



***Managerial Remuneration
under the Companies Act
2013***

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Care, Pair, and Share

KNOWLEDGE THAT MATTERS. EXPERIENCE THAT COUNTS.

Agenda

- Meaning of Managerial Personnel
 - Types of Managerial Personnel
 - Ways of Remunerating Managerial Personnel
 - Provisions of the Companies Act 2013 and Rules made there under
 - Challenges in way of Managerial Remuneration
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Relevant Sections under the Companies Act 2013

- 2 (78) / 2 (94) / 2 (53) / 2 (54)
 - 196, 197, 198,
 - 199,
 - 200, 201, 202, 203
 - Schedule V to the Companies Act 2013
 - The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
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Types of Directors

- Managing Director
 - Whole-time Director / Chairman / Executive Director
 - Director – Chairman / Non Executive
 - Independent Director (Not available for Private Companies)
 - Additional Director
 - Alternate Director
 - Director appointed in Casual Vacancy
 - Nominee Director
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Popular Ways of Remunerating MP

- Cash – Monthly or percentage of Net profit
 - Perquisites
 - Stock Options
 - Sitting fees
 - Shouldering obligation of the Managerial Personnel
 - Insurance Premiums
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Types of Managerial Personnel

- 2 (51) "key managerial personnel", in relation to a company, means—
- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) **the company secretary;**
- (iii) *the whole-time director;*
- (iv) **the Chief Financial Officer;**
- (v) **such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (COA 2017)**
- (vi) **such other officer as may be prescribed**

Whole-time director

- 2 (94) "whole-time director" includes a director in the whole-time employment of the company

Manager

- 2 (53) – “manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

Managing director

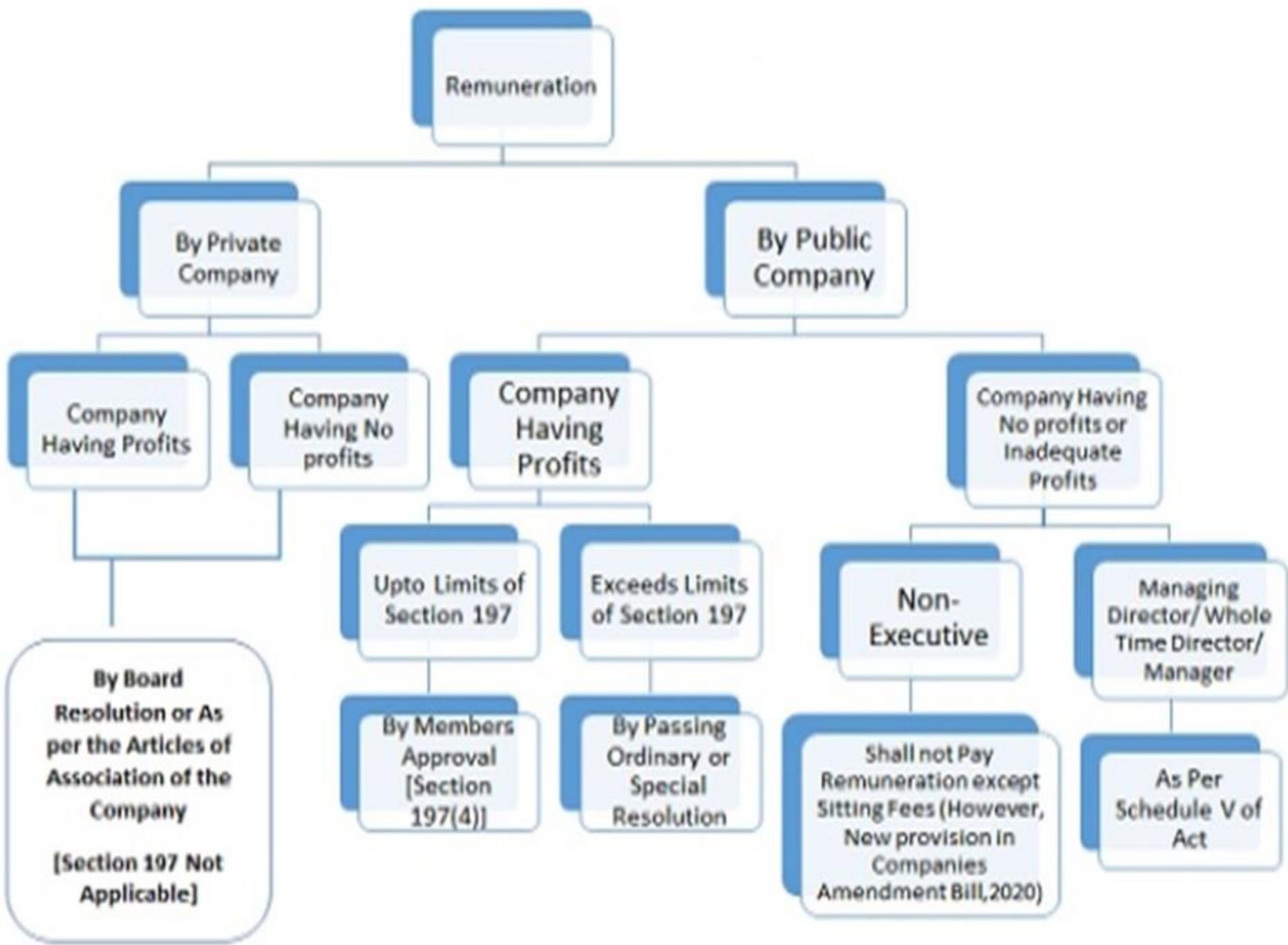
- 2 (54) - "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.
- *Explanation.*—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

