Employee Benefit Plans and the House Republican Tax Reform Bill

On November 2, 2017, House Republicans introduced a tax reform bill (H.R.1-115th Congress) called the "Tax Cuts and Jobs Act" that, if passed, would impact multiple aspects of the tax code. Many of these changes relate to employee benefit plans, particularly in relation to certain fringe benefits.

Dependent Care Accounts

A dependent care flexible spending account (DCFSA) is a pre-tax benefit account used to pay for eligible dependent care services. The IRS determines which expenses are eligible for reimbursement and these expenses are defined by Internal Revenue Code section 129 and the employer's plan. Eligible DCFSA expenses include costs for adult day care centers, before and after school programs, child care, nannies, preschool, and summer day camp. Day nursing care, nursing home care, tuition for kindergarten and above, food expenses, and overnight camp are ineligible expenses. The employer determines the minimum election amount and the IRS determines the maximum election amount. The IRS sets the following annual contribution limits for a DCFSA:

- $2,500 per year for a married employee who files a separate tax return
- $5,000 per year for a married employee who files a joint tax return
- $5,000 per year for the head of household
- $5,000 per year for a single employee

The original version of the tax reform bill completely eliminated dependent care accounts. It is now reported that Representative Kevin Brady (R-Texas) has added an amendment to the bill that reverses the immediate repeal of DCFSAs, and would extend them for five more years.

Adoption Assistance

Employers may currently reimburse employees up to $13,570 (indexed) tax-free for qualified adoption expenses. This is eliminated in the bill.

Education Assistance

Employers may currently reimburse employees up to $5,250 on a tax-free basis for qualified education expenses. This is eliminated in the bill. Employers that are educational institutions can currently provide qualified tuition reductions to employees, their spouses, and dependents tax free, but this would be eliminated under the bill.

Employer Tax Deduction Impact

Under the proposed bill, employers' corporate tax deduction credits for the following would be eliminated:

- Transportation fringe benefits
- On-premise athletic facilities
- Employer provided child care

The bill is now in markup, with the Ways and Means Committee working to draft a final bill for the House to vote on. If passed, it will be sent to the Senate to vote on.

11/13/2017