

Social Security in India- *Tax and non-tax areas*

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Appendix

- ▶ EPF Act - Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- ▶ FA - Finance Act
- ▶ PF - Provident Fund
- ▶ EPF - Employee Provident Fund
- ▶ ASF - Approved Superannuation Fund
- ▶ NPS - National Pension Scheme
- ▶ Rules - Income-tax Rules, 1962
- ▶ CSS - Code on Social Security, 2020
- ▶ Act - Income-tax Act, 1961
- ▶ SSA - Social Security Agreement
- ▶ CoC - Certificate of Coverage



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Introduction to Social security



Contribution to PF (for domestic workers)

- ▶ Monthly pay includes *basic wages, dearness allowance, retaining allowance and cash value of food concession*. Basic wages means all emoluments paid or payable in cash except - *dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance*.
- ▶ Key principles held by the Hon'ble Supreme Court in *Surya Roshni Ltd, Vivekanand Vidya Mandir and others*.

Particulars	Domestic Worker	
	Membership started prior to 1 September 2014	Membership started on or after 1 September 2014
Total contribution - Employer - Employee	<ul style="list-style-type: none"> ▶ 24% of monthly pay <ul style="list-style-type: none"> ▶ 12% of monthly pay ▶ 12% of monthly pay 	
Allocation - Employee's share	▶ Fully to Provident Fund	
Allocation - Employer's share	<ul style="list-style-type: none"> ▶ 8.33% of monthly pay up to INR 15,000 to Pension Scheme - (A) ▶ 12% of monthly pay less (A) to Provident Fund 	<ul style="list-style-type: none"> ▶ Where monthly pay exceeds INR 15,000: Fully to Provident Fund ▶ Where monthly pay is up to INR 15,000: <ul style="list-style-type: none"> ▶ 8.33% of monthly pay up to INR 15,000 to Pension Scheme - (A) ▶ 12% of monthly pay less (A) to Provident Fund

Note - In addition to above mentioned employer's contribution, every employer is liable to pay Employer's contribution to EDLI and Provident Fund administrative charges

Tax implications on contribution to PF

At the time of contribution:

Employer's contribution

Contribution in excess of 12% of monthly pay is taxable

(Finance Act, 2020 amendment pertaining to taxability of contributions in excess of INR 7,50,000 - discussed separately in subsequent slides)

Employee's contribution

Deduction available under Section 80C of the Income-tax Act, 1961

(maximum limit: INR 1,50,000 per annum)

Interest on Employer's Contribution

Interest in excess of rate fixed by Central Government is taxable

Interest on Employee's Contribution

Interest in excess of rate fixed by Central Government is taxable

(Finance Act, 2021 amendment pertaining to interest on contributions in excess of INR 2,50,000 - discussed separately in subsequent slides)

Tax implications on withdrawal of PF

At the time of withdrawal:

Withdrawal of total
accumulated balance

The total accumulated balance withdrawn by the employee is exempt if:

- ▶ the employee has rendered continuous service for a period of five years or more, or
- ▶ the service has been terminated by reason of the employees ill-health or other cause beyond the control of the employee before the period of 5 years, or
- ▶ on the cessation of his employment, the accumulated balance is transferred to his individual account in any recognized provident fund maintained by such other employer

Tax implications on withdrawal of PF (contd.)

In case where the PF amount is withdrawn by the employee before 5 years, taxability of various components received by the employee are as follows:

Employer's contribution	Taxable as income under the head ' <i>Salaries</i> '
Employee's contribution	Employee's contribution is not taxable Arguably, deduction claimed earlier under Section 80C need not be reversed
Interest on Employer's Contribution	Taxable as income under the head ' <i>Salaries</i> '
Interest on Employee's Contribution	Taxable as ' <i>Income from other sources</i> '



PF – Some key aspects

Issues related to different provisions of the Income-tax Act vis-a-vis the EPF Act

- ▶ As per PF law, employer is statutorily obliged to contribute @ 12% of the monthly pay i.e. basic salary and all allowances which are uniformly paid to all employees. Whereas, 'salary' as per Rule 2(h) of the Fourth Schedule Part A of the Income-tax Act is defined to include dearness allowance but excludes all other allowances and perquisites.

Particulars	As per PF laws	As per tax laws
Basic salary	12,000	12,000
Special allowance	10,000	10,000
Salary for the purposes of PF as per respective laws	22,000	12,000

Whether employer's contribution to PF in excess of 12% of basic salary + dearness allowance will trigger taxation in hands of employee and subsequent disallowance in hands of employer?

- ▶ Interest accrued on accumulated PF balance from the date of cessation of employment upto the date of withdrawal/date of joining of new employer is taxable.
Eg – Date of cessation of employment – 31 March 2021; PF balance withdrawn on/new employment joining date is 15 June 2021

Superannuation Fund



Superannuation Fund

Nature	<ul style="list-style-type: none">▶ Superannuation scheme is a voluntary scheme to provide retirement benefits to employees▶ Specified benefits under the scheme accrue to employees on fulfilment of laid-down conditions, in the following events:<ul style="list-style-type: none">▶ <i>Retirement on attaining the age of superannuation;</i>▶ <i>Death/permanent total disablement;</i>▶ <i>Separation, after rendering a prescribed minimum service</i>
Limit / Range	<ul style="list-style-type: none">▶ Employer's contribution - upto 15% of basic salary and dearness allowance;▶ No mandatory contribution from the employee
Tax implications	<ul style="list-style-type: none">▶ <i>Employer's perspective:</i><ul style="list-style-type: none">▶ Annual contributions made to an ASF can be claimed as deductible business expense by the employer as per the Act subject to limits specified in Rules;▶ Contribution should not exceed 27% of salary of employee (including 12% towards PF)▶ <i>Employee's perspective:</i><ul style="list-style-type: none">▶ With effect from 1 April 2020, the Act provides an aggregate annual limit of INR 7.5 lakhs for non-taxability of employer's contribution made to PF, NPS and ASF (<i>discussed separately in subsequent slides</i>);▶ Amount received from ASF is exempt, subject to fulfilment of the prescribed conditions [<i>Section 10(13)</i>];▶ Transfer from ASF to NPS is also tax exempt [<i>Section 10(13)</i>];▶ Annuity payouts are taxable as income under the head 'Salaries' [<i>Section 17(3)(ii)</i>]

