

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). Memorandum of **Finance Bill 2023** termed it as one of the Socio-Economic Welfare Measures for promoting timely payments to Micro and Small Enterprises. Further it is stated that the said amendment will take the effect from April 01, 2024 and will accordingly apply to the Assessment Year 2024-25 and subsequent AYs.

**Now let us understand what it is all about:**

**Followings to be noted from combined reading of Section 43B and relevant provisions of MSME Act, 2006:**

- > Amount payable to Micro and Small enterprises will only be governed by section 43B(h) i.e. amount payable to medium enterprises will not be governed by section 43B(h);
- > Any amount remained outstanding as on 31<sup>st</sup> March not paid within forty-five days or period agreed between the buyer and supplier in writing, whichever is earlier shall be disallowed;
- > Any amount remained outstanding as on 31<sup>st</sup> March not paid within fifteen days when there is no agreement between the buyer and supplier in writing shall be disallowed;
- > Period of forty-five days or fifteen days shall be reckoned from the date as under:

<b>Sr. No.</b>	<b>Case Nature</b>	<b>Period to be counted from</b>
1	Day of acceptance	the day of actual delivery of goods or services
2	Day of acceptance (Objection is made by the Buyer in writing, objection must be made within 15 days from the day of delivery of goods or services)	the day on which such objection is removed from the supplier;
3	Deemed day of acceptance (No objection is made by the buyer in writing)	the day of actual delivery of goods or services

> Classification of enterprise as per section 7 of MSMED Act, 2006:

<b>Sr. No.</b>	<b>Enterprise Class</b>	<b>Enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule*</b>	<b>Enterprise engaged in providing rendering of services</b>
1	Micro	Investment in plant and machinery < Rs. 1 Crore and Turnover < Rs. 5 Crore;	
2	Small	Investment in plant and machinery < Rs. 10 Crore and Turnover < Rs. 50 Crore;	
3	Medium	Investment in plant and machinery < Rs. 50 Crore and Turnover < Rs. 250 Crore;	

\* First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951).

**Conclusion:** The insertion of Section 43B(h) marks a significant step in promoting the timely payment culture, specifically benefiting micro and small enterprises. The interplay with MSMED Act provisions adds depth to the understanding of this legislative change. Enterprises and stakeholders need to align with the new norms to ensure compliance and contribute to the economic well-being of MSMEs.

Extract of relevant provisions of Income tax Act, 1961 are as under:

**Section 43B(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 (27 of 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 :*

**First Proviso to section 43B** provides 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.

**Clause (e) to Explanation 4 to Section 43B defines micro enterprise**

*(e) “micro enterprise” shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);*

**Clause (g) to Explanation 4 to Section 43B defines small enterprise**

*(g) “small enterprise” shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).*

Extract of relevant provisions of Micro, Small and Medium Enterprises Development (MSMED) Act 2006 are as under:

**Section 15 – 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 forty-five days from the day of acceptance or the day of deemed acceptance.*

**Section 2(b)** – “appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

*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;*

## **Section 7 – Classification of enterprises**

**Section 7 (1)** *Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—*

*(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—*

*(i) a micro enterprise, where the investment in plant and machinery does not exceed twentyfive lakh rupees;*

*(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or*

*(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;*

*(b) in the case of the enterprises engaged in providing or rendering of services, as—*

*(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;*

*(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or*

*(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.*

*Explanation 1.—For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.*

*Explanation 2.—It is clarified that the provisions of section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall be applicable to the enterprises specified in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of this section.*

## **Section 7 – Classification of enterprises**

***As amended by Press Release dated 01-June-2020***

[Cabinet approves Upward revision of MSME definition](#)