



कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)

EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भिकाजी कामा प्लेस, नई दिल्ली-110 066
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No.C-II/Misc/02/06/EZ/Ex

Dated:

To

11 8 नवम्बर 2018
NOV 2018

All Additional Central P.F. Commissioners (Zones)
All Regional P.F. Commissioners-in-charge of ROs/SROs.

Sub:- Exemption u/s 17(1)(a) of the EPF & MP Act, 1952 & u/p 27A of the EPF Scheme, 1952.

Sir,

Kindly refer to Head Office Circular No. C-II/Misc/02/06/EZ/EX/79520-79690 dt. 28/12/07 on the above subject (copy enclosed).

1. In the sub para (ii) (Page-5) of para-7 of the above circular, it is mentioned in the seventh line "that the rate of contribution should be more favourable" is substituted with "the rates of contribution are not less favourable".
2. In the sub-para (vii) of Page 7 of said circular is substituted as "A certificate of the RPFC that P.F Trust Rules with respect to the rate of contribution are not less favourable than those specified in Section-6 of the EPF & MP Act, 1952".

This issues with the approval of ACC (C).

Yours faithfully


(R.K. Kukreja)

Regional P.F. Commissioner-I (Compliance)

Copy to:-The RPFC (NDC) with a request to upload the circular on the EPFO website.



कर्मचारी भविष्य निधि संगठन

(श्रम मंत्रालय, भारत सरकार)

Employees' Provident Fund Organisation
(Ministry of Labour, Govt. Of India)

मुख्य कार्यालय / Head Office

भविष्य निधि भवन, 14-भौकाजी कामा प्लेस, नई दिल्ली-110066
Bhavishya Nidhi Bhawan, 14-Bhikaji Cama Place, New Delhi-110066

No.C-II/Misc./2/06/EZ/Ex./ 79520-79690

Dated: 27.12.2007

28 दिसम्बर
DEC 2007

To

All Regional P.F. Commissioners/Assistant P.F. Commissioners-
in-charge of the Regions/Sub-Regional Offices.

Subject: Exemption under Section 17(1)(a) of the EPF & MP Act, 1952 and under para 27A of the EPF Scheme, 1952.

Sir,

1. You are aware that consequent to the significant legislative development by way of Clause 56, Finance Act, 2006, considerable emphasis has been laid on the disposal of applications for exemption under Section 17 of the EPF & MP Act, 1952. In this context, it is important to realize that the applications for exemption are addressed to the appropriate government and hence all complete applications must be placed before the same for a final decision. Incomplete applications must hence be returned to the applicant employer with an exhaustive list of missing documents/information and an opportunity to submit them in a complete form.

2. It has been generally observed that the applications for exemption remain pending in the offices for very long periods. Relaxation under para 79 of the Scheme is meant only to avoid the difficulty of making an applicant establishment comply as an unexempted establishment during the period its exemption application is being processed and is pending a decision by the

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appropriate government. The said period is at best contemplated to be brief but in practice it has been found that relaxation is treated as defacto exemption by the RPFCs as well as the employer and there is no effort to dispose of the exemption application thereafter. This is not only incorrect but the pendency of the applications for exemption for unduly long periods earns EPFO a bad name.

3. It has hence been decided that upon receipt, an exemption proposal be promptly examined within a week. All complete applications must be forwarded to this office along with the RPFC's recommendations. In other cases, the deficiencies/missing information/documents, if any, may be objectively listed and the exemption application be returned to the employer requesting him to submit the same in a complete state within a reasonable timeframe preferably 15 days. In case, the employer is not able to furnish the requirements a show cause notice may at once be issued by the RPFC calling upon the employer to show cause as to why it may not be presumed that he has no intention of submitting a complete exemption proposal and therefore why his establishment should not be asked to comply as an unexempted establishment. In case the employer, without a good and sufficient cause, fails to submit a complete exemption proposal within the notice period the RPFC should proceed to secure compliance as an unexempted establishment. It is hence always essential for the RPFC to ensure that relaxation is granted subject to the condition that a complete exemption application has been received.

