AMERICAN RESCUE PLAN OVERVIEW

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law. The Act includes a number of tax and business relief provisions, including a third round of direct stimulus payments, enhancements of many personal credits meant to benefit people with lower incomes and children, extensions of highly popular payroll tax credits for employers first instituted at the beginning of the pandemic, and changes related to retirement plan funding.

INDIVIDUAL TAX RELIEF

Recovery Rebates

The Act includes a third round of direct stimulus payments for taxpayers.

The American Rescue Plan Act of 2021 provides a $1,400 stimulus payment. The payments are essentially credits against 2021 taxes, but fully refundable and payable in advance (similar to the prior payments). Also, like previous stimulus payments, this third round is subject to income limitations.

The amount of the payment phases out ratably for single filers with adjusted gross income over $75,000 ($112,500 for heads of households and $150,000 for joint filers). The stimulus amount phases down to $0 for single filers with $80,000 of adjusted gross income ($120,000 for heads of households and $160,000 for joint filers).

Adjusted gross income amounts for the 2020 tax year are used in applying the phaseout, but 2019 amounts will be used in lieu of 2020 amounts for taxpayers who have not yet filed 2020 returns.

As was the case with the last two stimulus payments, amounts to which taxpayers would have been entitled but did not receive will be creditable when preparing 2021 tax returns in 2022. Also, amounts received based on 2019 or 2020 returns that would have been lower when 2021 returns are prepared do not have to be repaid

The $1,400 is available for all persons for whom a Social Security Number is associated, and is $1,400 for taxpayers, children, and non-child dependents. The Treasury and IRS are granted authority to provide payments to nonfilers based on available information.

Child Tax Credit

The Act includes a significant overhaul of the child tax credit, but only for the 2021 tax year.

Under prior law, the amount of the child tax credit is equal to $2,000 per child, but only $1,400 of that amount is refundable (meaning that the taxpayer receives the credit even if there is an insufficient amount of taxes to be credited against).

The Act increases the amount to $3,000 per child (or $3,600 for a child under the age of six) and makes the credit amount fully refundable. The bill also increases the maximum age of qualifying children to include 17-year old children.

The excess of the amount of the credit over the present-law $2,000 amount is phased out by $50 for every $1,000 of modified adjusted gross income in excess of the threshold amount ($150,000 for joint filers, $112,500 for head of household filers, and $75,000 for single filers).

Once the excess amount is eliminated, the amount of the credit remains at $2,000 until the present law phaseout thresholds are reached ($400,000 for joint filers, $200,000 for all other filers).

The Treasury and IRS are directed by the Act to issue advance payments of half of the credit amount beginning on July 1, 2021. The advance payments are to be issued periodically in equal amounts through the end of 2021. The remaining half of the credit not paid in advance is received when filing 2021 returns, as the full amount is claimed on the return but reduced by the aggregate amount received in advance.

In the case of a taxpayer who received advance payments in error (for example, where a 2019 or 2020 return indicated a dependent child who is no longer a dependent in 2021), the Act provides a safe harbor provision, protecting taxpayers from having to pay back overpayments of up to $2,000 per child. The safe harbor is available for single taxpayers with modified adjusted gross income of $80,000 or less ($120,000 for joint filers, $100,000 for head of household filers).

The IRS and Treasury are directed to create a website for taxpayers to opt out of receiving advance payments, or to provide information on status changes that would impact the amount of the credit.

Earned Income Tax Credit

The Act includes several enhancements to the earned income tax credit (EITC). Under the Act, for 2021 only, the amount of the credit is significantly increased for filers without children. The changes cause the childless EITC amount for 2021 to increase from $543 to $1,502, increase the amount of income at which the credit is maximized to $9,820 (previously set at $7,100) and increase the threshold for the phaseout of the credit for non-joint filers to $11,610 (previously set at $8,880). The minimum age for childless claimants of the EITC is also reduced from 25 to 19 (except in the case of full-time students).

The Act also allows taxpayers to substitute 2019 earned income for 2021 earned income in claiming the EITC on 2021 returns if 2021 earned income was less than 2019 earned income.

Other changes to the EITC are made permanent. This includes the elimination of the prohibition against filers claiming the childless EITC solely because they are unable to claim the EITC for filers with children due to the lack of identification requirements. Additionally, a married but separated individual can claim the EITC as an unmarried person as long as certain requirements relating to children are satisfied.

