STARTUP INDIA REGISTRATION

INTRODUCTION:

Startup India is essentially an initiative taken by the Indian government that aims at promoting and encouraging the entrepreneurial spirit amongst its citizens.

Startup India is a flagship initiative of the Government of India, intended to build a strong ecosystem that is conducive for the growth of startup businesses, to 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.

Several programs have been undertaken since the launch of the initiative on 16th of January, 2016 by Hon'ble Prime Minister, to contribute to his vision of transforming India into a country of job creators instead of job seekers. These programs have catalyzed the startup culture, with startups getting recognized through the Startup India initiative and many entrepreneurs availing the benefits of starting their own business in India.

BENEFITS OF STARTUP REGISTRATION:

The benefits provided to recognized startups under the Startup India initiative are:

1. **Self-Certification:** Self-certification and compliance under 3 Environmental & 6 Labour Laws

Labour Laws:

- 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

Environment Laws:

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

- The Air (Prevention & Control of Pollution) Act, 1981

2. **Tax Exemption:** Income Tax exemption for a period of 3 consecutive years out of first ten years of startup incorporation u/s 80IAC of the Income Tax Act, 1961 and exemption on capital and investments above Fair Market Value u/s 56 of the Income Tax Act, 1961. The details of the exemption u/s 56 is as under:

- Investments into eligible startups by listed companies with a net worth of more than INR 100 Crore or turnover more than INR 250 Crore shall be exempt under Section 56 (2) VIIB of Income Tax Act

- Investments into eligible Startups by Accredited Investors, Non-Residents, AIFs (Category I), & listed companies with a net worth more than 100 crores or turnover more than INR 250 Crore, shall be exempt under Section 56(2)(VIIB) of Income Tax Act

- Consideration of shares received by eligible startups shall be exempt upto an aggregate limit of INR 25 Crore

3. **Easy Winding of Company:**

- As per the Insolvency and Bankruptcy Code, 2016, startups with simple debt structures, or those meeting certain income specified criteria can be wound up within 90 days of filing an application for insolvency.

- An insolvency professional shall be appointed for the Startup, who shall thereafter be in charge of the company (the promoters and management shall no longer run the company) including liquidation of its assets and paying its creditors within six months of such appointment.

- Upon appointment of the insolvency professional, the liquidator shall be responsible for the swift closure of the business, sale of assets and repayment of creditors in accordance with the distribution waterfall set out in the IBC. This process will respect the concept of limited liability.

4. **Startup Patent Application & IPR Protection:**

- **Fast-tracking of Startup Patent Applications:** Patent applications filed by startups shall be fast-tracked for examination so that their value can be realised sooner.

- **Panel of facilitators to assist in filing of IP applications:** For effective implementation of the scheme, a panel of “facilitators” shall be empanelled by the Controller General of Patents, Designs and Trademarks (CGPDTM), who shall also regulate their conduct and functions. Facilitators will be responsible for providing general advisory on different intellectually property as well as information on protecting and promoting intellectual property in other countries.

- **Government to bear facilitation cost:** Under this scheme, the Central Government shall bear the entire fees of the facilitators for any number of patents, trademarks or designs that a Startup may file, and the Startups shall bear the cost of only the statutory fees payable.

- **Rebate on filing of application:** Startups shall be provided an 80% rebate in filing of patents vis-a-vis other companies. This will help them pare costs in the crucial formative years

5. **Easier Public Procurement Norms:**

- **Opportunity to list your product on Government e-Marketplace**: Government e Marketplace (GeM) is an online procurement platform and the largest marketplace for Government Departments to procure products and services. DPIIT Recognized Startups can register on GeM as sellers and sell their products and services directly to Government entities. This is a great opportunity for startups to work on trial orders with the Government.

- **Exemption from Prior Experience/Turnover:** In order to promote startups, the Government shall exempt Startups in the manufacturing sector from the criteria of "prior experience/ turnover" without any compromise on the stated quality standards or technical parameters. The Startups will also have to demonstrate requisite capability to execute the project as per the requirements and should have their own manufacturing facility in India.

- **EMD Exemption:** DPIIT recognised startups have been exempted from submitting Earnest Money Deposit (EMD) or bid security while filling government tenders.

6. **Dedicated Portal- Startup Runway for recognized Startups on GeM portal:** There is a dedicated portal for recognized startups on GeM portal to facilitate their reach to Government buyers.

ELIGIBILITY CRITERIA FOR STARTUP RECOGNITION:

1. **Age of the Entity:**

   The period of existence of the entity should not exceed 10 years from the date of Incorporation.

2. **Type of Entity:**

   It should be 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.

3. **Annual Turnover Criteria:**

   Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees.

4. **Original Entity:**

   Entity should not have been formed by splitting up or reconstructing an already existing business.

5. **Innovation & Scalability:**

   Entity should be 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.

