Press release

The Government adopts the draft Startup Law, placing Spain at the forefront to attract investments, innovative entrepreneurship and talent

- **The draft Law includes important tax measures, removes bureaucratic obstacles and makes the procedures to create and invest in startups more flexible. It also contains important measures to attract international talent and recover domestic talent, encouraging the establishment of remote workers and digital nomads in Spain**
- **Significant tax incentives are established for startup companies, investors and employees, including the EU's most beneficial treatment of returns on stock options**
- **The procedures for setting up a company are streamlined into just one step and can be completed online without notary or registry expenses. A one-stop window is also created for the declaration of the innovative nature of the company and access to the benefits afforded by the draft Law**
- **Significant tax measures are introduced, such as a reduction in Corporate Tax and in Non-Resident Income Tax (which drops from 25% to 15%) for four years, as well as interests and deposit-free deferral of tax debt payments**
- **The use of stock options as a payment method is encouraged and the tax exemption on this income is raised from 12,000 to 50,000 euros per year. Also, taxation is delayed until the date of settlement, either when the stocks are sold or if the company goes public**
- **The maximum deductible amount for investments in new or recently created companies is raised (from 60,000 to 100,000 euros**

EMAIL
prensa@economia.gob.es

Pº de la Castellana, 162
28071 - MADRID
TEL: 91 603 79 18 / 20 / 21

per year), the deduction rate goes from 30% to 50% and the period for considering a company 'recently created' is extended

- **In order to attract talent the tax regime has been improved for Non-Resident Income Tax. This is applicable to executives and startups employees, investors and "digital nomads" -people who temporarily settle in Spain and work remotely- and their families, who are eligible for a special visa for up to 5 years. The draft Law encourages talent return by reducing the previous non-residence period in Spain to 5 years in order to have access to this special regime**
- **Entrepreneurs who simultaneously stay at another job as employees will no longer be required to contribute twice to the Social Security system**
- **Collaboration with public authorities, universities, public research organisations and technology centres is fostered by providing for the creation of *sandboxes*, or trial licences in regulated sectors**
- **The Government has deployed financial resources to foster startups growth, such as FondoICO Next Tech, with an investment target of up to 4 billion euros, and the Empresa Nacional de Innovación (ENISA) addressed to emerging companies led by women, with a budget of 51 million euros, aiming to reduce the gender gap in the field of innovative entrepreneurship**
- **The Startup Draft Law is one of the milestones of the Recovery, Transformation and Resilience Plan, which will enable Spain to be aligned with the European standards of excellence in the 'EU Startups Nations Standard'**

10 December 2021. The Spanish Council of Ministers has agreed to hand down to the Spanish Parliament the draft version of the Startup Law; this legislation puts Spain at the forefront of Europe in supporting the eco-system of innovative startups, attracting investments and talent.

Through this draft law, the Government adapts the applicable framework to the specific nature of startups in the administrative, fiscal, civil and commercial fields with the aim of supporting them throughout their life cycle and especially in early stages. To this end, it promotes the creation and growth of innovative emerging companies based on digital technology and rapid growth, and boosts measures for attracting international talent and investors, thus

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responding to the unique nature of these companies and the main demands of the sector.

The Startup Law is one of the milestones of the Recovery, Transformation and Resilience Plan. The draft law enables Spain to be aligned with the most attractive countries in Europe for drawing investments, entrepreneurship and talent. Furthermore, it complies with the *EU Startups Nations Standard*, supported by Spain: a set of practices designed to foster the entrepreneurial spirit within the European Union and to promote the creation of innovative new companies by generating conditions that facilitate their scalability.

Together with this draft law, the Government has launched several measures to boost financing for startups in Spain, including FondoICO Next Tech, with an investment target of up to 4 billion euros, designed to financially support companies in the growth phase. And the ENISA line of funding is endowed with 51 million euros, addressed to startups led by women, which aims to reduce the gender gap in the field of innovative entrepreneurship.

