NewsLetter

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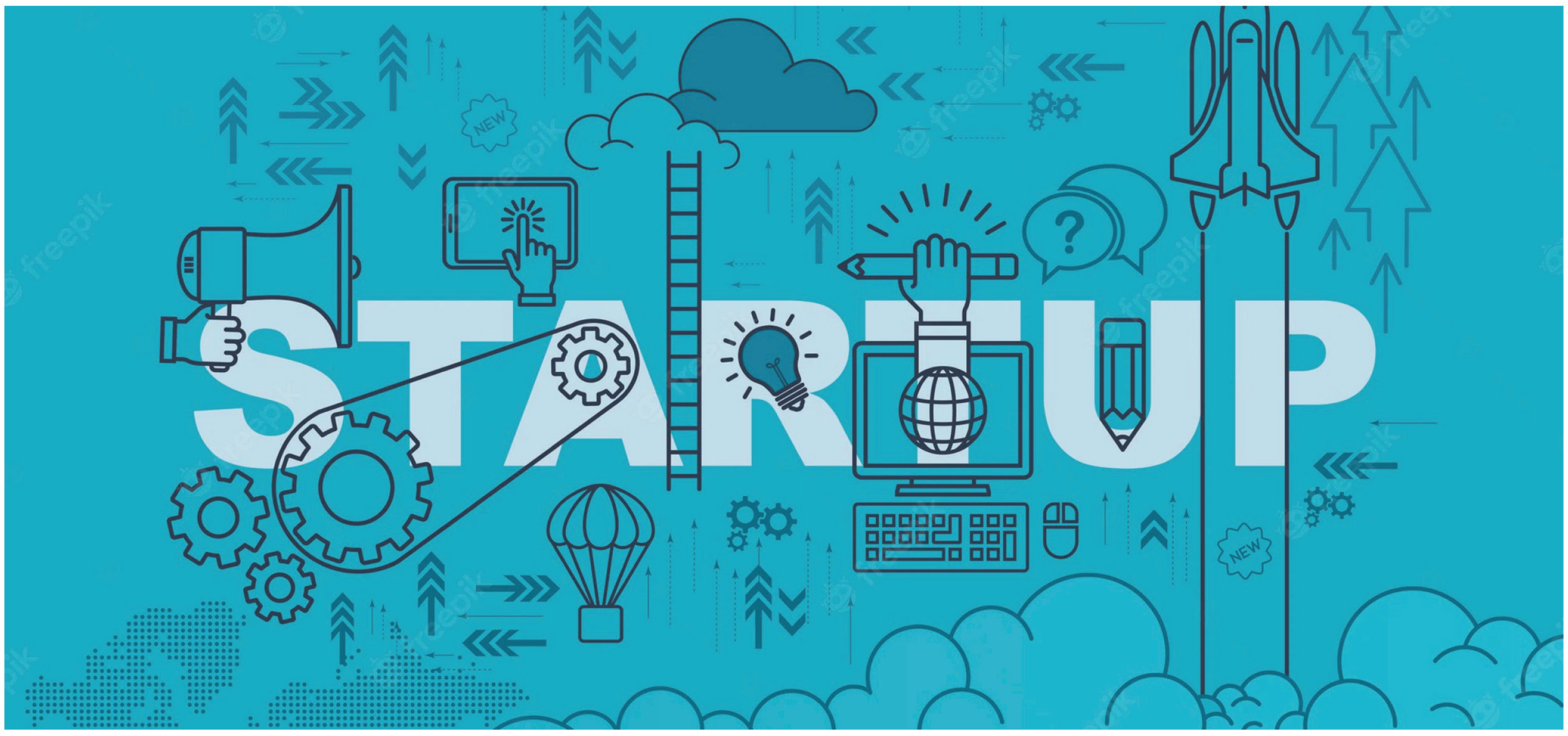
THE NIGERIA STARTUP ACT 2022: GOVERNMENT INTRODUCED NEW TAX REGIME FOR STARTUPS



A labelled startup has an obligation to comply with extant laws governing businesses in Nigeria.

The Nigeria Startup Act 2022 ("Startup Act" or "the Act") was recently signed into law by the President of the Federal Republic of Nigeria, with a commencement date of 19 October 2022. The Act provides for the establishment and development of an enabling environment for technology-enabled startups in Nigeria. As a means of creating this enabling environment, Part VII of the Act contains tax and fiscal incentives which qualifying startups may enjoy in a bid to encourage participation and investment in startups in the country.

The Act defines a 'startup' as a company in existence for not more than ten (10) years, with its objectives as the creation, innovation, production, development or adoption of a unique digital technology innovative product, service or design. The startup to which the Act will apply must also be a holder or repository of a product or process of digital technology or be the owner/author of a registered software, with at least one-third local shareholding held by one or more Nigerians as founder or co-founder. The Act does not apply to any organization which is a holding company or subsidiary of an existing company not registered as a startup.