4. In case, however, an establishment submits an incomplete exemption proposal alongwith an explanation as to why it is unable to furnish one or more of the essential standard requirements of a complete proposal, the RPFC concerned must process and forward the proposal to this office alongwith his appropriate comments/recommendations.

5. Also, in all cases where the establishment is functioning as an exempted establishment with effect from a prior date, RPFCs must issue, subject to the usual conditions, an order of relaxation under para 79 of the EPF Scheme, 1952 with effect from that prior date. This is because the law allows only the relaxed establishments to maintain its separate Provident Fund and function as an exempted establishment before the grant of exemption under Section 17 of the Act. It may also not be insisted that the establishments comply as an unexempted establishment prior to grant of relaxation/exemption or that it deposit administrative charges instead of inspection charges. All this would be against the spirit of para 79 of the Scheme. The emphasis has to be on disposing of the applications for exemption expeditiously. Once an application of exemption under Section 17 is under consideration, the applicant should normally be issued a relaxation order from an appropriate date allowing it to function as an exempted establishment pending the disposal of its application for exemption. In cases of rejection of its application, however, the establishment must promptly be made to comply as an unexempted establishment. As to the requirement of compliance audit of the establishment seeking exemption and of its Trust before the grant of relaxation, remittances of contributions into and subsequent investments by the Trust, for example, can legally take place only after grant of relaxation. **Compliance audit prior to grant of relaxation in such cases, therefore, would be quite superfluous.** Compliance audit requirement prior to grant of relaxation would, however, apply to cases of 'deemed exemption'. These are cases where the establishment seeking exemption has been functioning as an 'exempted' establishment without being relaxed under para 79 of the Scheme. In these cases, relaxation is required to be granted from a much prior date in order to regularize a period of time during which the establishment has complied as an exempted establishment without being relaxed. **As such it is hereby clarified that the requirement of prior compliance audit should be limited to the cases of 'deemed exemption' only.** Apart from the above, exemption under para 27A calls for a different

treatment as here exemption is sought in respect of a 'category of employees' only. In such cases, even after grant of exemption the establishment continues as an unexempted establishment in respect of its other employees who do not belong to that category. Relaxation here shall pertain only to the category of employees in respect of which exemption is applied for and therefore, linking this relaxation to compliance audit of the entire establishment would not seem reasonable. Compliance audit should be confined to the category of employees in respect of which exemption is sought. Further, in case the exemption sought is in respect of the 'excluded employees', there need be no prior compliance audit at all. Other instructions relating to relaxation under para 79 of the Scheme mentioned in the Head Office letter E.III/Misc./2000 dated 24.5.2000 would continue to apply.

6. The above procedure shall be strictly followed. Accordingly, all the applications for exemption filed with the RPFCS till 30.11.2007 shall be forwarded to this office by 15.01.2008. The deadline of 15.01.2008 is applicable to all cases of exemption under Section 17(1)(a) of the Act and Para 27A of the Scheme whether new, old, relaxed or otherwise. In future too, all the applications for exemption shall normally be forwarded to Head Office in 15 days. In cases involving show cause notices as described above, the retention period shall not exceed 45 days from their receipt by the RPFCS. It is hence clarified that no exemption application shall on any pretext be retained beyond 45 days of its receipt. RPFCS shall be held absolutely and personally responsible if the above-mentioned procedure is violated.

7. The following clarifications need also be kept in mind while processing the cases of exemption -

- (i) Whenever the 'excluded employees' (as defined u/p 2(f) of the EPF Scheme 1952) voluntarily come within the ambit of the EPF Scheme, 1952, they shall be treated alike with other employees for purposes of

exemption. However, it shall not be insisted that the PF contributions in respect of the hitherto 'excluded' employees and the 'unexcluded' ones shall be remitted into the same provident fund. Separate Provident Funds/Trusts are not prohibited under the law. However, in light of the provision that exemption is granted under section 17 to an 'establishment', it would be essential that the same Provident Fund Rules apply to the multiple Provident Funds/Trusts operating in respect of its employees.

