

## A COMPARATIVE APPRAISAL OF THE “NOT FOR PROFIT” EXEMPTION CLAUSES IN THE TAX LAWS OF NIGERIA, UNITED KINGDOM, UNITED STATES OF AMERICA AND AUSTRALIA \*

### Abstract

*Tax is a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Tax therefore embraces all governmental impositions on the person, property, privileges, occupations and enjoyment of the people. The classical function of the tax system is the raising of revenue to meet government’s expenditures. Exempt income is an income liable to be taxed by law but expressly excluded by another provision of the law. Tax exemption therefore, refers to a monetary exemption which reduces taxable income. Tax exemption are granted specifically to not-for-profit organisations in relation to income derived by them, so far as such income are not generated from trade or business. Though, tax exemption has been criticized as a subsidy granted by legislative grace to these organisations performing services that the government would have to perform and that such as subsidy relieves the exempt organisation of tax obligations that other tax payers are often obliged to assume. This notwithstanding, the objective of this paper is to critically appraise the tax exemptions granted to these organisations in Nigeria. Also, to analyse comparatively the tax exempt status granted to not-for-profit organisations in some selected jurisdictions like United Kingdom, United States of America and Australia, in a bid to finding out whether tax exemptions in these jurisdictions are automatic, absolute or limited (that is, subject to some conditions or qualifications).*

**Keywords:** Tax, Tax Exemption, Status, Not-For-Profit Organizations

### 1. Introduction

There is no doubt that issue of taxation of not-for-profit organisations have generated enough public curiosity and criticism. It has become controversial whether or not these organisations should pay taxes. The taxation issues of these organisations have been very contentions, due to the fact that they enjoy a tax exempt status which have been proven to a burden on patriotic citizens. Though, notwithstanding that the express provisions of the law exempting these organisations from paying taxes, the proviso to these provisions of the law stipulated that the profits of these organisations are tax exempt so long as they are not derived from a trade or business carried out by them.

This paper therefore focuses on appraising the exempting provisions under the Nigerian Companies Income Tax regime. It also compared the practice in other jurisdictions in a bid to improving or enhancing our practice here in Nigeria.

#### 1. 1 Exemption Provisions under the Nigerian Tax Regime

The phrase “tax exemption” is not defined under the Companies Income Tax Act or any other tax legislation. But in *Northern Nigeria Investment Ltd v Federal Board of Inland Revenue*,<sup>1</sup> the Court, Per Belgore J. defined the expression “exempt income” as follows; “exempt income is

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<sup>1</sup> [1976] FRCR 93.

income primarily subject to tax but exempt under another provision of the law”. The true position is not that exempt is not subject to tax.<sup>2</sup> In other words, exempt income is income subject to tax under a particular provision of the law, but only taken out of the taxing law by the relevant exempting provision.<sup>3</sup>

Exempt income is therefore, income liable to be taxed by law, but expressly excluded by another provision of the law. In *Australian Mutual Provident Society v IRC*,<sup>4</sup> it was stated that the word “exempted from taxation” in section 86 of the Australian Act, did not cover income which was not within the reach of the New Zealand tax laws.

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

## **1.2 Companies Income Tax Act**

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

Under section 23(1) of CITA<sup>5</sup>, the following profits are exempted from tax:

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

From the foregoing provisions of Companies Income Tax Act, profits of any organisation engaged in ecclesiastical, charitable, benevolent or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business carried on by the company.<sup>6</sup> Thus, where not-for-profit organisation engages in any trade or business, the profit derived therefrom will be subjected to income tax as provided for in the Act.<sup>7</sup>

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<sup>2</sup> *Ibid*, p.95.

<sup>3</sup> IA Ayua, *Nigeria Tax Law*, (Ibadan: Spectrum Law Publishing, 1996) pp.72-73.

<sup>4</sup> [1962] A.C. 135.

<sup>5</sup> Cap C21, LFN 2004.

<sup>6</sup> Companies Income Tax Act, section 23(c) and Personal Income Tax (Amendment) Act 2011, section 19, paragraph 13, third schedule.

