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The New Tax Bill & Employee Benefits: What is Changing? What is Not?

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Yesterday, Congress passed the Republican tax bill. The tax bill is now on its way to the President to be signed into law, something he has indicated he will do shortly. Beyond cutting individual tax rates temporarily and slashing corporate taxes to 21 percent permanently, the tax bill includes some important changes to the taxation of certain employee benefits.

Listed below are the major changes to employer-provided benefits under the final tax bill:

- Revised: Time to repay "offset" employer-sponsored retirement plan loans.

  Currently, retirement plan loans are generally accelerated (i.e., immediately due and payable) when the plan terminates or the participant terminates employment. If the loan is not repaid, the plan will "offset" the loan against the participant's account. This loan offset may be rolled over by making an equivalent contribution to an IRA or another qualified plan, but this must be done within 60 days of the date of the offset.

  Beginning in 2018, the period to roll over a loan offset is extended to the individual's due date for the tax return for the year in which the offset occurred (including extensions).

- Repealed: Employer deduction for qualified transportation fringe benefits, including commuting expenses.

  Currently, an employer can deduct the cost of certain transportation fringe benefit provided to employees (i.e., parking, transit passes, and vanpool benefits), even though such benefits are excluded from the employee's income.

  Beginning in 2018, the employer deduction for qualified transportation fringe benefits is fully disallowed. In addition, except as necessary for ensuring the safety of an employee, the employer deduction for providing transportation or any payment or reimbursement for commuting to work is disallowed.

  These changes do not appear to prevent employers from sponsoring a qualified transportation plan to allow employees to elect to have certain transportation costs paid on a pre-tax basis.

- Repealed: Employee exclusion of bicycle commuting reimbursements.

  Currently, an employee can exclude from income qualified bicycle commuting reimbursements of up to $20 per qualifying bicycle commuting month. These amounts are also excluded from wages for employment tax purposes.

Beginning in 2018, the qualified bicycle commuting reimbursement exclusion is fully disallowed.

Going forward, employers can still maintain a program for bicycle commuting, however, reimbursements under such program will be taxable to the employee.

- Repealed: Employer deduction for entertainment, amusement and recreation provided to employees.

  Currently, an employer can fully deduct expenses for recreational, social, or similar activities primarily for the benefit of non-highly compensated employees, provided such activities directly relate to the active conduct of the employer's business.

  Beginning in 2018, this deduction is fully disallowed. The employee exclusion remains unchanged.

- Partially Repealed: Employer deduction for meals, food and beverages provided to employees.

  Currently, an employer can fully deduct any food and beverage expense that can be excluded from an employee's income as a de minimis fringe benefit.

  Beginning in 2018, there will be a 50% limitation on the deduction for food and beverages that can be excluded from an employee's income as a de minimis fringe benefit, including expenses for the operation of an employee cafeteria located on or near the employer's premises. The employee exclusion remains unchanged.

- Partially Repealed: Employee exclusion of value of certain types of employee achievement awards and the employer's related deduction.

  Currently, an employer can deduct up to $400 (or up to $1,600 in the case of certain written nondiscriminatory achievement plans) of the value of certain employee achievement awards for length of service or safety. The employee receiving such award can exclude the award from income to the extent that the value of the award does not exceed the employer's deduction.

  Beginning in 2018, the employee's exclusion and employer's deduction for employee achievement awards will not apply to cash, gift coupons/certificates, vacations, meals, lodging, tickets to sporting or theater events, securities, and “other similar items.” However, an employee can still exclude (and an employer can still deduct) the value of other tangible property and gift certificates that allow the recipient to select tangible property from a limited range of items pre-selected by the employer.

- Repealed: Employee exclusion from income of employer-provided qualified moving expense reimbursements.

  Currently, an employee can exclude qualified moving expense reimbursements paid by his or her employer for the reasonable expenses of moving. These amounts are also excluded from wages for employment tax purposes.

Beginning in 2018, the qualifying moving expense reimbursement is fully taxable to the employee, except for members of the Armed Forces on active duty who move pursuant to a military order.

- Enacted: Employer tax credit for employers providing paid family and medical leave.

  Beginning in 2018, an employer that offers at least two weeks of annual paid family and medical leave, as described by the Family and Medical Leave Act (FMLA), to all "qualifying" full-time employees (and a proportionate amount of leave for non-full-time employees) will be entitled to a tax credit. The paid leave must provide for at least 50% of the wages normally paid to the employee. "Family and medical leave" does not include leave provided as vacation, personal leave, or other medical or sick leave.

  A "qualifying employee" is an employee who has been employed by the employer for at least one year, and whose compensation for the preceding year did not exceed 60% of the compensation threshold for highly compensated employees (i.e., compensation did not exceed $72,000).

  The credit will be equal to 12.5% of the amount of wages paid to a qualifying employee during such employee's leave, increased by .25% for each percentage point the employee's rate of pay on leave exceeds 50% of the wages normally paid to the employee (but not to exceed 25% of the wages paid).

In addition, employers should be aware that the tax bill eliminates the Affordable Care Act's ("ACA") individual mandate penalty starting in 2019. The individual mandate requires most individuals (other than those who qualify for a hardship exemption) to carry a minimum level of health coverage. Currently, individuals who do not enroll in health coverage can incur a tax penalty. Beginning in 2019, individuals will still technically be required to carry health coverage, but will no longer be penalized for failing to do so. This change to the ACA's individual mandate could indirectly impact employers. For example, if fewer employees avail themselves of Exchange coverage and the related subsidies, an employer's penalty risk under the ACA's employer mandate will decrease. The lack of individual penalty could also destabilize the Exchange, resulting in more individuals looking to their employers for coverage.

Although earlier drafts of the tax bill called for repeal or modification, the following benefit provisions remain unchanged by the final tax bill:

- The hardship distribution safe harbor rules incorporated into many retirement plans (proposals would have eased hardship rules);
- The employer-provided child care credit;
- Dependent Care Assistance Programs (DCAPs);
- Adoption assistance programs;
- Employer-provided housing; and

- Educational assistance programs.

Takeaways for Employers:

In light of changes to employer-provided benefits under the final tax bill, employers should take the following actions:

- Determine whether any changes are needed to retirement plan loan distribution paperwork regarding tax and rollover consequences.
- Review qualified transportation plan(s) in light of the changes to qualified transportation fringe benefits and bicycle commuting reimbursements.
- Review any company policies that involve recreational, social, or similar activities for employees, employee meals, employee achievement awards, and/or employee moving expenses.
- Adjust payroll reporting as necessary and determine whether any taxable amounts are now eligible compensation for retirement plan deferrals and employer contributions.
- Consider utilizing the new tax credit for paid family and medical leave.

If you would like more information, please feel free to contact one of our benefits attorneys.