

# COVID-19 Measures for U.S. Taxpayers and Businesses (Long)



Recognizing the immediate need for economic relief at this time, the U.S. Government and Internal Revenue Service (IRS) were quick to enact measures to provide such relief through tax deadline extensions and numerous opportunities for both personal and corporate stimulus.

On March 27, 2020, U.S. president Donald Trump signed a \$2.2 trillion economic relief bill. In this communication, we provide some details with respect to the measures under both the Families First Coronavirus Response Act or FFCRA (Phase II) and the Coronavirus Aid, Relief, and Economic Securities Act or CARES Act (Phase III). This is a third legislative response following \$8.3 billion in emergency funding for health care and \$192 billion to assist individuals impacted by COVID-19.

The following measures may be a benefit to taxpayers who are American citizens residing in Canada or Canadians with U.S.-based businesses.

## DEADLINES

The IRS has delayed filing and payment deadlines per the following table.

Filer Status	Filing Due Date	Payment Due Date
<b>Individuals and Trusts</b>		
U.S. Taxpayers with a permanent home in the U.S.	July 15, 2020	July 15, 2020
Canadians with U.S. Wages	July 15, 2020	July 15, 2020
U.S. Citizens with a permanent home in Canada	July 15, 2020	July 15, 2020
Canadians with no U.S. Wages (but with other U.S.-source income)	July 15, 2020	July 15, 2020
EXTENDED DUE DATE <i>File Form 4868 by the original return due date as listed above</i>	October 15, 2020	N/A
Q1 and Q2 Installment	N/A	July 15, 2020
<b>Corporations</b>		
Calendar Year-End Filers	July 15, 2020	July 15, 2020
Fiscal Year-End Filers	15 <sup>th</sup> day following 3 months after year-end	Unknown

Foreign Corporations with no physical presence in the U.S.	15 <sup>th</sup> day following 5 months after year-end	N/A
EXTENDED DUE DATE File Form 7004 by the original return due date as listed above	Additional 6 months to the above original return due dates	N/A
Q1 and Q2 Installment	N/A	July 15, 2020
<b>Miscellaneous</b>		
Section 965 (Transition Tax) 3 <sup>rd</sup> Installment	N/A	July 15, 2020
Form 709	July 15, 2020	July 15, 2020
Form 3520	July 15, 2020	July 15, 2020
2019 IRA/Roth IRA contribution	July 15, 2020	N/A
FinCEN 114	October 15, 2020	N/A

## MEASURES FOR INDIVIDUAL TAXPAYERS

The following measures have been put in place for individual U.S. taxpayers.

### Stimulus checks

To receive a stimulus check, you must be a U.S. citizen, a U.S. resident or a Green-card holder and you must be current with your U.S. income taxes (unless you receive Social Security benefits and are not required to file). The amount is based on your qualifying income (i.e., employment, self-employment or pension) of at least USD\$2,500 for either 2018 or 2019, depending on whether your 2019 taxes are done before an assessment is made. If you do not have qualifying income, you may still be eligible for a stimulus check if you meet either the tax liability test or the gross income test.

Single taxpayers with a valid social security number will get \$1,200 if they made \$75,000 or less. Married couples making less than \$150,000 combined will receive \$2,400. Payments will be increased by \$500 for each dependent child under the age of 17. Dependents with Individual Taxpayer Identification Numbers (ITINs) are not eligible for the rebate.

Unfortunately for those in higher tax brackets, payments decrease by \$5 on every \$100 dollars over the \$75,000 or \$150,000 threshold up to \$99,000 or \$198,000 and then the payment is phased out altogether.

U.S. citizens don't have to apply. Payment is made automatically if the IRS has your banking information. If not, the IRS will send a check to the most recent address listed on your return. The IRS will send a follow-up notice within 3 weeks of issuing a check notifying that the check has been issued. The payments will commence on April 13, 2020 and must be made by no later than December 31, 2020. If you still wish to receive a payment through a direct deposit, the IRS is currently working on a portal to update banking details, but the bank account must be in the U.S.

The payment is an “advance refund of credit” that will be reconciled on the 2020 Form 1040. If a taxpayer receives a payment that is less than the full amount based upon 2019 (or 2018) and qualifies for the full \$1,200 based upon 2020, the taxpayer will receive the difference as a credit on the 2020 Form 1040. The taxpayer does not have to repay the credit if the 2020 numbers make them ineligible.

In contrast to the \$2,000 monthly Canadian Emergency Response Benefit (CERB) payments that are taxable for both U.S. and Canadian tax purposes, the U.S. stimulus check is not taxable for U.S. tax purposes. Its treatment in Canada will be similar to the CERB.

