

The Tax Administrator's Dilemma: To Tax or not to Tax Church Incomes in Ghana

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ABSTRACT

This paper explores the opportunity for Tax Administration in Ghana to widen the tax net via taxation of other sources of income, including incomes accruing to Churches. Evolution of Taxation of Religious bodies and Charitable Faith based Organisations in Ghana, Constitutional perspectives of taxation of Religious bodies, Functions of Churches, Tax Exempt Provisions, and Tax decided cases were discussed. It was observed that limited companies registered by guarantee commit an offence, when they engage in profit making ventures, and shall be liable to a fine not exceeding five pounds for every day during which it shall carry on such business. It also came to light that some churches were engaged in income generating activities such as transportation, church farm, bookshops or guest houses, private Universities, money transfers, consultation fees, sale of olive oil, water from the well, lemon, porridge, oranges, handkerchiefs, stickers, Anti-Witchcraft Pomade ("Abiyifoo Nku"), commission on lotto winnings, and microfinance companies which does not fall under the tax exempt clauses as stipulated in the Income Tax Act 2015, Act 896. The study therefore recommended for the Taxation of the Business and Investment Income of Religious and Faith based organisations, strict application and enforcement of the Tax law by the Commissioner of Ghana Revenue Authority, and filing of returns by religious bodies.

Keywords: church income, taxation, tax exemptions, tax enforcement

INTRODUCTION

BACKGROUND

Churches in Ghana (charitable faith based organizations) are registered as limited companies by guarantee. This implies that, they are registered not to engage in operations with the view of making profits. Also these organisations are exempted from the paying of income taxes on their core operations.

Section 10 of the companies' code, Act 179, 1963 provides very useful insights into the operations of such organisations as;

- A company limited by guarantee may not lawfully be incorporated with the object of carrying on business for the purpose of making profits.
- If any company limited by guarantee shall carry on business for the purpose of making profits, all officers and members thereof who shall be cognizant of the fact that it is so carrying on business shall be jointly and

severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be liable to a fine not exceeding five pounds for every day during which it shall carry on such business

For the avoidance of doubts, limited companies registered by guarantee commit an offence, when they engage in profit making ventures, and shall be liable to a fine not exceeding five pounds for every day during which it shall carry on such business.

However, after registering as companies limited by guarantee, which is envisaged by the law to be purely for charity and not for profit, some of them convert from their core activities to profit-making companies.

The core activities of the church are to win souls and expand their Christianity which makes the churches an NGO. This means that income generated from its core activities is tax exempt

as stipulated in the Internal Revenue Act 2000, Section 10(1) of Act 592 as amended on exempt income. One of the categories of income exempted from taxes are 'income accruing to or derived by an **exempt organization** other than income from any business. Section 94 of Act 592 as amended defines an exempt organization as anyone who or that is and functions as a religious, charitable, or educational institution of a public character. This means that in principle, churches are tax exempt on incomes accruing to or derived in Ghana except income from other business.

However, not all incomes accruing to churches under the tax law, are exempt. Income accruing to churches of a public character from ecclesiastical services, such as **normal collections, thanks offerings; tithe and incomes from harvest** are specifically exempted by the tax law.

Any other businesses which generate income such as transportation, church farm, bookshops or guest houses, private Universities, money transfers, consultation fees, sale of olive oil, water from the well, lemon, porridge, oranges, handkerchiefs, stickers, Anti-Witchcraft Pomade ("Abiyifoo Nku"), commission on lotto winnings, and microfinance companies are all subject to tax.

THEORETICAL ISSUES

Churches of "Public Character?"

Definition of Churches

The IRS of the United States of America uses the term *church* to refer to any faith or religious body that, at a minimum, has a distinct legal existence, has a congregation, and regularly holds religious services. Thus, the word *church* is used in a generic sense. It may designate a synagogue, a mosque, a temple, or an organization of any other religious denomination.

Criteria for determining what constitutes a Church in the United States of America

The IRS has developed 14 criteria that it applies on an ad hoc basis to an organization to determine whether it qualifies as a church.

- Does it have a distinct legal existence?
- Does it have a recognized creed and form of worship?
- Does it have a definite and distinct ecclesiastical government?
- Does it have a formal code of doctrine and discipline?

