CONTENTS

		PAGE
	r Alphabetical Ready Reckoner to FAQs on Timely Payments ISMEs	I-17
FAQ		
	<u>1</u>	
	OBJECTS AND RATIONALE OF SECTION $43B(h)$ OF THE INCOME-TAX ACT, 1961	
1.	What is section $43B(h)$ of the Income-tax Act, 1961 all about?	1
2.	What are the avowed aims and objects of clause (<i>h</i>) for section 43B?	1
3.	Prior to section $43B(h)$, were there any legal provisions to ensure timely payments to micro and small enterprises? What is the status of those legal provisions now?	3
4.	Is there any interplay between section $43B(h)$ and MSMED Act, 2006?	4
5.	What is the rationale of enacting section $43B(h)$ in addition to Chapter V of MSMED Act?	4
	<u>2</u>	
	PROVISIONS OF SECTION $43B(h)$ OF THE INCOME-TAX ACT, 1961	
6.	What does section $43B(h)$ provide as regards deduction to a buyer-entity in respect of sum payable to Micro or Small Enterprise?	5
7.	Whether <i>non obstante</i> clause in section 43B means that disallowance of interest payable to Micro/Small enterprises for delayed payments under section 23 of MSMED Act would not apply?	7
8.	Whether <i>non obstante</i> clause in section 43B overrides section 44AD, section 44ADA, section 44AE, section 44BBB and section 115VA (Tonnage Tax) and gives section 43B(h) overriding effect over the said sections?	7

I-6 CONTENTS

FAQ		PAGE
9.	Whether <i>non obstante</i> clause in section 43B overrides section 145 of the Act so as to disallow payables under clause (<i>h</i>) even in respect of assessees who follow cash basis of accounting?	8
10.	Whether section 43B(<i>h</i>) would apply in respect of amounts due to Micro or Small enterprises in respect of purchase of Capital Goods?	10
11.	Can depreciation be disallowed if payment for the purchase of a fixed asset is made beyond 45 days?	10
12.	What is meant by "any sum payable by the assessee to a micro or small enterprise"?	10
13.	Whether deduction for purchases from micro or small enter- prise during financial year will be allowed if delayed payment made during the financial year itself?	12
14.	If goods were purchased on 1-4-2023 from Udyam-Registered Micro/Small Enterprise and payment was made on 31-3-2024, will it be disallowed to the buyer-entity under section $43B(h)$?	12
15.	What are the consequences if payment is made beyond 45 days but before 31st March?	13
16.	Whether and how deduction will be allowed for amounts due to micro or small enterprises as at the year-end but paid in the following financial year within the time allowed by section 15 of MSMED Act?	13
17.	What if the amount outstanding at year-end (31-03-2024) is paid in the next financial year (2024-25) beyond the time allowed by section 15 of the MSMED Act?	14
18.	What if advance is paid to the supplier who is micro or small enterprise?	14
19.	What if 50% advance is given in current year and balance 50% is paid to MSE supplier on or before the due date u/s 15 of MSMED Act in the next year?	14
20.	What if 50% advance is given in current year and the balance 50% is paid to MSE supplier beyond the due date under section 15 of MSMED Act in the next year?	14
21.	Whether amounts will be disallowed under section 43B(h) if payment delayed but made on average due date?	14

CONTENTS I-7

FAQ		PAGE
22.	What if cheque is handed over to the supplier on the due date under section 15 of MSMED Act but cheque is encashed by the supplier after the due date?	15
22A.	What if Cheque is handed over to Supplier on due date u/s 15 of MSMED Act and he acknowledges as received on that date but presents the cheque after 1 month from date of receiving under tacit understanding with the buyer?	15
23.	What if cheques dated 31st March but handed over to micro/small enterprises in April-end or May and accounted in books as paid on 31st March? Are these to be regarded as paid on 31st March?	16
23A.	What if photocopies of cheques and acknowledgement of MSE suppliers that they received cheque on 31st March are on record will it make any difference to FAQ 23 above?	16
24.	Whether section $43B(h)$ applies to retention money?	16
24A.	What if amounts outstanding to MSE suppliers as on 1-4-2023 (opening balances) are paid after the due date u/s 15 of MSMED Act during FY 2023-24?	17
24B.	If amounts paid during FY 2023-24 to a registered micro or small enterprise is not sufficient to cover opening balance plus purchases during FY 2023-24, how will section 43B(<i>h</i>) work?	17
25.	What if provisions are made instead of crediting individual accounts of the Trade Creditors/Suppliers? Can provisions be disallowed?	19
26.	Whether disallowance under section 43B(h) can be made while computing book profit for MAT purpose?	19
	<u>3</u>	
	BUYERS TO WHOM SECTION 43B(h) APPLIES	
27.	To what kind of buyer-assessee is section 43B(h) applicable?	21
28.	What if any charitable trust is making payment to a MSME? Will section 43B(<i>h</i>) apply?	21
29.	Whether section 43B(h) will apply to buyer-assessee who, being eligible, opts for presumptive taxation scheme under section 44AD or section 44ADA or section 44AE or section 44BBB or section 115VA (Tonnage Tax)?	21

