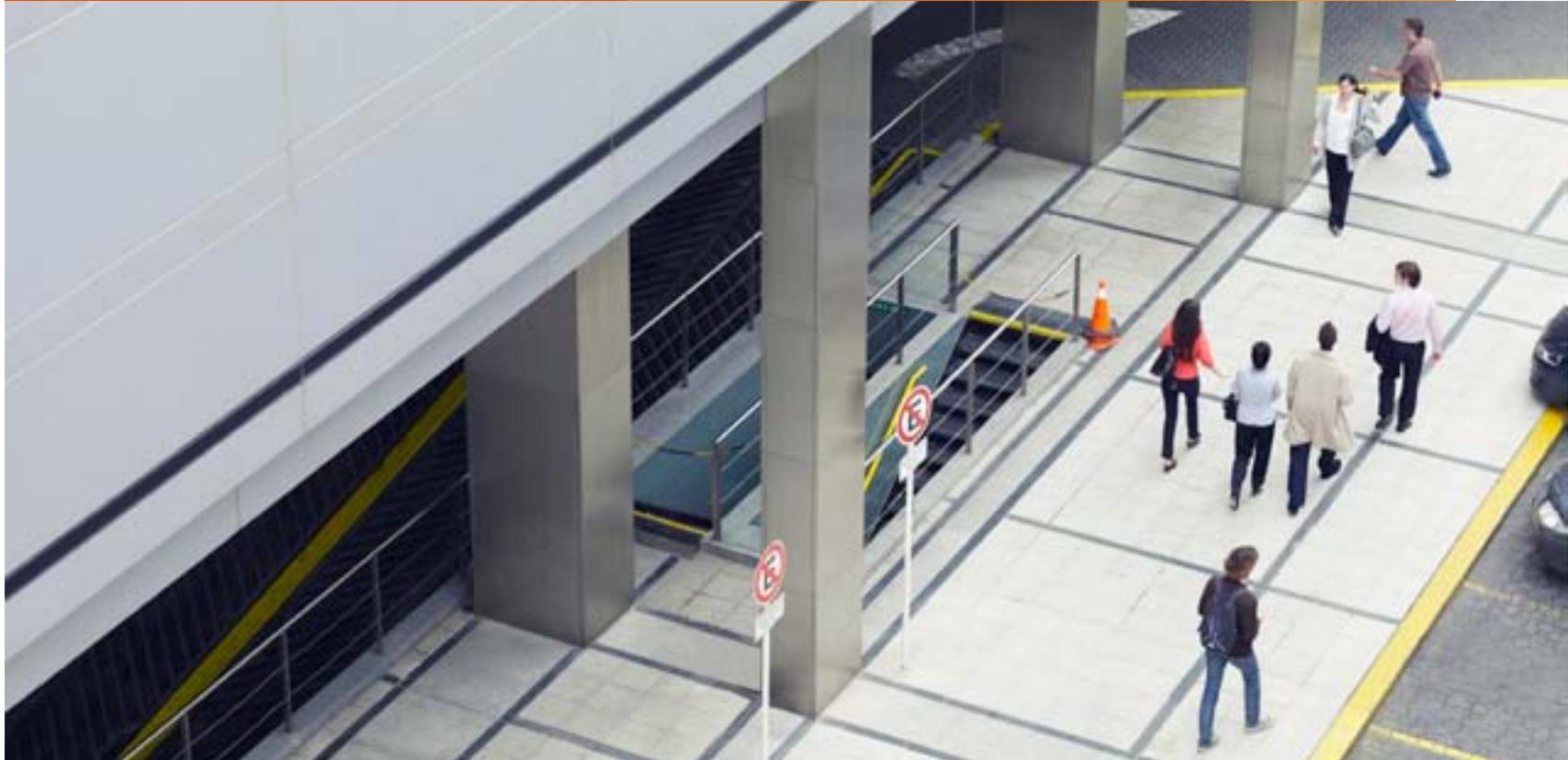


Indian social security For cross-border assignments

September 2014



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 voluntary 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. However, it has been clarified that Indian

Employees, holding certificate of coverage (COC) from India and contributing to the Indian social security schemes, will not become international workers and will continue to be treated like any other domestic Indian employees.

