



Italy's legislative framework to support **innovative SMEs** 

# **Executive summary**



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# Vision and legal references

The notion of "innovative SME" was introduced by Decree Law 3/2015. It comprises any small or medium-sized enterprise characterized by a strong innovation component, regardless of its level of maturity. This typology can benefit from most of the support measures provided by Decree Law 179/2012 (the "Italian Startup Act"), which was formerly aimed just at innovative businesses in their startup phase.

SMEs play a major role in terms of employment and added value, in Italy even more than elsewhere in the European Union<sup>1</sup>. Targeting SMEs, also at an advanced stage of their lifecycle, is therefore indispensable in the attempt to spread an innovation-oriented entrepreneurial culture across the country. Given its strong ties with the Italian Startup Act, the national policy on innovative SMEs can be conceived as the second part of a single, progressive policy effort. Empirical studies show that, thanks to the Italian Startup Act, innovative startups have grown more than they would without tailored policy support<sup>2</sup>. The assumption is that innovative SMEs will do the same by benefitting from a similar range of incentives and instruments.

These encompass, inter alia, tailor-made company regulations, robust tax breaks for financial instruments and venture capital, as well as a simplified access to the main national credit guarantee programme.

In the last few years, innovation policies have climbed to the top of the Italian economic agenda. The National Plan on Industry 4.0, for instance, offers a vast array of incentives to spur private R&D and innovation (for more information, see the dedicated page on the Ministry's website). Albeit not exclusively addressed to innovative SMEs, a brief reference to the Plan and other relevant innovation policies can be found in the final part of this document.

<sup>&</sup>lt;sup>1</sup> See European Commission, SBA Fact Sheet 2018: https://ec.europa.eu/docsroom/documents/32581/attachments/16/translations/en/renditions/native

<sup>&</sup>lt;sup>2</sup> See OECD, "The evaluation of the Italian "Start-up Act" ", 2018: https://www.oecd-ilibrary.org/industry-and-services/the-evaluation-of-the-italian-start-up-act\_02aboeb7-en

# Definitions, registration procedure and monitoring system

The policy on innovative SMEs does not address any small and medium-sized enterprise, but only those characterised by a strong innovation component. Neither sectoral constraints nor age limits are foreseen, as the rationale is to foster innovation in any sector, including traditional ones, and regardless of companies' stage of maturity.

#### Definition of "innovative SME"

Decree Law 3/2015 (art. 4, paragraph 1) defines innovative SMEs as any small or medium-sized enterprise (i.e. enterprises employing fewer than 250 persons, whose annual turnover does not exceed  $\epsilon$  50 million or whose balance sheet total does not exceed  $\epsilon$  43 million, in accordance with the Recommendation 361/2003 of the European Commission) that meet the following requirements:

- ✓ they are incorporated as limited companies, including cooperatives (paragraph 1);
- ✓ they have their headquarters in Italy, or in another Member State of the European Union or of the European Economic Area, provided that they have a production facility or branch located in Italy (paragraph 1, letter "a");
- ✓ their latest financial statements (or their consolidated financial statements, if applicable) have been drawn up by an auditor or an audit firm recorded in the register of auditors (letter "b");
- ✓ their shares are not listed on a public regulated market (letter "c");
- ✓ they are not registered in the special section of the Business Register dedicated to innovative startups and certified incubators (letter "d");
- ✓ they fulfil **at least two** out of **the following criteria** (letter "e"):
  - research and development expenditure corresponds to at least 3% of the higher value between turnover and annual costs (as per the latest approved financial statement;

- at least 1/5 of the total workforce is made up PhD holders, PhD students or researchers, or at least 1/3 holds a master's degree;
- 3. the company is the owner or licensee of a registered **patent** (or it has filed an application for an industrial property right) or it owns an original registered software.

#### **Registration procedure**

A company that meets the aforementioned requirements can obtain the innovative SME status by registering into a **special section** of the **Business Register** (art. 25, paragraph 8).

