NEWS & EVENTS

The Payment of Bonus (Amendment) Act, 2015

Submitted By Firm: Trilegal

Contact(s): Ajay Raghavan, Atul Gupta

Author(s):

Ajay Raghavan

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On 31 December 2015 the President gave his assent to certain amendments to the Payment of Bonus Act, 1965. The amendments have increased the wage threshold for determining applicability of the Act from INR 10,000 to INR 21,000 per month. Additionally, the wage ceiling for calculation of bonus has been increased from INR 3500 to INR 7000 per month.

The Payment of Bonus Act, 1965 (**Bonus Act**) has been recently amended to bring about certain key changes (the **Amendments**).

(a) ***Revision of wage threshold for eligibility***: The wage threshold for determining eligibility of employees has been revised from INR 10,000 to INR 21,000 per month, covering a larger pool of employees.

(b) ***Change in the wage ceiling used for calculation of bonus***: Previously the maximum bonus payable was 20% of INR 3500 per month. The minimum bonus payment was also capped at 8.33% of INR 3500 per month or INR 100, whichever is higher. The calculation ceiling of INR 3500 has now been doubled to INR 7000 per month "*or the minimum wage for the scheduled employment, as fixed by the appropriate Government"* (whichever is higher). Therefore, the cost associated with bonus payments could double (or be greater still, depending on applicable minimum wages), based on the organization's performance.

(c) ***Retrospective Effect***: The amendment has been brought into effect from 1 April 2014.

The Bonus Act applies to every factory and every establishment that employs 20 or more persons, and unlike other performance linked incentives offered by companies, the bonus payable under this law is not linked to the performance of the employee. All employees earning up to the wage threshold (increased to INR 21,000 by the Amendments), and who have worked in the establishment for not less than 30 working days in the year are eligible to receive this statutory bonus. Therefore, the Amendments could have a significant financial bearing for establishments, especially those in the medium and small scale sectors. We have analyzed the Amendments in some more detail below.

Impact of the Amendments and potential challenges

(a) ***INR 10,000 to INR 21,000***: As with many other labour statutes, the Bonus Act also contains a separate definition of 'wages'. Broadly, 'salary or wage' under the Bonus Act includes all guaranteed components of an employee's salary (not just the basic salary) and specifically excludes certain allowances and concessions. Salary structures adopted by organizations these days can be fairly complex, with multiple allowances and incentives built into the compensation structure. With the increase in the wage threshold, employers would have to undertake a more detailed assessment to determine which components of their existing salary structure would fall with the definition of 'wages' under the Bonus Act, and accordingly determine which employees are eligible to receive the statutory bonus.

(b) ***Reference to minimum wages under the Minimum Wages Act (MW Act)***: The insertion of a reference to the minimum wage under the MW Act to calculate bonus payments has created an additional challenge for companies. The appropriate Governments (i.e. State Governments) fix different minimum wages for various scheduled employments. Further, even within a particular scheduled employment, different minimum wages are notified for different categories of employees. Thus, employers would have to carry out an assessment of the applicable wage rates for different categories of employees in order to calculate the statutory bonus payable. This issue would be even more significant for employers having offices in multiple States since the minimum wages for the same scheduled employment also vary from one State to another, and the variation can sometimes be quite significant. For instance, the monthly minimum wage for a skilled employee in a shop or commercial establishment in Delhi is INR 11,154 while the monthly minimum wage for a skilled employee in a shop or commercial establishment in Maharashtra is INR 8,440.

Another consequence of including this reference to minimum wages is that it creates an additional level of unpredictability in the calculation of the bonus amount. A lot of companies (especially MNCs) currently follow a practice of calculating the maximum statutory bonus (i.e. 20% of INR 3,500) and paying this to employees on a monthly basis through the year. However, since there is now a reference to the minimum wages under the MW Act and since the minimum wages are updated on a periodic basis (i.e. once or twice a year), there would be an increased variability in the bonus amount, and it would therefore be difficult for employers to predict the maximum bonus payable under the Bonus Act.

(c) ***Complexities in paying the bonus retrospectively***: Under the Bonus Act, an employer is required to pay bonus within 8 months from the close of the accounting year. Employers in India usually follow a financial year from 1 April to 31 March and close their books of accounts accordingly. Therefore, most companies would have already determined the allocable surplus for the financial year 2014 - 15 (i.e. 1 April 2014 to 31 March 2015) and distributed bonus to eligible employees. Since the Amendments are retrospective, it would impact the distribution of bonus in relation to the financial year 2014 - 15 as well. The allocable surplus would need to be re-assessed to account for the increased pool of covered employees and the bonus eligibility re-determined based on the revised calculation ceilings and available surplus. This would then have to be redistributed among this larger pool of employees, which may result in various outcomes - (i) companies could now be required to pay an additional bonus to employees who have already been paid, if the bonus amount that was paid earlier is lower than the bonus payable after the Amendments; or (ii) if the bonus already paid was higher than the bonus payable after the Amendments, there may even be a reduction of bonus entitlement for some individuals (either in terms of the amount payable or in the context of percentage of bonus received), to accommodate bonus payments to the newly covered staff using the allocable surplus.

Therefore, there would be an increase in the financial burden and greater accounting complexities for employers, and in some cases, there may also be issues around recovery of amounts from employees.

It is therefore critical that the government issues clarifications, further amendments or exemptions to ease the operational complexities with the retrospective amendments. The requirement to consider the minimum wages under the MW Act while calculating bonus will create uncertainty and disparity around bonus payments, which was best avoided at this stage. We have been working with various industry associations to approach the government to offer solutions in relation to the financial and operational hardships that companies will face due to the Amendments. However, at present, the obligation to pay statutory bonus in accordance with the amended eligibility threshold and wage ceiling in relation to financial year 2014 - 15 continues to exist.