

## IRS Releases FAQs Clarifying CARES Act Payroll Tax Deferral Provisions

Written by Ian S. Chasse Osborn, Nicola Lemay, Nicholas V. Romanos, Tad Heuer

April 28, 2020

On April 10, 2020, the Internal Revenue Service (“IRS”) released [frequently asked questions](#) (FAQs) to address specific issues relating to the deferral of the employer portion of Social Security taxes under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act payroll tax deferral program permits all employers (including self-employed individuals) to defer deposit and payment of the employer portion of Social Security taxes due between March 27, 2020 and January 1, 2021 (the “Payroll Tax Deferral”), with half of the amount deferred due on December 31, 2021 and the remaining amount due on December 31, 2022 (each such date, an “Applicable Date”). In addition to answering general questions about the mechanics of the Payroll Tax Deferral, the FAQs provide two important clarifications to the provisions of the CARES Act.

First, the FAQs clarify the impact of forgiveness of a Paycheck Protection Program (“PPP”) loan (Section 1102 of the CARES Act) on Payroll Tax Deferral eligibility. Under the CARES Act, if an employer receives any loan forgiveness with respect to a PPP loan, the employer is ineligible for the Payroll Tax Deferral. The FAQs clarify, however, that an employer only becomes ineligible for the Payroll Tax Deferral prospectively upon receipt of a decision from its lender that the employer’s PPP loan has been forgiven. Any taxes previously deferred under the Payroll Tax Deferral through the date that a PPP loan is forgiven will remain deferred without interest or penalties charges being imposed and will not be due until the Applicable Dates.

Second, the FAQs provide additional insight into the interaction between the Payroll Tax Deferral and the Families First Coronavirus Relief Act (“FFCRA”) paid leave credits and the CARES Act employee retention credit, respectively. The FAQs note that the Payroll Tax Deferral is available to all employers, and is in addition to any relief from payroll tax deposit obligations provided in anticipation of FFCRA paid leave credits and the CARES Act employee retention credit.

We anticipate that Treasury and the IRS will provide additional guidance regarding the Payroll Tax Deferral and CARES Act provisions generally. For an overview of all of the tax relief provisions of the CARES Act, please see our [general alert](#).

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