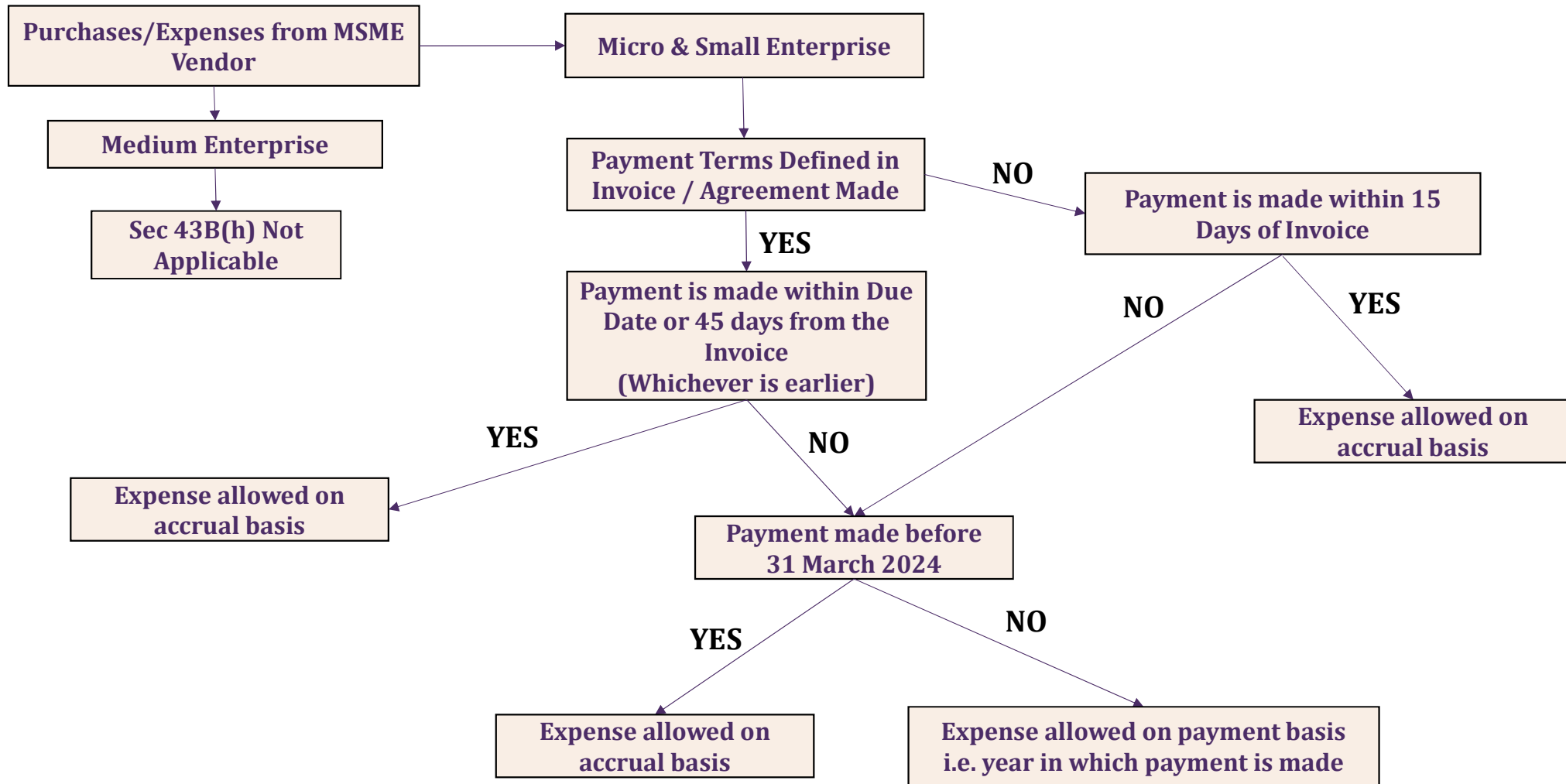


Amendment in Section 43B(h) – Payment to MSME Vendors



Amendment in Section 43B of Income Tax related to MSME Sector applicable to MICRO and SMALL units

- Section 43B of the Income Tax 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 of the relevant financial year.
- In effect if payment for certain accrued expenses are made up to the date of filing of the Income Tax return such expenses are allowed.
- However, Finance Act 2023, inserted a new clause (h) in section 43B of the Act to provide for exception to the above proviso of deduction stating 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*.
- The Explanatory Memorandum to the Finance Bill 2023 explains the amendment as under:

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, the proposed amendment to Section 43B will allow the payment as a deduction only on actual payment. It can be allowed on accrual basis only if the payment is within the time specified under Section 15 of the MSMED Act.

