

Benefits under Start-up India

The Government of India has been promoting innovation, technological development, wealth generation in India by encouraging start-ups through various plans. One such plan is the '19-point Start-Up India Action Plan'. Under this plan the Government has set up an INR 2,500 crore fund annually for four years amounting to a corpus of INR 10,000 Crore to nurture the Start-ups. A 945 crore Rs. Startup India Seed Fund Scheme (SISFS) should also become operational from April 2021^[1]. Through this initiative the aim is to provide tax deduction benefits, free registration, tax deductions to investors while investing in start-ups along with easier exit provisions.^[2]

Recognition under the Start-Up India Action Plan

In order to avail the benefits under the Start-Up India Action Plan, an entity is required to fulfil the following conditions:^[3]

1. The entity shall be considered a startup upto a period of **ten years** from the date of incorporation/registration (whether a private limited company, a partnership firm or a limited liability partnership firm).
2. Turnover for that entity has **not exceeded Rs. 100 crores** in any financial year from the date of incorporation/registration.
3. That entity is working towards **innovation, development or improvement** of products or process or services or it is a scalable business model (meaning that the model of business would generate revenue at the rate that it outpaces the expenses of that business while generating employment and creating wealth).^[4]
4. File an application for recognition as a start up

Any entity which has exceeded the duration of 10 years or has exceeded the above-mentioned turnover will cease to be a Start-up under this notification, Moreover, an entity which was already in existence and has been formed again either through splitting up or reconstruction will not be considered as a Start-up.



Registration: Procedure to be recognized as a Start-Up

A Start-up that fulfils the abovementioned conditions is then required to obtain recognition as a start-up. Such a recognition can be obtained by submitting an application for registration either on the mobile application or the online portal of Department of Industrial Policy and Promotion (“DIPP”).

- After logging into the application/online portal, the details of the Start-up must be filed which include the registration details of the entity, the phone number, email ID etc. along with the following:
 1. A copy of the Certificate of Incorporation or registration; and
 2. A write-up that would explain how your startup is working towards innovation, development or improvement of products or processes or services or scalability of business.

The DIPP may call for further documents or information and make enquiries. After such enquiry the DIPP reserves the right to either recognize the entity as a startup or reject the application providing reasons for rejection.^[5]

The Inter-Ministerial Board of Certification (“IMBC”) will (if the application is approved) provide the applicant Start-up with a Certificate of Approval, but where it is found that the information in the documents which were sent for approval is false, the Board reserves the right to revoke such a certificate, and in such a case it will be deemed that the certificate of approval had never been issued.

Benefits:

Exemption under section 80-IAC of Income Tax Act, 1961^[6]

The Government, keeping in mind how difficult it can be for a Start-up to survive in the initial years, has provided the benefit of tax-haven to Start-ups. While computing the total income of assessee entity i.e. an eligible startup, an amount equal to one hundred percent of the profits and gains derived from such eligible business shall be allowed for deduction. This deduction can be availed for three consecutive years out of ten years beginning from the year in which the startup is incorporated.^[7]

Conditions

In order to avail this benefit the Startup must satisfy the following conditions:

1. An eligible start-up would include a start-up which is:
 - Not formed by splitting up, reconstruction of a business already in existence, this condition shall not apply to a start-up formed as a result of re-establishment, reconstruction or revival by the assessee of the business of an undertaking referred in section 33B of The Income Tax Act.
 - Not formed by the transfer to a new business of machinery or plant previously used for any purpose.^[8]

1. The income includes profits and gains from eligible business.^[9]
2. The deduction may be claimed by the assessee of the startup for any three consecutive years out of the seven years beginning from the year of incorporation of the Start-up.^[10]
3. For the purpose of computing deduction, the eligible business shall be considered as the only source of income upto the year for which the determination is to be made^[11]
4. The accounts for which the deduction is claimed must be audited by an accountant and the assessee must furnish along with the return of Income the report of such an audit in the prescribed form duly signed and verified by such an accountant^[12]
5. If the benefits of deduction under this section have been availed by the assessee, the assessee shall not be allowed any other deduction under provisions of Chapter “Deductions in respect of certain Income”. In no case shall the deduction exceed the profits and gains of such eligible business^[13]

How to avail this benefit

A Startup whether a private limited company, a partnership or a limited liability partnership firm incorporated on or after 1st day of April 2016 but before 1st day of April 2021 with the prescribed turnover limit can apply to the Inter-Ministerial Board of Certification with documents specified in the Form-1 (as prescribed in the notification^[14]). Thereafter, the IMBC will either grant the certificate under sub-clause (c) of clause (ii) of the Explanation of sub-section 4 of Section 80-IAC of the act or reject the application providing the reasons, as the case may be.

Exemption under Section 56(2) (viib) of Income Tax Act, 1961

Inserted by the Finance Act of 2016, this provision provides for a deduction which can be availed by the eligible Start-up where an investment is made by specific investors. The deduction is provided on the consideration received for issue of shares that exceed the face value of such shares and the aggregate consideration received for those shares exceed the fair market value of those shares^[15]. In more clearer terms, where the issue price of the shares exceeds both, the face value and the fair market value, the taxable amount is the difference between the price at which the shares were allotted and the fair market value, which is exempted under this section.

Conditions

For start-ups:

1. It should not be a company where public is substantially interested
2. The aggregate amount of paid-up share capital and premium and share premium of the startup after the proposed issue of shares does not exceed Rs. 25 crores.
3. Start-up has obtained a report from a merchant banker specifying the fair market value of shares under rule 11UA of Income tax rules, 1962.
4. The start-up cannot invest in certain specified assets for a period of seven years from the end of the latest financial year in which shares are issued at premium.

