

Client Alert

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The Importance of Compliance with the Central Provident Fund Act (Cap.36)

On 1 June 2016, the Central Provident Fund (“CPF”) Board (“Board”) released a press release stating it has recovered about SGD 516 million in CPF arrears in 2015. These CPF arrears recovered were from underpayment, non-payment and late payment of CPF contributions by employers.

CPF contributions are to be made in accordance with the CPF Act (Cap.36) (the “Act”) and it is the responsibility of the employer to make the correct amount of contributions. We have set out below the 2 common mistakes employers make when dealing with CPF issues. In addition, you will see that failure to contribute the correct amounts in compliance with the Act can lead to serious consequences for employers.

Underpayment and non-payment of CPF contributions

The above tends to happen in situations where clients are unfamiliar with the CPF regime in Singapore, or situations where independent contractors should have been treated as employees instead.

In such scenarios, back payments for any shortfall amounts to rectify the underpayment/non-payment of CPF contributions would have to be made to the Board. However, when making such back payments, it is unlikely that the employer can recover the employee’s share of contribution ie. the employer would have to bear the whole back payment amount itself.

In addition, employers may also be liable to make late payment interest payments in accordance with the Act with respect to the underpayment/non-payment of CPF contributions. This late payment interest is calculated at the rate of 1.5% per month or the sum of SGD 5, whichever is greater.

Lastly, underpayment/non-payment of CPF contributions may give rise to potential criminal liability under the Act. The relevant penalty for such offences is a fine not exceeding SGD 2,500 for first offences and, in the case of a second or subsequent conviction, a fine not exceeding SGD 10,000. As these fines apply per charge, employers who have been underpaying or not paying CPF contributions for some time, or for more than one employee, can face multiple charges and the resultant total fine may be considerable. The Act goes on to state that where an offence under the Act has been committed by a body corporate and is found to have been committed with the consent or connivance of or to be attributable to any act or default on the part of

any officer of the body corporate, that officer as well as the body corporate shall be guilty of an offence.

Misclassification of the type of wages

Under the Act, wages are classified into ordinary wages for the month (“**Ordinary Wages**”) and relevant additional wages in a calendar month (“**Additional Wages**”).

Ordinary Wages are wages due or granted in respect of employment and include allowances earned by an employee in the month and payable before the due date for payment of CPF contributions for that month, which is the 14th day after the end of that month. On the other hand, Additional Wages are any remuneration other than Ordinary Wages in a calendar month, i.e. annual bonus and leave pay. This distinction in the classification of wages is important as the maximum amounts of Ordinary Wages and Additional Wages that CPF contributions are payable for are different and different caps apply for both types of payments.

If employers had not been careful and had misclassified the type of payment to be made, it may lead to a situation where there is an underpayment of CPF contributions as described above.

Conclusion

The CPF scheme is unique to Singapore and as such clients may not be familiar with respect to it as compared to other social security schemes or pension schemes around the world. Nevertheless, it is important for employers to understand its obligations under the Act and ensure that it is fully compliant with the Act. In the event it is not, such non-compliance can lead to severe monetary penalties in the form of late payment interests and fines.