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Significant Tax Changes in Recently-Enacted "HIRE Act"

On Thursday, March 18, 2010, President Obama signed into law the “Hiring Incentives to Restore Employment Act” (HR 2847) (the “HIRE Act”). The President’s signature sets the effective date for numerous HIRE Act provisions with an effective date geared to the March 18, 2010 date of enactment.

Among other things, the HIRE Act:

- features a payroll tax break and a tax credit for new hires;
- permits small businesses to write off investments they make in equipment in 2010;
- expands the Build American Bonds program, which subsidizes interest costs paid by local governments when they borrow for construction projects;
- continues roadway infrastructure investment into the spring and summer of 2010; and
- enacts a comprehensive set of measures to reduce offshore noncompliance.

Payroll Tax Break and Tax Credit

The HIRE Act exempts employers from paying the employer share of Social Security employment taxes (6.2% of the first $106,800 of wages) for wages paid after the enactment date (i.e., March 18, 2010) and before January 1, 2011, for any new employee hired after February 3, 2010 and before January 1, 2011 if the new employee (1) was previously unemployed for at least 60 days and (2) does not replace another employee of the employer.

Additionally, for tax years ending after the enactment date (i.e., March 18, 2010), the HIRE Act creates a $1,000 business credit for unemployed individuals hired after February 3, 2010 and before January 1, 2011, who (a) work for the employer for a period of not less than 52 consecutive weeks, and (b) whose wages for such employment during the last 26 weeks of such period equal at least 80% of the wages for the first 26 weeks of the period.

Small Business Expensing

The HIRE Act extends provisions from the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") that double the amount small businesses can immediately write off their taxes for capital investments and purchases of certain capital expenditures made in 2010 from $125,000 to $250,000 under Internal Revenue Code Section 179. Additionally, it extended the Recovery Act provision that increased the phase-out threshold for 2010 to $800,000 (i.e., the $250,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during 2010 exceeds $800,000).

Bonds

Congress has provided State and local governments with the ability to issue special purpose tax credit bonds for school construction, energy conservation and renewable energy. The federal government subsidizes these tax credit bonds by providing investors in these bonds with a federal tax credit in place of interest that would otherwise be payable on the bond. In lieu of providing investors with federal tax credits, the HIRE Act permits qualifying issuers of tax credit bonds to elect to receive a direct payment from the Federal government equal to the amount of the federal tax credit that would otherwise be provided for these bonds.

Highways and Infrastructure

The HIRE Act extends highway and transit programs through calendar year 2010 and transfers from the General Fund to the Highway Trust Fund foregone interest.

Offshore Noncompliance Provisions

Most of the HIRE Act is financed by cracking down on offshore tax havens. For example, it requires foreign financial institutions to give the Internal Revenue Service more information to help it catch tax cheats, and delays a tax break for foreign interest payments. The foreign account provisions of the new law will impose expansive new information reporting and compliance burdens on foreign financial institutions and other foreign persons requiring them to identify and disclose US account holders or become subject to a new 30% US withholding tax regime with respect to any payment of US source investment income and proceeds from the sale of equity or debt instruments of US issuers. The HIRE Act also further delays for an additional three years (through 2020) the phase-in of a tax break enacted in 2004 (which is not yet available) that would let U.S. multinational companies that have shipped jobs overseas reduce their U.S. taxes by deducting more of their worldwide interest income against their U.S. income. Further, the HIRE Act tinkers with estimated tax payments of large corporations in future tax years.

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