

While the Constitution may not specifically make tax compliance an eligibility condition to contest an election, those who have failed to declare their income honestly (by filing a return) and pay their taxes promptly can be disqualified under the Constitution if they are convicted under the PITA for failure to file returns and pay their taxes.

GLOBAL BEST PRACTICES

In many countries, effective tax compliance is considered a key moral and legal requirement for eligibility to hold public office. This is not simply a presentation of tax clearance certificate but a diligent and robust review of the amount of taxes paid and timeliness of payment compared to income earned in the relevant years, assets declaration and overall net worth of the aspirants.

In countries such as the United States, it has become the tradition for aspirants to the office of the President to publicly disclose or publish their tax returns. While this is not required by law, it is considered as necessary to earn the trust of the people and in turn enhance their tax morale and trust in government.

THE WAY FORWARD

Beyond the legal requirement and moral obligation to pay taxes, using tax non-compliance as a basis to disqualify politicians and tax evaders will pave the way for credible candidates given that it takes people of character to declare their income honestly and pay their taxes promptly. An honest and sincere introspection is required to get our tax bearings right, and we must have a re-orientation and reconstruct our tax culture.

To achieve this objective, the following action points are recommended:

- **Tax authorities** should verify full compliance with “honest declaration and prompt payment of taxes” before issuing TCC to any person (including political actors). Where taxes have not been paid in the past, TCCs should not be “sold” subsequently to such persons without imposition of fines and prosecution as may be necessary.
- **The Independent National Electoral Commission (INEC)** should ensure compliance with all applicable laws including section 85(4)(s) of PITA which mandates that a TCC be demanded for appointment or election into public office.
- **The ICPC and EFCC** should support the tax authorities and INEC in the discharge of the above functions.
- **The Judiciary** should provide guidance and proper interpretation in a manner that gives effect to the letters and spirit of the Constitution and all relevant laws.
- **The National Assembly** should amend the electoral law to specifically require full and effective tax compliance as a basis for eligibility for public office.
- The National Tax Policy mandates political parties to articulate and make public their tax agenda before and during election campaigns and the electorates must demand that from parties during elections.

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Chairman, Joint Tax Board*



JOINT TAX BOARD

**WHY EFFECTIVE
TAX COMPLIANCE
BY POLITICAL
LEADERS IS
CRITICAL FOR
NATIONAL
DEVELOPMENT**

BACKGROUND

The age-long theory of social contract holds that people's moral and political obligations derive from an agreement among them to form the society in which they live. It confers legitimacy on the authority of government over the people.

Put differently, government will lack legitimacy without the social contract and society will not be able to function as desired. At the centre of the social contract is the fact that while the government derives its powers from the people, they also contribute their resources mostly by way of taxes in return for social services, rule of law and good governance. Therefore, if the people do not pay taxes, there will be no organised society.

LEGAL FRAMEWORK

In recognition of the critical role of tax payments, section 24(2)(f) of the 1999 Constitution of the Federal Republic of Nigeria requires every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly. This means that political leaders, being citizens, are required to pay their taxes in addition to their responsibility to provide good governance and deliver on the people's expectations under the social contract.

Furthermore, section 3 of the Personal Income Tax Act (PITA) imposes tax on the income of every taxable person for each year of assessment from all sources inside or outside Nigeria including salaries, business profits, rent, interest, and

dividend. Section 41 mandates every taxable person to file a return containing true and complete statement of his income annually with the tax authority of the State in which he is a resident. A fine of N20,000 and a daily penalty of N2,000 is applicable for failure to file returns and pay the taxes due in addition to imprisonment for 6 months upon conviction.

Section 85 of PITA entitles a taxpayer to a tax clearance certificate (TCC) where the tax assessed for the previous 3 years have been fully paid while S.85(4)(s) mandates that a TCC be demanded for appointment or election into public office.

PROBLEM DEFINITION

Nigeria has a revenue problem because many people evade taxes. Consequently, the tax to GDP rating of the country is one of the lowest globally. Tax evasion is the illegal non-payment or underpayment of tax. Where an aspirant for a political office only pays a nominal amount to 'buy' a TCC for the purpose of political screening, such an individual is a tax evader as the very action confirms the failure to file returns and pay income tax (at least in the previous 3 years). Such a person is liable to be prosecuted as contained in the law.

In view of the political activities in the lead up to an election year, some States' tax authorities issued public notices prescribing the amounts to be paid by political aspirants seeking to obtain tax clearance certificates for various elective positions. Observations show that some asset

declarations made by political actors have been inconsistent with their tax status.

Sadly, there is no focus on whether these aspirants are legally and morally eligible to superintend over taxpayers' monies. Ironically, many of the aspirants were reported as "shopping" for TCCs in states where they can pay the least amounts notwithstanding where they are resident contrary to the clear provisions of section 41 of PITA.

Section 137 of the Constitution disqualifies a person who is under a sentence of imprisonment or fine for any offence from contesting for the office of President (there are similar sections regarding other political offices). While the Constitution does not specifically mention tax compliance or tax clearance certificate as a basis for disqualification, it is logical to infer that the Constitution expects that such persons would have been prosecuted in any case and sentenced to a fine or imprisonment thereby making them ineligible to hold any political office.

DECIDED CASE

The Court of Appeal in *KOLAWOLE & ANOR V. OYELEKE* (2011) seem to suggest that payment of tax as and when due is not a requirement for eligibility to contest an election under the Constitution.