

AMENDMENTS IN TAX AUDIT

AMENDMENT IN FORM 3CD

Income Tax department has amended the 3CD report by **inserting a New Clause 17A after Clause 17** by **NOTIFICATION NO. 36/2009, dt 13-4-2009**, which require auditors to report **Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006. In addition to that there were some changes in provisions of fringe benefit.**

Notification is as follows:-

Income-tax (Tenth Amendment) Rules, 2009 - Amendment in Form No. 3CD

NOTIFICATION NO. 36/2009, dt 13-4-2009

In exercise of the powers conferred by **section 295 read with section 44AB of the Income-tax Act, 1961 (43 of 1961)**, the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely :

1. (1) These rules may be called the Income-tax (Tenth Amendment) Rules, 2009.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962, in Appendix II, in Form No. 3CD, after item 17, the following shall be inserted, namely :—

“17A. Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.”

This additional reporting requirement appears to be simple, but in practice it will require lot of examination of relevant records, wherever any interest is paid or payable to Suppliers/ service providers.

The clients of auditor will have to find out eligible suppliers to whom the provisions of section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 apply and interest payable or paid to them will have to be ascertained. The auditor must verify the same carefully and to ensure that the client has taken all reasonable steps to ascertain the information in this regard.

The clients may be advised to:

- Maintain a separate register or details sheet of eligible suppliers.
- A separate classification of such suppliers can be maintained in ledger.
- A separate interest account in ledger can be maintained in relation to such suppliers.

The auditor can also consult relevant websites to find out if any supplier is an eligible supplier under the said Act.

Provisions relating to computation of income:

In the **Micro, Small and Medium Enterprises Development Act, 2006** we find a section 23 which reads as follows:

23. Interest not to be allowed as deduction from income.-

Notwithstanding anything contained in the [Income-tax Act, 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.

This section has been given status of an overriding provision vide section 24 of the enactment. The section 24 reads as follows:

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.

Therefore, section 23 shall have an overriding effect on the relevant provision of the [Income Tax Act 1961](#). We find that interest can be claimed under different circumstances under different provisions like **sections 24, 36, 37 and 57**. Section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 will have overriding effect on all the provisions which enable deduction of interest payable by a buyer to the supplier of goods or service provider in case of delayed payment.

Section 2. (d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

Section 2.(n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,— (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956; (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956; (iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

From the definition of buyer, we find that provisions relates to goods purchased as well as serviced received.

Eligible supplier must satisfy requirements of S.2 (n). otherwise the provision shall not apply and the tax auditor will not be required to report about any supplier. Unless a supplier has given intimation with evidence as to his eligibility, a buyer cannot be presumed that the supplier is eligible, and therefore, interest payable to such a supplier need not be disallowed.

Interest on capital borrowed will not be covered:

Section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 is concerned with interest payable by a buyer to supplier/service provider, who is micro, small and medium enterprise to which the provision of that Act apply. In this relation we need to have a look on the definition of buyer and supplier which reads as follows:

Total disallowance of interest is not justified:

It is to be noted that any interest to which S. 23 apply is not at all allowable. This is not justified. If there is delay in payment, the buyer can compensate the supplier by paying interest. Therefore, it would have been better proposition to allow interest payable to such eligible suppliers only on actual payment and not otherwise.

Total ban in allowability of interest paid or payable to such eligible suppliers may lead to payment of interest from undisclosed sources in cash or it may prompt to collusive deal under which the supplier may be asked to over invoice future supply by including the amount of interest payable for delayed payment.

S. 43B could be applied to all payments to eligible suppliers to achieve purpose:

Considering the purposes of the Micro, Small and Medium Enterprises Development Act, 2006 it would have been better option to cover allowability of any sum payable to eligible supplier under section 43B including for goods purchased, services received and interest payable for delayed payments.

In fact the provision that interest shall not be allowed at all may be considered as unconstitutional and illegal being unreasonable and devoid of merits based on usages and practices in nay trade, commerce and industry. This is because negotiation of terms and conditions as to interest payment are integral part of any business contract. A supplier sells goods at lower price when cash payment is made and higher price is charged when credit period is allowed. Depending on period of credit, price charged also vary.