

# Making SME Payments by 31<sup>st</sup> March 2024 for compliance u/s 43B(h) of Income Tax Act

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In March 2024, it is important to comply with Section 43B(h) of Income Tax Act for payment to MSEs (Micro and small-scale Enterprises). In this article we pen down the statutory requirements and analysis of this new amendment in detail.

## **1. Legal Provision - Certain deductions to be only on actual payment -**

**Section 43B(h) of Income Tax Act provides as follows –**

**Notwithstanding anything contained** in any other provision of this Act, a deduction otherwise allowable under this Act **in respect of** -

<sup>43</sup>[(h) any **sum payable** by the assessee to a **micro or small enterprise beyond the time-limit specified in section 15** of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006.),] shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) **only in computing the income referred to in section 28** of that previous year in which such sum is **actually paid** by him :

<sup>14</sup>[**Provided** that nothing contained in this section <sup>44</sup>[[**except the provisions of clause (h)**]] shall apply in relation to any sum <sup>15</sup>[\*\*\*] which is actually paid by

*the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.*

<sup>26</sup>[*Explanation 4.*-For the purposes of this section,-

<sup>36</sup>[<sup>45</sup>[(e) "**micro enterprise**" shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006.);]

...

<sup>46</sup>[(g) "**small enterprise**" shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).]]

## **2. Memorandum to finance bill 2023 specified as follows –**

### ***Promoting timely payments to Micro and Small Enterprises***

*Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.*

*2. In order to promote timely payments to micro and small enterprises, it is proposed to include payments made to such enterprises within the ambit of section 43B of the Act. Accordingly, it is proposed to insert a new clause (h) in section 43B of the Act to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction*

only on actual payment. However, it is also proposed that the proviso to section 43B of the Act shall not apply to such payments.

3. Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the proposed amendment to section 43B of the Act will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

4. This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

### **3. Relevant MSME Act snapshots are as follows –**

#### **Section 15. Liability of buyer to make payment:**

Where any **supplier** supplies any **goods or renders any services** to any buyer, the buyer shall make payment therefor **on or before the date agreed upon** between him and the supplier **in writing** or, where there is no agreement in this behalf, **before the appointed day**:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days **from the day of acceptance or the day of deemed acceptance**.

**Section 16 - Date from which and rate at which interest is payable:**

Where any **buyer fails to make payment** of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount **from the appointed day** or, as the case may be, from the date immediately following the date agreed upon, at **three times of the bank rate** notified by the Reserve Bank.

**Section 2(b)** "**appointed day**" means the day following immediately after the expiry of the period of **fifteen days** from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation.--For the purposes of this clause,--

(i) "the day of acceptance" means,--

(a) the day of the **actual delivery of goods or the rendering of services**; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, **the day on which such objection is removed by the supplier**;

(ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the **day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services**;

**S2 (e) "enterprise"** means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the **manufacture or production of goods**, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or **engaged in providing or rendering of any service or services**;

**S2 (n) "supplier"** means a **micro or small enterprise**, which has **filed a memorandum** with the authority referred to in sub-section (1) of section 8, and includes,--

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

Section 2(h) of the MSMED Act defines "micro enterprise" to mean an enterprise classified as such under sub-section (1) of Section 7

Section 2(m) of the MSMED Act defines “small enterprise” to mean an enterprise classified as such under sub-section (1) of Section 7

Section 7(1) of the MSMED Act provides that the Central Government may, for the purposes of this Act, **by notification** (in the Official Gazette), classify any class or classes of manufacturing or service enterprises, whether proprietorship, HUF, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called, into:

- Micro Enterprises
- Small Enterprises
- Medium Enterprises

Section 7(9) of the MSMED Act provides that the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

The Central Government has issued Notification No. 2119(E), dated 26-6-2020, under Section 7(1) read with Section 7(9) of the MSMED Act. Para 3(1) of the said Notification provides that a **composite criterion of investment and turnover** shall apply for the classification of an enterprise as micro, small or medium. Para 1 provides that an enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria:

Category of Enterprise	Criteria for classification
Micro Enterprise	Net investment in plant and machinery or equipment (Not L&B, Furniture or any other Asset) does not exceed Rs 1 crore; and
	Net turnover does not exceed Rs 5 crores.
Small Enterprise	Net investment in plant and machinery or equipment does not exceed Rs 10 crore; and
	Net turnover does not exceed Rs 50 crores.
Medium Enterprise	Net investment in plant and machinery or equipment does not exceed Rs 50 crore; and
	Net turnover does not exceed Rs 250 crores.

Turnover = net turnover basis = turnover of goods and services minus the exports of goods and services.

Investment in plant and machinery or equipment = net investment basis as per the income-tax return = WDV of plant and machinery or equipment as per the ITR subtracting the costs associated with pollution control, research and development, and industrial safety devices.



#### **4. Applicability Of Benefit To Trader/Distributors -**

As per the definition of enterprises, only persons dealing in either Manufacturing of Goods or providing any services will be classified as an **Enterprise**. One could surely take a stand that trader /Retailer/Distributor, etc would not be classified as an Enterprise and would not be covered under the Micro or Small Enterprise definition.

On simple reading the Office Memorandum No. 5/2(2)/2021-E/P & G/Policy) date 02/07/2021 issued by Government of India, Ministry of MSME.

“Retail and wholesale trades as MSMEs and they are allowed to be registered on Udyam Registration Portal. However, benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.”

