



## Key aspects of Startup Act

**Spanish Act to Promote the Startup Ecosystem (“Startup Act”) introduces significant changes affecting venture capital industry, entrepreneurs and impatriates**

Spain - Legal flash

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### Key aspects

- > **Carried interest qualifies as income from work**, and 50% of that income will be subject to personal income tax if certain requirements are met.
- > **Greater flexibility is added to the treasury stock system** of startups and also allows them not to **have grounds for dissolution due to losses** until three years have elapsed from the date of their incorporation.
- > **Tax benefits are introduced regarding** taxation of stock options.
- > **A tax credit of 100% is established under the Special Regime for Self-Employed Workers** for corporate self-employed workers that continue to work as employees.
- > Startups that operate in regulated sectors can request **temporary trial licenses** for one year.
- > Changes are introduced to the **impatriate tax regime** to enable more taxpayers to benefit from it, as well as changes regarding **migration** to promote international remote working.
- > Certain companies and branches **must disclose “country-by-country” information about company tax**.



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## Objective and entry into force

On December 1, 2022, the Congress of Deputies (lower house of parliament) approved the **Act to Promote the Startup Ecosystem, known as the “Startup Act”** (the “**Startup Act**”), aimed at establishing a specific regulatory framework to support the creation and growth of startups. It will be published in the coming days in the Official Gazette of the Spanish State (“BOE”).

**The act is expected to enter into force on the day following its publication in the BOE, although the main tax developments will not apply until January 1, 2023.**

Below we indicate the main new developments introduced by the Startup Act for:

- > management companies and funds;
- > startups, their investors and entrepreneurs; and
- > impatriates.

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## Developments affecting managers and funds: carried interest tax treatment

From January 1, 2023, the tax treatment of carried interest (referring to the additional remuneration paid to managers of private equity and venture capital funds in compensation for their successful management) will be regulated in line with the provisions in the legal systems of neighboring countries and of the chartered communities of the Basque Country and Navarre.

**Under the Startup Act, this form of remuneration will qualify as income from work, and 50% of that income will be subject to personal income tax.** This treatment will apply to income derived directly or indirectly from shares or other rights, including success fees, that grant special economic rights in certain entities, provided the following requirements are met:

- > **Entities granting special rights:** a) closed-ended alternative investment funds as defined in Directive 2011/61/EU included in some of the following categories: i) entities defined in [article 3 of Act 22/2014](#), regulating venture capital funds and other closed-ended investment funds, ii) European venture capital funds, iii) European social entrepreneurship funds, iv) European long-term investment funds; and b) investment entities similar to these funds. The approved act exclusively refers to venture capital funds regulated by Spanish Act 22/2014 (those mentioned in article 3), therefore leaving out of its scope of application other instruments such as closed-ended type collective investment schemes. In turn, this creates an element of insecurity for non-Spanish



entities to which this regulation would be applied, as it would be necessary to carry out a comparability analysis with Spanish venture capital funds.

- **Recipient:** the recipient must be a director, manager or employee of those institutions, or of their management companies or companies of their group.
- The **special economic rights** from shares or other rights, including success fees, must be made conditional on the investors obtaining a minimum guaranteed return defined in the regulations or bylaws of the entity, and they must be maintained for at least five years, with some exceptions, such as an anticipated liquidation. Also, the concept of *mortis causa* transfer of these rights has been excluded from the maintenance requirement.

Moreover, these rights cannot derive directly or indirectly from an entity resident in another country or territory classified as a non-cooperative jurisdiction or with which no rules have been established on mutual assistance for the exchange of tax-related information.

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## Commercial, tax, labor and regulatory benefits for startups, their entrepreneurs and investors

### Main requirements to qualify as startups

To benefit from the support measures provided in the Startup Act, the company must be classified as a startup. This classification is temporary, which means that the related benefits will no longer apply when the company ceases to be considered as such, or at the end of the term specified in each case.

The startup must, among other requirements, (i) have been in existence **for up to five years** (or seven years in the case of certain activities such as biotechnology, energy, industrial and other strategic companies); and (ii) be innovative.

### Accreditation as a startup

- Accreditation must be requested from the National Innovation Company (Empresa Nacional de Innovación, SME, S.A. or ENISA) which has three months from when the company submits all the information (this deadline will apply from the six months after the date the Startup Act comes into force). The request will be considered accepted by positive administrative silence if the deadline expires without there being an express resolution.
- ENISA's analysis will be based on criteria that will be developed by ministerial order, e.g., degree of innovation or market attractiveness; scalability of the number of users or operations; and the team's experience, training and track record.



