



Federal Tax & Accounting Coronavirus Road Map

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FEDERAL TAX & ACCOUNTING – CORONAVIRUS ROADMAP

BUSINESS ENTITIES

BUSINESS LOSSES (NOLS)

The CARES Act amends IRC §172(b) to allow for the carryback of losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to each of the five taxable years preceding the taxable year of such loss (however, real estate investment trusts (REITs) are not permitted such carrybacks). The CARES Act does not alter the indefinite carryforward of NOLs arising in those years. The CARES Act also amends section 172(a) to remove the limitation that NOLs could be used to offset no more than 80% of taxable income (disregarding the NOL deduction itself). The amendment applies to tax years beginning before January 1, 2021 (previously, tax years beginning after December 31, 2017, were subject to the 80% limitation). Authorities IRC §172; CARES Act §2303

NOLS AND OTHER ATTRIBUTE LIMITATIONS

Net Operation Losses - In the event of a change in ownership of a loss corporation (generally where 50% of the stock is acquired by new owners), the use of NOLs and other tax attributes by the company after the change is limited. For these purposes, stock acquired by government entities or lenders as part of loan or guarantee programs can constitute a transfer of stock contributing to such a change. The CARES Act provides Treasury regulatory authority to make rules including guidance that acquisition of equity interests as part of loan and guarantee facilities and programs authorized by CARES Act § 4003 will not result in an Business Interest Limitations

Business Interest Expense - For tax years beginning in 2019 and 2020, the deduction for business interest expense is limited to the sum of (i) business interest income, (ii) 50% of adjusted taxable income (ATI) (increased from 30% of ATI), and (iii) floorplan financing interest expense. Taxpayers may elect not to use the increased limitation. Given that many taxpayers may have significantly reduced income in 2020, taxpayers may elect to substitute 2019 ATI for 2020 ATI. Special rules apply for short tax years. In the case of a partnership, the increase to the ATI portion of the limitation applies only to tax years beginning in 2020. Any election not to use the increased limitation must be made at the partnership level. Like other taxpayers, partnerships may elect to substitute 2019 ATI for 2020 ATI. A special rule provides that partners treat 50% of any excess business interest expense allocated to the partner in a tax year beginning in 2019 as paid or accrued in the partner's first tax year beginning in 2020, with the remaining 50% subject to the default limitation based on allocated excess taxable income (or excess interest income pursuant to Prop. Reg. §1.163(j)-6(g)(2)(i)). A partner may elect out of this special rule. Authorities IRC §163(j); CARES Act §2306

Excess Business Losses - The CARES Act removes the limitation on excess business losses for taxpayers other than corporations for tax years beginning after December 31, 2017, and before January 1, 2021. The

Act also makes technical corrections to the excess business loss provisions to clarify: (1) that net operating losses and the qualified business income deduction under §199A are not included in calculating an excess business loss; and (2) the extent to which capital gains are taken into account in determining the amount of an excess business loss.

GOVERNMENT-PROVIDED RELIEF FUNDS (LOANS AND GRANTS)

For loans provided to businesses under Title I of Division A of the CARES Act (Small Business Administration loans), the Act expressly provides that any forgiveness or cancellation of all or part of such loans will not be treated as income for tax purposes. Assistance received under Title IV of Division A of the CARES Act will be treated as indebtedness for tax purposes, even if the government acquires warrants, stock, or other equity interests in the assisted companies as part of the assistance program. The CARES Act also provides, in Division A, Title I, for grant programs for certain small businesses. The Act does not have any express provision concerning the treatment of such grants for tax purposes. Section 118(b) expressly excepts contributions to a corporation by a government entity from the exclusion for contributions to capital. As a result, absent legislative provision, grants received by a corporate entity may be treated as an ownership change for section 382 purposes.

MINIMUM TAX CREDITS

The CARES Act accelerates the ability of corporations to recover excess minimum tax credits (MTCs) that they possessed when the corporate alternative minimum tax was repealed beginning in 2018. Under the new provision, 50% of the excess MTC are refundable in the corporation's 2018 tax year and all remaining MTCs are refundable in tax year 2019. In addition, corporations may elect to take the entire refundable in the 2018 tax year. Authorities IRC §53(e); CARES Act §2305

QUALIFIED IMPROVEMENT PROPERTY

The CARES Act retroactively classifies qualified improvement property (QIP) placed in service after 2017 as 15-year property with an ADS recovery period of 20 years. Taxpayers may thus apply 100% bonus depreciation to eligible QIP. The CARES Act also clarifies that improvements must be made by the taxpayer to be QIP. The amendments are effective as if enacted as part of the TCJA

