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Tax Alert

Tax Provisions of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

On March 27, 2020, the $2 trillion stimulus bill titled the "Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted to respond to the global coronavirus pandemic. Below is a summary of the various tax related provisions affecting individuals and businesses.

INDIVIDUAL TAX PROVISIONS

- 2020 Recovery Rebates – All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per child. Rebates are available even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. Taxpayers who receive a smaller rebate than they are eligible for based on 2020 income will receive the difference after filing a 2020 income tax return.

  For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as the IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. Rebates are completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

- Allowance of partial above the line deduction for charitable contributions – This provision encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to $300 of cash contributions, whether they itemize their deductions or not.

- Modification of limitations on charitable contributions during 2020 – This provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

- Exclusion for certain employer payments of student loans – This provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under this provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. 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. This 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.

BUSINESS TAX PROVISIONS

- Employee retention credit for employers subject to closure due to COVID-19 – This provision provides a refundable payroll tax credit for 50 percent 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 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.

- Delay of payment of employer payroll taxes – This provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees from the date of the enactment of the CARES Act until December 31, 2020. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. This provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

- Modifications for net operating losses – This provision relaxes the limitations on a company's use of losses. Net operating losses ("NOL") are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 pandemic.

- Modification of limitation on losses for taxpayers other than corporations – This provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so these specific taxpayers can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

- Modification of credit for prior year minimum tax liability of corporations – The corporate alternative minimum tax ("AMT") was repealed as part of the Tax Cuts and Jobs Act, 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, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

- Modification of limitation on business interest – This provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

- Technical amendment regarding qualified improvement property – This provision enables businesses, especially in the hospitality industry, to immediately write- off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. Qualified improvement property is now classified as 15-year life property eligible for bonus depreciation. This provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

- Temporary exception from excise tax for alcohol used to produce hand sanitizer – This provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

OTHER PROVISIONS

- Expanded unemployment insurance ("UI") – The Cares Act provides for expanded UI for workers including a $600 per week increase in benefits for up to four (4) months and federal funding of UI benefits provided to those not usually eligible for UI, such as the self-employed independent contractors and those with limited work history. The federal government is incentivizing states to repeal any "waiting week" provisions that prevent unemployed workers from getting benefits as soon as they are laid off by fully funding the first week of UI for states that suspend such waiting periods. Additionally the federal government will fund an additional 13 weeks of unemployment benefits through December 31, 2020 after workers have exhausted state unemployment benefits.

We anticipate further guidance from the federal government in the weeks and months ahead on the tax provisions summarized above. In the meantime, please contact any Eckert Seamans attorney for assistance.

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This Tax Alert is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact author Michael J. Herzog at 412.566.6130 or mherzog@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.