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) sebahagia 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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