

«Startup Law»

Law for the promotion of start-ups, known as the “Start-up Law”, which was approved by the Congress of Deputies on 1 December 2022.



SCOPE OF APPLICATION

The future law will apply to start-up companies (“EEs”) which must simultaneously meet the following characteristics:

01.

Be newly created or be no more than 5 years old since incorporation (seven years in certain cases).

02.

Have its registered office/ domicile or permanent establishment (PE) in Spain.

03.

60 % of the staff must have an employment contract in Spain

04.

In the case of groups, all entities in the group must comply with the requirements.

05.

Not have arisen from a merger, demerger or transformation operation.

06.

Be innovative and must apply for accreditation as an EE at the Empresa Nacional de Innovación, S.A. (ENISA). (ENISA) and register it in the Companies Register and record it in the Commercial Register



TAX INCENTIVES

The tax incentives foreseen in the draft law to favour the specific needs of EEs are detailed below:



Corporate and non-resident income tax (for EEs acting through a PE in Spain).



Personal income tax (effective 1st January 2023).



Corporate and non-resident income tax (for EEs acting through a PE in Spain).

- The tax rate is reduced from 25 % to 15 %, applicable to the first tax period in which they have a positive tax base and to the following three tax periods, if they maintain their EE status.
- Deferral - without guarantee or interest for late payment - of the instalments of these taxes during the first two financial years in which the taxable base of the EE is positive (12 and 6 months respectively).
- In the same periods, EEs are exempt from the payment by instalments on account.



Personal income tax (effective 1st January 2023).

- Investments in new or recently created companies.
- Provision and exercise of stock options to employees as a form of remuneration (stock options).
- Special regime for workers posted to Spanish territory (formerly Beckham regime, today digital nomads).
- Carried interest: Success fee obtained by venture capital managers.





Personal income tax (effective 1st January 2023).



Investments in new or recently created companies

- 50 % reduction, subject to a maximum annual limit of 100,000 per year, for all companies, not just EE (today, the deduction is 30% and its maximum base is 60,000 euros).
- The purchase of EE shares can take place in the first 7 years (instead of 5).
- For EE, there is no limitation of participation for the founding partners (40% for the rest of the entities).



Provision and exercise of stock options to employees as a form of remuneration (stock options)

- For EEs, the amount of the exemption is increased from 12,000 euros to 50,000 euros per year, not requiring that it be offered to all workers, but only that it is part of the EE's remuneration policy.
- Special temporary imputation rule for the excess of the said exempt amount in the year in which:
 - 10 years have elapsed since the delivery of the EE titles
 - EE IPO, Spanish or foreign, or
 - transfer of the share or participation of the EE.



Personal income tax (effective 1st January 2023).



Special regime for workers posted to Spanish territory (formerly Beckham regime, today digital nomads)

- Reduction to 5 years of the current period of 10 tax periods prior to their move to Spanish territory.
- Posting in the first year of application of the scheme or in the previous year
- Possibility to use this special scheme for:
 - Employees of foreign companies working remotely (teleworking visa).
 - Directors irrespective of the percentage shareholding. If it is an asset-holding entity, it may not have a shareholding of 25% or more in the company in the company.
 - Spouse of the taxpayer, during the first tax period and provided that the sum of the savings income of both is less than the taxpayer's taxable income generating the scheme (it is not clear whether dividends, interest and gains worldwide or only from Spain).
 - Carrying out an entrepreneurial activity in Spain, in accordance with Article 70 of Law 14/2013.
 - Highly qualified professional providing services to start-up companies, receiving at least 40% of their total income. of their total returns.



Carried interest: Success fee obtained by venture capital managers

- Remuneration linked to the success of their management shall be treated as earned income and shall be included in the taxable amount at the rate of 50 % of its amount.
- Requisites:
 - Closed-end alternative investment funds as defined in Directive 2011/61/EU (private equity and similar).
 - Guaranteed minimum return for investors, as defined in the institution's rules or by-laws.
 - Maintenance of securities for a minimum period of 5 years, subject to certain exceptions.
 - The beneficiary must be a director, manager or employee of the entities indicated or of their managing entities or entities of their group.
- Not applicable when sourced - directly or indirectly - from an entity resident in a tax haven.
- It is not known at this stage whether it will influence the corporate income tax and its time limitation.



INVESTMENT AND TALENT

Attracting foreign investment: foreign investor identification requirements.



Foreign persons (individuals or legal entities) who wish to invest in Spanish EE and do not reside in Spain, must apply to the Spanish State Tax Administration Agency for a tax identification number, with the following new features:



- Natural persons are not required, for these purposes, to obtain a foreigner's identity number
- The representative applying on behalf of legal persons or unincorporated entities of foreign nationality shall:
 - be assigned a tax identification number;
 - its power of representation may be proven by a notarial deed or by a mandate contract with representation expressly stating the acceptance of fiscal representation; and
 - if the notarial deed has been issued by a foreign notary, it is not required to bring its content into line with Spanish law.



Talent recruitment and retention: treasury stock in EEs that are limited companies for the purpose of executing a remuneration plan.

20%

The general meeting of the company may authorise the acquisition of own shares, up to a maximum of 20% of the capital, to be delivered to directors, employees or other partners of the company for the sole purpose of implementing a remuneration plan, provided that the following conditions are met:



01.

Must be provided for in the articles and approved by the general meeting

03.

The acquisition must take place within five years of the authorisation agreement

02.