The registration is voluntary and free of charge. It takes place by sending a self-certification of compliance with requirements to the local Chamber of Commerce (art. 25, paragraph 9). Forms and guidelines are available on http://pminnovative.registroimprese.it/ (see in particular section: Information about the regulation > Find out if your company is an innovative SME). This "agile" entry process is balanced by two counterweights. First of all, the Chambers of Commerce carry out routine checks to make sure that innovative SMEs meet the legal requirements (see Circular No. 3696/C of 14 February 2017). Secondly, the list of registered innovative SMEs is publicly available on startup.registroimprese.it, also in view of fostering public monitoring and discouraging opportunistic behaviour. The database is updated weekly and published in an open format. It can be downloaded and re-used for free, also for research and business purposes (see section "Lists and statistics").

In addition, innovative SMEs are required to confirm once a year (by 30 June) that they still fulfil the requirements set forth by the law. Failure to do so is a cause of removal from the dedicated special sector of the Business Register (art. 4, paragraph 6). Before filing this communication, innovative SMEs are also required to complete their public profile on pminnovative.registroimprese.it (see Focus below).

#### Focus: the "pminnovative.registroimprese.it" platform

The 2019 "Simplifications Decree" (Decree-Law no. 135 of 14 December 2018, converted with amendments by Law no. 12 of 11 February 2019) modified several paragraphs of article 4 of Decree-Law 3/2015. Most importantly, new provisions were introduced, requiring innovative SMEs to (1) complete their business profile on the website startup.registroimprese.it upon registration in the special section, and (2) update or confirm them at least once a year prior and as a precondition to submitting the aforementioned annual confirmation of compliance with legal requirements.

In the light of the above, the platform pminnovative.registroimprese.it now has a legal value. The portal, launched in November 2015 with the aim of enhancing and expanding the wealth of information on Italian innovative companies, allows all innovative SMEs to create a customisable public profile in two languages.

In first place, the portal generates by default a public profile for each innovative SME upon registration, reporting basic data already available in the Register (name, location, incorporation date, business sector, size class in terms of employees and turnover, etc.).

By clicking on the dedicated editing icon ("modify"), entrepreneurs have the opportunity to enrich the profile with a wide range of additional information. They include the stage of business development, a description of the team, a presentation of the products or services offered, as well as the investment received, the financial needs and the target markets.

In particular, the following fields are mandatory:

- General presentation of the business;
- Characteristics of the product/service offered;
- Innovation: description of the innovative aspects of the company, including IP rights;
- Funding received (if applicable).

Once digitally signed by the legal representative (compilation guide), information are accessible to everyone in the public profile of the company, making up a real showcase for all innovative startups and SMEs. This can be helpful, among others, for VC funds and business angels looking for new high-potential investment opportunities, as well as for established

businesses eager to establish new open innovation partnerships.

The platform can be freely modified at any time. However, it must be updated at least once a year by 30 June. Otherwise, the company will be unable to submit its yearly form for confirming the fulfilment of the requirements set forth by the law, losing its innovative SME status and the related benefits.

#### **Monitoring and evaluation**

The policy on innovative SMEs, just like its forerunner on innovative startups, aspires to be fully evidence-based. In this view, the law foresees the creation of a structured monitoring and evaluation system. It also requires the Minister of Economic Development to report to Parliament once a year. The Annual Report on the national policy on innovative startups and SMEs presents: the state of the art of regulations; demographics and growth dynamics of innovative companies; and evidence of the performance of support measures. Past issues of the Report, all available both in Italian and English, are filed in the "Annual report and periodic reports" section of the Ministry's website. As of 2015, its full name is "Annual report to Parliament on the state of implementation of the legislation supporting innovative startups and SMEs".

In addition to the Annual Report, the Directorate-General for Industrial Policy, Competitiveness and SMEs of the Ministry of Economic Development has designed a quarterly report on the access to credit by startups and innovative SMEs through the intervention of the Guarantee Fund for SMEs (see section "Facilitation measures", point 8)

The reporting system described above benefits considerably, e.g. in terms of statistical sources, from the support of the administrations part of a Monitoring and Evaluation Committee, established pursuant to the Ministerial Decree of 31 January 2014.

