

Executive Summary

of the new Italian legislation on innovative SMEs

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Italian Ministry of Economic Development

Minister's Technical Secretariat

DG for Industrial Policy, Competitiveness and SMEs

Boosting technological innovation within the domestic industrial fabric

Vision and legislative process

The measures in question truly represent a “second stage” process of reforms beginning in 2012 with the [Decree Law 179/2012](#) (“Decreto Crescita 2.0”), introducing a robust and consistent package of tools in support of new innovative enterprises with high technological value: the *innovative startups* ([Executive Summary of the Italian Startup Act](#)).

Following the main guidelines of international economic doctrine, that unreservedly considers technological innovation as a key driver for employment, competitiveness and growth, and aiming to foster with greater effort and reach the propagation of technological innovation within the domestic productive fabric, the [Decree Law 03/2015](#), known as “Investment Compact”, has extended most of the benefits previously attributable to innovative startups to a broader range of companies: *the innovative SMEs*, that is all the Small and Medium Enterprises operating in the field of technological innovation, regardless of their date of incorporation, the sector in which they operate or their stage of maturity.

As remarked in the [Small Business Act 2014 Report](#), SMEs – companies with less than 250 employees and a turnover lower than 50 million Euros – represent the backbone of the domestic productive and economic fabric. The “phase 2” boosted by the Investment Compact thus represents the logical and inescapable evolution for an industrial policy – as the one carried out by the Italian Ministry of Economic Development – that aims at promoting sustainable growth and the diffusion of an entrepreneurial culture much more prone to the world of research and innovation and more open to the global flow of human and financial capital.

Evidently, the concept itself of innovative startup and innovative SME, are in fact two subsequent stages of a continuous, sequential and coherent growth process: the Government aims is to support not only the startup phase of Italian innovative businesses but also, in view of the data collected in the last two years with regards to innovative startups (see the [dedicated online, weekly-updated directory of the business register](#)), to accelerate the dimensional growth and consolidation of those companies characterized by high technological content.

As described in the following pages, the acceleration program designed in favour of the

innovative SMEs consists in a vast and diversified package of measures that deal with every aspect of a company's lifecycle, including the introduction of flexible corporate management tools, new ways to remunerate workers and consultants, facilitation in the access to capital and investment and support in the process of internationalisation.

Definition, data exposure and public monitoring

The legislation in question regards *innovative* SMEs. It does not apply to all small and medium size enterprises but just to those that present a clear connection to technological innovation, regardless of their sector, be it software, manufacturing or agriculture.

Definition of innovative SME: the measures in question apply only to those Small and Medium Size Enterprises as defined by the European regulation (that is companies with less than 250 employees and a total turnover that does not exceed 43 million euros), meeting the following requirements:

- ✓ be established as companies with shared capital (i.e. limited companies), including cooperatives;
- ✓ have their headquarters in Italy or in another EU country, but with at least a production site or branch in Italy;
- ✓ have the last balance sheet certified by an auditor or by a company of auditors registered in the auditors' register;
- ✓ have the shares of the company not listed in a regulated market;
- ✓ be not registered as innovative startup or certified incubator in the special section of the business register;
- ✓ do not distribute profits;
- ✓ be of innovative character, which can be identified by *at least two* of the following criteria:
 1. at least 3% of the major between the company's expenses and turnover can be attributed to R&D activities;
 2. at least 1/5 of the total workforce are PhD students, the holders of a PhD or researchers; alternatively, 1/3 of the total workforce must hold a Master's degree;
 3. the enterprise is the holder, depositary or licensee of a registered patent (industrial property) or the owner of a program for original registered computers.

Registration and Publicity Regime: innovative SMEs must register in the respective special sections of the business register created ad hoc at the Chambers of Commerce. Registration occurs by transmitting online a declaration of self-certification of fulfillment of all required qualifications as indicated above, to the competent Chamber of Commerce per jurisdiction. This flexibility “in entry” is balanced by two counterweights: supervision ex post by the competent authority on the effective fulfillment of all required qualifications and the duty to update once a year (deadline on the 30th of June) the data provided at the moment of registration in the special section. This data concerns mainly the type of activity undertaken, with particular reference to the elements characteristic of technological innovation. As with the innovative startup, the innovative SMEs’ register is made public in electronic format and updated weekly by the Chambers’ system, in order to give publicity, foster widespread monitoring and spur a qualified and objective debate on the impact the new legislation will have on economic growth, employment and innovation.

Monitoring and evaluation: because the policy strives to be “evidence-based”, the corpus of regulations on SMEs provides a structured system for policy monitoring and evaluation. Moreover the Minister of Economic Development must report to the Italian Parliament annually on the impact of the measures in question¹.

¹ On the 1st of March 2014, the Minister of Economic Development discussed the first “*Annual Report to the Parliament on the startup law*”. The Report collected the analysis of the Monitoring and Evaluation Committee set up with the [Ministerial Decree](#) approved on the 31st of January 2014. The next annual report will be issued in September 2015.

