

Tax Guide

For Startups



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1) Naming the Entity

If you choose to form an entity and you have determined which type of entity to form, you will need to select a name for your entity. It makes sense not to choose a name that is long or confusing if you have a B2C business. If you have a long vision for the business and the business name, you should consider getting a Trademark for your Brand name

Overview of Naming Issues

Trademark:

Trademark is a visual symbol in the form of a word, a name, a device, a symbol, or a label which identifies a merchant's or manufacturer's goods or services, and distinguishes them from others.

Getting Registered

a The registration of a trademark in India confers on the registered proprietor of the trademark the exclusive right to use the trademark in relation to the goods or services in respect of which the trademark is registered. While registration of a trademark is not compulsory it offers better legal protection for action for infringement.

b Find out if the name is already registered: In order to determine whether any person or company is using a particular trademark, a trademark search can be conducted. , it is advisable to get the official search report from the registered and pending application records before filing the application

c On obtaining the search report, file an application for registration : An application for trademark may be made on Form TM-1 with prescribed fee of Rs. 2500/- at one of the five office of the Trade Marks Registry located at Mumbai, Delhi, Kolkata, Chennai and Ahmedabad depending on the place where the applicant resides or has his principle place of business.

Don't Register

1. Trademark the use of which would be likely to deceive or cause confusion
2. Which comprises or contains scandalous or obscene matter
3. Any matter likely to hurt the religions susceptibilities
4. Matter which is merely the generic name

The application is examined to ascertain whether it is distinctive and does not conflict with existing registered or pending trademarks and examination report issued Once the applicant has overcome all objections raised by the registrar, the application proceeds to publication in the Indian Trade Marks Journal.

d Attach the following documents to your application

- Five prints of your trade marks
- General Power of Attorney in a Rs.100/- Stamp Paper in the name of your company. (NOTARISED).
- If the Trade Mark is a Label, Color Xerox copy of the Box (15 Copies).

e Opposition: After publication in the Trade Marks Journal, anyone has three months (which may be extended by up to a further month at the registrar's discretion) to file a notice of opposition to registration.

f The question of acceptance or refusal of the trademark application will be considered only once the opposition proceedings have been completed. The onus is on the applicant to establish that it is entitled to registration of the trademark as applied for.

g Final Registration: If an application has been published as accepted and is not opposed, or if any oppositions are decided in favour of the applicant, the mark will proceed to registration. If the application has been published before acceptance and is not opposed during the opposition period, the registrar will then consider afresh whether to accept the application; if he decides in the affirmative, the mark will be registered. The fact of registration must be published in the Trade Marks Journal. Once an application has been accepted for registration and any opposition have been decided in favour of the applicant, certificate of registration is issued

To get a free copy of the forms required for the Trademark registration process, send a request to services@reachtax.com

If you need expert assistance in registering for Trademark, write to robin@reachtax.com

2) Business Structure

Before you begin your Business, you will probably want to form an entity. An entity is a legal fiction which allows a business to take on a separate existence apart from its owners, even though the owners still control the business.

There are many different types of entities recognized by the laws of most states, However, for most who choose to form an entity, the best choice will usually be between:

- a Sole Proprietorship; or
- a Partnership; or
- a Private Limited company

Overview of Entity Choices

Sole Proprietorship: If you choose not to form an entity to operate your business, then you will be considered a sole proprietorship (if the business is owned by a single individual). A sole proprietorship exists when a single individual operates a business and owns all of the assets. A sole proprietor is personally liable for all debts and obligations of the business. Under a sole proprietorship, the life of the business is limited to the life of the individual proprietor. The sole proprietorship makes no legal distinction between personal and business debts, and it does not require a separate income tax return.

General Partnership: A general partnership exists when two or more individuals or businesses join to operate a business. A general partnership is a separate business entity, but creditors can still look to the partners' personal assets for satisfaction of debts. If the business is owned by 2 or more individuals, then the individuals will usually be considered to be partners in a general partnership. General partners share equally in income and liabilities. A general partnership must file an annual partnership income tax return (separate from the partners' personal returns).

To get a free copy of the forms required for the Partnership registration process, send a request to services@reachtax.com

If you need expert assistance in registering a Partnership, write to robin@reachtax.com

Registration Process:

1. Draft the constitution of the company and the bylaws involved in a judicial stamp paper worth Rs.300/-
2. Get signatures of the partners and two witnesses.
3. Get relevant forms filled and make an application for registration to the Registrar of Firms.
4. Obtain registration certificate.

Private Limited Company: A Private Limited Company is an incorporated business entity which shares some of the aspects of partnerships, but which has more flexibility. The PLC is designed to provide its owners with limited liability and pass-through tax advantages without the restrictions imposed on partnerships. An PLC must be registered with the Registrar of Companies of the appropriate State.

