



NEWSLETTER

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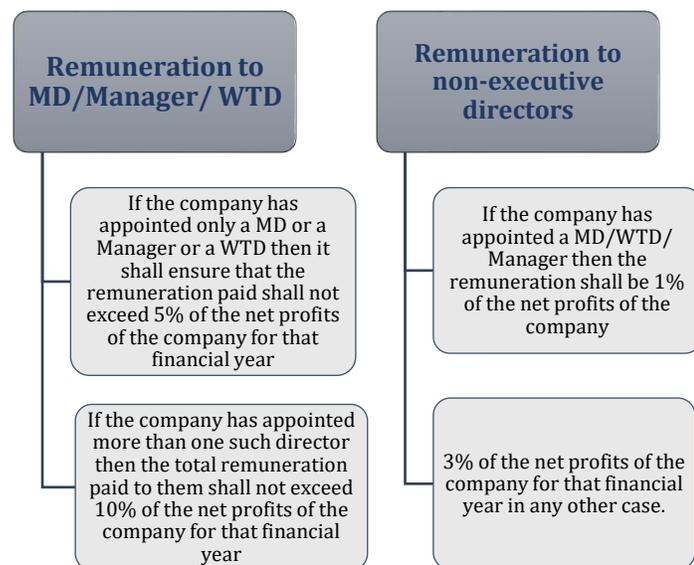
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Managerial Remuneration - a brief overview

Payment of remuneration to the Directors of the Company including its Managerial Personnel in terms of the provisions of the Companies Act, 2013 ("Act") requires them to comply with certain conditions particularly in the case of Public Limited Company. The conditions can be in the form of approval required, limit of remuneration, disclosure requirement, etc., Here in this writeup we are going to discuss on the conditions and compliances required under the Act.

REMUNERATION LIMITS

In case of Public Limited Companies, Section 197 of the Act deals with the provisions relating to remuneration to Directors including Managerial Personnel. As per said section, the limits of remuneration are as under:



Further the Total remuneration payable by the company to its directors including its MD, WTD and its manager in respect of any financial year shall not exceed 11% of the net profits for that financial year.

The words used in the Companies Act, 2013 are 'in that financial year'.

- Does that mean that before even ascertaining the profits of the Company, can the company pay a monthly remuneration to its directors? If so, then what would happen if remuneration already paid is in excess of the limits as provided in the Section?

In such cases what companies can do is, go by the trend in Net Profit of the Company and thereafter approve the remuneration and then at periodical intervals like Quarterly track the profits and the remuneration and then decide on the actual remuneration disbursement. Also in situation wherein the company pays remuneration in excess of limits under the section, the director concerned can refund the said excess amount within two years, provided until that time he holds the excess amount in trust of the company. The Section 197 also provides for waiver of excess remuneration paid to director, with the approval of the members of the company by way of special resolution.

Payment of remuneration in excess of 11% of the net profits:

In case in any particular year a company has no profits or its profits are inadequate, the provisions of the Act, permits the companies to pay remuneration in excess of 11% of the net profits in terms of and in **compliance of Schedule V of the Act.**

HIGHLIGHTS OF THE SECTION

- Limits of remuneration applicable only to public companies;
- Limits given based on the appointment and number of the MD/WTD or manager;
- Where the company has sufficient profits, the remuneration shall be within 11%, 5%, 3%, 1% as provided above.
- Where the company has no profit or inadequate profit, the limit of remuneration shall be as per Schedule V

SCHEDULE V LIMITS – PART II

Section II of Part I of Schedule V of the Act, prescribed the limits of remuneration for managerial personnel, where a company has no profits or its profits are inadequate, as under (per managerial personnel):

Effective Capital	Remuneration(yearly)
Negative or less than 5 Crores	60 lakhs
More than 5 Cr but less than 100 Cr	84 lakhs
More than 100 Cr but less than 250 Cr	120 lakhs
250 Cr and above	120 lakhs plus 0.01% of the effective capital above 250 Cr

The remuneration up to the above limits can be paid by the Company to its managerial personnel with the approval of members by way of ordinary resolution and with passing of special resolution they can pay any amount of remuneration.

Effective Capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

It is to be noted that where the remuneration is proposed to be paid in terms of Schedule V of the Act, the companies need to also comply with the stipulated disclosure requirement and attendant conditions.

