



Legitimizing the taxation of religious institutions, privately owned educational institutions and non-governmental organisations in Nigeria

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Abstract

Taxation is basically the imposition of compulsory levies on individuals or entities by government. Taxes are levied primarily to raise revenue for government expenditures and realization of the obligations of government. Ironically, one of the challenges of the Nigerian government today is meeting up with the agreed obligations such as capital and revenue expenditures. Plugging tax leakages in the administration of tax becomes particularly more pertinent in order to justify the moral right to impose tax. Hence, it is imperative to bring in all the channels of tax leakages with in the tax net of the Revenue Authority. Tax exemption granted to religious institutions, privately owned educational institutions and non-governmental organisations has been argued as one of the channels of tax leakages. Although, in Nigeria, religious institutions, educational institutions and non-governmental organisations of a public character are exempt from tax; both under Section 23(c) of the Companies Income Tax Act, Section 19 and Paragraph 13 of the Third Schedule of the Personal Income Tax Act. However, the exemption applies only to the extent that the profit does not relate to a trade or business carried on by such institution. Nonetheless, these bodies have taken undue advantage of their tax free income to establish businesses and other investments. This paper examines the propriety for the grant of tax exempt status to these bodies in view of their engagements in trade and business. Thus, the paper advocates for the legitimization of taxation with respect to all income of these bodies.

Keywords: religious, educational, non-governmental, organisations, institutions, tax exemption

Introduction

Any discussion of the appropriate tax treatment of non-profit organisations will inevitably confront the conundrum of churches and other charities.

As a threshold matter, to question the non-profit tax exemption is to question value of non-profit themselves. Vital independent non-profit organisations are crucial to the society^[1]. The benefits of charities which ranges from promotion of altruism and volunteerism, collective action free from private profit motive to pluralistic approach to problems have been celebrated. At the same time, Lawrence Stone^[2] emphasized the “responsibility on the part of government not to provide tax and other financial benefits that might create an imbalance between government needs for tax revenues and the benefits provided the exempt sector”. It is pertinent to analyze whether or not there is need for these organisations to continue to enjoy their tax exempt status.

1. Exempting Provisions under the Nigerian Tax Regime

The phrase tax exemption is not defined under the Companies Income Tax Act or any other tax legislation. But in *Northern Nigeria Investment Ltd v Federal Board of Inland Revenue*,^[3] the Court, Per Belgore J. defined the expression “exempt income” as follows; “exempt income is income primarily subject to tax but exempt under another provision of the law”. The true position is not that exempt is not subject to tax^[4]. In other words, exempt income is income subject to tax under a particular provision of the law, but only taken out of the taxing law by the relevant exempting provision^[5].

Exempt income is therefore, income liable to be taxed by law, but expressly excluded by another provision of the law. In *Australian Mutual Provident Society v IRC*,^[6] it was stated that the word “exempted from taxation” in section 86 of the Australian Act, did not cover income which was not within the reach of the New Zealand tax laws.

Having analysed the meaning of exempt income, the exempting provisions under the Nigerian Companies Income Tax Act shall now be considered.

2. Companies Income Tax Act

Companies’ income tax is a tax on all limited liability companies in Nigeria except for companies engaged in petroleum operations.

Under section 23(1) of CITA^[7], the following profits are exempted from tax:

- a. The profit of a company being a statutory or registered friendly society, provided such profits are not derived from trade or business carried on by such society;
- b. The profits of any company being a cooperative society registered under any enactment or law relating to cooperative societies not being from any trade or business carried on by the company;
- c. The profits of any company engaged in any ecclesiastical, charitable or educational activities of a public character, provided such profits are not derived from trade or business carried on by such a company;
- d. The profits of any company formed for the purpose of promoting sporting activities, provided such profits are fully applied for such purposes;
- e. Profits of a trade union registered under the Trade Union Act 1973, provided such profits are not derived from a trade or business carried on by such trade union;
- f. Dividend distributed by unit trust.

