KHAITAN & CO ADVOCATES SINCE 1911

UPDATE

ERGO

Analysing developments impacting business

KARNATAKA PROFESSIONAL TAX AMENDMENT 2023: MAJOR CHANGES NOTIFIED

23 March 2023

Background

The Government of Karnataka notified the Karnataka Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2023 (New Amendment) in the Official Gazette on 14 March 2023, pursuant to the Governor's assent to the same on 13 March 2023. The New Amendment amends the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (Karnataka Professional Tax Act), and the same will be effective from 1 April 2023. In this update, we discuss the key changes brought about by the New Amendment from an employment law perspective.

Substitution of schedule detailing tax payable for various classes of persons

The New Amendment ushers in a new schedule (New Schedule) replacing the old schedule detailing the rates of tax on various classes of persons. The New Schedule is relatively concise as it has 12 entries in comparison to 74 entries in the old schedule of the Karnataka Professional Tax Act. Some of the significant entries in the New Schedule are as follows:

- Persons earning salary of INR 25,000 per month and above (increased from INR 15,000 per month and above) in the state of Karnataka are covered in class of eligible persons for payment of professional tax with the rate of tax rate remaining the same i.e., INR 200 per month.

- Persons required to be registered under the Karnataka Goods and Services Tax Act, 2017 have to pay a professional tax at the rate of INR 2,500 per annum.

- Employers of establishments covered under the Karnataka Shops and Commercial Establishments Act, 1961 employing more than 5 employees, and co-operative societies registered under the Karnataka Co-operative Societies Act, 1959 and engaged in any profession, trade or calling are required to pay professional tax at the rate of INR 2,500 per annum.

- Companies registered under the Companies Act, 2013 and engaged in any profession, trade or calling and banking companies as defined and governed by the Banking Regulation Act, 1949 are required to pay professional tax at the rate of INR 2,500 per annum.

The explanations to the New Schedule in the New Amendment provide that when a person is covered by multiple entries in the New Schedule, instead of paying the applicable highest rate of tax specified under the entries, the person can pay tax under any one of the entries. Further, if any asset or business is held on lease by a lessee, such lessee shall be deemed to be the person liable under the Karnataka Professional Act.

Other amendments

In addition to the above amendments to the Karnataka Professional Tax Act, other changes as set out below have been brought about in the Karnataka Professional Tax Act:

- Assessment: The New Amendment has incorporated the definition of 'assessment', which *inter alia* covers self-assessment, reassessment, and best judgment assessment.

- Interest: The simple interest on arrears in case of default committed in payment of professional tax has been increased from 1.25% to 1.5% of the arrears.

- Penalties: The penalty for wilful non-disclosure of information or attempt at evading professional tax by the employer has been changed such that while the statute previously placed a cap on penalty to the extent of 1.5 times of the tax assessed, the New Amendment makes it mandatory for the authorities to impose a penalty amounting to 100% of the tax so assessed. Further, the penalty for non-payment of professional tax has been changed from a maximum of 50% of the tax amount due to an amount equal to 10% of the dues. Interestingly, while reducing the penalty, the New Amendment has also omitted the defence of reasonable cause for employer to avoid penalty implications.

Comment

The New Amendment can be seen as an attempt by the Government of Karnataka to make the Karnataka Professional Tax Act more robust in terms of the statutory framework by leaving limited discretion with the authorities in terms of determining the applicable penalty in case of default or assessing the existence or absence of reasonable cause in such cases. The increase of the threshold salary limit as regards coverage of salaried employees would also benefit employees. However, to an extent, the definition of 'assessment' remains unclear on the implementation front. While the definition covers self-assessment, there appears to be no mechanism introduced in the statute to allow employers to self-assess and verify the amount of professional tax deposited, which would have enabled ease of compliance. It is anticipated that the state government would receive requests for clarification from employers in this regard.

- *Anshul Prakash (Partner), Deeksha Malik (Senior Associate) and Ajeta Anand (Associate)*

For any queries please contact: editors@khaitanco.com