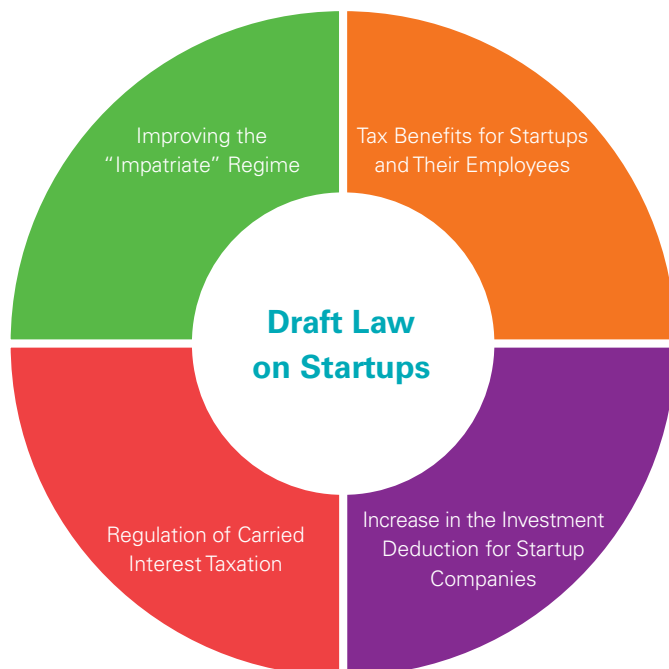


This note sets out the main fiscal measures included in the Draft Law for the Promotion of the Startup Ecosystem – better known as the “Startup” Law – approved by the Council of Ministers on 10 December 2021 for submission to the Spanish Parliament.

In the event that the Spanish Parliament approves this Bill during 2022, its content would come into force with effect from 1 January 2023.



## 1. Tax Benefits for Start-Ups and for Granting Stock Options to Employees

### • Concept of startup company.

The Draft Law defines for the first time the concept of “startup” (or emerging company) as a company that simultaneously meets the following conditions:

- It must be a newly created innovative company or be no more than five years’ old – in general – or seven years’ old for companies dedicated to biotechnology, energy, industrial or another strategic sector.
- Be domiciled in Spain (or be a permanent establishment (PE) located in Spanish territory).
- Have more than 60% of the workforce with employment contracts in Spain.
- It must not distribute or have distributed dividends and must not be a listed company.
- It must not belong to a controlling group or, in this case, that all the companies in the group meet the above requirements.

### • Regulation of the taxation of startups in corporate income tax (or non-resident income tax in the case of PE).

A tax rate of 15% is envisaged for corporate income tax (or non-resident income tax) during the first tax period in which these companies obtain a positive taxable income and in the following three periods.

Likewise, if these companies are up to date with their tax obligations and file the corresponding self-assessments for this tax on time, they may request deferral of their tax debt for the first two tax periods in which the tax liability is payable, for a period of 12 months (in the first year) and six months (in the second year). This deferral does not accrue interest and does not require the provision of a guarantee. In addition, during this period, these companies are exempted from making instalment payments.

### • Improvement in the taxation of the granting of shares or stock options to employees of startups.

The Draft Law improves the current exemption provided for in the Personal Income Tax Law for employment income in kind from the delivery of shares or stock options. The new regulation increases the exemption from €12,000 to €50,000 for employees of companies that are considered “startups” at the time they are granted.

The Bill also eliminates the requirement for these companies to offer shares to all their employees under the same conditions in order for them to be able to apply the aforementioned exemption. However, this system of remuneration in kind is required to be included in the company’s general remuneration policy.

It is foreseen that income from shares or stock options that are not exempt from taxation (i.e. in excess of €50,000) will not be taxed at the time of delivery, but only in the following cases: (i) they are admitted to trading on a Spanish or foreign market; (ii) they are transferred by the taxpayer; or (iii) 10 years have elapsed since they were granted.

Finally, as regards their valuation, if in the last year there has been a capital increase subscribed by an independent third party, the Draft Law establishes that the shares will be valued at the value at which they were subscribed by these independent third parties, in all other cases, at their market value.

## 2. Increase in the Deduction for Investment in Startup Companies

- The Bill increases the current personal income tax deduction for investment in startups from 30% to 50%.
- In addition, if certain requirements are met, the possibility of increasing the base on which the deduction can be applied from €60,000 to €100,000 is envisaged.
- Shares or holdings must be acquired within the first five years of incorporation (seven in some cases) and must be held for a period of more than three years and less than 12 years.

## 3. Regulation of Carried Interest Taxation

- The Draft Law regulates for the first time the tax treatment of the so-called “carried interest” or special economic rights granted to managers of investment funds and venture capital companies in the event of successful management.
- It is established that this income will be considered as earned income and will, therefore, be included in the general taxable base for personal income tax (i.e. subject to tax rates of up to 54% depending on the Autonomous Community in which the recipient resides). The main advantage introduced by the Bill is that, if certain requirements are met, only 50% of the amount is integrated (therefore, the effective taxation will be similar to that that would have applied if it had been taxed as capital gains in the savings tax base).
- The requirements for applying this benefit (integration of 50% of the amount) are as follows:
  - It must be one of the investment or venture capital funds indicated in the Draft Law.
  - The recipient of the carried interest must be an administrator, manager or employee of the fund in question, its management company or group company.
  - The receipt of the carried interest must be conditional upon obtaining a minimum return established in the regulations or bylaws of the fund or management entity and must be maintained for a minimum period of five years.
  - That the special economic rights do not come directly or indirectly from an entity resident in a tax haven or in a country with which there are no regulations on mutual assistance in the exchange of information.

## 4. Improvement of the “Impatriate” Regime

- The Draft Law modifies the special regime for workers posted to Spanish territory or “impatriates” for Personal Income Tax, including the following new features:
  - Taxpayers who have not resided in Spanish territory during any of the last five tax periods (the current regulation provides for a minimum period of 10 years) prior to their move to Spain may opt to apply for this special regime.
  - Subject to certain income earning requirements, the regime may be extended to the taxpayer’s spouse and children under 25 years of age (or of any age in the case of disability).
  - The special regime is allowed to be applied to persons who travel to Spain to telework from Spain (i.e. for workers known as digital nomads).

## Contacts



**José E. Aguilar-Shea**

Partner, Madrid

T +34 914264840

E jose.aguilar.shea@squirepb.com



**Andrea Boulosa**

Associate, Madrid

T +34 914264840

E andrea.boulosa@squirepb.com

