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TAX & ESTATES DEPARTMENT

ALERT

Hiring Incentives to Restore Employment Act Signed Into Law

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The Hiring Incentives to Restore Employment (HIRE) Act was signed into law by President Obama on March 18, 2010. The Act primarily provides employers with incentives to hire and retain new employees. To encourage employers to hire new employees, the Act exempts a qualified employer from paying the employer's share of the Social Security employment taxes (6.2 percent of the first $106,800 of wages) for wages paid in 2010 for any new employee hired after February 3, 2010, and before January 1, 2011, if the new employee (1) was previously unemployed and (2) does not replace another employee of the employer. To encourage employers to retain these newly hired employees, the Act provides employers with a $1,000 income tax credit for every new employee they employ continuously for 52 weeks. Any qualified employer is entitled to claim the tax incentives.

The term "qualified employer" means any employer other than the United States, any state or political subdivision thereof or any instrumentality of the foregoing. An employer that is a public institution of higher education (as defined in Section 101(b) of the Higher Education Act of 1965) is not excluded from the term "qualified employer." The individual hired by the qualified employer, among other requirements, is required to certify by signing an affidavit, under the penalties of perjury, that he or she had not been employed for more than 40 hours during the 60 days before such individual is employed by the qualified employer.

In addition to the hiring incentives set forth above, the Act extends, through the end of 2010, the provision allowing small businesses to write off up to $250,000 of certain capital expenditures as long as their total expenditures do not exceed $800,000. When the total expenditures reach $800,000, the allowable deductions will begin to phase out. In addition, the Act provides state and local governments with the ability to issue special purpose tax credit bonds for school construction, energy conservation and renewable energy through federal government subsidies.

To offset these provisions, the Foreign Account Tax Compliance Act of 2009 (FATCA) was included as part of the Act. This subtitle is projected to raise $8.7 billion over 10 years by increasing the disclosure requirements and withholding for offshore financial institutions. An additional $10 billion is anticipated to come from a three-year delay, until 2021, of the worldwide interest allocation.

The provisions in the Act's FATCA subtitle accomplish the following:

- Imposes a 30 percent withholding tax on payments made to foreign banks and trusts that fail to identify U.S. accounts and their owners and assets to the IRS and to foreign corporations that do not provide the names, addresses, and TINs of U.S. individuals who own at least 10 percent of such corporations;

• Extends bearer-bond tax penalties to any bonds marketed to offshore investors and prevents the U.S. government from issuing bearer bonds;

• Imposes penalties on U.S. taxpayers who own at least $50,000 in offshore accounts or assets and fail to report such accounts on their income tax return;

• Levies a 40 percent penalty on an understatement attributable to any undisclosed foreign assets;

• Extends the statute of limitations for “substantial” omissions derived from offshore assets to six years;

• Requires shareholders in passive foreign investment companies to file annual returns;

• Requires certain financial firms to file electronic returns with respect to withholding taxes;

• Codifies that a foreign trust has U.S. beneficiaries if a U.S. person could be a current, future or contingent beneficiary;

• Permits the Treasury Department to assume that a foreign trust has U.S. beneficiaries if the trust property is transferred by a U.S. person;

• Establishes a $10,000 minimum failure-to-file penalty for certain foreign-trust-related information returns; and

• Subjects certain dividend equivalent payments to a 30 percent withholding tax similar to the tax that is levied on dividends paid to foreign investors.

For more information regarding the HIRE Act, please contact Pauline Markey at 561.804.4426 or pmarkey@foxrothschild.com or any member of Fox Rothschild’s Tax & Estates Department.