

CARES Act provides tax relief to insurers

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In brief

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) includes significant tax provisions and other measures to assist businesses and individuals impacted by the economic effects of the COVID-19 pandemic. Many of the provisions that apply to corporate taxpayers generally are particularly important to insurers. In addition, modifications to the rules for net operating loss (NOL) carrybacks have specific rules for both life and nonlife insurers that may allow some companies to reclaim taxes paid in prior years.

In detail

By far, the CARES Act provisions most impactful to insurers are the corporate tax provisions -- in particular, the modification of the rules for NOLs and the acceleration of Alternative Minimum Tax (AMT) credit refunds.

Modification of rules for NOLs

The 2017 tax reform act (the 2017 Act) limited the deduction under Section 172 for NOLs that arise after 2017 to 80% of taxable income, and generally did not allow NOLs to be carried back to prior tax years (although they could be carried forward indefinitely). Insurance companies other than life insurance companies were permitted to carry back such losses two years and forward 20 years, without the limitation related to 80% of taxable income. Life insurance company losses arising before 2018 generally could be carried back three years and forward 15 years.

The CARES Act modifies the treatment of NOLs arising in tax years 2018, 2019, and 2020. Specifically, in the case of tax years during this period and beginning before 2021, taxpayers must carry back NOLs (but not capital losses) to the prior five tax years, unless they elect to forego the carryback. In addition, the 80% taxable income limitation does not apply to losses arising in tax years 2018, 2019, and 2020. Effectively, this delays the 80% taxable income limitation until 2021 and temporarily extends the carryback period to five years. The CARES Act provides that NOL carrybacks cannot be used against Section 965 inclusions.

The new provisions allow nonlife companies to carry back NOLs in a similar manner -- i.e., for five years, and without the 80% taxable income limitation on NOL carryovers (the latter was afforded to them under the 2017 Act, and is unchanged). However, nonlife companies still are limited to a 20-year carryforward period.

The new provisions permit life insurance companies the same five-year carryback that applies to other corporate taxpayers, and clarify that the losses carried back to pre-2018 years otherwise are deductible as if they were losses from operations under pre-2017 Act rules.

Observation: The life/nonlife rules such as ‘bumping,’ ‘eligibility,’ and ‘sub-group’ limitations continue to apply. Accordingly, for companies in a life/nonlife consolidated group, additional analysis is recommended to determine the effect of carryback claims and ability to utilize the enhanced NOL carryover across subgroups.

Observation: Increased ability to utilize carryover losses from 2018 through 2020, and ability to carry back losses to 2018 and 2019, ultimately could result in an adjustment to the base erosion and anti-abuse (BEAT) liability. This impact should be considered when evaluating NOL utilization.

Acceleration of AMT credit refunds

The CARES Act accelerates the recovery of AMT credits that otherwise are refundable in each of the tax years 2018-2021 under the 2017 Act. In particular, the 2017 Act repealed the corporate AMT and provided a new statutory mechanism for corporate taxpayers to recover AMT credits by reducing regular tax liabilities and providing refunds for AMT credit balances not absorbed by regular tax liabilities. Under the 2017 Act, the government refunds 50% of the unused balance of such credits carried forward by taxpayers in each of the tax years 2018-2020, and in 2021 the government must refund all remaining AMT credits.

The CARES Act allows corporations to claim 100% of AMT credits in 2019 as fully refundable and provides an election to accelerate claims to 2018, with eligibility for accelerated refunds.

Observation: The election to claim the AMT credit refund in 2018 under this provision is to be administered similarly to the ‘quick refund’ claims for NOL carrybacks. Therefore, taxpayers may be able to file a claim for refund relatively quickly, subject to the due dates and other limitations that may apply.

Other corporate provisions

In addition to the NOL and AMT credit refund provisions, the CARES Act includes other changes applicable to corporate taxpayers and may be impactful to insurers or their affiliates, policyholders, or independent brokers, depending on the circumstances. For example, the CARES Act --

- relaxes the limitations on deductible interest expense under Section 163(j) by increasing from 30% to 50% the percentage of adjusted taxable income that is added to interest income to compute the deduction limitation;
- provides a new temporary refundable 50% employee retention credit for certain employers subject to a business suspension due to the COVID-19 emergency, or for employers whose gross receipts have significantly declined due to COVID-19; and
- delays payment of certain employer payroll taxes from March 27 through December 31, 2020. Half of the deferred tax is to be paid by December 31, 2021, and the remainder by December 31, 2022. The deferral includes the employer portion of FICA taxes and half of the SECA tax liability.

The takeaway

The CARES Act provides new rules for insurance companies to consider, most of which may require attention in the short run.

- Companies should consider either amending returns or requesting ‘quick’ refunds based on the new NOL and AMT credit acceleration provisions. Companies that should consider analyzing these issues include (1) companies with losses in 2018 or 2019, or those that anticipate losses in 2020, which have carryback capacity in years up to five years earlier, and (2) companies with corporate AMT credits that have not yet been recovered.

- Due to the change in tax rates from 35% to 21%, carryback of post-2017 NOLs to pre-2018 years may be particularly valuable.
- Unfortunately for many taxpayers, there is no change to the carryback/carryforward provisions for capital losses (these losses may be carried back three years and carried forward five years). Companies that sell capital assets at a loss in order to pay abnormal insurance losses may be eligible to carry back such losses against ordinary income under Section 832(c)(5). Further analysis would be required to determine the potential impact from this provision.
- Because NOLs have an impact on a number of other provisions, a thorough evaluation of the effect of a carryback is required, and scenario planning may be needed to account fully for the impact on BEAT, global intangible low-taxed income (GILTI), and NOL usage limitations in accordance with Section 382, separate return limitation year (SRLY) rules, and life/nonlife consolidated returns.
- The default rule for NOL carrybacks in the CARES Act requires a company to carry back NOLs to available years. In addition to 'bumping,' 'eligibility,' and 'subgroup' limitations, these rules can cause NOLs carried forward from a 'foregone' carryback year to be 'forever' precluded from being used to offset future taxes of the other subgroup. Consideration should be given to whether to forgo an NOL carryback in a life/nonlife consolidated return.
- Losses of a foreign insurance company treated as a domestic corporation by reason of a Section 953(d) election are treated as dual consolidated losses (DCLs). Analysis should be made of the impact of the carryback provisions to DCLs.
- Attention should be paid to the process for corporate AMT refunds. For example, amended returns may be required, rather than an application for quick refund, if the due date has passed for requesting a quick refund.
- Many states do not follow the federal rules for NOLs. Companies should examine what relief states may offer, and assess the most efficient way to meet compliance obligations.
- The federal tax rate changed from 35% to 21% as a result of the 2017 Act. Accordingly, the tax rate differential should be considered for any NOLs that are expected to be carried back to a year before the tax rate change was effective. This rate differential may impact the tax provision in several ways, including:
 - The tax benefit for remeasuring deferred tax assets related to prior year NOLs (i.e., tax years ending in 2018 and 2019) expected to be carried back should be recorded discretely in the period of enactment.
 - Any existing temporary differences (currently recorded at a 21% rate) that are expected to reverse during the year and become part of a loss that will be carried back to a 35% year should be remeasured to 35% discretely in the period of enactment.
 - The tax benefit for the rate differential related to losses recognized during the current year should be included in the annual effective tax rate.

Additional resources

For additional details relating to the relief provisions summarized above, and other provisions not covered here, please refer to PwC's previously issued Tax Insight: ["Senate passes Phase Three COVID-19 economic stabilization legislation,"](#) March 26, 2020.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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