MorrisonCohen LLP

> Covid-19 Client Alert

CARES Act Signed into Law – New Tax Relief Provisions

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On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act (the "Act"), the latest and by far the largest federal relief and stimulus package intended to help U.S. businesses and individuals weather the economic crisis caused by COVID-19. We will be publishing a series of client alerts discussing the various aspects of the Act and their significance to clients. This alert discusses the U.S. federal income tax aspects of the Act.

1. Exclusion of Certain Cancellation of Indebtedness Income. One of the principal features of the Act is the expansion of Small Business Administration Loans and the creation of the Paycheck Protection Program, a loan forgiveness program for amounts used to pay certain expenses, including payroll, rent, certain interest, and utilities. The Act provides that amounts forgiven under this provision will not be included in taxable income as cancellation of debt income. Subsequent guidance suggests that such debt forgiveness may impact the deductibility of certain expenses.

2. Tax Treatment of Loans Under the Act. The Act contemplates that equity interests may be acquired in connection with loans made or guaranteed by the Department of the Treasury under the Act. The Act specifies that such loans will be treated as indebtedness, notwithstanding any equity-like features acquired in connection with the loan. In addition, any equity acquired in connection with such loans will not result in an "ownership change" for purposes of applying the limitation on the use of net operating losses ("NOLs") following an ownership change.

3. Expanded Availability of Net Operating Losses. In 2017, the Tax Cuts and Jobs Act ("TCJA") eliminated the ability of most taxpayers to carry NOLs back to prior years. The Act temporarily restores the ability to carry back losses accrued in tax years beginning in 2018, 2019 or 2020. Such NOLs may be carried back to the five preceding years, potentially generating a tax refund. Additionally, the Act temporarily reverses a limitation created by the TCJA restricting the use of NOLs to offset no more than 80% of a taxpayer's taxable income. Taxpayers may now use NOLs to offset up to 100% of their taxable income for tax years beginning in 2019 or 2020.

4. Loosened Limitation on Deductibility of Business Interest. The limitation on the deductibility of net business interest expense has been temporarily increased from 30 percent of adjusted taxable income to 50 percent for tax years beginning in 2019 and 2020. In addition, for tax year 2020, taxpayers may elect to use their 2019 adjusted taxable income, which will allow for a larger deduction for taxpayers that will have less adjusted taxable income in 2020 than in 2019. These changes should generally enhance business' ability to borrow additional short-term debt without seeing its interest expense deductions disallowed. However, taxpayers should carefully consider the continued relevance of the 30% limitation in tax years beginning in 2021 or thereafter with respect to any loans that will remain outstanding beyond the end of 2020.

5. Limitation on Use of Losses by Non-Corporate Taxpayers**.** The TCJA previously limited the ability of non-corporate taxpayers to deduct the net losses attributable to their trades or businesses ("Excess Business Losses") against their non-business income, to the extent such Excess Business Losses exceed $250,000 (or $500,000, in the case of individuals filing a joint return). To the extent that a deduction for any Excess Business Losses are disallowed under this rule, the taxpayer is permitted to carry forward such Excess Business Losses to subsequent years. The Act effectively suspends the limitation on the deductibility of Excess Business Losses for tax years 2018, 2019, and 2020. Accordingly, non-corporate taxpayers can now offset other sources of income in such years with their Excess Business Losses.

6. Acceleration of AMT Credits. The TCJA previously repealed the corporate AMT while permitting corporations to claim a refund of AMT tax credits over tax years 2018 through 2021. The act created an election to accelerate such AMT tax credits to tax year 2018 (or, alternately, to claim the refund in tax years 2018 and 2019).

7. Technical Correction to Depreciation Rules. The Act fixed a drafting error in the TCJA that precluded taxpayers from immediately deducting 100% of the cost of improvements to the interior of nonresidential buildings placed into service after the building was placed into service. This drafting error effectively required such improvements to be depreciated over 39 years. This technical correction was made retroactive to improvements placed into service after December 31, 2017.

The provisions discussed above are generally intended to inject additional liquidity into businesses as they adjust to current circumstances. As such, many of these changes are intended to create opportunities for taxpayers to file amended returns for past periods to receive tax refunds. Taxpayers should discuss with their tax advisors whether it may be advisable to do so.

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Morrison Cohen LLP has created the COVID-19 Resource Taskforce, a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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