AccountAble

Provident Fund | Issue 32 for Feb '97 (Revised: June 2001)

Providing for the ups and downs of life

As NGOs grow larger and more formally organized, questions such as minimum wages, provident fund, gratuity start coming up.

What are the legal requirements and pitfalls in these matters? We start with Provident Fund.

What is Provident Fund

The word *Provident* is closely related to the word *Prudent.* Both have been in use since the 14th - 15th century. Both can be traced back to the Latin word *Providere*. The Latin *Providere* originally meant *foresee.* Later on, it was used to mean *exercise foresight by making preparations.* 'Provident Fund' thus means: *saving some funds for the future*.

Provident Fund has been compulsory for most organizations in India since 1952. It was meant as a social security measure for workers in the organized sector. It is also available on optional basis to other organizations and individuals. As on 31st Dec'2000 the PF scheme covers more than 2.45 crore employees in over 3.26 lacs establishments. The corpus of the PF Trust is about Rs.54,200 crores. It is controlled by the 50 Trustees who form the Central Board of Trustees. Most of the investments are in Government bonds and securities.

Obviously, the Provident Fund pie has become very large and very sweet — everyone wants a piece. Proposals to release this money into private investments and other similar bright ideas have been floating around for some time now. In the present scam-age, it is difficult to say how long this money will remain safe.

Does it apply to you?

PF Act applies only to organizations (including NGOs) which have more than 19 employees. Also they should be producing some specific items. Or they should be involved in some specified activity. Some of these (relevant for NGOs) are given in the list.

Some of the covered items / activity

1. *Paper, stationery*
2. *Printing (including screen printing)*
3. *Herbal / Ayurvedic medicines*
4. *Cane, bamboo, coir or leather items*
5. *Canned items (sauce, pickles etc.)*
6. *Hospitals*
7. *Textile, garment factories*
8. *Credit-based NGOs (NBFCs)*
9. *Schools / NFE centers etc.*

Who are employees

Employees include teachers in NFE schools also. All schools run by an NGO would be taken together.

It does not matter whether payment to employees is made as salary or as honorarium. Part-time or temporary employees also have to be counted. Casual labor need not be counted as employees.

Exemption for

- Cooperative Societies, with less than 50 employees. They should not be using power to run the machines;
- NGOs which run mainly on Government Grants
- New organizations — for the first three years.

Inside...

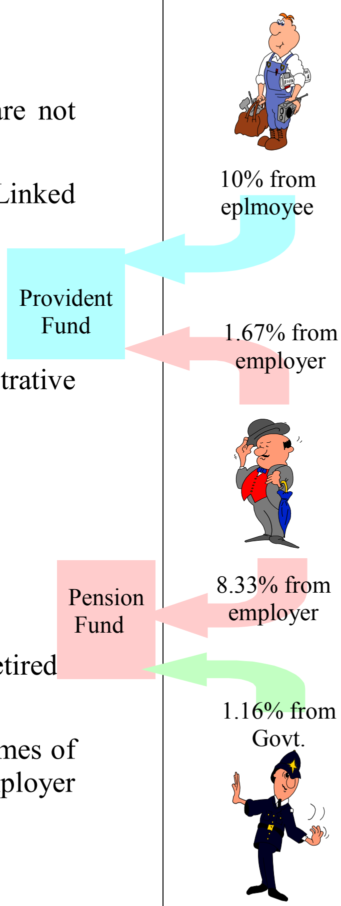
Deductions & Deposits

Monthly Deductions

Once PF becomes applicable, you have to deposit some amount each month. This amount comes both from employee and the employer (NGO).

- 10% of employee's monthly salary is deducted.
- Additional 1.67% is contributed by the employer (NGO).
- The NGO also has to deposit 8.33% for the Pension Fund.
- For certain cases the employee's and employer's contribution is as much as 12%.
- Calculate contribution on the basis of actual salary drawn during a month. Salary means basic wages, dearness allowance (including food concession allowed) and retaining allowance (if any);
- Round it off to the nearest rupee.
- Generally, employees drawing monthly salary of Rs.6,500 or more are not covered under this EPF scheme.

The NGO also has to deposit additional amounts as 'Employee's Deposit Linked Insurance' and as 'administrative charges'.



Depositing the amount

After deducting the PF amount, you have to deposit it within 15 days:

- Prepare separate cheques or bank drafts for contribution and administrative charges. Pension Fund amount should also be paid by separate cheque.
- Cheque / draft should be in the name of P.F. Commissioner.
- Use separate PF challans for depositing each type of contribution.
- Deposit the cheques in State Bank of India or Reserve Bank of India.

Filing Returns

PF involves a lot of paperwork. Some organizations tie up with a retired employee from PF Department to complete this. Some of the forms are:

1.**Monthly Return** of contributions should be filed in **Form # 6**. Give names of members, their P. F. account number and contributions made both by employer and employee.

2.**Annual Return** of contributions should be filed in **Form # 6-A**.

