TAX

IRS Providers Initial Guidance on the Coronavirus, Aid, Relief, and Economics Security (CARES) Act

Key Points:
- The legislation includes several tax incentives which the IRS issued information on this week.
- The two main areas the IRS issued information are the rebate payments to individuals and fully refundable employee retention tax credit.

According to the IRS release, the credit:
- Is fully refundable and is equal to 50% of qualified wages that eligible employers pay their employees.
- Applies to wages paid after March 12, 2020 and before January 1, 2021, and can be applied to Social Security Taxes incurred by the organization.
- The maximum amount of income taken into account for each individual employee is $10,000 and the maximum credit paid to employers per employee is $5,000.

The IRS issued initial guidance and information on the employee retention tax credit that was included in the CARES Act. The IRS has a website where all coronavirus information is posted.
A qualified employer under this program includes employers who were required to fully or partially suspend operations due to COVID-19, or an employer who experienced a significant decrease in receipts during the specified time period.

Under the CARES Act the employer is not required to pay qualified wages out to employees however the Families First Coronavirus Response ACT (FFCRA) does require employers to pay sick or family leave to those who are unable to telework due to circumstances surrounding COVID-19.

Eligible employers can claim this refund by reporting their total qualified wages and the related tax credits on their federal employment tax returns. In anticipation of receiving the credits, Eligible Employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.

The IRS also released information on the economic impact payments or rebates for single Americans making less than $75,000 and joint filers making less than $150,000, phased out above those levels:

- Under this program a single filer would receive a payment of $1,200 and joint filers would receive $2,400, with an additional $500 per eligible child.
- An individual’s eligibility for this program will be determined using their 2019 tax returns or 2018 tax returns if their 2019 taxes have yet to be filed due to the deadline extension until July 15, 2020.
- The IRS will also use the information on the Form SSA-1099 or Form RRB-1099 to generate Economic Impact Payments to recipients of benefits reflected in the Form SSA-1099 or Form RRB-1099 who are not required to file a tax return and did not file a return.
- Electronic payments are expected to be distributed within the next two weeks and paper checks are expected to take longer.
- Lastly, for those who plan on delaying filing until the new July 15, 2020 deadline the eligibility for this program lasts until the end of 2020.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Josh Hansma contributed to this section.

FINANCIAL SERVICES

Treasury and the SBA Begin CARES Act Implementation

Key Points:
- The Treasury Department and the SBA released documents detailing the implementation of the small business lending provisions of the CARES Act. The small business lending program went into effect on April 3.
- Treasury also put out guidance on loans to the airline industry under the CARES Act.

This week, the Treasury Department, the Small Business Administration (SBA) and the Federal Reserve began implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law last Friday.

Title I of the CARES Act provided $349 billion for the Paycheck Protection Program (PPP) which offers forgivable loans to small businesses. The program went live on April 3. On March 31, the Treasury Department released several documents detailing the program, including: (1) a topline summary; (2) an
information sheet for lenders; (3) an information sheet for borrowers; and (4) an application form for borrowers. The SBA has launched a webpage providing an overview of the PPP for lenders and borrowers.

On March 31, the Treasury Department issued a press release in which Secretary Steven Mnuchin stated:

This legislation provides small business job retention loans to provide eight weeks of payroll and certain overhead to keep workers employed. Treasury and the Small Business Administration expect to have this program up and running by April 3rd so that businesses can go to a participating SBA 7(a) lender, bank, or credit union, apply for a loan, and be approved on the same day. The loans will be forgiven as long as the funds are used to keep employees on the payroll and for certain other expenses.

On April 2, Treasury Secretary Steven Mnuchin held a press conference in which he announced that the SBA was raising the interest rate for new small business loans under the PPP to 1.0 percent, after lenders had suggested that the original rate of 0.5 percent would not cover their cost of funds. The SBA subsequently released an interim final rule outlining key provisions of the implementation of the PPF including borrower and lender eligibility, and a 1.0 percent interest rate. Mnuchin also indicated that he will ask Congress for additional funds for the PPP if the initial $349 billion is expended, which is expected to occur quickly.