Benefits

- 1. No duty stamp due for the subscription to the business register.**
- 2. Flexible corporate management:** the most significant waivers are provided for in the case of innovative SMEs incorporated as S.r.l. (the equivalent of an Ltd.), for which the following are permitted: creation of categories of shares with specific rights (for example, categories of shares that do not attribute rights to vote or that attribute such rights in non proportional terms to the participation); the possibility of carrying out operations on one's shares; the possibility of issuing participative financial instruments; offer to the public of capital shares. Many of these measures imply a radical change in the financial structure of the S.r.l, approaching that of an S.p.a. (the equivalent of an Inc.).
- 3. Exemption from the regulations on companies reporting systematic losses:** during their years of activity, innovative, high-risk companies may record losses. If the available capital is insufficient, such losses may have a direct impact on the company's share capital. Where losses result in the share capital being reduced by over 1/3, the shareholders' meeting must lower the capital proportionally to the losses recorded by the following financial year. A 12-month extension is applied to innovative SMEs, during which the capital can be reduced proportionally to the losses. While ordinary companies must lower capital by the following financial year, SMEs can do this for up to two financial years after they suffered losses.
- 4. Exemption from regulations on dummy companies:** regulations concerning non-operational dummy companies that constantly make a loss, do not apply to Innovative SMEs. To verify non-operative status of the company. The SMEs are not obliged to take the operativity test. These regulations provide for the allocation of a set minimum income on a flat-rate basis.
- 5. Flexible remuneration system:** salaries remunerating workers employed in innovative SMEs can have a variable component linked to efficiency or profitability of the company, the productivity of the employee or the team of employees, or to other objectives and parameters for output and performance as agreed upon by the parties, including what is listed below.

- 6. Remuneration through stock options and work for equity scheme** ([Guide](#); [Model with comments](#)): in order to foster loyalty among management, employees and service suppliers such as lawyers and accountants, Innovative SMEs may offer them capital shares by way of additional remuneration. The revenues resulting from these financial instruments are tax deductible for both fiscal and contributory purposes. In other words, innovative SMEs may make use of instruments such as stock options and work for equity schemes on even better terms than big companies listed on the Stock Exchange.
- 7. Tax incentives for corporate and private investments in Innovative SMEs that have operated in the market for no more than 7 years** made by individuals (19% tax credit up to a maximum investment of 500,000 Euros) or legal entities (20% fiscal deduction up to a maximum investment of 1.8 million Euros). These incentives apply both in case of direct investments in SMEs and in case of indirect investments by means of other companies investing predominantly in Innovative SMEs. **For those Innovative SMEs that have operated in the market for more than 7 years**, these tax concessions apply only if the Innovative SMEs are able to provide a development plan for products, services or processes that are new or remarkably better compared to the state of the art of the sector in which they operate.
- 8. Equity crowdfunding:** in July 2013, CONSOB – the equivalent of the American SEC² – has published a [“Regulation on the raising of venture capital by innovative startups through on-line portals”](#). In so doing, Italy has become the first country in the world to have introduced a specific set of rules on equity crowdfunding, allowing innovative startups to raise capital, also from abroad, through [certified web portals](#). With regards to equity crowdfunding, the already mentioned Law Decree “Investment Compact” has introduced three important developments: even innovative SMEs can take advantage of the instrument; just as CIUs and other corporations that invest predominantly in innovative startups and SMEs, an evolution that allows for the diversification of the portfolio and decreased risk towards retail investors; once again waiving ordinary norms, the transfer of shares of innovative startups and SMEs is dematerialized, and as such related burdens are reduced, with a view to fluidification of the secondary

² Commissione nazionale per le società e la borsa (CONSOB) is the Italian Securities and Exchange Commission (SEC).

market.

- 9. Fast-track, simplified and free-of-charge access for innovative startups and certified incubators to the [Fondo Centrale di Garanzia](#)**, a Government Fund that supports access to credit through guarantees on bank loans. The guarantees covers 80% of the bank loans up to a maximum of 2.5 million Euros and it is provided through a simplified fast-track procedure.
- 10. More targeted support to the process of internationalisation** provided by the Italian Trade Promotion Agency (“ICE”), including assistance in legal, corporate and fiscal activities, as well as real estate and credit matters.

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Additional support measures

Finally, innovative SMEs can benefit from two important measures in favour of technological innovation:

1. **Tax credit for R&D:** the [Budget Law 2015](#) (art. 1, paragraph 35) has redefined the discipline on tax credit for investments in research and development as introduced by the Decree “Destinazione Italia”, deferring its operationality to 2015 whilst at the same time diluting the period of fruition until 2019. The tax credit is recognized in favour of companies who invest in R&D, up to an annual maximum of 5 million Euros for each beneficiary. The credit comes to measure 25% of incremental annual costs for activities in R&D with respect to the average of the costs incurred over the 3 fiscal periods previous to the one ongoing at the 31st of December 2015, as long as in each of the fiscal periods costs for R&D have been equivalent to at least 30,000 Euros. The fiscal benefit reaches 50% for investments in R&D relative to: employment of highly qualified staff; or costs for research “extra muros”, meaning in collaboration with universities and entities or research organizations and/or with other companies, such as innovative startups. A specific decree by the Minister for Economy and Finance, in accordance with the Ministry of Economic Development, will adopt the necessary implementation regulations.
2. **Patent Box:** unprecedentedly, the [Budget Law 2015](#) (art. 1, paragraphs 37-45) introduced fiscal benefits on income deriving from the use of intellectual property. The so called “Patent Box”, applicable as of 2015, allows companies the option to exclude from taxation 50% of income deriving from commercial use of intangible assets (copyrights, industrial patents, commercial brands). The more recent Investment Compact has enhanced such an instrument, fully including trademarks and commercial brands among the intangible activities subject to tax benefits. The Patent Box represents a powerful measure for the attraction of investment in the value of intangible capital, of brands and industrial models. The definition of the implementation dispositions is remitted to a following decree by the Ministry of Economic Development, in accordance with the Ministry for Economy and Finance.