Startup Conclave

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What is a Startup?

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- Every new business is not a startup.
- Department for Promotion of Industry and Internal Trade (DPIIT) has defined the criteria for "startup entity"
- Eligibility criteria includes turnover, business objectives, time period since incorporation/set-up, etc.
- **Startup status needs to be applied for** and it is not automatically available to an eligible entity
- Only after recognition from DPIIT, an entity can be said to be a Startup for availing benefits available to Startups

What is a Startup?

- **Start-up means an entity**, incorporated or registered in India:

Period
Up to a period of **ten years** from the date of incorporation/ registration;

Entity Form
- Private Limited Company; or
- Partnership firm; or
- Limited Liability Partnership

Turnover
Annual turnover **not exceeding** Rs. 100 Crore for any of the financial years since incorporation /registration;

Activities criteria
Working towards –
- **innovation**, **development** or **improvement** of services/products/ processes /, or
- it is a scalable business model with a high potential of **employment generation** or **wealth creation**;

Splitting-up
Should **not be** an entity formed by splitting up or reconstruction of an existing business

[Notification GSR 127 (E) dated 19th Feb 2019]

Benefits available to recognized Startup

Benefits available to recognized Startup

SELF-CERTIFICATION FOR COMPLIANCE WITH LABOUR AND ENVIRONMENT LAWS

FAST TRACK PROCESSING AND REBATE IN PATENT FILINGS

RELAXATIONS IN PUBLIC PROCUREMENT TENDERS

EASY ACCESS TO FUNDS

EASY EXIT

INCENTIVES FROM STATE GOVT

INCOME TAX BENEFITS

Easy access to funds – Fund of Funds

FUND OF FUNDS

Status of FFS as on October 13, 2023.

Fund of Funds for Startups

- **₹ 10,019 Crores** Commitment made
- **126** Number of AIFs
- **₹ 17,010 Crores** Invested in Startups by AIFs under FFS
- **913 Startups** Supported under FFS

List of AIFs under FFS - Commitments - SIDBI Fund of Funds (sidbivcf.in)

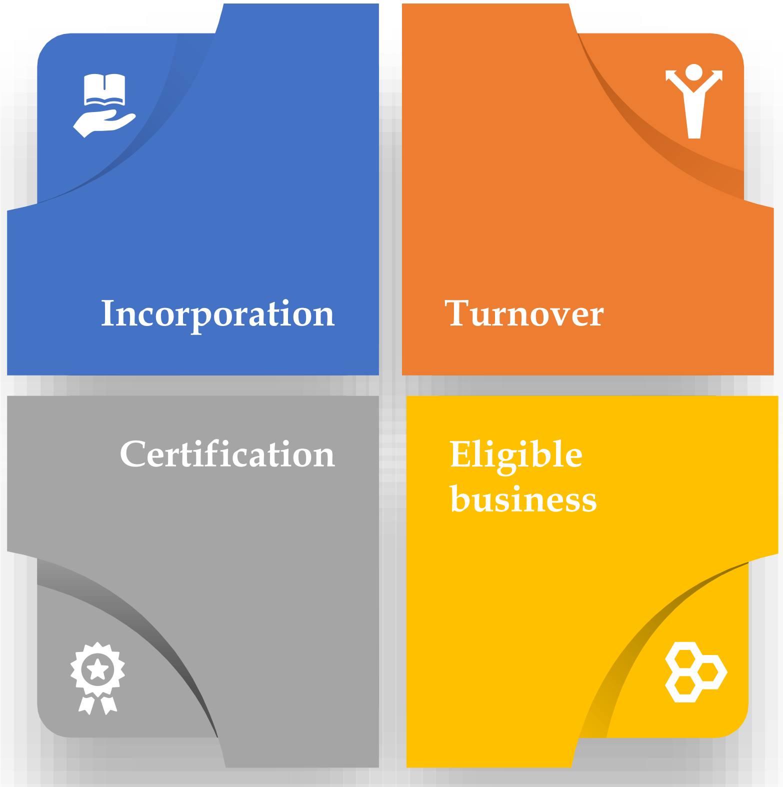
Income tax benefits

Eligibility for income tax holiday

- An eligible startup must be either a **company** or a **limited liability partnership ('LLP')**, and it must fulfill all the below conditions:

