**START-UP LAW**

Law 28/2022 of 21 December to promote the ecosystem for new entrepreneurs, also known as the “Start-up Law”, was [published in the Spanish Official Gazette](https://www.boe.es/boe/dias/2022/12/22/pdfs/BOE-A-2022-21739.pdf) on 22 December 2022.

It has the objective to establish a specific regulatory framework to support the creation and growth of new innovative companies, considered as one of the factors responsible for driving recovery and modernisation of the country’s economy.

**1.- DEFINITION OF A START-UP COMPANY**

For companies to have the consideration of “start-up company”, they must:

* Be newly created, or to have been created no more than 5 years previously, since their date of registration in the Business Register, in general, or 7 years in the case of companies in biotechnology, energy, industrial and other strategic sectors or which have developed their own technology.
* Not have emerged from a merger, spin-off or the transformation of companies that are not considered to be start-ups.
* Have their head office or permanent facilities in Spain. 60% of their workforce must be employed in Spain. They must not issue or have issued dividends.
* Not be listed on the regulated market.
* Have the consideration of innovative company. The accreditation of start-up company will be the responsibility of ENISA or of collaborating third-party entities, in the Autonomous Communities.

**Criteria stipulated by ENISA for issuing start-up company certification**

Entrepreneurs wishing to take advantage of the benefits and specialities of this law must apply to ENISA, which will assess the extent of their innovation and the scalability of their business model.

The assessment process conducted by ENISA will be completed within a deadline of no more than three months, starting from the date of receiving the application complete with all of the required information. After this time, should no express notification of a decision have been received, the interested party will have the right to consider it favourable due to positive administrative silence.

Analysis of the degree of innovation of the start-up project and of the scalability of the business model will be based on, at least, following criteria:

* + - * **Degree of innovation**. An assessment will be made of public funding received in the last three years. Account will also be taken of amounts dedicated to research, development and technological innovation with respect to the total company costs in the two previous years, or in the previous year in the event of a company less than two years old.
      * **Degree of market attractiveness**. An assessment will be made of supply and demand in the sector, the generation of traction, strategies for attracting users or customers, among other aspects.
      * **Life stage of the company**. An assessment will be made of the implementation of prototypes and the obtaining of a minimum viable product or placement of the service on the market.
      * **Business model**. Consideration will be given to the scalability of the number of users, of the number of operations or of the annual turnover.
      * **Competitors**. An assessment will be made of competing companies in their field or sector of activity and of the factors that set the company apart with respect to these.
      * **Team**. An assessment will be made of the experience, training and background of the team making up the company.
      * **Dependence on providers, suppliers and rental agreements**. Account will be taken of relations with other economic operators.
      * **Customers**. An assessment will be made of the company’s volume of customers or users. Segmentation and not depending on only a few customers that invoice large amounts.

For all of the above, companies must register in [ENISA’s official portal](https://www.enisa.es/es/info/proceso-de-acreditacion).

*Note: In June 2023 the order regulating this certification has still not been issued.*

The company cannot take advantage of the benefits of the Law, when:

* It is purchased by another company not considered to be a start-up.
* The company’s business turnover is greater than 10 million euros.
* It conducts an activity that causes significant harm to the environment according to EU Regulation 2020/852 of the European Parliament and of the Council, of 18 June 2020.
* The partners who, directly or indirectly, hold a share of at least 5% of the share capital or sit on the board of the start-up have received a final conviction for criminal offences.

**2.- NEW ASPECTS OF THE NEW LAW**

**2.1.- NEW MERCANTILE ASPECTS**

Given that the emerging companies largely incorporate themselves as limited companies, the following modifications are included:

* The articles of association of limited companies with the consideration of emerging companies can deliver shares to board members, employees or other collaborators, permitting them to hold up to 20% of own shares for the purposes of executing said retribution plan.
* The deadline for the registration of emerging companies and their deeds (including shareholder agreements) will be 5 working days (and not the 15 indicated in the general rule).
* During the first 3 years, the emerging company will be exempt from equity balance requirements. In other words, they will not be subject to dissolution for qualified losses. These are losses that reduce the net worth to less than half of the share capital, until the first three years have elapsed.
* In the event of using different models of standard articles of association, the registrar can proceed to qualify the registration within the 6 working hours following telematic reception of the deed.
* Entrepreneurs who adopt the standard articles of association and use the telematic submission system provided by the Information Centre and Company Creation Network, and whose capital falls below €3,100 will be exempt from paying the BORME registration fees. However, they will have to pay notary and registry fees of €60 and €40 respectively.

