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# INDIA-UK
# SOCIAL SECURITY ARRANGEMENTS

Facilitating trade and investment

## THE CASE FOR A SOCIAL SECURITY AGREEMENT

India is the second largest investor into the UK, having set up 120 new projects and creating 5,429 new jobs in 2019-20. Over 800 Indian companies in the UK, with consolidated revenues of £41 billion, employ nearly 110,000 people. This represents a major contribution by a Commonwealth partner to the UK economy, with further opportunities for investment. Additionally there are hundreds of thousands of Indian employees on secondment to the UK, also contributing significantly.

The largest workforce on secondment to the UK from India is from the technology services sector. Typically these Indian companies have branches or subsidiaries in the UK and use the Tier 2 Intra-Company Transfer (ICT) route to obtain certificates of sponsorship for the employees on secondment.

Indian employees working in the UK may be required to contribute towards both the Indian and the UK social security schemes. Temporary Indian workers in the UK have a limited exemption from paying social security, even though they have restricted access to public funds and are unlikely to work in the UK for long enough to accrue any state pension entitlement.

If India and the UK enter into an agreement, then Indian employees would be able to claim exemption from social security contributions in the UK by obtaining a Certificate of Coverage (CoC) from the Indian Provident Fund office. Indian Industry is therefore keen to have a sustained dialogue to put in place a social security agreement between India and the UK.

> The absence of an India-UK social security agreement is a barrier to trade and investment between the two countries. Employees working on secondment are suffering double contributions and employers suffer a double liability for the employer component. These are hidden costs of trading between India and the UK.

## THE ISSUE – NATIONAL INSURANCE CONTRIBUTIONS AND EXEMPTIONS

Until April 2017, the ICT route had a short term category with Indian employers to second employees to the UK for a period of up to 12 months. This was a popular category to use for secondees to the UK. For UK National Insurance (NI) purposes, this generally resulted in no employee's or employer's NI being due, as the 52 week exemption applied in most cases (under s.145 (2) Social Security (Contributions) Regulations 2001).

From April 2017, the short term category route was closed to new applicants, which has brought an existing problem for longer term secondees into more focus. Secondees who applied for certificates of sponsorship after this date would generally have come with an expected stay of more than 12 months, so would at some point during their secondment to the UK have a liability to national insurance.

If they exceed the initial stay of 52 weeks, they lose the exemption from NI, making the employer and employee liable to class 1 primary and secondary contributions, in the same way as a UK local hire, given that there is no social security agreement between India and the UK.

The minimum period of NI contributions to gain entitlement to a state pension is ten years which an Indian employee on a Tier 2 ICT visa is unlikely to meet as the maximum length of the visa in most cases is five years (or in certain cases, nine years, if the salary paid is £120,000 or more).

The employer will incur a cost of 13.8% and, once NI is being paid, will also be subject to the apprenticeship levy of 0.5% so the total cost to the employer would be 14.3%.

# WHAT WOULD A SOCIAL SECURITY ARRANGEMENT DO?

A social security agreement between the UK and India would potentially provide three benefits to Indian workers on secondment to the UK:

### 1. Avoidance of double social security contributions

Firstly, it would provide an exemption from NI in the UK for a period longer than the existing default 52 weeks on the basis that the employee and employer continued to make contributions to the social security system in India (Provident Fund, Superannuation and/or Gratuity). This would increase the social security burden in the first year as, under the current rules, there are often no contributions being made in the UK or India. A saving would be provided in the second and later years where it is possible that contributions will be made in both the UK and India on the same element of salary.

### 2. Aggregation of contribution periods

Secondly, a social security agreement would normally provide for the totalisation of the period of coverage in the home country (i.e. India) and the host country (i.e. the UK). The period of contribution in one country will be included in the period of contribution in the other country in order to determine eligibility for pension benefits under Indian or UK social security (except for periods of overlap between the two countries).

### 3. Exportability of benefits

Finally, a social security agreement would normally include an ‘export of benefits’ clause which would allow the UK authorities to remit any state pension entitlement accrued in the UK directly in India to Indian employees once they have returned.