I-8 CONTENTS

FAQ		PAGE
30.	Since section $43B(h)$ overrides section 145 of the Act relating to method of accounting, will section $43B(h)$ applies to buyerentities carrying on business/profession who follow cash system of accounting?	21
31.	Will section 43B(h) apply to a buyer-assessee who is Udyam-Registered Micro or Small Enterprise?	22
31A.	Whether section 43B(h) will apply to a Sole proprietorship/partnership firm/HUF buyer who is exempt from tax audit u/s 44AB of the Act as his turnover does not exceed ₹ 10 crores and 95% of his receipts and payments are in prescribed cashless modes?	22
	4	
	DEFINITION OF "MICRO ENTERPRISE" AND "SMALL ENTERPRISE"	
32.	What are the definitions of the terms "micro enterprise" and "small enterprise"	24
33.	How is turnover calculated for classification of enterprises into micro, small and medium?	26
34.	How is investment in plant and machinery or equipment calculated for classification of enterprises into micro, small and medium?	26
35.	Can you please illustrate classification of enterprises based on composite criteria of turnover and investment?	27
36.	So will each buyer-entity have to call for the financials, ITRs and GSTs of every trade creditor/supplier and determine their classification as micro enterprise or small enterprise?	30
37.	Is section 43B(<i>h</i>) applicable to amounts due to unregistered micro/small enterprises?	34
38.	Our Supplier who is an Udyam-Registered Small Enterprise has purchased a new plot of land worth ₹ 10 crore for putting up a state of the art plant and had invited us to the Bhoomi Pujan. Can we put his bills on hold without inviting section 43B(h) disallowance and without attracting interest liability u/s 16 of MSMED Act since his investment in Plant, Property and Equipment now exceeds ₹ 10 crores?	34

FAQ		PAGE
39.	Can the buyer-entity take non-mention of Udyam Number on Bills of suppliers as conclusive evidence of non-registration under Udyam?	35
40.	How to verify that Udyam Registration number printed on suppliers invoice is genuine?	36
41.	Can it be inferred from the Udyam Number printed on Supplier's invoice that he is a micro or small enterprise?	36
42.	Is it possible to obtain Udyam Registration details of a Supplier by searching for his name in Udyam portal?	36
43.	Is it possible to obtain Udyam Registration details of a Supplier by searching his PAN on the Udyam portal?	37
44.	What details are contained on Udyam Registration Certificate?	37
45.	What should buyer-entities check from the Udyam Certificate displayed on the portal?	38
46.	Is section 43B(<i>h</i>) a "non-tax benefit" for the Supplier micro/small enterprise?	40
47.	What if, as per Supplier's Udyam Certificate, under the head "Enterprise Type", the following details are given in Tabular form	40
48.	What if, the Supplier's Udyam Certificate shows, under the head "Enterprise Type", that the supplier is a medium enterprise since financial year 2020-21?	41
49.	What if, as per Supplier's Udyam Certificate, the supplier's status was reverse-graduated from medium enterprise to small enterprise w.e.f. 1-4-2022?	41
50.	Whether section $43B(h)$ shall apply to outstandings in respect of supplies made prior to date of Udyam Registration?	42
51.	Whether section $43B(h)$ will apply if supplier cancels his Udyam Registration?	42
52.	Whether supplier can cancel Udyam Registration? If so, how?	43
53.	Will Micro or Small Enterprises having Udyog Aadhaar Memorandum or EM-II be regarded as micro or small enterprises	
	for section 43B(h) purposes?	43
54. 	What is Udyam Assist registration?	43
55.	What are Informal Micro Enterprises (IMEs)	44
56.	What is the status of IMEs registered on UAP?	44

