

Recent US Coronavirus Tax Relief: Considerations for Foreign-Owned US Corporations

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Our Speakers



Agenda

Economic Stimulus Programs

Tax Deadline and Payment

Extensions

Family First Coronavirus Response

Act

Employee Retention Credit

Payroll Tax Deferral

Net Operating Loss Rules

Interest Expense Limitation

Qualified Improvement Property

HOUSEKEEPING

- The content of this webinar is based on the information that is currently available as of May 1, 2020
- To ask any questions please use the questions pane in the GoToWebinar dashboard on your screen. We will try to answer as many questions as possible at the end.
- This webinar is being recorded and will be uploaded on to www.wgcpas.com



Economic Stimulus Packages



Paycheck Protection Program (PPP)

Overview of the PPP

Understanding 'Payroll Costs'

Calculating the Loan Amount

Loan Forgiveness

Overview of the Paycheck Protection Program

(“PPP”)

The basics:

- Federal program initially authorizing up to \$349 billion of guaranteed loans
- Round 2 authorizing up to \$310 billion of guaranteed loans
- Small and medium sized businesses can receive up to \$10 million
- All loan proceeds could potentially be forgiven
- No personal guarantee or collateral required
- Waived ‘credit elsewhere’ requirement
- Loans are issued by banks that are either SBA approved or approved for this process

Understanding Payroll Costs

The term 'payroll costs' means the sum of payments of any compensation with respect to employees that is a

- **Salary**, wage, commission, or similar compensation (including amounts paid via PEO, employee leasing, and temporary staff)
- Payment of cash tip or equivalent
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of **group health care benefits**, including insurance premiums
- Payment of any **retirement benefit**
- **Payment of State or local employer tax** assessed on the compensation of employees

Calculating the Loan Amount

The maximum loan amount shall be the lesser of

2.5 x the average total monthly payments by the applicant for the payroll costs incurred during the 1-year period before the date on which the loan is made.

In the case of an applicant that is seasonal employer, as determined by the Administrator, the average total monthly payments for payroll shall be for the 12- week period beginning February 15, 2019, or at the election of the eligible recipient, March 1, 2019, and ending June 30, 2019.

\$10 million

Loan Forgiveness

During the 8-week period beginning on the loan origination date, an eligible recipient shall be eligible for debt forgiveness where the loan proceeds were used to pay select expenses.

These expenses include:

- **Payroll costs**, as previously defined (must be at least 75%)
- Any payment on any covered **rent** obligation (lease must have been in force prior to February 15, 2020.)
- Any covered **utility** payment (electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020)
- Any payment of **interest** on any covered mortgage obligation (excludes principal payments and prepayments). Mortgage must have been incurred prior to February 15, 2020.

What is an Economic Injury Disaster Loan (EIDL) and Loan?

- Who's Eligible for an EIDL?
- How to Apply for an EIDL?

What Is the Federal Reserve Main Street Lending Program?

- Who's Eligible for the Main Street Lending Program?
- How to Apply for a Main Street Lending Program Loan

Main Street Lending Program Loan Types

Loan Type	New Loans	Priority Loans	Expanded Loans
Minimum Loan	\$500,000	\$500,000	\$10 million
Maximum Loan	Lesser of \$25 million or an amount that, when added to outstanding and unused available debt, does not exceed 4x adjusted 2019 EBITDA	Lesser of \$25 million or an amount that, when added to outstanding and unused available debt, does not exceed 6x adjusted 2019 EBITDA	Lesser of \$200 million, 35% of existing outstanding and unused available debt or an amount that, when added to outstanding and unused available debt, does not exceed 6x adjusted 2019 EBITDA
Rate	LIBOR, plus 3%	LIBOR, plus 3%	LIBOR, plus 3%
Payments	<ul style="list-style-type: none"> – Year 1: automatic deferral – Years 2-4: 33.33% annually 	<ul style="list-style-type: none"> – Year 1: automatic deferral – Year 2-3: 15% annually – Year 4: 70% 	<ul style="list-style-type: none"> – Year 1: automatic deferral – Year 2-3: 15% annually – Year 4: 70%

Understanding and Interpreting the Paycheck Protection Program

Helpful links:

- US Small Business Administration:

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>

- US Department of the Treasury:

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

- Federal Reserve (Press Release on Main Street Lending Program):

<https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>



Tax Filing Relief

Standard US Corporate Tax Deadlines

- Tax Return or Extension Request is due by 15th day of 4th month after year end:
 - December year end – April 15th
 - March year end – July 15th
- Advance Tax Payments
 - 15th day of 4th month (Q1)
 - 15th day of 6th month (Q2)
 - 15th day of 9th month (Q3)
 - 15th day of 12th month (Q4)
- Tax must be paid with tax return/extension/estimated tax payment due
 - Otherwise penalties and interest accrue
- State taxes

