

Executive Summary

of the new Italian legislation on innovative startups



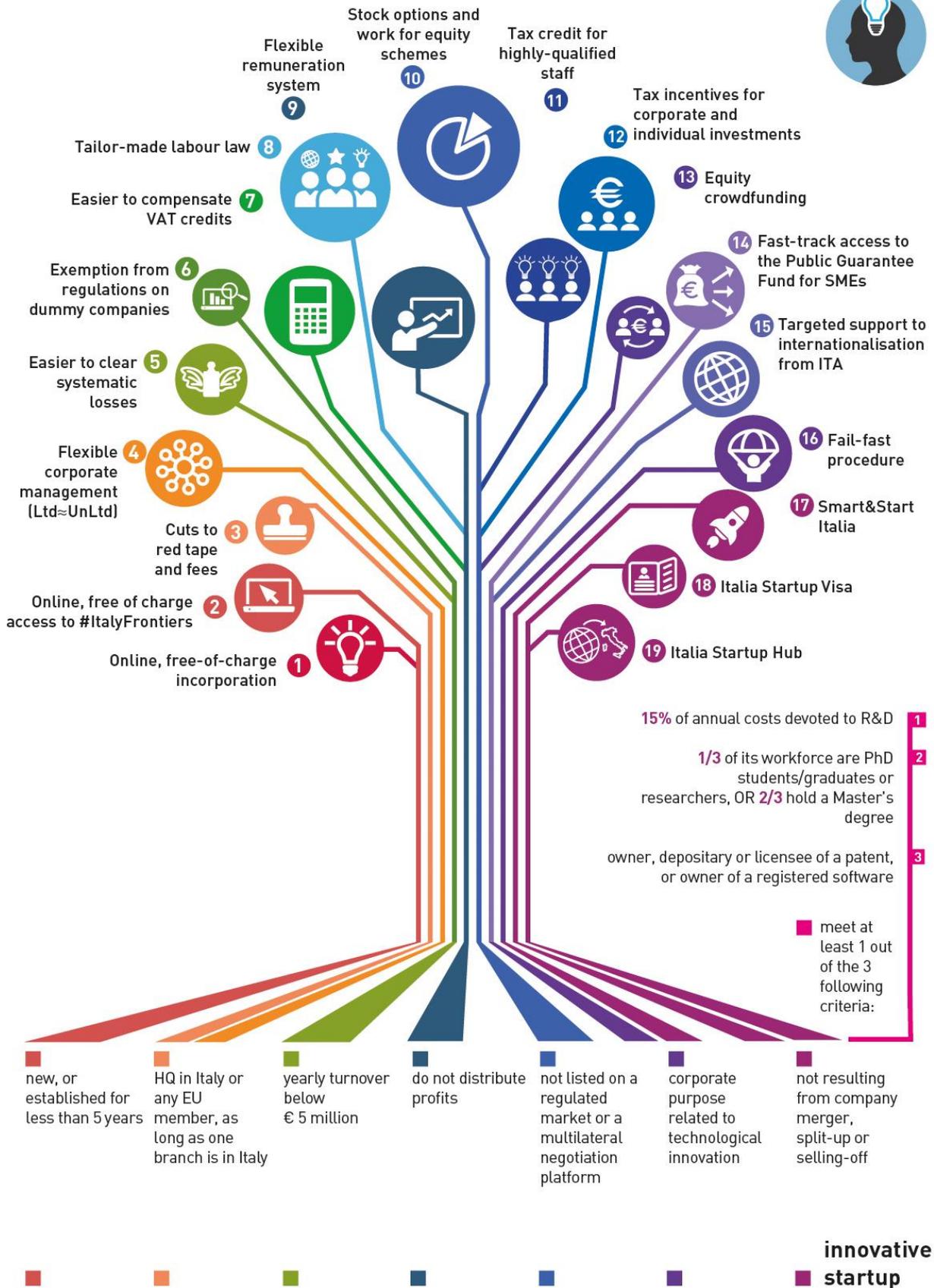
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Italian Ministry of Economic Development

