TAX PLANNING STRATEGIES FOR INDIVIDUALS DURING THESE UNPRECEDEDENTED TIMES
May/June 2020

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*The Mazars USA Ledger contains articles and alerts published from April 1, 2020- May 31, 2020*
COVID-19 GUIDANCE CARES ACT PROVIDES RELIEF THROUGH EMPLOYEE BENEFITS PLANS

BY GEORGE PARKER AND TOBY AKRAB

April 2020
Executive Summary
The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), passed by Congress on March 27, 2020, provides more than $2 trillion in relief for both companies and individuals affected by the COVID-19 pandemic. Given the economic impacts of COVID-19, Congress recognized that people may need increased access to their retirement plan savings, and employers may not be able to make required plan contributions under ERISA. As a result, Congress included in the act various provisions related to qualified employee benefit plans under ERISA.

Plan sponsors should coordinate with their trustees, custodians and third-party administrators to understand these new plan provisions, including how they will be enacted, so that newly allowable transactions will be approved, when appropriate, and not treated as prohibited transactions or plan errors.

Individuals should understand the new provisions related to loans and distributions, both in-service and required minimum, including related tax effects, before requesting relief under the CARES Act.

A sum of the CARES Act provisions affecting employee benefit plans are included in the tables below.

<table>
<thead>
<tr>
<th>Defined Contribution Plans (including 401(k) Plans)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CARES Act allows participants to take a “coronavirus-related distribution” of up to $100,000 from eligible retirement plan without the normal 10% early withdrawal penalty. Such distributions can be taken through December 31, 2020.</td>
</tr>
</tbody>
</table>

Coronavirus-related distributions can only be made to qualified individuals, such as those:
1. Diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention
2. Whose spouse or dependent is diagnosed with COVID-19
3. Experiencing financial hardship from being quarantined, furloughed or laid off, having work hours reduced, being unable to work due to childcare needs, or closing of their business due to COVID-19

Eligibility for a coronavirus-related distribution is determined by the plan administrator who may rely on an employee's certification that the employee satisfies one of the conditions above.

Coronavirus-related distributions may be repaid through one or more repayments at any time during a 3-year period beginning on the date the coronavirus-related distribution was received. The repayments do not need to be made to the plan that the distribution came from. Repayments can be made to any eligible retirement plan of which the individual is a beneficiary or to an account for which a rollover contribution is eligible.

A coronavirus-related distribution that is repaid within 3 years will be treated as if it was transferred to an eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution, the standard period for a rollover contribution.

Any coronavirus-related distribution amount that is required to be included in gross income, will be included in gross income ratably over a 3 taxable-year period unless the taxpayer elects to not apply this provision. Coronavirus-related distributions are not subject to income tax withholding at the date of distribution.

Qualifying participants can borrow up to a maximum of $100,000 from qualified plans (an increase from the $50,000 previously allowed). The CARES Act temporarily allows qualified individuals to borrow up to 100% of their vested balance (an increase from 50% of their vested balance). This increased loan limit is allowed during the 180-day period beginning March 27, 2020.

Qualifying participants are those who meet the criteria noted in the penalty free distribution section above.

Qualifying individuals are granted a 1-year extension for any repayment of outstanding loans from a qualified employee benefit plan that are due from March 27, 2020 to December 31, 2020.

Any repayments after December 31, 2020, with respect to any such loan, shall be appropriately adjusted to reflect the delay in the due date. The CARES Act also provides for the accrued interest on such loans to be amortized over the extended period.

Minimum distribution requirements from defined contribution plans and IRAs in 2020 are waived. In addition, the required minimum distribution for individuals required to make their first required minimum distribution by April 1, 2020 are also waived (individuals who turned 70 1/2 in 2019).

The Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”) increased the age for minimum required distributions from 70 1/2 to 72 for an individual who was not 70 1/2 as of December 31, 2019.
## Defined Benefit Pension Plans

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3608. Delayed Minimum Required Contributions</td>
<td>Minimum required contributions (including quarterly contributions) for single-employer plans are deferred to January 1, 2021. However, the amount of the minimum required contribution will be increased by any interest that it accrues between the original due date for the contribution and the payment date, at the effective rate of interest for the plan year.</td>
</tr>
<tr>
<td>Sec. 3608. Carryforward Target Funding</td>
<td>Plan sponsors may elect to treat the plan’s adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 as the adjusted funding target attainment percentage for plan years ending in 2020.</td>
</tr>
<tr>
<td>Sec. 3607. Filing Deadline</td>
<td>The CARES Act amends ERISA to add a public health emergency to the circumstances in which the DOL may postpone ERISA deadlines for up to a 1-year period. The CARES Act did not extend the Form 5500 filing or other deadlines.</td>
</tr>
<tr>
<td>Sec. 2202. Plan Amendments</td>
<td>Plans need to be amended to reflect the loan and required minimum distribution provisions of the CARES Act retroactively no later than the last day of a plan year beginning on or after January 1, 2022 (January 1, 2024 for government plans). For compliance purposes, plans are treated as if the future amendments are effective March 27, 2020, and thus applying the provisions of the CARES Act will not result in prohibited transactions or instances of noncompliance with laws and regulations.</td>
</tr>
</tbody>
</table>

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FINANCIAL SERVICES TRENDS

LIBOR TRANSITION: THE FINANCIAL ACCOUNTING STANDARDS BOARD’S (FASB) GUIDANCE TO SUPPORT A SMOOTHER TRANSITION

BY LAURENCE KARAGULIAN AND ARTHUR MIDIANGA

Issue XIII– April 2020
As the transition away from LIBOR and other interbank offered rates as a benchmark rate at the end of 2021 draws closer, impacting trillions of dollars of financial transactions, the FASB released temporary optional guidance to ease the accounting impact related to the Reference Rate Reform. On March 12, 2020, the FASB issued an Accounting Standards Update (ASU) Accounting Standards Update 2020-04 Reference Rate Reform (Topic 848) which provides optional expedients and exceptions for applying generally accepted accounting principles (GAAP) to:

- Contracts modifications,
- Hedging relationships, and
- Other transactions affected by reference rate reform, based upon specific criteria.

This ASU would allow firms with significant exposure to LIBOR to better face key challenges related to the volume of instruments (contracts and other arrangements, such as debt agreements, lease agreements, and derivative instruments) which will be impacted by this transition.

Potential operational challenges impacting the LIBOR transition include:

- Elevated costs due to a compressed timeframe for contract modification.
- Financial reporting results need to reflect intended continuation of contracts and arrangements during the period of market-wide transition.
- Disallowing the application of certain hedge accounting guidance and certain hedge relationships may not qualify as highly effective during the period of market-wide transition to a replacement rate.
- Financial reporting outcomes that don’t reflect intended hedging strategies may occur due to the inability to apply hedge accounting.

**Guidance Under ASU 2020-04**

To address concerns, the FASB guidance allows for entities to elect the following:

- Consistently: For optional expedients applicable to contract modifications, across all eligible transactions (modified because of the reform and meeting certain scope guidance).
- On an individual basis: For optional expedients applicable to hedging relationship
- One-time election: For optional expedients applicable to sell or transfer of HTM debt securities without requiring a transfer all remaining debt securities that meet the qualifying conditions.

**Application and Timeline**

Amendments are effective as of March 12, 2020 and apply only to contracts, hedging relationships, and other transactions referencing LIBOR, or another reference rate expected to be discontinued due to reference rate reform. Expedients and exceptions do not apply to contract modifications made and hedging relationships entered into or evaluated after December 31, 2022, except for hedging relationships existing as of December 31, 2022, that an entity has elected certain optional expedients for and are retained through the end of the hedging relationship.

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MAIN STREET LENDING PROGRAM
BY SAMUEL PIZZICHILLO

May 2020
In order to support small to medium-sized businesses who are experiencing economic hardship due to COVID-19, the Federal Reserve established the Main Street Lending Program. This program was designed to support businesses that were unable to access the Paycheck Protection Program ("PPP") or that require additional financial support after receiving a PPP loan. However, unlike the PPP loans, Main Street loans are full-recourse and are not forgivable.

In response to public feedback, the program’s scope and eligibility was expanded on April 30, 2020. The changes included creating a third loan option, lowering minimum loan sizes, and expanding eligibility criteria.

The program will operate through three facilities: The Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF) and the Main Street Expanded Loan Facility (MSELF).

These facilities are not yet operational but to implement the program, the Department of the Treasury will make an investment in a single common special purpose vehicle. The funds for this investment were appropriated under the CARES Act. Under the MSNLF and the MSELF, the SPV will purchase a 95% share in eligible loans from eligible lenders, and lenders would retain 5% of each loan. Under the MSPLF which was added on April 30, 2020, the lenders would retain a 15% share on loans.

The SPV will purchase loan participations until September 30, 2020, unless extended by the Treasury’s Board and the Federal Reserve Bank will continue to operate the SPV until all assets mature or are sold. The SPV will purchase up to $600 billion of participations in eligible loans in the aggregate across the three facilities.

All three facilities follow the same eligibly criteria. Under the original terms of the program, eligible borrowers were U.S. based businesses with up to 10,000 employees or up to $2.5 billion in 2019 revenue. However, effective April 30, 2020, the eligibility requirements were expanded to include U.S. based businesses with up to 15,000 employees or up to $5 billion in 2019 revenue. Borrowers can only participate in one of the three facilities.

However, borrowers may receive more than one loan under a single Main Street facility, provided that the sum of the loans does not exceed that facility’s maximum guidelines.

Term sheets for the MSNLF and the MSELF were originally established on April 9, 2020. However, on April 30, 2020, the term sheets for those two loan facilities were amended and a term sheet for the third facility, the MFPLF, was established.

Common features amount all three loan facilities include:

- All Loans mature in 4 years with a one-year deferral of principal and interest.
- Interest for all loans is based on the adjustable 1 or 3-month LIBOR rate plus 3%
- There are no prepayment penalties for any of the loan facilities

The highlights of each facility include the following:

**Main Street New Loan Facility**
- Eligible borrowers can apply for new term loans ranging from $500,000 up to $25 Million.
- The maximum size of the loan cannot exceed four times their 2019 EBITDA when added to existing outstanding but undrawn debt.
- To be considered eligible loans under this facility, the loan origination date must be after April 24, 2020.
- No principal is paid in the first year. The loan principal and capitalized interest will be amortized with one-third due at the end of each of years 2, 3, and 4.
- MSNFL loans may not be junior in priority to the borrower’s other unsecured loans or debt instruments.

**Main Street Priority Loan Facility**
- Eligible borrowers can apply for new term loans ranging from $500,000 up to $25 Million.
- The maximum size of these loan cannot exceed six times 2019 EBITDA.
- To be considered eligible loans under this facility, loan origination date must be after April 24, 2020.
- No principal is paid in the first year. The loan principal and capitalized interest will be amortized with 15% due at the end of years 2 and 3, and a balloon payment of 70% due at the end of year 4.
- MSPLF loans must be senior or equal to other loans or debt instruments in priority and security, other than mortgage debt;
- Lender retains 15% of the risk with MSPLF loans.

**Main Street Expanded Loan Facility**
- Eligible borrowers can apply for an increase to an existing term loan or a revolving credit facility, with the upsized tranche ranging in size from $10M to $200M.
- The maximum size of these loans cannot exceed
  - Either 35% of the borrower’s existing outstanding but undrawn debt, or
  - Six times the borrower’s 2019 EBITDA
- To be considered eligible loans under this facility, the existing loan must have been originated before April
24,2020 and must have a remaining maturity of at least 18 months

- No principal is paid in the first year. The loan’s principal and capitalized interest will be amortized with 15% due at the end of each years 2 and 3, and a balloon payment of 70% due at the end of year 4.
- MSELF loans must be senior or equal to other loans or debt instruments in priority and security, other than mortgage debt;

Under all of the facilities, among other certifications, borrowers must certify that they will use the proceeds to make reasonable efforts to maintain payroll and to retain employees during the loan term.

The full-term sheets and FAQ can be found here.

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INSIGHT: TEMPORARY REPEAL OF EXCESS BUSINESS LOSS LIMITATION TRIGGERS NEED TO AMEND RETURNS
BY TIMOTHY EVANS
This article was originally published by Bloomberg Tax on May 18, 2020.
Click here to view original article.

May 18, 2020
Congress passed Covid-19 relief legislation in March that included a temporary repeal of the business loss limitations enacted in the 2017 tax law. Timothy Evans of Mazars explains how that provision works and what taxpayers need to know to make an informed decision about using it.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act), introduced a variety of tax relief measures targeting both businesses and individuals that have suffered economic hardship as a result of the coronavirus. While the bill is intended to put cash back into taxpayers’ pockets, at least one provision, unfortunately, presents a trap for the unwary.

The CARES Act temporarily repeals tax code Section 461(l), a relatively new provision that limits the amount of business losses a non-corporation taxpayer can use to offset non-business income. This repeal is retroactive to tax years that begin after Dec. 31, 2017, and effectively provides that the loss limitation no longer applies for the 2018 through 2020 taxable years.

Section 461(l), introduced by the Tax Cuts and Jobs Act of 2017 denies non-corporate taxpayers a deduction for net business losses that exceed $250,000 for single filers or $500,000 for joint filers, with any disallowance carried forward to future years.

As such, individuals and trusts with business losses derived from sole proprietorships, partnerships, or S-corporations can only offset non-business income such as wages and investment income with business losses up to the threshold.

Benefits of the temporary repeal of Section 461(l) are potentially two-fold: (1) 2020 returns and 2019 returns not yet filed will not be subject to the limitation (potentially decreasing taxable income); and (2) 2018/2019 returns already filed are eligible for amendment (potentially generating an immediate refund). The temporary repeal may be particularly significant to owners of, and investors in, real estate as well as active traders with a trader tax status.

The repeal of Section 461(l) is not elective. As a consequence, if a taxpayer who is subject to limitation in a prior year does not amend, the IRS could adjust downward the amount of that taxpayer’s loss carryforward. If the taxpayer’s statute of limitation for the relevant year (i.e., 2018 or 2019) is closed at the time of the adjustment, then the taxpayer would lose the relevant benefit.

For example, if in 2018, a single taxpayer had a net business loss of $400,000 and non-business income of $400,000, under Section 461(l), the allowable business loss deduction would have been limited to $250,000, resulting in net taxable income of $150,000. The excess loss of $150,000 would have been carried forward as a net operating loss. Following the repeal of Section 461(l), the taxpayer could amend the 2018 return to take the full $400,000 loss, generating a refund of the tax associated with the $150,000 income previously taxed.

An issue arises if the taxpayer decides to forgo amending the 2018 return, assuming the carryforward loss may be utilized in a future year. As the loss limitation no longer exists with respect to 2018, the carryforward is improper. On examination, the IRS could disallow the $150,000 carryforward loss, which would be permanently lost if the 2018 statute of limitations is closed.

Any excess loss that, absent Section 461(l), could have been utilized in the year it was disallowed (2018 or 2019 if filed pre-CARES act) is potentially at risk of forfeiture. The importance of filing an amended return therefore cannot be understated. Filing an amended return may not only provide the taxpayer with a refund (a timing issue) but, perhaps more significantly, may prevent a loss from being disallowed (a permanent difference).

A taxpayer should also consider whether losses freed as a result of the Section 461(l) repeal are suitable for carryback under the bill’s new net operating loss provisions.

Also of note are several technical corrections that will impact Section 461(l) when it becomes effective in the 2021 tax year:

- Net business losses subject to limitation are calculated without regard to net operating losses or qualified business income deductions.
- W-2 wage income will not be considered trade or business income and therefore may only be offset by business losses to the extent of the threshold.
- Net losses from the sale of capital assets are excluded from the Section 461(l) computation.

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

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FINANCIAL SERVICES TRENDS

COVID-19 POLICY CHANGES: WHAT BANKS NEED TO KNOW!
BY GINA OMOLON AND MICHAEL MOROSKY

Issue XIV– May 2020
Impacts from the COVID-19 pandemic have reverberated across every part of the global economy. Small businesses are struggling to pay their employees, banks are grappling with collapsing local economies, and many borrowers across the nation cannot meet their monthly mortgage payments.

Banks will play a critical role in supporting their communities through this crisis, and federal banking agencies and legislators want to provide them with the tools to do so.

Since the outbreak ground the nation’s economy to a halt in March, a number of new policies have been introduced, aimed at both helping banks navigate the unique uncertainties brought on by this pandemic and providing relief to the larger economy.

Some of the most drastic changes are intended to alleviate issues around borrower difficulty servicing debt, as well as the banking regulatory requirements surrounding them.

CARES Act Relief for Loan Modifications and Troubled Debt Restructurings
Under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), passed by Congress on March 27, 2020, banks must structure forbearance programs for federally-backed mortgages that will allow borrowers to defer payments for up to 180 days, which legislators may extend further if necessary. These forbearance programs will be available to borrowers who are experiencing hardships due to the COVID-19 pandemic.

The CARES Act also provides new guidance for financial reporting on loans that have fallen delinquent. When a borrower facing hardship from the pandemic falls delinquent, or if their loan terms are modified, resulting in a troubled debt restructure, their loan will not be reported as delinquent or as a troubled debt restructure, whether or not the loan is delinquent or non-performing. This change only applies to loans that were current as of December 31, 2019, and if the hardships where directly related to the pandemic. If a borrower was delinquent as of December 31, 2019 and they receive payment accommodations due to the pandemic, they will maintain their delinquency status prior to the COVID-19 impact if further delinquencies occurred because of the pandemic.

Banks should properly evaluate the impact of these changes on the disclosure requirements discussed in ASC 310-10-50-31 through 50-34, relating to troubled debt restructures, and ASC 326-20-50-14/15, relating to delinquencies.

These reporting exemptions are in effect from March 1 until either December 31 or 60 days after the national emergency ends.

If a loan modification is not eligible under the CARES Act, the bank should continue to account for these modifications under Accounting Standards Codification (“ASC”) subtopic 310-40.

Additional considerations on loan modifications and reporting for banks working with customers affected by the current pandemic were announced by an interagency statement on April 7. They are:

CARES Act Relief on the Community Bank Leverage Ratio Framework
To incentivize community banks to continue lending during the crisis, the CARES Act also lowers the required community bank leverage ratio from 9% to 8%, starting in the second quarter of 2020 through the end of the year. Regulators hope this will help community banks focus on “supporting lending to creditworthy households and businesses” during the pandemic, according to a joint press release from regulatory agencies. The ratio will subsequently be increased to 8.5% for the calendar year 2021 and 9% thereafter. The CARES Act also calls for a two-quarter grace period for institutions whose leverage ratio falls no more than 1% below the applicable community bank leverage ratio.

Credit Risk
The agencies’ examiners will exercise judgement when reviewing loan modifications and will not automatically adversely risk rate credits that are impacted by COVID-19.

Regulatory Capital
One-to-four family residential mortgages where the loans are prudently underwritten, and not 90 days or more past due or carried in nonaccrual status, will not result in the loans being considered restructured or modified for the purposes of their respective risk-based capital rules.

Nonaccrual Status and Charge-Offs
During the short-term arrangements discussed in this statement, these loans generally should not be reported as nonaccrual. During the short-term arrangements discussed in this statement, these loans generally should not be reported as nonaccrual.

Discount Window Eligibility
Institutions are reminded that loans that have been restructured as described under this statement will continue to be eligible as collateral at the Federal Reserve Board’s discount window.

CARES Act PPP Program Loans
In an additional step to encourage lending to small businesses, the CARES Act establishes that loans originating from the Paycheck Protection Program (“PPP”) will have no credit or market risk and will carry a zero percent risk weight for capital purposes.

As banks prepare for a spike in call volumes from customers seeking forbearance agreements, regulatory agencies have announced that they do not intend to take supervisory or enforcement action against mortgage servicers for delays in
submitting certain documentation to regulators, including annual escrow statements, early intervention and loss mitigation notices.

**Regulatory Relief from Appraisal Requirements**

Regulatory agencies also have begun to allow banks to close on most real estate transactions without first obtaining an appraisal, with deferrals up to 120 days after the closing of a residential or commercial real estate transaction. This interim rule, effective April 14 through December 31, 2020, excludes transactions related to acquisitions, construction, and development of real estate.

**CARES Act Relief from CECL**

Additionally, the CARES Act seeks to provide banks with optional temporary relief relating to the implementation of FASB Accounting Standards Update No. 2016-13 ("Measurement of Credit Losses on Financial Instruments"), including the Current Expected Credit Losses ("CECL") methodology for estimating allowances for credit losses. The CARES Act indicates banking institutions are not required to comply with the standard during the period beginning on the date of enactment of the act. These provisions will remain in effect until the earlier of the date in with the National Emergencies Act terminates, or December 31, 2020.

One key consideration for banks that opt to elect CARES Act relief and do not adopt CECL during the period allowed by the act, is that this will have an impact of reducing the two additional years relief provided by the regulatory agencies in delaying adoption of CECL.

**Regulatory Relief from CECL**

On March 31, 2020, in an additional step to provide regulatory relief, a joint statement by regulators including the Treasury, FRB, FDIC and OCC was made in the adoption of a CECL Interim Final Rule ("IFR") which states that banks which were required to adopt CECL as of January 1, 2020 now have the option to delay reporting on the impact of CECL on regulatory capital for an additional two years, resulting in a total transition period of five years. This election can still be made for regulatory reporting even if the banking organization chooses to apply CECL pursuant to GAAP in 2020.

This five-year transition begins on the original CECL adoption date under U.S GAAP, regardless of whether the banking organization utilizes the regulatory relief. For a banking organization that utilizes the regulatory relief, and subsequently opts to use the relief provided in the CECL IFR, the initial two-year transition period would be reduced by the number of quarters during which the banking organization uses the statutory relief.

The CECL IFR, however, does not replace the current three-year transition option in the 2019 CECL Rule. This remains available to any banking organization at the time it adopts CECL. In addition, banks that opt to elect the CARES Act relief discussed above should note that such election will reduce the two additional years under the regulatory relief.