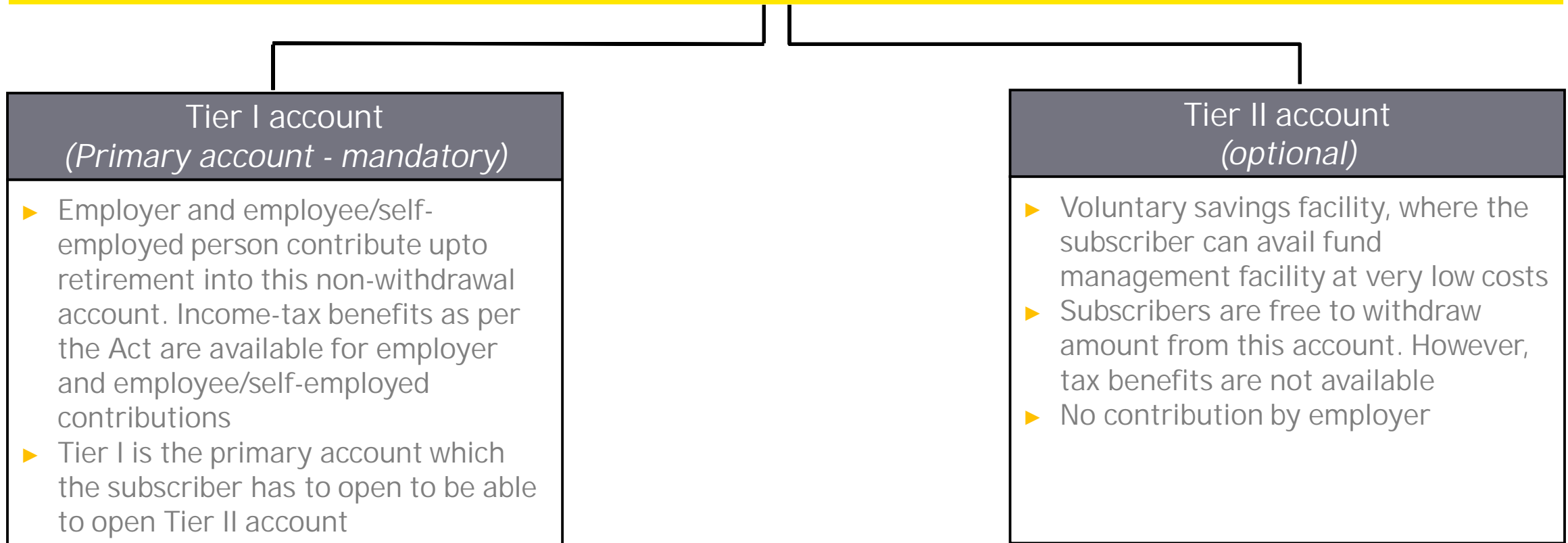
National Pension Scheme



National Pension Scheme

- ▶ NPS is a scheme introduced by the Government of India, which entails voluntary contribution of funds by an eligible individual for a sustained period of time to enable him to draw pension after he attains 60 years of age
- ▶ NPS is an 'Exempt-Exempt-Tax' scheme for 'contributions-income-withdrawal'

Types of NPS accounts



National Pension Scheme (contd.)

Contributions to NPS	<ul style="list-style-type: none"> ▶ NPS model allows three variations of contributions from employer and employee: <ul style="list-style-type: none"> ▶ <i>Equal contributions by employer and employee</i> ▶ <i>Unequal contributions by the employer and the employee</i> ▶ <i>Contribution from either the employer or the employee</i>
Tax implications in the hands of the <u>employees</u> at the stage of contribution	<ul style="list-style-type: none"> ▶ <u>Employees' contribution:</u> <ul style="list-style-type: none"> ▶ Deduction u/s 80CCD(1) to the extent of 10% of salary* subject to a limit of INR 1,50,000 under section 80CCE of the Act; ▶ For the amount on which deduction is not availed u/s 80CCD(1) as mentioned above, an additional deduction of INR 50,000 under section 80CCD(1B) is available for contribution made by employee to NPS ▶ <u>Employer's contribution:</u> <ul style="list-style-type: none"> ▶ Treated as income in the hands of the employee under section 17(1)(viii) of the Act but a deduction for the same can be claimed under section 80CCD(2) for the amount contributed by employer (<i>subject to aggregate limit of PF, NPS & SAF of INR 7.5 lakhs</i>); ▶ Limit: Deduction restricted to employer's contribution to the extent of 10% of salary* for the financial year (<i>over and above the deduction available for employee's contribution</i>)
Tax implications in the hands of the <u>employer</u>	<ul style="list-style-type: none"> ▶ Employer's contribution to NPS is a tax deductible business expenditure upto 10% of salary* of the employees u/s 36(1)(iva) of the Act

*Salary includes Dearness Allowance but excludes other allowances and perquisites

National Pension Scheme (contd.)