<sup>7</sup> FIRS Circular.

### 1.3 What then is Trade?

Since the liability to payment of tax by the not-for profit is hampered on derivation of profits from trade. The cardinal question will then be; what constitute a trade? In *Arbico Ltd v FBIR*, the plaintiff in the dispute, Arbico, had acquired a plot of land, erected a building and sold the property at a profit.<sup>8</sup> The company was subsequently assessed for tax on the proceeds of the sale of the property. The company objected to the assessment on the basis that the transaction was a one-off and did not constitute ‘trade’. The case was ultimately settled in the Supreme Court. In the judgment, the court laid down two important axioms; firstly, that the word ‘trade’ should be interpreted in its widest sense in accordance with its common everyday meaning. Secondly, that an isolated or one-off transaction can still constitute a ‘trade’.

Decided cases in other jurisdictions on what constitute trade or business are as follows;

In the case of *Marlin v Lowry*, a person without previous knowledge of linen trade bought a surplus stock of aero plane linen from government which he sold to the public in small lots.<sup>9</sup> He engage employees for the re-packaging and embark on ‘sales’ promotion through extensive adverts and campaigns. It was held that he was engaged in trading activities.

Similarly, in *Murray v IRC*,<sup>10</sup> where a timber merchant who bought standing timbers in two plantations and could not cut them due to labour cost, sold the rights to cut the timbers to meet his indebtedness. He was to tax on the profit from the transaction. He contended that sale was a capital transaction since it was not in normal course of his business, but it was held that the transaction was part of his normal trading as a timber merchant.

Again, in *Burge v Payne*<sup>11</sup>, a club a proprietor providing facilities for bar, dancing, cabaret, fruit machines and gambling, appealed against the inclusion of his winnings in his assessment. The appeal was dismissed on the ground that winnings formed part of his regular income from the trade of running the club.

From the foregoing, it is seen that whenever a taxable person whether natural or artificial, engages in a transaction whether isolated or one-off and derives income from the said transaction, such income shall be subjected to tax. Similarly, if a not-for profit organisation carry out commercial transactions or activities, such profits or income derive from the transactions or activities shall be subjected to the payment of tax. Thus, the supposedly exempted not-for profit organisation, becomes liable to payment of tax, by virtue of such income.

## 2. Tax Exemption in Some Selected Jurisdictions

### 2.1 United Kingdom (UK)

Taxation in the United Kingdom will involve payments to a minimum of two different levels of government; the Central government and local government.<sup>12</sup> Central government revenues emanate primarily from Income tax, National Insurance contributions, Value Added Tax, Corporation and Fuel Duty. Local government revenues emanate from grants from central government funds; business rates in England and Wales, Council tax and increasingly from fees and charges such as those from on-street parking.<sup>13</sup>

<sup>8</sup> [1996] 2All NLR 303.

<sup>9</sup> [1955] 3All ER 48; ITC 297.

<sup>10</sup> [1951] 32 TC 238.

<sup>11</sup> [1969] 1 All ER 467.

<sup>12</sup> [http://en.wikipedia.org/wiki/taxation\\_in\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/taxation_in_the_United_Kingdom) accessed 13<sup>th</sup> November, 2019.

<sup>13</sup> *ibid.*

Tax exemption<sup>14</sup> refers to a monetary exemption which reduces taxable income. Tax exempt status can provide complete relief from taxes, reduced rates or tax on only a portion of items.<sup>15</sup> The phrase “Not-for-profit organisations” in the United Kingdom belong to a domain of entities known as “Charities”, which enjoy tax exemptions in the UK. Charity law within the UK varies between England and Wales, Scotland and Northern Ireland. The fundamental principles are however the same.<sup>16</sup> Most organisations that are charities are required to be registered with the appropriate authority for their jurisdiction.<sup>17</sup> However, significant exceptions apply so that many organisations are *bonafide* charities but do not appear on the public register. The registers are maintained by the Charity Commission for England and Wales. The organisation that intend to apply must meet the specific legal requirements summarized below, and the filing requirements. They are also subject to inspection or other forms of review.

