

Zakat Obligation on Shares from Shariah Perspective

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Abstract

This paper discusses the contemporary discourse of Zakat obligation on shares owned by shareholders in a company, concurrently with concise deliberation on multiple views of Shariah scholars regarding the treatment of shares mainly according to the intention of owning the shares and the nature of the company's activities, as well as how shares are categorized and analogized in the light of Shariah perspective, which will affect the Zakat imposition drawn from it. Providing analysis of those views, it aims to dispel the confusion pertaining to the Zakat imposition liable on Zakatable assets held by the company, with clear focus on the shares owned by the company. Bringing along the suggestion of shares being treated as commercial goods (urud tijarah) and hence the zakat imposition on it regardless the primary intention of owning the shares in the first place, the arguments given are referral to the views of International Fiqh Academy in concordance to the modern practice of shares trading and ownership as been exercised in Bursa Malaysia, apart from proposing a distinguish between the ruling of zakat on shares owned by Public Listed Companies (PLC) and private limited companies that are elucidated in the paper.

Keywords: Zakat, shares and Shariah opinion

Introduction

The discourse of Zakat obligation on shares is broadly discussed and significant amount of literatures is founded in tackling the issue. As a commercial business activities have become prevalent in today's world, this topic is of prime importance as to determine the obligation of Zakat emanating from the shares owned. With purpose to tweak the discourse of Zakat obligation on shares, this paper aspires to bring the proposition of Zakat obligation on shares to a clearer comprehension.

A previous current practice based on most of the prevailing fatwas holds that Zakat on shares is paid based on the intention of holding the shares whether it is aimed for dividends or aimed to be traded in the stock markets and gaining profit from the appreciation of the prices or market value of the shares. This paper attempts to revisit the concept in the sense of the Shariah treatment

towards the shares owned by shareholders, which will further determine the Shariah legal ruling drawn from it based on the expansion of modern practice and exercise of shares trading and ownership.

Prior to the complexity and detailed accounting intricacies in appraising the market value of the companies' Zakatable asset, it is paramount to discuss the Shariah views on this particular topic in determining the zakat obligation and how it will be calculated and localized. Various views of scholars are to be taken into account in this paper in terms of their analogical deduction to what Zakat on shares is in order to arrive at the conclusion of our proffered suggestion.

Normally, in expounding Zakat obligation on shares, Muslim scholars will divide the discussion into two situations:

First situation: Companies Paying the Zakat Obligation

Should a company decided to pay the obliged amount of Zakat; the shareholders are no longer held accountable for the Zakat payment. This is in concordance to the legal verdict by Al-International Fiqh Academy number 28 (3/4):

“Zakat on shares is liable to the one who owns it, or in the case of a company with a stipulated policy of paying Zakat on behalf of the shareholders, or it is determinately resolved in the company's board meeting or is explicitly stated in the country's legislation that made compulsory for the company to pay Zakat, or the management of the company is mandated by the shareholders to settle their Zakat-related liability.”

Second situation: Shareholders Paying the Zakat Obligation

In the realm of this situation, the aim of shares ownership should be taken into account to calculate the amount of zakat liable to the owners. The ownership aim is generally classified into two groups of objectives:

First objective: The owner who aims to gain returns from shares trading in the secondary market.

This is treated as *'urud tijarah* (merchandise) according to International Fiqh Academy:

“If the shareholder has invested in shares for trading purposes, then his shares are subject to Zakat as commercial goods. After the elapse of one year period, and if they are still in his possession, he shall pay Zakat on their market value; if there is no stock market, he will pay Zakat on their value as appraised by qualified experts. He will pay 1/4 of 1/10 (2.5%) of their market value plus their dividends, if they yield any dividend.”

Second objective: The owner who aims to gain dividends from the company and has no intention in shares trading. As mentioned in International Fiqh Academy resolution number 28 (3/4):

“If the shareholder only intends to gain dividend yields and do not have intention in trading purposes, then the Zakat shall be subject according to Zakat Mustaghallat; this ruling is in conformity with resolution by the 2nd Conference of International Fiqh Academy.”

There are a number of shareholders aiming solely for the annual dividend yield prior to its nature of the stable period of distribution which renders it more enticing. Regardless of more profitable return in shares trading, it is less appealing to them for some reasons such as exposure to fluctuating fashion of shares trading in the secondary market that commands more risk profile, efforts and additional unit of capital.

To some extent, holding the share for a long period of time has become prevalent. This type of share is mostly the unlisted share in a sole proprietorship company. Other cases occurred also to serve the aim of saving and long-term investment.

Islamic scholars have extensively discussed the jurisdiction of this type of share, which will be brought forth in this paper. It comprises of:

First view: Zakat on shares is based on the type of business of the issuance company.

The view is in respect to the operational nature of company in terms of whether it is a service providing company, which is exempted from Zakat or is it a Zakatable shares of trading companies.

