



Employee's Pension  
Scheme – What does the  
Supreme Court ruling  
mean to you?

## We'll be discussing .....

- Provident fund and pension regulations
- 2014 EPS amendment
  - What changed?
  - Relevant judgements
- Supreme Court ruling
  - Salient features
  - Eligible population
  - Impact
- Way forward
  - Process
  - Challenges / concerns
- Q & A



## Poll question 1

**What actions has your establishment adopted pursuant to the SC ruling?**

(Select one of the options flashing on the panel to respond)

You have facilitated

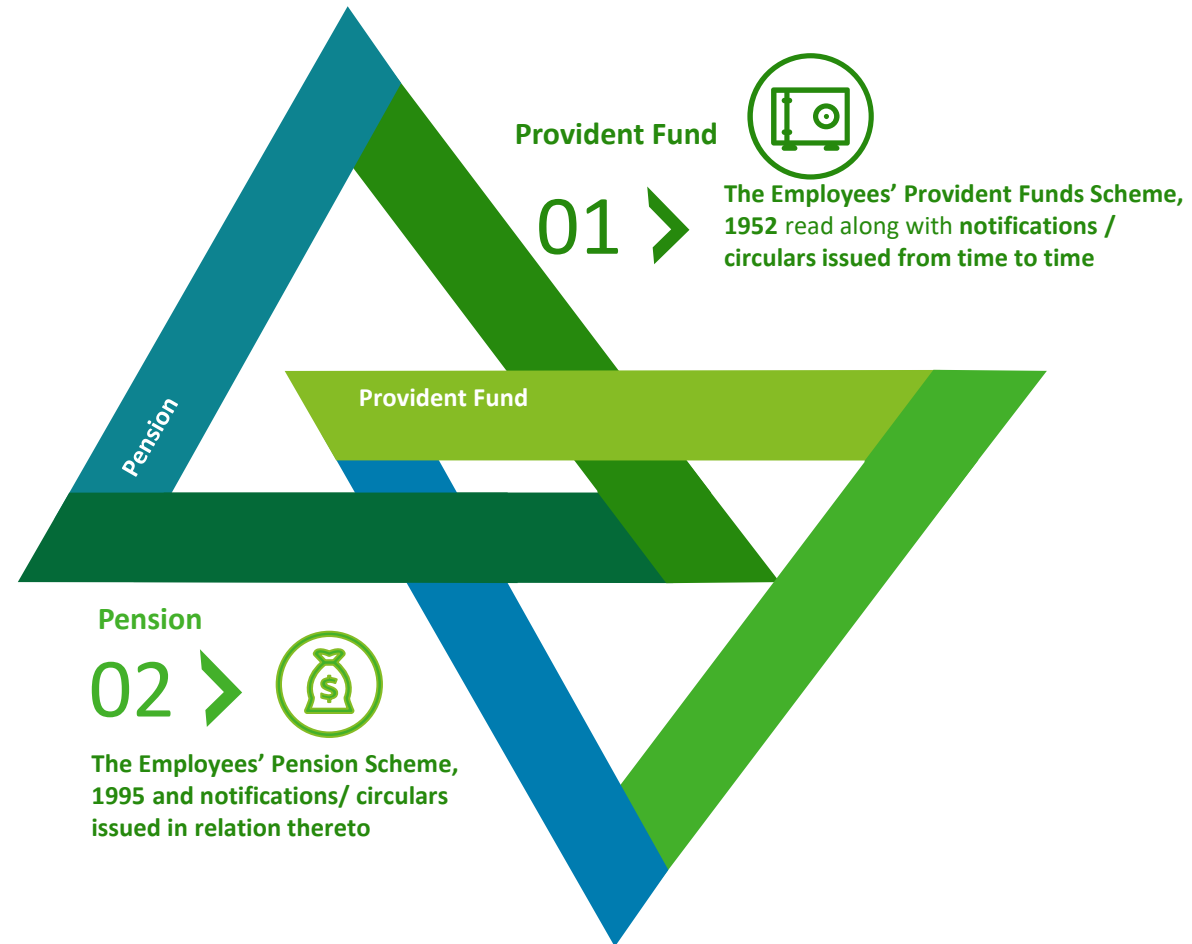
- Employee awareness sessions
- Communication and frequently asked questions
- Helpdesk
- All of the above
- None of the above

