

A vibrant, hand-drawn illustration in shades of blue, green, and yellow. The word 'STARTUP' is written in large, bold, block letters in the center. Surrounding it are various business-related icons: a bar chart with an upward arrow, a dollar sign, a rocket ship, a magnifying glass over a globe, a city skyline, a network diagram, a camera on a tripod, a paper airplane, and a cloud. The overall theme is entrepreneurship and growth.

STARTUP

STARTUPS AND SCALEUPS LEGAL REGIME

On 26 May 2023, Law no. 21/2023 of 25 May came into force, establishing the regime applicable to Startups and Scaleups and amending the Personal Income Tax Code, the Tax Benefits Statute and the Investment Tax Code.

This Law is designed to ensure that companies are recognised as Startups and Scaleups, introducing their legal definitions as well as the concept of Business Angels.

The aim of this Law is to promote national entrepreneurship and define specific investment policies, seeking to guarantee efficient conditions for the establishment and maintenance of Startups on national territory, by fostering a growth-oriented economy based on digitalisation and innovation.

Given the preference for remuneration schemes based on options to acquire shareholdings, a key aspect for attracting and retaining highly qualified professionals in the technology sector, it is guaranteed that taxation only takes place when the income is actually realised. For this reason, this law is also known as the Stock Option Law.

This Law defines a Startup as a legal person that cumulatively:

- a) Operates for a period of less than 10 years;
- b) Employ fewer than 250 workers;
- c) Has an annual turnover not exceeding €50,000,000.00;
- d) Is not the result of a transformation or demerger of a large company and does not have a direct or indirect majority shareholding in a large company;
- e) Has its head office or permanent representation in Portugal or at least 25 employees in Portugal;
- f) fulfils one of the following conditions:
 - i) It is an innovative company with a high growth potential, falling within the terms defined by Ministerial Order no. 195/2018, of 5 July, or which has been recognised as suitable by ANI-Agência Nacional de Inovação, S. A., in the practice of research and development activities or certification of the process of recognition of companies in the technology sector;
 - ii) Has completed at least one round of venture capital financing by a legally authorised entity, or through the contribution of equity or quasi-equity instruments by investors who are not founding shareholders of the company;
 - iii) Has received, directly or indirectly, investment from Banco Português de Fomento, S. A.

Failure to fulfil these conditions may be remedied by a prior declaration issued by "Startup Portugal", based on evidence that the applicant has an innovative business model, product or services or a rapidly scalable business with high growth potential.

In turn, a **Scaleup** is considered to be a legal person that fulfils the conditions necessary to obtain Tech Visa certification, as well as the requirements referred to for Startups, with the exception of points a), b) and c).

This law also introduces the concept of **Business Angels**, which refers to natural persons who invest in Startups, helping to strengthen their financial capacity and their experience and market position. Business Angels are also considered to be legal persons who fulfil the following requirements:

- They are majority owned, with management control, by an individual qualified as a business angel;
- Their investment policy is to acquire equity and debt capital instruments in companies with high growth potential, in order to benefit from the respective increase in value;
- Are micro, small or medium-sized enterprises (SMEs) and only invest in SMEs;
- Their capitalisation is at least 15% contributed by the Business Angel;
- They are legally constituted and authorised to operate in Portugal.

Startup or Scaleup status is recognised by means of prior communication to Startup Portugal.

In order to bring the Portuguese regime closer to more competitive markets in terms of tax benefits for these entities, the Startups Law provides incentives through changes to the Personal Income Tax Code, the Tax Benefits Statute and the Investment Tax Code.

The major tax attraction of the Startups Law is the change to the taxation regime for Stockoptions, which aims to attract and retain professional talent, as well as guaranteeing the maintenance and attraction of Startups in Portugal.

Gains derived from option, subscription, allocation or other plans with an equivalent effect, on securities or similar rights, created for the benefit of employees, will now be taxed at an autonomous rate of 28 per cent, without prejudice to the option of aggregation. Only 50 per cent of this gain will be taken into account for tax purposes.

Contrary to the previous system, in which taxation took place at the moment the Stockoption was exercised, the new law stipulates that taxation will only take place at the moment the income is actually realised, i.e. at the moment the shares acquired in this way are sold.



Pedro Leão Trigo
Lawyer



Pedro Vitorino
Trainee Lawyer

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