



tax provisions of the hire act: business incentives and offshore compliance

MSK Client Alert

March 23, 2010

On March 18, 2010, President Obama signed The Hiring Incentives to Restore Employment (HIRE) Act of 2010. The HIRE Act primarily provides businesses with federal tax breaks to hire the unemployed and pays for these incentives with stricter offshore reporting requirements and penalties. The following is a summary of some of the key tax provisions of the HIRE Act.

Tax Incentives to Hire New Employees

The cornerstone of the HIRE Act is a pair of federal tax benefits intended to encourage private-sector employers (including nonprofit organizations) to hire unemployed workers:

1. an exemption from the employer's 6.2% share of Social Security payroll tax (OASDI) for each new employee's 2010 wages; and
2. a tax credit of up to \$1,000 per new hire who remains employed for 52 consecutive weeks.

To be eligible, new employees must not have worked a total of more than 40 hours during the 60-day period prior to being hired.

In an attempt to discourage potential abuses, the incentives are not available for any new hire who is (a) a family member or other related party or (b) a replacement for a terminated employee, unless the former employee left the job voluntarily or was terminated for cause. Also, an employer must choose between the new payroll tax holiday and the Work Opportunity Tax Credit as to employees qualifying for both.

Notably, there is no minimum number of hours per week the new employee must work. However, for an employer to claim the full \$1,000 retention tax credit, it must pay the new hire at least \$16,129 during the 52-week period (as the credit is capped at \$1,000 but is computed based on 6.2% of wages). To qualify for the tax credit at all, the employee's total wages during the second

practice areas

tax and trusts & estates

tax planning

transactional tax

trusts & estates



tax provisions of the hire act: business incentives and offshore compliance

26-week period must be at least 80% of the wages during the initial 26-week period.

These incentives are generally available for new employees hired after February 3, 2010, with respect to wages paid after March 18, 2010, and in both cases before January 1, 2011.

Time will tell whether the OASDI holiday and retention tax credit actually will stimulate employment. At a minimum, the new rules should increase the current cash flow of businesses making qualifying hires.

Extension of Business Expensing

The HIRE Act extends through 2010 the 2009 rules allowing businesses with active trade or business income to expense up to \$250,000 of depreciable business assets newly placed in service. This benefit begins to phase out if the business places in service \$800,000 of such assets.

Offshore Anti-Abuse Provisions

Increasing the pressure for compliance with U.S. tax laws in the international arena, the HIRE Act contains new reporting requirements pertaining to U.S. taxpayers with foreign assets or income, imposing additional penalties for noncompliance.

The rule with the most immediate impact is an extension of the statute of limitations. Specifically, the HIRE Act provides the Internal Revenue Service (IRS) with six years (up from three years) to assess income taxes relating to unreported gross income of more than \$5,000 attributable to "reportable foreign assets." These assets broadly include accounts in foreign financial institutions, foreign stock or other interests in foreign entities, and many types of foreign financial instruments.

The lengthened statute of limitations applies to income tax returns filed after March 18, 2010, as well as returns for which the previous three-year statute of limitations had not yet expired. Accordingly, this can affect not only 2009 returns currently being prepared, but also returns going back to 2006 or earlier.

New disclosure requirements apply to U.S. taxpayers with more than \$50,000 in reportable foreign assets. The penalty for nondisclosure begins at \$10,000. In a related provision, an accuracy-related penalty of 40% applies to tax underpayments relating to reportable foreign assets not otherwise reported. These are generally effective for tax years beginning after March 18, 2010.

Beyond taxpayer reporting, the HIRE Act contains provisions to encourage foreign third parties to report information to the IRS. For example, foreign financial institutions will be required to report the identity of U.S. persons owning foreign accounts, as well as specific account balances, gross receipts, and withdrawals. Institutions that do not comply will be subject to a 30% withholding tax on their U.S.-source interest, dividends, investment profits, gross proceeds from stock and debt sales, and other types of income. These rules are generally effective beginning in 2013.

Foreign entities other than financial institutions also generally will be subject to 30% withholding unless they provide information regarding their substantial U.S. owners (or certify that they have none).



tax provisions of the hire act: business incentives and offshore compliance

Foreign Trusts

The HIRE Act clarifies and extends existing rules for determining whether a foreign trust is treated as having a U.S. beneficiary. There is a related minimum \$10,000 penalty for failure to disclose certain information upon the creation of, or transfer of assets to, a reportable foreign trust. These rules are generally applicable for notices and returns required to be filed after December 31, 2009.

Please contact us if you have any questions or concerns regarding how the HIRE Act may apply to your circumstances.