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REPORT

From: General Secretariat of the Council
To: Delegations
Subject: Code of Conduct Group (Business Taxation)
- Report to the Council

Spain's Support of Startup Ecosystems (ES024)

1. Background:

Spain notified one measure in the 2022 Standstill Notification Exercise: ES024 – Act on the Support of Spanish Start-up Ecosystems.

2. Relevant Legal Framework

Act No. 28/2022 of 21 December 2022 on the Promotion of Start-up Ecosystems (The Start-ups Act) lays down the specific legal framework for the support of start-up companies. It is published in the Spanish Official State Gazette of 22 December 2022.

3. Purpose of the Measure

The act introduces several incentives, including a number of tax incentives, to promote start-up companies in Spain and to support them in their initial stages. This is due to the specific characteristics of start-up companies, such as uncertainty related to the outcomes of their business which makes obtaining financing difficult.

4. Design of the Measure

In accordance with Article 3 of the Start-ups Act, a “start-up company” is defined as any legal entity, including technology-based companies, that has existed for less than five years (seven years for strategic sectors) and that meets certain conditions. For example, the company must be carrying out an innovative activity¹, it must not be listed on the stock exchange, it must not be distributing dividends, and its annual turnover must not exceed EUR 10 million. Further, the company must have its headquarters or permanent registered office in Spain, and 60 per cent of its staff must have a work contract in Spain. To ensure that the company *de facto* is a start-up company, it cannot derive from a merger, division, or other transformation of an existing company. When the start-up company is part of a group as defined in Article 42 of the Spanish Commercial Code, the group *or* each of the companies that compose it must comply with the requirements.

The first tax incentive is laid down in Article 7 and concerns a temporary reduction of the corporate tax rate. The standard corporate tax rate in Spain is 25 per cent. As a general rule, newly created companies not covered by the Start-ups Act are granted a reduced corporate tax rate of 15 per cent for a maximum period of two years. This general rule has a broader scope than the Start-ups Act, as it is open to newly formed companies carrying out (any) economic activities. However, it does not apply to companies that are part of a group.

According to the Start-ups Act, start-up companies liable to Corporate Income Tax, or Non-Resident’s Income Tax deriving income through a permanent establishment located in the Spanish territory, will be subject to a corporate tax rate of 15 per cent in the first tax period in which they attain a positive taxable income. In addition, the company will be able to apply the reduced rate for the following three years provided that the company retains its

¹ According to Article 3.2, second paragraph, “a start-up company shall be considered to be innovative when its purpose is to solve a problem or improve an existing situation by developing new or substantially improved products, services or processes compared to prior art and which entails a risk of technological, industrial or business model failure.” In addition, Article 4 stipulates that the Ministry for Economic Affairs and Digital Transformation, the Ministry of Industry, Commerce and Tourism, and the Ministry of Science and Innovation will jointly determine the criteria to assess the characteristics of Articles 3 and 6 to be met by start-up companies, particularly the innovative activity criterion, by means of a joint ministerial order. Such ministerial order has not yet been adopted.

status as a start-up company. Thus, the Start-ups Act grants start-up companies a maximum of four years of reduced corporate tax rates.

The second tax incentive is laid down in Article 8 and concerns a temporary deferral of corporate tax payments. Start-up companies may apply for a deferral of the tax payment due in the first two tax periods in which the tax base is positive. A deferral may be sought for a period of twelve months for the first tax period and six months for the second tax period starting at end of the respective payment periods. The deferral does not entail accrual of late interest payments nor a need to provide a guarantee.

In addition, the Act contains a number of tax incentives related to personal income taxation, including favorable tax treatment of employee shares, tax deductions for investors liable to personal income taxation, a specific tax regime for highly qualified professionals, and a requalification of “carried interest” for tax purposes. These measures do not fall within scope of the Code of Conduct and will, therefore, not be considered further.

5. Analysis

By virtue of paragraph A of the Code of Conduct (Business Taxation), the Code covers preferential tax measures which affect, or may affect, in a significant way the location of business activity in the Union.

The measure in question may be considered as a preferential tax measure as it entails a temporary reduction of the corporate tax rate and a temporary deferral of corporate tax payments that only apply to start-up companies.

However, in the light of the narrow scope of application (companies younger than five years, carrying out innovative activities, with a maximum turnover of EUR 10 million) and the temporary nature of the benefit (maximum four years), it is not expected to potentially affect the location of business activity in the EU in a significant way.

The Group has dealt with other measures for start-ups and SMEs that were anticipated not to have a significant impact on business activities in the past and concluded that they did not need to be further assessed.²

6. Conclusion(s)

In light of the aforementioned, it is the view of the Commission services that the measure does not meet the criteria in paragraph A of the Code of Conduct and, consequently, that it does not need to be assessed.

7. Follow-up

The Group agreed that the measure does not need to be assessed by the Group.

² See, e.g., [CoCG report to ECOFIN ST 10047 2017 INIT](#) and, in particular, the measure LV005 [Latvia: Law on support for start-ups activities]; [CoCG report to ECOFIN ST 9637 2018 INIT](#) and, in particular, measures PL007 and PL009 [Poland: One-time depreciation of factory new fixed assets and increase of the one-time depreciation limit for fixed assets and intangible assets]; [CoCG report to ECOFIN ST 9652 2019 INIT](#) and, in particular, measure PL010 [Poland: reduction of the standard CIT rate of 19% to 15% CIT rate and subsequently to 9% CIT rate for taxpayers with revenues not exceeding EUR 1.2 million]; [CoCG report to ECOFIN ST 8374 2020 INIT](#) and, in particular, measure HR014 [Croatia: reduction of the standard CIR rate of 18% to 12% for taxpayers with revenues not exceeding EUR 1 million.