

Zakat of Joint Stock Companies and Saudi Arabian Experience

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Abstract--- *This research aims to examine fiqh characterization of share and the impact of juristic debate on the fiqh characterization of share on zakat obligation of joint stock companies. It also examines whether legal status on shares has impact of the determination of Shariah ruling applicable to zakat on share. The research shed light on the juristic debate among the contemporary Shariah scholars pertaining to the fiqh characterization of share and its effect on zakat of shares of Joint Stock Company. It studies the approach of Saudi on zakat of shares in contemporary joint stock companies. As zakat regulation in Saudi Arabia makes the payment of zakat on joint stock companies mandatory. The research finds that underlying intention behind the possession of property plays a key role in determining the zakat due of the property. It also highlights the substance of the juristic debate on the fiqh characterisation of share.*

Keywords--- *Zakat, Shares, Property, Joint Stock Company, Fiqh Characterisation, Zakatable Asset.*

I. INTRODUCTION

This paper is prepared in resin response to a noble request from the Centre of Studies for Islamic Consulting, for presentation at the Fifteenth Conference. It studies the issue of zakat in joint stock companies with special reference to zakat of joint stock companies in Saudi as case study. It involves mainly two sections. The first is fundamental basis of zakat of shares. The second is method of zakat deduction in joint stock companies' share and Saudi Arabian experience. Apart from the above main sections, the research involves an introduction which contains background to the research, research problem, research questions and literature review as well as conclusion and recommendation.

II. RESEARCH PROBLEM

The zakat on shares is a contentious contemporary issue. There are different opinions among the contemporary Shariah scholars. Their views center on the categorization of shares to ensure consistency of Shariah characterisation and the legal and regulatory framework. However, these differences resulted in many effects, the most important of which is how zakat of companies' shares are deducted.

III. RESEARCH QUESTIONS

As highlighted above that the main objective of the research is to study *fiqh* characterisation of shares and the alignment between the *fiqh* characterisation and legal and regulatory framework. The research in the course of its study has devised some questions to achieve the underlying objective. The questions are as follows:

Can the *fiqh* characterisation of shares be based on the legal view?

What if its characterisation in accordance with the legal view is inconsistent with Shariah rules and principles?

Whether *fiqh* characterisation of shares among the contemporary Shariah scholars has an impact on its zakat?

What the method Saudi Arabia adopted in deducting zakat of joint stock companies' shares?

IV. LITERATURE REVIEW

This research has consulted several jurisprudential studies by the contemporary Shariah scholars on this subject. The most important literary works are as follows:

First, Hassan, H. in his paper entitled *al-takfīf al-fiqhī li ashum al-Sharikat al-Musahimah* which means the *fiqh* characterisation of shares of joint stock companies.

Second, Al Shubaily, Y., in his paper entitled *At-Tawsīf al-Shar'īli al-Sahm*, which means, the legal (Shariah) characterisation of Shares).

The research focuses on establishing the *fiqh* characterisation and legal framework for corporate shares. Further, it also discusses the impact of the characterisation on zakat of shares of joint stock companies. Finally, it examines the current application of zakat deduction on shares of joint stock companies in Saudi Arabia.

V. FUNDAMENTAL BASIS IN THE ZAKAT OF SHARES

This section focuses on two headings namely *fiqh* characterisation of shares and zakat of shares. The following paragraph discusses *fiqh* characterization of shares.

Fiqh charaterisation of Shares

There have been special symposia held on the *fiqh* characterization of shares and several studies have been written on this subject hence, there is no need for detailed discussion on the scholarly debate on the subject. However, this paper provides a brief discussion of the debate aiming at highlighting the effect of the debate on zakat of shares. Thus, the contemporary Shariah scholars held two major opinions on the *Fiqh charaterisation* of shares:

The first opinion posited that shares are an undivided portion in company's assets, and the owner of the shares is considered as a direct owner of such assets.¹ Consequently, the owner of the shares owns from company's undivided assets based on proportion of his share.

