Discussing the Employee Social Security Tax Deferral

With the Sept. 1 start date for the employee-side Social Security tax deferral approaching, you may be wondering how this impacts your organization and how to respond to questions from employees. To help, we’ve provided potential questions and answers below. Please read carefully, as there are serious risks to employers who choose to opt in to allow employees to defer.

Q: What is the employee-side Social Security tax deferral?

A: On Aug. 8, 2020, President Trump signed a presidential memorandum directing the Secretary of the Treasury to use his authority to allow deferral of certain payroll tax obligations. Specifically, he was directed to allow the deferral of the employee portion of Social Security tax for employees generally making less than $4,000 per biweekly pay period, or equivalent amount, on wages paid from Sept. 1, 2020, to Dec. 31, 2020. On Aug. 28, 2020, the IRS released guidance implementing this presidential memorandum, postponing repayment of these taxes until the period beginning Jan. 1, 2021, and ending April 30, 2021.

Q: Does this apply to all employers? What if I want to opt out?

A: The deferral is voluntary for employers. If you wish to opt in, please be aware of the potential risks as outlined below and make the best decision for your organization. If after reviewing the risks, you wish to proceed, you must contact your dedicated payroll specialist and complete a Client Instruction Letter, which will give your employees the option in Employee Self-Service® to opt in to the deferral. If you do not wish to offer the deferral option to your employees, simply take no action.

Q: What risks should employers consider before making a decision to opt in?

A: Employers with employees who fail to repay the deferred amounts must still pay these taxes to the IRS by April 30, 2021, or interest, penalties and additions to these taxes will begin accruing on May 1, 2021. Those employers who opt in could be left in a position to collect funds for employees who separate from the company prior to repaying the deferral amount. Essentially, depending on the wages of an employee, this has the potential to be an unsecured loan provided by the employer to the employee of as much as $2,000. You should consult with your tax or legal advisers regarding your obligations as an employer to pay these deferred taxes in the event it is not possible to withhold the amounts from the employee’s pay.
Q: What if I have employees who want to take advantage of the deferral, but as an employer, I do not want to participate?

A: If you, as the employer, do not opt in to the deferral in Paycom, the option will not be available to your employees. You should consult with your own legal or tax advisers about any obligations you may have to your employees or to taxing authorities regarding the tax deferral and obligations regarding repayment of the deferred taxes.

Q: Will this apply to all of my employees?

A: No, not automatically. You must opt in to offering your employees the option to defer. Additionally, each employee must affirmatively opt in to the deferral in Employee Self-Service®. Your employees may also be at risk from opting in, as they may find themselves unable to repay the additional tax expense. Unless Congress or the Treasury takes further action, the impact of the deferral repayment will effectively double an employee’s ordinary Social Security tax liabilities beginning in January 2021, meaning the employee’s take-home pay will be reduced by approximately 6.2% from what it otherwise would have been.

Q: What risks should employees consider before making a decision to opt in?

A: Your employees may also be at risk from opting in, as they may find themselves unable to repay the additional tax expense. Unless Congress or the Treasury takes further action to forgive these deferrals, the impact of the deferral repayment will effectively double an employee’s ordinary Social Security tax liabilities beginning in January 2021, meaning the employee’s take-home pay will be reduced by approximately an additional 6.2%.

Q: Who will be responsible for repaying these deferred taxes?

A: The IRS Notice 2020-65 states the employer must withhold and pay the total deferred taxes ratably from wages and compensation paid between Jan. 1, 2021, and April 30, 2021, or interest, penalties and additions to tax will begin to accrue on May 1, 2021. Employers who opt in are ultimately responsible for repaying the deferred amounts if the employee fails to repay. Essentially, depending on the wages of an employee, this has the potential to be an unsecured loan provided by the employer to the employee of as much as $2,000.

The notice also states that if necessary, the employer may make arrangements to otherwise collect the total deferred taxes from the employee. In the event that an employee leaves your employment, or does not have sufficient funds in their checks paid between Jan. 1, 2021, and April 30, 2021, to repay the deferral, you must still pay these taxes to the IRS. You should consult with your tax or legal advisers regarding your obligations as an employer to pay these deferred taxes in the event it is not possible to withhold the amounts from the employee’s pay.
Q: Will the deferral have to be repaid and, if so, when?
A: Yes. Taxes that are deferred must be withheld and paid by the employer ratably from wages paid between Jan. 1, 2021, and April 30, 2021, or interest, penalties and additions to tax will begin to accrue on May 1, 2021. Therefore, the ratable amount to be repaid each pay period between Jan. 1, 2021, and April 30, 2021, will be calculated by dividing the total deferral amount as of Dec. 31, 2020, by the number of available pay periods between Jan. 1, 2021, and April 30, 2021.

Q: Will the deferred tax be forgiven in the future?
A: For the deferred amounts to be forgiven, Congress would have to take action to make statutory changes to the tax code. At this juncture, it is unclear whether this will happen.

Q: Is this a tax cut?
A: No. This is a temporary tax deferral. Taxes deferred must be withheld and paid by the employer ratably from wages paid between Jan. 1, 2021, and April 30, 2021, or interest, penalties and additions to tax will begin to accrue on May 1, 2021. The IRS Notice specifies that if necessary, the employer may make arrangements to otherwise collect the total deferred taxes from the employee.

Q: Is this a true payroll tax holiday as we have seen in previous administrations?
A: No. In those instances, Congress and the administration lowered the payroll tax rate for a time period, whereas here, the presidential memorandum directs only a deferral period and not a reduction.

Q: When will employees be able to start deferring?
A: Per the guidance issued by the Treasury, employees may begin deferring Social Security taxes beginning with wages paid on or after Sept. 1, 2020. Employees should carefully consider this decision, as they may find themselves unable to repay the additional tax expense. Unless Congress or the Treasury takes further action, the impact of the deferral repayment will effectively double an employee’s ordinary Social Security tax liabilities beginning in January 2021, meaning the employee’s take-home pay will be reduced by approximately an additional 6.2%.

Q: How do my employees opt in to the deferral if they wish to defer?
A: Once you have opted in at the client level, each employee can opt in to the deferral if they wish by navigating to Payroll > Tax Setup in Employee Self-Service® and clicking the “Opt In” option under “Employee-Side Social Security Tax Deferral Program.” This will only defer employee-side Social Security taxes if the employee otherwise meets the eligibility requirements for the deferral. The employee must have Social Security taxable wages for the pay period that are less than $4,000 biweekly, or an equivalent amount for other payroll periods. The calculation of the threshold amount is made on a pay-period-by-pay-period basis.
Q: What if my employees want to defer, but they do not have access to Employee Self-Service®?

A: You can activate the deferral for an employee by going to the employee’s Form 1 in Paycom, and checking the “Employee SSC Tax Deferral” box, which appears between “Federal Tax Information” and “State Tax Information” sections on Form 1.

Q: After I opt in, will this apply to all paychecks moving forward for employees who also opted in after Sept. 1, 2020?

A: No. Even if the employee opts in, the deferral will only apply to employees who meet the eligibility requirements for the deferral. Additionally, the deferral will only apply to payrolls created after the employer and the employee have affirmatively opted in to the deferral. If the payroll has already been created before an employer or employee opts in, the payroll must be recalculated in order for the deferral to occur on that payroll.

Q: Can we opt in to the deferral later in the year and then receive a refund of employee Social Security taxes already paid to the IRS?

A: No. Since this is a deferral and not a tax credit, payroll tax amounts already paid to the IRS cannot be refunded or recouped later.

Q: Where can I learn more?

A: Please see IRS Notice 2020-65, available on the IRS website.

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