For the investor/proposed investor:

1. The investor should have returned income of Rs. 50 Lakh or more for the financial year preceding the year of investment/proposed investment
2. Investor should also have net worth of Rs. 2 crores or more, or the amount of investment made/proposed to be made in the Start-up, whichever is higher, as on the last date of the financial year preceding the year of investment/proposed investment.

How to avail this benefit

The Applicant-Start-up must take approval of IMBC by way of an application accompanied by the documents specified in the form. After calling for any additional documents and information, as may be required, IMBC may grant approval specifying details of the investor, amount of premium on which shares are to be issued and the date by which the shares are to be issued. It may also reject the application stating reasons for the same.

Procedure for Self-Certification

For ease of setting up businesses, the Government has provided the Start-ups with the benefit of minimum regulation on labor laws providing them with an 'inspection-holiday' for the first year of setting up of the Start-up and will be expected to submit an online self-declaration instead.

The six labor laws under which the inspections are usually conducted include:

- The Building and other Construction Workers' (Regulation of Employment and conditions of Service) Act, 1996
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979
- The Payment of Gratuity Act, 1972
- The Contract Labor (Regulation and Abolition) Act, 1952
- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
- The Employees State Insurance Act, 1948

An online portal has been set up under the '19-point Start-Up India Action Plan for filing self-certification at the 'Shram Suvidha Portal'

Assistance with Patent Applications by Start-ups

In order to promote innovation and protect the IPR of start-ups the Government of India has introduced the Scheme for Facilitating Start-ups Intellectual Property Protection (SIPP). Under the SIPP scheme a facilitator will be appointed by the Controller General of Patent, Trademark and Design (CGPDTM) who will assist the start-ups in the following manner:

- Providing general advisory on intellectual property rights to startups on pro bono basis,
- Providing information on protecting and promoting IPRs to startups in other countries on pro bono basis,
- Providing assistance in filing and disposal of the IP applications related to patents, trademarks and design under relevant Acts at the national IP offices under the CGPDTM
- Drafting complete provisional specifications for inventions of startups,

- Preparing and filing responses to examination reports and other queries, notices or letters by the IP office,
- Appearing on behalf of the startup at hearings as may be scheduled,
- Contesting opposition, if any, by other parties, and
- Ensuring final disposal of the IPR application.

For providing the above-mentioned services the facilitator will not charge the start-up but will be compensated by the Government through the office of CGPDTM.

Apart from assisting the start-ups with the necessary services, the Government has also provided for an expedited examination of patents. As per Rule 24C of the Patent Rules as amended in 2016^[16], a request for expedited examination can be filed with the prescribed fees in Form 18A along with the fee as specified in the first schedule by electronic transmission duly authenticated within the period prescribed in the rules. The relevant authority responsible for processing such an application may direct the applicant to show proof that the applicant is indeed a start-up, recognized by the DIPP.

Faster Exit for Startups

An important aspect considered while establishing a business is the cost of winding-up in case the business fails to achieve projected growth. These winding-up costs, litigation and documentation can take a toll on the person entering into an industry. The Government has made an effort to ease these procedures through The Insolvency and Bankruptcy Code, 2016 which provides that the corporate insolvency resolution process shall be concluded in a 180 days period from the admission of application (which can be extended for 90 days but not exceeding 330 days)^[17].

The Insolvency & Bankruptcy Board of India has notified Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 which will be applicable on the following categories of corporate debtors:^[18]

- A small company, as defined under clause (85) of section 2 of The Companies Act, 2013; or
- A Start-Up (other than a partnership firm), as defined in the notification dated 23rd May, 2017 of Ministry of Commerce and Industry; or
- An unlisted company with total assets, as reported in the financial statement of the immediately preceding final year, not exceeding Rs. 1 crore.

The initiation of the proceedings can be done by a creditor, or the corporate debtor itself, this cuts down most of the complexity of the insolvency procedure.^[19]

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- [1] Department for Promotion of Industry and Internal Trade, Startup India Section Notification the 21st January, 2021 S.O. 414(E)
- [2] Action Plan January 16, 2016, page 13
- [3] Gazette Notification No. G.S.R. 127(E), notified on 19th February, 2019
- [4] Department of Industrial Policy and Promotion (DIPP) Notification G.S.R. 364E, dated 11th April, 2018
- [5] DIPP Notification G.S.R. 364E, dated 11th April, 2018
- [6] The Finance Act, 2016 NO. 28 OF 2016
- [7] Ins. by Income Tax Act 28 of 2016 s. 42, (w.e.f. 1-4-2017)
- [8] Section 42, The Finance Act, 2016 NO. 28 OF 2016
- [9] Section 80IA (5), The Income Tax Act, 1961
- [10] Section 80IAC (2) The Income Tax Act, 1961
- [11] Section 80IA (5), The Income Tax Act, 1961
- [12] Section 80IA (7), The Income Tax Act, 1961
- [13] Section 80IA (9), The Income Tax Act, 1961
- [14] Gazette Notification No. G.S.R. 127(E), notified on 19th February, 2019
- [15] Para 4, DIPP Notification G.S.R. 364E, dated 11th April, 2018
- [16] The Patent Amendment Rules, 2016 G.S.R.523(E)
- [17] Section 12 Of Insolvency & Bankruptcy Code
- [18] Press Release by Insolvency and Bankruptcy Board of India dated 15th June 2017
- [19] Section 55(2), The Insolvency Bankruptcy Code, 2016