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VOYAGE TO TAXING RELIGIOUS ORGANIZATIONS IN NIGERIA AND BLOCKING LEAKAGES IN THE NIGERIAN ECONOMY: LEGAL FRAMEWORK AND MATTERS ARISING

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ABSTRACT

Taxation in the modern State has become an essential ingredient in the fabric of economic and social development, often utilized as a pivot to assemble revenue for catering to the needs of the entire citizenry. Religious Organizations for centuries have enjoyed classic exemption from taxes across board. There are many reasons for their exemption from taxation, but chief of them all is the argument that religious organizations like charitable entities meet a moral need crucial to peace, stability, and progress of the society, thus taxing them would be so burdensome and crippling that their objectives may be defeated with a heavy tax burden placed on them. A curious mind would wonder if this argument can hold sway in this millennia where religious leaders have made the Forbes list and a lot of them boast of private jets and mansions their counterparts in other centuries before could not have afforded or boasted of. If these religious organizations have become profit making centers why should they not be taxed? In this work the writer reviews the status quo gleaning from the American experience and scrutinizing the matters arising in this age long debate. The trajectory then is that the phenomenon of exemption of religious organizations from taxation must be revisited from a legislative and policy making stand point.

INTRODUCTION

Mention the word “Nigeria” and “economy” and what comes to mind is a country known for her rich oil reserves specializing in exporting crude oil in exchange for petrodollars that help fund her economy and public infrastructure. Indeed, the country for a long time has been among the top seven nations oil producing nations in the world. Such that one would not be wrong to opine that the main source of the country’s revenue is oil and gas, it is the golden goose and driver of Nigeria’s economy for many decades (Folarin, 2013). However, things are not what they used to be anymore with maddening inflation rates and clearly more dwindling sources of IGR (Akpanke et al., 2022). The conversation on the need to tax religious institutions has never been rifer or more critical than it is today under a seemingly confused governmental apparatus. Nigeria is a vast enclave both geographically and in terms of diversity (Antai, 2024).

With over 250 ethnic groups, it is easy to see why many issues like tribalism and ethnic affiliations could stand in the way of real progress with many decisions taken with parochial ethnic and clannish interests at the forefront (Odia, 2014). The dichotomy of church and state for long seem to have been good for society until the reign of Constantine I when Church and State had a brief stint of godly romance that led to the mainstreaming of the papacy and the involvement of church in ordinations and celebrations of State affairs. In more recent times, it is the flamboyance of Pentecostalism and the prosperity preachers’ camouflage that have led us here. In the debate over the implications of unity between church and state, the question of accountability within the church has become a highly controversial one (Fyanka, 2022). It is easy to reel out historical development of the debate on the dichotomy between Church and State, however, it is important to weed our way past historical antecedent and focus on current realities.

Nigeria’s federal structure creates three separate tiers of governance; local, state, and federal with the federal government superseding yet with states and local governments allowed some level of autonomy over their affairs depending on whether they fall within the concurrent list of the CFRN or not. It is in Section 4 & 150 item D of part II of the second schedule of the Nigerian 1999 Constitution, that the government derives the powers to levy taxes on generally (Mainoma et al., 2020). An imminent challenge facing the Nigerian Government is budget deficit and the continued difficulty in multiplying sources of IGR outside of petroleum funds. Meeting up with obligations of capital and revenue expenditure (Erikume, 2006) was a problem under the PDP national government and is still a problem under the APC national government. Section 23 (c) of the Companies Income Tax Act clearly provides for the exemption of religious organizations of a public character from taxation broadly. This exemption is not without conditions which operate to temporarily disintegrate those exemptions. The modus operandi adopted here in considering the subject is to start by answering the utility question, why it is important to tax religious organizations then review the National Tax Policy if it envisages taxation of religious institutions or is passive about the issue. In the second half of this article a comparative study is conducted

by analyzing the American tax system with regard to religious organizations before culminating with the pros and cons of taxability of religious institutions.

