

HR Law Hotline

April 10, 2009

EMPLOYMENT LAW: RELIEF FROM SOCIAL SECURITY FOR EXPATRIATES IN INDIA?

In what could bring about some relief to select expatriate employees employed in India, it was recently reported that the Indian Government is reconsidering the social security norms for such expatriates. The proposals include (i) setting up a separate employees' provident fund for expatriate employees, (ii) providing an opt out option to expatriates from countries such as the US, the Netherlands and Sweden, and (iii) grading of salaries of expatriate employees to keep the higher paid ones out of the ambit of the social security norms. These proposals are being considered in order to avoid overlapping of payments towards social security benefits and to ease the pressure on India's provident fund kitty, which is expected to generate returns at 8.5% per annum.

The new provident fund and pension fund norms prescribed by the Government by way of its notification dated October 1, 2008 ("**Notification**") (discussed in our earlier hotlines [Expatriates to be more socially secure in India](#) and [Additional Compliances Under EPF Act For Employing International Workers](#)), have created a great deal of anxiety among Indian employers and those employees working in India who do not hold an Indian passport. The Notification inter alia defines 'International Workers' to include foreign passport holders employed in Indian establishments (to which the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**") is applicable). As a result of the Notification, Indian employers and their International Workers are required to contribute a total of 24% (12% each) of the salary towards social security, which is to be contributed to the account maintained by the Employees' Provident Fund Organization set up under the EPF Act. There are also additional compliances as a result of the Notification.

The Notification excludes from its purview those expatriate employees who are citizens of countries with which India has signed social security agreements ("**SSAs**") and are making social security contributions in their home country. India has presently signed such SSAs with Belgium, France and Germany, although these SSAs are yet to be notified. It has been reported that India is currently negotiating SSAs with several other countries including USA, Netherlands, Spain, Portugal, Switzerland, Norway and Sweden.

Undoubtedly, this Notification has increased the cost of assignment of expatriate employees to India by multinational companies substantially as it would need to be reflected in the compensation structure. Parul Jain, a senior member of the Tax and Employment practice group at Nishith Desai Associates, is of the view that "as a result of the new social security notification, several Indian employers are currently in the process of re-negotiating the compensation package of their foreign employees working in India, as these expatriates are typically more concerned with the net 'take-home-pay'. Some of these expatriates are not keen to contribute to the Indian social security system since they are already making similar contributions in their home country. The ongoing economic crisis has unfortunately made this negotiation process far more complex. Any relief introduced by the government would definitely be welcomed by the employers and the expatriate employees."

While no official announcement with respect to the proposed reforms has been made as yet, it would be necessary to review of text of the reforms once introduced and analyze the potential impact. Nonetheless, any such reforms adopted by the government would bring much needed relief or help address some of the ongoing concerns on the social security norms for expatriates in India. At the same time, the government should continue its efforts in negotiation and signing of the SSAs in this financial year. In the interim, the government may also consider a deferral period to allow companies to comply with their obligations.

- Radhika Iyer & Vikram Shroff

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

New Age of Franchising

June 20, 2025

Life Sciences 2025

June 11, 2025

The Tour d'Horizon of Data Law Implications of Digital Twins

May 29, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

April 01, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025