### **Retirement funds**

If you own a 401(k) or other U.S. individual retirement account, you don't have to take a minimum required distribution (MRD) in 2020 due to market performance.

On the other hand, if you need more than the MRD this calendar year, you can withdraw up to \$100,000 without penalty. The penalty-free withdrawal only applies if it is a direct result of the Coronavirus (i.e. you, a spouse, or a dependent tested positive or you suffered financially because of the pandemic). Any income taxes owed on the larger distribution can be spread out over three years from the date the distribution was taken. In addition, you can return the money to the account before the end of that three-year period without worrying about the size of the contribution, as you normally would. Be careful on the Canadian side if the withdrawal is not treated as a loan. Recognizing income in the current year without enough foreign tax credits for taxes paid in the U.S. due to the three-year deferral will result in double taxation.

The 10% penalty for taking a distribution of up to \$100,000 from a qualified retirement plan before the age of 59 ½ has also been eliminated. This only applies if you have been diagnosed with COVID-19 or have a spouse or dependent who has been diagnosed or you have experienced financial consequences due to COVID-19.

### **Deductions for charitable donations**

It's a great time to be charitable! The CARES Act introduces a new deduction for up to \$300 in charitable contributions per year, which extends beyond the 2020 taxation year. The deduction is only available to people who don't itemize deductions and is calculated by subtracting the donation amount from gross income. There are stipulations around the donation, including that it must be a cash donation to a qualified charity and not a donor-advised fund. Under the Canada-US Income Tax Treaty, Americans residing in Canada should be eligible for this deduction even when they contribute to a Canadian charity.

For 2020, cash donations made to public charities are not limited to the 60% of the adjusted gross income (AGI) threshold, rather 100% of cash contributions may be claimed as an itemized deduction. So, if you donate a million dollars and that is your AGI, you can deduct the entire million to have no taxable income in 2020. If you donate a million dollars and your AGI is less than that, the difference will be carried forward to future years. The permanent law limits the deduction to 60% of the AGI.

### **Student loan payments**

Payments on federal student loans, including direct loans, Perkins loans and Federal Family Education Loans owned by the U.S. Department of Education, are automatically suspended from March 13 through September 30, 2020. In addition, the first \$5,250 paid by an employer towards the employee's student loan is not taxable income to the employee.

## **MEASURES FOR CORPORATE TAXPAYERS**

Some of the most relevant business-focused provisions are summarized below:

### **Carry-backs of Net Operating Losses (NOLs)**

The 2017 Tax Cuts and Jobs Act (TCJA) disallowed NOL carry-backs. Starting in 2018, businesses could use NOLs to reduce taxable income for a certain period of time going forward, however, they could no longer carry them back. Also, a business could only take NOLs amounting to up to 80% of its taxable income.

Under the CARES Act, the 100% NOL deduction once again applies and businesses can carry back their NOLs from 2018 through 2020 to the five years preceding the year of loss. NOL carry-backs up to five years are also available to partnerships and individuals. In addition, individuals are no longer limited to 250,000/500,000 of business losses per year for 2018-2020. For U.S. branches of Canadian companies, the decision to carry operating losses back should be done in concert with a crossborder accountant as it may negatively impact the Canadian side of taxation.

### **Interest deduction limitation**

Prior to the CARES Act, the interest deduction that a business could take was limited to 30% of earnings before interest, tax, depreciation, and amortization (EBITDA). The limit is now retroactively increased to 50% of EBITDA for tax years 2019 and 2020. Under this policy, Canadian businesses with crossborder activity can provide more funding to U.S. operations and improve their tax position when bringing profits back over the border. To avoid the debt reclassification into equity, the loan must be subject to an AFR (applicable federal rate).

### **Depreciation for properties**

Under the CARES Act businesses can now claim 100% depreciation for properties classified under “Qualified Improvement Property” (QIP) including improvements to non-residential buildings as 15-year property. This bonus depreciation is retroactive to December 31, 2017 and is also available to individual filers.

### **Available loans/credits**

These are the various loan and credit opportunities available to U.S.-based businesses.

### ***Economic Injury Disaster Loan Program and Emergency Advance (EIDL)***

Canadians owning U.S. companies may be eligible for this expanded loan program, which carries highly favourable terms and possible loan forgiveness. To be eligible for the U.S. Small Business Administration’s (SBA) Economic Injury Disaster Loan Program a company must have been in business in the U.S. for at least one year, the loan has to be guaranteed by management, and collateral for the loan must be based in the U.S. These limitations do not apply to U.S. companies with U.S. majority ownership.

