



कर्मचारी भविष्य निधि संगठन
(श्रम मंत्रालय भारत सरकार)

Employees' Provident Fund Organisation

(Ministry of Labour, Govt. Of India)

मुख्य कार्यालय / Head Office

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No. E.III/18(1)04/Sub Committee/

Date : 05.05.2014

To

All Regional PF Commissioners,
In-Charge of Regional/Sub-Regional Offices.

Subject : Guidelines on rate of surcharge to be levied on Board of Trustees of the exempted/relaxed establishments on account of deviation from the prescribed pattern of investment by RPFs.

Sir,

Exemption from the implementation of the Employees' Provident Funds Scheme, 1952 is granted to an establishment under the provisions contained in Section 17(1)(a) and Section 17(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 read with Para 27A of the Employees' Provident Funds Scheme, 1952. Further, provisions contained in Paragraph 79 of the Employees' Provident Funds Scheme, 1952 provides for grant of relaxation pending the disposal of the establishment's application for grant of exemption under Section 17 of the Act.

2. Paragraph 27AA of the Employees' Provident Funds Scheme, 1952 provides that all exemptions already granted or to be granted hereafter under Section 17 of the Act or under Para 27A of the Scheme shall be subject to the terms and conditions as given in the Appendix - A.

3. Section 17(1A)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 stipulates that where an exemption has been granted to an establishment under clause a of sub-section 1, the employer shall establish a Board of Trustees for the administration of the Provident Fund. Section 17(1A)(d)(iii) provides that the Board of Trustees so constituted shall invest the Provident Fund monies in accordance with the direction issued by the Central Government from time to time.

4. Further, Paragraph 27AA of the Employees' Provident Funds Scheme, 1952 provides that all exemptions already granted or to be granted hereafter under Section 17 of the Act or under Paragraph 27A of the Employees' Provident Funds Scheme, 1952 shall be subject to the terms and conditions as given in the Appendix - 'A'. Condition No. 17 of Appendix - 'A' to Paragraph 27AA of the Employees' Provident Funds Scheme, 1952 stipulates that:

"The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative."

5. Central Government (Ministry of Labour & Employment) notifies the pattern of investment from time to time. The latest notification relating to pattern of investment is that which was issued under S.O. 2126 dated 9th July, 2003 published in the Gazette of India, Pt – II, Section – 3 (ii) vide Issue No. 30 dated 20-26th July, 2003.

6. Till date, guidelines on levy of surcharge in case of default on this count by Board of Trustees of exempted/relaxed establishments have not been finalised. It has been the experience of EPFO that Board of Trustees of exempted/relaxed establishments have many a times failed to adhere to the notified pattern of investment for one reason or the other. Though, the annual inspections are required to be done by the Inspectors of the Provident Fund Office but these inspections are not being done regularly. Sometimes, the inspections of the exempted establishments have not been carried out even once during the year.

7. Extensive discussions with the stakeholders have been made during the year, 2013-14 regarding the way the exempted Trusts are functioning. Though the issue of surcharge so called fine was not raised specifically, it was felt by the exempted Trusts that levy of surcharge with retrospective effect may not be advisable. Therefore, surcharge, if any, being imposed for deviation in adherence to the pattern in earlier years may be kept minimal.

8. The issue of levy of surcharge and its rates was placed before the Sub-Committee of Central Board of Trustees, EPF on Exempted Establishments in its 35th meeting held on 28th March, 2014 for decision on the following issues:

- a) rates of surcharge to be levied on Board of Trustees for deviation in the investment pattern prescribed and
- b) extent of deviation.

9. After detailed deliberation and recommendation of Sub-Committee of Central Board of Trustees, EPF on exempted establishments in its 35th meeting held on 28.03.2014, the following general guidelines are issued to bring appropriate deterrence on deviation in adhering to the investment guidelines.

- a) In case of establishments which have already been granted exemption or are enjoying relaxation pending grant of exemption, to regularise the cases, the rates of surcharge for all deviations till 2013-14 may be as under:

| Sl. No. | Investment Category | Rates |
|---------|---|---|
| 1. | Central Govt. Securities and State Govt. Securities | 0.0025% of amount* in shortfall of prescribed percentage of investment in these two categories combined together. |
| 2. | Bonds/Securities of Public Financial Institution | 0.0025% of amount* in shortfall of prescribed percentage of investment in the category. |
| 3. | Private Sector Bonds/Securities | 0.005% of amount * in excess of prescribed percentage of investment in the category. |

[*to the extent of deviation in the investment pattern (excess or shortfall in respective category as the case may be), proposed to be regulated by levy of surcharge.]

