

# FAQs on delayed payment to MSMEs

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## Introduction

The Micro, Small and Medium Enterprise (MSME) Sector is the pillar of economic growth in our country. It is often termed as the engine of growth for India, since it plays a prominent role in the development of the country. Despite the important role played by them in the economic structure of the country, they continue to face constraints in procuring adequate finance, thereby impacting their working capital and term loan needs.

To resolve the problem of liquidity and to provide the MSME sector with adequate finance, the government has initiated to strengthen the legislative framework for delayed payment to the MSMEs and has aimed to provide security to the MSMEs against the unwarranted delays.

## Notifications/Orders

Issued by	Content of the Notification
<b>1. Notification dated November 2, 2018<sup>1</sup></b>	
<b>Ministry of MSME</b>	All companies who purchase goods or avail services from Micro and Small enterprises <b>and</b> whose payment to such suppliers have exceeded 45 days shall submit a half yearly return to the Ministry of Corporate Affairs (MCA) stating the outstanding amount and the reasons for delay.
<b>2. Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 dated January 22, 2019<sup>2</sup></b>	
<b>Ministry of Corporate Affairs (MCA)</b>	Specified Companies are required to report the outstanding dues to the Micro and Small enterprises in <b>Form MSME I</b> .

The aforementioned notifications issued by the Government has raised several questions among the companies. Keeping in mind the need of the hour, we have listed down the probable questions that one can have with respect to reporting the outstanding dues with potential answers to such questions.

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<sup>1</sup> <http://egazette.nic.in/WriteReadData/2018/191730.pdf>

<sup>2</sup> [http://www.mca.gov.in/Ministry/pdf/MSMESpecifiedCompanies\\_22012019.pdf](http://www.mca.gov.in/Ministry/pdf/MSMESpecifiedCompanies_22012019.pdf)

## Frequently Asked Questions (FAQs)

May 28, 2019 .....	1
Introduction.....	1
Notifications/Orders.....	1
<b>Applicability.....</b>	<b>3</b>
1. What is the definition of MSME? .....	3
2. Has the proposed definition of MSME been imposed?.....	3
3. Are all Micro, Small and Medium Enterprises covered under the notification?.....	3
4. Can only registered suppliers avail the benefit under this notification?.....	3
5. Which companies are covered under the notification?.....	4
6. What is meant by day of acceptance or the day of deemed acceptance?.....	5
<b>Reporting requirements .....</b>	<b>5</b>
7. What is the initial reporting requirement?.....	5
8. What shall be the cut-off date for determining the first time reporting applicability?.....	5
9. What are outstanding dues?.....	5
10. Do the term outstanding dues include principal as well as interest amount?.....	6
11. Is the period of 45 days exclusive of credit period provided to the Company? .....	6
12. Is the e-form MSME I, available on the MCA portal?.....	6
13. What is the half yearly reporting requirement?.....	6
16. Are any type of entities exempted from the applicability of the notification?.....	7
17. Is there any requirement of NIL reporting?.....	7
18. If the Specified Company has settled its outstanding due before the reporting date, then do they have to file Form MSME I for the half year?.....	7
19. Is there any limit of reporting of suppliers in e-Form MSME-1? .....	8
20. If the entry can be made only for 99 invoices/transactions, what should be reported in (a) i.e. total outstanding amount? .....	9
21. What will be required to be reported in Financial Year from and to?.....	9
22. If the invoice has already been paid, although after a delay of more than 45 days, what should be specified in Reasons for Delay?.....	9
<b>Penal provisions.....</b>	<b>9</b>
23. What are the penal provisions under MSME Act? .....	9
24. What are the penal provisions in case of non-filing of or filing wrongful information in Form MSME 1 under Companies Act, 2013?.....	9

## Applicability

### 1. What is the definition of MSME?

The Government of India had enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of MSMEs is as under:

	<b>Manufacturing Sector</b>	<b>Service Sector</b>
	<b>Investment in plant &amp; machinery</b>	<b>Investment in equipment</b>
<b>Micro</b>	Does not exceed Rs. 25 lakhs	Does not exceed Rs. 10 lakhs
<b>Small</b>	More than Rs. 25 lakhs but does not exceed Rs. 5 crores	More than Rs. 10 lakhs but does not exceed Rs. 2 crores
<b>Medium</b>	More than Rs. 5 crores but does not exceed Rs. 10 crores.	More than Rs. 2 crores but does not exceed Rs. 5 crores.

