

DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
(TAXATION CELL)

No. DSIIDC/TAXATION/I.TAX/2023-24/718

Dated: 10.04.2024

Sub: Payment to 'Micro', 'Small' or 'Medium' vendors registered under MSME Act, 2006

Circular No. DSIIDC/TAXATION/I.TAX/2023-24 --- 492 dated: 01.05.2023 bearing subject "**Allowability of any exp./purchases made from 'micro', 'small' or 'medium' vendor registered under MSME Act, 2006 w.e.f. FY 2023-24 is only on actual payment basis**" enclosed herewith is hereby re-circulated for compliance. Non compliance may attract disallowance of expenditure, penal interest and disallowance of penal interest.



(Rohit Tanwar)
DAO (Tax)

To: -

1. All Associate Finance (concerned Divisional Heads) for necessary action
2. D.M. (IT) for uploading on website

Copy to (for monitoring pl.): -

All CAOs

Copy to (for information pl.)

PS to Director (Finance)

DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
(TAXATION CELL)

No. DSHDC/TAXATION/I.TAX/2023-24 - 492

Dated: 01.05.2023

Sub: Allowability of any exp./purchases made from 'micro', 'small' or 'medium' vendor registered under MSME Act, 2006 w.e.f. FY 2023-24 is only on actual payment basis: -

New clause (h) is inserted vide Finance Act 2023 in Section 43B of the Income Tax Act 1961 to provide that any sum payable by the assessee to a micro, small & medium enterprise within 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 under the Income Tax Act 1961. The relevant clause is reiterated below-

"43B. 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."

Analysis of Section 43B(h) of Income tax Act 1961 -

As per amendment made by the Finance Act, 2023 where payment to micro, small or medium vendor registered under MSME Act, is not made within period specified u/s 15 of MSMED Act, 2006, the expense shall not be allowed under Income tax Act and this will result in increased profit of the Corporation and due to this higher tax will be payable in that year.

Analysis of relevant sections of MSMED Act-

- **Section 15 of the MSMED Act** mandates payments to micro and small enterprises within-
 - If agreement stipulated 20 days than payment is to be made within 20 days of invoice.
 - If agreement stipulated 60 days than payment is to be made within 45 days of invoice.
 - If no agreement than within 15 days of invoice.
- **Section 16 of MSMED Act** - The interest payable shall be **three times of the bank rate notified by the RBI** in case there is a delay beyond 45 days from the date of acceptance or date of deemed acceptance.
- **Section 23 of MSMED Act**-The interest if any paid/payable to the MSME on delayed payment is in nature of penal interest. The said **expenditure is otherwise not allowable under section 37 of the Income Tax Act, 1961.**

Hence, in view of the specific provisions (Section 23) under MSMED Act, 2006 having the overriding effect over Income Tax Act 1961, amount paid as interest to the MSME under MSMED Act 2006 is not allowable as expenditure under Income Tax Act 1961.

Thus, in reference to the above amendments, all the divisions must identify the supplier/parties registered under MSMED Act and accordingly process the payments within time specified under Section 15 of MSMED Act in order to avoid disallowances under section 43B(h) of Income Tax Act and more significantly **forever disallowance of penal interest**, if any.


(Rohit Tanwar)
Section Officer (Tax)

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