Quickfinder® Annual Tax Update 2020
Post-Publication Developments

Key Issue	*Topic*	*Development*
1F	**Post-CARES Act Significant 2020 Tax Legislation**	The Consolidated Appropriations Act, 2021 (CAA, 2021) (Public Law 116-260, enacted on December 27, 2020) includes new relief payments to individuals; another round of Paycheck Protection Program (PPP) funding; changes to the deductibility of expenses for PPP recipients; and numerous tax extender, disaster relief, and other economic relief provisions. See *Tax Legislation* in the *Handbook Updates* section of the Quickfinder website (**tax.thomsonreuters.com/quickfinder**) for tables summarizing key provisions of the December 2020 legislation.
2F	**Individual Coverage HRA—Employer Mandate Considerations**	The IRS has issued final regulations under IRC Secs. 4980H and 105 that clarify the application of the employer shared responsibility provisions and certain nondiscrimination rules to Health Reimbursement Arrangements (HRAs) and other account-based group health plans integrated with individual health insurance coverage or Medicare (individual coverage HRAs). The regulations also provide certain safe harbors with respect to the application of those provisions to individual coverage HRAs. The final regulations do not include any changes to the final integration regulations or the final premium tax credit regulations. The IRS noted that, while the safe harbors provided under the final regulations are voluntary, the taxpayer, not the IRS, is responsible for determining whether a safe harbor is applicable and for ensuring that the use of a safe harbor is properly reported (TD 9949).
3D	**Misdirected Direct Deposit Refunds—Final Regulations**	The IRS has issued final regulations that provide procedures for taxpayers to use in identifying and recovering misdirected direct deposit refunds that are not delivered to the taxpayer's designated account. The final regulations (TD 9940) adopt, with minor modifications, proposed regulations that were issued in December 2019 (REG-116163-19). The proposed regulations defined *misdirected direct deposit refund* as any refund of an overpayment of tax that is disbursed as a direct deposit but is not deposited into the account the taxpayer designated on the refund claim to receive the direct deposit refund. The final regulations clarify that the offset or setoff of an overpayment occurs before a direct deposit refund is issued and, therefore, neither can be a misdirected direct deposit refund. However, the IRS will determine if a missing refund reported by a taxpayer was setoff or offset as part of the IRS process for identifying the account that received the misdirected direct deposit refund [Reg. 301.6402-2(g)(3)(i)]. The final regulations are effective on, and their procedures apply to any report of a misdirected direct deposit refund for a current or prior year submitted after December 22, 2020.
4C	**Charitable Contributions By Individual Taxpayers**	For 2020, individuals who normally do not itemize deductions may take up to a $300 above-the-line deduction for cash contributions to qualified charitable organizations. This $300 limit also applies to MFJ filers. A 20% penalty applies to tax underpayments attributable to any overstated cash contribution by non-itemizers. In addition, the limitation on deductions for charitable contributions by individuals who itemize is increased from 60% to 100% of modified income for cash contributions, generally to public charities, made in 2020. Section 212 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, extends the non-itemizer charitable deduction through 2021. It allows individuals not filing MFJ a deduction in 2021 of up to $300, and increases the deduction allowed in 2021 to $600 for MFJ filers, for cash contributions to qualified charitable organizations [IRC Sec. 170(p)]. The Act also restructures the deduction so that while it may be claimed only by non-itemizers, the deduction does not reduce AGI. In addition, an increased penalty of 50% applies to tax underpayments attributable to any overstated cash contribution by non-itemizers under IRC Sec. 170(p) [IRC Sec. 6662(l)]. Section 213 of the Act extends the 100% of modified income limitation for cash contributions, generally to public charities, to contributions made in 2021.