Adverse impact of the Amendment

- 1) If any payment is due for payment prior to 31 March to any MICRO or SMALL enterprise which has remained unpaid as on 31 March will be disallowed while computing Income and will subsequently allowed in the year of payment.
- 2) If any expense is booked prior to 31 March in respect of purchase of goods/services availed from MICRO or SMALL enterprise which has remained unpaid as on 31 March (as due date of payment is after 31 March) and the same is not paid within the specified due date in the next year, then such expense will also be disallowed while computing income and subsequently be allowed in the year of payment.

Explanation of the new provision

- New provision provides that if any sum due for payment to Small or Micro Enterprises is not paid then deduction for such expenses will be allowed in the year when actual payment is made.
- Effectively, due to above disallowance, taxable profit of the tax payer will increase.
- It is to be noted that disallowance stated above is in relation to payment for purchase of goods as well as for availing services.
- If amount due to Small or Micro Enterprises are debited to Fixed Assets or not debited to Profit & Loss Statement, then no disallowance under section 43B should be made.
- Notably, clause (h) of section 43B does not cover Medium Enterprises i.e. It is only applicable to Micro & Small Enterprises.
- Any anticipated delay payment to Micro or Small Enterprises to be factored in while calculating advance tax.

Time limit as per section 15 of MSMED Act:

- Where any person purchases goods/service, from a Micro or Small Enterprise, the payment shall be made before the date agreed upon 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.

Date of Acceptance and Deemed Acceptance:

- Date of Acceptance refers to the actual delivery of goods or services.
- Deemed Acceptance occurs when no objections are raised within 15 days of delivery.

The classification of Micro and Small Enterprises is defined under the MSMED Act 2006 through Notification as under:

	Micro Enterprise	Small Enterprise
Investment in Plant & Machinery or equipment AND	Up to INR 1 Crore	Up to INR 10 Crore
Turnover	Up to INR 5 Crore	Up to INR 50 Crore

- In addition to above criteria, the Enterprise must also be registered under Udyam Registration, which is mandatory from 1 July 2022. [Enterprise registered prior to 30 Jun 2020 whose Udyam Aadhar Memorandum (UAM) was valid only up to 30 Jun 2022].

- It is suggested that a confirmation may be rolled out to each and every vendor/service provider to confirm whether they are registered as Small or Micro Enterprise under the MSMED Act or not.
- In order to check whether the vendor is Small or Micro Enterprise for the FY 2023-24 the details of Investment and Turnover of the FY 2021-22 will be considered.

Illustration in respect of Goods:

X Ltd purchased goods from Y Ltd (A Small Enterprise as per MSME Act) for INR 15,00,000 on 2 March 2024. As per written agreement payment is to be made up to 30 April 2024. However the payment is made as follows:

Amount Paid INR	Date of Payment
2,00,000	30 March 2024
4,00,000	06 April 2024
3,00,000	15 April 2024
6,00,000	06 May 2024

Date of Acceptance of goods – 02 March 2024

Due Date as per MSMED Act – 16 April 2024 (i.e. the agreed date of payment or 45 days whichever is earlier).

Deduction available to X Ltd as follows:

Amount	Date of Payment	Due date as per MSMED Act	Payment made before due date?	Basis of Deduction	FY in which expense allowed
2,00,000	30 March 24	16 April 24	Yes	Accrual	2023-24
4,00,000	06 April 24	16 April 24	Yes	Accrual	2023-24
3,00,000	15 April 24	16 April 24	Yes	Accrual	2023-24
6,00,000	06 May 24	16 April 24	No	Payment	2024-25

Suppose in example above there is no agreement about the time of payment

Date of Acceptance of goods – 02 March 2024

Due Date as per MSMED Act – 17 March 2024 (i.e. 15 days from date of acceptance of goods).

Deduction available to X Ltd as follows:

Amount	Date of Payment	Due date as per MSMED Act	Payment made before due date?	Basis of Deduction	FY in which expense allowed
2,00,000	30 March 24	17 March 24	No	Payment	2023-24
4,00,000	06 April 24	17 March 24	No	Payment	2024-25
3,00,000	15 April 24	17 March 24	No	Payment	2024-25
6,00,000	06 May 24	17 March 24	No	Payment	2024-25

Illustration in respect of Services:

Amount	Date of Service	Date of Payment	Due Date as per Agreement	Due Date as per MSMED Act	Basis of Deduction	FY in which expense allowed
2,50,000	15 March 24	29 March 24	15 April 24	15 April 24	Accrual	2023-24
1,00,000	25 March 24	03 April 24	25 May 24	9 May 24	Accrual	2023-24
10,00,000	29 March 24	15 May 24	29 May 24	13 May 24	Payment	2024-25
7,00,000	31 March 24	05 April 24	NA	15 April 24	Accrual	2023-24
15,00,000	25 March 24	07 April 24 (10,00,000)	NA	09 April 24	Accrual	2023-24
		15 April 24 (5,00,000)	NA	09 April 24	Payment	2024-25