The saying is attributed to the view of Syeikh Abdul Rahman Isa:

“Indeed, the purview of the obligation of zakat requires to consider the type of shares issued as well as the issuance companies. Provided the company is particularly a manufacturing company (exchange of goods and services), which did not run the business (exchange of goods) of hospitality companies or advertising companies or bus transportation companies or courier services companies or aviation companies or railway companies; it possesses an exemption of zakat in shares. This is because the value of the shares is reflecting the equipment value of the company, the management cost, the company’s building value and the other miscellaneous operational value of the company. However, the returned profits and dividends drawn out from these shares are still

subject to zakat in a way of merging them with other shareholders' property. Zakat will be imposed on the combination of the balances of the distributable shares dividend together with the other shareholders' property after the elapse of one year (haul) as well as when the zakat minimum limit (nisab) has been reached.”¹

However, if the company full operational business relies on the purchasing of goods and subsequently selling them without the occurrence of processing changes in the forms of the goods (*tahwiliyah*), or a company running the processing and later commencing the exchange of the goods; then, the shares of these companies are subject to zakat.

The activity of the company that runs the business of trade and exchange of goods and services, regardless whether it is to manufacture it or not is the plausible reason for the zakat imposition. Zakat is liable on the current value of shares after the deduction of several enumerated components; the value of buildings, tools and equipment owned by the company. The net value of those is to be referred to the published annual report of the company.

Syeikh Yusuf Al-Qaradhawi however, critically contends this view by displaying a comparison between two shareholders of two different companies, where the first leg of the picture is an individual who owns shares in a book printing company, which is liable for zakat on yielded dividends only, while the other leg is an import and export trading company where the zakat imposed is not only on the dividends, but on the shares as well.

He remarks:

“The partition of companies based on services offering company and business companies (trading of goods) or its equivalent of classification is a separation that has no definite basis from Al-Quran, Sunnah, Ijma' and valid qiyas.”²

This is because shares in both types of companies are evolving in nature and yielding significant annual returns to the company, and even perhaps the services offering company is generating greater returns than the trading company.

¹ Al-Muamalat Al-Hadithah wa Ahkamuh: p.73-74. Sheik Yusuf Al-Qaradhawi in Fiqh Zakat p.137

² Sheikh Yusuf Al-Qaradhawi: Fiqh Zakat p.438

Second view: Zakat on shares is regarded as a merchandise (*'urud tijarah*) in totality.

The view is supported by Abu Zahrah, 'Abd Abdul Rahman Hasan and 'Abd al-Wahhab Khallaf³, where they do not distinguish the form and the type of the companies, but see it in the spectrum of glasses. The purchased shares are intended for trading and they yielded returns just like the traders who gain profits resulting from the trade commenced. The price is actually appraised by its market value, and it differs from the issuance price. Therefore, the purchased shares are considered as commercial goods (*'urud tijarah*), so it should be fitted to Zakat calculation as similar to what it is applied to merchandise.⁴ Apart from that, this view also do not differentiate the intention of the shareholders who purchase shares, whether it is aimed for investment or shares trading. Regardless of the intention, the shares are subject 2.5% zakat of the market value at the end of the one-year elapse and when the minimum threshold of amount (*nisab*) has been reached.

According to Syeikh Al-Qaradhawi, this view is suitable for the shareholders on an individual capacity as they acquired the necessary information on the shares as well as on their gained profits and values. Thus, it is easier for them to pay Zakat out of it. Besides that, Al-Qaradhawi said that it is applicable to implement the first view at the national level since all the details and information of the respective shares are readily accessible to them rather than to the individual shareholders. Hence, he stated that the second view of opinion is more practically suitable on the basis of individual shareholders as he says:

“Possibly this opinion (which considers all types of shares is subject to zakat as merchandise or 'urud tijarah) is more convenient and easily practices by an individual compared to the first view because every shareholder knows his or her share of annual profits, therefore it will be easier to calculate the zakat due. This is in contrasts to the former view which differentiates the companies' shares, where zakat are imposed on the profit yielded only for some of the shares, while for the other shares, zakat are imposed on the shares' value together with the profit gained. This is sought to cause difficulties for the ordinary shares holders. Therefore, we believe that it is more preferably to take the second view for an

³ Sheikh Yusuf Al-Qaradhawi: Fiqh Zakat p.441

⁴ Halaqoh Al-Dirasat Al-Ijtimauiyyah, Al-Daurah Al-Thalithah, p.242 Cited by Sh Yusuf Al-Qaradhawi: Fiqh Zakat (1/560)

*individual because the zakat calculation is easier. But if an Islamic state wants to collect zakat from the companies, the first view is of a better choice”*⁵

Third view: Zakat is based on a shareholder’s knowledge on the company’s assets and properties that are subject to zakat.

This is the view of the majority of the scholars who participated in the 1st Zakat Conference.⁶ The company's assets that are subject to zakat include cash, goods and debts of the company that are believed to be amortized. According to this opinion, the charged zakat on shares is 2.5%. Thus, it can be inferred that zakat is not based on the shares owned, but rather it is based on the assets and equities of the company.