RECOGNITION PROCESS:

The process of recognition of an entity as a Startup is as under:

1. **Incorporation of your business entity:**

   First of all, we need to incorporate our business entity in the form of either a Private Limited Company (OPC also eligible), Registered Partnership Firm or Limited Liability Partnership Firm. Any existing entity fulfilling the above mentioned criteria can also apply for recognition.
   After incorporation, one has to take all the relevant registrations like PAN, TAN, GST and other business allied registrations.

2. **Filling of Application with DPIIT:**

   The startup entity to make an online application on the portal- www.startupindia.gov.in . The application needs to be accompanied with Certificate of Incorporation of the entity along with 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.

Upon receipt of the application and calling for any additional information, if required, the DPIIT may recognize the entity as Startup or reject the application after providing reasons for the same.

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.

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

Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

Eligibility Criteria for applying to Income Tax exemption (80IAC):

a. The entity should be a recognized Startup

b. Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC

c. The Startup should have been incorporated after 1st April, 2016.

Eligible startups needs to make an application in Form-1 along with the specified documents to the Inter Ministerial Board and the Board after verification of documents, grant the certificate of exemption u/s 80IAC of the Income Tax Act, 1961.

The screenshot of Form 1 is as under:

APPENDIX-I

Form-1

Application for certificate for the purposes of section 80-IAC of the Income-tax Act, 1961

1. Name of the Startup - …………………………
2. Date of incorporation/ registration of Startup - ……………………………..
3. Incorporation No./ registration No.…………………………
4. Address and business location- ………………………………..
5. Nature of business…………………
6. Contact details of Startup (Phone No. and Email)- …………
7. Permanent Account No - ………………………………..
8. Existing/ proposed activities - ……………………………………

   (Enclose copy of Memorandum of Association, LLP/partnership Deed, Board Resolution etc.)

Declaration

I/ We hereby certify that the above information furnished by me is true and no relevant information has been concealed.

For (Name of the Startup)

(Name of the authorised signatory) Designation

Place: _______

Date: _______

This form shall be accompanied by the following documents (if applicable)-

1. Annual Accounts of the startup for the last three financial years
2. Copies of income-tax returns for the last three financial years

Tax Exemption under Section 56 of the Income Tax Act (Angel Tax):

Post getting recognition a Startup may apply for Angel Tax Exemption.

Eligibility Criteria for Tax Exemption under Section 56 of the Income Tax Act:

a. The entity should be a DPIIT recognized Startup

b. Aggregate amount of paid up share capital and share premium of the Startup after the proposed issue of share, if any, does not exceed INR 25 Crore.

   Provided that in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of twenty five crore rupees in respect of shares issued to any of the following persons shall not be included─
   (a) a non-resident; or
   (b) a venture capital company or a venture capital fund;

c. It has not invested in any of the following assets,─

   (a) building or land appurtenant thereto, being a residential house, 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;
   (b) land or building, or both, not being a residential house, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;
   (c) 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;
   (d) capital contribution made to any other entity;
   (e) shares and securities;
   (f) 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;
   (g) jewellary other than that held by the Startup as stock-in-trade in the ordinary course of business;
   (h) 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.

   Provided the Startup shall not invest in any of the assets specified in sub-clauses (a) to (h) for the period of seven years from the end of the latest financial year in which shares are issued at premium;

A startup fulfilling the above conditions, shall file a declaration in Form 2 to DPIIT that it fulfills the stipulated conditions. On receipt of such declaration, the DPIIT shall forward the same to the CBDT and the exemption u/s 56 (2) (viib) of the Income Tax Act, 1961 shall be available to the Startup.

Format of Form 2 is as under:

Form 2

Declaration by a Startup for exemption under Section 56(2)(viib) of the Income Tax Act, 1961

<To be issued on Company Letterhead>

I,_______________________________Son/ Daughter of ______________________ having Permanent Account Number (PAN) ___________________________ in my capacity as __________________ of _________________________ (Company's Name) _________________ having DPIIT recognition number_____________________________and Permanent Account Number (PAN) ________________________ hereby certify and declare that the said company has not invested and shall not invest for a period of seven years from the end of the latest financial year in which shares are issued at premium by the said company in any of the assets specified in para 4(iii) of the notification number _______ dated _________ issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry.

2. I understand that failure to comply with the above declaration will result in revocation of exemption with retrospective effect.

Place: _______________

Date: _______________ *Signature: _________________________

Name: ______________________________

Designation: ________________________

*This declaration is to be signed by a person who is authorised to verify the return of income under section 140 of the Act.

Revocation of Exemption u/s 80IAC and 56 (2) (viib) of the Income Tax Act, 1961:

In case it is found by the Inter Ministerial Board that the exemption u/s 80IAC was availed by the Startup by furnishing false information, the Board reserves the right to revoke such certificate or approval. Where the certificate or approval has been revoked, such certificate or approval shall be deemed never to have been issued or granted by the Board.

In case the Startup which has furnished declaration in Form-2 invests in any of the assets specified above before the end of seven years from the end of the latest financial year in which the shares are issued at premium, the exemption provided under section 56(2)(viib) of the Act shall be revoked with retrospective effect.