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CLIENT ALERT - COVID-19: KEY TAX COMPONENTS OF CONSOLIDATED APPROPRIATIONS ACT, 2021

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Every once in a blue moon Congress bestows to taxpayers a gift, and in doing so reverses the negative tax treatment imposed on PPP loan recipients by the Internal Revenue Service. Last week, Congress overwhelming did just that, with the passage of the Consolidated Appropriations Act, 2021 (the "**Relief Act**"), which President Trump signed into law December 27, 2020.

With the enactment of the **Relief Act**, effective as of the date of the enactment of the CARES Act on March 27, 2020 (the "**CARES Act**"), taxpayers whose Payroll Protection Program (PPP) loans ("**PPP Loan**") have, or will be, forgiven are allowed to take a deduction for business expenses paid in connection with such PPP Loan without a reduction against the tax basis of the taxpayer's assets as a result of the forgiveness of the PPP Loan.

While the deductibility of business expenses paid in connection with a taxpayer's PPP Loan seems rather necessary, given the very nature and purpose of PPP Loans, to stimulate the economy with fully forgivable loans, the Internal Revenue Service ("**IRS**") took a position to the contrary. In Revenue Ruling 2020-27 and Revenue Procedure 2020-51, the IRS addressed the question as to whether the business expenses paid by a taxpayer in connection with a taxpayer's PPP Loan are deductible in the tax year in which the expenses were paid or incurred if the taxpayer reasonably expects their PPP Loan to be forgiven in the same tax year. Under the tax benefit rule (providing that the amount of an expense recovered shall be included in income in the year of recovery to the extent the expense resulted in a tax benefit to the taxpayer), the IRS determined that since the taxpayer has a reasonable expectation of reimbursement (in the form of loan forgiveness) at the end of the year in which the taxpayer obtained the PPP Loan, deduction of the expenses is inappropriate. With the enactment of the Relief Act, Congress trumped the IRS.

The Relief Act clarifies that *"no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided*" by the applicable provisions of the CARES Act (*emphasis added*).

The Relief Act also provides taxpayers some other notable relief:

- ***CARES Act Extension*** – The Relief Act extends the refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act, through the end of March 2021 (read more here), and includes several modifications so that the payroll tax credit applies as if the corresponding employer mandates were extended through March 31, 2021.

- ***Outbound International Tax*** – The provision which allowed a controlled foreign corporation (CFC) to avoid treating dividends, interest, rent, and royalties received or accrued from a related person as not foreign personal holding company income (FPHCI) to the extent attributable or properly allocable to income of the related person that isn't subpart F income or income treated as effectively connected with the conduct of a

U.S. trade or business (ECI) (i.e., the 'Look-Thru Rule') was set to sunset on December 31, 2020. The Relief Act extended the Look-Thru Rule through 2025. In the inbound context, while none of the provisions touch on it directly, the Relief Act does indirectly provide an attractive landscape for inbound investment from foreign investors.

- ***Miscellaneous Provisions***:
  - For expenses incurred after December 31, 2020, the Relief Act increases the business expense deduction from 50% to 100% for so long as the expense is for food or beverages provided by a restaurant. This provision sunsets on December 31, 2022.
  - Through 2021, individuals who normally do not itemize deductions may take up to a $300 above-the-line deduction (or $600 for married filers) for cash contributions to qualified charitable organizations. A 50% penalty applies (increased from 20%) to tax underpayments attributable to any overstated cash contribution by such individuals that do not itemize deductions.

The COVID-19 pandemic continues to create rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this Client Alert is issued. We therefore encourage you to monitor our website, review our future Client Alerts and generally remain alert for additional updates or modifications to laws and regulations.

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