



सत्यमेव जयते



STANDARD OPERATING PROCEDURE

CANCELLATION OF EPF EXEMPTION





75
Azadi Ka
Amrit Mahotsav

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No. E-III/10(167)2021/SOPforcancellationofexemption/ 1613

Date:

30 OCT 2023

To

All ACC-HQ (Zones)/ ACC (Zones)
All RPFC-I/RPFC-II/ APFC in charge of Field Offices

Subject: Standard Operating Procedure (SOP) for Cancellation of EPF Exemption - regarding

Madam/Sir,

Please find attached herewith the SOP for Cancellation of EPF Exemption. With reference to the statutory provisions contained in Section 17(4) of the EPF Act, the SOP for cancellation of EPF Exemption describes the process through which the proposals for cancellation of Exemption are to be examined and forwarded with recommendations by the field offices to Head Office, EPFO. The Head Office examines and obtains recommendation of its committees and the Central Board to communicate for the consideration of the appropriate Government.


This SOP is in supersession of all the previous instructions and circulars issued till date. The list of circulars and instructions to be superseded is annexed herewith as Annexure-1.

The ACC(HQ)/ ACC (Zones) to ensure compliance of this SOP in their respective office and in the Regional Offices under jurisdiction.

All RPFC-I/RPFC-II/ APFC in charge of Field Offices are to ensure the compliance in respective offices. In addition, this SOP may be shared to the establishments which have violated the conditions of Exemption under their jurisdiction.

(This issues with the approval of Competent Authority)

Yours faithfully


(P Veerabhadra Swamy)
ACC(Exemption)

Enclosed:

1. Approved SOP for Cancellation of EPF Exemption.
2. Annexure-1 containing all the previous circulars/instructions superseded.

STANDARD OPERATING PROCEDURE

SOP Number 01

SOP Title Cancellation of PF Exemption granted to establishments.

| | NAME | TITLE | SIGNATURE | DATE |
|-------------------|-------------|--------------|------------------|-------------|
| Author | | | | |
| Reviewer | | | | |
| Authoriser | | | | |

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| Effective Date: | |
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1. INTRODUCTION

(i) Exemption under Section 17 of the EPF Act is granted to an establishment which has the financial wherewithal to sustain and match the benefits provided by the Government under the EPF Act to its members. A logical corollary to this, is that the privilege of exemption is liable to be cancelled once the conditions meriting its grant in the first place and its subsequent continuation, changes with time to the detriment of the social security entitlement of its members.

(ii) It is in this context, that the EPFO steps in as a regulator of P.F. Trusts by virtue of the provisions of Section 17(4) of the EPF Act which provides for regulatory powers and cancellation of the Exemption granted to an establishment once the conditions of Exemption are violated. As explained above, such an action is simply in the nature of cancellation of what essentially was a privilege accorded to the establishment. Here it is pertinent to point out that since cancellation of exemption doesn't affect any vested rights of the establishment under the EPF Act, it has no penal consequences which altogether merit a separate action under Section 14 (2A) of the EPF Act.¹

(iii) Another important point which merits attention of all stakeholders is that despite the grant of exemption to an establishment the scheme framed by the establishment for its employees continues to be a scheme within the ambit of the Act. The observations of the Honorable Patna High Court in this context are relevant.

- a. *“Section 17 is thus only an extension of the scheme under the Act, whereby, in order to avoid duplication, if the appropriate Government is satisfied that the scheme framed by the concerned establishment, in regard to the rules of its provident fund regarding the rates of contribution, etc. are not less favorable than those specified in Section 6 of the Act or as available in any other establishment of like nature, authorizes the establishment to substitute its own scheme in place of a scheme framed by the appropriate Government. Both the schemes are, however, schemes under the Act.” [Tata Iron and Steel Co. Ltd. v Bir Singh and another-1983(63) FJR.32; Patna High Court]*
- b. Further the Supreme court in the reported case of N. K. Jain and others v. C.K. Shah and others has made some very pithy observations.

“Notwithstanding the exemption granted, the appropriate Government does not lose its hold over the scheme framed by the establishment, and there are built in safeguards like S. 17(4) to protect the interests of the employees. Section 17 is a self-contained provision dealing with the power to grant exemption and the consequent obligation. The exemption is granted for getting better benefits and to ensure their continuance for the employees with a view to avoiding duplication in framing a scheme by the appropriate Government on the lines as framed by the establishment itself and the purpose of the exemption is only to ensure such a scheme better than the one under S.6. The procedural aspect of S.17(4)

¹ Supreme Court in the reported case of N. K. Jain and Others Vs C.S. Shah and others

provides for cancellation of such exemption by which only the privilege granted is being withdrawn by an executive order. Such a cancellation does not penalize the management and consequently does not result in any punishment that is normally allowed in respect of an offence.” [960A-B; 961B-C; Supreme Court]

(iv) The Statutory Provisions for the powers of cancellation is delineated under Section 17(4) of the Act and reads as below:

“Any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply,

(a) in the case of an exemption granted under sub-section (1), with any of the conditions imposed under that sub-section 5 or sub-section (1A) or with any of the provisions of sub-section (3).

(aa) in the case of an exemption granted under sub-section 8(IC), with any of the conditions.

(b) in the case of an exemption granted under sub-section (2), with any of the provisions of imposed under that sub-section; and sub-section (3);

(c) in the case of an exemption granted under sub-section (2A), with any of the conditions imposed under that sub-section or with any of the provisions of sub-section (3A).

(d) in the case of an exemption granted under sub-section (2B), with any of the provisions of sub-section (3A).

(v) The authority which granted Exemption to the establishment i.e. the Appropriate Government is only competent to cancel the said exemption. Thus, in cases of exemption granted under Section 17(2) of the Act read with Para 27 of the Scheme since the power to grant such exemption to an individual employee lies with RPF, it is he who is the competent authority to cancel the said Exemption.

(a) the establishment violates any of the conditions in the exemption notification or/and the conditions mentioned in Appendix “A” to para 27AA of the EPF Scheme, 1952.

The Appendix A conditions are effective from 30th October 2003 on all exempted establishments.

2. PURPOSE

This Standard Operating Procedure (SOP)

- (i) Standardises the administrative procedures for cancellation of EPF Exemption u/s 17(4) of the EPF & MP Act,1952.
- (ii) Indicates the documents, the formats, the channel, and the timelines for various scenarios of cancellation of EPF Exemptions.
- (iii) Puts in place a mechanism for monitoring, feedback, and stakeholder management.

3. SCOPE

The Standard Operating procedure aims to enable all stakeholders to meet the following objectives:

- (a) To indicate the work sequence involved in the initiation and processing of the proposals for cancellation of Exemption aimed at securing the interest of the workers in exempted establishments.
- (b) To lay down a definitive protocol to be followed across the board as regards the process of cancellation of exemption culminating in the presentation of the views of the CBT before the appropriate Government in a time bound manner.
- (c) To streamline the cases of cancellation of exemption of establishments that are closed or are under liquidation

4. DEFINITIONS

For this Standard Operating Procedure (SOP), unless the context otherwise requires –

- (a) "Act" means Employees' Provident Fund & Miscellaneous Provisions Act 1952.
- (b) "Appropriate Government" means, government as defined in Section 2(a) the Act
- (c) "BoT" means Board of Trustees of the exempted establishment,
- (d) "Cancellation" means issuance of a notification of cancellation by the appropriate Government under Section 17(4) of the Act.
- (e) "Cancellation Date" means the date with effect from which the exemption is cancelled by the appropriate Government,
- (f) "Cancellation proposal" means, the proposal to be sent by the Zonal Additional Central Provident Fund Commissioner to the Head Office
- (g) "CBT " means, the Central Board as provided under Section 5A of the Act.
- (h) "Common Provident Fund Trust" means a Trust with two or more participating establishments with at least one representative from each of the participating establishments.

- (i) “Conditions of Exemption” means conditions contained in Appendix A to para 27AA of the EPF Scheme, 1952, in addition to the conditions appearing in the notification of Exemption.
- (j) “Compliance Audit” means the annual audit of an exempted establishment in a designated proforma by a team of officers from the R.O in whose jurisdiction the exempted establishment is located.
- (k) “Depository participants” means the registered agent or stockbroker of the depositories like NSDL and CSDL which maintain the ownership records of the investors.
- (l) “Draft Agenda” means the designated format for collating information for the purpose of cancellation of exemption, to be put up to EEC and CBT, as per HO guidelines.
- (m) “EEC” means the Exempted Establishments Committee of the CBT.
- (n) “Employer” means the employer as defined in Section 2(e) of the Act.
- (o) “Exempted establishment” means an establishment as defined in Section 2(ff) of the Act.
- (p) “Priority Matrix” means the categorisation of the violations of conditions of exemption and the consequential actions as described in Para 12 of this SOP and indicated in FORM CE-6.
- (q) “Regional Provident Fund Commissioner RPFC” means, the RPFC in charge of the region in whose jurisdiction the establishment’s Trust office is located.
- (r) “PA” means the Past Accumulations as indicated in section 17(5) of the Act read with Para 28 of the Scheme.
- (s) “Scheme” means the Employees’ Provident Fund Scheme framed under Section 5 of the Act.