### Support measures



The following section describes the support measures dedicated to innovative SMEs. Decree-Law 3/2015 represent their legal basis; in particular, art. 4, paragraph 9 extends to innovative SMEs most of the benefits previously attributed just to innovative startups, by explicitly referring to Decree Law 179/2012 (articles 26-31).

Unlike startups, innovative SMEs can benefit from these facilitations without any time limit, as long as they meet the requirements set forth by the law.



1. Exemption from stamp duties (d.l. 179/2012, art. 26, paragraph 8)

Innovative SMEs are exonerated from the payment of the stamp duty due to the registration in the special section of the Business Register.



**2. Exceptions to general company law** (d.l. 179/2012, art. 26, paragraphs 2, 3, 5-7)

Innovative SMEs established in the s.r.l. form (comparable to a British "private limited company") are allowed to:

- create categories of shares with specific rights (e.g. categories of shares without voting rights, or whose voting rights are not proportional to capital share);
- carry out transactions on their own shares;
- issue financial instruments such as stock options and work-for-equity;
- offer capital shares to the public.

These measures make rules for s.r.l. companies more similar to the s.p.a. form (comparable to a British "public limited company"), which is generally adopted by larger firms with sizeable capital endowment.



**3. Extension of the deadline to cover losses** (d.l. 179/2012, art. 26, paragraph 1)

In the event of financial losses resulting in a reduction of the company's share capital of more than one third, in derogation of the Italian Civil Code, the period within which the loss must be reduced to less than one third is postponed to the second subsequent financial year (instead of the first subsequent financial year). In the event of a reduction of the capital below the threshold set forth by the law, incurred due to losses, shareholders may postpone the adoption of the countermeasures mandated by the Civil Code until the end of the subsequent financial year.



# 4. Derogation from the rules on dummy companies and companies reporting systematic losses (d.l. 179/2012, art. 26, paragraph 4)

Innovative SMEs are not subject to regulations on dummy companies and companies reporting systematic losses. Therefore, in case they report exceptionally low revenues or a systematic loss, innovative SMEs are exempted from the tax penalties normally incurred by so-called dummy companies. For example, they are exempted from measures such as the application of a minimum income for corporate tax purposes, limitations to claim VAT credits, and a 10.5% corporate income tax surcharge.



#### 5. Remuneration through equity instruments (d.l. 179/2012, art. 27)

Innovative SMEs can reward their employees with equity participation instruments (such as **stock options**), and external service providers through **work for equity** schemes. The income coming from reception of such instruments does not contribute to the formation of taxable income.

For more information:

- User guide for equity plans and work for equity
- Commented model of an equity incentive plan



#### 6. Tax incentives for equity investors (d.l. 179/2012, art. 29)

The Italian Startup Act rewards equity investments in innovative SMEs, made by natural and legal persons, with a robust tax incentive.

Its current configuration, applicable to equity investments made from 1 January 2017 (Budget Law 2017, art. 1, paragraph 66), foresees the following:

- for individuals, a deduction from gross income tax (IRPEF) equal to 30% of the amount invested, up to a €1 million ceiling;
- for limited companies, deduction from taxable corporate income (IRES) equal to 30% of the amount invested, up to a €1.8 million ceiling.

Unlike innovative startups, innovative SME are not eligible by default: requirements vary depending on the level of business maturity, in line with the European parameters on state aid rules.

In accordance with the Decree of the Minister of the Economy and Finance, in agreement with the Minister of Economic Development, of 7 May 2019, which incorporates the guidelines set out in the decision of the European Commission of 17 December 2018, an innovative SME is eligible if it falls in one of the following three categories:

- a. the company has operated in the market for less than **7 years** counting from the date of its first commercial sale;
- b. the company has operated in the market for less than 10 years counting from the date of its first commercial sale, and has not yet sufficiently proven its potential to generate returns;

the company makes a **risk finance investment** – based on a business plan prepared in view of entering a new product or a new geographical market – that is **higher than 50% of the average annual turnover in the preceding 5 years (irrespectively of their age)**.

The incentives, which can be deployed automatically in the tax return, apply both to direct investments in innovative SMEs and to indirect investments executed through collective investment undertakings (CIUs) and firms that "primarily invest in innovative startups and SMEs",

a category that includes most VC funds. From 2017, the fruition of the investment is subject to a 3-year holding period of shares.



