



START-UP REGISTRATION AND TAX IMPLICATION

BACKGROUND

To transform the dream of our Hon'ble Prime Minister Mr. Narendra Damodardas Modi into a reality of making Indian economy the fastest and strongest among others, it's the people of India who have to take up the step to make India grow at the fastest possible rate.

To transform everyone in India from job seeker to job provider, PM Modi introduced one of the dream mission of this country- "Start-up India Stand-up India". Under this mission, government has been continuously introducing numerous schemes to inspire the young Indian minds to achieve its target of making India incredible again. With the start-ups having innovative ideas, India can obtain the world's cooperation and come up as one of the leading and dominating economy of the globe.

Since the inception, there has been various hurdles coming across this dream. The government has been regularly dealing with all the issues and at each point have favoured the Start-ups through various amendments and exceptions in the law. The idea has always been to rule out every hurdle coming across these start-ups and inspire them to stick to their work without worrying for the result. The Lord Krishna in the battlefield urged Arjun in the same manner to take action and perform, and to carry out his duty and responsibilities and quoted:

कर्मण्येवाधिकारस्ते मा फलेषु कदाचन ।

मा कर्मफलहेतुर्भूर्मा ते संगोऽस्त्वकर्मणि ॥

With the same thought, we the team INMACS have tried to summaries various benefits/incentives whether monetary or in kind provided by the government. We hope this will help young minds out there to bring the change in the world they wanted and inspire others in their journey.

WHAT IS A STARTUP?

According to the **Notification G.S.R. 127(E) dated 19th February 2019** issued by Department of Industrial Policy and Promotion (DIPP) of Ministry of Commerce and Industry, entity can be termed as "startup entity" and can enjoy number of incentives and assistance, extended by the Government if the following conditions are satisfied:

Entity shall be incorporated or registered in India:

- As a private limited company or registered as a partnership firm or a limited liability partnership;
- 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.; and
- Shall not be formed by splitting up or reconstruction of an existing business.

And entity shall cease to be a startup:

- On completion of ten years from the date of incorporation/registration for startup;
- Turnover of the entity for any of the financial years since incorporation/ registration exceeds one hundred crore rupees.

An entity fulfilling all the above conditions, need to apply to DIPP(The Department of Industrial Policy & Promotion) to be recognized as "startup" entity and avail all the benefits provided by the government of India.

However, further the Notification while giving tax benefit, clarified as under:

"Provided that the mere act of developing:

- products or services or processes which do not have potential for commercialization, or
- undifferentiated products or services or processes, or
- products or services or processes with no or limited incremental value for customers or workflow would not make a Startup eligible for tax benefits."

In view of the above Notification, prima facie, it is clear that mere development of product, process or service which lacks commercialization or which is not identifiable or which does not make value addition as such will not make business as eligible start-up.

WHAT IS INNOVATION ,DEVELOPMENT & IMPROVEMENT?

INNOVATION:

As per the general meaning, innovation means the action or process of innovating.

The meaning of "innovation" as defined or explained in various dictionaries are as under:

- It is an process of translating of an idea or invention into goods or services which creates value addition. [<http://www.businessdictionary.com/definition/information.html>]
- It is new idea, method, device or introduction of something new [<https://www.merriam-webster.com/dictionary/innovation>]
- It is a new thing or a new method of doing something. Innovation is the introduction of new ideas, methods, or things [https://www.collinsdictionary.com/dictionary/english/ innovation/](https://www.collinsdictionary.com/dictionary/english/innovation/)]

[<http://www.dictionary.com/browse/innovation>]

- "The process by which entrepreneurs put the new ideas into commercial use" [Taxmann's Dictionary for Chartered Accountants/Company Secretaries/Cost Accountants/Corporate Professionals by Dhruva Dutta Chowdhury, Page 816]

DEVELOPMENT:

As per the general meaning 'development' means a process of developing or being developed or some time an event constituting a new stage in a changing situation.

The meaning of "development" as defined or explained in various dictionaries are as under:

- "The process in which someone or something grows or changes and becomes more advanced" <https://dictionary.cambridge.org/dictionary/english/development>
- "The act, process, or result of developing the development of new ideas" <https://www.merriam-webster.com/dictionary/development>
- Development is the gradual growth of something (like business or industry) or formation of something. It is process of making basic things gradually better and more advanced. [<https://www.collinsdictionary.com/dictionary/english/development>]
- CIT v. Radhe Developers [2012] 17 taxmann.com 156/204 Taxman 543 (Guj.)

