A Comparison of Fatawa
on
the Disposal and use of interest (Riba)

Version 3,00

By

Ustaaz

Ahmed Fazel Ebrahim

The use of interest to pay specific bond costs associated to a property purchase and can it be used to pay taxation in Muslim or non-Muslim countries

Version 2,001

By Ustaaz,
Ahmed Fazel Ebrahim

The Disposal of Interest Money

By
Justice Maulana Muhammad Taqi Usmani

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A financial fatwa on a Interest Free Banking Account

by Ustaaz, Ahmed Fazel Ebrahim
With Notes
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a Chartered Accountant
RASHID-AHMED SYED CA (SA)

First Albaraka Seminar, Fatawa No. 7

With footnotes by Ustaaz, Ahmed Fazel Ebrahim

SECOND FIQH SEMINAR – NEW DELHI
Dec. 8-11, 1989
CONCLUSIONS: Bank Interest

The use of interest
to pay specific bond costs associated to a property purchase
and can it be used to pay taxation in non-Muslim countries

By Ustaaz,
Ahmed Fazel Ebrahim

Assalaamu Alaykum

In regard to the answers you wanted on

1. I have recently bought a house and the attorneys want me to pay registration and bond costs. Can I offset these payments by using Interest money?

2. Can I use somebody else's interest money to offset those payments?

3. Can I use the interest money that I have accrued on my 32 day call account to offset my water and lights and rates and tax fees every month?

Give me full details

1. What is the definition and description of the bond costs

Bond costs include the following as reflected on my statement from the bank

1. Fee for taking instruction of power of attorney
2. Financial advisory identification docs
3. Postage and stamps
4. Standard Bank electronic instruction fees
5. Deeds office fees
6. Evaluation of property fees
7. Initiation fees

2. Also, full description and demarcation of what is rates and taxes on the house, and separate the extent of rates from the extent that is taxes

2. Rates and tax will include the sewage system and picking up of dirt that the government does for us

1. Payment of the registration and bond costs (as described above) cannot be with interest money since the above-mentioned costs, despite the value thereof, are valid service charges. You cannot use your own interest money earned to pay such charges. Neither can you use the interest of any other person to pay it. It is apparent that you wish to capitalize for your benefit with the money of others.

2. To place your money on 32 day call deposit is totally Haraam since this is wilful intent of gaining maximum interest on deposits. Thus, instead of a regular account, you deposit the money on a 32 day Call account since it pays higher interest. Thus, you are, in Islamic terms, demanding interest on your money and have forwarded the money on loan to the bank to earn interest. **This is Haraam (prohibited).**

You might say **"What is the difference between interest received on a regular account and that received on a call account since both accounts provide an interest return?"** **If the purpose of placing money into a regular account is not for the purpose of business or**

economic necessity, and neither for the purpose of safe keeping but is purely to earn interest, then it is also Haraam to place money into the regular accounts since these form a means of earning interest and allow the generation of further interest. It allows the growth and perpetuation of the Riba (interest) cycle. Thus, you , in order to gain a higher rate of interest for the period concerned, opted for the 32 call / notice deposit. You have thus wilfully sought higher rates of interest.

In fact, in pure Islamic terms, even in a business account, you must only leave that extent of money in the account that will suffice for the needs of your business concern. If safety is not the factor, then to leave money in the account purely because you know that this will generate interest will also entail the violation of the Shari'ah's instruction against Riba (interest / usury).

3. Use of the sewage system and removal of refuse are not Haraam facilities. These services provided by the municipality are Halaal services and thus you cannot pay for these services from Haraam money.

4. However, the issue of taxation on these services is a debatable issue. Those who argue that such taxation is absolutely allowed and valid because the state requires operational income, would say that the full taxation on such services must be from Halaal sources since, although we Muslims, as citizens of a non-Muslim country, we require to abide by State regulations. Others might argue that since the State would use the money for Islamically Haraam activity as well, we therefore can pay such taxation from specific Haraam sources e.g. interest earned.

In the case of South Africa, Muslims might say that for decades we were oppressed by the apartheid government and we did not receive the amenities and the facilities that were enjoyed by the Europeans in South Africa, thus we are not obligated to pay for such taxation and other forms of taxation like personal and business income tax from Halaal sources.

