International Workers

PF Applicability

April 2019

Contents

- Meaning of International Worker
- International Worker & Domestic Worker – Compliance differences
- Social Security Agreements
- Certificate of Coverage
- Provident Fund Withdrawal Process
- Impact of recent Supreme Court ruling on IWs

International Workers (IWs)
Background

Social Security Framework in India

- The Employees' Provident Fund (EPF), Employees' Pension (EPS) and Employees' Deposit Linked Insurance (EDLI) comprises the India social security.
- Social security schemes are governed by the Employees' Provident Funds And Miscellaneous Provisions Act which has been in force since 1952.
- Every establishment in India, employing 20 or more employees, is required to register with Employee's Provident Fund Organization (EPFO) unless they are an exempt establishment. Establishments registered with EPFO are referred as Covered Establishment.
- Because of the wage ceiling, foreign nationals were not required to contribute towards Provident Fund (PF) until October 2008.
- In October 2008, EPFO introduced the concept of International Workers ('IWs') to include the foreign nationals in the ambit of PF regulations.
- Effective November 01, 2008 - IWs are required to make Provident Fund contributions.
- The provisions relating to IW's are provided in Para 83 of the Employees' Provident Fund Scheme and Para 43A of the Pension Scheme.

International Workers (IWs)
Definition

International Worker means –

Indian Citizen	Foreign Citizen
Indian employee who is eligible to avail the benefit of a foreign social security by virtue of the eligibility gained under the social security agreement which India has entered with such country	Foreign national (i.e. foreign passport holder) who is working in a covered establishment

Exclusion from the definition of IWs

- Foreign nationals coming from a country with which India have a social security agreement and holding a Certificate of Coverage (CoC) issued under the provision such agreement.
- Foreign nationals coming from Singapore who meet the criteria under the Comprehensive Economic Cooperation Agreement
- Nepalese and Bhutanese Passport holders. They are deemed to Indian Workers under the Peace and Friendship Treaty of 1950 with Nepal and India-Bhutan Friendship Treaty of 2007 (Notification dated November 2, 2016)

International Workers (IWs)
Definition

Examples:

a) **Rohan, an Indian citizen, has relocated to Germany where he is working with a multinational company. He pays taxes in Germany and also participates in German social security scheme. Will he be considered as IW?**

As India has a social security agreement with Germany under which he is eligible to receive benefit of German social security, Rohan will be considered as an IW.

b) **What happens if Rohan comes back to India and get employed with a covered establishment?**

EPFO circular dated June 23, 2017 clarifies that an Indian employee who returns to work in India after having worked in a foreign country with which India has entered into a social security agreement will not be considered as IW.

c) **Melissa is a Overseas Citizen of India (OCI) cardholder and a US citizen. She is employed with a covered establishment; is she an IW?**

Yes, since she is a foreign passport holder and working with a covered establishment.

d) **Jenny, a Belgium national, is deputed to India for a two year assignment. She has obtained a CoC from Belgium social security authorities. Will she be considered as IW?**

As India has a social security agreement with Belgium and she has obtained a CoC under the provision of such agreement, she will be an excluded employee and not an IW.

International Worker & Domestic Worker – Compliance differences

International Workers (IWs) & Domestic Workers (DWs)

Key difference

Particulars	International Workers	Domestic Workers
Registration	• Registration with the EPFO is mandatory for IW's • Form No. 11 is to be completed at the time of on-boarding • Form No. IW-1 is to be filed through the on-line portal	• First time employees have an option of not becoming a member of EPFO provided the monthly salary exceeds INR 15,000 • Form No. 11 is to be completed at the time of on-boarding
Contributions	• Employer and Employee contributions @ 12% of Total PF wages • Wage ceiling of INR 15,000 for the purpose of determining pay is not applicable	• Employer and Employee contributions @ 12% of Pay as defined under PF Act • Wage ceiling of INR 15,000 for the purpose of determining pay is applicable
Provident Fund Withdrawal	• *IWs covered under SSA:* – Withdrawal of PF accumulation is permitted upon ceasing of employment with covered establishment • *IWs not covered under SSA:* – Withdrawal of PF accumulation is permitted only upon attainment of 58 year of age, or – Upon retirement on account of permanent and total incapacity for work	• Withdrawal of PF accumulation is permitted upon retirement at the age of 55 years or upon termination of employment

