CARES Act Provides Relief For COVID-19 Individuals and Businesses

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At 880 pages in length, “comprehensive” does not seem to do it justice. But the Coronavirus Aid, Relief and Economic Security Act is, in a word, comprehensive. Coming on the heels of the Families First Coronavirus Response Act which focused primarily on relief for employees, the CARES Act seeks to provide both individuals and businesses with immediate relief, and a path forward, as we look to a future following the COVID-19 pandemic.

Individual Relief

Many individuals will receive a check directly from the government. Specifically, individual adults making less than $75,000 in annual income, and families with annual income of less than $150,000, based on tax returns will receive a $1,200 ($2,400 for those filing joint tax returns) stimulus check and additional check of $500 per child. The amount of the stimulus check will be reduced up by 5 percent of the amount of the taxpayer’s adjusted gross income that exceeds $150,000 in the case of a joint return, $112,500 in the case of a head of household return, and $75,000 for all other individual taxpayers. Eligibility will be based on 2019 tax returns or, if unavailable, 2018 tax returns. The Act also delays the due date for federal tax returns to July 15, 2020.

The CARES Act also increases unemployment benefits for individuals, including self-employed persons. It provides an additional $600 in unemployment compensation to weekly unemployment benefits and provides individuals who have exhausted their unemployment benefits with an additional 13 weeks of federally funded compensation.

Further, individuals suffering as a result of COVID-19 who have had to rely on a retirement plan for support are permitted to repay the amount up over a period of three years following the distribution from the plan without violating tax rules, provided the distribution does not exceed $100,000. Any distribution amount required to be included in gross income will be included ratably over the three-year period beginning with the year of the distribution, unless the individual would prefer to have the income taxed in the year of distribution. Any such individuals who borrow from a retirement plan at any time between the CARES Act and December 31, 2020 may defer any required loan payments for a period of one year without penalty.

Finally, the CARES Act provides individuals tax relief in terms of revised provisions on losses and the treatment of capital gains.

Business IRS Tax Relief

For businesses, the CARES Act begins by providing tax relief. In addition to delaying the 2019 tax return deadline to July, payroll taxes are deferred and may be paid over a two-year period, with 50% due by December 31, 2021 and 50% due by December 31, 2022. The Act also provides a payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis, which is separate from the Families First Coronavirus Response Act tax credit designed to reimburse employers for paid sick leave and paid family leave provided under the FFCRA. The CARES Act credit is available to employers who were forced to suspend operations, in whole or in part, due to a COVID-19-related shut-down order, or whose gross receipts declined by more than 50% when compared to the same quarter in the prior year.

The credit is limited to the first $10,000 paid to an eligible employee, including any payments for health care benefits, for wages paid from March 13, 2020 through December 31, 2020. All wages paid by employers with 100 or fewer full-time employees qualify. Employers with more than 100 full-time employees may count only those wages paid to employees when not providing COVID-19-related services.

SBA Business Loans

The CARES Act also provides loan opportunities for businesses. In addition to traditional Small Business Administration loans, the Act establishes a special SBA loan process for businesses, sole proprietorships, independent contractors and self-employed individuals affected by the COVID-19 outbreak to obtain additional types of loans. In what is sure to be a popular option, the paycheck protection program applies to loans made during a "covered period" commencing on February 15, 2020 and ending on June 30, 2020.

These "paycheck protection loans" are designed to assist employers to meet payment or paycheck obligations and are available in an amount of up to $10 million, or 2.5 times the average total monthly payroll costs during the 1-year period before the loan, whichever is less; seasonal employers use a shorter time period. "Payroll costs" includes the sum of payments of any compensation with respect to employees that is a: salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment required for group health care benefits, including insurance premiums; payment of any retirement benefit; or payment of state or local tax assessed on the compensation of employees. Payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 in 1 year, as prorated for the covered period, is also included. Excluded from payroll costs are: compensation paid to individual employees in excess of an annual salary of $100,000, as prorated for the covered period; taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period; compensation paid to an employee whose principal place of residence is outside of the United States; and sums paid for sick leave or family leave for which a credit is allowed under the FFCRA.

The loan can be used to pay: payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensation; payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation); rent (including rent under a lease agreement); utilities; and interest on any other debt obligations that were incurred before February 15, 2020 (but not principal).

