

## How to Establish a Start-up in India

A host of incentives have been unveiled by the Bharatiya Janata Party (BJP) led National Democratic Alliance (NDA) government that seek to promote the growth of startups in India. Economic goals are at the core of the government's reforms, which include ease of doing business, job creation, promotion of skill development, and entrepreneurship. Towards this a national policy framework was launched in February 2016 called the Startup India Action Plan.

### What is the Startup India Action Plan?

Under this plan, new startups in India can avail of regulatory and tax benefits for three years, capital gains tax exemption, and access to funds from the government's U.S. \$1.5 billion (Rs 10,000 crores) corpus. A self-certification compliance system is now in place, with respect to nine labor and environment laws, whereby there will be no inspections for the first three years of the launch of the venture.

Other benefits include reduction in patent registration fees by 80 percent, simpler entry and exit norms, protection of intellectual property rights (IPR), and facilities to promote entrepreneurship among women and SC/ST communities. The Department of Industrial Policy and Promotion (DIPP) is currently in the process of developing a mobile application that will serve as the single point of access for all services from registration to meeting compliance norms. Meanwhile a Twitter helpline has just been launched; persons can tweet with [#mociseva](#) for assistance in any matter related to startups in India.

Additionally, the government will be setting up 31 centers of innovation and entrepreneurship at national institutes, as part of its focus on developing R&D in the country.

### How is a Startup Defined in India?

As per new legal norms, a business entity is identified as a startup for up to five years from the date of its incorporation. It also needs to meet the following criteria set by the DIPP to access government benefits:

- Its turnover does not exceed U.S. \$3.75 million (Rs 25 crores) in the last five financial years;
- It should have its headquarters in India; and
- It is recognized as working towards innovation, development, deployment, and commercialization of new products, processes, or services driven by technology or intellectual property.

### What are the Legal Requirements to Establish a Startup?

For a corporation, entity, or a business to be termed as a startup, it must be established under either of the following legal frameworks:

- Registered under the Companies Act, 2013;
- Registered under section 59 of the Partnership Act, 1932, as a partnership firm; or

- Registered under the Limited Liability Partnership Act, 2002, as a limited liability partnership.

This legal definition means that Sole Proprietorship Firms are not under the Startup India scheme.

### **How to Avail Tax Benefits under the 'Startup India' Scheme?**

In order to avail tax benefits, an entity or firm has to obtain a certificate from the Inter-Ministerial Board of Certification. The board consists of the following members:

- Joint Secretary, Department of Industrial Policy and Promotion;
- Representative of the Department of Science and Technology; and
- Representative of the Department of Biotechnology.

### **What is the Application Process to Establish a Startup in India?**

The application process requires any one of the following documents to be submitted:

- A recommendation, in the format specified by the DIPP, from an incubator established in a post-graduate college in the country;
- A letter of support from any central or state government funded incubator to promote innovation;
- A recommendation, in the format specified by the DIPP, acknowledging the innovative nature of business, from an incubator recognized by the central government;
- A letter of funding of not less than 20 percent in equity by any incubation or angel fund/private equity fund/accelerator or angel network that is duly registered with the Securities and Exchange Board of India (SEBI) that endorses its innovative nature of business;
- A letter of funding by the central or state government as part of a scheme that promotes innovation; or
- A patent filed and published in the Journal by the Indian Patent Office in areas affiliated with the nature of business being promoted.

Once the application is uploaded, a recognition number will be immediately issued to the startup. If the appropriate documents are not uploaded or are found to be forged, a fine on the applicant will be levied, which shall be 50 percent of the paid-up capital of the startup, and not less than U.S. \$375 (Rs 25,000).

### **What are the Tax Exemptions Provided to Startups?**

- The DIPP has stipulated that exemption shall be given to startups which have capital gains during the year, if such capital gains are invested in the Fund of Funds recognized by the government;
- Similarly, tax exemptions on profits will be given to startups for a period of three years; and
- As per the rules under The Income Tax Act, 1961, when a startup (company) receives any consideration for issue of shares, which exceeds the Fair Market Value (FMV) of such shares, such excess consideration is taxable in the hands of the recipient as 'Income from

Other Sources'. It is now proposed that the same shall be extended to investments made by incubators in startups.

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