“Remuneration”

- Section 2 (78) of the Companies Act 2013
- “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 (43 of 1961)

“Remuneration”

- Money or its equivalent
 - Given or passed to any person
 - For services rendered by him
 - Includes perquisites as defined under the Income-tax Act, 1961
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Section 196

- Managing Director or Manager
- Cap of five years on appointment / reappointment of MD, WTD / Manager
- Reappointment not earlier than one year before expiry of the term
- Age Limit – 21 years to 70 years
- Age above 70 years – Special Resolution
- Age above 70 years – Simple majority with Government Approval

Section 196 – Preventions

- Undischarged insolvent or has at any time been adjudged as an insolvent
- Any time suspended payment to his creditors or makes, or has at any time made, a composition with them
- At any time been convicted by a court of an offence and sentenced for a period of more than six months.

– Applicable even to a Private Company

Section 196

- Appointment of MD / WTD / Manager by Board as per terms and conditions
- Such terms and conditions to be approved by next General meeting – Notice to include specified details
- Approval of Central Government if the appointment is at variance with Part I of Schedule V to the Companies Act 2013.

– Not Applicable to a Private Company and Specified IFSC Public Company

Section 197

- Not Applicable to a Private Company and Specified IFSC Public Company
 - Remuneration to directors, including MD / WTD / Manager
 - In respect of any financial year
 - Not exceed 11% of the net profits of that company for that financial year (Sitting fees not included)
 - Computed in the manner laid down in [section 198](#)
 - General Meeting may authorise higher remuneration subject to Schedule V (Ordinary Resolution)
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Overall Cap

- Remuneration to One MD / WTD / Manager – 5% of Net profit
 - If more than one such director – 10% of Net profit for all of the together
 - Remuneration to other Directors
 - 1% of Net Profit if there is an MD / WTD / Manager
 - 3% of Net Profit in other cases
 - To pay beyond 11% - Special Resolution (also subject to approval of Lending Institutions and NCD holders for Defaulting Companies)
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No / Inadequate Profits

- No profit – Inadequate Profits – Schedule V to the Companies Act 2013
 - Remuneration inclusive for services rendered in other capacity unless:
 - the services rendered of a professional nature; **and**
 - in the opinion of the Nomination and Remuneration Committee (if applicable under section 178) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.
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Sitting Fees

- As decided by the Board of Directors
- Maximum RS. One Lac per meeting per director
- Sitting fees for Independent Directors and Women Directors not to be less than the sitting fee payable to other directors.

**TDS and GST
Implications**

Excess remuneration

- Remuneration in excess of limit / without according approval required under the section – Refund within Two years
- Till that time – Hold it in Trust
- Company not to waive recovery except with Special Resolution within two years from the date refundable (also subject to approval of Lending Institutions and NCD holders for Defaulting Companies)

Listed Entities

- Listed company to disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.
- **SEBI (LODR) Regulations for Non-executive Directors**
- Regulation 17(6) of the SEBI (LODR) Regulations, 2015.....

SEBI (LODR) Regulations for Non-executive Directors

- **The board of directors shall recommend** all fees or compensation, if any, paid to non-executive directors, including independent directors and **shall require approval of shareholders in general meeting.**
- The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

**TDS and GST
Implications**

SEBI (LODR) Regulations for Non-executive Directors

- The approval of shareholders shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.
- The approval of shareholders by **special resolution** shall be obtained every year, in which the **annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors**, giving details of the remuneration thereof.
- Independent directors shall not be entitled to any stock option.

SEBI (LODR) Regulations for Non-executive Directors

- The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-
 - The annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
 - where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

Insurance

- Indemnity Insurance

- If such person proved to be guilty, the premium paid on such insurance to be treated as part of the remuneration

- Life Insurance

- Keyman Insurance

- Medical Insurance – Group / Individual

From Holding / Subsidiary....

- MD / WTD receiving commission (Remuneration?)
- Receive Remuneration / Commission from Holding or Subsidiary
- Subject to its disclosure by the company in the Board's report.

Auditors' Duty

- Make a statement in Report under section 143
 - 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
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Section 198

- Credits allowed:

- Bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs

- Credits not allowed:

- Premium on issue of shares / debentures (except investment Company as per clause (a) of Explanation to section 186 (a) – Effective 12/09/2018)
- Profits on sales by the company of forfeited shares;
- Profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

Section 198

- Credits not allowed:

- profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company (except in normal course of business of buying and selling any such property or assets)

(Where the Sale amount exceeds WDV, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its WDV;)

- any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
- any amount representing unrealised gains, notional gains or revaluation of assets – **Effective 12/09/2018**

Debits

- Debits to be made:
 - all the usual working charges;
 - directors' remuneration;
 - bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis.....

