

RE-APPRAISING THE TAX EXEMPTION OF RELIGIOUS INSTITUTIONS IN NIGERIA:
THEORETICAL PERSPECTIVE*

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. Tax exemption is the removal of tax liability of an organisation etc. by an enabling provision of the law. Thus, tax exemption excludes certain income, revenue or even the tax payers from payment of tax. Under the Nigerian tax regime, religious institutions of a public character are exempt from tax; both under Section 23(c) of the Companies Income Tax Act 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. Notwithstanding the obvious exemption of religious institutions and others from tax liability, there have been criticisms regarding the very basis for this exemption. This paper examines the theoretical justification for the extant tax exemption granted to religious institutions. Different theories were x-rayed in a bid to establish the rationale for the tax exempt status granted to religious institutions. The paper also makes a finding that both tax exemption and tax deductibility are a form of subsidy that are administered through the tax system.

Keywords: Tax exemption, Religious Institutions, Non- Profit Organisations, Government, Theory

1. 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 Stone² 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’. At this juncture, it is pertinent to analyze the different theories of tax exemption, since that will depend on whether the nation views exemption as a mechanism for delivering a particular subsidy or, instead, as part of the organic structure of the tax scheme.

2. Theories of Tax Exemption

Base-Defining Theory

The base-defining theory holds that charitable activity does not even rise to the level of taxable activity. An example is, the Connecticut Supreme Court’s 1899 description of the ‘non-taxation of the public buildings’. The seats of government, State or municipal, highways, parks, churches, public school-houses, colleges, have never been within the range of taxation; they cannot be exceptions from a rule in which they were not included’.³ Charitable activity enjoyed favourable treatment under a variety of tax regimes. Attempts have been made to cast each exemption in terms that define the tax base. It has been asserted that ‘income’ of charities cannot be measured in profit-seeking terms. Similarly, a legal scholar⁴ argued that the charitable-contribution deduction is necessary to properly measure the donor’s ability to pay income tax. Another legal scholar⁵ made similar argument with regard to the State tax. Nevertheless, some debate remains over which tax-favoured rules for charity constitutes subsidies rather than being part of the properly measured tax base.⁶ A tax-base defining theory encounters some difficulties describing property-tax exemption for charities. By definition, charities that own property have property in their base. If charities are to be exempt because they do not engage in business activities, then how does the base-defining theory account for the fact that

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¹E Brody, *Legal Theories of Tax Exemption: A Sovereignty Perspective*, available at <https://books.google.com.ng/books?id> accessed 29 July, 2021.

²L Stone, ‘Federal Tax Support Charities and other Exempt Organisations: The need for a National Policy’ University of Southern California Tax Institute, 1968, 27.

³ *Connecticut’s Supreme Court’s decision in Yale University v Town of New Haven* [1899] 42A.87, 91.

⁴ William Andrew; ‘Personal Deductions in an Ideal Income Tax’ *Harvard Law Review* 86:309.

⁵ John Simon, *The Tax Treatment of Nonprofit organisations: A Review of Federal and State Policies*, *In the Nonprofit sector: A Research Handbook* (New Haven: Yale University Press) p.67.

⁶ Brody, *op cit* p.168.

householders/ house owners form backbone of any property-tax scheme? If, instead, charities are to be exempt because their property does not benefit from local expenditures funded by the property tax (such as schools), then why should business owners pay property tax? And since certain services – such as police, fire, and trash collection – directly benefit all property owners, even those opposed to subjecting churches to general municipal tax have no objection to churches having to pay their own way. ‘They do not need or ask for special favours like free water or electricity for which others have to pay’.⁷ An alternative argument that imports income-tax notion can support the base theory. A scholar suggested that the property tax operates as a complement to the federal personal income tax, which fails to tax the imputed rental value of owner-occupied housing; no such complement would be needed for charities, because they owe no federal income tax.⁸ More generally, the property tax, like all tax, is borne by individuals; a property tax imposed on charities would be borne by their beneficiaries, donors, and employees,⁹ or even their operators.

