

News

Ziance Quoted in *Tax Notes* Story Titled “COVID-19, Force Majeure, and Tax Incentive Agreements”

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Scott J. Ziance

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Scott Ziance, a partner in the Vorys Columbus office, was quoted throughout a *Tax Notes* story titled “COVID-19, Force Majeure, and Tax Incentive Agreements.” The story was focused on how companies with tax incentive agreements should check on their performance objectives and consider whether to seek relief under “force majeure” in light of the coronavirus (COVID-19) pandemic.

The story states:

“Our clients are more focused on the immediate issues right now, but we’ve been through this before with downturns. I expect that, like what happened in late 2008 and 2009, we will be getting phone calls from businesses that are unable to meet performance targets because of events beyond their control,” Scott Ziance, a partner with the firm, told Tax Notes March 24.

Ziance estimates that around half of the tax incentive agreements he sees have provisions that account for extraordinary circumstances and allow some measure of relief. Those provisions may be called “force majeure” or “market conditions,” and they allow businesses to be excused, often temporarily, from meeting their obligations due to forces outside of their control.

Force majeure — translated as “superior force” — provisions typically will allow one party to limit its liability because of unforeseen events. These events can include “acts of God,” war, or terrorism, and would likely apply to forced closures in the face of a pandemic, Ziance said.

In the other half of agreements, local or state authorities are often given a choice in whether to exercise a clawback of grants or tax breaks, or to temporarily delay performance obligations.

Some agreements adjust automatically with performance-based measures, and companies get a tax credit based on a percentage of their payroll. In those types of agreements, force majeure provisions are not needed.”

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VORYS COVID-19 TASK FORCE

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.