

## **SPECIAL PROVISION FOR INTERNATIONAL WORKERS**

### **FREQUENTLY ASKED QUESTIONS (FAQ)**

#### **1) Who is an International worker?**

An International worker may be an Indian worker or a foreign national. This means an Indian worker who has divided his/her career between India and another country with whom India has entered into a bilateral Social Security agreement or a foreign national working in India. (Para 2 ff)

#### **2) Who is an 'excluded employee' under these provisions?**

A 'detached worker' posted in an establishment in India but contributing to the social security programme of the source country in terms of the bilateral Social Security agreement signed between that country and India shall be an 'excluded employee' under these provisions. (Para 2 f)

#### **3) Who is a 'detached worker'?**

An International worker, being not an Indian employee, contributing to the social security programme of the source country in terms of the bilateral Social Security agreement signed between that country and India and exempt from making any contribution to the Indian system for the period and terms as set out in such an agreement is a 'detached worker' for the purpose of compliance under the Indian system. (Para 2 f)

#### **4) What does the term 'Indian employee' mean?**

An employee, holding or entitled to hold an Indian passport and employed by an establishment covered under the EPF and MP Act, 1952 is an Indian employee under the Special provisions in respect of International workers. [Para 2 ff (a) ]

#### **5) Who all shall become the members of the fund?**

- a) Every International worker, other than an 'excluded employee' - from 1st Nov.2008.
- b) Every excluded employee, on ceasing the status, - from the beginning of the month following that in which he/she losses the status. (Para 26)

#### **6) Which category of establishments shall take cognizance of these provisions?**

All such establishments covered/coverable under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 that employ 'International workers' either in India or

abroad shall take cognizance of these provisions. (Para 26)

**7) Whether PF rules will apply to an employee if his salary is paid outside India?**

Yes, the provisions will apply irrespective of where the salary is paid. (Para 30)

**8) Whether PF will be payable only on the part of salary paid in India in case of split payroll?**

In case of split payroll the contribution shall be paid on the total salary earned by the employee. (Para 29)

**9) 'Monthly Pay' for calculating contributions to be paid under the Act?**

The monthly pay shall be the pay as specified under Para 29 of the EPF Scheme, 1952, which covers:

- Basic wages (all emoluments paid or payable in cash while on duty or on leave / holiday except Dearness allowance, House rent allowance, overtime allowance, bonus, commission or any other similar allowance payable in respect of employment and any presents made by the employer)
- Dearness allowance (all cash payments by whatever name called paid to an employee on account of a rise in the cost of living)
- Retaining allowance
- Cash value of any food concession

**10) What portion of salary on which PF would be payable in case an individual has multiple country responsibilities and spends some part of his time outside India?**

Contribution is payable on the total salary payable on account of the employment of the employee employed for wages by establishment covered in India even for responsibility outside India also.[Section 2 (b)]

**11) Is there a minimum period of days of stay in India which the employee can work in India without triggering PF compliance?**

No, there is no any minimum period of employment in India is required to be eligible for membership. Every eligible International worker has to be enrolled from the first date of his employment in India.

**12) What constitutes the Pensionable service?**

The service for which contributions are received and/or receivable as also the period of service rendered and considered as eligible under a Social Security Agreement that may cover an International worker. (Para 10 of EPS)

**13) How is Pensionable service determined?**

While the period of service for which contributions are received under the EPS will decide the quantum of pension admissible, the period of service rendered under a relevant social security agreement shall be taken into account only for the purpose mentioned under such agreement. (Para 10 of EPS)

**14) Is there a cap on the salary up to which the contribution has to be made by both the employer as well as an employee?**

No, there is no cap on the salary up to which the contribution has to be made by both the employer as well as an employee.

**15) Is there a cap on the salary up to which the employer's share of contribution has to be diverted to EPS?**

Yes, the cap on the salary up to which the employer's share of contribution has to be diverted to EPS remains at Rs.6500. (Para 3 of EPS)

**16) What is a social security agreement (SSA)?**

A social security agreement is a bi-lateral instrument to protect the interests of the workers in the host country. It being a reciprocal arrangement generally provides for avoidance of no coverage or double coverage and equality of treatment with the host country workers

**17) What are the provisions covered in a social security agreement?**

Generally a social security agreement covers 3 provisions. They are:

**a) Detachment**

Applies to employees sent on posting in the host country, provided he/she is complying under the social security system of the home country.

**b) Exportability of Pension**

Provision for payment of pension benefits to the beneficiary choosing to reside in the territory of the home country directly with out any reduction as also to a beneficiary choosing to reside in the territory of a third country.

**c) Provision for totalisation of Benefits**

The period of service rendered by an employee in the host country to be counted for the "eligibility" purpose and the payment may be restricted to the length of service, on pro-rata basis.