From the foregoing provisions of Companies Income Tax Act, profits of any organisation engaged in ecclesiastical, charitable, benevolent or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business carried on by the company^[8]. Thus, where not-for-profit organisation engages in any trade or business, the profit derived there from will be subjected to income tax as provided for in the Act^[9].

Critique of Tax Exemptions

1. Non-Governmental Organisations

The recent pronouncement by the Federal Inland Revenue Service (FIRS)^[10], that Non-Government organisations (NGOs) in Nigeria are required by law to discharge tax obligations to the government came as a surprise to many NGO operators^[11]. It therefore means many of the NGOs have never been paying tax. People evade tax with impunity in Nigeria despite the numerous extant tax regulations in operation. Indeed, payment of tax is a fiscal responsibility of all the non-profit organisations and their evasion remains condemnable. As an emerging economy, Nigeria quest for sustainable development is largely hung on the attitude of the citizens to tax^[12].

It should be borne in mind that the performance of government depends on tax payment by citizens and corporate organisations. Any government that does not encourage citizens to pay tax promptly will lack the financial wherewithal to achieve its objectives.

Over the years, there had been clarion calls for the NGOs to be paying tax. These calls, no matter how loud and far-reaching, cannot yield results, if deliberate and practical measures are not taken to address obvious tax evasion by the NGOs in Nigeria.

There is no gainsaying, that tax evasion and avoidance practices, in a way, constitute acts of corruption. The evasion is however, made possible by sharp practices and collusion between the tax officials and the operators of the NGOs.

Obviously, tax evasion and avoidance practices are two major fiscal challenges that must be addressed with utmost urgency by the government. There is no ambiguity in Nigeria tax regulations, and its enforcement procedures are equally not contentious. Yet, Nigerians have ways of circumventing the laws.

It is on record that the issue of over dependence on revenue accruing from oil, even in the face of dwindling economy as we have presently, has been a major cause of failure of government to maximally explore taxation for a national development. It is submitted that if Nigeria can move from resource dependence especially taxation, then, government cannot but tax all commercial ventures of non-profit organisations in any guise.

Notwithstanding, the clearly defined tax obligations of NGOs by the Federal Inland Revenue Service^[13] (FIRS), the operators of NGOs are still insisting on exemption provisions of the law on the basis that their activities are not for profit. It is worthy of mention that statutory obligations of NGOs among others are; maintaining accurate record of employees; maintaining proper book of accounts; deducting Pay As You Earn (PAYE) from employees' salary and remit same to the appropriate tax authority; payment of Value Added Tax (VAT) on goods and services with the exception of humanitarian projects or activities carried out by them; deducting withholding tax (WHT) on payments made to its contractors/suppliers and remit same to the appropriate authority in accordance with the laws; such remittance is to be accompanied with schedule of deduction; and pay tax as when due on non-exempt activities^[14].

Incontrovertibly, there are civil society groups that venture into businesses with a lot of investment portfolios. Many of the NGOs are not willing to discharge their tax obligations to the government. Without doubts, many NGOs do conceal information to public on their financial profile, even some do not maintain proper books of accounts as stipulated by the FIRS guidelines.

It is the researcher's view that, NGOs should be made to pay certain types of tax particularly capital gains tax where it disposes of any asset for valuable consideration. In any event of such disposal of a capital asset, the organisation should be made to pay ten percent (10%) of the consideration sum to the appropriate revenue authority as capital gains tax. Again, where it engages in profit-oriented activities or commercial activities like any other profit making corporate or entity, it should be mandated to pay companies income tax like other profit making entities. For it will prejudice the interest of other corporations, if these organisations are allowed to use their tax-free income to compete unfavourably with others. Though, in practice, this not-for-profit organisation

will embark on commercial ventures and make profit out of them. But such profits will not be assessed and chargeable to tax on the guise that they are exempted from taxation.

