

A blue-tinted background image showing a woman's silhouette in profile, looking out a window at a dense city skyline. The scene is viewed from a high angle, looking down at a conference table in the foreground.

# TAX ASPECTS OF THE CORONAVIRUS RELIEF PACKAGES

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# Introduction – Covid-19 Legislation Explained

In the wake of the coronavirus crisis, the President and the U.S. Congress have passed specific emergency legislation, including:

- » **Notice 2020-18**, which extended the tax return filing deadline
- » **Families First Coronavirus Relief Act**, which issued leave benefits to families impacted by pandemic funded by employer tax credits
- » **The CARES Act**, a massive stimulus package designed to support the American people and economy

# Agenda

- » **Notice 2020-18**, which extended the tax return filing deadline
- » **Families First Coronavirus Relief Act**, which issued leave benefits to families impacted by the pandemic funded by employer tax credits
- » **The CARES Act**, a massive stimulus package designed to support the American people and economy
  - Business Provisions
  - Individual Provisions

# Notice 2020-18

- » The Notice postpones the filing and payment deadlines from April 15 to July 15 without penalties and interest
- » Is available for any person or entity with a federal income tax return or payment due April, 15, 2020
- » The Notice postpones the deadline for first quarter 2020 estimated income tax payments due on April 15, 2020
- » The second quarter estimated income tax payments are still due on June 15, 2020

# Notice 2020-18 Continued

- » The deadline for making contributions to your IRA for 2019 is also extended to July 15, 2020
- » Many states have provided three additional months to file and pay balances due including Rhode Island, Massachusetts and New York

# Families First Coronavirus Response Act

- » Families First Coronavirus Response Act (Act) was signed by President Trump on March 18, 2020
- » The act is intended to ease the economic consequences stemming from the coronavirus disease outbreak by providing family and medical leave, and sick leave, to employees and providing tax credits to employers providing the leave.

# Emergency and Family and Medical Leave [1]

- » The Act includes the Emergency Family and Medical Leave Expansion Act (EFMLEA), which requires employers with fewer than 500 employees to provide both paid and unpaid health emergency leave to certain employees through December 31, 2020.
- » You have fewer than 500 employees if, at the time the employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the US, DC or any territory. You should include employees on leave, temporary employees, and day laborers supplied by a temporary agency.
- » Do NOT count any independent contractors.

# Emergency and Family and Medical Leave [1]

- » Typically, a corporation is considered to be a single employer. When a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If they are joint employers, both employers must count the employees.
- » The new leave requirements do not apply to a private sector employer with more than 500 employees.

# Emergency and Family and Medical Leave [1]

- » In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA).
- » If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave.

# Emergency and Family and Medical Leave [1]

Factors to be considered in determining if separate businesses are an integrated employer include:

1. Common management,
  2. Interrelation between operations,
  3. Centralized control of labor relations, and
  4. Degree of common ownership or financial control.
- » For purposes of determining employer coverage under the FMLA, the employees of all entities making up the integrated employer must be counted.

# Child Care Leave

- » The child care leave is generally available when an employee who has been employed for at least 30 days is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus.
- » The first 10 days of leave may be unpaid and then paid leave is required for the next ten weeks.
- » The employer must pay at least two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate to any one employee.
- » Child care leave is not subject to 6.2% employer Social Security tax [1].

# Paid Sick Leave

- » For COVID-19 related reasons, private employers with fewer than 500 employees must provide 80 hours of paid sick time to full-time employees who are unable to work. Part-time employees are entitled to sick time based on their average hours worked over a 2-week period.
- » Any employee, regardless of how long they have been employed is a covered employee. This is different than the child care leave which requires 30 days of employment.
- » Employees who are (1) subject to a quarantine or isolation order, (2) advised by a health provider to self-quarantine, or (3) experiencing symptoms and seeking diagnosis, must be compensated at their regular rate, up to a maximum of \$511 per day (\$5,110 total).

# Paid Sick Leave Continued

- » For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, must be compensated at two-thirds of their regular pay, up to a maximum of \$200 per day (\$2,000) in total.
- » Sick leave is not subject to the 6.2% employer Social Security Tax [1].

