

هيئة الزكاة والضريبة والجمارك
Zakat, Tax and Customs Authority



FIQH OF ESTIMATION IN CALCULATING ZAKAH

AN APPLIED FUNDAMENTAL STUDY
OF THE METHODOLOGY OF INVESTIGATION AND
APPROXIMATION IN ZAKAH ON JOINT-STOCK COMPANIES

ALI IBN MUHAMMAD IBN MUHAMMAD NUR

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Nature of the Book



This book is a thesis submitted by the researcher to obtain PhD degree in the field of (Fiqh and Its Fundamentals) from the Department of Islamic Studies, College of Education, King Saud University. The thesis was discussed on Wednesday 14 Rabî` Ath-Thâni, 1441 AH.

The discussion committee consisted of:

- 1- Prof. Dr. `Abdul-`Azîz Ibn Su`ûd Ad-Duwayhî, as a supervisor and rap-porteur.
- 2- Dr. Khâlid Ibn Rashîd Al-`Adîm, as an assistant supervisor.
- 3- Prof. Dr. Yûsuf Ibn `Abdullâh Ash-Shubîlî, as a member.
- 4- Prof. Dr. Nadhîr Ibn Muḥammad At-Tayyib Ūhâb, as a member.
- 5- Prof. Dr. Muḥammad Ibn `Abdul-`Azîz Al-Yumnî, as a member.

At the end of discussion, the discussion committee unanimously approved the researcher's thesis, with a recommendation to print and make use of it in relevant scientific bodies. The researcher was granted the PhD degree in Islamic studies (**Fiqh and Its Fundamentals**) with the grade: (**Excellent**).



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Introduction

Introduction



Praise be to You, O Allah, for the abundant favors You have bestowed upon us, and I thank You, my Lord, for Your incessant blessings. To You belongs all the praise and thanksgiving, and to You return all affairs. Glory be to You, my Lord! You have guided me after misguidance, taught me after ignorance, and conferred prosperity upon me after neediness. I am Your servant on whom You have showered Your blessings, variegated Your favors, and conferred Your magnificent concealment of his faults.

O Allah! I ask You by Your mercy, which encompasses all things, to complete Your favor upon me, bless me with prosperity and well-being, and grant me Your forgiveness and pleasure.

O Allah! I deny my might and strength before Yours alone, and I bear witness that you are my Lord, and none has the right to be worshiped but You alone. You have no partner or associate in Your divinity, lordship, names and attributes. O Allah, to You belongs all the praise that would fill all the heavens, the earth, what is between them, and whatever You have wished of things afterward.

O Allah! Send Your prayers upon our Prophet Muḥammad, and upon his Household just as You have sent Your prayers upon Prophet Ibrâhîm (i.e. Abraham) and upon his Household. Verily, You are the Most Praiseworthy, the Most Glorious. O Allah! Send Your blessings upon our Prophet Muḥammad and upon his Household just as You have sent Your blessings upon Prophet Ibrâhîm and upon his Household. Verily, You are the Most Praiseworthy, the Most Glorious.

Applying *Taqdîr* (i.e. Estimation) is one of the Shari'ah-considered fundamentals. Such an application is indicative of the perfection and easiness of the Islamic Law (i.e. Shari'ah), as the Prophet (peace and blessings of Allah be upon him) said:

“Indeed, the religion (of Islam) is easy, and no one will ever overburden himself in religion, except that it will overcome him. So, seek Tasdîd, and Muqârabah.”⁽¹⁾

“Tasdîd means hitting the target, and its origin is to shoot the arrow when it hits the target without missing it.

Muqârabah means coming as close as possible to the target, even without hitting it. However, one shall exert his best efforts to hit the target. So, he may hit it at one time and come close to it another time. Otherwise, *Muqârabah* is meant for anyone unable to hit a target. In this regard, Allah says:

{“And fear Allah as much as you can”}.⁽²⁾

Also, the Prophet (peace and blessings of Allah be upon him) said:

“If I command you to do something, then do of it as much as you can.”⁽³⁾⁽⁴⁾

There are many examples of applying *Taqdîr* (i.e. Estimation) to the Shari'ah as it is used almost in all chapters of Fiqh.⁽⁵⁾

It was a favor of Allah that my work required paying attention to the issues of *Zakâh* in both Fiqh and Accounting, being acquainted with the researches and studies relating to this topic, and meeting with the specialists of this field, be they Shari'ah scholars or accountants.

Since then, I found that calculation of *Zakâh* is an important issue which needs to be fundamentally established in both Fiqh and Accounting, whether *Zakâh* calculation is meant for companies or for individuals. That is why, after making consultation and performing *Istikhârah* (i.e. Prayer asking Allah's guidance to make a good choice), I choose this subject *“At-Taqdîr Fî*

(1) Narrated by Abû Hurayrah (may Allah be pleased with him). *“Sahîh Al-Bukhârî”*, Book of Faith, Chapter: Religion is easy, hadith no. (39).

(2) Surah *At-Taghâbun* (Mutual Fraud): 16.

(3) Narrated by Abû Hurayrah (may Allah be pleased with him). *“Sahîh Al-Bukhârî”*, Book of Holding Fast to the Qur'an and Sunnah, hadith no. (7288); *“Sahîh Muslim”*, Book of *Hajj*, hadith no. (1337).

(4) *“Fath Al-Bârî”*, Ibn Rajab, (1: 137, 138).

(5) *“Al-Ummiyah Fî Idrâk An-Niyah”* (P. 214); see also: *“Qawâ'id Al-Ahkâm”* (2: 112); *“Al-Furûq”*, Al-Qarâfi, (1: 74); *“Sharh Al-Kawkab Al-Munîr”* (4: 312).

Hisâb Az-Zakâh” (i.e. Estimation in Calculating *Zakâh*) to be the subject of my PhD thesis.⁽¹⁾

Research problem

The process of calculating *Zakâh* for joint-stock companies depends primarily on financial reports issued by these companies. These reports are prepared and published in accordance with accounting standards that do not, necessarily, disclose the information needed in the calculation process, whether this information relates to the conditions of obligating *Zakâh* on the zakatable wealth, or to the determination of its amount.

It is not easy for shareholders to have access to all information needed in the process of calculating *Zakâh* for joint-stock companies because financial reports do not disclose it. The International Islamic Fiqh Academy (IIFA) resolved in its resolution no. 121 (13/3) that if the investor could not have access to this information, then he should investigate as much as he could do, and pay the *Zakâh* corresponds to the asset value of his shares of the zakatable assets.

The Academy’s resolution did not clarify the method of investigation or its guidelines, as a number of researchers have pointed out.⁽²⁾ Hence, an urgent need arises for a study which establishes the foundation of the Fiqh of estimation in calculating *Zakâh*: Its guidelines and effects, as well as Fiqh-based study of the issues for which estimation in calculating *Zakâh* for joint-stock companies is needed, for both the investor who can deal properly with these financial reports, and the investor who cannot do so.

(1) This PhD thesis was registered under the title: “*At-Taqdîr Fî Hisâb Zakât Sharikat Al-Musâhamah: Dirâsah Fiqhiyyah Taṭbiqiyyah*” (Estimation in Calculating *Zakâh* for Joint-stock Companies: An Applied Fiqh-Based Study).

Then, after making consultation and performing *Istikhârah* (i.e. Prayer asking Allah’s Guidance to make a good choice), I amended the title to: “*Fiqh At-Taqdîr Fî Hisâb Az-Zakâh: Dirâsah Taṣiliyyah Taṭbiqiyyah Li-Manhajiyyat At-Taharrî Wat-Taqrîb Fî Zakât Sharikat Al-Musâhamah*” (Fiqh of Estimation in Calculating *Zakâh*: An Applied Fundamental Study of the Methodology of Investigation and Approximation in *Zakâh* for Joint-stock Companies).

(2) Such as: Dr. Husayn Hâmid Hassân and Dr. Yûsuf Ash-Shubîlî. See: Researches of Al Baraka 34th Symposium, (15, 47).

Significance of research and reasons for being chosen

- 1- This research relates directly to the fulfillment of one of the pillars of Islam, and it is an essential prerequisite for the development of Islamic economy.
- 2- It combines two important branches of knowledge, namely the science of Fiqh and the science of Accounting. This makes it an important scholarly addition contributing to the proper formation of the researcher, and helping enrich these two branches of knowledge as well. Besides, lacking mastery of these two fields results in serious errors in the process of calculating *Zakâh*.
- 3- It is one of the intricate topics whose importance comes to light when calculating *Zakâh* in practice. This is why few people address it, despite the pressing need to establish its Fiqh-based foundation and put it into application. That is, many fatwas and resolutions relating to *Zakâh* cannot be applied to the calculation of *Zakâh* base for joint-stock companies. This is because common accounting disclosure differs from disclosure and assessment required for calculating *Zakâh* properly, such as the assessment of goods stocked for trade for less than their cost or market value, or because such an application is contingent on some details that cannot often be obtained from financial reports.
- 4- It helps many investors, who own shares in companies that do not pay the obligatory *Zakâh* on behalf of the shareholders, or even disclose the Shari'ah amount due on them, and thus they are unable to calculate the *Zakâh* themselves, to free themselves from the blame of Shari'ah.

Literature review

After reviewing previous studies related to this subject of research, as well as consulting specialists in this field, and contacting King Faisal Center for Research and Islamic Studies, I could not find any scientific study tackling the issue of *Taqdîr* (i.e. Estimation) in calculating *Zakâh*. The following is an overview of the most important studies relevant to this research:

First: “*Al-Wi`â` Az-Zakawî Lish-Sharikât Al-Musâhimah*” (i.e. *Zakâh Base for Joint-Stock Companies*), by Dr. Mâjid Ibn `Abdul-Rahmân Al-Faryân: It is a scientific thesis for which the author received the PhD degree

in Fiqh with the grade: (Excellent) from Sharia College at Imam Mohammad Ibn Saud Islamic University, 1435 AH.

The author exerted commendable efforts to prepare this thesis, and he agrees with my thesis in the point of calculating *Zakâh* for joint-stock companies based on financial reports of these companies, but I noticed that the accounting aspect related to the subject of the thesis and its consequent problems was not discussed in detail. The most significant ideas of this thesis can be summarized as follows:

- 1- Establishing a Fiqh-based foundation for the issue of *Taqdîr* (i.e. Estimation) in calculating *Zakâh* for joint-stock companies, due to its importance in calculating *Zakâh* base.
- 2- Studying problematic Fiqh-based issues regarding *Zakâh* calculation aroused from the non-compliance of financial reports with Shari'ah requirements for *Zakâh* calculation in joint-stock companies, whether these problematic issues relate to the conditions of *Zakâh* obligation, or to the determination of its amount, the principles of its assessment, and the means of tackling it.

Second: “*Dirâsât Fî Al-Muhâsabâh Az-Zakawiyah: Îrâdât Ru’ûs Al-Amwâl Ath-Thâbitah*” (i.e. Studies in *Zakâh* Accounting: Fixed Capital Revenues”, by Dr. Sâlih Ibn `Abdul-Rahmân Az-Zahrânî: It is a scientific thesis for which the author received the Ph.D. degree in Accounting from Faculty of Commerce at Al-Azhar University, 1417 AH.

In this thesis, the author exerted commendable efforts so as to explain the methods of calculating *Zakâh* using financial statements. Given its specialization in accounting, this thesis managed to better tackle the problems of applying Fiqh-based fundamentals to accounting standards. In this regard, second and third chapters of the thesis were devoted to problems pertaining to calculating *Zakâh* for fixed capital revenues. However, this thesis differs from my research in two aspects:

- (a) The author’s thesis is concerned with calculating *Zakâh* for fixed capital revenues, namely *Zakâh* on crops and fruits, minerals and *Rikâz* (i.e. buried treasures or natural ores), and exploited assets. This does not include *Zakâh* on gold and silver, or *Zakâh* on goods stocked for trade.

(b) Author's thesis did not touch on establishing Fiqh-based foundation for the principle of *Taqdîr* (i.e. Estimation) in calculating *Zakâh*, as well as its Shari'ah-based methods and guidelines. Also, it did not discuss methods of estimation regarding issues in which estimation is much needed.

Third: “Nawâzil Az-Zakâh: Dirâsah Fiqhiyyah Ta’sîliyyah Li-Mustajad-dât Az-Zakâh” (i.e. The Contemporary Issues of Zakâh: A Fundamental Fiqh-Based Study of Contemporary Issues of Zakâh”, by Dr. `Abdullâh Ibn Mansûr Al-Ghufflî: It is a scientific thesis for which the author received the Ph.D. degree in Comparative Fiqh from the Higher Judicial Institute, 1428 AH.

Despite being of great importance, the thesis did not pay much attention to the practical aspect of *Zakâh* calculation. This is why the author neither touched on establishing the Fiqh-based foundation for the issue of *Taqdîr* in calculating *Zakâh*, nor studied its practical applications to the process of such a calculation. However, he tackled some issues that can be used to establish a Fiqh-based foundation for the principle of *Taqdîr* in calculating *Zakâh*. These issues include:

- 1- Studying contemporary Fiqh-based views relating to *Zakâh* on shares for individuals,⁽¹⁾ as some of these views were based on the principle of *Taqdîr* (i.e. estimation) in calculating *Zakâh*.
- 2- Studying the ruling on using solar year as *Hawl* (i.e. *Zakâh* year) for paying *Zakâh*.⁽²⁾

Difficulties and obstacles

In the course of my research, I encountered some difficulties and obstacles, for which I sought Allah's help to overcome. They include:

- 1- Combining work and study, without devoting myself to scientific research, in addition to my family responsibilities. These matters resulted in delaying the accomplishment of the thesis. Thus, I made every endeavor striving to complete the research in accordance with my goals and objectives.

(1) See: “Nawâzil Az-Zakâh” (pp. 175-184).

(2) Ibid. (pp. 81-184).

- 2- Scattering of scientific material relating to the subject of this thesis across some scientific symposiums and conferences, as well as some scientific writings, researches, resolutions and recommendations dispersed among universities, scientific councils and Shari'ah boards. I aimed at tracking down every material related to the subject of the thesis. So, I contacted various institutions and scientific figures, both inside and outside the Kingdom of Saudi Arabia; such as Kuwait, Bahrain, the United Arab Emirates, Jordan, Sudan, and Morocco, to collect the research material.
- 3- The complicatedness and ramification of the subject, as well as the scarcity of significant studies addressing it. This is why I exerted great efforts to collect, examine, edit and phrase the scientific material. I kept on thinking that due to the considerable amount of written material on the Fiqh and accounting of *Zakâh*, there will be no longer need to expatiate on writings in this field of Fiqh as it would all be a wasted effort. But, after carefully examining these written materials, I found that most of them depend on citation and repetition, and that only few studies so far managed to enrich Fiqh-based *Ijtihâd* (i.e. legal reasoning and discretion) in terms of practical problems of *Zakâh* accounting. Hence, I sought the help of Allah and buckled down to search, examine, study and review this issue, asking Allah to grant me success and proper guidance. Thanks to Allah alone, this search came to light.

Research objectives

- 1- Establishing a Fiqh-based foundation for the permissibility of applying the issue of *Taqdîr* (i.e. Estimation) to calculation of *Zakâh*.
- 2- Clarifying the conditions and guidelines of applying the issue of *Taqdîr* (i.e. Estimation) to calculation of *Zakâh*.
- 3- Explaining the impacts of applying the issue of *Taqdîr* (i.e. Estimation) to calculation of *Zakâh*.
- 4- Demonstrating *Zakâh* Fiqh-based problems relating to financial disclosure of joint-stock companies.
- 5- Studying Fiqh-based issues relating to *Taqdîr* (i.e. Estimation) in calculating *Zakâh* for joint-stock companies.

- 6- Providing methods for estimating *Zakâh* on shares for those who cannot deal with financial reports.
- 7- Clarifying the impact of shareholder's intention on estimating the calculation of *Zakâh* base.

Research methodology

In this study, I adopted both the inductive and deductive approaches.

Research procedures

After seeking help from Allah, the Almighty, and asking Him for success and proper guidance, I conducted my research basing on the following guidelines:

- 1- If necessary, I will form an accurate conception of the issue to be examined before stating its ruling; so as to clarify the intended purpose of its study.
- 2- In case the issue is unanimously agreed upon, I will cite its ruling supported by evidence or justification, if any, documenting its considered references.
- 3- In case the issue is a point of disagreement, I will follow these steps:
 - (a) Clarifying the subject of disagreement in case there is a disagreement regarding some forms of the issue while other forms are unanimously agreed upon.
 - (b) Mentioning the viewpoints on the issue, attributing each of them to its issuing scholar (or school of Fiqh). I will also clarify the disagreement among the schools of Fiqh regarding such an issue, giving priority to the opinion of the majority of Fiqh scholars, arranging all of this in chronological order.
 - (c) Limiting opinions to those of considered schools of Fiqh. In case the issue is not tackled by any school, I will use Fiqh-based extraction.
 - (d) Citing opinions from their original sources.
 - (e) Setting forth the strongest evidence of each opinion, and its inference (i.e. the angle of using it as an evidence).
 - (f) Selecting the most preponderant opinion, clarifying the reasons for selection, and the outcomes of disagreement, if any.

- 4- Relying on the primary sources and original references in terms of editing, compilation, documentation, and ascription.
- 5- Focusing on the topic of research, and avoiding digression.
- 6- Attributing Qur'anic Verses to their Surahs and numbers in the footnote. Verses are to be written in "Uthmanic" script with their diacritical marks added (in the Arabic version of this book).
- 7- Attributing hadiths reported throughout the research to their original sources, mentioning their books, chapters, and numbers, or the volume and page thereof. When a hadith is not included in the two Books of *Sahîh* (i.e. *Sahîh Al-Bukhârî* and *Sahîh Muslim*) or in one of them, I will clarify the opinion of the scholars of Hadith concerning its degree of authenticity.
- 8- When documenting in the footnote, I mention the book's title, the author's name, the volume, and the page number.
- 9- Documenting linguistic meanings from their accredited lexicons.
- 10- Paying attention to Arabic grammar, rules of writing and spelling, and punctuation marks.

Research plan

I divided this research into an introduction, a preface, five chapters, and a conclusion.

Introduction: It includes the title of the research, its problem, its significance and reasons for being chosen, literature review, difficulties and obstacles, research objectives, research methodology, research procedures, and research plan.

Preface: It includes two treatises:

Treatise One: Definitional introductions.

It contains three topics:

Topic (I): Zakâh: Definition, ruling and status.

Topic (II): Zakâh Accounting: Definition, significance, and functions.

Topic (III): Joint-stock company: Definition, characteristics, and ruling.

Treatise Two: Purposes of Shari'ah in calculating *Zakâh*.

It contains three topics:

Topic (I): Purpose of clarification and explanation.

Topic (II): Purpose of facilitation.

Topic (III): Purpose of justice.

Chapter One: Fiqh of Estimation in Calculating *Zakâh*: A Fundamental Study.

It includes four treatises:

Treatise One: Concept of estimation in calculating *Zakâh*.

Treatise Two: Permissibility of applying estimation to calculation of *Zakâh*.

Treatise Three: Conditions of applying estimation to calculation of *Zakâh*.

Treatise Four: Impacts of applying estimation to calculation of *Zakâh*.

Chapter Two: Financial Disclosure of Joint-Stock Companies: Concept, Principles, and *Zakâh*-Related Issues.

It includes three treatises:

Treatise One: Financial disclosure: Concept, types, and relation to calculation of *Zakâh*.

Treatise Two: Accounting principles: Concept, components, and *Zakâh* assessment.

Treatise Three: Financial disclosure: *Zakâh*-related problems and their solutions.

Chapter Three: Estimation Regarding Conditions of *Zakâh* for Joint-Stock Companies.

It includes a preface and two treatises:

Preface: It tackles conditions of *Zakâh*.

Treatise One: Estimation regarding general conditions of *Zakâh* for Joint-stock companies.

It contains three topics:

Topic (I): Estimation regarding *Zakâh* payer and the conditions thereof.

Topic (II): Estimation regarding the condition of absolute ownership.

Topic (III): Estimation regarding the condition of the elapse of *Hawl*.

Treatise Two: Estimation regarding conditions of zakatable wealth in joint-stock companies.

It contains four topics:

Topic (I): Estimation regarding conditions of *Zakâh* on gold and silver.

Topic (II): Estimation regarding conditions of *Zakâh* on goods stocked for trade.

Topic (III): Estimation regarding conditions of *Zakâh* on livestock.

Topic (IV): Estimation regarding conditions of *Zakâh* on minerals.

Chapter Four: Estimation Regarding Calculating Zakatable Wealth for Joint-Stock Companies.

It includes three treatises:

Treatise One: Estimation regarding calculating *Zakâh* on cash and debts.

It contains six topics:

Topic (I): Estimation regarding calculating *Zakâh* on cash.

Topic (II): Estimation regarding calculating *Zakâh* on bank deposits.

Topic (III): Estimation regarding calculating *Zakâh* on commercial papers.

Topic (IV): Estimation regarding calculating *Zakâh* on receivables.

Topic (V): Estimation regarding calculating *Zakâh* on payables.

Topic (VI): Estimation regarding calculating *Zakâh* on operating lease and financing lease.

Treatise Two: Estimation regarding calculating *Zakâh* on goods stocked for trade.

It contains five topics:

Topic (I): Estimation regarding calculating *Zakâh* on inventories.

Topic (II): Estimation regarding calculating *Zakâh* on investment assets.

Topic (III): Estimation regarding calculating *Zakâh* on trading securities.

Topic (IV): Estimation regarding calculating *Zakâh* on real estate and projects under development.

Topic (V): Estimation regarding calculating *Zakâh* on goods under delivery.

Treatise Three: Estimation regarding calculating *Zakâh* on products of land, grazing livestock, and minerals.

It contains three topics:

Topic (I): Estimation regarding calculating *Zakâh* on products of land.

Topic (II): Estimation regarding calculating *Zakâh* on livestock.

Topic (III): Estimation regarding calculating *Zakâh* on minerals.

Chapter Five: Estimation of *Zakâh* Base for Joint-Stock Companies.

It includes a preface and two treatises:

Preface: Concept of *Zakâh* base.

Treatise One: Methods of estimating *Zakâh* base in joint-stock companies.

It contains four topics:

Topic (I): Equity method.

Topic (II): Zakatable net assets method.

Topic (III): Working capital method.

Topic (IV): Net profit method.

Treatise Two: Impact of shareholder's intention on estimating *Zakâh* base.

It contains a preface and three topics:

Preface: Types of investment in shares and its impact on *Zakâh*.

Topic (I): Estimation regarding *Zakâh* for an investing shareholder.

Topic (II): Estimation regarding *Zakâh* for a trading shareholder (speculator).

Topic (III): Estimation regarding *Zakâh* for a saving shareholder.

Conclusion: It contains the most important findings and recommendations.

After exerting great efforts and making every endeavor, let me put forward this research "*Fiqh At-Taqdîr Fî Hisâb Az-Zakâh*" (i.e. Fiqh of Estimation in Calculating *Zakâh*) for consideration. In fact, I spared no effort to perfect and improve this study, paying much attention to edit, scrutiny, well-presentation and arrangement, and trying hard to avoid circumlocution and prolixity. I hope that this research will help the reader to assimilate as much as possible the words of earlier scholars of Fiqh, and the *Ijtihâd* (i.e. legal reasoning and

Introduction

discretion) of late scholars of Fiqh. However, I do not deny any points of deficiency and flaw, for this is the nature of mankind. May Allah confer mercy on those who helped me by providing proper guidance and correction.

I ask Allah to make this research pure for His sake, and to accept it from me. I ask Him, the Almighty, to bless it and make it beneficial, and to make it as an asset for me, my parents and my offspring in this World and in the Hereafter. Indeed, Allah is All-Hearing, and Ever Responding. I seek hope (of eternal recompense) from Him, sufficient is He for me, and He is the best disposer of all affairs. May Allah's peace and blessings be upon our Prophet Muhammad, his Household and all his Companions.



ALI IBN MUHAMMAD IBN MUHAMMAD NUR

Riyadh, 2 Rajab, 1441 AH.

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Preface

Treatise One

Definitional Introductions



Topic (I)

Zakâh: Definition, Ruling and Status

First: Linguistic meaning of Zakâh⁽¹⁾

In Arabic language, *Zakâh* is an infinitive formed in accordance with Arabic morphological measure “*Fa`alah*”, as *Sadaqah*. Its original form is *Zakawah*, but when the letter /w/ was vocalized and preceded by a *Fathah* /a/, it was converted to /â/. Its plural is “*Zakawât*”. In Arabic, it is said: “*Zakkâ* (Past tense. i.e. he paid *Zakâh*), *Yuzakkî* (Present tense. i.e. he is paying *Zakâh*), *Zakâtan* and *Tazkiyatan* (Infinitives. i.e. the act of paying *Zakâh*)”.⁽²⁾

In his “*Maqâyis Al-Lughah*”, Ibn Fâris states: “The (Arabic letters) ‘*Zây*, *Kâf*, and the vowel letter *Yâ*’ (i.e. Z K Â) [ز ك آ] form a trilateral root which

(1) See: The root “*Zây, Kâf, Wâw* [i.e. Z K W (ز ك و)]” in linguistic lexicons: “*Al-`Ayn*”, (5: 394); “*Tahdhîb Al-Lughah*”, (10: 175-176); “*As-Sihâh*”, (6: 2268); “*Al-Muhkam Wal-Muhîtt Al-A`zam*”, (7: 162); “*Al-Mukhassas*”, (4: 58); “*Maqâyis Al-Lughah*”, (3: 17-18); “*Mujmal Al-Lughah*”, (1: 437); “*Lisân Al-`Arab*”, (19: 77-78); “*Al-Qâmûs Al-Muhîtt*”, (P. 1667); “*Tâj Al-`Arûs*”, (38: 220).

- Books of unfamiliar words in the Qur`ân and Hadith: “*Mufradât Al-Qur`ân*”, (pp. 380-381); “*Tafsîr Gharîb Al-Qur`ân Al-`Azîm*”, Ar-Râzî, (pp. 556-557); “*Gharîb Al-Hadîth*”, Ibn Qutaybah, (1: 184); “*Al-Fâ`iq Fî Gharîb Al-Hadîth*”, (2: 118); “*Mashâriq Al-Anwâr*”, (1: 310); “*An-Nihâyah Fî Gharîb Al-Hadîth Wal-Athar*”, (2: 307).

- Books of unfamiliar words in Fiqh: “*Az-Zâhir Fî Gharîb Alfâz Ash-Shâfi`î*”, (P. 160); “*Al-Mughrib Fî Tartîb Al-Mu`rib*”, (1: 366); “*Al-Misbâh Al-Munîr*”, (P. 210); “*Al-Mutli` Alâ Abwâb Al-Muqni`*”, (P. 155).

(2) See: “*Al-Fâ`iq Fî Gharîb Al-Hadîth*”, (2: 118); “*An-Nihâyah Fî Gharîb Al-Hadîth Wal-Athar*” (2: 307).

means to grow and increase.”⁽¹⁾ Yet, two main meanings are derived from this root, namely tangible *Namâ’* (i.e. growth/increase) and *Tahârah* (i.e. purity/cleansing).⁽²⁾

Concerning *Namâ’* (i.e. growth/increase), it is said: “*Zakâ* or *Azkâ Az-Zar’*” (i.e. plants grew and increased). Everything that grows and increases in a tangible way is meant by the Arabic word *Zakâ’*.⁽³⁾ Also, *Zakâ’* is a name for agricultural products, such as fruits. However, it may be used to describe intangible items, as in the statement of `Alî (may Allah be pleased with him):

“Knowledge increases and grows (*Yazkû*) when it is given away (and shared with others).”⁽⁴⁾

As for *Tahârah* (purity/cleansing), it is said: “*Tazkiyat An-Nafsi Islâhuhâ*” (i.e. purifying the soul is to set it upright) by increasing good deeds and purifying it from vices. In this regard, Allah, the Almighty, says:

{“He has certainly succeeded who purifies it (i.e. his soul by doing righteous good deeds)”}⁽⁵⁾; and

{“He has certainly succeeded who purifies (i.e. his soul by doing righteous good deeds).”}⁽⁶⁾

Beside meaning to keep away from imperfections, *Tahârah* also means an increase. This deems it appropriate to be considered as a second meaning, beside *Namâ’* (i.e. growth/increase), of the original Arabic root (Z K Â). Hence,

(1) Refer to the root “*Zây, Kâf, Yâ*” (i.e. Z K Â) [ز ك ي] in “*Maqâyis Al-Lugh*”, (3: 17-18).

(2) Ibid.; “*Az-Zâhir Fî Gharib Alfâz Ash-Shâfi’î*”, (P. 160).

(3) “*Tahdhîb Al-Lughah*”, (10: 175).

(4) Related by Abû Nu`aym Al-Aṣbahânî in “*Hilyat Al-Awliyâ*”, (1: 79); Al-Khatîb Al-Baghdâdî (through Abû Nu`aym’s narration) in “*Al-Faqîh Wal-Mutafaqqih*”, (1: 182); “*Târîkh Dimashq*”, Ibn `Asâkir, (14: 17) and (50: 252); “*Tahdhîb Al-Kamâl*”, Al-Mizzî, (24: 220); “*Tadhkirat Al-Huffâz*”, Adh-Dhahabî, (1: 11). Adh-Dhahabî said, “Its *Isnâd* (i.e. chain of transmission) is *Layyin* (i.e. Lenient).”

In his “*Jâmi` Bayân Al-`Ilm Wa-Faḍlih*”, (2: 984), Ibn `Abdul-Barr said: “It is a *Mashhûr* (i.e. well-known) hadith among the scholars of Hadith and (the weakness of) its *Isnâd* can be disregarded because of being well-known among them.”

In his “*T`lâm Al-Muwaqqi`in*”, (3: 26), Ibnul-Qayyim approved this hadith.

(5) Surah *Ash-Shams* (The Sun): 9.

(6) Surah *Al-A`lâ* (The Most Exalted): 14.

Tazkiyah (i.e. purification) means to inform about righteousness, as when an upright person commends someone else, as meant by Allah's saying:

{“So ascribe not purity to yourselves...”}⁽¹⁾⁽²⁾

Also, *Zakâh* connotes the wealth given as a means of *Qurbah* (i.e. seeking closeness to Allah). It is said: “*Zakkâ Mâlahu Tazkiyatan*” (literally: he paid the *Zakâh* due on his wealth); and “*Zakkâhu*” (literally: he took its *Zakâh*); and “*Tazakkâ*” (literally: he gave alms). *Zakâh* may also denote the object (i.e. the determined share of wealth to be paid), and the process of payment.⁽³⁾

However, there is a disagreement regarding the view stating that *Zakâh* connotes the wealth given as a means of *Qurbah*, whether it implies the meaning of *Namâ'* (i.e. growth/increase) or that of *Tahârah* (purity/cleansing). A criticism directed to the opinion saying that it implies the meaning of *Namâ'* is that the word “*Zakâh*” has never been used to express *Namâ'*, but rather the word “*Zakâ*”.⁽⁴⁾

It is obvious that the meaning of *Tahârah* (i.e. purity/cleansing), as stated by Ibnul-'Arabî, is “closer to *Zakâh* than that of *Namâ'*, but both meanings are implied in it because the meaning is linguistically established in them both.”⁽⁵⁾ This opinion does not go beyond the general meaning of increase, which is the original meaning of the Arabic root. In this regard, Imam Ibn Jarîr At-Tabarî said:

“This inference is very admirable to me than the first one as to the interpretation of *Zakâh* on wealth. However, the interpretation of the first inference is acceptable.”⁽⁶⁾

This is confirmed by the argument that *Zakâtul-Fitr* expresses the meaning of *Tahârah* (purity/cleansing),⁽⁷⁾ as quoted from the Prophet (peace and blessings of Allah be upon him) who said:

(1) Surah *An-Najm* (The Star): 32.

(2) See: “*Mufradât Alfâz Al-Qur'ân*”, (P. 381); “*Tâj Al-'Arûs Min Jawâhir Al-Qâmûs*”, (38: 222).

(3) See: “*An-Nihâyah Fî Gharîb Al-Hadîth*”, (2: 307); “*Tâj Al-'Arûs*”, (38: 221).

(4) See: “*Fath Al-Qadîr*”, (1: 481).

(5) “*Al-Masâlik Fî Sharh Muwattâ' Mâlik*”, (5: 10).

(6) “*Jâmi' Al-Bayân Fî Ta'wîl Ây Al-Qur'ân*” (1: 611).

(7) See: “*Az-Zâhir Fî Bayân Alfâz Ash-Shâfi'î*”, (P. 160); “*Al-Masâlik Fî Sharh Muwattâ' Mâlik*”, (5: 10).

“A purification for your fasting from idle talk and obscenities.”⁽¹⁾

Yet, it is not appropriate to state that the word *Zakâh* in *Zakâtul-Fitr* means an increase except through some kind of *Takalluf* (i.e. over-explanation without linguistic reason that can contradict forms and precepts of the Arabic language).

Second: Terminological meaning of *Zakâh*

Scholars of Fiqh use the term “*Zakâh*” to indicate obligatory almsgiving. When they generally mention it, they refer to *Zakâh* due on wealth, and not *Zakâtul-Fitr*, which is the *Zakâh* due on (individual persons’) bodies. However, *Zakâh* in general refers to the *Zakâh* due on wealth and bodies equally. The following are some significant definitions of *Zakâh* according to the four schools of Fiqh:

(a) *Hanafi* school

Concerning the definition of *Zakâh*, the Hanafites differentiate between its usage in the convention of Shari’ah and that of the scholars of Fiqh. In their school, it is predominant that *Zakâh* is used in Shari’ah to denote the nominal sense; which is the determined share of wealth to be paid. But in terminology of Fiqh, the Hanafites define obligatory *Zakâh* as:

“Transferring the ownership (Arabic: *Tamlîk*) of a determined portion, out of a specific wealth, to a specific person, for the sake of Allah, Glory be to Him.”⁽²⁾

As for its definition including obligatory *Zakâtul-Fitr*, it is defined as:

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- (1) “*Sunan Abû Dâwûd*”, Book of *Zakâh*, Chapter: *Zakâtul-Fitr*, hadith no. (1609); “*Sunan Ibn Mâjah*”, Book of *Zakâh*, Chapter: *Sadaqatul-Fitr*, hadith no. (1827); “*Al-Mustadrak*”, Book of *Zakâh*, Chapter: *Zakâtul-Fitr* is a purification for fasting, (1: 409); “*Sunan Ad-Dâraquṭni*”, Book of *Zakâtul-Fitr*, (2: 138); “*Al-Aḥādīth Al-Mukhtârah*”, by Ad-Diyâ, hadith no. (116); “*As-Sunan Al-Kubrâ*”, by Al-Bayhaqî, Book of *Zakâh*, Collective Chapter of *Zakâtul-Fitr*, Chapter: *Zakâtul-Fitr* is not due for a disbeliever in one’s keeping, (4: 274). Ad-Dâraquṭni said, “None (of its narrators) have been criticized (by Hadith scholars).” Al-Hâkim said, “It is an authentic hadith according to Al-Bukhârî’s conditions”. Adh-Dhababî did not make any comments on it. In his “*Al-Majmû*” (6: 126), An-Nawawî deemed it a *Hasan* (i.e. good) hadith.
- (2) “*Al-Lubâb Fi Sharḥ Al-Kitâb*”, (1: 136); “*Tabyîn Ad-Daqâ’iq*”, (1: 251-252).

“Giving (Arabic: *Îtâ*) a determined wealth, in a specific amount.” Some others defined it as: “The wealth to be paid ...”⁽¹⁾

Hanafites’ definition using the expressions “Transferring the ownership (Arabic: *Tamlîk*)” or “Giving (Arabic: *Îtâ*)” is based on their maxim stating that the amount of wealth to be paid in *Zakâh* is not to be given specifically from the wealth on which *Zakâh* is due. According to them, it is permissible to pay the value of the amount under any circumstances, and the poor have no right to the wealth paid before transferring its ownership by the payer.

(b) *Mâlikî* school

The Malikites define *Zakâh* as:

“Paying a determined portion, out of a specific wealth that reached the *Niṣâb* (i.e. minimum amount determining a person’s zakatability), to the one who deserves it, in case the ownership and *Hawl* (i.e. *Zakâh* year) have completed, for objects other than minerals and crops/fruits.”⁽²⁾

It is also defined as:

“The determined portion paid out of a specific wealth that reached the *Niṣâb*, in case the ownership and *Hawl* have completed, for objects other than minerals and crops/fruits.”⁽³⁾

It is noted that they define *Zakâh* in accordance with its infinitive sense (i.e. the action of payment) and its nominal sense (i.e. the determined share of wealth to be paid) as being two Shari’ah-based meanings of *Zakâh*.⁽⁴⁾

(c) *Shâfi`î* school

The definition of *Zakâh* in accordance with its nominal sense is predominant among the Shafiites, so it is defined as:

“A term denotes what is paid out of wealth or body in a particular way.”⁽⁵⁾

(1) “*Al-Jawharah An-Nayyirah*”, (2: 152). It is not clear to me whether the word “some” refers to some Hanafites or to some scholars of Fiqh in general.

Also see: “*Al-Binâyah Sharh Al-Hidâyah*”, (3: 287).

(2) “*Ash-Sharh Al-Kabîr*”, (1: 430); “*Ash-Sharh As-Saghîr*”, (1: 581).

(3) “*Sharh Hudûd Ibn `Arafah*”, (1: 140); “*Hâshiyat Ad-Dusûqî*”, (1: 430).

(4) “*Minah Al-Jalîl*”, (2: 3).

(5) “*Nihâyat Al-Muhtâj*”, (3: 43); “*Tuhfat Al-Muhtâj*”, (3: 208).

Some others defined it in accordance with the infinitive sense (i.e. the action of payment), such as Al-Mâwardî in his “*Al-Hâwî Al-Kabîr*” where he defined it as:

“An explicit term denotes taking a determined share, out of a specific wealth, with specific descriptions, for particular categories (of people).”⁽¹⁾

(d) *Hanbalî* school

According to the Hanbalites, *Zakâh* is defined as:

“An obligatory right in a specific wealth, (to be paid) for particular categories (of people), at a specific time.”⁽²⁾

The definition of *Zakâh* as a right appears to be based on the ruling, but interpreted pursuant to the amount paid.⁽³⁾ Hence, such a definition is based on the nominal sense.

Al-Ba`li in his “*Al-Muṭli`*”, and others defined *Zakâh* more clearly stating:

“A term denotes a determined share of wealth that has specific descriptions, to be given from a specific wealth to particular categories (of people).”⁽⁴⁾

Some others defined it in accordance with the infinitive sense as:

“Paying an estimated portion of a specific wealth, for particular categories (of people), with the intention to be paid as a means of seeking closeness to Allah.”⁽⁵⁾

These definitions agree that *Zakâh* is “a determined share, or a specific portion”, which is the amount payable in *Zakâh*; and that it is due in “a specific wealth”, which is the wealth on which *Zakâh* is due. They also agree that it is due “at a specific time”, which is the time when it is obligatory to pay *Zakâh*; and that it is to be paid for “particular categories (of people)”, which are the

(1) “*Al-Hâwî Al-Kabîr*”, (4: 3); “*Al-Majmû`*”, (5: 296).

(2) “*Al-Iqnâ`*”, (1: 387); “*Muntahâ Al-Îrâdât*”, (1: 121).

(3) “*Kashshâf Al-Qinâ`*”, (4: 304); “*Sharḥ Al-Muntahâ*”, (2: 168).

(4) “*Al-Muṭli` `Alâ Abwâb Al-Muqni`*”, (P. 122); “*Kashf Al-Lithâm Sharḥ `Umdat Al-Aḥkâm*”, (3: 396).

(5) “*Fath Al-Malik Al-`Azîz Bi-Sharḥ Al-Wajîz*”, (3: 5); “*Sharḥ Az-Zarkashî*”, (2: 372).

eight categories of people entitled to receive *Zakâh* as mentioned in the Noble Qur'an. Allah, the Almighty, says:

{“Indeed, Sadâqât (i.e. Zakâh) are only (to be given) to the poor and the needy, and to those who employed to collect it, and to those whose hearts have been (recently) reconciled (to Islam), and to (free) those in bondage, and to those in debt (the debt-ridden), and for the cause of Allah, and to the wayfarer. (This is) an obligation (enjoined) by Allah. And Allah is All-Knowing, All-Wise.”}⁽¹⁾

Third: Ruling on *Zakâh* and its status in Shari'ah

Zakâh is the third pillar of Islam, and one of its religious obligations and great rituals. Imam Ash-Shâfi`î (may Allah confer mercy upon him) said:

“Zakâh is an obligation prescribed by Allah in His book, and on the tongue of His Prophet (peace and blessings of Allah be upon him).”⁽²⁾

Evidences of the obligation of *Zakâh* are established by the Noble Qur'an, Prophetic Sunnah and consensus of Shari'ah scholars as follows:

Evidences of *Zakâh* in the Noble Qur'an:

1- Allah's saying:

{“And establish Salâh (i.e. Compulsory Congregational Prayer), pay Zakâh (i.e. Obligatory Almsgiving)...”}⁽³⁾

2- Allah's saying:

{“Take, (O, Muhammad), from their wealth a Sadaqah (Zakâh) by which you purify them and cause them increase, and invoke [Allah's blessings] upon them...”}⁽⁴⁾

3- Allah's saying:

{“...And those who hoard gold and silver and spend it not in the way of Allah, give them tidings of a painful punishment.”}⁽⁵⁾

(1) Surah *At-Tawbah* (Repentance): 60.

(2) “*Al-Umm*”, (2: 76).

(3) Surah *An-Nûr* (The Light): 56.

(4) Surah *At-Tawbah* (Repentance): 103.

(5) Surah *At-Tawbah* (Repentance): 34.

Evidences of *Zakâh* in the Prophetic Sunnah:

- 1- `Umar Ibnul-Khattâb (may Allah be pleased with him) narrated that the Prophet (peace and blessings of Allah be upon him) said:

“Islam has been built on five (pillars): to testify that there is no deity worthy of worship except Allah and that Muhammad is the Messenger of Allah, to establish Salâh (i.e. Compulsory Congregational Prayer), to pay Zakâh (i.e. Obligatory Almsgiving), to perform Hajj (i.e. Pilgrimage to Mecca), and to observe fasting during (the month of) Ramadân.”⁽¹⁾

- 2- `Abdullâh Ibn `Abbâs (may Allah be pleased with him) narrated that Mu`âdh said:

“The Messenger of Allah (peace and blessings of Allah be upon him) sent me (as a governor of Yemen) and said: ‘You are going to some people from amongst the people of the Book. So, call them to bear witness that there is none worthy of worship except Allah and that I am the Messenger of Allah. If they obey (you) in this respect, then inform them that Allah has enjoined upon them five Salâhs (i.e. Compulsory Congregational Prayers) every day and night. If they obey (you) in this respect, then inform them that Allah has enjoined upon them an obligatory Sadaqah (i.e. Zakâh) to be taken from their rich and distributed among their poor. If they obey (you) in this respect, then beware of (taking as a share of Zakâh) their best (most expensive) belongings, and fear the supplication of the one who has been wronged, for there is no barrier between it and Allah.”⁽²⁾

As for the consensus (of Shari'ah scholars):

Muslim scholars unanimously agree that *Zakâh* is obligatory, and that it is one of the pillars of Islam.⁽³⁾

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- (1) “*Sahîh Al-Bukhârî*”, Book of Faith, Chapter: Your invocation means your faith, hadith no. (8); “*Sahîh Muslim*”, Book of Faith, hadith no. (16).
(2) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: The obligation of *Zakâh*, hadith no. (1395); “*Sahîh Muslim*”, Book of Faith, hadith no. (19).
(3) “*Al-Ifsâh `An Ma`âni As-Sihâh*”, (1: 195); “*Al-Iqnâ` Fî Mas`ûl Al-Ijmâ`*”, (2: 616); “*Al-Muhallâ*”, (4: 3); “*Fath Al-Qadîr*”, (1: 481); “*Bidâyat Al-Mujtahid*”, (2: 55); “*Al-Majmû`*”, (5: 296); “*Al-Mughni*”, (4: 5).

