

## CLIENT ALERT

### Continuing Uncertainty Around Loan Forgiveness in the Paycheck Protection Program

May 12, 2020

The Small Business Administration (SBA) has committed to providing additional guidance regarding many fundamental aspects of the Paycheck Protection Program (PPP) including loan forgiveness. While awaiting the SBA's additional guidance on forgiveness, other relevant guidance and analysis has been published.

First, the Internal Revenue Service (IRS) recently issued Notice [2020-32](#) addressing the deductibility for Federal income tax purposes of certain otherwise deductible expenses incurred in a taxpayer's trade or business when the taxpayer receives a PPP loan. While acknowledging that the CARES Act provides that PPP loan forgiveness is not income, the IRS nonetheless prohibits PPP loan recipients from taking deductions for payments (such as payroll and rent) that are normally deductible business expenses. The Notice finds that Section 265(a) of the Internal Revenue Code prohibits deductions for expenses paid with PPP loan proceeds, because those the loan proceeds are "tax-exempt income" and allowing a deduction for expenses paid with this income would lead to a double benefit. While still beneficial, this position somewhat offsets the usefulness of PPP loans as borrowers will not be able to deduct those expenses from income. Congressmen Grassley, Neal, and Wyden issued a [letter](#) to Treasury, asserting that the Notice misapplies the law and contradicts Congressional intent. Treasury responded to the lawmakers on May 7th, promising to take their comments into consideration and follow up with their offices.

Second, on May 8, 2020, the SBA Office of Inspector General (OIG) released a [report](#) on the implementation of the PPP in which the OIG addressed, among other items of note, how the SBA's position on loan forgiveness as reflected in post-legislation guidance and interim final rules was not fully aligned with the CARES Act. The SBA OIG has recommended that the SBA evaluate the potential negative impact to borrowers arising out of the limitation on loan forgiveness imposed by the SBA in consultation with Treasury that at least 75 percent of the loan proceeds must be used for payroll and to update the requirement, as deemed necessary.

The Crowell & Moring Team is closely monitoring these developments and will report on any additional guidance as it is published.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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