Nevertheless, some NGOs instead of rendering the said services for which they were established free of charge, they charge fees for the delivery of such services. For instance, some members of International Federation of Women Lawyers instead of rendering *pro bono* services, now charge fees from prospective clients. Then, the question is if they are exempted from taxation on the premise that they render *pro bono* legal service, why then are they charging fees? It has become obvious most of these NGOs are used as haven for tax evasion or avoidance.

The tax authority needs to streamline between activities of the organisation for which it is granted exemption and that for which it is not, so that when it has gone outside such activities, particularly, profit making, the tax authority should plough into such income and assess them accordingly.

Even when it appears that the law on tax exemption is clear and sufficient, there still exist a wide-range of avenues for tax evasion and avoidance. This is basically due to paucity of enforcement mechanisms. The tax authorities should devise workable enforcement measures to ensure strict compliance of the relevant tax exemption provisions. The existence of loopholes in the enforcement procedures in tax administration has occasioned a great loss of revenue to the government. The tax authorities do not engage any organisations after granting them exemption from payment of taxes. These organisations take undue advantage of their tax exempt status to engage in various profit-oriented ventures and the tax authorities will not charge or assess those incomes for tax purposes.

Again, the exemption granted to the NGOs with respect to Value Added Tax is only when they purchase goods and services purely for humanitarian projects. Suffice to state that when they make purchases on goods and services for non-humanitarian projects, they will be bound to pay value added tax (VAT).

Further, NGOs are expected to deduct and pay personal income tax from salaries and allowances of their employees. Under the Personal Income Scheme ^[15], the personal income tax is charged on the income of every taxable person for the year from a source inside or outside Nigeria in respect of, but not restricted to the following:

- a. The gains or profit from any trade, business, profession or vocation for whatsoever period of time such may have been carried out.
- b. Any salary, wages, fees, allowances or other gains or profit from an employment including gratuities, compensations, bonuses, premiums, benefits or other prerequisites allowed, given or granted by any person to an employee.
- c. Gain or profit including any premiums arising from a right granted to any person for the use or occupation of any property.
- d. Dividend, interest or discount;
- e. Any pension, charge or annuity; and
- f. Any profit, gain or other payments not falling within paragraph a-e inclusive of this subsection.

Flowing from the above, it is obvious that income in the form of salary, wages, fees, allowance or gains or profits received by virtue of employment is chargeable to tax. In other words, the salaried employees of the NGOs and other like organisation should pay personal income tax like other employees in the public or private sector. Thus, the NGOs should deduct a certain amount monthly from the emoluments of their employees as personal income tax under the "pay as you earn scheme"

There is no gainsaying that NGOs play intervention roles on national emergencies and equally perform social responsibilities. Notwithstanding the contributions of NGOs to National development, these do not in any way justify continuous tax evasion by some of the NGOs.

2. Religious Institutions

Nevertheless, the ecclesiastical bodies, though exempted from taxation ^[16], it is submitted that they should be robbed of their tax-exempt status. The essence or rationale for exempting religious institutions and other not-for-profit organisations from the payment of tax is that they are expected to embark on charities and other welfare programmes, which the State cannot readily meet. The pertinent question to ask is has these organisations been able to fulfill the welfare/charitable obligations to warrant the continued enjoyment of their tax exempt status? This question and other issues were brought to fore at the last concluded National Conference, held in Abuja ^[17]. One of the recommendations of the Confab was that religious organisations in Nigeria should be taxed, after it was put to vote by the delegates. Some of the delegates expressed the view ^[18] that the extreme flamboyant lifestyle of some religious leaders in the country is indicative of the excessive wealth at their disposal and as such the organisations which they preside over, which generate such excessive funds in the first place, must be subjected to taxation ^[19].

Other delegates have equally argued that business ventures of the most of these religious bodies should be subjected to taxation since they are strictly profit making undertakings ^[20]. On the other hand, those who were against the move to tax religious bodies have argued that since the income of religious bodies are largely made up of voluntarily gifts, donations, offerings and contributions from willing members, who have already paid taxes on their income, taxing them would amount to double taxation ^[21].

