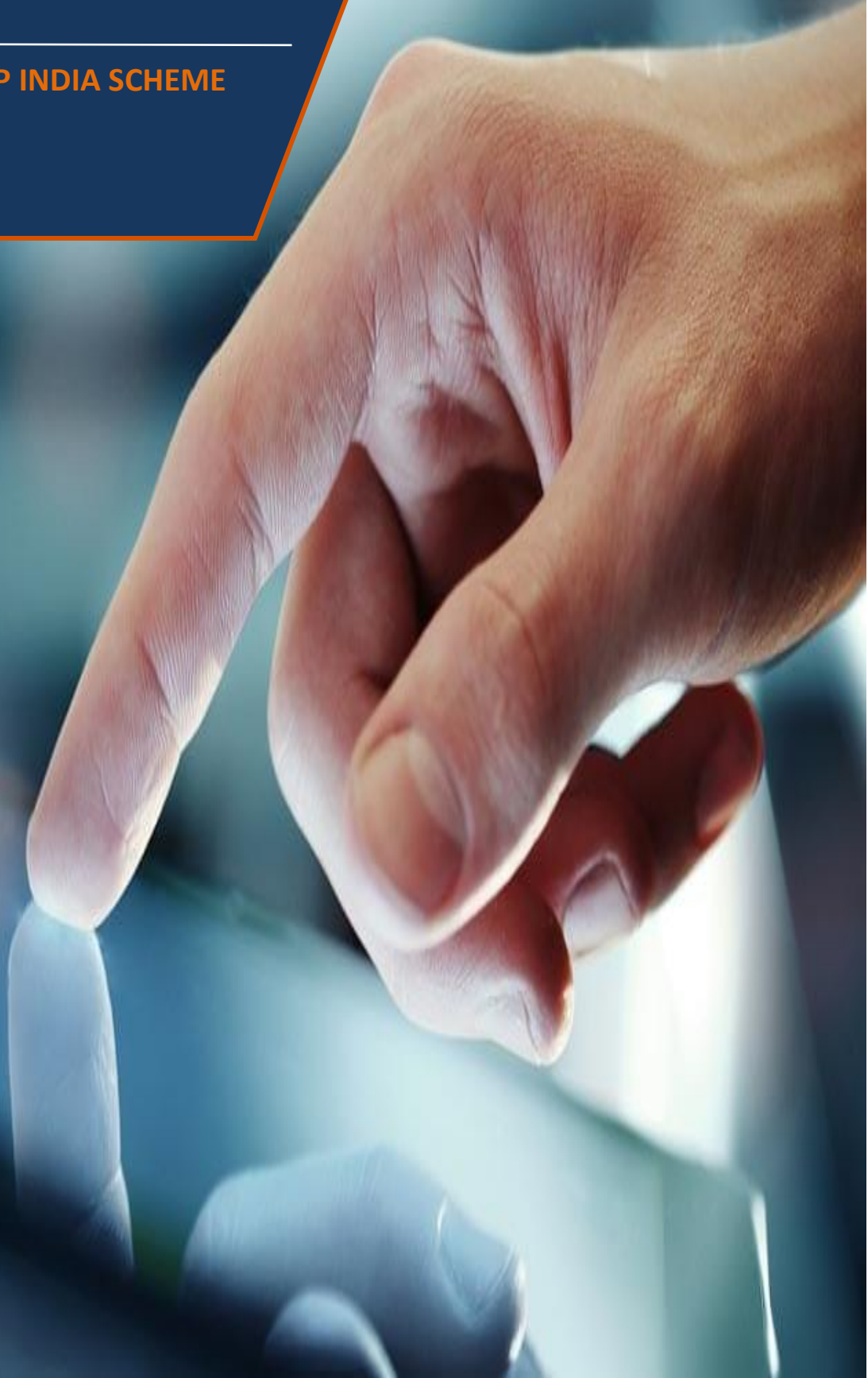


Government Scheme

START UP INDIA SCHEME



START-UP INDIA SCHEME

Start-up India Scheme is an initiative by the Government of India for generation of employment and wealth creation. The goal of Start-up India is the development and innovation of products and services and increasing the employment rate in India. Ministry of Commerce and Industry has defined Start-up eligibility criteria vide Notification No. G.S.R. 364(E) dated April 11, 2018 as modified vide Gazette Notification No. G.S.R. 34(E) dated January 16, 2019 and Notification No. G.S.R. 127(E) dated 19th February, 2019.

