

Circular No – 061/2024

Date: 16.10.2024

To
All Members of The Association

**UTILIZATION OF RESERVES AND SURPLUS IN THE EXEMPTED
PROVIDENT FUND TRUST**

1. The Provident Fund Organization Head Office vide their internal circular no. C-Ex-Misc./Comp./Audit/2009/43789 dated 20.10.2010 had clarified that the reserves and surplus funds available with the exempted trust may be utilized for extending the benefits to the members in the form of enhanced interest payment.
2. The Provident Fund Organization head office have re-examined the issue of utilization of the reserves and surplus in the account of exempted Provident Fund Trust for payment of interest particularly at the time of surrender of the Trust. After examining the issue and its legal ramification EPFO have observed as under;
 - An inflated surplus in the Balance Sheet of the Trust is indicative of non-distribution of earnings of previous years amongst the incumbent beneficiaries proportionately. An obvious corollary to this is that the higher earnings in previous years should have been distributed as higher interest for the beneficiaries.

- Interest is to be credited in the beneficiary accounts on monthly running balance basis with effect from the last day in each year; thus no interest is allowed to be credited for the broken periods of a year.
 - The rate of interest allowed to the beneficiaries of the Exempted Trusts in any particular should be commensurate with the earnings of the Fund.
 - Over drawl of reserves and surplus is not permitted at any point of time.
3. Based on the above observations, the EPFO have revised their instructions and clarified that the reserves and surplus available in the account of exempted provident fund trust should not be utilized for payment of interest to the members and any surplus funds available with the trust should be remitted to Central Board of Trustees EPFO on cancellation of exemption or surrender of exemption in line with the explanation as contained in paragraph 28(2) of the EPF Scheme. Para 28 of the EPF Scheme contains the provisions relating to transfer of accumulation from the exempted Provident Fund Trust to the EPFO. Para 28(2) provides that all accumulation standing to the credit of the subscribers, howsoever invested shall be transferred to the fund by the Authority in cash.
4. The instructions as contained in the following two circulars stand withdrawn:





- No.c-Ex/misc/comp.Audit/2009/43798 dated 20.10.2010
- No.c-Ex/misc/comp.Audit/2009/104919 dated 17.03.2011

Copy of the internal circular no. E.III/10(122)/2024/Circular/Exemption 85435 dated 07.10.2024.

For KARNATAKA EMPLOYERS' ASSOCIATION

Sd/

[B C Prabhakar]

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No E.III/10(122)/2024/Circular/Exemption/

535

Dated: 07 OCT 2024

To,

All Addl. Central Provident Fund Commissioner's(Zones)
All Regional Provident Fund Commissioner's/Officer-in-charge(Regions)

Subject: Regarding utilization of Reserves and Surplus for crediting interests to the existing Trust beneficiaries - regarding

Sir/Madam,

With reference to the aforementioned subject, instances have come to the notice of H.O wherein Exempted establishments have sought permission from Regional Offices to appropriate the balance lying in the Trusts Reserves and surplus by crediting interests to the existing Trust beneficiaries at a much higher rate than that declared by EPFO for its members. Such actions by the Exempted establishments have been proposed either during the time of Surrender of exemption or undertaken just prior to the initiation of surrender process.

The issue and its legal ramifications has been given a thoughtful consideration and the following maxims emerge out it.

- i. An inflated surplus in the Balance Sheet of the Trust is indicative of non distribution of earnings of previous years amongst the incumbent beneficiaries proportionately. An obvious corollary to this is that the higher earnings in previous years should have been distributed as higher interest for the beneficiaries.
- ii. Interest is to be credited in the beneficiary accounts on monthly running balance basis with effect from the last day in each year; thus no interest is allowed to be credited for the broken periods of a year.
- iii. The rate of interest allowed to the beneficiaries of the Exempted Trusts in any particular should be commensurate with the earnings of the Fund.

- iv. Overdrawal of reserves and surplus is not permitted at any point of time.

A perusal of the aforementioned legal maxims is enough to bring out the manifest illegality inherent in any such actions undertaken by the Exempted establishments. It is also apparent that such accumulations in the reserve fund have come up in course of time by utilizing the accretions from several past and present beneficiaries in contravention of Para 60 of the Scheme and any sanction allowing them to distribute it amongst the incumbent beneficiaries would amount to sanctioning an unjust enrichment of a few at the expense of others while being also supportive of a violation by the Trustees of Section 17 of the Indian Trusts Act which enjoins them to act impartially. Thus for the said reasons such requests from exempted establishments can't be acceded to and any instance of such action shall be brought to light during the compliance audit exercise, as delineated in Para 6.B (V) of the SOP on Regulation and Management of Exempted establishments. It is also, imperative that the total accumulations of the Trust Fund including the balance of undistributed interest on investment is transferred to the CBT, EPFO upon cancellation of Exemption or surrender of exemption, in line with the explanation to Para 28(2) of the Scheme.

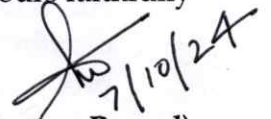
The aforementioned instructions are in supersession of all existing circulars on the issue and more specifically the following two circulars which are hereby withdrawn with immediate effect.

- i. No.c-Ex/misc/comp.Audit/2009/43789 dated 20.10.2010.
- ii. No.c-Ex/misc/comp.Audit/2009/104919 dated 17.03.2011.

All Z.O's and R.O's are to take note and regulate such cases accordingly. Further the aforesaid instructions should be brought to the notice of all exempted establishments under their jurisdiction by a communication from the Zonal Offices.

(This issues with the approval of ACC(HQ) Exemption)

Yours faithfully



(Saurabh Suman Prasad)
R. P.F.C-I (Exemption;V-I)