

# Section 43B(h) of Income Tax Act, 1961: Delay in payment to MSME

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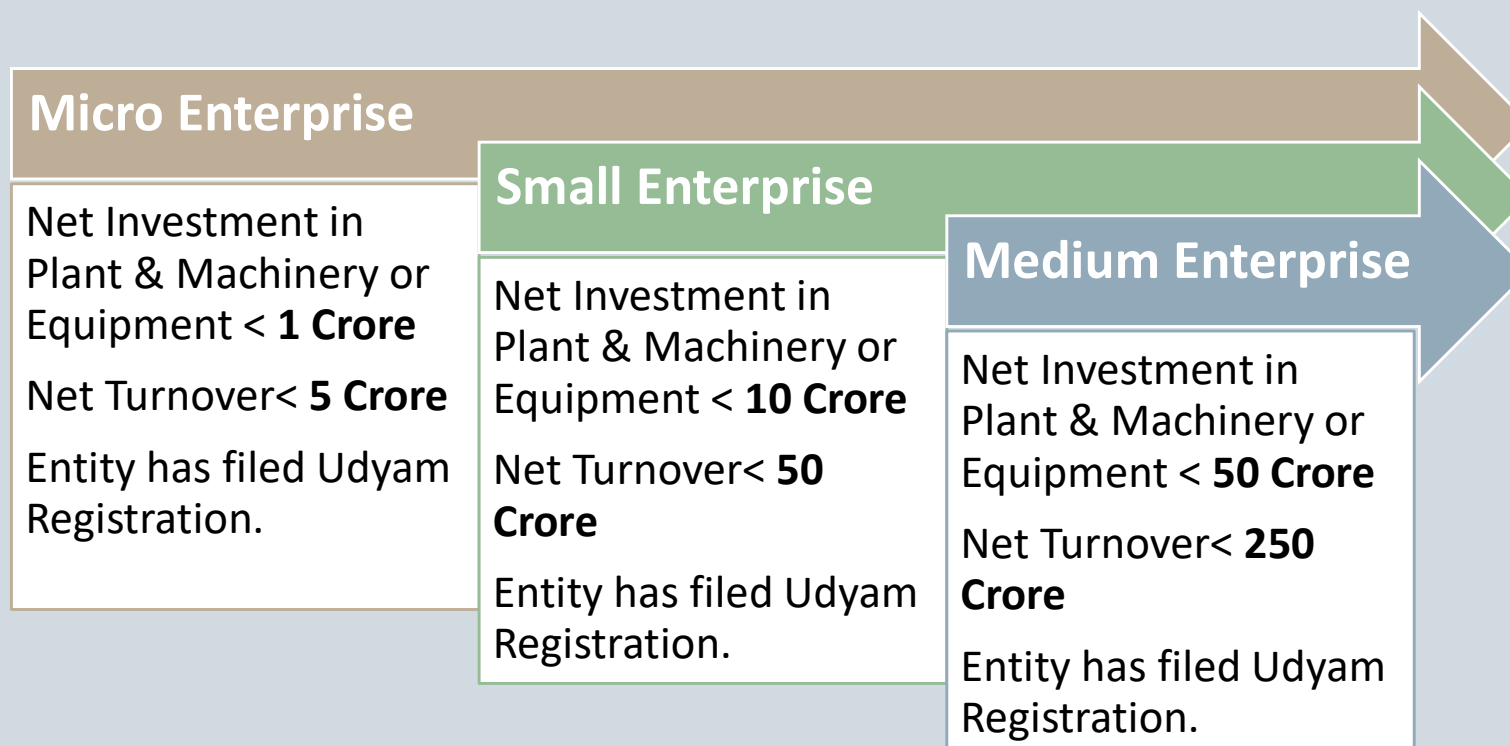
Frequently Asked Questions

