

# STARTUP INDIA

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## What is Startup scheme of Indian Government?

Startup India is a flagship initiative of the Government of India (launched in January 2016), intended to build a strong ecosystem for nurturing innovation and startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design. In order to meet the objectives of the initiative, Government of India announced Startup India Action Plan that addresses all aspects of the Startup ecosystem.

## Objectives of Startup India

The Action Plan is based on three pillars:

- Simplification and Handholding
- Funding Support and Incentives
- Industry-Academia Partnership and Incubation

## Defination of Startup<sup>1</sup>

An entity shall be considered as a Startup

- Upto a period of 10 years from the date of incorporation/ registration, if it is incorporated as a Private Limited Company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a Limited Liability Partnership (under the Limited Liability Partnership Act, 2008) in India
- Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs 100 crores
- Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation

**Note 1:** Any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'Startup'.

**Note 2:** An entity shall cease to be a Startup on completion of ten years from the date of its incorporation/registration or if its turnover for any previous year exceeds one hundred crore rupees

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<sup>1</sup> Notification no. Gsr 127 (e) [f.No.5 (4)/2018-Si], dated 19-2-2019

## Process of Recognition

The process of recognition as a 'Startup' is through an online application<sup>2</sup> set up by the Department of Industrial Policy and Promotion. Entities are required to submit the online application along with the Certificate of Incorporation/ Registration and other relevant details as may be sought. Startups also have to submit a write-up about the nature of business highlighting how is it working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.

In order to obtain tax benefits, an eligible Startup incorporated after 1st April 2016 should obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification<sup>3</sup> as constituted by Department of Industrial Policy and Promotion from time to time.

Once an entity is eligible to be a startup, the application of it would be shared with the Inter-Ministerial Board for evaluation. The entity would be able to avail the Tax benefits only on certification from the Inter-Ministerial Board (IMB)



<sup>2</sup> [www.startupindia.gov.in](http://www.startupindia.gov.in)

<sup>3</sup> The Inter-Ministerial Board constituted for furnishing certificate of eligibility to Startups for availing tax benefits under the Income Tax Act, 1961 will consist of following :

- i. Joint Secretary, Department of Industrial Policy & Promotion
- ii. Representative of Department of Biotechnology
- iii. Representative of Department of Science & Technology, and

Further, Secretary, Department of Industrial Policy and Promotion may nominate representative from any other Department to the Inter-Ministerial Board, as may be deemed necessary

## Benefits under Startup Scheme

### Non-Tax Benefits

- **Labour and Environmental Law:** Self-certification compliance by Startups to reduce the regulatory burden in the labour and environmental laws have been introduced. Self-certification can be done in respect of Labour Laws<sup>4</sup>, Ministry of Labor has now increased the tenure of compliance of self-certification under 6 Labour laws from 3 to 5 years, twenty seven states have also complied with such regime and Environment Laws<sup>5</sup> for white category of industries i.e. startups falling under the list of 36 “white<sup>6</sup>” category industries will not require Environment clearance under 3 Environment related Acts.
- **Start India Hub:** Ministry of Commerce & Industry launched the Startup India Virtual Hub on 1st April, 2016. Hub is an on-line platform for all the stakeholders in the entrepreneurial ecosystem in India to discover & connect with each other. The portal will host startups, inventions, funds, incubators and more.
- **Incentives by Reserve Bank of India (RBI)**
  - a. External Commercial borrowing: RBI has issued relaxed norms for startups for external borrowing upto USD 3 million for minimum average maturity of three years. Lenders can be resident of FATF<sup>7</sup> member countries.
  - b. Foreign Currency Bank Accounts: In line with the Government of India’s startup initiative, it has been decided that an Indian startup, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary. The balances held in such accounts, to the extent they represent exports from India, shall be repatriated to India within nine months. Further in addition, payments received in foreign exchange by an Indian startup arising out of sales/ export made by the startup or its overseas subsidiaries will be a permissible credit to the Exchange Earners Foreign Currency (EEFC) account maintained in India by the startup.