1. Eligibility criteria for start-up companies:

- A Private Limited Companies/LLP/Partnership firms.
- Turnover should not exceed 100 Crore for any of the financial years since its incorporation.
- An entity shall be considered as a start-up up to 10 years from the date of its incorporation
- 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.
- An entity formed by splitting up or reconstruction of an existing business shall not be considered a "Start-up"

2. Steps to Register Business under Start-up India

- **Incorporate your business:** The organisation has to be registered as Private Limited Company or a Partnership firm or a Limited Liability Partnership.
- **Registration with Start-up India:** It can apply to register for Start-up India by logging on to the Start-up India website and fill up the form with details of your business and upload certain documents.
- **Indicative Documents to be uploaded (in PDF format only):**
 - Certificate of incorporation of your company/LLP (Registration Certificate in case of partnership).

- 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.

3. Benefits of Start-up Recognition by Department for Promotion of Industry and Internal Trade (DPIIT)

- Start-ups shall be allowed to be self-certify compliance for following 6 Labour Laws and 3 Environmental Laws through a simple online procedure.
 - 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
 - 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
- In the case of labour laws, no inspections will be conducted for a period of 5 years. Start-ups may be inspected only on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer.
- In the case of environment laws, start-ups which fall under the 'white category' (as defined by the Central Pollution Control Board (CPCB)) would be able to self-certify compliance and only random checks would be carried out in such cases

4. Tax Benefits applicable to Start-ups as on date

- **Deduction under Section 80 IAC:**

- Section 80IAC of the Income Tax Act, 1961 (Act) provides for 100% deduction of profit derived from eligible business by an eligible start-up for 3 consecutive assessment years out of its first ten* assessment years beginning from the year in which such start-up is incorporated.

*substituted for seven by Finance Act 2020 w.e.f AY 2021-22

- For the purposes of section 80-IAC, Start-up means company or LLP incorporated on or after 1st April, 2016 but before 1st April 2021.

Turnover of its business shall not exceed Rs. 100 crore* in the previous year relevant to A.Y. for which deduction is claimed [*substituted for 25 crore by Finance Act 2020 w.e.f AY 2021-22]

- Start-up is 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.
 - It holds a certificate of eligible business from the Inter-Ministerial Board of Certification. Application for such certificate shall be made in Form 1 along with requisite documents.

- **Liberal Set off and carry forward of losses u/s 79: W.e.f. A.Y. 2020-21, in case of an eligible start-up referred in Section 80IAC, loss incurred in any year prior to the previous year shall be carried forward and set off against income of the previous year** if all the shareholders of such company who held shares carrying voting power on the last day of the year in which the loss was incurred, continue to hold shares on the last day of previous year in which such loss is to set off and such loss has been incurred during the period of 7 years beginning from the year in which such company is incorporated.. Such restriction for carry forward and set off of loss as provided in section 79 is less stringent than the conditions prescribed for non-start-up companies. In case of non-start-up companies, the carry forward and set off is not allowed 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. There is no such % requirement in start-up companies.

- **Deemed income (Angel taxation) under Section 56 (2)(viib) not applicable:** Section 56(2)(viib) provides for levy of tax on deemed income being amount received on issue of shares by a closely held company above the fair market value in case of shares issued at premium. This is also generally called Angel taxation. However, said section is not applicable on eligible start-up registered under Section 56(2)(viib) of the Act. A start-up shall be eligible for registration and exemption u/s 56(2)(viib) of the Act subject to following conditions:

- **It has been recognized by Department of Promotion of Industry and Internal Trade (DPIIT) as eligible start-up;**
- **Aggregate amount of Paid up share capital and share premium of the start-up after issue or proposed issue of shares, if any, does not exceed Rs. 25 crore;**

For calculating the limit of Rs. 25 crore, amount of paid up share capital and share premium issued to the following shall not be included:

- Non-resident; or
- **Venture capital fund or venture capital company; or**
- **Specified company being company whose shares are frequently traded and whose net worth exceeds Rs. 100 crore or turnover exceeds Rs. 250 crore for F.Y. preceding the year in which shares are issued.**

Start-up has not invested in any of the following asset:

- a) Building or land appurtenant thereto, being a residential house, other than that used by the start-up for the purpose 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 Start-up for its business or used by it for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;

- c) Loan and advances, other than loans and advances extended in the ordinary course of business by the start-up where lending money is the substantial part of its business;
- d) Capital contribution made to any other entity;
- e) Shares and securities;
- f) A motor vehicle, air craft, yacht or any other modes of transport, the actual cost of which exceeds ten Lakh rupees, other than held by the start-up for the purpose of plying, hiring, leasing or as stock in trade;
- g) Jewellery other than that held by the start-up as a stock-in- trade in the ordinary course 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 being archaeological collections; drawings; paintings; sculptures; any work of art or bullion;

Provided the Start-up shall not invest in any of the above assets specified in for the premium period of seven years from the end of the latest financial year in which shares are issued at premium.

