BDO KNOWS SPACs

TREATMENT OF TAX ATTRIBUTES FOR SPECIAL PURPOSE ACQUISITION COMPANIES

Special Purpose Acquisition Companies (SPACs) are publicly traded companies formed for the sole purpose of raising capital through an IPO and using the IPO proceeds to acquire one or more unspecified businesses in the future. The management team that forms the SPAC (the “sponsor”) forms the entity and funds the offering expenses in exchange for founder shares. There are various tax considerations and complexities that can have significant implications both during the SPAC formation process and down the road.

When an IPO results in an “ownership change” – as is the case with a SPAC transaction – net operating losses (NOLs) could be impaired based on Internal Revenue Code rules that are designed to discourage the acquisition of loss-making companies in order to utilize NOLs. An ownership change occurs when one or more shareholders increase their ownership of the stock (measured by value) of the NOL company by more than 50 percentage points compared to the lowest ownership percentage during a lookback testing period (normally three years). In such a case, a company with NOLs will often be allowed to use only a fraction of those NOLs to offset income in future years.

Under pre-CARES Act law, Section 172(a) of the Internal Revenue Code provided that the amount of an NOL deduction was equal to the lesser of the aggregate of NOL carryovers and NOL carrybacks to such year, or 80% of taxable income without regard to the NOL deduction (for NOLs arising in post-2017 taxable years). Thus, such NOLs were subject to a taxable-income limitation and could not fully offset income. The 80% limitation did not apply to NOLs arising in pre-2018 taxable years.

BDO is dedicated to helping both sponsors and target companies navigate going public through Special Purpose Acquisition Companies. In a series of articles, we'll provide an introduction outlining the current SPAC market and talk through tax, accounting, and valuation considerations to keep in mind. You can find the full series on our Special Purpose Acquisition Companies Hub Page.

The CARES Act temporarily removes the 80% taxable-income limitation to allow an NOL carryforward to fully offset income. For taxable years beginning before 2021, taxpayers can take an NOL deduction equal to 100% of taxable income.

Also, for taxable years beginning in 2021 and thereafter, taxpayers will be able to take a 100% deduction for NOLs arising in taxable years beginning before 2018, and a deduction limited to 80% of modified taxable income for NOLs arising in taxable years beginning after 2017.

BDO INSIGHT

Affected parties should plan well in advance of an IPO to take into account the potential limitation of the use of any NOLs post-IPO. BDO has significant experience planning for such cases.

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