



Tax Alert

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House of Representatives investigates alleged non-remittance of contributions to NSITF

The Ad-Hoc Committee of the House of Representatives (“the Committee”) on the “*Investigation of Non-remittance of Contributions into the Nigerian Social Insurance Trust Fund (NSITF)*” issued a Public Notice on Monday, 23 September 2019 inviting 1,124 organizations across the Federal, States and Local Governments, and the private sector to an investigative hearing. The hearing, which is scheduled to hold from 7 – 11 October 2019, is to enable the Committee to ascertain the level of compliance by the affected organizations with their obligation to make contributions to the NSITF from 2010 till date.

Affected organizations are required to submit a soft copy and 20 hard copies of their evidence of registration with, and remittance to NSITF, to the Committee Secretariat in Abuja, not later than 4 October 2019.

Comments

1. Section 33 of the Employees’ Compensation Act (ECA), 2010 requires employers to contribute a minimum of 1% of their total monthly payroll to the Employees’ Compensation Fund (ECF) managed by the NSITF Management Board (“the Board”). Section 36 of the ECA empowers the Board to institute relevant actions to recover any unpaid contribution from employers. It is in exercise of this power that the NSITF has been conducting compliance reviews on employers to ascertain the accuracy of their contributions and recover their unremitted contributions. This calls to question the decision of the House of Representatives (HORs) to investigate selected

employers for alleged non-remittance of ECF contributions to the NSITF. Why is the HORs introducing another layer of enforcement of remittance of ECF contribution at the expense of employers, especially those who had passed through NSITF audits? Did it perceive laxity on the part of NSITF? If this is the case, why is the Minister of Employment, Labour and Productivity, who has oversight of the NSITF under Section 61 of the ECA, not being directed by the HORs to ensure NSITF lives up to expectation? Should the HORs be conducting investigation such as this?

2. Section 88 of the 1999 Constitution of the Federal Republic of Nigeria grants the House of Representatives the power to investigate any matter in respect of which it has power to make laws. It, however, requires that such power is exercised only to make new laws, correct defects in existing laws, expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence, and in the administration of funds appropriated by it. Can the HORs' intended investigation really be justified in light of this provision when the objectives of the investigations that it is permitted to conduct by the Constitution are so limited? If its objectives are to *make new laws, correct defects in existing laws, expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence, and in the administration of funds appropriated by it*, is the approach being taken in this instance the best approach to achieve its objectives? Could the investigation not be done by limiting its scope to the operational review of the NSITF and proposing amendments to the ECA to deal with any perceived lapses in the NSITF operation? Will the HORs not be turning itself to an agency for debt collection in the event that any employer is delinquent in its monthly remittance of its ECF contributions to the NSITF? These are questions for the Committee to ponder upon and resolve before proceeding with the proposed investigation.
3. Other areas of concern are:
 - a. The 10-year period to be covered by the investigation. Businesses, on the average, typically retain documents for 6 years in line with Section 332(2) of the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004. Asking them to produce documents beyond 6 years is, therefore, onerous and unrealistic especially where they have a 6-year document retention policy further to which they have destroyed older documents.
 - b. The 2-week timeframe for preparation and submission of the documents required. Other things may have to suffer for any employer to be able to comply within the tight deadline. It must also be said that the resulting disruption is not compatible with ease of doing business.
 - c. The 5-day timeframe for the investigation. How would the Committee cope with the sheer volume of documents and the number of affected employers within the short period? Can the employers really get fair hearing within the limited time, if time is not sufficient for them to present their case and defend themselves before the Committee?

- d. 1,124 employers are a minute fraction of the employers of labour in the country. Is this the first round of investigation? Or what happens to the remaining multitude of employers?

The above questions and concerns show the challenges of employers with the proposed investigation of non-remittance of ECF contributions to the NSITF by the HORs Committee. Hopefully, these would be addressed by the HORs before the proposed hearing date.

Please click [here](#) to access the Public Notice

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