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KARNATAKA EMPLOYERS' ASSOCIATION

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BANGALORE - 560 004

Reg. No. TU 507 / 20-3-1962

Date : 30-10-2008

CIRCULAR No.63/2008

To
All Members of the Association

Sub: International Workers covered under the EPF Act w.e.f 1.11.08

1. The Ministry of Labour and Employment, Government of India has notified Employees' Provident Funds (3rd Amendment) Scheme, 2008 and the Employees' Pension (3rd Amendment) Scheme, 2008, vide its Notification dated 1.10.2008 to extend applicability of these Schemes to the International Workers.
2. In order to assist our members to understand key definitions under the Schemes and also the implications of the aforesaid amendments this circular is being issued.

INTERNATIONAL WORKER MEANS:

- o An Indian employee having worked or going to work in a foreign country with which India has entered into a Social Security Agreement and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement;
- o An employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the provident fund legislation applies;

"Excluded Employee" is an International Worker who is contributing to social security programme of his or her country of origin, either as a citizen or resident with whom India has entered into social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms, as specified in such an agreement.

"Pensionable Service" means, the service rendered by the member covered by an international Social Security Agreement for which contributions have been received or receivable, the period of service rendered and considered as eligible under such Agreement.

3. In the first place, the term International Worker refers to only those Indian employees who are deployed in countries with whom India has signed SSA. Indian nationals working in countries with whom India does not have an SSA are outside the purview of the term International Worker. Excluded Employee is an International Worker who is contributing to social security programme in his country of origin, which has signed SSA with India, based on which he/she need not contribute to the provident fund / pension fund in India.
4. The object of re-defining the excluded employee is obviously to encourage the signing of SSA by all countries as the expatriate employees would then not required to make contributions to the Indian Provident Fund / Pension Fund so long as they are doing so in their home country.
5. All International Workers, other than Excluded Employees, are required to join the Provident/Pension fund w.e.f. 1.11.08.
6. The impact of the amendment will be as under to the establishment which employ expatriates and also deposes their employees to work in foreign countries :-

Sl. No.	Category	Impact with respect to SSA Country	Impact with respect to non-SSA Country
1	Persons deployed overseas by the Indian Company / Establishment.	Contribution to be made to Indian Provident/Pension Funds. Rate and limit to be governed by the SSA.	No impact Employees will continue to contribute to social security benefit in the Host Country.
2	Expatriates deployed in India	No impact. No contribution required to be made to the Indian Provident / Pension Funds.	Contribution to be made to Indian Provident/Pension Fund on Basic Salary, DA and Retainers Allowance.

7. In essence, there is no impact of the amendment on the employees of the establishment who are working in the foreign countries with whom India has not signed SSA. Such employees will continue to contribute to the Social Security Schemes of the country in which they are posted but may not get any benefit out of such contribution.
8. In the case of employees who are deputed to the foreign countries with whom India has signed SSA, such employees are exempted from contributing to the Social Security Scheme of the country in which they are posted. However, they would continue to contribute to the Provident Fund / Pension Fund, which they have been contributing in India. Thus, this category of employees will continue the contribution which they

have been making prior to their posting abroad and obviously earn benefit out of such Contribution.

9. If the Establishment is employing expatriate from a country which has not signed SSA with India, such employees are to be covered under the EPF as well as pension and they are liable to contribute to the said funds and the Employer shall also contribute in accordance with the respective Schemes. Such employees will not get the benefit out of the above contributions in the event they leave their services without completing the minimum qualifying service for the purpose drawing the benefit under the Scheme. India has SSA only with Belgium, Germany, and France. Consequently, expatriates from other countries would be affected.
10. International worker is required to be member of the Employees' Provident Fund from 1.11.2008 and shall contribute to the fund at the rate of 12% of salary (Basic salary, D.A. and retention allowance, if any). The employer is required to contribute at the rate of 8.33% of salary to the pension fund and 3.67% of the salary to the Employees' Provident Fund. The employer shall file monthly information returns of International workers joining and leaving the Establishment.
11. The crucial issue is that what is the salary limit for the purpose of coverage of an International workers under EPF and Pension Fund.
12. The "excluded employee" has been defined under Para – 2 of the EPF Scheme which reads as under :
 - (i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of Paragraph 69;
 - (ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds Rs.6500/- (six thousand and five hundred rupees) per month;

Explanation: "Pay" includes basic wages with the dearness allowances, (retaining allowance (if any) and cash value of food concessions admissible thereon;

(iii) (Omitted)

(iv) an apprentice

Explanation: — An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to an apprentice by the authority specified in this behalf by the appropriate Government.

13. The above definition of an excluded employee has been substituted in the case of international workers. The amendment does not specify

any limit for coverage. Once an employee answers the description of International workers as defined above, such employee will have to be covered irrespective of his salary. However, the position is not clear as the whole Scheme of the Act is for coverage of the employees who are drawing a salary as prescribed by Notifications from time to time and the present limit of Rs.6,500/- has been prescribed after couple of amendments and raising the salary limit for coverage. The Act is not intended to cover high salaried employees.

14. As already recorded, the EPF Act and the Scheme and Pension Scheme have been designed to cover the employees drawing low salary compared to others. If an international workers is drawing a salary of Rs. 2 Lakhs and if he is to be covered under the Act, the liability on the international worker as well as the employer will be huge. The international worker will not be entitled to have the benefit of such contribution in the event, he were to leave the service before he completes the requisite number of years of service as stipulated under the Schemes for having the benefits. The aim of the Scheme apparently is not to deprive a person of his own contributions. Thus, this is a grey area which is to be clarified by the EPF Authorities. Until such clarification is received, the international worker will have to be covered having regard to the definition of an 'excluded employee' under the amended Scheme at least upto Rs.6500/-
15. An International worker can withdraw the Provident Fund on cessation of employment subject to the other provisions of the Act and Scheme subject to the tax implications wherever applicable. An International worker can also withdraw from the pension fund as per the SSA in the case of expatriate hailing from SSA Countries. In the case of International worker from other countries they can withdrawn from the pension fund on the principle of reciprocity available to Indian employees in that country.
16. The obligations of the employer are contained in paragraph 36.
 - Every employer shall send to the Commissioner within 15 days of the commencement of the scheme a consolidated returns in such form as the Commissioner may specify of the International worker indicating clearly nationality of each and every international worker required or entitled to become members of the fund showing the basic wage, retaining allowance, if any and Dearness Allowance including the cash value of any food concession paid to each of such international workers, provided that if there is no international worker who is required or entitled to become a member of the fund, the employer shall send "nil" Returns.
 - Every employer shall send to the Commissioner within 15 days of close of each month a return in Form 5 of the International workers qualifying to become members of the fund for the first time during the preceeding month together with declaration in Form 2 to furnish by such qualifying International workers indicating distinctly the nationality of each and every International workers.

- If there is no International worker qualify to become member of a fund for the first time or there is no International worker leaving the service of the employer the employer shall send a 'nil' return.
- Format of Form V is also enclosed for ready reference.

for KARNATAKA EMPLOYERS' ASSOCIATION

B.C. Prabhakar

**(B.C. PRABHAKAR)
PRESIDENT**