

CARES Act Payroll Tax Deferral: A Detailed Analysis

Tax and Estates Alert | April 3, 2020

By: John Eagan and L. Stephen Bowers

The Coronavirus Aid, Relief, and Economic Security Act (Act) contains several business relief provisions, including an employer payroll tax deferral (Deferral) and a companion provision allowing an employee retention credit (Credit). A brief overview of the Deferral is included in our CARES Act Reference Guide (see p. 9) and a detailed analysis of the Credit is included in a separate alert. The following is our detailed analysis of the key aspects of the Deferral.

The Act allows for a deferral of “applicable employment taxes” and it appears that the Deferral can be used in conjunction with the Credit when the Credit does not result in a refund. As in the case of the Credit, the applicable employment tax for Deferral purposes is the employer portion of the Social Security tax (6.2 percent of wages), and in the case of a self-employed individual, the applicable employment tax is 50 percent of the self-employment tax based on 12.4 percent of self-employment income. As such, the Deferral does not apply to employee income tax withholding, the employee or employer portion of the Medicare tax, or the employee portion of the Social Security tax.

Unlike the Credit, the Deferral is not based on the taxpayer meeting eligibility requirements. The Deferral applies to the applicable employment taxes for the period from the date of enactment of the Act (March 27, 2020) and through December 31, 2020. The payment of the tax is deferred, with 50 percent of the tax payable on December 31, 2021 and the remaining 50 percent of the tax payable on December 31, 2022. This is a significant benefit, but as noted above, it only relates to the Social Security tax (6.2 percent of wages) portion of the overall employment or self-employment tax.

There are several special Deferral rules:

- The Deferral is not applicable if a taxpayer has had indebtedness forgiveness under the Paycheck Protection Program (see p. 2 of our CARES Act Reference Guide and our alert on this program for non-profits) or indebtedness forgiveness under the Main Street Lending Program.
- As long as the taxes subject to the Deferral are timely deposited by the December 31, 2021 and December 31, 2022 dates, the taxes will be treated as timely deposited, thereby avoiding the significant failure to deposit penalties.
- The Deferral with respect to 50 percent of self-employment taxes for individuals also applies to the related estimated tax.
- If an employer designates an agent to deposit employment taxes, the employer who directs the agent to defer the payment of employment taxes has the liability if the taxes are not timely paid by the applicable deferral date.
- If a customer has a service contract with a certified professional employer organization (within the meaning of Code Section 7705(a)), the customer who directs such organization to defer the payment of employment taxes has the liability if the taxes are not timely paid by the applicable deferral date.

- While these rules allow a deferral of the tax payment, they do not change the personal liability of responsible persons for the trust fund portion of withheld taxes (employee income tax withholding and employee portions of Social Security and Medicare taxes).
- The Internal Revenue Service is authorized to issue regulations and guidance regarding the Deferral rules.

The availability of the Deferral is an important aspect of the Act and employers should evaluate whether they can benefit from this tax provision. To discuss how the Deferral provision applies to your business, please contact John Eagan (eaganj@whiteandwilliams.com; 212.868.4835) or Stephen Bowers (bowerss@whiteandwilliams.com; 215.864.6247).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and legal questions.