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Zakah On Stocks: Some Unsettled Issues

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ABSTRACT. Issues relating to *zakah* on equity shares are far from being settled if one considers the available *fatawa* and observed practices in many Muslim countries. The most basic questions pertain to the correct method of valuation of equity shares for the purpose of estimation of *zakah* liability.

This paper reviews alternative methods of valuation and argues in favour of market-based valuation. It also raises serious questions on the permissibility of exemption of fixed assets from *zakah* liability in the accounting based framework, notwithstanding its actual use in some Muslim countries. A market-based valuation framework is rooted in the notion of market efficiency, which dominates modern finance theories for over a century.

The paper seeks to push forward the concept of "average price" as the basis of valuation as also of estimating *zakah* liability. It argues that the concept not only follows logically from the efficient market theory, but also is backed by sound Shari'ah evidence.

1. Introduction

The history of joint stock companies is many centuries old in Western countries. But 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. As such, Islamic scholars and jurists have often investigated their legitimacy. In general, their opinion is tilted in favor of permissibility, more so in recent years. Most scholars now understand and appreciate the need and significance of such forms of organizing business. In fact, there is almost a consensus on permissibility of investment in shares of joint stock companies provided they produce *halal* products and avoid interest-based transactions. Equity shares therefore, account for a major part of investment portfolios of Muslims all over the globe. With increasing popularity of equity shares as vehicles of investment where Muslims may park their surplus savings, the issue of *zakah* has also assumed a great significance.

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The question of zakah on equity shares is still a less discussed topic. As far as English language is concerned, to the best of our knowledge, no major research work has been undertaken so far on the subject. In Arabic, since early 1950s the issue has been raised and discussed from time to time by eminent *ulama* like Abd al-Rahman Isa, Abu Zahrah, Abd al-Rahman Hasan, and Abd al-Wahhab Khallaf. Yusuf al-Qaradawi has surveyed their opinions⁽¹⁾. Majma` al-Fiqh al-Islami (the Islamic Fiqh Academy) of O.I.C. made it one of the topics of discussion in its Fourth Session held in Jeddah during Feb. 6-11, 1988⁽²⁾. In 1993, the Islamic Research and Training Institute (IRTI) of the Islamic Development Bank, Jeddah, published a small tract that exclusively examined and analyzed the recent opinions regarding zakah on shares⁽³⁾. In Kuwait Bayt al-Zakah organized its eleventh seminar during Muharram 8-11, 1422 (corresponding 2-5 April 2001) on contemporary issues related to zakah. The theme was “zakah on shares, securities and treasury bills”⁽⁴⁾. A number of notable scholars participated in this seminar. Going through these opinions, the present authors humbly feel that there are still issues that need further investigation through joint efforts of the experts of financial markets and Islamic jurisprudence. Some issues that need to be subjected to further analysis and investigation are: (i) what is the proper method of valuation of shares, given that there are multiple bases and methods for the valuation of a company and its assets - inventories/ merchandize and fixed assets; (ii) whether the value of fixed assets should be deducted from the total value of the company before calculating the zakah base for individual shares on a pro-rata basis; (iii) whether zakah should be levied on individual investors or corporate entities or both; (iv) if zakah is payable by individual equity investors, what is the correct method of assessment of zakatable amount, especially when equity shares are unlisted in stock markets or listed in a market characterized by violent swings in market prices, and the like. The present paper seeks to undertake a fresh look at some of the unsettled issues.

While supporting the view that all tradable shares, irrespective of the types of companies, should be treated as trade commodities (*urud al-tijarah*) in the hands of the individual investors, this paper suggests to adopt the average price of the shares over a year as the basis for zakah calculation instead of the market price prevailing on a particular date, which may be extremely volatile. The Shariah basis, for accepting the average price as the standard, has been provided. It invites attention to find a solution to the issue of unlisted shares. The paper addresses the professional economists and *ulama* equally.

2. Alternative Methods of Valuation of Shares

The first and foremost issue, that needs a reexamination, arises out of the complexity inherent in the valuation of a company and its shares. An accurate and proper valuation of the company and its shares is a prerequisite for a fair estimation of zakah-related liability of an investor. It needs to be recognized that there are multiple bases and techniques for valuation of a share. These methods could be based on assets of a company or based on its future earnings, cash flows and dividends or even based on simply the market price. The purpose of all these techniques is to arrive at the real worth or ‘intrinsic value’ or fair value of the share. The accountant’s tool of valuation based on book value of assets is perhaps too conservative and suffers from the problem of understatement. Consequently, the zakah base is understated too. A better alternative is

perhaps the use of 'replacement cost' of assets or adjustment to asset values for inflation. This would take care of the understatement problem. The accountant's method of valuation would also yield different results depending upon the method of inventory valuation used, such as, First-In-First-Out (FIFO) or Last-In-First-Out (LIFO) and so on and so forth. In short, a host of issues need to be resolved within the realm of what is now known as the emerging discipline of zakah accounting. The apparent merit of the accounting method is its similarity with the notion of "part-ownership" of the company by the shareholder. The pro-rata net worth (assets minus liabilities) estimated from the books of accounts and adjusted for inflation should capture what the shareholder "owns" and hence, according to this view should form the basis of zakah liability.

