

Chapter - 3 "Appointment and Remuneration of Managerial Personnel"

(iii)	<u>Sec. 197: Overall Maximum Managerial Remuneration in case of public companies</u>		
	I	II	III
	A. Companies having	B. Companies having	C. Other Provisions
	adequate profits	inadequate profits	- Sec. 197(4), (5)
	- Sec. 197(1), 197(2)	or not profits	- Sec. 197(6), (9), (10)
	- Section I of Part II	- Sec. 197(3)	- Sec. 197(11), (15), (16)
	of schedule V	- Section II & III of	- Section IV and V of
		Part II of Schedule V	Part II of Schedule V
(A)	<u>Overall managerial Remuneration of public companies having adequate profits:</u>		
	<u>Sec. 197(1):</u>		
	S. No	Person entitled for remuneration	Maximum Remuneration in any financial year
		(a)	(b)
	1	For all directors and manager together	11% of the net profits of the company for that financial year.
	2	One MD / WTD / Manager	5% of the net profits of the company for that financial year.
	3	More than one M.D./ WTD / Manager (for all such directors & manager together)	10% of the net profits of the company for that financial year.
	4	Directors who are neither MD nor WTD	1% of net profits of the company, (if there is a MD or WTD or Manager) for that FY. In any other case 3% of net profits.
			If remuneration exceeds maximum remuneration as provided under column (b)
			Company in general meeting, may authorise remuneration in excess of 11% of net profits. [1 st Proviso to Sec. 197(1)]
			Company in general meeting, by a special resolution may approve higher remuneration. [2 nd Proviso to Sec. 197(1)]

	<u>Sec. 197(2):</u> The percentages specified in Sec. 197(1) shall be exclusive of any fees payable to director's u/s 197(5).	
	Examples: State the nature of resolution to be passed in GM as to managerial remuneration in following cases when company is having <u>sufficient profits</u> .	
		<u>Resolution</u>
I.	To pay \leq 11% of net profits to directors including MD, WTD and Manager.	OR
II.	To pay $>$ 11% of net profits to directors including MD, WTD and Manager.	OR (1 st Proviso)
III.	To Pay \leq 5% to one MD or one WTD or one Manager.	OR
IV.	To pay $>$ 5% to all MD, WTD and Manager taken together (Below 10%).	OR
V.	To pay \leq 10% to all MD, WTD and Manager taken together.	OR
VI	To pay $>$ 10% to all MD, WTD and Manager taken together.	SR (2 nd Proviso)
VII	To pay $>$ 5% to one MD or one WTD or one Manager.	SR (2 nd Proviso)
VIII	To pay 2% of N.P. to directors other than MD or WTD	
	Situation - I: Company do not have M.D/WTD/Manager.	OR
	Situation - II: Company is having M.D./WTD/Manager.	SR (2 nd Proviso)
(B)	<u>Overall managerial Remuneration in case of companies having no or inadequate profits</u>	
	<u>Sec. 197(3):</u> 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 director's u/s 197(5) except in accordance with the provisions of Schedule V.	