- Does it have a distinct religious history?
- Does it have a membership not associated with any other church or denomination?
- Does it have an organization of ordained ministers?
- Are its ordained ministers selected after completing prescribed courses of study?
- Does it have a literature of its own?
- Does it have established places of worship?
- Does it have regular congregations?
- Does it hold regular religious services?
- Does it offer religious instruction of the young, such as "Sunday school"?
- Does it provide schools for the preparation of its members?

An organization need not satisfy all of the above criteria to qualify as a church. As a court in the case of *American Guidance Foundation v. United States*, 490 F. Supp. 304 (D.D.C. 1980) described it:

"While some of these are relatively minor, others, e. g. the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance." The means by which an avowedly religious purpose is accomplished separates a "church" from other forms of religious enterprise.

In the other case of *Church of Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916, 924 (1986) the court held inter alia that a church could be helpfully defined to mean:

"A coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs. In other words, a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith".

Churches of "**public character**" have the right administrative and financial structures in place, applying good corporate governance principles such as accountability to the lay faithful, closely guarding against misappropriation of the incomes for personal use.

In 2009, the Supreme Court of Ghana ruled on the position of the law with regard to whether or not exempt organisations were subject to income tax in Ghana, as was held in *Chapel Hill*

School Limited vs the Attorney-General and the Commissioner, Internal Revenue Service, [2009, Unreported], Dr Date-Bah JSC (as he then was), said:

“Our comment on this argument by the second respondent (Commissioner, Internal Revenue Service) would be that the mere fact that what the appellant does constitutes a business does not inevitably lead to the conclusion that the activity cannot be exempt from tax.

“If the business concerned is one that falls within the purview of the educational business carried out by an educational institution of a public character, then the income from that business will qualify for exemption from tax.”

In explaining what constitutes public character, the learned judge said, “... business was of public character ... did not confer any private benefit to individuals.” He further said, “... for as long as the appellant was a Company limited by guarantee, there was a legal assurance that its business was not conferring any private benefit on individuals.”

The court concluded that an educational institution of a public character was not subject to income tax during the said period it remained as a company limited by guarantee until such time that it is converted into a company limited by shares. The learned judge also referred to the South African case of *Chancellor, Master and Scholars of the University of Oxford vs Commissioner for Inland Revenue, 1995 (3) SA 258* (C) to support his position.

In his judgment Berman J appears to have accepted that the appellant was an educational institution of a public character, but held that it did not follow that it, or the Plaintiff, was entitled to the exemption provided for in sec 10(l)(f). Having referred to certain cases decided in the Income Tax Special Court (viz Income Tax Case 1262. 39 SATC 114 and Income Tax Case 1376. 45 SATC 213), the learned Judge propounded the following test for the applicability of sec 10(l)(f) in circumstances such as these.

This ‘new’ Income Tax Act 2015, Act 896 recognizes that the non-business income of religious organisations remain exempt from income tax. However, now there are clear rules.

First, under section 97(1), to qualify for this ‘charitable institution’ status, organisations are required to seek and obtain the express approval of the Commissioner-General.

Second, under section 97(2) (a)(ii), as amended in 2016 by Act 924, the religious institution must be “of a public nature.” The Act doesn’t define the term “public nature.”

It is important to note that there are churches in Ghana where it is very difficult to draw a line between the church and the pastor. Offerings are shared right after the close of service and in most cases no proper records are kept for the income that is received in their ministry. In short, such churches are not accountable to anyone, not even their **congregation**, they therefore spend recklessly, buying **flashy cars, and buildings** to the detriment of their poor followers. “Therefore all incomes of such churches are not tax exempt,”

Taxation of Business Profit of Religious Organisations

In the obiter of Her Ladyship Jennifer Dodoo, a Justice of the High Court, in the recent case of *Taylor & Taylor Limited vs The Commissioner-General and the Attorney-General (2017, Unreported)*, Her Ladyship observed that “There are two certainties in life: death and taxes. There is no escape from either of these variables. The inscription in the Internal Revenue Service (IRS) building in Washington reads: “Taxes are what we pay for a civilised society.” In Matthew 22:21, Jesus was asked by the Pharisees whether it was lawful to pay taxes to the emperor or not.

Jesus responded: “Render unto Caesar the things that are Caesar's, and unto God the things that are God's.” This reinforces the point that religious organisations have a responsibility to fulfill their tax obligations unless exempt.

