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PROVIDENT / PENSION FUND WITHDRAWL – STRINGENT RULES FOR INTERNATIONAL WORKERS

The Ministry of Labour and Employment by way of a special notification1, has further amended the Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995 in respect of International Workers ("IWs").

Background

In October 2008, the Ministry of Labour and Employment made fundamental changes in the Employees Provident Fund and Employees Pension Fund schemes. The ambit of both the schemes was broadened to compulsorily cover IWs under the purview of Indian social security regime (Click here for BMR analysis on 2008 amendments). Some of the key provisions, including those related to withdrawals from the Provident Fund ('PF') scheme were hitherto kept same as were applicable in case of domestic employees. This enabled IWs to withdraw the balance available at their credit in PF account immediately upon completion of assignment in India.

The Ministry of Labour and Employment has now amended the scheme to allow PF withdrawal, in case of IWs, upon attainment of 58 years of age. Some of the provisions of Pension Scheme affecting IWs have also been modified, as follows:

Salient features of Employees Provident Fund (Amendment) Scheme, 2010

- PF withdrawals by IWs permitted only under following circumstances:
  - On retirement from service after attaining 58 years of age
  - On retirement on account of permanent and total incapacity from work due to bodily or mental infirmity as certified by specified medical officer / practitioner
  - On suffering from tuberculosis, leprosy or cancer, even if contracted after leaving the service on the grounds of illness but before the payment has been authorized
  - In respect of the member covered under Social Security Agreement ('SSA'), on such grounds as specified in SSA

Upcoming Events

- International Taxation Conference, December 2-4, 2010, Mumbai, India

Awards & Recognitions

- BMR wins India Case of the Year and Best Use of the Internet awards at 5th International Tax Review Asia Awards, 2010.
- BMR ranked Tier 1 firm according to the World Tax 2011 Guide to the world's leading tax firms.
- BMR rated Great Place to Work 2010; Great Place to Work Institute
- BMR ranked Tier 1 Tax Planning and Tax Transactional Firm in India, International Tax Review's online poll 2010
- BMR Advisors ranked second most active transaction advisor (Private Equity) in 2009, Venture Intelligence League Table
- BMR is Transfer Pricing Firm of the Year and wins India Case of the Year award, International Tax Review Asia Awards, 2009

Contributors

- Where the salary has been paid in foreign currency, the same will be converted into Indian Rupee by applying telegraphic transfer buying rate of State Bank of India as on the last working date of the relevant month in which the salary is due
- Payment of Provident Fund
  - In case IWs covered under SSA, as per the terms specified in relevant SSA
  - In all other cases, the amount shall be payable to the credit of bank account in India

Salient features of Employees Pension (Amendment) Scheme, 2010

- The definition of term “pensionable service” has been amended to include the period of coverage earned in another country and considered as eligible under the relevant SSA
- Under existing provisions of the pension scheme, 8.33 percent of pay (for the purpose of calculating contribution to pension fund employee pay in excess of INR 6,500 is to be ignored) is to be remitted as employer contribution and Central Government makes an additional contribution equivalent to 1.16 percent of employees pay. However, as per the recent amendment, there will not be any contribution by the Central Government to the IWs Pension Fund.
- Under existing provisions of the pension scheme, IWs from both SSA and non-SSA countries were entitled to withdraw pension based on the principle of reciprocity. However, this provision has now been withdrawn, thereby restricting the availability of withdrawal to IWs only from SSA countries.

Effective Date

- These amendments are effective from September 11, 2010 being the date of publication of notification in the Gazette of India

Impact of the amendments

The amendments may have following key implications:

- IWs from countries, not covered by SSA, will not be eligible to withdraw accumulated balances in their PF account before attaining the age of 58 years or on prescribed medical grounds. This is a significant shift from the earlier provisions wherein IWs were entitled to withdraw the accumulated balances at the end of their employment in India.
- IWs would need to either retain their existing bank accounts in India or open a fresh bank account for the purpose of withdrawal, and this criterion could pose practical difficulties
- For IWs coming from SSA countries, withdrawal of PF accumulated balance permitted subject to provisions of the applicable SSA. This may persuade other countries to sign SSA with India.

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- In a scenario where IW was receiving part of his salary outside India in foreign currency, there was an ambiguity under the existing provisions as to the exchange rate which needs to be applied for conversion of foreign salary into Indian Rupees for the purpose of calculation of monthly PF contributions. This amendment addresses the ambiguity.
- Summarizing, the amendments will not only impact forthcoming international assignments but materially impact IWs who are already on their existing assignment. Existing IWs who have made significant social security contributions will have to wait for a considerable period of time before access to their contributions.

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