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GMS Flash Alert

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United States - Congress Passes Stimulus Package

On December 21, 2020, the United States Congress passed additional coronavirus (COVID-19) pandemic relief legislation, which includes over $900 billion for various COVID-19 relief programs and $1.4 trillion in government funding, as well as a bevy of tax provisions. Although Congress has passed the bill, it still needs to be signed by President Trump in order for it to become law.

WHY THIS MATTERS

The tax provisions included in the stimulus package are wide-ranging: while a number of provisions are directly related to COVID-19 relief, expanding upon relief provided in the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act),[1] the legislation also addresses a number of temporary measures (so called "expiring provisions" or "tax extenders") and provides relief for other, non-COVID-19 disasters.

This GMS *Flash Alert* focuses on the provisions within the legislation most likely to impact global mobility programs and international assignees.

Additional 2020 Recovery Rebate for Individuals (Economic Impact Payment)

The legislation provides a second round of recovery rebate credits for eligible individuals in the amount of $600 per taxpayer ($1,200 for married couples filing jointly) and an additional $600 for each qualifying child with a Social Security Number (SSN) or adoption taxpayer identification number (ATIN). The amount of recovery rebate credit is fully refundable and phased out for higher-income earners beginning at $75,000 of adjusted gross income (AGI) ($112,500 for head of household; $150,00 for married filing jointly). Advance payments will generally be issued based on information provided on 2019 tax returns.[2]

In general, individuals must have a valid SSN to be eligible for the payment. However, married taxpayers filing jointly are eligible for a $600 payment if one spouse has an SSN and one spouse does not (in addition to $600 per child with an SSN or ATIN).

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 generally have an SSN.

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" for 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.

The legislation also amends the recovery rebate provided by the CARES Act ($1,200 per eligible taxpayer plus $500 per qualifying child) to permit married taxpayers filing jointly to claim a $1,200 credit if only one spouse has an SSN, plus a $500 credit per qualifying child with an SSN or ATIN.

KPMG NOTE

The CARES Act denied the Economic Impact Payment (EIP) to an eligible individual with an SSN if the individual filed a joint return with a spouse who had an ITIN. The amendment to the CARES Act included in this legislation means that some couples who did not receive the first EIP will be entitled to a refundable $1,200 credit on their 2020 tax return.

Any individual deceased before January 1, 2020 is not an eligible individual for purposes of the recovery rebate credit.

The legislation directs U.S. Secretary of the Treasury Steven Mnuchin to issue these payments as rapidly as possible, and allows the Treasury to electronically disburse payments to any account to which an individual has authorized the delivery of a refund of taxes or from which an individual has made a payment of taxes, or any Treasury-sponsored account. No payments will be made after January 15, 2021.

KPMG NOTE

Taxpayers who have filed their 2019 tax return and provided bank account information for refund purposes may receive their check sooner than other taxpayers for whom the IRS does not have bank account information on file.

Extension of Certain Deferred Payroll Taxes

The legislation extends the period of time an employer has to withhold and pay certain payroll taxes deferred under an August 8, 2020 presidential memorandum, and the date from which penalties and interest will accrue to the employer.[3] The presidential memorandum provided that employers could elect not to withhold the employee portion of the 6.2 percent OASDI social security tax for the period from September 1, 2020 through December 31, 2020, for eligible employees (generally those with wages of $4,000 or less per biweekly pay period). If this election was made, the employer was required to withhold the deferred taxes from wages paid during the period from January 1, 2021 through April 30, 2021, with penalties accruing as of May 1, 2021.

Under the legislation, the period for withholding the deferred taxes is extended to run from January 1, 2021 through December 31, 2021. If the applicable taxes are not fully repaid by December 31, 2021, penalties and interest on the deferred unpaid tax liability will begin to accrue to the employer on January 1, 2022.

KPMG NOTE

The extension of the period for withholding the deferred taxes from four months to 12 may mean that more employees will separate from service from the employer, for retirement or other reasons, before repaying the full amount making it even more important that employers who elected to apply the deferral have a policy in place to recoup the unpaid balance from an employee in those situations. On the other hand, if the employer elects to spread the withholding of the deferred 2020 payroll tax over 12 months rather than just four, the impact on employees' paychecks will be much smaller, which would be perceived as a positive result for most taxpayers.

Changes to Charitable Deduction Rules

The legislation provides for a special charitable contribution deduction for the 2021 tax year of up to $300 ($600 if filing a joint return) for 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. The CARES Act created this special deduction for tax year 2020 only, and limited the amount to $300 for all taxpayers for tax year 2020. Also, in 2020 the deduction is characterized as an "above-the-line" deduction taken in arriving at AGI, whereas in 2021 it will be taken in addition to the standard deduction in arriving at taxable income.

