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U.S. HIRE ACT BECOMES LAW, WITH TAX AND FOREIGN ACCOUNT COMPLIANCE MEASURES

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On March 18, 2010, U.S. President Barack Obama signed the Hiring Incentives to Restore Employment (HIRE) Act.¹ The Act includes tax incentives for hiring and retaining unemployed workers, and other tax expenditure items. As revenue offset measures, the Act includes provisions similar to those in the proposed Foreign Account Tax Compliance Act (FATCA), introduced in the U.S. House and Senate in November 2009 (for prior coverage, see [Flash International Executive Alert 2009-219](#), November 24, 2009).

Below, we briefly highlight some of the HIRE Act's important provisions in respect of individuals and their employers:

- Payroll tax forgiveness for hiring unemployed workers, whereby qualified employers are exempt from the employer portion of social security taxes in relation to qualified new employees.
- A business credit for the retention of certain newly hired employees who remain employed for at least 52 weeks.
- An increase in the expensing of certain depreciable business assets.
- Foreign account tax compliance measures, including:
 - the imposition of 30-percent withholding requirements on certain payments made to foreign financial institutions unless those institutions agree to adhere to certain reporting requirements for U.S. account holders;
 - the imposition of 30-percent withholding requirements on certain payments made to non-financial foreign entities unless those entities comply with certain reporting requirements as to U.S. owners;
 - the repeal of preferred treatment for foreign-targeted bearer bonds;
 - a requirement that individuals holding more than \$50,000 in reportable foreign assets report information about such assets on their U.S. tax returns, and a penalty of up to \$50,000 for failure to so report;
 - penalties of 40 percent for under-payments attributable to undisclosed foreign financial assets;
 - a presumption that where a U.S. person transfers property to a foreign trust, the trust has a U.S. beneficiary;

- the imposition of a minimum \$10,000 penalty for failure to report certain foreign trusts;
- where a foreign trust permits a U.S. grantor or beneficiary to use certain trust property, that use is treated as a distribution from the trust;
- a requirement that shareholders in passive foreign investment companies (PFICs) file annual returns;
- the codification and clarification of rules (currently in the Treasury Regulations) under which a foreign trust is treated as having a U.S. beneficiary if any current, future, or contingent beneficiary is a U.S. person.

KPMG LLP (U.S.) has prepared a detailed report on the HIRE Act's provisions. You may access the report at:

http://www.us.kpmg.com/microsite/taxnewsflash/2010/Mar/Jobs_Booklet.pdf

Footnote:

1 The Hiring Incentives to Restore Employment Act of 2010, H.R. 2847. For the March 18, 2010 White House press release "Remarks by the President before Signing the HIRE Act," see: <http://www.whitehouse.gov/the-press-office/remarks-president-signing-hire-act>.

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