# Employer Credits for Child Care and Paid Sick Leave

- » News Release 2020-57 – Treasury, IRS and Labor announce plan to implement Coronavirus-related paid leave for workers and tax credits for small and midsize businesses to swiftly recover the cost of providing Coronavirus-related leave.
- » For an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. The credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate, for up to ten weeks.

# Employer Credits for Child Care and Paid Sick Leave Continued

- » For an employee who is unable to work because of Coronavirus quarantine or self quarantine or has Coronavirus symptoms and is seeking medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of ten days.
- » For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for a total of ten days.

# Employer Credits for Child Care and Paid Sick Leave Continued

- » The credits are increased by the the costs to maintain health insurance coverage for the eligible employees during the leave period.
- » The credits are increased by the employer's 1.45% Medicare tax that is imposed on qualified family leave or sick wages [1].
- » Under guidance that will be released this week, eligible employers who pay sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

# Employer Credits for Child Care and Paid Sick Leave Continued

- » The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- » Any excess credit is refundable. The IRS expects to process these requests in two weeks or less.

# CARES ACT - Business Provisions

## Paycheck Protection Loans [1]

- » New “Paycheck Protection Loans” under Section 7(a)(36) will be available during the “covered period,” from February 15, 2020-June 30, 2020
- » The loans are available from SBA and Treasury approved banks and credit unions.
- » You don’t need to establish that you were unable to get credit elsewhere. No personal guarantee is required. No collateral is required.
- » There will be no repayment penalties, no guarantee fees and no yearly fees.

# Payroll Protection Loans Continued

[1]

- » The borrower needs to certify:
  - That the uncertainty of current economic conditions makes the loan necessary to support the ongoing operations of the borrower,
  - That the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments,
  - That the borrower does not have an application for a loan under Section 7(a) for the same purpose and has not received another Section 7(a) loan from February 15, 2020 through December 31, 2020

# Payroll Protection Loans Continued

[1]

- » Who is a “small business concern” eligible for these loans?
- » A small business with fewer than 500 employees.
- » Guidance: affiliation rules for measuring number of employees are found at 13 C.F.R. §121.103
- » Any business with less than 500 employees per physical location that has a NAICS code of 72 (accommodation and food services)
- » Maximum loan amount is the lesser of the average monthly payroll costs incurred during the year prior to the loan date times 2.5 or \$10 million.

# Payroll Protection Loans Continued

[1]

- » *Example. X Co. had \$2.4 million of total payroll costs for the period April 1, 2019 through March 31, 2020. X Co.'s average monthly payroll costs were thus \$200,000. X Co. is eligible for a Paycheck Protection Loan equal to the lesser of:*
  - \$500,000, or
  - \$10 million.

# Payroll Protection Loans Continued [1]

## » **Acceptable Use of Funds**

- » During the period February 15, 2020 through June 30, 2020, the borrower may use the borrowed funds for:
  - Operational costs,
  - Payroll costs,
  - Group health care benefits,
  - Interest on any mortgage obligation,
  - Rent,
  - Utilities,
  - Interest on any other debt incurred before February 15, 2020.

# Payroll Protection Loans Continued [1]

- » Terms of the loan:
  - Maximum maturity of 10 years,
  - Maximum interest rate of 4% (usually 1%-2.75%),
  - Guaranteed deferral of repayment for 6-12 months. If the Paycheck Protection Loan is used for its intended purposes, the first 8 weeks worth of certain payments will be forgiven on a tax-free basis.

# Payroll Protection Loans Continued

## [1]

- » **Loan forgiveness feature: Section 1106 of the CARES Act**
- » If the Paycheck Protection Loan is used for its intended purposes, the first 8 weeks worth of certain payments will be forgiven on a tax-free basis.
- » What payments are covered during the first 8 weeks?
  - Interest on a mortgage incurred before February 15, 2020
  - Rent for a lease in force before February 15, 2020
  - Certain utilities for which service started before February 15, 2020
  - Payroll costs (same definition as under Section 7(a)(36))
- » The limit cannot exceed the principal of the note (interest will still be owed).

# Payroll Protection Loans Continued [1]

- » The amount of the loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees.
- » If an employer replaces any full-time employees or restores any substantially reduced wages by June 30, 2020 that occurred during the period from February 15, 2020 and ending 30 days after the enactment of the CARES Act, the full forgiveness is again allowed.

