



WHITESPAN  
A d v i s o r y

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

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Monthly Newsletter  
December, 2023



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## MAA FOUNDATION ACTIVITIES



**Women Empowerment:** Maa Foundation is dedicated to advancing women's empowerment. Additionally, as part of the goal, Maa Foundation is offering women vocational training through our initiative "Sui Dhaga" and by conducting POSH awareness sessions to make workplace more welcoming.

### **MESSAGE FROM THE CHIEF EDITOR**

*“When I let go of what I am, I become what I might be.” – Lao Tzu*

It gives us immense satisfaction to share the 80<sup>th</sup> Edition of “WINS – E-Newsletter” for December 2023, covering legal updates released during the month of November 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of December 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, and CBDT, RBI and miscellaneous Law
2. Articles
  - a) The Evolving Compliance Regime for LLPs
  - b) Latest Case Laws and Updates
  - c) Harmonizing Laws: The Push for a Uniform Civil Code in India
3. Case Laws
4. Compliance checklist for the month of December 2023.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor’s Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at [vinayshukla@whitespan.in](mailto:vinayshukla@whitespan.in) or [+91 9810 624 262](tel:+919810624262)

With warm regards,

**TEAM WINS (Whitespan Information and News Services)**

**November 30, 2023**

**OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS**

- 1. Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
- 3. Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
- 4. Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Mr. Pushkar Garg**, Senior Associate at Whitespan Law Offices and member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
- 6. Ms. Tanya Shukla**, a semi qualified company secretary and a graduate in Commerce from Kanpur University.
- 7. Ms. Sanjana Bindal**, a semi qualified company secretary and a graduate from H.P. National Law University.

# Ministry of Corporate Affairs (MCA)

## 1. Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023

**Date of Notification:** November 9, 2023

**Effective Date:** November 9, 2023

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=pJZaasqhXL5W9F46Ukp5lw%253D%253D&type=open>

MCA vide a notification dated November 9, 2023 notified the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.

Key highlights of the above mentioned rules are:

- a. Every reporting LLP shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting LLP and if so, identify him and cause such individual to make a declaration in form LLP BEN 1.
- b. Upon receipt of above declaration, the reporting LLP shall file form LLP BEN 2 within 30 days from the date of receipt of such declaration.

- c. The LLP shall maintain a register of significant beneficial ownership in BEN 3.
- d. Every LLP shall in case where the partner holds not less than 10% of its contribution or voting rights shall give notice to such partner in LLP BEN 4.
- e. The above rules shall not apply to:
  - i. the Central government, the State Government, or any local authority
  - ii. a reporting limited liability partnership, or a body corporate, or an entity controlled controlled by the Central Government or by one or more State Government, or partly by the Central Government and partly by one or more State Government;
  - iii. an investment vehicles registered with, and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds (AIF). Real Estate Investment Trusts (REITs). Infrastructure Investment Trust (InVITs).
  - iv. an investment vehicles regulated by the Reserve Bank of India, or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority



## 2. Special Campaign 3.0 for disposal of pending matters and undertaking cleanliness drives

**Date of Press Release:** November 08, 2023

**Effective Date:** November 08, 2023

**Link:**

[chromeextension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=fUHXQjqCJgO8t3O0ssEGKw%253D%253D&type=open](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=fUHXQjqCJgO8t3O0ssEGKw%253D%253D&type=open)

MCA vide press release dated November 08, 2023 announced the successful completion of the month-long Special Campaign 3.0, which started in the beginning of October, 2023 by the Union Ministry of Corporate Affairs for disposal of pending matters and undertaking cleanliness drives.

It achieved goals of reviewing, weeding and closing of physical and electronic files and disposing of the pending PMO. Furthermore, 16,969 Non STP Forms have been processed/finalized. Revenue amounting to Rs. 3.58 Lakh (approx.) has been generated after disposal of scrap material. The achievements in different parameters were uploaded on regular basis on SCPDM.

# Securities Exchange Board of India (SEBI)

## **1. Simplification and streamlining of Offer Documents of Mutual Fund Schemes**

**Date of Circular:** November 1, 2023

**Effective Date:** April 1, 2024

**Link:**

**[https://www.sebi.gov.in/legal/circulars/nov-2023/simplification-and-streamlining-of-offer-documents-of-mutual-fund-schemes\\_78665.html](https://www.sebi.gov.in/legal/circulars/nov-2023/simplification-and-streamlining-of-offer-documents-of-mutual-fund-schemes_78665.html)**

SEBI vide its Circular dated November 01, 2023 simplified and streamlined the format of the Scheme Information Document (SID). The revised format is aimed at streamlining the dissemination of relevant information to investors, rationalizing the preparation of SID, and facilitating its periodic updation by mutual funds. Updated format for SID/KIM/SAI will be implemented w.e.f. April 01, 2024.

In order to give effect to the revisions in the SID, the relevant changes have also been made in SEBI Master circular dated May 19, 2023.

