COVID-19 NEWS OF INTEREST

Recent COVID-19 Tax Relief including an Overview of the CARES Act as Passed by the Senate

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In response to the evolving COVID-19 crisis, the government has enacted several relief measures. First, on March 18, 2020, the President signed the Families First Coronavirus Response Act (the "Families First Act"). Then, on March 20, 2020, the IRS issued Notice 2020-18 providing for extensions of time to both file tax returns and pay taxes to July 15, 2020. Finally, on March 25, 2020, the Senate passed the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act").

This Client Alert discusses these measures and provides some practical insights on their impacts.

1. **Notice 2020-18 – Extension of Time to File Returns and Pay Taxes**

The IRS and the Treasury Department have provided relief for tax return filing and tax payment deadlines to certain taxpayers. Notice 2020-18 provides that, for all taxpayers (including individuals, partnerships, corporations, trusts and estates):

- The due date for paying U.S. federal income tax (including estimated income tax payments) otherwise due on April 15, 2020 is postponed to July 15, 2020. There is no limit on the amount of tax that can be deferred.

- The due date for filing U.S. federal income tax returns otherwise due April 15, 2020 is automatically postponed to July 15, 2020. There is no need for an affected taxpayer to file an extension.

- Interest, penalties, and additions to tax with respect to such tax return filings and payments will begin to accrue on July 16, 2020.

- Many states have also already announced similar payment and filing deadline changes.

2. Families First Act – Payroll Tax Credits

The legislation requires small employers (those with fewer than 500 employees) to provide limited paid-leave benefits to employees who are affected by the coronavirus pandemic. Under the Families First Act, such employers are given tax relief to help pay for these benefits. Specifically:

- A small employer can collect a tax credit equal to 100% of qualified emergency sick-leave and family-leave payments made by the employer between April 2, 2020 and December 31, 2020.

- The new credit can be used to offset payroll taxes owed with respect to any employee (not just the affected employees).

- Any excess credit is refundable and additional guidance is expected soon on how to obtain the refund.

CARES Act - Summary of Tax Provisions

Employee retention payroll tax credit for employers subject to business suspension or otherwise negatively impacted due to COVID-19

The CARES Act contains a provision that creates a refundable payroll tax credit for employers that are required to suspend operations or are otherwise significantly negatively impacted by the COVID-19 pandemic.

- Eligible employers are allowed a credit against employment taxes equal to 50 percent of qualified wages (up to $10,000 in wages) for each employee.

- Eligible employers are employers whose (i) business operations are fully or partially suspended due to shut-down orders from an appropriate governmental authority or (ii) gross receipts are less than 50 percent of their gross receipts for the same quarter in the prior year.

- For employers with more than 100 full-time employees, wages eligible for the credit are wages paid to employees who are not providing services due to the suspension of the business or a reduction in gross receipts. For employers with 100 or fewer employees, all wages paid qualify for the credit.

- The credit is available for wages paid from March 13, 2020, through December 31, 2020.

- The credit is refundable to the extent that it exceeds the employer's liability for payroll taxes.

Delay of payment of employer payroll taxes

Under the CARES Act, employers and self-employed individuals are allowed to delay payments of the employer's share of social security tax (i.e., 6.2 percent on employees' wages). 50% of the payroll taxes may be deferred until December 31, 2021, with the balance due on December 31, 2022. This provision is designed to permit businesses to retain cash during the expected height of the economic crunch. This provision will be become applicable on the date the CARES Act is enacted.

Easing of net operating loss limitations

The CARES Act relaxes the limitations on a company's use of net operating losses ("NOLs").

- First, it provides that an NOL arising in a taxable year beginning in 2018, 2019, or 2020 can be carried back five years (rather than permitted only to be carried forward). Second, the CARES Act permits NOLs generated in taxable years beginning on or after January 1, 2018 to offset 100% of taxable income for 2019 and 2020 (rather than only up to 80% of taxable income).
- The NOL provisions have a distinct impact on private equity sponsors and their portfolio companies. While this provision will allow portfolio companies to utilize losses more quickly, it may have unintended consequences. For example, in a buyout transaction, the transaction agreement may require a buyer to obtain and pay over to the seller refunds relating to pre-closing tax periods (including a refund resulting from the carryback of an NOL). Thus, this provision may provide the prior owner of the business (and not the current owner) with the economic benefit of the new law. Buyers and sellers should review recent transaction agreements to determine how this change may affect their rights and obligations in recent transactions.

AMT Credits

The CARES Act accelerates the recapture of AMT credits. If a company has AMT credits it should look at this acceleration to further reduce current year tax payments.

Eliminating Excess Business Loss Limitation on Non-Corporate Taxpayers for 2018, 2019 and 2020

The CARES Act eliminates the limitation on a non-corporate taxpayer's ability to deduct excess business losses from a trade or business under section 461(l) of the Code for the 2018, 2019 and 2020 taxable years. In addition, the provision allows carryover losses into subsequent taxable years as a technical correction.

Reduced Limitation on Deducting Business Interest Expense for 2019 and 2020

The deductibility of business interest expense was previously limited under section 163(j) of the Code to no more than 30% of the sum of the taxpayer's adjusted taxable income ("ATI") and business interest income. This percentage is increased to 50% in any taxable year beginning in 2019 or 2020 resulting in taxpayers being able to deduct more interest.

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click here to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

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