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<sup>4</sup> Labour Laws includes (Indicative list):

- The Building and Other Constructions Workers’ (Regulation of Employment & Conditions of Service) Act, 1996
- The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979
- The Payment of Gratuity Act, 1972
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952
- The Employees’ State Insurance Act, 1948

<sup>5</sup> Environment Laws includes (Indicative list):

- The Water (control of Pollution) Act, 1974
- The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003
- The Air (Prevention & Control of Pollution) Act, 1981

<sup>6</sup> List can be provided on request

<sup>7</sup> Financial Action Task Force



- c. Enabling start-up enterprises, irrespective of the sector in which they are engaged, to receive foreign venture capital investment and also explicitly enabling transfer of shares from Foreign Venture Capital Investors to other residents or non-residents;
- d. Other proposed important measure:
  - i. Permitting, in case of transfer of ownership of a start-up enterprises, receipt of the consideration amount on a deferred basis as also enabling escrow arrangement or indemnity arrangement up to a period of 18 months;
  - ii. Enabling online submission of A2 forms for outward remittances on the basis of the form alone or with document(s) upload/submission, depending on the nature of remittance; and
  - iii. Simplifying the process for dealing with delayed reporting of Foreign Direct Investment (FDI) related transaction by building a penalty structure into the regulations itself.
- **Deposits:** A private company which is a start-up, for ten years from the date of its incorporation can accept any amount as deposits from its members, subject it does necessary compliances and files the details of monies so accepted to the Registrar of companies in Form DPT-3.
- **Procurement by government:** in order to create a conducive ecosystem for growth of Startups and provide an equal platform to Startups vis-à-vis the experienced entrepreneurs/companies in public procurement, relaxed norms of public procurement for micro and small enterprises have been provisioned in the Procurement Policy of Ministry of Micro, Small and Medium Enterprises (MSME). Department of Expenditure has also notified that all Central Ministries / Departments shall relax condition of prior experience and prior turnover in public procurement to all Startups (whether MSEs or otherwise) subject to meeting of quality and technical specifications. Department of Public Enterprises has expanded the relaxation to Central Public Sector Undertakings (CPSUs)
- **Easy Exit:** Startup Schemes aims to promote entrepreneurs to experiment with new and innovative ideas, without having the fear of facing a complex and long-drawn exit process where their capital remain interminably stuck. Being innovative is crucial for the success and in the event of failure startups are allowed to allocate their resources and capital in other operations, making it easier for Startups to wind up operations. For the purpose of faster winding up under Insolvency and Bankruptcy Code, 2016, the Ministry of Corporate Affairs brought into force the relevant section 55 to 58 of the Insolvency and Bankruptcy Code, 2016 on 16th June 2017, which aims to expedite the insolvency resolution process of certain specified entities including start-ups. As per this, now start-ups will be eligible to close their insolvency process quickly within a period of 90 days of filing the application instead of 180 days for other entities.

## Tax benefits under Indian Income tax Act

### Definition of Startup as per Income tax act-Section 80-IAC

“Eligible start-up” means a company or a limited liability partnership engaged in eligible business which fulfils the following conditions, namely:—

- a. it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2021 ;
- b. the total turnover of its business does not exceed twenty-five crore rupees in any of the seven previous years beginning from the year in which it is incorporated; and
- c. it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government;

**Eligible Business** means a business carried out by an eligible start up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.



## Income Tax Exemptions to Startups

### 1. Deduction of 100% of profit for 3 years:

As per Section 80-IAC, start-up can claim deduction of 100% its profits for 3 consecutive years out of 7 years, beginning from the year in which start-up is incorporated.

#### Conditions :

The provision of Section 80-IAC shall apply to start-up which fulfills the following conditions:

- i. it is not formed by splitting up, or the reconstruction, of a business already in existence: Provided that this condition shall not apply in respect of a start-up which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B<sup>8</sup>, in the circumstances and within the period specified in that section.
- ii. it is not formed by the transfer to a new business of machinery or plant previously used for any purpose. However, this condition would not be applicable if value of such used plant and machinery does not exceed 20% of total value of plant and Machinery used in the business.

