

**EARMARKED FUNDS CAPPING AND
REALIGNMENT BILL, 2017**

ARRANGEMENT OF SECTIONS

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Identified Earmarked Funds

Earmarked Funds Capping and Realignment Bill, 2017

A
BILL

ENTITLED

EARMARKED FUNDS CAPPING AND REALIGNMENT ACT, 2017

AN ACT to provide a cap for Earmarked Funds and to provide for related matters.

PASSED by Parliament and assented to by the President:

Application

1. (1) This Act applies to any Earmarked Fund and Internally Generated Fund provided for in an enactment.

(2) Where a provision in an enactment relating to an Earmarked Fund or an Internally Generated Fund is inconsistent or conflicts with a provision of this Act, this Act shall, except as otherwise provided in subsection (5) of section 3, prevail.

Objects

2. The objects of this Act are to

- (a) free up public resources by placing a cap on the Earmarked Funds specified in the Schedule to ensure that tax revenue encumbered by those Funds as a result of allocations is twenty-five percent of tax revenue; and

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- (b) empower the Minister, in consultation with the relevant sector Minister, to review the enactments under which the Earmarked Funds specified in the Schedule are established, and to make a determination as to whether or not a particular Earmarked Fund has outlived its usefulness and should cease to exist.

Earmarked Funds capped

3. (1) The Minister shall ensure that the budgetary allocation

- (a) made in each year to the Earmarked Funds specified in the Schedule, and
- (b) encumbered in each year by the Earmarked Funds specified in the Schedule

is twenty-five percent of tax revenue.

(2) The Minister shall, in furtherance of the obligation under subsection (1), ensure that the capped Earmarked Funds amount of twenty-five percent of tax revenue is allocated to the Earmarked Funds specified in the Schedule, each according to a weight which shall be approved by Parliament as part of the Annual Budget for each fiscal year and each Earmarked Fund shall be adjusted accordingly.

(3) The Minister shall, in determining the weight to be applied to an Earmarked Fund for submission to Parliament for approval, be guided by

- (a) the allocation of budget revenue that the Earmarked Fund would have normally received if a cap was not placed on those Earmarked Funds, and
- (b) the corresponding weight that would have applied to the Earmarked Fund.

(4) The identified Earmarked Funds specified in the Schedule and their weights for each fiscal year shall be appended to the Annual Budget.

(5) Despite subsection (2), the Minister shall, in accordance with clause (2) of article 252 of the Constitution, make a monetary allocation of not less than five percent of total revenue to the District Assemblies Common Fund.

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(6) Despite subsections (2) and (5), where the priority of Government as established in a Budget Statement for a particular year requires that additional budgetary allocation be made to an Earmarked Fund specified in the Schedule, the Minister shall make additional budgetary allocation to that particular Earmarked Fund.

Distribution of Internally Generated Funds

4. The Minister shall allocate the capped Internally Generated Funds amount to the Ministries, Departments or Agencies that are permitted by law to retain Internally Generated Funds according to their respective weights that existed immediately before the coming into force of this Act.

Realignment of revenue freed

5. The Minister shall realign revenue that is freed as a result of

- (a) the capping of Earmarked Funds, or
- (b) an Act of Parliament passed in pursuance of a Bill laid in Parliament by the Minister in accordance with subsection (3) of section 6,

and the realigned Earmarked Fund shall form part of the national budget.

Review of enactments establishing Earmarked Funds

6. (1) The Minister shall, on the commencement of this Act,

- (a) conduct a review of each enactment that establishes an Earmarked Fund specified in the Schedule to determine whether or not the Earmarked Fund has outlived its usefulness; and
- (b) conduct a review every two years after a review under paragraph (a).

(2) The Minister shall, in consultation with the relevant sector Minister, consider the following in making a determination under subsection (1):

- (a) the purpose for which the Earmarked Fund was established;
- (b) whether or not the economic or social need for which the Earmarked Fund was established has been fully or largely achieved or is not likely to be ever achieved as it is currently set up;

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- (c) whether or not the State institution or Fund that is the beneficiary of the Earmarked Fund is able to raise revenue on its own to meet the economic or social need for which it was established; and
- (d) where the State institution or Fund is able to generate revenue, whether or not that revenue is able to sustain that State institution or Fund in achieving the object for which the Earmarked Fund was established if annual allocation of revenue to the Earmarked Fund is withdrawn.

(3) Where the Minister makes a determination under subsection (1), that an Earmarked Fund has outlived its purpose, the Minister shall cause a Bill to be prepared and laid in Parliament

- (a) for the repeal of the enactment that establishes that Earmarked Fund, or
- (b) for an amendment to the enactment, to remove the allocation of Earmarked Funds.