An additional provision within the CECL IFR released in 2020 introduces a 25% “scaling factor” for estimating the impact of CECL during the selected transition period. See the below three step approach to determining the estimate of the CECL impact, which includes the 25% scaling factor:

**Step 1: Calculate day-one transitional amounts:**

**Calculate the “Day-One” Impact of Adopting CECL for the following items consistent with the 2019 CECL Rule.**

- **Retained Earnings ("CECL Transitional Amount")**
  Equal to the difference between pre-CECL and post-CECL amounts of retained earnings at adoption

- **Credit Loss Allowance (Adjusted Allowance for Credit Losses - "AAACL Transitional Amount")**
  Equal to the difference between pre-CECL amount of ALLL and post CECL amount of AAACL at adoption

- **Temporary Difference Deferred Tax Assets ("DTA Transitional Amount")**
  Equal to the difference between pre-CECL amount and post-CECL amount of DTA at adoption due to temporary differences

*Adjusted Allowance for Credit Losses ("AAACL") is a new regulatory defined term under 2019 CECL Rule that includes only those allowances that have been charged against earnings or retained earnings.*
Step 2: Calculate modified transitional amounts, and the regulatory impact:

On a quarterly basis for up to two years, an electing organization must then calculate the cumulative impact of CECL on regulatory capital as follows:

| Increase retained earnings by the “Modified CECL Transitional Amount” |
|--------------------------|--------------------------|
| Computed as follows:     |
| CECL Transitional Amount + Change between end-of-period reported AACL and the AACL as of beginning of fiscal year that the Firm adopts CECL, multiplied by the 25% scaling factor = Modified CECL Transitional Amount |

| Decrease AACL by the “Modified AACL Transitional Amount” |
|------------|--------------------------|
| Computed as follows:     |
| AACL Transitional Amount + Change between end-of-period reported AACL and the AACL as of beginning of fiscal year that the Firm adopts CECL, multiplied by the 25% scaling factor = Modified AACL Transitional Amount |

<table>
<thead>
<tr>
<th>Two Additional Regulatory Capital Adjustments:</th>
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<tr>
<td>Computed as follows:</td>
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<tr>
<td>1. Decrease Temporary Difference DTA by the DTA Transitional Amount</td>
</tr>
<tr>
<td>2. Increase reported average total consolidated assets by the Modified CECL Transitional Amount</td>
</tr>
</tbody>
</table>

Step 3: Calculate the phase-in amount over the next three years, and the regulatory impact

After two years, the cumulative amount of quarterly-modified transitional amounts become fixed and are phased out of regulatory capital along with the transitional amounts that were calculated to reflect the Day One impact of CECL.

The phase out occurs over the subsequent three-year period at following rates:

| Increase retained earnings and average total consolidated assets by the following percentages of the modified CECL transitional amount……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………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FASB Relief Related to Financial Accounting and Reporting

FASB has also considered the impacts of COVID-19 and intended to provide stakeholders with accounting relief and clarity on the effective dates of implementation of ASC 606 and ASC 842. On April 18, 2020, the FASB decided to add a project to its technical agenda to amend the effective dates relating to these standards for certain entities, as well as adding a research project to see if there are any opportunities to provide revenue recognition expedients to franchisors.

On April 21, 2020, the FASB issued a proposal that would grant a one-year effective date delay for certain entities applying leases and revenue recognition guidance. The leases’ effective date deferral would be limited to private companies, private not-for-profit organizations, and public not-for-profit organizations that have not yet issued their financial statements. Under the proposed Accounting Standard Update (“ASU”), private companies and private not-for-profit organizations would have the option to apply the new leases standard for fiscal years beginning after December 15, 2021, and to interim periods within fiscal years beginning after December 15, 2022. Public not-for-profit organizations that have not yet issued financial statements would have the option to apply the standard for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years.

The proposed effective date deferral for revenue recognition would be limited to private company franchisors. Those stakeholders would have the option to apply the new standard for annual reporting periods beginning after December 15, 2019, and interim reporting periods within annual reporting periods beginning after December 15, 2020.

FASB also discussed additional plans to support stakeholders with other standards that have effective dates of 2022 and beyond, as well as future standard setting activities for current project deliberations.
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MAZARS USA AT A GLANCE

Mazars USA LLP is a client-centered, full-service accounting, auditing, tax, consulting and advisory firm with over 100 partners and 800 professionals in 10 US offices. Mazars USA is the independent US member firm of Mazars Group – a prominent international accounting, audit, tax and advisory services organization with nearly 24,000 professionals in 90+ countries.

OUR TONE AT THE TOP

PRINCIPLED, ETHICAL
A principle-based, ethically-driven firm, populated with the best and brightest talent

CLIENT-FOCUSED
A client-focused, professional services firm dedicated to unparalleled excellence in service

PEOPLE-ORIENTED
A people-centric, team-oriented firm committed to diversity, learning and innovation

QUALITY DRIVEN
A business where sustaining growth and profitability is our top priority, but never superior to professional quality

MAZARS USA STORY

1921
M.R. Weiser & Co.

1991
M.R. Weiser & Co.
17 Partners
$17M in Revenue
OUR MISSION

Our Mission At Mazars USA is to be:

• A high-performing national firm with significant presence in strategic US geographies;
• Leveraging our exceptional international capabilities and reach;
• Offering a broad array of industry specialists providing Accounting, Audit, Tax, Consulting and Advisory services to growth-oriented enterprises and individuals;
• Centered on a culture of diversity, collaboration and community;
• Driven by our Guiding Principles of Association Respect and Excellence.

CSR consulting and ethics in business consulting

Empowering PEOPLE

Corporate culture and human rights internal audit, external assurance and consulting, advisory services in the areas of diversity and corporate equality.

Reengineering TRUST in business

Nonfinancial assurance, GDPR, corporate governance, anti-bribery and corruption

Nurturing collective RESPONSIBILITY
Quality has been at the heart of Mazars USA since inception, and improving quality remains its driving force as we continue our national expansion.
The robust values we adhere to and the principles from which we operate - quality, integrity, independence, respect, continuity and responsibility - have shaped our culture, driven our actions and been the key to our success throughout our firm’s history. They have guided the way we collaborate with each other, our clients and wider society, and are essential for the future.

The world is changing rapidly, with events and new technologies having unpredictable consequences for individuals, companies, governments and society. Mazars USA LLP (“Mazars”) has a vital role to play in helping people and organizations thrive in this environment. We want to encourage business leaders to create a positive movement towards trust, sustainability, transparency and ethical behavior.

Our core values apply to all “Mazarians” from firm leadership to recent recruits and interns; from those working with clients to the critical support teams that enable them to do that work. Beyond complying with professional standards, we emphasize ethical principles and professional behaviors, including Association, Respect, and Excellence, which we endeavor to implement wherever we are, for whomever we serve, and whenever we act. Put simply, we must live our core values every day, “The Mazars Way.”

Our profession is expected to serve the public interest. We are committed to building the economic foundations of a fair and prosperous world by caring for the success of our clients, the health of financial markets and the integrity of our industry. We are also responsible for welcoming and developing new generations of professionals. Therefore, we must ensure that our services reflect high standards of quality, integrity, independence, respect, continuity and responsibility.

We hope you enjoy reading our Quality Intelligence Report!

VICTOR R. WAHBA – CHAIRMAN & CEO
MAZARS USA LLP

THE PURPOSE OF THIS REPORT

Mazars voluntarily issues this report to provide transparency into our processes to ensure quality. This report illustrates our commitment to excellence by sharing information about our firm culture, leadership, ethics and independence, engagement performance, risk monitoring, and talent management with a view towards demonstrating how we manage and monitor quality. We take pride in offering insight to our clients, regulators, and other stakeholders into what matters most to us.
1. MAZARS USA FIRM LEADERSHIP

EXECUTIVE BOARD

AS OF AUGUST 31, 2019
FIRM’S OPERATING STRUCTURE

EXECUTIVE BOARD

CHAIRMAN & CEO

CHIEF OPERATING OFFICER

OFFICE MANAGING PARTNERS

OPERATING SERVICE GROUPS

MARKET SEGMENT & SERVICE LINE LEADERS

CHIEF GROWTH OFFICER

PARTNERS
MAZARS USA QUALITY LEADERSHIP

Mazars serves global and national clients with an agile, personal approach. We tailor our solutions and service experience to each client’s unique needs based on a deep understanding of their industry, business, culture and environment.

In collaboration with the resources of Mazars Group, our local teams combine cultural awareness with a global perspective. We believe that how we work is as important as what we do. We strive to do what is right for our clients and society, managing the firm for excellence, quality and the benefit of future generations.

Mazars’ dedicated National Quality & Risk Management Team (QRM) oversees the firm’s quality directive for its service lines. QRM defines and promotes policies and procedures for firmwide risk management, which include client acceptance and continuance, ethics and independence. QRM monitors the firm’s compliance with professional standards with a view toward continuous improvement in the efficiency and effectiveness of all client service deliverables. QRM is also responsible for managing the firm’s interaction with external stakeholders and inspectors.

At the team’s core is a focus on excellence for audit and assurance, tax, consulting, and accounting and advisory services.

Specifically, for our audit and assurance practices, QRM sets requirements for delivery of high-quality services in compliance with professional standards. It provides technical support to the firm’s Audit and Assurance Practice through thought leadership, consultation, and monitoring of firm quality mandates, including attest specific policies and procedures.

Each non-attest service line has a tailored Quality Control Manual and designated leaders accountable for the quality mission. These manuals outline policies, procedures and the related monitoring for compliance. As part of these monitoring procedures, quality inspections are performed on tax and advisory engagements.

We focus on delivering high-quality services to our clients in the most professional manner. “Professionalism” in our practice means integrity, objectivity, independence where required, adherence to professional standards and applicable laws and regulations and a demonstrated will to maintain and improve the quality of professional services. Professionalism also means a commitment to withstand all pressures, competitive and otherwise, to compromise on principles, standards and quality. To achieve high-quality, professional performance, our firm has established policies and procedures specific to our audit, tax, consulting, and accounting and advisory service lines which are built on the elements of quality control.

As a leading firm, Mazars understands the importance that the technical excellence of our people plays in offering consistent, quality service. We take pride in training our teams, bringing them up to date with the latest regulatory developments and technical evolution, while giving them the knowledge and skills they need to abide by the strictest ethical and independence requirements, all while delivering value to our clients and their stakeholders. Being committed to quality and client service that measure up to the high level we demand means going beyond professional compliance requirements and making sure we share an ethical culture throughout our organization. It also means contributing to regulatory debates in order to continually raise standards and produce better, more reliable and meaningful client deliverables.

To be credible in our call for quality, we must invest continuously in strengthening our National Quality & Risk Management vision, processes, controls and manuals.
HOW CLIENTS RATE OUR QUALITY OF SERVICE

Mazars is an innovative, creative problem solver

Rated 9 out of 10

Attention to detail
Quality of service

The people assigned to our engagements have the right level of expertise and experience to get the job done

REGULATORY OVERSIGHT & PROFESSIONAL INVOLVEMENT

Mazars is a Registered Public Accounting Firm with the Public Company Accounting Oversight Board ("PCAOB") and a member of the American Institute of Certified Public Accountants ("AICPA"). The firm is also a member of the AICPA’s Center for Audit Quality, Governmental Audit Quality Center, Employee Benefit Plan Audit Quality Center, and the AICPA Private Companies Practice Section. Mazars has established policies and procedures specific to the firm’s Public Company Audit Practice, its Governmental Audit Practice, and its Employee Benefit Plan Practice, in order to comply with the applicable professional standards and the requirements of the AICPA and PCAOB. In addition, Mazars professionals are actively involved in and have served in various roles, including leadership positions, for numerous professional organizations and committees.

In addition to serving in numerous professional organizations, we are actively involved in communicating with our regulators and standard setters, including the AICPA, PCAOB, and SEC. We particularly welcome the opportunity to respond to direct outreach from these organizations on concept releases, consultation requests and proposed quality, auditing and accounting standards by delivering detailed comment letters in response to exposure drafts or consultative requests. Our involvement in these matters, and in the professional organizations, affords us the opportunity to better understand emerging issues, allowing us to proactively consider the impact on our organization, the profession and our clients. These activities demonstrate our passion for and contribution to the profession. Participating in these matters adds to the success of our quality mission.
We serve the public interest and take this responsibility seriously, knowing the trust we establish with our stakeholders is at the heart of our work.
VALUES AND TRUST

Integrity, objectivity, ethics and independence are the cornerstones of our profession because they are the foundation of the public’s trust. They are at the heart of our culture and everything we do. Our policies, procedures and tools are designed so our people comply with the strictest professional requirements, engendering public trust. This trust emanates from the rigorous and ethical work we perform on our assignments, striving for a high level of integrity, independence and technical excellence.

Our values guide our professionals on a daily basis, and our National Quality & Risk Management Team helps to ensure they are upheld at all times. Their mission is to foster sustainable development, thorough risk management, ethical behavior and high-quality across all service lines.

SAFEGUARDS TO INDEPENDENCE - BOTH IN FACT AND APPEARANCE

Training

Consultation

Safeguards to Independence

Transparency of Information

Mandatory Rotation

Limits on Fees

Representations of Independence

Engagement Independence Assessments

TRAINING

Mazars provides training to help professionals understand the firm’s ethics and independence policies. Each professional is required to complete annual ethics and independence training. This includes training in the relevant rules regarding investments, loans, brokerage accounts, business relationships, employment relationships, proscribed services and fee arrangements.

CONSULTATION

Mazars requires communication and consultation regarding any apparent or potential violation of the firm’s independence, integrity and objectivity policies and procedures, as well as ethical conflicts or other conflicts of interest. Recognizing that such issues can be sensitive and difficult to address with firm leaders, Mazars has established a hotline for any Mazars personnel to discuss ethical issues, or to report inappropriate workplace behavior or suspected ethical or professional standards violations.

The hotline is operated by the firm’s external counsel. These attorneys are experienced and knowledgeable about ethical issues faced by firm personnel and know how to perform investigations when needed.

“Everything that Mazars has done for us has been perfect. The guidance, professionalism, work quality...has been extraordinary.”

ENGAGEMENT INDEPENDENCE ASSESSMENTS AND DOCUMENTATION

Maintaining independence is a requirement for the audit services that we provide and is the responsibility of our Partners providing such services. Key to maintaining independence is having a full understanding of the firm’s relationship with our clients, both personal and professional. We seek to be a full-service provider to our clients, where permissible under professional standards, and perform permitted non-attest services for many of our attest clients. These non-attest services can create threats to independence that need to be monitored and, where appropriate, have safeguards applied.

Independence rules, which are issued by various standard setters regulatory bodies, by their nature are complex, and in certain cases significantly restrict the non-attest services that can be provided to certain clients.
To manage the complex nature of ethics and independence, all engagement teams must provide QRM with relevant information about client engagements, including the scope of services, to enable QRM to assess the independence requirements and any potential ethical issues. Where non-attest services are being proposed related to an audit client, the documentation also must include an independence assessment made by the attest Partner. This evaluation is documented in the initial Engagement Acceptance Form or the annual Engagement Continuance Form, and more frequently as additional non-attest services are proposed.

**REPRESENTATIONS OF INDEPENDENCE**

Each Mazars employee is required to assert their independence upon joining Mazars and to complete an Annual Representation of Independence (the “Representation”). Employees are sent these representation requests by the Director of Quality Control in which they are asked to certify that:

- They are familiar with and adhere to the firm’s independence policies and procedures.
- They affirm that neither they or their immediate family member is presently engaged in or have been engaged in prohibited transactions.
- They have reviewed the firm’s SEC Registrants List.
- They have complied with the requirements of the firm’s policies and procedures regarding independence, integrity, and objectivity during the period specified.

To ensure that the information received via the Representation from our Managers through Partners and Principals is complete and accurate, at least annually a sample of such representations must be audited. This sample is selected in a manner that ensures that each professional within scope is audited at least once every three years. The National Quality & Risk Management Practice Leader ensures that these audits are conducted in accordance with firm policy, addresses any compliance issues noted and reports non-compliance to the Executive Board.

**PERCENTAGE OF PROFESSIONALS SELECTED FOR INDEPENDENCE AUDIT**

- 2018: 34%
- 2019: 52%

As part of the firm’s ongoing program for monitoring independence and conflicts of interest, prior to an employee accepting a position with fiduciary responsibility, such as serving as a board member or an executor, they must receive approval from the firm’s Executive Committee.

In addition to the Representation, all employees receive daily independence checks addressing all new proposed engagements and certain engagements where periodic independence checks are required or prudent. Responses are tracked in the firm’s Quality Control System, and any potential conflicts are reviewed with QRM prior to coming to a formal conclusion. Any non-compliance with the firm’s policies or procedures regarding independence is subject to corrective action by the firm and may include individuals being removed from a particular engagement or client, or termination from the firm, and reassignment of the engagement to another office or team of professionals.

**TRANSPARENCY OF INFORMATION**

Mazars maintains a list of restricted entities that is available to all staff (the “SEC Registrants List”). This list details each entity where independence is required under SEC regulations.

The list is updated by the firm’s SEC Practice Group and, in addition to being readily available to all staff, is communicated and circulated monthly to all professionals. Restricted entities are added to the SEC Registrants List when Mazars is engaged to perform audit or accounting services to an SEC registrant or affiliate, or when an existing client becomes an SEC registrant or affiliate.
MANDATORY ROTATION

Professionals performing services for restricted entities, and certain regulated industries, must comply with partner rotation requirements. This rotation reduces the risk of familiarity to the audited company. It enables the auditor to have greater independence of mind in dealing with client issues and in expressing opinions on financial statements.

The National Quality & Risk Management Practice Leader ensures rotations are executed in conformity with applicable regulations.

LIMITS ON FEES

The National Quality & Risk Management Practice Leader monitors the Partner group for the following circumstances:

• Fees from a particular client or group of related clients representing more than 50% of that Partner’s total fees or more than 15% of the total fees of the firm.
• Fees from a particular client or group of related clients for non-attest services exceeding those for attest services.

Where these situations exist, Partners must document a plan to implement safeguards to independence, which is reviewed by the National Quality & Risk Management Practice Leader.

The engagement Partner must also inform QRM if any fees from a particular client or group of related clients have been outstanding for more than a year, and appropriate safeguards are established, which could include resigning from the client relationship.

“Mazars has excellent staff and is very knowledgeable of international standards.”
3. AUDIT ENGAGEMENT PERFORMANCE
A QUALITY AUDIT THAT SERVES SOCIETY

At Mazars, we believe audit is critical to the foundation of global economics. Audit has been, and remains, a profession at the heart of our business. We work for the public interest and by caring about the organizations we audit and their stakeholders, we help to build sustainable businesses for the benefit of society as a whole.

Through our audits we deliver insight, promote transparency and provide constructive challenge, enhancing trust in how organizations report to their stakeholders. But it does not stop there: a robust, independent audit contributes to building a dependable control and governance framework to help future-proof the organizations we audit.

Audit is first and foremost about people. We focus on building positive, effective relationships that engender trust and deliver demonstrable worth. Each audit is unique. We take the time to understand the business model, culture, engagement risks and control environment of the audited company, and consider the needs of its stakeholders; tailoring the audit strategy to the specific risks identified. Throughout the audit process we are in constant dialogue with all relevant stakeholders, with clear, pragmatic and timely communication.

We bring our deep understanding of industries to our engagements, developing a plan that is both efficient and effective, while creating opportunities to bring value add to our clients. For our clients with international needs, we can leverage the Mazars Group in order to provide one, agile, integrated and collaborative team, across services and geographies. This means we combine specialist local knowledge with international perspective. We bring together the right people, with the right expertise, at the right time to provide seamless support.

We pride ourselves on our rigor, independence of thought, perseverance and robustness. Supported by the latest technologies, methodologies and processes, we provide reliable, objective and insightful judgements and opinions. Our unique approach means we efficiently and consistently deliver high-quality audits that benefit our clients and their shareholders. As technology and the changing business landscape require that we continuously transform the way we perform and deliver audits, we seek to remain true to the values and unique characteristics that are the roots of Mazars.

With this distinctive, human-centric approach, we deliver an augmented audit experience. One that goes beyond just compliance and contributes to the development of sustainable businesses, economies and societies.

AUDIT POLICIES AND METHODOLOGY

Our audit methodology complies with U.S. regulatory and standard setter requirements, while being adaptable to both the local and global clients we serve. We tailor our approach to each client’s unique aspects, while providing a consistent level of quality irrespective of client size or complexity. Our approach is risk-based, ensuring adequate focus is placed on the issues that matter while addressing the organization’s environment as a whole. Our methodology and associated guidance are designed to encourage challenge and professional skepticism in the execution of the audit.

Our audit process utilizes audit software that drives the application of the risk-based approach from client acceptance to completion of the audit. Subject matter experts are available for audit methodology and financial reporting technical consultations when support is required. To further support the audit teams, we have dedicated resources and specialists for information technology, taxation and valuation.
INNOVATIVE AUDIT TECHNOLOGY

In this technology and data-driven world, no business can be successful without embracing change, and ours is no exception. By incorporating technology in designing and implementing our audit approach and procedures, we can streamline many of the compliance aspects of our audit process, allowing our professionals the time to address the risks noted in our planning assessment. As a result, we can enhance our audit quality and provide a more rewarding experience for both our people and our clients.

We leverage technology in all aspects of the audit, from planning, to substantive testing to reporting. We utilize various data extraction and analytical tools in assisting with our assessment of engagement risk, selection criteria for potential anomalies, and detailed audit testing. These tools allow audit teams to conduct more efficient and relevant audit procedures on accounting data. By combining data analytics with visualization of results, we can provide real-time graphical representation of data queries which aid in understanding the data and determining the impacts on our engagement strategy.

In addition to data extraction and analytics, we are in the early stages of deploying robotic processing automation (“RPA”). RPA provides opportunities to develop very tailored audit strategies as well as reduce common repetitive tasks. Maintaining strong controls and ensuring proper accounting is complicated when companies have multiple IT applications whose connection and synchronization remain imperfect.

This situation increases audit complexity and thus risk. Robotization will increasingly connect these applications to each other to provide greater assurance to our engagement teams and allow them to focus on value-added activities.

Pivotal to effective leveraging of technology is the use of a sophisticated audit platform. Mazars Group, over the last several years, has developed and deployed a proprietary audit platform, Atlas, which will support all of the independent member firms of Mazars Group and allow for true global audits leveraging the latest audit technologies.

DATA SECURITY AND CONFIDENTIALITY

With the ever-increasing focus on data analysis, data security and confidentiality are paramount. All of our professionals use encrypted computer hardware that run industry leading virus software. Data security is not just about the tools, it is also about the people. All personnel are bound by confidentiality obligations and we have organization-wide policies and procedures which assure limited access to, and security over, client work papers and deliverables. During and after employment or contracting with the firm, confidential business information may not be shared with non-employees of the firm and may only be shared with firm employees on a need-to-know basis.

