HR Law Hotline

December 29, 2015

BONUS PAYOUTS TO INDIAN EMPLOYEES SET TO BE DOUBLED

- Both Houses of Parliament pass the bill that amends the law on employee bonus
- Eligibility wage ceiling for payment of statutory bonus to be increased to INR 21,000 (approx. US$ 325) per month
- Monthly wage ceiling for computing bonus to be increased to INR 7,000 (approx. US$ 110)
- Amendments to have a retrospective effect

INTRODUCTION

The Indian Government has decided to play Santa to the country's large (organized) workforce. Both houses of the Indian Parliament have, in quick time, passed[1] the Payment of Bonus (Amendment) Bill, 2015[2] ("**Bonus Bill**"). The Bonus Bill, once enacted, shall raise the employee eligibility threshold for payment of statutory bonus to INR 21,000 (approx. US$ 325) per month from the current limit of INR 10,000 (approx. US$ 150). The wage ceiling for computing bonus is also proposed to be increased from INR 3,500 (approx. US$ 55) per month to INR 7,000 (approx. US$ 110).

While the amounts may seem relatively low in view of the rising salary levels especially in some of the progressive sectors of the country, what is of concern is that the amendments are proposed to have a retrospective effect.

For the Bonus Bill to become law, it will need to receive assent of the President of India.

BACKGROUND

The Payment of Bonus Act, 1965 ("**Employee Bonus Act**") provides for payment of statutory bonus to eligible employees. The bonus payable is to be determined on the basis of profits or on the basis of production or productivity of the establishment. The Employee Bonus Act is applicable to factories and establishments employing at least 20 persons[3]. The Employee Bonus Act requires the employer to pay to an eligible employee a minimum bonus at the rate of 8.33% of the salary earned by the employee during the accounting year or INR 100 (approx. US$ 1.5), whichever is higher. As per law, the maximum statutory bonus can be limited to 20% of the employee's salary.

KEY AMENDMENTS PROPOSED

1. Employees eligible for bonus: Under the provisions of the Employee Bonus Act, every employee who has worked for at least 30 days (in an accounting year) and draws a salary of INR 10,000 per month is eligible to receiving statutory bonus. The Bonus Bill increases this eligibility limit to a salary threshold of INR 21,000 per month.

2. Calculation of bonus: As per the Employee Bonus Act, if an eligible 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 limited to INR 3,500 per month. The Bonus Bill raises this wage ceiling to INR 7,000 per month or the minimum wage notified for the employment under the Minimum Wages Act, 1948, whichever is higher.

3. Retrospective amendment: The amendments, once enacted, shall be made applicable from April 1, 2014.

ANALYSIS

India's strong trade unions had issued a 'charter of demands' in light of some proposals by the Government to introduce changes the labour laws. While the proposals were viewed by the Government as reform-oriented, the trade unions objected to it as they felt they were anti-labour. One of the demands of the trade unions was to "remove all ceilings on payment and eligibility of bonus and provident fund". Almost a decade has passed since the wage ceiling under the law for employees' eligibility was increased to INR 10,000 per month[4].

It is expected that the proposal is likely to trigger bonus payouts to a large number of workers who would fall within the salary bracket of INR 10,000 - 21,000 per month. At the same time, the amendments shall cast a huge financial burden for the employers, especially those in traditional sectors. While the Government has estimated the approximate expenditure that is likely to be incurred as a result of these amendments with respect to employees of the Central Government and Railways and Posts, the financial impact on the private sector remains unknown.

Moreover, the retrospective nature of the amendments should have been avoided and employers should have been given adequate time to plan for such increase in their salary costs. Employers would not have budgeted for this expense in the previous financial year (2014 - 2015) for which the books of accounts would have been closed by now and taxes would have been paid.

Meanwhile, with the Indian Government's continuing focus on labour law reforms, a few important and eagerly awaited changes to

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the Indian labour laws are in the pipeline including the Labour Code on Wages Bill, 2015 which seeks to consolidate, simplify and rationalise various labour laws in India pertaining to wages, namely, Payment of Bonus Act, 1965, Minimum Wages Act, 1948, Payment of Wages Act, 1936 and Equal Remuneration Act, 1976.

– Ajay Solanki, Vikram Shroff & Veena Gopalakrishnan
You can direct your queries or comments to the authors

[1] The Upper House of the Indian Parliament (Rajya Sabha) passed the Bonus Bill on December 23, 2015 and the Lower house (Lok Sabha) on December 22, 2015.

[2] http://www.prsindia.org/uploads/media/Payment%20of%20Bonus/Payment%20of%20Bonus%20as%20passed%20by%20LS.pdf - Text of the Bonus Bill passed by the Lower House of the Parliament.

[3] In some Indian states, the Government has extended the applicability of the law by reducing the threshold to factories and establishments employing at least 10 persons.

[4] In the year 2007, through the Payment of Bonus (Amendment) Act, 2007, the salary threshold for eligibility for payment of bonus was increased from INR 3,500 to INR 10,000. Further, through the same amendment, the wage ceiling for computation of bonus was enhanced from INR 2,500 to INR 3,500.

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