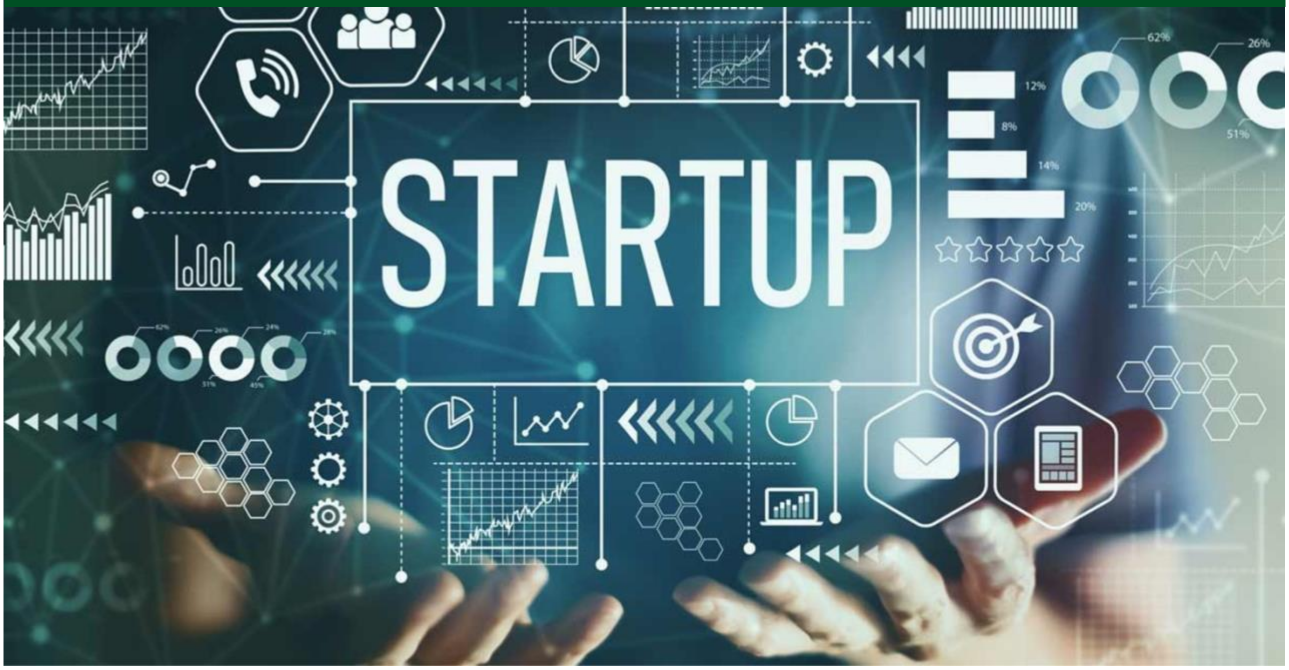
Frequently Asked Questions on Start-ups in India



India has one of the largest start-up eco-systems globally and it is growing at a rapid pace. Improvement in the ease of doing business rankings, regulatory changes, Government initiatives and the ever-growing consumer market in India are some of the major factors contributing towards the growth of the Indian start-up eco-system. To further incentivise start-ups and entrepreneurs, several reforms and relaxations has been introduced for the start-ups in India.

In this primer, we have discussed the basic framework with respect to benefits and recognitions for start-ups in India.

1. What is a recognised start-up in India?

In India, the Department for Promotion of Industry and Internal Trade ("**DPIIT**"), Ministry of Commerce and Industry, recognises an entity as a start-up which fulfils the following criteria:

(a) The entity has not completed 10 (Ten) years from the date of its incorporation or registration as a private limited company or partnership firm or a limited liability partnership;

(b) The turnover of such entity, for any of the financial years since its incorporation or registration has not exceeded INR 1 billion; and

(c) The entity should be working towards, innovation, development or improvement of products or processes or services, or if it is a scalable business model with high potential of employment generation or wealth creation.

