



# WWF and WPPF

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## WWF and WPPF

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Workers' Welfare Fund and Workers' Profit Participation Fund are primarily labour related legislation

Historically, they are governed by federal statutes viz.

- ▶ The Workers' Welfare Fund Ordinance, 1971; and
- ▶ The Companies Profits (Workers' Participation) Act, 1968

The Constitution (Eighteenth Amendment) Act, 2010 amended various Articles of the Constitution including Article 142 dealing with "Subject-matter of Federal and Provincial laws" which falls under Chapter 1: Distribution of Legislative Powers

## WWF and WPPF

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The Concurrent Legislative List and its entries (1 to 47) thus been omitted which included the following –

“Entry 26. Welfare of labor; conditions of labor, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, old age pensions.”

Provinces have thus been empowered to legislate, regulate and administer inter alia, the labour related matters

## WWF and WPPF

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So far, only the province of Sindh has legislated WWF and WPPF statutes. These are –

- ▶ The Sindh Workers' Welfare Fund Act, 2014; and
- ▶ The Sindh Companies Profits (Workers' Participation) Act, 2015

The federal statutes to the extent of the province of Sindh, therefore, stand repealed

## WORKERS WELFARE FUND

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### The Workers' Welfare Fund Ordinance, 1971 ("WWF Ordinance, 1971") –

- ▶ Applicable to an industrial establishment having total income not less than Rs.500,000 in a tax year, and engaged in –
  - manufacturing or production of goods through various means of energy;
  - working in a mine or quarry or natural gas or oilfield;
  - in the growing of tea, coffee, rubber or cinchona;

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- in the carriage of men and goods by inland mechanically propelled vessels;
- to any concern which the Federal Government, declares to be an industrial establishment for the purposes of the WWF Ordinance

It follows that the WWF Ordinance is primarily applicable to concerns/ entities where workmen/ workers are employed and for their benefit, the WWF is charged/ collected

## WORKERS WELFARE FUND

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- ▶ The levy of WWF is calculated @ 2% of total income as is assessable under the Income Tax Ordinance, 2001 (“Ordinance”)
- ▶ The payment of WWF is to be made to the FBR which is entrusted with powers to enhance the levy where an amended assessment is made resulting in enhancement of income
- ▶ The FBR is also entrusted with powers to recover WWF not paid by a person. It can also levy default surcharge where the WWF is not paid or the payment is made late

## WORKERS WELFARE FUND

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- ▶ The Finance Acts of 2006 and 2008, amended the WWF Ordinance, 1971 whereby inter-alia, the following amendments were made –
  - the definition of ‘industrial establishment’ was expanded to include all other concerns to which the West Pakistan Shops and Establishments Ordinance, 1969 was applicable;
  - the definition of “total income” was amended in a manner that the levy of WWF was to be calculated on higher of total (taxable income), or profit before tax as per accounts

## WORKERS WELFARE FUND

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- ▶ The effect of the above amendments was that -
  - the WWF Ordinance was made applicable to all concerns including individuals, as well as to entities (including companies) which were service providers;
  - the levy of WWF was to be calculated with reference to the higher of taxable income (as per the return of income), or profit before tax (as per the audited accounts),
  - in case of exemption or availability of tax loss resulting in no total (taxable) income, WWF also became leviable; and
  - it was applicable on income subject to FTR to be calculated @ 4% of the receipts declared in the statement filed under section 115(4) of Ordinance

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- ▶ The legality of the above amendments was challenged in Courts and the matter has finally been decided by the Supreme Court in the case of Workers Welfare Funds M/o Human Resources Development, Islamabad, vide order dated 10 November 2016
- ▶ The Supreme Court held all the above amendments to be ultra-vires and therefore of no legal effect. The result is that the original provisions of the WWF Ordinance stood restored

## WORKERS WELFARE FUND

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- ▶ The outcome is summarized as under –
  - The WWF Ordinance, 1971 to apply only to an industrial establishment having total income in a tax year of not less than Rs.500,000 and which is engaged in manufacturing or production of goods through various means of energy; to any concern working in a mine or quarry or natural gas or oilfield; to concerns engaged in the growing of tea, coffee, rubber or cinchona; to any concern engaged in the carriage of men and goods by inland mechanically propelled vessels; and to such concern which the Federal Government, declares to be an industrial establishment for the purpose of the levy of WWF. As such, a concern which is not covered in the above criteria including a service sector entity is not subject to the levy of WWF under the WWF Ordinance;

