

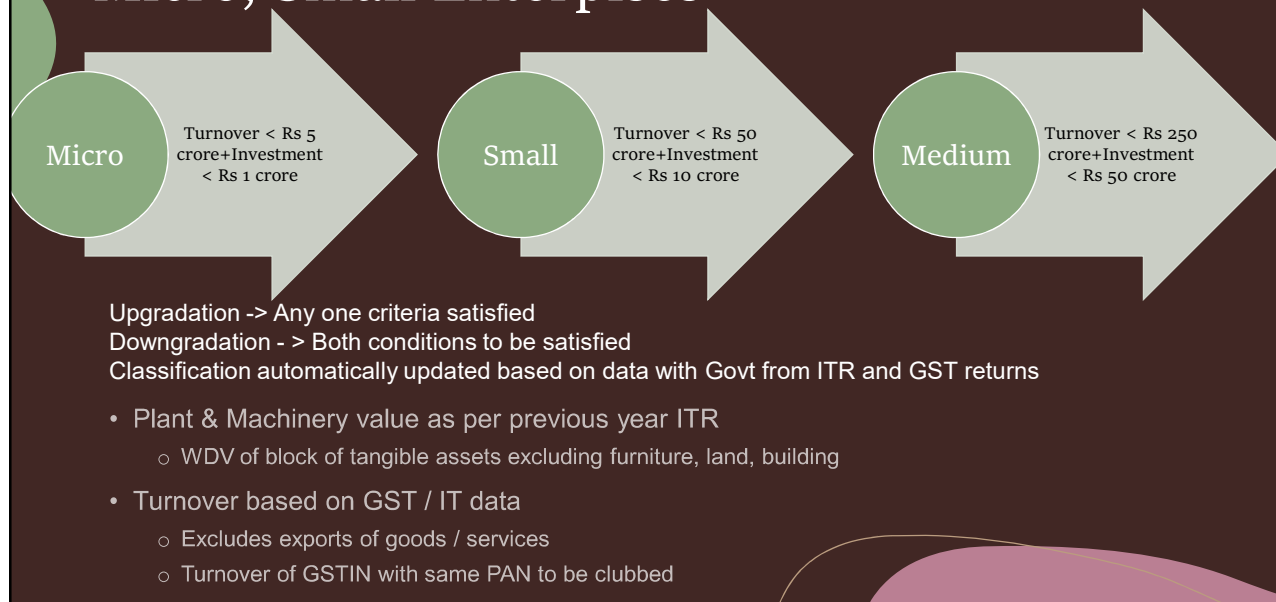
Relevant amendments for FY 23-24 closure

ICAI Kottayam

Amendments related to business income

- Section 43B(h) Payments to Micro, Small enterprises
 - New clause inserted to provide amount payable to Micro, Small Enterprise beyond time limit as per section 15 of MSMED Act will be allowed as a deduction on payment basis
 - Proviso permitting deduction for payments made upto date of filing ITR not applicable to above clause
 - Definition of micro and small enterprises as per MSMED Act
 - Time limit for payment as per section 15 of MSMED Act
 - As agreed between parties subject to maximum of 45 days
 - If no agreement limited to 15 days from date of delivery of goods / rendering of services
 - Section 15 of MSMED Act as well as 43B(h) exclude medium enterprises

Micro, Small Enterprises



Due date for payment

Transaction	Date of delivery	Due date of payment	Actual payment	Deduction allowed in FY
ABC sells goods to XYZ (no due date specified in agreement)	5-3-24	20-3-24	5-4-24	24-25
ABC sells goods to XYZ (due date as per invoice 30 days from date of receipt)	5-3-24	4-4-24	2-4-24	23-24
ABC sells goods to XYZ (due date as per invoice 90 days from date of receipt)	5-3-24	19-4-24	15-4-24	23-24
ABC sells goods to XYZ XYZ raises an objection in writing regarding the goods XYZ removes the objection (due date as per invoice is 30 days from date of receipt)	5-3-24 15-3-24 25-3-24	24-4-24	30-4-24	24-25
ABC sells goods to XYZ XYZ raises an objection in writing regarding the goods XYZ removes the objection (due date as per invoice is 30 days from date of receipt)	5-3-24 25-3-24 31-3-24	4-4-24	25-3-24	23-24

