

Form MSME-I – Related Interpretations and analysis

1. Brief overview

With a view to assess the overall financial health of MSME sector and the promptness of payments to MSME suppliers, the Ministry of Corporate Affairs had directed specified companies under Section 405 of the Companies Act, 2013 to file Form MSME-I.

2. Legislative Background/Requirement

The Ministry of **M**icro, **S**mall and **M**edium **E**nterprises (MSME) had vide notification dated 2nd November 2018 directed all companies

- who get supplies of goods and services from micro and small enterprises and,
- whose payments to micro and small enterprise suppliers exceed 45 days from the date of acceptance or deemed acceptance

to file a half yearly return with the Ministry of Corporate Affairs (“MCA”) stating the amounts due and the reasons for delay.

Subsequently, the MCA had vide notification dated 22nd January 2019 (hereinafter referred to as “MCA Notification”) directed all specified companies to file form MSME-I (hereinafter referred to as “the Form”). The aforesaid requirement is applicable only to “**Specified Companies**” as defined under MCA notification: -

- a) Companies which get supplies of goods and services from Micro and Small enterprises **and**
- b) Whose payments exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per provisions of Section 9 of the Micro Small and Medium enterprises Development Act, 2006 (MSMED Act)

The MCA notification requires the following:-

- a) One time return within 30 days of notification to be filed by Specified Companies.
- b) Half yearly return by the end of the month succeeding the end of half year. The half year for this purpose shall be April to September and October to March and the due dates shall accordingly be 31st October and 30th April respectively.

3. Analysis

- A. It may be pertinent to note that only the details of outstanding dues to **Micro and Small** enterprises (MS Suppliers) are required to be filed and not details of outstanding dues to **medium enterprises**.
- B. It may further be noted that the wordings of the MCA notification indicate that once a Company falls under the category of a Specified Company as per this notification, the details of all outstanding dues are required to be disclosed in the Form. For instance, if the Company has outstanding dues to 10 MS suppliers and the dues to one supplier is outstanding for more than 45 days and the dues to balance nine suppliers is outstanding for less than 45 days, then the details of outstanding dues to all the 10 MS suppliers would have to be filed. However, if the dues to all 10 suppliers are outstanding for less than 45 days, then the Company would not be classified as a “specified company” for the purposes of this notification and hence the Form would not have to be filed.

- C. The relevant dates for assessment of outstanding amount shall be 22 January 2019 (one-time) and 30th September and 31st March of each half year respectively. In other words, if any dues to MS supplier is outstanding for beyond 45 days as on relevant date (say 30th September) and even if the payment has been made (say by 15th October) before the due date of filing the form (say 31st October), the details of outstanding dues would still have to be filed in the Form.
- D. Further the assessment of applicability shall be done as at each half year end. Accordingly there could be scenarios, where the Company might be a "specified company" as at a particular half year end and will end up filing the Form whereas it may not be a "specified company" as at subsequent half year end and hence would not be required to file the Form.
- E. Further, Section 9 of the MSMED Act quoted in the MCA notification appears to be incorrect since Section 9 provides general powers to the Central government to take measures for promotion and development of MSME Sector and does not define the date of acceptance or deemed acceptance.
- F. It would also be relevant to analyse certain provisions of MSMED Act in this regard:-
- Day of acceptance has been defined under Section 2 of the MSMED Act to be the –
 - date of actual delivery of goods or rendering of services,
 - where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier.
 - Day of deemed acceptance has also been defined under Section 2 of MSMED Act to mean the day of actual delivery of goods or services if no objection is made in writing by the buyer regarding the acceptance of goods or services within 15 days of delivery of goods or services.
 - Appointed day has been defined as the day immediately after the expiry of 15 days from the date of acceptance or date of deemed acceptance.
 - As per Section 15 of MSMED Act, if the payment terms are not agreed in writing, the appointed day shall be the due date for payment.
 - Even if the payment terms are agreed in writing, it shall not exceed 45 days from the date of acceptance or deemed acceptance. In other words, the payment terms for the purpose of computation of interest under Section 16 of the MSMED Act shall be based on the agreed days or 45 days whichever is lower.

Let us understand the aforesaid by means of an illustration

Particulars	Scenario 1	Scenario 2	Scenario 3
Company	X Ltd	Y Ltd	Z Ltd
Date of PO/Agreement	30-Nov-18	30-Nov-18	30-Nov-18
Date of delivery	05-Dec-18	05-Dec-18	10-Dec-18
Agreed credit period after removal of objection, if any	30 days	75 days	Not agreed
Date of objection raised in writing	10-Dec-18	30-Dec-18	No objection raised
Date of removal of objection (deficiency) by supplier based on buyers' communication	20-Dec-18	10-Jan-19	Not applicable
Date of acceptance/Deemed Acceptance	20-Dec-18	05-Dec-18	10-Dec-18
Appointed day	04-Jan-19	20-Dec-18	25-Dec-18
Payment due date as per agreement	19-Jan-19	26-Mar-19	Not applicable
Payment due date as per Section 15 of MSMED Act	19-Jan-19	19-Jan-19	25-Dec-18
Actual Payment date	28-Jan-19	28-Jan-19	28-Jan-19
Whether requirement to pay interest under Section 16 of MSMED Act	Yes	Yes	Yes
Whether outstanding as at 22 Jan 2019	Yes	Yes	Yes
Whether 45 days elapsed as on 22 Jan 2019 (being date of notification) from the date of acceptance or deemed acceptance	No	Yes	No
Whether Company is a specified Company	No	Yes	No
Whether requirement to file Form MSME-1 will apply	No	Yes	No
Remarks	Note (i)	Note (ii)	Note (iii)