The issue is delicate. Consensus on this matter is impossible. Those who argue on the need for compliance with Halaal money must then also dutifully discharge the taxes in all other sectors with Halaal money. Here again, in the post apartheid South Africa, Muslims are predominantly neither European, nor indigenous African. Rather because of being Indians or Malays, Muslims continue to suffer the effects of apartheid and racialism e.g. Affirmative action post-apartheid State policies (where employment positions are to be preferentially or obligatory filled , to specific levels, by indigenous African people) imply that Muslims still suffer employment opportunities and face distress in other public amenities e.g. hospital services, schooling etc. However, the safest approach in this matter is that such taxation be paid from Halaal income.

Perhaps, in America, Muslims may argue that the state has waged war against a Sovereign Muslim state without true justification under the pretence of "weapons of massive destruction," America then used its own WMD's "Weapons of mass destruction" to destroy Iraqi cities. Thus, since the State also uses its resources against Muslims, it is fine to pay the taxation from an interest (riba) source like a banking institution. However, this does not mean that they will be allowed to generate interest through placing their money into interest bearing accounts for the purpose of paying such taxation through interest income.

We need to note that Islam prohibits interest in entirety. Thus, you cannot even take interest from non-Muslims whether they are Christians, Jews or Hindus or from any other faith. The interest needs to be returned to the person or juridical person from whom it was taken. We can justifiably argue, in Islamic terms that interest earned on our banking accounts in interest-dealing banks, will be capitalized by the bank or possibly be used for non-Islamic work. Thus, in such a case we allowed to dispose of the interest earned to other allowed avenues. In the case where you privately earned interest from someone, even if he/she were an atheist, you

have to return the interest that you took from him/her . This is compliance to the Qur'an. Islam demands economic justice. Thus, the economic justice must prevail in dealing with all members of society whether Muslim or non-Muslim.

5. In an Islamic / Muslim State, we cannot pay taxation with Haraam although the State maybe supporting some non-Islamic activity. This is because the bulk of the beneficiaries are Muslim and we are not allowed to take interest.

The Disposal of Interest Money

By

Justice Maulana Muhammad Taqi Usmani

With footnotes by Ustaaz, Ahmed Fazel Ebrahim

Q. Muslims all over the world, and, unfortunately, also including those living in Muslim countries, despite all their commitment to Islamic values, face the problems brought before them by unwanted interest money generated in their name through channels they do not control. This happens, inspite of their being careful against whatever is likely to get them involved in interest bearing activity.

In case, interest does come into their accounts, no matter how unwanted, is there a valid way under the Shariah through which the identified interest amount can be disposed?

1. Can it be taken out of the account and used to pay personal or company income tax?

2. Can it be used to pay for insurance dues on cars, houses, materials, businesses, stores, etc.?

3. Can interest money be given as part of his or her salary for work to a non-Muslim? Would that apply to Jews and Christians as well?

4. Can this be given to non-Muslim charities unusually solicited through mail, door-calls and ads, such as, Blood banks, Heart Associations, Community Service groups, Welfare Committees for the aged, sick, disabled, prisoners and similar others under disadvantage?

5. There are individuals on the streets and subways asking for help. Are they entitled to be given this money?

6. There are non-Muslims one knows live under very low income levels. Would they be preferable as recipients of this interest money?

7. Is it permissible to give this money to Muslims falling in some of the above categories?

8. Is it right to give this money to: a) Make toilets in Masajid? b) Help counter anti-Muslim propaganda as claimed and accepted by a known Muslim institution in South Africa?

(S. Ahmed, New York)

A. As a general rule, no Muslim by his free choice should invest or deposit his money in an

interest-bearing scheme or account.

If a Muslim has deposited his money in an interest-bearing account for any reason, or the interest has come to his account without his choice or intention, he should not receive the amount of interest, but should surrender it to the payer of interest.

However, in non-Muslim countries he can receive the amount of interest with a clear intention that he will not use this amount for his personal benefit.[1] In this case it is incumbent upon him to give this amount as Sadaqah to the poor who do not have the nisab of Zakah.[2] This is not the normal Sadaqah which a Muslim gives out of his lawful income with an intention to get reward in the Hereafter. Instead, this Sadaqah is meant only for disposing unclean and unlawful money and to relieve oneself from the burden of an ill-gotten gain.

But it should be remembered that this amount is unclean only for the person who has received it

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[1] Footnote by Ahmed Fazel Ebrahim: Since the Shari'ah had ruled that taking of interest is Haraam upon Muslims, this rule applies to Muslims not only when intending to take interest from Muslims but also when Muslims intend to take interest from non-Muslims.