In case of deviations prior to 2013-14 where the extent of deviation is beyond 10%, the surcharge may be additional 20% over and above the surcharge so worked out at the rates stated above.

b) The rates of surcharge for the prospective deviations from 2014-15 onwards may be as hereunder:

| Sl. No. | Investment Category | Occasion of Deviation | Rates |
|---------|---|-----------------------|--|
| 1. | Central Govt. Securities and State Govt. Securities | 1 st | 0.25% of amount* in shortfall of prescribed percentage of investment in the category. |
| | | 2 nd | 0.50% of amount* in shortfall of prescribed percentage of investment in the category. |
| | | 3 rd | 1.00% of amount* in shortfall of prescribed percentage of investment in the category. |
| 2. | Bonds/Securities of Public Financial Institution | 1 st | 0.25% of amount* in shortfall of prescribed percentage of investment in the category. |
| | | 2 nd | 0.50% of amount* in shortfall of prescribed percentage of investment in the category. |
| | | 3 rd | 1.00% of amount* in shortfall of prescribed percentage of investment in the category. |
| 3. | Private Sector Bonds/Securities | 1 st | 0.50% of amount* in excess of prescribed percentage of investment in the category plus 10% of the surcharge so worked out. |
| | | 2 nd | 1.00% of amount* in excess of prescribed percentage of investment in the category plus 10% of the surcharge so worked out. |
| | | 3 rd | 2.00% of amount* in excess of prescribed percentage of investment in the category plus 10% of the surcharge so worked out. |

[*to the extent of deviation in the investment pattern (excess or shortfall in respective category as the case may be), proposed to be regulated by levy of surcharge.]

These rates may be effective from 01/04/2014.

10. Deviation can be regulated by levy of surcharge within the securities class given in the prescribed investment pattern only. If the Trust invests in a security/scrip in which investment is not at all permitted, it cannot be said to be a deviation but violation which may attract cancellation/withdrawal of exemption/relaxation.

11. For the purpose of extent of deviation, the term "investible surplus" for any financial year shall mean the sum total of fresh contributions receipts of maturity proceeds, commission amount plus any other accruals (including interest on investment) less payments and withdrawals.

12. Any deviation in the pattern of investment in any one year prior to 01/04/2014 may be treated as first occasion if this deviation has happened after a gap of three years from the year in which deviation occurred last.

13. Further, prospective deviation (from 01.04.2014) on maximum of three occasions may be regularised by levy of surcharge as stated at Para 9(b) and any deviation beyond may result in cancellation of exemption or withdrawal of relaxation as the case may be, apart from levy of surcharge as stated above. Further, the deviation in any one particular year irrespective of approved asset class may mean one occasion.

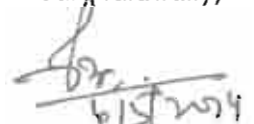
14. All the RPFCs In-Charge of Regional/Sub-Regional Offices may levy surcharge at the rates prescribed above to regulate the deviations prior to 2013-14 and from 2014-15 onwards. The proposals where grant of exemption is pending for deviations from the pattern of investment shall be forwarded to Head office after levy and collection of surcharge. The surcharge so levied and collected by RPFCs shall be credited to the exiting Special Reserve Fund.

15. The amount of surcharge levied shall be paid by the establishment within 30 days from the date of order of assessment. If the surcharge is not paid within the time so stipulated, it will attract interest at the rate as provided under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

16. These guidelines are general in nature. In any exceptional case, a proposal in writing to vary from the prescribed surcharge in the above guidelines, may be forwarded to ACC (Compliance) for decision of CPFC keeping the overall interest of the members in consideration.

(This issues with the approval of CPFC.)

Yours faithfully,



(P.K. Udgata)

Addl. Central PF Commissioner (Compliance)

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(P.K. Udgata)

Addl. Central PF Commissioner (Compliance)