CARES Act Refund Claims and ATNOL Guidance: Another Fly in the Ointment

by Maury Passman, Amy Chapman, Farbod Solaimani, Lauren G. Roberts, Gregory T. Armstrong, and Alexander Dobyan

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In this article, the authors analyze the IRS’s FAQs regarding the five-year carryback period for net operating losses, and they clarify how C corporations can carry back NOLs to years subject to the alternative minimum tax rules.

The Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) generally granted C corporations a five-year carryback period for net operating losses arising in tax years beginning in 2018, 2019, and 2020. Under the timing rules of section 172(b)(2) and reg. sections 1.172-4(b)(1) and 1.1502-21(b)(1), NOLs must be carried back to the earliest of the tax years to which they may be carried. One of the headline points about the CARES Act’s corporate NOL carryback provision is that while corporations generally are subject to a 21 percent corporate tax rate in 2018, 2019, and 2020, an NOL generated in one of those years and carried back to a pre-2018 tax year can generate a tax benefit based on the 35 percent corporate tax rate that generally applied in that year.

At first glance, it may seem a relatively simple thing to carry back an NOL and obtain a refund of corporate tax paid in a prior year. However, taxpayers quickly encountered various complexities when carrying back NOLs as permitted by the CARES Act. One of the more significant complexities concerned the interaction of the NOL carryback with the now-repealed corporate alternative minimum tax provisions potentially applicable in the relevant carryback years.

Generally, taxpayers must recompute their tax liability for the carryback year using the law as in effect during that year. And while the late (but not particularly lamented) corporate AMT was repealed for tax years beginning after December 31, 2017, the AMT applied in pre-2018 tax years. Thus, corporate taxpayers intending to take advantage of the CARES Act amendments to carry back a 2018-2020 NOL to a pre-2018 tax year generally must consider the potential effect of the

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1 A net operating loss is defined as the excess of allowable deductions over gross income. Section 172(c). See also reg. section 1.1502-21(e) (defining consolidated net operating loss, or CNOL).

2 Section 172(b)(1)(D)(ii)(I), as amended the CARES Act, applicable to NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021. (For simplicity, we disregard the CARES Act’s special NOL carryback rules for REITs and life insurance companies.) The House recently passed H.R. 6800, which would inter alia reduce the five-year NOL carryback period established in the CARES Act. See H.R. 6800, Division B — section 20302(a) (116th Cong., 2d Sess.). The White House has issued a veto threat — see Statement of Administration Policy (May 14, 2020) — and prospects for H.R. 6800’s enactment remain murky.

3 Section 11(b), as amended by section 13001(a) of the Tax Cuts and Jobs Act, effective for tax years beginning after December 31, 2017.

4 Section 11(b), before its amendment in the TCJA, provided for a graduated rate structure for C corporations starting at 15 percent for the first $50,000 of taxable income, reaching 35 percent for taxable income exceeding $10 million, with an additional tax imposed on corporations with taxable income exceeding $15 million equal to the lesser of (1) three percent of the excess, or (2) $100,000, to claw back the benefit of the graduated rate structure.

5 Section 172(e); reg. section 1.172-1(e).

6 Section 55(a), as amended by section 12001(a) of the TCJA.
resulting NOL deduction on their corporate AMT liability in the carryback year. Further complicating matters, the Tax Cuts and Jobs Act included rules to accelerate use of AMT credits (MTCs), which allowed MTCs to be refundable in a phased manner from 2018-2021. The CARES Act further accelerated the refundability of MTCs to the 2018 or 2019 tax year.

In a recent article, authors Amy Chapman and Alexander Dobyan examined the interaction between the CARES Act carryback provisions and the AMT rules, including the computation of alternative tax NOLs (ATNOLs).

They concluded that despite the repeal of the corporate AMT, the better application of the relevant law is that corporate taxpayers can still compute and carry back ATNOLs to offset alternative minimum taxable income generated in the carryback year, with the ATNOL to be computed by using the items of tax preference and adjustment in effect in the tax year in which the loss is incurred (the carryback method).

The next fly landed in the ointment on May 27, 2020, when the IRS posted FAQs about NOL carrybacks of C corporations to tax years to which the AMT applied.

FAQ No. 1 relates to the calculation of potential corporate AMT for a pre-TCJA year (the earlier refund year) to which NOLs are being carried back under the provisions of the CARES Act. FAQ No. 1 asks what amount of ATNOL should be applied in determining the corporation’s alternative taxable income for the earlier refund year and answers that taxpayers should “treat the ATNOL amount arising in a post-2017 year as zero” (the no carryback method). That statement is followed by the (rather ominous) statement that “the processing of the C corporation’s refund may be delayed if it uses a different method to determine the amount of its ATNOL.”