The view of Mufti Taqi Usmani does not deny this facet. Rather, it acknowledges the financial and economic conditions of non-Muslim financial entities that earn interest from its clients and other investments in order to pay interest to depositors and those who have invested funds with their institutions but simultaneously also recognizes that returning interest received to from these institutions to the very same source from where it was acquired is futile since these institutions do not, in-turn, return the interest to sources from where they acquired it. Rather, such financial institutions would either use the interest for internal benefit or distribute it to other charities – many or all of which are non-Muslim and, sometimes, are also engaged in missionary work against the teachings of Islam.

On the contrary, the other fatwa given in Imdaadul Fataawaa (included in this document) which relates to returning interest from where it was taken is 100% in compliance to the Shari'ah. Thus, where interest is then to be returned to the source from which it was taken, we as Muslims are not responsible regarding their subsequent use and disbursement of interest that is returned to them by the clients. This is a great test on the Imaan of Muslims!

In the case of financial institutions, the owners of the interest, in the legal sense of the non-Islamic law, are the shareholders of the institution until the point of their distribution of such interest when ownership is legally transferred to depositors and investors who deposit or invest with such institutions.

In the case of shares, the issue is different; the actual shareholder is a recipient of fractions of interest earned by companies. In the latter case, the shareholder actually earns interest directly. In the former case, his deposit of funds on an interest basis entitles the banking and financial institutions to re-invest and lend on interest and non-interest basis.

In conclusion, in the case of not knowing who the actual owners are of interest taken by the clients, on the assumption that the bank's shareholders are not the original owners since the interest was exacted from the clients and holders of deposits in accounts, it would be allowable to distribute the interest to the poor. However, the Nass (text) of the Quran makes interest Haraam for all Muslims - rich and poor. It is therefore that interest is not to be given to poor Muslims. Here again, sometimes, poor Muslims are obligated to pay interest on mortgaged property or other financed assets.

On the basis of the fatwa given in Imdaadul Fatawa, we can conclude that giving interest earned on accounts to offset the interest due on other accounts would still be a lesser evil, even if the interest taken is offset with interest that is to be paid to other financial institutions that are not related to the institution from which the interest was taken. However, in this matter, it is not only poor Muslims who have to pay interest, in modern economies, very often many rich Muslims are also obligated to pay interest on various loans or purchases that were financed through interest.

[2] Footnote by Ahmed Fazel Ebrahim: Allah had ruled the taking of interest to be Haraam upon Muslims. Thus, the ruling would apply to rich and poor Muslims.

as interest. The poor persons who get it from him as Sadaqah can use this amount for their personal benefits. This amount can also be given to one's close relatives who are entitled to receive Zakah. Even one's adult children can receive this amount from him, if they are so poor that they can receive Zakah.[3]

Keeping these rules in view, the certain answers to your questions are as follows:

(1) No. If the amount of interest is used in paying income tax or other government taxes, it amounts to using it for personal benefit, hence it is not permissible. Some contemporary scholars of Shariah, however, have allowed it only where the banks or financial institutions are nationalized. But I am not satisfied with this proposition. It is a very grave sin to use interest-money and one should not seek such advices to use the same for his own benefit.

(2 & 3). No, all these uses are beneficial to the holder of interest-money, hence impermissible.[4]

(4). As mentioned above, the interest-money can only be given as Sadaqah to those entitled to receive Zakah and the Sadaqah can only be performed through tamlik, i.e. by making the payee owner of the amount. So, this amount cannot be given to any welfare scheme where it is spent in office expenditure, salaries of the staff, construction of building or purchasing things of public use without giving it in the ownership of a particular person.[5] The interest-money therefore should be given to some poor person entitled to receive Zakah. But unlike the Zakah money, the amount of interest can also be given to a poor non-Muslim who does not own the value of nisab

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[3] Footnote by Ustaaz, Ahmed Fazel Ebrahim. I, humbly differ with my Ustaaz Justice Mufti Taqi Usmani on this view. Allah had made interest Haraam for all Muslims. To thus, give poor Muslims interest is Haraam. The only situation, and as a lessor evil, where I would consider it allowable for poor Muslims to use interest, as a lessor evil, is in the case where these very poor Muslims are obliged to pay interest-related debt on necessities. Thus, interest given to them can only be possibly used to pay or off-set interest that they have to pay towards mortgage and other interest payments that they have to make. This allowance cannot be extended to the rich since they do not have the dire need to purchase on an interest basis. The rich may argue that financial rules in non-Muslim countries oblige them to make purchases on interest. This is true for tax purposes but their purchases of luxury goods, non-essentials and other essentials on an interest basis is purely investment based and not on dire necessity for subsistence.

