

Executive Summary of the

The Coronavirus Aid, Relief and Economic Security (CARES) Act

March 27, 2020

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The Coronavirus Aid, Relief and Economic Security (CARES) Act

- Signed into law by President Trump on March 27, 2020.
- The \$2.2 trillion stimulus package is the largest emergency aid package in US history. It was enacted in response to the social, economic, and health crises created by the coronavirus (COVID-19) pandemic.
- The legislation contains hundreds of provisions impacting consumers, specific industries, and US employers of all sizes.
- This summary highlights 11 of the stimulus elements, tax provisions, and business benefits that are most likely to be relevant for our clients and related parties.
- Like most large and complex pieces of legislation, there may be questions or issues that require follow-on clarification from law-making or regulatory agencies.

Part 1: Individual Stimulus Payments

- Stimulus payments to eligible taxpayers up to \$1,200 if single (\$2,400 if married filing jointly) PLUS \$500 for each child under the age of 17.
- No limitations based on tax liability or minimum level of income.
- Payments phase out \$5 for every \$100 AGI earned above:
 - \$75,000 adjusted gross income (AGI) for individuals (so fully phased out above \$99,000)
 - \$150,000 (AGI) if married filing jointly (so fully phased out above \$198,000)
- The payments will be made between now and December 31, 2020. Payments may be paid to taxpayers electronically if the IRS has direct deposit information from the 2018 or 2019 personal income tax returns.

Part 2: Retirement Plans & Accounts

- Under CARES, the 10% penalty tax will be waived for taxpayers younger than age 59½ who wish to withdraw up to \$100,000 from their individual retirement accounts (IRAs) and/or defined contribution plans (such as 401(k) plans).
 - This coronavirus-related distribution must be made between January 1 and December 31, 2020, by an individual who is (or whose family) is infected with the coronavirus or who is economically harmed by the coronavirus.
 - Distributions may be re-contributed to the IRA or retirement plan within three years.
- Additionally, defined contribution plans are permitted to allow plan loans up to \$100,000 and repayment of existing plan loans is extended for employees who are affected by the coronavirus.
- Under CARES, Required Minimum Distributions (RMDs) from IRAs and defined contribution plans (such as 401(k) plans) are waived in 2020. The waiver includes required minimum distributions that are due by April 1, 2020, because the account owner turned 70 ½ in 2019.
- Defined benefit plan sponsors may postpone minimum funding contributions (including quarterly contributions) until January 1, 2021. (Postponed contributions will have to include interest.)

Part 3: Paycheck Protection Loans

- Businesses with fewer than 500 employees (including sole proprietors and nonprofits) have access to “paycheck protection loans” under Section 7 of the Small Business Act until June 30, 2020.
- The loans are fully guaranteed by the US federal government through December 31, 2020.
- The maximum loan amount is the lesser of \$10 million OR:
 - The sum of the business’s average monthly “payroll costs” for the one-year period ending on the date the loan was made (an alternative calculation is available for seasonal employers) multiplied by 2.5, PLUS any **disaster loan** (see following pages) taken out after January 31, 2020 that has been refinanced into a **paycheck protection loan**.
- The loans will have a maximum maturity of 10 years and an interest rate not to exceed 4%.
- Proceeds may be used to cover payroll, mortgage payments, rent, utilities, and any other debt service requirements.

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Part 3: Paycheck Protection Loans *(cont'd)*

- No personal guarantee is required by the business owner(s).
- The standard fees imposed under Section 7 of the Small Business Act are waived.
- For this legislation, “payroll costs” is defined as:
 - Wages, commissions, salary, or similar compensation to an employee or independent contractor up to \$100,000 per year
 - Payment of a cash tip or equivalent
 - Payment for vacation, parental, family, medical or sick leave
 - Allowance for dismissal or separation
 - Payment for group health care benefits, including premiums
 - Payment of any retirement benefits
 - Payment of state or local tax assessed on the compensation of employees
- Payroll costs do not include payroll taxes, any compensation of an employee whose principal place of residence is outside the U.S., or any qualified sick leave or family medical leave for which a credit is allowed under the Coronavirus Relief Act passed earlier this year.

