

## **Evolution of Provident and Pension Fund benefits to Expats**

For several years, the expatriates in India bore the brunt of being ineligible to the social security benefits. Amendment to 'The Employees' Pension Scheme, 1995 Act (EPS, 1995)' that came into force on November 1, 2008 (by insertion of Para 43A) is a step towards extending benefits to the expats or international workers as available to the Indian Nationals in Social Security Agreement (SSA) signatory countries.

Expats refer to individuals who are not of Indian origin (and not holding Indian passports) but working in the Indian Territory. Till November, 2008 foreign nationals working in India were excluded from being members to the provident fund since in most of the cases their salaries exceeded the statutory limit of Rs. 6,500. With the amendment, a newly inserted term International Workers (IW) recognized three categories of workers:

### **1<sup>st</sup> Category**

Indian origin workers/ persons working in a foreign country that has entered into Social Security Agreement (SSA) with India. In this case, the workers are eligible to avail benefits under the social security of that country.

### **2<sup>nd</sup> Category**

International Workers (IWs) who hail from the country with which India has a Social Security Agreement.

### **3<sup>rd</sup> Category**

Workers who hail from the country with which India does not have any SSA

The amendment brought the 2<sup>nd</sup> category of workmen within the ambit of the EPS Act. Till date India has signed 15 social security agreements with Switzerland, Denmark, Belgium, Finland, France, Luxembourg, the Netherlands, Hungary, Czech Republic, Austria, Australia, South Korea, Norway, Sweden and Canada. The United States and the United Kingdom are contesting against the issue and not signatories to the agreement. A comprehensive social security agreement with Portugal is in the process of getting operationalized. In addition, a partial social security agreement with Germany is already operationalized. Another comprehensive social security agreement between India and Japan will be operational from 1<sup>st</sup> October, 2016.

## **Applicability of the Act & Membership to the Fund**

After the amendment, the cap of salary with respect to the workers of Indian origin working in India was retained but due to insertion of Para 83 in EPFS, 1952 and Para 43A in EPS, 1995, there is no ceiling for the IW(s) to join the fund. Now, the IWs are liable to become member of the fund irrespective of the amount received by them as wages, dearness allowance, retaining allowances, etc.

## **Criteria to become Member of the Fund as International Worker**

- I. All the IWs other than employees who are given the status of 'detached employee' from 1.10.2008.

- II. Every excluded employee on ceasing to the status – from the date he/she ceases to be an excluded employee.
- III. The IW is liable to be the member of the fund irrespective of the currency in which he draws the salary including the split pay roll.

### **Liability of the Employer under the Act and the Scheme**

Para 36 of the Scheme as amended with respect to the IWs and incorporated in Para 83 provides for the duties of the employer in this respect. A duty is cast on the employer to send to the Commissioner, particulars of IW(s) working in the establishment along with the details of the basic wages, retention allowance, etc.. Under Para 36(2) there is a recurring duty on the employer to send to the Commissioner within 15 days of the close of each month till date, the return in the specified form.

Every employer shall send to the Commissioner within fifteen days of the close of each month a return-

- (a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding month together with the declarations in Form 2 furnished by such qualifying employees, and
- (b) [in such form as the Commissioner may specify], of the employees leaving service of the employer during the preceding month:

Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.

An employee, once a member, continues to be the member of the fund unless he withdraws the fund under Para 69 of EPFS, 1952; or covered by a notification under section 17 of the Act; or covered under an order of exemption is passed under Para 27 or 27A; or if the benefits are settled in accordance with the social security agreement.

### **Contribution payable under the Act**

The contribution shall be calculated on the monthly pay containing:

- Basic wages
- Dearness allowance
- Retaining allowance
- Cash value of any food concession

Para 29 of the EPFS Act deals with both the employer and employee's contribution towards the fund.

(1) The employer shall pay the contribution payable to the Employees' Pension Fund in respect of 10[each member] of the Employees' Pension Fund employed by him directly or by or through a contractor.

(2) It shall be the responsibility of the principal employer to pay the contributions payable to the Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

[Provided that the Central Government shall pay the contribution payable to the Employees' Pension Fund in respect of an employee who is a person with disability under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) and under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) respectively, up to a maximum period of three years from the date of commencement of membership of the Fund.]

Thus, an employee may contribute more to the fund by increasing the percentage of the contribution but the liability of the employer is limited to 12% of the salary and 10% rate is applicable for any establishment in which less than 20 employees, a sick industrial company, any company, which has been declared as a 'sick company' by the Board for Industrial and Financial Reconstruction, any establishment which has at the end of any financial year, accumulated losses equal to or exceeding its entire net worth and any jute, beedi, brick, coir and guar gum factories.

There is no cap to the salary on which the contribution is to be made by the employer and employee for provident fund. However, under Employee's Deposit Linked Insurance Scheme, 1976, the minimum salary limit for making contribution is to be Rs. 6,500.

#### **Withdrawal Benefits for Service less than 10 years**

Unlike the Indian workers who can withdraw their contribution to the fund under number of circumstances, the options available to IWs are limited. In such cases where service in India is less than 10 years, the employees could be eligible to avail benefit of totalization. In other cases where totalization comes below 10 years, then only those employees covered by a social security agreement will be eligible for a lump sum withdrawal benefit under the EPS, 1995. Such benefits are not extended to international workers of other countries.

#### **Employee Provident Fund**

If the IW is covered under an SSA, the worker can withdraw the provident fund according to SSA. An IW from non-SSA country, can withdraw the provident fund at the age of 58 years only. However, exceptions are given if he or she retires due to any incapability to work or suffers from leprosy, cancer and tuberculosis.

#### **Employee Pension Scheme**

An IW will be eligible for pension in the following events:

- o Death
- o Permanent disability, or
- o Permanent retirement from the Indian workforce

Moreover, the IW can withdraw superannuation benefits to the extent of his permanent retirement from the Indian workforce.

#### **Consequence of Non-compliance**

The employer has the primary liability to deduct contribution from the wages of workmen and deposit the same at the PF department along with matching contribution in a prescribed form. Upon non-compliance, the same can be recovered in a manner provided in Section 8B & 8F of the EPF Act, 1952.

Moreover, the employer may face penal action for such non-compliance. Thus, there is no escape from complying with the provisions of the Act except to the persons engaged as 'consultants'.

### **In a Nutshell**

The amendments have created a favourable impact in fostering international relationship. The profitability and competitive positioning of India as well as foreign countries will result in mutual growth and reduction in cost of doing business abroad. Both Indian and international workers will and consider India as a preferred occupational destination.