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CARES ACT – CORPORATE BUSINESSES

The following chart sets forth some of the tax provisions affecting corporate businesses in the CARES Act. This chart highlights only some of the key issues and is not intended to address all aspects of the legislation. If you have any questions, please contact your Andersen advisor.

As of March 27, 2020

CORPORATE BUSINESSES		
Provision	**Description of Change**	**Comments**
Corporate Net Operating Losses	For taxable years beginning before January 1, 2021, the CARES Act repealed the 80% taxable income limitation (i.e., net operating loss (NOL) deductions taken in all taxable years prior to 2021 are allowed up to 100% of taxable income). For taxable years beginning in 2021, the NOL deduction is the sum of (A) the pre-2018 NOL carryovers plus (B) the lesser of (1) the post-2017 NOL carryovers or (2) 80% of the excess of taxable income for the year over the pre-2018 NOL carryovers. In addition, the CARES Act provides an NOL carryback rule up to five taxable years for NOLs arising in 2018, 2019, and 2020. If an NOL is carried to a Sec. 965 inclusion year, the taxpayer is treated as having made the election in Sec. 965(n), which provides that the income inclusion under Sec. 965 does not need to be taken into account to determine either the NOL deduction for that year or the amount of taxable income eligible for reduction by an NOL carryover or carryback to that year. However, taxpayers can elect to exclude any Sec. 965 inclusion year from the 5-year carryback period. Special NOL rules apply to REITs that limit the carryback of NOLs from a REIT year to only prior taxable years that are also a REIT year. While not specifically classified as technical corrections within the bill, the CARES Act made additional modifications to the NOL rules enacted as part of TCJA. First, the CARES Act addressed the stacking issue arising from having a mix of NOL carryovers, where only the pre-TCJA NOL carryovers are expiring and where the post-TCJA NOL carryover deductions were limited to 80% of taxable income. Beginning with 2021 taxable years, the CARES Act clarifies that taxable income is first reduced by pre-TCJA NOL carryovers (that expire but are not subject to a taxable income limitation) before being reduced by the post-TCJA NOL carryovers with no expiration that are subject to the 80% taxable income limitation. Second, the CARES Act also addresses a stacking issue arising from having multiple Code sections subject to a taxable income limitation. Beginning with 2021 taxable years, the CARES Act clarifies that taxable income is first reduced by any NOL deduction under Sec. 172 before being reduced by any deductions under Sec. 199A or Sec. 250. The CARES Act also made a technical correction with respect to the effective date in TCJA to ensure that NOLs for 2017 fiscal years remain subject to pre-TCJA law (i.e., carrybacks allowed, no taxable income limitation), consistent with taxpayers with a 2017 calendar tax year.	This change provides the opportunity to carry back 2018, 2019 and 2020 losses for five- years and to offset 100% of income of such prior taxable years (instead of the 80%). In particular, the creation of a five-year carryback for these NOLs creates an opportunity to carry such losses back to a pre-TCJA taxable year when the 35% corporate tax rate was in effect, thus increasing the amount of potential refund available. Due to other changes made by the Act, such as to the Sec. 163(j) interest limitation and the qualified improvement property (QIP) depreciation rules (see discussion below), some corporations that previously had taxable income for 2018 and 2019 may now have NOLs that could be carried back. Taxpayers should assess NOL carryback potential for 2013-2017 and consider filing refund claims. Various states couple their NOL carryback rules with the federal rules and others allow state NOLs based on state statute. State NOL carryback claims should also be considered, where eligible.

CORPORATE BUSINESSES (CONT.)		
Provision	**Description of Change**	**Comments**
Business Interest Expense Limitation	For corporate taxpayers, the CARES Act amends the calculation of the business interest limitation under Sec. 163(j) for tax years beginning in 2019 and 2020. A corporation to which Sec. 163(j) applies will be able to include 50% of its adjusted taxable income (ATI) in its limitation calculation for those years, instead of 30% provided under the prior law. For tax years beginning in 2021 and beyond, the percentage will revert back to 30%. Additionally, a corporation will be able to elect to substitute its 2019 ATI in its limitation calculation for any tax year beginning in 2020. If 2020 is a short tax year, the 2019 ATI is adjusted based on the number of months. Sec. 163(j) now provides some relief to corporate partners that received an allocation of excess business interest (i.e., Line 13K on Schedule K-1) from a partnership whose tax year began in 2019. Unless the corporate partner elects out, the amendments to Sec. 163(j) also allow the corporation to treat 50% of the excess business interest as paid or accrued in 2020. Additionally, this portion is excepted from further limitation under Sec. 163(j) at the corporate level in 2020. The residual 50% of excess business interest allocated in 2019 to a corporate partner is still subject to the general carryforward rules under Sec. 163(j). In general, excess business interest allocated from a partnership is only treated as paid or accrued when the same partnership that allocated the amount allocates excess business interest income or excess taxable income to the partner in a subsequent year. These amendments also apply to non-corporate taxpayers other than partnerships.	The changes under the Act to the Sec. 163(j) rules do not extend beyond tax years beginning in 2019 and 2020, but all are elective. For corporations that received Schedules K-1 for 2019 that reported excess business interest, there will be no impact to the corporation's 2019 return. However, a special rule for 2020 aimed at providing relief for partners with excess business interest arising from the 2019 tax year generally allows the corporate partner to fully deduct 50% of the excess business interest from the partnership for 2019. As a result of these changes, corporate taxpayers with valuation allowances recorded against Sec. 163(j) carryover attributes may be required to update their ASC 740 deferred tax scheduling that supports the need for the valuation allowance. Many states conform to Sec. 163(j) and unless they decouple from the temporary increase to the AIT limitation then the additional interest capacity will also reduce state taxable income.

