

Latest Corporate Law Amendments & Section 43B(h)



CA. PRAMOD JAIN

FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

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ICAI – Vikas Marg CPE Study Circle (NIRC)

26th February 2024

Corporate Laws Amendments

CPC FOR E-FORMS

Sl.No.	Details of application, e-Form or documents
(i)	Filing of Resolutions and agreements to the Registrar under section 117 of the Act in e-Form no. MGT-14
(ii)	Notice to Registrar of any alteration of share capital under section 64 of the Act in e-Form no. SH-7
(iii)	Application for approval of Central Government for change of name under section 13 of the Act in e-Form no. INC-24
(iv)	One Person Company- Application for Conversion under section 18 of the Act in e-Form no. INC-6
(v)	Conversion of public company into private company or private company into public company under sections 14 and 18 of the Act in e-Form no. INC-27
(vi)	Intimation to Registrar of revocation/surrender of license issued under section 8 of the Act in e-Form no. INC-20
(vii)	Return of deposits under sections 73 and 76 of the Act in e-Form no. DPT-3
(viii)	Application to ROC for obtaining the status of dormant company under sub-section (1) of section 455 of the Act in e-Form no. MSC-1
(ix)	Application for seeking status of active company under sub-section (5) of section 455 of the Act in e-Form no. MSC-4
(x)	Letter of Offer under section 68 of the Act in form e-Form no. SH-8
(xi)	Declaration of Solvency under sub-section (6) section 68 of the Act in e-Form no. SH-9
(xii)	Return in respect of buy-back of Securities under sub-section 10 of section 68 of the Act in e-Form no. SH-11

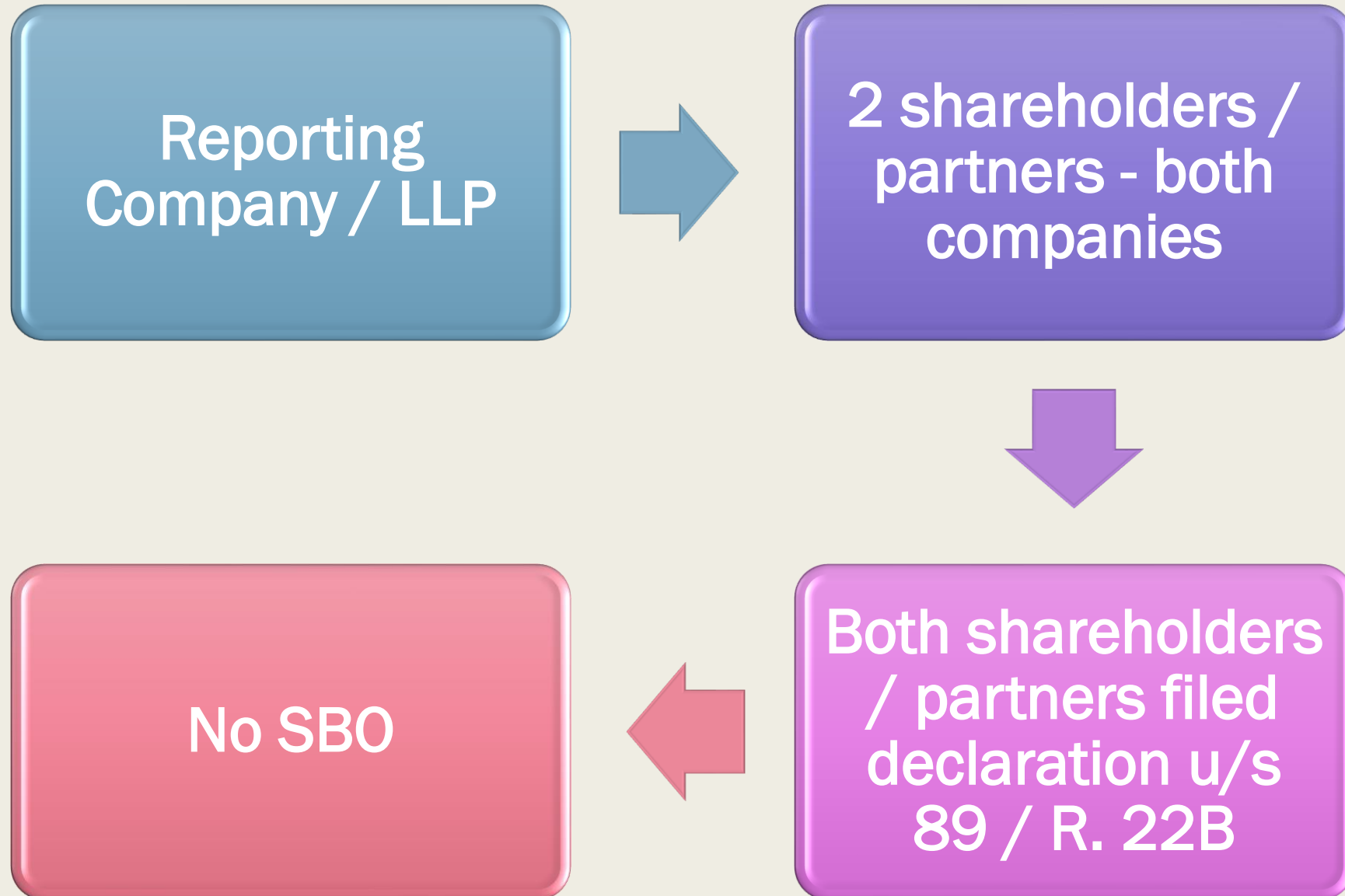
OTHER AMENDMENTS

- MCA notifies Companies (Listing of equity shares in permissible Jurisdictions) Rules 2024
- MCA allows AGM and EGM to be conducted for year 2023 and 2024 to be done through VC or OAVM till 30th September 2024
- Dematerialization of shares of Pvt Companies other than Small companies
- MCA extends due date of filing Forms LLP BEN-2 and LLP Form 4D without additional fee till 15.5.2024

