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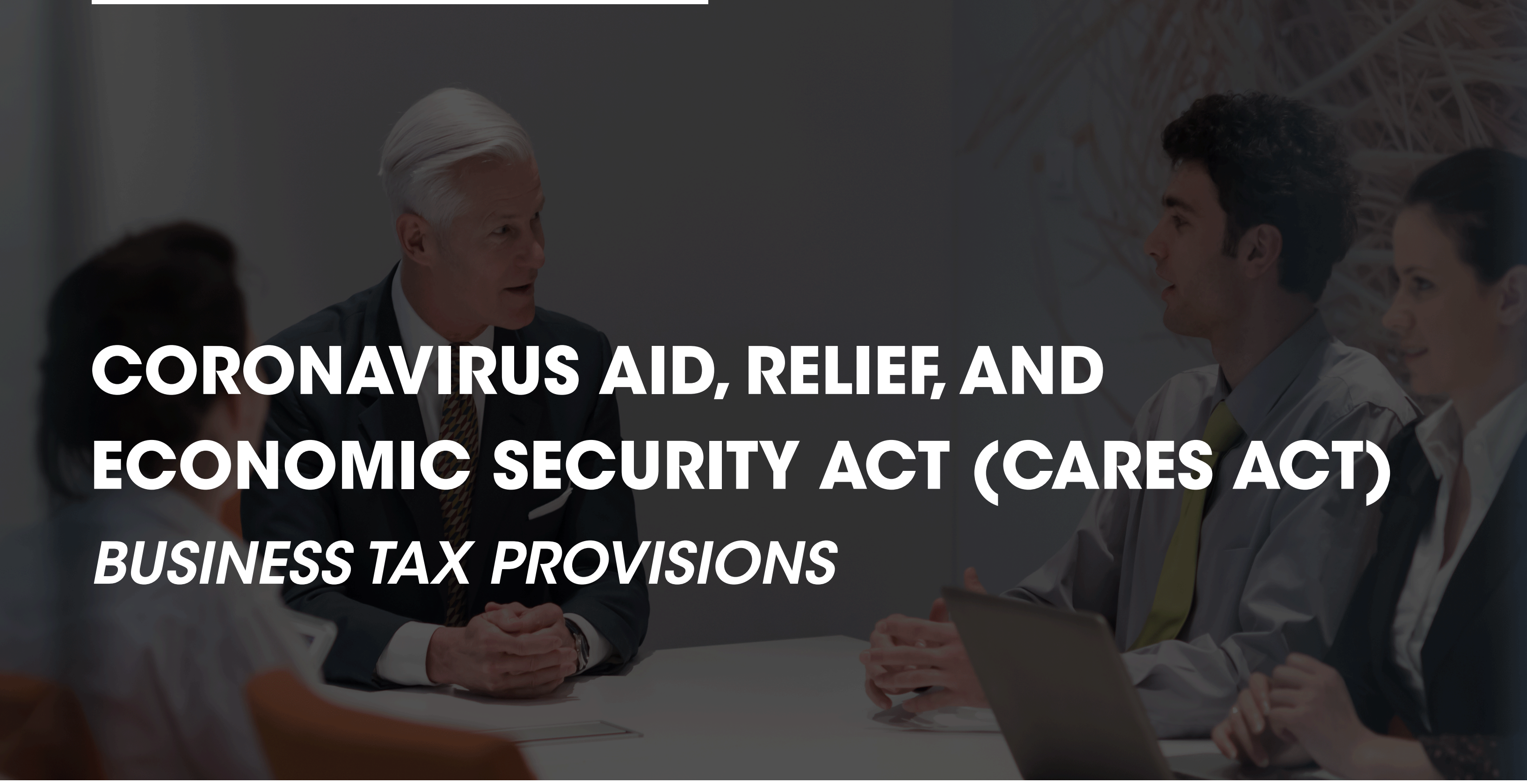

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)

BUSINESS TAX PROVISIONS

The Novel Coronavirus has had a huge impact all over the world. People in quarantine are forced to stay home, many kids are now homeschooled, and businesses are closed. To help Americans get through this crisis, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into effect on March 27, 2020. The Act provides a $2 trillion support relief package to help stabilize the American economy. Below are some major business-related tax provisions found in the CARES Act.

- **Forgiveness of Loans Obtained Under the Paycheck Protection Program (PPP)**

  Recipients of loan offered under Paycheck Protection Program are eligible for forgiveness of indebtedness for loans used to pay payroll costs and certain other expenses. Forgiveness or cancelation of the loans will be excluded from gross income for income tax purposes (i.e., there will be no cancelation of debt income).

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PPP is offered by banks that do SBA 7(a) loan (underwritten by SBA). Do not confuse it with the Economic Injury Disaster Loan Assistance (EIDL) program offered directly by SBA. [Please refer to our comparison chart for the difference between the two.]

- **Refundable Employee Retention Credit**

  Eligible employers can get a refundable payroll tax credit for 50% of wages paid to employees between March 13, 2020, and December 31, 2020. For this purpose, eligible employers are employers whose operations are disrupted due to virus-related shutdowns and employers who experience a decrease in gross receipts of 50 percent or more when compared to the same quarter last year.

