



Miller & Chevalier

The Third Coronavirus Relief Package: An Initial Discussion of the Tax Relief Provisions

American Council of Engineering Companies

Layla J. Asali, Jorge E. Castro, Marc J. Gerson, and Loren C. Ponds

April 1, 2020

1

Agenda

- CARES Act Tax Relief Provisions
- Proposals for Future Coronavirus Relief Packages
- Concluding Observations

H.R. 748: The CARES Act

- Two prior legislative packages to address the coronavirus crisis
 - H.R. 6074: Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020
 - H.R. 6201: Families First Coronavirus Response Act
- H.R. 748: The CARES Act
 - Economic stimulus package of unprecedented magnitude: \$2+ trillion
 - Considered and enacted on an accelerated basis to address the crisis and procedural issues facing the Congress
 - Major non-tax components include small business loans, expansion of unemployment insurance, recovery rebate checks for individuals, health care provisions, the \$500B Exchange Stabilization Fund and appropriations

Key Business Tax Relief Provisions

- Employee Retention Credit
- Delay of Employer Payroll Taxes
- Net Operating Loss Relief
- Corporate Alternative Minimum Tax Relief
- Interest Expense Deduction Limitation Relief

Employee Retention Credit

- Refundable payroll tax credit for 50 percent of wages paid to employees during the COVID-19 crisis
- For employers with more than 100 full-time equivalent employees, only wages paid to employees who are not providing services (*i.e.*, furloughed or face reduced hours) are eligible for the credit
- Credit available to two types of employers (including non-profit entities)
 - Employers whose operations are fully or partially suspended due to a government order related to COVID-19
 - Employers that have experienced a greater than 50 percent reduction in gross receipts compared to the same quarter in the prior year
- Credit is provided for the first \$10,000 in wages (including health care expenses) paid to an eligible employee
- Applies to wages paid after March 12, 2020 and before December 31, 2020

Delay of Employer Payroll Taxes

- Provision allows employers to defer payment of the employer share of the Social Security payroll tax (6.2 percent up to the \$137,700 wage base)
- The 2020 deferred payroll tax is allowed to be paid over the next two years
 - Half of the amount due by December 31, 2021
 - Other half due by December 31, 2022
- Applies to payroll taxes from the date of enactment through the end of the year

Net Operating Loss Relief

- TCJA modified the NOL rules by eliminating carrybacks and introducing a limitation to 80 percent of taxable income for NOL carryovers
- The CARES Act delays these changes and makes additional modifications to the NOL rules
- Provides for a five-year carryback for NOLs incurred in 2018, 2019, or 2020
 - Includes elections relating to section 965 transition year: (1) automatic section 965(n) election allows taxpayer to apply FTCs rather than NOL carryback against transition tax; (2) election to exclude section 965 years from carryback
- Delays 80 percent taxable income limitation until 2021
- Technical correction to application of pre-TCJA carryover and carryback rules to fiscal year taxpayers with NOLs incurred in years ending after December 31, 2017
- Legislation also includes modification on the limitation on losses for taxpayers other than corporations

Corporate Alternative Minimum Tax Relief

- TCJA repealed the corporate AMT and provided for a refund of AMT credits over a period through 2021
- The CARES Act accelerates the refund of AMT credits to 2019
- Election to claim the entire refundable credit amount in 2018 by filing a tentative claim for refund using procedures similar to the section 6411 quickie refund procedures

Interest Expense Deduction Limitation Relief

- Under TCJA, section 163(j) provided for a limitation on business interest expense deduction equal to 30 percent of adjusted taxable income (generally EBITDA, for tax years through 2021)
- The CARES Act provides for an election to increase the section 163(j) interest limitation from 30 percent to 50 percent for 2019 and 2020
 - Relief is elective because taxpayers that are subject to BEAT may prefer to preserve section 163(j) interest expense carryforwards
- The CARES Act also provides for an election to use 2019 adjusted taxable income in calculating 2020 interest expense limitation
- Special rules for partnerships
 - 50 percent of excess business interest allocated to partners in 2019 is deductible in 2020 and not subject to limitation
 - Increase in limitation from 30 percent to 50 percent adjusted taxable income goes into effect in 2020 for partnerships

Potential for Additional Coronavirus Relief Legislation

- Even before negotiations were completed on the CARES Act, legislators were already discussing the need for additional legislative packages to address the coronavirus crisis
- The tax relief provisions in the CARES Act were generally large, widely applicable provisions in line with what was expected in a “first wave” response
- Additional legislative packages may include more targeted tax relief provisions to particular industries
- Potential that tax relief provided in the CARES Act will be extended or expanded

Proposals for Future Coronavirus Relief Legislation

- Provisions dropped from original Senate CARES Act
 - Statutory extension of tax return filing deadline from April 15th to July 15th
 - Mooted by IRS issuance of Notice 2020-18
 - Delay of estimated tax payments by corporations until October 15, 2020
 - Section 965 technical correction
 - Allows companies that overpaid their 2017 taxes as a result of the Section 965 transition tax and were unable to claim a refund of those taxes due to an interaction with the rules for electing installment payments to recover the overpayment of taxes
 - Section 958(b)(4) technical correction
 - Restoration of limitation on downward attribution of stock ownership in applying constructive ownership rules

Proposals for Future Coronavirus Relief Legislation

- Provisions from H.R. 6379 not adopted in the final CARES Act
 - Expanded earned income, child tax and dependent care tax credit relief
 - Expanded eligibility for ACA premium tax credits and easing restrictions associated with ACA income estimates and related tax credits
 - Payroll tax credits for hospitals providing charity coronavirus care and hospitals making facility expenditures
 - Paid mandated leave tax credits for governmental employers (including public universities)
 - Expansion of the paid mandated leave tax credits offered in the Families First Coronavirus Response Act
 - More generous employee retention credit

Proposals for Future Coronavirus Relief Legislation

- Additional items that may be considered
 - If the length and severity of the crisis and its impact on the economy grows, Congress will likely look to more general economic stimulus measures to boost the economy, creating the opportunity for tax items beyond crisis-specific tax relief
 - Items that may be considered:
 - Revisit items from failed year-end negotiations (extenders, TCJA technical corrections, green energy)
 - “Middle class” tax relief
 - Infrastructure investment
 - Retirement (savings incentive package, multiemployer pension funding)
 - Pending changes to, or expiration of, numerous TCJA provisions (EBITDA→EBIT, introduction of R&E amortization, phase-out of 100 percent bonus depreciation, etc.)

Concluding Observations

- The coronavirus crisis still continues to have a major impact on the tax legislative landscape
- Following the guidance process with respect to the enacted coronavirus relief packages will be important
- Depending upon the severity and duration of the pandemic, additional relief packages are possible
 - Consider provisions that were not adopted in the CARES Act as a starting point
- Fast-moving process – important to remain engaged
 - Carefully evaluate proposals’ potential benefits and burdens
- In addition to potential additional coronavirus packages, opportunities remain for consideration of tax legislative items during the post-election “lame duck” session
- Continue to monitor the 2020 election, as the pandemic will continue to impact the candidates’ platforms and priorities

Contact Information



Layla J. Asali
lasali@milchev.com
202.626.5866



Jorge E. Castro
jcastro@milchev.com
202.626.5859



Marc J. Gerson
mgerson@milchev.com
202.626.1475



Loren C. Ponds
lponds@milchev.com
202.626.5832