

PROVIDENT FUND REGULATIONS FOR EXPATRIATES IN INDIA

An Overview

Discussion Organised by JETRO in Association with CCI

Bangalore, July 13, 2009



Sunil Arora II *Partner II*

ASA & Associates chartered accountants www.asa.in

PRESENTATION OUTLINE

- Introduction
- Salient Features of the PF Scheme
- Tax Issues
- Compliance Matters
- About CCI

INTRODUCTION

- **Background** - The Provident Fund ('PF') Act was earlier applicable to Indian Nationals only. All establishments with 20 or more employees are covered under the PF Act. Both employer and employee contribute **12% of basic salary** to the Provident Fund. **Foreign nationals were excluded.**
- **Ceiling on Amount of Contribution** – Indian employees with salary in excess of Rs 6,500 per month were required to only contribute 12% on a maximum salary of Rs 6,500 per month. Maximum compulsory contribution by each person was Rs 780 per month (12% of Rs 6,500).
- **New PF Scheme Introduced** - On October 1, 2008, the Ministry of Labour & Employment, Government of India extended the above provisions to foreign nationals.

SALIENT FEATURES OF PF SCHEME

- **Applicability to Foreign Nationals** – All foreign nationals deputed to India automatically became part of the PF scheme **provided** the Indian establishment was covered under PF scheme i.e. employed more than 20 staff. No minimum period of working in India required. Effective from Nov 1, 2008
- **Mandatory Contribution** - to PF scheme by such foreign national **unless** the Government of India has agreed a Social Security Agreement (SSA) with the home country of such foreign national. Such SSA must be effective. However, **no SSA till date is made effective.**
- **No Ceiling on Contribution** - Rate of contribution remains same i.e. at 12% of Basic Salary. Total contribution at 24%. However, such contribution to be computed on basic salary **without any ceiling on amount of basic salary** (as compared to ceiling of Rs 6,500 for Indian employees).

SALIENT FEATURES OF PF SCHEME

- **Entire Salary Considered** – Foreign nationals generally receive part of salary in India and part in home country. Under new scheme, it is mandatory to consider **total salary (Indian + Foreign)** for computing amount of contribution.

The above provisions needs clarity as this results into substantially different PF treatment for Indian and Foreign Employees. A clarification is awaited from PF authorities.

- **Contribution to 'EPF' Scheme Refundable** – Some part of the contribution which goes to the EPF Account, **is refundable under specific circumstances**. Whether the foreign national can get this refund, is not tested yet.

TAX ISSUES

- **Tax Exemption (marginal)** – Contribution to EPF Account by the foreign national is **tax deductible** from salary income upto Rs 100,000 per annum. This can result into marginal tax saving (maximum Rs 33,900 per annum).
- **Grossing Up of Salary** – Where the employer has agreed to pay a ‘net salary’ to the foreign national, the employer must contribute even the employee’s share of contribution. This will result in grossing up of salary and resultantly additional tax burden to employer.
- **Tax Allowance to Employer** - Employer can claim his share of contribution as **tax deductible expense** from its income, if PF is deposited in time.

COMPLIANCE ISSUES

➤ Responsibility of Employer

- Effective November 1, 2008, to deduct 12% of Basic Salary from employee's salary and deposit with Government Account.
- Also to deposit an equal amount from own funds.
- File details of foreign nationals alongwith periodic returns of PF deducted & deposited with Commissioner of PF

➤ What Other Japanese Companies Are Doing?

- Pending clarification from PF authorities, most of the Japanese companies have taken an **aggressive position** and contributed PF only on Indian portion of basic salary.

Our Services



Services

- Start-up & Project Management
- Transaction Advisory
- Market Intelligence
- Taxation
- Assurance & Compliance

Key People – India Office

Ashok Desai
Chairman

Economist and business writer, former Chief Consultant to the Ministry of Finance, Government of India; 1991-1993



Arjun Asrani
Vice Chairman

Expert on International Affairs, former Indian Ambassador to Japan, Thailand and Libya and Consul General in New York, conferred the *Grand Cordon of the Order of the Rising Sun* by His Majesty the Emperor of Japan



Rajiv Arya FCA
Director
(Assurance & Compliance Services)



Tatsundo Maki CPA
Director (India)



Ajay Sethi FCA
Managing Partner & Director
(Business Advisory Services)



Sateesh Kulkarni MBA
Director
(Market Intelligence)



Pankaj Bajjal FCA
Director
(Transaction Advisory Services)



Sunil Arora FCA
Director
(Taxation)



Parveen Kumar FCA
Director
(Assurance & Compliance Services)



P R Jayakumar FCA
Director
(Assurance & Compliance Services)



Anil Mehta FCA
Director
(Assurance & Compliance Services)

Global Reach



National and International Offices

THANK YOU

24% CONTRIBUTION TO PF – BREAK UP

Nature of Contribution	Account	Basis
Employee's Contribution	Provident Fund	12% of salary
Employer's Contribution	Pension Fund	8.33% of 6,500
	Provident Fund	Balance
	Total Contribution	24% of Salary
Employer's Contribution	Misc Accounts (administration charges etc.)	Negligible