Be Cool and Clear on the CPF Act

Key Considerations on CPF Contributions

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Facilitated by:
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The Central Provident Fund (CPF) Board has stepped up enforcement inspections on employers in recent years. Nearly S$2.7 billion in CPF arrears were recovered from employers within a five-year period from 2014 to 2018, whether through desktop audits, on-site audits or simply acting on complaints by employees.

At a recent *Tax Excellence Decoded* session by the Singapore Institute of Accredited Tax Professionals (SIATP), Accredited Tax Advisor (Income Tax) Kerrie Chang, Partner, People Advisory Services – Mobility, Ernst & Young Solutions; Sandesh Kumar, Director, and Sharon Chiam, Associate Director, both from People Advisory Services – Mobility, EY Corporate Advisors, provided a timely reminder to businesses and highlighted the essentials in complying with CPF obligations in Singapore.

Common CPF Mistakes of Employers

Errors in CPF contributions can be costly for employers. Unlike the Comptroller of Income Tax who can only raise additional assessment subject to the statutory time limit under the Income Tax Act, the CPF Board is not restricted by any statute of limitation in carrying out its recovery action.

Defaulting employers are subject to a late payment interest calculated daily at a rate of 1.5% per month (starting from the first day of the following month after the contributions are due), in addition to arrears of CPF contribution.

Some of the most common CPF mistakes by employers are highlighted below.

MISCLASSIFICATION OF WAGES

Misclassification of wages as Ordinary Wages (OW) instead of Additional Wages (AW) contributes to one of the highest amounts recovered through self-rectification by the CPF Board.

Essentially, the different wage ceilings of OW and AW affect the amount of CPF contributions payable, and where wrongly classified, could result in an underpayment of CPF contributions.

Under the CPF Act, OW are defined as wages due or granted wholly and exclusively in respect of an employee's employment in that month, and wages payable before the due date for payment of CPF contributions for that month. Any other wages that do not fall into the definition of OW are AW (that is, wages that are not granted wholly and exclusively for the month, or wages made at intervals of more than a month).

The most commonly misclassified remuneration items are overtime payments, sales commission and back payments.

NON-PAYMENT OF CPF CONTRIBUTIONS ON REIMBURSEMENTS

Another common misconception is that reimbursements to employees do not attract CPF contributions.

Employers should note that where the cash payments increase the employee's wages, CPF contributions would be payable regardless of payment modes (that is, whether outright cash payments or via reimbursements). For example, if the company gives out red packets (in cash) to its employees during Chinese New Year, CPF contributions would be payable on such cash payments.

On the other hand, cash payments that are not wages, such as retrenchment benefits and genuine reimbursements (that is, monetary payments to employees for actual expenses incurred on behalf of the employer and capped at the expenditure incurred), do not attract CPF contributions. Examples of genuine reimbursements include taxi claims incurred for business purposes and meal expenses incurred for overtime work. Besides cash payments that are not wages, benefits-in-kind that do not include cash payments (such as employee share-settled incentive plans) also do not attract CPF contributions.

Accredited Tax Advisor (Income Tax) Kerrie Chang, Partner, People Advisory Services – Mobility, Ernst & Young Solutions; Sandesh Kumar, Director, and Sharon Chiam, Associate Director, both from People Advisory Services – Mobility, EY Corporate Advisors, navigated participants through the complexity of the CPF Act.

Recent updates on CPF treatment of reimbursements of employee benefits

Since 1 January 2020, the exemption to pay CPF contributions on the reimbursements of medical and dental treatment has been expanded to include overseas treatment, so long as the doctors, dentists and Traditional Chinese Medicine (TCM) practitioners are registered in the location of practice.

In addition, reimbursements for dental treatment for an employee's spouse and child would no longer attract CPF contributions, while reimbursements to an employee for holiday-related expenses would attract CPF, regardless of whether such reimbursement is attributable to the employee or his/her immediate family member.

APPLICATION OF THE INCORRECT CPF CONTRIBUTION RATES

In practice, incorrect CPF contribution rates are often used when employers assume that employee information remains the same in the new filing period. For example, employers may overlook an employee's date of birth and not realise that he has moved into a different age bracket (with a different CPF contribution rate). Employers may also neglect the CPF obligation of foreign employees who may have since obtained the Singapore Permanent Resident (SPR) status.

To minimise the risk of applying the wrong CPF contribution rates, employers should relook at their system such that the CPF contribution rates could be automatically updated as certain events are triggered (such as when an employee moves to the next age group for CPF purposes). Employers should also check with their foreign employees regularly to ensure that any changes to their citizenship status are promptly updated.

