



# GMS Flash Alert



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## United States - President Trump Signs CARES Act into Law

On March 27, 2020, U.S. President Trump signed the “Coronavirus Aid, Relief, and Economic Security Act,” (“CARES Act”) into law.<sup>1</sup> The CARES Act contains measures designed to bring some economic and fiscal relief to companies, small businesses, and individuals facing financial difficulties due to the COVID-19 crisis. (For prior coverage, see GMS [Flash Alert 2020-116](#), March 26, 2020.)

### WHY THIS MATTERS

The CARES Act contains numerous tax relief provisions that will impact individual assignees, as well as global mobility programs.

This Alert focuses on certain tax provisions of the CARES Act that apply to individual taxpayers and thus may be relevant to international assignees and their employers.

### 2020 Recovery Rebates for Individuals

The CARES Act adds a new section to the Internal Revenue Code (“the Code”), which provides that all U.S. resident individuals with adjusted gross income (“AGI”) up to \$75,000 (\$112,500 for head of household; \$150,000 for married taxpayers filing jointly), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for a refundable credit of up to \$1,200 (\$2,400 if married filing jointly) on their 2020 federal income tax returns. The credit is increased by an additional \$500 for each qualifying child (a dependent child under the age of 17) of the taxpayer, provided the qualifying child has a social security number or adoption taxpayer identification number. The credit is available for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. This includes many low-income individuals who file a tax return to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit.

The credit, which will be paid immediately as an advance rebate in order to get funds to taxpayers quickly, is reduced by \$5 for each \$100 that a taxpayer's AGI exceeds the phase-out threshold. The amount is completely phased-out for single filers with AGI exceeding \$99,000, \$146,500 for head of household filers with one qualifying child, and \$198,000 for married taxpayers filing jointly.

For the vast majority of U.S. residents, no action on their part will be required in order to receive a rebate check as the IRS will use the information reported on a taxpayer's 2019 tax return if filed, or in the alternative their 2018 tax return. If a taxpayer has not filed a 2019 or 2018 tax return, the IRS may use information provided on Form SSA-1099, *Social Security Benefit Statement*, or Form RRB-1099, *Social Security Equivalent Benefit Statement*, for the 2019 calendar year.

Since the rebate amount is based on prior year information while the 2020 credit amount is based on 2020 information, taxpayers may receive a rebate check for an amount that differs from the credit amount they are eligible to claim on their 2020 federal income tax return. While taxpayers are required to reduce the credit claimed on their 2020 federal income tax return by the rebate amount, they do not have to pay back any rebate amount to the government if they are not eligible for the credit based on their 2020 information. Alternatively, taxpayers may not receive a rebate check based on their prior year information even though they qualify for the credit based on their 2020 information. In such cases, taxpayers would receive a refundable credit on their 2020 federal tax income return instead of receiving the advance rebate.

This provision does not have an effective date as such. The CARES Act states that the IRS should issue the refund or credit any overpayment attributable to this provision as rapidly as possible. However, no refund or credit shall be made or allowed under this provision after December 31, 2020.

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## KPMG NOTE

The rebate is not available to any individual who is a nonresident individual, nor to any individual who can be claimed as a dependent on another's return, nor to estates and trusts. It is important to note the requirement that eligible individuals and their children must have a Social Security number, although there is an exception for military spouses. The CARES Act denies the rebate to an eligible individual with a Social Security number if the individual filed a joint return with a spouse who has an Individual Taxpayer Identification Number (ITIN), or filed a return with a qualifying child who has an ITIN.

With respect to international assignments, compensation amounts and reimbursement methods used by companies for employees on international assignments will be important factors in determining which assignees qualify for the rebate. Given that the driving factor for qualifying for the rebate is AGI, it is necessary to consider how an assignment policy influences an employee's AGI and what, if any, responsibilities companies have to make employees "whole" on this rebate. Alternatively, since AGI is calculated net of the Foreign Earned Income Exclusion, employees on international assignments who claim the Foreign Earned Income Exclusion may receive rebate checks as a result of their assignment if their stay-at-home income would have exceeded the phase-out limits.

