

MUST SALARIES AND INCOME OF SELF-EMPLOYED PROFESSIONALS REACH A YEAR BEFORE ZAKAT IS DUE ON THEM?: THE CASE OF NIGERIA

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Abstract: *Salaries and incomes of the self-employed professionals have become some of the most common sources of earnings. Despite their absence in the classical jurists' discussions of Zakat, countries like Sudan and Malaysia have been implementing the fatwa that allows deduction of Zakat from salaries and income of the self-employed professionals. However, many Nigerians have yet to be convinced by the same fatwa. This paper seeks to ascertain whether Zakat on salaries and income of the self-employed professionals applies only if these earnings remain for one year and completed a niṣāb, or the only condition is niṣāb. The methodology of the research is a combination of qualitative and empirical qualitative methods. While the theoretical part will employ primary and secondary sources of Islamic law, the Constitution of the Federal Republic of Nigeria 1999 and the Nigerian Zakat Laws, the empirical method employed interview as instrument for data collection. One of the major findings is that Zakat on salaries and income of self-employed professionals is supported by texts of the Quran, Sunnah and the Maliki Madhhab which is the dominant school in Nigeria. The research also found that many Nigerians are willing to subject their salaries and professional incomes monthly Zakat deductions if the administration is transparent.*

Keywords: Zakat, salaries, Maliki Madhhab, income, self-employed professionals, *ijtihad*.

INTRODUCTION

During the time of the Prophet S.A.W the current monthly salaries structure was not in existence (Siwar, 2016, p. 84). Therefore, the reason for not having the discussion by the classical jurists is clear. However, the Shariah is always responsive to any emerging issue. On this note, the matter is one that requires research to see how salaries and other incomes of professional workers could be subjected to zakat. The reason is that Allah commanded the Prophet (S.A.W) in Quran chapter 9, verse 103 to take zakat from their wealth This verse did not mention one type of wealth and leave the other, it is general. It is known in Shariah that anything that has value is regarded as *māl*. However, what is unanimously agreed upon by the scholars is that there is no zakat on personal properties utilized by the owner in his home and not for commercial purpose. Apart from this, any other thing that falls under the category of *māl* (singular of *amwāl* that is mentioned in the above-mentioned verse) is subject to zakat except where there is proof to exempt it. Categorically, there is no proof to exempt salary and income of self-employed professionals from the *amwāl* which Allah commanded His prophet to take zakat from. Knowing very well that trade commodity is subject to zakat except a dissenting opinion credited to few scholars, why should salaries and income of self-employed professionals be exempted from zakat and yet the proceeds is cash just as the proceeds of trade commodity is cash?

And why the Nigerian Zakat laws did not include salaries and income of self-employed professionals in the list of zakat deductible items enumerated by the Laws, when they have included trade commodities in the list? Have they forgotten that zakat on trade commodities was also not specifically mentioned in the Quran and hadith and it is not an *ijmā'* either, but a product of *ijtihad* by the Sahabah and their successors?

During the introduction of the Shariah in Zamfara State from 1999 through 2000, the Zamfara State sent some delegates to visit Sudan to copy from their practices of zakat and waqf. Indeed, the visit manifested in the Zamfara State adopting the practice of zakat on salaries and income of self-employed professionals in the Zamfara State Zakat and Endowment Law 2000. Why did the section imposing zakat on salaries and income of self-employed professionals was repealed in the 2003 amendment to the laws? These are the questions that need to be tackled in this research from Shariah point of view so that we can ascertain the tenacity of any claim to the contrary if there is.

This paper advances arguments of the contemporary scholars on this matter and uses the verse of the Quran and hadith as well as commentaries of the two and *fiqh* books to establish the Shariah position based on proofs. This issue becomes timely in terms of research, looking at zakat as the third pillar of Islam, legislated as a tool for wealth circulation as requested by Quran chapter 59, verse 7. The verse reads to the effect that, "... In order that it may not (merely) make a circuit between the wealthy among you..."(Quran, *al-Hashr*: 7).

It is worth noting that Sharī'ah had laid down the principles and guidelines that could be relied upon to determine the assets that are subject to zakat even if they did not exist during the time of the Prophet S.A.W and his companions. Such guidelines and principles are used in the process of *qiyās* or consideration of *maqāṣid* Sharī'ah to have similar ruling applied to the new cases that share similarity with them. Based on this reason some Muslim countries today, have adopted the contemporary *fatwā* from reputable religious conferences and symposiums

and councils that ruled that salaries and income of the self-employed professionals were subject to zakat.

However, this practice is yet to be generally embraced in the Nigerian zakat institutions. Some Nigerians argued that there is no zakat on salaries because one of the conditions of paying zakat on money is passage of a complete year, and salaries can hardly fulfil this condition. They argued that a monthly salary of most people is less than *niṣāb* (threshold of wealth before it is subject to zakat) (personal communication with Nigerian zakat institutions, 2015). This argument was further made relevant by the zakat and endowment laws of many states in the Northern Nigeria that have repealed the sections on zakat on salaries and income of the self-employed professionals (compare Zamfara State Zakat and Endowment Board Law 2000 with the 2003 amendment version).

Some have also argued that it was against the Constitution of the Federal Republic of Nigeria to impose zakat on income zakat and income of the self-employed professionals that are registered under Corporate Affairs Commission of Nigeria, because doing so is an exclusive right of the Federal government of Nigeria (Philip, 2011, p. 85). Others argued that it is not in the Maliki School.

It is true that, many have, however, written on zakat on salaries, but the approach of the current study is multifaceted: studying the Quran and *sunnah*, analysis of the Constitution of the Federal Republic of Nigeria 1999, theoretical and empirical study of the phenomenon. Consequently, the study seeks to establish that it is a valid Shariah ruling to impose zakat on salaries and income of self-employed professionals and that if there is any individual or personal observation contrary to this view, the Islamic law of making everyone surrendering to the ruler should apply and consequently the laws of zakat should be amended to compel for the payment.