<i>Withdrawal from Tier I account (both employer and employee contributions)</i>	
Before 60 years of age (Allowed to subscribers who have been in NPS for atleast 10 years)	<ul style="list-style-type: none"> ▶ Complete withdrawal - If corpus is less than INR 2,50,000 ▶ If not, withdrawal permitted of maximum 20% of the accumulated amount ▶ Balance 80% is mandatorily commuted for pension/annuitisation
On attaining the age of 60 years (or on superannuation)	<ul style="list-style-type: none"> ▶ Complete withdrawal - If corpus is less than INR 5,00,000 ▶ If not, withdrawal permitted of maximum 60% of the accumulated amount ▶ Balance 40% to be mandatorily commuted for pension/annuitisation (can be deferred by 3 years at the time of exit)
On death, nominee can either	<ul style="list-style-type: none"> ▶ Receive 100% of pension wealth in lumpsum; or ▶ Purchase any of the annuities being offered upon exit; or ▶ Subscribe to NPS individually
Partial withdrawal (post participation for atleast 3 years)	Permitted upto maximum <u>25%</u> of the contributions made by the employee (excluding contribution made by the employer) subject to fulfillment of conditions for specified purposes including higher education and marriage of children, buying residential property, treatment of certain critical illnesses etc. (maximum 3 times during entire subscription period)
<i>Withdrawal from Tier II account</i>	
No restrictions - employees are free to withdraw their savings, whenever they wish to, subject to minimum contribution and balance	

Gratuity



Gratuity

Contribution	<ul style="list-style-type: none">▶ An employer may offer gratuity out of his own funds or may purchase a group gratuity plan from a life insurer▶ An amount equal to 4.81% of basic salary and dearness allowance is contributed to the gratuity fund
Tax implications in the hands of the <u>employees</u>	<ul style="list-style-type: none">▶ Any provision created by the employer for payment of gratuity is not taxable in hands of the employees▶ Any gratuity paid by the employer under the Payment of Gratuity Act, 1972, is exempt from tax subject to the least of the following :<ul style="list-style-type: none">▶ <i>INR 20,00,000 (as reduced by the exemption earlier availed under this Section); or</i>▶ <i>Gratuity actually received; or</i>▶ <i>Amount calculated under section 4(2)/(3) of the Gratuity Act [ie 15 days' salary based on salary last drawn for each year of completed service or part thereof in excess of 6 months]</i>
Tax implications in the hands of the <u>employer</u>	<ul style="list-style-type: none">▶ Employer's contribution to approved gratuity fund is a tax deductible business expenditure u/s 36(1)(v) of the Act

Amendments in social security taxation



Recent amendments in social security taxation

Finance Act, 2020 amendments

- ▶ Aggregate of employer's contribution towards EPF, NPS and ASF in excess of INR 7.5 lacs shall be taxable in the hands of the employee [*Section 17(2)(vii)*];
- ▶ Additionally, annual accretion by way of interest, dividend or any other amount of similar nature to the credit of such funds to the extent it relates to such excess contribution (to be computed in a manner prescribed by Rule 3B) shall be treated as income in the hands of the employee [*Section 17(2)(viia) – Corresponding rule notified on 05 March 2021*];
- ▶ The aforesaid amounts are treated as salary income of the employee in the year of excess contribution/accretion and the employer has corresponding withholding obligation on the aforesaid amounts.

Finance Act, 2021 amendment

- ▶ Interest accrued on the employee contribution to the EPF above INR 2.5 lacs shall be taxable and will be treated as Income from other sources (increased limit of INR 5 lacs applicable only where there is *no employer contribution*) [*Section 10(12)*];
- ▶ Taxation triggered in the year of withdrawal even if interest on excess amount is credited on a year on year basis.

Recent amendments in social security taxation – Rule 3B

The formulary approach notified for computing annual accretion on excess contribution as per Rule 3B vide notification dated 05 March 2021 is:

$$TP : (PC/2)*R + (PC1+TP1)*R$$

Where

- ▶ TP: taxable perquisite under s.17(2)(viiia) for the current tax year
- ▶ TP1: Aggregate of taxable perquisite under s.17(2)(viiia) for the tax year or years commencing on or after 1 April 2020 other than the current tax year
- ▶ PC: Amount or aggregate of amounts of principal contribution made by the employer in excess of INR 7,50,000 to the specified funds during the current tax year
- ▶ PC1: Amount or aggregate of amounts of principal contribution made by the employer in excess of INR 7,50,000 to the specified funds for the tax year or years commencing on or after 1 April 2020 other than the current tax year (See note below)
- ▶ R: I / F_{avg}
- ▶ I: Amount or aggregate of amounts of income accrued during the current tax year in the specified funds
- ▶ F_{avg} : $(\text{Amount or aggregate of amounts of balance to the credit of the specified funds on the first day of the current tax year} + \text{Amount or aggregate of amounts of balance to the credit of the specified funds on the last day of the current tax year}) / 2$
- ▶ *Note - Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of amounts of balance to the credit of the specified funds on the first day of the current previous year, then such excess shall be ignored for the purpose of computing the amount or aggregate of amounts of TP1 and PC1.*

Recent amendments in social security taxation – Rule 3B (Example)

$$TP : (PC/2)*R + (PC1+TP1)*R$$

(in INR)			(in INR)		
Facts: 2020-21	Amount	Amount	Facts: 2021-22	Amount	Amount
Balance as on 1 April 2020		50,00,000	Balance as on 1 April 2020		78,88,000
Contribution during the year (ER)	12,00,000		Contribution during the year (ER)	12,00,000	
Contribution during the year (EE)	12,00,000	24,00,000	Contribution during the year (EE)	12,00,000	24,00,000
Total as on 31 March before interest		74,00,000	Total as on 31 March before interest		1,02,88,000
Interest assumed @ 8%		4,88,000	Interest assumed @ 8%		7,19,040
Balance as on 31 March 2021 with interest		78,88,000	Balance as on 31 March 2022 with interest		1,10,07,040
Calculation			Calculation		
I=Amount credited		4,88,000	I=Amount credited		7,19,040
Favg = (Opening Bal+Closing Bal)/2		62,00,000	Favg = (Opening Bal+Closing Bal)/2		90,88,000
R=I/Favg		7.87%	R=I/Favg		7.91%
PC=ER Contribution		4,50,000	PC=ER Contribution		4,50,000
PC1=Total PC before current year		-	PC1=Total PC before current year		4,50,000
TP1=Total TP before current year		-	TP1=Total TP before current year		17,710
Taxable Perquisite=(PC/2)*R + (PC1+ TP1)*R		17,710	Taxable Perquisite=(PC/2)*R + (PC1+ TP1)*R		54,807

