

EPFO issues circular on higher pension benefit under the Employees' Pension Scheme, 1995

Background

On **4 November 2022**, the Honorable Supreme Court¹ pronounced a ruling and held that all the employees who did not exercise the option to contribute towards Employees' Pension Scheme, 1995 (EPS) on higher salary (and not limit such contributions on the wage ceiling) under the proviso of paragraph 11(3) of the EPS and continued to be in service as on 1 September 2014 ought to be given a further chance to exercise this option of higher contribution towards EPS. Accordingly, the Apex Court had further given an extension of four months from the date of the judgement to exercise the option.

For details, please refer to our earlier Flash News dated 09 November 2022 by accessing the following link:

<http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Supreme-Court-ruling-on-higher-pension-benefit-under-the-EPS-1995-1.pdf>

- Subsequent to the SC ruling, EPFO issued a circular² on **29 December 2022**, pertaining to employees who had retired before 1 September 2014 and had contributed on higher wages and further, had exercised the joint option along with employer under paragraph 11(3) to contribute higher pension on actual wages but their option request was denied by the provident fund offices. Such category of employees can now validate their past options through online mode.

- In **January 2023**, EPFO issued another circular³ to re-examine the cases of employees who drew higher pension based on actual wages and had retired prior to September 2014 but had not opted for higher pension in the past. EPFO through this circular has given directions to stop any over payment of pension in respect of such employees and also to ensure that they are not given higher pension from the month of January 2023 onwards.

Recently, on **20 February 2023**, EPFO has issued another circular⁴ for clarifying the eligibility for opting the higher pension contribution under para 11(3) and para 11(4) of EPS.

Key clarifications provided in the Circular

- As per the circular, employees who had not earlier applied for higher pension as mandated under the Employees' Provident Fund (EPF) Scheme but were entitled to do so, are eligible to exercise the option for higher pension.
- The following employees with their employers may submit joint option under para 11 (3) and 11 (4) to the concerned Regional Office:
 - The employees and employers who had contributed under paragraph 26(6) of EPF Scheme on salary exceeding the prevalent wage ceiling; and
 - Did not exercised joint option under the proviso to para 11(3) of EPS of the pre-amendment scheme while being member of EPS, and

¹ Employees Provident Fund Organisation. And ANR ETC. vs. Sunil Kumar B and Ors. Arising out of the Special Leave Petition (C) Nos. 86588659 of 2019

² EPFO Circular – No. Pension/2022/54877/ 15149 dated 29 December 2022

³ EPFO Circular – No. Pension/2022/55893/ 15785 dated 25 January 2023

⁴ EPFO Circular – No. Pension/2022/56259/ 16541 dated 20 February 2023

- were members prior to 01 September 2014 and continued to be a member on or after 01 September 2014.
- Employees who had exercised option under Para 11(3) of EPS and continued to be in service on or after 1 September 2014 will be governed by paragraph 11 (4) of EPS. Employees that did not exercise the option within the time specified under Para 11(4), shall not be eligible to exercise option within the extended period of four months.
- EPFO through this circular has provided the manner in which the employee has to apply to the concerned Regional PF Office:
 - The request will be made in the form and manner, as may be specified by the Commissioner.
 - The joint option will contain the disclaimer and declaration as may be specified in the said form.
 - The employee has to give the consent in the joint option in case an adjustment from PF to Pension Fund is required and if any re-deposit to the fund is required.
 - In case of transfer of funds from exempted provident fund trust to pension fund of EPFO, an undertaking of the trustee shall be submitted. The undertaking shall be to the effect that due contribution along with interest up to the date of payment, will be deposited within the specified period.
 - In case of employees of unexempted establishments, refund of requisite employer's share of contribution, the same shall be deposited with interest at the rate declared by EPFO till the date of actual refund.
 - The joint option should have the proof of remittance of employer's share in PF on higher wages exceeding the prevalent wage ceiling and proof of joint option under Para 26(6) of EPF Scheme duly verified by the employer.
 - EPFO will come up with a separate circular on methodology of deposit and computation of pension.
- EPFO has provided in the circular that once application form is received within the time period specified in the Joint Option Form will be dealt with in the following manner by the Commissioner:
 - A facility will be provided for which URL will be informed shortly.
 - Each application will be registered and digitally logged. The receipt number will be provided to the applicant.
 - The application will be sent to the employer's login whose verification with Digital Signature/ e-sign will be essential for further processing.
 - RPFC will cause each application to be converted into e-file.
 - The concerned dealing assistant will examine the papers including the note on receipt of due amount in the Pension Fund and mark the case to concerned officers. The concerned officers would then mark out discrepancies, if any and after due examination, forward to higher officials for deciding the case.
 - The concerned commissioners shall examine each case of joint option on higher salary and the decision shall be intimated to the applicant through email/post. Efforts will be made to intimate them through telephone/SMS as well.

Our Comments

Though a detailed circular on the procedural aspect is still awaited from EPFO, the recent circular by EPFO has provided clarity on eligibility of employees and certain formalities to be undertaken by the employees and the employer for availing the option to contribute towards EPS on higher salary and reallocation of funds from EPF to EPS.

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills Compound, N M
Joshi Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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