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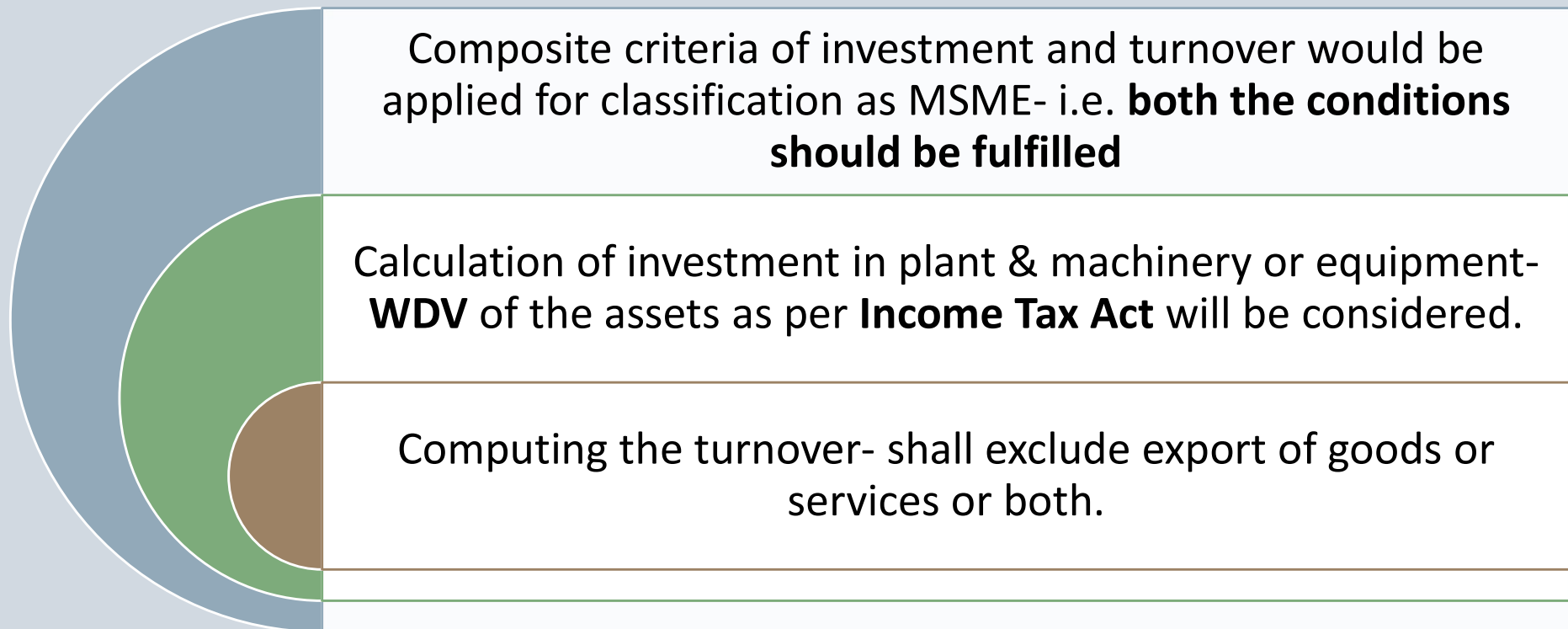
Draft Comments for Sec 43B(h)- Tax Audit Reporting

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# Who are considered as MSME ?