‘Subsidy’ or ‘Tax Expenditure’ Theory

A rather common view of religious tax exemption is that it is a means of subsidizing particular charitable services that these organisations provide.¹⁰ It would thus appear that those who argue in favour of not-for-profit tax exemption on the grounds that these organisations provide services that would otherwise fall to government expense presumably subscribe to such a view.¹¹ This view is premised on a rationale of *quid pro quo*: that most of the services supplied by these organisations, if diminished in scale by taxation, would have to be replaced at government expense. In other words, not-for-profit organisations relieve government’s burden and therefore should be tax exempt as a subsidy granted by the government in reciprocity. For through tax exemptions, government supports the work of not-for-profit organisations and receives a direct benefit. Commenting on this theory, a seasoned Jurist noted thus:

One understanding of tax exemption is that it is, in effect, a subsidy granted by legislative grace to those Organisations performing services that the government would otherwise have to perform, and that such a subsidy relieves the exempt organization of tax obligations that other taxpayers are often obliged to assume. This view is clearly expressed in such lower court decisions in *Christian Echoes National Ministry v U.S* (470f.2d.849, 10th Circuit, 1972), and has been referred to as the *quid pro quo* or ‘tax expenditure’ theory¹².

Thus, the ‘subsidy’ theory suffers a very prominent weakness,¹³ calling charitable tax exemption a subsidy makes it very difficult to account for the exemption of religious institutions, a large and historically central component of the charitable world, without running into conflict with of section 10 of the 1999 Constitution.¹⁴ Accordingly, the U.S Supreme Court has, in refusing to access the social services rendered by churches as the basis of their exemption from tax, rejecting the *quid pro quo* rationale of both the ‘Subsidy’ and ‘Social Benefit’ theories of religious tax exemption on the grounds that it violates the principle of separation of church and State as established in the U.S. Constitution.¹⁵ An obvious merit of this theory

⁷ DM Kelly, ‘A New meaning for Tax Exemption’? *Journal of Church and State*, Vol.25. No.3 (Autumn, 1983) p.p 415 – 426 available at <https://www.jstor.org/stable/23916569>, accessed 29 July, 2021.

⁸ TC Heller, ‘Is the Charitable Exemption from Property Taxation as Easy case’ General concerns about Legal Economics and Jurisprudence’. *Journal of Church and State*, vol. 25. N0.3 (autumn, 1983) p.391-414 available at <https://www.jstor.org/stable/23916569>, accessed 29 July, 2021.

⁹ *Yale University v City New Haven*, [1899] 92 conn.42A.87, 92.

¹⁰ Henry Hans Mann, ‘The Rationale for Exempting Nonprofit Organisations from Corporate Income Taxation’ *The Yale Law Journal*, Vol. 91 No.1 (Nov. 1981), pp.54-100, available at <http://www.ystor.org/stable/795849>, accessed 29 July, 2021.

¹¹ *Ibid.*

¹² The US Supreme Court, per Chief Justice Williams H. Rehnquist, in *Regan v Taxation*(with representation), 461 U.S.540 (1983), substantially endorsed the *quid pro quo* or ‘subsidy’ theory of tax exemption, when it observed thus; ‘both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organisation of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual’s contributions. The system congress has enacted this kind of subsidy to nonprofit civil welfare Organisations generally...’

¹³ ‘Reasons for tax-exemption; why are non-profit Organisations Tax Exempt’ available at www.nonprofitsine.org/about-nonprofit-faqs/reasons-for-tax-exemption/ accessed 29 July, 2021.

¹⁴ *Ibid.* Also Constitution of the Federal Republic of Nigeria 1999 (as amended), section 10, provides that the government of the Federation or of a State shall not adopt any religion as a State religion. If the State is by this Constitutional provision prevented from propagating religion, then how does the propagation of religion benefit the State to warrant a subsidy by way of exemption from taxes in lieu thereof?

¹⁵ Rob Atkinson, ‘Theories of the Federal Income Tax Exemption for Charities: Thesis, Antithesis and Synthesis’, 27 *Stetson Law Review* 395 [vol. xxvii] available at https://www.stetson.edu/law_lawreview/media/theories-of-the-federal-income-tax-exemption-for-charities-thesis-antithesisandsynthesis-27-2.pdf, accessed 29 July 2021.

