

Start-up Law

A guide for start-ups, investors and employees

On 23 December 2022, Law 28/2022 of 21 December to Promote the Start-up Ecosystem, also known as the '[Start-up Law](#)', comes into force.

This new Start-up Law brings tax, employment, business, and administrative benefits for these companies, as well as for their employees and investors. It is also aimed at attracting qualified international professionals to Spain through a new residence permit and visa for homeworking and provides an improved tax scheme for the so-called 'impatriate workers' (also known as the 'Beckham Law').

Measures for start-ups, their investors and employees

This law introduces tax, employment, market and administrative incentives for start-ups, their investors and employees.

Tax and employment incentives:

- **Corporate Income Tax.** Start-ups will be able to benefit from a reduced corporate income tax rate of 15% for the first year in which they have positive taxable income and for the following three years. They can also defer their Corporate Income Tax without the need to present a guarantee covering the amount due for the first two years in which they have positive taxable income. Furthermore start-ups have the option of paying Corporate Income Tax in instalments for the first two years following the first tax year in which they had a positive taxable income.
- **ii. Personal Income Tax. Deduction for investing in newly incorporated companies.** Investors can deduct their start-up investment from their income tax at a rate of 50% (previously 30%), while the Law has increased the maximum base (i.e., the acquisition value of the shares) up to EUR 100,000.



What are start-ups?

Capital companies or cooperatives that apply to be considered a start-up must have their headquarters or permanent establishment in Spain and develop an innovative entrepreneurial project with a scalable business model and a turnover that may not exceed EUR 10,000,000. A company can only be considered a start-up for the first 5 or 7 years since its incorporation (depending on the industry). Furthermore, at least 60% of its workforce must have a Spanish employment contract and the company cannot pay out dividends or returns (for cooperatives) or be listed on a regulated market. If the start-up is part of a group of companies, all other companies in the same group must also meet the same aforementioned requirements.

The *Empresa Nacional de Innovación SME, SA* (or '**ENISA**', as per its Spanish acronym) is in charge of checking compliance with the legal requirements to qualify as a start-up. ENISA's assessment must be carried out within a 3-month term. A lack of response from this authority will be understood as a favourable assessment (*silencio administrativo positivo*).

Tax and employment incentives (cont.):

- **Personal Income Tax. Shares or stock option plans.** Employees may benefit from a tax exemption up to EUR 50,000 / year per employee (previously EUR 12,000) for the distribution of shares or stock options by the company. The amount of tax payable on such income in kind that exceeds the EUR 50,000 limit will be deferred for a maximum of 10 years but must be paid before said term if the company is listed or if the shares have been transferred.
- **Non-resident income tax. Delivery of shares.** Income in kind gained from the distribution of shares is considered exempt.
- **Social Security contributions.** Self-employed professionals who have created their start-up while working for a different company can deduct up to 100% of their Social Security contributions if they can prove effective control of the start-up at the same time as they are employed by the other company (*pluriactividad*).

Market incentives:

- **Own shares (*autocartera*).** Limited liability start-ups can acquire up to 20% of their own shares (treasury shares) to implement a remuneration plan, subject to prior authorisation of the shareholders' general meeting.
- **Losses reducing net worth.** Start-ups with a net worth below 50% of their share capital will not face winding-up, provided that they do not have to apply for insolvency. This provision applies for a maximum 3-year term from the date of incorporation.
- **Shorter deadline for registration in the Companies Register.** The deadline to register a start-up and all their corporate acts is reduced from 15 to 5 business days.
- **Identification of foreign investors.** Requirements regarding identification of foreign non-resident investors in Spain are also simplified, making it easier to apply and obtain a Tax ID number (NIF) online as well as being exempt from obtaining a Foreign ID number (NIE).

Administrative incentives:

- **Encouraging public procurement for innovation.** The government will encourage public tenders of innovative tech or processes and pre-commercial public procurement.
- **Financial and technical solvency criteria.** A start-up's individual circumstances will be considered when setting financial and technical solvency criteria to participate in public tenders and pre-commercial public procurement procedures.
- **Temporary licences.** Start-ups operating in regulated sectors may apply for a temporary 1-year trial licence for the development of their business activities.
- **Safe testing environments.** In order to assess the usefulness, feasibility and impact of tech innovations applied to regulated activities, public authorities will promote controlled testing environments for limited periods of time.
- **State aid.** In order to attract private capital to finance start-ups, the State Administration, in cooperation with regional and local authorities, will promote the establishment of co-investment funds.



Measures to attract international talent to Spain

Visa and residence permits for international homeworking

The Law allows employees and self-employed professionals who provide services remotely for companies located outside Spain to apply for work visas and residence permits in Spain, benefiting from the processing provided for in Law 14/2013, of 27 September, on support for entrepreneurs and their internationalisation.

Applicants must meet certain requirements, including proving that the foreign company or group of companies they provide services to has continuously carried out activities for at least one year, carrying out a professional activity for, or being employed by, the foreign company for at least three months prior to the application request, and that such services can be provided remotely.

A work visa will have a maximum duration of 1 year, whilst a residence permit can last up to 3 years, although both are renewable.



Special Regime for Impatriates (the 'Beckham Law')

The Start-ups Law amends the current so called 'impatriate' scheme provided for in the Personal Income Tax Law, making it more accessible and introducing new beneficiaries.

- An 'impatriate' can benefit from this scheme if they have not been a tax resident in Spain for the last 5 tax years (as opposed to the 10 years previously required).
- The new beneficiaries of this scheme are: (i) 'digital nomads', or persons who work remotely, exclusively through computer and telecoms systems (this requirement is understood to be met for employees who have a visa for international homeworking); (ii) persons who become managing director of a company (a stake in their share capital is no longer a requirement, except for holding companies); (iii) professionals who relocate to carry out an entrepreneurial business activity (i.e. innovative or of particular economic interest for Spain, after obtaining a favourable report issued by ENISA); and (iv) highly qualified professionals who relocate to carry out a business activity in Spain who provide services to start-ups, provided that the amounts obtained represent over 40% of the total income from the business activity and employment.
- Income from business activities that are listed under points (iii) and (iv) above will be deemed to have been obtained in Spain for the purposes of this tax regime.
- This tax regime is extended to the impatriate's spouse and children under the age of 25 or older if they have a disability, subject to compliance with certain requirements.

The information in this note is of a general nature and does not represent legal advice by its authors, having been issued on 22 December 2022.

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