DECEMBER 17, 2021

Key tax provision changes to remember entering 2022

Before the new year, taxpayers should plan for various changes affecting employment tax compliance, the Affordable Healthcare Act (ACA) health insurance mandate, and business meal deductions for 2022, as well as new digital asset reporting requirements that take effect later.

Payroll tax deferment

The Coronavirus, Aid, Relief and Economic Security Act (CARES Act; PL 116-136) allowed employers to defer deposits and payments of their share of Social Security taxes and certain railroad retirement taxes from March 27 through December 31, 2020. Under the CARES Act, deposits must be timely deposited to avoid penalties and interest retroactive to original 2020 due dates. 50% must be paid by December 31, 2021, but because that day falls under the Code Sec. 7503 weekend/holiday rule, the deadline is instead January 3, 2022. The remaining amounts are required to be deposited by January 3, 2023. As there are some complexities with this, it's important to seek guidance from your payroll tax provider.

Employee retention credit

The CARES Act also created the employee retention tax credit (ERTC), which provided specified employers a credit against employment taxes equal to 70% of qualified wages paid in a calendar quarter before January 1, 2022, up to $10,000 for each employee. The American Rescue Plan Act of 2021 (ARP Act, ARPA; PL 117-2) extended the ERTC through January 1, 2022, but the recently enacted Infrastructure Investment and Jobs Act, (IIJA, H.R. 3684) eliminated the credit (except for recovery startup businesses), retroactive to September 30, 2021.

This caused confusion among employers who had anticipated the credit through the end of this year. In response, the IRS issued Notice 2021-65 to provide guidance applicable to employers that received an advance payment of the ERTC for fourth-quarter 2021. The IRS is not requiring Taxpayers who received an advance to repay the amount until the due date of the fourth-quarter return, which is January 31, 2022. The guidance includes failure to deposit penalty waivers for deposits retained on or before December 20, 2021.

Form 1095-C

On December 9, the IRS released the *2021 filing instructions* for Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. Recently proposed regulations extended the deadline from January 31 to March 2 for employers to furnish to full-time employees individual statements indicating whether the employer's health insurance plan meets the minimum essential coverage requirement pursuant to the ACA. The electronic filing due date for Form 1095-C is March 31.

Form 1095-C (continued)

Applicable large employee (ALE) members offering employer-sponsored self-insured health coverage will be considered to have timely furnished Form 1095-C to non-full-time employees and enrolled non-employees if the form is accessible on the ALE member's website. Employers that fail to file applicable healthcare information returns may be subject to per-return penalties that increase 30 days after the deadline, and again after August 1, 2022.

Per diem rates

On November 16, the IRS issued Notice 2021-63, which provides a special rule allowing a temporary 100% deduction meal portion of a per diem rate or allowance as being attributable to food or beverages provided by a restaurant. The notice is effective January 1, 2021, through December 31, 2022.

Digital asset reporting

The IIJA defines a digital asset as "any digital representation of value which is recorded on cryptographically secured distributed ledger or any similar technology" specified by Treasury. Sales of digital assets must be reported beginning 2023, and businesses must report receipts of digital assets valued over $10,000 for transactions occurring in 2024 or after.

The IIJA also provides that the definition of a broker is "any person who is (for consideration) responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person." Though these provisions are not effective in 2022, they are the first compliance requirements the industry has seen and a potential indicator that the IRS will target the crypto and non-fungible token markets for enforcement.

Contact us if you have any questions.