Another argument that was put forward by those opposed to taxation of religious bodies was that what they brought to “tables” in terms of providing spiritual coverage for the country is invaluable and cannot be quantified. Consequently, subjecting them to taxation would be considered an act of ingratitude by government, since they are the reason Nigeria has not disintegrate. According to those who held this view, the only reason why the country has not disintegrated completely is because of the fervent prayers being offered, on behalf of the country, by these religious organisations ^[22].

Some has gone further to declare that taxing religious bodies is an affront on God, whose interests the bodies are projecting. And when God is angry, he would complicate the country’s troubles and woes ^[23].

Flowing from the above analysis, it is submitted that arguments and opinions expressed by those objecting to taxation of religious institutions were merely founded on sentiments. Beyond rational and historical reasons in favour of taxing the church, the money currently going to faith organisations is not used for non-profit or charitable activities that could help the poor or alleviate poverty or even improve the welfare scheme to any extent in Nigeria.

3. Educational Institutions

Centuries ago, calling for religious bodies and their leaders to be taxed, would have been regarded by many as a blasphemous move. However, current trend within our religious organisations has shown that lots of them have sacrificed piety on the altar of mundane pursuit. It is for instance, immoral and unjustifiable for religious bodies to establish institutions of learning that charge fees that are beyond the reach of majority of their members.

In the pre-colonial and colonial periods, when the European Missionaries introduced Western education into the Country, what they offered was “free education”. Their ultimate goal was to massively educate the people. Indeed, most modern day religious leaders benefitted from the erstwhile free education of the early missionaries. It is ironic that same people could preside over organisation that are taking education beyond the reach of the ordinary masses, even their members. A lot of views have been expressed specifically the fact that churches and mosques alike would use the donations of the respective congregations to build private schools and universities that impose exorbitant fees which their members and followers cannot afford to educate their children there. For instance, Al-Hikmah University ^[24] and Christian Universities such as Covenant University ^[25], Babcock ^[26], Benson Idahosa University ^[27], Redeemers University ^[28], Bowen, Ajayi Crowther University, et cetera. These universities charge from Five Hundred Thousand Naira (N500, 000) to One Million naira (N1, 000,000). Though, it has been argued that it takes huge funds to set up quality institutions of learning, but in all sincerity, it is indefensible for religious Organisations that used members’ funds, donations and contributions to establish schools to charge exorbitant fees that are well above the reach of average “income earner members”.

Even though, educational establishments or institutions are exempted from taxation, but these are premised on the ground that proprietors or owners of these institutions will help the government in providing education for the populace. Hence, the exemption they enjoy cannot be justified when they charge exorbitant fees which church members or followers whose resources were primarily used in funding the schools cannot afford.

Thus, these institutions of learning have become only for the affluent in the society due to their exorbitant charge of tuitions. Notwithstanding that religious based educational institutions, established majorly from donations, contributions, offerings, et cetera of members and followers are operated as business ventures, whereby they charge exorbitant fees, which can only be afforded by politicians and business tycoons. Little wonder, most religious bodies in rivalry and competition among themselves crave to establish schools because these are seen as very lucrative business venture. Most religious bodies have already established two institutions, those with only one, crave to establish the second one.

It is submitted that if the government can remove the “exempt status”, these organisations enjoy and tax their “educational venture” and as well as those owed by other private persons. Thus, the government can derive some revenue from the tax on “educational ventures”. Hence, it is unjustifiable for educational institutions who are exempted from tax on the ground that they promote charity and welfare of the public, to commercialize education as a business venture.

It is obvious that these bodies are taking undue advantage of their tax-free income to diversity into businesses and other investments.

Their business empires include Television stations, Guest Houses in their camp grounds, petrol stations, bakeries, restaurants and fast food joints, hospital, microfinance Banks, publishing outfits, universities and schools across all levels, internet café, supermarkets, water purification factories (including the production of bottled and sachet water) plant (Bulldozers et cetera) hiring, bookshops, rental shops in plazas, event centers, sales of audio and visual materials, real estates.

