



Treasury Department Issues Guidance on Payroll Tax Deferral

On August 8, 2020, President Trump signed an executive memorandum directing “the Secretary of the Treasury to use his authority to defer certain payroll tax obligations with respect to the American workers most in need.” In response to the executive memorandum, the IRS issued guidance on the evening of August 28, 2020 in the form of IRS Notice 2020-65.

Generally, employees are required to pay a 6.2% Social Security tax on wages up to a certain limit (\$137,700 for year 2020). These amounts are withheld by the employer from the employee’s wages and remitted to the Treasury. Pursuant to Notice 2020-65, employers are permitted to defer withholding of this employee portion of taxes for qualifying employees during the period beginning September 1, 2020 through December 31, 2020. The due date for withholding and payment of these taxes is **deferred** until the period beginning Jan. 1, 2021 and ending April 30, 2021. This deferral is only applicable to an employee whose pretax wages or compensation during any biweekly pay period is less than \$4,000, or the equivalent threshold amount for other pay periods (e.g., \$2,000 for employees paid weekly). The determination of applicable wages is made on a pay period-by-pay period basis.

Treasury Secretary Steven Mnuchin confirmed that the deferral is voluntary and that employers may continue to withhold and deposit employee Social Security taxes in accordance with their normal schedule. Employers who elect to defer, however, should be mindful that Notice 2020-65 does not relieve the employer’s obligation to deposit the taxes and the employer remains liable for the payment of the deferred taxes regardless of whether the employer is able to collect the deferred taxes from the employee. Presently, absent special circumstances, employers electing to defer withholding and payment are required to collect the postponed tax sums ratably from employees’ paychecks from January 1, 2021 until April 30, 2021.

Employers considering implementing this payroll tax deferral should consult with their payroll service provider and employment and tax attorneys prior to implementation in order to ensure compliance. Presently, the maximum amount of tax that can be deferred is approximately \$2,000 per employee. Employers should note that IRS Notice 2020-65 does not address the consequences to employers who defer payroll taxes for an employee who subsequently ceases to be employed prior to or during the recoupment period (January 1, 2021 – April 30, 2021).

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