5. Key Legal Provisions:

- (i) Section 17(4) of the Act: -relates to the conditions for cancellation of exemption by the authority which granted it.
- (ii) Section 17(5) of the Act: - relates to transfer of PA consequent to cancellation of exemption.
- (iii) Para 27AA Appendix “A” of the Scheme relates to the conditions of exemption
- (iv) Para 28 of the Scheme relates to the procedural guidelines for the transfer of PA
- (v) Condition No. 19 of Appendix “A” of Para 27AA relates to a compulsory transfer of the Trust’s investments to CBT by the depository participants, on closure, liquidation and when called upon to do so consequent to a communication received from RPFC.

(vi) Condition No. 25 of Appendix” A” of Para 27AA relates to mandatory withdrawal of exemption upon the establishment incurring loss for three consecutive years or suffering an erosion in its capital base, from the 1st day of the next FY.

(vii) Condition No. 29 of Appendix” A” of Para 27AA relates to a change in legal status of the exempted establishment and the mandatory revocation of exemption.

6. ROLES AND RESPONSIBILITIES

(a) Establishment: -

- i. To promptly communicate to the RPFC any change in the legal status of the establishment consequent to a merger, demerger, acquisition, sale, amalgamation, or formation of a subsidiary establishment.
- ii. To furnish a copy of the **Annual report of the establishment** along with the **audited accounts of the Trust Fund** within 6 months of the closure of the financial year, i.e., 30th September of each FY.
- iii. To issue standing instructions to the Depository Participants of the Trust to transfer to the RPFC, the entire investment holdings upon a communication received from in terms of Condition No. 19.

(b) Regional Office (RO): -

(i) To ensure regular scrutiny of online returns filed by the establishment and the points secured by it in the online performance evaluation system.

(ii) To conduct regular compliance audit within 31st December of the FY (For the previous FY which ended on 31st March) with timely follow up actions.

(iii) To seek a time bound response from the establishments and the Trustees of BoT in case a violation of the conditions of exemption as delineated in in Para 4(i) of this SOP is noticed in the compliance audit of the establishment or otherwise and take expeditious action on “Category A” violations as indicated in the priority matrix i.e. **FORM C.E-6**.

(iv) To recommend immediate cancellation of exemptions after due process in cases attracting Condition No. 25 and Condition No.29 of the conditions of exemption.

(v) To prepare the Draft agenda in **FORM C.E-2** for presentation before the EEC as per HO guidelines.

(vi) To take timely action to communicate with the depository participants to ensure transfer of investments to the CBT in cases of closure, liquidation and cancellation of exemption in compliance with Section 17(5) of the Act read with Para 28 of the Scheme. Provision may be created in the system along with the line of the directions issued in the notification under Para 52(l) dated 23.04.2015 to alert I accept the investment depending upon the rating and other related parameters of the instrument to overcome the prevailing complexity in accepting the bonds, short term debt instruments, enquiry and related Instruments.

(vii) To ensure compliance with Para 28(5) of the EPF Scheme post cancellation by issuance of a notification in the Gazette as regards the addition of new subscribers and the vesting of their accumulations in the Central Board.)

(viii) To communicate to the Z.O about the removal of Link for filing online returns by the erstwhile exempted establishment.

(ix) To cancel the exemption granted to individual employee under Section 17(2) of the Act read with Para 27 of the Scheme. In case of Exemption granted under Section 17(2) of the Act read with Para 27 of the Scheme, the RPFC has to cancel the exemption following the procedure mentioned aforesaid without referring the matter to Zonal Office and Head Office.

(c) Zonal Office (ZO): -

- i. To forward Draft agenda complete in all respects along with its recommendations for cancellation to H.O in a time bound manner.
- ii. To forward requests to RPFC (Exemption) HO for removal of Link for filing of online returns.
- iii. To co-ordinate with the appropriate Government (if State Govt.) as regards pending notifications for cancellation.

(d) Head Office (HO): -

- i. To scrutinize and place the agenda received from the Zonal offices before the Exempted Establishments' Committee (EEC) and then subsequently to the CBT with the recommendations of the EEC, in the next meeting.
- ii. To forward the proposal as recommended by EEC to CBT and to forward its recommendations, to the appropriate Government.
- iii. To monitor issuance of notification for cancellation recommended by CBT.

- iv. To process requests received from the Zonal Offices for removing link for filing of online returns.
- v. To verify PA reported by Regional office in coordination with the Investment and Banking division.
- vi. Sometimes it happens that one case is pending at Head Office level, whereas concerned field office is reporting it is at Zonal Office level. In order to have a correct position of the case, an online dashboard, designed to suit this purpose can be thought of and made a part of this SOP (Received from ZO, Kolkata)

7.SPECIFIC PROCEDURE

(A) Regional Office (RO):

(i) The process of cancellation of exemption is initiated at the level of RO on account of the violations of the conditions of exemption as indicated in the Appendix “A” of Para 27 AA and defined in Para 4(i) of this SOP.

(ii)The immediate triggers can be from:

- a. A scrutiny of the online returns on monthly basis.
- b. A scrutiny of the online performance evaluation system on quarterly basis.
- c. Flags raised in the annual compliance audit conducted by officers from RO.
- d. Complaint or any information verifiable and substantive in nature from any source as and when it arises.

(iii) The triggers shall be followed by a show cause notice issued in **FORM C.E.1** by an officer not below the rank of an APFC communicated through a registered post, speed post and email, to be replied within 7 days.

(iii) The notice shall be accompanied with a brief account of the findings. In case it is triggered from a compliance audit of the establishment the notice in Form CE-1 shall be issued only after a lapse of **15 working day** time from the date the compliance audit team issues a communication to the BOT and the employer as regards the findings of the compliance audit, advising them to take corrective actions.

(iv) On the basis of the reply submitted by the establishment and the Trustees, RPF may take further actions based on the Priority Matrix as defined in Para 4 (p) of this SOP and indicated in **FORM CE-6**.

(v) For Category A violations, immediate actions are to be taken for cancellation of exemption by issuance of a Show Cause Notice.

(vi) For Category B violations, establishment may be directed to rectify the deficiency within 15 days. If the same is not done, cancellation process shall be initiated. If a violation is repeated on two consecutive occasions without rectification, then cancellation process shall be initiated without any further opportunity.

(vii) For Category C violations, the establishment may be advised to be vigilant about the matter. If a violation is repeated on three consecutive occasions without rectification, then cancellation process shall be initiated without any further opportunity.

(viii) For any cancellation proposal, RPFC shall proceed to prepare the Draft agenda in **Form C.E.2** for cancellation of exemption which shall be accompanied with the following documents. An online system should be made available for Field Office, for reporting and submitting of documents related to the cancellation of exemption granted for an establishment. Further, special portal may be provided for uploading the details of the bonds, securities, Mutual Fund etc. so that a decision for accepting or rejecting of securities held by the Trust may be taken and communicated without delay.

(ix) A Third –Party audit shall be conducted to get an idea of the financial health of the Trust Fund.

- a. Original notification for grant of exemption.
- b. A copy of **Form C.E.1** issued to the employer and the Trustees and a copy of their reply.
- c. A copy of the draft show cause notice to be issued to the employer and the Trustees by the appropriate Government in **Form C.E.3**
- d. A report about the financial health of the establishment and the Trust Fund.
- e. Documents/reports indicating the violations of the conditions of exemption.
- f. A copy of the third-party auditor’s report in the designated format.
- g. Copies of compliance audit report for the last three years prior to the proposed date of cancellation of exemption.

(ix) In case, the establishment is **Relaxed under Para 79** but does not have the exemption notification in possession, relaxation shall be withdrawn using **Form C.E-1(R)**, and the concerned establishment shall be directed to transfer Past Accumulations as per Section 17(5) of the Act read with Para 28 of the Scheme.

(x) Whenever, a violation of condition is noticed and the employer admits the lapses but offers to relinquish the exemption, the RPFC shall immediately take over the Trust to secure the interests of the worker and direct the establishment to report compliance as an un-exempted establishment, crediting the member’s account with the PA received. Proposal in such cases as received by the establishment shall be immediately forwarded as a special case of “Surrender”. Subsequently, actions shall immediately start for correct determination of PA and PA statement through Third Party Audit. Subsequent to a

formal notification of cancellation, the RPFC shall proceed with a formal Gazette notification as per Para 28(5) of the Scheme.