**2.2.- NEW TAX FEATURES throughout Spain.**

***Note: The Tax Offices of the Basque provinces have their own regulations.***

* Corporate Income Tax is reduced from the current 25% to 15% for a maximum of 4 years, applicable to the first tax period in which the tax base is positive, and in the 3 following years, provided that the company maintains its condition of start-up.
* An application can also be made for the deferral of Corporate Income Tax or non-resident personal income tax (“Non-resident Income Tax”) in the first two (2) tax periods from the time that the tax base is positive, with no interest on late payment (12 months for the first tax period and 6 months for the second).
* The tax obligation is deferred in the event of delivering Stock Options to employees. The Law envisages an exemption of €50,000 per year in the event of delivering shares or holdings to the employees of emerging companies, deferring their tax liability until whichever of the following occurs first: (i) 10 years; (ii) when the actions or holdings are transferred; or (iii) acceptance in the Stock Exchange or any other multilateral negotiation system, in Spain or abroad.
* Deduction on the Personal Income Tax applicable to investments in newly or recently created companies. The deduction rate is increased from 30% to 50% and the maximum base from €60,000 to €100,000.
* No Foreigner Tax Identification number will be required for investors. They will however require Spanish Tax Identification which they can obtain by means of a simplified telematic procedure.

**2.3.- NEW REGULATIONS FOR LICENSES**

The Law also envisages regulated testing environments, known as “regulatory sandboxes”; these are regulatory environments adapted to the needs of emerging companies and act as testing grounds for new business models.

The purpose of this regulation is exemption from the general regulation, supervised by a regulating body or entity, to assess the utility, viability and impact of technological innovations in the different sectors.

The possibility is envisaged for start-ups to apply to the administrative regulatory authority in their field of activity for a 1-year test licence to carry out their activities, issuing a written warning to the user or consumer informing them of this situation of temporary testing.

**2.4.- NEW LABOUR FEATURES**

To promote entrepreneurship among wage-earners, the double Social Security payment is eliminated during 3 years in the case of holding more than one job, discounting 100% of the quota corresponding to the general minimum base stipulated in the Special Social Security Scheme for Self-employed Workers (RETA) in the case of entrepreneurs who work simultaneously in the employment of others.

**3.- ATTRACTION AND RETAINING OF TALENT**

With respect to foreign talent, by way of a complement to the tax measures, a series of migratory measures are incorporated to enable the entrance and residence not only of highly qualified professionals, but also of entrepreneurship and investment.

Its objective is to attract so-called digital nomads, entrepreneurs and teleworkers who come to Spain or work for national companies from other countries.

The scheme for non-nationals applies (a scheme enabling foreigners wishing to have their tax residence in Spain to pay tax for one year in exchange for residency and for the remaining 5 to pay Non-Resident Income Tax on profits and earnings in Spain with a reduced flat rate of 24% on income obtained worldwide up to €600,000 and of 47% on sums over and above that amount) in the following situations:

* Workers, professionals, entrepreneurs and investors who move to Spain.
* When the expats have not been resident in Spain for the five previous tax periods.
* The scheme is open to digital nomads (people who work for foreign companies, remotely, exclusively using online means and systems and telecommunications). In the case of administrators, the scheme can be applied with no limit with respect to the percentage of their share.

**Promotion of international telework**

* Creation of an international telework visa enabling holders to enter and live in Spain for a maximum of 1 year.
* Creation of a residency authorisation for international telework enabling foreigners who regularly spend time in Spain to apply for authorisation for a maximum period of 3 years, renewable for another 2 years, being able to obtain permanent residence after 5 years.

**4.- “CARRIED INTEREST” FOR VENTURE CAPITAL MANAGERS**

Carried Interest is the participation obtained by the venture capital manager on the amount secured for the investors. In some cases the carried interest is not only received by the person managing the capital, but can also go to the employees of the company if so established beforehand.

Tax classification of the Carried Interest is regulated to foster the development of venture capital as an element for channelling business financing, in keeping with that previously envisaged in Provincial Territories and other European countries.

This remuneration is classified as capital gains on the work for which 50% of its sum must be paid as Personal Income Tax, applicable to capital gains obtained directly or indirectly from holdings, shares or other rights, including success fees authorising special economic rights in certain entities specified in the Law. For this, the following must occur:

* Entities from which the special rights arise:
  + Alternative Investment Funds: (i) ECR -SCR and FCR. (ii) FCRE, (iii) FESE, (iv) FILPE.
  + Other investment bodies analogue to the above.
* The recipient must be the administrator, manager or employee of one of the entities mentioned or of its management entities or entities in their group.
* The special economic rights must be conditioned to the investors (LPs) obtaining a minimum guaranteed return (hurdle rate) and must remain in place for a minimum period of 5 years, except in the case of early settlement.