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Late Monday night, December 21, 2020, Congress passed the Covid-related Tax Relief Act of 2020 ("COVIDTRA") and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 ("TCDTR") both part of the Consolidated Appropriations Act, 2021("CAA"). Although the CAA was passed with a veto proof margin, President Trump has threatened not to sign it and is requesting that Congress revise the COVIDTRA to provide a larger amount of direct payment to individual taxpayers than the $600 that is currently contained in the COVIDTRA.

The CCA provides, in part, for additional PPP loans ("Second Draw Loan" or "Second Draw") for smaller and harder-hit businesses. The maximum amount of the Second Draw is $2 million. To qualify for the Second Draw, a business must

- Employ not more than 300 employees; and
- Have used or will use the full amount of their first PPP; and
- Demonstrate at least a 25% reduction in gross receipts in Q1, Q2, Q3 or Q4 of 2020 relative to the same quarter in 2019.

The maximum amount of the loan is the lesser of 2.5 times the average monthly payroll costs in the preceding 12 months or the calendar year prior to the loan, or $2 million. Businesses with NAICS sector code 72 (businesses in the accommodation and food services sector) may receive loans up to 3.5 times the average monthly payroll, not to exceed $2 million.

Perhaps most notable among the various provisions in the COVIDTRA is the much sought after tax deductible treatment of expenses paid by businesses from funds received under the Paycheck Protection Program. COVIDTRA clarifies that taxpayers whose PPP loans are forgiven are allowed deductions for otherwise deductible expenses paid with the proceeds of the PPP loan (the IRS previously stated that such expenses would not be deductible under current provisions of the Internal Revenue Code). Additionally, tax basis and other tax attributes of the borrower's assets will not be reduced (as is typically the case when debt forgiveness income is excluded from taxable income). COVIDTRA also allows the Treasury Department to waive the information reporting requirements that would otherwise apply to PPP loans that are forgiven.

Under COVIDTRA, taxpayers owning residential rental property that elected out of the limitation on the business interest expense deduction by switching to ADS depreciation recovery periods, may now use a 30 year life (previously 40 years) for residential real property placed in service prior to January 1, 2018.

Under current law, the deduction for ordinary and necessary food and beverage expenses associated with operating a business are limited to 50% of the amount paid. In an attempt to support the failing restaurant industry, COVIDTRA provides that business expenses for food or beverages provided by a restaurant that are paid or incurred after December 31, 2020 and before January 1, 2023 will be 100% deductible.

As alluded to above, COVIDTRA provides for "additional 2020 recovery rebates" in the form of a refundable tax credit to eligible individuals in the amount of $600 per taxpayer ($1,200 for a couple filing jointly) and $600 per qualifying child. The credit phases out starting at $75,000 of modified adjusted gross income ($112,500 for heads of household and $150,000 for married filing jointly). Thus, a married couple filing jointly with modified adjusted gross income exceeding $162,000 would not be entitled to the credit. The Treasury is authorized to issue advance payments of the credit. Nonresident aliens, dependents of another taxpayer, estates and trusts are not considered eligible individuals.

There are a number of other tax provisions and tax extenders in CAA that will be disseminated in future emails as guidance is issued.