Executive summary

This Tax Alert summarizes recently introduced amendments in the Payment of Bonus Act, 1965 through the Payment of Bonus (Amendment) Act, 2015:

(i) The salary eligibility limit for coverage of employee under the Payment of Bonus Act, 1965 has been increased from INR 10,000 per month to INR 21,000 per month. Post the amendment, the term “employee” as defined under the Payment of Bonus Act, 1965, inter alia, means a person (other than apprentice) employed on salary or wage not exceeding INR 21,000 per month.

(ii) The salary ceiling limit for calculation of bonus has been increased from INR 3,500 per month to INR 7,000 per month or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher. Post the amendment, where an employee’s salary is more than INR 7,000 per month or such minimum wage (whichever is higher), for the purposes of calculation of bonus, the salary will be assumed to be INR 7,000 per month or such minimum wage, whichever is higher.

The above mentioned amendments shall be deemed to have come into force on 1st April 2014.
Key changes

The Payment of Bonus (Amendment) Act, 2015 (‘Amendment Act’) received the assent of the President on 31st December 2015. Amendments made to the Payment of Bonus Act, 1965 (‘Act’) are as follows:

► Employees eligible for bonus:

Section 8 of the Act provides that every employee of an establishment covered under the Act shall be entitled to be paid bonus by the employer provided that the employee has worked in the establishment for not less than 30 (thirty) working days in the year. The term “employee” as defined under Section 2(13) of the Act, inter alia, means a person (other than apprentice) employed on salary or wages not exceeding INR 10,000 per month.

The Amendment Act has now increased this eligibility limit from INR 10,000 to INR 21,000 per month.

► Calculation of bonus:

Section 12 of the Act provides that the bonus payable to an employee will be in proportion to the salary or wages of the employee. However, if an employee’s salary is more than INR 3,500 per month, for the purposes of calculation of bonus, the salary will be assumed to be INR 3,500 per month.

The Amendment Act has now raised this ceiling from existing INR 3,500 to INR 7,000 per month or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher.

► Effective date

The Amendment Act shall be deemed to have come into force on 1st April 2014, i.e. with retrospective effect.

Next steps for employers

The above changes have major implications for employers that may require review and action steps:

► The changes in the Act will have financial implications for employers, as both the coverage of eligible employees and the amount of the eligible salary has been increased. The payment of arrears may cast a huge burden on the business finances especially those in the medium & small categories.

► No specific dates have been notified within which the arrears are required to be paid to eligible employees.

► Employers in India usually follow a financial year from 1 April to 31 March and close their books of accounts accordingly. Under the Act, an employer is required to pay the due bonus within 8 months of close of accounting year. Most employers would have already determined the allocable surplus for the Financial Year 2014-15 (i.e. 1st April 2014 to 31st March 2015) and distributed bonus to eligible employees (based on old limits - (a) to employees with salary up to INR 10,000 per month; and (b) bonus calculated on salary up to INR 3,500 per month). Now, given that the amendments are retrospective, bonuses will have to be reworked and redistributed amongst increased pool of eligible employees (based on new limits - (a) to employees with salary up to INR 21,000 per month; and (b) bonus calculated on salary up to INR 7,000 per month or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher.

► The Amendment Act has raised the eligible salary for bonus calculation from INR 3,500 to INR 7,000 or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher. Given that different states in India may have different minimum wages notified, employers operating in more than one state will have to be mindful of this and will have to pay out bonuses accordingly. It does mean extra vigilance and processing for the employers. This has the potential to create disparities in the payment of bonus.

► Several employees eligible to receive bonuses in arrears may have left the
employer now and will need to contact their past employers. On the part of the employer, there is additional responsibility to maintain and operate this process for an indefinite time period.

► Some employers may have made other pay-outs such as a customary bonus, attendance bonus, project incentives, overtime etc. or any other pay-outs to employees during the eligible period. These employers may evaluate if such pay-outs qualify for adjustments against the mandatory bonus dues or would remain as independent pay-outs.
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