Topic (II)

Zakâh Accounting:

Definition, Significance, and Functions

Since the calculation of *Zakâh* for joint-stock companies depends on accounting outputs of financial statements, it was appropriate to commence this study by clarifying the definition of *Muhâsabah* (i.e. accounting) and highlighting its significance and functions. Then, the study tackles the definition of *Zakâh* accounting as being a scientific and professional field that combines between the Fiqh of *Zakâh* and accounting.

First: Linguistic meaning of *Muhâsabah*

Muhâsabah is the infinitive of the verbs *Hâsab*, *Yuhâsib* meaning “to reckon and recompense”.

Its trilateral root “*Hâ*, *Sîn*, *Bâ*’ (i.e. *H S B*) [ح س ب]” denotes “counting”. In Arabic, it is said: “*Hasab* (Past tense. i.e. he counted), *Yahsubu* (Present tense. i.e. he is counting), *Hasban*, *Hisbatan*, *Hisâban*, and *Husbânan* (Infinitives. i.e. the act of counting) to indicate counting and calculations. In this regard, Allah, the Almighty, says:

{“...and may know the number of years and the account (of time)...”}(1)

This trilateral root (i.e. *H S B*) also denotes “*Hisbân*” (i.e. assumption). In Arabic, it is said: “*Hasibtahu* (Past tense. i.e. I assumed that he), *Ahsibahu* (Present tense. i.e. I assume that he), *Hisbânan* (Infinitive. i.e. the act of assuming)” to indicate assumption.”(2)

Second: Concept of *Muhâsabah* in accounting

In accounting literature, *Muhâsabah* has several definitions that can be categorized, due to disagreements regarding the nature and role of accounting, into two main approaches as follows:

(1) Surah *Al-Isrâ*’ (The Night Journey): 12.

(2) Refer to the root “*Hâ*, *Sîn*, *Bâ*’ (i.e. *H S B*) [ح س ب]” in “*Mukhtâr As-Sihâh*”, (P. 134); “*Al-Misbâh Al-Munîr*”, (P. 118); “*Mufradât Alfâz Al-Qur’ân*”, (pp. 232-233).

Approach (1): Defining *Muhâsabah* as being a branch of science

According to this approach, *Muhâsabah* (i.e. accounting) is defined as: “The science of searching in the methods of recording, classifying and analyzing different financial transactions of an entity to serve specific purposes.”⁽¹⁾

Approach (2): Defining *Muhâsabah* as an art and a practice

According to this approach, *Muhâsabah* is defined as: “The Art of recording, classifying and summarizing economic events.”⁽²⁾

This disagreement is based on the nature of accounting. The prevailing view at the beginning of the twentieth century was that accounting is an applied field, an art, or a profession, and that “its role is to serve economic decision-makers at micro and macro levels, by providing necessary data that help make rational economic decisions. As any economic service or commodity, it changes depending on the factors of supply and demand. That is, whenever the needs of beneficiaries evolve, accounting provides them with new economic data. Since these needs are constantly evolving, the nature and role of accounting are constantly developing too.”⁽³⁾

But some academics began to consider accounting a science in itself, not just a service or a commodity. To them, accounting is the science of measuring financial events for a specific accounting unit, and conveying the outputs of measurement to beneficiaries. Therefore, the nature and role of accounting are crystallized in the light of outlining the pivots of the science of measurement and conveyance.⁽⁴⁾ Also, accounting should be applied based on a scientific theory that proceeds from practical application to explain its procedures and outputs theoretically, and be able to interpret and predict the accounting behavior and future events in a scientific manner.⁽⁵⁾

Nevertheless, accounting in its theoretical and applied fields is not based on a widely accepted accounting theory that can encompass all the factors affecting the accounting environment. Rather, everything available, according

(1) “*Usûs Al-Muhâsabah*”, by Al-Wâbil, (P. 6).

(2) “*Accounting: The Basis for Business Decisions*”, Walter B. Meigs and Robert F. Meigs, (P. 4).

(3) “*Nazariyyat Al-Muhâsabah*”, Al-Ḥumayd, (P. 38).

(4) *Ibid.*, (P. 38).

(5) *Ibid.*, (P. 43).

to a study prepared in 1977 by the Committee on Concepts and Standards for Financial Reports of the American Accounting Association (AAA), does not go beyond being an accounting literature or a set of theories, or assumptions that primarily shed light on the wide differences in viewpoints.⁽¹⁾

Yet, it is based on a conceptual framework that includes a number of principles, concepts and assumptions, developed, approved and enforced by local and international organizations and bodies. However, the absence of a widely accepted accounting theory will continue to result in disagreements as to the nature of accounting.

This is why the definition of the American Accounting Association (AAA) managed to avoid this disagreement regarding the nature of accounting. It defines accounting as:

“The process of identifying, measuring and communicating economic information to permit informed judgments and decisions by users of the information.”⁽²⁾

It has also been defined in many academic studies as:

“A system for providing quantitative information about an entity and communicating this information to the relevant parties to be useful in making decisions.”⁽³⁾

This definition figures out the following points:

- (a) Accounting is a set of parts or elements that represent the inputs for this system. These parts are collected, arranged and categorized with the aim of producing outputs.
- (b) The treatment of these inputs is conducted in accordance with a specific system represented in the principles, concepts, assumptions, and accounting standards issued by supervisory and auditing boards, in addition to their appendices including accounting interpretations or guidelines.

(1) “*Nazariyyat Al-Muhâsabâh*”, Al-Humayd, (P. 43-44); “*Nazariyyat Al-Muhâsabâh*” [*Accounting Theory*, Richard G. Schroeder, Myrtle W. Clark, Jack M. Cathey], (P. 74).

(2) “*A Statement of Basic Accounting Theory*”, American Accounting Association, 1966.

(3) “*Mabâdi’ Al-Muhâsabâh*”, Al-Wâbil, (P. 6); “*Al-Muhâsabâh Al-Mutawassitah*” [*Intermediate Accounting*, Kin Lo, George Fisher], (P. 35); “*Financial Accounting*”, Donald E. Kieso, (pp. 4, 29).

- (c) The aim of conveying these outputs to the entity-related parties is to assist them in making decisions, be these parties inside the entity, such as its managers, or outside it, such as parties dealing with the entity including government bodies and investors.

Accordingly, it appears that accounting is not limited to bookkeeping; which is aimed at recording institution's financial transactions on a daily basis. Rather, bookkeeping is one of the accounting elements concerned with analyzing financial transactions, and setting systems and standards required for recording and conveying them to relevant parties so as to provide assistance necessary for proper decision-making.

Third: Zakâh accounting: Concept and relationship

Zakâh accounting or *Zakâh*-based accounting⁽¹⁾ has several definitions, and it can be classified in terms of its relationship to accounting into three approaches:

Approach (1): Defining *Zakâh* accounting as being a branch of the (conventional) accounting

According to this approach, *Zakâh* accounting is defined as:

“A branch of accounting that deals with technical and Shari'ah-based basics, principles, systems, and procedures necessary for preparing *Zakâh*-related data. This is to determine its amount, and ways of distribution to its designated channels, and to provide and convey *Zakâh*-related information to beneficiaries.”⁽²⁾

Being a branch of accounting necessitates that principles and basics of accounting be in compliance with Shari'ah rulings on *Zakâh*. The advocates of this approach stated another definition of *Zakâh* accounting which is:

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- (1) Some people prefer to use the term “*Zakâh*-based accounting” as it refers to the complete combination of the science of accounting and Fiqh of *Zakâh* obligation; unlike the term “*Zakâh* accounting” which refers to the application of accounting to *Zakâh*. See: “*Dirâsât Fî Al-Muhâsabah Az-Zakawiyah*”, Sâlih Az-Zahrânî, (P. 16).
- (2) “*Al-Muhâsabah Ad-Darîbiyyah Waz-Zakawiyah*”, Sa`d Al-Huwaymil, (P. 403); “*Muhâsabat Az-Zakâh Mafhûman Wa-Nizâman Wa-Tatbiqan*”, Husayn Shihâtah, (P. 96); “*Dawrah Tadribiyah `An Idârat Az-Zakâh*”, Muḥammad `Abdul-Ḥalîm `Umar, (P. 2).

“The science that combines scientific and accounting basics and rules with the obligation of *Zakâh* on wealth, to extract the scientific basics and rules suitable for applying this obligation in a manner that fulfills the needs of our time.”⁽¹⁾

This is the prevailing approach in studies concerned with *Zakâh* accounting. Accordingly, *Zakâh* accounting is regarded as a major area of specialization in accounting, in both academic study and professional practice. Also, *Zakâh* accounting, based on this approach, is regarded as a branch of accounting that does not contradict with its specialization in a set of branches and principles derived from the Islamic Shari'ah.⁽²⁾

Nevertheless, defining *Zakâh* accounting as a branch of accounting is problematic in two points:

- 1- Accounting, as a firmly established and applied science, is an outcome of the environment that produced it. It is known that the intellectual framework of accounting and international accounting standards was not a product of the Muslim societies. Further, such a framework was not intended to be suitable for the Shari'ah approach in calculating *Zakâh*, the matter that reflected on the use of this accounting system in the process of calculating *Zakâh* according to the Shari'ah approach.
- 2- Calculating *Zakâh* according to Shari'ah approach precedes the accounting system itself, and thus its rulings can be applied without the need to use the outputs of the accounting system. Rather, the need for the accounting system arises in cases where it is difficult to know the zakatable wealth according to the Shari'ah approach of calculating *Zakâh*. Accordingly, resorting to the accounting system depends on urgent need or necessity, and thus the accounting system is subject for the Shari'ah approach of calculating *Zakâh*.

Approach (2): Defining *Zakâh* accounting as a branch of the Islamic accounting

According to this approach, *Zakâh* accounting is defined as:

(1) “*Muhâsabat Az-Zakâh Waḍ-Darâ'ib Fī Dawlat Al-Imârât*”, Kawthar Al-Abjī, (P. 139).

(2) “*Muhâsabat Az-Zakâh Fiqhan Wa-Taṭbiqan*”, Ḥusayn Al-Khatīb, (P. 59).

“An independent branch of Islamic accounting, which examines the methods of determining, measuring, investigating and reporting on the *Zakâh* base for a particular unit. This is to determine the amount of *Zakâh* due on that base, as well as disclosing it to relevant parties so as to help them take proper decisions including paying obligatory *Zakâh* properly in compliance with the rulings of Islamic Shari'ah in general, and the Fiqh of *Zakâh* in particular.”⁽¹⁾

The advocates of this approach view that accounting in the Muslim society shall be consistent with the values of the society, particularly compliance with the rulings of Islamic Shari'ah. They also view that the Islamic heritage of accounting is worthy of establishing the foundation of this branch of science to have its own identity which is quite distinct from that of traditional accounting, namely the “Islamic Accounting”, or “Accounting in Islamic Thought”.⁽²⁾

Despite being a noble and far-reaching goal, the idea of Islamic accounting developed by the advocates of this approach did not go beyond theorization, due to the following reasons:

- 1- The fulfillment of accounting for the requirements of Muslim society is a purpose that cannot be overlooked by accounting, as being a social science by nature, even if it has fallen short in application. This purpose does not necessitate to re-establish the foundation of accounting, or to detach it from the field of knowledge to which it belongs.
- 2- The approach, enforced by globalization, to unify accounting standards through formulating the international standards diminishes the role of accounting in fulfilling the requirements and values of the local environment. This, in turn, will diminish the role of supervisory boards in Muslim societies in developing accounting standards that satisfy the needs of the Muslim society. As a result, countries will have the option

(1) “*Dirâsât Fî Al-Muḥâsabâh Az-Zakawîyyah*”, Sâlih Az-Zahrânî, (P. 24); “*Nazariyyat Al-Muḥâsabh Al-Mâliyyah Min Manzûr Islâmî*”, Shawqî Shihâtah, (P. 6); “*Al-Muḥâsabâh Al-Mâliyyah Al-Islâmiyyah*”, Husayn Al-Khatîb, (pp. 7, 19); “*Al-Muḥâsabâh Fî Al-Islâm*”, Muḥammad Sa`id `Abdus-Salâm, (P. 13); “*Dawrah Tadribiyyah `An Idârat Az-Zakâh*”, Muḥammad `Abdul-Halîm `Umar, (P. 2).

(2) “*Dirâsât Fî Al-Muḥâsabâh Az-Zakawîyyah*”, Sâlih Az-Zahrânî, (P. 22).

either to adopt the standards entirely, or to slightly amend them to fit in with local environment.

- 3- Reconciling the international accounting standards with the requirements and values of the Muslim society is a conjecture-based *Ijtihâd* (i.e. legal reasoning and discretion) that is likely to be wrong or right. Despite this commendable effort, it may be infeasible to achieve full reconciliation with the rulings of Islamic Shari'ah and its purposes, at both the fundamental and applicative frameworks. Hence, such an effort shall not be attributed to the Islamic Shari'ah so as to safeguard it from any kind of criticism directed to the fundamental or applicative frameworks, lest it may be falsely directed to the Shari'ah. This very clear in the hadith of Buraydah (may Allah be pleased with him) who narrated:

“Whenever the Messenger of Allah (peace and blessings of Allah be upon him) appointed a commander over an army or a detachment, he would instruct him to fear Allah in his own behavior and to be good to the Muslims who were with him... ‘When you besiege a fortress, and they (the besieged) appeal to you for the protection of Allah and the protection of His Prophet, grant them neither the protection of Allah nor the protection of His Prophet, but grant them your protection and the protection of your companions, for it is less serious (i.e. a lesser guilt) to break your guarantee of protection than to break the protection of Allah and His Prophet. And when you besiege a fortress, and they (the besieged) want you to let them come out in accordance with the command of Allah, do not let them come out in accordance with the command of Allah, but let them come out according to your own command, for you do not know whether or not you will be able to carry out the command of Allah regarding them.’”⁽¹⁾

Approach (3): Defining *Zakâh* accounting as being an application to the Fiqh of *Zakâh*

According to this approach, *Zakâh* accounting is defined as:

“Calculating the wealth on which *Zakâh* is due, and measuring its amount. It is a kind of processing the inputs, as it is based on important

(1) “*Sahîh Muslim*”, Book of *Jihâd* and Expeditions, hadith no. (1731).

basics and rules known as accounting rules of determining *Zakâh* base in the light of the Shari'ah approach, with the aim of reaching the outputs, and then distributing them in accordance with the designated channels of *Zakâh*.”⁽¹⁾

Some others defined it as:

“Determining and measuring the amount of *Zakâh* on wealth, identifying its distribution to its various channels, and then disclosing all of that in accordance with the Fiqh of *Zakâh*.”⁽²⁾

According to researcher's viewpoint, this approach is more preponderant and meets the scientific criteria. This is because Shari'ah rulings have defined the zakatable wealth based on clear principles of calculating *Zakâh*, specifically in terms of the zakatable wealth, the basics of its measurement, and the amount of *Zakâh* due on it. Nevertheless, the need to benefit from accounting outputs, such as financial reports, arose from the fact that, despite their deficiency, they are the main source for calculating the zakatable wealth in companies and entities that disclose their wealth in financial statements prepared in accordance with the accounting standards and principles. That is, these financial reports are simply issues tackled by the Shari'ah rulings, and not the basis for them.

Fourth: Significance of *Zakâh* accounting

The significance of *Zakâh* accounting is based upon the following:

- 1- It relates to *Zakâh* which is a pillar of Islam and one of its great rituals. No doubt that the importance of a science is measured by the importance of its subject.
- 2- It is a means of applying the rulings of *Zakâh* to our contemporary time; rather, it is necessary to know about it in order to apply *Zakâh* to some zakatable wealth properly, particularly in companies and commercial entities.

(1) “*Istikhdam Nizâm Al-Ma`lûmât Al-Muhâsabiyyah Wifqan Lil-Muntaj Al-Muhâsabi Ash-Shar`î*”, Hishâm Hammûdî, (P. 6); “*Muhâsabat Az-Zakâh Fiqhan Wa-Tatbîqan*”, Husayn Al-Khatîb, (P. 56).

(2) “*Fiqh Wa-Muhâsabat Az-Zakâh Lil-Afrâd Wash-Sharikât*”, `Abdus-Sattâr Abû Ghuddah and Husayn Shihâtah, (P. 67).

Fifth: The objective of *Zakâh* accounting

Through the definition of *Zakâh* accounting, it is clear that the objective of *Zakâh* accounting is to determine the wealth on which *Zakâh* is due, measure it in accordance with Shari'ah-based fundamentals, determine the payable amount of *Zakâh* to be disbursed to those entitled to it, identify its proper distribution to its various channels, and disclose all of that to the beneficiaries, namely the payers, and the authorities charged with collecting *Zakâh*.



Topic (III)

Joint-Stock Company

Definition, Characteristics, and Ruling

Since the research is aiming at using *Taqdîr* in calculating *Zakâh* for joint-stock companies, it is important to start with the definition of *Sharikat Al-Musâhamah* (i.e. joint-stock company) and its characteristics, as follows:

First: Linguistic meaning of *Sharikat Al-Musâhamah*

Sharikah (i.e. company) in Arabic language is an infinitive of the verb “*Sharika* (formed in accordance with the Arabic morphological measure “*Fa`ila*” like *`Alima*) *Yashrakuhu Shirkan* and *Sharikatan*”.

In Arabic, it is said: “*Shârakahu* (Past tense. i.e. he became his partner), *Yushârikahu* (Present tense. i.e. he becomes his partner) *Mushârakatan* (Infinitive. i.e. partnership)”, meaning to become his partner; “*Ashrakahu* (Past tense. i.e. he made him his partner), *Yushrikuhu*” (Present tense. i.e. he is making him his partner), meaning to make him his partner.

Also, “*Shirk*” (noun) denotes participation and share,⁽¹⁾ as quoted in the following hadith:

“*He who manumits his Shirk (i.e. share) of a slave, ...*”.⁽²⁾

The trilateral root “*Shîn, Râ, Kâf* (i.e. *SH R K*) [ش ر ك]” as stated by Ibn Fâris:

“It has two main indications: The first denotes partnership as being the opposite of isolation, and the second denotes extension and straightness. The first indication is ‘*Ash-Shirkah*’ (i.e. partnership), meaning

(1) See, the root “*Shîn, Râ, Kâf* (i.e. *SH R K*) [ش ر ك]” in “*Maqâyis Al-Lughah*”, (3: 205); “*An-Nihâyah Fî Gharîb Al-Hadîth*”, (2: 466); “*Al-Misbâh Al-Munîr*”, (P. 255); “*Tâj Al-`Arûs*”, (27: 223).

(2) “*Sahîh Al-Bukhârî*”, Book of Manumission of Slaves, Chapter: If one manumits a male slave owned by two persons, hadith no. (2523); “*Sahîh Muslim*”, Book of Manumission of Slaves, hadith no. (1501).

something shared by two persons in a way that none of them individually owns any part of it. In Arabic, it is said: ‘*Shâraktu Fulânan*’, meaning I became the partner of so-and-so; and ‘*Ashraktu Fulânan*’, meaning I made him my partner.”⁽¹⁾

As for *Musâhamah*, it is an infinitive of the verb “*Sâhama, Yusâhimu, Musâhamatan*”. The Arabic noun “*Sahm*” (i.e. arrow) is singular.⁽²⁾ Its plural is “*Ashum, Sihâm and Suhmân*”. The Arabic word “*Suhmah*” (i.e. share) is formed in accordance with the Arabic morphological measure “*Fu`lah*”. In Arabic, people say: “*Ashamtu Lahu*” to mean “I gave him a share”.

It is common to use the verbs “*Sâhama*” and “*Ashama*” in the sense of “*Mushâraakah*” (i.e. participation). In Arabic, it is said: “*Ashama Fî*” and “*Sâhama*” to mean “he participated in”. This meaning fits one of two meanings denoted by the root, namely “a share or a portion of something”.⁽³⁾ In its fourteenth session, the Arabic Language Academy in Cairo approved this meaning where the Council resolved:

“The two words ‘*Sâhama*’ and ‘*Ashama*’ have the same meaning, as they originally are used in gambling to refer to (the process of) drawing an arrow among others. Then, the meaning changed to be ‘taking a share with others’. Finally, they were used to denote the meaning of “having share(s) in.” The council views that both words are correct as meaning ‘having shares in’, and that there is no justification for the writers to avoid using the word ‘*Sâhama*’.”⁽⁴⁾

I found no justification for the common usage of “*Sharikah Musâhimah*” or “*Ash-Sharikah Al-Musâhimah*” with *Kasrah /i/*, since “*Musâhimah*” is an active participle, and it is inaccurate to use it as an adjective of *Sharikah* (i.e. company). This is because *Sharikah* would involve *Musâhamah* (i.e. having shares in), and thus it is apparently suitable to say: “*Sharikat Musâhamah*”

(1) “*Maqâyis Al-Lughah*” (3: 205).

(2) See, the root “*Sîn, Hâ, Mîm* (i.e. S H M) [س ه م]”, “*An-Nihâyah Fî Gharîb Al-Hadîth Wal-Athar*” (2: 429).

(3) “*Maqâyis Al-Lughah*” (3: 111).

(4) “*Journal of the Arabic Language Academy in Cairo*”, the fourteenth session, 1948 AD, issue no. (7), (P. 187). Also see, the root “*Sîn, Hâ, Mîm* (i.e. S H M) [س ه م]”, “*Al-Mu`jam Al-Wasîf*”, (1: 459).

or “*Sharikat Al-Musâhamah*” [with *Fathah /a/*] without using the Arabic definite article /Al-/ in “*Sharikah*” and then using genitival structure to attach “*Musâhamah*” to it, with or without the Arabic definite article /Al-/, by means of attaching a thing to its kind.

Second: Joint-Stock company in law, and its characteristics

Article (52) of the Saudi Companies Law tackles joint-stock company stating:

“The capital of a joint-stock company shall be divided into negotiable shares of equal value. A joint-stock company shall be solely liable for debts and liabilities arising from its activities.”

Joint-stock company is distinguished by a number of characteristics as follows:⁽¹⁾

- 1- Joint-stock company is a corporation in which *intuitu personae* is not considered since the main purpose of establishing a joint-stock company is to collect the capital necessary to carry out a specific project regardless of the shareholders. As soon as the shares of this company are offered for subscription, any person can be a shareholder in this company through participating in its capital. Shareholder’s bankruptcy, assignment of his shares, or even his death has no effect on the existence and continuation of the company.
- 2- Limited liability of shareholders, as the liability of the shareholder is equal to his shares, so that his liability shall not exceed this amount of capital.
- 3- The name of a joint-stock company shall indicate the purpose of its establishment, and may not include the name of any shareholder except within very exceptional limits when a commercial entity or partnership is transformed into a joint-stock company and decides to adopt the individual name of this company.
- 4- A Shareholder does not acquire the trader status. As a result, the shareholder is not required to have the capacity to professionalize trade, and he is not

(1) See: “*Ash-Sharikât At-Tijâriyyah*”, Samîhah Al-Qalyûbi, (P. 597); “*Ash-Sharikât At-Tijâriyyah*”, Khâlid Ar-Ruways, (P. 273).

bound by the obligations of traders due to his limited liability, although entering into a joint-stock company is considered a commercial business as it is the case with participating in any commercial company.

Third: Ruling on joint-stock company

Contemporary *Ijtihâd* (legal reasoning and discretion) of Fiqh has settled on the permissibility of joint-stock companies if their activities and purposes are permissible. Accordingly, the OIC International Islamic Fiqh Academy (IIFA)⁽¹⁾ in Jeddah has issued its resolution no. (63) which resolved:

“Since the essential thing about transactions is their licit nature, the establishment of a joint-stock company with unprohibited purposes and activities is permissible.”⁽²⁾

Thereby, Shari'ah Standard no. (12) was issued concerning: *Sharikah* (*Mushâarakah*), and Modern Corporations.



(1) The OIC International Islamic Fiqh Academy (IIFA) is a global scientific body which consists of a group of prominent jurists, scholars and thinkers in various fields of Islamic knowledge from different parts of the Islamic world. It seeks to provide Fiqh-based solutions for the issues of the Islamic Nation in conformity with Islamic Shari'ah. IIFA's main headquarters is located in Jeddah, Saudi Arabia. It has been established according to the resolution of the third summit meeting of the Organization of Islamic Conference (OIC), held at Mecca, in 1401 AH. The founding conference of the Council was held in 1403 AH, and the Council held its first session in 1405 AH. See: IIFA's website: (www.fiqhacademy.org.sa), seen on 2 Safar, 1431 AH

(2) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, (7: 418).

Treatise Two

Purposes of Shari'ah in Calculating *Zakâh*



This blessed Shari'ah has been established to achieve great benefits and purposes. Acquaintance with these purposes is among the first priorities to be observed on the way to comprehend Shari'ah rulings and its application to practical cases. Therefore, it was appropriate to commence this research with clarifying the purposes of Shari'ah in *Zakâh*.

I have exerted myself to induct the purposes of Shari'ah in estimating *Zakâh* and to extract them from scholarly texts, so that they could be a guideline to comprehend the Legislator's statements and benefit from the opinions of Fiqh scholars. In this regard, Imam Al-Ghazâlî states:

“Indeed, the *Qiblah* of a *Mujtahid* (i.e. the goal to which every scholar fervently aspires) is the purposes of Shari'ah, so whichever direction he turns while observing the goal of Shari'ah, he is still facing the *Qiblah*, just like the one who is surrounded by the walls of Kaaba.”⁽¹⁾

As a result of inducting Shari'ah texts and comprehending Shari'ah rulings, three purposes related to the calculation of *Zakâh* have emerged. These purposes are detailed in the following topics:



(1) “*Haqîqat Al-Qawlayn*”, Al-Ghazâlî, (P. 103); “*Ar-Radd 'Alâ Man Akhlada Ilâ Al-Ard*”, As-Suyûtî, (P. 91).

Topic (I)

Purpose of Clarification and Explanation

Among the considered purposes of Shari'ah is the clarification and explanation as to the rulings of *Zakâh* and the basics of determining the rate payable in this respect, so that it would be easy for both payer of *Zakâh* and its collector.

This is the hallmark of Shari'ah in all its rulings, as quoted by Imam Ash-Shâtîbî:

“This blessed Shari'ah is *Ummiyyah* (i.e. of the unlettered), because those who were its addressees were likewise”⁽¹⁾

This means that the comprehension of Shari'ah and the identification of its commands and prohibitions have no need of scientific methods known only by some scholars and specialists, which confirms the validity of Shari'ah for every time and place.⁽²⁾

The inference about this purpose follows from two aspects:

First: General aspect which relates to the generalization of evidence stating that this Shari'ah is of the unlettered. Ash-Shâtîbî inferred this aspect from some evidences as follows:

“The *Mutawâtir* (i.e. successive) texts in both wording and meaning, such as the saying of Allah, the Almighty:

“It is He who has sent among the Ummiyyîn (unlettered persons) a Messenger from themselves...”⁽³⁾

And His saying:

“So believe in Allah and His Messenger, the Ummî (unlettered) Prophet, who believes in Allah and His words,...”⁽⁴⁾

(1) “*Al-Muwâfaqât*”, (2: 109).

(2) “*Ta`lîq Dirâz `Alâ Al-Muwâfaqât*”, (2: 109).

(3) Surah *Al-Jumu`ah* (Friday): 2.

(4) Surah *Al-A`raf* (The Battlements): 158.

The Prophetic hadith stating:

"I have been sent to an Ummî (i.e. unlettered) nation".⁽¹⁾

This is because they were unacquainted with the knowledge of the ancients. (The Arabic word) "*Ummî*" (i.e. unlettered person) is derived from (the Arabic word) "*Umm*" (i.e. mother); meaning a person who remained in the same state as he was born from his mother, who has not learned anything, and who cannot read and write.

The Prophetic hadith stating:

"We are an Ummî (i.e. unlettered) nation; we neither write, nor make calculations. The month is like this, and this, and this (i.e. sometimes of 29 days and sometimes of 30 days)."⁽²⁾

The word "*Ummî*" in the Prophetic hadith was interpreted as having no knowledge of calculations or writing, as quoted from the saying of Allah, the Almighty:

{“And you did not recite before it (i.e. the Qur’an) any book, nor did you inscribe one with your right hand.”}⁽³⁾

Further, there are similar evidences in the Qur’an and the Sunnah which indicate that the Shari’ah has been established on the description

(1) "*Al-Musnad*", Abû Dâwûd At-Tayalisi, hadith no. (545); "*Musnad Ahmad*", (5: 123); "*Jâmi` At-Tirmidhî*", Chapters on modes of recitation related from Allah’s Messenger (peace and blessings of Allah be upon him): What has been related about ‘the Qur’an was revealed in seven modes of recitation’, hadith no. (2944); "*Sahîh Ibn Hibbân*", hadith no. (739); "*Al-Ahâdith Al-Mukhtârah*", Ad-Diyâ’ Al-Maqdisî, hadith no. (1168) on the authority of Ubayy Ibn Ka`b (may Allah be pleased with him).

At-Tirmidhî said, "This is a *Hasan* (i.e. good) *Sahîh* (i.e. authentic) hadith narrated from Ubayy Ibn Ka`b with different chains of transmission."

The complete version of the hadith as related by At-Tirmidhî from Ubayy states: "*The Messenger of Allah (peace and blessings of Allah be upon him) met Jibrîl (i.e. Gabriel) and said, ‘O Jibrîl! I have been sent to an unlettered nation among whom are the elderly woman, the old man, the boy and the girl, and the man who cannot read a book at all.’ He (i.e. Jibrîl) said, ‘O Muḥammad! Indeed, the Qur’an was revealed in seven modes (of recitation).’"*

(2) "*Sahîh Al-Bukhârî*", Book of Fasting, Chapter: We neither write nor know calculations, hadith no. (1913); "*Sahîh Muslim*", Book of Fasting, hadith no. (1080), on the authority of Ibn `Umar (may Allah be pleased with them).

(3) Surah Al-`Ankabût (The Spider): 48.

of “*Ummiyyah*” (i.e. of the unlettered), because those who were its addressees were likewise.”⁽¹⁾

Second: Specific aspect which relates to the specification of evidences that the Legislator’s purpose is the clarification and explanation as to the rulings of *Zakâh*.

This aspect is evidenced by the explanation of the Prophet (peace and blessings of Allah be upon him) for the *Zakâh* rulings, shares and amounts in such a way that clearly highlights the purpose of clarification and explanation. That is, he (peace and blessings of Allah be upon him) did not only convey these rulings by words, as it is often the case in his conveyance of legislations and rulings of the Religion, but he also sent letters explaining *Zakâh* rulings, shares and amounts to different regions of the Islamic State, “such as:

- His letter concerning *Sadaqaḥs* (i.e. *Zakâh*) that was with Abû Bakr who wrote the same to Anas Ibn Mâlik when he sent him to (collect the *Zakâh* from) *Al-Bahrayn*,⁽²⁾ and it was adopted by the majority of scholars.
- His letter to the people of Yemen, narrated by Abû Bakr Ibn `Amr Ibn *Hazm* narrated from his father from his grandfather. It is a great letter which includes several forms of the Fiqh of *Zakâh*, blood money and other rulings. Regarding this letter, Imam *Aḥmad* said: “There is no doubt that it was dictated by Allah’s Messenger.”
- His letter, which was with `Umar Ibnul-Khattâb, concerning the shares and amounts of *Zakâh* and other things.”⁽³⁾

The aim of clarification and explanation is to help the payer of *Zakâh* be aware of what he is commanded to do, so that he would have reassurance about his compliance with the Shari’ah commands, and have argument which keeps him safe from the oppression and exploitation of *Zakâh* collectors. This is indicated by the saying of the Prophet (peace and blessings of Allah be upon him) in the introduction of Abû Bakr’s letter:

(1) “*Al-Muwâfaqât*”, (2: 109-111).

(2) **Translator:** In pre-Islamic and early Islamic times, this name was applied to the entire coastal area along the Gulf between Basra and Oman, or the mainland of Eastern Arabia, embracing the oases of Al-Qatif and Hajar (Al-Ahsa). See: “*Mu`jam Al-Buldân*”, Yâqût Al-Ḥamawî, (pp. 346-349).

(3) “*Zâd Al-Ma`âd*”, (1: 109-111).

“This is the obligatory *Sadaqah* (i.e. *Zakâh*) which Allah's Messenger (peace and blessings of Allah be upon him) has imposed on Muslims as Allah has commanded His Messenger to observe. Whoever amongst the Muslims is asked for it in the manner explained (in the letter of Abû Bakr), he should give it (to the *Zakâh* collector), and whoever is asked for more than that (what is specified in this letter) he should not give it.”⁽¹⁾

Besides, the Shari'ah aimed at making the process of calculating *Zakâh* easier for the collectors in a manner that facilitates their work and resolves the dispute between them and the payers of *Zakâh*. This is why the collection of *Zakâh* during the Prophet's era was limited to the apparent wealth where there was no need for an inspection or investigation.

As for non-apparent wealth, their payment was entrusted to *Zakâh* payers themselves.

Impact of purpose of clarification and explanation on Fiqh-based *Ijtihâd* regarding *Zakâh*

The scholars of Fiqh have generally relied on this purpose regarding their *Ijtihâd* (i.e. legal reasoning and discretion) in the rulings of *Zakâh*, particularly the concept of facilitation, even though they have disagreed about realizing this purpose in some branches of Fiqh.

The following are some issues explaining how scholars of Fiqh consider this concept in comprehending Shai'ah texts regarding *Zakâh* and its application to practical cases:

Issue (1): Scholars of Fiqh have generally agreed that reaching *Nisâb* (i.e. minimum amount determining a person's zakatability) is a precondition for the obligation of *Zakâh*, but they disagreed about the time of stipulating the completeness of *Nisâb*, shall it be at the beginning or at the end of *Hawl* (i.e. *Zakâh* year), taking into account the difficulty of checking it during the *Hawl*. The Hanafites stipulated that *Nisâb* should be reached at the beginning and at the end of *Hawl*, but not at its middle, in all kinds of wealth.⁽²⁾ Meanwhile,

(1) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: The *Zakâh* of sheep, hadith no. (1454).

(2) “*Al-Mabsûṭ*”, (2: 172); “*Al-'Inâyah Sharh Al-Hidâyah*”, (2: 220-221).

the majority of scholars including the Malikites,⁽¹⁾ Shafiites⁽²⁾ and Hanbalites⁽³⁾ stipulated that the *Nisâb* should be reached through a complete (lunar) year; however, the Malikites and Shafiites excluded the growth of wealth in goods stocked for trade, as their *Hawl* would complete before reaching their *Nisâb*, and their *Zakâh* becomes due when their *Nisâb* completes at the end of *Hawl*.

Their reason for non-stipulating the completeness of *Nisâb* at the beginning or at the middle of *Hawl* is the difficulty of checking it.

The Hanafites considered this concept in all kinds of wealth, as stated in “*Al-Jawharah An-Nayyirah*”:

“This is because it is difficult to check the completeness of *Nisâb* during it (i.e. *Hawl*), unlike trading wealth, considering that the trader always disposes of wealth and his disposal may or may not be profitable, owing to the increasing price and high cost. As for *Sawâ'im* (freely grazing livestock), they are open to mortality and parturition, and some of them may be lost.”⁽⁴⁾

The Malikites and Shafiites restricted non-stipulating the completeness of *Nisâb* during the *Hawl* to goods stocked for trade since it is difficult to check them, and because their value is the point of consideration, unlike other kinds of *Zakâh* that should be paid out from the asset itself, such as grazing livestock. Al-Ghazâlî elucidated that in his book “*Tahsîn Al-Maâkhidh*”:

“The reason is that *Zakâh* relates to the value, and the remaining amount necessary for the *Nisâb* to be reached, even if it is a small amount, can be realized by means of purchase for two hundred by a casual customer, or through urgent needs to purchase. That is, the decrease in the *Nisâb* cannot be accurately considered, but it can be covered by urgent needs to purchase. Yet, the increase and decrease of a commodity is based upon offer and demand, and it is difficult, if not impossible, to observe it, and thus its consideration (i.e. stipulating the completeness of *Nisâb* during the *Hawl*) is negated owing to difficulty.”⁽⁵⁾

(1) “*Ash-Sharh As-Saghîr*”, (1: 625); “*Al-Fawâkih Ad-Dawâni*”, (1: 331).

(2) “*Nihâyat Al-Muhtâj*”, (3: 101); “*Tuhfat Al-Muhtâj*”, (3: 292).

(3) “*Kashshâf Al-Qinâ'*”, (4: 327); “*Sharh Muntahâ Al-Îrâdât*”, (2: 184).

(4) “*Kashshâf Al-Qinâ'*”, (4: 330).

(5) “*Tahsîn Al-Maâkhidh*”, (1: 649).

Issue (2): The Legislator considered the combined/mixed wealth in the *Zakâh* due on cattle as being one asset, and this is a point of agreement in *Khulṭat Al-A 'yân* (i.e. common partnership). However, it is a point of disagreement with the Hanafities in *Khulṭat Al-Mujâwarah* (i.e. defined partnership).⁽¹⁾ This makes it easier for the collector to calculate the due *Zakâh* in accordance with the total wealth, although this may require an increase or decrease in the rate payable. If the collector of *Zakâh* is looking for the total wealth and not asking about the asset of each wealth, then he should not ask about the value of each property, even if it is easy for the owner to determine it.⁽²⁾

Although the advocates of mixing wealth agree that it may require an increase or decrease in the rate of *Zakâh* payable, they disagree regarding the requirement that *Zakâh* is obligatory for a person who does not possess the minimum amount of *Nisâb*. The approved view according to the Hanafites,⁽³⁾ Shafiites⁽⁴⁾ and Malikites⁽⁵⁾ stipulates the ownership of the *Nisâb*, while the Hanbalites⁽⁶⁾ view the obligation of *Zakâh* on mixing wealth even if the payer does not possess the *Nisâb*, but they stipulate that a payer shall not have a debt which will consume his entire wealth to be paid off.

Concerning the stipulation of possessing the minimum amount of *Nisâb* for a person who possesses a mixed wealth, the Hanafites, Shafiites and Malikites argue that the wealth considered for the obligation of *Zakâh* is determined by reaching the amount of *Nisâb*. Their evidence regarding this is the general meaning of the Prophetic hadith, stating:

“No (obligatory) Sadaqah (i.e. Zakâh) is payable on less than five Ūqiyyahs (Ūqiyyah is a kind of weight equals 40 Dirhams of silver = 119 gm).”

(1) *Khulṭat Al-A 'yân* (i.e. common partnership): It is when two or more men become partners in the ownership of wealth, so that each partner has a common share in it. It is also called “*Khulṭat Sharikah*” and “*Khulṭat Shuyû*”.

As for “*Khulṭat Al-Awsâf*” (i.e. defined partnership), it means that the partners have their separate, clearly defined and independent shares, but for easement they use the same route, plain, grazing field, etc. It is also called “*Khulṭat Jiwâr*”. See: “*Mu'jam Mustalahât Iqtisâdiyyah*”, (P. 189).

(2) “*Āt-Tanbih 'Alâ Mushkilât Al-Hidâyah*”, (1: 826).

(3) “*Al-Fatâwâ Al-Hindiyyah*”, (1: 181); “*Majma' Al-Anhur*”, (1: 202).

(4) “*Ash-Sharḥ Al-Kabîr Ma'a Hâshiyat Ad-Dusûqî*”, (1: 439); “*Ash-Sharḥ As-Saghîr*”, (1: 602).

(5) “*Āsnâ Al-Matâlib*”, (1: 347); “*Nihâyat Al-Muhtâj*”, (3: 59).

(6) “*Kashshâf Al-Qinâ*”, (4: 477); “*Sharḥ Al-Muntahâ*”, (2: 211).

As for the Hanbalites, they justify the obligation of *Zakâh* on mixing wealth stating:

“The costs of a separate wealth increases while its benefit decreases; and the more the wealth increases, the more its cost decreases and its benefit increases; so it is eligible for *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor).”⁽¹⁾

Therefore, they do not stipulate that each partner should possess the *Nisâb*; rather, they stipulate that he shall not have a debt which will consume his entire wealth to be paid off, and thus his wealth is regarded as nonexistent.

The Hanbalites⁽²⁾ considered the difficulty of calculating separate wealth, so they argued that if the distance between the two wealth is equal to the distance which permits a traveler to shorten Prayer, then each wealth should take the ruling of a separate wealth according to the general meaning suggested by the Prophetic hadith, stating:

“*And do not combine separate (herds).*”

This would facilitate the calculation of *Zakâh* on separate wealth. However, the majority of scholars did not consider the difficulty of calculating the separate wealth with the unity of ownership, so they bound the owner of wealth to pay *Zakâh*, even if it was separate and difficult to be calculated.⁽³⁾

Issue (3): Although the scholars of Fiqh agree on stipulating the elapse of one-year period (*Hawl*) for the obligation of *Zakâh*, they disagree regarding the ruling of acquired wealth during the *Hawl*.

The Hanafites⁽⁴⁾ view that whoever acquires a zakatable wealth by means of purchase or inheritance, or the like, while a full lunar year *Nisâb* of its kind is in his possession, then he should combine it together with the asset in his possession and the *Hawl* would be calculated from the time of calculating the original asset.

(1) “*Tahsîn Al-Maâkhiḍh*”, (1: 582); “*Al-Mughnî*”, (4: 52).

(2) “*Kashshâf Al-Qinâ`*”, (4: 374); “*Sharḥ Al-Muntahâ*”, (2: 220).

(3) “*Al-Mabsûṭ*”, (2: 154); “*Al-Ishrâf*”, Ibnul-Mundhir, (3: 16); “*Al-Mughnî*”, (4: 63).

(4) “*Fath Al-Qadîr*”, (2: 196); “*Al-Baḥr Ar-Râ`iq*”, (2: 222).

The Malikites⁽¹⁾ agree with Hanafites regarding the apparent wealth of cattle, crops, and fruits, but not the non-apparent wealth.

The Shafi'ites⁽²⁾ and Hanbalites,⁽³⁾ however, opined that *Hawl* should be renewed for every acquired wealth except for the produce of grazing livestock and trade profits.

The Hanafites and Malikites justify the obligation of *Zakâh* on acquired wealth by *Mujânasah* (i.e. homogenization) between the wealth on which one-year period (*Hawl*) has elapsed and the acquired wealth, stating:

“It is an increase in the same kind of an animal which takes the ruling of the same ownership, so that its ruling may vary between facilitation and difficultness, by analogy with *Khulṭah* (partnership)”⁽⁴⁾

Also, this *Mujânasah* is the reason for combining the produce of grazing livestock and trade profit together with their original assets, but not because being produces of such assets.

The Hanafites and Malikites consider the concept of difficulty regarding stipulating the elapse of one-year period (*Hawl*) for the obligation of *Zakâh* for every acquired wealth. However, the Hanafites consider the difficulty for the payer with regard to calculating a *Hawl* for every acquired wealth. This is why they make the ruling to include every wealth, since it is very difficult to distinguish them with the existence of *Mujânasah* (i.e. homogenization). In this regard, Ibnul-Humâm said:

“Our consideration provides more adequate basis, because it mitigates hardship... in view of the fact that considering a *Hawl* for every acquired money involves great hardship. Meanwhile, the *Hawl* was prescribed as a means of facilitation, so its consideration (i.e. stipulating a *Hawl* for every acquired wealth) is negated owing to difficulty.”⁽⁵⁾

As for the Malikites, they consider the difficulty for the collector with regard to stipulating the elapse of one-year period (*Hawl*) for the obligation

(1) “*Ash-Sharh Al-Kabîr*”, (1: 430); “*Ash-Sharh As-Saghîr*”, (1: 593, 625-629).

(2) “*Mughnî Al-Muhtâj*”, (1: 379); “*Tuhfat Al-Muhtâj*”, (3: 233-234).

(3) “*Kashshâf Al-Qinâ*”, (4: 330); “*Sharh Muntahâ Al-Îrâdât*”, (2: 184-185).

(4) “*Al-Ishrâf `Alâ Nukat Masâ'il Al-Khilâf*”, Judge `Abdul-Wahhâb, (2: 125).

(5) “*Fath Al-Qadîr*”, (2: 196).

of *Zakâh* for every acquired wealth. That is, the collector comes once every year to collect *Zakâh*, and thus he does not need to return to collect the *Zakâh* on wealth after completing its *Nisâb*. This is why they permitted combining the acquired apparent wealth together but not the non-apparent one.