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4D	**Nondeductible Fines and Penalties—Final Regulations**	The IRS has issued final regulations that provide guidance on the nondeductible penalties and fines provisions under IRC Sec. 162(f) and on the required information reporting for those penalties and fines under IRC Sec. 6050X. The final regulations (TD 9946) adopt, with several changes, proposed regulations that were issued in May 2020 (REG-104591-18). The proposed regulations treated any amount paid or incurred as a disgorgement or forfeiture as, per se, denied deductibility under IRC Sec. 162(f). Among the changes in the final regulations is one that reverses the per se treatment of disgorgements and forfeitures as nondeductible. The final regulations are effective on January 14, 2021. Reg. 1.162-21 applies to tax years beginning on or after January 19, 2021, but not to amounts paid or incurred under any order or agreement pursuant to a suit, agreement, or otherwise, which became binding under applicable law before such date, determined without regard to whether all appeals have been exhausted or the time for filing appeals has expired. Reg. 1.6050X-1 applies only to orders and agreements, pursuant to suits and agreements, which become binding under applicable law on or after January 1, 2022, determined without regard to whether all appeals have been exhausted or the time for filing an appeal has expired.
4E, 4G	**Medical Expense Deduction Threshold**	These key issues describe the 7.5%-of-AGI medical expense deduction threshold as applying through 2020. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 makes the 7.5%-of-AGI threshold permanent [IRC Sec. 213(a)].
4F	**Additional 2020 Recovery Rebates**	The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided for direct payments/rebates to certain individual taxpayers. These were referred to as Economic Impact Payments (EIPs). Section 272 of the COVID-related Tax Relief Act of 2020 (COVIDTRA), enacted December 27, 2020 as part of the CAA, 2021, expands and revises the recovery rebates as follows: • Establishes a new program, which it refers to as “additional 2020 recovery rebates.” • Provides a refundable tax credit to eligible individuals in the amount of $600 per eligible family member. The credit is $600 per taxpayer ($1,200 for MFJ), in addition to $600 per qualifying child. The credit phases out starting at $75,000 of modified AGI ($112,500 for HOH and $150,000 for MFJ) at a rate of $5 per $100 of additional income. • The term *eligible individual* does not include any nonresident alien, anyone who qualifies as another person’s dependent, and estates or trusts. • The credit is available on the taxpayer’s 2020 return. • The new law provides for the Treasury to issue advance payments based on the information on 2019 tax returns. Eligible taxpayers treated as providing returns through the nonfiler portal with respect to their EIP will also receive payments. • In general, taxpayers without an eligible social security number (SSN) are not eligible for the payment. However, MFJ filers where one spouse has an SSN and one spouse does not are eligible for a payment of $600, in addition to $600 per child with an SSN. • Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. If the amount of the credit determined on the taxpayer’s 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit. Advance payments are generally not subject to administrative offset for past due federal or state debts. In addition, the payments are protected from bank garnishment or levy by private creditors or debt collectors. Section 273 of the COVIDTRA amends the CARES Act EIP rules as follows: • The $150,000 limit on AGI before the credit amount starts to decrease, which under the CARES Act applied to joint returns (MFJ), also applies to surviving spouses (QW). • Changes the requirement, in order to be eligible for an EIP, with respect to providing the IRS with the taxpayer’s identification number, to conform to that requirement as described above.

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4G	**Disaster Act Extenders**	The Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, extends many expiring tax provisions beyond 2020 and makes some of these provisions permanent. See the extender provisions Quickfinder table under *Tax Legislation* in the *Handbook Updates* section of the Quickfinder website (**tax.thomsonreuters.com/quickfinder**) for a summary of the provisions that were extended or made permanent.
4H	**Student Loan Payments By Employers**	An employer may contribute up to $5,250 annually toward an employee's student loans, and the payment will be excluded from the employee's income. The $5,250 cap applies to both the student loan repayment benefit as well as other educational assistance (such as tuition, fees, and books) provided by the employer. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 extends this provision, which was to expire at the end of 2020, through 2025.