Further, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if all the following conditions are fulfilled, namely:

- i. such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- ii. such machinery or plant is imported into India;
- iii. no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

### Certification for the purposes of section 80-IAC of the Act

A Start-up being a private limited company or limited liability partnership, which fulfils the conditions specified in sub-clause (i) and sub-clause (ii) of the Explanation to section 80-IAC of the Act, may, for obtaining a certificate for the purposes of section 80-IAC of the Act, make an application in Form-1 along with documents specified therein to the Board and the Board may, after calling for such documents or information and making such enquires, as it may deem fit -

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<sup>8</sup> Undertaking means any undertaking which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining

- grant the certificate referred to in sub-clause (c) of clause (ii) of the Explanation to section 80-IAC of the Act; or
- reject the application by providing reasons.

## 2. Exemption from tax on long-term capital gains -Section 54GB

Government has provided capital gain tax exemption under section 54GB to those investors who liquidate their personal assets to fund their startups.

As per this provision, any long-term capital gains arising to Individual or HUF on account of transfer of a residential property (house or plot of land) shall not be charged to tax if he utilizes its net consideration for subscription in equity shares of a company which qualifies to be an eligible startup.

Further, such eligible start-up, shall utilize this consideration received on shares within one year from the date of its subscription for purchase of new plant and machinery (in case of technology driven start-up it shall also include computer or computer software).

### Other Conditions :

- Such eligible start-up cannot sell or transfer equity shares within 5 years of its acquisition. If it does so, then capital gains exempted earlier shall be charged to tax in the year in which such shares are sold.
- Such eligible start-up cannot sell or transfer new plant and machinery within 5 years of its acquisition. However, in case of computer or computer software the time-limit for holding of asset is 3 years. If it does so, then capital gains exempted earlier shall be charged to tax in the year in which such plant and machinery or computer or computer software is sold.

## 3. Tax exemption from capital gains u/s 54EE

Section 54EE has been introduced in Income tax act, 1961 to provide exemption from capital gains tax if the long term capital gains proceeds are invested by an assessee in units of such specified fund, as may be notified by the Central Government in this behalf, subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn.

The investment in the units of the specified fund shall be allowed up to Rs. 50 lakh. If the units of specified fund transferred by the assessee at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred.



#### 4. Exemption from angel tax

As per the provisions of Section 56(2)(viib) of the Income Tax Act 1961, where a company receives any consideration for issue of shares above its Fair Market Value (FMV) of the shares, such excess consideration is taxable in its hands as under the head Income from Other Sources. Such tax is also known as "angel tax". However, startups shall be eligible for exemption<sup>9</sup> from such provision if it fulfils the following conditions:

- i. it has been recognised by DPIIT under para 2(iii)(a) or as per any earlier notification on the subject
- ii. aggregate amount of paid up share capital and share premium of the startup after issue or proposed issue of share, if any, does not exceed, twenty five crore rupees

*A startup fulfilling conditions mentioned in para 4(i) and para 4(ii) above shall file duly signed declaration in Form 2 to DPIIT that it fulfills the conditions mentioned in para 4. On receipt of such declaration, the DPIIT shall forward the same to the CBDT.*

Provided that in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of Rs 25 crores in respect of shares issued to any of the following persons shall not be included :

- a. Non-resident
  - b. Venture capital company or a venture capital fund.
  - c. Specified company<sup>10</sup>
- iii. It has not invested in any of the following assets :-
- Residential and non-residential land or building [other than that used by the Startup for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business];
  - Loans and advances [other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business]
  - Capital contribution to any other entity
  - shares and securities
  - a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees [other than that held by the Startup for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business]
  - jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;
  - any other asset, whether in the nature of capital asset or otherwise, of the nature specified in sub-clauses (iv) to (ix) of clause (d) of Explanation to clause (vii) of sub-section (2) of section 56 of the Act.

<sup>9</sup> As per notification no. 13/2019, Dated 5-3-2019 and notification no. Gsr 127 (e) dated 19-2-2019

<sup>10</sup> "specified company" means a company whose shares are frequently traded within the meaning of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds one hundred crore rupees or turnover for the financial year preceding the year in which shares are issued exceeds two hundred fifty crore rupees

**Note:** The Startup shall not invest in any of the aforesaid assets for the period of seven years from the end of the latest financial year in which shares are issued at premium.