2.0 Definitional Clarity (Tax, Taxation, Religion, Religious Institutions etc)

There may be many philosophical and logical underpinnings as to why taxes exist but that is not the concern here, however it is important to lay the ground work with the basic definitions of key terms. Taxation is a governmental act of imposing enforceable monetary impositions on individuals, corporations, or entities by government with the intent to raise revenue for developmental projects (Nwabachili, 2021). A charge looks like a tax but it is not; taxation is built to ensure development and welfare of the entire population but especially the most vulnerable demography (Mainoma, 2020). Although there are other means of raising money for capital projects like the government itself using bonds and doing business outright, taxes have become the most tangible accessible system of fund raising for capital projects.

Taxation is founded on the notion that there exists a social contract between the individual and the state under which the individual is obliged to contribute to the prosperous existence of the state through compulsory financial payment (Federal Ministry of Finance 2017). Taxation, apart from being an obligatory contribution to the state by the citizen, is the easiest modus by which governments' raises revenue. A functional tax system should create room for raising much needed revenue such that, it becomes the very oxygen that keeps alive the nation's economy (Jones & Basu, 2002). The fiscal configuration of the nation is similarly federal but with a little twist seeing the federal government control the allocations made to the component states through the Revenue Mobilization and Fiscal Commission (RMFAC). The federal nature of the country determines how resources flow and how taxes move or how the tax chest is distributed. All the tiers of government have varying tax authorities for the level of taxes they are authorized to raise (Odusola, 2006).

The term religion on the other hand does not boast of a very common one size fits all definition. Religion can be said to be a major component of the way of life as well as beliefs upon the nature of the world and the admonitions to be. Religion is indeed a voyage that lasts a lifetime, thus after joining the set religion the individual then proceeds from just being a member to become an integral part of the religious infrastructure, a proselyte, one who is poised to bring more members into the faith, this is the modus operandi for all religions (Davidson 1973).

2.1 Utility of Taxation of Religious Institutions in Nigeria and blocking leakages in the Nigerian Economy

The necessity and importance of all citizens abiding by their obligation to pay tax to the state may sound rudimentary akin to the flogging of a dead horse yet this obligation underscores the very fabric that make for modern day civilized society; the citizens pays to be protected and supplied with the basic amenities of life (Antai, 2024). On the other hand, there exist some benefits created by statute to lure the taxpayer to collaborate with the state infrastructure by investing as pioneers in commerce and industry thus cutting them some slack in many tenable and untenable ways.

This reality creates an imbalance, which if unchecked could hamper the smooth generation of revenue and development in the nation. While individuals and corporations have had a seat at the table it appears that in the same vein, religious organizations have had to sit out of the conversation (Aidonojie, 2024).

All the modalities regarding companies remitting tax to the government, except companies in the business of crude oil exploration is regulated under Companies Income Tax Act (CITA) 2004, which serves as to primary law to look to. That the CITA makes provision for companies income tax does not mean other laws do not one way or the other also make provisions regarding companies tax directly or indirectly. Historically, the law has had to evolve with time and updated occasionally to capture time related changes (Salaudeen & Atoyebi 2018). The most recent reform is seen in the Companies Income Tax (Amendment) Act, 2007. Companies Income Tax (CIT) is derived from the profits of a company whether within Nigeria or outside of Nigeria. There are multiple types of taxes in Nigeria some individual and others applicable to corporate entities or entities that provide specialized services. The Personal Income Tax Act (PITA) governs all chargeable levies directed towards an individual in their personal capacity also determinable by the location where an individual resides.

