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KPMG report: Compensation and benefits concerns in uncertain times—telecommuting and other items (COVID-19 considerations)

Efforts to contain the 2019 novel coronavirus (COVID-19), declared by the World Health Organization as a pandemic, have led many employers (whether voluntarily or pursuant to government action) to change the normal working environment and operating procedures. It's no longer business as usual as employers and workers around the United States formulate and adapt approaches in combatting this evolving disruption. Employer-related COVID-19 pandemic response efforts can also raise complicated tax considerations for individuals and employers.

This report focuses on the initial approaches that employers are taking, such as increased telecommuting, and the resultant tax considerations. Subsequent economic implications are beyond the scope of this report.

Telecommuting or working remotely

A key component of the U.S. Centers for Disease Control and Prevention (CDC) [mitigation strategy](#) [PDF 330 KB] to prevent the spread of disease includes “social distancing,” and thus many companies are encouraging or even requiring their employees to work from home.

- **Home-office equipment and telecommunication services.** Companies are taking steps to prepare for or implement a remote work scenario. When working away from the office, employees may need additional equipment to replicate what is available to them on a typical workday—including additional hardware such as monitors, keyboards, printers or headsets. There are also less sophisticated office supplies that many employees use on a day-to-day basis, such as pens and note pads, that may be needed to carry on work from an improvised home office. In addition to physical equipment, employers may continue or begin to provide an allowance to cover telephone and internet services for employees while working from home.

Each of these items is frequently provided in the ordinary course on employer premises to enable employees to perform their work. The IRS has provided guidance on the tax treatment of many of these types of items, and their value can typically be excluded from employee income as a working condition fringe benefit. However, use in a home-office environment may require a different analysis, although work at a remote location at the direction of the employer may still weigh in favor of exclusion. The income exclusion analysis may also depend in part on whether the equipment or services are provided indefinitely or for a limited time or purpose. In cases of reimbursement or cash allowance, substantiation may also be required. There may also be an opportunity to provide certain benefits or reimburse employees on a tax-free basis as a result of a declared national emergency, discussed below.

Exclusion from employee income is even more meaningful following enactment of the 2017 tax law (commonly referred to as the “Tax Cuts and Jobs Act” (TCJA)), which generally eliminated the ability of individual employees to take a deduction for unreimbursed expenses on their personal tax returns.

In addition, provisions for certain reimbursement of independent contractors may cloud the employee versus independent contractor analysis.

- **Employer-provided meals.** During times of business-as-usual, some employers provide office premises meals to their employees that are fully or partially excludable from the employees’ income. The meals may be excludable from income as a result of, for example, geographical isolation of the office, employees required to be on call during the workday, or during a busy season of the employer’s business that requires teams to work extended hours at the office. In addition, the rules around income exclusion for employer-operated eating facilities are very specific and typically require being on the employer premises. Generally, whether employer-provided meals may be excluded from employee income is a fact-specific analysis, unique to each employer and business.

When employees are no longer working together in the office, the analysis around whether the cost of meals can be excluded from employee income necessarily takes a different shape. Although an argument could potentially be made that the employer business premises have shifted to the individual’s home, the same considerations that resulted in the meals being excludable from income may no longer apply, and the meals may become taxable. For example, meals consumed during business meetings among a group of employees may have been excludable from employee income as a de minimis fringe benefit for occasional group meals. With meetings taking place instead online or over the phone—although employees may still sit down for a meal in conjunction with the meeting—it may not be considered a group meal excludable from income.

These changes may affect working individuals who have grown accustomed to having certain meals provided and now have to provide those meals on their own or have any reimbursed meal costs treated as taxable compensation. In addition, employers that continue to provide meals for employees in a remote-work scenario may also face increases in the costs to cover meals on an individual basis to employees at their homes rather than purchase bulk food or catering to make available at the office.

- **State payroll withholding.** In general, state income tax withholding is required based upon the state where employees perform services. There are exceptions to this rule, most notably for states that have reciprocal agreements with neighboring states, which allow state income taxes to only be withheld in the employee’s resident state.

When employees are working from their home, which may be in a state that is different than the state where their primary work location is located, state income tax withholding may be required in the employee’s resident state rather than the normal primary work state. Whether state

withholding requirements on an employee's wages will be affected is a fact specific analysis based upon employee home locations, an employer's business locations, and review of state specific withholding regulations, including reciprocal agreements.

In addition, five states (Connecticut, Delaware, Nebraska, New York, and Pennsylvania) have specific regulations around telecommuting when employees work from home for their own convenience that may need to be considered.

Transportation and parking

In addition to social distancing from the office, employees may look for other transportation opportunities to avoid unnecessary contact with the general public.