Taking the minimum salary threshold under the most popular visa category (Tier-2 ICT), the potential loss of NI contributions is estimated at £413 million per annum, which may seem huge.

However Indian companies operating in the UK have a combined turnover of £41 billion and this has the potential to increase. In this context, the possible cost of a social security agreement is modest, which could further incentivise investment and job creation.

# FINANCIAL IMPACT ON INDIAN INDUSTRY

The Home Office immigration statistics state that the number of skilled work visas granted to Indian nationals coming to the UK each year is around 50,000.

Assuming that the average length of secondment is now two years, and so at any given moment there are around 100,000 Indian nationals working in the UK on a visa.

However, only 50,000 are those who have passed the 52 week exemption which they are entitled to under the existing rules for non-EU nationals coming from a country without a social security agreement.

The minimum salary for availing the Tier-2 ICT route is now £41,500 – and based on this, the estimated annual employer's NI contribution would be approximately £4,000 and the employee's contribution would be about £3,500.

The UK Home Office has published its plans for the new immigration rules effective 1 January 2021 and the reduced minimum salary is likely to be £25,600 – leading to approximately £2,500 and £2,000 of NI contributions respectively.

Assuming that the minimum salary and associated NI contributions are applicable to 50,000 skilled visa holders in the UK, the annual potential loss of contributions would be approximately £220 million from the employers and £192 million from employees.

| **Annual salary per person** | **Minimum threshold £41,500** | **Higher-range £50,000** |
|---|---|---|
| Annual employer's NI (per person) | £4,416 | £5,589 |
| Annual employee's NI (per person) | £3,840 | £4,860 |
| Total annual NI (per person) | £8,256 | £10,449 |
| Total employer's NI (50,000 skilled visa workers) | £220,800,000 | £279,450,000 |
| Total employee's NI (50,000 skilled visa workers) | £192,000,000 | £243,000,000 |
| **Total NI contribution (50,000 skilled visa holders)** | **£412,800,000** | **£522,450,000** |

Going above the minimum salary threshold of £41,500, into a higher salary band of £50,000, the estimated social security contributions, which Indian nationals cannot claim for pension benefits would be in the range of £413 million to £522 million. Under the proposed new immigration system this will be £213 million to £522 million.

In estimating these amounts the following point need to be considered:

- An employee on secondment may have part of their salary paid as allowances towards living costs as a bespoke scale rate agreed with HM Revenue & Customs while on secondment which do not suffer NI so the employee and employer contributions estimated above are likely to be overstated; and
- Additional contributions will be made where UK national employees are seconded to India and benefit from an exemption from Indian contributions on the basis that they continue to pay NI. For example, if there are 5,000 individuals working in India on an average salary £80,000 per annum, after the first 52 weeks they pay no NI so the additional contributions which would be made under a reciprocal agreement could be as high as £75 million per annum.

UK Prime Minister Boris Johnson has pledged to increase the threshold for NI to £12,500 from the current threshold of £9,500. Assuming that this pledge becomes law from April 2021, the cost to the Treasury for 50,000 skilled Indian workers would reduce by about £39 million.

# AN INSIGHT INTO GOVERNMENT NEGOTIATIONS

India has raised the issue of a social security agreement with the UK several times in the past. However, progress has been quite slow due to significant differences in the structure of the two systems and the need for parity in reciprocal arrangements. During the UK visit of Shri Suresh Prabhu, Minister for Commerce and Industry, Government of India in January 2018, this was discussed with his counterpart Dr Liam Fox, Secretary of State for International Trade at the India-UK Joint Economic and Trade Committee meetings.

**Comparative – international agreements**

However, it is worth noting that the UK has agreements about NI and benefit entitlement with the following non-European Economic Area (EEA) countries:

- Barbados
- Bermuda
- Canada (DCC)
- Chile (DCC)
- Israel
- Jamaica
- Japan (DCC)
- Yugoslavia (including Serbia and Montenegro, Bosnia-Herzegovina,and the former Yugoslav Republic of Macedonia)
- Jersey and Guernsey
- Korea (DCC)
- Mauritius
- Philippines
- Turkey
- USA

India has negotiated social security agreements with the following countries:

- Austria
- Australia
- Belgium
- Brazil
- Canada
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hungary
- Japan
- Luxembourg
- Netherlands
- Norway
- Portugal
- Quebec
- South Korea
- Switzerland
- Sweden

The UK has 14 social security agreements with non-EEA countries, and India has 20 agreements with other countries, but have never managed to agree one between themselves. This places India at a disadvantage to, say, the US where the agreement allows for a five year exemption from UK NI on the basis that US contributions continue to be made.