<u>Remuneration payable by companies having no profit or inadequate profit</u>		
<u>- Section II of Part II of Schedule V</u>		
<u>Effective capital*</u>	<u>Maximum Limit of yearly</u>	
- Negative or less than ₹5 crores	60 lakhs [§] / 12 lakhs [#]	
- ₹ 5 crores and above but less than ₹ 100 crores	84 lakhs [§] / 17 lakhs [#]	
- ₹ 100 crores and above but less than ₹ 250 crores	120 lakhs [§] / 24 lakhs [#]	
- ₹ 250 crores and above	120 lakhs [§] / 24 lakhs [#] +	
	0.01% of effective capital	
[§] Managerial Personnel	[#] Other Directors	in excess of ₹250 crores
<u>Effective Capital:</u>		
PUSC + Share Premium + Reserves & Surplus excluding revaluation reserve + Long term loans and deposits repayable after one year)		
Less: Investments + Accumulated Losses + Preliminary expenses not written off		
Notes:		
- Remuneration in excess of above limits may be paid by special resolution		
- For a period less than one year, the limits shall be pro-rated.		
<u>Examples of Managerial Rem. if company is having inadequate profits or no profits:</u>		
(1) <u>Mention the resolutions required in General Meeting:</u>		
<u>Effective Capital</u>	<u>Rem. Payable (to one MD/WTD/Manager)</u>	<u>Resolution</u>
4 Cr.	≤ 5 lacs p.m. (≤60 lacs for FY)	OR
	> 5 lacs p.m. (>60 lacs for FY)	SR
50 Cr.	≤ 7 lacs p.m. (≤84 lacs for FY)	OR
	> 7 lacs p.m. (>84 lacs for FY)	SR
200 Cr.	≤ 10 lacs p.m. (≤120 lacs for FY)	OR
	> 10 lacs p.m. (>120 lacs for FY)	SR
300 Cr.	≤ 120.50 lacs for FY	OR
	> 120.50 lacs for FY	SR

(2) Comprehensive example:

	A	B	C	D	E	F	G	H	
Net profit	100 Cr.	100 Cr.	10 Cr.	10 Cr.	4 Cr.	(1 Cr.)	(1 Cr.)	(1 Cr.)	
Rem.	2 M.D.	4 Cr.	4.5 Cr.	1.5 Cr.	1.1 Cr.	4.10 Cr.	0.50 Cr.	1.70 Cr.	0.50 Cr.
	Other 2 Directors	1 Cr.	1.5 Cr.	1.0 Cr.	-	-	-	-	0.40 Cr.
Res. Passed	OR	OR	OR	OR	OR	OR	OR	OR	
Effective Capital	200 Cr.	200 Cr.	50 Cr.	50 Cr.	200 Cr.	25 Cr.	25 Cr.	25 Cr.	
State the Violations									
(i) First proviso to Sec. 197(1)	No	No	Yes* (>11%)	No	N.A.	N.A.	N.A.	N.A.	
(ii) 2 nd proviso to Sec. 197(1)	No	Yes (>1%)	Yes (>10%)	Yes (>10%)	N.A.	N.A.	N.A.	N.A.	
(iii) Section II of Part II of Sch V	N.A.	N.A.	N.A.	N.A.	Yes	No	Yes	Yes	
					>240 lacs		(>168 lacs)	(Rem. to Other Director >34 lakhs)	
					= 120 lacs × 2		= 84 lacs × 2		

Other Provisions related to Managerial remuneration in case of companies having no profits or inadequate profits (Section II, Part II of Schedule V):

--- Self Study from main Book (not of so much significance) ---

(C) Other provisions:

(i) Manner of determination of remuneration [Sec. 197(4)]:

Remuneration payable to the directors of a company, including any MD or WTD or manager, shall be determined, either

- by the articles of the company, or
- by a resolution, or
- if the articles so require, by a SR, passed in general meeting

and the remuneration payable to a director shall be inclusive of remuneration to him for the services rendered by him in any other capacity.

	Note: Remuneration for services rendered by any director in other capacity shall not be so included in managerial remuneration if—
	(a) the services rendered are of a professional nature; and
	(b) in the opinion of the NRC, if the company is covered u/s 178(1), or the BOD in other cases, the director possesses the requisite qualification for the practice of the profession.
	(ii) <u>Sitting fees to directors [Sec. 197(5)]:</u>
	- A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.
	- Amount of such fees shall not exceed the prescribed amount.
	- Different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.
	<u>Rule 4:</u> - Company may pay sitting fee to a director, such sum as may be decided by BOD, which shall not exceed ₹ 1 lakh per meeting.
	- Sitting fee for Independent Directors and Women Directors, shall not be less than the sitting fee payable to other directors.
	(iii) <u>Manner of payment [Sec. 197(6)]:</u>
	A director or manager may be paid remuneration either
	- by way of a monthly payment, or
	- at a specified percentage of the net profits of the company, or
	- partly by one way and partly by the other.
	(iv) <u>Refund of excess remuneration [Sec. 197(9)]:</u>
	- If any director draws or receives, by way of remuneration sums in excess of the limit prescribed by this section, or
	- without approval required under this section
	he shall refund such sums to the company within 2 years or such lesser period as may be allowed by the company.