- **Commuting and parking.** Workers who typically rely on public transportation, such as the subway or bus system, may be looking for alternative transportation options if they are still attending the office or a client worksite. Commuting between home and a regular place of work is typically considered a personal expense. As such, commuting benefits provided or reimbursed by an employer are generally taxable compensation unless they fit within limited qualified transportation fringe benefit exceptions (certain transit passes, parking, and van pools up to a specific monthly limit). A car service or other ride-sharing service covered by an employer for commuting purposes is typically taxable to the employee. Whether the travel to and from certain worksites is considered commuting is a fact-based determination which may be altered for employees otherwise working remotely.

Additional tax complications may arise for workers who have already purchased parking or transit passes that will go unused, as well as workers who have requested a pre-tax salary deduction on the assumption that business-related parking expenses will be consistently incurred.

From the employer perspective, the TCJA disallows a deduction related to commuting expenditures, except to the extent necessary to provide for the safety of the employee. It's unclear whether commuting benefits may be deductible if provided by the employer for the purpose of mitigating risk of COVID-19 exposure.

- **Private aircraft.** Some employees and officers that typically fly commercial may be switching to charter flights or private jet rentals for any necessary travel. Use of a non-commercial aircraft provided or paid for by an employer raises some unique tax issues. There are specific rules around how to track and value private flights as well as determine the deduction available to the employer, and employers need to be aware of what details will need to be gathered to perform these calculations.

Generally, employers need to track the dates, flight hours and miles, the number of passengers, and each passenger's reason for travel for each flight. Employers are also required to track any expenses related to such flights for which the employer seeks a deduction, including but not limited to, hangar fees, pilot salaries, fuel, maintenance, and the value of any depreciation deductions.

Business travel

Another response to the COVID-19 outbreak is restrictions on travel, specifically travel in and out of the United States. Travel restrictions apply more broadly to and from certain locations, and in others, returning home may be delayed as a result of a mandatory quarantine. For employees who are traveling away from home on business and are delayed from returning, there may be questions around how to characterize the expenses incurred for the remainder of the travel period—namely, whether they constitute business travel that is excludable from income rather than personal travel that must be

treated as compensation if paid for by the employer. Employers may also incur non-routine travel expenses related to relocation of employees on assignment in higher risk locations. Additional tax complications can arise if extension of the trip crosses the one-year-away threshold, potentially taking the trip out of the “temporary” travel category.

General “tax home” rules still apply when considering business travel, but may be further complicated by the realities of working remotely. To the extent employees qualify under the home office deduction rules of section 280A (though the deduction itself has been suspended under the TCJA), the individuals may be able to consider their personal residence to be their tax home when considering whether expenses are incurred for travel away from home. As always, tax considerations related to travel away from home are highly fact specific and must be considered on a case-by-case basis. In addition, employers may need to consider the various legal and regulatory requirements in each jurisdiction where employees are traveling or assigned and continue to monitor any changes in those rules as the situation evolves.

Employee assistance

In times of emergency, whether on a global or individual scale, employers often take actions to facilitate assistance for employees in need. In some instances, this takes the form of employer-provided benefits and in others the employer facilitates employees helping one another.

- **Employee donation programs.** Many employers currently operate programs through which employees can make donations of funds or unused leave time to other employees in need. The tax implications to the donating employee and to the recipient depend on how the program is structured and the foundational circumstances for the employee in need. Employers that already have this type of program in place, or that are interested in starting one, need to consider the potential tax implications to all parties and the opportunities available.
- **Employer loans.** Many employers offer loans to their employees in an effort to provide support in times of need and to cover unforeseen expenses. Proceeds of a bona fide loan are generally not considered taxable income to the borrower, but the terms and circumstances of an employer-provided loan need to be carefully considered to determine whether—and when—treatment as taxable compensation may be required.
- **Emergency declarations.** Often in times of disaster, the U.S. federal government issues an emergency declaration to provide for specific tax treatment or tax relief for emergency benefits provided to employees and their families. Although most commonly associated with weather-related natural disasters (e.g., hurricanes and tornadoes), an infectious disease outbreak of this magnitude may result in similar direct economic implications and therefore prompt similar declarations. At such time, certain relief can be provided directly to employees by their employer on a tax-free basis, which can help bridge potential gaps left open by insurance and other programs. President Trump recently declared a national emergency related to COVID-19. Employers may consider the special programs or relief available in connection with this declaration, as well as continue to monitor announcements on more specific guidance. In addition, employers may want to consider whether any of the expenses for benefits or assistance described above could be provided to employees tax-free on this basis.

Read more about employer assistance opportunities in times of national emergency, including through charities and foundations in [TaxNewsFlash](#).

