

# ALL EMPLOYERS CAN DEFER EMPLOYMENT TAX DEPOSITS UNTIL PAYCHECK PROTECTION PROGRAM LOAN IS FORGIVEN

The IRS has issued frequently asked questions ([FAQs](#)) on the payroll tax deferral opportunity provided by the Coronavirus, Aid, Relief, and Economic Security (CARES) Act ([Public Law 116-136](#)). Under that provision, employers of all sizes (including tax exempt/non-profit employers) can defer the deposit and payment of the employer's share of Social Security taxes. Self-employed individuals can also defer payment of some self-employment taxes.

## Background

To help employers conserve cash while retaining their workforce, Section 2302 of the CARES Act allows all employers to defer depositing the employer's share of Social Security taxes for payments due from March 27 (CARES Act enactment date) through December 31, 2020. Generally, employers are required to deposit timely 6.2% of employee wages up to \$137,700 (which is the 2020 Social Security wage base), along with 1.45% of Medicare (or "hospital insurance") taxes (with no wage base cap). But Section 2302 of the CARES act allows employers to defer depositing the 6.2% of wages, interest-free and penalty-free. Payment of half of the amount deferred is due on December 31, 2021, and the remainder is due on December 31, 2022.

## Insight

- Employers' 1.45% Medicare tax cannot be deferred under the CARES Act and must be deposited unless it is being used to offset payroll tax credits allowed under the CARES Act or the Family First Coronavirus Response Act.
- There is no application form or approval procedure to use the payroll tax deposit deferral. Rather, employers simply do not remit the amount that would otherwise be due. IRS will update the Form 941 for the second quarter of 2020 to track the deferred deposits.
- While not addressed by the IRS in the recent FAQs, it appears that an employer who paid their social security

tax liabilities due on or after March 27 could take advantage of the full deferral amount allowed by recovering the previously paid, but not required, amounts from other 2020 federal tax deposits. Employers using third party payroll-providers should discuss system capabilities and procedures for taking advantage of the allowed deferral and the possibility of recovering any previously paid amounts that were eligible for deferral.

## Coordination With PPP Loan Forgiveness

There was some confusion over whether employers who obtain a Paycheck Protection Program (PPP) Small Business Administration (SBA) loan could use the payroll tax deferral, since Section 2302 of the CARES Act states that employers who obtain forgiveness of a PPP loan may not defer deposit of payroll taxes. The FAQs clarify that employers who obtain PPP loans may defer deposit of payroll taxes until such time that the employer receives a decision from its lender that all or any portion of their PPP loan is forgiven.

Once loan forgiveness has occurred, the employer must resume timely payroll tax deposits. The FAQs confirm that the amount that was deferred through the date that the loan was forgiven will continue to be deferred. Accordingly, half of the deferred amount will be due on December 31, 2021, and the other half will be due on December 31, 2022.

## Insight

To maximize the payroll tax deferral opportunity, employers with PPP loans may wish to consider delaying their request for PPP loan forgiveness until December 31, 2020. PPP loans are for two years, at 1% interest and do not require any payments during the first six months. Employers can request PPP loan forgiveness for qualified payroll costs and certain other expenses

# ALL EMPLOYERS CAN DEFER EMPLOYMENT TAX DEPOSITS UNTIL PAYCHECK PROTECTION PROGRAM LOAN IS FORGIVEN

incurred during an eight-week period beginning on the date they receive the loan proceeds (lenders must disburse proceeds within 10 days after the loan is approved). Lenders generally have up to 60 days to consider the loan forgiveness. There does not appear to be any time limit for when an employer could submit its request for loan forgiveness, and many will wait until after June 30, 2020, to take advantage of provisions that maximize loan forgiveness.

For example, if an employer submits a request for loan forgiveness on July 15, 2020, the lender could forgive the loan anytime through September 15, 2020. Assume the loan is forgiven on August 15, the employer could no longer defer payroll taxes from August 15 through December 31, 2020. But if the employer does not request loan forgiveness until December 15 (and assuming the lender does not forgive the loan until early 2021), the employer could continue deferring payroll taxes through December 31, 2020.