

R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

JANUARY

2022

*“The future belongs to those who believe
in the beauty of their dream”*

- Janvi Bhanushali



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Income Tax

Notification No. 8/2022/F. No. 370142/61/2021-TPL

Computation of capital gains for the purposes of sub-section (1B) of section 45-

“8AD Computation of capital gains for the purposes of sub-section (1B) of section 45-(1) Where any person receives at any time during any previous year any amount under a specified unit linked insurance policy, including the amount allocated by way of bonus on such policy, then, –

where the amount is received for the first time under the specified unit linked insurance policy during the previous year, the capital gains arising from receipt of such amount by such person during the previous year shall be calculated in accordance with the formula: –

A-B

where,

A= the amount received for the first time under a specified unit linked insurance policy during the previous year, including the amount allocated by way of bonus on such policy; and

B = the aggregate of the premium paid during the term of the specified unit linked insurance policy till the date of receipt of the amount.

where the amount is received under the specified unit linked insurance policy during the previous year, at any time after the receipt of the amount as referred to in clause (i), the capital gains arising from receipt of such amount by such person during the previous year in which such amount is received shall be calculated in accordance to the formula, –

C-D

where,

C= the amount received under a specified unit linked insurance policy during the previous year, at any time after the receipt of the amount as referred to in clause (i), including the amount allocated by way of bonus on such policy excluding the amount that

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has already been considered for calculation of taxable amount under this sub- rule during the earlier previous year or years; and

D = the aggregate of the premium paid during the term of the specified unit linked insurance policy till the date of receipt of the amount as referred to in „C“ as reduced by the premium that has already been considered for calculation of taxable amount under this sub-rule during the earlier previous year or years.

The capital gains computed shall be deemed to be the capital gains arising from the transfer of a unit of an equity oriented fund set up under a scheme of an insurance company comprising unit linked insurance policies.

Explanation: For the purposes of this rule, the expression “specified unit linked insurance policy” shall mean any unit linked insurance policy referred to in sub-clause (c) of clause (14) of section 2 of the Act.”

Notification No. 9/2022/F. No. 370142/61/2021-TPL

Person responsible for collection and payment of securities transaction tax in case of Insurance Company

In the case of an insurance company, the person responsible for collection and payment of securities transaction tax shall be the managing director or a whole-time director duly authorised by the Board of Directors of such company in this behalf.

In the principal rules, for rule 6, the following rule shall be substituted, namely: -

“ Payment of securities transaction tax.- Every recognised stock exchange, or the trustee of every Mutual Fund or such other person managing the affairs of the mutual fund as may be duly authorised by the trustee in this behalf, or the managing director or a whole-time director, duly authorised by the Board of Directors of an insurance company, who is required to collect and pay securities transaction tax under section 100 of the Act, shall pay the amount of such tax to the credit of the Central Government by remitting it into any branch of the Reserve Bank of India or of the State Bank of India or of any authorised bank accompanied by a securities transaction tax challan.”

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In the principal rules, in rule 7, –

- 1) in sub-rule (1), after clause (b), the following clause shall be inserted, namely: – (c) in the case of an insurance company, be in Form No. 2A and be verified in the manner indicated therein.”;
- 2) for sub-rule (2), the following sub-rules shall be substituted, namely: - The return in Form No. 1, Form No. 2 and Form No. 2A referred to in sub-rule (1) shall be furnished electronically either under digital signature or electronic verification code.

Explanation: -

For the purposes of this sub-rule "electronic verification code" means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the returns in Form No. 1, Form No. 2 and Form No. 2A.”

- 3) after sub-rule (3), the following sub-rule shall be inserted, namely: - “(3A) In case of an insurance company, the return referred to in sub-rule (1) shall be furnished by the managing director or a whole-time director, as defined in clauses (54) and (94) of section 2 of the Companies Act, 2013 (18 of 2013), duly authorised by the Board of Directors of such company in this behalf.”.
- 4) In the principal rules, in rule 8, after clause (b) the following clause shall be inserted, namely: - “(c) in the case of an insurance company by the managing director or a whole-time director as defined in clauses (54) and (94) of section 2 of the Companies Act, 2013 (18 of 2013) a duly authorised by the Board of Directors of such company in this behalf.”