Title IV of the CARES Act provided $500 in loans for distressed sectors of the economy, including $25 billion for passenger airlines. On March 30, the Treasury Department issued two documents providing guidance on aid to the airline industry: (1) Procedures and Minimum Requirements for Loans to Air Carriers and Eligible Businesses and National Security Businesses under Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act; and (2) Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors under Division A, Title IV, Subtitle B of the Coronavirus Aid, Relief, and Economic Security Act.

Regulators Take Additional Actions to Support the Economy During the Coronavirus Outbreak

Key Points:

- The Federal Reserve announced the creation of a temporary repurchase agreement facility for foreign and international monetary authorities.
- The CFTC announced additional regulatory relief for futures commission merchants.

This week, federal financial regulators continued their efforts to ensure the stability of the market during the coronavirus outbreak. On March 31, the Federal Reserve announced the establishment of “a temporary repurchase agreement facility for foreign and international monetary authorities (FIMA Repo Facility) to help support the smooth functioning of financial markets, including the U.S. Treasury market, and thus maintain the supply of credit to U.S. households and businesses.” A Federal Reserve press release further explained:

The FIMA Repo Facility will allow FIMA account holders, which consist of central banks and other international monetary authorities with accounts at the Federal Reserve Bank of New York, to enter into repurchase agreements with the Federal Reserve. In these transactions, FIMA account holders temporarily exchange their U.S. Treasury securities held with the Federal Reserve for U.S. dollars, which can then be made available to institutions in their
jurisdictions. This facility should help support the smooth functioning of the U.S. Treasury market by providing an alternative temporary source of U.S. dollars other than sales of securities in the open market. It should also serve, along with the U.S. dollar liquidity swap lines the Federal Reserve has established with other central banks, to help ease strains in global U.S. dollar funding markets.

The Federal Reserve also announced that it was delaying the effective date of its final rule for the revised control framework by six months to September 30, 2020.

On April 1, the Federal Reserve announced a temporary change to its supplementary leverage ratio (SLR) rule to ease strains in the Treasury market resulting from the coronavirus and increase banking organizations’ ability to provide credit to households and businesses.

At an April 2 press conference, Treasury Secretary Steven Mnuchin noted that he is working with the Federal Reserve to create a “Main Street Lending Facility” and they are also looking at a program to help state governments.

The Commodity Futures Trading Commission (CFTC) announced it was providing additional temporary regulatory relief for certain futures commission merchants (FCM) in response to COVID-19:

DSIO has granted temporary, targeted no-action relief to permit certain foreign affiliates of FCMs that are exempt from registration with the Commission by CFTC Regulation 30.5 to accept orders from U.S. persons for execution on U.S. contract markets in the event an affiliated FCM’s U.S. personnel are unable to handle the order flow of U.S. customers due to their absence from normal business sites. [See CFTC Staff Letter No. 20-12]

SEC Holds Advisory Committee Meetings on the Impact of COVID-19

Key Points:
- Chairman Jay Clayton stressed that the SEC is focused on maintaining orderly markets and supporting small business capital needs.
- Commissioner Hester Peirce recommended that the SEC create a micro-offering exemption for small businesses.

On April 2, the Securities and Exchange Commission (SEC) held meetings of its Small Business Capital Formation Advisory Committee and Investor Advisory Committee (IAC) focused on the impacts of COVID-19.

At the Small Business Capital Formation Advisory Committee meeting, Chairman Jay Clayton said the SEC would be examining the challenges facing small businesses and how the capital markets and SEC rules can assist them. He noted that the SEC has provided relief to companies with respect to filing obligations under Regulation A and Regulation Crowdfunding. Commissioner Hester Peirce stressed the need for cooperation and flexibility to help small businesses. She expressed interest in how the SEC can help small businesses to meet short-term capital needs. She suggested creating a micro-offering exemption for small businesses, such as restaurants. She stated that a pilot program could go live shortly. Pierce suggested that temporary adjustments could be made to make Regulation A and Regulation CF more attractive without having to go through the full rulemaking process.

