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Mr. J.B. Mohapatra, I.R.S.  
Chairman  
Central Board of Direct Taxes  
Ministry of Finance  
Government of India  
North Block  
New Delhi – 110 001

Sir,

**Request for Instructions/Guidelines - TDS is not applicable on Taxable Accrued interest towards Employees annual PF contribution above 2.50 lacs w.e.f. F.Y. 2021-22**

**Amendment made vide Finance Act 2021 (PF Interest Employees Contribution)**

Section 10(12) of the Income Tax Act, 1961 ('the Act') provides for exemption to the accumulated balance due and becoming payable to an employee participating in a recognised Provident Fund ('PF') to the extent prescribed in rule 8 of Part A of the Fourth Schedule of the Act.

The Finance Act 2021 introduced an amendment by way of inserting proviso to the said section 10(12) of the Act whereby interest accrued on an employee's annual contribution in the PF account exceeding Rs. 2.50 lacs (Rs. 5.00 lacs if there is no employer contribution) is taxable in the hands of the employee w.e.f. financial year ('FY') 2021-22 onwards.

Pursuant to the said amendment, Rule 9D was introduced in the Income Tax Rules which prescribes maintenance of separate account within PF Account from FY 2021-22 onwards for taxable contributions and non-taxable contributions made by the employee.

**Issues/Concerns - Withholding/TDS Obligation**

While such accrued interest income has been made taxable in the hands of the employee, however there is an ambiguity with respect to (a) Tax Deduction at Source ('TDS') obligation/applicability on the said taxable interest income accrued and credited to PF Account of the employee and (b) timing of taxability of such interest in the hands of the employee.

Such Interest, being interest on employees own money/contribution, can be taxed only as "Income from other sources" (and not as "Income from Salary") being not in the nature of Salary/Perquisites defined in Section 17 of the Act. Hence, as per the CBDT Circular No. 04/2022 dated 15-03-2022 issued on "TDS from Salaries u/s 192 of the Act for the F.Y. 2021-22", there is no obligation casted on the employer to deduct any TDS on such taxable accrued interest credited to PF Account.

However, in absence of clarification from the CBDT, there is lot of anxiety amongst various companies operating their own Recognised PF Trust [exempted/approved u/s 10(25)(ii) of the Act] as well as the Statutory PF Body "Employees Provident Fund Organisation" ('EPFO') with regard to the applicability/non-applicability of TDS u/s Section 194A of the Act on such accrued taxable interest. The foremost portion of Section 194A is quoted below:

Established 1836.

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**Interest other than "Interest on securities".**

**194A.** (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

**Provided** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

*Explanation.* .....

Section 194A of the Act, therefore, casts an obligation upon any person, other than an individual or an HUF, who is responsible for paying to a resident any income in the nature of interest other than interest on securities, to deduct TDS at the time of credit or payment whichever is earlier. The TDS obligation on individual/HUF u/s. 194A is applicable only if such individual/HUF is carrying on business/profession and total sales/gross receipts/turnover from such business/profession exceeds Rs. 1 Cr/ Rs. 50 lakhs in preceding financial year.

Therefore if a Recognised PF Trust is treated as an "individual" having no income/receipts from business/profession, then it is not covered by the provisions of section 194A of the Act.

In this connection, attention may be drawn to the following few of the various rulings/decisions wherein it is held that a trust is assessable in the capacity of an "individual" and accordingly provisions of section 194A of the Act are not applicable to a trust :

- Delhi HC in the case of CIT v. Food Corporation of India, Contributory Provident Fund Trust: 177 Taxman 224 (Delhi HC) 2009
- Madras HC ruling CIT v Sivashakti Trust [2003] 128 Taxman 342
- Madras HC ruling in case of ITO v Arihant Trust [1996] 214 ITR 306
- Gujarat HC ruling in case of M L Family Trust v State of Gujarat [1995] 127 CTR 407
- Delhi Tribunal ruling in the case of NTPC Ltd Employee Provident Fund Trust v ITO [2008] 113 TTJ 285 (Delhi Trib.)
- Bangalore Tribunal ruling in case of ACIT v Guru Trust [1996] 57 ITD 247

That the status of a private discretionary trust is that of an 'individual' (as per law explained in the aforesaid decisions) has also been accepted vide CBDT Circular No. 6/2012 dated 3<sup>rd</sup> August 2012 issued vide F No. 133/44/2012-SO(TPL).

