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Perspectives on the New Administration

March 26, 2021

American Rescue Plan Act (ARPA) Phase 5 Stimulus Package— Highlights of Certain Key Tax-Related Provisions in ARPA

On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA), in furtherance of the fifth phase of the federal government’s response to the COVID-19 crisis. The full text of the bill is published [here](#). The key tax provisions of the Phase 5 Stimulus are summarized in this Alert, and include the repeal of the worldwide interest allocation election, an expansion of the employee retention credit, and additional economic impact payments for individuals.

Phase	Legislation Name	Cost
Phase 1	Coronavirus Preparedness and Response Supplemental Appropriations Act	\$8.3 billion
Phase 2	Families First Coronavirus Response Act (FFCRA) (See Ropes & Gray alert on the FFCRA .)	\$192 billion
Phase 3	Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (See Ropes & Gray alert on the CARES Act .)	\$1.72 trillion
Phase 3.5	Paycheck Protection Program and Health Care Enhancement Act (PPP Expansion) (See Ropes & Gray alert on the PPP Expansion .)	\$483 billion
Phase 4	Consolidated Appropriations Act (CAA) (See Ropes & Gray alert on the CAA .)	\$900 billion
Phase 5	American Rescue Plan Act (ARPA)	\$1.9 trillion
Total		\$5.3 trillion

Key amongst its relief provisions, the Phase 5 Stimulus:

- Repeals the worldwide interest allocation election, which was previously set to begin in 2021. Congress has delayed use of the worldwide interest allocation election since its creation in 2004.
- Creates a new, more taxpayer-friendly employee retention credit (ERC) that applies after June 30, 2021 through December 31, 2021. The new ERC extends the existing CAA ERC (previously set to expire July 1, 2021), extends eligibility to “recovery startup businesses,” and expands the available credit for severely financially distressed employers with more than 500 employees.
- Gives a third round of recovery rebates/economic impact payments for eligible individuals in the amount of \$1,400 (\$2,800 for joint filers), plus \$1,400 per qualifying dependent.
- Increases the amount of the annual child tax credit for eligible families to \$3,000 per child under 18 (\$3,600 for children under 6) for 2021 only, with credit payments to be made periodically.
- Excludes from a taxpayer’s adjusted gross income the first \$10,200 in unemployment benefits received in 2020 only for taxpayers making less than \$150,000 per year (\$20,400 for joint filers whose gross income is less than \$150,000 combined).

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Certain key highlighted tax-related provisions of the Phase 5 Stimulus are summarized below, with more detailed descriptions:

Key Tax-Related Sections Providing Relief to Businesses	
Key Tax Provisions	Summary
<p>Repeal of Election to Allocate Interest and Other Expenses on Worldwide Basis</p>	<p><u>ARPA Phase 5 Stimulus Provision:</u></p> <p>Modifies Section 864 of the Internal Revenue Code of 1986 (the Code) by removing the election to allocate interest on a worldwide basis in subsection (f). (See ARPA § 9671.)</p> <p><u>Summary of Code Section 864(f):</u></p> <p>This election allows domestic corporations who are members of a worldwide affiliated group to apportion the interest expenses of each member as if the members of the group were a single corporation. A worldwide affiliated group is an affiliated group (as defined in Code Section 1504(a)) and CFCs that meet the 80% aggregate ownership requirement.</p>
<p>Extends and Increases the Employee Retention Credit (ERC)</p>	<p>With the ARPA ERCs, there are essentially now three rounds of ERCs:</p> <ol style="list-style-type: none"> 1) CARES Act ERCs, for wages paid March 13, 2020–December 31, 2020 (inclusive): Maximum of \$5,000 credit per employee. 2) CAA ERCs, for wages paid January 1, 2021–June 30, 2021 (inclusive): Maximum of \$14,000 credit per employee, \$7,000 per employee per quarter. 3) ARPA ERCs, for wages paid July 1, 2021–December 31, 2021 (inclusive): Maximum of \$14,000 credit per employee, \$7,000 per employee per quarter. <p>For 2021, the CAA and ARPA ERCs are equal to 70% of qualified wages. Qualified wages are capped at \$10,000 per employee, per quarter. Thus, if the employee makes over \$40,000 per year (\$10,000 per quarter) and all of their wages are qualified, then the credit is capped at \$7,000 per employee per quarter.</p> <p><u>ARPA Phase 5 Stimulus Provision:</u></p> <ul style="list-style-type: none"> • Creates a new Section 3134 of the Code. (See ARPA § 9651.) • Does not make any changes to limit the ERCs previously available to eligible employers under the CARES Act or the CAA.