Where a company qualifies as a startup in line with the Act, such company is eligible for 'labelling' by the issuance of a certificate by the Secretariat of the National Council for Digital Innovation and Entrepreneurship ("the Council").

Tax & Fiscal Highlights of the Startup Act

1. **Expedited Pioneer Status Incentive (PSI):** Labelled startups which fall within qualifying industries under the PSI scheme, may apply through the secretariat to receive expeditious approval from the Nigerian Investment Promotion Commission for the grant of tax reliefs and incentives.

2. **Relaxation of Fiscal Incentives Conditions:** The Act provides that the Federal Government through the Ministry of Finance, may ease the requirements necessary for a startup to enjoy existing fiscal incentives, irrespective of the provisions of any other law.

3. **Exemption from Companies Income Tax:** A labelled startup may be entitled to exemption from the payment of income tax in line with the provisions of the Industrial Development (Income Tax Relief) Act. The exemption will cover an initial period of three (3) years and an additional two (2) years if the entity still qualifies as a labelled startup. To determine the exemption period, the date of issuance of the startup label will be deemed the commencement of the tax relief.

4. **Unrestricted Tax Deduction of Expenses on Research & Development:** Labelled startups are eligible to enjoy full deduction of expenses on research and development provided that these expenses are wholly incurred in Nigeria. As an added incentive, startups are not bound by the restrictions contained in the Companies Income Tax Act in respect of these expenses.

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5. **Reduced Withholding Tax (WHT) for Qualifying NRCs:** Where a non-resident company provides technical, professional, management and consulting services to a labelled startup, the income derived by such NRC in respect of the services provided is subject to WHT at 5%. The WHT deducted is considered the final tax in respect of such income.

6. **Exemption from Industrial Training Fund (ITF) Contributions:** Labelled startups are exempted from payment of the ITF Levy provided they offer periodic trainings to the employees during the period they qualify as a startup.

7. **Exemption from Capital Gains Tax:** Chargeable gains accruing to an investor of any kind from the disposal of assets with respect to a labelled startup are exempt from capital gains tax provided that such assets being disposed have been held in Nigeria for at least 24 months.

8. **30% Tax Credit to Investors:** An investor in a labelled startup is entitled to a tax credit of 30% of the investment in the startup but such tax credit is to be applied only against any taxable gains from the investment.

9. **Guaranteed Repatriation of Investment Net of Taxes:** Foreign investors are guaranteed repatriation of proceeds of their investment in a labelled startup through an authorized dealer net of all taxes, provided that the investors had obtained a Certificate of Capital Importation (CCI) as evidence that the capital injection was through approved channels.

10. **Other Fiscal Obligations:** A labelled startup has an obligation to:

- Comply with extant laws governing businesses in Nigeria
- Provide information on total assets and annual turnover achieved from the period the startup label was granted
- Maintain proper books of accounts in line with reporting obligations under extant laws
- Provide an annual report on incentives received and advancements made by virtue of the incentives.

Our Comments

The enactment of the Startup Act is indeed a laudable initiative by the Federal Government, especially considering the need to encourage young Nigerian entrepreneurs in the field of technology and innovation. The infusion of tax incentives in the Act demonstrates not just the desire of government to attract investments to the sector but also to help see startup businesses beyond their years of formation by lightening their tax burdens during their early years.

Although the Startup Act is targeted at entities which create, develop, or adopt unique digital technology innovative products, services or designs, these entities are still bound by the provisions of other extant tax laws, other than where the Startup Act expressly states otherwise. The implication therefore is that labelled startups must be conversant with the various tax and non-tax laws that impact their businesses, while noting the supremacy of the various positions.

We note that following the passing of the Act, small and medium scale enterprises (SMEs) are expected to have easier access to government grants and other loan facilities administered by the Central Bank of Nigeria and other statutorily empowered bodies. If this is achieved as intended, it will positively impact on the economy as SMEs constitute one of the largest employers of labour in the country, contributing about 48% to the national gross domestic product (GDP) in the last five years. This contribution can only go up in the years following the implementation of the Startup Act.

However, we expect to see effective inter-agency collaborations in order to enable the Act achieve its aims. Of particular interest is the collaboration between the National Council for Digital Innovation and Entrepreneurship, the Federal Inland Revenue Service (FIRS) and the Nigerian Investment Promotion Commission (NIPC), with respect to the implementation of the tax reliefs and incentives granted to startups as well as to investors of various genres.

Finally, we implore founders, investors and other stakeholders of startups to seek professional advice particularly in respect of the possible tax obligation, reliefs and incentives that are available to them under the Act, as this will aid compliance which and in turn help to generate the desired results.