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Client briefing

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Start-up Law

The parliamentary process to approve the Law to foster the start-up ecosystem in Spain, also known as the "Start-up Law", aimed at establishing a specific regulatory framework to support the creation and growth of start-ups, concluded on 1 December 2022. The Law will be published shortly in the Official State Gazette (*Boletín Oficial del Estado*) and will enter into force the day after its publication.

1. BOOST FOR INNOVATIVE ENTREPRENEURSHIP

Innovative start-ups form the basis of the new digital economy, attracting skilled talent and specialised investment. However, their specific characteristics, namely, the need for financing without the need to generate revenue immediately, uncertainty about the success of its business models and strong competition for international capital and talent, make it difficult for start-ups to fit into the current conventional regulatory framework, especially when it comes to tax, commercial and employment matters.

To address this, Spain's Recovery, Transformation and Resilience Plan includes specific measures to support entrepreneurship and facilitate the creation and development of innovative start-ups. It also identifies the need to review the current regulations and remove barriers that start-ups currently face due to their intrinsic characteristics.

The Start-up Law implements:

(A) Tax[1] and employment-related measures

(i) The Corporate Income Tax ("**CIT**") rate is reduced from 25% to 15% for Spanish start-up businesses (*empresas emergentes*) for four years and CIT payments can be deferred for the start-up's first two years, in which case no collateral has to be posted and late-payment interest does not apply. An exemption from having to pay on account (*pagos fraccionados*) is also introduced.

(ii) The exemption in connection with awarding shares or stock options to start-up business employees increases from EUR 12,000 to EUR 50,000 per year and a special valuation rule is introduced for non-exempt income. The general tax deduction for investing in new companies (not necessarily Spanish start-ups) is increased.

[1] Click **here** for more information on the tax-related measures.

(iii) A 50% tax allowance is introduced for income obtained by directors, employees or managers of certain closed-end collective investment funds and entities, which is triggered when the funds' investors earn a specific minimum return (carried interest).

(iv) The scope of application of the special tax regime for workers posted to Spain (the so-called tax regime for expatriates) is extended, and the reasons for moving to Spain that entitle a taxpayer to apply the regime have been made more flexible. An exemption similar to that for non-resident taxation is introduced for income in kind that expatriates or their family members earn.

(v) Parent companies of specific Spanish groups or branches of companies not subject to the laws of an EU Member State now have a reporting obligation for CIT or equivalent or similar taxes.

(vi) A 100% allowance of the minimum general rate for self-employed workers who provide services to an emerging company but at the same time are employed by another company.

(vii) The process for obtaining residency in Spain is made easier in various circumstances on economic interest grounds.

(viii) International remote working is regulated.

(B) **Corporate-related measures**

(ix) Start-ups that are limited liability companies (*sociedades de responsabilidad limitada*) may acquire own shares to pay for incentive plans, subject to the limits (20% of the share capital) and requirements established by the Start-Up Law.

(x) The company may suffer losses but these will not give rise to compulsory dissolution for the first three years following its incorporation provided it does not have to file for insolvency.

(xi) The company incorporation process is eased and lower notary and registry fees apply in specific cases.

(C) **Administrative-related measures**

(xii) Fostering both types of innovative public procurement for start-ups: Public Purchase of Innovative Technology (PPIT) and Pre-Commercial Public Purchase (PCPP).

(xiii) Allowing start-ups to operate in regulated sectors via temporary trial licences.

(xiv) Creating secure test environments for start-ups to operate in regulated sectors.

(xv) Promoting public-private collaboration between universities and start-ups, through education programmes on entrepreneurship and digital skills, as well as other actions to foster the creation of start-ups and technology-based companies in rural or sparsely populated areas.

(xvi) Supporting start-ups through state aid for innovation-based entrepreneurship and establishing co-investment funds to attract private capital, as well as creating contact and collaboration networks, platforms and meeting points.

(xvii) Reducing barriers for start-ups to access public aid.

(xviii) Publicising information on the Spanish start-up ecosystem through a newly created portal.

(xix) Adapting and updating public-authority-user-interfaces, as well as those for registries and notaries.

2. WHEN IS A COMPANY CONSIDERED TO BE A START-UP?

2.1 DEFINITION

For the purposes of the Start-up Law, a "start-up company" is any legal person that meets all of the following **conditions**:

1) Is newly created or no more than 5 or 7[2] years have elapsed since its incorporation was registered at the relevant commercial registry.

2) Did not arise from a merger, spin-off, or conversion of companies that are not deemed start-ups.

3) Does not and has not distributed dividends.

4) Is not listed on a regulated market.

5) Has its headquarters, registered office or permanent establishment in Spain.

6) 60% of its workforce have employment contracts in Spain.

7) Is based on an innovative entrepreneurial project with a scalable business model.

2.2 EXCLUSIONS

(A) Start-up companies incorporated or managed, directly or indirectly, by a person or persons who:

a) is not up to date with their tax and social security obligations;

b) has been convicted by final judgment for the offence of misconduct in public office, bankruptcy offences, corporate offences, money laundering offences, terrorism financing, offences against the Public Treasury and Social Security, malpractice, bribery, influence peddling, embezzlement of public funds, fraud or unlawful exactions or town planning offences, as well as losing the possibility of obtaining public subsidies or aid; or

c) has lost their public procurement right.

(B) Fraudulently constituted start-ups.

2.3 ENISA'S VALIDATION OF THE REQUIREMENTS TO BE CONSIDERED A START-UP

Empresa Nacional de Innovación SME, S.A. (ENISA) must determine that all the requirements to be considered a start-up under the Start-up Law are met[3] before the company can register as such at the

[2] For biotechnology, energy, industrial and other strategic sectors or companies that have developed their own technology that has been designed entirely in Spain. To be determined by a ministerial order.

[3] ENISA must at least take into account the following criteria:

- Degree of innovation
- Degree of market attractiveness
- Business life cycle

relevant commercial registry.[4] For such purposes, the entrepreneurs' request for registration must be addressed to the relevant public authority, which will request a report from ENISA on its entrepreneurial and business activity.

ENISA's evaluation will take up to three months from the date on which the application and supporting documentation has been uploaded to the relevant electronic register.

ENISA may not give its approval when a business model represents potential reputational, regulatory, ethical or speculative risk.

- Business model
- Competition
- Team
- Dependence on suppliers, providers and rental contracts
- Customer base

[4] Once a start-up is registered at the relevant registry it can apply and take advantage of the benefits of the Start-up Law.

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