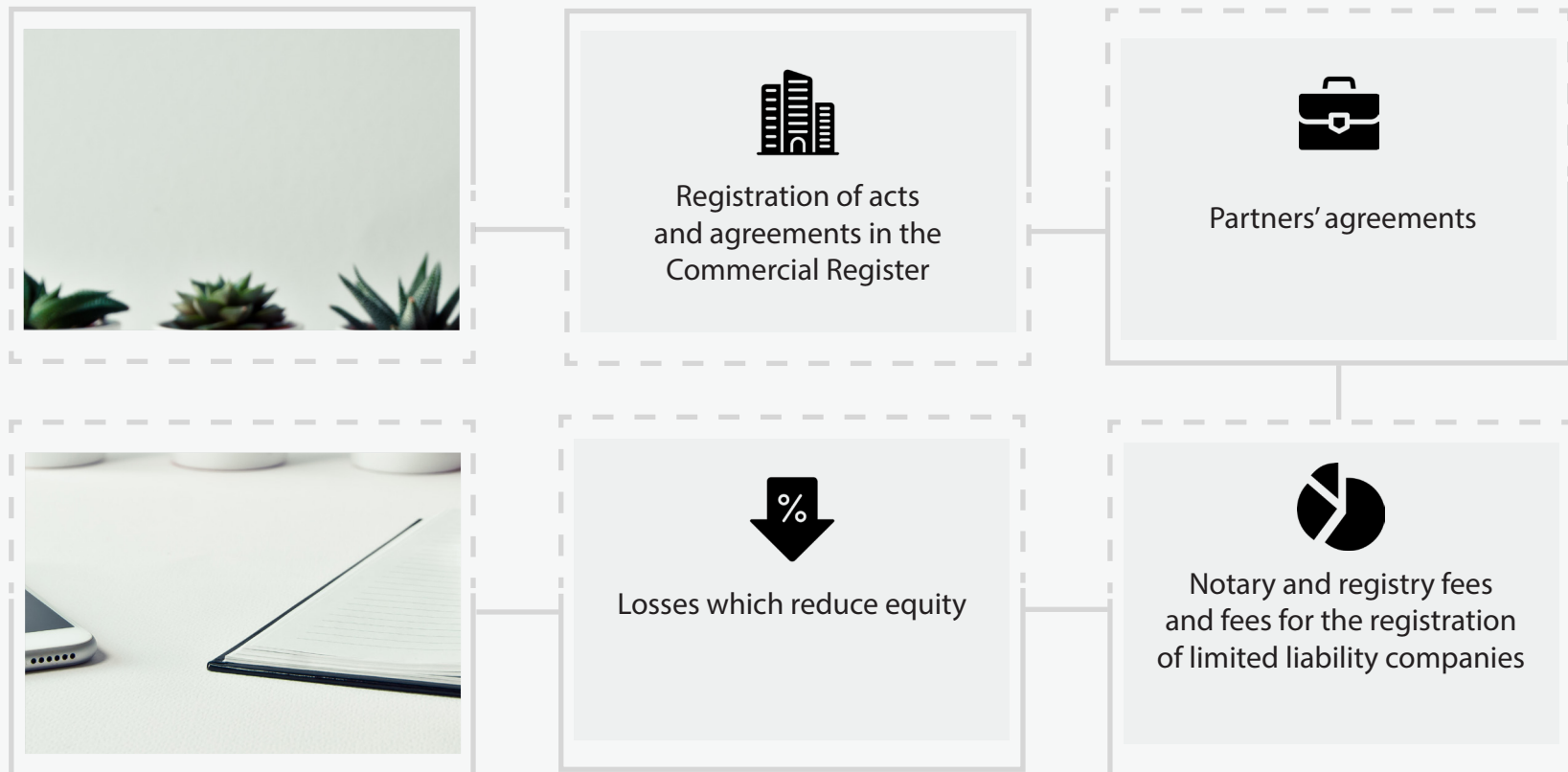
The shares to be acquired must be fully paid up

04.

The net assets, after the acquisition, must not be less than the amount of the share capital plus any unavailable legal or statutory reserves



FORMALITIES APPLICABLE TO THE FORMATION OF EMERGING LIMITED LIABILITY COMPANIES





Registration of acts and agreements in the Commercial Register

- The time limit for entry in the Commercial Register shall be five working days from the day following the date of filing or the date of return of the document withdrawn.
- Where standard articles of association are used, the registrar shall carry out the qualification and registration within six working hours of receipt of the deed by electronic means.
- Use of the Single Electronic Document and the CIRCE system to carry out the necessary formalities for the registration of EE, as well as the tax and Social Security formalities required for the start-up of the activity.



Partners' agreements

- In the case of an EE in the form of a limited company, they shall be registrable and enjoy publication of information in the register if they do not contain clauses contrary to the law.
- Similarly, clauses in the articles of association which include an ancillary obligation to subscribe to the provisions of the shareholders' agreements in the SE shall be registrable, provided that the content of the agreement is identified in such a way that it can be known not only to the shareholders who have subscribed to it but also to future shareholders.



Losses which reduce equity

An EE shall not be liable to be wound up on account of losses which reduce its net assets to less than half its share capital, provided it is not appropriate to file for bankruptcy, until three years have elapsed since its formation.



Notary and registry fees and fees for the registration of limited liability companies

- Maximum limit for notary and registry fees for companies with a share capital of less than 3,100 of EUR 60 and EUR 40, respectively, provided that the entrepreneurs:
 - make use of the standard statutes (referred to in the eighth final provision) adapted to the needs of the EEs;
 - and use the online processing system of the Business Start-up Network and Information Centre.
- Exemption from the payment of fees for the publication of acts of registration in the “Official Gazette of the Commercial Register”.

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