2. What are the governing laws and regulations in India with respect to establishment and operation of a start-up?

In India, recognitions of start-ups are governed by the DPIIT notification dated 19 February 2019. For the purpose of incorporation and compliances, a start-up which is:

(a) a private limited company is governed under the Companies Act, 2013 or Companies Act 1956, as the case may be, and the rules and regulations formed thereunder (Our primer on Incorporation of Companies in India can be accessed here.);

(b) a partnership firm is governed under the Indian Partnership Act, 1932; and

(c) a limited liability partnership is governed under the Limited Liability Partnership Act, 2008 and the rules and regulations made thereunder (Our primer on Limited Liability Partnership in India can be accessed here.).

3. Which is the governing authority for recognition of start-ups in India?

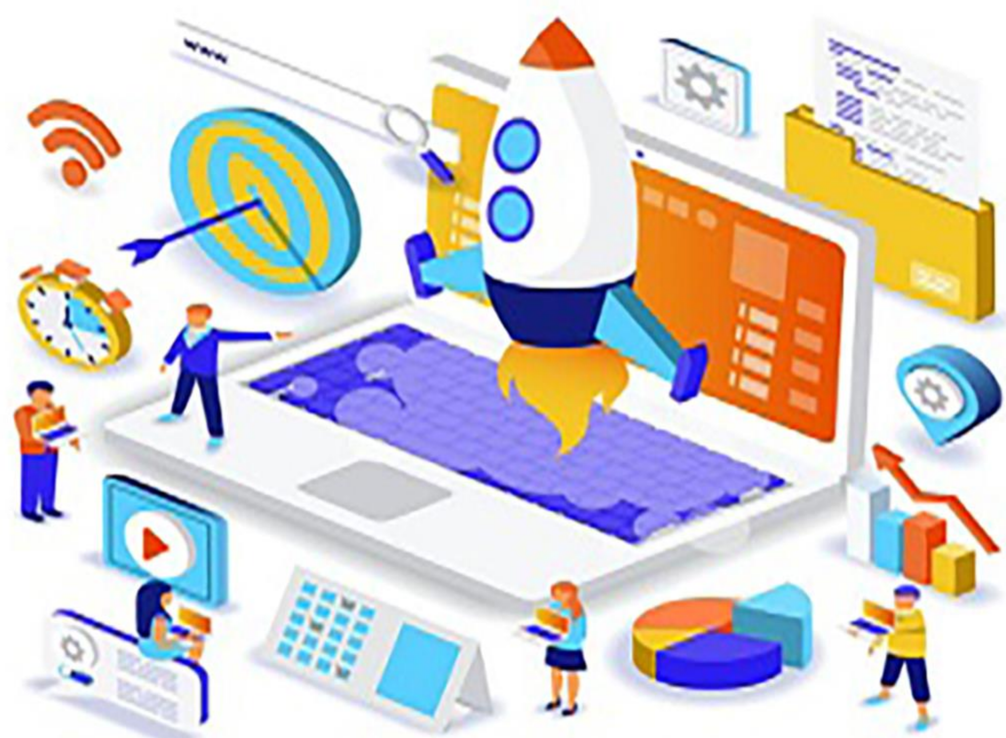
3.1. For a private limited company or limited liability partnership, the governing authority is the Registrar of Companies of the concerned jurisdiction. For partnership firms, the governing authority is the Registrar of Firms appointed under the Partnership Act, 1932.

3.2. DPIIT is the authority which grants recognition to start-ups in India.

4. **How can a start-up be recognised in India?**

4.1. An entity is required to make an online application, free of cost, on the portal or over the mobile application set up by the DPIIT to be recognised as a start-up. The start-up recognition form can be accessed here.

4.2. The online application should be accompanied by a copy of the incorporation or registration of the concerned entity, as the case may be, and a write-up about its nature of business.



4.3. The write-up should highlight how the entity is working towards innovation, development or improvement of product or process or services, or its scalability in terms of employment generation or wealth creation.

