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CHARTERED ACCOUNTANTS

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OTHER LAW REVIEW

MAY 2019

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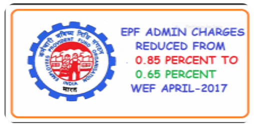
Updates or amendments in respect to Employees Provident Fund and Employees' Pension Schemes in India

Supreme Court ruling to significantly push up pension of private sector employees



On April 1, 2019 the Honorable Supreme Court (SC) has dismissed the Special Leave Petition (SLP) filed by the Employees' Provident Fund Organization (EPFO) against the Kerala High Court ruling explained below. In simple terms the SC ruled that all private sector employees in the organized sector which were up till now subject to a salary cap of INR 15,000 for calculating their pension, will now be able to get monthly pension based on the '*number of years*' put in by the employee multiplied by his "***last drawn salary***" divided by seventy.

Brief History:

Amendment in EPS in September 2014 by notification:

Maximum pensionable salary for the purpose of calculating monthly pension was increased to INR 15,000 from INR 6500 and new membership would be applicable to employees whose pay is less than or equal to INR15,000 p.m. on the date of membership. The wage ceiling for contribution was increased to INR 15,000.

The members were given a time period of 06 month from 01-09-2014 to exercise the option to contribute to pension on higher wages. *A writ petition challenging the said amendments by EPFO was filed.*

Supreme Court (SC) ruling in October 2016:

The SC in its ruling in Oct 2016 held that there would be no cut-off date to determine the eligibility of employer and employee to indicate their option for a higher contribution and employees would be entitled to the benefit of deposit of 8.33 % of actual salary, irrespective of the ceiling limit. At the request of the member, the EPFO could seek a return of all EPF accumulations that the employees may have withdrawn and divert the funds to the EPS to provide higher pension to the member.

PF Circulars in 2017

March 2017: To align the EPF act with the above SC ruling the, the EPFO issued a circular stating that a member contributing or who had contributed to PF on wages exceeding the statutory ceiling cannot be debarred from exercising the option to contribute on such higher wages to the pension fund.

Kerala High Court (HC) ruling in October 2018

The Kerala HC set aside the Notification issued in 2014 and held that all proceedings issued by the EPFO declining to grant opportunities to petitioners to exercise a joint option along with other employees to remit contributions to the EPS on the basis of the actual salaries drawn by them are to be set aside and all resulting proceeding to also be set aside.

In December 2018 the EPFO filed an SLP in the Supreme Court against the above judgement.

PF Circulars in 2019

January 2019: An earlier issued directing additional contribution of 1.16 % to be collected from all employees who had opted for contribution to the pension fund on actual salary, with effect from 01-09-2014 was withdrawn by the EPFO in Feb 2019.

Supreme Court ruling in 2019

Now in this current ruling issued on April 2019, the SC has dismissed the SLP filed by the EPFO as having no merit thus dismissing the SPL filed by the EPFO against the Kerala High Court ruling.

Supreme Court (SC) Limits the Scope of “Excluded Employee” under the Employees' Provident Funds and Miscellaneous Provisions Act and the Employees' Provident Funds Scheme 1952.

In the matter of Modern Transportation Consultation Services Pvt Ltd vs. CPFC EPFO and others it was held by the SC that Employee who have withdrawn their full PF upon superannuation and were subsequently re-employed on lump sum honorarium basis cannot be automatically treated by the employer as "excluded employees" under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' Provident Funds Scheme, 1952.

In order to be covered under the expression “excluded employee” under the 1952 scheme, the employee during his earlier employment must have been a member of the Fund established under the Scheme of 1952 and not any other Fund.

It held that the “excluded employees” in paragraph 2(f) and the stipulation in paragraphs 26 and 69 of the 1952 Scheme reads as “an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in **the Fund** under clause (a) or (c) of sub-paragraph (1) of paragraph 69"; and therefore refers to "the Fund" and not to "any Fund".

Similarly, paragraphs 26 and 69 also refer to "the Fund" and not to "any Fund". The usage of the word "the" as opposed "any" before "fund", in the opinion of the Supreme Court, makes it evident that the reference therein is only to the 1952 Scheme and not a general reference to any fund.

RBI extends date for implementation (phase I and phase II) of legal entity identifier (LEI)* for participation in non-derivative markets

As per the circular FMRD.FMID.No.15/11.01.007/2018-19 dated 26th April,2019 issued by RBI on the timelines for implementation (Phase I and Phase II) of Legal Entity Identifier (LEI) for participation in non-derivative markets are extended as follows:

Phase	Net Worth of Entities	Previous Deadline	Extended Deadline
Phase I	Above INR 10000 million	30-Apr-2019	31-Dec-2019
Phase II	between INR 2000 million and INR 10000 million	31-Aug-2019	31-Dec-2019
Phase III	up to INR 2000 million	31-Mar-2020	31-Mar-2020

Brief History

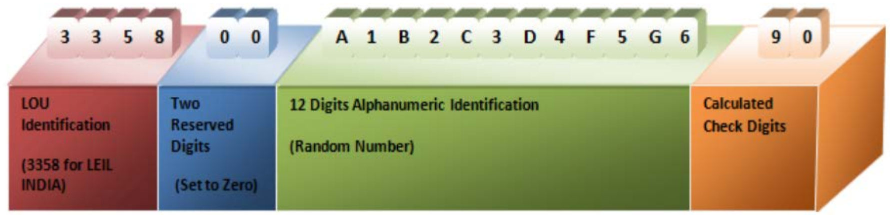
The Legal Entity Identifier (LEI) is a 20-character global reference number that uniquely identifies every legal entity or structure that is party to a financial transaction, in any jurisdiction.

Legal Entity Identifier India Limited (LEIL) a wholly owned subsidiary of The Clearing Corporation of India Ltd. set up as a Local Operating Unit (LOU) for issuing globally compatible Legal Entity Identifiers (LEIs) in India.

LEIL has been recognized by the RBI as an "Issuer" of LEIs under the Payment and Settlement Systems Act 2007 (as amended in 2015).

The structure of the global LEI is determined in detail by ISO Standard 17442 and takes into account Financial Stability Board (FSB) stipulations.

Structure of LEI Code is as under:



LEI will be assigned on application from the legal entity and will be allotted after due validation of data.

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