



President Trump's Payroll Tax Deferral: What We Know and What We Don't Know

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On August 8, 2020, President Trump [published a memorandum](#) for the Treasury Department on deferring payroll taxes in light of COVID-19. While the President is attempting to temporarily relieve the tax burden on workers, the memorandum raises more questions than it provides answers. The memorandum directs the Treasury Department to issue implementing guidance, and hopefully this guidance will address the many unanswered questions. Until this guidance is issued, though, below is what we know and what we don't know about President Trump's payroll tax deferral.

What we know:

- Deferral will be available from September 1, 2020, through December 31, 2020.
- Deferral will be available for the 6.2% employee share of the Social Security tax under Internal Revenue Code ("IRC") section 3101(a), but it will not be available for the 1.45% employee share of the Medicare tax or the .9% Additional Medicare tax under IRC section 3101(b).
- Deferral will be available for any employee whose compensation payable during any bi-weekly pay period is less than \$4,000 pre-tax, or the equivalent amount for other pay periods.
- Deferred amounts will not be subject to interest or penalties, but will need to be repaid without action by Congress.

What we don't know:

- Is deferral voluntary (as many believe), or is it mandatory?
- If deferral is voluntary, does the employer or the employee get to elect deferral?
- When will the deferred amounts need to be repaid?
- Will the deferred amounts need to be repaid in lump sum, or may they be repaid in installments?
- What will be the mechanism for repayment (i.e., will repayment be made directly by employees or through make-up withholding at the employer level)?
- If the employer is obligated to withhold additional amounts after the deferral period ends, how will repayment work when an employee no longer works for that employer?

- Are employees who receive discretionary bonuses or variable pay eligible for deferral even if they are paid more than \$104,000 (\$4,000 x 26 bi-weekly pay periods) on an annualized basis? What about employees with multiple jobs?
- How will deferral impact the recently enacted employer payroll tax credits under the [CARES Act](#) and the [Families First Coronavirus Response Act](#)?

Perhaps the Treasury's forthcoming guidance will address our concerns, but assuming this deferral opportunity is voluntary, we strongly recommend that both employers and employees think twice before choosing deferral. For starters, without legislative action by Congress, deferral will result in a tax bill that will eventually need to be repaid, whether in lump sum or installments, and whether at the employee or employer level. A lump sum tax bill will be problematic for some taxpayers, and installment obligations may not be much better. In the case of repayment through make-up withholding, assuming compensation remains constant, employees would see a decrease in take-home pay when it's time to repay the deferred taxes. Finally, if repayment will occur through withholding at the employer level (as with the typical Social Security tax withholding obligation), there is risk for employers where these taxes are deferred for employees who no longer work for the same employers when the taxes become due.

Interested parties should pay close attention to the impending Treasury guidance implementing President Trump's payroll tax deferral. Please contact any member of our [Tax Law team](#) with any questions.



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