



Income Tax Department

Ministry of Finance, Government of India

Notification No. GSR 364(E) [F.No.5(4)/2018-SI]

SUPERSESION OF NOTIFICATION NO. GSR 501(E) [F.NO.5(91)/2015-BE-I], DATED 23-5-2017

NOTIFICATION NO. GSR 364(E) [F.NO.5(4)/2018-SI], DATED 11-4-2018

AS AMENDED BY NOTIFICATION NO. G.S.R. 34(E) [F.NO. 5(4)/2018-SI], DATED 16-1-2019 AND SUPERSEDED BY NOTIFICATION NO. G.S.R. 127(E) [F. NO. 5(4)/2018-51], DATED 19-2-2019 This notification is being issued in supersession of Gazette Notification No. G.S.R. 501(E) dated May 23, 2017.

Definitions

1. In this notification,—

(a) An entity shall be considered as a Startup:

Upto a period of seven years from the date of incorporation/registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India. In the case of Startups in the biotechnology sector, the period shall be upto ten years from the date of its incorporation/registration.

ii. Turnover of the entity for any of the financial years since incorporation/registration has not exceeded Rs. 25 crore

iii. 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 that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

Explanation

An entity shall cease to be a Startup on completion of seven years from the date of its incorporation/registration or if its turnover for any previous year exceeds Rupees 25 crore. In respect of Startups in the biotechnology sector, an entity shall cease to be a Startup on completion of ten years from the date of its incorporation/registration or if its turnover for any previous year exceeds Rs. 25 crore.

(b) "Act" means the Income-tax Act, 1961;

(c) "Board" means the Inter-Ministerial Board of Certification comprising of the following members: —

(i) Additional Secretary, Department of Industrial Policy and Promotion, Convener

(ii) Representative of Ministry of Corporate Affairs, Member

(iii) Representative of Ministry of Electronics and Information Technology, Member

(iv) Representative of Department of Biotechnology, Member

(v) Representative of Department of Science & Technology, Member

(vi) Representative of Central Board of Direct Taxes, Member

(vii) Representative of Reserve Bank of India, Member

(viii) Representative of Securities and Exchange Board of India, Member

(d) "limited liability partnership" shall have the meaning as assigned to it in clause (n) of sub-section(1) of Section 2 of the Limited Liability Partnership Act, 2008;

¹ [(e) "CBDT means the Central Board of Direct Taxes Constituted under the Central Board of Revenue Act, 1963."]

(f) "partnership firm" means a firm registered under section 59 of the Partnership Act, 1932;



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- (g) "private limited company" shall have the meaning as assigned to it in clause (68) Section 2 of the Companies Act, 2013;
- (i) "turnover" shall have the meaning as assigned to it in clause (91) Section 2 of the Companies Act, 2013;
- (j) All references to "Forms" in this notification shall be construed as references to the forms set out in Appendix-I hereto.

Recognition

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

- (i) A Startup shall make an online application over the mobile app or portal set up by the Department of Industrial Policy and Promotion.
- (ii) The application shall be accompanied by—
 - (a) a copy of Certificate of Incorporation or Registration, as the case may be, and
 - (b) 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 Department of Industrial Policy and Promotion may, after calling for such documents or information and making such enquires, as it may deem fit, —
 - (a) recognise the eligible entity as Startup; or
 - (b) reject the application by providing reasons.

Certification for the purposes of section 80-IAC of the Act

3. A Startup being a private limited company or a limited liability partnership incorporated on or after 1st day of April 2016 but before 1st day of April 2021 may, for obtaining a certificate for the purposes of section 80-IAC of the Act, make an application in Form-1 along with documents specified therein to the Board and the Board may, after calling for such documents or information and making such enquires, as it may deem fit, —

- (i) grant the certificate referred to in sub-clause (c) of clause (ii) of the Explanation below sub-section (4) of section 80-IAC of the Act; or
- (ii) reject the application by providing reasons

^{1a} [4. (1) A Startup which is recognised by DIPP under para 2(iii) (a) shall be eligible to apply for approval for the purposes of clause (viib) of sub-section (2) to section 56 of the Act for the shares already issued or proposed to be issued if the following conditions are fulfilled—

- (i) aggregate amount of paid up share capital and share premium of the startup after the proposed issue of share, if any, does not exceed ten crore rupees;
- (ii) The investor/ proposed investor shall have —
 - (a) returned income of Rs. 50 lakh or more for the financial year preceding the year of investment/proposed investment; and
 - (b) net worth exceeding Rs. 2 crore or the amount of investment made/proposed to be made in the startup, whichever is higher, as on the last date of the financial year preceding the year of investment/proposed investment.

(2) (i) Application for approval under this para shall be made in Form-2 to DIPP and shall be accompanied by the documents specified therein:

Provided that in case the approval is requested for shares already issued by the Startup, no application shall be made if assessment order has been passed by assessing officer for the relevant financial year.

(ii) The application of the recognised startup shall be transmitted by DIPP to CBDT with the necessary documents.

(3) The CBDT, within a period of 45 days from the date of receipt of application from DIPP may grant approval to the Startup for the purposes of clause (viib) of sub-section (2) of section 56 of the Act or decline to grant such approval.]

Revocation



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5.(1) In case it is found that any certificate or approval referred to para 3 or para 4 have been obtained on the basis of false information, the Board ²[or CBDT] reserves the right to revoke such certificate or approval.