Tax Filing Relief

Notice 2020-23

Most recent cumulative guidance issued on April 9, 2020

Overall Theme of Relief:

- Tax Returns Due
- Tax Payments Due
- Specified Time-Sensitive Actions

Actions or payments previously due on or after April 15, 2020 have been postponed to July 15, 2020

Tax Filing Relief

Estimated Tax Payments

Any payments otherwise due on or after April 15, 2020 prior to July 15, 2020 are now due on July 15, 2020

No interest charges will accrue

- Calendar year Individual taxpayers:
 - Amount due with 2019 tax return/extension
 - Q1 2020 estimated tax payment
 - Q2 2020 estimated tax payment

Tax Filing Relief

What is NOT included (generally)

- Payroll tax returns and payments
- Excise tax returns and payments

Tax Filing Relief

Tax Returns included:

- Corporations
 - Forms 1120, 1120-F, . . .
- 1040/1040NR
- Partnerships
 - Forms 1065
- Estate and Trusts
 - Forms 1041
- Estate, Gift and GST returns
 - Forms 706, 709
- Tax Exempt Organizations
 - Forms 990, 990-PF

Tax Filing Relief

Specified Time-Sensitive Actions

- Filing a petition in Tax Court
- Filing a refund claim
- Revenue Procedure 2018-50
 - Numerous specific items
 - Important to check your specific item



Tax Filing Relief

How to Receive Benefit from Notice 2020-23

- No action is required to take advantage of these postponements
- "Normal" extensions can be requested on July 15th, if applicable



Permanent Establishment

Permanent Establishment

- Limited relief from US PE due to Covid-19 reasons
- Important to file protective Form 1120-F
- <https://www.irs.gov/newsroom/information-for-nonresident-aliens-and-foreign-businesses-impacted-by-covid-19-travel-disruptions>



US Payroll Tax Overview

US Federal Payroll Taxes

- Social Security Tax (FICA)
 - Employer share:
 - 6.2% of compensation up to \$137,700
 - Employee share:
 - 6.2% of compensation up to \$137,700
- Medicare tax
 - Employer Share:
 - 1.45% of compensation
 - No limit
 - Employee Share:
 - 1.45% of compensation
 - No limit



Family First Coronavirus Response Act (FFCRA)

FFCRA Payroll Tax Credit

Background

- FFCRA signed by President Trump on March 18, 2020
- Required small and mid-size businesses to provide paid sick leave and paid family leave to certain employees
 - Applies to businesses with less than 500 employees
- Employees had to be impacted by COVID-19
 - Direct impact
 - Caregiver impact
- Employers entitled to refundable tax credits to offset cost of paid leave

FFCRA Payroll Tax Credit

The Basics

Credit is equal to the sum of:

- Qualified sick leave wages
 - \$511/day for 80 hours over 2 weeks (direct impact) - \$5,110 max
 - \$200/day for 80 hours over 2 weeks (caregiver) - \$2,000 max
- Qualified family leave wages
 - \$200/day for additional 10 weeks (\$10,000 max)
- Qualified health plan expenses
- Employer's share of Medicare tax

Applies only to payments made for leave during the period
beginning
April 1, 2020 and ending December 31, 2020

FFCRA Payroll Tax Credit

Claiming the Credit, Refunds and Advance Payments

- Credit is claimed on quarterly federal payroll tax return, Form 941
- Credit is allowed against employer portion of social security taxes
- If credit exceeds applicable taxes, excess can be refunded
- Employers can retain cash by reducing the amount of taxes it deposits for that quarter
- Usually coordinated with third party payroll company



Employer Retention Credit

Employer Retention Credit

The Basics

What is the Employee Retention Credit?

- Fully refundable tax credit equal to 50% of qualified wages (including health plan expenses)

Who is an Eligible Employer?

- Those that carry on a trade or business during calendar year 2020 (includes tax-exempt organizations) that either:
 - Fully or partially suspend operations during any calendar quarter in 2020 due to governmental mandate; or
 - Experiences a significant decline in gross receipts during the calendar quarter
- Must not have received a PPP loan

Employer Retention Credit

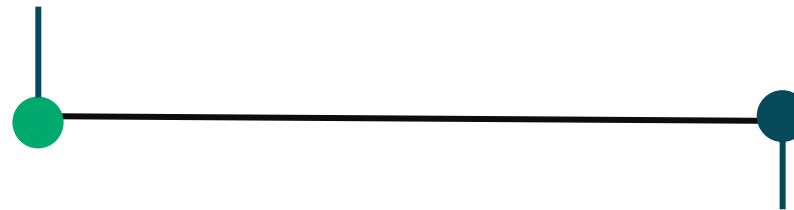
Eligibility Requirements

What Constitutes a Partial Suspension?

