

PRINCIPLIZING ISLAMIC ZAKAT AS A SYSTEM OF TAXATION

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ABSTRACT

This thesis examines the problems of implementation of the Islamic “zakat” as a system of taxation. In doing so, it seeks to establish coherent and consistent principles for zakat assessment, collection and disbursement, and to measure the Saudi zakat system against these principles. The Kingdom of Saudi Arabia is regarded as the cradle of Islam and it would therefore have been expected that Saudi Arabia would implement zakat correctly. However, this thesis argues that the current implementation of zakat in the Saudi legal system is fundamentally flawed, because it does not comply with a significant proportion of the fundamental principles of zakat. This thesis highlights the problems inherent in Saudi Arabia’s arguably excessive reliance on fatwas for the implementation of zakat. It is argued that these fatwas have rendered contemporary practice of zakat distant from the fundamental principles of zakat. This issue is examined with reference to original sources on zakat (Quranic verses and related statements by the Prophet Muhammad), and Islamic jurisprudence generally. The contention herein will be that the Zakat Regulation in Saudi Arabia requires reform in accordance with the principles identified in this thesis. This thesis begins by examining the concept and principles of zakat, and then establishes the principles of zakat collection, zakat application and zakat disbursement, the zakat practice in Saudi Arabia and its problems, and finally offers recommendations that would render Saudi law conformant with zakat principles.

AFFIRMATION

This thesis, submitted for the Degree of Doctor of Philosophy, is my own work and has not been submitted previously for any other Degree elsewhere.

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ABBREVIATIONS

CMA	Capital Market Authority
ECHR	European Convention on Human Rights
GCC	The Gulf Cooperation Council
CGT	UK Capital Gain Tax
IIFA	The International Islamic Fiqh Academy
DZIT	Department of Zakat and Income Tax
KSA	Kingdom of Saudi Arabia
NSHR	National Society for Human Rights
OECD	Organisation for Economic Co-operation and Development
OIC	Organisation of the Islamic Conference
SAMA	The Saudi Arabian Monetary Agency
SOCPA	The Saudi Organization for Certified Public Accountants
UAE	The United Arab Emirates
UK	The United Kingdom
UN	The United Nations
USA	The United States of America

CHAPTER ONE

INTRODUCTION

This thesis characterises and evaluates zakat as a tax system. The thesis articulates the main principles of zakat collection, assessment and disbursement, and measures the Saudi zakat system against these principles to establish whether the Saudi Zakat Regulation requires reform.

This chapter introduces the thesis, in particular explaining the importance of zakat, defining the originality of the thesis, outlining the thesis structure and highlighting the research methodology.

1.1 The Importance of Zakat

Zakat is a compulsory, flat levy which is imposed by the Quran and its fund must be distributed to the eligible beneficiaries.¹ Zakat is the third pillar of Islam. Of the five pillars,² zakat is regarded as the third most important act of piety after *shahada* (confessing belief in Allah and his Prophet Muhammad) and the five daily prayers. Zakat is unlike the other four pillars, in that its practice is not entirely left up to the individual's conscience. Governmental intervention is required to manage both zakat

¹ Allami, A., *Zakat as Islamic Taxation and its Application in the Contemporary Saudi Legal System* (2009) 5 *Journal of Islamic State Practices in International Law* p. 82.

² ² Islam is an Abrahamic religion. The term Islam means 'submission to the Will of God'. The Prophet Muhammad stated: 'Islam is built upon five pillars - *shahada*, performing the prays, paying zakat, fasting during Ramadan and *Hajj* (take a pilgrimage to Mecca at least once during the life).' Muhammad, A. and AlBukhari, I., *AlJame" Alsaheeh "Sahih Al Bukhari"* (Dar AlJeel, Beirut 2005) p. 24.

collection and disbursement.³ The authorities have the power to force an individual to pay zakat.⁴ For this reason, Islamic jurists categorise zakat as ‘fiscal worship’,⁵ reflecting the fact that it must be performed by individuals in accordance with governmental or fiscal mechanisms.

The primary aim of zakat is the equitable re-distribution of wealth.⁶ The financially capable must pay zakat, so that the government can then distribute it to the financially incapable. The zakat fund which is collected by the authorities, must be distributed to eight specific categories of beneficiaries; these are the poor, the needy, zakat administrators, and *almu'allafatu qulubihim*, slaves, debtors, *fi sabeel Allah*, and travellers.⁷ Taxes are commonly collected for governmental spending on public services such as health, transport, infrastructure, war, etc.⁸ By contrast, zakat requires re-distribution of wealth according to a more individualist approach,⁹ as its proceeds must be delivered to eligible persons, to allow them to spend the proceeds according to need.

Understanding the system by which zakat is implemented is important for Muslims, since they have a religious duty to pay it. Muslims should understand zakat principles and rules, as ultimately they will be involved in zakat in some way, whether as payers or beneficiaries. Indeed, without understanding the principles and rules of zakat, an

³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 59.

⁴ Ibid.

⁵ Ibid.

⁶ For further discussion, see chapter five below.

⁷ Ibid.

⁸ Morse, G. and Williams, D., *Davies: Principles of Tax Law* (6th edn, Sweet & Maxwell, London 2008).
p. 3.

⁹ Ibid.

individual can confront unfairness or lack of consideration in the presence of the zakat authority.¹⁰

Although zakat is an important religious obligation, its collection is not implemented in most Islamic states in the way it should be.¹¹ Thus, there are questions about why zakat is not performed properly in Islamic states,¹² despite its being the third pillar of Islam, and an important contributor to the economy (through the re-distribution of wealth). However, it may be that the main reason for this lag in implementation is the common misconception about zakat. Many Muslims believe that zakat is a form of worship that should not be regarded as a ‘tax’.¹³ For them, it is a religious concern, requiring no governmental intervention.¹⁴ They are unconvinced that the government should manage the mechanism of zakat, and prefer individuals to pay zakat directly (hand-to-hand) to the poor and needy.¹⁵ Thus, there is a need to clarify this misunderstanding, and explain why zakat should be regarded a tax.

¹⁰ ‘If we are to claim the rights which the civil (that is, non-criminal) law gives us, or to perform the obligations which it imposes on us, it is important to know what our rights or obligations are. Otherwise we cannot claim the rights or perform the obligations. It is not much use being entitled to, for example, a winter fuel allowance if you cannot reasonably easily discover your entitlement, and how you set about claiming it.’ Bingham, T., *The Rule of Law* (The Penguin Group, London 2010) p. 37.

¹¹ For further discussion, see 2.2.6 below.

¹² Within the 57 members of the Organisation of the Islamic Conference (OIC) there are only a few states which consider zakat a tax. For further discussion, see 2.2.6 below.

¹³ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 32.

¹⁴ Ibid.

¹⁵ ‘Zakat donations may be made in several different ways, making the practice difficult to regulate. A Muslim may donate zakat money directly to a particular charity or to a special committee established by the government that determines the recipients and channels donations to these individuals. The donation

In daily life, it is possible to observe Muslims consulting imams about zakat issues, in particular how they should calculate zakat (personal fatwa).¹⁶ The majority of Muslims confront challenges when attempting to make their zakat calculation. Contemporary zakat payers must consult enormous books from diverse jurisprudential schools, containing many different opinions, to determine what an appropriate level of zakat is. Reliance on such books can be confusing as many proffer sophisticated jurisprudential arguments. This results in unnecessary complexity. Thus for the purpose of simplification, there is a need to formulate clear principles that encompass the debates that have been put forward on the subject of zakat.

Politically, the subject of zakat has gained a higher profile following the ‘Arab Spring’. Several (so-called) Islamic revolutions and rebellions occurred, with the aim of fighting against poverty and repression, but although they failed, there were questions raised about Islamic law’s credibility.¹⁷ Therefore, in the contemporary context it is necessary to illustrate how zakat, as an Islamic system, can be deemed to decrease the poverty rate, and how it can be seen as a fair rather than an arbitrary tax system.

Zakat practice is an even more pressing issue in the context of the Kingdom of Saudi Arabia because the Kingdom is regarded as the central state and cradle of Islam, since it is home to its holiest sites: Masjid AlHaram in Mecca, which contains Islam's most

of zakat may be even more informal and anonymous, coming from collection boxes in mosques and shopping malls.’ Gurule, J., *The Legal Response to the Financing of Global Terrorism* (Edward Elgar Publishing Limited, Cheltenham 2008). p. 121.

¹⁶ For further discussion, see 2.3.2.3 below.

¹⁷ Fisher, K. and Stewart, R., *Transitional Justice and the Arab Spring* (Routledge, Oxford 2014) p. 220.

sacred place, the Ka'abah,¹⁸ and AlMasjid AlNabawi in Medina, which contains the Prophet Muhammad's tomb. Hence, it would therefore have been expected that Saudi Arabia would implement zakat correctly.

1.2 The Originality of the Thesis

The originality of this thesis lies in two aims: *simplifying the subject of zakat*, and setting out *consistent principles for zakat collection, assessment and disbursement*. The thesis makes clear that zakat is a non-complex tax system, which can readily be understood by laymen, scholars, legal practitioners, judges and tax specialists. It elucidates the definition, history and sources of zakat, and seeks to eliminate the misunderstandings surrounding the concept of zakat. Most importantly, the thesis sets out to establish and distil a coherent and consistent set of principles for zakat assessment, collection and disbursement. Care is taken to ensure that no principle established in this thesis conflicts with or contradicts another. The principles put forth broadly address the questions 'what items are subject to zakat?', 'who is liable to be assessed for zakat', and 'who is eligible to receive proceeds of zakat?'

The thesis sets out principles for the most controversial issues of zakat assessment, collection and disbursement. It arrives at the established principles by examining the wordings of the primary sources, which, it is argued, speak in terms of principles rather than rules, assessing Islamic jurisprudence which purports to interpret the primary

¹⁸ A cube-shaped building in Mecca; was built for the first time by Abraham. In the sixth century A.D, pagans used to practice their pilgrimage there. However, ever since the appearance of Islam, Ka'abah became Muslims' shrine and their most sacred site. Pinkham, M., *Guardians of the Holy Grail* (Adventure Unlimited Press, Illinois 2004) p. 51.

sources, and attempting to eliminate inconsistencies and contradictions. Islamic jurisprudence offers different opinions that reveal diverse and often conflicting arguments and constructions. Clearly, they cannot all be correct, as the original enactments did not intend to engender different meanings. In the formulation and distillation of the principles put forward in this thesis, no preference is given to any specific Islamic juristic opinion or jurisprudential school. Instead, the thesis upholds constructions that are consistent with the treatment of zakat as taxation, and advocates principles for related jurisprudential debates that make zakat clear and economically efficient.

An attempt to contribute to this field is significant in itself, as there are few legal references, in English and Arabic, to explain the subject of zakat, or to establish consistent principles of zakat collection and disbursement. As will be discussed below, zakat references commonly focus on interpreting the zakat Quranic verses, examining the credibility of related statements of the Prophet Muhammad, illustrating the recompense of zakat and afterlife retribution for failure to pay. Even Zayas' the *Law and Institution of Zakat* (2007), which has an exciting title, is not a legal study, but another traditional book of zakat. Thus, pioneering Islamic jurists such as AlQaradawi, and Ibn Manie impel lawmakers and scholars to articulate zakat in a legal context, and to explain how zakat should be legally assessed, collected and distributed. A streamlined legal explanation of zakat is also significant for Saudi regulators to propose how it can be implemented effectively.

1.3 The Thesis Structure

This current introductory chapter articulates the importance of the subject of zakat and outlines the thesis structure. It will also highlight the research methodology applied when preparing this study.

The second chapter clarifies the concept of zakat by discussing definitions of zakat, its history, sources, and the characteristics that denote zakat payers. It confirms that zakat is an obligatory imposed levy, and submits that zakat should be managed as a tax system. The chapter explains that the Quran¹⁹ and Prophet Muhammad's statements are the primary sources of zakat, while the secondary sources are ijma', qiyas and fatwas. It will argue that it is not improper to impose zakat on non-Muslims, and incapacitated persons; however, that it is improper to impose zakat on public bodies. The chapter concludes that zakat is a tax on wealth and not on persons *per se*.

The third chapter discusses the main principles of zakat collection. It defines the scope of zakat collection and examines the extent to which 'wealth' is the subject of zakat. It will argue that both types of exchangeability features (natural-exchangeability and exchangeability-by-intention) are not required over items liable to zakat. In addition, it will establish that the two main requirements to identify zakatable²⁰ items are: when

¹⁹ The holy book of the religion of Islam, its original version is written in Arabic. However, other language translations are considered as preaching explanations or interpretations but not an original Quran. Benthall, J., Financial Worship: The Quranic Injunction to Almsgiving (1999) 5 *Journal of Royal Anthropological Institute* p. 40.

²⁰ Hereafter, the word 'zakatable', a term invented by this writer, will be used to refer to the question whether something is liable to zakat. In this wise guise, it is a similar adjective to 'taxable'.

an item's value exceeds the allowance amount, and when an item is not consumable or when it has depreciating value. The chapter will also argue that it is not a requirement that items have permanent lasting value to be zakatable, and, will eventually highlight that zakat evasion is a crime and that there is no distinction between evasion and avoidance in Islamic jurisprudence. The main aim of the third chapter is to establish principles for zakat collection.

Chapter four examines in detail the zakat collection principles established in the third chapter. It discusses the importance of adopting consistent principles for zakat collection, and explains how these principles can be regarded as guidance for the application of zakat. The chapter then applies these zakat collection principles to various classes of wealth (such as gold and silver, goods, income, residences, loans, stocks, agricultural products, cattle, sources of income and intellectual property) in order to determine whether or not these are taxable. Finally, the chapter will argue that zakat allowances ought to be considered adjustable in line with inflation, and that the zakat allowance amounts need to be drawn in such a way as to demarcate a realistic line between rich and the poor.

The fifth chapter clarifies the principles of zakat disbursement. It reveals the main requirements of zakat beneficiaries (the poor, the needy, zakat administrators, *almu'allafatu qulubihim*, slaves, debtors, *fi sabeel Allah* and travellers), and examines their legal position and rights. The chapter confirms that receipt of zakat proceeds is a genuine legal right for eligible beneficiaries. It also argues that the Quran limits the state authority's discretionary power regarding zakat disbursement, and prevents abusive expansion of the requirements of beneficiaries. The main aim of this chapter is to define and formulate principles for zakat disbursement.

The sixth chapter examines zakat practice in Saudi Arabia. It provides an overview of the Saudi legal system, and examines the role and implementation of zakat in the Kingdom. The chapter discusses the history and functions of the Department of Zakat and Income Tax (DZIT), and finally, examines the Saudi Zakat Regulation, arguing that its lack of principles has increased the role of Islamic jurisprudence (fatwas) creating uncertainty within the system.

The seventh chapter concludes the thesis, and argues that when properly implemented zakat is a certain, convenient, efficient and fair tax system. The chapter highlights that the contemporary Saudi Zakat Regulation is lacking in these and thus the Regulation is in need of reform. Finally, it provides recommendations to enhance the Saudi zakat system to reach optimal levels.

1.4 Methodology

This thesis mainly comprises of textual analysis provided for by library based research. It presents a critical examination of a range of documents, publications, online materials, and legal materials from different jurisdictions, both in Arabic and English. It draws on Arabic books, periodicals, official documents, reports and other sources related to Saudi Arabia, in addition to legal databases such as LexisNexis, HeinOnline, Westlaw, etc. Materials pertaining to Islamic and English law and practice have been collected from a number of libraries in Saudi Arabia and the United Kingdom (UK); in particular The British Library and the libraries at King AbdulAziz University, Um AlQura University, Brunel University, University College London, Institute of Advanced Legal Studies, and SOAS.

The Quran is a principal source of Islamic law and this thesis. Mainly, the interpretations of the dictates of the Quran are constructed to pursue their intention, and can be conveyed through literal explanation, and by examining the historical background to the verse. In addition, the thesis references the ‘authentic’ Prophet Muhammad’s statements (*sahih and hasan*) only. Prophet Muhammad’s statements are the most credible source of Islamic law after the Quran. Hence, it is also necessary to refer to these in the thesis. However, statements which were ‘counterfeited’ (*mawdou*), cannot be relied on. Such statements cannot be referred to as the Prophet’s word as they are the invention of others. The ‘narrator’ is a person who fabricates comments that they attribute to the Prophet but that the comments were not in fact made by the Prophet. It is regarded (by Islamic jurists) as lie that is forged and falsely attributed to the Prophet Muhammad. Also, ‘weak’ (*da’if*) statements are not used as a reference in the thesis. They are not credible, because some of the narrators of these statements are not historically reliable, ‘weakening’ these sources. The ‘weak’ statement has a narrator who either does not have a strong memory or is not a virtuous person. However, counterfeit and weak statements will be mentioned occasionally in the footnotes to highlight them as a non-authentic source.²¹

The thesis addresses in detail the existing zakat jurisprudence. It is significant that Islamic jurists, not legal specialists, wrote the majority of the zakat books and articles. There is scarcity of sources that examined zakat within a legal context. Zakat books are commonly written using Islamic jurisprudential methods. They focus on interpreting Quranic verses, examining the credibility of Prophet Muhammad’s statements, and

²¹ The terms ‘sahih, hasan, mawdou’ and da’if’ are translated from Arabic to English in Hallaq, W., On the Authoritativeness of Sunni Consensus (1986) 18 *International Journal of Middle East Studies* p. 430.

illustrating the recompense of zakat and afterlife retribution for not paying zakat. The thesis draws heavily on Yousif AlQaradawi's *Fiqh AlZakah* (Zakat's Jurisprudence – 2 volumes, 1985), which is regarded as the contemporary masterpiece on zakat. AlGhoveeli's *Nawazel AlZakat* (The New Issues of Zakat, 2008) is also an important reference for the thesis, as it examines modern issues that were not previously recognised by many jurists (for example, the issue of public bodies paying zakat, the effect of inflation on zakat allowance, zakat on stocks, and how to measure poverty).

In addition, the opinions of jurists who are known in the Kingdom of Saudi Arabia for their reliability are referred to frequently. Examples are the opinions of Ibn Othaimen, Ibn Manie and Ibn Qudamah, and reports issues issued by the International Islamic Fiqh Academy (IIFA), the Organisation of the Islamic Conference (OIC) and the Saudi General Presidency of Scholarly Research and Ifta. Nevertheless, Ibn Hazm's opinions are referred to often in the thesis; principally because he is a pioneering jurist who interprets the Quran verses literally (*Zahiriyyah*); therefore, his approaches represent those jurists who seek to narrow the scope of zakat.

This thesis does not adopt the literal method of interpretation. Thus, the interpretations are not based on the exact wording. Herein, the verses of the Quran and the Prophet Muhammad's statements will not be constructed according to the most primitive sense of the words, nor interpreted in their simplest form. That is, the method of gazing at the verses/statement's words and presuming 'nothing else' informs them is not espoused in this thesis.²² For example, Ibn Hazm's literal interpretations will be

²² According to Lord Denning, 'if [words], taken literally, they lead to a result which is unjust or unreasonable, then you must think again. You must use all your skill – as a craftsman in words – to avoid that unjust or unreasonable result. There are many tools at hand for you to use. The most useful is the one

countered,²³ specifically his approach that permits that nothing is zakatable unless mentioned explicitly, having been literally addressed by the Prophet. In addition, the eight categories of zakat beneficiaries will be explained here, going beyond the literal method of interpretation.²⁴ However, some statements cannot be constructed in any way except the exact wording; for example, sources relating numbers and percentage. For example, the ‘Zakat rate of gold and silver is 2.5%.’²⁵ and ‘no zakat to be paid on less 200 dirhams for gold and silver and commercial goods, 5 camels, 30 cows, 40 goats and sheep, and 780 kilograms of grains and agricultural products’.²⁶ These words are definite and fixed, and so not open to further interpretation or the possibility that they connote further meaning.

In this thesis, the interpretations offered seek to elucidate the zakat mechanism by resolving loopholes and inconsistencies. The mechanism of zakat is elucidated by two factors: ‘collection’ and ‘disbursement’, as rooted in the Prophet Muhammad’s statement: ‘Tell them that it is obligatory to pay zakat, which will be taken from the rich to be given to the poor’.²⁷ The statement denotes two principles; collection (‘to pay zakat’) and disbursement (‘to be given’). These must be exercised if we are to consider that zakat has been performed correctly. These two factors make zakat distinctive; thus,

whereby you point out to the Judge that the word or phrase is capable of more than one meaning. It can be a broad meaning or a narrow meaning.’ Denning, A., *The Discipline of Law* (Oxford University Press, Oxford 2005) p. 55.

²³ For further dissuasion, see 3.1 below.

²⁴ For further dissuasion, see chapter five below.

²⁵ Abaadi, S., *Awn AlMa’bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 746.

²⁶ Muhammad, A. and AlBukhari, I., *AlJame’ Alsaheeh “Sahih AlBukhari”* (Beirut: Dar AlJeel, Beirut 2005) p. 573.

²⁷ Ibid.

it was necessary to maintain their integrity in all interpretations. For that reason, it will be argued that non-Muslims and incapacitated persons are also liable to pay zakat,²⁸ a distinction between zakat evasion and avoidance will be drawn,²⁹ and the notion of excessively widening the scope of zakat beneficiaries will be rejected.³⁰ It will be observed that the majority of the arguments in the thesis seek to preserve the zakat mechanism from loopholes, avoiding any inconsistencies in principles and rules.

Nonetheless, arguably, the interpretations in this thesis are based on the teleological method. The aim of the thesis is to clarify precisely how the zakat system works; thus, it is necessary to construct zakat as presented in primary and secondary sources in a practical way (as it must be understandable for legislators and tax practitioners). The interpretations of the Quran and the Prophet's statements will always be constructed and analysed to clarify zakat and insure it is performed. This thesis does not seek to favour any specific jurisprudential school or conventional opinions on zakat. It will only adopt opinions that contribute to the aim of making zakat an understandable tax system. However, this does not mean 'selectiveness' when stating opinions; rather, it employs a method to explain zakat through consistent interpretations and principles. Indeed, many different arguments will be presented, allowing the most persuasive opinions to be adopted to articulate zakat principles consistently.

The thesis is not a comparative study, which means it does not aim to contrast the differing opinions of the four jurisprudential schools (Hanbali, Malki, Shafii, Hanbali) under each subtitle. Rather it offers different jurisprudential opinions to reveal diverse

²⁸ For further dissuasion, see 2.4 below.

²⁹ For further dissuasion, see 3.3 and 3.4 below.

³⁰ For further dissuasion, see chapter five below.

arguments, so that by examining them it can formulate clear and consistent principles. The opinions expressed by the many jurisprudential schools explain the complexity of zakat; thus, there is no benefit to repeating them all in the search for certainty and simplicity.

Furthermore, the thesis is not a legal comparison between zakat and other taxation systems. Its objective is to formulate and present the principles of zakat and to examine how the issues with the Saudi Zakat Regulation can be resolved. However, the thesis will provide examples of other states' zakat practice to clarify and to offer brief comparisons on some issues. This will include references to other taxation system, such as UK tax law. Furthermore, some of the zakat practices of Indonesia and Pakistan will be mentioned when categorising the contemporary zakat practices in Islamic states. There will also be some references to UK tax practice in regard to the definitions of residence, wealth, fixed beneficiaries and trust law.

It is beyond the scope of the thesis to expand into the role of economics. The thesis is presented as legal study, and so it is not its aim to discuss the economic impacts of zakat explicitly. However, consideration of economic issues in brief is important, as the zakat system has a role to play in contributing efficiently to the economy. The zakat system cannot be separated from its economic purpose, because the role of law makers, jurists, and judges is not confined to interpreting and implementing the zakat law, but also awareness of the economic impacts of the law.³¹ Hence, in some cases, especially when jurisprudential debates arise, brief economic discussions are included. For example, on the issue of exempting minors and public bodies from paying zakat, considering the economic pros and cons of these exemptions is essential to evaluate the issue rationally.

³¹ Freeman, M., *Lloyd's Introduction to Jurisprudence* (Sweet and Maxwell, London 2008) p. 621.

This helps to make the subject practical and its functions parallel with economic prudence but does not tie it to an exhaustive examination of economic issues.

The same is true with accounting disputes. The thesis does not articulate the process for the calculation of zakat; rather it identifies the issues that have to be incorporated in the zakat calculation. The calculation of zakat is a major separate area of accounting, and so the thesis will not strive to accommodate it. Setting the principles of zakat, which is the main aim of the thesis, is a foundational function, and should precede the zakat calculation not *vice versa*. The zakat calculation process will follow the articulation of zakat principles and accountants will apply them accordingly.

In the thesis some Arabic phrases will be used, including *zakat*, *jaziyah*, *almu'allafatu qulubihim* and *fi sabeel Allah*, because there are no equivalent terms or literal translations in the English language. As will be discussed, these phrases express unique concepts in Islamic law, and translating them into English could be misleading and lead to miscommunication. However, it was not necessary to use Arabic phrases for terms like '*nisab*' (allowance), '*sahih*' (authentic), '*fiqh*' (jurisprudence), '*wia'a*' (base), as these have literal English translations, and using English creates a better flow for reader.

The next chapter examines the concept of zakat.

CHAPTER TWO

THE CONCEPT OF ZAKAT

This chapter discusses the concept of zakat and examines whether it can be evaluated as a tax system. The chapter also discusses the definitions of zakat, its history, sources, and who is liable to pay it.

2.1 The Definition of Zakat

The discussion in this subsection criticises the traditional definition of zakat, providing a legal one that presents zakat as a tax system. It also explains the frequent confusion between zakat, almsgiving and zakatufitr.¹

2.1.1 The Traditional Definition of Zakat

‘Zakat’ in Arabic derives from the verb zakah, which means ‘to purify (also with the connotation of growth or increase)’.² Zakat has been defined by a majority of Islamic jurists as ‘a duty that was tasked by God for economic and social efficiency’.³ The definition here conveys the belief that zakat is mandated by God,⁴ and that it has efficient functions toward the economy and society.⁵

¹ For further discussion, see 2.1.3 below.

² Benthall, J., *Financial Worship: The Quranic Injunction to Almsgiving* (1999) 5 *Journal of Royal Anthropological Institute* p. 30.

³ AlGhoseeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 41.

⁴ Ibid.

⁵ Ibid.

However, it could be said that such a definition is unclear because it portrays zakat as a religious duty, through which, people obtain socio-economic prosperity, when practiced. It does not state what the core concept of zakat is, or what zakat is about. It is a wholly religious spiritual definition that lacks legal elements, and might make it difficult for law enforcers to relate to tax law. For that reason, such traditional definitions ought to be overlooked when scrutinising zakat as a tax system. The definition of 'zakat as taxation' connects with the features associated with tax, and is not based on faith and subjective belief alone.

2.1.2 Zakat as Taxation

The Oxford English Dictionary defines tax as 'a compulsory contribution to state revenue, levied by the government on personal income and business profits or added to the cost of some goods, services, and transactions.'⁶ Alternatively, according to Morse and Williams, tax is 'a compulsory levy imposed by an organ of government for public purposes'.⁷ Tiley and Loutzenhiser state, 'taxes are imposed under the authority of the legislature levied by a public body and that they are intended for public purposes.'⁸ Elsewhere, Olowofoyeku observed that one feature that most definitions of tax share is

⁶ Quoted from Olowofoyeku, A., *The Taxation of Income* (2nd edn, Cambridge Academic, Cambridge 2013) p. 3.

⁷ Morse, G. and Williams, D., *Davies: Principles of Tax Law* (6th edn, Sweet & Maxwell, London 2008) p. 3.

⁸ Tiley, J. and Loutzenhiser, G., *Revenue Law* (7th edn, Hart Publishing, Oxford 2012). p. 2.

the notion of *compulsion*.⁹ Lee also confirms that the most basic feature of tax may simply be that it is compulsory.¹⁰

According to the above definition, zakat can be classified as a tax. Zakat is a levy imposed by the order of the Quran '*take zakat from their wealth...*',¹¹ and it must be collected (compulsorily) from individuals. The term '*take*' denotes a command to the Prophet Muhammad¹² to collect zakat, thereby giving zakat its compulsory nature. To reiterate, zakat cannot reasonably be regarded as voluntary or as a donation but is an imposed levy;¹³ therefore, it is appropriate to categorise zakat as a tax.

Abdullah Ibn Manie¹⁴ defined zakat as 'the sum of money that is considered to be rights for specific beneficiaries, which must be collected from specific payers by imposing annual flat rates levy on specific bases'.¹⁵ Unlike the previous definition, this one contributes to the legal definition of zakat, since it provides the following five elements:¹⁶

- The zakat fund collected must be given to specific beneficiaries;
- zakat is compulsory;

⁹ Olowofoyeku, A., *The Taxation of Income* (2nd edn, Cambridge Academic, Cambridge 2013) p. 3.

¹⁰ Lee, N., *Revenue Law: Principles and Practice* (13th edn, Bloomsbury Professional Ltd, West Sussex 2012) p. 4.

¹¹ The Quran 9: 103.

¹² For further discussion, see 2.2.2 below.

¹³ For further discussion, see 2.1.3 below.

¹⁴ A Saudi judge in the Appellate Court, a member of the General Presidency of Scholarly Research and Ifta and a pioneer of Islamic banking in Saudi Arabia.

¹⁵ Ibn Manie, A., *Bohoth fi AlEktisad AlIslami* (AlMaktab AlIslami, Makkah 1996) p. 20.

¹⁶ AlGhufeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 43.

- zakat must be collected annually;
- the rates of zakat are flat; and
- the bases of zakat are specified.

However, although Ibn Manie's definition highlights the elements of zakat, it could be argued that his definition does not describe zakat coherently. The definition is defective for three reasons. First, it lacks any legal basis. Ibn Manie does not mention the Quran or even the Prophet Muhammad's statements in the definition; yet these are the primary sources of zakat enactment.¹⁷ The definition determines that zakat is 'a sum of money that is considered to be rights for specific beneficiaries', with no justification of where these beneficiaries' rights originated from. He also states that zakat 'must be collected... by imposing annual flat rates levy', without connecting the legitimacy of this imposition to any statutory or legislative source, which is the Quran.

Second, it is inaccurate to consider zakat as an 'annual' levy for two reasons. From a legislative point of view, zakat is not an annual levy in terms of re-enacting or rescheduling, like the UK income tax law.¹⁸ The bases and rates of zakat have already been specified in the Prophet's statements, thus they are not subject to an ad hoc annual amendment. Alternatively, if Ibn Manie intended to say that zakat is an 'annual' levy in term of the annuity of payments; this is still inaccurate, because the principle in zakat is

¹⁷ For further discussion, see 2.3 below.

¹⁸ Theoretically, what make taxes enforceable in the UK is the annual Finance Act, where every year on the budget day Parliament reschedules the bases and make some amendments on rates and other rules. Morse, G. and Williams, D., *Davies: Principles of Tax Law* (6th edn, Sweet & Maxwell, London 2008) p.

that it can be paid monthly, quarterly or annually.¹⁹ Accordingly, it is unnecessary to describe zakat as an ‘annual’ levy. Third, it is unnecessary to state that zakat ‘must be taken from specific payers’, as it gives the impression that zakat is a levy imposed on a precise set of people, or it tends to present the duty of zakat as if it is an exclusive levy on the minority. Zakat is not a fee, charge or tariff enacted as a duty on a specific sector or particular payers. It is a public tax and by default it is supposed to be imposed on the majority of the people.²⁰

Therefore, it could be more accurate to state: *Zakat is a compulsory, flat levy which is imposed by the Quran, and its fund must be distributed to the eligible beneficiaries.*²¹ This definition highlights the fact that the Quran states zakat is compulsory; mentions the flat rates feature, and states that zakat’s fund must be given to specific beneficiaries.

However, it is important to mention that the term ‘*to be distributed to eligible beneficiaries*’ does not contradict the argument against the term ‘which must be collected from specific payers’ in Ibn Manie’s definition. The specification of beneficiaries is justifiable and differs from Ibn Manie’s specification of payers. It is justifiable because the relationship between beneficiaries and the zakat authority is private rather than public (comparable to the relationship between the trustee and beneficiaries in trust law).²² It is an issue of individuals’ entitlement, and for that reason it was stated that the zakat fund is ‘*to be distributed to the eligible beneficiaries.*’ While,

¹⁹ For further discussion, see 3.2.3 below.

²⁰ Abdullatif, M., *AlDamanat AlDoustoriyah fi AlMajal AlDareebi* (Dar AlNahdah, Cairo 2000) p. 115.

²¹ Allami, A., *Zakat as Islamic Taxation and its Application in the Contemporary Saudi Legal System* (2009) 5 *Journal of Islamic State Practices in International Law* p. 85.

²² For further discussion, see 5.2 below.

as was previously mentioned, the term ‘to be collected from specific payers’ is unnecessary.

It should be asked whether the latter definition should emphasise the Prophet Muhammad statements are regarded a source of zakat in conjunction with the Quran. The Prophet’s statements are regarded as a primary source of zakat.²³ The Prophet Muhammad’s statements codify the basics and rules of zakat, such as the zakat rates, bases and punishment. Therefore, it should be asked whether the definition should state that zakat is ‘imposed by the Quran, and the Prophet Muhammad’s statements’.

Indeed, the intention of using the phrase ‘*imposed by the Quran*’ is to justify the enactment of zakat.²⁴ The latter definition means to overlook mention of the Prophet’s statements because their role is regulatory, unlike the Quran which is regarded as the basis of the zakat imposition. Zakat was enacted by the Quran in the verse ‘*Take zakat from their wealth...*’²⁵ and not by a statement made by the Prophet. The Prophet Muhammad’s statements are a primary source for zakat, but they are not the foundational source of zakat imposition; which is the Quran.

2.1.3 The Distinction between Zakat, Alms, and Zakatufitr

The confusion between zakat and alms is usually demonstrated in linguistic contexts, rather than as a conceptual debate. Since the English literal translation of ‘zakat’ is ‘alms’, oriental scholars like Joseph Schacht²⁶ and John Esposito use the English word ‘alms’ instead of ‘zakat’, leading to unnecessary literal confusion. For example,

²³ For further discussion, see 2.3.1.1 below.

²⁴ For further discussion, see 2.3.1.2 below.

²⁵ The Quran 9: 103.

²⁶ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 59.

Esposito, in the *Future of Islam*, called 'zakat' 'almsgiving', although he clarified that zakat is an imposed levy and is not an act of donation.²⁷ In addition, in *Islamic Law of Obligatory Alms*, Javaid Rehman and Aybek Ahmedov stress that zakat is an imposed levy;²⁸ thereby, creating a linguistic confusion by claiming that zakat is an 'obligatory alms'.²⁹ The idea of 'obligatory alms' is a paradox, as 'alms' is a form of charity and voluntary by definition. If 'alms' is legislatively imposed or enforceable, then it is proposed that it be called 'tax' or an 'imposed levy' instead of 'obligatory alms'.³⁰ Thus, it is neither justifiable nor linguistically correct to use the literal translation 'alms' to refer to 'obligatory alms'. To re-iterate, 'Zakat' should not be confused with 'alms',³¹ because it is as an compulsory levy.

Yusuf AlQaradawi, one of the most renowned Muslim scholars of the modern era, argues that alternative terminology can be used instead of the term zakat.³² In his notable book *Fiqh AlZakat* (The Jurisprudence of Zakat), he suggests some alternative terms, such as tax system, social insurance system, and the growth fund system. AlQaradawi cites his opinion based on evidence provided by Omar Ibn AlKhattab.³³ For example, when Omar collected zakat from Taglab, the Christian tribe, many of his

²⁷ Esposito, J., *The Future of Islam* (Oxford University Press, New York 2010) p. 46.

²⁸ Rehman, J. and Ahmedov, A., *Islamic Law of Obligatory Alms: Manual on the Teaching of Zakat Law* (Centre for Legal Education, Warwick 2008) p. 13.

²⁹ Ibid.

³⁰ For example, tithe is considered a flat rate tax (10%) on the gross produce of lands. Its revenue is to support churches. Ricardo, D., *The Principles of Political Economy and Taxation* (Dover Publications, Inc, London, 2004) p. 112.

³¹ Marie, N. and Tischler, P., *All Things in the Bible: A-L* (Green Press, Weatport 2006) p. 11.

³² AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 132.

³³ Omar Ibn AlKhattab succeeded Abu Bakr (634 - 644).

companions criticised him, because zakat is an Islamic duty, whereas Taglab's people were Christian. So, Omar said to them: 'Name it whatever you want'.³⁴ AlQaradawi indicated, based on Omar's latter statement, that the name 'zakat' is not a vital issue as long as zakat rules are applied.³⁵ However, the chosen names should denote the obligatory nature of zakat.³⁶

Nonetheless, there is common confusion between the concept of zakat and zakatulfitr. Zakatulfitr is not a tax managed by the authority, but solely an act of piety.³⁷ Zakatulfitr was imposed on Muslims to impel them to share their happiness and celebration of the Eid³⁸ with the poor. Hence, every year on the last day of Ramadan, Muslims give zakatulfitr to the poor and needy. Muslims commonly give dates, rice, grain and raisins.³⁹ Thus, zakatulfitr and zakat are dissimilar concepts.

2.2 Historical Background of Zakat

This section discusses the emergence of zakat in the Pre-Islamic era and its history until the Abbasid Caliphate. The reasons why zakat was not implemented during the late Ottoman Empire will be explained, and a general overview of contemporary zakat practices will be highlighted.

³⁴ AlQaradawi, supra. p. 128.

³⁵ AlQaradawi, supra. p. 132.

³⁶ Ibid.

³⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 416.

³⁸ Edi AlFitr is an Islamic festivity where in the first day of Shawwal (the month which come after Ramadan).

³⁹ AlQaradawi, Y, supra p. 436.

2.2.1 The Pre-Islamic Era

Generally, the pre-Islamic era (Jahiliyya) was marked by the ‘tyranny of Arab tribes’.⁴⁰ In the sixth century A.D., the tribes of Quraysh were the most dominant on the Arabian Peninsula,⁴¹ specifically in Mecca⁴² where they controlled trade and politics.⁴³ The tribes of Quraysh monopolised slavery,⁴⁴ cattle, usury rates, imports and sales of agricultural goods (like fruits, dates, grains, etc.).⁴⁵ They also encouraged the spread of paganism because they charged⁴⁶ pagans who visited the Ka’abah,⁴⁷ and so its spread represented an important source of income to them.

The legal system at that time sought to preserve the Quraysh tribes’ welfare in the first place. All the statutory bodies of the Quraysh were based on the morals and local customs of the elite classes.⁴⁸ Leaders of the Quraysh legislated rules in the interest of trade. Thus, what was profitable for them was ‘permitted’ (e.g. usury),⁴⁹ while unprofitable acts were ‘prohibited’ (e.g. charity).⁵⁰ According to Henri Lammens,⁵¹ the

⁴⁰ Ali, J., *AlMufassal fi Tarikh AlArab Qabl AlIslam* (2nd, Baghdad University, Baghdad 1993) vol. 5, p. 472.

⁴¹ The Arabian Peninsula is located between the Red Sea and the Persian Gulf.

⁴² Mecca is the holiest meeting city for Muslims. It is now under the sovereign Kingdom of Saudi Arabia.

⁴³ Quraish tribes monopolised any commercial agreement with Byzantines, Ethiopians and Persians. Lewis, B., *The Arabs in History* (6th edn, Oxford University Press, Oxford 1993) p. 30.

⁴⁴ Wafi, A., *AlHuriyah fi AlIslam* (Dar AlMa’arif, Cairo 1968) p.22.

⁴⁵ Lewis, B., *supra*.

⁴⁶ Brown, D., *A New Introduction to Islam* (2nd, Blackwell Publishing, Chichester 2009) p. 27.

⁴⁷ Ka’bah is defined in the footnote 1.1 above.

⁴⁸ Ali, J., *supra*. p. 486.

⁴⁹ *Ibid*.

⁵⁰ *Ibid*.

government of Mecca at that time was, ‘a merchant republic governed by a syndicate of wealthy businessmen’.⁵² Regarding Mecca’s judicial system, there was a total absence of courts;⁵³ they only had the informal Majlis (council) to settle disputes between the traders and tribal heads.⁵⁴ The Majlis at this time resembled a body for mediation.⁵⁵

In Mecca, ‘right’ and ‘justice’ were strongly dependent on the potential and strength of individuals. Quraysh adopted the approach: ‘survival of the fittest’,⁵⁶ which awarded eligibility to enjoy rights to those in power. The rich, nobles, elites and warriors were most likely to be awarded rights and compensations.⁵⁷ Women, the elderly, minors and the disabled were prevented from obtaining any property rights and forbidden from inheriting; they were considered too weak and inefficient to benefit from rights.⁵⁸

During the pre-Islamic era, the poor were badly oppressed by the rich and by traders.⁵⁹ Heads of the Quraysh tribes were merciless with the poor and needy. For example, many enslaved the sons of debtors when the latter could not pay the former’s

⁵¹ A Belgian orientalist (1862 - 1937) who contributed to the *Encyclopaedia of Islam* (1913) regarding the Pre-Islamic era.

⁵² Lewis, B., *The Arabs in History* (6th edn, Oxford University Press, Oxford 1993) p. 31.

⁵³ Ali, J., *AlMufasssal fi Tarikh AlArab Qabl AllIslam* (2nd, Baghdad University, Baghdad 1993) vol. 5, p. 497.

⁵⁴ Ibid.

⁵⁵ ‘So when they have a conflict regarding blood, water, grazing or inheritance they used to appoint an arbitrator who carries the characters of honour, honesty, older age and wisdom.’ Baamir, A., *Shari’a Law in Commercial and Banking Arbitration* (Ashgate Publishing, Farnham 2010) p. 57.

⁵⁶ Therefore, fight, revenge and violence were natural methods for solving disputes. Ali, J., *supra* p. 484.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

dues.⁶⁰ Thus, many poor people killed their young sons to rescue them from poverty, slavery and a miserable life.⁶¹ There was no policy to resolve the problem of poverty, and no attention to charitable activities.⁶² Only the Jews and Christians who lived in Arabia practiced almsgiving,⁶³ but they were in the minority, and thus their role in poverty reduction took the form of personal assistance, rather than a planned social security system.⁶⁴

When Prophet Muhammad⁶⁵ began to preach about Islam in public, he expressed concern about many issues that affected human rights, such as equality, fair trade and charity.⁶⁶ He ordered Muslims to give zakat to the poor, just as Christians and Jews were practicing alms.⁶⁷ The Prophet called for charitable activities in line with the Quran: *'So give to the kindred his due, to the poor and to the wayfarer. That is best for those who seek God's Countenance; and it is they who will be successful.'*⁶⁸

⁶⁰ Wafi, A., *AlHuriyah fi AllIslam* (Dar AlMa'arif, Cairo 1968) p.22.

⁶¹ Ali, J., *AlMufasssal fi Tarikh AlArab Qabl AllIslam* (2nd, Baghdad University, Baghdad 1993) vol. 5, p. 98. Therefore, the Quran stated a few years later: *'And kill not your children for fear of poverty. We shall provide for them as well as for you. Surely, the killing of them is a great sin.'* The Quran 17: 31.

⁶² AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 74.

⁶³ For further discussion about the difference between zakat and alms see 2.1.3 above.

⁶⁴ AlQaradawi, Y., supra p. 74.

⁶⁵ The Arabic Prophet of Islam. He began to preach in Mecca as God's prophet at the age of 40. He died on the 8th of June 632 A.D. at the age of 63. Armstrong, K., *Muhammad: A Biography of the Prophet* (HarperCollins, New York 1992) p. 250.

⁶⁶ Ibid.

⁶⁷ AlQaradawi, Y., supra p. 75.

⁶⁸ The Quran 30: 38.

Leaders of the Quraysh regarded Muhammad's Islamic preaching with contempt, continuing to prevent charitable activity in Mecca. They also blockaded Muhammad and his followers economically, prohibiting the sale of goods to Muslims and the purchase of goods produced by Muslims.⁶⁹ The reason for this was that they did not want to implement charity, or witness the effects of wealth re-distribution to the poorest in society. They were afraid of losing their dominance over unpaid employees and slave, and saw alms as a threat to their superiority (once the latter received charity and financial aid they may become independent).⁷⁰ As a result of this tyranny, in 622 A.D. Muhammad and many of his followers left Mecca, and migrated to Medina (the Hijra).⁷¹

2.2.2 The Emergence of Zakat Enforcement in Medina

The development of zakat enforcement began in Medina after the immigration of the Prophet from Mecca. The first enactment of 'obligatory zakat' was not in Mecca but in Medina. As stated by AlQaradawi, zakat, as it was known during the first few years following Islam's emergence, is not exactly the same zakat system founded in year nine (of the Islamic calendar/Hijri).⁷² At the beginning of Islam, and when in Mecca, the notion of zakat was a solely religious duty, like alms in Christianity; meaning, it 'is not a duty of justice but a work of supererogation'.⁷³ Its performance was left to individual

⁶⁹ Armstrong, K., *Muhammad: A Biography of the Prophet* (HarperCollins, New York 1992) p. 134.

⁷⁰ Collins, R., *Early Medieval Spain: Unity in Diversity, 400-1000* (2nd, St. Martin's Press, New York 1995) p. 146.

⁷¹ Armstrong, K., *supra* p. 134.

⁷² AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 84.

⁷³ Finnis, J., *Aquinas* (Oxford University Press, Oxford 1998) p. 192.