# Provident and pension funds

## The regulations

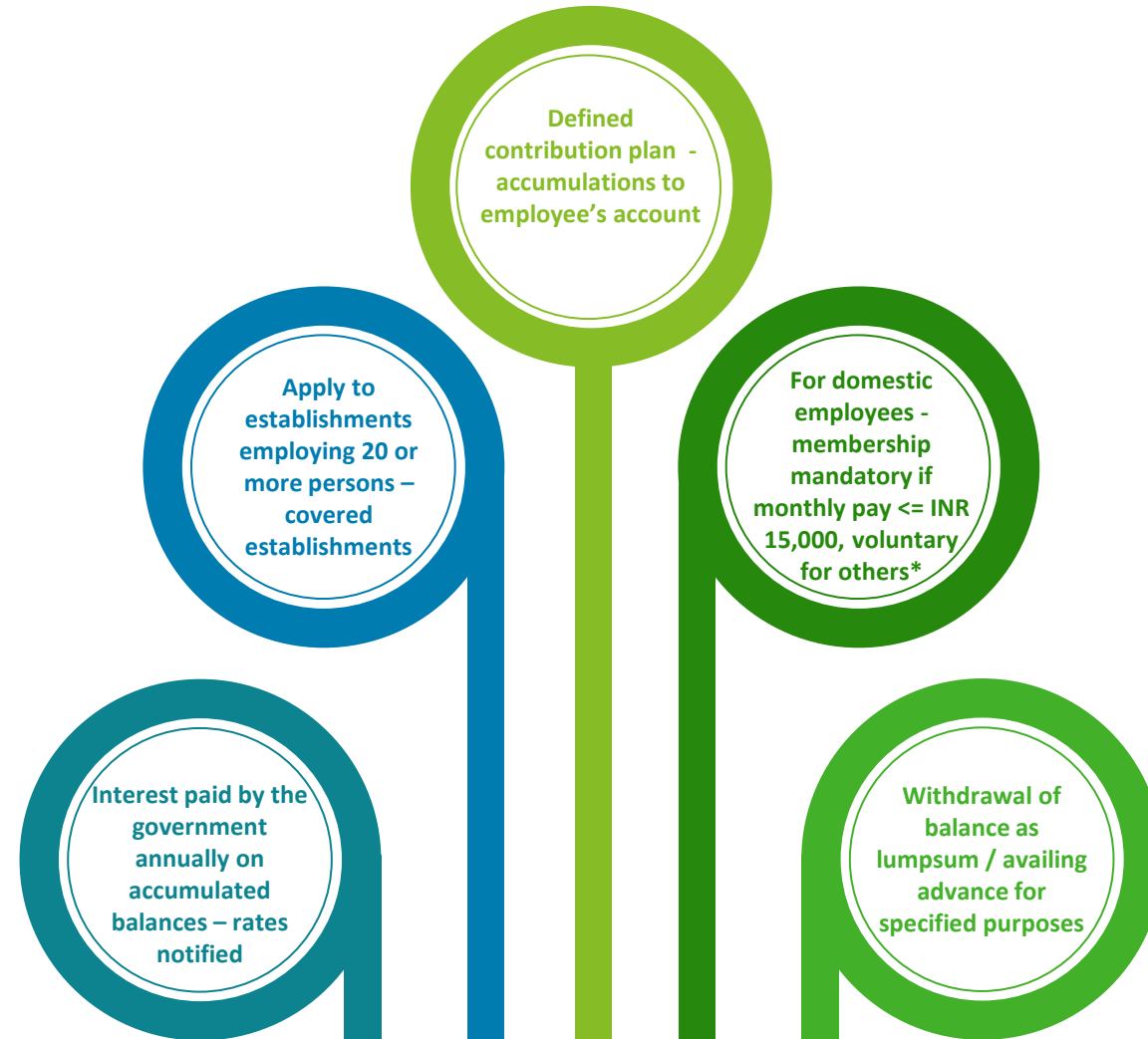
# Provident and pension funds

Governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952



# Provident fund regulations (PF regulations)

## Key features



*\*Joint declaration as per Para 26(6) of EPF scheme to be furnished if opting for contributions on wages exceeding statutory ceiling*  
*Withdrawal of accumulated balance generally tax exempt – continuous service criterion to be fulfilled*

