

CITN Press release!

Subject your incomes to tax assessment and payment, CITN advises Professionals

The President of the Chartered Institute of Taxation of Nigeria, Chief Mark Anthony Dike has advised professionals to practise what they preach by ensuring they fulfil their civil responsibility to the government. Speaking on the recently settled face-off between the Chief Judge of Ondo State and the state branch of the Nigerian Bar Association, the CITN helmsman wondered why 'learned friends' of the bar could be at logger-heads on tax issues that are not constitutionally ambiguous.

Tracing the genesis of the rancor, Dike recalled an order by the Chief Judge of Ondo State directing that only persons proven to have paid their taxes could stand as sureties in matters subsisting in court for which a surety is required. This development subsequently elicited protests by the Nigerian Bar Association which insisted, according to reports that requirement to pay taxes had been substantially complied with by virtue of payment of practicing fees by lawyers. The NBA had further posited that the directive of the Chief Judge had limited the exercise of discretion by trial Courts to grant bail, thereby infringing on the liberty of citizens especially a suspect that could not afford the minimum tax imposed by Government.

The CITN President lamented that this controversy was uncalled for as what both parties could have easily done was to determine if the payment of tax is a discretionary duty or civic duty of the citizens of any state, determine the nexus between practicing fees and payment of taxes in relation to the issue at hand, and of course, the legal right of an accused to bail.

His words, "In standing surety, the person(s) promises the Judge agreeing to supervise and provide the accused on trial and while on bail. He/ She therefore answers to the court in the event such accused person cannot be produced. It suffices therefore that the Surety may find himself/ herself in double jeopardy should such surety fail to produce an

accused and revenue authorities seek the same individual to enforce the legal right of the state to collect its taxes standing against him/ her accruing to revenue."

The CITN President further stressed that practising licence fees, on the other hand, is the fee payable by a member of an Association or Professional body in accordance with established rules and guidelines in fulfillment of that member's obligation and agreement of continued participation in such body's activities. The power to fix such fees, according to the CITN President, is usually vested in the leadership of such Association and those of a professional body established by law with approval by members. The case of the Nigerian Bar Association is not different from such other professional bodies found in Nigeria. These fees are monies wholly ascribable to these bodies to which members belong.

Dike noted the fact that tax is not a charge, fee, fine, penalty or rate as it has often been interpreted to be. He stated that in practice, there may be little distinction between what constitutes a tax or charge or fine as these concepts are sometimes used interchangeably. His words, "we need to note very explicitly that tax is a mandatory payment made to or received by the government whose benefit(s) to be derived is not directly ascribable to the payer. Taxes are therefore no longer so-called if the axiom of non-direct beneficial relationship between the payer and government is violated.

In response to all parties with respect to the matter, the CITN helmsman highlighted his Institute's position as follow:

- That professional practicing fees do not constitute taxes on such individual paying same.
- That taxes are levied and assessed on income of all categories of persons across all professional endeavours and those in the legal profession and sureties are not excluded.
- That a tax payer who has met the requirements of the tax law in submitting his/ her income to tax can deservedly be said to be one in good standing and qualifies for the right to stand surety in court as prescribed by the Chief Judge of Ondo state provided he/she meets other requirements of the court in this respect. This is consistent with Sections 24 (f) and 274 of 1999 Constitution of the Federal Republic of Nigeria (As Amended).

- That the flat charge of N75,000.00 tax payment to enable Sureties obtain a tax clearance certificate in meeting the order of the Chief Judge is however inconsistent with the progressive tax system as currently in practice in Nigeria.
- That Lawyers, as with other Sureties, should do everything within their powers to immediately subject and submit their incomes for tax assessment and payment.
- That Tax Clearance Certificate is not an end in itself but the product of a process having undergone and satisfied the requirement of enabling tax laws (see section 85 (1) of PITA (as amended)).
- While it is not specifically stated in the law that evidence of tax payment should be a condition for securing bail bonds, it should be encouraged especially as a means of ensuring that people are paying their taxes as at when due. However we wish to sound a note of warning that failure to show proof of evidence of tax payment should not be used as a precondition for the denial of an accused's constitutional right to liberty by virtue of Section 35 of the Nigerian Constitution. The law presupposes an accused to be innocent until proven guilty and therefore should not be detained beyond what the law prescribes.
- The Tax Administrator should not take the request for Tax Clearance Certificate by taxable persons as a wake-up call to duty, rather he should ensure that he goes out in ensuring such taxable persons are brought into the tax net and the relevant laws applied in assessing their incomes to tax. He should not indulge in raising arbitrary assessments on taxpayers which are not in keeping with the spirit of the law.

He concluded by emphasizing that taxes are necessary for development and all parties and economic agents should join hands in delivering this development. It therefore stands to reason that any individual who refuses to pay his or her own fair share from his income withholds and denies government of an important revenue driver necessary for maintaining government and discharging its social contract to its citizens. Payment of taxes is not only a civic responsibility, it is also the position of law.