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KPMG report: Tax considerations of disruptions in healthcare industry in COVID-19 environment

The coronavirus (COVID-19) pandemic has caused unprecedented operational and economic disruption that reaches every corner of a healthcare organization, even the tax function. Tax leaders in both taxable and tax-exempt healthcare organizations need to be mindful of the tax consequences that can flow from these business changes.

This report highlights some of the tax issues and opportunities to keep in mind as healthcare organizations respond to this disruption. This report primarily addresses federal tax laws; similar or additional considerations may apply under state, local and foreign tax laws.

Disruption in cash flow

Healthcare organizations are not immune to the financial pain brought on by the COVID-19 pandemic. Revenue has dropped due to wide-spread cancellations of procedures and diagnostics; inpatient caseload has shifted to higher-cost, lower-margin care; and social distancing has shuttered medical practices. The recently enacted "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Pub. L. No. 116-137, enacted March 27, 2020) provides some relief for the healthcare industry and for other businesses experiencing cash flow and liquidity challenges.

Deferred deposit of payroll taxes

Under the CARES Act, eligible employers and self-employed individuals may defer the deposit of certain payroll taxes[1] otherwise required from March 27, 2020 (the date of enactment) through December 31, 2020. The deferred amounts are due 50% on December 31, 2021, and 50% on December 31, 2022.

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[1] As the payroll tax is not paid within 8.5 months of year-end, it does not appear to be eligible for a deduction under the recurring item exception. See Rev. Rul. 2007-12. Additional IRS guidance is anticipated.

Employee retention credit

The CARES Act provides a refundable payroll tax credit for 50% of "qualified wages" paid by certain employers to employees. The credit is available to eligible employers carrying on a trade or business in calendar year 2020 whose:

- Operations were fully or partially suspended, due to a government order, or
- Gross receipts declined by more than 50% when compared to the same quarter in the prior year.

The deferred deposit of payroll taxes and the employee retention credit are available to both taxable and tax-exempt employers that otherwise meet the eligibility requirements.

For more information about these provisions and other employer-related benefits that may be available, read ***KPMG report: Employer-related liquidity – tax credits, deferrals, and efficiencies (COVID-19)*** [PDF 948 KB].

Temporary roll-back of tax reform limitations on business tax benefits

The 2017 U.S. tax law commonly referred to as the "Tax Cuts and Jobs Act" (TCJA) (Pub. L. No. 115-97), imposed limitations on a number of business tax benefits in connection with the reduction in tax rates. The CARES Act makes temporary changes to some of these limitations, providing opportunities for reduced cash tax expense and tax refunds. For example, the TCJA eliminated the carryback of net operating losses (NOLs), but the CARES Act grants a five-year carryback period for NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021 (i.e., calendar years 2018, 2019, and 2020). Other TCJA limitations on the use of NOLs, the deduction of business interest expense, and the usage of alternative minimum tax (AMT) credits have also been temporarily relaxed by the CARES Act.

- For more information about these changes, read ***KPMG report: Tax provisions in the CARES Act (COVID-19 "Phase 3" response): Analysis and observations*** [PDF 3.9 MB].

- For potential planning opportunities related to these and other CARES Act changes, read KPMG's report: ***Cash flow planning for covid-19: leveraging tax accounting methods and credits to generate cash flow*** PDF 84 KB].

Other liquidity provisions

The CARES Act includes nontax avenues to addressing the immediate cash flow concerns of healthcare organizations, including for example a temporary suspension of Medicare sequestration and expansion of the Medicare accelerated payment program.

For an overview of these provisions, read KPMG's report: ***Coronavirus Aid, Relief, and Economic Security Act: Economic relief and stimulus bill*** [PDF 106 KB].

Healthcare organizations receiving grants, forgiveness of debt, or other forms of financial assistance should be careful to consider the tax treatment of such amounts (keeping in mind that following the enactment of the TCJA in 2017, grants are no longer excludable from taxable income as nonshareholder contributions to capital under section 118).

Disruption for employees

Employees in healthcare have been affected by the COVID-19 outbreak in a number of ways. In some cases, employees have been furloughed due to the cancellation of elective procedures and nonurgent care. On the front lines, medical professionals and other health system employees are working longer hours under extraordinary working conditions, with many being affected by quarantine due to exposure or illness.

Employee hardship assistance

In times of emergency, employers often take actions to facilitate assistance for employees in need. In some instances, this takes the form of employer-provided benefits and in others the employer facilitates employees helping one another.

For an overview of the options for employers, as well as some of the tax advantages and disadvantages of each, read ***KPMG report: Employers providing hardship assistance related to coronavirus (COVID-19)*** [PDF 111 KB].

Other employee assistance

As a general rule, amounts provided by an employer to an employee are considered taxable compensation to the employee and a deductible business expense for the employer. However, when a federal "qualified disaster" has been declared—such as been the case with the COVID-19 outbreak—an employer may make "qualified disaster relief payments" (QDRPs) to employees, and the assistance may be excluded from employee income (while also being deductible to the employer). For example, if healthcare providers provide assistance with housing, meals, laundry, errands or child care to maximize the scheduling availability of their patient care professionals while protecting families and communities from exposure to the virus, reimbursement of such expenses may potentially be excluded from the employee's income as a QDRP.[2] More information about QDRPs can be found in the KPMG report noted above.

