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NEWSFLASH - STARTUP REVOLUTION IN INDIA

Introduction

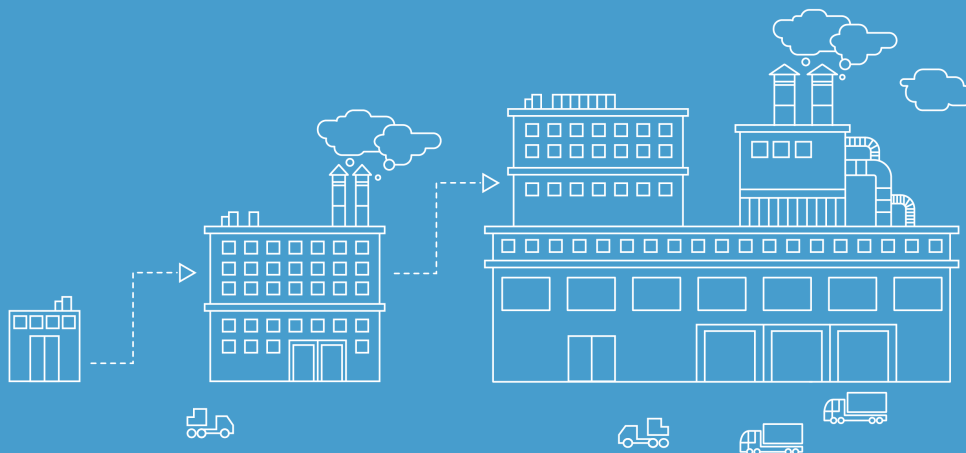
Startup India is a flagship initiative of the Government of India, intended to build a strong eco-system for nurturing innovation and Startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design.

In order to meet the objectives of the initiative, Government of India has announced the Action Plan that addresses all aspects of the Startup ecosystem. With this Action Plan the Government hopes to accelerate spreading of the Startup movement:

- From digital / technology sector to a wide array of sectors including agriculture, manufacturing, social sector, healthcare, education, etc.; and
- From existing tier 1 cities to tier 2 and tier 3 cities including semi-urban and rural areas.

In this newsflash, we have provided an overview of:

- Definition of a Start-up (only for the purpose of Government schemes)
- Simplification and Hand-holding for Start-ups
- Funding Support for Start-ups
- Tax incentives for start-ups



“I see startups, technology and innovation as exciting and effective instruments for India’s transformation.”

- Shri Narendra Modi, Prime Minister of India

1.0 Definition of a Startup (only for the purpose of Government schemes)

Startup means an entity, incorporated or registered in India not prior to 5 years, with annual turnover not exceeding INR 25 crore in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

