

STARTUP TAXATION AND VALUATION

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Startup taxation and Valuation

- Meaning of Startup
- Startup registration with DPIIT
- Benefits of registration with DPIIT
- Tax benefit under of the Income Tax Act, 1961
- Valuation of shares:
 - (i) Valuation under Companies act 2013
 - (ii)Valuation under Income tax Act 1961
 - (ii)Valuation under FEMA Regulations

Meaning of startup

Notification No. G.S.R. 501(E) dated May 23, 2017	Notification No. G.S.R. 501(E) dated April 11 th 2018	Notification No. G.S.R. 34 (E) dated February 19, 2019
<input type="checkbox"/> private limited company <input type="checkbox"/> registered partnership firm <input type="checkbox"/> LLP	<input type="checkbox"/> private limited company <input type="checkbox"/> registered partnership firm <input type="checkbox"/> LLP	<input type="checkbox"/> private limited company <input type="checkbox"/> registered partnership firm <input type="checkbox"/> LLP
<ul style="list-style-type: none"> • 10 years for biotechnology • 7 years for others 	<ul style="list-style-type: none"> • 10 years for biotechnology • 7 years for others 	<ul style="list-style-type: none"> • 10 years for all
Turnover not exceeded INR 25 Cr.	Turnover not exceeded Rupees 25 Cr	Turnover not exceeded INR 100 Cr.
Working towards :- <ul style="list-style-type: none"> • Innovation, • Development or • Improvement of <u>products</u> or <u>services</u> 	Working towards:- <ul style="list-style-type: none"> • Innovation, • Development or • Improvement of <u>products</u> or <u>services</u> 	Working towards:- <ul style="list-style-type: none"> • Innovation, • Development or • Improvement of <u>products</u> or <u>services</u>

Start-up registration with DPIIT

- File an online application over the mobile app or portal set up by the DPIIT (www.startupindia.gov.in)
- Application shall be accompanied by—
- A copy of Certificate of Incorporation or Registration
- Write-up about the nature of business highlighting how it is working towards innovation, development, improvement of products or services
- Portal required to submit the following information:
 - (i) Is the startup creating an innovative product / service / process or improving an existing product / service / process
 - (ii) Is the startup creating a scalable business model with high potential of employment generation or wealth creation
 - (iii) brief note on innovation, improvement and scalability
 - (iv) Brief note on the problem which the startup is going to solve
 - (v) Brief note on how the startup will solve the problem
 - (vi) What is the uniqueness of the solution
 - (vii) How does the startup will generate the revenue
- Form-2, as prescribed in Notification No. G.S.R. 34 (E) dated February 19, 2019 has been filed and approval mail is received from CBDT for income tax exemption from angle tax.

Benefits of registration with DPIIT

- Self Certification of 3 environmental and 6 labor laws
- Income tax exemption and deductions
- Easy winding up of company under IB Code 2016
- Patent application and IPR protection
- Easier public procurement norms

Tax Benefits Under Income tax Act

Tax deduction under Section 80IAC of the Income Tax Act, 1961

- A deduction of an amount equal to 100% of the profits and gains derived from such business for 3 consecutive assessment years.
- The tax deduction under the said section may be claimed , at the option of the assessee, for any 3 consecutive AY out of 7 years beginning from the year in which the eligible start-up is incorporated.
- To claim deduction start-up must fulfils the following conditions:
 - i. it is not formed by splitting up, or the reconstruction, of a business already in existence
 - ii. it is not formed by the transfer to a new business of machinery or plant previously used for any purpose
 - iii. The start has filed Form-1 as prescribed in DPIIT notification and approved by inter ministerial board for claiming deduction under this section.
- The provisions of sub-section (5) and sub-sections (7) to (11) of section 80-IA shall apply to the start-ups for the purpose of allowing deductions under sub-section (1) **[process and conditions of calculation of profit of eligible business]**

Clause (viib) of sub-section (2) of section 56

56 (2)- In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person **being a resident**, 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:

Provided that this clause shall not apply where the consideration for issue of shares is received—

- by a venture capital undertaking from a venture capital company or a venture capital fund ⁹[*or a specified fund*]; or
- by a company from a class or classes of persons as may be notified by the Central Government in this behalf (Notification No. 13/2019)

¹⁰**[Provided further that**

- *where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (ii) of the first proviso and*
- *such company fails to comply with any of those conditions, then,*
- *any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax*
- *for the previous year in which such failure has taken place and,*
- *it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.]*

Explanation.—For the purposes of this clause, the fair market value of the shares shall be the value—

(i) as may be determined in accordance with such method as may be prescribed **(Calculated as per Rule 11 UA)** or

(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

- **whichever is higher;**

ELIGIBILITY FOR ANGEL TAX EXEMPTION

A Startup shall be eligible under clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Act

- ✓ it has been recognised by DPIIT
- ✓ Form-2 as prescribed in DPIIT notification as been has been filed and approved by CBDT
- ✓ aggregate amount of paid up share capital and share premium does not exceed, 25 crore rupees
- ✓ not invested in any of the assets as attached **annexure A**

Note: amount of paid up share capital and share premium of 25 crore rupees in respect of shares issued , following persons shall not be included

- (a) a non-resident; or
- (b) a venture capital company or a venture capital fund;
- (c) specified company i.e Listed company whose shares are frequently traded and having Net worth 100 cr. and Turnover having 200Cr.