Incorporated between 1 April 2016 and 31 March 2024, and should not be formed by splitting up or reconstruction of an existing business

Turnover of business does not exceed INR 100Cr



Has obtained certificate from the Inter-Ministerial Board of Certification

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

100% tax holiday

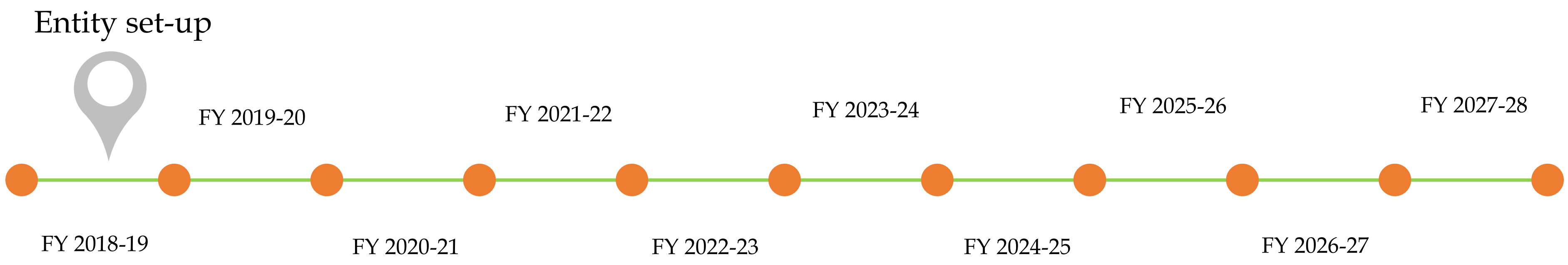
100% tax deduction against profits under **Section 80-IAC** of Income-tax Act

Allowed for 3 consecutive tax years

Any 3 years within a block of 10 years from the date of incorporation

100% tax holiday

E.g.: If a company is incorporated in August 2018, then it can choose to claim the 100% tax rebate in **any consecutive three years** till financial year 2027-28, i.e., ten years from the financial year 2018-19:



100% tax holiday

The conditions attached to this tax holiday are:

- Once the 100% tax rebate is claimed, it has to be claimed for continuous period of three years.
- The turnover from business should not exceed INR 100Cr.
- Business should not be formed by transfer of machinery or plant previously used for any purpose (except if the value is below 20% of total value of machinery or plant, or is imported)
- Audit Report from a Chartered Accountant is required to be filed in **Form 10CCB** for the year in which deduction is to be claimed.
- Audit Report is to be filed one month prior to the due date of filing the tax return.

MAT / AMT would still apply, even after getting this tax exemption.

Deduction u/s 80-IAC is not available if lower rate tax regime has been opted

Eased conditions for angel taxation

Eased conditions for angel taxation

Background

As per section 56(2)(viib) of the Income-tax Act, when a company issues shares to an investor, it has to bring in the capital at Fair Market Value (FMV) of shares.

FMV can be determined through 'Discounted Cash Flow' method.

If the capital money so received exceeds the FMV of the shares issued, such excess amount becomes the income of the company, and is taxable as other income.

This taxing provision of income-tax law is notoriously called '**Angel Tax**'.

Eased conditions for angel taxation

Conditions – DPIIT Notification no. G.S.R. 127(E)

- **Startup registration** must be obtained from Department For Promotion of Industry and Internal Trade (DPIIT)
- Singed copy of **Form 2 must be filed** with DPIIT
- Aggregate amount of **paid-up share capital and share premium** should **not exceed INR25 crore,** except for the share capital/premium received from – (i) Non-resident, (ii) Venture Capital Fund/Company registered as Category-I AIFs, (iii) Specified companies
- '**Specified company**" means a company whose shares are frequently traded on stock exchanges and whose net worth on the last date of preceding financial year exceeds INR100Cr. **or** turnover for the preceding financial year exceeds INR250Cr.
- The **turnover** remains **below INR100 crore** in each year since incorporation till the year in which investment is obtained

