



# **Company Law Refresher Course**

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# Synopsis

- Provisions relating to:
    - Important definitions
    - Restriction on Power of Board(Section 180-183)
    - Loans to Directors etc.(Section 185)
    - Loan and Investment by company(Section 186)
    - Managerial Remuneration(Section 197-198)
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# Important Definitions



# Free Reserve (Section 2(43))

- Such reserves which as per latest **audited** BS are available for distribution of dividend.
  - Proviso states that following to be excluded:
    - any amount representing unrealised gains, notional gains or revaluation of assets (whether shown as reserve or otherwise) or
    - Any change in carrying amount of an asset or liability recognised in equity, including surplus in PL on measurement of asset or liability at fair value
  - **Whether Securities Premium is free reserve?**
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# Net Worth (Section 2(57))

❖ Means aggregate value of

**paid-up share capital**

Add: all reserves created out of profit

Add: securities premium account

Less/Add: debit or credit balance of profit and loss account

Less: accumulated losses,

Less: deferred expenditure

Less: miscellaneous expenditure not written off

**As per audited balance sheet,**

but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation

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# Relative

## ❖ Section 2(77) :

“**relative**”, with reference to any person, means anyone who is related to another, if –

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed\*;

\*- Father, mother, son, son's wife, daughter, daughter's husband, brother, sister, **(including step relations)**

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# Restriction on Power of Board



# Restrictions on powers of Board (section 180)

- ❖ BOD shall exercise following powers by **special resolution**
    - to sell, lease or otherwise dispose of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings
      - ❑ “undertaking” shall mean
        - An undertaking in which investment of the company > **20% of its net worth** as per the **audited balance sheet** of the preceding financial year
        - OR
        - An undertaking which **generates 20% of the total income** of the company during the previous financial year;
      - ❑ The special resolution passed as above may stipulate various conditions including conditions regarding use, disposal and Investment of the above sales proceeds.
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# Restriction on powers of board (section 180)

- to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation
- to borrow money, where the money to be borrowed, together with the money already borrowed by the company will **exceed aggregate** of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from **Company's bankers** in the ordinary course of business.

“temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

- Total amount up to which monies may be borrowed to be specified in special resolution
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# Restriction on powers of board (section 180)

- to remit, or give time for the repayment of, any debt due from a director
  - ❖ No debt incurred by the company in excess of the limit imposed under the section shall be valid or effectual, unless the lender proves that the loan advanced was in good faith and he did not have any knowledge that the limit prescribed has been exceeded.
  - ❖ This section shall not apply to **Private Company** which has not committed default in filing its financial statements under section 137 or Annual return under section 92 with the Registrar.{Read Exemption to private limited Company Notification dated 5<sup>th</sup> June,2015 as amended by Notification dated 13<sup>th</sup> June, 2017}
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# Restriction on powers of board (section 180)

## Case study:

ABC Ltd, a listed company is planning to borrow term loan of Rs. 2 crores as on 30.4.2020. Further details of company are as follow:

Particulars	Amount (In crores)
Paid up Equity Share capital	2.00
Paid up Non-convertible Preference shares	0.50
Securities Premium	1.00
Capital Redemption reserve	0.20
Surplus- 30.4.20 unaudited	1.80
Surplus- 31.3.19 audited	1.30
<b>Borrowing details</b>	
Term loan from banks	1.50
Cash Credit facilities form Banks	2.50
Unsecured loan from Directors	2.00

Kindly, guide the Company whether the Company would require special resolution to borrow additional Term loan of Rs. 2 crores.

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# Restriction on powers of board (section 180)

## Case study:

ABC private ltd is to borrow Term loan of Rs. 5 crores and has no borrowing as on date. However, it has been noticed that the company has made default in filling its annual returns for the previous year.

The paid up share capital+ Free reserves+ Securities Premium of the Company is 1 crore. Whether the Company would require special resolution to borrow the above term loan?

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# Company to contribute to Bona fide and charitable funds (section 181)

- ❖ BOD may contribute to bona fide charitable and other funds
    - Provided that **prior permission** of the company in **general meeting** shall be required
    - for such contribution
    - in case any amount the aggregate of which, in any financial year,
    - exceed **5%** of its **average net profits for the three immediately preceding financial years**
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# Company to contribute to Bona fide and charitable funds (section 181)

## Case study:

XYZ Private limited is planning to contribute 15 lakhs as Donation to charitable trust. The profit of the company for previous 3 years are as follow:

Financial Year	Amount (in Lakhs)
2016-17	(100.00)
2017-18	200.00
2019-20	500.00

Whether the Company can contribute the above amount?

