



Tax Alert

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Another earmarked tax coming through NYSC Trust Fund Establishment Bill, 2021

The National Assembly of the Federal Republic of Nigeria recently passed the National Youth Service Corps (NYSC) Trust Fund (Establishment) Bill, 2021 (“the Bill”) for the establishment of the NYSC Trust Fund (“NYSCTF” or “the Fund”).

The Fund aims to provide sustainable funding for the monthly allowances for corps members, skill acquisition, training, and empowerment of NYSC personnel, development of orientation camps, and such other purposes incidental to or connected with the attainment of the objectives of the Bill.

Based on Section 4(1) of the Bill, the NYSCTF is to be funded by the following sources:

- a levy of 1% of the net profit of companies and organized private sector operating business in Nigeria
- 0.2% of total revenue accruing to the Federation Account
- take-off grants and special intervention funds as may be provided by the Federal, State, and Local Governments of the Federation
- money appropriated to meet the objectives of the Bill by the National Assembly in the budget
- aids, grants, and assistance from international bilateral and multilateral agencies, non-governmental organizations, and the private sector
- grants, donations, endowments, bequests, and gifts, including money, land, and other properties from any source
- money derived from investments made by the Fund

Section 19 of the Bill exempts profit generated from investments carried out by the Board of Trustees on behalf of the Fund from income tax.

Commentary

The commitment of the Federal Government (FG) to the NYSC Scheme, since its establishment in 1973 to promote national unity, skilled manpower development, and cultural integration among Nigerian youths, is commendable.

The FG's quest for sustainable funding for the Scheme is also appreciated. However, the proliferation of earmarked taxes is a cause for concern due to the multifaceted challenges facing Nigerian businesses. If the President assents to the Bill, this will increase the number of earmarked taxes payable by different categories of Nigerian companies to five (refer to our [Newsletter Issue No.: 8.1 of August 2021](#) for commentary on the National Agency for Science and Engineering Infrastructure Levy). This is in the face of the judgement of the Federal High Court (FHC) in *Attorney General for Rivers State vs Attorney General of the Federation & ANOR (Suit No: FHC/ABJ/CS/511/2020)* to the effect that the FG is required by Section 162(1) and (3) of the Constitution of the Government of the Federal Republic of Nigeria 1999 (as amended) to pay all federally collectible revenues (excluding revenues explicitly exempted) into the Federation Account for distribution among the Federal, State, and Local Government Councils in each State of the Federation to the exclusion of any other person or entity. On this basis, the FHC nullified the provision on the Nigerian Police Trust Fund (NPTF) Act for mandating the payment of the NPTF levy into a fund other than the Federation Account (Refer to our [Newsletter Issue No.: 2.5 of February 2022](#) for further details).

Consequently, the provision of Section 4(1)(a) and (b) of the Bill requiring companies to contribute a levy of 1% of their net profits to the Fund and allocating 0.2% of the credit balance of the Federation Account for payment into the Fund appears vulnerable. It is hoped that the FG will re-evaluate these two sources of funding the Scheme to align the Bill with the provision of Section 162 of the 1999 Constitution (as amended) and the decision in the above-referenced FHC judgement.

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