We are serious about maintaining client confidentiality and data security. We have a data policy designed to meet security requirements and specifically protect both our own data, and the private information of our clients. Our data privacy policies are overseen by an independent Data Protection Officer who advises the firm on compliance with, and monitors for adherence to, the General Data Protection Regulation (GDPR) and state and national data privacy laws. This integral role serves as our point of contact for both supervisory authorities, data subjects, and internal teams. The Data Protection Officer is responsible for determining training needs for employees regarding data privacy and protection and reporting to executive management on the status of the firm’s compliance. In addition, the Data Protection Officer advises the firm on data processing activities, conducts data protection impact assessments, and responds to data breaches, if necessary.

Their staff is experienced and knowledgeable. They understand your business and provide services based on your needs, not a general basis.
CONSULTATION

The firm has a robust consultation protocol and embraces consultation as a key risk management process. Mazars’ professional staff and Partners are encouraged to consult with experts when uncertain about technical matters, ethics, independence, professional standards or other engagement matters.

QRM is a resource for consultation. The firm has also designated specific individuals as experts and maintains a list of current technical resources available to all employees.

Certain complex accounting and auditing areas require consultation, and it is the responsibility of the engagement Partner to seek it. Additionally, consultation is expected in the broad areas of relevant ethical requirements, including independence, integrity and objectivity, initially during client acceptance and ongoing as part of client continuance.

Certain engagements may require consultation with, or the use of, non-firm specialists such as actuaries, appraisers, attorneys, engineers, and geologists in order to manage risk and comply with professional standards.

CONSULTATION PROTOCOL

It is expected that the engagement team will do research to propose a preliminary conclusion before submission of a consultation. Members of QRM perform an initial review of the consultation and assign it to a professional with appropriate knowledge and experience. The consultation reviewer will review the submission, discuss the matter with the engagement team, consult professional literature and involve other firm or outside experts when necessary in order to assess the preliminary conclusions of the engagement team. Once all parties consulted approve the documentation of the consultation, it is filed with the engagement workpapers. The engagement Partner ensures that the Engagement Quality Control Reviewer is aware of consultations regarding the engagement under review.

If any member of the engagement team or other individual who consulted on the issue disagrees with the resolution, the procedure for dispute resolution is followed.

DISPUTE RESOLUTION

We recognize that there may be situations on engagements where professionals have differences of opinion as to a technical or other matter that cannot be adequately resolved solely within the engagement team.

To address such situations, the firm has established an issue escalation process to bring such matters to the attention of the National Quality & Risk Management Practice Leader. If additional consultation is needed, the issue is brought to the attention of the Chairman and CEO, who convenes the Senior Technical Committee.

While these procedures are generally initiated by the engagement Partner, any member of the engagement team, or any firm member involved in the matter, can use the dispute resolution procedure if they disagree with the conclusions reached on an issue.

If a member of the engagement team remains dissatisfied with the conclusions reached on a particular issue, they may disassociate from the engagement by documenting the reasons and submitting the documentation to the National Quality & Risk Management Practice Leader and the Chairman and CEO, and including a copy in the engagement workpapers.

RATIO OF TECHNICAL PARTNERS & DIRECTORS TO ACCOUNTING & AUDIT PARTNERS (1 TO X)

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>1 to 6.8</td>
</tr>
<tr>
<td>2018</td>
<td>1 to 7.2</td>
</tr>
</tbody>
</table>
ENGAGEMENT QUALITY CONTROL REVIEW

All attest engagements are subject to an Engagement Quality Control Review ("EQCR"). The nature and extent of the EQCR is based on the risks associated with the engagement, such as complexity, the experience of professionals involved, and the risk that the report might not be appropriate in the circumstances.

ENGAGEMENTS SUBJECT TO EQCR

100%

EQCR procedures include:

• Reading the financial statements or other subject matter information and the opinion.

• Evaluating and challenging the engagement team’s assessment of, and audit responses to, significant risks, including the risk of fraud.

• Reviewing and challenging, as appropriate, engagement documentation relating to significant judgments the engagement team made and the conclusions they reached.

• Evaluating and challenging, as appropriate, the conclusions reached in formulating the report and whether the opinion is appropriate.

• Discussing with the engagement Partner any significant findings and issues.

The reviewer is independent in relation to the engagement and conducts the review in a timely manner so that significant issues are promptly resolved to the reviewer’s satisfaction before the report is released. When the reviewer makes recommendations that the engagement Partner does not accept and the matter is not resolved to the reviewer’s satisfaction, the Dispute Resolution Procedures for differences of opinion are followed.

In order to maintain objectivity, the reviewer cannot have supervised or performed procedures as a member of the engagement team during the current reporting period or the preceding two years.

As a result of the need for the reviewer to maintain independence and not overstep their role in assessing quality, we seek to strike the correct balance in terms of the level of detail reviewed and the time invested in each review. We believe that when we assess the time invested by the reviewers in relation to the engagement Partners, we have accomplished that goal.

PCAOB QUALITY REVIEW

For a PCAOB engagement an independent concurring Partner is assigned to perform the quality review. This review is required to be completed prior to issuance with respect to engagements performed under PCAOB engagement quality review standards. The focus of the review is to evaluate the significant judgements and conclusions reached by the engagement team and provide concurring approval for report issuance. PCAOB quality reviewers are assigned to specific engagements by the National Quality & Risk Management Practice Leader. The engagement Partner may not select the PCAOB engagement reviewer or others who assist in the review. The assignment is designed to ensure the PCAOB quality reviewers have the knowledge, competence, independence, integrity, and objectivity to perform the review.

“ Personalized service, frequent contact, outside-the-box thinking. ”
4. MONITORING
HOW WE ARE MONITORED—INTERNALLY AND EXTERNALLY

QRM is responsible for the ongoing consideration and monitoring of the firm’s system of quality control and determining the appropriateness of its design and the effectiveness of its operation. QRM also assesses the relevancy and adequacy of the firm’s quality control policies and procedures.

As a result of this assessment and monitoring, the National Quality & Risk Management Practice Leader determines any actions or improvements that are to be made to the firm’s quality control system. An action plan is created and updated periodically with the responsible individuals, anticipated timeframes, and related progress.

Constant review of all existing and new processes enhances the firm’s ability to comply with professional standards, manage risk, obtain satisfactory third-party inspection results, and improve the technical competency of our professionals. Key to our assessment process is the completion of annual internal inspections as well as periodic inspections required by regulatory bodies and Mazars Group International Quality Control.

INTERNAL INSPECTION

The firm’s internal inspection procedures include the selection of a representative sample of engagements from the firm’s audit and assurance practice for the period under inspection. The inspection includes a review of the engagement work papers, reports, and clients’ financial statements for those engagements selected. Each year “areas of focus” are determined to supplement the standard internal inspection checklist.

Each professional inspecting an engagement must possess current experience and knowledge of the accounting and auditing practices specific to that engagement.

P CAOB INSPECTION, PEER REVIEW AND MAZARS INSPECTION

Every three years the firm is subject to the following external reviews:

• Inspection by the PCAOB for both issuer clients and broker-dealer clients
• A peer review in accordance with the requirements of the AICPA
• An International Quality Control Committee inspection by Mazars Group

The firm is also subject to periodic inspections of its benefit plan audits by the Department of Labor.

The National Quality & Risk Management Practice Leader is responsible for scheduling and coordinating these reviews and communicating the results to the Executive Board and other appropriate personnel. The results of these inspections are analyzed to consider the root causes of the findings, and are the basis for developing action steps which, among other things, inform training needs, quality control system changes and areas for continuous improvement.
EVALUATION, COMMUNICATION AND REMEDYING IDENTIFIED DEFICIENCIES

Having inspections is important, but what adds value is the assessment of the results and determining how to move forward with our quality agenda. The National Quality & Risk Management Practice Leader is responsible for evaluating the effect of deficiencies noted as a result of the monitoring process and determining whether they are either:

- Instances that do not necessarily indicate that the firm’s system of quality control is insufficient to provide it with reasonable assurance that it complies with professional standards and applicable legal and regulatory requirements and that the reports issued by the firm are appropriate in the circumstances, or;

- Systemic, repetitive, or other significant deficiencies that require prompt corrective action.

Recommendations for appropriate remedial actions for deficiencies noted must include one or more of the following:

- Taking appropriate remedial action in relation to an individual engagement or a member of the engagement team.

- Changes to the quality control policies and procedures.

- Disciplinary action against those who fail to comply with the policies and procedures of the firm, especially those who do so repeatedly.

Recommendations for disciplinary action as a result of monitoring procedures are communicated to the Chief People Officer for all professionals other than Partners, and to the Executive Board for Partners.

If results of the monitoring procedures indicate that a previously issued report may be inappropriate or that procedures were omitted during the performance of the engagement, the National Quality & Risk Management Practice Leader is responsible for determining what further action is appropriate to comply with relevant professional standards and legal and regulatory requirements, and for considering whether to refer the matter to the firm’s General Counsel.

At least annually, the results of the monitoring must be communicated to engagement Partners and other appropriate individuals within the firm, including the Executive Board. This communication must be sufficient to enable these individuals to take prompt and appropriate action to ensure we have a system of quality control that can be relied upon.

Monitoring and its resulting honest reflection on how we are performing as an organization is an effort we embrace in our mandate to continuously improve the quality of everything we do.
#25 Most Prestigious Accounting Firm

THE VAULT

Wendy Stevens
Speaker at The Foundation for Accounting Education’s Auditing Standards Conference

Victor Wahba
Signs Pledge Supporting CEO Action for Diversity & Inclusion

Tifphani White-King & Wendy Stevens
Awarded Crains 2018 Most Notable Women in Accounting
5. TALENT MANAGEMENT
Culture is at the heart of our talent management program. Our industry is viewed differently today than it was in the past, which impacts our ability to retain talent. We recognize that now, more than ever, professionals select employers based on culture above many other factors. The culture of our firm is built into our day-to-day activities and how we manage our people. It is “The Mazars Way” — our commitment to each other, our clients and our communities.

Mazars fosters a diverse workplace in which all members of our team can thrive. Having a range of viewpoints gives us better insight when overcoming challenges and a deeper understanding of our clients’ needs.

We hire candidates who have diverse backgrounds because we value the opportunity to create teams with the right skillsets that share unique perspectives and contributions. We also firmly believe that diversity enhances our ability to retain top talent, regardless of age, gender, race, or ethnicity. In addition to our focus on diversity, our Women@Mazars strategy is a long-term effort supporting the full potential of women leaders at Mazars.

ASSOCIATION
Our association as professionals and as colleagues at Mazars calls upon us to articulate and demonstrate our common commitment to teamwork, pride and firm-first.

RESPECT
Demonstrating respect for others is a basic expectation of every person at Mazars. At our firm, the key ingredients of respect are trust, care for our people, clients and communities, and enthusiasm.

EXCELLENCE
Excellence at Mazars goes beyond setting high standards. It is a combination of the collective power of enterprising minds, professionalism and accountability.

OUR INVESTMENT IN OUR PEOPLE

We differentiate ourselves by the opportunities, development and culture we offer our professionals. The core of Mazars is a culture of diversity, learning and innovation, driven by our guiding values of Association, Respect and Excellence.

JULIE VENKAT
CHIEF PEOPLE OFFICER

“Our people are at the heart of our business and the values of our firm are extended through our employees to our clients and the employees’ local communities.”
Mazars through education, awareness, and improving the visibility of, and access to, role models. We actively engage all individuals at the firm, building diverse teams to enhance the growth of the firm and the individual.

Mazars is dedicated to serving others, both as a firm and as individuals, as demonstrated by the contributions we make to a wide array of charities, in the form of funding, supply donations and our time.

Perhaps the most appreciated aspect of our culture is our connection to our local communities, including our firmwide Days of Service, and our philanthropic activities. Our employees value this time spent as a team and seeing the impact they can make. In 2019, Mazars chose to support organizations dedicated to improving Children’s Health and Wellness. All children should be given the opportunity to develop their capabilities to the fullest extent.

Our Talent Management Programs

Mazars currently offers 16 leadership development programs across all levels in the firm, including custom programs delivered in-house by Talent Management leaders and professional colleagues from our different service lines.

Eight of these programs are provided through our collaborative relationship with our global Mazars member firms, providing a blended learning experience with Mazarians around the world. Our programs also include offerings from the AICPA and programs developed in conjunction with the U.S. Praxity Alliance firms.

The content in these programs highlights a conscious effort to build and maintain a coaching culture. We focus on emotional intelligence, giving and receiving feedback, goal setting, business development, diversity and inclusion, innovation, time management, and delegation as a road to empowerment.

Our firm also offers a variety of custom, interactive workshops for employees throughout the year on timely topics like Unconscious Bias, Being an Impactful Remote Employee, and Managing Remote Employees. These offerings add to the regular compliance training offered across the firm, like Anti-Harassment, to ensure we provide all employees with a safe environment to learn and grow as professionals.

Our Talent Management team evaluates all programs and workshops on an annual basis to ensure we include best practices and adapt to changing needs to remain aligned with the consistent growth we experience as a firm.

“The Firm listens to the voices of the employees and cares about making it a great place to work. It’s nice to know our opinions matter.”
PERFORMANCE MANAGEMENT

Our performance management system facilitates individual goal setting and development plans, engagement reviews, and provides resources related to our competency model and expectations for promotion. Additionally, each client service professional at the firm is provided with a Career Coach to support their performance development and personal growth. Development is a key driver of engagement and retention.

Each person in our firm has access to an abundance of technical and soft skills training. We address generational differences in learning styles and preferences by involving all levels of employees in the design and implementation of training, which leads to a blended approach composed of more condensed opportunities as well as longer, more traditional sessions. Our goal is to provide the right training at the right time.

Employees are part of a coaching culture which features regular feedback and encourages all to ask smart questions and challenge others to grow. Talent Management and leaders at the firm maintain an open-door policy for all employees to share feedback on how we can continue to evolve our coaching culture.

There is a strong demand for qualified audit professionals in the market, particularly for audit professionals trained at prestigious public account firms such as Mazars. The CPA Journal has published an article noting that one of the most challenging issues facing leaders in the public accounting profession is the high rate of employee turnover ranging from 17% to more than 20%. We devote substantial efforts to retaining our talent. We offer flexible work arrangements, competitive salaries, career coaching, timely promotions, and remote working options. We strive to minimize voluntary turnover by working individually with each of our professionals to guide them to success, through support, development, coaching and mentoring.

In addition, we conduct employee satisfaction surveys and carefully review our professionals’ responses and recommendations, and use the surveys to continuously make improvements to any areas that are brought to our attention. 2019 was a year with higher turnover for our firm and many of our competitor firms. Through our formal exit interview processes, we continually monitor the reasons for professional departures and proactively address any internal drivers to ensure we are providing a strong, positive environment in which our professionals can thrive.

The Firm continues to improve its flexibility toward working remotely and improving work/life balance.
BUILDING A FUTURE TALENT PIPELINE

Graduate recruitment is crucial to our strategy of building a talent pipeline for the future. We seek to hire a diverse group of motivated individuals possessing the breadth of skills, and the attitudes and behaviors required to deliver quality service. We believe a high-performing team that embodies our values is a diverse team whose strength and experiences complement each other.

Over the last year we have renewed our focus on boosting our employer branding in schools and universities, as well as enhancing our internship programs and expanding opportunities across service lines including:

- A nationwide network of colleges and universities utilizing technology to further our direct contact with students outside of our local geographies.
- Forming stronger strategic links with key universities.
- Increasing our local school outreach by nurturing lasting relationships with schools located near our offices.
- Revitalizing our internship program to offer opportunities across all areas of the business and reach students sooner in their academic careers.

Our internship program is a key component to building an effective pipeline of future leaders joining Mazars who are prepared from day one to merge their skills with their previous knowledge of our business, procedures and best practices.

Mazars is dedicated to the recruitment, development, promotion and retention of talent. To that end, we take a critical look at the entire employee lifecycle each year to see where improvements can be implemented – from onboarding to each step in the promotional ladder.

Mazars recognizes that first impressions are long-lasting, so we seek to ensure our new hires start out with a positive experience.

We onboard new hires twice a month to maximize resources and the attention given to the experience. We also provide a targeted onboarding for graduate hires, for both audit and tax, that takes place over a period of two weeks, and includes presenters and educators from all levels of the firm, including our Executive Board.

LEARNING & DEVELOPMENT PROGRAMS

As part of our talent management program, the firm’s Chief Learning Officer and the Learning & Development team are responsible for working with the firm’s Learning & Development Advisory Board and curriculum leaders to design and develop curriculums and training programs to support our professionals’ training as they progress in their careers. These programs offer a clearly defined learning path that develops and enhances our professionals’ technical knowledge and skills through activity-based training programs and workshops.

All professionals are required to participate in general and industry-specific technical continuing professional education. We also focus on building well-rounded professionals through training of “soft skills” such as planning, managing and organizing, problem-solving and analysis, business acumen, collaboration and teamwork, written and verbal communication skills, presentation skills, and taking ownership for results and continuous quality and performance improvement. We also ensure that they understand key professional standards such as ethics and independence. These professional development activities enable them to fulfill their technical and client-related responsibilities, and to meet continuing professional education requirements of the AICPA and regulatory agencies.

Offering both general and industry-specific training supports the firm’s philosophy of developing “well-rounded” professionals as well as the firm’s “go-to-market” strategy which supports our clients’ varied professional needs.

“The leadership trainings through Talent Management are great. They are engaging and interactive.”
Our programs are built around activity-based training and workshops which simulate “real-world” engagements, thus preparing our professionals for their client responsibilities, ensuring they are able to deliver exceptional client service and develop into trusted advisors and thought leaders. As part of this development we also provide our Managers and Senior Managers with the opportunity to facilitate training, which not only provides them with additional education hours, but also adds to their career advancement and leadership skills. While our training hours vary each year based on financial reporting and professional standards developments within the profession, we are committed to investing heavily in training in order to ensure our staff are prepared to serve our clients with a high level of technical knowledge.

**AVERAGE CONTINUING EDUCATION HOURS FOR AUDIT PROFESSIONALS**

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner</td>
<td>61</td>
<td>75</td>
</tr>
<tr>
<td>Senior Manager/Manager</td>
<td>85</td>
<td>81</td>
</tr>
<tr>
<td>Senior</td>
<td>64</td>
<td>78</td>
</tr>
<tr>
<td>Staff</td>
<td>126</td>
<td>137</td>
</tr>
</tbody>
</table>

**MONITORING WORKLOAD AND SERVICE QUALITY**

We strive to maintain an effective staff leverage model to ensure all staff are being properly challenged and positioned for success and personal growth. The workload of all employees and Partners is closely monitored at Mazars by Office Managing Partners, Service Line Leaders, and Talent Management to ensure high-quality client service. Our clients demand significant involvement by our Partners and Managers as they view us as key professionals in their success plans. As a result, we invest time by our senior professionals in our engagements which has the added benefit of lowering our staff leverage ratios, thus allowing for more direct supervision and on-the-job training of our staff.

**AVERAGE ANNUAL HOURS WORKED IN EXCESS OF 40 HOURS PER WEEK**

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner</td>
<td>350</td>
</tr>
<tr>
<td>Senior Manager/Manager</td>
<td>140</td>
</tr>
<tr>
<td>Senior</td>
<td>200</td>
</tr>
<tr>
<td>Staff</td>
<td>130</td>
</tr>
</tbody>
</table>

Talent Management creates and shares a monthly dashboard showing staff utilization. This data assists leadership in ensuring we have an equitable workload across our teams and allows us to proactively share or re-allocate resources during peak business times. This data also assists leadership in ensuring engagement leverage is effective in providing our audit professionals with sufficient challenges and the opportunity to grow and succeed in their careers. Given our commitment to training our people, all of our professionals are well-versed in their industries, and able to work on audits efficiently without significant overtime, enhancing our audit quality.
Mazars SCRL is an international and independent organization, specializing in Audit, Advisory, Accountancy, Tax and Legal services.

Across the Mazars Group’s 318 offices worldwide, our global organization brings together over 24,400 international professionals who share the same vision, the same entrepreneurial and collaborative mindset, and the same determination to create shared value for all our stakeholders: staff, clients, the business community and society as a whole.
Group global revenue 2018-2019

1.8 bn euro

△10.4% increase on prior year

These figures are valid as of 31 August 2019. For current up-to-date information, please visit www.mazars.com/keydata

Revenue by region (%)

- 12% North America
- 5% Africa & Middle East
- 3% Latin America & the Caribbean
- 15% Asia-Pacific
- 65% Europe

€500m revenue 37 countries

2005

5,300 professionals

Growth in Europe and in America

€1.8bn revenue 91 countries

2019

24,400 professionals

Presence on 5 continents
APPENDIX

Mazars Group Leadership

As at August 31, 2019 the Global Executive Board was composed of:

HERVÉ HÉLIAS  
CEO and Chairman

ANTONIO BOVER

PASCAL JAUFFRET

RUDI LANG

TAÏBOU M’BAYE

DR CHRISTOPH REGIERER

VERONIQUE RYCKAERT

WENXIAN SHI

TON TUINIER

PHIL VERITY

VICTOR WAHBA
INSIGHT: TAX PLANNING STRATEGIES FOR INDIVIDUALS DURING THESE UNPRECEDENTED TIMES

BY RACHEL EFTHYMES, OLGA LUBOMIRSKY AND ALLISON TOWLE

This article was originally published by Bloomberg Tax on May 7, 2020.
Click here to view original article.

May 7, 2020
The Covid-19 relief legislation and the depressed stock market allow for or adjustments to retirement plans and employment or business-related equity holdings. Rachel Efthemes, Olga Lubomirsky, and Allison Towle of Mazars examine tax-advantaged opportunities to modify your retirement planning, exercise nonqualified stock options, and diversify concentrated positions.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), as the government’s Phase 3 response to the Covid-19 crisis. The current environment is extremely challenging on many levels, but the new tax laws and provisions introduced by the CARES Act, along with the current state of the economy significantly change the landscape for tax planning and create many possible opportunities.

**Required Minimum Distributions, Roth IRA Conversions, and Waiver of Early Withdrawal Penalty**

The CARES Act waives required minimum distributions (RMDs) from certain defined contribution plans and individual retirement accounts (IRAs) for the 2020 tax year. This will not only give your portfolio the potential to grow and hopefully recover from any recent decrease in value but will also lower your taxable income and related tax liability for the 2020 tax year.

You may be wondering what happens if you’ve already taken your 2020 RMD. Under normal circumstances, RMDs are not eligible for rollovers; however, the CARES Act will allow you to roll over your 2020 RMD to an IRA or other eligible retirement plan to avoid paying tax on that initial distribution under limited circumstances. If you took your RMD anytime from Feb. 1 through May 15, you have until July 15 to roll over that distribution and avoid paying tax on that amount.

