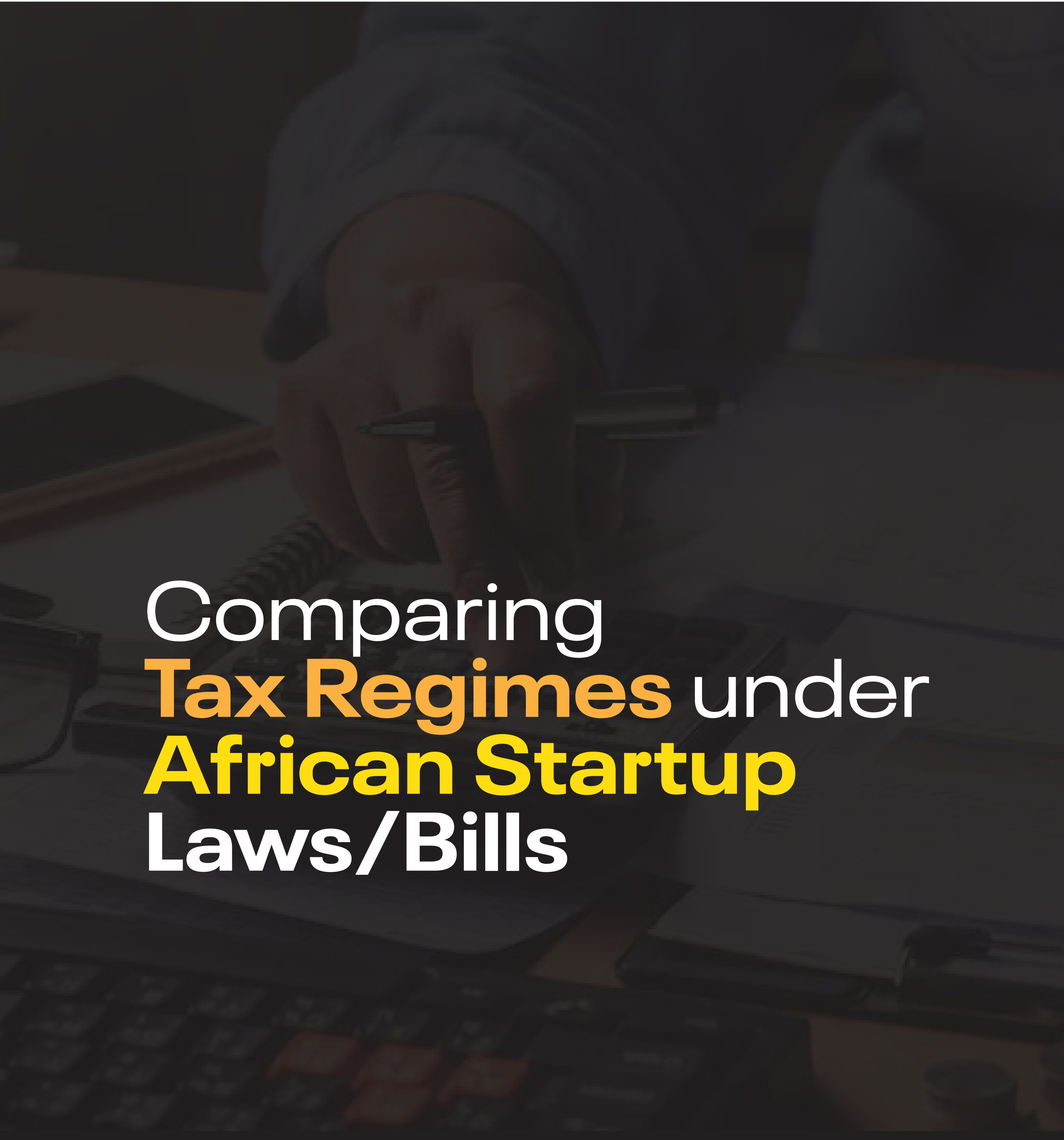

Comparing Tax Regimes under African Startup Laws/Bills

TECH HIVE ADVISORY

IKIGAI

About Tech Hive ™

Tech Hive Advisory Limited ("Tech Hive") is a technology policy and advisory firm that provides advisory and support services to private and public organisations regarding the intersection between technology, business, and law. We focus on how emerging and disruptive technologies are altering and influencing the traditional way of doing things while acting as an innovation partner to our clients.