is that it provides some theoretical justification for the existing tenor of the exempting statutes, which tends to extend the exemption to only non-profit organisations which are of a public character.¹⁶ However, the validity of this theory may be quickly assailed on the grounds that religious institutions primarily serve a religious purpose that does not directly aid the government; as such, their tax-exempt status is unjustified on a rationale of *quid pro quo*.¹⁷ The argument here is that tax exemptions to secular non-profit like hospitals and homeless shelters are justified because such organisations provide public services that would otherwise fall to the government expenses. Religious institutions, however, while they may generally undertake charitable work, exist primarily for religious worship and institution which the Nigerian government is constitutionally barred from performing¹⁸ is not a subsidy to religion, and is therefore constitutional.¹⁹ In *Wale v Tax Commission of the City of New York*²⁰, the Court per Chief Justice Warren E. Burger, observed thus;

Obviously, a direct money subsidy would be a relationship pregnant with involvement... but that is not this case...The grant of a tax exemption is not sponsorship, since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the State... No one has ever suggested that tax exemption has converted libraries, art galleries or hospitals into arms of the State or put [their] employees on the 'public payroll'. There is no genuine nexus between tax exemption and the establishment of religion... we find it unnecessary to justify the tax exemption on the social welfare services or 'good works' that some churches perform for parishioners and others... Churches vary substantially in the scope of such services... To give emphasis to so variable an aspect of the work of religious bodies would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programmes, thus producing a kind of continuing day to day relationship which the policy of neutrality seeks to minimize.²¹

Apparently reasoning in this direction, a seasoned jurist has pointed out that since secular charitable institutions prevent destitute reasons from becoming a charge on the State and relieve the congestion that would otherwise exist in public establishments, it is obvious that the burden of taxation is considerably lightened by these secular charitable institution even though they go beyond the work ordinarily done by the State²². The State, therefore, is making a very good bargain in having part of its work performed by them in consideration of the tax exemption granted them. The State would be decisively to loser if all secular charitable institutions were abolished, their property taxed, and the work done by transferred to the State. The public nature of the work voluntarily shouldered by these secular charitable institutions is, therefore, a full and sufficient justification – on a *quid pro quod rationale* – for the exemption extended to them.²³

However, religious tax exemption is not so easily justified on principle as it is supported by authority. It is in fact easier to admire to motive which prompted it than to justify it by and sound reasoning.²⁴ While charity and education may be said to be established in the policy of the State, an establishment of religion is expressly prohibited in the Constitution²⁵. Accordingly, the strictly religious features of religious institutions can therefore furnish no valid reason for religious tax exemption. The only rational ground remaining on which it can be justified is the benefit accruing to the State through the positive influence exerted by the various religious institutions on their members. The religious and moral cultures afforded by religious institutions is deemed to be beneficial to the public, necessary to the advancement of civilization and the promotion of the welfare of the society. It has been argued that it is so even if the benefits received are of necessity a variable quantity; and in some instances even entirely absent.²⁶ It is worthy of note that Walz²⁷ majority case made it

¹⁶ DM Kelly, 'A New Meaning for Tax Exemption?' *Journal of Church and State*, Vol. 25 No.3 (Autumn, 1983) pp.415-426, available at <https://www.jstor.org/stable/23916569>, accessed 29 July, 2021.

¹⁷ Public Character here implies that their activities are of 'public benefit', and, thus indirectly relieves government burden.

¹⁸ Pro and con Arguments: should churches (defined as churches, Temples, Mosque, Synagogues, etc.) Remain Tax-Exempt?' available at <https://www.churchesandtaxes.procon.org/>, accessed 29 July 2021.

¹⁹ Kelly, *op cit*, p.416.

²⁰ 397 U.S 664, 1970.

²¹ *Walz v Tax Commission of the City of New York* supra.

²² Carl Zollmann, 'Tax Exemption of America Church Property' *Michigan Law Review*, vol.14, No.8 (June 1916) pp. 646-657 at 646; available at <https://www.jstor.org/stable/1276446>, accessed 29 July, 2021.

²³ *Ibid*.

²⁴ *Ibid*.

²⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) section 10.

²⁶ First M.E. *Church South v Atlanta*, 176 Ga.181, 192.

²⁷ Walz's case *supra*.

clear its view that property-tax exemption constitutionally differs from direct grant, 'The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the State'.