2.2 Review of the National Policy on taxation in Nigeria

The National Tax Policy (NTP) (Federal Ministry of Finance 2017), a fundamental policy document on taxation in Nigeria, which in itself forms the bedrock cum guideline for future tax legislations and administration. The NTP is not just a policy document but also an operational guideline for regulation of taxation in Nigeria. No better place is the purpose and purport of the NTP captured than in the document itself, which categorically states that: 'The National Tax Policy is a document, which sets broad parameters for taxation and other ancillary matters connected with taxation. It is a clear statement on the principles governing tax administration and revenue collection. It therefore, provides a set of guidelines, rules and modus operandi that would regulate taxation in Nigeria" (Federal Ministry of Finance 2017) Put simply, the NTP is the operating document to consult when one seeks to capture a holistic view of the modus operandi of taxation in Nigeria. A careful perusal of the NTP reveals an attempt to capture every facet of the system of taxation in Nigeria. From the objectives, to the stakeholders, to the guiding principles, everything seems to have been provided for in the NTP. This would have been a happy conclusion if not for the fundamental error noticed-non contemplation of the probable need for the taxation of religious organizations.

The utilization of incentives to encourage individuals and corporations to remit tax and on time is a strategy that has been around for some time now and used by nations to drive tax remittance and reinvestments into the local economy or especially in key sectors of the economy to promote robust growth (Onapajo & Ezuma 2017). Tax incentive models in Nigeria fall under other tax based statutes designed in the mould of duty drawbacks, years of tax breaks, credit easing etc (Action Aid Nigeria, 2020). The CFRN 1999 (as amended) is silent with regards to investment

attraction through tax incentives, however, the Nigerian Tax Policy of 2017 (Federal Ministry of Finance in 2017) recognizes incentives as stimulants to attract investments. However, the crucial question that bugs a fertile mind is what does the National tax policy say regarding taxability of religious institutions?

PITA and CITA allow for tax exemption in sections 19 and 23 respectively. Section 19 of PITA specifies that incomes listed in the third schedule to the Act are exempt from taxation. A cursory look at the third schedule reveals the exact provisions on which the exemption is based on. Precisely, item 13 of the said third schedule to the PITA Cap P 4 LFN 2004, provides that; 'The income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution.' The interpretation of this provision is quite self-evident. A similar provision mirroring this is embedded in CITA Section 23 (1) (c) specifically section 23 (1) (c) which provides inter alia that 'the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company'.

The tax tribunal further cements this position in the case of American International School of Lagos v FIRS (2015) Tax Appeal Tribunal Report Ruling in the Lagos tribunal on 29 July 2015 by holding that FIRS cannot tax religious institutions unless they derive profit from a trade or business. A cursory look but combined and co-joined reading of these sections shows that the religious organization must be a not-for-profit entity, public in nature and not sharing profit among the trustees of the organization. This is very similar to the provision in America as seen below except that their provision is more elaborated and specific allowing no room for misinterpretation. In the case of Reverend Shodipo & others v FBIR (2010) 3 TLRN 61, a case where the issue was authoritatively settled according to the holding of the court that the peculiar situation of religious organizations being granted status of being exempt is however circumscribed around the income of these organizations derived from their religious pursuits, however that religious organizations are still responsible to remit taxes for their profits from commercial ventures and investments made by the organization.

3.0 Comparative Analysis

The point has already been emphasized before that Nigeria is built on a federal tripartite configuration with powers shared among the different strata of the federation; federal, state and local governments with their specified tax jurisdictions (Odusola, 2006). Nigeria's Bureau of Statistics declares the Country's population to currently stand at an estimated. 200 million (Nigerian Bureau of Statistics, 2022), Nigeria's GDP grew by 3.54% around the second quarter of the year 2022 (Nigerian Bureau of Statistics, 2022). It is abundantly clear that more sources of generating IGR are crucial to the continued survival of the black populous nation. While we know the provisions that exempt religious organizations from taxation presently in Nigeria what is the polar opposite or situation in the USA?