**Roth IRA Conversion**

Another opportunity to consider in conjunction with the waiver of 2020 RMDs is the conversion of a traditional IRA to a Roth IRA. This is a particularly beneficial strategy now, because not only could your 2020 taxable income be reduced (due to the absence of the 2020 RMD in addition to other potential losses as a result of the current economic environment), but also the tax effect of the conversion will be lower when the value of the assets in the account being converted are depressed.

There are two main advantages of a Roth IRA versus a traditional IRA.

- Roth IRAs have no minimum distribution requirements, so you can leave the assets in your account to continue to grow tax free even after you reach age 70 1/2. Additionally, if you’re fortunate enough to not need the cash flow during your own retirement, this would be a great opportunity to leave those assets to your heirs.

- Any withdrawals you decide to take in the future would be tax free, unlike traditional IRAs, which are subject to ordinary income rates in the year of withdrawal.

**Waiver of Early Withdrawal Penalty**

On the flip-side to deferring RMDs, the CARES Act also allows you to access money in your retirement accounts if necessary without the usual penalties, if you’ve been affected by the Covid-19 crisis. This relief may be available to you if:

- You, your spouse, or another dependent has been diagnosed with Covid-19 by a test approved by the Centers for Disease Control and Prevention; or
- You have suffered financial consequences due to Covid-19 (such as quarantine, job loss, furlough, reduction in hours, inability to work due to lack of child care, or loss of your business).

Even during these unprecedented times, tapping into your retirement account is an important decision and should only be taken as a last resort. If you were affected and determine this is necessary to bridge the gap, you may withdraw up to a total of $100,000 from your retirement accounts between now and Dec. 31, 2020 without being subject to 10% early withdrawal penalty.

If you take a coronavirus-related distribution of pre-tax money from your retirement account, you will have to pay tax on that income. However, you also have the opportunity to pay those taxes over a three-year period beginning in 2020. Furthermore, you may also repay some, or all, of the distribution to your plan and essentially pay yourself back within three years of the distribution and avoid paying tax on the distribution.

**Exercise of Nonqualified Stock Options**

Nonqualified stock options (NSOs) are a benefit that many companies include in employee compensation packages. When you exercise NSOs, you must include the difference between the exercise price and the fair market value of the stock at the date of exercise in your taxable income for that year, and the income is subject to ordinary income rates.

If you currently hold NSOs, exercising them now may be beneficial when many stock prices have declined, as your taxable ordinary income may be greatly reduced since the spread between the exercise price and value of the stock may have decreased. This is assuming that the value of the stock is still greater than the exercise price of the options, as you would not want to exercise the options if the value of the stock is “under water” or has declined below the exercise price.

For example, let’s assume you decide to exercise your NSOs at an exercise price of $10 per share, and the fair market value of the stock is currently $15 per share, whereas six months ago the fair market value of the stock was $25 per share. As a result, you would only recognize $5 per share of taxable ordinary income now rather than $15 of taxable income per share that you would have reported and paid tax on if you exercised the same NSOs six months earlier.
Diversifying Concentrated Positions and Wash Sale Rules
There are a few different strategies if you own concentrated stock positions that may make up a large portion of your overall portfolio. Currently, you may have an opportunity to sell concentrated positions that, although the stock price may have recently declined, would still generate capital gains. These gains may be offset if you have other realized losses that were generated due to the economic downturn. In contrast, if the concentrated position has declined to the point that it would generate losses, you may find it beneficial to not only get out of the concentrated position, but also harvest those losses to offset other capital gains you may have recognized elsewhere.

Another opportunity is to diversify your portfolio and decrease the risk associated with owning one single security. The advantage in the current environment is again that any gains you recognize on the sale of the concentrated position may be offset by other realized losses, and you may be able to also maintain the exposure to a certain sector by purchasing securities in the same industry as the security that was sold.

However, you need to be mindful of the wash sale rule when selling securities that constitute a concentrated position or otherwise. The wash sale rule was intended to discourage individuals from selling securities at a loss simply to claim a loss for tax purposes and then repurchasing the same or “substantially identical” securities within 30 days before or after the date of the sale.

For example, if you sold 100 shares of Exxon stock on March 15 for $1,000 and you originally paid $5,000 for that stock two years ago, you would have a long-term capital loss of $4,000 to offset other capital gains. If you subsequently repurchased 100 shares of Exxon stock on April 1, because you still want to own the stock and the price is lower than average; your original loss of $4,000 would be deferred since the repurchase was within the 30-day window.

There are ways you can sell a security to recognize the loss and still avoid the wash sale rule. One option is by selling the securities to generate the loss and buying an investment in the same sector that suits your investment and portfolio allocation goals. For example, you could sell 100 shares of Coca Cola and buy 100 shares of Pepsi Co stock or sell your position in the Vanguard Index 500 fund and subsequently purchase a similar position in the Vanguard Total Market Index ETF. Another, riskier strategy would be to simply purchase additional shares of the depressed security and then wait 31 days to sell the shares you originally held at a loss. However, this strategy is riskier and would increase your sector exposure for that 30-day period.

Any decision regarding investments should take into consideration the risk and reward of the investment strategy and should be discussed with your investment advisor.

Net Operating Losses (NOLs)
As a result of stay-at-home orders, social distancing, and forced closures implemented to minimize the spread of Covid-19, many businesses are expected to suffer significant losses in 2020. Many of these businesses are structured as pass-through entities and, therefore as a business owner, you would report these losses on your personal income tax returns. The CARES Act provided additional relief by reinstating the five-year NOL carryback for losses arising in any taxable year beginning after Dec. 31, 2017, and before Jan. 1, 2021. These were previously only allowed to be carried forward to future years. In addition, any NOLs that were generated after Dec. 31, 2017, were subject to a taxable income limitation. The CARES Act temporarily suspends this rule until after Dec. 31, 2020, to allow an NOL to fully offset income.

These changes allow you to carry back previous years’ losses that you were previously required to carry forward by amending your prior year returns to recognize the additional losses sooner rather than later. This will provide you with critical cash flow and liquidity from the prior year refund during the Covid-19 emergency. When considering carrying back of federal losses, you should also review the applicable state rules to determine if the losses can be carried back at the state level as well.

Excess Business Losses
The 2017 tax law limited your ability to deduct excess business losses under tax code Section 461(I) for tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026. Excess business losses are the amounts by which the total deductions attributable to all your trades or businesses, including pass-through entities, exceeds your total gross income and gains attributable to those trades or businesses in any given year.

If you file as single, you can take excess business losses up to $250,000, or $500,000 if you file jointly with your spouse, with any excess over that amount carrying forward to be applied against income in future years. For example, if your filing status is single, and you incurred a trade or business loss of $300,000 and had no other trade or business income in 2018, you could only deduct $250,000 against your other 2018 income, leaving the excess $50,000 to be carried forward and applied against your 2019 income.

The CARES Act amended this limitation for tax years beginning after Dec. 31, 2017, through Dec. 31, 2020, by reinstating your ability to deduct excess business losses that would have otherwise been disallowed. If you had losses limited in 2018 and/or 2019, you should consider amending your returns to take advantage of the losses to their fullest extent and again generate refunds to obtain cash flow that is especially essential during the Covid-19 crisis.

These are just a few of the tax planning strategies to consider in the current environment as a result of the CARES Act and other relief efforts in reaction to the Covid-19 global crisis. It remains to be seen what other coronavirus-relief packages may be passed by Congress to assist you through this uncertain time, but talk has already begun on “Phase 4” of the stimulus.
This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

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COVID BUSINESS ADVISORY ALERT

YOU APPLIED FOR THE PAYCHECK PROTECTION PROGRAM…NOW WHAT?
BY CARLOS MARTINS AND JOHN CONFREY

April 22, 2020
Amidst the COVID-19 economic crisis, there is a growing need for relief for small to middle-market companies. Beginning April 3, 2020 companies have been able to apply for the Paycheck Protection Program ("PPP"), and on April 10, 2020 individuals classified as independent contractors were also able to begin applying.

**When will the money run out?**
The Coronavirus Aid Relief and Economic Security Act (the “CARES Act”) included $359 billion for the PPP. Some speculated that by April 6, just two full business days after the launch of the PPP, the available funds could be all but gone. As of April 16, more than 1,000,000 loans for the total allocated funds of $349 billion have been approved. While these numbers are astonishing the treasury is seeking an additional $310 billion of additional funding...stay tuned!

**When will funding be received?**
It is being reported that some companies had already received funds as early as April 6, however for most there is still a wait. The good news is on April 8, the Treasury and the Small Business Administration (“SBA”) released a set of frequently asked questions that helped to clarify when funds need to be disbursed. Per the FAQ “The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.” This means funds should start flowing to the companies that need them in the near future and thus into the hands of their employees.

**How do loans get forgiven and what do I need to know?**
Receiving funds from the federal government at a 1% borrowing rate would entice any potential borrower. However, the most attractive component of the PPP is the potential for loan forgiveness, leading up to 100% “free money” as the PPP allows for forgiveness up to the initial loan amount. Unfortunately, the forgiveness calculation is not simple and has been further complicated due to the initial bill and several rounds of subsequent guidance having been released in such a short period of time.

The loan forgiveness piece is based upon the eight weeks following the date of the loan. There is a need to adjust the forgiveness amount based on three calculations:

1. 75% of the loan proceeds need to be used on payroll and payroll related costs. The forgiveness is reduced dollar for dollar to the extent that the other allowable costs exceed 25% of the loan amount.
2. The headcount during the eight-week period compared to the headcount during either February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020; provided the headcount is not cured by June 30, 2020
3. Payroll costs during the eight-week period compared to payroll costs during the most recent full quarter. The forgiveness is reduced to the extent that wages during the eight weeks are more than 25% of the most recent full quarter.

In order to receive forgiveness, the borrower will need to apply with their respective PPP lender and be able to support their forgiveness calculation with the relevant documentation. With the rush of the bill, subsequent guidance, applications, and approvals, there is belief that the forgiveness will be heavily reviewed as compared to the initial loan applications. The loan forgiveness calculation is much more involved and has the potential for pitfalls or missteps.

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COVID BUSINESS ADVISORY ALERT

PAYCHECK PROTECTION PROGRAM
“PPP” ROUND 2
BY RYAN VAUGHAN

April 24, 2020
The House of Representatives passed a $484 billion relief package for small businesses, hospitals, and expanded testing. The President signed the bill today, April 24, 2020.

The legislation represents the fourth round of coronavirus relief. The Paycheck Protection Program received the lion’s share of funding at $310, of which $60 billion is set aside for community banks and smaller credit unions. This round of the PPP is expected to be drained even faster than the 13 days it took for the first round to run out. We recommend contacting your bank immediately and coordinating with your advisors to complete the application.

The Economic Injury Disaster Loans program received $10 billion in funding.

Please contact your Mazars USA LLP professional for additional information.

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CARES ACT PROVIDES SIGNIFICANT INCENTIVE FOR DONATING TO CHARITY IN 2020
BY ISRAEL TANNENBAUM

April 8, 2020
On March 27, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), the Phase 3 COVID-19 emergency relief bill aimed at providing much-needed assistance to individuals, small businesses and not-for-profit organizations.

One item of particular interest in the CARES Act provides generous benefits to donors for the remainder of 2020. Section 2205 lifts the existing cap on deductions for annual cash contributions for those who itemize, raising it from 60% of adjusted gross income (“AGI”) to 100%. For corporations, the legislation raises the annual limit from 10% of the corporation’s taxable income to 25%.

This important provision is intended to encourage charitable giving during a time when many organizations are experiencing significant concern with future donations.

For example, a taxpayer who has $1 million of AGI for 2020 and makes a $1 million contribution to a public charity in the same year is allowed to take a charitable contribution deduction of the full $1 million for this year only. Previously, the income tax deduction would be limited to $600,000.

It should be noted that the higher AGI limit applies only to contributions made directly to public charitable organizations, and not contributions to donor advised funds, supporting organizations or private foundations.

**Mazars’ Insight**

While much of the CARES Act discussion has been focused on the Paycheck Protection Program, this key component of the act provides a significant incentive for charitable donations for donors who itemize, to increase their giving throughout the remainder of 2020. Organizations should proactively ensure that donors are aware of this added benefit, as this can provide a welcome increase in funding to organizations, especially those struggling due to the devastating virus.

Please contact your Mazars USA LLP professional for additional information.

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RELIEF OPTIONS FOR NON-501(C)(3) EXEMPT ORGANIZATIONS UNDER THE CARES ACT
BY ISRAEL TANNENBAUM AND ETHAN KAHN

April 13, 2020
On March 27, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), the Phase 3 COVID-19 emergency relief bill aimed at providing much-needed assistance to individuals, small businesses and not-for-profit organizations.

Although many of the provisions of the CARES Act only apply to entities organized under sections 501(c)(3) and 501(c)(19) of the Code, emergency relief for other types of not-for-profits, such as 501(c)(4) social welfare organizations and 501(c)(6) trade associations, is available under different sections of the act, including emergency Economic Injury Disaster Loan (EIDL) grants, and Retention Payroll Tax Credits.

Eligibility and Requirements for Emergency EIDL Grants
Section 1110 of the CARES Act injects an additional $10 billion into the Small Business Administration’s (“SBA”) existing EIDL program, expands eligibility for EIDL loans, and waives certain requirements for applicants, which include private not-for-profit organizations with 500 or fewer employees. The EIDL loans are available during the period of January 31, 2020 through December 31, 2020.

EIDL loans go up to $2 million. Small businesses are subject to a 3.75% interest rate, while nonprofits have a 2.75% interest rate. Terms of the loan go up to 30 years, and principal and interest can generally be deferred for up to four years.

This section waives the standard EIDL program eligibility requirements that:

- The borrower provide a personal guarantee for loans up to $200,000;
- That the eligible not-for-profit be in operation for one year prior to the disaster (except that the not-for-profit must have been in operation on January 31, 2020); and
- That the borrower be unable to obtain credit elsewhere. The SBA is also empowered to approve applicants for small-dollar loans solely on the basis of their credit score or "alternative appropriate methods to determine an applicant's ability to repay."

$10,000 Emergency Advance - EIDL Grant Program
For not-for-profit organizations seeking immediate funds, borrowers may receive a $10,000 emergency advance within three days after applying for an EIDL grant. If the application is denied, the applicant is not required to repay the $10,000 advance. Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or repaying obligations that cannot be met because of revenue losses.

Employee Retention Payroll Tax Credits
Section 2301 of the CARES Act creates a refundable payroll tax credit of up to $5,000 for each employee on the payroll when certain conditions are met.

To be eligible, an entity must have carried on a trade or business during calendar year 2020, and satisfy one of the following two tests:

- Have business operations fully or partially suspended during the calendar quarter because of orders from a government authority limiting commerce, travel, or group meetings due to COVID-19; or,
- Have a reduction in revenue of at least 50% in the first quarter of 2020 compared to the first quarter of 2019.

For not-for-profit organizations, the entity's entire operations must be taken into account when determining the decline in revenues.

Claiming the Credit
Eligible employers will report their total qualified wages and related credits for each calendar quarter on their federal employment returns (usually IRS Form 941, "Employer’s Quarterly Federal Tax Return"). Form 941 is used to report income and Social Security and Medicare taxes withheld by the employer from employee wages, as well as the employer’s portion of Social Security and Medicare tax.

Advancing the Credit
As noted in the FAQs put out by the IRS, because quarterly returns are not filed until after qualified wages are paid, some eligible employers may not have sufficient federal employment taxes set aside for deposit to the IRS to fund qualified wages. Following is a procedure established by the IRS for obtaining an advance of the credits:

- The eligible employer should first reduce its remaining federal employment tax deposits for wages paid in the same calendar quarter by the maximum allowable amount.
- If the anticipated credit for the qualified wages exceeds the remaining federal employment tax deposits for that quarter, the eligible employer can file Form 7200 to claim an advance refund for the full amount of the anticipated credit for which it did not have sufficient federal employment tax deposits.
- If the employer files Form 7200, it will need to reconcile this advance credit and its deposits on Form 941 (or other applicable federal employment tax return), and it may have an underpayment of federal employment taxes for the quarter.
- The eligible employer should not file Form 7200 if it fully reduces its required deposits of federal employment taxes otherwise due on wages paid in the same calendar quarter to its employees in anticipation of receiving the credits, and it has not paid qualified wages in excess of that amount.

For example: An eligible employer paid $20,000 in qualified wages to employees and is therefore entitled to a credit of $10,000. The employer is otherwise required to deposit $8,000 in federal
employment taxes, including taxes withheld from all its employees, on wages paid during the same calendar quarter. Assume that the eligible employer has no paid sick or family leave credits. The eligible employer can keep the $8,000 of taxes that it was otherwise required to deposit without penalties as a portion of the credit it is otherwise entitled to claim on Form 941. The eligible employer may file Form 7200 requesting an advance credit for the remaining $2,000.

Mazars’ Insight

Although much of the CARES Act spotlight has been on the programs that are afforded to 501(c)(3) entities, there are some very beneficial options that can be utilized by all not-for-profit organizations during this difficult time.

Organizations should consider how they can maximize these programs. Mazars is well versed and uniquely experienced in navigating these provisions, and we are here to help should you have any questions.

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NOT-FOR-PROFIT ALERT

RELIEF OPTIONS FOR NON-501(C)(3) EXEMPT ORGANIZATIONS UNDER THE CARES ACT
BY ISRAEL TANNENBAUM AND ETHAN KAHN

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NOT-FOR-PROFIT ALERT

IRS AND NEW YORK STATE EXTEND THE DEADLINE FOR NOT-FOR-PROFIT ORGANIZATIONS TO FILE FEDERAL TAX RETURNS
BY ISRAEL TANNENBAUM AND ETHAN KAHN

April 13, 2020
Recently, both the Internal Revenue Service (“IRS”) and the New York State Attorney General’s Charities Bureau provided guidance on the imminent tax due dates for not-for-profit organizations.

Federal
On April 9, 2020 the IRS issued Notice 2020-23, which provides an update to previously issued Notice 2020-18, and expands the relief previously offered to taxpayers on making federal tax payments and filing federal tax returns.

The notice automatically extends the deadlines for not-for-profit organizations with a federal tax payment obligation or a federal tax return filing obligation, which were due (originally or by a valid extension) on or after April 1, 2020 and before July 15, 2020 until July 15, 2020.

The extension applies to the following:

- Form 990
- Form 990-EZ
- Form 990-PF
- Form 990-T
- Form 990-W
- Form 1120-POL
- Form 4720

For organizations filing Form 1023 and Form 1024, the notice also extends the 27-month period to obtain recognition of exemption from the organization’s formation date.

The extension is automatic, and organizations do not need to file any extension forms or other requests to receive this relief. However, organization that need additional time to file beyond July 15, 2020 may choose to file the appropriate extension form by July 15, 2020 to obtain an extension on filing their return. Additional extension dates may not go beyond the original statutory or regulatory extension date.

New York
Additionally, the New York State Attorney General’s Charities Bureau has announced that, in order to assist charities during the COVID-19 pandemic, an automatic six-month extension of time for filing NY Form CHAR500 will be granted.

This extension applies to any organization whose filing deadline, including the standard automatic six-month extension, was originally after February 15, 2020.

For example, the annual financial report of organizations whose year-end is June 30, 2019, and who utilized the standard, automatic six-month extension, must be filed by May 15, 2020. However, with this additional automatic extension, the report is not due until November 15, 2020.

Please contact your Mazars USA LLP professional for additional information.

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A WINNING COMBINATION: IRS CLARIFIES INTERACTION OF PAYROLL TAX DEFERRAL AND PAYCHECK PROTECTION PROGRAM
BY ISRAEL TANNENBAUM AND ETHAN KAHN

April 17, 2020
One of the most important provisions of the Coronavirus Aid Relief and Economic Security Act (the “CARES Act”) is the employer payroll tax deferral provision in section 2302.

This allows employers of all sizes to defer the employer’s portion (6.2%) of the Social Security payroll tax on wages paid from March 27, 2020, through December 31, 2020. The amounts deferred must be repaid in equal installments on the “applicable dates,” half by December 31, 2021, and half by December 31, 2022.

There are, however, some limitations to the availability of this benefit. Most notably, the payroll tax deferral provision does not apply if a taxpayer obtains loan forgiveness under a PPP loan.

However, the IRS has recently released updated FAQs which clarify that employers can defer the payroll taxes up to the date of forgiveness, and then continue the deferral of such amounts up to the repayment dates listed in the statute – half by December 31, 2021, and the balance by December 31, 2022.

FAQ Clarification
The IRS clarified in FAQ #4 that employers who received a PPP loan can continue to defer payroll taxes after they receive the loan funds and can continue to do so up to the date they receive a forgiveness decision from their lender. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer’s share of Social Security tax due after that date.

The amount of the deposit and payment of the employer's share of Social Security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates," as noted above.

Mazars’ Insight
The IRS clarification provides a unique opportunity for organizations to take advantage of both the PPP and payroll tax deferral until they receive a decision from their lender on loan forgiveness.

As it may take some time until banks are able to process the numerous requests they will receive for the forgiveness program of the PPP, this deferral can be a great way for organizations to obtain some much needed relied during this challenging time.

At Mazars, we understand there is a lot of complex information being disseminated within a short time period. We would be happy to help your organization navigate these new opportunities. Feel free to contact us at any time for assistance.
GOOD NEWS FOR NOT-FOR-PROFITS ON PPP LOANS AND SINGLE AUDIT REQUIREMENTS

BY AVI LAZEROWITZ

May 6, 2020

INTRODUCTION

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The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) passed by Congress and signed into law on March 27, 2020 created the Paycheck Protection Program (“PPP”) to provide loans to assist businesses and not-for-profit (“NFP”) organizations through the economic crisis created by COVID-19. However, many NFPs were concerned that if they received a loan and it was forgiven, the funds would be considered a federally-funded government grant and could potentially cause them to be subject to a Single Audit.

Under OMB Uniform Guidance, Single Audit requirements apply for an entity that expends $750,000 or more of federal assistance (commonly known as federal funds, federal grants, or federal awards) received for its operations within one year. This rigorous, organization-wide audit is required by the federal government to provide assurance that the entity has appropriate internal controls in place and is in compliance with program requirements. Accordingly, organizations would need to budget for increased compliance costs related to the audit.

