

To promote timely payments to micro and small enterprises, payments made to such enterprises have been included within the ambit of section 43B of the Act vide FA 2023.

A new clause (h) has been inserted 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. This is irrespective of the previous year in which the liability to pay such sum is incurred by the assessee according to the method of accounting regularly employed by him.

However, it has also been provided that the proviso to section 43B of the Act shall not apply to such payments. The proviso to section 43B which extends the time limit for allowance of deduction if actual payments are made up to the 'due date' for furnishing the return under section 139(1), would not apply in respect of the payment referred to in clause (h) of section 43B.

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



WHICH ENTITIES CAN BE CATEGORISED AS MSME

Micro

- Investment in Plant & Machinery does not exceed Rs 1 crore
- Last year turnover does not exceed Rs 5 crore

Small

- Investment in Plant & Machinery does not exceed Rs 10 crore
- Last year turnover does not exceed Rs 50 crore

Medium

- Investment in Plant & Machinery does not exceed Rs 50 crore
- Last year turnover does not exceed Rs 250 crore

POINTS TO BE NOTED

Definition	Particulars
Enterprise [Sec 2(e)]	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 or engaged in providing or rendering of any service or services.
Section 15	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 (Not exceeding 45 days) or, where there is no agreement in this behalf, before 15 days.
Supplier [Sec 2(n)]	A micro or small enterprise, which has filed a memorandum with the authority u/s. section 8(1) , and includes (a) the National Small Industries Corporation, being a company, registered under the Companies Act; (b) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act; (c) 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.
Buyer	Whoever buys any goods or receives any services from a supplier for consideration.
Aggregation	If on a single PAN more than one unit is registered then all units will be aggregated for arriving at investment and turnover.

ADDITIONAL POINTS TO BE NOTED

- **Composite criteria of investment and turnover** would be applied for classification as micro, small and medium enterprise. Which means **both the conditions given in the above table are to be satisfied** for classifying a unit as micro, small or medium enterprise.
- If an enterprise crosses any of the limits specified in its present category either by way of investment in plant & machinery / equipment or turnover, it would be placed in the next higher category. However, for downgrading the enterprise, both the criteria should be below the limit from the existing level.
- As regards, calculation of investment in plant & machinery or equipment, it is with reference to the ITR of the previous year filed under the Income tax Act, 1961. Therefore, WDV of the assets would be considered and not their original cost.
- Similarly, for computing the turnover, it shall exclude export of goods or services or both. Information as regards turnover and export turnover shall be linked to the Income-tax Act, 1961 or the Central Goods and Services Act and the GSTIN.
- Yet another communication viz. Office Memorandum dated 2nd July, 2021 of the Government of India, Ministry of MSME is worthy of note. It says that based on representations it was decided to include retail and wholesale trades being registered on Udyam Registration Portal. However, **benefits to retail and wholesale trade MSMEs are to be restricted to priority sector lending**. Thus, units engaged in trading though registered as MSME would not be covered by this Act.
- Section 43B(h) covers only micro and small enterprises. It **does not cover medium enterprises**. Thus, if payment is not made by 31st March of the previous year the outstanding amount due to **medium enterprise is not liable for disallowance**.

FREQUENTLY ASKED QUESTIONS

Q #1 : From which Financial Year this amendment is applicable?

Answer: This amendment is made applicable from AY 2024-25 i.e. FY 2023-24.

Q #2 : Whether this amendment can be made applicable for an amount outstanding to micro and small enterprise as on 31/03/2023?

Answer: **The amendment is not applicable to dues outstanding as on 31/3/2023 and prior to that date.** Section 43B(h) has been introduced in statute from Asst year 2024-25. Hence any deduction claimed on mercantile basis from FY 2023-24 onwards attracts the rigour of this section. Therefore old dues unpaid and outstanding prior to 01/04/2023 are not to be added back u/s 43B(h).

Q #3: To attract the disallowance u/s 43B(h), is it mandatory that supplier should have registration under the MSMED Act?

Answer: Yes. Meaning of Supplier as per Sec 2(n) of MSMED Act means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8. Therefore only those micro and small enterprises who have obtained UDYAM registration shall be eligible to obtain benefit of section 43B(h).

Numerous enterprises now include their UDYAM registration number on their invoices. The MSME Portal offers a convenient way to verify UDYAM registration and the enterprise type (Micro/ Small/ Medium) using the registration number. Therefore, when a supplier includes their UDYAM registration number on the invoice/ letterhead, it serves as an indication that they have communicated their MSME status. [Ref OM No.2(18)/2007-MSME(pol), dt. 26-08-2008]

It is the responsibility of the supplier to intimate its registration to the buyer. If in any case, the supplier has not in any manner intimated his MSME registration, then in the absence of availability of information, no disallowance can be made under section 43B(h).



CONFIRMATION

Name of the Company/Firm:

PAN Number:

1. We confirm that the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 are applicable to us and our organization falls (as per the Acknowledgement enclosed) under the definition of:
 - a. ☐ Micro Enterprise
 - b. ☐ Small Enterprise
 - c. ☐ Medium Enterprise

MSME / Udyog Aadhaar Registration Number : _____

2. ☐ None of the provisions of the Act is applicable to us.