(xi) Exempted establishments which meet the stipulations of Condition No. 25 (consecutive loss for three years or an erosion in the capital base of the establishment) and Condition No. 29 (change in legal status of the establishment) shall, however be treated as below.

(a) In case of existence of Condition No. 25, as evident from the records, RPFC shall inform the employer and the Trustees about the mandatory withdrawal of exemption from a prospective date as delineated in the Appendix "A" of Para 27AA of the Scheme in **FORM CE-9** and proceed to prepare the Draft Agenda in **Form C.E.2** highlighting this fact, for onward communication to ZO.

(b) In case of the existence of Condition No. 29 the RPFC shall inform the employer and the Trustees about the revocation of exemption, in **FORM CE-10** forthwith. A Draft agenda in **Form C.E.2** clearly specifying the details of the existence of Condition No. 29, along with the documents in evidence and a legal opinion if necessary, shall be forwarded to Z.O.

(xii) Completion of all compliance actions against the exempted establishment shall be a parallel activity and not an essential pre-requisite of the cancellation proposal. Thus any default under Conditions No.5,6,7, and 28 may be addressed by actions for assessment of dues under Section 7A and recovery under Section 8 as well as consequential levy of penal interest and damages under Section 7Q and Section 14B respectively. Section 17 default in patterns of investment can be addressed by levying of surcharge. However, initiation of any compliance action shall be sufficient for preparation of draft agenda in **Form CE-2**.

(xiii) On Cancellation of Exemption RPFC shall proceed with the issuance of a Gazette notification as per Para 28 (5) of the Scheme.

(xiv) Subsequent to the completion of the aforementioned obligation, the RPFC may proceed to request for link removal along with the details of PA Transfer and PA Statement.

(xv) The documentations should be completed by the RPFC, and the draft agenda in **FORM C.E.2** should be forwarded to the concerned Zonal Office along with the supporting documents as per the prescribed checklist within 30 days of the establishment's response to the notice in FORM CE-1.

(xvi) To cancel the exemption granted to individual employee under Section 17(2) of the Act read with Para 27 of the Scheme. In case of 17(2) of the Act read with Para 27 of the Scheme, the RPFC has to cancel the exemption following the procedure mentioned aforesaid without referring the matter to Zonal Office and Head Office.

(B) Zonal Office(ZO): -

(i) The ZO shall scrutinise the draft agenda in **FORM C.E-2.** received from the RO and forward the draft Agenda to Head Office along with the recommendation of the Zonal ACC, in **Form CE-4.**

(ii) All agenda shall be sent within a period of 30 days from the date of the receipt of the proposal from the RO. Presentation of an agenda complete in all respect shall be the responsibility of the Zonal ACC.

(iii) The ZO shall coordinate with the respective State Governments (appropriate Government) on the proposals recommended by CBT. The forum of Regional Committee may be utilised for an expeditious decision on these proposals.

(iv) The ZO shall ensure removal of online returns link for returns of the exempted establishment upon cancellation through HO.

(C) Head Office (HO): -

(i) Exemption Division, Head Office shall place the agenda received from the Zonal offices before the Exempted Establishments' Committee (EEC) and the subsequently to the CBT in the next meeting. Agendas received in complete shape shall be placed **within 30 days** or the ensuing EEC meeting whichever is later.

(ii) Proposals recommended by CBT, shall be sent to the appropriate Government **within 15 days** of receipt of the CBT minutes.

(iii) Issuance of notification for cancellation of exemption recommended by CBT shall be monitored at the level of Exemption Division.

(iv) The requests received from Zonal Offices for removal of link for filing of online returns shall be responded to immediately.

(v) **Subsequent to the cancellation of exemption,** the Exemption Division shall verify the PA dues in coordination with the Investment and Banking division as well as the compliance division.

(vi) The Investment division of HO shall confirm the amount of SDS/permissible securities so intimated replying to the email back to the RO. Within 03 working days.

(vii) The cash component shall be verified by the exemption division through the TRRN provided by the RO from the website.

8. Exceptional circumstances: -

- I. In cases where Condition No 19 is attracted, RPFCs may approach the depository participants to transfer the holdings of the Trust to CBT in **FORM CE-11** Non-Compliance with this request can entail cancellation of exemption of the Establishment after the issuance of a show cause notice.
- II. In the case of **closed establishments**, the RPFC shall facilitate transfer of past accumulation from a prospective date or the date of closure/liquidation. However, this action shall not preclude initiation of cancellation proceedings by the RPFC on the basis of available records.
- III. If the employer's whereabouts are not known, then the RPFC may advertise in the local newspaper as regards closure of such exempted establishment. The intention of bringing the Trust within the fold of EPFO may be specified with a request to the general public to furnish any available information for the purposes of cancellation of exemption within 30 days of the publication of the advertisement.
- IV. In cases where the establishment is closed or a chronic defaulter and the BOT is not in a position to file the PA statement up to date, cancellation proposal has to be furnished only after completion of all the compliance action as mandated under the Act and Scheme.
- V. In cases where despite existence of the conditions meriting cancellation as per condition no 25 and condition 29 the cancellation is pending beyond the time frame indicated in the aforesaid two conditions RPFC shall proceed to get a Third-Party audit done immediately. However, if despite due diligence the same cannot be done on factual grounds he can proceed to take immediate action without waiting for any Third Party audit report. This is required to secure the interest of workers for whom the exemption primarily exists. The draft agenda in **Form CE-2** in such cases shall be processed and sent to ZO with a note on the pending Third Party Audit, which shall include the reasons behind such pendency and the due diligence taken by RPFC as regards completion of the Third Party Audit before proceeding to send the Draft Agenda to ZO. Further, Form CE-3 sent to Head Office shall be accompanied with a comment from Zonal ACC. The said draft agenda shall be put up to EEC only along with the note from RO and comments from Zonal ACC so as to take a decision as regards waiver of this document while sending recommendations for cancellation to CBT. Subsequently such Third Party Audit shall be compulsorily completed at the time of transfer of PA subsequent to the issuance of cancellation notification.

9. FORMS AND TEMPLATES TO BE USED:

- **FORM C.E.1:** Show-cause Notice to be issued by the Regional Office.
- **FORM C.E.1 (R):** Format for relaxation/withdrawal.
- **FORM C.E.2:** Draft agenda by Regional Office for placement before the EEC along with the document checklist.

- **FORM C.E.3:** Draft Show-cause Notice to be issued by the Appropriate Government.
- **FORM C.E.4:** Zonal Office communication to be forwarded to the Head Office regarding proposal of Regional Office.
- **FORM C.E.5:** Head Office format for forwarding the CBT's proposal to the Appropriate Government.
- **FORM C.E-6:** Priority Matrix indicated in Para 12 of this SOP.
- **FORM CE-7:** Consolidated Report to be sent to ZO by RO.
- **FORM CE-8:** Consolidated Report to be sent to HO by ZO.
- **FORM CE-9:** Withdrawal of exemption under Condition No. 25
- **FORM CE-10:** Revocation of exemption under Condition No.29
- **FORM CE-11:** RPFC's directions to the exempted Trust's Depository participants to transfer the investment corpus of the Trust to CBT.

10. MATRIX OF TIMELINES, ROLES AND RESPONSIBILITIES:

| S. No. | Office | Responsibility | Timeline |
|---------------|-----------------|---|--|
| 1 | Establishment | Reply to the Show Cause Notice | Within 7 days of the receipt of the Show Cause Notice from the RO |
| 2. | Establishment | Furnishing the Annual Report of the establishment along with the audited reports of the Trust Fund. | By 30 th September every year. |
| 3. | Regional Office | Compliance Audit of the establishment | By 31 st December (for the previous FY which ended on 31 st March) |
| 4. | Regional Office | Third Party Audit. (TPA) | Upon the discretion of CPFC /RPFC-I/. In case FORM CE-2 is for a cancellation based on Condition no. 25 TPA should be conducted within 30 days of issuance of FORM CE-9. |

| | | | |
|----|-----------------|--|---|
| 6. | Regional Office | Preparation of Agenda | 30 Days |
| 7. | Zonal Office | Examine the Agenda fit for consideration of EEC. | 30 Days |
| 8. | Head Office | Scrutinize and present a complete agenda. | 30 days or ensuing EEC whichever is later |

11. MONITORING MECHANISM:

- (a) At HO Level: Quarterly review by CPFC.
- (b) At ZO Level: Monthly review by ACC
- (c) At RO Level: Monthly review by RPFC
- (d) In addition, a monthly report for monitoring to be sent by RO to ZO and by ZO to HO as mentioned in FORM CE-7 and FORM CE-8 respectively.
- (e) IS Division, Head Office shall develop an online system to process the cancellation cases based on the priority matrix as per **Form C.E.6** of this SOP. However, till such portal is developed the procedure shall be implemented as prescribed above with efforts to collect all documents through e-mail to the extent possible.
- (f) The Concerned Zonal Offices shall forward an establishment-wise half yearly report as per Para 28 of EPF Scheme 1952 for the establishments whose cancellation is notified by the appropriate Government.
- (g) Regional Office shall submit the status related to the cancellation proposals under its jurisdiction and Zonal Office shall ensure that the timelines as per the SOP are adhered to, scrupulously. The monitoring of Zonal Office shall be done at the Head Office.
- (h) The website of EPFO shall be regularly monitored for the correctness of the display list of cancelled exemptions under their jurisdiction. Missing information shall be updated by sending a copy of notification to the web admin NDC and Head Office

12. MODIFICATIONS/AMENDMENTS:

First document. No modification proposed.