The Small Business Capital Formation Advisory Committee members described the devastating effects of COVID-19 on small businesses.
Several members emphasized the importance of the funds provided under the CARES Act Paycheck Protection Program (PPP), but suggested that there is uncertainty around the affiliate rules, eligibility, and the guarantees. Members expressed concern that the PPP will not allow venture capital (VC) or private equity (PE) backed firms to apply for loans, urging that this rule be changed. Members also suggested relaxing the requirements for audited financial statements for smaller companies. Chairman Clayton said he is aware of the affiliate issues and is in contact with other agencies about them. He stated that he recognizes that historical financial statements are not as relevant in the current situation as information on cash flows.

At the IAC meeting, Chairman Clayton emphasized the importance of maintaining orderly market functioning. He said resource allocation at the SEC is focused on Regulation Best Interest, Form CRS implementation, and the short-term rulemaking agenda. Clayton praised his colleagues at the Division of Corporation Finance for their approach to the next earnings period. He recognized that market participants rely on these earnings reports, but he said some issuers will struggle to file quarterly reports as a result of the outbreak. However, he said that a failure to file required reports does not preclude issuers from filing earnings releases and Forms 8-K. He said that conditionally tailored relief related to disclosure topics such as cash flows will allow issuers to provide prompt information regarding past and future efforts to respond to COVID-19. He emphasized that the SEC stands prepared to work with issuers on these reports. He expressed interest in hearing from IAC members about the effects of COVID-19 on day-to-day operations and ways in which the Commission can provide support.

Upcoming Hearings and Meetings

April 8

SEC Open Meeting: The SEC will hold an open meeting to consider: (1) whether to adopt rule and form amendments that would improve access to capital and facilitate investor communications by business development companies, which primarily invest in small and developing companies, and registered closed-end investment companies; and (2) whether to adopt rule and form amendments to modernize securities registration fee payments for certain registrants.

For more information about financial services issues you may email Joel Oswald or Alex Barcham.

ENERGY & ENVIRONMENT

EPA Issues COVID-19 Enforcement Guidance

Key Points:
- The EPA announced changes in its enforcement policies in response to the COVID-19 pandemic.
- The agency is relaxing a range of enforcement policies, with the changes in effect until further notice.

On March 26, the Environmental Protection Agency (EPA) published a memorandum titled “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program”. The memorandum details how the agency will adjust its enforcement policies during the pandemic emergency.

The policy is predicated on the disruptions to workforces and facility operations caused by the pandemic and recognizes that these “may affect the ability of an operation to meet enforceable limitations on air emissions and water
Effective Dates: The EPA states that the compliance policy is effective retroactively to March 13, 2020, and that it will provide seven days advance notice before terminating the policy.

Obligations of Regulated Entities: The EPA declares that regulated entities should continue to “make every effort to comply with their environmental compliance obligations”. The agency specifies what a regulated entity must do in cases where compliance “is not reasonably practicable”: (a) “Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;” (b) “Identify the specific nature and dates of the noncompliance;” (c) “Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;” (d) “Return to compliance as soon as possible; and”; (e) “Document the information, action, or condition specified in a. through d.”

In addition, the EPA specifies that it “expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and protects the public and the environment.”

Critical Infrastructure: Regarding critical infrastructure, the memorandum states that “the EPA may consider a more tailored short-term No Action Assurance, with conditions to protect the public, if the EPA determines it is in the public interest”. These decisions will be made “on a case-by-case basis…[and will] consider essential the facilities that employ essential critical infrastructure workers as determined by guidance issued by the Department of Homeland Security, Cybersecurity and Infrastructure Security Agency” (CISA). CISA issued its guidance, “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response”, on March 19, and published an updated version on March 28.

Accidental Releases: The EPA also emphasizes that the COVID-19 enforcement policy does not relieve “any entity from the responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous waste, and other pollutants, as required by federal law.”

Criminal Penalties: Regarding criminal penalties, the memorandum states that the EPA will distinguish between “violations that facilities know are unavoidable as a result of COVID-19 restrictions from violations that are the result of an intentional disregard for the law.”

