

2020 update: Tax Considerations for Project Financing

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 - Links to the evaluations are emailed to all registrants.
- For more information on CPE credits, contact Lindsay Wells at consult.lwells@gmail.com.

ITEMS FOR DISCUSSION

- I. Form 8609 "Reasonable Cause" Approach to First Year Credits
- II. IRS Notice 2020-53 Granting COVID-19 Deadline Relief to LIHTC Properties
- III. 163(j) Business Interest Expense Limitation
- IV. 168(k) Depreciation
- V. Update on the Income Averaging Set Aside
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I. Form 8609 "Reasonable Cause" Approach to First Year Credits

- a) As of 2018, BBA partnerships cannot amend tax returns
- b) This affects a LIHTC partnership's ability to amend a prior year return to claim first year credits after receiving form 8609 in a subsequent year
- c) The industry is moving toward a "reasonable cause" approach to claim first year credits on a project that does not yet have Form 8609

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II. IRS Notice 2020-53 Granting Deadline Relief to LIHTC Properties in the Wake of COVID-19

- a) The 10-percent test for carryover allocations
- b) The Sec 42(e) 24-month minimum rehabilitation expenditure period
- c) Reasonable period for restoration or replacement in the event of casualty losses
- d) Reasonable restoration period in the event of a prior major disaster
- e) The 12-month transition period to meet set-asides for qualified residential rental projects

II. IRS Notice 2020-53 Granting Deadline Relief to LIHTC Properties in the Wake of COVID-19 (Continued)

- f) The Sec. 147(d) 2-year rehabilitation expenditure period for bonds used to provide qualified residential rental projects
- g) Income recertifications
- h) Compliance monitoring
- i) Common areas and amenities
- j) Emergency housing for medical personnel and other essential workers

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III. 163(j) Business Interest Expense Limitation

a) Background:

- i. The deduction for net business interest is generally limited to 30% of adjusted taxable income (ATI)
- ii. The CARES Act increased the limit to 50% of ATI for 2019 and 2020
- iii. Special rules apply to partnerships for 2019
- iv. The business interest limitation does not apply to electing real property trades or businesses

b) Rev. Proc. 2020-22

- i. Late elections
- ii. Revoking elections

III. 163(j) Business Interest Expense Limitation (Continued)

c) Regulations update:

- i. **Effective date.** Final regulations effective for tax years beginning on or after 11/13/2020, but can be applied retroactively if done consistently
- ii. **Electing out.** Final regulations clarify that previously suspended interest of a partnership is not treated as paid or accrued if the business subsequently elects out of the limitation. The interest continues to be suspended and can be taken into account by the partner to the extent of the partner's share of excess taxable income from the partnership.
- iii. **Definition of interest.** Final regulations scale back the definition of interest. However, the relief is limited due to an anti-avoidance rule that treats as interest any expense or loss economically equivalent to interest if a principal purpose of structuring the transaction is to reduce the amount of the taxpayer's interest expense.

Poll #1

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IV. 168(k) Depreciation

- a) Depreciating qualified improvement property
- b) Regulatory update
 - i. **Partnership look-through.** The proposed regulations established a partnership look-through rule under which a person would have a depreciable interest in a portion of property before acquiring the property if the person was a partner in a partnership at any time the partnership owned the property. Final regulations withdraw this rule because the complexity of applying the rule would place a significant administrative burden on the taxpayers and the IRS.

IV. 168(k) Depreciation (Continued)

ii. **Qualified improvement property.**

1. The TCJA had drafting errors precluding taxpayers from recognizing bonus depreciation on qualified improvement property (QIP) placed in service on or after Jan. 1, 2018.
2. The CARES Act fixed the drafting error.
3. The CARES Act also amended 168(k) to clarify that QIP rules did not apply to acquired QIP, just to QIP constructed by the taxpayer.
4. The 2020 final regulations modify the definition of QIP by requiring that the improvement be made by the taxpayer, aligning the definition in the regulations to IRC Section 168(e)(6).