Exemption

An international worker, from a country with which India has a reciprocal SSA, is exempted from Indian Social Security where he or she:

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

Similarly, an international worker from a country with which India has entered into a bilateral comprehensive economic agreement prior to 01 October 2008 is exempted from Indian social security where:

- (a) he or she is contributing to his/her home country’s social security, either as a citizen or resident; and
- (b) the agreement specifically exempts natural person of the other contracting country from contributing to the social security system of India.



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 150,000 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. However, no such allocation towards the pension fund is required, where an international worker has joined a covered establishment in India on or after September 1, 2014 and drawing a salary of more than INR 15,000 per month. In such case, the employer's entire contribution will go to the international worker's 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.

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.
- On ceasing to be an employee of a covered establishment, where the international worker is from an SSA country.

In cases where the international worker is from a SSA country, withdrawal from the provident fund shall be payable in the payee's bank account directly or through the employer. In all the other cases, the amount withdrawn will be credited to international workers' Indian bank account. Amendments have been made in the Indian regulatory framework to permit international workers to open Indian bank accounts in order to realise provident fund money.

Any lump sum withdrawn by international workers from their provident fund account on retirement or otherwise, after completing five years of continuous service in a covered establishment in India or under other specified circumstances is exempt from tax.

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 sum in the pension fund is paid as pension to employees upon retirement or in certain circumstances as specified in the EPS. International workers are not entitled to pension benefits 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, early withdrawal /Pension benefit is possible.

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.



India has entered into SSAs with
17 countries,
as listed in Appendix A.

Certificate of coverage (Detachment)

A 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. In case there are no international workers, 'nil' return must be submitted. Employers are also required to file a monthly return (Form 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 need 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.



Appendices

Appendix A: Social security agreements

Operational

Sl. No.	Name of countries	Status
1	Belgium	Operational from 1 September 2009
2	Germany	Operational from 1 October 2009
3	Switzerland	Operational from 29 January 2011
4	Luxembourg	Operational from 1 June 2011
5	France	Operational from 1 July 2011
6	Netherlands	Operational from 1 December 2011
7	Denmark	Operational from 1 May 2011
8	Korea	Operational from 1 November 2011
9	Hungary	Operational from 1 April 2013
10	Finland	Operational from 1 August 2014
11	Sweden	Operational from 1 August 2014
12	The Czech Republic	Operational from 1 September 2014

Signed but not yet operational

Sl. No.	Name of countries	Status
1	Norway	Signed on 29 October 2010. Not yet operational.
2	Canada	Signed on 6 November 2012. Not yet operational.
3	Japan	Signed on 16 November 2012. Not yet operational.
4	Austria	Signed on 4 February 2013. Not yet operational.
5	Portugal	Signed on 4 March 2013. Not yet operational.

Appendix B: Non compliance penalties

Rates of damages

Period of default	Rate of damage * (% of arrears per annum)
Less than two months	5%
Two months and above but less than four months	10%
Four months and above but less than six months	15%
Six months and above	25%

* 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

Nature of offence	Person liable	Consequences
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.	Employer	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.
Default in relation to the payment of contributions (or inspection charges) towards the Deposit Linked Insurance Scheme.	Employer	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.
Making a false statement or misrepresentation to avoid any payment towards the provident fund, pension fund or deposit linked insurance fund.	Any person	Imprisonment up to one year or fine of INR 5,000 or both.
Contravention/default in complying with any of the provisions.	Any person	Imprisonment for up to one year or fine of up to INR 4,000 or both.
Contravention/default in complying with any provision of the PF Act where no other penalty is provided elsewhere in relation to that non compliance.	Any person	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.



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://epfindia.com/iw.html>





Appendix D: Contacts

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Fax: +91 124 330 6999
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