

We have been receiving certain queries and questions on the specific amendment of Section 43B(h) of the Income Tax Act “Payments to Small and Micro Enterprises registered under “MSMED Act 2006” and its disallowance. Some of these queries are addressed below:

1. Whether a retail trader / supplier, supplying material to me, shall be covered by this provision?

Ans : Even though the retail trader / supplier, supplying material is registered under UDYAM certificate, he/she will not be covered under Section 15 of the MSMED Act 2006 and section 43B(h) of the Income Tax Act.

Kindly refer to the Office Memorandum No.5/2(2)/2020/E/P&G/policy dated 02.07.2021, which clarify that the retails and wholesale traders are allowed to get registered under UDYAM, only for the purpose of “Priority Sector Lending”, i.e. availing bank finance.

Accordingly, the provisions of Section 43B(h), shall not be applicable to amount payable to retails / wholesalers whose UDYAM registration shows the registration status as “Trader”

2. We are registered under MSMED Act 2006 and we have outstanding receivables from Government Agency, which are due for more than 6 months. Whether, the Government Agency is covered under this Clause?

Ans.: Government Authority or Agencies do not have “Income from business and profession” and therefore the provisions of Section 43B (h) are not applicable such authorities. However, we suggest

that you should intimate the agency that you are a registered micro / small enterprise & delayed payment is liable for interest u/s 23 of the MSMED Act.

3. Whether, the GST component is also included in the disallowance?

Ans. : If the amount payable to the party is inclusive of GST, the disallowance shall be restricted to the amount excluding GST. However, one need to check the method of accounting for expenses followed year on year basis, i.e. exclusive of GST or inclusive of GST.

4. Whether these provisions of disallowance shall be applicable to supplier, who is “not registered”?

Ans. : The Section 43B(h) refers to Section 15 of the MSMED Act, 2006. Further, Section 15 refers to Section 2(n) of MSMED Act 2006, which defines “supplier” as the one who is has filed a memorandum with Authority, i.e. UDYAM. In view of this, it would be feasible to implement the section only when the supplier is duly registered under MSMED Act 2006.

5. If the supplier has obtained UDYAM registration on 20.03.2024 itself, so whether the provisions of section 43B(h) shall be applicable to all supplies made by the party since 1st April,2023 to 31st March 2024?

Ans. : The provisions of Section 43B(h) shall be made applicable to supplies made after obtaining the UDYAM registration, i.e. 20.03.2024

6. In case the buyer & seller, both are registered under the MSMED Act, whether the provisions are also applicable to an enterprises, who itself is registered under MSME Act?

Ans. : Yes.

7. If the amount is paid after 45 days, along with interest, to the supplier. Whether the amount paid as interest thereon is an allowable expenditure?

Ans. : The amount paid as interest on delayed payment, under section 23 of the MSMED Act, 2006, is not an allowable expenditure under the Income Tax Act

8. Whether the provisions of Section 43B(h) are applicable to payments made by Charitable Trusts to MSME?

Ans. : The provisions of section 43B(h) shall not be applicable to Charitable Trusts as the income computation of Charitable Trust are governed by Section 11 to 13 and does not fall under "Income from business and profession". However, if the charitable trust is carrying on any business activity, then the provision shall be applicable to that extent.

9. If some retention amount is withheld from amount payable to supplier, whether to that extent disallowance needs to be made under section 43B(h)?

Ans. : If the amount is withheld under contractual obligation towards performance guarantee, the same shall not be subjected to provisions of section 43B(h). Once the contractual obligations

are fulfilled, then the period shall be counted from the particular date of fulfillment & the provision of this section shall be applicable from that date.

For eg.: Defect liability period is of 12 months, so after 12 months the amount will become due & provisions of section 43B(h) shall become applicable.

10. Whether the period for payment is 15 days or 45 days?

Ans. : The period for payment is 15 days. It will be considered as 45 days only in case of any *written* agreement between the parties.

11. If purchase is made from manufacturer in January 2024 & against this purchase, the purchaser has issued him Inland LC for 60 days. Whether such LC will be construed as payment for section 43B(h)?

Ans. : Letter of credit, being a guarantee instrument, will not be construed as payment for the provision for section 43B(h).

Ensure that LC payment is made within the timeline specified under this provision.

12. Whether any liability which was outstanding in respect of the period prior to 01.04.2023 would be hit by the section 43B(h), say if it is outstanding as on 31st March, 2024.?

Ans. : In our opinion, the current provision has been introduced on 01.04.2023. Considering the fact, that the amount was treated as an expense prior to the date on which the provision became applicable, this will not be covered under section 43B(h).

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