



Q&A Regarding New IRS Individual Income Tax Withholding Guidance

JANUARY 11, 2018

The Tax Cuts and Jobs Act (Act) implements sweeping reform to the Internal Revenue Code of 1986, as amended with most changes effective January 1, 2018. Among the most important changes are the impact to individuals, which are as follows: (i) changes in the individual tax rates and brackets, (ii) the increase in the standard deduction, and (iii) the repeal of personal exemptions. In order to help account for these changes, the IRS released [Notice 1036](#) on January 11, 2018, providing the rules for withholding for Federal income tax purposes.

In order to assist payors in understanding the new guidance, we have provided the following Q&A.

Material Q&A Regarding the New Tax Withholding Guidance

What does this mean to employers?

IR-2018-05 provides that employers should coordinate with their payroll functions/payroll administrators to ensure that the new 2018 withholding tables and procedures are implemented into the applicable payroll procedures, as soon as possible, but no later than **February 15, 2018**.

Is it necessary to obtain new Forms W-4 from employees?

Not currently. The withholding guidance issued on January 11 is designed to work with existing Form W-4s that employees have on file. Note that the Internal Revenue Service (IRS) is working on revising the Form W-4 to more fully reflect the Act, and the IRS intends on providing additional guidance on that as it becomes available. By using withholding allowances under current Form W-4s (which are based on the assumption that exemptions were not repealed by the Act), many employees may be under withheld when they file their 2018 tax returns in 2019 due to the fact that the new withholding tables are used.

Bonuses are being paid soon. What is the correct flat supplemental rates to use for equity awards and annual cash bonuses in light of the new lower tax rates?

Notice 1036 provides rules for 2018 supplemental wage withholding as follows (employers should refer to IRS guidance for additional details):

1. **Less than \$1 million supplemental wages:** The new supplemental rate on an employee who receives \$1 million or less in supplemental wages is a flat 22 percent.
2. **More than \$1 million supplemental wages:** The new supplemental rate on an employee who receives more than \$1 million of supplemental wages during the calendar year is a flat 37 percent.

Note that under pre-existing IRS guidance, the employer does not have the option of withholding at any other flat rates other than that provided by the IRS in Notice 1036.

What is the new backup withholding rate?

Based on Notice 1036 guidance, the backup withholding is now 24 percent of certain taxable payments if the payee fails to furnish you with his or her correct taxpayer identification number (TIN).

What other guidance is expected?

By the end of February, the IRS intends to update its withholding tax calculator. It appears that the IRS will be encouraging employees to use this calculator to allow employees to determine if their wages are being under or over withheld.

Because payroll taxation is quite complex, employers may want to prepare communications to be sent to their employees to allow them to understand how to use the IRS calculator via the information provided in the employee's pay stub and/or be prepared to respond to questions from employees regarding these new withholding tables and/or the IRS calculator.

Takeaway

Employers should be prepared to implement the new tax withholding guidance no later than February 15, 2018. Since the new guidance is designed to leverage the current Form W-4s, there should be minimal need to obtain additional information from employees to implement the new tax withholding guidance.

An administrative issue is that the IRS additional guidance may well be staggered with the new withholding calculator intended to be in place by the end of February, but the new Form W-4 may not be issued at that time. Note that if employees wish to provide new Form W-4s, current law requires the employer to follow that new Form W-4 for future withholding within a short time frame.

If you have any questions, please do not hesitate to reach out to your local Winston & Strawn benefits and executive compensation contact.

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