



TAX MEASURES IN RESPONSE TO COVID-19 UNITED STATES OF AMERICA

THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT FOR US BUSINESSES

As at **March 31, 2020**, the US President signed into law the CARES Act, which provides corporations and individuals special tax relief to help during the pandemic. Richter has gone through the new Act and we believe the following provisions would be of most interest to you.

HIGHLIGHTED MEASURES

NOL, TEMPORARY REPEAL

The Act temporarily removes the taxable income limitation to allow for net operating losses (NOLs) to fully offset taxable income, applicable to:

- tax years beginning after December 31, 2017; and
- tax years beginning on or before December 31, 2017, to which NOLs arising in tax years beginning after December 31, 2017 are carried.

RULES RELATING TO NOL CARRY-BACKS

The Act stipulates that within the specific time frame, NOLs can be carried back to each of the five tax years preceding the tax year of such loss.

- The rule is applicable to NOLs arising in tax years before January 1, 2021 and beginning after December 31, 2017, as well as to tax years beginning before, on or after such date to which such NOLs are carried back.
- This amendment is a major win for taxpayers as the *Tax Cuts and Jobs Act* (passed in 2017) permitted losses to only be carried forward and not backward.

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DEDUCTIBILITY OF INTEREST EXPENSES, TEMPORARILY INCREASED

- The Act temporarily increases the interest deduction limitation to 50% of taxable income from 30%, applicable to tax years beginning in 2019 and 2020.
- Under a special rule for partnerships, this increase in the limitation will not apply to partners in partnerships for 2019.

INCREASE IN CHARITABLE DONATION LIMIT

- The Act provides an increase in the corporate income tax charitable deduction limitation from 10% to 25% of the corporation's taxable income for 2020.
- This increase in deduction limitation is restricted to 2020 charitable contributions only and all unused charitable contributions carried forward from prior years are not subject to this increased limitation.

EMPLOYEE RETENTION CREDIT**

- This credit allows for a refundable payroll tax credit for 50% of wages paid by *eligible* employers to *eligible* employees during the COVID-19 crisis.
- This credit is dependent to a certain extent on how much a business has been impacted as a result of government-imposed operational limitations and it varies based on the number of employees the business employs.
- This rule is applicable to wages paid between March 12, 2020 and January 1, 2021.

EXTENSION FOR CERTAIN PAYROLL WITHHOLDINGS**

- Effective March 27, 2020, employers can defer paying the employer portion of certain payroll taxes through the end of 2020 (i.e., FICA).
- All deferred payments will be required to be remitted in two equal installments, one at the end of 2021 and the other at the end of 2022.

LOANS AND LOAN GUARANTEES***

- The Act allows for Small Business Administration (SBA) loans that are made between February 15, 2020 and June 30, 2020, which are subsequently forgiven, to receive favourable treatment, up to an amount totaling the cost of 8 weeks of payroll, covered rent, covered interest on mortgages and covered utilities.
- The forgiven amount will not result in a taxable income inclusion, as would a normal debt forgiveness
- The Employee Retention Credit and the Extension for Certain Payroll Withholdings described above are not available if the forgiveness of an SBA loan is in respect of payroll.

** Please contact your payroll service provider to ensure that they have incorporated these new provisions into your payroll obligations for the remainder of 2020.

*** Please contact your bank to inquire into their ability to issue an SBA loan and their policy of forgiving this loan.

The CARES Act contains several other provisions that may be applicable to your business. If you would like to further discuss, please reach out to your US tax contact at Richter.