

Rep. by Act.....19.....of 1988, s. 2 & sch. I

THE PAYMENT OF BONUS (SECOND AMENDMENT)
ACT, 1980

No. 66 GF 1980

[27th December, 1980.]

An Act further to amend the Payment of Bonus Act, 1965.

BE it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:—

Short
title and
commen-
cement.

1. (1) This Act may be called the Payment of Bonus (Second Amendment) Act, 1980.

(2) It shall be deemed to have come into force on the 21st day of August, 1980, except section 11 which shall come into force at once.

Amend-
ment of
section 2.

2. In section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act),—

(a) in sub-clause (a) of clause (4), after the words "being a company", the brackets and words "(other than a banking company)" shall be inserted;

(b) in clause (8), after the figures "1970", the words, figures and brackets "any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980," shall be inserted.

40 of 1980.

Substitu-
tion of
new sec-
tion for
section 4.
Computa-
tion of
gross
profits.

3. For section 4 of the principal Act, the following section shall be substituted, namely:—

"4. The gross profits derived by an employer from an establishment in respect of any accounting year shall—

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule;

(b) in any other case, be calculated in the manner specified in the Second Schedule."

Amend-
ment of
section 6.

4. In section 6 of the principal Act,—

(a) in clause (b), for the words "development rebate or development allowance", the words "development rebate or investment allowance or development allowance" shall be substituted;

(b) in clause (d), for the words "Second Schedule", the words "Third Schedule" shall be substituted.

5. In section 7 of the principal Act, in clause (e), for the brackets and words "(other than development rebate or development allowance)", the brackets and words "(other than development rebate or investment allowance or development allowance)" shall be substituted. Amendment of section 7.

6. For section 10 of the principal Act, the following sections shall be substituted, namely:— Substitution of new sections for section 10.

'10. Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year: Payment of minimum bonus.

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted.

11. (1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent. of such salary or wage. Payment of maximum bonus.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.'

7. In section 12 of the principal Act, for the words and figures "under section 10", the words and figures "under section 10 or, as the case may be, under section 11," shall be substituted. Amendment of section 12.

8. For section 13 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 13.

"13. Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent. of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced." Proportionate reduction in bonus in certain cases.

Substitution of new section for section 15.

9. For section 15 of the principal Act, the following section shall be substituted, namely:—

Set on and set off of allocable surplus.

“15. (1) Where for any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.”

Amendment of section 16.

10. In section 16 of the principal Act, in sub-section (1B), for the words “Third Schedule” at both the places where they occur, the words “Fourth Schedule” shall be substituted.

Amendment of section 20.

11. Section 20 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Save as otherwise provided in sub-section (1), nothing in this Act shall apply to the employees employed by any establishment in public sector.”

Amendment of section 21.

12. In section 21 of the principal Act, in the *Explanation*, for the words and figures “sections 22, 23 and 25”, the words and figures “sections 22, 23, 24 and 25” shall be substituted.

Amendment of section 23.

13. In section 23 of the principal Act, in sub-section (1), for the words and figures “section 25”, the words and figures “sections 24 and 25” shall be substituted.

Insertion of new section 24.

14. After section 23 of the principal Act, the following section shall be inserted, namely:—

"24. (1) Where any dispute of the nature specified in section 22 between an employer, being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company duly audited are produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts, but the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act.

Audited accounts of banking companies not to be questioned.

(2) Nothing contained in sub-section (1) shall enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under the provisions of section 34A of the Banking Regulation Act, 1949."

10 of 1949.

15. In section 27 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment of section 27.

"(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of, any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Regulation Act, 1949."

10 of 1949.

16. In section 30 of the principal Act, in sub-section (1), after the words "appropriate Government", the words and brackets "or an officer of that Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government, and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government" shall be inserted.

Amendment of section 30.

17. In section 31A of the principal Act, in the proviso, for the words "Provided that", the words "Provided further that" shall be substituted and before the proviso as so amended, the following proviso shall be inserted, namely:—

Amendment of section 31A.

"Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right."

18. In section 32 of the principal Act,—

(a) clause (vii) shall be omitted;

(b) in clause (ix),—

(i) sub-clause (ff) shall be omitted;

(ii) in sub-clause (g), after the words "financial institution", the brackets and words "(other than a banking company)" shall be inserted.

Amendment of section 32.

19. In the principal Act,—

(a) the First Schedule shall be renumbered as the Second Schedule and in that Schedule as so renumbered—

(i) for the brackets, words and figure "(See section 4)", the brackets, words, figure and letter "[See section 4(b)]" shall be substituted;

Amendment of the First Schedule.

(ii) in the second column, against Item No. 2, for the entry “(d) Development rebate/Development allowance reserve.”, the entry “(d) Development rebate/Investment allowance/Development allowance reserve.” shall be substituted;

(b) before that Schedule as so renumbered, the following Schedule shall be inserted, namely:—

‘THE FIRST SCHEDULE
[See section 4(a)]
COMPUTATION OF GROSS PROFITS
Accounting year ending.....