# Prohibitions and Restrictions Regarding Political Contributions (section 182)

- ❖ A company, other than a Government Company and a company which has been in existence for less than 3 years, may contribute **any amount directly or indirectly** to any political party only by A/c Payee Cheque/Draft/ECS of Bank
    - ~~The aggregate of the amount contributed by the company in any financial year shall not exceed 7.5% of its average net profits during the three immediately preceding financial years.~~
    - No such contribution shall be made by a company unless a resolution is passed at a meeting of the **Board of Directors**.
    - Every company shall **disclose** in its profit and loss account the total amount contributed by it.
    - Penalty for contravention:
      - For company : upto 5 times of amount contributed
      - Every officer in default: Imprisonment upto 6 month and fine upto 5 times of amount contributed
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# Prohibitions and Restrictions Regarding Political Contributions (section 182)

## Case study:

ABC Private limited has made donation of Rs. 10 lakhs to a political party and in turn the Political party has allowed the company for advertisement in their publication at concessional rate of Rs. 3 lakhs. The average net Profits of the Company for immediately preceding 3 years is Rs. 2 lakhs. The resolution authorising the above payment by company was passed in Board meeting. The Company has disclosed in its financial statement that the company has given Political contribution of Rs. 10 lakhs to Hindustan Political Party. Kindly guide the Company, whether there is any Noncompliance under section 182 of the Companies Act, 2013.



# Power of Board and Other Persons to Make Contributions to National Defence Fund, etc. (section 183)

- ❖ The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors in general meeting,
    - contribute such amount as it thinks fit to the National Defence Fund or
    - any other Fund approved by the Central Government for the purpose of national defence.
  - ❖ Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund.
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# Loans to Directors, etc



# Loans to directors, others (section 185) (As Amended)

- ❖ Entire provision of Section 185 of the Act substituted by Companies (Amendment) Act, 2017 and has been made effective from May 7, 2018.
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# Loans to Directors (section 185) (As Amended)

- ❖ No company shall directly or indirectly advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by, -
    - Any director of company; **or**
    - Any Director of holding company; **or**
    - Any partner or relative of any such director; **or**
    - Firm in which any such director or relative is a partner.
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# Loans to Directors (section 185) (As Amended)

- ❖ A company may advance any loan including any loan represented by a book debt or give any guarantee or provide any security in connection with loan taken by:
    - any private company of which such director is a director or member;
    - Any body corporate at General Meeting of which not less than 25% is controlled by any such director;
    - Any body corporate – BOD are accustomed to act in accordance with instruction of the lending company.
  
  - ❖ **Condition for granting loan to above 3 parties:**
    - special resolution is passed by the lending company [with explanatory details to disclose full details];
    - the loans are utilised by the borrowing company for its principal business activities.
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# Loans to Directors (section 185) (As Amended)

## Exemptions:

- ❖ giving any loan to a managing director or whole time director;
    - as part of the conditions of service extended by the company to all its employees; or
    - pursuant to any scheme approved by the members by a Special Resolution
  - ❖ Ordinary course of business to provide loans and interest at Government Security rates of comparable tenor;
  - ❖ **Loan**/Security/Guarantee by holding to **Wholly** own subsidiary for any loan taken by Subsidiary company;
  - ❖ Security/Guarantee by holding to subsidiary for any loan taken by Subsidiary company from Banks/ Financial Institution;
  - ❖ Provided the loans are utilized by the subsidiary company for its principal business activities.
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# Loans to Directors (section 185) (As Amended)

## ❖ Penal provision in contravention of section 185:

- The company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty five lakhs rupees;
  - Every officer of the company shall be punishable with 6 month imprisonment or with fine which shall not be less than five lakh rupees but which may extend to twenty five lakhs rupees;
  - Director or other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan by him or other person- imprisonment of six months and/or with minimum fine of five lakhs rupees which may extend to twenty five lakhs rupees;
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# Loans to Directors (Section 185)

## Exemption to Private Companies vide notification date 5<sup>th</sup> June 2015:

- ❖ Section 185 will not apply to Private Company -
    - In whose share capital no other "body corporate" has invested any money ;
    - If borrowing from Banks or FI's or any body corporate is less than twice of paid up capital or fifty crore, whichever is lower ;
    - Such a company has no defaults in repayment of such borrowing subsisting at the time of making transactions under this section.
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# Loans to Directors (Section 185)

## Case study:

A ltd has given loan to a firm in which relative of one of its director is partner. The company has charge interest on above loan @12% p.a. The company has passed special resolution authorising above loan given by the company. Whether the company has complied with the Provisions of Section 185 of the Companies Act, 2013

## Case Study:

A ltd has given loan and has also provided guarantee for loan taken by its Subsidiary company. The company has authorised the above transaction in Board meeting. Whether the company has complied with the Provisions of Section 185 of the Companies Act, 2013

# Loan and Investment by Company



# Loan and Investment by Company(Sec 186)

- ❖ Company shall unless otherwise prescribed, make investment through not more than two layers of investment companies.

