

COMPANIES OPERATING IN NIGERIA TO PAY 0.005% NET PROFIT LEVY UNDER THE NIGERIA POLICE TRUST FUND (ESTABLISHMENT) ACT 2018

Introduction

On June 24, 2019, the Nigeria Police Trust Fund (Establishment) Act 2018 (the “Act”)¹ was signed into law by the President of the Federal Republic of Nigeria. The Act establishes and provides a legal framework for the management and control of the Nigeria Police Trust Fund (the “Trust Fund”) which is designed by the Act to, amongst other things, provide funds for the training and retraining of personnel of the Nigeria Police Force, provide state-of-the-art security equipment and machineries, to improve the general welfare of the said personnel, and enhance their preparedness to effectively discharge their constitutional duties of protection of life and property.²



¹ See *section 30 of the Act*.

² See the *explanatory memorandum and section 1 of the Act*.

By section 23 of the Act, the Trust Fund is exempted from income tax, and the provisions of any enactment relating to the taxation of companies or trust funds do not apply to the Trust Fund.

The Act has significant tax implications for companies carrying on business operations in Nigeria. The good news, however, is that the Trust Fund is created to exist for only 6 years from the commencement of the Act; and will, at the expiration of that period, cease to exist unless it is extended for any further period by an Act of the National Assembly.³

Tax implications of the Act for companies carrying on business operations in Nigeria

Section 4(1) of the Act provides that the Trust Fund shall, amongst other things, consist of –

³ See *section 2(2) of the Act*. *Section 28 of the Act* provides that except as provided for under section 2 of the Act, at the expiration of the 6 year duration of the Trust Fund referred to in that section, the Trust Fund shall have 6 months to wind up its activities, including the settlement of all liabilities, and thereafter handover all outstanding assets of the Trust Fund to the Nigeria Police Force.

- (a) an amount constituting 0.5% of the total revenue accruing to the Federation Account;
- (b) a levy of 0.005% of the net profit of companies operating business in Nigeria; and
- (c) money derived from investment made by the Trust Fund.

Given the imposition of a 0.005% levy on the net profit of companies carrying on business operations in Nigeria, companies operating in Nigeria are now required to pay a levy representing 0.005% of their net profits to the Federal Government for the benefit of the Trust Fund, in addition to the traditional 30% company income tax and 2% education tax paid to the Federal Government from the companies' taxable profits.⁴

Although the Act is silent on the point, it appears that the companies operating in Nigeria will not be entitled to deduct the cost of the 0.005% net profit levy contributed to the Trust Fund under the Act from their taxable profits when assessing their 30% company income tax.

The Act has also failed to define the scope of "companies operating in Nigeria".

⁴ While there are no penal provisions in the Act compelling payment of the 0.005% levy imposed on the net profit of companies carrying on business operations in Nigeria, it is possible that the Board of Trustees of the Trust Fund will exercise its powers under **section 27 of the Act** to make regulations for the purpose of giving full effect to the provisions of the Act, including providing modalities for payment of the levy, and imposition of sanctions for non-payment of the levy as at when due.

Commentary

The imposition of a 0.005% levy on the net profit of companies effectively increases the already chocking tax burden of companies carrying on business operations in Nigeria. We note that section 4(1) of the Act lists several sources of income for the Trust Fund, including an amount constituting 0.5% of the total revenue accruing to the Federation Account. We are mindful that monies in the Federation Account include company income tax paid by companies carrying on business operations in Nigeria.⁵



In any event, net profit levy imposed on companies by the Act is effectively double taxation and flies in the face of constitutional and international best practices, as the levy is essentially paid from profits that have already been taxed (that is, payable after the company has already paid its statutory 30% and 2% companies and education taxes respectively from its taxable income).

It also flies in the face of the Revised National Tax Policy issued by the Federal Ministry of Finance on February 1, 2017,

⁵ Section 162(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) establishes the Federation Account as a special account into which all revenues collected by the Government of the Federation shall be paid, except the proceeds from the personal income tax of the personnel of the Armed Forces of the Federation, the Nigeria Police Force, the Ministry of Foreign Affairs, and the residents of the Federal Capital Territory, Abuja.

which cites reduction in the number of taxes and avoidance of multiple taxation as part of the policy guidelines of the Nigeria tax system.⁶ The imposition of a 0.005% levy on the net profits of companies carrying on business operations in Nigeria obviously failed to take the commendable objectives of the Revised National Tax Policy 2017 into consideration.

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⁶ The Revised National Tax Policy 2017 provides in paragraph 2.2.6 of Chapter 2 thereof that taxes should be few in number, broad-based, and high-revenue yielding; and that the administration of the taxes should also be simplified for ease of enforcement and compliance. It also provides that taxes similar to those being collected by a level of government should not be introduced by the same or another level of government; and that the federal, state, and local governments shall ensure collaboration in harmonizing and eliminating multiple taxation.

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