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Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)

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Yesterday, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) an unprecedented \$2.2 trillion stimulus package. By some estimates, the total value of the stimulus, including new credit facilities, will be \$5.6 trillion – almost 25% of the United States GDP.

The unprecedented Act, at 880 pages with regulations to follow, will require careful review and analysis. In advance of that, we provide the following summary of certain key programs and elements of the Act that will be of interest to businesses and their employees.

Labor, Unemployment and General Benefits

The Act provided \$250 billion for enhanced unemployment benefits and \$300 billion for direct payments to adults who filed tax returns in 2019, subject to income restrictions (\$75,000 per year for individuals; \$150,000 for couples), and an additional payment of \$500 per child. Programs and benefits include:

- Increased unemployment benefits to provide an additional \$600 per week for up to four months, funded by the federal government and not chargeable to the employer;
- Short-time compensation agreements allowing employers to reduce pay to workers who will then receive prorated unemployment benefits;
- Expands unemployment insurance for self-employed and contract workers;
- Mortgage foreclosure forbearance on federally guaranteed mortgages for a limited time;
- A temporary moratorium on eviction proceedings; and
- Advance refunding of tax credits.

Loan Programs and Guarantees for Businesses

The Act provides for a new \$349 billion SBA lending program modeled on the existing 7(a) program with a 100% government guarantee.¹ The Act also provides \$500 billion for loan programs and credit facilities to support impacted businesses, including large businesses, through programs or facilities established by the Federal Reserve.

- Known as the “Paycheck Protection Program”, this expansion of the SBA loan program will allow businesses with less than 500 employees² to secure loans that will be forgiven by the government at year end subject to conditions and restrictions.
 - Allows loan amounts of up to 2.5 times the borrower’s average monthly payroll costs, not to exceed \$10 million;
 - Maximum interest rate of 4%;
 - Borrower eligible for loan forgiveness equal to the amount the borrower spent on certain items during the eight (8) week period beginning on the date of the loan origination; and
 - Cancelled indebtedness under this program will not be included in gross income.
- Funds will be allocated to assist businesses with existing SBA loans. Payments can be deferred for six (6) to twelve (12) months.
- Loan programs for businesses with between 500 and 1,000 employees will allow for loans at 2% with no principal or interest due for the first six (6) months. Maturity not to exceed five (5) years.
- The loan programs will have conditions, including restrictions on the use of funds, and will need to be carefully considered. Depending on the program, some restrictions include:
 - Loan proceeds cannot be used for stock buybacks, dividend payments, or executive compensation for at least one year after repayment of the loan; and
 - Employers must retain at least 90% of their employees.

Tax Law Changes

The Act includes sweeping changes to tax law and the code, including the following:

- Eligible employers severely impacted by the crisis will be granted a refundable payroll tax credit equal to 50% of qualifying wages paid to employees who are not working due to the employer’s full or partial suspension of business as a result of a government order or a significant decline in gross receipts. The credit is limited to \$10,000 per employee for qualifying wages paid after March 12, 2020 and before January 1, 2021.
- Net Operating Losses incurred in 2018, 2019 and 2020 can be carried back to the prior five tax years. Losses carried over to 2019 and 2020 are not permitted to fully offset taxable income.

¹ SPSK has a fully staffed SBA lending practice and can assist prospective borrowers in navigating the SBA lending process.

² The 500-employee limitation includes all employees, full time, part time and any other status. In the accommodation and food services industries, the 500-employee threshold will be applied on a per location basis.

- The amount of interest expense that businesses can deduct on their tax returns is increased from 30% to 50% of adjusted taxable income for 2019 and 2020. There are special rules for partnerships.
- Business can immediately write off costs associated with improving facilities for “qualified improvement property” instead of having to depreciate those expenses over 39 years.
- Employers can defer 100% of the employer portion of payroll taxes, while self-employed individuals can defer 50% of their self-employment taxes.
- For corporations there is a temporary increase of the limitation on the deductibility of cash charitable contributions during 2020 to certain charities from 10% to 25% of the taxpayer's taxable income.

There are restrictions, conditions, requirements and regulations for the programs and funds which are to be made available under the CARES Act, some of which have not yet been promulgated. Additional stimulus packages and programs are expected to be introduced.

SPSK's various practice groups are preparing more detailed alerts addressing the matters summarized above.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.