[4] Footnote by Ahmed Fazel: This is because, although the benefit is not immediate, it allows the person who pays these costs the ability to benefit from possible insurance claims that could arise in the future. However, where interest based insurance and other such Haraam costs were obligated on a person without his own volition, the payment of these costs through interest (Riba) would be a lessor evil than paying it with Halaal provided that, subsequently, no claims of money from such funds are used for the benefit of the person holding the insurance etc contract.

[5] Footnote by Ahmed Fazel: Mufti Taqi Ustmani's analysis of Interest to the Hanafi condition of Tamleek (ownership by a human and not by a juristic person) in Zakaah is totally incorrect and wrong. These are two separate issues. Interest is not equivalent in nature to Zakaah, therefore his inference is wrong. Thus, there is nothing wrong in giving interest to non-Muslim charities immaterial whether they use it for food distribution to non-Muslims or whether they use it for administrative expenses or office assets.

[6] Footnote by Ahmed Fazel: The nature of interest is different from Zakaah. Thus, in my humble view, tamleek cannot be applied to interest when interest is not returned to the original source from where it was taken. It is also a Hanafi ruling that Zakaah is discharged by tamleek (making other poor individuals the owners of the discharged Zakaah). Some other Shari'ah opinions do not specify tamleek in the case of Zakaah. That is a juridical debate within Islamic jurisprudence.

[7] Footnote by Ustaaz, Ahmed Fazel Ebrahim: Allah had made interest haraam for rich and poor Muslims.

[8] Footnote by Ustaaz, Ahmed Fazel: Firstly, the Non-Muslims are not obliged to follow the Ahkaam of the Shari'ah. Secondly, the issue of Nisaab is related to discharging Zakaah and not to discharging Haraam interest. The ruling pertaining to Nisaab is thus not applicable to distributing interest.

[9] Footnote by Ahmed Fazel: Refer to footnote 7

(threshold).[6]

(5). If they are so poor that they do not have the nisab of Zakah, the interest-money can be given to them.[7]

(6). As mentioned earlier, the interest-money can be given to a non-Muslim also subject to the condition just mentioned in answer to question 5. [8]

(7). Yes if they are entitled to receive Zakah, they can be given the interest-money also.[9]

(8). As mentioned in answer to question no. 4 this Sadaqah must be performed through tamlik, So, the amount cannot be used for making toilets of a masjid or in the general expenditure of a Muslim association.

A fatwa from Imdaadul Fataawaa, Vol. 3, Page 173

Question: Is it permissible to repay interest with interest?

Answer: Fatwaa no. 169/03

It will be permissible to repay interest with interest if it is carried out in the same bank, i.e. repay the interest to the same bank from which he had received the interest and the deal is settled through adjusting documents (on paper) and not by him physically attaining the interest and then repaying it. However, one should repent from indulging in such transactions, although he will not be as sinful as physically receiving and repaying interest. (**Imdaadul Fataawaa, Vol. 3, Page 173**)

And Allah Ta'ala knows best, Ilyaas bin Hashim Limbada

Attested to as correct by: Mufti Muhammad Ashraf

Darul Iftaa, Jameah Mahmoodiyah Springs (www.mahmoodiyah.org.za)
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01 September 2003, 04 Rajab 1424

Notes by Ustaaz, Ahmed Fazel Ebrahim – December 13/2003: The above fatwa does not imply that taking interest from bank A is permissible. Rather it states that in the event of having received interest from bank A, the following applies - a) the interest received must be returned to the source from which it was taken. b) A person can use interest money to pay interest charged by any person or entity, provided that the interest used to pay has been received from the same person or entity. The fatwa neither implies that engaging in the subsequent interest contract with the same bank A is permissible, rather, it means that if a person was subsequently compelled to borrow money or finance something on the basis of interest from the very Bank that he had previously

received interest, then to discharge such interest due in the latter transaction with interest received from the same Bank A would be acceptable. The fatwa thus implies that Muslims must return interest that they received to the source from which they had taken it. It is thus not permissible to offset interest charged by any other person or entity with interest received elsewhere.