5A	**Qualified Opportunity Funds (QOFs)—COVID-19 Relief**	This key issue discusses IRS relief for QOFs and their investors provided by the IRS in Notice 2020-39. The IRS has provided further relief in Notice 2021-10. If a taxpayer's 180th day to invest in a QOF falls on or after April 1, 2020 and before March 31, 2021, the taxpayer has until March 31, 2021 to invest eligible gain in a QOF. Also, the period between April 1, 2020 and March 31, 2021 is suspended for purposes of the 30-month period during which property may be substantially improved. The IRS also announced that a QOF's failure to hold at least 90% of its assets in QO Zone (QOZ) property on any semi-annual testing date from April 1, 2020 through June 30, 2021 is due to reasonable cause under IRC Sec. 1400Z-2(f)(3), and such failure does not prevent qualification of an entity as a QOF or an investment in a QOF from being a qualifying investment.
5C	**Personal Casualty Gain and Loss**	The Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, includes several disaster relief provisions. See the disaster relief and other provisions Quickfinder table under *Tax Legislation* in the *Handbook Updates* section of the Quickfinder website (**tax.thomsonreuters.com/quickfinder**) for a summary.
5D	**Qualified Principal Residence Indebtedness**	The Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides that individuals can exclude up to $750,000 ($375,000 for MFS) of cancellation of debt (COD) income from qualified principal residence indebtedness that is canceled, before January 1, 2026, because of their financial condition or decline in value of the residence. Debt canceled after December 31, 2025 qualifies if discharged pursuant to a written binding agreement entered into before January 1, 2026. Before this law change, the exclusion was to expire on December 31, 2020, and the limit was $2 million ($1 million for MFS).
6B	**Carried Interests Held By S Corporations—Final Regulations**	The IRS has issued final regulations (TD 9945) that provide, as did proposed regulations issued in August 2020, that an S corporation is not treated as a "corporation" for Section 1061 purposes. The final regulations generally apply to tax years beginning on or after January 19, 2021. However, taxpayers may choose to apply the regulations to a tax year beginning after December 31, 2017, provided the rules are consistently applied in their entirety.
8F	**Penalty Relief for Partnerships Related to Partners' Beginning Capital Account Balances**	For tax years beginning in 2020, under IRC Sec. 6031, the IRS requires partnerships to calculate and report their partners' capital accounts using the transactional approach for the tax basis method. However, Form 1065 instructions allow certain partnerships to determine beginning capital account balances using the (1) tax basis method, (2) modified outside basis method, (3) modified previously taxed capital method, or (4) Section 704(b) method. The IRS has provided partnerships with relief from penalties under IRC Sec. 6698, 6721, or 6722 for including incorrect information in reporting partners' beginning capital account balances using one of the methods listed above if the partnership took ordinary and prudent care. The IRS also will waive the accuracy-related penalty under IRC Sec. 6662 for the imputed underpayment that is attributable to a reported partner's capital account balance based on the 2020 Form 1065 instructions (Notice 2021-13).
8H	**Business Interest Expense Limitation for Tiered Partnerships**	The IRS has issued final regulations (TD 9943) that provide guidance regarding the limitation on the deduction for business interest expense under IRC Sec.163(j). However, the final regulations reserve Reg. 1.163(j)-6(j) on tiered partnerships, so Prop. Reg. 1.163(j)-6(j) continues to apply as discussed in Key Issue 8H.

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8I	**Carried Interests—Final Regulations**	The IRS has issued final regulations (TD 9945) that clarify, as did proposed regulations issued in August 2020, (1) how to apply the holding period when a partner holds an API for less than three years, but the partnership sells an asset it held for more than three years and (2) that carried interests held by an S corporation are subject to the three-year holding period requirement. The final regulations modify the application of a lookthrough rule that was provided in the proposed regulations. Under the final regulations, the lookthrough rule can apply when an API that has been held for more than three years is sold, but only if the API's holding period would be less than three years if the holding period were determined by excluding any period before the date that an unrelated nonservice partner is legally obligated to contribute substantial money or property (directly or indirectly) to the partnership to which the API relates [Reg. 1.1061-4(b)(9)]. See Reg. 1.1061-4(c)(2)(i), Example 1. The final regulations generally apply to tax years beginning on or after January 19, 2021. However, taxpayers may choose to apply the regulations to a tax year beginning after December 31, 2017, provided the rules are consistently applied in their entirety.