DG for Industrial Policy, Competitiveness and SMEs



Benefits



A new industrial policy for economic development and competitiveness

Vision and legislative process

Italy's Startup Act aims to create favourable conditions for the establishment and the development of innovative enterprises in order to contribute significantly to economic growth and employment, especially youth employment. It also fosters a knowledge spill-over in the whole economic fabric and, more specifically, supports a new Italian production oriented towards high-tech and high-skill sectors. Not only that: supporting innovative entrepreneurship contributes to greater social mobility; strengthens the links between universities and businesses; makes people more incline to take business risks; and contributes to making the country more attractive for foreign capital and talents.

To reach these goals, the Italian Government has worked since 2012 on the creation of a complete and coherent legislation directed towards the development of an ecosystem of innovative startups with high technological content. Such work has culminated in the Decree-Law 179/2012 on "*Further urgent measures for Italy's economic growth*", converted into Law 221/2012.

Law 221/2012 includes many of the policy proposals put forward in the [Restart, Italia!](#) Report – a report elaborated by a [task force](#) of 12 experts, which was set up in April 2012 by the Minister of Economic Development – as well as suggestions coming from a vast consultation with the main players making up the Italian startup ecosystem. With the law in question, a definition of **innovative startup**, that is a new innovative enterprise of a high technological value, has been introduced into the Italian legal system. For the very first time, this type of enterprise could draw upon an exhaustive corpus of regulations (articles 25-32) that launched new instruments and support measures regarding subjects which have an impact on the whole lifecycle of a company: since its incorporation to its growth, development and maturity stages. All this was achieved without distinguishing between sectors or introducing age limits for entrepreneurs.

By creating a regulatory framework congruent with the needs of all the players involved in the startup ecosystem, Law 221/2012 transcends a simple law-making exercise. It is an organic and coherent policy for which public support for innovative entrepreneurship represents a new way of thinking about industrial policy-making.

Far from being static, the policy for innovative startups is in constant evolution. On the one hand, more recent legislative measures ([Decree-Law 76/2013](#), known as “Decree on Labour”, turned into Law 99/2013; [Decree-Law 3/2015](#), known as “Investment Compact”, turned into Law 33/2015), have improved and broadened the range of measures in favour of innovative startups: the present file is comprehensive of all updated developments. On the other hand, other measures not directly arising from the original package of regulations have enriched the framework of governmental initiatives currently in place to support innovative startups and their ecosystem. Indeed, the last paragraph of this report focuses on such additions.

Definition, data exposure and public monitoring

The legislation in question does not apply to all newly-established companies, 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 startup: companies with shared capital (i.e. limited companies), including cooperatives, the shares or significant registered capital shares of which are not listed on a regulated market nor on a multilateral negotiation system. These companies must also meet the following requirements:

- ✓ be new or have been operational for less than 5 years;
- ✓ have their headquarters in Italy or in another EU country, but with at least a production site branch in Italy;
- ✓ have a yearly turnover lower than 5 million Euros;
- ✓ do not distribute profits;
- ✓ produce, develop and commercialize innovative goods or services of high technological value;
- ✓ are not the result of a merger, split-up or selling-off of a company or branch;
- ✓ be of innovative character, which can be identified by *at least one* of the following criteria:
 1. at least 15% of the company's expenses can be attributed to R&D activities;
 2. at least 1/3 of the total workforce are PhD students, the holders of a PhD or researchers; alternatively, 2/3 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.

Support measures apply to newly established companies for the first 5 years of activity, provided that they meet the aforementioned requirements.

Already established companies: companies which were already established upon the coming into force of Law 221/2012 (19 December 2012) and which meet the requirements provided by the law in question, may register at the special section of the Companies Registry and are entitled to the same benefits as innovative startups. These benefits apply for a 4-year period if the company was established in the 2 previous years, for a 3-year period if the company was established in the 3 previous years, and for a 2-year period if the company was established in the 4 previous years (for further information, please see [Circular 16/E](#) issued on 11 June 2014 by the Italian Revenue Agency).

