CERTIFIED PUBLIC ACCOUNTANTS

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TAX ALERT – MARCH 27, 2020

President Signs the CARES Act

Executive Summary

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") a $2 trillion COVID-19 economic stabilization package. The CARES Act includes extraordinary tax provisions and other measures that assist businesses and individuals affected by the COVID-19 health and economic crisis and aim to sustain the US $21.5 trillion economy.

Among the most significant provisions for businesses there are a 5-year net operating loss (NOL) carryback, a loosening of the interest deduction limitations, accelerated AMT refunds, payroll tax relief, tax credits for employers who retain employees and bonus depreciation provisions.

Provisions for individuals include "recovery checks," more favorable rules for retirement accounts and charitable deductions.

The CARES Act provides $500 billion for a Treasury Department Exchange Stabilization Fund to provide loans, loan guarantees, and other investments to qualifying businesses and $349 billion for a Small Business Administration "paycheck protection program." The CARES Act also provides $340 billion of funding for hospitals and assistance to states and localities.

Tax Provisions for Businesses

Net Operating Losses ("NOLs"). The CARES Act temporarily removes the current limitations and allows a NOL to fully offset taxable income. The legislation reintroduces the NOL carry-back mechanism allowing an NOL from tax years beginning in 2018, 2019, or 2020 to be carried back for five years and NOLs arising in a tax year beginning in 2017 and ending in 2018 (a fiscal year) to be carried back two years. An NOL limitation applicable to pass-through businesses and sole proprietor is modified to permit utilization of excess business losses for tax years beginning before January 1, 2021.

Interest expense. This provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30% limitation to 50% of taxable income (with adjustments) for 2019 and 2020. It also allows corporations to use their adjusted taxable income from 2019 to calculate the 2020 interest limitation.

Corporate alternative minimum tax (AMT). The corporate alternative minimum tax (AMT) was repealed as part of the 2017 Tax Cuts and Jobs Act ("**TCJA**"), but corporate AMT credits were made available as refundable credits over several years, ending in 2021. This provision accelerates the ability of companies to recover those AMT credits.

Employee Retention Credit. This provision provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.

For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

The 50% credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Payroll Tax Payment Deferral. The CARES Act defers the payment of applicable 2020 employer payroll taxes from the date of enactment through December 31, 2020. 50% of the deferred tax is to be paid by December 31, 2021, and the remainder by December 31, 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

Bonus Depreciation. This provision is a technical correction to the TCJA to provide a 15-year recovery period for qualified improvement property (QIP). This technical correction makes QIP eligible for bonus depreciation. The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. This technical correction has retroactive effect, meaning taxpayers can file amended tax returns for 2018. Alternatively, taxpayers can file an automatic Form 3115, *Application for Change in Accounting Method.*

Tax Provisions for Individuals

Recovery rebate checks. The CARES Act provides checks up to $1,200 for individuals / $2,400 for married couples / $500 per child. The one-time recovery rebate phases out after $75,000, for a single filer, and $150,000 for a joint filer, and is completely phased out after $99,000 for a single filer

($198,000 for a joint filer) with no children. The IRS will issue rebate checks based on a taxpayer's adjusted gross income on their 2019 tax return, if filed, or otherwise on their 2018 return.

Retirement funds. This measure provides a temporary waiver of the 10% early withdrawal penalty for certain distributions up to $100,000 made on or after January 1, 2020 from qualified retirement accounts for COVID-19 related purposes. Additional changes apply to retirement plan rules.

Charitable contributions. This provision increases the limitations on deductions for charitable contributions. For individuals who itemize their deductions, the 50% of adjusted gross income limitation is suspended for 2020. A partial "above-the-line" deduction up to $300 is provided for individuals who do not itemize their deductions.

Student loans. The CARE Act excludes from income certain employer payments of student loans up to $5,250 annually. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Loans and Guarantees

Treasury Department Exchange Stabilization Fund (the "Fund"). The CARES Act provides $500 billion for the Fund to offer loans, loan guarantees, and other investments to qualifying businesses. The Fund offers lending totaling $50 billion for passenger airlines, $8 billion for cargo carriers, and $17 billion for businesses maintaining national security. Businesses receiving assistance from the Fund must maintain existing employment levels, to the extent possible. To be eligible, the business entity must be US-based and have significant domestic operations, with a majority of employees based in the United States.

Paycheck Protection Program. The CARES Act provides $349 billion for a Small Business Administration ("**SBA**") "Paycheck Protection Program" to offer loans up to a maximum of $10 million to eligible businesses with 500 or fewer employees.

In addition to "small business concerns" as currently defined under the SBA, eligible businesses for the new program include any business concern if it employs not more than the *greater* of: a) 500 employees (includes full-time, part-time, and those employed on other bases); or b) the size standard in number of employees established by the Administration for the industry in which the entity operates. Expanded eligibility rules apply for businesses in the hospitality and dining industries.

Borrower requirements include a good-faith certification that: the loan is needed to continue operations during the COVID-19 emergency; funds will be used to maintain payroll or make mortgage, lease, and utility payments; the applicant does not have any other application pending under this program for the same purpose; and the applicant has not received duplicative amounts under the program.

The maximum loan amount is capped at $10 million and is determined based on 2.5 times the average total monthly payroll costs incurred in the one-year period before the loan is made.

Covered loans can be used for payroll costs, health benefits, payments on qualifying mortgage or rent obligations, utilities and interest on other debt obligations incurred before the covered period. Limits include a cap of $100,000 on the amount of an individual employee's compensation that can be funded from a covered loan.

Loan forgiveness is provided for loan amounts spent during an initial eight-week period for certain expenses including payroll costs, with the amount of loan forgiveness dependent on employee retention. Amounts of cancelled indebtedness will not be included in the borrower's taxable income. Express loan procedures are provided to accelerate the processing of loan applications.

SBA Disaster Loan Program. In addition to the Paycheck Protection Program described above, the CARES Act expands the SBA's Disaster Loan Program. This applies to a business with 500 or fewer employees, sole proprietorships, with or without employees, and independent contractors. Entities applying for these loans can request an emergency advance of up to $10,000, which does not have to be repaid, even if the loan application is later denied. Advances are to be awarded within 3 days of an application. Advances may be used for the following:

- Providing sick leave to employees unable to work due to direct effect of COVID-19;
- Maintaining payroll during business disruptions during slow-downs;
- Meeting increased supply chain costs;
- Making rent or mortgage payments; and
- Repaying debts that cannot be paid due to lost revenue.

Increased Unemployment Benefits. The CARES Act provides $260 billion for increased unemployment benefits, including up to four months of full replacement wages up to certain limits for individuals who lose a job or are furloughed due to the COVID-19 emergency.

This content is for general information purposes only, and does not constitute tax advice.

If you have any questions or would like additional information on the topics covered in this alert, please contact your engagement partner.

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