 - Debits not to be made:
 - Income-tax
 - any compensation, damages or payments made voluntarily
 - loss of a capital nature including loss on sale of the undertaking
 - any change in carrying amount of an asset or of a liability recognised in equity reserves
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Recovery of Remuneration in Certain Cases

- Section 199 – Restatement of financial statements due to fraud or non-compliance with any requirement under this Act and the rules
- Past or present MD / WTD / CEO
- Recover excess remuneration

Company to Fix Limit with Regard to Remuneration

- Powers completely shifted to Company effective 12/09/2018
- a company may, while according its approval under [section 196](#) to any appointment, or to any remuneration under [section 197](#) in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit

Company to Fix Limit with Regard to Remuneration

- Company shall have regard to—
 - (a) the financial position of the company;
 - (b) the remuneration or commission drawn by the individual concerned in any other capacity;
 - (c) the remuneration or commission drawn by him from any other company;
 - (d) professional qualifications and experience of the individual concerned;
 - (e) such other matters as may be prescribed.....

.....other matters

- 1) the Financial and operating performance of the company during the three preceding financial years.
 - (2) the relationship between remuneration and performance.
 - (3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
 - (4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
 - (5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.
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Forms of, and Procedure for Applications

- Every application made to the Central Government under the provisions of Chapter XIII shall be made in [Form No. MR.2](#) within a period of ninety days from the date of such appointment
 - Leverage given to unlisted public companies to pay remuneration with CG approval discontinued effective 12/09/2018
 - Notice to members and to be published in Regional and English Newspaper
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Compensation for Loss of Office – Section 202

- MD / WTD / Manager – Loss of office or retirement
- No compensation if:
 - Reconstructed company – Director reappointed
 - Resignation
 - Vacation of office under section 167 (1)
 - Winding up due to negligence of the director
 - Director Guilty of breach of trust / gross negligence
 - Resignation instigated by the Director

Limit on compensation

- Not to exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter,
 - calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or such lesser period
 - Not to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity
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Section 203 - KMP

- Every listed company
 - Every other public company
 - having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel
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- (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
 - (ii) company secretary; and
 - (iii) Chief Financial Officer :

Schedule V

- Amendment with effect from 18/03/2021
- “Other directors” included in addition to Managerial Person

	(1)	(2)	(3)
Sl. No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director (NED / ID)
(i)	Negative or less than 5 crores.	60 lakhs	12 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

“Effective capital”

- Aggregate of the paid-up share capital (excluding share application money or advances against shares);
 - Share premium account; reserves and surplus (excluding revaluation reserve);
 - Long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, 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.
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Schedule V

- Additional Remuneration - Pass Special Resolution
 - Managerial person functioning in a professional Capacity – allowed to be paid provided he holds no interest in capital of the Group, and not associated with promoters – Possesses **graduate** level qualification with expertise and specialised knowledge in the field in which the company operates
 - Person holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme like ESOP
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Covenants


- Payment of remuneration is approved by a resolution passed by the Board or Remuneration Committee
 - Company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor / else prior approval obtained from them
 - OR / SR as applicable passed for Remuneration; and SR passed for Managerial person functioning in a professional Capacity at the general meeting of the company for a period not exceeding three years - Details in Notice to be given
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Disclosures

- All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
 - Details of fixed component. and performance linked incentives along with the performance criteria;
 - Service contracts, notice period, severance fees; and
 - Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable
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Perquisites not included in managerial remuneration

- (a) Contribution to PF, superannuation fund, or annuity fund either singly or put together not taxable under the Income-tax Act, 1961
- (b) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
- (c) Encashment of leave at the end of the tenure.

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- Children's education allowance – Foreign Education RS. 12,000 per month up to two children
 - Holiday passage for children studying outside India or family staying abroad - Return holiday passage once in a year by economy class or once in two years by first class
 - Leave travel concession: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.
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Perquisites under the Income-tax Act 1961

- Valuation of residential accommodation provided by the employer – Owned / Rented / Furnished / Unfurnished
 - Value of hotel accommodation provided by the employer
 - Perquisite of motor car provided by the employer
 - Perquisite arising out of supply of gas, electric energy or water
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- Free/Concessional Educational Facility: Value of the perquisite would be the expenditure incurred by the employer
 - Free/Concessional journeys provided by an undertaking engaged in carriage of passengers or goods
 - Provision for sweeper, gardener, watchman or personal attendant
 - Fringe Benefits - Interest free/concessional loans, Value of free meals, Value of gift or voucher or token, Credit card provided by the employer, Club membership

Challenges

- Valuation of ESOPs – 56 (2) (x)
 - Point of Taxation of ESOPs as perquisites
 - Commission as a percentage of Profits (especially to substantial shareholder – Payment of bonus in lieu of dividends)
 - Unreasonable payment of Remuneration
 - Performance Bonus to directors
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Challenges

- Sitting fees – TDS made under section 194J – Taxable as IOS
- Providing for commission based on percentage of net profit in accounts
 - Year in which employee offers income
 - TDS issues