4. Trade or Business

Nonetheless, the tax-exempt status granted to religious institutions in Nigeria under the relevant taxing statutes does not contemplate the carrying on of any trade or business by the relevant religious institutions. The position of the law as envisage under CITA ^[29], section 23 (1)(c), is that there shall be exempt from income tax the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character; in so far as such activities are not derived from a trade or business carried on by such company. ^[30] Also, a similar provision in PITA ^[31], provides that the income of any ecclesiastical, charitable or educational institution of a public

character is exempt from income tax, in so far as such income are not derived from a trade or business carried on by such institution.

Furthermore, Capital Gains Tax ^[32], section 26 (1) (a) provides that a gain shall not be chargeable to capital gains tax if it accrues to an ecclesiastical, charitable or educational institution of a public character; in so far as the gain is not derived from any disposal of any assets acquired in connection with trade or business carried on by the institution ^[33].

From the foregoing, if the provisions of the law are clear on the tax treatment of these institutions when they carry on trade or business related activities, why is it that they are not paying taxes on those business or trade related ventures? The answer is simple, these organisations do business under the guise that they are registered as tax-exempt organisations.

Nevertheless, the pertinent questions arising from the religious tax exempting provisions ^[34] highlighted above are; what constitutes “trade” or “business” for the purpose of the said exempting statutes? And how do we know if a religious institution is engaged in a trading activities? Unfortunately, what constitutes “trade” or “business” for the purpose of determining what part of the profits of a religious institution are assessable to tax is not conveniently defined in the relevant statutes, although a less than feeble attempt was made in the PITA ^[35].

However, a learned author has expressed the view that whether or not an activity is a trade is a mixed question of law and fact ^[36]. For him, it would seem that a person does not trade if he simply process other trade; he must be involved in buying and selling of goods or rendering services ^[37]. If there is regular buying and selling or rendering of services, this is clearly trading and the profits and gain are taxable ^[38]. It is worthy of note that for purposes of tax assessment, it is immaterial whether a relevant trading activity is regularly carried on or it is a one of transaction as far as it can be seen that profits or gains emanates from such activity.

The classic case on the issue of taxation of religious institutions in Nigeria is that case of *Rev. M. F. Shodipo & 2 Ors. v FBIR* ^[39]. In that case, the third claimant; (Development Trust (Nig) Ltd.;, a corporate entity engaged in charitable activities setup as subsidiary of the Methodist Church in Nigeria) was the owner of a property situated in Lagos and known as Wesley House, which leased to various tenants. The first and second claimants: Revered M.F Shadipo and T.R.B Macaulay; Trustees of the Methodist Church. Income derived from the property was said to be applied to charitable and educational purposes, namely for maintenance of various missionary establishments and educational institutions of the Methodist Mission in Nigeria.

The defendant raised income tax assessment on the rental income derived by the third claimant from the property contending that since the company was involved in activities of developing and letting of property, the income was derived from “trade” or “business” within the meaning of CITA, 1961, section 26 (1)(c) ^[40]. The claimants contended that the income was tax exempt as the third claimant was engaged in charitable and educational activities. Upon these, the contentious, the claimants brought this action seeking a declaration that the third claimant was exempted from tax on rental income and to obtain an injunction to restrain the defendant from taking steps to assess, collect or enforce the payment of tax.

It was led by the Federal Revenue Court, Lagos, per Lambo, J.(As he then was), that the third claimant was carrying on business of a company dealing in real estate and was therefore carrying on a trade or business within the meaning of CITA, 1961, section 26(1)(c). It was further held that third claimant as a company was a legal person separate and distinct from individual members that held shares in it. Accordingly, the fact that the first and second claimants owned all the shares of the third claimant as trustees of the Methodist Mission of Nigeria, and that dividend could not be paid to them, did not affect the liability of the third claimant to tax under the CITA, 1961.

Of even more interest was the holding of the court that even if the rental income was wholly devoted to charity, the third claimant was still assessable to tax on such income, having derived said income from a trade or business carried on by it –thereby forfeiting its tax-exempt status under CITA 1961, section 26(1) (c) and the claim for declaration and injunction could therefore be considered.