With modern computer technology and the joint accounting system of banks, it will imply that if a person had received interest in a Johannesburg division of Standard bank, he will be able to use such interest to pay any other interest that he is charged at any other division of Standard bank.

However, although this fatwa expresses a better use of interest then

a. the case where interest received from one source is discharged, in the case of need, to any other source

b. distributing it to poor non-Muslims,

the fatwa does not intend to imply that interest received from bank A must be kept until you are obliged to pay interest to Bank A in another transaction. Since the fatwa says that by returning interest received from bank A to bank A is "not be as sinful as physically receiving and repaying interest," therefore, the fatwa actually means that it is obligatory for you to return interest received from Bank A to Bank A, without waiting for another transaction where Bank A will obligate you to pay interest on a loan taken by you from it or where you are obligated to pay interest to Bank A for anything that it has financed for you.

This ruling follows the primary principle of the shari'ah, which states that since interest cannot be received, it must be returned to whoever provided it. Therefore, this ruling is 100% in conformity to the implications of the Qur'an and hadith.

However, this fatwa requires that interest is not physical extracted from the bank by the holder of the account, and that settlement with regard to interest owed in another sector of the same bank is done on paper. This is a useless demand since using interest from one account to offset the interest owed in another account of the same bank, in reality means

1. You have taken interest from account 1. This was Haraam to do.

2. You deed another interest transaction with the same bank by buying something for which you had to take finance from the bank. You thus become obligated to pay interest. This was also Haraam except if done for absolutely need when no alternative was available.

3. Since paying interest is Haraam, it is actually also Haraam to pay such interest due with interest taken from any other place. If this is not the case, then it would imply that people can buy through interest financing and pay the interest due with interest earned or acquired elsewhere. This is also because in reality, immaterial with what you pay the interest that is due, whether the payment is with Halaal income or with Haraam income, you will still be paying interest. Thus, the fatwa means that offsetting interest due with interest received from the same source is a lessor evil than paying the interest that is due with interest (that is received from another source) or Halaal money.

Can your debtor be held liable for the payment of interest under specific circumstances?

Interest

By
Justice Maulana Muhammad Taqi Usmani

(1) There are circumstances in which the bank charges us interest when our current account goes into overdraft due to circumstances outside our control---mainly due to non-realization of cheques issued to us by our debtors.

Is it jaiz (permissible) for us to recover such interest from the debtor concerned?

(Rafiq Qasim, Colombo)

(1) If the interest is charged by the bank without your knowledge or without your having entered into an agreement with them for an interest --- bearing transaction, you cannot be held responsible for the sin of paying interest. But at the same time, you cannot claim that amount of interest from your debtor, because in that case your will be deliberately entering into a transaction of interest.[10]

A financial fatwa on a Interest Free Banking Account

by Ustaaz, Ahmed Fazel Ebrahim

Question: Some interest-dealing banks in South Africa offer you a facility on having a Banking account that does not pay interest. In return, the bank does not charge you for the various transactions you make through the account. Perhaps, even the charges for money withdrawals and transfers or payments from the AutoTeller (Electronic machines) are waived. Is this a better form of an account than an account which pays interest on credit balances, but which charges for transactions?

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[10] Footnote by Ustaaz, Ahmed Fazel Ebrahim: I humbly disagree with Retired Justice Taqi Usmani on the interpretation of the contract and not in his ruling. Although, the failure of the debtor to ensure that his/her/their cheque is met by the bank results in your account not being credited with the amount of the cheque, it was your responsibility to ensure that you wait for the cheque to be met before you engage in other purchases, cheque payments or withdrawals from your account. Since, the account holder expects the cheque to be met, he takes a calculated risk on the expenditure he makes from the account. This risk, sometimes, proves negative because, although the drawer of the cheque had taken all measures for its fulfilment, there are times and circumstances in business that results in the absence of fulfilment of the cheque. It will be, as Mufti Taqi said, "a case where you are deliberately charging interest," since actual the reason for the interest charge on your account was not drawer but rather the payments and withdrawals, etc made by you from the account. However, if the bank has charged your account a fee due to the rejection of the cheque, you can charge the drawer of the cheque or the debtor for that amount which the bank charged due to the rejection of the cheque. In the case, where the debtor used the cheque of another person, the debtor is liable to you and not the original drawer of the cheque. The debtor can then claim from the original drawer of the cheque for its rejection. **This issue, as well as many other issues introduces us to the need for creating a database of Islamic Banking Case law.**

Answer: The reality of the situation is that immaterial in which account you place your money, the bank still uses it to generate interest. The Bank has an instant computer update of money available in the accounts, and uses this to base the extent of finance and loans it provides to its clients. In some cases, it might lend from Central banks if the deposits are insufficient.