COMPLIANCE ISSUES

DUE DATES FOR FILING AND MAKING TAX PAYMENTS

The IRS postponed to July 15, 2020 the due date for both filing a return and for making income tax payments due April 15, 2020. The postponement is automatic; no Form 4868 or Form 7004 is required. Initially, only the due date for making income tax payments was extended, and the amount of payment eligible for postponement was limited. The current guidance addresses the filing deadline in addition to the due date for making income tax payments and does not limit the amount of payment that may be postponed. Payments that may be postponed are limited to federal income tax payments in respect of a taxpayer's 2019 taxable year and federal estimated income tax payments due on April 15, 2020 for a

taxpayer's 2020 taxable year. The period from April 15, 2020 to July 15, 2020 will be disregarded in the calculation of interest, penalty, or addition to tax for failure to file returns or pay taxes. Authorities Notice 2020-18, superseding Notice 2020-17

QUICK REFUNDS

A corporation that overpays its estimated tax can obtain a quick refund of the excess estimated tax before it files its tax return. A corporation can obtain a quick refund only if the amount of the refund equals or exceeds 10% of the amount estimated by the corporation on its application as its income tax liability for the tax year and is at least \$500. Authorities IRC §6411

DUE DATE FOR FILING FATCA REPORTS

See International, Due Date for Filing FATCA Reports

DUE DATE FOR IRC §965(H) INSTALLMENT PAYMENTS

See International, Due Date for IRC §965(h) Installment Payments

DUE DATE FOR GIFT TAX AND GST RETURNS AND PAYMENTS

The IRS postponed to July 15, 2020 the due date for both filing a gift tax and GST tax return and for payments of gift and GST tax due April 15, 2020. The postponement is automatic; no Form 8892 is required. An affected taxpayer may file Form 709 to obtain an extension to file by October 15, 2020. The period from April 15, 2020 to July 15, 2020 will be disregarded in the calculation of interest, penalty, or addition to tax for failure to file returns or pay taxes. Authorities Notice 2020-20, amplifying Notice 2020-18

IRS TEMPORARY PROCEDURE ON ELECTRONIC SIGNATURES AND ELECTRONIC DOCUMENT TRANSMISSION

From March 27, 2020 until July 15, 2020, the IRS will allow IRS employees: (1) to accept scanned or photographed images of signatures and digital signatures on documents related to the determination or collection of tax liability; and (2) accept documents via email and to transmit documents to taxpayers using SecureZip or other established secured messaging systems.

EXCISE TAX

TEMPORARY EXEMPTION FOR CERTAIN DISTILLED SPIRITS

The CARES Act allows a temporary excise tax exemption for distilled spirits used or contained in hand sanitizer produced and distributed consistent with FDA guidance related to SARS CoV-2 or COVID-19. The temporary exemption applies to alcohol withdrawn from bonded premises of a distilled spirits plant for use in hand sanitizer for the period January 1, 2020, through December 31, 2020. Authorities New IRC § 5214(a)(14); CARES Act §2308

SUSPENSION OF CERTAIN AVIATION EXCISE TAXES

The CARES Act creates an excise tax holiday period from after the date of enactment through Dec. 31, 2020, during which the following excise taxes are suspended: Air Transportation. Federal excise taxes imposed on air transportation under IRC § 4261 and § 4271 are suspended during the excise tax holiday period. Kerosene. Kerosene used in commercial aviation is exempt from tax imposed under IRC § 4041(c) and § 4081 during the excise tax holiday period and is considered a nontaxable use under IRC § 6427(l). The tax applied for financing the Leaking Underground Storage Tank Trust Fund is not suspended.