## **2. Procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and manner of claiming such amounts by investors**

**Date of Circular:** November 08, 2023

**Effective Date:** March 01, 2024

**Link:**

**[https://www.sebi.gov.in/legal/circulars/nov-2023/procedural-framework-for-dealing-with-unclaimed-amounts-lying-with-entities-having-listed-non-convertible-securities-and-manner-of-claiming-such-amounts-by-investors\\_78988.html](https://www.sebi.gov.in/legal/circulars/nov-2023/procedural-framework-for-dealing-with-unclaimed-amounts-lying-with-entities-having-listed-non-convertible-securities-and-manner-of-claiming-such-amounts-by-investors_78988.html)**

SEBI vide circular dated November 08, 2023 issued a procedural framework for dealing with unclaimed amounts lying with entities having listed non-convertible securities and the manner of claiming such amounts by investors. Where the interest/dividend/redemption amount has not been claimed within thirty days from the due date of interest/ dividend/redemption payment, a listed entity shall within seven days from the date of expiry of the said period of thirty days, transfer the amount to an Escrow Account. As there was a need to standardize the process to be followed by a listed entity for transfer of such amounts to Escrow Account and for the investors for making claims thereof, a framework has been created for defining the manner of transfer of such unclaimed amounts by a listed entity to an Escrow Account and claim thereof by an investor. Same is enclosed to the above mentioned circular.

### 3.Simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and nomination

**Date of Circular:** November 16, 2023

**Effective Date:** November 17, 2023

**Link:**

[https://www.sebi.gov.in/legal/circulars/nov-2023/simplified-norms-for-processing-investor-s-service-requests-by-rtas-and-norms-for-furnishing-pan-kyc-details-and-nomination\\_79167.html](https://www.sebi.gov.in/legal/circulars/nov-2023/simplified-norms-for-processing-investor-s-service-requests-by-rtas-and-norms-for-furnishing-pan-kyc-details-and-nomination_79167.html)

SEBI vide circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 dated March 16, 2023 (now rescinded due to issuance of Master Circular for Registrars to an Issue and Share Transfer Agents dated May 17, 2023) had simplified norms for processing investor's service request by RTAs and for furnishing PAN, KYC details and Nomination.

Accordingly, following changes have been made to Master Circular for Registrars to Issue and Share Transfer Agents dated May 17, 2023:

**Para 19.2-Freezing of Folios without PAN, KYC details and Nomination:**

- a. Reference to the term 'freezing/ frozen' has been deleted.
- b. Referral of folios by the RTA/listed company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, has been done away with.

#### **4. Most Important Terms and condition (MITC)**

**Date of Circular:** November 13, 2023

**Effective Date:** November 13, 2023

**Link:**

**[https://www.sebi.gov.in/legal/circulars/nov-2023/most-important-terms-and-conditions\\_79085.html](https://www.sebi.gov.in/legal/circulars/nov-2023/most-important-terms-and-conditions_79085.html)**

SEBI vide circular dated March 13, 2023, directed brokers to inform a standard Most Important Terms and Conditions (MITC) which shall be acknowledged by the client.

The form, nature of communication, documentation and detailed standards for implementation of MITC shall be published on or before January 01, 2024, by the Brokers' Industry Standards Forum (ISF), under the aegis of stock exchanges, in consultation with SEBI. For on boarding of new clients, the date of the implementation and compliance by the market participants shall be April 01, 2024. For existing clients, the MITC shall be informed to clients via email or any other suitable mode of communication (which can be preserved) by June 01, 2024.



**RESERVE BANK  
OF INDIA  
(RBI)**

## **1. Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices**

**Date of Notification:** November 07, 2023

**Effective Date:** April 01, 2024

**Link:**

**<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12562&Mode=0>**

RBI vide notification dated March 7, 2023, published comprehensive Master Direction relating to information technology (IT) governance and controls for banks and NBFCs. The key focus areas of IT governance will include strategic alignment, risk management , resource management, performance management, business continuity recovery management and disaster recovery management.

In this regard RBI has issued the final Reserve Bank of India (Information Technology Governance , Risk, Controls and Assurance Practices) Directions, 2023 that will come in effect from April 1, 2024.



## **2. Fully Accessible Route' for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green Bonds**

**Date of Notification:** November 08, 2023

**Effective Date:** FY 23-24

**Link:**

**<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12563&Mode=0>**

RBI vide notification dated November 08, 2023, notified that Sovereign Green Bonds is included in the 'Fully Accessible Route' (FAR), expanding investment opportunities for non-residents in the Government Securities market.

Through this proactive move of RBI, Non-resident investors can participate in the Government Securities market without restrictions, making it an attractive prospect in growing ESG factors of Investment in India and word-wide.

### **3. International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds**

**Date of Notification:** November 17, 2023

**Effective Date:** November 17, 2023

**Link:**

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12568&Mode=0>

RBI vide its notification dated November 17, 2023 notified that Authorised Dealer Category – I (AD Category – I) banks are invited to A.P. (DIR Series) Circular No.10 dated July 11, 2022, in terms of which an additional arrangement has been put in place for invoicing, payment, and settlement of exports/imports in INR through Special Rupee Vostro Accounts of the correspondent bank/s of the partner trading country maintained with AD Category-I banks in India.

Further, AD Category-I banks to refer to Para 4.1 of circular DOR.CRE.REC.23/21.08.008/2022-23 dated April 19, 2022 on Opening of Current Accounts and CC/OD Accounts by Banks. In terms of this provision and in order to provide greater operational flexibility to the exporters, AD Category-I banks maintain Special Rupee Vostro Account as per the provisions of the Reserve Bank circular dated July 11, 2022 referred above are permitted to open an additional special current account for its exporter constituent exclusively for settlement of their export transactions.