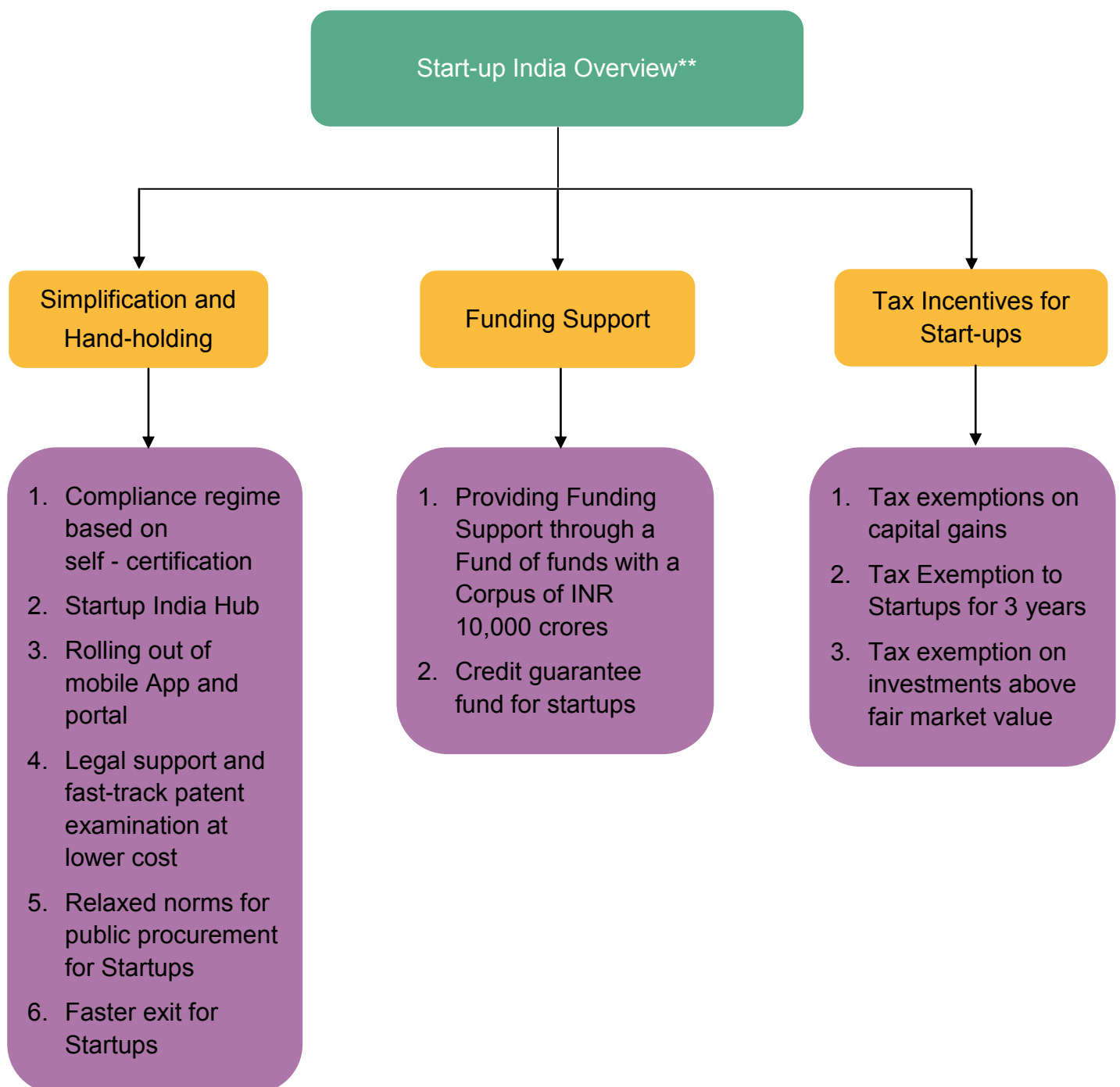
- An entity shall cease to be a Startup if its turnover for the previous financial years has exceeded INR 25 crore or it has completed 5 years from the date of incorporation/ registration.
- The meaning of 'turnover' shall be as per the Companies Act, 2013.
- The entity shall not be recognized as a "Startup" if it is formed by splitting up, or reconstruction, of a business already in existence.

A Startup shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose. An Inter-Ministerial Board setup by DIPP to validate the innovative nature of the business for granting tax related benefits.

Explanations

Sr. No.	Particulars	Coverage / Explanations
1	For the purpose of the above definition, the term " entity " shall mean:	<ul style="list-style-type: none"> • <i>Private Limited Company (under The Companies Act, 2013) or</i> • <i>Registered Partnership Firm (under The Indian Partnership Act, 1932) or</i> • <i>Limited Liability Partnership (under The Limited Liability Partnership Act, 2008)</i>
2	For the purpose of the above definition, a business is covered under the definition	<p>if it aims to develop and commercialize</p> <ul style="list-style-type: none"> • <i>a new product or service or process; or</i> • <i>a significantly improved existing product or service or process, that will create or add value for customers or workflow.</i> <p>The mere act of developing</p> <ul style="list-style-type: none"> • <i>products or services or processes which do not have potential for commercialization; or</i> • <i>undifferentiated products or services or processes; or</i> • <i>products or services or processes with no or limited incremental value for customers or workflow would not be covered under this definition.</i>
3	In order for a 'Startup' to be considered eligible, the Startup should	<ul style="list-style-type: none"> • <i>be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator established in a post-graduate college in India; or</i> • <i>be supported by an incubator which is funded (in relation to the project) from GoI as part of any specified scheme to promote innovation; or</i> • <i>be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator recognized by GoI; or</i> • <i>be funded by an Incubation Fund/Angel Fund / Private Equity Fund/ Accelerator/Angel Network duly registered with SEBI* that endorses innovative nature of the business; or</i> • <i>be funded by GoI as part of any specified scheme to promote innovation; or</i> • <i>have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.</i> <p>DIPP may publish a 'negative' list of funds which are not eligible for this initiative</p>