Financial experts however, point out that the value of a company and its shares (now that the company is a separate legal entity) is not the same as the value of net worth in the accounting sense. According to them, the value of a share should be based on expected earnings, cash flows and dividends. For example, if an individual constructs two houses (in addition to his house of residence) – one in a remote locality and another at the heart of a commercial center incurring the same cost, the accounting-based value would be the same. There would however, be a gross difference between the true worth of the individual's holdings. The one with locational advantage would be worth much more because of its high potential for generating rental income. The true value would be better estimated by considering the future earnings potential and not the actual cost incurred in building the facility. The earnings-based valuation is undoubtedly a more accurate exercise and is quite popular among financial experts. However, its theoretical superiority notwithstanding, the valuation exercise can be quite cumbersome and often beyond the comprehension of ordinary individuals.

The market-based valuation uses the price of the share as the basis of valuation. It is quite simple and easy to comprehend. However, it is based on an assumption that the market is quite rational and prices provide a fair estimate of the value of a share. The assumption may indeed be quite unrealistic in the face of large-scale volatility witnessed in prices and volumes in financial markets across the globe. Consequently, the net worth or wealth or zakah base for an individual would also experience violent swings over time. The zakah base estimated using the market price as on a particular point in time could suffer from both understatement and overstatement considering the inter-day and even intra-day variations in prices. The key determinant is the extent to which the financial economy maintains its linkage with the real economy. If financial markets move away from the real economy due to irrational factors, market-price-based valuation and therefore, the estimation of zakah would be inaccurate.

3. Accounting-Based Valuation: Further Issues

The accounting-based valuation of shares has been discussed rather widely by eminent scholars and has also been popular with regulators in many Muslim countries. While its popularity with regulators may perhaps be traced to its similarity with corporate taxation accounting (with familiar rules of the game), researchers have thrown up various issues unique to zakah accounting in the past. One issue that needs a thorough reexamination is the issue of exemption provided to fixed assets in the calculation of zakah base. According to one view, while calculating zakah on shares of

companies that engage in production and sale or involve in trading activities, one should deduct the cost of fixed assets like building, machines, lands, etc. from the value of shares and zakah is payable on the remaining value only⁽⁵⁾. For example, if 50% of capital is invested in machines, building, etc. then one should pay zakah at half the value of the share. The proponents of this opinion base their argument on an analogy and take the machine, building, etc. as analogous to the ploughing bullocks or camels used for irrigation, which are exempted from zakah. In a Hadith and in a number of sayings of the Companions and Followers it has been said that there is no zakah on one's bullocks meant for ploughing⁽⁶⁾. The jurists have included in this all the factors that a person uses in the process of production like land, building, machines, equipments, etc. But Imam Malik, who always accepts the practice of the people of Madinah, does not subscribe to this opinion and considers the working camels and bullocks liable to zakah⁽⁷⁾.

3.1 Discrepancy in Analogy

A little reflection would show that there is a fundamental difference between an individual or a few partners working directly with their tools and equipments to earn their livelihood and the joint stock companies of financiers, which have separate legal entity. In case of joint stock companies the entire process of manufacture is entrusted to hired laborers. The investors have nothing to do with the process. To an investor both fixed and liquid assets are the same. His main concern is the value of shares, which he purchases and sells like any commodity. In many cases, dividend is a secondary consideration. Even if one invests for a long-term period, one is always concerned with the value of shares, which does not necessarily, as we have seen above, reflect the actual sum total value of fixed and other assets of the company. The situation is similar for institutional investors, such as, mutual funds. Arguably, an individual or institutional investor is less of an owner of the company; he is more like a trader with merchandize of shares and hence, should pay zakah based on market value of his merchandize.

