

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question:

Zakat on Partnership in Sheep

To: Baher Saleh

(Translated)

Question:

I noticed in the Q&A of the Ameer – May Allah protect him – regarding Zakat on joint money that it differs from what was stated in the book “*Funds in the Khilafah State*” regarding the Zakat on partnership in sheep, as it was mentioned in the *Funds* book as stated:

The Rule on Partners in Sheep (al-Ghanam)

"The partnership or mixing in grazing sheep makes the property of the partners or two associates like the property of one man in Zakat. This is the case whether the livestock is shared jointly between them such that each one has a common unspecified share, for example if they inherit a portion, purchase them in partnership or they are gifts given to both of them so they retain them in this situation without separation or division. This may be whether they were given to them together or they were separate shares and they mixed them later on, i.e. the property of each one is distinct but they mixed them and became partners together whether they were of equal shares or not, with regards to shepherding, pasture, male sheep (al-Fahl) or drinking place. The sheep of a partnership or mixing, irrespective of the number of partners or associates or their shares, are counted like the sheep and goats of one man in taking Zakat. They are counted as one and remain in their situation without separation or combination. If they reach forty, then the collector of Sadaqah takes one sheep, and if they reach one hundred and twenty one, two sheep are taken. Three sheep are taken if they reach two hundred and one, and four sheep are taken if they reach four hundred. The collector of Sadaqah divides what he takes as Zakat from the partners or associates according to their shares in the sheep such that the least among them returns to the higher in his share due to the Prophet's saying: «وما كان من خليطين فإنهما يتراجعان بينهما بالسوية» "If a property is equally owned by two partners, they should pay the combined Zakat and it will be considered that both of them have paid their Zakat equally.." Reported by Abu Dawud."

Is my remark correct, or is there something else that I missed?

In other words, is what is mentioned in the book “*Funds in the Khilafah State*” regarding the “ruling on partners in sheep,” limited only to the zakat of sheep or livestock, and no other kinds of zakat? As I understood earlier that the matter is related to the nature of partnership and the mixing that takes place in the company, and that it is not related to sheep alone.

May Allah bless you and protect you, and may He (swt) unite us with you soon in the righteous Khilafah state (Caliphate).

Your brother, Baher Saleh 17/8/2020 CE.

Answer:

Wa Alaykom Assalam Wa Rahmatullah Wa Baraktuhu,

You mean the Q&A that we published on 19 Dhul Hijjah 1441 AH, corresponding 09/08/2020 CE titled: “**Zakat on Joint Money**,” which implies that partnership in cash has no effect on zakat; rather, each one of the partners should pay zakat on his own behalf if his money reaches the *nisaab* and one year has passed in accordance with the relevant Sharia rulings, and you brought an abstract from the book: “**Funds in the Khilafah State**” that implies that partnering and mixing in sheep has an effect on the zakat of sheep, and you are asking whether this ruling includes cash also, in contrast to what came in our aforementioned answer, or is it specific to sheep or cattle.

And the answer is as follow:

1- The 'as/ (original ruling) of Zakat is that it is a personal 'Ibadah related to the money of individuals, because the evidences of Zakat are directed at a Muslim who possesses the minimum amount (Nisab) in excess of his debts for the duration of a year. i.e. the hukm of Zakat is related to the individual's earned money alone and not the money he possesses for others. Some of these evidences include:

- it was narrated in a long Hadith, reported by Muslim from Zayd ibn Aslam, that Abu Saleh Dhakwan told him that he heard Abu Hurairah say: The Messenger of Allah ﷺ said:

«مَا مِنْ صَاحِبِ ذَهَبٍ وَلَا فِضَّةٍ، لَا يُؤَدِّي مِنْهَا حَقَّهَا، إِلَّا إِذَا كَانَ يَوْمَ الْقِيَامَةِ، صَفَّحَتْ لَهُ صَفَائِحُ مِنْ نَارٍ، فَأَحْمِي عَلَيْهَا فِي نَارِ جَهَنَّمَ...»