However, there are some disputes amongst the scholars in the event that the respective knowledge and information are failed to be obtained. A group representing the majority believes that the shareholders should total up the yielded dividend from the shares. Besides that, their properties should meet the condition of *haul* and *nisab*.

It is an important note that the shareholders should exert effort to secure the necessary information and pay zakat for the assets and shares that are subject to zakat. In consonance to Majma’ al-Fiqhi⁷, it applies as long as the company is not in a critical situation where the value of the debts exceeds the value of the assets.

On the contrary, Syeikh Al-Qurahdagi criticizes that it is strange if the reason for not paying zakat is only because of there is no information regarding the ratio of a company's assets that are subject to zakat.⁸

⁵ Sheikh Yusuf Al-Qaradhawi: Fiqh Zakat p.442

⁶ <http://www.qaradawi.net/new/Home/page> accessed on 25/10/2015, 9:05pm

⁷ Refer: Majma Al-Fiqhi Resolution no 121 (3/13)

⁸ Sheikh Al-Qurroh Dagi: *Buhuth fi Qodhoya Fiqh Mu’asorah*, p.213

Fourth view: Zakat obligation on shares is juristically analogized to the tithe imposed on agricultural land (*al-‘usyur*) where 10% is imposed on the profits once the shareholders have received them.

This view represents the minority voice of the delegates of the 1st Zakat Conference and also stands as the last resort chosen by Syeikh Yusuf Al-Qaradhawi.⁹ It is based on a *qiyas*, an analogy of shares to agricultural land, sharing the same effective cause (*‘illah*) where there is Zakat obligation imposed on the principal, not on the capital.

According to Syeikh Ali Muhyiddin al-Qurahdagh¹⁰, the effective cause (*‘illah*) is pointless and renders the analogy to be susceptibly invalid because as far as stock and shares are concerned, the legal practitioners recognized them as a portion bestowed to the holder or a legal certificate representing the holder’s portion of the capital in the established company. This portion is interpreted as a cash given by the shareholders to the company and if it is assumed that the portion is identified as a tangible asset which is not subject to zakat, the shares (which are represented in the *‘ainiyyah* component) are permissible to be traded in secondary market (*tadawul*) only after the company has published the two years reports of their financial statement. This is a key rule to be adhered to as it will illustrate the real value stored in the *‘ainiyyah* as appraised in the financial statement.

The shares of assets that are subject to zakat will not remain as an asset as it is initially translated into a cash value based on the appraisal in the 12-months financial statement. In the view of legal experts, the shares will turn to cash values like *al-manqulat* shares. Then, how they will be regarded as a static and stagnated principal or capital that is not subject to zakat like in the case of agricultural land?

Al-Qurahdagh¹⁰ also added that generally in companies; Islamic banks in particular, it is founded on their annual financial statement that the ratio of cash to debt is 80% to 90% and part of the ratio includes trading merchandises. Therefore, how can it not be subject to zakat?

⁹ Sh Al-Qurroh Daghi: Buhus fi Qodhoya Fiqh Mu’asorah, p.215

¹⁰ Ibid

Apart from that, agricultural land has distinguishing characteristics in terms of nature, forms and ways to irrigate and reap. The land also has unchanged features such as maturity and stability till the end of the day. This is where the dissimilarity is identified between agricultural lands and shares, where unlike agricultural lands, shares are capturing debts, cashes as well as company's merchandises. Furthermore, shares are also highly exposed to fluctuations and even risks in the case of the company's failure and insolvency. Thus, is the analogy is suitable to be accepted?

In the sense of returns gained, shareholders procured returns in the form of cash (dividends), whereas the returns on the land are in the forms of agricultural produce. Each case adopts different jurisdictions with different legal effects.

Looking at it from another perspective, if the land is irrigated naturally by rainwater or the like, 10% of the yield is due, and if it is irrigated by human or mechanical watering, then 5% of the yield is due, while for those holding the view of 10% due for stock and shares, they do not distinguish between these two situations. This implies that pertaining to the analogy, *al-far'u hukm* is not in consonance with the original *hukm (al-asl)*, and thus it denies the prerequisite condition for *qiyas* to be accepted.

Lands, together with their yields occupy the role of production tools while shares are not the same. The returns yielded are normally referred to capital and efforts, hence it is suited to be regarded as *'urud tijarah* with an exception for several agricultural companies.

