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India

Withdrawal of Social Security Accumulations Permitted upon Cessation of Employment for Expatriates From Countries Having a Social Security Agreement with India

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Foreign nationals working in India (International workers) who are covered under a Social Security Agreement (SSA) between India and any other country have now been allowed to withdraw their accumulated provident fund balance under the Employees Provident Fund Scheme, 1952 (EPF Scheme) on ceasing to be in employment with the establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act).¹ Prior to this amendment, an international worker was allowed to apply for withdrawal of provident fund accumulations only on retirement from service at any time after the attainment of 58 years of age (except under specified conditions) or in accordance with the SSA applicable to such employee, if any. In October 2008, it was made mandatory for international workers to contribute under the EPF Act. Earlier in 2012, expatriates in India contributing to a social security plan in another country and covered by a bilateral economic agreement with India were recognized as exempt from social security contributions in India.²

The Amendment also allows the provident fund accumulations to be paid to the international workers' bank account directly or through the employer. Previously, the provident fund dues for international workers were to be paid only to their bank accounts in India or in accordance with the SSA applicable to them. Therefore, it is no longer mandatory for international workers to maintain a bank account in India after cessation of employment with the Indian establishment in order to receive the provident fund accumulations.

The Amendment also clarifies the position on determining the 'eligible service' for international workers under the Employees' Pension Scheme, 1995 (Pension Scheme) and provides that:

- In the case of an "existing member" or a "new entrant," the actual service rendered in India shall be treated as eligible service; and
- In case of a member covered by a SSA, the period of coverage under the social security program in another country shall be added to the actual service and the aggregate thereof may be treated as eligible service for receiving pension benefits in accordance with the SSA.

¹The Ministry of Labour and Employment has amended provisions in the EPF Scheme and the Pension Scheme with

respect to expatriates by issuing notifications dated October 5, 2012.

²http://www.americanbar.org/content/newsletter/groups/labor_law/int_newsletter/ilel_news20121/july2012/1207_ilelc_india.html#india2

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