Recent amendments in social security taxation (*Practical challenges*)

Interpretation issues / controversies

- ▶ Section 17(2)(vii) and Rule 3B does not address which fund should be picked for excess contribution - whether to PF or ASF or NPS?
- ▶ Meaning of 'annual accretion' - whether year of notification of interest or year of credit to an employee's account?
- ▶ Can it be argued that section should not apply to NPS / ASF as there is no annual 'accretion' to any account but merely a valuation on a given date? Especially where there is a defined benefit ASF scheme?
- ▶ If increase in valuation is 'accretion' then there is no provision for factoring in 'decrease' in valuation in subsequent years
- ▶ Double addition of employer's contribution to NPS under GTI once under Section 17(1)(viii) and again under section 17(2)(vii) - sustainable?
- ▶ The note to the formula provides that where the amount of excess contributions and past accretions exceed the opening balance, the excess should be ignored for computing the current year's accretion. This shows that formula proceeds on the presumption that withdrawals are out of past exempt contributions/accretions and not out of excess taxable contributions and accretions thereon. Such presumption is adverse to the taxpayer and will trigger perquisite taxation till the balance is fully withdrawn.
- ▶ Potential for double taxation of employer's contribution to PF and interest thereon if employment period is less than 5 years.
- ▶ Potential for double taxation of ASF contributions if exemption under section 10(13) is not available.

Recent amendments in social security taxation (*Practical challenges*) – contd.

Employer approach from an income-tax withholding perspective

- ▶ Nothing in the section or annual TDS circular or Form 12BB discusses on the employer's obligations;
- ▶ Various High Courts have held that an employer is expected to exercise 'due care and caution' for withholding tax purposes;
- ▶ Whether employer to rely exclusively on employee declarations of contributions / interest / accretion or whether employer needs to maintain memorandum records on a continuous basis?
- ▶ Should tax withholding start post contributions exceeding Rs 7.5 lakhs or whether fair estimate needs to be made?
- ▶ Allocation of excess contribution to either PF / NPS / ASF – who to decide? Is employer compliant if option given to employee?
- ▶ Practical challenges in the case of employees who are newly joined or left during the year.

Recent amendments in social security taxation (*Practical challenges*) – contd.

Issues aspects surrounding taxation of interest on employee contributions exceeding INR 2.5 lakhs

- ▶ Arguable that the changes apply to 'accruals' post 1 April 2021;
- ▶ How will the EPFO keep a track of excess contributions? Increased onus on Private PF trusts;
- ▶ TDS:
 - ▶ Recognised PF – Section 192(4)
 - ▶ Statutory PF – Section 192A @ 10%
- ▶ Ineligible interest – in a manner to be prescribed - Rule not available right now – so in absence of computation mechanism can it be argued that the provision fails?
- ▶ Interest post amount becoming due will be taxable in the normal course

Discussions within Industry



Discussions within Industry

Permissibility of restricting PF contributions on salary threshold of INR 15,000 instead of contributing PF on the entire monthly pay (*Para 26A of the EPF Scheme*)

1

2

Permissibility of reduction in allocation of basic salary (without changing the gross salary) of the employee



Recent updates around social security



Recent updates around social security

1

In order to provide relief to members, the EPFO has recently notified that employees who have already availed first tranche of Covid-19 advance can now opt for a *second non-refundable advance*. Further, amount that can be withdrawn shall be *lower of* -

- 75% of PF balance (both Employee's and employer's share); or
- Three months of basic salary and dearness allowance

Taxability of the above Covid advance in the hands of the employees?

2

The deadline for seeding Aadhaar to UAN for filing of Electronic Challan-cum-Return (ECR) has been extended from 1 June 2021 to 1 September 2021

(Section 142 of the Code on Social Security, 2020)

3

Amendments in EDLI Scheme:

- Amount of maximum benefit has been increased from INR 6 lakhs to INR 7 lakhs to the family members of deceased employee;
- Minimum assurance benefit of INR 2.5 lakh to eligible family members of deceased employees who was a member for a continuous period of 12 months in one or more establishments preceding his death in place of existing provision of continuous employment in the same establishment for 12 months;
- Restoration of provision of minimum INR 2.5 lakh compensation retrospectively, i.e., from 15th February 2020.

International Workers



Meaning of 'International Worker'

International Worker

For an inbound employee

- ▶ An employee other than an Indian employee
- ▶ holding other than an Indian passport
- ▶ working for an establishment in India to which the EPF Act applies



For an outbound employee

- ▶ An Indian employee
- ▶ having worked or going to work in a foreign country with which India has entered into a Social Security Agreement and
- ▶ being eligible to avail the benefits under a social security programme of that country
- ▶ by virtue of eligibility gained or going to gain, under the said agreement

Contribution to PF (for *International Worker*)

► Contributions to PF and Pension Scheme

Particulars	International Worker	
	Membership started prior to 1 September 2014	Membership started on or after 1 September 2014
Total contribution - Employer - Employee	<ul style="list-style-type: none"> ► 24% of monthly pay <ul style="list-style-type: none"> ► 12% of monthly pay ► 12% of monthly pay 	
Allocation - Employee's share	<ul style="list-style-type: none"> ► Fully to Provident Fund 	
Allocation - Employer's share	<ul style="list-style-type: none"> ► 8.33% of monthly pay to Pension Scheme - (A) ► 12% of monthly pay less (A) to Provident Fund 	<ul style="list-style-type: none"> ► Fully to Provident Fund



PF Withdrawal (for International Worker)



Lump-sum withdrawal from Provident Fund Scheme	For International Worker
On retirement	✓ (only after attaining the age of 58 years)
On permanent and total incapacitation	✓
On retrenchment	✗
Completion of Indian employment	✓ (Only if covered under SSA)

Issues related to International workers

Issues

- ▶ It is seen that sizeable employers are non-compliant with the PF provisions pertaining to IWs as contributions are not in line with the PF laws (*eg - contributions made only on basic salary and not on entire monthly pay*);
- ▶ Considerable disguised IWs (such as US nationals of Indian origin) continue to exist in relation to which employers have failed to comply with the PF provisions;
- ▶ PF officers likely to take a tough stand going forward in the light of interpretive landmark Apex Court ruling (*in case of Surya Roshni Ltd, Vivekanand Vidya Mandir and others Vs Employees' Provident Fund Organisation and others*);
- ▶ As a result of the above, a large number of companies have opted for PF remediation in the recent past. However, companies need to be mindful that non-compliance would lead to additional exposure of interest and damages, as applicable.