FINANCIAL ACCOUNTING

ASSET IMPAIRMENT

An impairment loss is defined within ASC 360-10-35-17 as the non-recoverable amount by which the carrying value of a long-lived asset (asset group) exceeds its fair value. Nonrecoverable is identified as when the carrying value exceeds the sum of the undiscounted cash flows and eventual disposition of the asset. The immediate economic effects of the virus are likely to trigger an impairment test for long-lived assets or asset groups at many companies across a variety of industries. Authorities ASC 360-10-35-17, ASC 360-10-35-21, ASC 360-10-50-2

DEPRECIATION OF IDLE ASSETS

Depreciation begins when the asset is placed in service and the owner is using the asset to help generate revenue. Depreciation ends at the earlier of when the asset is depreciated down to its salvage value, is classified as held for sale, or is disposed of or abandoned. Depreciation, however, does not cease merely because the PP&E becomes idle or is retired from active service. When completing U.S. GAAP financial reporting, idle assets that result from COVID-19 will continue to be depreciated in the same manner unless a change in depreciation method is made, in which case rules for changing estimates in ASC 250 would be applied

CURRENT EXPECTED CREDIT LOSSES (CECL)

Compliance with FASB Accounting Standards Update No. 2016-13 (Measurement of Credit Losses on Financial Instruments), as it pertains to insured depository institutions, bank holding companies, or affiliates, is not required from date of enactment until earlier of the termination of the national coronavirus emergency or December 31, 2020. The optional three-year phase-in of regulatory capital of the day-one adverse effects of CECL has been delayed by two years to allow banking organizations to focus on supporting lending to creditworthy households and businesses during the economic downturn resulting from COVID-19, while also maintaining the quality of regulatory capital. Authorities CARES Act §4014; OCC Bulletin 2020-27

TROUBLED DEBT RESTRUCTURINGS (TDR)

Financial institutions may elect to suspend requirements under U.S. GAAP for loan modifications resulting from COVID-19 that would otherwise be categorized as troubled debt restructurings (TDR), including

impairment for accounting purposes, beginning March 1, 2020 and ending on the earlier of Dec. 31, 2020 or 60 days after the date on which the National Emergency declaration terminates.

This suspension is applicable for the term of the loan, but solely with respect to the modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest. The loan must be not more than 30 days past due as of December 31, 2019.

HEALTH CARE

DUE DATES FOR CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS

Participants may make contributions to an HSA or Archer MSA for 2019 at any time up to July 15, 2020. Authorities Notice 2020-18, superseding Notice 2020-17 <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers>

INCLUSION OF CERTAIN OVER-THE-COUNTER MEDICAL PRODUCTS AS QUALIFIED MEDICAL EXPENSES

Reimbursements for medicine through an account-based plan may be made without a prescription. (The medical expense deduction continues to require that medicine be obtained by a prescription or be insulin.) Amounts paid for menstrual care products are treated as amounts paid for medical care for purposes of payment through an account-based plan. For HSAs and Archer MSAs, the provision is effective for amounts paid after December 31, 2019. For FSAs and HRAs, the provision is effective for expenses incurred after December 31, 2019. Authorities IRC §106(f), §220(d), §223(d); CARES Act §3702

RAPID COVERAGE OF PREVENTIVE SERVICES AND VACCINES FOR CORONAVIRUS

Secretary of Labor and the Secretary of the Treasury are instructed to require group health plans and health insurance issuers offering group or individual health insurance to cover (without cost-sharing) any qualifying coronavirus preventive service. This requirement applies 15 business days after the date on which a recommendation is made relating to the qualifying coronavirus preventive service. Authorities

A high deductible health plan (HDHP) may, without affecting its status as a HDHP, provide health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (self only or family) for an HDHP. Such benefits are disregarded for purposes of determining the plan's status as a HDHP. An individual covered by the HDHP will not be disqualified from being an eligible individual under IRC §223(c)(1) who may make tax-favored contributions to a health savings account (HSA). Authorities Notice 2020-15

EXEMPTION FOR TELEHEALTH SERVICES

Under a safe harbor for plan years beginning on or before December 31, 2021, a plan may be treated as a high deductible health plan even though it does not have a deductible for telecare and other remote care

services. Remote care services do not disqualify an individual from contributing to the health savings account. Effective on the date of enactment of the CARES Act. Authorities IRC §223(c); CARES Act §3701

GUIDANCE ON PROTECTED HEALTH INFORMATION

Not later than 180 days after the date of enactment, the Secretary of Health and Human Services must issue guidance on the sharing of patients' protected health information during the declared COVID-19 emergencies, including information on compliance with HIPAA regulations. Authorities

COVERAGE OF DIAGNOSTIC TESTING FOR COVID-19

Modifies the requirements related to an in vitro diagnostic test that must be covered without cost sharing or other conditions. Authorities CARES Act §3201

PRICING OF DIAGNOSTIC TESTING

The Families First Coronavirus Response Act requires group health plans and health insurance issuers to cover COVID-19 testing but does not include information regarding the pricing of the testing. Under the CARES Act, issuers and group health plans must reimburse the provider of the diagnostic testing. During the COVID-19 public health emergency declaration period, testing providers must make public the cash price of the test on their public internet website or risk a civil penalty of up to \$300 a day. If a negotiated rate was in effect between the parties before the emergency declaration, that rate applies during the declaration period. If the rate was not negotiated, the plan or issuer must pay the listed cash price unless it can negotiate a lower rate.

