

# 2020 Tax Year-In-Review

January 14, 2021

## Highlights

- ✓ Busy Year for Tax Legislation
- ✓ Ongoing COVID-19 Crisis Drives Agenda
- ✓ TCJA Guidance Continues
- ✓ New Congress and President Means More Legislation in 2021 and Beyond?

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### SPECIAL REPORT

## COVID-19 Pandemic Drives Tax Policy and Legislative Activity

2020 was an unprecedented year across the social, economic, and political spectrum. It was a year that saw political upheaval, with both an impeachment of the President of the United States and a contentious national election. Much of the year saw social unrest with many in the country deeply concerned about race issues in America. Overarching it all was the ongoing COVID-19 pandemic, that has claimed the lives of hundreds of thousands of Americans, and severely short-circuited the economy.

Tax policy in 2020 was not without drama either. With a national election in November, the general consensus at the beginning of 2020 was that significant tax legislation was highly unlikely. However, once the crisis began to hit with full force, it became clear that significant work was needed due to the widespread closures necessitated by the pandemic. Congress had to act swiftly, and significantly, to avoid a second Great Depression. In total, Congress passed, with broad bipartisan support, three enormous bills in 2020, each with a sizable amount of tax content: the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the Consolidated Appropriations Act, 2021.

Congress was not alone in attempts to stem the economic impact of the pandemic. Throughout the year, the IRS issued massive amounts of guidance, both to implement the above legislation, but also in an attempt to address issues as they arose. Additionally, even though the Tax Cuts and Jobs Act (TCJA) is now more than three years behind us, a significant amount of the guidance issued by the IRS that wasn't related to COVID still dealt with implementing the landmark bill. However, the IRS still managed to issue new guidance not related to the pandemic or legislation that will have an impact for 2021 and beyond.

### TAX LEGISLATION

Congress passed three sets of significant tax legislation during the 2020 tax year. The effective date of the legislation varied widely, with some provisions retroactive to the 2018 tax year, and others coming into effect immediately. The goal of most of the legislation was pandemic relief and economic stimulus.

#### Families First Coronavirus Response Act

On March 18, 2020, the President signed the Families First Coronavirus Response Act into law. The large Act included funding for testing for the spreading



COVID-19 virus in the early days of the pandemic. On the tax side, the Act included a credit for paid family leave provided by employers to employees impacted by the surging virus, as well as some other relief.

### CARES Act

On March 27, with it becoming more evident in just nine days that the nascent crisis would need more significant action in order to stave off an economic, social, and health disaster, the President signed the \$2.2 trillion Coronavirus

*“Congress had to act swiftly, and significantly, to avoid a second Great Depression.”*

Aid, Relief, and Economic Security (CARES) Act into law. The Act included the Paycheck Protection Program (PPP), which provided forgivable Small Business Association loans to employers who kept employees on the payroll, as well as enhanced unemployment insurance and relief to industries heavily affected by the pandemic. The Act also included a significant amount of tax relief, including \$1,200 direct stimulus payments, payroll tax relief, and several provisions meant to grant businesses increased expense deductions, including partial rollbacks of the TCJA, as a way to help businesses survive the economic turmoil.

### Consolidated Appropriations Act, 2021

Before the ink was even dry on the CARES Act, leaders of both parties were insisting that more relief was needed. However, other than a small bill providing additional funding to the highly popular PPP, lawmakers could not reach an agreement on the size and scope of the next bill during months of tense negotiations. House Democrats passed an enormous \$3 trillion “CARES 2” bill in May of 2020, and Senate Republicans later proposed a “skinny” relief bill, which failed to pass the Senate in September.

Eventually, in the waning days of 2020, both sides came together and passed the Consolidated Appropriations Act, 2021, an omnibus spending and relief Act that included a number of smaller Acts, including the COVID-19-Related Tax Relief Act and the Taxpayer Certainty and Disaster Tax Relief Act of 2020. In sum, several small changes were made to provisions of the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, while also extending them beyond their initial expiration date. The Act included another

round of direct payments to taxpayers, extensions of the charitable contribution provisions and employee retention tax credit, relief for lower income taxpayers on tax credits, and a clarification of the treatment of business expenses for small businesses with forgiven PPP loans. The Act also included an extension of popular individual and business tax breaks scheduled to expire at the end of 2020.