3.2 Anomalies Resulting from Analogy

A group of *ulama* have tried to differentiate between companies that have capital goods to provide services only and those engaged in production and sale of goods. In their opinion there is no zakah on shares of companies that provide services only (since all assets of such service providers are in the form of fixed assets that are fully exempted)⁽⁸⁾. Al-Qaradawi illustrates the anomaly resulting from such analogy: if two investors put equal amounts in a manufacturing or trading company and in a service providing company respectively, the investor in the manufacturing/trading company would pay zakah on the value of shares while the investor in the service-providing company would be fully exempted from zakah! Of course, he may be liable to pay zakah on his earnings from investment, but only if earnings are not consumed and completely exhausted before a year passes (*hawan al-hawl*). Commenting on this paradoxical situation, al-Qaradawi says that in this case it is possible that a person, who has invested his money in a service producing company, may not pay zakah for years while the other one who has invested in goods producing company, will have to pay zakah each year. This is a resultant difference, which the justice requirement of Shariah can never accept. In his opinion, this distinction has no established ground from the Qur'an and the Sunnah, or consensus and correct analogy⁽⁹⁾. To avoid this confusion, al-Qaradawi suggests that the two types of companies

are to be treated as owned by the individual. Now if the company is service producing, one should pay *ushr* (1/10), or *nisf al-ushr* (1/5) of the net revenue and profit of the company (as is his view about returns from all such productive resources), and if the company is doing commercial activities, he should pay 2.5% on the market value of its shares plus profit minus the value of fixed assets⁽¹⁰⁾.

Another scholar, Usmani also tried to give allowance to both opinions. He says, if some one has purchased shares on long term investment basis to earn profits from the company, in that case, such shares cannot be treated as trade goods. So, if it is possible for the investor to distinguish zakatable and non-zakatable assets, then he should pay zakah on the former only. And if he cannot do that, he should pay zakah on the full value of the shares to be on safe side. On the other hand if some one has purchased shares for capital gains and to earn profits by selling them, in this case those shares will be treated as trade commodity and it shall be obligatory to pay zakah on full value of those shares⁽¹¹⁾. This is a realistic view but assumes that the individual decides the zakah payable by himself. Arguably, this solution may be problematic in a scenario where the state requires calculation and payment of zakah. In this case, it would have to be based on voluntary disclosure by the individual. Intentions cannot be observed.

Majma al-Fiqh al-Islami, in its Fourth Session held in Jeddah during Feb. 6-11, 1988, exempted the share holder who had invested in a company to benefit from its annual dividends and not for trading, from paying zakah on the shares all together, and held him responsible to pay zakah on dividends only if all other conditions of zakah are fulfilled. Following is a translation of the text of the Resolution:

“If the shareholder has no means of knowing these elements of information for calculating the amount due, then:

If he had invested in the company to benefit from the annual dividends of those shares, and not for trading purposes, then the owner of such shares will not pay zakat on the market value of the shares but only on the basis of the dividends, at the rate of 1/4 of 1/10 (2.5%) after the elapse of one year from the date of the actual reception of the dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the Academy at its 2nd session with respect to zakat on the rented real estates and non-agricultural leased lands”⁽¹²⁾.

This verdict perhaps implies that shares are to be treated as “earning assets” like real estate or properties notwithstanding the fact that a small percentage of investors looks forward to long term appreciation and dividends. Most financial commentators recognize the fact that stock markets are dominated by speculators who participate in the market to benefit from price differences only over the short term.

3.3. Related Problems with Analogy

A question may be raised about the analogy between working bullocks of a real self employed man and capital goods of the legal man. A concession and exemption provided for to a person or a few partners (who are directly involved in their business

and have control over it and whose shares are not tradable in the market) should not be extended to joint stock companies (which have separate legal entity, over which the partners or investors have no control, and whose shares have a market value tradable any time, and where the share holders' own jobs are something else). Individuals invest their savings, which are mostly over and above their actual need (*al-hajah al-asliyah*). They invest their savings so that zakah may not reduce it. If such permission is granted, a person can easily and legitimately adopt it as a means to zakah avoidance.

Moreover, when we compare an individual or working partners with equity investors, we should remember that the former will always keep camels of irrigation, bullocks of cultivation, horses of carriage and machines for domestic industries within a certain limit. The latter, on the other hand, invest in financial assets and therefore may relentlessly pursue equity investment as a tool of zakah avoidance.

Still another line of argument against exemption of fixed assets from zakah is based on inconvenience and uncertainty. For instance, an investor may have diversified his investment into a dozen companies. Generally it is not possible to get their reports/balance sheets at the specific zakah date relevant for the given investor. Companies have their own schedules. Moreover, all companies are not very regular and punctual in the preparation and the dispatch of their balance sheets. This will cause inconvenience and delay in zakah accounting. A person who is frequently changing his portfolio of investment may not be sure about the composition of his invested companies. Thus there will be uncertainty about the zakah liability.