Muslims' consciences (as an act of piety such as prayer and fasting).⁷⁴ Zakat in Mecca was voluntary and similar to alms in Christianity. However, by year nine, zakat had gradually transformed to become an economic duty (as well as a religious one).⁷⁵ In Medina, the Quran imposed zakat on Muslims as a compulsory tax: 'Take⁷⁶ zakat from their wealth...'.⁷⁷ Zakat has been considered the third pillar of Islam ever since. The obligatory nature of zakat was affirmed by the Prophet⁷⁸ when he said: 'Zakat will be taken by force from evaders and those who instigate evasion, and half their fortune as sanction'.⁷⁹ The latter verse and statement demonstrates the enforceability of zakat and underlines that it should not be seen as a solely voluntary activity like alms or charity, but as an imposed levy, the evasion of which entails punishment.

The functions of zakat collection and disbursement were the responsibility of the Prophet and many of his close companions.⁸⁰ Muslims were obliged to pay zakat, yet its rules were not uniform, nor was there a written code or statutory body.⁸¹ Traditional historians claim that since Muslims believed in the Quran as a divine book. Paying

⁷⁴ Finnis, J., *Aquinas* (Oxford University Press, Oxford 1998) p. 192.

⁷⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 86.

⁷⁶ Indeed, 'take' indicates that zakat should be compulsorily collected and not be voluntary anymore. AlQaradawi, Y., *supra*.

⁷⁷ The Quran 9: 103.

⁷⁸ Prophet Muhammad was the sole Judge of Mecca. Khalaaf, A., *Koulasat Tareekh AlTashri'i AlIslami* (Dar AlKalam, Kuwait 1970) p. 11.

⁷⁹ Abaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 708.

⁸⁰ Like Abu Masoud, Muaz Ibn Jabal and Abu Hurairah. AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 233.

⁸¹ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 12.

zakat was enforceable by inner-self incentive⁸² proceeding from their religious belief.⁸³ Nonetheless, Muslims' compliance with zakat was a reflection of a non-religious driver, which was the presence of poverty and the economic difficulties faced at that time.⁸⁴ Most of the early followers of Prophet Muhammad were poor and oppressed, and thus they liked the socio-economic security extended by zakat.⁸⁵ According to Karen Armstrong, 'Many of the converts (to Islam), including a significant number of women, were from the poorer clans.'⁸⁶ The usury hike, debtors' bankruptcy, monopoly of tribes, spreading of slavery, etc., must have been adequate reasons for them to follow the Prophet's preaching about immediate wealth re-distribution.

2.2.3 Post-Prophet Muhammad Eras

After the death of Prophet Muhammad,⁸⁷ and during the Apostasy War (Riddah),⁸⁸ many rebels stopped paying zakat because they rejected Islam entirely. They also promoted denial of zakat as the third pillar of Islam.⁸⁹ The majority of these rebels were

⁸² The situation at that time meets John Mill's observation that honest religious motive could make persons obedient. Mill, J., *Utilitarianism* (2nd edn, Hackett Publishing Company, Indianapolis 2001) p. 28.

⁸³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 84.

⁸⁴ Abdulwahed, M., *AlMujtama' AlIslami* (3rd edn, Dar AlBayan AlArabi, Jeddah 1983) p. 162.

⁸⁵ AlQaradawi, supra p. 75.

⁸⁶ Armstrong, K., *Islam: A Short History* (Phoenix Press, London 2009) p. 5.

⁸⁷ After the death of Muhammad the judiciary was eventually separated from the executive authority. Abu Bakr and Omar Ibn AlKhattab were also concerned about the separation of the judiciary from the legislature and executive. They also raised judge's salaries and stored the written judgments in the governmental archive. AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p. 114.

⁸⁸ The war (632 - 633 A.D.) of the several Arabic tribes against Islam and Abu Bakr in particular.

⁸⁹ AlBouti, M., *Fiqh AlSirah AlNabawiya* (Dar AlSalam, Cairo 2004) p. 352.

from famed tribes like the Banu Hanifa and Banu Tamim (but not from the Quraysh).⁹⁰ They found paying zakat to the government of Abu Bakr,⁹¹ who succeeded Muhammad, insulting and humiliating, as he was not a Prophet of Allah like Muhammad.⁹² Abu Bakr conceived that zakat was a religious duty and a significant part of the fiscal policy of the Islamic state.⁹³ Hence, he fought the rebels, famously stating in reference to zakat enforcement: ‘I swear to God, I will fight those who distinguish between praying and zakat, for zakat is the financial worship...’.⁹⁴ Indeed, Abu Bakr’s decision to wage war against the rebels preserved the dignity of zakat enforcement for many decades.⁹⁵ Thus, when the Umayyads⁹⁶ seized power in Arabia, zakat was already being enforced and administered by Baitulmaal (the ministry of finance).⁹⁷

During the Umayyad Caliphate era, the politics and economy of the Arabian Peninsula were more influential than they had been in previous decades.⁹⁸ The Caliphate was expanding and was growing in its strategic importance in the world. Economically, it was a time of the great prosperity and saw the first minting of gold,

⁹⁰ AlQaradawi, Y., *Fiqh AlZakat* (Mo’asasat AlRisalah, Beirut 2002) vol. 1, p. 104.

⁹¹ Abu Bakr AlSiddiq, the Caliph of Muslims (632 - 634).

⁹² AlQaradawi, Y., supra p. 104.

⁹³ According to Abdulhaqq Bewley, ‘The point here, however, is that it was recognised that zakat was not to be given by those who owed it but to be taken by the leader of the Muslims.’ Bewley, A, *Zakat: Raising a Fallen Pillar* (Black Stone Press, Norwich 2001) p. 5.

⁹⁴ AlSalaabi, A., *AlKhalifa AlAwal: Abu Bakr AlSiddiq* (Dar AlMarefah, Beirut 2006) p. 173.

⁹⁵ Ibid. In Chapter 4 below, Abu Bakr’s war against rebels will be examined.

⁹⁶ Islamic Caliphate (661 - 750), established by Mu’awiya Ibn Abi Sufyan. Its capital was Damascus.

⁹⁷ AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p.156.

⁹⁸ Benthall, J., Financial Worship: The Quranic Injunction to Almsgiving (1999) 5 *Journal of Royal Anthropological Institute* p. 35.

silver and bronze Dinars (the currency).⁹⁹ In addition, the majority of the Umayyad Caliphs were able to effectively raise the Caliphate revenue by imposing tariffs and charges on imports and foreign traders.¹⁰⁰ The Caliph's messengers collected taxes and zakat, while disbursement and spending functions were considered the competence of Baitulmaal.¹⁰¹ The function of zakat collection was based on the Caliph's commands,¹⁰² and there was no written statutory of zakat.¹⁰³

However, the centralisation and inequality of the Umayyad taxation policy were the two main causes of its failure. First, the centralisation of the Umayyad Caliphate complicated the collection of zakat.¹⁰⁴ By 750 A.D. when the Umayyad Caliphate was experiencing its greatest expansion,¹⁰⁵ the government was not able to collect zakat efficiently. The government was centralised in Damascus and reported that it was financially expensive to collect zakat and other taxes from distant territories. Misbah Islam stated: 'Distance-related problems affected the collection of all forms of taxes. Since most of the land tax was far removed geographically from the central collection point, this made the collection and transport of the proceeds in kind to be very time

⁹⁹ AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p.156.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² The Caliph was the sole and the only legislator. The 'caliph' concept in the Islamic political ideology means 'the successor of Muhammad', so it was not expected that anyone would oppose the Caliph orders. AlAshmawi, M., *AlKhilaafah AlIslamiyah* (2nd, Sina'a le AlNashr, Cairo 1992) p. 15.

¹⁰³ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 12.

¹⁰⁴ Ibid.

¹⁰⁵ From France in the west to China in the east - around 7,000,000 km². Black, J, *World History Atlas: Mapping the Human Journey* (Dorling Kindersley, London 2008) p. 226.

consuming, expensive, and subject to leakage.¹⁰⁶ Thus, the centralisation of the Caliphate meant that collection costs rose beyond the amount zakat funds were expected to yield, and the system collapsed. Second, since the Umayyad taxation did not equalise the requirements of payers, many felt discriminated against and refused to pay any levy at all. The Umayyad taxation discriminated between payers according to faith. Only Muslims were obliged to pay zakat, while non-Muslims and new-Muslims (who had recently converted to Islam) were paying jaziya (tax of truce), in addition to high rate of land tax.¹⁰⁷ Because of this inequality, non-Muslims and the new-Muslims of Africa and central Asia refused any levies. This rebellion created a deficit in the economy of the Umayyad Caliphate,¹⁰⁸ and set the stage for the Abbasids to seize power in Arabia.¹⁰⁹

2.2.4 The Abbasid Caliphate

Compared to the collection mechanism during the Umayyad era, the process during the Abbasid Caliphate¹¹⁰ was less centralised. The majority of the Abbasid Caliphs established local bureaus in each territory to collect zakat and taxes.¹¹¹ The Abbasid Caliphs directed serious attention towards raising the Caliphate's revenue, whether from

¹⁰⁶ Islam, M., *Decline of Muslim States and Societies* (Xlibris Corporation, Bloomington 2008) p. 152.

¹⁰⁷ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 12.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Islamic Caliphate (750-1258), Baghdad was its capital.

¹¹¹ Lapidus, I., *A History of Islamic Societies* (2nd edn, Cambridge University Press, Cambridge 2002) p. 59.

zakat or other taxes.¹¹² They were very concerned about raising the Caliphate's revenue, since the government increased its spending on military services and public accommodations. Zakat was enforceable on Muslims, and agricultural land taxes and jaziya were imposed on non-Muslims.¹¹³ The practice of zakat at that time was managed more efficiently than in preceding eras;¹¹⁴ this was especially true during the reign of Harun AlRashid¹¹⁵ who led a rapid expansion of the Caliphate. He, forced many non-Muslim governments to pay agricultural land tax (kharaj) and jaziya as a form of political repression. He attacked¹¹⁶ Constantinople (Istanbul, Turkey) the capital

¹¹² AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p.158.

¹¹³ AlRayis M., *AlKharaj wa AlNuzom AlMaliya le Aldawlah AlIslamiya* (Dar AlTurath, Cairo 1985) p. 436.

¹¹⁴ AlBayoomy, M., *Harun AlRashid* (Dar AlKalam, Cairo 2005) p. 184.

¹¹⁵ The Abbasid Caliph Harun (786 - 809) is the one who looked at the clouds and said to them: 'Go anywhere for in the end the taxes of your agriculture belongs to me'. Ibid.

¹¹⁶ Because of this event, Bertrand Russell, the English philosopher, referred to the fanatic characteristic of AlRashid and the Abbasids. Russell, B., *History of Western Philosophy* (Routledge Classics, Abingdon 2004) p. 392. However, we cannot simply accept Russell's observation for two reasons. (1) It is unfair to assume that AlRashid was a fanatic or terrorist regarding this event because he approved a truce of peace with Empress Irene (before Nikephoros succeed her); which shows that he did not attack Constantinople unreasonably. (2) Indeed, because he had a political agreement with the Empress, we should presume that AlRashid attacked Constantinople only when Nikephoros breached the truce. The *History of the Decline and Fall of the Roman Empire* by Edward Gibbon reveal that AlRashid did attack Constantinople after Nikephoros violated the truce agreement, refused to pay jaziya and menaced AlRashid aggressively. Gibbon, E., *The History of the Decline and Fall of the Roman Empire* (B. F. French, London 1830) vol. 3, p. 409.

of the Byzantine Empire (Battle of Krasos 806 A.D.), after Nikephoros I, refused to pay the jaziyah imposed.¹¹⁷

As the collecting function increased in complexity due to the rapid expansion of the Caliphate lands, AlRashid found it necessary to update the jurisprudence of Islamic fiscal policy.¹¹⁸ Thus, he demanded Chief Justice Abu Yusuf to define the rights and obligations between the Caliph and his citizens, and to explain the legality of collecting zakat, jaziyah and other taxes from extraterritorial areas. Abu Yusuf wrote the book *AlKharaj*¹¹⁹, which led to great developments in the field of Islamic jurisprudence.¹²⁰ He explained issues pertaining to the role of the Caliph in collecting zakat, beneficiaries' rights, and flat rates features, and the crimes associated with zakat.¹²¹ The book eventually spurred many Islamic jurists to contribute to the subject of zakat as well, which helped payers and collectors to comprehend the system.¹²²

Despite the vital importance of the jurisprudence of zakat during the Abbasid era, to both the government and jurists, the zakat system was only explained in jurisprudential references such as *AlKharaj* and Abu Obaid AlQasim's *AlAmwal*, but was never

¹¹⁷ The Confessor, T., *The Chronicle of Theophanes: Anni Mundi, 6095-6305 (A.D.602-813)* (University of Pennsylvania Press, Pennsylvania 1982, Ed. by Turtledove, H.) p. 163.

¹¹⁸ Abu Yusuf, Y., *AlKharaj* (Dar AlMarefah, Beirut 1979) p. 3.

¹¹⁹ Abu Yusuf was a judge in Baghdad and later became Chief Justice. He also helped spread the influence of the Hanafi school.

¹²⁰ It was the time when many Islamic jurisprudential schools and doctrines started to appear to elucidate Islamic law for the public. Such as AlHanafi, AlMalki, AlShafi'i and AlHanbali schools. Khalaaf, A., *Koulasat Tareekh AlTashri'i AlIslami* (Dar AlKalam, Kuwait 1970) p. 61.

¹²¹ AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p.159.

¹²² Khalaaf, A., *supra* p. 64.

codified in statutory form.¹²³ At that time, there was still no written statute or code of zakat.¹²⁴ Muhammad Abu Zaid suggested that, Abbasid leaders did not need a written statute of zakat, since Muslims believe that zakat is a duty compelled by the Quran. Muslims found it justifiable to pay zakat according to their religious belief, and so did not need written legislation to practice it.¹²⁵

In general, it could be said that, the Abbasid Caliphate's attention to zakat collection and taxes, in addition to the Islamic jurists' concerns to elucidate zakat rules stabilised the enforcement and practice of zakat over many decades.¹²⁶

2.2.5 The Decline of Zakat Enforcement during the Ottoman Empire

The decline in zakat enforcement started during the Ottoman Empire era, as zakat was no longer considered a tax but a voluntary act of charity.¹²⁷ During this period, zakat became neglected as an imposed levy.¹²⁸ The 1867 Ottoman Tanzimat (Mithat Pasha Constitution)¹²⁹ did not enforce zakat and failed to reference it. Instead, it imposed

¹²³ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 12.

¹²⁴ Ibid.

¹²⁵ Abu Zaid, M., *Wajib AlHukomah AlIslamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 381.

¹²⁶ AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p.158.

¹²⁷ Mandy, M. and Musallam, B., *The Transformation of Nomadic Society in the Arab East* (Cambridge University Press, Cambridge 2000) p. 46

¹²⁸ Singer, A., *Constructing Ottoman Beneficence* (State University of New York Press, Washington 2002) p. 166.

¹²⁹ Historians said that Mithat Pasha formed the 1867 *Tanzimat* with co-operation of western Masonic societies. AlSalaabi, A., *AlDawlah AlOthmaniyah* (AlIlmiyah, Banha 2002) p. 393.

progressive taxes similar to present day western taxes, which replaced it.¹³⁰ Article 20 stated:¹³¹

The assessment and distribution of taxes are to be in proportion to the fortune of each taxpayer, in conformity with the laws and special regulations.¹³²

Only charitable institutions received zakat made by voluntary donation.¹³³ Therefore, payment of zakat became a charitable act instead of a duty.¹³⁴ This leads to the following questions: Why did the Ottomans pay no attention to zakat as taxation despite being Muslims? Why did the Ottomans consider zakat a charitable activity and not a compulsory levy? The answer to these questions can be found in two chronological events, leading to the relaxation of zakat enforcement.

Initially, a relaxation in zakat enforcement occurred during the sixteenth century after the signing of the 1535 Ottoman Capitulation.¹³⁵ Suleiman the Magnificent¹³⁶

¹³⁰ Landau, J., *Exploring Ottoman and Turkish History* (C. Hurst & Co, London 2004) p. 92.

¹³¹ Also see Articles 25, 96 and 110 of the Ottoman Constitution 1867. Worldstatesmen (2010) *The Ottoman Constitution (23 December 1876)* <<http://www.worldstatesmen.org/OttomanConstitution1876.htm>> accessed 5 January 2011.

¹³² Landau, J., *supra*.

¹³³ Mandy, M. and Musallam, B., *The Transformation of Nomadic Society in the Arab East* (Cambridge University Press, Cambridge 2000) p. 46.

¹³⁴ Bonner, D., Ener, M, and Singer, A., *Poverty and charity in Middle Eastern Contexts* (State University of New York Press, Albany 2003) p. 28.

¹³⁵ The 1535 Ottoman Capitulation is a treaty between the Ottoman Empire and France. It was signed to strengthen the relationship between the parties, and to enhance the commercial co-operation between the parties. Hanson, M., *The Influence of French Law on the Legal Development of Saudi Arabia* (1987) 2 *Arab Law Quarterly* 280.

agreed with King Francis I¹³⁷ that the French, who were living on Ottoman territories should enjoy privileges, such as concession contracts (to protect and re-construct Christian holy places).¹³⁸ The Capitulation also stated that the French law could be applied in the Ottoman courts.¹³⁹ Thus, the French enjoyed privileges and they were protected by their native jurisdiction in the Ottoman lands. Moreover, as French trade extended to Syria, Lebanon and Egypt,¹⁴⁰ the application of French jurisdiction also spread into Africa and Arabia.¹⁴¹ Therefore, at this time, and as a consequence of the increase in French and European peoples in the Ottoman lands, Ottoman law and French law were applicable¹⁴² in tandem.¹⁴³ According to Assaf Likhovski, ‘Ottoman law was a mixture of Islamic and French norms’,¹⁴⁴ and, since businesses were rapidly expanding, Ottoman statesmen became more concerned with raising governmental revenues¹⁴⁵

¹³⁶ Suleiman the Magnificent, the tenth Sultan of the Ottoman Empire (September 1520 - September 1566).

¹³⁷ Francis I, the first King of France from the House of Valois’s Angoulême branch (January 1515-March 1547).

¹³⁸ Hanson, M., *The Influence of French Law on the Legal Development of Saudi Arabia* (1987) 2 *Arab Law Quarterly* 283.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² Yilmaz, I., *Muslim Laws, Politics and Society in Modern Nation states: Dynamic Legal Pluralism in England, Turkey and Pakistan* (Ashgate Publishing, Hants 2005) p. 83.

¹⁴³ Likhovski, A., *Law and Identity in Mandate Palestine* (The University of North Carolina Press, Chapel Hill 2006) p. 52.

¹⁴⁴ *Ibid.*

¹⁴⁵ Cosgel, M., *Efficiency and Continuity in Public Finance: The Ottoman System of Taxation* (2004) 3 *Review of Social Economy* 331.

through higher rates of commercial taxes (5-12.5%).¹⁴⁶ Eventually, zakat was applicable only to Muslims¹⁴⁷ and was no longer a tax that governed the public.¹⁴⁸

Second, there was an intellectual influence proceeding from colonialism.¹⁴⁹ Ottoman statesmen and legislators were becoming influenced intellectually by European legal philosophies¹⁵⁰ and Roman jurisprudence in particular.¹⁵¹ In this way, European thinking was affecting their legal philosophy and ideas about social justice.¹⁵² Meanwhile, there was no equivalent effort in the Islamic states (whether Africa or Arabia) to substantively update the jurisprudence of Islamic law.¹⁵³ Zakat, as a form of

¹⁴⁶ Inalcik, H., *An Economic and Social History of the Ottoman Empire* (Cambridge University Press, Cambridge 1994) vol. 1, p. 198.

¹⁴⁷ Hanson, M., *The Influence of French Law on the Legal Development of Saudi Arabia* (1987) 2 *Arab Law Quarterly* p. 287.

¹⁴⁸ Ibid.

¹⁴⁹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 510.

¹⁵⁰ Benthall, J., *Financial Worship: The Quranic Injunction to Almsgiving* (1999) 5 *Journal of Royal Anthropological Institute* p. 40.

¹⁵¹ Likhovski, A., *Law and Identity in Mandate Palestine* (The University of North Carolina Press, Chapel Hill 2006) p. 52.

¹⁵² Actually, from the seventeenth till the nineteenth century, German and French philosophies of justice, law and right were prevalent worldwide. The French philosophical contributions such as Charles de Montesquieu's *Spirit of Laws* (1748), and Jean-Jacques Rousseau's *Social Contract* (1762) had greatly changed the attitude of the law-makers in France and many eastern states into adopting social justice and welfare systems doctrines. However, Montesquieu condemned the despotism of the Ottoman Empire, especially in term of 'the three powers are united in the person of sultan.' Montesquieu, C., *The Spirit of Laws* (Cambridge University Press, Cambridge 1989, Ed. by Anne, C., Miller Basia & Stone, H) p. 157.

¹⁵³ '[T]he door of independent legal interpretation closed in the tenth century.' Hanson, M., *supra*. For further discussion, see 1.3.2 below.

non-codified taxation, was not explained and interpreted to match the form of other written tax legislations.¹⁵⁴ There were no written¹⁵⁵ laws of zakat, and no updated explanations for zakat principles and rules, although there were written European and Ottoman taxation codes.¹⁵⁶ Zakat was not considered a subject of any importance in legal studies and its jurisprudence and interpretations could not anticipate western tax laws requirements.¹⁵⁷ Finally, statesmen and legislators did not pay attention to codifying a zakat law, as zakat had become disregarded as a tax.¹⁵⁸ Muslims were practicing zakat independently as a religious duty only, in a manner that resembled almsgiving or took the form of charitable activities.¹⁵⁹ During the late Ottoman era, zakat in Mecca and Medina was handed to the poor by individuals, and not through the Ottoman governor.¹⁶⁰

¹⁵⁴ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 15.

¹⁵⁵ It was the time when the German philosopher Georg Hegel stressed the importance of the readable laws: 'To hang the laws so high that no citizen could read them (as Dionysius the Tyrant did) is injustice'. Hegel, G., *Outlines of the Philosophy of Right* (Oxford University Press, Oxford 2008, Ed. by Houlgate, S and Trans. by Knox, T) p. 204.

¹⁵⁶ AlFitri, A., *The Law of Zakat Management and Non-Governmental Zakat Collectors in Indonesia* (2006) 8 *The International Journal of Not-for-Profit Law* 56.

¹⁵⁷ Ibid.

¹⁵⁸ Singer, A., *Constructing Ottoman Beneficence* (State University of New York Press, Washington 2002) p. 22.

¹⁵⁹ Ibid.

¹⁶⁰ Agoston, G. and Masters, A. singer, *Encyclopaedia of the Ottoman Empire* (Facts on File Inc, New York 2009) p. 253.

2.2.6 Contemporary Zakat Practices

Currently, within the 57 members of the Organisation of the Islamic Conference (OIC) there are only few states which consider zakat a tax. The remainder consider it a charitable activity. Thus, there are three types of contemporary zakat practice:

- States that do not enforce zakat;
- States that have an official institution to collect zakat as a charitable endeavour;
- States that enforce zakat as a tax.

Syria, Morocco and Oman are examples of countries that do not have a zakat enforcement policy, or any governmental institution to collect it. In states of this class, paying zakat is only a charitable activity.¹⁶¹ It is practiced within Islamic communities, by imams in mosques or by giving the money informally to the poor and needy. This category should be disregarded when examining zakat as taxation. As in this case, zakat is not obligatory but charitable and it is not a tax or imposed levy. However, the problem with such charitable performance is that zakat is unofficial,¹⁶² which could lead

¹⁶¹ No European or American government have ever adopted the idea of zakat as tax system. Definitely its Islamic/religious nature makes non-Muslims disregard it in their legislative discussions, and they pay no attention to it as a tax system. Also modern Muslim jurists and specialists of law should be blamed for not exporting the zakat idea to non-Islamic states. They have not explained it in a sophisticated legal study as western specialists of tax law are doing. Legal updated references of zakat are very rarely found, thus statesmen, legislators and academics usually base their studies on a few classical books (such Abu Yusuf's 'AlKharaj' and Abu Obaid's 'AlAmwal') as raw materials of the subject.

¹⁶² Such performance is frequently denigrated. 'Zakat is an important source of financial support for the al Qaeda network because of the amount of money it generates every year and the lack of government oversight.' Gurule, J., *Unfunding Terror: the Legal Response to the Financing of Global Terrorism* (Edward Elgar Publishing, Cheltenham 2008) p. 121.

to confusion arising between the concepts of zakat and alms.¹⁶³ In addition, on occasion unofficial collections of zakat have allegedly been used for financing terrorism, or money laundering,¹⁶⁴ casting doubt over its legitimacy as a tax system.

The second class of states devotes an official institution to the collection of zakat as an act of charity. These states intend to implement zakat for charitable purposes, but through official institutions. This is similar to charitable practices, except that they are collected by official institutions. The zakat funds in Bahrain, United Arab of Emirates, Kuwait,¹⁶⁵ Qatar, Egypt, Jordan,¹⁶⁶ Indonesia and also the Zakat Foundation of America¹⁶⁷ are examples of this second class of zakat collection.¹⁶⁸ Although zakat in

¹⁶³ For further discussion, see 2.1.3 above.

¹⁶⁴ Noland, M. and Pack, H., *The Arab Economies in a Changing World* (Peterson Institute, Washington 2007) p. 118.

¹⁶⁵ Zakat in Kuwait is an official charitable activity. The Kuwaiti Zakat House was established in 1982 which had not imposed zakat but to collect it as a charity. In 2006 Majlis AIUmah (Kuwait National Assembly) passed the zakat law which manages zakat. The Islamic Law Affairs Office mentioned in its charter 'Zakat House is a charitable establishment that tries to implement the law of zakat to collect and distribute zakat and charity'. Islamic Law Affairs Office in *Zakat House, Zakat Rules* (Zakat House, Salmiya 2001) p. 103.

¹⁶⁶ Benthall, J., Financial Worship: The Quranic Injunction to Almsgiving (1999) 5 *Journal of Royal Anthropological Institute* p. 41.

¹⁶⁷ Zakat Foundation of America (2010) *About Us* <http://www.zakat.org/about_us/> accessed 16 January 2013.

¹⁶⁸ In the west, there is a frequent confusion between the concept of zakat and other charitable activities. For example, President Barack Obama's 4th June 2009 speech in the Cairo University: '[I]n the United States, rules on charitable giving have made it harder for Muslims to fulfil their religious obligation. That's why I am committed to working with American Muslims to ensure that they can fulfil zakat ...' The White House (2009)

this class is collected by an official institution, it is not obligatory; hence, there is no substantive difference between this class and the first with regard to enforcement. However, to distinguish such practice from the third class, emphasis can also be placed on examining the enforceability status of zakat. For example, whether there is an enacted law of zakat, administrative or judicial procedures of zakat, prosecution or penalties for evaders, etc.

The Islamisation movement in Indonesia which took place in 1968 proposed to “change Muslims’ perception of zakat from an act of religious piety to the foundation of an Islamic socio-political and economic system”.¹⁶⁹ It proposed that Muslims ought to pay zakat to the authority instead of directly to zakat beneficiaries. According to Salim, Indonesian Islamisation tended to “transform the practice of zakat from a voluntary act to a compulsory one, thus penalising those who are negligent in paying zakat”.¹⁷⁰ Thus, the ‘New Order’ era, during the regime of President Suharto (1967-1998),¹⁷¹ called for Forum Zakat. The Forum was originally founded by 11 zakat charitable agencies, and two years later, this number increased to 150 agencies. The Forum Zakat gathered various zakat and upheld the enforcement of zakat as a tax. However, this proposal was challenged by the Ministry of Religious Affairs, who argued that enforcing zakat would implicate zakat in taxation law, and zakat would thus lose its spiritual aspect.¹⁷² In 1998, the Council of Ulama held a seminar on zakat which affirmed that zakat and tax are

Remarks by the President on a New Beginning <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/> accessed 16 January 2013.

¹⁶⁹ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 8.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

different duties and that Indonesian Muslims are obliged to pay both.¹⁷³ Zakat is an obligation mandated by Allah, while tax is a duty required by the state.¹⁷⁴ As a result, Indonesian Zakat Law No. 38/1999 was issued to manage zakat agencies.¹⁷⁵ Article 12 of this Law states, “[T]he collection of zakat is organised by the government-sponsored zakat agency responsible for receiving or taking zakat payment from the zakat payer”.¹⁷⁶ Although the Zakat Law regulates the institutions which manage zakat, it does not make zakat compulsory¹⁷⁷ and contains no provisions for penalising those who refuse to pay zakat.¹⁷⁸ The Ministry of Religious Affairs requested that the Minister of Finance issue a resolution to impose zakat on bank accounts and profits, but the proposal was rejected.¹⁷⁹ Hence, zakat practice in Indonesia must be categorised as voluntary and managed by official institutions.¹⁸⁰ In 2003, the Minister of Finance issued Decree No. KEP.650/MK/11/5/1976, which endorsed tax deductions for zakat payments to avoid double levying.

The third class of zakat practice comprises states that enforce zakat as an imposed levy, so in the form of taxation. In Asia, Pakistan imposes zakat as tax. In Africa, Sudan enforces zakat as an imposed levy.¹⁸¹ And in the Arab Gulf, Saudi Arabia considers

¹⁷³ Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 35.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ AlFitri, A., *The Law of Zakat Management and Non-Governmental Zakat Collectors in Indonesia* (2005) 8 *The International Journal of Not-for-Profit Law* p. 60.

¹⁷⁸ Salim, A., *supra* p. 56.

¹⁷⁹ Salim, A., *supra* p. 61.

¹⁸⁰ Salim, A., *supra* p. 54.

¹⁸¹ Ibid.

zakat a tax.¹⁸² These countries have enacted zakat laws, and their governments have the authority to collect zakat and sanction evaders.

In Pakistan, the government imposes 2.5% on all fixed financial assets declared to the government at the beginning of the year.¹⁸³ Zakat has been enforced since the enactment of the Zakat and Ushr Ordinance 1980 (No. XVIII of 1980). The collection of zakat, base compulsory levy of zakat at source from 11 types of assets detailed in the 1st Schedule of Zakat and Ushr Ordinance 1980. The Zakat and Ushr Department administers collection of zakat and maintenance of relevant accounts.¹⁸⁴ The disbursement of zakat takes place by transfer of funds to the Provincial Zakat Council which in turn transfer it to District Zakat Committees. In Pakistan, the zakat fund is distributed between a variety of areas, such as Islamic schools, health care, rehabilitation, marriage of girls, and students of technical institutions.¹⁸⁵

In Saudi Arabia, zakat became enforceable when King AbdulAziz founded the Kingdom and held that Islamic principles would be the main source of Saudi laws. Ministerial Resolution no. 394 established the Department of Zakat and Income Tax (DZIT) on 14th June 1951, to collect zakat.¹⁸⁶ Since then, the DZIT's functions have been to administer and collect zakat from Saudi individuals and companies, and also from individuals and companies of the Cooperation Council for the Arab States of the

¹⁸² Salim, A., *The Shift in Zakat Practice in Indonesia* (Silkworm Books, Chiang Mai 2008) p. 54.

¹⁸³ Jonsson, D., *Islamic Economics and the Final Jihad* (Xulon Press, Florida 2006) p. 260.

¹⁸⁴ Zakat and Ushr Department: Government of the Punjab (2014) *Zakat and Ushr* <<http://www.zakat.gop.pk/>> assessed at 15 March 2013

¹⁸⁵ Ibid.

¹⁸⁶ The Department of *Zakat* and Income Tax (DZIT) (2010) *Brief Information on DZIT* <<http://www.dzit.gov.sa/en/GeneralInfo/generalinfo1.shtml>> accessed 17 January 2013.

Gulf (GCC).¹⁸⁷ The department also administers and collects income tax from non-Saudi investors based in the Kingdom, resident Saudi companies and the shares of non-Saudi partners, and non-resident companies doing business in the Kingdom through permanent establishment or deriving an income from a source within the Kingdom.¹⁸⁸

The practice of zakat in Saudi Arabia will be examined in chapter six below.

2.3 Zakat Sources

This subsection defines the sources of zakat. It highlights the importance of the Quran and the Prophet Muhammad's statements, which are considered primary sources of zakat. Then, the secondary sources: ijma', qiyas and fatwas will be explained.

2.3.1 The Primary Sources

The primary sources of the zakat are the Quran and Prophet Muhammad's statements. The Quran is the source of zakat imposition and offers justification of its enactment, while Prophet Muhammad's statements are considered the source of zakat rules and instructions. This will be explained as follows.

2.3.1.1 The Quran

The holy Quran is the primary and most sacred source of Islamic law.¹⁸⁹ It is the divine law for Muslims. The Quran considers the words of Allah, as having been revealed by Gabriel¹⁹⁰ to Prophet Muhammad.¹⁹¹ The revelation of the Quran took 23 years (from

¹⁸⁷ The Department of *Zakat* and Income Tax, *supra*.

¹⁸⁸ *Ibid*.

¹⁸⁹ Hallaq, W., *An Introduction to Islamic Law* (Cambridge University Press, Cambridge 2009) p. 16.

¹⁹⁰ Gabriel the Archangel, is the Holy Spirit, and the messenger from God to Prophets.

the beginning of Muhammad's preaching to his death) to be completed.¹⁹² All the jurists agreed that the Quran must remain in Arabic as it was revealed to the Prophet in Arabic, which means all other translations are not authentic Quran, being interpretations and explanations of the original Quran text.¹⁹³

The Quran is divided into 114 chapters (sura), 87 of them revealed in Mecca and the remainder in Medina.¹⁹⁴ The chapters revealed in Mecca, date to the beginning of Islam, and focus on spiritual issues such as belief and disbelief, heaven and hell, praying, fasting, almsgiving, and stories of the Prophets including Abraham, Moses, Yusuf, Jesus, etc. While the other 27 chapters (sura), revealed in Medina, constitute practical issues (legal-verses),¹⁹⁵ such as marriage and divorce, rules of inheritance, contracts, criminal penalties¹⁹⁶ and, as was mentioned above, the imposition of zakat. Therefore, it is clear that the majority of the Quran's chapters and verses are devoted to directing the consciences of the people rather than constituting legal rules.¹⁹⁷ The Quran mentions zakat 32 times in its verses. For example:

- *'[T]hey perform prayers, and the zakat, and obey God and His Messenger. God will have His Mercy on them...'*¹⁹⁸

¹⁹¹ Hallaq, W., *An Introduction to Islamic Law* (Cambridge University Press, Cambridge 2009) p. 16.

¹⁹² Hourani, A., *A History of the Arab People* (Warner Books, New York, 1992) p. 69.

¹⁹³ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p.72.

¹⁹⁴ Hallaq, W., *supra*.

¹⁹⁵ *Ibid*.

¹⁹⁶ Zubaida, S., *Law and Power in the Islamic World* (I. B. Tauri & Co Lts, New York 2003) p. 12.

¹⁹⁷ AlAkkad, A., *AlFalsaphah AlQuraniyyah* (AlMaktabah AlAsriyah, Beirut 1947) p. 18.

¹⁹⁸ The Quran 9: 71.

- *'if they repent, perform prayers and pay zakat, then they are your brethren in religion.'*¹⁹⁹
- *'those who perform prayers and pay zakat, and they bow down to God in their prayers. And whosoever takes God, His Messenger, and those who have believed, as protectors, then the party of God will be the victorious.'*²⁰⁰
- *'take zakat from their wealth to purify them and sanctify them with it, and invoke God for them.'*²⁰¹
- *'Zakat's revenue must be distributed for the poor, needy, Zakat administrators, and reconciled persons, slaves, debtors, soldiers and travellers.'*²⁰²

It is difficult to answer the question of whether the Quran is a book of rules, because in some issues like inheritance and contracts the Quran does present detailed rules.²⁰³ On the other hand, other issues stated in the Quran are mentioned without rules, and it was Prophet Muhammad's role to present these.²⁰⁴ Zakat is a requirement imposed by the Quran, with rules developed through the Prophet's statements. This will be explained as follow.

2.3.1.2 Prophet Muhammad's Statements

Prophet Muhammad's statements are regarded as the second primary source of the Islamic law. Muslims have to obey Prophet Muhammad's statements as the Quran

¹⁹⁹ The Quran 9: 11.

²⁰⁰ The Quran 5: 55-56.

²⁰¹ The Quran 9: 103.

²⁰² The Quran 9: 60.

²⁰³ Khalaaf, A., *Elm Usul AlFiqh* (Maktabat AlDa'awa AlIslamiya, Alexandria 2002) p. 33.

²⁰⁴ Ibid.

ordered: *'And whatsoever the Messenger gives you, take it; and whatsoever he forbids you, leave it'*.²⁰⁵ They must believe that the statements were inspired by Allah, but the literal words and actions are the Prophet's,²⁰⁶ *'He, Prophet Muhammad, does not speak out of his own desire. It is but revelation revealed to him'*.²⁰⁷

There are three types of Prophet Muhammad's Statements; verbal, physical, and implied approval.²⁰⁸ First, verbal statements, which are words uttered by the Prophet. The Prophet's verbal statements regulated Zakat bases, rates and the mechanisms for collection and disbursements.²⁰⁹ For example, 'No double paying in zakat'²¹⁰, and 'Zakat rate of gold and silver is 2.5%.'²¹¹ Second, physical movements, like how Prophet Muhammad was praying and practicing other acts of worship.²¹² Third, implied approval, which refers to the Prophet's silence or tacit approval regarding deeds, which occur with his knowledge.²¹³ For example, when Muhammad's companions ate zebra, he did not censure them, and so that is considered implied approval.²¹⁴

²⁰⁵ The Quran 59: 7.

²⁰⁶ Hourani, A., *A History of the Arab People* (Warner Books, New York, 1992) p. 69.

²⁰⁷ The Quran 53: 3-4.

²⁰⁸ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p. 95.

²⁰⁹ Benthall, J., Financial Worship: The Quranic Injunction to Almsgiving (1999) 5 *Journal of Royal Anthropological Institute* p. 41.

²¹⁰ AlQasim, A., *AlAmwal* (Mo'assat Nassir LeAlthakafah, Beirut 1981) p. 154.

²¹¹ Abaadi, S., *Awn Alma'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 746.

²¹² Abu Zahra, M., *supra*. p. 95.

²¹³ Baamir, A., *Shari'a Law in Commercial and Banking Arbitration* (Ashgate Publishing, Farnham 2010) p. 62.

²¹⁴ Abu Zahra, M., *supra*. p. 95.

The main role of Prophet Muhammad's statements in regard to zakat are to demonstrate that he regulated the issues that the Quran constituted.²¹⁵ They 'had the important function of clarifying the ambiguities, and if necessary, abrogating verses, in the Quran.'²¹⁶ The Quran enacted zakat through verse '*Take zakat from their wealth...*'²¹⁷ It determined its basic tenets; such as the imposition of zakat, the governmental duty to collect and disburse. Then, Prophet Muhammad explained and instructed other basics of zakat.²¹⁸ So statements and reports²¹⁹ were issued by him to codify the Quran's verses, and to regulate other rules of zakat. For example, after the Quran ordered Muslims to pay zakat – '*perform prayers and pay zakat...*'²²⁰ – Prophet Muhammad clarified that, 'No double paying in zakat'²²¹ and the 'Zakat rate of gold and silver is 2.5%.'²²²

The successful interpretations of Prophet Muhammad's statements depend on their clarity or vagueness. There are statements that are not subject to interpretation, because they are clear and not in need of further construction.²²³ For example, the 'Zakat rate of

²¹⁵ Khalaaf, A., *Elm Usul AlFiqh* (Maktabat ALDa'awa AlIslamiya, Alexandria 2002) p. 33.

²¹⁶ Hallaq, W., On the Authoritativeness of Sunni Consensus (1986) 18 *International Journal of Middle East Studies* 427-454.

²¹⁷ Ismail, S., *Usul AlFiqh AlMuyassar* (Dar AlKeetab AlJame'e, Cairo 1994) vol. 1, p. 220.

²¹⁸ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p. 96.

²¹⁹ Prophet Muhammad statements, reports, behaviours and even his silence approval regarding deeds which occur with his knowledge. Ibid. For further discussion see 2.3.1.2 below.

²²⁰ The Quran 2: 43.

²²¹ AlQasim, A., *AlAmwal* (Mo'assat Nassir LeAlthakafah, Beirut 1981) p. 154.

²²² Abaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 746.

²²³ Abu Zahra, M., *supra* p. 96.

gold and silver is 2.5%.²²⁴ This does not attract attempts at estimation for it is articulated clearly that the gold and silver zakat rate is 2.5%.²²⁵ However, there are statements that are open to interpretation, like when Prophet Muhammad said: ‘Zakat will be taken by force from evaders and those who instigate evasion, besides half of their wealth as sanction.’²²⁶ It is not clear here whether the ‘half of their wealth’ is only half the value of the zakat base or half the entire fortune of the evaders. Therefore, this needs further interpretation by jurists to determine what Prophet Muhammad intended to regulate.²²⁷ In fact, it is always recommended to interpret the Prophet’s statements after examining an historical occasion, and the socio-economic circumstances surrounding the statements.²²⁸

2.3.2 The Secondary Sources (*Ijtihad*)

Secondary sources of Islamic law comprise three sources. These sources are, in chronological order: *ijma’*, *qiyas* and *fatwas*. They are the outcomes of jurists’ interpretations.

2.3.2.1 *Ijma’*

Ijma’ is the consensus of qualified Islamic jurists of a given generation on a particular contentious issue.²²⁹ If a debate was raised and all Islamic jurists held the same opinion about its resolution; this agreement is considered *ijma’* and constitutes a third source of

²²⁴ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p. 96.

²²⁵ Ibid.

²²⁶ Abaadi, S., *Awn AlMa’bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 708.

²²⁷ Abu Zahra, M., *supra* p. 108.

²²⁸ Ibid.

²²⁹ Khalaaf, A., *Elm Usul AlFiqh* (Maktabat AlDa’awa AlIslamiya, Alexandria 2002) p. 47.

the Islamic law. Thus, ijma' can be considered as a source of zakat regulations when the following two conditions exist. First, all the Islamic jurists must agree about the solution with no exception (whether they are Sunni, Shii, Sophist, etc.). If there is any disagreement, even if it is a minority one, it would no longer be considered ijma'.²³⁰ Second, this consensus must have existed for a sufficiently long period of time to attain assurance that all jurists have agreed on the issue.

However, practically speaking, there is no longer any new ijma', as it requires consensus between all jurists from different schools, which is very difficult to obtain.²³¹ Hence, Abdulwahaab Khalaaf asserts that jurists have not provided ijma' since the early history of Islamic law.²³² And Abdullah Ibn Hanbal says that, 'whoever claims Ijma' (consensus) between all jurists is a bluffer'.²³³ Regardless of this debate, ijma' does not exist in relation to zakat, based on the evidence that modern Islamic states have their own fiscal policy, and naturally jurists adhere to opinions that match the policy of their states.²³⁴ So, although ijma' is theoretically the third source of Islamic law, it is impossible to consider it as a significant source for zakat.²³⁵

2.3.2.2 Qiyas

Qiyas is the fourth source of Islamic law. Its creation involves logical reasoning based on the primary sources of the Quran and Prophet Muhammad statements. It is 'a process of logical reasoning from a known injunction to a new injunction'. In the process of

²³⁰ Khalaaf, A., *Elm Usul AlFiqh* (Maktabat ALDa'awa Allislamiya, Alexandria 2002) p. 48.

²³¹ Ibid.

²³² Khalaaf, A., *supra* p. 50.

²³³ Ibid

²³⁴ Allami, A., *supra* p. 90.

²³⁵ Hallaq, W., *An Introduction to Islamic Law* (Cambridge University Press, Cambridge 2009) p. 23.

qiyas, jurists apply a known Quran rule or Prophet statement (asl) to an issue that is not covered by the Quran and Prophet Muhammad statements (far') as this latter issue shares the first rules meaning or prudence (illah).²³⁶ For example, prohibition of alcohol is known from the Quran (asl), but the position regarding opium and heroin is not covered by any text of Quran or the Prophet (far'). Thus, jurists apply the alcohol rule to opium and heroin as all affect the human mind (illah).

The importance of qiyas on the subject of zakat is demonstrated in discussions about zakat. For example, because Prophet Muhammad considered dates and raisins as subject to zakat (i.e. a base for zakat), AlShafii states that rice must also be, as all are commodities. In addition, AlQaradawi considers letting income as a base, because Prophet Muhammad considered income from agriculture lands a base of zakat. This will be explained in chapter 3 below.

2.3.2.3 *Fatwas*

Fatwas are recommendations or consultations issued by Islamic jurists.²³⁷ There are three types of fatwas; personal, jurisprudential and official. The first, personal fatwas, are issued by a qualified jurist to advise individuals on personal matters. Usually on topics related to piety. For example, when a diabetic person consults a jurist for advice on his inability to fast during Ramadan, or a student who studies in a non-Islamic state asks a jurist about how to organise his prayer time. As it can be seen, personal fatwas are not to be enacted over the public, as their intention is to provide rules for specific

²³⁶ Makdisi, J., 'Legal Logic and Equity in Islamic Law', *The American Journal of Comparative Law*, 33 (1985) p. 66.

²³⁷ AlKahnin, A., *AlFatwa fi AlSharia AlIslamiya* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 47.

individual matters.²³⁸ The second type is jurisprudential fatwas, which are usually demonstrated in academic essays, theses and books. References by Ibn Qudamah and Ibn Taymiyyah, for example, are the most recognised jurisprudential fatwas in Saudi Arabia. They are studies undertaken by jurists and scholars, and interpretative sources for legislators, statesmen and judges that are not statutes or enacted in law *per se*.²³⁹

The third type is official fatwas, which are issued by the Saudi General Presidency of Scholarly Research and Ifta,²⁴⁰ the Organisation of the Islamic Conference (OIC)²⁴¹ and the Muslims World League.²⁴² They are official recommendations, or reports issued by an Islamic committee of jurists, which intend to advise the public on social issues, or to confirm religious values. For example, the Muslims World League recommended that

²³⁸ AlKahnin, A., *AlFatwa fi AlSharia AlIslamiya* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 47.

