

# Audit perspective.....

- The Payment of Bonus Act, 1965
- The Employees State Insurance Act, 1948
- The Employee Provident Fund Act, 1952
- The Payment of Gratuity Act, 1972

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# Audit perspective.....

## The Payment of Bonus Act, 1965

# The Payment of Bonus Act, 1965

## Introduction

An act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity.

## Applicability

- Every factory where in **10 or more persons** are employed with the aid of power on any day during an accounting year
- Every other establishment in which **20 or more persons** are employed without the aid of power on any day during an accounting year

# The Payment of Bonus Act, 1965

Here, establishment includes department, undertaking and branches, etc.

## **Exception:**

In case **separate** balance sheet and profit and loss accounts are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch is treated as **separate** establishment for the purpose of computation of bonus under this act.

# The Payment of Bonus Act, 1965

- **Component of Bonus**

- **Salary or wages includes**

- basic
- dearness allowance,
- CCA
- but no other allowances e.g. over time, house rent, incentive or commission

- **Eligibility for bonus:**

- An employee will be entitled for bonus only when he has worked for 30 working days in that financial year.

# The Payment of Bonus Act, 1965

- **Payment of Minimum Bonus**

- 8.33% of the salary or Rs.100 whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

- **Eligible employees**

- Employees means any employee drawing wages not more than Rs.10000/- per month.
- However for calculation purpose of bonus Rs.3500/- p.m. will be taken into consideration.

- **Time limit for payment of bonus**

- Within 8 month from the close of the accounting year.

# The Payment of Bonus Act, 1965

- **Disqualification & deduction of bonus**

- An employee shall be disqualified from receiving bonus under this act, if he is dismissed from service for-
  - Fraud
  - Riotous or violent behaviour while on the premises of the establishment
  - Theft, misappropriation or sabotage of any property of the establishment
  - Misconduct of causing financial loss to the employer to the extent that bonus can be deducted for that year

# The Payment of Bonus Act, 1965

- **Maintenance of Register and Records**
- Every employer shall prepare and maintain the following registers:
  - A register showing the computation of allocable surplus
  - A register showing the set on and set off of the allocable surplus
  - A register showing the details of the amount of bonus due to each of the employee

# The Payment of Bonus Act, 1965

allocable surplus" means,-

(a) in relation to an employer, being a company (other than a banking company) **sixty-seven per cent** of the available surplus in an accounting year;

(b) in any other case, **sixty per cent of such available surplus;**

# The Payment of Bonus Act, 1965

- **Annual Returns**

- Every employer shall submit a return in Form D to within 30 days after the expiry of time limit i.e. 8 month.

## **Set on or Set off**

In the following table figure assumed are as follows:

Minimum Bonus= Rs.1,04,167(8.33%)

Maximum Bonus= Rs.2,50,000 (20%)

# The Payment of Bonus Act, 1965

Year	Available surplus allocable as bonus (Rs.)	Amount payable as bonus (Rs.)	Set on or set off of the year carried forward (Rs.)	Total set on or set off carried forward (Rs.)
1	104167	104167 (Minimum)	Nil	Nil
2	635000	250000 (Maximum)	Set on 250000	Set on 250000 (2)
3	220000	250000 (inclusive of 30000 from Y-2)	Nil	Set on 220000 (2)
4	375000	250000 (Maximum)	Set on 125000	Set on 220000(2), 125000(4)
5	140000	250000 (inclusive of 110000 from Y-2)	Nil	Set on 110000(2), 125000(4)
6	310000	250000 (Maximum)	Set on 60000	Set on Nil (2), 125000(4), 60000 (6)

# The Payment of Bonus Act, 1965

## **Set on or Set off of allocable surplus**

Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment then, the excess shall, subject to a limit of twenty per cent of the total salary or wages of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus.

# The Payment of Bonus Act, 1965

## **Set on or Set off of allocable surplus**

Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment, and there is no amount or sufficient amount carried forward which could be utilized for the purpose of payment of the minimum bonus, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year.

