Updates
March 25, 2020
Summary of Tax Provision of the Families First Coronavirus Response Act and Certain Tax Filing Changes

In response to the ongoing coronavirus (COVID-19) pandemic, the U.S. Congress, the Executive Branch, and the Internal Revenue Service (the IRS) have taken several actions intended to provide immediate relief to taxpayers, including by postponing federal income tax return and tax payment deadlines, providing businesses with tax credits to the extent that such businesses are subject to new paid sick and paid family and medical leave requirements, and declaring COVID-19 a national emergency.

Postponing of Federal Income Tax Deadlines

Deadlines applicable to federal income tax payments and returns which were originally due April 15, 2020, have been postponed until July 15, 2020.

- On March 20, 2020, the IRS issued Notice 2020-18, which postpones the deadlines for **both** federal income tax payments and federal income tax return filings (this notice superseded an earlier, and more limited, IRS notice that postponed federal income tax payment deadlines for certain taxpayers). Taxpayers whose federal income tax payment (including estimated income tax payments) or federal income tax return was originally due on April 15, 2020, now have until July 15, 2020, to make such payments or file such returns. The extension is automatic, and taxpayers do not need to seek an extension of the filing or payment deadlines. Unlike the relief provided by the earlier Notice 2020-17, there is no limitation on the amount of the payment that may be postponed.
- Interest, penalties, and additions to tax with respect of postponed federal income tax filings and payments will now begin to accrue on July 16, 2020.

- The above-referenced extensions are limited in scope. For instance, they do not extend to any types of federal tax other than federal income tax, such as employment taxes. The extension of the tax filing deadline also has certain coverage gaps, including federal information returns (e.g., IRS Form 1099). Further, the deadline postponement will not apply to any tax payment or tax return which is due on any date other than April 15, 2020. Although Notice 2020-18 does not specifically address the 3.8% "net investment income tax," we believe such taxes would be within the scope of notice given that such taxes are reported on IRS Form 8960 in connection with the filing of a taxpayer's income tax return.
- Many states have taken actions similar to the federal government in this respect. For instance, California's Franchise Tax Board has postponed until July 15, 2020, all tax filing and payment deadlines for all individuals and business entities in respect of 2019 tax returns, 2019 tax return payments, 2020 first and second quarter estimated payments, 2020 LLC taxes and fees, and 2020 non-wage withholding payments. Similarly, the Department of Revenue for the State of Washington has advised that taxpayers may seek extensions for filing returns and paying taxes (even if the request is made after the applicable due date) so long as the state remains in a state of emergency.

Tax Credits Available to Businesses Subject to New Paid Sick and Paid Family Leave and Medical Leave Requirements

Businesses providing paid leave to COVID-19 affected employees may be eligible to receive a tax credit against the 6.2% Social Security tax borne by such businesses on the payment of wages.

- On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) became effective, which, described generally, provides that eligible employees of certain employers will be entitled to up to 12 weeks of job-protected leave if unable to work due to certain COVID-19 created emergency situations. For a more in-depth discussion of the FFCRA and its provisions, please see this prior Perkins Coie update.
- To alleviate the cost to employers of providing such paid leave, the FFCRA provides employers with a tax credit against the employer's portion of Social Security taxes (which consists of a 6.2% tax on wages by the employer). The tax credit is equal to 100% of the paid leave wages required to be paid under the FFCRA. If the tax credit exceeds the amount of the employer's portion of Social Security tax due for the applicable quarter, the employer may treat the excess as a refundable overpayment. The amount of any tax credit claimed by an employer is subject to certain limitations, including a cap tied to the type of leave taken by an employee ($511 per day in cases of leave taken to care for oneself and $200 per day where leave is taken to care for another individual).
- The IRS has announced that it intends to issue further guidance on how businesses can utilize the above-described tax credits.

Tax-Free Reimbursement of Certain Payments to Employees Under Section 139 of the Code

Employers may make certain tax-free payments to employees to reimburse employees for certain expenses caused by COVID-19, while at the same time claiming such payments as deductible expenses.

- On March 13, 2020, President Trump declared the COVID-19 pandemic a national emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). Since March 13, the president has also declared a "major disaster" in various states, including Washington, New York, and California. The declarations of major disasters and a national emergency under the Stafford Act has various tax-related consequences, including the vesting of authority to postpone tax filing and payment deadlines (as described above).
- Another tax-related consequence of invoking the Stafford Act relates to Section 139(c)(2) of the Code, under which employers may make certain "qualified disaster relief payments" to employees on a tax-free basis while still claiming a deduction on the employer's federal income tax return. "Qualified disaster payments" include payments which are paid to (1) reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, and (2) reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.
- Many expenses incurred by employees which are caused by COVID-19 could be potentially reimbursable by an employer on a tax-free basis under Section 139 of the Code, including medical and other healthcare-related expenses, child care costs, funeral expenses, and educational costs related to school closures.

We expect that the IRS will issue further guidance addressing at least some of the above-described federal income tax considerations related to COVID-19. We also expect that the federal government will take new and additional tax-related actions in the upcoming days and weeks to help provide relief to American taxpayers facing hardships and challenges caused by COVID-19, including by providing economic stimulus payments to taxpayers in amounts that may be based on historical tax filing. We will continue to monitor federal income tax developments related to COVID-19, and we encourage you to reach out to any member of Perkins Coie's Federal Income Tax practice group with any questions you might have regarding these new provisions and initiatives.

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