



ATOZ ALERT

Draft law introducing a new start-up tax credit for individuals as from 2026 released

10 April 2025

On 4 April 2025, the Government Council approved [draft law n°8526](#) (hereafter referred to as the “**Draft Law**”), introducing a **new tax credit** to encourage individuals to invest in **young innovative companies** (the “**Start-Up Tax Credit**”). The aim of this draft law is to make Luxembourg’s ecosystem more attractive for young innovative companies by **improving their access to financing during the early stages of the companies’ existence**. This new start-up tax credit would apply as **from the 2026 tax year**.

In order to increase the diversification and competitiveness of the Luxembourg economy, the Start-Up Tax Credit is intended to encourage individuals to invest in young innovative companies (the “**Start-Up Entity**”).

To benefit from the Start-Up Tax Credit, the taxpayer must be a tax resident or assimilated non-resident individual (the “**Investor**”) who invests in and holds, for an uninterrupted period of a minimum of three years, shares directly in an entity qualifying as Start-Up Entity.

The conditions that must be fulfilled by both the Investors and the Start-Up Entity in order to benefit from the Start-Up Tax Credit, as well as the rules governing the determination of the Start-Up Tax Credit amount, are outlined below.

Conditions to be fulfilled by the Investor

The investor cannot be an employee or founder of the start-up entity

The Investor must neither have an employment relationship, as defined by Luxembourg labor law, with the Start-Up Entity during the tax year for which the Start-Up Tax Credit is claimed, nor be a founder of the Start-Up Entity within the meaning of the Law of 10 August 1915 on commercial companies.

The investor must invest in and hold, directly, fully paid-up shares in a start-up entity

In order to benefit from the Start-Up Tax Credit, the Investor must invest in a Start-Up Entity directly and acquire new shares or securities representing the share capital of that entity either at the moment of the incorporation of the Start-Up Entity or upon an increase of the share capital of the Start-Up Entity. For that purpose, the Draft Law provides that holding an interest in a Start-Up Entity through a tax transparent partnership, such as a limited

partnership (*société en commandite* or “SCS”), a special limited partnership (*société en commandite spéciale* or “SCSp”) or a civil company (*société civile* or “SC”), shall not be considered as direct ownership, so that an investment via such partnership would not be eligible for the Start-Up Tax Credit.

The shares must be fully paid up in cash by the end of the tax year during which the acquisition took place and for which the Start-Up Tax Credit is claimed. If the shares are only fully paid up during the subsequent year, the taxpayer will not be entitled to the Start-Up Tax Credit for this investment. To avoid situations of double benefit, the Start-Up Tax Credit is not granted to a taxpayer who invests into the Start-Up Entity through a business, even if the taxpayer exploits such business on an individual basis.

The investor must invest a minimum amount of EUR 10,000

In order to be eligible for the Start-Up Tax Credit, the total amount invested must reach at least EUR 10,000. This amount is assessed individually for each Investor and by Start-Up Entity.

The investor must hold a qualifying investment for an uninterrupted period of a minimum of three years

The Investor must undertake to hold the shares directly for an uninterrupted period of at least three years as from the end of the tax year for which the Start-Up Tax Credit is claimed. For example, a taxpayer will have to hold a qualifying investment made in 2026 until 31 December 2029.

Failure to comply with the minimum holding period of three years results in a retroactive adjustment of the taxation (*imposition rectificative*) for the tax year for which the tax credit was granted (and for the subsequent tax year in case the Start-Up Tax Credit has been carried forward). This could happen if the Start-Up Entity shares are sold by the Investor within three years, or in case the Start-up Entity is placed into voluntary liquidation during this period. However, there will be no retroactive adjustment of the taxation in certain exceptional cases exhaustively listed in the Draft Law, such as the bankruptcy of the Start-Up Entity or the death, disability, or permanent incapacity of the taxpayer to work.