# The Payment of Bonus Act, 1965

## Computation of available surplus

- **Net Profit:**
- **Add:**
  - bonus to employees
  - depreciation as per Sec.32 of Income Tax Act, 1961
  - direct tax
  - development rebate or investment allowance or development allowance
  - bonus paid to employees in respect of previous accounting years
  - donation in excess of the amount admissible for income tax
  - capital expenditure other than scientific research
  - capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income tax )
  - losses of, or expenditure relating to any business outside situated outside India
  - any income credited directly to reserves

# The Payment of Bonus Act, 1965

## **Deduct:**

- Capital receipts and capital profits (other than profits on sale of assets on which depreciation has been allowed for income tax purpose)
- Profits of, or receipts relating to any business outside situated outside India
- Income of foreign concerns from investments outside India
- Any expenditure debited directly to reserves
- Refund of any direct tax
- Cash Subsidy



Audit perspective.....

# The Employees State Insurance Act, 1948

# The Employees State Insurance Act, 1948

## Introduction

- An act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters.

## Applicability

- It extended in area wise to factories using power and employing **10 or more persons** and to non power using manufacturing units and establishments employing **20 or more persons**.

# The Employees State Insurance Act, 1948

## Non Applicability

- Seasonal Factory
- To employees of Govt. Factory or establishment receiving similar or superior benefits

## Employee

- Directly employed or through contractor.

## Coverage

- Drawing wages upto Rs.10000/- per month.

# The Employees State Insurance Act, 1948

## Contributions

- Employer's = 4.75%
- Employee's = 1.75%

## Contribution Period

- 1<sup>st</sup> April to 30<sup>th</sup> September
- 1<sup>st</sup> October to 31<sup>st</sup> March

## Manner and time limit for making payment of contributions

- The total amount of contributions (employee's share and employer's share) is to be deposited with the authorized bank through a challan in prescribed form in quadruplicate on or before 21<sup>st</sup> of month following the calendar month in which the wages fall due.

# The Employees State Insurance Act, 1948

<b>To be deemed as Wages</b>	<b>Not to be deemed as Wages</b>
Basic Pay	Contribution paid by the employer to any pension fund/provident fund or ESI act
Dearness Allowance	Daily allowance paid for the period spent on tour
HRA	Gratuity payable on discharge
CCA	Pay in lieu of retrenchment
Overtime Wages	Encashment of leave
Payment for day of rest	Conveyance amount towards reimbursement for duty related journey
Production Incentive	Washing allowance

# The Employees State Insurance Act, 1948

To be deemed as Wages	Not to be deemed as Wages
Bonus other than statutory dues	
Night Shift allowance	
Suspension Allowance	
Lay Off Compensation	

## Return

Return of Contributions should be submitted within 42 days of expiry of contribution period. Certificate by CA is required in case of employers employing 40 or more employees.



# Audit perspective.....

## The Employee Provident Fund Act, 1952

# The Employee Provident Fund Act, 1952

## Introduction

It is a mandatory, tax-qualified, defined, contribution retirement benefit plan wherein equal contribution at the specified rate is made by the employer and the employee and the same is payable in lump sum on retirement.

## Applicability

- Establishments employing 20 or more persons and engaged in any of the industries / Businesses specified.
- Co-operative Societies, employing 50 or more persons & working without the aid of power.

# The Employee Provident Fund Act, 1952

- *Applicability*
- Establishments not coverable statutorily can opt for coverage.
- An establishment continues to be covered under the Act, irrespective of fall in the employment strength.
- Cinema Theatres employing 5 or more persons.