I-10 CONTENTS

FAQ

5

LIABILITY OF BUYER UNDER SECTION 15 OF MSMED ACT TO MAKE TIMELY PAYMENTS TO MSE SUPPLIERS

57.	What is the time allowed by section 15 of MSMED Act for making payment to a supplier who is a micro or small enterprise?	45
58.	What is meant by the terms "the Appointed Day", "the day of acceptance" and "the day of deemed acceptance"	47
59.	Can you please illustrate how the provisions of section 15 of MSMED Act work?	48
59A.	A What if buyer-entity has no written agreement with MSE suppliers as regards credit period?	49
59B.	Whether agreements with longer credit period upto 45 days can be made retrospectively applicable by clause in agreement to verbal orders of purchases made prior to the date of agreement?	49
60.	What is average due date?	49
61.	The following are due dates u/s 15 of MSMED Act for payments of various Bills of an Udyam Registered Small enterprise supplier which are outstanding on 31-3-2024	50
62.	Whether Parties can by written agreement agree that Buyer will pay the MSE Supplier on average due date of all bills falling due for payment according to 45 days due date of section 15?	51
63.	What is meant by the term "Supplier"?	51
64.	Whether micro enterprise/small enterprise will be regarded as 'supplier' for supplies made on or before the date of Udyam registration?	51
65.	Whether Udyam-Registered medium enterprises are suppliers?	52
66.	Which enterprises shall not be regarded as suppliers for purposes of section 15 of MSMED Act?	52
67.	Can it be argued that since section 43B refers to only section 15 of MSMED Act and does not refer to definition of "Supplier" in section $2(n)$ of MSMED Act, section $43B(h)$ will also apply to amounts due to an unregistered micro or small enterprise (<i>i.e.</i> micro or small enterprise not having Udyam Registration)?	52

CONTENTS I-11

FAQ		PAGE
68.	What is the definition of "Buyer"?	54
69.	What if buyer-entity buys goods from Udyam Registered Micro/Small Enterprise whose Udyam Certificate shows he is a trader? Will section 43B(<i>h</i>) apply?	55
70.	How to know the correct status of Supplier, whether he is manufacturer or service provider or trader?	55
71.	What if the Status of Micro/Small "Supplier" changes from Manufacturer to Trader?	55
72.	What if the Status of Micro/Small "Supplier" changes from Trader to Manufacturer?	56
73.	Does Udyam Portal allow search of MSME status of Supplier based on his name?	56
74.	Can one do bulk search of Udyam Numbers of many suppliers?	56
75.	There is a popular eatery in front of our Office from where we order tea and snacks for staff, guests and visitors. There is no written agreement as to due date. We settle the bills of the eatery on a monthly basis. Whether section 43B(h) would apply to the Bills of the eatery?	56
76.	Will section $43B(h)$ apply to fees payable to CA firm who is internal auditor/concurrent auditor?	57
77.	What if CA firm submitted internal audit report on 15-3-2024 and obtained Udyam Registration on 16-3-2024 and internal audit fees bill is pending as on 31-3-2024? Will section 43B(<i>h</i>) apply in this case?	57
78.	If contract between buyer and Udyam Registered MSE supplier is of the nature of works contract, will section 43B(h) apply?	57
79.	Whether section 43B(h) would apply to provision for statutory audit fees/tax audit fees made as of 31st March of relevant financial year if CA firm who is auditor is an Udyam	
	Registered micro or small enterprise? 6 COMPLITATION OF AMOUNT OF	58

80. Whether disallowance will be of net amount debited to P&L (*i.e.* amount net of ITC) or amount credited to supplier?

DISALLOWANCE U/S 43B(h)

59

I-12 CONTENTS

FAQ		PAGE
81.	Whether section 145A would impact disallowance u/s 43B(h)?	61
	<u>7</u>	
	SECTION 43B(h) DISALLOWANCE VIS-A-VIS DISALLOWANCE U/S 23 OF MSMED ACT OF INTEREST PAYABLE TO MSEs	
82.	What is the date from which and rate at which interest is payable by buyer who delays payment to a registered micro or small enterprise supplier?	63
83.	For computing interest on delayed payments as per section 16, bank rate as of which date is relevant?	64
84.	What is meant by calculation of interest compounded at monthly rests?	65
85.	Will section 16 of the MSMED Act apply where contract provides that no interest shall be paid for delays in payment?	65
86.	Is interest under section 16 of the MSMED Act in addition to interest provided for in the contract?	66
87.	Can interest under section 16 of the MSMED Act be waived by the supplier?	66
88.	What if payment could not be made within the time-limit stipulated by section 15 of the MSMED Act as the buyer had delayed submission of the bills?	69
89.	What if payment could not be made within the time-limit stipulated by section 15 of the MSMED Act as the buyer had not followed the instructions regarding the submission of bills?	69
90.	What if supplier's Udyam Registration number is not mentioned by supplier in letterheads, invoices, bills, delivery challans or other documents and payment is delayed by the buyer as he is unaware of supplier's MSE status? Can the supplier claim interest in such a case?	70
91.	What if supplier's bill settled but interest under section 16 of the MSMED Act kept outstanding? Will any interest be payable under section 16 of the MSMED Act on the interest amount outstanding?	71