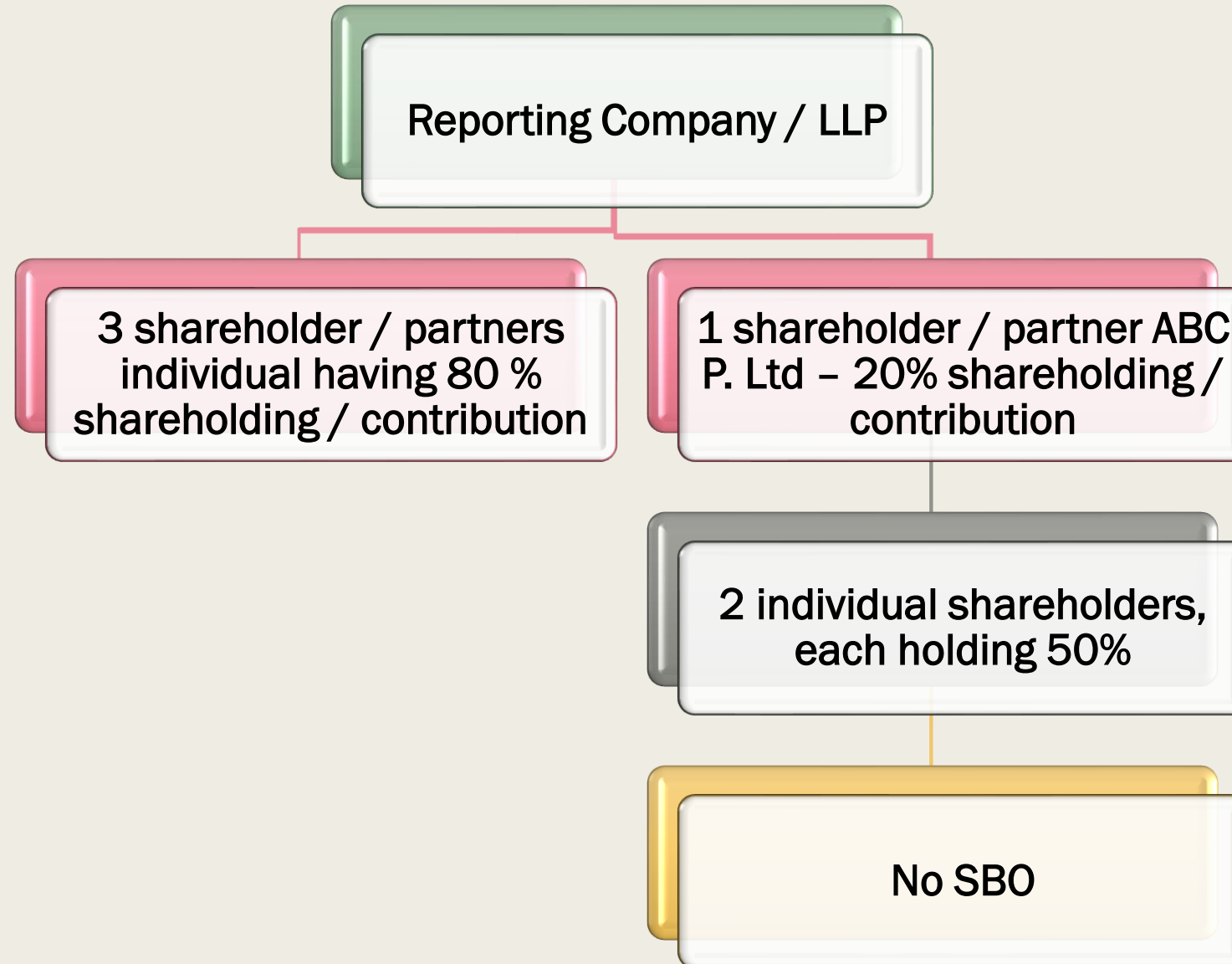
Case 1



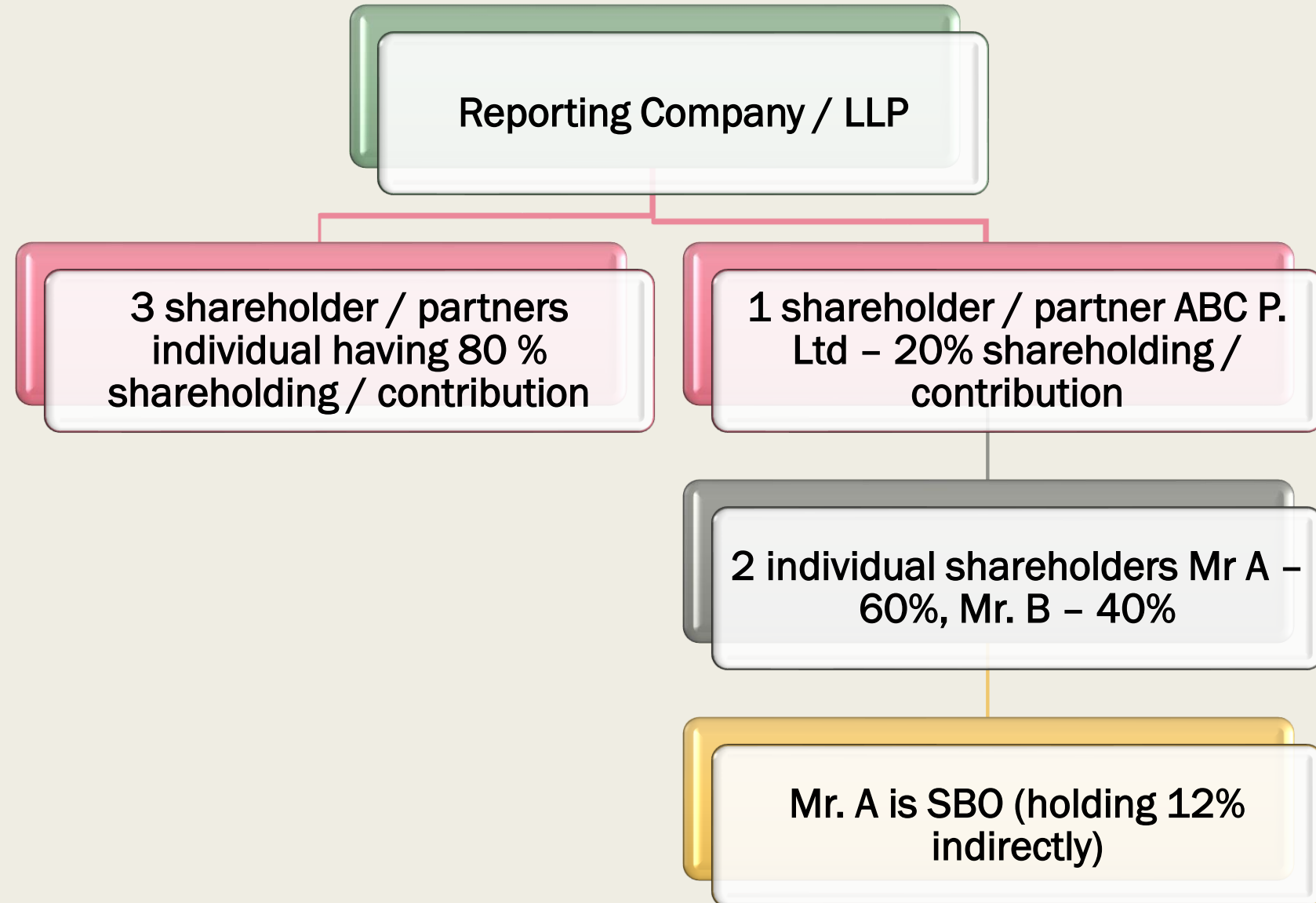
Case 2



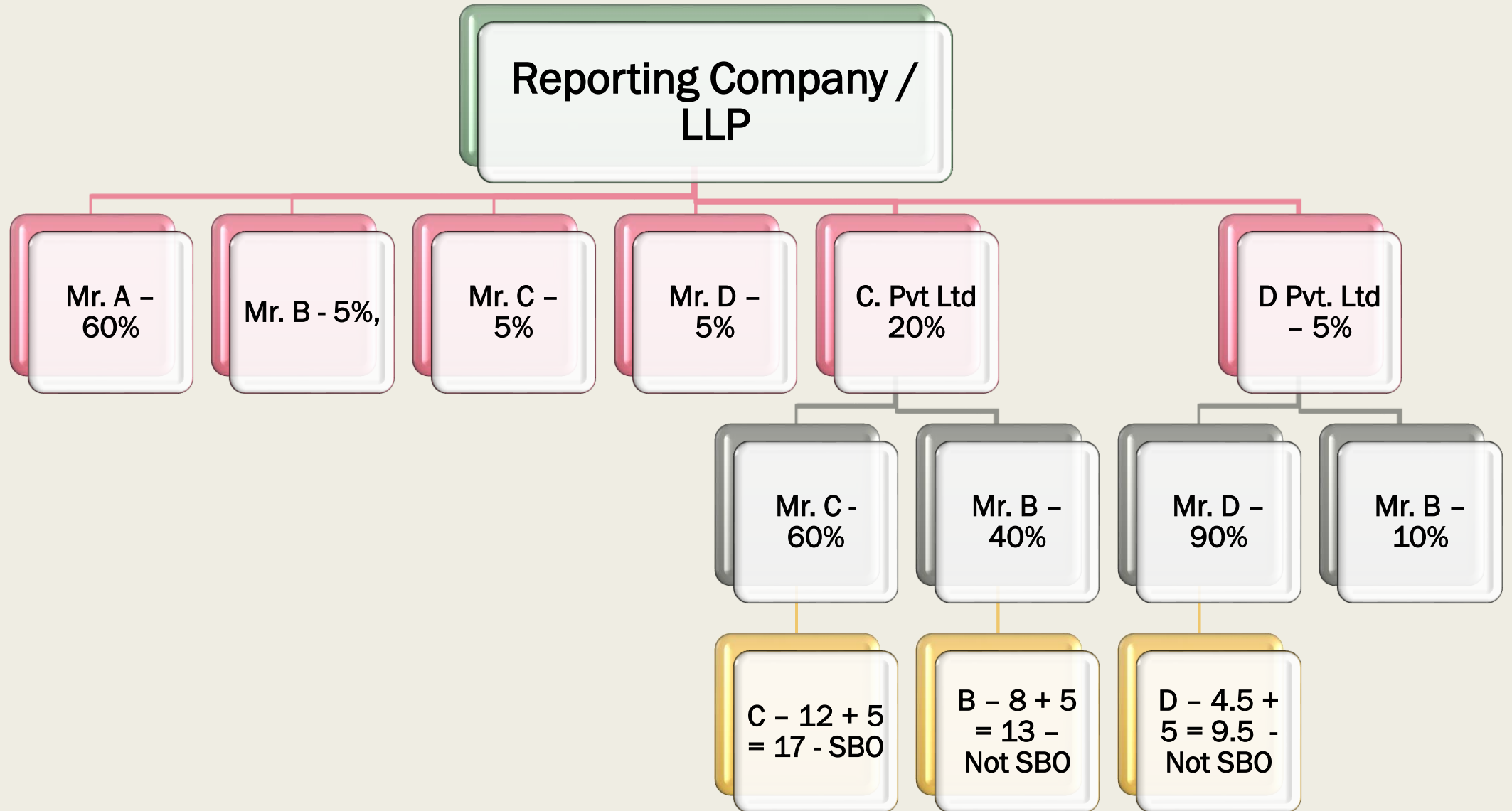
Case 3



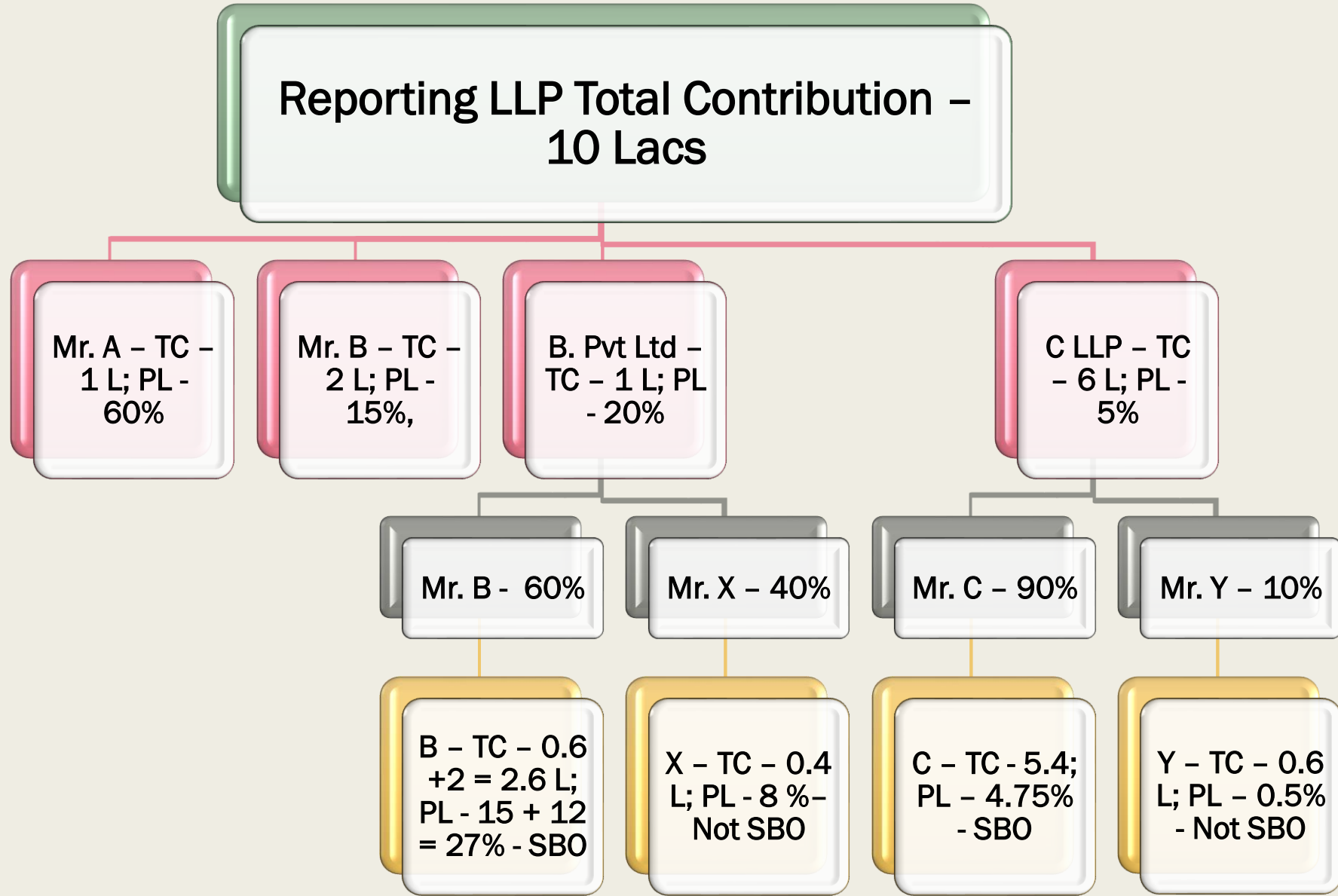
Case 4



Case 5



Case 6



MSME
MICRO, SMALL & MEDIUM ENTERPRISES
सूक्ष्म, लघु एवं मध्यम उद्यम

S. 43B

- Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act....
- Clause (h) inserted w.e.f. 1.4.2024 i.e. AY 2024-25 i.e. FY 2023-24
 - *Any sum payable by assessee to*
 - *a Micro or Small enterprise*
 - *beyond*
 - *Time Limit specified in s. 15 of MSMED Act, 2006*

