

## **President Trump's Memorandum Regarding Payroll Tax Deferral**

On August 8, 2020, President Trump signed a memorandum<sup>1</sup> directing the Secretary of the Treasury, pursuant to §7508A of the Internal Revenue Code, and effective for wages paid between September 1<sup>st</sup> and December 31<sup>st</sup>, to “defer the withholding, deposit, and payment” of the employee’s share of the Social Security tax. This is the 6.2% tax on employees’ wages, up to the Social Security wage base.

The deferral *does not apply* to the employee’s share of the Medicare tax (1.45%), the employer’s share of Social Security and Medicare taxes, income tax withholding, or federal or state unemployment taxes.

The deferral would be effective with respect to wages paid between September 1 and December 31, 2020 to employees—

whose wages or compensation . . . payable during any bi-weekly pay period generally is less than \$4,000, calculated on a pre-tax basis, or the equivalent amount with respect to other pay periods.

In general, this means employees whose annual wages are as much as \$104,000 are eligible for the deferral. However, “generally” remains to be defined.

### **Payments of amounts deferred**

Presumably, the taxes “deferred” would be payable on the employer’s first employment tax deposit date for amounts paid after December 31, 2020, and the employer would be required to withhold all amounts deferred during the previous four months from the first wages paid in 2021.

No penalties or interest would be charged on the amounts deferred.

### **Open questions**

The memorandum does not address any details about how to determine which employees are eligible for the deferral, or how the employer is expected to collect the deferred taxes from former employees.

Instead, it instructs the Treasury Department to issue implementing guidance—presumably before September 1<sup>st</sup>—and to “explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred.”

We will keep you updated regarding additional developments.

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<sup>1</sup> <https://www.whitehouse.gov/presidential-actions/memorandum-deferring-payroll-tax-obligations-light-ongoing-covid-19-disaster/>