

# CONTENTS

PAGE

## 1

### START-UP

<b>1.1</b>	Start-up	1
<b>1.2</b>	Start-up India Scheme	2
<b>1.2A</b>	Benefits to recognised Start-ups under 'Start-up India Scheme'	2
<b>1.3</b>	What qualifies as a "Start-up" under the Start-up India Scheme for various Govt. incentives/support	9
<b>1.3-1</b>	Definition of "Start-up" as per Notification No. G.S.R. 180(E) dated 17-2-2016	9
<b>1.3-2</b>	Definition of "Start-up" as per Notification No. G.S.R. 501(E), dated 23-5-2017	11
<b>1.3-3</b>	Definition of "Start-up" as per Notification No. GSR 364(E), dated 11-4-2018	14
<b>1.3-4</b>	Definition of "Start-up" as per the latest start-up Notification No. GSR 127(E), dated 19-2-2019	15
<b>1.3-5</b>	Whether start-ups incorporated abroad and operating in India will be eligible to be regarded as "start-ups" as per the above definition?	16
<b>1.3-6</b>	Applicability of revised expanded definition to existing start-ups <i>i.e.</i> start-ups existing as on 19-2-2019	17
<b>1.3-7</b>	Registered Partnership Firm	20
<b>1.3-8</b>	Limited Liability Partnership	21
<b>1.3-9</b>	Private Limited Company	21
<b>1.3-10</b>	Entity hasn't completed 10 years from the date of its incorporation/registration	33
<b>1.3-11</b>	Turnover of entity shall not exceed INR 100 crores	33

	PAGE
<b>1.3-12</b> Entity is working towards innovation, development or improvement or is a scalable business model	36
<b>1.3-13</b> Entity not formed by splitting up or reconstruction of a business already in existence	42
<b>1.3-14</b> No tax incentives under section 80-IAC or section 54GB if start-up entity is a partnership firm	47
<b>1.3-15</b> Merely satisfying the definition of start-up not enough to claim tax benefits under the Income-tax Act	47
<b>1.4</b> Approvals needed by Start-up to claim tax benefits under the Income-tax Act	48
<b>1.5</b> Recognition of a Start-up by DPIIT	49
<b>1.5-1</b> Whether recognition by DPIIT essential for claiming tax benefits under the Income-tax Act, 1961?	50
<b>1.5-2</b> Whether fresh recognition to be obtained by a DPIIT-recognised start-up firm on conversion to LLP/private limited company or by a DPIIT-recognised LLP on conversion to private limited company?	51
<b>1.5-3</b> What if start-up application for DPIIT-recognition is rejected or marked incomplete?	51
<b>1.6</b> Certification of the start-up entity by IMB for the purposes of section 80-IAC of the Act	52
<b>1.6-1</b> "Board"/IMB	53
<b>1.6-2</b> How would the Inter-Ministerial Board review the applications received for the purpose of tax exemption?	53
<b>1.6-3</b> What is the time-frame for obtaining certification of Inter-Ministerial Board for availing tax exemption post successful application?	53
<b>1.6-4</b> Whether start-ups existing as on 19-2-2019 whose turnover is more than 25 cr and less than Rs. 100 cr can apply to IMB for certification for section 80-IAC purposes?	53
<b>1.6-5</b> Does a start-up have to separately apply to IMB for certification every assessment year?	54

