

## Resources

### Treasury Further Expands Relief for Taxpayers in Notice 2020-23

April 13, 2020

On Thursday, April 9, 2020, the U.S. Department of the Treasury issued Notice 2020-23 (the “Notice”), updating and expanding the relief granted by Notices 2020-18 and 2020-20. Notice 2020-23 postpones tax filing and payment deadlines until July 15, 2020, for many taxpayers in order to grant some amount of relief to individuals, businesses, non-profit organizations and trusts/estates amid the coronavirus/COVID-19 crisis. In contrast to the preceding Treasury Notices issued in 2020 postponing tax deadlines (namely, 2020-17, 2020-18, and 2020-20), Notice 2020-23 does not limit the relief granted to Federal tax payments and filings otherwise due April 15, 2020, but instead expands the class of postponed deadlines to include specified filings, payments, and time-sensitive actions due between April 1, 2020, and July 14, 2020.

#### Notice Issued in Response to Emergency Determination

Notice 2020-23 was issued in response to the determination of President Trump, on March 13, 2020, that the COVID-19 pandemic is of sufficient severity and magnitude to warrant an emergency determination under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In the declaration of emergency, the President instructed Secretary Mnuchin to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency.

#### Filings and Payments Affected

The Notice lists myriad forms and payments, which, if otherwise due (whether originally or pursuant to a valid extension) on or after April 1, 2020, but before July 15, 2020, will have their due dates automatically postponed. The enumerated filings and payments postponed are as follows:

- Individual income tax return filings, including any payment obligation associated with such filings, namely:
  - Form 1040 (U.S. Individual Income Tax Return);
  - Form 1040-SR (U.S. Tax Return for Seniors);
  - Form 1040-NR (U.S. Nonresident Alien Income Tax Return);
  - Form 1040-NR-EZ (U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents);
  - Form 1040-PR (Self-Employment Tax Return - Puerto Rico);
  - Form 1040-SS (U.S. Self-Employment Tax Return); and
  - Additional Child Tax Credit for Bona Fide Residents of Puerto Rico.
- Calendar year or fiscal year corporate income tax return filings, including any payment obligation associated with such filings, namely:
  - Form 1120 (U.S. Corporation Income Tax Return);
  - Form 1120-C (U.S. Income Tax Return for Cooperative Associations);
  - Form 1120-F (U.S. Income Tax Return of a Foreign Corporation);
  - Form 1120-FSC (U.S. Income Tax Return of a Foreign Sales Corporation);
  - Form 1120-H (U.S. Income Tax Return for Homeowners Associations);

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- Form 1120-L (U.S. Life Insurance Company Income Tax Return);
- Form 1120-ND (Return for Nuclear Decommissioning Funds and Certain Related Persons);
- Form 1120-PC (U.S. Property and Casualty Insurance Company Income Tax Return);
- Form 1120-POL (U.S. Income Tax Return for Certain Political Organizations);
- Form 1120-REIT (U.S. Income Tax Return for Real Estate Investment Trusts);
- Form 1120-RIC (U.S. Income Tax Return for Regulated Investment Companies);
- Form 1120-S (U.S. Income Tax Return for an S Corporation); and
- Form 1120-SF (U.S. Income Tax Return for Settlement Funds Under Section 468B).
- Calendar year or fiscal year partnership return filings, including any payment obligation associated with such filings, namely:
  - Form 1065 (U.S. Return of Partnership Income) and
  - Form 1066 (U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return).
- Estate and trust income tax return filings, including any payment obligation associated with such filings, namely:
  - Form 1041 (U.S. Income Tax Return for Estates and Trusts);
  - Form 1041-N (U.S. Income Tax Return for Electing Alaska Native Settlement Trusts); and
  - Form 1041-QFT (U.S. Income Tax Return for Qualified Funeral Trusts).
- Estate and generation-skipping transfer tax return filings, including any payment obligation associated with such filings, namely:
  - Form 706 (U.S. Estate and Generation-Skipping Transfer Tax Return)—including those filed pursuant to Revenue Procedure 2017-34;
  - Form 706-NA (U.S. Estate and Generation-Skipping Transfer Tax Return);
  - Form 706-A (U.S. Additional Estate Tax Return);
  - Form 706-QDT (U.S. Estate Tax Return for Qualified Domestic Trusts);
  - Form 706-GS(T) (Generation-Skipping Transfer Tax Return for Terminations);
  - Form 706-GS(D) (Generation-Skipping Transfer Tax Return for Distributions);
  - Form 706-GS(D-1) (Notification of Distribution from a Generation-Skipping Trust)—including the due date for providing such form to a beneficiary;
  - Form 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent)—including any supplemental Form 8971 and all other requirements contained in section 6035(a) of the Internal Revenue Code; and
  - Estate tax payments of principal or interest due as a result of an election made under sections 6166, 6161, or 6163 and annual recertification requirements under section 6166 of the Internal Revenue Code.
- Gift and generation-skipping transfer tax return filings, including any payment obligation associated with such filings, namely:
  - Form 709 (U.S. Gift and Generation-Skipping Transfer Tax Return)—applicable to those that are due on the date an estate is required to file Form 706 or Form 706-NA (all other Form 709 return and payment due dates were postponed by Notice 2020-20).
- Exempt organization business income tax and other return filings, including any payment obligation associated with such filings, namely:
  - Form 990-T (Exempt Organization Business Income Tax Return)—including proxy tax under section 6033(e) of the Internal Revenue Code.
- Excise tax on investment income return filings, including any payment obligation associated with such filings, namely:

