

Tax Flash News

12 May 2023

Key updates under higher pension option issued by the Government of India under Employees' Pension Scheme

Background

On **4 November 2022**, the Honorable Supreme Court¹ (SC) 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 01 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 i.e. till 3 March 2023.

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 had issued circulars² for clarifying the eligibility for opting the higher pension contribution under para 11(3) and para 11(4) of EPS. Also, the timeline of exercising the option had been extended by 2 months i.e. till 3 May 2023.

For details, please refer to our earlier Flash News dated 23 February 2023 by accessing the following link:

<http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-EPFO-circular-on-higher-pension-benefit-under-the-EPS.pdf>

Recently, on 3 May 2023, through a press release³, the Government of India (GOI) has extended the due date to exercise the option for higher pension further till 26 June 2023. Additionally, in another press release⁴ and circular⁵ issued by EPFO, a clarification towards deduction of 1.16% share of contribution has also been provided.

Further on **3 May 2023**, EPFO has issued a circular⁶ in relation to providing an option of deleting and re-submitting application for validation of option / joint option.

Key updates provided in the press releases and EPFO circulars

A. Extension of timeline for filing of Joint option applications

As per the press release issued by GOI on 2 May 2023, the deadline for making an application to exercise the joint option has been further extended to 26 June 2023.

In the press release it has been mentioned that this timeline is being extended to facilitate and provide ample opportunity to the pensioners / members so as to ease out any difficulty being faced by such pensioners / members.

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, EPFO Circular – No. Pension/2022/55893/ 15785 dated 25 January 2023 and EPFO Circular – No. Pension/2022/56259/ 16541 dated 20 February 2023

³ GOI Press Release – Release ID: 1921500 dated 2 May 2023

⁴ GOI Press Release – Release ID: 1921830 dated 3 May 2023

⁵ EPFO Circular – No. Pension/Supreme Court/ judgement/HPM/2022/Pt dated 4 May 2023

⁶ EPFO Circular – No. Pension/POHW/2023/69114/615 dated 3 May 2023

B. EPFO circular on 1.16% increased contribution from employer's share into Pension Fund

The SC in the ruling had earlier held that the requirement of the members to contribute 1.16% of the differential salary, i.e., such salary exceeding INR 15,000 per month, as an additional contribution under the amendment scheme is ultra vires or illegal to the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act)

However, as a stop-gap measure, the court had directed the authorities to make necessary adjustments in the Scheme within a period of six months from the date of ruling or till such amendment is made in the scheme (whichever is earlier).

Since the EPF Act has been subsumed in the **Code on Social Security, 2020** (notified but not yet effective) and whereas the EPF Act does not allow employer's contribution in excess of 8.33% of pay towards the Pension Scheme, the Central Government has decided to bring into force only certain relevant provisions of the said code into effect which provides flexibility to the Central Government to decide the rate at which contributions can be allocated towards EPS. In exercise of such powers, the Central Government has notified the increased 1.16% rate of contribution for members who have exercised the joint option under the Employees' Pension Scheme to be diverted from the employer's Provident Fund into the Pension Fund.

EPFO had issued a circular on 4 May 2023 regarding clarification on 1.16% share of contribution.

The circular provides that in respect of eligible members who have exercised the joint option for higher pension, the employer's share of contribution towards Pension Fund shall now be 9.49% of the monthly PF salary (increased by 1.16%) from the existing 8.33% and the remaining share will be allocated towards the Employer's PF account out of the overall 12% of employer's contribution.

It also states that the increased 1.16% contribution shall be applicable on the monthly PF salary (salary as per the EPF act) to the extent such monthly PF salary exceeds fifteen thousand rupees per month.

The change is retrospective and effective from 1 September 2014.

C. EPFO Circular on correction of the application

EPFO has provided an online facility to correct errors in the employee's applications for validation of option / joint option.

In the online functionality, a button for '*Delete Application*' has been provided to the employees. The employee after deleting the application can file a fresh Application for Validation of Option / Joint Option with correct details/ uploads. However, this can be used only if the employer has not acted on the application submitted by the employee.

In case the employer has already acted on the application, the employee will be provided an opportunity to rectify the errors after the scrutiny of application for validation of option / joint option by the field offices.

Our comments

The extension of the timeline till 26 June 2023 could be a big relief for the employees and members of EPS who may still be contemplating to register for higher pension.

Further, the delete option updated on the portal will be helpful for employees who had exercised the option but had inadvertently provided incorrect information. Such members would be able to rectify the same now provided the employer has not acted on the application.

Also, the circular issued on additional 1.16% of share of contribution is a long-awaited clarification provided by EPFO. No additional contribution is required to be paid by the employer or employee and the increased 1.16% share of contribution would be diverted from within the overall 12% of the employer's contribution of Provident Fund into the Pension Fund.

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