	(v) <u>Waiver of refund of excess remuneration [Sec. 197(10)]:</u>
	- The company shall not waive the recovery of any sum refundable to it unless approved by special resolution within 2 years from the date the sum becomes refundable.
	- However, where the company has defaulted in payment of dues to any bank or PFI or NCD holders or any other secured creditor, the prior approval of such entities or persons, as the case may be, shall be obtained by the company before obtaining approval of such waiver.
	(vi) <u>Insurance for Indemnification [Sec. 197(13)]:</u>
	Where any insurance is taken by a company on behalf of its MD, WTD, Manager, CEO, CFO or CS for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, premium paid on such insurance shall not be treated as part of remuneration payable to any such personnel.
	Note: If such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.
	(vii) <u>Penalty [Sec. 197(15)]:</u>
	- If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of ₹ 1 lakh and
	- Where any default has been made by a company, the company shall be liable to a penalty of ₹ 5 lakh.
	(viii) <u>Auditor's duty to report [Sec. 197(16)]:</u>
	Auditor of the company shall, in his report u/s 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

	(ix) Section III of Part II of Schedule V: Remuneration to a managerial person or other director may be paid in excess of the amounts provided in Section II, in following cases:
	(a) newly incorporated company , for 7 years from date of its incorporation,
	(b) sick company , for whom a scheme of revival has been ordered by BIFR for a period of 5 years from the date of sanction of scheme of revival,
	(c) a company in relation to which a resolution plan has been approved by the NCLT under IBC, 2016 for 5 years from the date of such approval,
	(d) remuneration has been fixed by the BIFR or the NCLT provided:
	<ul style="list-style-type: none"> • that person is not receiving remuneration from any other company; • auditor or CS or CS in practice, certifies that all secured creditors & term lenders have stated in writing that they have no objection for the appointment of managerial person & quantum of remuneration & such certificate is filed along with return as prescribed u/s 196(4). • auditor or CS or CS in practice certifies that there is no default on payments to any creditors & all dues to deposit holders are being settled on time.
	(x) Section IV of Part II of Schedule V: Perquisites not included in remuneration
	1. Following perquisites shall not be included in ceiling on remuneration:
	(a) contribution to PF, superannuation fund or annuity fund to the extent these are not taxable under the Income-tax Act, 1961;
	(b) gratuity payable at a rate not exceeding $\frac{1}{2}$ month's salary for each completed year of service; and
	(c) encashment of leave at the end of the tenure.
	2. In addition to the perquisites specified above, in case of an expatriate managerial person (including a non-resident Indian) following perquisites shall not be included in ceiling on remuneration:
	(a) Children's education allowance : upto ₹ 12,000 p.m. per child or actual expenses incurred, whichever is less, for two children.

	(b) <u>Holiday passage for children studying outside India or family staying abroad</u> : Return holiday passage once in a year by economy class or once in two years by first class to children and members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.	
	(c) <u>Leave travel concession</u> : Return passage for self and family as per rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.	
	(xi) <u>Section V of Part II of Schedule V (Remuneration payable to a managerial person in two companies)</u> : A managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.	
	Misc. Examples/ Questions:	
(1)	Whether provisions of Section 197 and Schedule V are applicable over CEO/ CFO/ CS.	No
(2)	Whether remuneration to directors (other than MD/ WTD) can be paid in accordance with Section II of Part II of Schedule V	Yes
(3)	Whether remuneration payable to a director for services rendered in professional capacity shall be included in managerial remuneration	No
(4)	Whether sitting fees payable to directors will be considered while	
(a)	computing percentage u/s 197(1)	No
(b)	computing remuneration as per Section II of Part II of schedule V	No