# Central Board of Direct Taxes (CBDT)

## **1. Taxpayers' Lounge of Income Tax Department set up at IITF, 2023**

**Date of Press Release:** November 15, 2023

**Link:**

**<chromeextension://efaidnbmnnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1168/Press-Release-Taxpayers-Lounge-of-Income-tax-Department-set-up-at-IITF-2023-dated-15-11-2023.pdf>**

CBDT vide its Press Release dated November 15, 2023 announced that Taxpayers' Lounge has been set up by the Income Tax Department in India International Trade Fair, 2023 at Pragati Maidan, New Delhi being held from 14th to 27th November, 2023. Shri Nitin Gupta, Chairman, Central Board of Direct Taxes (CBDT) inaugurated the Taxpayers' Lounge today i.e on 15.11.2023 at Hall No. 5, Pragati Maidan, New Delhi in the presence of Members of the CBDT and senior officers of the Income Tax Department.

It aims to foster awareness about the services provided by the Income Tax Department and to showcase its various initiatives in the areas of digitalization, transparent taxation, e-PAN, e-filing, online grievance redressal etc. for easing voluntary compliance.

## **2. Direct Tax Collections for F.Y. 2023-24 up to 09.11.2023**

**Date of Press Release:** November 10, 2023

**Link:**

**[Press-Release-Direct-Tax-Collections-for-FY-2023-24-up-to-09-11-2023.pdf \(incometaxindia.gov.in\)](#)**

CBDT vide its Press Release dated November 10, 2023 announced the Direct Tax Collections for F.Y. 2023-24 up to 09.11.2023. The provisional figures of Direct Tax collections up to November 09, 2023 continue to register steady growth. Direct Tax collections up to November 09, 2023 show that gross collections are at Rs. 12.37 lakh crore which is 17.59% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 10.60 lakh crore which is 21.82% higher than the net collections for the corresponding period of last year. This collection is 58.15% of the total Budget Estimates of Direct Taxes for F.Y. 2023-24.

So far as the growth rate for Corporate Income Tax (CIT) and Personal Income Tax (PIT) in terms of gross revenue collections is concerned, the growth rate for CIT is 7.13% while that for PIT is 28.29% (PIT only)/ 27.98% (PIT including STT). After adjustment of refunds, the net growth in CIT collections is 12.48% and that in PIT collections is 31.77% (PIT only)/ 31.26% (PIT including STT). Refunds amounting to Rs. 1.77 lakh crore have been issued during 1st April, 2023 to November 09, 2023.

# Miscellaneous Laws

## **1. BRICS India Compendium of 78 Top IP Driven Solutions**

**Date of Public Notice:** November 10, 2023

**Effective Date:** November 10, 2023

**Link:**

**[chromeextension://efaidnbmnnnibpcajpcgglefindmkaj/https://ipindia.gov.in/writereaddata/Portal/Images/pdf/PUBLIC NOTICE-BRICS India Compendium of 76 Top IP Driven Solutions.pdf](https://efaidnbmnnnibpcajpcgglefindmkaj/https://ipindia.gov.in/writereaddata/Portal/Images/pdf/PUBLIC_NOTICE-BRICS_India_Compendium_of_76_Top_IP_Driven_Solutions.pdf)**

Department for Promotion Of Industry And Internal Trade vide its Public Notice dated November 10, 2023 announced the initiative of compendium consisting of 78 Top IP Driven Solutions created for addressing the need for the Sustainable Development Goals (SDGs). The objective of publishing this compendium is to showcase India's strength in IP driven solutions for addressing the global needs of the SDGs and commitment towards sustainable development.

Applicant/ Inventors are invited to submit the details of inventions to [int-ipo@gov.in](mailto:int-ipo@gov.in) or sent by post to the address Bhoudhik Sampada Bhavan, Head Post Office, Shaikh Mistry Rd, near Antop Hill, Dosti Acres, Antop Hill, Mumbai, Maharashtra 400037 latest by 29 Nov 2023 The submissions received will be reviewed by an expert committee to select the 78 Inventions and the decision made by the committee will be final From the 78 IP-Driven Solutions, selected 10 inventions may feature in the official BRICS compendium to demonstrate the success story of IP for SDG by India

## **2. Extending framework for restricting trading by Designated Persons (“DPs”) by freezing PAN at security level to all listed companies in a phased manner**

**Date of Circular:** November 17, 2023

**Effective Date:** January 01, 2024

**Link:**

**<https://www.nseindia.com/companies-listing/circular-for-listed-companies-equity-market>**

National Stock Exchange vide its Circular dated November 17, 2023 in furtherance to its previous circulars regarding Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”) – Framework for restricting trading by Designated Persons (“DPs”) by freezing PAN at security level.

Annexure I for Next Top 1,000 companies in terms of BSE Market Capitalization as of June 30, 2023 is attached to the circular above. Companies that qualify must include all equity ISIN and ISINs that are convertible into equity.

Listed entities are required to designate one of the depositories as its designated depository and provide the information including PAN of Promoter(s), promoter group, director(s) and designated person(s) in the manner as specified by the depositories according to SEBI circular no – SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 9, 2020. Further, listed entities shall update their designated person list in the manner specified by the depositories on regular basis.