## 5. Set-off and carry forward of losses in case of change of shareholding [Section 79]

In the case of a company being an eligible start-up, loss shall be carried forward and set off against the income of the previous year, even if a change in shareholding has taken place in a previous year, subject to the condition that

- all the shareholders of such company on the last day of the year or years in which the loss was incurred, continuing to hold those shares on the last day of such previous year and
- such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

### CBDT's clarification on start-ups<sup>11</sup>

CBDT dispelled the confusion created by some media report claiming discrepancy that the Income tax law was yet to reflect DPIIT's higher turnover threshold of Rs. 100 crore. CBDT said that there was no contradiction in DPIIT's notification dated 19.02.2019 and Section 80-IAC of the I.T. Act, 1961.

Accordingly, the CBDT had clarified that all the start-ups recognised by DPIIT which fulfilled the conditions specified in the DPIIT notification did not automatically become eligible for deduction under Section 80-IAC of the Act. A start-up has to fulfil the conditions specified in Section 80-IAC for claiming this deduction. Therefore, the turnover limit for small start-ups claiming deduction is to be determined by the provisions of Section 80-IAC of the Act and not from the DPIIT notification.

### Assessment of start-ups<sup>12</sup>

Central Board of Direct Taxes (CBDT) has issued a consolidated circular 22/2019 dated 30 August, 2019 and Press release dated September 2, 2019 which deals with the matters relating to assessment of start-ups, time limit for completion of their pending assessments, procedure for addition made under section 56(2)(viib) of the Act in the past assessment, outstanding income tax demands and constitution of start-up cell.

**This circular consolidates all these circulars and further clarifies as under:**

S. No	Particulars	Procedure to be followed	Time-Limit for completion of assessment
1.	In case of Startup companies recognized by DPIIT which have filed Form No. 2 and whose cases are under "limited scrutiny" on the single issue of applicability of section 56(2)(viib) of the Income Tax Act	No verification to be done by Tax Officer(TO). The contention of the assessee will be summarily accepted.	30th September, 2019

<sup>11</sup> CBDT Press Release dated, 22-08-2019

<sup>12</sup> CIRCULAR NO. 22/2019, dated 30-08-2019

2.	Start-ups recognised by the DPIIT which have filed Form No. 2 and the case is selected under “limited scrutiny” with multiple issues or under “complete scrutiny,” including the issue of applicability of section 56(2)(viib) of the Act	The issue of applicability of section 56(2)(viib) of the Act not to be pursued. • Inquiry/ verification with regard to other issues shall be carried out by the TO only after obtaining approval of the supervisory officer	Scrutiny Assessments should be taken up on priority and should be preferably completed by 31st October, 2019
3.	Start-ups recognised by the DPIIT which have not submitted declaration in Form No. 2, and the case is selected for scrutiny inter alia on the ground of applicability of section 56(2)(viib) of the Act or any other issues.	Inquiry/ verification shall be carried out by the TO only after obtaining approval of the supervisory officer	Scrutiny Assessments should be taken up on priority and should be preferably completed by 31st October, 2019

### Procedure for addition made u/s 56(2)(viib) in the past assessment

Vide clarification issued on 9th August, 2019 it was provided that the provisions of section 56(2)(viib) of the Act would also not be applicable in respect of assessment made before 19th February, 2019 if a recognised Start-up had filed declaration in Form No. 2.

The following procedure is laid down with regard to addition made under section 56(2)(viib) of the Act in assessment order passed before 19th February, 2019:

S. No.	Particulars	Procedure to be followed
1.	In case the appeal against the assessment is pending before the Commissioner of Income-tax (Appeal) [CIT(A)]	Appellate order should be passed by CIT(A) on or before 31st December, 2019 after taking into account the fact that the Startup has filed declaration in Form No. 2 and, hence, provisions of section 56(2)(viib) are not applicable; Department shall not file further appeal on the issue of addition made under section 56(2)(viib) of the Act
2.	In case the case is pending before the ITAT	Department shall not press the ground relating to addition under section 56(2)(viib) of the Act in these cases
3.	Outstanding Income-tax demand relating to additions made under section 56(2)(viib)	Demand shall not be pursued and no communication with the assessee in respect of outstanding demand shall be made for this purpose.

