

Critical Appraisal of the Companies' Obligations to Pay Zakat in the Malaysian Context

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[☞] Commercial law; Corporate governance; Islamic law; Legal personality; Malaysia; Shareholders

Introduction

The word “*zakat*”¹ is an Arabic word whose literal meanings are purity, growth, blessing, increase, praise, soundness and piety.² Technically, *zakat* can be defined as

“an act of worship performed to draw closer to Allah by extracting an obligatory right from certain kinds of wealth and giving it to specified groups at a specified time, in accord with specific conditions”.³

Zakat is a religious obligation imposed on Muslims if the certain preconditions are met.⁴

There is a unanimous consensus (*ijma'*) among the Sharia scholars that *zakat* is obligatory on all Muslims. Many of them, in fact the majority, extend *zakat* obligation to companies as well. They argue that behind every company is a human being. In other words, they lift the corporate veil of companies and look at the religion of the shareholders. If the shareholders are Muslims then the company becomes a “Muslim” only for the purpose of *zakat*. Where the shareholders are mixed, i.e. Muslims and non-Muslims, then only the Muslim portion of the net income is subject to *zakat*. This attribution of the religion of Islam to the artificial person, i.e. the company, only for the purpose of payment of *zakat*, has perplexed the authors and made them research further into the reasoning which led Sharia scholars to

such conclusions. If *zakat* is an obligation imposed “only on Muslims”, how then can a company be a Muslim? To be a Muslim, all five Pillars of Islam must be fulfilled. Can a company pronounce the Islamic creed (*shahadah*), pray, fast and perform other Pillars as human beings can do? So, if the company cannot be a “Muslim” in the ordinary meaning of the term, why then should a company be obliged to pay *zakat*?

In the Malaysian context, attempts were made by the Malaysian Sharia scholars to make it obligatory (*wajib*) on companies to pay *zakat*. What more, in addition to the “traditional” arguments and reasoning used by Sharia scholars around the world, their arguments expended to the arena of common law principle of separate legal entity which has been bestowed on companies in the famous *Salomon v Salomon & Co Ltd*⁵ case, and later legislated in Malaysian Companies Act 1965. In other words, they tried to “borrow” the support of the common law principle in their claim that a company, which fulfils prescribed preconditions, exists as a separate “Muslim” entity and as such is required to pay *zakat*. This is exactly the point that prompted authors to explore the basis and reasoning of their arguments. The authors are not concerned with the actual outcome, i.e. whether such companies will pay *zakat* or not. We are also not questioning any Sharia principle. Contrary, we fully accept that a Muslim is obliged to pay *zakat* if all the preconditions are met. Having said that, we do not see how the common law principle of separate legal entity would work in favour of their claim and how the company, which in law is a separate legal entity, can fulfil some of the preconditions which make payment of *zakat* obligatory. How can the company be a “Muslim” for the purpose of payment of *zakat*? If the religion of the shareholders is attributed to the company, would that not be in breach of the principle of separate legal entity? This and similar questions will be dealt with by the authors in the article.

Zakat obligations on companies—Malaysian context

Malaysian Sharia scholars are not an exception when it comes to their stand on payment of *zakat* by companies. Their views and reasoning have been expressed in form of “opinions” or “*fatawa*”⁶ by the Fatwa Committee National Council of Islamic Religious Affairs Malaysia (the National Fatwa Council) and Selangor Fatwa

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¹ The authors are using the Malaysian and English spelling of “*zakat*”.

² See Dr Said Bouheraoua, “Zakah Obligations on Islamic Financial Institutions”, ISRA Research Paper No.34 (International Shari'ah Research Academy for Islamic Finance (ISRA), 2012), p.13.

³ Bouheraoua, “Zakah Obligations on Islamic Financial Institutions” (2012), p.14.

