Foreword

Foreign assignments are often challenging because they involve not only entering into a new tax system but also negotiating the social security structure in the country in question. Every country has its own set of social security regulations for employees working within its territory. India introduced compulsory social security regulations for cross border workers for the first time in October 2008. These regulations are still evolving and the authorities have issued several clarifications since their introduction. This guide is designed to help employers and cross border workers understand:

- the social security system in India and its various compliance requirements;
- the benefits available under social security agreements; and
- other matters which need to be kept in view.

This booklet contains details of the social security law and practice in India currently applicable to cross border workers, compiled by a team of specialists within the PricewaterhouseCoopers, International Assignment Services (IAS) practice. We invite you to contact us for further details. Our specialists will be pleased to provide advice and assistance tailored to your specific requirements.

Addresses of PricewaterhouseCoopers offices in India are provided in Appendix D of this publication.

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Section 1
The Indian social security system for cross border workers
Introduction
The Indian social security system provides retirement and insurance benefits to employees working in factories or other establishments covered by the system, in India. The system is governed by the Employees’ Provident Fund and Miscellaneous Provisions Act 1952 (PF Act) and the schemes made there under, namely, the Employees’ Provident Fund Scheme (EPF) and the Employees’ Pension Scheme (EPS). The Employees’ Provident Fund Organisation (EPFO), a statutory body established by the government of India, administers the social security regulations in India.

Scope
Every establishment in India, employing 20 or more persons is required to register with the social security authorities unless they are an exempt establishment. An establishment employing less than 20 persons can voluntarily opt to register with the authorities for the welfare of its employees. Upon voluntarily registration, the provisions of the Indian social security regulations apply in exactly the same way as if such registration were mandatory.

In October 2008, the government of India made the social security scheme mandatory for cross border workers by introducing a new category of employee, ‘international worker’, within the ambit of the EPF and EPS. Prior to this amendment, such workers used to qualify for exclusion from the provisions of the Indian social security regulations and were not subject to the Indian social security system.

International worker
A foreign national qualifies as an ‘international worker’, if he/she is coming to work for an establishment in India to which the Indian social security regulations apply.

Similarly, an Indian national qualifies as an ‘international worker’, if he/she has worked or is going to work in a country with which India has entered into a social security agreement (SSA) and is eligible to avail him/herself of the benefits under the social security programme of the host country, according to the terms of the relevant SSA.

Exemption
An international worker is exempted from Indian social security regulations where he or she:

- is from a country with which India has a reciprocal SSA; and
- is contributing to his/her home country’s social security, either as a citizen or resident; and
- he or she enjoys the status of ‘detached worker’ for the period, and according to the terms, specified in the relevant SSA.

Contributions
An international worker is required to contribute 12% of his/her salary to the social security system. The term salary is broad and covers basic wages (all emoluments paid or payable in cash while on duty or on leave/holiday), dearness allowance, retaining allowance and cash value of any food concessions. However, house rent allowance, overtime allowance, bonus, commission or any other similar allowance or presents are excluded from the salary figure used to calculate contributions.

Employers are required to deduct the social security contribution from the employee’s monthly pay and, after making a matching contribution of 12%, to deposit the sum with the Indian social security authorities/fund by the 20th day of the following month. A five day grace period is included within this time limit.

Contributions are payable on the full salary where an international worker is on a split payroll. For converting foreign salary figures into the equivalent INR, the month end telegraphic transfer buying exchange rate, as published by the State Bank of India, is to be used.
Employers’ contributions to Indian social security are not taxable in the hands of international workers. In relation to their own contributions, international workers can claim a deduction of up to INR 100,000 per annum from their taxable income in India.

**Allocation of contributions**

From the employer’s 12% contribution, an amount equal to 8.33% of the salary is allocated to the international worker’s pension fund and the remaining amount is allocated to the provident fund.

The employee’s entire contribution of 12% is allocated to the provident fund.

The accumulated balance in the provident fund earns interest at a specified rate, which is announced by the government from time to time. The government announced a 9.5% rate of interest for the year 2010-11.

Interest that accrues on accumulated contributions (employers’ as well as employees’) is exempt from tax.

**Withdrawal benefits**

The EPF and the EPS provide detailed rules for withdrawal benefits.

**Provident fund**

An international worker can withdraw their accumulated balance in the provident fund in the following circumstances:

- Retirement from service in the establishment or after attaining 58 years of age, whichever is later.
- Retirement on account of permanent and total incapacity to work due to bodily or mental infirmity as certified by a prescribed medical officer/registered practitioner,
- When suffering from certain diseases detailed in the terms of the scheme,
- According to the provisions specified in the relevant SSA which covers the international worker.

In all other cases, the employer’s contribution and interest earned on that contribution (both on the employer and employee’s share) is taxable in the year of withdrawal. Furthermore, where an international worker availed of any deduction for his/her own contribution during the past years, such deduction shall be taxable in the year in which it is withdrawn.