Definition of “innovative startup with a social goal”: it fulfils all the requirements that apply to ordinary startups. However, an innovative startup with a social goal operates in specific domains that have a considerable social value according to the Italian legislation¹. [Circular 3677/C](#) issued by the Ministry of Economic Development on 20 January 2015, introduced a new procedure – extremely agile and flexible, based on the accountability of the social impact, on transparency and widespread control of information – for the recognition of innovative startups with a social goal. At the same time, to better lead the user in his use of the new procedure, the Ministry published the “[Guide to drafting the Document for the Description of Social Impact](#)”, as outcome of a collaboration with the Ministry for Education, University and Research, as well as other players within the social business community.

Definition of a “certified incubator”: the startup incubator or accelerator must verify that specific requirements concerning the startup’s physical structures, management, facilities and, above all, its track record, are fulfilled (the [Ministerial Decree](#) issued on 22 February 2013 sets such requirements). In this way, the law aims to identify the structures that are able to offer efficient incubation services in Italy. Certified incubators can benefit from some instruments provided for by the law (e.g. they are exempted from registration fees → *see page 7*; they can use stock options to remunerate workers, as if they were innovative startups themselves → *see page 8*; they have priority access to tax credit for hiring highly qualified personnel → *see page 9*; they have simplified access to guarantees on bank loans → *see page 10*).

¹Article 2, paragraph 1, of [Decree-Law no. 155 of 24 March 2006](#), regulating social enterprises, lists such specific areas: social work, health care and social care, education and training, environmental protection, promotion of cultural heritage, social tourism, undergraduate and post-graduate education, cultural services, non-academic training, services for the social enterprises of entities of which 70 per cent is composed of social enterprises. As we shall see later, in the case of investment in an innovative startup with a social goal, the tax incentive granted to investors is increased.

Registration and Publicity Regime: the innovative startups and certified incubators must register in the respective special sections of the Register of Companies ([startups](#); [incubators](#)) created ad hoc at the Chambers of Commerce. Registration occurs by transmitting online a declaration of self-certification of fulfilment of all required qualifications as indicated above, to the competent Chambers of Commerce per jurisdiction. This flexibility “in entry” is balanced by two counterweights: supervision ex post by the competent authority on the effective fulfilment of all required qualifications, the duty to update twice a year (deadlines on 30 June and 31 December) the data provided at the moment of registration in the special section, and to confirm once a year, contextually to the biannual compliance, the fulfilment of all requirements, otherwise forfeiting the special status and correlated benefits (for in depth reading please see the [Circular N. 3672/C](#) issued by the Ministry of Economic Development on 29 August 2014. This data concerns mainly the type of activity undertaken, with particular reference to the elements characteristic of technological innovation. The special innovative startup 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.

#ItalyFrontiers: aiming to more effectively employ the large amount of data collected as a result of the provisions of “Decree Growth 2.0”, on 13 November 2015 a new online platform, #ItalyFrontiers, has been established. The new platform gives to innovative startups the opportunity to manage a public profile, in bilingual Italian and English versions, located on the website <http://startup.registroimprese.it/isin/home>. Each business can upload a detailed profile, which does not only include the details already available, and weekly updated, on the Registry of Companies (key facts such as corporate purpose, location, main sectoral area and operational activities, number of employees, capitalization, production worth), but also provides a wide range of more in-depth information about the stage of development of the business, the characteristics of the team members, the type of products or services offered, funding needs, capital obtained and target markets. Once the legal representative of the firm has validated the details provided, through a fully online procedure ([link to the guidelines](#)), the data are available to everyone visiting the public profile of the business. As a whole, the profiles are intended to act as a digital showcase for innovative startups: they may be read by more traditional firms interested in setting up partnerships [on innovation], and by national

and international investors looking for new opportunities.