In reaching this decision, the court relied on seven English cases, two of which are of interest to the subject matter of this research work. In *Rotunda Hospital Dublin (Governors) v Coman*, ^[41] the Hospital, which was a maternity hospital incorporated in 1956 for the care of poor women, owned certain rooms. These rooms were let by the Governors of the hospital for concerts and other entertainments. It contended that all the receipts from the hiring out of the rooms were devoted to the purposes of the charity and therefore, not assessable to tax. The House of Lords per Viscount Cava, observed thus;

No doubt the hospital, like other charities yields no profit; but if the Governors in the course of their management carry on a profitable business, the profits of the business are subjected to taxation ^[42].

The judicial opinion considered above would appear to sufficiently establish that an isolated or one off transaction which is in the nature of trade or of a commercial activity is taxable, irrespective of whether or not it is carried on by a religious institution.

“Trade” or “business” for the purpose of determining the tax liability of a religious institution in Nigeria is to be construed in the widest sense of the phrase; such that any activity of a commercial nature – however minute – amounts to trade or business sufficient to deprive a religious institution of its qualified tax –exempt status. And where it is established that a religious institution in Nigeria is carrying on trade or business, it is taxable under CITA, and PITA, (whichever is applicable) on gain(s) or profit(s) of the trade ^[43].

From the foregoing, it is incontrovertible that where a religious institution in Nigeria lets out property for rent, the rental income accruing therefrom is deemed derived from a trade or business carried on by the relevant

religious institution and therefore assessable to tax. Most contemporary religious institutions in Nigeria would seem to have transformed themselves into “Commercial non-profits” and therefore not entitled to religious tax-exemption – their income, gains or profits being arguably derived from trade or business carried on by them.

In line with the above principle, the income from commercial activities of the religious institutions which among others are; guest houses, event centers, rental shops in plaza and other real estate must be harnessed into the hotchpotch and assessed and charged to tax accordingly.

Also proceeds from bakeries, restaurants and fast food chain, microfinance banks, publishing outfits, petrol stations, water purification factories, supermarket, sales of audio and visual materials, books, hiring, internet cafés, et cetera as operated by these religious institutions must be accessed and tax appropriately. As already expressed, that it would be unjustifiable and unconscious for religious institutions operating business ventures under the guise of tax exempt organisations to compete unfavourably with other taxpaying companies or enterprises involve in the same trade related activities or businesses.

Though, Churches pay certain amount of money to building authorities of any relevant State to get approval plan, building permit, building plan and other necessary authorizations. The application for building plan approval must be received, processed and assessed at the payment of various sum of money to the appropriate office.

This must be distinguished from tax exemption granted to religious bodies. This in turn means that religious are exempted from all forms of taxation, with the exception of Value Added Tax (except where they purchase goods and services which will be used majorly for humanitarian projects). On the other hand, sums of money demanded from the religious bodies for building plan, permit, approval plan or other necessary authorization are basically statutory levies which are payable to the appropriate state building authorities before any development is carried out on any land or improvement is carried out on an existing structure.

A business analyst and management expert ^[44], expressed the view that some churches and Mosques have a continuous cash flow for stipulated periods. They have their Statement of income and expenditures. Whenever their income exceeds expenditure, then the organization should pay a portion of their surplus as tax. For him, some taxpaying companies and other business organisation do not realize half of what religious bodies make. He said government can generate more revenue from these establishments as there seem to be increase in the number of churches and Mosques in recent years.

Even though, the argument expressed above sound cogent, it is submitted that imposition and payment of taxes on religious institutions should not be hinged on surplus. This is because, if that was the case, when their Statement of income and expenditures show no surplus, they would not be liable to pay tax. A better view would be to access all their income generated from profits or gains on commercial activities and charge them as tax on income.

