

TEMPLARS Legislative Watch: Review of Tax And Other Fiscal Provisions Of The Nigerian Startup Bill.

16 June 2022

Introduction

To harness the abundant talents in the country, grow its economy and reduce unemployment, the Nigerian Government, among other things, sees tremendous opportunities in supporting startups engaged in the country’s tech industry. This informs the decision of President Muhammadu Buhari to transmit to the National Assembly the *Nigerian Startup Bill, 2022* (the “Bill”). The Bill contains different segments that addressed several issues – such as administrative, tax/fiscal, operational structures and others. This newsletter examines the tax and fiscal provisions of the Bill to assist the reading public appreciate that important parts of the Bill before it is finally enacted as an Act of Parliament.

Objectives of the Bill

The Bill seeks to make comprehensive provisions for the regulation of technology focused startups in Nigeria. In particular, the objectives of the Bill revolve round promoting growth and sustainable technological development; create a favourable environment for innovation and attraction of highly skilled talents; encourage investments in technology focused businesses through the provision of fiscal and non-fiscal support to startups in Nigeria. In particular, the Startup Bill is expected to be a viable tool for creating and sustaining the enabling environment for the growth of small and medium enterprises (SMEs). In many cases, startup laws address the problem of funding and infrastructure for SMEs by providing needed incentives for them. These are what the Nigerian Startup Bill, 2022 intends to achieve when enacted as an Act of the National Assembly.

Tax and Fiscal Incentives

The Bill makes provision for various tax reliefs and fiscal incentives for registered/labelled startups, investors in startups, employees of labelled startups and incentives for external service providers.

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The Bill also seeks to establish accelerator and incubator programs, clusters, hubs and virtual parks for startups in Nigeria.

As a prerequisite for benefiting from the incentives under the Bill, a startup must be labelled in accordance with the Bill. For a startup to be eligible for labelling, it must be registered with the Corporate Affairs Commission (“CAC”); has at least one Nigerian as a founder or co-founder; not older than 10 years from the date of its incorporation and with objects revolving round technological innovation, development, production, improvement, and commercialization of Nigeria’s digital economy; is a holder or a repository of a product or process of digital technology or is the owner or author of a registered software¹. Some of the specific tax and fiscal incentives recommended by the Bill are:

Pioneer status incentive

The Bill provides that a labelled startup that falls within the industries favoured by the extant Pioneer Status Incentives (PSI) Scheme, may apply to the Nigerian Investment Promotion Commission (“NIPC”) for the grant of tax reliefs and incentives available under the PSI Scheme.²

Industries under the PSI Scheme include Agriculture, Mining and Quarrying, Manufacturing, Electricity and Gas Supply, Waste Management, Construction, Trade, Information and Communication, Professional Services, Financials, and Administrative Services. Thus, where a startup’s business falls under any of these industries, it may apply to the NIPC to enjoy the tax incentives available therein.

Employee based tax relief

This relief is based on percentages. For a labelled startup to benefit from this, it must have the following:

- a. a minimum of ten employees; and
- b. 60% of the employees must be without any form of experience and within three years of graduation³.

Where a labelled startup satisfies the above criteria, it may be entitled to 5% relief of income tax from its assessable profits in the year of assessment in which the profits were generated. This relief will be available to a labelled startup for a maximum period of five years.

Access to export facilities, government grants, loans and facilities

Where a labelled startup is involved in the exportation of products and services which are eligible under the *Export (Incentives and Miscellaneous Provisions) Act*, it will be entitled to export incentives and financial assistance from the Export Development Fund, Export Expansion grant, and the Export Adjustment Scheme Fund⁴.

¹ Section 13 of the Startup Bill.

² Section 24 of the Startup Bill

³ Section 26 of the Startup Bill (The graduation may be from a school or any vocation within the assessment period).

⁴ Section 27 of the Startup Bill.

Labelled startups shall also have access to grants and loan facilities administered by the Central Bank of Nigeria (“CBN”), the Bank of Industry, or other bodies statutorily empowered to assist small and medium scale enterprises and entrepreneurs⁵.