The NI exemption currently offered to Indian nationals is 52 weeks, while the exemption for several other nationalities can be between three and five years, depending on whether they belong to a EEA country or a country with which the UK has reciprocal agreement (RA) or double contribution convention (DCC). This does not include all provisions such as totalisation and export of benefits.

In this context, with a business employing a US worker on secondment to the UK, it would be possible for the US worker to obtain a Certificate of Coverage (CoC) under the social security agreement, which would give a five year exemption from NI, on the basis that continued contributions are already being made in the US. Therefore, an employer of Indian nationals on secondment to the UK is at a disadvantage, compared to an equivalent employer of US nationals. This has a bearing on ease of doing business and business competitiveness for Indian companies in the UK, despite the fact that India is one of the largest inward investors to the UK and will become an increasingly important trading partner in a post Brexit world.

Not all social security agreements include totalisation and export of benefits clauses so it would be a matter of negotiation between countries whether a full or partial agreement is entered into.

By way of example, the Indian/Belgium social security agreement, which came into effect on 1 September 2009, includes all three elements of the model agreement and provides an exemption for 60 months (i.e. five years).

## SUMMARY OF INDIA-BELGIUM RECIPROCAL AGREEMENT

The Government of India has entered into an agreement on social security with the Government of Belgium. This agreement aims to achieve equality on the principles of reciprocity and is intended to benefit the employees and employers of both India as well as Belgium. The salient features of the agreement are:

- The employees of the home country deputed by their employers, on short term assignment for a pre-determined period of up to 60 months, to the host country need not remit social security contribution in that country.
- Export of pension due under the legislations of one country to the other country, where the member might choose to live, is possible.
- Totalisation of the contribution periods earned while in service in both the countries for the purpose of deciding eligibility to benefits is possible under certain circumstances.
- The employers are saved from making double social security contributions for the same set of employees, thereby enhancing the competitiveness of their products and services.

Employees' Provident Fund Organisation (EPFO) has been identified as the liaison agency to implement the provisions of the agreement in India and has been authorised to issue CoC to the eligible employees deputed to Belgium, effective from 1 September 2009. Therefore, all the employers who have already deputed/intend to depute their employees to Belgium for a pre-determined short-term assignment for the period of up to 60 months are requested to avail the benefits under the agreement. They may also contact their jurisdictional regional provident fund commissioners or the international workers unit in the head office at New Delhi for further details and clarifications, if any.

*Source: Employees' Provident Fund Organisation, Ministry of Labour and Employment, Government of India*