(ii) The model PF rules approved earlier are to serve as a guide to the employers in framing of the PF rules of their establishment. It is, however, not mandatory to adopt them verbatim. Where an employer decides to frame PF Rules incorporating some greater benefits than those offered under the provisions of EPF Scheme, 1952, the same shall be quite acceptable. The requirement of the law (viz Section 17) in this regard is that the rate of contribution should be more favourable than those specified in Section 6 of the Act and that the employees are in enjoyment of other PF benefits which on the whole are not less favourable to the employees than the benefits under the EPF Scheme, 1952. As such a holistic rather than a verbatim comparison of the benefits under the PF Rules of the establishment and those under the provisions of the EPF Scheme should be made.

(iii) Usually, in respect of the employees of an applicant establishment who are engaged 'indirectly' by or through contractors, the contractors are independently covered under the Act and are allotted separate PF code numbers. These contractors therefore comply as 'unexempted' establishments and the PF contributions in respect of their employees are remitted into the statutory Fund thus having no relation with the Provident Fund of the establishment. **As such any ongoing proceeding/inquiry under section 7A, 14B etc. against any contractor of an establishment for determination of any dues**

payable by it shall not stand in the way of accepting and processing the application of exemption from the establishment. This is because a 7A inquiry is independent of the status of an establishment, exempted or unexempted. In either case the RPFC has to ensure that all persons entitled to PF membership get their legal rights enforced through the various provisions of the EPF & MP Act, 1952.

8. Further, in order to enable an objective and prompt disposal of the exemption applications uniformly, the essential information/documents/certificates accompanying an exemption application forwarded to this office are reiterated as under and which should be followed in letter and spirit in future -

(i) A forwarding letter of the RPFC (in charge of the region or of SRO, as the case may be) clearly mentioning the following:-

- Complete name & addresses of the establishment and of the employer.
- the date of coverage and the date w.e.f. which the establishment is relaxed.
- the kind of exemption applied for (u/s 17(1)(a) or u/p 27A).
- 'recommendation' of the RPFC with regard to grant of exemption. In case there is recommendation that exemption be not granted, specific justifications therefor may be listed. Only serious violations of the conditions of relaxation/exemption should lead to an adverse recommendation and such violations should have taken place despite all measures of enforcing correct behaviour. RPFCs are expected to take timely measures to avoid/correct the minor deviations from the norms of exemption by the establishment.

- (ii) Application for exemption duly signed by the employer and addressed to the appropriate Government (in accordance with section 2(a) of the EPF & MP Act, 1952).
- (iii) In case of requests for exemption under para 27A of the Scheme, the 'class of employees' in respect of which the exemption is sought must be clearly defined in the PF Rules of the establishment, the application addressed to the appropriate Govt. and in the recommendation letter of the RPFC concerned addressed to this office.
- (iv) Except in cases where the applicant establishment is complying as an 'unexempted' establishment, relaxation w.e.f. the appropriate date must be granted by the RPFC and it may be certified:-
 - (a) that in respect of all the employees the PF dues for the period of relaxation have been remitted into the Trust regularly;
 - (b) that the PF dues for the period other than the period of relaxation have been remitted to the RPFC; and
 - (c) that all the other dues since the date of coverage have been remitted to the RPFC without any default.
- (v) Two copies of PF Trust Rules (including Annexures A to E) duly signed by all the trustees indicating their respective statuses in the Trust.
- (vi) Certificates of undertakings (in the prescribed formats) by the employer as well as of all the other Trustees to abide by the Condition No.22 and Condition No.23 of Appendix 'A' to para 27AA of the EPF Scheme, 1952.
- (vii) A certificate of the RPFC that the PF Trust Rules with respect to the rate of contribution are more favourable than those specified in Section 6 of the EPF & MP Act, 1952.
- (viii) Comparison of benefits under the PF Trust Rules of the establishment with those under the EPF Scheme, 1952 in the prescribed proforma (copy enclosed) signed by the employer and the RPFC clearly

certifying that the employees are in enjoyment of other PF benefits which on the whole are not less favourable to the employees than the benefits under the EPF & MP Act, 1952 or any scheme in relation to the employees in any other establishment of a similar character.