4.4. The Inter-Ministerial Board of Certification grants certificate to the DPIIT recognised start-ups.

5. What are the benefits available for entities recognised as start-ups?

An entity recognised as a start-up by DPIIT can avail the following benefits:

(a) Self-certification of compliance with labour laws and environmental laws;
(b) Fast-track patent application;
(c) Tax exemptions; and
(d) Easier public procurement norms.

6. What are self-certification benefits of a recognised start-up?

6.1. Self-certification means start-ups are permitted to self-certify compliance with 6 (Six) existing labour laws and 3 (Three) environmental laws. This self-certification can be done online.

6.2. In case of the labour laws, no inspections will be conducted for a period of 5 (Five) years. Start-ups may be inspected only on credible and verifiable complaints relating to violation and such complaint should be approved by at least one level senior to the concerned inspecting officer. 6 labour laws which are covered in this regard are:

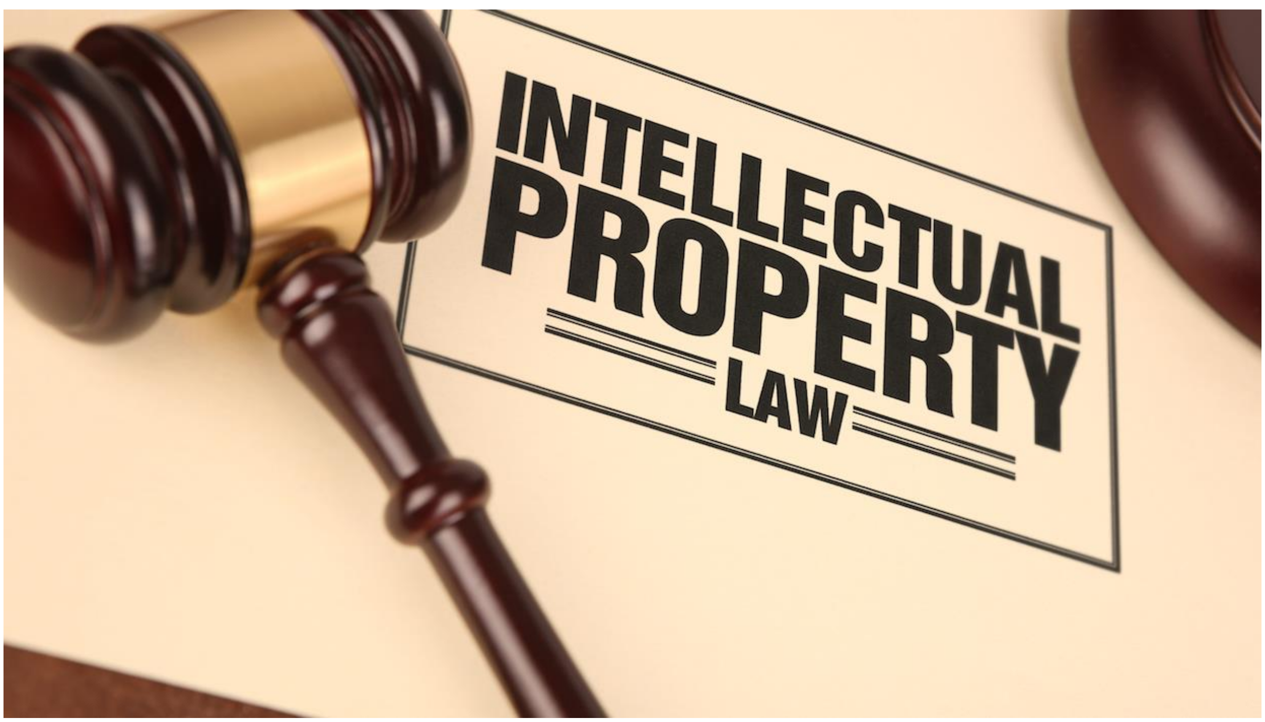
(a) The Building and Other Construction Workers' (Regulation of Employment & Conditions of Service) Act, 1996;
(b) The Inter-State Migrant Workmen (Regulation of Employment & Condition of Service) Act, 1979;
(c) The Payment of Gratuity Act, 1972;
(d) The Contract Labour (Regulation and Abolition) Act, 1970;
(e) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and
(f) The Employees' State Insurance Act, 1948.

