

Preliminary draft of the "Startup Law": The Law to promote the startup ecosystem

On 6 July, the Council of Ministers approved the Report on the Preliminary Draft Bill to promote the start-up ecosystem, with the aim of:

1. Encourage the creation and relocation of start-ups in Spain.
2. Attract talents and international capital for the development of an entrepreneurial ecosystem with an innovative vocation.
3. Encourage collaboration between small to medium Enterprises (SMEs), large companies and start-ups.
4. Promote Research, Development, and Innovation (R&D&I), also in the Administration through innovative public procurement, and
5. Encourage the collaboration of start-ups and entrepreneurs with universities and research centers.

The text now submitted for public hearing is aimed at all newly created companies or entrepreneurs and groups of "emerging" companies that are not listed, have their registered office or permanent establishment in Spain, are innovative in nature and have not distributed dividends.

In addition, the indicative criteria of this innovative nature are included, encompassing the concepts hitherto existing in different regulations of **"technology-based companies"**, **"innovative SMEs"** or **"young innovative companies"**.

According to article 3 of the draft bill, for the present purposes, a start-up company is understood to be any legal entity, including technology-based companies created under Law 14/2011, of 1 June, on Science, Technology and Innovation, or any natural person, including limited liability entrepreneurs regulated by Law 14/2013, of 27 September, on support for entrepreneurs and their internationalization, who simultaneously meet a series of conditions:

- a) Be newly created or not being newly created, when no more than five years have elapsed since its incorporation, in general, or seven in the case of biotechnology, energy and industrial companies.
- b) It has not arisen from a merger, spin-off, or transformation operation. The terms merger or spin-off are deemed to be included in the above operations.
- c) Have their registered office or permanent establishment in Spain.
- d) 60% of the workforce must have a contract in Spain.

- e) Be an innovative company, in accordance with the provisions of Article 4 of the same legal text.
- f) Not distribute or have distributed dividends.
- g) Not be listed on a regulated market or a multilateral trading system.
- h) If it belongs to a group of companies in accordance with Article 42 of the Spanish Code of Commerce, the group must meet the above requirements.

These companies shall accredit their emerging status in the entry in the Commercial Register.

Regarding the innovative nature of a start-up company, in accordance with the article 4, it will be considered as such when its purpose is to solve a problem or improve an existing situation through the development of products, services or processes that are new or substantially improved compared to the state of the art and which carry an implicit risk of technological or industrial failure. To this end, entrepreneurs must ask ENISA, Empresa Nacional de Innovación SME S.A. to assess the innovative nature of the product or business.

Without prejudice to the approval and entry into force of the future law, we can highlight the following measures to be introduced:

Boosting talent

In this regard, important tax and fiscal measures are incorporated to promote the attraction of international talent and to encourage the creation of digital hubs.

To this end, the tax rate for start-ups in corporate income tax and non-resident income tax IRNR is reduced from the general rate of 25% to 15% in the first tax period in which the taxable base is positive and in the following three periods, provided that the start-up company qualification is maintained.

Investment promotion

The maximum deduction base for investment in new or recently created companies is increased (from 60,000 to 100,000 euros per year), the deduction rate (from 30% to 40%), as well as the period in which it is considered recently created, which increases from 3 to 5 years, in general, or to 7 years for companies in certain sectors.

Administrative flexibility

- a) The obligation to make payments in instalments for corporate income tax and non-resident income tax in the 2 years following the year in which the taxable income is positive is eliminated.
- b) **The "famous" NIE: Non-resident investors are no longer required to obtain a foreigner's identification number (NIE) and** are only required to obtain tax identification numbers (NIF) for themselves and their representatives.
- c) **Termination of activity:** On the other hand, considering that the failure of a start-up should be accepted as a normal occurrence, the procedures for the termination of activity are streamlined and will be completed electronically.

In addition, a general and basic regulation on regulated test environments is made based on the recent experience of the #sandbox in the #fintech sector. This will promote the creation of controlled environments, for limited periods of time, to assess the usefulness, viability and impact of technological innovations in the different sectors of productive activity.

Finally, the Preliminary Draft takes the opportunity to amend, among others, Law 14/2013, of 27 September, on support for entrepreneurs and their internationalization, with the creation of a special visa and residence regime for international teleworkers.

Other countries such as Estonia, Croatia and Germany, among others, have already implemented similar measures in this regard.

At Augusta Abogados we continue to support companies, whether they are multinationals, SMEs or start-ups, also promoting their internationalization through tools that facilitate international business transactions, and in particular, collaborating with the International Chamber of Commerce in the drafting of model contracts for start-ups.