Again, for subtraction of the value of fixed assets from the share, it is reasonably required that the total value of the share must represent the sum total of the company's fixed and liquid assets. But we know that in many cases, the shares appreciate or shed their value for reasons exogenous to the company. Sometimes they are even under valued. Looking into these matters, it seems most appropriate to treat shares of all kinds of joint stock companies as trade goods and impose zakah at the rate of 2.5%. This opinion was also held by scholars like Abu Zahrah, Abd al-Rahman Hasan and Khallaf⁽¹³⁾. Al-Qaradawi also considers it ideal for individual zakah payers as they know the value of shares held by them, and also the annual dividends on those shares. So they can easily calculate zakah.⁽¹⁴⁾

Among the contemporary scholars, Monzer Kahf voices one of the strongest criticisms of the "fixed assets exemption" rule. As he asserts, "this opinion entirely misses the principle of justice in zakatability by keeping the majority of the rich in any contemporary Muslim society out of the reach of zakah while charging the poor agricultural population at a rate of five percent or ten percent with a zakatability criterion that does not even exempt what provides food to the average peasant family in any contemporary Muslim country".⁽¹⁵⁾

4. Market-Based Valuation: Further Issues

From the above, it is clear that the accounting-based approach (especially of exempting fixed assets) is fraught with grave injustice. Interestingly, the scholars who favor such exemption revert back to market-based valuation of shares when the same is

undertaken from the standpoint of individual investors. Below we present some more arguments in favor of our position that shares are to be treated as trade commodity in the hands of the individual investor. We also highlight some related issues and problems and seek to offer a solution.

4.1 Traditional Vs. Modern Partnerships

Early partnerships were simple. Such partnerships or joint ventures between two or a few persons were concluded generally not for a period of years, but for a single venture or voyage in which the concerned parties physically took part or at least had decision-making power. The formation or dissolution was simple and easy. It did not affect the others. Valuation of shares in such partnerships was a simple yet accurate exercise.

The present day joint stock companies are entirely different from the known forms of partnership in Islamic *fiqh*. A joint stock company or corporate body is regarded in the law as an entity separate from the members who own it. It can enter into a contract, acquire property, borrow money; and it can sue and be sued. The company obtains the money paid for the shares and the shareholders become the owners, not the managers of the company. The Board of Directors appoints senior managers. So the management and ownership are separated. The company is established by floating shares, which are traded in the market like any commodity. A shareholder cannot dissolve the company; he can withdraw from it just by selling the shares owned by him, which have a price in the market. The change of ownership does not make any difference to the company. In other words, when we seek to estimate the zakah base for an individual investor, it seems quite logical to focus on the market place and the price that a share would fetch when it is sold. The case for using pro rata value of physical assets of the company (since the shareholder is the owner, technically speaking) is therefore quite weak. A matter of common observation that strengthens the case for use of market price is that most shareholders in the market indeed have a very short time horizon. The so-called 'shareholder' or 'partner' is in fact an 'investor' who has no long term commitment for the company. Nor is our investor directly concerned with how efficiently the physical assets (which it owns) are being utilized to generate revenues and profits. The objective of such investment 'game' is to buy low and sell high and make a profit in price differences.

4.2 Volatility in Market Prices

A company's progress and development is generally reflected by the price of its shares in the market. As the company grows and starts giving return, the price of its shares rises. Shares of a loss making company lose their attractiveness in the market and their prices fall. But more often than not, the price of shares is affected by a host of other factors, such as:

- Changes in fiscal policies relating to taxation and public expenditure
- Changes in monetary policies
- Timing of arrival of monsoon
- Political uncertainty and turmoil.

- War tension or its diffusion.
- Payment crisis on any leading stock exchange of the world.
- Speculation and rumors, etc.⁽¹⁶⁾
- Any big scandal at national or international level.

The list is by no means all-inclusive. It may be noted that some of the factors are fundamental in nature – these affect future revenues, profits, cash flows and dividends, and consequently lead to change in market prices. Others (last three) are purely technical and psychological unrelated to performance of economy, industry or company, but can move prices violently. Further, of the fundamental factors, some affect the entire environment of stock market and general prices of all shares, while others affect the share price of a particular company alone. Examples of such factors are, announcement of bonus or right issues, change in the composition of the Board of Directors of a company, disputes arising among the management of the company, etc. The impact of such economy-wide, industry-wide or company-specific – fundamental or psychological factors on share prices is quite dramatic. It is a matter of common observation that prices in active equity markets remain highly volatile across the globe. Consequently, the zakah base estimated for an individual investor would also experience inter-day or intra-day variations.