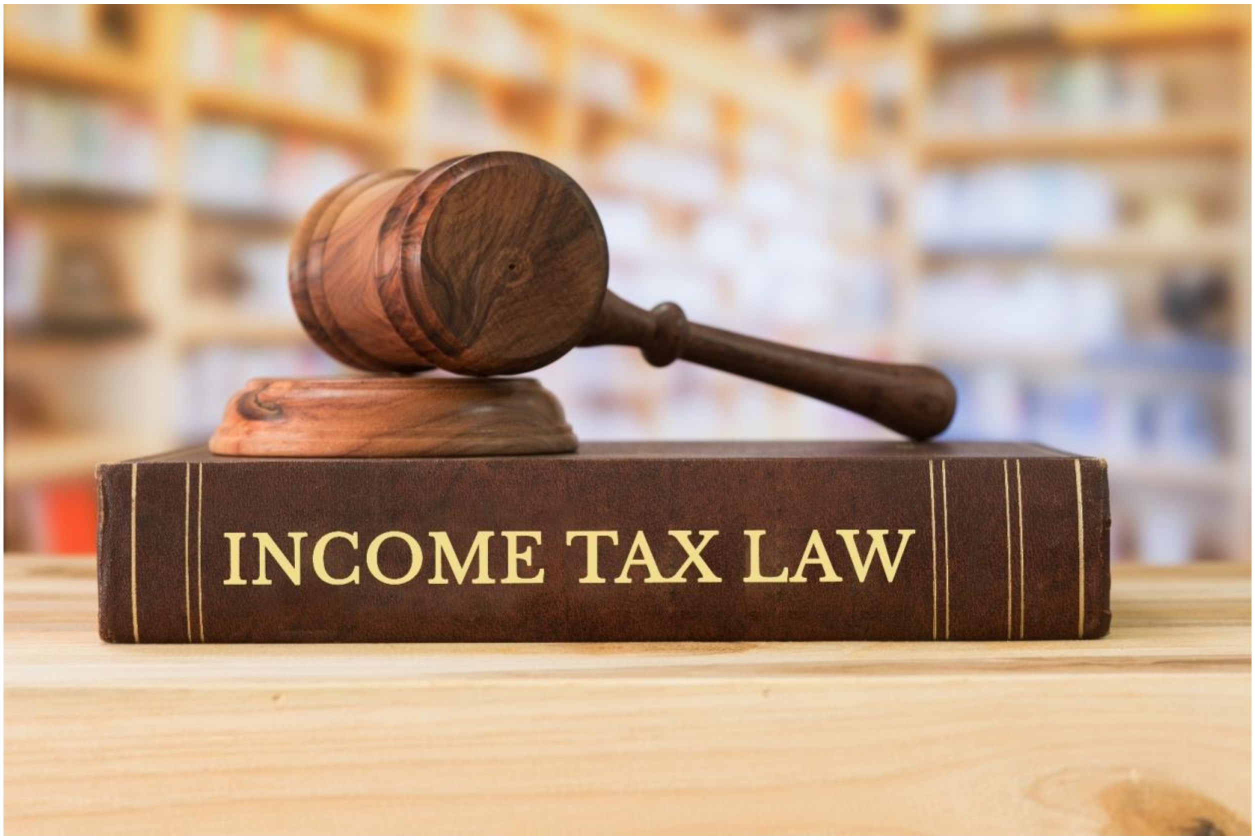
6.3. Similarly, start-ups which fall under the 'white category industries' i.e., industries which do not need green clearance under the existing environmental laws in India, will be able to self-certify compliance of environmental laws and only random checks will be carried out in such cases. The environmental laws include:

(a) The Water (Prevention & Control of Pollution) Act, 1974;
(b) The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003; and
(c) The Air (Prevention & Control of Pollution) Act, 1981

7. What are the benefits under intellectual property laws for recognised start-ups?

The patent applications filed by start-ups will be fast-tracked for examination and hence it is estimated that its value may be realised by the entities sooner. The Controller General of Patents, Designs and Trademarks is required to empanel facilitators who will be responsible for providing advisory and information on different intellectual properties. Recognised start-ups are also eligible for an 80% rebate on the cost of filing of patents. The list of facilitators for this purpose can be accessed here.