Payment of remuneration in case of inadequate of insufficient profits can be paid on the fulfillment of the following conditions:

- a. Payment of remuneration is approved by the Board and NRC, if any
- b. The company has not defaulted in the payment of dues to any bank or public financial institution, NCD holders, Secured Creditors and if defaulted with their prior approval.
- c. An Ordinary resolution or Special Resolution has been passed by the company as the case maybe for a period not exceeding three years.
- d. Explanatory Statement of the notice calling the General Meeting contains prescribed disclosures prescribed in Schedule V.

FREQUENTLY ASKED QUESTIONS

1. Are the provisions of Section 197 and Schedule V of the Act applicable to private companies?

As per the general circular dated June 5, 2015 relating to exemption to private companies Section 196(4) and 196(5) have been exempted. Section 196(4) and 196(5) specify the applicability of the provisions under Section 197 and Schedule V. In the view of the above, it can be said that Section 197 and Schedule V do not apply to private companies.

2. If a Pvt Company is a Subsidiary of a Public Company, whether these provisions are applicable?

As per the Proviso to Section 2(71) of the Companies Act, 2013, it is provided that 'a company which is a subsidiary of a public company, not being a private company, shall be deemed to be a public company for the purposes of this Act'.

In view of the above, even if a private company is a subsidiary of a public company, will be considered as a public company for the purposes of the Companies Act, 2013 and hence shall comply with Section 197.

EXCEPTIONS TO REMUNERATION PAYMENTS

The Company may pay a maximum of 11% of the net profits, as calculated as per Section 198, for that financial year as remuneration to the directors of the Company. As per Section 2 of the Act, remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961.

From the above, it can be told that, any sums paid to the director shall be included in remuneration. However, as per Section 197, there are certain **exceptions** to the same. They include:

- a. Payment of Sitting fees, not included in the prescribed limits of remuneration;
- b. Payment to the director for any professional services provided by him. (Conditions under this point is that the person to whom such sums are paid shall hold a professional qualification and the NRC, if any or the Board shall be of the opinion that the person possesses some qualification to provide such services.) However, this could be characterized as payment to Director holding office or place of profit under Section 188(1)(f) of the Act.
- c. Any insurance taken on behalf of MD, WTD, CEO, CFO or CS for indemnifying any of them for any liability arising in relation to the company, then the premium paid shall not be treated as remuneration. However, if they prove to be guilty, the premium of such insurance will be treated as remuneration.

3. Is it mandatory for a public company into losses to pass a SR for paying remuneration to managerial personnel? Or can they pay the remuneration as per Part II of Schedule V by passing an OR?

In accordance with Section 197(3) of the Companies Act, 2013, the words 'Notwithstanding anything contained under sub sections (1) and (2), but subject to the provisions of Schedule V if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager or any other non-executive director, including an independent director], by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.'

Thus, even in case a company is having no profit or its profits are inadequate, and the Company has complied with the terms of Schedule V of the Act, passing of special resolution under 1st proviso of Section 197(1) might not be required.

4. Whether remuneration to KMPs (CEO, CS and CFO) are subject to these limitations?

The Section is a specific section relating to the remuneration of MD, WTD, Manager and non-executive directors. If a person is appointed as CEO, CS or CFO in a public company then the limits relating to the remuneration are not applicable. Nevertheless, if such CEO, CFO or CS are also appointed as a director in the Company, then such limits to remuneration shall apply.

5. When Holding Company pays remuneration to its Subsidiary Company's Managerial Personnel, whether any limits get attracted?

The point to be noted here is that the holding company will be paying the remuneration on behalf of its subsidiary company. The intention of the Section is on the remuneration amount/limit and not on who is paying the remuneration. So, we are of the view that even if the holding company is paying on behalf of the subsidiary company, the remuneration limits will be ascertained based on the net profits/effective capital of the subsidiary company only.

6. Is consent of bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, required when the company proposes to pay more 11% of profits, where it has adequate profits??

The approval of bank or public financial institution concerned, or the non-convertible debenture holders or other secured creditor is supposed to be obtained when there is a default in payment to the above parties concerned according to Section 197 and Schedule V of the Act.

7. Default in refund of excess remuneration will it hit Section 185 provisions??

Once the excess remuneration is not refunded, it is like a debt payable to the Company. Section 185 says that a company shall not directly or indirectly advance any loan including a loan represented by a book debt or give any guarantee or provide any security in connection with any loan taken by any director. The intent of the section is that the director being in a fiduciary position shall not use the Company's funds for his own benefit. This area is however debatable.