Issues related to 43B(h) amendment

- **Does the amendment cover dues to traders?**
 - Enterprise definition does not cover traders
 - Trading concerns permitted to register as MSMED for priority sector lending and other benefits like provisions of delayed payment excluded (Office Memorandum: No. 5/2(2)/2020/E/P&G/POLICY dated 2-7-2021)
 - Amendment may not cover persons whose Udhyam certificate does not show manufacturing / service activity
- **Will the disallowance apply to person covered under presumptive taxation (44AD / 44ADA)?**
 - Income is computed notwithstanding anything contained in section 28 to 43C – hence no disallowance
- **Is it applicable to non tax audit cases**
 - Yes

Issues related to 43B(h) amendment

- **Is disallowance limited to taxable value / is GST also disallowed?**
 - Not disallowed generally
 - In case of ineligible ITC, where entire expenditure is booked in P&L, it may be disallowed
- **If supplier has taken registration during the year but invoice pertains to pre registration period, will disallowance apply?**
 - No, since section 15 is applicable only to a supplier
 - Supplier is defined as person who has filed memorandum with relevant authority

Issues related to 43B(h) amendment

- **Would there be a disallowance in case the dues relate to fixed assets?**
 - Section 43B is applicable in respect of deduction otherwise allowable under Income Tax Act – hence no disallowance
 - Depreciation, being an allowance is not covered u/s 43B
- **If advance is paid to MSME supplier in 23-24 but goods are received in 24-25, deduction would be allowed in 23-24 or 24-25?**
 - Deduction would be allowed in 24-25 since expenditure is booked in 24-25
- **If provision is created instead of crediting to supplier a/c would there be disallowance?**
 - If payment is delayed beyond period given in section 15, disallowance would apply

Issues related to 43B(h) amendment

- **If payment is subject to TDS, whether TDS is also to be paid within time limit under section 15**
 - TDS to be paid as per provisions of Income Tax Act and balance payment to be paid as per time limit under section 15
- **If TDS is not deducted, would disallowance be as per section 40(a) or section 43B**
 - Section 43B is a non obstante provision and hence would prevail over other disallowances
- **In case the liability disallowed is written back in a subsequent year, would it be considered as income?**
 - This would result in double taxation of same amount and hence would not be considered as income in the year in which amount is written back

Case study – appropriation of payment

Transaction	Date of delivery	Remarks
A sells goods to B for Rs 50,000 (Invoice A) * 45 days due date	01-01-2024	Not paid by B till 31-3-24
A sells goods to B for Rs 50,000 (Invoice B) * 45 days due date	01-03-2024	Not paid by B till 31-3-24
B makes payment of Rs 60,000 on 10-4-24		

If appropriated 50,000 towards invoice A and 10,000 towards invoice B

- 10,000 allowed in FY 23-24
- 50,000 allowed in FY 24-25

If appropriated 50,000 towards invoice B and 10,000 towards invoice A

- 50,000 allowed in FY 23-24
- 10,000 allowed in FY 24-25

Practical aspects

- Clients may update vendor status annually - email confirmation may be obtained with Udyam Registration Certificate
- Payment terms may be intimated through invoice / email **(in writing as per Section 15)**
 - Date of rendering of service based on completion / stage wise
- Any dispute to be in writing / on record
- Interest provision in case of disallowance (or delay during year)
 - Interest to be disallowed and disclosed in Form 3CD
- ROC filing for companies – MSME 1 half yearly filing
- Auditor may rely on test checking / process followed by client
- If supplier does not provide details assessee may not be liable
- Advance tax to be paid on probable disallowance
- Deferred tax asset on disallowance
- Intra group transactions not exempted – whether JV will be considered as payment?