In the United States of America, according to revealed research, organizations that fall into the category of religious institutions whether described as Churches or Mosques or some other nomenclature, may be legally organized in a variety of ways under the law of the different States. Consequently, they can be described in a number of ways or better still be formed under the configuration such as incorporated or unincorporated associations, not for profit entities, and charitable trusts (Department of Treasury IRS. 2015). This is a sharp contrast from what is obtainable in Nigeria where the church or other religious organization must be registered under the CAMA 2020 as an incorporated trustee to even stand a chance of being recognized as such. In other climes, there exist graphic understandings of the role of religious and charitable organizations as being institutions that foster community, foster reform, and foster peaceful coexistence (Antai et al., 2024). It lies then on the government of the day to decide that such an organization has a purpose that ought to be promoted, but will not be, if burdened by the normal incidence of taxation. This very line of logic is what informs the need for tax exemption in order to foster the valued activity, which the organizations are involved in. The valued activity may be of a nature of providing food, clothing and shelter to the most vulnerable demography of any society thus remaining ever relevant in both developing and extremely developed nations in East and West (Davidson, 1973).

In the U.S the legal structure or framework under which charitable and religious bodies enjoy preferential treatment took many years to develop (Emory & Zelenak, 1982) much older than Nigeria when compared to America is simply a democratic and legal toddler. The status of these special organizations in the US was first enacted around in of August 27, 1894. With a reenactment in 1913. The current replacement or embodiment of said exemption is found in U S Internal Revenue Code (IRC) Section 501 under which institutions with religious purposes are granted exemption but must be qualified for such an exemption only if these requirements are met:

That the organization is organized and operated exclusively for one or more exempt purposes; That no part of the organization's net earnings may inure to the benefit of a private individual; That the organization is not actively involved in legislative lobbying and political campaigns. That the organizations' purposes and activities are not illegal and do not violate fundamental public policy.

It is therefore important to scrutinize this all important section 501 (c) (3) which itself is a big deal in America. Our discussion is not on the constitutionality or otherwise of the age old exemption as this is a mute issue a matter already practically settled even though many authors still go on a theoretical rampage over constitutionality – a mere academic exercise. Consequently, the main point being made is that given the existing posture of judicial precedent, tax benefits extended to religious institutions are determined as constitutional in both jurisdictions. The Judicial authorities have classed all forms of breaks and privileges as subsidies, and a subsidy is by default intended to ease the burden that would ordinarily arise. It therefore becomes a First Amendment matter, requiring said subsidies to be granted broadly and not just concentrated on organizations and institutions with a charitable or religious objective or purpose. In Nigeria on the other hand

the paucity of test cases makes it a broad allowance to accept the said exemptions until the Nigerian Supreme Court holds otherwise which I hardly doubt it would because such a judgment would feel the wrath of the millions of religiously affiliated Nigerians.

3.1.1 Taxation in the United States; the IRC 501 (C) (3) Provision

It has already been mentioned in the preceding section that the exemption in IRC 501(c) (3) is conditional. There are statutorily three conditions with the third condition being extrapolated to create two more. The three conditions are conjunctive requirements only if all three are met. Failure to satisfy any of the listed stipulations results in denial of the privileges that come with enjoying exemption. Understanding these exemptions is crucial to understanding how the issue is addressed in the United States. Condition number one stipulates that the religious organization must be operated exclusively for religious purposes and not for any other purpose especially for political influence or clout. Religious organizations typically are set up to cater for the physical as well as the eternal needs and material needs of practitioners of said religion. In order to ascertain whether an entity is run on the foundation or objects for which they were established, the investigation would ask if the organization is run exclusively for religious purposes or not thus, it is the activities that are to be scrutinized to find out. In the US cases of Wisconsin v Yoder (1979) 406 U.S 205 215-19, Reynolds v United States (1878) 98 U.S 145, 165-66 and People v Woody (1964) 61 cal. 2d - 1840 cal pp 69, 72 - 75. In the first case, the court examined the seemingly unjust withdrawal of children from school based on a certain religious sect beliefs, in the second case the court considered Mormon practices concerned with the act of polygamy, while in the third case the court evaluated peyote use by a Native American Church. All evaluations were surmised as activities exclusive to the religious purpose if the organizations involved so tax exempt. It is not the purpose behind the activities alone that matters as this must be distinguished from the activities themselves. However, the statute itself IRC 503 (c) (3) provides specifically that one would have to look at the purpose of the entity to ascertain if the entity is exclusively religious.

