Key tax developments during the third quarter of 2017

The following is a summary of important tax developments that have occurred in the past three months that may affect you, your family, your investments, and your livelihood. Please call us for more information about any of these developments and what steps you should implement to take advantage of favorable developments and to minimize the impact of those that are unfavorable.

*Disaster tax relief legislation and administrative relief.* On September 29, President Trump signed into law the "Disaster Tax Relief and Airport and Airway Extension Act of 2017" (P.L. 115-63). The Act provides temporary tax relief to victims of Hurricanes Harvey, Irma, and Maria. Relief for individuals includes, among other things, loosened restrictions for claiming personal casualty losses, tax-favored withdrawals from retirement plans, and the option of using current or prior year's income for purposes of claiming the earned income and child tax credits. Businesses that qualify for relief may claim a new "employee retention tax credit" of 40% of up to $6,000 of "qualified wages" paid by employers affected by Hurricanes Harvey, Irma, and Maria (for a maximum credit of $2,400 per employee). In addition to the new law, IRS has granted specific administrative hurricane relief, for example, extending various deadlines, encouraging leave-based donation programs for hurricane victims, and allowing retirement plans to make hardship distributions.

*Treasury to roll up myRA program.* On July 28, the Treasury Department announced that it would begin winding down the myRA (my Retirement Account) program-a type of government-administered Roth IRA initially offered by Treasury beginning in 2014. Noting that demand for and investment in the myRA program had been extremely low, Treasury stated that it would phase out the program over the following months. The myRA program would no longer accept new enrollments, but existing accounts were to remain open and accessible, so that individuals could continue to manage their accounts until further notice. Individuals could make deposits, and their accounts would continue to earn interest. Funds in myRA accounts remained in an investment issued by the Treasury Department.

*Simplified per-diem increase for post-Sept. 30, 2017 travel.* An employer may pay a per-diem amount to an employee on business-travel status instead of reimbursing actual substantiated expenses for away-from-home lodging, meal and incidental expenses (M&E). If the rate paid doesn't exceed the IRS-approved maximums, and the employee provides simplified substantiation, the reimbursement isn't subject to income- or payroll-tax withholding and isn't reported on the employee's Form W-2. Instead of using actual per-diems, employers may use a simplified "high-low" per-diem, under which there is one uniform per-diem rate for all "high-cost" areas within the continental U.S. (CONUS), and another per-diem rate for all other areas within CONUS. The IRS released the "high-low" simplified per-diem rates for post-Sept. 30, 2017, travel. Under the optional high-low method for post-Sept. 30, 2017 travel, the high-cost-area per diem is $284 (up from $282), consisting of $216 for lodging and $68 for M&IE. The per-diem for all other localities is $191 (up from $189), consisting of $134 for lodging and $57 for M&IE.

*Honest mistake no excuse for incorrectly claimed advance premium tax credit.* In what appears to be the first case of its kind-although others are likely to follow-the Tax Court ruled that taxpayers who didn't qualify for the premium tax credit under the Affordable Care Act (Obamacare) because their modified adjusted gross income exceeded 400% of the federal poverty level had to repay all the advance premium tax credit paid on their behalf to their insurer. A sympathetic Tax Court noted that while their state health insurance Marketplace may have incorrectly informed the taxpayers that they were eligible for the credit for 2014, the Court's hands were tied by the Code and regs. The simple fact was that the taxpayers' income exceeded eligible levels and that they had to repay the advance premium tax credit payments.

*Safe harbor for financially distressed homeowners extended.* The IRS has extended through 2021 guidance on the tax consequences of programs that involve payments made to or on behalf of financially distressed homeowners, including a safe harbor method for computing a homeowner's deduction for payments made on a home mortgage. For tax years 2010 through 2021, an eligible homeowner (i.e., one who meets the requirements of Code Sec. 163 (dealing with deducting interest) and Code Sec. 164 (dealing with deducting taxes), and participates in a State program in which the program payments could be used to pay interest on the home mortgage) may deduct the lesser of: (1) the sum of all payments on the home mortgage that the homeowner actually makes during a tax year to the mortgage servicer or the State housing finance agency; or (2) the sum of amounts shown on Form 1098, Mortgage Interest Statement, for mortgage interest received, real property taxes, and, if deductible for the tax year, mortgage insurance premiums. (The deduction for mortgage insurance premiums under Code Sec. 163(h)(3)(E) expired at the end of 2016, but it is one of those tax provisions that have been repeatedly extended in the past). The IRS also extended penalty relief related to information reporting for mortgage servicers and state housing finance agencies.

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