#### 7. Fundraising through equity crowdfunding campaigns

(d.l. 179/2012, art. 30, paragraphs 1-5)

In 2013, Italy was the first country in the world to regulate the equity crowdfunding market, also through the creation of a special register of authorised online portals.

Initially introduced for innovative startups only, equity crowdfunding was gradually extended to innovative SMEs, CIUs and VC funds (2015) and then, with the 2017 Budget Law, to all Italian SMEs. The instrument falls under the responsibility of Consob, Italy's Financial Market Supervisory Authority: implementing provisions can be retrieved in the *Regulation on the venture capital fundraising through online portals* adopted with resolution no. 18592 of 26 June 2013, updated with resolution no. 20264 of 17 January 2018 (link to the text).

For more information: Consob information page dedicated to equity crowdfunding



#### 8. Simplified access to the SME Guarantee Fund

(d.l. 179/2012, art. 30, paragraph 6)

Innovative SMEs benefit from a simplified, free and direct intervention from the Guarantee Fund for Small and Medium Enterprises, a public facility that fosters access to credit by applying guarantees on bank loans (implementing decree; guide).

The guarantee, applicable both directly and to operations carried out through credit consortia, covers 80% of the credit issued by financial institutions to innovative SMEs, up to €2.5 million per firm (also across multiple operations).

As of 15 March 2019, new operational provisions apply, providing that innovative SMEs must undergo an evaluation of creditworthiness by the Fund in any case, regardless of the rating class they fall into (whereas innovative startup do access the Fund by default, i.e. without any assessment of credit risk). Similar to the past, innovative SMEs falling into the last class are prevented from accessing the Fund (in the new scale, the fifth; in the previous scale, the third).

Just like innovative startups, innovative SMEs will access the Fund for free, the share of the loan covered by the guarantee will amount to 80%, and credit institutions are not allowed to request

collateral, insurance or bank guarantees on the part of the loan covered by public guarantee.

The Ministry of Economic Development, in partnership with MedioCredito Centrale (the managing body of the Fund), publishes a quarterly monitoring report on the use of the facility (link to the archive).



9. Italian Trade Agency: ad hoc services for the internationalization of startups (d.l. 179/2012, art. 30, paragraph 7)

The Italian Trade Agency ("ITA", in Italian "*Agenzia ICE"*) provides assistance on regulatory, corporate, fiscal, real estate, contractual and credit matters: innovative SMEs are entitled to a 30% discount on standard costs, available by requesting the "Innovative SMEs Service Card" at urp@ice.it.

Moreover, to spur dialogue with potential foreign investors, the ITA guides innovative SMEs for free to some of the main international events for hi-tech companies: the scheduled activities are available on the portal www.innovationitaly.it/en.

#### What are the differences between innovative startups and innovative SMEs?

Innovative SMEs benefit from most of the measures provided for by the Italian Startup Act. Some of them are applicable without any differentiation between innovative startups and innovative SMEs:



Exceptions to general company law



Extension of the deadline to cover losses



Possibility of remunerating staff in a flexible way



Fundraising through equity crowdfunding campaigns

Support from the Italian Trade Agency

For some measures, albeit applicable to both types, innovative SMEs are subject to special provisions:



**Exemption from the stamp duty** usually owed when filing documents at the Chamber of Commerce. However, there is no exemption *from secretarial and annual chamber fees*, as it happens for innovative startups.

#### Tax incentives for equity investments



The tax relief for equity investments apply under the same rules of innovative startups only if the company performed its first commercial sale less than 7 years before the investment. More mature companies are still eligible, if they comply with the conditions set out in the implementing decree. To ensure compliance with EU regulations on State aid, the Decree incorporates the guidance contained in the authorisation of the European Commission of 19 December 2018 (link to the text).

#### Simplified access to the Guarantee Fund for Small and Medium Enterprises

Unlike startups, innovative SMEs are not entitled to automatic access to the public guarantee – i.e. the Fund will perform a separate credit assessment based on its own rating system, on top of the evaluation already carried out by the concerned financial institution. However, only companies that are classified in the lowest rating bracket are by default excluded from the guarantee; all the others can access it under the same rules applied to innovative startups.

