

Editor: [Tim Darby](#) | Africa and Middle East Editor: [Karen Seigel](#) | Asia and Oceania Editor: [Ute Krudewagen](#) | Canada Editor: [Gilles Touchette](#) | European Editor: [Paul Callaghan](#) | Latin America Editor: [Juan Carlos Varela](#) | Law Student Editor: [Irene Lehne](#), Earle Mack School of Law at Drexel University

## India

### Recent Circular on Social Security Contributions Kept in Abeyance

[Veena Gopalakrishnan](#) and [Vikram Shroff](#), Nishith Desai Associates, Mumbai/Bangalore/Delhi

The guidelines for computation of contributions and quasi-judicial proceedings and under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) laid out in an internal circular dated November 30, 2012,<sup>1</sup> because of confusion over what benefits are to be included in calculation of basic wages. To the extent the Circular is kept in abeyance,<sup>2</sup> the current status in relation to provident fund contributions on basic wages is likely to continue.

The Circular was issued to streamline and standardize the assessments made under the EPF Act. The key points addressed by the Circular include:

1. Certain inquiries in relation to violations of, and non-compliance with, the EPF Act are to be initiated only after actionable and verifiable information is provided for compliance officers to consider;
2. In order to facilitate the effort of the compliance officers in inquiring into the proceedings, the complete compliance history of the establishment consisting of, *inter alia*, the amount remitted, the number of employees, pending quasi-judicial enquiries, pending recovery certificates, and pending legal cases should be made available by the Employee Provident Fund's officers based on the data collected from employers as a part of their routine filings;
3. The procedure for initiation of assessment inquiry;
4. Regulation of lump sum assessments;
5. Inspection of multi-location establishments;
6. Limitation on inquiries and investigations going beyond seven years i.e., the period of default investigated into shall not exceed seven years; and
7. In relation to splitting of wages, all allowances which are ordinarily, necessarily and uniformly paid to the employees are to be treated as a part of the basic wages for the purposes of calculation of provident fund contributions.

The Circular has attempted to clear the confusion in the definition of the term 'basic wages' under the EPF Act<sup>3</sup> and stipulates that the expression 'commission or any other similar allowance payable to employees' is to be read as one continuous term i.e., commission or any other 'commission-like allowance, irrespective of the nomenclature. The Circular provides that the 'basic wages' is subject only to those exclusions expressly referred to in the definition of the term under the EPF Act.

<sup>1</sup>[http://www.epfindia.com/Circulars/Y2012-13/CirQJA\\_345.pdf](http://www.epfindia.com/Circulars/Y2012-13/CirQJA_345.pdf).

<sup>2</sup>[http://www.epfindia.com/Circulars/Y2012-13/Comp\\_21224.pdf](http://www.epfindia.com/Circulars/Y2012-13/Comp_21224.pdf); <http://www.thehindu.com/news/national/pf-circular-kept-in-abeyance-says-kharge/article4196897.ece>; and  
<http://www.livemint.com/Politics/fKU1YHbLsUYVmNQ0EoIwQL/EPFO-may-be-asked-to-withdraw-circular-tweaking-PF-deduction.html>.

<sup>3</sup>Section 2(b) of the EPF Act: "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include: (i) the cash value of any food concession; (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission *or any other similar allowance payable* to the employee in respect of his employment or of work done in such employment; (iii) any presents made by the employer; . . .

---

American Bar Association Section of Labor and Employment Law  
321 N Clark | Chicago, IL 60654 | (312) 988-5813