U.S. business owners can apply for up to \$2 million to be used towards working capital. The loan amount is dependent on the extent to which the business has suffered as a result of the pandemic. In addition to the requirements for a Canadian-owned business in the U.S., the business must also meet the size standards defined by the SBA and be located in a declared disaster area. The interest rate is 3.75% on the EIDL loan, the term can be up to 30 years, and

the SBA allows for an automatic six-month deferral on repayment, however, interest will start to accrue upon disbursement.

As part of an EIDL application, U.S. business owners can also apply for emergency relief that does not require repayment and is not subject to taxation. The amount of the EIDL grant is determined by the number of people the business employs, at \$1,000 per employee up to \$10,000, and is intended to provide immediate relief while waiting for the main EIDL loan. There is only a three-day wait for this emergency advance.

### ***Paycheck Protection Program***

In addition to the EIDL program, the SBA also brings us the Paycheck Protection Program (PPP) through the CARES Act. This program allows small businesses with 500 employees or less, including sole proprietorships, independent contractors, self-employed persons, private non-profit organizations and veterans' organizations affected by COVID-19, to receive loans equal to 250% of their average monthly payroll up to a maximum of \$10 million.

Payments on loan principle, interest and fees are deferred for up to six months, and these loans can be fully forgiven if they are used for payroll, interest on mortgages, rent and utilities, etc. (i.e. eligible expenses) for at least 75% of the forgiven amount. The forgiven amount is equal to the eligible expenses incurred within eight weeks after receiving a loan. According to SBA guidance, small businesses can apply for a PPP loan in addition to receiving SBA's emergency advance.

To be eligible, a business had to have been operational on February 15, 2020 and employ 500 people or less. Some businesses with more than 500 employees may be eligible if they meet the SBA's industry specific size standards.

It is currently unknown whether an employer eligible for a forgivable PPP loan can claim eligible expenses incurred during the same eight-week period.

### ***Payroll Tax Credits***

#### ***Sick Leave Tax Credit***

Employers can be eligible for a dollar-for-dollar payroll tax credit equal to 100% of the qualified sick leave wages that are required to be paid under the FFCRA. The amount of the credit depends on the reason an individual is taking sick leave. Credits are capped at \$511/day for up to 10 days per calendar quarter if the employee is quarantined, self-quarantined or has COVID-19. If the employee is taking sick leave for another reason under the Act, credits are capped at \$200/day for up to 10 days per calendar quarter. The credits can be increased further through the employer's qualified health plan expenses. Credits that exceed the employer's payroll tax liability will be refunded.

#### ***Family Leave Tax Credit***

Employers can be eligible for a payroll tax credit equal to 100% of the qualified family leave wages required to be paid under the Family and Medical Leave Act (FMLA) of the FFCRA. Similar to the Sick Leave Tax Credit, credits are calculated by individual and capped at \$200/day for up to 10 weeks and a maximum of \$10,000 per employee. Employers can only claim credits for 2/3 of an employee's regular pay if the employee is on leave to take care of a child.

### Payroll Tax / Employee Retention Tax Credit

Under the CARES Act, employers may be eligible for a tax credit for 50% of wages paid. This is available to employers whose businesses are fully or partially shut down due to the virus or whose gross receipts are down by more than 50% as compared to this time last year. The tax credit is for qualified wages paid or incurred from the period of March 13, 2020 through to December 31, 2020 and is limited to the first \$10,000 of compensation (up to \$5,000 credit per employee). This also includes health benefits paid during this period. The credit is available even if a PPP application has been submitted but only up to the date of approval. For businesses with 100 employees or less, the credit is for all wages, whether or not the business is shut down during the pandemic. For businesses that employ more than 100 people, the credit is only available to cover wages for employees who can't work due to the pandemic but are kept on payroll.

### Payroll Tax Deferral

Under the CARES Act, an employer can defer payment of their portion of the Social Security tax from March 27, 2020 through December 31, 2020. If deferred, employers must pay 50% of the taxes on December 31, 2021 and the remaining 50% on December 31, 2022 to avoid the sizable penalties.

If the employer has had indebtedness forgiveness under the CARES Act's Payroll Protection Program ("PPP"), this tax deferral is not available.

### **Exchange Stabilization Fund**

Through the U.S. Treasury's Exchange Stabilization Fund, U.S. based businesses can access emergency loans, however, in taking a loan the business must not engage in stock buybacks for the period of the loan plus one year. The business also has to retain at least 90% of its employees as of March 24, 2020. These loans also include limitations on employee compensation and severance pay and are overseen by a Congressional Oversight Commission and a Special Inspector General.

It is believed that this is only the beginning and there will be more assistance to come as events of the pandemic unfold and economic impacts become clearer. If you wish to receive more information, or if you have questions on how to navigate the government programs and initiatives, especially in conjunction with the Canadian provisions and programs, please contact Hanson Crossborder Tax.

Kindest regards,

*Elena*



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