Health plans and protected health information

An infectious disease outbreak naturally raises questions around crafting communications that maintain individual privacy as well as making health benefits available without creating any undesirable consequences in other realms.

- **Continuing to protect private health information of individuals.** Employers may be eager to take action to communicate risks and updates to their employees and request information from their employees about health status as a means to protect the employee population and broader community. However, employers need to remain cognizant of restrictions around requesting or disclosing protected health information and need to work with their advisors to establish a policy for communication in line with federal, state, and local requirements.

The U.S. Department of Health and Human Services (HHS) released a [bulletin](#) [PDF 794 KB] in February 2020 in light of the COVID-19 outbreak to provide that entities covered by the Health Insurance Portability and Accountability Act (HIPAA) and their business associates are aware of the ways patient information may—and may not—be shared under the HIPAA privacy rules in an outbreak of infectious disease. The HHS bulletin also serves as a reminder that HIPAA protections are not set aside during an emergency.

- **Health plans providing COVID-19 benefits.** The IRS in March 2020 released [Notice 2020-15](#) [PDF 39 KB] providing that a health plan may provide for testing and treatment of COVID-19 without jeopardizing its status as a high deductible health plan (HDHP). In order to be eligible to make tax-favored contributions to a health savings account (HSA), an individual must be covered by an HDHP, which requires that certain medical benefits may not be provided without satisfying a minimum deductible. To remove administrative and financial barriers to testing for and treatment of COVID-19 in the midst of the public health emergency, the IRS stated that all related medical care services and items provided by a health plan without a deductible, or with a deductible below the minimum annual deductible otherwise required for an HDHP, will be disregarded for purposes of determining the status of the plan as an HDHP.

Other considerations

As a result of the COVID-19 outbreak, many businesses are faced with uncertainties and closures, and individuals are experiencing lost wages and the prospect of rising medical bills. When the greater community or individuals experience a financial downturn, additional concerns may arise for employers.

- **COVID-19 unemployment insurance updates.** As a result of the COVID-19 outbreak in the United States, temporary guidance—[UI-PL No. 10-20](#) [PDF 326 KB]—has been provided by the U.S. Department of Labor on the state treatment of unemployment insurance (UI). Under the new UI guidance, states may amend their laws to provide additional state unemployment benefits to businesses and their employees affected by circumstances related to COVID-19. Individuals affected need to continue to monitor state departments of labor/unemployment for recent changes.
- **Qualified retirement plans.** A number of potential issues may arise in the context of qualified retirement plans, such as a 401(k) plan or defined benefit pension plan. Some plans require employers to make a safe harbor or minimum funding contribution for each plan year, which can be difficult during a time of economic uncertainty. In more severe situations, plan termination or withdrawal procedures may be implicated. In addition, participants may be more interested in seeking a plan loan or hardship distribution if their finances are tight. Many plans also have rules around the treatment of leaves of absence, which may become more relevant for employees who become ill or are caring for loved ones. There are specific compliance considerations that

employers need to consider in these situations for the proper tax treatment and to maintain plan qualification.

- **Nonqualified deferred compensation.** Unfunded nonqualified deferred compensation (NQDC) arrangements are generally subject to strict limitations on deferral as well as the time and form of payment under section 409A of the Internal Revenue Code. Adjustments to the terms of NQDC arrangements are not always easy or efficient without running afoul of the section 409A rules, which can result in negative tax consequences. Opportunities may be available, however, to further delay payments, to make early payments in the event of an emergency, or take other actions under the plan as currently structured or with permissible amendments. Employers need to understand these rules before making any changes to their NQDC arrangements or making any distributions outside of the current plan terms.
- **Severance payments and benefits.** For some employers, there may be worker attrition. With separation from employment comes issues surrounding severance payments, continued health benefits (e.g., under COBRA), wrapping up certain contribution-based programs such as flexible spending accounts (FSAs), supplemental unemployment benefits, and release agreements. Employers may need to consider a refresher to confirm the proper tax, withholding, and reporting treatment of severance-related payments and benefits.
- **Stimulus proposals.** The U.S. government officials continue to discuss potential approaches to support businesses and individuals in response to the COVID-19 situation. Some proposals have included a discussion of a payroll tax cut. The details of an economic response package are still taking shape, but may provide some relief for businesses and individuals as the consequences of the pandemic continue to unfold.

KPMG observation

Although some of the relevant tax concerns for employers in the current environment are outlined above, this is by no means an exclusive list. In addition, there are likely numerous legal and regulatory considerations that are increasingly relevant to employers in light of the current events. Employers need to continue to monitor updates and remain in contact with their advisors in developing policies and taking action in response to the global pandemic.

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