By virtue of Chargeable Gains Act 1992, Charitable Trusts such as trusts for the advancement of religion, are exempt from capital gains tax on the disposal of assets, provided they are devoted to charitable purposes only. Not-for-profit organisation qualifying as charities also enjoy statutory exemption from value added tax in respect of certain goods purchased by, or donated to them, for charitable purposes.<sup>18</sup>

All the same, to enjoy any of the available tax reliefs in the UK the religious organisation and other not-for-profit organisations must be recognized by HM Revenue and Customs (HMRC),<sup>19</sup> which implies that the organisation must be:

- (i) based in the UK, European Union (EU), Iceland, Liechtenstein or Norway;
- (ii) established for religious purposes only;
- (iii) registered with the Charity Commission of England and Wales or other regulator, where applicable;
- (iv) run by fit and proper persons; and
- (v) Apply for and obtain recognition of tax exemption from the HMRC.<sup>20</sup>

Not-for-profit organisation recognized as tax exempt by the HMRC do not pay tax on certain types of income and gains, provided it applied the income or gain to the exclusive charitable purpose. This is known as “charitable expenditure”. This includes tax on donations, profits from trading, rental or investment income, profits realized from the sale or disposal of an asset or upon the purchase of property.<sup>21</sup>

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<sup>14</sup> Though, the term has been broadly discussed under clarification of concepts.

<sup>15</sup> <http://en.wikipedia.org/wiki/tax-exemption> accessed on 13th November, 2019.

<sup>16</sup> “Charitable Organisation”, Wikipedia, the free encyclopedia, available at [http://en.wikipedia.org/wiki/charitable\\_organisation.html](http://en.wikipedia.org/wiki/charitable_organisation.html), accessed 13 November, 2019.

<sup>17</sup> Though, for the purpose of this discourse, UK jurisdiction of England and Wales shall be the scope.

<sup>18</sup> UK Value Added Tax Act 1994, S.30 and Group 15 of part II of the Eight Schedule

<sup>19</sup> “Charities and Tax-Gov.UK.” available at <http://www.gov.uk/charities-and-tax/tax-reliefs> accessed 13th November, 2019.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid*

However, it is not all the income and gains of recognized not-for-profit organisation in the UK that are tax exempt. Not-for-profit organisations recognized as tax exempt by the HMRC are still required to pay tax on:

- (a) dividends from UK companies;
- (b) profits from developing land or property; and
- (c) purposes of goods and services (but there are special VAT rules for religious organisations).

Not-for-profit organisations also pay business rates on non-domestic buildings, but they get an 80% discount. Also, a not-for-profit organization recognized as tax exempt by the HMRC must pay tax on part of its income not applied to charitable purpose. Such taxable part of the income of a not-for-profit organisation is known as “non-charitable expenditure”.

Some ministers of religious organisation are exempted<sup>22</sup> from liability on certain types of income connected with their occupation of property. Those qualifying are ministers who:

- (a) Are provided with a residence from which they are expected to perform their duties; and
- (b) Hold a full-time office as a minister.

This special treatment only applies where some legal interest in the residence belongs to either a charity or an ecclesiastical corporation. So, for example, premises belonging to a Diocesan Board of Finance, a Cathedral Chapter, a body of trustees acting for a denomination or for a local congregation, and a parochial church council, are all covered. It also covers parsonage houses vested in incumbents of benefices in the Church of England.<sup>23</sup>

There are also examples of properties that do not meet the requirements for exemption. These include:

- (a) premises privately leased by the Minister from a charity
- (b) premises in which the minister lives rent-free but which are not his or her official residence (for example a cottage provided by the congregation)
- (c) premises occupied by a minister holding an appointment that could be filled by a layman (for example a school teacher).

