PATH Act Extends Key Tax Provisions for Businesses and Individuals; Many Extenders Made Permanent

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On December 18, 2015, the President signed into law the Protecting Americans from Tax Hikes Act of 2015, HR 2029, PL 114-113 (the "PATH Act"), which extends or makes permanent over fifty (50) expiring tax provisions relating to businesses and individuals.

This Alert provides an overview of several important tax provisions affecting businesses and individuals contained in the PATH Act. Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome. You should consult your own tax advisor regarding the United States federal, state, local, non-U.S. and other tax consequences of the provisions of the PATH Act.

GENERAL BUSINESS TAX PROVISIONS

Exclusion of 100% of Gain on Certain Small Business Stock Permanently Extended	The PATH Act makes permanent the 100% exclusion and the exception from alternative minimum tax treatment of gain on "qualified small business stock". *See* IRC § 1202(a)(4), as amended by PATH Act § 126.
New Markets Tax Credit Extended	The PATH Act retroactively extends the new markets tax credit through 2019 and provides up to $3.5 billion in qualified equity investments for each calendar year from 2015 through 2019. The carryover period for unused new markets tax credits also is extended through 2024. *See* IRC § 45D(f), as amended by PATH Act § 141.

Research Credit Permanently Extended	The PATH Act retroactively and permanently extends the research credit for qualified research expenses. *See* IRC § 41(h)(1), as amended by PATH Act § 121.
Work Opportunity Tax Credit Extended and Expanded	The PATH Act retroactively extends the work opportunity tax credit so that it applies to eligible veterans and nonveterans who begin work for the employer before January 1, 2020. In addition, with respect to individuals who begin work for any employer after December 31, 2015, the credit also applies to employers who hire qualified long-term unemployed individuals (those who have been unemployed for no less than 27 consecutive weeks, including any period in which the individual receives unemployment compensation). The credit with respect to long-term unemployed individuals is 40% of the first $6,000 of wages. *See* IRC §§ 51(c)(4)(B), 51(d)(1)(J), and 51(d)(15), all as amended by PATH Act § 142.

DEPRECIATION AND EXPENSING PROVISIONS

Small Business Expensing Under IRC § 179 Extended	The PATH Act retroactively and permanently extends the increased $500,000 maximum expensing amount under IRC § 179 and the increased $2 million investment-based phase-out amount (both indexed for inflation). In addition, the treatment of computer software as § 179 property is permanently extended, and air conditioning and heating units will now be eligible for § 179 expensing. *See* IRC § 179(b) and (d), as amended by PATH Act § 124.

Bonus First-Year Depreciation Extended	The PATH Act extends 50% first-year bonus depreciation for three (3) years so that it applies to qualified property acquired and placed in service before January 1, 2018. First-year bonus depreciation is then reduced to 40% and 30% for qualified property placed in service in 2018 and 2019, respectively. *See* IRC § 168(k)(2), as amended by PATH Act § 143.
15-Year Writeoff for Qualified Leasehold, Retail Improvements, and Restaurant Property Permanently Extended	The PATH Act retroactively and permanently extends the inclusion of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property in the 15-year MACRS class. *See* IRC §§ 168(e)(3)(E) and 168(e)(8)(E), as amended by PATH Act § 123.

ENERGY CREDITS AND DEDUCTIONS

Energy Efficient Commercial Buildings Deduction Extended	A deduction is allowed in an amount equal to the cost of an “energy efficient commercial building property” placed in service during the tax year. Prior to the PATH Act, the deduction did not apply to property placed in service after December 31, 2014. The PATH Act retroactively extends the deduction for two (2) years to property placed in service before January 1, 2017. *See* IRC § 179D(h), as amended by PATH Act § 190.
Renewable Electricity Production Credit Extended	A renewable electricity production credit is allowed for the production of electricity from qualified energy resources at qualified facilities. Prior to the PATH Act, the construction of a qualifying facility had to begin before January 1, 2015 in order to qualify for the credit. The PATH Act retroactively extends the date by which construction of a qualifying facility must begin for two (2) years to December 31, 2016. *See* IRC § 45(d), as amended by PATH Act § 187.

