
Legal regime on startups and scaleups

Law 21/2023 of May 25 establishes the regime applicable to startups and scaleups and amends the Personal Income Tax Code, the Tax Benefits Statute and the Investment Tax Code.

Portugal - Legal Flash

June 1, 2023



Key aspects

- > The Startups Law introduces and defines the concepts of startup, scaleup, and business angel, and grants this status to companies that meet certain requirements.
- > Companies that want to be recognized as a startup or scaleup must send a prior communication to Startup Portugal through the public services one-stop shop.
- > The Startups Law establishes fines for legal entities that no longer meet the requirements for the status but fail to inform Startup Portugal within the established period.
- > The Startups Law establishes a tax incentives system aimed at encouraging investment in and the development of the Portuguese startup ecosystem.



Framework

Law 21/2023 of May 25, which establishes the regime applicable to startups and scaleups and amends the Personal Income Tax Code, the Tax Benefits Statute, and the Investment Tax Code (“Startups Law”), has been published.

Definitions

The Startups Law introduces and defines the concepts of startup, scaleup, and business angel, and grants this status to any company that:

- a) has been in operation for less than 10 years;
- b) employs under 250 employees;
- c) has an annual turnover of less than €50 million;
- d) is not the result of a transformation or split from a large company, and no large company holds a direct or indirect majority stake in its capital;
- e) has its headquarters or permanent representation office in Portugal, or it employs at least 25 employees in Portugal; and
- f) meets one of the following conditions:
 - It is an innovative company with high growth potential, innovative business models, products or services, and falls within the scope of Ordinance 195/2018 of July 5, or has been recognized as suitable for research and development (“R&D”) activities by the Portuguese National Innovation Agency or certified through the recognition process for technology sector companies, except for promotional, intermediation, investment, or real estate development companies.
 - It has successfully completed at least one round of venture capital financing from a legally qualified venture capital investment entity supervised by the Portuguese Securities Market Commission (CMVM) or a similar international authority, or through equity or mezzanine instruments provided by investors who are not founding shareholders of the company.

- It has received investment from Banco Português de Fomento, S. A., or funds that it manages, its subsidiaries, or one of its equity or mezzanine instruments.

Companies that do not meet these conditions can apply to Startup Portugal - *Associação Portuguesa para a Promoção do Empreendedorismo* - SPAPPE (“Startup Portugal”) for a prior declaration stating that the applicant has an innovative business model, product or service, or a rapidly scalable business with high growth potential.

Definition of scaleup: A scaleup is a legal entity that meets the conditions necessary for obtaining Tech Visa certification, as well as the above requirements for startups (except for a), b) and c)).

Definition of business angel: A business angel is an individual who invests in startups, boosting their financial capacity, experience, and market knowledge.

Companies that meet the following cumulative requirements are also considered business angels:

- a) The majority shareholder with managerial control is an individual who qualifies as a business angel.
- b) Their investment policy involves acquiring equity and debt instruments from companies with high growth potential to benefit from their increasing value.
- c) They are micro, small, or medium-sized enterprises (“SMEs”) and only invest in other SMEs.
- d) At least 15% of their capital is held by a business angel.
- e) They are legally incorporated and authorized to operate in Portugal.

Recognition

Startups or scaleups are recognized through a Startup Portugal prior communication procedure through the public services one-stop shop.

Companies can obtain recognition by submitting the necessary documents to Startup Portugal. However, they are not obligated to submit documents that are already held by any public administration department or entity. These departments or entities must share the documents with Startup Portugal—with the holder’s consent—through the public administration interoperability platform.

However, a company will lose its startup or scaleup status if it no longer meets the established requirements. Maintaining startup or scaleup status is contingent on Startup Portugal's confirmation, every three years, that the company still meets the requirements.

When companies no longer meet the status requirements, they must inform Startup Portugal within 30 days of the event that prevents them from doing so.

Startup Portugal may also withdraw startup or scaleup status if it finds that a company no longer meets one or more of the requirements.

