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KEY TAX RELIEF PROVISIONS OF THE CARES ACT

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CARES ACT: BUSINESS TAX PROVISIONS

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136, included several provisions that provide business tax relief:

- Temporarily increased business interest deduction limitation under section 163(j);
- Temporarily reduced NOL limitations;
- Precluded government investment from causing a section 382 ownership change;
- Accelerated corporate AMT credit recovery; and
- Fixed the “retail glitch”, allowing immediate expensing of Qualified Improvement Property.

CARES ACT: INCREASED INTEREST DEDUCTION CAP

The CARES Act increased the 2017 Tax Act cap on interest deductions of 30% of Adjusted Taxable Income (ATI).

- Pre-CARES Act, ATI generally equaled EBITDA. For taxable years beginning in 2022, ATI will generally equal EBIT.
- The CARES Act increases this cap on deductions:
  - Raises the 30% ATI threshold to 50% for taxable years beginning in 2019 and 2020 (unless the taxpayer elects out); and
  - Allows taxpayers to elect to calculate the interest limitation for taxable years beginning in 2020 based on the taxpayer's ATI for its last taxable year beginning in 2019.
  - Special rules apply to partnerships. Section 163(j)(10)(A)(ii).

PROCEDURES FOR INTEREST DEDUCTION AND REAL PROPERTY ELECTIONS

Revenue Procedure 2020-22 provides mechanics for interest deduction elections.

- Describes the election process:
  - to retain the 30 percent, rather than 50 percent, of ATI limitation on interest deduction for tax years beginning in 2019 and 2020;
  - to use the taxpayer's ATI for the last tax year beginning in 2019 to calculate the taxpayer's section 163(j) limitation in 2020; and
  - to subject all, rather than 50 percent, of a partner's allocable excess business interest expense from a partnership to the section 163(j) limitation for tax years beginning in 2020.
- Revenue Procedure 2020-22 also allows certain taxpayers to make a late election – or to withdraw a prior election – to be an electing real property trade or business (section163 (j)(7)(B)) or an electing farming business (section 163(j)(7)(C)) for 2018, 2019 and/or 2020 taxable years.

CARES ACT: EXPANDED NOL CARRYOVERS

The 2017 Tax Act prohibited most taxpayers from carrying back NOLs to prior taxable years and limited new NOLs to offsetting only 80% of taxable income in any carryover taxable year.

- The CARES Act temporarily rescinds these restrictions, permitting taxpayers to:
  - carry back NOLs arising in taxable years beginning in 2018, 2019, and 2020 up to five taxable years, and
  - offset 100% of their taxable income with NOL deductions in taxable years beginning before 2021.
- The CARES Act appears to preclude taxpayers from carrying back NOLs to offset lower-taxed section 965 inclusions via an automatic section 965(n) election.
  - Taxpayers may waive carrybacks to taxable years with section 965 inclusions, or alternatively, waive the entire 5-year carryback period.
- Special rules apply to REITs and life insurance companies.

PROCEDURES TO CARRY BACK NOLs

Revenue Procedure 2020-24

- Explains the procedures for taxpayers to:
  - waive carryback of NOLs arising in taxable years beginning in 2018, 2019, and 2020, or exclude taxable years with section 965 inclusions from the elective carryback period, and
  - make tentative carryback adjustments and NOL carryover elections with respect to NOLs arising in taxable years straddling, and not ending on, December 31, 2017.

Notice 2020-26

- Grants taxpayers a six month extension to apply for tentative carryback adjustments for NOLs that arose in tax years beginning in 2018 and ending on or before June 30, 2019.

CARES ACT: ACCELERATED RECOVERY OF CORPORATE AMT CREDITS

Before its repeal in 2017, the corporate alternative minimum tax (AMT) generated minimum tax credits that could be used to offset the corporation's regular tax in future years.

- The 2017 Tax Act repealed the corporate AMT and provided that any then unused AMT credits would be refundable over several years, with any remaining AMT credits refundable in taxable years beginning in 2021.
- The CARES Act accelerated this recovery by making the remaining AMT credits fully refundable in taxable years beginning in 2019.
- The interaction of these rules with the potential creation of additional AMT credits through the carryback of NOLs to pre-2017 years will require additional guidance.

CARES ACT GOVERNMENT INVESTMENTS WILL NOT TRIGGER OWNERSHIP CHANGES

Section 382 strictly limits the amount of net operating losses and other tax attributes a corporation can use after it undergoes an ownership change.

- The CARES Act allows Treasury to invest in corporations, and requires Treasury to provide guidance to the effect that the government’s investment “does not result in an ownership change for purposes of section 382,” which is reminiscent of the guidance issued by the IRS in the wake of the 2008 credit crisis.
  - However, until Treasury issues the required guidance it will not be clear which types of transactions will be exempted.

CARES ACT: BONUS DEPRECIATION FOR QUALIFIED IMPROVEMENT PROPERTY

The 2017 Tax Act allows taxpayers to claim 100% bonus depreciation deductions for certain investments.

- However, due to a drafting error, certain improvements to the interior of nonresidential buildings known as Qualified Improvement Property (QIP) were not eligible for bonus depreciation.
- The CARES Act fixed this glitch so that QIP improvements made by a taxpayer after September 27, 2017, and placed in service by the taxpayer after December 31, 2017, are eligible for bonus depreciation, assuming all other requirements under section 168 are satisfied.

PROCEDURE FOR ELECTING BONUS DEPRECIATION FOR QIP

Revenue Procedure 2020-25

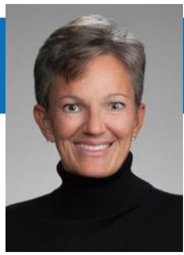
- Permits a taxpayer to change the depreciation method for QIP placed in service after 2017 and in a taxable year ending in 2018, 2019 or 2020 by filing;
  - an application to change its accounting method,
  - an amended tax return, or
  - for partnerships, an administrative adjustment request.
- Also provides that a taxpayer can make a late election, or revoke or withdraw certain depreciation elections with respect to depreciable property placed into service during taxable years ending in 2018, 2019 or 2020.
  - Late and revoked elections made within the time specified will be treated as accounting method changes, reducing the administrative burden on taxpayers.

SPECIAL PARTNERSHIP PROCEDURES

Revenue Procedure 2020-23

- Allows a larger partnership and its partners to quickly obtain the benefits of the CARES Act by amending returns for taxable years beginning in 2018 or 2019 that were filed before the revenue procedure was issued on April 8, 2020.
    - This process obviates the need to file an Administrative Adjustment Request, which would not benefit its partners until their current taxable year returns are filed, diminishing the immediate tax benefit the CARES Act intended to provide.

KEY CONTACTS



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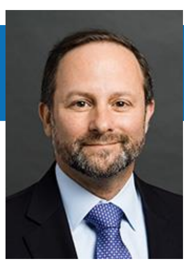

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