9B, 10B, 11B, Page 16-4	**Standard Mileage Rates—2021**	Beginning January 1, 2021, the standard mileage rates for cars, vans, pickups, and panel trucks are 56 cents per mile for business purposes, 16 cents per mile for medical or moving purposes, and 14 cents per mile for charitable purposes. However, the rates cannot be used to claim an itemized deduction for unreimbursed employee travel expenses or for moving expenses (except for certain members of the U.S. Armed Forces). The portion of the business standard mileage rate treated as depreciation is 26 cents per mile for 2021. When computing the allowance under a fixed and variable rate (FAVR) plan, the standard vehicle cost cannot exceed $51,100 for autos, trucks, and vans. The same value is used for purposes of the fleet-average and vehicle cents-per-mile valuation rules (Notice 2021-2).
10A	**Business Interest Expense Limit—Final Regulations**	The IRS has issued final regulations (TD 9943) that provide additional guidance regarding the limitation on the deduction for business interest expense under IRC Sec. 163(j). The regulations address, among other things, the calculation of Adjusted Taxable Income (ATI) and the application of the limitation to Controlled Foreign Corporations (CFCs). The regulations also provide guidance regarding the definitions of *real property development*, *real property redevelopment*, and *syndicate*. The regulations affect taxpayers that have business interest expense, particularly passthrough entities, their partners and shareholders, as well as foreign corporations and their U.S. shareholders. The final regulations also clarify provisions in final regulations previously released in TD 9905. The final regulations adopt most of the provisions in the 2020 proposed regulations (REG-107911-18), but with some revisions. The final regulations generally apply to tax years beginning on or after March 22, 2021. See TD 9943 for applicability date exceptions.
10D	**Business Meals Deduction Limitation**	Taxpayers may generally deduct the ordinary and necessary food and beverage expenses associated with operating a trade or business, including meals consumed by employees on work travel. The deduction is generally limited to 50% of the otherwise allowable amount [IRC Sec. 274(n)(1)]. There are exceptions to the 50% limit, but there was no exception for meals provided by a restaurant. Section 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, provides that the 50% limit will not apply to expenses for food or beverages provided by a restaurant that are paid or incurred after December 31, 2020 and before January 1, 2023 [IRC Sec. 274(n)(2)(D)]. **Observation:** The use of the word "by" (rather than "in") a restaurant makes it clear that the new exception is not limited to meals eaten on the restaurant's premises. Takeout and delivery meals provided by a restaurant are also fully deductible.

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10G	**Qualified Business Income (QBI) Deduction—Final Regulations for Cooperatives and Patrons**	IRC Sec. 199A(g) provides a deduction for specified agricultural or horticultural cooperatives. The IRS has issued final regulations (TD 9947) under IRC Sec. 199A providing guidance to cooperatives and their patrons regarding the QBI deduction when receiving qualified payments from cooperatives. In June 2019, the IRS issued proposed QBI deduction regulations (REG-118425-18) addressing the reporting requirements of the passthrough deduction at the cooperative and patron level. The final regulations slightly relax the reporting requirements and address the aggregation rules for cooperatives with examples. The final regulations also clarify provisions in a previously released final regulation. The regulations generally apply to tax years beginning after January 19, 2021. However, taxpayers may choose to apply the regulations to a tax year beginning on or before that date, provided the rules are consistently applied in their entirety.
10J	**Small Business Taxpayer Exceptions—Final Regulations**	The IRS has issued final regulations (TD 9942) under IRC Secs. 263A, 448, 460, and 471 that retain the basic approach and structure of the proposed regulations (REG-132766-18), with certain revisions, including clarification of the treatment of costs to acquire or produce tangible property. The final regulations generally apply to tax years beginning on or after January 5, 2021. However, taxpayers may choose to apply the regulations to a tax year beginning before that date, provided they follow all applicable rules for each Code provision they choose to apply.