Ibn Rushd (the grandfather) opined:

“Rather, *Zakâh* on acquired wealth combined together shall be collected in accordance with the *Hawl* first started for the *Nisâb* in cattle, unlike the asset, owing to the separation of *Hawl*, so that the collector would only go out for once, and collect its *Zakâh* in accordance with the *Hawl* of the original asset first started.”⁽¹⁾

The Malikite’s consideration of the Legislator’s purpose to facilitate and regulate the work of the collector is apparent in their views regarding the issues of *Zakâh*. That is, they stipulate the arrival of the collector to collect *Zakâh* for the obligation of *Zakâh* on cattle, and that his arrival should be at the appearance of Pleiades so that the difference in seasons would not cause any difficulty for him. Also, they forgive the increase or decrease occurring after the elapse of one-year period (*Hawl*) and before the arrival of the collector, and the collector takes the *Zakâh* for what he finds of the apparent wealth without needing to ask about the debt, which decreases the *Nisâb*.

In his “*Al-Mudawwanah*”, Imam Mâlik stated:

“It is a customary procedure to dispatch the collectors before summer, at the appearance of Pleiades, and when people drive their livestock to water area. This is our approved view, since it involves easiness and facilitation for people as they gather for water and for the collector owing to the gathering of people.”⁽²⁾

In his “*Al-Muntaqâ*”, Al-Bâjî said:

“As for the time of going out to collect the *Sadaqah* (*Zakâh*), it is the time of the appearance of the Pleiades when dawn breaks. It is a time when cattle are gathered for water, because there is no water in the

(1) “*Al-Bayân Wat-Tahsîl*”, (2: 468).

(2) “*Al-Mudawwanah*”, (1: 367).

mountains and the deserts. This is much easier for the payers, and more suitable for people to gather without harm or difficulty resulting from leaving pasturing, grazing, and herding in order to gather for paying the *Sadaqah*. Also, there would be no harm, at that time, to drive the livestock freely because their offspring has become stronger.”⁽¹⁾

(1) *“Al-Muntaqâ”*, (2: 149).

Topic (II)

Purpose of Facilitation

It is confirmed that facilitation is the main feature of Islamic Shari'ah, and among the aspects of facilitation sought by the Legislator is to determine the payable rate of *Zakâh* and the bases of its calculation. The main point here is facilitation for wealth owners, as quoted by As-Sarakhsi in his "*Al-Mabsûṭ*":

"The Legislator has considered facilitation for the owners of wealth."⁽¹⁾

However, this purpose also includes facilitation for the collectors and distributors of *Zakâh*, as well as the recipients of *Zakâh* in terms of benefitting from it.

With regard to facilitation for the owners of wealth, this is clear in the following four aspects:

Aspect (1): Facilitation in the reason for obligating *Zakâh*

In his "*Badâ'i` As-Sanâ'i`*", Al-Kasânî cited:

"The obligation of *Zakâh* is based on facilitation."⁽²⁾

This is indicated by the following points:

(a) *Zakâh* is due only in growing wealth. In this regard, Al-Ghazâlî states:

"*Zakâh* is obligated in courteous kinds (of wealth)."⁽³⁾

That is, courtesy is ascertained by the obligation of *Zakâh* on this wealth because it is eligible for *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor).

(b) *Zakâh* becomes obligatory only after possessing the minimum amount of *Nisâb* indicative of richness, even if the affordability is assured below it. Shari'ah has made the obligation of *Zakâh* contingent on a facilitated

(1) "*Al-Mabsûṭ*", (2: 157).

(2) "*Badâ'i` As-Sanâ'i`*", (5: 66-67).

(3) "*Tahsîn Al-Mââkhidh*", (1: 576).

affordability. Do not you see that affordability is assured with absolute wealth. Then, the Legislator has stipulated growth in wealth so that the amount paid would be a portion of it, which would secure considerable facilitation.⁽¹⁾

- (c) Excluding the products of land, *Zakâh* is due only after completing the *Hawl*, so that the payer would achieve a growth in wealth which would confirm *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor). Accordingly, *Zakâh* is given from the growth of wealth, not from its asset.

Aspect (2): Facilitation in payable rate

The Legislator aimed at imposing a small amount as being the rate due on the payer, especially that he gives away what is much beloved to himself, so that he could pay *Zakâh* with a willing heart in obedience to Allah's command. So, the Legislator has prescribed a small rate of *Zakâh* to be paid out of much wealth, considering the hardships encountering the payer to collect and grow his wealth. Also, the Legislator forbade taking one's best (most expensive) belongings as shares of *Zakâh*. Ibn Daqîq Al-`Îd said:

“The wisdom behind this is that *Zakâh* has been prescribed to support the poor from the wealth of the rich. Hence, it would not be appropriate to show prejudice against the owners of wealth. So, Shari'ah has forgiven the owners of wealth for what they withhold of their best wealth, and forbade the collectors from taking it.”⁽²⁾

Aspect (3): Facilitation in calculating the *Zakâh* due

The Legislator aimed at facilitating the calculation of *Zakâh* through a numerical value that is based on an accurate accounting system,⁽³⁾ so that it would be easier for the payer and the collector to comprehend.

This is indicated by the following points:

- (a) Shari'ah has determined the *Nisâbs* (i.e. minimum amounts determining a person's zakatability) of *Zakâh* in zakatable wealth in numbers that are

(1) “*Kashf Al-Asrâr*”, (1: 203).

(2) “*Ihkâm Al-Ahkâm*”, Ibn Daqîq Al-`Îd, (2: 418).

(3) “*Tahsîn Al-Maâkhidh*”, (1: 548).

easy to calculate, as well as the numbers by which the obligation of *Zakâh* on cattle is calculated. The greater the number of grazing livestock, the easier the Legislator is in calculating *Zakâh*.

For example: Shari'ah discards fractions when calculating *Zakâh* on cattle, due to difficulty in some of their calculations, as well as the damage inflicted upon the payer if obligated to pay the *Zakâh* from their parts.

This is why the Shari'ah has prescribed giving one sheep for every five camels, as quoted by Ibn Abul-'Izz Al-Hanafi:

“It is not known in the Shari'ah, regarding the *Zakâh* on *Sawâ'im* (freely grazing livestock), to take a part of the animal, and this is why the Legislator has turned to the sheep in the lowest *Nisâb* of camels; so as to avoid *Tashqîs* (i.e. dividing into parts or portions).”⁽¹⁾

Ibn Qudâmah said:

“The cow is among the cattle, so it is not permissible to pay its *Zakâh* as a fraction, and all other kinds of cattle are likewise.”⁽²⁾

(b) The Legislator has specified the zakatable wealth in easy-to-understand descriptions, and has not broach the descriptions that would be difficult to specify precisely leaving their specification to customary practice. That is, it has not specified the descriptions of grazing livestock, and considered absolute dirhams and dinars for the *Zakâh* on gold and silver despite their disparity in weight and purity/fineness in the era of the Prophet (peace and blessings of Allah be upon him). Hence, a number of scholars argued that estimating the *Nisâb* of gold and silver is based on approximation. Accordingly, a decrease by one or two grains does not affect the obligation of *Zakâh*, and this is the approved view according to the Hanbalites.⁽³⁾

The Malikites forgive a decrease by one or two grains on a condition that this (insignificant) decrease is common to be weighed as equal as *Wâzinah*

(1) “*At-Tanbîh ‘Alâ Mushkilât Al-Hidâyah*”, (2: 830). Also see, the root “*Shîm, Qâf, Sâd* (i.e. *SH Q S*) [ش ق ص]” in “*Tahdhîb Al-Lughah*”, (8: 245); “*Al-Misbâh Al-Munîr*”, (P. 262).

(2) “*Al-Mughnî*”, (4: 33).

(3) “*Kashshâf Al-Qinâ’*”, (4: 312); “*Sharh Al-Muntahâ*”, (2: 172).

(the complete weight).⁽¹⁾ As for the Hanafites⁽²⁾ and the Shafi'ites,⁽³⁾ they argue that estimating the *Nisâb* of gold and silver is based on accurate determination, so *Zakâh* is not due if one grain decreases from the *Nisâb*.

Aspect (4): Facilitation in the kind of the amount to be paid

The Legislator obligates that the *Zakâh* on cattle, crops and fruits should be paid out from the same kinds of wealth so as to facilitate the payment of *Zakâh* for the owners of wealth. However, Shari'ah has permitted to pay *Zakâh* from different kinds of wealth if there is a major benefit, such as the obligation of sheep in the lowest *Nisâb* of camels, and the *Zakâh* on goods stocked for trade.

In this regard, Abû Ya`lâ Al-Farrâ' states:

“The basic rules regarding *Zakâh* are based on paying the rate of *Zakâh* from the same kinds of wealth, but this is not the case for the lowest *Nisâb* of camels, which should be paid out from different species, because it would be unattainable from the same species, and if we accepted fractions in payment of *Zakâh* due on such a wealth, it will involve difficulty.”⁽⁴⁾

Impact of the purpose of facilitation on Fiqh-based *Ijtihâd* regarding *Zakâh*

Considering the purpose of facilitation, the Hanafites⁽⁵⁾ view that the estimation of Shari'ah, in terms of paying the rate of *Zakâh* from the same kinds of wealth, includes facilitation for the payer. This is because *Sadaqah* (*Zakâh*) is intended to satisfy the need (of the poor), and the value takes its place in achieving that, then *Zakâh* should be permissible to be paid in value, as it was narrated on the authority of Mu`âdh Ibn Jabal that he used to say to the people of Yemen:

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- (1) “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Disûqî*”, (1: 455-456); “*Ash-Sharh As-Saghîr*”, (1: 622).
 - (2) “*Tabyîn Al-Haqâ'iq*”, (1: 276); “*Radd Al-Muhtâr*”, (2: 295).
 - (3) “*Nihâyat Al-Muhtâj*”, (3: 84); “*Tuhfat Al-Muhtâj*”, (3: 263).
 - (4) “*Sharh Mukhtasar Al-Khiraqî*”, (1: 173).
 - (5) “*Tabyîn Al-Haqâ'iq*”, (1: 270-271); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 181).

“Bring me small, or used garments (in obligatory *Sadaqah*) as it will be much easier for you and more useful for the people of Medina among the *Muhâjirûn* (i.e. Emigrants) and the *Ansâr* (i.e. Supporters).”⁽¹⁾

The majority of scholars including the Malikites, the Shafi’ites, and the Hanbalites are of the view that the payment of the value is not permissible,⁽²⁾ pursuant to Shari’ah texts determining the payable amount, and according to the Legislator’s purpose requiring the specification of the wealth from which the *Zakâh* payable is taken out.

This is because:

“The owner wants to keep his property as it is, and pay its *Zakâh* from another asset. So, when his soul inclines to that and becomes attached to it, this requirement will sever such an attachment between the heart

(1) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: *Zakâh* may be paid in kind (and not in cash). Al-Bukhârî narrated it as a *Mu`allaq* hadith in an affirmative decisive manner stating that *Tâwûs* said:

“Mu`âdh said to the people of Yemen, ‘Bring me small, or used garments in (obligatory) *Sadaqah* in place of barley and millet as it will be much easier for you and more useful for the Companions of the Prophet (peace and blessings of Allah be upon him) in Medina.”

Yahyâ Ibn Âdam narrated it as a *Mawsûl* hadith in his “*Al-Kharâj*”, hadiths no. (525, 526). Al-Bayhaqî narrated it through Yahyâ Ibn Âdam’s narration in “*As-Sunan Al-Kubrâ*”, Book of *Zakâh*, Chapter: Is it permissible to take out the value in *Zakâh*, (4: 113). Its chain of transmission involves *Inqitâ`* (i.e. interruption) because *Tâwûs* did not meet Mu`âdh. Al-Isma`îlî said, “It is a *Mursal* (i.e. transmitted) hadith and cannot be brought in as evidence, but this *Inqitâ`* does not affect the validity of the narration.”

Al-Bayhaqî said, “Even if *Tâwûs* did not meet Mu`âdh, he is a Yemenite and the biography of Mu`âdh is widely-known among the people of Yemen.”

But, Al-Bayhaqî mentioned that some narrators used the word “*from Jizyah*” in place of “*in Sadaqah*”, but he did not mention its *Isnâd*. He gave preponderance to *Jizyah* stating:

“This is most befitting of Mu`âdh and is consistent with the command of the Prophet (peace and blessings of Allah be upon him) concerning taking out the (obligatory) *Sadaqahs* in kind, and taking out the *Jizyah* as a dinar or its equivalent of the *Mu`âfirî* garments (i.e. clothes made in a Yemenite town called *Ma`âfir*), and distributing the (obligatory) *Sadaqahs* among their poor without sending it to the *Muhâjirûn* (i.e. Immigrants) in Medina who are the recipients of *Fay`* (i.e. booty gained without fight) not *Sadaqah*.”

See: “*At-Talkhîs Al-Habîr*”, (3: 242); “*Al-Jawhar An-Naqî*”, (4: 113).

(2) “*Ash-Sharh As-Saghîr*”, (1: 668); “*Tuhfat Al-Muhtâj*”, (3: 365); “*Matâlib Uli An-Nuhâ*”, (2: 25).

and that part of wealth, and thus this very amount shall be paid out from this specific asset.”⁽¹⁾

Also, because:

“When it is permissible to pay the value under any circumstances, then the owner may pay out bad kinds, and the valuation may be harmed. Also, *Zakâh* is based on *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor), which is considered in the amount of wealth and its kinds equally.”⁽²⁾

Ibn Taymiyyah steered a middle course between the two views and prevented paying the value unless there is an urgent need or a *Maslahah Râjihah* (i.e. a major benefit). He permitted paying the value for a benefit, and inferred this from a narration on the authority of Imam Ahmad, saying:

“This is the fairest view... because the textual and analogical evidences which require the payment from the asset itself is like all other evidences of obligation, and it is known that the benefit of obligating the payment from the asset itself may, in some cases, contradict, in value, with a more major benefit, and, in the asset, with the difficulty negated by the Shari'ah.”⁽³⁾

Ibn Taymiyyah added:

“As for the payment of the value for an urgent need, a major benefit, or a just compromise, there is nothing wrong with it, such as when a person sells the fruits of his orchard or the crops for dirhams, then paying one-tenth of these dirhams relieves him from the obligation, and he is not required to buy fruits or wheat if he equated the poor with himself, and Imam Ahmad permitted this. Likewise, when he is required to give one sheep for every five camels while finding no one to sell him a sheep, then taking out the value here is sufficient, and he is not required to travel to another city to buy a sheep. Also, when the recipients of *Zakâh* ask him to give the value because it is more

(1) “*Ahkâm Al-Qur’ân*”, Ibnul-`Arabî, (2: 520).

(2) “*Majmû` Al-Fatâwâ*”, Ibn Taymiyyah, (25: 82).

(3) “*Al-Qawâ`id An-Nûrâniyyah*”, (P. 136); “*Majmû` Al-Fatâwâ*”, (25: 82).

beneficial and he gives it to them, or when the collector views that taking the value is more beneficial for the poor, as it was narrated that Mu`âdh Ibn Jabal said to the people of Yemen:

‘Bring me small, or used garments (in the obligatory *Sadaqah*) as it will be much easier for you and more useful for the people of Medina among the *Muhâjirûn* (i.e. Emigrants) and the *Ansâr* (i.e. Supporters).’

It was argued that he said this when he was sent to collect *Zakâh*, or *Jizyah* (i.e. tribute).”⁽¹⁾

(1) “*Majmû` Al-Fatâwâ*”, (25: 82-83).

Topic (III)

Purpose of Justice

Justice is one of the Shari'ah purposes in the obligation of *Zakâh*, which means to maintain balance between the right of wealth owners and that of the recipients regarding the estimation of *Zakâh*, so that *Zakâh* would neither inflict prejudice against the owners of wealth nor the poor.

In this regard, Abû Ya`lâ Al-Farrâ' said:

“*Zakâh* is founded on justice between the poor and the owner of wealth.”⁽¹⁾

This is indicated by the following:

(a) The saying of the Prophet (peace and blessings of Allah be upon him):

“*And beware of (taking as a share of Zakâh) their best (most expensive) belongings.*”⁽²⁾

And the letter of Abû Bakr regarding the *Zakâh* which goes:

“Neither an old nor a defected animal in the eye, nor a male-goat may be taken as (obligatory) *Sadaqah* except if the collector is willing (to take it).”⁽³⁾

Also, it was narrated in “*Al-Muwattâ*” on the authority of Sufyân Ibn `Abdullâh that `Umar Ibnul-Khattâb once sent him to collect *Zakâh*. He used to include *Sakhlahs*, and they said, “Do you include *Sakhlahs* even though you do not take them (as payment)?” When he returned to `Umar Ibnul-Khattâb and mentioned that to him, `Umar said:

“Yes, we include a *Sakhlah* which the shepherd is carrying, but we do not take it. Neither do we take an *Akûlah*, nor a *Rubbâ*, nor a *Mâkhiḍ*, nor male sheep (used for breeding), and we take *Jaza`ah* (i.e. a goat in its second year) and *Thaniyyah* (i.e. a goat in its third year), and this

(1) “*Sharḥ Mukhtaṣar Al-Khiraqī*”, (1: 183); “*Majmû` Al-Fatâwâ*”, (25: 34).

(2) “*Saḥīḥ Al-Bukhârī*”, Book of *Zakâh*, Chapter: *Zakâh* should be taken from the rich and given to the poor wherever they are, hadith no. (1496).

(3) “*Saḥīḥ Al-Bukhârī*”, Book of *Zakâh*, Chapter: Neither an old, nor a defective animal, nor a male-goat may be taken as *Zakâh*, hadith no. (1455).

is a just compromise between the young of sheep and goats and the best of them.”⁽¹⁾

Mâlik said, “*Sakhlah* is a newborn lamb or kid, *Rubbâ* is a mother that is looking after her offspring, *Mâkhiḍ* is a pregnant ewe or goat, and *Akûlah* is a sheep or goat that is being fattened for meat.”

Steering a middle course in taking the wealth considers the benefits of both parties, and makes a just compromise between them, because taking the good wealth is harmful to the owner of wealth, and taking the bad wealth is harmful to the poor.⁽²⁾

(b) The Shari'ah has made the lowest *Nisâb* of camels inconsistent with the basic rule regarding the obligation of paying the *Zakâh* out from the same kind of wealth. Concerning this, Abû Ya`lâ Al-Farrâ' quotes:

“But this is not the case for the lowest *Nisâb* of camels, which should be paid out from different species, because it would be unattainable from the same species, and if we accepted fractions in payment of *Zakâh* due on such a wealth, it will involve difficulty.”⁽³⁾

Impact of the purpose of justice on Fiqh-based *Ijtihâd* regarding *Zakâh*

The scholars of Fiqh consider the purpose of justice in comprehending Shari'ah texts related to *Zakâh*, or *Ijtihâd* (i.e. legal reasoning and discretion) in cases where no text is mentioned in this regard. This is indicated by the following:

Issue (1): The Hanafites and Hanbalites considered *Sawm* (i.e. free grazing on pasture) in most of the *Hawl* (i.e. *Zakâh* year) as a precondition for the obligation of *Zakâh* on livestock. Ibnul-Humâm said:

“According to Shari'ah, the description of a naturally grazing livestock as being *Sâ'imah* (i.e. freely grazing livestock) is not to be denied by

(1) “*Muwatta' Mâlik*”, Book of *Zakâh*, Chapter: Counting lambs and kids when assessing *Zakâh*, hadith no. (909); “*As-Sunn Al-Kubrâ*”, Al-Bayhaqî, Book of *Zakâh*, Chapters: With regard to the *Sadaqah* of grazing sheep; “*As-Sihâh*”, (6: 2444); “*An-Nihâyah Fî Gharîb Al-Hadîth*”, (3: 348).

(2) “*Al-Muntaqâ*”, Al-Bâjî, (2: 144).

(3) “*Sharh Mukhtasar Al-Khiraqî*”, (1: 173).

little artificial feed, because the Prophet (peace and blessings of Allah be upon him) made *Zakâh* obligatory for the owners grazing their livestock in their regions, considering that free grazing is not sufficient to feed the livestock all the year, as there is not enough food for them in their regions or in other places. Further, even if food is found in other places, they will not be able to graze in times of severe cold, snow and continuous rainfall. Thus, if *Sawm* (i.e. free grazing on pasture) is considered in all the year, then the *Zakâh* is to be negated.”⁽¹⁾

This is explained by the statement of Al-Buhûtî:

“Considering it (*Sawm*) in all the year includes prejudice against the poor, and considering it in some of the year includes prejudice against the owners, so considering it in most of the year is a just compromise between the two states, and it wards off the two greater harms by choosing the lesser one of them, and ‘the most’ takes the ruling of ‘all’ in many rulings.”⁽²⁾

The Shafi’ites hold the view that if it is artificially fed a quantity without which it cannot survive, or without which it can survive with an apparent harm, then there would be no *Zakâh* on it.⁽³⁾

The Malikites, however, do not consider the condition of *Sawm*, and thus, according to them, *Zakâh* is due on livestock whether it is naturally grazing or artificially fed.⁽⁴⁾

Issue (2): The scholars of Fiqh agreed that *Zakâh* is neither taken out from the best (most expensive) belongings, out of deference to the right of the wealth owners, nor from the defective ones in the presence of others, out of deference to the right of the poor, unless the payer voluntarily pays it from his best (most expensive) belongings.

This is due to statements quoted from the letter Abû Bakr As-Siddîq regarding the obligatory *Sadaqah* which goes:

(1) “*Fath Al-Qadîr*”, (2: 195).

(2) “*Kashshâf Al-Qinâ’*”, (4: 345).

(3) “*Mughnî Al-Muhtâj*”, (1: 380); “*Tuhfat Al-Muhtâj*”, (3: 237).

(4) “*Ash-Sharh Al-Kabîr*”, (1: 430); “*Ash-Sharh As-Saghîr*”, (1: 592).

“Neither an old nor a defected animal in the eye, nor a male-goat may be taken as (obligatory) *Sadaqah* except if the collector is willing (to take it).”

The prohibition of taking from the best (most expensive) wealth or the defective one is, as aforementioned, consistent with the Legislator’s purpose of making a balance between the right of the rich and that of the poor.

However, the scholars of Fiqh disagreed as to the case in which the *Nisâb* of livestock is to be taken in full from the best (most expensive) or from the defective, is the payer obligated to pay it from his best (most expensive) belongings, and is it sufficient for him to pay it from the defective ones?

The Shafi’ites and Hanbalites permitted to give an old and a defected animal if the *Nisâb* had the same description of what is to be paid. This is to ensure a just compromise between the right of the owner and that of the poor; thus, the payer is not required to give *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor) from his best (most expensive) belongings.⁽¹⁾

The Hanafites and the Malikites hold the view that it is not sufficient for the payer to give a defective animal even if the *Nisâb* is defective in full, and that the payer is not required to give the best (most expensive) animal if the *Nisâb* is, in full, from the best (most expensive); rather, he should follow a moderate approach between the two cases.⁽²⁾

The Malikites permit that the collector takes the defective animal if this is more beneficial for the poor.

As for the Hanafites, pursuant to their permissibility of paying the value, they agree on this if the defective animal is equal to the average value, otherwise he should pay the difference.⁽³⁾

(1) “*Nihâyat Al-Muhtâj*”, (3: 52); “*Tuhfat Al-Muhtâj*”, (3: 224); “*Matâlib Uli An-Nuhâ*” (2: 41); “*Sharh Muntahâ Al-Irâdât*”, (2: 207).

(2) “*Tabyin Al-Haqâ’iq*”, (1: 272); “*Radd Al-Muhtâr*”, (2: 286); “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Disûqî*”, (1: 435); “*Minah Al-Jalîl*”, (2: 12).

(3) “*Tabyin Al-Haqâ’iq*”, (1: 272); “*Radd Al-Muhtâr*”, (2: 286); “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Disûqî*”, (1: 435); “*Minah Al-Jalîl*”, (2: 12); “*Nihâyat Al-Muhtâj*”, (3: 52); “*Tuhfat Al-Muhtâj*”, (3: 224); “*Matâlib Uli An-Nuhâ*”, (2: 41).

Concerning this, Judge `Abdul-Wahhâb cites:

“*Zakâh* is founded on a just compromise between the owners of wealth and the poor. So, if a potential benefit is considered for any of them, a similar benefit should be considered for the other party as well. Yet, it has been established that if the livestock are in full from the best (most expensive) wealth, then *Zakâh* shall not be taken from them out of deference to the right of the wealth owners. Likewise, if the livestock are old in full, then *Zakâh* shall not be taken from them out of deference to the poor.”⁽¹⁾

Issue (3): The majority of scholars including the Hanafites, Malikites and Hanbalites are of the view that *Zakâh* is due on money-changers,⁽²⁾ who use gold and silver for commercial purposes.

They considered both of them as being of the same kind when combing them together (in order to complete the *Nisâb*), but they did not consider exchanging their assets as an interruption of the *Hawl*. This is because if it was assumed that exchanging the assets of gold and silver should interrupt the *Hawl*, then *Zakâh* would not be due on money-changers as stated by the Shafi`ites,⁽³⁾ pursuant to the basic rule that exchanging the types of zakatable wealth with each other interrupts the *Hawl*. However, the majority of scholars considered the unity of purpose thereof stating that *Zakâh* is due on money-changers because their money is used for commercial purposes, and the *Hawl* continues regardless of the kind of money being exchanged, otherwise it will lead to non-obligating *Zakâh* on a growing wealth and obligating it on a non-growing wealth, the matter which the basic rules of Shari'ah require its opposite.⁽⁴⁾

The non-obligation of paying *Zakâh* on money-changers results in depriving the poor of *Zakâh* due from this growing wealth, which contradicts the purpose of justice between the rich and the poor regarding growing wealth.

(1) “*Al-Ishrâf `Alâ Nukat Masâ'il Al-Khilâf*”, verified by Mashhûr, (2: 117).

(2) “*Al-Bahr Ar-Râ'iq*”, (2: 235); “*Radd Al-Muhtâr*”, (2: 285); “*Al-Ishrâf `Alâ Nukat Masâ'il Al-Khilâf*”, (1: 403-404); “*Hâshiyat Ad-Disûqî*”, (1: 438); “*Kashshâf Al-Qinâ`*”, (4: 333); “*Sharh Al-Muntahâ*”, (2: 187).

(3) “*Nihâyat Al-Muhtâj*”, (3: 65); “*Tuhfat Al-Muhtâj*”, (3: 235).

(4) “*Kashshâf Al-Qinâ`*”, (4: 333).

Issue (4): The majority of scholars including the Hanafites, Malikites and Hanbalites are of the view that gold and silver may be combined together in order to complete the *Nisâb*.⁽¹⁾ This is because:

“They, however being of different forms, are of the same kind as to the ruling of *Zakâh*, so that the rate of *Zakâh* payable on them would be identical. Then their payable *Zakâh* would be estimated by one fourth of the one tenth (2,5%) in all cases. The obligation of *Zakâh* on both of them is considered by one meaning, which is the moneyness (i.e. the current price) of their assets.”⁽²⁾

However, they disagreed as to whether this combination is to be by value, according to Abû Hanîfah,⁽³⁾ or by parts, according to his two companions (i.e. Abû Yûsuf and Muḥammad Ibnul-Ḥasan), which is the approved view of the Malikites⁽⁴⁾ and the Hanbalites?⁽⁵⁾

The Shafi’ites⁽⁶⁾ viewed that there is no need to combine any of the gold and silver together. They based their view upon the statement of Al-Ghazâlî:

“The Shari’ah obligated *Zakâh* of dirhams on anyone possessing two hundred dirhams, and *Zakâh* of gold on anyone possessing twenty dinars. But it negated *Zakâh* on any amount below that. When a person does not possess either this or that, then there would be no *Zakâh* due on him, considering that *Zakâh* is obligated on both of them by the asset capacity, not the value.”⁽⁷⁾

The view of the majority of scholars is inconsistent with the concept of the Shari’ah text, because they rendered two things of different *Nisâbs* in weight as one *Nisâb*, and they specified a (new) *Nisâb* which is neither the *Nisâb* of gold nor that of silver out of deference to the right of the poor, as quoted by Ibn Mawdûd Al-Mûsilî in his “*Al-Ikhtiyâr*”:

(1) “*Fath Al-Qadîr*”, (2: 222-223); “*Ash-Sharḥ Al-Kabîr Ma`a Ḥâshiyat Ad-Disûqî*”, (1: 455); “*Nihâyat Al-Muhtâj*”, (3: 85); “*Kashshâf Al-Qinâ`*”, (5: 15).

(2) “*Al-Mabsûṭ*”, As-Sarakhsî, (2: 193).

(3) “*Fath Al-Qadîr*”, (2: 222-223).

(4) “*Ash-Sharḥ Al-Kabîr Ma`a Ḥâshiyat Ad-Disûqî*”, (1: 455).

(5) “*Kashshâf Al-Qinâ`*”, (5: 15).

(6) “*Nihâyat Al-Muhtâj*”, (3: 85).

(7) “*Tahsîn Al-Ma`âkhidh*”, (1: 611).

“(And one of them is combined with the other), because they are united in the meaning of *Mâliyyah* (i.e. moneyness), and *Thamaniyyah* (i.e. value), and *Zakâh* is payable on both of them by their capacity of being standard of moneyness and value, so they are combined together out of deference to the right of the poor.”⁽¹⁾

Ibnul-Humâm argued:

“Rather, *Nisâb* of *Zakâh* in both of them follows from the *Thamaniyyah* (i.e. their capacity of being standard of value), as it is useful for realizing purposes and satisfying needs, regardless of the color or the nature. Further, proving the richness, which is the true reason, is achieved by this (*Thamaniyyah*) and not by anything else, and both of them (i.e. gold and silver) are united in this respect. So. they are considered as being one kind as to the right of *Zakâh*, even if the unity is not considered as to the right of other rulings, such as *Tafâdul* in sale (i.e. the disparity or differential in the volume or weight of a commodity).

Accordingly, the reason in fact is the price estimated at such-and-such if it is in the form of such-and-such, and at such-and-such if it is in the form of such-and-such, unlike riding, which is not the reason of obligation in grazing livestock, since richness is not proven by riding, but by the capacity of its moneyness which involves various benefits filling specific needs, and the greatest of which is the benefit of eating by which the beneficiary is fed and sustained.”⁽²⁾

Ibn Rushd (the grandson) argued that the majority of scholars’ view brings confusion, and it opposes the purpose of clarification and explanation in this respect. Explaining this, he stated:

“The reason for this confusion is their tendency to render two things of different *Nisâbs* in weight as one *Nisâb*, which is completely meaningless. Those intending to combine one of them to the other may innovate a ruling, where there is no ruling, in Shari’ah, because their ruling stipulated a (new) *Nisâb* which is neither the *Nisâb* of gold nor that of

(1) “*Al-Ikhtiyâr Li-Ta`lîl Al-Mukhtâr*”, (1: 110).

(2) “*Fath Al-Qdîr*”, Ibnul-Humâm, (2: 222).

silver. Yet, it is impossible, as established in the specific injunctions of Shari'ah and its command of clarification, that a specific ruling regarding such controversial things could be found, and the Legislator does not say anything about it and thus it arouses such a considerable controversy, while the Legislator (peace and blessings of Allah be upon him) was sent to eliminate controversy.”⁽¹⁾



(1) “*Bidâyat Al-Mujtahid*”, (2: 18).

Chapter One
Fiqh of Estimation in Calculating *Zakâh*:
A Fundamental Study

Introduction



This chapter is regarded as a theoretical basis for the Fiqh of Estimation in calculating *Zakâh*. It sets out, with its treatises, the principles of a scientific theory for Fiqh of Estimation in calculating *Zakâh* as well as the methodology of investigation and approximation in calculating *Zakâh*. The discussion in this chapter is arranged into four treatises as follows:

Treatise One: Concept of estimation in calculating *Zakâh*.

Treatise Two: Permissibility of applying estimation to calculation of *Zakâh*.

Treatise Three: Conditions of applying estimation to calculation of *Zakâh*.

Treatise Four: Impacts of applying estimation to calculation of *Zakâh*.



Treatise One

Concept of Estimation in Calculating *Zakâh*



This treatise revolves around estimation and how it is used in calculating *Zakâh*. It sheds lights on the connotative concept of, as well as terms and concepts relating to estimation under Fiqh fundamentals and rulings and their relevant applications. It goes beyond linguistic meanings of such terms and concepts and digs deeper in their importance and relevance to the subject matter of this study. The treatise is divided into three topics as follows:

Topic (I)

Estimation in the Context of Fiqh and Fundamentals: Concept and Consideration

First: Linguistic definition of the Arabic term “*Taqdîr*” (i.e. Estimation)

“*Taqdîr*” is the infinitive of the Arabic verbs “*Qaddara* (Past tense: i.e. he estimated), *Uqaddiru* (Present tense: i.e. I estimate).” In Arabic, it is said: “*Qadartu* (Past tense: i.e. I estimated) *Ash-Shay’* (i.e. a thing) *Aqdiruhu* and *Aqduruhu* (Present tenses: i.e. I estimate it) *Qadran* (Infinitive: i.e. the act of estimation).”⁽¹⁾

The origin of the Arabic trilateral root “*Qâf, Dâl, Râ’* (i.e. Q D R) [ق د ر]”, according to Ibn Fâris: “...Is a sound origin which indicates the end of a thing

(1) See the Arabic root “*Qâf, Dâl, Râ’* (i.e. Q D R) [ق د ر]” in “*Al-’Ayn*”, (5: 122); “*Maqâyîs Al-Lughah*” (5: 61), “*Al-Misbâh Al-Munîr*”, (P. 401), “*Al-Qâmûs Al-Muhîtt*” (P. 591); “*Tâj Al-’Arûs*” (13: 382).

and its final stage. So, “*Qadr*” is the end of a thing. It is said: “*Qadruhu Kadhâ*”, which means its final stage or end, and so is the meaning of *Qadar*.”⁽¹⁾

The term “*Taqdir*” (i.e. estimation) has different meanings according to the context in which it occurs:

(a) “*Taqdir*” means to measure (or estimate) something based on, in relation to, or using something else (different units of measurement)⁽²⁾

In Arabic it is said: “*Qaddartu Ash-Shay’ Bish-Shay’* and *Qadartuhu Bihi*” which means: “I measured something for another.” This meaning is used exquisitely in a statement said by `Âishah (may Allah be pleased with her):

“So, you may estimate of what age a little girl may listen to amusement.”⁽³⁾

Estimation here implies both determination and evaluation.⁽⁴⁾ The term also means to determine or measure something by number (of units), quantity and weight.⁽⁵⁾

(b) “*Taqdir*” means to consider settling and preparing a matter and to determine something

It is said: “*Qaddartu Amra Kadhâ and Kadhâ*”, which means: “I intended a matter and determined to do it”.

It is also said: “*Qaddartu Li-Amri Kadhâ and Kadhâ*” which means: “I considered and prepared a matter.”⁽⁶⁾ This meaning can be found in the following Quranic Verse:

{“Verily, he thought and plotted. So, let him be cursed! How he plotted! And once more let him be cursed, how he plotted!”}⁽⁷⁾

(1) See the Arabic root “*Qâf, Dâl, Râ’* (i.e. Q D R) [61 :5] [ج د ق] in “*Maqâyis Al-Lughah*”.

(2) “*Tahdhîb Al-Lughah*”, (9: 24)

(3) “*Sahîh Al-Bukhârî*”, Book of Marriage, Chapter: To treat the family in a polite and kind manner, hadith no. (5190); “*Sahîh Muslim*”, Book of Prayer of Two `Ids, hadith no. (892), on the authority of `Urwah Ibnuz-Zubayr from `Âishah (may Allah be pleased with her).

(4) “*Tahdhîb Al-Lughah*”, (9: 24). See the Arabic root “*Qâf, Dâl, Râ’* (i.e. Q D R) [ج د ق]” in “*Al-Qâmûs Al-Muhîr*”, (P. 460); “*Tâj Al-`Arûs*”, (13: 370).

(5) See: “*Mufradât Alfâz Al-Qur`ân*”, (P. 658).

(6) See: “*Tahdhîb Al-Lughah*”, (9: 24).

(7) Surah *Al-Muddaththir* (Shrouded): 18-20.

(c) **“*Taqdîr*” means to prepare, measure, determine, and set due time for a matter**

It is said: “*Qadartuhu* (past tense. i.e. I measured, prepared, determined it), *Aqdiruhu* (present tense. i.e. I measure, prepare determine it), *Qadâratan* (infinitive. i.e. the act of measuring, preparing, determining). This meaning can be found in the following Quranic Verses:

“From Nutfah (male and female semen drops) He created him and then set him in due proportion.”⁽¹⁾;

“...And Allah measures the night and the day...”⁽²⁾;

“We have decreed death to you all...”⁽³⁾; and

“So, We did measure (Arabic: Qadarnâ), and We are the Best to measure (the things).”⁽⁴⁾

The Arabic term “*Qadarnâ*” (i.e. we did measure) in the original Arabic text of the Verse is geminated (i.e. pronounced *Qaddarnâ*)⁽⁵⁾. Also, “*Taqdîr*” refers to cooking. “*Qadîr*” refers to cooked meat and “*Qudâr*” refers to butcher or cook. This is why a cooking pot is called “*Qidr*” in Arabic.⁽⁶⁾

(d) **“*Taqdîr*” means glorification or estimation**

Based on this meaning, the following Quranic Verse is approached and given an interpretation:

“They (the Jews, Quraysh pagans, idolaters, etc.) did not estimate Allah with an estimation due to Him.”⁽⁷⁾

Here, the English translation of the Verse is self-interpreted, suggesting the meaning of glorification mentioned above.

(1) Surah 'Abasa (He Frowned): 19.

(2) Surah *Al-Muzzammil* (Enwrapped): 20.

(3) Surah *Al-Wâqi`ah* (The Event): 60.

(4) Surah *Al-Mursalât* (The Emissaries): 23.

(5) This is the recitation of Nâfi` and Al-Kisâ'i. See: “*Ibrâz Al-Ma`âni*”, by Abû Shâmah, (P. 465); “*Al-Kashf `An Wujûh Al-Qirâât Wa-`Ilalihâ*”, by Makki Ibn Abû Tâlib, (2: 352).

(6) See: “*Maqâyis Al-Lughah*”, (5: 62); “*Al-Qâmûs Al-Muḥîṭ*” (P. 591). Ibn Fâris considered the Arabic term “*Qidr*” as a deviation from the Arabic root “*Q D R*”.

(7) Surah *Al-Ḥajj* (The Pilgrimage): 74.

In this regard, Ibn Fâris says:

“This is true, and the interpretation implies that they (the Jews, *Quraysh* pagans, idolaters, etc.) did not describe Allah with a description due to Him.”⁽¹⁾

(e) “*Taqdir*” implies restriction

It is said: “*Qaddara Allâhu Ar-Rizqa Yuqaddiruhu Taqdiran*”, which means: “Allah gives the provision (for whom He wills) with little (restricted) amount.”

This meaning can be found in the following Quranic Verse:

{“Truly, your Lord enlarges the provision for whom He wills and restricts (for whom He wills).”}⁽²⁾

So, the Arabic term “*Yaqdir*”, translated as “restricts”, means to give with little (restricted) amount.⁽³⁾

The same approach is used to interpret the following Quranic Verse:

{“...and imagined that We shall not punish him (Arabic: *Naqdir*).”}⁽⁴⁾

In this Verse the Arabic term “*Naqdir*”, translated as “punish”, implies restriction,⁽⁵⁾ which can be used as a way for imposing a punishment as suggested by the interpretation of the Verse used in the English translation.

(1) “*Maqâyis Al-Lughah*”, the Arabic root “Z K A”, (3: 17-18).

(2) Surah *Ar-Ra`d* (Thunder): 26.

(3) “*Maqâyis Al-Lughah*”, the Arabic root “Z K A”, (3: 17-18).

(4) Surah *Al-Anbiyâ`* (The Prophets): 87.

(5) See: “*Jâmi` Al-Bayân*”, (16: 378); “*Al-Muharrar Al-Wajiz*”, (4: 114). Regarding the term “*Naqdir*”, it is argued, in another interpretation of the Verse to mean “capable of”. According to this interpretation, there seem to be an implied rhetorical question in the Verse, namely: “Did he think that We are not capable of controlling him?”. In this regard, At-Tabarî says, “The soundest interpretation to me is the one implies that Yûnus (i.e. Jonah) thought that his Lord would not impose restriction on him as a punishment for him getting angry with his Lord. Our opinion, here, is based on the interpretation of the term “*Naqdir*” to imply “to restrict” but not “capable of”. This is because Yûnus can never been accused of disbelieving in Allah Who has chosen him as a Prophet. Yet, describing him having thought that his Lord is not capable of doing something implies unbelieving in Allah’s absolute capability or omnipotence, an attitude which by no means can be argued to have been adopted by a Prophet.”

Here, the original meaning of the term “*Taqdîr*” (i.e. estimation) is to measure something using something else. As for the other meanings, they imply measurement as well as consideration, preparation, arrangement, estimation and restriction. The connotation for these meanings, however, is not a subjective connotation. This is because the term “*Taqdîr*” has the same meaning, which is to measure something using something else, in all cases. Yet, the other meanings of the term, or the verb, are construed from the context itself, which is known in the field of syntax and semantics as *Tadmîn* (i.e. implication).⁽¹⁾

Second: Concept of estimation and its applications to Fiqh and its fundamentals

Fiqh scholars and fundamentalists use the term “*Taqdîr*” (i.e. estimation) in light of its linguistic definition described above. However, the term intended to be defined here is “Shari’ah-Based Estimation”, which has two meanings: the first is “determination” which is commonly used as “Shari’ah Estimates“, while the second relates to the “Shari’ah-Based Estimations Rule”. The two meanings are briefly described in the next two branches as follows:

First branch: “Shari’ah Estimates”

This branch is divided into five issues:

Issue (1): Definition of “Shari’ah Estimates”

“Shari’ah Estimates” have not been assigned specific definition by early Muslim scholars. This may be attributed to the fact that their intended meanings were very clear. Researcher Hâdî Aş-Şirâbî defines “Shari’ah Estimates” as:

(1) According to Academy of the Arabic Language in Cairo, *Tadmîn* (i.e. implication) is to use a verb or whatever term implying the meaning of this verb to suggest the meaning of another verb or whatever term implying the meaning of such a verb. In such a case, the first verb is to be given the same syntax rule of the second verb regarding transitivity and intransitivity.

See: “*Majmû’at Al-Qarârât Al-’Ilmiyyah Fî Khamsîna ‘Âman 1934-1984 A.D.*”, (P. 6). Professor. Ahmad Al-Iskandari, member of Academy of the Arabic Language, clarified the purpose of this resolution, and defended it in “*Majallat Majma’ Al-Lughah Al-’Arabiyyah Bil-Qâhirah*”, (1: 181-199)

“Anything for which the Legislator assigned specific quantity or amount whether by capacity (measure), weight, number (of units), time or length.”⁽¹⁾

Also, researcher ` Ablî Al-Laythî defines them as:

“Anything whose amount is determined by capacity, weight, number (of unit), or length, or whose time or place is determined by the Legislator.”⁽²⁾

The two definitions are derived from Article (132) of “*Majallat Al-Ahkâm Al-`Adliyyah*” (Ottoman Civil Code), which reads as follows:

“Things estimated by quantity are those things the amount of which is determined by any measure of capacity or of weight, or of number, or of length. This includes things measured by capacity, weight, number and length, which are called “The Four Estimates.”⁽³⁾

The definition mentioned in “*Majallat Al-Ahkâm Al-`Adliyyah*” is not intended to cover “Shari’ah-Based *Taqdîr* (i.e. Estimation)”, the subject matter of the research, but rather to define “Estimates” considered in sales and other financial transactions.

“Shari’ah-Based *Taqdîr*” with the meaning of determination which affects the Shari’ah ruling is not limited to estimation using the four mentioned principles of estimation, namely capacity (i.e. measure), weight, number and length only, but it also includes all descriptions set out by the Legislator and upon which the Shari’ah ruling is to be based.

For example, in removal of impurity caused by a dog, estimation is not limited to the number of times an item, made impure by a dog, is to be washed out, which is seven times, but also includes a condition that such item is to be washed out seven times by water and to be rubbed with earth in the eighth time. In this regard, the Prophet (peace and blessings of Allah be upon him) said:

(1) “*Al-Muqaddarât Ash-Shar`iyyah Fî Al-Ahwâl Ash-Shakhsiyyah*”, Hâdî As-Sirâbî, (P. 15).