# Article 1

## **THE EVOLVING COMPLIANCE REGIME FOR LLPS**

### **Introduction of LLPs and its incentives**

Limited Liability Partnership ('LLP') was introduced to be a body corporate with hybrid characteristics of both a company and a partnership firm and thus provided the advantage of both. The main benefit of LLP Form was the comparative less burden of compliances to be made than a company. LLP Act and Rules did not impose the detailed legal and procedural compliances as needed in case of Companies. LLPs also have added taxation benefits vis-à-vis companies. Unlike companies, LLPs are not required to get their accounts audited unless its turnover exceed Rs 40 lakhs or the contribution exceed Rs 25 lakhs in which case such LLPs are required to annually get their accounts audited by any CA in practice.

In April, 2014, allowed LLPs to receive FDI subject to specified conditions and In March 2017, RBI liberalized the FDI conditions for LLPs and allowed persons resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a SEBI Registered FPI or FII or Foreign VC Investor to contribute foreign capital by capital contribution / acquisition / transfer of profit shares in the capital structure of an LLP.

Due to these benefits, A Large Number of private limited company and unlisted public company have since been converted into LLP and a large number of LLPs have been formed particularly in Large Corporate Groups.

The introduction of more stringent reforms for LLPs

The regulatory gaps are gradually being plugged up as follows:

1. MCA vide Notification dated 11.02.2022 made various provisions of the Companies Act applicable to LLPs as follows:
  - Section 90 (except subsection 12): SBO provisions were made applicable on LLPs. Due to this notification, LLPs were required to Identify the SBO, Take declarations from SBO and Maintain register of SBO.
  - Section 164 (1) and (2): Provisions w.r.t. Disqualification of Directors were, with suitable changes, made applicable to the holding of / continuing to hold the designation of Designated Partner of LLP.
  - Section 165 (except subsection 2): A person can be Designated Partner in Max. 20 LLPs.
  - Section 167 (except subsection 4): On account of disqualification incurred, the DPs will be required to vacant their positions.
  - Section 206(5), 207(3) and 252 w.r.t CG to have power of Inspection of books, etc, Registrar vested with powers of Civil Court w.r.t. Conduct of Inspection and Enquiry and Appeal to Tribunal for Restoration of Name of Struck Off LLPs.
  
1. The hardships in implementation of SBO provisions on LLPs have been eased with the recent notification dated November 9, 2023 ('LLP SBO Rules') and the framework for identification of SBO's of LLPs has been aligned with that of companies.

However, the following additional obligations have been cast on LLPs:

- The SBO(s) of LLPs will be required to file a declaration in Form No. LLP BEN-1 to the reporting LLP within 90 days from November 9, 2023 i.e. by February 7, 2024.
- Every person who becomes an SBO or where an SBO undergoes any change will be required to file a declaration in Form No. LLP BEN-1 to the reporting LLP, within 30 days of acquiring SBO Status or any change therein, as the case may be.
- LLPs are required to Identify the SBO and Take declarations from SBO in LLP BEN-1 and give notice in Form LLP BEN-4 seeking information w.r.t. identity of SBO, Filing of Return in Form LLP BEN-2 and Maintain register of SBO in Form LLP BEN-3.

These SBO Rules also empower the Tribunal to take action against non-compliance thereof and unsatisfactory information. LLPs now need to proactively identify SBOs and ensure compliance with these SBO Rules. However, a Large Number of Loopholes / Ambiguities still remain in the LLP Regulatory Framework. It remains to be seen if the plugging of loopholes by the Government will prove to be a boon to LLPs and thus benefit the corporate sector or will stringent reforms for LLP disincentivize the LLP as a Corporate Structure.

**AUTHOR:**

**FCS HARSHIT GUNANI**

**SR. MANAGER – SECRETARIAL, RSPL LIMITED**

**FCS 12652**



# Article 2

## **LATEST CASE LAWS AND UPDATES**

### **CSR Expenses could also be eligible for deduction U/S 80G, provided conditions are fulfilled: ITAT**

M/s. Rustomjee Realty Private Limited (ITA no.1585/Mum./2023)

1. During the assessment proceedings, it was observed that the assessee incurred expenditure amounting to Rs. 11,00,000 on account of CSR. However, the assessee claimed a deduction to an extent of Rs. 5,55,000 under section 80G of the Act.
2. The AO vide order dated 26/09/2022 held that the amount has not been paid by the assessee voluntarily to become eligible for entity specified under section 80G of the Act. However, the same has been paid by the assessee as a mandatory requirement as per section 135 of the Companies Act, 2013 to spend a certain amount for specified activities.
3. The CSR expenses are not allowed under section 37 of the Act pursuant to insertion of Explanation-2 to section 37 vide Finance Act, 2014 with effect from 01/04/2015.
4. The AO had rejected the assessee's claim without verifying the nature of contributions and observed that it is not a donation, and was not spent voluntarily for the eligibility of claim u/s 80G of the Act but due to legal obligation prescribed u/s 135 r.w. Schedule VII of companies Act, 2013.

#### **ITAT Mumbai held as below:**

1. The contributions made u/s 135(5) of the companies Act are also eligible for deduction u/s 80G of Income Tax Act subject to assessee satisfying the requisite conditions prescribed for deduction u/s 80G of the Act.

2. As per the Industrial policy of Government of Bihar and Government of Odisha, assessee was granted incentive in the form of reimbursement of VAT/sales tax.
3. Assessing Officer denied the claim of capital receipt of VAT subsidy at Rs.23,88,62,511/- observing that these are revenue receipts as there is a direct nexus of the VAT subsidy with the revenue generated and, thus made the addition thereto.
4. The Id. CIT(A) dealt with this issue referring to the various judicial pronouncements and held in favour of assessee by placing reliance on the judgment of the Hon'ble Supreme Court in the case of CIT v/s. Chaphalkar Brothers Pune [2018] 400 ITR 279 as well as that of the Hon'ble Jurisdictional High Court in the case of CIT vs Rasoi Limited [2011] 335 ITR 438 (Cal) (HC).