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Part 3: Paycheck Protection Loans *(cont'd)*

- Example:
 - ACME Services applies for a paycheck protection loan on May 1, 2020.
 - The business had \$3.6 million in payroll costs for the period May 1, 2019 through May 1, 2020, for a monthly average of \$300,000.
 - ACME is entitled to a fully guaranteed federal loan equal to the lesser of \$10 million or 2.5 times the monthly payroll costs of \$300,000 which is \$750,000—so \$750,000 is ACME's loan limit
 - Loan must be made before December 31, 2020.
- CARES provides for possible deferment of repayment of the loans for a period of at least six months, but not to exceed a year.

Part 3a: Forgiveness of Paycheck Protection Loans

- CARES permits a portion of any paycheck protection loans to be forgiven on a tax-free basis.
- The amount that may be forgiven is the sum of the following payments made by the borrower during the eight-week period beginning on the date of the loan:
 - Payroll costs (as defined earlier)
 - Mortgage interest or rent
 - Certain utility payments
- The loan forgiveness is contingent upon the employer:
 - Not reducing its workforce during the eight-week period compared to other periods in 2019 or 2020, or
 - Not reducing the salary or wages paid to any employee who had earned less than \$100,000 in annualized salary by more than 25% during the covered period.

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Part 3a: Forgiveness of Paycheck Protection Loans

- Example:
 - Assumed ACME Services borrowed \$750,000 in a paycheck protection loan.
 - During the eight-week period after taking out the loan, ACME pays \$650,000 in payroll costs, rent, and certain utilities.
 - ACME is thus eligible to have \$650,000 of the \$750,000 loan forgiven on a tax-free basis.

Part 4: Additional Loan Provisions for Businesses

- CARES expands access to the *existing* Economic Injury Disaster Loans available under Section 7(b)(2) of the Small Business Act to include not businesses with fewer than 500 employees, but also sole proprietors and ESOPs. In addition:
 - For any loan made under this program before December 31, 2020, no personal guarantee will be required from the business owner(s) on loans below \$200,000.
 - The CARES Act creates a new Emergency Grant to allow a business that has applied for a disaster loan to get an immediate advance of up to \$10,000. The advance can be used to maintain payroll, and is not required to be repaid, even if the borrower's request for a 7(b) loan is denied.
- CARES also forgives up to six months of principal, interest and fees on *existing* qualifying SBA Section 7(a) loans (other than the new paycheck protection loans).
- For SBA Express loans, the statutory \$350,000 limit is increased to \$1 million through December 31, 2020. (The SBA typically responds to Express loans within 36 hours whereas 7(a) loans may take weeks to process.)

Part 5: Qualified Improvement Property (QIP)

- As part of the 2017 Tax Cuts and Jobs Act, Congress intended to accelerate the depreciation on “qualified improvement property” (QIP)—generally defined as any improvement made to the interior portion of a nonresidential building any time after the building was placed in service—from 39 down to 15 years, and with 100% bonus depreciation being available for all assets with a life of 20 years or less. However, in the 2017 legislation this change was erroneously missed.
- CARES includes a technical correction to the QIP issue by assigning the intended 15-year depreciation life. This change is retroactive to January 1, 2018. Thus, taxpayers eligible for increased depreciation expense may consider filing amended returns to reap the benefits of accelerated depreciation in 2018 and 2019.

Part 6: Employee Retention Tax Credit

- For a business of any size (including non-profits) that is forced to suspend or shut down operations due to COVID-19, but continues to pay employees during that period, the CARES Act includes a one-year only credit against an employer's 6.2% share of Social Security payroll taxes.
- For wages paid after March 12, 2020, and before January 1, 2021, eligible employers will be allowed a new refundable payroll tax credit equal to 50% of the qualified wages paid. The total eligible wages per employee are \$10,000, resulting in a maximum credit of \$5,000 per employee.
- A business is eligible for the credit in either of two ways:
 1. The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate government authority resulting from COVID-19, or
 2. The business remained open, but during any quarter in 2020, gross receipts for that quarter were less than 50% of what they were for the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where it's recovered sufficiently that its receipts exceed 80% of what they were for the same quarter in the previous year.

