Recent Developments in Federal Income Taxation

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To obtain today's outline and slides:
https://tinyurl.com/outline0420

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CARES Act Changes to the § 163(j) Limit on Deducting Business Interest
Outline: item D.1, page 3

- The 2017 TCJA amended Code § 163(j) to limit the deduction of business interest expense – a/k/a "thin cap rules."
- Limit is business interest income plus 30% of "adjusted taxable income" plus floor plan financing
  - ATI generally is earnings before interest, tax, depreciation and amortization (EBITDA) for 2018-2021, then earnings before interest and taxes (EBIT).
- Businesses with average annual gross receipts of $25 million or less (over 3 years) are exempted
- Real estate businesses can elect out, but become subject to alternative depreciation system.

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CARES Act Changes to the § 163(j) Limit on Deducting Business Interest
Outline: item D.1, page 3

- New Code § 163(j)(10):
  - Increases to 50 percent (instead of 30 percent) the "adjusted taxable income" component of the § 163(j) limitation for taxable years beginning in 2019 and 2020.
    - Taxpayers are permitted to elect out of the increased percentage pursuant to procedures to be prescribed by the IRS.
  - Permits eligible taxpayers to elect to substitute their 2019 "adjusted taxable income" for 2020 "adjusted taxable income" when determining the § 163(j) limitation for taxable years beginning in 2020.
  - Provides special rules for partnerships and partners for their 2019 and 2020 tax years and for short taxable years.

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CARES Act Changes to Excess Business Losses and NOLs
Outline: item H.1, page 3

- 2017 TCJA changes to rules for net operating losses:
  - "Excess business losses" of noncorporate taxpayers disallowed
    - "Excess business loss" is amount by which taxpayer's aggregate trade or business deductions exceed aggregate gross income from those trades or businesses, plus $250,000 ($500,000 for joint filers), adjusted for inflation after 2018.
  - NOLS not carried back (only forward); capped at 80% of taxable income.
  - NOLs do not expire

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CARES Act Changes to Excess Business Losses and NOLs
Outline: item H.1, page 3

- The CARES Act:
  - Suspends the disallowance of "excess business losses" for TY beginning before 2021
  - NOLS arising in 2018, 2019, and 2020:
    - May be carried back to each of the five preceding taxable years, then forward indefinitely.
  - For TY beginning before January 1, 2021 (generally, 2019 and 2020), the 80 percent taxable income limitation on NOL carryforwards does not apply.

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CARES Act Changes to HSAs and FSAs
Outline: item A.1, page 4

- The CARES Act:
  - Permits distributions from HSAs and reimbursements from FSAs for over-the-counter medicine.
  - Applies to distributions and reimbursements after 2019.

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CARES Act Changes to Retirement Plan Distributions and Loans
Outline: item B.1, page 5

- Access to retirement funds for "coronavirus-related distributions"
  - Penalty-free withdrawals of up to $100,000
  - Income from withdrawals can be reported ratably over three years
  - Amounts withdrawn can be recontributed within three years and treated as tax-free rollovers

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CARES Act Stimulus Payments
Outline: item D.1, page 6

- New Code § 6248: Eligible individuals will be entitled to a credit on their 2020 tax returns
  - Nonresident aliens, dependent children, and estates and trusts are not eligible
  - Must have a "valid identification number" for the taxpayer, spouse, and dependent children, defined generally as a Social Security Number issued before the due date of the return.
- Advance payment of the credit
  - Will be made based on the 2019 return or, if necessary, 2018 return, or Social Security information (Form SSA-1099).
  - Must reconcile whe 2020 return is filed, which could result in a larger credit, but excess advance payments need not be repaid.

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CARES Act Changes to Taxation of Employer-Provided Educational Assistance
Outline: item F.1, page 7

- Code § 127(a) excludes from the gross income of an employee up to $5,250 of employer-provided "educational assistance"
- The CARES Act:
  - New Code § 127(c)(1)(B): temporarily expands definition of "educational assistance" to include repayments of "qualified education loans" by an employer whether paid to the employee or to the lender.
  - Effective for payments made after March 27, 2020 (the date of enactment).

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CARES Act Changes to Charitable Contributions
Outline: item B.1, page 8

- New § 62(a)(22): up to $300 above-the-line deduction for individuals making "qualified charitable contributions."
  - New § 62(f): qualified charitable contributions are cash contributions to public charities
  - Permanent and effective for taxable years beginning after 2019.
- Increased limits on deducting "qualified contributions"
  - Individuals: up to 100% of contribution base (AGI)
  - Corporations: up to 25% of taxable income
  - Qualified contributions are cash contributions to public charities if taxpayer elects the new limit.
  - Effective for 2020 only.

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CARES Act Changes to Deposits of Employment Taxes
Outline: item A.1, page 9

- CARES Act § 2302:
  - Remittance of the employer's share of both the social security portion of FICA tax and of the social security portion of Railroad Retirement Act (RRTA) tax incurred in 2020 may be deferred.
  - FICA payments previously due between March 27, 2020, and before January 1, 2021, may now be paid in two equal installments.
  - The first half of the payment may be deferred until December 31, 2021, and payment of the second half of the liability may be deferred until December 31, 2022.
  - Deferral is not available to employers that have had debt forgiven with respect to the loans made available through the Small Business Administration pursuant to the CARES Act.

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