## Additional Points



# Duties of MSME entities

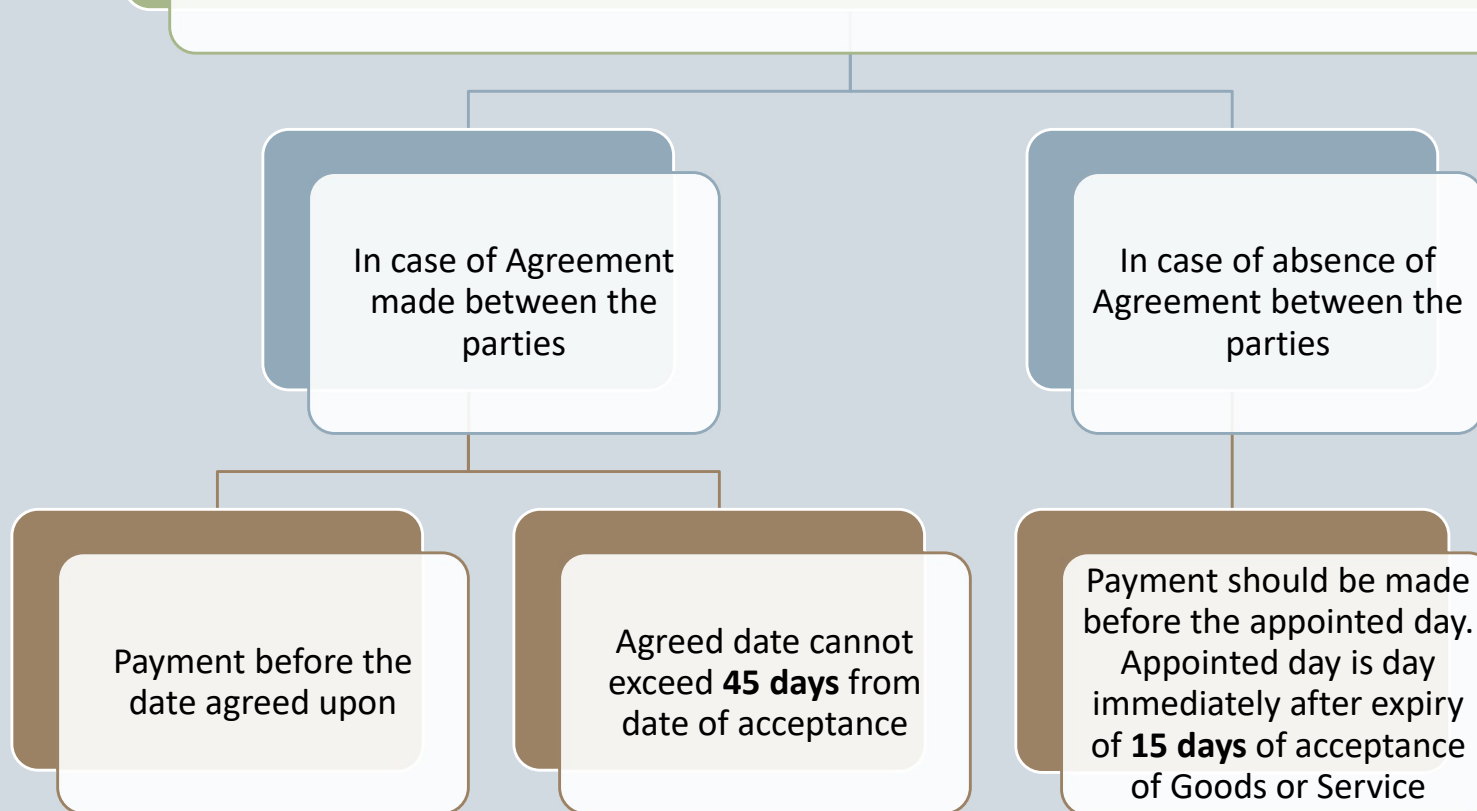
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It is the duty of MSME to disclose its MSME status on supply orders, letterheads, invoices, supply order sheets and other relevant documents.

An enterprise having Udyam Registration shall update its information online in the Udyam Registration portal, including the details of the ITR and the GST Return for the previous financial year and such other additional information as may be required, on self-declaration basis.

If there is any change in the business activity, the entity should update the details of such new business activities. Failure to update the relevant information on Udyam Registration Portal will render the entity liable for suspension of its status.

## Time Limit for making payment as per Section 15 of MSMED Act, 2006



If any sum payable is not paid to the MICRO/ SMALL ENTERPRISE within the stipulated time limit, it will not be allowed as deductible expense.

# Interest on Non-Payment/ Late Payment to MSMEs

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As per Section 16 of MSMED Act, a buyer is liable to pay a compounded fine on the amount at **3 times** the bank rate notified by RBI if he/she fails to make a payment to the MSME within specified time limit as per Sec 15 of the said act.

Such Interest is not considered as deductible expense u/s 37 of The Income Tax Act, 1961 and will not be allowed for the purpose of computing taxable income.



## Examples of Interest levied on some Companies


Company	FY 2020-21		FY 2021-22		FY 2022-23	
	Amount O/s	Interest	Amount O/s	Interest	Amount O/s	Interest
Larsen & Turbo	193.36	14.01	318.82	14.43	572.13	16.61
Zomato	280	20	620	50	260	40
MRF Tyres	54.21	0.87	58.26	1.09	72.72	1.1
Eicher Motors	0	0	4.4	0.13	0.65	0.09



# The MSME Samadhaan Portal

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The MSME Samadhaan portal enables the MSMEs to directly register their cases about delayed payments against the buyer of goods/services before the Micro and Small Enterprise Facilitation Council (MSEFC).



The portal will give information about the pending amount of MSMEs with individual buyers, CPSEs, Central Ministries, State Governments, etc.