Item No.	Particulars	Amount of sub-items	Amount of main items	Remarks
		Rs.	Rs.	
*1.	Net Profit as shown in the Profit and Loss Account after making usual and necessary provisions.			
2.	Add back provision for:			
	(a) Bonus to employees.			
	(b) Depreciation.			
	(c) Development Rebate Reserve.			
	(d) Any other reserves.			See foot-note (1)
	Total of Item No. 2	Rs.	Rs.	See foot-note (1)
3.	Add back also:			
	(a) Bonus paid to employees in respect of previous accounting years.			See foot-note (1)
	(b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of—			
	(i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and			
	(ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.			
	(c) Donations in excess of the amount admissible for income-tax.			
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax).			See foot-note (1)
	(e) Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Regulation Act, 1949.			
	(f) Losses of, or expenditure relating to, any business situated outside India.			
	Total of Item No. 3	Rs.	Rs.	

*Where the profit subject to taxation is shown in the Profit and Loss Account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

Item No.	Particulars	Amount of	Amount of	Remarks
		sub-items	main items	
		Rs.	Rs.	
4.	Add also income, profits or gains (if any) credited directly to published or disclosed reserves, other than—			
	(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax);			
	(ii) profits of, and receipts relating to, any business situated outside India;			
	(iii) income of foreign banking companies from investments outside India.			
	Net total of Item No. 4	Rs.		
5.	Total of Item Nos. 1, 2, 3 and 4.	Rs.		
6.	Deduct :			
	(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax).			See foot-note (2)
	(b) Profits of, and receipts relating to, any business situated outside India.			See foot-note (2)
	(c) Income of foreign banking companies from investments outside India.			See foot-note (2)
	(d) Expenditure or losses (if any) debited directly to published or disclosed reserves, other than— capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax);			
	(ii) losses of any business situated outside India.			
	(e) In the case of foreign banking companies proportionate administrative (overhead) expenses of Head Office allocable to Indian business.			See foot-note (3)
	(f) Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation, or development rebate, if written back.			See foot-note (2)
	(g) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.			See foot-note (2)
	Total of Item No. 6.			
7.	Gross Profits for purposes of bonus (Item No. 5 minus Item No. 6)	Rs.	Rs.	

Explanation.—In sub-item (b) of Item 3, “approved gratuity fund” has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act.

Foot-notes—

- (1) If, and to the extent, charged to Profit and Loss Account.
- (2) If, and to the extent, credited to Profit and Loss Account.
- (3) In the proportion of Indian Gross Profit (Item No. 7) to Total World Gross Profit (as per consolidated Profit and Loss Account adjusted as in Item No. 2 above only).

Amendment of the Second Schedule.

20. In the principal Act, the Second Schedule shall be renumbered as the Third Schedule and in that Schedule as so renumbered,—

(a) in column (2), against Item No. 1, for the word “Company”, the words “Company, other than a banking company” shall be substituted;

(b) after Item No. 1 and the entries relating thereto, the following item and entries shall be inserted, namely:—

(1)	(2)	(3)
“2.	Banking company	<ul style="list-style-type: none"> (i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable; (ii) 7.5 per cent. of its paid up equity share capital as at the commencement of the accounting year; (iii) 5 per cent. of its reserves shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year; (b) any sum which, in respect of the accounting year, is transferred by— <ul style="list-style-type: none"> (a) to a reserve fund under sub-section (1) of section 17 of the Banking Regulation Act, 1949; or (b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India, whichever is higher; <p>Provided that where the banking company is a foreign company within the meaning of section 591 of the Companies Act, 1956, the amount to be deducted under this Item shall be the aggregate of—</p> <ul style="list-style-type: none"> (f) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds;

10 of 1949.

1 of 1956.

(1) (2) (3)

- (ii) 7.5 per cent. of such amount as bears the same proportion to its total paid up equity share capital as its total working funds in India bear to its total world working funds ;
- (iii) 5 per cent. of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;
- (iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (3) of section 11 of the Banking Regulation Act, 1949, not exceeding the amount required under the aforesaid provision to be so deposited.”;

10 of 1949.

(c) in the Explanation, for the figures, brackets and word “1 (iii) and 3 (ii)”, the figures, brackets and word “1 (iii), 2 (iii) and 3 (ii)” shall be substituted.

21. For the Third Schedule to the principal Act, the following Schedule shall be substituted, namely:—

“THE FOURTH SCHEDULE

(See sections 15 and 16)

In this Schedule, the total amount of bonus equal to 8.33 per cent. of the annual salary or wage payable to all the employees is assumed to be Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent. of the annual salary or wage of all the employees) would be Rs. 2,50,000.

Substitution of new Schedule for the Third Schedule.

Year	Amount equal to sixty per cent. or sixty-seven per cent., as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or set off of the year carried forward	Total set on or set off carried forward	
(1)	(2)	(3)	(4)	(5)	
	Rs.	Rs.	Rs.	Rs.	of (year)
1	1,04,167	1,04,167**	Nil	Nil	
2	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000	(2)

(1)	(2)	(3)	(4)	(5)	
	Rs.	Rs.	Rs.	Rs.	of (year)
3	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6	3,10,000	2,50,000*	Set on 60,000	Set on Nil† 1,25,000 60,000	(2) (4) (6)
7	1,00,000	2,50,000* (inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8	Nil (due to loss)	1,04,167** (inclusive of 35,000 from year-6)	Set off 69,167	Set off 69,167	(8)
9	10,000	1,04,167**	Set off 94,167	Set off 69,167 94,167	(8) (9)
10	2,15,000	1,04,167** (after setting off 69,167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

NOTES—

*Maximum.

†The balance of Rs. 1,10,000 set on from year-2 lapses.

**Minimum”.

Repeal
and
saving.

22. (1) The Payment of Bonus (Amendment) Ordinance, 1980, is 10 of 1980. hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act.