



The government notifies the definition of the term 'startup' and prescribes the procedure for its recognition and obtaining tax benefits

Background

The government has launched the 'Startup India' initiative. This initiative is part of the 19 points Action Plan through which the government aims to empower startups to grow through innovation and design.

Amongst the many incentives bestowed through this initiative, key ones include, exemption from paying income tax on their profit for the first three years, a simple exit policy, fast-tracking of the patent applications, 80 per cent exemption in patent fee, self-certification based compliance system, etc. Also, this plan is intended to put startups on a level playing field with the MSMEs¹, and a fund worth INR100 billion shall be created for the same.

The government has now issued a notification² defining the term 'startup' and prescribing the procedure for its recognition and obtaining tax benefits.

¹ Micro, small and Medium Enterprises

² Notification [F. No. 5(91)/2015-BE. I], dated 17 February 2016

The Notification is summarised as follows:

CBDT Notification

'Startup' defined

An entity shall be considered as a 'startup':

- Up to five years from the date of its incorporation/registration,
- If its turnover for any of the financial years has not exceeded INR250 million, and
- It is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

Criteria for startup

- Any entity formed by splitting up or reconstruction of a business already in existence shall not be considered as a 'startup'.
- In order to avail tax benefits a startup shall be required to obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification consisting of:
 - Joint Secretary, Department of Industrial Policy and Promotion (DIPP)
 - Representative of Department of Science and Technology, and

- Representative of Department of Biotechnology.
 - An entity is considered to be working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialise a new product or service or process, or significantly improve existing product or service or process, that will create or add value to customers or workflow.
 - The mere act of developing products or services or processes which do not have the potential for commercialisation, 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 be covered under the definition of a startup.
 - An entity shall cease to be a startup on completion of five years from the date of its incorporation/registration or if its turnover for any previous year exceeds INR250 million.
 - Entity means a private limited company as defined in the Companies Act, 2013, or a registered partnership firm under Section 59 of the Partnership Act, 1932 or a Limited Liability Partnership under the Limited Liability Partnership Act, 2002. Turnover is as defined under the Companies Act, 2013.
- A recommendation (with regard to innovative nature of business), in a format specified by DIPP, from any incubator recognised by Government of India; or
 - A letter of funding of not less than 20 per cent in equity by any incubation fund/angel fund/private equity fund/accelerator/angel network duly registered with the Securities and Exchange Board of India that endorses innovative nature of the business. DIPP may include any such fund in a negative list for such reasons as it may deem fit; or
 - A letter of funding by Government of India or any state government as part of any specified scheme to promote innovation; or
 - A patent filed and published in the Journal by the Indian patent office in areas affiliated with the nature of the business being promoted.
- DIPP may, until such mobile app/portal is launched make an alternative arrangement of recognising a 'startup'.
 - Once such application with relevant documentation is uploaded, a real-time recognition number will be issued to the startup.
 - If on subsequent verification, such recognition is found to be obtained without uploading the document or uploading any other document or a forged document, the concerned applicant shall be liable to a fine which shall be 50 per cent of paid-up capital of the startup but shall not be less than INR25,000.

Procedure and recognition for a startup

- The process of recognition as a 'startup' shall be through mobile app/portal of the DIPP.
- Startups will be required to submit a simple application with any of following documents:
 - A recommendation (with regard to innovative nature of business), in a format specified by DIPP, from any incubator established in a postgraduate college in India; or
 - A letter of support by any incubator which is funded (in relation to the project) from the Government of India or any state government as part of any specified scheme to promote innovation; or

The Notification comes into effect from 18 February 2016 i.e. the date of its publication in the official gazette.

Our comments

In order to build a strong ecosystem for nurturing innovation and startups in the country that can drive sustainable economic growth and generate large scale employment, the government has launched the 'Startup India' initiative. It has now issued a notification defining the term 'startup' and prescribing the procedure for its recognition and obtaining tax benefits.

It has been clarified that an entity shall be considered as a 'startup' if it is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

In order to obtain tax benefits, a startup shall be required to obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification. The process of recognition as a 'startup' shall be through mobile app/portal of the DIPP. The government clarified that until such mobile app/portal is launched, DIPP may make an alternative arrangement of recognising a 'startup'.



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