



## Option to Defer Payment of Employment Social Security Taxes

*A COVID-19 Update from Questco – September 14<sup>th</sup>, 2020*

On Friday, August 28, 2020, the Department of Treasury (DOT) issued preliminary guidance on the President's August 8, 2020 Executive Memorandum on Payroll Tax Deferral. This Executive Memorandum allows certain **employees** to delay the payment of Social Security payroll taxes from September 1 through December 31, 2020.

### **Below are the highlights of the DOT guidance issued on August 28<sup>th</sup>:**

- Social Security tax deferral is only available to employees making less than \$4,000 per bi-weekly time period (to be measured each payroll period)
- The employer must withhold from the employee and remit the total taxes deferred in 2020 from wages paid between January 1, 2021 and April 30, 2021
- If deferred employee Social Security taxes are not remitted to the IRS by the **employer** by April 30, 2021, interest, penalties, and additions to tax will accrue against the **employer** beginning May 1, 2021
- It appears that the **employer** remains liable for the those deferred taxes if they cannot be recouped from the employee (i.e., if employee is no longer employed in 2021 or does not have sufficient wages to cover the additional tax withholding beginning in January 2021)
- *The choice to **defer** withholding, deposit, and payment of Social Security taxes is optional*

### **What does this mean:**

- First, deferral is optional (i.e., the employer can elect not to defer the collection of the taxes)
- Second, there is significant potential risk to both the employer (i.e., they are ultimately liable for the collection and remittance of any tax liability arising while the employee is employed by their company) as well as to the employee themselves (i.e., deferring the current payment due with uncertainty around whether the employee will have sufficient wages to cover the catch-up tax). In a PEO co-employment arrangement, both the client and Questco bear the liability for remitting Social Security tax obligations on behalf of their employees.
- Any decision to implement the deferral should be addressed on an employee-by-employee basis to determine if the employee wishes to elect the deferral. However, it is unclear whether an employer may defer employment taxes for some of its eligible employees but not others.
- Changes in the payroll processing software will be necessary to implement these deferrals, including validation of eligibility for deferral and indication of deferral election.
- The IRS will require reporting of deferred employee Social Security taxes on the employer's employment tax returns; however, those tax return changes have not yet been released by the IRS.

As summarized above, the decisions on whether and how to proceed on the deferral of employee Social Security taxes are complex. **At this time, Questco does not recommend nor are we prepared to support the deferral of Social Security tax liabilities for those individuals that we co-employ with you.** Should you be asked by your employees, please respond that you have currently opted out of the deferral election as a company. When sharing the decision not to offer the deferral option with your employees, any specific employee inquiries should be communicated to your Client Success Manager and we will assist you in providing a response.

**As always, our team is here to serve you should you have any further questions.**

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