INDIVIDUALS

RECOVERY REBATES

Eligible individuals are allowed a credit of \$1,200 (\$2,400 for joint filers), plus \$500 for each qualifying child, for the first taxable year beginning in 2020. An eligible individual is any individual who has a Social Security number and who is not a nonresident alien, an individual who can be claimed as a dependent on another taxpayer's return, or an estate or trust. The allowable credit is reduced by 5% of the eligible individual's adjusted gross income in excess of \$75,000 (all filers other than joint and head of household), \$112,500 (head of household), or \$150,000 (joint filers). The credit phases out entirely at \$99,000 (\$198,000 for joint filers). Authorities New IRC §6428; CARES Act §2201(a)

QUALIFIED DISASTER RELIEF PAYMENTS

Gross income does not include any amount received by an individual as a qualified disaster relief payment, which includes any amount to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. A qualified disaster relief payment must be made to, or for the benefit of, an individual, but only to the extent any expense compensated by the payment is not otherwise reimbursed.

CHARITABLE CONTRIBUTION DEDUCTIONS

For the 2020 tax year, the deduction percentage limitation for charitable contributions of cash has been removed for individual taxpayers. The TCJA had provided for an increased limitation of 60% for cash contributions; however, the CARES Act would suspend the percentage limitations entirely. This simply means that any qualified contribution is allowed to the extent that the aggregate of such contributions does not exceed the taxpayer's adjusted gross income. This type of provision allowing for an "unlimited" charitable contribution deduction has occurred in the past; however, this suspension is applicable only for cash contributions. The CARES Act also increases the limitation on the corporate charitable contribution deduction from 10% of taxable income to 25% of taxable income. In addition, the limitation on contributions of food inventory is increased from 15% to 25%. For tax years beginning in 2020, eligible taxpayers are entitled to an above-the-line deduction of up to \$300 for qualified charitable contributions. An eligible taxpayer is an individual that did not elect to itemize deductions. A qualified charitable contribution is a cash contribution to a qualified tax-exempt organization. Although not a significant amount, individuals may find this provision important due to the increased standard deduction amount that made the threshold for itemizing beyond reach for many taxpayers

INTERNATIONAL

NOLS AND IRC §965

The CARES Act amends IRC §172(b) to allow for the carryback of losses arising in taxable years ending after December 31, 2017 and before January 1, 2021 to each of the five taxable years preceding the taxable year of such loss. However, the NOL carryback cannot be used to offset IRC §965(a) income in those taxable years. The CARES Act provides that if the taxpayer elects to carryback NOLs to any taxable year in which it included IRC §965(a) income in its gross income, then the taxpayer is treated as having made the election under IRC §965(n) with respect to each such taxable year. The CARES Act allows a taxpayer to elect to exclude from its NOL carryback any taxable year to which IRC §965(a) applies. Authorities IRC §965(a), §965(n)

DUE DATE FOR IRC §965(H) INSTALLMENT PAYMENTS

Although the IRC §965(h) installment payment is generally made in respect of a taxpayer's 2017 or 2018 tax year, the due date of the installment payment associated with a 2019 tax return is the due date of the taxpayer's 2019 federal income tax return. For any taxpayer whose filing due date has been postponed from April 15, 2020 to July 15, 2020, the due date of that taxpayer's IRC §965 installment payment has also been postponed to July 15, 2020. Authorities Notice 2020-18, superseding Notice 2020-17; IRC §965(h)(2)

DUE DATE FOR FILING FATCA REPORTS

IRS provided an automatic extension of time for Reporting Model 2 FFIs and Participating FFIs to file Form 8966, FATCA Report. The March 31, 2020 filing deadline was extended to July 15, 2020.