Social Security Agreements



Social Security Agreements

- ▶ SSAs are bilateral agreements between India and other countries designed to protect interests of cross border workers
- ▶ They provide for avoidance of 'No Coverage' or 'Double Coverage' and equality of treatment of the workers of both the countries

Detachment

Applies to employees posted to other country provided they comply with social security requirements of their home country

Exportability of benefits

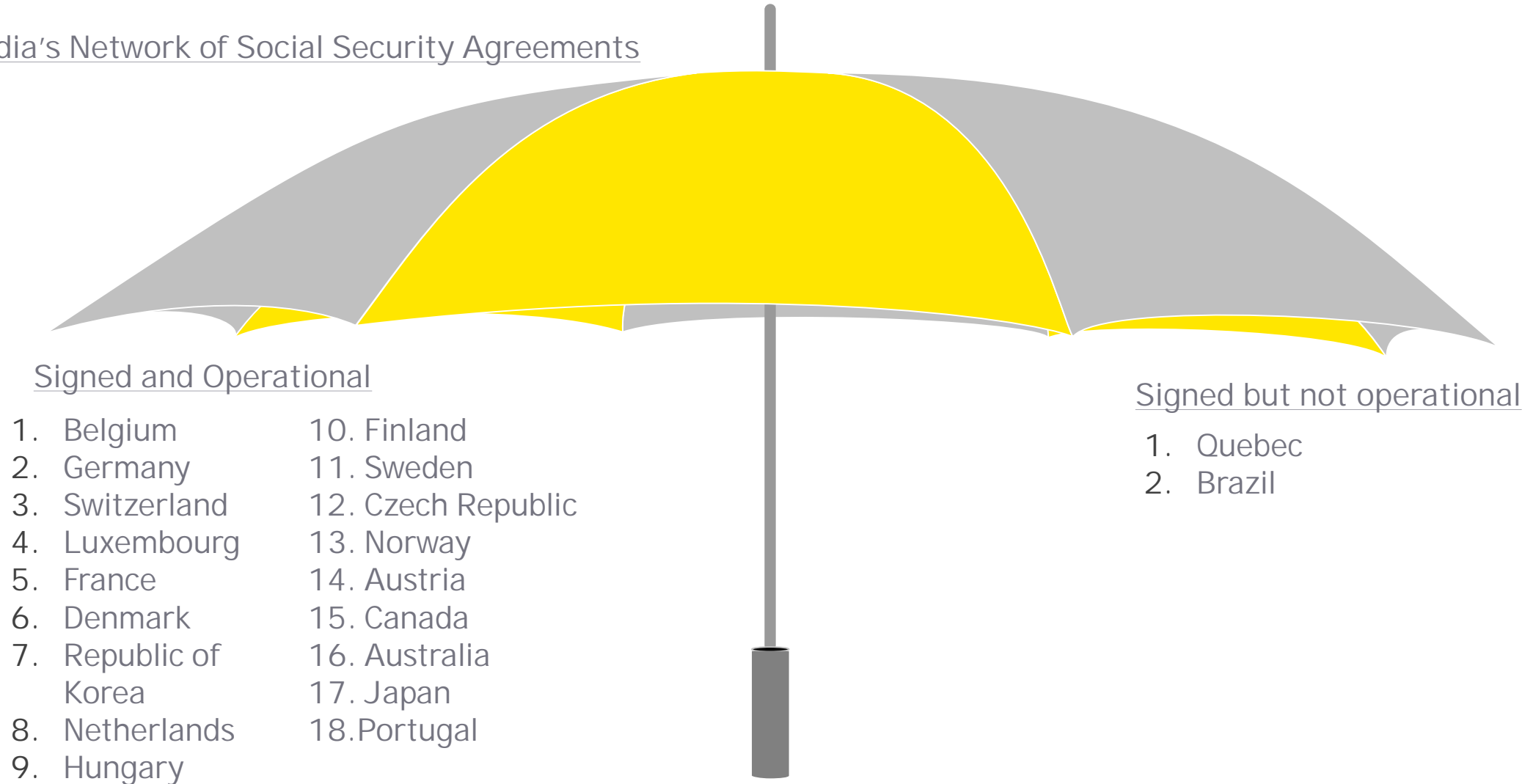
Provision for payment of pension benefits directly to the beneficiary in his/her home country or host country

