

**Presentation on Amendment u/s 43B of Income Tax Act 1961 as per  
Finance Act 2023**

**J B Nagar Study Circle of WIRC**

**14th January 2024**

# **CERTAIN DEDUCTIONS ON PAYMENT BASIS FOR BUSINESS AND PROFESSION (SEC 43B)**

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## Scope of Discussion

1. Over View of Provision U/S 43B of I. tax Act
2. Recent Amendments u/s 43B as per Finance Act 2023
3. Over View of MSMED Act ,2006
4. Issues & Case studies

# Section 43B – Over View

# Sec 43 B of Income Tax Act, 1961

Section 43B of Income Tax Act, 1961 provides that for the purpose of claiming deduction in the previous year in which the expenditure is incurred, the below mentioned sums allowed as a deduction **in the previous year in which actually paid by the assessee**

(a) Any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

▶ (b) Any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

▶ (c) Bonus or Commission for services rendered payable to employees, or

▶ (d) Any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State Financial Corporation or a State Industrial Investment Corporation, or

- ▶ (da) Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- ▶ (e) Interest on any loan or advance from a scheduled bank or co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- ▶ (f) Any sum paid by the assessee as an employer in lieu of earned leave of his employee,
- ▶ (g) Any sum payable by the assessee to the Indian Railways for use of Railway assets or

As per Proviso the Expenditure is allowed for the previous year in case the same is paid on or before the due date for furnishing the return of income under section 139(1).

## Newly inserted clause by the Finance Act 2023, Applicable from F.Y. 2023-24

- ▶ (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.

For Clause (a) to (g) Payments can be made upto due date of return for claiming deductions in Previous Year. However for clause (h) this proviso is not available. Hence Deductions can be claimed strictly on Payment basis within due date u/s 15 of MSMED Act.

## Sec 43-B ( h)

- ▶ The attract the Disallowance the conditions to be satisfied as follows :
  1. The Amount is Outstanding as on the year end i.e 31-03 as per the Accounts
  2. The Out standing Dues is to a Supplier classified as **Micro or Small** Enterprises as per MSMED Act 2006
  3. The Outstanding Dues is beyond the time limit specified **U/s 15 of MSMED** Act 2006

Outstanding Dues to MEDIUM Enterprises as per MSMED Act 2006 or any other Suppliers are not covered by the provisions .

Explanation -4 (e ) and (g ) defines the terms - “Micro Enterprise “ and “ Small Enterprise” . The meaning are as defined in MSMED Act, 2006 .

# Overview of MSMED Act 2006 & Important Provisions





# Over View of MSMED Act 20026

- ▶ small-scale industries have remained crucial to the economy , a key sector that contributes significantly to the economy and employs millions of people
- ▶ The MSMED Act, 2006 aims at facilitating the promotion, development and enhancing the competitiveness of micro, small and medium enterprises
- ▶ MSME are divided into two groups in compliance –Mfg Enterprises and Service Enterprise
- ▶ legal framework for an ‘enterprise’ (both manufacturing and services) the three levels of these enterprises, namely micro, small, and medium-sized.
- ▶ AS per Notification of 1<sup>st</sup> July,2020 the Enterprises are classified MSMED based on Composite Criteria of Investment and Turnover
- ▶ Single comprehensive law which will ease the challenges for small businesses by easing rules and regulations

Enterprise



**Micro**

**T/o < 5 Crore**

**And**

**P/M < 1 Crore**



**Small**

**T/o < 50 Crore**

**And**

**P/M < 10 Crore**



**Medium**

**T/o < 250 Crore**

**And**

**P/M < 50 Crore**

- **T/o excluding Exports to promote Exports without losing MSME Status**
- **P/M > Depreciated Value as per Income Tax Act.**

# Important Provisions of MSMED Act 2006

▶ Sec. 15 -  
Liability of  
Buyer to  
Make  
Payment

Where any Supplier Supplies Goods or Render Services to any Buyer, Buyer shall make payment therefor on or Before Date Agreed between him and Supplier in Writing or where there is no agreement in this behalf before appointed day .

Provided that in No Case the period Agreed upon between the supplier and Buyer in writing shall exceed 45 days from the day of Acceptance or date of Deemed Acceptance‘

▶ Sec 2 ( a ) -  
Appointed  
Day

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 the Deemed Acceptance of any Goods or Services by the Buyer from the Supplier

▶ Sec 2(e) -  
Enterprise

Means an Industrial Undertaking or Business Concen...Engaged in Mfg /Production of Goods , in any manner , pertaining to any Industry Specified in Schedule I of Industries(Development & Regulations) Act , 1951 or rendering any Service or Services

# Important Provisions of MSMED Act 2006

- ▶ Sec.16 - Date from which and Rate at which Interest is Payable
- ▶ Sec.23 - Interest not to be allowed as a deduction from Income
- ▶ Sec.24 - Overriding Effect
- ▶ Where Buyer fails to make the payment as per Sec.15 , notwithstanding anything contained in any Agreement be liable to pay Interest at monthly rest **at the Rate three times the Bank Rate notified by the RBI.**
- ▶ Notwithstanding anything contained in I.Tax Act, 1961 the amount of Interest payable /paid by the Buyer as per this Act , shall not be allowed as a deduction for the Calculation of Income for the I.Tax.
- ▶ The provisions of sec 15 to 23 shall have effect notwithstanding anything inconsistent in any other laws.

