CLIENT ALERT

What Tax Actions Should Portfolio Companies Be Taking Now?

APRIL 10, 2020

Along with all of the other COVID-19 legal developments, there are a few tax provisions that may have been overshadowed, but that can provide benefits to portfolio companies right now. Accordingly, below is a list of tax actions that almost every portfolio company should be taking (if they have not done so already):

1. **Don't Pay Income Taxes until July 15, 2020**

   a. There is no need to make federal income tax payments until July 15, 2020. This applies to both ***2019 income taxes that would otherwise have been due before July 15 and to 2020 first and second quarter estimated taxes***.

   b. There is no need to file for extension or make any other filing to get this benefit.

   c. Many states have followed the federal deadlines, but this should be reviewed on a state-by-state basis.

2. **Don't Pay Employer Portion of Social Security Taxes for Remainder of 2020**

   a. Except as noted below, employers may defer the employer portion of social security taxes (ordinarily payable at a rate of 6.2%) for the period from March 12, 2020 to December 31, 2020. That is, you can ***stop paying this now***.

   b. 50% of the deferred payroll taxes will be due December 31, 2021 and 50% will be due December 31, 2022. The amounts due on those dates will be reduced by any payroll tax credit claimed (discussed below).

   c. There is no application or other filing to get this benefit.

   d. The only taxpayers that are not eligible are those that apply for payroll protection plan loans and have all or part forgiven.

3. **Figure Out Eligibility for Payroll Tax Credits (Retention Credits)**

   a. Eligible employers can obtain a refundable tax credit for the employer portion of social security taxes. The credit is for the first $10K of qualifying wages, so it is a maximum of $5K per employee.

i. An eligible employer is one with (i) a full or partial shutdown due to governmental order or (ii) a 50% decline in gross receipts compared with the same quarter in 2019.

1. If an eligible employer meets the gross receipts test in one quarter, it can continue qualifying for the credit until a quarter in which gross receipts are greater than 80% of the corresponding quarter in 2019.
2. The IRS is interpreting a partial shutdown broadly to cover partial suspension of operations due to orders from a governmental authority limiting commerce, travel, or group meetings such that the business can still continue to operate, but not at normal capacity.

ii. Qualified wages depend on the number of full-time equivalent employees ("FTEs") in 2019:

1. If more than 100 FTEs, only wages paid to employees to not provide services count.
   1. As an example, if an hourly employee is working two days a week and getting paid for five days, then three days of wages should be qualified wages.
   2. It is unclear whether credit is available for a salaried employee who provides reduced or limited services (*g.,* answering emails for an hour a day).
2. If 100 or fewer FTEs, all wages count.

iii. An aggregation rule applies to treat all entities under common ownership as one employer, including for purposes of determining who is an eligible employer and for the 100-FTE threshold.

b. Eligible employers ***can get the benefit now*** (before claiming it on a quarterly payroll tax return on Form 941) in one of two ways***:***

i. Reducing deposits, including of withheld income taxes and FICA taxes not already being deferred (*i.e.,* Medicare payroll taxes); or

ii. Filing a Form 7200 (*Advance Payment of Employer Credits Due to COVID-19*).

c. Credit is not available to eligible employers who apply for a payroll protection plan loan. This includes if any affiliate covered by the aggregation rule applies for a payroll protection loan.

4. **Review 2018 Income Tax Returns for Refund Opportunities**

a. Companies should review 2018 income tax returns to see if any income tax refunds are available.

b. If companies spent money on improving interiors of existing buildings, this can now be expensed instead of amortized over 39 years. This may reduce 2018 tax liability and result in refunds of tax paid in 2018.

c. Taxpayers that had net operating losses (NOLs) in 2018 can now carry those back five years (*e.g.,* to 2013 through 2017) to obtain refunds of tax paid.

d. Ordinarily, it would take the IRS a few weeks to process refunds, so they would be available fairly quickly, but we have not yet been able to determine how this is being affected by COVID-19.

5. **Consider Expediting 2019 Income Tax Filings if Refunds Are Expected**

Lastly, any taxpayer that believes it overpaid estimated taxes in 2019 or w ould have an NOL that can be carried back to prior years to obtain a tax refund should see what can be done to expedite 2019 income tax filings and obtain the resulting tax refunds.

View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

3 Min Read

Related Locations

Brussels | Charlotte | Chicago | Dallas | Houston | London | Los Angeles

New York | Paris | San Francisco | Shanghai | Silicon Valley | Washington, DC

Related Capabilities

Tax | Private Equity | Structured Finance

Related Regions

North America | Europe | Asia | Middle East & Africa | Latin America & Caribbean

Related Professionals

Rachel Ingwer

Olga Loy