Totalization of Benefits

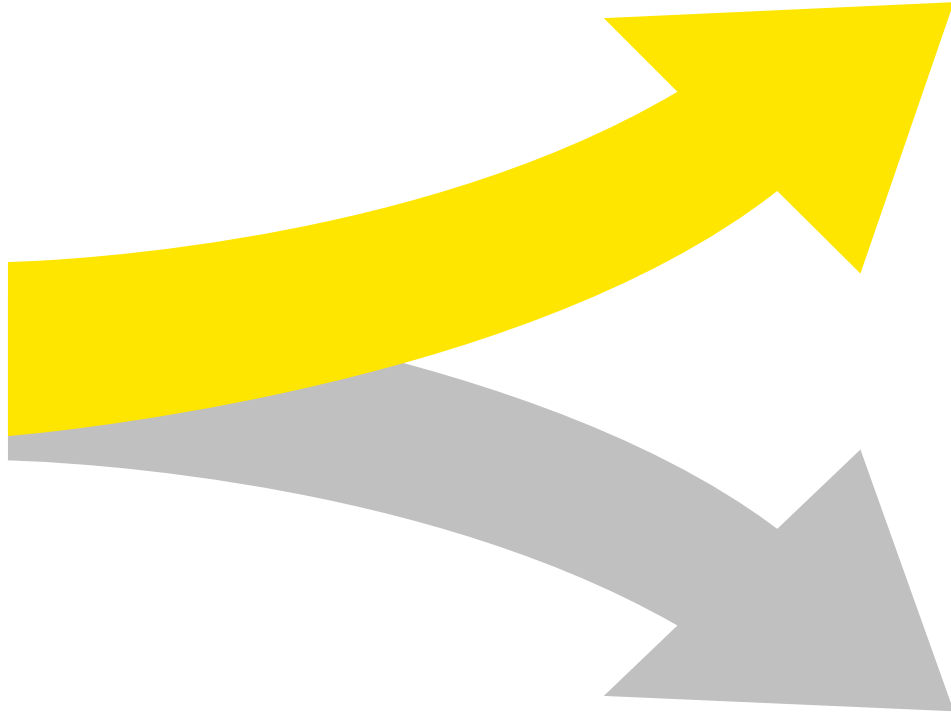
The period of services rendered in a foreign country is counted when determining eligibility of Benefits

Social Security Agreements (contd.)

India's Network of Social Security Agreements



Certificate of Coverage



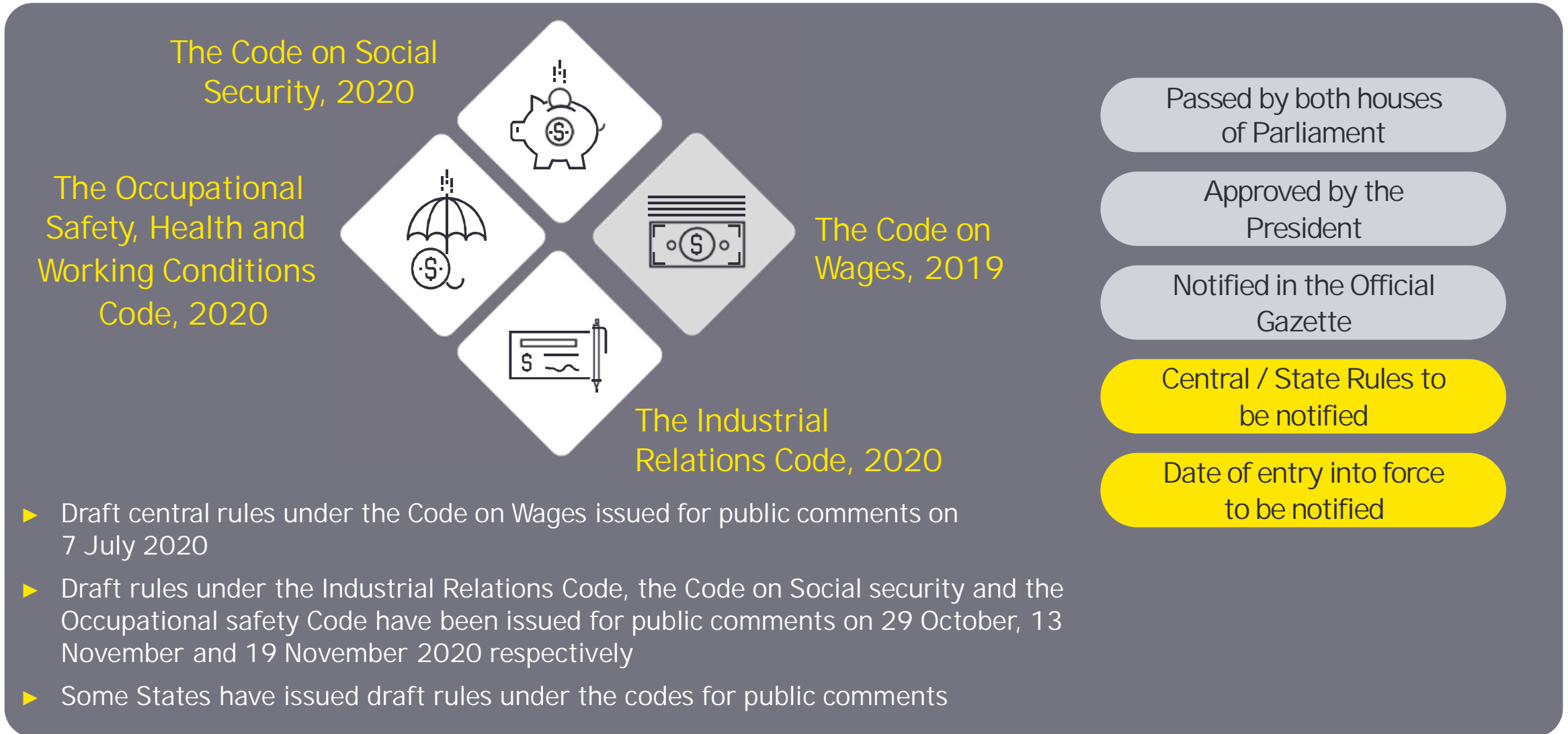
- ▶ A Certificate of Coverage must be obtained by an international worker to avoid double social security coverage
- ▶ It is issued by the social security authority of the home country

Eg - A Netherlands national can apply for a CoC from Netherlands Social Security Authorities before being deputed to India to work with an establishment to which the Indian Social Security Regulations apply. This will exempt him/her from contributing to Indian social security for the period stated in the CoC.

Central Labour codes



Central Labour codes – Current status



Existing laws subsumed

The Code on Wages, 2019

1. The Equal Remuneration Act, 1976
2. The Minimum Wages Act, 1948
3. The Payment of Wages Act, 1936
4. The Payment of Bonus Act, 1965

The Code on Social Security, 2020

1. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
2. The Employees' State Insurance Act, 1948
3. The Payment of Gratuity Act, 1972
4. The Maternity Benefit Act, 1961
5. The Employee's Compensation Act, 1923
6. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
7. The Cine-Workers Welfare Fund Act, 1981
8. The Building and Other Construction Workers' Welfare Cess Act, 1996
9. The Unorganised Workers' Social Security Act, 2008

Existing laws subsumed (contd.)

