NEWS OF LAW 28/2022, OF DECEMBER 21, FOR THE PROMOTION OF THE ECOSYSTEM OF EMERGING COMPANIES

On December 21, entering into force the following day, Law 28/2022 for the promotion of the ecosystem of emerging companies, better known as the "Startup Law", was published.
In an increasingly globalized and independent economy and with a growing weight of technology-based companies and remote work with digital media, attracting talent and investment through the creation of ecosystems favorable to the establishment of entrepreneurs is becoming increasingly important. or remote workers, known as “digital nomads”, to the creation and growth of innovative, knowledge-based, digital-based and fast-growing companies, and to the attraction of investors specialized in the creation and growth of these companies (business angels). Emerging companies have specific characteristics that make it difficult to fit into the traditional regulatory framework, such as high risk, uncertainty about the success of the business model that makes financing difficult in the initial phases, their growth potential through economies of scale that requires large capital investments to allow its rapid expansion in the event of success, and its dependence on attracting and retaining highly qualified and highly productive workers from the initial phases of the company, in which there is no flow of income to remunerate them through classic salary instruments, as well as exposure to strong international competition for foreign capital and talent.
All these characteristics of emerging companies do not fit well with the traditional regulatory frameworks in the tax, commercial, civil and labor fields. This justifies a differentiated treatment with respect to companies with conventional business models.

In this context, this law incorporates an important set of measures that reduce the obstacles detected to the creation and growth of these companies, bureaucratic procedures, tax and social charges, and commercial law requirements. In addition, the law promotes investment in innovation, promotes public instruments to support the ecosystem of emerging companies and reinforces public-private collaboration. Finally, the establishment in Spain of entrepreneurs and workers of this type of company, and of remote workers, is favored, in addition to eliminating the existing gender gaps in the Spanish ecosystem of emerging companies.

The scope of application of the law is limited to emerging companies, understood as those companies that meet the following conditions:

- Be newly created or less than five years old from the date of registration in the Mercantile or Cooperatives Registry (seven years for biotechnology, energy, industrial or other strategic sector companies).
- Not having arisen from a merger, spin-off or transformation operation of companies that are not considered emerging.
- In the case of cooperatives, do not distribute or have distributed dividends or returns.
- Not listed on a regulated market.
- Have their headquarters, domicile or permanent establishment in Spain.
- Have 60% of its workforce with a work contract in Spain.
- Develop an innovative project with a scalable business model.
- When the company belongs to a group of companies, all must meet these requirements.

It is required that the entrepreneurship project be innovative and scalable, understanding that an emerging company is innovative when its purpose is to solve a problem or improve an existing situation through the development of new or substantially improved products or services or processes compared to the state of technique and that carries an implicit risk of technological or industrial failure or in the business model itself.
The entity in charge of certifying the innovation will be ENISA, whose evaluation process will be carried out within a period not exceeding three months. The request, and therefore the qualification, will be

understood as estimated due to administrative silence. The analysis of the degree of innovation of the project and the scalability of the business model will be based, at least, on the following criteria:

- Degree of innovation.
- Degree of attractiveness of the market.
- Phase of the company's life.
- Business model.
- Competence.
- Equipment.
- Dependence on providers.
- Customers.

Companies that have the status of emerging companies that obtain income through a permanent establishment located in Spanish territory, will have the following tax incentives:

- Corporation Tax and Non-Resident Income Tax will be taxed at 15% during the first four years with positive tax bases.
- Deferral without guarantee of the payment of the tax debt corresponding to the first two tax periods in which the tax base of the tax is positive.
- Taxpayers of Corporation Tax and Non-Resident Income Tax that have the status of emerging company will not have the obligation to make installment payments.

The law also establishes incentives to attract foreign investment and loyalty of talent:

a) Incentives to attract investment:

- The bureaucratic requirements are reduced for investors who are not going to reside in Spain, who will not be required to obtain the NIE, facilitating the electronic application of the NIF.
- The equivalence of documents issued in other countries is favored.
- The tax regime for Non-Resident Income Tax is improved.
- The deduction for investment in newly created or recently created companies is increased, increasing the type of deduction from 30% to 50% and increasing the maximum base from €60,000 to €100,000.

b) Incentives to attract and retain talent:

- Work income in kind derived from the delivery of shares or social participations will be allocated when they become liquid.
- In order to favor the remuneration policy, the delivery to active workers, free of charge or at a price lower than the normal market price, of shares or company participations, will be exempt in the part that does not exceed €50,000 per year.
- Also, with the exclusive purpose of executing a compensation plan, the general meeting may authorize the acquisition of own shares up to a maximum of 20% of the share capital.
- The tax regime of the Non-Resident Income Tax is modified and improved.
- Discount of 100% of the quotas of self-employed workers of emerging companies in a multi-activity situation (who work for someone else for another company) and during the first three years as long as the multi-activity situation persists.

Finally, the law contains other novelties:

- The tax classification of the remuneration obtained for the successful management of venture capital entities (carried interest) is regulated, while establishing a new specific tax treatment for such remuneration, which encourages the development of venture capital as a channeling element of business financing, in order to promote entrepreneurship, innovation and economic activity.
- Controlled test environments, known as regulatory sandbox, are regulated. Startups operating in regulated sectors will be able to test for one year in an environment controlled by the relevant regulator (temporary trial license).

- The deadline for registration of emerging companies and all their corporate acts will be five business days (six hours in the case of standard statutes). Partner agreements will be registrable and will enjoy registration publicity.
- During the first three years, emerging companies will not incur a cause of dissolution for losses that reduce their net worth to less than half of the share capital.

Murcia on January 16, 2023

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