

Incentives for start-ups: update

December 13, 2012

On December 13, 2012 the Italian Parliament adopted a law (the "Law")¹ to convert, with amendments, Law Decree No. 179 of October 18, 2012, aimed, *inter alia*, at promoting the establishment and growth of innovative start-ups in Italy (the "Decree"). For a detailed description of the measures introduced by the Decree, please see our Alert Memo of October 5, 2012, at the following link: http://www.cgsh.com/incentives_for_innovative_start_ups/.

The Law has amended some of the provisions relating to innovative start-ups, generally expanding the benefits applicable to these companies. Please find below a summary of the main amendments brought about by the Law.

1. Definition of innovative start-up

In order to expand the scope of the new rules, certain requirements that needed to be met in order to qualify as an innovative start-up and benefit from the applicable regime have been relaxed by the Law, as follows:

- the requirement that the majority of the company's share and voting capital should be held by individuals has been limited to 24 months as of the date of incorporation of the company. Therefore, once the 24-month period has elapsed, the company can still be qualified as an innovative start-up even if the majority of the shares are transferred to legal entities;
- it is no longer necessary that the corporate purpose is only limited to the development and distribution of innovative products and services with high technological value, as long as such activities are the main corporate purpose;

¹ The entry into force of the Law is subject to its publication in the Official Gazette, which is expected to occur in the upcoming days.

- finally, the first and third “alternative” requirements that had to be met in order to qualify as an innovative start-up (see footnote 3, point (c)(vi) of our Alert Memo of October 5, 2012) have been modified:
 - o the amount of R&D expenses has been reduced from 30% to 20% of the greater of the company’s total production expenses (*costo della produzione*) or the company’s total production value (*valore della produzione*). Moreover, the Law specifies that the R&D expenses, in addition to those set forth by accounting principles, also include: “*expenses relating to the pre-competitive and competitive development, such as those relating to testing, and to the development of prototypes and business plans, expenses relating to the incubation services provided by certified incubators, gross costs for personnel, including the company’s shareholders and directors, and external counsel, carrying out R&D activities, including legal expenses for the registration and protection of IP rights, their terms and conditions and licenses to use*”. However, in addition to the costs relating to the purchase of real estate, now also those relating to leases can no longer be considered R&D expenses;
 - o pursuant to the Law, the requirement that a company must be the owner or licensee of at least one IP right related to its corporate purpose or activity is deemed met even if the company is the “depository” of such IP right. Although the provision introduced by the Law is not entirely clear, it seems that reference is made to the case in which a company files an application to register an IP right but the process is still pending.

2. Amendments to the rules applicable to start-ups’ personnel

- *Application of a Tax Credit for New Hires*

The Law provides that innovative start-ups and certified incubators can benefit from a tax credit for the so-called highly qualified hires pursuant to Article 24 of Law Decree No. 83 of June 22, 2012 (converted into law by Law No. 134 of August 7, 2012)².

The tax credit is equal to 35% of the cost borne by employers (up to Euro 200,000 per year) for new, highly qualified hires. The tax credit is subject to a number of limits and conditions (including the obligation that the new hire remains employed for at least three years). A specific request must be filed with

² Highly qualified hires include (i) Ph.D. graduates from Italian or equivalent foreign universities and (ii) college graduates in scientific or technical matters, employed in R&D.

the Ministry of economic development which will make its decision whether to grant the tax credit based on a pre-determined budget for all companies.

As an exception to these rules, the Law provides that innovative start-ups and certified incubators:

- would enjoy preference over other companies *vis-à-vis* the grant of tax credit;
 - would be exempt from the documentation and certification requirements;
 - would be entitled to file the specific request in simplified form (based on the terms to be approved under a separate decree).
- *Amendments relating to employment relationships entered into by innovative start-ups*

The Law provides the following amendments to the Decree designed to increase the possibilities for innovative start-ups to hire new personnel under flexible employment arrangements:

- the specific provisions provided for fixed-term hires made by innovative start-ups are now extended to fixed-term staff leasing;
- it is expressly provided that innovative start-ups are entitled, under ordinary rules, to hire employees on fixed-term contracts not exceeding six months, as opposed to the minimum six-month requirement of the *ad hoc* fixed-term contract laid down by the Decree for innovative start-ups;
- fixed-term employment contracts and fixed-term staff leasing entered into by an innovative start-up are not subject to the quantitative restrictions applicable to all companies.

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If you have any questions concerning this memorandum, please feel free to contact Roberto Bonsignore or Pietro Fioruzzi in our Milan office (+39 02 72 60 81) or Vania Petrella (+39 06 69 52 21) in our Rome office, or any of our other Italy-based partners and counsel listed under M&A, Corporate Governance, Capital Markets or Tax Practice Areas under the “Practices” section of our website at www.clearygottlieb.com, or any of your regular contacts at the firm.

CLEARY GOTTLIEB STEEN & HAMILTON LLP

NEW YORK

One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999

WASHINGTON

2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
T: +1 202 974 1500
F: +1 202 974 1999

PARIS

12, rue de Tilsitt
75008 Paris, France
T: +33 1 40 74 68 00
F: +33 1 40 74 68 88

BRUSSELS

Rue de la Loi 57
1040 Brussels, Belgium
T: +32 2 287 2000
F: +32 2 231 1661

LONDON

City Place House
55 Basinghall Street
London EC2V 5EH, England
T: +44 20 7614 2200
F: +44 20 7600 1698

MOSCOW

Cleary Gottlieb Steen & Hamilton LLC
Paveletskaya Square 2/3
Moscow, Russia 115054
T: +7 495 660 8500
F: +7 495 660 8505

FRANKFURT

Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main, Germany
T: +49 69 97103 0
F: +49 69 97103 199

COLOGNE

Theodor-Heuss-Ring 9
50688 Cologne, Germany
T: +49 221 80040 0
F: +49 221 80040 199

ROME

Piazza di Spagna 15
00187 Rome, Italy
T: +39 06 69 52 21
F: +39 06 69 20 06 65

MILAN

Via San Paolo 7
20121 Milan, Italy
T: +39 02 72 60 81
F: +39 02 86 98 44 40

HONG KONG

Cleary Gottlieb Steen & Hamilton (Hong Kong)
Bank of China Tower, 39th Floor
One Garden Road
Hong Kong
T: +852 2521 4122
F: +852 2845 9026

BEIJING

Twin Towers – West (23rd Floor)
12 B Jianguomen Wai Da Jie
Chaoyang District
Beijing 100022, China
T: +86 10 5920 1000
F: +86 10 5879 3902

BUENOS AIRES

CGSH International Legal Services, LLP-
Sucursal Argentina
Avda. Quintana 529, 4to piso
1129 Ciudad Autonoma de Buenos Aires
Argentina
T: +54 11 5556 8900
F: +54 11 5556 8999

SÃO PAULO

Cleary Gottlieb Steen & Hamilton
Consultores em Direito Estrangeiro
Rua Funchal, 418, 13 Andar
São Paulo, SP Brazil 04551-060
T: +55 11 2196 7200
F: +55 11 2196 7299

ABU DHABI

Al Odaid Tower
Office 1105, 11th Floor
Airport Road; PO Box 128161
Abu Dhabi, United Arab Emirates
T: +971 2 414 6628
F: +971 2 414 6600

SEOUL

Cleary Gottlieb Steen & Hamilton LLP
Foreign Legal Consultant Office
19F, Ferrum Tower
19, Eulji-ro 5-gil, Jung-gu
Seoul 100-210, Korea
T: +82 2 6353 8000
F: +82 2 6353 8099