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Notification No. 10 /2022 F.No.300196/21/2021-ITA-I

Amount received in the form of grants for skill development other Government grants

National Skill Development Corporation, a body constituted by Central Government, in respect of the following specified income arising to that Corporation, namely: -

- Government grants.
- Grants for skill development other Government grants
- Long-term or short-term capital gain out of investment in an organisation for skill development
- Dividend and royalty from skill development venture supported or funded by National Skill Development Corporation
- Income from Accreditation Fees, Registration fees, fees from training partners and other cost recovery from its skill development activities
- Administrative & Mobilization fees from the scheme management;
- Income from institutions outside India for skilling, Training & Employability
- Interest on loans to Institutions for skill development;
- Miscellaneous income, like sale of scrap, Profit on sale of assets, RTI application fees, forfeiture of Bank Guarantee, interest on income tax refund, excess provision written back; and
- Interest earned on (a) to (i) above.

The provisions of this notification shall be effective subject to the conditions that National Skill Development Corporation, -

- shall not engage in any commercial activity;
- activities and the nature of the specified income remain unchanged throughout the financial years; and
- shall file returns of income in accordance with the Income-tax Act, 1961.

This notification shall be applicable with respect to the financial years 2021-2022, 2022-2023, 2023-2024, 2024-2025 and 2025-2026.

Circular No. 01/2022

Extension of timelines for filing of Income-tax returns and various reports of audit for the Assessment Year 2021-22

Due date of furnishing of Report of Audit is further extended to 15th February, 2022. Due date of furnishing of Return of Income for the Assessment Year 2021-22 is further extended to 15th March, 2022.

Circular No. 2 of 2022

Clause (10D) of section 10 of the Income-tax Act, 1961 (the Act)

This Clause provides for income-tax exemption on the sum received under a life insurance policy, including any sum allocated by way of bonus on such policy subject to certain exclusions.

The Finance Act, 2021 amended clause (10D) of section 10 of the Act by inserting fourth to seventh provisos. Fourth proviso provides that, with effect from 01.02.2021, the sum received under a Unit Linked Insurance Policy (ULIP), issued on or after 01.02.2021, shall not be exempt under the said clause if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs 2,50,000. Further, fifth proviso provides that if premium is payable for more than one ULIP, issued on or after 01.02.2021, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed Rs 2,50,000 for any of the previous years during the term of any of those policies. Sixth proviso provides that the fourth and fifth provisos shall not apply in case of sum received on death of the person.

Seventh proviso to the said clause (10D) also empowers the Central Board of Direct Taxes (Board) to issue guidelines, with the previous approval of the Central Government, in order to remove any difficulty which arises while giving effect to the provisions of the said clause. In exercise of the powers under this proviso, Board, with the previous approval of the Central Government, hereby issues the following guidelines. Sum received including any sum allocated by way of bonus during the previous year under any one or more ULIPs issued on or after 01.02.2021 shall be exempt under clause (10D) of section 10 of the Act, subject to the satisfaction of other provisions of said clause.

~Compiled by Adil Shaikh.

Case Laws:

1. Bombay HC set aside order of provisional attachment as objections raised by assessee were not considered

Monopoly Innovations (P.) Ltd. v. Union of India - [2021] 133 taxmann.com 237 (Bombay)

The Competent Authority provisionally attached the bank accounts of the assessee under section 83 of CGST Act, 2017. The assessee objected to the orders of provisional attachment by its representations dated 7-5-2021 and 17-5-2021 and sought for revocation thereof on diverse grounds. The Competent Authority passed an order dated 21-5-2021, whereby objection raised to the orders of provisional attachment had been overruled and the prayer for revoking the said orders rejected. It filed writ petition against the same.

The honourable High Court observed that the Competent Authority had written a detailed order spread over nine pages as to why the provisional attachment ought to continue; still it suffered from the infirmity of lack of application of mind as well as breach of principles of natural justice. The recorded conclusions were without supporting reasons. Therefore, it was directed to de novo consider the objection of the assessee and the order dated 21-5-2021 was unsustainable and liable to be set aside.

