The New Federal CARES Act

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The new federal stimulus CARES Act that was signed into law on March 27, 2020 contains numerous programs targeted at helping individuals, families, businesses, not-for-profits and states and municipalities affected by the COVID-19 pandemic.

Many excellent summaries of the CARES Act are already available from law and accounting firms. Rather than prepare a comprehensive summary of the CARES Act (very little of which pertains directly to real estate), we have prepared this short summary of those provisions which we believe will be of the greatest interest to our clients.

- <u>The CARES Act does not abate any existing obligations to pay rent, debt service or real estate taxes on office, industrial or retail real estate.</u>
- Under the new Paycheck Protection Program, affected businesses with not more than 500 employees (higher in some industries) are eligible for government-backed loans of up to $10 million, not to exceed 2½ months payroll (subject to various exclusions, including an exclusion of compensation in excess of $100,000 per annum to any individual).
    - <u>Importantly, depending on how the loan proceeds are used and how many jobs are preserved, a portion of the loan up to eight weeks' payroll, rent, utilities, and certain interest is eligible to be forgiven.</u>
    - For restaurants and hotels, the 500-employee test can be applied on a location by location basis.
    - Loans can bear interest up to 4% and have a term of up to ten years. No loan payments will be due during an initial period of at least six months.
    - Commercial banks and SBA lenders will make these loans.
- The CARES Act also expands the SBA's existing Economic Injury Disaster Loan program to cover businesses affected by the COVID-19 crisis. This program provides loans of up to $2 million which can be refinanced with a loan under the Paycheck Protection Program. Application can be made directly on the SBA's website.
- Businesses affected by a government-mandated shutdown or experiencing a significant decline in gross receipts (as defined in the CARES Act) will be eligible for refundable tax credits equal to 50% of wages paid during the balance of 2020, subject to a maximum credit of $5,000 per employee. For employers with more than 100 employees, the credit is limited to employees not providing services due to the COVID-19 crisis.
- To provide immediate liquidity, payment of the employer share of social security taxes on wages paid through the end of 2020 is deferred as follows: one-half until the end of 2021 and the balance until the end of 2022.
- In a provision of special benefit to commercial tenants, the CARES Act corrects a mistake made in the 2017 tax reform bill and reclassifies qualified improvement property (e.g., leasehold improvements to existing buildings) as 15-year, rather than 39-year, property, also making it eligible for 100% bonus depreciation if placed in service before January 1, 2023. This correction is retroactive to January 1, 2018, permitting tax returns to be amended and refunds to be claimed.
- The CARES Act contains many other income and payroll tax changes. Some may be very important to particular clients.
- For residential property with federally backed financing the CARES Act includes various foreclosure and eviction forbearance programs.

The above is a summary and potentially important qualifications, limitations and restrictions are omitted. Savills does not provide legal, tax or accounting advice, and clients and other readers of this Memo should seek such advice when seeking to obtain any of the benefits of the CARES Act.
