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Vialto News Alert | Spain - Startups Law to encourage innovative entrepreneurship

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On 1 December 2022, the Spanish Government has approved the so-called "Law of Start-ups", which simplifies the procedures for the creation of these new companies and establishes incentives to attract entrepreneurs and highly qualified employees.

Immigration upcoming changes

The reforms aim to benefit targeted groups given their economic relevance, such as workers with disruptive skills, and innovative businesses; by relaxing administrative or bureaucratic requirements, adapting the legal framework to the post-pandemic "new-normal" and boost the efficiency of immigration procedures for this reference group.

These new changes will come into effect by late December 2022.

a) Implementation of a new visa and residence permit adhoc for *digital nomads and remote workers*: now, non-EU employees, hired by a foreign company (non-based in Spain), with an internal seniority within their employers of at least three months, can apply either for a digital nomad visa at the relevant Spanish Consulate abroad valid for one year (if the applicant is not initially present in Spain when submitting the application); or for a residence permit as a digital nomad directly in Spain, valid for three years. This is extendable to the digital nomad's direct relatives too.

In regards to the foreign employer's requirements, there are basically two: the company must have been an operating business for at least one year prior to the application; and the job to be developed in Spain shall be done fully remotely on behalf of the foreign employer, without providing professional services to a company based in Spain (under such a scenario, an ICT work permit would be more appropriate).

Alternatively, if the digital nomad is a self-employed person, it is permitted that a maximum of 20% of the applicant's labour time is dedicated to the provision of services to Spanish companies.

b) Initial validity of work permits for *highly skilled professionals*, researchers, national intra-company work permits, investors and entrepreneurs (in addition to the digital nomads) of three years, rather than two.

c) Easing of administrative requirements, such as:

- Simplification of the alternative ways to qualify for a work permit as a highly skilled professional: from seven subtypes, to just one single requirement in order to be eligible for this work permit type granted on the grounds of a local work contract in Spain with a proposed salary higher than 40.000 EUR (specialists) or 54.000 EUR (managers/ executives).

- Now, it is only required that the employee has completed higher education studies (VET programmes of three years may be accepted) or, alternatively, relevant professional experience of three years.
 - Modification of the requirement of submitting a police clearance certificate from the countries where the applicant has resided over the last two years (instead of five years, as it currently is) along with an affidavit stating that the applicant is clear from any criminal offences in the countries where he/she has resided over the previous five years;
 - The possibility for the foreigner of being enrolled within the Social Security scheme on a temporary basis up to six months even without being provided with a tax ID number; or
 - An upcoming online platform to easily apply for tax ID numbers (NIE) for individuals that fall under the scope of the Law 14/2013 (highly skilled professionals, digital nomads, etc).
- d) Redefinition, on the one hand, of what "*entrepreneurial activity*" means at the light of the Immigration Law (setting the focus on the applicant's profile, his/her business plan and its added value for the Spanish economy); and, on the other hand, more importantly, reshaping of the process - which now is handled entirely by the central immigration office ("Dirección General de Migraciones") and liaises with the relevant stakeholders (mainly, the Spanish Consulate and ENISA) during the visa and residence permit application process.
- e) *Graduates*: the visa for searching employment is valid now up to 24 months (rather than 12), whereas the work permit for graduates on the grounds of a trainee contract is now valid for up to 12 months.

Personal Income Tax upcoming changes

The text incorporates important tax measures for individuals.

Award of shares or stock options to employees: the exemption is increased for start-up employees up to a maximum annual amount of EUR 50,000 per employee.

Additionally, it will be sufficient that shares are awarded within the general remuneration policy of the company and contributes to the participation of employees in the company's share capital (being not necessary that award shares to all of the company's employees under the same terms).

Income from shares or stock-option plans granted to startup employees (which are not exempted under the limits mentioned above) will be deferred when the first of the following occurs:

- (i) The shares are listed on a regulated stock exchange or any multilateral trading system (in Spain or abroad).
- (ii) The shares are disposed of by the taxpayer; or
- (iii) Ten years have passed.

A special valuation rule will apply according to the value of the shares subscribed by an independent third party in the last capital increase in the preceding year. Otherwise, the shares will be valued at the market value at the time of delivery.

Carried interest: The Law clarifies that carried interest income will be taxed as employment income. Nevertheless, if specific requirements are met, the income will benefit from a 50% tax allowance.

Benefit in kind: Application of the exemptions of certain payments in kind to non residents and taxpayers with the regime special.

Deduction for investment in new companies: the tax deduction is increased from 30% to 50%, and the maximum qualifying investment for the deduction from EUR 60,000 to EUR 100,000. Moreover, investments in new companies can now be made during the first five years of a company's life.

However, Spanish start-ups will have specific privileges and the investment period is increased from five to seven years and the start-up's founding partners or shareholders are not restricted from owning more than 40% of the share capital (individually or with related persons).

Special Tax Regime: The Law modifies some requirements and include new beneficiaries.

- It is reduced the previous non residence in Spain to five years.

- The reasons for moving to Spain have been made more flexible. In addition to those that already existed, the taxpayer can also qualify if they move to Spain to:

- Work remotely from Spain: through the exclusive use of computer, electronic and telecommunication means and systems (a travel order from the employer is not necessary).

This requirement will be deemed fulfilled by employees who have a visa for international remote-working;

- Carry out in Spain an economic activity that qualifies as an entrepreneurial activity;
- Be considered a highly qualified professional who provides services in Spain to start-ups or who carries out training, research, development and innovation activities in return for remuneration that represents more than 40% of the total income he/she earns.

- Persons who become a director of a company that is an asset-holding entity may apply this regime provided they do not directly or indirectly hold 25% or more of that entity's capital stock.

The spouse and children under the age of 25 could also be entitled to apply for the special regime if they move to Spain at the same time as the expatriate or within the first tax year in which the regime applies. They should also fulfill the requirements and can not have resided in Spain in the five preceding tax years and their net taxable income must be lower than that of the expatriate.