# Pension regulations

## Key features



Monthly pension =  $[\text{Pensionable Salary} * \text{Service Period}] / 70$   
Pensionable salary = Average of last 60 months' salary preceding date of exit  
Service Period = Period during which pension contributions have been made

# Provident Fund and Pension Scheme Contributions

Contributions to PF and Pension  
Monthly Basic INR 20,000

- Pension contributions currently capped at INR 1,250
- Balance out of 12% employer contributions remains in PF a/c

ER Provident Fund	1,150
ER Pension Fund	1,250
EE Provident Fund	2,400

- Employee contribution of 12% goes entirely to PF
- Statutory wage ceiling is INR 15000 pm effective 1 September 2014
- Para 11(3) provided an option to employees to contribute on wages beyond the statutory wage ceiling from the date the wages exceeded such limit

Change in contributions to opt for higher pension

- Pension contributions to be uncapped i.e. 8.33% of monthly pay to be diverted to Pension
- Balance employer contributions to remain in PF a/c
- Employees may also be required to contribute 1.16% (of monthly pay in excess of INR 15,000) out of their contribution towards pension with effect 1 September 2014\*

ER Provident Fund	734
ER Pension Fund	1,666
EE Provident Fund	2,342
EE Pension Fund*	58

- Option to contribute to pension on higher salary retrospective and irreversible.



## 2014 amendment to pension scheme

- What changed?
- Relevant judgements / circulars

# Amendment to Employees' Pension Scheme in 2014

What changed?

The following amendments were introduced in the Employee Pension Scheme(EPS) vide notification dated 22 August 2014, effective 1 September 2014



## Increase in statutory wage

Statutory wage ceiling increased from INR 6,500 pm to INR 15,000 pm.

## New members

New members earning over INR 15,000 pm not eligible to be EPS members, existing EPS members to continue

## Higher pension option

Existing pension members contributing on higher pay to submit a joint employer-employee application to continue, else earlier contributions to be earmarked back to PF.

## Additional contribution

Higher contributions to pension to attract an additional payout of 1.16% of PF wages exceeding INR 15,000 by the employee, to be allocated from employee's contribution

## Pensionable salary

Pensionable salary to be calculated using the average salary over the 60 months prior to the date of retirement instead of last 12 months salary.

# Amendment to Employees' Pension Scheme in 2014

## Relevant judgements / circulars

Employees' Pension Amendment Scheme, 2014 set aside

**P. Sasikumar  
(Ker. HC)<sup>2</sup>**



Aligned with views of Delhi High Court and quashed the EPFO 2017 circular wherein applicability was restricted to establishments with EPFO

**Jale Singh  
(Raj. HC)<sup>3</sup>**



**R. C. Gupta  
(SC)<sup>1</sup>**



- Enforcement of cut-off date struck down – cannot be provided for a beneficial provision;
- Dates relevant only for computation of pension, employees entitled to opt for higher contributions without reference to cut off date

**Bhartiya  
Khadyam Nigam  
Karamchari Sangh  
(Delhi HC)<sup>4</sup>**



Principles of R.C. Gupta ruling apply to exempted establishments as well – EPFO circular of May 2017 restricting coverage struck down

### **EPFO circulars**

March 2017 – Directions to implement SC order in R.C. Gupta case – recovery of funds withdrawn permitted

May 2017 – Clarification on applicability of the ruling – exempted establishments not covered

Jan 2019 – Remittance of contribution on higher wages without any questions deemed acceptance [26(6) compliance]

Feb 2019 – Jan 2019 circular withdrawn – ambiguity prevails

1. R.C. Gupta and Others vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and Other [(2018) 14 SCC 809]

2. P. Sasikumar & Others vs. Union of India (UOI) Represented by the Secretary to Govt. of India Ministry of Labour & Department of Employment and Others [in Writ Petition (C) No. 13120 of 2015]

3. Bhartiya Khadya Nigam Karamchari Sangh and Anr. vs. Union of India and Ors. [in Writ Petition (C) No. 5678 of 2018]

4. Union of India and Others vs. Jale Singh and Others [in D.B. Special Appeal Writ No. 436 of 2019]

# Supreme Court ruling

Salient features, eligible population and impact

# Supreme Court ruling

## Salient features

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### Validation of 2014 Amendments

- The amendments in pension scheme as per notification dated 22 Aug 2014 are held as valid.
- The aforesaid amendment shall apply to members of the exempted establishment (i.e. where companies have a PF Trust) in same way it applies to regular members
- Members who retired before Sept 2014 without exercising options are no longer members and hence shall not be entitled for benefits / relaxation provided by SC ruling.