Again, earnings of some specified persons are exempted from liability to income tax. These include:

- (a) employee in lower-paid employment,
- (b) a director in lower-paid employment and has no material interest in the company who is either a full-time working director or the company is non-profit making or is established for charitable purposes only.<sup>24</sup>

<sup>22</sup> ITEPA 2003, section 290 and Extra-Statutory Concession A61, available at [www.hmrc.gov.uk/manuals/eimmanul/EIM60007.htm](http://www.hmrc.gov.uk/manuals/eimmanul/EIM60007.htm) accessed 14th November, 2019.

<sup>23</sup> *Mitchell v Child* 24TC 511.

<sup>24</sup> “EIM20007”, *ibid.*

It is worthy of note that the mere fact the company does not make a profit does not mean that it is non-profit making for the purpose of this test. Such a company must not carry on a trade and its function must not consist wholly or mainly in the holding of investments or other property.

## **2.2. United States of America (USA)**

In USA, charitable, non-profit organisations and religious organisations are colloquially known as 501 (c) organisations.<sup>25</sup> The United States Internal Revenue Code, provides that twenty types of non-profit organisations are exempt from some federal Income taxes.<sup>45226</sup>

The most common type of tax-exempt non-profit organisation falls under category 501 (c)(3), where a non-profit organisation is exempt from federal income tax if its activities have the following purposes: charitable, religious, educational, scientific, literary, testing for public safety, fostering amateur sports competition, or preventing cruelty to children or animals.<sup>27</sup>

### **Section 501 (c) (3) Requirements**

The Code exempts non-profit entities, like church and other religious institutions from taxes. The Code, also allows for individuals who donate monies to those entities to deduct their contributions from individual tax returns.

IRC 2006, S.501(c) (3) provides as follows:

Corporations and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting, to influence legislation (except as otherwise provided in sub-section (h) and which does not participate in or intervene in (including the publishing or distributing of Statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

While, IRC 2006, Section 170 (a)(i) and Section 170 (c)(2)B provides that:

It (there) shall be allowed as deduction any charitable contribution (as defined in subsection c) payment of which is made within the

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<sup>25</sup> [http://en.wikipedia.org/wiki/501\(c\)-organisation](http://en.wikipedia.org/wiki/501(c)-organisation), accessed 17<sup>th</sup> November, 2019.

<sup>452</sup> Section 501 © and sections 503 to 505 set out the requirements for the attaining such exemptions.

<sup>27</sup> *ibid.*

taxable year... allows for an individual to deduct a charitable contribution made to a church or religious non-profit organization.

The Federal Government confers tax exempt status on non-profit organisations and the IRS Code's definition of a non-profit includes religious organisations.<sup>28</sup> This status provides two distinct tax benefits; (a) S.501(c) (3) organisations themselves do not pay taxes; (b) people (donors) who donate to those organisations may deduct the value of those donations on their individual tax returns<sup>29</sup>. For Churches, Congress provided an additional benefit; churches automatically qualify for tax exempt status under section.501(c) (3)<sup>30</sup>. Hence, churches that meet the requirements of IRC are automatically considered tax exempt and are not required to apply for and obtain recognition for tax-exempt status from the IRC.<sup>31</sup>

Although, there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because this recognition assures church leaders, members and contributors that church is recognized as exempt and qualifies for related tax benefits. For example, contributors to church recognized as tax exempt would know that their contributions generally are tax deductible.<sup>32</sup>

On the other hand, religious organisations, unlike churches, that wish to be tax exempt generally must apply to the IRS for tax-exempt status unless their gross receipts do not normally exceed \$5,000 annually.<sup>33</sup>

#### **Factors that jeopardize tax-exempt status of all IRC organisations.**<sup>34</sup>

These organisations must adhere to certain rules, these among others include:

- (a) Their net earnings may not inure to any private shareholder or individual;
- (b) They must not provide a substantial benefit to private interests;
- (c) They must not participate in or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office;
- (d) The organisation's purposes and activities may not be illegal or violate fundamental public policy; and
- (e) They must not devote a substantial part of their activities to attempting to influence legislation.<sup>35</sup>

Some of these factors shall be discussed in *seriatim*.