The FAQs’ espousal of the no carryback method is contrary to the authors’ view expressed in the Chapman and Dobyan article of the better application of the relevant law.

The authors noted that (1) the TCJA’s repeal of the corporate AMT regime didn’t affect any code provisions dictating the use and calculation of ATNOLs, so those provisions seemingly remain “good law” in any context in which the corporate AMT regime still applies; and (2) judicial decisions and prior administrative guidance, as well as the policy underpinnings of the AMT regime, strongly support a concomitant and consistent application of the NOL and ATNOL regimes to the calculation of taxes payable in a specific tax year.

The FAQs do not purport to represent the IRS’s technical analysis of the underlying legal question whether to include, and how to compute, ATNOLs carried from a post-TCJA year to a pre-TCJA year. The FAQs contain no analysis and purport only to provide “further information for subchapter C corporation taxpayers (C corporations) that are carrying back NOLs to years in which the alternative minimum tax (AMT) applies.” Also, the answer to FAQ No. 1 explicitly states that “processing of the C corporation’s refund may be delayed if it uses a different method to determine the amount of its ATNOL,” indicating that the advice is geared more toward administrative convenience to the IRS as opposed to the technical merits.

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1 Section 53(e), as added by section 1202(a) of the TCJA, before its amendment by the CARES Act. These rules and the potential for interactions between these rules and the section 383 limitations are explored in Mark R. Hoffenberg and Stephen M. Marencik, “Are AMT Refunds Subject to Limitation?” Tax Notes Federal, Feb. 26, 2018, p. 1177.

2 Section 53(e), as amended by section 2305(a) of the CARES Act. Amended section 53(e) and its potential interaction with the consolidated SRLY limitation are explored in Amy Chapman and Bela Unell, “SRLY Is Not a Bar to Minimum Tax Credit Refunds,” Tax Notes Federal, May 4, 2020, p. 801.


4 Alternative minimum taxable income (AMTI) is the taxable income of a taxpayer for the tax year, determined with the adjustments in sections 56 and 58, and increased by the amount of the tax preference items in section 57. Section 55(b)(2). The adjustment under section 56(a)(4) for the ATNOL deduction is allowed in computing AMTI in lieu of the NOL deduction allowed under section 172. Section 56(d) defines ATNOL deduction as the NOL deduction allowable under section 172, with adjustments.

5 ATNOLs arising from losses in post-TCJA tax years (to be carried to pre-TCJA years as part of the NOL carryback mechanism enacted by the CARES Act) could likely be calculated without reference to the “ACE adjustments” otherwise required in determining corporate AMTI income. See Chapman and Dobyan, supra note 9, at 1189.

6 IRS, “Questions and Answers About NOL Carrybacks of C Corporations to Taxable Years in Which the Alternative Minimum Tax Applies.” The IRS issued a second set of FAQs, this time concerned mostly with administrative and procedural aspects, on June 29, 2020. See IRS, “Temporary Procedures to Fax Certain Forms 1139 and 1045 Due to COVID-19.”

7 See Chapman and Dobyan, supra note 9.
FAQ No. 2 appears to confirm this view by indicating that a taxpayer that submitted a claim for refund before June 1, 2020, with a calculated ATNOL carryback doesn’t need to take any corrective action or refile the refund forms unless contacted by the IRS. However, the IRS doesn’t indicate exactly how it intends to handle these refund claims: Will the IRS undertake corrective action by disallowing the ATNOL carryback or process the refund claim as filed? And of course, in general, an IRS “frequently asked questions” document is not legal authority and should not be used to sustain a position.”

