



PAY MSME'S ON TIME, SAVE A DIME!

Wednesday Wisdom
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The Financial Bill 2023 introduced an amendment to the Income Tax Act, 1961, by incorporating a new Section 43B(h). This Section emphasizes on timely payments to Micro and Small Enterprises (MSMEs). The amendment is applicable from FY 2023-24 or AY 2024-25 and is designed to protect MSMEs from late payments by their buyers. [1]

Interested in how this works? Let's delve into Section 43B(h) of the Income Tax Act, 1961 ("Section").

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.



Section 43B(h) of the Income Tax Act, 1961 states that:

“(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. Provided that nothing contained in this section [except the provisions of clause(h)] shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under section 139(1).”



Key Elements of This Section Applicability:

This Section applies exclusively to Micro and Small Enterprises, not Medium Enterprises.

Definition Enterprises: According to Section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”), “Enterprises” refer to a business concern, an industrial undertaking, or any other establishment involved in the manufacture or production of goods related to any industry listed in the First Schedule of the Industries (Development and Regulation) Act, 1951, or engaged in providing or rendering services. Therefore, Enterprises not involved in production, manufacturing, or providing services, such as traders, are excluded from this provision.



As per notification no. S.O. 1702(E) dated 01.06.2020 issued by Central government:

TYPE OF ENTERPRISES

Micro

Small

Medium

INVESTMENT IN PLANT AND MACHINERY (AMOUNT IN RS.)

Up to 1 Crore

Up to 10 Crore

Up to 50 Crore

TURNOVER (TOTAL TURNOVER LESS EXPORT TURNOVER) (AMOUNT IN RS.)

Up to 5 Crore

Up to 50 Crore

Up to 250 Crore



Time Limit:

Under this new Section, taxpayers are permitted to claim deductions for certain expenses as per actual payment basis.

Explanation: For exploring benefit under the provisions of Section 43 b(h) of Income Tax Act, enterprises availing services or purchasing goods (“Buyer”) from MSME registered Enterprises (“Supplier”) needs to make payment in the following manner:

Situation 1: If there is an agreement executed between Buyer and Supplier for purchasing goods/services and time for making payment is mentioned therein, same shall not extend beyond a period of 45 days.

Situation 2: If there exists no written agreement with respect to making payment for the goods/services purchased by Buyer from the Supplier, then the Buyer is under obligation to make payment to the Supplier within a period of 15 days from the Day Of Acceptance.



In case of Objection filed by the Buyer in writing to the Supplier:

Day of Acceptance shall mean the day on which the Supplier has delivered goods/services to the Buyer.

In case where the Buyer has filed its objection in writing within fifteen days from the day of the delivery of goods or the rendering of services with the Buyer:

Day of Acceptance shall mean the day on which such objection is removed by the Supplier.



- **Part payments:**

The provision of the Section provides for deduction on actual payment basis. Therefore, if a 'micro' and/or 'small' enterprise has received payment in part, then deduction to the extent of such part payment shall be allowed.

- **Goods:**

This provision is applicable to the goods provided by MSME registered Supplier to the Buyer except any capital goods. As the expenses towards purchase of capital goods is not considered in the Profit and Loss Account. Hence, the purchase of capital goods is not an expense and can not be considered under provisions of 43B(h) of Income Tax Act.





- **Penalties:**

If the Buyer fails to make the payment to MSME registered Supplier within the prescribed time limit under the MSMED Act, 2006, the Buyer is liable to pay interest to the MSME registered Supplier at the rate prescribed by the RBI from the date of invoice or appointed date until the payment date.

Under the provisions of Section 23 of MSMED Act, the interest or penalty which Buyer is liable to pay the Supplier, cannot be considered as an expense in the computation of taxable income under the Income Tax Act, 1961.

In addition to above penalties Sec 27 of MSMED Act provides for some additional monetary penalties for not specifying unpaid amount with interest in the annual statement of accounts.



Conclusion:

The introduction of this Section incentivises Buyers/taxpayer enterprises to make payments to Suppliers within the stipulated period. Failure to do so may lead to an inability to claim any deduction for income tax purposes. This is likely to promote payments to the Supplier within the specified time limit, thereby assuring them of timely cash flow, which is essential for their sustainability and growth. However, this benefit can be availed by only those Suppliers who are registered on Udyam Portal.

The aspect addressing the delayed payments for MSMEs have been broadly covered [here](#).

MSMEs can also register a complaint against the Buyers in case of repetitive non-payments through MSME Samadhaan Portal: https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx. As on date, 2,00,742 applications have been filed on the MSME Samadhaan Portal.



Therefore, Buyers who are purchasing goods/services from the MSME registered Suppliers, should seek required documents from the Suppliers regarding MSME registration.

This provision is not only beneficial to the MSMEs but also to the Buyers who are availing goods/services from MSMEs. If the timelines for payment are adhered, Buyers can claim deductions for payments provided to MSMEs in the same year, resulting in reduced tax liabilities.

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