

Senate passes Tertiary Hospitals Development Tax Fund Bill

KPMG in Nigeria
November 2021



The Senate of the Federal Republic of Nigeria recently passed the Tertiary Hospitals Development Tax (THDT) Fund Bill, 2021 ("the Bill") for the establishment of the THDT Fund ("THDTF" or "the Fund"). The Fund will be used to facilitate the rehabilitation, restoration, and consolidation of Tertiary Healthcare in Nigeria.

We have highlighted below, some of the key provisions of the Bill:

1. Administration of the THDTF

The Fund will be managed by a Board of Trustees (BoT or "the Board") consisting of a Chairman, an executive secretary, one representative from the six geopolitical zones and eight (8) other members from the specific ministries and agencies specified in the Bill. The BoT will oversee the administration and disbursement of the monies in the Fund to Federal and State Tertiary Hospitals, specifically for the provision and maintenance of the following:

- i. essential physical infrastructure for teaching, learning, research and services;
- ii. instructional, medical and other services equipment;
- iii. research and publication;
- iv. staff training and development; and any other need which, in the opinion of the Board, is critical and essential for the improvement of quality and maintenance of standards in the Federal and State Tertiary Hospitals.

Further, Clause 12 of the Bill directs the Board to allocate a maximum of 10% of the total monies received in the preceding year to cover for the operating cost of the Board and other administrative costs, including employee related costs.

The BoT is also required to submit an annual report to the Minister of Health including a copy of the Fund's audited accounts and the auditor's report thereon.

2. Functions of the THDTF

Clause 6 of the Bill provides that the Fund shall perform the following functions:

- i. provide and maintain tertiary healthcare infrastructure, health research and publications and clinical staff training and development,
- ii. monitor collection of THDT by the Federal Inland Revenue Service (FIRS) and ensure transfer of same to the Fund,
- iii. manage and disburse the THDT,
- iv. liaise with the appropriate ministries or bodies responsible for collection or safe keeping of the tax,
- v. receive requests and approve admissible projects after due consideration,
- vi. ensure disbursement of funds to various public Federal and State Tertiary Hospitals in Nigeria,
- vii. monitor and evaluate the execution of projects in relation to the Fund's releases
- viii. invest funds in appropriate and safe securities
- ix. update the Federal Government on its activities and progress through annual and audited reports,
- x. review progress and suggest improvements within the provisions of the Bill,
- xi. make and issue guidelines on disbursement of monies from the Fund,
- xii. regulate the administration, application, and disbursement of monies from the Fund,
- xiii. other functions incidental to the objectives of the Fund for the improvement of Tertiary Hospitals.



3. Sources of Funding

The operations of the THDTF are to be funded by the following:

- i. A take-off grant provided by the Federal Government
- ii. Allocated funds from the National Assembly
- iii. 1% of petroleum companies' tax paid on total barrels of crude oil produced yearly
- iv. 1% of mobile phone service providers tax paid on airtime and data sold yearly
- v. 1% of beverages and breweries companies' tax paid on profit yearly declared
- vi. 1% of cement companies' tax paid on profit yearly declared
- vii. 1% of paint and chemical manufacturing companies' tax paid on profit yearly declared; and
- viii. 1% of tobacco companies' tax paid on profit yearly declared.

In addition to the sources of funding listed above, the Fund may borrow any sum of money required for the performance of its functions as outlined in (2) above.

4. Taxpayer compliance requirements

Based on Clause 11 of the Bill, the FIRS is tasked with the assessment and collection of items (iii) – (viii) in 3 above, after which the taxes collected must be remitted into the Fund. The assessed tax liability is payable within 90 days after FIRS' assessment.

FIRS is also required to submit details of the taxpayers to the Board including their names, assessable profits for the relevant accounting period, amount collected, and any other information that may be required for a proper administration of the Fund.

5. NRSs powers to appoint a representative

The Bill provides that a person found guilty of an offence is liable upon conviction, to a maximum fine of ₦2million or imprisonment for a term of two years or both.

Commentary

There is no doubt that the Nigerian public healthcare sector needs funding to upgrade its infrastructure and improve the quality of its services to the citizenry. The COVID-19 pandemic has especially exposed the dearth in the capacity of our public health system to deal with medical emergencies. Nevertheless, the FG will be taking

an austere approach by enacting the Bill to tax selected private sector businesses to fund the cost of revamping the country's tertiary health institutions. Clause 10 of the Bill appears to suggest that the tax will be appropriated from the corporate income tax paid by the listed companies. However, this ambiguity is removed by Clause 11 which requires the FIRS to assess and collect the taxes imposed under the Bill from the affected companies when assessing them for companies income tax.

The addition of yet another layer of tax to the various ancillary corporate income taxes (namely, Nigerian Police Trust Fund levy, Tertiary Education Tax, National Agency for Science and Engineering Infrastructure Fund, and National Information Technology Development Agency levy) payable by the specified companies will further compound the impact of multiple taxation on them. This detracts from the Government's avowed intention of reducing the cost of doing business in Nigeria under its ease of doing business reform initiatives. While acknowledging that the private sector has a role to play in revamping critical infrastructure, such as healthcare, taxation should not be the default option for the Government. With appropriate public-private partnership structures on win-win terms, the private sector can mobilize the capital required for investment in healthcare that will deliver better results and more value for money than what the revenues from the additional tax burden proposed by the Bill can achieve.

From the breakdown of the proposed 2022 Budget by the Honourable Minister of Finance, Budget and National Planning, Mrs. Zainab Shamsuna Ahmed, only ₦820.2 billion was allocated to the health sector. This represents about 5% of the total expenditure for the year, which is below the 15% benchmark recommended by the World Health Organisation for budgetary allocation to health sector and approved by the leaders of African Union member countries in April 2001 in Abuja.

It is hoped that the House of Representatives will, in reviewing the Bill, give due consideration to the concerns of the private sector on multiple taxation that increases the cost of doing business and further aggravates the challenges of the business environment. The reality is that businesses are yet to recover from the impact of the twin shocks of COVID-19 and recession on their fortunes.

It is further hoped that the FG will explore alternative sources of funding the development of the Nigerian public health sector as suggested in this newsletter.

In the meantime, affected companies are advised to closely monitor proceedings on the Bill by the House of Representatives and make necessary representations to address their concerns.

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