(2) “*Al-Muqaddarât Ash-Shar`iyyah Fî Al-Fiqh Al-Islâmî*”, `Alî Al-Laythî, (P. 5).

(3) See: “*Durar Al-Hukkâm Sharh Majallat Al-Ahkâm*”, `Alî Haydar, (1: 118); “*Mu`jam Al-Mustalahât Al-Mâliyyah Wal-Iqtisâdiyyah Fî Lughat Al-Fuqahâ*”, Nazîh Hammâd, (P. 435).

“When the dog licks the utensil, wash it seven times, and rub it with earth the eighth time.”⁽¹⁾

By the same token, estimation regarding Prayer goes beyond the number of *Rak`ahs* (i.e. unit of Prayer) to include number of *Tasbîh* (i.e. saying *Subhâna Allah*), the way Prayer is to be performed, and other conditions relating to the place and time of Prayer. In this regard, the Prophet (peace and blessings of Allah be upon him) said:

“Pray as you have seen me praying.”⁽²⁾

Accordingly, “Shari’ah Estimates” can be defined as follows:

“Any conditions and descriptions set out by the Legislator to achieve compliance with Shari’ah obligations.”

In this definition, I say “set by the Legislator” to make a reference to the relation with “Positive Ruling in Fiqh Fundamentals”, which is the subject matter of the following point.

Issue (2): Relation between “Shari’ah Estimates” and science of fundamentals and rulings

According to its early meaning, *Taqdîr* (i.e. estimation) relates to Positive Ruling in the science of Fiqh Fundamentals, including relative conditions, causes and prohibitions. Due to the fact that under such definition, *Taqdîr* relates to Shari’ah discourse, then the original ruling regarding it is that it should be based on what set out by the Legislator.

In this regard, Al-Kâsânî says:

“Estimates are to be specified based on *Tawqîf* (i.e. being bound by a Shari’ah text and not amenable to legal reasoning and discretion) and *Sam`* (i.e. hearing; a Shari’ah ruling transferred directly from a source

(1) “*Sahîh Muslim*”, Book of Purification, hadith no. (280), on the authority of `Abdullâh Ibn Mughaffal (may Allah be pleased with him).

(2) “*Sahîh Al-Bukhârî*”, Book of Accepting Information Given by a Truthful Person, Chapter: Acceptance of the information given by one truthful person in about all matters, hadith no. (7246), on the authority of Mâlik Ibnul-Huwayrith (may Allah be pleased with him).

of Legislation) not on induced rulings. It takes the same ruling as what is heard from the Prophet (peace and blessings of Allah be upon him).”(1)

In the same regard, judge `Abdul-Wahhâb Al-Baghdâdî says:

“Estimates are to be based only on definitive ruling not on *Qiyâs* (i.e. analogical deduction), particularly at the time of the Prophet (peace and blessings of Allah be upon him).”(2)

“This is because Shari'ah includes rulings about measures that cannot be added to.”(3)

Al-Juwaynî says:

“Estimation is to be specified only by definitive ruling.”(4)

Ibn Qudâmah says:

“Estimation is to be based on definitive ruling. It may not be specified based on abstract opinion, especially where such opinion cannot be attributed to a fundamental ruling or verified by means of *Qiyâs*.”(5)

It is worth mention that the wisdom behind “Estimates” is often unknown. This is why any judgement or opinion regarding “Estimates” is to be relied totally on the Shari'ah text. At the end of the Inheritance Verse, Allah, Glorified be He, says:

{“You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.”}(6)

In his “*Al-Bahr Al-Muhîl*”, Abû Hayyân says:

“What has been legislated is the ultimate truth, not what we try to figure out using our minds. If such knowledge is not known for us, then we should not proceed with something we do not know. That is, these

(1) “*Badâ’` As-Sanâ’i*”, (7: 112).

(2) “*Sharh Ar-Risâlah*”, (2: 29).

(3) *Ibid.* (1: 482).

(4) “*Nihâyat Al-Matlab*”, (1: 319).

(5) “*Al-Mughnî*” (3: 109).

(6) Surah *An-Nisâ’* (Women): 11.

are rulings set out by the Legislator, the wisdom or the cause behind them are not known for us. This is why we are required to accept them as laid down by Allah and His Messenger. All “Shari’ah Estimates” are like distribution of inheritance in that the wisdom behind them are not known for us.”⁽¹⁾

However, not all Estimations laid down by Shari’ah text are of unknown cause or wisdom. The Legislator’s intention behind some Estimations set out in Shari’ah text can be figured out with regard to their relation to Shari’ah ruling. Accordingly, a Shari’ah scholar is to consider such Estimations as stated in Shari’ah text and try to find out which are related to Shari’ah ruling and which are not, a methodology referred to, in Fiqh fundamentals, as *Tanqîh Al-Manât* (i.e. rectifying the underlying cause), which means: “to study the description stated in the text so as to define the cause where there is no specific one mentioned, and then eliminate any other description that has nothing to do with the cause.”⁽²⁾

Scholars of Fiqh may differ with regard to considering these Estimations in the underlying cause of Shari’ah ruling based on their difference in refining such underlying cause. An example of this difference can be found in the issue of *Zakâh* on camels mentioned in the letter of Abû Bakr (may Allah be pleased with him):

“Regarding the one who had to pay one *Bint Makhâd* (i.e. a she-camel in its second year) as *Zakâh*, and he did not have it but had got *Bint Labûn* (i.e. a she-camel in its third year), then it could be accepted from him as *Zakâh*, and the collector of *Zakâh* would return him 20 dirhams or two sheep. But, if the *Zakâh* payer had not a *Bint Makhâd*, but he had an *Ibn Labûn* (i.e. a he-camel in its third year), then it could be accepted as his *Zakâh*, and he would not be paid anything.”⁽³⁾

Scholars of Fiqh differ in taking into account the estimation mentioned in Abû Bakr’s letter where a she-camel with an age satisfying the requirements

(1) “*Al-Bahr Al-Muhîr*”, (6: 136).

(2) “*Mu`jam Mustalahât Usûl Al-Fiqh*”, Quṭb Sânu, (P. 150); “*Al-Bahr Al-Muhîr*”, (7: 322); “*Sharḥ Al-Mahallî `Alâ Jam` Al-Jawâmi` Ma`a Hâshiyat Al-`Attâr*”, (2: 337).

(3) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: *Zakâh* may be paid in kind (and not in cash), hadith no. (1448), on the authority of Anas Ibn Mâlik (may Allah be pleased with him).

of *Zakâh* is not available. The Hanafites are of the opinion that the value is to be taken into account in the determination of the due age (of a she-camel to be paid as *Zakâh*). Accordingly, they view that an *Ibn Labûn* (i.e. a he-camel in its third year) may be paid as *Zakâh* in lieu of a *Bint Makhâd* (i.e. a she-camel in its second year) if both are equal in value. Also, they see that it is permissible to pay the value of camels or other items to be paid as *Zakâh*.⁽¹⁾ Abû Bakr's letter states that an *Ibn Labûn* may be paid as *Zakâh* instead of a *Bint Makhâd*, where the latter is not available, because the *Ibn Labûn* was, at that time, of the same value of the *Bint Makhâd*. The proof of that is when the values of *Bint Makhâd* and *Bint Labûn* differed, Abû Bakr ordered that a *Bint Labûn* shall be paid provided that the difference of value, one female sheep or twenty dirhams, is to be returned (to the *Zakâh* payer).⁽²⁾

The Malikites, however, are of the opinion that an *Ibn Labûn* (i.e. a he-camel in its third year) may not be paid as *Zakâh* instead of a *Bint Makhâd* (i.e. a she-camel in its second year) unless the latter is not available,⁽³⁾ whether both are of an equal value or not. Their opinion is based on the argument that an *Ibn Labûn* can be regarded as an equivalent to a *Bint Makhâd*, as the first is older and male while the latter is younger and female. Here, the privilege of age is compensated by the privilege of femineity which is, in case of cattle, superior to masculinity due to milk production and offspring.⁽⁴⁾ In other cases where a *Bint Labûn* (i.e. a she-camel in its third year), a *Bint Makhâd* or a *Hiqqah* (i.e. a she-camel in its fourth year) is not available (at the disposal of the *Zakâh* payer), the Malikites view that it must be bought (and paid as *Zakâh*). Here, the Malikites do not follow the rule of *Jubrân* (i.e. making up for the difference in ages of camels) stated in the letter of Abû Baker (may Allah be pleased with him), because Imam Mâlik, instead, founds his opinion on the letter of `Umar (may Allah be pleased with him) which, according to Ibn Taymiyyah, provides for the best (of the camels to be paid as *Zakâh*) and does not provide for replacement.

(1) See: "Fath Al-Qadîr" (2: 189); "Tabyîn Al-Haqâ'iq", (1: 270).

(2) "Sharh Mukhtasar At-Tahâwi", (2: 241).

(3) See: "Mawâhib Al-Jalîl" (2: 257); "Ash-Sharh As-Saghîr Ma`a Bulghat As-Sâlik", (1: 595).

(4) "Al-Muntaqâ", Al-Bâji, (2: 127).

Ibn Taymiyyah says:

“Mâlik does not follow this opinion because (in establishing his opinion) he adopts Ibn `Umar’s letter which does not include the addition stated in Abû Bakr’s letter. This is the practice of scholars.”⁽¹⁾

The hadith narrated by Anas (may Allah be pleased with him) in the Book of *Zakâh*, though existing in “*Sahîh Al-Bukhârî*”, is argued. This hadith is considered defective by Imam Ibn Ma`în, Ad-Dâraquṭnî and other scholars specialized in hadith defects.⁽²⁾

(1) “*Majmû` Al-Fatâwâ*”, (25: 33).

(2) Al-Bukhârî related Abû Bakr’s letter in ten occurrences in his “*Sahîh Al-Bukhârî*” as follows: (1448), (1450), (1451), (1453), (1454), (1455), (2487), (3106), and (6955), Al-Bukhârî related it on the authority of Muḥammad Ibn `Abdullâh Ibnul-Muthannâ Al-Anṣârî, who said: Thumâmah Ibn `Abdullâh Ibn Anas narrated to me that Anas narrated to him that Abû Bakr (may Allah be pleased with him) wrote to him this letter when he sent him to (collect *Zakâh* from) *Al-Baḥrayn*. Also, it has been related from Muḥammad Ibn `Abdullâh Ibnul-Muthannâ with a similar *Isnâd* (i.e. chain of transmissions) in “*Jâmi` At-Tirmidhî*”, hadith no. (1747) and (1748); “*Sunan Ibn Mâjah*”, hadith no. (1800); “*Sahîh Ibn Khuzaymah*”, hadith no. (2661); “*Sahîh Ibn Hibbân*”, hadith no. (3266); “*Sunan Al-Bayhaqî*”, (4: 85); “*Sunan Ad-Dâraquṭnî*”, hadith no. (1948). At-Tirmidhî said: “It is a *Ḥasan* (i.e. good), *Sahîh* (i.e. authentic) hadith.

- Also, it has been related in “*Musnad Ahmad*”, (1: 11); “*Sunan Abû Dâwûd*”, hadith no. (2447); “*Sunan Ad-Dâraquṭnî*”, hadith no. (1985); “*Al-Mustadrak*”, Al-Ḥâkim, (1: 390); “*Sunan Al-Bayhaqî*”, (4: 86), all of them on the authority of Hammâd Ibn Salamah who said: “This letter was narrated to me by Thumâmah Ibn `Abdullâh Ibn Anas from Anas (may Allah be pleased with him). Ibn Ma`în, Ad-Dâraquṭnî, and At-Tahâwî deemed this hadith as being a *Da`if* (i.e. weak) hadith. Regarding the narration of Khâlid Ad-Daqqâq, Imam Yahyâ Ibn Ma`în said: “There is no hadith with continuous *Isnâd* (i.e. chain of transmission) regarding *Zakâh*.” See Yahyâ Ibn Ma`în’s statements in “*Min Kalâm Yahyâ Ibn Ma`în Fî Ar-Rijâl*”, (P. 39), Paragraph (43).

- In the Book of “*At-Tatabbu`*”, (P. 251), Ad-Dâraquṭnî says: “Al-Bukhârî related the hadith of *Zakâh* from Al-Anṣârî from his father from Thumâmah from Anas; however, Thumâmah did not hear this hadith from Anas neither did `Abdullâh Ibnul-Muthannâ heard it from his uncle Thumâmah. `Alî Ibnul-Madîni said: “`Abduṣ-Ṣamad narrated to me (saying): `Abdullâh Ibnul-Muthannâ narrated to me, saying: Thumâmah reported to me this letter. He said: And `Affân narrated to us: Hammâd narrated to us, saying: “I reported a similar letter from Anas by Thumâmah.” Also, Hammâd Ibn Zayd narrated from Ayyûb (that he said): “Thumâmah reported to me a letter, and he mentioned this letter.”

- Whoever deemed the hadith as being a defective hadith gave preponderance to the *Isnâd* including Hammâd Ibn Salamah. In his “*Al-Mustadrak*”, Al-Ḥâkim says: “This =

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- = is a *Sahîh* (i.e. authentic) hadith under Muslim's conditions. they (i.e. Al-Bukhârî and Muslim) did not relate it like that. Rather, it is only Al-Bukhârî who related it using another *Isnâd* from Thumâmah Ibn `Abdullâh. The hadith narrated by Hammâd Ibn Salamah is more authentic and complete than the hadith narrated by Al-Ansâri." This is why the narration (of the hadith) related by Al-Bukhârî is considered defective based on two reasons as follows:
- **First:** Thumâmah Ibn `Abdullâh Ibn Anas did not hear the hadith from Anas, and `Abdullâh Ibnul-Muthannâ did not hear it from Thumâmah Ibn `Abdullâh Ibn Anas. Accordingly, the declaration of `Abdullâh Ibnul-Muthannâ that Thumâmah reported (directly) to him this letter is not considerable because it is only `Abdullâh Ibnul-Muthannâ who declared being directly reported. In his "*Sharh Ma`âni Al-Âthâr*", (3: 377), At-Tahâwî says: "The hadith narrated by Thumâmah Ibn `Abdullâh Ibn Anas is narrated as a *Muttasil* (i.e. uninterrupted) hadith only by `Abdullâh Ibnul-Muthannâ, and we are not aware of any one else who narrated it as being *Muttasil*. Yet, you do not consider `Abdullâh Ibnul-Muthannâ as a trustworthy." Ibn Hajar did not consider this point as having effect on the authenticity of the hadith. This because it is narrated by means of *Munâwalah* (i.e. handing over), which is an accepted method of narration by hadith scholars, especially that the narration of this letter is sequenced by the Basrites from the family of Anas. This makes it more necessary to protect, adjust and transfer this letter. It is stated in "*Musnad Ishâq Ibn Râhawayh*": This is reported to us by An-Nadr Ibn Shamîl: Hammâd Ibn Salamah narrated to us (saying): "Thumâmah reported this letter to us from Anas from the Prophet (peace and blessings of Allah be upon him), and he mentioned the letter. `Abdus-Samad is not more reliable than Muḥammad Ibn `Abdullâh Al-Ansâri and I do not know about the hadith narrated by him from his father. See: "*Hady As-Sâri*", (P. 357).
 - In addition, there are different opinions regarding the reliability of `Abdullâh Ibnul-Muthannâ. That is, Abû Hâtîm said: "He is a Sheikh"; and Abû Zur`ah said: "His hadiths are valid". Ibn Ma`în, in a narration, said: "He is not reliable", while in another narration, he said: "He is an accepted narrator". He, however, is considered as a trustworthy narrator by Al-`Ijlî and At-Tirmidhî. An-Nasâ`î said: "He is not reliable". Al-`Uqaylî said: "He is not to be considered as reliable with regard to most of the hadiths he narrated. As-Sâjî said: "He is a weak narrator as the hadiths narrated by him include *Munkar* (i.e. denounced) hadiths, while his son Muḥammad was trustworthy and regarded as one of the reliable narrators." In the book of Al-`Uqaylî, it is said: "He is not to be regarded as reliable with regard to most of the hadiths he narrated. Abû Salamah said: "He is weak and narrates *Munkar* (i.e. denounced) hadiths. See: "*Tahdhîb Al-Kamâl*", (16: 25); "*Ikmâl Tahdhîb Al-Kamâl*", (8: 162); "*Mizân Al-I`tidâl*", (2: 499).
 - Scholars who deemed the hadith as being authentic, such as Imam Al-Bukhârî and other Imams who agree with him including Imam At-Trimidhî, Ibn Khuzaymah, Ibn Hibbân and Al-Bayhaqî, give preponderance to the narration of Al-Muthannâ. This is why, in his "*Ma`rifat As-Sunan Wal-Âthâr*", (3: 217), Al-Bayhaqî says: "As for the scholars who narrate and memorize hadiths, we do not know anyone who exerted the same efforts as =

This is why Imam Mâlik did not rely on it, and thus he did not adopt *Jubrân* (i.e. making up for the difference in ages of camels) included in this letter but not included in the letter of `Umar Ibnul-Khattâb (may Allah be pleased with him). This is the real cause behind Malik's attitude but not the argument that the letter was not reported to him as suggested by Ibn Rushd, the grandson.⁽¹⁾

The Shafiites and the Hanbalites, however, view that an *Ibn Labûn* (i.e. a he-camel in its third year) may be used instead of a *Bint Makhâd* (i.e. a she-camel in its second year), if the latter is not available, with a *Hiqqah* (i.e. a she-camel in its fourth year) being worthier to be used instead without any *Jubrân* (i.e. making up for the difference in ages of camels). However, a *Hiqqah* may

= Muḥammad Ibn Isamâ`il Al-Bukhârî (may Allah confer mercy upon him) with regard to criticizing and examining the narrators of Hadith. This is due to his high position as Imam and his incomparable knowledge of narrators and defects of hadiths. In addition, he depends, regarding this issue, on the hadith narrated by `Abdullâh Ibnul-Muthannâ Al-Anṣârî from Thumâmah Ibn Anas, and therefore narrates it in his "*Sahîh Al-Bukhârî*" from Muḥammad Ibn `Abdullâh Ibnul-Muthannâ from his father due to the availability of many evidences approving authenticity of such a hadith." In his "*Al-Muhallâ*" (6: 20), Ibn Ḥazm says: "This hadith is of the utmost authenticity and Abû Bakr As-Siddîq acted upon it in the presence of all companions and neither of them is known to disagree with him in this regard."

- Acceptance and application of this letter by scholars are clear indication of its authenticity despite the fact that its *Isnâds* (i.e. chains of transmission) have been the subject of wide criticism. However, this should not contradict the fact that any part of such letters may not be applied to or acted upon if found, by a *Mujtahid* (i.e. a scholar practicing legal reasoning and discretion), to be in contradiction with another text (or ruling) worthier to be applied or adopted. This is a common practice followed by scholars in this regard. The same applied to `Amr Ibn Ḥazm's letter about which Imam Aḥmad says: "I have no doubt that the Prophet (peace and blessings of Allah be upon him) has dictated this letter." Yet, scholars do not adopt some of its content because the letter's *Isnâds* (not the letter itself) were the subject of criticism. However, scholars still depend upon this letter in deciding some relevant issues nowadays. After all, Allah knows best.

(1) In his "*Bidâyat Al-Mujtahid*", (2: 89-90), Ibn Rushd says: "As for cases where a camel with higher or lower age than that required for due *Zakâh* is only available, Mâlik says: "A camel of the age required is to be bought (and then paid as *Zakâh*)." Other scholars, however, are of the opinion that the available camel may be paid (as *Zakâh*) provided that the *Zakâh* payer is to pay extra twenty dirhams or two ewes if the age is lower. If the age is higher, the *Zakâh* payer is to be paid twenty dirhams or two ewes. This is established in the book of *Zakâh*, and in no way can be argued. Here, it can be said that Mâlik may not have been informed about this hadith."

not be used instead of *Bint Labûn* (i.e. a she-camel in its third year) because it is not specifically stated in the text. They adopt the *Jubrân* stated in the letter of Abû Bakr (may Allah be pleased him) regarding a *Bint Labûn* and a *Bint Makhâd*, etc., arguing that the aim thereof is to avoid any disagreement as to the value and thus it should be adopted. They also adopt double *Jubrân* when making up for the difference between the required age and a higher age, as is the case where a *Bint Labûn* is to be paid while only a *Hiqqah* is available, and vice versa. They, however, limit the application of *Jubrân* to camels only.⁽¹⁾

Ibn Hazm agrees with the Shafiites and the Hanbalites that the *Jubrân* included in Abû Bakr's letter is estimated by Shari'ah. But he disagrees with them as to applying it to the difference between an age and higher age based on the argument that *Qiyâs* (i.e. analogical deduction) is not to be applied in this regard.⁽²⁾

Faqihs may practice *Ijtihâd* (i.e. legal reasoning and discretion) in determining the "Shari'ah Estimates" based on *Tahqîq Al-Manât* (i.e. ascertaining the underlying cause), which means: To specify the subject of the Shari'ah ruling after making sure that there no material difference between Shari'ah ruling and its subject.

In "*Al-Mustasfâ*", Imam Al-Ghazâlî argues that determining "Shari'ah Estimates" is a type of *Tahqîq Al-Manât*. He says:

"There is not disagreement among Muslim scholars regarding this. It is a type of *Ijtihâd*... and a requirement for every law."⁽³⁾

An example of this in *Zakâh* is estimating the richness limit as possessing a *Nisâb* (i.e. minimum amount determining a person's zakatability) of *Zakâh*, the limit of poverty as not possessing half of one's needs, and the limit of neediness as barely earning sufficient means to support one's needs, as well as determining the amount of *Zakâh* to be given to the poor. All these estimations and other estimations are not specifically stated in a Shari'ah text which can be referred to and are thus subjects of disagreement between scholar. They

(1) See: "*Asnâ Al-Matâlib*", (1: 341-342); "*Tuhfat Al-Muhtâj*", (3: 216); "*Sharh Al-Muntahâ*", (2: 202-203); and "*Matâlib Uli An-Nuhâ*", (2: 35-36).

(2) See: "*Al-Muhallâ*", (4: 108).

(3) "*Al-Mustasfâ*", (2: 239).

are regarded as a type of *Ijtihād* as to ascertaining the underlying cause of a Shari'ah ruling.

Issue (3): Divisions of “Shari'ah Estimates”

“Shari'ah Estimates” are divided or classified based on some considerations, the most important of which are as follows:

(a) Classifying “Estimates” based on determination and approximation

“Shari'ah Estimates” are classified, with regard to determination and approximation, into two categories as follows:

First: Where estimation is aimed at determination. In this case, determination is to be strictly adhered to without any increase or decrease. An example is the determination made by Allah, the Almighty, of the amounts of inheritance. In this regard, Allah, Glorified be He, says:

{“And whosoever disobeys Allah and His Messenger (Muhammad), and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment.”}⁽¹⁾

Another example is the estimation of what to be paid as *Zakâh*.

Second: Where estimation is aimed at approximation. An example is the hadith in which the Prophet (peace and blessings of Allah be upon him) says:

“No woman is allowed to travel for two days duration unless accompanied by a Mahram (i.e. unmarriageable person) or her husband.”⁽²⁾

Another example is the hadith in which he (peace and blessings of Allah be upon him) says:

“If water is enough to fill two pots (Qullah), it will not carry impurity.”⁽³⁾

(1) Surah *An-Nisâ'* (Women): 14.

(2) “*Sahîh Al-Bukhârî*”, Book of *Hajj* (i.e. Pilgrimage), Chapter: Pilgrimage of women, hadith no. (1864); “*Sahîh Muslim*”, Book of *Hajj* (i.e. Pilgrimage), hadith no. (827). The wording of this hadith belongs to Muslim, on the authority of Abû Sa`id Al-Khudrî (may Allah be pleased with him).

(3) “*Sunnan Abû Dâwûd*”, Book of Purification, Chapter: Impure Water, hadith no. (63); “*Jâmi` At-Tirmidhî*”, Book of Purification, hadith no. (67); “*Al-Mujtabâ*”, An-Nasâ`î, Book of Purification, Chapter: Timing for Water, (2: 35); “*Musnad Ahmad*”, (2: 12); =

Some “Estimates” are agreed upon to be aimed at either determination or approximation while other “Estimates” are disagreed upon, as is the case with the determination of the *Nisâb* (i.e. minimum amount determining a person’s zakatability) of gold and silver in *Zakâh* or determination of *Hawl* (i.e. *Zakâh* year) in *Zakâh*, where scholars disagree regarding whether they are aimed at determination or approximation.

In this regard, Imam An-Nawawî (may Allah be pleased with him) says:

“It is known that “Estimates” are of three types: One type is unanimously agreed upon to be aimed at determination. The second type is unanimously agreed upon to be aimed at approximation. The third type is disagreed upon...

As for “Estimates” agreed upon to be aimed at determination, there are many examples, including estimating the period for which wiping the inner footwear remains valid as one day and one night in case of residency and as three days and three nights in case of travel, estimating the number of stones used for *Istinjâ’* (i.e. cleansing the private parts after urination or defecation) as three stones, and estimating the number of times a pot is to be washed out to remove the impurity of a dog as seven times. This is because such “Estimates” are determined by Shari’ah text and there is a wisdom behind their estimation, which explains why they cannot be disregarded.

The reason for disagreement with regard to other “Estimates” is that they determined by the *Ijtihâd* (i.e. legal reasoning and discretion)

= Ibn Khuzaymah deemed it as *Sahîh* (i.e. authentic) in his “*Sahîh Ibn Khuzaymah*”, hadith no. (92); “*Sahîh Ibn Hibbân*”, hadith no. (1249); “*Al-Mustadrak*”, Al-Hâkim, (1: 224), and others from the hadith narrated by Ibn ‘Umar (may Allah be pleased with him). The hadith is subject to disagreement regarding its authenticity and it is considered as defective hadith by some scholars. Many scholars of Hadith, however, gave preponderance to the acceptance and application of the hadith. In his “*Ma’âlim As-Sunan*”, (1: 36), Al-Khattâbî (may Allah be pleased with him) says: “A more than sufficient evidence for the authenticity of this hadith is that it is deemed as a *Sahîh* (i.e. authentic) and reliable hadith by many prominent scholars of Hadith, who are the figures to be followed, and the base to be relied on in this regard.”

For an analysis regarding the hadith’s *Isnâd* (i.e. chain of transmission), refer to: “*Mawsû‘at Ahkâm At-Tahârah*”, Ad-Dubayn, (1: 342).

not by explicit Shari'ah texts, and this is why they are subject to the rule of approximation.⁽¹⁾"

(b) Classifying "Estimates" based on deduction

"Shari'ah Estimates" are classified based on deduction as follows:

First: "Shari'ah Estimates" whose proofs are based on texts from the Qur'an, Sunnah or other texts regard as Shari'ah text. This is the principal rule for "Shari'ah Estimates", as explained above.

As for other texts regraded as Shari'ah text, they are such texts transmitted from the Prophet's companions with regard to "Estimates" as a means to explain Shari'ah rulings. Here, such texts are to be adopted and may not be disagreed upon or challenged by next generations. Here, the rule of *Marfû`* text (i.e. text ascribed to the Prophet) shall apply. An example, is estimating the days for sacrifice as three days. In this regard, Al-Jassâs says:

"Also, estimation of the days of sacrifice is based on *Tawqîf* (i.e. being bound by a Shari'ah text and not amenable to legal reasoning and discretion) or agreement; as *Qiyâs* (i.e. analogical deduction) cannot be used to determine the same. Estimation here is based on *Tawqîf* since the reports of the companions determined this period as three days. The same applies to estimation of the period of menses, estimation of dowry, estimation of *Tashahhud* as a prerequisite for the completion of Prayer obligation, and other "Estimates" whose proofs are based on *Tawqîf* or agreement. In this case, if an estimate is adopted by any of the companions, then its proof shall be established and this is to be considered by means of *Tawqîf*."⁽²⁾

A distinction should be made between "Shari'ah Estimates" reported by the companions subject to the rule of *Marfû`* text (i.e. text ascribed to the Prophet), and other "Estimates" aimed at approximation and clarification of Shari'ah rulings, as stated in the Quranic Verse:

(1) "*Ru'ûs Al-Masâ'il*", An-Nawawî, (pp. 117-119); "*Al-Majmû`*", (1: 176); "*Al-Manthûr*", Az-Zarkashî, (3: 194); "*Al-Qawâ'id*", Al-Hisnî, (3: 73); "*Al-Ashbâh Wan-Nazâ'ir*", As-Suyûtî, (P. 393).

(2) "*Ahkâm Al-Qur'ân*", (5: 68); "*Al-Mughnî*", (5: 300).

{“It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners.”}⁽¹⁾

That is, some companions made their estimations regarding bequest. `Alî (may Allah be pleased with him) estimated that the minimum limit for which a bequest is to be made is 4000 dirhams (or above), while Ibn `Abbâs (may Allah be pleased with him) estimated such a limit as 8000 dirhams.

In addition, when it was reported to `Â'ishah (may Allah be pleased with her) that a woman desiring to make a bequest was prevented by her family based on their argument that she has children and possesses a little amount of money, she asked: “How many children does she have?” They replied: “Four”. She asked: “How much money does she have?” They replied: “3000”. `Â'ishah said: “This is not enough amount of money”, which indicates that she accepted their argument as being reasonable.

In this regard, Al-Jassâs says:

“It is known by tradition that a person leaving only one dirham (as inheritance) cannot be said to have left a wealth. Yet, since the concept of wealth is to be determined based on tradition and its estimation is based on *Ijtihâd* (i.e. legal reasoning and discretion) and prevailing view, taking into account the fact that little amount of money is not to be subject to the definition of wealth while great amount of money is to be subject to such a definition, then the estimation of wealth had to be based on *Ijtihâd* and prevailing view, in addition to their acquaintance with the Prophetic Sunnah.”⁽²⁾

Second: “Shari'ah Estimates” deduced by means of *Qiyâs*: Schools of Fiqh are of different opinions regarding this division, as there are two views as follows:

View (1): *Qiyâs* (i.e. analogical deduction) is not to be applied to “Shari'ah Estimates”, which is the view adopted by the Hanafites based on the

(1) Surah *Al-Baqarah* (The Cow): 180.

(2) “*Ahkâm Al-Qur'ân*”, (1: 202).

argument that the real meaning or wisdom behind “Shari’ah Estimates” is not recognizable.⁽¹⁾

View (2): *Qiyâs* may be applied to “Shari’ah Estimates”, which the view adopted by the majority of scholars, including the Malikites, the Shafiites and the Hanbalites based on the argument that “Shari’ah Estimates” are in themselves Shari’ah rulings and therefor can be subjected to the rule of *Qiyâs* if the meanings or the wisdoms behind them are recognizable.⁽²⁾ This is because the rule of *Qiyâs* is generally proved to be considerable in Shari’ah. Allah, Glorified be He, says:

“Then take admonition, O you with eyes (to see).”⁽³⁾

An example of this is when the scholars of Fiqh estimate “much quantity” to be one third based on the hadith in which the Prophet (peace and blessings of Allah be upon him) says:

“Yes, one third, yet even one third is too much (quantity).”⁽⁴⁾

As argued by Al-Fakhr Ar-Râzî:

“The cause of disagreement is attributable to main question: Are there in Shari’ah some known issues to which *Qiyâs* (i.e. legal reasoning and discretion) may not be applied? Does each issue need to be investigated to know whether *Qiyâs* can or cannot be applied to it? If they argue that the cause behind such issues cannot be determined, then this is to be approved by investigating each of these issues. Hence, if the cause of an issue is found, then *Qiyâs* may be applied, but if otherwise, it may not. However, this is not limited to these issues only; rather, each issue the cause behind which is not recognizable is not to be subjected to *Qiyâs*.”⁽⁵⁾

(1) See: “*Al-Fuṣūl*”, Al-Jassâs, (4: 105-106).

(2) See: “*Sharḥ Tanqīḥ Al-Fuṣūl*”, (P. 58); “*Sharḥ Al-Mahallī ‘Alā Jam‘ Al-Jawāmi‘ Ma‘a Ḥāshiyat Al-‘Attār*”, (2: 243-244); “*Al-Baḥr Al-Muḥīṭ*”, (5: 51); “*Sharḥ Mukhtasar Ar-Rawḍah*”, (3: 451).

(3) Surah *Al-Ḥaṣhr* (The Mustering): 2.

(4) “*Saḥīḥ Al-Bukhārī*”, Book of Wills, Chapter: To leave inheritors wealthy than begging others, hadith no. (2742); “*Saḥīḥ Muslim*”, Book of Wills, hadith no. (1228), on the authority of Sa‘d Ibn Abū Waqqâs (may Allah be pleased with him).

(5) “*Al-Maḥsūl*”, (5: 349-350).

Imam Ash-Shâfi`î disagreed with the Hanafites regarding some issues in which they applied estimation to “Estimates” by means of *Qiyâs* out of *Istihsân* (i.e. Shari'ah approbation). They considered it as being a deduction made through negating the difference, and accordingly judging such issues cannot be based on *Qiyâs*. This is explained in details in the books of Fiqh Fundamentals.⁽¹⁾

Issue (4): “Shari'ah Estimates” in Zakâh

Zakâh is a matter in which the meaning of “estimation” appears clearly. In this regard, An-Nawawî says:

“*Zakâh* is classified as obligatory because it is estimated and because it requires that the amount due be estimated. This is why the amount paid as *Zakâh* is called an obligation or an imposed share.”⁽²⁾

Obligation or imposed share suggests the meaning of assignment and distribution.⁽³⁾

In this regard, Al-Muwaffaq Ibn Qudâmah says:

“The statement of As-Siddîq (may Allah be pleased with him): ‘Which Allah's Messenger (peace and blessings of Allah be upon him) has imposed⁽⁴⁾’ means that “which he has estimated.” *Taqdîr* (i.e. estimation) is called an imposed share.”⁽⁵⁾

Second branch: “Shari'ah-Based Estimations Rule”

This branch is divided into four issues as follows:

Issue (1): Concept of “Shari'ah-Based Estimations Rule”

This rule has been given various names by scholars. They are, however, close in meaning and do not have any significant difference. In addition

(1) See: “*Al-Bahr Al-Muhîṭ*”, (7: 70).

(2) “*Al-Majmû`*”, (5: 296).

(3) See the Arabic root “*Fâ', Râ', Dâd* (i.e. *FRD*) [ف ر ض] in “*Al-Qâmûs Al-Muhîṭ*”, (P. 838); “*Al-Misbâh Al-Munîr*”, (P. 381).

(4) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: The individual property of different people should neither be gathered together nor the joint property should be divided, in assessing the *Zakâh*, hadith no. (1450), on the authority of Anas (may Allah be pleased with him).

(5) “*Al-Mughnî*”, (4: 11).

to its above-mentioned name, some scholars call it “Shari’ah Estimation”, “Estimated Rulings”, and “Two-Estimates Rule”.⁽¹⁾

The common definition of “Shari’ah-Based Estimation” is:

“To give an existing matter the ruling of nonexistent, and to give a nonexistent matter the ruling of existent.”⁽²⁾

Some scholars use the term “apply” or “make” instead of “give” despite the little difference between the terms. However, it is preferable to use the term “apply” in the definition, as it implies a wider meaning than “give”. Also, the term “apply” covers rulings, descriptions and conditions.⁽³⁾

It is worth mentioning that the terms “existent” and “nonexistent” are not limited to tangible aspects of the subject matter of estimation, but rather include the existence and nonexistence of rulings, attributes and conditions. This is why the following is added to the definition: “and to give the advanced the ruling of the later, and to give the later the ruling of the advanced”⁽⁴⁾, or “to give the attributes and effects the ruling of the material objects.”⁽⁵⁾

Ash-Shîshâwî has limited estimation to six types, which are: approximating the distant, distancing the close, deeming the nonexistent as being existent, and deeming the existent as being nonexistent, unifying the multiple, and multiplying the united.⁽⁶⁾ These types, although not inclusive to all types of estimation, are included in giving the existent the ruling of nonexistent,

(1) See: “*Al-Qawâ`id Waḍ-Ḍawâbiḥ Al-Fiqhiyyah Al-Qarâfiyyah Zumrat At-Tamlîkât Al-Mâliyyah*”, `Âdil Qūtah, (1: 290).

(2) See: “*Qawâ`id Al-Aḥkâm*”, Al-`Izz Ibn `Abdus-Salâm, (2: 205); “*Al-Fawâ`id Fî Ikhtisâr Al-Maqâsid*”, (P. 134), “*Al-Furûq*”, Al-Qarâfi, (1: 71, 72, and 161), (2: 26-29 and 200-202), (3: 189 and 234-236); “*Al-Umniyyah Fî Idrâk An-Niyyah*”, (P. 213); “*Al-Qawâ`id*”, Al-Maqqarî, (2: 501); “*Al-Majmû` Al-Mudhhab*”, (1: 29); “*Al-Bahr Al-Muhîṭ*”, Az-Zarkashî, (1: 127 and 311); “*Al-Qawâ`id*”, Al-Hisnî, (1: 200); “*At-Tahbîr Sharḥ At-Tahrîr*”, (7: 3600); “*Sharḥ Al-Kawkab Al-Munîr*”, (4: 312).

(3) Regarding comparison between scholars’ definition of the “Shari’ah-Based Estimations”, refer to: “*At-Taqdîrât Ash-Shar`iyyah*”, Dr. Muslim Ad-Dusari, (pp. 26-41); “*Qawâ`id At-Taqdîrât*”, Yûsuf Ash-Shihhî, (pp. 28-32).

(4) “*Qawâ`id Al-Aḥkâm*”, Al-`Izz Ibn `Abdus-Salâm, (2: 208).

(5) Ibid.

(6) “*Raf` An-Niqâb `An Tanqîḥ Ash-Shihâb*”, (2: 86).

and giving the nonexistent the ruling of existent, so its enumeration is for clarification and representation.⁽¹⁾

This definition of estimation is a definition for the ruling, and it is one of the types of definition considered by the scholars of Fiqh, and it does not agree with the definition of logicians. Thus, Dr. Muslim Ad-Dusarî defines *Taqdîr* (i.e. estimation) as:

“To give a thing, in case of existence or nonexistence, a condition or a ruling in contrast to its reality based on a considerable Shari'ah aspect.”⁽²⁾

The most likely to be said in its definition is: “A Shari'ah ruling to deal with the subject matter of the ruling in a manner contradictory to its reality, in rulings, attributes or conditions.”

“Shari'ah-Based Estimation” is regarded as a Shari'ah ruling like all other rulings reached by applying *Ijtihâd* (i.e. legal reasoning and discretion) to the Shari'ah texts, and thus the phrase “based on considerable Shari'ah aspect” can be disregarded.

Issue (2): Status and authority of “Shari'ah-Based Estimations Rule”

“Shari'ah-Based Estimations Rule” has been approached by many scholars, headed by Al-`Izz Ibn `Abdus-Salâm, in his book “*Qawâ`id Al-Ahkâm*”, then his pupil Al-Qarâfi, who simplified the opinions about this rule in a number of his books, mainly “*Al-Furûq*”, “*Al-Umniyyah Fi Idrâk An-Niyyah*”, “*Adh-Dhakhîrah*”, “*Nafâ'is Al-Uṣûl*”, “*Sharḥ Tanqîḥ Al-Fuṣûl*” and “*Al-Ihkâm Fî Tamyîz Al-Fatâwâ Wal-Ahkâm*.”⁽³⁾

After Al-Qarâfi, the Malikites gave much attention to the “Shari'ah-Based Estimations Rule” in detail, which is, as quoted in “*Sharḥ Al-Manhaj Al-Muntakhab*”: “A fundamental of the Malikites, and one of their rules.”⁽⁴⁾

(1) See: “*At-Taqdîrât Ash-Shar`iyyah Wa-Atharuhâ Fî At-Taq`id Al-Uṣûlî Wal-Fiqhî*”, Muslim Ad-Dusarî, (P. 35).

(2) Ibid., (P. 40).

(3) To view all opinions of Imam Al-Qarâfi and his comments on “Shari'ah-Based Estimations Rule”, refer to “*Al-Qawâ`id Wad-Dawâbit Al-Fiqhiyyah Al-Qarâfiyyah Zumrat At-Tamlikât Al-Mâliyyah*”, Prof. `Âdil Ibn `Abdul-Qâdir Qûtah, (1: 289-321).

(4) See: “*Al-Fâ`iq Fî Gharîb Al-Ḥadîth*”, (2: 118); “*An-Nihâyah Fî Gharîb Al-Ḥadîth Wal-Athar*”, (2: 307).

Imam Al-Maqqarî mentioned it in his book *“Al-Qawâ`id”*,⁽¹⁾ and so did Imam Az-Zaqqâq in the opening of the second section of *Al-Qawâ`id* (i.e. Rules) in *“Al-Manhaj Al-Muntakhab”*,⁽²⁾ which is meant to refer to *“An-Nazâ`ir Wal-Furû`”*, i.e. correspondences and detailed (individual) cases, falling under one origin without referring to any disagreement.

Estimation under this meaning, as quoted by Imam Al-Qarâfi:

“Estimation rule applies to both the Shari'ah points of consensus and disagreement”;⁽³⁾ “It is agreed upon among scholars, and it is a general rule in Shari'ah”;⁽⁴⁾ and “No section of Fiqh is void of estimation.”⁽⁵⁾

Al-Maqqarî says:

“Shari'ah-Based Estimations Rule, which is to give an existing matter the ruling of nonexistent, and vice versa, is generally established though disagreed upon with regards to some of its parts, as estimation is contrary to the origin.”⁽⁶⁾

The later opinion of Imam Al-Qarâfi, in which he says: “Estimation rule applies to both the Shari'ah points of consensus and disagreement” is regarded as more preferable than his opinion in his *“Al-Ihkâm”* that “It is agreed upon among scholars, and it is a general rule in Shari'ah.”⁽⁷⁾

This is due to disagreement regarding consideration of the “Shari'ah-Based Estimations Rule” in general. Al-Qarâfi himself mentioned the disagreement of Al-Fakhr Ar-Râzî on this issue.⁽⁸⁾ Ibnut-Tilmisânî reported from some scholars that “Shari'ah-Based Estimations Rule” was not established according to Ar-Râzî.⁽⁹⁾

(1) See: *“Al-Qawâ`id”*, Al-Maqqarî, rule no. (258).

(2) *“Sharh Al-Manhaj Al-Muntakhab”*, (2: 468).

(3) *“Al-Furûq”*, (2: 27).

(4) *“Al-Ihkâm Fî Tamyiz Al-Fatâwâ `An Al-Ahkâm”*, (P. 74).

(5) *“Al-Furûq”*, (2: 29).

(6) *“Al-Qawâ`id”*, Al-Maqqarî, rule no. (259).

(7) *“Al-Ihkâm Fî Tamyiz Al-Fatâwâ `An Al-Ahkâm”*, (P. 74).

(8) *“Nafâ`is Al-Uṣūl Fî Sharh Al-Mahṣūl”*, (4: 352); *“Sharh Tanqih Al-Fuṣūl”*, (P. 410).

(9) His opinion was reported by Az-Zarkashî in *“Al-Bahr Al-Muḥîṭ”*, (1: 312) as follows: “Ibnut-Tilmisânî said: ‘The estimated ruling is divided into: an estimation of a Shari'ah attribute whose effect appears in the subject matter, such as the estimation of ownership =

Similarly, the opinion of Ar-Râzî, Al-Baqqûrî, in “*Tartîb Al-Furûq*”,⁽¹⁾ says (as will be mentioned below):

“Disagreement regarding the rule does not affect the points of consensus and disagreement.”

An example of giving an existing matter the ruling of nonexistent is: the case in which a sick person is not allowed to use water for fearing that he may lose any of his organs or its function. Hence, he is allowed to perform *Tayammum* (i.e. dry ablution) instead and in this case the water is considered as nonexistent.⁽²⁾

An example of giving a nonexistent matter the ruling of existent is the case in which the blood money of a murdered person is inherited. That is, things may be inherited if only included in the property of a dead person. However, nothing may be included in the property of a person once he dies. This is why blood money is estimated to be included in the dead person’s property in order to be transferred to his heirs and in order to be used to settle his debts. Hence, the ruling of the existent is applied to the nonexistent.⁽³⁾

= in *Milk An-Nikâh* (i.e. marriage) and *Milk Al-Yamîn* (i.e. owning bondwomen), and an estimation of tangible objects, such as the estimation of dirhams (i.e. debt) in one’s liability. He says: Some scholars do not confirm these estimates. He also says: The ruling concerning the subject matter of a certain case claimed to need estimation is the same as the basic ruling. But estimating attributes to make it accepted in Shari’ah is not supported by an evidence. An example of this is their saying: Ritual impurity is a matter estimated in the organs of the person affected by ritual impurity the effect of which appears in nullifying prayer.”