The legislation also increases the underpayment penalty for an underpayment attributable to an overstatement of qualified charitable contributions.

For taxpayers who itemize deductions, the legislation permits individuals to claim a charitable contribution deduction of up to 100 percent of AGI, extending the relief provided in the CARES Act for tax year 2021.

Both the special charitable contribution deduction for non-itemizers and the increased limitation require the contribution to be made during 2021, 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 special $300 charitable contribution deduction for non-itemizers or the increased limits.

KPMG NOTE

Under the CARES Act, for tax year 2020 the special $300 charitable contribution deduction for non-itemizers was considered in determining AGI, and thus affects any credit tied to AGI. For 2021, under this new legislation, the special $300 charitable contribution deduction is a reduction of taxable income.

Reduction in Medical Expense Deduction Floor

Individuals are allowed a deduction for unreimbursed medical expenses that exceed a certain percentage of their AGI. The 2017 tax law (commonly referred to as the "Tax Cuts and Jobs Act") temporarily set this percentage of AGI threshold at 7.5 percent for tax years beginning before January 1, 2021. The AGI threshold was scheduled to increase to 10 percent of AGI starting in tax year 2021. The new legislation permanently reduces the AGI threshold to 7.5 percent for all taxpayers.

Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements

The legislation provides flexibility for taxpayers to rollover unused amounts in their health and dependent care flexible spending arrangements from 2020 to 2021 and from 2021 to 2022. The legislation allows for the grace period for plan years ending in 2020 and 2021 to be extended to 12 months with respect to unused benefits or the contributions grace period. In addition, employers may allow employees to make a 2021 mid-year prospective change in contribution amounts.

Temporary Special Rule for Determination of Earned Income

The legislation contains a special rule for determining earned income for the 2020 tax year for purposes of the Child Tax Credit and Earned Income Tax Credit. If an individual's earned income in 2020 is less than his or her earned income in 2019, the individual may elect to determine the 2020 credit using 2019 earned income. For married taxpayers who file jointly, earned income for 2019 is the sum of earned income of each spouse in 2019.

Temporary Rule Preventing Partial Plan Termination

A partial termination generally occurs when a qualified retirement plan has turnover in excess of 20 percent. A partial termination can cause significant cost and administrative expenses to the plan sponsor. Due to the high turnover since March of 2020, the legislation provides a temporary rule for any plan year which includes March 13, 2020, because of the high workforce turnover since March 2020. The legislation provides that determination of the partial termination can be delayed until March 31, 2021, to give companies time to restore their workforce above 80 percent and avoid the partial termination.

Full Deduction for Certain Business Meals

The legislation allows a 100-percent deduction for business meal food and beverage expenses provided by a restaurant that are paid or incurred in calendar years 2021 and 2022. Currently, the deduction is available for only 50 percent of such expenses.

Transition from Deduction for Qualified Tuition and Related Expenses to Increased Income Limitation on Lifetime Learning Credit

The deduction for qualified tuition and related expenses, which was set to expire for tax years beginning after December 31, 2020, is one of several tax provisions collectively known as "expiring provisions" or "tax extenders" that Congress frequently allows to expire and then retroactively extends.[4] Rather than extending this deduction past December 31, 2020, the legislation allows the deduction to expire.

In place of the deduction for qualified tuition, for tax years beginning after December 31, 2020, the legislation increases the modified AGI (MAGI) limitation for the Lifetime Learning Credit (LLC) for qualified tuition and related expenses. Under the legislation, for tax years beginning after December 31, 2020, the MAGI limitation for the LLC is set to the same MAGI limitation as the American Opportunity Credit (AOTC) and is no longer indexed for inflation. Both the LLC and AOTC begin phasing out for taxpayers with MAGI of $80,000 ($160,000 for married filing jointly) and are fully phased out for taxpayers with MAGI of $90,000 ($180,000 for married filing jointly) or more.

Non-COVID-19 Disaster Tax Relief

The legislation provides disaster tax relief for individuals and businesses in presidentially-declared disaster areas for major disasters declared (other than COVID-19) after December 31, 2019, through 60 days after the date of enactment.

Special Disaster-Related Rules for Use of Retirement Funds

The legislation allows residents of disaster areas to borrow or take out a loan of up to $100,000 from a retirement plan or IRA account without penalty. Amounts withdrawn are included in income, but the income is spread over three years. The amount may be recontributed to the plan to avoid tax. For new and outstanding plan loans, the repayment period is extended for one year.

Special Rules for Qualified Disaster-Related Personal Casualty Losses

The legislation provides special rules for qualified disaster-related personal casualty losses, increasing the threshold above which such losses are deductible from $100 to $500, and eliminating the requirement that personal casualty losses must exceed 10 percent of AGI to qualify as disaster-related personal casualty losses. Also, under the legislation, the deduction for disaster-related casualty losses will not be limited only to those who claim itemized deductions, but will also be allowed as an addition to the standard deduction for non-itemizers.

