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Business Tax Provisions Highlights in the New Law signed on December 28, 2020

Clarifications of tax consequences of PPP loan forgiveness. The new law clarifies the non-taxable treatment of Payroll Protection Program (PPP) loan forgiveness that was provided for in the 2020 CARES Act. It clarifies that taxpayers whose PPP loans are forgiven, are allowed deductions for otherwise deductible expenses paid with the loan proceeds. The tax basis and other attributes of the borrower's assets won't be reduced as a result of the loan forgiveness.

Extensions and modifications of earlier payroll tax relief. The law extends the CARES Act credit known as the Employee Retention Credit, allowed against the employer portion of the Social Security (OASDI) payroll tax or of the Railroad Retirement tax, for qualified wages paid to employees during the COVID-19 crisis. Under the extension, qualified wages must be paid before July 1, 2021 (instead of January 1, 2021). Additionally, beginning on January 1, 2021, the credit rate is increased from 50% to 70% of qualified wages. and qualified wages are increased from $10,000 for the year to $10,000 per quarter. Many other rules are also relaxed. And the law makes some retroactive clarifications and technical improvements to the credit as initially enacted.

The law extends (1) the credits provided by the Families First Coronavirus Response Act (FFCRA) against the employer portion of OASDI and Railroad Retirement taxes for qualifying sick and family paid leave and (2) the equivalent FFCRA-provided credits for the self-employed against the self-employment tax. Under the extension of the employer credits, wages taken into account are those paid before April 1, 2021 (instead of January 1, 2021). Under the extension of the credits for the self employed, the days taken into account are those before April 1, 2021 (instead of January 1, 2021).

The Act directs the IRS to extend the Presidentially ordered deferral of the employee's share of OASDI and Railroad Retirement taxes. As first provided by IRS, the deferral was of taxes to be withheld and paid on wages and other compensation (up to $4,000 every two weeks) paid in the period from September 1, 2020 to December 31, 2020 so that the taxes were instead withheld and paid ratably in the period from January 1, 2021 to April 30, 2021. Under the deferral, the period over which the deferred-from-2020 taxes are ratably withheld and paid is extended to all of 2021 (instead of the four-month period ending on April 30, 2021).

Business meals. The Act provides that expenses for business-related food and beverages provided by a restaurant are fully deductible if they are paid or incurred in calendar years 2021 or 2022, instead of being subject to the 50% limit that generally applies to business meals.

Flexible Spending Arrangements. The Act temporarily allows (1) carryovers and relaxed grace period rules for unused flexible spending arrangement (FSA) amounts, whether in a health FSA or a dependent care FSA, (2) the raising of the maximum eligibility age of a dependent under a dependent care FSA from 12 to 13 and (3) prospective changes in election limits set forth by a plan.

Deferred compensation. The Act relaxes rules that would otherwise cause a partial qualified retirement plan termination if the number of active participants decreases. Because of market volatility during the COVID-19 pandemic, the Act relaxes, if certain conditions are met, the funding standards that, if met, allow a defined benefit pension plan to transfer funds to a retiree health benefits account or retiree life insurance account within the plan. The CARES Act's relaxed rules for ''coronavirus-related distributions'' are retroactively amended by this law to additionally provide that a coronavirus-related distribution that is made during employment from a money purchase pension plan meets the distribution requirements of Code Sec. 401(a). And under a provision of narrow applicability, the law lowers to 55 years, from the usually applicable 59½ years, the age at which certain employees in the building or construction trades can, though still employed, receive pension plan payments under certain multiple employer plans without affecting the status of trusts that are part of the pension plans as qualified trusts.

Tax provisions made permanent (without other changes).

- The railroad track maintenance credit
- The exclusion of the aging period in determining the mandatory interest capitalization period in producing beer, wine or distilled spirits

Tax provisions extended (without other changes).

- The new markets tax credit
- The work opportunity credit
- The employer credit for paid family and medical leave that was provided by the 2017 Tax Cuts and Jobs Act)
- The carbon sequestration credit
- The business energy credit both as regards termination dates and phase-downs of credit amounts
- The credit for electricity produced from renewable resources and the election to claim the Code Sec. 48 credit instead for certain facilities (but the phase-down of the amount of the Code Sec. 45 credit for wind facilities isn't deferred)
- The Indian employment credit
- The mine rescue team training credit
- The American Samoa development credit
- The second generation biofuel producer credit
- The qualified fuel cell motor vehicle credit as applied to businesses
- The alternative fuel refueling property credit as applied to businesses
- The two-wheeled plug-in electric vehicle credit as applied to businesses
- The credit for production from Indian coal facilities
- The energy efficient homes credit

Additional provisions extended by the Act without other changes are the following: (1) the exclusion from employee income of certain employer payments of student loans, (2) the 3-year recovery period for certain racehorses, (3) favorable cost recovery rules for business property on Indian reservations, (4) the 7-year recovery period for motor sports entertainment complexes, (5) expensing for film, television and live theatrical productions, (6) empowerment zone tax incentives except for the increased section 179 expensing for qualifying property and the deferral of capital gain for dispositions of qualifying assets, and (7) the exclusion from being personal holding company income for certain payments or accruals of dividends, interest, rents, and royalties from a related person that is a controlled foreign corporation.

Energy provisions. The Act makes changes to energy provisions in addition to making them permanent or extending them. There are changes for “waste energy recovery property” and “qualified offshore wind facilities.” The Act makes permanent the energy efficient commercial buildings deduction.

Residential real estate depreciation. For tax years beginning after December 31, 2017, the Act assigns a 30-year ADS depreciation period to residential rental property even though it was placed in service before January 1, 2018 (when the 2017 TCJA first applied the more-favorable 30-year period) if the property (1) is held by a real property trade or business electing out of the limitation on business interest deductions and (2) before January 1, 2018 wasn't subject to the ADS.

Farmers' net operating losses. The Act allows farmers who had in place a two-year net operating loss carryback before the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. It also allows farmers who before the CARES Act waived the carryback of a net operating loss, to revoke the waiver.

Excise taxes. The Act makes various excise tax changes for beer, wine and distilled spirits. The new law also provides that the temporary increase in the Black Lung Disability Trust Fund tax won't apply to coal sales after 2021 (instead of after 2020). Additionally, the alternative fuels credit against the diesel and special motor fuels tax is extended.

Disaster relief. The TCDTR includes several provisions targeted at ''qualified disaster areas,'' some of which affect individuals and some which affect businesses as described below. ''Qualified disaster areas'' are areas for which a major disaster was Presidentially declared during the period beginning on January 1, 2020 and ending February 25, 2021. The incidence period of the disaster must begin after December 27, 2019 but not after December 27, 2020.