

## Employee Payroll Tax Deferral

On August 28, 2020, the IRS issued guidance via [Notice 2020-65](#) on President Trump's August 8 Presidential Memorandum regarding the payroll tax deferral on the withholding and payment of the employee share of Social Security Tax (a 6.2% payroll tax withheld on wages up to \$137,700.) The Notice is directed toward employers, not employees, and allows (but does not require) an employer to stop withholding Social Security Tax from certain employees for the four month period from September 1 through December 31, 2020 (for employees making less than \$4,000 in a bi-weekly pay period, or the equivalent, with each pay period considered separately). Thus, an employee can qualify for the deferral in one period and not the next if, for example, he/she receives a bonus that puts the employee over the threshold for that period, but not a subsequent period. Whatever the employee defers through the end of this year is to be withheld ratably from the employee's wages for the four month period from January 1 through April 30, 2021, in addition to the employee's normal withholdings. All of the deferred tax must be repaid by April 30, 2021; beginning May 1, 2021, interest and penalties start to accrue. As the Notice is directed to employers, it is the employer that is on the hook for any unpaid tax, not the employee.

There are potential risks. The above assumes that the employee will remain an employee during the collection period and that the employee's payroll will be large enough to absorb the additional withholding. If not, the employer may "make arrangements" to collect the additional withholding from the employee. This means that, for example, an employer could find itself in the position of attempting to collect deferred taxes from ex-employees.

From the employee perspective, given that the Trump administration would like these deferred taxes to ultimately be forgiven (whether or not this happens may depend on the November elections and whether Congress chooses to pass a forgiveness provision), employers need to consider that an employee may be prevented from possible forgiveness either because the employer chose not to participate or because the employee opted out, if Congress were to address only amounts actually deferred in a forgiveness program.

[More guidance from the IRS can be anticipated. In the meantime, please reach out to us if you have any questions or would like to discuss.](#)

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