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**Director's Remuneration Under GST**

## Director's Remuneration under GST

### Definition of 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.

### Definition of Director

Section 2(34) of the Companies Act, 2013, “director” means a director appointed to the Board of a company.

### Types of Directors

- a) Executive Directors: Executive directors are the full-time working directors of the company. They look after the affairs of the company and have a higher responsibility towards the company. Executive directors are internal employees of a company. Therefore, they are not independent when making their decisions and performing administrative duties.
- b) Non- Executive Directors: Non-executive directors are non-working directors and are not involved in the everyday working of the company. They might participate in the planning or policy-making process and challenge the executive directors to come up with decisions that are in the best interest of the company. Non - executive directors are independent external directors, who are specifically appointed to bring an independent external view.

## **Applicability of GST on Remuneration Paid to Directors**

### Employee – Employer Relationship

If a person has to work under the direct control and supervision of the principal and has no discretion of his own in the performance of his duties, he is deemed to be an employee and the remuneration payable to him in such a case is chargeable to tax under the head salaries. Taxability of an income under the head 'Salary' requires existence of employee and employer relationship. Before a payment can be taxed as salary, the relationship of employer and employee must be established. In the absence of the employer-employee relationship, the income is not assessable as salary.

The employee - employer relationship can also be determined from the fact that under section 192 of Income Tax Act, 1961 the TDS is being deducted on the remuneration paid to directors by the company. Hence if the TDS on remuneration paid to directors is deductible under section 192, it signifies the existence of employee – employer relationship between the director and the company.

The TDS on professional fees and technical services is deducted under section 194J of Income Tax Act, 1961. Hence if the TDS on remuneration paid to directors is deductible under section 194J, it signifies the non-existence of employee – employer relationship between the director and the company.

### **a) Remuneration to Directors that falls under Schedule III**

Directors who are the employees of the said company and are being paid under the head of salary, are subject to TDS under section 192 of Income Tax Act, 1961.

Services by an employee to the employer in the course or in relation to his employment are covered under Clause 1 of the Schedule III which relates to the activities or transactions which shall be treated neither as a Supply of Goods nor as a Supply of Services. Thus, services supplied by employee to an employer is out of supply purview in GST.

**b) Remuneration to Directors that falls under Reverse Charge Mechanism**

In the absence of employee – employer relationship, the remuneration in nature of professional fees are liable to TDS under section 194J of Income Tax Act, 1961.

The remuneration paid to the directors who are not the employee of the said company should be covered under Notification No. 13/2017 and liable to be taxed under Reverse Charge Mechanism.

**DISCLAIMER:**

The information contained herein is in summary form and is prepared based on the provisions of Companies Act 2013, Income Tax Act 1961, Goods and Services Tax Act, 2017 and related Rules, Circulars, Notifications therein. For details, please refer the provisions of Companies Act 2013, Income Tax Act 1961, Goods and Services Tax Act, 2017. While the information is believed to be accurate to the best of our knowledge, we do not make any representations or warranties, express or implied, as to the accuracy or completeness of this information. Reader should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.

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