Coincidentally (or perhaps not), the IRS’s position may have limited practical or economic consequence for most C corporation taxpayers. As noted, the TCJA and the CARES Act effectively allow corporate taxpayers to monetize any MTCs not otherwise used to offset tax in years before 2018 or 2019. Thus, corporate taxpayers attempting to carry back NOLs to pre-2018 years may need to take a two-step approach to obtain a refund for their regular (non-AMT) taxes paid in pre-2018 carryback years by first converting a portion of the refund into an MTC that can then (to the extent it’s otherwise unused) be monetized under section 53(e).15

First, for an NOL generated in the tax year that ended December 31, 2019, the taxpayer will need to file a Form 1139, “Corporation Application for Tentative Refund,” no later than December 31, 202016 (or Form 1120-X, “Amended U.S. Corporation Income Tax Return,” within the period of limitations for filing a claim for credit or refund under section 6511(d)(2)) to carry back the 2019 NOL to a pre-2018 year and “generate” the additional MTCs. If the taxpayer files Form 1139 on or before December 30, 2020, the taxpayer may also elect under section 53(e)(5) to use 100 percent of the MTCs in 2018 with that Form 1139.17 If the taxpayer files Form 1120-X to carry back the 2019 loss, the taxpayer will need to separately file Form 1139 (time permitting) or Form 1120-X for 2018 if the taxpayer seeks to make the section 53(e)(5) election.18

Once this process is underway, in many cases the overall refund for a taxpayer will be the same under the carryback method and the no carryback method. Consider the following simplified example. First, we establish base facts that will be assumed in each example.

P is a calendar-year domestic corporation (with no relevant short years) that generates $250 of tax loss in its 2019 tax year that it seeks to carry back to the 2014 tax year. In 2014 P had generated

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14 Internal Revenue Manual section 4.10.7.2.4 (“FAQs that appear on IRS.gov but that have not been published in the [Internal Revenue] Bulletin are not legal authority and should not be used to sustain a position unless the items (e.g., FAQs) explicitly indicate otherwise or the IRS indicates otherwise.”). In other words, FAQs do not constitute authority for a return position for accuracy-related penalty purposes under section 6662 and the penalty for erroneous claims for refunds or credits under section 6676. See reg. section 1.6662-4(d)(3)(iii). See also National Taxpayer Advocate, “NTA Blog: Protecting the Rights of Taxpayers Who Rely on IRS Frequently Asked Questions (FAQs)” (July 7, 2020); Monte A. Jackel, “A Question or Two About FAQs,” Tax Notes Federal, Mar. 2, 2020, p. 1463.

15 The necessary procedural steps will likely vary depending on the taxpayer’s circumstances.

16 Section 6411(a) provides that Form 1139 may not be filed before the filing of Form 1120 for the loss year and must be filed within 12 months of the end of that year. The CARES Act established special deadlines for filing Form 1139 for some NOL carryback and MTC provisions. The deadline for filing some Forms 1139 was also postponed by the IRS following the president’s coronavirus disease emergency declaration on March 13, 2020, and the issuance of guidance under sections 7508A and 6081. For a discussion of the specific filing deadlines and procedures, see Gregory T. Armstrong, Timothy J. McCormally, and Lauren G. Roberts, “Navigating IRS Fax Rules to Expedite NOL and Minimum Tax Refunds,” Tax Notes Federal, June 8, 2020, p. 1679, as supplemented by a letter to the editor, “Expediting NOL Refunds,” Tax Notes Federal, July 20, 2020, p. 472 (updated guidance to FAQs on deadline for filing some Forms 1139).

17 The FAQs on Form 1139 temporary filing procedures for CARES Act claims don’t directly address filing a 2019 NOL carryback and a 2018 section 53(e)(5) election on the same Form 1139. But a fair reading of the FAQs suggests that the IRS intended to allow for both to be made in the same Form 1139 filing. There is an advantage to filing one Form 1139 to claim tentative refunds for both a 2019 NOL carryback and the election under section 53(e)(5) to use 100 percent of the MTCs in 2018. As highlighted in this article, a 2019 NOL carryback could affect the AMT liability in carryback years, resulting in additional MTC carryforwards available for use in 2018. If the section 53(e)(5) election is made for 2018 to use 100 percent of the available MTCs on a separate Form 1139 or before the filing of Form 1139 for a 2019 NOL carryback, the MTC carryforward to 2018 may change because of the 2019 NOL carryback, and the taxpayer may need to file a 2018 Form 1120X to reflect the correct allowable MTC.