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## Temporary Waiver of Early Withdrawal Penalty for Certain Withdrawals from Qualified Retirement Plans

The CARES Act provides that the 10-percent penalty for early withdrawal from a qualified retirement plan is waived for distributions of up to \$100,000 for "coronavirus-related" purposes. If a distribution to an individual is considered to be a "coronavirus-related distribution," a plan will not be treated as violating any requirement of the Code merely because the plan treats the distribution as a "coronavirus-related distribution," unless the aggregate amount of such distributions

from all plans maintained by the employer (and any member of any controlled group which includes the employer) to the individual exceeds \$100,000. Distributions are considered “coronavirus-related” if they are distributed from an eligible retirement plan during the 2020 calendar year to an individual:

- who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC),
- whose spouse or dependent is diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC, or
- who experiences adverse financial consequences as a result of:
  - being quarantined, furloughed, laid off, or having work hours reduced due to COVID-19; or
  - being unable to work due to lack of child care due to COVID-19; or
  - losing or reducing hours of a business owned or operated by the individual because of COVID-19; or
  - other factors determined by the Treasury.

When determining whether a distribution is considered a “coronavirus-related distribution,” the plan administrator may rely on an employee’s certification that the employee satisfies one of the conditions stated above.

If an individual receives a “coronavirus-related distribution,” the distribution is included in income ratably over three years, unless the taxpayer elects to include the entire distribution in income in the year of distribution. Alternatively, any individual who receives a “coronavirus-related distribution” is permitted, at any time during the three-year period beginning on the day after the date the distribution was received, to make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which the individual is a beneficiary and to which a rollover contribution of such distribution could be made under certain provisions of the Code.

The CARES Act also stipulates that the limit on loans from qualified plans is increased from \$50,000 to \$100,000. The loan is limited to the present value of the non-forfeitable accrued benefit of the employee under the plan. The loan limit is increased for a 180-day period starting on March 27, 2020.

Additionally, The CARES Act provides that the repayment due dates with respect to certain outstanding loans from qualified plans made to qualified individuals that were otherwise due between March 27, 2020 and December 31, 2020, will be delayed for one year. Further, the CARES Act provides that any subsequent repayments will be adjusted to reflect the delay and any interest accrued during such delay.

## **Temporary Waiver of Required Minimum Distribution Rules for Certain Plans and Accounts**

The CARES Act waives the required minimum distribution rules for calendar year 2020 for certain defined contribution plans and Individual Retirement Accounts. Individuals are usually required to take mandatory distributions starting at age 72, but such distributions are not required during 2020.

## **Changes to Charitable Deduction Rules**

The CARES Act provides a new “above the line” charitable contribution deduction of up to \$300 to individuals who do not itemize their deductions. Thus, individuals who claim the standard deduction can still obtain the benefit of a deduction for qualifying charitable contributions. For individuals who do itemize their deductions, the CARES Act permits a charitable contribution deduction of up to 100 percent of their AGI.

Both the above the line deduction and the increased limitation require the contribution to be made during 2020, in cash, and to a public charity or foundation. Contributions made to a supporting organization or a donor-advised fund do not qualify for either the above the line deduction or the increased limits.

## Exclusion for Certain Employer Payments of Student Loans

The CARES Act includes a provision allowing employers to provide a tax-free student loan repayment benefit to employees. The CARES Act allows an employer to contribute up to \$5,250 annually toward an employee's student loans, and this contribution is not included in the employee's income. The annual limit applies to both the student loan payment as well as other educational assistance traditionally provided under an educational assistance program. It also disallows the employee's deduction for interest paid on the student loan. This provision is effective for payments made after March 27, 2020 and before January 1, 2021.

## Delay in Employer and Self-Employment Payroll Taxes

The CARES Act allows employers and self-employed individuals to defer payment of the employer share (6.2%) of the social security tax they otherwise are responsible for paying in 2020, effective for payments due after March 27, 2020. Fifty percent of the deferred payroll taxes are due on December 31, 2021, and the remaining amounts are due on December 31, 2022.

### FOOTNOTE:

1 At the time of publication, the text of the signed CARES Act was not yet available, however the House passed the Senate version of the CARES Act without amendments. For the text of the CARES Act as passed by the Senate, see [H.R. 748](#). For KPMG commentary on the provisions of the Act, see <https://home.kpmg/content/dam/kpmg/us/pdf/2020/03/tnf-cares-act-mar27-2020.pdf>.

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