Note: As per Sec 2(24)(xviii) of the Income Tax Act, any assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement is an income w.e.f. 1/4/16.

**ITAT Kolkata held as below:**

1. On going through the above, and judicial precedents referred in the impugned order and after perusal of the Industrial policies of the Governments of Bihar and Odisha, we find that firstly introduction of amendment in Section 2(24)(xviii) of the Act is prospective in nature and applicable from Assessment Year 2016-17 and onward.
2. Secondly, so far as the nature of the subsidy is concerned, the alleged incentive was assured under the Industrial policy for the purpose of encouraging the assessee to set up new industries in the State.

3. We find that the objective contained in the Industrial policy was not to reduce operation costs of the company or facilitate working of existing undertaking.
4. The entrepreneurs with the attraction of such subsidy (VAT Subsidy) plan to establish and commence business operations in such areas and for establishing such business has to make capital expenditure in the form of land, building, plant and machinery and such investments are partly reimbursed by the subsidies granted by the State Governments.
5. Therefore, in our view, the subsidy received in form of VAT reimbursement from the State Governments was towards industrialisation in the State and to generate employment
6. Therefore, the alleged subsidy has been rightly held to be capital receipt by the Id. CIT(A) which thus calls for no interference.

**System default is the standard excuse while delaying refunds: Bombay HC**

**Matrix Publicities and Media India Pvt. Ltd. Versus Deputy Commissioner of Income Tax Circle- 16(1), Mumbai & Ors. (Writ Petition (L) No.16764 Of 2023)**

Facts:

1. The petition seeks a refund amount of Rs. 19,69,46,789 for Assessment Year 2020–21. The jurisdictional officer has sent a letter or email to Central Processing Centre (CPC) for early capture or update of the refund details as determined in the ITBA portal so that the final manual order can be passed by the respondent.



2. The system (under the control of CPC, Bangalore) has to capture the refund already approved via the web service rectification order passed on July 29, 2023. Until the issue is resolved, proceedings in the case cannot be completed and refund cannot be granted.

**Hon. Bombay HC held as below:**

1. The excuse used is that the system under the control of the Centralized Processing Center (CPC), Bangalore, has some issues and, therefore, amounts are not being released to assessees. Interest is payable by law until the date of refund, and the Department does not realize that it is public money that is used to pay interest. That is a waste and a burden on the exchequer.

2. We would only hope that the Finance Ministry looks into it with seriousness and tries to put an end to the problem faced by all assessees and the Income Tax Officers. A copy of this order should be sent to the PMO, the Hon'ble Finance Minister GOI, the Hon'ble Law Minister GOI, the Central Board of Direct Taxes, and the Attorney General for India for information and necessary action. We only hope this problem gets resolved at the earliest.

3. The system default is the standard excuse of the department when it comes to giving refunds. Had the department sorted out its technical issues, totally unrelated to any substantial legal issue, nevertheless contravening the fundamental right of the petitioner to receive an undisputed amount of refund, the present proceedings would not have crept into the litigation arena.

4. The department, either by itself or through CPC, should ensure that the amount is credited to the petitioner's account on or before November 4, 2023, with interest up to the date of payment in accordance with the law.

**Insurance business is not a banking activity: ITAT**

**Indur Intideepam Producers MA Cooperative Societies Federation Limited (ITA 339 / Hyd / 2023)**

Facts:

1. Assessee is a cooperative society providing credit facilities to members.
2. The AO noted that the assessee was mainly in the business of lending services for guarantee payments ie security investment policies, life insurance, pension and earning commission.
3. AO disallowed the deduction claimed U/S 80P of the Income Tax Act, as he opined that the services provided by the assessee do not fall U/S 80P.

ITAT Hyderabad held as below:

1. Insurance activities do not fall under the category of banking activities. So deduction in respect of the same cannot be claimed by the assessee.
2. However disallowance can be made o LT to the extent of the deduction claimed U/S 80P.
3. The file is remanded back to the file of the AO for the limited purpose of verifying the deduction claimed by the assessee and pass a fresh order after according a due opportunity to the assessee to be heard.

## **Sec 79 invocation when the beneficial ownership remains the same:**

### **Introduction:**

1. Section 79 of the Income Tax Act disallows a closely held company from carrying forward and setting off its tax losses if there is a change in the beneficial ownership of shares carrying more than 49% of the voting power of the company as compared to the year in which the loss was incurred (subject to certain exceptions).
2. This provision is an anti abuse provision introduced to bring an end to the practice of buying loss making entities for the sole purpose of setting off losses.

### **Issue:**

1. Various courts are besieged with the question whether beneficial ownership can be said to have remained unchanged merely because registered owner of shares, holding more than 49% of the voting power, has changed.
2. Hon'ble Karnataka High Court in the case of Commissioner of Income-tax v. AMCO Power Systems Ltd.,[[2015] 62 taxmann 350 (Karnataka)] held that a holding company would naturally exercise control over its wholly-owned subsidiary and thus, it would also be considered to have voting power over the shares of its step-down subsidiary.
3. However, the Hon'ble Delhi High Court in Yum Restaurants (India) (P.) Ltd. v. Income-tax Officer,[[2016] 66 taxmann 47 (Delhi)] held that simply because the ultimate holding company remained unchanged, this would not automatically imply that the beneficial ownership also remained unchanged. The onus was on the taxpayer to show that there was a separate beneficial shareholder, distinct from the registered shareholder, who was entitled to the benefits flowing from the shares (i.e., voting rights, dividend, etc.).