⁴ *Zakat* has been mentioned along with prayers (*salah*) in more than 80 places in the Qur'an, which indicates its enormous importance in Islam. See, for instance, *Surah Al-Baqarah* (Ch.2: verse 110) and *Al-Bayyinah* (Ch.98: verse 5). The importance of *zakat* and its obligatory nature has been highlighted by many Hadith of the Prophet (peace be upon him—p.b.u.h.) such as, for example, Abd' Allah ibn Umar quoting the Prophet (p.b.u.p.) as saying: “Islam is founded on five [pillars]: to bear witness that none has the right to be worshipped except Allah and that Muhammad is the messenger of Allah; to establish *salah*, pay *zakah*, make Pilgrimage [to Makkah]; and fast in Ramadan.” (*Sahih Al-Bukhari*, 1: 12, Hadith no.8). In addition, Sharia scholars have unanimously agreed (*ijma'*) that *zakat* is obligatory on Muslims.

⁵ *Salomon v Salomon & Co Ltd* [1897] A.C. 22 HL.

⁶ The word “*fatawa*” is the plural form of the Arabic word “*fatwa*” which in our context can be translated as “ruling”. Therefore both terms “*fatwa*” and “ruling” will be used interchangeably in the article.

Committee.⁷ There are few relevant decisions made by the Fatwa Committees. Nonetheless, in order to keep this article short, the authors will refer only to two perhaps most relevant decisions, namely:

1. the decision of the National Fatwa Committee, dated December 9, 1992, entitled *Zakat Ke Atas Syarikat (Zakat on Companies)*⁸; and
2. the ruling or *fatwa* of the Selangor Fatwa Committee, dated July 24, 2001, entitled *Fatwa Tentang Zakat Ke Atas Syarikat Yang Dimiliki Oleh Pelbagai Jenis Pemegang Saham Yang Bercampur Muslim dan Non Muslim* (Ruling (fatwa) on Zakat on Companies Owed by Different Types of Owners Mixed Between Muslims and Non-Muslims).

The authors are of the opinion that it would be the most appropriate to reproduce the above-mentioned decision and ruling by the Fatwa Committees in full for clarity and transparency purposes.

The decision of the National Fatwa Committee, dated December 9, 1992, entitled *Zakat Ke Atas Syarikat (Zakat on Companies)*

“The 31st *Muzakarah* (Conference) of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 9th December 1992 has discussed zakat on company. The Conference has decided that a business company is obliged to pay zakat (*‘syarikat perniagaan diwajibkan zakat’*) when it fulfills these conditions:

1. The company is owned by Muslims
2. The company is owned by free Muslims
3. Complete ownership
4. The amount of the wealth reaches the minimum zakatable limit (*nisab*)
5. The wealth has been possessed for one lunar year (354.3 days)
6. The zakat rate on company is 2.5%

As for the company shared by Muslims and non-Muslims, only the share owned by the Muslims is zakatable. The zakat is calculated based on the net income obtained.

Evidence and Arguments⁹

1. The committee had directed the Islamic Affairs Division (of the Prime Minister’s Department or JAKIM) to prepare a paper entitled *Zakat on companies* and to present it to the Conference with a view to obtaining a decision on the Syariah position as well as the rate payable.
2. The decision is required by the Department of Inland Revenue (JHDN) to enable the department to give tax rebate for the amount paid by the companies to the State Islamic Religious Council or Department in the same way as it is given to individuals who pay zakat. This is to avoid companies which have paid zakat having to pay tax as well.

Argument and Authority¹⁰

The establishment of companies (*syarikat*) is governed by the Companies Act 1965. The companies incorporated under the Act may be divided into three types:

- (a) a company limited by shares;
- (b) *an unlimited company; and*
- (c) *a company (limited—added) by guarantee.*

Scholars (*Ulamas*) had been unanimous that trading companies are obliged (*wajib*) to pay zakat when the following conditions regarding the obligation to pay trading zakat are met:

... [Omitted as they are a repetition of the first five of the six points reproduced above].

The opinion is based on what Allah s.w.t. has revealed in Surah Al-Baqarah, verse number 267:

‘O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth ...’¹¹

Scholars have interpreted the word [which word? Most likely ‘which you have earned’] to mean all kinds of permissible endeavors done by human beings whether in the form of trading, industry, agriculture and the like, whether the endeavor is done individually or company. In a Hadith, the Prophet p.b.u.h. is reported to have said:

⁷ Selangor is name of one of the States in Malaysia.