قِيلَ يَا رَسُولَ اللَّهِ فَأَلْبِلُ؟ قَالَ: وَلَا صَاحِبُ إِبِلٍ لَا يُؤَدِّي مِنْهَا حَقَّهَا وَمَنْ حَقَّهَا حَلَبَهَا يَوْمَ وَرْدِهَا إِلَّا إِذَا كَانَ يَوْمَ الْقِيَامَةِ بَطِحَ لَهَا بِقَاعٍ قَرَقَرٍ أَوْفَرَ مَا كَانَتْ لَا يَفْقِدُ مِنْهَا فَصِيلاً وَاحِداً تَطْوُهُ بِأَخْفَافِهَا وَتَعْضُهُ بِأَفْوَاهِهَا كُلَّمَا مَرَّ عَلَيْهِ أَوْ لَهَا رَدٌّ عَلَيْهِ أَخْرَاهَا...»

قِيلَ يَا رَسُولَ اللَّهِ فَأَلْبِقِرُ وَالْعَنَمُ؟ قَالَ: وَلَا صَاحِبُ بَقَرٍ وَلَا عَنَمٍ لَا يُؤَدِّي مِنْهَا حَقَّهَا إِلَّا إِذَا كَانَ يَوْمَ الْقِيَامَةِ بَطِحَ لَهَا بِقَاعٍ قَرَقَرٍ لَا يَفْقِدُ مِنْهَا شَيْئاً لَيْسَ فِيهَا عَفْصَاءٌ وَلَا جَلْحَاءٌ وَلَا عَضْبَاءٌ تَنْطَحُهُ بِقُرُونِهَا وَتَطْوُهُ بِأَظْلَافِهَا كُلَّمَا مَرَّ عَلَيْهِ أَوْ لَهَا رَدٌّ عَلَيْهِ أَخْرَاهَا...».

“Any person who possesses gold or silver and does not pay what is due on it (i.e., the Zakat); on the Day of Resurrection, sheets of silver and gold would be heated for him in the fire of Hell...”

It was asked, "How about someone who owns camels and does not pay what is due on him (i.e., their Zakat)?" He (ﷺ) replied, "In the same way the owner of camels who does not discharge what is due in respect of them (their due includes their milking on the day when they are taken to water) will be thrown on his face or on his back in a vast desert plain on the Day of Resurrection and they will trample upon him with their hoofs and bite him with their teeth. As often as the first of them passes him, the last of them will be made to return..."

It was (again) asked: "O Messenger of Allah, what about cows (cattle) and sheep?" He (ﷺ) said, "If anyone who possesses cattle and sheep and does not pay what is due on them (i.e., their Zakat); on the Day of Resurrection, he will be thrown on his face in a vast plain desert. He will find none of the animals missing with twisted horns, without horns or with a broken horn, and they will gore him with their horns and trample upon him with their hoofs. As often as the first of them passes him, the last of them will be made to return to him..."

- Bukhari reported from Ibn 'Abbas (May Allah be pleased with them): The Prophet (ﷺ) appointed Mu'adh (May Allah be pleased with him) as governor of Yemen, and at the time of his departure, he instructed him thus: «...فَاعْلَمْتُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةَ فِي أَمْوَالِهِمْ تُوَخَّدُ مِنْ أَعْيَانِهِمْ وَتُرَدُّ عَلَى...» «...tell them that Allah has made it obligatory for them to pay Zakah upon their assets and it is to be taken from the wealthy among them and given to the poor among them.»

«... فَأَذَا كَانَتْ لَكَ مَائَتَا دِرْهَمٍ وَحَالَ عَلَيْهَا الْحَوْلُ فَفِيهَا خُمْسَةٌ دَرَاهِمٍ وَلَيْسَ عَلَيْكَ شَيْءٌ - يَعْنِي فِي الذَّهَبِ - حَتَّى يَكُونَ لَكَ عِشْرُونَ دِينَاراً فَأَذَا كَانَ لَكَ عِشْرُونَ دِينَاراً وَحَالَ عَلَيْهَا الْحَوْلُ فَفِيهَا...» «...When you possess two hundred dirhams and one year passes on them, five dirhams are payable. Nothing is incumbent on you, that is, on gold, till it reaches twenty dinars. When you possess twenty dinars and one year passes on them, half a dinar is payable.» Reported by Abu Dawud.

