

Amendment in

Sec 43B

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Sec 43B



Why
Important?

Certain deductions to
be only on actual
payment

Tax, Bonus, PF, Gratuity, Interest

The Finance Act 2023 introduced a significant amendment, adding subsection (h) to Section 43B, with a focus on fostering timely payments to Micro and Small Enterprises (MSMEs).

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Sec 43B of the Income Tax Act, 1961

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

(a) to (g)

(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 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.**

Sec 43B of the Income Tax Act, 1961

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 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.

Whether deduction can be claimed if payment is made upto due date to →

- 1) Micro Enterprises
- 2) Small Enterprises
- 3) Medium Enterprises

Budget Memorandum

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.

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Applicable on whom ?



- Assessee involved in Business & Profession
 - Tax audit
 - Normal ?

What about Assessee covered u/s 44AD
or 44ADA ?

Starts with → “Notwithstanding anything to the
contrary contained in sections 28 to 43C.....”

Classification



Category	Investment in P&M	Annual Turnover
Micro	Upto 1 crore	Upto 5 crore
Small	1-10 crore	5-50 crore
Medium	10-50 crore	50-250 crore

Both the conditions must be fulfilled

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Some Imp Terms of MSMED Act, 2006



- **Sec 2(e) → “Enterprise”**
- **It means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in -**
 - **Manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951**
 - **Providing or rendering of any service or services**

Dangerous : Whether trader/wholesaler is also MSME ?

Can they take registration under MSME ?

Can they get other benefits ?

Office Memorandum (1st Sep 2021)

Subject: - Benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSMEs viz-a-viz Traders related

Vide OM No. 5/2(2)/2021-E/P&G/Policy dated 2.7.2021 issued by this office, Retail and Wholesale Trades have been included as MSMEs, allowing them to be registered on Udyam Registration Portal and benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

2. In this context, some MSEFCs have been approached by Traders to get the benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSEs. It is clarified that as mentioned in the aforesaid OM, the benefits to Retail and Wholesale trade MSMEs are restricted upto Priority Sector Lending only, and any other benefits, including provisions of delayed payments as per MSMED Act, 2006, are excluded.

3. This issues with the approval of the competent authority.

Sec 15 of MSMED Act

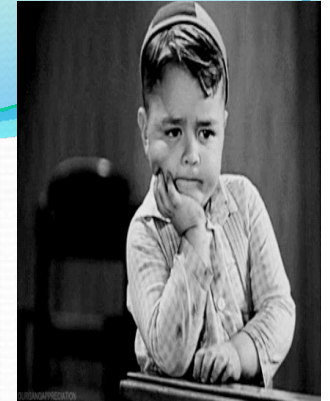


Liability of buyer to make payment

- 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 45 days from the day of acceptance or the day of deemed acceptance.

What is the meaning of appointed day ?

Sec 2(b) of MSMED Act



- "Appointed day" means the day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.
 - (basically it means 16th Day)

What is the meaning of day of acceptance ?

Sec 2(b) of MSMED Act



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

In simple terms



- If agreement for 7 days then payment is to be made within 7 days
- If agreement for 45 days then payment is to be made within 45 days
- If agreement for 60 days then payment is to be made within 45 days
- If No agreement then payment is to be made before the appointed day

Practical Example 1 : If no agreement

Date of Invoice	Date of Delivery of Goods/Rending of Service (Day of Acceptance) *	Appointed Day (Due Date as per Payment Date MSME Act)	Payment Date	Deduction Allowed in FY
01/03/2024	01/03/2024	16/03/2024	25/03/2024	2023-24

Reason : If paid after appointed day then allowed as deduction in year of payment (Here it was paid after due date as per MSME act but paid in same FY so eligible for deduction in same FY 2023-24)

Practical Example 2 : No agreement

Date of Invoice	Date of Delivery of Goods/Rending of Service (Day of Acceptance) *	Appointed Day (Due Date as per Payment Date MSME Act)	Payment Date	Deduction Allowed in FY
01/03/2024	01/03/2024	16/03/2024	03/04/2024	2024-25

Reason : If paid after appointed day then allowed as deduction in year of payment (Hence in FY 2024-25)

Practical Example 3 : no agreement

Date of Invoice	Date of Delivery of Goods/Rending of Service (Day of Acceptance) *	Appointed Day (Due Date as per Payment Date MSME Act)	Payment Date	Deduction Allowed in FY
01/03/2024	18/03/2024	02/04/2024	01/04/2024	2023-24

Reason : Deduction Allowed in FY 2023-24 as it was paid before Appointed day

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Practical Example 4



Date of Invoice	Date of Delivery of Goods/Rending of Service (Day of Acceptance) *	Appointed Day (Due Date as per Payment Date MSME Act)	Payment Date	Deduction Allowed in FY
01/03/2024	18/03/2024	02/04/2024	02/04/2024	2024-25

Reason : Deduction Allowed in FY 2024-25 as it was paid on Appointed day (MSME Act says if no agreement then payment to be made "**before the appointed day**" so if paid on or after 02/04/24 then it shall be allowed in FY 24-25)

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Practical Example 5

Date of Invoice	Date of Delivery of Goods/ Service (Day of Acceptance)	Agreement for days	Due Date as per Agreement	Due date as per MSME act	Payment Date	Deduction Allowed in FY
01/03/2024	01/03/2024	15	16/03/24	16/03/24	25/03/2024	2023-24

Reason : If paid after the due date as per MSME act then allowed as deduction in year of payment
(Here it was paid after the due date as per MSME but paid in same FY so eligible for deduction in FY 23-24)

Practical Example 6

Date of Invoice	Date of Delivery of Goods/ Service (Day of Acceptance)	Agreement for days	Due Date as per Agreement	Due date as per MSME act	Payment Date	Deduction Allowed in FY
01/03/2024	01/03/2024	15	16/03/24	16/03/24	03/04/2024	2024-25

Reason: If paid after the due date as per MSME act then allowed as deduction in the year of payment Deduction (Here it was paid in FY 2024-25 so eligible for deduction in FY 2024-25)

Practical Example 7

Date of Invoice	Date of Delivery of Goods/ Service (Day of Acceptance)	Agreement for days	Due Date as per Agreement	Due date as per MSME act	Payment Date	Deduction Allowed in FY
01/03/2024	18/03/2024	15	02/04/24	02/04/24	02/04/2024	2023-24

Reason: Deduction Allowed in FY 2023-24 as it was paid on or before the date as per MSME Act

Practical Example 8

Date of Invoice	Date of Delivery of Goods/ Service (Day of Acceptance)	Agreement for days	Due Date as per Agreement	Due date as per MSME act	Payment Date	Deduction Allowed in FY
01/03/2024	18/03/2024	15	02/04/24	02/04/24	04/04/2024	2024-25

Reason: Deduction Allowed in FY 2024-25 as it was paid in next FY and after the due date as per MSME Act

CHALLENGES

- **Whether agreement in writing is mandatory ?**

- **Sec 23 of MSME Act**
 - **Interest**
 - **Disallowed**
 - **Clause 22 : Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.**

Challenges



- What is the advice for trader ?
- If loan taken from MSME and interest is due ?
- What if the supplier takes registration later on ?
- What if the amount of expense is already disallowed under some other provisions of IT Act ? Will there be double disallowance ?
- Not applicable on opening balances BUT FIFO

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Q & A

Session

THANK YOU

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