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PAYMENT OF EPF CONTRIBUTION BY CENTRAL GOVERNMENT

- AN OVERVIEW OF THE SCHEME

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Introduction

To boost the ailing economy and ameliorate the conditions of poor and migrant workers, the Finance Ministry had, on March 26, 2020, announced a relief package of Rs. 1.70 lakh crore under Pradhan Mantri Garib Kalyan Yojana (“**PMGKY**”). Whilst the detailed breakup or modality was not specified, the Finance Ministry had, during such announcement, declared that the Central Government would be paying the contributions payable by the employer and the employee under the Employees’ Provident Funds and Miscellaneous Provident Act, 1952 (“**EPF Act**”) for a period of three (3) months.

To implement the aforesaid package, the Ministry of Labour, Government of India, has, vide [Office Memo No. C-1/Misc./2020-2021/Vol. II/Pt./6 dated April 9, 2020](#), approved a scheme with guidelines for implementation of the proposal (“**Scheme**”). This update provides a brief overview of the Scheme and attempts to clarify some issues which may arise in the implementation of the Scheme.

Scope of the Scheme

Under the Scheme, the Central Government proposes to pay the *entire contribution payable* under the EPF Act by an *employer* (12% of wages) and an *employee* (12% of wages), totalling 24% of the monthly wages for the wage months of March 2020, April 2020 and May 2020.

Who are the Eligible-Establishments?

An establishment, to be covered under the Scheme, would have to fulfil the following conditions:

- (i) The establishment or factory should have already been covered under the EPF Act; and
- (ii) total number of employees employed in the establishment should be up to 100 (one hundred), with 90% (ninety percent) or more of such employees should be drawing monthly wages less than Rs. 15,000 (Rupees fifteen thousand).

Who are the Eligible Employees?

An employee to be eligible has to meet the following criteria:

- (i) he needs to be employed in an eligible establishment earning monthly wages less than Rs. 15,000 (Rupees Fifteen Thousand).
- (ii) the Universal Account Number (“**UAN**”) should be seeded with his/her Aadhaar;
- (iii) the employee should be a member of the EPF Scheme, 1952 & Employees’ Pension Scheme, 1995, whose contributions are received for any period during the last six months (September, 2019 to February, 2020) in the ECR filed by any eligible establishment against his/her UAN; and
- (iv) he should not be a registered beneficiary under other similar schemes (such as *Pradhan Mantri Rojgar Protsahan Yojana Scheme*), wherein the employer’s share is contributed by the Central Government.

What are the Instructions for availing the Scheme?

To avail the benefit of the Scheme, employers of an *eligible establishment* has to comply with the following steps:

- (i) disburse wages for the month to all employees of the establishment, without deducting the contribution towards employee's share of EPF contributions from the monthly wages of any eligible employee drawn for the wage months- March 2020, April 2020 and May 2020;
- (ii) only one valid ECR has to be filed for each of the months- March, 2020, April, 2020 and May, 2020. At the time of submission of the ECR, the employer shall be required to certify correctness of information furnished electronically in ECR and in Form 5A with an undertaking, in the format specified in the Scheme itself.
- (iii) The challan so uploaded would reflect the amount payable by the employer- contributions towards EDLI Scheme, 1976 and EPF administrative charges in respect of all employees as well as EPF & EPS contributions due in respect of the ineligible employees.
- (iv) Once the employer remits the payment due from him as reflected in the challan, the EPF & EPS contributions in respect of eligible employees will be credited directly in their respective UAN by the Central Government.

Apart from the Scheme, EPFO has already come up with an [FAQ](#) on the Scheme ("EPFO FAQ"). The following section addresses some of the other *Frequently Asked Questions* in the context of the Scheme not covered in the FAQ provided by the department:

1. In terms of the EPF Act, who would qualify as an *employee* for the purposes of determining whether the establishment is eligible to claim the benefit?

In terms of Section 2(f) of the EPF Act, an employee would mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—

- (i) employed by or through a contractor in or in connection with the work of the establishment;
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment.

2. Would that imply that even persons employed through a contractor be counted towards the threshold?

Yes. However, in the event the contractor has an independent code, based on the jurisprudence developed, one may be able to argue that such contractor would be deemed to be principal employer *vis-à-vis* its employees and hence, the employees engaged through such contractor cannot be considered as employees of the principal employer.

In other words, where the contractor has an independent code under the EPF Act, the employer of the establishment would not be required to calculate such person engaged through the contractor towards employees engaged in the establishment.

3. The Scheme provides that an establishment to be eligible, 90% (ninety percent) or more of such employees should be drawing monthly wages less than Rs. 15,000 (Rupees Fifteen Thousand). The Scheme further provided that an employee to be eligible should be earning monthly wages of less than Rs. 15,000 (Rupees Fifteen Thousand). What happens if the employee earns Rs. 15,000 (Rupees Fifteen Thousand) per month?

The threshold of Rs. 15,000 (Rupees Fifteen Thousand) is actually derived from the threshold specified under the EPF Scheme Pension Scheme and EDLI Scheme, for determining if an employee would qualify as an *excluded employee* under the relevant schemes. If one examines the definition of *excluded employee* under the schemes, it would be apparent that only if a person's wages exceeds Rs. 15,000 (Rupees Fifteen Thousand) per month, would such person be treated as *excluded employee*.

Unfortunately, the drafting of the Scheme specifies eligibility criteria as wages less than Rs. 15,000 (Rupees Fifteen Thousand) per month, and is a departure from the manner in which *excluded employees* are identified.

4. Ignoring for a moment the confusion regarding the wage threshold, how does one calculate the wages for determining the threshold limit of Rs. 15,000 (Rupees Fifteen Thousand)?

The wage is calculated by adding the *basic wages*, *dearness allowance*, *retaining allowance* (an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services) and cash value of any food concession.

To ascertain what constitutes *basic wages*, one may refer to the decision of Supreme Court in the case of *RPFC (II) West Bengal v. Vivekananda Vidyamandir* [Civil Appeal No. 6221 of 2011, decided on February 28, 2019], where it was held that where an emolument paid is universally, necessarily and ordinarily paid to all across the board such emoluments would qualify as basic wages, irrespective of the terminology used to denote such payment.

5. Would all the employees drawing monthly wages less than the specified threshold be entitled to the benefit?

No. If the UAN of the employee is not seeded with his/her Aadhaar, such person may not be entitled to the benefit of the Scheme, despite meeting the wage threshold. Notably, the EPFO FAQ notes that such seeding of UAN with Aadhaar would also be possible during lockdown.

Further, if the employee is a beneficiary of similar other schemes, such employee would not be eligible for the benefit of the Scheme.

6. Would an employee be required to be a member of the EPF Scheme to be eligible under the Scheme?

The Scheme mentions that for an employee to be eligible under the Scheme, he would have to be a member of the EPF Scheme and Pension Scheme. However, EPFO FAQ seems to have suggested that even an *exempted establishment* would be entitled to the benefit of the Scheme if the same meets the criteria for an *eligible establishment* under the Scheme. Considering that members of an *exempted establishment* would not be required to be a member of the EPF Fund, it appears that even when an employee is not a member of the Fund, such an employee would be entitled to avail the benefit.

This update has been contributed by Arka Majumdar (Partner).

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