#### **Prohibition on Investment and Private Benefit**

- (a) Inurement to Insider

All exempt organisations under IRC code, are prohibited from engaging in activities that result in inurement of the organisation's income or assets to insiders (such as persons having a personal

<sup>28</sup>IRC, Section 501(c)(3)

<sup>29</sup>IRS Code limits the amount of these deductions to no more than fifty percent of the person's total income, if the contribution goes to a church, IRC 2006, S.170 (b)(1)(A).

<sup>30</sup>*Branch Ministries v Rossolli* (Branch Ministries) (2000) 211F: 3d, 137,139.

<sup>31</sup> Section 501(c)(3)

<sup>32</sup>*ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> section 501(c)(3)

<sup>35</sup> *ibid.*

and private interest in the activities of the organisation). Examples of prohibited inurement include the payment of dividends, the payment of unreasonable, compensation to insiders and transferring property to insiders for less than fair market value.<sup>36</sup> The prohibition against inurement to insiders is absolute; therefore, any amount of inurement is, potentially, grounds for loss of tax-exempt status. In addition, the insider involved may be subjected to excise tax. It is worthy of note that prohibited inurement does not include reasonable payments for services rendered, payments that further tax-exempt purposes or payment made for the fair market value of real or personal property.<sup>37</sup>

(b) Private Benefit

Under IRC code, organisation’s activities must be directed exclusively towards charitable, educational, religious or other exempt purposes. The organisation’s activities may not serve the private interests of any individual or organisation. Rather, beneficiaries of an organisation’s activities must be recognized objects of charity (such as the poor or the distressed) or the community at large (for example, through the conduct of religious services or the promotion of religious private benefit is different from inurement to insiders). Private benefit may occur even if the persons that benefitted are not insiders. Also, private benefit must be substantial to jeopardize tax-exempt status.<sup>38</sup>

**Restriction on Lobbying Activity**

In general, no organisation may qualify for IRC section 501(c) (3) status if a substantial part of its activities attempt to influence legislation (commonly known as lobbying). An IRC section 501(c) (3) organisations may engage in some sort of insubstantial lobbying, but substantial lobbying activity risks loss of tax-exempt status.

The organisation will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting or opposing legislations, or if the organisation advocates the adaptation or rejection of legislation.<sup>39</sup>

The organisations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, they may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.<sup>40</sup>

**Prohibition on Political Campaign Activity**

Under the Internal Revenue Code, all IRC section 501(c) (3) organisations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaigns funds or public statements of position (verbal or written) made by or on behalf of the organization in favour of (or in opposition to) any candidate for public office

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<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*



clearly violate the prohibition may result in denial or revocation of tax-exempt status and the imposition of excise tax.<sup>41</sup>

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the educational process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner.<sup>42</sup> On the other hand, voter education or registration activities with evidence of bias that (a) would favour one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favouring a candidate over group of candidates, will constitute prohibited participation or intervention.<sup>43</sup>

It is worthy of note that individual activity by religious leaders does not jeopardize the tax-exempt status of the organisation. Thus, political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of these organisations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organisation to remain tax exempt under IRC section 501(c) (3), these leaders cannot make partisan comments in official publications. To avoid potential attribution of their comments outside of the organisation functions and publications, leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organisation.<sup>44</sup>

### **Unrelated Business Income Tax (UBIT)**

Net Income subject to the UBIT, tax exempt organisations, may engage in income-producing activities which are not a substantial part of the organisation's activities<sup>45</sup>. However, the net income from these activities will be subject to the UBIT if the following three conditions are met:

- (a) The activity constitutes a trade or business ,
- (b) The trade or business is regularly carried on, and
- (c) The trade or business is not substantially related to organisation's exempt purpose.<sup>46</sup>

### **Exception to UBIT**

Even if an activity meets the above criteria, the income may not be subject to tax if it meets one of the following exceptions:

- (a) Substantially all the work in operating the trade or business is performed by volunteers;
- (b) The activity is conducted by the organisation primarily for the convenience of its members; or

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<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*

<sup>46</sup> The fact that the organisation uses the income to further its charitable or religious purposes does not make the activity substantially related to its exempt purposes.