8. What are eligible businesses and eligible start-ups under the Indian Income Tax law?

As per the Income Tax Act, 1961:

(a) Eligible business means business carried out by an 'eligible start-up' engaged in innovation, development or improvement of products / processes / services or a scalable business model with a high potential of employment generation or wealth creation.

(b) Eligible start-up means a company / LLP engaged in eligible business which is incorporated on or after 1 April 2016 but before 1 April 2021, the total turnover of the business does not exceed INR 1 billion and it holds a certificate of eligible business from the Inter-Ministerial Board of Certification.

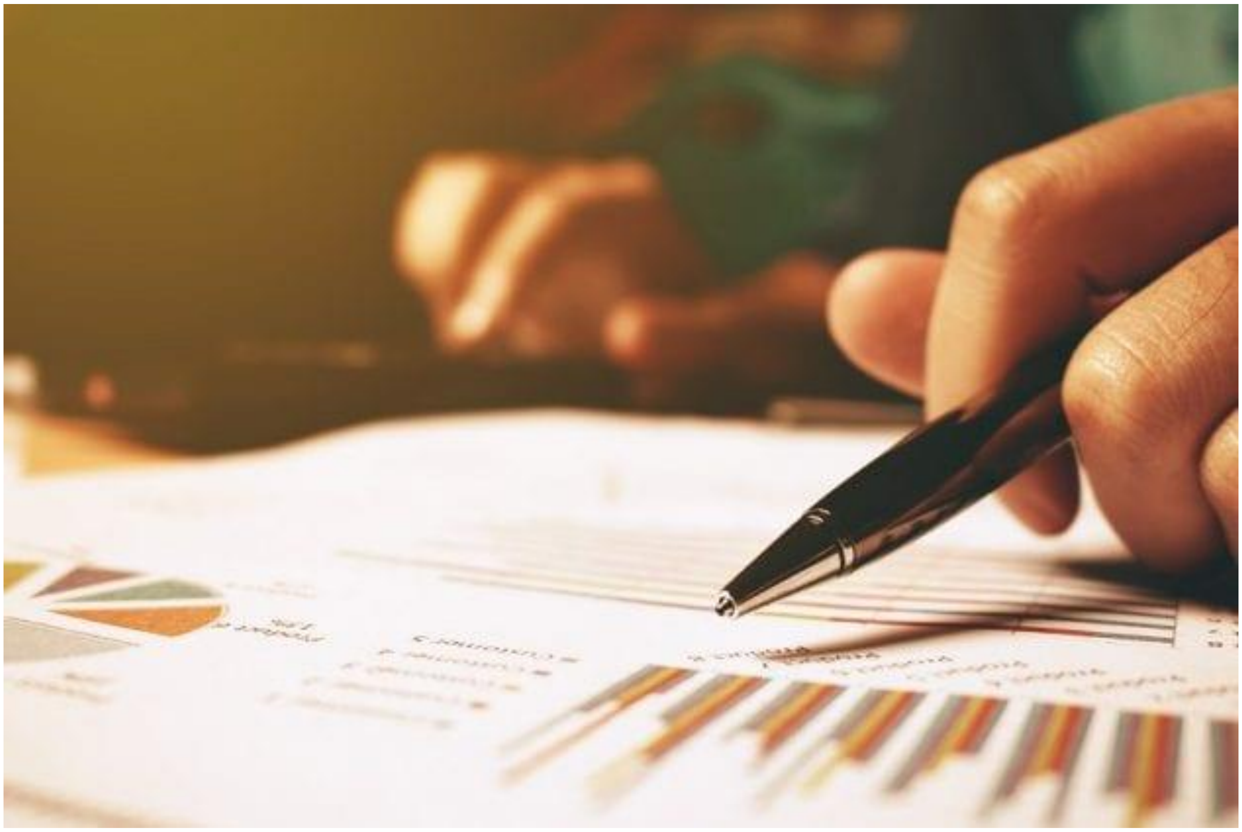
9. What are the tax exemptions available for recognised start-ups?