⁸ Published on Portal Rasmi Malaysia (<http://www.e-fatwa.gov.my> [Accessed August 2, 2013]) under “e-Fatwa” entitled “Zakat Ke Atas Syarikat”. This decision of the National Fatwa Committee has been reiterated by two other subsequent decisions of the same Fatwa Committee which we will not be directly referred to in this article owing to time and space constraints. Those decisions are:

- The decision of the National Fatwa Committee on August 16, 2001, titled “Zakat On Shari’ah Compliance Banks and Business Companies Where the Parent Companies are Owned by Non Muslims”.
- The decision of the National Fatwa Committee dated May 10, 2001, titled “Zakat Ke Atas Syarikat Yang Dimiliki Oleh Berbagai Jenis Pemegang Saham Yang Bercampur Muslim Dan Non Muslim” (Zakat on Companies Owned by Different Types of Owners Mixed Between Muslims and Non-Muslims).

For further discussion on all these decisions of the National Fatwa Committee see Tun Abdul Hamid Mohamad, “Obligations of Companies to Pay Zakat: Issues Arising from Effects of Separate Legal Entity” [2012] *Law Review* 481.

⁹ To keep this article short, we have summarised in English the “*Keterangan/Hujah*” (evidence/arguments) given in support of the decision.

¹⁰ The following is our translation of the “*Hujah dan Dalil*” (argument and authority) into English, trying to keep it as close as possible to the Malay text.

¹¹ English translation according to *Sahih International*—our addition.

'... what is separated is not mixed and what is mixed is not separated for fear of paying zakat, and people who rear animals should agree among themselves on the basis of equality ...'¹²

Based on this Hadith it may be concluded that individuals who are in a company or group are considered as one without being separated from each other. Whenever a company is established with the intention of trading whether it is a service company, law firm, hotel, arbitration, medical, recreation, exploration and so on, the company is considered as a trading company that is obliged to pay trading zakat. The rate of the zakat is 2.5% of the net income. Therefore, it is the obligation of the company to pay zakat on behalf of the owners and if the company does not pay the zakat, then the owners must pay the zakat themselves (*secara persendirian*). In the case of a company jointly owned by Muslims and non-Muslims, the zakat shall only be paid based on the shares owned by Muslims only.

Source: Collection of decisions of the Conference of the National Fatwa Committee on issues of Mu'amalat (2009).¹³

The decision or fatwa of the Selangor Fatwa Committee, dated July 24, 2001, entitled "Fatwa Tentang Zakat Ke Atas Syarikat Yang Dimiliki Oleh Pelbagai Jenis Pemegang Saham Yang Bercampur Muslim dan Non Muslim" (Ruling (fatwa) on Zakat on Companies Owed by Different Types of Owners Mixed Between Muslims and Non-Muslims)¹⁴

"1. *Diwajibkan zakat bahagian Muslim sahaja bagi syarikat yang bercampur antara pemegang saham muslim dan non muslim.*"

("1. Zakat is obligatory only on the shares of Muslims in a company whose shareholders are mixed between Muslim and non-Muslims").¹⁵

The reasons given in support of the ruling are the same as those given by the National Committee, including the verse of the Qur'an and the Hadith relied on with some addition. As has been observed, they refer to human beings.

Paragraph (e) of the *fatwa* says:

"Scholars (*Ulamas*) are unanimous that zakat is obligatory (*wajib*) on individual Muslims (individu Muslim) ... (who qualify the oft-repeated conditions)".

Under "*Keterangan/Hujah*" (evidence/argument):

"*Para ulama' ... telah bersepakat bahawa pemilik syarikat-syarikat perniagaan adalah wajib mengeluarkan zakat ...*"

("Scholars ... are unanimous that owners of trading companies are obliged to pay zakat ...").

Legal standing of the National and Selangor Fatwa Committees and nature of their decisions

Before we proceed to the content and implications of the opinion of the National Fatwa Committee and ruling of the Selangor Fatwa Committee, we need to determine the legal standing of these bodies and the nature of their decisions. As it can be noticed, the authors are using the word "opinion" in referring to the decision of the National Fatwa Committee because its decision are not binding on anyone. The National Fatwa Committee has no legal standing.¹⁶ It has not been established under any law, and therefore its decisions are not rulings (*fatawa*) with binding effects. They are mere opinion. In fact, a body that has legal standing to make legally binding rulings in the Federal Territories of Malaysia is the Federal Territories Fatwa Council, which was established by the Administration of Islamic Law (Federal Territories Act) 1993.

On the other hand, Selangor Fatwa Committee was established under Administration of Religion of Islam (State of Selangor) Enactment 2003, and as such, has a legal standing. Therefore its decision has been referred to as a "*fatwa*", which naturally is supposed to have a binding effect. Nevertheless, it is submitted hereby that Selangor Fatwa Committee's ruling, that companies are obliged to pay zakat on behalf of its Muslim owners, cannot have a binding nature because it is unconstitutional. The Federal Constitution of Malaysia only allows zakat to be levied on the "persons professing the religion of Islam".¹⁷ Can a company profess the religion of Islam? The authors categorically say no. Therefore this ruling issued by the Selangor Fatwa Committee can be challenged on the grounds of constitutionality. Furthermore, companies are not within the jurisdiction of the State Legislative Assembly and Syariah courts. They fall under the jurisdiction of the Federal Parliament and Federal Courts.¹⁸ For those reasons, the ruling made by the Selangor Fatwa Committee is not enforceable despite the fact that it has been gazetted. The decision of the National Fatwa

¹² Our own English translation.

¹³ See <http://www.e-fatwa.gov.my/fatwa-kebangsaan/zakat-ke-atas-syarikat> [Accessed August 16, 2013].

¹⁴ We shall now selectively reproduce parts of the *fatwa* of the Selangor Fatwa Committee dated July 24, 2001. (As it is wholly in Malay, we have translated the parts which we are reproducing.)

¹⁵ We are purposely giving a literal translation to reflect the influence of the Sharia principle of "*khultah*" ("*bercampur/mixed*") in the minds of the scholars.

¹⁶ Tun Abdul Hamid Mohamad has in the *Muzakarah Ahli-Ahli Majlis Penasihat Syari'ah Institusi Kewangan Di Malaysia Kali Ke-5* on June 17–19, 2009, in a paper entitled "Perbankan Islam dan Takaful: Forum Untuk Penyelesaian Isu Undang-Undang Dan Hukum Syarak", made a suggestion that the Committee could in fact be legalised with limited jurisdiction: see <http://www.tunabulhamid.my> [Accessed August 2, 2013]. However, no one has picked up this idea.

¹⁷ See Ninth Schedule, List II, Federal Constitution of Malaysia.

¹⁸ See Ninth Schedule, List I, Federal Constitution of Malaysia.

Committee hereinafter will be referred to as an “opinion” while the decision of the Selangor Fatwa Committee will be referred to as “*fatwa*”.

Whose zakat is the company obliged to pay?

Both the National Fatwa Committee’s opinion and Selangor Fatwa Committee’s *fatwa* categorically conclude that companies are obliged (*wajib*) to pay zakat if the earlier-mentioned requirements are fulfilled. The only difference between the opinion and *fatwa* is in the consistency or inconsistency of expression on whose zakat the company is obliged to pay, its own or shareholders’ zakat. The opinion by the National Fatwa Committee leaves one with the impression that a company is obliged to pay its own zakat. That conclusion is eminent from reading the “arguments and authority” section of the opinion. However, only after a few lines, there is a following sentence:

“Therefore, it is the obligation of the company to pay zakat on behalf of the owners and if the company does not pay the zakat, then the owners must pay the zakat themselves (*secara persendirian*).”

So, the opinion is not consistent in regard to the point as to whose zakat the company is obliged to pay, its own or on behalf of its shareholders. On the other hand, the *fatwa* by the Selangor Fatwa Committee is quite clear and consistent in providing that the company is obliged to pay zakat on behalf of its shareholders.

Both opinion and *fatwa* use the same reasoning in arriving to their decisions. They argue that behind every company there are human beings (shareholders). They impart the religion of the shareholders to the company. So, if the shareholders are all Muslims, then the company will be regarded as Muslim for the purpose of paying zakat. For the companies which are owned by both Muslim and non-Muslim shareholders, only the Muslim portion of the net income is liable to zakat.

Regardless of whose zakat company pays, i.e. its own or shareholders’, certain difficulties with both propositions are eminent to emerge. The authors will try to point out those difficulties in both situations.

Issues arising from a company’s obligations to pay its own zakat

Reading the opinion of the National Fatwa Committee, which directly refers to the companies incorporated under the Companies Act 1965, one may get an impression that company as a separate legal entity is obliged to pay zakat. The choice of words used by the Committee will lead to that conclusion. It confirms in the “arguments and authority” section that it refers to the company incorporated under the Malaysian Companies Act 1965.

Furthermore, it clearly says: “Scholars (*Ulamas*) had been unanimous that trading companies are obliged (*wajib*) to pay zakat” Therefore one may rightly conclude that a company as a separate legal entity is obliged to pay its own zakat. This conclusion is even further reiterated by the underlying reason for issuing of this opinion, which is to enable the Department of Inland Revenue to give tax rebate to the companies which pay zakat in the same way as it is given to individual Muslims who pay zakat to avoid the situation of double taxation. One more sentence in the “argument and authority” section, which says: “the company is considered as a trading company that is obliged to pay trading zakat”, is evidence that the company is intended to be obliged to pay its own zakat. There is an impression that the principle of separate legal entity seems to be used and recognised by the Committee in its claim.

However, both *fatwa* committees failed to appreciate a company as a separate legal entity. There is no doubt that the National Fatwa Committee, in the “arguments and authority” section of its opinion, clearly refers to the companies incorporated under the Companies Act 1965. If they refer to the companies incorporated under this Act, they ought to know that one of the main effects of incorporation under this Act is a separate legal entity status which is enshrined by s.16(5) of the Companies Act 1965 which says:

“On and from the date of incorporation specified in the certificate of incorporation but subject to this Act the subscribers to the memorandum together with such other persons as may from time to time become members of *the company shall be a body corporate* by the name contained in the memorandum *capable forthwith of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession and a common seal with power to hold lend* but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.”¹⁹

The separate legal entity of a company is a direct consequence of incorporation of the company, and what that means is that a company becomes a different person in law from its members (shareholders) and officers. Section 16(5) of the Companies Act 1965 has merely legislated a common law principle which has been established by the famous House of Lords decision in *Salomon*.²⁰ Lord Macnaghten, one of the House of Lords judges who decided the case, observed:

“The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive

¹⁹ See Companies Act 1965 s.16(5) (emphasis added).

²⁰ *Salomon* [1897] A.C. 22.

the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.”²¹

Separate legal entity is one of the main factors that distinguish a company from sole proprietorship and partnership.

The National Fatwa Committee's failure to appreciate the principle of separate legal entity is evidenced from their “argument and authority” section. They firmly state that Sharia scholars had been unanimous that “trading companies” are obliged to pay zakat if the prescribed conditions are met. What is the meaning of the “trading company”? In the same section, just one paragraph earlier, the Committee reinforces the fact that “the establishment of companies (*syarikat*) is governed by the Companies Act 1965”. Therefore one may presume that the “trading company” referred to in the subsequent paragraph is the one incorporated under the Companies Act 1965, and as such, it must accept all the effect of incorporation, including the status of separate legal entity. However, in the latter part of the “argument and authority” section, the Committee's explanation of the “trading company” completely overshadows the earlier statement by saying:

“[W]henever a company is established with the intention of trading whether it is a service company, law firm, hotel, arbitration, medical, recreation, exploration and so on, the company is considered as trading company that is obliged to pay trading zakat.”

The Committee tried to define what a trading company means, but have they asked themselves whether their definition of trading company is in line with the definition of a “company” under the Companies Act 1965? We say it is not. Their statement states different types of business activities, not the types of organisations. The National Fatwa Committee does not differentiate between companies and other forms of business organisations, such as sole proprietorship, partnership, and limited liability partnership. To them all sorts of business organisations could become “trading companies” as long as they are “established with the intention of trading”. The implications of this casual classification of trading companies are far-reaching. For example, if the “trading company” referred to by the Committee is registered as sole proprietorship or partnership, then on what grounds could the Committee claim that “the company” is obliged to pay its own zakat? In sole proprietorship and partnership, the entity does not exist as a separate legal entity, and as such, it does not exist as a separate “Muslim” entity for the purpose of paying zakat.

Furthermore, both the opinion and *fatwa* have based their claims on the same authorities and reasons. Both have cited *Surah Al-Baqarah* (Ch.2: verse 267) which provides as follows:

“O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth ...”²²

In addition, they cite a Hadith of the Prophet (p.b.u.h.) where he says:

“[W]hat is separated is not mixed and what is mixed is not separated for fear of paying zakat, and people who rear animals should agree among themselves on the basis of equality ...”²³

One may not fail to notice immediately that the verse of the Qur'an is addressed to “O you who have believed”. In other words, it confirms the fact that zakat is obligatory on those who believe. How can a company as a separate legal entity be a believer? Similarly, in our opinion, the above-mentioned Hadith explains how zakat is to be calculated when the “wealth” is inseparable.

If one goes one step further and looks at the “conditions” which must be fulfilled for a company to be obliged to pay zakat, especially the first and second, which state that the company must be owned by Muslims who also must be free, that by itself goes against the principle of separate legal entity. Why would the Committee need to lift the corporate veil and look at the religion of the shareholders if the company exists as a separate legal entity? The answer is obvious, because the company as a separate legal entity could never have a religion and, therefore, should not be obliged to pay zakat owing to the fact that zakat is an obligation only on Muslims. Both Committees have attributed the religion of the shareholders to the company in order to claim that companies are Muslims for the purpose of paying zakat. So, if the shareholder is a Muslim then a company is a Muslim for the purpose of paying zakat, and in the case of companies which are owned by both Muslim and non-Muslim shareholders, only the Muslim portion is liable to pay zakat. The authors submit that attributing the religion of the shareholders to the company is at odds with the principle of separate legal entity.

Furthermore, the authors wonder why the Committees have selectively attributed the religion of the shareholders only for the “religious duty” of paying zakat. In analogy to that, can the company be obliged to pay the shareholders' debts as well, since paying off the debts is also a “religious duty”? After all, can the performance of the “religious duty”, such as zakat, be delegated to a “non-human, artificial person”, i.e. a company? What is the basis for that? The authors submit that the performance of religious duties cannot be delegated to non-human beings. The attribution of religion to non-human beings is contrary to the concept of religion

²¹ *Salomon* [1897] A.C. 22 at [51].

²² English translation according to *Sahih International*.

²³ Our own English translation.

itself. Religion is based on belief, and how can a company believe or disbelieve? The Qur'an and the Prophet (p.b.u.h.) are sent to human beings.

In addition, the Committees' statement that companies are obliged to pay zakat because behind every company there are human beings (shareholders) is not always true. The shareholders of a company could be another company or even the Ministry of Finance and Central Bank of Malaysia. They themselves have no religion. So, we wonder how would the Committees attribute their religion (which they do not have) to the company?

Interestingly, the National Fatwa Committee concludes that the company is obliged

“to pay zakat on behalf of the owners and if the company does not pay the zakat, then the owners must pay the zakat themselves (*secara persendirian*)”.

Likewise, the Selangor National Fatwa Committee states that “scholars ... are unanimous that owners of trading companies are obliged to pay zakat”. This proposition in itself is at odds with the principle of separate legal entity. If it is accepted that a company is a separate legal entity, why then should it do something on behalf of someone else?

Issues arising from a company's obligations to pay its shareholders' zakat

Making a company obliged to pay zakat on behalf of its shareholders would amount to placing a higher religious burden on a company than even on a Muslim human being. If we accept the fact that a company is a separate legal person from its shareholders and that it is a “Muslim” for the purpose of paying zakat, it should then be responsible to pay its own zakat and not somebody else's zakat. Even a Muslim human being is not required to pay somebody else's zakat.

In addition, if the company is obliged to pay shareholders' zakat because it is a religious duty, then, using that analogy, the company should also be obliged to pay shareholders' debts, which is also an obligation in Sharia.

If one accepts the argument that a company is obliged to pay zakat on behalf of its shareholders, the inevitable question that arises then is, with whose income is the company paying zakat? In law, whatever a company earns belongs to the company and it is a discretionary power of a company to declare dividends to its shareholders. Consequently, shareholders are obliged to pay zakat only when they receive their dividends. Likewise, is the company obliged to pay the zakat of the shareholders who have not received the income (or may not receive it at all) and who are not obliged (or at least not yet) to pay zakat? So, why should the company be obliged to pay shareholders' zakat if the shareholders themselves are not obliged to pay it? Why should the company be obliged to pay zakat from its own funds? Is that not quite similar

to a company settling the shareholders' private bills? Alternatively, if one presumes that the company pays zakat from the income of the company and then distributes the balance (or part thereof) to the shareholders, they will have to pay their individual zakat again on the income for which zakat has been paid by the company. Would that not mean that the individual shareholder is subjected to double zakat?

Furthermore, if the company pays zakat on behalf of its shareholders, why should the tax rebate be given to the company? How is a company entitled to a rebate on other people's zakat? A taxpayer, individual or company, in law, is only entitled to rebate for his/its own zakat he/it pays, not on other people's zakat even if he/it volunteers to pay it.

Therefore, regardless of which approach is taken to be right in interpreting the words of the opinion and *fatwa* regarding the question as to whose zakat the company is obliged to pay, i.e. its own or shareholders' zakat, it is quite obvious that there are many issues and questions to be answered in both situations.

Conclusion

Zakat is a religious obligation of a Muslim human being, just like prayers, fasting and *haj*. Whatever zakat a Muslim human being is obliged (*wajib*) to pay, from whatever source subject to zakat, is the obligation of the Muslim human being to pay and should be collected from him. A company has no religion. It is neither a Muslim nor a non-Muslim. A company established under the Companies Act 1965 is recognised in law as having an identity separate from the shareholders in regard to liability to pay debts, the right to own property, the right to sue and be sued etc. There is no basis for imputing the religion of the shareholders to a company, only for the purpose of paying zakat. It is misplaced to say that a company is obliged (*wajib*) to pay zakat like a Muslim human being. There is also no basis for treating zakat differently from the other obligations like prayer, fasting and *haj*.

In Malaysia, the decisions made by the Fatwa Committees should be revisited. The reasoning used by them to arrive at the conclusion that companies are obliged to pay zakat is flawed. The very common law principle of separate legal entity on which they rely in their arguments is in fact the main obstacle to the claim that companies are obliged to pay zakat on behalf of their shareholders. At the very least, it is improper for a company to use its own funds to settle the zakat of the shareholders. It is quite similar to requiring a company to use its own funds to settle the shareholders' private bills. Equally, a company is not entitled to a tax rebate for paying the zakat of the shareholders. A tax rebate may only be granted for a taxpayer's own tax paid by the taxpayer.

Furthermore, the Selangor Fatwa Committee's *fatwa* that a company is obliged to pay zakat, though gazetted, is not enforceable on companies because, first, under the

constitution, a company is not a state matter. Secondly, a company is not within the jurisdiction of the Sharia Court. Thirdly, any state law imposing zakat on a

company is void because, under the constitution, zakat can only be made obligatory on "persons professing the religion of Islam". Companies are not such persons.