

April 15, 2020

## IRS Clarifies Payroll Tax Deferral Relief and Expands Relief for those Using the PPP

The CARES Act allows employers to defer the deposit and payment of the employer's share of social security (SS) taxes (6.2%) and self-employed individuals to defer payment of certain self-employment taxes. One half of the deferred amount must be paid by December 31, 2021, and the other half must be paid by December 31, 2022. The IRS recently issued FAQs to address specific issues related to the deferral of deposit and payment of these employment taxes – including a clarification on the interfacing of the Paycheck Protection Program (PPP) with this deferral (discussed below).

Most notably, the FAQs provide:

- Confirmation that employers may defer the deposit and payment of the employer's portion of SS taxes during the period beginning on March 27, 2020 and ending December 31, 2020 without incurring failure to deposit and failure to pay penalties.
- Confirmation that Form 941 will be used to report the deferred deposits.
  - An updated 941 will be issued for Q2 2020 (April – June 2020).
  - More information is forthcoming on how to reflect the deferred deposits and payments otherwise due on or after March 27, 2020 for Q1 2020 (January – March 2020).
  - In no case will employers be required to make a special election to be able to defer deposits and payments of these employment taxes.
- Confirmation that there is **no** size limit (e.g., # of employees) on employers using this deferral feature

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or any requirement to do anything else (e.g., provision of leave or additional pay) to claim this credit.

- All employers may defer the deposit and payment of the employer's share of SS tax.
- More flexibility in using the SS tax deferral program in advance of receiving loan forgiveness under the PPP. See our PPP alerts [here](#), [here](#), and [here](#).
  - Employers that receive a loan under PPP may NOT defer the deposit and payment of the employer's share of SS tax due on or after the date that the PPP loan **is forgiven**. This clarification/expansion is important because it was previously unclear whether employers that applied for/received a PPP loan could defer the deposit and payment of any portion of its share of SS tax.
  - Employers who have received a PPP loan, but whose loan has not yet been forgiven, may defer deposit and payment of the employer's share of SS tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan.
  - Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of SS tax **due after that date**.
  - The FAQs confirm that the amount of the deposit and payment of the employer's share of SS tax that was deferred through the date that the PPP loan is forgiven **continues to be deferred**.
- Confirmation that relief for deferring and depositing SS taxes is **in addition** to the relief for deposit of employment taxes in anticipation of the Families First Coronavirus Relief Act (FFCRA) paid leave credits and the CARES Act employee retention credit.
- Confirmation that the deferred deposits of the employer's share of SS tax must be deposited by the following dates:
  - On December 31, 2021, 50% of the deferred amount; and
  - On December 31, 2022, the remaining amount (i.e., the other 50%).

A review of these FAQs, especially for those employers who sought PPP loans (and assumed they were forgoing SS tax deferral), is important to ensure that the company is availing itself of all available liquidity relief for the remainder of 2020.

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