Eased conditions for angel taxation

Conditions – DPIIT Notification no. G.S.R. 127(E)

- **No investment** in the **following assets** up to seven years from the end of financial year in which shares are issued at premium:
  - immovable property (land, building or both)*
  - loans and advances*
  - capital contribution made to any other entity;
  - shares and **securities**;
  - motor vehicle, aircraft, yacht or any other mode of transport, (exceeding ten lakh rupees of cost)*
  - jewelry* or bullion
  - archaeological collections
  - drawings, paintings, sculptures or any work of art

* The **restrictions will not apply** if the assets are used in ordinary course of business or held as stock-in-trade

Capital gain tax relief

Capital gain tax relief

Section 54GB

A	B	C	D
Eligible persons	Capital Gain on	Investment in	Use of investment
Individual **or** Hindu Undivided Family (HUF)	Transfer of long term residential property (house or plot of land)	Eligible MSME or Startup Company	Purchase new plant and machinery within one year from the date of subscription

Capital gain tax relief

Section 54GB – Eligible Company

INCORPORATION OF COMPANY

- The company must be incorporated between 1 April of the tax year in which capital gain arises and the due date of filing of return of the tax / payer

BUSINESS

- The company should be engaged in the business of 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

SHARE CAPITAL

- The investor seeking relief from capital gain tax must own more than 25% of the share capital or have more than 25% of the voting rights in the company
- Equity shares so acquired must be held for 5 years

CLASSIFICATION

- The company must be an eligible startup having certification from the Inter-Ministerial Board of Certification

Capital gain tax relief

Section 54GB – Conditions for use of investment

The new plant and machinery **must be held for at least 5 years** and must **fulfill all** the below conditions:

The whole of the cost of such machinery or plant must not have been claimed as tax deduction, by way of depreciation or otherwise, in any previous tax year

It should not be installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house

It should not have been used earlier, either in India or outside India

Vehicles are not eligible for investment

It should not include
- any office appliances
- computers or computer software (except for technology driven startups, where the holding period would be 3 years)

Relaxed norms for carry forward & set-off of losses

Relaxed norms for carry forward & set-off of losses

- Incurring losses in the initial years is a hard reality for startup ventures. To keep the venture running, founders do invite external investors to take up equity capital.

- Section 79 of the Income tax Act mandates that tax losses **cannot be carried forward** for set-off against future year losses, if shareholders (who held shares in the year of loss) holding at least 51% of voting rights do not hold the shares in the year when profit is earned.

- In simple terms, if the voting rights of original shareholders slide below 51%, either through a **stake sale** or through **issue of fresh share capital**, then the losses incurred in earlier years would not be allowed to be set-off against the profits of future years.

- However, **eligible startups** have been **partially exempted** from the above condition. Eligible startups **will be exempted** if the stake of original founders of the company is diluted **only through issue of capital fresh share capital**.

- This relief is available only for the losses incurred in **first ten years** of incorporation.

CA Anshul K. Singhal

- Anshul Kumar is a Chartered Accountant by profession and has 18 years of professional experience. He is presently a Partner with Lalit Vanjani & Co.
- He has worked with Big4 firms (Deloitte and PwC) for over 13 years and have domain expertise in corporate tax and foreign exchange regulations.
- Anshul has been working with Startups for past many years and provides support in initial set-up, business modeling, market assessment, tax & regulatory advisory, investor dealing and other relevant matters.
- He has vast experience in mergers and acquisitions and lends support to Startups in various levels of funding rounds, deal structuring, due-diligence, valuation, etc.
- Anshul is also the co-founder of '**Startup-Bazaar**', under the aegis of Startup Dreams Pvt. Ltd., a one-stop shop for all Startup needs.
- He is also the Jt. Gen. Secretary of 'Swadeshi Startups as well as the Convenor of 'Gurugram Chapter', which provides a platform to budding entrepreneurs.

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