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### Higher contribution option - timelines

- SC allowed four months from date of the order i.e., till **03 March 2023** for members to submit a joint application if they prefer to make pension contribution on higher salary. Eligible members –
  - Members retired before 1 Sept 2014 who exercised option earlier but it was rejected
  - Members retired after 1 Sept 2014 who paid PF contributions on higher salary but the joint application was not made
  - ***Members who were in service on 1 Sept 2014 and continue in service who pay PF contributions on higher salary but have not exercised the option***

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### Impact on opting for higher pension

- 8.33% of differential salary to be earmarked to EPS out of the employer's PF contribution retrospectively. Impact of PF balances, and interest earned on the same till date.
- Additional contribution of 1.16% (to be moved from employee's share of PF to EPS), as a stop-gap measure, until the legislative changes are made.
- SC directed that the government should make the legislative changes within 6 months from date of the order.

# Supreme Court ruling

## Eligible population

Scenario	Employees who retired prior to 1.9.2014 – contributing to PF on higher wages		Employees who joined before 1.9.2014 and are continuing in service – contributing to PF on higher wages		Employees becoming EPF members after 1.9.2014*
	exercised option, rejected by EPFO	Did not exercise option	exercised option under 11(3) but not under 11(4)	Exercised option, rejected or not responded by EPFO / Did not exercise option	
Eligibility for filing joint application for pension contribution on higher wages	Yes	No	No	Yes	Not eligible for EPS membership
Timeline	4 months from date of SC ruling – lapsed on 3 March 2023	Not applicable	Not applicable	<ul style="list-style-type: none"> <li>Initially 4 months from date of ruling (i.e. 3 March 2023)</li> <li>Extended by EPFO by two months (i.e. till 3 May 2023)</li> </ul>	Not applicable

\*Employee who become EPS member after 1 Sept 2014 on account of salary being below Rs. 15,000 do not have any option to make pension contributions on higher salary even if subsequently their salary increases beyond Rs. 15,000.

# Supreme Court ruling

## Factors to consider for higher pension contribution

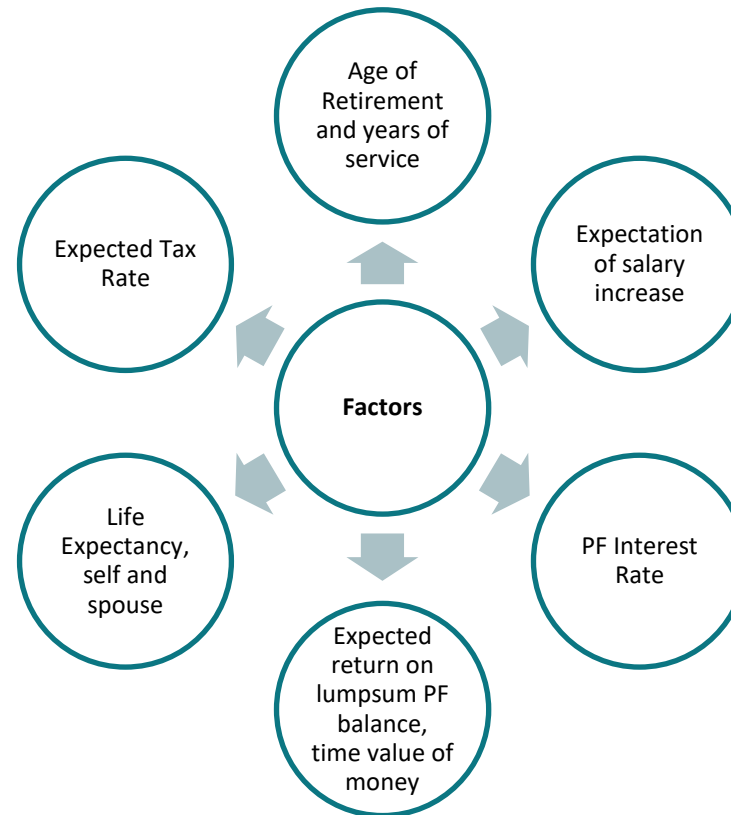
### Change in contributions - Retroactive

