

# The IRS and Treasury Are Working Overtime to Provide Taxpayers with Joy, Hope and Optimism During These Trying Times

04.13.20 01.07.26

## **NOTICE 2020-23**

On April 9, 2020, the U.S. Secretary of the Treasury issued Notice 2020-23. It greatly expands the tax compliance relief previously granted to taxpayers in response to the COVID-19 pandemic.

### **Background**

On March 13, 2020, President Trump issued an emergency declaration, instructing the U.S. Secretary of the Treasury to relieve taxpayers from certain tax compliance deadlines during these horrific times.

Code Section 7508A grants Treasury authority to postpone the time to perform certain acts required under the Code for taxpayers affected by a federally declared disaster (as defined in Code Section 165(i)(5)(A)).

### **Notice 2020-23**

[Notice 2020-23](#) should bring a tidbit of joy to many taxpayers. For affected taxpayers, certain additional filing and payment obligations are automatically postponed until July 15, 2020. Accordingly, these taxpayers will not need to request an extension for complying with these filing and payment obligations from the IRS.

Additionally, Notice 2020-23 also relaxes the due dates with respect to numerous additional time-sensitive taxpayer actions.

### **Specified Filing and Payment Obligations**

The following payment obligations and filing obligations constitute "Specified Filing and Payment Obligations" for which payment and tax returns and related filing deadlines are automatically extended to July 15, 2020:

- Individual income tax payments and returns (on Forms 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR and 1040-SS);
- Calendar year or fiscal year corporate income tax payments and returns (on numerous forms in the Form 1120 series, including Forms 1120 and 1120-S);
- Calendar year or fiscal year partnership returns (on Forms 1065 and 1066);
- Estate and trust income tax payments and returns (on Forms 1041, 1041-N and 1041-QFT);
- Estate and generation-skipping transfer tax payments and returns (on numerous forms in the Form 706 series);
- Estate and GST tax returns (Form 706), filed pursuant to Revenue Procedure 2017-34;
- Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent and any supplemental Form 8971, including all requirements contained in Code Section 6035(a);
- Gift and GST tax payments and returns on Form 709 that are due on the date an estate is required to file Form 706 or Form 706-NA;
- Estate tax payments of principal or interest due as a result of an election made under Code Sections 6166, 6161 or 6163 and annual recertification requirements under Code Section 6166;
- Exempt organization business income tax and other payments and returns on Form 990-T;
- Excise tax payments on investment income and return filings for private foundations on Form 990-PF and excise tax payments and returns on Form 4720; and
- Quarterly estimated income tax payments calculated on or submitted with Form 990-W, forms in the Form 1040-ES series, Form 1041-ES and Form 1120-W.

**Practice Alert:** The extensions to the forms also apply to schedules and returns filed as attachments to the specified forms (including foreign asset reporting forms that include Forms 3520, 5471, 5472, 8621, 8858, 8865 and 8938).

**Practice Alert:** The relief applies to installment payments under Code Section 965(h) due on or after April 1, 2020 and before July 15, 2020.

**Practice Alert:** The extensions to the forms also apply to elections made or required to be made on the forms.

### **Specified Time-Sensitive Actions**

Notice 2020-23 provides that the U.S. Secretary of the Treasury has determined that any person performing a "Time-Sensitive Action" listed in either of the following authorities that is due to be performed on or after April 1, 2020, and before July 15, 2020 is an Affected

Taxpayer:

- Treasury Regulations Section 301.7508A-1(c)(1)(iv)-(vi); and
- Revenue Procedure 2018-58.

Each of these types of Time-Sensitive Actions is discussed in more detail below.

Additionally, an investment at the election of a taxpayer due to be made during the 180-day period described in Code Section 1400Z-2(a)(1)(A) (Qualified Opportunity Zones) is a Specified Time-Sensitive Action.

Thus, the deadlines for taxpayers to perform these actions are extended to July 15, 2020.