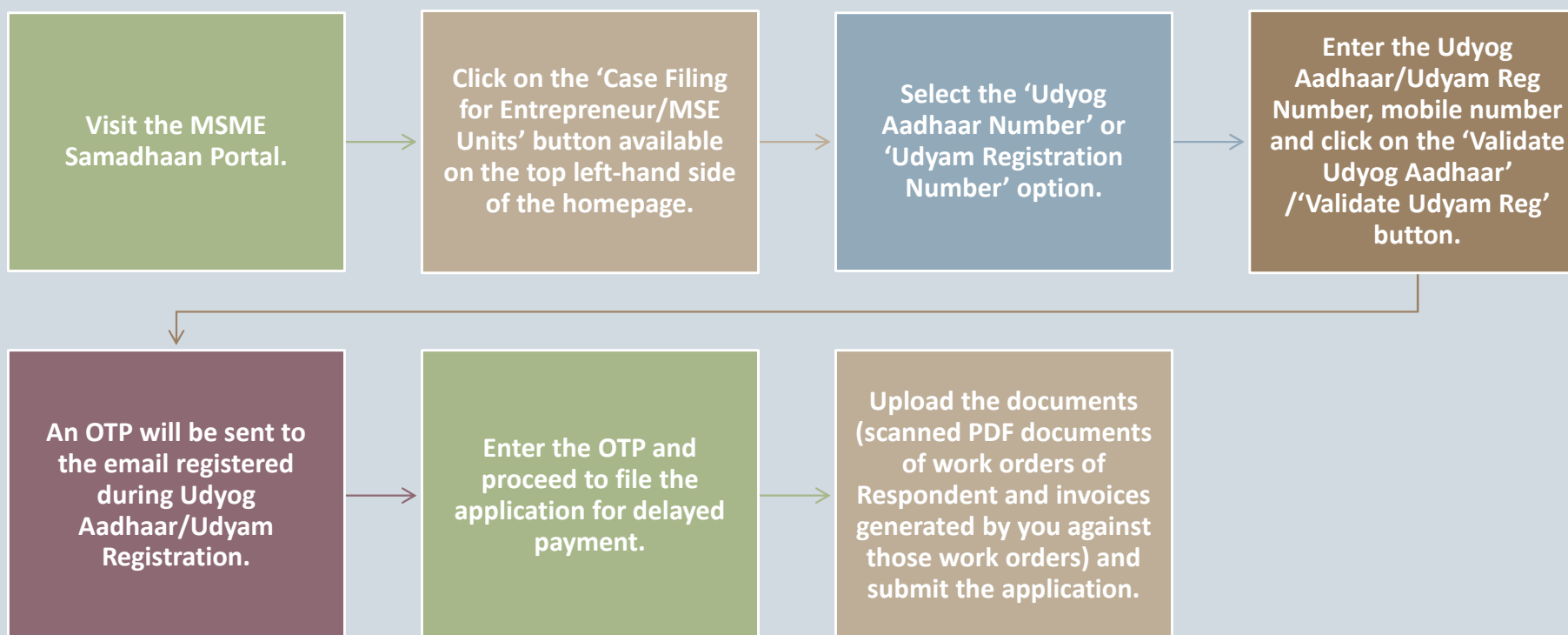


Any MSME with a valid Udyam Registration can apply for an application against the buyer/ purchaser of goods or services before the MSME Facilitation Council in case of non-payment within the time specified under section 15.



Every reference made to the MSEFC shall be adjudicated within 90 days from the date of making such a reference.

# Process for making an application on MSME Samadhaan



# Disclosure about MSMEs as per Companies Act, 2013

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Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts

- I. The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year.
- II. The amount of interest paid by the buyer in terms of section 16, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year.
- III. The amount of interest accrued and remaining unpaid at the end of each accounting year.
- IV. the amount of interest due and payable for the period of delay in making payment

# Filing of MSME-1

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Every company that has obtained goods or services from an MSME supplier and has outstanding dues for **more than 45 days** must disclose it to the ROC by filing the **MSME-1** return.

The MSME-1 is a **half-yearly** return that the specified companies need to file regarding their outstanding dues to the MSME.

However, companies have to file this return only when they have payments outstanding for more than 45 days to the MSME supplier. The companies need not file a 'Nil MSME-1 Return' when there are no outstanding amounts with the MSME suppliers.

Details of Name, PAN of the supplier, the amount outstanding, the date from which such amount is due to the supplier along with the reason for delay in such payments should be furnished in MSME-1.