- **Carve out 8.33% of differential salary from employer PF contributions to EPS**
- **Divert 1.16 % of differential salary from employee contributions**
- **Reversal of interest earned on PF balances – at the EPFO declared rate / rate of interest declared by the trust.**
- **Accumulated Provident fund balance available on retirement is reduced**
- **Increase in monthly pension inflow**

Other financial / qualitative aspects to be considered before making an informed decision

Employers to enable awareness of employees, and support with suitable information is required by employees.

For organisations who are exempt establishments, there is a need to evaluate the impact of cash outflow from the PF trust to the RPFC.



# EPS – Higher pension contributions

## Illustration

Particulars	Details		Scenario A : Pension contribution on wage ceiling	Scenario B: Pension contributions on higher salary
Age at the time of joining	26	<b>Provident Fund Benefit</b>		
Retirement age	58	Balance of Employee PF contribution	7,056,209	6,464,572
Life expectancy	65	Balance of Employer PF contribution	6,653,899	2,158,025
		PF Interest	15,980,728	10,531,201
		<b>Total (i)</b>	<b>29,690,836</b>	<b>19,153,798</b>
		<b>Pension Benefit</b>		
Basic salary upon joining	25,000	Pensionable Salary	15,000	391,094
Expected salary increment	10%	Pensionable Service	33.42	33.42
		Monthly Pension	<b>7,160</b>	<b>186,700</b>
Expected PF Interest (%)	7%	Less: Tax liability	(716)	(18,670)
Expected tax rate	10%	<b>Monthly Pension post tax</b>	<b>6,444</b>	<b>168,030</b>
Present value factor	6%	Expected number of months for which pension will be received	96	96
		Total Pension post tax over expected life time (ii)	618,624	16,130,880
		<b>Present Value of total pension at retirement age (iii)</b>	<b>490,358</b>	<b>12,786,280</b>
		<b>Total Benefits in absolute terms (i+ii)</b>	<b>30,309,460</b>	<b>35,284,678</b>
		<b>Total Benefits (present value of pension) (i+iii)</b>	<b>30,181,194</b>	<b>31,940,078</b>

The numbers are for illustration purpose only. As of date, the EPFO has not released any guideline for computation of pension as indicated in the Feb 20, 2023 circular. The specific factors that would impact the outcome could vary depending on the guidelines from EPFO. The impact shall vary on case-to-case basis. All figures are rounded off to nearest 10.



# EPS – Higher pension contributions

## Illustration

Particulars	Details	Particulars	Scenario A : Pension contribution on wage ceiling	Scenario B: Pension contributions on higher salary
Age at the time of joining	26	<b>Provident Fund Benefit</b>		
Retirement age	58	Balance of Employee PF contribution	2,126,336	1,996,880
Life expectancy	75	Balance of Employer PF contribution	17,24,026	650,308
		PF Interest	8,398,956	6,013,291
		<b>Total (i)</b>	<b>12,249,318</b>	<b>8,660,479</b>
		<b>Pension Benefit</b>		
Basic salary upon joining	20,000	Pensionable Salary	15,000	81,536
Expected salary increment	5%	Pensionable Service	33.42	33.42
		Monthly Pension	<b>7,160</b>	<b>38,920</b>
Expected PF Interest (%)	8%	Less: Tax liability	(716)	(3,892)
Expected tax rate	10%	<b>Monthly Pension post tax</b>	<b>6,444</b>	<b>35,028</b>
Present value factor	<b>10%</b>	Expected number of months for which pension will be received	216	216
		Total Pension post tax over expected life time (ii)	1,391,904	7,566,048
		<b>Present Value of total pension at retirement age (iii)</b>	<b>6,44,501</b>	<b>3,503,348</b>
		<b>Total Benefits in absolute terms (i+ii)</b>	<b>13,641,222</b>	<b>16,226,527</b>
		<b>Total Benefits (present value of pension) (i+iii)</b>	<b>12,893,819</b>	<b>12,163,827</b>