An additional benefit allowed by the CARES Act is that employers may provide tax-free student loan repayment benefits to employees in 2020 through an educational assistance program, up to a maximum annual amount.

Telecommuting

As a result of "social distancing" guidelines, employees who aren't directly involved in the delivery of patient care and are otherwise able to work from home are being encouraged to telecommute. These arrangements, even if temporary, raise tax issues such as, for example, the provision of home office equipment and telecommunication services, and state payroll withholding rules.

For more information, read ***KPMG report: Compensation and benefits concerns in uncertain times – telecommuting and other items***.

High-deductible health plan changes

In March 2020, the IRS released guidance (Notice 2020-15) providing that a health plan may provide for testing and treatment of COVID-19 without jeopardizing its status as a high deductible health plan (HDHP), even if such testing and treatment are provided with no deductible. In addition, the CARES

[2] Ordinarily, employer-provided meals may be excludable from employees' income as a result of, for example, geographical isolation of the office, employees required to be on call during the workday, or during a busy season of the employer's business that requires teams to work extended hours at the office. The rules around income exclusion for employer-operated eating facilities are very specific and typically require that the facilities must be on the employer premises. Generally, whether employer-provided meals may be excluded from employee income is a fact-specific analysis, unique to each employer and business.

Act provides that the status of HDHPs is protected even if there is no deductible for telehealth or remote services for plan years beginning on or before December 31, 2021.

Disruption to the care-delivery model

COVID-19 has accelerated and broadened the use of telemedicine, and changes such as this in the care-delivery model can give rise to new tax issues. For example, tax-exempt providers will need to consider whether reimbursements related to telemedicine give rise to unrelated business income for federal income tax purposes. Both taxable and tax-exempt providers need to consider the state and local tax considerations, as well, including income tax, apportionment and tax return filing obligations, and sales and use tax implications. Technology investments related to telemedicine may qualify for research and development (R&D) tax credits or other tax benefits.

Disruption to supply chain

The global COVID-19 challenges have resulted in considerable disruption to the supply chain for medical supplies, pharmaceuticals, equipment, and many other products—healthcare, as well as general consumer goods. Healthcare organizations should be mindful that changes in their supply chain can have tax consequences, and in some cases transfer pricing considerations. Both taxable and tax-exempt purchasers need to consider reverse sales and use tax audits, in order to identify taxes that may have been incorrectly collected by new suppliers for sales of exempt goods or sales to tax-exempt purchasers.

For information about recent customs and duties developments in light of COVID-19, including provisions related to medical equipment, read ***KPMG report: Customs measures in response to coronavirus (COVID-19)*** [PDF 1 MB].

Disruption for independent physicians and medical groups

In addition to the other forms of relief discussed earlier in this report, the CARES Act provides some forms of assistance that are aimed at small businesses. Independent physicians and practice groups may be eligible for loans under the Small Business Administration-administered Paycheck Protection Program (PPP). PPP loans are forgivable when the applicable requirements are met, but may not be used in conjunction with certain tax benefits under the CARES Act, such as the refundable employee retention tax credits. Practices need to be mindful of affiliation and aggregation rules when considering their eligibility for programs aimed at small and mid-sized businesses.

For more information about the lending programs under the CARES Act, read ***KPMG Report: Lending programs under CARES Act, including interactions with tax provisions*** [PDF 110 KB].

Disruption for the community

Community need

The financial repercussions of COVID-19 and social distancing have reached every sector of the economy, resulting in significant unemployment and growing numbers of uninsured patients. Healthcare providers—particularly those that are required to be compliance with section 501(r)—need to consider reviewing their financial assistance policies and their billing and collection procedures, and check for compliance and institute proper adoptions of updates when needed. Hospitals that are conducting Community Health Needs Assessments need to consider the impact of both COVID-19 and the resulting rise in unemployment on the health needs in their communities, and they may want to also take stock of their preparedness for future epidemic episodes.

Charitable contributions

The CARES Act increases the deduction limitation for charitable contributions by both corporate and individual taxpayers (itemizers and non-itemizers) for donations made in 2020. Donations do not need to be earmarked for uses directly related to COVID-19.

KPMG observation

The major disruptions wrought by COVID-19 have led to both immediate and longer-term challenges for all healthcare organizations—the future will most certainly not look much like the past. As organizations adapt, operational models will change and business leaders across the organization will be reassessing how they do things and how to prepare for the challenges of tomorrow.

Now is the time for tax functions to rethink their own operating models, including strategy, sourcing model, utilization of data, process improvements and technology. A new tax function design can drive significant value; more efficient and higher-value use of resources, improved decision making, greater business alignment, and enhanced responsiveness to changes in the tax and healthcare landscapes.

For more information, contact a professional with the Healthcare team in KPMG's Washington National Tax:

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