4. Similarly, the Hon'ble Delhi ITAT in ACIT v. WSP Consultants India (P.) Ltd.,[[2022] 140 taxmann 65 (Delhi – Trib.)] noted there was nothing on record to show that the ultimate holding company was the beneficial owner of shares of the company having 51% or more voting right. In the absence of such evidence, the registered shareholder would be presumed to be the beneficial shareholder.

5. In a very recent judgement of the ITAT Mumbai in the case of Hiranandani Healthcare Pvt Ltd Vs CIT (ITAT Mumbai) (I.T.A. No. 1142/Mum/2023), ITAT highlighted that the key factor in Section 79 is the maintenance of beneficial ownership by the same group of shareholders. As there was no change in the group's beneficial ownership, the ITAT ruled in favor of the Assessee.

**Conclusion:**

The taxpayers would be required to present evidence to substantiate the fact that in a given case, the beneficial owner is distinct from the registered owner.

Shree Sai Baba Sansthan Trust is entitled to IT exemption on anonymous donations:

Shree Sai Baba Sansthan Trust (Shridi) Versus DCIT (Exemptions) (I.T.A. No.3049/Mum/2022)

**Facts:**

1. The assessee/respondent is a public trust that was constituted in 1953 under the name and style of 'ShirdiSansthan of Shri Sai Baba', registered under the Bombay Public Trust Act. The assessee is also registered under Sections 12A and 80G of the Income-tax Act, 1961.

2. The AO was of the view that the assessee was a charitable trust, and since the anonymous donations exceeded 5% of the total donations, they were taxable under Section 115BBC(1) of the Income Tax Act.
3. The assessee argued that its holding of a certificate under Section 80G was valid, and at the same time, since it existed both for charitable and religious purposes, it was also entitled to the benefit of exclusion set out in Section 115BBC(2)(b). As per Sec 115BBC(2) anonymous donation received by any trust or institution created or established wholly for religious and charitable purposes is not taxable.
4. The department contended that AO had rightly held that the assessee was only a charitable organization and not both a charitable and religious organization and therefore not entitled to avail the benefit of exclusion set out in Section 115BBC(2)(b) to the assessee. The assessee trust, whose primary object was to propagate the teachings of Shri Sai Baba, did not have any religious purposes whatsoever.

**ITAT Mumbai held as below:**

1. The exclusion set out in Section 115BBC(2)(b) can co-exist with Section 80G. Hence, the proposition put forth by the department placing reliance on 80G registration to ipso facto deny the exclusion set out in Section 115BBC(2)(b) is held to be untenable.
2. Thus Shree Sai Baba Sansthan Trust is eligible for income tax exemption on anonymous donations.

**Income Tax adjudication proceedings and prosecution proceedings are independent of each other: Madras HC**

**R.Revathy Vs. The Assistant Commissioner of Income Tax (Crl.O.P.No.18477 of 2021 and Crl.M.P.No.10136 of 2021)**

**Facts:**

1. A search and seizure operation took place on 18.08.2011, revealing gold ornaments and jewelry at the petitioner's residence.
2. The petitioner was issued a notice under Section 153C of the Income Tax Act for the assessment years 2006-07 to 2011-12. The petitioner filed a return of income for the assessment year 2012-13, admitting a total income of Rs.24,09,170/-.
3. During assessment proceedings, the petitioner revised the memo of taxable income, admitting Rs.48,39,044/- as an investment made in gold. An order was passed on 25.03.2014 determined the total income at Rs.72,75,218/- towards undisclosed investment, with a penalty imposed under Section 271(1)(c) of the Income Tax Act.
4. Prosecution proceedings were also launched under Sections 276C(1) & 277 of the Income Tax Act for the assessment year 2012-2013.
5. The penalty was challenged and eventually deleted on 15.11.2019 by the High Court, citing reconciliation of the quantum of jewelry.
6. The Principal Commissioner of Income Tax has however reopened the proceedings, and the petitioner challenged it in W.P.No.15854 of 2021, which was rejected.

7. The petitioner argues that the entire prosecution case cannot be sustained since the penalty was set aside by the High Court.

8. The department has contended that the prosecution proceedings have to be continued since re-assessment proceedings are pending with the Assessment Officer.

**Hon Madras HC held as below:**

1. The proceedings have not attained finality. The pendency of proceedings under Section 263 of the Income Tax Act indicates that the reconciliation of jewelry has not concluded.

2. The adjudication proceedings and criminal prosecution are independent. The findings in adjudication are not binding on criminal prosecution.

3. The petition is dismissed.

**Rental income from let out property without any additional services is income from house property: ITAT Delhi**

**DCIT, Circle-27(1), New Delhi Vs. U & I Business Services Pvt. (ITA No. 5912/Del/2019)**

**Facts:**

1. The assessee is a resident corporate entity engaged in leasing property. The return of income was filed, declaring income of Rs.3,95,29,220.

