

Update

Clarification on exemption to making application to Central Government for remuneration exceeding limits under provisions of Schedule XIII



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During the past year until now Indian economy has witnessed many changes in government policy and many introductions for simpler and easy conduct of day to day affairs. Apart from several policy changes the government has also come up with doing away of redundant provisions. One of them being application to Central Government for seeking approval in case the payment of remuneration exceeded the limits prescribed under Schedule XIII. Vide Notification No. GSR 534(E) dated July 14, 2011, companies were exempted from seeking such approval in cases where:

- managerial persons not having any interest in the capital of the company and
- were not related to the directors or promoters thereof;

The confusion was in case the managerial person held any shares pursuant to the requirements u/s 270 qualification shares. It is obvious that managerial personnel hold the required qualification shares and therefore it was practically impossible for managerial personnel to have nil interest in the capital of the Company. Similarly, any allocation of shares under corporate scheme like ESOP to employees also had confusion in the minds of corporates. Though it was obvious that in case of holding qualification shares irrespective of any specific provision the same should not have been counted for the purpose of exemption. Thankfully, to the relief of stakeholders MCA vide Notification F. NO. 14/11/2012-CL-VII dated 16-8-2012 has clarified that any employee of a company holding shares of the company **up to 0.5% of paid up share capital** thereof under any scheme formulated for allotment of shares to such employees including under ESOP or by way of qualification shares are also covered under the category of “persons not having any interest in the capital of the company” in terms of the Ministry's notification GSR 534(E) dated 14-7-2011.

Has the specification become more unclear?

Though the department has come up with an express provision specifying employee holding qualification shares or under employee scheme are covered under the meaning of “persons not having any interest in the capital of the company” provided the holding is only to the extent of 0.5% but it has become all the more unclear as to whether the 0.5% is inclusive of holding under both qualification shares and holding pursuant to any scheme or whether any of the two as the language reads as-

*“.....0.5% of paid up share capital thereof under any scheme formulated for allotment of shares to such employees including under ESOP **or** by way of qualification shares....”*

So prima facie the provision seems to be applicable in case of holding either qualification shares or holding under any scheme. Therefore, in case of a person holding shares



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pursuant to both qualification shares and under a scheme, the holding should not exceed 0.5% so as to fall under the exemption.