(2) Where the certificate or approval has been revoked under sub-para(1), such certificate or approval shall be deemed never to have been issued or granted by the Board ²[or CBDT].

Effect

³[6. This Notification shall come into effect on the date of its publication in the Official Gazette. The Government will carry out a review of this Notification before 31.03.2021.]

APPENDIX-I

Form-1

Application for certificate for the purposes of section 80-IAC of the Income-tax Act, 1961

1. Name of the Startup -
2. Date of incorporation/registration of Startup
.....
3. Incorporation No./registration No.
4. Address and business location
5. Nature of business.....
6. Contact details of Startup (Phone No. and Email)
7. Permanent Account No.
8. Existing/proposed activities

(Enclose copy of Memorandum of Association, LLP/partnership Deed, Board Resolution etc.)

Declaration

I/We hereby certify that the above information furnished by me is true and no relevant information has been concealed.

For (Name of the Startup)

(Name of the authorised signatory) Designation

Place:

Date:

This form shall be accompanied by the following documents (if applicable)-

1. Annual Accounts of the startup for the last three financial years
2. Copies of income-tax returns for the last three financial years

Form-2

Application for approval for the purposes of section 56(2)(viib) of the Income-tax Act, 1961

1. Name of the Startup
2. Date of incorporation/registration of Startup
3. Incorporation No./registration No.
4. Address and business location
5. Nature of business.....
6. Contact details of Startup (Phone No. and Email)-
7. Permanent Account No.



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8. Startup Recognition number allotted by DIPP
9. Existing/proposed activities
- (Enclose copy of Memorandum of Association, LLP/partnership Deed, Board Resolution etc.)
10. Details of certificate granted under section 80-IAC of Income-tax Act,1961 , if any
11. Details of share capital as on the date of application—
 - (i) Amount of share capital.....
 - (ii) Amount of share premium.....
 - (iii) Type of shares.....
 - (iv) Number of shares
 - (v) Face value
 - (vi) Issue price
12. Details of proposed issue of shares—
 - (i) Type of shares.....
 - (ii) Number of shares
 - (iii) Face value
 - (iv) Premium per share.....
 - (v) Issue price
 - (vi) Proposed date of issue of shares.....
13. Details of the investor—
 - (i) Name of the investor(s)
 - (ii) Address
 - (iii) Contact Details (Phone No. and Email)
 - (iv) Permanent Account No.
 - (v) Nature of business
 - (Enclose copy of Memorandum of Association, LLP/Partnership Deed, Board Resolution etc., if applicable)
 - (vi) Residential status.....
 - (vii) Amount of investment proposed
 - (viii) Average Returned income of the investor in the last three financial years-
 - (ix) Net-worth of the investor on the last date of the preceding financial year-
14. Fair market value of shares as per the report of a merchant banker

Declaration

I/We hereby certify that the above information furnished by me is true and no relevant information has been concealed.

For (Name of the Startup) (

Name of the authorised signatory) Designation

Place:

Date:



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This form shall be accompanied by the following documents —

- a. the annual accounts of the startup from the date of its incorporation;
- b. name, PAN and address of the existing shareholders along with their shareholding and the amount at which shares are issued to them;
- c. copy of income-tax returns of the investor for the last three financial years;
- d. copy of balance sheet of the investor as on the last day of the preceding financial year; and
- e. merchant banker's report.

■ ■

1. Substituted by Notification No. G.S.R. 34(E) [F.No. 5(4)/2018-SI], Dated **16-1-2019**.

1a. Paragraph (4) substituted by Notification No. G.S.R. 34(E) [F.No. 5(4)/2018-SI], Dated **16-1-2019**. Prior to its substitution paragraph (4) read as under:

"Approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act

4. (1) A Startup being a private limited company and in conformity with the definition as per definition stipulated at Para 1(a) shall be eligible to apply for approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act, if the following conditions are fulfilled: —
- (i) the aggregate amount of paid up share capital and share premium of the startup after the proposed issue of shares does not exceed ten crore rupees,
 - (ii) the investor/proposed investor, who proposed to subscribe to the issue of shares of the startup (hereinafter in this notification referred to as "investor") has, —
 - (a) the average returned income of twenty five lakh rupees or more for the preceding three financial years; or
 - (b) the net worth of two crore rupees or more as on the last date of the preceding financial year, and
 - (iii) the startup has obtained a report from a merchant banker specifying the fair market value of shares in accordance with Rule 11UA of the Income-tax Rules, 1962.
- (2) the application for approval under this para shall be made in Form-2 to the Board and shall be accompanied by the documents specified therein.
- (3) The Board may, after calling for such documents or information and making such enquiries, as it may deem fit, —
- (i) grant approval for the purposes of clause (viib) of sub-section (2) of section 56 of the Act, specifying the relevant details, including details of investor, amount of premium on which shares are to be issued, and the latest date by which the shares are to be issued; or
 - (ii) decline to grant the said approval after providing reasons."

2. Inserted by Notification No. G.S.R. 34(E) [F.No. 5(4)/2018-SI], Dated 16-1-2019.

3. Paragraph (6) substituted by Notification No. G.S.R. 34(E) [F.No. 5(4)/2018-SI], Dated 16-1-2019. Prior to its substitution paragraph (6) read as under:

"6. This notification shall come into effect on the date of its publication in the Official Gazette. The Government will undertake independent evaluation of the benefits of this Notification and carry out a review before 31.03.2019."