Monitoring and evaluation: with the aim of putting in place an “evidence-based policy”, the corpus of regulations on startups provides for a structured system to monitor and evaluate this new policy. Moreover the Minister of Economic Development must report to the Italian Parliament annually on the impact of the measures in question. On 1 March 2014, the Minister of Economic Development discussed the first “*Annual Report to the Parliament on the Startup Law*”. The Report collected the results of the analysis carried out by the Monitoring and Evaluation Committee (set up by [Ministerial Decree](#) approved on 31 January 2014). The second Annual Report has been published on 16 December 2015, and it is available in English [here](#).

Moreover, the Ministry of Economic Development carries out a comprehensive reporting effort, in order to monitor the evidences of the effects of the policy on innovative startups and to share them with the public. All the reports are available to everyone on the Ministry’s website, [here](#). In addition, the National Institute for Statistics (Istat) has set up a dedicated page on its website aimed at sharing, in an open and fully editable format, the raw data collected as a result of the policy. All tables can be found [here](#).

Benefits



The measures described below apply to innovative startups for 5 years after their incorporation:

1. **Incorporation and following statutory modifications by means of a standard model with digital signature** (art. 4, paragraph 10 bis of the [Investment Compact](#)): innovative startups and certified incubators will be able to draw up the deed of incorporation and its modifications even by means of a typified standard model using digital signature, analogously to what is already in place for network contracts. The deed of incorporation and its modifications are drawn up according to a uniform model, adopted by [decree by the Ministry for Economic Development on 17 February 2016](#), and are transmitted to the competent office of the Registry of Companies. The new procedure will be fully operational when the dedicated portal will be online, (estimated time: 5 months).
2. **Cuts to red tape and fees:** unlike most companies, innovative startups are exempt from the payment of stamp duty and fees incurred due to the obligation of registering to the company register, as well as the payment of the annual fee due to the Chambers of Commerce. In addition, as clarified in the [Circular 16/E](#) issued by the Italian Revenue Agency on 11 June 2014, the exemption from such fees could be interpreted as a general waiver, covering all the actions carried out by the innovative startups after the subscription to the company register, such as incentivised capital increases.
3. **Flexible corporate management:** the most significant waivers are provided for in the case of innovative startups 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 right 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.).

- 4. Extension of terms for covering losses:** during their first few 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 startups, during which the capital can be reduced proportionally to the losses. While ordinary companies must lower capital by the following financial year, startups can do this for up to two financial years after they suffered losses.
- 5. Exemption from regulations on dummy companies:** regulations concerning non-operational companies and companies registering systematic losses, do not apply to startups. Accordingly, in case they cannot get “appropriate” revenues, they are exempted from fiscal penalties applied to so-called “dummy companies”, such as the computation of a minimum income and taxable base for corporate taxation purpose (IRAP).
- 6. Exemption from the duty to affix the compliance visa for compensation of VAT credit** (art. 4, paragraph 11 novies of the [Investment Compact](#)): the ordinary norm calling for the application of the compliance visa for compensation in F24 of VAT credits above 15,000 Euros, may constitute a disincentive to the use of horizontal compensation. With the exemption up to 50,000 Euros, innovative startups may receive relevant benefits in terms of liquidity during the delicate phase of investment in innovation.
- 7. Tailor-made labour law:** innovative startups must comply, with some exceptions, with the regulations on fixed-term contracts as defined in Decree-Law 81/2015 (known as “Jobs Act”). Therefore, innovative startups can hire a staffer on a fixed-term contract for a maximum length of 36 months. However, in this time frame, in derogation to Jobs Act’s provisions, innovative startups can hire personnel through fixed-term contracts of any duration, even very short, which can be renewed as many times as wished. After 36 months, the contract can be renewed only once, for a 12 months maximum, leading to an overall employment duration of 48 months. By the end of this 4-year period, usually marked by high enterprise risk, the fixed-term contract is automatically converted into an open-ended one. Moreover, as an exception to general regulation, innovative startups with more than 5 employees are

not required to maintain a statutory ratio between fixed-term and active open-ended contracts.