Overall, both the activities and purpose must be scrutinized. It so happens that over the years there have been a myriad of cases on both sides of the spectrum discussing them all would be a book project for another forum. There cases like the Bethel Min Inc v U.S (1979) 79 - 2 U.S Tax Case (C.C.H) 9412 at 87, Golden Rule Church Association v Commissioner 41 T.C 719 (1964). In the Case, the IRS alleged that the infant school involved was ran and was operated specially for educational services purpose because the school side by side proffered what seemed like day care services for the infants. Court refused to accept this argument surmising that the custodial care offered by the school in the case seemed to be a very crucial component was a necessary concomitant of the education that without the custodial service, the schooling of the students would have been incomplete. There are other sub conditions within this condition such as the need for the religious organization to be serving a holistic objective for which it was created, but even this point lay fallow in the murky waters of argument (Emory & Zelenak, 1982). In the US, these organizations qualify for exemption from Federal income tax pursuant to 501 (c) (3) and are generally eligible to receive tax deductive contributions as one of the benefits (Department of

Treasury IRS, 2015). Every organization entitled to these privileges must have an Employer Identification Number regardless of the nature and scope of employees in the organization. When an application for this hallowed status is approved, the revenue agency is obligated to notify the entity of their new status together with any requirements to file consequential annual returns.
It is fundamental to note that every institution or organization with the objects of charity or religion similarly to any other enjoying the privileges in IRC Section 501(c)(3), must not directly or indirectly partake in any sort of operations that would yield profit or benefit to members of the organization. It is almost the same thing as banning profit sharing since the entity was not established originally to make profit but help communities and individuals through her operations. The category of persons that may be described properly as insiders are basically the nucleus of members who run the day to day activities of the organization whether as employees, volunteers or full time staff members (Edet et al., 2022). Consequently, there should be nothing like the payment of dividends, or the advancement of any form of monetary compensation to such persons whether at standard rate or slightly higher rates than the average market value. The stipulation of the law against insider interest is a serious one and where it is derogated from; the entity may likely forfeit her status and still be exposed to criminal liability (Antai, 2024). So apart from being liable to forfeit this hallowed status the alleged insider would be forced to cough up what profit has accrued and made to pay excise duty on the proceeds. However, the prohibition of seeming unconscionable profit does not cover clearly fair balanced areas or dealings in the course of the entity's dealings (Anifowose et al., 2024).

Section 501 (c) (3) provisions limits any entity applying for exemption from being too involved in political activities akin to that of a political party, and within said provisions can be deduced two kind of tests which must be fulfilled before an entity would be given this privilege. The first test is an organizational test and the second test is best described as an operational test; both must be met wholly for any applicant entity to qualify for income tax remittance exclusion. The organizational test demands that the constitutive documents of the entity whether described as a charter or certificate of incorporation circumscribes or better still defines the extent of the authorities and powers of the entity applying for an exemption (Ekpenisi et al., 2024). It is then easy to conclude that the organizational test focuses on outward form, while on the other hand, the operational test peers through the glass of form and considers substance. Typically, where an entity has political objects as the main focus or foundation of its founding, that organization will ab intio be perceived as engaging in substantial political activity and cannot enjoy the exempt status. A political entity is seen as one of mass mobilization and communal engagement being an action entity. The interesting conclusion then is that an organization may fulfill the conditions for falling under the category of the organizational test but still fall short of meeting the operational test and vice versa (Davidson, 1973). On the face of it, none of the proffered two tests fully makes the organization tax exempt. Similarly, it seems the two test are half measures with none of each really being the best for evaluating religious organizations but this is a mute issue at this point as long as the modalities on exemption is understood. A cursory look at the judicial precedents shows that quite often the American courts have had to confront the issue of political activity

