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Tax Notes

Tax Provisions of New Stimulus Package

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On December 21, 2020, the House and Senate passed the 2021 Consolidated Appropriations Act and it now awaits signature from the President. In addition to funding an additional round of Paycheck Protection Program (PPP) loans (see dedicated article), the Act contains a wide range of tax provisions. Together, they provide renewed relief to struggling businesses. Key tax provisions are described below.

This article is a brief summary of the 2021 Consolidated Appropriations Act. More analysis, with additional PKFOD observations and action items, will follow.

Deductibility of PPP Expenses

As many hoped, the Act provides for expenses paid with the proceeds of PPP loans to be fully deductible for tax purposes, whether or not the loan is or is expected to be forgiven. This fulfills the initial Congressional intent in the CARES Act from March 2020, and overrules prior IRS guidance to the contrary. In addition, the Act confirms that tax-exempt PPP forgiveness income increases tax basis for partners of partnerships and S Corporation shareholders.

PKFOD Observation: Note that at this juncture we are unsure if all states will follow. Some may decouple from this provision and prevent the deduction of PPP expenses.

Expanded Employee Retention Credit

The Employee Retention Credit (ERC), a refundable credit against employment taxes paid by employers whose business was shut down by government order or who experience a significant decline in gross receipts, was part of the initial CARES Act legislation. However, because a business had to choose between receiving a PPP loan and taking advantage of the ERC, it had experienced limited usage.

The ERC, due to expire at the end of 2020, has been extended through the first two quarters of 2021. In addition, the Act retroactively amends the CARES Act to remove the exclusion from the ERC for PPP borrowers (although a credit cannot be obtained for wages treated as covered expenses for PPP purposes).

For the first two quarters of 2021, the ERC has been increased and access has been expanded.

- The credit amount is increased from 50% of qualified wages to 70%.
- The cap on qualified wages is increased from $10,000 total to $10,000 per quarter, effectively increasing the maximum credit from $5,000 per employee to $14,000.
- The reduction in gross receipts required to qualify if the business has not been shut down by a government order is 20% year-over-year, reduced from 50%.
- Businesses of less than 500 employees can now take the credit for all employees, as opposed to only employees not providing services; this cap was originally 100 employees.
- Some non-profits, such as colleges and universities and health care providers, now qualify as eligible employers.

PKFOD Observation: This is a broad expansion of the applicability of the ERC and will provide additional relief to a number of businesses. PKFOD will provide additional guidance on how businesses can claim the expanded ERC as it becomes available, but suffice to say, this is good news for many businesses that previously did not qualify.

Business Meal Deduction

Deductions for business meals provided by a restaurant in 2021 and 2022 will not be subject to a 50% cap and will instead be fully deductible.

PKFOD Observation: Note that the Act does not address entertainment expenses, which are still non-deductible.

Extension of Credits for Enhanced Paid Sick Leave and Family Leave

The Act extends the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (Expanded FMLA) provisions of the Families First Coronavirus Response Act (FFCRA) through the end of March 2021, while also extending the tax credits provided to employers who make payments to employees under those programs as well.

Tax Extenders

In addition, the Act extends a number of other key tax provisions:

- A variety of tax credits, including those for the renewable energy industry
- The expanded deductibility of charitable contributions, enacted in the CARES Act
- The reduction in the excise tax on beer, wine, and spirit makers is now permanent
- 30-year period for depreciation of qualifying residential real property for those making the real property trade or business election in calculating interest expense limitation
- The look-through rule for payments between related controlled foreign corporations (CFCs)

Contact Us

PKF O'Connor Davies is monitoring the situation in Washington and as it changes we will keep you informed. Please feel free to reach out to us with questions about how these new tax provisions may affect your business.

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This is part of a continuing series updating our clients regarding the effects on tax filings due to COVID-19. Please find our prior articles as part of PKF O'Connor Davies' COVID-19 Resource Center here.

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