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The CARES Act—Tax implications for employers

Jonathan Traub discusses some of the areas of interest to recovery planning tax departments found in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This includes a focus on the temporary provision allowing companies to delay the deposit of payroll taxes to the government.

Host: Ian Solomon, Senior Manager, Deloitte
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Ian Solomon: Jon, thanks again for coming on the podcast. Good to talk to you. Always good to be here. So last week, we talked about some of the highlights of the CARES Act, but now that it's been law for about a week or so, are there any additional areas that that might be of interest to tax departments?

Jonathan Traub: For sure. The law as written is one thing. The law as implemented is something else entirely. And we are seeing federal agencies now try to put the CARES Act into regulatory language and into guidance and applications for loans, etc. And those details really matter a lot.

In fact, we saw on Thursday, when the Small Business Administration put out the rules for the Paycheck Protection Program, they effectively rewrote the law to change in some ways what loan proceeds could be used for. And so tax departments should be very conscious as they think about what it's . . . loans or tax provisions, etc., to really pay attention to the details of the regulatory process.

Solomon: And in the CARES Act, you know, there's that that temporary provision allowing companies to delay the deposit of payroll taxes to the government. What are some of the things the taxpayer should be thinking about there?

Traub: So I would point out a couple of things there, even though one is not applicable to all payroll taxes. It's only the employer share of Social Security taxes, so it doesn't apply to the employee side—it does not apply to Medicare taxes. Secondly, there are provisions in the law and the CARES Act that run through the payroll tax. The employee retention tax credits, the deferral of payroll tax payments.

And so there are a lot of antiabuse/double-dipping rules that apply here, so if you were taking paycheck protection loans from SBA, you may be precluded from using some of the tax provisions, and vice versa. So tax departments would be well-advised to make sure they consult with counsel to understand what routes are taking and whether it may preclude them from taking other available tax or loan benefits.

Solomon: While not directly related to tax, there's also some options for grants and debt relief for small and large businesses. Can you go a little deeper on some of those that we saw?

Traub: On Friday, the Small Business Administration began to make money available under the Paycheck Protection Program. And as of late last night, SBA issued about 17,000 loans with a total value of about $5.4 billion. In some sense, that's surprising in that we thought it to be a tremendous amount of demand for these loans at the get-go. And there's still about $345 billion left of loan capacity based on what SBA reported last night, so these loans may last longer than some of us anticipated.

The Treasury lending facility, which they've worked on with the Fed for up to $454 billion in lending for larger employers, that, we're still waiting on guidance and regulatory provisions and an application process. I would hope those come out very, very soon. We've been expecting them really any day now, and so I'm going to keep saying "ask again tomorrow," but those should be out soon. And that will kick off that aspect of the CARES Act.

Solomon: Going beyond the CARES Act, it seems like as soon as it passed, members of Congress started floating potential additions to either phase three or phase four legislation. Where are we with that? And what do you think the timeline is for additional legislation?

Traub: So the week started with Democrats in the House moving quickly to advance or put forward a phase four bill, and some of the early contours of what they talked about were infrastructure, clean water, changes in how we vote—understanding people may not be comfortable going to the polls in person in November—more checks for individuals, more assistance for frontline health care workers, more money for states.

And as the week started, Senate Republicans were saying, "Well, wait a minute, let's let this process play a little bit. We just passed the CARES Act. Most of the money isn't out the door yet," right? The paycheck protection program hadn't even launched at that point, we're still waiting on a larger Fed/Treasury lending facility to get up and running.

But as the week ended, the sides sort of moved closer together. We saw Speaker Pelosi on Friday said, "Well, maybe what we don't want to do is not phase four, but phase 3.1, in which we build upon pieces of phase 3 with additional assistance, fill in some gaps, correct some errors, make it more robust where necessary. We said Senate Republicans, led by McConnell, have opened the door to, "Yeah, maybe we do need to consider another phase, which makes sense because we saw just terrible unemployment numbers on Thursday and Friday." I think the gravity of the situation is going to weigh on lawmakers' minds.

What does it mean in terms of when something gets done? Well, both the House and Senate are, in theory, on recess until the third week of April. While committees can start drafting legislation, it's unlikely we're going to see anything get enacted into law until then. Although it's worth pointing out we live in such an unusual and unpredictable times that I think almost any result is possible here.

Solomon: Jon, thanks very much for your insight. Appreciate you coming on the program, and looking forward to talking to you soon.

Traub: My pleasure. And stay safe.