

MSME timely payments: Section 43B(h)

These amendments will take effect from 1 April 2024 and will, accordingly, apply in relation to the assessment year 2024-2025 and subsequent assessment years.

Disallowance u/s. 43B of the Act will be attracted in case the supplier is either Micro Enterprise or Small Enterprise. Disallowance u/s. 43B of the Act will not be attracted if the supplier is Medium Enterprise.

1. As per the definition of Enterprises, only persons dealing in either Manufacturing of Goods or providing any services will be classified as an Enterprise.
2. Trader / Retailer/ Distributor, etc would not be classified as an Enterprise and would not be covered under the Micro or Small Enterprise Definition.
3. As per Sec-15 of MSME Development Act 2006, the due date for an invoice is to be determined as per the Terms of the Invoice or 45 days from the date of the invoice whichever is earlier. For example- If terms are agreed that payment is due to be made within 75 Days, but still a maximum of 45 Days can be allowable (not beyond that) to make the payment otherwise deduction will not be given in the same Financial year.
4. Supplier under the MSME Development Act 2006 is defined as a person who is registered under the Act, hence Micro or Small Enterprise who are not registered under the Act would not be covered under the Definition of S-43B(h)
5. Hence, it is advisable to take an MSME registration certificate while dealing with MSME Vendors.
6. It shall also be noted that there may be a situation where some defect in the goods or deficiency in the provision of service is noticed and the buyer, in this situation, makes an objection, the due date shall be counted from the date when the MSME supplier removes an object. However, the objection is required to be made in writing by the buyer to the supplier.

7. There may be a situation that an assessor issues a cheque to the MSME supplier and due for some reason; the MSME supplier does not encash it within the due date. In light of the judgment of the Hon'ble High Court of Punjab and Haryana in the case of CIT vs Hindustan Wire Products Ltd. [2002] disallowance u/s. 43B of the Act should not be attracted.

8. Assesses the need to make payments on a timely basis in order to get a deduction within the same financial year. This will be very beneficial for MSME's development & promotion.

9. There will be now additional responsibility on Income Tax Auditors to respectfully check Trade creditors outstanding as of 31 March for allowing expense with respect to the MSMED Act 2006 & Income Tax Act 1961.

10. Non-Compliance with these changes will lead to huge taxes on the concerned Assesses, Proper accounting & other various mechanisms are required to adhere to these amendments on a timely basis.

11. Clause 10 of the Tax Audit report says Tax Auditor is to report the amount of interest inadmissible u/s 23 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED, Act 2006). As per the said section, any interest for delayed payment to Micro, Small, and Medium Enterprises is not allowed as a deductible expenditure while computing the income of the Assesses under the Income Tax Act, 1961.

12. Any outstanding payment to MSME at end of the year needs disclosure in financials along with interest due.