Due date for furnishing MSME-1:

For Apr- Sept      ->      31<sup>st</sup> October

For Oct- Mar      ->      30<sup>th</sup> April

## How to identify that supplier is a MSME?

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It is the duty of the supplier to mention his MSME status on supply orders, invoices, letterheads and other relevant documents.

The Government of India had also issued OM No. 2(18)/2007-MSME(Pol), dated 26/08/2008, which clarifies that 'it is advisable that the Micro or Small Enterprises should mention/get printed on their letterheads, supply order sheets, invoices, bills and relevant documents

### Point to Ponder?

Does the above circular absolve the Assessee and his Auditors of any blame if their non-detection or omission of disclosures of dues to MSEs is due to suppliers not mentioning their Udyam Registration Numbers on their letterheads, invoices, bills and other relevant documents? Will the buyer entity also be absolved of obligations under Sections 15 and 16 of the MSMED Act in such a situation?

## Section 43B(h) of Income Tax Act, 1961

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Section 43B(h) states that any sum payable by the assessee to a **Micro & Small Enterprise** beyond the time limit specified in Section 15 of the MSMED Act, 2006 shall be **allowed** only in computing the income of the previous year in which the sum has been **actually paid**.

Sec 43B(h) applies to sums outstanding as of year-end and paid after 31<sup>st</sup> March of the FY.

This clause is applicable when an enterprise is buying goods or taking services from an enterprise registered under the MSMED Act, 2006.

If any sum payable is not paid to the micro/ small enterprise within the stipulated time limit as per section 15 of MSMED Act, it will not be allowed as deductible expense. But the same will not be disallowed permanently i.e. it is an **reversible disallowance**.

## Few examples of disallowance u/s 43B(h):

Sr. No.	Date of Acceptance of any goods or services by a buyer from a supplier	Credit period (days)	Due Date as per Sec 15 of MSMED Act, 2006	Actual date of payment	Deduction allowed in which FY
1.	22-06-2023	15	07-07-2023	01-07-2023	FY 2023-24
2.	24-09-2023	32	26-10-2023	11-10-2023	FY 2023-24
3.	07-02-2024	10	17-02-2024	19-02-2024	FY 2023-24
4.	12-03-2024	45	26-04-2024	15-05-2024	FY 2024-25
5.	15-03-2024	45	29-04-2024	27-04-2024	FY 2023-24
6.	13-03-2024	15	28-03-2024	07-04-2024	FY 2024-25
7.	12-12-2023	15	27-12-2023	29-12-2023	FY 2023-24

# Scope of Section 43B(h) of Income Tax Act, 1961

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## Retail Traders & Wholesalers

- **Excluded** from the scope of Sec 43B(h)
- i.e., any sum payable to Retail Trader or Wholesaler will not be disallowed even if it is not paid within the specified time limit.

## Manufacturers & Service Providers

- **Included** in the scope of Sec 43B(h)
- i.e., expenses will be disallowed in case of non-payment to the manufacturers & service providers within the specified time limit.



# Disallowance of GST Component

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If ITC is claimed

The disallowance will be restricted to the sum payable **excluding GST**

If ITC is not claimed

If the buyer opts to not claim ITC and treat it as expense in the Profit & Loss A/c.

The GST component on sum payable will only be **allowed** on the **actual payment** basis.

## Sec 43B(h)-Reversible Disallowance/ Permanent Disallowance ?

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Where the amount outstanding at year-end is paid next year beyond the time allowed in Section 15 of the MSMED Act, such amount shall be **disallowed** while computing the business income for the current financial year. However, this disallowance is not permanent or irreversible. Where the amount outstanding at year-end is paid next year but beyond the limitation period of Section 15 of the MSMED Act, 2006 such amount shall be **allowed** while computing the business income in the next Financial Year on an **actual payment basis**.

However, **Interest** paid by the Assessee for delayed payments under section 16 of MSMED Act will not be allowed as deductible expense i.e. it will be **disallowed permanently**.

## Disclosure in Tax Audit reports

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Expenses which were disallowed u/s 43B(h) of Income Tax Act, 1961 should be disclosed in Clause 22 of Form 3CD along with the interest inadmissible under section 23 of the MSMED Act, 2006.

As per section 23 of MSMED Act, 2006 - any amount paid as interest to MSMEs on account of delayed payments u/s 16 of the said Act shall be disallowed.

