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India – EPFO Issues Additional Guidance on International Workers and Provident Funds

by KPMG, India (a KPMG International member firm)

Recently, the Employees' Provident Fund Organisation ('EPFO') in India issued a circular to its officers clarifying certain key aspects on International Workers ('IWs').[1]

Background

In October 2008, India's government made fundamental changes in the Employees' Provident Funds Scheme, 1952 ('EPFS') and Employees' Pension Scheme, 1995 ('EPS') by bringing IWs under the purview of the Indian social security regime.

In September 2010, the Ministry of Labour and Employment ('MoLE') issued a notification further amending the EPFS and EPS vis-à-vis the IWs. (For prior coverage, see the following issues of *Flash International Executive Alert*: 2010-187 (22 November 2010) and 2009-022 (4 February 2009).)

Key Clarifications Provided in the Circular

Who Is an IW?

- An Indian national employee who has contributed to the social security program of a country that has a Social Security Agreement ('SSA') with India and who has achieved or is going to achieve eligibility for benefits under the said SSA.

  Those employees who have availed themselves of the exemption from contributing in the other country because they have obtained a Certificate of Coverage ('COC') and who are contributing to the social security system in India will not fall under the category of IW. However, it would be mandatory for them to contribute to the Provident Fund ('PF') in India, which is a pre-requisite for getting a COC.
- All employees who are not Indian nationals (non-Indian employees) holding a non-Indian passport and employed in an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ('the Act') will be IWs.

Contributions for IWs

The PF contribution in respect of all IWs is required to be remitted by the employer and must be based on the full salary (i.e., without any wage ceiling). The term 'full salary' for IWs includes the same elements as apply for domestic Indian employees except that there is no salary cap.

Inoperative Account Not Applicable to IWs

The Indian government has amended the EPFS whereby interest shall not be credited to the account of a member from the date on which it has become an inoperative account. An inoperative account has been defined to mean an account in which no application for a refund or a transfer has been made within a period of 36 months from the date it can become payable. However, the regulation of an inoperative account will not be applicable in the case of IWs because the EPFS has not made any such provision for IWs.

It should be noted that the Indian PF allows cash refunds upon cessation of employement before the age of retirement (unlike in the United States and some other countries where no cash refunds are given, but usually a pension is provided upon retirement).

Furthermore, employees do not have a unique social security (PF) number in India. The PF account number is linked to an employer. Consequently the PF account number changes as soon as an employee changes employers. This leads to a problem of multiple PF accounts for one employee. Therefore, the government wants to encourage consolidation by transferring previous PF balances to the individual's "current" PF account.

Refund of Pension Accruals

In India, to be eligible to receive a monthly pension an aggregate service of 10 years is required. If the service is less than 10 years, then a one-time cash refund is given in lieu of contributions made.

- In relation to pension accruals, EPFO has clarified that a lump-sum cash refund will be available to only those IWs who are covered under an SSA.
- IWs that are not covered under an SSA will not get a lump-sum cash refund if their aggregate service in India in less than 10 years. However, if their aggregate service is more than 10 years in India, then they will be eligible for a monthly pension.

IWs in Exempt Provident Fund Trusts

The special provisions relating to IWs will also need to be implemented by the so-called exempted establishments under the Act.

Monthly Compliance for IWs

The IW-1 return (Statement of Employees qualifying for membership as International Workers) is mandatory for all covered establishments for reporting details of IWs. In cases where there are no IWs, a NIL return must be submitted to the local Regional Provident Fund Commissioner.

KPMG Note

The recent clarification on IWs should ease the problems faced by the Indian employees going to SSA countries after obtaining a COC, as they will not be required to wait until they turn 58 years of age in order to get their PF refunds. Such Indian employees will not become IWs, they will contribute towards the PF as "ordinary" employees and not subjected to PF contributions on their full salaries. Moreover, it should come as a welcome relief to IWs that their PF accounts will not become dormant and will continue to earn interest.

Footnote:

1 Source: http://www.epfindia.com/Circulars/Y2012-13/IWU_CompofIW_2816.pdf .

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For additional information or assistance, please contact your local IES professional or Parizad Sirwalla (tel. +91 (22) 3090 2010 or e-mail psirwalla@kpmg.com), partner with KPMG in India in Mumbai.

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