Department of Energy to Lease SPR Oil Storage Space

Key Points:
- The Department of Energy announced this week that it would lease space in the Strategic Petroleum Reserve to domestic oil producers.
- The move follows an earlier proposal to purchase domestic crude oil for the Reserve, which was scuttled due to a lack of appropriated funding from Congress.

On Thursday, the Department of Energy announced that it would make up to 77 million barrels of storage capacity in the Strategic Petroleum Reserve (SPR) available to U.S. oil producers. The Department is starting with an initial 30 million barrel solicitation, with responses due by Thursday, April 9.

The Department’s press release states: “lack of storage is forcing premature shut-in of oil wells
and economically hurting the U.S. energy industry and its workforce. The SPR is well-positioned to relieve some of this economic stress by making storage capacity available to U.S. oil producers immediately.”

The Department, at the direction of President Trump, had originally sought to purchase domestic crude oil for the SPR. On March 19, the Department issued a solicitation to acquire 30 million barrels of “sweet and sour crude oil with a focus on small to midsize U.S. oil producers.” However, on March 26, the Department announced the cancellation of the solicitation, citing “the current uncertainty related to adequate Congressional Appropriations for crude oil purchases associated with the March 19, 2020 solicitation”.

In Thursday’s announcement, Secretary of Energy Dan Brouillette noted the ongoing interest in acquiring additional crude oil for the SPR. He said that the “Department continues to work with Congress to find ways to make funding available for DOE to buy American oil.”

FERC Announces Enforcement Policy Changes During Pandemic Emergency

Key Point:
- The Federal Energy Regulatory Commission is modifying its enforcement procedures as the Commission and regulated entities deal with the COVID-19 pandemic.

On April 2, Federal Energy Regulatory Commission (FERC) Chairman Neil Chatterjee announced a series of changes to FERC enforcement policies and procedures in response to the COVID-19 pandemic. These changes include:
- The “exercise [of] appropriate prosecutorial discretion in addressing events that arise during the emergency period”;
- The establishment of two “staff task forces to expeditiously process standards of conduct waiver requests and no-action letters”;
- A moratorium on new audits by the enforcement staff through July 31, 2020; and
- A restriction on enforcement staff contacts with regulated entities, limiting those contacts to “surveillance inquiries that involve market behavior that could result in significant risk of harm to the market and thus require immediate attention”.

Upcoming Hearings and Events

April 16

FERC Open Meeting: The Federal Energy Regulatory Commission (FERC) is scheduled to hold its monthly open meeting.

June 25

Reliability: The Federal Energy Regulatory Commission (FERC) will hold a technical conference on “Reliability of the Bulk Power System”. The conference “will focus on reliability-related issues for the bulk power system, including: (1) the changing resource mix; (2) inverter-based resources and inverter-connected distributed energy resources; and (3) cybersecurity.”

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Updates on energy and environment issues are also available on twitter.
HEALTH

Trump Administration Takes Aim at Medical Supply Chain

Key Points:
- President Trump reportedly signed off on Peter Navarro drafting an executive order which would require federal agencies to purchase medical equipment and products from U.S. manufacturers.
- Navarro has been particularly critical of the pharmaceutical industry.
- Congress is also considering measures aimed at returning production to the U.S.

President Donald Trump, under pressure from public officials and health organizations, has ramped up the use of executive orders (EO) exercising his powers under the Defense Production Act (DPA) in recent weeks. As part of the orders, Trump named Peter Navarro the national policy coordinator for the DPA. Navarro, who also serves as the Director of Trade and Manufacturing Policy, has been pushing for the President to impose an additional EO which would close loopholes in the Buy American Act.

The Buy American Act, originally passed in 1933, directs the federal government to grant preference to U.S.-manufactured products in its procurement processes. Over time, however, these protections have been blunted by subsequent international trade agreements and World Trade Organization (WTO) rules. As a result, federal agencies purchasing medical products (Department of Health and Human Services (HHS), Department of Defense (DOD), and Department of Veterans Affairs (VA)) have significant authority to waive Buy American Act provisions in order to purchase foreign products.

