## Net operating loss liberalizations:

The 2017 Tax Cuts and Jobs Act (the 2017 Tax Law) limited NOLs arising after 2017 to 80% of taxable income and eliminated the ability to carry NOLs back to prior tax years. For NOLs arising in tax years beginning before 2021, the CARES Act allows taxpayers to carryback 100% of NOLs to the prior five tax years, effectively delaying for carrybacks the 80% taxable income limitation and carryback prohibition until 2021.

The Act also temporarily liberalizes the treatment of NOL carryforwards. For tax years beginning before 2021, taxpayers can take an NOL deduction equal to 100% of taxable income (rather than the present 80% limit). For tax years beginning after 2021, taxpayers will be eligible for: (1) a 100% deduction of NOLs arising in tax years before 2018, and (2) a deduction limited to 80% of taxable income for NOLs arising in tax years after 2017.

The provision also includes special rules for REITS, life insurance companies, and the Code Sec. 965 transition tax. There are also technical corrections to the 2017 Tax Law effective dates for NOL changes.

## Deferral of no corporate taxpayer loss limits:

The CARES Act retroactively turns off the excess active business loss limitation rule of the TCJA in Code Sec. 461(l) by deferring its effective date to tax years beginning after December 31, 2020 (rather than December 31, 2017). (Under the rule, active net business losses in excess of $250,000 ($500,000 for joint filers) are disallowed by the 2017 Tax Law and were treated as NOL carryforwards in the following tax year.)

The CARES Act clarifies, in a technical amendment that is retroactive, that an excess loss is treated as part of any net operating loss for the year, but isn't automatically carried forward to the next year. Another technical amendment clarifies that excess business losses do not include any deduction under Code Sec. 172 (NOL deduction) or Code Sec. 199A (qualified business income deduction).

Still another technical amendment clarifies that business deductions and income don't include any deductions, gross income or gain attributable to performing services as an employee. And because capital losses of non-corporations cannot offset ordinary income under the NOL rules, capital loss deductions are not taken into account in computing the Code Sec. 461(l) loss and the amount of capital gain taken into account cannot exceed the lesser of capital gain net income from a trade or business or capital gain net income.

## Acceleration of corporate AMT liability credit:

The 2017 Tax Law repealed the corporate alternative minimum tax (AMT) and allowed corporations to claim outstanding AMT credits subject to certain limits for tax years before 2021, at which time any remaining AMT credit could be claimed as fully-refundable. The CARES Act allows corporations to claim 100% of AMT credits in 2019 as fully-refundable and further provides an election to accelerate the refund to 2018.

## Relaxation of business interest deduction limit:

The 2017 Tax Law generally limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income (ATI). The CARES Act generally allows businesses, unless they elect otherwise, to increase the interest limitation to 50% of ATI for 2019 and 2020, and to elect to use 2019 ATI in calculating their 2020 limitation. For partnerships, the 30% of ATI limit remains in place for 2019 but is 50% for 2020. However, unless a partner elects otherwise, 50% of any business interest allocated to a partner in 2019 is deductible in 2020 and not subject to the 50% (formerly 30%) ATI limitation. The remaining 50% of excess business interest from 2019 allocated to the partner is subject to the ATI limitations. Partnerships, like other businesses, may elect to use 2019 partnership ATI in calculating their 2020 limitation.

## Technical correction to restore faster write-offs for interior building improvements:

The CARES Act makes a technical correction to the 2017 Tax Law that retroactively treats (1) a wide variety of interior, non-load-bearing building improvements (qualified improvement property (QIP)) as eligible for bonus deprecation (and hence a 100% write-off) or for treatment as 15-year MACRS property or (2) if required to be treated as alternative depreciation system property, as eligible for a write-off over 20 years. The correction of the error in the 2017 Tax Law restores the eligibility of QIP for bonus depreciation, and in giving QIP 15-year MACRS status, restores 15-year MACRS write-offs for many leasehold, restaurant and retail improvements.

## Accelerated payment of credits for required paid sick leave and family leave:

The CARES Act authorizes IRS broadly to allow employers an accelerated benefit of the paid sick leave and paid family leave credits allowed by the Families First Coronavirus Response Act by, for example, not requiring deposits of payroll taxes in the amount of credits earned.

## Suspension of certain alcohol excise taxes:

The CARES Act suspends alcohol taxes on spirits withdrawn during 2020 from a bonded premise for use in or contained in hand sanitizer produced and distributed in a manner consistent with FDA guidance related to the outbreak of virus SARSCoV- 2 or COVID-19.

## Suspension of certain aviation taxes:

The CARES Act suspends excise taxes on air transportation of persons and of property and on the excise tax imposed on kerosene used in commercial aviation. The suspension runs from March 28, 2020 to December 31, 2020.