Considerations for employers

Employers should consider the following issues as they close out 2021 and head into 2022:

- Employers have until the extended due date of their 2021 federal income tax return to retroactively establish a qualified retirement plan and fund the plan for 2021.

- Contributions made to a qualified retirement plan by the extended due date of the 2021 federal income tax return may be deductible for 2021; contributions made after this date are deductible for 2022.

- The amount of any PPP loan forgiveness is excluded from the federal gross income of the business, and qualifying expenses for which the loan proceeds were received are deductible.

- The CARES Act permitted employers to defer payment of the employer portion of Social Security (6.2%) payroll tax liabilities that would have been due from March 27 through December 31, 2020. Employers are reminded that half of the deferred amount must be paid by December 31, 2021 (the other half must be paid by December 31, 2022). Notice CP256-V is not required to make the required payment.

- Employers should ensure that common fringe benefits are properly included in employees' and, if applicable, 2% S corporation shareholders' taxable wages. Partners should not be issued W-2s.

- Publicly traded corporations may not deduct compensation of "covered employees" — CEO, CFO and generally the three next highest compensated executive officers — that exceeds $1 million per year. Effective for taxable years beginning after December 31, 2026, the American Rescue Plan Act of 2021 expands covered employees to include five highest paid employees. Unlike the current rules, these five additional employees are not required to be officers.

- Generally, for calendar year accrual basis taxpayers, accrued bonuses must be fixed and determinable by year end and paid within 2.5 months of year end (by March 15, 2022) for the bonus to be deductible in 2021. However, the bonus compensation must be paid before the end of 2021 if it is paid by a Personal Service Corporation to an employee-owner, by an S corporation to any employee-shareholder, or by a C corporation to a direct or indirect majority owner.

- Businesses should assess the tax impacts of their mobile workforce. Potential impacts include the establishment of a corporate tax presence in the state or foreign country where the employee works; dual tax residency for the employee; and payroll tax, benefits, and transfer pricing issues.