4.3 Market Efficiency

A case in favor of the market-priced based approach to determination of zakah liability may be made out on the basis of the theory of efficient markets. According to this theory that has ruled the text books in modern finance for over four decades and is over a century old, financial markets are efficient in pricing the securities traded therein. In other words, market prices at all times equal the intrinsic worth of the securities. Any change affecting the fundamentals and hence the intrinsic worth, causes a change in market prices that is instantaneous and accurate. Any standard text book in modern finance contains an elaborate discussion of this theory that forms the basis of many subsequent theories of finance relating to financing, investment and dividend decision-making. While a more exhaustive discussion of the efficient market theory is beyond the scope of this paper, the same provides a robust theoretical justification for use of market price for valuation of one's share holdings and calculate one's zakah liability. Proponents of the efficient market theory are fairly large in number led by Eugene Fama, Nobel laureates Merton Miller and Franco Modigliani and others.⁽¹⁷⁾ It may be noted that according to this theory the price fluctuations or volatility is quite consistent with the notion of efficiency.

A contrary view propounded by the “anomalies school” led by Robert Schiller and others⁽¹⁸⁾ argues that market prices often depart from the intrinsic worth and move in a manner that may not be explained by fundamental factors alone. These researchers have reported various types of “anomalies” that essentially mean inefficiencies or discrepancies between prices and values. Notwithstanding the dissenting literature, the mainstream thinkers led by Fama in modern finance seem to agree that such departures may be temporary and market prices reflect intrinsic values “on average.”

4.4 Average Price as a Basis of Valuation

This follows directly from the above. The adverse consequences of violent fluctuations of market prices of shares have prompted economists, regulators and policy makers to seek ways of curbing such volatility and of ensuring greater stability in prices⁽¹⁹⁾. However, the fact remains that volatility is an inevitable consequence of free markets and cannot be simply done away with. Given this scenario, we propose that the average price may be adopted as standard for zakah calculation. Most financial journals publish three prices of shares – the highest and the lowest prices of 52 weeks and the current market price. If we take out the average of these three prices, it is hoped that it will be much nearer to the actual price of the share, or at least, to a great extent, the unhealthy impact of violent price fluctuations would be remedied. In this, there is due consideration to the interests of both zakah payers and the beneficiaries. This solution is especially for those who have invested for a long time period. For them the daily fluctuation of market prices of the share amount to gains or losses on papers only. The real value or a closer average price is more practical for them. Needless to say, however, in case of actual sale of shares at any existing high or low market price, the realized price would be used for zakah calculation. Further, it is also possible to estimate the average by using data points over smaller time intervals over the year, subject to their availability.

4.4.1 Shariah evidence for selection of average price

It may be noted that at different occasions the Shariah has praised or upheld the *average*. Here are a few evidences. The Quran ordains that one who breaks his swearing, his penalty (*Kaffarah*) is to feed ten poor the average (*awsat*) diet that he serves his own family⁽²⁰⁾. In his famous commentary on the Qur'an, al-Qurtubi says:

“That (i.e. *awsat*) here means the rank between two degrees and middle of two extremes. In the same sense is the Hadith, “the best of affairs is the average one”, reported by Ibn Majah. Again Muhammad bin Yahya reported from Ibn Abbas that a man used to feed his family graciously (sometimes) and (at another) used to feed his family niggardly, so the *ayah* enjoined (to feed the poor) the average diet that one feeds his family. It is obvious that average here means what we have just described, i.e. something between two (extreme) objects⁽²¹⁾.

The above statement of al-Qurtubi clearly shows that where there are many standards, the average should be chosen. A person sometimes arranges a feast for his family and sometimes feeds a simple meal. So instead of asking him to provide food of the best quality to the poor that he ever takes, or instead of permitting him to serve an ordinary meal, the average food was required. This is so because the high quality will be good for the poor, but it will burden the feeder. On the other hand, serving the ordinary meal will be easier for the feeder, but it will hurt the poor. It is also not required to serve the food of the day of swearing in or the food of the day of breaking it. Rather the average food has been ordered to observe the interest of both.

The matter of share price is also similar, sometimes it rises too high and sometimes it comes too low. Thus the suggestion of average price should be accepted.

Another proof for charging the average commodity in zakah is the Hadith in which it is reported by Ibn Abbas that while sending Mu'adh ibn Jabal to Yaman, the Prophet (p.b.u.h.) cautioned him not to take the best quality of goods⁽²²⁾.

Al-Tirmidhi reports the statement of the famous expert of the Prophet's traditions – Ibn Shihab al-Zuhri – who reported that whenever the collector of zakah came, he divided the entire flock of sheep into three categories: one third the best quality, one third the lowest quality and one third the middle class and then the collector took the sheep from the middle class⁽²³⁾. This tradition also suggests that the consideration of average will be desirable, or at least, permissible where an object has different qualities.

