Office Memorandum

Subject: Implementation of provisions of Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 (Chapter V - Delayed Payment to Micro and Small Enterprises) Section 22 relating to "Requirement to specify unpaid amount with interest in the annual statement of accounts" and Section 23 relating to "Interest not to be allowed as deduction from income" under Income Tax Act, 1961 — Instruction No: 12/2006 dated 14 December 2006, as notified by the Central Board of Direct Taxes (CBDT) (Department of Revenue-Ministry of Finance) — information regarding.

In accordance with the provisions of the MSMED Act, 2006, the CBDT has notified instructions to all assessing officers vide their Instruction No: 12/2006, December 14, 2006, thereby directing them to implement the provisions under Section 22 of the said Act, which requires disclosure of the principal and interest due thereon {on delayed payments due to micro and small enterprises- (MSEs)} separately in the annual statement of accounts, which enables the assessing officers to ascertain correct amount of disallowance on account of interest payment or paid by the buyer, and Section 23 of said Act which lays down that the amount of interest payable or paid by any buyer under or in accordance with the provisions of MSMED Act, 2006 shall not be allowed as deduction in the computation of income.

2. A copy of the said instructions issued by CBDT vide their Instruction No. 12/2006 dated December 14, 2006 is enclosed herewith with the request that the same be brought to the notice of all concerned including Public Undertakings / institutions under the control of the Ministry/Department at Central/State/UT, Micro and Small
Enterprises Facilitation Councils (MSEFCs) in the State/UT, etc and given a wide publicity so as to enable the enforcement of these instruction in letter and spirit.

3. This may please be treated as URGENT.
Encl: as above.

(1) The Secretary, Government of India (All Ministries/Departments)

(2) The Secretary, Department of Public Enterprises, New Delhi, with the request that the contents of this circular/instructions be brought to the knowledge of Head of all Central Public Sector Undertakings (CPSUs) for their information and compliance.

(3) The Secretary Industries/Directorate of Industries (All States/UTs)

(4) Director, MSME-Development Institutes (SISIs)/Incharge, Branch MSME-Development Institutes.

(5) The President, All Micro, Small and Medium Enterprise (MSME) Associations with the request that the contents of this circular/instructions be brought to the knowledge of all their members.

(6) The Chairman & Managing Director, NSIC, New Delhi

(7) The Chairman & Managing Director, Small Industries Development Bank of India (SIDBI), Lucknow

(8) All Officers up to the level of Deputy Secretary in the Ministry of Micro, Small and Medium Enterprises, Udyog Bhawan, New Delhi.

(9) All Officers up to the level of Directors and All Sections in the Office of the Development Commissioner, Micro, Small and Medium Enterprises, Nirman Bhavan, New Delhi.

(10) Chairman and Managing Directors, Commercial Banks and Financial Institutions including State Financial Corporations

(11) All others as per mailing list.

(Sanjeev Kaushal)
Joint Secretary & ADC
Tel: 23062694 Fax: 23061972
INSTRUCTION NO.12/2006,

Dated: December 14, 2006

Subject: Provisions of Micro, Small and Medium Enterprises Development Act, 2006 - Interest not to be allowed as deduction from income.

The Micro, Small and Medium Enterprises Development Act, 2006 (MSMEDA, 2006) which provides for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises hascome into force from 2nd October, 2006. The provisions of Sections 22 and 23 of the said Act have a bearing on the assessment of 'buyers' under the Income Tax Act, 1961. Here, the term 'buyer' means a person who buys any goods or receives any services from a 'supplier' for a consideration.

2. Section 23 of MSMEDA, 2006 lays down that the amount of interest payable or paid by any buyer under or in accordance with the provisions of this Act shall not be allowed as deduction in the computation of income. Section 22 of the MSMEDA, 2006, inter alia, requires disclosure of the principal and interest due thereon separately in the annual statement of accounts. This enables the assessing officers to ascertaint the correct amount of disallowance on account of interest payable or paid by the buyer.

3. The relevant sections of the aforementioned Act are reproduced in the Annexure for convenience of reference.

4. The above may be brought to the notice of all assessing officers in your charge for effective implementation.

(Renu Jauhri)
Director (ITA-II)

Section 22: Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:

(i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

Section 23: 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.

2. The definition of a supplier under section 2 of the above mentioned Act is also reproduced below:

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."

3. Section 7(1) of the Act defines micro and small enterprises.

A "micro enterprise" means any class or classes of enterprises, whether proprietorship, HUF, Association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called, if its investment in plant and machinery does not exceed twenty five lakh rupees if it is engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries(Development and Regulation) Act, 1951. However, if the enterprise is engaged in providing or rendering of services, the investment in its equipment should not exceed ten lakh rupees.

A "small enterprise" - the definition of "small enterprise" is similar to that of a "micro enterprise" except that the amount of investments in case of a manufacturing enterprise is more than rupees twenty lakh but does not exceed rupees five crore, and in a case of service enterprise it is more than rupees ten lakh but does not exceed rupees two crore.