Annexure A
Not invested or to be invested in any of the following assets

- i. Building or land being a residential house, other than that used for renting or as stock-in-trade.
- ii. Land or building, or both, not being a residential house other than that occupied for its business or renting or as stock-in trade,
- iii. Loans and advances, other than loans or advances extended in the ordinary course of business
- iv. Capital contribution made to any other entity
- v. Shares and securities
- vi. Motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees other than that held for the purpose of plying, hiring, leasing or as stock-in-trade
- vii. Jewellery other than that held by the Startup as stock-in-trade
- viii. any other asset, whether in the nature of capital asset or otherwise as provided in explanation to clause (vii) of Section 56(2)

Annexure A
Not invested or to be invested in any of the following assets

(viii) any other asset, whether in the nature of capital asset or otherwise as provided in explanation to clause (vii) of Section 56(2)

- (a) immovable property being land or building or both;
- (b) shares and securities;
- (c) jewellery;
- (d) archaeological collections;
- (e) drawings;
- (f) paintings;
- (g) sculptures;
- (h) any work of art; or
- (i) bullion;



VALUATION OF SHARES

- **Valuation under Companies act 2013**
- **Valuation under Income tax act 1961**
- **Valuation under FEMA Regulations**

Valuation under Companies act 2013

- **As per section 62 (1) (c) of the Companies act 2013, where company proposed to issue shares under preferential allotment, than a valuation report of securities is to be obtain from the registered valuer as prescribe in section 247 of companies Act 2013.**
- **Valuation of shares Rules 13(2)(g) of Companies (Share Capital and Debentures) Rules, 2014**

The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;

- **As per Rule 13 (2)(h) of Companies (Share Capital and Debentures) Rules, 2014**

where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-

- (i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or
- (ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:

Valuation under Companies act 2013

Section 247(1) Where a valuation is required to be made in respect of any

- ✓ property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act,

It shall be valued by a person having such qualifications and experience and registered as a valuer and appointed by the audit committee or in its absence by the Board of Directors of that company.

Section 247(1) (c)

The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

- (a) internationally accepted valuation standards;
- (b) valuation standards adopted by any registered valuers organisation.

Valuation under Income tax Act 1961

Valuation for the purpose of section 56 sub section (2)

As per rule Rule 11UA of income tax rules

Sub Rule (1) the **fair market value** of a property, other than immovable property, shall be determined in the following manner,

- a) valuation of jewellery
- b) valuation of archaeological collections, drawings, paintings, sculptures or any work of art
- c) valuation of shares and securities,—:
 - (a) FMV of Quoted Shares & Securities :
 - :IF received through any transaction with any recognised stock exchange then value as recorded in RSE
 - :If not received through a RSE, then the lowest value recorded in any RSE on transaction date or any date prior to transaction date if no transaction on such date
 - (b) FMV of Unquoted Equity Shares :- As per NAV method
 - (c) FMV of *Unquoted Shares and Securities other than equity*:-
 - :It would fetch if sold in the open market and assessee **may** obtain valuation report from a merchant banker or a CA

Sub Rule 2 For the purpose of Section 56(2)(viib) valuation of **equity shares** will be any of the following at the **option** of the assessee

- (a) FMV of Equity Shares on the Basis of NAV method OR
- (b) FMV as determine by **merchant banker** on the basis of **DCF** method

Valuation under FEMA Regulations

As per rule 11 (1) of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017

the price of capital instruments of an Indian company Issued by such company to a person resident outside India shall not be less than:

- (a) the price worked out in accordance with the relevant Securities and Exchange Board of India guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
- (b) the valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Securities and Exchange Board of India registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company

Questions & Answers

1. Who can issue valuation report when **Equity shares** are issued under **Private placement** to a **Resident** and a non resident simultaneously
 - : -Under FEMA regulation : CA or cost accountant or a Merchant Banker
 - : -Under Income tax Act section 56(2)(viib): Merchant Banker Only
 - : -Under Companies Act. : Registered Valuer
2. Who can issue valuation report when preference shares are issued under **Private placement** to **Resident** and NR Simultaneously
 - : -Under FEMA regulation : CA or Cost accountant or a Merchant Banker
 - : -Under Income tax Act section 56(2)(viib): CA or a Merchant Banker
 - : -Under Companies Act. : Registered Valuer
3. Who can issue valuation report when preference shares/ Equity shares are issued under **Private placement** to **Non resident** only
 - : -Under FEMA regulation : CA or Cost accountant or a Merchant Banker
 - : -Under Income tax Act section 56(2)(viib): Section not applicable
 - : -Under Companies Act. : Registered Valuer
4. Who can issue valuation report when Equity are issued under **Right issue** to **Resident** only
 - : -Under FEMA regulation : Non applicable
 - : -Under Income tax Act section 56(2)(viib) : Merchant Banker only
 - : -Under Companies Act. : Not Applicable

Questions & Answers

5. Who can issue valuation report when preference shares are issued under **Right issue** to **Resident** only

: -Under FEMA regulation	: Non applicable
: -Under Income tax Act section 56(2)(viib): CA or Merchant Banker	
: -Under Companies Act.	: Not Applicable

6. Who can issue valuation report when preference shares are issued under **Private placement** to **Resident** only

: -Under FEMA regulation	: Non applicable
: -Under Income tax Act section 56(2)(viib): CA or Merchant Banker	
: -Under Companies Act.	: Registered valuer

*Thank
You!*

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