



Via Email and Mail

September 3, 2020

Re: Payroll Tax Deferral Plan Clarification

Dear Client:

This letter is a clarification to the letter issued by KSGA, LLP related to the Payroll Tax Deferral Plan dated August 31, 2020.

As mentioned in the letter, on August 28, 2020, the Department of Treasury and Internal Revenue Service issued a guidance on the payroll tax deferral that was issued by President Trump's memorandum on August 8, 2020.

Under the guidance, payroll tax relief is available for employers and is applicable to wages paid from September 1, 2020 through December 31, 2020. Employers are allowed to defer withholding, deposit and payment of the employee's portion of Social Security tax on wages below \$4,000 during any biweekly pay period. Please note that this is a deferral of payroll tax and not an exemption. Also note that the payroll tax deferral does not include income tax withholding and State Disability Insurance withholding to Employment Development Department for California or equivalent agencies for other states. The due date for withholding and payment of these taxes is postponed until the period beginning January 1, 2021, and ending on April 30, 2021. Deferred payroll taxes not paid during this period will be subject to interest and penalties.

We are looking for additional guidance on the payroll tax deferral as there are confusion and concern among accountant and businesses. The American Institute of CPA has requested that Treasury and the Internal Revenue Service provide guidance in the following areas for further clarifications:

- Guidance stating that the deferral is voluntary and that an "eligible employee" is responsible for making an affirmative election to defer the payroll taxes;
- Guidance stating that an "eligible employee" is an employee whose wages are less than \$4,000 per biweekly pay period;
- Guidance stating that the \$4,000 limit should apply separately to each employer of an employee;
- Guidance stating a payment due date(s) for the deferred taxes and a mechanism for employees to pay the deferred taxes.

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Under the current understanding, for employers who plan on implementing the payroll tax deferral program for employee portion, source from CPA Practice Advisor provided some suggestions to make the process easier and to protect all parties involved as follows:

- Make sure you inform employees that it is expected that deferred Social Security taxes will have to be paid back between January 1 and April 30, 2021;
- Have employees sign a contract agreeing to additional withholding up to twice the normal amount of Social Security taxes in the period from January 1 through April 30, 2021;
- Include in the employee contract the agreement that the employee will reimburse the employer for any deferred payroll taxes should the employee leave the company prior to such a time when all deferred payroll taxes have been repaid;
- Have a plan in place to account for repayment of deferred payroll taxes should the affected employee be earning less in 2021 than he or she earned in 2020;
- Make sure your payroll team or payroll provider understands its obligations for adjusting paychecks to reflect the deferral and then, next year, adjusting paychecks to repay the deferred amount.

We believe that such approach is impractical and difficult to implement. As such, in general, we are advising our clients not to implement deferral of employee payroll taxes, which is not a mandatory order to employers.

Also please note that under The Coronavirus Aid, Relief and Economic Securities Act (CARES Act) employers are allowed to defer the deposit and payment of the employer's share of Social Security taxes and self-employed individuals to defer payment of certain self-employment taxes.

Attached is the link to the IRS source of Frequently Asked Questions (FAQs) on deferral of employment tax deposits and payments through December 31, 2020 for your reference.
<https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020#:~:text=The%20Coronavirus%2C%20Aid%2C%20Relief%20and,of%20certain%20self%2Demployment%20taxes.>



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We will keep you posted on further developments as we learn more about the payroll tax deferral plan.

Sincerely,



Mike Song, CPA
Partner
KSGA, LLP

CC: Steven Kang, CPA



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