DISCUSSION

The former president of Ghana’s Catholic bishops’ conference, Bishop Joseph Osei-Bonsu of the Diocese of Konongo-Mampong, indicated at a meeting with the Commissioner General held on the 8th September, 2018 that “it is normal to tax church activities that generate income, but tithing must not fall into that category”. He further stated that “So if a church has a factory or provides transport services, then of course that is doing business and that one should be taxed. But the normal collection we take in the church for the revenue of the church; that one should not be taxed.” The bishop advised that the government needs to take a look into the activities of various churches to ensure that only “what constitutes business” is taxed.

The Commissioner for the Revenue Authority (GRA), Kofi Nti said church activities which fall outside the legal remit of the church's operations will be taxed, noting that the activities of all churches across the country will be investigated so they are taxed based on their commercial activities.

Ghana's President, Nana Akufo-Addo, welcomed the development, saying that it is not difficult to see why there are increasing calls for churches to be taxed. "It is not surprising that there are calls for taxes to be imposed on church income. When you step out of the charity mandate, out of education, out of healthcare, you are putting yourself in the line of the tax sphere," he said.

He said the Church, which was known for its charity and projects in education and healthcare and other social interventions, has now shifted to the sphere of prosperity, and therefore deserves to be taxed. And his argument is bolstered by the open display of affluence displayed by some church leaders

Former General Secretary of the Christian Council of Ghana, Rev. Dr. Kwabena Opuni-Frimpong, also the Ghana Revenue Authority (GRA) to clarify which activities of churches it plans to tax. He expressed concerns about the wrong impression created in the public that churches do not pay taxes.

He said it is no secret that churches already pay taxes on their revenue-generating businesses.

"When people are talking about churches and taxes, we must understand what we are talking about. There is the impression that churches are not paying taxes, but it depends on what taxes you are talking about.

"There are churches that have hospitality businesses...they pay even VAT, there are churches that have buses, they pay taxes and even what the Ghana Private Road Transport Union (GPRTU) charges...those who are calling for churches to pay tax must define exactly what they mean," .

The immediate past General Secretary of the Christian Council told **PM Express**, Nana Ansah Kwao IV, that if the plan is to tax offertory at churches then tax collectors may be wading into a complex issue.

Pastors or Priests from churches like International Central Gospel church, The church of Pentecost, The Christian Action Faith, The Catholic, Presbyterian Church, Methodist

Church of Ghana, The Apostolic church, Light House Chapel, Perez Chapel and the likes are considered employees of the Church. The aforementioned churches pay taxes of staff and ministers on the Pay As You Earn (PAYE) income, whilst it pays eight per cent withholding tax on rent, ten per cent on professional services, five per cent on purchases of items and construction charges and profits accruing from their transport and guest house businesses.

Section 4(1) of the Income Tax Act 2015, Act 896, states that income from employment for a year of assessment is the gains and profits accruing to the individual from the employment for the year or part of the year, including salaries, wages, overtime payments, bonuses, personal allowances, cost of living allowance, subsistence, rent allowance, entertainment allowance, and gifts exceeding 50 currency points. What churches (actually, all "religious bodies") do not pay taxes on are the tithes and offerings, classified as "gifts" under the law. But that tax exemption is subject to the condition that the religious body uses the gift "for the benefit of the public or a section of the public." Thus if the religious body uses the gift for private purposes (e. g. Pastors' Appreciation Day), the exemption does not apply. But similarly exempt are gifts (i) obtained under a will or intestacy, (ii) received from a spouse, child, parent, brother, sister, aunt, uncle, nephew, or niece, or (iii) for charitable purposes. "Jesus Christ instructed His followers to pay tax and obey the laws of the land. So religious bodies that operate profit making businesses must respect the laws governing the country,"

CONCLUSION AND RECOMMENDATION

The call for Churches operating businesses to pay tax dates as far back as **16-04-2014** when **the then** Finance Minister, Seth Tekper made this observation when he inaugurated the Ga Presbyterian (GAP) Micro Finance Limited, of the Ga Presbytery Church of Ghana in Accra.

Indeed time is up, to take the "Bull by the Horn" to tax Churches who are engaged in profitable incomes generating businesses and PAYE of such Bishops, Apostles, Angels, Prophets who use "Liberation Theology" to extort from their flock. They would then be conforming to the teachings of our Lord Jesus Christ who admonished his flock to "give unto Caesar that is Caesar's, and unto God, that is God's"

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