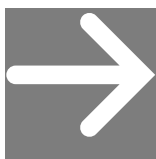


Tax updates for Start-ups and emerging companies and amendments of the special tax regime for displaced workers



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Let's talk

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On 1 December, the House of Representatives approved the text of the Law on the Promotion of the Ecosystem of Emerging Companies (commonly known as the Start-Ups Law). With this law, Spanish lawmakers aim at establishing a specific regulatory framework to support the creation and growth of start-ups in Spain, promoting entrepreneurship based on innovation in an increasingly globalized and interdependent economy, in which technology-based companies with remote work and using digital tools are taking on special importance.

As a key part of this new law, a set of tax incentives are developed to support the specific needs of this type of companies. Among all these measures, we will focus on the developments that have an impact on the taxation of individuals:

1. Award of shares to start-up employees

The following amendments have been introduced in order to foster the award of shares to employees of entities that qualify as start-ups:

a. Increase of the exemption to 50,000 euro.

Firstly, the **increase of the exemption** for income in kind consisting of the award

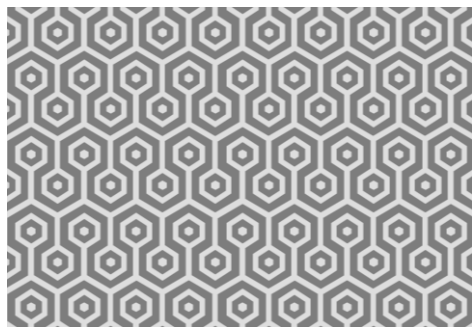
of shares to employees should be pointed out. As a general rule, the exempt amount comes up to 12,000 euros, but for start-up employees it is increased to 50,000 euros, with the conditions to qualify for the exemption being softened too, as it is only required that the award be made as part of the company's general remuneration policy to promote the employees' share in the latter. For entities that do not qualify as start-ups, the requirement that the offer be made under the same conditions to all company's employees does not vary.

b. Special timing allocation rule

The extension of the exemption limit and the softening of the requirements for access to the exemption are complemented by the establishment of a special timing allocation rule for earned income that is not exempt because it exceeds the amount of 50,000 euros.

As opposed to the general rule whereby earned income is taxed in the tax period in which the shares are awarded, in the case of start-ups, the taxation of earned income is deferred until:

- The start-up is admitted to trading on the Stock Exchange or,
- The employee transfers the shares received.



The deferral shall be subject to a maximum time limit of 10 years. If none of the above-mentioned circumstances have arisen by the end of this period, the earned income will be allocated for tax purposes to the tax period in which the 10-year period ends.

c. Special valuation rule

As a last measure related to the award of shares as remuneration in kind to start-up employees, a special valuation rule is also established for the income in kind received.

As a general rule, the award of shares qualifies as income in kind, which is equal to the market value of the shares on the date on which these were awarded to the employee.

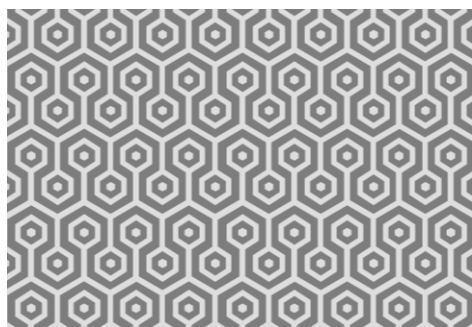
However, if shares are delivered to start-up employees, the income obtained will be valued at the value of the shares subscribed by an independent third party in the last share capital increase carried out in the year prior to that in which the shares were awarded to the employee. In the absence of share capital increase transactions carried out in the preceding year, the income in kind will be valued in accordance with the general rule, i.e. at the market value of the shares at the time of award to the employee.

The application of all these measures requires that the relevant entity qualifies as a start-up in accordance with the provisions of the Start-Ups Law.

The definition of start-up is included in Article 3 of the Law, which states that any legal entity, including technology-based companies, created under Law

14/2011, of June 1, on Science, Technology and Innovation, which simultaneously meets the following conditions, will qualify as a start-up:

- It must be newly created or, if this is not the case, no more than five years must have elapsed since registration of the public deed of incorporation in the Commercial Registry (seven years for companies operating in the biotechnology, energy, industrial and other strategic sectors or having developed proprietary technology, entirely designed in Spain).
- It must not have arisen from a merger, spin-off or conversion of companies that do not qualify as start-ups.
- It must not distribute or have distributed dividends.
- It must not be listed on a regulated market.
- Its head office, registered office or permanent establishment must be located in Spain.
- 60% of its workforce must have an employment contract in Spain.
- It must be an innovative company under the terms established in the law itself.
- For these purposes, companies whose purpose is to solve a problem or improve an existing situation by developing products, services or processes that are new or substantially improved compared to the state of the art and which carry a risk of technological or industrial failure are considered as such.
- If it belongs to a group of companies, the group or each of the companies comprising it must comply with the abovementioned requirements.