Subsidy theory does not focus only on donors; tax exemptions can also be used to induce charities to undertake specific activities or to engage in certain behaviours. Under the classic conception of this *quid pro quo* approach, the State bestows exemption because charities lessen the burdens of government.²⁸ However, conditioning exempt status on organization's provision of services that government might otherwise provide would eliminate some important types of entities currently exemption, including open associational organization such as churches.²⁹

'Social Benefit' or 'Intangible Benefit' Theory

This theory recognizes the fact that non-profit organisations provide great benefits to society via their good works.³⁰ Here, it is thought that charitable institutions and non-profit organisation generally meet the needs of poor and indigent in the society, provide numerous social or welfare services for downtrodden and reach out to the neglected in numerous ways.³¹ The social benefit theory is closely related to the subsidy theory, as it is founded on some sort of *quid pro quo rationale*. It seeks to justify non-profit sector tax exemption on the rationale that it is some kind of bargain-non-profit sector provide needed services to the society, so they are entitled to tax exemption in return. However, there is a marked distinction between the reasoning attending the social benefit theory and that attending the subsidy theory. The former seeks to build on the weakness of the latter. It does not set out to argue that non-profit organisations are entitled to tax exemption on the grounds that they provide services that would otherwise fall to government expense.³² It rather takes the modified position that though a majority of the services provided by non-profit organization do not otherwise ordinarily fall to government expense; they are nevertheless beneficial to the society at large via the enculturation of moral locals which indirectly benefit the government – a benefit which manifests in reduction of crime rate in society. Accordingly, the government encourages their social beneficial services via the waiver of their tax liabilities.

Thus, one corollary of the social benefit theory that is often overlooked is what a writer has termed 'the intangible benefit' theory of religious tax exemption. This highlights the intangible and often unseen benefits provided by religious institutions to the society.³³ Some impact like reduced crime rates resulting from transformed lives, suicides prevented when people surrender to a higher power, and people with destructive behavioural patterns that harm the community changing into hardworking and virtuous citizens who contribute to the well-being of the community.³⁴ The argument here is that religious institutions provide more social services and intangible benefits to the society than they would ever pay in taxes. Thus, it makes no sense to tax religious institutions because the tax money taken from religious institutions reduce the amount of social and intangible benefits they can provide to the society. As such, in a very real sense, taxing religious institutions harm society.³⁵

The obvious strength of this theory is that it avoids the most prominent weakness of the 'Subsidy' or 'Tax Expenditure' theory; that is, that the government cannot subsidize the provision of services it is constitutionally not empowered to provide in the first place. It also appeals to the religious sentiments of the average citizen who would ordinarily encounter no difficulties in relating to the assertion that his religion is one of peace,³⁶ integrity, virtue and acceptable social morals generally. The most prominent weakness of this theory, however, is that there exist no reliable criteria to determine the specific monetary worth of the social benefits provided by religious institutions; as they are very variable and even non-existent in some

²⁸ Harvey Dale object to this declaration as 'bad history, because there is no indication that the tax exemption, afforded since the end of the nineteenth century, was predicated on the *quid pro quo rationale*'. H.Dale, 1995, 'Foreign Charities' Tax Lawyer 48: 655-704.

²⁹ Zollman *op cit* p.646.

³⁰ Erick Stanley, 'should churches be Tax Exempt', available at <https://blog.speakupmovement.org/church/churches-and-politics/should-churches-be-tax-exempt>, accessed on 29 July, 2021.

³¹ *Ibid.*

³² *Ibid.*

³³ Stanley, *op cit*.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Even a religion that allegedly encourages the elimination of non-adherents of its faith on the grounds that they are 'infidels', and has spawned various brutal terrorist organisations all over the world – especially in Nigeria, Kenya, et cetera, has been declared a religion of 'peace'.

circumstance.³⁷ Besides, what are the parameters of measuring the ‘Intangible Benefits’ of religious institutions? Furthermore, it shares a prominent weakness of the subsidy theory; it tends to violate the principle of separation of religion and State as enshrined in the Constitution.³⁸