S. 43B

- Shall be allowed (irrespective of the PY in which liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing income referred to in section 28 of that PY in which such sum is actually paid by him
- Before 139(1) – not allowed (Excluded from the Proviso)

IMPORTANT DATES

2.10.2006

- MSME Act 2006

16.11.2007

- Schedule VI of Companies Act 1956 amended

13.4.2009

- Clause 22 inserted in Form 3CD

4.9.2015

- Schedule III of Companies Act 2013 amended

22.1.2019

- MSME Form 1

26.6.2020

- Change in classification w.e.f. 1.7.2020

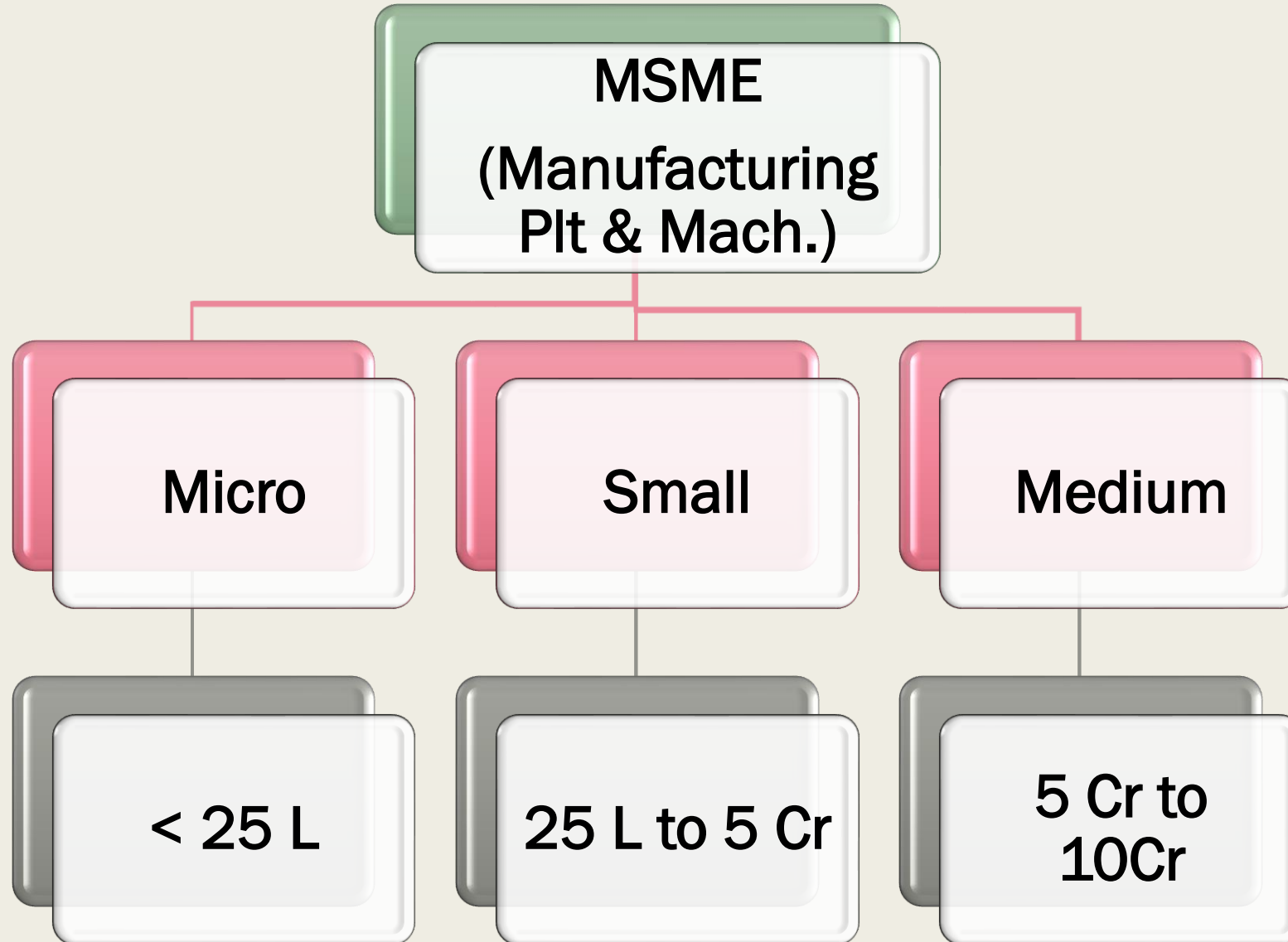
2.7.2021

- MSME Ministry Office Memorandum

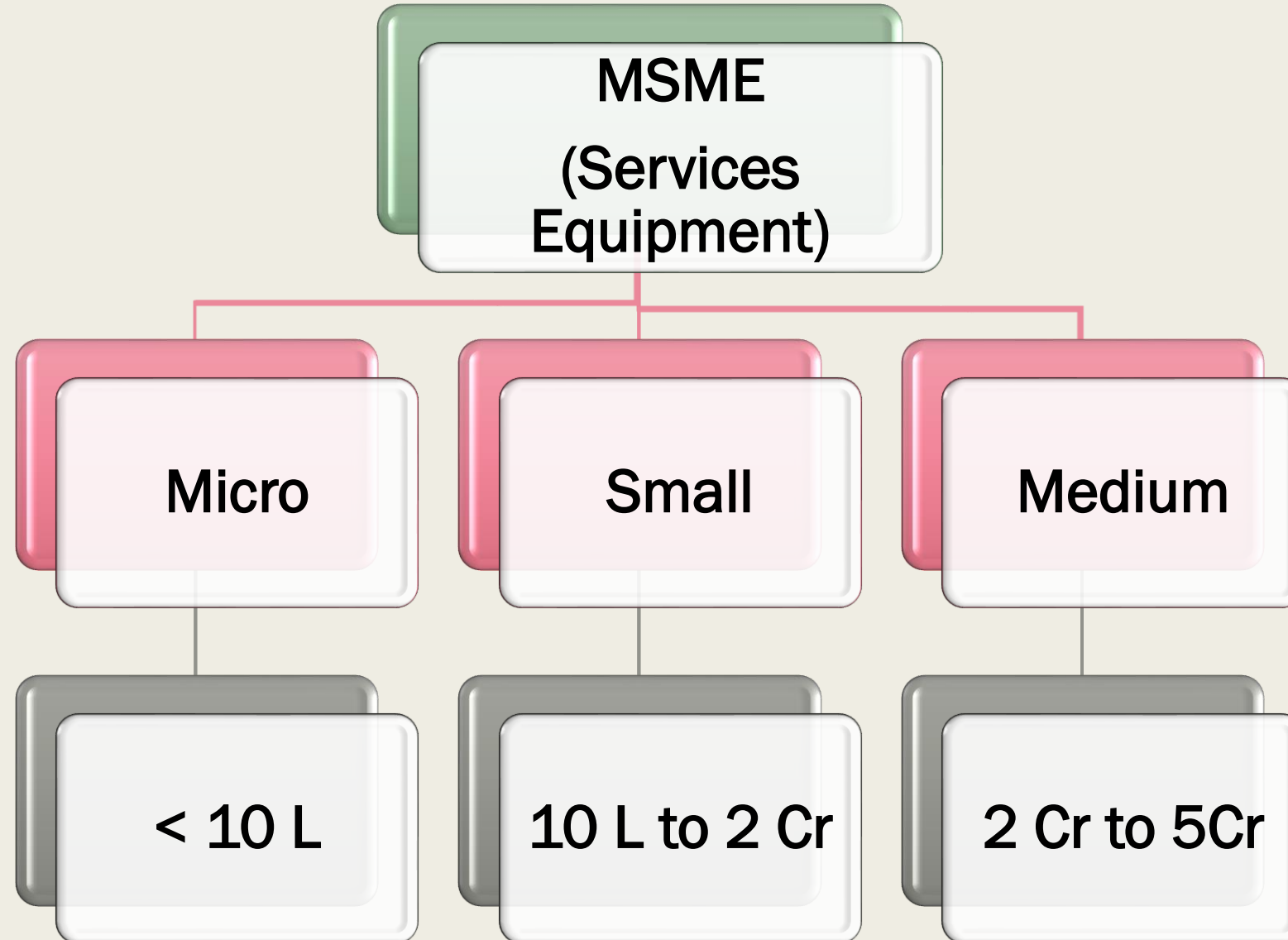
1.4.2024

- S. 43B(h) Income Tax Act

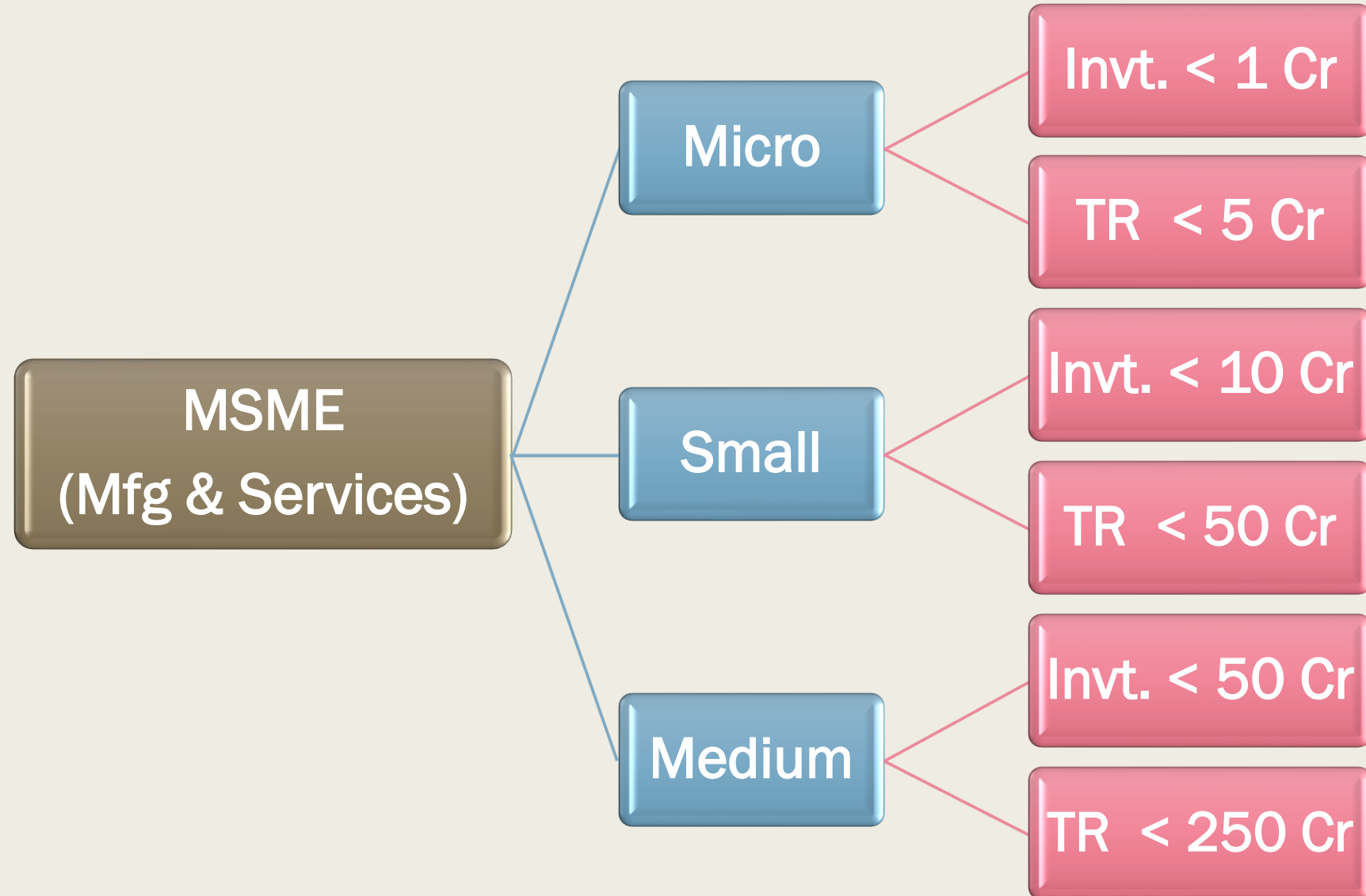
Prior to 1.7.2020



Prior to 1.7.2020



w.e.f. 1st JULY 2020



INVESTMENTS

- Calculation of investment in plant & machinery or equipment will be linked to ITR of PY
- New enterprise, invest. on self-declaration - relaxation shall end after 31st March of FY in which it files its first ITR.
- Plt & Mach. Same as IT Act - shall include all tangible assets (other than land & building, furniture & fittings).
- Purchase (invoice) value of Plt & Mach. or equip., whether purchased 1st hand or 2nd hand, excluding GST, if enterprise is a new.
- Cost to exclude .. Pollution control, R&D, Industrial safety devices, + not. dt. 5.10.2006

TURNOVER

- Exports of goods or services or both, shall be excluded
- Information as regards turnover and exports turnover for an enterprise shall be linked to the IT Act or CGST Act and the GSTIN.
- Turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March 2021 and thereafter, PAN and GSTIN shall be mandatory

MSME Form 1

S.O.5622 (E), dated the 2nd November, 2018 has directed that all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereafter referred to as “Specified Companies”), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

