HR Law Hotline

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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 hotlinesExpatriates to be more socially secure in India andAdditional 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 of 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**

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