A research conducted by the University of Tampa, in the United States of America suggests that the government losses an estimated \$71billion due to exemption of religious institutions from taxation. The research shows that despite the fact the religious bodies claimed to be charitable organization, that even when they embark on charity, only 29 percent of their revenue are spent on charity, while 71 percent goes into operating expenses. That is nowhere close to the America Red Cross which uses 92.1 percent of revenue for charity (physical assistance) and just 7.9 percent on operating expenses.

5. Employment Income

It is worthy of note to state that religious ministers, officers and employees are expected to pay personal income tax. No provision of the law exempts them from paying personal income tax. The situation we have in practice is that most clerics, pastors, et cetera, who are full-time ministers and some under salaried employment of the religious institution, alongside with other employees of religious institutions (who are regarded as “church staff”) labour under the impression that since religious institutions are exempted, therefore all religious paraphernalia are also exempted.

This is not the position, it is trite law that all employees in any Nigerian employment shall pay personal income tax through “Pay As You Earn” (PAYE). The employer being the religious institution is required under this scheme to deduct an appropriate amount from the weekly or monthly wages/salary of the employee in anticipation of the employee’s tax liability for the whole year ^[45]. An employer will be given a tax table to assist in the calculation by the relevant authority upon request ^[46].

The authorized employers who also deduct the PAYE taxes will make regular returns to the relevant tax authorities in such manner as the relevant tax authority may prefer for the deductions so made, and in the event of failure by the employer to make the deduction or properly to account thereof, the amount thereof together with a penalty of ten per centum per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt by the employer to the relevant tax authority ^[47].

The religious institutions are in default of these requirements of the law. It is pertinent to understand the meaning of the term “employment”. The term “employment”, simply put, includes any service rendered by anybody in return for any gains or profits ^[48]. The pursuit to PITA, income tax is payable on any salary, wage, fee, allowance or other gain or profit from employment, including compensations, bonuses, premiums, benefits or other prerequisites allowed, given or granted by any person to an employees ^[49].

Thus, an employee of a religious institution in Nigeria is taxable, if it is shown that his salary or any other compensation is derived from his employment with the religious institution. And the relevant religious institution

– as his employer – is under obligation to deduct the taxes due on its employee’s income and remit same to the relevant tax authority on request. The religious institution may be penalized for non-deduction and/ or remission of the said tax under the PAYE scheme.

Finally, it is worthy of mention that the income of the founders, general superintendents, et cetera, of religious institutions shall be chargeable to tax by virtue of the gain or profit they derive from their profession or vocation (as religious clerics) for whatever period of time such profession or vocation may have been carried on or exercised ^[50].

Hence, for tax purposes, members of the clergy will not be considered as employees of religious institution; but rather as individuals engaged in profession or vocation by virtue of the position they are occupying and therefore taxable in respect of income accruing therefrom under PITA ^[51]. This is the clear distinction between clergymen and other officers/employees of religious bodies for tax purposes.

Conclusion

From the foregoing, the principal legislations on taxation in Nigeria have provisions exempting ecclesiastical, charitable and educational institutions from income tax. Though, the exemption granted to these institutions is limited, as certain provisos are made applicable, which is none involvement in trade and business.

Notwithstanding the aforementioned, it is advocated that payments of taxes by these institutions should be legitimized. As there have surplus of income which there divert to investments and other capital ventures. Further, the sole essence of this exemption was for these institutions to assist the government in providing welfare obligations to the citizenry, which is no longer the situation as it is presently, thus the call for legitimizing their tax liabilities.

By this exemption, the government is losing revenues that would have accrued to it. These institutions apply their surplus income to profit oriented ventures whilst enjoying their tax exempt status. On this premise, there is an urgent need for government to structure by law the tax treatment of all the incomes of these institutions, hence plugging in all avenues of tax leakages.