# Inclusion of Retail and Wholesale trades as MSMEs as per No. 5/2(2)/2021-E/ Ministry of Micro, Small & Medium Enterprises Dt,. 02 -07-2021

- ▶ The Government has received various representations and it has been decided to include Retail and wholesale trades as MSMEs and they are allowed to be registered on Udyam Registration Portal. **However, benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only**
- ▶ Accordingly, the list of eligible additional activities under NIC Code 45, 46 and 47 are as under : 45 Wholesale and retail trade and repair of motor vehicle and motorcycles 46 Wholesale trade except of motor vehicles and motor cycles 47 Retail Trade Except of Motor Vehicles and motor cycles

Enterprise



**Manufactures**

**Service  
Providers**

**Service Provider  
(Traders)**

**NIC**

**NIC**

**NIC  
45 ,46 and 47**

# NIC Code Example

## NATIONAL INDUSTRY CLASSIFICATION CODE(S)

SNo.	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit	Activity
1	69 - Legal and accounting activities	6920 - Accounting, bookkeeping and auditing activities; tax consultancy	69201 - Accounting, bookkeeping and auditing activities	Services
2	69 - Legal and accounting activities	6920 - Accounting, bookkeeping and auditing activities; tax consultancy	69202 - Tax consultancy	Services

## NATIONAL INDUSTRY CLASSIFICATION CODE(S)

SNo.	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit	Activity
1	31 - Manufacture of furniture	3100 - Manufacture of furniture	31001 - Manufacture of furniture made of wood	Manufacturing
2	47 - Retail trade, except of motor vehicles and motorcycles	4771 - Retail sale of clothing, footwear and leather articles in specialized stores	47711 - Retail sale of readymade garments, hosiery goods, other articles of clothing and clothing accessories such as gloves, ties, braces etc.	Services

# Reporting Requirements in Tax Audit





# Form 3CA / Form 3CB Audit Report

- ▶ In Our opinion and to the best of Our information and according to the explanations given to us , **the particulars given in the said Form No. 3CD are true and correct**, subject to the following observations/qualifications, if any:

# Clause 22 - Amount Inadmissible u/s 23 of MSME Act ,2006

- ▶ Interest Not to be allowed as deduction from income Computation under Income TAX Act 1961 for the Interest payable / paid by any Buyer under or in accordance with the provision of MSMED ACT 2006
- ▶ ICAI Guidance Note on Tax Audit u/s 44 AB provides Guidance on the Matter
- ▶ Assessee has not paid the Interest and not compiled the data to calculate the same > appropriate qualification is required
- ▶ Interest not Debited to P & L Account > Needs to check impact on True and Fair view of the Financials

## Clause 26 - Reporting in respect of any sum referred to in clause (a), (b), (c), (d), (e), (f), (g) or (h) of section 43B

- ▶ A. pre-existed on the first day of the previous year, not allowed in the assessment of any preceding previous year
  - a. paid during the previous year;
  - b. not paid during the previous year;
  
- ▶ B. was incurred in the previous year and was
  - a. paid on or before the due date for furnishing the return of income of the previous year under section 139(1) / **due date of MSMED Act 2006 for clause (h)**
  - b. not paid on or before the aforesaid date.

# Audit Process

- ▶ Obtain the list of Outstanding Creditors list with Date of Acceptance & Due date of Payment with classification of - Micro, Small and Medium Enterprise ,with their Udyam Aadhar Number.
- ▶ Micro & Small Supplier further to be Classified for - Mfg/Services and Trader
- ▶ Verify the Udyam Certificate from Website of MSME on test check basis
- ▶ Verify the Contract copies for the Due date of payment and Map the same with Sec 15 of MSMED Act
- ▶ Workout the Disallowable for the year

# Issues & Case Studies

- ▶ Whether 44AD/44ADA Assessee will have impact of Disallowance U/s 43B (h) ?
- ▶ Whether Auditor Can accept the confirmations of Non receipt of Confirmation of classification of Supplier and proceed ?
- ▶ Outstanding Dues on 31-03-2023 Not Paid till up to end of the year , will have any Disallowance During Tax Computation for the previous year ended 31-03-2024?

- ▶ Ex 1: Mr A (Supplier) delivers goods of Rs. 35000 to Mr B (Buyer) on 20/03/2024 with the following dates of payment specified in written Agreement in different scenarios.

Scenario	Time Limit	Due Date (As per Agreement)	Maximum Credit Time allowable (As per MSME Act Max 45 Days)	Actual Date of Payment	Year of Deduction
A	10 Days	30/03/2024	05/05/2024	26/03/2024	
B	10 Days	30/03/2024	05/05/2024	31/03/2024	
C	10 Days	30/03/2024	05/05/2024	04/04/2024	
D	20 Days	09/04/2024	05/05/2024	04/04/2024	
E	20 Days	09/04/2024	05/05/2024	12/04/2024	
F	60 Days	19/05/2024	05/05/2024	15/04/2024	
G	60 Days	19/05/2024	05/05/2024	15/05/2024	

Ex 2: Mr A (Supplier) delivers goods of Rs. 35000 to Mr B (Buyer) on 15/03/2024 in absence of any agreement with regards to the time limit of Payment.

Scena rio	Accept / Reject	Remarks	Appointed Day	Date of Payment	Year of Deduction
A	Accept Delivery No Objection	-	31/03/2024	29/03/2024 01/04/2024	
B	Objects Quality on 31.03.2024. Resupplies on 05.04.2024	No objection raised within 15 Days of Delivery	31/03/2024	10/04/2024	
C	Objects Quality on 26.03.2024. Resupplies on 05.04.2024	Objection raised within 15 Days. Hence Date of Acceptance will be when objects resolved ie. 05.04.2024	21/04/2024	10/04/2024 21/04/2024 22/04/2024	

# Conclusion

- ▶ Section 43B plays a vital role in income tax calculations, especially concerning payments to Micro and Small Enterprises. The proposed addition of Clause “h” in Section 43B, effective from FY 2023-24, highlights the importance of timely payments to these entities.





**Thank  
You**

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