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## International workers from social security agreement countries allowed to withdraw provident fund early

### In brief

In October 2008, the Indian government made it mandatory for foreign nationals to contribute to the Indian social security, where they qualify to be international workers (IWs). Since then several changes have been made to the regulations and a number of clarifications and guidelines have been issued in this regard. The most important amendment was made in September 2010, which allowed IWs to withdraw their accumulated provident fund (PF) money only upon retirement after attaining the age of 58 years, or in certain exceptional circumstances. However, IWs from countries with which India has a social security agreement (SSA) in force were permitted to withdraw the PF money in accordance with the relevant SSA. All the existing SSAs, except the one with Korea, are silent on the provisions of withdrawal of PF money.

Recently, the Ministry of Labour and Employment (MLE) has issued a notification<sup>1</sup> which allows early withdrawal of PF money in general by all IWs from SSA countries.

### Key changes

#### Provident fund

- An IW covered under an SSA is allowed to withdraw the PF money upon ceasing to be an employee in an establishment covered under the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (PF Act).

<sup>1</sup> Notification No. F.No.S-35025/09/2011-SS-II dated 5 October, 2012 of the Ministry of Labour and Employment, Government of India

- The amount due to such IWs shall be payable directly in their bank accounts or through their employers.

### **Pension fund**

- For the purpose of determining the eligibility for pension benefits of IWs, the actual service rendered will be treated as an 'eligible service'.
- In the case of IWs covered under an SSA, the period of coverage under the relevant social security programme in the other country shall be added to the actual service and the aggregate thereof shall be treated as eligible service, as may be provided in the SSA.

### **Our comments**

These changes were much awaited and are a welcome move. IWs from SSA countries can now withdraw their PF money upon completion of their Indian employment, irrespective of whether or not the provisions of withdrawal are contained in the relevant SSA.

The other interesting change is that IWs from SSA countries can now receive their PF money in their bank accounts or through their employers. If this means they can receive their PF money into their overseas bank accounts or their employers can receive the money and remit to them, then all IWs stand to benefit as they would no longer be required to maintain their Indian bank account. One would need to wait for further clarifications on these aspects as the amendment is not very clear. Furthermore, the authorities would also need to lay down the procedure to implement this amendment.

There is also a need to review the number of IWs in India, particularly those from SSA countries who have left Indian employment. They may now claim their PF money, because after 36 months their accounts may be classified as inoperative and may not earn any interest.

## Our Offices

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<p><b>Ahmedabad</b>  President Plaza, 1st Floor Plot No 36  Opp Muktidham Derasar  Thaltej Cross Road, SG Highway  Ahmedabad, Gujarat 380054  Phone +91-79 3091 7000</p>	<p><b>Bangalore</b>  6th Floor, Millenia Tower 'D'  1 &amp; 2, Murphy Road, Ulsoor,  Bangalore 560 008  Phone +91-80 4079 7000</p>	<p><b>Bhubaneswar</b>  IDCOL House, Sardar Patel Bhawan  Block III, Ground Floor, Unit 2  Bhubaneswar 751009  Phone +91-674 253 2279 / 2296</p>	<p><b>Chennai</b>  8th Floor, Prestige Palladium Bayan  129-140 Greams Road,  Chennai 600 006  Phone +91-44 4228 5000</p>	<p><b>Hyderabad</b>  #8-2-293/82/A/113A Road no. 36,  Jubilee Hills, Hyderabad 500 034,  Andhra Pradesh  Phone +91-40 6624 6600</p>
<p><b>Kolkata</b>  56 &amp; 57, Block DN.  Ground Floor, A- Wing  Sector - V, Salt Lake.  Kolkata - 700 091, West Bengal, India  Telephone: +91-33 2357 9101 / 4400 1111  Fax: (91) 033 2357 2754</p>	<p><b>Mumbai</b>  PwC House, Plot No. 18A,  Guru Nanak Road - (Station Road),  Bandra (West), Mumbai - 400 050  Phone +91-22 6689 1000</p>	<p><b>Gurgaon</b>  Building No. 10, Tower - C  17th &amp; 18th Floor,  DLF Cyber City, Gurgaon  Haryana -122002  Phone : +91-124 330 6000</p>	<p><b>Pune</b>  GF-02, Tower C,  Panchshil Tech Park,  Don Bosco School Road,  Yerwada, Pune - 411 006  Phone +91-20 4100 4444</p>	<p>For more information contact us at,  pwctrs.knowledgemanagement@in.pwc.com</p>

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