 **COMMENT.** *Wolters Kluwer covered these pieces of legislation throughout 2020 as they were passed. Further analysis of the Acts can be found in prior Wolters Kluwer Tax Briefings, or on CCH® AnswerConnect.*

## ADMINISTRATIVE COVID-19 RELIEF AND GUIDANCE

In the days surrounding the passage of the Families First Coronavirus Response Act and the CARES Act, the IRS issued various forms of relief aimed at easing the administrative burdens of filing taxes. After the Acts were signed into law, that guidance continued, along with vast amounts of guidance implementing the new relief provided in the legislation.

 **COMMENT.** *Below are just highlights of various pieces of relief and implementing guidance issued by the IRS in response to the COVID-19 crisis. Complete coverage of all guidance can be found on CCH® AnswerConnect.*

### Filing Delays

Among the first forms of relief provided by the IRS was filing relief. As the pandemic began to severely impact the country in mid-March, there was concern that people and businesses would not be able to file returns and pay taxes by the April 15 deadline that generally applies. The IRS began by postponing certain tax payments to July 15, 2020 (Notice 2020-17) then quickly postponed the filing deadline for income tax returns as well (Notice 2020-18). Similar delays followed for the filing of gift tax returns (Notice 2020-20) and estate tax returns (Notice 2020-23). Finally, the date for performing all time-sensitive actions after March 30, 2020 and before July 15, 2020 was moved to July 15, effectively moving the entirety of “tax season” to summer.

### Business Guidance

The two massive Acts in March of 2020 made significant changes to the taxation of businesses, in some cases

changing provisions of the TCJA to pre-2018 law in order to help businesses survive the economic impacts of the shutdown, such as the limitation on the deduction of business interest. After the CARES Act, the IRS issued guidance in Rev. Proc. 2020-22 on making the elections:

- out of the 50 percent adjusted taxable income (ATI) limitation for tax years beginning in 2019 and 2020,
- to use the taxpayer's ATI for the last tax year beginning in 2019 to calculate the limit for the 2020 tax year
- out of deducting 50 percent of excess business interest expense for the 2020 tax year without limitation

Final regulations issued on the business interest expense limitation also included guidance for these temporary and retroactive provisions (T.D. 9905, Notice 2020-59).

The TCJA also eliminated the net operating loss (NOL) carryback for most losses occurring after 2017. However, the CARES Act allowed the return of the carryback for losses in 2018, 2019, and 2020. The IRS provided guidance in Notice 2020-26 and Rev. Proc. 2020-24 on how to make elections to waive that carryback period, as well as how to make limited waivers where the taxpayer has an inclusion due to the transition tax. It also issued additional guidance in the case of taxpayers with NOLs and a foreign tax credit (Rev. Rul. 2020-8).

The CARES Act also fixed the "retail glitch" from the TCJA, which inadvertently made qualified improvement property ineligible for 100 percent bonus depreciation. The CARES Act made the "fix" retroactive to 2018, and the IRS issued guidance on amending prior year returns and making election changes as a result of the retroactive change (Rev. Proc. 2020-25).

## Foreign Guidance

The lockdown of nearly all travel, including international travel, had some tax consequences as well. The IRS issued guidance (Rev. Proc. 2020-20; Rev. Proc. 2020-27) that:

- up to 60 consecutive calendar days of U.S. presence that are presumed to arise from COVID-19 travel disruptions will not be counted for determining U.S. tax residency, or determining whether an individual qualifies for tax treaty benefits for income from personal services performed in the United States
- for certain U.S. citizens and residents, qualification for gross income exclusion of foreign earned income will not be impacted by days spent away from a foreign country due to the COVID-19 emergency; and
- certain U.S. business activities by a nonresident alien or foreign corporation will not be counted for determining whether the individual or entity is engaged in a U.S. trade or business or has a U.S. permanent establishment.

Further, the IRS determined that certain temporary activities conducted in a foreign country will not be taken into account in determining whether a domestic corporation has a foreign branch separate unit for purposes of the dual consolidated loss rules or a U.S. person has an obligation to file Form 8858 (Rev. Proc. 2020-30).

