Employees’ Provident Fund Organisation issues consolidated guidelines to secure proper compliance for overseas assignments

Background

India has signed several Social Security Agreements (SSAs) with other countries with a view to obtaining an exemption from a contribution towards social security in the host countries for outbound employees, provided that they contribute to social security in India. To obtain this exemption, an outbound employee requires a Certificate of Coverage (COC) from the designated agency, the Employees’ Provident Fund Organisation (EPFO), which serves as a proof of social security contribution in India.

Recently, the EPFO has issued a circular¹ for securing proper compliances in respect of employees going for overseas assignments. In the circular, the PF department has stated that since the different regional Provident Fund (PF) offices were adopting different practices with regard to compliance for Indian employees going to work in foreign countries, there was a need to lay down consolidated guidelines for proper compliances.

Key clarifications provided in the circular

1) Fundamental principle of deducting and paying PF and other dues in India for employers sending employees on an overseas assignment

- PF contributions and other dues should be deducted and deposited by the Indian employer only when the salary/wages are paid or payable by the Indian employer.

2) Proper compliance requirement in case of employees moving to an overseas country

- Compliance requirement in case of employees going to a country with which India has an effective SSA:

The EPFO has clarified that in order to obtain the COC, PF compliances should continue during the period of assignment, and it should remain same as it was being reported immediately before the start of the overseas assignment.

However, if the employee does not obtain the COC, PF compliances would be made on such salary which is being paid or payable by the Indian employer.

- Compliance requirements in case of employees going to a country with which India does not have an effective SSA:

The PF compliance should be made on such salary which is being paid or is payable by the employer in India.

**Our comments**

This is an important circular which may have significant implication for companies with sizable outbound employee population (such as software firms, BPOs, KPOs and other IT/ITES companies, etc.).

The clarification provided by the PF authorities, that PF liability will not arise in the case of overseas assignments where the salary is neither paid nor payable by the Indian employer, is a welcome development for the Indian industry. This circular is expected to reduce overseas assignment costs and should also help employers facing litigation from PF authorities with respect to overseas assignments.

Employers who have obtained COCs in the past should review their compliances under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), to check whether the compliances are in line with the clarification made in this circular. This circular should also be kept in view by the employers for future overseas assignment planning.

Employers are complying with the EPF Act on a notional salary or shadow payroll, may need to revisit their policies from the PF, tax and other regulatory perspectives.
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