2. The Assessing Officer observed rental income from a property leased to Reliance Retail Ltd. and treated it as business income. The property was let out without any additional/associated services.
3. The Assessing Officer issued a show cause notice and examined the Memorandum of Association, concluding that the rental income should be treated as business income.
4. The learned Commissioner (Appeals) accepted the assessee's claim, assessing the rental income as income from house property.
5. So the main issue was regarding the disallowance of Rs.1,17,26,787 under Section 24(a).

**ITAT Delhi held as below:**

1. The property let out to Reliance Retail Ltd is without any additional benefits unlike other properties let out by the assessee which have been assessed as income from business.
2. In the last years too the property was offered to tax as income from house property.
3. So we are inclined to uphold the decision of learned First Appellate Authority in treating the rental income as income from house property and allow deduction under Section 24(a) of the Act.

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# Article 3

## **HARMONIZING LAWS: THE PUSH FOR A UNIFORM CIVIL CODE IN INDIA**

### **INTRODUCTION:**

In the wake of monumental shifts such as the abrogation of Article 370 in Jammu and Kashmir and the Ayodhya case ruling, the Sangh Parivar has set its sights on a new venture—the implementation of a Uniform Civil Code (UCC) in India. The UCC is a proposal to replace existing personal laws with a unified set of regulations governing various aspects such as marriage, divorce, guardianship, inheritance, adoption, succession, and maintenance, transcending religious boundaries. Recent developments, including the introduction of the Uniform Civil Code in India Bill, 2020, suggest a renewed momentum in this contentious debate.

### **POLITICAL LANDSCAPE:**

On December 9, 2020, BJP Rajya Sabha member Kirodi Lal Meena presented a private member's Bill, aiming to establish a National Inspection and Investigation Committee responsible for formulating a UCC. The Bill seeks to create a uniform legal framework applicable to all citizens, irrespective of their religious affiliations. The political spectrum responded with varying degrees of support and opposition. While the Left parties, Congress, Trinamool Congress, and the Samajwadi Party opposed the Bill, the Treasury benches advocated for a debate. Ultimately, the Bill was introduced with 63 votes in favour and 23 against, though noteworthy absentees from Congress and Trinamool added intrigue to the vote.

**STATE INITIATIVES:**

In a parallel development, several BJP-led state governments have embarked on the journey of formulating their own versions of the UCC. Uttarakhand took a pioneering step by initiating extensive consultations in June 2022, constituting a panel comprising retired judges and experts to delve into the practicalities of implementing a UCC. The states of Gujarat and Himachal Pradesh subsequently announced their intent to form similar panels, reflecting a growing trend among BJP-led administrations to address personal laws at the regional level.

**CONSTITUTIONAL FRAMEWORK:**

Responding to queries in the Rajya Sabha, Union Minister of Law and Justice Kiren Rijiju invoked Article 44 of the Constitution, which falls under the Directive Principles of State Policy. This article recommends the state to endeavor towards securing a uniform civil code throughout India. States possess legislative powers concerning intestacy and succession, wills, joint family and partition, and marriage and divorce, as outlined in Entry 5 of List III in the Concurrent List of the Seventh Schedule of the Constitution.

**UTTARAKHAND'S PROGRESSIVE APPROACH:**

The Uttarakhand government's proactive approach towards the UCC has yielded substantial public feedback, surpassing the suggestions received by the 21st Law Commission during its two-year deliberation on the subject. Notably, religious leaders voiced support for a UCC, advocating the prohibition of practices like polyandry and polygyny. The committee also grappled with suggestions related to family size restrictions and addressed concerns about the rights of children born out of live-in relationships.



### **GENDER EQUALITY AT THE FOREFRONT:**

Emphasizing gender equality, the Uttarakhand committee prioritizes the voices of women in the formulation of the UCC. The committee's focus on making laws gender-neutral and the receptiveness of the intellectual segment across communities suggests a concerted effort to bridge gender disparities embedded in existing personal laws.

### **PARLIAMENTARY STANDING COMMITTEE'S INQUIRY:**

Simultaneously, a Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice, chaired by Sushil Kumar Modi, is conducting a comprehensive "Review of Personal Laws." The committee aims to explore the possibility of codifying personal laws to address societal changes and eliminate discriminatory practices. It seeks input on resolving conflicts between personal laws and fundamental rights, ensuring gender justice, addressing social evils masked as religious customs, and reforming personal laws in exempted States under the Sixth Schedule.

### **AMIT SHAH'S PRONOUNCEMENT:**

Union Home Minister Amit Shah, at an event in November 2022, unequivocally stated that if the BJP secures victory in 2024, the government will implement a UCC. He argued that in a secular nation, laws should not be based on religion, emphasizing the need for uniformity in legal frameworks across diverse beliefs.

### **EXPERT OPINIONS:**

Notwithstanding the political posturing and fervent declarations, legal experts caution against equating equality with uniformity. Former Law Commission member and Supreme Court lawyer Kirti Singh contends that extensive consultations, particularly with women's rights advocates, are imperative for any amendments to be meaningful. She highlights existing gaps in laws, such as the Hindu Minority and Guardianship Act of 1956, which grant preferential treatment to fathers over mothers in guardianship matters.

Sanjay Hegde, a senior advocate at the Supreme Court, challenges the efficacy of a UCC, asserting that uniformity may be elusive when some forms of marriage are legal in certain states but prohibited in others. He points to the Goa civil code as an example, which, while used by all communities, accommodates different types of marriage.

