

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

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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.

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

A BILL

FOR

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.

[] Commencement

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

1.	<p>from the commencement of this Act, there shall be charged and there shall be an annual tertiary education tax which shall be assessed, collected and administered in accordance with the provisions of this Act.</p> <p>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").</p> <p>The assessable profit of a company shall be ascertained in the manner provided in the Companies Income Tax Act or the Petroleum Profits Tax Act (whichever Act referred to as "the Act") as the case may be.</p> <p>Without prejudice to the provision of subsection (3) of this section, the provisions of the Petroleum Profit Tax Act shall not apply to the assessment, collection and payment of tertiary education tax and all companies liable to tax under the Petroleum Profit Tax Act shall be liable to pay the tax to the extent of the tax imposed under this Act.</p>	Imposition of tertiary education tax.

2.	<p>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-</p> <p>shall, when assessing a company, for companies income tax or petroleum profit tax for an accounting period of the company, also proceed to notify the company for the tax due under this Act; and</p> <p>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 collection of the tax under this Act.</p> <p>The tax imposed by this Act shall be due and payable</p> <p>60 days after the Service has served notice of the assessment on a company.</p> <p>The Service may, for the purpose of assessment and collection of the tax imposed by this Act, devise such forms</p>	Assessment and collection of tax.
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	ay deem necess	
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3.	<p>ere is established the Tertiary Education Trust Fund (in this Act d to as “the Fund”) for the rehabilitation, restoration and consolidation of tertiary education in Nigeria</p> <p>shall be managed by the Board of Trustees established under section 10 of this Act.</p> <p>he Fund –</p> <p>ll be a body corporate with perpetual succession and a common seal.</p> <p>ay sue and be sued in its corporate name.</p> <p>e Service shall pay the tax collected under this Act into the</p> <p>and shall, when doing so, submit to the Fund, in such</p>	<p>Establishment of the Tertiary Education Trust Fund</p>
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As the Board of Trustees shall approve, a return

including-

the name of the company making the payment;

the amount collected;

the assessable profit of the company for the accounting period; and

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

The Fund shall, before disbursement of the amount in the Fund, set aside in each year, an amount not exceeding 5 percent of the total monies coming to the Fund in the preceding year which shall be applied-

to the cost of administration and management of the Fund;

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

	<p>r project monitoring;</p>	
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	<p>meet all the needs of the Fund necessary for the due</p>	
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	<p>stration and implementation of the purpose of this</p>	
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4.	<p>There is established for the Fund, a Board of Trustees (in this Act referred to as "the Board of Trustees") which shall consist of –</p> <p>Chairman who shall –</p> <p>be a person with good knowledge in finance and administrative matters;</p> <p>have qualifications and experiences as are required to perform the functions of that office under this Act.</p> <p>persons, each representing a geo-political zone in the country;</p> <p>representative each of the following Federal Ministries, who shall not be below the rank of a Director-</p> <p>Education; and</p> <p>Finance;</p> <p>representative each from the Universities, Polytechnics and Colleges of Education; and</p>	ment of the Board of Trustees
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Executive Secretary, who shall be the Secretary to the Board of Trustees.

The membership of the Board of Trustees shall reflect the six

political zones of the Federation.

The members Board of Trustees shall-

persons with considerable experience from both the public and private sectors to represent the business, financial and education sectors.

appointed by the President on the recommendation of the Minister.

Other than the ex-officio members, each hold office for a term of 4 years in the first instance and may be eligible for reappointment for a further term of 4 years and no more;

paid such remuneration and allowances as the President may, from time to time, determine.

Rule

the Board of Trustees shall meet for the conduct of its ordinary meetings in a calendar year.

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

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

5.	<p>A member of the Board of Trustees shall cease to hold office if</p> <p>becomes of unsound mind;</p> <p>comes bankrupt or makes a compromise with his creditors;</p> <p>convicted of a felony or any offence involving dishonesty; or</p> <p>guilty of serious misconduct in relation to his</p> <p>A member of the Board of Trustees may be removed from office resident if he is satisfied that it is not in the interest of the Fund or that the member should continue in that office.</p> <p>A member of the Board of Trustees, other than an ex-officio, m his appointment by a notice in writing under his hand, addressed resident.</p> <p>Where a vacancy occurs in the membership of the Board of es, it shall be filled by the appointment of a successor to hold off</p>	<p>Cessation of Membershi p</p>
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	mainder of the term of office of his predecessor, so that the succe represent the same interest and shall be appointed by the Preside	
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6.