## WORKERS WELFARE FUND

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- The levy of WWF is to be calculated only on the amount of taxable income. Where there is a tax loss available for adjustment against taxable income for the year, WWF liability would be calculated on resultant taxable income, if any, after the aforesaid adjustment;
  - In the case of exempt income, and for cases falling under FTR, no WWF liability would be payable
- ▶ Under section 60A of the Ordinance, a deductible allowance is given to a person who has paid WWF under the WWF Ordinance, 1971

## The Sindh Workers Welfare Fund Act, 2014 ("Sindh WWF Act")

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- ▶ This is applicable primarily to industrial establishments the total income of which in a tax year, is not less than Rs.500,000. Industrial establishment is defined to mean –
  - any concern owning or managing a factory, workshop or other establishment in which articles are produced, adapted or manufactured with the aid of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency;
  - any concern working in mine or quarry or natural gas or oilfield;

# The Sindh Workers Welfare Fund Act, 2014 ("Sindh WWF Act")

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- any concern engaged in the carriage of worker and goods by inland mechanically propelled vessels;
- any concern engaged in the growing of tea, coffee;
- any concern engaged in the Banking or financial Institution except State Bank of Pakistan;
- any concern engaged in telecommunication;
- any concern which the Government declares to be an industrial establishment for the purposes of the Sindh WWF Act. However, any concern or establishment which is owned by Government or by a corporation established by Government or where majority of its shares are owned by the Government is not liable to pay WWF

## The Sindh Workers Welfare Fund Act, 2014 ("Sindh WWF Act")

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- ▶ The levy of WWF is calculated @ 2% of total income which is defined to mean –
  - where return of income is required to be filed under the Ordinance, the profit as per accounts or the declared income as per the return of income;
  - where return of income is not required to be filed, four percent of the receipts as per the statement filed under section 115 of the Ordinance;
  - where both return and statement are filed, both the incomes would be clubbed to form total income

## **The Sindh Workers Welfare Fund Act, 2014 ("Sindh WWF Act")**

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- ▶ This would mean that the amount of WWF would be calculated and paid at higher of the aforesaid amounts
- ▶ The payment of Sindh WWF is to be made to the SRB
- ▶ Where the total income is enhanced as a result of an amended assessment order passed by the tax authorities, the differential will become due from the taxpayer who is required to deposit the same with SRB

## **The Sindh Workers Welfare Fund Act, 2014 ("Sindh WWF Act")**

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- ▶ Where the Sindh WWF is not paid by a person, SRB is empowered to recover the same. Further, it can also levy default surcharge where the Sindh WWF is not paid or the payment is made late
- ▶ Section 60A of the Ordinance has not been amended to include payment of WWF under the provincial legislation as it still provides for a deductible allowance to a person who has paid WWF under the WWF Ordinance, 1971

# **WORKERS PROFITS PARTICIPATION FUND**

## **The Companies Profits (Workers' Participation) Act, 1968** **("WPPF Act")**

### **General Scheme of the WPPF Act**

- ▶ the WPPF Act requires every 'company', to which the Scheme applies, to establish a Workers' Profit Participation Fund ("the Fund") in accordance with the Scheme set out in the Schedule to the WPPF Act ("the Scheme")

# **WORKERS PROFITS PARTICIPATION FUND**

## **Applicable to whom**

- ▶ Under Paragraph 1 of the Schedule to the WPPF Act, the scope of the Scheme applies to all 'companies', engaged in "industrial undertakings", which satisfies any one of the following conditions –
  - The number of workers employed by the company at any time during a year is 50 or more
  - The paid-up capital of the company on the last day of its accounting year is Rs.20 lakhs or more
  - The value of the fixed assets of the company (at cost) on the last day of the accounting year is Rs.40 lakhs or more

## **WORKERS PROFITS PARTICIPATION FUND**

- ▶ It follows that the Schedule would apply only to –
  - a company, being an industrial undertaking; and
  - which satisfies any one of the three conditions e.g. employment of workers, paid up capital or fixed assets

## **WORKERS PROFITS PARTICIPATION FUND**

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- ▶ “Industrial undertaking” means –
  - an institution, organization, enterprise or establishment which involves the use of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency and which is engaged in any one or more of the following operation, namely:-
    - (i) the subjection of goods or materials or any manufacturing, assembly, finishing or other artificial or natural process, which changes their original condition or adds to their value;

## **WORKERS PROFITS PARTICIPATION FUND**

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- (ii) ship-building;
- (iii) the transformation, generation, conversion, transmission or distribution of electrical energy, including hydraulic power; and
- (iv) the working of a mine, oil-well or any other source of mineral deposit, including blending, refining and purification of oils and gases; and includes companies engaged in the marketing and distribution of gas or oil, or in the carriage of men or goods by sea or air, and an establishment which the Federal Government declares to be an industrial undertaking for the purposes of the Scheme