LITERATURE REVIEW

Many have written on zakat on salaries and professional incomes. The literature review in this research will be skewed towards the most relevant one to the current research so that gap can be made clear.

Al-Qardhawi (2002) argued that salaries and income of self-employed professionals are subject to zakat because, sometimes they are even higher in quantity than the assets that were specifically mentioned in the hadith and classical *fiqh* books.

Luqman, Wan Marhaini Wan Ahmad, Wan Hasan (2014, p. 197) argued that despite the popular practice of monthly zakat deduction in Malaysia, there are still some people at individual and state level that do not endorse the practice, citing the state of Perak as example of one of the states in Malaysia that does not see zakat on salaries until a year passes by the savings. This finding supports the objective of the current research which is responding to similar argument in Nigeria. Murad Raiq Rashid Awdah (2011, 27-8) however differed in opinion of method of paying zakat on salaries and income of self-employed professionals, arguing that the payment should be after one year if it reaches *nisāb*. His finding is in consonance with the finding of Luqman et al on the position of State of Perak.

Siwar (2016, pp. 32, 63) argued in favour of zakat obligation on *al-māl al-Mustafād* and consequently ruled that zakat is obligatory on salaries and wages of professionals upon receipt without waiting for the end of a year as also established by Qadhawi (2002). Ahmed,

Johari, & Wahab (2017) wrote on identification of poor using eligibility to receive zakat as threshold. Their findings agreed with Raimi, Patel, & Adelopo (2014) who focused on integration of zakat, waqf and corporate social responsibility in poverty reduction. The finding was that these three components are plausible in poverty alleviation. The studies of the duo, however, are not on the same aspect of focus of the current study which is establishing the Shariah ruling on zakat on salaries and income of the self-employed professionals. Nevertheless, they are relevant to the current study because zakat is primarily for poverty alleviation which is why the current study is arguing for validity of zakat on salaries and income of self-employed professionals to augment the sources of social funds for the poor.

The literature reviewed shows that there is no research that has looked at the current topic within the arguments raised in the Nigerian context through the viewpoint of Islamic jurisprudence, the constitution of the Federal Republic of Nigeria as well as empirical investigation.

RESEARCH METHODOLOGY

This research is a theoretical and empirical study. The theoretical approach will use primary and secondary sources of Islamic law, using deductive system of analysis. On the other hand, the empirical aspect is data generated through interview from relevant stakeholders.

The interviews which were semi-structured, were conducted with some Nigerians face-to-face and phone calls.² The interview were cited verbatim and the most reliable of the interviewees was selected and cited to represent others because according to some qualitative researchers, there is no specific numbers of interviewees in a qualitative research. Rather, what is important is getting the right people as the interviewees for the subject matter under investigation. They said that it is possible to interview 1 person or 2 or 30 -40, so long saturation point is attained (John W. Creswell, 2012, p. 206-9).

THE CURRENT LEGAL STATUS OF ZAKAT ON SALARIES AND INCOME OF SELF-EMPLOYED PROFESSIONALS IN NIGERIA

A major lacuna exists in the current Nigerian *zakat* laws as they are devoid of provision that will impose Zakat on salaries and incomes of the self-employed professionals. At the onset, Zamfara State in Northern Nigeria was the first state to enact laws on the formal administration of zakat and waqf in 2000. Section 27 of this law recognized imposition of zakat on salaries and income of the self-employed professionals. However, the section was later repealed in the 2003 amendment to the law (Zamfara State Zakat and Endowment Board Law 2003).

Because many of the laws on zakat and waqf in other states copied from Zamfara State, they all replicated Zamfara State Zakat and Endowment Board Laws 2003 by not including imposition of zakat on these types of incomes. This phenomenon makes the enactments less effective as they are skewed towards the farmers, the Fulani herders, and big traders which is also not efficient. There is no doubt that such advertent lack of zakat imposition on salaries and income of self-employed professionals amounts to anomaly in the administration of Zakat and consequently lowers the collection and the positive social impact that zakat promises.

² The data of this paper are based on the research on this subject in PhD thesis of the author in Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2016.

It is worth noting that other Muslim countries like Malaysia and Sudan have salaries and income of the self-employed professionals subjected to Zakat and the payers are entitled to tax rebate (Sudanese Dewan Zakat Law, 2001, 2001, s. 35 (1a and b), (2); Malaysian Income Tax Act 1967, s. 6, s. 44). Also, Kuwait and Saudi Arabia, though did not make zakat on salaries and income of self-employed professional compulsory, but the law encourages it, thus showing that it something recognized by the Shariah. This made the people to pay on their own volition and the zakat proceeds is very high. This approach, whereby the law recognizes this type of zakat is better than removing it from the law as it will make the people to think that the Shariah does not support it at all, when the Quran chapter 9: verse 103 is clear.

Rebuttal to the Arguments Against Zakat on Salaries and Incomes of Self-Employed Professionals in Nigeria

There are several bases upon which the Nigerian zakat authorities and good numbers of potential zakat payers do not want to recognize zakat on salaries and income of self-employed professional. The reasons have been mentioned above and the rebuttal will subsequently follow with reproduction of the reasons where appropriate.

Argument from Constitutional Viewpoint

One of the arguments states that it will be against the Federal List of the Constitution of the Federal Republic of Nigeria's exclusive right to impose levy on income. The view reads as follows:

The most notable Niger [state's] variation [from Zamfara law] is the omission of §27 of Zamfara's law, levying Zakat on "the gross salaries of State officials and other sectors, and on the wages, gratuities, pensions as well as other profits of professionals and craftsmen". Quite possibly Niger omitted this section because of its apparent inconsistency with the Federal Government's exclusive right to tax incomes, profits and capital gains, as laid down in §59 of Part I of the Second Schedule to the 1999 constitution. It is notable that when Zamfara State amended its Zakat and Endowment Board Law in 2003, it too deleted that section (Philip, 2007, p. 64, p:85).

Based on this quote and those whose omission of similar provision in their zakat laws show that they align themselves with the same view, it is ultra vires for the Shariah implementing states in the Northern Nigeria to collect zakat from these types of incomes.

Rebuttal of the Above Argument

The argument is not valid because section 38 of the Constitution of the Federal Republic of Nigeria 1999 provides that every person in Nigeria is entitled to freedom of religion and freedom to practice same (Constitution of the Federal Republic of Nigeria 1999, Section 38). In observing this provision, it could be concluded that the Nigerian constitution itself protects the right of one to contribute to his religion activities. Money paid as zakat is part of practicing one's religion which section 38 of the Nigerian Constitution guarantees as a fundamental human right of every Nigerian.

This argument will even have potential to stand against some of the Acts of Parliament in Nigeria, section 26 of Companies and Allied Matters Act 1990 which provides for

registration of company limited by guarantee for the promotion of religion and other legitimate activities by a group of people. The section reads as follows:

Where a company is to be formed for promoting commerce, art, science, religion, sport, culture, education, research, charity or other similar objects, the income, property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee.

Also, the section 4 of the Constitution gives the house of assembly of a state certain powers to make laws in certain matters which are not within the exclusive legislative powers of the National Assembly and some of these matters are enumerated in part 2 of second schedule. Thus, paragraph 9 of the concurrent list of the Constitution of Federal Republic of Nigeria 1999, Part 2, second schedule reads,

A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate for the administration of the Law providing for such collection by a local government council.

Based on this provision, a state in Nigeria is free to enact law on Zakat administration and harmonize it with any other tax in the state by not making one person to pay double tax (zakat and the conventional tax in this regard). Furthermore, the above mentioned constitutional provisions did not only appear as a proof for the right to establish and administer zakat on the Muslims in Nigeria, but also give them the constitutional backing to have detailed laws from the state houses of Assembly and specific regulations that may be issued by the relevant zakat authorities from time to time by the powers conferred by those zakat laws that draw their powers from the constitution.

On the strength of ongoing rebuttal, it is correct to say that, though zakat is not expressly mentioned in Constitution of the Federal Republic of Nigeria 1999, but the powers to administer it in all the states in Nigeria has a constitutionality like the *wakf* that is expressly mentioned in section 277 of the constitution. This assertion is based on centrality of zakat in the life of a Muslims as the third pillar of Islam, and so it falls under the general freedom to practice one's religion as a fundamental human right guaranteed by the constitution itself.

Therefore, it could be argued that those that drafted the 1999 constitution could not be misunderstood to segregate an integral part of the religious belief of the Muslims. Thus, zakat does not necessarily require a specific Act from the National Assembly of the Federal Government to back it up as it stands at par with the five daily prayers which freedom to practice them are part of the fundamental rights of every Muslim. On this premise, zakat is obligatory on every Muslim that fulfills the conditions, notwithstanding, whether he is duty bound to pay income tax to the government or not.

Argument Based on Maliki School of Jurisprudence

Some Nigerians argue that "zakat on salaries and income of self-employed professionals is not obligatory because there is no such ruling in the Maliki school", while others see no zakat on salaries "because monthly salary cannot stay for one year and zakat on money is only obligatory if the money stays for one year as *niṣāb*" (Tahir Muhammad, personal communication, July 7, 2015). This is better discussed in the sections below to avoid overlapping of ideas that need to be mentioned later and analyzed in the sections that discuss evidences from Quran, Sunnah, and the jurisprudential points of views.

Argument Based on Low Income

On the argument that “the salaries are too small and so, people cannot pay zakat as there is no savings.” While this argument makes sense, it could also not be used as an excuse to prevent zakat deduction from salaries where appropriate. This is because it is not substantiated by the interview conducted with some salaries’ earners in Nigeria. Those interviewees confirmed that they were ready to pay zakat on their salaries provided the system is transparent. Also, some of the interviewees said that they are already practicing the principle of zakat on salaries among the Muslim staff in their university and successfully used it to build a Central Mosque in the University (Sadisu , personal Communication, 20 May 20, 2015).

In the light of the above pieces of evidence, it is therefore correct to say that, this argument is not strong enough to prevent zakat from salaries because, like other zakat deductible items, there is no zakat without *niṣāb*. Therefore, those whose incomes are small are not obliged to pay zakat, neither in salaries nor any other assets like farm produces while those whose salaries reach *niṣāb* after deduction of their basic annual needs, as would be explained later, should pay the zakat.

Zakat on Salaries and Income of the Self-Employed Professionals is Similar to What in the Past?

The earlier jurists did not discuss zakat on salaries because it was not a payment arrangement known to them as established today (Al-Qardhawi, 2002, vol. 1: 461). However, they deduced the guiding principles from the Quran and Prophetic traditions to differentiate Zakat deductible items from non-Zakat deductible items even though they may disagree with each other in some items. But we are obliged to worship Allah and give preference to what is best supported by the available Shariah proofs, closer to the spirit of the Shariah in every situation.

Accordingly, the contemporary argument on zakat on salaries and income of the self-employed professionals is based on differences in what is the original zakat deductible item salary and professional income are closer to in the past? The reason for this argument is that whether one year old of wealth before subjecting it to zakat is applicable to salaries and income of the self-employed professionals or not? The contemporary scholars held the following *fiqhi* adaptation:

1. Proceeds of House Rent. Some contemporary jurists argued that salaries and professional incomes are closer to zakat on house rent income which Imam Ahmad’s fatwa averred that the zakat is due upon the receipt if it reaches the *niṣāb*, without waiting for one year. Although some of his followers had tried to seek for different interpretation and consequently maintained that completion of one year remains the condition for paying zakat on money (Abu Muhammad Muwaffaq al-Din, 1968, vol. 3: 57). But this interpretation cries for establishing that the Imam’s *fatwa* was alien to the Shariah and zakat rules, which the researcher does not think.
2. Analogy on ‘*Al-Māl Al-Mustafād*’. It refers to various meanings: profits from your existing wealth, new offspring like the calves of cows and other livestock. But in the context in which we are making comparison between it and salaries and professional incomes, I prefer to explain it directly from the Arabic Lexicons. They say:

It also refers to newly possessed wealth not through reproduction or profits but as a gift, inheritance, or alms (Yusuf, 2002, vol. 1: 463). Some scholars argued that there is a very close similarity between this category of ‘*al-māl al-mustafād*’ and salaries and professional incomes. This variant of ‘*al-māl al-mustafād*’ is explained by Arabic Lexicons as follows:

واستطرف الشيء وتطرفه واطرفه: استفاده. والظريف والطارف من المال: المستحدث، وهو خلاف التالد والتلبد، والاسم الطرفة، وقد طرف، بالضم، وفي المحكم:

والطرف والظريف والطارف المال المستفاد؛ (IbnManzur, 1414, vol. 9: 214).

It translates as: [Arab says], Ṭarīf and Ṭarīf of wealth: *a new wealth*, which is opposite of an existing or old one. Then he again said, Ṭarīf and Ṭarīf: ‘*al-māl al-mustafād*’ (*a new wealth*). We can see that he has used Ṭarīf and Ṭarīf: *a new wealth* and ‘*al-māl al-mustafād*’ as synonyms.

PREFERENCE

Based on the definition provided above, it means the ‘*al-māl al-mustafād*’ which the Sahabah disagreed upon its method of paying zakat on it, as will be mentioned in the following three opinions is a new wealth. Accordingly, by way of analogy, this research prefers the contemporary opinion of Qardhawi that says salaries and income of the self-employed professionals are closer to it than they share with house rental. However, the scholars disagreed on whether zakat on ‘*al-māl al-mustafād*’ is due immediately it reaches the *niṣāb* or it has to reach one year, the same reason that generates disagreement on whether there is zakat on salaries and income of the self-employed professionals.

The following are the three opinions as proponent of completion of one year, opposite, and the moderate position: (Abu Bakr Abdulrazaq, 1403, vol. 4: 76-9):

- a. The Proponent Opinion: this opinion says that there is no zakat on wealth until it reaches one year. This had been reported from Abu Bakr Al-Siddiq, Uthman Ibn Affan, Ali, Aishah, Ibn Umar (may Allah be pleased with all of them) (Al-Bayhaqi, 1994, vol. 4: 160) (Yusuf, 2002, vol. 1: 469).
- b. The opposite opinion: Ibn Mas’ud, Abdullah Ibn Abbas, Umar ibn Abdul Azeez are mentioned as the Sahabah and earlier scholars that administered zakat on ‘*al-māl al-mustafād*’ immediately it reaches *niṣāb*, without waiting for a year.
- c. The Moderate Opinion: Uthman Ibn Affan, ‘Aṭā Ibn Abi Rabah, Hasan, Al-Zuhri, Al-Thawri held that ‘*al-māl al-mustafād*’ is subject to zakat immediately if the other money owned by the person has reached one year as *niṣāb*, otherwise the ‘*al-māl al-mustafād*’ must reach one year as *niṣāb* before it is subject to zakat. The practical example of this moderate opinion is reported by Aishah Ibnatu Qudamah from her father who said:

Whenever I received my government grant from Uthman Ibn Afan (may Allah be pleased with him), he (Uthman) used to ask: “Do you have any other money that is due for zakat now? If I answered affirmatively, he will remove the zakat from the grant together with the other money. But if I answered no, he will deliver the grant to me without deducting the zakat (Abu Bakr Abdulrazaq, 1403, vol. 4: 76-9).

The above three opinions are held by parties that consist of the Sahabah of the Prophet S.A.W. In scenario such as this, the scholars of *uṣul fiqh* established that when the Sahabah disagreed on a jurisprudential matter, the methodology of making preference is by searching for other proofs outside their disagreement. Thus, there is no doubt that the conditionality of one-year duration of wealth before it could be subject to zakat is a well-established zakat principle and justice for the owner of wealth so that he can grow his wealth before taking zakat out of it. However, in the chapter of zakat, the *Shariah* differentiates between method of paying zakat of one type of wealth from the other, by subjecting some to zakat after one year and

subjecting others to zakat upon completion of *niṣāb* without taking one year into consideration. The following are examples of items that are subject to zakat before completion of one year:

1. *Al-Rizāk* (treasure trove). It is by unanimous agreement of the Muslim jurists that, Zakat of one-fifth is to be paid on *al-rizāk* (treasure trove) immediately it is dug out from the ground, and not after one year (Ibn-Qatan, 2004, v.1, p: 209; Ibn-Munzir, 2004, p: 46).
2. Raw Gold from the Mining Site. The classical jurists said that each time the miner realised a piece of gold that reaches *niṣāb* of 85 grams, the zakat is obligatory immediately which is 2.125 grams (2.5% of 10% from 100%). They said that there was no stipulation for one-year in this case because the condition to complete one-year is stipulated so that the property can grow to cross the minimum level of being wealthy in the eyes of the Shariah, which is ownership of *niṣāb*. Then the owner is required to share a fraction of it with the underprivileged ones. But this mined piece of gold has grown by itself to reach that minimum level that is why there is no condition to complete one-year (al-Nawawi, 1991, v. 2, p. 282). From this analysis, we can understand that the Shariah sets the *niṣāb* as the standard to determine value of wealth that its owner could conveniently share a fraction of it with another person as assistance.
3. Also, the calves of livestock complement their mothers to complete *niṣāb* and yet the calves are still less than a year old.

Based on these three examples, we can conveniently say that the opinion of the Sahabah that imposes zakat on '*al-māl al-mustafād*' immediately when it reaches *niṣāb* is the prevailing opinion and next to it is opinion that considers whether the person has other money that is due for zakat and take zakat of both and if not it will not take the zakat of '*al-māl al-mustafād*'. This is not to undermine the opinion of Abubakr Al-Siddiq, because as someone who launched war against zakat evaders, if he was alive today and see the colossal amount of money from salaries and income of the self-employed professionals he would have probably taken it tougher and stricter position to ensure compliance from this people without stipulating completion of one year.

The researcher based the preferred opinion on the Shariah ruling that having *niṣāb* is the yardstick of differentiating between wealthy and not being wealthy (Al-Sarakhsi Muhammad Ibn Ahmad, 1993, vol. 3: 14). Therefore, the researcher views salary as money that has grown by itself to reach *niṣāb*, notwithstanding, whether one-month salary reaches *niṣāb* or not, but aggregate of annual salaries. This is because the modern governments use annual salaries as a base line for imposing tax, thus telling us that the monthly salaries of a years are interconnected and viewed as one single fund that is treated with one ruling. This why the tax officials use the year of assessment for each year and not for multiple years.

Based on this analysis that see the annual salaries as one, therefore the authority collecting zakat is left with the choice to calculate the zakat of the total annual salary and spread over 12 months as will be demonstrated below. This approach means that the *niṣāb* was not reached after deducting basic needs and taxes until after the passage of several months, which are likely to be 12 months. A different approach abounds the employees whose every monthly salary is more than the *niṣāb* and after deducting his basic needs and taxes, he still has *niṣāb*. In this case, the researcher argues that he will pay zakat of each month upon the receipt of the salary of that just as Umar Ibn Abdul Azeez used remove zakat from government grants immediate. This is based on analogy on the above mentioned newly mined gold.

One important point to note in the chapter of zakat is that the Shariah considers a timeline that is enough for a wealth to grow before zakat is imposed on it, and the yardstick for

measuring the growth is attainment of *niṣāb*. Therefore, one year is stipulated for zakat to be due on trade commodity. But the Shariah did not take this approach in raw gold that has newly been mined from its deposit because it has grown by itself to reach the *niṣāb*. This research portends that the salaries and professional income have grown on their own through daily work and professional service delivery of the salary earner and the self-employed professional respectively. But differ from farm produce in the aspect of recurrence of zakat on cash money because the original assumption of cash money is that it is created to grow even if the owner had refused to grow it. The Shariah principle is that any ruling that is based on original presumption does not consider the deficiency of the presumption. The ruling on the presumption will still apply. Thus zakat will still apply on cash money like salaries and income of the self-employed professionals and newly mined gold even if they were not invested for growth (Abu Muhammad Muwaffaq al-Din, 1968, vol. 1: 75, vol. 2: 467).

What also stresses the argument that the total annual salary is a good yardstick to measure the *niṣāb* and treat it as a single money is that, in many jurisdictions, it has become a usual practice for the employment letter to bear the annual salary and allowances of an employee. This is a good custom that does not violate the Shariah and custom is authoritative (Al-Zarqā', 1989, p. 219).

EVIDENCE FROM QURAN, HADITH AND CLASSICAL SCHOLARS TO OBLIGE ZAKAT ON SALARIES AND PROFESSIONAL EARNINGS

Even though Quran and hadith did not expressly mention zakat on salaries and income of self-employed professionals, there are, nevertheless, some verses, Prophetic traditions and principles laid down by the classical scholars to argue for the imposition of zakat on these types of earnings. These are as follows:

1. Quran chapter 2, verse 267 which its translation reads as follows: "O you who have believed, *spend from the good things which you have earned and from that which We have produced for you from the earth...*"

On this verse, Imam Bukhari says, "*Bāb ṣadaqāt al-Kasb Wa Tijārah*" (chapter of obligation of *ṣadaqāt* (zakat) on earnings and trade) (al-Bukhari, 1422, v. 2, p. 115; Abu Sa'dāt, 1972, v. 4 at 631; Ibn Hajar, v.3, p. 307). The earning mentioned in the verse refers to all types of lawful earnings except what a proof from Quran, hadith or *Ijmā'* exempted and such has not been found to remove salaries and income of self-employed professionals from being subject to zakat.

In the same vein, Ibn 'Atiyyah said that this verse is a call to the whole Ummah of Prophet Muhammad (may Allah be pleased with him) to spend from what they possess, and the verse *covers both obligatory and voluntary spending* (Ibn Atiyyah, 1422AH, v.1, p. 361; Shawkani, 1414AH, v.1 p. 331; Qurtubi, 1964/1384AH, v. 3, p. 321; Abubakar al-Jassas, v. 2, p. 174.).

It is also worthy to note that while al-Jassas was extending obligation of zakat to anything called *kasb* (earnings), he argued that the word '*kasb*' which Allah used in this verse refers to *two types of earnings: the earnings from exchange of commodities (buying and selling) and the earnings from exchange of services*. These two types of earnings are referred to as *kasb* in the verse and they are what Allah commands His believing servants to spend the best of them and pay their Zakat (Jassas, 1405AH, v. 2, p: 174). On this note, salaries and income of self-employed professionals are within these two categories of earnings which are subject to both zakat and voluntary alms, and it has been mentioned above that their zakat is like that of *al-māl*

al-mustafād in which this research prefers the opinion of the Sahabah that oblige the zakat immediately it reaches *niṣāb* and till it reaches one years.

2. Quran Chapter 49: verse 1. The translation reads as, “O you who have believed, do not put [yourselves] before Allah and His Messenger but fear Allah. Indeed, Allah is Hearing and Knowing.” Based on this verse, Al-Qurtubi, while explaining the meaning of this verse as apparent, that you cannot put yourself forward before Allah and His messenger, he however mentioned those things in which putting oneself before Allah and His messenger is allowed. On this ground, he said that it is permissible to collect zakat in one or two years in advance. He supported this opinion with the practice of the Prophet (may Allah be pleased with him), when he collected zakat of two years in advance from his uncle, Abbas (may Allah be pleased with him)(Al-Bayhaqi, 1994, vol. 4: 187, Hadith no. 7367). Relying on this prophetic practice, the Al-Qurtubi argued that if by the end of the year the *niṣāb* was realized in the wealth from which the zakat was collected in advanced, then the person is considered to have discharged his obligation validly. But if it was not up to the *niṣāb* by the end of the year then the advanced payment becomes voluntary *ṣadaqāt* (Qurtubi, 1964/1384AH, v. 8 part 16, p. 302). Although, in this era where transactions can easily be computerized, it is possible to make a zakat return to the person who paid on wealth that was short of *niṣāb* of the year of assessment.

The verse, the hadith on the advanced collection of zakat and the analyses averred by al-Qurtubi are clear original cases that could be extrapolated to collection of zakat from salaries and income of the self-employed professionals on monthly basis or at each time a fee from professional practice is received without waiting for the completion of a year. This is practicable if the leaders are determined as practiced in Sudan where zakat is compulsorily deducted from salaries and income of the self-employed professionals in accordance with the procedures to be mentioned below. This is also practiced in Malaysia where people are given the option to pay zakat or tax from their monthly salaries or pay both in percentage preferred by the payer and get tax rebate. This approach encourages people to pay the zakat instead of paying the tax or pay higher percentage of the statutory deduction to zakat than what is paid to be the income tax. In the case of Nigeria, the Muslim majority states can practice same.

However, the workers at the federal government jobs can also pay zakat from the balance of the salaries after tax and the deduction of the basic human needs as would be explained below using Sudanese Chambers of Zakat as a sample. What remains after these deductions of basic human needs and deduction of tax that is not within the same authority that collects the zakat, if applicable, is multiplied by 12 months, and if is equal to *niṣāb* and above then the zakat would be split into 12 monthly deductions.

3. The Majority of the Hanafi School had categorically ruled that paying zakat in advance and in excess of the yet-to-be available one or more *niṣāb* is valid (Al-Kasani Alau Al-Din Abu Bakar Ibn Mas’ud, 1986, vol. 2: 51). This ruling is also sanctioned by any scholar who permits paying zakat in advanced as earlier quoted from Imam Qurtubi above. Therefore, it is now possible to say that the earlier jurists already formulated the principle of paying zakat on salaries as adopted by Sudanese Chambers of Zakat today from the resolution of the First International Conference of Zakat cited in this research.

4. Empirical Evidence from Nigerian Potential Zakat Payers

The empirical data was collected through interviews that were conducted with potential payers of zakat on salaries and income of self-employed professionals. With several interviewees that were interviewed the following response encapsulates what most of them say:

We were trying to build a *Jumaat* Mosque in one of the universities' campuses. Sometimes back, the Muslim community in the university was looking for Zakat, but people were not willing to pay. So we now went into the bursary and had the names of the Muslim staff, 2.5% from whatever you are taking home will be deducted flat from whatever you are taking home flat, for the construction of that mosque and we tagged it, that 2.5% was from the policy of Zakat. You give 2.5% and honestly it got a very long way to build the Mosque. Now by the year 2014, we are trying to replicate the same thing in the Main Campus to build another Mosque. We tried to do that, the new Vice Chancellor that could not understand the system said he would not allow anybody to deduct somebody's salary without any [...], so many of them were happy that their money will not be deducted. This project was lying there, there was not any progress and the little money they could realize could not build the Mosque, cannot build the Mosque. With understanding, preaching the Vice-Chancellor was convinced later, because he is a concerned Muslim, he now summoned a meeting, the Muslim ummah meeting [and said] that this project, we cannot achieve it. Then people made [suggestion] of the previous system in the meeting, they now resolved on that. The VC said he would like to appeal, let's go to the previous system of deducting [2.5%] directly from the people's salaries, whoever is not interested can come and submit his name, he has promised he would refund that person's money even with interest if he wants and when he started that, believe me, people, nobody complained people accepted our contribution, donation to the construction. Today it is going on smoothly because they are taking directly from your salaries so every Month you know what you are getting. I believe our problem is creation of awareness and being well organized. As Muslims in Nigeria, if we are well organized, we shall achieve (Personal Communication, Sadiu, April 20, 2015)."

This quote is just one of the empirical proofs from the interview conducted to establish the possibility of implementing scheme of zakat deduction on salaries and income of self-employed professionals in Nigeria. However, the interviewees had anchored such possibility on creation of awareness among the people, well organised, well-coordinated and making the beneficiaries visible.

METHODS OF PAYING ZAKAT ON SALARIES

There are various methods of paying zakat on salaries which the preponderance of the contemporary jurists that supports payment of Zakat on salaries and earnings of self-employed professionals have mentioned as the guiding principles. While this research will also be mentioning other methods for awareness sake, the preferred method is the following Sudanese method and it is what this study and the analysis better support. Thus, the method and principles are enumerated in the First International Conference of Zakat organized by The Sudanese

Chambers of Zakat in 1994. The resolution of this conference was that payment of *zakat* on salaries and other earnings were binding, subject to the following principles (Dīwān al-Zakat, 2018, <http://www.Zakat-sudan.org/>):

1. Determination of *niṣāb* from net income of a worker after deduction of the estimated value of basic needs from his gross earnings.
2. The above said determination of earnings that are subject to zakat based on aggregate monthly earnings.
3. In deducting zakat from salaries, it is not valid to stipulate completion of a year as a condition requisite for the payment; rather, what are to be considered are the aggregate of annual monthly salaries.
4. If the total value the annual salaries reached *niṣāb* of zakat they will be subject to zakat, minus estimated value of basic needs as mentioned in item number no.1 above.
5. The amount of *zakat* payable on salary is paid progressively, through monthly deduction for the year of assessment and remitted to the Chambers of Zakat.

In the same vein, the Memorandum of Interpretation to section 35 of the Sudanese Zakat Laws shed more light on the above guiding principles with regards to what is regarded as the basic needs. Thus, the section 35 (3) of the memorandum says, “Basic needs cover feeding, drinking, clothing, housing, mobility, treatment of disease, as determined by the technical committee established under the Sudanese Chambers of Zakat (Dīwān al-Zakat, 2018, <http://www.Zakat-sudan.org/>).

In the Nigerian context, the following examples are applied on the above method based on 2019 *Niṣāb*: 1, 075, 066.00 Naira (\$2,962.282).

Example 1:

Ahmad’s annual salary is 2.5 million Naira (\$6, 911.76715). His monthly salary is 208, 333 Naira (\$574.047).

His Deductions: income tax deduction is 7000 Nigerian Naira and his basic human needs that include cost of living with his family and health care is 150,000 Naira (\$414.71).

Now, his estimated total deductions will be $150,000 + 7000 = 157,000$ (\$157.060).

Then, $208, 333 - 157,000 = 51, 333$ (\$141.446).

So, Ahmad has balance of 51, 333 only as estimated monthly savings from his salaries.

Now we multiply 51, 333 by 12 months = 615, 996 Naira (\$1,697.34).

So, Ahmad’s estimated annual savings of 615, 996 Naira (\$1,697.34) is less than the current *niṣāb* of 1, 075, 066.00 Naira. Therefore, he would not pay zakat on his salaries or his professional fees because his total annual income is less than *niṣāb* after all the legally permitted deductions.

Example 2:

Conversely, Ahmad’s annual salary is 5,000,000 Naira (\$13,777.20). His monthly salary is 416, 666 Naira(\$1,148.10).

His income tax deduction is 14,000 Nigerian Naira and his basic human needs that include cost of living with his family and health care is 300,000 Naira.

Total deductions are $300,000 + 14,000 = 314,000$ Naira (\$865.213).

Then his monthly salary of 416,666(\$1,148.10) – 314,000 Naira(\$865.213)= 102,666 Naira (\$282.890).

Ahmad has balance of 102, 666 Naira (\$282.890) only as expected savings from his monthly salaries.

Monthly Balance of 102, 666 Naira X 12 months= 1, 231, 992 million Naira (\$3,394.675).

Ahmad's estimated annual savings of 1, 231, 992 million Naira (\$3,394.675) is more than the *Nisab*: 1, 075, 066.00 Naira (\$2,962.282).

Therefore, Ahmad would pay zakat on his salaries or his professional fees as follows: 1, 231, 992 million Naira (\$2,962.282) ÷ 2.5% OR (1/40) = 30, 799.8 Naira (\$84.9101).

Ahmad will pay zakat of 30,799.8 (\$84.9101) spread over 12 months= 2, 566.65 (\$7.07221).

Based on the above two examples and the above evidences from the Quran and the Sunnah and their analysis, the researcher certainly believes that since collection of Zakat in advance was practiced by the Prophet (may Allah be pleased with him) it is thus not wrong in Shariah to make deduction of Zakat from salaries or income of the self-employed professionals following the above method explained. This is because the total amount of annual salaries is readily known to earners at the beginning of each year, and so also transaction history of businesses assists the self-employed professionals to estimate what he may be realizing by the end of the year. This is practicable if the leaders are determined as it is practiced in Sudan and Malaysia today. More importantly, the empirical research of this research confirms that majority of the Nigerian Muslims are willing to be submissive to deduction of Zakat from their salaries and other incomes of professional work if there is trust and confidence and transparency in the administration.

Other Methods

There are other suggested methods by Fatwa of some notable scholars, but most of these methods are not based on the finding of this research on the similarity between zakat on salaries and income of self-employed professionals and *al-māl al-mustafād*.

1. Another Method of Paying Zakat on Salaries

Following the method of Uthman Ibn Affan mentioned above in deducting zakat from *al-māl al-Mustafād*, some contemporary jurists prefer that the zakat on salaries should be paid immediately only if the payer has other money that has been due for zakat, then he would join the salaries and pay the zakat together. The researcher is of the opinion that this method will not be efficient in paying zakat of all the salaries of the year. For example, if he receives August salary and coincidentally, his money beside the August salary becomes due for zakat in August he would pay the zakat on both. But what happens to zakat on September salary whereby the salary earner does not have another money that will be due for zakat as he has paid the zakat of other money in August? It means that this method may be inconsistent. One time he will pay zakat on salaries if he has *niṣāb* from his other money beside salary and another time he will not pay zakat on salary until he is lucky to have saved amount of *niṣāb* from his salary that reached one year.

2. Another Method Mentioned by Ibn Uthaymeen

Ibn Uthaymeen preferred that a salary earner should use the month of his first salary as his zakat month so that he would pay the zakat of his salaries and whatever he has in savings at the same time. He conditioned the payment of zakat on salary on availability of savings, otherwise he is not obliged to pay zakat. Although, in zakat of salary he maintains the condition for the wealth to complete one year. However, he admitted that if the year of every monthly salary was to be considered for the completion there will be hardship on the payer. This is

because completion of a year from *Muharram* is different from completion of a year from *Şafar*, or *Rabī‘ Al-Awwal*, or *Rabī‘ Al-Athani* and so on.

Therefore, he suggests that the person should fix the month of his first salary like *Muharram* for example as his the beginning of his year of zakat (Al-Uthaymeen, 1413, vol. 18: 178; Ibn Baz, n.d., vol. 14: 136). The result is that, if he has savings, he would be paying zakat of his monthly salaries before the end of the year. This is easy but the implication is that zakat on salary of months of *Zulqa‘dah* and *Zulhijjah*, for example, will just be two months and one month old respectively and their zakat will be due by *Muharram*. The implication of this is that we are compelled, knowingly and unknowingly, to agree with the opinion of Uthman Ibn Affan that remove zakat of *al-māl al-Mustafād* if the recipient has another money that is due for zakat, otherwise he will not remove until it reaches one year.

It also implies agreeing with the opinion that removes zakat from *al-māl al-Mustafād* immediately, if it reaches *nişāb* without waiting for completion of one year. This is because if any of his monthly salary reaches *nişāb* on its own, and the month happens to be the last month of the year like *Zulhijjah*, though he will be paying the zakat of the whole year at *Muharram* but in reality he had paid the *Zulhijjah* based on its own *nişāb*.

The lesson that could be derived from this scenario is that one of the principles of zakat is permissibility of paying it in advance as earlier mentioned and analysed above. This principle weakens the sentiment of those who are not comfortable with paying zakat on salary before the salary spend a year as *nişāb*. Ibn Uthaymeen had clearly mentioned this principle as his justification for the fatwa containing his method of paying zakat on salary. This is also of the justification used by the resolution of the first International Conference of Zakat 1994 as cited above. For consistency of methodology, the method proffered by this resolution of this conference is easier and more motivative for the payer to pay and more beneficial to the zakat beneficiaries.

METHOD OF DEDUCTING ZAKAT FROM EARNINGS OF SELF-EMPLOYED PROFESSIONALS

The preceding subsection and the example can easily be applied on salaries' zakat deduction, because the total annual salaries minus tax is certainly known to every employee and their employers. It is also possible to determine the basic human needs based on the expert opinion as mentioned above. But application of the method on income of the self-employed professionals may sometimes be inconsistent because there is no certainty in the total amount of their annual income. For example, clients to lawyer or visitation to a medical practitioner fluctuates from one time to the other. So, asking this set of professionals to pay zakat of 2.5 % rate on uncertain amount of income that was based on their transaction history is not a just treatment in the view of the researcher, except if they do that out of their own volition so that they free themselves from any doubt.

However, based on the al-Qurtubi's view on taking zakat in one or two years in advance there is nothing wrong to do so if the professionals succumbed to that. Nevertheless, the researcher proposes the following method to deduct zakat from the professional income as follows:

1. That if the records of his revenue are available then the zakat would be deducted in the same method it is deducted from the salaries earners, but if the records are not available there is no

way to deduct the zakat except at the end of the year at the rate of 2.5% of his saving that reach the *niṣāb* (Murad Raiq Rashid Awdah, 2011, 22).

2. The second approach is to follow the approach of the righteous predecessors like Umar Ibn Abdul Azeez. He used to take out zakat from government grants at the point of giving it to the recipients (al-Baghdadi, N.d, p. 529). This recipient did not own this money from beginning of the year, but he is just owning it now after receiving it.

CONCLUSION

This paper has examined the Shariah position of imposing zakat on salaries and income of self-employed professionals. The problem was that the Nigerian Zakat law are devoid of imposition zakat on salaries and incomes of the self-employed professionals, thereby limiting imposition to farm produce and business commodities and livestock. Many have argued against the imposition of zakat on the above listed earnings, citing the Constitution of the Federal Republic of Nigeria 1999. Others have wrongly cited the Maliki School, thinking that in all cases money must reach one year before is subject to zakat and others used the low value of salaries and others as excuses.

The research has analysed the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999, Nigerian Zakat laws and interviews from the zakat institutions, and the Nigerian people in their capacities as zakat payers. The research heavily relied on the primary and secondary sources of the Shariah with a view to reaching the credible Shariah findings.

Accordingly, the theoretical study shows that the Shariah contains evidences from the Quran and Sunnah that support obligation of zakat on salaries and income of self-employed professionals. So also, the study finds that the earlier jurists understand zakat deductible property as anything called *kasb* (earnings and commercial activities) as contained in Quran 2: 267. Furthermore, the collection of zakat from monthly salaries could be supported by Quran 49, verse 1, based on the analysis made by Qurtubi in his *tafseer* on collection of zakat in advance which is also supported by the practice of Prophet S.A.W with his uncle Abbas. Also, the research found that classical scholars had already set the principle that is applicable to validly impose zakat on salaries and incomes of the self-employed professionals, this is expressly found in the Hanafi school of jurisprudence cited in this paper.

Finding of the empirical data shows that many Nigerian people are ready to pay zakat on salaries and income of self-employed professionals if there is transparency in the administration. It is therefore deduced that they are also pleased to make their monthly salaries zakat deductible, subject to the conditions and the examples given above.

The paper therefore suggests that the policy makers should amend the existing zakat laws, enlighten the public and all stakeholders with the aim of strengthening administration of zakat on salaries and income of self-employed professionals in Nigeria.

The research suggests that, to facilitate the implementation of zakat on salaries and income of self-employed professional in Nigeria, it will be wise to reach an agreement with the salaries earners as well as the employers to assist in deducting the zakat. Zakat deduction from earnings of self-employed professionals should be handled by the states' zakat board and assisted by *hisbah* (ombudsman) corps. Laws are therefore required to protect the zakat proceeds from abuse and compel the officials on transparency, otherwise, the people will ne be ready to pay.

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