

Extraordinary



Federal Republic of Nigeria

Official Gazette

No. 65

Lagos - 14th June, 2011

Vol. 98

Government Notice No. 155

The following is published as Supplement in this *Gazette* :

<i>Act No.</i>	<i>Short Title</i>	<i>Page</i>
16	Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011	A 253 - 268

Printed and Published by The Federal Government Printer, Lagos, Nigeria
FGP 100/82011/1,200 (OL 62)

Annual Subscription from 1st January, 2011 is Local : N15,000.00 Overseas : N21,500.00 [Surface Mail] N24,500.00 [Second Class Air Mail]. Present issue N1,500.00 per copy. Subscribers who wish to obtain *Gazette* after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC.)
ACT, 2011



ARRANGEMENT OF SECTIONS

SECTION :

1. Imposition of tertiary education tax.
2. Assessment and collection of tax.
3. Establishment of the Tertiary Education Trust Fund.
4. Establishment of the Board of Trustees.
5. Cessation of membership.
6. Functions of the Board of Trustees.
7. Management and administration of the Fund.
8. Appointment of the Executive Secretary and other staff of the Fund.
9. Pension.
10. Offences.
11. Penalties.
12. Jurisdiction.
13. Limitation of suits against the Fund, etc..
14. Service of documents.
15. Restriction on execution against property of the Fund.
16. Indemnity of officers.
17. Regulations.
18. Repeal.
19. Savings.
20. Interpretation.
21. Citation.

SCHEDULE.

TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC.) ACT, 2011

ACT No. 16

AN ACT TO REPEAL THE EDUCATION TAX ACT CAP. E4 LAWS OF THE FEDERATION OF NIGERIA, 2004 AND EDUCATION TAX FUND (AMENDMENT) ACT NO. 17, 2003 AND ESTABLISH THE TERTIARY EDUCATION TRUST FUND CHARGED WITH THE RESPONSIBILITY FOR IMPOSING, MANAGING AND DISBURSING THE EDUCATION TAX TO PUBLIC TERTIARY EDUCATION INSTITUTIONS IN NIGERIA ; AND FOR RELATED MATTERS.

[3rd Day of June, 2011]

Commence-
ment.

ENACTED by the National Assembly of the Federal Republic of Nigeria—

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

Imposition
of tertiary
education
tax.

(2) The tax at the rate of 2 percent 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.

(4) Without prejudice to the provision of subsection (3) of this section, section 60 of the Petroleum Profit Tax Act shall not apply to the assessment, collection and payment of tertiary education tax and all companies chargeable to tax under the Petroleum Profit Tax Act shall be liable to pay the full extent of the tax imposed under this Act.

2.—(1) The Federal Inland Revenue Service (in this Act referred to as “the Service”) shall assess and collect from a company the tax imposed by this Act and accordingly—

Assessment
and
collection of
tax.

(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 ; and

(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 Service has served notice of the assessment on a company.

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

Establishment
of the
Tertiary
Education
Trust Fund.

3.—(1) There is established the Tertiary Education Trust Fund (in this Act referred to as *the Fund*) for the rehabilitation, restoration and consolidation of tertiary education in Nigeria 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.

(3) The Service shall pay the tax collected under this Act into the Fund and shall, when doing so, submit to the Fund, 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 ;

(c) the assessable profit of the company for the accounting period ; and

(d) such other information as may be required by the Fund for the proper administration of the tax.

(4) The Fund shall, before disbursement of the amount in the Fund, set aside in each year, an amount not exceeding 5 per cent of the total monies accruing to the Fund in the preceding year which shall be applied—

(a) for the cost of administration and management of the Fund ;

(b) for the maintenance of any property acquired by or vested in the Fund and generally to pay for services rendered to the Fund ;

(c) for project monitoring ;

(d) to meet all the needs of the Fund necessary for the due administration and implementation of the purpose of this Act.

Establishment
of the Board
of Trustees
Schedule.

4.—(1) There is established for the Fund, a Board of Trustees (in this Act referred to as *“the Board of Trustees”*) which shall consist of—

(a) a chairman who shall—

(i) be a person with good knowledge in finance and administrative matters ;

(ii) have qualifications and experiences as are required to perform the functions of that office under this Act.

(b) 6 persons, each representing a geo-political zone in the country ;
 (c) a representative each of the following Federal Ministries, who shall not be below the rank of a Director—

- (i) Education ; and
- (ii) Finance ;

(d) a representative each from the Universities, Polytechnics and Colleges of Education ; and

(e) the Executive Secretary, who shall be the Secretary to the Board of Trustees.

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

(3) The members 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 re-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 ordinary meetings 4 times in a calendar year.

(5) Notwithstanding subsection (4) of this section, the Board of Trustees may meet to conduct such other business as exigency demands. Schedule.