²³⁹ Shuwaikh, A., *Ta'aleel AlAhkaam fi AlSharia AlIslamiya* (Dar AlBasheer, Tanta 2000) p. 220.

²⁴⁰ The Saudi body which issue official fatwas.

²⁴¹ Was established on the 25th September 1969; it is the second largest inter-governmental organization after the United Nations which has membership of 57 states spread over four continents. The Organization is the collective voice of the Muslim world and ensuring to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world. The Organization of the Islamic Conference (OIC) (2010) *About OIC* <http://www.oic-oci.org/page_detail.asp?p_id=52> accessed 22 January 2013.

²⁴² The Muslim World League was founded in accordance with a resolution adopted during the meeting of the General Islamic Conference, which was held in Mecca on the 18th May 1962. Muslim World League is an international non-governmental Islamic organization based in the Holy City of Makkah. It is engaged in propagating the religion of Islam, elucidating its principles and tenets, refuting suspicious and false allegations made against the religion. The Muslim World League (2010) *Profile* <<http://www.themwl.org/Profile/default.aspx?l=EN>> accessed 23 January 2013.

governments should not invest zakat funds.²⁴³ Official fatwas are not considered binding laws or regulations, although official institutions issue them. In Saudi Arabia, jurists are held liable for their official fatwas, so they can be dismissed,²⁴⁴ condemned or asked to apologise publically if they issue non-standard or erroneous fatwas.²⁴⁵ Jurists of official fatwas do not enjoy legislative immunity as legislators.²⁴⁶

Islamic jurists issue fatwas based on the process of Usul AlFiqh. The literal translation of Usul AlFiqh is the ‘origins of jurisprudence’, which jurists term ‘Islamic legal theory’.²⁴⁷ On the subject of Usul AlFiqh, which is the methodology of jurists to issue fatwas, jurists handle issues that are debated and seen as controversial aspects of Islamic rules.²⁴⁸ They never cover, for example, the question whether zakat is a duty or not, because it is beyond question that zakat is the third pillar of Islam. According to Wael Hallaq, “Usul AlFiqh provided the jurists with a methodology that allowed them not only to find solutions for a new case, but also to articulate and maintain the existing law. Even old solutions to old problems were constantly rehabilitated and reasoned

²⁴³ AlGhofeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 472. The legality of investing zakat’s money will be examined in 4.3 below.

²⁴⁴ On the 4th of October 2009, the jurist Saad AlShithry was expelled from the the General Presidency of Scholarly Research and Ifta because he accused King Abdullah University of Science and Technology (KAUST) in term that its system do not segregate males and females in different halls. Okaz (2009) *Amr Malaki: I’fa’a Saad AlShithry mn Aamalouh fi Hai’at Kibaar AlUlaama* <<http://www.okaz.com.sa/new/issues/20091005/Con20091005307886.htm>> accessed 23 January 2013.

²⁴⁵ AlKahnin, A., *AlFatwa fi AlSharia AlIslamiya* (Mo’asasat AlRisalah, Beirut 2002) vol. 1, p. 235.

²⁴⁶ AlTammawi, S., *AlQada’a Alldari: Qada’a AlTaaweed* (Dar AlFik AlArabi, Cairo 2003) p. 36.

²⁴⁷ Emon. A., *Islamic Natural Law Theories* (Oxford University Press, Oxford 2010) p. 12.

²⁴⁸ Khalaaf, A., *Elm Usul AlFiqh* (Maktabat AlDa’awa AlIslamiya, Alexandria 2002) p. 16.

anew”.²⁴⁹ Usul AlFiqh is a certain process to deduce rules²⁵⁰ from the Quran, and Prophet Muhammad’s statements, and then to make ijma’ or qiyas. If, for example, jurists want to discover if minors are obliged to pay zakat or not; they will first research the rule in the Quran because it is the primary source of the Islamic law, but if there is no clear rule there they will try to find it in Prophet Muhammad’s statements as it is the second primary source. However, if there is nothing again they will finally try to achieve ijma’ (consensus) between Muslims on the issue. If they cannot make ijma’ or qiyas, they/he will then issue an opinion or recommendation (fatwas), based on Islamic rules that do not contradict the principles of the Quran or the Prophet’s statements. Fatwas must be practical for the sake of the state welfare.²⁵¹

The principles of Usul AlFiqh were written for the first time in the year 813 A.D. by Muhammad AlShafi’i²⁵² in his book AlRisalah (The Message).²⁵³ He wrote it when he was debating with jurists from different schools about how to deduce rules from the Quran and the Prophet’s statements. AlShafi’i is not the founder of Usul AlFiqh, or the inventor of how to deduce rules from the Quran and Prophet Muhammad’s statements but he is the first jurist to write them coherently. The chronological order of the Usul AlFiqh processes was intuitively known by jurists and scholars.²⁵⁴

²⁴⁹ Hallaq, W., *The Origins and Evolution of Islamic Law* (4th edn, Cambridge University Press, Cambridge 2007) p. 148.

²⁵⁰ Ibid.

²⁵¹ AlKahnin, A., *AlFatwa fi AlSharia AlIslamiya* (Mo’asasat AlRisalah, Beirut 2002) vol. 1, p. 235.

²⁵² Muhammad AlShafi’i (766-820) was a Muslim jurist, and the founder of AlShafii jurisprudential school.

²⁵³ Jokisch, B., *Islamic Imperial Law* (Walter de Gruyter, Berlin 2007) p. 517.

²⁵⁴ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p. 9.

2.4 Zakat Payers

This subtitle defines who is obliged to pay zakat. First, it examines whether or not non-Muslims are obliged to pay zakat like Muslims. Then, it illustrates the position of persons lacking legal capacity (e.g. minors and the mentally afflicted) with respect to paying zakat. The section finally examines the case for imposing zakat on public bodies.

2.4.1 Imposing Zakat on Non-Muslims

Paying zakat is a duty for Muslims. The Quran, which issues the order to pay zakat, is the Islamic divine book; hence, Muslims are obliged to obey it. For Muslims, paying zakat is initially a matter of piety - like praying, fasting during Ramadan and Hajj. They accept the burden, for they yearn to obtain a blessing and God's Mercy.²⁵⁵ The Quran mentions performing prayers and paying zakat in many verses, which reveal the magnitude of the zakat duty as prayer.²⁵⁶ For example, '*they perform prayers, and the zakat, and obey God and His Messenger. God will have His Mercy on them...*'.²⁵⁷ And '*if they repent, perform prayers and pay zakat, then they are your brethren in religion.*'²⁵⁸ The Prophet Muhammad also correlated the duties of prayers and zakat when he said to Muslims: 'You are obliged to pray and pay zakat...'.²⁵⁹ Actually, this religious feature of zakat imposition is as an advantage to the zakat system, because,

²⁵⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 86.

²⁵⁶ Ibid.

²⁵⁷ The Quran 9: 71.

²⁵⁸ The Quran 9: 11.

²⁵⁹ Ibn AlTabari, M., *Jamie' AlBayan a'an Ta'aweel AlQuran* (Hajr, Cairo 2001) vol. 11, p. 362.

since Muslims believe in the Quran as their divine book, paying zakat is supposedly then enforced by the inner-self incentive²⁶⁰ of religious belief.²⁶¹

Muslims already accept that zakat is an imposed levy that they must pay, so whenever the state enacts or codifies zakat law, the former will find the zakat duty justifiable and related to their natural law.²⁶² However, such a point of view does not exist for non-Muslims. They do not share Muslims' beliefs and do not have similar incentives to practice zakat.²⁶³ Thus, a question should be asked about their position: do non-Muslims who live in the Islamic states have to pay zakat like Muslims? Is it proper to regard non-Muslims and Muslims as equals with respect to zakat duty? Or is it unjust to treat them alike since non-Muslims are not obliged to obey the Quran nor the rules of the Islamic canon?

AlQaradawi stated the principle that non-Muslims who live in Islamic states are not obliged to pay zakat because they are not required by the Quran to perform it; in addition, because they do not share Muslims' beliefs.²⁶⁴ Nevertheless, when the Prophet Muhammad sent Muaz²⁶⁵ to Yemen on a preaching mission (to explain to Yemenis the

²⁶⁰ As was mentioned above (in 1.1.2), John Mill stated that that honest religious belief could make persons more obedient. Mill, *supra*

²⁶¹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 83.

²⁶² Religion and orders of God is one of the seven basic values that were considered by the legal naturalist John Finnis (an Australian legal philosopher in the University of Oxford (1940)). These seven basic values are: life, knowledge, play, aesthetic experience, friendship, practical reasonableness and religion. Finnis, J., *Natural Law and Natural Rights* (Oxford University Press, Oxford 1980) p. 85.

²⁶³ AlQaradawi, Y., *supra* p. 123.

²⁶⁴ AlQaradawi, Y., *supra* p. 124.

²⁶⁵ Muaz Ibn Jabal was a companion of the Prophet. He started preaching Islam when he was a teenager. AIDhahabi, M., *Siyar A'laam AlNubalaa* (Bait AlAfkaar AlDawliyah, Beirut 2004) vol. 3, p. 3869.

message of Islam), he reminded the latter to inform the non-Muslim Yemenis about the zakat imposition, which becomes mandatory once they convert to Islam: ‘Tell them that it is obligatory to pay zakat, which will be taken from the rich to be given to the poor’.²⁶⁶ Apparently, the statement confirms that zakat is not a duty for non-Muslims until they convert to Islam.²⁶⁷

However, AlQaradawi gave two reasons to explain why it is not improper to impose zakat on non-Muslims as a tax.²⁶⁸ First, it would be fairer to impose zakat on non-Muslims who live in Islamic states rather than imposing *ad hoc* taxation. Since zakat rates are flat and low (2.5 % in most instances), non-Muslims often prefer to pay such a levy rather than enduring progressive or higher rate taxes.²⁶⁹ For example, the Taglab, the Christian tribe, refused to be discriminated against by Muslims, hence, they petitioned the Caliph, Omar Ibn AlKhattab, to collect zakat from them instead of paying other taxes.²⁷⁰ Thus, if it is inevitable that non-Muslims will have to pay a levy, then it would be more attractive for them to choose to pay zakat like Muslims. Milton Friedman argued that, when a tax is flat and not proportional, there will be less incentive to evade it;²⁷¹ meaning that zakat is more acceptable to non-Muslims than progressive or high rate taxes.

²⁶⁶ Muhammad, A. and AlBukhari, I., *AlJame' Alsaheeh "Sahih AlBukhari"* (Beirut: Dar AlJeel, Beirut 2005) p. 573.

²⁶⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 126.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Friedman, M., *Capitalism and Freedom* (University of Chicago Press, London 2002) p 175.

Second, discriminating between Muslims and non-Muslims over payment of zakat could create unnecessary loopholes and incentives for evasion.²⁷² In a situation where non-Muslims are not obliged to pay any levy, whether zakat or other tax, this rule will be regarded as a privilege. Non-Muslims will enjoy this privilege, while the Muslim citizens pay zakat, which could increase the latter's incentive to evade. For example, a Muslim could marry a non-Muslim to transfer his property to the exempted spouse. On the other hand, if the state imposes higher rates tax on non-Muslims while Muslims are paying the low rate of zakat, this could impel non-Muslims to seek to avoid the high taxes imposed on them. For example, non-Muslim businessmen have the ability to register their companies in Muslim names to avoid the high rate tax, or they can attract Muslims to join their enterprises as partners to mitigate the tax burden.

Thus, it can be argued that imposing zakat on non-Muslims is a fair approach that may be more acceptable to them,²⁷³ and could prevent evasion/avoidance arising from employing two different tax systems. Moreover, whereas the Quran and the Prophet do not restrict zakat imposition on non-Muslims, zakat laws shall imitate modern taxation by adopting less subjective approaches. For example, in the UK, the tax payer is anyone who enjoys the privilege of being protected by UK law - whether a resident or non-resident owning UK property.²⁷⁴ Similarly, Egyptian law imposes income tax on

²⁷² AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 126.

²⁷³ Once non-Muslims are seen as equal to Muslims with respect to the duty of zakat, they can be more enthusiastic to co-cooperate with the system. John Tiley stated, payers' co-operation with the authority is one of the desirable results of the horizontal equality. Tiley, J., *Revenue Law* (5th edn, Hart Publishing, Oxford 2005) p. 10.

²⁷⁴ Lord Wrenbury said: 'The [person who is resident in the UK] is taxed because (whether he be a British subject or not) he enjoys the benefit of our laws for the protection of his person and his property. The

residents or non-residents with Egyptian investments.²⁷⁵ Equalising payers' requirements using objective criteria (e.g. residency, owning a property in the state or investment) instead of discriminating on religious grounds, meets the equality before law principle.²⁷⁶

2.4.2 The Position of Incapacitated Persons

In Islamic law, incapacitated persons (minors, insane or the mentally-disabled) are exempted from performing some acts of piety (e.g. Hajj, fasting during Ramadan, giving zakatufitr).²⁷⁷ This exemption applies to minors and the insane, because minors are physically unable to endure the toughness of these forms of acts of worship, while the mentally-disabled are insufficiently aware to perform them.²⁷⁸ Thus, it should be queried whether or not persons who lack capacity are obliged to pay zakat. That is, whether paying zakat is an obligatory practice for minors and the insane?

[non-resident with UK property] is taxed because in respect of his property in the United Kingdom he enjoys the benefit of our laws for the protection of that property.' *Whitney v IRC* [1925] 10 TC 88 at 112.

²⁷⁵ Article 2 of the Egyptian Income Tax Law No. 91 of 2005: 'In applying the provisions of this law, a natural person is an Egyptian resident, in any of the following cases: (1) If having permanent residency in Egypt (2) If residing in Egypt for more than 183 continuous or intermittent days within twelve months (3) An Egyptian working abroad, and receiving income from an Egyptian treasury. A legal person is deemed a resident of Egypt in any of the following cases: (1) If established according to Egyptian law (2) If its main or effective managing headquarters is in Egypt (3) If its a corporation in which the state or any state-owned legal person hold more than 50% of its capital. This law's executive regulation will define the rules for determining permanent residence and effective managing headquarters.'

²⁷⁶ For further discussion, see Bingham, T., *The Rule of Law* (Penguin Books, London 2010) p. 55.

²⁷⁷ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p. 28.

²⁷⁸ Ibid

Ibn Hazm²⁷⁹ and most Hanafians exempt incapacitated persons²⁸⁰ from paying zakat; as such persons are unable to make decisions themselves.²⁸¹ For them, it is implausible to impose zakat on minors and the insane because of their legal incapability. Minors are below the legal age, and the insane are too incapable and inexperienced to handle the zakat authority's complex procedures, such as assessment and appeal.²⁸² The Hanafians offered this opinion based on the Prophet Muhammad's statement: '[T]hree persons are not liable for commitments: the one who is asleep until he wakes, the child until he attains puberty, and the insane person until he regains sanity.'²⁸³

Other scholars such as Ibn Othaimeen²⁸⁴ and AlQaradawi²⁸⁵ refer the issue to the Quran's '*Take Zakat from their wealth...*',²⁸⁶ noting the verse does not literally exempt incapacitated persons from paying zakat. They argue that, the incapacity of minors and insane persons is not an adequate justification to exempt them from paying zakat, particularly when those incapacitated persons are under guardianship.²⁸⁷ Indeed, as long as minors and the insane are under guardianship, it is irrational to consider their

²⁷⁹ Ali Ibn Hazm (994 - 1064), an Andalusian philosopher, jurist, historian and theologian.

²⁸⁰ Ibn Hazm, A., *AlMuhallah* (Bait AlAfkaar AlDawiyah, Riyadh 2003) p. 524.

²⁸¹ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p. 294.

²⁸² Ibid.

²⁸³ Aabaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 740.

²⁸⁴ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayyah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 16.

²⁸⁵ AlQaradawi, supra. p. 148.

²⁸⁶ The Quran 9: 103.

²⁸⁷ This opinion is similar to the two Caliphs'; Umar Ibn AlKhattab and Ali Ibn Abi Talib. Also most Shafiists, and Hanbalians adopted similar point of view. AlQasim, supra. p. 448.

incapability a ground for exemption. For Ibn Othaimen²⁸⁸ and AlQaradawi,²⁸⁹ the existence of guardianship revokes the assertion that minors and the insane are incapable, arguing it is improper to state that the *guarded minors/insane* are covered by the Prophet's latter statement that:²⁹⁰ 'persons are not liable for commitments... the child until he attains puberty, and the insane person until he regains sanity.'²⁹¹ Primarily, the duty of their guardians is to manage and protect their affairs.²⁹² According to AlShafii, because the Prophet Muhammad said to his companions: 'Invest the orphans' wealth before it gets reduced as a result of paying zakat',²⁹³ this confirms the zakat imposition on the guarded incapacitated. Otherwise, the Prophet would not urge guardians to invest their incapables' wealth, or to declare his concern about the reduction of the latter's wealth as a result of the zakat payments.²⁹⁴ In addition, when Ali Ibn Abi Talib²⁹⁵ was guardian of the Raafee' tribe's²⁹⁶ minors, he paid zakat on their behalf (from their wealth) for several years,²⁹⁷ demonstrating that guarded minors were not exempted. In

²⁸⁸ Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 16.

²⁸⁹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 134.

²⁹⁰ Ibid.

²⁹¹ Abaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 740.

²⁹² AlQaradawi, Y., supra p. 134.

²⁹³ AlQasim, A., *AlAmwal* (Mo'assat Nassir LeAlthakafah, Beirut 1981) p. 154.

²⁹⁴ AlQaradawi, Y., supra p. 138.

²⁹⁵ He is the cousin and son-in-law of Prophet Muhammad (599 - 661). Ruled the Islamic Caliphate from 656 to 661. AlDhahabi, M., *Siyar A'laam AlNubalaa* (Bait AlAfkaar AlDawliyah, Beirut 2004) vol. 3, p. 2806.

²⁹⁶ Ali Ibn Abi Talib held the duty to guard Raafee' minors after the latter's parents passed away. AlShafii, M., *AlUmm* (Dar AlWafaa', Mansoura 2001) vol. 3, p. 73.

²⁹⁷ AlQaradawi, Y., supra p. 134.

fact, exempting minors and the insane from paying zakat can create a loophole that encourages evasion and avoidance.²⁹⁸ For example, wealthy individuals can gift their fortune to their minor children to avoid paying zakat, and guardians could transfer their wealth to their incompetents' bank accounts to enjoy the exemption of the latter dishonestly. As can be seen, a levied wealth could be zakat free if the exempting minors and insane were legislated differently in zakat law.

Therefore, it could be argued that incapacitated persons are not exempt from paying zakat.²⁹⁹ Zakat is a compulsory levy, which aims to contribute to the socio-economy,³⁰⁰ and, as it can be seen, there is no convincing reason to exclude wealthy minors or the insane from this establishment. If exempting minors and the insane is predicated on the belief that they are incapable or inexperienced, this is null when they have a guardian.³⁰¹

2.4.3 Should Public Bodies Pay Zakat?

Public bodies and governmental institutions have budgets allocated to ensure public welfare. For example, the Ministry of Higher Education spends its budget on domestic

²⁹⁸ When Milton Friedman proposed his regressive tax system (Negative Income Tax) which requires a minimum flat rate (similar to zakat), he suggested eliminating exemptions as much as possible to decrease payers' incentive for avoidance. Friedman, M., *Capitalism and Freedom* (University of Chicago Press, London 2002) p 174.

²⁹⁹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 142.

³⁰⁰ Lord Halsbury LC said in term of criticising the increase of tax exemptions, 'every exemption throws an additional burden on the rest of the community'. *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] 3 TC 53 at 73. Lord Halsbury's statement could be borrowed here to state that exempting guarded minors and insane is undesirable, as the more exemptions to occur, the less wealth re-distribution will be exercised.

³⁰¹ AlQaradawi, Y., *supra* p. 134.

universities and scholarships, the Ministry of Transportation allocates its budget to public transportation, the Ministry of Defence finances the army and other governmental enterprises, etc. In Saudi Arabia, there are also non-ministerial and non-governmental authorities such as the Capital Market Authority (CMA),³⁰² and the National Society for Human Rights (NSHR),³⁰³ which work to establish public welfare and not for private gain. It is sometimes asked, why, if these public bodies (ministerial and non-ministerial) have such enormous budgets, do they not pay zakat like natural/legal persons, to contribute to the re-distribution of wealth?

AlQaradawi argues that public bodies are not obliged to pay zakat because their budgets and possessions are not owned by anyone, and already belong to the public, so are in effect distributed.³⁰⁴ Moreover, public budgets have no specific owner responsible for zakat payments, thus it is illogical to impose zakat on a non-identifiable entity.³⁰⁵ The zakat directive in the Quran, to '*Take zakat from their wealth*',³⁰⁶ obliges

³⁰² The Capital Market Law issued by the Royal Decree No. (M/30) dated 1/8/2003, which formally brought it into existence. The CMA is a government organization applying full financial, legal, and administrative independence, and has direct links with the King.' The Capital Market Authority (2012) *About Capital Market Authority* <<http://www.cma.org.sa/En/AboutCMA/Pages/default.aspx>> accessed 29 January 2012.

³⁰³ Created on 9/3/2004 to protect and defend human rights in accordance with Islamic Law. 'NSHR is a national non-governmental organization (NGO), independent administratively and financially from the government. It strives to defend human rights within and outside the Kingdom of Saudi Arabia, whether the target of abuse is a Saudi citizen, expatriate, or visitor...' National Society for Human Rights (2012) *Scope of NSHR* <<http://nshr.org.sa/english/aRightMenuCMS.aspx?smid=74>> accessed 29 January 2013.

³⁰⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 165.

³⁰⁵ Rahman, M., *Zakat Calculation* (The Islamic Foundation, Leicester 2003) p. 24.

³⁰⁶ The Quran 9: 103.

individuals, and supposes that wealth must be owned by individuals to be 'zakatable'. For the same reason, AlQaradawi³⁰⁷ and Ibn Othaimeen³⁰⁸ state that all public trusts (e.g. schools, mosques, or orphanages) and funds of charitable communities are not subject to zakat. Similarly, the Thirteenth Conference of Contemporary Zakat Issues (Sudan, Khartoum 2004) reported that even companies run by the government are not obliged to pay zakat.³⁰⁹ Such companies are controlled by the government or public entities and as such not owned by individuals. The Thirteenth Conference reported that, if the state were to nationalise a company, the zakat authority would then have no power to collect zakat from it,³¹⁰ or to assess its shares.³¹¹

On the other hand, several scholars who have opposed this approach. For example, the Shafiist scholar Ali AlBasri argues that public bodies are akin to legal persons, and hold budgets they can dispose of according to their discretion, and so must be treated as the actual owners of their budgets. Consequently, they are obliged to pay zakat.³¹²

However, AlBasri's approach contains two major fallacies. First, he regards the 'freedom of disposition of budgets' as a badge of the public bodies' ownership, which is an incorrect supposition. In practice, public bodies are not permitted to spend their budgets without executive restraints. The public body's power to spend its budget is

³⁰⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 165.

³⁰⁸ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 184.

³⁰⁹ Ibid.

³¹⁰ AlGhoseeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 243.

³¹¹ Hence, the inevitable inequality between legal persons and public bodies (which will appear when assessing private shares solitary) is justifiable by the verse interpretation.

³¹² AlBasri, A., *AlHaawi* (Dar AlKutub AlElmiyah, Beirut 2003) vol. 3, p. 130.

usually guided by executive plans and rules, and a body is not totally free to spend in the same way as a natural or legal persons. Moreover, public bodies are regularly subordinated to supervision and control - whether by the legislature or another superior executive authority (e.g. the Saudi Auditing Bureau ‘*Diwan AlMurakabah*’),³¹³ and are not entitled to dispose of their budgets as individuals. Second, there is no good reason to impose zakat on public bodies. As the Thirteenth Conference has reported, zakat payments by public bodies cannot offer a further socio-economic contribution, because these public budgets are intended to be spent to the public benefit.³¹⁴ Once public bodies start to pay zakat, their spending plans will be affected by the reduced budget, negatively effecting the citizens, who are the beneficiaries of the spending. Were bodies required to re-distribute their public budgets this would apply inefficiency not known to be present.³¹⁵ These two arguments confirm that public bodies are exempt from zakat.

2.4.4 Zakat: A Personal Tax or a Tax on Wealth?

After clarifying the issues of non-Muslims, incapacitated persons and public bodies, it should be questioned whether zakat is a personal tax or a tax on wealth. If zakat is a personal tax, it means the identity of the payer is the core subject of zakat, and should be examined further. But, if zakat is a tax on wealth, the meaning of wealth should be clarified to elucidate how wealth is liable to zakat.

³¹³ Saudi Auditing Bureau (2012) *GAB Intro* <<http://www.gab.gov.sa/article.php?id=12>> accessed 30 January 2012.

³¹⁴ AlGhufeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 243.

³¹⁵ John Rawls said in term of the efficiency of distribution: ‘an efficient distribution is one which it is not possible to find further profitable exchange.’ Rawls, J., *A Theory of Justice* (Harvard University Press, Massachusetts 2005) p. 70.

The above discussions reveal that Islamic scholars have focused on the identity of zakat payers regarding religion and legal capability. They were also concerned about whether public bodies should pay zakat. Their arguments reflected zakat as a personal tax, as they revolved around the ‘identity of payers’.

However, it could be said that zakat is not a personal tax in the widest sense, as zakat is not imposed on the payers’ identity *per se*.³¹⁶ The definition of ‘payers’ in zakat law ought not to be stretched to regard them as the main subjects of zakat, because wealth is the main subject of zakat (this will be explained subsequently). Payers are persons who are in charge of paying the zakat levied on their wealth and nothing further.³¹⁷ Zakat is a tax on wealth, for, as it was mentioned, there might be a non-Muslim or guarded incapable who is obliged to pay zakat because he owns wealth, while there might be a Muslim and mentally capable person not obliged to pay zakat as he has no wealth.³¹⁸ The argument above accommodated the legitimacy of imposing zakat on non-Muslims, meaning it cannot be claimed that the main subject of zakat is the Islamic identity of the payer. In addition, if zakat strictly requires the Islamic identity of payers, then Omar, the Caliph, would not have imposed zakat on Taglab, the Christian tribe,³¹⁹ and Islamic scholars would not acknowledge the suggestion to impose zakat on non-Muslims. Zakat

³¹⁶ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 39.

³¹⁷ Ibid.

³¹⁸ For further discussion see, 2.4 above.

³¹⁹It was discussed in 1.3.2 above that the practices of the Prophet Muhammad’s companions are considered a secondary source of the Islamic law. Hence, it is proper to rely upon their practices as reference.

is unlike zakatulfitr, which only Muslims have to give as charity every Eid.³²⁰ The latter is a duty on the persons themselves, whereas zakat is a duty relating to a persons' wealth only. Regarding incapacitated persons, it was argued that they are liable to pay zakat on the condition that they are under guardianship.

This confirms that the zakat system does not consider the legal capability of payers an essential requirement, and zakat is mainly about taxing wealth and not determining identity.³²¹ If not, the Prophet Muhammad and Ali would not have been concerned about collecting zakat from guarded incompetents and they would have been contented with exempting them. Accordingly, it can be said that zakat is a levy imposed on wealth (as will be examined in the subsequent chapter).

2.5 Conclusion

This chapter has clarified the concept of zakat throughout by discussing its definition, history, sources, and who must pay. It has confirmed, offering historical evidence, that zakat is an obligatory imposed levy, and has thus submitted that zakat should be regarded as a taxation system. The chapter also articulated that it is not improper to impose zakat on non-Muslims and guarded incapacitated persons, and argued against imposing zakat on public bodies' budgets. The chapter also concludes that zakat is a tax on wealth and not on persons *per se*.

The following chapter will examine the extent to which wealth is liable to zakat, and discuss the principles of zakat collection.

³²⁰ For further discussion see 2.1.3 above.

³²¹ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 39.

CHAPTER THREE

THE PRINCIPLES OF ZAKAT COLLECTION AND ASSESSMENT

This chapter examines the principles of zakat collection. It defines the scope of zakat collection and examines to what extent 'wealth' is subject to zakat. The chapter also argues that evading zakat is a crime and that there is no jurisprudential distinction between evasion and avoidance in the zakat system.

3.1 Wealth as the Subject of Zakat

Zakat is a levy on wealth. The Quran expresses this clearly when Prophet Muhammad is commanded to collect zakat from Muslims: "*Take zakat from their wealth...*".¹ The verse indicates that the imposition of zakat covers all parts of an individual's wealth², such as property, liquidity, income, profit, commercial goods and jewellery. It does not specify that any one type or area of wealth should be the only base for zakat (for example inherited wealth, capital gain or accumulated profits).³ Similarly, the Prophet Muhammad did not specify the meaning of 'wealth', but rather confirmed the 'broad

¹ The Quran 9: 103.

² AlMasri, R., Zakah: Is it Imposable on Income or on Capital? (2004) *Journal of King Abdulaziz University - Islamic Economics* 29-31.

³ Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayyah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 39.

approach' of the meaning of wealth, which is mentioned in a later verse, particularly when he stated in the Farewell Sermon:⁴ "pay your zakat wealth"⁵.

Ibn Hazm, who adopted the *literal construction (Zahiriyah)* of expressions in the Quran and the Prophet's statements, dismissed the 'broad approach' of the imposition of zakat on the grounds that the Prophet specified eight bases in the statement: "Zakat is on camels, cows, sheep, grain, barley, dates, silver and gold."⁶ This means that the zakatable 'wealth' refers literally to those eight types of wealth and nothing else and that it would be improper to widen the scope of zakat beyond the mentioned bases. The zakat authority should have no power to collect zakat other than from the eight bases mentioned in the latter statement. It is unjustifiable to consider the 'broad approach' of the meaning of wealth while there is a statement that literally specifies the basis for zakat.⁷ Furthermore, in Ibn Hazm's opinion, the priority is to reject the 'broad approach' of wealth. Instead of postulating it,⁸ people's private rights and properties should be preserved and not subject to any arbitrary interpretations, such as when to widen the scope of wealth.

However, there are three reasons why the 'broad approach' of the meaning of wealth is more reasonable than in Ibn Hazm's literal interpretation. First, Ibn Hazm did not clarify why the Quran did not specify the eight bases in the verse "*Take zakat from their wealth...*" or in any other verse such as that specifying the eight categories of zakat

⁴ The speech which was delivered by Prophet Muhammad in Mecca at the end of his pilgrimage (632 A.D.), and seventy-two days before the Prophet death, AlDhahabi, M, supra. vol. 1, p. 308.

⁵ AlTirmidhi, M., *Sunan AlTirmidhi*, (Maktabat AlMa'arif, Riyadh 1996, Ed. Alalbany, M) p. 156.

⁶ Ibn Hazm, A., *AlMuhallah* (Bait AlAfkaar AlDawiyah, Riyadh 2003) p. 530.

⁷ Ibid.

⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 179.

beneficiaries: ‘Zakat’s fund must be distributed to the poor, needy, zakat administrators, and almu’allafatu qulubihim, slaves, debtors, fi sabeel Allah and travellers’.⁹ This may reflect an intention of ‘specification’ in the latter verse and confirms the intention of ‘widening’ in the former. Nevertheless, in most primary sources (“take zakat from their wealth to purify them and sanctify them with it, and invoke God for them”,¹⁰ the Farewell Sermon statement: “pay your zakat wealth”¹¹ and “it is obligatory to pay zakat, which will be taken from the rich to be given to the poor”)¹² the order of the imposition of zakat comes in broad terms, thus making it indefensible to simply overlook these sources and to confine zakat to only eight bases.¹³

Secondly, according to AlQaradawi, it is illogical to literally consider the eight types of bases (camels, cows, sheep, grain, barley, dates, silver and gold)¹⁴ and exempt all other types of wealth such as bank accounts, properties, income and antiques. Zakat is not regarded as a “wealth re-distribution system” in the widest sense of that word. The Prophet’s later statement, which Ibn Hazm relies on, denotes the eight types of wealth as examples and not as strict codification.¹⁵ As at that time, the types of wealth mentioned were the most valuable items to society.¹⁶

⁹ The Quran 9: 60. For Further discussion see chapter 5 below.

¹⁰ The Quran 9: 103.

¹¹ AlTirmidhi, M., *Sunan AlTirmidhi*, (Maktabat AlMa’arif, Riyadh 1996, Ed. Alalbany, M) p. 156.

¹² Muhammad, A. and AlBukhari, I., *AlJame’ Alsaheeh “Sahih AlBukhari”* (Beirut: Dar AlJeel, Beirut 2005) p. 573.

¹³ AlQaradawi, Y., *Fiqh AlZakat* (Mo’asasat AlRisalah, Beirut 2002) vol. 1, p. 180.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

Thirdly, the paradox in Ibn Hazm's argument is that, although he strictly confined the zakat bases to eight types of wealth for the sake of saving peoples' properties from any arbitrary collection, Ibn Hazm also argues that the Islamic state is entitled to impose positive taxes when necessary.¹⁷ He thus opposes the 'broad approach' of the '*wealth*' as a priority for preserving people's properties, but then makes contradictory remarks on the imposition of positive taxes by the sovereign state. Ibn Hazm's opinion reveals flexibility in applying taxes. The 'broad approach' defines a principle to apply zakat rather than to leave it to *ad hoc* or arbitrary taxes. His flexibility and the term 'necessary' are not defined which could lead to ambiguity. The lack of clarity in how and when to apply positive taxes leads to uncertainty, which is not the case in the 'broad approach' of wealth.

The word '*wealth*' should thus be based on the 'broad approach' as follows.

3.2 The Definition of Wealth

It could be argued that the concepts: 'wealth' and 'money' are correlated¹⁸ and have similar definitions. Adam Smith linked the meaning of 'wealth' to 'money' and *vice versa*.¹⁹ In most dictionaries, the noun 'wealth' is usually described as a large amount of

¹⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 18.

¹⁸ The wealthy person is opposite to the poor because he is rich or financially able, and can afford the necessities of life. For further discussion about the poor requirements, see 5.1.1 below.

¹⁹ Smith, A., *The Wealth of Nations: Book I-III* (Penguin Books, London 1999) p. 134.

money or property,²⁰ or 'large amount of money or valuable possessions that someone has.'²¹

The concepts of wealth and money are interchangeable as they have similar features. First, 'wealth' is *exchangeable* like 'money'.²² Wealth²³ and money are tools for exchange²⁴ with other valuable items, utilities and services.²⁵ They can be used or exploited to buy basic needs such as food, accommodation and education. Second, 'wealth' is similar to money, as both of them are *valuable*.²⁶ They enrich the person who enjoys its ownership. Gold, silver, land, property, commercial goods, liquidity, stocks and bonds are considered wealth as they are valuable and simultaneously exchangeable. If 'wealth' or 'money' is not valuable, its exchangeability nature will be revoked.²⁷ Third, 'wealth' and 'money' are similar as they are usually *saveable*.²⁸ They

²⁰ Oxford English Dictionary. p. 1726.

²¹ Cambridge English Dictionary. p. 1798.

²² AlFawzan, S., *Istethmar Amwal AlZakat* (Dar Konoz Eshbilia, Riyadh 2005) p. 39.

²³ The word 'wealth' will be used hereafter instead of 'money' to avoid any confusion with more specific terms like 'cash money' and 'liquidity'.

²⁴ Karl Marx stated that everything, commodity or not, that is 'saleable and buyable' is considered as money (or wealth). Marx, K., *Capital: An Abridged Edition* (Oxford University Press, Oxford 1995, Ed. by McLellan, D.) p. 85.

²⁵ Aristotle observed 4 centuries B.C. that money and wealth is anything which can be exchanged with goods, services and repayment of debts. Aristotle, *Politics* (Penguin Books, London 1992, Trans. by Sinclair, T.) p 75.

²⁶ Mankiw, G., *Principles of Economics* (6th edn, Soth-Western Cengage Learning, Mason 2008) p. 620.

²⁷ For further discussion, see 3.2.1 below.

²⁸ Hudson, A., *The Law of Finance* (Sweet and Maxwell, London 2009) p. 41.

can be stored or saved for future use since they have features of lasting value,²⁹ such as when someone saves gold, cash, antiques or jewellery for later sale or use.

The question that should arise here is to what extent those features must exist in wealth that is liable to zakat. Is it a strict requirement in zakat that items are exchangeable, valuable and can be saved to be levied? The question arises of whether the lack of these three features precludes them from being actual wealth and thus non-zakatable.

If the argument that wealth must be exchangeable, valuable and saveable is adhered to, many items will not be subject to a levy. In practice, numerous items do not meet the three features of wealth. First, many exchangeable-valuable items are not saveable due to their perishable nature, such as cement, fruits, dairy products and medicines. Second, other types of items are valuable-saveable but are not a subject of exchange, as their owners do not yet intend to exchange them, such as occupied residences, private cars and spouses' jewellery. Their nature may also be too trivial for exchange, such as pens, pieces of blank paper or tissues. Third, as some exchangeable-saveable items are consumable, it is therefore uncertain whether they are sufficiently valuable. This may include pens, tissues, charcoal, cars, batteries and tobacco.

The next three sections will answer these questions to illustrate the importance of these features on zakat law.

3.2.1 The Exchangeability Feature

Two types of exchangeability should be examined here: 'natural-exchangeability' and 'exchangeability-by-intention'. First, 'natural-exchangeability' covers all items or

²⁹ Hudson, A., *The Law of Finance* (Sweet and Maxwell, London 2009) p. 41.

subject-matters that are eligible to be exchanged. They are naturally exchangeable (or buyable and saleable) because of their value, appreciation or usefulness. Examples include currencies, properties, stocks, cars, furniture, mobile phones, papers, meat, coffee or any item of value and utility. However, it is not significant to state that items have to be naturally exchangeable to be liable to zakat. The ‘natural-exchangeability’ feature requirement will contribute nothing to the zakat law because it is *prima facie* that all valuable items are exchangeable.³⁰ All items can be subject to trade or be buyable or sellable as long as they have value,³¹ even items that appear unpleasant, such as waste material, scrap metal and manure. It is not therefore necessary to require that items have to be naturally exchangeable, as in practice all items can be exchanged. More importantly, the ‘natural-exchangeability’ feature is an issue of value³² rather than of exchange. Items usually become exchangeable when they have an appreciated value or utility.³³ The value of an item precedes its exchangeability feature and not *vice versa*.³⁴ If an item no longer has value, has lost its utility, or if it is of no concern, it is

³⁰ Except non-exchangeable subject-matters which are unlikely to be given by a person to be received by another party. Moral rights such as authorship, maternity and kinship are non-exchangeable. Or natural rights such as freedom of speech, life, and the right to work. All of them are not buyable or saleable. AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 157.

³¹ Smith, A., *The Wealth of Nations: Book I-III* (Penguin Books, London 1999) p. 134.

³² For further discussion about the required value over items, see 3.2.2 below.

³³ Smith, A., *supra* p. 131.

³⁴ According to Michel Foucault, ‘In fact, exchange by barter is possible only if each of the two parties concerned recognizes a value in what the other possesses. In one sense, therefore, these exchangeable things, together with their particular values, should exist in advance in the hands of each party so that the double cession and double acquisition can finally take place... In other words, in order that one thing can represent another in an exchange, they must both exist as bearers of value; and yet value exists only

unlikely to be considered exchangeable anymore.³⁵ For this reason, requiring the ‘natural-exchangeability’ feature is misleading, as at the end it is actually a matter of value and not of exchange, and this is an adequate reason to disregard the ‘natural-exchangeability’ feature.

Second, the ‘exchangeability-by-intention’ refers to purchasable items. In other words, as the owner or possessor is bound to sell the item that he or she owns, it has become exchangeable. The ‘exchangeability-by-intention’ scope is narrower than the ‘natural-exchangeability’ since it only accommodates items that have obtained their exchangeability features when they become purchasable, subject to trade, under invitation to treat or commercial offer. ‘Exchangeability-by-intention’ also cannot be regarded as a requirement over the item to be liable to zakat.³⁶ There is no verse in the Quran, or statement by the Prophet, that confines the imposition of zakat to purchasable items. If zakat requires the ‘exchangeability-by-intention’ features over items, it should be questioned why the Quran and the Prophet did not mention such a rule.³⁷ It is doubtful whether the scope of zakat can be narrowed to the extent that the basis for zakat is confined to purchasable items while, as noted above, most sources widen the scope of zakat (*‘Take zakat from their wealth...’*, the Prophet statements: ‘pay your

within the representation (actual or possible), that is, within the exchange or the exchangeability.’ Foucault, M., *The Order of Things: Archaeology of the Human Sciences* (Routledge Classics, London 2004, Trans. Pantheon Books) p. 207.

³⁵ Ibid.

³⁶ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 177.

³⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 159. Also, Ibn Othaimeen did not mention the ‘exchangeability-by-intention’ feature as a requirement. Ibn Othaimeen, M., supra p. 16.

zakat wealth³⁸ and ‘[Y]ou are obliged to pray and pay zakat...’).³⁹ Considering the ‘exchangeability-by-intention’ features leads to the imposition of zakat only on purchasable items and exempts all non-purchasable items.⁴⁰ Furthermore, putting forward the ‘exchangeability-by-intention’ requirement means converting the principle ‘zakat is a tax on the wealth’ to ‘zakat as a tax on trade’. This also leads to the pursuit of commercial motives or the state of mind of the owner (toward his or her items) rather than defining the meaning of wealth. Regardless of whether or not valuable items are subject to exchange or sale, they are zakatable. If someone owns valuable stocks, land, gold or cattle and does not yet intend to sell them, it makes no difference in zakat law, and they should be considered wealth.⁴¹

It is therefore improper to state that the ‘exchangeability’ feature is required over items that are subject to zakat. The role of zakat authority neither concerns the exchangeability nature of items, nor pursues the owner’s state of mind or his or her commercial motives toward the items. Rather, it is necessary to examine whether or not these items are valuable, which is addressed in the following section.

3.2.2 The Required Value

This section discusses the required value for items that are to be regarded as zakatable. It explains the zakat allowance requirement, examines the issue of ‘consumable items’ and articulates the fallacy of the ‘productivity’ feature.

³⁸ Ibn AlTabari, M., *Jamie’ AlBayan a’an Ta’aweel AlQuran* (Hajr, Cairo 2001) vol. 11, p. 362.

³⁹ Ibid.

⁴⁰ Ibn Othaimeen, M., *Majmou’ Fatawah wa Rasaa’il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 39.

⁴¹ Ibid.

3.2.2.1 The Zakat Allowance Requirement

All Islamic jurists agreed that the zakat allowance is a requirement over items that are liable to zakat.⁴² The idea of a zakat allowance, which is termed ‘*nisab*’ in the Arabic language,⁴³ is similar to tax allowance. It refers to the amount that is not subject to zakat. If the value of an item did not exceed the amount allowed for zakat, it should be considered a zakat-free item. The zakat allowance is a practical requirement as it fixes certain amounts, which distinguishes the valuable item from the non-valuable one.⁴⁴ It thus helps the zakat authority identify the valuable items with no discretion.

The Quran did not constitute the zakat allowance. Even the verse ‘*And they ask you [Prophet Muhammad] what they ought to spend. Tell them: to give their surplus...*’⁴⁵ is not at all relevant to the topic of zakat allowance. The word ‘*surplus*’ does not indicate a requirement for a zakat allowance, as has been claimed recently.⁴⁶ The purpose of the verse is to impel Muslims to give charity and to cooperate with the poor and needy and

⁴² AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 185.

⁴³ Many scholars prefer to use the Arabic phrase ‘*nisab*’ even in English language studies. For example, ‘[Z]akat is not imposed unless the zakatable wealth reaches a certain minimum amount. That level is called the *nisab*.’ (Rahman, supra. p. 46.). However, at present the word ‘allowance’ will be used instead since it is similar to the term ‘tax allowance’ which is more familiar in the English language.

⁴⁴ Also, these amounts of allowance are considered the line to distinguish rich from poor. Hence, many Hanafian scholars consider that the poor are the ones who do not have or cannot afford the zakat allowance (200 dirhams, 5 camels, 30 cows, 40 goats and sheep, or 780 kilogram of agricultural products). AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 20. For further discussion see 5.1.1 below.

⁴⁵ The Quran 2: 219.

⁴⁶ Ahmad, Z., *Nisab of Zakat* (1981) 20 *Islamic Studies* 239-259. And Ammari, A., *AlZakat: Phalsaphatiha wa Ahkamaha* (2nd edn, Muslim World League Mecca 1993) p. 63.

with relatives.⁴⁷ The word “*surplus*” reminds Muslims to donate from funds that exceed their needs and does not imply any meaning of the zakat allowance ‘*nisab*’.⁴⁸ AlBaghawi⁴⁹ argues that the latter verse was revealed in Mecca before year nine,⁵⁰ where zakat enforcement had not yet emerged.⁵¹ For that reason, it is out of the question that the latter verse indicates any meaning of zakat allowance.

The zakat allowance was for the first time recognised in Medina when the Prophet Muhammad stated: ‘[T]here is no zakat to be paid on less 200 dirhams for gold and silver and commercial goods, 5 camels, 30 cows, 40 goats and sheep, and 780 kilograms of grains and agricultural products’.⁵² The statement’s clear command ‘no zakat to be paid on less...’ confirms that the allowance is a requirement, which establishes the consensus of jurists that items only become zakatable when the items’ value exceeds the mentioned allowance.⁵³ For example, if a trader has commercial goods that are worth more than 200 dirhams, these must be considered valuable and subsequently zakatable. If a farmer has 31 cows, his cattle are also zakatable as this amount exceeds the zakat allowance “no zakat to be paid on less than... 30 cows.” However, if someone has 30 goats, such cattle are not levied as they do not exceed the required allowance of “40 goats and sheep”.

⁴⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 188.

⁴⁸ Ibid.

⁴⁹ Hussain Ibn Masood AlBaghawi (1042-1122) a Shafist jurist.

⁵⁰ For further discussion about the history of zakat, see 2.2 above.

⁵¹ AlBaghawi, H., *Tafseer AlBaghawi: Ma‘alim AlTanzeel* (Dar Taibah, Riyadh 1989) vol. 1, p. 253. For further discussion, see 2.2.2 above.

⁵² Muhammad, A. and AlBukhari, I., *AlJame’ Alsaheeh “Sahih AlBukhari”* (Beirut: Dar AlJeel, Beirut 2005) p. 573.

⁵³ Ibid.

The point here is to highlight the fact that the first process of identifying valuable items is to ensure that the subject-matter value exceeds the zakat allowance. This is a point of law rather than fact. As the allowance requirement was fixed by the Prophet Muhammad's statements (primary source), there is no place here for discretion to be exercised by the authority, or a place for amendment by any regulative power.

3.2.2.2 *The 'Consumables Items' Issue*

"Consumable items" or "consumables"⁵⁴ (hereafter) are items or products that lose their value due to consumption. The value of consumables is usually a value of use or consumption and declines, promptly or gradually, after being expended. Examples of consumables include pens, papers, tissues, perfumes, furniture, mobile phones, batteries, computers, tobacco, factory machines, cars, charcoal and food. Not all of them are appreciated as they would have been prior to the consumption. They have no lasting value, such as land, gold, liquidity or buildings, and come to an end when their utilities run out.

The Prophet Muhammad stated: "The zakat payer is not obliged to pay zakat for the horse...", which has been interpreted by most Islamic jurists and AlQaradawi to mean that items of frequent consumption are not zakatable.⁵⁵ The Prophet described the consumable at that time as a horse in accordance with the latter statement. Currently, jurists interpret this statement as exempting all consumables from zakat. Consumables are agreed to be zakat-free items given the uncertainty about proper wealth or money.⁵⁶

⁵⁴ The 'consumables' noun means 'goods that are intended to be used fairly quickly and then replaced.' Oxford Advanced Learner's Dictionary. p. 327.

⁵⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 178.

⁵⁶ Ibid.

Their depreciating nature (due to consumption) is a preclusion to regarding them as wealth.⁵⁷

It should be noted that the identification of ‘consumables’ is a matter of fact rather than of law. Identifying ‘consumables’ is a factual issue as recognising the value of things depends on economic analysis and requires examination of the value of the subject matter. It is not an issue that is referred to in the Quran, the Prophet’s statements, or any source that provides a list of consumables. The duty to realise whether an item is consumable or not is a problem related to factual analysis and human perception,⁵⁸ and it is not fixed to verses or a statement by the Prophet. Consumable items need to be treated individually based on realistic observations and economic analysis. For example, if someone owns a copy of Adam Smith’s *Wealth of Nations* that was purchased for £8 from a book shop, it is undoubtedly an exempted item, as it does not exceed the zakat allowance and is apparently a consumable item. However, if someone owns the first edition of the *Wealth of Nations*, which was published in 1776, the book will be zakatable as its value supposedly exceeds the allowance. It would not be recognised as a consumable anymore, but rather as a fine antique. Furthermore, if a man owns 1kg of charcoal it will be considered a consumable, whilst an amount in the region of 500kg would be recognised as valuable goods or wealth and thus be liable to zakat.

The problem is that ‘consumables’ are often relatively appreciated, valuable and are exchanged with other valuable items. Some items are consumable but could still be

⁵⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 178.

⁵⁸ Foucault, M., *The Order of Things: Archaeology of the Human Sciences* (Routledge Classics, London 2004, Trans. Pantheon Books) p. 207.

considered wealth as they are in fact valuable and exchangeable. For example, whilst cars are consumables⁵⁹, they could be sold for a price that exceeds the zakat allowance. Furthermore, construction assets and factory machines are relatively high-priced even after a few years of consumption.⁶⁰ The sale of consumable items proves that cars and machines are valuable (while they were exempted). It is thus questionable whether the zakat law codifies cars and factory machines as consumables; does any upcoming sale from these consumables mean that they are valuable and thus not zakat-free? Should the zakat law impose retroactive rule on consumables that have been sold at high prices that exceed the zakat allowance?

To exempt consumables fairly is a matter of principle⁶¹ as their perishable nature is an inevitable obstacle to regarding them as wealth. It is baseless to enact retroactive rules to impose zakat on the consumables sold at a high price.⁶² A perishable consumable will not lead to a profit or gain when it is sold, as the transaction amount cannot be at the same value as the consumable item prior to consumption. For example, if a car is purchased for £200,000 the law will not impose zakat on it as the car is consumable. If the car is then sold for £140,000 which supposedly exceeds the zakat allowance, this does not negate the depreciating nature of the car, or the seller's £60,000 loss. It is thus apparent that selling a consumable at a high price must be considered a

⁵⁹ Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 210.

⁶⁰ Ibid.

⁶¹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 178.

⁶² It is possible to include 'sundries' within the consumables area. For example, travelling expenses, the cost of refurbishment or phone calls bills, as these expenses are of depreciating nature as well.

loss and not as an income or a new source of wealth. It is absolutely irrational to consider the loss of wealth or the source of enrichment.

3.2.2.3 The Fallacy of the 'Productivity' Feature

The "productivity" feature (*namaa* in Arabic) means that the item is profitable naturally and by itself. Although no statement from the Prophet requires the productivity feature of items to be zakatable,⁶³ many Islamic jurists argue that items must be productive if they are to be liable to zakat. Abu Hanifah and Ibn Malik argue that items have to be productive, profitable or fruitful *per se*; otherwise, they are not liable to zakat.⁶⁴ For them, the 'productivity' feature requirement is necessary as it ensures an actual value for items and repeals any likelihood to regard them as consumables.⁶⁵ Abu Hanifah exemplifies agricultural products as productive in themselves⁶⁶ as they are productive by nature and grow biologically. Cows, camels and sheep are also biologically productive due to their natural reproductive cycle. Gold and silver are productive as their value is unanimous and regularly increases.⁶⁷ As Abu Hanifah and Ibn Malik are of the view that productive items are an absolute source of profit, it is essential to consider them wealth.⁶⁸

On the other hand, jurists such as Ibn Qudamah⁶⁹ have not written about the 'productivity' feature requirement or the need to confine the imposition of zakat to

⁶³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 179.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibn Qudamah, M., *AlMuqni* (Dar AlKitab AlArabi, Cairo 2010) vol. 2, p. 690.

productive items.⁷⁰ It is inappropriate to state that wealth or items must be productive *per se* to be zakatable⁷¹ on the basis of the following three points.

First, *the 'productivity' feature is an irrational requirement as there is no productive item per se (or by itself)*. Even the most universal valuable items, such as gold, silver, diamonds, money and petrol are not productive or fruitful alone. Usually, individuals intervene to make them productive.⁷² For example, gold is not productive unless its possessor sells it profitably. The gold value is determined depending on the market (supply and demand) and its value could rise and fall, making it difficult to state that gold is productive *per se*. Furthermore, the liquidity is not productive in itself if no one invests it properly, or if its owner pays no attention to prevent its value declining with inflation. Even agricultural products do not generate any profit or income if no farmer waters, harvests and then sells them. In the absence of positive intervention by humans, agricultural products expire and become useless. The Hanbalian scholar Ibn Qudamah states that the 'productivity' feature is unlikely to be applied⁷³ as nothing is productive in itself; it is always individuals who make them profitable. Historically, in 1619 it was agreed in Virginia to consider tobacco as currency, whilst salt, silk and dried fish were considered as currency in the Pacific Island of Yap.⁷⁴ This confirms that the value is not determined by the nature of the item *per se*, but rather by people in relation to the socio-economic circumstances (such as trusted value, paucity and inflation).⁷⁵ It could

⁷⁰ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 200.

⁷¹ Ibid.

⁷² Friedman, M., *Free to Choose: A Personal Statement* (A Harvest Book, Florida 1990) p. 249.

⁷³ Ibn Qudamah, M., *AlMuqni* (Dar AlKitab AlArabi, Cairo 2010) vol. 2, p. 690.

⁷⁴ Friedman, M., *supra* p. 250.

⁷⁵ Ibid.

therefore be argued that requiring a ‘productive’ feature leads to confusion, as this is actually a result of human conduct, rather than a natural feature that can be pursued intuitively.

Secondly, *there is no verse in the Quran or statement by the Prophet that commands the ‘productivity’ feature requirement.*⁷⁶ The problem is that this requirement narrows the zakat collection scope with no justified basis (as it confines the imposition of zakat only to productive items). As the ‘broad approach’ of the meaning of wealth is the principle, any proponent for the ‘productivity’ requirement must carry the burden of justifying this productivity feature requirement. This is unlikely as the ‘productivity’ feature requirement was first suggested by jurists like Abu Hanifah and Ibn Malik (secondary sources), and cannot outweigh the ‘broad approach’ of zakat revealed by the Quran and the Prophet’s statements (primary sources).⁷⁷

The Prophet Muhammad’s statement: “Invest orphans’ wealth before it is reduced as a result of paying zakat” may be interpreted as only levying zakat on the non-invested amount of money, while the invested money is not zakatable. In other words, this statement could be interpreted as if the Prophet was impelling his companion to invest the orphans’ wealth as the non-invested wealth is zakatable; he wanted them to invest orphans’ wealth to avoid their money decreasing in value due to the zakat payments. However, adoption of this interpretation is unlikely for two main reasons. Firstly, it is illogical to suggest that the Prophet was encouraging his companion to avoid paying zakat through investment. As the imposition of zakat imposition is deeply rooted in the Quran, the Prophet must not have intended to compel Muslims to elude it. Secondly, the

⁷⁶ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 179.

⁷⁷ For further discussion, see 3.2.1 above.

latter construction confines the imposition of zakat to non-invested wealth, which is not consistent with the ‘broad approach’ of wealth in other statements,⁷⁸ such as “Pay your zakat wealth”,⁷⁹ and “It is obligatory to pay zakat, which will be taken from the rich to be given to the poor.”⁸⁰ Furthermore, as described above, investment, trade or more specifically the ‘exchangeability-by-intention’ feature plays no role in determining whether items are liable to zakat.⁸¹

Thirdly, Abu Hanifah and Ibn Malik established the ‘productivity’ feature requirement to ensure that the subject matter refers to actual wealth and is not consumable or may depreciate. For them, the ‘productivity’ feature is the antithesis of the depreciative feature, and requiring it will certainly exclude a levy on any consumable.⁸² Indeed, their argument could be said to be incoherent. *The ‘productivity’ feature is not necessarily the antithesis of the ‘depreciating’ nature, and what is not productive is not always consumable and vice versa.* The ‘productivity’ feature requirement can be a confusing aspect in zakat law since it will convert the principle “zakat is a tax on wealth” to “zakat is a tax on what generates profit”. For example, the proponents of the ‘productivity’ feature requirement (such as Ibn Malik),⁸³ will consider goods that are stored for a long period of time as non-zakatable as they do not generate

⁷⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 179.

⁷⁹ AlTirmidhi, M., *Sunan AlTirmidhi*, (Maktabat AlMa’arif, Riyadh 1996, Ed. Alalbany, M) p. 156.

⁸⁰ Muhammad, A. and AlBukhari, I., *AlJame’ Alsaheeh “Sahih AlBukhari”* (Beirut: Dar AlJeel, Beirut 2005) p. 398.

⁸¹ For further discussion, see 3.2.1 above.

⁸² AlQaradawi, Y., *supra* p. 173.

⁸³ In Ibn Malik opinion the storage goods are not productive thus non-zakatable. AlQaradawi, Y., *supra* p. 177.

profits, whilst they in fact indicate wealth or are valuable items. The same applies to a non-investor who owns one million dollars and wishes to hoard the amount.

It is therefore irrational to argue that items have to be productive *per se* to be liable to zakat. It is an illogical requirement and will convert the principle “zakat is a tax on wealth” to “zakat is a tax source of wealth.”

3.2.3 The Lasting Value Feature

The question of to what extent items have to be saveable (or for how long they can remain valuable) should be answered in order to assess the significance of this feature in zakat law. Items that naturally have lasting value, for example, gold, silver, diamond, antiques, currencies and land, are not an issue, as they can remain valuable for years, decades or centuries. Items whose lasting value is limited to the short term or that expire, for example agricultural products, cattle, cement, medicines or dairy products, may pose a problem. The question arises of how the zakat authority can assess such items of limited lasting value, as well as whether they should be considered wealth in the first place?

Whilst in theory⁸⁴ wealth is regularly considered to be a lasting value feature, zakat law does not necessarily require this. It is inaccurate to require items not to be regarded as zakatable unless they are very long-lasting for two reasons.

Firstly, in the Prophet Muhammad statement:⁸⁵ “No zakat to be collected unless a year pass on items”,⁸⁶ reduces the significance of the ‘lasting value feature’ to a year.

⁸⁴ Hudson, A., *The Law of Finance* (Sweet and Maxwell, London 2009) p. 41.

⁸⁵ Some of the narrators of this statement are not trusted for Islamic jurists, thus they consider it a weak source. AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AIRisalah, Beirut 2002) vol. 1, p. 197.

⁸⁶ *Ibid.*

The statement indicates that wealth has to be assessed every year,⁸⁷ and the yearly base (or the annuity) here means that zakat has to be paid *from year to year*.⁸⁸ Provided that the lasting value remains a year, there will be no need to require a permanent value.

Secondly, as long as no verse or statement by the Prophet⁸⁹ requires a specific ownership period, it is baseless to specify a 'lasting value' requirement. It would be unreasonable to require a specific period to be considered the lasting value as items vary in their durability. Items such as gold and property, which remain valuable for a long time, cannot be treated as agricultural goods, which expire in the short term. It seems impractical for zakat law to require items to exist for a full Islamic calendar (Hijri)⁹⁰ year in order to be zakatable. Such requirement pays less attention to the exchangeable nature of things. It assumes that zakat payers will keep items in their ownership for at least a year and overlooks the fact that money is exchangeable and needs to be rapidly substituted with other items.

⁸⁷ Ibn Qayyim, M., *Zaad AlMa'aad fi Hadie Khair AlEbaad* (3rd edn, Mo'asasat AlRisalah, Beirut 1998) vol. 2, p. 5.

⁸⁸ It could be said that the meaning of annuity (from year to year) in the zakat law is similar to what Rowlatt J stated in *Ryall v Hoare* [1923] 8TC521 at 526: 'it seems to me that "annual" here can only mean "in any year," and that the "annual profits or gains" means "profits or gains in any year as the succession of years comes round'. HMRC (2012) *BIM80150 - Miscellaneous income: Calculating the Profits* <<http://www.hmrc.gov.uk/manuals/bimmanual/bim80150.htm>> accessed 14 October 2013.

⁸⁹ Ibn Rushd, M., *Bidayat AlMuftahid wa Nihayat AlMuqtasid* (Dar AlSalaam, Cairo 1995) vol. 2, p. 638.

⁹⁰ The Islamic calendar is a lunar one which consisting of 12 months in a year of 354 or 355 days. The first year was the Islamic year beginning in AD 622 during which the emigration of the Islamic Prophet Muhammad from Mecca to Medina, known as the Hijra, The twelve Hijri months are named as follows in Arabic: Muḥarram, Ṣafar, Rabī' al-Awwal, Rabī' ath-Thānī, Jumādā al-Ūlā, Jumādā ath-Thāniya, Rajab, Sha'ban, Ramadan, Shawwāl, Dhū al-Qa'da and Dhū al-Hijja.

Requiring a specific lasting value as a condition when considering items to be zakatable is therefore inappropriate. Indeed, it is the existence of ownership, not how long the item lasts for, that forms the basis of zakat. The existence of ownership is therefore an adequate reason to make a valuable item zakatable. The Quran states ‘*pay zakat on the day of its harvest*’⁹¹, which confirms that the existence of ownership is a matter ⁹² not only for harvests (agricultural goods) but, analogically, by extension for all items. The annuity does not make items liable to zakat. Instead, it refers to the need to pay zakat on an item from year to year. This does not mean that the item needs to be owned or held for a year before it becomes zakatable.

3.3 Zakat Evasion

The Oxford English Dictionary’s Finance and Banking defines tax evasion as ‘[M]inimizing tax liabilities illegally, usually by not disclosing that one is liable to tax or by giving false information to the authorities.’⁹³ Or ‘[A]ny illegal action taken to avoid the lawful assessment of taxes.’⁹⁴ It is a breach of the tax system by performing illegal acts⁹⁵ (such as not declaring earnings and fraud). Tax evasion is unlawful,⁹⁶ because it is an act intended to avoid paying legally due taxes.

⁹¹ The Quran 6: 141.

⁹² Ammari, A, *AlZakat: Phalsaphatiha wa Ahkamaha* (2nd edn, Muslim World League Mecca 1993) p. 66.

⁹³ Oxford English Dictionary: A Dictionary of Finance and Banking. p. 256.

⁹⁴ Oxford English Dictionary: A Dictionary of Law. p. 328.

⁹⁵ Ibid.

⁹⁶ Lee, N., *Revenue Law: Principles and Practice* (13th edn, Bloomsbury Professional Ltd, West Sussex 2012) p. 9.

Like any other tax system,⁹⁷ acts of evasion exist in the zakat system. This problem usually refers to the greed of purchasers or the incentives for them to pay less tax.⁹⁸ This problem increases when the tax burden is heavy or set at a high rate.⁹⁹ The evasion destroys the function of collection and can cause economic issues with regard to government spending.¹⁰⁰ Evading zakat means that wealth re-distribution will be less exercised than it ought to be. The Prophet Muhammad therefore stated: ‘Zakat will be taken by force from evaders and who instigate evasion, and half their wealth as sanction.’¹⁰¹ Furthermore, Abu Bakr stated: ‘I swear to God, I will fight those who distinguish between praying and zakat, for zakat is the financial worship...’¹⁰² As is apparent, zakat is of great importance as evading its payment leads to serious punishment.

However, it is more important to interpret the Prophet’s latter statement as defining the punishment for zakat evasion. According to AlQaradawi, the term “half their wealth” does not refer to the evader’s entire fortune, but to half of the base value.¹⁰³ For example, if someone has zakatable goods valued at £100,000, the sanction must be £50,000 (along with collecting the payable zakat), which is half of the goods value. AlQaradawi did not consider the term “half their wealth” as the half of the evader’s

⁹⁷ Tanzi, V. and Shome, P., A Primer on Tax Evasion (1993) *Palgrave Macmillan Journals and International Monetary Fund* are collaborating, No. 4, p. 808.

⁹⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo’asasat AlRisalah, Beirut 2002) vol. 2, p. 597.

⁹⁹ Sam, C., Exploring the Link between Tax Evasion and the Underground Economy (2010) *Pakistan Economic and Social Review*, vol. 48, p. 177.

¹⁰⁰ Ibid.

¹⁰¹ Abaadi, S., *Awn AlMa’bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 708.

¹⁰² AlSalaabi, A., *AlKhalifa AlAwal: Abu Bakr AlSiddiq* (Dar AlMarefah, Beirut 2006) p. 173.

¹⁰³ AlQaradawi, Y., *supra*.

entire fortune as another statement by the Prophet Muhammad revokes such broad interpretation: “Verily, Allah has dignified your lives, your fortune and your honour are as sacred and inviolable.” This means that there is doubt about what the Prophet meant by “half their wealth” in its broad meaning. There is a form of abusiveness or arbitrariness if the authority sanctions the evader by expropriating half of his entire fortune.¹⁰⁴ Nonetheless, when considering the latter statement, AlQaradawi¹⁰⁵ and Ibn Hazm¹⁰⁶ assume that such a punishment can only be executed when the evader is proven guilty before the court. It is not an administrative or executive penalty that can be enforced on a defendant where a conflict arises between the latter and the zakat authority. According to the Prophet, people’s wealth is dignified and ‘inviolable’.

It could therefore be argued that the punishment for evading zakat should not be less or more than collecting zakat that is payable (by force), along with expropriating half of the base value.

Abu Bakr’s statement tends to demonstrate the importance of zakat (as the third pillar of Islam) rather than constituting punishment for zakat evaders. As previously noted,¹⁰⁷ Abu Bakr stated, “I will fight those who distinguish between praying and zakat, for zakat” during the Apostasy War (Riddah) and when he was fighting rebels. As the rebels regarded zakat as an excuse to reject Islam altogether, zakat was mentioned in his statement as a reaction to their rebellion.¹⁰⁸ Logically, zakat evaders cannot be sanctioned by capital punishment. Another statement of the Prophet is as follows:

¹⁰⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 597.

¹⁰⁵ Ibid.

¹⁰⁶ Ibn Hazm, A., *AlMuhallah fi Sharh AlMujalah* (Bait AlAfkar AlDawliyah Amman 2003) p. 602.

¹⁰⁷ For further discussion, see 2.2.3.

¹⁰⁸ AlQaradawi, Y., *supra* p. 580.

“Verily, Allah has dignified your lives...are as sacred and inviolable.” This prevents such an assumption and makes it doubtful whether such grave punishment would be used for zakat evasion.

3.4 Zakat Avoidance

The Oxford Dictionary of Finance and Banking defines tax avoidance as ‘[T]he lawful arrangement of planning of one’s affairs so as to reduce liability to tax.’¹⁰⁹ Her Majesty’s Revenue and Customs (HMRC) defines tax avoidance as ‘an attempt to exploit legislation to gain a tax advantage that was never intended. This includes reporting of artificial transactions that serve little or no purpose other than to produce a tax advantage.’¹¹⁰ Lee states that evasion involves dishonesty, while avoidance is based upon interpretation of the tax legislation and the structuring of transactions to minimise tax burden.¹¹¹ Thus, the main distinction between evasion and avoidance is that, avoidance is an act that alters the amount of tax deemed legally due, while evasion is the illegal act of failing to pay tax that is legally due.

It must be noted that Islamic jurists do not distinguish between zakat evasion and avoidance.¹¹² In Islamic jurisprudence, no jurist has legalised any of the acts of

¹⁰⁹ Oxford English Dictionary: A Dictionary of Law. p. 527.

¹¹⁰ HMRC (2014) Tax avoidance - an overview <<http://www.hmrc.gov.uk/manuals/cgmanual/cg10243.htm>> accessed 28 December 2014.

¹¹¹ Lee, N., *Revenue Law: Principles and Practice* (13th edn, Bloomsbury Professional Ltd, West Sussex 2012) p. 18.

¹¹² ‘In many Western countries, a distinction is drawn in law between evasion and avoidance, avoidance is generally accepted as lawful, whereas tax evading is illegal and subject to civil or criminal penalties.’ Lai

avoidance as they consider it evasion. Only Abu Hanifah has stated that avoiding zakat is not evasion but a detestable act; even Abu Hanifah did not promote zakat avoidance.

The lack of distinction between evasion and avoidance is referred to Abu Yusuf's opinion. He stated: "No man believes in Allah and the Doomsday shall not pay zakat, or to distribute his wealth to his fellow to minimise what he owns to be exempted and evade zakat..."¹¹³ It may be noted that whilst distributing wealth to others Abu Yusuf prohibits such conduct if it is for the sake of avoiding zakat. Most Islamic jurists follow him in this matter and do not distinguish between zakat evasion and avoidance.¹¹⁴ In Islamic jurisprudence, many acts are described as evasion yet are legally accepted. For example, distributing wealth to family members, donating to charities that help the poor (on the condition that this act of charity will be reciprocated) or buying and selling zakatable items prior to collection time may elude collectors. Ibn Malik agrees¹¹⁵ with Abu Yusuf and sees no difference between evasion and avoidance. Both of them destroy wealth re-distribution and both originated from bad faith.¹¹⁶

Theoretically, it could be said that the lack of distinction between evasion and avoidance in Islamic jurisprudence is not a major problem for two main reasons. Firstly, acts of evasion and avoidance lead to the same result, namely the reduction of wealth re-distribution. There is therefore no point in distinguishing their concepts and justifying

Lan Mo., P, *Tax Avoidance and Anti-avoidance Measures in Major Developing Economies* (Greenwood Publishing Group, Westport 2003) p. 2.

¹¹³ Abu Yusuf, Y., *AlKharaj* (Dar AlMarefah, Beirut 1979) p. 8.

¹¹⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 328.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

the latter when they cause the same economic disadvantages.¹¹⁷ Secondly, even if the avoidance is considered legal, as in most tax systems, it makes no contribution to the system. On the contrary, the government usually tries to fill loopholes that lead to tax avoidance.¹¹⁸ There is therefore no need to adopt avoidance as legal and then challenge it later on.

The zakat authority should consider the distinction between zakat evasion and avoidance, although Islamic jurisprudence does not. In practice, payers will commonly avoid paying zakat and find loopholes to make sure that less zakat is legally due. This is an inevitability and the zakat authority cannot deal with both acts (avoidance and evasion) in the same way. According to Lee, a distinction between avoidance and evasion must be clarified; otherwise, it is 'likely that this will be viewed by most tax practitioners as quite unacceptable.'¹¹⁹ As was mentioned above, evasion may result in

¹¹⁷ 'To the professional mind, the phrase "tax evasion and tax avoidance" has been familiar for many years, for the legal problems which are implied by the phrase arose with the passage of our first Income Tax Act and have been with us since. But within the past few months, through official use and wide appearance in the press, the phrase is now brought home to the public generally, with, it is feared, rather bewildering consequences. Charges of "tax evasion and tax avoidance" have been made broadcast; public outcry has been raised against "evaders and avoiders"; care in language and precision of statement have often been lost; and laymen, unversed in the fundamental canons of statutory interpretation which have been applied for a century and a half of judicial decision, have leapt to conclusions which, in many instances, are unwarranted.' Angell, M., *Tax Evasion and Tax Avoidance* Columbia Law Review (1938) vol. 38, No., p. 86.

¹¹⁸ Lai Lan Mo., P, *Tax Avoidance and Anti-avoidance Measures in Major Developing Economies* (Greenwood Publishing Group, Westport 2003) p. 1.

¹¹⁹ Lee, N., *Revenue Law: Principles and Practice* (13th edn, Bloomsbury Professional Ltd, West Sussex 2012) p. 53.

punishment of the zakat payer for not paying what is legally due (for example, giving false accounting, hiding information or offering fraudulent documents). It is unjustifiable to treat the avoider, who has lessened the burden of zakat through legitimate means (e.g. granting donations to fall below the zakat allowance, distributing wealth to family members or settling money in trust to make zakat legally undue) in the same way as the evader. The authority should fight avoidance through regulation, but it is unjustifiable to criminalise legal acts of zakat avoidance.

3.5 Conclusion

This chapter discussed the main principles of zakat collection. It defined the scope of zakat collection and addressed the extent to which “wealth” is considered the subject of zakat. It was argued that both forms of the exchangeability feature (natural-exchangeability and exchangeability-by-intention) are not required on items liable to zakat. The two requirements for the identification of zakatable items are: a value that exceeds the allowance amount and when the item is not consumable or will depreciate. It was also argued that zakat does not require items to have a permanent value. It was also argued that zakat does not require items to have a permanent value. In addition to this that evading zakat is a crime and that there is no distinction between evasion and avoidance in Islamic jurisprudence.

CHAPTER FOUR

APPLICATIONS OF ZAKAT COLLECTION AND ASSESSMENT PRINCIPLES

This chapter examines the zakat collection principles established in the preceding chapter. It first discusses the importance of adopting consistent principles for zakat collection before examining the position of gold and silver, goods, income, residences, loans, stocks, agricultural products, cattle, sources of income and intellectual property in zakat law. The effects of inflation on the zakat system are evaluated and it is argued that zakat allowances ought to be considered as adjustable when inflation occurs. Zakat allowance amounts need to draw a realistic line between the rich and the poor.

4.1 The Importance of the Zakat Collection Principles

The principles of zakat collection are important in determining the rules of zakat when many interpretations are possible or when more than one rule can be applied.¹ Failing to adopt principles of zakat collection can result in misconceptions about zakat and in contradictory opinions.² Applications of zakat collection must therefore be consistent and should not conflict with the principles of zakat if the principles of collection are to retain their role as supreme guidance.

¹ Avery-Jones stated regarding the relationship between tax principles and rules: 'But the real use for the principle is to determine what the rule means in the first place (and hopefully to reduce the amount of detail required in stating the rule), in which case there is no conflict.' Avery-Jones, *Tax Law: Rules or Principles?* (1996) 17 *Fiscal Studies* 63.

² Ibid.

As noted in the previous chapter, the principles of zakat collection were developed through scholarly argument. These principles did not therefore exclusively emerge through fixed or non-interpretive verses revealed by the Quran and the Prophet Muhammad's statements, but rather are the outcome of jurists' interpretations and arguments. This means that they can vary from one jurist to another, as each jurist may adopt the principles of zakat collection that match his or her jurisprudential method of interpretation or the jurisprudential school to which the jurist belongs. For example, Ibn Hazm, who adopted a literal interpretation of expressions, narrowed the scope of zakat assessment and confined the meaning of "wealth" to gold, silver, camels, cows, sheep, grains and dates.³ As a result, the principle that all items are non-zakatable apart from those mentioned was adopted.⁴ On the other hand, Ibn Othaimen considered a 'broad approach' to the meaning of "wealth", adopting the principle that any valuable item that exceeds the allowance is liable to zakat.⁵

However, the existence of different principles of zakat assessment is not a disadvantage. On the contrary, this variety has enriched the subject of zakat through the various interpretations and scholarly opinions on the matter. A problem arises when jurists do not follow the collection principles which they have adopted. A number of jurists are not committed to their principles of zakat collection. They interpret the Quran and the Prophet's statements based on inconsistent principles, which leads to conflicting opinions.

³ For further discussion, see 3.2.1 above.

⁴ Ibn Hazm, A., *AlMuhallah fi Sharh AlMujalah* (Bait AlAfkar AlDawliyah Amman 2003) p. 530.

⁵ Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayyah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, 39.

In order to avoid confusion and contradictory opinions, it is therefore important to adopt consistent principles for zakat, which will be considered in the following subtitle. The applications of zakat in this chapter follow the collection principles established in the preceding one. For example, cars have been described as consumables that are non-zakatable; this principle must thus be upheld even for expensive cars (excluding vintage cars which are regarded as antique).⁶ It is also argued that the ‘exchangeability’ feature is not a requirement of items to be liable to zakat,⁷ which means that it is irrelevant whether or not the subject matter is exchangeable.

In brief, the principles of zakat collection adopted here comprise the following:

- Zakat is a tax on wealth in its broad meaning.
- Items have to exceed the allowance in order to be liable to zakat.
- Exchangeability is not a requirement for items to be zakatable.
- Consumables and expenses are zakat-free.
- Items become zakatable once they are owned.

4.2 Zakat Applications

This section applies the zakat collection principles to various areas of wealth in order to determine whether they are liable to zakat. The position of gold and silver, goods, income, residences, loans, stocks, agricultural products, cattle, sources of income and intellectual property will now be examined.

⁶ For further discussion, 4.2.9 below.

⁷ For further discussion, see 3.2.1 above.

4.2.1 Gold and Silver⁸

All Islamic scholars agree that gold and silver are liable to zakat.⁹ The Quran stipulated this clearly, backed by the threat of afterlife punishment: “*And those who hoard gold and silver and do not pay zakat for Allah, seek, announce unto them a painful torment on the doomsday.*”¹⁰ In addition, the Prophet Muhammad stated, “Zakat rate of gold and silver is 2.5%”¹¹ and “no zakat to be paid on less than 200 dirhams for gold and silver...”¹², which confirms that gold and silver are liable to zakat.¹³ These should be regarded as zakatable once their value exceeds the zakat allowance, which is 200 dirhams (or 85g of gold or 595g of silver at current prices).¹⁴ Gold and silver are universally regarded as wealth.¹⁵ They are exchangeable and saveable items and always have trusted value.¹⁶ It is implausible to exclude them as a basis for zakat as those two

⁸ Gold and silver (hereafter) denotes subject-matter, when their chemical element is gold and silver, and not subject-matter which is only plated by artificial golden and silver colouring.

⁹ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 281.

¹⁰ The Quran 9: 34.

¹¹ Abaadi, S., *Awn AlMa’bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 746.

¹² Muhammad, A and AlBukhari, I, *AlJame’ Alsaheeh “Sahih Al Bukhari”* (Dar AlJeel, Beirut 2005) 398.

¹³ AlQaradawi, Y., *supra* p. 283.

¹⁴ AlQaradawi, Y., *supra* p. 301.

¹⁵ Friedman, M, *Free to Choose: A Personal Statement* (A Harvest Book, Florida 1990) 249.

¹⁶ “The price of gold and silver, when the accidental discovery of more abundant mines does not keep it down, naturally rises with the wealth of the country, so, whatever the state of the mines, it is at all times naturally higher in a rich than a poor country. Gold and silver, like all other commodities, naturally seek the market where the best price is given to them. Smith, A., *The Wealth of Nations: Book I-III* (Penguin Books, London 1999) p. 294.

There are materials recognised as economic wealth¹⁷ and have been throughout history.¹⁸ According to AlQaradawi, the main reason for imposing zakat on gold and silver is to dissuade individuals from hoarding their possessions and therefore to enhance wealth re-distribution.¹⁹

As the shape of gold and silver is not important, they can assume different forms, such as ingots, coins,²⁰ jewellery, souvenirs, utensils²¹ and furniture.²² However, some jurists, such as Ibn Hazm and AlQaradawi, exempt jewellery as it is presumed to be used as an accessory;²³ if it is owned for such purposes, it is not considered to be productive. These jurists agree to impose zakat on jewellery only when it is expensive, or if the intention of the possessor is to hoard the jewellery.²⁴ They also claim that jewellery is a personal possession, and that the zakat authority should not intervene in such items, stating that jewellery is of a very private nature and should not be subject to zakat.

Jewellery would appear to be zakatable when it exceeds the zakat allowance (85g), as this proves that the subject-matter is valuable. However, exempting jewellery on the basis of the owner's intentions is unreasonable for four reasons. Firstly, the non-

¹⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 301.

¹⁸ Bernstein, P., *The Power of Gold: The History of an Obsession* (John Wiley & Sons, New York 2012) 10.

¹⁹ AlQaradawi, Y., *supra* p. 283.

²⁰ AlQaradawi, Y., *supra* p. 283.

²¹ AlQaradawi, Y., *supra* p. 229.

²² AlQaradawi, Y., *supra* p. 224.

²³ AlQaradawi, Y., *supra* p. 332.

²⁴ AlQaradawi, Y., *supra* p. 355.

productive nature of jewellery is not an obstacle to zakat imposition. As mentioned above, the productivity feature and the exchangeability-by-intentions feature are not requirements that make items liable to zakat.²⁵ Secondly, the intention in possessing jewellery is not an important factor. Whether jewellery is for hoarding or accessory purposes, this does not change the fact that it constitutes wealth (it adds to the financial position of the possessor) and should therefore be regarded as zakatable.²⁶ Thirdly, as Ibn Hazm and AlQaradawi eventually agreed to impose zakat only on ‘high-priced’ jewellery, it could be more certain to uphold the imposition of zakat on jewellery. While the zakat allowance amount is fixed and certain, Ibn Hazm’s and AlQaradawi’s ‘high-priced’ term is vague and requires further economic examination to clarify what the term “high-priced” means.

Fourthly, it is important to note the historical background, which illustrates the misconception of Ibn Hazm and AlQaradawi’s opinion about the private nature of jewellery. During the era of Caliph Othman Ibn Affan, zakat collection was expanded to distant territories from Medina (the capital of the Caliphate).²⁷ At this time, the zakat collection mechanism was primitive. The collectors had to visit markets and residences in order to collect zakat.²⁸ However, after many incidents occurred and some collectors abused their authority, the Caliph Othman prevented the collection of zakat for items

²⁵ For further discussion, see 3.2.1 above.

²⁶ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, 99.

²⁷ AlSoudani, S., *In the Beginning: Hijacking of the Religion of God* (Xlibris Corporation, USA 2009) p. 791.

²⁸ AlNabrawi, F., *Tarikh AlNuzom wa AlHadara AlIslamiya* (Dar AlFikr AlArabi, Damascus 2000) p. 142.

that were not displayed (such as jewellery and stored good).²⁹ Because some collectors abused their power by forcing payers to have their residences inspected, the Caliph ruled that zakat collectors had no right to access people's residences.³⁰ This rule to prevent the collectors from entering residences and invading people's privacy was thus temporary and there is reason to apply this rule nowadays.³¹ The collection mechanism in modern times is very different to that of the past. In the past, collection was conducted physically by collectors, while at present it is unlikely that people will face such physical abuse. Memorandum of understanding (MoU) agreements between the zakat authority and gold shops can solve this privacy problem.

The International Islamic Fiqh Academy³² (IIFA), Ibn Othaimeen³³ and AlQaradawi³⁴ all agree that 'currency' and 'cash' should be treated in the same way as gold and silver. Jurists established an analogy between 'currency' and 'gold and silver' due to their monetary nature. Gold and silver are considered to be the most trusted commodities³⁵ and are valuable tools of exchange. As currency has the same value features, it can be compared to gold and silver.³⁶

²⁹ Galston, W., Hoffenberg, P., *Poverty and Morality: Religious and Secular Perspectives* (Cambridge University Press, New York 2010) p. 202.

³⁰ Ibid.

³¹ Ibn Othaimeen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimeen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, 99.

³² AlGhobeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 156.

³³ Ibn Othaimeen, M., *supra* p. 105.

³⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 315.

³⁵ Friedman, M., *Capitalism and Freedom* (University of Chicago Press, London 2002) p 175.

³⁶ AlQaradawi, Y., *supra*. 316.

Accordingly, the zakat rate of currency ought to be similar to that of gold and silver, which is 2.5%. The same is true of their zakat allowance, which is 85g of gold.³⁷

4.2.2 Goods

Goods are items that are produced to be sold,³⁸ or are exchangeable chattels or items of property.³⁹ Goods are liable to zakat⁴⁰ as they are supposed to be valuable, appreciated or useful. If they are not valuable, they would no longer be regarded as exchangeable, as nobody wants to buy a worthless or useless item. According to AlQaradawi and Ibn Othaimen, goods are rarely zakat-free. They are considered to be wealth, as they enrich their possessor.⁴¹ In addition, they represent a great proportion of people's wealth;⁴² thus if they were non-zakatable, this would affect the redistribution of wealth that the zakat system aims to achieve.⁴³

The identification of goods is a matter of fact rather than of law. As goods comprise any items that are produced to be sold, they should be recognised as goods even when they come in different quantities or when they are consumable. It is impractical to affix a rule to particular goods by specifying a certain quantity of items, or to determine that only specific items are to be considered goods. A tonne of charcoal will be regarded as goods despite being consumable. The same is true for large amounts of cement, paper,

³⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 319.

³⁸ Oxford English Dictionary. 670.

³⁹ Oxford Dictionary of Law. p. 243.

⁴⁰ AlQaradawi, Y., *supra* p. 319.

⁴¹ *Ibid.*

⁴² Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, 205.

⁴³ AlQaradawi, Y., *supra* p. 366.

pens or medicines; they must be regarded as goods despite being consumables. The identification of goods is a factual issue as recognising goods requires an examination of the value of the item and the establishment of whether or not they are produced to be sold. Goods can be identified through simple means, for example the intention of the possessor to sell the item, the repetitions of selling activity or the item's quantity.

Islamic jurists, including AlQaradawi, have indicated that goods should be treated similarly to gold and silver as goods are simply a different type of money or currency.⁴⁴ Goods are valuable-exchangeable and thus have the same nature as money.⁴⁵ The zakat rate and allowance of goods should be similar to that of gold, silver and currency, which is 2.5%⁴⁶ and 85g of gold allowance.⁴⁷

Goods are liable to zakat as they are valuable rather than exchangeable; zakat is a levy on wealth and not sales.⁴⁸ Goods become liable to zakat when their market price exceeds the allowance (85g of gold, as with gold, silver and currency). Abu Obaid and AlQaradawi indicated that goods ought to be evaluated according to the market or selling price rather than the cost.⁴⁹ The selling price is the actual value of the goods and demonstrates how much they are truly worth. Only Ibn Rushd stated that goods ought to

⁴⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 366.

⁴⁵ Ibid.

⁴⁶ AlQaradawi, Y., *supra* p. 379.

⁴⁷ Ibid.

⁴⁸ Examining the intention or the state of mind of the possessor is not important. For further discussion, see 3.2.1 above.

⁴⁹ AlQaradawi, Y., *supra* p. 383.

be evaluated according to their purchase price or cost; he did not justify this opinion or offer evidence supporting it.⁵⁰

In cases of loss or damage, goods are considered to cause financial loss rather than as valuable items or wealth. When they occur, this erodes the financial position of the payers as the value of the goods is no longer maintained. In zakat law, the payer is not only entitled to deduct loss when loss or damage occurs but it exempts the goods. The effect of losses ought to make goods zakat-free, as the goods lose their value and become items that cost money, with no reason to tax them. The zakat law intends to tax wealth or valuable items. Items that cost (such as consumables) are exempt. As consumables are considered zakat-free due to their depreciation in value, goods that depreciate will also be zakat-free. Zakat law should exempt damaged goods or goods that cause loss and does not simply allow the payer to deduct losses from the base.

4.2.3 Income: Profits, Salary and Wages

The generic term of ‘income’ refers to any ‘financial return’,⁵¹ or the money that an individual earns from his or her job, profession, investment or business.⁵² Income is liable to zakat as it is considered as wealth.⁵³ Any income, whether in the form of profits, salary or wages, enriches the financial position of its possessor. Individuals rely on their income to make a living and to afford the necessities of life, which signifies that it should be classified as wealth. Income is zakatable regardless of its source, which means that it can be paid by public institutions or the private sector, or by independent

⁵⁰ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 379.

⁵¹ Curzon, L. and Richards, P., *The Longman Dictionary of Law* (7th edn, Pearson Education, 2007) 295.

⁵² Oxford Advanced Learner’s Dictionary p. 785.

⁵³ AlSultan, S., *AlZakat: Tatbeek Muhaasabi Mua’asir* (Dar AlMareekh, Riyadh 1986) p. 121.

professions, trades, rents or enterprises.⁵⁴ As long as it is possessed by a natural or legal person and not a public body, income has to be zakatable.⁵⁵

AlQaradawi maintains that income from illegitimate sources is not liable to zakat.⁵⁶ If it comes from sources such as robbery, fraud, bribery, monopoly, prostitution or gambling, it should be considered to be zakat-free. He based this opinion on the Prophet Muhammad's statement: "Allah does not accept the burglar's charity."⁵⁷ However, it could be said that AlQaradawi's opinion is *reductio ad absurdum*, for three reasons. First, exempting income earned from illegitimate sources will presumably urge people to earn income from these illegitimate sources;⁵⁸ if income arising from illegitimate businesses is zakat-free, people will tend to exploit this rule and invest in such businesses in order to avoid paying zakat.⁵⁹ Secondly, the term "illegitimate sources of income"⁶⁰ signifies a lack of the rule of law, as these illegitimate sources should not

⁵⁴ AlSultan, S., *AlZakat: Tatbeek Muhaasabi Mua'asir* (Dar AlMareekh, Riyadh 1986) p. 119.

⁵⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 166.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ 'Because criminals typically fail to declare their illegal income on returns, they can often be successfully prosecuted for tax evasion even when there is no specific proof as to how they got the money.' *Tax Law Design and Drafting*, (International Monetary Fund, Washington 1998) p. 532.

⁵⁹ Friedman, M., *Capitalism and Freedom* (University of Chicago Press, London 2002) p. 174.

⁶⁰ According to Olowofoyeku, in the UK, 'a book maker's profits were taxable as the profits of a vocation, even though wagering contracts were unlawful. In *Minister of Finance v Smith* [1927 AC 193] the profits of illegal brewing were held to be taxable, and in *Mann v Nash* the [1932 AKB 752] profits of automatic "fruits" and "diddler" machines used for illegal gambling activities were held to be taxable. It is interesting to note that the court does not necessarily view the taxing of proceeds of illegal activities as the State participating in unlawful gains. Rowlatt J explained that the State 'is merely taxing

exist other than in the form of crimes or offences. Primarily, income earned from fraud or bribery is illegitimate, and the law has to punish its possessor rather than granting them privileges.⁶¹ Thirdly, the statement, “Allah does not accept the burglar’s charity” does not literally prevent the imposition of zakat on illegitimate incomes. It is illogical to assume that Allah exempts sinners from zakat and allows them to enjoy their illegitimate income. The term ‘charity’ primarily denotes the optional charity or alms, rather than zakat.⁶² However, this statement warns Allah will not grant repentance or bliss to anyone who gives to charity from income arising from an illegitimate source.

4.2.4 Residences⁶³

The term ‘residence’ refers to the place in which a person lives.⁶⁴ In this context, it denotes the house, domicile, accommodation or settled abode of the zakat payer.⁶⁵ The

individual with reference to certain facts. It is not a partner of a sharer in the illegality [Mann v Nash 1932 1KB 754 at 759]’. Olowofoyeku, A., *The Taxation of Income* (Cambridge Academic, Cambridge 2013) p. 143.

⁶¹ In United States of America (USA) ‘Federal, state, or local tax authorities may follow the criminal investigations and assess a civil tax liability, and interest and penalties to the liability of the defendant after a determination of guilt is made. In cases where the tax income is generated from an illegal activity (not just a failure to report legitimate income), the illegal gains are often subject to criminal or administrative forfeiture by the level of government that has jurisdiction in the case. Forfeiture statutes are designed to ensure that criminal does not benefit from his or her criminal acts.’ Pasco, G., *Criminal Financial Investigations: The Use of Forensic Accounting Techniques and Indirect Methods of Proof* (2nd edn, CRC Press, New York 2013) p. 107.

⁶² For further discussion on the distinction between zakat and charity, see, 2.1.3 above.

⁶³ The extraterritorial residence does not fall within this discussion because the supremacy of zakat law revolves around wealth that is domestically based.

⁶⁴ Oxford English Dictionary p. 8429.

identification of a 'residence' is a matter of fact and it must be a place where the payer actually lives. The payer cannot claim that a piece of undeveloped land, a long-disused house or a sports arena is a residence, as it is implausible to regard such places as suitable living accommodation. The identification of a residence can be determined in various ways, such as having complete access to the property,⁶⁶ the availability of the property to the payer, the location of the payer's belongings and possessions (occupation)⁶⁷ and definitely the existence of residential deeds or licences.⁶⁸

AlQaradawi stated that residences are exempt from zakat.⁶⁹ He believes that zakat on residences can be destructive to the payers' lives,⁷⁰ as they may find such duty to be exaggerated and financially harmful, particularly because of its recurrence.⁷¹ Paying zakat on a residence every year can force zakat payers to sell their properties in order to pay the outstanding dues, which clearly contradicts the purpose of zakat in improving

⁶⁵ A letting house owned by a zakat payer is also not to be considered as a residence but as an investment, because it is apparently not the payer's domicile but a source of income. Meanwhile, letting houses and rented residences are not owned by the tenant. The tenant is entitled to residency but he is not the property owner, and it is not a part of his wealth, thus does not fall within the scope of this discussion. AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 158.

⁶⁶ Possession and occupation are considered a badge for the ownership and residency. For further discussion, see AlSanhuri, A., *AlWaseet fi AlQanoon AlMadani* (Munsha'at AlMa'arif, Alexandria 2004) vol. 9, p. 773.

⁶⁷ AlSanhuri, A., *AlWaseet fi AlQanoon AlMadani* (Munsha'at AlMa'arif, Alexandria 2004) vol. 8, 435.

⁶⁸ AlSanhuri, A., *AlWaseet fi AlQanoon AlMadani* (Munsha'at AlMa'arif, Alexandria 2004) vol. 2, 126.

⁶⁹ AlQaradawi, Y., *supra* p. 168.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

people's socio-economic position.⁷² For AlQaradawi, the Prophet Muhammad's statement, "No zakat to be paid unless by the rich"⁷³ allows residents to be exempt, particularly because the majority of payers are not sufficiently rich to endure this type of zakat.⁷⁴

However, the justification of AlQaradawi's exemption is somewhat subjective, as it considers the welfare of zakat payers but pays less attention to examining whether or not 'residences' constitute wealth. AlQaradawi's opinion is compassionate to middle-class payers, but overlooks instances where this argument does not seem reasonable, such as cases of having more than one residence, luxury chalets, cruise ship apartments or massive palaces. In such instances, it is not possible to assert that this type of residence does not comprise wealth, or that imposing zakat on such residences will destroy the payers' socio-economic lives. The Prophet Muhammad's statement "no zakat to be paid except by the rich"⁷⁵ did not exempt the rich, and these residences must be owned by rich or financially solvent people. Those who own luxury chalets or cruise apartments normally have adequate liquidity to pay the zakat on their residences. There are two main opinions regarding whether or not residences constitute wealth. Firstly, *residences can resemble consumables* as they are similar in terms of depreciating in nature. It is apparent that the condition for a residence is that of consistently losing its value. Although the condition or value of a house can hold for years or decades, this does not prevent the reality of its declining value, or the fact that

⁷² AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 188.

⁷³ Muhammad, A. and AlBukhari, I., *AlJame' Alsaheeh "Sahih AlBukhari"* (Beirut: Dar AlJeel, Beirut 2005) p. 570.

⁷⁴ AlQaradawi, Y., *supra* p. 188.

⁷⁵ Muhammad, A. and AlBukhari, I., *supra*.

it requires additional expenditure (on things such as plumbing repairs and refurbishments) to maintain its value. Residences must fall within the ‘consumables’ category, and for this reason they are not liable to zakat.

Secondly, as *residences are wealth*, they are liable to zakat. Residences enrich the position of their owner, which is sufficient reason to regard them as a base for zakat. It is unlikely that residences are depreciating as house prices usually rise. Arguing that houses do not comprise wealth or are consumables is false, as whatever the expenses incurred by the residence, they do not decrease the value of the property or cause it to depreciate in value.. Residences must therefore be considered wealth. Whilst it is possible to exempt the expenses themselves as they are considered costs, exempting the residence *per se* is unjustifiable. If expenses are what prevent the residence from being zakatable, cattle can also not be regarded as zakatable, as they incur feeding expenses. Agricultural products have costs in the form of water, harvest and storage and would therefore also have to be exempted. Bank accounts and other types of investment would also be subject to exemption as they incur expenses such as charges, fees, accountants and lawyers’ fees. Nonetheless, it is misleading to construct an analogy between the expenses from cattle, agricultural products and investments and those from residences. The point here is to examine whether or not residences naturally depreciate rather than to highlight the fact that items requiring expenses are not necessarily exempted.

Both these opinions appear to clearly confirm the fact that residences are costly and cause loss. The former opinion suggests that they are consumables or naturally depreciating, while the latter also confirms a loss through the admission of expenses. The convergence point of the two opinions is that residences cause loss whether as a

result of consumption or expenses.⁷⁶ The reality emerges that owning a residence should be considered as a source of ‘liability’ to the zakat payer rather than as a stable form of wealth.⁷⁷ Residences will inevitably require repairs and refurbishments and will result in utility bills, all of which prove the depreciating nature of residences. These expenses show that the condition and value of residences do not remain steady but are in fact costly and consumable.

Some may contend that it is uncertain whether residences are zakatable or not. Arguably, the core of this issue is regulatory in nature, rather than an issue of principle, as the authority can make adjustments according to the economic status of the payer. For example, the zakat authority specifies residences, in the cases of ownership of more than two houses, chalets or palaces, as wealth. On the other hand, the authority exempts residence that incur costs considering them a liability rather than wealth; for example owning a studio flat or a small house. This issue must be codified by the relevant authority. However, to leave this issue to regulative authorities is not a solution to be encouraged. In the zakat system, the principle is to minimise the arbitrary power of the authority. For that reason zakat rates, allowances and beneficiaries are fixed. If zakat on residences is a regulatory issue, the authority may arbitrarily regulate a zakatable residence, which is not consistent with the principles of zakat mentioned.

It is proposed that a residence the payer occupies can be exempted as matter of principle, as it should be recognised as his domicile.⁷⁸ As AlQaradawi argued, zakat on

⁷⁶ McKelvy, W., *Moving at the Speed of Wealth* (Cagan Publishing, Centennial) p. 84.

⁷⁷ Ibid.

⁷⁸ In the UK Capital Gain Tax, ‘the dwelling house, land is included in the exemption if the owner has it as the garden or grounds of the dwelling house, for his own occupation and enjoyment.’ Tiley, J., *Revenue Law* (5th edn, Hart Publishing, Oxford 2005) p. 614.

a residence can be economically destructive for those who are financially incapable;⁷⁹ especially as zakat must be paid annually. Zakat is a system to enhance the socio-economic development of the state, and levying 2.5% on a residence *every year* can seriously harm people's stability. Hence, exempting residences is a matter of principle rather than a regulatory issue.

This principle can exceed the principle, which takes into account the broad definition of wealth. The former preserves people's socio-economic status, making them more productive, resulting in prosperity and greater re-distribution of wealth. However, if people are liable to pay a heavy levy on residences, they will be less productive and the re-distribution mechanism will be destroyed. Furthermore, exemptions should cover all residences regardless of their space and price. As long as the residence is used as a domicile for the zakat payer, this principle should prevail. The payer cannot claim multiple houses or commercial properties as residences (to seek zakat avoidance),⁸⁰ as a person must inhabit a single dwelling.⁸¹

⁷⁹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AIRisalah, Beirut 2002) vol. 1, p. 188.

⁸⁰ For example, referring to the UK Capital Gain Tax (CGT), Vinelott J 'rejected out of hand submission that these flats [five flats in separate buildings in London] could form one residence; declining to lay down any general principles he described the submission as 'an affront to common sense.' Thus, he did not exempt them. Tiley, J. and Loutzenhiser, G., *Revenue Law* (7th edn, Hart Publishing, Oxford 2012) p. 615. *Honour v Norris* [1993] BTR 24 at 40.

⁸¹ However, since polygamy exists in Islamic states, including Saudi Arabia, the probability of having more than a single domicile is high.

4.2.5 Loans

A loan is “an amount of money that is given (by the creditor) to someone (debtor) for a period of time with a promise that it will be paid back”,⁸² or “an amount of money that is borrowed (by the debtor from the creditor).”⁸³ Loans can also be defined as the transfer of money from creditor to debtor, who must repay the capital amount of the loan at the end of the loan period.⁸⁴ The problem with zakat collection on loans is that it is difficult to decide which party (the creditor of the debtor) is liable to pay zakat on the loan. Should creditors pay zakat on the loan because they are entitled to the loan, and will eventually be paid the amount borrowed, or should the debtors pay it, as they are the current beneficiaries of the borrowed amount?

There are four possible assumptions involved in answering this question. Firstly, it is assumed that it is the creditors who are liable to pay the zakat on the loan. The borrowed amount belongs to them as they are entitled to it by contractual relationship. The debtors are no more than temporary beneficiaries of the loan, as they are obliged to repay the amount of the loan after a certain period of time.⁸⁵ Secondly, the debtors are liable to pay the zakat on the loan. AlShafii argued that the debtor is the party who holds the amount of the loan; because he or she is enjoying enrichment by this amount, he or she is the one who is liable to pay it.⁸⁶ Thirdly, the creditors and the debtors are both liable to pay zakat on the loan, as both of them possess the loan amount.⁸⁷ The former owns

⁸² Oxford English dictionary p. 901.

⁸³ The Longman Dictionary of Law p. 573.

⁸⁴ Hudson, A., *The Law of Finance* (Sweet and Maxwell, London 2009) p. 861.

⁸⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 169.

⁸⁶ Ibid.

⁸⁷ Ibid.

the amount, while the latter exploits it; thus both of them ought to share payment of zakat.⁸⁸ Fourthly, neither the creditors nor the debtors are liable to pay zakat because loans are exempted from zakat.⁸⁹

Most Islamic scholars agree with the first assumption that it is the creditors who are liable to pay zakat on loans. Ibn Othaimen argued that as creditors are entitled to the amount of the loan, they are considered to be the actual owners of it,⁹⁰ and are thus the ones liable to pay zakat on it. The debtors are the current beneficiaries of the loan but are not the actual owners, as they carry the contractual duty to pay the creditors at the end of the loan period.⁹¹ AlQaradawi and Ibn Othaimen agree that debtors cannot be liable to pay zakat. The debtors must be in need of money as they would not otherwise have taken out the loan.⁹² They are the inferior parties in the lending relationship and must not be made to carry the further burden of paying zakat for the loan that they will pay back.⁹³ In addition, the debtors are entitled to the proceeds of zakat as they are the beneficiaries of zakat,⁹⁴ which makes it doubtful that they can be also be regarded as zakat payers.⁹⁵

⁸⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 169.

⁸⁹ Ibid.

⁹⁰ Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, 24.

⁹¹ Ibid.

⁹² AlQaradawi, Y., *supra* p. 169.

⁹³ Ibid.

⁹⁴ For further discussion see 5.1.6 below.

⁹⁵ AlQaradawi, Y., *supra* p. 169.

Regarding the third assumption, no jurists consider both the creditor and the debtor liable to zakat; nor do any suggest that they ought to share the zakat payment.⁹⁶ According to AlQaradawi, imposing zakat on both the creditor and debtor implies double-charging, which is forbidden by the Prophet's statement: "No double paying in zakat."⁹⁷ The same is true of the fourth assumption; no scholar agrees that loans are exempted, with the exception of Ibn Hazm, who argued that neither the creditor nor the debtor truly owns the loan as it has no specific owner and should thus be treated in the same way as public budgets.⁹⁸ Ibn Hazm's opinion that loans have no owner is indefensible. In fact, loans are unlike public budgets in having no specific or identifiable owner, as the agreement of the loan is adequate for the identification of the creditor as the actual owner of the loan amount.

However, the only case in which a loan becomes exempt, as stated by AlQaradawi, is when it becomes impossible for it to be paid back;⁹⁹ for example, when a debtor company becomes insolvent, or when a loan that is defined by reference to a foreign currency decreases by an unexpectedly large amount and falls below the zakat allowance.¹⁰⁰ In such cases, it is impossible for the creditor to be paid back, and it is unjustifiable to regard him or her as being entitled to the loan amount when in fact the debtor is required to repay him or her.¹⁰¹

⁹⁶ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 170.

⁹⁷ AlQasim, A., *AlAmwal* (Mo'assat Nassir LeAlThakafah, Beirut 1981) p. 154.

⁹⁸ AlQaradawi, Y., *supra* p. 169.

⁹⁹ AlQaradawi, Y., *supra* p. 172.

¹⁰⁰ Peel, E., *Treitel's the law of Contract* (12th edn, Sweet & Maxwell, London 2010) p. 945.

¹⁰¹ AlQaradawi, *supra* p. 172.

It is therefore suggested that the creditor is the party who is liable to pay zakat on the loan. Similarly, this principle can be applied in any creditor-debtor relationship, not only in cases relating to cash or liquidity. For example, a grantee has to pay zakat for the gift he or she has accepted but not yet received as he or she is the creditor party.¹⁰² Whilst the carrier is not obliged to pay zakat for delayed goods, the consignee must do so (he or she is the creditor in most cases).¹⁰³ The issuer rather than holder of bonds is also liable to pay zakat.

4.2.6 Stocks

No verses in the Quran or statements by the Prophet Muhammad mention zakat on stocks. As joint-stock companies did not exist until the 13th century,¹⁰⁴ there are no early jurisprudential references that discuss the subject of zakat on stocks.¹⁰⁵ AlQaradawi and AlGhoveeli confirmed that stocks are liable to zakat. Stocks are considered to comprise wealth as they are no different to currency and goods, all of which enrich the financial position of their possessors. This analogy means that the allowance of stocks should be considered to be 85g of gold; the zakat rate of stocks is 2.5%, similar to that of gold, silver, currency and goods.

¹⁰² 'A promise to give away onerous property is binding if the promises are made in return to discharge obligations attached to them.' Peel, E., *Treitel's the law of Contract* (12th edn, Sweet & Maxwell, London 2010) p. 93.

¹⁰³ Murray, C., Holloway, D. and Timson-Hunt, D., *Schmitthoff's Export Trade: The Law and Practice of International Trade* (11th edn, Sweet & Maxwell, London 2007) p. 349.

¹⁰⁴ 'The history of joint stock companies is many centuries old in Western countries. However, in Muslim countries, their development has become noticeable in the 20th century only. These companies do not have a clear parallel or precedent in Islamic jurisprudence.' Islahi, A. and Obaidullah, A., *Zakat on Stocks: Some Unsettled Issues* (2008) 2 *Journal of King Abdulaziz University* p. 15.

¹⁰⁵ AlGhoveeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 188.

AlGhofeli and Wahbah AlZuhaili¹⁰⁶ argue that the stockholder is liable to pay zakat, while other jurists, such as AlQaradawi, maintain that the joint-stock company should be in charge of paying zakat. The argument is that stocks are considered to be part of an individual's wealth; as their value adds to the stockholder's wealth, the stockholder is liable to pay zakat on stocks. However, AlZuhaili and AlGhofeli, claimed that as stockholders are the actual owner of these stocks, they therefore have to be in charge. The stockholders are entitled to sell, gift or abandon their stocks and are also able to liquidise the value of the stocks if the joint-stock company dissolves,¹⁰⁷ which means that the stockholders definitely own the stocks. The board and executive office of the joint-stock company are managers or administrators of these stocks, but not their owners.¹⁰⁸ The International Islamic Fiqh Academy (IIFA)¹⁰⁹ and the Kuwait Zakat House¹¹⁰ have adopted a similar approach and maintain that stockholders must pay zakat.

On the other hand, AlQaradawi considered that the joint-stock company is liable to pay zakat. Stockholders are not involved in the process of assessment of stocks for zakat. In order to avoid complexity in the assessment process, the zakat authority should collect zakat stocks from joint-stock companies and not from individual stockholders themselves. This simplifies the assessment process as filing is then done once a year and is handled by the company board.

¹⁰⁶ AlGhofeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 188.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

However, the above question raised is artificial. The decision as to who is liable to pay zakat (the stockholders or the board) is an executive issue rather than one of principle. The most important aspect is to impose zakat on stocks, whether stockholders pay the zakat authority directly or the board will deduct the zakat payment from the stockholders. Either way, the outcome is similar in that stocks are levied and stockholders will pay zakat.

4.2.7 Agricultural Products

Agricultural products refer to harvests, crops or any product that grows on the land.¹¹¹ Such products are liable to zakat,¹¹² as the Quran clearly stated “*pay zakat on the day of its harvest.*”¹¹³ These products are considered to comprise wealth as they are valuable for their possessor. The Quran used the word ‘*harvest*’ to emphasise the fact that agricultural products become zakatable when they exist as grown crops and when they become useful for their possessor. During the process of irrigation, the products are not yet complete; it is thus unreasonable to consider them harvests.¹¹⁴

The Prophet Muhammad’s statement: “no zakat to be paid on less... 780 kilograms of agricultural products”¹¹⁵ contains two rules. Firstly, it indicates that agricultural products are zakatable. It does not specify some products and exempt others, but rather

¹¹¹ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 391.

¹¹² The statement ‘no zakat on vegetables’ is not authentic. Some of the narrators of this statement are not trusted by Islamic jurists, thus they consider it a weak source. However, it can be stated by a trader and referred to the Prophet to avoid paying zakat on their products. AlQaradawi, Y., *supra* p. 406.

¹¹³ The Quran 6: 141.

¹¹⁴ AlQaradawi, Y., *supra* p. 395.

¹¹⁵ Muhammad, A and AlBukhari, I, *AlJame’ AlSaheeh “Sahih Al Bukhari”* (Dar AlJeel, Beirut 2005) 400.

has a literal broad form. Hence, the term “agricultural products” term signifies all items that grow from the land, such as barley, beans, corn, cucumbers, dates, olives, oranges, peanuts, radishes and wheat.¹¹⁶ According to AlQaradawi, there is no logic in imposing zakat on some agricultural products, such as wheat and barley, and exempting others, such as oranges and mangos.¹¹⁷ All types of crops ultimately enrich their possessors and thus should be treated equally under the term “agricultural products”.¹¹⁸ Secondly, the zakat allowance of agricultural products is 780 kilograms for every harvest.

Prophet Muhammad stated that, “The zakat rate on agricultural products which were watered by rain, springs or torrents is 10%, and 5% for those which were irrigated.”¹¹⁹ This statement fixed the percentage of zakat on agricultural products at 10% for harvests watered by natural means and 5% for irrigated harvests. Most jurists suggest that the Prophet reduced the zakat rate by 5% on irrigated products out of compassion for the zakat payer. The Prophet gave consideration to the fact that investors and farmers who irrigate agricultural land are already spending money on water and machines and should hence be subject to a lower zakat rate than those whose land is naturally able to produce agricultural crops.

The subject of “agricultural products” should be distinguished from that of “agricultural land”.¹²⁰ The former signifies crops and harvests, while the latter should be referred to as the “source of income’ issue.¹²¹ Thus, if someone rents agricultural land,

¹¹⁶ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 403.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ AlSanhuri, A., *AlWaseet fi AlQanoon AlMadani* (Munsha’at AlMa’arif, Alexandria 2004) vol. 8, p. 32.

¹²¹ For further discussion, see 4.2.9 below.

he or she must be liable to pay zakat for the agricultural products (because they belong to him or her, and he or she is the actual beneficiary of the crop). Agricultural land is a source of income for the landowner, and its assessment should be his or her concern.

4.2.8 Cattle

Cattle in Arabic signifies camels, cows, goats and sheep.¹²² The Prophet Muhammad also specified the meaning of cattle in the statement: “[T]here is no zakat to be paid on less... 5 camels, 30 cows, 40 goats and sheep.”¹²³ Only these four kinds fall in the category of “cattle”, while animals like horses, donkeys, felidae and birds should be treated individually to determine whether they are liable to zakat.¹²⁴

Cattle are regarded as liable to zakat. Camels, cows, goats and sheep must be recognised as wealth for the possessor. They are valuable and serve many useful purposes such as trade, the production of dairy products, transport and grazing. However, zakatable cattle have to be alive and in good health. Dead cattle and those which suffer from physical disabilities are not regarded as valuable or as wealth for the possessor and should not be liable to zakat. On the contrary, such cattle are costly. The same is true of young cattle, which are not considered valuable and grown. The zakat allowances of cattle are fixed as stated by the Prophet: “[T]here is no zakat to be paid on less... 5 camels, 30 cows, 40 goats and sheep.”¹²⁵

¹²² AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 202.

¹²³ Muhammad, A and AlBukhari, I, *AlJame’ Alsaheeh “Sahih Al Bukhari”* (Dar AlJeel, Beirut 2005) 400.

¹²⁴ For further discussion, see 3.2.2.2 above.

¹²⁵ Muhammad, A and AlBukhari, I, *AlJame’ Alsaheeh “Sahih Al Bukhari”* (Dar AlJeel, Beirut 2005) 400.

The Prophet Muhammad stated that: “No zakat on the employed cattle”,¹²⁶ which means that working camels, cows, goats and sheep are zakat-free. Cattle owned for the purpose of carriage, ploughing or irrigation are exempted from zakat. AlQaradwi indicated that when cattle are owned for such purposes they ought to be regarded as consumable tools like machines; they are therefore exempted.¹²⁷ He added that only cattle that are owned for grazing are zakatable.¹²⁸ Cattle that are not working but are owned only to graze and breed are liable to zakat as the Prophet stated, “[A]nd there is zakat on the grazing cattle.”¹²⁹

4.2.9 Sources of Income

The term “source of income” signifies any item that generates profit, rent or income, for example, factories, letting properties, cattle, taxis and intellectual property. There are two opinions regarding zakat on sources of income. Firstly, it has been argued that there is no zakat on sources of income.¹³⁰ According to Ibn Hazm, the Prophet Muhammad never mentioned the imposition of zakat on these.¹³¹ Sources of income such as factories and rental properties ought to be regarded as consumables, as their value does not appreciate, as it did prior to consumption.¹³² As previously noted, the Prophet Muhammad’s statement: “The zakat payer is not obliged to pay zakat for the horse...”

¹²⁶ Muhammad, A and AlBukhari, I, *AlJame’ Alsaheeh “Sahih Al Bukhari”* (Dar AlJeel, Beirut 2005) 400.

¹²⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 207.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ AlGhoseeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 126.

¹³¹ AlQaradawi, Y., *supra* p. 516.

¹³² For further discussion, see 3.2.2.2 above.

was interpreted by most jurists as meaning that consumables are not liable to zakat.¹³³ Conversely, it has been argued that sources of income are liable to zakat as they comprise wealth and obviously enrich their possessors.¹³⁴ It cannot be argued that factories and rental properties are consumables because only the machines in the factories and the furniture in the properties are consumables and depreciate in value. Factories and properties *per se* are valuable, profitable and thus must be zakatable.¹³⁵ Nevertheless, as AlQaradawi stated, if the Prophet did not literally specify the sources of income, this does not mean that they are exempted.¹³⁶ Other bases, such as stocks and currencies, were never mentioned by the Prophet but are consensually liable to zakat.¹³⁷

However, it can be misleading to question whether “sources of income” are liable to zakat as this depends on the nature of the income source. Sources of income such as goods, cattle and lands can be zakatable as they are considered wealth, while other sources, such as factory machines and taxis, are regarded as consumables, and are thus zakat-free.¹³⁸ Agricultural land that generates an income cannot be compared with a consumable item like a taxi. The value of the former is steady, whilst that of the latter depreciates.

It appears to be difficult to set a principle for the ‘source of income’ issue as these sources vary in terms of economic nature; different sources of income therefore need to

¹³³ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 518.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ It was justified above that goods, cattle and lands are liable to zakat, while houses for rent, building and factories are not.

be treated individually. Letting out houses and residences may lead them to be regarded as liabilities rather than assets, but the former has wealth value. Even AlQaradawi failed to set a principle in regards to this issue. He upheld zakat on sources of income, but then made so many exceptions to his opinion that he ruined its certainty. For example, he argued that taxis are zakatable as they generate profits, while simultaneously exempting cars, as they are consumable.¹³⁹ He also postulated that rental houses lose their value annually, but suggested imposing zakat on them because they are profitable.¹⁴⁰ Somehow, AlQaradawi diverted the issue from ‘taxing wealth’ to ‘taxing the source of wealth’.

Accordingly, it could be argued the principle that “zakat is a tax on wealth” means that the main intention of zakat law must be to identify and tax wealth rather than to pursue sources of wealth. It should consequently be looking at the “source of income” term as an adjective for wealth rather than as a separate area of wealth. The sources of income should be treated individually according to the subject-matter nature and value. It is a factual issue¹⁴¹ that has to be treated according to the source of income status.

4.2.10 Intellectual Property

Intellectual property (IP) comprises “results from the expression of an idea”.¹⁴² Different areas of IP include copyright, patents, trademark, performance rights,

¹³⁹ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 540.

¹⁴⁰ Ibid.

¹⁴¹ Even in the UK tax law, the definition of ‘plant’ is a factual issue. For further reading, see Olowofoyeku, A., *The Taxation of Income* (2nd edn, Cambridge Academic, Cambridge 2013) p. 374-388.

¹⁴² The Intellectual Property Office (2013) *IPO Home* <<http://www.ipo.gov.uk>> accessed 16 December 2012

registered designs and passing off.¹⁴³ These all appear to “refer to creations of the mind, such as inventions, literary and artistic works, symbols, names and images used in commerce”.¹⁴⁴ It is important to question whether or not IP is liable to zakat as this is not mentioned in old jurisprudential references. As the subject of IP is modern, it should be examined in order to clarify its position in zakat law.

AlBouti¹⁴⁵ and AlBaa’li¹⁴⁶ argued that zakat is not imposed on IP, as IP is intangible¹⁴⁷ and should therefore not be treated in the same way as tangible items such as gold, silver, money and cattle.¹⁴⁸ However, both AlGhobeeli and the Seventh Conference of Contemporary Zakat Issues have suggested that IP is zakatable.¹⁴⁹ The latter claim has no adequate justification, because even if IP is intangible this does not negate the fact that “IP can be owned, bought and sold”,¹⁵⁰ and that it is valuable. Hudson argued that the nature of wealth does not require it to constitute tangible items or materials that can be seen or touched.¹⁵¹ Intangible items such as electronic money and stocks are unanimously considered to comprise wealth.¹⁵²

¹⁴³ Bainbridge, D., *Intellectual Property* (6th edn, Pearson Education, Harlow 2009) p. 3.

¹⁴⁴ World Intellectual Property Organization Office (2013) *What is Intellectual Property?* <<http://www.wipo.int/about-ip/en/index.html>> accessed 16 December 2012.

¹⁴⁵ AlGhobeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 302.

¹⁴⁶ AlBaa’li, A., *Zakat AlHuqouq AlMaa’nawiyah* (Bait Alzakat, Kuwait 1994) p. 90.

¹⁴⁷ AlGhobeeli, A., *supra*.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid*.

¹⁵⁰ The Intellectual Property Office, *supra*.

¹⁵¹ Hudson, A., *The Law of Finance* (Sweet and Maxwell, London 2009) p. 39.

¹⁵² *Ibid*.

It could therefore be argued that IP should be liable to zakat in cases such as patents and trademarks when they are regarded as assets,¹⁵³ have market value and thus are wealth.

4.3 Is Zakat a tax on Capital?

It is important to test whether zakat is a tax on capital. If it is imposed on capital, the zakat system can cause serious economic damage. Indeed, imposing zakat on capital can encourage savers and investors to transfer their capital abroad to avoid such a burden.¹⁵⁴ To impose zakat on the capital has an economic disadvantage, as such a levy will damage payers, reduce their wealth and devastate their capital, particularly if the levy is annual.¹⁵⁵

However, it is not accurate to state that zakat is a tax imposed on capital.¹⁵⁶ Rather, zakat is a tax on wealth, but in some instances capital is levied. Zakat is imposed on capital such as gold, silver, antiques and cattle and is sometimes imposed on income like wages and profits. It cannot be submitted that zakat is imposed on capital or income. Zakat is not imposed on capital such as factories and letting properties, but is sometimes imposed on reproductive capital such as goods, cattle, harvests and profits. Even if it claimed that zakat is imposed on capital, this does not discourage payers as these zakatable capitals (cattle, goods and profits) are presumably re-productive and can regenerate wealth.

¹⁵³ Hudson, A., *The Law of Finance* (Sweet and Maxwell, London 2009) p. 39.

¹⁵⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 531.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

Zakat is a tax imposed on wealth in its broad meaning, and not only on capital or income.

4.4 The Effects of Inflation on the Zakat System

Inflation refers to a sustained increase in the aggregate or general price level in the economy,¹⁵⁷ or to a considerable and persistent rise in the general level of prices over a long period of time.¹⁵⁸ Inflation creates fictitious values for items as it increases the general price level but distorts the measurement of values, profits and wages.¹⁵⁹ When inflation occurs, the price of items increases.¹⁶⁰ However, this increase is not truly profitable, because when the rise in prices is caused by inflation it erodes the real value of money.¹⁶¹ Inflation and purchasing power are inversely proportional; an increase in inflation means a decrease in the purchasing power of the currency.¹⁶² Hence, inflation is regarded as a loss in terms of its impact on purchasing power.¹⁶³

The effect of inflation must be financially harmful for zakat payers for two reasons. First, inflation means that people hold more money (due to the fictitious increase in the

¹⁵⁷ Oxford English Dictionary p. 795.

¹⁵⁸ Dwivedi, D., *Macroeconomics: Theory and Policy* (2nd edn, Tata McGraw-Hill, New Delhi 2005) p. 389.

¹⁵⁹ Feldstein, M., *Inflation: Causes and Effects* (Ed. Hall, R, The University of Chicago Press, London 1982) p. 153.

¹⁶⁰ Tanzi, V., *Inflation, Lags in Collection, and the Real Value of Tax Revenue*, 24 IMF Staff Papers 154, 155 (1977).

¹⁶¹ Ibid.

¹⁶² Rossi, S., *Money and Payments in Theory and Practice* Routledge, Oxford 2007) p. 119.

¹⁶³ Ibid.

prices of items, profits and wages), which means that their wealth will be more easily subject to zakat (when they exceed the zakat allowance amounts). When inflation occurs, a person who earns (assuming that profit is wealth) £10,000 a year might earn £15,000, increasing the likelihood of that person being liable to zakat. In addition, as inflation erodes the real value of money and lowers the purchasing power of currency, zakat payers will pay according to their apparently increased profits, as well as experiencing a decrease in their purchasing power.

Second, inflation does not affect the zakat allowance of gold, silver, cattle or agricultural products, because the allowance of these items is referred to using fixed numbers of identical items.¹⁶⁴ For example, the allowance of gold is 85g, that of sheep is 40 sheep, and agricultural products are only eligible from 780 kilograms upwards. Inflation therefore plays no role in adjusting the zakat allowance amounts.¹⁶⁵ However, the position of liquidity (or cash money) is different, as the liquidity allowance is not referred to in terms of identical items (like gold, silver, cattle or agricultural products), but rather in terms of a certain amount of gold. The effect of inflation on increasing the value of gold will simultaneously adjust the allowance of liquidity. For example, if somebody owns £10,000 of cash, this amount will be zakatable when it exceeds the value of 85g of gold, but this £10,000 may not be worth 85g of gold when inflation occurs. Inflation can therefore make liquidity non-zakatable.

¹⁶⁴ AlGhoseeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 79.

¹⁶⁵ Ibid.

In many tax laws, such as those of the United Kingdom¹⁶⁶ and the United States,¹⁶⁷ governments solve the problem of inflation by adjusting tax rates and indexation, which is “by prescribing that everybody's price, wage, or income be raised as much as the average 'level' of prices. This usually means by the same percentage the official consumer price index of the country has gone up.”¹⁶⁸ When inflation occurs, price levels and income are moved into higher tax brackets, which results in higher income taxes but no real increase in purchasing power.¹⁶⁹ “Tax indexing attempts to eliminate the potential for bracket creep by altering the tax rates before the creep occurs.”¹⁷⁰ Tax indexing provides a proactive solution by using a form of indexation to maintain purchasing power and avoid the higher taxation brought on by inflation.¹⁷¹ For example, a zero bracket that is to be indexed for inflation will increase at the rate of inflation. If inflation is 5%, a \$10,000 bracket in Year 1 will become a \$10,500 bracket in Year 2.¹⁷²

However, in the zakat system, the government cannot adjust the zakat rate (2.5% or 5%) as these rates were fixed by the Prophet Muhammad. Unlike in other tax systems,

¹⁶⁶ HMRC (2013) CG10243 - Capital Gains Tax: indexation allowance <<http://www.hmrc.gov.uk/manuals/cgmanual/cg10243.htm>> accessed 28 December 2013.

¹⁶⁷ McCaffery, E., *The Oxford Introductions to U.S. Law Income Tax Law* (Oxford University Press, New York 2012) p. 164. Also, see the American Taxpayer Relief Act of 2012.

¹⁶⁸ Hazlitt, H., *The Inflation Crisis and How to Resolve it* (The Ludwig Von Mises Institute, Alabama 2009). p. 130.

¹⁶⁹ McCaffery, E., *supra*.

¹⁷⁰ *Ibid*.

¹⁷¹ *Ibid*.

¹⁷² McCaffery, E., *The Oxford Introductions to U.S. Law Income Tax Law* (Oxford University Press, New York 2012) p. 164.

the rates are non-adjustable. When inflation occurs, the government adjusts the zakat allowance amounts and for two reasons. Firstly, adjusting the zakat allowance is *a matter of principle*. The core idea of zakat is the re-distribution of wealth between rich and poor. The Prophet Muhammad stated that, “Zakat is to be paid by the rich to be given to the poor,” and “no zakat is to be paid except by the rich.” The principle is that only the rich have to pay zakat. In addition, the Prophet Muhammad fixed the zakat allowance amounts to distinguish between rich people and wealth. The allowance amounts fixed by the Prophet were designed to point out who is rich and to highlight what constitutes wealth. Consequently, when these amounts present a blurred distinction between the rich and the poor, or an impractical meaning of wealth, then they ought to be subject to adjustment. For example, during the era of the Prophet, five camels (the zakat allowance of camels) were considered to represent real wealth, but such an amount is no longer considered to comprise wealth of the same value in the modern economy.¹⁷³

Secondly, there is a relevant precedent in Saudi Arabia. On 1 September 2011, a Royal Decree (43108) approved the decision of the Higher Court to adjust the amount of the *accidental death compensation* from 100,000 Saudi riyals (approximately £16,000) to 300,000 (£48,000). The amount of 100,000 riyals was based on the value of 100 camels according to the Prophet Muhammad’s statement: “the accidental death compensation is 100 camels”,¹⁷⁴ but was amended to 300,000 Saudi Riyals because the Higher Court believed that the former amount no longer held an equivalent value in the

¹⁷³ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 1, p. 319.

¹⁷⁴ Ibn Qudamah, M., *AlMuqni* (Dar AlKitab AlArabi, Cairo 2010) vol. 8, p. 690.

modern economy.¹⁷⁵ An analogy can therefore be made here that the allowance can be amended when it is no longer of significant value or considered to represent wealth. The adjustment of the allowance has to be reasonable in order to apply the allowance idea to distinguish between those who have wealth and those who do not.

It can therefore be argued that if the zakat allowance amounts no longer present a real distinction between the rich and the poor, and are no longer regarded as representative of wealth in the current economy, they should be adjustable.

4.5 Conclusion

This chapter examined the zakat collection principles that were established in the preceding chapter. It discussed the importance of adopting consistent principles of zakat collection and examined how these principles are regarded as the standards and guidance for the application of zakat. The chapter then applied the zakat collection principles to various areas of wealth (gold and silver, goods, income, residences, loans, stocks, agricultural products, cattle, sources of income and intellectual property) in order to determine whether or not these are liable to zakat. Finally, the chapter concluded that zakat allowances ought to be considered to be adjustable when inflation occurs, and that the zakat allowance amounts need to draw a realistic line between the rich and the poor.

¹⁷⁵ The Saudi <<http://www.scj.gov.sa/index.cfm?do=cms.conArticle&contentid=1092&categoryid=443>> accessed 22 December 2012.

CHAPTER FIVE

THE PRINCIPLES OF ZAKAT DISBURSMENT

This chapter discusses the principles of zakat disbursement. It clarifies the requirements which zakat beneficiaries must meet and examines their legal position with respect to zakat funds. It also debates the legality of the zakat authority investing the fund of zakat.¹⁷⁶

5.1 Requirements of Zakat Beneficiaries

According to the Quran, '*Zakat's fund must be distributed to the poor, needy, zakat administrators and almu'allafatu qulubihim*¹⁷⁷, *slaves, debtors, fi sabeel Allah*¹⁷⁸ and *travellers*'.¹⁷⁹ It is clear that zakat funds, collected by the relevant authority, must be distributed among eight specific categories of beneficiaries. The Quran does not provide detailed specifications to define the beneficiaries,¹⁸⁰ it simply mentions the eight categories of people that are considered to be eligible as beneficiaries of zakat. This section aims to clarify the basic criteria that need to be met by beneficiaries.

¹⁷⁶ Zakat authority in general, and in subsequent chapters the performance of the Saudi zakat authority will be examined.

¹⁷⁷ For Further discussion see 5.1.4 below.

¹⁷⁸ For Further discussion see 5.1.7 below.

¹⁷⁹ The Quran 9: 60.

¹⁸⁰ AlFawzan, S., *Istethmar Amwal AlZakat* (Dar Konoz Eshbilia, Riyadh 2005) p. 87.

5.1.1 The Poor

The Poor is the first category of people mentioned in the Quran as being potential beneficiaries of zakat. The poor are also referred to in the verse that reads, ‘*In Muslims’ wealth there is a right of zakat for the poor and needy*’.¹⁸¹ It thus appears that zakat must be distributed to persons who are suffering from poverty and lack of resources. When Prophet Muhammad sent Muaz¹⁸² to Yemen on a preaching mission, the Prophet declared to the latter that the initial purpose of the zakat fund is for it to be distributed to the poor: ‘It is obligatory to pay zakat, which will be taken from the rich to be given to the poor’.¹⁸³ It is evident, therefore, that poor persons are at the top of the list of zakat beneficiaries. To define the poor people that fall within this category two types of measurements are to be used simultaneously: ‘factual’ and ‘fixed’.

Firstly, Islamic scholars have traditionally described a person as being poor in terms of the factual economic circumstances of that person. Most stated that a poor person is one who has very little money,¹⁸⁴ or who cannot, or barely can, afford food, accommodation and clothes. Ibn AlTabari¹⁸⁵ characterised a poor person as one who does not have enough money and never asks people for charity, out of self-respect and modesty.¹⁸⁶ Other jurists (like most Malkists, Shafiists and Hanbalians)¹⁸⁷ have used other supplementary characteristics to identify a poor person, such as the inability to

¹⁸¹ The Quran 51: 19.

¹⁸² Muaz Ibn Jabal was companion of the Prophet Muhammad.

¹⁸⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 11.

¹⁸⁴ Ibid.

¹⁸⁵ A Persian historian (838-923), and one of the most famous exegete of the Quran.

¹⁸⁶ Rahman, M., *Zakat Calculation* (The Islamic Foundation, Leicester 2003) p. 61.

¹⁸⁷ AlQaradawi, Y., *supra* p. 15.

buy clothes when needed and the lack of money to spend on education.¹⁸⁸ This ‘factual’ measurement considers *financial insufficiency* as the standard of poverty and uses it as a measure to determine whether a person is poor. Western economists, including Adam Smith,¹⁸⁹ John Mill,¹⁹⁰ Benjamin Rowntree,¹⁹¹ Friedrich Hayek¹⁹² and Amartya Sen,¹⁹³ have adopted similar approaches to the ‘factual’ measurement standard.¹⁹⁴ They have defined a poor person as being one who cannot afford the necessities of life (such as food, education and accommodation) because of financial insufficiency.¹⁹⁵ Similarly, the Organisation for Economic Co-operation and Development (OECD) defines poverty as an ‘income level that is considered minimally sufficient to sustain a family in terms

¹⁸⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 15.

¹⁸⁹ 'According to Smith, food, clothing and lodging constitute the basic needs of man. If a person lacks these basics of man, he or she is poor.' Rauhnt, D., *Economists and Poverty: From Adam Smith to Amartya Sen* (Vedams ebooks Pvt. Ltd. New Delhi 2005, Ed. by Rauhnt, D.) p. 33.

¹⁹⁰ 'Mill defines poverty in a dual sense. On one hand, poverty is about the inability to provide oneself with necessities of life, i.e. food, clothing and housing. On the other hand, he also considers poverty a social problem.' Rauhnt, D., *supra* p. 61.

¹⁹¹ 'Families whose total earnings are insufficient to obtain the minimum necessities for maintenance ... may be described as ‘primary’ poverty'. Rowntree, B., *Poverty: A Study of Town Life* (Macmillan and Co. Ltd, London 1908) p. 86.

¹⁹² 'To Hayek, poverty means to starve, to lack shelter or otherwise miss the basic needs of life.' Bengtsson (Ed. by Rauhnt, D.), *supra* p. 207.

¹⁹³ 'Sen suggests that any measurement of poverty should start with an identification of a set of basic minimum needs. These needs can be divided into commodities and characteristics. Wheat and rice are commodities while protein, calories and vitamins are characteristics a consumer seeks in these commodities.' Rauhnt, D., *supra* p. 33.

¹⁹⁴ Rauhnt, D., *supra* p. 61.

¹⁹⁵ *Ibid.*

of food, housing, clothing, medical needs, and so on'.¹⁹⁶ This indicates that there is some agreement between Islamic and Western scholars in the use of the measure of financial sufficiency as an indicator of poverty at a personal level.

The second approach to identifying a poor person is through the 'fixed' measurement. In this approach, the state, which is the authority responsible for zakat, sets fixed criteria to define a poor person. The scope of the 'fixed' measurement is narrower than the 'factual' one because it is absolute and is codified by regulators or the government.¹⁹⁷ In the eighth century, many Hanafian scholars adopted a similar approach. They considered anyone who was financially unable to own 5 camels or 39 sheep to be poor.¹⁹⁸ This measure had its roots in the Prophet Muhammad statements, which states that when Prophet Muhammad was asked what the fixed standard of the poor person is he replied:¹⁹⁹ 'Less than fifty dirhams'²⁰⁰ Nowadays it is common to find that each state or organisation has codified its own measurement of poverty. For example, the poverty line by the World Bank is drawn at US\$1.25 or less a day.²⁰¹ In some countries there may be fixed conditions regarding the beneficiaries of charitable trusts. These examples illustrate that it is possible to categorise a person as being poor by setting 'fixed' criteria.

¹⁹⁶ The Organisation for Economic Co-operation and Development (2005) *Glossary of Statistical Terms: Poverty Line* <<http://stats.oecd.org/glossary/detail.asp?ID=6337>> accessed 2 April 2012.

¹⁹⁷ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 18.

¹⁹⁸ Ibid.

¹⁹⁹ Abaadi, S., *Awn Alma'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 739

²⁰⁰ Dirham was the currency of Mecca and Medina. Currently, there are few Arab nations who are still using dirham as a currency, such as United Arabs of Emirates and Morocco.

²⁰¹ The World Bank (2014) *Poverty* <<http://data.worldbank.org/indicator/SI.POV.DDAY>> accessed 3 December 2014.

However, adopting only one type of measurement (be it factual or fixed) and completely disregarding the other can lead to fundamental problems. Firstly, the financial disparity between one individual and another makes it difficult to measure the requirements of the poor.²⁰² According to Alastair Hudson, ‘such levels [of disparity] would necessarily cause disagreement as to what constitutes a level of poverty.’²⁰³ It could be fairly said that adopting only the ‘factual’ measurement could widen the scope of the poverty requirements without limitation.²⁰⁴ Such an approach could divert the zakat authority from the initial purpose of this category, which is to distribute zakat to the destitute poor. If the ‘factual’ measurement is adopted without limitations, the zakat authority’s examination of the financial insufficiency of a person would not be focused on the element of destitution.²⁰⁵ Some Islamic jurists (such as AlShafii and Ibn Hanbal) claim that if a person is financially insufficient then that person can be considered to be poor regardless of how much the person is earning.²⁰⁶ They refer to the ‘factual’ measurement and claim that if someone is financially capable of owning 5 camels, or has liquidity but this amount is insufficient for his family spending, then he should be considered to be a poor person. Their claims are based on the teachings of the Prophet

²⁰² Hudson, A., *Equity and Trust* (6th edn, Routledge-Cavendish, Oxford 2010) p. 1015.

²⁰³ Hudson, A., *supra* p. 1015.

²⁰⁴ Also it could distort the consuming behaviours of the public. For example, people might increase their spending on unnecessary goods and then claim the financial insufficiency.

²⁰⁵ Hudson, A., *supra* p. 1016.

²⁰⁶ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 21.

Muhammad's statements who did not limit the scope of poverty when he stated: 'anyone who has a grinding lack of resources is a beneficiary of zakat'.²⁰⁷

In the English charitable trust case *Mary Clark Homes v Anderson*,²⁰⁸ Channell J argued against the approach that a definition of poverty should be limited and specified and should only consider the destitution of the person as the standard of poverty. He held that poverty is 'genuinely straitened circumstances and inability to maintain a very modest standard of living for himself and persons (if any) dependent on him'.²⁰⁹ Channell J's opinion sought to make coherent the definition of what it is to be 'poor' and to prevent non-destitute persons from being considered as beneficiaries even if they are facing financial insufficiency.²¹⁰ He wanted to provide a definition that described the miserable situation of the poor, rather simply a definition covering the extent of financial disparity between one individual and another. In fact, Prophet Muhammad's statement, 'anyone who has a grinding lack of resources is a beneficiary of zakat'²¹¹ is incompatible with Channell J's definition. The Hadith claim that 'Poverty is less than fifty dirhams'²¹² reveals that the Prophet accepted the limitation of financial insufficiency.²¹³ Thus, it is permitted to limit the factual measurement of the poor by setting fixed criteria.

²⁰⁷ Abaadi, S., *Awn Alma'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 746.

²⁰⁸ [1904] 2 KB 645.

²⁰⁹ [1904] 2 KB 645.

²¹⁰ Hudson, A., *Equity and Trust* (6th edn, Routledge-Cavendish, Oxford 2010) p. 1015.

²¹¹ Abaadi, S., *supra*.

²¹² *Ibid*.

²¹³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 40.

Secondly, to distinguish the poor person through the ‘factual’ measurement while totally ignoring the ‘fixed’ measurement would make the procedure of applying for zakat funds inaccessible. In such a situation, the zakat authority will be able to exercise wide discretionary power to determine who is poor or who is eligible to obtain the zakat funds.²¹⁴ If the requirements of the poor had no limit, the authority would enjoy the power of examining applications on a case-by-case basis according to factual circumstances of applicants, which would decrease the opportunity to challenge the authority’s decisions.²¹⁵ If the authority’s rejection to grant zakat funds is due to an error made in relation to the ‘fixed’ requirements, the rejection can easily be challenged and rectified. However, if an error is made in relation to a ‘factual’ measurement the ‘superior court may be slow to interfere’.²¹⁶ This puts applicants on the same footing as claimants for benefits, instead of people who have a right to the funds according to fixed requirements.

Thirdly, although the ‘fixed’ measurement seems more objective than the ‘factual’ one, adopting it without the ‘factual’ measurement could lead to an unrealistic or prejudiced conclusion. On the one hand, drawing fixed poverty lines or criteria to define poverty with no consideration of actual circumstances or the economy’s changeable nature (e.g. inflation, market failure, economic shocks, war) means that the fixed

²¹⁴ Most of the Hanafians jurists adopt such an approach which is to not limit the poverty scope. AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 13.

²¹⁵ De Smith, S., *Judicial Review of Administrative Action* (Stevens & Sons Limited, London 1980) p. 141.

²¹⁶ Ibid.

standard may not always be consistent with reality.²¹⁷ For example, the World Bank draws the poverty line at \$1.25 per day. This is not realistic because in Saudi Arabia there are those who live on more than this amount a day but are considered poor.²¹⁸ On the other hand, if the zakat authority sets fixed criteria to identify a poor person, there may be a number of people who would be adversely affected by the definition of such criteria. Those who almost but not quite fit the criteria may find themselves excluded from the zakat benefit system - yet if the factual measurement was used they would be classified as poor.²¹⁹ For example, if the zakat authority determined that any person with a daily income of less than £10 could be a beneficiary, and an applicant was earning £10.50 a day, the applicant would be excluded from being a beneficiary, although he or she is not far from the set cut off point.

Because of the reasons outlined above it is unlikely that regulators opt to use one type of measurement (factual or fixed) and totally disregard the other. Indeed, both measurements are vital to the mechanism of zakat disbursement and should be integrated in the zakat system. Both are valid and should produce the same result in terms of identifying the poor. The law of zakat must accommodate both types of measurement as this will help the authority act within the spirit of the Quran and

²¹⁷ 'Most people agree that the poverty line is unrealistic. In 2000, more than two-thirds of those polled thought that at least \$35,000 was necessary to meet abasic needs of a family of four. In 2001, 60 percent said that family of four was poor with an income of \$20,000, when the official poverty line was \$17,029. In 2002 poll, half of the respondent believed that an income of \$45,000 was needed for a family of four to meet basic needs.' Handler, J. and Haseneld, Y., *Blame Welfare, Ignore \Poverty and Inequality* (Cambridge University Press, New York 2006) p. 21.

²¹⁸ Ramady, M., *The Saudi Arabian Economy: Policies, Achievements, and Challenges* (2nd edn, Springer, New York 2010) p. 378.

²¹⁹ Handler, J. and Haseneld, Y., *supra*.

distribute zakat proceedings only to the destitute poor. The risk of abusing the ‘factual’ measurement and widening the scope of the definition of poor will be mitigated by the ‘fixed’ measurement.

In conclusion, for the purposes of zakat, “poor” should be construed to refer only to the destitute poor. This should be a combination of factual and fixed measurements.

5.1.2 The Needy

Needy persons are the second category of zakat beneficiaries listed in the Quran 9:60. Both Hanbalians and Shafists jurists agree that the Quran mentions both the ‘poor’ and the ‘needy’ because there is a distinction between them.²²⁰ They believe that needy persons are different from poor persons and so the Quran does not use the term ‘needy’ as a repetition or reinforcement of the ‘poor’ category.²²¹ For them, the distinction between needy and poor exists in two main aspects.²²² First, needy persons are unlike the poor who cannot afford the basic necessities of life.²²³ The needy person usually has a ‘minimum financial sufficiency’. He is earning a low income/wage, which allows him or her to afford the minimum necessities for living (such as food, clothes and children’s education). Secondly, needy persons are dissimilar to the poor in respect of the urgency of their financial insufficiency.²²⁴ The needy need immediate help, unlike the poor who cannot afford basic necessities on an ongoing basis. This immediate help is usually found when serious and unexpected incidents occur, such as the urgent need for medical

²²⁰ AlGhoveeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 351.

²²¹ Ibid.

²²² Redah, M., *Tafseer AlManaar* (2nd edn, Dar AlManaar, Cairo 1947) vol. 10, p. 569.

²²³ AlGhoveeli, A., *supra* p. 353.

²²⁴ Ibid.

surgery, funeral costs, liability to pay compensation because of negligence, unexpected or short-term unemployment and natural disasters.²²⁵

In other words, the needy person as a beneficiary of zakat is conceptually different from the poor person. The former's predicament is not perpetual like the latter's; he is earning a low income or wage and needs others' help only when an incident or circumstance arises that makes him financially incapable of surviving. Similarly, Benjamin Rowntree²²⁶ in his *Poverty: A Study of Town*²²⁷ draws a distinction between the poor and the needy. He divides poverty into two types: primary and immediate. Individuals in the 'primary' poverty category are those who cannot afford the main necessities of life, such as food, house rent and clothes, because of lack of resources (poor).²²⁸ Those in the 'immediate' poverty category usually have a low income or wage and are rendered financially disabled (needy) by an incident or harmful event. He argues that families of immediate poverty (needy) are 'those whose total earnings would be sufficient for the maintenance of merely physical efficiency were it not that some portion of it is absorbed by other expenditure, either useful or wasteful.'²²⁹ Accordingly, it could be said that those in the 'low income' category, along with those with an 'urgent/immediate need for support', are the category of the needy which qualify as beneficiaries of zakat.

²²⁵ AlGhobeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 366.

²²⁶ A British sociological researcher (1871-1954).

²²⁷ In this book, Rowntree investigated into the poorer Britons, 'he and his investigators went from house to house from the autumn of 1899, finally reaching 11,560 families in 388 streets.' Marr, A., *The Making of Modern Britain* (Pan Macmillan Books, London 2009) p. 17.

²²⁸ Rowntree, B., *Poverty: A Study of Town Life* (Macmillan and Co. Ltd, London 1908) p. 88.

²²⁹ Rowntree, B., *supra* p. 115.

5.1.3 Zakat Administrators

Administrators of zakat are the third category of zakat beneficiaries listed in the Quran 9:60. Notably, the ‘administrators’ category is different from the two previous categories of zakat beneficiaries. The administrators are not eligible to receive zakat funds not because they are destitute or because they are suffering from a lack of resources, but simply because they are working in the zakat authority. According to AlQaradawi, administrators are entitled to receive zakat funds even if they are neither poor nor needy. The statement of the Prophet Muhammad confirms this: ‘The zakat fund is not to be distributed to the non-destitute except for... zakat administrators...’.²³⁰

Islamic jurists agree that the ‘administrators’ being referred to in the Quran are the collectors of zakat.²³¹ The collectors of zakat are eligible to receive proceeds from the fund because they are regarded as the cornerstone of the zakat system.²³² The debate on this subject usually centres around whether or not all employees and workers of the zakat authority can be considered as collectors. For example, are employees of the authority who are not directly involved in collecting zakat (e.g. secretaries, accountants, legal advisors and technicians) eligible to receive zakat funds? In this matter, there are two opinions. The first holds that the only eligible beneficiaries of zakat are the collectors of zakat. The second opinion would include all workers of the zakat authority. AlBaghawi²³³ and many Shafist and Malkist jurists²³⁴ claim that only collectors can be considered administrators because they play a principal role within the zakat

²³⁰ Abaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 745.

²³¹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 48.

²³² Ibid.

²³³ Hussain Ibn Masood AlBaghawi (1042-1122) a Shafist jurist.

²³⁴ AlGhoveeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 374.

mechanism.²³⁵ Other workers of the authority are not eligible to be beneficiaries because they do not have a role to play in the zakat mechanism other than a co-operative one.

On the other hand, many Hanbalian prefer to include all employees who work in the zakat authority under the ‘administrators’ category.²³⁶ The Hanbalian jurist Ibn Qudamah states that: ‘beneficiary administrators are collectors, managers, accountants, secretaries, evaluators, statisticians, and all their assistants’.²³⁷ He argues that the collection function is not better than other functions, or any other job within the authority. All the employees are integrated in their efforts to perform the zakat; therefore, they are equally to be considered as potential beneficiary administrators.²³⁸ The Fourth Conference of Contemporary Zakat Issues (Manama, Bahrain 1994) held the same approach,²³⁹ which is to consider all employees of the zakat authority as administrators because all of them are essential parts of the collection and disbursement mechanisms.²⁴⁰

Indeed, some jurist claim that the purpose of considering ‘administrators’ as beneficiaries of the zakat is to separate the zakat authority’s budget from the government or the ministry of finance.²⁴¹ However, this claim is subject to criticism because it enlarges the scope of the ‘administrators’ category. This claim ignores the fact that there is a distinction between ‘spending the fund of zakat on the authority’ and ‘to distribute zakat proceeds to eligible administrators’. The latter means that the zakat

²³⁵ AlBaghawi, H., *Ma'alim AlTanzeel* (Dar Ibn Hazm, Beirut 2002) p. 566.

²³⁶ AlQaradawi, supra. p. 48.

²³⁷ Ibn Qudamah, M., *AlMuqni* (Dar AlKitab AlArabi, Cairo 2010) vol. 2, p. 696.

²³⁸ Ibid.

²³⁹ Ismail, H., *Masraf AlAmleen Aliyha* (Bait AlZakat, Manama 1994) p. 22.

²⁴⁰ AlGhoveeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 375.

²⁴¹ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 241

fund is to be distributed to the employees of the zakat authority. The zakat fund is devoted to *enriching identifiable employees* (along with the other seven categories), which is the Quran's intention.²⁴² However, spending the zakat fund on the authority in terms of *financing the authority as a public body* is not the intended meaning of the Quran.²⁴³ The zakat fund is *ring-fenced*; hence governmental financing or spending on its administration is inevitable.²⁴⁴ The state has to finance the zakat authority or the administration's buildings, computers, accessories and other administrative costs.²⁴⁵

The 'administrators' category refers to the employees or the workers of the zakat authority. Or, in other words, all the employees who are working in the authority shall receive zakat proceeds. Thus contractors, or those who are working for the authority due to a contractual relationship, are not considered to be administrators (e.g. constructors, plumbers, advisors) unless they are working for the authority *consistently*.²⁴⁶ For example, contractor accountants are considered to be zakat administrators as they are working consistently with the authority on a substantive issue. Also, contractor drivers are working consistently with the administration, but a contracted company that is constructing a new building for the authority is not a beneficiary - it should get paid out of the governmental budget as the construction of a building is a one-off activity²⁴⁷ and as such the contractor is not an eligible identified beneficiary.²⁴⁸

²⁴² For further discussion see 5.2.3 below.

²⁴³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 48.

²⁴⁴ AlQaradawi, Y., *supra* p. 241.

²⁴⁵ *Ibid.*

²⁴⁶ AlTammawi, S., *AlQadaa' Alldaari* (Dal AlFikr AlArabi, Cairo 2003) vol. 2, p. 225.

²⁴⁷ *Ibid.*

²⁴⁸ For further discussion see 5.2.3 below.

5.1.4 *Almu'allafatu Qulubihim*

Almu'allafatu qulubihim persons are the fourth category of zakat beneficiaries. The Arabic phrase '*almu'allafatu qulubihim*' could literally be translated as the proselytes or reconciled persons. The phrase refers to specific people who are already reconciled with Muslims or co-exist with Muslims.²⁴⁹ This category does not have a precise definition. Who falls within this category is at the discretion of the state or the zakat authority. For this reason, Islamic scholars usually present a non-exhaustive list of the *almu'allafatu qulubihim* persons as follows:

- The state can give non-Muslims zakat proceeds to encourage them to convert to Islam. This happened during Prophet Muhammad's time and for many years after. The Prophet used to fund Saied Ibn AlMussyab²⁵⁰ until the latter, like Muhammad, subsequently converted to Islam.²⁵¹ The Prophet did the same thing with Safwaan Ibn Omayah,²⁵² whom he granted a number of camels. Also Abu

²⁴⁹ Bewley, A. and Abdulhakim-Douglas, A., *zakat: Raising a Fallen Pillar* (Black Stone Press, Norwich 2001) p. 30.

²⁵⁰ He (637-715) became a jurist in Hadith and Quranic interpretation, and was a close friend with Prophet Muhammad.

²⁵¹ AlQaradawi, *supra*. p. 65.

²⁵² A son of Umayyah Ibn Khalaf, one of the leaders of Quraish (dies in 661). He became a Muslim after the Conquest of Mecca 630 AD.

Bakr gave zakat proceeds to Uday Ibn Hatim²⁵³ and Zurbakan Ibn Badr to encourage them to convert to Islam.²⁵⁴

- The state may grant non-Muslims zakat proceeds to avoid or restrain unnecessary conflict with them. For example, Prophet Muhammad used to give non-Muslim poets zakat proceeds to stop them from satirising or insulting the religion of Islam.²⁵⁵
- The state can also give zakat proceeds to proselytes who have just converted to Islam. Proselytes are eligible for zakat proceeds when they are in need of financial or social co-operation. The state has to consider new converts to Islam as beneficiaries of zakat to stabilise their new position financially and socially²⁵⁶ as, in some circumstances, proselytes experience discrimination from non-Muslims in their original society.²⁵⁷

AlQaradawi argues that the zakat authority cannot extend its discretion and grant zakat proceeds to Islamic organisations or Islamic communities under the name of ‘*almu'allafatu qulubihim*’ persons.²⁵⁸ This would contradict the principle that zakat funds are to be distributed to identifiable persons and not to finance specific purposes or

²⁵³ A leader of the Arab tribe of Tayy (568-688). He was a commander of the Islamic army after he became Muslim. AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 65.

²⁵⁴ Abu Bakr gave those tribe leaders believing that by the latter conversion to Islam many will follow them. Ibid.

²⁵⁵ Ibn AITabari, M., *Jamie' AlBayan a'an Ta'aweel AlQuran* (Hajr, Cairo 2001) vol. 11, p. 519.

²⁵⁶ Ibn Maniie, A., *Bohooth fi AlIqtisaad AlIslami* (AlMaktab AlIslami, Beirut 1996). p. 51.

²⁵⁷ Ibid.

²⁵⁸ AlQaradawi, Y., *supra* p. 80.

entities.²⁵⁹ He suggested that the authority can only transfer the proceeds from the zakat fund to such entities when the latter guarantees that they will deliver zakat proceeds to the proper ‘*almu’allahafatu qulubihim*’ beneficiaries.²⁶⁰

However, some jurists assume that the ‘*almu’allahafatu qulubihim*’ category does not exist anymore, for two reasons. Firstly, there is a consensus between the companions of Prophet Muhammad and contemporary Islamic jurists that, after the death of Muhammad, the purpose of encouraging non-Muslims to convert to Islam has not been important.²⁶¹ AlQaradawi argues that the ‘*almu’allahafatu qulubihim*’ category was very important at the time of Prophet Muhammad, where spreading the religion of Islam around the world was their main intention. This purpose has less significance nowadays because Islam has already spread worldwide.²⁶² AlQaradawi added that Omar Ibn AlKhattab stopped paying non-Muslims to encourage them to convert to Islam because he realised that Islam was already spreading quickly around the world.²⁶³ Secondly, the other reason for claiming the non-existence of the ‘*almu’allahafatu qulubihim*’ category appeared after the emergence of the human rights’ freedom of belief principle. Human rights laws and human rights conventions do not allow governments, communities or individuals to discriminate against anyone who converted from his or her religion to Islam or any other religion.²⁶⁴ According to human rights principles, citizens can freely

²⁵⁹ For further discussion see 5.2.3 below.

²⁶⁰ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 80.

²⁶¹ Many Hanafians, Malkists scholars believe in that. Ibid.

²⁶² AlQaradawi, Y., *supra*. p. 71.

²⁶³ Ibn Maniie, A., *Bohooth fi AlIqtisaad AlIslami* (AlMaktab AlIslami, Beirut 1996). p. 60.

²⁶⁴ Article 18 of the Universal Declaration of Human Rights: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and

decide their religion with no fear of discrimination by the government or individuals.²⁶⁵ In the developed non-Islamic states such as the USA, UK and France, the government and individuals cannot prevent any person from converting or abandoning his or her religion.²⁶⁶ Citizens of these non-Islamic states do not need zakat proceeds as they might have needed them in the past. The right to freedom of belief is already a guaranteed human right in many countries. Discrimination of individuals on the basis of their religion is illegitimate, so the conversion to Islam (or any other religion) is protected by the law.

freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’ Also Article 9 of the European Convention on Human Rights: ‘1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’

²⁶⁵ For example, Article 18 (1) and (2) of the The United Nations’s International Covenant on Civil and Political Rights: ‘1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice...’

²⁶⁶ Article 13 (1) of the English Human Rights Act: ‘If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.’

However, it is not allowed to abolish '*almu'allafatu qulubihim*' or to consider it as being a non-existent category. *Almu'allafatu qulubihim* as beneficiaries of zakat are mentioned in the Quran and were recognised during Prophet Muhammad's era. The Quran or any part of the verse cannot be abolished even if the latter two claims were logical and justifiable.²⁶⁷ The lack of *almu'allafatu qulubihim* persons does not indicate that the category should be abolished.²⁶⁸ The zakat authority should be true to the Quran and allow *almu'allafatu qulubihim* applicants to apply for zakat proceeds even if they are a minority.²⁶⁹ These persons should be given the opportunity to obtain zakat proceeds as *almu'allafatu qulubihim* persons.²⁷⁰ They are eligible as beneficiaries of zakat and thus have legal rights as stated in the Quran.

5.1.5 Slaves

The fifth category of zakat beneficiaries is slaves. A slave is one 'who is legally owned by another person,²⁷¹ and is forced to work.'²⁷² It was argued by Islamic scholars²⁷³ that

²⁶⁷ Ibn Maniie, A., *Bohooth fi Allqitisaad AlIslami* (AlMaktab AlIslami, Beirut 1996). p. 57.

²⁶⁸ Ibn Maniie, A., *supra* p. 53.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ Definitely workers and house servants cannot be considered slaves as they are employees by contractual relationship, which gives them certain rights of salary/wage, limited working hours, vacations, maternity or paternity leave, etc. Sargeant, M. and Lewis, D., *Employment Law* (4th edn, Pearson Education Limited, Harlow 2008) p. 40.

²⁷² Oxford Advanced Learner's Dictionary. p. 1435

²⁷³ Abu Hanifa and AlShafii. AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 88.

the Quran provided zakat benefits for slaves as a first measure to abolish slavery.²⁷⁴ During the era of Prophet Muhammad, slaves were not permitted to own money or property or to enjoy financial independence, but since it was revealed that the Quran stated that: ‘*Zakat’s fund must be distributed for... slaves*’²⁷⁵ slaves obtained a kind of financial independence through their eligibility to receive zakat proceeds. At that time, many slaves paid their owners for their release.²⁷⁶ Also, many zakat payers bought slaves to release them directly instead of paying the authority and having the latter distribute zakat proceeds to slaves.²⁷⁷

In any case, it is insignificant to elaborate on the category of slaves²⁷⁸ for slavery has been abolished in most parts of the world.²⁷⁹ Slave trading is a human rights violation in most of the United Nations’ (UN) member states.²⁸⁰ In Saudi Arabia there are no longer any slaves as slavery was abolished in 1962²⁸¹ by King Faisal’s decree.²⁸²

²⁷⁴ Then, Prophet Muhammad encouraged freeing slaves for the blessing sake, and called owners to let their slaves work independently. AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 91.

²⁷⁵ The Quran 9: 60.

²⁷⁶ AlQaradawi, Y., *supra* p. 87.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ Anti-slavery Society (2011) *How Many Slaves Are There?* < <http://www.anti-slaverysociety.addr.com/slavery3.htm>> accessed 13 April 2011.

²⁸⁰ Article 4 of the Universal Declaration of Human Rights: ‘No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.’ Also Article 8 (1) and (2) of the the United Nations’s International Covenant on Civil and Political Rights: ‘1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude.’ Also Article 4 of the European Convention on Human Rights (ECHR): ‘1. No one shall be held in slavery

5.1.6 Debtors

Debtors are the sixth category of zakat beneficiaries. Generally, a debtor is a person who owes money to another. With regard to the zakat, the category of the 'debtor' as a beneficiary is narrower. The beneficiary debtor is one who has 'financial sufficiency' (like the needy), so he or she is able to afford the necessities of life, but paying the debt will reduce him to poverty.²⁸³ The debtor, to be eligible as a beneficiary of zakat, must be in danger of falling into destitution and being unable to afford basic necessities should he pay his dues. The applicant or the debtor beneficiary has to have or be earning money but the amount he has or is earning cannot be enough to live on as well as pay off his debts. Or it could be said that the beneficiary debtors are those who have 'handed over to their creditors all the spare money and property in their possession.'²⁸⁴ For example, if X's wealth is 5000 and his debt is 4500, then he will become destitute and financially incapable as soon as he pays it. Hence, he can be considered to be a beneficiary debtor.

or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this article the term "forced or compulsory labour" shall not include...'

²⁸¹ BBC (2009) *Slavery in Islam* <http://www.bbc.co.uk/religion/religions/islam/history/slavery_1.shtml#section_8> accessed 13 April 2011.

²⁸² King Faisal declared that: 'The attitude of Islamic law towards slavery and its keen interest in liberating slaves is well known. It also known that any slavery existing at present fails to fulfil many of the Shari'a conditions laid down by Islam to allow slavery... The government now finds a favourable opportunity to announce the absolute abolition of slavery and the manumission of all slaves.' Quoted from Clarence-Smith, W, *Islam and the Abolition of Slavery* (C. Hurst & Co. Ltd, London 2006) p. 183.

²⁸³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 96.

²⁸⁴ Ibid.

AlQaradawi stressed that the zakat authority should not consider the debtor as a beneficiary unless the latter's debt meets the following three requirements. Firstly, to approve the application of a debtor for zakat proceeds, the activities which created the applicant's debt must not be prohibited under Islamic law.²⁸⁵ So, if someone owes an alcohol trader, gambling casino, or is in debt because of bank interests, the authority will not be obliged to give the debtor any zakat proceeds as such activities are illegitimate under Islamic law. On the contrary, debts arising from legitimate activities or due to the procurement of basic necessities of life such as food, clothes, marriage costs and medical treatments are good examples of acceptable debts.²⁸⁶ Secondly, as aforementioned, paying the debt needs to be financially harmful for the applicant debtor. If the applicant debtor has sufficient financial resources to pay the debt or has sufficient spare money he cannot be considered as a beneficiary.²⁸⁷ Thirdly, the debt must be currently payable or be payable soon.²⁸⁸ Thus if the authority finds that the debt is a long term one, to the extent that the applicant debtor can manage to afford to pay it off, the latter would not be eligible as a beneficiary of zakat.²⁸⁹

AlQaradawi states that the authority has to pay the debtor as long as the applicant debtor meets the three requirements.²⁹⁰ Only the zakat regulators can codify the

²⁸⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 97.

²⁸⁶ AlQaradawi, supra. p. 97.

²⁸⁷ Abu Zaid, M., *Wajib AlHukomah AlIslamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 290.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ AlQaradawi, Y., supra p. 89.

maximum amount that is to be paid by the authority to the beneficiary debtor as zakat proceeds.²⁹¹

5.1.7 *Fi Sabeel Allah (the Sake of God)*

The Quran's statement that the 'Zakat funds must be distributed to poor, needy, zakat administrators and *almu'allafatu qulubihim*, slaves, debtors, *fi sabeel Allah*'²⁹² reveals that *fi Sabeel Allah* is the seventh category of zakat beneficiaries. Islamic jurists agree that *fi Sabeel Allah* are those activities that promote and protect the interest of Islam or the Islamic states. This includes volunteer²⁹³ soldiers who are fighting in the name of Allah.²⁹⁴ AlQaradawi provides further examples for this category. For example, zakat proceeds can be given to people who want to do the Hajj, to support students and academics or individual publishers or to finance activists of Islamic websites. He suggests that the '*fi sabeel Allah*' category does not only comprise those who are fighting to protect Islam, but any person or activist who intends to preserve Islam. The First Conference of Contemporary zakat Issues (Cairo, Egypt 1988) had the same approach; that is that *fi Sabeel Allah* beneficiaries include any persons who are struggling with money for the purpose of preserving Islam. This category is similar to '*almu'allafatu qulubihim*' in that both are the subject of wide interpretation and subject

²⁹¹ For further discussion see 5.2.4.

²⁹² The Quran 9: 60.

²⁹³ To consider soldiers as zakat beneficiaries, they should be volunteers and not officially employed in the army or navy. According to Judge Abu Yusuf, volunteers who have not officially joined the army, and do not have weapons and other fighting tools are eligible to receive zakat proceed. AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AIRisalah, Beirut 2002) vol. 2, p. 110.

²⁹⁴ AlQaradawi, Y., *supra* p. 118.

to discretion by the zakat authority. There is no precise definition or standard to identify the ‘*fi Sabeel Allah*’ beneficiaries.²⁹⁵

5.1.8 Travellers

Travellers are the eighth category of zakat beneficiaries. Any traveller can be a beneficiary of zakat as long he or she is suffering from lack of financial sufficiency during his / her travels.²⁹⁶ So travellers who have run out of money, have lost money or are the victims of theft are considered to be potential beneficiaries of zakat.²⁹⁷

This category was very important in the past when there were no hotels, restaurants and embassies like there are today.²⁹⁸ Nowadays, AlQaradawi suggests, the zakat authority can transfer money to national airlines, universities or embassies located overseas so they could conveniently distribute it to destitute travellers as zakat proceeds.²⁹⁹

The two conditions of this category could be listed as the state of ‘travelling’ and ‘financial insufficiency’. The zakat authority is obliged to distribute zakat proceeds to poor travellers regardless of the purpose of the journey.³⁰⁰ Therefore, the beneficiary traveller could be in a travelling state because of tourism, education, medical treatment or scientific discovery among others.³⁰¹ Hajj can be included under this category as well

²⁹⁵ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 110.

²⁹⁶ AlQaradawi, Y., *supra* p. 149.

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ Unless the purpose of travelling is illegitimate (e.g. like trading in alcohol, terrorism or breaking foreign immigration laws). *Ibid.*

³⁰¹ *Ibid.*

as under the *fi sabeel Allah* category.³⁰² AlShaffi narrows the scope of this category when he states that the traveller beneficiary is the person who is travelling only *for the sake of Islam*³⁰³ (like studying Islamic law or to do the Hajj) and not for any other purpose like trading and tourism.³⁰⁴ However, this opinion was criticised by AlQaradawi,³⁰⁵ as AlShaffi's opinion implies pursuing the purpose of serving the religion of Islam rather than distributing zakat proceeds to eligible travellers.³⁰⁶

5.1.9 Are all Zakat Beneficiaries 'Poor'?

The question to be asked is 'do most of the beneficiaries of zakat meet the criterion of financial insufficiency?' Why not group all eligible beneficiaries under the 'poor' category? What is the reason for not gathering all the other seven categories of beneficiaries (the needy, administrators, *almu'allafatu qulubihim*, slaves, etc.) under the 'poor' category? This would put all beneficiaries on the same footing with regard to their legal rights and would simplify the disbursement mechanism by streamlining the criteria against which applicants are to be screened. It is a fact that five out of the eight categories of zakat beneficiaries (poor, needy, *almu'allafatu qulubihim*, slaves, travellers) share the same characteristic of financial insufficiency. They are all suffering from poverty and lack of resources. Having said this, it is important to distinguish zakat beneficiaries under different categories for the three reasons discussed below.

³⁰² AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 150.

³⁰³ Abu Zaid, M., *Wajib AlHukomah Allislamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 299.

³⁰⁴ AlQaradawi, Y., *supra* p. 154.

³⁰⁵ Ibn Malik and Ibn Hanbal held the same approach. AlQaradawi, Y., *supra* p. 155.

³⁰⁶ Abu Zaid, M., *Wajib AlHukomah Allislamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 300.

Firstly, the statement made in the Quran that ‘*Zakat funds must be distributed to poor, needy, zakat administrators, and almu'allafatu qulubihim, slaves, debtors, fi sabeel Allah and travellers*’³⁰⁷ clearly divides the zakat beneficiaries into eight different categories. It would be hard to justify ignoring this Quran categorisation and simply abolishing such distinctions. The Quran, as the primary source of Islamic law, cannot be overlooked or repealed.³⁰⁸ Thus, gathering all categories of beneficiaries under the ‘poor’ category and undermining the verse (to avoid administrative complexity) is unjustifiable and would be a breach of a fundamental Islamic principle. Secondly, it cannot be assumed that all of the people falling under the categories share the characteristic of the ‘poor’ with respect to financial insufficiency. There are eligible persons who are entitled to receive zakat proceeds although they are not poor. Prophet Muhammad’s states that, ‘Zakat funds are not to be distributed to the non-destitute except for *fi sabeel Allah* persons, zakat administrators, debtors...’ So administrators, debtors and *fi sabeel Allah* are not required to be poor to be beneficiaries.³⁰⁹ Administrators, as mentioned above, are employees of the authority. It is assumed that many of them are educated (e.g. accountants, managers, legal advisors) or are at least enjoying an average standard of life. Debtors are also not required to be destitute to obtain zakat proceeds.³¹⁰ *Fi sabeel Allah* persons are to be given zakat proceeds not because they are poor but merely for their activities and their desire to promote and protect the interest of Islam.³¹¹ Therefore, as not all categories share the characteristic of

³⁰⁷ The Quran 9: 60.

³⁰⁸ Abu Zahra, M., *Usul AlFiqh* (AlJawhara, Amman 2004) p.73.

³⁰⁹ Abaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 745.

³¹⁰ For further discussion, see 5.1.6 above.

³¹¹ For further discussion, see 5.1.7 above.

the 'destitute poor', it would be an error to gather all of them under the category of 'poor'.

Thirdly, since there are differences between the eight categories, the requirements of each must be different. To group all categories under 'poor' would be unjust. It would be unfeasible to standardise the applicant requirements for each category as each category has its own characteristics. For example, the poor applicant is eligible because he or she does not have a sufficient income or wage, so the documents, which prove his or her low income should be provided by him/her. The needy applicant needs to prove that he/ she suffered an accident, which rendered him / her destitute. The *almu'allafatu qulubihim* applicant should prove that he /she needs zakat proceeds because he /she has lost their previous job or position after converting to Islam. The debtor applicant has to prove that his / her debt is payable and he / she does not have or does not earn sufficient money.

Therefore, it could be said that distinguishing between each category and specifying each category's requirements is essential to the disbursement mechanism.

5.2 The Legal Position of Zakat Beneficiaries

This section examines the legal position of zakat beneficiaries and clarifies the extent to which beneficiaries of zakat are entitled to receive zakat proceeds. The scope of the zakat authority's discretionary power over the criteria against which the zakat applicants are assessed will be mapped.

5.2.1 Applicants' Rights

It is a subject of consensus among Islamic jurists that the eight categories of specified beneficiaries have a legal right to zakat proceeds.³¹² There is evidence from the Quran and the Hadith which proves this:

- The Quran states that '*Zakat funds must be distributed to...*'³¹³ The language used (the '*must*' request)³¹⁴ indicates that beneficiaries are entitled to receive zakat proceeds.
- The verse '*In Muslims' wealth there is a right of zakat for poor and needy*'³¹⁵ reveals that zakat proceeds are a legal '*right*' for the poor and the needy.
- The command of the Prophet Muhammad's statement 'It is obligatory to pay zakat, which will be taken from the rich to be given to the poor'³¹⁶ confirms that zakat funds must be distributed to the poor and the destitute.³¹⁷
- According to the Prophet's statement '*Zakat funds are not to be distributed to the non-destitute except for *fi sabeel Allah*, zakat administrator, debtor...*'³¹⁸ it appears that *fi sabeel Allah*, administrators and debtors are eligible zakat beneficiaries.

³¹² AlFawzan, S., *Istethmar Amwal AlZakat* (Dar Konoz Eshbilia, Riyadh 2005) p. 87.

³¹³ The Quran 9: 60.

³¹⁴ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 156.

³¹⁵ The Quran 51: 19.

³¹⁶ AlBukhari, S., *AlRawdah AlNadiyah fi Sharh AlDurar AlBahiyah* (Ulum AlDin, Cairo 1878) p. 573.

³¹⁷ Ibid.

³¹⁸ Abaadi, S., *Awn AlMa'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 745.

In an Islamic state, individuals have a genuine legal right to apply for zakat proceeds. In other words, any person in an Islamic state should be allowed to apply before the zakat authority to confirm his or her right to zakat proceeds. There is evidence of this, where a man came to Prophet Muhammad and asked him: ‘Give me some of the zakat money’ and the Prophet replied: ‘Allah has divided the qualifying beneficiaries into eight categories, so if you meet any of those categories’ requirements, I shall give you what you are yearning for.’³¹⁹ The statement indicates that applying for zakat proceeds should be a guaranteed right in the Islamic state. Hence, it could be said that zakat proceeds are not to be considered as state ‘privileges’ for beneficiaries. A privilege is a special benefit that is conferred by the sovereign or the administration upon specific persons,³²⁰ while zakat proceeds are legal rights arising from the Quran.³²¹ AbdulRazzaq AlSanhuri³²² equated applying for zakat proceeds to applying for a pre-emption right.³²³ Applicants for zakat proceeds and pre-emption rights need to meet specific requirements to be awarded the rights.³²⁴ Both of them may have the right to apply³²⁵ or

³¹⁹ Abaadi, S., *Awn Alma'bwod ala Sharh Sunan Abi Dawood* (Dar Ibn Hazm, Beirut 2005) p. 1626.

³²⁰ Barnett, H., *Constitutional and Administrative Law*, (10th edn, Routledge-Cavendish, Oxford 2013) p. 452.

³²¹ Privilege is to be granted or abolished according to the administration discretion, thus if the zakat proceed is considered privilege, applicants may not be able to access it easily.

³²² An Egyptian legal jurist and professor who drafted the revised Egyptian Civil Code of 1948 (1895-1971).

³²³ ‘The right of first refusal to purchase land in the event that grantor of the right should decide to sell.’ Oxford Dictionary of Law. p. 404.

³²⁴ AlSanhuri, A., *Masadir AlHaq fi AlFiqh AlIslami* (Dar Ihiya' AlTuraath AlArabi, Beirut 1997) vol. 1, p. 10.

to establish a right according to their legal positions (in French: *droit formateur*).³²⁶

This means that applicants of zakat proceeds first need to meet the criteria of any of the eight aforementioned categories to be entitled to receive zakat proceeds.

5.2.2 The Discretionary Power of the Zakat Authority

The discretionary power of the zakat authority is limited. On the one hand, the zakat authority's discretionary power is confined to a regulatory role. The Quran's verse, '*Zakat funds must be distributed to the poor, needy, zakat administrators, and almu'allafatu qulubihim, slaves, debtors, fi sabeel Allah and travellers*'³²⁷ limits the role of the authority. The Quran granted the zakat authority no power to legislate on the eligible categories; the authority was left only with some room to codify or regulate the requirements of the specified categories.³²⁸ The authority cannot extend or add to the eight categories of beneficiaries specified in the Quran. For example, the authority cannot identify 'guardians of extinct animals' as beneficiaries of zakat, or consider 'footballers' as a ninth category. These would not be eligible because the Quran hasn't mentioned them. In addition, this limited regulatory role does not allow the authority to repeal any of the eight categories.³²⁹

Even the authority's interpretative role of the criteria of the eight categories is limited. The authority's interpretation cannot be too flexible. Islamic jurists argue that

³²⁵ AlSanhuri, A., *Masadir AlHaq fi AlFiqh AlIslami* (Dar Ihiya' AlTuraath AlArabi, Beirut 1997) vol. 1, p. 10.

³²⁶ To claim for the pre-emption right, it is presumed that there should be an intention to sell by the other party. Ibid.

³²⁷ The Quran 9: 60.

³²⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 8.

³²⁹ Ibid.

the authority may only adjust the requirements of each category when it is exercising interpretive discretion,³³⁰ and it may not circumvent the Quran's specifications. For example, it was mentioned above that the 'poor' category must be controlled by the 'fixed' measurement in order not to allow the authority to distribute zakat proceeds to non-destitute persons. Moreover, as AlQaradawi argues, the zakat authority cannot extend its regulative discretion and include Islamic organisations and mosques under the '*fi sabeel Allah*' category. He stressed that the authority should not breach the principle that 'the fund of zakat is to be distributed to identifiable beneficiaries not to pursue purposes.'³³¹

The problem is that, since the zakat authority is codifying the requirements of beneficiaries and, at the same time, is administering the disbursement mechanism, it could be argued that the zakat authority still enjoys too much power. Hence, it bears asking whether these functions of regulation and administration grant the authority unlimited power.³³² The authority is both regulating the requirements of the categories of beneficiaries and approving applications. This poses a possible conflict of interest. Administering the disbursement mechanism does not give the authority unlimited discretionary power. The zakat authority's administrative discretion is also not unlimited because all resolutions issued by the authority are subject to judicial review.³³³ For example, where the zakat authority refuses to approve an applicant's

³³⁰ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 81.

³³¹ For further discussion see 5.2.3 below.

³³² AlQaradawi, Y., *supra* p. 8.

³³³ Like in the Saudi legal system. For further discussion see chapter 5 below.

documents, the latter will be able to review this refusal.³³⁴ The administrative discretionary power of the zakat authority is not absolute; it never allows administrators to violate the Quran or the regulation of zakat. The authority cannot take illegal or improper action against applicants and its discretionary power cannot be out of the zakat regulation's ambit.³³⁵ Therefore, although it may appear at first that the regulatory and administrative roles give the authority unlimited power, further analysis reveals this not to be the case. The Quran limits the authority's regulatory discretion and the administrative judicial system protects beneficiaries from improper or abusive actions by the authority.

5.2.3 Indefinable Beneficiaries v Pursuing Purposes

The question of which approach the zakat authority should adopt - 'to distribute zakat proceeds to 'identifiable beneficiaries' or to 'pursue specific purposes' - should be answered to elucidate the legal position of zakat beneficiaries. The basic principle is that the zakat authority is to distribute zakat proceeds to 'identifiable beneficiaries'.³³⁶ The authority is not to distribute zakat proceeds to beneficiaries to pursue any economic or social purpose.

Islamic jurists agree with the approach of distributing zakat proceeds to 'identifiable beneficiaries' for two reasons. First, this principle emerges distinctly from the identification of the eight categories of the verse: *'Zakat funds must be distributed for the poor, the needy, zakat administrators, and reconciled persons, slaves, debtors,*

³³⁴ Abu Zaid, M., *Wajib AlHukomah AlIslamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 290.

³³⁵ Ibid.

³³⁶ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 81.

soldiers and travellers'.³³⁷ The zakat authority has to distribute the fund of zakat to specific groups of beneficiaries because the Quran's identification/specification gives them eligibility.³³⁸ The Quran does not declare that the purpose of zakat disbursement is to decrease poverty or pursue other purposes. Even the Prophet Muhammad statement, 'It is obligatory to pay zakat, which will be taken from the rich to be given to the poor'³³⁹ confirms that zakat proceeds are to be given to the poor as an identifiable category. It does not state that the zakat system aims to fulfil any specific object. The authority undermines the Quran's intention if it chooses to give funds to people who are not identified beneficiaries but to fulfil other purposes.

Second, to codify the requirements of the poor, the needy, administrators, *almu'allafatu qulubihim* etc. in terms of identifying zakat beneficiaries is an appropriate function of the authority. However, if the zakat authority were to channel zakat proceeds to specific purposes it would eventually face difficulties³⁴⁰ as achieving large economic or social purposes (such as abolishing poverty, financing the administration, spreading Islam, supporting citizens who are overseas) is beyond the competence of the zakat authority.³⁴¹ It is also not the Quran's intention. For example, the authority can codify or regulate the requirements of 'poor' beneficiaries in order to be able to identify

³³⁷ The Quran 9: 60.

³³⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 81.

³³⁹ Muhammad, A.. and AlBukhari, I, AlJame " *Alsaheeh "Sahih Al Bukhari"* (Dar AlJeel, Beirut 2005) 573.

³⁴⁰ The opinion of Judge Goff in the *Re Denley* trust case could be applied here, 'Where, then, the trust, though expressed as a purpose, is directly or indirectly for the benefit of an individual or individuals, it seems to me that it is in general outside the mischief of the beneficiary principle.' *Re Denley* [1969] 1 Ch 373 at 387.

³⁴¹ AlQaradawi, Y., *supra* p. 84.

them but it is beyond the power of the authority to seek to abolish poverty or to meet everyone's needs.³⁴² In addition, the authorities can give zakat administrators zakat proceeds because they are employees of the authority,³⁴³ but the zakat fund cannot be used to finance the authority/administration's spending. Regarding the *fi sabeel Allah* category, zakat proceeds can be given to volunteer soldiers, while the fund cannot be used to finance a war or to pursue the goal of spreading the religion of Islam.

Debtors as beneficiaries of zakat are eligible to receive proceeds because they meet the regulated requirements of the category. The fund of zakat is to be distributed to those eligible debtors and not to pursue the aim of paying everyone's debts. Hence, creditors are not expected to approach the authority to receive zakat proceeds instead of the debtor.³⁴⁴ 'Creditors' are not a category that was mentioned in the Quran, and there is no evidence which reveals that the zakat fund's purpose is to pay everyone's debts. The zakat authority is only accountable for distributing zakat funds to the eight specified categories (including debtors). It is not its competence or concern to pay all payable debts. Ibn Hanbal argues that it is not permitted for the authority to issue funds to the debtor's heir unless the latter also meets the 'debtor' requirements. If the zakat authority were to issue funds to the debtor's heir without considering his or her circumstances this would be akin to paying the debt itself instead of giving zakat

³⁴² AlDeesouqi, S., *Hashiyat AlDeesouqi ala AlSharh AlKabeer* (AlAa'ilah AlMahdiyah, Cairo 1906) vol. 1, p. 401.

³⁴³The *Re Denley* trust case clarifies such distinction. 'The trust provide sport facilities for employees of a particular company will be people trust because it provides some benefits for identifiable beneficiaries..' Hudson, A., *Equity and Trust* (6th edn, Routledge-Cavendish, Oxford 2010) p. 175.

³⁴⁴ The right of zakat proceeds is like the pre-emption right that they cannot be exploited by creditors. AlSanhuri, A., *AlWaseet fi AlQanoon AlMadani* (Munsha'at AlMa'arif, Alexandria 2004) vol. 9, p. 464.

proceeds to an identifiable debtor.³⁴⁵ This would mean that the authority is violating the principle of distributing the fund of zakat not for a purpose but to identifiable debtors. Thus, if a debtor beneficiary dies while his debt is still payable, the authority is not obliged to give zakat proceeds to this beneficiary's heir except if the latter is financially incapable of paying the inherited debt.³⁴⁶

Currently there is an argument on whether the authority can include persons who are in need of legal-aid under the 'needy' category. In principle, the criteria of the 'needy' beneficiaries are 'minimum financial sufficiency' and 'immediate need for help'. People who need legal aid are usually 'not wealthy' and 'need legal advice urgently'. This means that a legally-aided person meets the 'needy' beneficiaries category criteria. Thus, persons who need legal-aid (in a state that has no legal aid fund like Saudi Arabia) may apply before the zakat authority as needy beneficiaries.³⁴⁷ Since there is a conceptual difference between the 'needy' and the 'legally-aided' person. 'Needy' can cover those who are in need of legal-aid. The notion of 'legal-aid' or 'legal aid fund' is regularly used only to finance or maintain claims.³⁴⁸ This is not inconsistent with the principle of the 'zakat fund which is to be distributed to identifiable beneficiaries'. Usually a legal aid system pursues the legal aid purpose.³⁴⁹ It endures the expense³⁵⁰ of

³⁴⁵ Ibn Qudamah, M., *AlMuqni* (Dar AlKitab AlArabi, Cairo 2010) vol. 2, p. 667.

³⁴⁶ AlSanhuri, A., *AlWaseet fi AlQanoon AlMadani* (Munsha'at AlMa'arif, Alexandria 2004) vol. 9, p. 464.