3.**Renewal** of contribution card of members should be done in **Form # 3.**

4.If an **employee leaves** inform the PF Department in **Form # 3-A.**

5.**Form # 2** should be filled by the members for **nomination**.

6.When a **new employee** joins, file **Form # 5.**

Penalties

Some of the penalties for violating PF Act are:

Offense	Prison	Fine
Not depositing employee's contribution	One year - three years	Rs.10,000
Not paying inspection fees or administration charges	Six months - three years	Rs.5,000
False statement to avoid PF payments	Up to one year	Rs.5,000

Getting Your Money Back

Getting your money back from the PF commissioner can be a problem. There are various forms, procedures, and conditions. Broadly, money can be withdrawn in following ways:

- By applying for a loan or advance
- By paying LIC premiums through PF Department
- By leaving India permanently
- By getting retrenched
- By retiring from service
- By dying...

Advances

Advances may be refundable or non-refundable. These can be taken only for listed purposes. There are many conditions attached to each of these (para 62-72 of the EPF Scheme). The advance can be taken by filing Form # 31 with the Regional P. F. Commissioner. Various certificates / documents are also required, depending on the purpose.

Advance is allowed for

1. *Purchase of a plot / Flat*
2. *Construction of House*
3. *Additions, alteration or improvement to own house*
4. *Repayment of Housing Loan to Government bodies*
5. *Closure / lock-out*
6. *Non receipt of wages for two months*
7. *Illness of self / Family*
8. *Marriage of self / son / daughter / sister / brother*
9. *Post-matric education of son / daughter*
10. *Damage to the property due to natural calamity*
11. *Loss of wages due to power-cut*
12. *Equipment for physically handicapped members*

The Pension Scream...

In 1995, the Government introduced a revised Pension Scheme. Under the scheme, the following happens:

- Most of the employer's PF contribution (8.33% out of 10%) will now go to the Pension Fund.
- The Government will contribute additional 1.16% to the fund.
- The employee will get a monthly pension on retirement. On the employee's death, the spouse or children will also get a somewhat reduced pension.
- The employee can commute up to one-third of the pension. The employee can also choose to get the capital amount refunded after death.

The scheme was not appreciated by the Unions and employees. The matter has gone to court. A lot has been written about the rate of return, choice to withdraw and the way employees are being 'short-changed' by the Government.

One key feature of the scheme has not been talked about much. The employer's contribution was earlier going into the Provident Fund. The accumulated balance in Provident fund is withdrawable.

Now most of the employer's contribution will go into the Pension Fund. For all practical purposes, *the balance in Pension Fund is not withdrawable*.

Thus with one stroke, the Government has indefinitely postponed the refund of half the PF balances. The amount coming into the Pension Fund can now happily be used to finance the Government's debts!

Your own PF Trust

Many people do not feel happy with the way the PF Department is run. Larger organizations sometimes set up their own PF Trust. This helps in speedy settlement of claims for the employee. This is also more beneficial in the sense that the trust is run by your own colleagues. However, it also involves a lot of paperwork.

Registration

To set up your own Trust, you should have at least 100 employees. Then you have to apply to the Regional P. F. Commissioner for permission. The Commissioner may grant you permission if :

- there are more than 99 employees in your organization;
- the rate of contributions provided in the Trust is at least equal to the PF Act rates;
- employees will get at least as much benefit as under the PF Act;
- the benefits will be mainly provident fund, pension or gratuity.

You will also need to get the PF Trust approved under the Income Tax Act. Both these procedures can be time-consuming, lengthy and tiring. NGOs with weak hearts should consult their doctors before setting up a PF Trust.

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Running the Trust

Setting up the Trust is only the beginning of your problems:

- Provisions of the Act remain applicable to the trust;
- The PF Department may lay down additional conditions;
- You have to establish a Board of Trustees for the provident fund;
- Terms and conditions of service of members of the Board of Trustees should be clear;
- Detailed accounts for each employee's Provident Fund should be kept;
- Various returns, including Income & Expenditure Account and Balance Sheet have to be filed regularly;
- Trust accounts have to be audited each year;
- Provident Fund moneys can be invested only according to Government rules;
- Administration expenses of the Trust have to be borne by the NGO.

References:

- *Employees' Provident Funds and Miscellaneous Provisions Act, 1952*; Edition 1997; Author R.R. De; Pub.: Kamla Law House, 8/2 K.S. Roy Road, Calcutta 700 001; Ph.: 2101558, 2208941; Rs.500
- *Industrial Law*: 17th Edition 1996; Author P.L. Malik; Pub.: Eastern book Company, 34, Lalbagh, Lucknow - 226 001; Ph.: 226517, 223171; Fax: 224328; Rs.640
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Your views, comments and questions on this circular are welcome. Please send these to:

AccountAid India,
55-B, Pocket C,
Siddharth Extension,
New Delhi -110 014

Ph: 011-2634 3128

Ph./Fax: 011-2634 6041

e-mail: accountaid@vsnl.com