The Small Business Administration (“SBA”) has brought joy to the nonprofit industry by concluding that PPP Loans issued to nonprofits do not represent federal financial assistance as contemplated by Uniform Guidance. Therefore, these loans will not be presented on the Schedule of Expenditures of Federal Awards (“SEFA”) and will not be subject to Single Audit requirements. However, SBA loans issued under the Economic Injury Disaster Loan program, which provided financial assistance to NFPs that suffered substantial economic injury, will be considered federal financial assistance and are required to be on the SEFA.

These updates were issued in response to a letter issued by the American Institute of Certified Public Accountants’ Governmental Audit Quality Center to the U.S. Office of Management and Budget.

Nonprofits with any questions about Uniform Guidance audits, PPP loans, the EIDL program or other finance or audit issues may reach out to Mazars USA LLP for further guidance related to their specific situation.

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SBA ANNOUNCES NEW DEADLINE OF MAY 14TH TO REPAY PAYCHECK PROTECTION PROGRAM LOANS FOR “GOOD FAITH” CERTIFICATION

BY ISRAEL TANNENBAUM

May 7, 2020
The U.S. Treasury Department updated a list of “frequently asked questions” (FAQs) concerning the Paycheck Protection Program (PPP) that is administered by the Small Business Administration (SBA).

The FAQs were updated to include FAQ #43 which states that the SBA is extending the repayment date for PPP loans to May 14, 2020, for “good faith” safe harbor certification.

Borrowers must certify in good faith that their PPP loan request is necessary to support their ongoing operations, and must take into account their current business activity and their ability to access other sources of liquidity.

Borrowers do not need to apply for the extension. According to the FAQ, it will be implemented through a revision to the SBA’s interim final rule providing the safe harbor. The SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020.

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KEY CHANGES TO 2019 FORM 990
BY ISRAEL TANNENBAUM

May 11, 2020
The 2019 Form 990 contains key changes that not-for-profit organizations need to be aware of. This updated form will be utilized by calendar year organizations to report the activity for their 2019 tax year, and fiscal year organizations to report their fiscal 2020 finances (as the version of the form utilized is dependent on the year in effect at the onset of the fiscal year).

**New Electronic Filing Requirement**
Exempt organizations are required to electronically file Form 990 for tax years beginning on, or after, July 2, 2019. This means organizations with a calendar year end will need to electronically file their Form 990 for the 2020 tax year. There are a few limited exceptions to this requirement, including name change and short-year change of accounting period returns.

**Form 990 Instructions Updates**
The 2019 instructions for Form 990 contain the following adjustments:

1. Due to the repeal of the qualified transportation fringe benefit tax, references to unrelated business taxable income (“UBTI”) regarding IRC Section 512(a)(7) have been removed from the instructions. This, in turn, caused them to change the references to Form 990-T line 39.
2. Part VII, Section A: Additional guidance regarding the order of reporting compensation was included in the instructions. "List the persons required to be included in Part VII, Section A, in order from highest to lowest compensation based on the sum of columns (D), (E), and (F) for each person." Organizations that preferred itemizing these individuals alphabetically or according to their respective titles should take note of this change.

**Form 990 Filing**
The Form 990 and applicable schedules are updated for the 2019 filing year as follows:

1. **Penalties for late/delinquent filing** have been increased for the 2019 return filing. While organizations will have their exempt status automatically revoked for three consecutive years of non-filing, there are significant penalties that can be assessed for late filing of any individual return as follows:
   a) A penalty of $20 a day, not to exceed the lesser of $10,500 (previously $10,000) or 5% of the gross receipts of the organization for the year, can be charged when a return is filed late.
   b) Organizations with annual gross receipts exceeding $1,067,000 (previously $1,046,500) are subject to a penalty of $105 (previously $100) for each day failure continues with a maximum penalty for any one return of $53,000 (previously $52,000). The penalty applies on each day after the due date that the return is not filed.

2. **Part IV, Checklist of Required Schedules**, lines 26, 27 and 28 regarding related party transactions expands the individuals included in each question to include "creator or founder" or "substantial contributor."
   a) This definition was modified to conform with the definition of "interested person" for purposes of Schedule L, Part II, to include: the creator or founder, a substantial contributor, a family member of an interested person, and a 35% controlled entity of any interested person(s).
   b) It should be noted that the Instructions to Schedule L define a "substantial contributor" as "an individual or organization that made contributions during the tax year in the aggregate of at least $5,000, and whose contributions are required to be reported on Schedule B."

3. **Part X, Balance Sheet**
   a) Line 5 regarding receivables from related parties and line 22 payables to related parties expands the question to specifically include "creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons."
   b) Balance Sheet has been updated to include a line for net assets without donor restrictions and a line for net assets with donor restrictions to coincide with FASB ASU 2016-14, Not-for-Profit Entities (Topic 958) Presentation of Financial Statements of Not-for-Profit Entities. Previously this was categorized as unrestricted net assets, temporarily restricted net assets and permanently restricted net assets.

4. **Schedule B**: The instructions state that under proposed regulations, only filers exempt under IRC Sections 501(c)(3) and 527 are required to report the names and addresses of contributors on Schedule B — all other filers may enter "N/A" in place of contributors' names and addresses.
5. **Schedule E**: Instructions have been updated to reference Revenue Procedure 2019-22, which modified Revenue Procedure 75-50 to include a third method for private schools to meet the racial nondiscrimination publicity requirement. "An organization may answer 'Yes' to line 3 if the organization has publicized its racially nondiscriminatory policy on its primary publicly accessible Internet homepage at all times during its tax year in a manner reasonably expected to be noticed by visitors to the homepage."

**Mazars’ Insight**
Although there are relatively few changes to the 2019 990, there are some key additions and clarifications which adjust reporting requirements for this filing. Organizations should ensure that they are familiar with these as we approach the 990 filing season.

Additionally, with the already severe penalties for late filing of Form 990 being increased, Organizations should ensure they are current with their required filings. For organizations that may have missed a filing, Mazars has extensive experience assisting with achieving and maintaining compliance with these requirements and can help your organization get back in compliance.

Please contact your Mazars USA LLP professional for additional information.
NOT-FOR-PROFIT ALERT

SBA ISSUES NEW GUIDANCE FOR SMALL BUSINESS LOANS
BY ISRAEL TANNENBAUM

May 12, 2020
Recently, the Small Business Administration ("SBA") issued new guidance regarding eligibility for the Paycheck Protection Program ("PPP"), which should afford increased opportunities for not-for-profits to obtain funding under the PPP.

Specifically, the SBA has shed light on what they will consider a valid "good faith certification" regarding the necessity of PPP loans and lack of other funding options.

The change comes on the heels of a second round of funding for the PPP, after the initial $350 billion was depleted. The program has received $310 billion in fresh funds, and this clarification should enable more of those funds to be allocated to not-for-profit organizations, which do not have the funding options of capital markets, or other sources, to rely on.

It is critical for not-for-profit organizations to thoroughly analyze their finances to determine whether they qualify to receive these federal funds. On March 19, 2020, the Department of Justice ordered every U.S. Attorney’s Office to appoint a Coronavirus Fraud Coordinator and we expect there to be extreme scrutiny around these loans and their subsequent forgiveness.

Companies applying for coronavirus relief funds must certify that the loans are necessary and that they cannot tap other sources of funding, the SBA said. By definition, public companies have access to capital markets. For example, Shake Shack returned the $10 million it got through the PPP after it sold $150 million in new shares. As this will preclude many companies from receiving loans under this program, it should free up significant funds that can be allocated to not-for-profits, which do not have the ability to raise funds through stock sales.

“Borrowers still must certify in good faith that their PPP loan request is necessary,” the SBA said. “It is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.”

In a key detail, the SBA indicated that companies who already received funds from the PPP will be considered to have acted in good faith by paying back the relief loans before May 14, 2020. The original May 7 deadline was moved under additional guidance.

The PPP specifies that applicants must certify the application and indicates applicants may be penalized for "knowingly making a false statement to obtain a guaranteed loan from SBA," and knowingly using the funds for unauthorized purposes. False statements or other fraudulent conduct may subject a violator to significant federal criminal liability.

### Mazars' Insight

In light of this, and because Boards have a fiduciary responsibility, organizations should make sure to thoroughly document the basis for their qualification to receive PPP funds, and should ensure that this is approved through a written Board resolution.

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THE RAPIDLY EVOLVING IMPACT OF CORONAVIRUS (COVID-19) ON ASSET VALUATION AND ESTATE PLANNING
BY MELISSA GONZALEZ, BRUCE RICHMAN AND RICHARD BLOOM

April 1, 2020

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Estate planning is most likely not a high priority during these turbulent times, but the pandemic has caused many individuals to focus on their estate planning documents as part of the overall wellbeing of their families. At the bare minimum, ensuring that the basic documents, like wills, revocable trusts, powers of attorney, beneficiary designations and health care directives are in order is crucial. The COVID-19 crisis is also creating unique opportunities in wealth and estate planning.

Following are a few strategies which take advantage of this volatile time where asset values are depressed and interest rates are extremely low. One of the keys to many of these strategies is to obtain a supportable valuation of the assets involved in the strategy, especially when dealing with a closely-held business or fractional interest in an investment partnership.

- **Intra-Family Loan**: In a low interest rate environment, planning techniques involving intra-family transactions can be very effective. For instance, money can be lent from a senior family member to a junior family member at a very low interest rate (the April 2020 short-term and mid-term applicable federal rates are .91% and .99%, respectively). The junior family member can then invest the loan proceeds into an asset that is expected to grow over the loan period. Given the market conditions, the fair market value of many assets could be extremely depressed and discounted. In such cases, the appreciation above the interest rate charged passes to the junior family member, gift, estate and generation-skipping tax free. Further, the value of the assets remaining in the senior family member’s estate will be frozen at the loan amount plus the low amount of interest received.

- **Sale to an Intentionally Defective Grantor Trust (IDGT)**: The grantor can sell assets to a trust in exchange for a promissory note payable to the grantor for a term of years. The key here, as mentioned above, is that the appreciation of the assets sold is expected to be greater than the current interest rate to be charged. The use of an IDGT also allows the grantor to continue to pay the income taxes of the trust, without this payment being considered a gift, which further allows those assets held by the trust to grow tax free. When the promissory note has been fully paid, the assets remaining in the trust will pass to the trust beneficiaries free of any further gift, estate and generation-skipping transfer taxes (assuming the generation-skipping transfer tax exemption was allocated to the trust at time of the trust’s creation).

Similar to the intrafamily loan, it is also a way to freeze the value of the assets that remain in the grantor’s estate at the purchase price plus the low amount of interest received.

Choosing assets that are depressed in value and are likely to recover from the recent economic downturn will allow for unprecedented estate planning opportunities. If the assets involved are closely-held businesses or other hard to value assets, it is important to obtain a qualified appraisal of the assets sold to support the arms-length nature of the transaction and to avoid potential gift taxes.

- **Grantor Retained Annuity Trusts (GRATs)**: A GRAT involves a grantor transferring specific assets into a trust while retaining the right to receive an annual annuity payment for a certain number of years. When the term of the GRAT expires, the remaining assets held in the trust pass to the trust beneficiaries.

The IRS values the gift based on the value of the annuity stream and an assumed rate of return, using the interest rates dictated under IRC Section 7520 (the April 2020 rate is 1.2%). If the assets transferred into the GRAT appreciate in value above and beyond the applicable Section 7520 rate, the beneficiaries of the GRAT will receive this excess. Through proper planning, the assets can be transferred gift tax free. The use of assets that can take advantage of currently lower valuations, and are expected to recover from the recent economic downturn, will help ensure that significant future appreciation passes to the beneficiary.

- **Swapping assets with a grantor trust**: A grantor can put the grantor trust “swap power” to use and swap assets that have a currently depressed value, but are expected to rebound, for assets inside the trust that are more stable. This allows the appreciation of the asset during recovery to occur inside the trust and outside of the taxable estate. In addition, assets inside the trust that are depressed in value, and not expected to recover, can be transferred back to the grantor in exchange for cash or other assets that are expected to appreciate.

- **Charitable Lead Annuity Trusts (CLATs)**: Similar to a GRAT, in a CLAT, the grantor transfers specific assets to a trust in which a charity is designated to receive an annuity stream for a term of years. At the end of the term of years, the balance of the assets remaining in the trust passes to the beneficiaries. The value of the annuity stream passing to the charity is also affected by the IRC Section 7520 rate—the lower the 7520 rate, the higher the present value of the annuity passing to the charity and the lower the current value of the assets expected to pass to the beneficiaries. The amount actuarially expected to pass to your beneficiaries is the taxable gift amount. As with the previously discussed strategies, depressed asset values and the low-interest rate environment result in more assets passing to the beneficiaries.
• **Spousal Lifetime Access Trust (SLATS):** A SLAT is an irrevocable trust in which the grantor’s spouse is a potential beneficiary. Making gifts to a SLAT using depressed value assets can remove the transferred asset and its future appreciation from the grantor’s taxable estate. Assets in the SLAT could be distributed to the grantor’s spouse should the family need funds in the future. The risk of divorce and death of the non-donor spouse must be considered when implementing this type of trust.

The current environment is extremely challenging on many levels. However, it does provide an opportunity to review one’s estate planning documents and one’s overall estate plan to make sure everything is in order. Mazars USA LLP is here to assist you with making sure your estate plan and related documents meet the current needs of your family and is available to appraise those hard-to-value assets such as closely held businesses that may be part of your estate.

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INTRODUCTION

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On March 27, President Trump signed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), as the government’s third response to the COVID-19 crisis. These new tax laws and provisions along with the current economic environment significantly change the landscape for tax planning and create many possible opportunities.

**Required Minimum Distributions & Roth IRA Conversions**

The CARES Act waives required minimum distributions ("RMDs") from certain defined contribution plans and individual retirement accounts ("IRAs") for the 2020 tax year. This will not only give your portfolio the potential to grow but will also lower your taxable income and related tax liability for the 2020 tax year. Another opportunity to consider in conjunction with the waiver of 2020 RMDs is the conversion of a traditional IRA to a Roth IRA (as discussed below).

**Roth IRA Conversion**

This is a particularly beneficial strategy now, because not only could taxpayers’ 2020 taxable income be reduced (due to the absence of the 2020 RMD in addition to other potential losses as a result of the current environment), but also the tax effect of the conversion would be lower when the value of the assets in the account being converted are depressed.

The long-term advantages of a Roth IRA include no RMDs, which allows taxpayers to leave the assets in the account to continue to grow tax-free and potentially leave those assets to their heirs if the cash flow is not needed. In addition, any withdrawals taxpayers do take in the future would be tax-free, unlike traditional IRAs which are subject to ordinary income rates in the year of withdrawal.

**Exercise of Nonqualified Stock Options**

Nonqualified stock options ("NSOs") are a benefit that many companies include in employee compensation packages. Exercising NSOs may be beneficial in the current environment. When NSOs are exercised, taxpayers must include the difference between the exercise price and the fair market value of the stock at the date of exercise in their taxable income for that year, and the income is subject to ordinary income rates. An advantage of exercising NSOs currently, when many stock prices have declined, is that the taxable ordinary income may be greatly reduced since the spread between the exercise price and value of the stock may have decreased. This is assuming that the value of the stock is still greater than the exercise price of the options, as taxpayers would not want to exercise the options if the value of the stock is "under water" or has declined below the exercise price.

**Diversifying Concentrated Positions & Wash Sale Rules**

There are a few different strategies to address with respect to concentrated stock positions. During these times of uncertainty there may be an opportunity to sell concentrated positions that, although the stock price may have recently declined, would still generate capital gains. These gains may be offset by other realized losses that may have been generated due to the economic downturn. In contrast, if the concentrated position has declined to the point that it would generate losses, taxpayers may find it beneficial to not only get out of the concentrated position, but also harvest those losses to offset other capital gains that may be recognized elsewhere.

Another opportunity is to diversify the portfolio and decrease the risk associated with owning one single security. The advantage in the current environment is again that any gains recognized on the sale of the concentrated position may be offset by other realized losses, and the taxpayer may be able to also maintain the exposure to a certain sector by purchasing securities in the same industry as the security that was sold at a low price.

Taxpayers must keep the wash sale rules in mind when selling securities that constitute a concentrated position or otherwise. The wash sale rule was intended to discourage taxpayers from selling securities at a loss simply to claim a loss for tax purposes then repurchasing the same or “substantially identical” securities within 30 days before or after the date they sold the stock.

Taxpayers can avoid the wash sale rule by selling a security to recognize the loss, then buying an investment in the same sector that suits their investment and portfolio allocation goals. Examples include selling Coca Cola and buying Pepsi Co stock or selling Vanguard Index 500 fund and purchasing the Vanguard Total Market Index ETF. Another, riskier strategy would be to simply purchase additional shares of the depressed security and then wait 31 days to sell the originally held shares at a loss. This strategy, however, increases the taxpayers’ sector exposure for a period of time.

Any decision regarding investments should take into consideration the risk and reward of the investment strategy and should be discussed with an investment advisor.

**Net Operating Losses ("NOL")**

As a result of stay at home orders, social distancing and forced closures instituted to minimize the spread of COVID-19, many businesses are expected to suffer significant losses in 2020. Many of these businesses are structured as pass through entities and therefore, these losses are reported on the business owners’ tax returns. In order to help these taxpayers (individuals and corporations), the CARES Act reinstated the five-year NOL carryback for losses arising in any taxable year beginning after December 31, 2017 and before January 1, 2021. In addition, any NOLs that were generated after December 31, 2017 were subject to a taxable income limitation. The CARES Act temporarily suspends this rule until after December 31, 2020 to allow an NOL to fully offset income.

These changes will allow taxpayers to carry back previous years’ losses that they have been carrying forward by amending prior year returns to recognize additional losses. This will provide critical cash flow and liquidity during the COVID-19 emergency. When carrying back federal losses, taxpayers should also review the applicable state rules to determine if the losses can be carried back at the state level.

**Excess Business Losses (Section 461(l))**

The Tax Cuts and Jobs Act ("TCJA") of 2017 limited taxpayers’ ability to deduct excess business losses for tax years beginning
after December 31, 2017 and before January 1, 2026. Excess business losses are the amounts by which the total deductions attributable to all taxpayers’ trades or businesses, including passthrough entities, exceeds their total gross income and gains attributable to those trades or businesses in any given year. The at risk and passive loss rules are applied prior to determining excess business losses. A single taxpayer can take excess business losses up to $250,000 ($500,000 married filing jointly) with any excess over that amount carrying forward to be applied against income in future years.

The CARES Act amended this limitation for tax years beginning after December 31, 2017 through December 31, 2020, by reinstating taxpayers’ ability to deduct excess business losses that would have otherwise been disallowed. Taxpayers who had losses limited in 2018 and/or 2019 should consider amending their returns to take advantage of the losses to their fullest extent and again generate refunds to obtain the cash flow that is especially essential during the COVID-19 crisis.

These are just a few of the tax planning strategies that taxpayers should consider in the current environment as a result of the CARES Act and other relief efforts in reaction to the COVID-19 global crisis. It remains to be seen what other coronavirus-relief packages may be passed by Congress to assist taxpayers, as talk has already begun on “Phase IV” of the stimulus.

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TAX ALERT

CARES ACT PROVIDES RELIEF FOR NOT-FOR-PROFIT-ORGANIZATIONS
BY ISRAEL TANNENBAUM

April 1, 2020

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On March 27, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the Phase 3 COVID-19 emergency bill aimed at providing much-needed relief to individuals, small businesses and not-for-profit organizations.

501(c)(3) and 501(c)(19) Organizations with 500 or Fewer Employees
One of the principal pieces of the CARES Act is the provision of $349 billion for small businesses through federally backed loans under a modified and expanded Small Business Administration ("SBA") 7(a) loan guaranty program called the Paycheck Protection Program.

Paycheck Protection Program
Program Eligibility
Unlike other SBA programs that are limited to for-profit businesses, the Paycheck Protection Program defines eligible businesses to include not-for-profit organizations, but only those organized under Section 501(c)(3) of the Code, and "Veteran organizations," as defined in section 501(c)(19) of the Code.

Available Loan Amounts
Under the Paycheck Protection Program, qualifying not-for-profit organizations with 500 or fewer full-time and part-time employees will be eligible for SBA loans of up to $10 million and expedited loans of up to $1 million. These types of not-for-profit organizations can receive the lesser of $10 million or 2.5 times the average total monthly payroll costs from the prior year.

Allowable Use of Paycheck Protection Program Loans
The loans must be used for the following types of expenses:

- Payroll costs, including compensation to employees; payments for vacation, parental, family, medical or sick leave; severance payments; payments required for group healthcare benefits (including insurance premiums); retirement benefits; and state and local employment taxes.
- Interest payments on any mortgage obligations or other debt obligations incurred before February 15, 2020 (but not any payments or prepayments of principal).
- Rent/Utilities.

The loans cannot be used for compensation of individual employees, independent contractors, or sole proprietors who receive annual compensation of $100,000 or more; compensation of employees with a principal place of residence outside the United States; or leave wages already covered by the Families First Coronavirus Response Act (the Phase 2 coronavirus response package).

Required Certifications
A 501(c)(3) or 501(c)(19) not-for-profit is also not required to show that it cannot obtain credit elsewhere. Rather, such organizations must certify that the loan is necessary because of the uncertainty of current economic conditions, that they will use the funds to retain workers, maintain payroll, or make lease, mortgage, and utility payments, and that they are not receiving other funds for the same use.

Loan Repayment
Payments of principal, interest, and fees will be deferred for at least six months, but not more than one year, and interest rates are capped at 4%. The SBA will not collect any yearly or guarantee fees for the loan, and all prepayment penalties are waived.

In addition, the SBA has no recourse against any individual, shareholder, member, or partner of an eligible loan recipient for non-payment, unless the individual uses the loan proceeds for unauthorized purposes.

Loan Forgiveness Under Paycheck Protection Program
Under Section 1106 of the CARES Act, 501(c)(3) and 501(c)(19) not-for-profit organizations are eligible for loan forgiveness for 8 weeks, commencing from the origination date of the loan. Eligible payroll costs do not include annual compensation greater than $100,000 for individual employees.

The amount of loan forgiveness may be reduced if the organization reduces the number of employees as compared to the prior year, or if the employer reduces the pay of any employee by more than 25% as of the last calendar quarter. Organizations that re-hire workers previously laid off as a result of the COVID-19 crisis will not be penalized for having a reduced payroll for the beginning of the relevant period.