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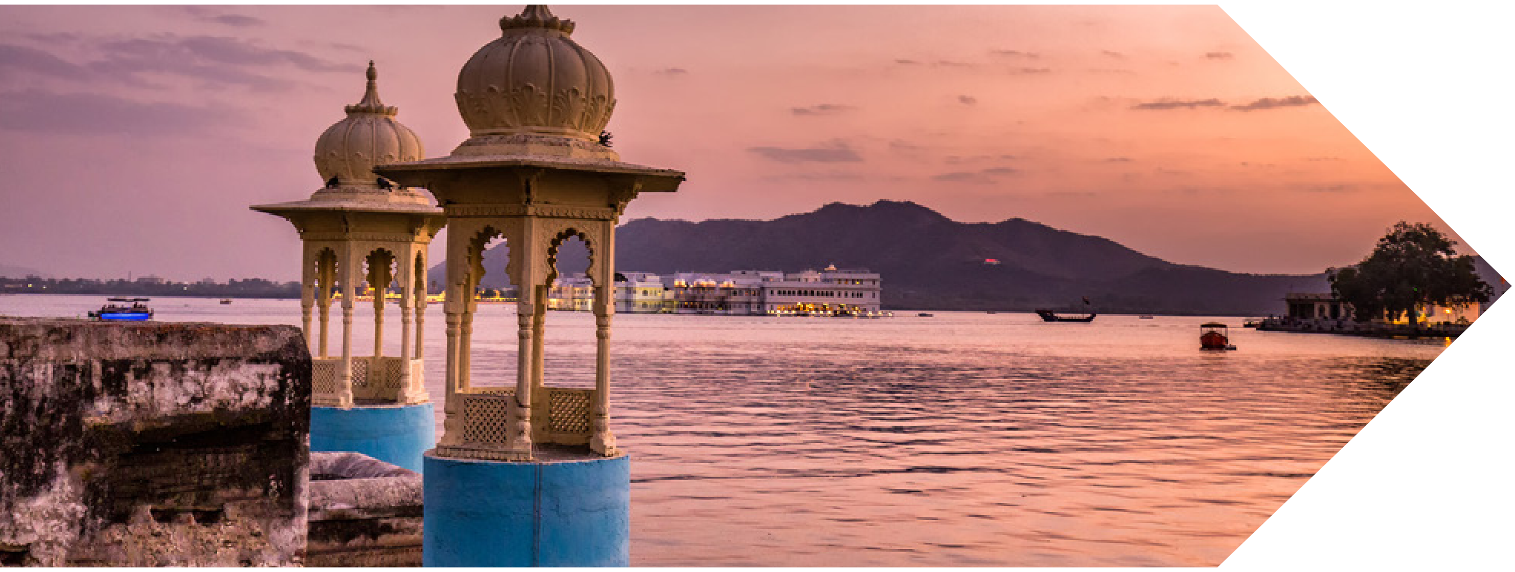
## POLICY ACTION

The changes to the immigration rules with the abolition of the short term ICT category of visa and the introduction of the skills and immigration health surcharge has made the UK less competitive for Indian businesses and students wishing to expand to the UK.

The introduction of a social security agreement would be a relatively simple and inexpensive process that would help balance what the UK has to offer. It would put Indian inward investors on an equal footing with international investors who benefit from a full social security agreement giving a four or five year exemption from UK national insurance aligning it to other major European country treaties like Belgium and Germany.

It is suggested that a full social security agreement covering a five year period to put India in the same position as the top foreign investors in the UK and also to align with the most popular ICT visa category period is now made a priority.



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The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the development of India, partnering industry, Government and civil society, through advisory and consultative processes.

For 125 years, CII has been working on shaping India's development journey and, this year, more than ever before, it will continue to proactively transform Indian industry's engagement in national development.

CII is a non-government, not-for-profit, industry-led and industry-managed organization, with about 9100 members from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 300,000 enterprises from 288 national and regional sectoral industry bodies.

CII charts change by working closely with Government on policy issues, interfacing with thought leaders, and enhancing efficiency, competitiveness and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus-building and networking on key issues.

Extending its agenda beyond business, CII assists industry to identify and execute corporate citizenship programmes. Partnerships with civil society organizations carry forward corporate initiatives for integrated and inclusive development across diverse domains including affirmative action, livelihoods, diversity management, skill development, empowerment of women, and sustainable development, to name a few.

With the Theme for 2020-21 as Building India for a New World: Lives, Livelihood, Growth, CII will work with Government and industry to bring back growth to the economy and mitigate the enormous human cost of the pandemic by protecting jobs and livelihoods.

With 68 offices, including 10 Centres of Excellence, in India, and 9 overseas offices in Australia, China, Egypt, Germany, Indonesia, Singapore, UAE, UK, and USA, as well as institutional partnerships with 394 counterpart organizations in 133 countries, CII serves as a reference point for Indian industry and the international business community.

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Our firm's close relationship with India started over two decades ago, when we began advising one of India's leading commercial enterprises doing business in the UK. Building on that success, our India Group today advises and assists a large number of Indian businesses on their international operations, encompassing the delivery of compliance services and advising on international business structures, taxation issues and corporate finance matters.

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