10K	**CARES Act Net Operating Loss (NOL) Rules for Farmers**	The CARES Act provides a five-year NOL carryback. Before the CARES Act, farmers were entitled to a two-year NOL carryback. Section 281 of the COVIDTRA, enacted December 27, 2020 as part of the CAA, 2021, provides that— • Farmers who elected a two-year NOL carryback prior to the CARES Act may elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act, and • Farmers who previously waived an election to carry back an NOL may revoke the waiver.
10N	**Paycheck Protection Program (PPP)—Second Round of Loans, etc.**	The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020 as part of the CAA, 2021, added additional covered expenses, provided for a second round of PPP loans, and made several other changes to the PPP program. See the three-part Quickfinder table under *Tax Legislation* in the *Handbook Updates* section of the Quickfinder website (**tax.thomsonreuters.com/quickfinder**) for highlights of PPP provisions in the Economic Aid Act.
10N	**Deductibility of PPP-Funded Expenses**	Section 276 of the COVIDTRA, enacted December 27, 2020 as part of the CAA, 2021, reverses previous IRS guidance in Notice 2020-32, which disallowed the deduction of otherwise allowable expenses to the extent a PPP loan was forgiven. COVIDTRA Sec. 276 provides that taxpayers whose PPP loans are forgiven are allowed deductions for otherwise deductible expenses paid with the proceeds of a PPP loan and that the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness. The IRS subsequently obsoleted the holdings in Notice 2020-32 and related release Rev. Rul. 2020-27 that disallowed deductions for the payment of eligible expenses when the payments resulted (or could be expected to result) in forgiveness of a PPP loan (Rev. Rul. 2021-2).

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10O	**2020 Disaster Act Employee Retention Credit**	Section 303 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, includes the following provisions: • *Eligible employers* can claim a *2020 qualified disaster employee retention credit* equal to 40% of up to $6,000 of qualified wages per eligible employee. The credit is part of the general business credit. Certain tax-exempt entities are provided the option to claim the credit against payroll taxes. • *Eligible employers* include those that conducted an active business in a qualified disaster zone at any time during the incident period of the qualified disaster, if the business was inoperable at any time during the period beginning on the first day of the incident period and ending on December 27, 2020 as a result of damage sustained because of the qualified disaster. An *eligible employee* of such employers is one whose principal place of employment with the eligible employer, immediately before the qualified disaster, was in the qualified disaster zone. • *Qualified wages* include wages paid or incurred by an eligible employer with respect to an eligible employee at any time (1) on or after the date the business first became inoperable at the employee's principal place of employment; and (2) before the earlier of (a) the date the business resumes significant operations at such principal place of employment or (b) 150 days after the last day of the incident period of the qualified disaster, whether or not the employee performs any services.
11B	**Employer-Provided Vehicles—Personal Use Valuation**	An employer using the annual lease value (ALV) method for the 2020 calendar year may instead use the cents-per-mile method beginning on March 13, 2020 if, at the beginning of 2020, the employer reasonably expected that an automobile with an FMV not exceeding $50,400 would be regularly used in its trade or business throughout the year, but due to the COVID-19 pandemic the automobile was not so used (Notice 2021-7).