Interpretation

7. In this Act, unless the context otherwise requires,

“capped Earmarked Funds” means the total amount of all the Earmarked Funds remaining after a cap of twenty-five percent of total tax revenue has been applied to the aggregate of all the Earmarked Funds;

“Earmarked Fund” means a dedicated fixed portion of revenue that is set aside and allocated periodically, as required by the Constitution or an Act of Parliament, to a State institution or Fund specified in the Schedule to pay for the performance of a particular social activity, economic activity or economic programme of the Government;

“Earmarked Funds” means the aggregate of all dedicated fixed portions of revenue that are by the Constitution or an Act of Parliament set aside and allocated to the Earmarked Funds specified in the Schedule;

“Fund” means a fund established under the Constitution or an Act of Parliament;

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“Internally Generated Funds” means revenue generated from the activities of a government entity from its operations or provision of services, other than taxes collected by the Ghana Revenue Authority;

“Minister” means the Minister responsible for Finance;

“realigned Earmarked Funds” means the total amount of revenue that is freed up and reallocated to budget revenue after capping Earmarked Funds;

“tax revenue” means revenue from taxes on income and property, goods and services and international trade, other than petroleum revenue under the Petroleum Revenue Management Act, 2011 (Act 815); and

“total revenue” includes the revenues collected by or accruing to the central Government other than foreign loans and foreign grants, non-tax revenue, petroleum revenue paid into the Petroleum Holding Fund under section 3 of the Petroleum Revenue Management Act, 2011 (Act 815) and revenues already collected by or for the District Assemblies under any enactment.

Repeal

8. (1) Paragraphs (a), (b) and (d) of subsection (1) of section 5 of the Ghana Infrastructure Investment Fund Act, 2014 (Act 877) are repealed.

(2) Any amount earmarked for purposes of the repealed enactments under subsection (1) is hereby realigned in accordance with section 5.

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SCHEDULE

(Sections 2(a) and (b), 3(1), (2), and (4) and (6), 6(1)(a) and 7)

IDENTIFIED EARMARKED FUNDS

SRN	ITEM
	Grants to other Government Units
1.	National Health Fund
2.	Education Trust Fund
3.	Road Fund
4.	Petroleum Related Funds (Energy Fund)
5.	District Assemblies Common Fund
6.	Retention of Internally Generated Funds (IGF)
7.	Transfers to Ghana National Petroleum Corporation (GNPC) from petroleum revenue
8.	Other Earmarked Funds
(a)	o/w Youth Employment Agency
(b)	o/w Students Loan Trust
(c)	o/w Export Development Levy
(d)	o/w Ghana Airport Company Limited
(e)	o/w Minerals Development Fund
(f)	o/w Ghana Revenue Authority (GRA) Retention
(g)	o/w Plastic Waste Recycling Fund

Date of *Gazette* notification: 15th March, 2017.

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MEMORANDUM

The object of the Bill is to cap Earmarked Funds at twenty-five percent of total tax revenue so as to provide for the re-alignment of tax revenue that is freed up as a result of the capping for use as budget support.

Dedicating predetermined percentages of tax revenue for predetermined future uses creates rigidity and credibility problems for budget implementation. For example, in the year 2016, fourteen earmarked funds took up to thirty-two point nine percent of tax revenue, up from twenty-eight point two percent in the year 2015 and twenty-five point two percent in the year 2014. This rigid dedication of tax revenue means that the ability of Government to shift public spending from one expenditure line to another is hindered even where current exigencies require Government to do so. For example, for statutory reasons, Government is unable, in any year, to redirect the use of Internally Generated Funds or vary transfers to Ghana National Petroleum Corporation in favour of other critically needed expenditure in other sectors of the economy. Consequently, it has become difficult to use public spending as an instrument to respond adequately to changing public needs.

This rigidity is compounded by the fact that, currently, the country's total revenue is virtually consumed by three main budgetary lines; that is wages and salaries, interest payments and amortisation, and earmarked funds. These three items alone accounted for one hundred and seven percent of Government revenue in 2016. As a result, all other governmental activity outside these three budget lines have to be financed by borrowing or aid.

The persistent resort to borrowing for any additional expenditure to meet the aspirations of our people is also not sustainable.

