



Cash is King – CRITICAL UPDATES

COVID-19 Tax, Regulatory and Other Considerations for Private Equity

COVID-19

Tax Insights – Immediate Action Required to Obtain Cash Tax Refunds

Overview	Summary	Action Suggested
<p>Tentative Refund Claim for 2018 NOLs</p>	<p>The tentative refund claim is generally the preferred method for obtaining cash tax refunds. The IRS only performs a limited review of tentative refund claims prior to the issuance of the refund (with a more detailed review potentially performed at a later date), and it is supposed to process and issue the refund within ninety days of filing. Tentative refund claims exceeding a certain threshold (\$5 million for corporations) are also required to be reviewed by the Joint Committee on Taxation, but such refund may be issued <i>prior</i> to the completion of the additional review.</p> <p>By comparison, filing an amended return can take the IRS at least six months to process, and may result in a full-scope audit. In addition, if a refund claim is applied for through an amended return and it requires additional review by the Joint Committee on Taxation, such refund <i>cannot</i> be issued prior to the completion of the additional review.</p> <p>The deadline to file a tentative refund claim is 12 months after the end of the tax year that gave rise to the tax attribute being carried back. Therefore, for calendar year taxpayers, the deadline to carry back 2018 NOLs expired on December 31, 2019. But in Notice 2020-26, the IRS extended the deadline for filing a tentative refund claim for 2018 NOLs by six months, to June 30, 2020, at the latest (for 2018 calendar year taxpayers).</p> <p>This extension only applies to NOL carrybacks, and only to those NOLs generated in tax years that began during the 2018 calendar year and ended on or before June 30, 2019. Note that if a taxpayer had a tax year that started in the 2018 calendar year but ended before December 31, 2018, the due date for filing the tentative refund claim will be prior to June 30, 2020. Fiscal year taxpayers may also have a different due date.</p>	<p>Review 2018 tax return (including short years as applicable)</p> <ul style="list-style-type: none"> Recalculate taxable income taking into account new changes to the tax law (see prior BKD Thoughtware) to determine if an NOL was created or increased. <p>File amended 2018 tax return, if needed</p> <ul style="list-style-type: none"> If any tax law changes created or increased an NOL in 2018, an amended return will need to be filed prior to the filing of the tentative refund claim. <p>Review purchase agreements</p> <ul style="list-style-type: none"> Legal counsel should be consulted regarding the ability to carry back NOLs to tax years under different ownership and claim cash tax refunds. <p>Analyze the effect of carrying back NOLs, and file tentative refund claim by June 30, 2020, at the latest (for 2018 calendar year taxpayers).</p>
<p>Amending Partnership Returns</p>	<p>With limited exceptions, under the centralized partnership audit regime partnerships are generally prohibited from filing amended returns with respect to the information required to be furnished to their partners if the due date for such returns has passed.</p> <p>As discussed in previous BKD Thoughtware, the CARES Act relief legislation that was signed into law on March 27, 2020, made various taxpayer-favorable changes to the tax law (<i>e.g.</i>, fixing the retail glitch). In Revenue Procedure 2020-23, the IRS provided that partnerships may file amended tax returns for their 2018 and 2019 tax years (if already filed) before September 30, 2020. This allows the partners of the partnership to reflect any changes to their share of the partnership's income or losses in their 2018 and 2019 tax returns (by themselves filing amended returns).</p> <p>Note that a partner will need to work with the partnership to obtain correct information if it intends to file a tentative refund claim. As noted above, the deadline for filing a tentative refund claim for 2018 NOLs is June 30, 2020, at the latest (for 2018 calendar year taxpayers), but the deadline for filing amended partnership returns is not until September 29, 2020.</p>	<p>Review 2018 tax return (including short years as applicable) and 2019 tax return (if filed)</p> <ul style="list-style-type: none"> Recalculate taxable income taking into account new changes to the tax law (see prior BKD Thoughtware) to determine if a reduction of partnership income or increase of partnership loss was created. Consider if the decrease or increase in partnership income or loss will result in a partner creating or increasing an NOL. <p>Consider amending returns prior to September 30, 2020.</p>
<p>Postponement of Federal Income Tax Filings and Payments</p>	<p>Most federal income tax returns and payments due on or after April 1, 2020, and before July 15, 2020, are postponed without penalty until July 15, 2020. This postponement now includes second quarter estimated tax payments for 2020 (originally due June 15, 2020).</p>	<p>Review 2020 tax projections in light of law changes to determine whether deferral is advantageous.</p>

