

**India-Germany Social Security Agreement becomes effective on 1<sup>st</sup> October 2009**



**Background**

The Government of India had signed a Social Security Agreement (‘SSA’) with the Government of Germany on 8<sup>th</sup> October, 2008 to avoid the hardship of double payment of social security (by employer and employee) in India and Germany.

The SSA is structured upon the principle of reciprocity by aiming to provide a level playing field for the Indians going to Germany vis-à-vis German nationals visiting India for work/ employment.

The SSA shall come into effect from 1<sup>st</sup> October, 2009. However there is yet no official news published on the Provident Fund Website<sup>1</sup>.

**Key features of the SSA:**

**I. Applicable Persons:** The SSA shall apply to all persons who are ordinarily resident or employed in India or Germany, as the case may be.

**Applicable legislation in case of detachment:**

- For an Indian national:

Nature of employment	Indian Legislation	German Legislation
Indian national posted to Germany:		
- For a period upto 48 months	✓	✗
- For more than 48 months (also refer note 2)	✗	✓

<sup>1</sup> www.epfindia.com

- For a German national:

Nature of employment	Indian Legislation	German Legislation
German national posted to India:		
- For a period upto 48 months	✘	✔
- For more than 48 months (also refer note 2)	✔	✘

**Note 1:** The period of 48 months shall start on the first day of the calendar month in which the employee takes up employment in India or Germany, as the case may be.

**Note 2:** In case the duration of detachment is upto 60 calendar months, the relevant authorities of the host country may exempt the employee from its social security legislation, upon joint request filed by the employee and his employer.

- For persons who are already detached as on 01 October 2009, the detachment period shall begin on that date.
- The above mentioned rules are also applicable to self-employed persons.

## II. Exceptions on applicability of the legislation

The relevant authorities of one country may make exceptions in respect of the applicability of the legislation, if the person concerned is already or will be, subject to the legislations of the other country. This would, however, require filing of a joint request, by the employer and the employee to the relevant authorities.

## III. Certificate on the applicable legislation

In order to avoid dual payment of social security in India and Germany, the employer and employee can apply to the relevant social security authority<sup>2</sup> in the home country for claiming exemption from social security contributions in the host country in case of employees posted to the host country for not more than 48 months.

The period of validity for the detachment is required to be given on the Certificate.

## IV. Non-applicability of Detachment

A case of Detachment will not be considered in the following circumstances when:

- The work of detached employee in the host country does not correspond to employers business in the home country.

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<sup>2</sup> In India, it is Employee Provident Fund Organization (EPFO), New Delhi

- The employer ordinarily does not engage in considerable business activities in the home country.
- The employee is not ordinarily resident in the home country at the time of posting to the host country.
- Illegal labour leasing is constituted under the legislations of either India or Germany.
- The employee has worked in the home country for less than six months after termination of last period of detachment.

### **Our Comments**

The implementation of the SSA with Germany is a positive step as it aims to avoid double payment of social security contribution by employers and employees in the home and host country. It will encourage the movement of the cross-border employees between the two countries.

This is the second SSA that will be effective after the SSA with Belgium. It will be imperative for employers with employees moving to Germany to analyse the impact of this SSA.

### **Disclaimer**

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