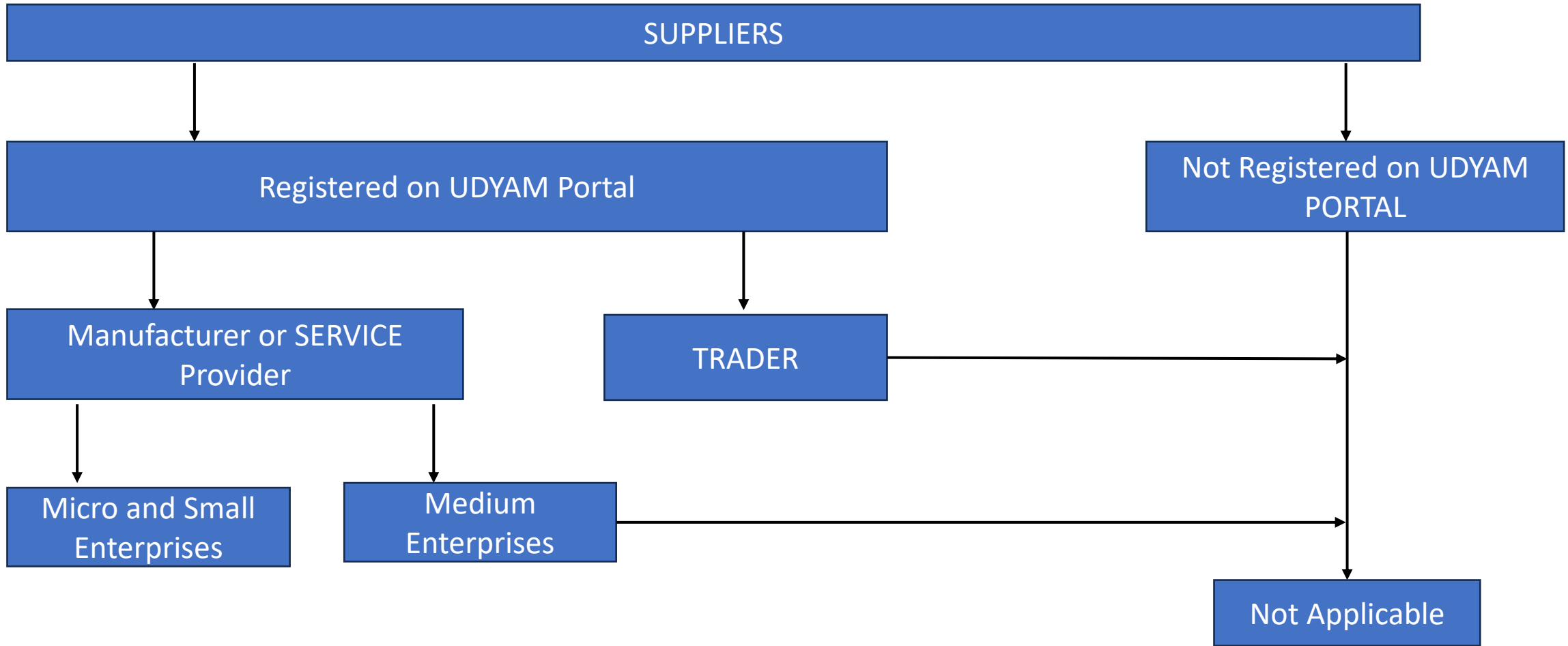


# Section 43B(h)

Disallowance of MSME Purchase / Expenses

# APPLICABILITY OF SECTION 43B(H)



## Applicability Of Section 43B(h)

### Definition of Micro, small and Medium Enterprises as per section 7 of MSMEI Act, 2006

Particulars	Micro	Small	Medium
Investment in Plant and Equipment's	Not more than Rs. 1 crores and	Not more than Rs. 10 crores and	Not more than Rs. 50 crores and
Turnover	Not more than Rs. 5 crores.	Not more than Rs. 50 crores.	Not more than Rs. 250 crores.

- The amount Payable for goods & services
- Obtaining the latest UDYAM Certificate is very important, the status of an enterprises displayed in the Certificate to be considered for the classifying as Micro or Small
- The Amount Payable for Micro and Small Enterprises **Only**
- Amount Payable to **Manufacturing and Services Provider (Major Activity) Only**
- **Not Applicable** to amount Payable to **Traders (for Availing benefit of Priority Sector Lending)**
- If Invoice for the period for 1<sup>st</sup> April 23 to 15<sup>th</sup> Feb 2024 and Payment made before 31<sup>st</sup> March 2024 the **Expenses Are Allowed**
- If Invoice for the period for 16<sup>th</sup> Feb 2024 to 31<sup>st</sup> March 2024 and were paid within 45days the **Expenses allowed FY 2023-24 (Assumed Written Agreement of 45 days is there between Buyer and Suppliers)**

- As per section 16 of the MSMED Act, the payment of interest on delayed payment is in the nature of penalty or it is penal interest. Therefore, once the payment of interest on **delayed payment to MSME is regarded as a penal in nature and it is not allowed as an expenditure under Income Tax Act 1961** due to the overriding effect of section 23 of MSMED Act 2006.
- The Amount will **allowed** in the financial year in which the payment is made
- The section is **Not applicable** on **Capital Goods**
- The Expenses will still be Disallowance even if the the goods is the part for closing stock.
- The Section 43B is **not applicable** in case of 44AD Cases.
- The Closing Balances for the financial year 2022-23 shall **not be considered** for disallowance.

# **APPLICABILITY TO TRADER/DISTRIBUTORS (insights)**

As per the definition of enterprises, only persons dealing in either Manufacturing of Goods or providing any services will be classified as an Enterprise.

One could take a stand that trader /Retailer/Distributor, etc would **not be classified** as an Enterprise and would not be covered under the Micro or Small Enterprise definition. AND On simple reading the **Office Memorandum No. 5/2(2)/2021-E/P & G/Policy) date 02/07/2021 issued by Government of India, Ministry of MSME.**

**“Retail and wholesale trades as MSMEs and they are allowed to be registered on Udyam Registration Portal. However, benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.”**

**“For the application of section 43B(h) the supplier should registered under MSMED Act, 2006 as a Micro and Small Enterprises as a Manufacturer and/or Service Provider.”**

# STEP TO BE TAKEN BY THE ASSESSE

1. Evaluate the status of outstanding creditors at the end of the year for all enterprises, regardless of audit applicability, to categorize them as Micro and Small Enterprises, Manufacturers, Service Providers, or Traders/Retailers.
2. Define the age of outstanding creditors as follows: less than 15 days, between 15 and 45 days, and more than 45 days.
3. It is strongly recommended to obtain an MSME certificate from suppliers, along with a declaration on the enterprise's classification, such as Micro, Small, or Medium Enterprises, and turnover for the preceding year, supported by a written agreement.
4. Tax auditors should meticulously review the information and documents maintained by the taxpayer to verify their authenticity and identify any potential disallowances under Section 43B.

**In conclusion**, businesses must take proactive steps to assess outstanding creditors, obtain necessary certificates and declarations, and ensure compliance with Section 43B. These measures are essential for adapting to the amendments effective from the assessment year 2024-25 and for maintaining smooth tax compliance while understanding the nuances of the MSMED Act and related provisions

- **Disclaimer:** The Tax disclaim all liability in respect to actions taken or not taken based on any or all the contents of this Insight report to the fullest extent permitted by law.