## Benefits and Retirement Guidance

The fact that the crisis relates to public health means a significant impact on the administration of health benefits. Further, the pandemic's outsized impact on the elderly means a similarly outsized impact on retirement savings. The IRS and Congress addressed these issues as well. The March legislation made many changes to ensure tax benefits for many kinds of medical expenses. Additionally, The Departments of the Treasury, Labor, and Health and Human Services (HHS) issued interim regulations that clarify the preventive services cost-sharing rules. Plans and issuers must cover, without cost-sharing, qualifying coronavirus preventive services, including immunizations (T.D. 9931).

For retirement administration relief, the IRS released guidance that provides temporary administrative relief to help certain retirement plan participants or beneficiaries who need to make participant elections by allowing flexibility for remote signatures (Notice 2020-42). Guidance was also issued on coronavirus-related distributions (Notice 2020-50) and single-employer defined benefit plan funding relief (Notice 2020-61), both allowed under the legislation in March.

## Employment Taxes

A good portion of the Families First and CARES Acts was devoted to various credits for employers to take advantage of in offering paid medical and family leave to employees impacted by the pandemic, as well as for employee retention for business impacted by government-mandated closures. The IRS issued final and proposed regulations (T.D. 9904, NPRM REG-111879-20) on how to:

- reconcile advance payments of refundable employment tax credits, and
- recapture the benefit of the credits when necessary

## PAYROLL TAX DEFERRAL

The CARES Act allowed for employers to defer payment of the **employer's** share of employment taxes from the period beginning on March 27, 2020 and ending before January 1, 2021. A provision also allowed for half of a self-employed person's old-age, survivors, and disability

insurance (OASDI) tax. The deferred taxes were to be paid over the following two years, 2021 and 2022.

In August, 2020, President Trump signed a memorandum allowing for the deferral of the **employee's** share of payroll taxes during the period from September 1, 2020 to December 31, 2020. While the details of the order were not clear at the time, the IRS later issued guidance that the deferred amounts had to be withheld from employee pay and paid back during the period from January 1, 2021 to April 30, 2021 (Notice 2020-65). This period was eventually extended to December 31, 2021 by the COVID-19-Related Tax Relief Act of 2020.

## OTHER SIGNIFICANT ACTIVITY

The IRS was busy with more than providing pandemic relief and implementing guidance related to the Families First and CARES Acts in 2020. Even three years later, the IRS is still busy issuing guidance on the Tax Cuts and Jobs Act. Guidance was also issued in several other areas.

 **COMMENT.** *The Treasury Department and the IRS issued more than 50 Treasury Decisions during 2020. Below are just some highlights of this significant guidance. Complete coverage of all guidance issued in 2020 can be found on CCH® AnswerConnect*

## TCJA Guidance

The IRS amended final regulations with guidance on the Code Sec. 199A deduction for suspended losses and shareholders of regulated investment companies (RICs). The amendments address the treatment of suspended losses included in qualified business income (QBI), the deduction allowed to a shareholder in a regulated investment company (RIC), and additional rules related to trusts and estates (T.D. 9899).

The IRS adopted previously issued proposed regulations dealing with the 100 percent bonus depreciation deduction. In addition, some clarifying changes were made to previously issued final regulations (T.D. 9916). The IRS then issued guidance for taxpayers that want to apply the new final regulations, or prior proposed regulations for certain property placed in service before 2021 (Rev. Proc. 2020-50).

The IRS also issued final regulations covering the deduction for foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI). The final regulations maintain the basic approach and structure of the proposed regulations and provide guidance on computation of the deduction and the determination of FDII, including in the consolidated return context (T.D. 9901).

Final regulations under the GILTI and subpart F provisions for the treatment of high-taxed income were also issued. The final regulations provide guidance on determining the type of high-taxed income that is eligible for the exclusion (the "GILTI high-tax exclusion" or GILTI HTE) (T.D. 9902).