Organizations must apply for loan forgiveness to their lenders by submitting required documentation. If a balance remains after the organization receives loan forgiveness, the outstanding loan will have a maximum maturity date of 10 years after the application for loan forgiveness.

Application Process
The SBA has been directed to issue regulations to carry out all of the CARES Act provisions described above within 15 days of enactment of the law. We will be closely monitoring this as it develops.

Charitable Giving Incentives for Donors to 501(c)(3) Not-for-Profit Organizations
The CARES Act also provides charitable giving incentives to donors to 501(c)(3) organizations by expanding charitable giving incentives for donors to 501(c)(3) not-for-profit organizations as follows:

- Section 2204 of the CARES Act includes a new above-the-line deduction (non-itemized deduction applicable to all taxpayers) for total charitable contributions of up to $300. The incentive applies to contributions made in 2020.
• Section 2205 of the CARES Act lifts the existing cap on annual cash contributions for those who itemize, raising it from 60% of adjusted gross income to 100%.
• For corporations, the legislation raises the annual limit from 10% to 25% of the corporation’s taxable income.
• Food donations from corporations would be available to 25% of taxable income, up from the current 15% cap.

Other Types of Not-for-Profit Organizations with 500 or Fewer Employees
Although the aforementioned provisions of the CARES Act only include entities organized under sections 501(c)(3) and 501(c)(19) of the Code, emergency relief for other types of not-for-profits, such as 501(c)(4) social welfare organizations and 501(c)(6) trade associations, is available under a different section of the Act, addressing emergency Economic Injury Disaster Loan (“EIDL”) grants. Furthermore, all not-for-profit that do not receive SBA Paycheck Protection Program 7(a) loans are also eligible for Employee Retention Payroll Tax Credits under Section 2301 of the CARES Act.

Eligibility and Requirements for Emergency EIDL Grants
Section 1110 of the CARES Act injects an additional $10 billion into SBA’s existing EIDL program, expands eligibility for EIDL loans, and waives certain requirements for all applicants, which include private not-for-profit organizations with 500 or fewer employees. This is applicable for the period January 31, 2020 through December 31, 2020.

This section waives the standard EIDL program requirements that:

1. The borrower provide a personal guarantee for loans up to $200,000;
2. The eligible not-for-profit be in operation for one year prior to the disaster (except that the not-for-profit must have been in operation on January 31, 2020); and
3. The borrower be unable to obtain credit elsewhere. The SBA is also empowered to approve applicants for small-dollar loans solely on the basis of their credit score or “alternative appropriate methods to determine an applicant’s ability to repay.”

It should also be noted that entities organized under section 501(c)(3) or 501(c)(19) may apply for an EIDL grant in addition to a loan under the Paycheck Protection Program, as long as the loans are not used for the same purpose.

$10,000 Emergency Advance - EIDL Grant Program
For not-for-profit organizations seeking immediate funds, borrowers may receive a $10,000 emergency advance within three days after applying for an EIDL grant. If the application is denied, the applicant is not required to repay the $10,000 advance.

Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or repaying obligations that cannot be met because of revenue losses.

Employee Retention Payroll Tax Credits
Section 2301 of the CARES Act creates a refundable payroll tax credit of up to $5,000 for each employee on the payroll when certain conditions are met. To be eligible, an entity must have carried on a trade or business during calendar year 2020, and satisfy one of the following two tests:

1. Have business operations fully or partially suspended during the calendar quarter because of orders from a government authority limiting commerce, travel, or group meetings due to COVID-19; or,
2. Have a reduction in revenue of at least 50% in the first quarter of 2020 compared to the first quarter of 2019.

For not-for-profit organizations, the entity’s whole operations must be taken into account when determining the decline in revenues.

Importantly, 501(c)(3) and 501(c)(19) organizations receiving emergency SBA Paycheck Protection Program 7(a) loans would not be eligible for these payroll tax credits, so it’s important for organizations to determine what is most beneficial prior to applying.

Mazars’ Insight
The Phase 3 Act is a welcome and much needed boost to organizations struggling to continue operations and meet payroll due to the devastation caused by COVID-19.

While there are several options to receive relief under the CARES Act, many complex factors must be considered when determining the most beneficial assistance program to select. Mazars USA’s COVID Business Advisory Services Team is available to assist organizations with getting the help they need to continue performing their critically important missions.

We are closely monitoring legislative and regulatory developments. We expect additional guidance from the SBA regarding how to apply for Paycheck Protection Program loans in the coming days.

For additional information regarding COVID-19 tax issues, please visit our dedicated resource center at www.mazarsusa.com/covid19
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THE CARES ACT – FIXING THE RETAIL GLITCH ISN’T EASY

BY MARK PELTZ, JOSEPH STRICKLAND, LISA PEDATELLA AND MICHELE LARRINAGA

April 9, 2020

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On March 27, Congress passed, and the President signed, the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), which is meant to provide tax relief, economic stimulus, and emergency business lending.

Within the CARES Act is a provision to correct a previous oversight, the “Retail Glitch,” and assign a 15-year class life to Qualified Improvement Property (“QIP”). The correction applies retroactively to improvements placed in service after September 27, 2017. As a result, QIP is now eligible for 100% bonus depreciation and can be depreciated over 15 years as opposed to the prior 39-year requirement. Additionally, taxpayers may choose a 20-year depreciable life based on the alternative depreciation system (ADS), in order to avoid the IRC section 163(j) limitation.

In addition to correcting the QIP recovery period, the CARES Act also amended the definition of QIP that is eligible for bonus depreciation. Based on the updated definition, to qualify for bonus depreciation in this context, improvements must be “made by the taxpayer.” As such, taxpayers who acquired previously ‘used’ QIP (as opposed to ‘original use’ QIP) would not be entitled to bonus depreciation.

Further, not all improvements are automatically considered 15-year QIP eligible for bonus depreciation. Rather, QIP is defined as any improvement to an interior portion of a building which is nonresidential real property, if the improvement is placed in service after the date the building was first placed in service. For example, costs associated with HVAC equipment located on the roof, exterior electrical, exterior painting, rooftop improvements, site utilities, paving, roofing, windows, exterior doors, and siding, are not Qualified Improvement Property.

Expenditures which are attributable to the enlargement of a building, installations of elevators or escalators, or changes to the structural framework of the building are excluded from the definition of QIP. This creates a problem where non-qualifying costs are co-mingled with improvement costs that do qualify.

**Mazars’ Insight**

The retail glitch negatively impacted retailers, grocers, restaurants, and many other businesses that routinely invest in QIP. Notably, these industries have been further negatively impacted by the coronavirus pandemic, as many have been required to close or reduce hours, especially in New York, New Jersey, and the surrounding areas. The retail glitch fix should enhance a business’s liquidity, whether they take advantage of bonus depreciation, or a shorter depreciable life.

Taxpayers who choose not to amend prior year returns may be able to make a request for an accounting method change to capture additional depreciation. Whether the method change may be done via automatic procedures remains in question, pending future guidance from the IRS.

Our Cost Segregation Group are experts at breaking out QIP from other construction costs. We assist taxpayers that make improvements to their leasehold, tenant, retail, or restaurant space by identifying any QIP that may be present within these properties and providing the applicable analysis and reports to support these classifications.

Please contact your Mazars USA LLP professional for additional information.

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THE CARES ACT AND NET OPERATING LOSSES
BY NATHAN PLISKIN

April 9, 2020

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The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), enacted on March 27, 2020, has introduced taxpayer-friendly changes to the net operating loss ("NOL") regime. The changes impact a wide-range of tax years, potentially back to tax year 2013, and ease restrictions on NOL usage to promote tax refund claims that will help inject capital into businesses during the current economic turmoil.

I. NOL Rules Before the CARES ACT
The rules applicable to tax years before 2018 generally allowed a taxpayer to carry back an NOL to the two years preceding the loss year or carry forward an NOL for the subsequent 20 years. Such losses were fully deductible during either the carryback or carryforward period.

The Tax Cuts and Jobs Act of 2017 ("TCJA") instituted a new regime, beginning in tax year 2018, which eliminated NOL carrybacks and provided for indefinite NOL carryforwards. However, a taxpayer’s deduction of post-TCJA NOLs in any carryforward year was limited to 80% of (pre-NOL deduction) taxable income in such year. Pre-TCJA NOLs remained fully deductible.

The Care Act generally makes changes to tax years starting in 2018, but allows carrybacks to tax years 2013-2017. These changes are discussed below.

II. Carrybacks Allowed For Tax Years 2018-2020
A. Five-Year Carryback Claim Allowed (Into 35% Corporate Rate Environment)
The CARES Act provides for an expansive carryback rule applicable to tax years beginning after December 31, 2017 and before January 1, 2021. For losses generated in these years (2018, 2019, and 2020 for a calendar year taxpayer), the CARES Act creates a new five-year carryback period. Taxpayers may now carry back these losses to the five tax years preceding the year in which the loss was incurred. Thus, a taxpayer may potentially carry back an NOL generated in 2018 to the 2013, 2014, 2015, 2016, and 2017 tax years.

For corporate taxpayers, the allowance of an NOL carryback to pre-2018 tax years allows losses to be deducted against income taxable up to the 35% top marginal tax rate in effect pre-TCJA. Every $100 of NOL that can be carried back to a pre-2018 tax year may generate a tax refund of $35 as opposed to a $21 cash tax value when utilized in tax year 2018 or later. Thus, such pre-2018 refunds may increase the value of each NOL utilized by 67% due to the higher rate of tax applicable to the income shielded by the NOL. Corporations in immediate need of capital should consider the potential value of refund claims that may now be available.

Individuals are likewise allowed a five-year carryback period, although the rate differential is not as significant for non-corporate taxpayers. Significantly, the CARES Act has also repealed the section 461(l) excess business loss disallowance rule for tax years beginning before January 1, 2021. This rule, created by the TCJA, has been applicable to non-corporate taxpayers and limited the amount of losses deductible by individual taxpayers beginning in tax year 2018. With the temporary retroactive repeal, losses that had been limited under section 461(l) are now fully allowed and may create NOLs that could be carried back to prior years, resulting in tax refunds.

B. Waiver of Carryback
Under the general rule for NOL carrybacks, a taxpayer must either carry back the entire NOL or elect to waive the entire carryback period. Thus, taxpayers may face a complicated and significant choice between carrying NOLs back across five different years or waiving the entire carryback period.

Mazars’ Insight
A review of the taxpayer’s specific circumstances in each relevant tax year is warranted prior to making refund claims. A number of tax provisions are calculated based upon (post-NOL deduction) taxable income, thus taxpayers need to run the numbers before determining that it is preferable to carry back the NOLs. Additional complications can arise where a corporate taxpayer has been involved in a merger or acquisition or has been part of a consolidated corporate group. Purchase agreements executed after the TCJA may not contemplate NOL carrybacks. An NOL carryback to a tax year with a section 965 inclusion presents several complications (discussed below).

For noncorporate taxpayers, the CARES Act repealed the section 461(l) excess business loss disallowance rule for tax years beginning before January 1, 2021. The temporary repeal of section 461(l) will generate refunds for some individual taxpayers in the 2018 and 2019 tax years, reducing their existing NOL carryforward.

The election to waive the carryback period with respect to tax years 2018 and 2019 must be made by the due date (including extensions) of the taxpayer’s return for the first taxable year ending after March 27, 2020. A separate election to waive the carryback period can be made with respect to each tax year (e.g., a taxpayer may carry back 2018 NOLs but elect to waive the carryback period for 2019 NOLs). Taxpayers therefore should consider all potential ramifications of the five-year carryback periods before filing tax year 2020 income tax returns.

C. Technical Correction to Allow Fiscal Year 2018 NOL Carryback
For fiscal tax years beginning in 2017 and ending in 2018, the CARES Act provides an extended deadline to claim a refund attributable to NOLs generated in such year. A refund based upon a carryback of such fiscal year NOLs will be treated as timely filed if the refund is claimed by the 120th day after the date of enactment.

This change is a technical correction of a TCJA drafting error that unintentionally left fiscal year taxpayers unable to carry back NOLs
from tax years beginning before January 1, 2018 and ending after December 31, 2017.

D. Deferral of 2019 Tax Payment When NOL Anticipated
Taxpayers may potentially gain additional liquidity by deferring payments of tax year 2019 income taxes (which have already been postponed until July 15, 2020 under Notice 2018-20).

A further deferral for corporations should be available under section 6164, which allows companies to receive an extension of time to pay tax relating to the preceding tax year if an NOL is expected for the current year. Section 6164 is an old provision, but is newly relevant in light of the CARES Act’s reintroduction of NOL carrybacks.

Mazars’ Insight
Corporations have historically received an extension under section 6164 by filing Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback. The IRS has not issued any guidance on the use of Form 1138 with respect to the 2019 tax year, however we expect that corporate taxpayers will be able to take advantage of expected 2020 losses in 2019 using this provision. Using this provision will mean that corporate taxpayers will not have to pay 2019 taxes and will then wait until after the end of the 2020 tax year to claim a refund.

Note, however, interest will accrue on the unpaid 2019 tax from July 15, 2020 through the due date for the tax year 2020 return. In other words, the IRS allows for the deferral of tax due, but will charge interest on amounts deferred until the due date of the loss year return. Finally, penalties will be assessed if the taxpayer fails to sufficiently estimate the anticipated NOL, resulting in an underpayment of tax.

E. Carryback Rules and the Section 965 Transition Tax
The CARES Act also created rules to prevent taxpayers from using NOL carrybacks to offset the section 965 transition tax, generally applicable with respect to the 2017 tax year. Section 965 required United States shareholders to pay a transition tax on the untaxed foreign earnings of certain foreign corporations as if those earnings had been repatriated to the United States.

Where a taxpayer carries back an NOL to a year with a section 965 inclusion, the NOL carryback will not be utilized to offset the section 965 inclusion (via a deemed section 965(n) election). Because section 965 inclusions are taxed at a discounted rate, it is generally preferable not to offset such income with NOLs.

Taxpayers should also be cognizant that the carryback of NOLs to such years may impact the foreign tax credit (“FTC”) limitation computation, which will result in a change to the section 965 liability (even though it is not offset by the NOL carryback). A portion of the NOL may also be considered foreign source, which would likewise adversely affect the FTC limitation. Last, it appears that any overpayment of tax generated in such years by virtue of the NOL carryback will be applied first to reduce the overall section 965 tax liability (including amounts payable under an eight-year installment) before being refunded to the taxpayer. Accordingly, taxpayers must carefully consider the interaction between NOL carrybacks and Section 965.

Because of these issues, the CARES Act makes a further modification to the election to waive the NOL carryback period when there is a section 965 inclusion in a relevant tax year. As discussed above, such election generally waives the entire carryback period (i.e. all five years). However, there is a special rule which allows taxpayers to exclude only the section 965 inclusion year without waiving the entire five-year carryback period. This will allow taxpayers to avoid the problems with NOL carrybacks to a year with a section 965 inclusion.

F. Carryback Restrictions For REITS
The CARES Act contains special rules that govern the use of NOLs by taxpayers that are taxable as REITs. The rules prevent REITs from carrying back any REIT year NOL to a preceding year. The rule also prevents non-REIT year NOLs from being carried to any preceding REIT year.

G. Special Carryback Rules for Insurance Companies
Like other taxpayers, insurance companies are entitled to a five-year NOL carryback period under the CARES Act. The law also provides that any NOL carryback by an insurance company to a pre-2018 tax year is treated as an operations loss carryback under section 810 (before that section’s repeal by the TCJA).

III. Taxable Income Limitation Temporary Repeal and Modifications
A. Temporary Repeal of Taxable Income Limitation
Under the CARES Act, the limitation on the use of NOL carryforwards to 80% of (pre-NOL) taxable income has been repealed for tax years beginning before January 1, 2021. Accordingly, existing NOL carryforwards may be fully deducted against 2020 income (in the absence of other restrictions). This rule applies to prior tax years as well. Thus, taxpayers that were subject to the 80% limitation on their 2018 and 2019 income tax returns may file their return, or amend a prior return, to claim additional NOLs in excess of the repealed 80% taxable income limitation.

B. Modified Taxable Income Limitation
The limitation of NOLs to 80% of taxable income is reinstated for any tax year beginning after December 31, 2020. In addition, the CARES Act contains certain changes to this calculation, resolving some statutory ambiguity (in ways that may not be beneficial to taxpayers).

Under the CARES Act, the 80% of taxable income calculation takes place after deducting pre-TCJA NOLs (which are deductible in full). Accordingly, this reduces the amount of any post-TCJA
NOL carryforward that may be deducted in any tax year (after 2020) in which a taxpayer also deducts pre-TCJA NOLs.

Conversely, the 80% of taxable income calculation does not account for the section 199A passthrough deduction or the FDII or GILTI deductions under section 250. This is because both sections 199A and 250 limit the deductions thereunder to taxable income. In some instances, this will reduce total taxable income by allowing a greater amount of post-TCJA NOLs to be deducted. In other instances, it will cause the utilization of post-TCJA NOLs to decrease the tax benefits that would otherwise be available in that year under sections 199A or 250.

IV. Corporate Alternative Minimum Tax

The CARES Act accelerates the potential for refund claims for corporate alternative minimum tax (“AMT”) credit carryforwards from pre-TCJA tax years.

The TCJA eliminated the corporate AMT, but provided that existing corporate AMT credits can offset regular income tax liability for any year. Moreover, the TCJA allowed corporate taxpayers to claim a refund of AMT credits in taxable years beginning after December 31, 2017 in an amount equal to 50% of the excess of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability. For tax year 2021, the 50% ratio increases to 100%, thereby allowing corporate taxpayers to claim a refund for any remaining AMT credit by the end of tax year 2021.

The CARES Act modifies the refundable AMT credit calculations created by the TCJA to accelerate the fully refundable credit from tax year 2021 to tax year 2019. Thus, taxpayers with remaining pre-TCJA AMT credits will be able to claim a refund on account of these credits in the 2019 tax year.

As a result of the interplay between the revised NOL provisions and various other provisions in the Internal Revenue Code, care must be taken before amending tax returns and/or waiving carryback provisions.

Please contact your Mazars USA LLP professional for additional information.
CRUCIAL PARTNERSHIP RELIEF AVERTS BBA LIMITATIONS FOLLOWING PASSAGE OF THE CARES ACT
BY TIMOTHY EVANS AND MICHELE LARRINAGA

April 10, 2020
As taxpayers and practitioners spent the past two weeks parsing the various items of retroactive tax relief provided by the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), partnerships were left ruing the Centralized Audit Regime implemented by the Bipartisan Budget Act of 2015 (the “BBA”), which precluded them from obtaining current relief.

However, on April 8, 2020, the IRS released Rev. Proc. 2020-23 offering welcome relief to partnerships, essentially allowing them to file amended returns for the 2018 and 2019 taxable years outside of the Administrative Adjustment Request (“AAR”) procedure of the BBA and, most importantly, receiving the benefits of such adjustments currently.

**Background**

Under the BBA regime, generally effective for partnership taxable years beginning after December 31, 2017, a partnership cannot amend a previously filed return. Rather, the partnership must file an AAR to make changes which are, in most cases, taken into account in the year that the AAR is filed.

When an AAR is filed by the partnership, the affected partners are entitled to their share of any resulting benefit on their current year federal income tax return. This procedural nuance would force partners to wait until they file their 2020 income tax return in 2021 to receive any benefits afforded by the CARES Act or other provisions that were the subject of an AAR submitted now. The application of the BBA in this context clearly put partnerships at a disadvantage.

**Rev. Proc. 2020-23**

Given this disparate treatment, the IRS released Rev. Proc. 2020-23, which enables partnerships to file amended returns for 2018 and 2019 to take advantage of retroactive CARES Act benefits. Importantly, the granted relief also permits partnerships to file amended returns to make non-CARES Act changes provided the amended return is submitted prior to September 30, 2020.

BBA partnerships looking to file amended returns will use Form 1065, checking the “amended return” box on page 1 and providing amended Schedules K-1 to partners. Additionally, the partnership should mark both the Form 1065 and the amended Schedules K-1 “FILED PURSUANT TO REV. PROC. 2020-23.” Filing may be performed via paper or electronic means.

The Rev. Proc. also notes that if a partnership has already filed an AAR in relation to 2018 (or 2019), it may still file an amended return, but it must use the items as adjusted by the filed AAR.

**Additional Considerations**

Rev. Proc. 2020-23 specifically addresses amended returns in the context of a partnership subject to GILTI in 2018. Guidance provides partnerships that relied on Notice 2019-46 to apply the Proposed Regulation 1.951A-5(b) hybrid approach may continue to follow this approach when amending the 2018 return provided the new Schedules K-1 issued are consistent with the procedural requirements of Notice 2019-46. Equally, partnerships that applied the final GILTI regulations (aggregate approach) may continue to follow the final regulations provided new Schedules K-1 are consistent with such treatment.

While not explicitly prohibited in the Rev. Proc. 2020-23, it is an open question whether taxpayers would be permitted to amend a partnership return prepared on the proposed regulation hybrid approach for the purpose of adopting the final regulation aggregate approach. Such an amendment may result in a refund for partners not considered US shareholders in their own right.

Please contact your Mazars USA LLP professional for additional information.
IRS ISSUES NOTICE 2020-23 PROVIDING EXTENSIVE RELIEF FOR TAX FILINGS, PAYMENTS AND OTHER TAX SENSITIVE MATTERS
BY JESSE SIROTKIN AND MARK PELTZ

April 10, 2020
The Internal Revenue Service (“IRS”) issued Notice 2020-23 on Thursday April 9, granting additional tax relief to taxpayers that have payment and filing deadlines from April 1, 2020 to July 15, 2020. The relief applies to individuals, trusts, estates, corporations, and other noncorporate tax filers.

While Notice 2020-23 identifies specific forms and payments subject to relief already provided in prior notices, it also expands the list, effectively postponing until July 15 most actions required to be taken by taxpayers from April 1 through July 14.

The relief granted by Notice 2020-23 is automatic and does not require the filing of an extension or other correspondence with the IRS. If a taxpayer needs additional time to file beyond July 15, they may file the appropriate extension form by July 15, 2020. However, the taxpayer’s extension date may not exceed the original extension date.

Federal tax forms and payments covered by the relief include:

- 1040 series (Individual income tax payments and return filings) including Forms 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR and 1040-SS.
- 1065 (U.S. Return of Partnership Income).
- 990-PF (Return of Private Foundation).
- 1041 series (Estates and Trusts income tax payments and return filings) including Forms 1041, 1041-N and 1041-QFT.
- 706 series (Estate and Generation Skipping tax payments and return filings) including Forms 706, 706-NA, 706-A, 706-QDT, 706-GS(D), and 706-GS(D-1).
- Gift and Generation Skipping tax payments and return filings on Form 709 that are due on the date an estate is required to file Form 706 or Form 706-NA.
- 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent).
- Estate tax payments of principal or interest due as a result of an election made under sections 6166, 6161, or 6163.