Our experience and capability extend across Research and Policy Advisory, Privacy and Data Protection, Data Ethics, Cybersecurity, Start-Up Advisory, and Digital Health. We ensure our advice serves our clients well by having an excellent understanding not only of their business but of the markets in which they operate through accurate policy and legislative development tracking and intelligence.

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About Ikigai ™

Ikigai Innovation Initiative is a non-profit organisation set up with the vision of becoming the one-stop centre for technology policy in Africa. We promulgate diverse research on technology policy and legal frameworks across Africa. We also engage relevant stakeholders around the intersection of law, business and technology and advocate for better policies for the ecosystem at large. Being a research and advocacy centre focused on emerging technologies, policy and research, we often work and collaborate with leading research institutes, academia, organisations, civil society, and individuals on policy affecting technology. We also publish and contribute to whitepapers, reports, policy briefs, infographics, guides and guidance, academic journals and publications.

Our researchers work closely with government, stakeholders and ecosystem players, placing evidence and academic intuition at the heart of policymaking. We bring together the latest insights, evidence and commentary from our researchers with our one-stop-shop vision for policy by connecting policymakers, decision-makers, and practitioners with our industry-leading research. We also deliver evidence-based policy that meets the grand challenges facing society by advocating for social justice in the face of technology; sensitization of the public on technology policies that impact their rights and lives and promoting digital rights and digital ethics.

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Introduction

The tax burden placed on businesses, startups, corporates, and industries alike, can frequently mean the difference between their capacity to expand, create jobs, and invest in innovation. This is more so for startups that are usually experimental in their early years and burn cash that could otherwise be subject to taxation, like capital gains tax.

Laws that provide exemptions or incentives to startups support their chances of success by reducing compliance burden, financial outlay, and give countries a competitive edge in attracting local and foreign investment into local startups.

In recent years, several African countries have introduced or are in the process of introducing Startup Laws. These laws create a special legal regime for startups, separate from the general legal regime for businesses.

In this guide, we focus on the tax provisions of these startup laws, focusing on Ethiopia, Senegal, Nigeria, Kenya, Algeria, and Tunisia highlighting and comparing the progressiveness of their tax regimes.

TUNISIA

The Tunisian Startup bill grants a number of tax incentives to startups. One of the prominent incentives is the exemption of startups from the payment of corporate tax for up to eight (8) years.[1] This was put in place to ensure the re-investment of profits made by the startup to ensure growth.

The Act also provides for an exemption from the payment of Capital Gains Tax on any investment made in these startups.

1. Articles 3(5) & 19 of the Tunisian Startup billl

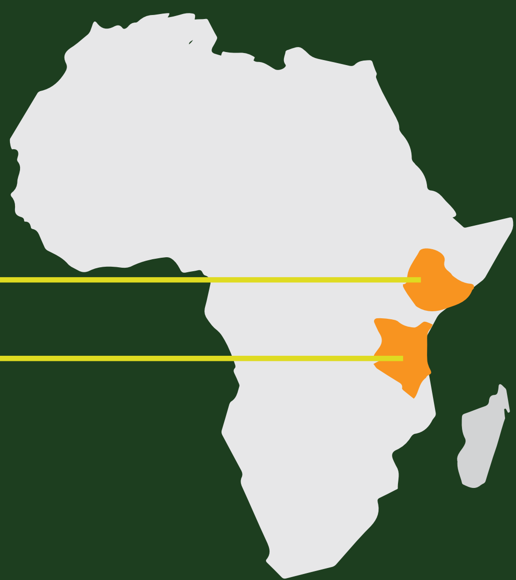
SENEGAL

Senegal's finance law allows labelled startups to benefit from fiscal incentives provided for in the General tax code. The Senegal's Finance Bill 2019 and 2020 amended tax provisions for SMEs and startups to provide the following exemptions and incentives: Under the General Tax code[2], SMEs now benefit from[3]:

1. An exemption from the minimum CIT for three (3) years.
2. An exemption from the employer tax for three (3) years.
3. The removal of the minimum fee of $850 for minimum CIT, which can have a confiscatory effect on SMEs in a deficit situation.

