



Delayed payments to MSME's now entail consequences under multiple regulations

Eligibility criteria for MSME classification (as revised w.e.f. July 1, 2020)

Micro, Small and Medium Enterprises, commonly known as MSMEs, are a classification of small-scale enterprises that assist the government in the formulation and implementation of varied policies for the development of MSME Sector. The Union Ministry of Micro, Small and Medium Enterprises has been entrusted with the development of the MSMEs and formulation of new policies.

Criteria	Investment and Annual Turnover		
Enterprises covered	Manufacturing and Services		
	Investment	And	Annual Turnover
Micro	Investment less than INR 1 crore	&	Turnover less than INR 5 Cr.
Small	Investment less than INR 10 crore	&	Turnover of less than INR 50 crore.
Medium	Investment less than INR 20 crore	&	Turnover less than INR 100 crore

The Micro, Small and Medium Enterprises Development Act, 2006

The following sections contain the four chief provisions under the MSME Act that an MSME or a person engaged with MSMEs must be cognizant of:

- 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."* In other words, this sections mandates that although the time period for payment to MSME shall be stipulated in the written agreement, the same cannot exceed a period of 45 days. Moreover, if there exists no such written agreement, then the payment shall have to be made within a period of 15 days.



- **Section 16: Date from which and rate at which interest is payable**

“Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.”

In other words, this section denotes that if payment is not made within the time limit specified under the aforementioned section 15, then the interest payable shall be three times of the bank rate notified by the RBI. Furthermore, the payment of such interest on delayed payment will be in the nature of penalty or as penal interest.

- **Section 17 in The Micro, Small and Medium Enterprises Development Act, 2006**

Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

- **Section 23: Interest not to be allowed as deduction from income**

“Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.” In other words, this section provides that the amount of interest payable or paid by any buyer (as under the Act), shall not be allowed as deduction, for the purposes of computation of income under the Income Tax Act, 1961.

- **Section 24: Overriding effect**

“The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

As per this section, the provisions of sections 15 to 23 of the Act shall prevail in case of any conflict with any inconsistent provisions contained in any other law for the time being.

IMPACT UNDER OTHER LEGISLATIONS

INCOME TAX ACT 1961

- **Section 43B: Delayed Payment**

This section of the Income Tax Act provides that the deduction of expenses from business income will only be allowed when there is actual payment made to the supplier. Through Finance Bill 2023, the government has amended the provisions of this section to add a new clause, being clause ‘h’ to this section which states, *“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.”*

In other words, deduction of payment to MSME will be allowed only if payment is made within the timeline specified in Micro, Small and Medium Enterprises Development (MSMED) Act (refer to Section 15 of MSMED Act as given above).

Furthermore, the proviso to section 43B which states that payment can be made till filing of income tax return, shall not apply to the newly inserted clause ‘h’. This means that payments to micro or small enterprise will only be allowed if it is paid before end of the financial year. The insertion of this new clause will ensure timely receipt of income by the MSME and would provide them with much needed aid and comfort with respect to efficiently manage their working capital.



• Section 37: Interest on Delayed payments

This section does not allow any expenditure which is penal in nature, which includes interest paid to MSMEs as per section 16 of the MSMED, Act 2006. Moreover, the above penal interest and payments are also required to be reported by tax auditor in the tax audit report under clause 22 of the act.

CENTRAL GOODS AND SERVICES ACT 2017

In accordance with the proviso to Section 16 of the CGST Act, if the recipient fails to make payment to the supplier within 180 days from the date of issue of invoice, the recipient is required to reverse the Input Tax Credit claimed (ITC) and pay the amount with applicable interest. The reversed ITC can only be reclaimed on payment bases, as such, when the payment is actually made.

THE COMPANIES ACT 2013

Ageing disclosure

This Act requires a specific disclosure of the ageing schedule of outstanding payments towards MSMEs in the financial statements.

Half yearly reporting requirements

MCA vide notification 'Specified Companies (Furnishing of Information about payment to micro and small enterprise suppliers) Order, 2019' dated January 22, 2019, mandates that, all specified companies who buy goods or avail services from micro and small enterprises and whose payments to such suppliers have exceeded 45 days shall submit a half yearly return (e-form MSME Form I) to the Ministry of Corporate Affairs (MCA) stating the outstanding amount due and the reasons for delay.

Non-Corporate Entities

The Institute of Chartered Accountants of India (ICAI), through its Accounting Standard Board (ASB), has taken a significant step by formulating this Technical Guide recommending the formats of financial statements for non-corporate entities. The standardized formats of the financial statements would enable non-corporate entities to communicate their financial performance and financial position in standardized formats thereby enhancing their comparability. The recommended Financial Statements requires outstanding due to MSME to be separately shown, on the form of Balance Sheet, from outstanding of creditors other than MSME under trade payables. Further, disclosure w.r.t, principal amount and interest due/unpaid/paid is to disclosed in the notes.

ACCOUNTING GUIDANCE

Guidance Procedure with respect to suppliers/vendors:

- Obtain duly filled Vendor Form (for every new parties) with all relevant details including PAN, Bank account no. & IFS Code and MSME status to create GL account in the Tally books;
- Set default credit period for each party in Tally. It should not be more than 45 days for MSME parties;
- Maintain parties ledgers' accounts bill by bill in Tally. No settlements should be done 'on account'
- Maintain MSME details in Vendor Masters in Tally to capture enterprise type and registration no. for every registered party;
- Obtain balance confirmations on quarterly basis. If practically not possible, atleast on half-yearly basis for MSME creditors and annually for others;
- Obtain confirmation for MSME status at the start of each financial year.



For Year 2022-2023

- Obtain MSME status declaration for the year 2022-2023;
- Map MSME status with parties to classify outstanding trade payable balance to MSME and Non-MSME;
- Obtain balance confirmation at year end and reconcile parties;



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