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Analysing developments impacting business

USHERING IN AN ERA OF OBJECTIVE INSPECTIONS: EPFO IMPLEMENTS A STREAMLINED SOP

8 August 2023

On 31 July 2023, the Central Analysis and Intelligence Unit (CAIU) of the Employees' Provident Fund Organisation (EPFO) released the Standard Operating Procedure (SOP) for inspection of establishments ([July Circular](#)) covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The July Circular was issued to give effect to the [SOP](#) set out in an earlier circular dated 21 March 2023 (March Circular), which in turn found its roots in an old circular dated 26 June 2014 ([2014 Circular](#)). The July Circular, read with the March Circular, took effect from 1 August 2023.

Background

The 2014 Circular ushered in an element of objectivity in the area of inspection by the EPFO by creating two kinds of inspections – mandatory inspection and optional inspection. A mandatory inspection would be triggered in all cases where a covered establishment is not complying with the law, while an optional inspection would be triggered where, among other specified factors, there is a remittance drop in excess of INR 10,000 and 15% vis-à-vis the previous contribution.

The SOP set out in the July Circular read with the March Circular aims to streamline and systematize inspections based on transparent and objectively determined methodology for identification of defaulting establishments. The complete implementation of the SOP requires development of some IT tools which, as per the July Circular, is under process. As such, the July Circular (read with the March Circular) lays down a mechanism for implementation of the SOP using a hybrid of already available tools within the existing framework. It must be noted that with the issuance of the July Circular, an earlier circular dated 27 February 2018 (2018 Circular) stands withdrawn. The 2018 Circular had set out rough guidelines to identify 'big defaulters' from the point of view of the quantum of default and gave complete discretion to field officers to inspect such establishments without requiring any permissions.

Mechanism for implementation of SOP

➤ **Periodic desk review**

Each field office will undertake an annual desk review (periodic review) of all establishments within its jurisdiction starting from the establishment with the oldest registration code. Physical inspection cannot be assigned to the Enforcement Officer (EO) unless nudging is completed (as explained in the subsequent paragraph), and desk review is undertaken. This desk review report should be recorded in compliance e-file of the establishment and populated in a format given in [Annexure-I](#) of the

circular. The periodic review should examine variations in membership and contributions made across a minimum of 14 monthly reports. Where the data is inadequate, the activity status of the organisation can be determined using available data from other agencies such as Employees' State Insurance Corporation and Ministry of Corporate Affairs. Any findings arrived at pursuant to the periodic review may trigger an inspection in an establishment after approval of the Regional Provident Fund Commissioner / Officer in Charge. The designated authority in this respect shall review a minimum of 40 establishments per month and submit reports through e-office.

➤ **Nudge and watch**

Defaulting establishments will be identified for the purpose of 'nudging' based on 'priority matrix' which in turn would be based on parameters such as establishments involved in non-filing of electronic challan-cum-return (ECR), variations in ECR, intelligence received on the basis of periodic review, etc. This matrix will be dynamic in nature, consisting of several indicators to be reviewed every 6 months by the CAIU. An office-wise list of defaulting establishments as per this matrix will be provided to CAIU, and such establishments will receive weekly SMS and e-mail alerts during the nudging phase on the contact information available with the EPFO. All members whose contribution is not deposited by the due date by the employer will also receive SMS alerts. Any response by these defaulting establishments will be duly recorded in the desk review report and compliance e-file of the establishment. The process of nudging will continue from the due date up to 3 months, post which an auto-populated message will be reflected in the employer's account on the EPFO portal to the effect that any arrears towards employees' provident fund contributions should be remitted within 30 days, else the defaulting employer may face inspection and penalties under the law.

➤ **Physical inspection**

After conclusion of the nudging phase, defaulting establishments which did not comply with the notifications received from the EPFO during the nudging phase will fall in the pool of establishments that would be subjected to physical inspection. The EO shall complete the inspection within 5 working days from the day on which the inspection began and upload the report on the Shram Suvidha Portal within the next 48 hours. This process will be repeated each week and an electronic show-cause notice (format of which is also available in the SOP) will be sent to the registered email address of the establishment.

➤ **Inspection report and follow-up action**

The inspection report will be put up in the establishment e-file within 3 working days for necessary action by the Circle Officer. Thereafter, within 5 working days, the Circle Officer will examine the report and record consequent actions on the e-file. Any response received by the establishment will further be recorded in the compliance e-file. In case of non-production of records by the establishment, the report will be sent ahead for processing of filing prosecution against the establishment under Section 14 of the EPF Act.

Comment

By making use of technology-enabled tools, the inspection process envisaged in the July Circular read with the March Circular appears to have become more calibrated, both for the employers and the authorities. As such, it narrows down the scope for unnecessary physical inspections carried out in the absence of justifiable grounds. With annexures detailing *inter alia* the contents of the inspection report and the show-cause notice, the

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SOP ensures that there is guidance for officials in terms of documentation, and with the timelines specified for each key process, the SOP provides a much-needed check on delays. However, it is yet to be seen how this robust mechanism on paper is implemented at a ground level, especially at a time when the enforcement regime under the EPF Act is becoming more active.

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