

18th February 2020

Revised Guideline for Initiating Inquiry u/s 7A of The EPF & MP Act, 1952

The Employees Provident Fund Organization issued revised Guidelines for Initiation of Inquiries u/s. 71 of the Act on 14th February 2020 vide instruction no. C-II/20/76/Misc./2020/CBE/TN/027. The key objective of the revised guidelines is to ensure that the Assessing Officers follow an uniform approach while initiating the inquiry u/s. 7A and that the reasons are sufficient and tenable. The whole purpose is to avoid resentment amongst employers and subsequent litigations. This is a very welcome development. This newflash tries to summarize the key points of this revised guidelines that the PF officers are now bound to follow, as under :

- **Purpose of initiating inquiries:** - Inquiry can be initiated only for the purpose mandated under section 7A i.e dispute of applicability and determination of dues No inquiry can be initiated just for non-submission of returns or non-production of records etc.
- **Existence of “Prima Facie case”:** - For initiating inquiry, there should be “existence of prima facie case” based on minimum standards of evidence. Mere complaint from someone does not constitute “prima facie evidence”. It is only a source of information which is not a legal proof of the allegation. Assessing Similarly, fishing or roving inquiries are not permissible. Officer should record reasons before initiating any inquiry under Sec. 7A.
- **Inquiries as *non-est ab-initio*:** - Inquiries or legal proceeding initiated without “Prima facie case” are a nullity in the eye of law and *non-est ab-initio*.
- **Inquiry as untenable:**-The inquiries initiated for prolonged duration such as 5 to 20 years are also legally untenable and must be eschewed.
- **“Proximate nexus”:** - The assessing officer should have proximate nexus with the evidence of default on record and the period for which the inquiry is intended to be held.
- **Fact of the issue:** - Once inquiry is initiated for a specific reason and period, the scope cannot be extended later beyond the fact of the issue.
- **Circulation of “Credible evidence”:** - Whenever the inquiries are intended to be initiated for any reason on the basis of creditable evidence, a copy of all documents must be supplied to the all concerned parties along with the notice u/s 7A.
- **Compliance e-proceeding portal:** - The inquiry notice shall be assigned computer generated diary number from Compliance e-proceeding portal for tracking.
- **Notice as “non-est”:**-Notice issued without case number shall be treated as non-est.

This newflash is general in nature. In this newflash, we have summarized the key points of the “Guidelines for initiation of Inquiries u/s. 7A of the EPF & MP Act, 1952, which are issued by the EPFO in order to reduce litigations. It may be noted that nothing contained in this newflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said instruction and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newflash.