NON-PAYMENT OF CPF CONTRIBUTIONS FOR INDIVIDUALS WRONGLY CLASSIFIED AS INDEPENDENT CONTRACTOR

CPF contributions are only applicable if an individual is providing services under a contract of service. Therefore, ascertaining whether an individual is providing services under a contract of service or a contract for service is crucial.

Essentially, a contract of service establishes an employer-employee relationship between the two parties (including the terms of employment) where the employee does business for the employer. A contract of service may be covered by the Employment Act.

In contrast, a contract for service is an arrangement where a person is engaged as an independent contractor (such as a self-employed person engaged for a fee to carry out an assignment for the company). The independent contractor carries out business on his own account and is not covered by the Employment Act. Statutory benefits (such as leave benefits) do not apply to the independent contractor.

Accredited Tax Advisor (Income Tax) Kerrie Chang, Partner, People Advisory Services – Mobility, Ernst & Young Solutions; Sandesh Kumar, Director, and Sharon Chiam, Associate Director, both from People Advisory Services – Mobility, EY Corporate Advisors, answering participants' queries on complying with CPF obligations in Singapore.

PP v Jurong Country Club [2019]

The importance of ensuring the right classification is highlighted in *PP v Jurong Country Club* [2019], where the High Court rejected a bid by the CPF Board to recover more than S$400,000 in alleged arrears of CPF contributions for a gym instructor who had worked at Jurong Country Club (the Club). The Club was also cleared of criminal charges of non-payment of CPF obligations.

The High Court's decision hinged on its conclusion that the gym instructor was an independent contractor, and not an employee of the Club. It was opined that in determining whether a person is an employee for the purposes of the CPF Act, due regard should be made for the parties' intention and the totality of the parties' working relationship. A multi-factorial approach should be adopted with a holistic assessment and due regard for all relevant factors.

In arriving at its decision, the High Court placed emphasis on the contracts entered into by the parties, which explicitly referred to the gym instructor as an independent contractor and stated that it was a contract for service. The contracts further stated that nothing in the terms should be construed as creating an employer-employee relationship.

Several factors were identified as suggestive of the gym instructor being an independent contractor. For example, the gym instructor was allowed to conduct programmes for the public at the Club's facilities outside of the stipulated work hours (in contrast to the general position that employees were not allowed to engage in personal work at the Club's premises without permission from the management). Unlike other employees who could access all areas of the Club's premises, he was only given access to the gym. The gym instructor was also not part of the Club's headcount and was not invited to staff events such as its Dinner and Dance. He was not required to sign personal data protection forms unlike other employees. The High Court opined that these differences were deliberate and demonstrated the parties' express intention for the gym instructor to be treated as an independent contractor.

The High Court's extensive analysis demonstrates that the factors to be considered in determining whether an individual is an employee or independent contract are not exhaustive. For a company to prove that its intention is to hire an independent contractor (and not an employee), such intention should be clearly and unambiguously articulated in the contract and carried out in a manner that is aligned with the factors indicating an independent contract relationship.

NON-ALIGNMENT OF CPF AND INCOME TAX TREATMENT

It is important to note that CPF and income tax treatment do not necessarily align with each other.

Frequent business travellers

Employment income earned by employees who are based outside Singapore but travel into Singapore for business purposes are not CPF payable. On the other hand, from an income tax perspective, employment income attributable to services rendered in Singapore is taxable but exemption may be available either under the domestic tax law or under the Avoidance of Double Tax Agreement between Singapore and the individual's country of residence.

Bonus payments to cross-border employees

CPF contributions on bonus payments to cross-border employees are dependent on the employee's physical location. For example, bonuses (relating to an employee's Singapore employment) that are paid when the employee is posted overseas are not CPF payable, while bonuses (relating to the employee's overseas employment) that are paid when the employee is in Singapore are CPF payable.

From an income tax perspective, income earned in respect of the employee's Singapore employment would be subject to tax in Singapore, regardless of whether it is paid when the employee is in Singapore or outside Singapore.

In view of the discrepancies between CPF and income tax treatment, it would be good for employers who may have assumed their alignment to review their CPF obligations.

In light of the active enforcement inspections by the CPF Board, employers should perhaps consider performing a CPF compliance review if they have not done so recently. With late interest payment charged at 18% per annum and in the absence of any statute of limitation, it is critical for employers to get their CPF obligations right as early as possible to avoid a potential time bomb.

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