13. INTERNAL AND EXTERNAL REFERENCES:

(a) Internal

The circular referred in this SOP are listed as Annexure -I

(b) External

IW.P. No: 1874 of 2004-Delta Ltd., & Anr. Vs RPFC & Anr.

14. MISCELLANEOUS:

TRIGGER POINTS for starting cancellation procedure as per point 5 above:

(a) Online returns

- i. No cancellation proposal shall be initiated/recommended only on the ground of non-filing of online returns, if the establishment is unable to file such returns on technical grounds for a continuous period of **three months**.
- ii. RPFC shall facilitate the resolution of the technical issues within this period with the help of the technical team of EPFO. However, nothing shall prevent the RPFCs to take cognizance of other defaults/deviations and initiate the process of recommendation of the cancellation of exemption.
- iii. Except for the process of cancellation, there shall be no difference in the compliance actions between an un-exempted and exempted establishments in the matter of non-filing of prescribed returns. Therefore, the provisions related to non-filing of returns by an un-exempted establishment shall apply to the exempted establishments as well apart from the penal provisions under Section 14(2A) meant exclusively for defaults related to violations of conditions of exemption.

(b) Marks obtained in the prescribed ranking system.

RPFC shall mandatorily cause an analysis to ascertain the possible default/deviations of statutory provisions/terms and conditions, if any by the exempted establishment it does not secure minimum marks i.e., **300 marks out of 600 marks** for a continuous period of **three months**.

(c) Establishments running into losses for a continuous period of three years.

- i. The RPFCs shall issue an advisory when the losses are detected in the first year itself and the replies received from the establishment should be analysed for their subsequent financial health.
- ii. If the losses continue to the second year, intimation must be issued for clearly specifying the initiation of the cancellation process.
- iii. From second year onwards, month-to-month scrutiny of the online/physical returns filed by such establishments should be scrutinized to examine the health of the Trust fund and to assess the need for initiation of the cancellation process well in time to secure the interest of the workers.

- iv. If loss occurs on conclusion of third financial year, the cancellation process shall be initiated without fail.

(d) Deviations in adherence to the prescribed investment pattern norms.

The RPFCS shall issue an advisory when the deviations are first detected in the along with the actions to levy the surcharge.

If the deviations run into the second year, a month-to-month scrutiny of the online/physical returns filed by such establishments should be done to examine the health of the Trust fund and the need to initiate the cancellation process. When the deviations continue for three or more years, the cancellation process shall start immediately.

(e) Rate of Interest:

Cancellation process shall be initiated wherever the rate of interest declared by the BOT is not at par with the rate of interest declared by EPFO without loss of time.

(f) Compliance issues:

If there is a dispute in membership of an employee, enquiries u/s 26B of the Scheme may be initiated and the same may also be intimated to the Compliance and Exemption Divisions of the Head Office. This is a failure to adhere to condition no 3 and hence cancellation process shall start immediately upon conclusion of 26 B proceedings. This shall however have no bearing on a cancellation proposal, triggered by any other violations of conditions of Exemption.

(g) Priority Matrix:

The priority matrix regarding the violation of exemption conditions is detailed in **Form C.E.6** wherein those conditions which entails mandatory cancellation are marked as “A” and those where the establishment can rectify violations are marked as “B” and “C”.

(h) Transfer of Past Accumulation Post Cancellation:

RPFC shall proceed to ensure compliance with Section 17(5) read with Para 28 of the Scheme as regards receipt of PA as defined in Para 4(r) of this SOP. Provision should be made available in the new application software for accepting bulk transfer in as per Manual of Accounting procedure, for the acceptance of Past Accumulation of the trust, with due interest. If the Past Accumulation is not received within the time limit of 30 days, then necessary compliance action as provided under the Act and Scheme and formulated by Compliance Division, HO from time to time may be initiated.

15. CHANGE HISTORY

a. Where the SOP is the initial version:

- SOP No: Version 1
- Effective Date: Date of issue of SOP.
- Significant Changes: As and when incorporated.
- Previous SOP no.: None

b. Where replacing a previous SOP: None as the present SOP is the First.

- SOP No: Record the SOP and new version number.
- Effective Date: Record effective date of the SOP.
- Significant Changes: Record the main changes from previous SOP.
- Previous SOP no.: Record SOP and previous version number

| SOP No. | Effective Date | Significant Changes | Previous SOP no. |
|---------|----------------|---------------------|------------------|
| | | | |
| | | | |
| | | | |

Review

The SOP shall be reviewed from time to time by a committee constituted by ACC (Exemption) to accommodate new requirements and realities as per the changing needs of business/ regulations in the country or as per the advice of the EEC. This shall be reviewed after every 2 years.

(_____)
Authorizer

(_____)
Approver

(Show-cause Notice)

(Under Appendix "A" of Para 27AA of the EPF Scheme,1952)

Whereas the establishment was granted exemption under Section 17(1)(a) by the being the Appropriate Government vide Notification No.

Whereas the revised conditions of the exemption indicated in Appendix-A of the Scheme are applicable to all exempted establishments vide GSR 853(E) with effect from. 30.10.2003.

Whereas compliance audit of the establishment conducted on detected the following violations of the revised conditions of exemption: -

- (i) (Condition No...); Category
- (ii) (Condition No...); Category
- & so on.

Now therefore, the employer and the Board of Trustees (BOT) are directed to show cause within 15 days from the receipt of this notice as to why a report be not sent to the appropriate Government; as regards violations of the conditions of exemption delineated under Appendix" A" Para 27AA of the EPF Scheme,1952 for necessary action.

(.....)
Name of the RPFC

Date: (.....)

- To,
- 1)The Employer (.....)
 - 2)Chairman Board of Trustees (.....)

(Withdrawal of Relaxation)

Whereas the establishment was granted relaxation under para 79 by the vide Notification No.

Whereas the revised conditions of the exemption indicated in Appendix-A of the Scheme is applicable to all exempted establishments vide GSR 853(E) with effect from. 30.10.2003.

Whereas a compliance audit of the establishment conducted on detected the following violations of the revised conditions of exemption: -

- (iii) (Condition No....); Category
- (iv) (Condition No....); Category
- & so on.

Now therefore, the relaxation granted to the establishment under Para 79 of the Scheme is withdrawn and the employer and the Board of Trustees (BOT) are directed to comply with the provisions of section 17(5) of the EPF Act read with Para 28 of EPF Scheme.

(.....)
Name of the RPFC

Date: (.....)

- To,
- 1)The Employer (.....)
 - 2)Chairman Board of Trustees (.....)

Draft Agenda to be placed before the EEC by Regional Office

Item No... Cancellation of Exemption under section 17(1)(a) of the EPF & MP Act, 1952 / Para 27A of EPF Act (As applicable) in respect of __ Establishment name __ (__ code number __)

The cancellation of exemption is governed by Section 17(4) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The cancellation of exemption is proposed for failure to adhere to the conditions imposed while grant of exemption by the Appropriate Government.

Section 17(4) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, is reproduced below:

(4) Any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply, -

(a) in the case of an exemption granted under sub-section (1), with any of the conditions imposed under that sub-section 15 or sub-section (1A) or with any of the provisions of sub-section (3);

(aa) in the case of an exemption granted under sub-section (1C), with any of the conditions imposed under that sub-section; and]

(b) in the case of an exemption granted under sub-section (2), with any of the provisions of sub-section (3);

(c) in the case of an exemption granted under sub-section (2A), with any of the conditions imposed under that sub-section or with any of the provisions of sub-section (3A);

(d) in the case of an exemption granted under sub-section (2B), with any of the provisions of sub-section (3A).

Brief Introduction:

M/s. bearing code no was granted exemption under Section of EPF & MP Act, 1952 vide notification No. dated The establishment has a Provident Fund Trust in the name of “.....”. The corpus of the Trust as per balance sheet as on _____ was Rs. _____ fornumber of _____ members.