Credit guarantee scheme

The National Information Technology Development Agency (NITDA), functioning as the Secretariat⁶ of the National Council for Digital Innovation and Entrepreneurship,⁷ has the obligation to establish a Credit Guarantee Scheme for the development and growth of labelled startups.⁸

The Credit Guarantee Scheme has the objective of ensuring financial support for labelled startups. The support shall take the form of providing accessible financial support through the creation of a framework which guarantees credit, provides financial and credit information, and the provision of financial management capacity building programmes.⁹

For the purpose of ensuring the effectiveness of the Scheme, the Secretariat shall ensure the establishment of strategic and operational goals which align with the objective of providing accessible financial support to labelled startups. The Secretariat shall further determine the thresholds and/or criteria for determining the eligibility of labelled startups to qualify for funding; also, the criteria for monitoring and evaluation of projects undertaken under the Scheme to ensure efficiency in the management of the scheme. In ensuring the effectiveness and efficiency of the Scheme, the Secretariat shall develop a mechanism for transparency, accountability and reporting standard of the Scheme¹⁰.

In granting access to credit facilities, the Secretariat shall ensure that assets, registered intellectual property, assigned shares or any other instrument as identified in the collateral registry constitute sufficient collateral for the credit granted.¹¹

Incentive/reliefs for investors

To encourage local and foreign investments, the Federal Government, in collaboration with the Ministry of Finance and other relevant ministries, departments and agencies shall develop a national policy for the purpose of creating incentives in the form of tax credits for individual and corporate investors in labelled startups.¹²The allowable tax credit for such investors shall be equivalent to 30% of the investment in the labelled startup. An added incentive is the exemption of capital gains tax from the gains accruable to investors who dispose of their capitals invested in a labelled startup.¹³

Incentives available to employees

The Bill further intends to encourage employees to take up employment with labelled startups by granting them a personal income tax exemption of 35% on their incomes for a period of two years

⁵ Section 28 of the Startup Bill.

⁶ Section 9 of the Startup Bill.

⁷ Section 3 of the Startup Bill.

⁸ Section 29(1) of the Startup Bill.

⁹ Section 29(2) of the Startup Bill.

¹⁰ Section 29(3) of the Startup Bill.

¹¹ Section 29(3) of the Startup Bill.

¹² Section 30(1) – (3) of the Startup Bill.

¹³ Section 30 (3) of the Startup Bill.

from the date of engagement.¹⁴ In determining the criteria for eligibility for this tax exemption, the Secretariat, in collaboration with the Joint Tax Board shall pay attention to these thresholds: minimum salary payable; the level of technical expertise and skills needed or possessed by an employee; and compliance with registration formalities as may be required by the Secretariat from time to time.¹⁵

Specific tax Incentive available to foreign service providers

The Bill seeks to reduce the income tax exposures of foreign entities involved in providing technical, consulting, professional or management services to labelled startups. It provides that notwithstanding the provision of any other law in force, foreign service providers involved in the provisions of the above services shall enjoy a reduced 5% withholding tax on income earned from any of the services mentioned above. Such withholding tax shall qualify as the final tax payable on the income(s) by foreign service providers.¹⁶

Simplification of startups' requirements for the enjoyment of tax and fiscal incentives

The Bill provides that the Federal Government may simplify and/or make provision for the enjoyment of already existing fiscal incentives by startups. For instance, notwithstanding the provisions of the *Industrial Development (Income Tax Relief) Act* or any other legislation on tax reliefs, a labelled startup may be exempted from the payment of income tax or any other tax chargeable on its income or revenue for a period of four years which shall commence from the date of the issuance of a startup label¹⁷. This presupposes that whether or not a startup benefits from the PSI, or enjoys any other form of tax relief, it may also benefit from other tax exemptions provided by the law.

Conclusion

The Bill appears to be one of Nigeria's responses to the need for economic growth and development. When passed into law, the Bill is expected to create the much-needed environment for the growth of SMEs in Nigeria: access to funds, availability of tax and other fiscal incentives will bolster the Nigerian business environment and also create jobs – especially to Nigerian youths, many of whom lack the oft-required experience by traditional employers of labour.

Technology focused startups are advised to monitor the progress of the Bill and position themselves to take its advantage when passed into law.

¹⁴ Section 31 of the Startup Bill.

¹⁵ Section 31(2) of the Startup Bill.

¹⁶ Section 32 of the Startup Bill.

¹⁷ Section 25 of the Startup Bill.