CORPORATE BUSINESSES (CONT.)		
Provision	**Description of Change**	**Comments**
Qualified Improvement Property (QIP) and Eligibility for Bonus Deprecation	As a technical correction to the TCJA, qualified improvement property (QIP) is assigned a 15-year recovery period, rather than a 39-year recovery period. This correction also allows such property to also qualify for bonus depreciation under Sec. 168(k). A second technical correction was made to the definition of QIP to clarify that QIP only includes those improvements made by the taxpayer, thus used or other property acquired by the taxpayer is not QIP. A third technical correction assigned a 20-year recovery period to QIP for purposes of the alternative depreciation system (ADS). All corrections are effective as if they were included in the TCJA (i.e., properly placed in service after December 31, 2017).	The technical correction to provide a 15-year recovery period is generally helpful as it allows QIP to qualify for bonus depreciation. The change applies retroactively to properly placed in service after December 31, 2017. Taxpayers may generally implement the correction by amending prior year returns or by filing an automatic method change for either the 2019 or 2020 tax year. This change may change the economics for taxpayers that made a real property trade or business election for purposes of Sec. 163(j), which is currently irrevocable, based on the assumption that QIP was no longer eligible for bonus depreciation. It is not currently known when, or if, the IRS may provide relief allowing such elections to be revoked.
Corporate Alternative Minimum Tax Credits	The TCJA repealed the corporate alternative minimum tax (AMT) beginning with 2018 tax years and also provided that AMT credits for AMT paid prior to its repeal were partially refundable in 2018, 2019, and 2020, with any remaining AMT credits refundable in 2021. Under the CARES Act, AMT credits not previously refunded for the 2018 tax year are refundable in the 2019 taxable year rather than 2021. In addition, taxpayers can instead elect to claim 100% of the AMT credits in the first taxable year beginning in 2018 by applying for a tentative refund claim on or before December 31, 2020. Under the CARES Act, IRS is required to review the application and refund the overpayment within 90 days of receipt of the tentative refund claim.	Tentative refund claims are to be made under procedures to be specified by IRS. The legislation does not appear to have resolved an issue under prior law as to how, if at all, AMT credit refunds would be affected by limitations due to prior ownership changes of the taxpayer. States that couple their AMT rules to the federal AMT rules may also allow an accelerated refund.

CORPORATE BUSINESSES (CONT.)		
Provision	**Description of Change**	**Comments**
Charitable Contributions by Corporations	At the taxpayer's election, the limitation on cash charitable contribution deductions by C corporations is increased from 10% to 25% of taxable income if the contribution is paid during calendar year 2020 to a Sec. 170(b)(1)(A) organization. The increased limit does not apply to contributions to donor-advised funds, Sec. 509(a)(3) supporting organizations, or private foundations. In addition, the CARES Act also increased the deduction limitation for charitable contributions of food inventory from 15% to 25% of taxable income for contributions made during calendar year 2020.	The temporary increases in the limitations provide increased deduction opportunities for businesses that are increasing their charitable activity in response to COVID-19. Cash contributions made to federal state and local governments are qualified for the increased threshold.
Excise Tax for Alcohol Used to Produce Hand Sanitizer	The CARES Act exempts undenatured alcohol used to produce and distribute hand sanitizer in a manner consistent with any guidance issued by the Food and Drug Administration that is related to the outbreak of COVID-19. The exemption applies to distilled spirits removed during calendar 2020.	
Suspension of Aviation Excise Taxes	The CARES Act temporarily suspends excise taxes during calendar year 2020 for aviation fuel and the transportation of persons and property (i.e., cargo).	Excise taxes are also suspended on amounts *treated as paid* for taxable transportation (e.g., amounts paid for the right to provide mileage awards).

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