The cancellation of exemption is proposed because of violation of various conditions of Appendix-A to Para 27AA of the EPF Scheme, 1952 noticed through.....(Compliance Audit Reports etc.). The establishment has been given opportunities to show cause by way of show cause notices

datedin line with Condition No. 27 of Appendix “A” OF Para 27AA of the Scheme. However, the reply is unsatisfactory.

2. Details of the establishment:

| Sl. No | Name of the Establishment | | | |
|--------|--|--|--|--|
| 1. | Code No. | | | |
| 2. | RPFC/RO | | | |
| 3. | Zonal Office | | | |
| 4. | Name of the Trust | | | |
| 5. | Exemption Notification details | | | |
| 6. | Appropriate Government | | | |
| 7. | Date of Exemption | | | |
| 8. | Date of last constitution of trust | | | |
| 9. | Statutory Provision empowering cancellation | | | |
| 10. | Working/Closed establishment | | | |
| 11. | Number of reported EPF/EDLI members | | | |
| 12. | Reported Corpus as on | | | |
| 13. | Contribution received up to | | | |
| 14. | Rate of interest for last three years (This is at Par with EPFO declared rates) | | | |
| | | | | |
| 15. | Compliance Audit Completed up to | | | |
| 16. | Third-Party Audit conducted up to | | | |

3. Violations reported/submissions of establishment/views of EPFO is as below:

| Condition No. | Deviations | Show Cause Notice date | Establishment's reply | RPFC views | Zonal Office views |
|---------------|------------|------------------------|-----------------------|------------|--------------------|
| | | | | | |
| | | | | | |

4.1. Third-Party Audit Report of FY 20xx-xx dated _____ (Annexure - H):

- i. Corpus of the Trust as on _____ was Rs. _____
- ii. RPFC has certified that the financial health of the establishment is good and no liability is likely to arise on EPFO currently, on account of cancellation of exemption. **(Annexure - D)**

4.2. Observations on Compliance of establishment:

.....

Compliance Audit Report for last three years:

- Year 1:
 Total invested corpus was _____ with employment strength of ____ (PF Subscribers: ____, EPS members: ____).
- Year 2:
 Total invested corpus was Rs. _____ with the employment strength of ____ (PF Subscribers: ____, EPS members: ____).
- Year 3:
 Total invested corpus was Rs. _____ with the employment strength of ____ (PF Subscribers: ____, EPS members: ____).

8. The proposal of cancellation of exemption if considered appropriate shall be forwarded to the Appropriate Government along with the following documents:

- i. Proposal for cancellation in specified format. **(Annexure-A)**
- ii. Copy of notification granting exemption. **(Annexure-B)**
- iii. Copy of Draft Show Cause Notice. **(Annexure-C)**
- iv. Report of RPFC regarding Financial Health of the Trust. **(Annexure-D)**
- v. Report of RPFC regarding compliance status of the establishment. **(Annexure - E)**
- vi. Report of Third Party Auditor ascertaining the financial health of the Trust **(Annexure – F)**
- vii. Copy of Third-Party Audit for FY 20xx-xx **(Annexure-H)**
- viii. Copy of Compliance audit report for 20xx-xx and 20xx-xx. **(Annexure-I)**
- ix. Draft notification for cancellation. **(Annexure-J)**
- x. Information as per Draft Template of MoL & E for Surrender/Cancellation of exemption granted under Para 27A/Section 17(1)(a) of the EPF & MP Act, 1952. **(Annexure-K)**
- xi. Online return for the month of ___ 20xx. **(Annexure-L)**
- xii. Show cause Notice dated _____ issued to establishment. **(Annexure-M)**
- xiii. Copy of FORM CE-9/CE-10 issued to the establishment and BOT
- xiv. Establishment reply to notice dated _____ **(Annexure-N)**

9. Justification about non availability of any prescribed document.

.....
.....
.....
.....

Proposal: The proposal for cancellation of exemption granted u/s of the EPF & MP Act, 1952 in respect of _____, by the Government of _____ vide notification no. _____ dated ___ is placed before the Committee for Exempted Establishments for consideration being the Appropriate Government. The recommendation / observation shall be further placed before the Central Board of Trustees, for consideration.

A CHECKLIST OF RELEVANT DOCUMENTS TO BE ENCLOSED

Checklist of supporting documents:

- i. Original notification granting exemption.
*(Note: a. Where notification for grant of exemption is available either at the Regional Office or at the exempted establishment/Trust, the copy of such notification may be provided.
b. Where the copy of the original notification is also not available, however, order number of the grant of exemption, efforts should be made to obtain the copy of the order from the appropriate government.
c. Where the original grant of the exemption is also not available at the appropriate government, RPFC shall withdraw the relaxation granted earlier and facilitate the transfer of funds.)*
- ii. Copy of the relaxation withdrawal order if any.
- iii. Report of RPFC regarding financial health of the Trust. The template is as below:

On the basis of the online ECR reports, this is to certify that monthly EPF compliance in respect of the establishment M/s. _____ (code number _____) is received up to _____. Damages & Interest have been levied up to _____ as applicable and the levied dues collected.

The pension fund contributions as well as Administrative Charges contribution of the trust received up to _____. Further, it is also certified by the Third Party Auditor that there is no liability likely to arise on EPFO.

Further, the losses if any incurred by the Trust, have been liquidated by the establishment. This certificate is issued without prejudice to any 7A (for evasion of membership) or 14B proceedings for levy of damages/FIR/Prosecution instituted against the establishment as well as any hidden losses not detected by compliance Audit/Third Party Auditors as such proceedings can continue even after cancellation of the exemption.

(RPFC-I/OIC)

iv. Draft Notification for cancellation:

| NOTIFICATION | |
|---|--|
| <p>Whereas M/s. _____ bearing code No. _____ in _____ Region has applied for surrender of exemption granted by the _____ Government under clause (a) of sub-section (1) of section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act) / para 27A of the EPF Scheme, 1952 (hereinafter referred to as the Scheme) (as applicable).</p> | |
| <p>2 Whereas a notification bearing No. G.O. _____ dated _____ granting exemption to the said establishment under clause (a) of sub-section (1) of section 17 of the said Act / para 27A of the said Scheme w.e.f. _____.</p> | |
| <p>3. And whereas now it has come to the notice to the _____ Government that the establishment has found violating conditions of Exemption under the provisions of EPF & MP Act 1952 and EPF Scheme, 1952.</p> | |
| <p>4. Now, therefore, in exercise of the powers conferred by sub-section (4) of section 17 of the said Act, the _____ Government hereby cancels the exemption granted to the said establishment with effect from _____</p> | |
| <p style="text-align: right;">(_____) Secretary to the Government</p> | |

v. Documents through which the alleged deviations/violations can be supported:

- a. Copy of third-party audit report (From the proposed date of cancellation, to the preceding month of the submission of cancellation proposal by Regional Office)

If cancellation is proposed to be from prospective date, then 3rd Party audit to be conducted on the last available Balance Sheet.

The draft agenda without 3rd Party Audit Report to be brought to the notice of Exempted Establishments' Committee for its approval and subsequent placement before the CBT.

(Note: Where the third party audit can't be completed, e.g., closed establishment /establishments under liquidation /establishment/ Trust under seizure by any other law-enforcing authority or by wilful non- cooperation by the employer/Trustees, the RPFC shall proceed with the cancellation without it, subject to the condition

that the same shall be mandatorily required to be conducted by RPFC at the time of transfer of past accumulations/corpus post-decision by the appropriate government. The fee of the audit shall be borne by the employer/establishment as per the conditions of exemption.)

- b. Compliance audit for the last three years from the date of proposed cancellation, date of closure, date of liquidation.
- c. Documents related to closure/liquidation/change of legal status.
- d. Legal opinion, wherever applicable/necessary.
- e. Details of deviations of investment along with the status of recovery of surcharge, if any.
- f. Details of non-filing of online returns and non-obtaining the requisite marks in the ranking system, if such violations are also among the cause for cancellation/non-renewal.
- g. Order by the appropriate government/any other law-enforcing agencies, if any.
- h. Documentary evidence in support of non-eligibility for exemption/renewal.

In case of any difficulty arising in the completion of documentary evidence in respect of any exempted establishment as per the aforementioned list and notes therein, the proposal for cancellation should be forwarded along with the recommendations of the Zonal ACC as well as RPFC for seeking relaxation of the circular provisions by the CPFC/EEC on a case-to-case basis.

