

EDUCATION TAX ACT

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SCHEDULE

An Act to impose an education tax on companies registered in Nigeria and to establish an Education Fund and a Board of Trustees to manage and administer the Fund.

[1993 No.7.]

[1st January, 1993]

[Commencement.]

1. Imposition of education tax

(1) As from the commencement of this Act, there shall be charged and payable an annual education tax which shall be assessed, collected and administered in accordance with the provisions of this Act.

(2) The tax, which shall be at the rate of two per cent, shall be charged on the assessable profit of a company registered in Nigeria (in this Act referred to as "a company").

(3) The assessable profit of a company shall be ascertained in the manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act (in this Act referred to as "the Act") as the case may be.

[Cap. C21. Cap. P13.]

2. Assessment and collection of tax

1) The Federal Board of Inland Revenue (in this Act referred to as "the Board") shall assess and collect from a company the tax imposed by this Act and accordingly-

(a) shall, when assessing a company for companies income tax or petroleum profit tax for an accounting period of the company, also proceed to assess the company for the tax due under this Act;

(b) the provisions of the Act relating to the collection of companies' income tax or petroleum profit tax shall, subject to this Act, apply to the tax due under this Act.

(2) The tax imposed by this Act shall be due and payable within 60 days after the Board has served notice of the assessment on a company.

(3) The Board may, for the purpose of assessment and collecting the tax imposed by this Act, devise such forms as it may deem necessary.

3. Establishment of the Education Fund

(1) There is hereby established a fund to be known as the Education Fund (in this Act referred to as "the Fund) for the rehabilitation, restoration and consolidation of education in Nigeria and which shall be managed by the Board of Trustees established under section 4 of this Act.

(2) The Fund-

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) may sue and be sued in its corporate name.

[1998 No. 40.]

(3) The Board shall pay tax collected under this Act into the Fund and shall, when doing so, submit to the Board of Trustees, in such form as the Board of Trustees shall approve, a return showing-

- (a) the name of the company making the payment;
- (b) the amount collected for the rehabilitation, restoration and consolidation of education in Nigeria; and
- (c) the assessable profit of the company for the accounting period; and
- (d) such other information as may be required by the Board of Trustees for the proper administration of the tax.

4. Establishment of Board of Trustees

(1) There is hereby established for the management of the Fund an Education Trust Fund Board of Trustees (in this Act referred to as "the Board of Trustees") which shall consist of-

- (a) a chairman;
- (b) six persons each representing the six geo-political zones of the country;
- (c) the Accountant-General of the Federation;
- (d) a representative of –
 - (i) the Minister of Education;
 - (ii) the Vice-Chancellors of the Nigerian Universities;
 - (iii) Rectors of the Polytechnics in Nigeria;
 - (iv) Provosts of the Colleges of Education in Nigeria;
 - (v) the National Chamber of Commerce, Industry, Mines and Agriculture (NCCIMA);

- (vi) the Manufacturers Association of Nigeria (MAN);
- (vii) the Academic Staff Union of Universities (ASUU);
- (viii) the Academic Staff Union of Polytechnics (ASUP);
- (ix) the Colleges of Education Academic Staff Union (COEASU);
- (x) the National Union of Teachers (NUT);
- (xi) the Association of Nigerian Principals of Secondary Schools (ANCOPS);
- (xii) the Executive Secretary of the Fund who shall serve as Secretary.

[2003 No. 17.]

(2) The membership of the Board of Trustees shall reflect the six geo-political zones of the Federation.

(3) The members of the Board of Trustees shall-

- (a) be persons with considerable experience from both the public and private sectors to represent the business, financial and education sectors;
- (b) be appointed by the President on the recommendation of the Minister;
- (c) other than the ex-officio members, each hold office for a term of 4 years in the first instance and may be eligible for appointment for a further term of 4 years and no more;
- (d) be paid such remuneration and allowances as the President may, from time to time, determine.

(4) The Board of Trustees shall meet for the conduct of its business at such times, places and on such days as the chairman may appoint, not being less than four times in a year.

(5) The supplementary provisions contained in the Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters contained therein.

[Schedule. 1998 No. 40.]

5. Cessation of membership

(1) A member of the Board of Trustees shall cease to hold office if-

- (a) he becomes of unsound mind; or
- (b) he becomes bankrupt or makes a compromise with his creditors; or

(c) he is convicted of a felony or any offence involving dishonesty; or

(d) he is guilty of serious misconduct in relation to his duties.

(2) A member of the Board of Trustees may be removed from office by the President if he is satisfied that it is not in the interest of the Fund or the interest of the public that the member should continue in office.

(3) A member of the Board of Trustees, other than an ex-officio member, may resign his appointment by a notice in writing under his hand, addressed to the President.

(4) Where a vacancy occurs in the membership of the Board of Trustees, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however that the successor shall represent the same interest and shall be appointed by the President.

[1998 No. 40.]

