HR Law Hotline

September 23, 2008

EXPATRIATE EMPLOYEES TO BE SOCIALLY SECURED IN INDIA?

The Government of India has proposed to issue a notification whereby expatriate employees in India will be required to park 24% of their salaries into the social security schemes (including a pension scheme) managed by the Indian Employees Provident Fund Organization (**"EPFO"**).

BACKGROUND AND PROPOSED AMENDMENTS:

Currently under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**"EPF Act"**) there is no specific requirement for expatriate employees in India to contribute to the EPFO towards provident fund / pension. Such employees typically continue to remit their retirement savings into their home country's pension systems. This helps ensure that there is no 'break in service' in their home country's pension system.

As per rule 69 of the Employees' Pension Scheme Rules, 1995, an employee can withdraw the amount accumulated in his provident fund account immediately before migration from India for permanent settlement abroad or for taking employment abroad. This allows expatriates in India to withdraw the balance amount in their provident fund account prior to leaving India. However, Indian employees working in other countries may not be eligible to a similar benefit. For example, it is believed that in the US, an employee has to serve at least 10 years in the United States to be eligible to withdraw his social security benefit. If the foreign employee in the US leaves the US before completing 10 years of service in the US, he may be forced to forfeit the amount standing to the balance in his pension account in the US.

In order to avoid this disadvantage to international employees as well as the loss of contributions to the EPFO, India has been attempting to enter into social security agreements (also known as totalization agreements) with other countries including The Netherlands, Germany, France, Czech Republic and the United States. Such Agreements inter alia exempt international employees from the mandatory requirements of making pension contributions in the country of employment, provided they continue to make similar contributions in their domicile country. Recently, India and Belgium have signed such a bilateral social security agreement which is proposed to be effective from January 1, 2009.

Government sources have indicated that the EPF Act is proposed to be amended to include a clause on contribution towards provident fund by expatriate employees. Additionally, expatriates would be subject to a similar treatment on withdrawals from the provident fund account as would have been given to Indian employees working in those countries abroad. The notification when issued would throw more light on the exact amendments that are likely to be introduced in the EPF Act.

IMPLICATIONS:

It is estimated that over 5 million foreign workers presently in India enjoy exemption from pension contributions. On the other hand, approximately 20 million Indians employed abroad may be required to make pension contributions as per the local laws of the countries where they may be employed. As a result of this, Indian employees working abroad contribute marginally into the EPFO schemes once they leave India, mainly because of the burden of making such payments in the local jurisdiction as well.

This proposal by the government is likely to increase the fund flow into the EPFO as not only Indian employees but also expatriates in India will make pension contributions to the EPFO.

Vikram Shroff, head of the firm's international Human Resources Law practice group, states that, "As India globalises, we witness more movement of personnel across borders. Employers want the ability to transfer their employees across nations without creating any disadvantage to them on account of inter alia employment benefits. Such developments are likely to pressurize and bring about some urgency to several countries to enter into totalisation agreements with India and going forward, it would be interesting to see whether other countries like US, UK, Australia, etc. enter into such agreements with India."

The past several months have seen a few other proposals by the EPFO including a proposal to extend the coverage of the EPF Act to establishments with 10 or more employees and appointment of some leading fund managers to manage the funds accumulated by the EPFO. The government may also plan to introduce a new pension fund scheme which would be voluntary for non-government employees.

Source: The Financial Express

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- **HR Law Team**

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September 22, 2024