April 10, 2020

IRS Significantly Extends Filing, Payment and Other Deadlines Due to COVID-19

In Notices 2020-18 and 2020-20, the Treasury Department and the IRS extended the due date to file all income tax returns and gift and generation-skipping transfer tax returns originally due on April 15 until July 15. However, questions remained as to whether due dates for some information returns (and particularly those that are not filed with a tax return) would also be extended. Further, the prior two notices did not cover estate tax returns and certain other federal tax returns. Subsequently, on April 9, the Treasury Department and the IRS issued Notice 2020-23 (the Notice), which significantly expands the scope of the prior two notices.

The deadline for most federal tax returns (Specified Forms) and payments (Specified Payments) otherwise due on or after April 1 and before July 15 is automatically extended to July 15. Specified Payments encompass not only payments of a taxpayer's tax liability accompanying a return and regularly scheduled estimated payments (including estimated payments due on June 15) but also installment payments under Sections 965(h), 6161 and 6166. Applicable interest and late filing and payment penalties also are tolled during this period.

The extension covers estate tax returns, partnership returns and certain excise tax returns. However, there is some ambiguity with respect to partnership returns. The Notice extends the deadline for "calendar year or fiscal year partnership return filings on Form 1065," but the deadline for calendar year partnerships was March 15—before the window covered by the Notice—so it is not clear how the Notice extends the deadline for calendar year partnerships.

The Notice extends the deadline for all time-sensitive actions listed in Treasury Regulations Section 301.7508A-1(c)(1)(iv)-(vi) and Revenue Procedure 2018-58, which cover a wide range of other filings and elections due on or after April 1 and before July 15. These include, among other things, deadlines for filing Form 990 series returns required for organizations exempt under Section 501(a). Thus, for example, calendar year public charities and private foundations that otherwise would have to file Forms 990 or 990-PF on May 15 now have an automatic extension to July 15. The same would apply to Forms 990-T for organizations reporting unrelated business income.

The Notice specifically extends the deadlines for Forms 3520, 5471, 5472, 8621, 8858, 8865 and 8938, but this list is nonexclusive, as the extension covers "all schedules, returns, and other forms that are filed as attachments to Specified Forms or are required to be filed by the due date of Specified Forms." Accordingly, this would also presumably cover Forms 926, 8833, 8840, 8843, 8992, 8993 and other information returns that are filed with the taxpayer's tax return or due at the same time that a tax return would have been due in situations where a tax return would not otherwise be filed.

The due date for elections that are made or required to be made on a timely filed Specified Form are similarly extended.

The Notice also extends a key deadline with respect to qualified opportunity zones. To qualify for the benefits of the qualified opportunity zone program, a taxpayer must invest in a qualified opportunity fund within 180 days of the sale or exchange that triggered the capital gain that the taxpayer seeks to defer. To the extent that an investor's 180-day deadline would fall on or after April 1 and before July 15, the notice automatically extends that deadline until July 15.

Finally, the Notice extends the deadline for certain government actions (for example, in audit or assessment situations or where the taxpayer files an amended return). It also extends the deadlines for filing petitions with the Tax Court, reviewing decisions rendered by the Tax Court, filing claims for a credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax, but only where such deadlines would otherwise fall on or after April 1 and before July 15.

This extension does not apply to FinCEN Form 114 (FBAR), as the deadline for this form is already automatically extended to October 15 of each year.

The IRS has publicly indicated that it expects to extend the deadline for Form 8966 (FATCA Reporting) from March 31 to July 15, though official guidance has not yet been issued.

Day Pitney is closely monitoring the IRS' response to the COVID-19 pandemic. These rules continue to evolve and depend on each taxpayer's unique circumstances, so we strongly suggest that you consult with your own tax adviser. If you have any questions about how these changes impact you, our attorneys are available to assist.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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