11F	**Health and Dependent Care Flexible Spending Arrangements (FSAs)**	Section 214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, provides the following relief for health and dependent care FSAs for plan years ending in 2020 or 2021: • Any unused benefits or contributions remaining in a health FSA or dependent care FSA at the plan year end can be carried over to the succeeding plan year. • If the plan provides a grace period with respect to unused benefits or contributions, the grace period can be extended to 12 months after the end of the plan year. • Employees can be permitted to prospectively modify the amount contributed to a health FSA or dependent care FSA without regard for the change of status rules. • An employee whose employment was terminated during the plan year and who was participating in a health FSA can be allowed to continue to receive reimbursements from unused benefits or contributions through the end of the plan year (including any grace period) during which he was terminated. The Act further provides that for dependent care FSAs, the maximum age of an eligible dependent may be extended from 12 to 13 years for dependents who aged out of eligibility during the last plan year with a regular enrollment period ending on or before January 31, 2020. Also, a dependent care FSA may allow employees with unused benefits for that plan year to carry over the balance to the subsequent plan year and use the benefits until the child turns 14. A cafeteria plan electing to provide any of the above listed voluntary changes must be amended by the last day of the first calendar year following the plan year in which the change first applies. A calendar year plan adopting these voluntary changes would generally need to be amended by December 31, 2021.
11I	**Coronavirus-Related Distributions**	The CARES Act provides for special tax treatment for a coronavirus-related distribution from a retirement plan. The COVIDTRA, enacted December 27, 2020 as part of the CAA, 2021, clarifies that money purchase pension plans are included in the retirement plans qualifying for these temporary rules, retroactive to March 27, 2020.

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11I	**Qualified Disaster Distributions**	Section 302(a) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, provides the following tax relief for qualified disaster distributions: • Up to $100,000 of such distributions are exempted from the early withdrawal penalty. • All or a part of a distribution can be recontributed tax-free (rolled over) to eligible retirement plans or IRAs any time during the three-year period beginning on the day after the distribution is received. • To the extent a distribution is not recontributed, the taxable amount is taken into gross income ratably over three years beginning with the year in which the distribution is received unless the taxpayer elects out of this treatment. • Such distributions are not subject to the mandatory 20% FIT withholding requirement. A *qualified disaster distribution* is a distribution from most types of tax-favored retirement plans, including IRAs, made on or after the first day of the incident period of a qualified disaster and before June 25, 2021 to an individual whose principal residence was in the qualified disaster area at any time during the incident period and who sustained economic loss due to the qualified disaster.
11I	**Qualified Distributions to Buy or Build a Home**	Section 302(b) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides that any individual who received a qualified distribution to buy or build a home can roll the money back into an eligible retirement plan (including an IRA) tax free during the applicable period (the period beginning on the first day of the incident period of a qualified disaster and ending on June 25, 2021). A *qualified distribution* is a hardship distribution from a 401(k) or 403(b) plan or a qualified first-time homebuyer distribution from an IRA that was: (1) received during the period (a) beginning 180 days before the first day of the incident period of the qualified disaster and (b) ending 30 days after the last day of the incident period and (2) intended for the purchase or construction of a principal residence in a qualified disaster area that didn't take place due to the qualified disaster.
11I	**Qualified Retirement Plan Loans**	Section 302(c) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides that for plan loans made to a qualified individual during the period beginning on December 27, 2020 and ending on June 25, 2021, the maximum loan amount is increased to the lesser of: (1) $100,000 or (2) 100% of the present value of the participant's vested accrued benefit. A *qualified individual* is any person whose principal residence was in a qualified disaster area at any time during the incident period of the qualified disaster and who sustained economic loss due to the qualified disaster. Also, for any qualified individual who has a plan loan (1) outstanding on or after the first day of the incident period of a qualified disaster, (2) for which the due date of any repayment occurs during the period (a) beginning on the first day of the incident period of the qualified disaster and (b) ending 180 days after the last day of the incident period, the due date for such repayment is extended one year (or, if later, until June 25, 2021).
12D	**FFCRA Sick and Family Leave Credits Extended and Improved**	The Families First Coronavirus Response Act (FFCRA) provided refundable tax credits against employment taxes for qualified leave wages taken beginning April 1, 2020 and ending December 31, 2020. The COVIDTRA, enacted December 27, 2020 as part of the CAA, 2021, provides the following additional relief: • COVIDTRA Sec. 286 extends the refundable tax credits for employers who provide paid sick and family leave related to the COVID-19 pandemic (enacted in the FFCRA) through March 31, 2021. While employers are not mandated to provide paid sick or family COVID-19 related leave in 2021, those who do may claim the tax credit through March 31, 2021. • COVIDTRA Sec. 287 similarly extends the credits available to self-employed individuals, and allows them to use their reported wages from tax year 2019 instead of tax year 2020 to compute the credit. • COVIDTRA Sec. 288 coordinates the definitions of qualified wages within the credits. All of these provisions are effective as if included in the original FFCRA legislation.