2. No sec. 43B disallowance if interest was recovered by debiting cash credit account of assessee: ITAT

Iceberg Foods Ltd. v. ACIT - [2021] 133 taxmann.com 190 (Delhi - Trib.)

Assessee was a company stated to be engaged in manufacturing food items, bottling of beverages, and drinking water. It filed its return of income for assessment year 2014-15, declaring loss.

It was noted that the assessee had taken loans from Allahabad Bank, and those loans were restructured during the year. The assessee claimed that interest on a pre-structured term loan was paid out of the Cash credit limit (CC account), and thus same should be treated as being actually paid.

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However, Assessing Officer (AO) claimed that the interest payable on restructured loans that were paid through CC account could not be deemed to have been actually paid by the assessee. The CIT (A) confirmed the order of AO. The aggrieved assessee filed the instant appeal before the Tribunal.

The Delhi Tribunal held that a similar issue arose before the Madras High Court, in case of Prakash Foods & Feed Mills (P.) Ltd. [T.C. (A) Nos. 775 and 808 of 2014, dated 26-11-2014. The Madras High Court had upheld the order of Tribunal wherein it was held that overdraft/cash credit accounts are not similar to loan accounts. When the interest was paid through an overdraft/cash credit account, the disallowance made under section 43B was set aside.

In the instant case, the bank had charged interest on the term loan on a month-to-month basis, and the same was recovered by debiting it to the assessee's cash credit (CC) account. Further, the amounts of credits (deposits) in the cash credit account are much more than the amount of interest debited by the bank.

Following the ruling of Madras High Court, the Delhi Tribunal held that the interest amount which had 'paid' by debiting Overdraft/Cash Credit account is deemed to be have been paid by assessee. The benefit of section 43B couldn't be denied when such interest amount had not been converted into a loan or advance.

~Compiled by Tuba Momin.

1) RBI/2021-22/146

CO.DPSS.POLC.No.S1264/02-14-003/2021-2022

Framework for Facilitating Small Value Digital Payments in Offline Mode

1. Reserve Bank had, vide circular dated August 06, 2020, permitted a pilot scheme to encourage technological innovations that enable small value digital transactions in offline mode. It was stated therein that the decision on formalising such a system would be based on the experience gained.

2. Pilot testing was undertaken by some entities during the period from September 2020 to July 2021. With encouraging feedback from the pilots, it was announced in the Statement on Developmental and Regulatory policies dated October 08, 2021, that a framework for carrying out small value digital payments in offline mode across the country would be introduced.

3. Accordingly, the framework to enable small value digital payments in offline mode using cards, wallets, mobile devices, etc., is detailed in Annex. Authorised Payment System Operators (PSOs) and Payment System Participants (PSPs) – Acquirers and Issuers (banks and non-banks) - shall ensure compliance with all the applicable instructions.

4. This directive is issued under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007) and shall come into effect immediately.

2) RBI/2021-22/148

DOR.RET.REC.76/12.07.160/2021-22

Inclusion of “Airtel Payments Bank Limited” in the Second Schedule of the Reserve Bank of India Act, 1934

“Airtel Payments Bank Limited” has been included in the Second Schedule to the Reserve Bank of India Act, 1934 vide Notification DoR.LIC.No.S2659/16.13.215/2021-22 dated December 02, 2021 and published in the Gazette of India (Part III - Section 4) dated January 01 - January 07, 2022.

3) RBI/2021-22/147**IDMD.PDRD.No.S1617/03.64.023/2021-22****Retail Direct Scheme - Market Making**

RBI Retail Direct Scheme has been launched on November 12, 2021 for providing one-stop access to facilitate investment in Government Securities by retail investors. In this connection, to provide liquidity in the secondary market, a market making

Arrangement, wherein the Primary Dealers shall be present on the NDS-OM platform (odd-lot and Request for Quotes segments) throughout market hours and respond to buy/sell requests from Retail Direct Gilt Account Holders (RDGAHs), is enclosed as annex

4) Notification No. DOR.FIN.080/CGM(JPS) - 2022**Registration of Factors (Reserve Bank) Regulations, 2022.**

In exercise of the powers conferred by section 3 read with Section 31A of the Factoring Regulation Act, 2011 (12 of 2012), the Reserve Bank of India, hereby makes the following regulations pertaining to the manner of granting Certificate of Registration to companies which propose to do factoring business.