References

1. *E Brody, Legal Theories of Tax Exemption: A Sovereignty Perspective*, available at <https://books.google.com.ng/books?id> accessed 29 October, 2021.
2. *L Stone, “Federal Tax Support Charities and other Exempt Organisations: The need for a National Policy”* University of Southern California Tax Institute, 1968, 27.
3. [1976] FRCR 93.
4. *Ibid*, p.95.
5. IA Ayua, *Nigeria Tax Law*, (Ibadan; Spectrum Law Publishing, 1996) pp.72-73.
6. [1962] A.C. 135.
7. Cap C21, LFN 2004.
8. Companies Income Tax Act, section 23(c) and Personal Income Tax (Amendment) Act 2011, section 19, paragraph 13, third schedule.
9. FIRS Circular.
10. “Guidelines on the Tax Exemption Status of Nongovernmental Organisations (NGOs)” Information circular by FIRS Published August 2010 as PC-T 1.2.2.3.1028.
11. Onike Rahaman, “NGOs and Tax Evasion” available at Newdiaryonline.com/ngos-tax-evasion onike-rahaman accessed 30 October, 2021.
12. *Ibid*.
13. “Guideline on the Tax Exemption Status of NGOs”, *op cit*.
14. *Ibid*, pp.5-6.
15. Section 3 Personal Income Tax (Amendment) Act, 2011.
16. Particularly when profits and gains are not derived from trade or businesses engaged by these bodies.
17. CONFAB of 2014.
18. T Ogunbiyi, “On religious bodies and taxation”, available at www.pmnewsnigeria.com/2014/06/09on-religious-bodies-and-taxation/ accessed 30 October, 2021.
19. *Ibid*.
20. *Ibid*.
21. *Ibid*.
22. *Ibid*.
23. *Ibid*.
24. An Islamic University in Ilorin, Kwara State founded in 2005 by Abdul Raeem Oladimeji Islamic foundation and World Assembly of Muslim Youths.
25. Established in 2002 by Living Faith Church.
26. Established by Seventh Day Adventist Church.
27. Established by Church of God Mission.
28. Established by Redeemed Christian Church of God.
29. Company Income Tax Act, Cap C21, LFN 2004.
30. Underlining mine, for emphasis.

31. Personal Income Tax (Amendment) Act, 2011, section 19 (1) and paragraph 1 and 13 of the Third Schedule.
32. Cap C1, LFN 2004.
33. Underlining mine, for emphasis.
34. CITA, S.23 (1) (c), CGTA, S. 26(1) (a) and PITA, S. 19(1) items 1 and 3 of the Third Schedule.
35. PITA, paragraph 1(d) (11) of the fifth schedule provides that “trade or business” means trade or business or that part of a trade or business the profits of which are assessable to tax under PITA. Clearly, this definition is of use in trying to understand, what constitute “trade” or “business” activity capable of depriving a religious institution of its exemption from income tax under the PITA.
36. Abdulrazaq, *op cit.* however, another learned author, has expressed a somewhat discrepant view. For him, “neither the word “trade” nor Business” was defined by the Act (CITA), but Nigerian court have treated the question of trade as one of fact” Orojo, *op cit.*
37. *Ibid.* This view appears very much open to question. It could afford the religious institutions the opportunity to carry on business or trade through third parties or even subsidiaries and still remain tax exempt, provided in all cases that they remain careful not to be directly involved in the management of the relevant trade or business.
38. *Ibid.*
39. (1974) 1 NTC 273.
40. An equivalent of CITA, section 23(1) (c).
41. *The Balowie Land Trust Ltd v The Commissioner of Land Revenue* [1992] 14 TC 684, where the first Division of the Court of session in Edinburgh, while determining the question whether an isolated commercial transaction could amount to “trade” or “business” for tax purposes, observed thus, “A single plunge may be enough provided it is shown to the satisfaction of the court that the plunge is made in the waters or trade”.
42. CITA, section 9 (1) (a) PITA, section 3 (1) (a).
43. Moshood Adetoro.
44. PITA, sections 81 and 82.
45. *Ibid.*
46. *Ibid.*
47. PITA, section 3 (2) (d).
48. Other than those enumerated in PITA, section 3(1) (b) (i)-(xii).
49. PITA, section 3(1) (a).
50. *Ibid.*