- ENISA can deny accreditation if the business model shows signs of potential reputational, regulatory, ethical or speculative risks.
- The startup must be registered as such in the corresponding registry. This registration will suffice to be eligible for the associated benefits and specialties although, for the purpose of applying the tax benefits under the Startup Act, the tax authorities could check whether the company meets the requirements for being innovative.

### More flexible commercial regulations

The legal form the vast majority of newly created companies choose is that of a private limited company (*sociedad limitada*, or “SL”). Therefore, the Startup Act offers several commercial advantages to startups that are incorporated as an SL, the most noteworthy of which are listed below:

- **It adds greater flexibility to the general treasury stock system** provided under the Spanish Companies Act to facilitate the adoption of stock option plans and thus favor the recruitment and retention of talent. SLs considered startups can include in their bylaws that the remuneration scheme of directors, employees and sub-contracted staff can involve the delivery of shares, and that the purchase of treasury stock is allowed up to 20% of the share capital to carry out the remuneration scheme (under a system similar to that adopted by public limited companies – *sociedades anónimas* - , which has not been allowed for SLs up until now). This measure is complemented with a better tax treatment of stock options, as explained below.
- **The term for registration** of these companies and their corporate documents is **5 business days** (instead of the 15 days generally given under [article 18.4 of the Spanish Commercial Code](#)).
- **Until three years have passed since their incorporation, startups will be exempt from grounds for dissolution due to qualifying losses** as provided under [art. 363.1.e of the Spanish Companies Act](#) (i.e., when the losses reduce the equity to an amount lower than half of the share capital). Therefore, the startups will not be subject to the requirements of equity balance set for the first few years, enabling them to consolidate their business model.

### Tax benefits

The Startup Act introduces three measures:

- **Tax benefits for startups for corporate income tax purposes.** The following rates will be effective for the tax periods beginning after the Startup Act enters into force (for companies whose tax year coincides with the calendar year, this will start on January 1, 2023):



- **A 15% tax rate** (instead of the general 25% rate) **applicable to the first tax period in which the tax base is positive and the following three years**, as long as the company still qualifies as a startup.
  - **A deferral, without having to provide security, of corporate income tax during the first two tax periods in which the tax base is positive** (12 months for the first period and 6 months for the second), if certain requirements are met.
- **Improvement of the taxation of stock options granted to employees** (with effect from January 1, 2023):
- **Increased exemption.** The exemption applicable to this income is increased from the generally established €12,000 to €50,000, as long as certain requirements are met (less demanding than those established for non-qualifying startups).
  - **Extended exemption.** The Startup Act extends the exemption to non-resident individuals, modifying the regulations on non-resident income tax (“**NRIT**”). The new wording includes all compensation in kind that is exempt under article 42 of the Personal Income Tax Act (such as meal vouchers), and not just stock options.
  - **Deferral.** Any excess on the €50,000 mentioned above, qualified as employment income, will be taxable in whichever of the following terms occurs first: 10 years, or when the share or stock is transferred, or it is admitted on a stock exchange or on any other Spanish or foreign multilateral trading facility.
  - **Valuation.** The act provides certain rules for the valuation of these shares: the value will be the one given to it by an independent third party in the last capital increase carried out in the year before the one in which the shares are delivered (if no capital increase has taken place, the shares will be given the market value at the time they are delivered to the employee).
- **Improvement to taxation of startup investors:**
- From January 1, 2023, resident investors will benefit from a higher personal income tax deduction applicable to investments in new or recently incorporated companies. The deduction rate will change from 30% of the invested amounts up to a maximum of €60,000 to 50% of the invested amounts up to a maximum of €100,000, subject to the fulfillment of certain requirements.
  - From entry into force of the Startup Act, non-residents will be exempt from the obligation to have a foreigner identification number. However, they must have a tax identification number, which they can apply for online.



## Social Security benefits in cases of multiple sources of employment

To promote the entrepreneurship of salaried workers, **a tax credit of 100% is introduced on the amount of the general minimum base under the Special Regime for Self-Employed Workers (“RETA regime”)** for individuals that register as corporate self-employed workers when they start a startup activity, while simultaneously continuing to work as employees for an employer.

- This credit will apply for the first three years from registration in the RETA regime.
- If the worker no longer has multiple sources of employment and the employment relationship ends, the tax credit will no longer apply and will not be applied again if the worker returns to multiple sources of employment.
- Before applying the tax credit, the self-employed worker must submit a statement of compliance.