9.1. Eligible start-ups are exempted from paying income tax for 3 (Three) consecutive years. The eligible start-up/ the assessee will have the discretion to claim any 3 (Three) consecutive years as the assessment years for exemption out of first 10 (Ten) beginning from the year in which the eligible start-up was incorporated/ registered.

9.2. Further, certain category of start-ups is eligible for tax exemptions for receiving consideration from any person (resident in India) for issue of shares in the assessment year. For such exemption, the consideration should be more than the face value of shares issued, and the total consideration received for such issue of shares should be more than the fair market value. This category includes start-ups recognised by DPIIT and having the aggregate amount of paid-up share capital and share premium after issue of shares as a maximum of INR 250 million and has not invested in any of the following:

(a) A residential house, other than that used by the start-up for the purpose of renting or held by the start-up as stock-in-trade, in normal course of business;
(b) Non-residential land or building other than that used by the start-up for the purpose of renting or held by the start-up as stock-in-trade, in normal course of business;
(c) Loans and advances, other than loans and advances extended in the normal course of business i.e., by a start-up having lending money as its substantial part of its business;
(d) Capital contribution made to any other entity;
(e) Shares and securities;
(f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds INR 1 million but does not include those held by the start-ups for the purpose of plying, hiring, leasing or as stock-in-trade, in the normal course of business;
(g) jewellery other than that held by the start-up as stock-in-trade in the normal course of business;
(h) any other assets which include archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

9.3. While computing the aggregate amount of paid-up share capital and share premium after issue of shares, shares issued to a non-resident or a venture capital company or venture capital fund should not be included.



10. What is public procurement and what are the benefits available for recognised start-ups in this regard?

10.1. Public procurement means the process by which government or state authorities purchase goods and services from the private players. Generally, a tender floated by any government organisation for any product or service can be termed as a public procurement.

10.2. With respect to public procurements, start-ups are exempted from having a prior experience or turnover subject to the meeting of quality and technical specification requirement. However, in cases where involving procurement of items related to public safety, health, etc., the procuring entity may prefer the vendor to have prior experience and may not allow these relaxations to start-ups.

10.3. Further, recognised start-ups are also exempted from submitting Earnest Money Deposit or bid security while filing government tenders.

11. Can a start-up enter a scheme of mergers or amalgamation?

As per the recent amendment to the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016, framed under the Companies Act, 2013, a scheme of merger or amalgamation may be entered into between:

(a) Two or more start-up companies; or
(b) One or more start-up company with one or more small companies.

