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GMS Flash Alert

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United States – President Trump Signs Memorandum Deferring Payroll Taxes

On August 8, 2020, as a response to the ongoing COVID-19 health crisis, U.S. President Donald Trump issued a memorandum directing the Treasury Secretary to defer the collection of certain payroll taxes for the period of September 1, 2020 to December 31, 2020.[1] This employee payroll tax deferral, which is separate from the employer payroll tax deferral included in the Coronavirus Aid, Relief, and Economic Security Act, ("CARES Act"),[2] is available with respect to any employee whose wages or compensation payable during any bi-weekly pay period is less than $4,000 (equivalent to pre-tax wage of approximately $104,000 for 2020). The memorandum also directs the Secretary of the Treasury to determine whether such obligation may be forgiven through legislative or other action.[3]

WHY THIS MATTERS

International assignees often receive assignment-related allowances and incentives in addition to their normal base salary. Thus, given the relatively low bi-weekly wage threshold amount, many assignees subject to U.S. payroll taxes may not qualify for this deferral. For those who do qualify, this deferral may alleviate personal short-term cash-flow issues. However, it is important to keep in mind that this relief does not eliminate an individual's tax liability. Assignees whose U.S. payroll taxes are deferred under this memorandum will want to make sure they have cash available to pay any deferred liabilities.

Background

Payroll taxes generally include old-age, survivor, and disability insurance ("OASDI") and hospital insurance (commonly referred to as "Medicare"). These payroll taxes apply at a rate of 15.3 percent for wages up to $137,700 for the 2020 calendar year, with the obligation for these taxes equally divided between employers and employees at 7.65 percent (6.2 percent for OASDI and 1.45 percent for Medicare). Above $137,700, the payroll tax obligation is limited to Medicare.

There is an additional 0.9-percent Medicare tax applicable to the employee's share depending on the employee's filing status. However, employers do not withhold this additional 0.9 percent until the employee's wages exceed $200,000 in a calendar year.

Although the ultimate tax obligation for OASDI and Medicare is shared between employers and employees, employers have the responsibility for withholding the employee's share from wages and depositing such amounts.

Deferral of Collection of Payroll Taxes

The memorandum directs the Treasury Secretary to defer the collection of the employee portion of OASDI, but does not defer the collection of the employee portion of Medicare. The memorandum appears to require the deferral of the employee portion of the OASDI tax for eligible employees, but leaves the details on implementing this directive to the Treasury Secretary. The memorandum further provides that amounts deferred are not subject to interest or penalty.

KPMG NOTE

The memorandum raises a number of issues that are yet to be resolved including whether this deferral is mandatory for eligible employees, when the deferred taxes would actually be collected, and how this would apply to employees who terminate their employment because their assignments have come to an end or for any other reason.

KPMG LLP (U.S.) will continue to monitor this situation closely. We will endeavor to keep readers of GMS *Flash Alert* posted on any developments as and when they occur.

FOOTNOTES:

1 Presidential Memorandum, "Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster" at: https://www.whitehouse.gov/presidential-actions/memorandum-deferring-payroll-tax-obligations-light-ongoing-covid-19-disaster/. For additional analysis of the memorandum by KPMG LLP (U.S.) see "KPMG report: Initial impressions about presidential memorandum on deferring payroll tax obligations (COVID-19)" (August 10, 2020) at: https://home.kpmg/us/en/home/insights/2020/08/tnf-kpmg-report-initial-impressions-presidential-memo-deferring-payroll-tax-obligations.html .

2 The CARES Act allows employers and self-employed individuals to defer payment of the employer share (6.2 percent) of the social security tax they otherwise are responsible for paying in 2020, effective for payments due after March 27, 2020. Fifty percent of the deferred payroll taxes is due on December 31, 2021, and the remaining amounts are due on December 31, 2022. (For prior coverage, see GMS *Flash Alert* 2020-127, March 27, 2020.)

3 While the memorandum directs the Treasury Secretary to "explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred pursuant to the implementation of this memorandum," eliminating the obligation would likely require new legislation passed by Congress and signed into law by the president.

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The above information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

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