

Zakah: Is it Imposable on Income or on Capital?

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It is a well known fact that there is *zakah* on cattle, money, merchandise and on cereals and fruits. The earlier jurists agree that these different forms of *zakah* are all *zakah* on growing capital. However, some contemporary jurists and economists might think that *zakah*, in comparison with taxes, is of two kinds: *zakah* on wealth, as in the cases of *zakah* on cattle, money and merchandise and *zakah* on income as in the case of *zakah* on cereals and fruits.

The discussion of this topic is not new, but it is being renewed recently because the Fiqh Council of the Muslim World League in Makkah discussed the topic of taxes on income in its 17th session held on 19-24/10/1424AH (13-18/12/2003 AD). Four papers were presented on the topic. The first was by Abdulkarim Zaidan from Iraq, the second was by Abdussalam al-Abbadi from Jordan, the third was by Abdullah al-Thumali from Saudi Arabia and the fourth one was by Shawqi Dunya from Egypt.

All four papers agreed that it is allowed to raise taxes on income. Not only that, but perhaps it is even necessary to raise taxes on income within the well known constraints and rules which the jurists mentioned when dealing with mobilization of extra financial resources (raising of extra taxes other than *zakah*). However, the Council did not take a decision on sanctioning the imposition of the tax suggested by the above mentioned participants, but postponed taking decision in view of other related matters that need to be further reviewed and researched. The participants also included Abdullah Al-Turki and Abdul Aziz Al-Shaykh from Saudi Arabia, Yusuf al-Qaradawi from Qatar, Wahbah al-Zuhayli from Syria, Taqi Uthmani from Pakistan and Nasr Fareed Wasil from Egypt.

Some of the researchers tried to base their argument of allowing taxes on income by making analogy with *zakah* on cereals and fruits which according to them is a *zakah* on income. For instance, al-Thumali quoted the following text of al-Juwayni: "If there is excess amount of capital, fruits and cereals" (*Ghiyath al-Umam*, p.210); and the saying of al-Ghazali and al-Shatibi that: "it is up to him (the ruler) to consider that on the basis

of cereals and fruits" (*Shifa' al-Ghaleel* by al-Ghazali, p.236 and *al-I'tisam* by al-Shatibi, 2/121). Al-Thumali maintains that "the jurists who sanctioned taxes in general did call for the imposition of taxes on income specifically. In fact, in their view, such taxes take precedence over other taxes, a fact supported by the emphasis they gave to them as examples of taxation" (p.45).

Shawqi Dunya went even further by saying that "*zakah* covered all kinds of incomes" (p.41) and he also quoted the texts of al-Juwayni and al-Ghazali. Thus, all forms of *zakah* became *zakah* on income according to Shawqi Dunya a conception no other jurist or economist advocated before. He also argued that *zakah* on wealth put the wealth at risk of dilapidation (p.40). This is true for the non-growing capital but not true for the growing productive capital, especially if the tax rate was determined properly.

As for al-Abbadi, he used the well known arguments of the jurists in advocating taxes generally and not taxes on income specifically. Lauding the raising of taxes on incomes based on the writings of its advocates in the prevailing secular circumstances, he contended that taxes on incomes are allowed in principle. However, for the detailed study, it is necessary to mandate some specialized committees made up of *shari'ah* scholars, lawyers and tax experts (p.58). Al-Abbadi quoted Ibn Hazm that there are duties on wealth other than *zakah* such as spending on one's parents, wife ... and animals (*al-Muhalla*, 6/159). He did not comment on the view of Ibn Hazm despite the fact that his evidence in this case is not right, because these duties are due prior to the payment of *zakah* and not after it. Our discussion is about the duties over and above *zakah* and not about the normal expenditures.

Zaidan based his opinion of sanctioning taxes on income, and indeed on its obligation on many bases of which he mentions the obedience of the ruler, the rules that say: "whatever is necessary to achieve the necessary is in itself necessary", "help each other in doing good", "maintain the general interest of the general public", "there is no gain without loss", "there is a duty on wealth other than *zakah*", "the rule of blocking the ways to evasive devices", "the permissible and the commendable could become obligatory", "all the wealth belongs to Allah" etc.. These "proofs" are not evidence neither for raising taxes generally nor for taxes on incomes specifically. In fact, they are no proofs at all and they do not comply with the *fiqh* or its rules.

The topic is still open: Is *zakah* chargeable on incomes? Can we consider the *zakah* on land produce and fruits as *zakah* on income, as al-Qaradawi (*Fiqh al-Zakah*, 2/1041) and others claim? If we need extra tax, should we levy it on income or on capital? If taxes are to be levied on income, will they be imposed on Muslims or non-Muslims? If it is meant for non-Muslims, does it fall under the rules of *zakah*, the rules of *kharaj* or the rules of reciprocity? Then if this or that tax was chosen, should it be accepted as practiced or should some changes be made? If so, what changes?

I claim that *zakah*, including the *zakah* on land produce and fruits, is a *zakah* on growing capital and that the rates of *zakah* are such that the *zakah* is paid from the increase in capital rather than from the original capital (principal). I also claim that Islam tends to impose *zakah* on manifest wealth whenever possible rather than on

hidden wealth and leaves *zakah* on hidden wealth to the conscience and the religious convictions of the person. Taxes on income are levied on hidden wealth!

We put this forward for discussion, with the hope of reaching a *fatwa* that comply with the intentions, principles and rules of the *Shari'ah*.

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