**Pension fund**

Accumulated sums in the pension fund are used to pay a pension to employees upon retirement or in certain circumstances as specified in the EPS. International workers are not permitted to withdraw from the pension fund unless they have rendered eligible service for a period of ten years. However, where international workers are covered under an SSA, withdrawal is possible earlier.

The monthly pension received from the pension fund on retirement is taxable as employment income. However, commutation of pension payments are exempt from tax, subject to the following conditions:

- In cases of a receipt of gratuity, the commuted value of one third of the pension is exempt from tax.
- In other cases, the commuted value of one half of the pension is exempt from tax.
Section 2

Benefits of social security agreements
SSAs are bilateral agreements between India and other countries designed to protect the interests of cross border workers. They provide for avoidance of ‘no coverage’ or ‘double coverage’ and equality of treatment of the workers of both countries. A SSA generally provides for the following:

(a) **Detachment**: Applies to employees posted to the other country provided they comply with the social security requirements of their home country.

(b) **Exportability of pension**: Provision for payment of pension benefits directly without any reduction to the beneficiary choosing to reside in his/her home country or any other country.

(c) **Totalisation of benefits**: The period of service rendered in a foreign country is counted when determining eligibility for benefits. Benefits are linked to the length of service, on a pro rata basis.

As at the current date, only the agreements with Belgium, Germany, Switzerland, Luxembourg and France are operational. The other agreements have not yet come into force.

**Certificates of coverage (Detachment)**

A certificate of coverage (COC), otherwise known as a ‘detachment certificate’ must be obtained by an international worker to avoid double coverage. A COC will be issued by the worker’s home country’s social security authority in accordance with the provisions of the relevant SSA. The COC serves as a proof of detachment on the basis of which exemption from social security contributions or social security taxes in the host country are available for the period of detachment. For example, a German national can apply for a COC from the German social security authorities before being deputed to India to work with an establishment to which the Indian social security regulations apply. This will exempt him/her from contributing to Indian social security for the period stated in the COC.

**Period covered by COC**

The period covered by the COC depends on the period of the international worker’s assignment to the other country. The maximum duration for which the COC can be issued depends on the terms provided in the SSA with the international worker’s home country. For instance, in the case of the India Germany SSA, the maximum duration for which the COC can be issued is 48 months.
Section 3

Compliance requirements
**Employer's obligations**

Employers are under a legal obligation to deduct the contributions and remit them with the Indian social security authorities within the specified time frame, as explained in the previous section.

Employers are required to file a Form (IW-1) to report details of their international workers on a monthly basis. A 'Nil' return must be filed in cases where there is no movement of international workers. Employers are also required to file monthly return (12A) and annual return (Form 6A and 3A) within the prescribed time frame.

**Interest for non payment/short payment**

Where any employer fails to remit a contribution or makes short remittance of any contribution to the Indian social security authorities/fund, interest at the rate of 12% per annum is payable from the date on which the amount became due till the date of actual payment.

**Non compliance penalties**

**Levy of damages**

Where any employer makes a default in their payment of contributions to the fund, a default in their transfer of accumulations, or a default in their payment of applicable charges, the Central Provident Fund Commissioner may recover from the employer, by way of penalty, damages at the rates given in Appendix B.

**Other consequences**

In addition to the levy of damages detailed above, the employer and/or any other person may be penalised/prosecuted where that employer and/or person commits any of the offences summarised in Appendix B. An opportunity of being heard is provided before any penalty is imposed and/or prosecution is initiated by the authorities.
Section 4

Other matters
**Equalisation policies**

The social security regulations are designed to protect the welfare of employees. Under the Indian social security regulations it is illegal to enter into an agreement with employees to reduce their salaries in order to provide social security benefits and/or otherwise to recover/claim the social security benefits from employees. Employers need to be careful particularly where foreign nationals are covered under the equalisation policies and may require to define the process appropriately to avoid any legal violation in India.

**Tax and other considerations**

Obtaining a COC may help to optimise social security contributions, but it may also have tax ramifications in India. The presence of foreign nationals as employees of a foreign company may result in a permanent establishment risk for the foreign company. Assignments needs to be structured and documented appropriately to keep in view social security, income tax, and regulatory considerations, in order to be compliant with Indian law.
## Appendix A
### Social security agreements

