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EDITORIAL COMMENT

Publication in the age of globalization is a strong paraphernalia of image projection of any Ivory Tower. For this, since the production of the 1st volume of the Unilorin Journal of Business and Corporate Law in 2023, the Department has made it a routine to always strive to keep the culture of constant production of the Journal. However, despite our determination on constant production, we do not sacrifice quality for production. In this edition, only 13 out of 23 papers received crossed the rigour of peer review and editorial process. As I said in the maiden editorial comment to the Journal, Unilorin Journal of Business and Corporate Law is designed to promote scholarship in the area of legal studies. And for that, this edition just like the first, contains well-researched articles on different areas of Business Law. The edition explores articles that provides timely and timeless insights into the essential culture and values of Business and Corporate Law research and reasoning. The 13 articles in this volume draw on several aspects of Business and Corporate Legal Jurisprudence and specialized frontiers of law.

The production of this edition is made possible by the untiring efforts of the Editorial Board (Internal and External) and of course the unquantifiable valuable comments of the scholars who reviewed the various manuscripts submitted for consideration. We appreciate these sacrifices. We thank you for contributing to knowledge through the Unilorin Journal of Business and Corporate Law.

Professor Saka Muhammed Olokooba
HOD and Editor-in- Chief.

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EVEN BEFORE GOD, IT'S GODLY

BY

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Abstract

This paper examines the rationale behind not taxing the revenue generated by the religious organisations despite making enormous gains from donations and various businesses established by them. The position of this paper is that, since all these religious bodies aggressively collect tax in form of tithe of 10% for Christians and Zakah or Jizya for Muslims from members and practically invest them in various businesses, then it's more equitable, reasonable and economically viable to tax such income for the economic development of the country. In conclusion, the paper calls for the amendment of the Nigerian tax laws to henceforth treat the religious organisations revenues and incomes taxable without any exemption.

1.0 Introduction

Payment of tax is mandatory and compulsory. In most professions, the charges of commission based on percentage are rife; mostly, 10% of the entire

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payment is charged as commission by professional agents including the legal practitioners. The collection and charges for services is practically placed on percentage. Therefore if God and Man so cherished the payment of charges and percentage either in form of commission or percentage, is there any justification for the State not to collect taxes on all generated revenue, why are some of the religious bodies revenue exempted from tax? Does that not translate to the draining of the economy in the name of God?

Under the Companies Income Tax Act, both churches and mosques are regarded as ecclesiastical bodies. And the applicable law to them is same as the applicable law to charitable organizations and educational institutions; they are all registered under part C of the Companies and Allied Matters Act. These organizations are registered for non-profit making purpose. Reasonably therefore, since these bodies and organizations are said to be formed not for making profit but to carry out religious, charitable and educational activities, the common belief is that there will be no reasonable or legal justification for them to pay tax.

Therefore, in a bid to encourage, promote and to actualize the intention of the Act, any donation made to religious organizations in cash or in kind in order to assist them to carry out their objectives by taxpayers be it individual or companies are treated as tax deductible. The simple meaning of this is that, if a company registered in Nigeria or elsewhere donated to religious organization in cash or in kind, such donation will be treated as relief when computing its tax liability and same will be treated as donation made to the ecclesiastical body which entitles the donor to such tax relief. This however must not be more than 15 percent of the total profits of the donor company or 25 percent of the tax payable in year of donation; whichever is higher.

Practically however in Nigeria today, churches and mosques are making enormous profits from donations, tithe, gifts as well as various businesses they are engaged in. The questions now are; are the donations, tithe and financial gifts in churches and mosques today judiciously being used for the benefit of the populace? Are those monies not mostly channeled to the welfare of the religious leaders exclusively? Are both profits and gains derived from various incomes and businesses engaged in by the religious organization not needed to be taxed, for same to contribute to the economic development of the nation?

Now that many religious leaders due to the availability of excessive and abundant revenue continue floating and displaying wealth all over the palaces, is there is any justification for not charging those revenue and incomes to tax?

2.0 Tax as an Obligation

Payment of tax both in Islam as well as in the conventional system is a constitutional obligation⁵⁸². The state's right to raise resources through tax in Islam according to Chapra is legitimized because such an action is in consonance with the prophetic saying that

... in your wealth there are also obligations beyond the *Zakah*, and of the fundamental principles of Islamic jurisprudence is that a small benefit may be sacrificed to attain a larger benefit and a smaller sacrifice may be impose in order to avoid a larger sacrifice....⁵⁸³

However, such right is not unfettered because;

While Islam does allow the levying of taxes to a reasonable extent to meet all necessary and desirable state expenditures, it does not permit an unjust tax structure which penalises honesty and creates an un-Islamic tendency of evading taxes.⁵⁸⁴

In Nigeria, Section 24 (f) of the 1999 Constitution of the Federal Republic of Nigeria enjoins all citizens of Nigeria to declare his/her income honestly and pay his /her tax promptly. According to the section

It shall be the duty of every citizen to-

Declare his income honestly to appropriate

and lawful agencies and pay his tax promptly

⁵⁸² This obligation is not peculiar to Islam alone, payment of tax in form of tithe is also recommended for Christians in Malachai 3:10, Deuteronomy 26:13. In Luke 20:25 Jesus said on the payment of tax "then give to Caesar what is Caesar's and to God what is God's"

⁵⁸³ M.U Chapra, *Towards a Just Monetary System*, (The Islamic Foundation, 1985),160

⁵⁸⁴ *Ibid*, at 89

Any individual or corporate organisation that refused to pay tax is said to have evaded tax thereby committing a punishable offence.⁵⁸⁵ Tax evasion according to Abdulrazaq, is “a contravention of the tax laws, whereby a taxable individual or company neglects to pay tax due, or reduces the tax liability by making fraudulent or untrue claims on the income tax form.”⁵⁸⁶ Tax evasion is a tax offence and same has constituted a major headache for tax authorities both at state and at federal levels in Nigeria.

Tax evasion is a way by which a taxpayer maliciously refused to pay his tax. The effort in this direction may be a deliberate misrepresentation on the true financial position of taxpayer to tax authority or a blatant refusal to pay the tax due. Tax evasion is one of the severe offences that attract payment of fine or imprisonment on conviction. According to the VAT Act,⁵⁸⁷ a person who participates in; or takes steps with a view to make evasion of the tax by him or any other person is guilty of an offence. Such an evader on conviction is liable to a fine of N30, 000 or two times the amount of the tax being evaded, which one is greater, or to imprisonment for a term not exceeding three years.

As an African, the African Charter provides that every individual has a duty to work to the best of his ability and competence and to pay taxes imposed by law in the interest of the society⁵⁸⁸. While the protocol to African Charter on Human and people's Right provides that states shall ensure the equal application of taxation laws to women and men to avoid tax discrimination against women folk.⁵⁸⁹

In the Holy Bible, when the Pharisees wanted to entangle Jesus to make him offend Caesar, they asked him “tell us therefore, what thinkest thou? Is it lawful to give tribute unto Caesar, or not”?⁵⁹⁰. Jesus cleverly answered, “*Give unto Caesar the things which are of Caesar's and unto God the things that are God's*”⁵⁹¹. This clever answer was what saved Jesus from the wrath of

⁵⁸⁵ See Part IV Taxes and Offences in section 40-49 Federal Inland Revenue Services Act, No 13, 2007

⁵⁸⁶ Abdulrazaq M.T. *Nigerian Tax Offences and Penalties* (Batay Law Publications Ltd Ilorin, 1993), p.2

⁵⁸⁷ Section 26(a)(b) VAT CAP VI LFN 2004

⁵⁸⁸ Article 28 (b) African Charter on Human and People's Right

⁵⁸⁹ Article 13 (b) Protocol to the African Charter on Human and People's Rights, on the right of Women in Africa adopted in Maputo in 2003. See also Oladoyin and Olufemi, 'Taxation of Religious Bodies in Nigeria', in O. Abifarin (ed.) *Modern Trend in Tax Law, Administration and Practice in Nigeria: Essay in Honour of Chief Olusola Adekanola*, (Makurdi, Juniper Publications, 2013), 177

⁵⁹⁰ Mathew 22:17, Mark 12:14, Luke 20:20

⁵⁹¹ Mathew 22:21, Mark 12:17, Luke 20:25

Caesar, the first Roman Emperor⁵⁹². Similarly, in the Holy Quran Chapter 9:29⁵⁹³, Allah SWT *approves the collection of tax (Jizya)* from the people of the Book living in the Muslim State for the protection and security provided for them⁵⁹⁴. Religiously and or conventionally, payment of tax is mandatory. Tax payment is one of the major responsibilities of a responsible and reliable citizen of any country. Failure to pay tax is a gross irresponsibility on the part of the citizen as well as criminality against the country⁵⁹⁵.

Prompt payment of tax is a civic responsibility of both individuals and corporate organisations⁵⁹⁶. Refusal to pay tax is tantamount to tax criminality otherwise known as tax evasion. In *Shell v. FBIR*⁵⁹⁷, the court held that tax is a debt owed to the government.

3.0 Tax Treatment of Religious Institutions in Nigeria

In Nigeria, religious organisations are regarded as ecclesiastical bodies. This is so because they are not registered to make profit or engage in trade or business. Section 23 (c) Companies Income Tax Act⁵⁹⁸ and section 19 (1) paragraph 3 of the 3rd Schedule of Personal Income Tax Act⁵⁹⁹ exempts from tax the profit any company engaged in ecclesiastical charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company. For this, the Nigerian tax law could be said to have adequately protect churches mosques and other charitable organisations against the payment of tax⁶⁰⁰.

The peculiarity and preferential tax treatment of religious institutions in Nigeria though has a constitutional support but same has not escape arguments on the desirability or otherwise of such treatment especially now that some religious leaders are living a flamboyant life like buying private jet and

⁵⁹² Olokooba S.M 'Withhold Caesar's Rights; then, Cry the Beloved Country' 249th Inaugural Lecture, University of Ilorin, p;1

⁵⁹³ (*Surah al-Tawbah*)

⁵⁹⁴ Olokooba, op cit, ibid

⁵⁹⁵ Olokooba, op cit, ibid

⁵⁹⁶ Olokooba, Awodun, Akintoye and Abubakar, 'Tax payer's Right to refund under the Nigerian Tax Law: A Right in fact or privilege in camouflage?' *Nnamdi Azikwe University Journal of International Law and Jurisprudence* Vol. 9 (2) 2018, p. 192

⁵⁹⁷ (2004) FNLIR 859 at 46

⁵⁹⁸ Cap. C 21 Laws of the Federation of Nigeria, 2004

⁵⁹⁹ Cap. P 8 Laws of the Federation of Nigeria, 2004.

⁶⁰⁰ Oladoyin and Olufemi, 'Taxation of Religious Bodies in Nigeria', in O. Abifarin (ed.) *Modern Trend in Tax Law, Administration and Practice in Nigeria: Essay in Honour of Chief Olusola Adekanola*, (Makurdi, Juniper Publications, 2013), 176

expensive cars while most of their congregations are languishing in abject poverty⁶⁰¹. For this, arguments have been advanced that the present tax treatment of religious bodies is inequitable and that it does not reflect the present day economic realities in Nigeria⁶⁰². Nigerians therefore have started asking the religious leaders using private jet to give account on how and where they got the money to buy expensive jets.⁶⁰³ Apart from the fact that many religious leaders in Nigeria now own private jets, churches and mosques in Nigeria now a day's are engaging in various businesses and activities including the establishment of schools which are bringing in profits and gains massively.

Apart from the fact that many religious bodies in Nigeria today seems to be richer and buoyant, the extravagant living standard of the religious leaders tend to lead credence to the argument of those that opined that religious organisation should be taxed. In their opinion the damaging effect as well as the crushing burden of taxation is now heavier on the Nigerian economy because of exemptions in favour of religious institutions.⁶⁰⁴

Despite this negative effect, the position of the law with regards to tax treatment of religious organisation in Nigeria still remains that once such organisation is registered under part C and not part A of the Companies and Allied Matters Act,⁶⁰⁵ any donation made to them in cash or in kind in order to assist them to carry out their objectives are tax deductible⁶⁰⁶. However, on the contrary where religious institutions made gains or profit, any trade, business, profession or vacation from source inside or outside Nigeria, then such income is susceptible to tax⁶⁰⁷. The implication of this provision is that

⁶⁰¹In Nigeria, pastors like Ayo Oritseja for (President of the Christians Association of Nigeria), Bishop David Oyedepo (General overseers Living Faith (Winners) Church), Enoch Adeboye of Redeemed Christian Church of God (RCCG) and T.B. Joshua of Synagogue Church of All Nations (SCOAN), Joseph Agboli Victor (Victories Army Ministries) owns private jets and expensive cars. For details and comprehensive list of all religious leaders living an extravagant life in Nigeria, see, 'Pastors and Preachers who own private jet in Nigeria,' available at nairabrain.com/2014/10/pastors-and-preachers-who-own-private-jets-in-Nigeria/. See also, Joseph Edgar: 'Pastors private jets and their taxes', *Daily Post* 18th September, 2015. Further see, Kemi Lawal and Allwell Okpi, 'Okotie buys N120M Rolls Royce to mark pastoral Anniversary,' *Sunday Punch* 22nd December, 2013. Also available at www.punchng.com/home.

⁶⁰² See www.punchng.com/home.

⁶⁰³ See, 'The private jet, the church and Nigerians' *Vanguard* 03 October, 2013 at 4. Also available at www.vanguardngr.com/2013/10/private-jet-church-nigerias/.

⁶⁰⁴Murphy J. made similar observation in the case of Australia in *Church of the New Faith v. Commissioner of Payroll* TR 794. Also see, Brett F. and Mahmood N 'The Constitution and Islam: Are Tax Reforms possible to facilitate Islamic Finance?' *Revenue Law Journal*, 20 Iss.1, Article 5, (2010), 17 Also available at <http://epublications.bond.edu.au/rlj/vol20/iss1/53>.

⁶⁰⁵ Cap. C20 Laws of the Federation of Nigeria, 2004. Part A of Companies and Allied Matters Act is on Company Incorporation. Any company incorporated under part A are not tax exempt.

⁶⁰⁶ See section 21 (4) (5) and section 21(a) (1) & (3) Companies Income Tax Act, CAP. C21 LFN. 2004

⁶⁰⁷ See section 3 (1) (a) Personal Income Tax Act, CAP. CP.8 LFN. 2004

as far as the current position of the law in Nigeria is concerned, there is no way a church or mosque or charitable organisation will pay tax except the law is amended. However, pending such amendment, the best alternative being proposed now is that a charities commission be set up by government to register, regulate and control all charity organisations and their activities in Nigeria⁶⁰⁸.

4.0 Taxation and Economic Development; Any Synergy?

As argued and observed by Olokooba,⁶⁰⁹ in this contemporary time, taxation is the bedrock upon which global economies rest. It is an effective instrument to check inflation, redistribute wealth, expand State revenue base, and as a guide against other various economic inequality and socio-economic vices. The more effective and functional a tax system is; the stronger, reliable, better, and secure a country will be. Unfortunately, the challenges confronting the Nigerian economy today, due to tax evasion, is diverse and enormous. Many companies, as well as individuals, are not willing to pay their taxes. Thus, the issue of tax evasion in Nigeria is as serious as other societal ills facing us as a nation⁶¹⁰. The oil revenue, which accounted for a larger part of government revenue in the past, has drastically decreased and unstable due to the precarious world oil market situation and other factors. The stoppage of oil subsidy regimes in Nigeria could not even help the situation. No wonder the return to partial subsidy regimes again in August 2024!

Apart from the fact that taxes provide the revenue that makes it possible for the government to effectively function; it also has some other economic significance such as the provision of social amenities, quality education, good infrastructural development like roads, water, and electricity, and employment, satisfactory rate of economic growth and stability of money supply in the economy⁶¹¹.

The function of tax in the contemporary global economy is unquantifiable. As tax can serve as a regulatory mechanism to control and regulate various

⁶⁰⁸ See 'The private jet, the church and Nigerians', *Vanguard* 03 October, 2013 at 4. Also available at www.vanguardngr.com/2013/10/private-jet-church-nigerians/.

⁶⁰⁹ Olokooba S.M 'Withhold Caesar's Rights; then, Cry the Beloved Country' 249th Inaugural Lecture, University of Ilorin, p.13

⁶¹⁰ Olokooba, Awodun and Adebawale, 'Peace Security and other Developmental Problems in Nigeria: Taxation as the light at the end of the Tunnel' *KIU Journal of Social Sciences, Kampala International University*, 2 (1). 2017, p.55

⁶¹¹ *ibid*

economic incidences, it can also be used to redistribute wealth in a given society. For instance, the government can check excessive importation to protect the local industries by increasing custom tariff. Tax can also be waived for an infant/new industry to encourage growth. The purpose of income redistribution is to lessen the inequalities of wealth in the society and the effect of the same is to transfer money from those who have it in excess to those who have very little.

A clear synergy between tax payment and economic development is the fact that every government requires revenue to augment the spending needs and to maintain an adequate level of public investment and social services. Revenue from taxes is to be used for the general welfare of the populace⁶¹². However, to achieve this, tax compliance is important. Therefore, be it individual, group or organisation, exemption from tax payment under any disguise is clearly detrimental to economic viability and stability.

5.0 Conclusion

From the foregoing, it is certain that, in Nigeria, to be chargeable to tax under the Companies Income Tax Act, the organisation must be a company. A company is defined by the Act as any Company or Corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere, while a Nigeria Company means by or under any law in force in Nigeria or elsewhere, while a Nigerian Company means any company incorporated under the Companies and Allied Matters Act ⁶¹³. In Nigeria, any organisation registered under part C of the Companies and Allied Matters Act is regarded as either an ecclesiastical body, charitable organisation or educational institution which is formed not to make profit or to engage in trade or business but religious, educational and charitable activities; and any association formed to promote sports.

* However, even though religious organisations are exempted by law from payment of tax, the way and manner most leaders of these religious organisations are displaying wealth acquired from religious activities does not show or reflect that these revenues are used for public good; rather for the well

⁶¹² *ibid*

⁶¹³ Part A of Companies and Allied Matters Act is on Company Incorporation.

being of the religious leaders exclusively⁶¹⁴. The least of the benefit that could go to the members of the religious organisation is to be able to put their children in schools established by the religious based organisation; but in actual fact, most members of these organisations could not afford sending their kids to such schools. The fee and charges are so high and unaffordable by members. In Nigeria today, religious activities generate money and at times made profits even more than companies and that is why most religious leaders are able to acquire and float/display their unexplained wealth while their followers are languishing in abject poverty. It is the argument of this paper therefore that failure to tax this unexplained wealth in the income and profits of religious organisations simply means an encouragement of draining of the Nigerian economy in the name of religion despite the fact that; even God Himself, sanctions and approves the payment of tax by humanity. In short, payment of tax on all incomes even before God, it's Godly.

6.0 Recommendations

- **Amendment of the Nigerian tax law to make all religious organisations revenue and income taxable:** Exempting the incomes, donation and religious organisations revenue from tax is more detrimental to the national economic development and revenue generation of the country. More so since much of these donations and revenues were being used exclusively for the enjoyment of the religious leaders and not otherwise, taxing such revenue will be more equitable and beneficial to the populace than individual religious leaders. Therefore, the laws that exempt some of the religious bodies' revenues, i.e. donations and others from taxation be amended to tax all income and revenue of religious bodies without exemption. Doing this will directly or indirectly enable Nigerians to benefit from the use of such revenue through whatever social amenities provided by the government.

⁶¹⁴ see, 'Pastors and Preachers who own private jet in Nigeria,' available at nairabrain.com/2014/10/pastors-and-preachers-who-own-private-jets-in-Nigeria/. See also, Joseph Edgar: 'Pastors private jets and their taxes', *Daily Post* 18th September, 2015. Further see, Kemi Lawal and Allwell Okpi, 'Okotie buys N120M Rolls Royce to mark pastoral Anniversary,' *Sunday Punch* 22nd December, 2013. Also available at www.punchng.com/home. See also, See, 'The private jet, the church and Nigerians' *Vanguard* 03 October, 2013 at 4. Also available at www.vanguardngr.com/2013/10/private-jet-church-nigerias/.

- **Tax Evasion by religious leaders/bodies in Nigeria Should Attract a More Severe Punishment:** Considering all the unquantifiable benefits of prompt tax payment in any economy as well as the likely adverse effects of nonpayment, it is hereby recommended that tax evasion should attract more severe punishment. Any religious organisation that evades tax should face stiff punishment which will include shorting down of such places of worship as well as sending the leaders of such religious organisation to jail. This is recommended because for now, mere imposition of monetary fines on tax defaulters seems not to be as effective as desired. Thus, if tax defaulters are made to serve compulsory jail term(s) in addition to a monetary fine it will greatly reduce; if not eliminate the grave criminality in the Nigerian taxation practices.

- **Strong Collaborative Efforts Among Government Agencies in Fighting Tax Criminality by religious leaders:** For effective check on tax criminality by religious leaders, tax authorities should collaborate with other government agencies such as the Corporate Affairs Commission, Land Registry, the Economic and Financial Crime Commission (EFCC), the Independent Corrupt Practices and other related offences Commission (ICPC), etc., to determine the extent of revenue generated by the religious organisation as well as the expenditure of same to determine the taxable amount in order to reduce the incidence of tax criminality in the so call 'house of God'. A good working synergy with the highest level of determination to check various antics of the religious leader with regards to tax evasion holds a key secret to improved revenue generation in Nigeria.

- **There is The Need For Attitudinal Changes of Nigerians To Taxation:** There is a need for a clear attitudinal change of Nigerian religious leaders to taxation. They need to see the cardinal necessity for holistic change to the way and manner they take tithe from congregation devoid of using same for the benefit of members. Diverting all this revenue to their personal use is a sabotage of the Country's economy growth and development.