United States: New ‘2020 recovery rebates’ may create inequities for mobile employees

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In brief

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), signed into law by the President on March 27, 2020, delivers relief in the form of an immediate payment from the IRS for certain individuals, including many mobile employees. Mobility programs should evaluate the impact of these potential payments and the related tax credit on their mobile populations, programs, and policies.

The CARES Act provides ‘2020 recovery rebates,’ which are credits for eligible individuals determined based on filing status and number of qualifying children and phased out for taxpayers with higher adjusted gross income (AGI). An estimate of the credit will be automatically paid to certain individuals as soon as possible but no later than the end of 2020 – referred to as an ‘advance refund.’ Although the credit applies to the 2020 tax year, the advance refund amount will be determined with reference to 2018 and 2019 tax year data for most taxpayers.

Mobility programs may have employees on assignment or recent transfers, whereby the amount of relief (or timing of relief) will be directly impacted due to the assignment or transfer. For example, some participants may not receive an advance refund and/or 2020 recovery rebate credit even though they would have had they lived and worked solely in their home location. Still others may receive a payment that they otherwise would not have received but for their relocation. How/should these payments be equalized?

This *Insight* describes some of the many resulting challenges and actions to consider.

In detail

Core provisions under the CARES Act

2020 recovery rebate amounts and timing

2020 recovery rebate amounts are $1,200 ($2,400 in the case of a joint return) for eligible individuals, plus $500 per qualifying child, subject to phase-outs for higher income taxpayers.

The advance refund amount to be paid in 2020 is the amount that would have been allowed as a 2020 recovery rebate credit for the individual's first taxable year beginning in 2019 if provisions for the credit had applied to such taxable year. If a 2019 return has not been filed at the time of determination, the IRS will consider 2018 tax return data or social security payment records.

Payments are expected to be released starting April 6, but no advance refund payments will be made after December 31, 2020. Payments will be made electronically to any account that the recipient authorized on or after January 1, 2018 for the delivery of a refund of federal income tax or certain other federal payments. If electronic payment is not available, payments will be delivered via check.

PwC observation: The IRS may issue further guidance as to the schedule by which electronic funds and checks will be delivered and/or the 'determination date' relevant for purposes of calculating the amount using 2018 or 2019 return data. As of the date of this Insight publication, no such guidance has been issued. It is not yet known whether accelerating or delaying the filing of outstanding 2019 returns will impact the existence or amount of the payments.

Eligible individuals and qualifying children

To be an eligible individual, the taxpayer (and spouse if filing a joint return) must have a social security number. Qualifying children also must have social security numbers or adoption taxpayer identification numbers. Individual Taxpayer Identification Numbers (ITINs) are not sufficient.

A qualifying child is defined for these purposes in the same manner as the child tax credit (i.e., a dependent child who has not reached age 17 by the end of the tax year).

Nonresident aliens are not eligible for the 2020 recovery rebate credit. No confirmation has been made as to qualification for those filing dual status returns (e.g., part-year resident tax returns including both Form 1040NR and 1040).

PwC observation: In addition to differences in AGI levels among years 2018, 2019, and 2020, the following also may change and impact ultimate payments and/or credits:

- *Filing status*
- *Number of qualifying children*
- *Obtaining a social security number for taxpayers and/or qualifying children*
- *Residency status for non-US citizens.*

Phase-outs for higher income levels

The amount of the advance recovery rebate will be reduced (but not below zero) by 5% of the taxpayer's 2019 (or 2018 if no 2019 return has been filed) AGI that exceeds $75,000 ($112,500 for head of household and $150,000 in the case of a joint return). Individuals (i.e., those with a filing status other than head of household or married filing jointly) with no qualifying children would not receive a rebate payment if their AGI exceeds $99,000. Head of household and married filing jointly filers with no qualifying children will receive no rebate if their AGI exceeds $132,500 and $198,000 (respectively) for the relevant tax year.