Clause	Particulars	Amount (Rs.)
22.		
a)	Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006	
b)	Any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961	

# Frequently Asked Questions-

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1. **Whether this amendment can be made applicable for an amount outstanding to micro and small enterprise as on 31/03/2023?**
  - The amendment u/s 43B(h) is not applicable to dues outstanding as on and prior to 31/3/2023. Section 43B(h) has been introduced in statute from AY 2024-25. Hence, it has a coverage of only those balances which are outstanding as on 31/03/2024 and are due for more than 45 days (in case of agreement)/ 15 days.
  
2. **If supplies are made before obtaining Udyam registration, is the disallowance under Section 43B(h) applicable?**
  - Section 43B(h) will not apply with respect to payments for supplies made before the date of Udyam Registration. As Udyam Registration does not operate retrospectively, the supplier would be regarded as a micro-enterprise only from the date of obtaining such registration.

# Frequently Asked Questions-

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3. **How can the assessee ensure their supplier does not transition from a micro/small to a medium enterprise or vice-versa during the financial year ?**
  - Ask for Udyam Registration certificate: The Udyam Registration is the only acceptable evidence of the supplier entity's micro-enterprise or small enterprise status as the registration certificate provides the classification of registered enterprises into micro, small and medium enterprises during a financial year for every year starting from the year in which such registration was obtained. Thus, the buyer entities may **ask for such a certificate every year** to determine the supplier's status in that year.
  
4. **If goods were purchased from MSEs on 01-04-2023 and payment was made on 31-03-2024, will it be disallowed under Section 43B(h) for the assessment year 2024-25?**
  - There will be no disallowance. Even though payment is made beyond the time specified in Section 15 of the MSMED Act, it is made during the same year and is not outstanding as of the year-end. Therefore, the amount will be allowed on an actual payment basis and not disallowed. However, interest u/s 16 of the MSME Act, 2006 will be levied as discussed earlier.

# Frequently Asked Questions-

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- 5. What if a partial payment is made in the current year, and the balance payment is made to the MSE supplier in the next financial year, will the same be disallowed?**
- If the taxpayer settles partial amount during the financial year, post the due date specified under Section 15 of the MSMED Act, 2006, no disallowance will occur for this amount. However, if the same remains outstanding at year-end and is paid after the due date it shall attract disallowance u/s 43B(h).
- 6. Is the disallowance under 43B(h) attracted for assessee opting presumptive taxation i.e. 44AD/44ADA/44AE etc.?**
- All the above sections start with a Non-Obstante clause i.e. Notwithstanding anything contained in sections 28 to section 43C of the Income Tax Act, 1961. Therefore, as the provisions in these sections have an overriding effect over section 43B, hence no disallowance is attracted to the assessee opting for presumptive taxation.

# Frequently Asked Questions-

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## 7. What if any charitable trust is making payment to an MSME? Will Section 43B(h) apply?

- Interest u/s 16 of the MSMED Act, 2006 is applicable to the charitable trusts but the disallowance, u/s 43B(h) does not apply. This means interest is payable if the trust delays payments to micro or small enterprises.
- Section 43B(h) applies to an assessee carrying on a business or profession whose income is computed under the head “business and profession.” Charitable trusts are subject to Sections 11 to 13, which are special provisions governing the taxation of charitable or religious institutions.
- It may be further noted that u/s 11 to 13, there are specific references to the provisions of ‘Profits & Gains of Business or Profession’ which have been made applicable to the computation of income u/s 11. However, there is **no reference to disallowance under Section 43B(h)** while computing income u/s 11. In other words, unless specifically provided, the provisions of the head ‘Profits & Gains of Business or Profession’ shall not apply to charitable institutions.
- Hence, the question of disallowance under Section 43B(h) will not arise while computing the application of income u/s 11 of the Act. However, u/s 16 of the MSMED Act, interest is payable if the trust delays payments to micro or small enterprises

# Frequently Asked Questions-

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- 8. What shall be the status of expenses booked where 15/45 days period from the date of invoice has not expired on 31<sup>st</sup> March?**
- If any sum remains payable to micro or small enterprise at year end but paid in next year within the time limit allowed u/s 15 of MSMED Act, 2006 then the same will be allowable in the year of incurrence of expenditure and if there is delay beyond the time limit specified in section 15 of the MSMED Act, 2006 then such payments will be allowed only in the year of payment.



# Frequently Asked Questions-

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**9. Is disallowance attracted under section 43B(h) for dues outstanding in relation to capital expenditure?**

- Section 43B states that it is applicable only to those deductions which are otherwise allowable under the Income Tax Act. However, 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.