IMPROVEMENT:

The meaning of "improvement" as defined or explained in various dictionaries are as under:

The meaning of "development" as defined or explained in various dictionaries are as under:

- "An occasion when something gets better or when you make it better: [<https://dictionary.cambridge.org/dictionary/english/improvement>]
- <https://www.merriam-webster.com/dictionary/improving>
 - 1: the act or process of improving
 - 2a: the state of being improved; especially : enhanced value or excellence
 - 2b: an instance of such improvement : something that enhances value or excellence"
- <https://www.macmillandictionary.com/dictionary/british/improvement>
 - the state of being better than before, or the process of making something better than it was before
 - a change that you make to something in order to make it better"
- Nagarjuna Cotton Pressing Factory v. State of Andhra Pradesh [1999] 115 STC 600 (AP)
 - "'Improvement' as per the Oxford dictionary, means "something that improves, especially an addition or alteration that adds to value"... Admittedly the activity of pressing cotton lint and converting the same into bales by using hessian cloths and iron hoops could not be considered as falling under the terms "improvement or repair" as there is no improvement or repair to the cotton supplied by the customers to the dealers for pressing the same and converting into bales."
 - 9.4-1b A scalable business model with a high potential of employment generation or wealth creation - The above business activity is now included in the definition of the eligible start-up.

Press Information Bureau (PIB) on 25-5-2017 had informed the change in definition of start-up,

inter alia as under:

"Startup India was launched by the Government of India on 16th January, 2016 to build a strong ecosystem for nurturing innovation and Startups in the country to drive economic growth and generate large scale employment opportunities.

In order to promote entrepreneurship in the country, the Government of India has amended the definition of a Startup. The following significant changes have been made to the definition of Startups

- (a) & (b)
- (c) Potential of Job and Wealth Creation: The scope of definition has been broadened to include scalability of business model with potential of employment generation or wealth creation." (Emphasis supplied)
- However, what is scalable business model is not defined or explained.

PROCESS OF RECOGNITION WITH DPIIT

The process of recognition of an eligible entity as startup shall be as under: —

- A Startup shall make an online application over the mobile app or portal set up by the DPIIT.
- The application shall be accompanied by—
 - a copy of Certificate of Incorporation or Registration, as the case may be, and
 - a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.
- The DPIIT may, after calling for such documents or information and making such enquires, as it may deem fit, —
 - a. recognise the eligible entity as Startup; or
 - b. reject the application by providing reasons.
- Startup shall be allowed to self-certify compliance with labour laws (including laws pertaining to Gratuity, PF and ESI) and environment law. In case of labour laws no inspection for 5 years except in case of receipt of verifiable and credible complaint.
- Fast track processing of application and rebate in filing patents: IPR protection and its registration are crucial for startup but generally the process of getting IPR registered is a long drawn and expensive affair. Government is extending support to startup for IPR filing
 - Provision of panel of facilitator to assist the startup for filing to till disposal of IPR applications, at the cost of Government.
 - Rebate @ 80% of the statutory fee for patent filing.
- Easy access to funds: A 10,000 crore rupees fund is set-up by government to provide funds to the startup as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital and has set-up a fund of Rs.2,000 crores.
- Public procurement: Critical criteria of prior experience and turnover are being relaxed for Startup. Startup can apply for government tenders and they are exempted from the "prior experience/turnover" criteria applicable for normal companies answering to government tenders.
- Easy exit: A startup can close its business within 90 days under Insolvency & Bankruptcy Code 2016.
- Tax benefits for investors investing in venture fund - "Funds of Fund" : People investing their capital

gains in the venture funds setup by the Government will get exemption from capital gains.

- Tax Exemptions for Startup having certification from Inter-Ministerial Board (IMB):
 - A 100% deduction of the profits & gains from the income of startup for three consecutive years out of first seven years starting from year of its incorporation. (section 80 IAC of the Income Tax Act. An application made to Board in Form 1 for obtaining certificate to avail deduction, This form will contain name of the startup , date of importance ,address, PAN etc.This form will be accompanied by Assessee accounts and Income Tax Deductor of the startup for last 3 financial year.
 - Section 56 of the Income Tax Act, Exemption from levy of Income Tax on share premium received by eligible startup (section 56(2)(viib) of the Income Tax Act.
 - Tax on long term capital gain arising on transfer of residential properties/plot, can be saved by investing in newly incorporated and startup.

How INMACS contribute in your growth?

- Assistance in getting the statutory registration and approved as a startup
- Accounting, Taxation, and other financial matters including Income tax and GST
- Assist you in any kind of transaction whether related in merger & acquisitions, share sale or purchase and out tax planning activities.
- Can provide assistance in Legal matters at any level.



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