(1) In his “*Tartîb Al-Furûq*”, (1: 337), Al-Baqqûrî criticized Al-Qarâfî’s expansion in the “Shari’ah-Based Estimations Rule” and objected to many examples cited by Al-Qarâfî. He explained his stance saying: “Likewise, it is more preferable to disregard the “Shari’ah-Based Estimations Rule” rather than adopting it, since there is no considerable evidence supporting it in the Shari’ah.”

He clarified his reasons behind his opinion of disregarding this rule, saying: “Estimation rule is not supported by any considerable evidence whether by Shari’ah text or discretion and this is why we should not consider it, and Allah knows best”

(2) “*Badâ’i’ As-Sanâ’i*”, (1: 75); “*Al-Majmû’*”, (2: 281), “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*”, (1: 149); “*Matâlib Uli An-Nuhâ*”, (1: 194).

(3) “*Al-Mabsûṭ*”, (26: 157); “*Kifâyat At-Tâlib Ar-Rabbânî*”, (2: 311); “*Al-Ashbâh Wan-Nazâ’ir*”, *As-Suyûtî*, (P. 321); “*Kashshâf Al-Qinâ’*”, (10: 273).

Issue (3): Relationship between “Shari’ah-Based Estimations Rule” and Fiqh maxims and fundamentals science

Imam Al-Qarâfi considered “Shari’ah-Based Estimations” as a section of positive ruling,⁽¹⁾ which requires the ruling to be established or nullified, making it contingent on the cause, nullifier and condition. So, what necessitates the establishment of a ruling is the existence of a cause, and what necessitates the nullification of a ruling is the nonexistence of the condition or the existence of a nullifier.⁽²⁾ This opinion was also adopted by Al-Jîlî of the Shafiites.⁽³⁾ Al-Qarâfi’s opinion was adopted by some fundamentalists.⁽⁴⁾

Shari’ah estimations rule is regarded as one of the positive rulings because a Shari’ah ruling is to be established by causes, conditions, or estimated nullifiers. Accordingly, a Shari’ah ruling is to be established with the real or estimated existence of the cause. By the same token, a ruling is to be nullified by the nullification of the condition or by the real or estimated existence of a nullifier.

In this regard, Imam Al-Qarâfi says:

“If a ruling is established by Shari’ah in the absence of a cause or a condition thereof, then the cause and condition are better to be estimated instead of establishment of the ruling in their absence; otherwise, the ruling is to be regarded as an exception to this rule. The same applies where inheritance is established by Shari’ah in case of blood money for accidental killing. According to scholars, in order for something to be included in inheritance it must be first included in the property of the person before his death. Also, when we approve the case in which a person’s slave may be emancipated by another person and allegiance (by the slave) is to be given to the person on his behalf the slave is emancipated (i.e. the owner), we establish our argument on the estimation that the slave was in the possession of the person

(1) “*Sharh Tanqîh Al-Fuṣūl*”, (P. 200); “*Nafâ’is Al-Uṣūl*”, (2: 225); “*Al-Furûq*”, (1: 16).

(2) “*Sharh Tanqîh Al-Fuṣūl*”, (P. 70).

(3) His opinion was reported by Az-Zarkashî in “*Al-Baḥr Al-Muḥîṭ*”, (1: 127).

(4) Including: Hūlūlū in “*Sharh Tanqîh Al-Fuṣūl*”, (P. 70); Al-`Alâ’î in “*Al-Majmû` Al-Mudhhab*”, (1: 29-30); Al-Mardâwî in “*At-Taḥbîr*”, (3: 1128); Ibnun-Najâr in “*Sharh Al-Kawkab Al-Munîr*”, (4: 312).

on his behalf the slave was emancipated before emancipation takes place. This is because it is regarded as the cause of proper expiation and the establishment of allegiance. The same applies to many causes, conditions and nullifiers where scholars translate this rule into giving a nonexistent matter the ruling of the existent and giving an existent matter the ruling of the nonexistent.”⁽¹⁾

The saying of Imam Al-Qârâfi: “When a ruling is established by Shari'ah in the absence of a cause or a condition thereof ...” indicates that the ruling is not established by an estimated cause, but rather by other Shari'ah cause. But the *Mujtahid* (i.e. a scholar practicing legal reasoning and discretion), however, estimates the cause upon which the Legislator rested the ruling in the absence of an evidence thereof, so that the Shari'ah ruling is applied to one rule only as far as possible. Accordingly, the aim of estimation is to reveal the source of the Shari'ah ruling, and explore the purpose behind it, but not to prove the cause upon which the ruling is to be established. The same applies to the estimation of a nullifier or a condition.

Accordingly, the difference between the Shari'ah cause upon which the ruling is to be established and the estimated cause is close to the difference between the cause to which the ruling relates in terms of existence and nonexistence and between the wisdom representing the intention of the Legislator behind the ruling, which is established by the cause. Az-Zarkashî and other fundamentalists argue that estimations are attributed, in their nature, to causes.⁽²⁾

The objection raised in discussing what Al-Qarâfi mentioned supports Al-Fakhr Ar-Râzî's view of denying the reasoning based on estimated attributes.⁽³⁾ As-Subkî agreed with him in “*Jam` Al-Jawâmi`*,”⁽⁴⁾ and As-Safiyy Al-Hindî attributed this opinion to most of fundamentalists.⁽⁵⁾ This is based on the fact that establishing a cause which is not existent contradicts the principal rule that the cause is to be considered the basis upon which a ruling is to be

(1) “*Adh-Dhakhîrah*”, (3: 33).

(2) “*Al-Bahr Al-Muhîtt*”, Az-Zarkashî, (7: 187-818); “*Al-Qawâ`id*”, Al-Hisnî, (1: 200-201).

(3) “*Al-Mahsûl*”, (5: 318).

(4) “*Jam` Al-Jawâmi` Ma`a Sharh Al-Mahallî Wa-Hâshiyat Al-Banânî*”, (2: 352).

(5) “*Nihâyat Al-Wusûl*”, (8: 3530).

regarded as existent or nonexistent. This makes the study of “Shari’ah-Based Estimations” a branch that does not belong to the study of Fiqh fundamentals. This is expressed in Al-Baqqûrî’s opinion in which he says:

“Estimation rule is not supported by any considerable evidence whether by Shari’ah text or discretion and this is why we should not consider it.”⁽¹⁾

However, Ar-Râzî has another objection to denying the reasoning based on estimated descriptions, which is that intangible matters established by the Legislator, such as liability, ownership, purification, etc., are from the well-established rulings the application or adoption of which does not require a considerable cause to be found. Al-`Izz Ibn Abdus-Salâm and Al-Qarâfi, however, consider them as “Shari’ah-Based Estimations” due to their intangible nature. This is why they are defined as Shari’ah estimated attributes.

Ar-Râzî justifies his denial of the reasoning using the “Shari’ah-Based Estimations” based on some considerations, including aspects related to the laws of theology and logic, which does not fall within the subject of this research. The basis of Ar-Râzî’s denial of the perception of estimations is that:

“He is against the view that ownership is to be regarded as an imposed meaning not established in the subject matter but only based on considerable cause. He, however, views ownership as a meaning established by Shari’ah in the subject matter and its establishment does not require a considerable cause. This means that in the subject matter there is a meaning which is the Shari’ah definition of ownership. He seems to apply his opinion regarding ownership to ritual impurity and other matters classified as being estimated.”⁽²⁾

This aspect of disagreement is due to the laws of logic and theology, and the disagreement therein does not imply anything relating to Fiqh. Regarding disagreement on this issue, Sheikh Zakariyyâ Al-Anṣârî says:

“Making an estimated matter as being established does not negate its nature as being estimated. The opinions of the scholars of Fiqh imply

(1) *“Tartīb Al-Furūq”*, (1: 337).

(2) *“Al-Āyât Al-Bayyinât”*, Al-`Abbâdî, (4: 84); *“Ḥāshiyat Al-Banânî `Alâ Jam` Al-Jawâmi`”*, (2: 252).

reasoning based on estimation, such as the opinion that ritual impurity is an estimated attribute based on the organs and nullifies the validity of Prayer since there is not exceptional license in this matter. It may be said that application of the condition is the methodology adopted by the fundamentals, while denial of the condition is the methodology adopted by the scholars of Fiqh.”⁽¹⁾

This is why in his commentary on “*Jam` Al-Jawâmi`*”, Zakariyyâ Al-Ansârî denies the condition that the cause must not be an estimated attribute.⁽²⁾

The disagreement regarding this aspect is simple, although Ar-Râzî has exaggerated in considering this estimation as “a form of myth”,⁽³⁾ an “invalid and meaningless”,⁽⁴⁾ and a “nonsense which has no value in Shari’ah.”⁽⁵⁾

Imam Az-Zaqqâq went on to say that the “Shari’ah-Based Estimations Rule” is one of the rules intended to refer to correspondences and detailed cases. He mentioned the “Shari’ah-Based Estimations Rule” in the opening of the second section of rules in his “*Al-Manhaj Al-Muntakhab*,”⁽⁶⁾ which is meant to refer to correspondences and detailed (individual) cases, which fall under one origin without referring to disagreement.

This classification by Imam Az-Zaqqâq for the “Shari’ah-Based Estimations Rule” is very robust and accurate. This is because detailed cases falling under this rule differ in terms of intent and evidence for each issue. They are very close to similarities and correspondences or Fiqh-related theories according to contemporary terminology.⁽⁷⁾ This is indicated by the opinion of Imam Al-Qarâfi in the conclusion of his book “*Al-Umniyyah Fî Ahkâm An-Niyyah*”, in which he says:

(1) “*Hâshiyat Zakariyyâ Al-Ansârî` Alâ Sharh Al-Mahallî*”, (3: 314); “*Hâshiyat Al-`Attâr` Alâ Sharh Al-Mahallî*”, (2: 295).

(2) “*Ghâyat Al-Wusûl Ilâ Sharh Lubb Al-Usûl*”, (P. 643).

(3) “*Al-Mahsûl*”, (5: 319).

(4) *Ibid.*, (5: 320).

(5) *Ibid.*

(6) “*Sharh Al-Manhaj Al-Muntakhab*”, (2: 468).

(7) Fiqh-related theory is defined as “A group of Fiqh-related fundamentals, rules and rulings with subjective connection and multiple relations, which are to interpret all things fall under their subjects.”

See: “*As-Siyâghah Al-Fiqhiyyah Fî Al-`Asr Al-Hadîth*”, Haytham Ar-Rûmî, (P. 518).

“It is announced that all matters should be interpreted based on one rule, which is the rule of estimations. It is a rule on which scholars have unanimously agreed. To interpret many individual cases based on one rule is always better than to interpret each individual case based on its relevant circumstances. This is more accurate for Fiqh and more beneficial for *Ijtihâd*. It is also the best method to be followed in Fiqh. This is exactly the method to be followed when it comes to interpreting Fiqh rulings, especially when it relates to Shari'ah rulings.”⁽¹⁾

Issue (4): Applications of “Shari'ah-Based Estimations Rule” to *Zakâh*

Estimation with such definition has many applications with regard to the rulings on *Zakâh*. This is why *Zakâh* include many examples on this rule as illustrated by Al-'Izz Ibn 'Abdus-Salâm, Al-Qarâfi and others. Even Al-Maqqarî approached this rule in the chapter of *Zakâh* in his book “*Al-Qawâ'id*”.⁽²⁾

An example of giving a nonexistent matter the ruling of the existent is to apply to the trade profit or the production of freely grazing livestock the same rule applicable to its principal with regard to the *Hawl* (i.e. *Zakâh* year) in case of *Zakâh*.

An example of giving the existent the ruling of the nonexistent is that the *Nisâb* (i.e. minimum amount determining a person's zakatability) of *Zakâh*, owned by legally competent person, is to be considered as nonexistent if countered by a debt of an equal amount. This why no *Zakâh* is to be paid on it. In this regard, Al-Qaffâl, the grand, says in “*Mahâsin Ash-Shari'ah*”:

“Most of the scholars are of the opinion that no *Zakâh* is to be paid on a property of a person encumbered by a debt (of an equal amount of such property). This is because the property, in this case, is considered as nonexistent. Such a property can be claimed at any time by the debtors, in which case the person is to be regarded as a poor and as a person of insufficient property (to be obliged to pay *Zakâh*). Other scholars, however, disagreed with this opinion and argued, saying: ‘If the property

(1) “*Al-Umniyyah Fî Idrâk An-Niyyah*”, (P. 225).

(2) See: “*Al-Qawâ'id*”, Al-Maqqarî, rules no. (258-259).

is not claimed for (by debtors), then it must be regarded as fully owned by the owner and in this case, he must pay *Zakâh* for it. However, once such property is claimed for, it must be regarded as damaged property and no *Zakâh* is to be paid for it. In fact, both opinions are considerable and have their justifications.”⁽¹⁾

Examples regarding this include: The obligation of *Zakâh* on forbidden jewelry because workmanship, in this case, is to be regarded as nonexistent and accordingly such jewelry is to be dealt with as raw gold. This opinion is adopted by Ibn Muflih in “*Al-Furû`*”, where he says:

“*Zakâh* is to be paid on forbidden jewelry and vessels of gold and silver. Due to the fact that they are forbidden to be used, workmanship is to be considered as nonexistent.”⁽²⁾

Here, *Zakâh* is to be calculated based on weight regardless of the value of the property. That is, the value is to be excluded from calculation of *Zakâh*.⁽³⁾

The same applies to goods stocked for trade that include forbidden profession. Here, “the value of the goods including forbidden profession is not to be taken into account, as in the case with the female slave who sings and plays on a musical instrument. In this case, the goods are to be evaluated without such profession as it has no value in Shari’ah.”⁽⁴⁾

(1) “*Mahâsin Ash-Shari`ah*”, Al-Qaffâl, (P. 171).

(2) “*Al-Furû`*”, Ibn Muflih Al-Maqdisi, (4: 141).

(3) See: “*Kashshâf Al-Qinâ`*”, (5: 43); “*Sharh Al-Muntahâ*”, (2: 263).

(4) “*Hâshiyat Ibn `Awad `Alâ Dalîl At-Tâlib*”, (1: 551-552).

Topic (II)

Relevant Concepts and Expressions

First: *Hukmî* (i.e. legal), *Ma`nawî* (i.e. meaningful), or *I`tibârî* (i.e. considered)

These expressions come as descriptions of the meanings that the Legislator has determined their existence even though they are not tangible and upon which rulings have been based. It is said about purity, impurity, ritual impurity, *Ihrâm* (i.e. ritual consecration), divorce and marriage that they are legal, moral or artificial attributes and not tangible attributes such as white and black. Moreover, they are not mental attributes such as knowledge and capability. Their existence, however, is to be estimated due to the Shari'ah rulings that rely on them.

In this regard, Ibnur-R_{ssâ`}, in his “*Sharh Al-Hudûd*”, says:

“The attribute is given to the meaning given to the described objective, either tangible or intangible. The attribute is also given to an estimated matter if a ruling is relied upon, as in the case of ritual impurity it is said, “If it occurs, a prohibition is applied and if it disappears and its opponent (i.e. purity) occurs, a permission is to replace the prohibition.”⁽¹⁾

Examples of *Hukmî* (i.e. legal) attributes that the Legislator establishes their effects despite the fact that they do not tangibly exist include: legal impurity, which Ar-Ramlî defines as:

“Something which cannot be perceived or described whether non-perceivability is due to the absence of its effect by means of dryness, as in the case of urine which dries and accordingly its substance, effect and smell disappear, whether its description disappears or not, due to the fact that material affected by urine is soft and thus impurity cannot stick to it, such as a mirror or a sword.”⁽²⁾

(1) “*Sharh Hudûd Ibn `Arafah*”, (1: 71-72).

(2) “*Nihâyat Al-Muhtâj*”, (1: 257-258).

The following are the linguistic and terminological definitions of *Hukmî* (i.e. legal), *Ma`nawî* (i.e. meaningful), or *I`tibârî* (i.e. considered):

1- *Ma`nawî* (i.e. Meaningful): Relative to the meaning, which is the intention that appears and is highlighted in the expression.⁽¹⁾ In his “*At-Ta`rifât*”, Al-Jurjânî said:

“Meaningful is defined as that which is not spoken out but rather understood by mind.”⁽²⁾

In terminology, “meaningful” is defined as: “A considered description relied upon in Shari`ah judgments, and its existence is estimated in the subject matter, though not existing in reality.”⁽³⁾

2- *Hukmî* (i.e. Legal): Relative to legality. In Arabic language, the Arabic root “*Hâ` Kâf Mîm* (i.e. *H K M*) [ح ك م]” indicates prohibition.⁽⁴⁾

As for the terminology, “legal” is defined as: “Whatever given the ruling of another matter for an unreasonable matter. The opposite of legal is actual.”⁽⁵⁾

3- *I`tibârî* (i.e. Considered): Linguistically speaking, it relates to consideration.

The Arabic root “*`Ayn Bâ` Râ`* (i.e. *` B R*) [ع ب ر]” indicates influence and advancement. It is derived from the Arabic noun “*`Abr*” which means advancement or transition from one state to another.⁽⁶⁾

As for the terminology, Ibn Rushd, in “*Al-Muqaddimât Al-Mumahhidât*”, says:

“Consideration is to represent a thing by another thing and apply the ruling of the first to the latter.”⁽⁷⁾

(1) See: “*Maqâyis Al-Lughah*”, the Arabic root “*`Ayn, Nûn, Alif* (i.e. *` N Â*) [أ ن ع]”; “*Mufradât Al-Fâz Al-Qur`ân*”, the Arabic root “*`Ayn, Nûn, Alif* (i.e. *` N Â*) [أ ن ع]”, (P. 591); “*Al-Misbâh Al-Munîr*”, the Arabic root “*`Ayn, Nûn, Wâw* (i.e. *` N W*) [أ ن ع]”, (P. 354).

(2) “*At-Ta`rifât*”, Al-Jurjânî, (P. 220).

(3) “*Hâshiyat Ad-Dusûqî `Alâ Ash-Sharh Al-Kabîr*”, (3: 210)

(4) See: The Arabic root “*Hâ`, Kâf, Mîm* (i.e. *H K M*) [ح ك م]” in “*Maqâyis Al-Lughah*”, (2: 91); “*Al-Misbâh Al-Munîr*”, (P. 127).

(5) “*Mu`jam Mustalahât Usûl Al-Fiqh*”, Quṭb Sânu, (P. 185).

(6) See: The Arabic root “*`Ayn, Bâ`, Râ`* (i.e. *` B R*) [ع ب ر]” in “*Maqâyis Al-Lughah*”, Ibn Fâris, (4: 204-210); “*Mufradât Al-Fâz Al-Qur`ân*”, (P. 543); “*Al-Misbâh Al-Munîr*”, (P. 317).

(7) “*Al-Muqaddimât Al-Mumahhidât*”, (1: 33).

In his “*Al-Kulliyât*”, Al-Kafawî says:

“Consideration indicates something opposite to reality. It is a pure consideration. When it is said that this something is considered, this means that it is not real.”⁽¹⁾

In his “*At-Ta`rîfât*”, Al-Jurjânî says:

“A considered matter is something that does not exist except in mind of the person practicing consideration as long as it is considered. It refers to essence without real existence.”⁽²⁾

Also, consideration means to take something into account in case of applying a judgment or the like. An example of this is the saying: “What is considerable is the heal”, which means that what should be taken into account in case of advancement is the position of the heal.⁽³⁾

In the Fiqh maxims, there comes the following question, which indicates this meaning: “Should the form or the (intended) meaning of a contract be taken into consideration?”⁽⁴⁾ Moreover, this meaning is indicated clearly in the following fundamental ruling, which says: “Consideration is to be granted to the generality of the language, not to the specificity of the reason.”⁽⁵⁾

Second: *Iftirâd* (i.e. Assumption)

Linguistically, the Arabic word “*Iftirâd*” is derived from the Arabic word “*Fard*”, which means obligation. An example is the obligation imposed by Allah, Glorified by He, on His salves, and the amount of alimony determined and imposed by a ruler. The Arabic root of the word “*Fard*” indicates the meanings of incising and cutting.⁽⁶⁾ Also, “*Fard*”, with the meaning “obligation”, may imply determination, which means to set up and enforce limits.

(1) “*Al-Kulliyât*”, Al-Kafawî, (P. 147).

(2) “*At-Ta`rîfât*”, Al-Jurjânî, (P. 45); “*At-Tawqîf `Alâ Muhimmât At-Ta`arîf*”, (P. 92).

(3) See: “*Al-Misbâh Al-Munîr*”, the Arabic root “`Ayn, Bâ, Râ (i.e. ` B R) [ر ب ع]”, (P. 317); “*At-Tawqîf `Alâ Muhimmât At-Ta`arîf*”, (P. 92).

(4) “*Al-Ashbâh Wan-Nazâ`ir*”, As-Suyûtî, (P. 166); “*Al-Manthûr*”, (2: 371).

(5) See: “*Sharh At-Talwîh `Alâ At-Tawdîh*”, (1: 117); “*Al-Furûq*”, (1: 105); “*Al-Mahsûl*”, (3: 125); “*Sharh Al-Kawkab Al-Munîr*”, (3: 493).

(6) See: The Arabic root “Fâ, Râ, Dâd (i.e. F R D) [ف ر ض]” in “*Maqâyîs Al-Lughah*”, (4: 488); “*Al-Misbâh Al-Munîr*”, (P. 381); “*Al-Qâmûs Al-Muhtâ*”, (P. 650).

In terminology, the Arabic word “*Fard*” implies assumption. An estimated possibility which does not correspond to reality nor taken into account. It may or may not be possible.⁽¹⁾

The same meaning applies to Fiqh of assumption, which assumes the possibility of a matter (to be existent) in order to be examined and studied. In empirical sciences, assumption is defined as: “An idea taken into account to prove or solve a matter.”⁽²⁾

Third: *Taharrî* (i.e. Investigation)

Linguistically, investigation may imply the aim or intention to reach something (seeking for something). For example, when it is said: “I seek to fulfill your satisfaction”, this means that my aim or intention is to achieve your satisfaction.

This meaning is indicated clearly in the following Quranic Verse, which says:

{“...then such have sought the Right Path.”}⁽³⁾

The meaning implied in this Verse is that those who have embraced Islam are those aiming at following the Right Path.

Also, this meaning is emphasized in the following hadith, which says:

“It seems that all your dreams agree that (the Night of Qadr) is in the last seven nights, and whoever wants to seek it (i.e. the Night of Qadr) should seek it in the last seven (nights of Ramadân).”⁽⁴⁾

The meaning stated in the hadith implies both “investigation” and “seeking”. In Arabic, “*Taharrî*” means to seek the best of two matters.⁽⁵⁾

(1) See: “*Al-Kulliyât*”, (P. 690); “*Nashr Al-Binâd*”, (2: 151).

(2) The Arabic root “*Fâ’, Râ’, Dâd* (i.e. *FRD*) [ف ر ض]

 in “*Al-Mu`jam Al-Wasit*”, (2: 683).

(3) Surah *Al-Jinn* (The Jinn): 14.

(4) “*Sahîh Al-Bukhârî*”, Book of Virtues of the Night of *Qadr*, Chapter: To look for the night of *Qadr* in the last seven nights (of Ramadân), hadith no. (2015); “*Sahîh Muslim*”, Book of Fasting, hadith no. (1165), on the authority of Ibn `Umar (may Allah be pleased with him).

(5) See: The Arabic root “*Hâ’, Râ’, Yâ’* (i.e. *HRÂ*) [ح ر ي]

 in “*Al-Misbâh Al-Munîr*”, (P. 117); “*Al-Qâmûs Al-Muhîr*”, (P. 1273).

In terminology, “*Taharri*” (i.e. Investigation) means “to make effort to reach the goal,”⁽¹⁾ or “to seek something based on probability where its reality is not known.”⁽²⁾ The second definition, however, is the closest meaning of investigation to estimation. It is also close to the meaning of *Ijtihâd*, which means “to make effort to reach the goal.” However, in Fiqh fundamentals terminology, *Ijtihâd* refers to an effort made in pursuit of knowledge based on Shari'ah rulings, reasoning, and discretion. Investigation, however, refers to an effort made to achieve compliance with the Shari'ah ruling.

Fourth: Accounting Estimate

The term “Accounting Estimate” is relevant to the research topic. This is because it may be difficult to accurately estimate some financial items in financial statements by means of measurement, which is one of the accounting functions as mentioned earlier. This is because these financial items depend on results of future events, or because the appropriate data related to actual events cannot be obtained in a timely manner based on the cost-benefit basis. As a result, accountants usually use accounting estimate.

International Standard on Auditing (ISA 540) defines “Accounting Estimate” as: “An approximation of a monetary amount in the absence of a precise means of measurement.”

Estimation depends on professional judgment. It also involves judgments based on information available when the financial statements are prepared. This type of measurement depends on the conditions existing at the time of measurement. Examples of “Accounting Estimate” include allowance for price decline, allowance for doubtful accounts, asset useful life, waste value, depreciation expense, and provision for claims.⁽³⁾

(1) See: “*Asnâ Al-Matâlib*”, (1: 22); “*Nihâyat Al-Muhtâj*”, (1: 90); “*Kashshâf Al-Qinâ*”, (1: 85); “*Matâlib Uli An-Nuhâ*”, (1: 54).

(2) See: “*An-Nahr Al-Fâ’iq*”, (1: 467); “*Radd Al-Muhtâr*”, (2: 352).

(3) See: International Standard on Auditing (ISA 450), Auditing Accounting Estimates, including fair value accounting estimates and related disclosures, and principles of auditing, Rick Hayes, et al., (P. 509).

Topic (III)

Estimation in Calculating *Zakâh* for Joint-Stock Companies: Concept, Types, and Importance

First: Concept of estimation in calculating *Zakâh*

Considering what has been presented in the research problem and the scholars of Fiqh and fundamentalists' definition of estimation stated in these treatises, the concept of estimation in calculating *Zakâh* for joint-stock companies can be defined as:

“Practicing *Ijtihâd* (i.e. legal reasoning and discretion) to determine *Zakâh* for joint-stock companies on a basis of approximation.”

“*Ijtihâd*”, here, means to investigate the calculation of *Zakâh* by deviating from the original ruling of calculating *Zakâh* and adopting estimation based on one of the considerable methods of *Ijtihâd*. This can be done by applying either a Fiqh principle, a Fiqh maxim, or a considerable method of *Qiyâs* (i.e. analogical deduction). This is to avoid public or private hardship in calculating *Zakâh*. This method of *Ijtihâd* shall have the ruling applicable to calculation of *Zakâh* based on investigation.

“To determine” means to specify the *Zakâh* due in terms of type and quantity.

“On a basis of approximation” means to apply the method closest to the abandoned original ruling. This includes approximation of the number estimated in Shari'ah as a result of uncertainty.

Accordingly, the subject of the research concerning the concept of estimation in calculating *Zakâh* can be summarized as follows:

- 1- The concept of estimation in calculating *Zakâh* falls under the “Shari'ah-Based Estimations Rule”, which is to give an existing matter the ruling of nonexistent, and to give a nonexistent matter the ruling of existent; however, it is more specific. This is because it is limited to *Ijtihâd* in cases where the accounting system fails to provide the *Zakâh* payer

with the information necessary to calculate *Zakâh* in accordance with the Shari'ah-based amounts of *Zakâh*, or where the *Zakâh* payer fails to realize this information. This method of *Ijtihâd* shall have the ruling applicable to calculation of *Zakâh* based on investigation, and it is not aimed at studying the "Shari'ah-Based Estimations Rule".

- 2- Estimation in calculating *Zakâh* does not deviate from the proof of *Istih̄sân* (i.e. Shari'ah approbation) in Shari'ah, which is defined as:

"Giving a ruling on a certain question that is different from the ruling on its equivalents for a reason requiring mitigation or due to a hardship that may occur if such question is subject to the same ruling as its equivalents when applying such a ruling."⁽¹⁾

Removing hardship in such a case requires the application of another Shari'ah proof, as stated in a number of the definitions of the earlier Imams. This means that *Istih̄sân* should not be regarded as an independent proof in investigation process. It, however, "reveals the ways some Imams adopt to apply Shari'ah proofs and rulings when they collide with some aspects of people's life. It is regarded as the window through which the scholars of Fiqh see the real life and accordingly try to remove hardship and harm, and to achieve benefit for people by applying Shari'ah principles and fundamentals."⁽²⁾

- 3- Understanding deficiencies in the accounting system for Shari'ah fundamentals in calculating *Zakâh* and practicing *Ijtihâd* (i.e. legal reasoning and discretion) to estimate such deficiencies requires observing "Shari'ah Estimates" in the Shari'ah stated *Zakâh* and trying to apply approximation as far as possible.

In this regard, Imam Al-Ghazâlî, may Allah be pleased with him, says:

"In the absence of *Tawqîf* (i.e. being bound by a Shari'ah text and not amenable to legal reasoning and discretion), a close ruling is to be applied."⁽³⁾

(1) "*Al-Istih̄sân*", Ya`qûb Al-Bâh̄usayn, (P. 41); "*Maṣâdir At-Tashrî' Al-Islâmi Fimâ Lâ Nass Fih*", `Abdul-Wahhâb Khallâf, (P. 69).

(2) "*Uṣûl Al-Fiqh Al-Islâmi*", Muḥammad Mustafâ Shalâbî, (1: 280).

(3) "*Tah̄sin Al-Maâkhidh*", (1: 547).

Second: Types of estimation in calculating *Zakâh* for joint-stock companies

There are two types of estimation in calculating *Zakâh* for joint-stock companies:

- 1- **Overall estimation:** Where estimation of *Zakâh* is made in a way that does not depend on companies' financial statements. This is due to the inability to access to these statements, or the inability to deal with the outcomes of the financial system.
- 2- **Partial estimation:** It is related to single examples of partial questions when relying on the outputs of the accounting system in calculating *Zakâh*.

Third: Importance of estimation in calculating *Zakâh*

The need for applying estimation to calculation of *Zakâh* for joint-stock companies appears in the following:

- (a) The information provided by joint-stock companies in their financial reports is intended to help the beneficiary to make his investment decision. It is not intended for providing the user with the information required for Shari'ah-based calculation of *Zakâh*. If the shareholder is required to know the information necessary to calculate the *Zakâh* due in the funds of joint-stock companies on the basis of investigation, then he will be provided only with such extent of information introduced by financial statements.
- (b) Although joint-stock companies are treated as having independent legal personality, there is much overlap and interdependence among these companies. This makes it impossible to know the reality of the assets represented by the shares of these companies. To illustrate, a person may invest in the shares of company (A), and this company is investing in another company (B). Meanwhile, company (B) is investing in company (A), which the shareholder wants to know the assets represented by its shares, or in other companies (C, D, E, ...etc.)
- (c) Joint-stock companies may invest in other companies whose financial data cannot be accessed either because these companies do not publish their financial reports to the public or because its shares are not traded, or because investment is indirect, such as investing in equity investment

funds. This makes it difficult even for company officials to know all the information required for calculating *Zakâh* on these assets.

- (d) Accounting information provided by financial reports imply estimation and assumption, which indicates the fact that investigation is not possible to be achieved through estimation.
- (e) Assuming that it is possible to verify the percentage represented by the share, this will imply cost and difficulty that exceed the desired interest in disregarding the potential error in estimation, whether this error is corrected in favor of the *Zakâh* payer or the person entitled to *Zakâh*. It is not reasonable to require a person to appoint a financial accountant or representative to ask the companies in which he invests about the calculation of his shares value in these companies, and then count and reassess the assets of the company and identify the funds that meet the Shari'ah conditions for the obligation of *Zakâh*. This may result in a material cost that may exceed the value of all his shares. This violates the Shari'ah rules regarding observing and supporting interests and preventing and mitigating the harm inflicted, which is consistent with one of the characteristics (limitations) of accounting information in financial reports, which is: The cost constraint on useful financial reporting. Regarding this principle, the Conceptual Framework for Financial Reporting states:

“Cost is a pervasive constraint on the information that can be provided by financial reporting. Reporting financial information imposes costs, and it is important that those costs are justified by the benefits of reporting that information. There are several types of costs and benefits to consider.”⁽¹⁾

These costs are either borne by the shareholder or borne by the company, which in turn will charge them to the shareholder's rights in the company, or borne by the authorities concerned with collecting *Zakâh*. Also, the person entitled to *Zakâh* may bear such costs indirectly if they are deducted from the *Zakâh* revenues.

(1) “*Itâh Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], QC35. This Framework will be approached in Chapter Two.

Treatise Two

Permissibility of Applying Estimation to Calculation of *Zakâh*



Applying estimation to calculation of *Zakâh* in accordance with considerable conditions is one of the licenses granted by Allah, Glorified be He, in this regard. Acting based on licenses is desirable in principle, as stated in the Prophetic hadith:

“Allah loves that His permissions (licenses) be practiced, just as he dislikes that disobedience to Him be committed.”⁽¹⁾

Licenses, therefore, must be applied when the original rule or judgment cannot be enforced.⁽²⁾

This results in removing the hardship a *Zakâh* payer may suffer when calculating *Zakâh*, whether acting upon estimation requires reduction in the amount paid, payment before or after the due date, or inconsistency with requirements regarding description. All this is to be forgiven thanks to the licenses acted upon.

If the *Zakâh* payer intends to pay *Zakâh* in accordance with the Shari'ah principle in calculating *Zakâh* without regarding the hardship that he may face, which may prevent him from other more considerable Shari'ah interests, then he will not achieve the Shari'ah purpose by so doing nor will he be acting in favor of what is best for his religion. This is because calculation is a method to achieve the Shari'ah purpose, and methods are not expected to separate the

(1) *“Musnad Ahmad”*, (2: 108); *“Sahîh Ibn Khuzaymah”*, hadith no. (950); *“Sahîh Ibn Hibbân”*, hadith no. (2742).

(2) See: *“At-Taqrîr Wat-Tahbîr”*, (2: 151); *“Nashr Al-Binûd”*, (1: 56); *“Al-Bahr Al-Muhîṭ”*, Az-Zarkashî, (1: 36-38); *“Al-Manthûr Fî Al-Qawâ`id”*, (2: 164); *“Sharḥ Al-Kawkab Al-Munîr”*, (1: 479).

person from the purposes or involve him in something else other than those which are more favorable and attainable. This is why acting upon licenses is more favorable for Allah and more useful for the person seeking to adhere to Shari'ah.

This is why the scholars argue that considering hardship a reason for entitlement of reward is not true in Shari'ah, and that the real reason for entitlement of reward or punishment should be based on interests and harm.⁽¹⁾

In this regard, Imam Ibn Taymiyyah says:

“It is worth mentioning that Allah’s pleasure is not to be sought by tormenting, or making oneself suffering depending on the false argument that the harder work is the better work. Many ignorant people think that the reward is equal to the hardship in everything. This is not true. Reward is to be based on the amount of the work’s benefit and interest, and according to the amount it involves of obedience to Allah and His Messenger.”⁽²⁾

There is a variety of Shari'ah evidences indicating permissibility of applying estimation to calculation of *Zakâh* according to the definition introduced above. The following are the most important evidences for the permissibility of applying estimation to calculation of *Zakâh* for joint-stock companies:

First: Allah chooses for this nation this divine religion and removes hardship regarding the rulings He has prescribed. Imam Ash-Shâtibî says:

“The evidences for relieving this (Muslim) nation from hardship are decisive. This can be approved by the following Quranic Verse:

{“...and has not laid upon you in religion any hardship...”}⁽³⁾

And by other Verses implying the same meaning, as Allah’s saying:

{“...Allah intends for you ease, and He does not want to make things difficult for you...”}⁽⁴⁾;

(1) See: “*Adh-Dhakhîrah*”, (2: 549 and 613).

(2) “*Majmû` Al-Fatâwâ*”, (25: 281).

(3) Surah *Al-Hajj* (The Pilgrimage): 78.

(4) Surah *Al-Baqarah* (The Cow): 185.

“Allah wishes to lighten (the burden) for you; and man was created weak.”⁽¹⁾;

“There is no blame on the Prophet in that which Allah has made legal for him...”⁽²⁾; and

“...he releases them from their heavy burdens (of Allah’s covenant), and from the fetters (bindings) that were upon them...”⁽³⁾

This religion is described as the tolerant religion because of the easiness and facilitation it contains.”⁽⁴⁾

Imam At-Tâhir Ibn `Âshûr says:

“Allah has decreed that Islamic Shari’ah shall be general and permanent. This requires that its enforcement on the nation shall involve easiness. This cannot be achieved unless such an enforcement is free from hardship.

Being impressively tolerant, this Shari’ah proves to be more appropriate for enforcement, as it ensures easiness and relief for people both on individual and society levels. Tolerance has proved very effective for the spread and longevity of Shari’ah. It is well known that easiness is part of the innate nature because people, by nature, prefer gentleness.”⁽⁵⁾

Removal of hardship as provided for in Shari’ah is to be applied to the rulings prescribed by Allah. This is because such rulings observe easiness. Accordingly, if a person is faced by hardship in compliance with a Shari’ah ruling, facilitation is to be sought.

`Abdur-Rahmân As-Sa`dî says:

“This is why all commands prescribed by Allah for His servants to observe are very easy in their nature. Thus, where such commands turn to be difficult due to any circumstances, facilitation is to be applied, whether by relief or mitigation. This principle cannot be analyzed in

(1) Surah *An-Nisâ’* (Women): 28.

(2) Surah *Al-Ahzâb* (The Allied Parties): 38.

(3) Surah *Al-A`râf* (The Battlements): 157.

(4) *“Al-Muwâfaqât”*, (1: 520)

(5) *“Maqâsid Ash-Shari`ah Al-Islâmiyyah”*, (P. 193).

detail because it covers all Shari'ah rulings, licenses and methods of mitigation.”⁽¹⁾

Accordingly, if hardship is experienced in calculating *Zakâh* for joint-stock companies, mitigation is to be adopted. Moreover, if such a hardship is general, then *Ijtihâd* (i.e. legal reasoning and discretion) is to be practiced so as to find out the best ways to comply with the Shari'ah ruling in this case where the *Zakâh* payer is unable to grasp the purpose of the Legislator behind this ruling, or cannot make whether compliance therewith is achieved or not. This idea is indicated clearly in the following Quranic Verse, saying:

“Those who listen to speech and follow the best of it. Those are the ones Allah has guided, and those are people of understanding.”⁽²⁾

Second: Allah makes compliance with His commands conditional on ability to do so, as He, the Almighty, says:

“...So, keep your duty to Allah and fear Him as much as you can; listen and obey...”⁽³⁾;

“...Allah burdens not a person beyond his scope...”⁽⁴⁾; and

“...Allah puts no burden on any person beyond what He has given him...”⁽⁵⁾

In this regard, Imam At-Tabarî says:

“The meaning implied here is that Allah, the Almighty, does not burden a person, with regard to worship, beyond his scope and ability.”⁽⁶⁾

Al-Fakhr Ar-Râzî says:

“Capacity implies what a person is capable of in a state of abundance and ease, not in a state of distress and hardship... As for the maximum

(1) *“Taysîr Al-Karîm Ar-Rahmân”*, interpretation of Surah *Al-Baqarah* (The Cow): 185.

(2) Surah *Az-Zumar* (The Hordes): 18.

(3) Surah *At-Taghâbun* (Mutual Fraud): 16.

(4) Surah *Al-Baqarah* (The Cow): 286.

(5) Surah *At-Talâq* (Divorce): 7.

(6) *“Jâmi` Al-Bayân”*, (5: 152).

energy, it is called effort not capacity... And whoever thinks that capacity is to make effort is wrong in his opinion.”⁽¹⁾

In “*Sahîh Muslim*”, it is narrated that Ibn Abbâs said:

“When this Verse has been revealed: {*... Whether you disclose that which is in your mind or conceal it, Allah will call you to account according to it...*”},⁽²⁾ there entered in their minds something (of fear) such as had never entered their hearts (before). The Prophet (peace and blessings of Allah be upon him) observed:

“Say: ‘We have heard and obeyed and submitted ourselves.’ He (the narrator) said: ‘Allah instilled faith in their hearts’, and He, Exalted be He, revealed: {*“Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned. “Our Lord, do not impose blame upon us if we have forgotten or erred.”*} He (our Lord) says: ‘I indeed did it.’ {*“...Our Lord, and lay not upon us a burden like that which You laid upon those before us...”*} He (our Lord) says: ‘I indeed did it.’ {*“...and forgive us; and have mercy upon us. You are our Protector...”*}⁽³⁾ He (our Lord) says: ‘I indeed did it.’”⁽⁴⁾

Also, this idea is emphasized in the hadith narrated by Abû Hurayrah (may Allah be pleased with him) in which the Prophet (peace and blessings of Allah be upon him) says:

“If I forbid you to do something, then keep away from it. And if I order you to do something, then do of it as much as you can.”⁽⁵⁾

In “*Sahîh Al-Bukhârî*” and “*Sahîh Muslim*”, it is reported that `Abdullâh Ibn `Umar (may Allah be pleased with him) said:

(1) “*At-Tafsîr Al-Kabîr*”, (14: 79), interpretation of Surah *Al-A`râf* (The Battlements): 40.

(2) Surah *Al-Baqarah* (The Cow): 284.

(3) Surah *Al-Baqarah* (The Cow): 286.

(4) “*Sahîh Muslim*”, Book of Belief, hadith no. (126).

(5) “*Sahîh Al-Bukhârî*”, Book of Holding Fast to the Qur`an and Sunnah, Chapter: Following the Sunnah of the Prophet (peace and blessings of Allah be upon him), hadith no. (7288); “*Sahîh Muslim*”, Book of Virtues, hadith no. (1337).

“Whenever we gave the pledge of allegiance to Allah’s Messenger (peace and blessings of Allah be upon him) for listening and obeying, he used to say to us, ‘for as much as you can.’”⁽¹⁾

Also, In “*Sahîh Al-Bukhârî*” and “*Sahîh Muslim*”, it is reported that Jarîr Ibn `Abdullâh (may Allah be pleased with him) narrated:

“I gave the pledge of allegiance to the Prophet (peace and blessings of Allah be upon him) that I would listen and obey, and he told me to add: ‘As much as I can, and to give good advice to every Muslim.’”⁽²⁾

Abû Bakr Ibnul-`Arabî says:

“This is a great principle in religion, and one of the pillars of the Shari’ah of Muslims, which Allah, Glory be to Him, has honored us with. He did not lay burden upon us, nor did He encumber us with hardship.”⁽³⁾

Highlighting this meaning, Imam Ibn Taymiyyah says:

“It has been established in Shari’ah that obligation is conditional on the ability of the servant (to achieve it), which is stressed by Allah’s saying:

{“So, keep your duty to Allah and fear Him as much as you can...”};⁽⁴⁾

Also, by the Prophetic hadith related in both “*Sahîh Al-Bukhârî*” and “*Sahîh Muslim*”, in which the Prophet (peace and blessings of Allah be upon him) says:

“If I order you to do something, then do it as much as you can.”

Since many of the matters disputed or disagreed upon by the scholars of this nation lack decisive evidences, be they Shari’ah-based or else, to settle them, then the same must apply to this case where a person

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- (1) “*Sahîh Al-Bukhârî*”, Book of Judgements, Chapter: How do the people give pledge of allegiance to the Imam, hadith no. (7202); “*Sahîh Muslim*”, Book of Pilgrimage, hadith no. (1867), on the authority of Ibn `Umar (may Allah be pleased with him).
 - (2) “*Sahîh Al-Bukhârî*”, Book of Judgements, Chapter: How do the people give pledge of allegiance to the Imam, hadith no. (7204); “*Sahîh Muslim*”, Book of Belief, hadith no. (56), on the authority of Jarîr Ibn `Abdullâh (may Allah be pleased with him).
 - (3) “*Ahkâm Al-Qur`ân*”, (1: 347).
 - (4) Surah *At-Taghâbun* (Mutual Fraud): 16.

must not be obliged to do something that he cannot afford. However, a person should not be relieved from doing something, just because he is not sure of his capability, if the prevailing assumption is that he is capable of doing it. Actually, this is to be regarded as something the person is capable to do, especially where this thing conforms with the truth. This means that an assumption that conforms with the truth is beneficial and rewarded, and it must be regarded as a cause for relieving from an obligation if cannot be achieved.”⁽¹⁾

Accordingly, a shareholder in joint-stock companies is not required to pay *Zakâh* on his shares except for the extent of information he is capable to obtain with regard to such shares.

This is because:

“Whoever is obligated to do certain acts of obedience is required only to do as such acts as he can afford while other acts, which he cannot afford are to be disregarded.”⁽²⁾

Third: Shari'ah enjoins *Tasdîd* (i.e. performing good deeds properly) and *Muqârabah* (i.e. seeking closeness to proper performance of deeds) and forbids strictness and exaggeration. This is indicated in the hadith, saying:

“Indeed, the religion (of Islam) is easy, and no one will ever overburden himself in religion, except that it will overcome him. So, seek Tasdîd, and Muqârabah.”⁽³⁾

Imam Ibn Rajab (may Allah confer mercy upon him) said:

“Tasdîd means hitting the target, and its origin is to shoot the arrow when it hits the target without missing it. *Muqârabah* means coming

(1) “*Al-Fatâwâ Al-Kubrâ*”, (1: 142-143); “*Dar’ Ta`ârud Al-`Aql Wan-Naql*”, (1: 53).

(2) “*Qawâ'id Al-Ahkâm*”, (2: 10). In his “*Adab Ad-Dunyâ Wad-Dîn*”, (pp. 100-103), Al-Mâwardî approached the cases where the person fails to fulfill his Shari'ah obligations. He says: “Failure, in this case, is of four categories; among them is a considerable excuse that prevents the person from fulfilling his obligation, or an illness that makes the person unable to fulfil his obligation. In both these cases, a person is not to be regarded as negligent with regard to his obligation. This is because the established Shari'ah ruling states that what cannot be done is to be excluded.

(3) “*Sahîh Al-Bukhârî*”, Book of Belief, Chapter: Religion is very easy, hadith no. (39), on the authority of Abû Hurayrah (may Allah be pleased with him).

as close as possible to the target, even without hitting it. However, one shall exert his best efforts to hit the target. So, he may hit it at one time and come close to it another time. Otherwise, *Muqârabah* is meant for anyone unable to hit a target.”⁽¹⁾

In *Zakâh* for joint-stock companies, *Tasdîd* means that a person is required to pay *Zakâh* based on accurate acquaintance with his wealth on which *Zakâh* is due. Meanwhile, *Muqârabah* means to get as close as possible to the amount of wealth on which *Zakâh* is due, in case of lacking accurate acquaintance with it.

In This regard, Imam Al-Ghazâlî (may Allah be pleased with him) says:

“In the absence of *Tawqîf* (i.e. being bound by a Shari’ah text and not amenable to legal reasoning and discretion), a close ruling is to be applied.”⁽²⁾

The command to perform *Tasdîd* and *Muqârabah* has been mentioned in many hadiths, which together indicate that performing them is one of the Shari’ah purposes that can be clearly noticed in its general rulings. For example, ‘Âishah narrated from her father (may Allah be pleased with them) that the Prophet (peace and blessings of Allah be upon him) said:

“Perform Tasdîd (i.e. performing good deeds properly) and Muqârabah (i.e. seeking closeness to proper performance of deeds) and know that your deeds will not make you enter Paradise, and that the most beloved deed to Allah is the most regular and constant even if it were little.”⁽³⁾

In “*Sahîh Muslim*”, Abû Hurayrah (may Allah pleased with him) narrated:

“When the Verse: {“**Whoever does evil will be requited for it...**”}⁽⁴⁾ has been revealed, Muslims were greatly perturbed. Thereupon, Allah’s Messenger (peace and blessings of Allah be upon him) said:

(1) “*Fath Al-Bâri*”, Ibn Rajab, (1: 137, 138).

(2) “*Tahsin Al-Maâkhidh*”, (1: 547).

(3) “*Sahîh Al-Bukhârî*”, Book of making the Heart Tender, Chapter: The adoption of a middle course, and the regularity of deeds, hadith no. (6467).

(4) Surah *An-Nisâ’* (Women): 123.

“Perform Muqârabah (i.e. seeking closeness to proper performance of deeds) and Tasdîd (i.e. performing good deeds properly), as in every trouble that falls upon a Muslim is an expiation for him; even stumbling on the path or the pricking of a thorn (are an expiation for him).”⁽¹⁾

Also, this principle is indicated in Allah’s saying:

{“Stand (to pray) all night, except a little. Half of it, or a little less than that...”}⁽²⁾

At-Tâhir Ibn `Âshûr says:

“The option to choose indicated by “or” is attributed to the changing length of the night (in the course of the year)”. This option is given to make it easy for the Prophet (peace and blessings of Allah be upon him) and to relieve him from any obligation to abide by a specific time for performing Prayer at night. This indicates that the course of *Muqârabah* represented in the choice given has been adopted.”⁽³⁾

Fourth: The Prophet (peace and blessings of Allah be upon him) ordered crops to be assessed for the sake of *Zakâh* payment, as referred to in many hadiths, including:

1- The hadith narrated by Ibn Abû Hathmah (may Allah pleased with him), which says:

“Allah’s Messenger (peace and blessings of Allah be upon him) commanded us saying, ‘Whenever you assess the amount of something, estimate the (Zakâh) and leave one-third. If you do not, then leave (at least) one fourth.’”⁽⁴⁾

(1) “*Sahîh Muslim*”, Book of Virtue, Enjoining Good Manners, and Joining of the Ties of Kinship, hadith no. (2574).

(2) Surah *Al-Muzzamil* (Enwrapped): 2-3.

(3) “*At-Tahrîr Wat-Tanwîr*”, Ibn `Âshûr, (29: 259).

(4) “*Musnad Ahmad*”, (3: 448); “*Sunan Abû Dâwûd*”, Book of *Zakâh*, Chapter: Assessment, hadith no. (1605); “*Al-Mujtabâ*”, An-Nasâ’î, Book of *Zakâh*, Chapter: How much one performing assessment should leave, hadith no. (2490); “*Jâmi` At-Tirmidhî*”, Book of *Zakâh* as reported from the Prophet (peace and blessings of Allah be upon Him), Chapter: Assessment, hadith no. (643); “*Sahîh Ibn Hibbân*”, hadith no. (3280); “*Al-Mustadrak*”, Al-Hâkim, (1: 402).

2- `Attâb Ibn Asîd (may Allah pleased with him) narrated:

“The Messenger of Allah (peace and blessings of Allah be upon him) commanded us to assess the (harvest of) grapes, and to pay Zakâh in raisins, just as the Zakâh on date palms is given in dried dates.”⁽¹⁾

3- `Âishah (may Allah be pleased with her) narrated:

“The Prophet (peace and blessings of Allah be upon him) used to send `Abduġlâh Ibn Rawâġhah (to Khaybar), and he would assess the amount of dates when they began to ripen before they were eaten (by the Jews). He would then give choice to the Jews that they have it (on their possession) by that assessment or could assign it to them (Muslims) by that assessment. Allah’s Messenger’s command of assessment was aimed at calculating the (amount of) Zakâh before the fruit became eatable and distributed (among the people).”⁽²⁾

The majority of scholars are of the view that it is permissible for the Imam to send someone to assess how much dates and grapes are due for *Zakâh* on fruits. In this case, the fruits of dates and grapes are to be assessed or estimated (for *Zakâh*) after they dry out, which is regarded as permission for their owners to dispose of them whether by eating or selling. In this regard, Imam At-Tirmidhî, in his “*Jâmi` At-Tirmidhî*”, says:

*“The majority of scholars depend on the hadith of Sahl Ibn Abû Hathmah regarding assessment (of fruits for *Zakâh*). Also, Aġmad and Ishâq adopt the hadith of Sahl Ibn Abû Hathmah. Assessment is to be done when the fruits of dates and grapes began to ripen. In this case, the governor shall send someone to assess such fruits, where he*

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- (1) “*Sunan Abû Dâwûd*”, Book of *Zakâh*, Chapter: Assessing Vines For *Zakâh*, hadith no. (1603); “*Jâmi` At-Tirmidhî*”, Book of *Zakâh* as reported from the Prophet (peace and blessings of Allah be upon Him), Chapter: Assessment, hadith no. (644); “*Al-Mujtabâ*”, An-Nasâî, Book of *Zakâh*, Chapter: Buying something that one has given in charity, hadith no. (2617); “*Sunan Ibn Mâjah*”, Book of *Zakâh*, Chapter: Assessment of date palms and grapes, hadith no. (1819), The hadith is *Munqati`* (i.e. interrupted).
- (2) “*Sunan Abû Dâwûd*”, Book of Sales, Chapter: Assessment, hadith no. (3413); “*Musnad Aġmad*”, (6: 163); “*Saġih Ibn Khuzaymah*”, Book of *Zakâh*, Chapters of charity on grains and fruits: The time when Imam sends an assessor to assess, hadith no. (320). The hadith’s *Isnâd* (i.e. chain of transmission) includes unknown narrators, See: “*Al-Badr Al-Munîr*”, (5: 543).

determines the amount of raisin and dried dates to be paid as *Zakâh*, which is one tenth. Once the amount of *Zakâh* is determined, the owner become free to dispose of the fruits and when the fruits ripen (dried out), one tenth thereof is to be taken as *Zakâh*. This is the opinion adopted by some scholars, including Mâlik, Ash-Shâfi`î, Ahmad and Ishâq.”⁽¹⁾

The four schools of Fiqh (Hanafites, Malikites, Shafiites, and Hanbalites) adopted this opinion as they agree on assessment as a method to find out the due amount of *Zakâh*, even if they differ in some of its effects, as in the case when it turns out that the assessment is contrary to the reality when the fruit dries up, or if the fruit is being heavily damaged by a blight as will be explained later. The opinion of the scholars denying and considering assessment as wrong practice, including An-Nakha`î and Ath-Thawri, depend on such effects. Many scholars, also, convey that this opinion is adopted by the Hanafites though it is contrary to the opinion established in their school.⁽²⁾

Due to the fact that assessment is in contrast to the original ruling, its application is limited to cases regard which there is a Shari`ah text, namely dates and grapes, which is intended to secure the *Maṣlahah Râjihah* (i.e. a major benefit) represented in eating and disposing of such fruits before they dry out. In this regard, Imam Al-`Izz Ibn `Abdus-Salâm says:

“Assessment is in contrary to the original ruling. This because it implies high risk of error in comparison to estimation by weight, length, capacity or number. The most accurate way of estimation is weight because

(1) “*Jâmi` At-Tirmidhi`*, (1: 28), hadith no. (643); “*Al-Mughni`*, (4: 173). Some scholars, however, disagree with this opinion. It is reported that An-Nakh`î and Ath-Thawri denied this opinion and considered it as *Bid`ah* (i.e. innovated matter in religion). They deemed assessment (in this case) as a kind of supposition and baseless guessing which shall not necessitate any rulings. They also argue that this opinion was adopted by the owner of property in deficiency claims, and that any one accuses them of treasury and theft should produce an evidence thereon. In addition, assessment was meant to threaten workers (plowmen) not to steal. See: “*Sharh Ma`âni Al-Âthâr*”, (2: 39-40).

(2) See: “*Al-Mabsûṭ*”, (23: 6); “*Al-Binâyah Sharh Al-Hidâyah*”, (3: 431); “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqi`*”, (1: 453); “*Ash-Sharh As-Saghîr*”, (1: 616-617); “*Nihâyat Al-Muhtâj*”, (3: 80); “*Tuhfat Al-Muhtâj*”, (3: 256-257); “*Kashshâf Al-Qinâ`*”, (4: 419); “*Matâlib Uli An-Nuhâ`*”, (2: 66).

little difference may occur among the weighted objects. Assessment, however, is the less accurate way, but is adopted in case of *Zakâh* and *Musâqâh* (i.e. sharecropping) for urgent public need. When dates and grapes begin to ripen and *Zakâh* becomes due thereon, they are to be assessed to determine the due amount of *Zakâh*. This is because if the owners are prevented from disposing of such fruits, whether by eating or selling, until the fruits dry out, the owners, as well as other people, will incur loss and damage. The same applies to assessment in case of *Musâqâh* (i.e. sharecropping), where partners are not to be prevented from eating or otherwise disposing of the crops. If they are so prevented, other people will be prevented as well. This is a general assessment aimed at preventing the harm resulting from withholding *Zakâh*, as the two partners may dispose of the crops by mutual consent before the same is assessed for *Zakâh*, and the poor cannot be satisfied because they are not specified.”⁽¹⁾

Whereas Shari'ah permits assessment for a *Maṣlahah Râjihah* (i.e. a major benefit) in case of grapes and dates, then this can be taken as an evidence for the permissibility of applying assessment where the *Zakâh* payer lacks the full knowledge required to comply with the Shari'ah ruling on *Zakâh*.

Imam Ibn Taymiyyah says:

“It has been proven that the Prophet (peace and blessings of Allah be upon him) allowed selling of *ʿÂriyah* (i.e. lending a property to benefit from its usufruct) for an assessed amount of dried dates. Here, a usurious commodity can be sold for an assessed amount of what will be produced. In case of necessity, assessment is used instead of measure, which reflects the good attributes of Shari'ah. By the same token, in case of *Zakâh* and *Muqâsamah* (i.e. proportional tax), assessment is used instead of measure where fruits are assessed or estimated for calculation of *Zakâh*. Also, ʿAbdullâh Ibn Rawâhah used to practice *Muqâsamah* with the people of *Khaybar* based on assessment subject to a permission from the Prophet (peace and blessings of Allah be upon him). It is well known that measure is to be used if possible; otherwise,

(1) “*Qawâ'id Al-Ahkâm*”, (2: 292).

assessment is to be used instead for necessity, as is the case with other alternatives. That is, *Qiyás* (i.e. analogical deduction) is to be used instead of the Shari'ah text where the latter is not available, and assessment is to be used instead of the like, and the alternative of nominal price is to be used where the like or nominal price is not available.”⁽¹⁾

Fifth: Extrapolation of Shari'ah rulings and *Ijtihâd* of the scholars of Fiqh regarding *Zakâh* indicate that estimation can be used in calculating *Zakâh* in order to facilitate the process of calculating *Zakâh* for the payers, to relieve the owners of property and the people entitled to receive *Zakâh* from any hardship in this regard. This is despite the fact that estimation may result in a decrease or increase in the due amount of *Zakâh*, which is indicated by a number of the aforementioned examples introduced in the discussion of the purposes.

(1) “*Majmû' Al-Fatâwâ*”, (20: 350-351).

Treatise Three

Conditions of Applying Estimation to Calculation of *Zakâh*



Whereas the application of estimation to calculation of *Zakâh* is regarded as a deviation from the original ruling on calculating *Zakâh* with the aim of removing any hardship regarding the information disclosed in the financial statements of the joint-stock companies, then it is important to figure out the conditions subject to which estimation may be applied to calculation of *Zakâh*. These conditions are, generally, represented in the Shari'ah rules on removing hardship and on cases of necessity in Islamic Shari'ah, which can be summarized as follows:

Condition (1): It is very difficult or impossible to calculate *Zakâh* accurately

Applying estimation, in general, can be attributed to the Shari'ah rule regarding removal of hardship. This is why estimation is to be applied only in case of need and necessity for it being in contrary to the original ruling. In this regard, Imam Al-Kâsânî says:

“An actually nonexistent matter can be dealt with as being existent by means of estimation in case of well-verified need and necessity.”⁽¹⁾

Also, Imam Al-Qarâfi says:

“Estimation is to be applied only where an evidence is found that the ruling is existent without the cause or condition thereof or where no nullifier is found regarding the application of this ruling. However, where estimation is not required by an urgent need, estimation is not to be applied then.”⁽²⁾

(1) “*Badâ'i' As-Sanâ'i'*”, (4: 201).

(2) “*Al-Furûq*”, (2: 202).

It is well known that it is not possible to count the circumstances or situations where estimation is to be required for the calculation of *Zakâh*. In this concern, Imam Ash-Shâtibî says:

“The causes behind licenses are not classified under one original initial rule nor can a general rule be formulated for them. In fact, they are additional with respect to each addressee within his personal context.”⁽¹⁾

This, however, can be explained throughout the following issues:

Issue (1): Rule of considerable need

In his definition of needs from Shari'ah's point of view, Ash-Shâtibî says:

“They are required so as to attain facility and removal of constraints that usually lead to difficulty and hardship and are accompanied by the loss of the desired object. When these needs are not preserved, the obligated persons, as a whole, are affected by difficulty and hardship. Nevertheless, such hardship does not reach the level of normal destruction expected in the case of the (five) general interests. The needs prevail in worship, practices, transactions and offences.”⁽²⁾

The foregoing definition is one of the best definitions given to the “need”. The definition, however, does not approach the individual need. Individual need, though lower in rank than public need, has impact on Shari'ah rulings. This is why Dr. Ahmad Kâfi, amends the definition of “need” to read as follows:

“That which an individual or a nation needs for mitigation and removal of hardship, whether temporarily or permanently. In this case, if the need is not observed, the obligated persons, as a whole, are affected by difficulty and hardship, and it may reach the level of destruction expected in the case of necessity.”⁽³⁾

Regarding the rule of considerable need to calculation of *Zakâh*, it can be said:

(1) *“Al-Muwâfaqât”*, (1: 485).

(2) *Ibid.*, (2: 21).

(3) *“Al-Hâjah Ash-Shar`iyyah: Hudûduhâ Wa-Qawâ`iduhâ”*, Ahmad Kâfi, (pp. 28-35). In comparison between the definitions of “need”, refer to: *“Al-Hâjah Wa-Atharuhâ Fî Al-Ahkâm”*, Ahmad Ar-Rashid, (1: 48-64).

“It is the public or individual hardship incurred by *Zakâh* payer when calculating *Zakâh*, and which results in violation of one of the Shari'ah purposes with regard to calculation of *Zakâh*. Here, I refer to both types of hardship, namely public and individual hardship, which also shapes both types of “need”, public and individual need. Public need covers all obligated persons or certain category thereof. It is not necessary for a public need to be considered in case of estimation that it affects obligated persons on an individual basis. This is because public need is to be dealt with the same way as individual necessity. Individual need, however, is that one experienced by obligated persons on an individual basis. For individual need to be considered as a reason for mitigation, it must be verified.”⁽¹⁾

Compliance with the Shari'ah cannot be achieved without any hardship. However, hardship referred to here is that usual hardship which is taken into consideration by Shari'ah and does not require mitigation but rather ensures reward when incurred by the person. This is indicated in the following hadith, in which the Prophet (peace and blessings of Allah be upon him) said:

“But (the reward of this ‘Umrah) is equal to your hardship.”⁽²⁾

Unusual hardship, however, which results in unbearable hardship for the obligated person, is negated by Shari'ah, as indicated in Allah's saying:

{“Allah burdens not a person beyond his scope...”}⁽³⁾

In his “*Al-Qawâ`id*”, Imam Al-Maqqarî says:

“A hardship implied by nature in an obligation is not to be taken as a cause for relief from such an obligation as in the case of murder in *Jihâd* (i.e. fighting in Allah's cause). This is because exposure to murder is linked with *Jihâd*.”⁽⁴⁾

(1) See: “*Raf` Al-Haraj Fî Ash-Shari`ah Al-Islâmiyyah*”, *Sâlih Ibn Humayd*, (pp. 175-182); “*Al-Hâjah Wa-Atharuhâ Fî Al-Ahkâm*”, *Ahmad Ar-Rashîd*, (1: 102-118).

(2) “*Sahîh Al-Bukhârî*”, Book of Pilgrimage, Chapter: The reward of ‘Umrah is equal to the hardship incurred, hadith no. (1787); “*Sahîh Muslim*”, Book of Pilgrimage, hadith no. (1211). The wording of this hadith belongs to Muslim.

(3) Surah *Al-Baqarah* (The Cow): 286.

(4) See: “*Al-Qawâ`id*”, Al Maqqarî, rule no. (100).

That is why the scholars divide hardship in terms of its consideration in Shari'ah into: (I) unanimously agreed upon considerable hardship; (II) unanimously agreed upon inconsiderable hardship, which is implied by nature in obligation; and (III) hardship which is not decided as considerable or inconsiderable by scholars.⁽¹⁾

Issue (2): Relationship between the need and the obligated persons

The hardship incurred in calculating *Zakâh*, requiring testimation to be applied, relates to one of three persons as follows:

First: The person required to pay *Zakâh*, i.e. the owner of the property or his representative. *Zakâh* payer in joint-stock companies may not have knowledge regarding financial statements or accounting. Moreover, he may have access only to such information as disclosed in financial statements. Also, a joint-stock company may face difficulty in recalculating its financial assets for *Zakâh* purposes in accordance with Shari'ah.

Second: *Zakâh* collector who collects and delivers *Zakâh* to entitled persons. He is the person appointed by the ruler to collect *Zakâh* and represented now by the bodies authorized to calculate and collect *Zakâh*. In calculation of *Zakâh*, a balance should be achieved between auditing activities and the cost and time that may affect the right of those entitled to *Zakâh*.

Some scholars argue that assessment is permitted as a means of facilitation for the *Zakâh* collector. In his "*Hâshiyah 'Alâ Ad-Dalîl*", Ibn 'Awad says:

"Assessment is justified for the benefit of *Zakâh* collector for two reasons: The first is that once *Zakâh* collector performs assessment, he will not be required to make another visit to calculate *Zakâh*. The second is that once assessment is made the poor will have the chance to benefit from grapes and dates before they dry out."⁽²⁾

Third: Persons entitled to *Zakâh*, including the poor and others. Hardship may be incurred by the poor (entitled to *Zakâh*) due to the nature of the object paid out as *Zakâh*. For example, where *Zakâh* is paid in the

(1) See: "*Qawâ'id Al-Ahkâm Fî Masâlih Al-Anâm*", (2: 13-22); "*Al-Furûq*", Al-Qarâfi, (1: 118-119); "*Qâ'idat Al-Mashaqqah Tajlib At-Taysir*", Al-Bâhusayn, (pp. 59-75).

(2) "*Hâshiyat Ibn 'Awad*", (1: 537).

form of grains and fruits, the *Zakâh* receiver may experience hardship in storing them in proper condition. In this case, paying the value of *Zakâh* in cash may be more proper substitute for *Zakâh* receiver. Also, hardship in case of *Zakâh* receiver may relate to the time of payment, or quantity of *Zakâh*.

Issue (3): Categories of need in calculating *Zakâh*

A considerable hardship in the calculation of *Zakâh* may be determined by a general rule, which is: Where the application of original rule results in a violation of any requirement of calculating *Zakâh*, which were previously explained in the preface: clarification and explanation, facilitation, and justice.

Accordingly, estimation may be applied to one of the following two cases:

First: Where a *Zakâh* payer lacks the information required for calculating *Zakâh* in accordance with Shari'ah. This is an established principle in Shari'ah, which states that whenever knowledge (i.e. information or certainty) is not available, assumption may be used. In his "*Al-Qawâ'id*", Al-Maqqarî says:

“What to be considered in determining the causes, innocence, and all things upon which the rulings are based is knowledge. Whenever knowledge is not available, assumption is to be used instead of it as it shares some aspects with certainty. This is indicated in Allah’s saying:

{“...then if you ascertain that they are true believers...”}⁽¹⁾⁽²⁾

He also says:

“The ability to be certain without great hardship prevents *Ijtihâd*.”⁽³⁾

This applies to the calculation of *Zakâh*, as stated above. Ibn Taymiyyah says:

“It is well known that measure is to be used if possible; otherwise, assessment is to be used instead for necessity.”⁽⁴⁾

(1) Surah *Al-Mumtahinah* (The Woman Tested): 10.

(2) "*Al-Qawâ'id*", Al-Maqqarî, rule no. (66).

(3) *Ibid.*, rule no. (123).

(4) "*Majmû' Al-Fatâwâ*", (18: 167).

“In case of necessity, assessment is used instead of measure, which reflects the good attributes of Shari'ah. By the same token, in case of *Zakâh* and *Muqâsamah*, assessment is used instead of measure where fruits are assessed or estimated for calculation of *Zakâh*.”⁽¹⁾

Second: Where calculation of *Zakâh* results in a breach of the purpose of justice between the rights of the poor and the rich. This is to be considered by the scholars in light of new events regarding *Zakâh*, particularly new events encountered by companies. Estimation, in this case, is to be applied by reconsidering the matter and reviewing the consequences of each opinion with the aim of achieving Shari'ah purpose of justice between the rights of the rich and the poor.

Practical application has revealed that some considerable Fiqh-related opinions regarding *Zakâh* of companies has negatively affected this Shari'ah purpose. For example, in approaching the impact of debts on *Zakâh*, some opinions result in many companies being relieved from the obligation of *Zakâh*. Other opinions argue that the due amount of *Zakâh* may cause companies to suffer financial problems and prevent them from assuming their developmental role. For this purpose, to be regarded as reasonable, the matter in question should be regarded as discretionary matter. This is because decisive (or agreed upon) matters cannot be regarded as contradictory to the interest; otherwise, interest, in this case, is to be disregarded and not considered by Shari'ah.

Condition (2): Estimation is to be based on Shari'ah principle

Whereas estimation, in its reality, is a deviation from an original Shari'ah rule out of necessity, the principle to be adopted by the scholar must be a Shari'ah principle, which, due to the considerable hardship involved, must be more preponderant than the original rule applicable to calculation of *Zakâh*.

Condition (3): Applying estimation shall not contradict with another more considerable principle

This condition is based on three matters:

(1) “*Majmû' Al-Fatâwâ*”, (20: 350).

First: Applying estimation shall not contradict with a prohibition that, initially, prevents the exercise of estimation.

This is as in the case where there is a definitive proof or absolute unanimity that prevents applying *Ijtihād* (i.e. legal reasoning and discretion) to the matter in question.

An example of this is when a person suspects that he has inherited a property. In this case, *Zakāh* may not be imposed based on such a suspicion. This is because suspicion is not to be taken into account in Islamic Shari'ah, as it contradicts the applicable original rule, which states that a person's liability is free of any obligation unless proven otherwise. Also, suspicion is not to be relied upon in the establishment of Shari'ah ruling regarding an originally nonexistent matter.

Second: Estimation applied to *Zakāh* shall not contradict another more considerable estimation.

This is because where the original Shari'ah ruling cannot to be applied, then the closest method proper to establish the Shari'ah ruling is to be applied instead.

This is a general principle in the Shari'ah, which is based on Allah's Saying: *{“So, keep your duty to Allah and fear Him as much as you can.”}*⁽¹⁾

And on the Prophetic hadith, in which the Prophet (peace and blessings of Allah be upon him) says:

“So, Perform Tasdīd (i.e. performing good deeds properly) and Muqārabah (i.e. seeking closeness to proper performance of deeds).”⁽²⁾

Also, this meaning is indicated in the advice (letter) given by `Umar Ibnul-Khattāb to Abū Mūsā Al-Ash`arī in which he says:

“Thorough and careful understanding is to be exercised in considering any matter not covered by an explicit Shari'ah text, whether in the Qur'an or the Sunnah. Then apply *Qiyās* (i.e. analogical deduction) to other

(1) Surah *At-Taghābun* (Mutual Fraud): 16.

(2) *“Ṣaḥīḥ Al-Bukhārī”*, Book of Belief, Chapter: Religion is very easy, hadith no. (39), on the authority of Abū Hurayrah (may Allah be pleased with him).

similar cases, and decide the one which is more likely to be pleasing to Allah and closest to the truth.”⁽¹⁾

In this regard, Imam Al-Ghazâlî says:

“In the absence of *Tawqîf* (i.e. being bound by a Shari'ah text and not amenable to legal reasoning and discretion), a close ruling is to be applied.”⁽²⁾

Moreover, Imam Az-Zarkashî says:

“It must be known that if a ruling is to be based on an original principle which cannot be established, then a closet similar original principle is to be adopted (by means of *Qiyâs*). In some cases, *Qiyâs* (i.e. analogical deduction) may be based on meaning as in the case of *Qiyâs* of similarities. Qur'an and sunnah are the main basis of deduction, but, if a proof thereof is not available, *Qiyâs* is to be adopted. In some other cases, *Qiyâs* may be based on shape, as in the case of the penalty applied in case of hunting during *Ihrâm* (i.e. ritual consecration). This is why the penalty in case of hunting an ostrich is a female camel, because they are similar in form. By the same token, a goat is to be paid (as a penalty) in case of hunting a deer, a she-goat in case of hunting a rabbit, and a cow in case of addax.”⁽³⁾

Third: Estimation resorted to is to be more likely to achieve Shari'ah interests in calculating *Zakâh*.

This condition is the scale that a *Mujtahid* should take into account in considering matters of estimation. Accordingly, he must examine the con-

(1) “*Sunan Ad-Dâraquṭnî*”, Book of Cases and Rulings and Others, the letter of `Umar (may Allah be pleased with him) to Abû Mûsâ Al-Ash`arî, hadith no. (4471); “*Sunan Al-Bayhaqî*”, Book of Etiquettes of the Judge, Chapter: A judge should issue a judgement only when he is satisfied and sated, (10: 115); “*Ma`rifat As-Sunan Wal-Âthâr*”, (14: 240); “*Al-Faqîh Wal-Mutafaqqih*”, Al-Khatîb, hadith no. (535). In “*Ma`rifat As-Sunan Wal-Âthâr*”, Al-Bayhaqî says: “It is a well-known letter which judges shall be aware of and act accordingly”. In “*Minhâj As-Sunnah*”, (6: 71), Ibn Taymiyyah says: “The letter of `Umar to Abu Mûsâ Al-Ash`arî regarding judicature has been circulated and adopted by the scholars of Fiqh who relied on it, and act according to the Fiqh fundamentals it contains.”

(2) “*Tahsîn Al-Ma`âkhidh*”, (1: 547).

(3) “*Al-Manthûr Fî Al-Qawâ`id*”, (2: 223).

sequences of estimation, interests to be achieved and evils to be averted, taking into account the aforementioned purposes of the Shari'ah behind *Zakâh* in general, and in calculating *Zakâh* in particular, in an attempt to make a balance between the good and the best. In this regard, Imam Ibn Taymiyyah says:

“Shari'ah seeks to achieve and complete interests and avoid and reduce evils. That is, where there are two good things, the best of which is to be sought and where there are two bad things, the worst of which is to be averted. Further, a matter with little benefit may be abandoned to obtain another with greater benefit or to prevent a bad matter the prevention thereof is more beneficial than obtaining such a matter with little benefit. Also, a matter with little evil may be resorted to prevent another matter with greater evil or to obtain a good matter the achievement thereof is more beneficial than preventing such a matter with little evil.”⁽¹⁾



(1) “*Sharh Al-`Aqidah Al-Asbahâniyyah*”, (P. 430).

Treatise Four

Impacts of Applying Estimation to Calculation of *Zakâh*



We have discussed earlier the Shari'ah licenses attributed to the application of *Taqdîr* (i.e. estimation), and that the purpose of applying estimation, as explained above, is to remove hardship that a person (*Zakâh* payer) may experience in calculating *Zakâh*. Accordingly, *Zakâh* payer may use estimation instead of the original rule relating the calculation of *Zakâh*, regardless of any reduction or time shift in the amount payable, or any difference in the description of the item to be paid for *Zakâh*.

However, if a *Zakâh* payer, having paid the *Zakâh*, finds that, due to the application of estimation, the amount paid differs from the amount due, then this requires that the amount paid is being considered to find out whether it fulfills his *Zakâh* obligation or the due amount is to be paid.

To elaborate on this issue, it can be divided into three sections as follows:

Section (1): Where estimation results in payment of *Zakâh* in different types

An example of this is when one pays a sheep (as *Zakâh*) for forty sheep in which he intends to trade while thinking that they are to be dealt with as being freely grazing livestock, and accordingly, paid *Zakâh* based on the asset (i.e. their number) in accordance with the opinion of the majority of scholars. However, it is found later that the principle of freely grazing is not realized since the sheep were artificially fed most of the year. Accordingly, he pays one sheep while the due *Zakâh* is a quarter of a tenth of the value of these sheep because they are regarded as goods stocked for trade and not as freely grazing livestock.

Another example is when a merchant buys a crop after the due date (of *Zakâh*), which is at the beginning of the month of Muharram, and is not sure where *Zakâh* is due on him, and so he pays *Zakâh* on such grains and fruits thinking it is due on him. Having paid such a *Zakâh*, the merchant realized that it was due on the seller. In this case, if the merchant transferred his property on which *Zakâh* of cash and goods stocked for trade is due at the beginning of Muharram, would the *Zakâh* of crops and fruits which the merchant paid fulfil his obligation regarding *Zakâh* of goods stocked for trade on the same property? There are two views regarding this issue:

View (1): *Zakâh* is an act of worship, and what to be considered in acts of worship is what assumed by the obligated person. Based on this, it can be said that the obligated person makes his effort to pay *Zakâh* in a Shari'ah-compliant way and accordingly what he pays is to fulfill his *Zakâh* obligation.

In his "*Al-Qawâ'id*", Ibn Rajab says:

"If a person performs an act of worship at its due date thinking that it is due on him and then realizes that another act of worship is due instead, then the first act of worship will be sufficient as a fulfilment of the second act of worship."

He adds:

"This rule applies to a defective condition which is hidden and then discovered later. In this case, it will be forgiven according to the soundest opinion."⁽¹⁾

View (2): Estimation is a form of assumption. In this case, if it is found that the *Zakâh* the person pays is not the due *Zakâh* to be paid, then "**the wrong assumption is not to be taken into account**",⁽²⁾ and the person is to pay the due *Zakâh*.

Earlier scholars are of two opinions regarding this issue:

Opinion (1): *Zakâh* payer is to correct what he paid based on the value.

(1) "*Al-Qawâ'id*", Ibn Rajab, rule no. (6), (1: 37).

(2) See: "*Al-Ashbâh Wan-Nazâ'ir*", Ibn Nujaym, (P. 134); "*Al-Ashbâh Wan-Nazâ'ir*", As-Suyûtî, (P. 157); "*Mawsû'at Al-Qawâ'id Al-Fiqhiyyah*", Al-Bûrnû, (6: 324).

That is, if the value of the *Zakâh* paid fulfils the obligation of *Zakâh*, then *Zakâh* is to be considered as paid and fulfilled.

This is consistent with the view of the Hanafites who consider the value of *Zakâh* paid as the absolute basis, and with the view of the Malikites who see that the paid value is to be corrected in some cases,⁽¹⁾ or with the view of those who see that it is permissible to pay goods stocked for trade as *Zakâh* for the public interest. The latter view is adopted by Ibn Taymiyyah (may Allah confer mercy upon him) who attributed it to Imam Ahmad.⁽²⁾

Opinion (2): What the person paid as *Zakâh* is not to fulfill what is to be paid of wealth due to the fact that it contradicts with the due *Zakâh* in terms of quantity and description.

This is consistent with the views of the Shafiites and the Hanbalites, who do not permit the payment of value in case of *Zakâh*. This is why they says: If the *Zakâh* on fifteen camels, for example, is paid in advance (before its due date) as one *Bint Makhâd* (i.e. a she-camel in its second year), and then the due *Zakâh* changes by the elapse of the *Hawl* (i.e. *Zakâh* year), then the amount paid (i.e. the one *Bint Makhâd*) shall not fulfil the obligation of *Zakâh*, and the due *Zakâh* is to be paid.

In this regard, An-Nawawî, in his "*Al-Majmû`*", says:

"If one *Bint Makhâd* is paid in advance as a *Zakâh* on twenty-five camels, which then reached by production thirty-six camels before the elapse of the *Hawl*, the *Bint Makhâd*, which is paid early, is not to fulfill the obligation of *Zakâh*, even if it turns into a *Bint Labûn* (i.e. a she-camel in its third year) while in the possession of the person who received it as *Zakâh*. In this case, the *Bint Labûn* (paid in advance at the age of *Bint Makhâd*) is to be recovered and repaid again, or another *Bint Labûn* is to be paid as *Zakâh*."⁽³⁾

In "*Kashshâf Al-Qinâ`*", it is said:

"If *Zakâh* on fifteen camels and their reproduction is paid in advance

(1) "*Al-Muntaqâ`*", (2: 161); "*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dustûqî*", (1: 501).

(2) Disagreement on this issue is presented in (P. 58).

(3) "*Al-Majmû`*", (6: 124); "*Nihâyat Al-Muhtâj*", (3: 142); "*Tuhfat Al-Muhtâj*", (3: 356).

as one *Bint Makhâd*, and such fifteen camels produce another fifteen camels, then the *Zakâh* paid in advance shall not fulfil the obligation of *Zakâh*. This because, as for the production, its *Zakâh* cannot be paid in advance before it comes into existence, and as for the original fifteen camels, the due *Zakâh* on them is not from its type. In this case, *Bint Makhâd* is to be paid if the *Hawl* (i.e. *Zakâh* year) elapses.”⁽¹⁾

The first opinion appears to be more appropriate to the principles of Shari'ah with regard to achieving facilitation for the obligated person. Also, the purpose of *Zakâh* is achieved by delivering *Zakâh* to the people entitled thereto. This is why this view is more appropriate than the second view stating that *Zakâh* is to be paid twice. Also, in this case, the obligated person has made his best to pay *Zakâh* in a Shari'ah-compliant manner.

This is because *Zakâh* implies the meaning of worship and implies the meaning of transaction since it is regarded as a due share in the property that must be given to those entitled thereto. Accordingly, scholars who see *Zakâh* as an act of worship take into account the obligated person's assumption. Accordingly, the Hanafites are of the opinion that if a person, having made a considerable effort to find out those entitled to *Zakâh*, finds out that he paid *Zakâh* to a person not entitled thereto, he is to be regarded as having fulfilled the obligation of *Zakâh*.⁽²⁾

In their opinion, the Hanafites depend on the hadith narrated by Abû Hurayrah (may Allah be pleased with him), stating that Allah's Messenger (peace and blessings of Allah be upon him) said:

“A man said that he would give something in charity. He went out with his object of charity and unknowingly gave it to a thief. Next morning the people said that he had given his object of charity to a thief. (On hearing that) he said, ‘O Allah! All the praises are for you. I will give alms again.’ And so, he again went out with his alms and (unknowingly) gave it to an adulteress. Next morning the people said that he had given his alms to an adulteress last night. The man said, ‘O Allah! All the praises are for you. (I gave my alms) to an adulteress. I will give alms again.’ So, he

(1) See: “*Kashshâf Al-Qinâ`*”, (5: 105).

(2) “*Al-Bahr Ar-Râ'iq*”, (2: 266); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 189).

went out with his alms again and (unknowingly) gave it to a rich person. (The people) next morning said that he had given his alms to a wealthy person. He said, 'O Allah! All the praises are for you. (I had given alms) to a thief, to an adulteress and to a wealthy man.' Then someone came and said to him, "The alms which you gave to the thief, might make him abstain from stealing, and that given to the adulteress might make her abstain from illegal sexual intercourse (adultery), and that given to the wealthy man might make him take a lesson from it and spend from his wealth which Allah has given him (in Allah's cause)."⁽¹⁾

They also depend on the hadith narrated by Ma`n Ibn Yazîd (may Allah be pleased with him), saying:

"My father Yazîd had taken some gold coins for charity and kept them with a man in the mosque (to give them to the poor). But I went and took them and brought them to him (my father). My father said, 'By Allah! I did not intend to give them to you.' I took it (the case) to Allah's Messenger (peace and blessings of Allah be upon him). On that Allah's Messenger (peace and blessings of Allah be upon him) said, 'O Yazîd! You will be rewarded for what you intended. O Ma`n! Whatever you have taken is yours.'"⁽²⁾

The majority of scholars, however, disagree with them on this matter and argue that *Zakâh* implies the meaning of worship and the meaning of transaction. Accordingly, the Malikites⁽³⁾ and the Shafiites⁽⁴⁾ say that *Zakâh* is not to be valid if paid to a person the *Zakâh* payer assumes wrongly that he deserves it and then finds later that he does not. This is because his mistake is established by means of certainty. If, however, the *Zakâh* payer gives *Zakâh* to Imam who, in return, pays it a person found later to be not entitled thereto, then the *Zakâh* payer shall be regarded as having

(1) "*Sahîh Al-Bukhârî*", Book of *Zakâh*, Chapter: If one gives an object of charity to a wealthy person unknowingly, hadith no. (1421); "*Sahîh Muslim*", Book of *Zakâh*, hadith no. (1022).

(2) "*Sahîh Al-Bukhârî*", Book of *Zakâh*, Chapter: If a person gives something in charity to his own son unknowingly, hadith no. (1422).

(3) "*Ash-Sharh Al-Kabîr*", (1: 501); "*Al-Khurashî `Alâ Khalîl*", (2: 224).

(4) "*Al-Hâwî Al-Kabîr*", (10: 623); "*Mughni Al-Muhtâj*", (4: 181).

fulfilled his *Zakâh* obligation, and the *Zakâh* paid is to be recovered from the person not entitled thereto.

The Hanbalites⁽¹⁾ are of the view that it is not valid, except in one case, namely if the *Zakâh* payer thinks that the person to whom he gives *Zakâh* is poor then finds later to be rich. They justify their opinion arguing that the condition of the poor is often hidden. They also depend on the aforementioned hadith of Abû Hurayrah.

Regarding the issue in question, the wealth is delivered to the person entitled thereto however in different description, which can be corrected based on the value. This is why facilitation is to be taken into account so that the obligated person may not pay *Zakâh* twice. This is consistent with the purpose of Shari'ah regarding establishing justice between the poor and the rich in calculation of *Zakâh*.

If we do not consider the difference in the description of the *Zakâh* paid in terms of value, then the value of the *Zakâh* paid is to be considered, which will be discussed in detail in the following two sections:

Section (2): Where the amount paid (as *Zakâh*) is found to be less than the amount due

This happens when the *Zakâh* payer estimates the *Zakâh* in a certain manner and then it appears later that the amount of *Zakâh* due is more than the amount estimated. In this case, he is required to pay the difference since a clearly wrong assumption is not to be taken into account, which applies to the case where someone forgets about a property he possesses and accordingly does not pay *Zakâh* thereon. Here, once he remembers this property, he shall pay *Zakâh* thereon. This is the opinion adopted by the Hanifites,⁽²⁾ the Malikites,⁽³⁾ the Shafiites,⁽⁴⁾ and the Hanbalites.⁽⁵⁾

This is justified by the argument that "the decision made by the person assigned to assess crops (for *Zakâh* purposes) has the same power as the

(1) "*Kashshâf Al-Qinâ`*", (5: 177); "*Sharh Al-Muntahâ*", (2: 331).

(2) See: "*Al-Mabsûl*", (23: 6); "*Al-Binâyah Sharh Al-Hidâyah*", (3: 431).

(3) See: "*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*", (1: 454); "*Ash-Sharh As-Saghîr Ma`a Bulghat As-Sâlik*", (1: 619).

(4) See: "*Mughnî Al-Muhtâj*", (2: 91-92); "*Tuhfat Al-Muhtâj*", (3: 261).

(5) See: "*Kashshâf Al-Qinâ`*", (4: 422); "*Sharh Muntahâ Al-Irâdât*", (2: 242).

judgment of the ruler and it is unanimously agreed that if a judgement made by the ruler is proven, without any disagreement, to be wrong, it must be nullified.”⁽¹⁾

Imam Mâlik is reported to have attitude considering this act as desirable. In “*Al-Mudawannah*”, it is said:

“I asked: ‘What if the person assigned to assess crops assesses the crop of dates as four *Wasqs* (a *Wasq* is a kind of weight equals 180 kg approx.) while the owner of the date palms, having made greater effort, assesses the same as five *Wasqs*?’ Mâlik says: ‘I think it is more desirable for the owner to pay *Zakâh* on five *Wasqs*, because the persons assigned to assessment are known to commit mistakes (in assessment) nowadays. This is why it is desirable for the owner to pay *Zakâh* (based on his assessment) before eating from the crop.’ Mâlik adds: ‘The same applies to grapes.’”⁽²⁾

However, in his “*Al-Bayân Wat-Tahsîl*”, Ibn Rushd says that this act is more likely to be regarded as obligatory based on the opinion reported, in “*Al-‘Atbiyyah*”, to have been said by Mâlik:

“When Mâlik was asked about the owner whose date palms have been assessed and then their crop is found to be more than the assessment, he said: ‘I think he shall pay *Zakâh* on the actual crop.’ He adds: ‘Disagreement may be acceptable if assessment is made by a professional person (at a time where justice prevails). However, if the assessment is made by a nonprofessional person, or by a professional person at a time where injustice prevails, it is to be disregarded, and *Zakâh* is to be paid according to the actual crop determined by the owner.’”⁽³⁾

Section (3): Where the amount paid (as *Zakâh*) is found to be more than the mount due

This happens when the *Zakâh* payer estimates the *Zakâh* in a certain manner and then it appears later that the *Zakâh* due is less than the amount

(1) “*Al-Bayân Wat-Tahsîl*”, (2: 488).