ETHIOPIA

The Startup Businesses Proclamation 2020 provides that a pre-registered startup will be relieved from paying taxes like Turnover Tax, Value Added Tax and Income Tax. Furthermore, startups and innovative businesses will be entitled to tax[4]. breaks and enjoy extended tax reporting periods[5] These incentives will be enjoyed by the startups for a total period of five (5) years[6]. This infers that a pre-registered startup will be entitled to the above incentives for an additional three (3) years exclud ing the two (2) years.



KENYA

The proposed startup Law[7] empowers the Cabinet Secretary for finance to put in place tax incentives that can be considered necessary for developing startups[8].

2. Article 8, Startup Law 2020 of Senegal
3. Afrikan Heroes, 'Senegal Approves A-Three Year Tax Exemption For Its Startups' (1 March 2020) <https://afrikanheroes.com/2020/03/01/senegal-approves-a-three-year-tax-exemption-for-its-startups/> accessed 25 March 2022
4. Article 19(2), Startup Businesses Proclamation 2020.
5. Article 29, Startup Businesses Proclamation 2020.
6. Article 23(1), Startup Businesses Proclamation 2020.
7. The Startup Law 2021 of Kenya
8. Section 27 of Kenya's Proposed Startup Law.

NIGERIA

The Nigerian Startup Bill offers comprehensive provisions which grant tax and fiscal incentives within the startup ecosystem of the country. It provides various encouraging incentives which include tax exemptions and facile access to facilities for stakeholders and major players in the startup industry. These provisions are collectively enshrined in Part VII of the Nigerian Startup Bill. Accordingly, Section 24 of the Bill authorises labelled startups that fall within the industries listed under the Pioneer Status Incentives (PSI) Scheme to apply to the Nigerian Investment Promotion Commission (NIPC) for the grant of tax reliefs and incentives under the PSI Scheme. The PSI scheme is a profit-based tax incentive established as a mechanism to attract and increase investment and economic development in the varying sectors of the Nigerian economy[9]. Under this scheme, companies in industries designated as 'pioneers' are relieved from paying Companies Income Tax[10] in their formative years to enable them make substantial profit for re-investment into the business thereby spurring further growth[11]. The PSI industries also enjoy other benefits which include exemption from 10% withholding tax on dividends paid out of business profits[12]. The Bill has, therefore, made express provisions for these labelled startups to apply for these PSIs.

In an attempt to improve employment rate, the Bill[13] provides a 5% Income Tax relief for a maximum period of five (5) years to a labelled startup having a minimum of ten (10) employees, 60% of whom must be employees without any form of work experience, and within three (3) years of graduating from school or any vocation within the assessment period[14]. This is in conjunction with Section 25 which provides that the Federal Government, through the relevant mechanisms, may simplify the requirements for startups to benefit from existing fiscal incentives[15].

While the majority of incentives under Part VII of the Bill are geared toward startups; the Bill also includes reliefs and exemptions for other stakeholders in the startup ecosystem namely, investors, employees and external service providers. Section 30 of the Bill creates an obligation on the Federal Government to implement national policies to enable individuals, impact investors, angel investors, companies, venture capitalists, private equity funds, accelerators or incubators; that invest in labelled startups or in the startup ecosystem to enjoy tax credits on their investment. Additionally, angel investors, venture capitalists, private equity funds, accelerators

9. 'The Principle Of Tax Incentives In Nigeria (Pioneer Status) - Tax - Nigeria' <https://www.mondaq.com/nigeria/income-tax/1075238/the-principle-of-tax-incentives-in-nigeria-pioneer-status> accessed 23 March 2022
10. Section 25(2) makes similar provision in this regard to labelled startups. This exemption is only enjoyable for a period of 4 years.
11. 'How Startups In Nigeria Can Benefit From Pioneer Status Tax (Free Tax) Incentive' (Afrikan Heroes, 6 October 2019) <https://afrikanheroes.com/2019/10/06/how-startups-in-nigeria-can-benefit-from-pioneer-status-tax-free-tax-incentive/> accessed 23 March 2022
12. Ibid. This incentive is usually enjoyed for 5-7 years.
13. Section 26 of the Nigerian Startup Bill
14. Section 26 (1-2) of the Nigerian Startup Bill
15. Section 25(1) of the Nigerian Startup Bill.