³⁴⁷ The Kuwaiti Zakat House includes people who need legal-aid under the poor or needy categories. Kuwaiti Zakat House (2011) <http://info.Zakathouse.org.kw/ahkam_ftawa/AHKAMPAGES/MSAREF%20AL-ZAKAT.HTM> accessed 23 April 2011.

³⁴⁸ Denning, A., *What Next in the Law* (Oxford University Press, Oxford 2008) p.92.

³⁴⁹ Cohn, E., *The Political Parties and Legal Aid* (1945) 3 *The Modern Law Review* p. 99.

the legal-aided persons' claims or defences to fulfil their needs.³⁵¹ The approach in the zakat system is different. The zakat authority exercises discretion on applications to determine whether or not applicants are needy. It considers the immediate need for legal aid only as grounds for the applicant's eligibility. The needy applicant can obtain zakat proceeds if his / her 'immediate need' is raised as a result of the need for legal aid and it is expected that the authority examine his / her application as an applicant in the 'needy' category not as an applicant of legal-aid, as applicants who are in need of legal-aid are never mentioned clearly in the Quran's eight categories, while the needy 'category' is unambiguously specified.³⁵² Thus, because the needy and the legally-aided have similar requirements, it is possible to give zakat proceeds to those who are in need of legal-aid under the 'needy' category.

The principle that the disbursement of zakat is based on the 'identifiable beneficiaries' approach and not to 'pursue specific purposes' covers two aspects. First, the authority is accountable when it is codifying the specifications of the categories to the Quran's specification of beneficiaries. As just mentioned above, the authority must

³⁵⁰ Lord Denning stated on the English Legal-aided persons: 'Those who are poor – of small means – can bring their cases at the expense of the state. They can have them conducted by lawyers of their choice – without making any contribution out of their pocket. They make a 'nil' contribution, as it is called. If they win, they pocket the winnings. If they lose, they do not have to pay any of the costs of the other side.' Denning, A., *What Next in the Law* (Oxford University Press, Oxford 2008) p.92.

³⁵¹ 'Assistance to needy persons is not a matter of grace.. It is an indispensable part of the administration of justice which the modern state, which recognises the Rule of Law, provides for those of its citizens who need it.' Cohn, E., *supra*.

³⁵² The authority and statesmen have no power to add, amend or repeal any of the Quran. The authority has to bind the Quran as it is, along with codifying beneficiaries' requirements. It cannot add the 'legal-aided' person as the ninth category.

not expand the scope of beneficiaries to such an extent that it leads to the accommodation of new types of categories.³⁵³ Second, the principle of distributing zakat proceeds to ‘identifiable beneficiaries’ confirms that the fund of zakat is *ring-fenced*. This means that the authority is not permitted to spend zakat funds to pursue purposes. The zakat fund is to be distributed only to the identified eight categories.

5.2.4 Determining the Allocation of Zakat proceeds

Generally, there are three considerations that can affect how the authority allocates zakat proceeds. Firstly, the size of the zakat fund plays the greatest role in determining how much each beneficiary will receive. It is an axiom or self-evident *that the more zakat that has been collected, the higher the amount of zakat proceeds that will be received by beneficiaries*.³⁵⁴ When the zakat authority collects a large sum this reflects positively on the allocations of zakat proceeds and *vice versa*.³⁵⁵ When the zakat fund is substantial, there are fewer problems confronted by the authority in terms of distribution. For example, if the authority collects £10,000,000,000 in the first year and needs to distribute the fund among 500,000 eligible beneficiaries, each beneficiary will receive £20,000. If the authority collects £15,000,000,000 in the next year and has to

³⁵³ For further discussion see 5.2.2 above.

³⁵⁴ Abu Zaid., M., *Wajib AlHukomah AlIslamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 397.

³⁵⁵ This consideration impels the authority to collect zakat efficiently and to impose deterrent penalties to prevent evasion actions. For further discussion see chapter 4 below.

distribute the funds among the same number of eligible beneficiaries, each beneficiary will receive the higher sum of £30,000.³⁵⁶

Secondly, the economic standing of the state also plays an essential role in determining how much of the zakat proceeds will be distributed to the beneficiaries. The economic difficulties (e.g. high rate of inflation and recession) can widen the scope of poverty which consequently will increase the number of destitute beneficiaries. Indeed, economic difficulties place a heavy burden³⁵⁷ on the zakat authority as it obliges it to help a higher number of beneficiaries.³⁵⁸ Recession, inflation and other economic shocks harm individuals economically and raise the rate of those who suffer from financial insufficiency (i.e. the poor).³⁵⁹ As a result, the authority is obliged to decrease individual zakat allocations to cover as many destitute people as possible. Thus it could be said that *the more unhealthy the economy, the lower the amount of zakat funds that will be received by beneficiaries.*

Thirdly, the policy of the zakat authority toward the fund and the disbursement mechanism has a role in determining allocations. AlShafii suggested dividing the zakat fund into eight allocations. Each 1/8th allocation is to be devoted to one specific category. He arrived at the conclusion that each allocation should be *ring-fenced* for its

³⁵⁶ Hence, actions of zakat evasion are strictly considered a crime, as it obstruct the authority's plan in associating with the beneficiaries and bother the disbursement mechanism. Abu Zaid., M., *Wajib AlHukomah AlIslamiya Iza' AlZakat* (Dar AlNahda AlArabiya, Cairo 2009) p. 397.

³⁵⁷ Nevertheless, unstable economy or poverty increasing is a heavy burden on the authority because zakat is a regressive flat levy. The authority cannot collect zakat progressively to allocate bigger amount for beneficiaries.

³⁵⁸ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 24.

³⁵⁹ Robson, P. and Kjønstad, A., *Poverty and the Law* (Hart Publishing, Oregon 2001) p. 44.

category. For example, if the allocation to the ‘travellers’ category is £1,000,000,000 the authority should maintain this allocation for this category and not distribute it to other categories. AlShafii prefers to distribute the funds equally among the categories, so each category receives 1/8th of the fund.³⁶⁰ AlShafii’s system would make the disbursement mechanism complex and expensive. If his system were to be adopted the zakat authority would have to gather updated data on each category. AlBukhari argued against AlShafii’s approach and stressed that it is not unlawful for the authority to devote a higher allocation of funds to one category over another.³⁶¹ For example, the allocation to the ‘poor’ category can be £10,000,000,000 while the allocation to the ‘travellers’ category can be £1,000,000,000 – a tenth of the sum. He said that the authority might find that allocating a higher amount to one category is necessary to respond to socio-economic needs.³⁶² Allocations of zakat proceeds should be based on socio-economic priorities because there is no Quran’s ranking of beneficiaries.³⁶³ AlBukhari also argued against AlShafii’s opinion because it is costly. There is no doubt that collecting updated data is a costly function. It would require a budget for research and researchers among other expenses.³⁶⁴ For example, the authority would be required to find out whether the rates of the poor or the debtors are increasing in order to amend the allocation amount.

³⁶⁰ AlQaradawi, Y., *Fiqh AlZakat* (Mo‘asasat AlRisalah, Beirut 2002) vol. 2, p. 163.

³⁶¹ Ibn Hanifah suggested that zakat’s fund can be distributed to one category if it is more profitable to enrich one category rather than to give allocation for each category. Redah, supra. p. 593.

³⁶² Muhammad, A., and AlBukhari, I, *AlJame’ AlSaheeh “Sahih Al Bukhari”* (Dar AlJeel, Beirut 2005)

136.

³⁶³ Ibid.

³⁶⁴ Houd, M., *AlNizaam AlA’lami le AlZakat* (Maktabat AlMalk Fahad AlWataniyah, Riyadh 2006) p.

122.

Therefore, since dividing the zakat fund into eight equal allocations would be complex and costly it is suggested (by jurist such as AlBukhari) that the authority do not follow such a strategy with regard to the disbursement mechanism.³⁶⁵ It would be a less-complex process to consider the entire zakat fund to be a *ring-fenced* fund and to let the socio-economic needs determine the size of the allocations of the different categories. For example, when the poverty rate increases, the allocation for the poor would automatically increase because more poor applicants will apply.³⁶⁶ The collection and distribution of zakat are ongoing functions during the financial year.³⁶⁷ The authority receives cash from payers on a daily basis.³⁶⁸ The zakat fund is not distributed only on one occasion; it is distributed throughout the year,³⁶⁹ so it is not practical to allocate a 1/8th distribution limit for each category as this would not fit in with the flexible nature of the disbursement mechanism.³⁷⁰

5.3 The Legality of Investing the Zakat Fund

This section examines the legality of investing the zakat fund. It first provides a general overview of the legitimacy of beneficiaries and payers' investments and then considers the legality of the authority investing the zakat fund.

³⁶⁵ Muhammad, A. and AlBukhari, I., *AlJame' Alsaheeh "Sahih Al Bukhari"* (Dar AlJeel, Beirut 2005) 136.

³⁶⁶ Ibid.

³⁶⁷ Jeffrey, Y., Madani, G and BaSHAikh, The Impact of zakat on the Cash Flow in the Kingdom of Saudi Arabia: A Comparative Study (1991) 5 *Journal of King Abdulaziz University* p. 10.

³⁶⁸ Ibid.

³⁶⁹ Houd, M., *AlNizaam AlA'lami le AlZakat* (Maktabat AlMalk Fahad AlWataniyah, Riyadh 2006) p. 82.

³⁷⁰ Muhammad, A. and AlBukhari, I., *supra*.

5.3.1 Investment of Zakat by Beneficiaries and Payers

It goes without saying that the beneficiary of zakat who has already received the zakat proceeds is able to invest this amount of money.³⁷¹ After the allocation of zakat proceeds to a beneficiary has been approved by the zakat authority, the funds are considered to be the beneficiaries property who is considered to be the owner of the zakat proceeds, so he or she shall enjoy a legal right to do anything he or she wishes with them (e.g. invest,³⁷² spend or redistribute them).³⁷³ It is beyond the zakat authority's power to prevent the beneficiary from investing his or her money.³⁷⁴

Regarding investments by payers, it is not allowed for a payer to delay paying his / her dues of zakat for the purposes of investment.³⁷⁵ According to Hanafians,³⁷⁶ Malkists,³⁷⁷ Shafiists³⁷⁸ and Hanbalians,³⁷⁹ zakat must be paid as soon as it becomes payable. It is not acceptable for the zakat payer to petition the authority to delay paying the zakat because he/she has money invested. Islamic jurists stress that because investments are generally long term they can delay or impede the disbursement

³⁷¹ AlFawzan, S., *Istethmar Amwal AlZakat* (Dar Konoz Eshbilia, Riyadh 2005) p. 155.

³⁷² Unless they are investing in something that is against Islam or the public laws.

³⁷³ AlSanhuri, A., *AlWaaseet fi Sharh AlQanoon AlMadani* (AlMaarif le AlNashr, Alexandria 2004) vol. 2, p. 2.

³⁷⁴ AlFawzan, S., supra p. 155.

³⁷⁵ This is the opinion of most of the Hanafians, Malkists, Shafists and Hanbalians. AlGhofeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 470.

³⁷⁶ AlKasaani, A., *Badaa'ie AlSanaa'ie* (Dar AlKutub AlElmiyah, Beirut 2003) vol. 2, p. 490.

³⁷⁷ AlQuraafi, S., *AlThaakeerah* (Dar AlGharb AlIslami, Beirut 1994) vol. 3, p. 137.

³⁷⁸ Sherbeeni, K., *Mughni AlMuhtaaj* (Dar AlMaferah, Beirut 1997) vol. 1, p. 606.

³⁷⁹ Buhooti, M.lghofee, *Khashaf AlKeenaa' fi Matn Allqnaa'* (Dar Aa'lam AlKutub, Riyadh 2003) vol. 3, p. 902.

mechanism, which is not to the benefit of the eligible beneficiaries.³⁸⁰ Also, investing the payable amount by payers will put a heavy liability on them and the authority, as investments could possibly lead to a loss. As a result, it is illegitimate to let the payer invest the payable zakat amount; it must be paid immediately.³⁸¹

5.3.2 Investing Zakat Funds by the Authority

The proponents of the authority investing the zakat fund argue that the profits arising from such an activity will be passed on to beneficiaries and increase their proceeds.³⁸² They believe that it is more beneficial economically to invest the zakat fund than to distribute it directly to the beneficiaries. The aim of investing it would be to grow the zakat fund for the beneficiaries' welfare.

There is also an opposing approach to the one which permits the authority to invest the zakat fund.³⁸³ This other approach does not allow the authority to engage in such types of activity. The Fiqh Council of the Muslim World League³⁸⁴ agreed in its 15th round that the authority must not invest the zakat funds.³⁸⁵ The Saudi General Presidency of Scholarly Research and Ifta also adopted the same approach. The General Presidency issued a resolution which rejects such a thesis³⁸⁶ in an interpretative

³⁸⁰ AlGhufeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 472.

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ AlGhufeeli, A., *supra* p. 479.

³⁸⁴ Was founded in Mecca 1962. One of the largest Islamic non-governmental organizations. It accommodates 22 Islamic states.

³⁸⁵ AlGhufeeli, A., *supra* p. 479.

³⁸⁶ Ibid.

consideration of the verse. The investment purpose was not mentioned in the Quran:³⁸⁷ *'Zakat funds must be distributed to the poor, needy, zakat administrators, and almu'allafatu qulubihim, slaves, debtors, fi sabeel Allah and travellers'*.³⁸⁸ There is no clear mandate in the Quran or the Prophet Muhammad's statement which encourages this type of investment. The Saudi General Presidency of Scholarly Research and Ifta consider investment to be an additional category of beneficiaries even if its revenue would eventually be distributed to the beneficiaries. For them, the priority is to distribute the zakat fund directly to the specified beneficiaries, as this is the main function of the zakat system.

However, the supporters of the first opinion argue that investing the zakat fund does not mean that the authority is constructing a ninth category of zakat beneficiary (as was argued by the Fiqh Council of the Muslim World League and the Saudi General Presidency of Scholarly Research and Ifta). Investment tends to grow the fund, not to deliver new types of beneficiaries.³⁸⁹ To arrive at the legality of investing zakat funds by the authority, it is important firstly to clarify the legal relationship between the zakat authority and the beneficiaries.

It could be said that the relationship between the zakat authority and beneficiaries is similar to the relationship between trustees and beneficiaries. The zakat authority, as a trustee, is obliged by the Quran to distribute the fund among beneficiaries.³⁹⁰ The three

³⁸⁷ AlGhobeeli, A., supra p. 479.

³⁸⁸ The Quran 9: 60.

³⁸⁹ AlFawzan, S., *Istethmar Amwal AlZakat* (Dar Konoz Eshbilia, Riyadh 2005) p. 166.

³⁹⁰ However, the relationship between the zakat authority and beneficiaries cannot be considered similar to the contractual 'fiduciary' relationship. The authority and beneficiaries of zakat are not in a bilateral agreement or contractual relationship. There were no rights and obligations between the authority and

certainties in the creation of express trusts³⁹¹ (intention, subject and beneficiaries)³⁹² can be found in the zakat system. Firstly, in the Quran's statement that '*Zakat funds must be distributed for poor, needy...*'³⁹³ the 'intention' of disbursement is clear. The phrase '*must be distributed*' clearly indicates that the zakat fund is devoted to enriching identifiable categories of beneficiaries. Neither the will of the Quran nor the intention of disbursement is ambiguous.³⁹⁴ Secondly, the subject matter of the trust is also specified and clearly stated as the '*Zakat funds...*' The '*Zakat funds*' which are held by the authority are considered to be the subject of the relationship between the zakat authority and beneficiaries. The subject matter here is the funds of zakat which were collected from zakat payers (it is not any other possession that belongs to the authority, such as its budget and other properties). Thirdly, the eight types of beneficiaries (the object) are principally identified, '*Zakat funds must be distributed for poor, needy, zakat*

beneficiaries until the verses were revealed to regulate their positions. Indeed, the authority and the beneficiaries are not free to regulate their incidents. The Quran gives rise to the disbursement mechanism to be enforced and recognised, hence it cannot be pretended that the relationship between the authority and beneficiaries of zakat is of a fiduciary nature. It was the Quran that commanded the authority to collect zakat as an imposed levy and then instructed them to distribute it to the identifiable beneficiaries. Basically the legal relationship here is similar to the one that is between trustees and beneficiaries rather than the one between the principal and beneficiaries. Hudson, A., *Equity and Trust* (6th edn, Routledge-Cavendish, Oxford 2010) p. 1015.

³⁹¹ In Saudi Arabia trust law exists. Nonetheless, Islamic law knew the '*waqf*' which is 'a device which was used within Muslim families to provide for property to be held by one family member for the benefit of other family members.

³⁹² Hudson, A., *supra* p. 73.

³⁹³ The Quran 9: 60.

³⁹⁴ Trone, D., Allbright, W. and Taylor, P., *The Management of Investment Decisions* (McGraw-Hill, USA, 1996) p. 27.

administrators, and almu'allafatu qulubihim, slaves, debtors, fi sabeel Allah and travellers'.³⁹⁵ (Their criteria were clarified above, so the point here is that there are entitled beneficiaries who do exist).

A number of Islamic jurists dealt with the subject from the perspective of the trust investment rules. The International Islamic Fiqh Academy (IIFA) which belongs to the Organization of the Islamic Conference (OIC) issued Resolution no. 15 (3/3) 1986 which declared that the zakat authority is permitted to invest the zakat fund³⁹⁶ as long as the investment meets the following three conditions:³⁹⁷

- The authority should avoid risky businesses.
- The profits of the investment are to be distributed to the beneficiaries of zakat.
- The authority should not delay distributing zakat proceeds because of the investment excuse.

Firstly, the zakat authority needs to choose where to invest wisely; it needs to choose low risk investments which give the best available returns.³⁹⁸ Since the beneficiaries have a legal right to the zakat funds, the zakat authority, as holder of the fund, should avoid investing in risky businesses. Scholars of the IIFA declare that acting safely in the interest of the beneficiaries is the most important factor to consider before investing the

³⁹⁵ The Quran 9: 60.

³⁹⁶ The International Islamic Fiqh Academy of the Organization of the Islamic Conference, Round 3, No. 15 (3/3), dated 11-16/October/1986. Amman, Jordan.

³⁹⁷ Kuwait zakat House and jurist AlQaradawi adopted similar approach. AlGhofeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 387.

³⁹⁸ Ibid.

zakat fund.³⁹⁹ In fact, scholars of IIFA are in agreement with Alastair Hudson's⁴⁰⁰ statement about the trust investment's low-risk approach: 'In this situation, the trustees would not be seeking investments which promised a high return at a potentially unacceptable level of high risk, but rather, once a field of suitable investment had been identified, the trustees would be required to choose the most remunerative of those suitable investments.'⁴⁰¹ Secondly, any profits made by zakat fund investments should be considered as legally belonging to the beneficiaries of the funds.⁴⁰² The permission to invest zakat funds by the authority was initially given in order to enhance and maintain the fund for the beneficiaries, so the investment revenue cannot be distributed to the private sector for example. The profits should be distributed among the eight categories of beneficiaries after the authority has subtracted what it has paid in investment costs.⁴⁰³ The administrators of these investments are still covered by the 'administrators' category, as they are working within the administration of zakat to grow the fund.⁴⁰⁴ Thirdly, the zakat proceeds should not be delayed. The beneficiaries should have access to their allocation with no delay caused because of the investment. Otherwise, the

³⁹⁹ AlGhoseeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 387.

⁴⁰⁰ An English barrister and legal academic (1968). He is professor of equity and trust at Queen Mary, University of London.

⁴⁰¹ AlGhoseeli, A., *supra* p. 387.

⁴⁰² AlGhoseeli, A., *supra* p. 483.

⁴⁰³ *Ibid.*

⁴⁰⁴ Administrators or managers of the investment are covered by the 'administrators' category, for they are working consistently with the administration to grow the fund. AlGhoseeli, A., *supra* p. 501.

investment of the zakat fund by the authority cannot be said to be any different from the investment of zakat dues by the payer, which is not allowed.⁴⁰⁵

As can be seen, ‘the duty of care’ is the authority’s duty (as a trustee) toward the zakat fund,⁴⁰⁶ which means that the authority needs to preserve and protect the fund.⁴⁰⁷ The zakat fund is like a trust that must be distributed to identifiable beneficiaries and the authority is acting as a trustee in the disbursement mechanism. It is not incorrect to say that investing the zakat fund is legal as long as it considers the IIFA’s conditions of low risk investment, of ensuring that the revenue is to be distributed among the eight categories of beneficiaries and as long as the beneficiaries’ rights are not affected by delays. AlGhoffeli states that investing the zakat fund is not a priority as the fund must directly be distributed to the beneficiaries.⁴⁰⁸ However, the zakat authority can invest any surplus in the zakat funds, when the fund is facing no deficit, and thus ensure that no delay or obstacle impedes the distribution mechanism.⁴⁰⁹ Finally, the authority should consider the overall socio-economic climate to decide whether it is appropriate to invest the zakat fund.⁴¹⁰

⁴⁰⁵ AlGhofeeli, A., *Nawazel AlZakat* (AlMaiman and Bank AlBilad, Riyadh 2008) p. 501.

⁴⁰⁶ Hudson, A., *Equity and Trust* (6th edn, Routledge-Cavendish, Oxford 2010) p. 150.

⁴⁰⁷ The Fourth Conference of Contemporary zakat Issues (Manama, Bahrain 1994) held that the authority, if it invested the zakat fund, is not liable for commercial losses but only is liable for negligence. AlFawzan, S., *Istethmar Amwal AlZakat* (Dar Konoza Eshbilia, Riyadh 2005) p. 200.

⁴⁰⁸ AlGhofeeli, A., *supra* p. 481.

⁴⁰⁹ *Ibid.*

⁴¹⁰ *Ibid.*

5.4 Conclusion

This chapter clarified the basics of the zakat disbursement mechanism. It revealed the main characteristics of the zakat beneficiaries (the poor, the needy, zakat administrators, *almu'allafatu qulubihim*, slaves, debtors, *fi sabeel Allah* and travellers) and examined their legal position and rights. The chapter confirmed that eligible beneficiaries have a genuine legal right to zakat proceeds. There is no doubt that the intention of the Quran, which is the supreme law of the Islamic state, is to enrich the eight identified types of beneficiaries and not to pursue other purposes. The Quran limits the authority's discretionary powers and prevents the authority from expanding the criteria, which define the eligibility of beneficiaries, abusively. Thus protecting the legal rights of the beneficiaries.

CHAPTER SIX

ISSUES OF ZAKAT IMPLEMENTATION IN SAUDI ARABIA

This chapter examines zakat practice in Saudi Arabia. First, it provides an overview of the Saudi legal system, discussing the position of zakat in Saudi Arabia and the history and functions of the Department of Zakat and Income Tax (DZIT). The chapter measures the Saudi zakat practice against the principles of zakat which were established in the preceding chapters. It argues that fatwas issued by the General Presidency of Scholarly Research and Ifta have rendered the contemporary practice of zakat distant from the fundamental principles of zakat.

6.1 An Overview of the Saudi Legal System

The Kingdom of Saudi Arabia is a sovereign Arab Islamic State whose national religion is Islam. The country's constitution is the *Holy Quran* and the Prophet Muhammad's statements, which are regarded as the primary foundations for laws and regulations. Article 7 of the Saudi Basic Law of Governance states that the "Government in the Kingdom of Saudi Arabia derives its authority from the Quran and the Prophet Muhammad's statements, which are the sources and reference for this Law and the other laws of the Kingdom".

Article 44 of the Basic Law of Governance divides the Saudi state authorities into three branches: *Majlis al Shura* (the regulatory authority), the judicial authority, and the executive authority. According to this article, *Majlis al Shura* "shall be concerned with the making of laws and regulations which will safeguard all interests and eliminate evil

from the State's affairs according to the Islamic law".¹ The Judiciary is an independent authority, and the decisions of judges are not subject to any authority other than the authority of Islamic law.²

Article 5 of the Saudi Basic Law of Governance states that the Kingdom is a Monarchy, and Article 56 clarifies that the Saudi King is also the Prime Minister and that members of Majlis al Shura shall assist him in the performance of his mission.

6.1.1 Majlis al Shura

King Abdul Aziz founded the Majlis al Shura in Mecca in 1924. He intended to establish an Islamic Kingdom and to apply Islamic law. The King considered al Shura to be the foundation of his government, giving Islamic jurisprudence a regulatory and advisory assembly.³ In 1992, King Fahd Ibn AbdulAziz issued decrees to modernise all major laws in the country, including the Majlis al Shura Law.⁴ It was believed that the modernisation of Majlis al Shura would develop and enhance al Shura's functions and ensure that al Shura could cope with the rapid developments in the country in all areas in order to keep pace with the demands and requirements of modern times.⁵

On 1 August of 2005, King Abdullah Ibn AbdulAziz ascended the throne. As Crown Prince, he had given the Majlis al Shura his utmost attention, supporting it and

¹ The Saudi Basic Law. Article 67.

² The Saudi Basic Law. Article 46.

³ Majlis AlShura (2014) <<http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Historical+BG/>> accessed at 10 July 2014.

⁴ Ibid.

⁵ Ibid.

strengthening its functions by amending some articles of al Shura law to anticipate the development of the Kingdom's economy. ⁶

However, the Majlis al Shura is not regarded as a legislative authority in the widest sense of that word. According to Article 44 of the Saudi Basic Law of Governance, it is only a regulatory authority. Al Shura does not have sole legislative power or a sovereign parliamentary authority like the UK Parliament, for example.⁷ In Saudi Arabia, according to Article 7 of the Basic Law, the Quran and the Prophet Muhammad's statements are the source of law, and they cannot be amended or challenged by Majlis al Shura.

Thus, al Shura is not considered competent to legislate but only to regulate and codify what is stated in the Quran and the Prophet's statements; its resolutions and endorsements should not conflict with these primary sources of Islamic law but simply codify and update them according to changing socio-economic needs.⁸ For that purpose, Majlis al Shura relies on the Supreme Council for Religious Endowments, which is specialised in studying issues related to Islamic law.⁹

⁶ Majlis AlShura, supra.

⁷Barnett, H., *Constitutional and Administrative Law*, (6th edn, Routledge-Cavendish, Oxford 2006) p. 151.

⁸'The law of the Majlis AlShura states that its role shall be defined by royal order, and recognises the king's paramount role under the Saudi interpretation of Shari'a [the Islamic law]. At the same time, the Quran does call on the king to consult with his advisors, and there is a potential precedent in Shari'a that the king should not overrule any recommendation where both the Majlis and Council of Ministers agree.' Cordesman, A, *Saudi Arabia Enters the Twenty-First Century* (Greenwood Publishing Group, Westport 2003) p. 152.

⁹ Majlis AlShura (2014) *Committees* <<http://www.shura.gov.sa/wps/wcm/connect/shuraen/internet/committees>> accessed at 10 July 2014.

6.1.2 The Saudi Judicial Bodies

Since Saudi Arabia is an Islamic state, its judicial system is based on Islamic law.¹⁰ In April 2005, a royal order approved a plan to reorganise the judicial system. On 1 October of 2007, a second royal order approved the new system. Changes included the establishment of a Supreme Court and special commercial, labour, and administrative courts.¹¹ According to Article 9 of the Saudi Judiciary Law of 2007, the Courts must consist of the High Court (*Almahkama Al'olia*), the Court of Appeal (*Mahkamat Alisti'naaf*), and the Courts of First Instance (*Mahakim Aldaraja Al'oula*). "The Ministry of Justice shall assume the administrative and financial supervision over the courts and other judicial panels, take actions, and submit to the appropriate authorities such proposals and projects as may secure the proper standard for the justice system in the Kingdom".¹²

¹⁰ 'In Saudi Arabia, Islamic Shari'a [Islamic law] is the law applicable to all judicial matters. It should be applied according to the Hanbali school of jurisprudence, but if there is no rule in this school that can be applied to the case which is being dealt with or if the application of some rules of the Hanbali school are not in the interest of the public, the other three schools of jurisprudence (Hanafi, Shafii and Malki) can be consulted. However, considerable changes, both economically and socially, in the country particularly over the last few decades have created pressing need for the enactment of regulations by Royal Decrees, Ministerial Decisions or Administrative Circulars in many fields of activity such as business, banking, labour, social security and arbitration, etc. Such legislation is meant to supplement the Shari'a law and is approved of by it, because it is not contrary to Shari'a principles. 'AlGhadyan, A., The Judiciary in Saudi Arabia (1998) Arab Law Quarterly, vol. 13. p. 225.

¹¹ The Saudi Government (2014) <http://www.saudiembassy.net/about/country-information/government/legal_and_judicial_structure.aspx> accessed at 10 July 2014.

¹² Article 87 of the Saudi Law of Judiciary 1975.

6.1.2.1 The High Court

The High Court, as a successor to the Supreme Judicial Council, is regarded as the highest judicial authority in the Kingdom and is thus the final court of appeal. The duties of the High Court, in accordance with Article 11 of the Law of Judiciary of 2007, are:

- Giving legal opinions about judiciary matters upon request of the Minister of Justice.
- Examining the questions referred to it by the King regarding Islamic law.
- Reviewing capital punishment.
- Reviewing cases in which a party is not satisfied with the decision of the court of appeal in case the decision contradicts Islamic law or is issued by a court that lacks the competence to decide on the issue under dispute.
- Examining questions of Islamic law that, in the opinion of the Minister of Justice, require a statement of general Islamic law principles.

Similarly to the Supreme Judicial Council, the High Court's decisions on cases referred to it from the Court of Appeal are binding upon all other courts, including the Court of Appeal. As a result, the High Court has a powerful influence on the development of law in the country. However, the administrative court decisions are not yet available to the public, which contradicts the basic rules of transparency and justice. The previous Law of Judiciary of 1975 provided for the regular publication of a selection of judicial decisions.

6.1.2.2 *The Court of Appeal*

The Court of Appeal was established in 1927 under the name of *Hay'at ALTadqeat AlShar'iyah*. After the enactment of the Law of Judiciary of 1975, the same Committee functioned under the name of *Mahkamat ALTameez*. The Law of 2007 added a new division to this court and divided it into five departments: the Civil Division, the Criminal Division, the Personal Status Division, the Commercial Division, and the Labour Division.

6.1.2.3 *Courts of First Instance*

The general courts were established by the same royal order which established the Court of Appeal in 1927. The judge in these courts sits alone, except in cases of executions, stoning, amputation, kidnapping, armed robbery, and other serious criminal offences specified in the Judiciary Act and which must be decided by three judges. These courts have both civil and criminal jurisdiction as they deal with more cases than other judicial bodies in the Kingdom.

Saudi general courts assume jurisdiction over all cases brought before them except in cases *in rem*, involving real estate located outside the Kingdom. The general courts have the authority to deal with all civil and criminal cases regardless of their nature and financial value, unless the case falls under the competence of other judicial bodies which have been given exclusive jurisdiction, such as the Saudi Arabian Monetary Agency and the Ministry of Social Affairs.

6.2 The Zakat Position in the Saudi Basic Law of Governance

Zakat is the third pillar of Islam and must be exercised in all Islamic states. Because the Kingdom of Saudi Arabia is an Islamic state,¹³ its Basic Law of Governance must enforce zakat. More specifically, zakat is regarded as a form of taxation in the Kingdom of Saudi Arabia. Article 20 of the Saudi Basic Law states that “[z]akat shall be collected and distributed for the entitled beneficiaries”,¹⁴ authorising the Saudi government to impose zakat and to distribute its funds to the entitled beneficiaries.

The Saudi Basic Law of Governance does not oblige the government to impose other *ad hoc* taxes as it does with zakat. Article 21, in fact, restricts any positive or *ad hoc* taxes except when there is a need to do so. According to Article 21, “No taxes or fees shall be imposed, except in need and on a just basis. Imposition, amendment, cancellation or exemption shall take place according to the provisions of the Law”.¹⁵ The Saudi Basic Law of Governance thus limits the imposition of other taxes. The term ‘need’ is ambiguous and can be subject to wide interpretation, which is unlike the prescriptive terms of Article 20 - i.e., that “Zakat shall be collected and distributed...”. The Basic Law requires the government to collect zakat as the Quran has instructed. However, the phrase ‘on a just basis’ indicates that the Basic Law recognises that *ad*

¹³ Article 1 of the Saudi Basic Law, it stresses that the Saudi legal system is based on the Islamic law: ‘The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is Almighty Allah’s Book, the Holy Quran, and the statements of the Prophet...’ Ibid

¹⁴ Majlis AlShura (2013) *The Basic Law Of Governance*
<<http://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/>>
accessed 1 January 2014.

¹⁵ Majlis AlShura, *supra*

hoc taxes can be arbitrary or unjust and thus stipulates that imposing them must be on a just basis when there is a specific need.

6.2.1 An Overview of the DZIT

The Department of Zakat and Income Tax (DZIT) is a sub-ministerial body which falls under the administration of the Ministry of Finance. The DZIT is the official, competent body which is entitled to collect zakat, and it was established by Ministerial Resolution No. 394, dated 7/8/1370 H (14/06/1951).¹⁶ The head office of the DZIT is in the city of Riyadh, which is the capital of the Kingdom of Saudi Arabia. It also has eleven branches based in other cities, namely: Abha, AlBaha, AlAhsa, Dammam, Jeddah, Jeizan, Madinah, Makkah, Qassim, Tabuk, and Taif.¹⁷ The DZIT has around 1400 employees¹⁸ who receive salaries from the Ministry of Civil Service.¹⁹

The DZIT was established for two reasons: 1) to calculate and collect zakat imposed on businesses from Saudis and citizens of the other Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates),²⁰ and 2) to

¹⁶ The Department of Zakat and Income Tax (DZIT) (2013) *Brief About DZIT* <<https://dzit.gov.sa/en/brief-about-dzit>> accessed 10 June 2013. See Appendix 1.

¹⁷ Ibid.

¹⁸ Okaz (2010) *Namlk AlHaq fi Alltilaa' ala ALOqoud AlSiriyah le AlHokoumah* <<http://www.okaz.com.sa/new/issues/20100405/Con20100405342499.htm>> accessed 16 December 2014.

¹⁹ The Ministry was established in 1999. The function of the Ministry to plan the civil manpower required in the government sector and to ensure that the competence of civil servants matches the requirements of the Kingdom as it implements its various development programs. For further discussion, see <http://www.mcs.gov.sa/pages/default.aspx>.

²⁰ The Department of Zakat and Income Tax, *supra*.

calculate and collect income tax from foreigners and other individuals.²¹ The DZIT also has several administrative functions, such as “to provide fair treatment to zakat and taxpayers and improve their voluntary compliance, and to issue statistical reports for the Department’s operations and taxpayers” and “to set-up and implement procedures to follow up on delinquent payers and take necessary actions to ensure their compliance and to submit an annual report on revenues and expenditures, actual and projected, to competent authorities”.²²

The amount collected as zakat (hereafter fund) must be transferred to the Saudi Arabian Monetary Agency (SAMA) account number 230301000006,²³ which is the central bank of Saudi Arabia. The fund is earmarked to be spent on the poor who are registered with the Social Insurance Agency of the Ministry of Social Affairs.²⁴ Income tax revenues are part of the Kingdom’s public revenue,²⁵ which is used for the public

²¹ Article 2: Persons Subject to Taxation:(a) A resident capital company with respect to shares of non-Saudi partners (b) A resident non-Saudi natural person who conducts business in the Kingdom (c) A non-resident who conducts business in the Kingdom through a permanent establishment (d) A non-resident with other taxable income from sources within the Kingdom (e) A person engaged in the field of natural gas investment (f) A person engaged in the field of oil and hydrocarbons production. The Department of Zakat and Income Tax (DZIT) (2013) *The New Income Tax - Chapter 2: TAXPAYERS* <<https://dzit.gov.sa/en/taxpayers>> accessed 10 June 2013.

²² The Department of Zakat and Income Tax (DZIT) (2013) *DZIT Objectives* <<https://dzit.gov.sa/en/mission-vision>> accessed 10 June 2013.

²³ For further information, see <http://www.sama.gov.sa>.

²⁴ The DZIT, *supra*.

²⁵ ‘Dr. Abdullah Abdulqader read the Zakat bill at the Shura 53rd session, saying that the new system aims at achieving justice and equality so that nobody pays more than should be paid. The 46-article seven-chapter system prescribes the money that should be levied and deposited into Zakat account for the

expenditure incurred by the government of the Custodian of the Two Holy Mosques in providing various services to citizens and residents.²⁶

The DZIT has improved its collection system which has led to an increase in the overall number of zakat collections. For example, in 2009 the DZIT reported that it had earned around 15 billion Saudi riyals (around 4 billion US dollars, which was 20 percent more than the previous year) from zakat.²⁷ In 2013, this number had increased to 23.5 billion Saudi riyals (around 6.26 billion US dollars and 18 percent more than the previous year).²⁸ The new computation and self-assessment measurements adopted by DZIT have played an important role in enabling it to increase zakat payments. Hence, it could be said that the DZIT interior management is improving.

The DZIT seeks fatwas from the General Presidency of Scholarly Research and Ifta prior to issuing regulations in order to avoid any regulatory Islamic contradictions. This will be examined in more detail below.²⁹

The DZIT issues a quarterly magazine, but this does not contain empirical articles or judicial publications. The magazine delivers general news about the Kingdom and

benefit of social insurance beneficiaries according to the Saudi Arabian Monetary Agency list, thus drawing a clear-cut line between the State's revenues and Zakat money.' Majlis al Shura (2012) *Riyadh*, Sep 18, 2012 accessed 10 June 2013.

²⁶ Majlis al Shura, supra.

²⁷ Alriyadh (2009) *Ieradat Maslahat AlZakat Tartafi ila 15 Miliar Riyals* <<http://www.alriyadh.com/2009/06/15/article437812.html>> accessed 2 July 2013.

²⁸ Okaz (2013) *23.5 Miliar Riyals Ieradat Maslahat AlZakat wa AlDakhl le'aam 2012 Beziyadah %18* <<http://www.okaz.com.sa/24x7/articles/article1451.html>> accessed 2 July 2013.

²⁹ For further discussion, see 6.2.6 below.

describes DZIT achievements. The DZIT magazine is therefore not considered an important reference for research and academic purposes.³⁰

6.2.2 Zakat as Taxation in Saudi Arabia

The existence of the DZIT and the Zakat Regulation supports the view that zakat is considered a form of tax in Saudi Arabia.³¹ In addition, there are more than 25 tax agreements between Saudi Arabia and other countries which confirm that zakat is a tax.³² For example, Article 2(6) of the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital states that:

- (1) The existing taxes to which this Convention shall apply are in particular:
 - (a) in the case of the Kingdom of Saudi Arabia:
 - (i) the zakat;
 - (ii) the income tax including the natural gas investment tax.

The same is true of Article 2(3) of the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income:

³⁰ For further information, see The Department of Zakat and Income Tax (2014) *Zakat Magazine* <https://dzit.gov.sa/en/zakat-magazine> assessed at 12/11/2014.

³¹ The Saudi Zakat Regulation was issued by the Royal Decree No. 17/2/28/8634, dated 29/6/1370 H (7/4/1951), and Royal Decree No. 17/2/28/8799, dated 8/9/1370 H. (1/6/1951).

³² DZIT (2013) *Circulars and Tax Agreements* <<http://dzit.gov.sa/en/circulars-tax-conventions>> accessed 6 October 2013.

The existing taxes to which this Convention shall apply are:

(b) in the case of Japan:

- i. the income tax;
- ii. the corporation tax;
- iii. the local inhabitant taxes

(hereinafter referred to as “Japanese tax”).

(c) in the case of the Kingdom of Saudi Arabia:

- i. the Zakat and
- ii. the income tax including the natural gas investment tax

(hereinafter referred to as “Saudi tax”).

Although zakat is officially regarded as a tax in Saudi Arabia, many people still practise zakat as a charitable endeavour. Individuals give donations and subventions to the poor and needy in the name of zakat, which cannot be described as a compulsory tax, but as charity.³³ The government is not supposed to prevent such charitable practice because it is an Islamic Kingdom. It is not surprising that this charitable practice (so-

³³ ‘Zakat donations may be made in several different ways, making the practice difficult to regulate. A Muslim may donate zakat money directly to a particular charity or to a special committee established by the government that determines the recipients and channels donations to these individuals. The donation of zakat may be even more informal and anonymous, coming from collection boxes in mosques and shopping malls.’ Gurulé, J., *Unfunding Terror: The Legal Response to the Financing of Global Terrorism* (Edward Elgar Publishing Limited, Cheltenham 2008). p. 121.

called zakat) exists in the Kingdom since zakat originates from the Quran.³⁴ The problem with such charitable activities arises from the fact that this zakat is unofficial, which could lead to unnecessary conflation of the concepts of zakat and charity.³⁵ Such unofficial collection of zakat can result in zakat being labelled as a financing stream for terrorism, or money laundering acts, instead of a legitimate tax system.³⁶

6.2.3 Zakat Litigation in Saudi Arabia

According to Article 10 of the Saudi Zakat Regulation,

[A] zakat payer may object to the amount of zakat within 15 days of the receipt date by a registered-mailed memorandum stating reasons for objection addressed to the notifying department. Otherwise, the zakat payer loses the right to object and is required to pay the amount as stated in the received notice. [...] The 1st Instance Committee may review zakat payers' books and records and any other material that may help reach the truth and will issue its resolution within 15 days of the objection date.³⁷

Article 12 states that the zakat payer or the DZIT may appeal against the 1st Instance Committee: "The Appeal Committee shall issue its resolution in regard to the objection within a period not to exceed one month of its receipt of the objection".

However, according to Article 13, to

³⁴ For further discussion, see 2.3.1.1 above

³⁵ For further discussion, see 2.1.3 above.

³⁶ For further discussion, see 2.2.6 above.

³⁷ The Saudi Zakat Regulation, Article 11.

appeal against the 1st Instance Committee's resolution, the zakat payer must first pay zakat in accordance with the objected resolution; or in the case of overpayment by the zakat payer, he shall receive a refund. To consider the appeal, it should have attached with it an officially certified copy of the receipt of payment of the mentioned zakat.

In the Saudi Zakat Regulation, there is no clause to regulate the issue of zakat evasion nor any rule about how the DZIT should deal with the non-compliant payer. However, DZIT Resolution No. 9/2973 dated 26/3/2009 addresses the non-compliance issue: if a payer does not pay the zakat due, the DZIT is not required to issue the Zakat Certificate, which means that the payer will not be entitled to apply for certain governmental processes. For example, a civil employee who failed to pay the required zakat would not receive a salary, would not have the right to apply for governmental aid or to renew commercial licences, and would not be entitled to recruit foreign employees.³⁸

Most Saudi public bodies require a Zakat Certificate in order to approve applications and documents. The DZIT can also file claims against non-compliant zakat payers at the 1st Instance Court and request that all public bodies suspend the non-compliant person's procedures. Moreover, this resolution states that the DZIT may suspend the non-compliant payer's bank accounts or deduct the zakat due from any governmental credit to which they are entitled. However, the resolution does not specify the instances which would entail these greater sanctions. Thus, it could be said that it is a discretionary matter for the DZIT to take the appropriate action against the non-

³⁸ Okaz (2011) *Mann' AlMutakalifeen an AlSadaad mn AlTasatouf fi Amwalihim* <<http://www.okaz.com.sa/new/issues/20110307/Con20110307404282.htm>> accessed 16 December 2014.

compliant zakat payer.³⁹ In short, the DZIT can effectively suspend the non-compliant person's financial affairs by not providing the Zakat Certificate.

It should be noted, however, that the act of non-compliance is not regarded as a crime in Saudi Arabia. It does not entail prosecution, penalty, or grave punishment. Only fraud and submitting false documents are considered crimes, and the Saudi Anti-Forgery Law of 1961 deals with these.⁴⁰

6.2.4 Zakat Payers in Saudi Arabia

Article 1 of the Saudi Zakat Regulation (see Appendix) instructs that all "Saudi companies and persons: male, female, adults, minors or legally incompetent, are subject to zakat after completion of one year under the provisions of Islamic Jurisprudence". No distinction is thus made between payers with respect to gender, age, and capacity. Both males and females are equally obliged to pay zakat, even if they are legally declared incompetent (not mentally sound or are legal minors). This article does not exempt

³⁹ Okaz (2011) *Mann' AlMutakalifeen an AlSadaad mn AlTasatouf fi Amwalihim* <<http://www.okaz.com.sa/new/issues/20110307/Con20110307404282.htm>> accessed 16 December 2014.

⁴⁰ Article 5 of the Saudi Anti-Forgery Law: 'Any who commits forgery, by making a false deed or a false manuscript, or by altering the real one, or if he fixes a signature, a seal or a false finger print, or destroys an official deed or papers of legal authority, whether the destruction is in full or in part, or forges an academic certificate, or a Government or private service certificate, or misuses a signature on blank forms entrusted to him, or enter false events and statements as authentic and valid; or records information or statements other than what have been stated by persons, or makes alterations in official papers, records and documents through scratching, crossing or addition, deletion or omission of words by intention; or causes a change in names written in official papers and records, an alteration in the figures in official papers and records in addition to deletion and alteration, he shall be liable to imprisonment for a term from 1 to 5 years.'

minors from paying zakat, which helps prevent a loophole from being created which could be used by the guardians of minors.⁴¹ Saudis and Gulf citizens must pay zakat and,⁴² subsequently, according to Article 8, are

required to file a declaration with financial officers responsible for collection of zakat showing zakatable monies, goods, properties, cash belongings, profits from such items, and zakat amount during the first month of the year following the zakat year.

According to Article 6, zakat payers are also required to ‘keep organised books that show capital, receipts and expenditure relevant to their activity for each year to be used to assess their zakat’.

