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U.S. CONGRESS CARES: LEGISLATIVE OVERVIEW OF TAX PROVISIONS

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The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or "Act") was signed into law by President Trump on Friday, March 27, 2020. The Act provides tax benefits to businesses and individuals and includes a number of changes to the Internal Revenue Code, including changes to the limitations on the deduction for net operating losses ("NOLs") and business interest expense. A number of the CARES Act provisions reverse or defer the effective time for certain changes made by Public Law 115-97, informally known as the 2017 Tax Cuts and Jobs Act ("TCJA"). We will be releasing additional alerts to provide more in-depth analysis of certain of the tax benefits included in the CARES Act.

Tax Benefits for Businesses

1. NOL carryback and excess business losses

The CARES Act temporarily repeals the prohibition on the carryback of NOLs in order to obtain a current refund of U.S. federal income taxes paid in prior tax years. The provisions allow the carryback of NOLs generated in tax years 2018, 2019, and 2020 to each of the five (5) taxable years preceding the year such NOL arose. Further, for tax years 2018, 2019, and 2020, taxpayers can use their NOLs up to the full amount of taxable income (rather than up to 80% of taxable income). There are special rules for real estate investment trusts and life insurance companies, as well as rules related to the repatriation tax and farming losses.

The CARES Act also retroactively delayed the imposition of the excess business loss limitation (generally a per year limit of $250,000 or $500,000 if married filing jointly) until 2021. As a result, non-corporate taxpayers are able to deduct all excess business losses generated through the end of 2020, and any losses that were disallowed in 2018 or 2019 are eligible to be refunded.

2. Increase of interest expense deduction limitation

The TCJA limited the deduction for business interest expenses generally to 30% of adjusted taxable income for taxable years beginning after 2017, although an exemption from the limitation was provided for taxpayers with average annual gross receipts of $25 million or less. The CARES

Act amends the business interest expense limitation to allow taxpayers subject to it to claim a deduction for business interest expenses in an amount up to 50% (instead of 30%) of their adjusted taxable income in tax years 2019 and 2020. The Act also provides an election for taxpayers to substitute their 2020 adjusted taxable income with their 2019 adjusted taxable income for purposes of computing the limitation in 2020. This election should provide certain taxpayers with lower taxable income in 2020 the ability to deduct a greater amount of interest expense.

The rules applicable to the deduction allowed by partnerships for business interest expense vary slightly from the above. Finally, taxpayers may irrevocably elect to have the 30% limitation, rather than the new 50% limitation, apply to their 2019 and 2020 tax years.

3. Employee retention credit

The CARES Act provides certain eligible employers a refundable credit with respect to the employer's share of the 6.2% Social Security employment tax for each calendar quarter in 2020 equal to 50% of qualified wages paid after March 12, 2020 and before January 1, 2021 (with up to $10,000 per employee for all calendar quarters). Eligible employers generally include those required to fully or partially suspend operations due to a COVID-19 related order or that have a 50% decrease in gross receipts for a calendar quarter when compared to the same quarter in 2019. Generally, all employee wages paid by employers with up to 100 full-time employees in 2019 are eligible for the credit. However, if an employer had more than 100 full-time employees in 2019, only wages paid to employees who are not providing services due to the suspension of operations or significant decrease in gross receipts (limited to 30 days per employee) are credit-eligible.

4. Deferral of employer portion of payroll tax

The CARES Act defers payment of the employer's share of the 6.2% Social Security employment tax paid on wages through the end of 2020. The deferred tax liability would be paid in two equal installments, due by December 31, 2021 and December 31, 2022, respectively.

5. Refundable minimum tax credit

Corporations with any refundable alternative minimum tax credits that were generated prior to 2018 can claim those credits in equal amounts in 2018 and 2019 (or the entire amount in 2018 pursuant to an election). A special rule provides that the Treasury Department must review the claim, which is to be made prior to December 31, 2020, and pay the refundable credit within ninety (90) days of the claim being filed.

6. Charitable contributions

Under the Act, corporations are allowed a deduction for cash contributions made in tax year 2020 to public charities (but not non-operating private foundations or donor advised funds) in an amount equal to 25% of taxable income (up from the current limitation of 10%). The limitation with respect to contributions by partnerships and S corporations are made at the member level. Further, the CARES Act raised the 15% limitation applicable to charitable contributions of food to 25%.

7. Fix to QIP 100% bonus deduction

The CARES Act made a technical correction to the bonus depreciation rules enacted in the TCJA. Under the Act, certain interior improvements to non-residential buildings (*i.e.*, qualified improvement property) are retroactively eligible for immediate expensing as if this correction were included in the TCJA when it was enacted.

Tax Benefits for Individuals

1. Recovery rebates

The CARES Act provides for a refundable advance credit, to be paid to eligible taxpayers by check or direct deposit as soon as possible, based on an individual's 2019 income tax return (or 2018 income tax return if the 2019 income tax return has not yet been filed). For taxpayers with adjusted gross income ("AGI") of $75,000 (or $150,000 if married filing jointly), the credit will be $1,200 (or $2,400 if married filing jointly), plus an additional $500 for each qualifying child (generally U.S. citizens or residents under the age of 17) of the taxpayer. The credit is phased out at a rate of 5% for taxpayers with AGI between $75,001 and $99,000 (or between $150,001 and $198,000 if married filing jointly) and no credit is available for taxpayers with AGI in excess of $99,000 (or $198,000 if married filing jointly).

2. Charitable contributions

The CARES Act establishes an above-the-line deduction up to $300 for individuals making cash contributions to public charities (but not non-operating private foundations or donor advised funds) in any year beginning in 2020. Unlike certain other tax provisions of the CARES Act, this provision is not limited to just 2020, and applies to all years going forward.

The Act also permits individuals to deduct all cash contributions made in tax year 2020 to public charities (but not non-operating private foundations or donor advised funds) in an amount up to the taxpayer's AGI (up from the current 60% AGI limitation).

3. Employee exclusion for employer student loan payments

The CARES Act allows employers to make qualified student loan payments on behalf of employees, subject to the overall limitation of $5,250 per employee per year with respect to employer-sponsored educational assistance. Like other items of employer-sponsored educational assistance, the qualified student loan payments would not be treated as wages and thereby would not be subject to income or employment taxes. The qualified student loan payments can be paid directly to the employee or to the lender.

4. Deferral of self-employment taxes

The CARES Act defers payment of 50% of an individual's 12.4% Social Security self-employment tax owed on self-employment income through the end of 2020. The deferred tax liability would be paid in two equal installments, due by December 31, 2021 and December 31, 2022, respectively.

For additional information, please feel free to call or email Phil Wright (314-259-2499 or pbwright@bclplaw.com), Jessica Edwards (314-259-2355 or jessica.edwards@bclplaw.com), Erika Labelle (303-866-0454 or erika.labelle@bclplaw.com), John Barrie (212-541-1184 or jpbarrie@bclplaw.com), Frank Crisafi (404-572-6840 or frank.crisafi@bclplaw.com), Chris Girouard (312-602-5142 or chris.girouard@bclplaw.com), or any member of our Tax Advice and Controversy team.

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Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com
+1 415 675 3435