(c) The trade or business involves the selling of substantially all of which was donated. In general, rents from real property, royalties, capital gains, and interest and dividends are not subject to the unrelated business income tax unless financed with borrowed money.

### **2.3 Australia**

Not-For-Profit (NFP) organisation which includes charities, religious and non-governmental organisations et cetera, perform a valuable role in Australian society. They are eligible for a range of tax concessions and receive direct government funding in support of their philanthropic and community based activities. The tax concessions for the NFP sector are complex and applied unevenly.<sup>47</sup>

Under the Income Tax Assessment Act, 1997, a not for profit organisation must pay tax on any “taxable income” unless it qualifies for an exemption. For example, a charity must be registered with the Australian Charities and Not-For Profits Commission (ACNC) to apply for charity concessions from the Australian Tax Office (ATO).

The ACNC register organisations as charities for common wealth purposes while the ATO remains responsible for administering tax law, including decision on the organisation’s eligibility for tax concessions.<sup>48</sup>

Australia applies a range of tax concessions to different types of NFP organisations. These concessions includes; Income tax exemptions; a higher GST (Goods and Services Tax) registration threshold; the ability to make supplies GST free in certain circumstances; GST input credits; capped exemptions form (or rebates of) Fringe Benefits Tax (FBT); and the ability to receive tax deductible gifts (DGR).<sup>49</sup> These tax concessions shall be discussed *seriatim*.

#### **Fringe Benefits Tax**

The FBT concessions provided to the NPF sector can provide NFP organisations with a cost advantages for the recruitment and retention of staff. The concessions are capped to prevent over-use and limit the impact on competitive neutrality. This is particularly significant concessions for hospital, given that the health industry and competes directly with the private sector for qualified staff. Some ineligible charitable and community organisations have criticized the concessions on the ground that they have led to staff losses (through the inability to match market salaries for qualified staff) and resulted in a greater proportion of their funds being directed into salaries.<sup>50</sup>

Similar issues in respect of competitive neutrality arise in relation to the treatment of rebate able employers, which are eligible for a rebate of 48 percent of the amount of FBT that would otherwise be payable<sup>51</sup>. The rebate applies up to \$30,000 percent employee and reflects the fact that these employers do not benefit from the tax deductibility of FBT cost.

The FBT concessions provided to NFP organisations may result in a greater proportion of income being provided to employees as fringe benefits, rather than a cash.

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<sup>47</sup> “Australian Charities and Not-for-profit Commission’s Guideline” available at [http://www.acnc.gov.au/ACNC/FTs/Fact\\_Cncavial.aspx](http://www.acnc.gov.au/ACNC/FTs/Fact_Cncavial.aspx) accessed 29 November, 2019.

<sup>48</sup> *ibid*.

<sup>49</sup> [www.taxreview.treasury.gov.au/consultationpaper.aspx?doc=html/publications/papers/consultation\\_paper/section7.htm](http://www.taxreview.treasury.gov.au/consultationpaper.aspx?doc=html/publications/papers/consultation_paper/section7.htm) accessed 29 November, 2019.

<sup>50</sup> *ibid*.

<sup>51</sup> *ibid*.

## Good and Service Tax

Certain NFP organisations are able to treat some or all their separately identifiable branches as separate GST entitles. As a consequence, one or more sub-entitles may fall below the \$150,000 GST registration threshold for NFP organisations, when the complete entitle would exceed the registration threshold. This is intended to reduce the compliance costs of NFP organisations and may result in a reduced GST liability for some NFP organisations.<sup>52</sup>

The GST concessions for charitable organisations would not be expected to impact on competition neutrality. Unlike income tax exemptions, the activities of charitable organisations are taxable under the GST legislation, unless an explicit concession applies. Since, the commercial activities of charitable organisations would not be expected to qualify for these GST concessions, this is unlikely to lead to competitive neutrality concerns<sup>53</sup>.