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Part 6: Employee Retention Tax Credit *(cont'd)*

- For purposes of the credit, “qualified wages” vary depending on whether or not the employer has more than 100 full-time employees:
 - For those with more than 100 full-time employees, qualified wages are those paid to employees when they are not providing services due to the COVID-19 outbreak.
 - For those with 100 or fewer full-time employees, essentially all wages qualify for the credit.
- Qualified wages includes amounts paid to maintain group health insurance coverage.
- If the business takes out a payroll protection loan under Section 7(a) of the Small Business Act as described earlier, then this employee retention tax credit is not available.
- The credit is refundable if it exceeds the business’s liability for payroll taxes.

Part 7: Deferral of Payroll and Self-Employment Taxes

- Employers struggling to make payroll can gain some relief under CARES by deferring payment of certain employer's share of the 6.2% Social Security taxes.
- The payroll taxes normally due between now and through December 31, 2020 may be deferred with 50% payable by December 31, 2021 and the other 50% payable by December 31, 2022.
- Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax that would be due from now through the end of 2020 until the end of 2021 (25%) and 2022 (25%).
- If an employer defers the actual payment of payroll taxes, that employer may still count the payroll taxes when calculating the employee retention credit.
- This deferral is not available to any business that takes out a payroll protection loan as described earlier in this document.

Part 8: Net Operating Loss (NOL) Rules

- Businesses with tax losses during tax years 2018, 2019 and 2020 will be permitted to carry the loss back for up to five years. Alternatively, the business may forgo the carryback and instead carry the loss forward.
- Losses carried forward to 2019 and 2020 will be permitted to offset 100% of taxable income.
- These provisions serve to temporarily return the NOL rules to their pre 2018 status, when they were modified under the Tax Cuts and Jobs Act (TCJA).

Part 9: Section 461(l) Suspension

- CARES temporarily suspends Section 461(l) which caps at \$250,000 (\$500,000 if married filing jointly) the amount of “net business loss” an individual may use in a year to offset other sources of income.
- The suspension is retroactive to January 1, 2018. As a result, a taxpayer who experienced a loss limited by the provision in 2018 or 2019 can file an amended return to claim a refund.
- Note: CARES stipulates that when Section 461(l) resumes in 2021, wages will not be considered business income. In many cases this will result in significantly more loss being limited in future years.
- This applies to business owners of pass through entities (not C-Corporations).
- Additional limitations may apply depending on the type of loss (active vs passive) and the taxpayer’s income tax basis.

Part 10: Section 163(j) Revision

- CARES increases a business's ability to deduct its interest expense to from 30% of adjusted taxable income (ATI) to 50%, as defined in the Section 163(j) limits. Any excess interest expense may be carried forward.
- Given that many businesses will have reduced or no taxable income in 2020, the business can elect to use its 2019 ATI to calculate its 2020 deduction limitation.
 - For example, if a business had ATI of \$10 million in 2019 but zero ATI in 2020, it could elect to deduct \$5 million of interest expense in 2020 (50% of \$10 million), generate a bigger loss, and then use the favorable new net operating loss provisions to carry back the loss to 2019 and recover taxes paid in that year.
- Partners of partnerships subject to the business interest expense limitation rules have the option to treat 50% of any allocated excess business interest expense from the partnership during 2019 as fully deductible in tax year 2020. The remaining 50% is subject to the normal rules under Section 163(j) and is only deductible by the partner in a future year if that same partnership passes through excess taxable income or excess business interest income.

Part 11: Corporate Alternative Minimum Tax (AMT) Revision

- Regular C-Corporations are no longer subject to the alternative minimum tax (AMT), as it was repealed for such taxpayers by the 2018 Tax Cuts and Jobs Act (TCJA). Any AMT credits that a company generated pre-TCJA and otherwise had available to carry forward were refundable in 2018 through 2022, with the amount limited in each year to 50% of the remainder.
- CARES modifies the refundable credit so that corporations may take the entire amount in 2018 or in across 2018 and 2019, if they prefer.