Compliance Calendar

INCOME TAX

Compliance details	Applicability	Reporting period	Due Date	Form
File challan-cum-statement for TDS u/s 194-IA and 194-IB	All deductors related to Immovable Property Sale & Rent	February, 2021	30th March, 2021	Form 26QB & 26QC
Issue of TDS certificate u/s 194IA 194IB and 194M	All deductors	January, 2021	15th March, 2021	Form 16B & 16C
Advance tax	All tax payers who has tax liability of more than Rs.10,000/-	Q4 (Jan-Mar 21)	15th March 2021	Challan 280
Income tax return	All taxpayers who wants to filing belated or revised return of income	F.Y. 2019-2020	31st March,2021	Respective ITR's
Furnishing of statement of financial transaction	All taxpayers who are required to be furnished under sub-section (1) of section 285BA of the Act	F.Y. 2019-2020	31st March,2021	Form 61A
TDS/ TCS returns	All tax deductors/Collectors who has not filed TDS returns for the first two quarters	Q1 and Q2 of F.Y.2019-20	31st March,2021	Respective forms
Due date to link PAN with Aadhar	All tax payers	-	31st March,2021	-
Vivad Se Vishwas Scheme	Payment without additional levy	-	31st March,2021	-
Yearly Return for the financial Year 2019-20 and Monthly payment for Tax less than 50,000/-	Entities registered with PT Authorities	F.Y. 2019-2020	31st March,2021	Through state-wise PT Portal

GST

Compliance details	Applicability	Reporting period	Due Date	Form
Return of outward supplies of taxable goods and/or services	Taxpayers with Annual Turnover more than INR 1.5 Cr	February, 2021	11th March, 2021	GSTR 1
Summary Return of Outward and Inward Supplies along with payment of Tax	Taxpayers with Annual Turnover more than INR 5 Cr	February, 2021	20th March, 2021	GSTR 3/3B
Summary Return of Outward and Inward Supplies along with payment of Tax	Taxpayers with Annual Turnover not more than INR 5 Cr	February, 2021	22th March, 2021	GSTR 3/3B
Summary Return of Outward taxable supplies and tax payable	GST Taxpayers	February, 2021	20th March, 2021	GSTR 5 & 5A
Return for details of ITC received and distribution	Input Service Distributors	February, 2021	13th March, 2021	GSTR 6
Return for TDS under GST	Government Authorities	February, 2021	10th March, 2021	GSTR 7
Return for Details of Supplies and the amount of tax collector	E-commerce Operator	February, 2021	10th March, 2021	GSTR 8

GST Annual Return	Taxpayers with Annual Turnover more than INR 2 Cr	F.Y.2019-20	31st March, 2021	GSTR 9
GST Annual Return	Taxpayers with Annual Turnover more than INR 5 Cr	F.Y.2019-20	31st March, 2021	GSTR 9C
Return for details of goods and services purchased in India	Taxpayer claiming Refund & having UIN	February, 2021	28th March, 2021	GSTR-11

Companies Act and FEMA

Compliance details	Applicability	Reporting period	Due Date	Form
Filing of the Annual Return with the ROC	Companies closing their financial year on 31st March, 2020 and having AGM on 31/12/2020	F.Y. 2019-2020	1st March, 2020	MGT-7
Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA	All categories of ECB	February, 2021	7th March, 2021	Form ECB-2

SEBI(LODR) Regulations

Compliance details	Applicability	Reporting period	Due Date	Form
Regulation 33 Annual Financial Results along with Auditor's Report	Listed Companies, having Jan-Dec as Financial Year	FY ended December 2020	1st March, 2021	

Labour Laws

Compliance details	Applicability	Reporting period	Due Date	Form
The Employees' Provident Funds & MP Act 1952 (Provident Fund) Deposit of Provident Fund Contributions	Entities registered with PF Authorities	February, 2021	15th March 2021	Monthly ECR
EDLI Return (Employees Deposit Linked Insurance)	All companies and firm deducting PF	March, 2021	25th April, 2021	-
The Employees' State Insurance Act 1948 (ESIC) Deposit of E.S.I.C Contributions	Entities registered with ESIC Authorities	February, 2021	15th March, 2021	Monthly ECR