**18) What is the status of the SSAs?**

As of today, Social security agreements have been signed with Belgium, France and Germany. But the date of entry into force is yet to be notified. Negotiations are at various stages with The Netherlands, Czech Republic, Hungary, Norway, Switzerland, Sweden, Luxembourg, USA and Australia. Government level talks are on with many other countries where sizable numbers of Indian workers are employed. Although not a formal agreement, there is a reciprocal arrangement between India and Korea to settle the claims of the employees on completion of employment in the host country

**19) Should the eligible employees from Belgium, France and Germany contribute under the Special provisions till such time the 'date of effect' is notified?**

Yes, the International workers from Belgium, France and Germany shall be enrolled as members of EPF till such time the 'date of effect' is notified by the Government of India and after such workers obtaining a 'detachment certificate' from the appropriate authority in their countries, respectively. Till the 'date of effect' is notified no Indian employee posted to these countries and none of the employees from these countries working in India shall be eligible for detachment status.

**20) Indian employees working abroad and contributing to Social Security Scheme of that country with whom India has social security agreement. Should they be covered for PF in India or should be treated as excluded employee?**

As of today the date of effect of the SSAs is yet to be notified. Therefore, a posted employee, whose name is retained in the pay bill maintained by the employer in India, shall be covered under EPF. If an Indian employee is directly employed by a local employer abroad, such an employee shall be covered by the host country legislations.

**21) Could the term "Indian employee" mean any foreign national who is directly employed by an Indian establishment i.e. a person who is in India not under a secondment arrangement or any deputation from a foreign employer but hired directly by the Indian**

**establishment under local terms and service conditions?**

The term Indian employee shall mean only such of those employees as explained under Q.No 4. No foreign national can be termed an Indian employee.

**22) Whether a Third Country(C) National domiciled in a country (B) with which India (A) has a social security agreement is eligible for benefit under the social security agreement between India and that country?**

Normally social security agreements are signed to cover the 'Nationals' of the respective countries. Therefore, the above employee may be eligible for the benefit provided that the Third country (C) has signed an enabling agreement with both India (A) as well as the Second country (B).

**23) Indian employees working abroad and contributing to Social Security Scheme of that country with whom India DOES NOT have social security agreement. Should they be covered for PF in India or should be treated as excluded employee?**

A posted employee, who is drawing wages from the employer in India, shall be covered under EPF. If an Indian employee is directly employed by a local employer abroad, such an employee shall be covered by the host country legislations.

**24) Foreign nationals who are employed in India and being paid in foreign currency, whether to be covered or not?**

Yes, International workers drawing salary in any currency and in any manner are to be covered. (Section 2 f).

**25) Foreigners who are employed directly as an employee by an Indian establishment abroad to be covered or not?**

The local employees of an Indian establishment engaged abroad shall be covered by the local legislations

**26) Considering that in most countries issuance of work permit to an individual is a trigger for social security compliance, whether the purpose and type of visa i.e. business/employment will be a determinant for a person to be considered as an International Worker?**

The purpose of the visit of an individual is the main determinant for social security compliance. The type of visa may help in determining the purpose of visit. For example – a foreign national coming in to India under an employment visa is working in India.

**27) Whether benefit of reciprocity can be extended to an International Worker if his home country provides for exemption from social security to Indian nationals going to work in that country under its domestic law even though there is no social security agreement with India?**

In the absence of a formal agreement the benefit of reciprocity is available at the time of withdrawal of the pension claim and not at the time of coverage. (Para 14 of EPS)

**28) Where will the survivor benefits be delivered in case of a covered employee holding a passport, being other than an Indian passport, issued by a country with which India is not having a SSA?**

In the absence of a SSA, the survivor benefits such as widow/widower pension, children /orphan pension, nominee/parent pension, etc. as the case may be, shall be payable to a bank account of the eligible beneficiary in India. (Para 14 of EPS)

**29) What is the criterion for receiving the withdrawal benefit for the services of less than 10 years under EPS, 1995?**

In respect of employees hailing from the countries with which India has signed a SSA, the withdrawal benefit shall be paid or accounted for as per the provisions of the SSA. In all other cases, it shall be guided by the principle of reciprocity with reference to the entitlement available to Indian employees in the other country. (Para 14 of EPS)

**30) How long an Indian employee retains the status of "International worker"?**

An Indian employee attains the status of "International worker" only on account of his employment in a country with which India has signed a SSA. He shall remain in that status till the time he avails the benefits under a social security programme covered under that SSA. (Para 2 f)

**31) Under what condition the contributions received in the PF account are payable along with interest?**

The full amount standing to the credit of a member's account is payable if any one of the circumstances mentioned under Para 69 of the EPF Scheme, 1952 is fulfilled

**32) Is there a cap on the salary up to which the contribution has to be made to EDLI Scheme by both the employer?**

Yes, the cap on the salary up to which contribution has to be made to EDLI Scheme remains unchanged at Rs.6500.

*Source: Website - [www.epfindia.com](http://www.epfindia.com) (home page)*

*Link: [http://www.epfindia.com/faq\\_IntWorker.htm](http://www.epfindia.com/faq_IntWorker.htm)*