- (a) the amount of payment due; and
- (b) the reasons of the delay;

WHEN TO PAY

- **SECTION 15** - Where any **supplier** supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:
- Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed 45 days from the day of acceptance or the day of deemed acceptance.
- Default if payment not made:
 - *If date agreed upon in writing - within that date (can't agree beyond 45 days from day of acceptance / deemed acceptance)*
 - *If not agreed in writing - before appointed day (within 15 days of date of acceptance)*

IMPORTANT DEFINITIONS

- **Appointed day** - day following immediately after 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier
 - **Day of acceptance** - *day of the actual delivery of goods or the rendering of services; or 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** - *where no 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 of the actual delivery of goods or the rendering of services*

CONSEQUENCES

- SECTION 16 - Where any buyer fails to make payment of the amount to the supplier, as required u/s 15, the buyer shall, **notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force,** be liable to pay **compound interest with monthly rests** to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, **at 3 times of bank rate notified by RBI.**

CONSEQUENCES

- 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.**

FS REPORTING

- **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:—**
 - **principal amount & interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;**
 - **amount of interest paid by buyer in terms of s.16, along with the amount of payment made to supplier beyond the appointed day during each accounting year;**
 - **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;**
 - **amount of interest accrued and remaining unpaid at end of each accounting year;**
 - **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 u/s**

OVERRIDING EFFECT

■ SECTION 24

- 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.

S. 43B

- Any sum payable by assessee to a
- Micro or Small enterprise
- beyond
- Time Limit specified in s. 15 of MSMED Act, 2006

Important Definitions

- **Enterprise** - means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in 1st Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services

Important Definitions

- **Supplier** - means a micro or small enterprise, which has **filed a memorandum** with authority referred to in section 8(1), and includes
 - *NSCI registered as a company*
 - *SIDC of a state or UT registered as company*
 - *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*

TRADERS

CA. Pramod Jain

Dated:02.07.2021

OFFICE MEMORANDUM

Subject: Activities (NIC code) under MSMED Act, 2006 for Udyam Registration –Addition of Retail and Wholesale Trade- regarding

This Ministry's O.M. No. UAM/MC/01/2017-SME dated 27.06.2017 on the subject 'Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM)' excluded certain activities from registration on UAM Portal. This O.M. was further validated for Udyam Registration vide O.M. no. 5/2(1)/2020-P&G/Policy dated 17.07.2020. Certain changes were made vide 5/2(1)/2020/E-P&G/Policy dated 01.12.2020; where it was clarified that in Table. 1 of O.M. no. UAM/MC/01/2017-SME dated 27.06.2017, NIC codes 45, 46 and 47 and the activities mentioned against these NIC codes, are not permitted for registration in Udyam Registration Portal (<https://udyamregistration.gov.in>).

2. The Government has received various representations and it has been decided to include 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.

