KPMG

cutting through complexity™

July 18, 2012
2012-137

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

India – Revised Rules Provide Exemption from Provident Fund for Certain Expatriates

by KPMG, India (a KPMG International member firm)

Recently, the term "excluded employee" under India's Employees' Provident Funds Scheme, 1952 ('EPFS') rules as concerns "International Workers" ('IWs') was modified as per a Ministry of Labour notification. The revision will entitle certain expatriate employees to an exemption from making Provident Fund contributions.

Background

In October 2008, India's government made fundamental changes in the EPFS and EPS by bringing IWs under the purview of the Indian social security regime. Consequently, foreign nationals who were working in an organization covered under the Employees' Provident Funds and Miscellaneous Provisions Act were required to pay the Provident Fund (PF) contributions. (For a related story on IWs and PFs, see *Flash International Executive Alert* 2012-127, 9 July 2012.)

However, certain expatriate employees were exempted from PF contributions in India subject to specified conditions. Such employees have been defined as "excluded employees"[1] under the EPFS.

Recently, the Ministry of Labour and Employment issued a notification to enlarge the aforementioned scope of "excluded employee."[2]

Amendment in EPFS

The government has amended para 83 of EPFS to enlarge the definition of excluded employee by adding a new clause.

According to the newly added clause, expatriate employees, transferred from a country with which India has entered into a bilateral comprehensive economic agreement, will also qualify as an excluded employee upon satisfaction of the following conditions:

- The employee is contributing to the social security program of his or her home country, either as a citizen or resident; and
- The above-mentioned agreement contains an appropriate clause in respect of employer/employee social security obligations; and
- The agreement specifically exempts natural persons of either country from contributing to the social security system of the host country; and
- The agreement has been entered into prior to 1 October 2008.

KPMG Note

The latest amendment in the EPFS should facilitate the exemption from PF contributions in India for employees coming from countries, such as Singapore, which have entered into a Comprehensive Economic Cooperation Agreement ('CECA') / Comprehensive Economic Partnership Agreement ('CEPA') with India before 1 October 2008.

This new regulation took effect on 24 May 2012. Clarifications on actual implementation are awaited from Employees' Provident Fund Organisation.

Footnotes:

1 As per the Notification dated 1 October 2008, "excluded employee" means an IW who is contributing to a social security program of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on a reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such agreement.

2 Ministry of Labour and Employment, Notification dated 24 May 2012. The Gazette of India: Extraordinary, recd. No. D.L. 330044/99, No. 231, 24 May 2012.

* * * *

This article originally appeared in "Indian Government Grants Exemption from Provident Fund Contribution for Certain Expatriate Employees" from *KPMG Flash News* (3 July 2012), a publication of the KPMG International member firm in India. It is republished here in *Flash International Executive Alert*, with permission.

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.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click **here**. To learn more about our IES practice, please visit us on the Internet: click **here** or go to http://www.kpmg.com .