1. Short title and commencement

(1) These regulations may be called the Registration of Factors (Reserve Bank) Regulations, 2022.

(2) These regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions

For the purpose of these regulations, unless the context otherwise requires:

(1) "Act" means the Factoring Regulation Act, 2011 (12 of 2012);

(2) "Reserve Bank" means the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(3) "Company" means a company as defined in clause (20) of section 3 of Companies Act, 2013 (18 of 2013);

(4) "Non-Banking Financial Company - Factor (NBFC-Factor)" means a non - banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of

India Act, 1934, which has its principal business as per Regulation 4 of these regulations and has been granted a Certificate of Registration (CoR) under section 3 of the Act;

(5) “Non-Banking Financial Company - Investment and Credit Company (NBFC-ICC)” means any company which is a financial institution carrying on as its principal business - asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities, and granted a CoR under Section 45IA of the Reserve Bank of India Act, 1934 (2 of 1934); and is not any other category of NBFCs as defined by the Reserve Bank in any of its Master Directions.

3. Net Owned Fund (NOF)

Every company seeking registration as NBFC-Factor shall have a minimum Net Owned Fund (NOF) of ₹5 crore, or as specified by the Reserve Bank from time to time.

4. Principal Business Criteria (PBC)

An NBFC-Factor shall ensure that its financial assets in the factoring business constitute at least fifty per cent of its total assets and its income derived from factoring business is not less than fifty per cent of its gross income.

5. Registration and matters incidental thereto

(1) Every company intending to undertake factoring business shall make an application to the Reserve Bank for grant of certificate of registration (CoR) as NBFC-Factor under the Act and shall ensure compliance with PBC as stipulated in regulation 4 of these regulations.

(2) Any existing NBFC-ICC, intending to undertake factoring business, shall make an application to the Reserve Bank for grant of CoR under the Act if it satisfies the following eligibility criteria:

- (a) Not accepting or holding public deposits;
- (b) Total assets of ₹1,000 crore and above, as per the last audited balance sheet;
- (c) Meeting the NOF requirement as prescribed in regulation 3 of these regulations;
- (d) Regulatory compliance.

(3) Any existing NBFC-ICC, which does not satisfy the above conditions but intends to undertake factoring business, shall approach the Reserve Bank for conversion from NBFC-ICC to NBFC-Factor. Such NBFC-ICCs shall comply with the PBC as specified in regulation 4 of these regulations.

(4) Application for such conversion shall be submitted with all supporting documents meant for new registration as NBFC-Factor, together with surrender of original CoR issued by the Reserve Bank to the NBFC-ICC under Section 45IA of the Reserve Bank of India Act, 1934.

(5) An entity not registered with the Reserve Bank under the Act, may conduct the business of factoring, if it is an entity mentioned in Section 5 of the Factoring Regulation Act, 2011 i.e. a bank or a body corporate established under an Act of Parliament or State Legislature, or a Government Company.

(6) NBFC-Factor or eligible NBFC-ICC which has been granted CoR by the Reserve Bank under these regulations shall commence factoring business within six months from the date of grant of CoR.

6. Conduct of business and prudential regulations

NBFC-Factors or eligible NBFC-ICCs which have been granted CoR under the Act shall conduct the factoring business in accordance with the Act and rules and regulations framed under the Act or the directions and guidelines issued by the Reserve Bank from time to time.

5) Notification No. DOR.FIN.081/CGM(JPS) - 2022

Registration of Assignment of Receivables (Reserve Bank) Regulations, 2022

In exercise of the powers conferred by section 19 (1A) read with Section 31A of the Factoring Regulation Act, 2011 (12 of 2012), the Reserve Bank of India, hereby makes the following regulations pertaining to the manner of filing of particulars of transactions with the Central Registry by a Trade Receivable Discounting System (TReDS) on behalf of Factors.

1. Short title and commencement

(1) These regulations may be called the Registration of Assignment of Receivables (Reserve Bank) Regulations, 2022.