3. Accordingly, the list of eligible additional activities under NIC Code 45, 46 and 47 are as under :

45	Wholesale and retail trade and repair of motor vehicle and motorcycles
46	Wholesale trade except of motor vehicles and motor cycles
47	Retail Trade Except of Motor Vehicles and motor cycles

4. The Udyam Registration is allowed for above three NIC Codes and activities mentioned against

CASE STUDY

- Purchase 10.5.2023, paid – 10.9.2023
 - No 43B(h), but interest
- Purchase 15.3.2024, paid – 15.4.2024
 - No 43B(h), no interest
- Purchase 15.3.2024, paid – 15.5.2024
 - 43B(h) & interest

ISSUES

- Registered or Not
- Traders covered or not
- Opening Balance
- For Capital Asset
- Purchases not consumed
- Only for entities audited or for all

ISSUES

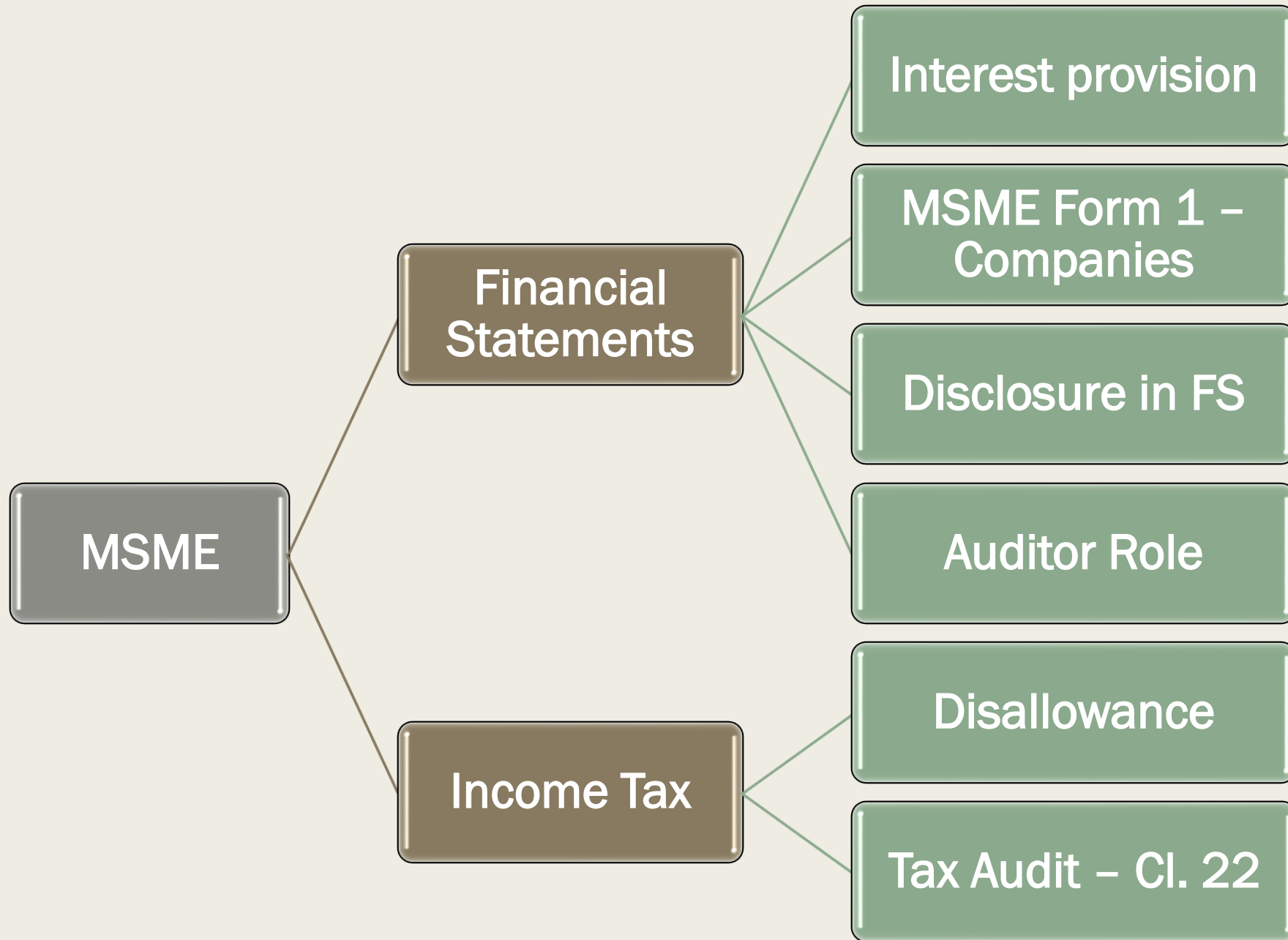
- **Written agreement !!**
- **Date of delivery or date of invoice**
- **Advance received – allowed on payment basis!!**
- **Purchase and sale with same party**
- **Is TDS deducted... money paid!!**
- **GST amount due !!**

ISSUES

- S. 44AD / 44ADA / 44AE
- Interest not receivable due to agreement or waiver
- Interest even if delay is there but amount due paid by 31st March
- TDS on interest
- MSE registration surrendered

ISSUES

- Payment on LIFO basis
- Buyer is not MSE. Is he covered?
- Are Charitable Trusts covered?
- TDS not deducted – 40(a)(ia) or 43B – 3CD
- Retention money
- Audit fee
- Provisions / unbilled expenses



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Q. In case of sale of derivative/ futures whether full sale & purchase of transactions need to be shown or profit or loss ?

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