This is the position of the most contemporary Shariah scholars including the International Islamic Fiqh Academy of Organisation of Islamic Cooperation (IIFA-OIC). As it states that "the object of the contract in the sale of shares is the unidentified portion of the company assets and the share certificate is a document attesting to entitlement to the said portion"²

¹These assets include: in-kind assets, whether real estate or transferred, and their benefits as well as benefits of the company's employees, money, debt, and moral rights such as trade name, licenses and so on.

²Resolutions and Recommendations of the Seventh session of the Council of the Islamic Fiqh Academy, No 63/1/7 Resolves 5 – Object of the contract in the sale of Shares.

Further, it is also stated in the AAOIFI Shariah Standard no 21 on Financial Papers, “a share represents an undivided share in the capital of a corporation, just as it represents an undivided share in its assets and the rights associated with it upon conversion of the capital into tangible things, benefits, debts and so on”.³

Basis for this position

This position is evidenced by expounding jointstock company on Sharikat al-‘Inān, a well-known type of partnership in the classical *fiqh*. If the partner ownstheshares in the assets of Sharikat al-‘Inān (contractual partnership) same goes to shareholders in the assets of company. And the fact that company is regarded legal entity does not preclude its shareholders’ right to own its assets.⁴

The second opinion argued that share is a financial paper that does not represent the company’s assets. The owner of the share does not own the assets, nor have right to them. The financial paper is owned by the company (in its legal capacity) as a legal entity. This means the shareholder only owns a right (beneficial) in the legal entity, and in the profits of the company and its assets when there is a liquidation of the assets of the company. The shareholder does not have a direct ownership in the company’s assets.

This opinion is the implied meaning from Sheikh Mohammed bin Ibrahim al-Sheikh in his famous Fatwa dated 1381 A.H. pertaining to the shares of companies which read: “The joint stock company is not intended for its assets, rather the intent is to gain profits”.⁵

Also, this opinion is held by Elgari M, (n.d.),⁶ as-Shubaily, Y. (n.d.)⁷ and inclined towards by Dr Hammād N., (n.d.) when he posits that: “As for what Elgari, M. stated regarding shares, and the nature of joint-Stock companies, there is a new look on the subject, which may be useful in our case (i.e., this discussion), but he did not put right and is not decisive”

This position is premised on the legal view that distinguishes between the ownership of the shares and assets.

Zakat of Shares

As earlier discussed, the *fiqh* characterization of shares are of two views namely:

Firstly: It represents a share of the company’s assets according to the majority of contemporary Shariah scholars, and the same position is held by both IFA-OIC and AAOIFI.

Secondly: It represents a financial paper and not the shares of a company’s assets, and the owner of the share does not own such assets, nor have rights on it. This is because the paper is unquestionably a property of the company as a legal entity.

³AAOIFI Sharī’ah Standard No. (21), 3/1 – Rules for Dealing in Shares

⁴As-Sharikāt li al-Khayyāt 2/215, Sharikat al-Musāhimah fi al-Nizām al-Su’ūdiy pg. 347

⁵Fatwah and Rasāil 7/34 Abridge.

⁶As-shakhsiyyah al-‘Itibāriyyah Dhātu al-Mas’ūliyyah al-Mahdūdah, Dr Elgari

⁷At-Tausif al-Ashar’iyy li al-Ashum pg. 6, and the Shaykh mentioned that the owner of the stock, by having a stake in the entity, owns its tangible and intangible assets as a dependency, but this ownership is incomplete and so have no disposition.

The implication of the first *fiqh* characterization is that the share is a portion of the company's assets: thus, each shareholder calculates what comes to zakatable asset and pay its zakat due accordingly. If not able to make appropriate calculation, he estimates the expected zakat due and pay accordingly.

The implication of the second *fiqh* characterization is that a share is a portion of the company as a legal entity), each shareholder pays the zakat due in accordance with zakat due on trade assets if he is intended to trade it otherwise he paid zakat due in line with rate of zakat due on fixed assets i.e. leased assets if he is intended to make an investment asset regardless of the types of company's assets that are zakatable assets.

The preferred opinion in this paper is that there is no significant effect in the juristic debate on the zakat subject because even based on the second opinion, that the share is a portion in the company in its capacity as legal entity, the shareholder still has an enabling right to receive profits, as well as permitting right to the proceeds if the company is liquidated. Thus, the shareholder knows his estimated portion and will pay his zakat dues accordingly.

Based on the above discussion, it safe to say that property in relation to intention of its owner, is of three types:

- 1- Property possessed for the purpose of its acquisition, such property is subject to zakat unless it is money.
- 2- Property possessed for an investment purpose such as an income generating property. Such property is not a zakatable asset, but the income generated from it is subject to zakat. For example, farmlands, leased properties, factories, etc.
- 3- Property possessed for trading purposes. Such property and its returns are subject to zakat.

In line with the above explanations, the underlying intention has effect on zakat due on all zakatable items, therefore, whoever purchases a house, or a car, or a furniture and others, if purchased for usage purpose, there is no zakat due on them. However, if intended for income generating, zakat is due on incomes only but no zakat due on the asset itself. And if the property is meant for trading, then, zakat is due on both the asset and income generated from it. Thus, it is inconceivable to acquire shares for usage purpose hence they are either for investment or trading purposes.

Zakat of share investor

The meaning of investor, in this context, is the one who owns shares and do not intend to trade with them, or change the intention, but owns the shares for retention purpose for long periods so as to take advantage of returns achieved by the company.

Whoever owns shares with the intent to benefit from the annual dividend, and not for the purpose of trading, then, he pays the zakat as per incomes generated from the fixed or leased assets. If, for any reason, the company did not pay zakat dues from such incomes. No zakat dues on the asset itself rather zakat is due on the income or dividend, i.e., returns earned whether the dividend is distributed or undistributed by the company, or whether half of the dividend is distributed, and the other half is made in reserve, zakat obligation is on the dividends or incomes earned.

This is the resolution of the IFA-OIC⁸, and the Eleventh Symposium of Zakat House⁹.

The resolution of IFA-OIC states that: "... if (someone) has a share in a company with intent of getting yearly dividend benefit, and not with the intent of trading, he pays the zakat due on the incomes or dividends and as for the owner of these shares, zakat is not obligatory on the fixed or leased asset itself, but it is due on the dividend, which is quarter of ten after a year has elapsed from the day of receiving the dividend, whilst putting into consideration, the conditions in which Zakat is allowed and disallowed".

Zakat of a sharetrader

A Mudārib¹⁰, in this context, refers to the one who buys shares with the intention of trading them and making profits from the price margin. Since the trader buys shares with the intention of trading, the zakat ruling on trading applies. Based on this, zakat is paid on the price of the shares at market price/value on the day zakat payment becomes due, and a quarter of that value is paid out, i.e., 2.5% of its value.

This position is stipulated in the resolution of IFA-OIC which read: "if someone has shares, being held for trading purpose, he pays the zakat due as paid on traded goods if being traded, and whenever a year has elapsed and still has ownership of the shares, he pays zakat on the market value of the shares"¹¹.

Zakat of shareholder¹²(Saver)

A saver in this context is the one who buys shares not with the intent of trading or changing (intention subsequently), but with the intention of retaining it for long periods so as to take advantage of increase in value and dividends and subsequently selling them for money when the need arises.

This kind of share holder carries both investment and trading qualities: On the one hand, he neither intends money flipping in the stock market, nor follow the market through monitoring, and he expects to receive dividends during the period he owns the shares. And on the other hand, he intends selling the shares in the long-term after it increases in value in the market and reaches the expected income. Can this person be considered an investor, a trader, or as third category different from both?

It is possible to expound this issue on the zakat of a monopolist trader (*at-tajir al-muhtakir*), and the base for such expound is that a share holder in this context, monitors the market and does not intend money flipping in the stock market.

The Shariah scholars are of two opinions regarding this issue:

⁸Resolution No. 121 (3/13) on the subject of: Zakat shares acquired for the purpose of benefiting from its proceeds.

⁹Resolution of the 11th Zakat House Symposium on Stock Zakat Zakat1/184.

¹⁰The use of the word "Mudārabah" over "Mutājarah" has an origin in the Qur'an in the words of Allah almighty: "and others traveling throughout the land seeking [something] of the bounty of Allah" - Sura al-Mazammil verse (20).

¹¹The decision of the Assembly No. 28/3/4, with which the recommendation of the eleventh symposium of the House of Zakat was issued (research and work of the symposium 1/184).

¹² Check: Zakat al-Ashum by Sheikh Dr Yusuf as-Shubailiy

First opinion: For the Maliki, they make distinction between an active (who engages in the competitive trading) and a monopolist¹³ trader (the one who buys goods meant for trading when prices fall and sells them when the prices rise); an active trader is the one that sells based on actual price and leaves what he sells with others – the zakat is paid on the value of the trade goods every year; and as for the monopolist, he is the one who monitors the market and does not engage in money flipping – the zakat is paid once on the price of traded goods for a year if sold after a year or more, of the original money which is liquidated through the sale.¹⁴

The scholars of this opinion backed their argument with the fact that zakat is not an obligation before it is sold, and that the fundamental ruling regarding traded goods is non obligation of zakat, which is based on the Prophet's statement – peace be upon him -: “No Sadaqa is due from a Muslim on his slave or horse”.¹⁵

The Maliki further expatiate that what removes the goods to be traded from the fundamental ruling of obligation is the intention of trading. Trading, in this context, entails money flipping, but as for mere intention of selling, it has no effect on zakat becoming obligatory, because if it were to have any effect without any action zakat will become obligatory upon someone who has goods for Qunyah (Keeping something to use for its yields, not for trade), and no one¹⁶ says such. With regards to the obligation of zakat on it for one year, it is because the money has spent in his hand for both ends of the one period year required to pay zakat. Even if it were years, then the required one period year has occurred of which the money has spent on both ends the period, and whatever is in between the years is not considered¹⁷.

Second opinion: For the Hanafi, Shafi and Hanbali, they argue that there is no difference between an active and a monopolist trader; whenever he owns the commodity and his intention is to sell it, he must pay zakat every year on its value even if without selling¹⁸ any of the commodity.

This opinion is evidenced with the general implication of the Hadith reported by Samurah bin Jundub-May Allāh be pleased with him-, he said: “The Messenger of Allāh -Peace and Blessings of Allāh be upon him- commanded us to pay zakat on whatever we prepare for trade¹⁹.

The majority made the intention to sell as the effective cause, even though the meant trade goods in their works (literatures), while the Maliki made the intention of administering the goods or money flipping; that is why the majority of scholars named the trader who flips money as an active trader, like shopkeepers and people alike; and named share traders in the stocks market, and the one who intend to only sellas Mutarabbis meaning one who waits to exploit profit opportunities.

¹³Monopolist in this context is for a positive reason and not a negative.

¹⁴Hāshiyat al-Dasukiy 1/474, Sharhu al-Khirakhiy 2/196, Bulgotu al-Sālik 1/637.

¹⁵Related by Buhārī (No. 1464), and Muslim (928/8) on the authority of Abu Hurairah.

¹⁶Al-Muntaqā by al-Bājijy 123/2

¹⁷Al-Muntaqā 113/2

¹⁸Al-Kifāyah ‘ala al-Hidāyah 2/222, Raddu al-Muhtār 2/272, Tuhfat al-Muhtāj 3/293, al-Mughniy 2/338.

¹⁹Related by Abu Dāwud (No. 1562), al-Bayhaqiy (4/146) - and it is a weak Hadith because in the chain there is Ja'far ibn Sa'd through Khabīb ibn Sulaymān, and both are unknown. Ibn Hajar commented on the Hadith by saying: “There is Jahālah in the chain” – at-Talkhīs al-Habīr 2/179.

VI. METHOD OF ZAKAT DEDUCTION OF JOINT-STOCK COMPANIES AND THE SAUDI EXPERIENCE

This section contains two headings namely who is responsible for zakat payment in zakat of shares and the position of Saudi legal system on this subject.

In order to address the main research question regarding the effect of zakat deduction by joint stock companies on the zakat of the shareholder who is willing to trading the shares, and the Saudi experience, it is appropriate to identify who is obliged to zakat on shares.

The Payer of Zakat on Shares

The basic principle of the Shariah mandate on zakat is addressed to natural persons. The same applies to all other Shariahmandate, including obligation of zakat, and the Shariah has set conditions for the obligation of zakat, the most important of which is Islam. But given that joint stock company and other legal entities are recognized by law, can it be said that the legal mandate of paying zakat is on the shareholders of the company, and that the payment by the company is on behalf of their shareholders? The contemporary Shariah scholars are of two opinions regarding this issue:

The first opinion holds the responsibility of zakat payment lies on the legal entity and accordingly, the responsibility in terms of sin lies with the representatives of this legal entity, as the sin does not fall on the boy and the madman in case of no payment but falls on the guardian in such case. This is the opinion of some contemporary Shariah scholars.²⁰

The basis for this opinion is that the requirements for the obligation of zakat are eligibility for duty in the addressee and possession of absolute ownership over the wealth that zakat will be paid on; and the two requirements are verifiably present in business corporate legal entity, because it has full eligibility, its financial obligation is subject to liabilities, it owns assets, and zakat, although it is originally an act of worship, but by most of its provisions, it tends to be a financial right. Therefore, according to the majority of scholars, it is not a condition of zakat obligation to reach the age of responsibility, that makes zakat obligatory on the wealth of the young and insane.

This opinion shows congruence with the idea of corporate personality in joint stock company, but it is necessary not to mandate zakat on shareholders if the company does not take out zakat, as this requisite is not opined as mandatory by adherence of this opinion, because they believe that if the company does not take out zakat, the duty is transferred to the shareholders.

The second opinion is that the legal characterization of zakat of the shares of companies is on the shareholders, and that the management of the company zakat deduction on their behalf, which is required by the jurisprudential consideration, and is the result of collective jurisprudence on this matter, as stated in the resolution of the IFA-OIC which read: The zakat of shares shall be levied on the owners, and the company's management shall deduct it on

²⁰Check: Islamic Fiqh Academy Journal, Issue 4 (1/258), Zakat as-Shakhsyiyah al-'Itibāriyyah by Fawāz as-Salīm (Complementary research for the master's degree at the Higher Institute of Justice), pg: 219.

their behalf if it stipulated in its statutes, or there is a resolution of the General Assembly, or state law obliges companies to pay zakat, or the owner of the shares delegates the company's management to pay zakat due on his shares.

Also, the first zakat conference²¹ and the Shariah Council of AAOIFI also hold this opinion, so the company's payment of zakat is on behalf of the shareholders.

Consequentially, it is important to know that the shareholder assumes the responsibility of zakat payment on the shares, and that zakat is paid only due to the obligation of the shareholders to pay zakat according to the dictate of Shariah. Thus, the reason for the resolution by IFA-OIC that the zakat is not obligatory on shares owned by those who are not required to pay zakat from a Shariah perspective, as example of such are state-owned shares, public institutions, or waqfs for public purposes, or non-Muslims. The IFA-OIC resolved that their shares must be removed from the company's zakat pool. The IFA-OIC stated in its resolution to that effect: The portion of shares in which zakat is not obligatory include shares of the Public Treasury, charitable endowment shares, charitable shares, as well as shares of non-Muslims.

The Position of the Saudi Regulation on the Person that is Responsible to Pay Zakat on Shares of Joint-Stock companies

As for the Saudi regulations, despite that the obligation to pay zakat is addressed to of legal entities such as companies but the regulator is not referred to the Shariah mandate, but what is intended is that legal entities are subject to zakat collection and to follow due processes of zakat. It is known that the state does not address individual shareholders by directing them to deduct zakat due from their shares in companies, even though they are the legally charged, but the state addresses the company's representatives from the board of directors on behalf of the shareholders. The Saudi regulation is in accordance with the jurisprudential consideration that the shareholder is responsible, and the condition for the responsibility on the shareholders is considered in what is taken from the companies and legal entities. That is evidenced by the following factors:

1- The distinction between legal personalities as shareholders, some of which are subject to zakat and tax, and some are subject to zakat in part, as well as to tax in another part. The reason for the differentiation is due to the nature of the shareholders in these companies, and that the tax is levied on foreign companies, because they may be owned by non-Muslims

2- Non-subjection of waqfs to zakat as stated in the Executive Regulations issued by the Ministerial Resolution (2082) and the date of 1/6/1438 H in Article 9:(Charitable endowment yields are not subjected to zakat, except for the offspring endowment; if it is expended for public good. Also, the yield of an endowment that is invested and generate profits, whether the investment is through a company or elsewhere, are not subjected to zakat.

²¹ Check: Abhāth Fiqhiyyah fī Qadhōya al-Zakāt al-Mu'āsiroh (1/869)

3- Exemption of non-profit entities from zakat, because the funds they have are not owned by certain persons, as stated in paragraph (II) of Article 5 of the Executive Regulations: (No zakat obligation on charities and non-profit organisations and institutions, including their shares in other establishments)

The summary of the above is that the zakat is paid by the company with backing from a Shariah and Statutory point of view. The zakat is from the company's zakat assets, and that the company's deduction of zakat is on behalf of the shareholders, and that the shareholder is free of any responsibility by the company's deduction from its zakat assets.

VII. CONCLUSION AND RECOMMENDATIONS

The conclusion and recommendations of the paper can be better captured in the following:

1- This study finds that there is no substance in the disagreement of contemporary Shariah scholars regarding the *Fiqh charaterisation* of shares on the zakat subject, because even based on the second opinion that shares is a share in the company's entity, the shareholder has the right to obtain profits, and has entitlement to get the right of the product of the liquidation of the company, and consequently, the shareholder pays zakat on the shares owned.

2- The difference of intention has effect on the zakat of all wealth, so whoever buys something for the purpose of using it, there is no zakat on it, and if it is intended to be invested (i.e., utilized), zakat must be paid from the streams of incomes not on the original asset. Also, if the intention is trading, zakat must be paid from both original asset and profit. Such shares are not conceived for use, it is either for investment or for the trading purpose.

3- Whoever buys shares with the intention of taking advantage of the annual dividend, not for the purpose of trading, then the zakat is paid as on things to be exploited (utilised).

4- Whoever buys shares for the purpose of trading, zakat is paid as on trade goods, and if the one year required period (for zakat to become obligatory) comes around while still in the person's possession (i.e., the shares), zakat is paid on the market value of the shares.

Furthermore, the research finds that the Saudi System does not address individual shareholders to pay zakat on their shares in the companies, even though they are the legally (Islamically) charged. The Saudi system addresses the company representatives including the board of directors on behalf of the shareholders, and thus the Saudi regulations agrees with the jurisprudential consideration that it is the mandate of the shareholder. The requirement of assigning zakat payment to the shareholders is taken from companies and legal entities.

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