Businesses with 500 or fewer employees are generally eligible for these loans, with exceptions based on meeting the employee criteria under the North American Industry Classification System. Additional requirements include a good-faith certification that: the loan is needed to continue operations during the COVID-19 emergency; the funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments; the applicant does not have any other application pending under this program for the same purpose; and from February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under the program.

These loans are non-recourse except to the extent that the borrower uses the proceeds for a purpose not authorized under the CARES Act. There are no loan fees and no personal guaranty is required. Interest on the loan will not exceed 4% per annum, and the maximum loan period is 10 years. No payments will be due for a period of at least 6 months, but no more than 1 year. Most importantly, these loans are subject to a forgiveness program.

Specifically, the loan can be forgiven to the extent the loan is used to pay for certain expenses during the eight-week period after the loan is made. These expenses include: payroll costs, excluding amounts paid above $100,000 per year for any employee; group health care benefits and premiums; interest on any mortgage obligation (but not principal); rent on leases in existence before February 15, 2020; electricity, gas, water, transportation, phone and Internet service incurred in the ordinary course of business prior to February 15, 2020. Contrary to ordinary income tax rules, the amount of indebtedness that is forgiven will not be recognized as income for tax purposes.

The amount to be forgiven will be reduced based on a failure to maintain the average number of full-time equivalent employees during the eight-week period following the loan compared to an earlier period to be selected by the borrowing business. That early period can be either February 15, 2019 through June 30, 2019, or January 1, 2020 through February 29, 2020. The amount to be forgiven will also be reduced if employees who earn less than $100,000 annually have had their wages reduced by more than 25% during the eight-week period following the loan as compared to the most recent full quarter. However, if a reduction in employees has occurred between February 15 and 30 days after enactment of the CARES Act, and the employer eliminates the reduction by no later than June 30, 2020, the amount of the loan eligible for loan forgiveness is not reduced. Similarly, reductions in pay occurring between February 15 and 30 days after enactment of the CARES Act which are eliminated by no later than June 30, 2020 will not adversely impact loan forgiveness. The SBA will soon have applications available for these loans and it is scheduled to issue additional guidance on loan forgiveness within 15 days after enactment of the CARES Act.

The economic injury disaster loan is an additional loan available to businesses on an expanded basis as a result of the CARES Act. A borrowing business is not prohibited from also obtaining an SBA paycheck protection loan, provided it is for a different purpose. Specifically, the SBA disaster program covers the period from January 31, 2020 through December 31, 2020 and allows businesses with 500 or fewer employees, including sole proprietorships and independent contractors, to borrow up to $2 million at 3.75% interest (non-profits can borrow at 2.75% interest) at a maximum term of 30 years.

These disaster loans also waive several traditional SBA loan requirements, and require only that the business be in operation on January 31, 2020. Lenders are permitted to rely on credit scores or alternative methods to determine ability to pay; tax returns are not required. However, collateral is required for loans above $25,000 and personal guarantees are needed for loans in excess of $200,000.

Under both the economic injury disaster loan and paycheck protection loan programs an applicant can request an emergency grant to be paid within 3 days of the application if used to: provide paid sick leave to employees unable to work due to the direct effect of the COVID–19; maintain payroll to retain employees during business disruptions or substantial slowdowns; meet increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains; make rent or mortgage payments; and repaying obligations that cannot be met due to revenue losses. The emergency grant carries no repayment obligation, even if the application is subsequently denied, although the amount will be subtracted from any loan forgiveness connected to a paycheck protection loan. No state declaration or certification is required and eligible businesses throughout the United States may apply.

Big Business Relief

The CARES Act has provisions permitting larger corporations, including airline companies, to borrow money subject to public disclosures and other requirements. These loans are subject to a special inspector general appointed to provide oversight. These businesses are prohibited from repurchasing stock for the term of the loan plus an additional year.

With broad-based provisions covering a wide variety of individuals and businesses, the CARES Act has something in it for everyone. Those seeking to take advantage of the opportunities set forth in this legislation should contact the state unemployment authorities (in California, the employment development department), the SBA, and counsel, as appropriate, before the time to do so expires.

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