Startup India Overview



****Note:** For detailed overview of the Start-up India program, refer the following link on the website [www.dipp.nic.in](http://dipp.nic.in):

http://dipp.nic.in/English/Investor/startupIndia/StartupIndia_ActionPlan_16January2016.pdf

2.0 Simplification and Hand-holding

1. Startup mobile app for startups
2. Self certification based compliance with 9 labour and environment laws¹
3. Significant laws include: POGA, EPF, ESIC / environment laws²

Compliance Regime based on Self-Certification



1. Using Mobile App³ Register Startups with relevant agencies of the Government
2. Tracking the status of the registration application and anytime downloading of the registration certificate
3. Filing for compliances and obtaining information

Rolling out of Mobile App - Single Platform for Startups



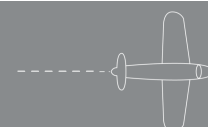
1. Fast-tracking of Startup patent applications
2. Panel of facilitators to assist in filing of IP applications
3. Government to bear facilitation cost & Start-up to bear cost of statutory fees
4. 80% Rebate in filing of patents

Fast-track patent examination at lower cost



1. Insolvency and Bankruptcy Bill 2015 ('IBB'), tabled in the Lok Sabha in December 2015 has provisions for the fast track and / or voluntary closure of businesses
2. Fast Track wind-up within 90 days⁴

Faster exit options for Startups



¹In case of the labour laws, no inspections will be conducted for a period of 3 years. In case of environment laws, Startups 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.

²POGA – Payment of Gratuity Act 1972, EPF – Employees Provident Funds and Miscellaneous Provisions Act 1952, ESIC – Employees State Insurance Act, 1948, Environmental laws covered such as: The Water (Prevention & Control of Pollution) Act, 1974, The Air (Prevention & Control of Pollution) Act, 1981, etc.

³ The App shall be made available from April 01, 2016 on all leading mobile/ smart devices' platforms. The Startup portal shall have similar functionalities (being offered through the mobile app) using a richer web-based User Interface. Besides this, it is intended that a checklist of required licenses covering labour licensing, environmental clearances etc. would also be made available to such Startups.

⁴ In such instances, an insolvency professional shall be appointed for the Startup, who shall be in charge of the company (the promoters and management shall no longer run the company) for liquidating its assets and paying its creditors within six months of such appointment. On 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 IBB. This process will respect the concept of limited liability.

3.0 Funding support for Start-ups

3.1 Providing Funding Support through a Fund of Funds with a Corpus of INR 10,000 crores

- In order to provide funding support to Startups, Government will 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 (i.e. INR 2,500 crores per year) .
- The Fund will be in the nature of Fund of Funds, which means that it will not invest directly into Startups, but shall participate in the capital of SEBI registered Venture Funds.

3.2 Credit Guarantee Fund for Startups

To encourage Banks and other Lenders to provide Venture Debts to Startups, Credit guarantee mechanism through National Credit Guarantee Trust Company (NCGTC) / SIDBI is being envisaged with a budgetary Corpus of INR 500 crore per year for the next 4 years.

4.0 Tax Incentives for Start-ups

Tax exemptions for Startups

Profits of startups shall be exempted from income-tax for a period of 3 years

The exemption shall be available subject to non-distribution of dividend by the startup

Exemption from capital gains tax

An investor in a startup shall enjoy capital gains exemption if the capital gains are invested in the fund of funds recognised by the government

Besides, capital gain tax exemption currently available to individuals and HUFs under section 54GB on investment in newly formed Micro, Small and Medium Enterprises (MSMEs) shall be extended to all startups. Investment in 'computer or computer software' (used in core business activity) shall also be considered as purchase of 'new assets' and accordingly qualify for exemption

Tax exemptions on investments above fair market value

At present, where a 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 recipient as Income from Other Sources under section 56(2)(viib)

To encourage seed-capital investment in Startups Company, it has been proposed that the investments in shares of a startup company above fair market value (FMV) will be excluded from the operation of this section

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This newsflash is general in nature. In this newsflash, we have provided a brief overview of the Action Plan on Start-up issued by the Department of Industrial Policy and Promotion recently. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the respective circulars and notifications and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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