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TAX FLASH NEWS

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The Government of India issues a notification for changing the provisions of provident fund withdrawals under the Employees' Provident Funds Scheme, 1952

Background

In accordance with the regulations of the Employees' Provident Funds Scheme, 1952 (EPFS), it was possible for employees to withdraw their full Provident Fund (PF) accumulations on the cessation of employment provided they were not re-employed with an establishment which is covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act).

However, recently the Ministry of Labour and Employment, Government of India issued a notification[1] dated 10 February 2016 to amend the EPFS with regards to the provisions relating to the early withdrawal of PF accumulations on the cessation of employment. The notification comes into effect from 10 February 2016.

Key amendments in the notification

a) Amendment in the age limits for PF withdrawal

Before the amendment

- As per the earlier provisions[2], members could withdraw the full amount standing to their credit in their PF account at the time of retirement from service after attaining the age of 55 years.
- Members of the EPFS were eligible to withdraw up to 90 per cent of their PF accumulations on attaining the age of 54 years or within one year before actual retirement, whichever was later[3].

After the amendment

- The age limit of PF withdrawal has been increased from 55 to 58 years. As per the revised provisions[4], members may withdraw the full amount standing to their credit in the PF account at the time of retirement from service after attaining the age of 58 years.
- Now the members of the EPFS are eligible to withdraw[5] upto 90 per cent of their PF accumulations on attaining the age of 57 years or within one year before actual retirement, whichever is later.

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[1] Notification no. G.S.R. 158(E), dated 10 February 2016 [F.No. S-35012/5/2015-SS-II]

[2] Para 69 of EPFS for non – International Workers (IWs)

[3] Para 68 NN of EPFS – Withdrawal within one year before the retirement

[4] Revised Para 69 of EPFS for non – IWs

[5] Revised Para 68 NN of EPFS – Withdrawal within one year before the retirement

b) *Removal of the provision for early withdrawal*

Before the amendment

- As per the earlier provisions[6], members could withdraw their full PF accumulations on the cessation of employment and on not being re-employed with an establishment which is covered under the EPF Act for a continuous period of not less than two months before making the PF withdrawal application.

After the amendment

- The above facility for an early withdrawal[7] has been removed by this notification.

c) *Inserting a provision enabling partial withdrawal*

- A new provision[8] has been inserted for enabling partial PF withdrawals. Members can now apply for withdrawal (after two months of the waiting period) of their own share of PF contributions along with interest earned on their own contribution on the cessation of employment on the condition that they are not re-employed with an establishment which is covered under the EPF Act.

  The two months waiting period shall not be applicable in the case of female PF members who are resigning on account of marriage, pregnancy or child birth.

- The payment of the partial withdrawal[9] the amount can be made directly into the member's bank account or through the employer[10] also.

d) *Removal of the provision relating to fresh membership*

Before the amendment

- As per the earlier provisions[11], employees could be treated as fresh members after taking their early PF withdrawals on the cessation of employment in a covered establishment.

After the amendment

- With the omission of these provisions[12], individuals shall remain the members of EPFS till they withdraw their full PF accumulations.

Our comments

The new amendments in the EPFS, which have limited the pre-retirement withdrawals, could have a significant impact on employees who were eligible for early withdrawals under the previous regulations.

Since individuals can now avail a full refund of their PF accumulations only on retirement after attaining the age of 58 years, it appears that the members will continue to earn interest on their PF accumulations till 36 months after they become eligible for a full refund. Clarification on this aspect from the PF department would be helpful for the industry.

The new regulations may also enable partial withdrawals at the time of cessation of employment in the case of International Workers (IWs) coming from countries with which India does not have a Social Security Agreement (SSA).

The regulations on the refund of PF accumulations in case of IWs who are covered under an effective SSA with India have not been changed in the latest amendment and they would continue to enjoy the special facility of full refund of PF accumulations at the time of cessation of their employment in the Indian establishments covered under the EPF Act.

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[6] Para 69 (2) of EPFS for non – IWs
[7] Para 69 (2) of EPFS for non – IWs
[8] Para 68 NNNN of EPFS - Option for withdrawal on cessation of employment
[9] Withdrawal under Para 68 NNNN of EPFS
[10] As per Revised Para 68 O of EPFS – Payment of withdrawal or advance

[11] Explanation to Para 26A and Para 69(5) of EPFS for non – IWs
[12] Explanation to Para 26A and Para 69(5) of EPFS for non – IWs

Establishments that run private PF trusts under the EPF Act may also need to revise their PF schemes pursuant to the new amendments in the statutory EPFS.

Employers would need to engage with their employees and communicate these new changes to help them to take informed decisions about their retirement planning.

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