



# Special Provisions for International Workers (FAQs)

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## **SPECIAL PROVISION FOR INTERNATIONAL WORKERS**

### **FREQUENTLY ASKED QUESTIONS (FAQs)**

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

An International worker may be an Indian worker or a foreign national.

- Any Indian employee working or having worked abroad in a country with which India has entered into a Social Security Agreement (SSA); OR
- Any foreigner working in India in an establishment where the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 is applicable.

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

A detached International Worker contributing to the social security programme of the home country and certified as such by a Detachment Certificate for a specified period in terms of the bilateral SSA signed between that country and India is an 'excluded employee' under these provisions.

#### **3) Who all shall become the members of the Fund?**

- a) Every International Worker, other than an 'excluded employee' - from 1<sup>st</sup> Nov. 2008.
- b) Every excluded employee, on ceasing the status - from the date he ceases to be excluded employee.

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

All such establishments covered/coverable under the EPF & MP Act, 1952 (including those exempted under section 17 of the Act) that employ any person falling under the category of 'International Worker' shall take cognizance of these provisions.

#### **5) 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.

#### **6) 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.

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

The contribution shall be calculated on the basis of monthly pay containing the following components actually drawn during the whole month whether paid on daily, weekly, fortnightly or monthly basis:

- Basic wages
- 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

**8) What portion of salary on which PF would be payable in case an individual has multiple country responsibilities and spends 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 an establishment covered in India even for responsibility outside India.

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

Every eligible International Worker has to be enrolled from the first date of his employment in India.

**10) What constitutes pensionable service?**

“Pensionable Service” means the service rendered by the member for which contributions have been received or are receivable and the period of coverage earned in another country and considered as eligible under a relevant social security agreement

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

No, there is no cap on the salary on which contributions are payable by the employer as well as employee.

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

No, there is no cap on the salary up to which the employer's share of contribution has to be diverted to EPS, 1995 and the same is payable on total salary of the employee.

**13) What is a Social Security Agreement (SSA)?**

A Social Security Agreement is a bilateral instrument to protect the social security interests of workers posted in another country. Being a reciprocal arrangement, it generally provides for equality of treatment and avoidance of double coverage.

**14) What are the provisions covered in a Social Security Agreement (SSA)?**

Generally a Social Security Agreement covers 3 provisions. They are:

- a) **Detachment:** Applies to employees sent on posting in another country, provided they are complying under the social security system of the home country.
- b) **Exportability of Pension:** Provision for payment of pension benefits directly without any reduction to the beneficiary choosing to reside in the territory of the home country as also to a beneficiary choosing to reside in the territory of a third country.
- c) **Totalisation of Benefits:** The period of service rendered by an employee in a foreign country is counted for determining the "eligibility" for benefits, but the quantum of payment is restricted to the length of service, on pro-rata basis.

**15) What is the status of the Social Security Agreements (SSA)?**

As of December, 2011 eight Social Security Agreements in respect of Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea and the Netherlands have been made effective from 1<sup>st</sup> September, 2009, 1<sup>st</sup> October, 2009, 29<sup>th</sup> January, 2011, 1<sup>st</sup> May, 2011, 1<sup>st</sup> June, 2011, 1<sup>st</sup> July, 2011, 1<sup>st</sup> November, 2011 and 1<sup>st</sup> December, 2011 respectively. Apart from the above, SSAs have already been signed with Czech Republic, Hungary and Norway, but not yet made effective. Negotiations are at various stages with Canada, Quebec, Sweden, Finland, Austria, Portugal, Japan, Australia and USA. Government level talks are on with other countries where sizable numbers of Indian workers are employed.

**16) Should the eligible employees from any country other than Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea and the Netherlands contribute as International Workers till such time the 'date of effect' of the SSA is notified for the particular country?**

Yes, the International Workers from any country other than Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea and the Netherlands shall be enrolled as members of EPF till such time that the 'date of effect' of the SSA is notified and after such workers obtain a 'detachment certificate' from the appropriate authority in their countries. 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.

**17) Regarding Indian employees working abroad and contributing to the Social Security Scheme of that country with whom India has a Social Security Agreement, are they coverable for PF in India or treated as excluded employees?**

An Indian employee sent on posting to a country with which India has an SSA becomes an 'International Worker' and is required to contribute on full salary. He can, however, seek exemption from the social security legislation of the country in which he is posted on the basis of a detachment certificate issued in terms of the SSA. If an Indian employee is directly employed by a local employer abroad, such an employee shall be covered by the foreign country legislation.

**18) Regarding Indian employees working abroad and contributing to the social security scheme of a country with which India DOES NOT have a Social Security Agreement, are they coverable for PF in India?**

If an Indian employee prior to his posting abroad qualifies/happens to be a contributing member of the EPF, he will continue to be a member of the EPF during his posting to a country with which India does not have an SSA.

**19) Whether foreign nationals employed in India and being paid in foreign currency are coverable?**

Yes, International Workers drawing salary in any currency and in any manner are to be covered.

**20) Whether foreigners employed directly by an Indian establishment are coverable?**

Foreigners employed directly by an Indian establishment would be coverable under the EPF and MP Act, 1952 as IWs and would not be eligible for the benefit of detachment under a SSA.

**21) 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 into India under an employment visa is deemed to be working in India.

**22) 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 not available to an International Worker. This implies that it is mandatory to enrol all International Workers, except those carrying a valid detachment certificate under an SSA.

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

Only those employees covered by a SSA will be eligible for withdrawal benefit under the EPS, 1995, who have not rendered the eligible service (i.e. 10 years) even after including the totalisation benefit as may be provided in the said agreement. In all other cases, withdrawal benefit under the EPS, 1995 will not be available to International Workers for contributory service less than 10 years.

**24) 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 does not have 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 the bank account of the eligible beneficiary in India.

**25) How long can an Indian employee retain the status of "International Worker"?**

An Indian employee attains the status of "International Worker" only on account of employment in a country with which India has signed SSA. He/she shall remain in that status

till the time he/she avails the benefits under a social security programme covered under that SSA.

**26) 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 anyone of the circumstances mentioned under amended Para 69 of the EPF Scheme, 1952 is fulfilled, namely:-

- i) on retirement from service in the establishment at any time after 58 years of age;
- ii) on retirement on account of permanent and total incapacity for work due to bodily or mental infirmity, duly certified by the authorised medical officer;
- iii) in accordance with the terms and conditions provided in an SSA.

**27) Is there a cap on the salary up to which the contribution has to be made under the EDLI Scheme, 1976 by the employer?**

Yes, the cap on the salary up to which contribution has to be made under the EDLI Scheme, 1976 remains unchanged at Rs. 6,500.