In addition, this draft law is part of the structural reforms set out in the Recovery Plan for the purpose of improving the business demographics and climate, and it complements the draft version of the ”Crea y Crece” (Create and grow) Law, which was recently approved by the Government, as well as the draft bankruptcy reform act, currently in its final stages.

Identifying *startups*, the foundations for promoting the eco-system of emerging companies

The draft law defines the *startup* concept and is addressed to new companies or companies less than 5 years old (7 years old in the case of biotechnology, energy and industrial companies and other strategic sectors or that have developed proprietary technology designed entirely in Spain), that are independent from other companies, not listed on the stock market, do not and have not shared their profits, are innovative in nature and have annual revenues of up to 5 million euros.

The draft Law also provides for a one-stop window, the Empresa Nacional de Innovación SME (SME National Innovation Company, or ENISA), which will designate companies as innovative to make them eligible for the benefits set out in the draft Act.

The Puntos de Atención al Emprendimiento (Entrepreneurship Service Points, or PAE) and the Oficina Nacional de Emprendimiento (National Office for Entrepreneurship, or ONE) will serve as information points on support measures and aid, supported by a reference website in Spanish and English.

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Administrative agility

The draft law stipulates that notary and registry fees will not be charged for the establishment of limited companies or for publication in the Official Companies Registry (BORME, Spanish acronym), that companies can be created using online resources, and that non-resident investors need not apply for a foreigner identification number (NIE in Spanish), but only a tax identification number (NIF in Spanish) shall be required for them and their representatives.

It should also be noted that, when the 'Crea y Crece' Law, which is now in the parliamentary process, is passed, it will be possible to create a company with a single euro of share capital.

Fiscal advantages

This draft law contains important fiscal measures to attract international talent and recover domestic talent, attract investments and promote the creation of digital hubs in Spain.

Thus, the tax rate for corporate tax and non-resident income tax is reduced from the general rate of 25% to 15% for the first four fiscal years after taxable income is first recorded.

The tax exemption on stock options is raised from 12,000 to 50,000 euros per year for startups that distribute shares or share units deriving from the exercise of call options, and the conditions for creating treasury stock in limited liability companies are rendered more flexible.

The maximum deductible amount for investments in new or recently created companies is also raised (from 60,000 to 100,000 euros per year), as is the deduction rate (from 30% to 50%), and the period for considering a company 'recently created' is extended from 3 to 5 years in general, or to 7 years for companies in certain sectors.

Corporate Tax and Non-Resident Income Tax payments for the first two years in which taxable income is recorded may be deferred, without requiring any deposits or late payment interest, for a period of 12 and 6 months, respectively. And the obligation to make payment instalments on Corporate Tax and Non-Resident Income Tax is eliminated for the first 2 years after taxable income is first recorded.

Another step forward is in relation to the figure of “digital nomads”, entrepreneurs and remote workers that settle in Spain. These individuals will have the option of residing and working in Spain for 5 years, and will be eligible for a special tax regime, paying Non-Resident Income Tax. With the aim of drawing talent back to Spain, the general requirements for eligibility in this regime are eased (reducing the previous non-residence period in Spain from 10 to 5 years).

As a social incentive, entrepreneurs with multiple jobs will not be required to contribute twice to the Social Security system for a period of 3 years.

Moreover, the draft law contains other measures in favour of emerging companies, such as the promotion of innovative public procurement or exemption from cause of dissolution when losses reduce the net equity to an amount lower than half of its share capital, provided that it is not required to request the declaration of bankruptcy, within the first three years of establishment.

Flow of knowledge

The draft law also fosters collaboration between public authorities, universities, public research organisations and technology centres.

It provides general and basic regulations for regulated testing environments based on the latest successful experience of the financial sector *sandbox*. In this regard, the draft law allows startups to test their innovations for one year in a controlled environment to assess the utility, feasibility and impact of technological innovations in different production sectors.

Finally, the draft law intends to respond to the present and future needs of emerging companies. To this end, it contains an ongoing review mechanism and calls for the creation of the National Forum of Emerging Companies, as a meeting point between this sector and the public authorities.

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