Annexure – A (Proposal of cancellation of Exemption)

Proposal for Cancellation of Exemption in respect of _____-Regarding.

| | | | |
|-------|--|---|--|
| i) | Name of the applicant Establishment | : | |
| ii) | P.F Code No. | : | |
| iii) | Address of the establishment | : | |
| iv) | a) Name of the PF Trust | : | |
| | b) Single PF Trust or Common PF Trust? | : | |
| | c) If common PF Trust, Details (Name, Code No., etc. of the Principal Establishment holding the PF Trust)? | : | |
| v) | Address of the PF Trust | : | |
| vi) | Kind of Exemption (Under Section 17(1)(a)/Para 27A) | : | |
| vii) | Date of Grant of Exemption | : | |
| viii) | Notification No. and Date | : | |
| ix) | Appropriate Govt. | : | |
| x) | Case of cancellation or surrender of Exemption? | : | |
| xi) | In case of Cancellation of Exemption | | |
| | a) Draft Show Cause Notice | : | |
| | b) Condition or Provisions of the Act and Schemes Violated | : | |
| | c) Copy of Notification/ Order granting exemption | : | |
| | d) Copy of Third Party Audit Report. It will not restrain Regional P.F. Commissioner from taking over the Trust Fund and facilitating compliance of the establishment as an un-exempted establishment. | : | |
| | e) Report of RPFC regarding Compliance status | : | |
| | f) Assessment of the RPFC regarding financial health of the Trust. Liability of EPFO in such cases will be limited to the extent of fund received from the Trust and loss, if any, incurred by the Trust will be got recouped/ recovered by/from the employer. | : | |

II. Any other Fact (s) having bearing on the processing of proposal for cancellation of exemption.

RPFC Certificate (Annexure E)

(Regarding up-to-date compliance status)

| | | |
|-----|--|--|
| 1. | Name of the establishment | |
| 2. | Name of the Board of Trustees (BOT) | |
| 3. | PF contributions paid upto | |
| 4. | PF contributions in default for the Periods | |
| 5. | Dues Assessed, if Any | |
| 6. | Balance sheets of the establishment audited up to | |
| 7. | Balance sheets of the BOT audited up to | |
| 8. | Statement of Annual Accounts issued to members up to | |
| 9. | Periodic Returns submitted up to | |
| 10. | Amounts in Default, in any | |
| 11. | Any loss or Deficit suffered by the BOT | |
| 12. | The loss/Deficit made Good by the establishment | |
| 13. | Action Taken | |

(RPFC/OIC)

Third Party Audit Certificate (Annexure-F)

On the basis of Third Party Audit conducted into the books of accounts of the _____ - Trust, which was formed due to exemption granted to establishment, M/s. _____ (Code No. _____), this is to certify that the financial health of the trust is sound and is sufficient to balance the liability arising out of the subscribers, members and accounts maintained by the said trust and no liability will occur to Employees Provident Fund Organisation on account to the intended cancellation of Exemption.

()

Chartered Accountant

Office _____

Date: _____

(Annexure – K)

Draft Template for Surrender/Cancellation of Exemption granted under Para 27A/17(1)(a) of the EPF & MP Act, 1952 (Template as per MoL&E letter No. S-35017/3/2018-SS. II dated 18.09.2018)

| S No | Subject | Status | Remarks |
|------|--|--------|---------|
| 1. | Name and code of the establishment | | |
| 2. | Date of Grant of exemption to the establishment and under which section/Para the exemption was granted (i)Whether under Section 17 of the EPF & MP Act, 1952; or (ii)Whether under Para 27 of EPF Scheme, 1952 | | |
| 3. | Date on which the establishment has started as an un-exempted establishment. | | |
| 4. | Date of application of Surrender/Cancellation of exemption by the establishment. | | |
| 5. | Date from which Surrender/Cancellation of exemption has been sought? (a)Grounds for Surrender/Cancellation of exemption. | | |
| 6. | Whether the establishment followed all the conditions of exemption as specified in Para 27AA of the EPF Scheme, 1952 and pattern of investment as notified from time to time, (i)If no, details thereof (Clearly mention the condition/violation) (ii)Action taken against such violations. (iii)Whether, certificate in this regard has been submitted by the concerned competent authority (also enclose a copy) and details thereof. | | |

| | | | |
|----|--|--|--|
| 7. | <p>Categorization of investment as per pattern of investment (during the period of exemption)</p> <p>(i)Government Securities and Related Investments</p> <p>(ii)Debt Instruments and Related Investments.</p> <p>(iii)Short-term Debt Instruments and Related Investments</p> <p>(iv)Equities and Related Investments</p> <p>(v)Asset Backed, Trust Structured and Miscellaneous Investments.</p> | | |
| 8. | <p>Whether the establishment has transferred all the past accumulations as per Para 28 of the EPF Scheme, 1952 along with Past accumulations statement and compliance as an un-exempted establishment,</p> <p>(a)If yes, details thereof (Category wise, Amount and date)</p> <p>(i) Government Securities and Related Investments</p> <p>(ii) Debt instruments and Related Investments</p> <p>(iii)Short-term Debt Instruments and Related Investments</p> <p>(iv) Equities and Related Investments</p> <p>(v) Asset Backed, Trust Structured and Miscellaneous Investments</p> <p>(b) If Not, details thereof and reason therefor.</p> | | |
| 9 | <p>Whether the annual statement of accounts or pass books issued to every employee within six months of the close of financial/accounting year free of cost once in the year.</p> | | |

| | | | |
|-----|---|--|--|
| 10. | The amount of interest paid by the establishment to its employees on the PF accumulations during the last three years: (i)First year (ii)Second year (iii)Third year | | |
| 11. | (i)Whether the rate of interest paid during the last three years was less than the interest decided by EPFO. (ii) If yes, the reason thereof. | | |
| 12. | (i) Whether there is amendment to the rules of the establishment during the period of such exemption? (ii)If yes, whether prior approval of the RPFC was obtained? | | |
| 13. | Whether the establishment is regular in filing various monthly and annual returns prescribed by EPFO? | | |
| 14. | Whether there is any change of legal status of the establishment after grant of relaxation? | | |
| 15. | Whether the establishment is regular in submission of Audited Balance Sheet along with the Auditor's report | | |

Encl: Docs as per checklist.

Dated:

RPFC-I/OIC (Regional Office)

(For the appropriate Government)

Whereas M/s. _____ bearing code no. _____ is an establishment to which exemption has been granted w.e.f. _____ vide Notification No. _____ dated _____ under section 17(1)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952/under Para 27A of The Employees Provident Fund Scheme, 1952 and is maintaining its own PF Trust.

And, whereas on examining the Annual Compliance Audit Report/Balance Sheet & other documents/records of the establishment, it has come to the notice that the establishment has reported following violation of conditions as per Appendix "A" under Para 27AA of revised conditions for grant of exemption of the EPF Scheme, 1952:

| Sl. No. | Description | Violation of conditions |
|---------|-------------|-------------------------|
| 1. | | |

Now the Managing Director, being the person responsible for the conduct of business of the establishment and also responsible for compliance of the provision of EPF & MP Act, 1952 and Schemes framed there under and being an employer covered within the definition of employer as defined under Section 2(e) of the Act, is hereby directed to Show cause as to why the exemption granted under u/s 17(1)(a) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952/ under Para 27A of The Employees Provident Fund Scheme, 1952 may not be withdrawn and the establishment may not be directed to comply as an un-exempted establishment, for violation of above mentioned conditions. The reply should be submitted within 15 days of receipt of this letter, failing which it would be presumed that you have nothing to submit in this matter and cancellation order shall be issued without any further intimation/reminder.

()

appropriate Government

To

(1) The Employer

(2) The Board of Trustees

Recommendation to be forwarded by the concerned Zonal Office

Item No. _: Surrender/Cancellation of Exemption under Section 17(1)(a) of the EPF & MP Act, 1952/Para 27A of the EPF Scheme, 1952 in respect of __ code No. __.

The draft template of agenda regarding proposal for cancellation of exemption in respect M/s. _____, Code No. (_____) has been received from RPFC-1, RO-_____ vide letter No. _____ Dated _____.

The complete proposal along with the supporting documents has been examined in light of the statutory provisions and is recommended for placing before the Committee on Exempted Establishments for consideration of cancellation of previously granted exemption and the same is being forwarded to Head Office.

(ACC/ACC(HQ))

Zone_____

Date_____

To,
The Appropriate Government,
Add:

Sub: Cancellation of Exemption under Section 17(4) of the EPF & MP Act, 1952 in respect of - Reg.

Madam/Sir,

The establishment bearing code no. is an establishment covered under Employees' Provident Fund and Miscellaneous Provisions Act 1952. The Establishment was granted Exemption under Section 17(1)(a) by the being the Appropriate Government vide Notification No.