#### *Time-Sensitive Actions Under Treasury Regulations Section 301.7508A-1(c)(1)(iv)-(vi)*

The Time-Sensitive Actions listed in Treasury Regulations Section 301.7508A-1(c)(1)(iv)-(vi) are as follows:

- Filing a petition with the Tax Court, or for review of a decision rendered by the Tax Court;
- Filing a claim for credit or refund of any tax; and
- Bringing suit upon a claim for credit or refund of any tax.

#### *Time-Sensitive Actions Under Revenue Procedure 2018-58*

Revenue Procedure 2018-58 sets forth a multitude of Time-Sensitive Actions. The following is a list of some of the more significant actions:

- Taking an action relating to the adoption, election, retention or change of any accounting method or accounting period, or to the use of an accounting method or accounting period, that is required to be performed on or before the due date of a tax return;
- Making a Code Section 444 election (to have a tax year other than a required tax year);
- Securing the IRS Commissioner's consent to a change in method of accounting that is not an automatic method change (on Form 3115);
- Obtaining a written acknowledgment of the contribution by a donee organization within 30 days of the contribution or sale of a qualified vehicle in order to claim a charitable deduction of more than \$500;
- Making 60-day rollovers for Code Section 529 qualified tuition plans;
- Identifying (45-day period) and exchanging property (180-day period) for 1031 exchanges;
- Electing the non-recognition of gain on involuntary conversions under Code Section 1033;
- Rolling over gain from the sale of small business stock under Code Section 1045;
- Making an entity classification election on Form 8832;
- Completing a corporate distribution pursuant to a plan of partial liquidation under Code Section 302(e)(1);
- Completing a distribution of property to a shareholder in redemption of all or part of the stock of a corporation under Code Section 303;
- Completely liquidating a corporate subsidiary under Code Section 332(b);
- Making elections to treat stock purchases as asset acquisitions under Code Sections 338(g) or 338(h)(10);
- Making 60-day rollovers for Archer MSAs, HSAs, retirement plans and IRAs;
- Taking required minimum distributions from defined contribution plans and IRAs;

- Filing Forms 5500 by employee benefit plans;
- Filing a Notice of Intent to Operate Under Code Section 501(c)(4);
- Filing a notice of intent to terminate private foundation status;
- Filing an application for recognition of exemption under Code Section 501(c)(3) on Form 1023 or under other Code sections on Form 1024;
- Filing an annual return on Form 990 series;
- Making a notification by a transferee to a partnership with a Code Section 754 election;
- Revoking a Code Section 754 election;
- Making an electing small business trust or qualified subchapter S trust election; and
- Making or revoking a subchapter S election.

**Practice Alert:** There are numerous other due dates provided in Revenue Procedure 2018-58 that we did not list above. Practitioners with looming tax-related deadlines should consult the tables in the revenue procedure to determine whether such deadlines are extended under Notice 2020-23.

## 1031 EXCHANGES

Specifically with regard to Code Section 1031 exchanges, Section 17 of Revenue Procedure 2018-58 provides that the deadlines for identifying property and obtaining replacement property are postponed by the later of "120 days or to the last day of the general disaster extension period."

However, a postponement period may not extend beyond the due date (including extensions) of the taxpayer's tax return for the year of the transfer. The period for extension may also not extend for more than one year, in the event that deadlines are further extended.

Taxpayers who are transferors may postpone the applicable deadlines only if both of the following are true:

- The relinquished property was transferred (or qualified indicia of ownership were transferred to an exchange accommodation titleholder) prior to the date the disaster was declared (March 13, 2020), and
- The taxpayer:
  - Is an "affected taxpayer" as defined in IRS guidance announcing tax relief for the victims of the disaster; or
  - Has difficulty meeting the 45-day identification period or 180-day exchange period deadline due to the federally declared disaster.