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- Form 990-PF (Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation) and
- Form 4720 (Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code).
- Quarterly estimated income tax payments calculated on or submitted with the following forms:
  - Form 990-W (Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations);
  - Form 1040-ES (Estimated Tax for Individuals);
  - Form 1040-ES (NR) (U.S. Estimated Tax for Nonresident Alien Individuals);
  - Form 1040-ES (PR) (Estimated Federal Tax on Self Employment Income and on Household Employees)—for residents of Puerto Rico;
  - Form 1041-ES (Estimated Income Tax for Estates and Trusts); and
  - Form 1120-W (Estimated Tax for Corporations).

The Notice also postpones the due date for any “Specified Time-Sensitive Actions” listed in Treasury Regulation § 301.7508A-1(c)(1)(iv)-(vi), which include the following:

- 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.

Any such actions which would otherwise need to be taken between April 1, 2020, and July 14, 2020, will have the date by which they must be performed postponed pursuant to the Notice. The applicable deadline for other certain Specific Time-Sensitive Actions, as listed in Revenue Procedure 2018-58, has also been postponed in the same manner.

## Applicable Filing and Payment Due Date

The Notice postpones the due date for the filing of the enumerated Federal tax returns, the payment obligations associated with such returns, and the deadline for taking Specific Time-Sensitive Actions otherwise required at any time on or after April 1, 2020, but before July 15, 2020. For any such return, payment, or action, the new applicable deadline provided by the Notice is July 15, 2020. The relief granted by the Notice is automatic and does not require any filing or application with the IRS to be effective.

## Postponement of Due Dates for Government Actions

In addition to postponing deadlines by which taxpayers must submit returns, make payments, or perform Specific Time-Sensitive Actions, the Notice also provides that certain time-sensitive actions to be taken by the IRS, as provided in Treasury Regulation § 301.7508A-1(c)(2), is postponed, namely:

- Assessing any tax;
- Giving any notice or making any demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
- Collecting, by levy or otherwise, of the amount of any liability in respect of any tax;
- Bringing suit by the United States 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.

The Notice provides a 30-day extension of time for the IRS to perform any of the enumerated actions, if the applicable due date for performing the action is after April 6, 2020, but before July 15, 2020, provided such action pertains to any of the following taxpayers:

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- Persons who are currently under examination;
- Persons whose cases are with the Independent Office of Appeals; or
- Persons who, during the period beginning on or after April 6, 2020, and ending before July 15, 2020, file amended returns or submit payments with respect to a tax for which the time for assessment would otherwise expire.

## Calculation of Interest and Penalties

For amounts properly deferrable under the Notice, the period of April 1 through July 15, 2020, will be disregarded for the calculation of interest and penalties on unpaid taxes. For all such unpaid taxes, any interest and penalty will only begin to accrue as of July 16, 2020.

The Notice specifies that the period of April 1 through July 15, 2020, is only disregarded for purposes of calculating interest and penalties associated with returns and payments “postponed by this notice.” Accordingly, any currently overdue unpaid taxes will continue to accrue interest and penalties without suspension.

## Only Applicable to Federal Taxes

The Notice, which was issued by the U.S. Department of the Treasury, is not binding on state and local taxing authorities and due dates for certain state and local income tax payments and tax returns may remain unchanged absent state action. Taxpayers should confirm with their local governments to ensure that filing and payment deadlines are not missed for state and local tax purposes.

For more information regarding Notice 2020-23, Federal or state tax return deadlines and further available extensions, or Federal or state tax payment deadlines, please contact Tony Frasca (734-214-7614 or [afrasca@dykema.com](mailto:afrasca@dykema.com)), Michael Cumming (248-203-0740 or [mcumming@dykema.com](mailto:mcumming@dykema.com)), Tyler Kemper (734-214-7694 or [tkemper@dykema.com](mailto:tkemper@dykema.com)), or your Dykema relationship attorney.

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