

# COVID-19 U.S.: Summary of key business tax relief provisions under the CARES Act

April 1, 2020

The CARES (Coronavirus Aid, Relief, and Economic Security) Act (Public Law No. 116-136) was signed into law on March 27, 2020 in an effort to provide financial help to beleaguered individuals, businesses, health care providers, and state and local governments and to sustain the economy which has plummeted during the COVID-19 outbreak. The legislation employs a mix of grant, loans, loan guarantees, and tax incentives seeking to address the economic problems from all directions. The tax relief provisions comprise a relatively short list of initiatives oriented toward improving the after-tax cash flow of businesses and encouraging them to retain their current workforces.

- **Carryback of Net Operating Losses (NOLs) over the previous five years**
  - The legislation permits losses from the current and recent years to be carried back to earlier years when the business had income to offset against such income, generating tax refunds that can be paid out quickly to provide needed cash flow to businesses.
  - More specifically, the legislation provides that a loss from 2018, 2019, or 2020 can be carried back five years to be offset against prior year taxable income, generating refunds.
  - The current law taxable income limitation under which the NOL carried back to the prior year can only be used to offset 80 percent of the taxable income in the prior year would be temporarily suspended, allowing the NOL to fully offset income in the prior year and increasing the size of the refund. (Note: The loss from a 21 percent corporate tax rate year is being used to offset income in the earlier carryback year that had been taxable at a 35 percent statutory rate).
- **Employee retention tax credit**
  - The legislation adopts a new temporary tax credit to encourage employers to pay wages to their workforce while the business is shuttered or experiencing a deep downturn in gross receipts.
  - No limitation based on employer size or number of employees.
  - The tax credit is applied against employment taxes.

- The credit is equal to 50 percent of each employee’s wages for the calendar quarter.
  - Each employee’s eligible wages are capped at a total of US\$10,000 for all calendar quarters taken together.
  - If the tax credit amount for an employee would exceed the employment tax paid with respect to that employee for a calendar quarter, the excess is treated as a refundable tax credit payable to the employer.
  - Eligible employers must meet all of the following conditions:
    - Carrying on a business in 2020;
    - The calendar quarter for which the credit is claimed must be one in which—
      - The business is “fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19),” OR
      - Such calendar quarter falls within the time period—
        - i. Beginning with the first calendar quarter in 2020 for which the employer’s gross receipts (as defined under I.R.C. section 448(c)) for the quarter are less than 50 percent of the gross receipts from the same quarter in the prior year, and
        - ii. Ending with – be patient here – the calendar quarter following the first calendar quarter beginning after a “less-than-50-percent-quarter” for which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter in the prior year. Boiling all of this down, it appears to mean that once the business rebounds and returns to a gross receipts level that is greater than 80 percent of the same quarter in the prior year, the time period ends with the next quarter after the 80 percent threshold is exceeded.
  - For employers with more than 100 employees, qualified wages are those wages paid to employees during the period when they are not providing services due to the COVID-19 related circumstances described above. For smaller employers, wages qualify regardless of whether services continue to be performed.
  - Qualified wages may include an allocable share of health care expenses associated with the employer’s group health plan, under rules to be prescribed by the Secretary, but intended to be a pro rata allocation of expense among employees and pro rata based on periods of coverage (relative to periods to which the wages relate).
  - Effective date: Applies to wages paid after March 12, 2020 and before January 1, 2021.
- **Delay of payment of employer share of social security taxes**

- This provision is intended to assist business cash flow during the COVID-19 period by permitting the business to hold on to the funds that otherwise would be used to pay the employer share of payroll taxes.
- Defers payment of the employer's 6.2 percent share of Social Security tax on employee wages that would otherwise be due between March 27, 2020 and December 31, 2020 to be paid over the following two years, with half to be paid by December 31, 2021 and the other half by December 31, 2022.
- **Relief from the current limitation on deductibility of business interest expense**
  - This provision also aims to help the cash flow of businesses that rely significantly on debt financing by increasing the deductibility of interest expense, thereby lowering the after-tax cost of debt financing.
  - The current law limit on deductibility of business interest expense would be temporarily increased from 30 percent of adjusted taxable income (computed without deductions for interest expense and depreciation/amortization) to 50 percent for 2019 and 2020.
  - It remains to be seen how helpful this provision will be to businesses experiencing a severe downturn in business, because such a drop in income lowers the taxable income number against which the percentage is applied, and potentially more than offsets the legislation's increase in the percentage from 30 to 50 percent.
- **Qualified improvement property fix to Tax Cuts and Jobs Act**
  - As described in the official summary, this provision would enable businesses, particularly in the hospitality industry, to immediately write off costs associated with improving interior portions of the building, instead of having to depreciate such costs on a straight line basis over the 39-year life of the business.
  - Treated as a technical correction retroactive to the Tax Cuts and Jobs Act effective date, so refunds may be claimed for prior taxable years.

Our teams of lawyers across the globe are continuing to compile the latest thinking and legal guidance on the coronavirus outbreak. To track our latest updates, which will include more specific discussions of particular contractual concepts, we encourage you to check the Hogan Lovells [COVID-19 Topic Center](#), which covers a wide variety of practice areas across the globe.

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