In practice, however, the DZIT collects zakat only from companies and commercial entities and not from individuals. Article 6 of the Saudi Zakat Regulation, which establishes the rules of assessment and the zakat payers’ duties, gives rise to this problem by significantly narrowing the scope of zakat collection and assessment. Article 6 states that

individuals and companies with industrial or commercial activity are required to keep organised books that show capital, receipts and expenditure relevant to

⁴¹ For further discussion, see 2.4.2 above.

⁴² ‘Saudi citizens and citizens of other Gulf Co-operation Council States are not liable to income tax, but instead pay zakat, a form of direct taxation provided for under Islamic law. The traditional rate applied is 2.5 per cent of real income.’ Brill, A., Saudi Arabia: Taxation (1987) *Arab Law Quarterly*, vol. 2, p. 92.

their activity for each year to be used to assess their zakat. The books must be certified by commercial courts or, if not available, by notaries public.⁴³

The scope of zakat assessment is narrowed in that it only covers commercial entities and traders. Even though Article 6 uses the term ‘individuals’, it does not refer to assess zakat for personal accounts or non-trader persons. According to the General Presidency of Scholarly Research and Ifta which issued this fatwa: “It is preferable when an individual distributes zakat by himself to the poor and needy”⁴⁴ Hence, the above mentioned Article 6 is not applicable to non-trader individuals. In contrast, Article 1 of Royal Decree No. 17/2/28/3321, dated 21/1/1370 H (2/11/1950) confirms that zakat is to be collected only from all individuals and commercial entities:

[Z]akat duty shall be collected in full in accordance with the provisions of Islamic law from all Saudi persons, shareholders of Saudi companies whose all shareholders are Saudi, and Saudi shareholders of joint companies whose shareholders are Saudi and non-Saudi.

Clearly, there is a contradiction between the wording of Article 1 of the Royal Decree and Article 6 of the Zakat Regulation. In addition, there is a clear contradiction between Article 6 of the Zakat Regulation and the above mentioned fatwa. It is also overlooked

⁴³ Resolution 9/2973 of the DZIT clarified that the ‘notaries public’ term means the approval of an accountant who is registered at the Saudi Organization for Certified Public Accountants (SOCPA). SOCPA was established to promote the accounting and auditing profession. It is an Organisation to review, develop and approve accounting standards. For further discussion see, Saudi Organization for Certified Public Accountants (2014) *About Us (SOCPA)* <<http://www.socpa.org.sa/Home/Homepage/About-us> > accessed at 12 December 2014.

⁴⁴ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (1393).

that zakat is meant to be imposed on wealth in a broad sense of the term, regardless of the identity of the payers.⁴⁵ The Quran expresses this clearly when Prophet Muhammad is commanded to collect zakat from Muslims: “*Take zakat from their wealth...*”.⁴⁶

It could thus be said that Article 6 of the Saudi Zakat Regulation excludes a great part of the people’s wealth from the zakat assessment. As the DZIT is only authorised to assess zakat from companies and traders, this means, by default, that personal accounts, private residences, jewellery, lands owned for purposes other than investment, and liquidity held by non-traders are not subject to zakat.⁴⁷

However, the General Presidency of Scholarly Research and Ifta’s fatwas are inconsistent with the Regulation defining zakat payers. As was just mentioned, the Regulation narrowed the scope zakat payers, and the Presidency widened it instructing ‘any wealthy Muslim including the guarded incapacitated persons are liable to pay zakat’⁴⁸ and ‘zakat is a duty on any who own what worth more than allowance.’⁴⁹ Thus, it is not understood why the Regulation does not offer a clear principle in this regard. Yet the Quran, the Presidency and most jurists have clarified reasonably that zakat must be collected from any person owning goods exceeding the required allowance.

⁴⁵ For further discussion, see 2.4.4 above.

⁴⁶ The Quran 9: 103.

⁴⁷ The Presidency of Ifta agrees with this ruling. As it’s fatwas focus on the exchangeability feature of items as a requirement of zakat imposition. For further discussion, see 6.2.6.4 below.

⁴⁸ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (192/9).

⁴⁹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (191/9).

6.2.5 The Saudi Zakat Regulation and the Meaning of Wealth

It could be argued that the meaning of wealth in the Saudi Zakat Regulation is unclear.⁵⁰ The Regulation does not set consistent principles for zakat collection and assessment. According to AlThunayan, ‘it should be noted that although Saudi Arabia imposes zakat on all companies, the applicable rules are far from clear. A royal decree was issued in 1964, with only a brief statement stating that the zakat “shall be collected in full from all-joint stock companies, as well as from individuals who are liable to pay zakat. All amount collected shall be remitted to the Social Security Department.’ Articles 3 and 4 of the Saudi Zakat Regulation, which establish the bases of zakat, are vague. They rely excessively on Islamic jurisprudence and fatwas rather than provide specific principles for zakat assessment.

The Regulation does not clearly state that zakat should be imposed on wealth in general. Instead, Article 3 specifies areas of wealth (e.g. capital, profits, dividends, and commercial goods), and then specifies capital gains and profits that are generated from commerce and industrial activity. This makes it unclear whether zakat is to be imposed on wealth in a general sense or only on wealth used for commercial purposes.⁵¹

Article 3 of the Saudi Zakat Regulation states that

capital and its proceeds, receipts, profits and gains of zakat payers from commerce, industrial activity, personal endeavours, financial properties and belongings, of whatever type and form, and inclusive of financial and

⁵⁰ AlThunayan, T., *Dealing with the Fragmented International Legal Environment: WTO, International Tax and Internal Tax Regulations* (Springer Heidelberg Dordrecht, Lodnon 2010) p. 52.

⁵¹ For further discussion, see 6.2.6 below.

commercial deals, dividends, in general any type of receipt that is zakatable according to Islamic Jurisprudence, are subject to zakat.

In addition, according to Article 4, “zakat is assessed on commercial goods, properties and financial belongings at estimated values at the end of the year in accordance with provisions of Islamic Jurisprudence”.

Also, the Saudi Zakat Regulation does not require the zakat allowances which are mentioned in the Prophet Muhammad’s statements (“no zakat to be paid on less 200 dirhams for gold and silver and commercial goods, 5 camels, 30 cows, 40 goats and sheep, and 780 kilograms of grains and agricultural products”).⁵² However, there is no justification for failing to state these in the Zakat Regulation. These allowances were fixed to distinguish valuable items and to identify what is regarded as wealth in the zakat system. To overlook this specific criterion is unnecessary.

Moreover, Articles 3 and 4 grant the Islamic jurisprudence, specifically the General Presidency of Scholarly Research and Ifta (the Saudi body which issues official fatwas), wide scope to define ‘zakatable’ items. Article 3 defines them as “in general any type of receipt that is zakatable according to Islamic Jurisprudence”. Also, Article 4 states that zakat is assessed “in accordance with provisions of Islamic Jurisprudence”. Zakat Resolution No. 393 issued by the Ministry of Finance dated 13/5/1950 also refers the issue of defining the meaning of wealth to Islamic jurisprudential interpretation.⁵³

⁵² Muhammad, A. and AlBukhari, I., *AlJame’ Alsaheeh “Sahih AlBukhari”* (Beirut: Dar AlJeel, Beirut 2005) p. 573.

⁵³ The Saudi Ministry of Finance (2014) *Taa’lemaat Jibayat AlZakat* <<http://www.mof.gov.sa/arabic/Zakah/Pages/ZakahInstructions.aspx>> accessed at 11 December 2014.

The problem is that in Saudi Arabia, there is no Islamic code or statute which regulates Islamic law.⁵⁴ Hence, the term ‘relevant Islamic provision’ in Article 2 must denote the Islamic jurisprudence or fatwas issued by the General Presidency of Scholarly Research and Ifta. The DZIT seeks fatwas from the Presidency of Ifta prior to issuing resolutions to avoid any regulatory Islamic contradiction. Fatwas issued by the Presidency of Ifta play a major role in fulfilling the Articles’ ambiguity, and it is therefore crucial to examine these fatwas in order to determine what types of items are zakatable in the current Saudi zakat practice. The DZIT usually informs the Saudi registered accountants if a new fatwa has been issued. However, there is no single repository that accommodates all these zakat fatwas.⁵⁵

The General Presidency of Scholarly Research and Ifta has stated that ‘wealth’ includes valuable assets, capital, cattle, agricultural products,⁵⁶ stocks, liquidity, goods,⁵⁷ income, profits, and gains.⁵⁸ However, the majority of fatwas do not define the meaning of wealth but instead require an exchangeability feature for items to be considered zakatable. In other words, for the Presidency of Ifta, to identify wealth is not an issue of value but of exchangeability. This will be explained below in Section 6.2.6.

⁵⁴ Alshamsi, M., *Islam and Political Reform in Saudi Arabia: The Quest for Political Change and Reform* (Routledge, Oxford 2011) p. 8.

⁵⁵ Allami, A., *Zakat as Islamic Taxation and its Application in the Contemporary Saudi Legal System* (2009) 5 *Journal of Islamic State Practices in International Law* 106.

⁵⁶ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (264/6).

⁵⁷ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (424/6).

⁵⁸ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (433/6).

The Presidency of Ifta exempt all types of consumables. For example, it exempts cars for personal use because of their depreciating nature.⁵⁹ The same is true for cars and vehicles that are used for trading and cargo.⁶⁰ Food is also regarded as consumable for the Presidency of Ifta and is thus non-zakatable.⁶¹ There is also a fatwa which states that washing machines used for laundry are not to be subject to zakat.⁶² Manure and insecticides used for agricultural lands are not liable to zakat.⁶³ Not all of them are appreciated as they would have been prior to consumption.⁶⁴

There is a general consensus on exempting consumables. There seems to be no justification for regarding them as wealth given their depreciating nature, a preclusion to considering them valuable items. Accordingly, the term ‘receipt’, which is mentioned in Article 3 of the Saudi Zakat Regulation, excludes the receipt of consumables and expenses. On the contrary, any receipt of consumables, expenses, or costs is not subject to zakat.

In addition, zakat is not imposed on public bodies’ budgets, charitable organisations, or charitable trusts.⁶⁵ These entities are “exempted because they are owned by no identifiable person, and they are allocated for the benefit of the people”.⁶⁶ Thus, the DZIT does not assess consumables and charitable funds.

⁵⁹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20173).

⁶⁰ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (14104).

⁶¹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (820).

⁶² The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20677).

⁶³ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (219).

⁶⁴ For further discussion, see 3.2.2.2.

⁶⁵ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (289/9).

⁶⁶ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (294/9).

6.2.6 Fatwas and the Exchangeability Feature

The General Presidency of Scholarly Research and Ifta requires the exchangeability feature over items to be considered subject to zakat. Most fatwas do not regard the value of the subject matter as an important factor in identifying whether it is zakatable or not. Instead, they require that subject matter be under commercial offer or for sale in order to be considered zakatable. There are many fatwas which denote this clearly. For example, one fatwa states that “if someone buys land for investment then it must be liable to 2.5% zakat, but if the owner changes his state of mind to sell the land, then it should be exempted”.⁶⁷ This reveals that the Presidency of Ifta considers the exchangeability feature as a requirement and is less concerned with land as wealth.

The Presidency of Ifta made the exchangeability requirement more important than the principle of ‘zakat as imposed on wealth’. There is a fatwa which states that land must be liable to zakat only when its possessor is bound to sell it.⁶⁸ Another fatwa has exempted two pieces of land because their owner was hesitant about selling them.⁶⁹ In another instance, a piece of land was considered subject to zakat only when its possessor admitted that he was planning to sell it once its value increased.⁷⁰

On the other hand, two inherited properties were exempted by the Presidency of Ifta because the descendant proved that his ancestor’s reason for owning the land was not for investment purposes.⁷¹ The same occurred with the fatwa which required that

⁶⁷ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (21717).

⁶⁸ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (14670).

⁶⁹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20668).

⁷⁰ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20046).

⁷¹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20817).

residences become zakatable only when the owner bound to sell it.⁷² The Presidency of Ifta also exempted valued silver utensils because they were not for sale.⁷³

All these fatwas confirm that the Presidency pays significant attention to the state of mind of the property owner rather than identifying whether such items should be defined as 'wealth' or not.

Although the Presidency of Ifta has widened the scope in terms of zakat payers, it has narrowed the ambit of collection when requiring the exchangeability feature. This lack of consistency is paradoxical, as it is illogical to broadly define zakat payers, as 'zakat is a duty on any who own what worth more than allowance',⁷⁴ and then exclude wealth excepting items for trade or the subject of exchange.

As argued above,⁷⁵ the exchangeability feature should not be a requirement for two reasons. Firstly, there is no verse or a statement by the Prophet which requires such a feature. Secondly, this feature is a matter of value rather than an exchangeability matter. If an item no longer has value, has lost its utility, or is of no concern, it is unlikely to continue being considered exchangeable. Considering this exchangeability feature leads to the imposition of zakat only on purchasable items and exempts all non-purchasable items,⁷⁶ which can convert the principle of 'zakat as a tax on wealth' to 'zakat as a tax on sales.

⁷² The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20219).

⁷³ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20303).

⁷⁴ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (191/9).

⁷⁵ For further discussion, see 3.2.1 above.

⁷⁶ Ibn Othaimen, M., *Majmou' Fatawah wa Rasaa'il AlShaikh Muhammad Ibn Saleh Ibn Othaimen* (Dar AlThurayah, Riyadh 2003, Ed. by AlSuaiman, F.) vol. 18, p. 39.

However, since the General Presidency of Scholarly Research and Ifta requires this feature of exchangeability, a difficulty arises in setting a consistent principle for identifying zakatable items. For example, one fatwa issued by the Presidency stated, “[I]f a set of diamonds, which exceeds the allowance, is for sale, it should be considered liable to zakat”.⁷⁷ This fatwa does not consider diamonds zakatable because they are inherently valuable but simply because they are for sale. Such a fatwa could cause confusion because even if a diamond is not for sale, it is still an object of wealth and should thus be subject to zakat.

There is no justification for not regarding a set of diamonds as a valuable item or as wealth even if it is not for sale. According to the Quran, (“*take zakat from their wealth...*”⁷⁸) zakat is to be imposed on wealth in its broadest sense and not only on trade or exchangeable/purchasable items. It is therefore difficult to understand why the Presidency considers a set of diamonds zakatable because they are exchangeable rather than because they are valuable.

Accordingly, it could be said that adopting the exchangeability feature as a requirement is a problem for two reasons. Firstly, the fatwas mentioned above play no positive role in interpreting Article 3 of the Saudi Zakat Regulation but rather increase its ambiguity. They create fundamental confusion about whether zakat is imposed on exchangeable/purchasable items or on wealth/valuable items. Secondly, it creates an unnecessary loophole which can be exploited by zakat payers, who may claim that they own items for purposes other than sale, investment, or exchange in order to exempt them from zakat.

⁷⁷ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (19949).

⁷⁸ The Quran 9: 103.

In the current Saudi practice of zakat, therefore, it can be argued that the role of the fatwas issued by the General Presidency of Scholarly Research and Ifta has become more important than the Zakat Regulation itself, as these appear to provide more precise guidance and rules. This problem occurs because the Saudi Zakat Regulation does not present sufficient principles of zakat but instead relies heavily on Islamic jurisprudence (Article 2, 3, 4 and Resolution No. 393).

However, it can also be argued that fatwas should not be considered an alternative to the Regulation because fatwas are no more than jurisprudential opinions or recommendations⁷⁹ (as discussed above).⁸⁰ They are not legislation, regulations, or Acts. Even in the Saudi Basic Law of Governance, fatwas do not constitute legislation but are regarded as a secondary source of law. Indeed, saying that fatwas are the regulation of zakat itself is similar to saying that the jurisprudence of Herbert Hart or Ronald Dworkin is a law *per se*. Fatwas are scholarly arguments rather than binding laws, and it is a *misconception* to treat them similarly.

Relying on fatwas issued by the General Presidency of Scholarly Research and Ifta is also *not always consistent*, because contradicting fatwas have been issued. For example, there is a fatwa which states, “It is preferable when an individual distributes zakat by himself to the poor and needy”⁸¹ which can be contrasted with another fatwa issued by the same Presidency which stated, “It is preferable when the authority collect

⁷⁹ ‘The scholar’s answer of fatwa is not binding rule; rather, it is recommendation... Indeed, the standardization of fatwas was an important aspect of truth management in Saudi Arabia. These religious opinions could act as mechanism of social control.’ Shahi, A., *The Politics of Truth Management in Saudi Arabia* (Routledge, Oxford 2013) p. 77.

⁸⁰ For further discussion, see 2.3.2.3 above.

⁸¹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (1393).

zakat from individuals, because the former has more knowledge and prudence to distribute its funds to the eligible poor”.⁸² These two fatwas set no principle but instead highlight the perplexity regarding whether zakat should be collected by the authority or paid by individuals and distributed directly to the eligible beneficiaries.

There are also fatwa issues connected with the Presidency of Ifta which oblige the creditor to pay zakat on a loan, as he is the real owner of the loan amount⁸³ compared with another fatwa by the same Presidency that obliges the debtor to pay zakat on the loan,⁸⁴ as he is the real holder of the borrowed amount. Thus, the DZIT is currently collecting zakat from both parties involved in the loan, the creditor and debtor, effectively doubling the levying through these two contradicting fatwas. These two fatwas breach the Prophet Muhammad’s statement, “[N]o double paying in zakat”.⁸⁵ The DZIT requested a clarification about these double levying loans, and the Presidency of Ifta confirmed that both parties must pay zakat on a loan because both of them are regarded as beneficiaries of the loan.⁸⁶

It can be seen that fatwas do not define the meaning of wealth, nor do they interpret Articles 3 and 4 of the Zakat Regulation. Instead, the ambiguity of these Articles is increased by requiring the exchangeability feature over items to be considered zakatable.

⁸² The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (229/6).

⁸³ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (19172).

⁸⁴ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (20572)

⁸⁵ AlQasim, A., *AlAmwal* (Mo’assat Nassir LeAlthakafah, Beirut 1981) p. 154.

⁸⁶ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (2/3077).

6.3 Zakat Disbursement in Saudi Arabia

It could be argued that zakat disbursement in Saudi Arabia is not optimal. The Saudi practice of zakat does not reflect a proper mechanism for zakat disbursement for two reasons. First, the DZIT is not competent in the distribution of zakat; its role is confined to collection. The zakat fund must first be transferred to the Saudi Monetary Agency (SAMA),⁸⁷ which is the central bank of Saudi Arabia, and is then transferred to the Social Insurance Agency of the Ministry of Social Affairs. This system has created unnecessary bureaucracy. There is no advantage to excluding the disbursement function from the DZIT.

Second, it seems that in practice, the only category of zakat beneficiaries (out of eight) that is eligible for zakat proceeds is the ‘poor’, who are entitled to zakat proceeds if they meet the requirement set by the Social Insurance Agency of the Ministry of Social Affairs. The poor apply for zakat proceeds and as such are the only category of zakat beneficiaries entitled by the government to zakat funds.

The Zakat Regulation and Ministry of Social Affairs do not make a distinction between the ‘poor’ and the ‘needy’.⁸⁸ The Quran distinguishes them in the verse “*Zakat funds must be distributed to the poor, needy...*”,⁸⁹ but the government makes no such distinction. Jurists have also drawn a distinction between the poor and the needy, but this distinction does not seem to be applied in contemporary Saudi zakat practice.

Zakat administrators also do not typically receive zakat proceeds as they ought to according to the Quran. The DZIT’s administrators are governmental employees and

⁸⁷ For further information, see www.sama.gov.sa.

⁸⁸ For further information, see 5.1.2 above.

⁸⁹ The Quran 9:60.

receive their salaries from the Ministry of Civil Service. This is a valid principle of disbursement, as zakat administrators, or the DZIT employees, are entitled to zakat proceeds, as stated in the Quran. Indeed, when zakat administrators are entitled to zakat proceeds, this provides them with more incentive to collect payments efficiently; when the total collected is higher, their own proceeds will also be higher.

Almu'allafatu qulubihim currently receive charity from different Islamic organisations and from individuals. There is no law or regulation to assess whether or not they are entitled to zakat proceeds. They receive donations from different sources, depending on donors' goodwill. They have no legal position; by law, they have no right to any zakat proceeds. They are granted certain rights rather than being entitled to them. The same applies to debtors, students, and travellers.

Legalised slavery no longer exists in Saudi Arabia;⁹⁰ it was abolished in 1962⁹¹ by King Faisal's decree.⁹² Thus, slaves are not considered at all in zakat practice.⁹³ Slavery has been abolished the world over, and slave trading is a human right violation in most

⁹⁰ Anti-slavery Society (2011) *How Many Slaves Are There?* < <http://www.anti-slaverysociety.addr.com/slavery3.htm>> accessed 13 April 2011.

⁹¹ BBC (2009) *Slavery in Islam* <http://www.bbc.co.uk/religion/religions/islam/history/slavery_1.shtml#section_8> accessed 13 April 2011.

⁹² King Faisal declared that: 'The attitude of Islamic law towards slavery and its keen interest in liberating slaves is well known. It also known that any slavery existing at present fails to fulfil many of the Shari'a conditions laid down by Islam to allow slavery... The government now finds a favourable opportunity to announce the absolute abolition of slavery and the manumission of all slaves.' Quoted from Clarence-Smith, W., *Islam and the Abolition of Slavery* (C. Hurst & Co. Ltd, London 2006). p. 183.

⁹³ AlQaradawi, Y., *Fiqh AlZakat* (Mo'asasat AlRisalah, Beirut 2002) vol. 2, p. 89.

of the United Nations' (UN) member states.⁹⁴ There are no longer any slaves in Saudi Arabia. Handymen, gardeners, drivers, and guards are labourers working in a contractual relationship with an employer and cannot be compared to slaves.

Although the Saudi government gives people in *Almu'allafatu qulubihim and fi sabeel Allah* (volunteers and students) benefits, such a practice can be criticised on three counts. First, it does not follow what is stated in the Quran and in Article 20 of the Saudi Basic Law of Governance. Second, such governmental spending (e.g. the granting of scholarships,⁹⁵ paying mortgages for debtors, and giving charity to those who have recently converted to Islam) can be abruptly suspended, thus affecting the beneficiaries. These benefits are considered to be subsidies rather than a right.

⁹⁴ Article 4 of the Universal Declaration of Human Rights: 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.' Also Article 8 (1) and (2) of the United Nations' International Covenant on Civil and Political Rights: '1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude.' Also Article 4 of the European Convention on Human Rights (ECHR): '1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this article the term "forced or compulsory labour" shall not include...'

⁹⁵ 'The government allocated for the scholarship program more than 7 billion riyals to support applicants to prestigious universities in a number of countries such as USA, Britain, Germany, Canada, Italy, Spain, Holland, Australia, New Zealand, France, Japan, Malaysia, China, India, Singapore, and South Korea. More than eighteen thousand scholarship students over the past years (1425 AH /1426 AH / 1427 AH / 1428 AH) and more than seven thousand five hundred students under completion of their course of studies. King Abdullah Scholarship Program aims to achieve a distinctive quality deliverables from the global output of higher education in disciplines needed in the country and qualifications including bachelor's, master's, doctorates and medical fellowships.' The Ministry of Higher Education (2014) *About the Ministry* <http://www.mohe.gov.sa/en/aboutus/Pages/default.aspx> accessed at 26 November 2014.

Second, the zakat disbursement mechanism, as mentioned above, assumes that zakat beneficiaries are eligible for zakat proceeds as a right (similar to the relationship between beneficiaries and trustees). Currently, the beneficiaries' legal position has not been established, and they are not legally entitled to zakat proceeds.

Third, the current practices mean that the government is pursuing purposes other than distributing zakat to fixed categories of beneficiaries. This distinction was clarified above,⁹⁶ and it was argued that the zakat fund must be distributed to eligible beneficiaries and not for other purposes. This is to guarantee the right to zakat proceeds. It could therefore be argued that contemporary zakat disbursement far from optimal or in agreement with the Quran and the Basic Law of Governance.

There is inconsistency in the fatwas (issued by the General Presidency of Scholarly Research and Ifta regarding zakat disbursement) and the Zakat Regulation. One fatwa clarifies that 'zakat fund has to be distributed to the eight categories',⁹⁷ and that 'it is wrong to distribute zakat on relatives or needy friends.'⁹⁸ Nevertheless, the Presidency of Ifta stresses 'the zakat beneficiaries requirements are which sat by the government',⁹⁹ and does not deal with beneficiaries as if they are eligible for charity, regarding them as if they are entitled to it as a legal right (after meeting set requirements).¹⁰⁰ However, as was articulated above, the DZIT and the government does not codify requirements for zakat beneficiaries'. Instead, it represents the zakat fund as a charitable fund for the poor and needy. Evidently, in this regard there is no

⁹⁶ For further discussion, see 5.2.3 above.

⁹⁷ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (1865).

⁹⁸ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (1866).

⁹⁹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (1867).

¹⁰⁰ For further discussion, see 5.2 above.

consistency nor integrity between the current practice of zakat disbursement, and the recommendations of the Presidency of Ifta.

An additional problem arising with fatwas relative to this matter is that the Presidency of Ifta issue embodies contradictory opinions. It has contradicted the aforementioned fatwas that disallow payers from distributing zakat to relatives. In another fatwa, the Presidency endorses that the zakat payer is ‘allowed to hand the zakat amount to relatives, needy friends and charitable organisations’¹⁰¹ as it is a sum intended for charity or donation. The Presidency has overlooked the fact that zakat has to be collected by the government as a tax, and that the government is then obliged to distribute it in accordance with legal requirements and mechanisms.

The eight categories of zakat beneficiaries are determined by a more sophisticated mechanism¹⁰² than that currently utilised in Saudi Arabia. Thus, arguably, the current implementation of zakat practice in the Saudi legal system is fundamentally flawed; it does not comply with a significant proportion of the fundamental principles of zakat.

In summary, five specific issues associated with the current Saudi practice of zakat must be highlighted. First, zakat is not collected from individuals but only from companies and commercial entities. Second, the zakat charitable practice still exists. Third, the Saudi Zakat Regulation lacks zakat collection principles. Fourth, the role of fatwas has been increasing to an excessive degree. Fifth, the zakat disbursement mechanism is fundamentally incorrect.

¹⁰¹ The General Presidency of Scholarly Research and Ifta, Zakat Fatwa (205).

¹⁰² For further discussion, see 5.1 above.

Therefore, it could be argued that the Saudi Zakat Regulation lacks principles and is unclear with respect to both collection and assessment as well as to zakat disbursement.

6.4 Conclusion

This chapter has examined the zakat practice in Saudi Arabia. It provided an overview of the Saudi legal system and examined the current position of zakat in Saudi Arabia. The chapter has discussed the history and functions of the Department of Zakat and Income Tax (DZIT) and examined the Saudi Zakat Regulation, arguing that the Regulation's lack of zakat principles and rules is increasing the role of fatwas and creating ambiguity within the system. This chapter has also argued that the current practice of zakat disbursement in Saudi Arabia is not optimal.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATIONS

This thesis examined the problems of implementation of the Islamic “zakat” as a system of taxation. In doing so, it sought to establish coherent and consistent principles for zakat assessment, collection and disbursement, and to measure the Saudi zakat system against these principles. This thesis argued that the current implementation of zakat in the Saudi legal system is fundamentally flawed, because it does not comply with a significant proportion of the fundamental principles of zakat. This thesis highlighted the problems inherent in the Saudi Arabia’s arguably excessive reliance on fatwas for the implementation of zakat. It is argued that these fatwas have rendered contemporary practice of zakat distant from the fundamental principles of zakat.

This thesis has distilled principles in reference to controversial issues of zakat assessment, collection, and disbursement. It has arrived at the established principles by examining the wording of primary sources, which, it has been argued, speak in terms of principles rather than rules, assessing Islamic jurisprudence which purports to interpret the primary sources, and attempting to eliminate inconsistencies and contradictions.

To summarise; this thesis has argued there are five main principles of zakat collection: Zakat is a tax on wealth,¹⁰³ items have to exceed an allowance in order to be liable for zakat,¹⁰⁴ exchangeability is not a requirement for items to be zakatable,¹⁰⁵

¹⁰³ For further discussion, see 3.1 above.

¹⁰⁴ For further discussion, see 3.2.2.1 above.

¹⁰⁵ For further discussion, see 3.2.1 above.

consumables and expenses are zakat-free,¹⁰⁶ and items become zakatable once owned.¹⁰⁷

Islamic jurisprudence offers differing opinions that reveal diverse and often conflicting arguments and constructions, all of which cannot be correct, as the original enactments did not intend to engender multiple meanings. In the formulation and distillation of the principles put forward in this thesis, no preference has been given to any specific Islamic juristic opinion or jurisprudential school. Instead, the thesis upholds constructions that are consistent with the treatment of zakat as taxation and advocates principles for related jurisprudential debates that make zakat clear and economically efficient.

7.1 Recommendations

It has been confirmed, through historical evidence, that zakat is an obligatory levy, and it was thus submitted that zakat should be regarded as a taxation system. Zakat cannot be regarded as voluntary or as a charitable donation. Rather, it is an imposed levy. Therefore, it is appropriate to categorise zakat as a tax. It is suggested that zakat should be defined as a compulsory, flat-rate tax which is imposed by the Quran, and the funds of which must be distributed to the eligible beneficiaries as identified in the Quran.

Zakat should be collected not only from commercial entities and companies, but must also be collected from all natural and legal persons, including non-Muslims and

¹⁰⁶ For further discussion, see 3.2.2.2 above.

¹⁰⁷ For further discussion, see 3.2.3 above.

protected or incapacitated persons.¹⁰⁸ Zakat is imposed on wealth in a broad sense of the term and not on the identity of persons. Wealth can be defined as any non-consumable item whose value exceeds the zakat allowance.

According to the Prophet's Statement, zakat allowances are fixed: "[T]here is no zakat to be paid on less 200 dirhams for gold and silver and commercial goods, 5 camels, 30 cows, 40 goats and sheep, and 780 kilograms of grains and agricultural products". The Saudi Zakat Regulation, however, does not require these allowance amounts, which is an unnecessary flaw. Zakat allowance is a practical requirement as it fixes certain amounts in order to distinguish valuable items from non-valuable ones. Such fixed amounts help the zakat authority to identify valuable items with no wide discretionary power. The Saudi Zakat Regulation must include certain allowances.¹⁰⁹ It has thus been suggested that the zakat allowances ought to be reviewed and should be

¹⁰⁸ 'Extenuating circumstances can also affect the ability of an individual or family to pay taxes. Individuals who are seriously ill, physically or mentally impaired, or too young or too old to care for themselves can strain family finances. In the past, federal tax laws granted extra income tax exemptions for the elderly and blind. One problem with using this approach to enhance horizontal equity is that the list of conditions that should be given special consideration would be extremely long. Further, this would be an area that could be prone to abuse and could actually favour families who have the resources to have maladies or disabilities diagnosed and documented.' The Tax Division of the American Institute of Certified Public Accountants (2007) *Guiding Principles for Tax Equity and Fairness* p. 8.

¹⁰⁹ 'Certainty is important to a tax system because it helps to improve compliance with the rules and to increase respect for the system. Certainty generally comes from clear statutes as well as timely and understandable administrative guidance that is readily available to taxpayers.' The Tax Division of the American Institute of Certified Public Accountants (2001) *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals* p. 10.

adjustable when inflation occurs, as the allowance amounts need to draw a realistic line between rich and poor.

It has been argued that the exchangeability feature should not be a requirement over items that are subject to zakat. The role of the zakat authority should neither concern the exchangeable nature of items nor the owner's state of mind or commercial motives. Instead, it is necessary to examine whether or not these items exceed the zakat allowance. The current Saudi zakat system, however, through fatwas, relies significantly on the exchangeability feature. This has converted the principle 'zakat as a tax on wealth' to 'zakat as a tax on trade'. Thus, the suggestion has been made to revoke this requirement and consider only the value of an item and to require zakat allowances.

A consumable is any item that cannot be appreciated as it would have been prior to consumption, such as pens, tissues, furniture, machines, and cars. Such items cannot be regarded as wealth because of their depreciating nature, which is a preclusion to considering them valuable items or stable wealth. It has been suggested that the identification of 'wealth and consumables' is a matter of fact rather than of law. Identifying wealth and consumables is a factual issue as recognising the value of things depends on economic analysis and requires examination of the value of the subject matter. It is not an issue that is referred to in the Quran, the Prophet's statements, or any source that provides a list of consumables.

All areas of wealth (such as gold and silver, goods, income, residences, loans, stocks, agricultural products, cattle, and intellectual property) should be subject to zakat once their value exceeds the required allowance. However, main residences should be exempted because levying 2.5% on a residence every year can seriously harm an

individual's financial stability and cause them to be less productive, and the re-distribution of this wealth (which is the main aim of zakat) would be affected.

It has been argued that the creditor should be obliged to pay the zakat loan rather than the debtor. The creditor is entitled to the amount of the loan and is considered to be the actual owner of it, and should thus be the party liable to pay the corresponding zakat. The debtor is the current beneficiary of the loan but not the actual owner, as he carries the contractual duty to pay the creditor at the end of the loan period. However, it is not acceptable to impose zakat on both parties, as in the current Saudi practice, because this means double levying on the loan. The DZIT ought to amend this rule and collect the zakat from creditors only.

The research has found that the punishment for evading zakat should be neither less nor more than collecting zakat that is payable by force along with expropriating half of the base value. The DZIT imposes punishment on evaders and non-compliers only by suspending the latter's governmental and financial affairs. However, such punishment is not sufficient as instructed by the Prophet Muhammad. To preserve the enforceability of the system, it is also important to criminalise zakat evasion and to apply deterrent punishment.

The DZIT should also consider the distinction between zakat evasion and avoidance, although Islamic jurisprudence currently does not. In practice, payers will commonly avoid paying zakat and find loopholes to make sure that less zakat is legally due. This is an inevitability, and the zakat authority cannot deal with both acts (avoidance and evasion) in the same way. The DZIT should fight avoidance acts by taking regulative and administrative measures. It should not criminalise legitimate avoidance acts as evasion.

Zakat should be distributed to the eight types of beneficiaries: poor, needy, zakat administrators and *almu'allafatu qulubihim*, slaves, debtors, *fi sabeel Allah*, and travellers. Islamic jurists agree with the approach of distributing zakat proceeds to 'identifiable beneficiaries' and not to pursue any economic or social purpose. In the current Saudi zakat practice, the only category currently receiving zakat proceeds is the 'poor', while the rest are receiving grants and welfare/benefits from the government. This is clearly not optimal, and so the disbursement mechanism must be reformed. The Saudi Zakat Regulation does not cover the disbursement issue completely. Hence, it can be argued that the Regulation should dictate the disbursement of zakat funds as it does with collection and assessment.

The zakat fund is like a trust that must be distributed to identifiable beneficiaries, and the authority acts as a trustee in the disbursement mechanism. Thus, it is not incorrect to propose investing the zakat fund as long as it involves only low risk investment, ensures that the revenue be distributed among the eight categories of beneficiaries, and as long as the beneficiaries' rights are not affected by delays.

It is recommended that the Zakat Regulation be updated. The Regulation needs to account for changes in the socio-economic status of the nation and its population, such as the inflation index, poverty line, and where the zakat fund is most needed. These issues are subject to change, and the Regulation must therefore be regularly updated to remain effective. Therefore, the Zakat Regulation should be amended annually, or whenever it is judged economically necessary. Without regular updates, it will not be able to anticipate the changing nature of the population's socio-economic life.

The General Presidency of Scholarly Research and Ifta should not regulate zakat through fatwas. Even if the Presidency of Ifta is an official body that is competent in

studying Islamic problems and issuing fatwas, it should not enjoy such a major role as Majlis al Shura (the regulative authority of the Kingdom) currently does. The DZIT should seek fatwas from the Presidency of Ifta only to assure that its resolutions and regulations do not conflict with Islamic law.

The Presidency of Ifta's fatwas should be merely advisory and not regulative. Hence, the Saudi Zakat Regulation must be decisive and cease to leave such broad scope for jurisprudential debates as in the current practice.¹¹⁰ The Regulation should be conclusive with regard to the controversial issues of zakat and should instruct certain principles. The issue of zakat on residences, for example, needs to be regulated, and the issue of investing the zakat fund by the authority needs to be restricted. The Regulation must set out principles rather than refer issues to Islamic jurisprudence. This would make the Zakat Regulation more effective and would simplify the zakat system.¹¹¹

Zakat litigation in Saudi Arabia is also in need of reform. The 1st Instance Committee is a quasi-judicial body under the supervision of the Ministry of Finance.

¹¹⁰ 'If taxpayers and their advisers cannot understand the tax system, they cannot evaluate the impact of that system. Beyond the fundamental aspect of actual and perceived fairness, proposing understandable changes to an understandable tax system would result in broader consensus on whether a change is necessary, wise, or effective. A tax that is not understandable can be easily retained or raised with little awareness among taxpayers about how the tax affects them.' The Tax Division of the American Institute of Certified Public Accountants (2003) *Guiding Principles for Tax Law Transparency* p. 11.

¹¹¹ 'The tax law should be simple so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner. Simplicity in the tax system is important both to taxpayers and to those who administer the various taxes. Complex rules lead to errors and disrespect for the system that can reduce compliance. Simplicity is important both to improve the compliance process and to enable taxpayers to better understand the tax consequences of transactions in which they engage in or plan to engage.' Ibid.

The Minister of Finance is the head of the Committee, and its members are governmental employees who work in the Ministry. This means that the zakat payer will confront bias before the Committee. The DZIT is a sub-ministerial department under the Ministry of Finance, and there is thus likely to be partiality if the latter hears the payer's appeal against the DZIT. It is also unjust to oblige the payer to pay the objected zakat when they have the right to appeal. Thus, it is recommended that zakat tribunals be established to hear cases between the DZIT and zakat payers. The judges of these tribunals would be expected to have adequate knowledge about Islamic law, zakat, and tax assessment.

Zakat holds great importance in Islamic law in general and in the Saudi Basic Law of Governance. It is recommended that zakat be administrated and managed by a non-ministerial or independent body directly answerable to the King. For example, the Saudi National Anti-Corruption Commission,¹¹² the Saudi Capital Market Authority

¹¹² The Anti-corruption Commission is intended to protect integrity, and enhance the concept of transparency, as well as combat financial and administrative corruption in its different forms, manifestations, and techniques, and to that end, the Commission holds the following competencies. The Commission shall include all the governmental sectors with no exceptions whatsoever, and shall be assigned the tasks of monitoring the implementation of orders and instructions of the public affairs. The Commission shall also be responsible for monitoring the administrative and financial corruption as well. the commission shall carry out the appropriate coordination with those authorities with regards to the public affairs and interests of citizens. These authorities shall provide the commission with any financial or administrative notices that are included within the commission's tasks. The Anti-corruption Commission Establishment (2014) Establishment <<http://www.nazaha.gov.sa/en/About/Pages/Establishment.aspx>. > accessed 20 November 2014.

(CMA),¹¹³ and the National Society for Human Rights (NSHR)¹¹⁴ are non-ministerial bodies with comprehensive authority. They can investigate and take financial measures to force a defendant to pay a penalty.

The DZIT is a sub-ministerial body; thus, its authority is limited to the Ministry of Finance. The zakat authority must be independent and not governmental, as is currently the case. This would provide a guarantee that the zakat system could be managed with greater competence. As seen from current DZIT practice, the present system lacks the extensive authority necessary to oversee the serious processes that other independent bodies are able to undertake. In addition, the zakat authority should have the competence to distribute zakat funds to beneficiaries. There is no reason to separate collection (by the DZIT) from disbursement (by the Social Insurance Agency of Ministry of Social Affairs). This can create additional bureaucracy and lengthen procedures.

¹¹³ The Capital Market Law issued by the Royal Decree No. (M/30) dated 1/8/2003, which formally brought it into existence. The CMA is a government organization applying full financial, legal, and administrative independence, and has direct links with the King.³ For example, CMA has the functions to regulate and monitor the activities of entities working under CMA, and to regulate and monitor full disclosure of information related to securities and issuers. The Capital Market Authority (2012) *About Capital Market Authority* <<http://www.cma.org.sa/En/AboutCMA/Pages/default.aspx>> accessed 29 January 2012.

¹¹⁴ Created on 9/3/2004 to protect and defend human rights in accordance with Islamic Law. National Society for Human Rights (2012) *Scope of NSHR* <<http://nshr.org.sa/english/aRightMenuCMS.aspx?smid=74>> accessed 29 November 2014.

Appendix

Royal Decree

After reviewing Income Tax Law issued per Royal Decree No. 17/2/28/3321, dated 21/1/1370 H.(2/11/1950), as amended per Royal Decree No. 17/2/28/8955, dated 30/9/1370 H (5/7/1951) and Royal Decree No. 17/2/28/576, dated 14/3/1376 H. (19/10/1956);

And after reviewing Zakat Regulations issued per Royal Decree No. 17/2/28/8634, dated 29/6/1370 H. (7/4/1951), as amended per Royal Decree No. 17/2/28/8799, dated 8/9/1370 H. (13/6/1951); and reviewing the Council of Ministers' Resolution No. 31, dated 27/2/1376 H. (2/10/1956).

We decree the following

Article 1:

Zakat duty shall be collected in full in accordance with the provisions of Islamic law (Shariah) from all Saudi persons, shareholders of Saudi companies whose all shareholders are Saudi, and Saudi shareholders of joint companies whose shareholders are Saudi and non-Saudi.

Article 2:

Royal Decree No. 17/2/28/8634, dated 29/6/1370 H (7/4/1951), and Royal Decree No. 17/2/28/8799, dated 8/9/1370 H. (1/6/1951) shall cease to be effective.

Article3:

This Decree shall be published and be effective as of 1/1/1376 H. (8/8/1956). The Council of Ministers shall issue, per recommendations by Minister of Finance, resolutions as required to put this Decree into effect.

Zakat Regulation was issued per Ministerial Resolution number 393, dated 6/8/1370 H (corresponding to 13/5/1950) consisting of 20 articles as follows:

1. ALL Saudi companies and persons: male, female, adults, minors or legally incompetent, are subject to zakat after completion of one year under the provisions of Islamic Jurisprudence starting from 1/1/1370 H (corresponding to 13/10/1950).
2. Capital and its proceeds, receipts, profits and gains of zakatpayers are subject to zakat in accordance with relevant Islamic provisions
3. Capital and its proceeds, receipts, profits and gains of zakatpayers from commerce, industrial activity, personal endeavors, financial properties and belongings, of whatever type and form, and inclusive of financial and commercial deals, dividends, in general any type of receipt that is zakatable according to Islamic Jurisprudence, are subject to zakat
4. Zakat is assessed on commercial goods, properties and financial belongings at estimated values at the end of the year in accordance with provisions of Islamic Jurisprudence
5. Current methods based on orders and instructions to assess zakat on sheep, cattle and plants will continue.
6. ALL individuals and companies with industrial or commercial activity are required to keep organized books that show capital, receipts and expenditure relevant to their activity for each year to be used to assess their zakat. The

books must be certified by commercial courts or, if not available, by notaries public.

7. Zakat payers with no reliable accounts will be assessed based on determination of value of zakatable goods, equipment, tools, belongings and properties at the end of the year; or based on estimation for zakat payers with no apparent zakatable items.
8. ALL zakat payers of individuals and companies are required to file a declaration with financial officers responsible for collection of zakat showing zakatable monies, goods, properties, cash belongings, profits from such items, and zakat amount during the first month of the year following the zakat year.
9. The financial officer responsible for assessment and collection of zakat will review data filed by zakat payers referred to above, and when necessary he may audit books, and upon completion he will inform the zakat payer of the amount payable by him in official stamped letter.
10. A zakat payer may object to the amount of zakat within 15 days of the receipt date by a registered-mailed memorandum stating reasons for objection addressed to the notifying department. Otherwise, zakat payer loses the right to object and is required to pay the amount as stated in the received notice.
11. The department receiving the objection shall refer it to the 1st Instance Committee consisting of the Prince of the area or representative (as chairman), and as members the Judge and the senior financial officer of the area, and three representatives elected annually by the Administrative Council of the area. The

1st Instance Committee may review zakat payers books and records and any other material that help reach the truth and will issue its resolution within 15 days of the objection date.

12. The financial office and the zakat payer have the right to appeal the 1st Instance Committee resolution to the Appeal Committee provided for in article 26 of resolution 340, dated 1/7/1370 H (8/4/1951) within periods as prescribed in article 10 above². The Appeal Committee shall issue its resolution in regard to the objection within a period not to exceed one month of its receipt of the objection.
13. To appeal the 1st Instance Committee's resolution, the zakat payer must first pay zakat in accordance with the objected resolution; or in the case of overpayment by zakat payer, he shall receive refund. To consider the appeal, it should have attached with it an officially certified copy of the receipt of payment of the mentioned zakat.
14. The 1st Instance Committee and the Appeal Committee have the right to call the zakat payer or representative to appear in front of either of them. The Zakat payer must respond, and if he refrains from appearance with no valid reason, the objection or the appeal may not be accepted.
15. The provisions of articles 21 and 31 of resolution 340, dated 1/7/1370 H. (8/4/1951) are applicable to zakat payers.
16. Officials referred to in articles 18 and 19 of resolution 340, dated 1/7/1370 H. (8/4/1951) will perform duties of assessment and collection of zakat in addition to similar tax duties.

17. In the case of lack of clarity that may surface during implementation of articles of this resolution, the Minister of Finance and National Economy shall be the reference authority for clarification and interpretation.

18. The officials responsible for implementation of this resolution are required to keep the necessary books and files to assess and collect zakat, register objections and notices, and to obtain data from zakat payers.

19. This resolution will be printed in sufficient number, published in local newspapers, and circulated to all Financial Offices.

20. The Director General of Finance shall supervise printing of the required books, forms of notices and statements and shall distribute them to Financial Offices as soon as possible.

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