Central Government’s office memorandum 1/4(1)/2021- P&G Policy, dated 01.09.2021, further clarifies that “the benefit to Retail and wholesale trade MSMEs are restricted up to priority sector landing only and other benefit, including provisions of delayed payment as per MSMED Act, 2006, are excluded.

Traders will not be considered as “Distribution Service Providers” as applicable in WTO Norms



## **5. Understanding with Example -**

Bill Date	Due Date	Date of payment	Deduction allowed in
10-02-2024	26-03-2024	31-03-2024	AY 24-25
10-02-2024	26-03-2024	30-04-2024	AY 25-26
20-02-2024	05-04-2024	05-04-2024	AY 24-25
20-02-2024	05-04-2024	30-04-2024	AY 25-26

## **6. Critical Issues -**

1. Application of S43B(h) not for MEDIUM Scale Enterprises
2. Application of S43B(h) to be seen ONLY on sums outstanding as of year-end and paid off after the 31<sup>st</sup> of March 2024.
3. Proviso to S43B NA incase of clause (h) - where payment 'due on 31<sup>st</sup> March 24' is made before return filing, the deduction will be allowed only in AY' 25-26
4. An E-Mail / invoice /purchase order stating the payment terms can be seen as an agreement, but it has to be in writing.
5. 15 Days / 45 days counted from – Date of Delivery/ Date of removal of objection in writing (acceptance). Not like GST (180 days clause) which is from date of invoice.

6. only micro and small enterprises that are Udyam-registered are considered suppliers u/s Section 2(n) for the purpose of Section 15 of the MSMED Act. Udyam Registration is only prospective

7. 43B(h) would include GST only if GST is debited to P/L A/c. However in such case 43B(a) would also be applicable and following 'latter the better maxim' 43B(h) would prevail over 43B(a). Hence proviso to S43B is NA

8. The GoI had also issued OM No. 2(28)/2007-MSME(Pol), dated 26-08-2008, which clarifies - "it is advisable that the Micro or Small Enterprises **should mention/get printed on their letterheads, supply order sheets, invoices, bills and relevant documents, the Entrepreneurs Memorandum (EM) number...., so that there always remains an identification of being an MSE supplier.**" – Hence MSE is identified by the same

9. It is also advisable that a letter be sent to all vendors to clarify whether they are MSEs or not. Also take their Udyam RC for FY 23-24 (Not last year)

10. Section 23 of the MSMED Act states that interest paid by a buyer for delayed payments is not deductible under the IT Act.

11. If a 100% deduction of capital expenditure is not allowable, there would be no disallowance with respect to depreciation on capital goods purchased if the MSE supplier of capital goods is not paid in time. This is because depreciation is not a "sum payable in respect of which deduction is otherwise allowable".

12. Sections 44AD, 44ADA, 44AE, [44BBB](#) and [115VA](#) also begin with non-obstante clauses as 'Notwithstanding anything to the contrary contained in Sections 28 to 43C,.....'. Therefore, Section 43B(h) overrides all other provisions of the Act except Sections 44AD, 44AE, 44ADA, 44BBB and 115VA. Therefore, Section 43B(h)

will not apply to eligible assessee-buyers who opt for presumptive taxation under Sections 44AD, 44AE, 44ADA, 44BBB or 115VA.

13. The advance payment made to the MSEs shall be allowed as a deduction in the year of payment itself, even if it does not fall due for payment in that year.

14. Payment is regarded as made on the date the cheque is handed over to the payee

15. Provisions - Provisions will be made if in respect of sums payable for which deduction is otherwise allowable under Section 37(1). Therefore, they would fall within the ambit of Section 43B(h).

16. MAT - Section 43B(h) is applicable for calculating taxable business profits of a company in regular assessment under the Act. It is not applicable for the calculation of Minimum Alternate Tax under Section 115JB.

17. There is no exemption for "buyers" who are Micro or Small enterprises

18. Sec 43B is applicable for trusts. However one might take the plea that since the entire income itself is exempt then it is not relevant.

## **7. Ten Point Year End 43B(h) Checklist: 43B(h) Compliances for all (including traders/MSE buyers) -**

1. Send a letter to all vendors to ascertain their MSME Status and get their RCs for FY 2023-24

1A. Incase no reply is received, then scrutinize their Invoices/POs/etc where they might have mentioned their MSME status

2. Ascertain whether they are Small or Micro enterprise or not. Incase they are 'Medium' 43B(h) is not applicable.

3. Ascertain whether they are traders/manufacturers/service providers. In case they are 'traders' 43B(h) is not applicable.
4. Ascertain whether the payments made to them are "Capex" Items or not. In case the payments are for 'capex items', 43B(h) is not applicable.
5. Ascertain whether there is any written contract with them or not regarding payment. If 'no', then it is better to have a written contract with them regarding payment terms
6. Find out the due date i.e. date of delivery of goods/services or date of acceptance or date of deemed acceptance. The 'due date' of 15/45 days is calculated from 'such date' only.
7. Handover cheque on 'due date' at least. It would be accepted as 'date of payment'
8. See the 'advance payments' made to MSEs – Take the same as a deduction u/s 43B even in case they are not debited to P/L A/c
9. Ensure that you're not liable to pay any interest to MSMEs – Such interest is disallowable
10. In case you falter, then Ascertain whether you're a trust/ tax is payable under MAT/ you are under presumptive taxation u/s 44AD/44ADA/44AE/ [44BBB](#)/ [115VA](#) - In such cases you're exempt from the rigors of Sec 43B(h)

## LET'S DISCUSS FURTHER!

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