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

5.—(1) A member of the Board of Trustees shall cease to hold office if he— Cessation of membership.

(a) becomes of unsound mind ;

(b) becomes bankrupt or makes a compromise with his creditors ;

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

(d) 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 public that the member should continue in that office.

(3) A member of the Board of Trustees, other than an ex-officio, 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 that the successor shall represent the same interest and shall be appointed by the President.

Functions of
the Board of
Trustees..

6. The Board of Trustees shall—

(a) monitor and ensure collection of education tax by the Service and ensure transfer of same to the Fund ;

(b) manage and disburse the tax imposed by this Act ;

(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 of funds to various public tertiary educational institutions in Nigeria ;

(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 ;

(k) make and issue guidelines, from time to time, to all beneficiaries on disbursement from the Fund on the use of monies received from the Fund ;
and

(l) generally to regulate the administration, application and disbursement of monies from the Fund under this Act.

Management
and
administration
of the Fund.

7.—(1) The Board of Trustees shall administer the tax imposed by this Act and disburse the amount in the Fund to Federal and State tertiary educational institutions specifically for the provision or maintenance of—

(a) essential physical infrastructure for teaching and learning ;

(b) instructional material and equipment ;

(c) research and publication ;

(d) academic staff training and development ; and

(e) any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in the higher educational institutions.

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

(a) funding of all public tertiary educational institutions ;

(b) equality among the 6 geo-political zones of the Federation in the case of special intervention ; and

(c) equality among the States of the Federation in the case of regular intervention.

(3) The distribution of funds shall be in the ratio of 2:1:1 as between Universities, Polytechnics and Colleges of Education.

(4) 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 tertiary education.

(5) The Minister shall, on the recommendation of the Board of Trustees and subject to approval by the President, make guidelines for disbursement of funds under this Act.

8.—(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 the Chief Executive and Accounting Officer of the Fund ;

(c) be a person with good knowledge and cognate academic and administrative experience in tertiary education ;

(d) have 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 5 years in the first instance and may be eligible for re-appointment for a further term of 4 years only and on such terms and conditions as to emoluments, and conditions of service as may be specified in his letter of appointment ;

(2) The Executive Secretary shall, subject to the general direction of the Board of Trustees, be responsible for—

(a) the day- to- day administration of the Fund ;

(b) keeping the books and proper records of the proceedings of the Board of Trustees ;

Appointment
of the
Executive
Secretary
and other
staff of the
Fund.

- (c) the administration of the secretariat of the Board of Trustees ; and
- (d) the general direction and control of all other employees of the Fund.

(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, be required to assist the Board of Trustees and the Executive Secretary in the discharge of their functions under this Act ; and

(b) pay to persons so employed such remuneration (including allowances) as the Board of Trustees may, with the approval of the National Salaries, Incomes and Wages Commission, determine.

Pension.

9.—(1) Service in the Fund shall be approved service for purposes of pension.

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

(3) Notwithstanding in subsection (1) or (2) of this section, nothing 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.

Act No. 2,
2004.

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

Offences.

10.—(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 Service shall serve on the company, a demand note for the unpaid tax plus a sum which is equal to 5 per cent of the tax ; and

(b) if a sum demanded under paragraph (a) of this subsection is not paid within 2 months of the demand, the company is guilty of an offence under this Act ; and

(3) Notwithstanding any other provision in this Act, it shall be the duty and responsibility of every company liable to pay education tax to ensure that

its annual returns are filed with the Service for the purpose of assessment of education tax.

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

(5) 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 that capacity 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.—(1) Except as otherwise provided in this Act, a person guilty of an offence under this Act shall, on conviction, be liable— Penalties.

(a) for a first offence, to imprisonment for a term of 6 months or to a fine of up to ₦1,000,000.00 or both ; and

(b) for a second and subsequent offence to imprisonment for a term of 12 months or to a fine of up to ₦2,000,000.00 or both.

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

(3) Notwithstanding subsection (1)(a) and (b) of this section, where any company or corporate body liable to file an education tax return under this Act fails in any year to file such return, the Service, if it is of the opinion that such a company or corporate body is liable to pay education tax, may, according to the best of its judgment, determine the amount of assessable profit of such company and make an assessment of education tax in accordance with the provisions of this Act.

12. The Federal High Court shall have jurisdiction to try offenders under this Act. Jurisdiction.

Limitation of
suits against
the Fund,
etc. Cap. P
41 LFN,
2004.

13.—(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.

(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 the 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 3 months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.

(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.

(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.

Service of
documents.

14. A notice, summons or other document required or authorized 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.

Restriction
on execution
against
property of
the Fund.

15.—(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.

(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.

Indemnity of
officers.

16. 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.

17. The Minister may, on the recommendation of the Board of Trustees and subject to the approval of the President, make regulations generally for the purposes of this Act and the due administration thereof. Regulations.