It is important to note that AGI exceeding the thresholds will reduce the total amount of 2020 recovery rebates – both for the taxpayer and qualifying children. For example, a family of four may receive $3,400, but their rebate will be reduced to zero if the joint tax return shows AGI in excess of $218,000.

PwC observation: Many mobile employees report higher amounts of AGI because of taxable assignment-related allowances and reimbursements (including relocation costs for permanent transfers) and as such, may not qualify for a 2020 recovery rebate payment and may or may not qualify for a credit on their 2020 tax returns. Conversely, some mobile employees may have a lower AGI due to their assignments. There are various scenarios and resulting issues to consider, explained in more detail below.

Residents of US possessions

The CARES Act includes provisions whereby the Treasury Department will pay amounts to US possessions (Puerto Rico and the Northern Mariana Islands) intended for the possessions to administer delivery to their own residents. Certain rules and limitations will apply, and a public awareness campaign is to be conducted.

Forthcoming communications to taxpayers

No later than 15 days after the 2020 recovery rebate payments have been distributed by the IRS (through a direct deposit or check) to eligible taxpayers, a notice will be sent by mail to the taxpayer's last known address. This notice will indicate the method by which payment was made, the amount of the payment, and a phone number for the taxpayer to contact the IRS to report any failure to receive such payment.

PwC observation: Employers should expect to receive questions from their employees about their eligibility for such payments. Employers should be ready to communicate if and how they will handle perceived shortfalls in advance to ensure consistency where possible.

Reporting on 2020 individual tax returns

The 2020 recovery rebate credit will be calculated and reflected on the 2020 Form 1040. The amount of the credit will be reduced (but not below zero) by the amount of the advance refund made or allowed to the taxpayer during 2020. Taxpayers are not required to repay any excess that may have been received.

For more information about the CARES Act, please see the WNTS Tax Insights publication.

Actions mobility programs should consider

Quantify the impact

As mentioned above, the qualification for, timing of, and amount of recovery rebate relief may be different for globally mobile individuals than if they had not lived or worked across borders. This impact may apply not only to those living or working across borders in 2020, but those whose 2018 and 2019 US federal income taxes were impacted by cross-border work.

This stems from the fact that globally mobile individuals may have inflated levels of AGI due to taxable assignment-related allowances and reimbursements (including relocation costs for permanent transfers). This additional compensation will mean that some will qualify for lower (or no) recovery rebate payments due to the phase-out limitations when compared to 'stay at home' compensation.

The ultimate benefit amount may be reconciled through a tax equalization or protection policy, but this may result in a delay well beyond when an advance recovery rebate deposit or check otherwise would have been received. Employers and other payors (e.g., partnerships, contractees, and corporations paying their board of directors) must determine whether and how to account for shortfalls in amount and/or timing.

In other situations, mobile employees may qualify for higher 2020 recovery rebate amounts. For example, the AGI threshold relevant for the phase-out rules is not adjusted by the IRC Section 911 foreign earned income and housing exclusions, potentially resulting in a higher payment or credit than without such exclusion.

Determine how tax reimbursement policies apply or should be changed

Funding advances

Certain individuals may not receive a current payment and must wait until after the filing of 2020 federal income tax returns and potentially equalizations to obtain the benefit of this relief. Should the employer take measures to deliver a hypothetical payment amount to them now (e.g., in recognition of the financial impact being suffered by many and other underlying reasons the government has decided to provide immediate payment to most taxpayers)? This may include, for example, employees who are resident aliens for 2020 but who were nonresident aliens in 2018 and/or 2019 or those with inflated 2018 or 2019 AGI solely as a result of assignment-related benefits.

If immediate funding is company-provided, should this be structured as 2020 taxable compensation or as a loan (e.g., bona fide debt)? If not structured as bona fide debt, would recipients be required to repay amounts recognized as credits on their 2020 returns? If loans are not provided and advances are recognized as taxable compensation for 2020, should such amounts be grossed up for taxes? If so, how will the extent of gross-ups be determined (e.g., federal, state, FICA, foreign, and special rules and exceptions for each)?

