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The Latest COVID-19 Stimulus: Highlights of Key Tax Provisions in the American Rescue Plan Act of 2021

Tax Planning & Structuring

The American Rescue Plan Act of 2021 (ARPA, 2021) was signed by President Biden on March 11, 2021 to address the continuing economic impact on employers and employees the coronavirus (COVID-19) pandemic has posed. The ARPA includes numerous tax provisions that may impact taxpayers in 2020 and later. The legislation extends and expands provisions found in the Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief and Economic Security (CARES) Act, and the Consolidated Appropriations Act, 2021 (CAA, 2021) that are discussed in our previous client alerts, which can be found by visiting our [Coronavirus/COVID-19 Resources page](#).

The following is an overview of some of ARPA's key tax provisions and implications for various taxpayers and is not intended as a comprehensive review. Please note that some of the details regarding the ARPA are subject to change and administrative guidance on many of the ARPA's provisions is expected to be released in the coming weeks.

Business-Related Tax Provisions

Employee Retention Credit: In general, the ARPA increases the availability and value of credit to "Severely Financially Distressed Employers" by allowing such employers to take all wages into account, not just those that are paid for employees not providing services. Specifically, the ARPA extends the employee retention tax credit through December 31, 2021. It also modifies the credit such that, beginning after June 30, 2021, the credit will be structured as a refundable payroll tax credit against the Medicare tax imposed under IRC 3111(b). The ARPA also changes the eligibility criteria for this credit by allowing Severely Financially Distressed Employers with more than 500 employees to include all wages paid to employees as qualifying wages, not just those wages paid to employees that are not providing services. A Severely Financially Distressed Employer is a company whose gross receipts for the calendar quarter are less than 10% of its gross receipts from the same calendar quarter in 2019. For businesses which were not in existence in 2019 but that want to claim the credit, they must use their average number of 2020 employees to determine the wages which would qualify for this credit. These new employers will utilize their 2020 receipts for purposes of the gross receipts test. For additional guidance on this credit, [please see our prior alert](#).

COBRA: Under the ARPA, Assistance Eligible Individuals (AEIs) may receive an 85% subsidy for COBRA premiums paid during any period of COBRA coverage during the period beginning on April 1, 2021 (the first day of the first month beginning after enactment) and ending on September 30, 2021, and the employer sponsoring the plan (for a self-insured plan) or the insurer (for a fully-insured plan) will be entitled to claim a fully refundable federal payroll tax credit for the amount of the premiums the individual was not required to pay. The ARPA also requires certain related employer notices.

Payroll Tax Credit for Sick and Family Leave: The ARPA extends the availability of the payroll credit to eligible employers that voluntarily provide paid leaves during the second and/or third calendar quarters of 2021, and also adds (i) additional qualifying standards for the paid leaves, (ii) provides for a full post-second-quarter reset of the number of days for which paid sick leaves will be available, and (iii) imposes new nondiscrimination requirements.

IRC Section 162(m) Limitation Expanded: Applicable to tax years beginning after December 31, 2026, the ARPA provides a change in the law whereby publicly traded companies are denied deductions for compensation in excess of \$1 million for the eight highest-paid employees, plus the chief executive officer and chief financial officer. Under current law, the deduction is denied only for the

three highest-paid employees, plus the chief executive officer and chief financial officer. The five additional so-called “covered employees” will not become permanent covered employees merely because they are included in this “next five.”

Worldwide Interest Allocation Election Repealed: The ARPA repeals IRC Section 864(f) in its entirety. IRC Section 864(f) which first went into effect in the 2021 tax year, would have allowed multinational taxpayers to allocate interest expense on a worldwide basis, altering the computation of the foreign tax credit limitation under IRC Section 904, which provides for the allocation and apportionment of deductions between U.S.-source and foreign-source income. The repeal of this election will result in the continuation of the pre-2021 policy for allocating interest expense.

“Gig” or “Sharing” Reporting Requirements for Third-Party Network Transactions: The ARPA amends IRC Section 6050W to provide that increased reporting will be required (with a reporting trigger point of \$600 instead of the prior law’s \$20,000 threshold) on IRS Form 1099-K, Payment Card and Third Party Network Transactions, starting for payments in 2022. Form 1099-K is an informational return used to report certain payment transactions to the Internal Revenue Service (IRS) to improve voluntary tax compliance. These amendments will result in an increase in reporting to the IRS by so-called “gig economy” or “sharing economy” companies, with the expected corresponding result of an increase in federal taxes paid.

Individual-Related Tax Provisions

Direct Stimulus Payments: The ARPA authorizes a third round of Covid-19 stimulus payments, up to \$1,400 per eligible individual. These payments are treated as tax credits and therefore will not be includable in the recipient’s 2021 taxable income. The stimulus begins to phase-out for single taxpayers with adjusted gross income (AGI) between \$75,000 and \$80,000, heads of household filers with AGI between \$112,500 and \$120,000, and joint filers without children with AGI between \$150,000 and \$160,000. No stimulus payment is offered for any taxpayers with AGI greater than the phase-out limits.

Extension of and Tax Exclusion for Unemployment Insurance Payments: Various pandemic-related unemployment assistance measures were set to expire on March 14, 2021, and have now been extended through Sept. 6, 2021. The ARPA extends the additional \$300 per week Federal Pandemic Unemployment Compensation, the Pandemic Unemployment Assistance Program, and the Pandemic Emergency Unemployment Compensation Program. It also makes the first \$10,200 of unemployment insurance received in 2020 nontaxable income for taxpayers with AGI of less than \$150,000.

Child Tax Credit: The ARPA makes the Child Tax Credit refundable and increases it in 2021 to \$3,000 per child (\$3,600 per child under age 6) for eligible families. Taxpayers eligible for the full credit would include single filers with AGIs below \$75,000, heads of household filers with AGI below \$112,500, and joint filers with AGI below \$150,000. The increased per-child credit amount is reduced by \$50 for every \$1,000 of modified AGI exceeding the above listed amounts. The ARPA also expands eligibility to include 17-year-old children.

Earned Income Tax Credit: The ARPA includes a provision strengthening the Earned Income Tax Credit for the 2021 tax year. Specifically, for tax years beginning after December 31, 2020, and before January 1, 2022, for taxpayers age 19 and older with no qualifying children the 7.65% credit percentage and phase-out percentage is increased to 15.3%, the \$4,220 earned income amount is increased to \$9,820, and the \$5,280 phase-out amount is increased to \$11,610. These amounts are not adjusted for inflation. For the 2021 tax year, the ARPA also eliminates the current maximum age of 64 to receive the Earned Income Tax Credit.

Dependent Care Assistance: The amount of taxable wage exclusion for dependent care benefits is increased from \$5,000 to \$10,500 for married couples filing jointly. The amount of excludable wages for married couples filing separately is \$5,250. This increase applies to any taxable year beginning after December 31, 2020, and before January 1, 2022, effective December 31, 2020.

Credits for Paid Sick and Family Leave: The ARPA extends the availability of paid sick and paid family leave tax credits, as established in the FFCRA through Sept. 30, 2021. It also expands eligibility to state and local governments that provide this benefit

Student Loan Forgiveness: The ARPA excludes federal student loan debt that is forgiven in 2021 through 2025 from gross income. The provision applies to student loans provided by the federal government, state governments, and eligible educational institutions, as well as certain private education loans as defined in the Truth-in-Lending Act.

For additional information, or to discuss the details of the ARPA and how they may apply to your particular circumstances, please contact a member of Gould & Ratner's [Tax Planning and Compliance Practice](#).