What is Start-up

1. Start-up shall mean an entity:

a) The Startup should be incorporated as a private limited company or registered as a partnership firm or a limited liability partnership in India

b) Incorporated or registered in India not prior to 10 years, with annual turnover not exceeding Rs. 100 crore in any preceding financial year;

c) 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

Not considered for Start-up

1. An entity formed by merger/ demerger/ Acquisition/ Amalgamation/ Absorption will not be recognized as "Startup
2. Compromise/ Arrangement: Entities formed due to compromise/ arrangement as provided under the Companies Act, 2013 will not be recognized as Startup.
3. Conversion: Conversion of an entity from one form to another shall not be a bar for availing recognition subject to the fulfilment of condition provided in sub-section (3) of section 80-IAC of the Income- tax Act, 1961.
4. Holding including foreign holding, Subsidiary including foreign subsidiary, Joint Ventures, entities incorporated outside territory Indian Territory
5. Incorporating additional entities: Incorporating additional entities having similar address with same production line/services and at least one common director/ designated partner/partner will not be recognized as startup.
6. Common directorship/partnership: Recognition of an entity having common director/designated partner/ partner with any other entity shall be allowed to the extent permissible under the provisions of the Companies Act, 2013. Related party transaction shall not be allowed except transactions on arm's length basis.
7. Regulatory Areas: Entities operating in domains specifically prohibited by law shall not be recognized.
8. Sole Proprietorship: A sole proprietorship is not eligible to apply for recognition. If a sole proprietorship changes its type of entity into a type permissible for recognition, then the recognition will be granted from date of commencement of business of the sole proprietorship
9. *The mere act of developing products or services or processes which do not have potential for commercialization 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 considered as eligible business.*

How to get recognized as a Start-up?

The Start-up should 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;
- Supported by an incubator which is funded (in relation to the project) from Govt. as part of any specified scheme to promote innovation; or
- Supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator recognized by Government; or
- 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
- Funded by Govt. as part of any specified scheme to promote innovation; or
- Have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.

Key incentives for Start-up

Key incentives proposed under this start-up scheme are as under:

- Self-Certification: For Compliance under 9 environmental & labour laws for 5 years so as to reduce the regulatory burden. Further in case of the labor laws, no inspections will be conducted for initial period of 3 years.

- Patent registration at lower cost: Patent applications of Start-ups shall be fast tracked for examination and disposal, so that they can realize the value of their IPR at the earliest possible. Further, Start-ups shall be provided 80% rebate in filing of patents vis-à-vis other companies.

- Faster exit for Start-ups: may be wound up within a period of 90 days from making of an application for winding up on a fast track basis days under Insolvency & Bankcruptcy Code, 2016

- Exemption if capital gain is invested in start-ups: Exemption shall be given in respect of a capital gain which is invested in the Start-up ecosystem.

- Tax exemption for 3 years: Profits of Start-up initiatives 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 Start-up. A Start-up shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose.

- Investments in start-ups above FMV is not taxable: Consideration received by a Start-ups for issuing shares at a price higher than its Fair Market Value would not be taxable as income from other Sources in the hands of recipient under section 56(2)(viib) of the Income-tax Act.

- Start-up India Hub: The Government has announced launch of Start- up India Hub to create single point of contact for the entire Start-up ecosystem and enable knowledge exchange and access to funding.

- *Relaxation in Public tender:* Get listed as seller to the Central government ministries/departments & benefit from exemptions on EMD & min requirements/fast track under the criteria of "prior experience/ turnover"

- Creating corpus of Rs. 10,000 crore: Rs. 2,500 crore per year. The Fund will be in the nature of fund of funds, which means that it will not invest directly into Start-ups, but shall participate in the capital of SEBI registered Venture Funds.

- Credit Guarantee fund: Debt funding to Start-ups is also perceived as high risk area and to encourage Banks and other Lenders to provide Venture Debts to Start-ups, 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 4 yrs

I. Start-up Recognition

The process of recognition of an eligible entity as startup shall be as under: —

- A Startup shall make an online application over the mobile app or portal set up by the DPIIT.
- The application shall be accompanied by—
  - a copy of Certificate of Incorporation or Registration,
  - a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.
- (iii) The DPIIT may, after calling for such documents or information and making such enquires, as it may deem fit, —
  - *(a)* recognize the eligible entity as Startup;
  - (b) reject the application by providing reasons.

II. Startup India: Tax Exemption under Section 56 of the Income Tax Act (Angel Tax) Application

Introduction of Angel Tax (Section 56(2)(viib) in 2012
Where a closely held company issues shares to a resident, for amount received in excess of the fair market value of the shares, it will deemed to be the income of the company under the head " income from other sources" and would be taxed at 30%. It is dubbed as angel tax due to its impact on investments made by angel investors in start-up ventures.

Post getting recognition, a Start-up may apply for Angel Tax Exemption. Eligibility Criteria for Tax Exemption under Section 56 of the Income Tax Act:

a. The entity should be a DPIIT recognized Start-up
b. Aggregate amount of paid up share capital and share premium of the Start-up after the proposed issue of share, if any, does not exceed INR 25 Crore.

Restriction on Utilization of Investment

Provided further that considerations received by such start-up for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing the aggregate amount of paid up share capital and share premium of twenty five crore rupees.

iii) It has not invested in any of the following assets, —
(a) Land or building, being a residential house, other than that used for the purpose of renting
(b) Land and/or building, or both, not being a residential house, other than that occupied by the Start-up for its business or renting
(c) loans and advances, if start-up isn't engaged in ordinary business of lending of money
(d) Capital contribution made to any other entity;
(e) Shares and securities;
(f) A motor vehicle, aircraft, yacht or any other mode of transport, if the cost of such an asset of which exceeds ten lakh rupees
(g) Jewellery (other than trading in the ordinary course of business;
(h) Any other asset, whether in the nature of capital asset or otherwise,
Provided the Start-up shall not invest in any of the assets specified in sub-clauses (a) to (h) for the period of seven years from the end of the latest financial year in which shares are issued at premium

III. Startup India: 80 IAC Tax exemption:

Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.
Eligibility Criteria for applying to Income Tax exemption (80IAC):

a. The entity should be a recognized Startup
b. Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC
c. The Startup should have been incorporated after 1st April, 2016

About the Firm – VK Mittal & Associates

VK Mittal & Associates can assist in incorporation of Company/ LLP. The firm has expertise in preparing the following:

1. Pitch Deck / Information Memorandum for prospective investors
2. Financial model
3. Incorporation of a company/ LLP
4. Undertake various compliances relating to Income tax, MCA, GST etc
5. Drafting of definitive agreements viz. Shareholders Agreement, Share Subscription Agreement
6. Assistance in getting eligibility certificate under Start-up India for "Start-up Recognition" with Department for Promotion of Industry and Internal Trade (DPIIT)
7. Application for tax exemptions under section 80 IAC of the IT act.
8. Assistance in filing declaration form for exemption under section 56 of the Income-tax Act (Angel Tax)