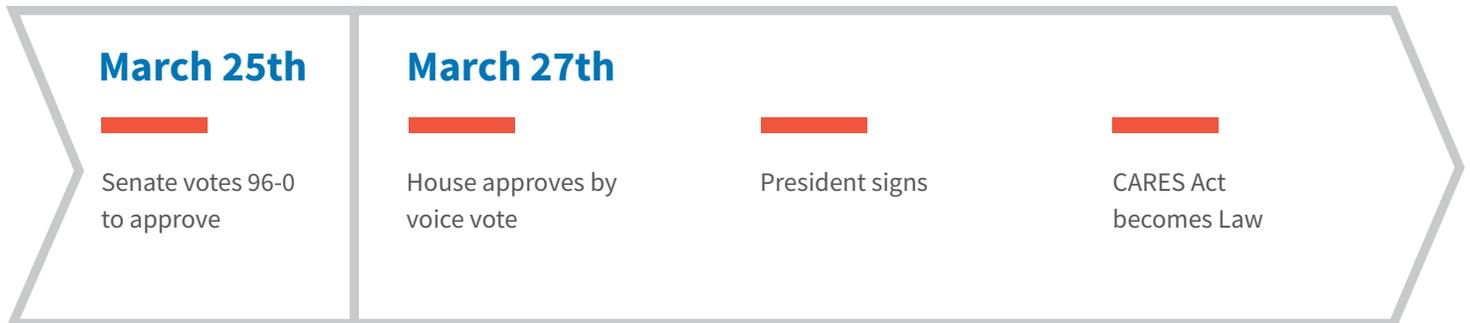


AN FTI CONSULTING REPORT – PUBLISHED 03/30/2020

The CARES Act Tax Provisions



On March 27, the President signed into law the CARES Act, designed to provide financial relief to those impacted by the COVID-19 pandemic. The Act contains both tax and financial relief provisions intended to address the strains placed on individuals and businesses, both large and small, from the coronavirus impact.



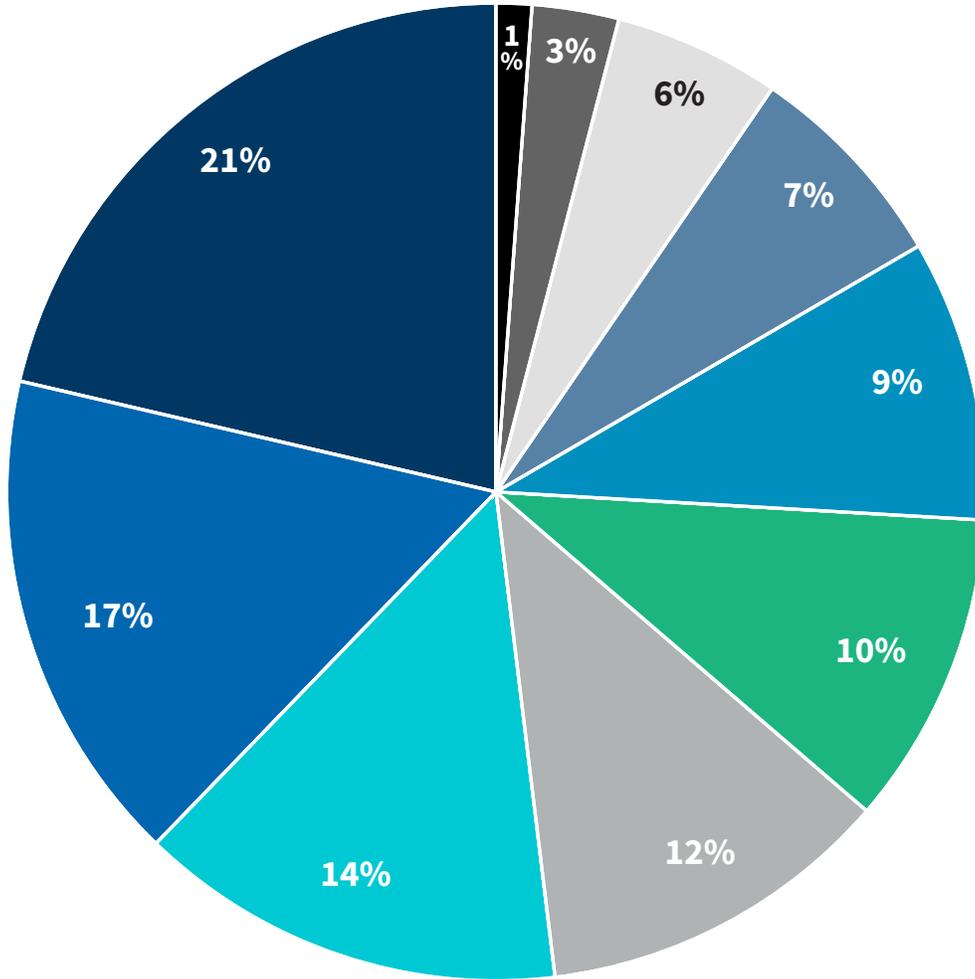
FTI Note: This summary addresses the Federal impacts of the CARES Act as it relates to federal income tax for the real estate industry. Careful analysis should also be performed on a state by state basis. Consult your FTI Tax Advisor.