### **CONSTITUTIONAL CHALLENGES:**

Constitutional expert P.D.T. Achary raises pertinent questions about the practicality of implementing a UCC. He questions whether a uniform law would be applicable to all, considering the diverse succession laws and religious practices across communities. Achary emphasizes the need for harmonization, questioning whether the Hindu Marriage Act would serve as a template or if other communities' laws and practices would align with Hindu law.

### **THE UNRESOLVED DEBATE:**

As the debate over the Uniform Civil Code in India continues, it remains a complex and nuanced subject that intertwines legal, social, and political dimensions. The proponents argue for a harmonized legal framework that promotes equality and justice, while critics express concerns about the potential erosion of cultural and religious diversity. The path towards a UCC, if pursued, requires delicate consideration of diverse perspectives, extensive consultations, and a nuanced understanding of the intricate web of personal laws that shape the social fabric of India.

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# Case Laws

1. In **New India Assurance Co Ltd v. M/S Mudit Roadways**, the Supreme Court recently held that in a fire insurance claim, the Supreme Court recently held that the exact cause of the fire is immaterial if the insured is not implicated as the one responsible for initiating the fire. This principle, grounded in the *Canara Bank v. United India Insurance Company* (2020) 3 SCC 455 case reinforces the insurer's duty to honor the terms of the insurance policy and fulfill its obligations to the insured. The Court further observed “Therefore, it was unequivocally declared that the precise cause of a fire, whether attributed to a short circuit or any alternative factor, remains immaterial, provided the claimant is not the instigator of the fire. This case underscored the fundamental principle that an insurance company’s obligation to the insured is of much greater import.
2. In **Ramkrishna Forgings Limited v Ravindra Loonkar & Anr.**, the Supreme Court has set aside an order whereby the National Company Law Tribunal (“NCLT”) kept the approval of a resolution plan in abeyance while directing an Official Liquidator to conduct re-valuation of the Corporate Debtor’s assets. Consequently, the order of National Company Law Appellate Tribunal (“NCLAT”) affirming the NCLT’s order has also been set aside. The Bench comprising Justice Vikram Nath and Justice Ahsanuddin Amanullah, has held, “In the case at hand, we find that there was no occasion before the Adjudicating Authority NCLT to be swayed only on the per se ground that the hair-cut would be about 94.25% and that it was not convinced that the fair value of the assets have been projected in proper manner as the bid of the appellant was very close to the fair value of the assets of ACIL. Ordering revaluation of the assets, by the OL, Ministry of Corporate Affairs, Government of India, in-charge of the particular area, cannot be justified.

3. In **P. Kishore Kumar v. Vittal k. Patkar**, reiterating that revenue records are not documents of title, the Supreme Court held that mere mutation of revenue records would not divest the real title-owners of a land of their right, title and interest in the land. Referring to a catena of precedents, the Court observed that "mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question".
4. In **Ankita Thakur & Ors v The HP Staff Selection Commission**, Supreme Court recently reiterated that eligibility criteria for a post, as set out in the Rules, could not be relaxed unless the said relaxation was envisioned in the Rules or advertisements for the post. Further, in case of any such relaxation passed, the same had to be widely publicised to be held valid.
5. In **Maharashtra State Electricity Distribution Company Limited v. Ratnagiri Gas and Power Private Limited & Ors**, the Supreme Court recently reiterated the need of interpreting commercial contracts in alignment with the original intent of the parties involved. It also opined that a deviation from the plain terms of the contract is warranted only when it serves business efficacy better.
6. In **M/s. Rajasthan Art Emporium v. Kuwait Airways & Anr.**, the Supreme Court held that an authority is bound by the promise held by its agent under the Indian Contract Act. The Apex Court held so in the context of a consumer dispute, where Kuwait Airways, through its agent, Dagga Air Agents, had fixed a schedule of 7 days for delivery of certain goods. The Court held that the Airline was liable to pay the complainant damages for the delay in delivering the consignment.



7. In **Shakeel Ahmed v. Syed Akhlaq Hussain**, the Supreme Court recently held that no title could be transferred with respect to immovable properties on the basis of an Agreement to Sell or on the basis of a General Power of Attorney. The court further observed that:

“...no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882”.

# Compliance Checklist

## COMPLIANCE CALENDAR FOR DECEMBER 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Income Tax Related Compliance	
	TDS Payment for Nov 2023
	Professional Tax (PT) on Salaries for Nov 2023
	Advance tax Payment for Oct to Dec 2023
	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Nov 2023
	Due date for Belated and Revised Income Tax Filing for AY 2023-24 for all Non Corporate's and Corporate's
GST Related Compliance	
	<ul style="list-style-type: none"> <li>GSTR 1 (Monthly) for Nov 2023</li> </ul>
	<ul style="list-style-type: none"> <li>GSTR 1 IFF (Optional) (Nov 2023) for QRMP</li> </ul>
	<ul style="list-style-type: none"> <li>GSTR 3B for Nov 2023 (Monthly)</li> </ul>

	<ul style="list-style-type: none"><li>• GST Challan Payment if no sufficient ITC for Nov 2023 (for all Quarterly Filers)</li></ul>
	<ul style="list-style-type: none"><li>• GST Annual Return Filing for FY 2022-23(GSTR-9 &amp; 9C)</li></ul>
Provident Fund Related Compliance	
	<ul style="list-style-type: none"><li>• Provident Fund (PF) &amp; ESI Returns and Payment for Nov 2023</li></ul>

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