# The Employee Provident Fund Act, 1952

## **Contributions**

- Statutory rate of contribution is 12% of salary subject to a maximum of Rs.6500/- per month  
(basic wages, dearness allowance, cash value of food concession and retaining allowances if any,)
- Rate of contribution shall be 10% in case of the following:
  - Brick, beedi, jute, guar gum factories, coir industry other than spinning sector.
  - Establishments declared as sick undertakings by BIFR.
  - Any establishment in which less than 20 persons are employed.
  - Any Establishment which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

# The Employee Provident Fund Act, 1952

## **Contributions**

- Matching contribution is to be collected from the employees
- Out of total contribution of 12% employer's share of Provident Fund contributions is 8.33% subject to the total wages limit of Rs. 6500/- per month and balance 3.67% is credited to the Employees' Pension Fund. The Central Government also contribute at the rate of 1.16% of total wages.
- No amount is recovered from employee's wages in EDLIS scheme. Employer should pay 0.5% of total wages subject to a ceiling of Rs. 6500/- per month

# The Employee Provident Fund Act, 1952

## **Settlements during the year**

- A member may completely withdraw the amount that has accrued in his account if:
- He retires at the age of 58.
- He retires – because of permanent and total disabilities. This could be either mental or physical, but must be ‘permanent and total’
- He immigrates or takes up employment abroad.
- His services are terminated because of retrenchment in the company.

# The Employee Provident Fund Act, 1952

## **Settlements during the year**

- He chooses to terminate his service under a voluntary retirement scheme.
- The establishment he works for shuts down.
- The organisation he works for shuts down, and he joins one that does not participate in the EPF scheme.
- He can withdraw up to 90 per cent of the amount in his credit in the year before he retires -- that is, between the ages of 57 and 58.
- If an employee brings in a transfer from another approved Provident Fund Trust or RPFC then the service rendered with such an ex-employer is also counted.

# The Employee Provident Fund Act, 1952

## **Settlements during the year**

- Settlement can be done only after a waiting period of two months from the date of resignation
- For members going abroad, settlements can be done immediately
- Settlements are immediate in case of female members who resign from the services for the purpose of getting married.

# The Employee Provident Fund Act, 1952

- **TDS on settlements**

- Any payment received from a Statutory Provident Fund is exempt.
- There is no tax deduction if the member has put in five years of continuous service with the employer (includes period of past membership with previous employer/s if there is a transfer received). Otherwise, the member is liable for deduction of tax

# The Employee Provident Fund Act, 1952

- **Return**

- Remittance of Contributions to be filed on 15<sup>th</sup> of every following month for the contributions received in previous month.
- Return of employees qualifying / leaving and statement to be filed on 25<sup>th</sup> of every month.
- Consolidated annual contribution statement to be submitted by 30th April

# The Employee Provident Fund Act, 1952

- **Payment of Contributions:**

The employer shall pay the contribution payable to EPF, EDLI and Employee Pension Fund in respect of employee employed by him directly or through a contractor.

### **Charges:**

<b>Particulars</b>	<b>Unexempted Establishment (%)</b>
Administration Charges	1.1(Basic +DA)
EDLI Charges	0.5 subject to maximum of Rs.6500/-
Inspection Charges	0.01 subject to maximum of Rs.6500/-



# The Employee Provident Fund Act, 1952

- The Government of India vide its notification dated 1st October, 2008 has broadened the scope of the Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995
- include specific category of Indian employees working outside India and
- employees other than Indian employees, holding other than Indian Passport, and working for an establishment in India.
- every International Worker employed with an establishment in India to whom the Provident Fund Act applies, would be required to become a member of the Provident Fund, unless he/she qualifies as an “Excluded Employee”



# The Employee Provident Fund Act, 1952

## **International workman**

- Indian worker who has divided his/her career between India and another country with whom India has entered into a bilateral Social Security agreement (SSA)
- or a foreign national working in India
- If there is a Social Security Agreement Between two countries then the rules regarding Provident Fund will be determined in accordance with the provisions of that Agreement.
- Those countries with which India has not entered into any Social Security Agreement, the Provident Fund/pension rules will be governed by Indian law



# The Employee Provident Fund Act, 1952

- Excluded Employee has been defined to mean an International Worker who is contributing to a social security programme of his /her country of origin, either as a citizen or as a resident, with which India has entered into a SSA on reciprocity basis
- As of today, Social security agreements have been signed with Belgium, France and Germany.
- Negotiations are at various stages with The Netherlands, Czech Republic, Hungary, Norway, Switzerland, Sweden, Luxembourg, USA and Australia.

