



## **Postponement of Withholding and Remittance of Employee Payroll Taxes**

The IRS has released guidance regarding the postponement of withholding and remittance of the employee's share of Social Security taxes as permitted under an August 8 Presidential Memoranda.

The Memoranda allows Treasury Secretary Mnuchin to make available a postponement of withholding, deposit, and payment of the employee's share of Social Security tax (6.2%) on wages paid from September 1, 2020, through December 31, 2020 that are less than \$4,000 on biweekly pay period or equivalent amount in other pay periods. The threshold is determined on a pay period by pay period basis.

The IRS has released Notice 2020-65 on August 28, 2020 that postpones the withholding and remittance of the employee share of Social Security tax ratably between Jan. 1, 2021, and April 30, 2021. Penalties, interest, and additions to tax will begin to accrue on May 1, 2021 for any unpaid taxes. The Notice states that if necessary, the employer may make arrangements to collect the total applicable taxes from the employee.

The guidance, however, does not address several concerns, such as:

- How does an employer collect taxes from a terminated employee?
- Can increased take-home pay be used for 401(k) loan repayments, garnishments, child support payments, etc.?
- How will postponed amounts be reported on the 2020 Form W-2?

The postponement of the withholding and remittance of the employee's share of Social Security tax is optional for the employer. Employers may seek input from their employees, but this is not required. Whether employers permit employees to opt in or opt out of the postponement is at the discretion of the employer and not addressed in the recent guidance.

The Form 941 is being revised for the third quarter of 2020 to report postponed taxes for employers who elect the postponement. The final Form 941 will be released late September for filing in October. The Notice permits employers who have elected the postponement to withhold the employee's share beginning January 1, 2021. However, such withholding may have unforeseen and detrimental consequences for employees and possibly employers.

With so many questions remaining, we advise employers to proceed with extreme caution at this time when opting for the postponement. The IRS has stated that regardless if the amounts are recovered from the employee, for example in the case of a separation, the employer will remain liable for the employee's share and must remit the postponed withholding of the employee's share of Social Security tax by April 30, 2021. However, if you choose to elect the postponement, we recommend a notice be provided to employees that clearly states that the employee's share of Social Security is postponed until December 31, 2020 and withholding for these amounts will occur ratably between Jan. 1, 2021, and April 30, 2021, and will be in addition to employment tax withholding otherwise required on wages for January through April 2021.

We are happy to discuss this further with you as we await further guidance.