- 8. Flexible remuneration system:** salaries due to workers employed in innovative startups 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.
- 9. Remuneration through stock options and work for equity scheme** ([Guide](#); [Model with comments](#)): in order to foster loyalty among management, employees and suppliers such as lawyers and accountants, startups and incubators 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 startups and certified incubators 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.
- 10. Tax credit for the employment of highly qualified staff** (valid for hires as of 31 December 2014)([Implementing Decree](#); ad hoc [Guide for innovative startups and certified incubators](#); [institutional page](#) dedicated to the measure); priority access to benefits has been granted for employment of highly qualified staff in innovative startups and certified incubators. Such benefits consist in a tax credit of 35% of the company's total cost for permanent employment, even with an apprenticeship contract, during the first year of the new working relationship. For hires of highly qualified staff in force as of 1 January 2015, please see the new Tax Credit for R&D (page 15).
- 11. Tax incentives for corporate and private investments in startups** 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)for the years 2013, 2014, 2015 and 2016 ([Implementing Decree for 2013-2015](#); [Implementing Decree for 2016](#)). These incentives apply both in case of direct investments in startups and in case of indirect investments by means of other companies investing predominantly in startups. Tax concessions are greater if the investment concerns startups with a social goal or those operating in the energy sector (25% tax credit for people or 27% fiscal deduction for legal entities).

- 12.** Possibility to collect capital through authorised **equity crowdfunding** portals. In July 2013, Italy was the first country in the world to enact comprehensive regulation for this instrument. In early 2015, the already mentioned Decree-Law “Investment Compact” has introduced three important amendments: innovative SMEs can now take advantage of the instrument; CIUs and other corporations that invest predominantly in innovative startups and SMEs can use equity crowdfunding as well, 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 dematerialised, and as such related burdens are reduced, aiming for fluidification of the secondary market. By a deliberation on 24 February 2016, CONSOB – the equivalent of the American SEC² – has updated the **Regulation**, adding to the aforementioned measures new procedural simplifications. The verification of adequacy of the investment can now be carried out by the administrators of the portals themselves, and not exclusively by banks as required before, bringing the entire procedure online. Moreover, two new categories of professional investors have been added: “professional investors on request”, identified according the EU directive “Markets in Financial Services” (Mifid), and “investors in support of innovation”, which includes business angels.
- 13.** **Fast-track, simplified and free-of-charge access for innovative startups and certified incubators to the [Fondo di Garanzia per le Piccole e Medie Imprese](#)**, a Government Fund that supports access to credit through guarantees on bank loans ([Implementing Decree](#); [Guide](#)). The guarantees cover 80% of the bank loans up to a maximum of 2.5 million Euros and it is provided through a simplified fast-track procedure.
- 14.** More targeted **support to the process of internationalisation** provided by the Italian Trade Agency (“ICE”, [dedicated website](#)), including assistance in legal, corporate and fiscal activities, as well as real estate and credit matters. In addition, innovative startups can benefit from free-of-charge participation to selected international fairs and events, as well as to international initiatives aimed at favouring the matching with potential investors. A “[Startup service card](#)” has been released by the Agency, granting 30% reductions on its assistance services.

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

15. “Fail fast” procedure: the aim of this measure is to avoid that the entrepreneur is “stuck” for ages because of the liquidation procedure and allow him to start a new business project as soon as possible without suffering reputational and financial cost. More in detail, startups are exempted from the standard bankruptcy procedure, preliminary closure agreements and forced liquidation in the event of an over-indebtedness crisis. As a result, waiting times are cut, and the administrative and reputational burden sharply reduced.

Legal interpretations of the norms available [here](#).