6. Functions of the Board of Trustees

The Board of Trustees shall have responsibility to-

(a) monitor and ensure collection of tax by the Federal Inland Revenue Service and ensure transfer to the Fund;

(b) manage and disburse the tax;

(c) liaise with the appropriate Ministries or bodies responsible for collection or safe-keeping of the tax;

(d) receive requests and approve admissible projects after due consideration;

(e) ensure disbursement to various levels and categories of education;

(f) monitor and evaluate execution of the projects;

(g) invest funds in appropriate and safe securities;

(h) update the Federal Government on its activities and progress through annual and audited reports;

(i) review progress and suggest improvement within the provisions of this Act;

(j) do such other things as are necessary or incidental to the objects of the Fund under this Act or as may be assigned by the Federal Government.

(j)

[1998 No. 40.]

7. Management and administration of the Fund

(1) The Board of Trustees shall administer the tax imposed by this Act and disburse the amount in the Fund to Federal, State and Local Government educational institutions, including primary and secondary schools, for any other matter ancillary thereto, but specifically for the following-

- (a) works centers and prototype development;
- (b) staff development and conference attendance;
- (c) library system at the different levels of education;
- (d) research equipment procurement and maintenance;
- (e) Higher Education Book Development Fund;
- (f) redressing any imbalance in enrolment mix as between the higher educational institutions; and
- (g) execution of the nine-year compulsory education programme.

(2) In disbursing the tax as between the various levels of education-

- (a) higher education section shall receive fifty per cent;
- (b) primary education section shall receive thirty per cent; and

[1998 No. 40.]

(c) the secondary education section shall receive twenty per cent, of the tax collected in anyone year.

[1998 No. 40.]

(3) The distribution of tax accruing to the higher education section shall be in the ratio of 2:1:1 as between universities, polytechnics and colleges of education.

(4) The Board of Trustees shall administer, manage and disburse the tax imposed by this Act on the basis of-

- (a) equality among the six geo-political zones of the Federation;
- (b) equality among the States within a zone;
- (c) equality among the local governments or area councils within a State or the Federal Capital Territory, Abuja respectively.

[1998 No. 40.]

(5) Notwithstanding the provisions of subsections (1), (2), (3) and (4) of this section, the Board of Trustees shall have power to give due consideration to the peculiarities of each geo-political zone in the disbursement and management of the tax imposed by this Act between the various levels of education.

[1998 No. 40.]

8. Appointment of the executive secretary and other staff of the Fund

(1) There shall be for the Fund an executive secretary who shall-

- (a) be appointed by the President on the recommendation of the Minister;
- (b) be a person with good knowledge in administrative matters;
- (c) be the chief executive and accounting officer of the Fund;
- (d) have such qualifications and experience as are appropriate for a person required to perform the functions of that office under this Act; and
- (e) hold office for a period of five years in the first instance and may be eligible for re-appointment for a further term of five years and no more and on such terms and conditions as to emolument, conditions of service as may be specified in his letter of appointment.

[1998 No. 40.]

(2) The executive secretary shall, subject to the general direction of the Board of Trustees, be responsible-

- (a) for the day-to-day administration of the Fund;
- (b) for keeping the books and proper records of the proceedings of the Board of Trustees;
- (c) for-
 - (i) the administration of the secretariat of the Board of Trustees; and
 - (ii) the general direction and control of all other employees of the Fund.

[1998 No. 40.]

(3) The Board of Trustees shall have power to-

- (a) employ either directly or on transfer or secondment from any civil or public service in the Federation such number of employees as may, in the opinion of the Board of Trustees, be

required to assist the Board of Trustees and the executive secretary in the discharge of any of their functions under this Act; and

(b) pay to persons so employed such remuneration (including allowances) as the Board of Trustees may, after consultation with appropriate bodies, determine.

[1998 No. 40.]

9. Service in the Fund to be pensionable

(1) Service in the Fund shall be approved service for purposes of the Pensions Act.

[1998 No. 40. Cap. P4.]

(2) Employees of the Fund shall be entitled to pension, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the civil service of the Federation.

[1998 No. 40.]

(3) Nothing in subsection (1) or (2) of this section or in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

[1998 No. 40.]

(4) For the purposes of the application of the provisions of the Pensions Act, any power exercisable thereunder by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Board of Trustees.

[1998 No. 40.]

10. Offences

(1) A person who contravenes or fails to comply with provisions of this Act is guilty of an offence under this Act.

(2) Subject to the provisions of subsection (3) of this section-

(a) if a tax due under section 2 of this Act is not paid within the time specified in that section, the Board shall serve on the company a demand note for the unpaid tax plus a sum which is equal to five per cent of the tax; and

(b) if a sum demanded under paragraph (a) of this subsection is not paid within two months of the demand, the company is guilty of an offence under this Act.

(3) The Board shall, with the approval of the Board of Trustees, remit in whole or in part a sum added to the unpaid tax under subsection (2) (a) of this section.

[1998 No. 40.]