2. Increase of the deduction for investment in newly created companies

Another measure included in the law is the increase of the deduction for investment in new or recently created companies, by increasing the deduction rate from 30% to 50%, while also increasing the maximum limit from 60,000 to 100,000 euros.

The subscription period for shares is also increased from 3 to 5 years as from the incorporation of the company, and up to 7 years for certain categories of start-ups, while also admitting the application of this deduction for the founding partners regardless of their stake in the share capital of the entity.

3. Special Tax Regime Applicable to Workers Posted to Spanish Territory

Also noteworthy are the amendments introduced to the Special Tax Regime applicable to Workers Posted to Spanish Territory (the so-called Beckham Regime), essentially aimed at simplifying access to the regime and extending its subjective scope of application.

a) Reduction of the period of non-residence for tax purposes prior to the posting.

One of the requirements to apply for the regime, i.e. the period of non-residence for tax purposes prior to posting, has been reduced. Previously, this period was 10 years and now it is reduced to 5. This measure enhances the attraction of foreign talent, as well as the return of national talent, reducing by half the required period of non-residence for tax purposes abroad prior to moving to Spain.

b) Expansion of the subjective scope of application of the regime.

Under the previous wording of Article 93 of the Personal Income Tax Law, taxpayers had to move to Spain as a consequence of the execution of an employment contract (with the exception of the special employment relationship of sportspeople), the international

assignment ordered by their source employer or the acquisition of the status of director in an unrelated entity. The Start-Ups Law amends this article, extending the subjective scope of application of the regime to the following cases:

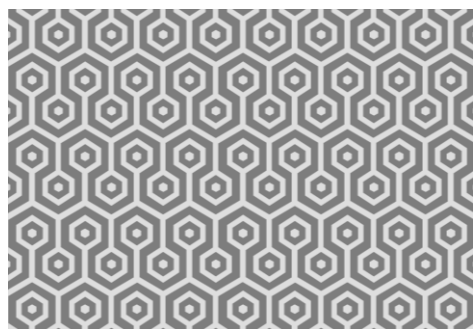
b.1. Digital nomads:

Taxpayers who become tax residents in Spain without their posting having been ordered by their employer and who perform their activity remotely, exclusively using computer, telematic and telecommunication means and systems, are also eligible for the regime.

This circumstance is understood to be fulfilled in the case of employees who hold an international visa for remote working provided for in Law 14/2013, of September 27, of support for entrepreneurs and their internationalization (digital nomads).

b. 2. Directors:

Regarding the posting as a result of acquiring the status of director, the requirement that the applicant and the entity must not related parties is removed and remains applicable only when the entity qualifies as an asset-holding company, according to the Corporate Tax regulations (more than 50% of its assets are not assigned to a business activity).



b.3. Entrepreneurial activity:

A new case is added to enable taxpayers posted to Spain as a consequence of carrying out in Spain an economic activity classified as an entrepreneurial activity, in accordance with Article 70 of Law 14/2013, of September 27, to apply for the regime.

Entrepreneurial activities are those considered to be innovative and/or having a special economic interest for Spain, with a favourable report from the Economic and Commercial Office of the geographical demarcation area or the Directorate General for International Trade and Investments.

b.4. Economic activity of highly qualified professionals:

Individuals may also apply for this regime when the posting to Spain is due to the performance in Spain of an economic activity by a highly qualified professional providing services to start-ups within the meaning of Article 3 of this Law, or carrying out training, research, development, and innovation activities. The taxpayer must receive a remuneration that exceeds 40% of the total business, professional and personal work income in aggregate.

The specific regulations will set out the way in which the condition of highly qualified professionals shall be proved, as well as the requirements to classify the activities as having a training, research, development, and innovation nature.

b.5. Family members:

Finally, the application of the special tax regime is extended to the spouse and children under twenty-five years of age (or, if disabled, regardless of age), or in the event of the absence of a marriage bond, to their parent. The extension of the regime to family members is however conditioned to the fulfilment of the following requirements:

They shall come to Spain along with the main taxpayer or later, provided that the first tax period of application of the regime has not ended.

They shall acquire the status of tax residents in Spain.

They have not been tax residents in the five tax periods prior to arrival and they do not obtain income qualified as income obtained through a permanent establishment, and

The sum of the taxable base of the spouse and children is lower than that of the main taxpayer.

4. Tax incentive for carried interests

Lastly, the new law also introduces an additional provision to the Personal Income Tax Law that regulates the tax classification of the remuneration obtained for the successful management of venture capital entities (known as special success fees or carried interests) and establishes a specific tax treatment for such remuneration.