## Exceptions:

a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country

a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law

# Loan and Investment by Company(Sec 186)

No company shall directly or indirectly

give any loan to any person or other body corporate

give any guarantee or provide security in connection with a loan to any other body corporate or person

acquire by way of subscription, purchase or otherwise, the securities of any other body corporate

Limit – Higher of the following

exceeding 60% of  
its paid-up share capital  
free reserves  
securities premium account

100% of  
its free reserves  
securities premium account

If limit exceeds should be previously authorised by special resolution passed in meeting subject to exceptions of loan or guarantee provided by the company to its WOS, or JV or acquisition made by the way of subscription of securities, to its WOS company.

# Loan and Investment by Company(Sec 186)

- ❖ Person does not include individual who is in **employment of company**
  - ❖ Disclosure to be made in financial statements of the purpose of loan given or investment made or Guarantee or security given and the its proposed utilisation by the recipient
  - ❖ No loan shall be given under this section at a rate of interest **lower than the prevailing yield** of one year, three year, five year or ten year Government Security closest to the tenor of the loan.
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# Loan and Investment by Company(Sec 186)

- ❖ No investment shall be made or loan or guarantee or security given by the company unless
    - the resolution sanctioning it is passed at a meeting of the Board with the **consent of all the directors present at the meeting** and the prior approval of the public financial institution concerned where any term loan is subsisting.
    - prior approval of a public financial institution shall not be required where the limits prescribed does not exceed and there is no default in repayment of loan installments or payment of interest thereon
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# Loan and Investment by Company(Sec 186)

- ❖ No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon,
    - shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
  - ❖ Every company giving loan or giving a guarantee or providing security or making an acquisition
    - shall keep a **register** which shall contain such particulars and shall be maintained in **Form MBP 2**.
    - The register shall be kept **at the registered office**.
    - The register shall be **preserved permanently** and shall be kept in the custody of the company secretary
    - The extracts from the register maintained may be furnished to any member of the company on payment of fee.
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# Loan and Investment by Company(Sec 186)

## ❖ Non Applicability(Except section 186(1))

- a) loan made, guarantee given or security provided by
    - Banking Company
    - Insurance Company
    - Housing Finance Company
    - Company engaged in the business of financing of companies or of providing infrastructural facilities;
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# Loan and Investment by Company(Sec 186)

b) To any investment:

- made by investment company
  - made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;
  - Made, in respect of investment and lending activities, by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934) and whose principal business is acquisition of securities:
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# Loan and Investment by Company(Sec 186)

## ❖ Penal provision in contravention of section 186:

- The **company** shall be punishable with **fine** which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and
  - Every **officer** of the company who is in default shall be punishable with **imprisonment** for a term which may extend to two years and with **fine** which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
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# Loan and Investment by Company(Sec 186)

## Case study:

ABC Private Ltd. have given loan of Rs. 1 crores at the rate of 4% to XYZ Private Limited for 5 years. The paid up share capital + Free reserves+ Securities Premium of the Company is 2 crore. The company has authorised the above transaction by way of special resolution in General meeting. The company is of the opinion that they have followed the Provisions of Section 186 of the Companies Act, 2013

# Managerial Remuneration



# Managerial Remuneration

- ❖ **Section 2(78)** defines remuneration as 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.
  - ❖ **Section 197(1) - Total Managerial Remuneration payable by public company (not applicable to Private company, Government Company or Specified IFSC Public Company)**
    - Total Remuneration paid to directors including MD + WTD + Manager **<= 11%** of the net profits computed in the manner laid down in Sec 198 (remuneration shall not be deducted from gross profits).
    - Remuneration exceeding 11% can be given subject to authorisation by the company in general meeting, subject to provision of Schedule V.
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# Managerial Remuneration payable by Companies having adequate profits

- ❖ Further, except with the approval of the Company in general meeting by a special resolution, the remuneration payable shall not exceed of following :

- To any one MD, WTD or manager  $\leq 5\%$  of the net profits and
- if there is more than one such director , remuneration  $\leq 10\%$

- To any directors who are neither MD, WTD or Manager  $\leq 1\%$  of net profit if there is a MD, Manager or WTD

- To any directors who are neither MD, WTD or Manager  $\leq 3\%$  of net profit in any other case.

