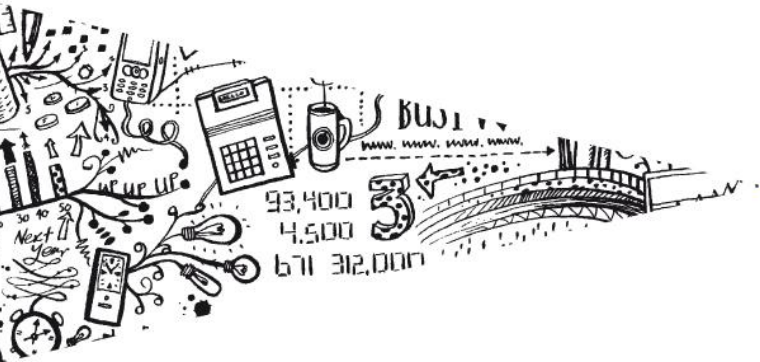


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EY Tax Alert

Updated Frequently Asked Questions issued by Provident Fund Authorities



Executive summary

The Employees' Provident Fund Organisation ('EPFO') has issued updated Frequently Asked Questions (FAQs) on 6 May 2011 in context of applicability of the Employees' Provident Fund Scheme, 1952 (EPFS) and Employees' Pension Scheme, 1995 (EPS), which are primary social security scheme in India, to International Workers (IWs). The FAQs have been posted on EPFO's website and can be downloaded by accessing the following link:

http://www.epfindia.com/faq_IntWorker.pdf

Key clarifications

The FAQs provide the following key clarifications:

- ▶ In case an employee is on a split payroll, the contribution is to be made on the total salary earned by the employee.
- ▶ In case employee working in India has multi country responsibilities, the contribution is to be made on total salary payable on account of the employment of the employee with a covered employer in India even for responsibility outside India.
- ▶ There is no minimum period of days of stay in India which the employee can work without triggering provident fund compliance and the employee has to be enrolled from the first date of his employment in India.
- ▶ There is no cap on salary on which employer's and employee's contributions are payable.
- ▶ There is no cap on salary while calculating employer's share of contribution to be diverted to EPS. Before 11 September 2010, there was a cap of Rs. 6,500 on salary on which employer's contribution to EPS was calculated.
- ▶ Even where India has signed SSA with other country, employees from such country working in India will be required to enrol as members of EPFS and EPS till such time the 'date of effect' of the said SSA is notified by the Indian Government and a certificate of coverage is obtained from the appropriate authority in the home country.
- ▶ An Indian passport holder who is working for a covered employer in India and is sent on a posting to a country with which India has a ratified SSA will qualify as IW and is required to contribute towards EPFS and EPS on full salary. However, such an employee will be eligible to claim exemption from the social security legislation of the host country on the basis of certificate of coverage obtained in accordance with the relevant SSA. If an Indian employee is directly employed by a local employer abroad, such an employee will be covered by the host country social security legislation.
- ▶ An Indian passport holder, who is working for a covered employer in India and prior to his posting abroad, was a member of EPFS and EPS, such employee will be required to continue to be a member of EPFS and EPS as local employee during his posting to a country with which India does not have a SSA. This is intended to cover situations where employees continue to be employed by Indian employer during the period of posting abroad.
- ▶ Foreign nationals who are directly employed by a covered employer in India will be required to contribute towards EPFS and EPS in India and will not be eligible for the benefit of detachment under the SSA.
- ▶ EPFO has again clarified that the purpose of the visit of an individual is the main determinant for social security compliance. The type of visa may help in determining the purpose of visit. For example, a foreign national coming into India under an employment visa is deemed to be working in India.
- ▶ In case where the home country of IW allows exemption from social security to Indian nationals going to work in that country under its domestic tax law even though there is no SSA with India, the benefit of reciprocity will not be available to such IW unless India has a formal agreement with their home country.
- ▶ Only IWs covered under a SSA will be eligible for withdrawal benefit under the EPS even if they have not rendered 10 years of eligible service after including totalization benefit as may be provided in the said SSA. Where IWs are not covered under a SSA, withdrawal benefit under EPS will not be available to the IWs for contributory services of less than 10 years.
- ▶ An Indian employee attains the status of IW only on account of employment in a country with which India has signed a SSA. EPFO has reiterated that such employee will remain in that status till the time he / she avails the benefits under a social security programme covered under that SSA.

Next steps

It is essential that all employers with cross border workers involving India should ensure that they comply with the relevant regulations of EPFS and EPS as applicable for International Workers.

Also, the clarification relating to Indian employees going to work in countries with which India does not have a SSA will need further analysis.

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