

The Supreme court on 28 February 2019 ruled that all allowances in question are to be treated as wages for the purpose of provident fund (PF), effectively widening the definition of pay for the purpose of PF.



Background

- Persistent dispute on what constitutes wages for the purpose of PF (PF wages)
- The definition of basic wages specifically excluded “any other allowance of a similar nature” – prompting companies to exclude all allowances
- Wage structuring with an intent to reduce PF contribution is considered an act of camouflage



Key aspects of the ruling

- All allowances in question are basic wages since they are
 - not variable in nature
 - not linked to any incentive for production warranting greater output by an employee
 - paid across the board to all employees in a particular category
 - not paid specifically to those who avail the opportunity
- Reliance on lower court findings on facts



Impacted population

- Domestic workers (Indian nationals) with PF wages not exceeding INR 15,000 pm
- International workers (non-Indian passport holders) where other allowances are not considered part of PF wages
- Contract employees (including hired in labour) where PF wages do not exceed INR 15,000 pm

- ▶ Companies have been considering basic salary alone as “PF Wages”
- ▶ No period of limitation under the PF Act
- ▶ No new provision or principle arising from the ruling - retrospective applicability

What you need to know



External factors

- Internal instructions to Regional Provident Fund Commissioner (RPFC) to dispose off pending cases based on the SC ruling
- Review Petition by Surya Roshni Limited (one of the appellants) dismissed – principles elucidated in the ruling prevail
- Circular to PF officers mandating prior permission from Central Analytics and Intelligence Unit for inspections / investigations
- Representation by various industry bodies for application of the judgement prospectively



Focus area for corporates

- Course corrections / review of positions to be taken on priority
- Identify affected population
- Conduct impact study on account of retrospective application
- Determine approach for corrective action: evaluate cost and impact
- Minimise interest and damages
- Review potential individual corporate tax and transfer pricing implications
- Impact on financials – need for provisioning and actual payout

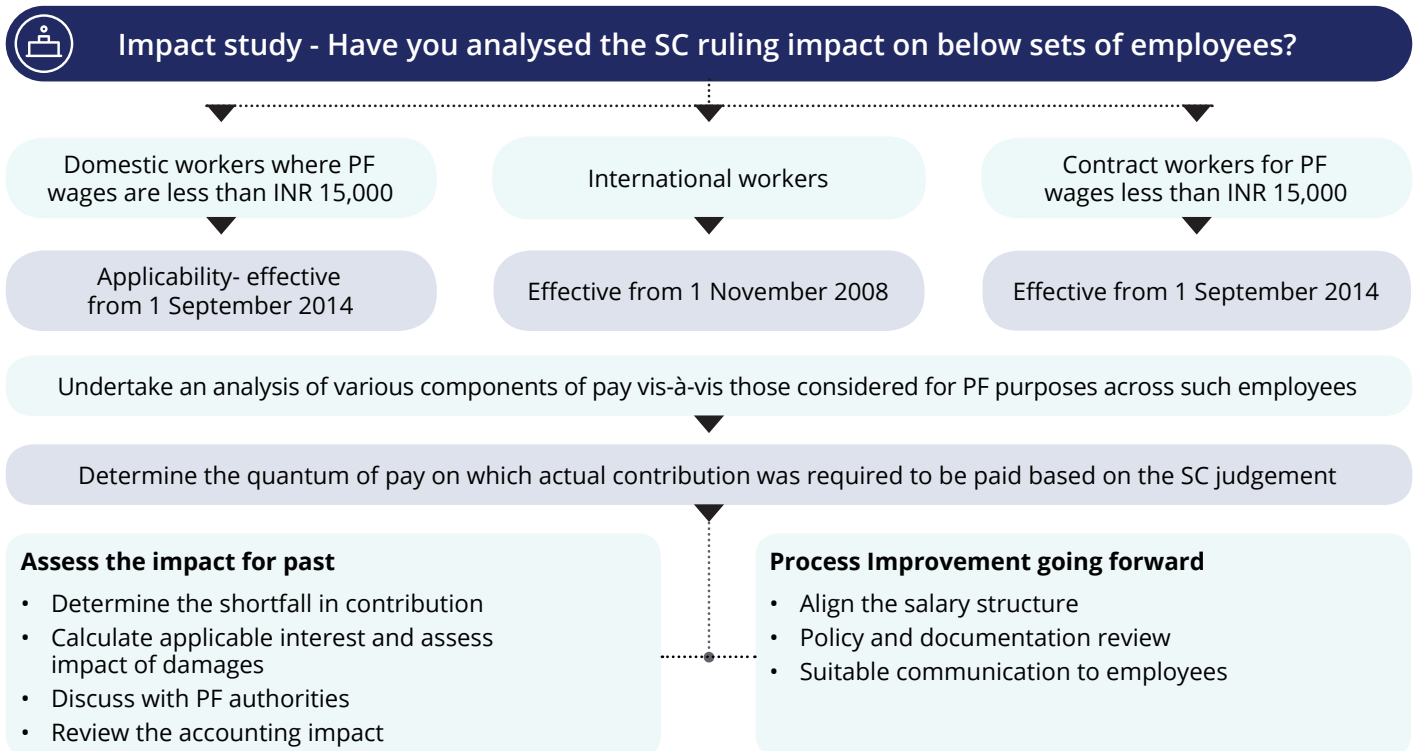


Involvement of wider stakeholders such as HR, Legal, Tax, Payroll critical

Impact of the ruling



What next?



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