(2) These regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions

For the purpose of these regulations, unless the context otherwise requires:

(1) "Act" means the Factoring Regulation Act, 2011 (12 of 2012);

(2) "Central Registrar" means a person appointed as such under subsection (1) of section 21 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(3) “Central Registry” means the Central Registry set up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

3. Registration of assignments of receivables transactions

(1) Where any trade receivables are financed through a Trade Receivables Discounting System (TReDS); the concerned TReDS on behalf of the Factor shall, within a period of ten days, from the date of such assignment or satisfaction thereof, as the case may be, file with the Central Registry the particulars of

(a) Assignment of receivables in favour of a Factor in Form I, which shall be authenticated by the authorized person using a valid electronic signature.

(b) Satisfaction of any assignment of receivables on full realization of the receivables in Form II, which shall be authenticated by the authorized person using a valid electronic signature.

(2) If the particulars referred in the sub-regulation (1) are not filed within the period specified therein, the Central Registrar may, on being satisfied on an application made in this behalf stating the reasons for the delay, allow the said particulars to be filed within such additional time not exceeding ten days as he may specify, upon payment of the fee as prescribed by GoI in Registration of Assignment of Receivables Rules, 2012, as amended from time to time.

(3) Every Form for registration of any transaction relating to assignment of receivables or satisfaction of receivables on realisation shall be accompanied by the fee, as prescribed by GoI in Registration of Assignment of Receivables Rules, 2012, as amended from time to time, to be paid to the Central Registrar in the manner as may be specified by the Central Registrar from time to time.

For more details, refer the website rbi.org.in

~Compiled by Siddhi Dhonde.

CORPORATE LAW

1. Additional Fees and Higher Additional Fees for shall be applicable for delay in Filing Forms.

On 11th January, 2022, MCA notified Rules which prescribes additional fees and higher additional fees shall be applicable for delay in filing of Forms other than for Increase in Nominal Share Capital or Forms under Section 92 (Provisions relating to Annual return-Form MGT-7) or Section 137 (Provisions relating to Copy of Financial Statements to be filed with Registrar-Form AOC-4) of Companies Act, or forms for filing charges.

The Amendments shall come into force with effect from 01st July, 2022.

TABLE

Sr No.	Period of Delay	Additional fee as a multiple of normal fees	Higher additional fee as a multiple of normal fees (for certain cases)
1.	Upto 15 days (sections 139 and 157)	One time of normal fees	-
2.	More than 15 days and upto 30 days (Section 139 and 157) and upto 30 days in remaining forms.	2 times of normal filing fees	3 times of normal filing fees
3.	More than 30 days and upto 60 days	4 times of normal filing fees	6 times of normal filing fees
4.	More than 60 days and upto 90 days	6 times of normal filing fees	9 times of normal filing fees
5.	More than 90 days and upto 180 days	10 times of normal filing fees	15 times of normal filing fees
6.	Beyond 180 days	12 times of normal filing fees	18 times of normal filing fees

The Circular further clarifies that:

Note 1: Higher additional fees shall be payable, if there is a delay in filing e-form INC-22 (For Shift of Registered Office of the Company), or e-form PAS-3 (For Return of Allotment), as the case may be, on two or more occasions, within a period of three hundred and sixty five days from the date of filing of the last such belated e-form for which additional fee or higher additional fee, as the case may be, was payable.

Note 2: Wherever higher additional fee is payable, additional fee shall not be charged.