# Employer-Paid Student Loan Payments [1]

## » Old Rules:

- Section 127 allows an employer to pay up to \$5,250 of “educational assistance” to an employee on a tax-free basis.

## » New Rules:

- Section 127 is amended to provide that the \$5,250 can be used for a combination of educational assistance and – for 2020 only – to pay the principal and interest of an employee’s student loan payment.
- The employee, of course, cannot deduct any interest paid by the employer as student loan interest under Section 221.

# Employer Retention Credit [1]

A new credit is created to encourage employers to retain employees and maintain salary during the rest of 2020.

- The credit is against payroll – not income – taxes. Specifically, the employer’s share of the Social Security tax, so 6.2% of wages paid. It is fully refundable. First, however, the payroll tax is reduced by qualified sick leave and family leave credits as discussed previously.
- The credit is equal to 50% of “qualified wages” paid to each employee, and is done on a calendar quarter basis. It applies only to wages paid after March 12, 2020 and before January 1, 2021. Thus, the maximum credit is for part of Q1, and then Q2, Q3 and then Q4 of 2020.

# Employer Retention Credit Continued [1]

- The TOTAL wages taken into account for any employee is \$10,000 plus allocable health care cost. Thus, an employee making more than \$40,000/year will only generate a credit for one quarter.
- You can't take this credit AND get a Paycheck Protection Loan OR Work Opportunity Credits; you have to choose.
- There are special related party rules to prevent the employer from receiving the credit if the employee is related to the employer.

# Employer Retention Credit Continued [1]

- » 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.
- » If you had more than 100 full-time employees during 2019, you count only the wages paid to employees that were not providing services.
- » If you had less than 100 full-time employees, you count all wages paid to employees – whether or not they were working- during the furloughed period or any in the “drop in receipts” period.

# Deferral of Payroll Taxes [1]

- Once you determine the net amount of payroll taxes actually owed in 2020 (after the reduction for sick leave, family leave and employee retention credits), Section 2302 of the CARES Act allows you to defer the taxes incurred between the date of enactment and December 31, 2020 until 2021 (50%) and 2022 (50%).
- The deferral provision applies only to the employer's share of social security tax. It does not apply to the employer's Medicare taxes nor to the employee's share of social security or Medicare taxes.
- However, you cannot defer payroll taxes if you have a Paycheck Protection Loan that is forgiven.

# Deferral of Payroll Taxes Continued

## [1]

- » A self-employed taxpayer can defer 50% of self-employment tax until 2021 (25%) and 2022 (25%). When the taxes come due in 2021 and 2022, the self-employed taxpayer will not have to make estimated payments against those deferred self-employment taxes.

# Changes to Net Operating Loss Rules [1]

## » Old Law:

- After passage of the TCJA, net operating losses for 2018 and beyond could not be carried back, and when carried forward could only offset 80% of taxable income.

## » New Law:

- Net operating losses for 2018, 2019 and 2020 can be carried back for up to five years and if carried forward, can offset 100% of taxable income.
- Come 2021, losses from pre-2018 can offset up to 100% of post-2020 taxable income, but losses from 2018 forward can only offset 80% of post-2020 income.

# Changes to Individual Loss Limitation Rules [1]

## » Old Law:

- For 2018-2025, “excess business losses” of an individual were limited to \$250,000 (if single; \$500,000 if married filing jointly) under Section 461(l),
- The presumption was that wages counted as business income.

## » New Law:

- Section 461(l) is suspended for 2018, 2019, and 2020. Losses can be used without limitation (provided Sections 704/1366, 465, and 469 are satisfied).
- Note, however, that when Section 461 kicks back in during 2021, wages will NOT count as business income.

# Changes to Interest Limitation Rules

[1]

## » Old Law:

- Beginning in 2018, the “business interest expense” of many businesses is limited to 30% of adjusted taxable income (ATI).
- For partnerships, any excess business interest is allocated to the partner and suspended at the partner level until they are allocated either excess taxable income (ETI) or excess business interest income (EBII) from the partnership.

# Changes to Interest Limitation Rules Continued [1]

## » New Law:

- For 2019 and 2020, the 30% of ATI floor is increased to 50%.
- For a partnership, the 30% limit still applies for 2019, but
  - Any excess business interest allocation to the partner:
    - 50% of the interest is freed up in 2020 and not subject to limitation
    - 50% is subject to the same limitations as under current law.
- In 2020, a taxpayer can elect to use 2019 ATI.