S CORPORATIONS

Reduction in S Corp Recognition Period for Built-In Gains Tax Permanently Extended	The PATH Act makes permanent the reduction in the recognition period for purposes of determining the net recognized built-in gain to a corporation upon conversion of a C corporation to an S corporation or upon receipt by an S corporation of property from a C corporation in an otherwise nontaxable carryover basis transfer. The temporary reduction in the recognition period from ten (10) years to five (5) years is now permanently extended. *See* IRC § 1374(d)(7)(C), as amended by PATH Act § 127.
S Corp Shareholder Basis Adjustments for Charitable Contributions Permanently Extended	The Pension Protection Act of 2006 ("PPA") provides that the amount of a shareholder's basis reduction in S stock by reason of a charitable contribution made by the corporation is equal to his pro rata share of the adjusted basis of the contributed property. Prior to the PATH Act, the PPA rule did not apply for contributions made in tax years beginning after December 31, 2014. The PATH Act retroactively and permanently extends the PPA rule. *See* IRC §1367(a)(2), as amended by PATH Act § 115.

INTERNATIONAL TAX PROVISIONS

Look-Through Rule for Payments Between Related CFCs Extended	The PATH Act retroactively extends look-through treatment for payments of certain dividends, interest, rents, and royalties between related CFCs for five (5) years to tax years of a foreign corporation before January 1, 2020, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end. *See* IRC § 954(c)(6)(C), as amended by PATH Act § 144.

Subpart F Exception for Active Financing Income Permanently Extended	The PATH Act retroactively and permanently extends the exclusion from Subpart F income for active financing income to a foreign subsidiary of a U.S. parent corporation. *See* IRC §§ 953(e)(10) and 954(h)(9), as amended by PATH Act § 128.

INDIVIDUAL INCOME TAX PROVISIONS

Child Tax Credit Reduced Threshold Permanently Extended	The child tax credit (CTC) is a $1,000 credit for each qualifying child that the taxpayer can claim as a dependent. To the extent the CTC exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount. The PATH Act permanently sets the threshold amount at an unindexed $3,000. *See* IRC § 24, as amended by PATH Act § 101.
American Opportunity Tax Credit	The PATH Act makes permanent the American Opportunity Tax Credit (AOTC), which takes the permanent provisions of the Hope Scholarship Credit and increases the credit to $2,500 for various tuition and related expenses for four years of post-secondary education, and increases the beginning of the phase-out amounts to $80,000 (single) and $160,000 (married filing jointly). *See* IRC § 25A(i), as amended by PATH Act § 102.
Earned Income Tax Credit	The PATH Act makes permanent the enhanced Earned Income Tax Credit ("EITC") for eligible low and moderate income workers. The increased EITC amount for those with three (or more) children and the reduction in the EITC marriage penalty such that the income phase-out range for those who are married and filing jointly is reduced by $5,000 (indexed for inflation) have been made permanent by the PATH Act. *See* IRC §§ 32(b)(1) and 32(b)(2)(B) as amended by PATH Act § 103.

Deduction for State and Local General Sales Taxes in lieu of State and Local Income Taxes Permanently Extended	Taxpayers who itemize deductions may elect to deduct state and local general sales and use taxes instead of state and local income taxes. Prior to the PATH Act, the election was unavailable for tax years beginning after December 31, 2014. The PATH Act retroactively revives and makes permanent this provision so that taxpayers who itemize their deductions may elect to deduct state and local sales and use taxes instead of state and local income taxes. *See* IRC § 164(b)(5)(I), as amended by PATH Act § 106.
Exclusion from Gross Income of Discharge of Indebtedness on Principal Residence Extended	Discharge of indebtedness income from qualified principal residence debt (up to a $2 million limit or $1 million for married individuals filing separately) is excluded from gross income. Prior to the PATH Act, the exclusion did not apply to any debt discharged after Dec. 31, 2014. The PATH Act extends the exclusion so that it applies to home mortgage debt discharged before January 1, 2017 or discharged pursuant to a binding written agreement entered into before January 1, 2017. *See* IRC § 108(a)(1)(E), as amended by PATH Act § 151.
Nontaxable IRA Transfers to Eligible Charities Permanently Extended	The PATH Act retroactively and permanently extends the rule allowing Taxpayers age 70½ or older to make tax-free distributions to a charity from an Individual Retirement Account of up to $100,000 per year. Such distributions should not be subject to the charitable contribution percentage limits since they are neither included in gross income nor claimed as a deduction on the taxpayer's return. *See* IRC § 408(d)(8)(F), as amended by PATH Act § 112.

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