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	<ul style="list-style-type: none"> • Applies to wages earned after June 30, 2021 and before January 1, 2022. (See Code § 3134(n).) • Creates a new category of eligible employer “recovery startup businesses.” <ul style="list-style-type: none"> ○ “Recovery startup businesses” are defined as: <ul style="list-style-type: none"> ▪ Any employer that began carrying on a trade or business after February 15, 2020; ○ Cannot receive more than \$50,000 per quarter (or \$100,000 for the entire year) in employee retention credits. (See Code § 3134(b)(1)(B).) • Expands the available ERC for “severely financially distressed employers” who have experienced a decline in revenue of 90% or more. <ul style="list-style-type: none"> ○ Qualified wages include all wages paid to all employees, not just affected employees. (See Code § 3134(c)(3)(C).) ○ This change benefits large employers (over 500 employees). Small employers could already receive credits for all wages. <p><u>CARES Act History:</u></p> <p>Created the ERC, which provides a refundable credit against employer’s share of social security contributions with respect to qualified wages paid by eligible employers. (See CARES Act § 2301.)</p> <p><u>CAA History:</u></p> <p>Created a new ERC based on the CARES Act ERC, which is more taxpayer-friendly and applies to wages paid January 1, 2021–June 30, 2021. (See CAA Div. EE § 207.)</p> <p>Extended the ERC to include wages paid January 1, 2021–June 30, 2021 (inclusive); increased the credit percentage to 70%; increased the per employee limitation for qualified wages to \$10,000 quarterly, rather than for all quarters; increased the threshold for determining whether wages of all employees or only eligible employees count towards qualified wages from 100 to 500 employees; if qualifying for the ERC based on a reduction in gross receipts, changed the reduction in gross receipts required for eligibility to 20% reduction, from 50% reduction; authorized</p>

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	<p>advance payments only to employers employing fewer than 500 employees; added an election for an employer to not take into account certain wages for purposes of the ERC. (See CAA Div. EE § 206.)</p>
<p>Extension of limitation on excess business losses of non-corporate taxpayers</p>	<p><u>ARPA Phase 5 Stimulus Provision:</u></p> <p>Modifies Section 461(l)(1) of the Code by extending the limitation on excess business loss rules for non-corporate taxpayers through 2026. Under prior law, the provision was set to expire after 2025. (See ARPA § 9041.)</p> <p><u>Summary of Code Section 461(l)(1):</u></p> <p>Limits excess business losses that exceed the non-corporate taxpayer's gross income by \$250,000 (\$500,000 on a joint return). This is measured separately for each trade or business. Excess business losses are not deductible and are carried forward as a NOL.</p>
<p>Extends FFCRA Paid Sick and Family Leave</p>	<p><u>ARPA Phase 5 Stimulus Provision:</u></p> <p>Extends FFCRA paid sick and family leave from April 1, 2021 to September 30, 2021 for employers and self-employed individuals. Reasons for eligible leave are expanded to include obtaining or recovering from Covid-19 immunization. Implements coordination with other programs, including with PPP loans, to disallow claiming multiple credits for the same wages. For paid family leave only, raises per-employee limit of wages taken into account from \$10,000 to \$12,000. (See ARPA §§ 9641–9643.)</p> <p><u>FFCRA History:</u></p> <p>Provided for tax credits for employers and self-employed individuals for paid sick and family leave for certain COVID-related reasons. (See FFCRA §§ 7001–7004.)</p> <p><u>CAA History:</u></p> <p>Extended FFCRA paid sick and family leave from December 31, 2020 to March 31, 2020, and also extended corresponding tax credits. Did not,</p>

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	<p>however, create an additional obligation for employers to provide additional FFCRA paid sick and family leave. (See CAA Div. N § 286.)</p> <p>Made changes to FFCRA paid sick and family leave retroactive as if included in the FFCRA. (See CAA Div. N § 286.)</p> <p>Allowed self-employed individuals to elect to use prior year net earnings to determine their average daily self-employment income for purposes of the tax credits for FFCRA paid sick and family leave authorized by the FFCRA. (See CAA Div. N § 287.)</p>