**Practical Challenges and hardship**

Further, deduction of any TDS, if required, by PF Trust on such taxable accrued interest poses some major practical challenges as described below :

- ❖ In case the rate of actual PF interest rate for a financial year is notified by the Ministry/ EPFO well after the end of the financial year (which actually happened in the earlier few years),

- it may be practically impossible for the PF Trust to ensure deposit of TDS by the due date of 30<sup>th</sup> April of the next FY (for income accrued and credited to PF Account in March of the current FY) resulting in unwarranted Interest Liability for the PF Trust on account of late deposit of TDS.
  - Alternatively, if the TDS is reported by the PF Trust in the TDS Return of the subsequent financial year while the Credit to PF Account is done in the current financial year, there will be mismatch between the Taxable Interest Income as per PF Account/Statement vis-à-vis Form 26AS of the employee which may lead to unnecessary litigation/hardship for the employee and complexities for the PF Trust.
- ❖ In case TDS is to be recovered by the PF Trust from the employee's PF Account by credit to the employee's PF Account with the net interest amount i.e. net of TDS (similar to the process followed by bank to credit Interest on fixed deposit, net of TDS, in the Bank Account/Statement), the accumulated balance of the PF Account of the employee gets automatically reduced by the amount of TDS and the employee is deprived of earning interest from the PF Account to the extent of the said TDS amount in future years.
- ❖ In case TDS is to be recovered from the employee (in which case the interest is credited to the PF Account of the employee on a gross basis), then the PF Trust will face the challenge of funding the TDS Amount at the time of deposit of TDS since there is no cash outflow by way of payment to the employee to deduct the same out of that cash outflow (unlike TDS on Salary, where TDS is deducted from the actual Salary payment in the form of cash outflow); alternatively, there is no mechanism prescribed by CBDT for the PF Trust to recover the TDS from the employee.
- ❖ In absence of any clear guidelines from the CBDT on any applicability of TDS on such taxable accrued interest, the PF Trusts are still undecided to firm up their position on TDS applicability in this regard and accordingly many employees, in order to avoid the burden of additional Interest liability, have discharged their full tax liability on such accrued interest income by way of paying Advance Taxes for the FY 2021-22 by considering Nil TDS on the said accrued interest income; in case PF Trust also deducts TDS on the accrued interest of FY 2021-22 by the due date of 30-04-2022 and the same is recovered from the employee by the PF Trust, then there will be unnecessary blockage of cash for the employee since it will take several months (may be more than a year in many cases) for the employee to get refund of the excess taxes by way of claiming through ITR.
- ❖ There may be instances of Double Taxation implication since any withdrawal of accumulated PF balance above Rs. 50,000/- before 5 years of continuous service is further subjected to TDS u/s 192A/192(4).

### **No uniform position adopted across the industry**

In absence of clear direction/instructions from CBDT in this regard, there seems to be divergent positions being adopted by various companies on whether or not to deduct any TDS on such taxable accrued Interest, which may lead to unwarranted multiple litigations and hardship.

Even the following recent Circulars (**copies attached**) of few Government run Departments, available on public domain, reflects the inconsistent positions being followed by these departments towards deduction/non-deduction of TDS on such Taxable Interest of FY 2021-22,  
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- As per Circular F No. 8-3/2020-21/PA(E)/I.Tax/653-703 dated 15-02-2022 issued by the Ministry of Communications (Department of Posts), all GPF subscribers having GPF subscription above Rs. 5 lacs were requested to intimate the details of such Taxable interest earned during FY 2021-22 for deduction of TDS from their Salary
- As per Circular No. AT/Army/BR/FC/4462/E-1754 dated 18-02-2022 issued by Defence Accounts Department (DAD) Headquarters, Delhi Cantt, such Taxable interest earned on contribution above Rs. 5 lacs during FY 2021-22 should be treated as "Income from Other Sources" and TDS should be deducted from the Salary payments of FY 2021-22
- As per Circular No. 1/2022 dated 03-03-2022 issued by Food Corporation of India (FCI), there is no obligation on FCI CPF Trust to deduct TDS u/s 194A and the employees/individuals shall include such Taxable interest as "Income from Other Sources" in their Total Income while filing their individual ITR of FY 2021-22

### **Ambiguity on timing of taxation of such interest in the hands of the employee**

The timing of taxation of such interest being credited on year on year basis in the PF account of the employees is integrally connected with the timing of TDS obligation in the hands of PF Trust.