## **WORKERS PROFITS PARTICIPATION FUND**

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### ▶ **“Definition of “worker” –**

- The Fund to be established is for workers and the term “worker” means –

“Worker” in relation to a company means an employee of the company whose average monthly emoluments computed in the manner set forth in the Scheme do not exceed five thousand rupees per month and who has been in the employment of the company for a period of not less than six months;

# **WORKERS PROFITS PARTICIPATION FUND**

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## **► Establishment of Fund**

- The WPPF Act requires every company qualifying under Paragraph 1 of the Scheme to establish a Fund in accordance with section 3 of the WPPF Act

## **► Rate of contribution**

- Under section 3, 5% of the profits (as defined) must be paid over to the Fund within 9 months of the close of each accounting year. Furthermore, where the Company utilizes the funds allocable to it, it is required to pay interest to the Fund

# **WORKERS PROFITS PARTICIPATION FUND**

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## **► Distribution of benefits to workers**

- Paragraph 4 of the Schedule to the WPPF Act deals with distribution of benefits to eligible 'workers'. It states that the share of a worker in the annual allocation to the Fund shall be expressed in units or fractions of units of the face value of Rs.10 determined in the manner set out therein

## **WORKERS PROFITS PARTICIPATION FUND**

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- ▶ **Payment of leftover from annual allocation of WPPF**
  - Any amount left out of the annual allocation after the units have been allocated to the workers eligible to participate in the Fund is required to be transferred to the Workers' Welfare Fund
  
- ▶ **Tax benefit in the hands of the company**
  - Under section 60B of the Ordinance, a deductible allowance is given to a person who has paid WPPF under the WPPF Act

## **WORKERS PROFITS PARTICIPATION FUND**

### **The Sindh Companies Profits (Workers' Participation) Act, 2015 ("Sindh WPPF Act")**

#### **General scheme of the Sindh WPPF Act:**

- ▶ The general scheme of the Sindh WPPF Act is similar to the WPPF Act, 1968
- ▶ Applicable to whom:
  - The Scheme applies to all companies which are engaged in Industrial undertakings as defined in the Schedule to the Sindh WPPF Act similar to the Federal WPPF Act

## **WORKERS PROFITS PARTICIPATION FUND**

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- Under the Federal WPPF Act, companies which employ 50 persons or more are required to establish a Workers Participation in Profits Fund. However, under the Sindh WPPF Act, the Scheme applies to those companies which employ 100 persons or more
- The Sindh WPPF Act has provided an option to companies which operate more than one industrial undertaking, to the effect that such a company may approach the Government to seek permission of the splitting up of the Fund amongst various undertakings

# WORKERS PROFITS PARTICIPATION FUND

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## ▶ Rate of contribution:

- Likewise the Federal WPPF Act, the rate of contribution remains the same i.e. 5% of profit for the year. The tim-line for payment is also the same i.e. 9 months from the close of the accounting year

## ▶ Eligible Workers to benefit from WPPF:

The wage categories for the disbursement of benefits to the workers are as under:

- Workers drawing average minimum monthly wages as fixed by the Government from time to time;
- Workers drawing average minimum monthly wages as fixed by the Government from time to time but not exceeding Rs.20,000;

## **WORKERS PROFITS PARTICIPATION FUND**

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- Workers drawing average minimum monthly wages exceeding Rs.20,000

### ▶ Definition of 'Worker':

- "Worker" in relation to a company is defined to mean an employee of the company, including employed by or through the contractor, who falls within the definition of worker as defined in Clause (xxx) of section 2 of the Sindh Industrial Relations Act, 2013, and has been working for or in the company for a period of not less than six months;

## **WORKERS PROFITS PARTICIPATION FUND**

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- ▶ Payment of leftover from annual allocation of WPPF

the excess over the profits allocable to workers under the Scheme is required to be transferred to the Fund established under the Sindh Workers Welfare Fund Act, 2014

- ▶ Tax benefit in the hands of the company:

The Sindh WPPF Act like the Federal WPPF Act duly provides that allocation made by a company to the Fund shall be admissible for tax purposes. However, the Ordinance needs to incorporate related references to provincial levies enacted through different labor laws in consequence of the Eighteenth Amendment made in the Constitution

## **WORKERS PROFITS PARTICIPATION FUND**

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### ▶ Retrospective application:

It may be recalled that the Sindh WWF Act has been made effective retrospectively for income years commencing on or after 31 December 2013. The Sindh WPPF Act has also been deemed to be effective from 01 July 2011

# Questions & Answers

Thank You