Finally, the amount of disqualifying investment income for purposes of the EITC is increased to $10,000, adjusted for inflation after 2021. The previous amount of disqualifying investment income was $3,650 for 2021.

Dependent Care Assistance

The amount of the child and dependent care credit is significantly enhanced under the Act for 2021 only.

Under prior law, the amount of the credit was equal to 35 percent of qualified expenses for care of a qualifying individual up to $3,000 for one qualifying individual or $6,000 for two or more qualifying individuals. However, the credit percentage was reduced by one point for every $2,000 of adjusted gross income in excess of $15,000, until reaching 20 percent, at which point it was no longer reduced.

The Act increases the credit to 50 percent of qualified expenses and reduces the credit percentage by one point for each $2,000 of adjusted gross income in excess of $125,000. The credit percentage is then not further reduced below 20 percent until adjusted gross income reaches $400,000, at which point the reduction of credit percentage continues until reaching zero. Additionally, the amount of eligible expenses qualifying for the credit are increased to $8,000 for one individual and $16,000 for two or more individuals.

Finally, the credit is made fully refundable.

In addition to the changes to the credit, the maximum exclusion of employer-provided dependent care assistance is also increased for 2021 to $10,500, or $5,250 in the case of a married taxpayer filing separately. These amounts are roughly double the maximum exclusion under prior law.

Unemployment Relief

The Act also includes an extension of enhanced $300 weekly unemployment relief first made available in the early pandemic relief bills. The extension, originally set to expire in March, would run through early September under the Act, but with some changes.

The notable change for tax purposes makes the first $10,200 of unemployment relief per person received in 2020 exempt from tax for households with less than $150,000 of income.

Exclusion of Forgiven Student Loans

The Act includes an expanded exclusion of forgiven student loan amounts applicable to loans discharged after 2020 and before 2026. Under prior law, forgiven student loans are only excludable given certain conditions (such as the death or disability of the borrower). However, this expansion allows for the exclusion to apply to any discharge of student loans for any reason during the period. The exclusion also applies to private student loans, as long as there is no required provision of services to the discharging lender.

EMPLOYER TAX RELIEF

Paid Sick and Family Leave Credits

One of the first relief measures provided by Congress in the early days of the pandemic was the payroll tax credit for employers providing paid sick and family leave, as well as a similar credit for self-employed workers. The period for which the credit could be claimed was originally set to expire on December 31, 2020, but was extended to March 31, 2021 by the Consolidated Appropriations Act, 2021.

The Act extends the applicable period to September 30, 2021. It also increases the limit on applicable wages for which the family leave credit can be claimed to $12,000 from $10,000, effective after March 31, 2021.

The leave for which a credit can be claimed is also expanded to include time off to receive a COVID-19 vaccine, or to recover from a vaccine-related illness or injury. However, the Act makes the credit applicable to the hospital insurance (HI) tax (a.k.a. Medicare tax), not old-age, survivors, and disability insurance (OASDI) taxes, effective March 31, 2021.

The Act also resets the ten-day per employee limitation on claiming the credit. The original 2020 provisions limited employers to claiming the credit for a total of ten days' leave for an employee, and that ten-day period applies from the original start date through March 31, 2021. Under the Act, effective after March 31, 2021, a new ten-day period is available.

For self-employed persons looking to claim the credit, the number of days for which the credit can be claimed is increased to 60 days (from 50 days) under the Act, retroactively effective after December 31, 2020.

Employee Retention Tax Credit

Another highly popular provision of the original COVID-19 relief legislation is the payroll credit for employee retention. The credit was extended through June 30, 2021 by the Consolidated Appropriations Act, 2021. The Act extends the credit through the end of 2021, and, like the paid sick and family leave credit, makes it available to apply to HI taxes, not OASDI taxes, after June 30, 2021.

The March 2020 *Coronavirus Aid, Relief, and Economic Security (CARES) Act* included a fully refundable federal payroll tax credit (the “Employee Retention Credit”) for employers whose trade or business was fully or partially suspended due to COVID-19 or that experienced a significant decline in gross receipts, equal to 50% of up to $10,000 of “qualified wages” paid to each employee after March 12, 2020, and before Jan. 1, 2021. The December *Consolidated Appropriations Act* extended the availability of the credit to the first two calendar quarters of 2021, increased the amount of applicable qualified wages to $10,000 per quarter, increased the credit amount to 70% of qualified wages, and eased the thresholds for large versus small employer status and for determining whether a significant decline in gross receipts had occurred. The new Act extends the availability of the credit to the third and fourth quarters of 2021, each with its own $10,000-per-employee maximum and adds additional eligibility opportunities.