For further information: startup@mise.gov.it

Additional support measures

In addition to the instruments forming part of the original package of regulations, the Italian Ministry of Economic Development is engaged in the following:

1. **Smart&Start Italia** (links to [website](#); [executive summary](#)): The Ministerial Decree enacted on 24 September 2014 introduced a subsidised financing scheme for innovative startups based in Italy, regardless their region of operation. Total financing amounts to € 200 million, available until their depletion to projects whose spending in investment goods and/or management costs are between 100,000 and 1.5 million euros. The financing scheme will cover such spending programmes through zero-interest mortgages for 70 percent of their total amount; the coverage ratio rises to 80 percent when a majority of business associates and employees are women or below 35 years of age. Moreover, when the beneficiary is an innovative startup based in a Southern Italian region (Basilicata, Calabria, Campania, Puglia, Sicilia), a 20 percent of the funding is converted into an outright grant. Access to the measure is also open to individuals who are committed to establish a new innovative startup in the next 60 days. Startups which are less than 12 months old can also benefit from tutoring services on technical and management issues. In addition, a preferential track is provided to innovative startups which commit themselves to finance at least 30 percent of their investment plan with capital coming from institutional investors.
2. Promoting, with the collaboration of the Ministry of Foreign Affairs, the Ministry of Labour and Social Policies and the Ministry of Interior, a visa policy dedicated to extra-EU innovative entrepreneurs, as a strategic way to attract in Italy investment and highly qualified human capital.
Launched on 24 June 2014 by the Italian Ministry of Economic Development, **Italia Startup Visa** has introduced a rapid, exclusively online, centralised and simplified mechanism for granting working visas to applicants intending to set up a new innovative startup in our country or join an existing one as a shareholder ([official website](#) and [guidelines](#) for the Italia Startup Visa programme). For more information, please contact the email address info.italiastartupvisa@mise.gov.it.
3. On 23 December 2014, along the lines of Italia Startup Visa, the program **Italia Startup Hub** was launched, with which the applicability of the abovementioned fast-track

procedures was extended to extra-EU citizens that are already in possession of a regular residency permit (obtained for example for study reasons) and intend on staying beyond its expiry to launch an innovative startup: this way, it is possible to convert a residency permit into a “permit for entrepreneurs in an innovative startup” without leaving the Italian territory and benefitting from the same simplified measures provided for the startup visa. The official website of the programme, italiastartuphub.mise.gov.it, entirely redacted in English, has been published on 22 April 2016 ([guidelines](#)). For more information, please contact the email address info.italiastartupvisa@mise.gov.it.

4. Drawing up, with the collaboration of the Italian Ministry of Education, University and Research, a pilot project for the creation of **Contamination Labs**, the aim of which is to offer university students from Southern regions (including Campania, Puglia, Calabria and Sicily) a stimulating environment in which to develop innovation projects with a business dimension. These spaces encourage students from different academic backgrounds to interact, while promoting entrepreneurship, innovation, an interdisciplinary perspective and new models of learning. 4 Contamination Labs have been selected and funded: they are located in [Naples](#), [Cosenza](#), [Reggio Calabria](#) and [Catania](#).
5. Moving to foster the diffusion of technological innovation within the National productive fabric with even greater effort and reach, the Decree-Law 3/2015, known as “Investment Compact”, has assigned the greater part of measures already destined towards innovative startups, to an even wider bed of companies: the **innovative SMEs**, that is all SMEs operating within technological innovation, irrespective of their date of incorporation, their objects stated in the Memorandum of Association, and the stage of maturity (→ see [Executive Summary](#)). Ultimately, achieving innovative SME status can represent a natural evolution of the growth and consolidation of an innovative startup.
6. Finally, startups and innovative SMEs can benefit from two important measures in favour of technological innovation:
 - a. **Tax credit for R&D** ([executive summary](#), in Italian): 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 5million 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 31 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. The necessary implementation regulations have been adopted by means a specific decree by the Minister for Economy and Finance, in accordance with the Ministry of Economic Development, enacted on 27 May 2015, further clarified by the Italian Revenue Agency through the [circular 5/E](#) (16 March 2016, text in Italian).

- b. **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. Implementation dispositions have been defined by a subsequent decree, enacted on 30 July 2015 by the Ministry of Economic Development, in accordance with the Ministry for Economy and Finance, further clarified by the Italian Revenue Agency through the [circular 11/E](#) (7 April 2016, text in Italian).