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V. Update on the Income Averaging Set Aside

a) Background

- i. The Consolidated Appropriation Act of 2018 added a third minimum set aside beyond the 20 at 50 and 40 at 60 set asides.
- ii. The Average Income set aside is when at least 40 percent of a project's units have to be "both rent-restricted and occupied by individuals whose incomes do not exceed the imputed income limitations designated by the taxpayer with respect to the "respective unit"
- iii. The Average of the imputed income limitations cannot exceed 60 percent of AMI

V. Update on the Income Averaging Set Aside (Continued)

b) Current status

- i. More states and syndicators are becoming more comfortable with Average Income.
- ii. The IRS has not yet provided final regulations on Average Income.
- iii. Some individuals in the tax credit industry believe that income averaging will become the new de-facto set aside.

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VI. IRS Notice 2020-39 Granting Deadline Relief to Opportunity Zones in the Wake of COVID-19

- a) 180-day Investment Requirement for QOF Investors
- b) 90-Percent Investment Standard for QOF's
- c) 30-Month Substantial Improvement Period for QOF's and QOZB's
- d) Working capital safe harbor for QOZB's
- e) 12-month reinvestment period for QOF's

Poll #2

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VII. Net Operating Loss (NOL's) Changes

- a) Temporary repeal of 80% of taxable income TCJA limitation
- b) Section 2303 removes this 80% limitation entirely for taxable years beginning before January 1, 2021.
- c) The 80% limitation remains in place for taxable years beginning after December 31, 2020.
- d) Modified rules for NOL carrybacks
- e) Restores a limited carryback, pursuant to which NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021, may be carried back to each of the 5 preceding taxable years.
- f) Temporary delay of EBL's until tax years beginning on or after January 1, 2021

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VIII. Tax Consequences of PPP Loans

a) Background

- i. The applications were accepted through August 8, 2020.
- ii. 60% of loan funds must be spent on payroll, remaining 40% may be spent on remaining categories of eligible expenses:
 - 1. Mortgage interest
 - 2. Rent and leases
 - 3. Utilities
- iii. There is a 24-week period extended from the initial 8 weeks

VIII. Tax Consequences of PPP Loans (Continued)

b) PPP Loan Forgiveness:

- i. Form EZ can be used if the taxpayer did not reduce salaries and wages of their employees by more than 25%, and did not reduce the number or hours of their employees.
- ii. Full Form includes adjustments for reduction in compensation and employment levels
- iii. Simple form for loans of \$50,000 or less
- iv. Any documentation submitted must be retained for six years.
- v. No deduction for PPP expenditures where loan is forgiven under IRC Section 265 and Notice 2020-32

Poll #3

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IX. K-1 Updates for 2020

- a) Report capital accounts on tax basis
- b) Don't forget about 2019 addition of boxes 21 and 22
 - i. 21: aggregated activities for IRC 465 at-risk purposes
 - ii. 22: grouped activities for IRC 469 passive activity purposes
 - iii. See also line K on form 1065

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X. IRS Notice 2020-58- Certain rehabilitation credit deadlines

- a) Section 38(b)(1) of the Code provides that the current year general business credit includes the investment credit determined under Section 46 of the Code. The investment credit under Section 46 includes the rehabilitation credit under Section 47.
- b) Due to COVID-19 pandemic, the IRS has postponed to March 31, 2021, the last day of the 24 or 60-month period for a taxpayer to pay or incur qualified rehabilitation expenditures for a qualified rehabilitated building if the measuring period originally was to end after April 1, 2020 and before March 21, 2021. 21: aggregated
 - i. This results in situations where the taxpayer may have a measuring period that is longer than 24 or 60 months.

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XI. Final Regulations on Business Meals and Entertainment

- a) The final regulations generally adopt the proposed regulations and apply the guidance in IRS Notice 2018-76
- b) The regulations disallow a business deduction for most entertainment expenses
- c) The regulations clarify the treatment of business deductions for food and beverages that remain deductible, generally limited to 50% of qualifying expenditures, and how taxpayers may distinguish those expenditures from entertainment
 - i. The regulations clarify that “entertainment” for purposes of Sec. 274(a) does not include food or beverages unless they are provided at or during an entertainment activity and their costs are not **separately stated** from the entertainment costs.

Thank you

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