And it is apparent from the terms used in these noble Ahadeeth that the ruling on Zakat is related only to an individual's money, not money in general, i.e. it is related to what an individual owns himself and not to what someone else owns: «مَا مِنْ صَاحِبِ ذَهَبٍ وَلَا فِضَّةٍ... وَلَا صَاحِبِ إِبِلٍ... وَلَا صَاحِبِ بَقَرٍ وَلَا عَنَمٍ...» «...فَاعْلَمْتُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةَ فِي أَمْوَالِهِمْ تُوَخَّدُ مِنْ أَعْيَانِهِمْ وَتُرَدُّ عَلَى فُقَرَائِهِمْ...» «... فَأَذَا كَانَتْ لَكَ مَائَتَا دِرْهَمٍ... وَلَيْسَ عَلَيْكَ شَيْءٌ يَعْنِي فِي الذَّهَبِ حَتَّى يَكُونَ لَكَ عِشْرُونَ دِينَاراً فَأَذَا كَانَ لَكَ عِشْرُونَ دِينَاراً...» «Any person who possesses gold or silver... someone who owns camels... someone who possesses cattle and sheep...» «...tell them that Allah has made it obligatory for them to pay Zakah upon their assets and it is to be taken from the wealthy among them and given to the poor among them.» «...When you possess two hundred dirhams... Nothing is incumbent on you, that is, on gold, till it reaches twenty dinars. When you possess twenty dinars.»

Therefore, in the calculation of zakat, the money owned by the son is not added to the money owned by the father, nor vice versa, nor is the money owned by the wife added to the money owned by the husband or vice versa, etc. Rather, zakat is calculated for the money that the individual owns separately from what others own, and if he alone has what reaches the nisaab, then zakat is due on it if one year has passed.

2- No amount of zakat money shall be excluded from the aforementioned 'as/ except with evidence indicating its exclusion from this 'as/. Evidence from the Hadith of the Prophet (saw) excludes sheep of a partnership or mixing, irrespective of the number of partners or associates or their shares, and they are counted like the sheep and goats of one man in taking Zakat if they reach the nisaab in combination, and if the nisaab is not reached by one of the partners or associates, or all of them individually or at separation.

We have outlined in the book *"Funds in the Khilafah State"* the details of the legislative ruling in the mixed sheep and the meaning of "khultah" (mixing) under the chapter: The Rule on Partners in Sheep, as follows:

[The partnership or mixing in grazing sheep makes the property of the partners or two associates like the property of one man in Zakat. This is the case whether the livestock is shared jointly between them such that each one has a common unspecified share, for example if they inherit a portion, purchase them in partnership or they are gifts given to both of them so they retain them in this situation without separation or division. This may be whether they were given to them together or they were separate shares and they mixed them later on, i.e. the property of each one is distinct but they mixed them and became partners together, whether they were of equal shares or not, with regards to shepherding, pasture, male sheep (al-Fahl) or drinking place. The sheep of a partnership or mixing, irrespective of the number of partners or associates or their shares, are counted like the sheep and goats of one man in taking Zakat. They are counted as one and remain in their situation without separation or combination. If they reach forty then the collector of Sadaqah takes one sheep, and if they reach one hundred and twenty one, two sheep are taken. Three sheep are taken if they reach two hundred and one, and four sheep are taken if they reach four hundred.

The collector of Sadaqah divides what he takes as Zakat from the partners or associates according to their shares in the sheep such that the least among them returns to the higher in his share due to the Prophet's saying: «وما كان من خليطين فإنهما يتراجعان بينهما بالسوية» **"If a property is equally owned by two partners, they should pay the combined Zakat and it will be considered that both of them have paid their Zakat equally.."** Reported by Abu Dawud.

The collector of Sadaqah leaves the sheep and goats as they are and counts them. It is not allowed to separate them in order to take more, e.g., when there are three partners with one hundred twenty sheep with each person owning forty sheep and the Sadaqah collector aims to separate them in order to take three sheep, one from each person. This is not allowed for him; rather, he must leave them as they are and take only one sheep. Similarly it is not allowed for the owners of the sheep to separate them once the Sadaqah collector came to collect Zakat in order to reduce or eliminate the Zakat upon them. This is when two partners or associates have 201 sheep which they divide (between them) so as to pay two sheep instead of the three if the sheep were to remain undivided due to their partnership. Similarly, they may have together forty sheep but they divide them so as not to pay anything after the division.