Getting Registered

Getting Registered

1. Log on to www.mca.gov.in

2. Obtain DIN

a. Fill-up and submit form DIN-1 online for obtaining provisional DIN. Form DIN-1 is available under 'Apply for DIN' tab on the left hand side panel under 'DIN' link on the homepage of MCA portal.

b. Login to the MCA portal and click on 'Pay Miscellaneous fee' link available under the 'Services' tab. Select 'DIN application fee' option and enter the provisional DIN. Applicant can make the payment of fee by using any of three

c. Take a print-out of Form DIN-1 (containing provisional DIN generated online). Fill the service Request Number (SRN) of the fee paid. Sign the DIN application form manually and paste a good resolution photograph in the space earmarked. Attach the photocopies of the 'Proof of Identity' (Attach additional proof, if 'Father's name and 'Date of Birth' is not indicated in the 'Proof of Identity') and the 'Proof of Residence' with DIN application form and tick the relevant checkbox against the document name. Get the photograph and the attached supporting documents attested from an approved authority as specified in form DIN-1. The certifying authority must mention its particulars such as Name, COP No. etc, and affix its seal/stamp. Complete set of documents is required to be sent to MCA DIN Cell at Noida, by post, courier or hand delivery, as per convenience, within 60 days from the date of generation of provisional DIN online

d. DIN application is received by MCA DIN Cell. DIN application form and attached supporting documents are scrutinized and if found in order, the provisional DIN is approved and activated in the system. If there is any defect in the DIN application, the provisional DIN is rejected. It takes about a week's time to complete this process. DIN approval/ rejection letter is generated and sent by post to the applicant. The status of application can also be tracked from the 'DIN Approval status' tab in the DIN corner.

e. On approval of DIN, intimate your DIN to all the company(ies) (within a period of 30 days from the date of approval) in which you are a Director, in form DIN-2. Form DIN-2 can be downloaded and printed from the 'DIN' link on the homepage of MCA portal.

f. After the Director has intimated the DIN allotted to the company(ies), the Company(ies) is/are

Quick Tips

1. Get a DIN.
2. Get your proposed name approved.
3. File Incorporation documents
4. Get the certificate of Incorporation

then required to intimate the DINs of its directors to the ROC in Form DIN-3 within a period of seven days of receiving form DIN-2.

g. If there is any change in the particulars submitted in form DIN-1, File form DIN-4 for intimating the changes in the particulars within 30 days. For instance in the event of change of address of a director, he/ she is required to intimate this change by submitting Form DIN-4 along with the required attested documents with MCA DIN Cell

3. The approved name is valid for a period of 60 days from the date of approval. The Applicant can renew the approved name for another 30 days by submitting Form-1AR on MCA portal before the expiry of initial validity period along with the fees of Rs. 250/-.

4. File Incorporation Documents

- a. After getting the name approval, the promoter(s) has to apply for incorporation of the company through Form 1
- b. and also notify the RoC regarding the situation of registered office through Form 18,
- c. and provide details of the Directors' appointment through Form 32.
- d. After processing of all three eForms i.e. 1, 18 and 32, the company is registered and a CIN is generated for the company.
- e. If the payment for the Form 1 challan generated for incorporation of a company is not made and it expires, the user will not be able to reupload this form for the next 15 days

5. Receive Certificate of Incorporation

Keep checking the status through the website, the certificate would be sent to you as soon as the company is incorporated.

To get a free copy of the forms required for incorporating a Private Limited Company, send a request to services@reachtax.com
If you need expert assistance in incorporating a PLC, write to robin@reachtax.com

3) Registering with Tax Authorities

A) Getting a Pan Card

Once you incorporate your company, you would do well to make a PAN Application for your entity. PAN) refers to a ten-digit alphanumeric number, issued in the form of a laminated card, by the Income Tax Department in India. It is a must to have a PAN number for all those who file their income tax returns, because from 2005 onwards, it has been made mandatory by the Income Tax Department to quote the PAN on return of income as well as on all correspondence with any income tax authority in the country.

The permanent account number is a vital part of any financial transaction today. Non-quoting or wrong quoting of PAN is an offence. When, where and how do you get a PAN? Read on to find out more Getting a PAN

To get a free copy of the forms required for making a PAN Application, send a request to services@reachtax.com
If you need expert assistance , write to robin@reachtax.com

How to Get a PAN Card

1. Log on to <https://tin.tin.nsdl.com/pan/index.html>
2. Fill the PAN Application online and submit
3. On submission an acknowledgement number will be displayed.
4. Print this acknowledgement.
5. Affix a colour photo on the acknowledgement and sign at relevant places.
6. Pay the requisite fees (Rs. 67/-) by credit/debit card.
7. Send the completed acknowledgement, a proof of address and a proof of identity to 'Income Tax PAN Services Unit, National Securities Depository Limited, 3rd floor, Sapphire Chambers, Near Baner Telephone Exchange, Baner, Pune 411045'.
8. Your PAN will be delivered at your doorstep.
9. You can check the status at <https://tin.tin.nsdl.com/tan/StatusTrack.html>

When to Use...