Non-compliance

The Startups Law establishes a fine for companies that no longer meet the requirements for startup or scaleup status but fail to inform Startup Portugal within the required period.

The fine for this non-compliance ranges from €1,700 to €24,000.

Tax measures

To incentivize investment in and the development of the Portuguese startup ecosystem, the Startups Law establishes a tax incentives system through amendments to the Personal Income Tax Code ("PIT Code"), the Tax Benefits Statute ("TBS"), and the Investment Tax Code ("IT Code").

Amendments to the PIT Code

Gains arising from option plans, subscription plans, allocation plans, or similar schemes that benefit from the regime provided for in article 43-C of the TBS will now be taxed at the 28% flat rate (without affecting the option to aggregate income).

Amendments to the TBS: Tax incentive for purchasing startup shares

The Startups Law amends the TBS to establish the following tax incentives for purchasing startup shares:

- Gains arising from option plans, subscription plans, allocation plans, or similar schemes involving securities or equivalent rights provided to employees, directors, or officers will be subject to tax on only 50% of their value, taxed at a rate of 28% (without affecting the option to aggregate income), when the plan is provided by an entity—including startups—that meets at least one of the following

conditions in the year before the plan is approved:

- The entity qualifies as a micro, small, or medium-sized enterprise or a small mid-cap enterprise.
- The entity operates in a field of innovation, which means that it has incurred expenses equivalent to at least 10% of its expenditure or turnover in investments in R&D, patents, industrial designs or models, or computer programs.
 - Research expenses refer to costs incurred by corporate income tax (“CIT”) taxpayers for acquiring new scientific or technical knowledge.
 - Development expenses refer to costs incurred by CIT taxpayers in exploiting the results of research work or other scientific or technical knowledge to discover or substantially improve raw materials, products, services, or manufacturing processes.
- Taxation is contingent on the continuation of the underlying rights associated with the instruments that generate the gains or equivalent rights for a minimum period of one year. The gains are taxed on the earlier of:
 - the sale of the securities or equivalent rights acquired by exercising the option;
 - the loss of resident status in Portugal; or
 - the gratuitous transfer of the securities or equivalent rights acquired by exercising the option or subscribing the equivalent right.
- Except in the case of plans provided by entities that qualified as a startup or a micro or small enterprise in the year before their approval, beneficiaries of this regime cannot be:
 - taxpayers who hold—directly or indirectly—at least 20% of the share capital or voting rights of the entity providing the plan; or
 - officers and directors of the entity providing the plan.

Amendments to the IT Code: Tax Incentive System for Business R&D

Changes have been made to the Tax Incentive System for Business R&D (“SIFIDE”) established in the IT Code:

- The deduction for expenses associated with R&D activities involving product eco-design projects has increased from 110% to 120%.

- > The reporting period for expenses that were not deducted in the period they were incurred due to insufficient taxable income has been extended from 8 to 12 years.
- > Regarding investments made through investment funds, the following changes have been implemented:
 - > Investments between entities with special relationships are excluded. A special relationship is considered to exist between an investment fund and its management company.
 - > The minimum unit-holding period has been extended from 5 to 10 years.
 - > The minimum investment percentage for funds has increased from 80% to 85%.
 - > The maximum period for making investments in R&D companies has been reduced from five to three years, starting from the purchase date of the units or the equity and mezzanine investments.
 - > The benefit does not apply to primarily R&D companies if the investments relate to R&D activities directly or indirectly financed by investment funds under SIFIDE II.

Entry into force

The Startups Law entered into force on May 26, 2023.

	Effective date
Startups Law	January 1, 2023
Chapter II of the Startups Law	180 days after publication
Article 43-C TBS amendments	These also apply to plans approved up until December 31, 2022, if they are provided by entities that (i) are recognized as startups, under the applicable legal provisions, within 12 months after this law enters into force; or (ii) can demonstrate that they qualified as startups on the plan approval date.

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