One hadith, the meaning of which is fortified through other narrations, states "Every loan which brings benefit (to the lender) is a form from the many forms of Riba (interest). A money deposit into a Banking account is actually a loan to the bank because the bank uses it to generate interest. Also, many of the charges made by the bank can be classified as Halaal service charges since it costs the bank money to provide these services. Since you will not be charged for various types of transactions on that account, you will also be benefiting from that loan (the deposits in your account). This form of account is thus also relates to taking interest. The better alternative is to pay for the bank charges, and dispose of the interest received into other avenues that the Shariah would allow.

A Chartered Accountant's perspective to these accounts

From: **RASHID-AHMED SYED CA (SA)**

Assalamu alaykum

The suggestion in this document is that it is preferable to have a normal banking account (referred to as account Type 1), pay the relevant bank charges, and to discharge the interest-received in accordance with principles discussed in the previous documents.

This is preferable in comparison to a banking account which does not pay interest, but does not charge any related service fees (referred to as account Type 2).

Type 1 bank account	Type 2 bank account
Clear agreement to receive interest	Unclear agreement to receive interest
Payment for bank charges	No payment for bank charges
valid service fees	Definite benefit through providing loan to bank

In both instances, it is assumed that the purpose of the deposit with the banking institution is not to earn interest, but rather because of safety considerations i.e. high risk of carrying cash.

A summary comparison of the two accounts

Type 1 bank account	Type 2 bank account
Earning explicit interest	Not earning explicit interest
Paying for service fees	No paying for service fees - implicit interest
Easy identification of interest income for purposes of discharging interest income	Difficult to identify interest income in quantifying bank charges, for purposes of discharging interest income.

Practical perspectives in the case of Type 1 banking account

On an individual's level:

1. The money is more likely to earn interest income in amounts which FAR EXCEED the amounts of the bank charges earned.

2. Many persons who have earned the interest income find it extremely difficult (due to human nature) to wilfully dispose of that interest income, as the disposition[11] is without deriving any personal benefits. Bear in mind that these interest-income amounts can be quite SUBSTANTIAL. People experience a certain natural feeling of resistance when giving away the interest-money. This despite me being aware of the severity of the use of interest-money. I can only imagine the feeling that other persons have who are less appreciative of Shariah commandments.)

3. I am of the opinion that the majority of people (taking into account our modern circumstances, background, education, personal desires, etc.), when evaluating the interest-income amounts involved (after having these amounts credited to their bank accounts), will be persuaded to hold on to the interest money instead of discharging it timeously. Once again, due to natural resistance in human nature.

4. With the notion of having interest-income, many persons are likely to enter into transactions where they will be required to pay interest and have the intention of settling this interest payment with interest-income. It is submitted that although it was previously mentioned that this is HARAAM, many persons who do not have a detailed knowledge and/or appreciation of the Shariah requirements will act in a manner which is self-beneficial. They will thus seek out those fatawa which declare permissibility of such actions (payment of insurance, taxes, traffic fines, etc. with interest-income). My comment on this point is that people will now consider interest-income in their decision making processes, whereas in Type 2 banking account there is no such risk.[12]

5. People tend to forget over time, or tend to procrastinate and the discharge of interest money gets neglected.

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[11] Footnote by Ahmed Fazel: The nature of interest demands, in Islamic terms, that it be disposed without personal benefit.

[12] Footnote by Ahmed Fazel: I agree with this but, at an economic level, the bank earns interest and gains from the money that you leave in the account. You are thus possibly allowing the bank to earn higher interest than it previously could.

On a collective level:

If the majority of people are encouraged to take out Type 1 banking accounts, it is my opinion as an accountant that the people will be receiving interest income on a MUCH LARGER scale than the implicit (?) interest earned on a Type 2 banking account i.e. more Muslims receiving more cumulative interest in the Muslim society. This presents two problems:

1. More cumulative interest income in the Muslim society, which is likely to impact on the minds and actions of the Muslims.