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Other Insights – Federal Reserve Action

Overview	Summary	Action Suggested
<p>Main Street New Loan Facility</p>	<p>Available to businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues. Such businesses must either be created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States.</p> <p>Borrowers must certify the following, beginning on the date of origination of the loan and until 12 months following the date on which the loan is not outstanding:</p> <ul style="list-style-type: none"> • Not repurchase an equity security listed on the national securities exchange of the business or its parent (exception available if contractually obligated prior to March 27, 2020); • Not pay dividends or make other capital distributions with respect to common stock; and • Not increase the total compensation of officers and employees who had a total compensation of over \$425 thousand in 2019. For officers and employees that had total compensation of over \$3 million in 2019, their total compensation is capped at the sum of: <ul style="list-style-type: none"> • \$3 million, and • Fifty percent of the excess over \$3 million of the total compensation received by the officer or employee in 2019. Total compensation includes salary, bonuses, awards of stock and other financial benefits <p>An eligible loan is an unsecured loan that was originated on or after April 8, 2010. Eligible loan features include the following:</p> <ul style="list-style-type: none"> • Four year maturity • Amortization of principal and interest deferred for one year • Adjustable rate of SOFR + 250–400 basis points • No prepayment penalty • Minimum loan size: \$1 million • Maximum loan size is lesser of: <ul style="list-style-type: none"> • (i) \$25 million; or • (ii) An amount that when added to the borrowers existing outstanding and committed but undrawn bank debt does not exceed borrower’s 2019 EBITDA x 4 <p>Proceeds cannot be used to repay other loan balances.</p> <p>The Federal Reserve will purchase 95 percent of eligible loans from eligible lenders, with lenders retaining the residual 5 percent.</p> <p>A borrower who participates in this program may not also participate in the Main Street Expanded Loan Facility or the Primary Market Corporate Credit Facility.</p>	<p>Consult directly with a qualified US insured depository institution, US bank holding company or US savings and loan holding company, or a licensed capital advisor to analyze financing alternatives.</p>

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Other Insights – Federal Reserve Action

Overview	Summary	Action Suggested
<p>Main Street Expanded Loan Facility</p>	<p>Available to businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues. Such businesses must either be created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States.</p> <p>Borrowers must certify the following, beginning on the date of origination of the loan and until 12 months following the date on which the loan is not outstanding:</p> <ul style="list-style-type: none"> • Not repurchase an equity security listed on the national securities exchange of the business or its parent (exception available if contractually obligated prior to March 27, 2020); • Not pay dividends or make other capital distributions with respect to common stock; and • Not increase the total compensation of officers and employees who had a total compensation of over \$425 thousand in 2019. For officers and employees that had total compensation of over \$3 million in 2019, their total compensation is capped at the sum of: <ul style="list-style-type: none"> • \$3 million, and • Fifty percent of the excess over \$3 million of the total compensation received by the officer or employee in 2019. Total compensation includes salary, bonuses, awards of stock and other financial benefits <p>An eligible loan is a term loan that was originated before April 8, 2010. Eligible loan features include the following:</p> <ul style="list-style-type: none"> • Four year maturity • Amortization of principal and interest deferred for one year • Adjustable rate of SOFR + 250–400 basis points • No prepayment penalty • Minimum loan size: \$1 million • Maximum loan size is lesser of: <ul style="list-style-type: none"> • (i) \$150 million; • (ii) Thirty percent of borrowers existing outstanding and committed but undrawn bank debt; or • (iii) An amount that when added to (ii) above doesn't exceed borrower's 2019 EBITDA x 6 <p>Proceeds cannot be used to repay other loan balances.</p> <p>The Federal Reserve will purchase 95 percent of eligible loans from eligible lenders, with lenders retaining the residual 5 percent.</p> <p>A borrower who participates in this program may not also participate in the Main Street New Loan Facility or the Primary Market Corporate Credit Facility.</p>	<p>Consult directly with a qualified US insured depository institution, US bank holding company or US savings and loan holding company, or a licensed capital advisor to analyze financing alternatives.</p>

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