Under the current law, the TDS obligation on trustees of recognised PF u/s. 192(4) and statutory PF u/s. 192A is at the time of making payment of accumulated balance due to the employee in cases where Rule 9(1), Part A, Fourth Schedule is applicable or alternatively Rule 8, Part A Fourth Schedule is not applicable.

On a conjoint reading of Rules 2(f) and 4(g), Part A, Fourth Schedule, it is clear that the interest credited on employees' contribution to PF is part of 'accumulated balance due to an employee' which becomes payable only upon cessation of employment. On such cessation, the employee has choice either to withdraw the balance or transfer the balance to new employer or retain it with the PF trustees. If the withdrawal is made under circumstances not covered by Rule 8 (eg. withdrawal after less than 5 years of continuous service), the PF trustees have obligation to deduct tax on the whole of such accumulated balance. If the balance is retained with PF trustees (Refer Rule 5(3)), the interest credited post the date of cessation of employment is taxable in the hands of the employees even prior to amendment by Finance Act 2021 (Refer, ACIT v. Dilip Ranjrekar (ITA No. 858/Bang/2016 dated 10 Nov 2017)) and ONGC CPF Trust vs. ITO [(4 SOT 333) r.w. rectified order cited in (24 SOT 48) (Del.Trib)]. Similar provision exists in statutory EPF scheme whereby the accumulated balance can be withdrawn only on retirement or in specified circumstances prior to retirement (Refer Rule 69 of EPF Scheme 1952)

This is further supported by s. 10(11) and 10(12) which provides exemption only for accumulated balance due and becoming payable to the employee and not for year on year accrual of interest. The proviso introduced by Finance Act 2021 merely makes such exemption not applicable to interest on employees' annual contribution above Rs. 2.50 lacs forming part of accumulated balance due and becoming payable.

Since the taxability of interest on excess employees PF contribution arises for the first time on cessation of employment (or early withdrawal in specified circumstances), the question of TDS obligation, if any, should also arise at the time of cessation of employment (or early withdrawal in specified circumstances)

The interest arising post date of cessation being Income from other sources may be offered to tax by the employee, at his/her option, on mercantile or cash basis

**Request for urgent clarification before the end of the financial year 2021-22**

Therefore to have uniformity/stability across the industry with regard to the position on non-applicability of TDS in this regard and to avoid potential risk/litigation, the following instructions/clarifications may kindly be issued by CBDT as soon as possible latest by 31 March'22 :

- That Recognised PF Trust [exempted/approved u/s 10(25)(ii)], being assessable in the status of 'individual' does not have any obligation to deduct TDS u/s 194A (or under any other Income Tax section) on such annual accretion of Taxable Interest.
- In case TDS is still required to be deducted by the PF Trust, necessary clear guidelines in this regard may be issued along with clarifications on all the following points :
  - the rate of TDS deduction
  - the timing of the TDS deduction
  - whether the PF Trust itself has to deposit the TDS under its own TAN or it can be deposited under the TAN of anyone authorised by the PF Trust (may be "the employer" if authorised by the PF Trust)
  - the process of funding of TDS amount by the PF Trust (whether from employee's Salary or from employee's PF Account)
  - whether the TDS Return has to be filed under the non-Salary TDS Return Form 26Q
  - There is no requirement to do withholding by the trust on accrual of interest every year
  - The employee should offer the interest to tax in his own return at the time of withdrawal of accumulated balance

We would be happy to provide any further clarification in this regard as may be required.

Thanking you,

Yours faithfully,



Sandeep Khosla