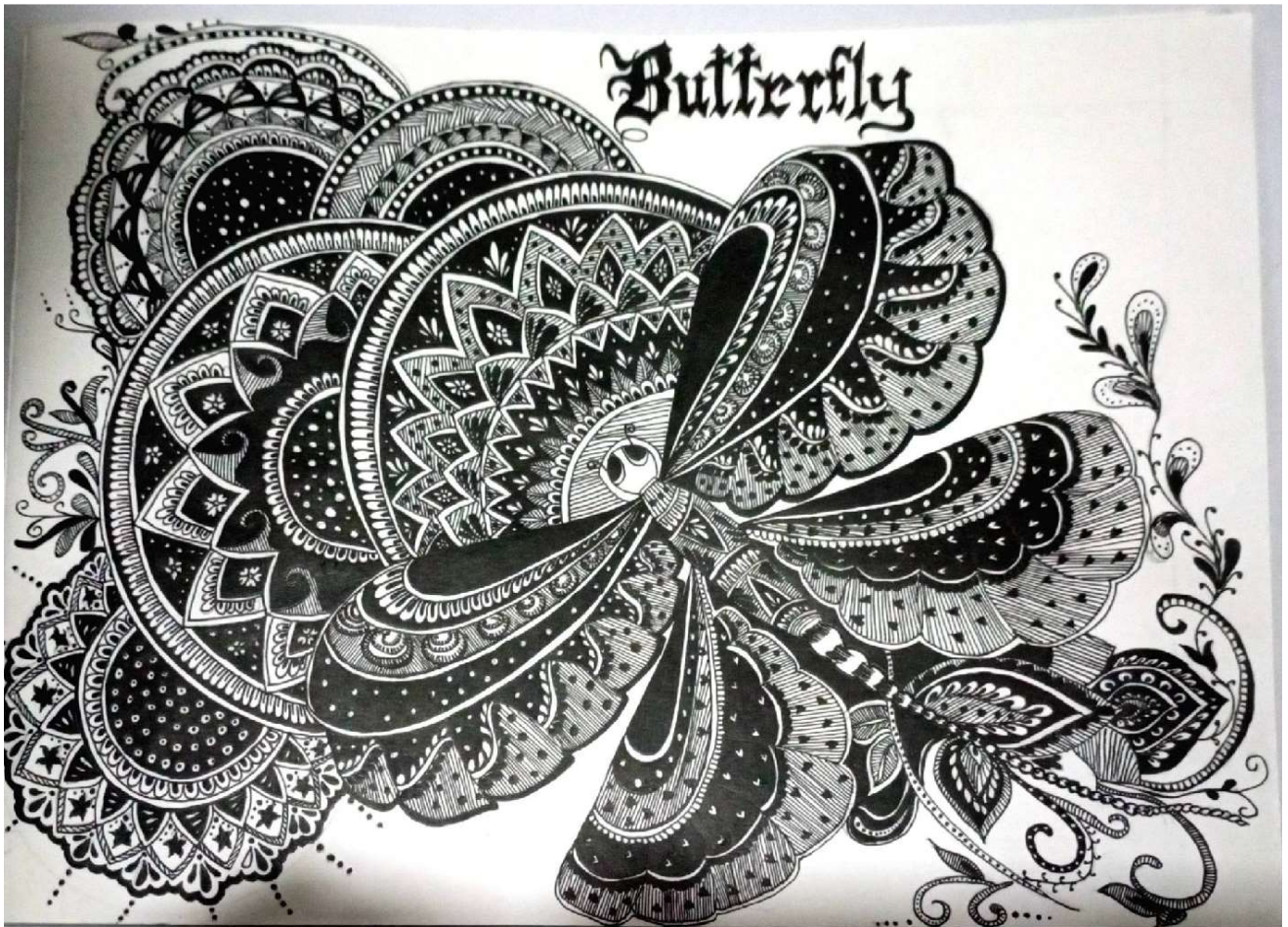
2. New Way of filling e-forms for Limited Liability Partnerships

- a. In our continuous endeavour to serve you better, the Ministry of Corporate Affairs is launching a new way of e-filing for LLP on MCA21 portal. All LLP filings going forward will be web based.
- b. This application is proposed to be launched on 06th March, 2022 at 12:00 AM.
- c. To facilitate this implementation stakeholders are advised to plan as per the following:
- d. LLP e-Filings on MCA21 portal will be disabled from 25th Feb 2022 12:00 AM. All stakeholders are advised to ensure that there are no SRNs in pending payment status.
- e. Offline payments for LLP using Bank Challan and Pay later option would be stopped from 19th Feb 2022 12:00 AM. Please note that during 19th Feb 2022 12:00 AM to 25th Feb 2022 12:00 AM, payments for LLP will be accepted only through online mode (Credit/Debit Card and Net Banking).
- f. DSC association and new user registration on MCA21 portal will be stopped on 25th Feb 2022 12:00 AM. These services will resume in new application with LLP launch.
- g. Please note that there will not any interruption in filling of Company forms.

~Compiled by Manan Vadhan

#HUNAAR HAAT

“You do not just wake up and become the butterfly”



~Payal Dubey.



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