Authorized Signatory

Date:

Name of the person.....

Designation.....

Seal of the firm.....

Note:

- 1) This confirmation letter has to be printed on your company letter head
- 2) Enclose PAN card copy of the Firm.
- 3) Please put a tick in the box [v] against the appropriate clause mentioned above.
- 4) Enclose a copy of the MSME / Udyog Aadhaar certificate in case clause no 1 is applicable to you.

Q #4: Whether section 43B(h) is applicable for dues outstanding to traders having MSME registration?

Answer: The Central Government, vide office memorandum issued on 2-7-2021, had allowed the traders to get registration for UDYAM under the NIC Code 45, 46 and 47 but for limited purposes. In that O. M. it is specifically stated that benefit to retail and whole trader MSME shall be restricted only for Priority Sector Lending.

Hence, other benefits available under the MSMED act do not apply to traders. Resultantly benefit of section 15 of the MSMED act is not available to traders and hence 43B(h) cannot be made applicable to dues outstanding to traders.



Q #5: If a supplier is engaged in both i.e. trading as well as manufacturing/services, in that situation whether section 43B(h) apply for dues outstanding to that supplier?

Answer: In such a situation, section 43B(h) can be made applicable for dues outstanding to such suppliers.

Q #6 : How year-end provisions will be dealt with for disallowance under 43B(h)?

Answer: As per section 15 and section 2(b) of MSMED Act, 2006 payment must be made within 15/45 days from the actual delivery of goods or services. Hence, for any provision made for which actual delivery of goods or services does not take place till the end of the year, no disallowance can be made under section 43B(h).

Q #7 : what if the buyer makes payment to the supplier after 15/45 days, but before the end of the financial year?

Answer: In such a situation, a deduction can be claimed in same financial year as payment is made in the same year.



Q #8: Can disallowance be attracted under section 43B(h) for dues outstanding in relation to capital expenditure?

Answer: Section 43B reads as – “Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of.....”

It is clear from above that 43B can be made applicable only to those deductions which is otherwise available under the Income Tax Act. Capital expenditure is not an allowable expense under the Income Tax Act. Hence, no disallowance will be attracted under section 43B(h) for dues outstanding in respect of capital expenditure.

Analogy can be drawn from Wipro Limited Vs. Addl CIT (ITAT Bangalore) Appeal Number : IT(TP)A No. 99/Bang/2014 [in the context of sec 40a(ia)]



Q #9: What if the buyer makes payment to the supplier after 15/45 days, but before filing the return of income for that financial year?

Answer: As per the amendment made in the first proviso to section 43B, the benefit of the first proviso will not be available for due to micro and small enterprises, Hence, though payment is made before filing a return of income, the deduction can only be claimed in the year in which actual payment is made and not in the year of accrual.

Q #10: Disallowance under 43B(h) can be attracted for assessee opting presumptive taxation i.e., 44AD/44ADA/44AE etc.?

Answer: All the above sections start with Non Obstante clause – Notwithstanding anything contained in sections 28 to 43C.....

Therefore Section 43B does not apply to the assessee opting for presumptive taxation. Hence, no disallowance can be made in such cases.



Q #11: Status of expenses booked after March 15 where 15 days period has not expired on 31st March

Answer:

Sec 43B(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

Memorandum Explaining the Provisions of the Finance Bill, 2023 clarifies as under :

“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.”

Therefore, if any sum remain payable to micro or small enterprise at year end but paid in next year within the time limit allowed under Section 15 of MSMED Act then the same will be allowable in the year of incurrance and if there is delay beyond the time limit specified in section 15 of the MSMED Act then such payments will be allowed only in the year of payment even if payment is made before due date of ITR applicable to the assessee because benefit of first proviso to Section 43B(h) is not available in respect of payments to Micro or Small Enterprises.



Q #12: What if there is dispute between buyer and supplier

Answer:

There may be situation where the buyer makes any objection in writing regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, then what would happen. In that case as per MSMED Act the day on which such objection is removed by the supplier shall be treated as day of acceptance and the payment has to be made before the appointed day which will be day following immediately after the expiry of the period of fifteen days from the day of acceptance



Q #13: What if cheque paid to supplier remains unpaid ? Can I escape disallowance

Answer:

There may be a situation that an assessee issues a cheque to the MSME supplier and due to some reason MSME supplier don't encash it within the due date. In light of the judgment of Hon'ble High Court of Punjab and Haryana in case of CIT v. Hindustan Wire Products Ltd. [2002] 120 Taxman 744 (Punjab & Haryana), disallowance u/s. 43B of the Act should not be attracted.

However, the company will be required to prove that default of supplier in encashing the cheque through following documents—

a) Copy of cheque with date of payment

b) Copy of delivery of cheque to supplier. Needless to say that delivery should be within stipulated time frame.