12. What are other government schemes for the benefit of start-ups in India?

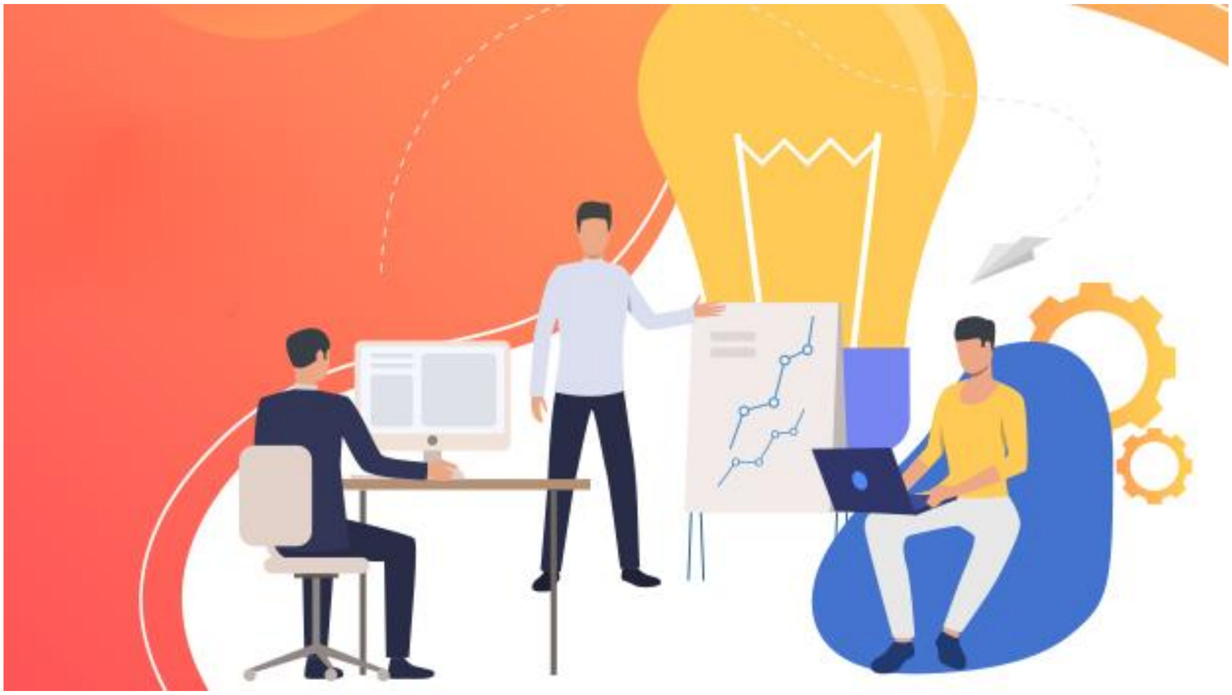
There are around 125 schemes split under various ministries/ departments of the government of India for the benefit of start-ups. Some of major schemes for benefits of start-ups include:

(a) Venture Capital Assistance Scheme of Ministry of Agriculture to assist entrepreneurs in the agricultural space in setting up agribusiness projects. The details of the scheme can be accessed here.

(b) Support for International Patent Protection in Electronics and Information Technology by the Ministry of Electronics and Information Technology. This scheme provides financial support to Micro, Small and Medium Enterprises ("**MSME**") and technology start-up units for international patent filing. The details of the scheme can be accessed here.

(c) Refinance scheme of Indian Renewable Energy Development Agency Limited under the support by the National Clean Energy Fund. The details relating to the scheme can be accessed here.

(d) Dairy Entrepreneurship Development Scheme by the department of Animal Husbandry, dairying and fisheries for generating self-employment opportunities in dairy sector covering activities such as enhancement of milk production procurement, preservation, transportation, processing and marketing of milk. The details relating to the scheme can be accessed here.



(e) Revamped Scheme of Fund for Regeneration of Traditional Industries by the Ministry of MSME. The details relating to the scheme can be accessed here.

(f) Multiplier Grants Scheme by the Department of Electronics and Information Technology to encourage collaborative R&D between industry and academics/ R&D institutions for development of products and packages. The details relating to the scheme can be accessed here.

(g) Biotechnology Industry Partnership Programme focused on creation of intellectual property, the ownership of which vests with the Indian industry / scientists. The details of the scheme can be accessed here.

(h) The Small Business Innovation Research Initiative scheme of Ministry of Science and Technology, under the Department of Biotechnology to boost public-private partnership efforts, to support new indigenous technologies relating to societal needs in the healthcare, food, agriculture and other sectors. The details of the scheme can be accessed here.

(i) Stand up India scheme by SIDBI to facilitate bank loans between INR 1 million to INR 10 million. The details of the scheme are available here.

(j) Promoting Innovations in Individuals, Start-ups and MSMEs Department of Science & Industrial Research to support individual innovators which will enable them to achieve the agenda of inclusive development. The details of the scheme can be accessed here.