‘Impracticability’ or ‘Double Taxation’ Theory

This theory exponent the view that non-profit organisations are simply not part of the base to begin with, since their members already pay their (presumably fair) share of the costs of the common wealth in their capacity as private citizens. Accordingly, there should not be taxed again for activities they undertake out of ‘pure’ motives of public service and from which they derive no personal monetary gain.³⁹ The argument here is that taxing these organizations when their members receive no monetary gain would amount to double taxation.⁴⁰ It has been suggested that non-profit organisations are granted exemption because they have no income in the sense in which that term is used in the relevant taxing statutes⁴¹. It was thus argued at length by a duo of learned jurists⁴² that any effort to use ordinary tax accounting to define taxable income for a non-profit leads to absurdities.⁴³ The obvious merit of this theory is that it avoids all the difficulties of both the ‘Subsidy’ and ‘Social Benefit’ theories of tax exemption, and instead focuses on the accounting practicability of imposing taxes on the income of religious institutions. It also seeks to prevent double taxation of citizens of the State, which is in line with the directive in item 8 of part II of Second Schedule to the 1999 Constitution of Nigeria. However, it would appear that a weakness inherent in this argument is the fact that theoretically, taxation of a corporate entity has nothing to do with the taxation of individuals constituting its membership.⁴⁴ The law is that a corporate entity, once incorporated, assumes a legal personality of its own different from that of the persons constituting its membership⁴⁵. It therefore follows that the argument of double taxation in respect to taxation non-profit organization would be incorrect, at least in relation to the Companies Income Tax Act.⁴⁶

In the view of Hansmann, many non-profits receive little or no income from donations, but rather derive all or nearly all of their income from sales of goods or services that they produce. These organisations – conveniently referred to as ‘commercial’ non-profits – in fact accounts for a large portion of the non-profit sector. For such organisations, it would be perfectly easy and natural to carry over the tax accounting that is applied to business firms, taking receipts from sales as the measure of gross income and permitting the usual deductions for expenses incurred in producing the goods or services sold. The resulting net earnings figure could be taxed just as in the case of a business firm. Since non-profits cannot distribute their net earnings, such a tax would effectively be levied on the sum of: (i) earnings saved for expenditure in future years; and (ii) net capital investment (that is, the excess of expenditures on capital equipment over depreciation allowances). This sum may simply be referred to as ‘retained earnings’. At best, then, argument concerning the impossibility of applying ordinary tax accounting to non-profits apply only to nonprofits that receive substantial income in the form of donations. Conveniently, religious institutions fall under the category of ‘donatives non-profits’.⁴⁷ Again, even for donative non-profits organization, there is a natural correlation to the concept of taxable income developed for business entities. For instance, as deductible from Hansmann’s arguments on the point, if an individual makes a contribution to religious institutions; it is presumably with the intention that the money will be used to propagate the teachings of his faith. In other words, the contributor is in effect buying propagation of religious teachings.⁴⁸

The relevant religious institution is, in a sense, in the business of producing and selling that relevant religious teaching. The transaction differs from an ordinary sale of goods or services, in essence, only in that individual who purchases the goods and services involved is different from the individuals to whom they are

³⁷ Zollmann, *op cit*, also, *First M.E. Church v Atlanta supra*.

³⁸ CFRN, 1999 (as amended) s.10.

³⁹ Kelly *op cit*.

⁴⁰ Hansmann *op cit*

⁴¹ *Ibid*.

⁴² B I Bittker and GK Rahdert, ‘The Exemption of Non-profit organisations from Federal Income Taxation’ [1976] *Faculty Scholarship Series. Paper 2292* (Yale Law School Legal Scholarship Repository) pp 299 -358, at 2.30.

⁴³ Hansmann, *op cit*.

⁴⁴ *In Rev. MF Shodipo & 2 ors v FBIR* [1974] INTC 273, it was held that the third claimant as a company was a legal person separate and distinct from the individual members that constitute its membership accordingly, the membership of the company could not affect its tax liability.

⁴⁵ Company and Allied Matters Act, Section 37, and also decision of the court in *Salomon v Salomon & co. ltd* [1897] AC 22.

⁴⁶ CITA, section 23(1) (c) grants tax exemption to ‘any company engaged in ecclesiastical, charitable and other activities’.

⁴⁷ Hansmann, *op cit*.