## Regulatory benefits regarding licenses and innovative public purchases

- **Temporary trial licenses:** Startups operating in regulated sectors can request a temporary trial license (maximum duration of one year) to develop their activities and must give written notice to the users or consumers of this temporary trial period.
- **Regulatory sandbox:** Regulations will be established to create controlled test environments for limited periods to assess the utility, viability and impact of technological innovations applied to regulated activities, to the offer and provision of new services and goods, to new forms of provision or service and to alternative methods for supervision and control by the competent authorities.
- **Innovative public purchases:** The Startup Act includes a set of measures **to promote calls for innovative public purchases especially in relation to startups in rural areas:**
  - In procedures for innovative public purchases and pre-commercial public purchases, the authorities will consider the startups’ characteristics given the requirements regarding economic standing and technical ability, and the carrying out of partial payments (if the execution of the contract can be divided into several stages).
  - In the specific administrative bidding conditions, the inclusion of capability and standing requirements and awarding criteria that facilitate equal access for startups located in sparsely populated areas will be assessed.
  - In the bidding conditions, it will be possible to establish that ownership of the intellectual property rights arising from the object of the contract be shared equally by the contracting administration and the startup.



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## New developments to attract and retain foreign talent

### New developments in the impatriate regime

The Start Up Act makes several amendments to the impatriate regime regulated under [article 93](#) of the Personal Income Tax Act in an attempt to make moving to Spain an attractive option for employees, professionals, entrepreneurs and investors residing abroad.

Note that this regime allows individuals who become tax residents in Spain to only pay NRIT for the year they move to Spain and the following five years, with certain features. This means that income and capital gains obtained abroad will not be taxed in Spain. NRIT will be levied on income and capital gains obtained in Spain, and income from work abroad will be taxed at a lower rate (fixed rate of 24% up to €600,000 and a rate of 47% for amounts over €600,000).

**The main new developments, which will take effect from January 1, 2023, are aimed at enabling a larger number of taxpayers to be eligible for the special regime.** The impatriate regime will apply in the following cases:

- It will not only apply to workers, but also to professionals, entrepreneurs and investors relocated to Spanish territory.

The regime will apply to individuals who have not been tax residents in Spain during the 5 tax years before moving to Spain (instead of 10 tax years).

- It will also apply to “digital nomads” (employees that work for a foreign company, providing their services remotely through the exclusive use of computer and telecommunication systems and resources).

It will also apply to individuals that become directors in a company, regardless of their stake. However, if the company is considered a passive company it would be necessary not to be a related party (in general, a shareholding of less than 25%).

The regime can also be applied by individuals moving to Spain to carry out an entrepreneurial activity. For this purpose, entrepreneurial activity is defined as any activity that is innovative or of special economic interest and obtains a favorable report issued by ENISA.

- The regime will also apply when highly qualified professionals move to Spain to carry out an economic activity involving providing services to startups or carrying out training, research, development and innovation activities, for which they receive remuneration that makes up over 40% of their income from work and economic activity. The definition of “highly qualified professional” under the future implementing rules will be relevant.
- The regime also extends to entrepreneurs’ spouses and children up to the age of 25 years, or disabled children of any age. The act includes specific requirements.





The act also includes a modification to non-resident income tax (“NRIT”). The taxpayer’s employment income plus any income obtained from entrepreneurial activities will be considered obtained in Spain.

### New measures to promote international remote working

The Startup Act includes a set of migration measures aimed at facilitating the entry and residence of highly qualified professionals (particularly digital nomads), as well as entrepreneurship and investment, some of which we highlight below:

- The creation of an **international remote working visa** allowing individuals to enter and reside in Spain for a maximum of one year while remote working for themselves or for employers anywhere in the world.
- The creation of a **residence permit for international remote working** allowing foreign individuals already based in Spain to apply for a permit for a maximum of three years, renewable for two years and to obtain permanent residence after five years.
- Residence permits in Spain governed by Act 14/2013, of September 27, for foreign investors and entrepreneurs will have their **validity extended from two to three years**..
- In the cases mentioned of international remote workers, and foreign investors and entrepreneurs, **the passport will be sufficient as a document validating identity to register with the Social Security** for the first six months of the residence or stay, when the individual does not have a foreigner identification number or NIE, although it may be requested later.

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## Country-by country reporting

To transpose [EU Directive 2021/2101](#) and for application in the financial years starting from June 22, 2024, the Startup Act introduces the obligation for certain companies and branches to publish a report containing “country-by-country” information.

Country-by-country information involves reporting on income, assets and employees, together with information on the benefits and taxes arising and paid by large multinational groups in each of the jurisdictions where they operate, providing a breakdown in the annual accounts between each of the EU Member States, certain third countries and other countries.

The report must be approved and published within six months from the date of yearly closing to which it refers and will be filed with the commercial registry together with the documents comprising the annual accounts. It must also be published on the corresponding website within six months of the yearly closing date of the year corresponding to the report and must be available free of charge for a minimum of five consecutive years.





For more details, please see our post [Country-by-country reporting in annual financial statements](#).

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For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.

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