Key Tax-Related Sections Providing Relief to Individuals

Key Tax Provisions	Summary
<p>Creates Third Round of Recovery Rebate/Economic Impact Payments for Individuals</p>	<p><u>ARPA Phase 5 Stimulus Provision:</u></p> <p>Adds a new Section 6428B to the Code, which provides for a rebate in the form of a credit against eligible individuals' 2021 tax liability of \$1,400 per individual (\$2,800 for joint filers) plus \$1,400 per qualifying dependent (instead of only children). The full credit is limited to individuals making below \$75,000 (\$112,500 for heads of household and \$150,000 for joint filers). The credit phases out completely for individuals making above \$80,000 (\$120,000 for heads of household and \$160,000 for joint filers). (See ARPA § 9601.) For the purposes of the advance refund, the individual's income will be determined using their most recent filed tax return at the time of the IRS's determination. (See Code § 6428B(g).) Refunds are not subject to reduction or offset. (See ARPA § 9601(c)(2).)</p> <p><u>CARES Act History:</u></p> <p>Added a new Section 6428 to the Code, providing for direct payments to individuals via an advance "recovery rebate" tax credit. The CARES Act recovery rebate was the sum of \$1,200 (\$2,400 for joint filers) plus \$500 per qualifying child. (See CARES Act § 2201.)</p>

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Key Tax Provisions	Summary
	<p><u>CAA History:</u></p> <p>Added a new Section 6428A to the Code, replicating the CARES Act formula, including the 2020 tax credit concept. The new CAA Section provided for direct payments via advance of credits in the amount of \$600 (\$1,200 for joint filers) plus \$600 per qualifying child. This CAA recovery rebate was limited to individuals making below \$75,000 (\$112,500 for heads of household, \$150,000 for joint filers). Similar to the CARES Act recovery rebate, the recovery rebate phased out for those earning between \$75,000 and \$99,000 (\$112,500 and \$124,500 for heads of household, \$150,000 and \$174,000 for joint filers). (See CAA Div. N § 272.)</p>
<p>Child Tax Credit Expanded for 2021</p>	<p><u>ARPA Phase 5 Stimulus Provision:</u></p> <p>Adds new Section 24(i) to the Code and increases the amount of the annual child tax credit to \$3,000 per child under 18 (\$3,600 for children under 6). The credit is applicable for the year of 2021 for taxpayers making less than 75,000 per year (\$112,500 for heads of household and \$150,000 for joint fillers or surviving spouses). Higher income subjects the additional credit amount to a phase-out. Makes 17-year-olds eligible to be qualifying children, unlike the usual cutoff at 16. The Other Dependents Credit cannot be claimed for children who are claimed under the expanded definition (17-year-olds). The special rules are specifically for 2021 only. (See ARPA § 9611.)</p> <p><u>Advance Payment of Child Tax Credit</u></p> <p>The IRS will be sending advance payments equal to 50% of the refundable credit owed to the taxpayer for 2021 based on their most recently filed tax return. The amount will be issued periodically, rather than all at once like the stimulus payment. An online portal will be established to allow the taxpayer to provide additional information or elect not to receive the payments. The payments are not subject to reduction or offset. While the advance payments will be reconciled with the amount of credit owed to the individual when they file their 2021 tax return, there is a safe harbor amount that will</p>

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	reduce the amount of excess advance payment that has to be repaid. (See ARPA §9611(b).)
Expands Earned Income Tax Credit (EITC)	<u>ARPA Phase 5 Stimulus Provision:</u> Expands the EITC for the year 2021 by increasing the credit available to eligible taxpayers without children and expanding the eligibility requirements. (See ARPA §§ 9621-9622 .)
Exclusion of Unemployment Income	<u>ARPA Phase 5 Stimulus Provision:</u> Adds a new Section 85(c) to the Code, which excludes from gross income the first \$10,200 in unemployment benefits received in 2020 for taxpayers making less than \$150,000 per year (\$20,400 for joint filers whose adjusted gross income is less than \$150,000 combined). There is no phase-out, so taxpayers making \$149,999 get the exclusion and those making \$150,001 do not. (See ARPA § 9042 .)
Modification of Student Loan Forgiveness	<u>ARPA Phase 5 Stimulus Provision:</u> Modifies Code Section 108(f) to exclude from gross income any amount of federal or private education loan that is discharged between and including 2021 and 2025. There is no limit to the amount of debt that can be discharged and not included in income. (See ARPA §9675.)

A separate Ropes & Gray client alert ([Key Employee Benefit Provisions of the American Rescue Plan Act of 2021](#)) provides a summary of the key employee benefit plan and executive compensation-related provisions outlined in the ARPA.