

## OBLIGATION OF COMPANIES TO PAY ZAKAT: SUMMARY OF MY FINDINGS AND MY VIEWS

By

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As the issue had been bothering me for a long time, I decided to take a close look at it. I focused on the decision of the National Fatwa Committee (“the opinion”) and the *fatwa* of the Selangor Fatwa Committee (“the *fatwa*”). My aim was to try to understand what the opinion and the *fatwa* really say and the reasons thereto. This is the summary of my findings and my views. The full text is to be found in an article titled “Obligation of companies to pay *zakat*: issues arising from the principle of separate legal entity” which I am finalising for publication.

What do the decision and the *fatwa* say?

Both the decision and the *fatwa* are clear that a company is obliged (“*wajib*”) to pay *zakat*.

The Selangor *fatwa* is quite clear and consistent that the company’s obligation is to pay “on behalf” of the shareholders i.e. the shareholders’ *zakat*.

The decision of the National Fatwa Committee is not so clear. The decision itself gives the impression that the company is obliged to pay its own *zakat*. However, in the reasons that follow, it suddenly uses the words “on behalf” (of the shareholders).

Both committees give the same reasons. Both rely on the same verse of the *Qur’an*, i.e. *Surah Al-Baqarah* verse 267: “*Wahai orang yang beriman! Belanjakanlah (pada jalan Allah) sebahagian daripada hasil usaha kamu yang baik-baik dan sebahagian dari apa yang kami keluarkan dari bumi untuk kamu.....*” (English translation: “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....”). Both rely on the same *hadith* regarding the manner of calculating the *zakat* when the share of the individual (e.g. partners) are inseparable”.

The decision of the National Fatwa Committee further states: “As for the company shared by Muslims and non-Muslim, only the share owned by the Muslim is *zakatable*. The *zakat* is calculated based on the nett income obtained.” The Selangor *fatwa* is to the same effect.

How do the committees arrive at their conclusions?

They assume that behind every company there are human beings (shareholders). They impute the religion of the shareholders to the company. If the shareholders are Muslims, the company is treated as a Muslim and is obliged (*wajib*) to pay *zakat*. Where the shareholders are partly Muslims and partly non-Muslim, only the non-Muslim portion (of the net income) is liable to *zakat*.

## MY COMMENTS

The committees fail to make a distinction between human beings and companies which are not human beings and which, in law, have a separate legal entity. They treat companies in the same way as partnerships. In the case of a partnership it is the Muslim human being partner who is obliged to pay *zakat* from the business activities of the partnership. The principle of separate legal entity does not apply to partnership.

The committees fail to take notice that *zakat* is one of the five Pillars of Islam (*Rukun Islam*) which is an obligation (*wajib*) on individual human beings who believe in the six Pillars of Faith (*Rukun Iman*) and are, therefore, Muslims (or “believers”). They give a different treatment to *zakat* compared to the other obligations (*rukun*) i.e. praying, fasting and *haj*. On what basis? For the purpose of *zakat* alone (even then *fitrah* is not included), they treat a company like a human being. They rely on the *Qur’anic* verse referred to earlier which clearly is only applicable to human beings who are able to believe or not to believe. How does a company as a separate legal entity believe (*beriman*) or does not believe (*kufur*)? Why only treat a company that way only in regard to *zakat* and not in regard to other religious obligations and on what basis?

They impute the religion of the shareholders to the company: if they are Muslims, the company is a Muslim having the same obligation regarding *zakat*. (As will be seen later, they, in fact, impose a higher obligation on a company than the obligation of a Muslim being.)

My questions are:

(i) How do we impute a religion to a non-human being, recognized as a legal entity by law (common law and statutory law) only for specific purpose e.g. limited liability in debt, right to own property, right to sue and be sued etc? Why only for *zakat* (even then, not including *fitrah*) and on what basis?

(ii) Even if (i) could be done (in my view, no), it is often not the case that a company’s shareholders are individual human beings. The shareholders could be

other companies or even the Treasury and Bank Negara. There could be many layers of such shareholders which themselves have no religion to be imputed to the relevant company.

Whose *zakat* is the company obliged to pay?

If the obligation of the company is to pay its own *zakat*, the issues raised in earlier paragraphs are pertinent.

If the obligation is to pay the shareholders' *zakat*, we are placing a higher religious burden on a company than even on a Muslim human being by, first, treating it as a Muslim human being and; secondly, by placing on it the obligation to pay somebody else's *zakat*. Even a Muslim human being does not have to pay another Muslim human being's *zakat*.

It is trite law that whatever is earned by a company belongs to the company. The company may or may not declare dividend. If it does, only when the shareholders receive their dividends that the shareholders become liable to pay *zakat*. If, until then, the shareholders are themselves not liable to pay *zakat*, why should the company be obliged to pay the shareholders' *zakat*?

From whose funds the company pays the shareholder's *zakat*? Obviously it is from the company's own funds. Is that proper? Is that not quite similar to a company settling the shareholders' private bills?

Under the present understanding, the company claims tax rebate. How is a company entitled to a rebate on other people's *zakat*? A taxpayer, individual or company, in law, is only entitled to a rebate for his/its own *zakat* that he/it pays, not on other people's *zakat* even if he volunteers to pay.

The committees fail to take into account constitutional issues. First *zakat* is a State matter while companies are a Federal matter. A State Fatwa Committee may give its opinion on the obligation of companies to pay *zakat* but the *fatwa* is unenforceable on companies, even if the *fatwa* is gazetted. This is because companies are not within the State jurisdiction. Therefore, any State law that makes it an obligation for companies to pay *zakat* is unconstitutional. Secondly, the constitution only allows *zakat* to be collected from "*persons professing the religion of Islam*". Companies have no religion. To make use of federal law to collect *zakat* from companies is equally unconstitutional for the same reasons.

## Conclusion

1. *Zakat* is a religious obligation of a Muslim human being, just like prayers, fasting and *haj*. Whatever *zakat* that 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.
2. A company has no religion. It is neither a Muslim nor a *kufur*. 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 and only for the purpose of paying *zakat*, even then not including *fitrah*. 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*.
3. In Malaysia, a *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 Shariah Court. Thirdly, any State law imposing *zakat* on a company is void because under the constitution, *zakat* could only be made obligatory on "*persons professing the religion of Islam.*" Companies are not.
4. 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.
5. A company is not entitled to a tax rebate for paying the *zakat* of the shareholders. Tax rebate may only be granted for a taxpayer's own tax paid by the taxpayer.

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