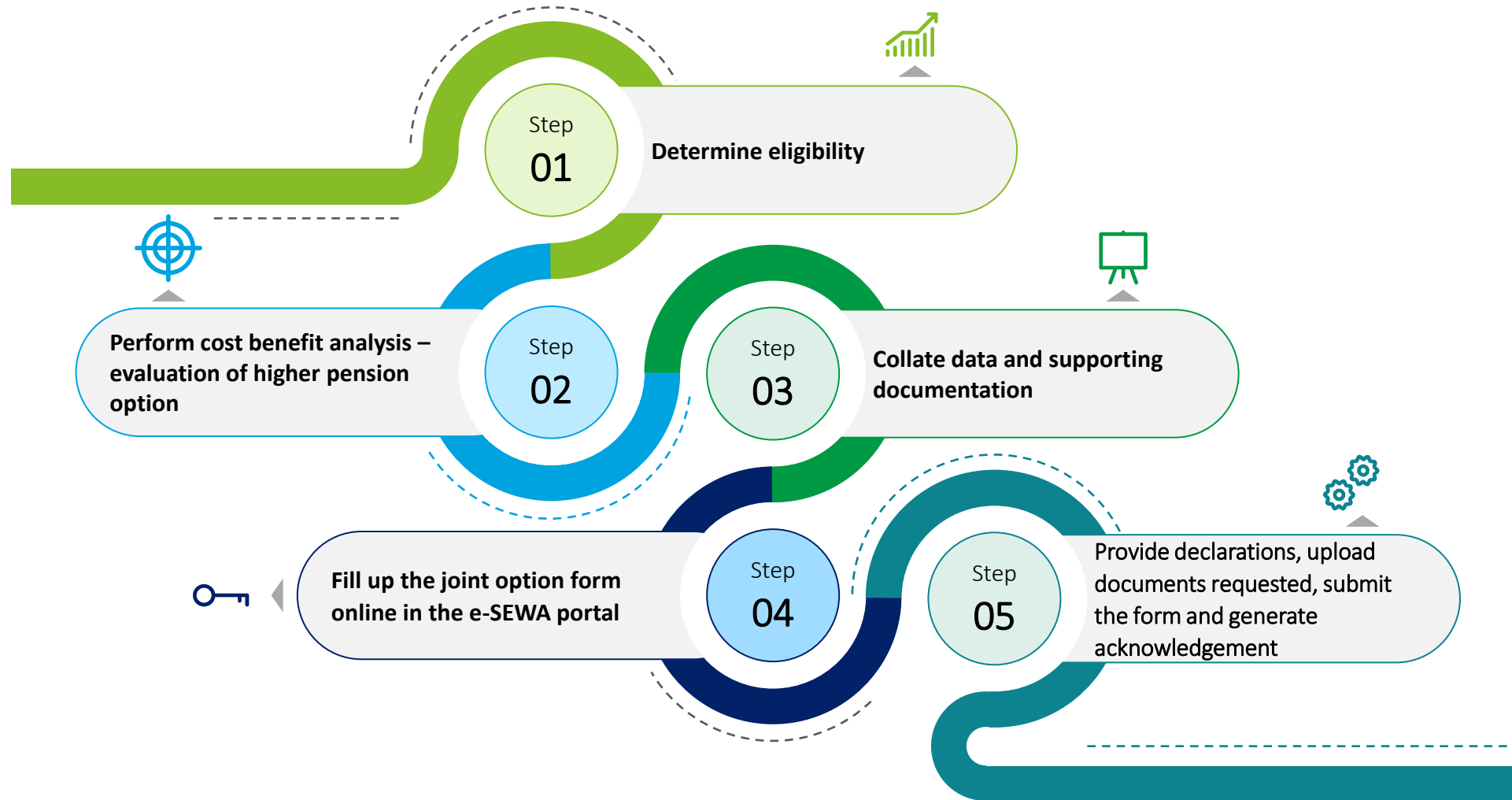
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# Way forward