Navarro’s proposal is expected to roll back these waiver authorities and trade exemptions used by federal agencies to purchase international products and require such agencies to procure all medical supplies from domestic manufacturers. The proposal would also attempt to stimulate domestic manufacturing by streamlining regulatory approval processes, mandating labeling requirements for foreign products, and offering incentives for advanced manufacturing. Exemptions will reportedly be included on products and ingredients for which there are no alternative sources.

Unlike the DPA authority, which is being exercised specifically as part of the COVID-19 emergency response, Navarro has clarified in public interviews that the new “Buy American” rules would not apply during the current crisis. Instead, the changes are intended to reform the supply chain for a wide range of medical products in the coming years. Included in these products would be pharmaceuticals, of which the federal government is currently the largest single purchaser. Navarro, speaking at the White House Coronavirus Task Force briefing on Thursday, asserted, “one of the things that this crisis has taught us is that we are dangerously overdependent on a global supply chain for our medicines like penicillin, our medical supplies, masks, and our medical equipment like ventilators.”

Navarro’s efforts have generated significant pushback from industry, which circulated a letter to the Administration urging it not to destabilize existing supply chains. The letter argued that, “proposals to drive all manufacturing to the United States not only overestimate the potential feasibility and underestimate the time and effort it would take to make such changes, but also misunderstand that a diverse pharmaceutical supply chain is precisely what enables industry to respond quickly and make adjustments.” Among the
signatories to the letter was the Pharmaceutical Research and Manufacturers of America (PhRMA), which prompted Navarro to publicly criticize pharmaceutical lobbying efforts against his proposal.

Reports indicate that Navarro is drafting the proposal with the explicit consent of the President, while other Administration officials including Treasury Secretary Steve Mnuchin and Director of the United States National Economic Council Larry Kudlow are privately lobbying the President against such an action. Members of Congress, notably Senator Marco Rubio (R-FL), have voiced support for Navarro’s efforts and have developed legislative proposals to bolster domestic manufacturing of pharmaceuticals and medical equipment.

CMS Announces New Regulations for COVID-19

Key Points:
- The Centers for Medicare and Medicaid Services announced a series a new temporary regulation to increase access to care during the COVID-19 emergency.
- These new regulations include expanding hospital capacity, addressing workforce shortages, removing administrative burdens, and expanding telehealth.

On March 30, the Centers for Medicare and Medicaid Services (CMS) announced a series of regulatory changes to address the COVID-19 pandemic. These changes apply immediately and will last through the duration of the emergency declaration. As CMS Administrator Seema Verma explained “this unprecedented temporary relaxation in regulation will help the healthcare system deal with patient surges by giving it tools and support to create non-traditional care sites and staff them quickly.”

One set of guidance aims to increase hospital capacity by relaxing rules for hospitals, allowing patients to be transferred to outside facilities like ambulatory surgery centers, inpatient rehabilitation hospital, hotels, and dormitories while still receiving hospital payments under Medicare. Ambulances will also be permitted to transfer patients to a wider variety of locations. There are also new guidelines for setting up testing and screening sites exclusively for COVID-19 patients including drive-through and off-campus testing sites. Medicare will also be reimbursing laboratory technicians for travel to a beneficiary’s home to collect a COVID-19 testing specimen.

CMS also seeks to increase the health care workforce by granting waivers to allow hospitals to provide benefits to support medical staff such as daily meals, laundry services, and childcare services. CMS is making it easier for providers to enroll in Medicare allowing local private practice clinicians to be available for temporary COVID-19 employment. Medical residents will have greater flexibility to provide medical services. CMS is waiving certain requirements for onsite visits by a nurse for home health and hospice to evaluate aides.

To remove administrative burdens, CMS is eliminating paperwork requirements for policies on processes and visitation of patients in COVID-19 isolation. Hospitals will also have more time to provide patients a copy of their medical records. Medical is expanding covering of respiratory devices and equipment allowing patients access for any medical reason. CMS will continue oversight activities but is reprioritizing program audits and will suspend requests for additional information from providers, health care facilities, and plans.