18 For some fiscal-year taxpayers, it may be possible to make the section 53(e)(5) election on an original 2018 Form 1120.
regular taxable income of $200, resulting in “regular tax” of $70; P also had generated $250 of AMTI, resulting in $50 of tentative minimum tax (TMT). In accordance with section 55(a), P paid the $70 regular tax liability in 2014 (the higher of the two amounts).21

Example 1A

Assume the example base facts. P carries back its 2019 NOL to 2014 to reduce its regular taxable income (as well as regular tax) to zero. Assume P applies the carryback method and likewise carries back to 2014 and deducts an ATNOL to similarly lower its AMTI in the 2014 year to $25 (but not zero, because an ATNOL is limited to 90 percent of AMTI). In doing so, P reduces its AMT to $5 for 2014. P thus claims a $65 refund ($70 of 2014 tax payment decreased by $5 AMT payable for 2014). The payment of $5 of AMT in 2014 creates an MTC that can then be used against regular tax paid in a later year or, if not so used, claimed as a refund in the 2018 or 2019 tax years.22

P’s total refund resulting from the 2019 NOL carryback is $70: $65 of 2014 refund, plus $5 of MTCs.

Example 1B

Apply the same example base facts, but assume P adopts the no carryback method from the FAQs and carries back zero ATNOL.

P carries back its 2019 NOL to 2014 to reduce its regular taxable income (as well as regular tax) to zero, but P’s 2014 AMTI is still $250 (and is unreduced by the $0 ATNOL required by FAQ No. 1). P’s $50 of TMT now exceeds its regular tax by $50, and so P owes $50 of AMT. Thus, P’s tax refund is only $20.

Concurrently, the $50 of 2014 AMT payable creates $50 of MTCs, and those MTCs can be used against regular tax paid in a subsequent year or, if not so used, claimed as a refund in the 2018 and 2019 tax years.

Again, P’s total refund from the 2019 NOL carryback is $70, but the refund comprises $20 of 2014 refund, plus $50 of MTCs.

Note on allowable overpayment interest: When the application of the carryback method or the no carryback method results in the same overall refund, taxpayers may expect a loss of interest under the no carryback method attributable to the lack of an overpayment of tax in the carryback year. However, the allowable interest should be the same regardless of which method is applied given how the overpayment interest provisions work under section 6611.

The code sets forth special rules for determining when interest is allowable on refunds of income tax attributable to NOL carrybacks. For purposes of determining when interest commences on any overpayment of tax that results from an NOL carryback, an overpayment is not deemed to exist before the filing date of the loss-year return.24

Allowable interest on an overpayment of tax resulting from an NOL carryback generally runs from the last date prescribed for filing the loss-year return (determined without regard to extensions) — assuming the source-year return was timely filed — to within 30 days of the date paid.25 This rule also applies in the case of an overpayment resulting from MTCs that are released or generated by an NOL carryback.26

Notes:
21 Before the TCJA, “regular tax” was defined in section 55(c) to mean the regular tax liability for the tax year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a), the section 963 credit allowable under section 27(b), and the Puerto Rico economic activity credit under section 30A. It didn’t include any increase in tax under section 45(e)(11)(C), 49(b), or 50(a), or subsection (i) or (k) of section 42. Section 55(c) (2017).
22 Before the TCJA, for a corporation the TMT for the tax year was defined as 20 percent of as much of the AMTI for the tax year as exceeds an exemption amount, reduced by the AMT FTC for the tax year. Section 55(b)(1)(B) (2017).
23 A corporation’s AMT was generally equal to the excess of the taxpayer’s (1) TMT for that tax year over (2) the regular tax for that year. See section 55(a).
24 See section 56(d)(1)(A)(II), imposing a 90-percent-of-AMTI limitation on the amount of an ATNOL that can be deducted. That provision originated in conference and was enacted in section 701(a) of the Tax Reform Act of 1986, P.L. 99-514, 100 Stat. 2085, 2325 (1986). See H.R. Conf. Rep. No. 99-841, at II-262 (1986). The ATNOL limitation, along with a companion haircut to FTCs, was enacted because “while Congress viewed allowance of the foreign tax credit and net operating loss deduction . . . as generally appropriate for minimum tax purposes, it was considered fair to mandate at least a nominal tax contribution from all U.S. taxpayers with substantial economic income.” Joint Committee on Taxation, “General Explanation of the Tax Reform Act of 1986,” JCS-10-87, at 436 (1987). The ATNOL income limitation has not been amended since its enactment.
25 Note that if P would have been able to use the $5 MTC in 2015, 2016, or 2017, but in its 2020 tax year P generated an additional NOL that it carried back, the effect of the carryback could be to release the $5 MTC. If that newly released $5 MTC is not otherwise usable before 2018, it appears that it can potentially be carried forward to become refundable in 2018 or 2019.
In general, the IRS has 45 days from the date the carryback claim is filed to issue the refund interest free; otherwise, overpayment interest will be paid in accordance with the rules described above. The 45-day rule applies to carryback claims filed on forms 1120-X and 1139.