2. There is a larger amount of interest-income to discharge, and as noted previously, the discharge of this amount is not without contention (with regard to opinions by jurists as to who is entitled to receive the interest money)

Practical perspectives in the case of Type 2 banking account

1. People sub-consciously have comfort in these types of accounts as they do not need to make any active effort in trying to identify interest income

2. People tend to forget over time, or tend to procrastinate and the discharge of interest money gets neglected. In Type 2 banking account, this risk is avoided.

3. People tend to feel positive that they are not receiving any interest-income i.e. apparent benefit. It may be argued that they are receiving a benefit through waiver of bank charges. However, this benefit is not in the nature of appealing to the human sense of increasing material wealth. FOR EXAMPLE: If a person receives R100,000 interest income, he may actually contemplate putting his money in a fixed deposit to earn higher interest, as this is a blatant temptation. However, if a person saves R1,000 on bank charges, he is unlikely to increase the frequency of his banking transactions in an effort to increase / maximise this benefit (of receiving free banking service).

I also understand that issues such as providing comfort to people are not reason enough to choose an alternative. My point was to highlight the most likely action of the people under the circumstances.

Thus, I simply wish to highlight the practical considerations, as it is my view that although both Type 1 and Type 2 bank accounts have an element of impermissibility, the Type 1 banking account has a far greater impact on the mindset of Muslims individually and in general (in steering them more towards interest) and is more likely to cause a harm to the greater society.

Your comments eagerly anticipated.

As-salamu alaykum.

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Comments by Ustaaz, Ahmed Fazel Ebrahim

The various financial, economical and social perspectives that you have mentioned are correct.

I subsequently found it essential to highlight these matters in respect of the two forms of banking accounts within this document. These are all valid considerations and implications related to these accounts. Each type of account has negative and positive factors.

The purpose of the fatwa was to highlight the fact that the so-called "interest-free" account is actually not interest-free since

a. The bank still generates interest on the money in the account
b. The bank offsets the bank charges and fees with the interest that it earns on the money
c. In terms of the Shariah, use of such an account definitely leads a person to benefit some extent from the money deposited in the banking account. This entails Riba and is thus impermissible

Due to Islamic economic perspectives, and the fact that interest is identifiable in **Type 1 account**, my preference is that **Type 1 account** be used if needed for business or other reasons. The negative issues related to **Type 1 account**, are issues that Muslims have to deal with Islamically. However, type 1 account would also prevent the Bank and its shareholders from an economic advantage

First Albaraka Seminar, Fatawa No. 7

With footnotes by Ustaaz, Ahmed Fazel Ebrahim

2. Paying taxes out of bank interest

Question:

Is it permissible for a person gaining some interest-based profit in a non-Islamic country to pay taxes out of this amount for his income in that country?

Fatwa:

The second conference on the Islamic banking held at Kuwait on 6-8 Jamadi Al Akhirah 1403A.H., (21-23 March 1983) offered the following advice:

The conference advises the rich Muslim to direct their wealth, first to the Islamic banks, Islamic organizations, and the Islamic companies within the Arab and Muslim countries, and then in foreign countries. Until the time this is achieved the interest they gain is an evil gain and they should collect it and expend it on the general welfare of the Muslims. To continue to deposit it in the banks and institutions functioning on the principle of interest, while they can avoid it if they wish, is an unlawful act.

In the light of this principle, any taxes due on this evil gain may be paid out of it, but it is not permissible to pay taxes due on any other activity out of it.[13]

SECOND FIQH SEMINAR – NEW DELHI
Dec. 8-11, 1989

The Second Fiqh Seminar was held by the Academy with the co-operation of the Institute of Objective Studies in New Delhi from the 8th to the 11th of December, 1989 and was inaugurated by the eminent Fiqh scholar of the Arab World, Dr. Jamaluddin Atiah (Cairo). More than seventy jurists, intellectuals and Ulama from all parts of the country participated in this Seminar. Many eminent persons and representatives of great seats of Islamic learning in India also attended it.

CONCLUSIONS:

Bank Interest

Participants of the Seminar were unanimously of the opinion that the interest paid by the banks undoubtedly comes under *Riba*. Some questions came up during the Seminar as to whether the amount should be withdrawn or left in the bank? Furthermore, in case it is withdrawn from the bank, how should the bank-paid interest be spent?