limitation viz a viz religious o charitable entities. The leaning has been quite liberal especially in the interpretation of the section mentioned in this work. It has been a long time of evasion of the key issue not until the case of Lord's Day Alliance v. US 65 F. Supp. 62 (E.D. Pa. 1946), a JudeoChristian entity had as one of her objects observing the Sabbath and promoting it. In so doing the entity was clearly in stark opposition to any legislation which permitted commercial activity on Sunday. However, it was still surmised by the court that the entity was entitled to be exempt upon application due to the fact that her objects did not substantially affect the status quo. Another perspective of Section 501(c) (3) can have it interpreted to be a negation of basic JudeoChristian beliefs and a limitation on religious entities fully pursuing and achieving their main objectives. If that is the case then that kind of circumscription creates a huge dent on its face and in the process crosses swords with the very essence of the right to exercise religious beliefs and the right to practice ones beliefs. One essential characteristics of the constitutional provision which is embedded in the American constitution described as the free exercise clause is the ability to enjoy freedom of religion and unhindered right to worship or practice ones beliefs (Antai, 2024). This right creates an equal obligation on the US government not to coerce any individual to do anything that would contradict their deep-seated beliefs. It has already been highlighted that an entity with political interest such as one that specializes in influencing political decisions especially in the legislature but the downside of IRC Section 501(c) (3) is that while the organization is free to lobby but at the expense of losing any chances of benefiting from the tax status afforded by the section (Department of Treasury IRS, 2015).

Under section 501(c) (3) entities with the objects that are charitable and or religious, are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign whether independently or as a representative of any political party. This interest in political participation also covers both campaign and post-election activities. This would also include making donations or collecting donations on behalf of a candidate. One thing is certain that the violation of the political interest provision results in withdrawal forcibly of the status of tax exemption and the imposition of excise tax.

4.0 Pros and Cons of Taxation of Religious Institutions in Nigeria

(Schwarzwalder, 2015) avers that the state will have many American citizens will suffer if exemption is whisked away completely. Precisely, that taking away the privilege of exemption from the church would be a huge loss and in turn make religion lose all influence and reliance on the State for both funding and other kind of support would become the main stay. Looking at the Soviet Union religion would become ultimately a private, publically irrelevant force. Unfortunately, we do not agree on the argument of relevance, the Church in fact including other religious entities have long existed and occupied a significant threshold in world’s history whether taxed or not. It is also our opinion that the Church can live up to any tax obligation imposed upon it by the state. It still boils down to ensuring that there are no hindrances to the charitable and moral significance that religious organizations play and have long since played throughout time. The essence of tax reform is to seal any leakages in the coffers of the national economy while forcing in discipline into the systems and institutions responsible for collection and remittance. Both developed and developing countries desire the eradication of fiscal deficits through

appropriate restructuring of the tax system to attract higher revenues (Oriakhi & Ahuru, 2014). Perhaps it is on this basis that we may need to really consider taxing religious organizations.

5.0 Conclusion and Recommendations

It is suggested that the exemptions under the Nigerian tax laws be made stricter and streamlined if they are to continue to exist so we do not have the same challenge the United States tax jurisprudence had to face in years of cases on all sides of the spectrum. The exemptions should also be whittled down such that where the religious organization is heavily involved in commercialized activity it cannot siphon the profits away under the guise of such being part of its original purpose. The National Tax Policy of 2017 is silent about the possibility of even considering the taxation of religious organizations in the future. This should continue to be part of the conversation as far as the eye can see and if the nation wants to improve the options of raising IGR. Hence, while it is a popular debate the main policy makers who actually make the tax policies are not really making any policy moves to change the status quo. The modus operandi adopted here to highlight the main points of the debate with reference to more civilized jurisdiction is apt allowing the reader to choose to be or not to be – that is the main question.

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