Notes

- i. While the requirement to pay interest to MSME suppliers under the Act has to be assessed in accordance with Section 16 of the Act, the applicability of the notification to be assessed based on 45 days from the date of acceptance or deemed acceptance irrespective of the agreed credit period. In other words, this could also result in a scenario, where a Company may be required to pay interest under Section 16 of the MSME Act (if the agreed credit period is below 45 days) but may not be required to disclose the same in Form MSME-1 (assuming the payment has been made within 45 days but beyond the agreed credit period).
- ii.
 - a) Though objection has been raised by the buyer, since the same has not been done within 15 days of delivery of goods, the date of acceptance for the purposes of MSMED Act shall be the actual date of delivery of goods (i.e 5 Dec 2018) and not the date of removal of objection/deficiency.
 - b) Though the payment due date as per the agreement is 26th March 2019 (75 days from 10th Jan 2019), since the same exceeds the maximum cap of 45 days under Section 15 of MSMED Act, the trigger for payment of interest will arise along with requirement to disclose in Form MSME-1.
- iii. Since the payment terms has not been agreed in writing, the due date shall be the appointed day, 25 December 2018 which is 15 days after the expiry of the date of acceptance/deemed acceptance being 10 December 2018. Hence payment made beyond the appointed day, i.e would trigger the requirement to pay interest. However since 45 days have not elapsed on 22 January 2019 , the requirement to file Form MSME-1 would not arise.

The aforesaid tabular analysis has been done in a simple scenario where the company deals only with a single MS supplier. The aforesaid assessment will have to be done for each and every MS supplier individually.

- G. Further, the assessment would have to be done for each supplier individually. For instance, if there is due to MS supplier for Rs. 10,000 against a particular invoice which is outstanding for beyond 45 days and there is an advance of Rs. 15,000 paid to the same supplier for another supply against which the goods have still not been received, the Company would still fall under the definition of Specified Company and would be required to file the Form.
- H. There are scenarios in which a portion of the amount payable is generally withheld as retention money in accordance with the contract, without any specific objection as regards the quality of goods or services, which is released after the satisfactory performance of the goods or services upto a period specified in the contract (say 6 months or one year etc.). The literal interpretation of the MSMED Act and the notification appears to include even such amounts for the purpose of computation of interest as well as disclose the same in the Form though they may strictly not be due as per the contract.
- I. Additionally, the MSMED Amendment Bill 2018 (which has been introduced in the Lok Sabha and is pending to be cleared by both houses of Parliament) proposes to change the criteria of classification of MSME enterprises as given below:-

	2006 Act (existing)		2018 Bill (Proposed)
	Manufacturing	Services	
Type of enterprise	Investment in Plant & Machinery	Investment in Equipment	Turnover
Micro	25 lakh	10 lakh	5 crore
Small	25 lakh to 5 crore	10 lakh to 2 crore	5 to 75 crore
Medium	5 to 10 crore	2 crore to 5 crore	75 to 250 crore

4. Consequences of non-compliance with the aforesaid provisions

The order to file Form MSME-1 has been given under Section 405 of the Companies' Act which empowers the central government to direct companies to furnish information or statistics.

Further the said section prescribes that "If any company fails to comply with an order made, or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both"

5. Concluding remarks

Form MSME-1 is an addition to the already existing plethora of forms and compliances required under the Companies' Act, 2013 increasing the burden of compliance and reducing the ease of doing business.

Further, there appears to be a slight conflict between the empowering notification issued by MSME Ministry and the implementing notification issued by MCA. While the former required only amounts due for more than 45 days and the reasons for the delay, the latter defines the same as applicability condition and requires details of all outstanding dues to be filed upon the notification being applicable. Moreover, since the e-Form has not yet been uploaded on the website of MCA, there are possibilities of the due date for one-time compliance being extended from "30 days from the date of notification" to "30 days from the date of deployment of the form in the MCA website" as was done in the case of Form NFRA-1.

It is recommended that the Government explicitly clarifies open/ambiguous issues such as applicability of the aforesaid to outstanding dues to medium enterprises, whether all dues or only dues for greater than 45 days are required to be disclosed, the position under MSME Act w.r.t retention money etc. It is also recommended that the MCA synchronizes the due date as the due date under Section 15 of MSME Act rather than having a separate threshold of 45 days for the limited purpose of the Form. It is also recommended that the one-time compliance for status as on 22 January 2019 is completely done away with and only the half-yearly compliance is retained considering the fact that Companies generally do not have processes and systems to support for information required in a regulatory filing for an odd date or period and are better equipped for furnishing information as at particular month-end.

Contact us at:

M2K Advisors Pvt Ltd

Alsa Mall, 1st Floor,
149 Montieth Road,
Egmore, Chennai – 600008
Email: info@m2k.co.in,
www.m2k.co.in

The views contained in this article are intended for general guidance only and should not be considered as an advice or opinion. We do not accept any responsibility for loss occasioned to any person acting as a result of any material in this note. Please refer to your advisors for specific advice.