4.5 The Issue of Unlisted and Thinly-Traded Shares

A related question is about those shares that have no market value because they are either unlisted or there is hardly any trading even if they are listed. Additionally, it is also possible that the company ceases to send any financial statements or reports to its shareholders.

In our opinion, such shares should be treated as dead assets (*mal dimar*). When their price could be ascertained or when their listing is resumed, their zakah would be paid. Help of professional accountants may also be sought to evaluate such shares. If it becomes possible to know their value, their zakah will be paid. Majlis Majma al-Fiqh al-Islami in its Fourth Session recommended that zakah on shares purchased for trading purpose shall be paid according to their market price if they have one. And if they don't have such price, their zakah will be paid according to the evaluation of the experts. Following is its resolution:

“If, on the other hand, the shareholder has invested in shares for trading purposes, then his shares are subject to zakah as commercial goods. After the elapse of one year period, and if they are still in his possession, he shall pay zakah on their market value; if there is no stock market, he will pay zakat on their value as appraised by qualified experts. He will pay $\frac{1}{4}$ of $\frac{1}{10}$ (2.5%) of their market value plus their dividends, if they yield any dividend”⁽²⁴⁾.

The Majma is silent on the method of zakah calculation where evaluation is not possible. The issue clearly needs further investigation.

4.6 Zakah Collection Directly from Companies

In the year 1950, Mawdudi proposed that an Islamic state should collect zakah directly from the company. And in this collection agents of production like machinery, buildings, furniture, etc. would be exempted and zakah would be levied on the rest of its assets including the cash holding⁽²⁵⁾. If companies pay zakah, there is no need for double payment of zakah and vice versa. It may be worth noting that mutual funds and individual shareholders in many countries are exempt from payment of income tax (on dividends received) as this would amount to double-taxation of corporate income. In the Islamic framework, there is greater emphasis on the idea that the individual shareholder is indeed a part-owner of the company (he is held responsible for manufacture of *haram* products and services, interest-based transactions and the like). Hence the idea to avoid double taxation of zakah merits greater consideration.

Al-Qaradawi also supports the above in case one has to give the allowance to the agents of production and distinction is intended between the fixed assets and non-fixed assets because the company can easily calculate them.⁽²⁶⁾ This seems to be a reconciling stand. It is obvious that in this case the shareholders will not be charged to pay zakah individually to avoid duplication in payment. But in the First Seminar on Management of Zakah in Modern Muslim Society, held in Karachi during April 22, to May 02, 1985, the following suggestion was made;

“The list of persons liable to zakah may be extended by including therein companies in respect of their net worth, in addition to the share holders of the company being liable to pay zakah in respect of their shareholdings. The proposal is objected to on the ground that it may amount to the same asset being subjected to zakah more than once within the same zakah year. The counter argument is that a company is to be held as a judicial person in its own right, with its own assets and liabilities with its rights and obligations distinct from and independent of the rights and obligations of its constituents⁽²⁷⁾.”

Arguably, the idea of a company as a judicial person paying zakah could be problematic. This would mean that if we change the nature of company to a partnership firm or sole proprietorship, the zakah liability would cease. The correct approach perhaps would be to view a company paying zakah as collective payment of zakah by shareholders who qualify *nisab*. For most of the contemporary scholars, the company will pay zakah on behalf of the shareholders in the following four cases: i) when the prospectus provides it, ii) when it is resolved in the general meeting, iii) when the law of land requires it, and iv) when the share holders authorize the company⁽²⁸⁾.

Abu Zahrah and his colleagues also have treated the company and its shareholders separately and independently⁽²⁹⁾. This shows that the issue is still unsettled and needs further investigation and discussion to reach consensus.

Another problem attached to the companies is that their shareholders comprise Muslims and non-Muslims, owners of *nisab* and those who are below *nisab*, sane and adult and those who are not so. In case we accept that company's zakah payment is on behalf of its shareholders, it will mean that non-Muslims and those not liable to pay zakah, have also been subjected to pay zakah. Mawdudi's suggestion is that such people should inform the company in advance so that zakah is not paid from their accounts⁽³⁰⁾. This is a practical solution. Similar was the Resolution of Majma al-Fiqh al-Islami expressed in its Fourth Session held in Jeddah during Feb. 6-11, 1988. Its resolution is as follows:

“In calculating zakat, the company shall take due account of shares not liable to zakat, such as owned by the public treasury, charitable institutions, philanthropic societies and non Muslim shareholders, and make necessary deductions⁽³¹⁾.”