### 2. Has the proposed definition of MSME been imposed?

The basis of classifying MSMEs is proposed to change from 'investment in plant and machinery/equipment' to 'annual turnover'<sup>3</sup>.

The revised definition<sup>4</sup> of MSMEs as mentioned below has not been notified yet.

Micro	•A unit where annual turnover does not exceed Rs. 5 crore;
Small	•A unit where annual turnover is more than Rs. 5 crores but does not exceed Rs. 75 crores;
Medium	•A unit where annual turnover is more than Rs. 75 crores but does not exceed Rs. 250 crores;

### 3. Are all Micro, Small and Medium Enterprises covered under the notification?

Only Micro and Small enterprises are covered under the aforesaid notifications. Medium enterprises have been kept outside the purview of this notification.

### 4. Can only registered suppliers avail the benefit under this notification?

Section 2(n) of the MSMED Act, 2006 defines supplier as:

<sup>3</sup><http://www.prsindia.org/billtrack/the-micro-small-and-medium-enterprises-development-amendment-bill-2018-5289/>

<sup>4</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=176353>

***“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 (1 of 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 (1 of 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;*

The aforesaid definition indicates that it has two parts. The first limb defines a supplier to mean a Micro or Small enterprise which has filed a memorandum with the authority referred to in sub-section (1) of Section 8 of the Act.

The second limb intends to include National Small Industries Corporation, Small Industries Development Corporation of a State or a Union territory and such company, co-operative society, trust or a body engaged in selling goods produced by Micro or Small enterprises and rendering services which are provided by such enterprises. Such entities are not required to be registered under the Act.

Therefore, to avail the benefit under the notification, a Micro or Small enterprise supplier must be registered under the MSMED Act, 2006. Apart from such Micro or Small enterprises, an entity engaged in selling goods produced by Micro or Small enterprises or rendering services provided by such enterprises are also included within the definition of suppliers irrespective of the fact that they have registered themselves under the Act or not. Delhi high court gave this judgement in the matter of **M/S Ramky Infrastructure Pvt. Ltd. Vs Micro and Small Facilitation Council and Anr. W.P (C) 5004/2017**

## **5. Which companies are covered under the notification?**

The filing requirement is applicable on ‘Specified Companies’ who satisfy **both these conditions:**

1. purchase goods or avail services from Micro and Small enterprises  
**and**
2. whose payment cycle, while dealing with MSMEs, exceeds forty-five days from the date of acceptance or the date of deemed acceptance.

Further, the classification of Specified Companies is to be done every half year to ensure submission of half yearly return to the Ministry of Corporate Affairs (MCA) stating the outstanding amount and the reasons for delay.

#### **6. What is meant by day of acceptance or the day of deemed acceptance?**

Section 2 of the MSMED Act, 2006, defines **the day of acceptance** as:

*(a) the **day of the actual delivery** of goods or the rendering of services; or*

*(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen 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;*

Further, **the day of deemed acceptance** means-

*where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.*

### Reporting requirements

#### **7. What is the initial reporting requirement?**

The initial reporting requirement is to report all outstanding dues as on January 22, 2019 (date of MCA notification) by every specified company in Form MSME-1. The reporting is to be done within 30 days from the date of deployment of the form in MCA 21 portal.

#### **8. What shall be the cut-off date for determining the first time reporting applicability?**

For the purpose of initial reporting, the Specified Company is required to report the outstanding dues to Micro and Small enterprises for a period exceeding 45 days as on the date of the notification i.e., as on January 22, 2019.