1. Sale/Purchase of a Property
2. Sale/Purchase of a motor vehicle
3. Bank deposit exceeding Rs. 50,000
4. Purchase of securities greater than Rs. 1,00,000
5. Travel payments exceeding Rs. 25,000
6. Opening a Bank A/c
7. Getting a Credit Card
8. Payment of 50,000 to a mutual fund.
9. Demand drafts exceeding Rs. 50,000
10. If Tax is deducted on your payments

You don't need if...

1. If your income is below taxable limits.
2. If you are an agriculturist

B) Register with Service Tax Authorities

Service tax is an indirect tax levied under the Finance Act, 1994, as amended from time to time, on specified services. At present, there are approximately 96 categories (including 15 new services introduced by Budget 2006) of services taxable under the service tax net.

What are the consequences for failure to obtain registration?

There is no specific penalty for failure to obtain registration. However, as per residuary penalty clause (ie penalty for contravention where no specific penalty is provided), penalty which may extend to Rs 1000/- may be leviable.

Register with Service Tax

If you happen to be a business owner, providing a service; chances are that you would be assessed under service tax. Read on to find if you need to take a registration, and if so how to do it yourself.

How to Register Service Tax

1. Download forms, fill the form in duplicate.
2. Fill your area code. Find out from http://exciseandservicetax.nic.in/sermon/servlet/loc_code_repx_location_user
3. Enclose photocopy of PAN card and proof of address to be registered..
4. Enclose a copy of the first invoice
5. Enclose a copy of your bank statement
6. Submit the forms to the jurisdictional Central Excise Office
7. Pay requisite fees
8. The superintend would issue a certificate mentioning your STC Code.

When to Register...

1. Within 30 days from starting business
2. If you provide taxable services.
3. If your turnover would exceed Rs. 10 Lakhs

You don't need if...

1. If your turnover is less than 10 Lakhs.
2. If you do not provide taxable services

To get a free copy of the forms required for registering with Service Tax, send a request to services@reachtax.com
If you need expert assistance , write to robin@reachtax.com

B) Register with VAT

Value added tax (VAT), or goods and services tax (GST), is a consumption tax levied on value added. In contrast to sales tax, VAT is neutral with respect to the number of passages that there are between the producer and the final consumer; where sales tax is levied on total value at each stage, the result is a cascade (downstream taxes levied on upstream taxes).

By definition, exports are consumed abroad and are usually not subject to VAT; VAT charged under such circumstances is usually refundable. This avoids downward pressure on exports and ultimately export derived revenue. A VAT is an indirect tax, in that the tax is collected from someone who does not bear the entire cost of the tax.

A dealer is a person who purchases, sells, supplies or distributes the goods in the course of his business for valuable consideration has to register with the VAT Authorities.

How to Register VAT

1. Fill relevant forms
2. Fill the Application in duplicate and affix photograph.
3. **Attach the following documents to the application**
 - a. Copy of the constitution document e.g. Partnership deed for partnership firm, Memorandum and Articles of Association for a company.
 - b. Board Resolution authorizing the signatory to sign the application in case of company.
 - c. Proof of identification of the authorized signatory e.g. voter identity card, passport, driving license.
 - d. Proof of principal place of business e.g. rent receipt, lease agreement, electricity bill.
 - e. Submit the forms to the jurisdictional Central Excise Office
4. Submit the above in the nearest Commercial Tax Office.
5. On submission, the Commercial Tax Officer would verify if the submission is complete and desirable.
6. He would make a field inspection of your premises.
7. The Office of Commercial Tax Officer would send you the VAT CERTIFICATE
8. Once registered, you will have to account for output tax that is attributable to your taxable sales. You will also have to submit VAT returns monthly to the Commercial Taxes Department and keep proper books of accounts.

When to Register...

1. If you do business within the state and your turnover exceeds or is expected to exceed Rs. 10 Lakhs per annum
2. If you do business out of the state and your turnover exceeds or is expected to exceed Rs. 5 Lakhs per annum.
3. If your Happen to pay VAT on your purchases, registration would allow you to set off the purchasa tax against collection.

You don't need if...

1. If your income is below taxable limits.
2. If you do not sell products.

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