Another solution may be that the company must pay zakah on its total zakatable assets. It is the non-Muslims and exempted shareholders who should file their returns to the government and claim for refund. It may be noted that collection from companies will be easier, less expensive, sure and based on the real worth of the company.

5. Conclusion

In the preceding pages an effort has been made to raise certain issues of importance regarding zakah on equity shares that seem to be unsettled. It is impossible to cover all relevant issues, which can only be resolved through joint efforts of *ulama* and Islamic economists to reach a solution. There are numerous provisions of modern financial transactions, stock markets and joint stock companies, which need to be sorted out as regards their permissibility, and accordingly applicable zakah rules are to be decided.

At present, equity participations in joint stock companies provide one of the important avenues of investments for people's savings. It is a fact that the emergence of financial institutions has changed the composition of savings away from the traditional ones like land, property, jewellery, etc., towards financial assets, which enables more productive investment to be undertaken. The new investment and forms of assets should not be at the cost of already deprived section of the society. If the earning sources and returns are increasing for the rich, there should be a corresponding increase in the shares of the beneficiaries of zakah. In the wake of large-scale establishment of joint stock companies in Muslim countries zakah on shares should constitute a major source of total zakah collection. But no statistical evidence is available to show the magnitude of this source and future prospect of this important zakah base in the modern age.

In this paper we have offered some arguments for and against specific methods of zakah assessment as suggested by some contemporary jurists. The issues that are highlighted pertain to the appropriate method of valuation of company and its shares, specifically the accounting vs. market based methods of valuation, deductibility of fixed assets from zakah base, selecting a basis for valuation of shares as zakah base, individual vs. corporate zakah liability and the like. In the opinion of the present authors, the issues pertaining to zakah on equity shares are too relevant to be ignored and should require collective *ijtihad* and joint efforts of professional economists and experts of Shariah together. The ever-changing composition of savings and investment in Muslim countries in particular, and among Muslim *Ummah* in general, make such *ijtihad* imperative. We hope this paper would trigger greater interest and initiate further discussion and investigation in this important area.

6. End Notes

1. **Yusuf Al-Qaradawi**, *Fiqh al-Zakah*, Beirut, Mu'assash al-Risalah, 1984, Vol. 1, pp. 521-533.
2. It may be noted that "Zakat on Company Shares" was one of the topics of the Islamic Fiqh Academy, for the first time, in its third session held at Amman (Jordan) during 11-16 October 1986, but no resolution was passed. The decision on this issue was postponed until its fourth session. See *Resolutions and Recommendation of the Council of the Islamic Fiqh Academy, 1985-2000*, Jeddah, Islamic Development Bank / IRTI, 2000, P. 26, resolution no.14 (2/3).
3. **Hasan Abdullah Al-Amin**, *Zakah al-Ashum fi'l-Sharikat: Munaqashah Ba'd Ara al-Hadithah*. Jeddah, IRTI/IDB, 1993 pp 36.
4. Its proceedings have been published entitled *Abhath wa A'mal al-Nadwah al-Hadiat `Ashrah wa l Nadwah al-Thaniat `Ashrah li Qadayah al-Zakat al-Mu'asirah* (held in Kuwait in 2001 and at Cairo in 2002 respectively. Kuwait. Bayt al-Zakah, part one. (Note: 'Bayt al-Zakah' is an independent government department of Kuwait) Strangely, most of the scholars based their opinions on earlier resolutions of the Majma` al-Fiqh al-Islami and decisions of Bayt al-

zakah. See p.171 of its proceedings. Very few have tried to strengthen their stand with fresh arguments.