(2) “*Al-Mudawannah*”, (1: 379).

(3) “*Al-Bayân Wat-Tahsîl*”, (2: 487).

paid. Excess, in this case, is to be regarded as voluntary act of worship. This is because payment of *Zakâh* implies both the intention to fulfil an obligation and the intention to perform an act of worship. Accordingly, if obligation appears not to exist, there remains the intention of worship, upon which the excess is regarded as a voluntary act of worship. In “*Sharh Al-Muntahâ*”, it is stated:

“Any obligation turns to be a voluntary act of worship if proven to be undue. This applies when a person performs a Prayer that he thinks he misses and then realizes that he has performed it. The same applies also when a person performs a Prayer thinking that its due time has come and then realizes that it has not come yet. This is because, in this case, performance of the obligatory Prayer (whose due time has not come yet) is invalid while there is nothing invalidating it as being a voluntary prayer.”⁽¹⁾

Scholars of Fiqh state that if the person assigned to assess a property overestimates such a property, then his assessment is not to be taken into account. This is because assessment is meant to determine the amount by means of assumption. Accordingly, assessment is to be disregarded if proven wrong. This is the opinion adopted by the Hanafites, the Malikites, the Shafiites and the Hanbalites.⁽²⁾ The Malikites and the Shafiites, however, do not accept, without a proof, the claim that the person assigned to assessment has committed a mistake.

There are two issues regarding such excess, as follows:

Issue (1): The ruling on recovering the excess from the person who received it

This issue is not tackled by scholars of Fiqh in the event of assessing fruits. This is because *Zakâh*, in this event, is assessed for the owners of crops to protect the share of the poor in grapes and grapevines, and to enable the

(1) “*Sharh Muntahâ Al-Îrâdât*”, (1: 361); “*Maâlib Uli An-Nuhâ*”, (1: 403).

(2) See: “*At-Tajrid*”, Al-Qaddûri, (3: 1274); “*Nukhab Al-Afkâr Sharh Ma`âni Al-Âthâr*”, (7: 166); “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqi*”, (1: 454); “*Ash-Sharh As-Saghîr*”, (1: 619); “*Nihâyat Al-Muhtâj*”, (3: 83); “*Tuhfat Al-Muhtâj*”, (3: 261); “*Sharh Muntahâ Al-Îrâdât*”, (1: 361); “*Maâlib Uli An-Nuhâ*”, (1: 403).

owners to benefit from the fruits whether by selling or eating thereof. *Zakâh*, here, is not to be paid unless become due as soon as the fruits dry out. In this case, if assessment is proven wrong by an evidence, *Zakâh* is to be paid based on the amount determined after the fruits have dried out. In “*Kashshâf Al-Qinâ`*”, it is stated:

“If he (the owner) keeps them (the fruits) until they dry out, *Zakâh* is to be paid based on the existing amount of dried fruits whether it consists with the assessment made or not and whether the fruits are kept as a guarantee for disposal thereof or as a trust without the right to dispose thereof, where it is regarded as a deposit. In this case, *Ijtihâd* (i.e. legal reasoning and discretion) is to be applied where no mistake is discovered because correctness is to be assumed.”⁽¹⁾

This is why this issue is attributed to the ruling on a person who pays *Zakâh* in advance and then, upon the elapse of the *Hawl* (i.e. *Zakâh* year), comes to know that he is not required to pay *Zakâh* due to the fact the property is damaged or that the due *Zakâh* is less than the *Zakâh* he pays due to the decrease in the *Nisâb* (i.e. minimum amount determining a person’s zakatability) of *Zakâh*.

Scholars of Fiqh are of three opinions regarding this issue:

Opinion (1): If *Zakâh* is found to be undue after it has been paid to the poor, then it must be deemed as a voluntary charity and thus the *Zakâh* payer shall not be entitled to recover it whether it is paid to the poor by him or by the ruler. However, if *Zakâh* is still in the possession of the ruler, it may be recovered, whether announced as paid in advance or not. This is the opinion adopted by the Hanafites⁽²⁾ and the Hanbalites.⁽³⁾

In justification of their opinion that *Zakâh* is not to be recovered if delivered to the poor, they argue that by payment of *Zakâh* to the poor, the obligation is fulfilled. However, when *Zakâh* is found to be undue, then it is to be regarded as a voluntary charity, which cannot be recovered once delivered to the poor.

(1) “*Kashshâf Al-Qinâ`*”, (4: 422).

(2) See: “*Al-Bahr Ar-Râ’iq*”, (2: 244); “*Hâshiyat Ash-Shiblî `Alâ Tabyîn Al-Haqâ’iq*”, (1: 274).

(3) “*Kashshâf Al-Qinâ`*”, (5: 107); “*Sharh Muntahâ Al-Îrâdât*”, (2: 305).

In justification of their opinion that *Zakâh* may be recovered if still in the possession of the ruler, they argue that *Zakâh* paid in advance is regarded as still owned by the payer, since the ruler has the choice whether to give the *Zakâh* paid in advance to the poor. Hence, it is not to be obligatory if still in his possession as it has not been paid as *Zakâh* or even as voluntary charity if not paid as thus yet.⁽¹⁾

Opinion (2): *Zakâh*, if proven undue, is to be recovered if paid to the receiver (whether being the collector or the person entitled thereto) and the receiver comes to know that it is paid in advance subject to a condition to that effect or by announcement from the payer or by any other means. This is the opinion adopted by the Shafiites.⁽²⁾

They justify their opinion based on the argument that a condition is to be observed in trade-off transactions. Accordingly, if a condition is made whether verbally or customarily, the receiver (of *Zakâh*) is to repay it. However, if no condition is made, *Zakâh* is not to be recovered because it is paid as an act of worship and accordingly it may not be withdrawn.

Opinion (3): If *Zakâh* is paid to the ruler, then it may be recovered whether a condition that *Zakâh* is paid in advance is made or not. If *Zakâh*, however, is paid to the poor, then it may not be recovered unless a condition to that effect is made. This is one of the opinions adopted by the Shafiites.⁽³⁾

They justify differentiation between the two cases based on the argument that the ruler is only entitled to dispose of obligatory *Zakâh* and accordingly if *Zakâh* is found otherwise, he is to return it. As for the owner of the property (*Zakâh* payer), he may pay voluntary charity as well as obligatory *Zakâh*, and accordingly if *Zakâh* found to be undue, it may be regarded as a voluntary charity.⁽⁴⁾

A similar case is when a person pays *Zakâh* on a property which is not present, which turns to be damaged later.

(1) See: "*Badâ'i' As-Sanâ'i'*", (2: 52).

(2) See: "*Nihâyat Al-Muhtâj*", (1: 144); "*Tuhfat Al-Muhtâj*", (3: 359-360).

(3) "*Al-Majmû'*", (6: 118).

(4) See: "*Al-Ibânah*", (1: 389).

In his “*Al-Umm*”, Imam Ash-Shâfi`î, states that *Zakâh* is to be recovered from the ruler in this case. He says:

“If a person owns 101 ewes in one country and 100 ewes in another country, then he is to pay 3 ewes as *Zakâh*. In this case, if he pays the three ewes to the *Zakâh* collector in either country and then comes to know that his ewes in the other country have been damaged before the elapse of the *Hawl* (i.e. *Zakâh* year), then *Zakâh* collector shall repay to him two ewes. This is because the due *Zakâh*, in this case, is one ewe only. This is regardless of whether some of his ewes are in one country and the others are in another, and whether they are subject to one or two sperate rulers. This is because he is the one responsible for paying *Zakâh* on his property, and not his ruler, regardless of the place where such property exists.

The same applies to food and other properties if they exist in different places.”⁽¹⁾

Here, it appears that if *Zakâh*, having been paid to the ruler, is found to be undue, it must be returned to the person who pays it (i.e. *Zakâh* payer). This is because the ruler is entitled to collect the due *Zakâh* only, and accordingly, if *Zakâh* is proven undue, it may be returned to the person who pays it.

The same applies where a person repays a debt on behalf of another person. In this case, if such debt is proven undue, the person is entitled to recover what he has paid.

If *Zakâh*, however, is paid to a person entitled thereto, then it may not be recovered. This is because recovery, in this case, violates the objective of *Zakâh*, which is to show kindness and *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor) to the poor.

Also, *Zakâh* is paid for a valid reason, which is to perform an act of worship, and such reason does not cease to exist if the obligation is not present. Accordingly, the person entitled to *Zakâh* is not required to return it.

(1) “*Al-Umm*”, (2: 21).

Issue (2): Is it permissible to consider excess as *Zakâh* paid in advance for the coming years?

A number of contemporary scholars of Fiqh argue that it is permissible to consider the excess in *Zakâh* as a *Zakâh* for the coming year, as stated in Article (20) of “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” (i.e. Corporate *Zakâh* Calculation Guide), which reads as follows:

“If a joint-stock company pays *Zakâh* on its assets, the shareholder, whether an individual or a company, shall not pay another *Zakâh* on his shares in the company, to prevent duplication, if his shares are not for the purpose of trading. However, if such shares are for the purpose of trading, they are to be treated like goods stocked for trade and accordingly are assessed at the market price on the day the *Zakâh* falls due, and the amount of *Zakâh* paid by the company on such shares is to be deducted thereof. If the amount of *Zakâh* based on market price is more than the amount of *Zakâh* paid by the company, the difference is to be paid. But, if the amount of *Zakâh* based on market price is less than the amount of *Zakâh* paid by the company, then the excess may be taken into account in calculation of *Zakâh* on other properties, or be dealt with as a next *Zakâh* paid in advance.”⁽¹⁾

The final statement, fatwas, and recommendations of the 26th symposium on “*Contemporary Zakâh Issues*”, held in Amman from 9 to 11 Jumâdah Al-Âkhirah, 1440 AH (corresponding to 14-16 February, 2019 AD), which discussed the topic of accelerating the payment of *Zakâh*, state:

- 1- If the condition of the person who pays *Zakâh* in advance changes, whether by death or apostasy, before the elapse of the *Hawl* (i.e. *Zakâh* year), *Zakâh* is not to be recovered from person to whom it is paid.
- 2- If the condition of the person to whom *Zakâh* is paid in advance changes, by death, wealth or apostasy, before the elapse of the *Hawl*, then the amount paid is to be regarded as *Zakâh*.
- 3- If the *Nisâb* (i.e. minimum amount determining a person’s zakatability) of *Zakâh* paid in advance is damaged or decreases before the elapse of the *Hawl*, then the amount paid in advance is not to be regarded as *Zakâh*.

(1) “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*”, (pp. 37-38).

- 4- If the property for which *Zakâh* is paid in advance increases, then *Zakâh* is to be paid in proportion to such an increase.
- 5- If the amount of *Zakâh* paid in advance is found to be more than the amount due, the excess may be regarded as a *Zakâh* paid in advance for the next year.

What appears is that this does not hold true because payment of *Zakâh* in advance must be accompanied by a *Niyyah* (i.e. intention) to that effect upon payment. Yet, excess is to be determined only after payment and accordingly cannot be regarded as *Zakâh* paid in advance without being accompanied by an intention to that effect. This is why the scholars of Fiqh say, as stated in “*Sharḥ Al-Muntahâ*”:

“Any excess over the due *Zakâh* paid to the *Zakâh* collector is to be considered as *Zakâh* paid in advance for a coming year only if so stipulated. That is, the *Zakâh* payer must have an intention that such an excess is to be accounted as *Zakâh* for the coming year. In this regard, *Aḥmad* says:

‘Whatever donation given to *Zakâh* collector is to be accounted as a part of the due *Zakâh*. Also, whatever amount is paid wrongly in *Zakâh* is not to be considered as a part of *Zakâh* as long as it is not so intended, an opinion indicated by *Al-Qâḍî* and *Al-Muwaffaq* in some occasions.’⁽¹⁾

Accordingly, if what is paid is intended to be *Zakâh* on a property but it turns out that no *Zakâh* is due on such a property, then what is paid is not to be accounted as *Zakâh* paid in advance due to the fact that the intention is not established with regard to what is due and what is not due as *Zakâh*. In “*Tuḥfat Al-Muhtâj*”, it is stated:

“If a person, assuming the death of his legator, his entitlement to the inheritance, and that *Zakâh* is due on such an inheritance, pays *Zakâh* on such an inheritance and then his assumption is realized, the *Zakâh* paid in advance (based on such an assumption) is not to be regarded as a fulfilment of the due *Zakâh*, due to the fact that the intention is not established with regard to what is due and what is not due as *Zakâh*.

(1) “*Sharḥ Muntahâ Al-Îrâḍât*”, (2: 306); “*Al-Mughnî*”, (4: 90).

This is despite the fact that *Zakâh* has not been due yet at the time of payment. By the same token, some scholars argue that if a person suspects that an amount is due in his liability as *Zakâh* and thus pays such an amount with the intention that if his suspicion turns out to be correct, the due *Zakâh* will be fulfilled, or otherwise such amount will be accounted as *Zakâh* paid in advance on another property, such as trade, then the amount paid shall not fulfill either of the two obligations of *Zakâh*. This is because the intention is not directed specifically to only one of the two obligations of *Zakâh*. In this case, he may recover such an amount if the receiver is informed about the status of his *Zakâh*. Here, it can be said that if a person suspecting that an amount is due in his liability as *Zakâh* pays such an amount, then *Zakâh*, if any, is to be deemed as paid as long as the actual amount of *Zakâh* in his liability is not determined. However, if the person pays an amount more than the amount due on him (as *Zakâh*) with the intention that such amount is to be accounted as a fulfillment of the obligation of *Zakâh* and as a voluntary charity at the same time without specifying any of them, the due *Zakâh* will not be regarded as paid. If the amount paid, however, is intended only as payment of *Zakâh*, then *Zakâh* will be deemed as paid and the excess amount will be deemed as voluntary charity.”⁽¹⁾

I tried to trace the opinions of early scholars in an attempt to find out a rule or a principle based on which such excess can be regarded as a *Zakâh* paid in advance but I found no text regarding this. Rather the scholars of Fiqh are of the opinion that such excess is to be regarded as a voluntary charity where no *Zakâh* is due. They, however, disagree whether such excess may be recovered or not in this case.

Here, it can be said that if it is found that the amount paid is more than the amount due as *Zakâh*, the excess may be recovered if such amount is paid to the ruler. In this case, if the amount of *Zakâh* is not recovered, it is to be regarded as a debt established in the liability of the Treasury and the *Zakâh* payer shall be entitled to deduct such an amount from any *Zakâh* due on him for the next years, if any. In this case, the ruler may repay the debt (i.e. the

(1) “*Tuhfat Al-Muhtâj*”, (3: 347). See: “*I`ânat At-Tâlibin*”, (2: 206).

excess amount) from the *Zakâh* of the next years, as the Prophet (peace and blessings of Allah be upon him) used to borrow money and pay back when the money of *Sadaqah* (i.e. *Zakâh*) is collected. This is indicated in the hadith narrated by Abû Râfi` who said:

“Once Allah’s Messenger (peace and blessings of Allah be upon him) took a young camel (below six years) as a loan from a Bedouin. Then, the camels of *Sadaqah* (i.e. *Zakâh*) were brought to him. Hence, he ordered me to return to him (the Bedouin) the young camel.”⁽¹⁾

In fact, this is more appropriate than considering the excess amount as a *Zakâh* paid in advance. This because payment of *Zakâh* in advance is subject to certain conditions, which may not be satisfied in this case, such as the condition that the *Nisâb* of *Zakâh* shall not decrease or be damaged during the *Hawl* (i.e. *Zakâh* year).

As for the opinion the researcher finds to be preponderant, namely that the excess amount may be recovered if paid to the ruler, such an amount is to be regarded as a debt due to the *Zakâh* payer in the liability of the Treasury. Whenever the *Zakâh* of the next year, or any other year, falls due, this debt is to be paid as the *Zakâh* due on the *Zakâh* payer without any verification that the conditions of paying *Zakâh* in advance, most important of which is that the *Nisâb* of *Zakâh* remains unchanged during the *Hawl*, are met.

This has an important impact on estimation of *Zakâh* for joint-stock companies, which is that *Zakâh* paid in advance is to be accounted only for the person upon whom *Zakâh* falls due, i.e. the person who owns the shares at the time the excess amount is paid not the person to whom the share is transferred. If, however, such excess amount is regarded as a debt, then the share, along with any rights and obligations associated thereto, including the debt (i.e. the excess amount) due in the liability of the Treasury, is to be transferred to the new investor (owner), and accordingly may be paid as *Zakâh* for the new investor.



(1) “*Sahîh Muslim*”, Book of Sales, hadith no. (1600).

Chapter Two

Financial Disclosure of Joint-Stock Companies: Concept, Principles, and *Zakâh*-Related Issues

Introduction



This chapter approaches financial disclosure of joint-stock companies and sheds lights on its principles and how it affects calculation of *Zakâh* and how to deal with any issues that may arise as a result of applying such principles to calculation of *Zakâh*. The discussion in this chapter is arranged into three treatises as follows:

Treatise One: Financial disclosure: Concept, types, and relation to calculation of *Zakâh*.

Treatise Two: Accounting principles: Concept, components, and *Zakâh* assessment.

Treatise Three: Financial disclosure: *Zakâh*-related problems, and their solutions.



Treatise One

Financial Disclosure:

Concept, Types, and Relation to Calculation of *Zakâh*



First: Linguistic meaning of financial disclosure (Arabic: *Al-Ifsâh Al-Mâlî*)

Linguistically speaking, the Arabic term “*Ifsâh*” (i.e. disclosure) is an infinitive of the verb “*Afsaha, Yufsihu, Ifsâhan*”, which means “to disclose”. Its trilateral root “*Fâ’, Sâd, Hâ’* (i.e. *F S H*) [ف ص ح]” denotes purity and clearness.

The Arabic nouns “*Fash*” and “*Fasâhah*” means to clarify, to disclose, to demonstrate. In Arabic, it is said: “*Afsaha Al-Amr*” meaning he clarified the matter, “*Al-Lisân Al-Fasîh*” meaning eloquence.⁽¹⁾

The Arabic term “*Mâlî*” (i.e. financial) is derived from the Arabic term “*Mâl*” (i.e. money). Originally, “*Mâl*” is a term that describes gold and silver, but it is used to describe other types of properties. The Arabic term “*Mâl*” was commonly used to describe camels in old Arabic culture since camels, at that time, were the main component of their property.⁽²⁾

Second: Financial disclosure in accounting concept

Disclosure is one of the key concepts of accounting. It is related to one of the main goals of accounting.⁽³⁾ Some researchers have indicated that there is no unified definition for the concept of disclosure in accounting studies.

(1) See the Arabic root “*Fâ’, Sâd, Hâ’* (i.e. *F S H*) [ف ص ح]” in “*Maqâyis Al-Lughah*” (4: 506-507); “*Tâj Al-`Arûs*” (7: 18-19); “*Al-Mu`jam Al-Wasîf*”, (2: 690).

(2) See the Arabic root “*Mîm, Wâw, Lâm* (i.e. *M W L*) [م و ل]” in “*An-Nihâyah Fi Gharîb Al-Hadîth*”, (4: 373); the Arabic root “*Mîm, Yâ’, Lâm* (i.e. *M Y L*) [م ي ل]” in “*Mufradât Alfâz Al-Qur`ân*”, Ar-Râghib, (P. 784); “*Hilyat Al-Fuqahâ*”, Ibn Fâris, (P. 123); “*Tâj Al-`Arûs*”, (30: 428).

(3) Refer to: Preface: The objective of *Zakâh* accounting, (P. 35).

This is because disclosure is a relative concept that varies according to the purpose and the beneficiary category.⁽¹⁾

The concept of disclosure can be divided into two definitions: General and Specific:

First definition is more general, where disclosure is defined as:

“Providing information and data to users in a correct, documented and appropriate manner, to help them make decisions.”⁽²⁾

Disclosure in this sense includes any information or data that the economic establishment reveals to the beneficiaries by any means, including financial reports, financial market announcements, or any other means that fulfills its purpose, whether provided to beneficiaries from inside or outside the establishment, regardless of their purposes and needs. Disclosure, in this meaning, is not restricted to a specific type of decision, a specific type of users, or a specific means.

Second definition of disclosure is what is meant here, and it may be called financial report because it is issued in the form of reports.

The American Institute of Certified Public Accountants (AICPA), defined it as:

“Fair presentation in conformity with generally accepted accounting principles should be set forth in the financial statement (which include related notes).”⁽³⁾

Third: Types of financial disclosure

The accounting literature is concerned with indicating the types and levels of disclosure with regard to comprehensiveness. This is to determine

(1) See: “*An-Nazariyyah Al-Muhâsabiyyah*” [*Accounting Theory*, Eldon S. Hendriksen], (pp. 797-798).

(2) “*Al-Qiyâs Wal-Ifsâh Al-Muhâsabi Fî Al-Qawâ'im Al-Mâliyyah Wifq Al-Ma`âyir Al-Muhâsabiyyah Ad-Dawliyyah*”, Shadû `Abdul-Latîf, Master's Thesis, Qasidi Merbah University, College of Economic, Business and Management Sciences, (P. 11); “*Mabâdi' Al-Muhâsabah Al-Mâliyyah: Al-Qiyâs Wal-Ifsâh Fî Al-Qawâ'im Al-Mâliyyah*”, Dr. Radwân Hulwah Hannâ, Nizâr Fulayh Al-Baldâwî, (P. 31).

(3) “*AICPA, 1975*”, SAS no. (1); “*Nazariyyat Al-Muhâsabah*”, Ash-Shirâzî, (P. 324).

how the financial reports should be. The Following is a brief description of the most important types of disclosure in terms of level of disclosure:⁽¹⁾

1- Full disclosure

It means: “Disclosure of all information and data that may influence the decision of the beneficiary”, or in other words: “the disclosure of all information which if not disclosed, the beneficiary might have taken a decision different from his decision in the event of disclosure of this information.”⁽²⁾

The importance of full disclosure is highlighted in the financial reports as a main source of information on which base the decision-making. Therefore, the concept of full disclosure is not limited to the facts until the end of the accounting period, but it extends to the facts subsequent to the dates of the financial reports as long as they mainly affect the users of those statements.

2- Fair disclosure

It means: “Disclosure that takes into account the satisfaction of the financial needs of all parties without bias.”

This definition adds an ethical meaning, since financial reports shall be produced to the extent that takes into account fairness between the interests of all parties, without favoring the interest of one party over that of the others.

3- Adequate disclosure or optimal disclosure

It means to determine the minimum limit of accounting information to be available in financial statements. Hendriksen states that adequate disclosure is the most used of the three concepts.

It can be noticed that the concept of minimum limit is not precisely defined, as it differs primarily according to needs and interests. This is why Dr. Al-Humayd thinks that “disclosure depends primarily on the level of community awareness and the development of its financial institutions, be they investment or analytical, and that the level of disclosure emanates from society. This means that the more the society, individuals and institutions, is

(1) See: “*Nazariyyat Al-Muḥâsabâh*”, Al-Humayd, (pp. 121-122); “*Accounting Theory*”, Hendriksen, (pp. 765-769).

(2) See: “*Ta`miq Al-Fahm Fi Al-Itâr Al-Mafâhimi*”, Khâlid Al-` Adim, (P. 119).

developed, the more the disclosure is developed. Disclosure, however, will not reach the level of fair, full, adequate, or optimal disclosure but the highest-level which disclosure can reach is practical disclosure, which depends on the needs of the society itself. Practical disclosure may be fair and optimal in a society, while it does not rise to these levels in other societies, and thus requires a position that specifies a minimum level of disclosure known as adequate disclosure.”⁽¹⁾

Fourth: Purposes of financial disclosure (financial report)

The methods of disclosure vary according to the different users of financial reports, their purposes, and their ability to request access to the information and data they need. The reporting methods can be divided into two parts:

1- Special purpose accounting disclosure

It is the disclosure that is made to special parties, whether this party is inside the facility; such as the board of directors or other levels of management, such as the financial department, or outside it, such as the supervisory bodies that require special reports for the purpose of monitoring and following up the company’s performance, *Zakâh*, tax, etc. Disclosure, in this case, shall be through reports prepared according to the purposes thereof.

2- General purpose accounting disclosure

It means the disclosure of the economic establishment’s data to all beneficiaries who have limited access to financial information and data, and the purpose of which is to make economic decisions related to the establishment.

Beneficiaries mean mainly current or expected investors and creditor.

Disclosure in this case is made through financial reports of public benefit, referred to as financial statements, which are defined as:

“Statements intended to meet the needs of users who are not in a position to require an entity to prepare reports tailored to their particular information needs.”⁽²⁾

(1) See: “*Nazariyyat Al-Muḥâsabâh*”, Al-Ḥumayd, (pp. 121-122).

(2) “*IAS 1- Presentation of Financial Statements*”, Paragraph (7).

These financial statements are considered as:

“A structured representation of the financial position and financial performance of an entity. The objective of financial statements is to provide information about the financial position, financial performance and cash flows of an entity that is useful to a wide range of users in making economic decisions. Financial statements also show the results of the management’s stewardship of the resources entrusted to it. To meet this objective, financial statements provide information about an entity’s:

- (a) Assets;
- (b) Liabilities;
- (c) Equity;
- (d) Income and expenses, including gains and losses;
- (e) Contributions by and distributions to owners in their capacity as owners; and
- (f) Cash flows.

This information, along with other information in the notes, assists users of financial statements in predicting the entity’s future cash flows and, in particular, their timing and certainty.”⁽¹⁾

Disclosure of this information in general purpose financial reports is made through:

“A complete set of financial statements comprises:

- (a) A statement of financial position as at the end of the period;
- (b) A statement of comprehensive income for the period;
- (c) A statement of changes in equity for the period;
- (d) A statement of cash flows for the period;
- (e) Notes, comprising a summary of significant accounting policies and other explanatory information;
- (f) Comparative information related to pervious period; and
- (g) A statement of financial position as at the beginning of the earliest

(1) “IAS 1- *Presentation of Financial Statements*”, Paragraph (9).

comparative period when an entity applies an accounting policy retrospectively or makes a retrospective restatement of items in its financial statements, or when it reclassifies items in its financial statements.⁽¹⁾

Fifth: Beneficiaries of financial disclosure

In general, the disclosure is not primarily related to a specific category of beneficiaries of the accounting system, but it includes all users of these statements, who are:

- 1- **Company's management;** which is the internal users, and includes: different administrative levels within the company for which financial reports were prepared to provide with accounting information to help making rational economic decisions, such as the extent of company's need for cash liquidity, in addition to the need for the management to ensure the achievement of its long-term goals. This is done through internal detailed reports in addition to the financial reports and prepared statements.
- 2- **Current and expected investors;** to know the size of the current or expected return and the efficiency of the management.
- 3- **Creditors;** to know the company's ability to fulfill its future obligations.
- 4- **Governmental agencies;** such as Zakat, Tax and Customs Authority (ZATCA), Ministry of Finance, Ministry of Commerce, and General Court of Audit, for various purposes; Such as: *Zakâh* collection, taxation, economic planning, and granting subsidies.
- 5- **Workers;** to check on the continuation of their jobs.
- 6- **Public opinion;** they are experts, researchers, financial and economic advisors, and public institutions, for various purposes.

Sixth: Relation of financial disclosure to calculation of *Zakâh*

The general accounting disclosure, represented in financial statements, which is subject in its preparation to the principles, concepts and standards of accounting, is the main source that enables users to obtain information related to *Zakâh* on shares in joint-stock companies, who can be divided into the following:

(1) "IAS 1- Presentation of Financial Statements", Paragraph (10).

- 1- **Management of the company:** If the company undertakes the calculation of the *Zakâh* due on shares, with the intention of paying it on behalf of the shareholders, or with the intention of disclosing the amount of *Zakâh* due on each share.
- 2- **Authorities responsible for calculating and collecting *Zakâh*:** These authorities rely mainly on financial statements, in addition to the data and information required by the company's management to gain access to information about the *Zakâh* due on the company's shares and assets.
- 3- **Shareholders:** Those whose information about *Zakâh* is limited to financial reports issued by the company.

It is noted that the financial reports and the accounting principles and standards on which they are based are the main source for calculating *Zakâh* for all of these categories, taking into account the disparity between them in terms of ability to understand and deal with these financial reports, or to obtain information that the financial reports may not provide, and the cost involved to obtain and verify this information.

That is why it is important to evaluate these accounting principles in terms of their suitability for calculating *Zakâh* in accordance with the requirements of the Islamic Shari'ah, and then consider the problems resulting from relying on them, with the aim of finding alternative solutions to calculate *Zakâh* in the light of these problems.

Treatise Two

Accounting Principles: Concept, Components, and *Zakâh* Assessment



This treatise aims at evaluating the accounting principles represented in the conceptual framework for financial accounting, as well as evaluating this framework in terms of its impact on the suitability of these accounting standards and financial reports for the calculation of *Zakâh*. The treatise is divided into two topics as follows:

Topic (I)

Concept of Accounting Principles

First: linguistic definition of accounting principles

In Arabic language, the word “*Mabâdi*” (i.e. principles) is the plural form of the word “*Mabda*” (i.e. principle). Its triliteral root “*Bâ’, Dâl, Hamzah*” (i.e. *B D ’*) [ب د ء] denotes beginning, initiation, and commencement. In Arabic, “*Mabda’ Ash-Shay*” means the main component of which something is composed or consisted. Allah, Exalted be He, is “*Al-Mubdi*” (i.e. the Initiator) and “*Al-Mu`id*” (i.e. the Restorer) which means that he is the Cause of Creation and the Bringer of the End.⁽¹⁾

In “*Al-Mu`jam Al-Wasîf*”: “The principles (Arabic: *Mabâdi*) of science, art, ethics, constitution, or law are its basic rules upon which it is based and of which it is composed.”⁽²⁾

(1) “*Maqâyis Al-Lughah*”, (1: 212); “*Mufradât Al-Qur`ân*”, Ar-Râghib Al-Asfahâni, (P. 113); “*Al-Mu`jam Al-Wasîf*”, (1: 42).

(2) “*Al-Mu`jam Al-Wasîf*”, (1: 42).

This meaning has been approved by Academy of the Arabic Language in Cairo.

As for the linguistic meaning of accounting, it has been clarified earlier.

Second: Accounting principles in accounting concept

Accounting principles refer often to array of objectives, principles and limitations, the sum of which is called the conceptual framework⁽¹⁾ for financial reporting, which is considered a temporary theoretical framework that can be continuously updated to serve as the basis for preparing accounting standards for financial reporting. This framework is intended to define the field of accounting and financial reports, as well as their limits and functions. It is also regarded as a basis for finding solutions to accounting problems, in light of the absence of an accounting theory of general scientific acceptance in the scientific and professional circles that is able to explain and evaluate accounting practices and find solutions to all variables required by the practical practice of accounting.⁽²⁾

The American Financial Accounting Standards Board (FASB)⁽³⁾ defined conceptual framework for accounting as follows:

(1) In Arabic accounting literatures, the conceptual framework is translated as “*Al-Itâr Al-Mafâhîmî*”, “*Al-Itâr Al-Fikrî*” or “*Itâr Al-Mafâhîm*”. Yet, the approved Arabic version of the International Standards, issued by the Saudi Organization for Certified Public Accountants (SOCPA) uses the translation “*Itâr Al-Mafâhîm*”, which conforms more with the rules of Arabic Grammar.

The researcher, however, views that translating the English word “Concept” as “*Mafhûm*” in Arabic is inaccurate. This is because, in Arabic, the term “*Mafhûm*” (i.e. concept) refers to comprehensions, unlike the term “*Mabda*” (i.e. principle) which refers to abstract meanings (comprehensions) and complex meanings (extensions), as a framework consists of abstract concepts and complex issues.

Thus, I titled the treatise as: “Accounting Principles”. If it is a must to use the term “Framework”, then it may be better to say “Theoretical Framework”.

(2) “*Nazariyyat Al-Muhâsabâh*”, `Abdur-Rahmân Al-Humayd, (P. 317); “*Ta`miq Al-Fahm Fî Al-Itâr Al-Mafâhîmî*”, Khâlid Al-`Adîm, (pp. 24-32).

(3) Established in 1973, the Financial Accounting Standards Board (FASB) is an independent, private-sector, not-for-profit organization based in Norwalk, Connecticut, that establishes financial accounting and reporting standards for public and private companies and non-profit organizations that follow Generally Accepted Accounting Principles (GAAP).

The Financial Accounting Foundation (FAF) supports and oversees the (FASB). FAF is =

“The conceptual framework is a coherent system of interrelated objectives and fundamentals that is expected to lead to consistent standards and that prescribes the nature, function, and limits of financial accounting and reporting.

It is expected to serve the public interest by providing structure and direction to financial accounting and reporting to facilitate the provision of evenhanded financial and related information that helps promote the efficient allocation of scarce resources in the economy and society, including assisting capital and other markets to function efficiently.”⁽¹⁾

The conceptual framework may be defined in brief as follows:

“A coherent system that includes an interrelated set of concepts related to the objectives and fundamentals of science.”⁽²⁾

The conceptual framework, as mentioned in its introduction: Purpose and Function, defines the concepts that govern the preparation and presentation of financial statements to external users. Conceptual framework is not an international standard for financial reporting, and therefore it does not specify standards for any specific measurement or disclosure issue, and nothing in the conceptual framework overrides any of the International Financial Reporting Standards (IFRS).

The research on the evaluation of conceptual framework for international financial reporting will be based on the framework issued in 2010 AD, which was jointly issued by the International Accounting Standards Board (IASB)⁽³⁾

= an independent, private-sector, non-profit organization, responsible for the oversight, administration, financing, and appointment of the (FASB) and the Governmental Accounting Standards Board (GASB).

See: Financial Accounting Standards Board (FASB): <https://www.fasb.org/>.

(1) “*Nashrat Mafâhîm Al-Muhâsabah Al-Mâliyyah*” [Statement of Financial Accounting Concepts], no. (6), CON6-4; “*Ta`miq Al-Fahm Fî Al-Itâr Al-Mafâhîmî*”, Khâlid Al-`Adîm, (P. 25); “*Nazariyyat Al-Muhâsabah*”, Ash-Shîrâzî, (P. 153).

(2) “*Nazariyyat Al-Muhâsabah*”, Ash-Shîrâzî, (P. 153).

(3) The International Accounting Standard Board (IASB) is a board affiliated with the International Accounting Standards Committee Foundation (IASC), which is an international non-profit organization, concerned with the issuance of a unified set of international accounting standards. It was established in April 2001 AD, based in the United Kingdom.

The International Accounting Standards Board is an independent board, whose =

and the American Financial Accounting Standards Board (FASB)⁽¹⁾ since the two boards work together to unify the conceptual framework in the two boards, and to limit the differences between the two frameworks to form one framework. This intellectual framework is subject to ongoing development and updating.⁽²⁾

It is worth noting that the current conceptual framework, the subject matter of this study, is incomplete. It does not include the second chapter about the reporting company. It also includes a number of chapters, four and next chapters, that are temporarily borrowed from the old framework issued in 1989 AD, and revised in 2007 AD. The Saudi Organization for Certified Public Accountants (SOCPA)⁽³⁾ has adopted the international conceptual framework for financial reporting, with little additions.

It is also worth noting that, from a methodological point of view, the conceptual framework does not apply to special reports with special purposes, such as reports for the purposes of calculating tax base, or *Zakâh* base, or for the purposes of initial offering, or mergers, or other special purposes. However, the researcher believes in the importance of evaluating this framework in terms of its suitability for the purposes of calculating *Zakâh*. This is because the outputs

= members are appointed by the board of trustees of the foundation according to a system that provides for their geographical diversity and independence.

It consists of a number of experts in accounting standards, legal review and academic education.

The board is concerned with preparing, issuing and publishing accounting standards. It is also competent to approve interpretations of international accounting standards. See: International Standards website: <https://www.ifrs.org/>.

(1) “*Al-Muḥāsabah Al-Mâliyyah*” [*Financial Accounting*, Harrison et al.], (P. 18).

(2) “*Al-Muḥāsabah Al-Mutawassitah*” [*Intermediate Accounting*, Kin Lo, George Fisher], (P. 77).

(3) Saudi Organization for Certified Public Accountants (SOCPA) is a Saudi professional body established under the law of accountants issued by the Royal Decree no. (M / 12) dated 13 Jumâdah Al-Ûlâ, 1412 AH.

Its members consist of licensed practitioners to work in the Kingdom of Saudi Arabia. It is supervised by the Ministry of Commerce, and concerned with developing the profession of accounting and auditing in the Kingdom of Saudi Arabia, and everything that would develop and promote this profession.

The Organization includes a number of technical committees concerned with accounting, auditing and governance standards. See Organization’s website: <http://socpa.org.sa>.

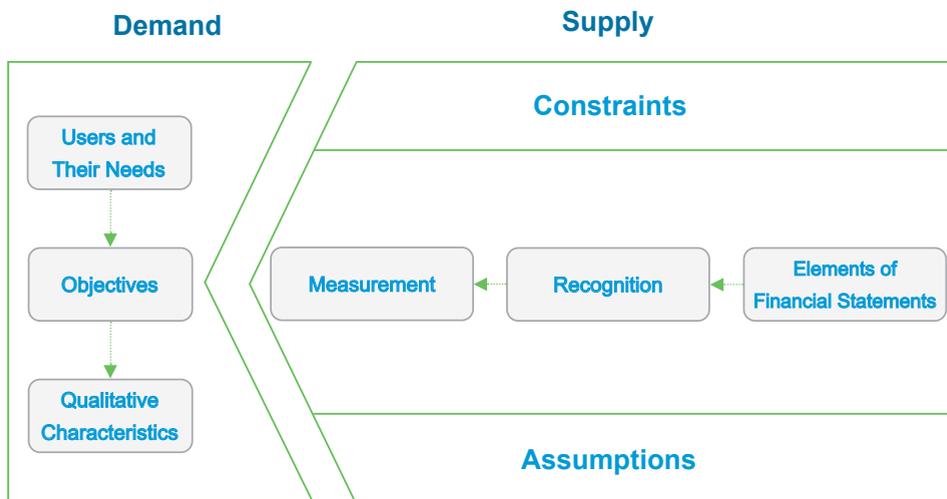
of this framework in terms of accounting standards and financial reporting are the main input for calculating *Zakâh* base and disclosure standards related to *Zakâh*. The importance of evaluation appears in determining the related problems so that it may be the basis for determining the appropriate treatment to develop a framework for the Shari'ah and accounting treatment of these problems.



Topic (II)

Components of Conceptual Framework for Financial Reporting and Their Impact on *Zakâh*

The conceptual framework for financial reporting, in its current form, consists of eight concepts (principles), which together form the work plan for the conceptual framework for financial reporting:⁽¹⁾



[Source: *Intermediate Accounting, Kin Lo & George Fisher, (1: 65)*]

The previous diagram reveals the relationship between these eight concepts, which are divided into two sections, namely:

Section (1): The concepts of demand side of the financial reporting, which include identifying potential (users) of these reports, the nature of their information needs (objectives), and (qualitative characteristics) of the information they need.

(1) See: "*Al-Muḥâsabâh Al-Mâliyyah*" [*Financial Accounting, Harrison, et al.*], (P. 18).

Section (2): The concepts of supply side of the financial reports, which include determining the (elements of financial statements), the principle of (recognition) that determines the appearance of these elements in the financial statements and their recognition, and (measurement) that determines the value that appears in the statements for these elements. The quality of presentation for these elements and its suitability for demand depend on the validity of the (assumptions) on which accountants base their work and on the (restrictions) that govern the accountant in preparing these financial reports.

The following is a statement of these concepts (principles) and their evaluation in terms of their impact on *Zakâh*:

First concept: Users

The conceptual framework for financial reporting defines the group of primary users in the conceptual framework specifically. It states as follows:

“The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity. Those decisions involve buying, selling or holding equity and debt instruments, and providing or settling loans and other forms of credit.”⁽¹⁾

Selection of this group is mainly an intentional choice by the International Accounting Standards Board. This is because many existing and potential investors, lenders and other creditors cannot require reporting entities to provide information directly to them and must rely on general purpose financial reports for much of the financial information they need.⁽²⁾

It follows from this determination that the needs of groups other than these specific groups of users may not be met to the same extent, such as

(1) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], OB2.

(2) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], OB5; “*Al-Muhâsabah Al-Mutawassîtah*” [Intermediate Accounting, Kin Lo, George Fisher], (1: 67).

supervisory and governmental authorities, or company employees, or those dealing with them, as these were not included in the conceptual framework for financial reporting.

This determination comes as an amendment to what was stated in the previous version (2010) of the conceptual framework, which did not specify a specific type of user, and this does not mean that the previous framework was targeting the needs of all users of financial statements of all kinds.

As Hendrickson says in his talk about the objective of financial reports in the previous conceptual framework:

“The objectives of presenting information to employees, customers and the public in general have not yet been established. Yet, it is generally assumed that the useful information for investors and creditors will benefit others as well.”⁽¹⁾

This means that the current conceptual framework is more accurate in expressing the reality of financial reports, and does not necessarily reflect a fundamental difference from previous issues on targeted groups in preparing financial reports.

Evaluating the concept of users for calculating *Zakâh*

It is established in contemporary Fiqh-related *Ijtihâd* (i.e. legal reasoning and discretion) that the person in charge of *Zakâh* for joint-stock companies is the shareholder, and that the ruler may check whether that the person pays *Zakâh* according to the Shari'ah estimation and delivers it to those who deserve it. Accordingly, it can be said that those who use financial information to calculate *Zakâh* are:

- (a) **Shareholders:** It is for the purpose of calculating and paying the *Zakâh* due, and the company's management is acting on behalf of the shareholders in calculating *Zakâh* and paying it in the cases stipulated in the resolution of the Islamic Fiqh Academy, if this is stipulated in the company's articles of association, or a binding law is issued for it by the state, or a decision is issued by the General Assembly.

(1) “*Nazariyyat Al-Muhâsabâh*”, Al-Ḥumayd, (pp. 765-766).

(b) **The State:** It is represented in the authority concerned with collecting *Zakâh* and delivering it to those who are entitled thereto.

Accordingly, the financial disclosure of *Zakâh* must be appropriate for these two categories in order to reach information about *Zakâh* due on the shareholders of the company.

Thus, the conceptual framework intersects with the users of the financial statements to calculate *Zakâh* in the category of current investors, but in terms of the objective they do not agree as evidenced by the evaluation of the concept of (objectives) as follows:

Second concept: Objectives of financial reports

The conceptual framework defines the need or purpose that the general purpose financial reports intend to meet for the specified categories, which is: **To provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity.** Those decisions involve buying, selling or holding equity and debt instruments, and providing or settling loans and other forms of credit.⁽¹⁾

It follows from this determination that the needs of the specified user groups outside of what serves the economic decision are not considered to be intended by the reporting entity, such determining the company's commitment to any Shari'ah or ethical standards in dealing with employees, in the services it provides, or in preserving the environment. Despite the fact that this information affects the economic decision of groups of users, the conceptual framework does not include these aspects.

Evaluating the concept of (objectives) for the purpose of calculating *Zakâh*

It has been presented that the conceptual framework aims at serving users in making investment decisions, and accordingly, the conceptual framework

(1) See: "*Itâh Mafâhîm At-Taqrîr Al-Mâlî*" [*Conceptual Framework for Financial Reporting*], OB2; "*Al-Muhâsabah Al-Mutawassîtah*" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 67).

does not aim at addressing the shareholders' need to know the due amount of *Zakâh*. The outputs of the conceptual framework shall not necessarily be able to provide the shareholder with the information he needs to calculate *Zakâh*.

It should be noted that the conceptual framework must disclose the amount of *Zakâh* in the event that the company gives it or the company is committed to pay *Zakâh* on behalf of the shareholders, considering its economic impact on the company. Accordingly, it appears in the income statement as an expense, and it appears among liabilities in the statement of financial position in the event of the company's commitment to pay *Zakâh* or having actual or anticipated claims to pay *Zakâh* from the concerned authorities. But this disclosure is not useful for calculating *Zakâh*, or verifying the accuracy of the company's calculation of *Zakâh*.

