

BILL TO PROMOTE THE START-UP ECOSYSTEM IN SPAIN
("THE START-UP LAW")

The Spanish Government has recently approved the Bill to promote the Start-up ecosystem in Spain, more commonly known as the "Start-up Law". This Law will come into force by the end of this year.

The draft of the Start-up Law establishes the specific legal framework for start-up companies regarding administrative, tax, civil, and company law, with the main purpose of supporting start-ups all along their life cycle, but mainly during the first stages. The objective of this Law is to define a specific legal regime exclusive to start-ups, different from the one applicable to traditional business models.

The Law has been designed according to the EU Start-ups Nations Standard, which establishes a set of practices designed to foster entrepreneurship in the European Union and accelerate the growth of start-ups and their scalability.

The aim in approving the Start-up Law is to create a favorable environment for entrepreneurship and the creation of innovative companies, remove bureaucratic obstacles and make the procedures to set up and invest in start-ups more flexible in Spain.

What is a start-up according to the Start-up Law?

A start-up is a new company based on know-how and technology with a high level of digitalization and characterized by a high growth potential. According to the draft Law, in order to consider that a company is a start-up, there are some requirements that have to be met:

- The start-up cannot be over 5 years old, or 7 years if the start-up is in biotechnology, energy, industrial or other strategic sectors, or if the start-up has developed proprietary technology designed entirely in Spain.
- The company must be independent from other companies, that is, the start-up cannot be the result of a merger, acquisition or spin-off.

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- The start-up cannot be listed on the stock market.
- The start-up mustn't have distributed profits.
- The start-up must be innovative, with the purpose of solving a problem or improving an existing situation by developing products, services, and new or improved proceedings compared to the current state of the art technology, with an implicit risk of industrial or technological failure.
- The annual revenues of the start-up cannot exceed 5 million euros.

If at any moment the start-up does not comply with one of these requirements, it will not be a start-up any longer and will become a regular company.

Measures to promote the creation of start-ups in Spain

Less bureaucracy and costs

The Law has the aim to promote and encourage the entrepreneurship of innovative companies and, in order to do so, the Law foresees more flexible procedures and advantages to create a start-up.

- Notary, Companies Registry and Official Gazette fees will not apply to start-ups incorporated as limited liability companies.
- Start-ups can be incorporated using an online procedure.
- Non-resident individuals investing in a Spanish start-up will not need to apply for a foreigner identification number (NIE), as long as they have a tax identification number.

Tax benefits

The Bill of the Start-up Law includes some tax benefits to attract and retain national and international talent, as well as investors, with the purpose to promote the creation of start-ups, improve their economic viability and support them along their life cycle.

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- The tax rate for corporate tax and non-resident income tax is reduced to 15% for the first four fiscal years from the moment the start-up has positive taxable income.
- The tax exemption threshold on stock options granted by the start-up is raised to 50,000 euros.
- Limited liability start-ups will have more flexible conditions on treasury shares, up to 20% of equity can be owned by the company when this is for a remuneration plan.
- Investors can deduct 50% of the annual amount invested in start-ups (with a limit of 100.000€ annual investment).
- A 50% tax reduction applies on carries derived from start-ups if certain conditions are met.

Additionally, in order to attract and retain foreign talent, there will be some tax benefits for “digital nomads” who temporarily settle in Spain. Digital nomads will have the possibility to live and work in Spain for 5 years under the special tax system of non-residents.

Social Security obligations

The draft Law establishes that entrepreneurs with multiple jobs will not be required to contribute twice to the Social Security system for a period of 3 years, which means that entrepreneurs who work simultaneously on their own project and for another company, will be exempt to contribute to the special regime of self-employed workers.

Conclusion

The draft Law seeks to encourage and promote a new business model based on research, development and innovation by attracting and retaining investments and talent.

It gives start-ups the necessary financial viability and support by recognizing the uniqueness of the start-up business model, and counteracting the risk derived from the high innovative content of start-ups and the uncertainty involved in their creation.

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The approval of the Start-up Law will definitely be a major step to recognize the role that start-ups have in the Spanish economy. The Law is scheduled to be approved in the last quarter of 2022, once the parliamentary debate is finished.

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