or incubators which invest in a labelled startup shall be entitled to an investment tax credit equivalent to 30% of the investment in the labelled startup[16]. Capital gains tax shall also not be charged on gains that accrue from the aforementioned entities' disposal of assets regarding a labelled startup[17].

Similarly, the Bill grants a 35% Personal Income Tax exemption to employees of labelled startups on the fulfilment of the eligibility criteria to be determined by the Secretariat and the Joint Tax Board[18]. It also grants a 5% Withholding Tax on income generated from technical, consulting, professional or management services to labelled startups by foreign entities. The Withholding Tax payment will qualify as the final tax to be paid by the entity[19].

ALGERIA

Algeria grants startups and incubators a range of tax exemptions.

1. Startups are exempted from VAT and enjoy a reduced customs duty rate of 5% on equipment acquired where it is directly involved in executing their projects.[20]
2. Incubators are exempt from the Tax on Professional Activity (TAP) or Turnover Tax, Personal Income Tax (PIT), or Companies Income Tax (CIT) for two (2) years. An incubator could be a corporate body or an individual[21].
3. Startups are exempt from VAT and CIT for four (4) years and an additional one (1) year upon renewal.[22]
4. Startups with a $227 million or less turnover are VAT-exempt.[23]

16. Section 30(2) Nigerian Startup Bill
17. Section 30(3) of the Nigerian Startup Bill
18. Section 31(1)&(2) of Nigerian Startup Bill
19. Section 32 of theNigerian Startup Bill
20. Orbitax - The Tax Hub, 'Algeria Publishes Finance Law for 2021' (Algeria, 21st January 2021) <https://www.orbitax.com/news/archive.php/Algeria-Publishes-Finance-Law--45120> accessed 25 March 2022
21. Ibid
22 . Ibid
23. Afrikan Heroes, 'Algeria's Tax Laws For 2021 Grant Startups, Incubators A Range Of Exemptions' (30 Dec 2020) <https://afrikanheroes.com/2020/12/30/algerias-tax-laws-for-2021-grant-startups-incubators-a-range-of-exemptions/> accessed 25 March 2022

Notable Highlights

- All laws or bills in focus here provide tax incentives geared towards ensuring startup growth.
- Only Kenya does not expressly define the tax incentives offered to startups; rather, they empower government officials to define the incentives.
- Tunisia offers corporate tax incentives for startups, exempting them for up to 8 (eight) years.
- Algeria does a great job exempting startups and incubators from corporate tax, personal income tax, VAT, turnover tax, and a reduced customs duty.
- Senegal removed the minimum CIT fees for startups and SMEs and a 3 (three-year) minimum CIT exemption.
- Ethiopia provides tax breaks and extended tax reporting periods.
- Nigeria's Startup Bill offers the broadest base of tax incentives by providing exemptions and reductions to startups, its employees, investors, incubators and accelerators, service providers and partners.

Comparison Highlights

Subject	Tunisia	Senegal	Kenya	Ethiopia	Nigeria	Algeria
Corporate Tax Exemptions / Reductions						
Company Income Tax	✓	✓	–	✓	✓	✓
Withholding Tax (WHT)	✗	✓	–	✗	✓	✗
Value Added Tax (VAT)/ Turnover Tax	✗	✗	–	✓	✓	✓
Customs Duty	✗	✗	–	✗	✗	✓
Capital Gains Tax (CGT)	✓	✗	–	✗	✓	✗
Personal Incentives/ Reductions /Exemptions						
Personal Income Tax(PIT) Employer Tax	✓	✗	–	✗	✓	✓
Other Incentives						
Tax break to startups & extended tax reporting periods	✗	✗	–	✓	✓	✗
Tax Credit for investors	✗	✗	–	✗	✓	✗

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