International Workers (IWs) & Domestic Workers (DWs)
Key difference

Particulars	International Workers	Domestic Workers
Pension Benefit	• *IWs covered under SSA:* – Period of contributions in home country would be considered in arriving at total eligible period (totalization) – Monthly pension available upon retirement where the 10 year contributory period criteria is met **after totalization** – Entitled to lump sum withdrawal if total contributory period (after totalisation) is less than 10 years (as per table D) • *IWs not covered under SSA:* – Home country contributory period would not be considered in arriving at the eligibility period (no totalization feasible) – Monthly pension available upon retirement where the 10 year contributory period criteria is met – No benefits would be available where the 10 year contributory period criteria is not met. Entire contributions will be descended.	• Monthly pension available upon retirement where the 10 year contributory period criteria is met • Entitled to lump sum withdrawal if total contributory period is less than 10 years (as per table D)

Social Security Agreement (SSA)

Social Security Agreements (SSAs)

An Overview

- A Social Security Agreement is a bilateral agreement to protect the social security interests of workers posted in another country. It generally provides for avoidance of double social security coverage (or no social security coverage) and equality of treatment with the host country workers

- An SSA could be:
  - Comprehensive – covering all relevant terms
  - Limited agreement – covering only detachment terms

Detachment

- No SS contribution in host country provided CoC is obtained in home country

Totalization of benefits

- Contributory period in the other jurisdiction considered in determining the eligibility

Export of benefits

- Payment of benefits in home/ third country without any reduction

The SSAs need to be carefully applied to avail of the benefits

Social Security Agreements (SSAs)

Detachment

Territorial Rule

Person is subject to the social security legislation of the contracting state where employment is physically exercised

e.g. Indian employee is posted to Belgium and working in Belgium - covered under the Belgium social security system.

Detachment

Exception to the territorial rule - no contribution to host country covered schemes if home country contribution continues.

e.g Indian employee posted to a country with which India has an SSA, can avail the benefit of detachment and is exempt from contributing to the host country social security system.

Specifics to be checked

- What is the Detachment period – forseeable period Vs period of posting
- Whether subsequent deputation from a third country is eligible for detachment?
- Who are covered persons under the specific SSA?
- Covered benefits

Social Security Agreements (SSAs)

Totalisation & Export of benefits

- Detachment not available – contribute to host country.
- Totalisation - Add up period of contribution in both countries to determining 'eligibility' to receive the social security benefits.
- Calculation of benefit restricted to contributory period of service under the respective social security program, on pro –rata basis.
- The export of benefit clause under the SSA provides for payment of benefits due by one country in the other country if the individual / beneficiary resides in the other country. This clause also provides for payment of such benefits in the third country if the individual resides in the third country.

Important Points:

- Contributory service period in other country is considered only for limited purpose of determining the eligibility to receive social security benefit. The actual payment of benefit will be based on actual period of service rendered in the host country.
- For example, if a person worked for 8 years Belgium and 4 years in India. He will be eligible for pension payout in India since overall he contributed for more than 10 year. However, the payout will be based on 4 years' contribution.
- It is important to check the specific SSA to know if totalization benefit is covered or not. For e.g. SSAs with Netherlands/ Switzerland do not provide for totalisation benefit)

Social Security Agreements (SSAs)

Comparative overview of benefits

Country	Exportability	Totalization	Transitional provisions
Belgium	Available	Available	Available
Denmark	Available	Available	Available
France	Available	Available	Available
Germany (Limited)	Not Available	Not Available	Not Available
Korea	Available	Available	Available
Luxembourg	Available	Available	Available
Netherlands	Available	Not Available	Not Available
Switzerland	Available	Not Available	Not Available
Hungary	Available	Available	Available
Czech Republic	Available	Available	Available
Norway	Available	Available	Available
Canada	Available	Available	Available
Japan	Available	Available	Available
Sweden	Available	Available	Available
Finland	Available	Available	Available
Austria	Available	Available	Available
Australia	Available	Available	Available
Germany (Comp)	Available	Available	Available
Portugal	Available	Available	Available

Certificate of Coverage (CoC)

Social Security Agreements (SSAs)

Certificate of Coverage (CoC)

Step – I: Initiated by the Employee

- Visit IW portal - *https://iwu.epfindia.gov.in/iwu/*
- Select option- For international workers: 1. Application for COC
- Enter the UAN, select appropriate Member ID against entered UAN
- Complete and submit the form with appropriate details and attach the scanned copy of passport while submitting.

Step – II: Subsequent by the Employee

- Download the prefilled form and upload the signed scanned copy of the application form
- In case, prefilled application for COC has not been downloaded during submission, the same can be downloaded by using "Download Pre-filled Application Form for COC".

Step – III: Completed by the Employer

- Visit IW portal - *https://iwu.epfindia.gov.in/iwu/*
- Access the signed application uploaded by employees
- Verify the details, then select 'approve' or 'reject'
- Once approved, download the application, sign and stamp and upload the same.

