The Institute of Chartered Accountants of India

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WICASA PIMPRI CHINCHWAD BRANCH (WIRC)

E-NEWSLETTER JANUARY 2024

STUDENTS

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Events for the Month of January 2024

Date	Particulars	Speaker	Venue
26.1.2024	National Flag Hoisting on the occasion of Republic Day	CA Sachin Bansal, Chairman	ICAI Bhawan Pimpri Chinchwad Branch, Nigdi

Forthcoming Events for the Month of February 2024

Date	Particulars	Speaker	Venue
1.2.2023	Lecture on Union Budget 2024	CA Harish Lalwani	ICAI Bhawan Pimpri Chinchwad Branch of WIRC of ICAI
1.2.2023	Workshop On English Speaking	Mr. Shivam Nirmale	ICAI Bhawan Pimpri Chinchwad Branch of WIRC of ICAI
2.2.2023	Half Day Programme of Ethical Values	Mr. Shivam Nirmale	ICAI Bhawan Pimpri Chinchwad Branch of WIRC of ICAI

Topic: Section 54GB, Section 80IAC

India is known to have the 3rd largest start-up ecosystem in the world. India has about 50,000 start-ups in 2018; around 8,900 – 9,300 of these are technology-led start-ups, 1300 new tech start-ups were born in 2019 alone, implying there are 2-3 tech start-ups born every day. In 2020, India joined the consortium of top 50 innovative economies. In addition to this, India is a home to 21 unicorns valued at $ 73.2 billion.

Figure 1 Indian Startup by 2025

Source: T V Mohandas Pai, Inc

The start-up ecosystem in India is prospering at a rapid pace, all thanks to growth and advancement of Indian IT companies, capital availability, as well as enhanced disposable income of middle-class Indians. All the government initiative added sparkle to this.

Tax incentives has also played a pivotal role in helping these start-ups in growing. This paper will discuss two important Income Tax provisions which has a detrimental impact on the growth of start-up.

Section 54GB

Overview

Section 54GB exempts long-term capital gains on sale of a residential property (house or plot of land) owned by an individual or a HUF in case of re-investment of net sale consideration in the equity shares of an eligible company being an eligible start-up, which is utilized by the company for the purchase of new plant and machinery.

Meaning of eligible business

A business carried out by an eligible start up engaged in:

- innovation, development or improvement of products or processes or services or
- a scalable business model with a high potential of employment generation or wealth creation.

Meaning of eligible start-up

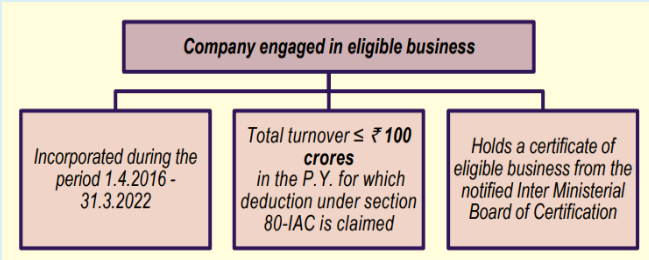


Figure 2 Meaning of eligible start-ups

Source: ICAI Module

Conditions to be fulfilled

- The amount of net consideration should be invested in the equity shares before filing of return u/s 139(1)
- The eligible companies should use the subscription amount for purchase of new plant and machinery within 1 year from date of subscription
- If such subscription amount is not utilized by the company till the date of return filing, the unutilized amount shall be deposited in Capital Gain Account Scheme (CGAS)
- The assessee should hold 25% or more equity share in such company after the investment

Quantum of exemption

- If cost of new plant and machinery ≥ Net consideration of residential house, entire capital gains is exempt.
- If cost of new plant and machinery < Net consideration of residential house, only proportionate capital gains is

  $$LTCG \times \frac{\text{Amount invested in new plant and machinery}}{\text{Net consideration}}$$

  exempt i.e.

Forfeiture of exemption

The exemption shall be withdrawn by way of levying tax on amount of unutilized deposit or the exemption claimed earlier. Following are the situations in which exemption shall be forfeited:

- If the *equity shares are sold* before 5 years from the date of acquisition, amount of exemption given earlier will become LTCG of the assessee in the year in which such transfer takes place
- If new *asset is sold* or otherwise transferred by the eligible company within 5 years (3 years in some cases) from the date of acquisition, the amount of exemption given earlier will become LTCG of the assessee in the year in which such transfer take place.
- If the amount deposited in *CGAS is not utilised* within 1 year from the date of deposit, the amount of exemption given earlier will become LTCG

Challenges to start-up

- *Investment in Plant and Machinery only*
  The section mandates that the eligible company can invest only in plant and machinery (Computers, in case a technology company). However, plant and machineries are purchased by only those companies who are into manufacturing. This provision is more pro to manufacturing sector and not that beneficial to service sector
- *Should hold 25% of the share capital after subscription*
  It is specifically mandated by the section that the assessee should hold 25% or more share capital or voting rights after the subscription. It may so happen that the assessee just wants to subscribe 10% of the share capital. In this case, the exemption under this section would not be available.

- *Difficult to procure certification from notified IMBC*
  It may look easy to procure certificate of eligible business from Inter Ministerial Board of Certification to claim exemption u/s 54GB. However, it is not that simple.

  The rampant red-tapism and corruption has corroded the efficiency. However, we are improving on this front.

Section 80-IAC

Overview

Section 80-IAC provides an incentive to start-up in order to aid their growth in the early phase of their business.

Quantum of deduction

Deduction of 100% of the profits and gains derived by an eligible start-up from an eligible business is allowed for any three consecutive assessment years out of ten years beginning from the year in which the eligible start up is incorporated.