(4) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate;
- (b) every partner or officer of the firm;
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in the capacity as aforesaid,

is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

11. Penalties

(1) Except as otherwise provided in this Act, a person who is guilty of an offence under this Act shall on conviction be liable-

- (a) for a first offence, to a fine of N10,000 or imprisonment for a term of three years;
- (b) for a second and subsequent offence, to a fine of N20,000 or imprisonment for a term of five years or to both such fine and imprisonment.

(2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company from liability to pay to the Board a tax which is or may become due under this Act.

12. Limitation of suits against the Fund, etc.

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Fund.

[1998 No. 40.]

(2) Notwithstanding anything contained in any other law or enactment, no suit against any member of the Board of Trustees, the executive secretary or any other officer or employee of the Fund for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless-

(a) it is commenced within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.

[1998 No. 40.]

(3) No suit shall be commenced against a member of the Board of Trustees, the executive secretary, officer or employee of the Fund before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Fund by the intending plaintiff or his agent.

[1998 No. 40.]

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

[1998 No. 40.]

13. Service of documents

A notice, summons or other document required or authorised to be served upon the Fund under the provisions of this Act or any other law or enactment may be served by delivering it to the executive secretary or by sending it by registered post and addressed to the executive secretary at the principal office of the Fund.

[1998 No. 40.]

14. Restriction on execution against property of the Fund

(1) In any action or suit against the Fund, no execution or attachment of process in the nature thereof shall be issued against the Fund.

[1998 No. 40.]

(2) Any sum of money which may by the judgment of any court be awarded against the Fund shall, subject to any direction given by the court where notice of appeal of the said judgment has been given, be paid from the general reserve fund of the Fund.

[1998 No. 40.]

15. Indemnity of officers

A member of the Board of Trustees, the executive secretary any officer or employee of the Fund, shall be indemnified out of the assets of the Fund against any proceeding, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Board of Trustees, the executive secretary, officer or employee of the Fund.

[1998 No. 40.]

16. Regulations

The Minister may, with the approval of the President, make regulations generally for the purposes of this Act and the due administration thereof.

17. Interpretation

(1) In this Act, unless the context otherwise requires-

“Act” means the Companies Income Tax Act or the Petroleum Profits Tax Act, as the case may be;

[Cap. C21. Cap. P13.]

“Board” means the Federal Board of Inland Revenue established under the Personal Income Tax Act;

[Cap. P8.]

“Board of Trustees” means the Education Tax Board of Trustees established under section 4 of this Act;

“company” means a company registered in Nigeria;

“Fund” means the Fund established under section 3 of

“Minister” means the Minister charged with responsibility for matters relating to education.

(2) Where no provision is made in this Act for a matter relating to the assessment and collection of the tax imposed by this Act, the provisions of the Acts relating to the assessment and collection of companies income tax or petroleum profit tax, as the case may be, shall apply mutatis mutandis to that matter.

18. Short title

This Act may be cited as the Education Tax Act.

[Section 4 (5).]

Supplementary provisions relating to the Board of Trustees

Proceedings of the Board of Trustees

1. (1) Subject to this Act and section 27 of the Interpretation Act, the Board of Trustees may make standing orders regulating its proceedings or those of any of its committees.

[Cap. 123.]

(2) The quorum of the Board of Trustees shall be five members and the quorum of any committee of the Board of Trustees shall be determined by the Board of Trustees.

[1998 No. 40.]

2. (1) The Board of Trustees shall meet not less than four times in each year and subject thereto, the Board of Trustees shall meet whenever it is summoned by the chairman; and if the chairman is required to do so by notice given to him by not less than three other members, he shall summon a meeting of the Board of Trustees to be held within fourteen days from the date on which the notice is given,

(2) At any meeting of the Board of Trustees, the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

(3) Where the Board of Trustees desires to obtain the advice of any person on a particular matter, the Board of Trustees may co-opt him to the Board of Trustees for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board of Trustees and shall not count towards a quorum.

[1998 No. 40.]

Committees

3. (1) The Board of Trustees may appoint one or more committees to carry out, on behalf of the Board of Trustees, such of its functions as the Board of Trustees may determine.

(2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board of Trustees) as may be determined by the Board of Trustees; and a person other than a member of the Board of Trustees shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Board of Trustees shall be of no effect until it is confirmed by the Board of Trustees.

[1998 No. 40.]

4. (1) The fixing of the seal of the Fund shall be authenticated by the signature of the chairman, the executive secretary or of any other person authorised generally or specially to act for that purpose by the Board of Trustees.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Fund by the chairman, executive secretary or any person generally or specially authorised to act for that purpose by the Board of Trustees.

(3) Any document purporting to be a document duly executed under the seal of the Fund shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

[1998 No. 40.]

5. The validity of any proceeding of the Board of Trustees or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board of Trustees or committee, or by any defect in the appointment of a member of the Board of Trustees or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Board of Trustees or committee.

[1998 No. 40.]

EDUCATION TAX ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation