



## Disclosure of tax returns for public officials and holders of public office

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During the campaign for the London mayor in 2012, the two main candidates, Boris Johnson and Ken Livingstone, agreed to release details of their tax returns. The Prime Minister and the Chancellor of the Exchequer have also suggested that the policy could be extended more widely. This Note looks at the arguments for and against so far, and looks at selected international comparisons. In Scandinavia it is common for the tax returns of ordinary citizens to be made available, and this will include politicians. In the United States, it has been the convention for some years for presidential candidates to disclose details of tax returns.

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## **1 Background**

During radio phone-in programmes, Boris Johnson and Ken Livingstone clashed over the amount and type of tax paid. Both subsequently agreed to release tax returns.<sup>1</sup> Mr Johnson released details in a letter from his accountant.<sup>2</sup> Mr Livingstone published data from 2007/8 tax year onwards.<sup>3</sup> The other candidates also released their details.<sup>4</sup> Subsequently, there was controversy as to the extent to which the tax affairs of spouses should be released.

Separately, Labour spokespeople pressed ministers to say whether they earned more than £150,000 after the government announced in the Budget in March that it would cut the tax rate on incomes above that level from 50p to 45p next year.<sup>5</sup>

## **2 Registration and declaration of financial interests**

The UK Parliament does not require its Members to register all financial assets. Although there are differences in detail between the registers of financial interests in the Lords and the Commons, the overall principle is clear. The main purpose is to give public notification of financial interests held by Members which might be thought to influence their parliamentary conduct or actions.<sup>6</sup>

The Committee on Standards in Public Life report into Members' expenses and allowances in November 2009 recommended that candidates for parliamentary elections be required to register their interests:

All candidates at parliamentary elections should publish, at nomination, a register of interests including the existence of other paid jobs and whether they intend to continue to hold them, if elected. The Ministry of Justice should issue guidance on this in time for the next general election. Following the election, consideration should be given as to whether the process should become a statutory part of the nominations process.<sup>7</sup>

However it did not comment on whether tax returns should be made public.

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<sup>1</sup> "Boris Johnson and Ken Livingstone in on-air tax row" 3 April 2012 BBC News

<sup>2</sup> "Boris Johnson's published details of his income and tax" 5 April 2012 *Guardian*

<sup>3</sup> Ken Livingstone's published details of his income and tax" 5 April 2012 *Guardian*

<sup>4</sup> [Boris Johnson, Brian Paddick and Jenny Jones release their income and tax paid- where's yours?" 5 April 2012 \*Daily Telegraph\*](#); [Siobhan Benita: the only independent on the London mayoral ballot](#) 30 March 2012 *Guardian*

<sup>5</sup> See for example [Ed Miliband's response](#) to the Budget statement 21 March 2012 c812

<sup>6</sup> [The Code of Conduct together with the Guide to the Rules relating to the conduct of Members](#) 2012 HC 1885 2010-12 . Guide to the Rules, Introduction, para 7.

<sup>7</sup> [MPs' Expenses and Allowances Committee on Standards in Public Life](#) 12<sup>th</sup> report Cm 7727, Chapter 11

As a result of section 41 of the *Constitutional Reform and Governance Act 2010*, anyone who is an MP or peer is to be regarded as resident, ordinarily resident and domiciled in the UK for the whole of that year for income tax, capital gains tax and inheritance tax purposes. In the case of a person ceasing to serve as a MP or peer, then this deemed tax status would not apply with effect from 6 April following cessation.<sup>8</sup> Following this legislation, four peers were reported to have decided to serve the notice provided for in section 42. Once this notice is served, the peer is no longer eligible for the writ of summons.<sup>9</sup>

### 3 Position of the coalition government

George Osborne, Chancellor of the Exchequer, indicated to the *Telegraph* during an interview on 6 April 2012 that he would be personally supportive of more openness from senior politicians:

Well, the Conservative Party has been at the forefront of transparency,” he said. “When it comes to publishing tax returns ... personally, I don’t set my face against it. [But] we have got to think through the issue of taxpayer confidentiality”.<sup>10</sup>

Mr Cameron was also described as ‘relaxed’ about the possibility of such transparency. The *Daily Telegraph* reported his comments, and that of the Conservative David Davis:

The Prime Minister is relaxed about the idea of the tax returns of senior Cabinet Ministers being published, but wants the opportunity to explore how this might work,” a source said.

Last night, David Davis, the former shadow home secretary, said that while he opposed the publication of personal tax records, any proposal should also cover the disclosure of other wealth.

He said: “This will induce the politics of envy – but if you are going to do it, you have got to cover everything: wealth, trusts, whether you are a beneficiary of trusts, whether you are going to inherit things.

“If you want really to know about someone’s tax affairs you have to know about more than just someone’s tax return. You have to know their assets, the potential inheritances, if they are going to be the beneficiaries of upcoming trust funds – all those things.”<sup>11</sup>

The *Financial Times* reported on 12 April remarks by Mr Cameron to the effect that he was expecting to be the first British prime minister to publish his annual tax return. The paper suggested that the requirement to disclose might extend to all Cabinet ministers.<sup>12</sup>

It would appear that these disclosures, if they take place, would be voluntary. Section 18 of the *Commissioners for Revenue and Customs Act 2005* places a duty for HMRC officers to keep tax information confidential.

