

N D A Update – Disallowance of payments to Micro or Small Enterprises under Section 43B of the Income Tax Act

CBDT has issued a circular (Circular No 1/2024) on 23.01.2024 explaining the various provisions of the Finance Act, 2023. The explanation relating to Section 43B as provided in the circular, is reproduced below.

21. Promoting timely payments to Micro and Small Enterprises

- 21.1** 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.
- 21.2** In order to promote timely payments to micro and small enterprises, payments made to such enterprises have been included within the ambit of section 43B of the Act vide FA 2023. A new clause (h) has been inserted 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 has also been provided that the proviso to section 43B of the Act shall not apply to such payments.
- 21.3** 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, this amendment to section 43B of the Act allows 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.

Applicability: This amendment takes effect from 1st April, 2024 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.

<https://incometaxindia.gov.in/communications/circular/circular-1-2024.pdf>

N D A Update – Disallowance of payments to Micro or Small Enterprises under Section 43B of the Income Tax Act

Section 43B in retrospect before inclusion of payments to micro & small enterprises under Section 43B

Section 43B of the Income Tax Act provides that certain expenses can be claimed as deduction by businesses or professionals under Income Tax while computing their taxable income on payment basis and not on accrual basis. However, such expenses can be claimed as deduction in the year of accrual if the payment is made before the due date of filing the return of income for that year.

Provision of Section 43B relating to payments to Micro or Small Enterprise

With the amendment made by Finance Act 2023 highlighted in red, Section 43B reads as under:

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

(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 : 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.”

Thus, any sum payable to a micro or small enterprise shall be allowed on payment basis. Since the proviso to Section 43B is not applicable to Section 43B(h), the benefit of claiming the deduction in the year of accrual will not be available even if the amount is paid on or before the due date of filing of ITR.

N D A Update – Disallowance of payments to Micro or Small Enterprises under Section 43B of the Income Tax Act

Section 15 of MSMED Act, 2006 - Liability of buyer to make payment, Definitions of Appointed Day, Day of Acceptance, Day of deemed Acceptance

Where any Micro or Small Enterprise supplier, supplies any good or renders any service to any buyer, the buyer shall make payment thereof 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 **forty-five days** from the **day of acceptance** or deemed acceptance of any goods or services.

“Appointed day” means the day following immediately after the expiry of fifteen days from the date of acceptance or deemed acceptance of any goods or services.

“Day of acceptance” means the day of actual delivery of goods or services or where any objection is raised by the buyer within fifteen days from the day of delivery of goods or services, the day on which such objection is removed by the supplier.

“Day of deemed acceptance” means where no objection is made in writing within fifteen days from the day of delivery of goods or services, the date of actual delivery of goods or services.

“Micro Enterprise” – Having Annual Turnover < Rs. 5 Cr & Investment in Plant & Machinery < Rs. 1 Cr.

“Small Enterprise” – Having Annual Turnover < Rs. 50 Cr & Investment in Plant & Machinery < Rs. 10 Cr.

N D A Update – Disallowance of payments to Micro or Small Enterprises under Section 43B of the Income Tax Act

Illustration

Date of Acceptance	Payment due date as per PO	Payment due date as per MSMED Act	Payment date (Actual)	Deduction allowed in the F.Y.
01/01/2024	14/02/2024	14/02/2024	14/02/2024	2023-24
01/01/2024	14/02/2024	14/02/2024	14/04/2024	2024-25
01/01/2024	30/03/2024	14/02/2024	31/03/2024	2023-24
01/01/2024	30/03/2024	14/02/2024	14/04/2024	2024-25
01/01/2024	Not specified	15/01/2024	31/03/2024	2023-24
01/01/2024	Not specified	15/01/2024	14/04/2024	2024-25
01/03/2024	14/04/2024	14/04/2024	14/04/2024	2023-24
01/03/2024	14/04/2024	14/04/2024	15/04/2024	2024-25
01/03/2024	Not specified	15/03/2024	16/03/2024	2023-24
01/03/2024	Not specified	15/03/2024	02/04/2024	2024-25
20/03/2024	Not specified	04/04/2024	02/04/2024	2023-24
20/03/2024	Not specified	04/04/2024	06/04/2024	2024-25

Payment to Micro & Small Enterprises as per MSMED Act, 2006

If there is agreement in writing – within the period as agreed or 45 days whichever happens earlier

If there is no agreement in writing – within the day following immediately after the expiry of fifteen days from the date of acceptance or deemed acceptance of any goods or services

Are Traders eligible for benefits under Section 43B(h)

Traders are not eligible for benefits of newly introduced Section 43B(h). Retailers and wholesale traders are allowed to register on Udyam Portal. However, the benefits are available to such entities for the limited purpose of priority sector lending only. Moreover, Traders are not included in definition of “enterprise” as defined under Section 2(e) of the MSMED Act, 2006. Thus, traders are not to be considered as micro or small enterprise for the purpose of benefits under Section 43B.