To further increase patients access to care, CMS is expanding telehealth in Medicare to allow beneficiaries to receive care where they are and
avoid exposure risks. CMS is covering over 80 additional services furnished through telehealth including allowing providers to evaluate beneficiaries through audio phones only.

Further information on the new waivers and additional flexibilities are available here.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Thomas McGrath contributed to this section.

TRADE

July 1 Now the Earliest Possible USMCA Entry-Into-Force Date According to the Agreement’s Language

Key Points:
- Parties missed the March 31 notification USMCA requirement that would make a June 1 entry-into-force possible.
- USTR Lighthizer is reportedly working to meet the commitments diligently and may be looking for a way around the USMCA language in order to meet the Administration’s June 1 entry-into-force goal.

The earliest the U.S.-Mexico-Canada Agreement (USMCA) can take effect is July 1 if the parties follow the language laying out how the pact can enter-into-force, trade attorneys said this week. The Trump Administration had been aiming for a June 1 entry-into-force date despite opposition from Senate Finance members who cited outstanding labor enforcement and auto commitments, and uncertainty regarding COVID-19.

A provision in the USMCA protocol of amendment says each party must provide written notification to the others once it has completed internal procedures required for entry into force. The agreement will then enter into force on the “first day of the third month following the last notification.” The parties should have exchanged notifications by March 31 to meet the administration’s June 1 goal. “In order for the agreement as a whole to go into effect, the requirement in the protocol must be met. By missing yesterday’s date for notification, it kicks off entry-into-force of the agreement among the three parties to July 1 at the earliest,” a source stated.

On Thursday, Canada notified the U.S. and Mexico that it has completed the internal procedures required for the USMCA to take effect. Nonetheless there are reports that USTR Robert Lighthizer is still working to complete necessary steps and may be looking for a way around the entry-into-force language included in that protocol in order to meet their original June 1 goal.

On-Again, Off-Again – Push For and Against Tariff Deferral

Key Points:
- Businesses have pushed for a deferral of tariff payments, while unions have opposed it.
- Rumors focus on a possible executive order that would give companies a 90-day grace period on paying certain underlying MFN tariffs.
- Tariff deferrals would not apply to Section 301 import penalties on Chinese goods, steel and other items subject to recent trade actions or Section 232 tariffs covering imports of steel and aluminum.
- NEC Director Kudlow today indicated the White House would not defer tariffs as it would send the wrong message.

Businesses have pushed for action that would give companies a 90-day grace period on paying certain underlying tariffs, despite opposition from some labor unions. The grace period would serve as a modest way to provide tariff relief in response to COVID-19. Several have
also opposed this relief, including Senator Brown (D-OH) and textile organizations, arguing a blanket deferral was inappropriate.

The issue has been on-again, off-again for two weeks, with the President indicating on Tuesday that no one had taken the issue to him yet. Nonetheless, as the week went on reports continued that a modest tariff deferral was possible.

According to the favorable reports, President Trump’s order would cover the underlying MFN or most-favored nation tariffs that apply to the full range of imports on a global basis. The decision would not defer payments of tariffs that were the result of the Administration’s Section 301 actions, which apply to Chinese goods and include retaliatory duties on imports from the European Union as a result of the Boeing-Airbus trade dispute. The Section 232 tariffs covering imports of steel and aluminum would also remain and not be deferred. U.S. companies that import foreign products have argued that a deferral on tariff payments would free up cash required to stay afloat.

Today, however, National Economic Council Director Kudlow indicated he did not think the White House would grant tariff relief, and said doing so would send the wrong message. He closed by noting that the issue had never been seriously considered in the White House. So, it appears on this issue we end the week off-again.

The United States collected nearly $72 billion in duties in fiscal 2019, compared to $41.6 billion in fiscal 2018 and $34.6 billion in fiscal 2017 according to U.S. Customs and Border Protection. U.S. importers have paid $48 billion in increased duties on Chinese goods since July 2018.

For more information about trade issues you may email or call Christopher Hatcher at 202-659-8201. Ryan Sigmon contributed to this section.

This Week in Congress was written by Alex Barcham.