Real Estate – Executive Summary

The most prominent tax aspects of the CARES Act as it relates to real estate owners and operators are as follows:

- Qualified Improvement Property life fixed to reflect 15 years and now eligible for bonus depreciation.
 - *Most REITs do not take bonus as it doesn't apply for earnings & profits.*
 - *Absent further guidance, entities that elected out of section 163(j) will not be eligible for bonus on QIP.*
- NOLs from 2018, 2019 and 2020 can be carried back 5 years for corporations (e.g. Taxable REIT Subsidiaries).
 - *This provision will allow corporations to obtain a refund of taxes paid at the 35% tax rate for years prior to 2018.*
 - *In addition, the NOL carryforward limitation of 80% is removed for 2019 and 2020. This would apply to 2018 NOLs carried forward.*
- Forgivable small business loans available for those financially impacted by COVID-19, such as landlords and tenants.
- Payroll tax credits to retain employees and enhance cash flows.
- Interest expense allowed up to 50% of Adjusted Taxable Income; many real estate companies already elected out of section 163(j) as an electing real property trade or business (RPTOB).
- Elimination of the \$500,000 excess business loss limitation rule for joint tax filers.

Where is the \$2.1 Trillion Going?



 \$454 21% Businesses Loans	 \$198 9% Other
 \$349 17% Small Business Loans	 \$150 7% State Aid
 \$301 14% Household Payments	 \$117 6% Hospitals and Veteran's Care
 \$250 12% Unemployment Insurance	 \$61 3% Airlines
 \$221 10% Tax Deferrals/Extended Deadlines	 \$25 1% Public Transit

Data above provided by the Wall Street Journal, amounts in billions

Business Tax Provisions

DELAY OF PAYROLL TAX PAYMENTS

Deferral of 6.2% Social Security payroll tax and Railroad Retirement Tax Act paid by employers and self-employed individuals

Will not apply if taxpayer had Section 7(a) loans forgiven

When: Applicable for wages paid from March 27 to December 31, 2020

Payment now due 50% on December 31, 2021 and 50% on December 31, 2022

NOLS – CORPORATIONS

Losses arising in 2018, 2019 and 2020 can be carried back to the 5 prior tax years. Doesn't apply to REITs

Eliminated the 80% limitation to allow the full offset of taxable income for tax years 2018 to 2020

When: Operating Losses in 2018, 2019 and 2020 eligible

Note: Carrying back NOLs to tax years prior to 2018 could result in a significant refund of taxes paid (including refund of 35% rate taxes)

Also consider the impact of US international provisions (e.g. income inclusions and foreign tax credit effect) for multinational corporations from NOL carrybacks

EMPLOYEE RETENTION CREDIT

Credit is 50% of qualified wages against employment taxes – 6.2% Social Security payroll tax and Railroad Retirement Tax Act [Cannot be taken if Employer receives PPP Loan]

Limited to: 50% of \$10,000 of wages per employee

Taken as a credit against employment taxes and any excess is then refundable

When: Applicable for wages paid after March 12, 2020 through December 31, 2020

Eligible Employer:

- i. carrying on a trade or business in 2020, and either ii) or iii) applies,
- ii. operation is fully or partially suspended due to governmental authority limiting commerce, travel or group meetings, or
- iii. had decline in gross receipts (defined as gross receipts for the applicable quarter which are 50% less than same quarter prior year (i.e. Q1 2020 is 50% lower than Q1 2019))

ALL 501(c) organizations are eligible employers regardless of i) and ii) The provision includes a related party employer aggregation rule

Qualified Wages (including health plan expenses): More than 100 employees – applies to wages paid during furlough as a result of the COVID-19 virus

Less than 100 employees – all wages during period above regardless of furlough or actively working

BUSINESS INTEREST EXPENSE LIMITATION

Interest expense previously limited to 30% of adjusted taxable income (roughly equal to EBITDA) now raised to 50% (see separate 163(j) rules pertaining to partnerships below)

Companies can elect to use 2019 adjusted taxable income (assuming higher) in 2020 to determine the 50% test

When: Applicable for 2019 and 2020 (reverts back to 30% limitation in 2021- 2025)

Special 163(j) rules for partnerships:

2019: Partnership's interest expense continues to be limited to 30% of Adjusted Taxable Income

Excess business interest expense from 2019 is now split and carried forward to 2020 as follows:

- 50% treated as paid in 2020, deductible by partner 100% in 2020
- Remaining 50% subject to existing rules