## Process, challenges and concerns

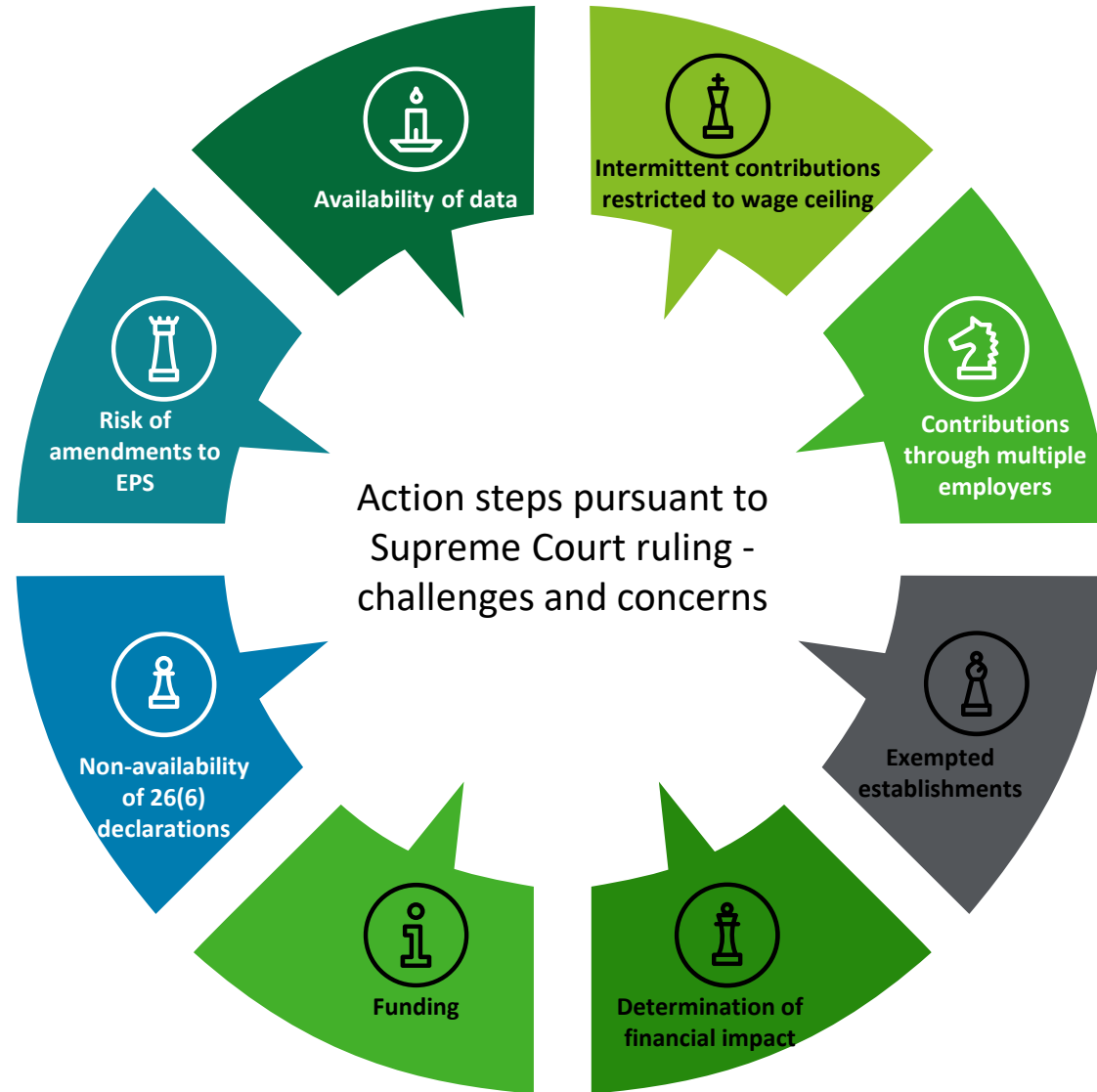
# Way forward

## Process



# Way forward

## Challenges and concerns



# Questions?

# Thank you!

Kindly spare a minute to help us with your feedback for today's session...

For any queries, please feel free to write to us at [intax@deloitte.com](mailto:intax@deloitte.com)



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