

**MP&S: TAX ALERT
MARCH 2010**

HIGHLIGHTS OF THE HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT

The Hiring Incentives to Restore Employment (HIRE) Act, which was signed into law on March 18th, provides tax incentives for hiring and retaining workers and purchasing equipment and many other business assets. It also includes new measures that heighten disclosure and reporting requirements for foreign accounts. Some key features of the Act are discussed below.

PAYROLL TAX FORGIVENESS

The HIRE Act essentially exempts qualified employers (generally employers other than government entities) from having to pay the 6.2 percent Social Security portion of Federal Insurance Contribution Act (FICA) taxes on certain new hires through the end of the year. To qualify, a worker must be hired after Feb. 3, 2010, and before Jan. 1, 2011, and must have been unemployed (defined as not having worked more than 40 hours) for the 60-day period ending on his or her start date.

RETENTION CREDIT

This credit applies to workers who qualify for payroll tax forgiveness if they are retained for 52 consecutive weeks. The tax savings per qualified retained worker are equal to the lesser of 6.2 percent of the wages paid to the worker in 2010 or \$1,000.

SECTION 179 EXPENSING

The HIRE Act extends the increase in the Section 179 limit for initial year expensing to \$250,000 (from \$134,000). The Section 179 expensing election allows a current deduction for newly acquired assets that otherwise would have to be depreciated over a number of years. The HIRE Act also extends the increase in the threshold at which the expensing election begins to phase out to \$800,000 (up from \$530,000). The higher limits apply for calendar year 2010 or a business's fiscal year that begins in 2010.

FOREIGN ACCOUNT TAX COMPLIANCE

Reporting on Certain Foreign Accounts

For payments made after 2012, a 30 percent withholding obligation can be imposed on any foreign financial institution (and certain other foreign entities) that does not agree to comply with the new reporting requirements.

In order to comply with this provision and not withhold 30 percent, the foreign financial institution must agree, among other things, to:

- Comply with verification and due diligence procedures with respect to accounts held by US persons or US-owned foreign entities,
- Deduct and withhold 30 percent on certain "passthrough" payments to recalcitrant account holders and others and
- Either obtain from the account holder a waiver to any foreign secrecy laws or close the account if the waiver cannot be obtained within a reasonable time.

Disclosure of Foreign Financial Assets

The foreign account tax compliance provisions of the HIRE Act require US taxpayers to disclose their foreign accounts on their tax returns. A 40 percent penalty could apply to the portion of any underpayment attributable to an undisclosed foreign financial asset. Failure to make the requisite disclosures could result in a minimum \$10,000 penalty to a maximum \$50,000 penalty.

OTHER PROVISIONS

The HIRE Act includes additional provisions that may be of interest to you, including:

- A new election to convert tax credit bonds to Build America Bonds.
- Extends highway and transit programs through 2010.
- Defers implementation of “worldwide allocation of interest.”
- Subjects US owners of foreign trusts to new reporting requirements and penalties for failing to report.
- Extends the statute of limitations to 6 years for omission of income in connection with reportable foreign assets, under certain circumstances.
- Requires shareholders of passive foreign investment companies (PFIC) to file an annual report with the IRS.

Various changes to estimated tax payment requirements for certain large corporations also were included in the Act, but they do not go into effect until 2014 or later.

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FOR MORE INFORMATION

For more information about the Hiring Incentives to Restore Employment Act, please contact your MP&S tax advisor or Steven Eliach, JD, LLM, the Principal-in-Charge of the MP&S Tax Practice, by phone at 212.503.6388 or by email at seliach@markspaneth.com.

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