The IRS has released final regulations (T.D. 9907) that address the interaction of the \$10,000/\$5,000 cap on the state and local tax (SALT) deduction and charitable contributions. The regulations include:

- a safe harbor for individuals who have any portion of a charitable deduction disallowed due to the receipt of SALT benefits;
- a safe harbor for business entities to deduct certain payments made to a charitable organization in exchange for SALT benefits; and
- application of the quid pro quo principle to benefits received or expected to be received by the donor from a third party.

## Proposed Regulations Under TCJA

The IRS continues to implement the Tax Cuts and Jobs Act from more than three years ago. The below proposed regulations are among those issued by the IRS during 2020:

- **REG-132741-17**, Changes to Wage Withholding, Redesigned W-4
- **REG-132529-17**, Life Insurance Company Reserves
- **REG-106013-19**, Hybrid Dividends, Conduit Financing Arrangements, and GILTI
- **REG-106864-18**, Silo Rules for Exempt Organizations
- **REG-113295-18**, Miscellaneous Deductions of Estate, Non-Grantor Trust
- **REG-104591-18**, Deductibility of Fines and Penalties
- **REG-122345-18**, Excess Tax-Exempt Organization Executive Compensation
- **REG-118997-19**, Definition of Qualifying Relative for Child-Related Tax Benefits
- **REG-107213-18**, Partnership Carried Interests
- **REG-132766-18**, Small Business Simplified Accounting Rules
- **REG-116475-19**, Plan Loan Offset Rollovers

Final regulations clarify the definition of “real property” that qualifies for a like-kind exchange, including incidental personal property. Under the TCJA, like-kind exchanges occurring after 2017 are limited to real property used in a trade or business or for investment (T.D. 9935).

## Withholding

At the beginning of the year, the IRS issued a new Form W-4 and Publication 15-T to reflect the change in individual taxation as a result of the TCJA. The IRS also issued interim guidance for the 2020 calendar year on income tax withholding from periodic payments for pensions, annuities, and certain other deferred income (Notice 2020-3). Final regulations were also released on the due diligence and reporting rules for persons making certain U.S. source payments to foreign persons. Guidance is also provided on reporting by foreign financial institutions on U.S. accounts (T.D. 9890).

The IRS also issued final regulations (T.D. 9924) that provide guidance for employers on federal income tax withholding from employees’ wages. The final regulations:

- address the amount of federal income tax that employers withhold from employees’ wages;
- implement changes made by the TCJA; and
- reflect the redesigned Form W-4, Employee’s Withholding Certificate, and related IRS publications.

## Employee Benefits

Final regulations reflect the significant changes that TCJA made to the deduction for travel and entertainment expenses (T.D. 9925). Note, however, that the Consolidated Appropriations Act, 2021 allows for a temporary 100 percent deduction of business meals provided by a restaurant.

The IRS issued final regulations to update the life expectancy and distribution period tables under the

required minimum distribution (RMD) rules. The tables reflect the general increase in life expectancy. The tables would apply for distribution calendar years beginning on or after January 1, 2022, with transition relief (T.D. 9930).

## TAX LEGISLATION ON THE HORIZON

Ahead of the passage of the Consolidated Appropriations Act, 2021, President-elect Joe Biden described the COVID relief and stimulus contained therein as a “down payment,” indicating more relief and stimulus to come. In fact, right after the bill was passed, an attempt was made to increase the \$600 stimulus payment in the bill to \$2,000, a move that was ultimately blocked by the GOP-led Senate.

Now, as the 117th Congress comes in with Democratic majorities in both chambers, Biden and Democratic leadership have indicated that an increase in direct stimulus to \$2,000 would be a priority. Additionally, Democrats have a long wish list from years of being in the minority in the Senate with a GOP President. On January 12, the Democrats on the House Ways and Means Committee released a framework for creating more economic and social equality in the country, which changes to tax benefits to help lower-income families, such as increases in the earned income tax credit, child tax credit, and the child and dependent care credit.

Also not to be overlooked is the long-stalled, heavily bipartisan reform to retirement benefits and funding, known as SECURE Act 2. The bill was something everyone agreed to early in 2020, and many expected it to hitch a ride with any of the COVID-related relief bills throughout 2020. The bill is something that could come up at any time during the next two years, especially given the need to get moderates in Congress on board with razor-thin majorities in both chambers.