Step – IV: Completed by the Employee

- Status of the CoC application can be tracked on the IW portal
- Once application is processed by EPFO, it will be available for download.
- CoC can be downloaded using the tab 'download CoC' and providing the reference number and dat of birth

Social Security Agreements (SSAs)

Certificate of Coverage (CoC)

Relevant Circular: May 18, 2017

- CoC application should be submitted one month prior to the start of employee's overseas assignment – to the extent possible
- EPFO shall endeavor to issue the Certificate of Coverage prior to the departure of the employee from India

Practical Challenges:

- CoC application may not be processed if there is a mismatch in signature and other details as per passport. In such case, the application has be to filed again from scratch
- Rejections are seen where Aadhaar seeding has not happened.
- Application for multiple CoC's –
  - When having two passport numbers (due to renewal) during the assignment period
  - When having multiple employers during the assignment period (say on account of client group reorganization)
  - Cancellation required for unutilized period before further COC application can be made

Outbound compliance
Guidelines based on January 20, 2016 circular issued by EPFO

The guideline broadly provided that if wages or salary are paid or payable out of the books of the Indian establishment, PF contribution would be required.

Deputation to SSA country COC has been obtained	Deputation to SSA country COC not obtained	Deputation to non-SSA country
• PF contribution to continue • Reporting compliance should be same as was being reported immediately prior to deputation • Since COC is availed, contribution to social security in host country is not required in respect of covered contributions.	• PF contribution would be required only if any Indian salary is payable or paid. • Employee to be governed as per law of host country	• PF contribution would be required only if any Indian salary is payable or paid. • Employee to be governed as per law of host country

PF Withdrawal Process

PF Withdrawal

Process

Process to be followed

- Withdrawal application to be prepared (composite claim form for PF withdrawal and pension benefits and Form 10D where employee is eligible for monthly pension benefits). This needs to be signed by employee and employer.
- In case of Non Aadhar based UAN Number, the claim form needs to be attested by the employer.
- Details of overseas bank account to be indicated in the composite claim form
- Employer and employee to sign the form
- PF balances will be transferred directly to the employees bank account. Employee to provide an advance confirmation of funds to be received (additional signature required in the application as specified).
- Send the filled form to jurisdictional PF office along with required documents

Documentation required

- Copy of blank or cancelled cheque/ attested copy of the first page of the bank statement to be provided as supporting for the bank account details
- Copy of visa, passport, journey ticket to be provided as proof of migration from India.
- Form 3A for all the years of PF contribution.
- Acknowledgement for IW-1 filed with PF authorities.
- In case of credit to overseas bank account, Form A2 to be submitted for overseas remittance. In practice requests for Form 15CA/CB are made. Further, Jurisdictional PF office has to forward the documents to the Regional Office in Delhi for processing payment in overseas bank account.

PF Withdrawal

Process

Relevant Circular: March 23, 2017

This circular provides the process to be followed to facilitate lump-sum withdrawal of benefit for IWs on the date of leaving service. The steps involved are –

- Employer to make payment of the contribution of retiring IW within first 3 days of the month in which he / she is getting retired – the contribution payment has to be done through a separate ECR
- The claim form should be submitted by the employer with the concerned EPFO by 6th of the month during which IW is retiring
- EPFO will process the claim and ensure the credit of lump-sum amount to IW's Indian bank account on the date of leaving service

Impact of recent Supreme Court ruling on IWs

Sample working

Financial impact- International worker

Example of an employee with a monthly pay of Rs. 200,000 i.e. Annual CTC of INR 24 Lakhs p.a.

Emoluments	Existing Scenario	Revised Scenario A (Pay less HRA)	Revised Scenario B (Pay less HRA and reimbursement)
Basic Salary – 40% of CTC	80,000	80,000	80,000
HRA @ 40% of Basic	32,000	32,000	32,000
Other allowances	59,150	50,750	52,812
Reimbursement	19.250	19,250	19,250
ER contribution to PF	9,600	18,000	15,938
Total monthly CTC	200,000	2,00,000	2,00,000
Take home salary	1,80,800	1,64,000	1,68,124
Impact on employer for retro payment (125 months)	NA	21,00,000	15,84,375
Interest on above	NA	13,01,977	982,295
Total payout per employee	NA	34,01,977	25,66,670
Impact for 15 employees	NA	5,10,29,654	3,85,00,052

Sample working

Domestic worker vs International worker

Example of two employees with basic salary and other allowances of Rs 1,00,000 each

Emoluments	Domestic Employee	International Worker
Basic Salary	1,00,000	1,00,000
Other allowances	1,00,000	1,13,636
ER contribution to PF	12,000	25,636
Take home salary	**1,88,000**	**1,88,000**
Total monthly PF contribution	**24,000**	**51,273**
Total monthly CTC	2,12,000	2,39,272

Questions

Q&A