Amendments related to business income

- Section 28 – benefits / perquisites in cash
 - Clarifies that provision is applicable to perquisites in cash / in kind
 - Over rules SC decision in the case of Mahindra & Mahindra [2018] 404 ITR 1 (SC)
 - Reference to Circular 20D dated 7 July 1964 at the time of introduction of provision
- Explanation 2 to 194R clarifies that TDS is applicable to such benefits / perquisites

Amendments related to business income

- Section 35D amortisation of preliminary expenditure
 - Earlier provision required feasibility report / project report / market survey / engineering services by the assessee himself / concern which is approved by the CBDT
 - Amendment removes such requirement
 - Assessee to file Form 3AE while claiming such expenditure u/s 35D (Audit report)
 - Assessee to file Form 3AF giving details of expenditure, amount paid in cash, TDS deducted, PAN of recipient etc

Amendments relating to business income

- Presumptive tax limit u/s 44AD increased from Rs 2 crores to Rs 3 crores if cash receipts < 5% of total receipts
- Presumptive tax limit u/s 44ADA increased from Rs 50 lakhs to Rs 75 lakhs if cash receipts < 5% of total receipts
- 44AB tax audit not applicable for such persons
- Cash receipt includes other than A/c payee cheque receipts

Amendments relating to business income

- Cost of acquisition / improvement of capital asset being intangible assets / rights deemed to be nil where it is self generated
- Section 56(2)(viib) regarding taxability of share premium in excess of fair value extended to non resident investors
 - Certain exceptions notified including start ups
- Increase in TDS rates for taxation of royalty / FTS u/s 115A from 10% to 20% (+ surcharge and cess as applicable)
 - In case recipient furnishes tax residency certificate, rates as per DTAA may apply if more beneficial)
- Provision for stock audit by cost accountant for preventing under valuation of inventory

TDS / TCS related amendments

- Removal of exemption for TDS on interest on listed debentures u/s 193
- Framework for TDS on winnings from online games
- Enabling claim of TDS where income offered to tax in earlier years
 - Application to AO within 2 years from end of assessment year (Form 71)
- TCS on foreign remittances under LRS



SEZ units

- Section 10AA deduction only on filing of ITR within time limit u/s 139(1)
- Time limit of 6 months / as permitted by competent authority for realisation of export proceeds

Changes in Form 3CD

- Clause 8a – cooperative societies opting for taxation u/s 115BAE
- Clause 12 – inclusion of section 44ADA presumptive profits included in P&L
- Clause 18 – adjustment to WDV u/s 115BAC(3)
- Clause 19 – deduction u/s 35ABA, any other relevant section
- Clause 21 – amendment to section 37
- **Clause 22 – 43B(h)**
- Clause 32 – losses not allowed to be carried forward u/s 115BAE

Changes in ITR forms

- E verification of ITR without DSC for individual / HUF (even if liable for tax audit)
- Applicable due date to be selected
- New tax regime – default option
 - Opt out through ITR for assessee w/o business income
 - Opt out through form 10IEA before due date for assessee with business income
- Legal Entity Identifier (LEI) compulsory in case of refund above Rs 50 crores
- Reason for tax audit u/s 44AB

Changes in ITR forms

- Tax audit acknowledgement no and UDIN
- Receipts in cash (for enhanced turnover limit)
- 43B(h) disclosure
- Details of deposit in capital gains deposit
- Winnings from online games
- Tax deferred on ESOP
- Deduction for Agnipath scheme
- Deduction u/s 80U – additional information
- Deduction u/s 80DD – additional information

Changes in ITR forms

- Dividend income from IFSC unit
- Bonus payments from life insurance policy
- Amount received from business trust u/s 56(2)(xii)
- Details of all bank accounts held in India at any time during the year (except dormant accounts)
- Unabsorbed depreciation adjustment to WDV
- Eligible startup claiming deduction u/s 80IAC
- Accreted income u/s 115TD
- MSME registration status
- Opting for section 115BAE