Just as it is not allowed to divide a group of sheep, it is also not allowed to gather them when they are separated with the intention to reduce what is to be paid from them. This is seen, for example, where two men have eighty sheep, each having forty sheep separately and not in partnership. However when the Sadaqah collector comes, they mix them together so as not to pay from them except one sheep instead of each paying one sheep. The evidence for the illegality of dividing a collected cattle or collecting the divided one is what Sa'ad b. Abi Waqqas narrated when he said: "The Messenger of Allah said: في الصدقة. لا يفرق بين مجتمع، ولا يجمع بين متفرق، «Do not divide between a collected group, nor gather together those which are divided for Sadaqa. And the two associates are those who gather together in male sheep, pasture, and water.» And in another narration: "and (al-Ra'iy) shepherd." End of quote from *"Funds in the Khilafah State"*

3- Likewise, the same Hukm applies to the rest of cattle on which zakat is obliged like camels

and cows of a partnership or mixing, irrespective of the number of partners or associates or their shares, and they are counted like the sheep and goats of one man in taking Zakat. They are counted as one and remain in their situation without separation or combination, even if they reach the nisaab in combination, and the nisaab is not reached by one of the partners or associates, or all of them individually or at separation. The evidence for this is the Hadith mentioned above, as it gives the explanation of “Khaleet” «والخليطان ما اجتمعا على الفحل، والمرعى، **“And the two associates (khaleet) are those who gather together in male sheep, pasture, and water.”** this can be used as a *illah* in *dalalah* as it is a description and a permission that includes cows and camels, and not only sheep or goats to achieve this *illah*. In addition to this, the expression of the Hadith is general in what is to be divided and gathered, so dividing and gathering it affects zakat: «...وَلَا يُجْمَعُ بَيْنَ مُفْتَرَقٍ وَلَا يُفْرَقُ بَيْنَ مُجْتَمِعٍ خَشْيَةَ الصَّدَقَةِ...» **“Do not divide between a collected group, nor gather together those which are divided for Sadaqa.”** and dividing and gathering camels and cows affects the increase and decrease of sadaqah.

4- As for all other zakat funds, such as cash, crops, fruits and trade, we do not have preponderant evidence that excludes them from the original hukm ('asl). Thus, the original ruling of zakat funds remains applicable to other than livestock, as indicated in point (1).

This is the opinion of the majority of scholars, as stated in **“Al-Mughni”** by *Ibn Qudamah Al-Maqdisi*:

[(A case: They were mixed in other than grazing livestock, such as gold, silver, trade offers, plants and fruits,)

[1736) A case: he said: "If they are mixed in other than that, it is taken from each of them individually if his belongings are obligatory for zakat) which means that if they are mixed in other than grazing livestock, such as gold, silver, trade offers, plants and fruits, their mixing has not affected anything, and their judgment was the judgment of the individuals. This is the opinion of most scholars. Ahmed has another narration that the company of A'yan affects non-livestock, and if there is a nisab they share, then they should pay zakat... But the truth is that the mixture does not affect other than livestock, as the Prophet (saw) said: «والخليطان ما اجتمعا على الفحل، والمرعى، **“And the two associates are those who gather together in male sheep, pasture, and water.”** It is suggested that what does not have this is not an impressive mix, and the Prophet's saying: «...وَلَا يُجْمَعُ بَيْنَ مُفْتَرَقٍ وَلَا يُفْرَقُ بَيْنَ مُجْتَمِعٍ خَشْيَةَ الصَّدَقَةِ...» **“...nor gather together those which are divided for Sadaqa.”** is in livestock, because zakah becomes less in collecting them at times, and becomes more in another. For other types of money, zakah is due on what is more the nisab and calculated accordingly so there is no effect when mixing them.].

5- With this clarification, it appears that there is no difference or conflict between what was mentioned in the Q&A published on 19 Dhul Hijjah 1441 AH, corresponding 09/08/2020 CE, titled: **“Zakat of Joint Fund,”** and what is mentioned in the book *“Funds in the Khilafah State”*, under the chapter: “The Rule on Partners in Sheep,” because the answer to the question is related to funds, and what is mentioned in the book *“Funds in the Khilafah State”* is regarding sheep, and the ruling on funds differs from the ruling on sheep in the matter of mixing and partnership.

I hope that this answer is sufficient, and Allah (swt) Knows Best and He is the Most Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

19 Rabii' Al-Akhir 1442 AH

Corresponding 04/12/2020 CE

The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/HT.AtaabuAlrashtah/posts/2817000905212582>