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EFFECTIVE MANAGEMENT AND REGULATION OF EPF-EXEMPTED ESTABLISHMENTS: EPFO RELEASES SOP

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Background

On 6 October 2023, the Employees' Provident Fund Organisation (EPFO) released a Standard Operating Procedure (SOP) for management and regulation of establishments that are permitted to operate an exempted private provident fund trust under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act).

Broadly speaking, the SOP outlines the responsibilities of various stakeholders, the specific procedures and timelines vis-à-vis the exempted establishments that are managing their own provident fund trust, and mechanism for monitoring compliance by EPFO through regional, zonal, and head offices in respect of such establishments.

Salient features of SOP

Set out below are some of the key developments that have been introduced by EPFO in its SOP governing the EPF exempted establishments:

1. Responsibilities of trust and EPFO:

- a. EPFO has facilitated the digital process of communication in respect of the issuance of annual statement of accounts or passbook to its members. Such communication shall be made by the board of trustees (BOT) of the exempted provident fund trust to covered employees through communication channels such as SMS, mobile phones, email, or e-passbook as regards the receipt and withdrawal of contributions and the credit of interest in their respective accounts.
- b. The SOP also envisages constitution of an investment committee of financial experts by BOT. The task of such committee shall be to ensure best investment practices and optimal management of trust funds. It may be noted that the verbiage in the SOP does not signify the constitution of such committee as being mandatory.
- c. The SOP outlines the responsibilities of regional office(s) of EPFO as regards the scrutiny of filing of online returns and annual compliance audit by exempted establishments. Further, zonal office and head office have been bestowed with the authority to monitor the performance of their respective jurisdictional offices.

- d. The term of office of the trustees of the exempted establishment has been reduced to 3 years, as opposed to the current term of 5 years as specified in the Employees' Provident Funds Scheme, 1952 (EPF Scheme).

2. Introduction of priority matrix:

The EPFO, through the SOP, has introduced priority matrix for the purpose of taking suitable action against exempted establishments and has classified the establishments into 3 categories (Category A, Category B and Category C), depending on the severity and materiality of such violations.

- a. Category A *inter alia* includes non-compliances as regards reporting of loss by establishments for 3 consecutive financial years, default in payment of employees' provident fund contributions and other dues, failure in following investment pattern as per the directions of the Government for 3 consecutive years. The occurrence of any of these violations shall entail immediate cancellation of exemption granted to the establishments albeit upon issuance of a show-cause notice in this regard.
- b. Category B *inter alia* includes non-compliances arising from failure by establishments to transfer and credit previous accumulations to employees' accounts, failure to pay inspection charges and maintain detailed accounts showing credit and withdrawal of employees' contributions.
- c. Category C *inter alia* includes failure by employer to display the copy of approved trust rules on the establishment's notice board and not issuing annual statement of accounts / passbooks to employees within 6 months of the close of the financial year.

In case of matters falling under Category B, the establishments shall be directed at first to rectify the deficiency, and in case of Category C matters, establishments shall be asked to be vigilant going forward. However, if any of these violations persists after 2 consecutive occasions (in case of Category B) or 3 consecutive occasions (in case of Category C) without rectification, the same shall result in cancellation of the exemption.

Comment

The approach of the EPFO of rolling out SOPs for various key aspects that are not elaborated in the EPF Act and the EPF Scheme signifies a notable progression in consolidating and streamlining the compliances that are required to be undertaken by various stakeholders under the extant regime. Further, the introduction of priority matrix and classification of categories of actions as triggering points for cancellation of exemption granted to establishments shall serve as an effective mechanism from an enforcement standpoint.

As regards exempted establishments, the streamlined and consolidated SOP may assist them in effectively regulating the trust established by them and monitoring its compliances, to limit the possibility of initiation of any adverse actions by the EPFO. That said, it is yet to be seen if suitable amendments will be made to the EPF Scheme to reflect some of the changes brought about by the SOP (particularly the change in tenure of the trustees of the exempted trust).

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