An irrevocable election out of the CARES Act change can be made for 2019 and 2020

Note: Some entities already made the irrevocable real property (RPTOB) election in 2018

Business Tax Provisions

QUALIFIED IMPROVEMENT PROPERTY

Qualified Improvement Property is now considered 15 year property eligible for bonus depreciation (100% write off)

QIP Alternative Depreciation System (ADS) life is 20 years (which is now the life for E&P purposes)

Bonus only available when the property is placed in service by the taxpayer

Effective: Retroactive to 2018

Prior Year Tax Return Amending Opportunities

Corporations: Yes

Partnerships: If in centralized partnership audit regime, requires an Administrative Adjustment Request (AAR); deduction taken in the year the AAR requested

OR: File 3115 to change method, 1 year Section 481 (“catch-up”) favorable deduction

It is hoped the IRS will provide further guidance on implementing this change

The History: TCJA increased bonus from 50% to 100% for assets that are 20 years or less, but QIP was left as 39 years due to a drafting error (“the glitch”)

– Many companies elected out of 163(j) and are now depreciating over ADS lives. Query: Will IRS provide relief for those who elected?

Definition of QIP: “Any improvement to an interior portion of a building which is non- residential real property” if placed in service after the building was placed in service NOT: an enlargement, elevator/escalator or internal structural framework

SBA 7(a) LOANS - PPP LOANS

Expands existing loan program

Certain loan amounts may be forgiven on a tax-free basis

– Amounts forgiven on a tax free basis are loan amounts expended on certain payroll, mortgage interest, rent, and utilities during the 8 week period beginning on the date of the loan

Loans are up to 2.5x average monthly payroll, with a max of \$10mm

Favorable applicability to restaurants and hotels

Max interest rate of 4%

Eligibility: Fewer than 500 employees

AMT CREDIT

Allows corporations to take AMT credits carried forward from years prior to 2018 over tax years 2018 and 2019

The History: Tax Cuts and Jobs Act (TCJA) repealed the AMT tax for corporations commencing in 2018 and allowed corps to utilize the unused AMT tax credits against regular tax over 4 years ending in 2021 (and any unused credit at end of 4 years was refundable in 2021) Amounts forgiven on a tax free basis are loan amounts expended on certain payroll, mortgage interest, rent, and utilities during the 8 week period beginning on the date of the loan

When: Must file application for refund before December 31, 2020

2018 Refundable AMT credit = 100% of excess of minimum tax credit carryforward amount from 2017 tax return

Options are to either amend 2018 or push 100% of the remaining credit and take as Refundable AMT credit in 2019

Individual Tax Provisions

EXCESS BUSINESS LOSSES

The TCJA limitation on the use of excess business losses in the amount of \$250,000 (\$500,000 for joint filers) is suspended from 2018 through 2020

Note: Clients with excess business losses can amend their 2018 tax return

When: Effective for tax years 2018 to 2020

NET OPERATING LOSSES

Noncorporate NOL carryback allowed without the 80% of taxable income limitation. For tax years after 2020, the 80% limitation returns and applies before taking 199A deduction and after pre-2018 NOLs

When: Losses arising in 2018, 2019 and 2020 can be carried back to the 5 prior tax years

DIRECT CASH REBATE \$\$\$

Rebate Checks as Follows:

- \$1,200 – single
- \$2,400 – married
- \$500 – per child

Phase out with AGI (adjusted gross income):

Between \$75,000 – 99,000, single
\$150,000 – 198,000, married

When: AGI is based on 2019 tax return, if filed, or 2018 tax return, if 2019 not filed yet

CHARITABLE DEDUCTIONS

\$300 deduction above the line for non-itemizers

Removed 50% limitation on deductions for charitable contributions, now 100% deduction of charitable contributions

ACCESS TO RETIREMENT PLAN DOLLARS

Waives the 10% penalty (not the tax) for early withdrawal up to \$100,000 for coronavirus related expenses prior to December 31, 2020 (i.e. diagnosed with COVID 19, care for spouse or dependent, financial hardship from quarantine, layoff, furlough, a business closing etc.)

Loan availability increased from \$50,000 to \$100,000

Those subject to minimum distribution requirements for IRAs, 401(K), 403(b), etc. have no minimum distribution for 2020 (to avoid drawing funds after market impact)

Any tax on income from drawing down retirement funds allowed to be paid over a 3 year period

STUDENT LOAN INTEREST

Employer can pay an employee's student loan interest on a tax free basis before January 1, 2021

Maximum exclusion is \$5,250 per year

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- International Tax Advisory and Compliance
- State & Local Tax Consulting
- Cost Segregation
- Private Client Advisory
- REIT and Fund Tax Structuring, Consulting & Compliance
- Tax Strategy & Planning Related to Bankruptcy & Financial Restructuring



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