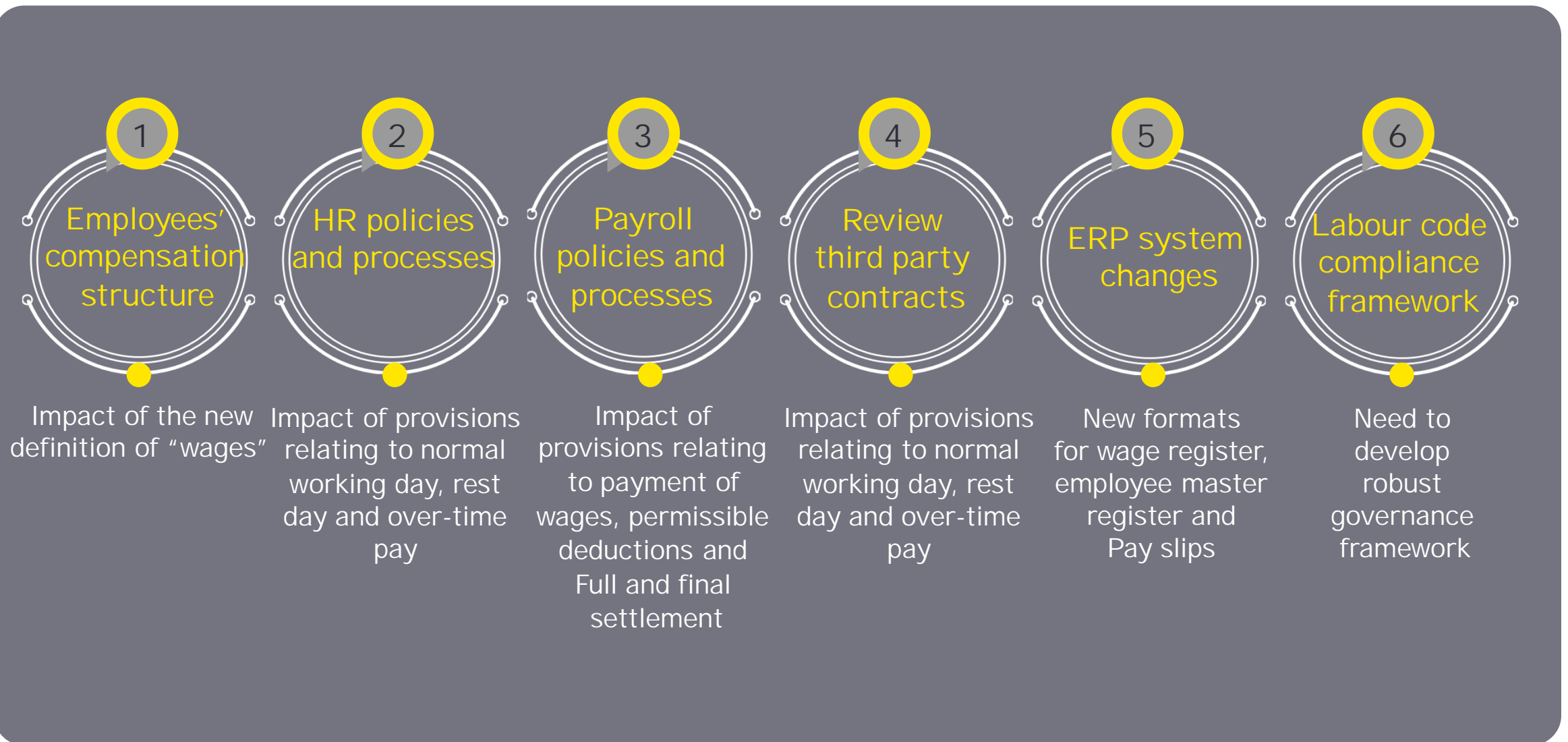
The OSHWC Code, 2020

1. The Factories Act, 1948
2. The Contract Labour (Regulation and Abolition) Act, 1970
3. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
4. The Plantations Labour Act, 1951
5. The Mines Act, 1952
6. The Working Journalists and other Newspaper Employees (Conditions of Service) & Misc. Provisions Act, 1955
7. The Working Journalists (Fixation of Rates of Wages) Act, 1958
8. The Motor Transport Workers Act, 1961
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Sales Promotion Employees (Conditions of Service) Act, 1976
11. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
12. The Dock Workers (Safety, Health and Welfare) Act, 1986
13. The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996

The Industrial Relations Code, 2020

1. The Industrial Disputes Act, 1947
2. The Industrial Employment (Standing Orders) Act, 1946
3. The Trade Unions Act, 1926