5. **Abd al Rahman Isa**, *Al-Mu'amalat al Hadithah*, pp. 73-74, quoted by al-Qaradawi, op. cit. pp. 523-24.
6. For details refer to al-Qaradawi, op. cit. pp. 172-73.
7. *Ibid.*
8. According to al-Qaradawi, the representative of this group is Shaykh Abd al-Rahman `Isa. For his arguments, see *ibid.* pp. 523-24.
9. *Ibid.* pp. 525.
10. *Ibid.* p. 525, 526.
11. **Muhammad Taqi Usmani**, *Islam aur Jadid Maishat wa Tijarat* (Islam and the Modern Economy and Commerce), Delhi, Dar al-Isha`at, n.d. pp. 93, 94.
12. IDB/IFA, *Resolutions and Recommendation of the Council of the Islamic Fiqh Academy, 1985-2000*, Jeddah, Islamic Development Bank / IRTI, 2000, p. 58, Resolution no. 28 (3/4).
13. Al-Qaradawi, *Fiqh al-Zakah*, op. cit. at pp. 527 .
14. *Ibid.* p. 528.
15. **Monzer Kahf** (1991), "Zakat: Unresolved Issues in the Contemporary Fiqh", in **Sadeq, A.M.**, et al. (1991), *Development and Finance in Islam*, Selangor, Malaysia, International Islamic University Press, pp. 180-81.
16. On October 27, 1997 worst ever crash on Wall Street occurred that pulled down prices by over thirty percent. Though this was an extreme drop, prices are generally observed to be highly volatile in free markets.
17. The Efficient Market Theory became a text book standard subsequent to the publication of the following paper by Eugene Fama.
Fama, E. (1965) "The Behavior of Stock Market Prices", *Journal of Business*, **38**, pp. 34-105
18. Schiller is an expert in a new discipline loosely known as behavioral finance. He and other behaviorists also called as "anomalies school" are trying to displace the orthodox efficient market theory. The following text contains the major ideas of Schiller.
Schiller, Robert J. (2000) *The Irrational Exuberance*, Princeton University Press.
19. For example, **Metwally, M.M.** "The Role of Stock Exchange in an Islamic Economy", *Journal of Research in Islamic Economics*, Vol. **2**, No. **1**, 1984, pp 30-31; Algari, Mohamed Ali, "Towards an Islamic Stock Market" *Islamic Economic Studies*. Vol. **1**, No. **1**, 1993, p. 9.
20. The Quran, 5:89.
21. **Abu Abdullah Al Qurtubi**, *al- Jami `Li Ahkam al-Qur`an*, n.p., n.d. vol. **6**, p. 276.
22. **Abu Isa Tirmidhi**, *Sunan*, Delhi, Rashidiyah, n.d. p. 80 *Bab ma ja `fi karahiyat akhdh khiyar al mal fi `l Sadaqah*.
23. *Ibid.*, p. 79.
24. IDB/IFA, *Resolutions and Recommendation of the Council of the Islamic Fiqh Academy, 1985-2000*, op. cit, p. 58.
25. **S. Abu'l A`la Mawdudi**, *Ma`ashihat-e-Islam* (Economics of Islam) Delhi, Markazi Maktabah Islami, 1981, p. 359.
26. **Al-Qaradawi**, *Fiqh al-Zakah*, op. cit. at pp. 526, 528 .
27. **I. A. Imtiaz**, et al (eds), *Management of Zakah in Modern Muslim*, Society. Jeddah, IRTI/IDB, 1989, pp. 20-21.
28. *Abhath wa A`mal al-Nadwah al-Hadiat `Ashrah wa `l Nadwah al-Thaniat `Ashrah li Qadayah al-Zakat al-Mu`asirah* (held in Kuwait in 2001 and at Cairo in 2002 respectively. Kuwait. Bayt al-Zakah, part one, pp.48, 74.
29. **Al-Qaradawi**, *Fiqh al-Zakah*, op. cit. p. 529.
30. **S. Abu'l A`la Mawdudi**, *Ma'ashiyat-e-Islam* (Economics of Islam), op. cit. p. 362.
31. IDB/IFA, *Resolutions and Recommendation of the Council of the Islamic Fiqh Academy, 1985-2000*, op. cit, p. 58.

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زكاة الأسهم : قضايا لم تحسم

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المستخلص. إن القضايا المتعلقة بزكاة الأسهم لازالت بعيدة عن الاستقرار على رأي واحد إذا أخذ بعين الاعتبار الفتاوى الصادرة بشأنها والممارسات التطبيقية لها في العديد من البلدان الإسلامية. والسؤال الأساسي الذي لايزال مطروحا يتعلق باختيار أصح الطرق لتقويم الأسهم من أجل تقدير مبلغ الزكاة المستحق عليها.

تراجع هذه الورقة الطرق البديلة لتقويم الأسهم وتدعو إلى استخدام طريقة التقويم القائمة على أساس سعر السوق، كما تثير أسئلة مهمة حول صحة جواز إعفاء الأصول الثابتة من الزكاة على الأسهم كما يتم في الإطار المحاسبي القائم، وكما عليه الحال في بعض البلدان الإسلامية. ثم إن طريقة التقويم القائمة على سعر السوق متجزرة في مفهوم كفاءة السوق التي تهيمن على نظريات التمويل المعاصرة منذ أكثر من قرن.

تحاول هذه الورقة أيضا أن تقدم مفهوم "السعر المتوسط" كأساس لتقويم الأسهم وذلك لتحديد مقدار الزكاة عليها، وتثبت أن هذا المفهوم لا يتماشى فقط مع نظرية كفاءة السوق وإنما يقوم على أدلة شرعية مساندة له أيضا.