

外国公司的美国子公司也可从美国《救助法案》获益 U.S. Subsidiaries of Foreign Companies Can Also Benefit from the CARES Act

寻求救济的跨国公司应考虑该救济所附的限制条件可能会影响美国公司向其外国关联方的现金流动

Multijurisdictional groups seeking relief should consider restrictions that might impact cash flows from U.S. companies to its foreign affiliates.

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概述

TAKEAWAYS

- ② 非美国公司的美国子公司可享受美国《救助法案》项下各类救济项目，包括薪酬保护项目、经济损害危难贷款和主街借②贷项目。美国子公司也具备享受税收优惠的资格。

U.S. subsidiaries of non-U.S. companies can obtain access to various relief programs under the CARES Act, including the Paycheck Protection Program, Economic Injury Disaster Loans, and the Main Street lending program. U.S. subsidiaries are also eligible to take advantage of the tax benefits.

- ② 考虑申请资金帮助的公司应了解限制股息支付或其他利润分配在内的《救济法案》附加的各类限制，并考虑这些限制会否阻碍企业业务运作。

Companies considering seeking funding should be aware of various restrictions that will be imposed, including on the payment of dividends or making other distributions, and consider whether this will hinder business operations.

- ② 即将发布的规定也可能实施额外的限制（如对外包或离岸工作的限制）。

Additional restrictions, such as on outsourcing or offshoring jobs, may also be coming with pending regulation.

如我们在 3 月 30 日文章中所言，美国《冠状病毒援助、救济和经济保障法案》（《救助法案》）(H.R. 748) 于 2020 年 3 月 27 日生效。《救助法案》旨在为受到新型冠状病毒疫情冲击的公司提供财务资助。

As reported in our March 30 alert, the United States Coronavirus Aid, Relief, and Economic Security Act, or CARES Act (H.R. 748) became effective on March 27, 2020. The CARES Act is intended to provide financial assistance to companies hit by the COVID-19 pandemic.

其中，根据《救助法案》，非美国公司的美国子公司也可以享受各类救济项目，包括薪酬保护项目（PPP）、经济损害危难贷款（EIDL）和主街借贷项目。同样地，美国子公司也具备享受税收优惠的资格。

Of importance, under the CARES Act, U.S. subsidiaries of non-U.S. companies can obtain access to various relief programs, including the Paycheck Protection Program (PPP), Economic Injury Disaster Loans (EIDL), and the Main Street lending program. Similarly, U.S. subsidiaries are also eligible to take advantage of the tax benefits.

下文中，我们将讨论有关外国公司的美国关联方享受《救助法案》下救济措施的资格，并对现已实施的救济措施进行总结和介绍。随着美国财政部、美联储和小企业管理局（SBA）持续制定和发布补充指导意见，该等信息可能发生变化。

Below, we provide information on the eligibility of U.S. affiliates of foreign companies to benefit from the various measures available under the CARES Act and an overview of some of the measures currently in place. This information is subject to change as Treasury, the Federal Reserve, and the SBA continue to develop and releases additional guidance.

财务救济措施的资格

Eligibility for Financial Relief Measures

根据《救助法案》的相关规定，未能通过贷款或贷款担保形式获得“足够经济支持”的企业，如果满足如下条件，则有资格获得该法案下的财务支持：

Under the relevant provisions of the CARES Act, a business that has not otherwise received “adequate economic relief” in the form of loans or loan guarantees may be eligible for support where it:

1. 在美国境内或根据美国法律设立或组建；
is created or organized in the United States or under the laws of the United States;
2. 在美国有重大业务；且
has significant operations in the United States; and
3. 其大部分员工位于美国。
has a majority of its employees based in the United States.

因此，如果一家外国实体的美国子公司能够满足上述要求，目前没有迹象表明该类公司没有资格享受《救助法案》下的救济。

Therefore, provided a U.S. subsidiary of a foreign entity is able to satisfy these criteria, there are currently no indications that such a company would not be eligible for relief under the CARES Act.

根据上述要求，美国公司设立于美国境外的子公司没有资格享受《救助法案》下的救济。

Given the eligibility criteria listed above, a non-U.S. subsidiary of a U.S. company would not be eligible for relief under the CARES Act.

《救济法案》尚未就如何界定“重大业务”或“大部分员工”提供任何指导意见。目前尚不清楚“大部分员工”的计算确定是否将仅基于美国子公司人数，亦或是包括任何外国关联方在内的员工人数。对这等概念的理解亟待美国财政部或美联储的进一步指引或其成熟的实践惯例。

No guidance is given as to how “significant operations” or “majority of employees” are defined. It is unclear whether the “majority of employees” will be calculated only by reference to the U.S. subsidiary or if it will include any foreign affiliates. The interpretation of these concepts will need to come from any further guidance or a developed practice from the U.S. Treasury or the Federal Reserve.

其他考量

Other Considerations

主街借贷项目下发放的贷款将附带阻止贷款接受者在不同期限内向关联方支付股息或分配利润的限制。

Loans granted under the Main Street lending program will be subject to restrictions preventing the recipient from paying dividends or making other distributions to affiliates, for varying amounts of time.

《救助法案》项下任何财务救济相关的贷款文件可能会进一步限制受益人向其非美国关联方进行股息支付或其他利润分配（包括公司间贷款）。

It is likely that the loan documentation in respect of any financial relief granted under the CARES Act will include further restrictions on dividend payments and other distributions (including inter-company loans) to non-U.S. affiliates of the beneficiary.

因此，寻求救济的跨国公司应考虑可能影响资金从美国公司向其外国关联方流动的任何限制。

Multijurisdictional groups seeking relief should therefore consider any restrictions that might impact cashflows from U.S. companies to its foreign affiliates.

同样，即将发布的指导意见可能会要求主街借贷接受者在贷款偿还后两年内不得进行外包或离岸工作。有任何国际扩张计划需求的公司需考虑这一限制。

Similarly, soon-to-be-issued guidance may limit Main Street lending recipients from outsourcing or offshoring jobs until two years after the loan is repaid. Companies will need to consider this restriction in respect of any international expansion plans.

总体而言，《救助法案》旨在为美国企业和工人提供支持。因此，符合条件的外国实体的美国子公司可从许多可选择的措施中获益，但是需要根据个案具体情况考虑其是否符合条件。在国外有重大业务或主要依靠外国劳动力的企业获得救济可能会受到限制，而这也尚待美国政府进一步指引的厘清。

Overall, the CARES Act is intended to provide support to U.S. businesses and workers. Therefore, while qualifying U.S. subsidiary of a foreign entity can benefit from many of the available measures, eligibility will need to be considered on a case-by-case basis. Subject to further guidance, businesses with significant operations abroad or those that rely predominantly on a foreign workforce may be restricted from accessing relief.

当外国实体的美国关联方有权享受财务资助时，必须仔细审查贷款条款以确保公司将承担的限制不会束缚其业务运营。

Where a U.S. affiliate of a foreign entity is entitled to financial assistance, loan terms must be carefully reviewed to ensure that companies are not bound by restrictions that might constrain their business operations.

获取更多信息，请联系您在美普盈的联系人或本文作者。

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