CARES Act Provides Important Business-Related Tax Relief

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) (the "CARES Act")[1] was signed into law by President Trump. The CARES Act provides important tax relief to help businesses mitigate the economic impact of the COVID-19 pandemic. The principal business-related tax changes are summarized below.[2]

I. Relaxed Limitations on Deducting Net Operating Losses

Prior to the CARES Act, a net operating loss (an "NOL") arising in a taxable year beginning after 2017 (a "post-2017 NOL") and carried forward to a subsequent taxable year generally could offset no more than 80% of the taxable income in such subsequent taxable year (the "80% cap"). In addition, no such NOL could be carried back to any prior taxable year.

The CARES Act relaxes the foregoing limitations in two respects. First, the 80% cap will not apply to carryforwards of post-2017 NOLs to a taxable year beginning before 2021.[3] Second, if a taxpayer elects, post-2017 NOLs arising in taxable years beginning before 2021 may be carried back for five years.[4] A carryback of post-2017 NOLs to taxable years prior to 2018 may generate a larger benefit than a carryforward because the maximum corporate federal income tax rate before 2018 was significantly higher than the current corporate federal income tax rate.

II. Delay of Limitation on Deducting Business Losses of Non-Corporate Taxpayers

Prior to the CARES Act, for taxable years beginning after 2017 and before 2026, the net business losses of a non-corporate taxpayer could not be deducted currently to the extent such losses exceed $250,000 (or $500,000 for a joint return), as adjusted for inflation.

The CARES Act suspends the foregoing limitation for taxable years beginning before 2021.

III. Relaxed Limitation on Deducting Net Business Interest Expense

Prior to the CARES Act, the deduction of net business interest expense was limited to 30% of a taxpayer's "adjusted taxable income." Any "excess business interest" could be carried forward indefinitely. Special rules applied to partnerships and their partners.

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1 The statute is available at https://www.congress.gov/bill/116th-congress/senate-bill/3548/text.

2 Other tax relief changes not addressed herein include employer credits for employee retention, the deferral of certain self-employment and payroll taxes, exemptions from certain excise taxes, accelerated recovery of certain alternative minimum tax credits, and increased limits for deducting charitable contributions.

3 Carryforwards of post-2017 NOLs to a taxable year beginning after 2020 will continue to be subject to the 80% cap.

4 The prior rules continue to apply to NOLs that arose in taxable years beginning before 2018 or arise after 2020. Specifically, NOLs that arose in taxable years before 2018 are not subject to the 80% cap, and may be carried back two years and carried forward 20 years. NOLs that arise in taxable years beginning after 2020 will be subject to the 80% cap and may not be carried back, but may be carried forward indefinitely.

For taxable years beginning in 2019 or 2020, the CARES Act permits a taxpayer, if it so elects, to increase the foregoing limitation from 30% to 50% of adjusted taxable income.[5] Special rules apply to partnerships and their partners for 2019.

In addition, for a taxable year beginning in 2020, a taxpayer generally may elect to apply the 50% limitation by reference to the taxpayer's adjusted taxable income for its taxable year beginning in 2019. This change addresses the fact that, due to the COVID-19 pandemic, the income of many taxpayers may be significantly lower in 2020 than in 2019.

IV. Technical Correction Regarding Qualified Improvement Property

The CARES Act retroactively corrects a technical error in the Tax Cuts and Jobs Act (the so-called "retail glitch") by clarifying that certain costs associated with improving nonresidential real property qualify as "15-year property." Consequently, those costs generally may be expensed immediately (rather than depreciated over 39 years) to the extent the improvements are placed in service after September 27, 2017 and before 2023.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or e-mail authors Craig M. Horowitz at 212.701.3856 or chorowitz@cahill.com; Aliza R. Levine at 212.701.3524 or alevine@cahill.com; or Ann Creed at 212.701.3876 or acreed@cahill.com; or e-mail publications@cahill.com.

5 Any excess business interest may still be carried forward indefinitely.

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