⁴⁸ E Onyeabor, ‘shall God’s money be taxed?’ *University of Nigeria Law Student’s Journal*, Vol.2 No.1, 2015, p.16.

delivered.⁴⁹ It then follows that we can view the contributions received by religious institutions and other such donative organisations as sales receipts, and hence – if such organisations were to be subjected to income taxation – as funds that are appropriately includable in gross income. The cost of the services, such as propagation of religious teachings, rendered by religious institutions would then be deductible, analogously to ordinary business expenses. The result is that religious institutions would be taxed annually on the amount, if any, by which their total receipts, from contributions as well as from other sources (such as tithes, offerings and gifts), exceed their total expenditures on the services to which they are dedicated. As with commercial non-profits, the tax would therefore effectively be levied on retained earnings. In Hansmann's view, there need be nothing troubling about such a definition of income.⁵⁰ It is arguable whether all religious institutions in Nigeria qualify to be regarded as 'donative non-profits'. It would seem that some religious institutions in Nigeria today have amassed so much wealth, and engage in several business-oriented ventures, that they now qualify as 'commercial non-profits'.⁵¹ Recently, four Nigerian pastors were listed among the top ten richest pastors in the world,⁵² It is worthy of note that a prominent Nigerian jurist⁵³ has called for taxation of what he called 'Big Business Churches' on the grounds that they have become more commercialized than would rationally be considered appropriate.⁵⁴

'Control' or Freedom of Religion' Theory

This theory is premised on the argument that exempting religious institutions from taxation upholds the principle of separation of religion and State⁵⁵ as embodied in the provisions of section 10 of the 1999 Constitution. The crux of this theory is that subjecting religious institutions to taxes would endanger the free expression of religion as guaranteed by the Constitution.⁵⁶ Proponents of this theory fear that by taxing religious institutions, the government would thereby be empowered to penalize or shutdown if they default on their payments, thereby infringing on their constitutionally guaranteed right to freely propagate their religion.⁵⁷ Taxation is, in essence, a very strong assertion of control by a sovereign over its subjects. Exempting religious institutions from taxation, therefore, is a way to ensure that the State cannot control religion.⁵⁸ The validity of this theory may be assailed on the grounds that religious tax exemption indirectly forces all Nigerian tax payers to support religion, even if they oppose some, or all religious doctrines.⁵⁹ Accordingly, opponents of this theory have maintained that by providing financial benefit to religious bodies by way of tax exemption, government is supporting religion contrary to the apparent intentment of the Constitution and the rights of citizens who profess no religion. This much was recognized in Australia by Kirby, J. in his dissenting opinion in *FCT v World Investments*,⁶⁰ when he observed thus:

A taxation exemption for religious institutions, so far as it applies, inevitably affords effective economic support from the Consolidated Revenue Fund to particular religious beliefs and activities of some individuals. This is effectively paid for by others... across-transference of economic support. The court must recognize that this is deeply offensive to

⁴⁹ Hansmann, *op cit*.

⁵⁰ Hansmann, *op cit*.

⁵¹ When the federal Government imposed taxes on individuals who own private jets, Bishop Oyedepo of Winners Chapel was reported to have converted his four private jets into a private airline for hire business. He established Dominion Airlines. He also owns Dominion Publishers and has published numerous religious books under his imprint that enjoy a very wide readership at substantial costs amongst members of his church. Also, Apori, *op cit* p.178.

⁵² 'Top 10 Richest Pastor in the world 2014', available at <https://www.richestlifestyle.com/top-richest-pastors-in-the-world>, accessed 30 July, 2021.

⁵³ Femi Falana, SAN 'Punch Interview: Let's Tax Big Business Churches – Falana,' Sahara Reporters, available at [https://www.saharareporters.com/2012/12/11/punch-interview-let's-tax-big-business-churches %E2...](https://www.saharareporters.com/2012/12/11/punch-interview-let's-tax-big-business-churches%E2...) Accessed 30 July, 2021.

⁵⁴ Leke Baiyewu, 'Punch Interview: Let's Tax Big Business Churches – Falana, 'Sahara Reporters, available at [https://www.saharareporters.com/2012/12/11/punch-interview-let's-tax-big-business-churches %E2...](https://www.saharareporters.com/2012/12/11/punch-interview-let's-tax-big-business-churches%E2...) Accessed 30 July, 2021.

⁵⁵ 'Pro & Con Arguments: should churches (defined as Churches, Temples, Mosque, Synagogues, etc.) remain tax-exempt?' *op cit*.

⁵⁶ The U.S Supreme Court, in a majority opinion written by Chief Justice Warren E. Burger in *Walz v Tax Commission of the City of New York* (supra), observed thus, 'The exemption creates only a minimal and remote involvement between the church and State and far less than taxation of churches. It restrict the fiscal relationship between church and State, and tends to complement and reinforce the desired separation insulating each from the other'.