RETIREMENT PLAN FUNDING

The Act includes several changes meant to help employers meet funding obligations for pension plans.

For multiemployer plans, it provides delays in having to apply changes to funding plans or schedules, as well as providing extended improvement and rehabilitation periods for plans that entered critical or endangered status in 2020 or 2021. The Act also provides a longer investment loss amortization period for multiemployer plans, effective for plan years ending on or after February 29, 2020.

For single-employer plans, the Act provides a longer period for amortizing funding shortfalls, effective for plan years beginning after December 31, 2019. Under the new law, the amortization period is extended to 15 years, from the previous law's seven years. The Act also provides for an extension of funding stabilization measures for single employer plans, also effective for plan years beginning after December 31, 2019.

MISCELLANEOUS RELIEF

A handful of other tax provisions are included in the Act, with some aimed at making health care more affordable and ensuring that pandemic-related aid does not create tax burdens on businesses receiving them.

COBRA Coverage Assistance

The Act includes premium assistance for COBRA continuation coverage through September 31, 2021. It calls for a 100% reduction of COBRA premiums for eligible individuals. The assistance is provided by reimbursing the employer (or whoever is to receive the premiums) for unreceived premiums through a credit against HI payroll taxes (not OASDI taxes).

The Act excludes the premium reductions from income. It also includes a penalty to be paid by employers failing to provide adequate notice to former employees whose COBRA continuation period has lapsed.

Premium Tax Credits

The Act makes changes to the premium tax credit. For 2021 and 2022, the Act modifies affordability percentages used in calculating the premium tax credit to make credits available for individuals with incomes above 400 percent of the federal poverty line and increases credit amounts for those already qualified. For 2021, the Act makes advance premium tax credits available for individuals receiving unemployment compensation. And the Act eliminates the recapture provisions applicable to 2020 for taxpayers receiving excess premium tax credits.

Tax Treatment of COVID-19 Relief

The Act provides that Targeted Economic Injury Disaster Loans (EIDL) and Restaurant Revitalization Grants received from the Small Business Administration will not be subject to income tax, and the exclusion will not result in the denial of a deduction reduction of tax attributes, or denial of increase in basis.

BUSINESS GRANT AND LOAN PROGRAMS

Paycheck Protection Program (PPP)

The Act adds $7.25 billion in new funding for the Paycheck Protection Program (PPP). It also makes additional Section 501(c) nonprofit entities eligible to receive first- and second-draw loans, subject to certain conditions as well as certain “internet publishing organizations.

The Act does not extend the expiration of the program past March 31, 2021.

Shuttered Venue Operator Grants (SVOG) program

$1.25 billion is appropriated for the Shuttered Venue Operator Grants (SVOG) program. The Act also formalized the change recently released by the Small Business Administration (SBA) that allows organizations to receive both a SVOG and a first- and/or second-draw PPP loan, though the SVOG amount will be reduced by any received PPP loan amounts.

Restaurant Revitalization Fund

The Act appropriates $28.6 billion to establish a “Restaurant Revitalization Fund,” which will provide grants to restaurants (and food trucks/stands, caterers, taprooms, and other defined businesses “in which the public or patrons assemble for the primary purpose of being served food or drink”) that were economically impacted by COVID-19. Grants will be provided equal to the entity’s “pandemic-related revenue loss” – generally, the difference between their 2019 and 2020 gross receipts, up to $10 million (or $5 million per physical location) and reduced by the amount of any PPP loans previously received. Funds can be used during a specified covered period for payroll costs; payments of principal or interest on any mortgage obligation; rent payments; utilities; defined maintenance expenses; supplies, including protective equipment and cleaning materials; certain food and beverage expenses; covered supplier costs; operational expenses; paid sick leave; and “any other expenses that the Administrator determines to be essential to maintaining the eligible entity.”

Significantly, the amounts received will not be included in the recipient’s gross income. Businesses cannot apply and receive for both a restaurant grant and a SVOG.