

# Global Tax Update

## India

Deloitte Tohmatsu Tax Co.

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### 1. Withdrawal of past PF<sup>1</sup> accumulations permissible, EPFO<sup>2</sup> clarifies for Japanese international workers

Social Security Agreement between India and Japan (“SSA”) has become effective from October 1, 2016. One of the benefits provided under the SSA relates to withdrawals of past contributions to PF and pension by Japanese nationals.

SSA specifically provides that Japanese nationals are entitled to withdraw accumulated PF balances on ceasing to be employees of a covered establishment<sup>3</sup> in India. Japanese nationals would also be entitled to the withdrawal benefit under the Employees’ Pension Scheme, 1995 (“Pension Scheme”) where the requirement of eligible services under the scheme is not met.

SSA further provides that these benefits are available to persons covered under the provident fund / pension schemes prior to the date of the SSA coming into force<sup>4</sup>. The provisions enable withdrawal of contributions by International Workers (IWs) covered under an SSA on ceasing to be an employee of a covered establishment in India.

Japanese Chamber of Commerce and Industry in India (JCCI) has brought to the notice of the

government of India that in practice, refund of accumulated balances were not being issued to Japanese nationals who had left India prior to the effective date of the SSA.

EPFO has now issued a clarification specifically with respect to lump sum withdrawal of PF balances / pension contributions for Japanese nationals working in India.

The clarification specifically states that Japanese nationals who had been working in India before the commencement of the India-Japan SSA (i.e., October 1, 2016), would also be eligible to apply for withdrawal of balances under the EPF / pension schemes, and the refunds should be processed in line with the specific provisions of the SSA.

### 2. Restriction on number of layers of subsidiaries under 2013 Act<sup>5</sup>

To check misuse of multiple layers of subsidiaries for diversion of funds and siphoning off funds, the 2013 Act<sup>6</sup>:

- Prohibits prescribed holding companies from having layers of subsidiaries beyond prescribed numbers; and

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1 Provident Fund – India’s social security contribution is referred as Provident fund. Both the employer and employee are required to make contributions towards provident fund provided certain conditions are satisfied.

2 Employer Provident Fund Organization

3 Entity to which social security regulations like PF regulations apply

4 The domestic regulations in India (Para 69(4) read with Para 83 of the PF Act) also provide for withdrawal of full amount standing in the Fund to the credit of an employee

5 Companies Act, 2013

6 These provisions were sought to be omitted from the 2013 Act on the recommendation of the Companies Law Committee (CLC) set up by the Ministry of Corporate Affairs (MCA). CLC felt that these restrictions may become too obtrusive and impractical in the modern business world, and have a substantial bearing on the structuring and the ability of companies to raise funds. Subsequently, in view of reports of misuse of multiple layers of companies, where companies create shell companies for diversion of funds or money laundering, the government decided to retain these provisions and placed a draft notification of the Rules to be prescribed, for public comments in June 2017.

- Requires that no investments can be made through more than two layers of investment companies.

On 20 September 2017, MCA notified the Companies (Restriction on Number of Layers) Rules, 2017 (the Notification). Highlights of the Notification are summarized as under:

- ① On and from 20 September 2017, no company shall have more than 2 layers of subsidiaries.
  - A company may acquire a company incorporated outside India with subsidiaries beyond 2 layers as per the local laws of such country;
  - In computing the number of layers, one layer which consists of one or more wholly-owned subsidiary or subsidiaries shall not be taken into account.
- ② The following classes of holding companies are exempted from the applicability of the Notification – Banking companies, Systematically Important Non-Banking Financial Companies, Insurance companies and Government companies
- ③ Existing companies having more than 2 layers of subsidiaries as on 20 September 2017 are required to ensure following:
  - File a return in the prescribed form with the Registrar of Companies within 150 days of 20 September 2017;
  - Shall not have any additional layer of subsidiaries over and above the existing layers on or after 20 September 2017; and
  - In case one or more layers of subsidiaries are reduced by such companies subsequent to the date of Notification, the number of layers permissible shall not be more than Number of layers after such reduction or 2 layers.
- ④ In case of contravention of the Notification, the company and every officer of the company who is in default is punishable with fine up to INR 10,000 and in case of continuing default, with a further fine up to INR 1,000 per day of default.

We recommend that the business groups should consult advisors / experts before making any decisions on incorporation of companies/ acquisition/ re-organizations, etc.

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