	PAGE
<b>1.6-6</b> We are a DPIIT-recognised private limited company completing 7 years of incorporation as of 31-1-2019. We also have IMB certification for section 80-IAC. We started making taxable profits from FY 2016-17 (AY 2017-18). However, we could not claim section 80-IAC benefits for AY 2017-18 and AY 2018-19 also as our turnover exceeds Rs. 25 crores for these two years. Our turnover figures for current FY and past two FYs	54
<b>1.6-7</b> Is it essential to obtain DPIIT recognition before applying to IMB for certification for section 80-IAC under Para 3 of the latest start-up Notification?	55
<b>1.6-8</b> We are a newly incorporated private limited company start-up (date of incorporation: 1-2-2019). Our commercial operations will go full swing in next financial year and our projected turnover for next financial year is Rs. 100 crores. Projected turnover for current financial year is mere Rs. 5 crores. We expect to earn taxable profits from next year. Are we eligible to apply for IMB certification for section 80-IAC?	57
<b>1.6-9</b> What are the common reasons for which IMB rejects applications for certification under section 80-IAC?	57
<b>1.6-10</b> Can the IMB revoke certification for section 80-IAC?	57
<b>1.6-11</b> What is the time-limit within which IMB has to revoke certification?	58
<b>1.6-12</b> What is the effect of revocation of certificate by IMB	58

## 2

### **TAX EFFICACY OF DIFFERENT START-UP ENTITY FORMS**

<b>2.1</b> Start-up entity forms recognised under the Start-up India Scheme	59
<b>2.2</b> Start-up entity which is a registered partnership firm	60
<b>2.3</b> Start-up entity which is a limited liability partnership	61

	PAGE
<b>2.4</b>	Start-up entity which is a private limited company 62
<b>2.5</b>	Summary 65

### **3**

## **TAX HOLIDAY TO START-UPS UNDER SECTION 80-IAC**

<b>3.1</b>	Tax holiday to Start-ups under section 80-IAC	67
<b>3.2</b>	Eligible Start-up	68
<b>3.2-1</b>	Start-up entity must be a private limited company or LLP	68
<b>3.2-2</b>	Engaged in eligible business	69
<b>3.2-3</b>	Instances of start-ups certified as “eligible business” by IMB as per Start-up India website	70
<b>3.2-4</b>	Instances of Applications rejected by IMB	71
<b>3.2-5</b>	Instances where IMB gave start-up 30 days to reply to its detailed observations or accept observations as reasons for rejection	76
<b>3.2-6</b>	It is incorporated on or after 1-4-2016 but before 1-4-2021	81
<b>3.2-7</b>	Total turnover not to exceed Rs. 25 crores	81
<b>3.2-8</b>	It holds a certificate of eligible business from the Inter-Ministerial Board of Certification	82
<b>3.3</b>	Start-up not formed by splitting up, or the reconstruction, of a business already in existence	85
<b>3.4</b>	Start-up not formed by the transfer to a new business of machinery or plant previously used for any purpose	85
<b>3.5</b>	Additional conditions applicable	86
<b>3.6</b>	Deduction is subject to sections 80A and 80AB	86
<b>3.7</b>	Deduction available even if ITR not filed within due date	87
<b>3.8</b>	Simultaneous deduction under section 80JJAA and section 80-IAC is available	87
<b>3.9</b>	Minimum Alternate Tax	87

	PAGE
<b>3.10</b> Alternate Minimum Tax applicable to LLP negates section 80-IAC and renders tax holiday illusory	88
<b>3.11</b> Conclusion	89

## **4**

### **FUNDING BLUES OF PRIVATE LIMITED START-UP COMPANIES**

<b>4.1</b> Onus on Start-up private limited co. to explain "Source of the Source" of share capital/share premium raised	90
<b>4.2</b> Angel Tax u/s 56(2)(viib) - Share premium received by closely held companies in excess of FMV taxable	92
<b>4.2-1</b> Where first proviso to section 68 attracted, will there be double taxation - Taxation under section 56(2)(viib) as well as section 68?	95
<b>4.3</b> Mode of acceptance of share capital monies - Section 269ST	95
<b>4.4</b> How should promoter raise money to fund his own investment in Start-ups before he can get angel funding	97

## **5**

### **TAX IMPLICATIONS OF FUNDING A START-UP BY INVESTING IN IT MONEY FROM SALE OF RESIDENTIAL PROPERTY INVESTED IN START-UP - SECTION 54GB**