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12E	**CARES Act Employee Retention Credit**	The CARES Act enacted a refundable payroll tax credit for 50% of qualified wages of up to $10,000 per employee for a maximum credit of $5,000 per employee [the employee retention credit (ERC)]. The ERC was available to (1) employers, including nonprofits, whose operations were fully or partially suspended due to a COVID-19-related shut-down order and (2) employers whose gross receipts declined by more than 50% when compared to the same quarter in the prior year. The ERC could be claimed for wages paid after March 12, 2020 and before January 1, 2021. The Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020 as part of the CAA, 2021, effective retroactively to March 12, 2020: • Clarifies the determination of gross receipts for certain tax-exempt organizations [Act Sec. 206(a)]; • Reaffirms prior IRS guidance that group health plan expenses can be considered qualified wages, even when no wages are paid to an employee [Act Sec. 206(b)]; and • Provides that employers who receive PPP loans may still qualify for the ERC with respect to wages that are not paid for with forgiven PPP loan proceeds [Act Sec. 206(c)]. Beginning on January 1, 2021 and through June 30, 2021, the Act extends and expands certain CARES Act provisions as follows: • Increases the ERC rate from 50% to 70% of qualified wages [Act Sec. 207(b)]; • Increases the limit on per-employee creditable wages from $10,000 for the year to $10,000 for each quarter [Act Sec. 207(c)]; • Expands eligibility for the credit by reducing the required year-over-year gross receipts decline from 50% to 20% [Act Sec. 207(d)(1)(A)] and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility [Act Sec. 207(d)(2)]; • Provides rules to allow new employers who were not in existence for all or part of 2019 to be able to claim the credit [Act Sec. 207(d)(1)(B)]; • Allows certain public instrumentalities to claim the credit [Act Sec. 207(d)(3)]; • Increases the delineation for determining the relevant qualified wage base from “greater than 100” to “greater than 500” employees [Act Sec. 207(e)(1)]; • Removes the 30-day wage limitation, allowing employers to, for example, claim the credit for bonus pay to essential workers [Act Sec. 207(e)(2)]; • Allows businesses with 500 or fewer employees to receive an advance payment of the credit at any point during the quarter based on wages paid in the same quarter in a previous year [Act Sec. 207(g)(1)]; and • Provides for a small business public awareness campaign regarding availability of the credit to be conducted by the Secretary of the Treasury in coordination with the Administrator of the Small Business Administration [Act Sec. 207(i)].
12F	**Deferring Payment of Payroll Tax Deposits**	Under a Presidential Memorandum issued in August 2020, employers could defer withholding employees’ share of social security taxes or railroad retirement tax equivalent from September 1, 2020–December 31, 2020. Increased withholding and payment of deferred amounts was to occur from January 1, 2021–April 30, 2021. Section 274 of the COVIDTRA, enacted December 27, 2020 as part of the CAA, 2021, revises this program as follow: • The repayment period of the deferred employee taxes is extended through December 31, 2021. • Penalties and interest will not begin to accrue on the deferred amounts until January 1, 2022.
14E	**Excessive Executive Compensation Excise Tax—Final Regulations**	The IRS has issued final regulations (TD 9938) that restate certain statutory definitions and provide rules for determining the amount of excess renumeration, calculating the excise tax, and deciding whether a parachute payment has been made. The final regulations generally apply to tax years beginning after December 31, 2021. However, taxpayers may choose to apply the regulations to a tax year beginning on or before that date, provided the rules are consistently applied in their entirety.

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