18. The Education Tax Act; CAP E4, Laws of the Federation of Nigeria, 2004 and the Education Tax Fund (Amendment) Act No. 17, 2003 are repealed. Repeal.

19.—(1) Without prejudice to section 6 of the Interpretation Act, the repeal of the enactment specified in section 18 of this Act shall not affect anything done under or pursuant to that enactment. Savings.

(2) The rights, interests, obligations and liabilities of the Fund existing before the commencement of this Act under any contract or instrument, or in law or in equity, apart from any contract or instrument, shall, by virtue of this Act, be assigned to and vested in the Fund established by this Act.

(3) Any such contract or instrument as is mentioned in subsection (2) of this section shall be of the same force and effect against or in favour of the Fund established by this Act and shall be enforceable as fully and effectively, as if the Fund established by this Act has been named therein or had been a party thereto.

(4) The Fund established by this Act shall be subject to all the obligations and liabilities to which the Fund established under the repealed Acts was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Fund established by this Act, as they had against the Fund established under the repealed Act immediately before the commencement of this Act.

(5) Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the Fund established by the repealed Act in respect of any right, interest, obligation or liability of the former Fund may be continued or as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Fund established by this Act, to the same extent that such proceeding, cause of action or determination might have been continued, commenced or enforced by or against the former Fund as if this Act had not been made.

(6) All assets, funds, resources and other movable property which immediately before the commencement of this Act were vested in the former Fund shall, by virtue of this Act and without further assurance, be vested in the Fund established by this Act.

(7) Persons who immediately before the coming into force of this Act were holders of offices in the repealed Education Trust Fund shall—

(a) continue in office ;

Act No. 2,
2004.

(b) have their previous service in the repealed Education Trust Fund counted as service for the purposes of pension payable under the Pension Reform Act ; and

(c) be deemed to have been appointed to the offices by the statutory body established by this Act.

Interpretation.

20.—(1) In this Act—

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

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

“*company*” means a company registered in Nigeria ;

“*Fund*” means the Tertiary Education Trust Fund established under section 3 of this Act ;

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

“*the Service*” means the Federal Inland Revenue Service established under the Federal Inland Revenue Service (Establishment) Act, 2007 ;

“*Tertiary Educational Institution*” means a University, a Polytechnic or a College of 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.

Citation.

21. This Act may be cited as the Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011.

SCHEDULE

Section 4 (6)

SUPPLEMENTARY PROVISIONS RELATING TO 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. Proceedings of the Board of Trustees.

(2) The quorum of the Board of Trustees shall be 5 members and the quorum of any committee of the Board of Trustees shall be determined by the Board of Trustees.

2.—(1) The Board of Trustees shall meet not less than 4 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 3 other members, he shall summon a meeting of the Board of Trustees to be held within 14 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 them 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 and shall not count towards a quorum.

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. Committees.

(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.

4.—(1) The fixing of the seal of the Fund shall be authenticated by the signature of the Chairman and any other person authorized generally or specially to act for that purpose by the Board of Trustees. Miscellaneous.

(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 Executive Secretary or any person generally or specially authorized 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.

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.

I certify, in accordance with Section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

SALISU ABUBAKAR MAIKASUWA, mni
Clerk to the National Assembly
2nd day of June, 2011.

EXPLANATORY MEMORANDUM

This Act repeals the Education Tax Act Cap. E4, Laws of the Federation of Nigeria, 2004 and Education Tax Fund Act No. 17, 2003 and establishes the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing the tax to public tertiary institutions in Nigeria.

SCHEDULE TO TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC.) ACT, 2011

(1) <i>Short Title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of the Contents of the Bill</i>	(4) <i>Date passed by the Senate</i>	(5) <i>Date Passed by the House of Representatives</i>
Tertiary Education Trust Fund (Establishment, Etc.) Bill, 2011.	An Act to repeal the Education Tax Act Cap. E4 Laws of the Federation of Nigeria, 2004 and Education Tax Fund (Amendment) Act No. 17, 2003 and establish the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing the Education Tax to public tertiary education institutions in Nigeria ; and for related matters.	This Act repeals the Education Tax Act Cap. E4, Laws of the Federation of Nigeria, 2004 and Education Tax Fund Act No. 17, 2003 and establishes the Tertiary Education Trust fund charged with the responsibility for imposing, managing and disbursing the education tax to public tertiary institutions in Nigeria.	26th May, 2011.	25th May, 2011.

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

I ASSENT.



SALISU ABUBAKAR MAIKASUWA, mni
Clerk to the National Assembly
2nd Day of June, 2011.

DR GOODLUCK EBELE JONATHAN, GCFR
President of the Federal Republic of Nigeria
3rd Day of June, 2011.