#### **9. What are outstanding dues?**

The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 issued by MCA does not define the term 'outstanding dues'. However, from the intent of the notifications, it can be inferred that dues outstanding to Micro and Small enterprises for a period exceeding 45 days will be regarded as outstanding dues.

**10. Do the term outstanding dues include principal as well as interest amount?**

The term “all outstanding dues” in our view, shall include both the components principal as well as interest, if any, as per terms of engagement between the MSME and the Company.

**11. Is the period of 45 days exclusive of credit period provided to the Company?**

The MCA notification states the requirement of reporting is for all those payments which “*exceed forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services*” only and not any sort of free credit period provided for the goods or services supplied to the company.

Further, the proviso to section 15 of the MSMED Act, 2006 states:

*“Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.”*

Therefore, in any event the agreed credit period cannot be more than 45 days. Hence, the due date shall be calculated from the date of acceptance or deemed acceptance and not the expiry of credit period. Accordingly, the payment (including credit period, if any) to a Micro and Small enterprise has to be made within 45 days of acceptance / deemed acceptance. If not made, the reporting has to be done on a half yearly basis as per the MCA circular within 30 days of end of each half-year.

**12. Is the e-form MSME I, available on the MCA portal?**

MCA released the e-Form on 1<sup>st</sup> May 2019.

**13. What is the half yearly reporting requirement?**

<b>For the period</b>	<b>Reporting date</b>
<b>April to September</b>	31st October
<b>October to March</b>	30th April

**14. Whether companies will be required to file MSME-1 as an initial requirement and as well as half year ending 31<sup>st</sup> March, 2019?**

Yes.

Please note that the e-form has been made available on 1<sup>st</sup> May, 2019 and for the purpose of initial reporting, the companies are required to report the outstanding dues to MSME for a period exceeding 45 days as on the date of the notification i.e., as on January 22, 2019. Unlike, e-Form DPT-3 no extension of reporting period has been notified by Ministry. Therefore, initial reporting shall be up to 22<sup>nd</sup> January, 2019.

If we consider first half year to commence from April 1, 2019 there shall be a reporting gap for the period (January 22, 2019 to March 31, 2019).

Accordingly, in our view, the half yearly return i.e. from October to March shall apply for this financial year.

**15. If yes, what will be the period of reporting of first half year? What will be required to be reported?**

The period of reporting will be from October 1, 2018 till March 31, 2019.

Every specified company shall report details of amounts paid after a period of 45 days to MSMEs during the half year, irrespective of whether there are any outstanding or not as on March 31, 2019.

If the Company had been a specified company during the half year, it shall file the return.

**16. Are any type of entities exempted from the applicability of the notification?**

No. The notification applies to all specified companies.

**17. Is there any requirement of NIL reporting?**

There is no requirement of filing a NIL return by any company. Therefore, in the following scenarios, the companies are not required to file the return:

- a) If any company does not have any MSME supplier; or
- b) If the outstanding dues does not exceed 45 days at any time during the period of half year.

**18. If the Specified Company has settled its outstanding due before the reporting date, then do they have to file Form MSME I for the half year?**

The answer to this question lies in the intent of the notification, which requires reporting of all delays beyond a period of 45 days. Hence, even in case a default has been made good, the fact that there was a default at any point of time during the half year, must be reported. The Specified Company may report the reason for delay in the form, stating that they have repaid all the dues outstanding to the Micro or Small enterprises.

In case a company has outstanding dues to MSMEs for a period exceeding 45 days at any point during the half year October, 2018 to March, 2019 and it has settled the dues as on March 31, 2019 the Specified Company will still be required to file the Form.

Examples:

H1 – April to September; H2 – October to March

1-Oct-18: Opening balance of MSME outstanding Invoices

- **Invoice accounted in H1 but Paid within due date in H2** – not to be included if paid within 45 days.
- **Invoice accounted in H1 but Paid after due date in H2** – to be included if paid after 45 days.
- **Invoice accounted in H1 Already Due in H1 but Paid in H2** - to be included if paid after 45 days

31-Mar-19: Closing balance of MSME outstanding Invoices

- **Invoice accounted in H2 is outstanding but not due on 31<sup>st</sup> Mar, 19 but Paid within due date in FY 19-20** –if outstanding for less than 45 days as on March 31, 2019, not to be included in MSME 1, will be included in next half yearly return if paid after a delay of 45 days.
- **Invoice accounted in H2 is outstanding but not due on 31<sup>st</sup> March, 19 but Paid after due date in FY 19-20.**- if outstanding for less than 45 days as on March 31, 2019, not to be included, will be included in next half yearly return if paid after delay of 45 days.
- **Invoice accounted in H2 is outstanding and overdue on 31<sup>st</sup> March, 19 but paid in FY 19-20.** if outstanding for less than 45 days as on March 31, 2019, not to be included, will be included in next half yearly return if paid after delay of 45 days.

**19. Is there any limit of reporting of suppliers in e-Form MSME-1?**

Yes. The e-Form allows companies to provide details of only 99 suppliers and fresh form is to be filed for entries in excess of 99. This again will be an operational difficulty for the companies.

(c) \*Email id of the company

3. Initial return of outstanding dues to Micro or Small Enterprises Suppliers.

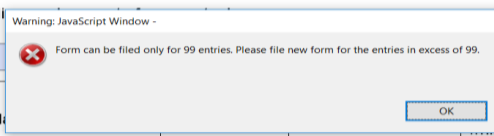
(a) \*Total outstanding amount due as on date of notification of this order

(b) \*Particulars of the name of supplier

Number of entries

Financial Year From	Financial Year To	No	Specify the date from which amount is due

5. \*Reasons for Delay in amount of payments due





**20. If the entry can be made only for 99 invoices/ transactions, what should be reported in (a) i.e. total outstanding amount?**

Field 3 (a) in relation to total outstanding amount due as on date of notification of this order and Field 4 (a) in relation to total outstanding amount shall reflect the aggregate amount in respect of all invoices/ transactions from all suppliers and will not be restricted to 99.

**21. What will be required to be reported in Financial Year from and to?**

The financial year to which the invoice relates shall be specified. For eg. If the date of invoice is February 1, 2018 then Financial Year shall be from April 1, 2017 to March 31, 2018.

**22. If the invoice has already been paid, although after a delay of more than 45 days, what should be specified in Reasons for Delay?**

The reasons for delay shall specify that 'As on the date of filing the form, the amount has been paid after a delay, on account of [*state the reason*].

**Penal provisions**

**23. What are the penal provisions under MSME Act?**

Section 27 of MSME Act provides for penalty for contravention of Section 8, Section 22 and Section 26.

Section 8 relates to registration of MSME. Section 22 provides the requirement of the buyer to specify the principal and interest due in the annual statement of accounts. Section 26 (2) provides for furnishing of information to the officers/ employees appointed by Central Government or State Government.

Violation of Section 8 or Section 26 (2) of MSME Act shall be punishable with Fine as under:

- In case of the first conviction: Fine which may extend to Rs. 1000;
- In case of second or subsequent conviction: Fine of Rs. 1000 to Rs. 10,000.

Violation of Section 22 of MSME Act shall be punishable with Fine which shall not be less than Rs. 1000.

**24. What are the penal provisions in case of non-filing of or filing wrongful information in Form MSME 1 under Companies Act, 2013?**

The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 has been provided pursuant to Section 405 of Companies Act, 2013, reproduced hereunder:

**Power of Central Government to Direct Companies to Furnish Information or Statistics.**

**405. (1) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.**

(2) Every order under sub-section (1) shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit and the date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(3) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any order under sub-section (1) is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

**(4) If any company fails to comply with an order made under sub-section (1) or subsection (3), 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.**

Accordingly, the penal provisions are as under:

On the Company: Fine which may extend to Rs. 25,000.

On every officer in default:

- 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

The offence is a compoundable offence under Section 441 of Act, 2013.