# The Employee Provident Fund Act, 1952

## ***Amount of contribution :***

### **If the Monthly Pay is upto Rs.6500, then-**

- Contribution by the Employee shall be 12% of the monthly pay; and
- Contribution by the Employer shall be 12% of the monthly pay. Out of this, 8.33% has to be remitted to the Employees' Pension Fund and rest 3.67% shall be remitted to the Provident Fund.

# The Employee Provident Fund Act, 1952

## ***Amount of contribution :***

### **If the Monthly Pay is upto Rs.6500, then-**

- The Employee shall contribute at 12% of the monthly pay; and
- The employer shall contribute 12% of Rs. 6500 (8.33% will be remitted towards Pension Fund and 3.67% shall be remitted towards Provident Fund)
- The employer shall also contribute 12% of the amount exceeding Rs. 6500/- and that whole amount shall be remitted towards Provident Fund.

# The Employee Provident Fund Act, 1952

## ***Other issues:-***

- The Provident Fund rules will apply irrespective of whether the salary is paid in India or outside India.
- In case of a split payroll, the contribution is required to be made on the total salary earned by the employee.
- Even where an IW has multiple country responsibilities and spends some part of his time outside India, his total salary will be considered for Provident Fund contribution.
- There is no minimum period of stay in India for triggering the Provident Fund compliances.
- The withdrawal also depends on the principles of reciprocity with the home country of the IW where there is no SSA in place.

# The Employee Provident Fund Act, 1952

## ***Other issues:-***

The Apex Court has laid down well settled law in order to identify “international worker”.

- In A.Sundarambal Vs Govt. of Goa that “A person not engaged in skilled or unskilled manual, supervisory, technical, or clerical work even though employed in an industry is not a workman.” So the Managing Director either coming from India or international class is not a “workmen” under the law, so he can’t be covered under the ambit of “international worker”
- As most assignments are typically for less than five years, the withdrawal of the PF amount before completion of the five years may give rise to additional income tax implications.



# Audit perspective.....

## The Payment of Gratuity Act, 1952



# The Payment of Gratuity Act, 1952

## Introduction

An act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

# The Payment of Gratuity Act, 1952

## Applicability

- Every factory, mine, oilfield, plantation, port and railway company
- Every establishment in which **10 or more persons** are employed on any day of the preceding 12 months
- Once this Act is applied to a shop or establishment it shall continue to be governed by this Act even if the number of persons employed gets reduced at a later date.

# The Payment of Gratuity Act, 1952

- **Authority**

Different controlling authorities to be appointed by appropriate government for different states for the administration of this act.

- **Gratuity Fund**

Employer to maintain a gratuity fund or shall obtain a insurance from the Life Insurance Corporation of India for his liability for payment towards the gratuity under this Act

# The Payment of Gratuity Act, 1952

## Entitlement:

On the termination of employment after continuous service for not less than 5 years—

- On superannuation
- On retirement or resignation
- On death or disablement due to accident or disease

In case termination of the employment is due to death or disablement continuous service of 5 years is not be necessary.

# The Payment of Gratuity Act, 1952

- **Calculation:**

$$W \times Y \times 15/26$$

where  $W$  = Last Wage drawn or average of 3 month salary i.e., (basic +DA)

$Y$  = number of completed years of continuous service (six months or less to be ignored and more than six months to be counted as full year.

15=15 days salary

26 = No. of working days in a month.

# The Payment of Gratuity Act, 1952

## Payment of Gratuity:

- Seasonal Establishment: 7 days wages for every completed year of service
- Piece Rated Employee: 15 days wages for every completed year on an average of 3 month of salary
- Monthly rated employee: 15 days wages for every completed year on the basis of wages last drawn
- **Maximum Limit Rs.10 lacs.** (w.e.f 25-04-2010)
- **Time Limit** Within 30 days from the date it becomes payable to person.



# The Payment of Gratuity Act, 1952

- An employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss
- the gratuity payable to an employee may be wholly or partially forfeited
- if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment



# Final Word....

This may be  
the end of Presentation,  
But it should not be  
the end of Learning.

Thank You  
End of Session