# Qualified Improvement Property Fix

[1]

- » This provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those assets over the 39-year life of the building.
- » At long last, qualified improvement property is given its rightful 15 year life, and becomes 100% bonus eligible.
- » In addition, the ADS life is reduced to 20 years, as was intended.
- » The change is effective as if the law were originally written correctly.

# CARES Act - Individual Provisions

- » 2020 Stimulus Payments
- » Credit is \$1,200 if single/\$2,400 if married filing jointly plus \$500 for each child under age 17.
- » Children who are (or can be) claimed as dependents by their parents aren't eligible.
- » The amount of the credit is reduced by 5 percent of the taxpayer's adjusted gross income (AGI) in excess of \$150,000 for a joint return, \$112,500 for a head of household, and \$75,000 for all other taxpayers.
- » Under these rules, the credit is completely phased-out for a single filer with AGI exceeding \$99,000 and for joint filers with no children with AGI exceeding \$198,000.

# Changes to Retirement Plan Rules

[1]

- » 10% additional tax does not apply to any coronavirus –related distribution, up to \$100,000.
- » A qualified individual is (1) who is diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC, (2) whose spouse or dependent is diagnosed with the virus or disease, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off work or having hours reduced due to COVID-19, being unable to work because of lack of child care, or closing one’s own business.
- » The administrator may rely on the employee’s certification that the employee satisfies the above conditions.
- » The distribution is still generally subject to income tax, however. But the income is spread over 3 years starting in 2020, unless the taxpayer elects otherwise.

# Changes to Retirement Plan Rules Continued [1]

## » Old Rules:

- Distributions from a qualified plan or IRA that are eligible for rollover must be rolled over within 60 days to avoid income recognition. (See Sections 402(c), 403(a)(4), 408(d)(3))

## » New Rule:

- An individual who receives a coronavirus-related distribution may repay the distribution within 3 years and avoid paying tax on the distribution

# Changes to Retirement Plan Rules Continued [1]

## » Old Rules:

- A taxpayer can borrow up to \$50,000 from a qualified plan.

## » New Rules:

- Temporarily increases to \$100,000 the maximum amount that an individual can borrow from his or her plan account balance, starting on the date the CARES Act is enacted and ending 180 days later. It would also allow qualified individuals to borrow up to the lesser of \$10,000 or 100% of their account balance, rather than 50% of their account balance under current rules. It appears that plans may, but are not required to, incorporate these limit increases.
- The due date for repayment of an existing loan that came due between the enactment of the CARES Act and December 31, 2020 is pushed back one year.

# Changes to Retirement Plan Rules Continued [1]

## » Old Rules:

- Section 401(a)(9) provides required minimum distribution rules for taxpayers over age 70 ½ (72 under new rules passed in December 2019).

## » New Rules:

- Plans are allowed to suspend making required minimum distributions in 2020. This suspension would also apply to participants who turned age 70-1/2 in 2019 and had not yet received their 2019 distribution.

# Changes to Charitable Contributions [1]

## » New Rules:

- A new above-the-line deduction is available in 2020 and beyond for up to \$300 of cash contributions made to a church, school, hospital, etc.... (Section 170(b)(1)(A)
  - Not to a Section 509(a)(3) supporting organization or a donor advised fund
- This does NOT apply to anyone who itemizes.

# Changes to Charitable Contributions Continued [1]

## » Old Rules:

- Section 170(b)(1) limits an individual's cash contributions to public charities at 60% of adjusted gross income.
- Section 170(b)(2) limits a corporation's contributions to 10% of taxable income.

# Changes to Charitable Contributions Continued [1]

## » New Rules:

- Individuals can make cash contributions to public charities in 2020 ONLY that are deductible up to 100% of adjusted gross income, but only to the extent they do not exceed 100% of AGI less other charitable contributions that would have traditionally been deductible against the 60% limit.
  - Any excess amount is added to the carryforward under Section 170(d)(1) and moves to the next five years.
- A corporation can make cash contributions to public charities in 2020 up to 25% of taxable income.
  - Any excess is added to the carryforward under Section 170(d)(2) for the next five years.

# References

- » Nitti, Tony, CPA, MST, Covid-19 Legislation Explained [\[1\]](#)

# Questions & Answers

**Thank You**