Frequently Asked Questions (FAQs)

Disclaimer:

(i) These FAQs are prepared on the basis of the general understanding of the judgement delivered by the Hon'ble Supreme Court on 4th November 2022 with regard to the validity of the Employees' Pension Amendment Scheme 2014 and the subsequent circulars and authorities issued by the EPFO.

(ii) Under the Employees' Pension Scheme, the duty to extend consent lies with PTI in relation to exercise of option under para 11(3) & 11(4) of the Employees' Pension Scheme, 1995. PTI takes no further obligation with respect to any rejection, alteration or change made to the option by the EPFO and the concerned authorities.

(iii) PTI shall not be liable for the date and manner of payment of enhanced pension as it is within the sole discretion and control of the EPFO and the concerned authorities.

(iv) In case of ex-employees, PTI takes no responsibility for the accuracy of data and timelines for deposit of the amount to be diverted. It shall not be liable for any consequent damage or interest which may be levied by the authorities in terms of the Employees Provident Fund (Miscellaneous Provisions) Act, 1952.

P.S: You may take independent advice from legal and financial experts in relation to the exercise of option under para 11(4) of the Employees' Pension Scheme, 1995.

Employee Pension Scheme – brief description

Employees' Pension Scheme, 1995 (EPS 95) is a social security scheme introduced in November 1995, by the Central Government. This is a mandatory scheme which entitles the employees working in organized sector to receive benefits of pension after attaining the age of 58 years or premature death. Under EPS 95, 8.33% of the employee’s pay is diverted from the provident fund to Pension Fund. The contribution is subject to the prescribed statutory salary limit under EPS 95, which underwent the following changes in due course:

(a) Rs. 5000/-: March 96 to September 2001
(b) Rs. 6500/-: October 2001 to August 2014
(c) Rs. 15, 000/-: September 2014 till date.

The Central Government also contributes 1.16% on the prevalent pensionable salary as additional contribution. However, the EPS scheme was amended in March 1996, with employees being given an option to contribute on full salary, by inserting proviso to para 11(3) to EPS 95.

Vide EPS Amendment of 2014 (2014 Amendment), this inserted provision was repealed with effect from September 2014. However, employees who had already taken the option to contribute on actual salary could exercise the option again within a period of 6 months extendable to 1 year.

Supreme Court judgement dated 04.11.2022 on EPS 1995 for enhanced pension.

The Supreme Court in its recent judgement dated 04.11.2022, decided on the issues:

a. Validity of 2014 Amendment.

b. Validity of EPFO circulars discriminating the exempting and non-exempting establishments.
The provision for contribution on actual salary was repealed with effect from 1st September 2014. The Supreme Court has upheld the validity of 2014 Amendment after the same was successfully questioned by the Kerala High Court. However, while upholding the 2014 Amendment it has given the following directions,

(i) Fresh options could be made within a period of 4 months from the date of the judgement by eligible employees.

(ii) Such option is available for employees who had earlier not taken option for contributing on actual salary and were member of the Pension Fund on or before 01.09.2014 and continued to be a member of the Pension Fund after 01.09.2014.

(iii) Employees must have contributed provident fund on actual salary to exercise the option.

(iv) The benefit of the judgement is available to exempted establishments.

Besides, the Hon’ble Supreme Court has held that the option for contributing to Pension Fund on actual salary shall also be available to employees of exempted establishments.

In order to share our understanding of the Supreme Court judgement and expected queries, a set of Frequently Asked Questions (FAQ) has been listed, which shall aid in understanding of the judgement. Detail operational guidelines are still awaited from Employees Provident Fund Organisation, which shall give clarity on the manner of accepting applications from eligible employees and the mode of computing the enhanced pensionary benefits. The list of FAQs shall be updated, in case of any guidelines received from the EPFO and also on the basis of queries received from employees/ex-employees. We shall keep you updated on further development, if any.

Based on the judgement, the following queries are generally being asked.