  For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employer's closure or reduced gross receipts are eligible for the credit.

  Wages (including health benefits) are capped at the first $10,000 in wages paid by eligible employers to each eligible employee. Wages that are taken into account for the payroll credit under FFCRA and IRC 45S (employer credit for paid family and medical leave) are excluded from this credit.

  The IRS has granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit. The IRS is expected to issue further guidance.

- **Delay Payment of Payroll Taxes**

  Employers can defer payments for the employer portion of payroll taxes through the end of 2020. Employers have to pay 50% of such deferred payroll taxes by December 31, 2021, and the remaining 50% by December 31, 2022. Self-employed individuals are also allowed to defer half of the self-employment taxes under the same terms.

- **Net Operating Loss Carryback and 80% Limitation Suspended**

  Net operating losses in tax years beginning after December 31, 2017, and before January 1, 2021, can be carried back to each of the five taxable years preceding the year of loss. This provision does not apply to real estate investment trusts (REITs).

  The Act also temporarily removes the 80% taxable income limitation to allow post-2017 Net Operating Losses (NOL's) to fully offset income. This provision applies to taxable years beginning after December 31, 2017, and before January 1, 2021.

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  Taxpayers who incurred net operating losses in 2018 and 2019 but have paid taxes on income in years 2013 to 2017 should consider filing amended returns as soon as possible to get tax refunds to help increase cashflow.

- **Modification of Limitation of Losses for Noncorporate Taxpayers**

  Previously, noncorporate taxpayers were not allowed to deduct excess business losses for tax years beginning after December 31, 2017, and ending before January 1, 2026. Excess business loss is defined as the excess of(1) the taxpayer's aggregate business deductions for the year over (2) the sum of the taxpayer's aggregate business gross income or gain plus $250,000 (adjusted for inflation). The CARES Act temporarily removes the excess business loss limitations for noncorporate taxpayers for tax years beginning after December 31, 2017, and before January 1, 2021.

  The CARES Act also made a technical amendment to IRC 461(l)(3), thereby allowing capital gains attributable to a trade or business be included in business income in determining excess business loss limitation. This will have an impact when the temporary lift of excess business loss limitation expires for tax years beginning after December 31, 2020.

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  > With the removal of excess business loss deduction, business owner should consider applying strategy such as cost segregation to accelerate deduction.

- **Credit for Prior Year Minimum Tax Liability for Corporations**

  The corporate Alternative Minimum Tax (AMT) was repealed as part of the Tax Cuts and Jobs Act. Corporations are allowed to take refundable minimum tax credits (MTC) for tax years before 2021, subject to certain limitations. The CARES Act accelerates the ability for companies to recover 100% of AMT credits in 2019. The Act also provides for an election to take the entire refundable credit amount in 2018.

- **Modifications of Business Interest Deduction Limitation**

  For certain taxpayers, the TCJA limits the amount of business interest deduction to the sum of (1) business interest income, (2) 30% of adjusted taxable

income (ATI), and (3) floorplan financing interest expense. The CARES Act temporarily and retroactively increases the limitation from 30% to 50% of ATI for tax years beginning in 2019 and 2020. Taxpayers can elect to calculate the interest limitation for tax years beginning in 2020 using the 2019 adjusted taxable income instead of 2020 adjusted taxable income. Taxpayers can also elect out of the increased limitation.

In the case of Partnerships, the increase to ATI portion applies only to tax years beginning in 2020. Any elections must be made by the Partnership.

- **Qualified improvement property (QIP) technical correction**

  The CARES Act provides a technical correction to TCJA by designating Qualified Improvement Property (QIP) as 15-year property for depreciation purposes. As such, QIP is eligible for 100% bonus depreciation treatment. This correction is retroactive for property placed in service after December 31, 2017.

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  If you have not filed your 2019 return, consider filing Change of Accounting Method with Form 3115 with your 2019 return to catch up on the missed deduction. Any losses generated will be eligible for the NOL carryback mentioned above. Alternatively, you can amend 2018 return (and possibly 2019 return if 2019 return has been filed) to catch up on the missed deduction.

- **Modification of Limitation on Certain Cash Donation Deductions**

  Previously, a Corporation's charitable deduction could not exceed 10% of its taxable income, with any excess carried over for five years. The CARES Act increases such limitation from 10% to 25%. Qualified contributions, for this purpose, are charitable contributions that are paid in cash to organizations described in IRC 170(b)(1)(A) charities (i.e., 501(c)(3) and certain other charitable organizations). An Election must be made for this provision to apply.

  For donations of food inventory to charitable organizations that will use it to care for the ill, the needy, or infants, the limitation is increased from 15% to 25%. These provisions apply to donations made during 2020.

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Do you need assistance determining which provisions apply to your situation? We can help. Contact KROST today for consulting on the CARES Act. Visit our COVID-19 Resource page for more tools to help you during this difficult time.