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Analysing developments impacting business

DETERMINING ELIGIBILITY AND COMPUTATION FOR PENSION IN CASE OF DUAL EMPLOYMENT: EPFO CLARIFIES

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Through the circular dated 29 January 2024, the Employees' Provident Fund Organisation (EPFO) issued a clarification regarding eligibility for and computation of pension under the Employees' Pension Scheme, 1995 (Pension Scheme) in case of members having multiple account numbers for the reason of dual employment. The update assumes significance against the backdrop of legislative, executive, and judicial developments in the past 2 years in connection with the Pension Scheme. This update explains the circular and its legal and practical ramifications.

Membership of the Pension Scheme:

- a) Cases where an individual becomes a member and later enters second parallel employment: Where an individual is already a member of the Pension Scheme in view of the fact that they earn monthly wages not exceeding INR 15,000, but they subsequently join another employment whilst being employed with the first establishment, the Regional Office in whose jurisdiction the second establishment falls will be responsible for ensuring that the total contribution into the pension fund in respect of such member does not exceed the contribution payable on the monthly wage ceiling of INR 15,000.
- b) Cases where an individual (not a member) enters dual employment: For the period effective 1 September 2014, if an individual joins a simultaneous and concurrent employment with two establishments such that their aggregate wages (across the two establishments) exceed INR 15,000 per month, the full contribution of 24% (i.e., 12% each from employer and employee) would go into the provident fund account of the individual because the individual would not be deemed to be eligible to participate in the Pension Scheme. The Regional Office governing the establishment where the individual joined subsequently would be responsible for ensuring compliance with this requirement.

In both instances, while the Regional Offices have been given the primary responsibility to monitor cases relevant to (a) and (b), establishments have been required to ensure that they verify the dual employment status of their employees so that they submit correct electronic challan-cum-returns on the EPFO portal.

Computation of pension in case of dual employment

The circular notes that in case of dual (concurrent) employment, the pension payable to a member from such multiple establishments shall be aggregated in a manner such that the

pensionable salary does not exceed the monthly wage ceiling. Pension will be computed from the place where the member finally exits the Pension Scheme.

Comment

While the circular helps understand the manner in which eligibility for coverage under the Pension Scheme ought to be determined in respect of individuals with dual employments, it also leaves out a few practical challenges. One such challenge is where an individual employed concurrently with two establishments and the aggregate wages from these establishments exceeds INR 15,000 per month (thus keeping them out of the Pension Scheme) but later, the individual leaves employment with one of the establishments and the monthly wages in the other establishment is at or below the ceiling of INR 15,000 (such that the individual again becomes eligible to be a member of the Pension Scheme). It appears that the treatment of such cases has not been envisaged in the circular. Similarly, because the circular governs the manner in which contributions are to be made in case of simultaneous and concurrent employment, it appears that some onus is being cast on employers as well to periodically verify the employment status of their employees. We anticipate that the circular may invite questions from employers and employees alike and hope to receive better clarity through further circulars or clarifications on the other possible scenarios as indicated above and practical issues arising out of such scenarios.

- *Anshul Prakash (Partner), Abhisek Choudhury (Principal Associate) and Deeksha Malik (Senior Associate)*

For any queries please contact: editors@khaitanco.com