Labour codes - Focus areas



Provident Fund - Impact

1

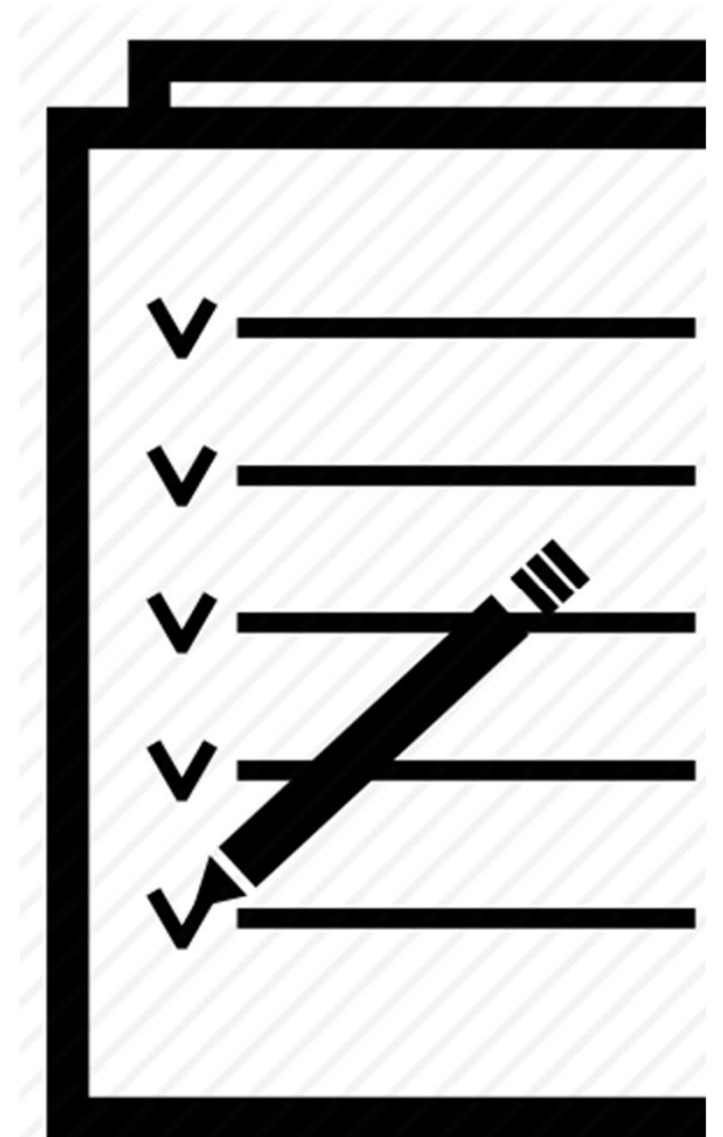
In all possibility, the contribution rates will continue to be 12% under the CSS as well.

2

The contributions towards PF will have to be made as per the new definition of 'wages'.

3

Existent PF and Pension Schemes will continue to remain in force for one year from the date of entry into force of the CSS.

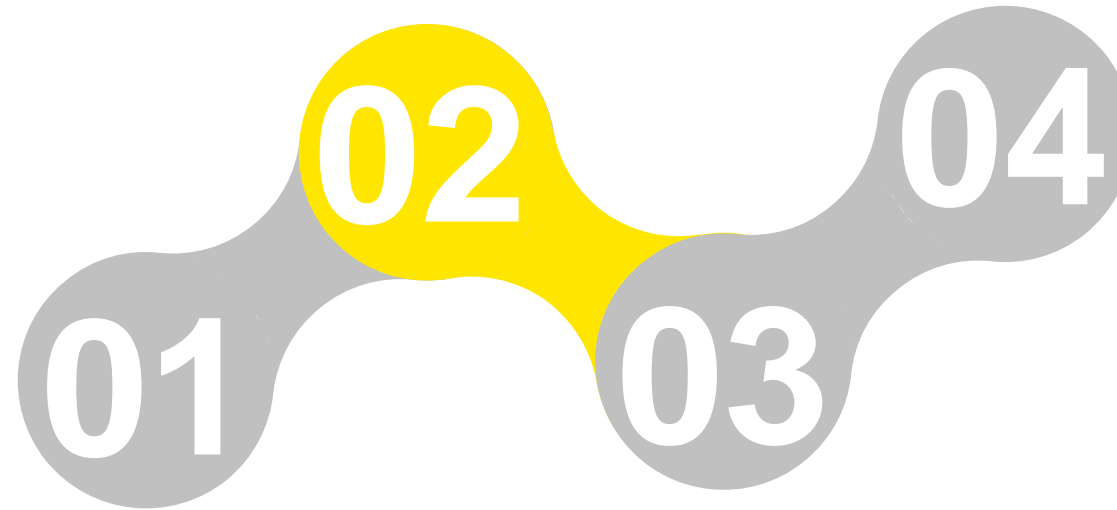


Employee State Insurance - Impact



The provisions of Employee's State Insurance Act, 1948 have been largely retained in the SS Code

However, once the CSS is effective, the contributions towards ESI will have to be made as per the new definition of 'wages'



ESIC provisions have been notified under the CSS. Existing ESI Scheme will remain in force for one year from the date of entry into force of the CSS

The rate of ESI contributions as regards *Employer* (ie 3.25%) as well as *Employees* (ie 0.75%) are same under the CSS

Gratuity - Impact

1

Under the CSS, gratuity will have to be paid based on the new definition of 'wages' for the entire tenure of employment of the employees (including the past period) - *pending any formal clarification/notification as regards grandfathering*

2

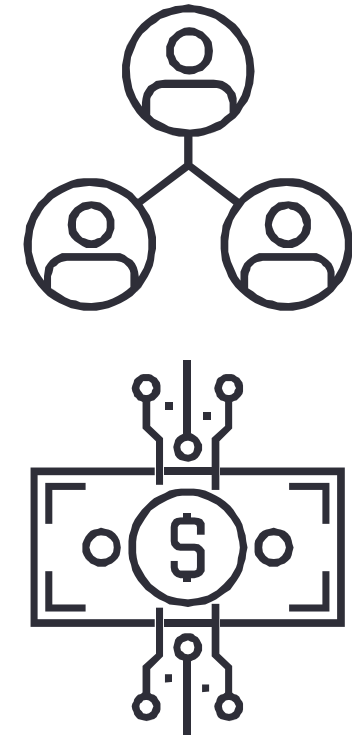
Gratuity is payable to a regular employee only if he renders *minimum five years* of continuous service with the company.

The CSS also provides for payment of gratuity to a fixed term employee subject to a minimum serving period of one year.

3

The prevailing upper cap of INR 20 lakhs as regards gratuity payment has not been laid down under the CSS / draft Rules thereto.

Additionally, the corresponding amendment under the Income-tax Act is also awaited.





Questions?

Thank you!

Assisted by:

*CA Pratik Asawa &
CA Anmol Nathani*

