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Tax Flash News

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Important updates under Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act)

Executive summary

The Ministry of Labour and Employment, Government of India and Employees' Provident Fund organisation (EPFO) have issued significant notifications recently under the EPF Act.

- EPFO has announced that it will no longer provide Covid-19 advances introduced under Para 68L(3) of the Employees' Provident Funds Scheme (EPFS), 1952 to its members with immediate effect.
- The Ministry of Labour and Employment via notification has reduced the penal charges for employers defaulting in remittance of contributions towards EPFS, Employees' pension Scheme, 1995 (EPS) and Employees' Deposit Linked Insurance Scheme, 1976 (EDLI Scheme) contribution with the retirement fund body. The penal charges have been revised to 1 per cent of arrear of contribution per month. The charges are now uniform irrespective of the duration of default.
- The Ministry of Labour and Employment via notification has revised the 'Table B' and 'Table D' laid under EPS in relation to the computation of pension withdrawal.

Gist of the Notifications

1. Discontinuation of Covid-19 advances under para 68L(3) of EPFS

- During the Covid-19 outbreak, EPFO had issued a notification dated 27 March 2020 and allowed a non-refundable advance[1] from the Provident Fund account of the member.
- Subsequently, a second Covid advance was also allowed in May 2021 in view of the second wave.
- The non-refundable advance was allowed from the Provident Fund (PF) account of such member for an amount not exceeding the basic wages and dearness allowances of that member for three months or up to seventy-five per cent of the amount standing to his credit in the Fund, whichever is less.
- Recently, as per the circular[2] EPFO has announced that it will no longer provide Covid-19 advances introduced under Para 68L(3) of the EPFS to its members with immediate effect.
- In a circular dated June 12, EPFO stated that, *"as Covid-19 is no more a pandemic, the competent authority has decided to discontinue the said advance with immediate effect. This will be applicable to the exempted trusts also and accordingly may be intimated to all the Trusts coming under your respective jurisdictions".*

2. EPFO revises the rate of damages for employers defaulting in payment of PF, Pension and EDLI deposits

- The Ministry of Labour and Employment, Government of India and EPFO vide notification[3] dated 14 June 2024 made a notable change under the EPF Act by reducing the rate of penal charges for employers who default or fail to remit the contributions under the EPFS, EPS and EDLI Scheme.

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[1] Notification – Notified in official gazette on 27 March 2020

[2] EPFO Circular dated 12 June 2024

[3] Notifications dated 14 June 2024

- The provision for recovering penal charges from the employers on account of any default or delay in payment of PF liability is laid under Section 14B[4] of the EPF Act. The said section clearly indicates that the Provident Fund Commissioner or any other officer authorized by the Central Government may recover from the employer such damages not exceeding the amount of arrears as may be specified in the scheme laid under para 32A of EPFS.

Rate of damages

- As per the previous provision laid under Para 32A of the EPFS, a Company was liable to pay damages on account of defaults in making PF contribution, transfer of accumulations and making payments of any charges as per provisions specified under the EPF Act.

- The rate of damages varied from 5% to 25% per annum of arrear amount depending on the period of default. These rates were earlier revised in September 2008. Prior to September 2008, the rate of damages varied from 17% to 37% per annum of arrear amount depending on the period of default.

- The provisions for payment of damages are laid under Para 5 and Para 8A of EPS and EDLI Scheme respectively. The rate of damages under both these schemes were similar to EPFS and varied in the range of 5% to 25% per annum of arrear amount depending on the period of default.

- Now, pursuant to the 2024 notifications, the rate of damages shall stand revised to 1% of arrears per month from the date of publication of notification.

- The said change in the rate of damages have been made under Para 32A of EPFS, Para 5 of EPS and Para 8A of EDLI Scheme. Thus, as per the notifications, the defaulting employers will be liable to pay 1% of the due liability per month towards damages across all the three schemes.

[4] Section 14B of EPF Act - Where an employer makes default in the payment of any contribution to the Fund [the (Pension) Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 [or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] "may recover" [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:'

3. Amendment in the Pension benefit

- The Ministry of Labour and Employment, Government of India has also issued two important notifications[5] under EPS whereby the rules for claiming the pension withdrawal benefit have been amended.

- Para 14 of the EPS provides for a withdrawal benefit to those employees who are members of the scheme but have not completed the eligible service mentioned under the scheme. The quantum of lump-sum pension withdrawal depends on the number of years of contribution and is indicated in Table D of the EPS.

- As per the earlier provision, the withdrawal benefit was calculated on the basis of number of years of service completed as laid under Table D of EPS. As per the revised 'Table D' the lumpsum withdrawal benefit is now calculated on the basis number of months of service completed by a member.

- The Government has also amended 'Table B' under EPS via notification dated 14 June 2024 which is relevant for computing pension.

[5] Notifications dated 14 June 2024

Our comments

These are significant developments introduced under the EPF Act and hence it becomes imperative for employers as well as companies to understand the implications of the said notifications.

With this circular, EPFO has discontinued the benefit of non-refundable Covid-19 advances, however, the members will continue to avail the other advances laid under the EPF Scheme depending on the eligibility criteria.

The rate of damages is now more simplified and have been made uniform irrespective of the duration of default vis-à-vis the earlier method of computation wherein the rates varied depending on the period of delay. However, more clarity/ calculation guidelines from the EPFO in this regard would be helpful for employers.

Further, in view of the notifications on amended Table B and Table D under EPS, pension withdrawal benefits will have to be calculated basis the revised tables.

EPFO has been coming up with updates regularly, hence it becomes important for employers and industry at large to keep revisiting their compliances regularly and keep abreast with the changes under the social security regime.

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