#### For more information:

- Circulars and interpretative opinions on the policies on innovative startups and SMEs are available at the following link.
- All acts (laws and implementing degrees) regarding the policy on innovative SMEs are available in the dedicated section of the MISE website, together with guides on specific instruments and other information materials.
- To contact the office responsible for this document: pminnovative@mise.gov.it.

# Other innovation policies

The Italian Ministry of Economic Development and other administrations offer a wide range of initiatives in support of innovative SMEs and innovative entrepreneurship at large. This section provides an overview of the most significant measures, without claiming to be exhaustive.

Particular attention is given to the measures introduced with the so-called "National Industry Plan 4.0" (2017), whose ultimate goal is to boost to private investment in innovation. According to the Digital Tax Index 2018, edited by PwC Germany in collaboration with the Centre for European Economic Research and the University of Mannheim, Italy ranked first worldwide in terms of fiscal attractiveness for investment in digital technologies.

This section presents the main measures of the Plan, albeit not targeting just innovative SMEs, are of particular interest to them. It concludes with an overview of other recent innovation policies.



#### Research and Development tax credit

Introduced by the 2015 Budget Law and amended several times over the years (most recently by the 2019 Budget Law, art. 1, paragraphs 70 and 72), CIR&S (Italian acronym for *Research and Development tax credit*) represents a tax incentive available to all companies – without any sectoral, size, legal form or accounting regime limitation – that have incurred in *incremental* expenses in research and development between 2015 and 2020.

The notion of "relevant expenditure" covers basic research, industrial research and experimental development. The credit is calculated on a fixed basis, based on the average R&D expenditure for the years 2012-2014, and it can also be used in the event of losses to cover a wide range of taxes and contributions.

As from 1 January 2019, the rates for CIR&S are the following:

- 50%: R&D activities commissioned (*extra-muros*) to universities and research institutions, as well as startups and innovative SMEs; and labour costs for permanent or temporary staff employed in *intra-muros* research activities.
- **25%:** all other expenses (external collaborators, consultancies, materials, etc.)

The maximum amount of the credit per company that can be granted in the 2019 tax period is set at  $\epsilon_{10}$  million (2015-2016:  $\epsilon_{5}$  million; 2017-2018:  $\epsilon_{20}$  million). The incentive is also available to companies resident abroad, provided that they have a permanent premise in Italy and instruct R&D activities, and also to companies that carry out R&D activities on behalf of foreign entities (e.g. multinationals).

For more information on this incentive, please consult the dedicated section on the Ministry's website, including FAQs and all secondary legislation on the matter – including interpretative circulars by the Italian Revenue Agency.

# Hyper-depreciation for the purchase of machinery and "Industry 4.0" technologies

A pillar of the National Plan for Industry 4.0 – the strategy launched with the 2017 Budget Law to promote the digital transformation of Italian industry – hyper-depreciation consists of an increase in the annual depreciation deduction on acquisition and leasing costs on a selected set of assets, devices and technologies with an "Industry 4.0" character.

Identified in Annex A of the 2017 Budget Law, these state-of-the-art technologies include industrial robots, additive manufacturing, Internet of Things, augmented reality, cloud services and cybersecurity, and solutions that aim at the horizontal and vertical integration of the supply chains.

Originally, the incentive consisted in an overvaluation of the acquisition costs equal to 150% of its actual price, with no ceiling on the maximum amount covered by the incentive. The Budget Law 2019 has modified this provision, introducing a progressive system with 4 brackets, whose intensity decreases as the amount invested increases.

The following rates apply to investments made from 1 January 2019 onwards:

- **170%** on the part lower than €2.5 million;
- 100% on the part between €2.5 million and €10 million;
- **50%** on the part between €10 million and €20 million;
- No incentive for the part exceeding €20 million.

The new bottom rate, which is higher than the past, is particularly advantageous for SMEs. As

shown by the 2019 Annual Report of Confindustria, companies with less than 50 employees represent more than 80% of beneficiaries, and made about 35% of the total subsidised investments.

For further information on this incentive, please refer to the dedicated information page on the MISE website.