Alternatively, should estimated hypothetical tax for 2020 be adjusted to provide a more timely benefit to those whose IRS advance refunds during 2020 will be less than the expected 'stay at home' 2020 recovery rebate amounts?

Duplicate payments

If a taxable payment from the employer is made during 2020, but a duplicate credit can be claimed on the 2020 Form 1040, will recipients be expected to repay the excess or retain the duplicate payment amount? How will this be handled from a policy and tax perspective? Repayments of compensation in a subsequent tax year can have different implications for federal, state, FICA, and foreign purposes and vary depending on the amount.

Expansion of mobility tax reimbursement policies

Should such measures include those <u>not</u> covered by tax reimbursement policies, or others considered to be adversely impacted as a result of a previous international assignment (including former employees)? Some companies may wish to provide compensation to those receiving lower 2020 recovery rebate payments even if no tax reimbursement policy (including gross-ups) reasonably calls for it.

Will those receiving a higher IRS benefit than would have applied without international work assignments be permitted to keep 'windfalls?' For example, current nonresident aliens may receive payment based on 2018 or 2019 resident tax returns.

A tax-equalized foreign national ordinarily may be held to a foreign 'hypothetical tax,' with the company covering US taxes incurred as a result of a US assignment. Since a US tax benefit would ordinarily inure to the employer under such arrangement, should the employee be entitled to retain an advance refund received from the US tax authorities?

Evaluate tax return preparation assistance

Will employer-provided tax preparation assistance be provided for 2020 to reconcile or confirm final benefits realized? Should this include those individuals who otherwise would not have received tax preparation assistance for 2020?

For those employees that are receiving tax return assistance, mobility programs should consider the additional analysis needed. Determining the potential relief under the CARES Act may depend on the 2018, 2019, and/or 2020 tax filings, and also is dependent on the timing of the filing of the returns (which may be impacted by mobility status). Mobility programs should consider the rebate benefit impact on the preparation of 2019 and 2020 tax returns and tax reconciliation calculations (if applicable), with the aim of increasing administrative and cost efficiency.

Prepare communications to employees

What communication from the company should be made to impacted individuals? Information should be as clear and comprehensive as possible given the likelihood of employee questions.

Communications should pinpoint recommended actions. For example, should the company encourage or assist employees in filing Form 8822, *Change of Address*, to ensure expected checks are sent to a preferred address (for those not expecting direct deposit)? Does the company have a plan in anticipation of checks that may be sent to a company address (if the company address was utilized on the person's Form 1040)?

The takeaway

While the concept of the 2020 recovery rebate is simple, there are many complexities when considering such payments to mobile individuals. Employers (and other payors) of compensation to globally mobile individuals should evaluate the impact of the CARES Act and develop a documented plan, optimally prior to the IRS issuing payments. This plan should include:

- timely employee communication – a critical step to ensure that all stakeholders are informed
- quick-paced revisions to mobility policies
- prioritization of the most critical issues based on the specific company's situation.

Most notably, many employers with mobile populations will face whether and how to reimburse for the loss of a 2020 recovery rebate by a mobile employee. The decision to do so and whether to require repayments of duplicate benefits should be made only after analysis and recognition of potential additional costs and complexities that may arise.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Global Mobility Services – United States

John Shea, *US Leader*
+1 (310) 809-9234
john.w.shea@pwc.com

Al Giardina
+1 (914) 420-2631
alfred.giardina@pwc.com

Julie Baron
+1 (571) 419-4742
julie.m.baron@pwc.com

Samir Mammadov
+1 (310) 755-4755
samir.a.mammadov@pwc.com

Derek Nash
+1 (203) 249-3695
derek.m.nash@pwc.com

Clarissa Cole
+1 (617) 359-7639
clarissa.cole@pwc.com

Global Mobility Services – United Kingdom

Leo Palazzuoli, *Global Leader*
+44 7738 310312
leo.palazzuoli@pwc.com