It was agreed that the accruing interest should not be left with the bank. Instead it should be withdrawn to be used under the following heads:

(i) The interest paid by the banks may be spent on the poor and needy without expecting any recompense from Allah.[14]

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[13] Footnote by Ustaaz, Ahmed Fazel Ebrahim: According to the view of the panel of scholars who formulated this opinion, you can only use interest that is earned on a particular interest based account or investment account to pay any taxes due on money earned in the very same account. Thus, when a person is annually taxed by the state on his total income or capital gain, he has to segment the various accounts and ensure that the pro-rata amount of tax due on the amount of each account is paid from any possible interest earned from that very same account. Thus, according to this fatwa, all haraam income earned in each particular or specific retirement annuity policies, insurance policies , pension funds or unit trust funds can be used to offset taxes due on that very fund. In South Africa, for example, unit trust funds (in the share market sector) are now to be taxed before any income is distributed to the bearer or owner of any number of share units in a given fund. This fatwa makes an ideal allocation for payment of such funds from tax.
In the above instance, the payment of tax from such interest money is actually financially beneficial to the person owning the account, investment or unit trusts. Therefore, according to Mufti Taqi Usmani's fatwa, the taxes cannot be paid from interest gained on that account. We thus have two diverse opinions on the matter. It is thus, in this case, safer to follow the opinion of Mufti Taqi, although we could allow others the right to adopt the above fatwa No. 7 by the Al-Baraka Bank's panel of scholars.

[14] Footnote by Ahmed Fazel Ebrahim: Since the Shari'ah had ruled that taking of interest is Haraam upon Muslims, this rule applies to Muslims not only when intending to take interest from Muslims but also when Muslims intend to take interest from non-Muslims.

Non-Muslim financial entities earn interest from its clients and other investments in order to pay interest to depositors and those who have invested funds with their institutions. We also recognize that returning interest received from these institutions to the very same source from where it was acquired is futile since these institutions do not, in-turn, return the interest to sources from where they acquired it. Rather, such financial institutions would either use the interest for internal benefit or distribute it to

(ii) The above mentioned amount may not be spent on any mosque[15] and its related requirements in any way.

(iii) Majority of the participants held the opinion that the above mentioned interest may be used for social welfare activities as well as on paying obligatory alms. However, some Ulama opined to limit its use for the poor and needy persons only.[16]

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other charities – many or all of which are non-Muslim and, sometimes, are also engaged in missionary work against the teachings of Islam.

On the contrary, the other fatwa given in Imdadul Fatawaa which relates to returning interest from where it was taken is 100% in compliance to the Shari'ah. Thus, where interest is then to be returned to the source from which it was taken, we as Muslims are not responsible regarding their subsequent use and disbursement of interest returned to them by the clients. This is a great test on the Imaan of Muslims!

In the case of financial institutions, the owners of the interest, in the legal sense of the non-Islamic law, are the shareholders of the institution until the point of their distribution of such interest when ownership is legally transferred to depositors and investors who deposit or invest with such institutions.

In the case of shares, the issue is different; the actual shareholder is a recipient of fractions of interest earned by companies. In the latter case, the shareholder actually earns interest directly. In the former case, his deposit of funds on an interest basis entitles the banking and financial institutions to re-invest and lend on interest and non-interest basis.

Thus, in the case of not knowing who the actual owners of interest taken, it is correct to distribute the interest to the poor. However, the Nass (text) of the Quran makes interest Haraam for all Muslims - rich and poor. It is therefore that interest is not to be discharged to poor Muslims.

The only situation, and as a lesser evil, where I would consider it allowable for poor Muslims to use interest, as a lesser evil, is in the case where these very poor Muslims are obliged to pay interest-related debt on necessities. Thus, interest given to them can only be possibly used to pay or off-set interest that they have to pay towards mortgage and other interest payments that they have to make. This allowance cannot be extended to the rich since they do not have the dire need to purchase on an interest basis. The rich may argue that financial rules in non-Muslim countries oblige them to make purchases on interest. This is true for tax purposes but their purchases of luxury goods, non-essentials and other essentials on an interest basis is purely investment based and not on dire necessity for subsistence.

[15] Footnote by Ustaaz, Ahmed Fazel Ebrahim: It can neither be spent on any assets of an Islamic Institution e.g. Madrasah property or a building used to receive rental, spares and repairs to equipment and motor vehicles of an Islamic Institution or Waqf "Trust." It cannot even be used to pay the salaries of non-Muslim staff who work in any Islamic organization.

[16] Footnote by Ustaaz, Ahmed Fazel Ebrahim: Refer to previous notes which entail details in this regard.