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CHARTERED ACCOUNTANTS

Start Up Basics

1, Definition of start-up-

An entity shall be considered as a start-up:

Up to a period of 10 years from the date of incorporation as a private limited company, partnership firm, Limited Liability Partnership ('LLP');

Turnover of the entity for any of the financial years since incorporation/registration has not exceeded 100 crores;

Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation;

Provided it is not formed by splitting up or reconstruction of an existing business.

2. Income Tax deductions with respect to start-ups-

As per section 80-IAC, where the gross total income of an assessee, being an eligible start-up, a deduction equal to 100% of the profits and gains derived from such start-up for 3 consecutive years out of the first 10 years from incorporation will be allowed;

Eligible start-up as per the Income Tax Act 1961 ('ITA'), refers to any company or LLP which is incorporated on or after 1/04/2016 and before 31/03/2022 and

Total turnover does not exceed 100 crores in the previous year relevant to the assessment year for the which deduction is claimed.

The start-up should hold a certificate of eligible business from the Inter-Ministerial Board of Certification.

3. Income Tax deduction with respect to carry forward and set off of losses in case of start-ups-

Where a change in shareholding has taken place during the previous year, no loss incurred in any year preceding the previous year shall be allowed to be carried forward and set off against the income of the previous year in case the shareholding of the company has reduced to below 51% with respect to the previous year in which a loss was incurred;
Where as in case of an eligible start-up the loss incurred in any year prior to the previous year shall be allowed to be carried forward and set off against income of the previous year if all the shareholders of the earlier year in which the loss has been incurred continue to hold shares in the start-up in the previous year and these losses have been incurred during the first 7 years from the date of incorporation of the start-up.
This provision has been introduced to safeguard the interests of start-ups having carry forward losses in initial years and diluting their stake by introducing new shareholders holding more than 50% shares.

4. Income Tax Deduction with respect to Section 56(2)(viib)-

Where a company, not being a company in which the public is 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 shall be chargeable in the hands of the company.

Provided this shall not apply to a start-up which fulfils the following conditions-
It is recognized by Department for Promotion of Industry and Internal Trade ('DPIIT');
Aggregate amount of paid up share capital and share premium of the start-up does not exceed 25 crores.
Therefore this exemption enables start-ups to raise capital at a share value greater than its book value as compared to other private limited companies.

5. Tax exemption to Individual/HUF on investment of long-term capital gain in equity shares of Eligible Start-up u/s 54GB:

If an individual or HUF sells a residential property (being house or plot of land) and invests the capital gains to subscribe to 25% or more equity shares or voting rights of an eligible start-up, then tax on long term capital gain will be exempt;
Provided such shares are not sold or transferred within 5 years from the date of its acquisition. The start-up shall also use the amount invested to purchase assets and should not transfer the assets purchased within 5 years from the date of its purchase (3 years in case of computer or computer software).

6. Fast tracking and rebate on applications for Intellectual Property:

The patent application of start-ups is fast-tracked for examination and disposal. Facilitators are responsible for providing general advisory on different IPRs, and information on protecting and promoting IPRs in other countries. Central Government bears the entire fees of the facilitators for any number of patents, trademark or designs, and start-ups only bear the cost of the statutory fees payable. Start-ups are provided with an 80% rebate in filing of patents and 50% rebate in filling of trademark vis-a-vis other companies.