- Government mandate imposing restrictions on operations
- Continues to operate just not at normal capacity
- Example - Restaurants were ordered closed except to the extent they can continue to serve the public through carry-out, drive through or delivery

What is a Significant Decline in Gross Receipts?

Begins with first calendar quarter in 2020 in which gross receipts are less than 50% of gross receipts for the same quarter in 2019



Ends with first calendar quarter in 2020 in which gross receipts are greater than 80% of gross receipts for the same quarter in 2019

Employer Retention Credit

Qualified Wages

- Wages paid after March 12, 2020 and before January 1, 2021
 - Includes qualified health benefits
- Capped at \$10,000 per employee for all quarters
 - Maximum \$5,000 per employee credit
- If 2019 average was more than 100 full-time employees
 - Only include wages paid to employees who are furloughed or who have had hours reduced
- If 2019 average was 100 or less full-time employees
 - Include wages on all employees
- Does not include wages used for credits under FFCRA

Employer Retention Credit

Claiming the Credit, Refunds and Advance Payments

- Credit is claimed on quarterly federal payroll tax return, Form 941
- Credit is allowed against employer portion of social security taxes
- If credit exceeds applicable taxes, excess can be refunded
- Employers can retain cash by reducing the amount of taxes it deposits for that quarter
- Usually coordinated with third party payroll company



Payroll Tax Deferral

Payroll Tax Deferral

- Eligible employers can defer payment of employer portion of social security tax. Maximum benefit approximately \$6,400 per employee.
- Applies to taxes required to be remitted beginning on March 27, 2020 and ending before January 1, 2021
- 50% of deferred amount must be paid by December 31, 2021 and the other 50% must be paid by December 31, 2022
- You are **not** eligible for this deferral once you receive notification that all or a part of your PPP loan has been forgiven



Net Operating Losses

Net Operating Losses

Overview – Pre-CARES Act Rules

- Amount of NOL deduction was limited to 80% of taxable income
 - Only applied to NOLs generated in post-2017 years
 - Pre-2018 NOLs were able to fully offset taxable income
- NOLs arising in post-2017 years could only be carried forward
 - Indefinite carryforward period
- NOLs arising in pre-2018 years could be carried back two years and carried forward twenty years

Net Operating Losses

Income Limitation and Carryback Restriction Temporarily Lifted

- Taxable income can be fully offset by net operating losses
 - Applies to tax years beginning in 2018, 2019 and 2020
 - 80% limitation applies again for tax years beginning in 2021
- NOLs arising in tax years beginning in 2018, 2019 and 2020 can be carried back five years
 - Added benefit due to rate differential
- Applies to both corporate and individual taxpayers, and trusts

Net Operating Losses

Elections

- Carryback provisions are MANDATORY unless you elect out
 - Generally either a check box or a statement attached to a timely filed tax return
 - Must carryback to earliest year first – can't pick and choose
- What about for returns already filed (2018 & 2019)?
 - File a superseding return, if possible, or an amended return
 - Election out must be made by the extended due date of tax return for first taxable year ending after March 27, 2020
- Special election available for carryback years where repatriation income was reported

Net Operating Losses

Claiming Refunds

- Generally two options
 - Amended Return (Form 1120X, 1040X, 1041)
 - Application for Tentative Refund (Form 1139 or 1045)
- Form 1139
 - Usually faster since IRS must review and issue refund within 90 days
 - Tentative Refund and subject to audit by IRS
 - Must be filed within 12 months of end of tax year in which NOL occurs
- Form 1120X
 - Takes longer to process but is final
 - Must be filed within 3 years after tax return for year in which NOL arose is due/filed (whichever is later)



Interest Expense Limitations

Deduction for Business Interest Expense

Temporary Increase in Overall Deduction Limitation

- Current law:
 - Business interest expense is limited to 30% of Adjusted Taxable Income (ATI)
- CARES Act temporarily and retroactively increases limitation to 50% of ATI
- Applicable for tax years beginning in 2019 and 2020
- Opportunity to amend 2019 if already filed
- Permanent election out available



Depreciation Provisions



Qualified Improvement Property

Definition

- Part of Tax Cuts and Jobs Act
- Non-residential real property improvements
- Interior portion of the building
- Placed in service after the date the building is placed in service
- Following improvements do not qualify:
 - Enlargement of building
 - Elevators and escalators
 - Internal structural framework

Qualified Improvement Property

(QIP)

- Technical correction to the 2017 Tax Cuts and Jobs Act
- QIP revised to specifically designated as 15-year property
- QIP assigned a 20-year class life for ADS
- QIP now qualifies for bonus depreciation

Thank You!



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