Further, growing budget rigidities imposed by earmarked funds threaten the credibility of our national budgets. In 2014, earmarked funds by law constituted about thirty-three percent of total tax revenue, but only twenty-five percent was actually transferred by the close of the required statutory time lines. In 2015, only twenty-eight percent was actually

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transferred out of the thirty-one percent expected by law; and in 2016, just thirty-three percent was transferred compared to the thirty-six percent required by law. Put in another way, we have been unable, as a nation, to comply with our statutory and budget requirements in respect of earmarked funds because they impose unhelpful rigidities in our public expenditure and development strategies.

It is to address these challenges, whilst respecting the rationale for the earmarking of these public funds, that Government seeks to cap the Earmarked Funds as a percentage of total tax revenue, to twenty-five percent in order to offer Government greater flexibility to respond to changing needs and priorities of the citizenry. This has been determined with the recent history of dedicated funds as a guide. The twenty-five percent cap reflects a balance between the priority considerations associated with existing Earmarked Funds, and, the need for Government to use, and to have readily available, public resources to respond to emerging public priorities.

This Bill therefore seeks to cap Earmarked Funds as a percentage of total tax revenue by placing an obligation on the Minister for Finance to ensure that Earmarked Funds for each year is twenty-five percent of tax revenue.

This Bill also provides for the realignment of the tax revenue that is freed up, as a result of the capping, for use as general budget support.

Furthermore, this Bill seeks to repeal paragraphs *(a)*, *(b)* and *(d)* of subsection (1) of section 5 of the Ghana Infrastructure Investment Fund Act, 2014 (Act 877), and to realign the amounts of Value Added Tax and Annual Budget Funding Amount that are allocated to the Ghana Infrastructure Investment Fund under those paragraphs, back to the budget. Government believes that the Ghana Infrastructure Investment Fund, as established, must be given the opportunity to independently achieve the objectives for which it was set up, by leveraging funds already allocated to the Fund up to December 2016, and attracting private capital to achieve its development agenda.

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Clause 1 deals with the application of the Bill. The Bill applies to any Earmarked Fund and Internally Generated Fund provided for in an enactment. Where a provision in an enactment relating to an Earmarked Fund or Internally Generated Fund is inconsistent or conflicts with a provision of this Bill, this Bill, except as otherwise provided in subsection (5) of section 3, prevails.

Clause 2 states the objects of the Bill. The objects are to free up public resources by placing a cap on the Earmarked Funds specified in the Schedule to the Bill to ensure that tax revenue encumbered by those Funds as a result of allocations to them is twenty-five percent of tax revenue. The Bill also seeks to empower the Minister, in consultation with the relevant sector Minister, to review the enactments under which the Earmarked Funds specified in the Schedule are established, and to make a determination as whether or not a particular Earmarked Fund has outlived its usefulness and therefore needs to cease to exist.

Clause 3 places an obligation on the Minister responsible for Finance to ensure that budgetary allocations to Earmarked Funds in each year are twenty-five percent of tax revenue. The *clause* requires the Minister to take into consideration and comply with clause (2) of article 252 of the Constitution in the performance of the obligation to ensure that the Earmarked Funds are twenty-five percent of tax revenue. Furthermore the *clause* allows the Minister responsible for Finance to make additional budgetary allocation to a particular Earmarked Fund specified in the Schedule, where the priority of Government as established in a Budget Statement for a particular year requires that additional budgetary allocation be made to that Earmarked Fund.

Clause 4 deals with the distribution of Internally Generated Funds.

Clause 5 requires the Minister responsible for Finance to realign revenue that is freed as a result of either the capping of Earmarked Funds or an Act of Parliament passed in pursuance of a Bill laid in Parliament by the Minister in accordance with *subclause* (3) of *clause 6*. The realigned Earmarked Fund is to form part of the national budget.

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Clause 6 deals with the review of enactments establishing Earmarked Funds. The *clause* further empowers the Minister to cause a Bill to be prepared and laid in Parliament for the repeal of an enactment that establishes an Earmarked Fund or for an amendment to an enactment to remove the allocation of Earmarked Funds where the Minister makes a determination that that Earmarked Fund has outlived its purpose.

Clause 7 is on the interpretation of words used in the Bill.

Clause 8 is on repeal. This provision repeals paragraphs (a), (b) and (d) of subsection (1) of section 5 of the Ghana Infrastructure Investment Fund Act, 2014 (Act 877) and provides further that any amount earmarked for purposes of the repealed enactments be realigned by the Minister responsible for Finance, in accordance with *clause 5*.

Furthermore, the Bill has a Schedule that contains a list of identified Earmarked Funds to be capped when the Bill is enacted.

MR. KEN OFORI-ATTA
Minister for Finance

Date: 20th March, 2017.