



Nepalese and Bhutanese national will be treated as Indian workers under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952

Background

In October 2008, Government of India (GOI) made fundamental changes in the Employees' Provident Funds Scheme, 1952 (EPFS) and Employees' Pension Scheme, 1995 (EPS) by bringing International Workers (IWs) under the purview of the Indian social security regime.

The definition of IWs under EPFS includes two categories:

- a) an Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;
- b) an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act) applies.

The Ministry of Labour and Employment, Government of India issued a notification¹ providing that a Nepalese national and a Bhutanese national shall be deemed to be an Indian worker. This notification shall be effective from 2 November 2016.

¹ Notification No. G.S.R. 1035 (E) and Notification No. G.S.R. 1036 (E), dated 2 November, 2016, published in the Gazette of India

Key amendments

A new proviso has been inserted in the definition of IWs under the EPFS and EPS and it states that:

"Provided that the worker who is a Nepalese national on account of Treaty of Peace and Friendship of 1950 and the worker who is a Bhutanese national on account of India-Bhutan Friendship Treaty of 2007, shall be deemed to be an Indian worker."

Our comments

This is an important notification which may have significant benefit for companies employing Nepalese and Bhutanese nationals. The clause added by the Government of India is a welcome step for the Indian industry as it would reduce the PF liability for such employees and reduce the cost of compliances under the EPF Act. However, a clarification on the following aspects of the PF department would be helpful for the industry:

- Whether Nepalese/Bhutanese nationals who have been working in India prior to 2 November 2016 will be treated as Indian workers in relation to contributions towards the EPFS and EPS and whether they will be eligible for withdrawal benefits as applicable to Indian workers.

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