FAQ		PAGE
92.	If the buyer makes a delayed payment to a supplier and the amount paid is not sufficient to satisfy the total amount (bill amount and interest under section 16 of the MSMED Act), how should the payment be appropriated by the supplier towards principal/towards interest?	71
93.	Is there any directive by Central Govt. for prompt payment of MSE bills by PSUs?	71
94.	Is it necessary for the supplier to file any suit or other legal proceedings to enforce buyer's liability for interest under section 16 of the MSMED Act?	72
95.	Whether defaulting buyer is liable to pay interest to a supplier who is an Udyam-Registered Medium Enterprise?	72
96.	Whether TDS is deductible from interest payable u/s 16?	72
97.	Is interest u/s 16 exempt from tax in supplier's hands?	73
98.	What are the provisions as regards disallowance of interest payable on delayed payments to MSE Suppliers under the MSMED Act?	73
99.	What is the means to ensure the disallowance of interest in accordance with section 23 of the MSMED Act?	73
99A.	What are the differences between tax implications under section $43B(h)$ of the Act and interest liability under section 16 which is disallowable u/s 23 of MSMED Act?	73
	<u>8</u>	
	DISCLOSURES OF AMOUNTS DUE TO MSEs IN AUDITED ACCOUNTS	
100.	What are the requirements regarding disclosure by buyer in his annual accounts of amounts due to MSE suppliers?	76
101.	What is the objective of requiring disclosures by buyer in his annual accounts of amounts due to MSE suppliers?	80
102.	How is the buyer to identify MSE suppliers to comply with Chapter V of MSMED Act including disclosures in annual audited accounts?	80
103.	Is there any penal consequences for the buyer if he fails to disclose dues to MSE suppliers in his audited annual accounts?	82

I-14 CONTENTS

FAQ		I	PAGE
104.		tes on Accounts are to be added by buyer entities to with disclosures under section 22?	82
105.		e the matters that tax auditor needs to verify and clause 22 of Form No. 3CD?	83
106.		e the Common Errors in reporting in clause 22 of a 3CD, as noticed by ICAI?	86
		9	
		REPORTING IN TAX AUDIT REPORT OF DISALLOWANCE U/S 43B(h)	
107.	Whether Form No	disallowance u/s $43B(h)$ requires reporting in . 3CD?	87
		<u>10</u>	
		CHECKLIST FOR BUYER-ENTITIES	
108.	in mind	give us a checklist of important matters to be kept by buyer-entities while making payments to micro l enterprises?	88
		11	
	СНЕ	ECKLIST FOR MICRO/SMALL ENTERPRISES	
109.	in to take	give us a checklist of important matters to be kept advantage of protections against delayed payments ction 43B(<i>h</i>) of the Act and sections 15, 16 and 23 ED Act?	91
		APPENDICES	
Арре	endix 1:	Relevant text of section 43B(h) of Income-tax Act, 1961	95
Арре	endix 2:	Relevant extracts of explanatory circular explaining the provisions of the Finance Act, 2023	96
Арре	endix 3:	Micro, Small and Medium Enterprises Development Act, 2006	97
Арре	endix 4:	New MSME Notification (NMN)	101
Appe	endix 5:	Inclusion of wholesale trade and retail trade in MSMEs	106

CONTENTS I-15

]	PAGE
Appendix 6:	Office Memorandum regarding activities not eligible for MSMEs registration	107
Appendix 7:	Extension of OM No. UAM/MC/01/2017-SME dated 27-7-2017 to Udyam Registration	108
Appendix 8:	Activities (NIC Codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM)	109
Appendix 9:	Benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSMEs <i>vis-a-vis</i> Traders related	111