Further, in order to redress grievances and to address various tax related issues in the cases of Startups, a Startup Cell is constituted on 30th August, 2019.

## GST for Startups

### Basic Introduction to GST

#### 1. Registration

There is a basic exemption of GST registration for entities just started, which can be understood as follows :

The purpose of any registration of business is to collect tax on behalf of the government and to claim input tax credit on inward supplies. Without registration it is not possible to charge output tax and claim input tax credit. Under GST every supplier of goods or services needs to get registered. However, small scale business having services or both service and goods all India aggregate turnover below INR 2,000,000 (in case hill and north east states it is INR 1,000,000) need not required to get registered. However, such suppliers can opt a voluntary registration. And also person is not required to get registered if he is engaged in exclusive supply of goods and his aggregate turnover does not exceed INR 4,000,000 subject to following conditions:

- i. He is not required to take compulsory registration
- ii. He is not engaged in making supply of Ice cream and other edible ice, Pan Masala or Tobacco manufacture.
- iii. He is not registered in the state of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttrakhand
- iv. He is registered voluntarily under this Act.





Mandatory registration has been introduced for certain category of persons i.e. persons making interstate supplies (with certain exception), casual taxable persons, persons who are required to pay tax under reverse charge , person supplying online information & database access & retrieval services to non registered persons, non-resident taxable persons, persons required to deduct tax at source , e-commerce entities required to collect tax at source (with certain exception), persons supplying goods through e-commerce entities , input service distributors, agents.

The threshold amount includes all supplies made by the taxable person, whether on his own account or made on behalf of all his principals includes the aggregate value of all taxable supplies and exempt supplies of a person having same PAN but excludes the value of inward supplies on which tax is payable by a person on reverse charge basis.

### **Due date to take registration**

Every person is liable to take registration under GST when the taxable supply of goods or services or both cross the threshold limit as specified in the Act. Every person is liable to be registered within 30 days from the date on which he becomes liable to pay.

***Note:** Any supplier who is making supplies which are taxable under reverse charge and tax shall be paid by the recipient thereon; in such case no requirement for supplier to take registration under the Act.*

## **2. Types of taxes under GST**

There are 3 types of taxes under GST:

- i. Integrated Tax (IGST):** This tax is levied on all inter-state supplies, where buyer or seller belongs to different state
- ii. Central Tax (CGST):** This tax is levied by central government on all intra-state supplies, where buyer and seller belong to same state
- iii. State/Union Territory Tax (SGST/UTGST):** This tax is levied by state government on all intra-state supplies, where buyer and seller belong to same state

## **3. Compliances**

Every registered person is required to furnish returns as prescribed, electronically on GST portal.

### **GSTR 3B**

This is a summarized return required to file by every registered person on monthly basis on or before 20th of next month, wherein the total value of taxable and exempt supplies made during the month, total input tax credit availed during the month and payment of tax is required to disclose.

#### **GSTR 1**

This is detailed return required to file by every registered person on monthly or quarterly basis (as the case may be) on or before 10th of the next month in case of monthly return and 30th of the next month in case of quarterly return. The invoice wise details are required to be disclose in this return.

#### **GSTR 9**

This is an annual return which is required to be file on or before 31 December of the next financial year. This is consolidation of all monthly/quarterly returns.

#### **4. GST Rates**

GST rates for goods have been categorized into Nil, 0.25%, 3%, 5%, 12%, 18% and 28%, while for services there are four rates i.e. 5%, 12%, 18% & 28%. Twenty services are identified under reverse charge mechanism, while 86 services have been exempted.

#### **5. Concept of Input Tax Credit**

Uninterrupted and seamless chain of input tax credit is one of the key features of Goods and Services Tax to avoid cascading effect of tax. Every registered person subject to certain conditions or restrictions, is eligible to take input tax credit on inward supplies used in furtherance of business.

However, there are certain list of blocked credit which are not available to the tax payer (except the tax payer involve the similar nature of business) even used in the furtherance of business.

In order to put in place a transparent and user-friendly mechanism of availing input tax credit the government has introduced the invoice level matching concept for inward and outward supplies. This means a taxpayer is eligible to take credit of only those inward supplies for which the corresponding supplier has paid and reported the sales.

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