The relief also includes all schedules, returns, and other forms filed as attachments, such as schedule H, schedule SE, and Forms 3520, 5471, 5472, 8621, 8858, 8865, and 9938.

Elections: Elections that are made or required to be made on a timely filed form specified in the Notice (or attachment to a specified form) shall be timely made if filed on such specified form or attachment on, or before, July 15, 2020.

Estimated taxes: The notice postpones the June 15 deadline for estimated tax payments to July 15, providing that second quarter payments are now also due on July 15, along with first quarter payments. This applies to Forms 990-W, 1040-ES, 1040-ES(NR), 1040-ES(PR), 1041-ES, and 1120-W.

Installment payments under Sec. 965(h): Installment payments of the Sec. 965 transition tax due on or after April 1, 2020, and before July 15, 2020, are postponed to July 15, 2020.

Deadlines for any of the following procedural actions occurring from April 1 through July 14 are also extended to July 15:

- Filing a petition with the Tax Court;
- Appealing a decision by the Tax Court;
- Filing a claim for credit or refund of any tax; and
- Bringing suit upon a claim for credit or refund of any tax.

Postponement of IRS Acts:
The IRS extended its own deadlines by an extra 30 days to perform time-sensitive acts if the last date for performance is between April 6, 2020 and July 15, 2020. This affects taxpayers under examination, with cases at the Independent Office of Appeals, and those who submit amended returns or payments for tax on which the assessment period would expire between April 6, 2020 and July 15, 2020.

Notice 2020-23 clarifies many questions that taxpayers have had since the release of Notice 2020-17. Although some questions still remain, it highlights that the IRS is attempting to provide filing and payment relief in most situations due to the impact of COVID-19.

Please contact your Mazars USA LLP professional for additional information.
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TAX ALERT

IRS ISSUES GUIDANCE ON PAYROLL TAX DEFERRAL INCLUDING CLARIFICATIONS RELATED TO INTERACTIONS WITH OTHER CARES ACT PROVISIONS

BY RYAN VAUGHAN AND JESSE SIROTKEN

April 14, 2020

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The Internal Revenue Service issued Frequently Asked Questions ("FAQs") clarifying an employer’s ability to defer the deposit and payment of the employer’s social security taxes provided under section 2302 of the Coronavirus, Aid, Relief and Economic Security ("CARES") Act. The FAQs can be found in the link below.


Section 2302 of the CARES Act “Delay of Payment of Employer Payroll Taxes” allows employers and self-employed individuals to defer payment of the employer’s share of the Social Security tax with respect to their employees and a portion of the self-employment taxes from March 27, 2020 through December 31, 2020. The deferred employment tax is required to be paid over the following two years, with half of the deferred amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The provision, however, disallows deferral for employers who have Payroll Protection Program ("PPP") loans forgiven. This restriction resulted in uncertainty for employers who have, or plan to apply for the PPP, but don’t know whether the PPP loan will be granted or ultimately forgiven.

The FAQs address this concern explaining that employers who have received a PPP loan, but whose loan has not yet been forgiven, may defer deposit and payment of the employer's share of social security tax beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan. Once an employer receives a decision from the lender that its PPP loan is forgiven, the employer may not continue to defer the deposit and payment of the employer's share of social security tax due. However, the employer’s share of social security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred, meaning that half of such deferred amounts will be due on December 31, 2021 and the other half on December 31, 2022. The IRS has not yet indicated exactly how much loan forgiveness will be required before it shuts off the payroll tax deferral.

Additionally, the FAQs confirm a taxpayer’s ability to defer payroll tax amounts and claim the payroll tax credits under the Families First Coronavirus Relief Act ("FFCRA") and CARES Act. An employer is entitled to defer deposit and payment of the employer’s share of social security tax prior to determining whether the employer is entitled to the paid leave credits under sections 7001 or 7003 of FFCRA or the employee retention credit under section 2301 of the CARES Act, and prior to determining the amount of employment tax deposits that it may retain in anticipation of these credits, the amount of any advance payments of these credits, or the amount of any refunds with respect to these credits.

The deferred payroll tax amounts for the first quarter of 2020 are reported on the employer’s second quarter, 2020 Form 941. The IRS will be providing instructions on how to report the deferral on Form 941, but explained that no special election will be required to take the deferral.

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NEW JERSEY EXTENDING TAX FILING AND PAYMENT DEADLINE
BY RICHARD BLOOM

April 14, 2020

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Governor Phil Murphy has announced his intention to sign legislation today extending the deadline for taxpayers required to make and file an annual or quarterly return or report pursuant to the New Jersey Gross Income Tax Act or the Corporation Business Tax Act originally due on April 15, 2020 to July 15, 2020.

The governor, Senate President Steve Sweeney and Assembly Speaker Craig Coughlin had previously issued the following joint statement on April 1 regarding the New Jersey tax filing deadline:

“The ongoing COVID-19 pandemic has caused hardships, financial strain, and disruptions for many New Jerseyans and New Jersey businesses. As part of our response, we have reached agreement that the state income tax filing deadline and the corporation business tax filing deadline will be extended from April 15 to July 15.”

The New Jersey Division of Taxation has published a list of due dates for various returns on its website (https://www.state.nj.us/treasury/taxation/duedates.shtml).

Some of the returns and their respective payment obligations that now have a July 15 due date include the following:

- 2019 Individual Income Tax Returns
- 2019 Fiduciary Income Tax Returns
- 2019 Corporate Business Tax Returns
- 2019 S Corporation Business Tax Returns
- 2019 Partnership returns
- First quarter 2020 individual income tax estimates
- First quarter 2020 corporate business tax estimates
- First quarter 2020 fiduciary income tax estimates

Penalties and interest will not be imposed on the balance of 2019 income tax due between the original due date and July 15.

Please note that second quarter 2020 estimates are still due June 15 and have not been extended.

This bill provides welcome relief to many taxpayers in these unprecedented times.

Please contact your Mazars USA LLP professional for additional information.

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TAX ALERT

IRS INSTITUTES PEOPLE FIRST INITIATIVE
BY NATHAN PLISKIN AND MARK PELTZ

April 14, 2020

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In its ongoing effort to help American taxpayers, the Internal Revenue Service (“IRS”) announced a program called the People First Initiative (“PFI”) to provide additional relief from a variety of matters ranging from easing payment guidelines to postponing compliance actions. The temporary relief offered by the PFI includes postponing Installment Agreements, Offer in Compromise payments, and stopping many collection and enforcement actions.

**Installment Agreements**
Payments under existing Installment Agreements due before July 15 are suspended and taxpayers who currently cannot comply with the terms on an Installment Agreement will not be penalized. The IRS will not hold taxpayers in default on any Installment Agreement for nonpayment during this period. However, interest will continue to accrue.

**Offers in Compromise**
Taxpayers will have the option to postpone, until July 15, (i) the time to respond to requests for additional information on pending OIC applications, (ii) the closure of pending OIC applications, and (iii) payments on any accepted OIC.

**Other Collection and Enforcement Actions**
A wide range of collection and enforcement actions are being suspended until July 15, including automated liens and levies, as well as passport certifications (preventing renewal or issuance of passports). The IRS generally will not commence new field office or correspondence examinations before July 15 and most field collection activities are suspended. Despite this, the IRS has reserved some leeway to continue to target high-income non-filers and take actions to preserve the statute of limitations for collections during this period.

Pursuant to the announcement, the IRS may expand or continue to delay enforcement of the PFI later in the year.

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BY RYAN VAUGHAN AND JESSE SIROTKIN

April 14, 2020

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The deferred payroll tax amounts for the first quarter of 2020 are reported on the employer’s second quarter, 2020 Form 941, but explained that no special election will be required to take the deferral.

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TAX ALERT

CARES ACT SIGNIFICANTLY ENHANCES INTEREST EXPENSE DEDUCTIONS UNDER SECTION 163(J)
BY NATHAN PLISKIN AND MARK PELTZ

April 14, 2020

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INTRODUCTION

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The Tax Cuts and Jobs Act of 2017 (“TCJA”) amended Section 163(j), severely limiting the ability to deduct interest expense. Under this provision, taxpayers can only deduct net business interest up to 30% of adjusted taxable income. For interest expense incurred by a partnership, the limitation is applied at the partnership level, rather than by the partners.

CARES Act Section 163(j) Provisions for Most Businesses
The Coronavirus Aid Relief and Economic Security Act (the “CARES Act”) modifies this limitation for all taxpayers. For taxpayers other than partnerships, the CARES Act increases the 30% limitation to 50% of the taxpayer’s adjusted taxable income. It also allows taxpayers to modify the default treatment by making two different elections:

1. Taxpayers can make an irrevocable election not to have the 50% threshold applied to the 2019 or 2020 taxable years.
2. A taxpayer may elect to use its 2019 adjusted taxable income to determine the limitation in 2020 if the taxpayer’s adjusted taxable income in 2019 exceeds its adjusted taxable income in 2020.

CARES Act Section 163(j) for Partnerships
The CARES Act provisions for partnerships are substantially more complex. Partnerships treat business interest expense as deductible only to the extent the partnership has sufficient adjusted taxable income. The CARES Act allows a partnership, but not the partners, to elect to partially suspend this treatment for 2019.

Generally, the partnership must first net its 2019 business interest expense against business interest income and 30% of the partnership’s adjusted taxable income. Then, 50% of any excess business interest expense is treated as paid or incurred in 2020, and that amount may be deducted without being subject to the limitation under Section 163(j). The remaining 50% is subject to the Section 163(j) limitation as applied to partnerships.

Partnerships, especially those involved in real estate operations, will need to do substantial analysis to determine whether the enhanced interest deduction combined with other amendments such as the qualified improvement property fix provide enough incentive to change the previous election to use the alternative depreciation system and avoid the Section 163(j) limitation.

The ability to use the 50% threshold, instead of 30% and the ability to use the 2019, rather than the 2020, adjusted taxable income should substantially increase the interest deduction for certain taxpayers. Further, this increased deduction may create net operating losses which can now be carried back to prior years without being subject to the 80% income limitation and offset income that is generally taxable at higher rates.

Interplay with Other Tax Laws
For taxpayers subject to the base erosion and anti-abuse tax (“BEAT”), careful analysis must be undertaken to determine whether the election out of the 50% threshold is a viable option. Because the BEAT acts as a minimum tax for large US corporations that make deductible interest payments to related foreign parties, this election to utilize the 30% threshold may be advantageous, allowing taxpayers to reduce the application of BEAT in the 2019 or 2020 tax years (and, instead, carrying forward the disallowed interest expense).

The Section 163(j) modifications and the new elections have created important decision points for affected taxpayers as they navigate the broader post-CARES Act tax landscape. The CARES Act has made significant additional changes to the post-TCJA tax regime which may provide taxpayers the opportunity to claim refunds. Taxpayers must carefully consider the impact of the changes to Section 163(j) in conjunction with the new five-year NOL carryback period, retroactive fix to the “retail glitch,” and the temporary suspension of the Section 461(l) excess business loss limitations. For a detailed discussion of these provisions, please review our previous Tax Alerts: The CARES Act and Net Operating Losses, Fixing the Retail Glitch Isn’t Easy, and Temporary Repeal of Excess Business Loss Limitation Triggers Need to Amend Returns. Taxpayers will need to do extensive modeling to determine the usage of some or all of these provisions.

State & Local Considerations
Finally, taxpayers must consider the state implications of the new Section 163(j) rules. Many states have not yet implemented legislation to address the impact of the CARES Act.

New York appears to be the first state to consider the implications of this stimulus legislation. Generally, New York conforms to federal tax changes on a rolling basis. However, under the recent FY 2021 Enacted Budget, New York tax law will not apply amendments enacted by the federal government after 3/1/20 that apply to years beginning before 1/1/22. Thus, for Section 163(j) purposes, New York will continue to apply the 30% limitation to adjusted taxable income instead of the 50% limitation in tax years 2020 and 2021. Accordingly, New York taxpayers will be required to keep two sets of computations: one for federal tax and one for New York State tax.

Please consult your Mazars USA LLP professional for additional information.
NEW YORK PERMITS WITNESSES OF WILLS AND NOTARIES PUBLIC TO USE AUDIO-VIDEO TECHNOLOGY
BY STEWART POLLAK

April 14, 2020

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As a result of the ongoing COVID-19 pandemic and the consequent social distancing mandate in New York and most other states, it has become increasingly difficult for people to execute their Last Wills and Testaments, trust agreements, Powers of Attorney, Healthcare Proxies and Living Wills, because these documents generally must be signed either before a notary public or witnesses. Taking this into consideration, New York State Governor Andrew Cuomo signed Executive Order 202.14 on April 7, 2020, which authorized the use of audio-video technology for the act of witnessing the aforementioned documents. This Executive Order is in effect until May 7, 2020, unless the governor extends it.

Under New York law (as well as many other jurisdictions) the above estate planning documents must be signed before a notary public and/or witnesses, who then also sign the document to acknowledge that the person signing the document did, in fact, sign it. Under New York law, a Last Will and Testament is required to be signed in front of at least two witnesses. This rule protects the integrity of an executed will, because the person signing the will and the witnesses must be in the same place, at the same time, when the will is signed. In addition, good practice includes having the witnesses sign a self-proving affidavit in front of a notary public. Prior to the signing of Executive Order 202.14, any of these estate planning documents would not be valid if the witnesses were not in the presence of the person signing them or if the document being executed was not signed before a notary public. Such a gathering has become virtually impossible given social distancing restrictions.

Executive Order 202.14 permits a person to sign any of these estate planning documents, including his or her will, while the witnesses are in another location, but while the witnesses are connected to the person signing the will using audio-video technology. In this trying time of social distancing, this Executive Order should prove to be invaluable to people needing to have their wills properly executed.

However, it should be noted that great care should be taken when following this Executive Order to ensure that all the provisions are carefully followed.

The relevant part of the Executive Order is as follows:

• “The person requesting that their signature be witnessed, if not personally known to the witness(es), must present valid photo ID to the witness(es) during the video conference, not merely transmit it prior to or after;
• The video conference must allow for direct interaction between the person and the witness(es) and the supervising attorney, if applicable. (e.g. no pre-recorded videos of the person signing);
• The witnesses must receive a legible copy of the signature page(s), which may be transmitted via fax or electronic means, on the same date that the pages are signed by the person;
• The witness(es) may sign the transmitted copy of the signature page(s) and transmit the same back to the person; and
• The witness(es) may repeat the witnessing of the original signature page(s) as of the date of execution, provided the witness(es) receive such original signature pages together with the electronically witnessed copies within thirty days after the date of execution.”

Governor Cuomo signed an earlier Executive Order (No. 202.7) on March 19, 2020, which permits the use of audio-video technology to ease the in-person requirements of executing documents before a notary public during New York’s stay-at-home mandate. Similar care must be followed by the notary public to ensure that the requirements of Executive Order No. 202.7 are strictly adhered to so that the document being signed before the notary public is recognized as a valid legal instrument. This Executive Order is in effect until April 18, 2020, unless the governor extends it.

Together, these Executive Orders provide the ability to complete wills and other estate planning documents, during these difficult times, without subjecting witnesses or the individual signing the estate planning documents to the risk of contracting COVID-19. As such, these tools are a welcome relief from social distancing mandates that make executing these documents so difficult during the pandemic.

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IRS PROVIDES ADDITIONAL GUIDANCE ON NET OPERATING LOSS CARRYBACK AND TENTATIVE CARRYBACK ADJUSTMENTS
BY NATHAN PLISKIN AND MARK PELTZ

April 23, 2020
The IRS recently released Notice 2020-26 (the “Notice”), granting taxpayers a six-month extension to make certain refund claims recently made available by the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The Notice covers the filing of an expedited application for a tentative refund on account of net operating losses (“NOLs”) arising in tax years beginning in calendar year 2018 and ending on or before June 30, 2019. The extended deadline for such claims expires as early as June 30, 2020 (for calendar year 2018 tax returns).

The 2017 Tax Cuts and Jobs Act (“TCJA”) eliminated net operating loss carrybacks for tax years ending after December 31, 2017. However, the CARES Act retroactively reinstated the net operating loss carryback rule, allowing a carryback of net operating losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021.

Under rules predating the TCJA and CARES Act, an expedited application for a tentative refund or credit of a net operating loss carryback has to be filed within 12 months of the close of the taxable year. Applications are made on Form 1139 by corporate taxpayers and Form 1045 by non-corporate taxpayers. This process is advantageous because the IRS is generally required to rule on the application within 90 days. If the expedited application is not filed within the 12-month period, an amended tax return is required to be filed to obtain a refund or credit, which can result in a much slower return of the tax refund.

Because the normal 12-month period had already lapsed for a number of tax periods (including calendar year 2018) affected by the CARES Act, the IRS issued the Notice to extend the time to file applications for a tentative carryback adjustment. The Notice grants taxpayers a six-month extension to file Form 1045 or Form 1139 for net operating losses that arose in a taxable year beginning during calendar year 2018 and ending on or before June 30, 2019. This extension is limited to requesting a tentative refund to carry back an NOL and does not extend the time to carry back any other item.

For more information about changes to NOL regime under the CARES Act, please see our Tax Alert “The CARES Act and Net Operating Losses”.

Please contact your Mazars USA LLP professional for additional information.
TAX ALERT

THE CARES ACT – FIXING THE RETAIL GLITCH ISN’T EASY
BY MARK PELTZ, JOSEPH STRICKLAND, LISA PEDATELLA AND MICHELE LARRINAGA

April 9, 2020

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On March 27, Congress passed, and the President signed, the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), which is meant to provide tax relief, economic stimulus, and emergency business lending.

Within the CARES Act is a provision to correct a previous oversight, the “Retail Glitch,” and assign a 15-year class life to Qualified Improvement Property (“QIP”). The correction applies retroactively to improvements placed in service after September 27, 2017. As a result, QIP is now eligible for 100% bonus depreciation and can be depreciated over 15 years as opposed to the prior 39-year requirement. Additionally, taxpayers may choose a 20-year depreciable life based on the alternative depreciation system (ADS), in order to avoid the IRC section 163(j) limitation.

In addition to correcting the QIP recovery period, the CARES Act also amended the definition of QIP that is eligible for bonus depreciation. Based on the updated definition, to qualify for bonus depreciation in this context, improvements must be “made by the taxpayer.” As such, taxpayers who acquired previously ‘used’ QIP (as opposed to ‘original use’ QIP) would not be entitled to bonus depreciation.

Further, not all improvements are automatically considered 15-year QIP eligible for bonus depreciation. Rather, QIP is defined as any improvement to an interior portion of a building which is nonresidential real property, if the improvement is placed in service after the date the building was first placed in service. For example, costs associated with HVAC equipment located on the roof, exterior electrical, exterior painting, rooftop improvements, site utilities, paving, roofing, windows, exterior doors, and siding, are not Qualified Improvement Property.

Expenditures which are attributable to the enlargement of a building, installations of elevators or escalators, or changes to the structural framework of the building are excluded from the definition of QIP. This creates a problem where non-qualifying costs are co-mingled with improvement costs that do qualify.

Mazars’ Insight
The retail glitch negatively impacted retailers, grocers, restaurants, and many other businesses that routinely invest in QIP. Notably, these industries have been further negatively impacted by the coronavirus pandemic, as many have been required to close or reduce hours, especially in New York, New Jersey, and the surrounding areas. The retail glitch fix should enhance a business’s liquidity, whether they take advantage of bonus depreciation, or a shorter depreciable life.

The IRS has not yet provided procedural guidance with respect to affected taxpayers, however, we will continue to monitor any developments. In some cases, taxpayers may be able to file an amended tax return, to either immediately expense the amount, or change the asset to a 15-year depreciation schedule. The enhanced deduction may cause a net operating loss deduction that could be carried back to obtain refunds. In certain circumstances, if a return has already been filed for 2019, taxpayers may be able to file a superseding return to incorporate the tax law changes.

Taxpayers who choose not to amend prior year returns may be able to make a request for an accounting method change to capture additional depreciation. Whether the method change may be done via automatic procedures remains in question, pending future guidance from the IRS.

Our Cost Segregation Group are experts at breaking out QIP from other construction costs. We assist taxpayers that make improvements to their leasehold, tenant, retail, or restaurant space by identifying any QIP that may be present within these properties and providing the applicable analysis and reports to support these classifications.

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Mazars USA LLP
TRANSFER PRICING CONSIDERATION IN THE CONTEXT OF COVID-19
BY VICTOR MIESEL, ERIN ALEXANDER, RICHA PRAKASH AND BRENDAN WILLIAMSON

April 23, 2020

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Many countries have adjusted tax filing and payment deadlines as well as introducing economic stimulus and employment stabilization programs as a result of the worldwide outbreak of COVID-19. While COVID-19 has changed the short-term macroeconomic landscape, created many business uncertainties, disrupted supply chains, and negatively impacted short term profitability and the operational status quo for most business enterprises, the fundamental tax regulatory requirements and compliance documentation burdens remain unchanged. Thus far, there have not been any changes to U.S. transfer pricing regulations under IRC Section 482, nor to the penalty and documentation requirements under IRC Section 6662.

The typical standard in transfer pricing regulations worldwide (including under the auspices of the Organization for Economic Cooperation and Development (“OECD”) Base Erosion and Profit Shifting (“BEPS”), U.S. transfer pricing regulations and case law, and the domestic laws in most foreign countries) is for compliance documentation of transfer pricing practices to be complete at the time of the taxpayer’s filing, and we do not expect this to change. While deadlines for tax payment and filing may be delayed, we continue to advise clients to begin work on their transfer pricing compliance documentation as soon as financial data for the prior fiscal year is available, in order to ensure timely completion of reports.

There is far too much uncertainty to reliably predict the future of transfer pricing enforcement activity or policy development in the immediate aftermath of the COVID-19 pandemic. Economies and markets have been disrupted worldwide, and supply chains which were already strained have been (and likely will continue to be) further tested. Many of our clients have already felt significant effects of the COVID-19 pandemic on their businesses and the lives of their employees, and we anticipate that many more are likely to experience disruptions in the coming weeks. While we do not anticipate a significant ramp-up in enforcement following the pandemic (especially as governments and economies worldwide enter into recovery mode), we also do not anticipate significant changes to the arm’s length standard and other longstanding principles that have historically underpinned transfer pricing regulations.