In the latter case, the taxpayer's difficulty must be due to one of the following or similar reasons:

- The relinquished property or the replacement property is located in a covered disaster area;

- The principal place of business of any party to the transaction is located in the covered disaster area;
- Any party or employee of a party to the transaction is killed, injured or missing as a result of the federally declared disaster;
- A document prepared in connection with the exchange or a relevant land record is destroyed, damaged or lost as a result of the federally declared disaster;
- A lender decides not to fund either permanently or temporarily a real estate closing due to the federally declared disaster or refuses to fund a loan to the taxpayer because flood, disaster or other hazard insurance is not available due to the federally declared disaster; or
- A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the federally declared disaster.

Notice 2020-23 provides that any person performing a Time-Sensitive Action listed in Revenue Procedure 2018-58, which is due to be performed on or after April 1, 2020, and before July 15, 2020, is an Affected Taxpayer. Thus, the extension applies to deadlines of all taxpayers who need to identify property or obtain replacement property, and such deadlines should be postponed by the later of 120 days or July 15, 2020. Accordingly, most taxpayers will have 120 extra days for the applicable period, provided the period began prior to March 13, 2020 and will not extend beyond the due date (with extensions) of the taxpayer's tax return for the year of the transfer.

## **QUALIFIED OPPORTUNITY ZONES**

As discussed in [prior posts](#), under Code Section 1400Z-2, investors can defer the gain from the sale or exchange of property by investing in a qualified opportunity fund ("QOF"). In order to do so, subject to special rules, they must invest in a QOF within 180 days of the sale or exchange of property. For these purposes, eligible gain is any gain treated as capital gain for federal income tax purposes.

Pursuant to Notice 2020-23, if the time for reinvesting eligible gain in a QOF expires on or after April 1, 2020 but before July 15, 2020, investors will have until July 15, 2020 to reinvest such gain in a QOF to take advantage of the Qualified Opportunity Zone deferral regime.

## **POSTPONEMENT OF DUE DATES WITH RESPECT TO CERTAIN GOVERNMENT ACTS**

Notice 2020-23 provides the IRS with a 30-day postponement to perform certain "Time-Sensitive IRS Actions" described in Treasury Regulations Section 301.7508A-1(c)(2) with respect to certain "Affected Taxpayers." The postponement applies if the last date for

performance of the action is on or after April 6, 2020, and before July 15, 2020.

The requisite Time-Sensitive IRS Actions are as follows:

- Assessing any tax;
- Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
- Collecting by the U.S. Secretary of the Treasury, by levy or otherwise, of the amount of any liability in respect of any tax;
- Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax;
- Allowing a credit or refund of any tax; and
- Any other act specified in a revenue ruling, revenue procedure, notice or other guidance published in the Internal Revenue Bulletin.

The following are Affected Taxpayers for these purposes:

- Persons who are currently under examination (including an investigation to determine liability for an assessable penalty under subchapter B of Chapter 68 of the Code);
- Persons with cases pending before the IRS Office of Appeals; and
- Persons who, during the period beginning on or after April 6, 2020 and ending before July 15, 2020, file amended tax returns or submit payments with respect to a tax for which the time for assessment would otherwise expire during this period.

## **EXTENSION OF TIME TO PARTICIPATE IN THE ANNUAL FILING SEASON PROGRAM**

Notice 2020-23 also extends the time to participate in the voluntary Annual Filing Season Program created under Revenue Procedure 2014-42 to encourage tax return preparers who do not have credentials as practitioners under Treasury Department Circular No. 230 to complete continuing education courses to increase their knowledge of the law relevant to federal tax returns. The due date for the application to participate has been moved to July 15, 2020.

### **Comments**

The relief provided under Notice 2020-23 provides more welcome relief to taxpayers and practitioners. We will continue to digest and comment on guidance as it is issued.

**Caveat:** The relief provided under the various notices discussed above applies only to the taxes, tax returns and forms specified therein and not any other taxes, tax returns and forms. Taxpayers and practitioners should not assume that the deadline to file any particular federal tax return or form, any payment due date, or time to take any other action has been extended. They should check the notices and related guidance to confirm the applicable deadline.

Of course, these notices only specifically impact federal deadlines. They do not have any impact on any state or local tax due dates (unless such jurisdictions expressly or implicitly adopt similar relief).

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