- (ix) In the case of exemption u/p 27A of the EPF Scheme, 1952, a certificate by the RPFC that such 'class of employees' is entitled to benefits in the nature of provident fund, gratuity or old age pension according to the rules of the factory or other establishment and such benefits separately or jointly are on the whole not less favourable than the benefits provided under the Act and this Scheme.
- (x) The 10 checkpoint format (copy enclosed) prescribed by the Ministry of Labour, fully filled up and signed by the RPFC.
- (xi) The details of the departments, branches and units of the applicant establishment.
- (xii) Complete names, designations and addresses (including permanent addresses) of all the members of the Board of Trustees.
- (xiii) A copy of the Income Tax Recognition Order (for Provident Funds which came into existence before 31.03.2008).
- (xiv) Copy of the relaxation order.
- (xv) A consolidated certificate by the Regional Provident Fund Commissioner covering the following points:-
 - (a) Details of employment strength:-
 - the total no. of 'directly' engaged employees =
 - the total no. of employees 'indirectly' engaged by or through a contractor =
 - the aggregate no. of employees (a+b) =
 - (b) Information regarding enrollment and compliance of employees employed by or through a contractor in or in connection with the work of establishment, if any. The names, PF code nos. (if

separately allotted) and the respective employment strengths of each contractor be mentioned.

(c) Whether contributions at the statutory rate have been transferred to the BOT and the RPFC regularly-

Contributions under	Fully paid upto (Month & Year)
EPF Scheme, 1952/Trust Rules	
Pension Scheme	
EDLI Scheme	
Inspection/administrative charges	

(d) The Board of Trustees' and RPFCs' certificate that the investments by the Trust have been as per the pattern of investment prescribed from time to time by the Government in this regard (only in respect of already relaxed and deemed exemption cases).

(e) Rates of interest declared by the BOTs for the last three financial years.

(f) Mode of calculation of interest (whether on opening/closing balance or on monthly running balance).

(g) The number of trustees representing the employer and the employees ensuring that their numbers are in accordance with the provisions of para 79 C (1) of the EPF Scheme, 1952.

(h) Name of the Provident Fund into which the PF contributions are being/shall be remitted and the place where the PF Trust is functioning. In the case of common provident fund for a group of two or more establishments, whether one representative each from the participating establishments are there in the Board of Trustees.

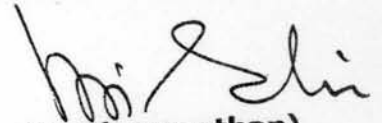
(i) Whether audited balance sheets of the Trust have been submitted to the RPFC. If yes, specify the last financial year for

which the balance sheet has been submitted (only in respect of already relaxed and deemed exemption cases).

- (j) Date of constitution/re-constitution of the Board of Trustees alongwith a documentary evidence of the same.
- (k) Whether proper records of withdrawal, settlements, transfer etc. are maintained.
- (l) Whether monthly returns have been submitted regularly and the month and year upto which they have been submitted.
- (m) Annual Account slips issued by the Employer upto –
- (n) Certificate of the employer and of the RPFC that the free consent of a majority of the employees or of their authorized representative union for the exemption has been duly obtained. If any objections to the proposed exemption has been received from any section of the employees the same may be mentioned clearly. In cases where it is not practically possible to obtain the physical consent of employees, a certificate that the establishment has published its intention of exemption on its website inviting objections from the employees and since objections have not been received from the employees even after a reasonable period of time, it is therefore implied that a majority of the employees favour the exemption proposal.
- (o) That the accounts of the trustees as well as that of the establishment is being periodically inspected by a team of officers headed by APFCs to ensure that the establishment complies with all the conditions for grant of exemption and the Trust handle the funds effectively and efficiently.
- (p) That none of the revised conditions for grant of exemption as laid down in Appendix 'A', para 27AA, EPF Scheme, 1952 have been violated by the applicant establishment.

9. Please acknowledge receipt and comply with the above instructions strictly.

Enclosures: As above


(A. Viswanathan)

Central Provident Fund Commissioner

Copy to:-

1. FA & CAO
2. All Addl. Central PF Commissioners of Zones/Head Office
3. Director (NATRSS)
4. Chief Vigilance Officer
5. Director/Deputy Director (Vigilance)/All Zonal Directorates
6. PS to CPFC
7. All Zonal Training Institutes
8. All Zonal Audit Officer
9. RPFC (ASD), Headquarters
10. Hindi Cell for Hindi version


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