



INSIGHTS FROM THE BDO LIFE SCIENCES PRACTICE

WHAT THE REPEAL OF THE MEDICAL DEVICE TAX MEANS FOR THE INDUSTRY

After years of legislative wrangling, the Medical Device Tax (MDT) was repealed at the end of 2019—drawing a sigh of relief from most sector stakeholders. While the tax had been inactive since late 2015, its official repeal puts to rest the lingering uncertainty as to whether it would ever resume. It also opens the door to a number of potential changes across the industry, including lower compliance and administrative costs, greater potential for new hiring and downward pressure on consumer prices. To understand these potential changes, however, it's important to review the history of the MDT.

Originally signed into law in March 2010, the MDT was intended to serve as a funding mechanism for the Affordable Care Act (ACA). It imposed a 2.3% excise tax on revenues across a wide variety of medical devices domestically produced and imported. Products made domestically for export, meanwhile, were tax-free. The law took effect in January 2013, but Congress later passed two moratoriums in December 2015 and January 2018 that suspended it. Proponents argued it would pay for itself via increased revenues from the nearly 30 million newly eligible for insurance under the ACA who could now purchase medical devices through their insurance.

LOOKING AT PAST IMPACT OF MDT TO ASSESS ITS REPEAL

According to data from the Joint Committee on Taxation and the Office of Management and Budget, projected revenues from the tax were roughly \$1 billion less than projected each year it was in effect. Additionally, it resulted in cumulative job losses of nearly 30,000. This largely lines up with the nonpartisan Tax Foundation's projections of a \$1.7 billion hit to GDP and decline of roughly 21,000 jobs if the tax were to resume.

While it's challenging to predict with certainty the impact the repeal will have, we anticipate several broad effects:

- ▶ **Lower compliance and administrative costs:** Unlike most taxes, the MDT targeted a specific sector. Aside from the top 30 manufacturers, high net losses are quite common among the medical device sector, leaving little cushion against additional expenses. Most medical device companies were far less able to shoulder the burden of the tax itself, as well as the high fixed administrative and compliance costs, according to the Congressional Research Service (CRS). Despite the four-year moratorium, it's likely there will be some new savings

in compliance costs, as many companies were likely still maintaining readiness for the eventuality that it might resume.

- ▶ **Potential hiring constraint removed:** As mentioned above, the MDT was linked to a decline of roughly 30,000 jobs. While it's difficult to know exactly how many of those may have been rehired or otherwise in the intervening period, now that the threat of the tax is removed, companies will not have that potential constraint in mind when looking at staffing moving forward.
- ▶ **New focus on domestic U.S. market, potential for reduced costs:** Roughly one third of the industry's production is focused on foreign exports, [according to the CRS](#), and the exemption incentivized prioritizing growing exports over serving the domestic U.S. market. With the tax now repealed, manufacturers no longer have an incentive to prioritize the export market.

Medical device manufacturers that have already raised prices and reduced workforces and employee health benefits in preparation for the tax's resumption will likely receive a windfall as a result of the repeal. However, the industry is facing other regulatory headwinds in the form of the EU's Medical Device Regulation and In Vitro Diagnostic Regulation, set to take effect in May 2020 and 2022, respectively. Long-term implications of the Tax Cut and Jobs Act—including the new requirement that research expenditures be capitalized and amortized over five to 15 years—are also unclear.

WHAT SHOULD MEDICAL DEVICE MANUFACTURERS DO NEXT?

While the repeal of the MDT is no doubt a welcome development across the industry, medical device organizations should continue to stay abreast of the broader regulatory landscape and conduct a time-intensive review of the repeal's impact on organizational strategies.

Contact us to learn more about how the medical device sector can navigate a complex and shifting regulatory environment:

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