



## Coronavirus Aid, Relief, and Economic Security Act: Tax Provisions

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “Act”) was enacted which contains a number of tax provisions designed to help workers, families and businesses contend with the economic suffering brought about by the coronavirus pandemic. Certain of the tax related provisions are summarized below.

### Employee Retention Tax Credit:

Employers whose operations are partially or fully suspended due to the coronavirus disease during 2020 or who experience a decline in gross receipts of more than 50% during a quarter in 2020 compared to the prior year’s quarter are entitled to a credit against Social Security taxes. The amount of the credit is equal to 50% of wages paid after March 12, 2020 and before January 1, 2021 to certain employees (not to exceed \$10,000 in wages per employee) during quarters in which operations are suspended or the business continues to suffer from the decline in gross receipts. If an employer’s credit amount exceeds the amount of its employment tax liability for a quarter, the employer may seek a refund of the excess.

### Payroll Tax Deferral:

The Act allows employers to defer payment of the employer’s share of Social Security taxes on wages paid to employees after March 27, 2020 through December 31, 2020. One half of the deferred taxes must be paid on each of December 31, 2021 and December 31, 2022. The deferral does not apply to taxpayers who have SBA loans forgiven under certain provisions of the Act. Similar rules apply with respect to 50% of the Social Security taxes on self-employment income.

### Modifications to Limits on Use of Net Operating Losses:

The Tax Cuts and Jobs Act (“TCJA”) enacted in 2017 imposed restrictions on the deduction of net operating losses (“NOLs”) by (i) eliminating the carryback of NOLs to offset income from prior tax years and (ii) limiting the deduction of NOLs to 80% of taxable income. The Act reverses the limitations imposed by the TCJA with respect to NOLs incurred in tax years beginning in 2018 through 2020 by permitting a 5 year carryback of NOLs incurred in such years and eliminating the taxable income limitation on the use of NOLs for such years. Thus, any company with unused NOLs arising in 2018, 2019 or 2020 that paid tax in such years or in any of the preceding five tax years should consider filing amended returns seeking a refund of taxes paid to improve their cash position.

### Modifications to Limits on Use of Business Losses by Non-Corporate Taxpayers:

The TCJA limited the deduction of business losses to reduce nonbusiness income by non-corporate taxpayers to \$250,000 (or \$500,000 in the case of a joint return) for tax years beginning in 2018 through 2025. The Act eliminates this limitation on deduction of business losses for tax years beginning in 2018, 2019 and 2020 and treats such losses as NOLs which may be carried back for potential refund opportunities under the rules described above.

### Acceleration of Refundable Corporate AMT Credits:

The TCJA repealed the corporate alternative minimum tax (“AMT”) and provided for a refund of any pre-TCJA AMT credit carryforwards over a period of years ending in 2021. The Act accelerates the ability of a corporation to claim a refund of one half of the credits in each of 2018 and 2019. Alternatively, a corporation may claim the entire credit in 2018, in which case it may seek an accelerated refund by applying before December 31, 2020.

## **Reduced Business Interest Deduction Limitation:**

Provisions of the TCJA generally limit a taxpayer's deduction for business interest expense for a tax year to 30% of its adjusted taxable income for such year. For tax years beginning in 2019 (excluding partnerships, the treatment of which is described below) and 2020, the Act generally increases the limit to 50% of adjusted taxable income. In addition, for tax years beginning in 2020, taxpayers may elect to use their 2019 adjusted taxable income for purposes of computing the limitation.

For partnerships, the limitation is applied at the partnership level and any disallowed business interest expense ("excess business interest") allocated to a partner is treated as incurred by the partner in the following tax year which may be used if and to the extent of the partnership's "excess business income" allocated to the partner. Under the Act, the 30% limitation continues to apply to a partnership for its 2019 tax year. However, unless a partner elects otherwise, 50% of any excess business interest allocated to the partner in 2019 may be treated as business interest expense of such partner in 2020 which is not subject to the 50% limitation and the deduction of which is not limited to the amount of excess business income allocated by the partnership to the partner.

## **Qualified Improvement Property:**

The TCJA allows for the current deduction of the entire cost of certain property with a depreciable life of 20 years or less in the tax year the property is placed into service. Due to a drafting error, improvements to the interior of a non-residential building (known as "qualified improvement property" or "QIP") were not eligible for expensing under the TCJA because the recovery period was set at the 39 year life of the building instead of the intended 15 year recovery period. The Act retroactively fixes this glitch and, thus, applies to QIP placed into service in 2018 and forward thereby providing taxpayers refund opportunities based on the additional depreciation expense.

## **Charitable Deductions:**

The Act provides for an above the line deduction for cash contributions (not to exceed \$300) made in 2020 to qualified charities by taxpayers who do not itemize deductions. For individuals who itemize deductions, the Act suspends the 50% of adjusted gross income limitation (or 60% for tax years beginning after 2017 and before January 1, 2026) applicable to individuals for cash contributions to qualified charities in 2020. The Act increases the deduction limit for cash contributions by corporations to qualified charities in 2020 from 10% to 25% of taxable income. The Act also increases the limitation on deductions for contributions of food inventory from a trade or business during 2020 from 15% to 25% of the net income from the trade or business.

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Munsch Hardt Kopf & Harr is continually monitoring the tax developments related to COVID-19 and will send out additional alerts as updates occur. In the interim, please call one of our Tax attorneys if you have any questions or need any additional information.



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