01. What are the conditions required for eligibility for diversion of pension contribution on actual/ full salary for PTI employees?

   a. Employees who are member of Employees Pension Fund and had not completed 58 years of age on or before 1st Sep 2014
   b. Employees who had completed 10 years of membership of Pension Fund by 1st Sept 2014

02. Whether the SC judgement make any specific exclusion list of employees?

   Yes

   a. The Supreme Court categorically states that the benefit of the judgement SHALL NOT be available for such persons who had exited EPS on attaining 58 years of age prior to 1st September 2014 without exercising option for diversion to EPS on full salary from employers’ contribution to Provident Fund.

   b. Employees joining EPS scheme on or after 1st September 2014.

03. Which category of PTI employees, who are presently governed by PTI PF Trust, shall be eligible for availing the benefits of the SC Judgement?

   (i) Category 1: Employees who joined employment prior to 1st Sep 2014 and continued in service and are member of EPS

      Yes

   (ii) Category 2: Employees who joined employment prior to 1st Sep 2014 and have exited the Pension Scheme after 1st Sep 2014 after attaining the age of 58 or by choice and were member of EPS
Yes

(iii) Employees who have exited the pension scheme on attaining 58 years of age before 1st Sep 2014 and have not exercised the option to divert to EPS on full salary during service period

NOT eligible

(iv) Employees who have joined PTI after Sep 2014

NOT eligible. Only lateral joinees, subject to condition as mentioned in point no. viii

(v) Employees who were members of the EPS 1995 and died after 1st September 2014, with their nominee availing of the pensionary benefits. Can the nominee avail of the option on behalf of the deceased employee?

Yes. However, the nominee must compute the benefit of such option because they will be entitled to 50% of pension of members eligibility.

(vi) Lateral Joinees having earlier worked with establishments, which contributed provident fund based on statutory wage ceiling or on actual wages which is lower wages whether eligible or not?

NOT eligible.

For statutory wage ceiling please refer to point no. 06.

(vii) Lateral joinees having joined PTI without transfer of earlier PF accumulation to PTI, whether eligible or not?

PTI will not be able to facilitate such type of cases. Employee may take up directly with EPFO.

Steps to be followed by lateral joinees prior to seeking consent of PTI for the purposes of making payment of pension contribution on actual salary?

a. Certificate from all previous employer that contribution to Provident Fund was on full basic and Dearness Allowance.

b. Month wise salary break up from Mar 1996 or from date of joining EPS membership, whichever is later and the total amount of diversion.

c. Transfer of Provident Fund amount from all previous organization in PTI Provident Fund Trust has been completed.

04. Is it compulsory to apply for higher diversion i.e. on the basis of the actual salary, if the deductions are being made in terms of the capping amount?

This is an option given to eligible employees and is purely voluntary.

05. What are the steps to be followed for making application for higher diversion (regular and discharge)

This will be communicated once the detailed guidelines are issued by EPFO.

06. What is the effective date of diversion of the actual salary exceeding the statutory limit of the employee, if s/he opted for enhanced pension?

The effective date shall be when the salary crosses the statutory ceiling as prescribed from time to time under the EPS’ 95. Statutory ceilings.

- Rs 5000 pm from Mar 1996 to Oct 2001
07. What if I do not have sufficient balance in my Provident Fund Account and I am currently in employment of PTI, due to withdrawal of the loan from provident fund. Can I deposit the deficit money into the Provident Fund?

The Rules do not have provision for accepting such deposit. Such employees are advised to take up this issue and deposit the arrear amount directly with the concerned RPFC.

08. What is expected quantum of funds required to be diverted from Provident Fund?

It is expected that 9.49% (8.33 % + 1.16%) of employees' pay from the Provident Fund accumulation and applicable interest thereon is likely to be the requirement for diversion after reducing the amount already diverted to the Pension Fund. However, this may vary from person to person.

09. Once I have exercised the claim for diversion from full salary, can I revert to diversion on statutory limit.

No. There is likely to be a bar on withdrawal of the option from the EPFO Authorities.

10. Who shall be governed by the EPFO circular dated 29.12.2022 issued with respect to the SC judgement dated 04.11.2022?

This circular applies to persons who fulfil the following criteria:

   i. Was member of the Pension Fund prior to 1st September 2014

   ii. Was member of provident fund which contributed on actual salary in accordance with the provisions of para 26(6) of the Employees Provident Fund Scheme

   iii. Had applied for the pension contribution on actual salary and was rejected/denied by the authorities and were covered by the earlier judgement of RC Gupta given by SC.