#### **Patent Box**

The 2015 Budget Law (art. 1, paragraphs 37-45) introduced a new facilitation system for incomes deriving from intellectual property. Since the 2015 tax year, a so-called "Patent Box" allows companies to exclude from taxation 50% of the incomes from the commercial exploitation of intangible assets such as copyrighted software, industrial patents, designs and models, as well as processes, formulas and information related to experience acquired in the industrial, commercial or scientific field that can be legally protected. Moreover, if deployed for the 2015 and 2016 tax periods, the option may also apply to trademarks, whether registered or in the process of being registered.

The Patent Box is meant to be a powerful measure to attract investments on intangible assets, brands and industrial models. The implementing provisions of the incentive are identified by the Decree of the Minister of Economic Development, in agreement with the Minister of Economy and Finance, of <u>28 November 2017</u>.

For further information, please refer to the ad hoc guide on the MISE portal.

#### Latest in 2019

#### NNOVAZIONE A new "National Innovation Fund"

Unveiled in March 2019 by the Minister of Economic Development, the National Innovation Fund (*Fondo Nazionale Innovazione*, FNI) is a public venture capital fund, born to support innovative companies and the national VC market. Administered by Cassa Depositi e Prestiti (CDP), the fund may either invest directly in firms, by acquiring minority shares, or intervene indirectly, by investing in other VC funds and "funds of funds".

At the end of the first collection phase, the Fund is expected to reach a financial endowment of around **€1 billion**, becoming the most prominent public venture capital initiative ever launched in Italy. As a first step towards this goal, the 2019 Budget Law authorised the acquisition by CDP of Invitalia Ventures, a matching fund owned by Invitalia, which has a budget of approximately €230 million. In recent years, Invitalia Ventures has taken part in several co-investment initiatives towards innovative startups and SMEs.

The FNI is expected to become fully operational in late 2019. For more details on the governance and activities of the Fund, please refer to the institutional channels of CDP and the Ministry.



Introduced by 2019 Budget Law (art. 1, paragraph 228), vouchers for innovation managers consist of a non-repayable grant that SMEs can use to purchase specialist consultancy services aimed at supporting their digital transformation, e.g. through acquisition of "4.0" technologies (see "Hyper-depreciation").

The contribution is equal to 50% of the costs borne by the firm, up to a ceiling of  $\epsilon_{40}$  ooo for micro and small enterprises, and 30% (with a  $\epsilon_{25}$  ooo limit) for medium-sized enterprises. The firm may apply for the incentive after signing an agreement (service contract) with a consulting company and qualified professionals, included in a dedicated register created by the MISE.

Executive provisions are set out in the Decree of the Minister of Economic Development published on 7 May 2019. More information are available on the dedicated page on MISE's website.



# Strategies for emerging technologies: artificial intelligence and blockchain

In 2019, MISE launched a number of initiatives on emerging technologies particularly interesting for innovative enterprises: artificial intelligence and blockchain.

• The 2019 Budget Law (art. 1, paragraph 226) requires MISE to set up a Fund for emerging

**technologies**, with the aim of supporting the development and applications of artificial intelligence, blockchain and IoT. The Fund has a budget of  $\leq$ 45 million for the 2019-2021 period, meant to finance research and innovation projects and competitive processes (e.g. challenge prizes) in these fields.

In January 2019, on the initiative of the Minister of Economic Development, two expert groups on artificial intelligence and blockchain were set up. The groups include 30 members each, selected after an open call, and present an equal representation of academics, representatives of companies (both large corporations and startups), and civil society. The work of the groups will serve as a starting point for drafting two action plans for the development of these technologies, promoted by the Italian Government.

In particular, implementing a national strategy for artificial intelligence is in line with a commitment made by Italy at the EU level: it is part of the actions foreseen by the European Coordinated plan on artificial intelligence. The Plan outlines some initiatives that, also drawing from the resources to be allocated under the next EU Multiannual Financial Framework (Horizon Europe and Digital Europe programmes), aim to make the European AI industry competitive worldwide, while promoting a distinctive approach with the purpose of developing an "ethical and trustworthy" AI (guidelines).