Tax Legislative and Regulatory Update
March 25, 2020

Legislative Update

Bipartisan "Phase 3" legislation

This morning, Senate leaders released legislative text for the Senate Amendment to H.R. 748, re-named the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the third COVID-19 related piece of legislation. That legislation includes numerous tax provisions, for which I have provided high-level summary below. The amendment tracks closely with the March 22 draft released by Senate Republicans, with a number of tax provisions added – most significantly a new employee retention credit for employers. Please follow up with me if you would like to discuss any of the provisions in more detail.

I. Individual Tax Provisions:
   a. Recovery Rebates:
      i. Provide to U.S. citizens and U.S. tax residents advance, fully refundable tax credits of $1,200 ($2,400 for joint filers), with $600 ($1,200 for joint filers) being refundable, plus $500 (refundable) per qualifying child.
      ii. Credit phases out at 5-percent rate for taxpayers with AGI in excess of $75,000 ($112,500 for heads of household and $150,000 for joint filers).
   b. Retirement accounts:
      i. Allow up to $100,000 in penalty-free withdrawals from qualified retirement accounts for certain coronavirus-related purposes, with the tax on distributions spread out over three years, and three years to re-contribute the funds without being subject to the standard annual cap on contributions.
      ii. Provide flexibility to loans from certain retirement plans for coronavirus-related purposes.
      iii. Suspend for 2020 required minimum distributions from employer-based defined contribution plans and IRAs.
   c. Charitable contributions:
      i. Allow above-the-line deduction for charitable contributions made in cash, limited to $300 and for tax year 2020 only.
      ii. For cash contributions made during 2020, suspend the 50-percent limitation on individuals, increase to 25 percent the 10-percent limitation on corporations, and increase to 25 percent the 15-percent limitation on food inventory.
   d. Health-related tax provisions:
      i. Exempt telehealth and other remote health services from deductible requirement for high deductible health plans and health savings accounts, for plan years 2021 and earlier.

ii. Repeal rule prohibiting over-the-counter medication from being treated as a qualified medical expense, and add menstrual care products to that definition.

e. Expand definition of employer-provided educational assistance that is excluded from gross income up to $5,250 in student loan payments made by an employer between the date of enactment and the end of 2020.

II. Business/Employer Tax Provisions:

a. Employee retention credit:
   i. Provide eligible employers a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50 percent of the first $10,000 in wages per employee (including value of health plan benefits).
   ii. Eligible employers must satisfy one of two tests:
      1. Fully or partially suspended operations due to orders from a governmental entity, OR
      2. Experience a year-over-year (comparing calendar quarters) reduction in gross receipts of at least 50 percent – until gross receipts exceed 80 percent year-over-year.
   iii. Effective for wages paid after March 12, 2020, and before January 1, 2021.

b. Postpone the due date for depositing employer payroll (i.e., employment) taxes and 50 percent of self-employment taxes related to Social Security and Railroad Retirement and attributable to wages paid during 2020 such that half would be due December 31, 2021, and half would be due December 31, 2022.

c. Net operating losses:
   i. Suspend the 80-percent-of-taxable-income limit on NOL carryovers (enacted in the TCJA) for three years, such that the limit would not apply to tax years beginning in 2018, 2019, and 2020.
   ii. Allow NOLs arising in 2018, 2019, and 2020 to be carried back five years.
   iii. Adopt the TCJA technical correction related the effective date of TCJA NOL provisions.

d. Business losses of pass-through entities:
   i. Suspend the limitation on the use of business losses against non-business income (enacted in the TCJA) and the limitation on excess farm losses for three years, such that the limits would not apply to tax years beginning in 2018, 2019, and 2020.
   ii. Adopt TCJA technical corrections related to section 461(l).

e. Limitation on business interest expense:
   i. Temporarily increase the 30 percent of adjusted taxable income ("ATI") threshold to 50 percent of ATI, for tax years beginning in 2019 and 2020. Because the IRS did not extend the generally-applicable partnership tax return filing deadline of March 15 under either of the recent IRS notices extending return filing and tax payment deadlines, the provision to increase the ATI limit applies to partnerships only for 2020. However, a partner may treat 50 percent of its already-allocated 2019 excess business

interest expense from a partnership as not being subject to section 163(j) in the hands of such partner.

   ii. Allow taxpayers to elect to use tax year 2019 ATI in lieu of tax year 2020 ATI for the purpose of calculating its tax year 2020 limitation.

f. Make any remaining corporate AMT credits fully refundable for tax year 2018.
g. Adopt the qualified improvement property TCJA technical correction.
h. Exempt from excise taxes any distilled spirits removed during 2020 for use in hand sanitizer.

III. Tax Provisions related to non-tax provisions in the legislation:

a. Exclude from gross income any cancellation of debt resulting from the small business loan provisions.
b. Grant regulatory authority to Treasury to ensure that loan and loan guarantee provisions do not trigger a change in ownership for section 382 purposes.
c. Provide an excise tax holiday from date of enactment through the end of 2020 for aviation ticket taxes (both passengers and freight) and taxes on kerosene used in commercial aviation.

Finally, the CARES Act includes provisions intended to improve the ability of taxpayers to monetize the benefit of the recently-enacted sick and family leave credits on an advanced basis.

Regulatory Update

Also today, the IRS announced its People First Initiative to help deal with COVID-19 effects. Building on the recent extension of various filing deadlines in Notice 2020-18, this initiative covers areas such as installment agreements, offers-in-compromise, private debt collection, and other administrative and compliance matters.