Although in many cases the application of the carryback method or the no carryback method results in the same overall refund, in some cases the different methods could create substantive differences.

For example, if taxpayers had applied a “specified tax credit” (STC) that can be used against AMT in a prior year, the application of the no carryback method could create a benefit.

Example 2

Assume the example base facts, except that in 2014 P had $70 of STCs. The $70 of STCs could be used to offset both the regular and alternative minimum taxes payable. Thus, P reported no tax payable on its original 2014 tax return.

As noted in Example 1A, applying the carryback method, P would reduce its regular taxable income and its regular tax to zero, and would reduce its AMTI to $25 and its AMT to $5. P generates $5 of MTCs, which it should be able to use against income in a subsequent year or claim as a refund in 2018 or 2019. However, because the taxpayer had applied credits and did not pay tax in 2014, it cannot seek a refund for its 2014 year. Note, however, that under the carryback method, $65 of STCs previously claimed are freed up, but whether they might be of use will depend on the taxpayer’s circumstances.

As noted in Example 1B, applying the no carryback method, P would reduce its regular taxable income and its regular tax to zero, but would not reduce its AMTI from $250, so its TMT would still be $50, which can then be offset by $50 of MTCs. Again, the taxpayer cannot seek a refund for its 2014 year, but P now generates $50 of MTCs that it can use against income tax in a subsequent year or claim as a refund in 2018 or 2019. In other words, the no carryback method ostensibly has converted additional nonrefundable STC into a refundable MTC.

In other instances, the application of the no carryback method can be a detriment to taxpayers. One notable obstacle is the potential adverse effect of the section 382 ownership change rules for corporate taxpayers that have undergone an “ownership change” in the interim period between the earlier refund year and the year in which the additional MTCs would be used.

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29 It appears that a taxpayer should be able to generate an MTC with respect to excess of TMT over regular tax, even if AMT is offset by a credit. Specifically, a corporation’s MTC equals any excess of its “adjusted net minimum tax” imposed for all prior taxable years beginning after 1986 over its section 53 credit allowable for those prior taxable years. See section 53(b). For corporations, the “adjusted net minimum tax” for any tax year is the amount of the “net minimum tax” for that tax year. Section 53(d)(1)(A)(i)(II). The “net minimum tax” generally is equal to the AMT. Section 53(d)(1)(A). However, tax credits, which are not listed as either an adjustment or preference item that reduces a taxpayer’s AMTI, don’t reduce the taxpayer’s AMT, and therefore don’t affect a taxpayer’s adjusted net minimum tax for which the MTC is based. This taxpayer-friendly reading of the rules appears logical because the corporate AMT largely functioned as a timing point or, as some called it, as a “prepayment” of regular tax. See Stewart S. Karlinsky, “A Report on Reforming the Alternative Minimum Tax System,” 12 Am. J. Tax Pol. 139 (1995).

30 Under section 39(a), any excess business credit (including a STC) is first carried back to the tax year preceding the unused credit year, and any excess business credit not carried back is carried forward to each of the 20 tax years following the year the credit was generated.

31 In general, tax credits can only offset tax liability otherwise payable but, with a few exceptions (such as the refundable MTC under the TCJA and CARES Act described herein), cannot create cash refunds. Thus, the additional STCs generally wouldn’t create a benefit unless P otherwise had taxable income in the future. Also, as discussed elsewhere in this article, the future use of any tax credit carryforward would generally be limited by the various limitations on the use of tax credits (for example, those in section 38(c)), and more generally by tax attribute carryover limitations of sections 382 and 383.
or refunded. These taxpayers’ MTC refunds may now be limited by sections 382 and 383.

**Example 3**

Assume the example base facts, except that P had a section 382 ownership change on January 1, 2016. As discussed in Example 1B, the calculation of P’s tax refund consistent with the no carryback method reduces the 2014 regular tax refund to $20 (as opposed to $65 in Example 1A, applying the carryback method). The revised 2014 AMT liability creates a $50 MTC (as opposed to $5 in Example 1A), but the interaction of sections 382 and 383 with the refundability provisions applicable to section 53(e) may prevent P from generating a full $50 refund for the 2018 or 2019 tax year. Thus, in that case it would be preferable for the taxpayer to apply the carryback method so more of its benefit is realized through a refund of regular tax in 2014, rather than through the conversion of STCs into MTCs that it may not be able to claim as refundable.

Another potential adverse application of the no carryback method can arise from the interaction with some tax credits that are limited to the excess of a taxpayer’s net income tax over the taxpayer’s TMT.

