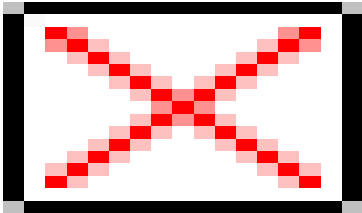


Start up for (income tax) benefits

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Introduction

"NEVER dream of becoming something, if you dream, dream of doing something!" Shri Narendra Modi, Hon'ble Prime Minister of India.

Start-up - A word that is extensively used now a day's rationalising the concept of creating new entrepreneurs and in joining hand in hand with Government in the development which materialises the dream of doing something for nurturing development through innovations.

Start-up India Initiative is aiming in developing a strong background of innovations and edifying entrepreneurship so as to convert India into a society of Job creators and not of job seekers. It is also intended to catalyse a start-up culture and build a strong and inclusive ecosystem of growth.

The Department for Promotion of Industry and Internal Trade (DPIIT) is coordinating implementation of Start-up India initiative with other Government Departments. Department of Science and Technology (DST), Department of Bio-technology (DBT), Ministry of Human Resource Development (MHRD), Ministry of Labour and Employment and Ministry of Corporate Affairs (MCA) and NITI Aayog have joined hands with DPIIT in developing and maintaining the Start up India Initiative of Government.

What is a start up?

As per Ministry of Commerce and Industry an entity shall be considered as start up for a period of 10 years if it is registered as company, LLP or partnership firm and working towards innovation, development and improvement of products, processes or service with a high potential of employment and wealth creation with turnover up to 100 crore rupees subject to the condition that it is not formed by splitting up or reconstruction of existing business.

Start up Registration

An entity in order to be recognised as a Start-up (i.e. to become eligible for benefits of schemes of Start up initiative of Government) , shall make an online application over the mobile app or portal (

https://www.startupindia.gov.in/content/sih/en/startupgov/startup_recognition_page.html.)

of DPIIT with prescribed supporting documents including a small write up about the proposed business/activities.

An entity shall be considered as a start up, on registration with DPIIT, up to 10 years from the date of its incorporation and will be eligible for benefits under Start up India initiatives.

Income Tax and Start ups

The Income Tax Act, 1961 provides various benefits to the so-called start-ups.

Section 80-IAC

Section 80-IAC (applicable to company or a limited liability partnership) of Income tax Act, 1961 provides exemption to tax for an amount equal to one hundred per cent of the profits and gains derived from such business for three consecutive assessment years in a period of 10 years of incorporated on or after 1st day of April, 2016 but before 1st day of April 2024* (*by Finance Bill 2023) on submission of Form 1 prescribed vide Notification GSR 127(E) dt 19/2/19 of DPIIT. Before claiming deduction under 80IAC, start up should gather Certificate from Inter-Ministerial Board of Certification .

Section 56(2)(viib)

Section 56(2)(viib) provides to tax a company in which the public are not substantially interested, if it receives, in any previous year, from any person being a resident(the word Resident been removed by proposed Finance Bill, 2023 from Asst. year 2024-25 onwards. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residential status) any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares, will be treated as income from other sources.

Notification No.13/2019 dated 6/3/2019(CBDT) prescribes exemption from taxability on full filling conditions specified in notification numbered G.S.R.127(E)/19/2/2019 issued by Ministry of Commerce and Industry

A start-up in order to claim the benefit as above shall file duly signed declaration in Form 2 prescribed vide Notification GSR 127(E) dt 19/2/19 of DPIIT that it fulfils the conditions for claiming the benefit. On receipt of such declaration, the DPIIT shall forward the same to the CBDT.

Section 54GB

Under Section 54GB - Capital gain on transfer of residential property will be exempted in case of Individual /HUF on long term capital gain from a residential property (a house or a plot of land), if the net consideration is used for subscribing the equity shares of an eligible start up subject to conditions mentioned there in.

Section 79

Under section 79 - In the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred: but relaxation of above share holding is given in case of an eligible start-up as referred to in section 80-IAC .

Benefits to employees of Start up

The value of specified security or sweat equity shares taxable under salary head issued by start up companies to its employees gets extended time for payment of tax under section 156/191/192 of Income Tax Act.

Conclusion

Many start ups forget, ignore or overlook to take start up registration which is a must for claiming any benefit of Start ups and filing declarations in prescribed forms mentioned *supra* with DPIIT for benefits under Income Tax Act and lose the benefits provided to start ups. Even though Notification GSR 127(E) dt 19/2/19 of DIPP read with CBDT Circular No [22/2019](#) dated 30/8/2019 and Circular No.[16/19](#) (F No.173/149/2019 ITA-1) dated 7/8/2019 allow exemption under Section 80IAC or 56(2)(viib) in spite of delay in filing statutory forms like Form 1, Form 2, as the case may be, entrepreneurs should be vigilant on timely compliance to avoid litigation and against losing incentives and benefits to start ups.

[The views expressed are strictly personal.]

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