Board of Trustees shall-

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onitor and ensure collection of education tax by the Service and e
r of same to the Fund;

nage and disburse the tax imposed by this Act;

se with the appropriate ministries or bodies responsible for colle
e keeping of the tax;

eive requests and approve admissible projects after due conside

ensure disbursement of funds to various public tertiary educational institutions in Nigeria;

monitor and evaluate execution of the projects;

invest funds in appropriate and safe securities;

advise the Federal Government on its activities and progress through annual and audited reports;

review progress and suggest improvement within the provisions of

	<p>such other things as are necessary or incidental to the objects of under this Act or as may be assigned by the Federal Government</p>	
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	<p>make and issue guidelines, from time to time, to all beneficiaries or sement from the Fund on the use of monies received from the Fu</p>	
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	<p>nerally to regulate the administration, application and disbursemen s from the Fund under this Act.</p>	
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the Board of Trustees shall administer the tax imposed by this Act
use the amount in the Fund to Federal and State tertiary education
tions specifically for the provision or maintenance of—

ment and
stration of the F

essential physical infrastructure for teaching and learning;

structional material and equipment;

search and publication;

ademic staff training and development; and

y other need which, in the opinion of the Board of Trustees, is cr
sential for the improvement of quality and maintenance of stand
higher educational institutions.

e Board of Trustees shall administer, manage and disburse the ta
ed by this Act on the basis of-

funding of all public tertiary educational institutions;

equality among the 6 geo-political zones of the Federation in th
f special intervention; and

ality among the States of the Federation in the case of regular
ntion;

e distribution of funds shall be in the ratio of 2:1:1 as between
sities, Polytechnics and Colleges of Education.

The Board of Trustees shall have power to give due considerat
cularities of each geo-political zone in the disbursement and
ement of the tax imposed by this Act between the various levels
r education.

The Minister shall, on the recommendation of the Board of Trus
bject to approval by the President, make guidelines for disburse
s under this Act.

8.	<p>ere shall be for the Fund an Executive Secretarywho shall-</p> <p>appointed by the President on the recommendation of the Minis</p> <p>the Chief Executive and Accounting Officer of the Fund;</p> <p>a person with good knowledge and cognate academic and strative experience in tertiary education;</p> <p>re qualifications and experience as are appropriate for a person ed to perform the functions of that office under this Act; and</p>	<p>Appointme nt of the Executive Secretary and other staff of the Fund</p>
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ld office for a period of 5 years in the first instance and may be e
ppointment for a further term of 4 years only and on such terms
ons as to emoluments, and conditions of service as may be spec
etter of appointment;

e Executive Secretary shall, subject to the general direction of th
of Trustees, be responsible for-

e day-to-day administration of the Fund;

eping the books and proper records of the proceedings of the Bo
es;

e administration of the secretariat of the Board of Trustees; and

general direction and control of all other employees of the Fund.

The Board of Trustees shall have power to-

employ either directly or on transfer or secondment from any civil or
service in the Federation such number of employees as may, in
n 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

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

9.

Service in the Fund shall be approved service for purposes of Pension

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

Notwithstanding in subsection (1) or (2) of this section, nothing in this section shall prevent the appointment of a person to any office on terms which do not include the grant of pension and gratuity in respect of that office.

For the purposes of the application of the provisions of the Pension 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.

2, 2004

10.	<p>person who contravenes or fails to comply with provisions of this Act.</p> <p>of an offence under this Act.</p> <p>subject to the provisions of subsection (3) of this section-</p> <p>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 for the unpaid tax plus a sum which is equal to 5 per cent of the tax due;</p> <p>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</p> <p>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</p>	Offences
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returns are filed with the Service for the purpose of assessment
ion tax.

e Board of Trustees shall, remit in whole or in part a sum added t
tax under subsection (2)(a) of this section.

ere an offence under this Act is committed by a body corporate o
er association of individuals-

ery director, manager, secretary or other similar officer of the bod
ate;

ery partner or officer of the firm;

	every person concerned in the management of the affairs of the ation; or	
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	every person who was purporting to act in that capacity is severally offence and liable to be proceeded against and punished for the e in like manner as if he had himself committed the offence, unle that the act or omission constituting the offence took place witho edge, consent or connivance.	
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11.	<p>cept as otherwise provided in this Act, a person guilty of an offence under this Act shall, on conviction, be liable-</p> <p>a first offence, to imprisonment for a term of 6 months or to a fine of up to N1,000,000.00 or both; and</p> <p>a second and subsequent offence to imprisonment for a term of 6 months or to a fine of up to N2,000,000.00 or both.</p> <p>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 may become due under this Act.</p> <p>Notwithstanding subsection (1)(a) and (b) of this section, where any company or corporate body liable to file an education tax return under this</p>	Penalties
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	<p>s in any year to file such return, the Service, if it is of the opinion</p> <p>company or corporate body is liable to pay education tax, may,</p> <p>ing to the best of its judgment, determine the amount of assessa</p> <p>of such company and make an assessment of education tax in</p> <p>ance with the provisions of this Act.</p>	
12.	<p>federal High court shall have jurisdiction to try offenders under this</p>	Jurisdiction