**10. Is depreciation disallowed if payment for the purchase of a fixed asset is made beyond a prescribed limit?**

- There is no provision in Section 43B for disallowance of depreciation on fixed assets.
- However, the deduction of 100% of capital expenditure u/s 35AD will not be allowed as a deductible expense if payment for the same is made after 31<sup>st</sup> March.

# Frequently Asked Questions-

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## **11. What if the cheque is handed over to the MSEs on or before the due date, but it is encashed by them after the due date?**

- As per accepted commercial usages, payment is regarded as made on the date the cheque is handed over to the payee, provided the cheque does not bounce subsequently. Therefore, in such cases, payment will have to be treated as made within the due date since it was handed over within specified time. In a similar situation addressed in the case of 'CIT vs. Hindustan Wire Products Ltd.', the assessee provided a cheque to LIC within the due date for a Group Gratuity Scheme, which was not encashed by LIC within the stipulated time. As a result, the Assessing Officer disallowed the deduction claimed by the assessee. However, the Punjab Haryana High Court ruled in favor of the assessee, allowing the deduction because the failure to encash the cheque was not the fault of the assessee. Similarly, if a cheque is handed over to MSEs on or before the due date, the related expenditure should be allowed as a deduction, even if the MSEs encash the cheque after the due date.

# Draft Comments for Sec 43B(h)- Tax Audit Reporting

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## **1. Assessee identifies all MSMEs and makes required provision and disallowance:**

### **Unmodified Opinion:**

- No Separate comment required in Form 3CD as due Compliance is taken care.

## **2. Assessee identifies all MSMEs and makes required provision and disallowance but 100% verification not done**

### **Modified - Qualified Opinion**

- In respect of reporting under Clause 22 of Tax Audit Report, Assessee maintains Party wise Classification as per MSME, has received Declaration from the Suppliers, Bill wise Payment details available in Accounting Software, etc. Overall, Assessee has in place mechanism for Calculation of Interest u/s 16 of MSMED Act, 2006 and disallowance of Amount u/s 43B(h) of Income Tax Act, 1961. While carrying out the Audit, we have verified such information and supporting on Sample basis as per the Guidelines issued by Institute of Chartered Accountants of India. However, we have not verified independently accuracy of MSME Classification. Reporting under respective clause is subject to correctness of such classification, Declaration so received and other calculation as provided by the Assessee.

# Draft Comments for Sec 43B(h)- Tax Audit Reporting

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## 3. Assessee identifies all MSMEs however does not/short provided Interest u/s 16 of MSMED Act, 2006 :

### Modified - Adverse Opinion

- In respect of reporting under Clause 22 of Tax Audit Report, Assessee maintains Party wise Classification as per MSME, has received Declaration from the Suppliers, Bill wise Payment details available in Accounting Software, etc. Overall, Assessee has in place mechanism for Calculation of Interest u/s 16 of MSMED Act, 2006 and disallowance of Amount u/s 43B(h) of Income Tax Act, 1961. While carrying out the Audit, we have verified such information and supporting on Sample basis as per the Guidelines issued by Institute of Chartered Accountants of India. However, we have not verified independently the accuracy of MSME Classification. Reporting under respective clause is subject to correctness of Such Classification, Declaration so received and other Calculation as provided by the Assessee. We report that, the interest u/s 16 of MSMED Act, 2006 calculated and reported in the books of Assessee is short to the extent of Rs. \_\_\_\_.

# Draft Comments for Sec 43B(h)- Tax Audit Reporting

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## 4. Assessee neither identifies all MSMEs nor makes required provision and disallowance

### Modified - Disclaimer Opinion

- In respect of reporting under Clause 22 of Tax Audit Report, Assessee does not maintain Party wise Classification of MSME, Declaration from the Suppliers, Bill wise Payment details, etc. Moreover, Assessee does not have in place mechanism for calculation of Interest u/s 16 of MSMED Act, 2006 and disallowance of Amount u/s 43B(h) of Income Tax Act, 1961. Due to insufficient supporting documentation and data availability, we are unable to ascertain whether the payments to MSMEs have been recorded properly, whether such payment requires Interest provision u/s 16 of MSMED Act, 2006 and disallowance under Section 43B(h) of income Tax Act, 1961 is warranted. Hence, unable to comment on accuracy of information provided therein. Our Opinion to that extent is disclaimed.

# Thank You

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