Companies operating in Nigeria to pay a new Police Fund Levy

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Background

The Nigerian Police Trust Fund Act (the "Act") was passed by the National Assembly in April 2019, and signed into law by the President on 24 June 2019.

The Act establishes a Fund; proceeds from which will be used to train police personnel and procure security machinery and equipment.

We have highlighted some key provisions of the Act and our comments on its impact.

Summary of the Act

- *Imposition of a levy*: The Act imposes a levy of 0.005% of the "net profit" of companies 'operating business' in Nigeria.
- *Funding from Federation Account and other sources*: The Fund will also consist of 0.5% total revenue accruing to the Federation Account, in addition to proceeds from grants, intervention funds, aids, donations, investment income and so on.
- *Establishment of a Board*: The Act establishes a board responsible for administering the Fund, making investment decisions, and fulfilling other objectives of the Act.
- *Duration of the Fund*: The Fund will be wound up 6 years after its establishment. The assets and liabilities will be transferred to the Nigeria Police Force.

Takeaway

0.005% levy (N5 per N100,000) of net profits may not be very significant, but it places additional administration on corporate taxpayers. Since it is imposed on companies 'operating business' in Nigeria, it is likely to also apply to permanent establishments of foreign companies.

Although funding of the police and improving security is a priority issue, it could be funded through more allocations from already existing revenue streams. Introducing earmarked taxes could create concerns around the stability of the tax regime in Nigeria.

The Act specifies that the Fund's income is tax exempt, but does not make provision for tax deductibility for the companies making the payments. Also, although the Act refers to the contribution as a 'levy', it should be classified as an 'income tax' under IAS 12, as it is imposed on income/profits. It is therefore not tax deductible based on CITA which specifically disallows taxes on income or profits of companies. 'Net profit' for computing the levy is not defined in the Act. Therefore, companies should be able to apply the ordinary meaning – which is profits after tax, but before the levy.

The Act does not contain provisions on collection and administration of the levy. A further regulation would therefore be required if the Federal Inland Revenue Service (FIRS) is to be responsible for the administration. Any other approach would lead to high cost of administration.

The Act provides for audit and presentation of an annual report to the President. The general public will be expecting more accountability and transparency in managing the Fund. Another level of accountability may be to ensure that the Board is composed of members from both the public service and the private sector.

We envisage that any regulation or guidelines to be issued under the new law will spell out details regarding commencement and administration.

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