Other Tax Provisions Extended by the Legislation

Long-Term Extensions of Temporary Provisions

Provisions Extended Through 2025

- **Exclusion from gross income of discharge of qualified principal residence indebtedness**

  The exclusion from gross income of discharge of qualified principal residence indebtedness is extended, and now applies to indebtedness discharged before January 1, 2026. However, for indebtedness discharged after December 31, 2020, the amount of discharged acquisition indebtedness that may be excluded is reduced from $2,000,000 ($1,000,000 in the case of a married individual filing a separate return) to $750,000 ($375,000 in the case of a married individual filing a separate return).

- **Exclusion for certain employer payments of student loans**

  The legislation extends through tax year 2025 the temporary exclusion for certain employer payments of student loans provided in the CARES Act. The exclusion now applies to employer payments paid after March 27, 2020, and before January 1, 2026.

KPMG NOTE

Student loan repayments may provide companies with an opportunity to award talent in a tax-efficient manner.

Provisions Extended Through 2023

Provisions that are extended for three years (through the end of 2023) include:

- **Energy credit, with adjustments to phase-out schedules:** Taxpayers may claim a credit for a percentage of their basis in certain qualified energy property placed in service during the tax year. The legislation extends the current 26-percent credit for solar energy property, fiber-optic solar equipment, fuel cell property, and small wind energy property that begin construction by the end of 2022, and at a 22-percent rate for property that begins construction by the end of 2023. Thereafter the credit is reduced to 10 or zero percent. The 10-percent investment credit is extended for microturbine property, geothermal heat pumps, and combined heat and power property that begins construction through 2023.

- **Residential energy-efficient property credit, with addition of rules for inclusion of biomass fuel property expenditures:** The legislation extends the credit for residential energy-efficient property at the current 26 percent rate for property placed in service through 2022. The rate is reduced to 22 percent for property placed in service in 2023. Eligible property includes qualified solar electric, solar water heating, fuel cell, small wind energy, and geothermal heat pump properties. Starting in 2021, eligible property also includes certain qualified energy-efficient biomass-fuel property.

Short-Term Extensions of Temporary Provisions

Provisions that are extended for one year (through the end of 2021) include:

- **Treatment of mortgage insurance premiums as qualified residence interest:** Mortgage insurance premiums paid or accrued before December 31, 2020, may be deducted as qualified residence interest (subject to certain limitations). This tax benefit has been extended one year and applies to mortgage interest premiums paid or accrued through December 31, 2021.

- **Non-business energy property credit:** Taxpayers are allowed a credit of 10 percent of the amounts paid or incurred for qualified energy improvements to the building envelope (windows, doors, skylights, and roofs) of principal residences. Credits of fixed-dollar amounts ranging from $50 to $300 are allowed for energy-efficient property including furnaces, boilers, biomass stoves, heat pumps, water heaters, central air conditioners, and circulating fans, subject to a lifetime cap of $500.

- **Qualified fuel-cell motor-vehicle rules for alternative motor-vehicles credit:** Through 2021, taxpayers may claim a credit for a new qualified fuel-cell motor vehicle purchased and placed in service during the tax year. The amount of the credit is determined by reference to the weight of the vehicle.

- **Alternative fuel refueling-property credit:** The legislation extends the credit for the installation of alternative fuel vehicle refueling property, which includes property that dispenses alternative fuels including ethanol, biodiesel, natural gas, hydrogen, and electricity. The credit is capped at $30,000 per location for business property and $1,000 for property installed at a principal residence.

- **Two-wheeled plug-in electric vehicle credit:** The legislation extends the 10-percent credit for highway-capable, two-wheeled plug-in electric vehicles. The maximum credit that can be claimed is $2,500

FOOTNOTES:

1 See GMS *Flash Alert* 2020-127, March 27, 2020, for prior coverage of the CARES Act.

2 For certain individuals who receive social security or veteran benefits but may have not yet filed a 2019 tax return, the IRS may use information provided by the Social Security Administration or Veteran Affairs to determine eligibility for the advanced payment.

3 See GMS *Flash Alert* 2020-352, August 11, 2020.

4 See GMS *Flash Alert* 2018-034, February 21, 2018, for prior coverage of "tax extenders."

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The 2021 Personal Tax Planning Guide Is Available for Your Use!

To support year-end tax planning and help individuals and families plan for the year ahead, KPMG LLP (U.S.) presents the "2021 Personal Tax Planning Guide." Prepared by tax professionals from the Washington National Tax office, the guide provides valuable information and insights to support year-end tax planning and help ensure an individual's/family's U.S. tax position is in shape heading into 2021.

The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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