Conditions to be fulfilled

- The company or LLP is not formed by splitting up, or the construction, of a business already existence

  Exception: This condition shall not apply in the case of an undertaking which is formed as a result of reconstruction, re-establishment or revival of the business of any undertaking which has been discontinued in any previous year due to extensive damage or destruction of any building, machinery, plant or furniture owned by the assessee.

- It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

  Exception: However, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose *provided* out of total value of plant and machinery of eligible business, more than 80% should be neither new or should be used in India

Further conditions

- *Audit Report*
  The audit report has to be filed electronically in Form 10CCB one month before the due date of furnishing return of income in order to claim deduction u/s 80-IAC

- *Double deduction not allowed*
  Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under the heading "deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

Meaning of eligible start-up

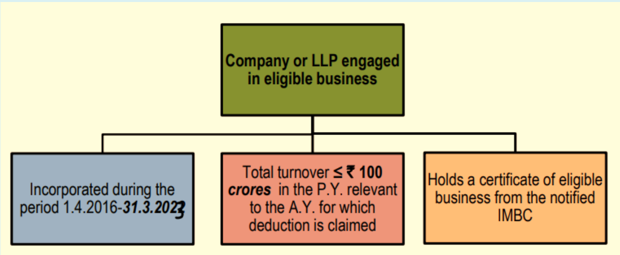


Figure 3 Meaning of eligible start-up

Source: ICAI Module

Meaning of eligible business

A business carried out by an eligible start up engaged in:

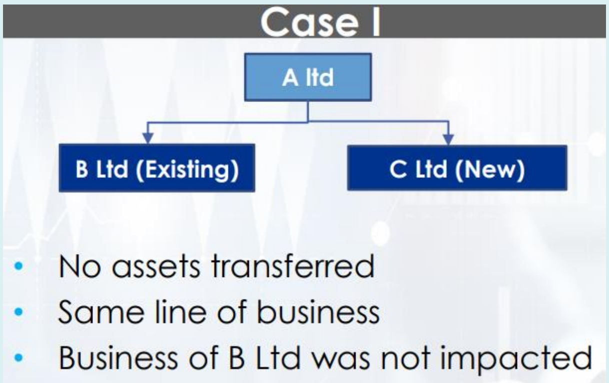
- innovation, development or improvement of products or processes or services or
- a scalable business model with a high potential of employment generation or wealth creation.

'Splitting up' or 'Reconstruction' of business

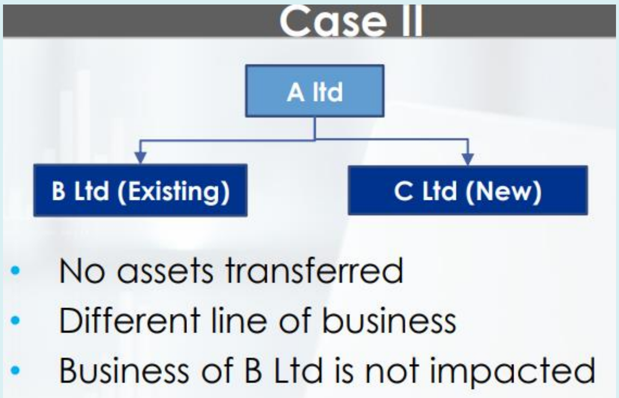
Judicial precedents have laid down following principles to evaluate 'Splitting up' or 'Reconstruction' of business:

- New business should be separate and distinct from the existing business
- No interdependence of unit/entity
- Books of accounts should be separate
- Employment of requisite manpower therein
- Earning of profits clearly attributable to the new business

Let us make this clear with few examples:



Since C Ltd is in the same line of business after splitting up, C Ltd is not eligible for Deduction u/s 80-IAC



Since C Ltd is in different line of business and no assets are being transferred, C Ltd is eligible for deduction u/s 80-IAC.

Challenges to start-up

- *Benefit limited to 10 years*
  This section may not be relevant for those startups which takes 6 to 7 years to be profitable. They will first set off their brought forward losses. Only if there is any excess profit after set off, it will claim deduction under Section 80-IAC. In case, there is no excess profit during the period of 10 years, benefit under this section cannot be resorted.

As per data available on the start-up India portal, 55,654 start-ups have been recognized by DPIIT, out of that only 396 start-ups have been granted benefit under Section 80-IAC of the Income Tax Act.

This may be one of the reasons.

- *Difficult to procure certification from notified IMBC*
  It may look easy to procure certificate of eligible business from Inter Ministerial Board of Certification to claim deduction u/s 80-IAC. However, it is not that simple.

  The rampant red-tapism and corruption has corroded the efficiency. However, we are improving on this front.

Concluding Remarks

Start-up culture intended to build a strong eco-system for nurturing innovation and start-ups in the country that will drive sustainable economic growth and generate large-scale employment opportunities.

The action plan aimed to promote bank financing for start-ups, simplify the incorporation of the start-up process, reduce the regulatory burden, focus on their core business, keep the compliance cost low, and grant various tax exemptions and other benefits.

These two sections have great potential to provide impetus to the start-ups. However, the challenges associated with it needs to be catered.

Sources

1. Taxmann.com – FAQs on Start-up
2. WIRC of ICAI – Start-up – Direct Tax and Regulatory Aspects
3. Money9.com – Complete guide on Income-Tax benefits for start-ups
4. Times of India – Why Start-up India has failed & how to fix it

Mr. Siddhant Khandelwal

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Event Photo

Celebration of National Flag Hoisting Ceremony on the occasion of Republic Day at Branch Premises on 26.1.2024

From L To R : CA Pankaj Patni Vice Chairman, CA Vijaykumar Bambe Past Chairman, CA Sachin Bansal Chairman, CA Shailesh Bore Treasurer, CA Vaibhav Modi WICASA Chairman

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