⁵⁷ CFRN 1999, section 38(1), provides that every person be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others; and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

⁵⁸ Stanley, *op cit*.

⁵⁹ 'Pro & Con Arguments', *op cit*.

⁶⁰ [2006] FCA 144,250.

many non-believers, to people of different faiths and even to some people of different religious denominations who generally share the same faith... charitable and religious institutions should share with other taxpayers the ability to pay income tax upon their income. Exemptions need to be clearly demonstrated as conformable to law⁷

It is thus arguable that religious tax exemption violates the principle of separation of religion and State as enshrined in section 10 of the 1999 Constitution of the Federal Republic of Nigeria as amended.⁶¹ However, it would seem that the strongest arguments against this theory is that religious exemption amounts to discrimination on grounds of religion against citizens of the State who do not subscribe to any particular religion⁶². For religious institutions are thereby accorded a privileged not enjoyed by atheist.⁶³

3. Conclusion

In summation, religious institutions are faced with a lot criticisms to justify their tax exempt privileges. Under the tax base definition theory, proponents argue that the tax base, by definition, does not include religious, educational and charitable activities. Therefore, such non-profits must be exempt from taxation. In other words, the income of such organisations cannot be measured in profit-seeking terms because their income is distributed for charitable purposes rather to shareholders. Thus, any tax imposed on a non-profit's revenues would be borne by the organisation's beneficiaries and donors, which is inconsistent with such organisation's overall charitable nature. This analysis is particularly for churches and other religious institutions, which typically do not charge any fees for admission or other benefits offered, albeit spiritual (though, not susceptible to proof).

Again, tax exemption has been framed as a subsidy, or incentive, for qualified charitable activities, thus *quid pro quo*. Here, this subsidy theory suggests that non-profits gain tax exemption- along with the benefit of receiving tax deductible contributions in exchange for lessening the burdens of government by providing charitable services to the State. Nonetheless, this theory's application to religious institutions gets more complex because distinct functions of religious institutions such as worship, prayer, healing, deliverance, religious teaching, evangelism etc. can not necessarily be construed in this manner.

Nevertheless, the grant of tax exemption to religious institutions is not sponsorship since the government does not transfer parts of its revenue to them, but simply abstaining from demanding that religious institutions should support the State. It is clearly seen that tax exemption keeps government out of control of the religious institution's finances and this upholds the principle of the separation of religious bodies and the State as contemplated by the Constitution.

It is also seen that religious institutions in a way, earn their tax exemption by contributing to the public good. As they offer some social and charitable services to the public. Though, this was the very intendment of the law for the grant of the exemption from the outset. However, the Revenue Authority should also monitor the activities of these religious institutions as to ensure that their tax exempt status are not abused by taking advantage of their tax-free income to diversify into businesses and other investments.

⁶¹ It has been argued that religious tax exemption blurs the separation between religion and the Nigerian State, contrary to the intendment of section 10 of the 1999 Constitution. He pointed out that non-religious groups argue that section 10 of the 1999 Constitution was intended to make Nigeria a secular State and that reality ought to be reflected in denying preference to religion in tax exemptions. They also argue that the present tax dispensation is inequitable; as religious tax exemptions cost imposes on the public generally and, the benefits are for the purposes of advancing religion and not national interest. These sentiments are based on the premise that as Nigeria is a secular State, there is no need to advance any religion. This view is expressed by M.T. Abdulrazaq, 'Banking and Taxation in Name of God and the Law', available at <https://www.nigerian/guru.com/articles/commercial%20law/Banking%20and%20taxation>, accessed 30 July, 2021.

⁶² Associate Justice of the U.S Supreme Court, Williams O. Douglas, in his dissenting opinion in *Walz v Tax Commission of the City of New York* (supra), observed thus, 'If believers are entitled to public financial support, so are non-believers. A believer and nonbeliever under the present law are treated differently because of the articles of their faith...I conclude that this exemption is unconstitutional'.

⁶³ CFRN 1999 (as amended) section 42 (1) (b) provides that a citizen of Nigeria of a particular religion, shall not, by reason only that he is such a person, be accorded either expressly by or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other opinions.