A declaration in Form 2 must be filed with DPIIT stating that the start-up 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 listed above.

5. Benefits in Intellectual Property Rights

Intellectual Property Rights (IPR) is emerging as a strategic business tool for any business organization to enhance industrial competitiveness. Start-ups with limited resources and manpower, can sustain in this highly competitive world only through continuous growth and development oriented innovations; for this, it is equally crucial that they protect their IPRs. The scheme for Start-up Intellectual Property Protection (SIPP) shall facilitate filing of Patents, Trademarks and Designs by innovative Start-ups. Various measures being taken in this regard include:-

- **Fast-tracking of Start-up patent applications:** The valuation of any innovation goes up immensely, once it gets the protective cover of a patent. To this end, the patent application of Start-ups shall be fast-tracked for examination and disposal, so that they can realize the value of their IPRs at the earliest possible.
- **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 IPRs as also information on protecting and promoting IPRs in other countries. They shall also provide assistance in filing and disposal of the IP applications related to patents, trademarks and designs under relevant Acts, including appearing on behalf of Start-ups at hearings and contesting opposition, if any, by other parties, till final disposal of the IPR application.
- **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 Start-up may file, and the Start-ups shall bear the cost of only the statutory fees payable.
- **Rebate on filing of application:** Start-ups 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.

6. Funding for Start-up Business

In order to provide funding support to Start-ups, Government set up a fund with an initial corpus of INR 2,500 crore and a total corpus of INR 10,000 crore over a period 4 years in 2016 (i.e. INR 2,500 crore per year). The Fund will be in the nature of Fund of Funds, which means that it will not invest directly into Start-ups, but shall participate in the capital of SEBI registered Venture Funds. Key features of the Fund of Funds are highlighted below:

- The Fund of Funds shall be managed by a Board with private professionals drawn from industry bodies, academia, and successful Start-ups
- Life Insurance Corporation (LIC) shall be a co-investor in the Fund of Funds

- The Fund of Funds shall contribute to a maximum of 50% of the stated daughter fund size. In order to be able to receive the contribution, the daughter fund should have already raised the balance 50% or more of the stated fund size as the case maybe. The Fund of Funds shall have representation on the governance structure/ board of the venture fund based on the contribution made.
- The Fund shall ensure support to a broad mix of sectors such as manufacturing, agriculture, health, education, etc.

7. Foreign Direct Investment in Start-ups

- Start-ups are eligible investee entities under FEMA regulation.
- Start-ups can issue equity or equity linked instruments or debt instruments to SEBI registered Foreign Venture Capital Investors (FVCI) against receipt of foreign remittance, as per the FEMA Regulation.
- Start-ups can issue convertible notes to person resident outside India subject to the certain conditions prescribed under FEMA regulation.
- Start-ups can receive investment from a SEBI registered Foreign Venture Capital Investor (FVCI) under the automatic route.

8. Relaxed Norms of Public Procurement for Start-ups

Typically, whenever a tender is floated by a Government entity or by a PSU, very often the eligibility condition specifies either “prior experience” or “prior turnover”. Such a stipulation prohibits/ impedes Start-ups from participating in such tenders.

At present, effective April 1, 2015 Central Government, State Government and PSUs have to mandatorily procure at least 20% from the Micro Small and Medium Enterprise (MSME).

In order to promote Start-ups, Government shall exempt Start-ups (in the manufacturing sector) from the criteria of “prior experience/ turnover” without any relaxation in quality standards or technical parameters. The Start-ups will also have to demonstrate requisite capability to execute the project as per the requirements and should have their own manufacturing facility in India.

9. Faster Exit for Start-ups

Given the innovative nature of Start-ups, a significant percentage fail to succeed. In the event of a business failure, it is critical to reallocate capital and resources to more productive avenues and accordingly a swift and simple process has been proposed for Start-ups to wind-up operations. This will 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.

- As per the Insolvency and Bankruptcy Code, 2016, start-ups 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 Start-up, 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.

For more details please refer the website: www.startupindia.gov.in

DISCLAIMER:

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