PAYROLL

PAID SICK AND FMLA LEAVE

The Families First Coronavirus Response Act created a federal paid sick leave requirement for coronavirus-related needs and expanded the Family and Medical Leave Act to include a paid leave component for employees caring for children whose schools or child care facilities were closed because of the virus outbreak. Generally, these requirements apply to employers with fewer than 500 employees. Employers are eligible for payroll tax credits in connection with providing paid leave from April 1, 2020 to December 31, 2020. Paid sick leave is not subject to the OASDI portion of FICA, and any amounts subject to the HI portion of FICA are offset by an increase in payroll tax credits. Authorities Families First Coronavirus Response Act; Notice 2020-21

DOL TEMPORARY REGULATIONS COVERING PAID LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Department of Labor promulgated regulations to implement public health emergency leave under Title I of the Family and Medical Leave Act and emergency paid sick leave to assist working families facing public health emergencies arising out of the COVID-19 global pandemic. The leave provisions are created by a time-limited statutory authority established under the Families First Coronavirus Response Act (FFCRA) and are set to expire on December 31, 2020. The temporary rule provides guidance relevant to the administration of the FFCRA's paid leave requirements, provides direction for administration of the Emergency Paid Sick Leave Act under the FFCRA, and provides direction for the effective administration of the Emergency Family and Medical Leave Expansion Act under the FFCRA.

The temporary rule is effective from April 1, 2020 through December 31, 2020

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19

Employers receive a refundable quarterly payroll tax credit equal to 50% of qualified wages paid to an employee. For purposes of the credit, up to \$10,000 of qualified wages per employee is taken into account. Excess credits are refundable. Eligible employers include employers (1) whose trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19, or (2) who have a 50% decrease in gross receipts for the same calendar quarter in the prior year. This credit does not apply to governmental employers. Applies to wages paid after March 12, 2020, and before January 1, 2021. Authorities CARES Act §2301

RELIEF FROM PENALTY FOR FAILURE TO DEPOSIT EMPLOYMENT TAXES

The IRS provides employers relief from the failure to deposit penalty imposed by IRC § 6656 for an employer's failure to timely deposit employment taxes, to the extent that the amounts not deposited are equal to or less than the amount of refundable tax credits to which the employer is entitled under the Families First Act and the CARES Act, described above. This allows employers to pay qualified leave wages required by the Families First Act or qualified retention wages under the CARES Act using

employment taxes that would otherwise be required to be deposited without incurring a failure to deposit penalty. This relief applies to deposits of employment taxes reduced in anticipation of the credits with respect to qualified leave wages paid for the period beginning April 1, 2020, and ending December 31, 2020, and in anticipation of the credits for qualified retention wages paid for the period beginning on March 13, 2020, and ending December 31, 2020

RETIREMENT

TAX-FAVORED WITHDRAWALS FROM RETIREMENT PLANS

Coronavirus-related distributions from eligible retirement plans are not subject to the 10% excise tax on early distributions. Distributions must be made on or after January 1, 2020 and before December 31, 2020 to an individual who is diagnosed with SARS-CoV-2 or COVID-19, whose spouse or dependent is so diagnosed, or who experiences financial hardship because of quarantine or other factors. Coronavirus-related distributions may not exceed \$100,000 in the aggregate for any taxable year. Taxpayers may elect to ratably spread the income over a 3-year period beginning with taxable year 2020. Taxpayers may also avoid income recognition by repaying the distribution to the retirement plan within three years of receipt. Authorities CARES Act §2202(a)

LOANS FROM RETIREMENT PLANS

Loans from qualified employer plans up to \$100,000 (increased from \$50,000) are permitted in the 180 days beginning on the date of enactment. The full present value of the nonforfeitable accrued benefit of the employee under the plan, as opposed to one-half thereof, is used in applying the IRC §72(p)(2)(A)(ii) exception to treatment of the loan as a taxable deemed distribution. For outstanding loans, repayment dates between the date of enactment of the CARES Act and December 31, 2020 are delayed for one year, and subsequent payments as well as interest accrual are adjusted accordingly. A plan will not be disqualified as a result of plan amendments in accordance with the CARES Act provisions

TEMPORARY WAIVER OF REQUIRED MINIMUM DISTRIBUTION RULES

Minimum distribution rules are waived for calendar year 2020 for IRAs and certain defined contribution plans. Waiver does not apply to required beginning dates in calendar year after 2020, and amounts which would otherwise be required to be distributed are not eligible rollover distributions. For distributions to be made over a 5-year period that includes calendar year 2020, calculations of the distribution period may disregard calendar year 2020. Plan amendments to comply with this provision must be made on or before the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans). Plans operated in accordance with these changes between the amendment's effective date and December 31, 2020, will not be deemed to have a plan qualification failure, or an anti-cutback rule failure, under §411(d)(6). Authorities