An Early Look at the Infrastructure Investments and Jobs Act: Impact for the Employee Retention Credit and Cryptocurrency Reporting

On August 10, 2021, the US Senate voted to advance the Infrastructure Investments and Jobs Act (H.R. 3684) with a 69-30 vote. The Act's provisions are intended to update the country's aging infrastructure and include over $1.2 trillion in new spending. While much of the spending for the Act will be covered by unspent COVID relief measures and recouped unemployment insurance, Title VI-Other Provisions contain a number of tax provision and filing requirement changes meant to balance the remainder of the infrastructure spending. Two of the larger revenue raising items included on the tax side to offset the cost of the Act are an early end to the employee retention credit ("ERC") and increased reporting and enforcement efforts on the digital currency market. Please note that this article does not address any of the broader tax reform items that were released in the Green Book proposals released this spring.

Employee Retention Credit End Date

The early end to the ERC, originally introduced in the Coronavirus Aid, Relief and Economic Security (CARES) Act (P.L. 116-136), comes as a bit of a surprise as it had been extended just this year as part of the American Rescue Plan Act of 2021 (P.L. 117-2). While originally extended through December 31, 2021, Section 80604 of H.R. 3684 would eliminate the ERC on October 1, 2021, removing fourth quarter wages from the credit eligible wages. As a result, employers may want to consider paying fourth quarter bonuses over August and September instead of in the fourth quarter, to make these bonuses eligible for the ERC. Larger employers (>500 average full-time employees in 2019) would need to ensure such bonuses meet the 30-day employee wage "look-back" rule and that they are tied to employees who are not providing services to receive the ERC.

Digital Asset Reporting Changes

Despite significant Congressional and public resistance[1], one of the most significant tax-related provisions in the Act is the change to digital asset reporting, specifically to the definition of a broker. Section 80603 of H.R. 3684 defines a digital asset as "any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary." It also defines a broker of a digital asset as "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital

[1] There has already been Congressional and public resistance to the provisions, focused on the burden it would put on non-traditional brokers to obtain information not generally available to them. There were two bipartisan, attempted amendments in the senate targeted at protecting non-traditional brokers from the filing requirements, neither of which were accepted into the advanced bill. Separately, the four co-chairs of the Bipartisan Blockchain Caucus in the House of Representatives also issued a letter to colleagues in the House expressing concern over Section 80603 and the potential repercussions it could have, specifically driving potential innovation to other countries.

assets on behalf of another person.'' The current interpretation would not only target traditional brokers, such as centralized digital asset exchanges, but would now incorporate "non-traditional brokers" which merely process and validate the transactions, such as data miners, stakers and lightning node operators. The effective tax year for the additional reporting would be for tax years beginning on or after January 1, 2023. The new rules would require information returns under IRC Section §6045A(d) (traditionally provided on Form 1099-B), which requires a broker to report transactions with each of its customers to the IRS, and IRC Section §6050I (traditionally provided on Form 8300), requiring reporting by any person receiving over $10,000 via a single transaction or set of related transactions. Brokers failing to meet the exposure would be subject to penalties of $280 per return (adjusted for inflation) with additional penalties if failure to report is found to be willful.

Contact Us

We will continue to monitor the progress of the Infrastructure Investments and Jobs Act as the legislative process plays out.

Bennett Thrasher's Tax practice can help you navigate the tax complexities of the Infrastructure Investments and Jobs Act (H.R. 3684) and assist in strategies to mitigate taxes and reporting obligations. To learn more about the Infrastructure Investments and Jobs Act (H.R. 3684), please contact Sam Heberton or Zack Leder by calling 770.396.2200.