

## THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

Section 17: Power to exempt - (1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification exempt, whether prospectively or retrospectively, from the operation of all or any of the provisions of any Scheme -

(a) any establishment to which this Act applies, if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character; or

(b) any establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character.

Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme.

(1A). Where an exemption has been granted to an establishment under clause (a) of sub-section 1,

(a) the provisions of sections 6, 7A, 8 and 14B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provision or conditions or any other provision of this Act, he shall be punishable under section 14 as if the said establishment had not been exempted under the said clause a;

(b) the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;

(c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme:

(d) The Board of Trustees constituted under clause b shall –

(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

(ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;

(iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;

- (iv) transfer, where necessary, the provident fund account of any employee; and
- (v) perform such other duties as may be specified in the Scheme.

(IB) Where the Board of Trustees established under clause (b) of sub-section (1A) contravenes, or makes default in complying with, any provisions of clause (d) of that sub-section, the Trustees of the said Board shall be deemed to have committed an offence under sub-section (2A) of section 14 and shall be punishable with the penalties provided in that sub-section.

(IC) The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or propose to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.

(2) Any Scheme may make provision for exemption of any person or class of persons employed in any establishment to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits, separately or jointly, are on the whole not less favourable than the benefits provided under this Act or the Scheme:

Provided that no such exemption shall be granted in respect of a class of persons unless the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

(2A) The Central Provident Fund Commissioner may, if requested so to do by the employer, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, any establishment from the operation of all or any of the provisions of the Insurance Scheme, if he is satisfied that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether linked to their deposits in provident fund or not, and such benefits are more favourable to such employees than the benefits admissible under the Insurance Scheme.

(2B) Without prejudice to the provisions of sub-section 2A, the Insurance Scheme may provide for the exemption of any person or class of persons employed in any establishment and covered by that scheme from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favourable than the benefits provided under the Insurance Scheme.

(3) Where in respect of any person or class of persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any Scheme whether such exemption has been granted to the establishment wherein such person or class of persons is employed, or to the person or class of persons as such, the employer in relation to such establishment -

(a) shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges, as the Central Government may direct.

(b) shall not, at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons was entitled at the time of exemption; and

(c) shall, where any such person leaves his employment and obtains re-employment in another establishment to which this Act applies, transfer within such time as may be specified in this behalf by the Central Government, the amount of accumulations to the credit of that person in the provident fund of the establishment left by him to the credit of that person's account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the Fund established under the Scheme applicable to the establishment.

(3A) Where, in respect of any person or class of persons employed in any establishment, an exemption is granted under sub-section (2A) or sub-section (2B) or from the operation of all or any of the provisions of the Insurance Scheme whether such exemption is granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such, the employer in relation to such establishment –

(a) shall, in relation to the benefits in the nature of life insurance, to which any such person or class of persons is entitled, or any insurance fund, maintain such accounts, submit such returns, make such investments, provide for such facilities for inspection and pay such inspection charges, as the Central Government may direct;

(b) shall not, at any time after the exemption without the leave of the Central Government, reduce the total quantum of benefits in the nature of life insurance to which any such person or class of persons was entitled immediately before the date of the exemption.

(c) \*\*\*

(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 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.

(5) Where any exemption granted under sub-section 1, sub-section 1C, sub-section 2, sub-section 2A or sub-section 2B is cancelled, the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident fund, the Pension Fund or the Insurance Fund of the establishment in which he is employed together with any amount forfeited from the employer's share of contribution to the credit of the employee who leaves the employment before the completion of the full period of service shall be transferred within such time and in such manner as may be specified in the Scheme or the Pension Scheme or the Insurance Scheme to the credit of his account in the Fund or the Pension Fund or the Insurance Fund, as the case may be.

(6) Subject to the provisions of sub-section 1C, the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the Pension Scheme apply, shall, notwithstanding any exemption granted under sub-section 1 or sub-section 2, pay to the Pension Fund such portion of the employer's contribution to its provident fund within such time and in such manner as may be specified in the Pension Scheme.

17A. Transfer of accounts – (1) Where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the fund, or as the case may be, in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

(2) Where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

17AA. Act to have effect notwithstanding anything contained in Act 31 of 1956 - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Life Insurance Corporation Act, 1956 (31 of 1956).

17B. Liability in case of transfer of establishment - Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme as the case may be, in respect of the period upto the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

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