Obviously, the COVID-19 pandemic is an extraordinary event, which has had, and will continue to have, a profound effect on the operations of businesses globally. It will have many unique implications for multinational enterprises, given the disruptions to international travel, global markets, points of entry, interest rates, and cooperative international organizations and efforts. The most important thing a business can do to prepare for its future transfer pricing compliance is to properly document the impact of current operating conditions and extraordinary circumstances, while continuing to do its best to adapt in a difficult and rapidly changing situation. We remind everyone to prioritize the health and safety of their employees and their families in this difficult time.

No one knows for certain how long the disruption from the COVID-19 pandemic will last. What we do know is that transfer pricing regulations worldwide are the result of decades of collaborative development by the international community. When the COVID-19 outbreak has been controlled, we fully expect this collaborative development to resume (even if remotely over video-conferencing for a time), for the ongoing debate of topics such as taxes on digital services to be taken up again, and for the ongoing implementation of BEPS actions to continue.

None of the COVID-19 Stimulus measures, thus far, change anything from a transfer pricing regulatory, technical, or enforcement perspective. However, taxpayers always need to be cognizant that transfer pricing regulations and the application of the arm’s length standard are often used by tax authorities to test the validity of FTCs, BEAT calculations, and the appropriate attribution of entrepreneurial risk and any resulting NOLs.

From a transfer pricing perspective, an NOL may be nothing more than an artificially created or inflated tax “asset” for the purpose of inappropriately shifting loss from one entity to another. During these uncertain times, and with what are likely to be very aggressive goals for tax collection over the next decade, it will be more important than ever to have a supportable transfer pricing policy and robust transfer pricing documentation to defend and support the tax positions taken, including any use of NOLs. An NOL is not a “get out of jail free card.” Tax authorities will continue to question whether NOLs meet the arm’s length standard, and whether the taxpayer has adequate documentation to support and defend the use of the NOLs.

The COVID-19 pandemic and resulting short term macro-economic turbulence may also be a unique opportunity to undo or “do-over” supply chain operations, economic behavior, royalty payments, interest charges, and implicit or explicit contracts or related party agreements. From a transfer pricing perspective, the current economic challenges may provide planning opportunities – or even business necessities – to modify or shift functions, change or “turn off” royalty payments, pursuant to the U.S. IRC Section 482 commensurate with income standard in place of the arm’s length standard, or to reallocate risk-bearing and entrepreneurial behavior, such as related party services. We strongly recommend that companies review their current transfer pricing policies to identify potential opportunities to take advantage of changes, and to help mitigate future exposure to tax and transfer pricing risk.

For example, under contract law, the considerations for modifying or unwinding transactions between parties, is called “rescission.” Allowing parties an opportunity for a “do-over” when there is a misunderstanding – or unanticipated economic events, such as a global pandemic – may have tax advantages for many taxpayers. Under Revenue Ruling 80-58, a successful tax rescission has two criteria that should be addressed when contemplating a redo of related party agreements and engagement in arm’s length economic behavior: one, the parties to the transaction must be returned to the status quo ante (to before the
transaction occurred); and two, the restoration to the *status quo ante* must be accomplished within the same tax year as the original transaction.

It is important to note, that since Revenue Ruling 80-58 was issued, the IRS has issued numerous private letter rulings confirming the effectiveness of numerous rescissions. However, whether or not the concept of “rescission” will be effective (or even necessary) under U.S. IRC Sections 482 and 6662, is an open question. It is somewhat comforting to know that rescission as a legal concept recognizes a business or economic need to redo contracts or agreements under certain defined conditions. Nevertheless, U.S. taxpayers with existing related-party transactions may want to consider adjusting or terminating certain of them that may not make economic or business sense, given the current business climate and resulting supply chain disruptions from the pandemic. The U.S. transfer pricing rules, based on the arm’s length standard, allow taxpayers to report arm’s length prices that have been adjusted from those originally charged (although, typically, it is recommended that this be done on an original, timely submitted tax return, particularly if the adjustment reduces U.S. taxable income). Lastly, other non-U.S. jurisdictions may not respect a rescission or related-party adjustment, depending on their own laws, policies, and regulations.

Transfer pricing planning, forecasting, implementation, risk mitigation and the drafting of related party agreements must be managed, especially in the context of a global catastrophe with historical repercussions. The eventual economic recovery will likely bring an aggressive focus on tax revenue and enforcement of transfer pricing, not only by the IRS, but by tax authorities worldwide.

Please contact your Mazars USA LLP professional for additional information.
NEW YORK’S DECOUPLING FROM CARES ACT HAS BROAD IMPACT
BY JOHN KOSTENBAUDER, HAROLD HECHT AND SETH RABE

April 30, 2020

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The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) that was signed into law March 27, 2020 included many taxpayer-friendly amendments to the Internal Revenue Code (“IRC”) affecting both corporations and individuals. New York recently became the first state to address some of the changes enacted by the CARES Act. Governor Cuomo signed New York’s 2020-2021 budget which impacts the New York State Corporate Franchise Tax and Individual Income Tax as well as the New York City General Corporation Tax (“GCT”), Unincorporated Business Tax (“UBT”), and Personal Income Tax on Residents. The budget includes tax provisions that decouple New York’s law from certain federal income tax law.

**NYS Corporate Franchise Tax/NYC GCT and UBT**

The CARES Act increased the interest expense limitation from 30% of adjusted taxable income (ATI) to 50%. New York has now decoupled from the increase to the IRC 163(j) interest expense deduction limitation for tax years 2019 and 2020. This means a separate calculation is necessary to apply the 30% adjusted taxable income (“ATI”) for NYS/NYC filings instead of the federal 50% limitation.

**NYS and NYC Individual income tax**

NYS and NYC have decoupled from all CARES Act provisions for taxable years beginning before January 1, 2022. While NYS is a “rolling conformity” state, meaning any changes to the IRC are automatically incorporated into the NYS tax code, the effect of the budget is to decouple from all provisions of the CARES Act and to fix the individual NYS/NYC statute to the IRC as of March 1, 2020. This includes the following:

1) IRC 461(l) excess business loss limitation deferral is not adopted. The excess business loss limitation came into law at the federal level in 2018 and generally allowed a business loss up to $500,000 (for taxpayers married filing jointly) against other types of income. Such a limitation will continue to apply for NYS/NYC individual income tax purposes.

2) Net operating loss (“NOL”) carryback limitations. NYS/NYC has no specific statutory provisions concerning individual NOL carryovers and carrybacks. The New York NOLs for residents were always predicated on a federal NOL being allowed. It is uncertain how the de-coupling will impact New York NOLs at this time.

3) 60-day rollover of coronavirus-related retirement plan distributions. While federal tax law now allows individuals a three-year period to rollover distributions from retirement plans (up to $100,000), for NYS/NYC purposes, the distribution would need to be paid back within 60 days to avoid taxation.

4) Business interest expense deduction limitation. The aforementioned ATI limitation on the business interest deduction that applies for NYS corporate tax purposes also applies for individual tax purposes.

5) The CARES Act allows a deduction for cash contributions to public charities of up to 100% of adjusted gross income (“AGI”). The former rule was 60% of AGI, which still applies for NYS and NYC. In addition, the $300 above-the-line charitable deduction impacting 2020 federal returns would not apply for NYS/NYC purposes.

6) A technical correction to the TCJA now allows qualified improvement property (“QIP”) to be depreciated over 15 years, allowing for a 15-year write off and qualifying it for bonus depreciation. This correction can be applied retroactively to 2018. However, it appears that this correction does not apply to NYS/NYC.

7) Small business interruption loans. Section 1105 of the CARES Act provides for potential loan forgiveness with respect to SBA 7(a) loans under the Paycheck Protection Program. The loan forgiveness is not taxable for federal purposes. As it stands now, such exemption from taxation would not apply to individual income taxes in NYS/NYC.

Any state that is a “rolling conformity” state will need to take action in order to decouple. Other states that have “fixed conformity,” meaning their tax statutes tie to a specific version of the IRC, may not need to take legislative action. The many other states that are neither “rolling” nor “fixed” conformity states may need to take separate legislative action to deal with the CARES Act. Given that not all state legislatures are currently in session, it may be a while before each state’s position is known.

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TRAVEL RESTRICTIONS: TAX CONSEQUENCES & COMPLIANCE OBLIGATIONS
BY RICHARD BLOOM AND IVINS, PHILLIPS & BARKER, CHTD.

April 30, 2020

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As a result of travel restrictions and stay-at-home orders in the United States and across the world, many individuals have found themselves stranded in unexpected locations. This has led to potential cross-border and multi-state income tax consequences and compliance obligations for individuals and businesses in unanticipated jurisdictions.

Implications for Individuals

- Within the U.S., individuals stranded in a state due to stay-at-home orders may trigger residency rules in a state, giving rise to unforeseen state income tax liabilities and compliance obligations.
- Foreign individuals stuck in the U.S. could inadvertently meet the requirements for U.S. tax residency, triggering unexpected U.S. federal income tax consequences for 2020 or subsequent years.
- Similarly, U.S. residents and citizens trapped overseas could be considered tax residents of another country, again with potential negative tax consequences.

Implications for Businesses

- Within the U.S., businesses that otherwise would not have been considered to have a tax nexus in a particular state might trigger nexus requirement due to employees working remotely.
- Foreign businesses with employees who have been working in the United States because of travel restrictions or medical conditions could be considered a U.S. trade or business or U.S. permanent establishment (depending on whether a treaty is applicable), potentially triggering U.S. income tax filing obligations and perhaps income tax liabilities as well.
- Similar permanent establishment concerns arise overseas, where a U.S. business might be considered to have a permanent establishment in a jurisdiction where it never previously had a taxable presence.
- Transfer pricing analysis for some businesses may depend on individual employees being in a given location for a certain amount of time. Remote work could impact the transfer pricing analysis and thus the profit flows.

Government Responses

A number of countries and U.S. states have issued guidance addressing the above concerns in light of current emergency situations; the OECD has also issued guidance applicable to interpretation of double tax treaties. But each government is taking a different approach to these issues, and some of the relief is triggered on additional compliance obligations. As a result, there is no single answer to the question of what types of income tax and compliance obligations are created as a result of employees working remotely, and each individual situation and each business needs to be analyzed separately.

Mazars’ Insight

Businesses with employees that are working in a jurisdiction other than their usual place of business (whether cross-border or within the U.S.) should be in touch with their Mazars advisor to determine whether there are any filing obligations that need to be met and any steps that can or should be taken to mitigate risk.

Clients who have been stranded due to COVID-19 travel or medical restrictions should be in touch with their Mazars advisor about their individual circumstances.

Below summarizes some of the relief countries and states have issued to date.

U.S. Federal Relief

On April 21, Treasury and the IRS released guidance on three topics related to the interaction of residency requirements and COVID-19 medical and travel restrictions:

- Under Revenue Procedure 2020-20, individuals who intended to leave the U.S. during what’s defined as the “COVID-19 Emergency Period,” but were unable to do so due to COVID-19 emergency travel disruptions, can exclude up to 60 days of presence in the U.S. for purposes of applying the substantial presence test used to determine residency under section 7701(b). Under the Revenue Procedure, the COVID-19 emergency is considered a medical condition for purposes of Reg. § 301.7701(b)-3(c).

The relief granted by the Revenue Procedure is limited: it only applies to individuals who weren’t U.S. residents at the end of the 2019 tax year, weren’t lawful permanent residents at any point in 2020, and don’t become U.S. residents in 2020 because of days of presence in the U.S. outside of their specified Emergency Period. This Emergency Period is also restricted to a single period of up to 60 consecutive days starting on or after February 1, 2020 and on or before April 1, 2020 during which the individual is physically present in the U.S. on each day.

Eligible individuals who are required to file Form 1040-NR for 2020 can claim the COVID-19 exception by attaching Form 8843 to their Form 1040-NR. The Revenue Procedure also provides rules for how to claim an exemption from withholding on income from dependent personal services.
**Mazars' Insight**

It is possible, but uncertain, whether the 60 day limit on the relief specified in the Revenue Procedure may be extended if lockdowns continue.

- In Revenue Procedure 2020-27, Treasury provided a waiver of the time requirements of section 911(d)(1) for 2019 and 2020, applicable to individuals who reasonably expected to meet the eligibility requirements of that section but failed to do so for reasons related to COVID-19 travel bans. This waiver will allow individuals to meet the bona fide residence test or the physical presence test if they need to leave a foreign country due to the COVID-19 Emergency.

  For 2019 and 2020, Treasury has determined that the COVID-19 Emergency is an adverse condition that precluded the normal conduct of business:

  In the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau (China) as of December 1, 2019; and Globally as of February 1, 2020

  The period covered by Revenue Procedure 2020-27 ends on July 15, 2020, unless an extension is announced by the Treasury and IRS.

  For example, an individual who left China on or after December 1, 2019, or another foreign country on or after February 1, 2020, but on or before July 15, 2020, will be treated as a qualified individual with respect to the period during which that individual was present, in, or was a bona fide resident of, that foreign country, provided the individual establishes a reasonable expectation that he or she would have met the requirements of section 911(d)(1) but for the COVID-19 Emergency.

- In a series of FAQs, the IRS said that businesses and nonresident aliens can choose an uninterrupted period of up to 60 days during the COVID-19 Emergency Period (which begins on or after February 1 and on or before April 1, 2020) during which activities conducted in the United States won’t be taken into account in determining whether their activities have given rise to a U.S. trade or business (or a permanent establishment (“PE”), if a treaty applies). The rule only applies to the extent that these activities were performed by individuals temporarily present in the U.S. and would not have been performed in the U.S. but for COVID-19 travel disruptions.

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**OECD Guidance**

The OECD has published guidance as to the interpretation of treaty PE standards for situations caused by the pandemic. This guidance provides that exceptional and temporary changes in the location where employees exercise their employment, such as working from home, shouldn’t create new PEs for the employer. The same principle applies to the temporary conclusion of contracts in the homes of employees or agents because of the COVID-19 crisis.

The OECD guidance also says that it is unlikely that the changes in where employees are working due to the COVID-19 situation will create changes to an entity’s residence status under a tax treaty. As a general matter, the guidelines say that it’s unlikely that the COVID-19 situation will affect individuals’ treaty residence positions.

**Other Countries**

The OECD guidelines are not self-implementing, not all countries have issued guidance on point, and the ones that have, have not taken consistent positions. For example, the UK has issued guidance on suspending residency rules for individuals, Belgium and France have issued residency guidelines specifically applicable to cross-border workers from their two countries, and Ireland has issued guidelines specific to meeting residency rules for corporation tax purposes. The Australian Tax Office has broadly said that COVID-19’s effects will not result in a change in a business’s PE status if it didn’t have a PE in Australia before the coronavirus, there are no changes in the business’s circumstances, and the unplanned presence of employees in Australia is a direct result of COVID-19.

**State Guidance**

A few states have issued guidance related to nexus and residency requirements arising from remote work. Some specific examples of state guidance follow:

*New Jersey* has published guidance stating that it would temporarily waive the impact of the threshold which treats the presence of employees working from their homes in New Jersey as sufficient nexus for out-of-state corporations, if the employees are working from home solely as a result of closures due to the coronavirus outbreak and/or the employer’s social distancing policy.

*Massachusetts* has said that compensation received for personal services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who during such emergency is performing such services from a location outside Massachusetts due solely to the state of emergency, will continue to be treated as Massachusetts source income subject to Massachusetts personal income tax and income tax withholding. Employers are not obligated to withhold Massachusetts income tax to the extent the employer remains required to withhold income tax with respect to the employee in such other state.
Maryland released Tax Alert 04-14-20B in which it said that while residents of Virginia, Washington D.C., West Virginia, and Pennsylvania who earn wages, salaries, tips, and commission income for services performed in Maryland are exempt from Maryland state income tax, and therefore, withholding, because Maryland has a reciprocal agreement with these states, no such agreement exists with Delaware and so compensation paid to a Maryland nonresident who is teleworking in Maryland is Maryland-sourced income and subject to withholding.

Maryland’s Comptroller’s Office does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. However, it said it would consider the temporary nature of a business’s interim workplace model and employee deployment in light of the current health emergency in making a nexus determination, whether the business correctly sourced income, and whether the business properly withheld and reported employee state withholding.

Mazars Insight
The above is just a sampling of recently-issued state guidance. It is hoped that more states will issue guidance relevant to remote working and residency thresholds resulting from the COVID-19 emergency. However, as in the cross-border context, this guidance is unlikely to be consistent across all states.

Please contact your Mazars USA LLP professional for additional information.

This alert was produced in conjunction with Ivins, Phillips & Barker, Chtd.
BREAKING NEWS: IRS TREATS EXPENSES PAID WITH FORGIVEN PPP LOAN PROCEEDS AS NON-DEDUCTIBLE
BY RYAN VAUGHAN

May 4, 2020

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On April 30, 2020, the Internal Revenue Service ("IRS") released Notice 2020-32 providing guidance regarding the deductibility for federal income tax purposes of expenses incurred in a taxpayer’s trade or business when the taxpayer receives a loan under the Paycheck Protection Program ("PPP"). The notice clarifies that NO DEDUCTION is allowed under the Internal Revenue Code ("IRC") for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a loan under the PPP and the income associated with the forgiveness is excluded from the taxpayer’s gross income.

Under the PPP, payments towards payroll, rent, utilities, and mortgage interest made in the eight week period following the date of the loan are eligible to be included in the loan forgiveness calculation of the PPP. The CARES Act exempts the amount of loan forgiveness under the PPP from inclusion in taxable income for taxpayers.

IRC Section 265(a)(1) and Section 1.265-11 of the Income Tax Regulations provides that no deduction is allowed to a taxpayer for any amount otherwise allowable as a deduction to such taxpayer that is allocable to one or more classes of income other than interest wholly exempt from the taxes imposed by subtitle A of the Code. The term "class of exempt income" means any class of income that is either wholly excluded from gross income under any provision of the Internal Revenue Code or wholly exempt from the taxes imposed by subtitle A of the Code under the provisions of any other law. The Notice concluded that the amount of the loan forgiven under the PPP results in a class of exempt income. Consequently, deductions such as the payroll, rent, utilities and mortgage interest that gave rise to the non-taxable loan forgiveness are not deductible.

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Mazars’ Insight
Opposition to the IRS’s position has already surfaced. Senate Finance Committee Chair Chuck Grassley, R-Iowa, indicated “The intent was to maximize small businesses’ ability to maintain liquidity, retain their employees and recover from this health crisis as quickly as possible. This notice is contrary to that intent.” House Ways and Means Committee Chair Richard E. Neal, D-Mass spokesperson Erin Hatch stated “we are planning to fix this in the next response legislation.” The American Institute of CPAs also plans to seek legislative clarification.

Please contact your Mazars USA LLP professional for additional information.
PROPOSED REGULATIONS ADDRESS DEDUCTIBILITY OF TRUST AND ESTATE ADMINISTRATIVE EXPENSES AND EXCESS DEDUCTIONS ON TERMINATION OF TRUSTS AND ESTATES
BY ANTHONY RAPPA, MELISSA GONZALEZ AND RICHARD BLOOM

May 14, 2020

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The IRS recently issued proposed regulations (REG-113295-18) under Internal Revenue Code (IRC) Sections 67(g) and 642(h)(2). These clarified that certain deductions are allowed to an estate or non-grantor trust because they are not miscellaneous itemized deductions and also explain how to determine the character, amount, and allocation of deductions in excess of gross income that a beneficiary succeeds to on the termination of an estate or non-grantor trust.

**Background**
IRC Sec. 67(g) was enacted into law on December 22, 2017 as part of the Tax Cuts and Jobs Act. IRC Sec. 67(g) prohibits individual taxpayers from claiming miscellaneous itemized deductions for any tax year beginning after December 31, 2017 and before January 1, 2026.

Subsequently, the IRS issued Notice 2018-61 on July 13, 2018 announcing that proposed regulations would be issued concerning the effect of Section 67(g) on the deductibility of certain expenses incurred by estates and non-grantor trusts. The notice stated that regulations would clarify that deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such estate or trust remain deductible in determining the adjusted gross income of an estate or non-grantor trust.

Excess deductions incurred in the year a trust terminates are allocated to the beneficiaries of the trust. These deductions were treated as miscellaneous itemized deductions which, as stated above, are not deductible for tax years beginning after December 31, 2017 and before January 1, 2026, as a result of the enactment of IRC Section 67(g). Notice 2018-61 requested comments regarding the effect of Section 67(g) on the ability of the beneficiary to deduct excess deductions on the termination of an estate or non-grantor trust and expressed the intent to address this issue in regulations.

**Proposed Regulation 1.67-4**
The proposed regulations formally adopt Notice 2018-61’s treatment and clarify that the following deductions under Section 67(e) allowed to an estate or non-grantor trust are not miscellaneous itemized deductions and are not affected by the suspension of the deductibility of miscellaneous itemized deductions:

- Costs paid or incurred in connection with the administration of an estate or non-grantor trust that would not have been incurred if the property were not held in the estate or trust;
- The personal exemption of an estate or non-grantor trust;
- The distribution deduction for trusts distributing current income; and
- The distribution deduction for estates or trusts accumulating income.

**Proposed Regulation 1.642(h)-2**
The proposed regulations also provide guidance on determining the character, amount, and allocation of deductions in excess of gross income succeeded to by a beneficiary on the termination of an estate or non-grantor trust. They clarify that the character of the deductions does not change when succeeded to by a beneficiary on the termination of the estate or trust and require the fiduciary to separately identify deductions that may be limited when claimed by the beneficiary.

Under the proposed regulations, each excess deduction on termination shall retain its separate character:
- As an amount allowed in arriving at adjusted gross income (AGI);
- As a non-miscellaneous itemized deduction; or
- As a miscellaneous itemized deduction.

These proposed regulations will apply to taxable years beginning after the date they are published as final. However, estates, non-grantor trusts, and their beneficiaries may rely on these proposed regulations for taxable years beginning after December 31, 2017 and on, or before, the date these regulations are published as final.

**Mazars’ Insight**
Trust and estate returns that were filed for 2018 and 2019, prior to the release of the proposed regulations, should be reviewed to determine if modifications are necessary. Beneficiaries who received a final year Schedule K-1 from any non-grantor trust or estate for 2018 or 2019 should reach out to the fiduciary or administrator for additional information regarding excess deductions.

Please contact your Mazars USA LLP professional for additional information.
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