13.	<p>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.</p> <p>Notwithstanding anything contained in any other law or enactment, no suit shall lie or be instituted 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 of the Act or any other law or enactment, or of any public duty or in respect of any alleged neglect or default in the execution of such law or enactment, duty or authority, shall lie or be instituted or brought unless-</p> <p>(a) the suit is commenced within 3 months next after the act, neglect or default complained of; or</p> <p>(b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.</p>	<p>Limitation of suits against the Fund, etc Cap.P41 LFN, 2004</p>
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	<p>suit shall be commenced against a member of the Board of Trustees, Executive Secretary, officer or employee of the Fund before the expiration 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.</p> <p>The notice referred to in subsection (3) of this section shall clearly and distinctly state the cause of action, the particulars of the claim, the name and abode of the intending plaintiff and the relief which he claims.</p>	
14.	<p>Any writ, 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 shall 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.</p>	Service of Documents

15.	<p>any action or suit against the Fund, no execution or attachment of assets in the nature thereof shall be issued against the Fund.</p> <p>any sum of money which may, by the judgment of any court, be awarded to the Fund shall, subject to any direction given by the court when the appeal of the said judgment has been given, be paid from the general reserve fund of the Fund.</p>	<p>Restriction on execution against property of the Fund</p>
16.	<p>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 in respect of 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.</p>	<p>Indemnity of officers</p>

17.	Minister may, on the recommendation of the Board of Trustees and to the approval of the President, make regulations generally for of this Act and the due administration thereof.	Regulations
18.	Education Tax Act, CAP E4, Laws of the Federation of Nigeria, 200 e Education Tax Fund (Amendment) Act No. 17, 2003 are repeal	Repeal

19. Without prejudice to section 6 of the Interpretation Act, the repeal of any enactment specified in section 18 of this Act shall not affect anything done or pursuant to that enactment.

The rights, interests, obligations and liabilities of the Fund existing before the commencement of this Act under any contract or instrument, or in relation to any property, apart from any contract or instrument, shall, by virtue of this Act, be transferred to and vested in the Fund established by this Act.

Any such contract or instrument as is mentioned in subsection (2) of section 18 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 had been named therein or had been a party thereto.

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 as they had against the Fund established under the repealed Acts.

shed by this Act, as they had against the Fund established under the former Act immediately before the commencement of this Act.

Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the Fund established by this 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 determined by a court of law, tribunal or other authority or person made competent by or against the Fund established by this Act, to the same extent as if such proceeding, cause of action or determination might have been commenced, commenced or enforced by or against the former Fund as if no change had not been made.

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.

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

continue in office;

and their previous service in the repealed Education Trust Fund shall be
taken into account for the purposes of pension payable under the Pension Refund
Act.

Persons who were appointed to the offices by the statutory provisions
enacted before the 2nd day of February, 2004, shall be deemed to have been appointed to the offices by the statutory provisions
enacted by this Act.

2, 2004

20.

his Act-

means the Companies Income Tax Act or the Petroleum Profits Tax Act, whichever case may be;

etation

of Trustees” means the Board of Trustees established under section 1 of the Tertiary Education Trust Fund Act;

any” means a company registered in Nigeria;

means the Tertiary Education Trust Fund established under section 1 of the Tertiary Education Trust Fund Act;

er” means the Minister charged with responsibility for matters re
cation;

ervice” means the Federal Inland Revenue Service established u
ederal Inland Revenue Service (Establishment) Act, 2007;

y educational institution” means a University, a Polytechnic or a
e of Education;

ere no provision is made in this Act for a matter relating to the
sment and collection of the tax imposed by this Act, the provision
ts relating to the assessment and collection of companies incom
oleum profit tax, as the case may be, shall apply *mutatis mutand*
atter.

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

Section 4(6)

SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD OF TRUSTEES

Proceedings of the Board of Trustees

(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.

(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.

(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.

Committees

(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.

Miscellaneous

(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.

(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.

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

Schedule to Tertiary Education Trust Fund (Establishment, Etc.) Bill, 2011

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE HOUSE OF REPRESENTATIVES	DATE PASSED BY THE HOUSE OF SENATORS
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	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	25th May, 2011	25th May, 2011

	for imposing, managing and disbursing the Education Tax to public tertiary education institutions in Nigeria; and for related matters.	responsibility for imposing, managing and disbursing the education tax to public tertiary institutions in Nigeria.		
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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.

SALISU ABUBAKAR MAIKASUWA, mni

Clerk to the National Assembly

2ND Day of June, 2011

DR. GOODLUCK EBELE JONATHAN, GCFR

I ASSENT.

President of the Federal Republic of Nigeria

3rd Day of June, 2011