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West India Council

Webinar on

Cross Border Legal & Tax Issues Under Cares Act, USA

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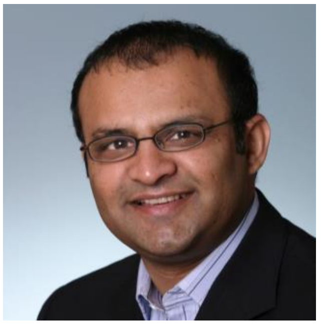

An article by Mr. Shantanu Surpure, Partner, Inventus Law on CARES ACT, USA

https://www.vccircle.com/us-stimulus-plan-may-be-relevant-to-india-related-firms-but-cross-border-issues-remain

A Report by Mr. Shishir Lagu, Partner, US Taxation, KNAV on Tax Benefits for businesses provided under the CARES ACT follows (Turn Overleaf)

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TAX BENEFITS FOR BUSINESSES PROVIDED BY THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

Shishir Lagu
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On March 27, 2020, the Congress approved, and President Donald Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), intended to serve as a comprehensive stimulus package in response to the economic crisis stemming from the coronavirus pandemic.

KNAV is closely following the various relief measures to assist businesses provided in the Bill. Some important provisions include;

I. Income Tax Implications

Topic	Existing Provision	CARES Act Provision	Observation
Carry Back of Losses (NOLs)	Post the Tax Cuts and Jobs Act (TCJA), no carry back of losses is allowed for post-2017 losses.	Losses from tax years 2018, 2019 and 2020 will be permitted to be carried back for up to five years. However, the carried back losses cannot be utilized against the IRC section 965 inclusion for the one-time repatriation tax.	The provision will be beneficial for corporations, that had profits in the prior years and incurred losses beginning 2018. The carry-back of NOLs to pre-TCJA years provides opportunity to utilize losses against a 35% corporate tax rate as compared to potential 21% benefit due to carry-forward.
Utilisation of Losses (NOLs)	Post TCJA, losses generated beginning from tax year 2018 could have been utilised only to the extent of **80%** of taxable income.	Losses can be utilised to the extent of **100%** of taxable income for tax years 2018, 2019 and 2020. However, from tax year 2021, utilization of post-TCJA NOLs shall be subject to the 80% taxable income limitation.	The provision will be beneficial to all corporations, that incurred losses in tax years 2018 or 2019 and have or are expected to earn profits in tax years 2019 and 2020. It shall also benefit corporations who may incur losses in 2020 due to the COVID-19 outbreak and intend to carry back the 2020 losses to 2018 or 2019.

IRC Section 163(j)	The maximum deduction pertaining to interest expense is limited to **30%** of Adjusted Taxable Income (ATI) (generally referred to as "Tax EBIDTA").	The limitation on interest deduction has been increased to **50%** of Adjusted Taxable Income (ATI) for 2019 and 2020. In addition, an election can be made to use the 2019 adjusted taxable income for calculating the limitation for the year 2020.	Companies with high net interest expense but insufficient EBIDTA to claim the deduction of interest expense will benefit. Additionally, it will benefit those entities, that are expected to incur losses in 2020 due to the COVID-19 outbreak as 2020 interest expense deduction limit may be calculated by using tax year 2019 ATI, leading to potentially higher interest deduction.
AMT Refund	50% of the AMT credits could be claimed as a refund over the years 2018 through 2020 and the remaining 50% credit shall be refunded in the year 2021.	50% of the AMT credits can be claimed **as a refund** in the year 2018 and the remaining 50% credit shall be refunded in the year 2019.	This will accelerate the receipt of AMT refund by at least a couple of years thereby helping businesses with cash inflows during these tough times.
Qualified Improvement Property (Leasehold Improvements)	Due to a drafting error in the TCJA, the QIP was to be depreciated over the life of **39** years and was not eligible for bonus depreciation.	A technical correction shall be made to revise the useful life of QIP to **15** years and it shall now be eligible for **100%** bonus depreciation. The change is retrospective w.e.f. January 1, 2018.	Companies may consider amending prior year return and claim the benefit of the bonus depreciation. The company may also consider claiming bonus depreciation on QIP on a prospective basis by changing the method of accounting.
Charitable Contribution	The taxable income limit on corporate charitable deductions is **10%** (**15%** for food inventory) of the adjusted taxable income.	The taxable income limit on corporate charitable deductions shall be increased to **25%** (including food inventory) of the adjusted taxable income.	This change would allow the higher utilisation of unabsorbed prior year charitable contributions leading to lower taxable income.

II. Payroll Tax Implications

Topic	CARE Act Provision	KNAV Observations
Deferral of payment of payroll taxes	The employer portion of the social security tax (6.2%) pertaining to the payroll tax liability until Dec 31, 2020 can be paid as per the following payment schedule: • Up to Dec 31, 2021 – 50% • Up to Dec 31, 2022 – 50%	The deferment of such payment will ease this tax burden and provide the much-needed cash flow to businesses. However, businesses company need to ensure that the employee portion of payroll taxes (Social Security and Medicare) and the employer portion of the Medicare tax is paid by the due dates.
Employee Retention Credit	A 50% credit of wages paid (credit capped at $5,000 per employee for all quarters) is allowed if all the following conditions are satisfied: 1. If a business has been partially or fully suspended due to a Government order or has experienced a 50% reduction in gross receipts for any calendar quarter of 2020 compared to the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where it has recovered sufficiently, such that its receipts exceed 80% of what they were for the same quarter in the previous year. 2. These wages paid should not been claimed as a credit under the new family medical leave or sick leave legislations. 3. No small business interruption loan should have been availed. Additional Points: • For employers with more than 100 full-time equivalent employees, only wages paid when the employee was not providing services are eligible. • For employers with 100 or fewer full-time equivalent employees, any wages paid when the business was fully or partially suspended or during the quarter of its gross receipts reduction are eligible. (All corporations forming part of a single controlled group shall be treated as one employer). • The credit is available against the employer portion of social security tax and if unutilized, a refund can be claimed.	This is an additional benefit provided in case a business is suspended on account of any government order or has experienced a significant slowdown. However, taxpayers should not confuse the same with the new paid leave and sick leave acts as both these benefits cannot be claimed on the same wages.

In conclusion, significant benefits have been provided by this Economic Stimulus package. KNAV will work with you in identifying all relevant benefits applicable to your business so that you may avail maximum tax benefits in these difficult times.

PARTNERS BEYOND BOUNDARIES

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