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The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“TCDTR”), enacted in December 2020, made several taxpayer friendly revisions to the Employee Retention Credit (“ERC”) enacted as part of the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”).

Under the CARES Act, the ERC provided a refundable payroll tax credit for 50% of qualified wages up to \$10,000 per employee for a maximum credit of \$5,000 per employee. As originally enacted in the CARES Act, the ERC could be claimed for wages paid after March 12, 2020 and before January 1, 2021 and was available to employers who experienced a greater than 50% reduction in receipts for any quarter in 2020 when compared to its equivalent quarter in 2019.

In addition to qualifying for the ERC as a result of a quarterly reduction in receipts, an employer who averaged 100 or fewer full-time employees during 2019 could also qualify for the ERC if its business operations were suspended.

Beginning January 1, 2021, the TCDTR extends and expands the following CARES Act provisions through June 30, 2021:

- Increases the ERC from 50% to 70% of qualified wages for a maximum credit of \$7,000 per employee for **each of the first two quarters in 2021**;
- Reduces the 50% receipt reduction requirement to 20%.

In addition, the TCDTR provides, retroactive to March 12, 2020, that employers who receive a Paycheck Protection Program (“PPP”) loan may qualify for the ERC for wages that are not paid for with forgiven PPP proceeds. Under the CARES Act, as originally enacted, an employer that received a PPP loan was not eligible to claim an ERC.

To claim the credit, eligible employers will report their total wages qualifying for the ERC for each quarter on their employment tax returns (generally Form 941). The credit is taken against the employer’s share of social security tax. Any excess credit amount is refundable.

In anticipation of claiming the credit, employers can retain a corresponding amount of the employment taxes that otherwise would have been deposited for all employees, up to the amount of the credit. Eligible employers can also request an advance of the ERC by submitting Form 7200.

If you have any questions, please contact us.