Conditions to be fulfilled by the Start-Up Entity

The start-up entity must be a resident collective entity or a PE of a collective entity established in an EEA member state

To be eligible for the Start-Up Tax Credit, the investment must be made in a fully taxable resident collective entity incorporated in the form of a capital company or a cooperative company, or in a fully taxable collective entity that is a resident of a State that is a party to the Agreement on the European Economic Area (“EEA”), provided that such entity is subject to a corporate income tax comparable to the Luxembourg corporate income tax and has a domestic permanent establishment (« PE »).

The start-up entity must have been incorporated for a period not exceeding 5 years

The Start-Up Entity must have been incorporated for no more than five years at the end of the tax year for which the Start-Up Tax Credit is claimed (i.e. as of 31 December of the year for which the Start-Up Tax Credit is claimed, regardless of whether the Start-Up Entity has a divergent financial year-end).

The start-up entity must employ fewer than 50 employees and have total assets or annual turnover not exceeding EUR 10,000,000

The Start-Up Entity must

- employ fewer than 50 employees (the “Employee Criterion”), and
- have total assets or an annual turnover not exceeding EUR 10,000,000 (the “Size Criterion”),

as at the end of the financial year ending during the tax year for which the Start-Up Tax Credit is claimed, i.e. 31 December (in the case of a financial year aligned with the calendar year) or another date (in the case of a divergent

financial year – for example, if the financial year ends as of 30 June each year, the criteria are to be assessed as of 30 June N for the tax year N).

If the Start-Up Entity is part of a group, the Employee Criterion and the Size Criterion must be met at group level and certified by a statutory auditor (*réviseur d'entreprises agréé*) or a chartered accountant. Where a group is involved, all entities forming part of the group must, at the end of the tax year in respect of which the Start-Up Tax Credit is claimed, have been incorporated for less than five years. A group means the Start-Up Entity and its related enterprises as defined by the Draft Law.

The start-up entity must carry on an innovative activity

In order for the investment to be eligible for the Start-Up Tax Credit, the Start-Up Entity must carry on an innovative activity. An activity is considered to be innovative when the following cumulative conditions are met:

- **At least two individuals work on a full-time basis for the Start-Up Entity.** These individuals are not required to be employed under labor law so that an independent director may be considered for the purpose of verifying this criterion provided that they work on a full time equivalent basis for the Start-Up Entity. However, external service providers such as consultants cannot be taken into account for the purposes of this criterion.
- **The Start-up Entity has incurred research and development (“R&D”) expenses,** such as personnel and equipment costs, representing at least 15% of its total operating expenses during at least one of the three financial years preceding the tax year for which the Start-Up Tax Credit is claimed. R&D refers to systematic efforts undertaken to increase the knowledge and to apply this knowledge to develop new applications, whether in the form of products, services, processes, methods, or organizational structures.

The start-up entity must not be active in certain excluded sectors of activity

The Draft Law contains a list of **exclusions for certain sectors of activity deemed not to meet the innovative character requirement and therefore ineligible for the Start-Up Tax Credit.** This criterion is assessed at the moment when the shares or securities in the Start-Up Entity are fully paid up by the Investor and is not required to be continuously satisfied during the relevant tax year.

The following entities are excluded from the scope of the Start-Up Tax Credit:

- Law firms;
- Statutory audit firms, approved audit firms, audit companies, or certified accountants;
- Entities whose main corporate object consists in the construction, development, exchange, management, leasing, promotion, enhancement, or disposal of immovable properties or rights over immovable properties, or in the holding of equity interests in companies pursuing a similar object;
- Investment companies in risk capital (*société d'investissement en capital à risque* or “SICARs”);
- Entities whose securities are admitted to trading on a regulated market within the meaning of the amended Law of 11 January 2008 on transparency requirements for issuers;
- Entities incorporated as a result of a merger or demerger of companies, as defined in the Merger Directive¹;
- Entities that have made, since incorporation, a dividend distribution or a share capital reduction, except for a capital reduction intended to offset losses. This provision is specifically aimed at preventing the risk of abuse and in any case, the general anti-abuse rule (“GAAR”) of §6 *Steueranpassungsgesetz* remains applicable; or
- Entities subject to an unenforced recovery order issued in a previous decision by the European Commission declaring an aid granted to be illegal and incompatible with the internal market. This exclusion is provided to ensure full compliance with the applicable state aid rules.

