

# LEGAL UPDATE

## IRS Issues Guidance on Payroll Tax Deferral Presidential Order

On Aug. 8, 2020, President Donald Trump [ordered](#) the U.S. Department of Treasury (the Department) to defer collecting certain payroll taxes from wages earned between Sept. 1 and Dec. 31, 2020.

On Aug. 28, 2020, the Internal Revenue Service (IRS) issued [Notice 2020-65](#) (the Notice) to provide guidance for affected employers. Employer participation in these deferrals is permitted, but not required.

### Eligibility for Deferred Payroll Taxes

The Notice releases employers from their obligation to collect and pay payroll Social Security taxes for individuals who receive applicable wages, defined as compensation that is less than \$4,000 for a biweekly pay period, or “the equivalent threshold amount with respect to other pay periods.”

Employers must determine whether applicable wages exist every pay period between Sept. 1 and Dec. 31, 2020.

### Recoupment of Payroll Taxes

The Notice informs employers that any taxes deferred between Sept. 1 and Dec. 31, 2020, will need to be collected and remitted to the IRS between Jan. 1 and Apr. 30, 2021, unless the Department can find an avenue to eliminate the obligation to pay the deferred taxes. Interest, penalties and additions to tax will begin to accrue on May 1, 2021, for any unpaid deferred taxes.

Employers will need to pay these deferred taxes in addition to collecting and remitting the taxes that regularly become due during the Jan. 1 to Apr. 30 pay period.

The Notice also explains that employers will be allowed to make arrangements with affected employees to collect deferred taxes in 2021.

## Next Steps for Employers

### Agency Guidance

Employers should review the IRS guidance carefully to understand deferral requirements.

### Implementation Concerns

Employers must determine whether they will participate in tax deferral for eligible employees between Sept. 1 and Dec. 31, 2020.

### Review Payroll Processes

Employers should take time to evaluate now how quickly they can alter their payroll practices and procedures to defer and later collect affected payroll taxes.

***Deferred taxes must be recouped between Jan. 1 and April 30, 2021, unless the Department can find an avenue to make the deferral permanent.***

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Provided to you by **McGohan Brabender**

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