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of countries</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Belgium</td>
<td>Operational from 1 September 2009</td>
</tr>
<tr>
<td>2</td>
<td>Germany</td>
<td>Operational from 1 October 2009</td>
</tr>
<tr>
<td>3</td>
<td>Switzerland</td>
<td>Operational from 29 January 2011</td>
</tr>
<tr>
<td>4</td>
<td>Luxembourg</td>
<td>Operational from 1 June 2011</td>
</tr>
<tr>
<td>5</td>
<td>France</td>
<td>Operational from 1 July 2011</td>
</tr>
<tr>
<td>7</td>
<td>Denmark</td>
<td>Signed on 17 February 2010. Not yet operational.</td>
</tr>
<tr>
<td>8</td>
<td>Hungary</td>
<td>Signed on 3 February 2010. Not yet operational.</td>
</tr>
<tr>
<td>9</td>
<td>The Czech Republic</td>
<td>Signed on 8 June 2010. Not yet operational.</td>
</tr>
<tr>
<td>10</td>
<td>Korea</td>
<td>Signed on 19 October 2010. Not yet operational.</td>
</tr>
<tr>
<td>11</td>
<td>Norway</td>
<td>Signed on 29 October 2010. Not yet operational.</td>
</tr>
</tbody>
</table>
Appendix B
Non compliance penalties

Rates of damages

<table>
<thead>
<tr>
<th>Period of default</th>
<th>Rate of damage * (% of arrears per annum)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than two months</td>
<td>5%</td>
</tr>
<tr>
<td>Two months and above but less than four months</td>
<td>10%</td>
</tr>
<tr>
<td>Four months and above but less than six months</td>
<td>15%</td>
</tr>
<tr>
<td>Six months and above</td>
<td>25%</td>
</tr>
</tbody>
</table>

* The damages shall be calculated to the nearest rupee and are levied simultaneously along with interest for non payment or short payment of contributions as explained above.

Penalties and prosecution

<table>
<thead>
<tr>
<th>Nature of offence</th>
<th>Person liable</th>
<th>Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Default in relation to the payment of contributions (or administration charges or inspection charges) towards the provident fund according to the provisions of the PF Act.</td>
<td>Employer</td>
<td>Where the default is in relation to payment of the employee’s contribution which has already been deducted by the employer from the employee’s wages. – Imprisonment for a minimum term of one year (which may be extended to three years) together with a fine of INR 10,000. For all other cases Imprisonment for a minimum term of six months (which may be extended to three years) together with a fine of INR 5,000.</td>
</tr>
<tr>
<td>Default in relation to the payment of contributions (or inspection charges) towards the Deposit linked Insurance scheme.</td>
<td>Employer</td>
<td>Imprisonment for a term not less than six months which may be extended to one year and a fine of up to INR 5,000.</td>
</tr>
<tr>
<td>Making a false statement or misrepresentation to avoid any payment towards the provident fund, pension fund or deposit linked insurance fund.</td>
<td>Any person</td>
<td>Imprisonment up to one year or fine of INR 5,000 or both.</td>
</tr>
<tr>
<td>Contravention/default in complying with any of the provisions.</td>
<td>Any person</td>
<td>Imprisonment for up to one year or fine of up to INR 4,000 or both.</td>
</tr>
<tr>
<td>Contravention/default in complying with any provision of the PF Act where no other penalty is provided elsewhere in relation to that non compliance.</td>
<td>Any person</td>
<td>Imprisonment for a term not less than one month which may be extended up to six months and a fine of up to INR 5,000.</td>
</tr>
</tbody>
</table>
Appendix C
Important contact details and useful web links

Head office

*Bhavishya Nidhi Bhawan,*
14, Bhikaiji Cama Place,
New Delhi – 110 066

*Central Provident Fund Commissioner*
Phone: 011 – 26172671
Email: cpfc@epfindia.gov.in

*Regional Provident Fund Commissioner*  
(International Workers Unit)
Phone: 011 – 26172668
Email: rc.iwcell@epfindia.gov.in

Useful links

Employees’ Provident Fund Organisation (EPFO)
www.epfindia.com

Ministry of Labour, Government of India
www.labour.nic.in

Ministry of Overseas Indian Affairs, Government of India
www.moia.gov.in

Frequently Asked Questions (FAQ)
http://www.epfindia.com/faq_IntWorker.pdf
Appendix D

Contacts

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Bandra (West)
Mumbai 400 050
Tel: +91 22 66891000
Fax: +91 22 66891888
Contact Person: Nikhil Bhatia
Email: nikhil.bhatia@in.pwc.com

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S.G. Highway, Thaltej
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Tel: +91 79 30917000
Fax: +91 79 29090007
Contact Person: Mayur Desai
Email: mayur.desai@in.pwc.com

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Fax: +91 33 2357 3394
Contact Person: Somnath Ballav
Email: somnath.ballav@in.pwc.com

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Tel: +91 40 66246600
Fax: +91 040 66246400
Contact Person: R. D. Hingwala
Email: r.d.hingwala@in.pwc.com

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Chennai 600 006
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Fax: +91 44 4228 5100
Contact Person: K Venkatachalam
Email: k.venkatachalam@in.pwc.com

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Don Bosco Road, Yerwada
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Tel: +91 20 4100 4444
Fax: +91 20 4100 4599
Contact Person: Sandip Mukherjee
Email: sandip.mukherjee@in.pwc.com
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