

Definition of Ex-gratia payments

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Ex-Gratia is a monetary consideration by an Employer, which is done voluntarily, out of kind. It neither carries liability on the employer nor legal obligation.

In many establishments, this terminology is used in various payment types. We will discuss few such types, in this blog.

Nowadays, few establishments pay “such amounts”, to those select few employees, where there is no policy of “Project based or Performance based incentive”. Usually these amounts are considered as an “ex-gratia”, which is easy for accounting purposes and it does not become a “precedent”.

In few of my previous organizations, our Management was magnanimous enough to release some funds towards “medical emergency of self/spouse/dependents” which may not be covered under Medclaim/exceeding the Medclaim. Those amounts were treated as an “ex-gratia”. And it is decided only in deserving cases, and not an UNO payment (Universally, Necessarily, Ordinarily), hence called as an “ex-gratia”.

Hope few other Proprietary or Partnership establishments, do pay such non-regular payments (as a lumpsum), which were considered as an “ex-gratia”. This is a normal practice, where the employer pays a considerable amount to meet out specific expenses of employees, during (a) academic year opening, (b) marriage in the family (c) emergency medical expenses, etc.

During Festival seasons (Onam, Holi, Diwali, Ramzan, Christmas, etc) – establishments have practice to release “Share in the profit”. For those who are eligible to receive such “Share in the Profit”, it is considered as “Statutory Bonus”.

Notwithstanding, whether the establishments

- earn profit (every profit year) or
- do not earn profit (compulsory after 5 years),
- it is mandated under the Legislation (PoB Act-currently subsumed under the Code on Wages) to disburse
 - a minimum percentage limiting to a fixed amount (8.33% on 7000) or

- the Minimum Wages (for those who are covered under Scheduled Employment), whichever is higher.
- And, such Statutory Bonus is “Mandatory” only to
 - those “eligible employees” (earning a threshold wage as prescribed the Government or less per month)
 - for the “eligible months in the previous FY” (all such months, where they have earned a threshold wage or less)

Where Trade Unions are strong & influential and in High-Profit making establishments, Managements were highly considerate to include other employees, who were “out-of the Statutory Bonus bracket” and disburse the “share in the profit”, which is wholly, called as an “ex-gratia”.

In few Establishments, where the Maximum Statutory Bonus is restricted to Rs.16,800, anything paid more than this, to eligible employees is called as an “ex-gratia”.

Considering “ex-gratia” in the Books of Accounts (and in the Form C, under the PoB Act), is a cumbersome job after the last amendment, after the insertion of **“payment of Statutory Bonus to a minimum of Rs. 7000 (which is 8.33%) or Minimum wages, whichever is higher”** in the provisions of PoB Act.

Reason for this complexity is,

- Where an establishment decides to declare 20% (which is maximum)
- Such establishment is an industry, which is covered under Scheduled Employment
- An Establishment, which comprises of all types of employment (Unskilled, Semi-skilled, Skilled), and those who do not come under scheduled types
- In this establishment, computing 20% is highly complex (which will be more than 16800 and not universal across employment type)

Such establishments blindly consider any amount paid to an employee, which is more than 16800 as ex-gratia, which is erroneous. Here the consideration of ex-gratia should be, any amount which is more than 20% of Minimum wages, if it is higher.

Ex-Gratia payment is taxable under the IT Act.

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