**Example 4**

Assume the example base facts, except that P’s 2019 loss is only $100, and in 2014 P generated only $200 in regular taxable income and $120 of AMTI. P also generated $30 of research and development tax credits. Before factoring in the R&D credits, P’s 2014 regular tax liability was $70, and its TMT was $24. On its original 2014 U.S. federal income tax return, P reported $70 of regular income tax payable reduced by $30 of R&D credits and paid $40 in tax to the IRS. P carries back its $100 2019 NOL to 2014.

If P were to use the carryback method, the NOL carryback would lower both the regular taxable income and AMTI in 2014 such that P’s recomputed 2014 regular taxable income would be $100 ($200 of income reduced by the $100 NOL carryback) and its AMTI would be $20 ($120 of income reduced by the $100 ATNOL carryback). The regular tax would be $35, and the TMT would be $4. The taxpayer could still claim its $30 R&D credit, and therefore its net tax payable would be $5. Because P originally paid $40 in tax in 2014 ($70 of tax payable, $30 of which was offset by current-year R&D credits), P would be eligible for a refund of $35.

If instead P applied the no carryback method, the carryback would result in $35 regular tax as compared with a TMT of $24. Under section 38(c)(1), only $11 of R&D credit can now be claimed in the 2014 tax year. Thus, P would only be eligible for a refund of $16 (the amount by which its originally paid $40 exceeds its revised 2014 tax payable of $24, equal to its $35 tentative regular tax reduced by $11 of R&D credit). Thus, the application of the no carryback method reduces the refund that the taxpayer can claim under this fact pattern.

**Conclusion**

COVID-19 and the associated economic crisis only add to the above complexity by combining to impose anxiety about the procedural aspects of refunds. First, the IRS’s ability to receive refund

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32 Sections 382 and 383 impose limits on a corporate taxpayer’s use of its historical tax attributes after the corporate taxpayer has experienced significant changes in its stock ownership. An ownership change occurs when the percentage of stock held by one or more 5 percent shareholders of the loss corporation on a testing date has increased by more than 50 percentage points over the lowest stock ownership held by those shareholders during a testing period (usually a three-year period). Section 382(g)(1). An ownership change can occur in a straightforward acquisition of 100 percent of the stock of a corporation, but it can also result from less obvious shifts in ownership between direct or indirect shareholders. Many debt workouts (whether in or out of bankruptcy court) result in significant equity ownership shifts that can result in section 382 ownership changes.

33 See Hofenberg and Marencik, supra note 7; Chapman and Unell, supra note 8.

34 Section 38(c)(1) generally limits the amount of general business tax credits to the excess of a taxpayer’s net income tax over the taxpayer’s TMT.

35 Section 41 establishes a R&D tax credit as a category of general business credit allowed as a credit against federal income tax liability under section 38’s general business tax credit regime. The R&D credits of a taxpayer that is not an “eligible small business” (as defined in section 38(c)(5)) are generally subject to the limitation of section 38(c)(1).

36 Of course, the carryback of the 2019 NOL would still have had the effect of freeing up $19 of R&D credit for future use. But as described in Example 3 above, this may be of limited use in producing a current cash benefit.
claims, process the claims, and provide refunds has been affected by the need to keep its personnel and workplaces safe.\(^\text{37}\) Second, taxpayers generating NOLs (or that had NOLs in tax years beginning in 2018 and 2019) and that are experiencing economic distress or cash flow anxiety are seeking the fastest route to a refund.

In light of the above, and despite our serious reservations regarding the technical merits of FAQ No. 1, taxpayers that are not adversely affected by the approach set forth in the FAQs may decide to take the no carryback method approach, unless and until further guidance is issued by Treasury or the IRS.

Taxpayers that would be adversely affected — for example, corporations that have undergone an ownership change in the interim timeframe for the intervening tax years — may want to weigh the relative benefits of a quicker initial cash refund with further future steps prolonging their refund process. In light of the complexities inherent in the interaction of the ATNOL carryback regime with various other code provisions, taxpayers are advised to consider the ramifications of their specific circumstances with their advisers.\(^\text{38}\)

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37 The IRS has warned taxpayers of longer waits on telephone calls and written correspondence related to the COVID-19 disruption. See IRS, “IRS Operations During COVID-19: Mission-Critical Functions Continue.”

38 The information in this article is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the authors only and does not necessarily represent the views or professional advice of KPMG LLP.

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