# Managerial Remuneration

Provided also that, where the company has defaulted in payment of dues to

- any bank or
  - public financial institution or
  - non-convertible debenture holders or
  - any other secured creditor,
- **Prior approval** of the bank or public financial institution or the non- convertible debenture holders or other secured creditor shall be obtained by the company **before obtaining approval in the general meeting.**

*Amendment Effective From 12.09.2018*

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# Managerial Remuneration

- ❖ Percentages stated earlier shall be exclusive of
    - a) Fees for attending meetings of the Board or Committee
      - Sitting fees shall be the sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.
      - Sitting Fees paid to Independent Directors and Women Directors, shall **not be less than** the sitting fee payable to other directors.
    - b) Fees for any other purpose whatsoever as may be decided by the Board.
  - ❖ Net profit for the purpose of section 197 shall be calculated in the manner prescribed under section 198.
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# Managerial Remuneration payable by Companies having nil or inadequate profits

- Where in any financial year - A company has no profits or its profits are inadequate, it may, ~~without Central Government approval~~, pay remuneration to the managerial person not exceeding, the limits specified as under :-

Effective Capital	Limit of yearly remuneration payable shall not exceed (Rupees)
i) Negative < Rs.5 crore	60 Lakhs
ii) >=Rs. 5 crore < Rs. 100 crores	84 Lakhs
iii) >=Rs. 100 crores < Rs.250 crores	120 Lakhs
iv) >= Rs.250 crores	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

- Provided the ~~above limits shall be doubled~~ remuneration in excess of above limits may be paid if special resolution passed by the shareholders.
  - For a period less than one year, the limits shall be pro-rated.
-

# Managerial Remuneration payable by Companies having nil or inadequate profits

- ❖ **Limit also applicable** to managerial person who is functioning in a professional capacity,
    - if he is **not having any interest** in the capital of the company/ its holding company/ its subsidiaries and
    - not having any interest or related to the directors or promoters of the company / its holding company/ its subsidiaries at any time during the **last two years** before or on or after the date of appointment and possesses graduate level qualification.
  
  - ❖ An ordinary or special resolution, as the case may be, has to be passed at the general meeting for the period not exceeding 3 years.
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# Managerial Remuneration

- ❖ Subject to the provisions of sections I to IV,
    - 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.
  - ❖ The remuneration payable to the directors shall be inclusive of the remuneration for the services rendered by him in any other capacity except
    - The services rendered are of a professional nature and
    - In the opinion of the Board, the director possesses the requisite qualification for the practice of the profession.
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# Other Conditions

- ❖ **197(9)** - If any director **draws or receives**, directly or indirectly, by way of remuneration any such 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 two years** or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. [Amendment Effective From 12.09.2018](#)
  - ❖ **197(10)** - **Recovery** of any sum refundable under Section 197(9) **cannot be waived** unless approved by the company by special resolution within two years from the date the sum becomes refundable. [Amendment Effective From 12.09.2018](#)
    - Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, prior approval of the bank or public financial institution or the non-convertible debenture holders or other secured creditor shall be obtained by the company before obtaining approval in the general meeting. [Amendment Effective From 12.09.2018](#)
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# Other Conditions

## ❖ 197(11)

- In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule.

## ❖ 197(12)

- Every listed company shall **disclose in the Board's report**
    - the ratio of the remuneration of each director to the median employee's remuneration
    - the percentage increase in remuneration of each director, CFO, CEO, Company Secretary or Manager.
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# Other Conditions

## ❖ 197(13)

- Where any insurance is taken by a company on behalf of its MD, WTD, Manager, CEO, CFO or Company Secretary 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, the **premium paid** on such insurance **shall not be treated as part of the remuneration** payable to any such personnel **except such person is proved to be guilty.**

## ❖ 197(14)

- Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report
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# Penal Provision

## ❖ 197(15)

- If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees

## ❖ 197(16)

- The auditor of the company shall, in his report under section 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
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# Managerial Remuneration

## Case study:

ABC Limited have One Manager Director and One whole time director. The net profit of the Company for the year is Rs. 500 lakhs. The company proposes for remuneration of Rs. 30 lakhs to Whole time Director and 15 lakhs to the Manager Director . The company has not passed any resolution as the remuneration paid to above Directors are within the Limit as prescribed by Section 197 of the Companies Act, 2013.



# Calculation of Profits (Sec 198)

Credit shall be Given [Sec. 198(2)]	Credit shall not be given [Sec. 198(3)]	To be Deducted [Sec. 198(4)]	Not to be Deducted [Sec. 198(5)]
Bounties and Subsidies received from Govt. or any public authority constituted by Govt., unless directed otherwise.	<ol style="list-style-type: none"> <li>1. Profits by way of premium on shares, debentures</li> <li>2. Profit on sale of forfeited shares</li> <li>3. Profits of capital nature.</li> <li>4. Unrealized gains, notional gains or revaluation of assets.</li> </ol>	<ol style="list-style-type: none"> <li>1. Normal business expenses including remuneration to directors, depreciation, contribution, interest on loan debentures, bad/written off debts etc.</li> <li>2. The excess of expenditure over income of earlier years.</li> </ol>	<ol style="list-style-type: none"> <li>1. Income tax,</li> <li>2. Voluntary damages or compensation.</li> <li>3. loss of capital nature.</li> <li>4. Change in carrying amount of asset or liability.</li> </ol>



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