¹ Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

Determination of the Start-Up Tax Credit amount

I. Determination of the eligible investment amount

Total amount invested in the share capital

The Start-Up Tax Credit amount is calculated based on the total amount invested in the share capital of the Start-Up Entity, also taking into account share premium (but excluding amounts that would be recorded in account 115 of the standard chart of accounts). As outlined above, to be eligible for the Start-Up Tax Credit, the total amount invested must reach at least EUR 10,000.

The Start-Up Tax Credit is claimed for the tax year during which the shares subscribed by the Investor were fully paid up.

Maximum ownership threshold of 30%

The Investor may not hold more than 30% of the share capital of the Start-Up Entity. If the 30% threshold is exceeded, the exceeding amount is not eligible for the Start-Up Tax Credit. This non-eligible portion of the total investment amount may not be carried forward to a subsequent tax year.

Maximum threshold of EUR 1,500,000 of eligible investments within the start-up entity

The Draft Law provides for a maximum threshold of investments eligible for the Start-Up Tax Credit within the same Start-Up Entity. Only the first total investments of EUR 1,500,000 received from Investors eligible for the credit (excluding, for instance, founders, corporate investors or investments that do not exceed the minimum threshold of EUR 10,000) will benefit from the Start-Up Tax Credit.

This threshold must be verified independently of the number of Investors claiming the Start-Up Tax Credit for an investment in the same Start-Up Entity.

II. Determination of the Start-Up Tax Credit amount

20% of the (lower) eligible investment amount

Under the Draft Law, the amount of the Start-Up Tax Credit corresponds to 20% of the lower eligible investment amount resulting from the application of the 30% ownership threshold or the EUR 1,500,000 threshold, as applicable.

Maximum EUR 100,000 per tax year

The total amount of Start-Up Tax Credit that can be granted to a taxpayer for a given tax year, based on all investments made, is limited to a maximum of EUR 100,000. Any amount exceeding EUR 100,000 cannot be carried forward to a subsequent tax year.

This threshold is to be considered excluding any carry forward of a Start-Up Tax Credit that may have been obtained for a prior tax year.

Potential carry forward of the tax credit

If the amount of the Start-Up Tax Credit granted to the taxpayer for a given tax year exceeds the income tax liability due by the taxpayer for that year, the difference between the amount of the tax credit and the tax liability is non-refundable to the taxpayer. This difference may nevertheless be carried forward to the subsequent tax year and deducted, under the same conditions, from the tax liability due for that subsequent tax year.

Formal condition

The taxpayer must attach the following documents to the income tax return for the tax year in respect of which the Start-Up Tax Credit is claimed:

- a certificate issued by the Start-Up Entity no later than two months after the shares have been fully paid up, certifying compliance with the 30% ownership threshold and the EUR 1,500,000 threshold; and
- a certificate issued by the Start-Up Entity after the end of the tax year for which the tax credit is claimed, certifying compliance with the eligibility conditions for the Start-Up Entity as detailed above.

Conclusion

Despite the fact that the Start-Up Tax Credit has a limited scope and strict conditions, this new initiative demonstrates once again the commitment of the Luxembourg government to the promotion and enhancement of the competitiveness of Luxembourg. The Draft Law must now go through the legislative process before being put to a parliamentary vote, hopefully before the end of the year.

Furthermore, in addition to the specific tax regime for impatriates as well as the profit participation regime already in place, the government [announced](#) the introduction of a new tax regime for stock option plans granted to employees of start-up companies.

We will keep you informed as soon as more details on these measures are available.

Do you have any questions?



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