It is worthy of note, Goods and Services Tax (GST) is a tax on transactions. Where goods and services are sold, the amount received for the sale may be subject to GST. Similarly, where goods and services are purchases, the purchase may be able to claim a GST for the GST included in the amount paid.<sup>54</sup>

Deductible Gift Receipt (DGR) status as well as applying for the tax concessions listed above, NFP can apply for deductible gift receipt (DGR) status.<sup>55</sup> The benefit of being a deductible gift receipt is that donations made to the organization may be tax deductible. If a donation is tax deductible, donors can deduct the amount of their donation from their taxable income when they lodge their tax return.<sup>56</sup>

## Mutual Receipts

The receipt that NFP member-based organisations (for example, licensed clubs) collect from dealing with their members are generally treated as non-assessable income. These entities are subject to income tax on profit from transactions with non-members and on transaction with their members.<sup>57</sup> Membership organization not prescribed as income tax exempt may utilize the mutuality principle. Under the mutuality principle, where a group of individuals join together to contribute to common fund, created and controlled by all of them for a common purpose, any surplus created in the fund from the individual contributions is not considered to be income.

## 2.4. Evaluation

Having examined the tax exemption as enjoyed by these organisations in these selected jurisdictions, it is pertinent that we evaluate the positions in the countries already examined, as against the practice in Nigeria.

In United Kingdom, all not-for-profit organisations are regarded as charities. These organisations are required to be registered with the Charity Commission, then, they will be granted exemption. Though, not all the income and gains of these organisations are tax-exempt, some income and gains of exempted organisations by HMRC, are still required to pay tax on (a) dividends from UK companies, (b) profits from developing land or property and (c) purchases of

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<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

<sup>54</sup> Australia Charities and Not-For-Profit Organisation(n 65).

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

goods and services. But, in Nigeria there is no established Charity Commission, as that is the case, there is no requirement for registration of these organisations. In Nigeria though, these organisations are not regarded exclusively as charities, except where the objects of the organisation indicate so. The same embargo on trading and business that applies in Nigeria, also applies in the United Kingdom, except that of UK is subject to certain qualifications.

Similarly, United States of America, by Internal Revenue Code, section 501 (c) provided that these organisations are exempted from all federal income taxes. Notwithstanding, the absolute exemption granted to these organisations, some factors may jeopardize their tax exempt status. These are, inurement to any private person, benefit to private interests, participation in political campaign activities, purposes and activities of these organisations must not be illegal or violate fundamental policy, *et cetera*. But, in Nigeria, the only factor that may jeopardize tax exempt status is when these organisations embarked on trade or business related activities.

For Australia, not-for-profit organisations qualify for exemption, if they register with the Australian Charities and Not-for-profits Commission (ACNC) and apply for charity concessions from the Australian Tax Office (ATO). There is no such requirements in the Nigerian tax regime. Though, the Australian religious organisations enjoy expanded tax exempt benefits, unlike the religious organisations in Nigeria.

### **Conclusion**

It has been observed that notwithstanding the tax exempt status granted to not-for-profit organisations, the exemption is not absolute. As enshrined under the Nigerian tax regime, the tax exemption granted to these organisations pertain only to income derived in the course of carrying out ordinary purpose for which they are established.

Once it is seen that these organisations have realized income from profit-oriented venture or commercial activity, such income will be chargeable to tax and as such, their liability to the payment of tax will arise.

Nevertheless, contrary to the general assumption the tax-exempt status enjoyed by not-for-profit organisations in Nigeria as already observed is not absolute; it is indeed predicated upon number of qualifications. These qualifications among others are; (a) The organisation must be of a public character, that is its activities must confer some benefit to the public or section of the public that is public benefit, within the legal meaning of the term. (b) The organisation must not derive its profits from a trade or business, that is, it must not derive its income from any activity of a commercial nature or profit oriented venture. (c) The organisation must apply its profits or gains purely or solely to its charitable purposes or objects that is income or assets may not inure to the private benefit of any person connected to them or any person having an interest in the organisation. These qualifications must be satisfied before the organisation will be granted the tax exempt status.