Fifth view: Zakat on shares is regarded as *Zakat al-Mustaghallat* where 2.5% is imposed on profits after the yielded distributed profits have elapsed a one-year condition, as per the resolution of International Fiqh Academy number 28 (3/4):

“If the shareholder intends only for dividend yields and not for trading purposes, then the zakat shall be subject according to zakat mustaghallat; this ruling is in conformity with resolution by 2nd Conference of Global Fiqh Academy (see: Qorar No:2(2/2)), and is referring to zakat of land ownership and non-agriculture rental land, that the shareholders are not liable for 2.5% of zakat on the capital/principal, but rather compulsory on the returns/profits/dividends after the

elapse of one year from the day of profit provided has satisfied the prerequisite condition and is not denied from any form of impediments”

Sixth view: It should be taken into account in the calculation of zakat, the dividends earned along with company’s inventorial merchandise and assets including cash, receivables that is certain to be collected, liabilities and debts payable to creditors. In addition to that, it also should concern the nature of its business activity. In other words, zakat is imposed on dividends and common calculation of zakat on trading companies. This is International Islamic Fiqh Academy resolution number 121 (13/3) with respect to shares owned for dividend purposes:

“The Council of International Islamic Fiqh Academy held a 13th workshop seminar in Kuwait on 22-27 December 2001 (7-12 Syawal 1422H). After the evaluation of the presented research study to Majma’ entitled “Zakat in shares owned for dividend yield purposes” and after listening to the discourse discussing the topic attended by members of Majma’ and other scholars and after taking Majma’ Resolution number 28 (3/4) into consideration pertaining to zakat in shares underlined in the third paragraph stating should a company doesn’t pay zakat on their assets for any reasons, the duty thereon falls to the owner of the shares himself if he is able to know what has been classified for him from the zakatable assets, but if the company has upfront shown to him what is paid on behalf of the shareholders, then the zakat obligation thus is discharged; because it is the original method of paying zakat in shares.”

The Council resolved a resolution:

“If the company possesses zakatable assets such as cash or merchandise or a certain third party receivables, and the company does not pay the liable zakat and the shareholders also do not acquire such respective information from the company’s account of which part of his portion of shares consisting zakatable assets; then the shareholders are obliged to search for the information provided the company is still viable for which its total debts do not exceed over the total assets. It is, on the other hand, resolution number 28 (4/3) is effectively applicable for companies absent of any zakatable items of which zakat imposition is only on the company’s profits and not on the shares.”

Analysis

This paper is inclined to combine the first and third view in regards to the long-term owned shares. The different nature of the company’s operation whether it involves services or trading, is what will be considered in imposing zakat on zakatable assets.

If the issuance company is a company based on commodity and goods trading, other than liable for zakat on yielded dividend from company's profit, the rate of zakat in shares imposed is capturing all the companies' zakatable assets encompassing cash, established and certain receivables, merchandises and other likes.

On the other hand, if the issuance company is a services offering company, zakat imposed on company's dividend yields as well as other zakatable assets such as saving, cash and the receivables.

The study perceives the second view of zakat for all type of shares is treated as zakat for commercial goods, as applicable and suitable for shares traded in capital market. This view is the best fitted for shares traded in capital and not for unlisted and untraded ordinary share of a company.

In regard to the fourth view, with all due respect, the study contends the view of analogizing zakat on shares to agricultural zakat as it is known that a company purposed for trading, profit maximization and cost minimization. As for agriculture ambit, the cultivated crops are for domestic use and not for exchange let alone traded for. And in the event of the produce and crops is exchanged or traded, it's regarded as commercial goods (*'urud tijarah*) nonetheless, regardless of t the fact that it is originally a non *zakatable* items or a *zakatable* one like rice or wheat.

The fifth view deducing that shares owned not for trading purposes but rather for the dividend yield, thus treated like zakat *al-mustaghallat* is the crux issue for this study. As development rolling in to the landscape and recent change regarding shares, is it eligible enough for them being not liable to zakat for the reason of holding the shares for a long period of time purported for the dividends only?

Zakat obligation on shares traded in capital market

Most of the studies that have been conducted and the verdict of legal rule are conveyed in a general connotation without distinguishing private limited company shares and shares traded in capital market.

International Fiqh Academy Council resolution number 28 (3/4) differentiates shares bought for trading purposes, recognizes it as commercial goods (*'urud tijarah*) and shares bought for the aim of dividend yield which is regarded as *al-mustaghallat* regardless of any type of operational nature of business the company is conducting. It is in consonance with the view of Shariah Council of AAOIFI in regards of the trading shares and underpinning details for *al-mustaghallat*, which the zakat is imposed on it, should be concerning the company's operation nature as well.

This study brings along a proposition of suggestion that any shares listed on capital market and being traded thereof, is treated the same as zakat on *'urud tijarah* regardless the purpose is for the dividends or for trading and gaining for the future appreciated price of shares. It is in line with the sixth view aforementioned above based on International Fiqh Academy resolution number 121 (13/3).

Evidences/Arguments

First: One of the prime stipulated conditions for a zakatable asset is it must acquire a growth potential attribute (*Al-Nama'*). In the case of traded shares, it can be observed that there are expansions and growth in wealth from earning dividends and benefited from the capital gains and daily exchange trade in secondary market.

Second: Analogy to trade goods. The main feature of shares is its tradable nature at any point of time, and is identified as a liquid asset due to that attribute. Investors are enticed to invest in shares rather than the other non-current asset such as real estate, house and building concerning the liquidation facility. Normally shares are bought for its potential future market price value to increase which to be sold thereafter to benefit from the appreciated shares prices, and there are still a segment of people who bought the shares for the intention of the yielded dividend. Hence navigating it to what scholars have stated as *'urud tijarah* due to the condition of trading aim is satisfied.

Third: Shares are considered as foreign entities that don't have direct relation with the companies' activities as well as their matter in gaining profit or incurring loss. Thus the market price does not significantly reflect the real value of company assets. It is as if the market price is

the actual price of the shares and is not determined based on the actual value or issuance price. A sheer number of investors who bought the shares are not in favor to take cognizance of the management and administration of companies, they concern most with the rise in shares price and potential increment in stock market, except for the majority shareholders and minority shareholders of them. This reinforces the argument that the shares are not traded based on the assets and profits of the company, but rather stimulated from the demand in the secondary market.

Fourth: Shares in nature are not owned for domestic personal utilization. If it is for that particular use rather than being traded, it's termed as *al-qunyah*. This is the distinguishing feature of what defines an asset to be subject to zakat or not.

Al-qunyah is defined as an acquisition of wealth for utilization other than trades¹¹ *Al-qunyah* includes furniture, motor vehicles, cloths and all the likes. Scholars agreed that assets bought for personal domestic utilization and not for trading or exchange purpose are not subjected to zakat. It is beyond logical comprehension that one buys shares and stocks for merely aiming for a domestic use.

Fifth: Since any companies are established to exercise trading practice, all the shares issued by them are targeting for an amount of working capital to execute business operation as well as generating revenues, and this profits will not be earned should the company do not stream any business transactions. Hence, it can be deduced that the shareholders normally are informed and acknowledged that the bought shares are for the business purposes of the respective company. In a nutshell, this implies that although the shares owned are capturing the company's asset acquisition and liabilities, in substance it is *'urud tijarah*, where the shares are there reflecting the company's business operations.

In today's context, trading encompasses the exchange or sale of goods and services and imposition of tax is declared on it. The annual reports of the companies do not treat separately their businesses whether they are trading-based or services offering based. This is in line with the

¹¹ Al-Mufradat fi Gholibul Quran, Al-Misbah Al-Munir, Lisanul Arab, Mu'jam Wasith, Mughni Al-Muhtaj 1/398

basic concept of zakat, where it is imposed on the net assets after the respective deductions i.e. debts.

It is hard to deny that profit maximization is the main intention of a company. If there is any company that does not want to capture profits, it must be the philanthropy bodies or Non-Profit Organizations (NGO) who clearly do not even issue the shares to begin with.

Sixth: The purchase of shares is not regarded as the basic necessities; it is rather a way to enrich income. In addition, the shares are not bought by the poor people, but they are bought by the wealthy people. According to Hanafites, asset acquired that is deemed above the necessities (*al-ziyadah 'an hawajj al-asliyah*)¹², is one of the conditions for it to be subjected to zakat.

Seventh: Among the arguments that shows the shares are commercial goods for trading and not representing the ownership of companies' assets, is the shareholders are not entitled to the right of consumption (*tasarruf*) of the companies' assets which much alike of not legally authorized to lease, sell, gratuitously giving to another person (*hibah*) and pledge them. Furthermore, they are not at liberty to access the right of consuming any of them. Therefore, the shares owned are regarded as tradable goods, which can be purchased, and to be sold back later on.¹³

There might be some sayings to put this issue in comparison to the inheritance property, in which although some of the inheriting beneficiaries are not entitled to the right of consumption i.e. have not reached the discerning age (*sighar*), the properties are still subjected to zakat regardless they are not being consumed or utilized. We view this as a flawed perspective because the property of inheritance is not aimed for trading which otherwise is the case for shares in companies.

Besides that, if the company is convicted to court, or is facing an impeachment of lawsuit case against them, the shareholders will not bear any sentences as per their limited liability features. This somehow implicates that the shareholders are not affiliated to the companies' ownership.

¹² Al-Hidayah wa Fathul Al-Qodir 1/487 and Al-Darru Al-Mukhtar Wa Raddu Al-Muhtar 2/6

¹³ Al-Ghufayli, t.t Cited by Luqmanulhakim Hussain in his paper titled Zakat Saham Status Kewajipan Ke Atas Individu Pemilik Saham dan Kaedah Pengiraan

Eighth: Recent practices show that shares purchasing in Bursa are normally purported for trading which aims the increase in the share price values rather than the dividend yield purposes. Dividends can be regarded as an ancillary (*tabi*) rather than the main goal (*asolah*). The rapidly growing companies usually do not pay dividends for their shareholders but they are focusing further on the potential investment for the benefits of the companies. Similarly, well-established companies also will not pay dividends to the shareholders due to their stable and robust value of shares that will entice more purchases. Therefore, because there is no dividend distribution, the company has more investable funds to be allocated to finance new projects, buy assets, repurchase companies' shares or even buy out another company. Among companies that do not exercise any dividend distribution are Facebook, Google Inc., Amazon, EBay and Yahoo.¹⁴

As stated in Investopedia:

*“A company that is still growing rapidly usually will not pay dividends, because it wants to invest as much as possible into further growth. Even a mature firm that believes it will do a better job of increasing its value (and therefore a better job of increasing its share price) by reinvesting its earning will choose not to pay dividends. Companies that do not pay dividends might use the money to start new projects, acquiring new assets, repurchase some of their shares or even buy out another company”*¹⁵

Unit trust fund managers are normally intended to purchase the shares to earn capital gain from the increment in the price value although there is a possible risk for it to happen otherwise.

Ninth: It is very difficult to calculate business zakat that is subject to a company based on its nature of operational activities whether they trade agricultural products, live stocks or others. Share traded in Bursa usually is not barricaded with specific tenor, and will be held for a very short period of time before later being traded or sold due to the appreciation or increase in the market value. Some stocks are traded on a daily basis.

Furthermore, there is a difference of opinion among jurists on commercial goods (*'urud tijarah*) and *al-mustaghallat*; whether both has distinctive features and need to be distinguished or not.

¹⁴ <http://finance.yahoo.com/news/biggest-companies-dont-pay-dividends-180000561.html> accessed on 1st September, 6.20pm

¹⁵ <http://www.investopedia.com/ask/answers/12/why-do-some-companies-pay-a-dividend.asp> accessed on 1st September, 6.10pm

According to Ibn ‘Aqil, a Hanbali jurist, in calculating zakat on *al-mustaghallat* such as leased assets e.g. buildings, or jewelries, both rental values of the leased assets as well as the assets’ value are taken into account similarly in calculation of commercial goods.¹⁶ This is also Imam Malik’s view as transmitted by Ibn Rusyd.¹⁷

On the other hand, majority of the scholars (*jumhur ‘ulama*) differentiate between ‘*urud tijarah* and *al-mustaghallat*, which they stated that zakat *al-mustaghallat* is imposed on the rental or lease value only.

This paper is more gravitated to the view of Ibn ‘Aqil and Imam Malik. This is due to the prevalent practice today that the services and leasing offers are carried out commercially, especially when it is offered and conducted by official registered companies. Therefore, it can be inferred that the asset acquisition by the company is not meant for domestic and personal use or utilization, rather it is aimed for generating income stream i.e. rental value. Hence, this is what actually *al-nama*’ element entails for the condition of a wealth to be subjected to zakat, as been stated by scholars.

Tenth: The application of *Qiyas Al-Shabah*. *Qiyas al-Shabah* is a legal methodology that looks at more similarities between the two sets of original cases (*usul*). This method is utilized when a *furu*’ is vacillating between two precedents of *usul*, and the *furu*’ will be linked and weighted to the *usul* that shares more identical similarities. The classical example for this is the discussion of scholars to identify whether a murdered slave is to be considered as a possession or a layman as far as *diyat* value is concerned. In the context of zakat on shares, shares vacillate between commercial goods (*‘urud tijarah*) and businesses ownership (in the sense of *musyarakah*). By adopting *Qiyas Al-Shabah*, stocks and shares are said to be inclined towards ‘*urud tijarah* because they are traded like commercial goods, their profits are emanated from the appreciation of the market price and value (in most of the cases), and because of some more similarities as been mentioned above. This clearly denotes that as far zakat on shares is concerned, the

¹⁶ Ibnu Qayyim Al-Jauziyyah, *Badai’ e Al-Fawaid*, 3/143

¹⁷ Ibn Rusyd, *Bidayatul Mujtahid*, 1/237, Al-Qardawi, *Fiqh al-Zakat*, 394

inclination of similarities is weighted more towards commercial goods rather than the company's asset acquisition.

Eleventh: The difference between the shares of a company listed in Bursa and the shares of a private limited company.

The main distinct between those two companies is how the companies obtain their capitals to finance their business. The companies listed in Bursa went through a process termed as Initial Public Offering (IPO), hence they have a commendable amount of shareholders. On the other hand, the capitals of private limited companies come from their own founders and owners.

The shares of the Public Listed Companies (PLC) in Bursa are meant to be traded in secondary market and to be purchased by anyone who are transacting in Bursa as well. Meanwhile, the shares of a private limited company or the shares of an unlisted company in Bursa are not meant to be traded even though they can be sold. This is because the trading of shares and stocks is not the method of the company to maximize its profits.

PLC garners the privilege of the capacity to consolidate a huge amount of capital compared to the other type of companies. The companies therefore are obliged to audit their financial accounts. Besides that, their annual reports must be presented to the shareholders and must be made available to the public, this somehow enhances the competitiveness of the company and acquires the highly sought feature of liquidity, of which the shares can be easily traded and exchanged.

Apart from that, PLC also gets an additional capital in the form of cash directly from the shares purchaser during the IPO, which is conducted in the primary market. Once the shares enter the secondary market, it is an independent transaction between the shareholders and the people in the market, and it has no significant effect to the companies' cash flows. This illustrates that the shares are not fully represented the ownership of the company's assets, but they are a product and a separate entity from the company.

Evidences stated before prove that shares traded in Bursa, or secondary market, are inclined towards *'urud tijarah*. The prerequisites and conditions in this research are pertaining to *'urud tijarah*.

Preconditions for Zakat on 'Urud Tijarah

To practically implement zakat imposition on shares, which can be regarded as *'urud tijarah* in capital market, the following prerequisites have to be taken into account.

First condition: Intention of the business

Scholars agreed that the embedded condition for a company's assets to be subjected to zakat is the assets must be intended for trading purposes when they were first bought, and it was acknowledged during the moment they were possessed and owned. Businesses are actions, hence they need to have intentions. If one owns an asset for a domestic use or to be utilized and consumed (*al-qunyah*), and later decided to sell it; this situation is not considered as *'urud tijarah*.¹⁸

On the other hand, there are two views with respect to the case of the changes in purpose from being a business item to a domestic use. Majority of the Hanafites scholars hold the view that when a person modifies the purpose of the initial intention of treating it as a trading good to a domestic use, it will no longer liable to zakat imposition and the previous calculation of the one year elapse also is dismissed.¹⁹

According to the Maliki view, if the business intention is attached together with the objective of benefiting from the purchased asset, like an intention of a person to lease the asset upon acquiring it, and once he earned the profit from the rental income stream, the asset will be sold; then this case is subjected to zakat on *'urud tijarah*. Further added in this particular view is the situation where a person's intention for the asset is meant for both his acquisition (*al-qunyah*)

¹⁸ Ibn Abidin, *Hasyiah Rad al-Muhtar*, 2/10, 13, al-Shawkani, *Fathu al-Qadir* 1/527, Al-Nawawi, *Al-Minhaj* 2/28, Ibn Qudamah, *Al-Mughni* 3/31.

¹⁹ Al-Imrani, *Nawazil al-Zakat*, 1421H, 3:308

and trading purposes, where he will initially utilize the asset, and trade it in a later time if he has a chance to gain profit from the trade.²⁰

The jurists also argue that if the asset is just for the ownership and personal use or to rent out, then it is not subjected to zakat.²¹ Some of the people are inclined to this view, and apply it on shares and stocks trading. This is wrong because the case that is discussed above is different with the case in shares trading.

Is intention really required?

Hanafites scholars only exempt the intention requirement for a trader (*mudharib*), because the role of a trader (*mudharib*) is to do businesses, while some Shafiites scholars like Qolyubi view that intention is not a requirement or a prerequisite.²²

Does the intention of the shareholders affect the zakat imposition on their shares?

Scholars had unanimously agreed that the intention of trading to gain profit is a main prerequisite for the zakat to be imposed. As stated by Ibn Munzir:

“The consensus of the scholars has agreed that zakat is subjected to an asset that is meant for trading purposes only, provided it has reached the one year elapse”

The view is transmitted from Umar RA and his son, Ibnu Abbas, the Seven recognized scholars (*Al-Fuqaha' Al-Sab'ah*), Hasan, Jabir bin Zaid, Maimun bin Mahran, Thawus, Al-Nakhaie, al-Thaury, al-Awzaie, al-Syafie, Abu Ubaid, Ishaq, and Ashab Al-Ra'yi. It is also a view of Maliki and Ahmad,²³ and by Abu Ubaid who narrated an ijma, a consensus of Muslim scholars that zakat is obligatory on the traded commercial goods.²⁴

²⁰ Al-Syarah Al-Kabir Ma'a Al-Dasuqi 1/472, Ibn Rushd, *Bidayat al-Mujtahid*, 1408H, 2:368

²¹ Ibn Abidin, *Rad al-Muhtar* 2/10, al-Shawkani, *Fathu al-Qodir* 1/527, Al-Nawawi, *al-Minhaj* 2/28, Ibn Qudamah, *al-Mughni* 3/31.

²² al-Nawawi, *Al-Minhaj* 2/29

²³ Ibn Qudamah, *al-Mughni* (3/3), Abu Ubaid, *Al-Amwal*, p.459

²⁴ Abu Ubaid, *al-Amwal*: p.463

The Change of Intention from Trading Purposes to an Acquisition

If the intention of the shareholders changes, where their shares are initially intended for the trading purposes but later they decide to hold the shares for the dividend yields, then this will accord an effect, in reference to the majority of scholars' view, as long as the intention is genuine and not being served as a trick to circumvent the zakat obligation. It is also applicable to the case where the intention is changed due to the loss incurred from the shares. Zakat on shares is only imposed if the prerequisites are satisfied, especially the unchanged intention of the shareholder.²⁵

Second condition: Is it required for the shares to be owned through an exchange (*mu'awadhot*)?²⁶

Among the conditions stipulated for the zakat to be imposed is one has to possess or acquire the goods through a transaction between contracting parties like a spot/cash purchase, barter exchange, purchase on credit (either it is a short or long term maturity), dowry or a compensation from a dissolution of marriage by redemption (*khulu'*).

This is the view of Maliki, Syafie and Muhammad bin Hasan al-Syaibani. In the case of a person who owns a good from inheritance, gifts, and land to be utilized for agricultural cultivation or all the alike, as well as from collecting fire woods and returning of defective goods, they are not subjected to zakat.

This is because a trade is gaining wealth through the exchange of wealth, and there are counter values involved, whereas *hibah* granting is an example of acquiring an item without any counter value.

However an unpopular view of some of the Shafie school suggests that the dowry and compensation from *khulu'* are not subjected to zakat.

²⁵ Al-Qurrah Daghi, *Buhuth fi Qodoya Al-Zakah Al-Mu'asorah*, p.208

²⁶ Ibn Abidin Rad al-Muhtar, 2/13-14, Al-Nawawi *al-Minhaj* 2/29, al-Dardir, *Syarah al-Kabir bihasyiah al-Dasuqi* 1/472, Ibn Qudamah, *al-Mughni* 3/31.

The second view by the jurists of *Mazhab* Ahmad and Imam Abu Yusuf states that one of the conditions for zakat on business is one should own the trading goods out of his own endeavor, either from an exchange of counter values through *muwa'adhah* (purchasing the commercial goods), or through other forms like collecting fire woods or getting a *hibah*. If he owns them effortlessly such as from inheritance or a possession of a lost property after a year, then they are not subjected to zakat.

In a narration from Imam Ahmad: There is no difference between the commercial trading goods whether they are acquired through a particular endeavor or through an exchange commenced, as zakat is imposed on any goods that are meant for trading or business purposes²⁷. This is based on the hadith on the authority of Samurah Ra:

*“We are ordered by the Prophet to pay zakat for the goods that we are preparing for trades”*²⁸

Conclusion

This paper proposes to distinguish the shares that are traded in Bursa with the shares that are not. For private limited companies, the calculation of zakat is similar to the normal zakat calculation, which accounts all zakatable assets owned with the deduction of the liabilities held, as the resolution of International Fiqhi Academy has finalized and as per practice of the majority of zakat collection centers. Whereas zakat on shares traded in capital market infers different legal ruling, this study is inclined to view it as *'urud tijarah*. Therefore, zakat calculation on the shares is similar to zakat calculation on *'urud tijarah*. The current share price according to the market price must be rated for zakat counting regardless of the business activities.

If it is proven that the intention to purchase shares is to get the dividend only without the intention to transact them, the study still suggests that they are subjected to zakat on business since a company normally will not be established if it is not meant for business purposes and

²⁷ Ibn Abidin, *Rad al-Muhtar*, 13/2,14, Al-Nawawi, *al-Mihaj* 2/29, al-Dardir, *Syarah Kabir bihasyiah al-Dasuqi* 1/472, Ibn Qudamah, *al-Mughni* 3/31.

²⁸ Sunan Abi Daud: 1562. Albani declares it as a poor hadith in Dhaif Abi Daud

even the shares listed in the market are usually issued by a company, not by any charitable bodies or any other organizations that are not purported for businesses and trades.

Although there are some contemporary scholars regard shares that are purchased with the intention of ownership and gaining dividends as not an investment, but in reality, they are an investment and a trade because any increment in wealth will not occur without the involvement of a trade.

The calculation of zakat includes the dividend yielded, the company's merchandises, the assets owned including cash, the established receivables, as well as the liabilities held and the company's IOU. Apart from this, it should be also taken into concern the nature of the business activity and the operation of the company. In other word, it can be conveyed that zakat imposed on the dividends is earned together with the normal zakat calculation on business and trade.

This view differs from the resolution of International Fiqh Council no 28 (3/4), which only obliges zakat on the dividends. We perceive the view of imposing zakat only on dividends as an inadequate view because normally, the distributed dividends of a company are often interrelated to the revenues of the sales for the recent financial year of the company, whereas the calculation of zakat should be comprised of the merchandises regardless they have been sold or not.

Furthermore, the distribution of the dividend is subjected to the Board of Director perusal and rectification. More often than not, dividends are not distributed although the company is profiting, due to the reasons aforementioned.

This is in parallel to the AAOIFI Shariah Standard 4/2/4 regarding zakat:

“In regard to the long term investment of shares: If a company's zakatable assets are recognized (cash, merchandise, established and certain receivables), then they are subjected to zakat. If such information is unknown, then the zakat of the zakatable assets is based on a valid estimation or approximation”²⁹

²⁹ AAOIFI, 2010, 475

If individual shareholders are not informed about the zakatable assets, then he or she should approximate or estimate them to the nearest of his effort. He will be paying 2.5% zakat on the shares owned from the appraised value of the market price only after the approximation is concluded.³⁰ This is in consonance to the resolution of International Fiqh Academy no 121 (13/3) held in Kuwait on 22-27 December 2001 (7-12 Syawal 1422H).

³⁰ This is in line to the verdict of legal ruling by Shariah Advisory Council of Kuwait. Ahkamul wa Fatawa al-Zakah wa al-Sadaqah wa al-Nuzur wa al-Kafarat, p.59

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