2. During the Compliance and Third-party inspection, Regional Provident Fund Commissioner, RO noticed violation of Condition(s) No. as enunciated in Appendix-A to Para 27AA of the EPF Scheme, 1952. Show cause notice was accordingly issued vide letter dated:

3. The establishment has failed to reply to the Show-cause notice/The reply of the establishment to the Show-cause notice was not found satisfactory. Accordingly, Regional P.F. Commissioner, RO vide letter dated:and Zonal Additional Central Provident Fund Commissioner, ZO..... vide letter dated: proposed cancellation of Exemption granted to the Establishment.

4. The proposal for cancellation of exemption was placed before the Exempted Establishments' Committee of the Central Board, in theirth meeting held on and subsequently before theth meeting of the Central Board of Trustees, held on

5. The Central Board of Trustees, has recommended the cancellation proposal in respect of the establishment under section 17(4) of EPF & MP Act, 1952.

6. In this context, please find the following documents for perusal and consideration for an order regarding cancellation of exemption in respect of the establishment under Section 17(4) of EPF & MP Act, 1952: -

(i).....

(ii)..... & so on.

7. A copy of the formal order may kindly be sent for updating our records and for ensuring compliance under Section 17(5) of the Act read with Para 28 of the EPF Scheme.

Yours faithfully,

Encl: As above

(Name.....)

Addl. Central P.F. Commissioner (Exemption)

(Priority Matrix)

For Category A: Immediate actions to be taken for cancellation of exemption by issuance of a Show Cause Notice.

For Category B: Establishment may be directed to rectify the deficiency. If the same is not met, cancellation process to be initiated. If violation is being done on 2 consecutive occasions without rectification, then cancellation process to be initiated.

For Category C: Establishment may be advised to be vigilant in the matter in future. If violation is being done on 3 consecutive occasions without rectification, then cancellation process to be initiated.

| Sl. No. | Conditions | Category | Source Document and Frequency |
|---------|---|----------|---|
| 1. | The establishment has reported a loss for the three consecutive financial years or erosion in their capital base. (Condition 25) | A | Compliance audit; Annual |
| 2. | Losses occurred to the P.F. Trust have not been recouped by the employer/establishment. (Condition 28) | A | Compliance audit; Annual |
| 3. | Default in payment of P.F. & allied dues. (Condition 05) | A | Online ranking; Monthly |
| 4. | Evasion in membership of all category of employees as defined in Section 2(f). (Condition 03) | A | Compliance audit; Annual |
| 5. | (a) The Trust has not ensured audit of the accounts of the Provident Fund (b) The audited balance sheet is not submitted to the RPFC by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. or (c) Same auditors have been appointed for two consecutive years and more than two years in a block of six years. (Condition 24) | B | Annual responsibility to submit on Establishment, Annual |

| | | | |
|-----|---|----------|--|
| 6. | Legal status of the establishment has changed due to merger, demerger, acquisition, sale amalgamation, formation of a subsidiary, whether wholly owned or not, etc., (Condition 29) | A | Compliance Audit, Annual. In addition, If RPFC is intimated about the same. |
| 7. | The securities are not obtained in the name of Trust or DEMAT account has NOT been opened in the name of the Trust for transacting in securities. (Condition 18) | A | Compliance audit, Annual |
| 8. | The establishment failed to file online monthly returns for consecutive 03 months | A | Online returns, Monthly |
| 9. | The establishment failed to score a minimum of 300 marks out of 600 for consecutive 03 months. | A | Online ranking, Monthly |
| 10. | The Board of Trustees failed to file not follow the investment pattern as per the directions of the government from time to time for three consecutive years. | A | Compliance Audit, Annual |
| 11. | The employer failed to file bear all the expenses of the administration of the Provident Fund and also did not make good the loss caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason. | A | Compliance Audit, Annual |
| 12. | Board of Trustees is not established by employer or is not in accordance with as per the existing guidelines. | A | Compliance Audit, Annual |
| 13. | The employer has not made good the deficiency in the interest declared by the Board of Trustees to bring it up to the statutory limit. | A | Compliance Audit, Annual |
| 14. | The rate of contribution payable, the conditions and quantum of advances and other matters is lower than those declared by the Central Government. | A | Compliance Audit, Annual |
| 15. | The Trust rules have not been amended as per the amendment in the Scheme which is more beneficial to the employees. | B | Compliance Audit, Annual |

| | | | |
|-----|---|---|---|
| 16. | The Trues Rules have been amended without prior approval of the RPFC. | A | Compliance Audit, Annual |
| 17. | All claims for withdrawals, advance and transfer are not settled within the maximum time frame as prescribed by the EPFO. | A | Compliance Audit, Annual |
| 18. | The exempted establishment failed to intimate the RPFC regarding the details of depository participants (approved by the Reserve Bank of India and Central Government), with whom and in whose safe custody, the investments made in the name of Trust, viz., Investments made in securities, bonds, etc. have been lodged. Further, the Board of Trustees kept high amount of money for meeting obligatory expenses. | A | Compliance Audit, Annual |
| 19. | The Board of Trustees has failed to hold a meeting at least once in every three months. | B | Responsibility of the BoT to send MoM to RPFC every 3 months. , Quarterly |
| 20. | Previous accumulation of the Employee is not transferred and credited to his account. | B | Compliance Audit, Annual |
| 21. | The Board of Trustees failed to maintain the detailed accounts showing the contribution credited, withdrawal and interest in respect of each employee. | B | Compliance Audit, Annual |
| 22. | The Board of Trustees and the employer failed to file monthly/annually returns. | B | Online returns, Monthly/Annual |
| 23. | Default committed by any of the Trustees/employer of any of the participating units. | B | Compliance Audit, Annual |
| 24. | The employer failed to pay inspection charges as prescribed by the Central Government from time to time within 15 days from the close of every month. | B | ECR filing, monthly, compliance action to be taken by the RPFC. |

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|-----|--|---|--------------------------|
| 25. | The employer or the Board of Trustees have not submitted written undertaking to abide by the conditions of grant of exemption. | C | Compliance Audit, Annual |
| 26. | All such investments made, like purchase of securities and bonds, is not lodged in the safe custody of depository participants. | B | Compliance Audit, Annual |
| 27. | The Trust has not credited the commission, incentive, bonus, or other pecuniary rewards to the account of BOT. | B | Compliance Audit, Annual |
| 28. | The employer and the members of the Board of Trustees, at the time of grant of exemption, has not furnished a written undertaking to the RPFC in such format as may be prescribed from time to time, inter alia, agreeing to abide by the conditions which are specified and this shall be legally binding on the employer and Board of Trustees, including their successors and assignees, or such conditions as may be specified latter for continuation of exemption. | C | Compliance Audit, Annual |
| 29. | The employer did not display the copy of the approved Trust rules on the notice board of the establishment along with a translation in the language of the majority of employees. | C | Compliance Audit, Annual |
| 30. | The Board of Trustees did not issue annual statement of accounts or passbooks to every employee within six months of the close of financial/accounting year free of cost once in the year. | C | Compliance Audit, Annual |
| 31. | The employer did not make necessary provisions to enable all the members to be able to see their account balance from the computer terminals. | C | Compliance Audit, Annual |

Consolidated report in respect of cancellations by Regional Office to Zonal Office by 5th of every month:

| Number of proposals in Pipeline(Opening Balance) (A) | Number of proposals forwarded to Zonal Office during the month (B) | Number of Proposals remanded back by Zonal office (C) | Closing Balance (A-B+C) |
|--|--|---|-------------------------|
| | | | |

Consolidated report in respect of cancellations by Zonal Office to Head Office by 10th of every month:

| Number of proposals in Pipeline(Opening Balance) (A) | Number of proposals forwarded to Head Office during the month (B) | Number of Proposals remanded back by Head office (C) | Closing Balance (A-B+C)# |
|--|---|--|--------------------------|
| | | | |

Notice of Withdrawal of Exemption

(Under Condition no. 25; of Appendix “A” of Para 27AA of the Scheme)

Whereas M/s. _____ bearing code no. _____ was notified under Section 17(1)/17(2) of the EPF & MP Act, 1952/ vide notification no. _____ dated _____.

Whereas from a perusal of the Annual Report of the establishment for the financial year ____ to ____ it is evident that the establishment has suffered losses for 3 consecutive years/suffered an erosion in its capital base.

Whereas the Condition no.25 of the Conditions of Exemption (Appendix “A” of Para 27AA of the EPF Scheme, 1952) reads as follows

“A company reporting loss for three consecutive financial years or erosion in their capital base shall have their exemption withdrawn from the first day of the next/succeeding financial year”.

In view of the aforementioned clause, it is proposed to withdraw the exemption granted to your establishment w.e.f. 01/04. ____ . It is to be noted that subsequent to the withdrawal of exemption the provisions delineated in Para 28 of the Scheme shall become applicable to your establishment. Consequently, any delay in transferring the Past Accumulations of your employees to the Fund under EPFO beyond the permissible time limit shall have its legal consequences delineated under Section 7A, Section 7Q, Section 8, Section 14B and Section 14(2A) of the Act without any further notice.

