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Coming out of COVID-19

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To say the outbreak of the COVID-19 pandemic took many in America — and around the globe — by surprise is certainly an understatement. The necessary government-mandated response to combat the virus sent shockwaves throughout the financial system. A system of robust financial markets that most people take for granted had come to a momentary halt.

Over the last couple of months, many small and medium-sized real estate companies were able to utilize either the Payroll Protection Program Loan (PPP) or Economic Injury Disaster Loan (EIDL) through the Small Business Administration (SBA), created through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

These programs are helping many businesses survive the downturn and are providing working capital needed to support revenue shortfalls for the next two to three months. With social distancing and protection measures likely to last for a much longer period, businesses may need to find other sources of capital and financing to survive. Fortunately, other government lending programs and CARES Act tax breaks are available.

Main Street Lending Program

Under the Main Street Lending Program, the Federal Reserve has expanded loan offerings and eased qualifications for its $600 billion lending effort designed to reach small and medium-sized businesses. The program provides loans to maintain operations and payroll. Businesses that have received funding under the Payroll Protection Program (PPP) may also be eligible. The Main Street Lending Program provides for three separate borrowing facilities. The loans are provided with terms of up to four years with interest at below-market rates. Payments can be deferred in the first year. The three facilities are: the Main Street New Loan Facility (MSNLF), with a loan

amount from $500,000 to $25 million; the Main Street Priority Loan Facility (MSPLF), with a loan amount from $500,000 to $25 million and the Main Street Expanded Loan Facility (MSELF), with a loan amount of $10 million to $200 million.

For all three facilities, the business must have been established prior to March 13 and have no more than 49% participation by foreign business entities. The business must not be an Ineligible Business as defined by SBA and must have 15,000 or fewer employees or 2019 annual revenues of $5 billion or less (with affiliation rules applying in both cases). The maximum loan size for each facility is limited to a multiple of a business' 2019 EBITA (four times for MSNLF and six times for MSPLF and MSELF).

In addition, the business must be a U.S. business created or organized in the U.S. and can only participate in one of the Main Street facilities. The business must not have received other support under the CARES Act (PPP excluded). The borrower must be able to make certifications, including a requirement that the business cannot prepay any other debt (principal or interest) until MSL is paid off entirely. The borrower also cannot seek to reduce or cancel any existing debt or credit lines. There must be a reasonable basis to believe the business can remain solvent for at least the next 90 days, with no expected bankruptcy filings. The business must commit that it will follow compensation, stock repurchase and capital distribution restrictions that apply to direct loan programs under provisions of the CARES Act, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.

There are some minor differences between the certifications required under each of the three facilities, including loan size limitations, loan terms and debt subordination. Eligible borrowers should make reasonable efforts to retain employees during the term of the MSNLF Loan, MSPLF Loan or MSELF Upsized Tranche, considering its capacities, the economic environment, its available resources and the business need for labor. Borrowers that have already laid off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for Main Street loans.

CARES Act Tax Relief
The CARES Act passed into law in late March has business tax breaks that will allow companies to go back and claim refunds from prior years' tax returns and/or significantly reduce their current estimated tax payments on 2020 tax liabilities. These include:

Net Operating Loss Modifications
The CARES Act allows for the carryback of losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to each of the five taxable years preceding the taxable year of such loss. This is especially helpful for the two following provisions which avail businesses of potentially significant deductions retroactive to 2019 and 2018 that were previously limited.

Modification of Limitation on Business Interest
Businesses that have substantial interest expense may have previously been limited in the deduction of interest by the Tax Cuts and Jobs Act (TCJA) provisions under IRC sec. 163(j). The

CARES Act increases the 30% adjusted taxable income threshold for deductible interest to 50% for taxable years beginning in 2019 and 2020. In addition, the CARES Act allows taxpayers to elect to use their 2019 adjusted taxable income as their adjusted taxable income in 2020.

Qualified Improvement Property

The CARES Act corrected an error in the TCJA related to the life of "qualified improvement property" (QIP). This property will now be classified as "15-year property" and eligible for bonus depreciation. These amendments are applicable to property placed in service after December 31, 2017. For taxpayers electing not to claim 100% bonus depreciation, QIP is depreciated over 15 years rather than 39 years.

Taxpayers may file an amended return for 2018 and 2019 (if already filed) to claim 100% bonus depreciation on eligible QIP or to change the depreciable life from a 39-year to a 15-year period. For real estate owners/developers, the bonus depreciation provisions available on 2018 and 2019 for interior renovations, tenant improvements and fit-ups on new and existing properties could provide significant additional deductions. These deductions could potentially create net operating losses that can be carried back to earlier years. The additional depreciation coupled with a greater interest deduction may allow business owners to find additional working capital.