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## Co-existence of Secular Taxation and *Syariah* Compliant Practices: A Contemporary Application

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### Abstract

In Malaysia, the administration of *zakat* institutions comes under the respective individual State jurisdictions while that of secular taxes comes under the Federal Government. Unlike *Syariah-compliant* practices, certain aspects of secular tax practices are not *Syariah-compliant*. Despite these two fundamental diverse features, secular taxation and *Syariah-compliant* practices have been able to co-exist within the Malaysian fiscal system, made possible by the provisions in Federal secular tax codes and fiscal policies that accommodate *Syariah-compliant* transactions and arrangements, by explicitly excluding certain *Syariah-compliant* transactions and arrangements from falling under the ambit of the secular tax laws. In addition, parallel tax treatments based on the principles of tax neutrality and specific tax incentives for *Syariah-compliant* transactions and arrangements are provided.

**Keywords:** Secular Tax, *Syariah* Compliant, Zakat

### Introduction

The Federation of Malaysia consists of the Federal Territories and thirteen States. Under the Federal Constitution, Islamic religious affairs come under the jurisdiction of the various States. Thus, the *zakat*<sup>1</sup> institutions are administered by thirteen respective states under their *Majlis Agama Islam Negeri* (State Islamic Religious Councils) and one for the Federal Territories. At the Federal level, acting as the intermediary between the Federal Government and the State Islamic Religious Councils is the Department of Awqaf, Zakat & Hajj (JAWHAR). Taxes that come under the jurisdiction of the Federal authority include direct taxes, such as income tax, real property gains tax and stamp duty. In spite of the separation of jurisdictions, both the *zakat* practices and secular taxes co-exist in the Malaysian fiscal system.

As such, the objectives of this paper are framed as below:

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<sup>1</sup> MASB TRI-1 (2006) classifies *zakat* as an expense in the period in which it is incurred. *Zakat* is referred to as an Islamic levy (Ahmed & Zainuddin, 2017; Mighdad, 2019; Sarif, et. al 2020)