<b>5.1</b> If eligible Start-up company (Pvt. Ltd. Co.) is liable to MAT, then will promoter get section 54GB relief?	98
<b>5.2</b> Tax exemption for selling residential property and investing long-term capital gains in equity shares of start-up company	98
<b>5.3</b> Conditions to be satisfied for availing tax relief in respect of capital gains by investment in shares of a company which is "Eligible Start-up"	99
<b>5.4</b> Promoter selling his residential property and investing monies in its shares-efficient from point of view of explaining "source of source" under section 68	100

## 6

### **EXEMPTION FROM “ANGEL TAX” TO PRIVATE LIMITED COMPANIES START-UPS**

<b>6.1</b>	Exemption from Angel Tax as per paras 4 to 7 of latest Start-up notification	<i>101</i>
<b>6.2</b>	Start-up should be a private limited company recognised by DPIIT	<i>105</i>
<b>6.3</b>	Aggregate consideration for shares should not exceed INR 25 crores	<i>105</i>
<b>6.3-1</b>	Is the limit of consideration for shares received of INR 25 cr for angel tax exemption applicable financial year-wise?	<i>106</i>
<b>6.3-2</b>	Promoter sells his residential property and invests in equity shares of his start-up private co. for 50% stake and claimed section 54GB exemption for capital gains from property in his ITR. Will this amount count for limit of INR 25 cr for angel-tax exemption	<i>106</i>
<b>6.3-3</b>	Will preference shares issued count for the limit of INR 25 cr?	<i>107</i>
<b>6.3-4</b>	Illustration on angel tax exemption - PQR Pvt. Ltd. is a DPIIT-recognised start-up incorporated on 1-4-2016. The aggregate consideration (share capital plus share premium) received till date for issue of shares is INR 70 cr. (Share capital INR 10 cr plus share premium INR 60 cr) The break-up of amounts received from various parties	<i>107</i>
<b>6.4</b>	Start-up has not invested in specified assets for period of 7 years from end of latest FY in which shares are issued for premium	<i>108</i>
<b>6.4-1</b>	Declaration in Form 2 to be filed for availing exemption from Angel Tax	<i>110</i>
<b>6.4-2</b>	Shares and securities	<i>110</i>
<b>6.4-3</b>	Jewellery	<i>112</i>
<b>6.4-4</b>	Archaeological collections	<i>113</i>
<b>6.4-5</b>	Painting	<i>113</i>

	PAGE
6.4-6 Drawings	114
6.4-7 Sculptures	115
6.5 Declaration in Form 2 to be submitted by start-up fulfilling conditions	115

## 7

### **COMPUTATION ON FMV OF SHARES ISSUED WHEN ANGEL TAX EXEMPTION IS NOT APPLICABLE**

7.1 Determination of fair market value of Start-up company's shares	116
7.2 Break-up value method	122
7.2-1 Balance sheet as on valuation date	123

## **APPENDICES**

---

APPENDIX 1 : <b>NEW DEFINITION OF 'START-UPS'</b>	137
APPENDIX 2 : <b>REPEALED DEFINITIONS OF 'START-UP'</b>	144
APPENDIX 3 : <b>RELEVANT SECTIONS OF INCOME-TAX ACT, 1961</b>	155
APPENDIX 4 : <b>RELEVANT RULES OF INCOME-TAX RULES, 1962</b>	162
APPENDIX 5 : <b>NOTIFIED CLASS OF PERSONS UNDER CLAUSE (ii) OF PROVISIO TO SECTION 56(2)(viib)</b>	168
APPENDIX 6 : <b>NOTIFIED CLASSES OF PERSONS UNDER SECTION 56(2)(viib), CLAUSE (ii) OF PROVISIO</b>	170
APPENDIX 7 : <b>DETERMINATION OF FAIR MARKET VALUE OF UNQUOTED EQUITY SHARES OF 'START-UP' COMPANIES UNDER SECTION 56(2)(viib) READ WITH RULE 11UA(2)</b>	171