

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his “Fihi” Facebook Page**

Answer to the Question:

No Kharaj on Residential Land

To Badr Al-Ajrab

(Translated)

Question:

Our dear Scholar Ata Bin Khalil Abu Al-Rashtah,

As-Salaam Alaikum Wa Rahmatullah Wa Barakatuhu

In the book *The Economic System of Islam* p. 129 (Arabic version): "As for Kharaj on land, the state takes from the land owner a certain amount assessed and determined according to the estimated production of the land usually not on the actual production. The estimation of the land is based on its potential so that injustice does not fall on the owner of the land, or on Bait ul Mal. Kharaj is taken every year from the owner of the land, whether the land was planted or not, and whether it produced or not." My question is: Is Kharaj exempted on kharaji land that has a building constructed on it or does the owner has to pay the kharaj regardless of whether it is an agricultural land or not?

May Allah bless you and grant you success and deliver the victory through you.

Your loving brother Badr Al-Ajrab

Answer:

Wa Alaikum us Salaam Wa Rahmatullah Wa Barakaatuhu

Below I mention some relevant matters:

1. The Kharaj land means that the owner owns its utility benefit not its land title “raqabba” and the owner pays Kharaj on it. It is inherited such as ‘Ushri land, but that which is inherited in the Kharaj land is its permanent utility, not its land title “raqabba” because it belongs to all Muslims. But its utility, Omar bin al-Khattab has approved its owners for the ownership of its permanent utility for eternity. The utility benefit is owned and inherited, and the owner of the utility benefit has the right to use it in all sorts of ways: selling, mortgage, gift, in a will, and any other way.

2. The payment due on the land remains until the end of time, regardless of the difference in the landowner type and the changes of the owners, because its reality of being opened by force does not change until the end of time, and the transfer of ownership of the utility benefit from a Kaffir to a Muslim does not change this status. Also it does not change the kharaj due on it, because Kharaj is linked to the opened land, which is given to its inhabitants and it is not tied to the ownership.

3. The one who has the authority over the utility benefit of the land has the right to sell this benefit, and to be paid for it, because the utility benefits are sold and deserve their price, and no one has right to take them from its owner, not even the Khaleefah of the Muslim, Abu Yusuf said: “Whatever land was opened by Imam forcibly and he did not divide it, and saw the goodness in approving it to remain in the hands of its people, as Omar bin al-Khattab (ra)

did regarding the Sawad land, then he can do so, it is kharaj land, and he has no right to reclaim it after that, it belongs to the people, they inherit it, and can sell it and pay its kharaj.” And if the state needed to take the land from the kharaj land for an indispensable need of the Muslims, it must to pay the price of the land utility benefit to the owner of the land that it claimed and not the price of the land title “raqabba”, because the owner of the kharaji land owns the utility benefit of the land and not the land title “raqabba”, because the land title is owned by Muslims. Therefore it has to pay him the price of what he owns, which is the benefit, no matter how big or small it is, but it is not limited to paying that was built on from the building or trees, because it is considered usurping of the right he owns. He owns what was built on it from building or trees, and owns what is in it of production energy, and of permanent benefit, so the price of all this must be estimated, and especially as the owner of the land may have bought it for tens of thousands, while the building or trees on it is not worth tens of hundreds, to pay only for the construction cost and trees is injustice to him, and squandering of his right, if the State does not pay the price of all of the utility benefit of his land it will be usurped, and this is like any benefit from the benefits, its full price must be paid when it is sold.

4. This is in the case when the kharaji land is for agricultural purposes, as for the residential land in the countries opened, its hokum is contrary to the Ahkam of agricultural land, there is no kharaj on residential land, and both its utility benefit and land title is owned, and this is by the consensus of the companions, when the Muslims conquered Iraq they took over of Kufa and Basra, and they divided it among them, and it became their possession, they own its land title and utility benefit in the days of Omar bin al-Khattab (ra) by his permission. And the opened lands were inhabited by the companions of the Messenger of Allah (saw). And so was ash-Sham and Egypt, as well as other open countries, and they did not pay kharaj on anything, and it was sold and bought like any possession, as well as no Zakat was paid on it but if it was included as offers for trade, they Zakat is eligible on it .

In summary, Kharaj is paid on the agricultural kharaji land, but kharaj is not paid on the residential land, and its ownership is comprehensive its utility benefit and land title, i.e. full ownership, not the ownership of Kharajah land.

Wa Salaamu Alaikum Wa Rahmatullah Wa Barakatuhu

Your brother,

Ata Bin Khalil Abu Al-Rashtah

11 Dhul Qiddah 1436 AH

26 August 2015 CE

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

<https://www.facebook.com/Ata.abualrashtah/photos/a.154439224724163.1073741827.154433208058098/487396401428442/?type=1&theater>