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Name of the RPF-C-I

To:

1. The Employer
2. The Board of Trustees

Notice to the Depository Participants of the Exempted Trusts
(Under Condition no. 19, of Appendix "A" of Para 27AA of the Scheme)

Whereas M/s. _____ bearing code no. _____ was notified under Section 17(1)/17(2) of the EPF & MP Act, 1952/ 1952 vide notification no. _____ dated _____.

Whereas information has been laid before me that M/s. _____ is the depository participant of the Exempted Establishment and its Trust namely _____.

Whereas information has been laid before me that the establishment is

| Sl.no. | Issue/*Details | Yes/No |
|--------|--|--------|
| 1. | Closed w.e.f. _____ | |
| 2. | Referred to NCLT w.e.f. _____ under IBC provisions | |
| 3. | Under Liquidation w.e.f. _____ | |
| 4. | Cancellation | |

*Details

Now, therefore, in terms of the Condition no. 19 of Appendix- "A" of Para 27AA you are hereby called upon to transfer the investments lying with you in the name of _____ to CBT, EPFO immediately. The said Condition No. 19 is as follows

"All such investments made, like the purchase of securities and bonds should be lodged in the safe custody of depository participants, approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of the establishment or liquidation or cancellation of exemption from EPF Scheme, 1952, such custodian shall transfer the investment obtained in the name of the trust and standing in its credit to the RPFC concerned directly on receipt of request from the RPFC concerned to that effect".

For securities transferred, the details of the securities may be furnished in the following format:

| Sl. No. | Name and Code No. of the Establishment | Description/ Name of Security | Face Value/ Price at which they were purchased as per para 28(2) of Scheme | Date of Transfer |
|---------|--|-------------------------------|--|------------------|
| | | | | |

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Name of the RPFC-I

To:

1. The Employer
2. The Board of Trustees

Circulars related to SOP of Cancellation (Annexure-1)

| Sl No. | Circular No | Dated | Circular Subject | Para No. of Circular | Para No. of SOP where Circular Para is referenced | whether SOP same, modified or deleted | Justification for Modification | Any reference of Act(Section) | Any reference of Scheme(Para) | Any reference of MAP |
|--------|---|------------|--|----------------------|---|---------------------------------------|---|-------------------------------|-------------------------------|----------------------|
| 1 | Coord/11(24)B2:D24/5/ Admin Inst/20 | 15-06-2005 | Cancellation of exemption granted under Section 17(1)(a) of the Act-W.P. No. 1874 of | 1 | NA | Del | Meaningless | | | |
| | | | | 2 | 5.b).iii | Modified | Intpretation of High Court order to identify action of clarifying that RC-1 can issue preliminary SCN for cancellation. However the same was reverted | | | |
| | | | | 3 | NA | Del | Meaningless | | | |
| | | | | 4 | 1(v),9 | same | NA | section 17(4) , 2(a) | | |
| | | | | 5 | NA | Del | No substantaive point | | | |
| 2 | C- II/Misc./02/06/Exem./EZ /Vol.I/69874 | 26/12/2008 | Violation of the revised conditions for grant of exemption - Compulsory follow up action required. | 1 | 7(xii) | Same | | SECTION 17(1A),17(3),17(4) | 27AA | |
| | | | | 2 | 7(xii) | same | | SECTION 17(1A),17(3),17(4) | 27AA | |
| | | | | 3 | 7(xii) | same | | SECTION 17(1A),17(3),17(4) | 27AA | |
| | | | | 4 | 7(xii) | same | | SECTION 17(1A),17(3),17(4) | 27AA | |
| | | | | 5 | 7(xii) | Same | | SECTION 17(1A),17(3),17(4) | 27AA | |
| | | | | 6 | 7(xii) | same | | SECTION 17(1A),17(3),17(4) | 27AA | |
| 3 | Exem. /6(20)08/DL/NZ/Vol.I/30 327-477 | 30/07/2009 | Procedure for the cancellation of exemption | 1 | 7(A)(xii) | Same | | | | |
| | | | | 2(i) | 7(A)(xii) | Same | | | | |
| | | | | 2(ii) | 7(A)(xii) | Same | | | | |
| | | | | 2(iii) | 7(A)(xii) | Same | | | | |
| | | | | 3(i) | 7(A)(xii) | Same | | | | |
| | | | | 3(ii) | 7(A)(xii) | Same | | | | |
| | | | | 4 | NA | Del | Refernce of previous circular, No substantaive point | | | |

| | | | | | | | | | | |
|---|---|------------|--|-----|----------------|----------|---|--------------------------|---|--|
| 4 | C-Ex/E-III/16(45)99/WB/CE/EZ/82943-83172 | 01-02-2010 | Cancellation of exemption - Transfer of past accumulations - Regarding. | 1 | 7(C)(v to vii) | same | | 17(5),14(2A) | 28 | |
| | | | | 2 | 7(C)(v to vii) | same | | 17(5),14(2A) | 28, Condition 19 of Appendix-A to Para-27AA | |
| | | | | 3 | 7(C)(v to vii) | same | | 17(5),14(2A) | 28, Condition 19 of Appendix-A to Para-27AA | |
| 5 | E-III/Misc./14/Exem/Third Party /2862Compliance Audit | 30-04-2014 | Re-Auditing of the accounts of Provident Fund maintained by Board of Trustees of Exempted and Relaxed establishments by any other qualified -- Auditor by RPFC | All | 7(A)(viii) (f) | Same | Format of third party audit | | 24(a) of 27AA | |
| 6 | 32(6)13/Cancellation Order/39344 | 23/02/2015 | Procedure for Cancellation of Exemption – regarding | 1 | NA | Del | No substantaive point | 17(1)(a) , 17(2) , 17(4) | | |
| | | | | 2 | NA | Del | Reference to previous circular | | | |
| | | | | 3 | 8(iv) | Modified | without third party under exceptional circumstances | 17(4) | 25 | |
| | | | | 4 | 8(iv) | Modified | without third party under exceptional circumstances | | 25 | |
| | | | | 5 | 8(iv) | Modified | without third party under exceptional circumstances | | 25 | |
| | | | | 6 | 8(iv) | Modified | without third party under exceptional circumstances | | 25 | |
| 7 | C-Ex/32(1)/15/BR/SRO/MUZ/CE/EZ/10249 | 05-09-2016 | Verification of closed exempted/Relaxed establishments | 1 | 8(ii),(iii) | same | | 17(5) | Condition 19 of Appendix-A to Para-27AA | |
| | | | | 2 | 8(ii),(iii) | same | | 17(5) | Condition 19 of Appendix-A to Para-27AA | |
| | | | | 3 | 8(ii),(iii) | same | | 17(5) | Condition 19 of Appendix-A to Para-27AA | |

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|----|--|------------|---|---|-----------------|----------|--|-------|---|--|
| 8 | C- II/Misc./02/06/Ex/EZ/Vol .I/15146 | 12-09-2016 | Transfer of PA on cancellation of Exemption | 1 | 7(C) (v to vii) | same | | 17(5) | 28 | |
| | | | | 2 | 7(C) (v to vii) | same | | | | |
| | | | | 3 | 7(C) (v to vii) | same | | | | |
| 9 | Exem/10(18)/2016/Closed Estt/16264 | 21-12-2016 | Verification of closed exempted/Relaxed establishments | 1 | 8(ii),(iii) | Same | | 17(5) | 28, Condition 19 of Appendix-A to Para-27AA | |
| | | | | 2 | 8(ii),(iii) | Same | | 17(5) | 28, Condition 19 of Appendix-A to Para-27AA | |
| | | | | 3 | 8(ii),(iii) | Same | | | | |
| | | | | 4 | 8(ii),(iii) | Same | | | | |
| 10 | Exem/10(20) /2016/Vo.III/144 | 09/10/2017 | Procedure to issue show cause notice to the EPF establishments and their Trusts - regarding | 1 | 5.b,.iii | Same | | 17(4) | | |
| | | | | 2 | 7(A) (iv),14(g) | Same | | 17(4) | | |
| 11 | C-Misc./Ex - Return/2013/Vol-II/909- 910 | 09-04-2018 | Performance Evaluation cum Ranking System for actions against Exempted Establishments securing 300 or lesser points - Regarding | 1 | NA | Del | General information | | | |
| | | | | 2 | NA | Del | General information | | | |
| | | | | 3 | NA | Del | General information | | | |
| | | | | 4 | 10. (4) | Modified | Compliance audit to be conducted Within 15 days if not already conducted for respective financial year | | | |
| | | | | 5 | 14 (b) | Same | | 17(4) | | |