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India – EPFO Guidelines on Social Security Compliance for Indian Outbound Assignees

by KPMG, India (a KPMG International member firm)

India's Employees' Provident Fund Organisation (EPFO) issued a circular[1] in January 2016 aimed at securing proper compliance by employers and employees in respect of employees on overseas assignments. In the circular, the Provident Fund (PF) department stated that since the different regional PF offices were adopting different practices with regard to compliance for Indian employees going to work in foreign countries, there was a need to lay down consolidated guidelines for proper compliance.

Why This Matters

The consolidated guidelines should make it simpler for Indian outbound assignees and their India-based employers to understand the rules and requirements and help foster proper compliance. This will reduce time and effort and help to avoid costly fines and penalties tied to improper compliance.

This circular is expected to reduce overseas assignment costs and should also help employers facing litigation from the PF authorities with respect to overseas assignments.

Background

India has signed several Social Security Agreements (SSAs) with other countries with a view to obtaining an exemption in respect of social security contributions in the host countries for outbound employees, provided that they contribute to social security in India. To obtain this exemption, an outbound employee must have a Certificate of Coverage (CoC) from the designated social security authority, the EPFO, which serves as proof of social security contributions in India.

Key Clarifications Provided in the Circular

- ***Fundamental principle of deducting and paying PF and other dues in India for employers sending employees on an overseas assignment***
    - PF contributions and other dues should be deducted and deposited by the Indian employer only when the salary/wages are paid or payable by the Indian employer.
- ***Proper compliance requirement in cases of employees moving to another country***
    - Compliance requirement in cases of employees going to a country with which India has an effective SSA:
        - ✓ The EPFO has clarified that in order to obtain the CoC, PF compliance should continue during the period of assignment and it

should remain the same as was being reported immediately before the start of the overseas assignment.

- ✓ However, if the employee does not obtain the CoC, PF compliance would be required for the salary being paid or payable by the Indian employer.

- o Compliance requirements in the case of employees going to a country with which India does not have an effective SSA:

  - ✓ PF compliance should be required for the salary being paid or payable by the employer in India.

KPMG Note

This is an important circular which may have significant implications for companies with sizable outbound employee populations (such as software firms, Business process outsourcing (BPO), Knowledge process outsourcing (KPO), and other Information Technology/Information Technology Enabled Service (ITES) companies, etc.).

The clarification provided by the PF authorities, that PF liability will not arise in the case of overseas assignments where the salary is neither paid nor payable by the Indian employer, should be a welcome development for Indian industry. In particular, the issuance of this circular offers the potential to:

- reduce overseas assignment costs, and
- help employers better confront actual or possible litigation from the PF authorities with respect to overseas assignments.

Employers that have obtained CoCs in the past should review their situations under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), to check whether they are effectively meeting their obligations in light of the clarifications stated in the circular. The circular should also be borne in mind by employers when planning for future overseas assignments.

Employers complying under the EPF Act on a notional salary or shadow payroll, may need to revisit their policies from the PF, tax, and other regulatory perspectives.

Footnote:

1 Source: http://www.epfindia.com/site_docs/PDFs/Circulars/Y2015-2016/IWU_Compliance_EPF_36602.pdf (accessed on 28 January 2016).

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For additional information or assistance, please contact your local GMS or People Services professional or Parizad Sirwalla (tel. +91 (22) 3090 2010 or e-mail psirwalla@kpmg.com), partner with the KPMG International member firm in India.

A New Video from the GMS Practice!

There has been a lot of news in recent months about the number of individuals who expatriate from the United States. This number has risen considerably from year to year, according to Treasury figures. People expatriate for many reasons, including tax, but there are indications that the Foreign Account Tax Compliance Act may be encouraging people to expatriate as well. In this video, we focus on what it means to be an "expatriator" and the tax implications especially for international assignees who have come to the U.S., have become long-term residents, and then decide they wish to return to their home countries and cease to be lawful permanent residents by either relinquishing their green cards or claiming the benefit of the tie-breaker provision of an income tax treaty.

With Numbers of Expatriators on the Rise: A Reminder of the Tax Implications – (app. 7-1/2 minutes)

The information contained in this newsletter was submitted by the KPMG International member firm in India.

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