

Applicability of Provident Fund to NPOs

The Constitution of India under "Directive Principles of State Policy" provides that the State shall within the limits of its economic capacity make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness & disablement.

Accordingly, The Employees' Provident Fund & Miscellaneous Provisions Act, 1952 was enacted by Parliament and came into force with effect from 14th March, 1952. Presently, the following three schemes are in operation under the Act:

1. Employees' Provident Fund Scheme, 1952
2. Employees' Deposit Linked Insurance Scheme, 1976
3. Employees' Pension Scheme, 1995 (replacing the Employees' Family Pension Scheme, 1971)

Through this article on Provident fund we would like to address few key issues:

Applicability of Employees' Provident Fund and Miscellaneous Provisions Act 1952 to an organisation:

The Employees' Provident Fund and Miscellaneous Provisions Act 1952 is applicable to every organisation which is employing 20 or more persons . Also the organization to which this Act once applies shall continue to be governed by this Act, even if the number of employees falls below 20 at a later date.

Voluntary Coverage: If any of the establishment is not satisfying the above conditions of employing 20 or more persons, still it can voluntarily get covered under the Act, if the employer and majority of the employees are willing.

But the Act does not apply to those co-operative societies which satisfy both the following conditions:

- a) Employ less than 50 persons and
- b) Work without the aid of power

Meaning of the word 'Employee' under the Employees' Provident Fund Scheme, 1952

"Employee" means any person who is employed for wages in any kind of work, manual or otherwise, or in connection with the work of an organization and who gets his wages directly or indirectly from the employer, and includes any person who is employed by or through a contractor in or in connection with the work of the organization.

Therefore keeping in view the above, all the employees who fall under the above definition, irrespective of the salary amount they are getting are to be considered for arriving at the above mentioned number of 20.

It is important to note that the dominant factor in the definition of 'employee' is that a person should be employed in the work of the establishment on a regular basis. It means the employees should have been employed regularly in or in connection with the work of an establishment. A person who is employed for a day or two or for certain period but not in connection with the regular work of the organization will not get the benefit of the provident fund scheme.

However the temporary workers are not to be counted in the number of persons according to the Supreme Court Judgment in the case of RPFCA, AP vs T.S.Hariharan. The employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the programme activities of the organisation would not be covered by the definition of "employees".

Therefore the duration of employment is not material but it is the nature of employment which is material in order to attract the provisions of the Act. Even part time employees (Short period) will fall within the ambit of EPF Act provided it is in connection with the regular work of the organisation.

The definition of "employee" in the Act is wide enough to include not only persons employed directly by the employer but also through a contractor.

An employee is eligible for membership of the funds under the schemes from the day he joins the covered organisation. But in case, the employee's emoluments exceed Rs. 6,500/- per month, he has the option to join the Scheme(s) with the consent of employer. Here, the emoluments mean basic wages, dearness allowance, cash value of food concession and retaining allowances if any.

The Registration of the organisation under the Act :If an organisation finds that the Employees' Provident Fund and Miscellaneous Provisions Act 1952 is applicable to it, then it can fill-in the attached proforma for registration. The duly filled-in proforma alongwith one or more of the documents mentioned in the proforma can be submitted to the respective provident fund offices for getting the registration.

(.....to be continued)
- Rahul Khanna, FMSF