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<sup>8</sup> “Not quite the same” 19 May 2011 *Taxation*

<sup>9</sup> “Peers quit to keep ‘non-dom’ status” 7 July 2010 *Financial Times*

<sup>10</sup> “George Osborne: I know this was a controversial budget” 6 April 2012 *Telegraph*

<sup>11</sup> “David Cameron will also disclose tax return” 10 April 2012 *Telegraph*

<sup>12</sup> “Cameron set to be first UK premier to publish annual tax statement” 12 April 2012 *Financial Times*

## 4 International practice

### 4.1 Scandinavia

In Norway and Sweden and tax details of all citizens are made public. In Sweden this has been the case since 1766 and appears to cause few problems, as the principle of transparency is ingrained. Sweden's 'tax calendars' are published in stages, starting with ordinary taxpayers, then high income earners from company bosses to celebrities. In Norway, there have been recent changes allowing release then restricting transparency and finally returning to releasing information. According to a 2007 poll cited by Channel 4 news, only 32 per cent of its citizens thought the tax list should be made public while 46 per cent were opposed.<sup>13</sup>

### 4.2 Other European states

Deputies (MPs) in Italy are required to deposit a declaration regarding their financial situation and a copy of their income tax return: the latter two documents must subsequently be deposited each year and at the conclusion of their mandate (laws no. 441/1982 and no. 515/1993).

The Department for Privileges and Immunities of the Chamber of Deputies ensures the acquisition and conservation of the documents and declarations prescribed by law, as well as their publication in the special Bulletin, which may be consulted by all citizens listed on the electoral rolls for election to the lower chamber.<sup>14</sup> Similar laws apply to Government members and heads of larger public bodies and local/regional councils. Italy has experimented with the general release of tax information for all citizens in 2005 but this was abandoned following data protection concerns.

A number of new member states in the EU require their MPs to provide full details of income to their parliamentary authorities, including Hungary and Poland. These are not made public.<sup>15</sup>

### 4.3 United States

In general, tax returns are confidential in the US. An extract from a report to Congress in 2000 sets out the legislative background:

#### A. Introduction

Except for a few periods in our history, tax information generally has not been available to the public – its disclosure has been restricted. Congress has used two basic approaches in determining whether, and under what circumstances, tax information could be disclosed. Under the first approach, taken prior to 1977, tax information was considered a “public record,” but was only open to inspection under Treasury regulations approved by the President or under presidential order. Under this approach, the rules regarding disclosure were essentially left to the Executive branch.

By the mid-1970's, there was increased Congressional and public concern about the widespread use of tax information by government agencies for purposes unrelated to tax administration. This concern culminated with a total revision of section 6103 in the Tax Reform Act of 1976.

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<sup>13</sup> “Taxes are an open secret in Scandinavia” 10 April Channel Four News

<sup>14</sup> Information correct as at 2008, from the European Centre for Parliamentary Research

<sup>15</sup> *Parliamentary Ethics: A question of trust* 2011 European Parliament Office for the Promotion of parliamentary democracy [http://www.europarl.europa.eu/pdf/oppd/Page\\_8/codes\\_of\\_conduct\\_FINAL-ENforweb.pdf](http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf)

There, Congress eliminated Executive discretion regarding what information could be disclosed to which Federal and state agencies. Under this second approach, Congress established a new statutory scheme in which tax information was confidential and not subject to disclosure except to the extent explicitly provided by the Code. Although there have been many amendments to the law since that time, the basic statutory scheme established in 1976 remains in place today.<sup>16</sup>

However, the chairpersons of the House Ways and Means Committee, Senate Finance Committee, the Joint Committee on Taxation, do have a right to access tax returns.<sup>17</sup>

Candidates for public office are required to prepare disclosure files to the Federal Election Commission. Failure to comply is a criminal offence. These do not amount to the detail on a tax form. It has become common for presidential candidates to release their tax returns voluntarily, although this is not a legal requirement. Mitt Romney, the main Republican candidate for President reportedly released 600 pages of documentation and has attracted criticism for family holdings in overseas bank accounts, according to the *Guardian*:

President Barack Obama has called on Republican Mitt Romney to release his past tax returns, saying that candidates for office need to be "as transparent as possible."<sup>18</sup>

#### 4.4 India

Hugh Tomlinson QC has noted how the Courts in India have used the constitutional right to freedom of expression – including the right to receive information – to place candidates for election under strict “disclosure” requirements – covering their own assets and liabilities and those of their families.<sup>19</sup>

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<sup>16</sup> *Report to the Congress on scope and use of taxpayer confidentiality and disclosure provisions vol 1 Office of Tax Policy* Department of the Treasury October 2000 p14

<sup>17</sup> US Internal Revenue Service 1993 Disclosure of Tax Return Information <http://www.irs.gov/pub/irs-tege/eotopick93.pdf>

<sup>18</sup> “Obama urges Romney to release past tax returns” 16 April 2012 *Guardian*

<sup>19</sup> Disclosure of politicians’ tax returns and freedom of expression: drawing on the Indian experience Hugh Tomlinson QC April 2012 <http://inform.wordpress.com/2012/04/11/disclosure-of-politicians-tax-returns-and-freedom-of-expression-drawing-on-the-indian-experience-hugh-tomlinson-qc/>