Third concept: Qualitative characteristics of financial information

The conceptual framework identifies six qualitative characteristics that make the accounting information included in the financial reports very useful for users in making decisions about the reporting entity. Based on these characteristics, the most acceptable accounting method for measurement, the information and data disclosed, and the optimal way to disclose this accounting information are all determined.⁽¹⁾

The qualitative characteristics of accounting information, in terms of their effect in providing useful information to users to make economic decisions related to the facility, are classified into:

◆ **Fundamental characteristics:** They are those characteristics that must be present in the information in order to be useful for the beneficiaries in making decisions, namely:

1- **Relevance:** It means the ability of the information to influence the decisions made by the users, even if the users or some of them choose not to benefit from it, or if they are aware of it from other sources.

(1) See: "*Al-Muḥāsabah Al-Mutawassīṭah*" [*Intermediate Accounting*, Kieso], (P. 31); "*Ta`miq Al-Fahm Fī Al-Itār Al-Mafāhīmī*", Khâlid Al-` Adīm, (P. 71).

Information is appropriate if it has a confirmatory value, meaning that it provides information about previous evaluations (feedback) to confirm or change them, or if it has a predictive value of future results, or if it has both confirmatory and predictive values at the same time.

Materiality is an important aspect in determining the relevance of information, if the deletion or misrepresentation of the information affects the decisions made by users on the basis of the financial information about the reporting facility.

2- **Faithful representation:** It is the realistic presentation of the financial information disclosed by the financial statements. There are three characteristics that contribute to achieving faithful representation, namely:

- (a) **Completeness:** It means that no relatively important items or transactions shall be omitted from the financial statements, during the period for which the report is issued.
- (b) **Neutrality:** It means that the preparation of the statements shall be free from bias in choosing the financial information or the way it is presented.
- (c) **Free from error:** It means that no error or omission shall occur in the description of the phenomenon, and it does not necessarily require complete accuracy in all aspects, particularly in the information determined on the basis of estimation.

◆ **Enhancing characteristics:** These characteristics increase the usefulness of financial reports, but they are not necessary. These characteristics may help in determining the most appropriate methods of depicting a phenomenon, if both are considered to provide equally relevant information and an equally faithful representation of that phenomenon. These characteristics are represented in the following:

1- **Understandability:** Statements must be clearly and concisely understood by their users. Due to the fact that understanding is relative, it is assumed that users of financial statements have reasonable knowledge of business and economic activities to understand these statements.

- 2- **Comparability:** This means that the statements are comparable to a group of financial statements, whether for the same economic entity in past years, or with other companies.
- 3- **Verifiability:** Financial statements must include information that can be verified by several independent observers with a degree of knowledge to confirm that a particular depiction is a faithful presentation, whether the verification is direct or indirect. This implies that to help users decide whether they want to use that information, it would normally be necessary to disclose the underlying assumptions, the methods of compiling information and other factors and circumstances that support the information.
- 4- **Timeliness:** It means having information available to decision makers in time to be capable of influencing their decisions. This originally emphasizes speed in providing information, even if some information provided after a long period may be useful, to meet the need of some users to identify and assess trends.

Evaluating the concept of (qualitative characteristics of information) for the purpose of calculating *Zakâh*

An evaluation of the qualitative characteristics of the information can be summarized in the following points:

- 1- The concept of relevance is related to the benefit of the information and data included in financial statements for the user in making an economic decision related to the facility. This characteristic is related to the general objective, and its effect appears in the connection between disclosing the item in financial statements and this objective. This means inconsistency for the consideration of *Zakâh* calculation whenever it contradicts the objective of accounting. The effect of this appears in a number of problems, in recognizing the item in financial statements, or the basis for its measurement, or the method of its disclosure, as will be discussed later in detail.
- 2- The principle of materiality is related to the principle of relevance. The method of disclosing an item in financial statements is related to the materiality of the item for the user in making the economic decision.

Accordingly, information that has an impact on the calculation of *Zakâh* may not be disclosed because its materiality in taking the economic decision is not significant, or because it includes a number of items within overall items due to its weak economic impact, such as including the item in the financial statements within general items that cannot be judged on the basis of *Zakâh*, such as saying, “other assets”, or “other liabilities”.

- 3- Faithful representation is less important than the principle of relevance, and it is considered a substitute for reliability in the previous conceptual framework. The purpose of this characteristic is to provide more useful information to the user of financial statements even if it is of lower reliability, which explains the tendency of international standards to adopt the current value, and the decline in reliance on the historical cost.

From *Zakâh* standpoint, this principle conforms originally with the principles of calculating *Zakâh*. Whereas, *Zakâh* payer may act according to the prevailing assumption regarding the calculation of zakatable property he possesses. The basic principle is to accept the statement of the *Zakâh* payer without the need for inspection, investigation or auditing, if the estimated amount of *Zakâh* is in accordance with the apparent circumstances.

- 4- Understandability is in principle consistent with the principles of Shari'ah regarding assignment in general, and regarding the calculation of *Zakâh* in particular. But the problem here is that accounting assumes that the users of financial statements have reasonable knowledge, and this may be a problem because the rulings of Shari'ah are established on the description of “*Ummiyyah*”. Hence, stipulating such a knowledge in the shareholder, whether by himself or by others, to calculate *Zakâh* contradicts with Shari'ah principle stating that Shari'ah is *Ummiyyah* (i.e. of the unlettered, since those who were its addressees were likewise), as was discussed in the purposes of Shari'ah in calculating *Zakâh*.
- 5- Comparability may be said that it is ineffective, but it appears that accounting compares economic events that are converging in the economic impact, even if they are different in terms of legal and Fiqh-related adaptation, which is reflected in the method of recognizing these assets in the financial statements and the basis for their measurement.

- 6- Verifiability may be said that it is a characteristic which does not affect the calculation of *Zakâh*. However, its impact becomes clear when we consider the funds of joint-stock companies as apparent wealth for which *Zakâh* is collected. This is because considering a property as an apparent wealth depends, in one aspect, on the verifiability of such a property. Also, *Zakâh*, in principle, does not require the state to monitor, inquire about, or require disclosure of properties unless there is an evidence or accusation of *Zakâh* evasion.
- 7- Timeliness is one of the concepts compatible with *Zakâh* in principle. However, the concept of relevance is related to objectives of investors, which explains why financial reports are not required to disclose the information at times when *Zakâh* is due, such as the lunar year and *Zakâh* at harvest.

Fourth concept: Elements of financial statements

General purpose financial statements or financial reports are defined as: “Statements intended to meet the needs of users who are unable to require an entity to prepare reports tailored to their particular information needs.”⁽¹⁾

This concept is concerned with identifying the elements that are included in the statements, which portray “the financial effects of transactions and other events by grouping them into broad classes according to their economic characteristics.”⁽²⁾

This concept distinguishes between the elements related to the financial position of the entity, which are concerned with the statement of resources and liabilities of the entity in a specific time, and those related to performance, which are concerned with the statement of business’s economic transactions during a certain period and their implications.

As for the elements directly related to the measurement of financial position, they are three elements as follows:⁽³⁾

(1) “IAS 1- *Presentation of Financial Statements*”, Paragraph (7).

(2) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [*Conceptual Framework for Financial Reporting*], Paragraph (4.2).

(3) *Ibid.*, Paragraph (4.4).

- 1- **An asset** is a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity.
- 2- **A liability** is a present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits.
- 3- **Equity** is the residual interest in the assets of the entity after deducting all its liabilities.

It may be important to address the concept of asset and liability in financial statements in detail due to their impact on calculating *Zakâh*. This can be achieved through the following points:

- (a) The conceptual framework in defining the basic items of the financial statements relied on the asset and liability entry. It follows from this that the asset and the liability are the two basic concepts in this entry, and the definition thereof underlies the definition of other items included in financial statements.⁽¹⁾
- (b) The definitions of an asset and a liability identify their essential features,⁽²⁾ which in reality depend mainly on the economic effects of each of them. So, we find that asset includes an inflow of future economic benefits, while liability includes a future outflow, which both are the result of events that occurred in the past, and not events expected to occur in the future.

Accordingly, “in assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely its legal form.”⁽³⁾

Thus, for example, in the case of financing leases, the substance and economic reality are that the lessee acquires the economic benefits of using and controlling the leased asset for the major part of its useful life in return for entering into an obligation to pay for that right an amount approximating to the fair value of the asset and the related finance charge. Hence, the leased asset is to be counted in the lessee’s assets, and the amounts related

(1) See: “*Nazariyyat Al-Muhâsabâh*”, Al-Humayd, (P. 332); “*Ta`miq Al-Fahm Fî Al-Itâr Al-Mafâhîm*”, Dr. Khâlid Al-`Adîm, (P. 81).

(2) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [*Conceptual Framework for Financial Reporting*], Paragraph (4.5).

(3) *Ibid.*, Paragraph (4.6).

to the benefits of using and controlling the asset are to be recognized in his liabilities.⁽¹⁾

- (c) The definition of the asset as “a resource controlled by the entity” does not stipulate that the entity should have the right of ownership. Control, here, means the capacity of an entity to control the economic benefits which are expected to flow from the property and the ability to make decisions thereon,⁽²⁾ and “the future economic benefit embodied in an asset is the potential to contribute, directly or indirectly, to the flow of cash and cash equivalents to the entity.”⁽³⁾ The potential may be a productive one that is part of the operating activities of the entity. It may also take the form of convertibility into cash or cash equivalents or a capability to reduce cash outflows.

However, physical form is not essential to the existence of an asset; hence patents and copyrights, for example, are assets if future economic benefits are expected to flow from them to the entity and if they are controlled by the entity. This is why unspecialized know-how is not considered an asset, even if it can produce future benefits.⁽⁴⁾

- (d) The concept of liabilities within the conceptual framework is broader and more comprehensive than the concept of legal liability, as liabilities may be legally enforceable subject to a binding contract or statutory requirement. Also, liabilities may arise from the conduct of normal business, custom, and the desire to maintain good business relationships, or to act in a fair manner.

If, for example, an entity decides as a matter of policy to rectify faults in its products even when these become apparent after the warranty period

(1) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], Paragraph (4.6); “*Al-Muhâsabâh Al-Mutawassîtah*” [Intermediate Accounting, Kin Lo, George Fisher], (pp. 72-73).

(2) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], Paragraph (4.12); “*Al-Muhâsabâh Al-Mutawassîtah*” [Intermediate Accounting, Kin Lo, George Fisher], (P. 72).

(3) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], Paragraph (4.8); “*Al-Muhâsabâh Al-Mutawassîtah*” [Intermediate Accounting, Kin Lo, George Fisher], (P. 72).

(4) See: “*Itâr Mafâhîm At-Taqrîr Al-Mâlî*” [Conceptual Framework for Financial Reporting], Paragraph (4.11); “*Al-Muhâsabâh Al-Mutawassîtah*” [Intermediate Accounting, Kin Lo, George Fisher], (P. 72).

has expired, the amounts that are expected to be expended in respect of goods already sold are liabilities,⁽¹⁾ which means that some liabilities can be measured only by using a substantial degree of estimation. Some entities describe these liabilities as provisions. In some countries, such provisions are not regarded as liabilities because the concept of a liability is defined narrowly so as to include only amounts that can be established without the need to make estimates.⁽²⁾

Concerning equity, it is defined as the residual interest in the assets of the entity after deducting all its liabilities. This includes all types of entities, including unincorporated entity, solidarity companies, and endowments. The items of equity in these entities are classified according to their legal nature. As for a corporate entity, funds contributed by shareholders, retained earnings, and reserves representing appropriations of retained earnings and reserves representing capital maintenance adjustments may be shown separately. This includes such classifications that indicate the ability of the entity to distribute or otherwise apply its equity.⁽³⁾

As for **the performance-related elements**, they are two main elements, namely income and expenses. They are defined as follows:

- 1- **Income** is increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity.⁽⁴⁾
- 2- **Expenses** are decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in equity.⁽⁵⁾

(1) See: *"Itâr Mafâhîm At-Taqrîr Al-Mâlî"* [Conceptual Framework for Financial Reporting], Paragraph (4.15).

(2) See: *"Itâr Mafâhîm At-Taqrîr Al-Mâlî"* [Conceptual Framework for Financial Reporting], Paragraph (4.19); *"Al-Muhâsabâh Al-Mutawassîtah"* [Intermediate Accounting, Kin Lo, George Fisher], (P. 135).

(3) See: *"Itâr Mafâhîm At-Taqrîr Al-Mâlî"* [Conceptual Framework for Financial Reporting], Paragraph (4.20); *"Al-Muhâsabâh Al-Mutawassîtah"* [Intermediate Accounting, Kin Lo, George Fisher], (P. 136).

(4) See: *"Itâr Mafâhîm At-Taqrîr Al-Mâlî"* [Conceptual Framework for Financial Reporting], Paragraph (4.25).

(5) Ibid.

In the current conceptual framework, there is no distinction between income/revenue arises in the course of the ordinary activities of an entity, such as sales and the like, and gains arising on the disposal of non-current assets, or unrealized gains arising; for example, on the revaluation of marketable securities. As for expenses or losses, they include the expenses that arise in the course of ordinary activities of the entity, and those losses arising from decreases in economic benefits, and those resulting from other matters, such as disasters. A distinction is often made in financial statements in both income and expenses between items resulting from the company's activity and other items. This is because of their impact on evaluating the company's performance and taking relevant decisions by investors and creditors.⁽¹⁾

Evaluating the concept of (elements of financial statements) for the purpose of calculating *Zakâh*

Zakâh relates to the wealth owned by the *Zakâh* payer according to the conditions required in each of the zakatable wealth. It is directly related to the wealth that the *Zakâh* payer owns and whose ownership may weaken for various reasons, including debts payable by the *Zakâh* payer.

Accordingly, if we want to look at the funds in joint-stock company with the intention of calculating *Zakâh*, the consideration is directed to the items of assets in the statement of financial position, as it shows the funds that the company owned at the time the statement of financial position was issued, as well as the items of liability. This is to look at their effect on the absolute ownership of these assets, if we consider that these obligations have an effect on the absolute ownership, which is a well-known dispute among scholars.

In order to evaluate the elements of the statements, it is necessary to evaluate the definition of assets and liabilities as they are the main entry point for the definition of the items of financial statements.

According to the definition in the conceptual framework, it is not a requirement that these assets being owned by the company. The definition is

(1) See: "*Itâh Mafâhîm At-Taqrîr Al-Mâlî*" [Conceptual Framework for Financial Reporting], Paragraph (4.29-35).

based on the concept of controlling resources. This is why the definition of asset includes, for example, prepaid amounts, which the company will not receive their benefits in the current fiscal year.

These amounts, however becoming unowned by the company, are to be recognized in the company's assets. This is because the company did not fulfill the contracted benefits, in addition to the fact that some of the assets included in the statement of financial position are not subject to *Zakâh*, which necessitates the importance of examining these items to distinguish zakatable items from non-zakatable ones.

Also, with regard to liabilities, we find that the concept of liabilities in the conceptual framework is broader than the concept of debt. This is because it includes expected contractual obligations the reason for their fulfillment has not occurred yet, such as end-of-service benefits and leaves. It also includes non-contractual obligations where compliance thereto is a matter of policy intended by the company to attract its customers. This requires examining these liabilities and considering their effects on calculating *Zakâh*.

It should be noted that examining the items in financial statements, whether on the assets or liabilities side, is not an easy task. This is because the judgment on any item in terms of its relevance to the calculation of *Zakâh* may depend on additional information that may not be provided by the financial statements. This in addition to the fact that a single item may include different funds to be considered in the calculation of *Zakâh*, which requires further clarification about the nature of what is included in this item to be considered in the calculation of the *Zakâh* base.

Likewise, with regard to the concepts related to performance, which are income and expenses, they do not originally affect the calculation of *Zakâh*.

Rather, they affect the calculation of *Zakâh* when relying on the aspect of liabilities and equity in calculating *Zakâh*, in terms of their effect on profits of equity in the statement of financial position. That is because some of the expenses deducted from income are not real expenses, such as depreciation allocations for fixed assets, which calls for special treatment of their impact on profits if the indirect method of calculating *Zakâh* is adopted.

Fifth concept: Recognition

Recognition is the process of incorporating in the balance sheet or income statement an item that meets the definition of an element and satisfies the criteria for recognition.⁽¹⁾

The general criterion for recognizing elements in financial statements is that an item (that meets the definition of an element) should be recognized if:

- 1- It is probable that any future economic benefit associated with the item will flow to or from the entity; and
- 2- The item has a cost or value that can be measured with reliability.

That is, information is reliable when it is complete, neutral and free from error.⁽²⁾

The recognition criteria establish guidelines for recognizing any item in the financial statements rather than disclosing it in supplementary notes. The measurement identifies the basis for determining the value of an item intended for reporting. The recognition criteria and the basis of measurement are considered as choices made available by the standards among several alternatives. The general accounting principles regulate the choices of standards makers in light of the qualitative characteristics that users request.⁽³⁾

Evaluating the concept of (recognition) for the purpose of calculating *Zakâh*

The foundations on which the concept of recognition is based in the conceptual framework does not adhere, in view of the objectives of the statements, to the Shari'ah principles by which distinction is made between zakatable and non-zakatable wealth, which are related to the conditions of the obligation of *Zakâh* on wealth, as will be explained later. This requires examining the items of financial statements for the purpose of calculating *Zakâh*, with the aim of distinguishing zakatable and non-zakatable wealth.

(1) See: "*Itâ'ar Mafâhîm At-Taqrîr Al-Mâlî*" [*Conceptual Framework for Financial Reporting*], Paragraph (4.37).

(2) Ibid., Paragraph (4.38-41).

(3) "*Al-Muhâsabâh Al-Mutawassî'ah*" [*Intermediate Accounting*, Kin Lo, George Fisher], (P. 73).

Distinguishing *Zakâh* assets may not be easy, especially when the information that enables the examiner to distinguish zakatable and non-zakatable wealth is not disclosed. Moreover, one financial item may include zakatable and non-zakatable assets, and information that enables the examiner to distinguish zakatable assets may not be disclosed.

Sixth concept: Measurement

Measurement is the process of determining the monetary amounts at which the elements of the financial statements are to be recognized and carried in the balance sheet and income statement.⁽¹⁾

A particular basis of measurement upon which the process of measurement is based shall be selected, which is called the measurement basis.

A number of different measurement bases are employed to different degrees and in financial statements. They include the following:⁽²⁾

- 1- **Historical cost:** The amount of cash or cash equivalents paid or received in a particular transaction.
- 2- **Current cost:** The amount of cash or cash equivalents that is paid to acquire a current asset or settle a current obligation.
- 3- **Realizable (settlement) value:** The amount of cash or cash equivalents that could currently be obtained by selling an asset. For liabilities, it is called settlement values; that is, the amount of cash or cash equivalents required to settle a certain obligation.

Realizable (settlement) value is to be determined in the normal course of business.

- 4- **Present value:** The present deducted value of the future net cash inflows that the item is expected to generate in the normal course of business.

The measurement basis most commonly adopted by entities in preparing their financial statements is historical cost. This is usually combined with

(1) See: "*Itâr Mafâhîm At-Taqrîr Al-Mâlî*" [*Conceptual Framework for Financial Reporting*], Paragraph (4.38-54).

(2) See: "*Itâr Mafâhîm At-Taqrîr Al-Mâlî*" [*Conceptual Framework for Financial Reporting*], Paragraph (4.55); "*Al-Muhâsabâh Al-Mutawassîṭah*" [*Intermediate Accounting*, Kin Lo, George Fisher], (pp. 73-74).

other measurement bases. For example, inventories are usually carried at the lower of the historical cost and net realizable value.⁽¹⁾

Evaluating the concept of (measurement) for the purpose of calculating *Zakâh*

This concept is considered one of the most affecting concepts on the calculation of *Zakâh*. This is because measurement depends in the accounting system on cash (the monetary unit), which implies that the accounting measurement is in principle more appropriate for *Zakâh* on assets, including cash, debts and goods stocked for trade than *Zakâh* on products of land and livestock.

This gives rise to the problem of the basis of measurement, which differs according to the financial items. This requires a comparison between the accounting bases of measurement and the Shari'ah basis for measuring zakatable wealth. For example, inventories are usually carried at the lower of the actual cost and realizable value. This contradicts the Shari'ah basis of measurement, which is the market value of goods stocked for trade, as will be mentioned later.

Seventh concept: Cost constraint on useful financial reporting

This means that the information provided by the financial report shall not be subject to considerations of cost and benefit. According to this, the cost expected from the accounting information report shall not exceed the benefit expected from using such information, whether the cost of collecting financial information and preparing financial reports, or the cost that users bear to read and benefit from the information. This cost can be measured in some cases, and may be subject to personal assessment in many cases. As for the benefit of financial information, it is subject to assessment in nature.

Evaluating the concept of (cost constraint on useful financial reporting) for the purpose of calculating *Zakâh*

In principle, this concept is considered one of the principles corresponding to the Shari'ah principles. However, since the consideration of cost is compared

(1) See: "*Itâr Mafâhîm At-Taqrîr Al-Mâlî*" [Conceptual Framework for Financial Reporting], Paragraph (4.56).

to the benefit in the objectives of the accounting system, this leads to non-disclosure of important information in calculation of *Zakâh* due to its low relative importance to users of financial statements, or its high cost compared to its importance.

Eighth concept: Assumptions

In order to develop detailed accounting rules, we need to make some assumptions, and these assumptions are not necessarily based on theoretical foundations. Assumptions are simplified generalizations on practical reality, which are appropriate in most but not in all cases.⁽¹⁾

The conceptual framework provides for an underlying assumption, which is going concern, and another assumption, appropriate for some environments, which is capital maintenance.

1- Going concern assumption:

This means that the financial statements are normally prepared on the assumption that an entity is a going concern and will continue in operation for the foreseeable future. Hence, it is assumed that the entity has neither the intention nor the need to liquidate or curtail materially the scale of its operations; if such an intention or need exists, the financial statements may have to be prepared on a different basis and, if so, the basis used is disclosed.⁽²⁾

This assumption is important in differentiating between accruals to be recorded, and based on which a distinction is made between fixed and current assets, and short-term and long-term liabilities.

This is why accounting according to the accrual basis is based on the assumption of going concern. It is not a requirement of this assumption to adopt the principle of historical cost.⁽³⁾

(1) "*Al-Muḥāsabah Al-Mutawassīṭah*" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 74).

(2) See: "*Itâṭ Mafâḥim At-Taqrîr Al-Mâli*" [*Conceptual Framework for Financial Reporting*], Paragraph (4.1).

(3) "*An-Nazariyyah Al-Muḥāsabiyyah*" [*Accounting Theory*, Hendriksen], (pp. 111-114).

2- Capital maintenance:

This assumption indicates the amount of resources required to ensure the going concern of an entity; that is, the resource required for such entity to continue its operations in the foreseeable future. This assumption determines the basis on which the profit is measured. It assumes that inflows of assets (earnings) in excess of amounts needed to maintain capital may be regarded as profit.⁽¹⁾

There are two concepts of capital upon which preparation of financial statements is based:⁽²⁾

- (a) **Financial capital maintenance:** It is adopted by most entities in preparing their financial statements, such as invested money or invested purchasing power. Capital is synonymous with the net assets or equity of the entity. Under this concept a profit is earned only if the financial (or money) amount of the net assets at the end of the period exceeds the financial (or money) amount of net assets at the beginning of the period, after excluding any distributions to, and contributions from, owners during the period.
- (b) **Physical capital maintenance, such as operating capability.** Capital is regarded as the productive capacity of the entity based on units of production per day. Under this concept a profit is earned only if the physical productive capacity (or operating capability) of the entity (or the resources or funds needed to achieve that capacity) at the end of the period exceeds the physical productive capacity at the beginning of the period, after excluding any distributions to, and contributions from, owners during the period. This concept is applied to some countries, such as Canada.

Evaluating the concept of (assumptions) for the purpose of calculating *Zakâh*

This concept does not have a significant effect on the calculation of *Zakâh*,

(1) See: "*Itâr Mafâhîm At-Taqrîr Al-Mâlî*" [Conceptual Framework for Financial Reporting], Paragraph (4.57); "*Al-Muḥâsabâh Al-Mutawassitâh*" [Intermediate Accounting], (P. 86).

(2) See: "*Itâr Mafâhîm At-Taqrîr Al-Mâlî*" [Conceptual Framework for Financial Reporting], Paragraph (4.59-65).

except for the effect of the assumption that the entity is going concern and has no intention or need to enter liquidation on choosing the basis of measurement for the financial items in financial reports, in a way that suits the objectives of the users of financial statements. This is due to the problem of measurement in financial statements.



Treatise Three

Financial Disclosure: *Zakâh*-Related Problems, and Their Solutions



This research aims at identifying types of financial disclosure problems related to *Zakâh* on joint stock companies and clarifying their solutions.

First: Problems of financial disclosure related to *Zakâh*

The most significant problems of financial disclosure related to *Zakâh* on joint stock companies can be summarized as follows:

Problem (1): Calculating *Zakâh* based on financial statements requires a reasonable knowledge, which may not be available to many specialists in Shari'ah and the public (*Zakâh* payer) in general. Indeed, *Zakâh* accounting has become an academic discipline and a professional field that needs scientific and practical training. Shall it be obligatory for all shareholders to know the calculation of *Zakâh* based on financial statements, and to seek the assistance of those responsible for calculating *Zakâh* if they cannot do that themselves even if this results in a material cost, since "what is necessary for an obligation to be fulfilled is in itself an obligation"?

Problem (2): If the *Zakâh* payer is supposed to have such reasonable knowledge, whether by himself or with the help of whoever owns it, and if we suppose that it is not required for all *Zakâh* payers to have such a knowledge, there remains the fact that acquiring such knowledge, even voluntarily, may result, in some cases, in significant hardship and cost, whose cost may exceed the amount of the money owned, not to mention the amount of *Zakâh* due on this money.

For example, if someone owns a portfolio of (various) shares, can it be said that the required or desirable perfection is to seek the help of a specialist in accounting to examine the financial reports of the shares of these companies,

identify the deficiencies in their financial reports, and then ask the company to provide the shareholder with what correct such deficiencies, regardless of the time or effort it costs?

The same applies to those who own units in equity investment funds, whose assets are constantly diversifying in size according to market requirements.

Problem (3): The failure of the accounting system to provide the *Zakâh* payer, who is able to deal with these statements, with the information necessary to calculate *Zakâh*. This can be summarized as follows:

- (a) **Failure in recognition:** Items are recognized in the financial statements based on economic impact, regardless of legal adaptation. Examples of this include:
- 1- Financing lease contracts.
 - 2- Investment instruments.
 - 3- Investing in investment funds.
 - 4- Anticipated allocations.
- (b) **Failure in measurement:** *Zakâh* in Shari'ah adopts a number of measurement bases for measuring the *Nisâb* (i.e. minimum amount determining a person's zakatability) and estimating the amount due (to be paid as *Zakâh*). The problem here appears in zakatable funds, other than cash, in which measurement is determined. Examples of this include:
- 1- Estimating the *Nisâb* in livestock.
 - 2- Estimating the *Nisâb* in crops and fruits.
- (c) **Failure to disclose the information necessary to verify the Shari'ah conditions for the obligation of *Zakâh*.** Examples of this include:
- 1- Conditions for *Zakâh* to be obligatory on livestock (i.e. *Sawm*: free grazing on pasture).
 - 2- Condition for *Zakâh* to be obligatory on goods stocked for trade (i.e. purchasing with the intention of trading).
 - 3- Condition for *Zakâh* to be obligatory on crops and fruits (watering supplies).
 - 4- Disclosure of forbidden assets and liabilities.

- (d) **Problems related to cost constraint:** These mainly relate to items that are included in general items to approximate their economic impact, which include both zakatable and non-zakatable properties. Examples of this include: (other assets and other liabilities).
- (e) **Failure to disclose the times affecting calculation of *Zakâh*:** Despite the fact that this originally relates to the conditions of *Zakâh*, I think that it must be mentioned individually due to its importance. Examples of this include:
- 1- Failure to adhere to the lunar *Hawl* (i.e. *Zakâh* year).
 - 2- Non-disclosure of harvest time.
 - 3- Problems related to the terms of obligation (shares of non-obligated shareholders).
 - 4- Investing in other investment vehicles, such as stocks and companies.

Second: Means of solving financial disclosure problems related to *Zakâh*

The means of solving financial disclosure problems in joint-stock companies can be divided into two sections:

Section (1): Preventive measures

This section includes every solution aimed at improving financial disclosure in a way that brings it closer to the Shari'ah principles of calculating *Zakâh*. The following falls under this section:

First: The company shall take charge of calculating *Zakâh* on zakatable funds, whether it is the company that pays the *Zakâh* or the shareholders. The company has the ability to access information and financial data, and deal with financial disclosure problems in accordance with the Shari'ah provisions in calculating *Zakâh*, the matter which is not available to other bodies competent to collect *Zakâh* or to general shareholders.

Companies shall use the efforts resulted from contemporary collective effort to clarify the necessary procedures for calculating *Zakâh* based on financial statements, the most important of which are:

- 1- "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*" (i.e. Corporate *Zakâh* Calculation Guide), which is one of the fruits of the symposiums on "*Contemporary Zakâh Issues*".
- 2- Shari'ah Standard no. (35) regarding *Zakâh*, issued by Sharia Board of the Accounting and Auditing Organization for Islamic Financial Institutions⁽¹⁾ on 25 Dhul-Qi'dah, 1429 AH (corresponding to 28 November, 2008 AD).
- 3- Accounting Standard no. (9) regarding *Zakâh*, issued by Accounting and Auditing Standards Board of the Accounting and Auditing Organization for Islamic Financial Institutions on 27-28 Safar, 1419 AH (corresponding to 21-22 June, 1998 AD).
- 4- *Zakâh* Accounting Standard (Amended) issued by Accounting Standards Committee of the Saudi Organization for Certified Public Accountants (SOCPA) on 17 Dhul-Hijjah, 1437 AH (corresponding to 19 September, 2016 AD), amended to be in line with International Accounting Standards.

Second: Despite the importance of these standards and guidelines in calculating *Zakâh* for joint-stock companies, and the explanation of the Shari'ah rulings for calculating *Zakâh*, the researcher believes that they need the following:

- 1- Developing these Shari'ah standards and guidelines to comply with International Accounting Standards and other issues regarding the calculation of *Zakâh*.
- 2- Preparing a Shari'ah standard for estimation in calculating *Zakâh*, as company's undertaking of calculation of *Zakâh* does not mean that all problems are addressed.
- 3- Developing a standard for governance and ethics for those responsible for calculating *Zakâh*, aiming at developing methods and systems that

(1) Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is an international non-profit body with an independent legal entity, based in Bahrain. It was established under the incorporation agreement held among a number of financial institutions in 1410 AH, and registered in the State of Bahrain in 1411 AH. The Organization aims at developing standards for the Islamic financial and banking industry. It issues accounting, audit, control and business ethics standards, as well as Shari'ah Standards. The membership of the organization exceeds 155 financial institutions from 40 countries. Refer to: The Organization's website (www.aaoifi.com), and "Shari'ah Standards".

contribute to organizing the procedures of calculating *Zakâh* in companies, and rectify the errors or conflict of interests in their procedures.

On this occasion, the researcher confirms the recommendation of the 26th symposium on “*Contemporary Zakâh Issues*”, held in Amman from 9 to 10 Jumâdah Al-Âkhirah, 1440 AH (corresponding to 14-16 February, 2019 AD), which discussed the procedures for calculating and distributing *Zakâh* in Islamic financial institutions, which concluded as follows:

First: Emphasizing the importance of Islamic financial institutions’ adherence to the principles, controls, guidelines and procedures that enable them to apply Shari’ah and accounting standards to calculating and distributing *Zakâh*, and achieving *Zakâh*’s purposes and objectives.

Second: Forming a special committee to prepare a governance standard for calculation and distribution of *Zakâh*, in accordance with the resolutions issued by the symposiums on “*Contemporary Zakâh Issues*”, the corporate *Zakâh* calculation guide, and the draft model law for calculation of *Zakâh*.”

The aim of developing these standards for governing the calculation of *Zakâh* for joint-stock companies is to guide the company to the best organizational methods of calculating *Zakâh*, and to indicate the optimal means of organizing between different departments related to the calculation of *Zakâh*. This is to control the procedures and policies of calculating *Zakâh*, and to protect this ritual from negative effects resulting from the behaviors of some executives in calculating *Zakâh* with the intention of inflating the profits of the company.

It also shows the importance that the authorities responsible for issuing accounting standards shall issue standards for the disclosure of *Zakâh*, which obligate the companies to include in their financial statements the disclosure of information that would solve many of the problems previously mentioned.

Third: The laws regulating *Zakâh* shall include some provisions that introduce solutions to a number of problems related to the calculation of *Zakâh*, such as imposing what is equivalent to *Zakâh* on a person not

obligated to pay *Zakâh*, the calculation thereof should be according to the calculation of *Zakâh* and is to be spent in its appropriate channels. This is to release joint-stock companies from hardship relating to calculation of *Zakâh* without considering the condition of the shareholders in terms of obligation. These provisions may also include a number of solutions for some problems that limit the need for estimation or assessment (*Khars*) in dealing with these financial reports.”

Section (2): Solutions

Solutions refer to the means of solving those problems, which can be summarized as a whole in estimation, the subject matter of this study. The application of estimation may differ based on the problems of calculating *Zakâh* and the person in charge of calculating *Zakâh*, in terms of his ability to access financial information in joint-stock companies, and to deal with this information.

In all case, what appears is that whatever procedures taken by authorities responsible for issuing the accounting standards to improve the financial disclosure in joint-stock companies, such improvement is actually restricted by a number of considerations, including: non-amendment of International Accounting Standards, whether by deletion or change, in addition to considering the costs incurred by companies in improving the financial disclosure for the purpose of calculating *Zakâh*. This confirms the importance of estimation in calculating *Zakâh* for joint-stock companies, the importance of establishing its Fiqh-based foundation, and stating the considerable conditions for its application and the implications thereof.



Chapter Three
Estimation Regarding Conditions
of *Zakâh* for Joint-Stock Companies

Introduction



This chapter aims at studying the issues of estimation regarding the conditions of *Zakâh* for joint-stock companies, which entails specifying the person obliged to pay *Zakâh*, and then determining the wealth subject to *Zakâh*. The discussion in this chapter is arranged into a preface and two treatises as follows:

Preface: Conditions of *Zakâh*.

Treatise One: Estimation regarding general conditions of *Zakâh* for joint-stock companies.

Treatise Two: Estimation regarding conditions of zakatable wealth in joint-stock companies.



Preface

Conditions of *Zakâh*



Since the chapter deals with estimating the conditions for the obligation of *Zakâh* for joint-stock companies, it is appropriate to pave the way for this by defining and clarifying the conditions of *Zakâh*.

First: Concept of conditions of *Zakâh*

Linguistically speaking, the Arabic word “*Shurûṭ*” (i.e. conditions) is the plural form of the word “*Shart*” (i.e. condition), which means an obligation to do something in sale and others.

In Arabic, it is said, “*Sharata `Alayhi Yashritu, and Yashrutu, and Ishtarata `Alayh*” (i.e. He made a condition for him). The root of this word indicates a sign, a mark, or a portent, as in the Arabic word “*Sharat*” which means a sign or a portent. This is indicated in Allah’s saying: {“...*But some of its portents (indications and signs) have already come...*”}^{(1) (2)}

In terminology, “*Shart*” (i.e. condition) can be defined as:

“The basis of a ruling, but not the cause of such ruling, as condition does not affect by the cause of a ruling.”⁽³⁾

Also, it is defined as:

“A condition, where existent, does not require a ruling thereof to be existent and, where absent, a ruling thereof shall be absent.”⁽⁴⁾

(1) Surah *Muhammad* (The Prophet Muhammad): 18.

(2) See the Arabic root “*Shin, Râ, Tâ*” (i.e. *Sh R T*) [ش ر ط] in “*As-Sihâh*”, (3: 1136); “*Maqâyis Al-Lughah*”, (3: 260); “*Tâj Al-`Arûs*”, (19: 404).

(3) “*Qawâ`id Al-Ahkâm*”, (2: 182). It is close to the definition given by the Hanafites. See: “*Uṣûl As-Sarakhsi*”, (2: 303).

(4) “*Sharh Tanqîh Al-Fuṣûl*”, (P. 82); “*Al-Bahr Al-Muhîṭ*”, (4: 437); “*Al-Kawkab Al-Munîr*”, (1: 452).

Obligation, in language, implies affirmation, necessity, duty, and fall.⁽¹⁾ In terminology, however, it refers to a duty noncompliance therewith is to be regarded as a default (sinful act) in accordance with Shari'ah.⁽²⁾

What is meant by the conditions of *Zakâh* is what the ruling for *Zakâh* to be payable is based upon with regard to the wealth of the payer subject to *Zakâh*. The conditions for the obligation of *Zakâh* are divided into conditions related to the *Zakâh* payer and conditions related to the wealth, which will be discussed below.

Second: Conditions of *Zakâh* related to *Zakâh* payer

Zakâh is obligatory under conditions related to *Zakâh* payer, which can be summarized as follows:

Condition (1): Islam. This is based on the letter of Abû Bakr As-Siddiq regarding *Zakâh* in which he says:

“This is the obligatory *Sadaqah* (i.e. *Zakâh*) which Allah’s Messenger (peace and blessings of Allah be upon him) has imposed on Muslims...”⁽³⁾

Accordingly, a non-Muslim is not required to pay *Zakâh*. However, he is to be punished in the Hereafter for not performing this obligation after fulfilling its condition of true belief in Allah and submitting to His Shari'ah (i.e. Islam). This based on Allah’s saying describing the believers in Paradise asking the people of Hellfire in the Hereafter:

{“What has caused you to enter Hell? They will say: “We were not of those who used to offer their Prayers. Nor we used to feed the poor.”}⁽⁴⁾

Condition (2): Richness. This is based on the hadith, where Allah’s Messenger (peace and blessings of Allah be upon him) said to Mu`âdh Ibn Jabal, when he sent him to Yemen:

“..so, let them know that Allah has made it obligatory for them to pay

(1) See the Arabic root “Wâw, Jîm, Bâ’ (i.e. WJB) [و ج ب] in “*As-Sihâh*”, (1: 231); “*Mufradât Alfâz Al-Qurân*”, (P. 853); “*Tâj Al-`Arûs*”, (4: 333).

(2) “*Sharh Tanqîh Al-Fusûl*”, (P. 71); “*Al-Bahr Al-Muhîr*”, (1: 234), “*Al-Kawkab Al-Munîr*”, (1: 345).

(3) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter of *Zakâh* on sheep, no. (1454).

(4) Surah *Al-Muddathir* (Shrouded): 42-44.

Sadaqah (i.e. Zakâh) from their property and it is to be taken from the wealthy among them and given to the poor.⁽¹⁾

The wealthy fulfilling the requirement of *Zakâh* is the one who fully owns the *Nisâb* (i.e. minimum amount determining a person's zakatability) of *Zakâh*. Accordingly, a person who does not own, such as a slave, or a person who does not have the absolute ownership of wealth, such as a *Mukâtab* (i.e. a slave having a contract of manumission), or a person who does not own the *Nisâb* of *Zakâh* are to be excluded from paying *Zakâh*.

Adulthood and sanity are not required for *Zakâh* to be obligatory according to the majority of scholars. This is the view of the Malikites,⁽²⁾ the Shafiites,⁽³⁾ and the Hanbalites.⁽⁴⁾ Accordingly, it is obligatory for the minor and the insane to pay *Zakâh*. This is based on the generalization of the hadith in which the Prophet (peace and blessings of Allah be upon him) says:

"...so, let them know that Allah has made it obligatory for them to pay Sadaqah (i.e. Zakâh) from their property and it is to be taken from the wealthy among them and given to the poor."

Also, *Zakâh* is an obligation aimed for *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor), and the minor and insane are subject to such an obligation, an opinion unanimously adopted by the companions of the Prophet (peace and blessings of Allah be upon him).⁽⁵⁾

The Hanafites,⁽⁶⁾ however, hold the view that adulthood and sanity are required for *Zakâh* to be obligatory. Their opinion is based on the hadith in which the Prophet (peace and blessings be upon him) says:

"The Pen has been lifted from three (i.e. There are three people whose

(1) *"Sahîh Al-Bukhârî"*, Book of *Zakâh*, Chapter: *Zakâh* should be taken from the rich and given to the poor; *"Sahîh Muslim"*, Book of Belief, hadith no. (19) on the authority of Ibn `Abbâs (may Allah be pleased with him).

(2) *"Mawâhib Al-Jalîl"*, (2: 292); *"Ash-Sharh As-Saghîr"*, (2: 289).

(3) *"Mughnî Al-Muhtâj"*, (2: 123); *"Tuhfat Al-Muhtâj"*, (3: 330).

(4) *"Sharh Muntahâ Al-Îrâdât"*, (2: 170); *"Matâlib Uli An-Nuhâ"*, (2: 5).

(5) *"Masâ'il Al-Imâm Ahmad"* (Abû Dâwûd's Narration), (no. 552); *"Fatâwâ As-Subkî"*, (1: 188).

(6) *"Al-Binâyah Sharh Al-Hidâyah"*, (2: 15); *"Al-Mabsûr"*, (2: 163).

actions are not recorded): From the sleeper until he wakes up, from the child until he grows up, and from the insane until he comes back to reason or recovers (his sense).⁽¹⁾

The majority of scholars view that unaccountability, in this hadith, is restricted to physical acts of worship, arguing that their opinion is supported by the obligation to pay the one-tenth (as *Zakâh* due on land products), *Zakâtul-Fitr* (i.e. *Zakâh* of breaking the fast), and financial obligations. Yet, the same ruling applies to *Zakâh* on wealth.⁽²⁾

Third: Conditions of *Zakâh* related to wealth

As for the conditions related to wealth upon which *Zakâh* is due, they are as follows:

Condition (1): It shall be one of the categories on which *Zakâh* is due, which is defined as zakatable wealth.

There are three types of zakatable wealth: Assets (i.e. gold, silver, and goods stocked for trade), products of cultivated land, and livestock.⁽³⁾ This is based on the narration of Mâlik in his "*Al-Muwatta*" that he has been informed that 'Umar Ibn 'Abdul-'Azîz wrote to his governor in Damascus about *Zakâh* saying:

"Sadaqah (i.e. *Zakâh*) is paid on the produce of cultivated land, assets (i.e. gold, silver, and goods stocked for trade), and livestock."

A similar narration is reported by Imam Mâlik in "*Al-Muwatta*".⁽⁴⁾

(1) "*Musnad Ahmad*", (6: 100); "*Sunan Abû Dâwûd*", Book of Prescribed Punishments, Chapter: If an insane person steals or commits a crime that is subject to a *Hadd* (punishment), hadith no. (4398); "*Al-Mujtabâ*", An-Nasâ'i, Book of Divorce, Chapter: The one whose divorce is not to be executed, hadith no. (3432); "*Sunan Ibn Mâjah*", Chapters of divorce: Divorce of the insane, minor and sleeper, hadith no. (2041); "*Al-Mustadrak*", Al-Hâkim, Book of Sales, the pledged (she-camel or sheep) may be milked and used, (2: 59); "*Sahîh Ibn Hibbân*", hadith no. (142), on the authority of 'Ā'ishah (may Allah be pleased with her). Al-Hâkim said: "This is a *Sahîh* (i.e. authentic) hadith according to the conditions of Muslim. Al-Bukhârî and Muslim did not relate this hadith."

(2) "*Al-Mughnî*", (4: 71).

(3) "*Al-Muwatta*", Mâlik, Book of *Zakâh*, the amount on which *Zakâh* is due, hadith no. (654).

(4) "*Al-Muwatta*" (Yahyâ Ibn Yahyâ Al-Laythî's Narration), (1: 335).

In this regard, Ibn `Abdul-Barr said:

“As for the saying of `Umar Ibn `Abdul-`Azîz and Mâlik Ibn Anas that *Sadaqah* (i.e. *Zakâh*) is to be paid only on the produce of cultivated land, assets, and livestock, the scholars unanimously agree on that in general but differ regarding the details.”⁽¹⁾

Zakâh on assets implies *Zakâh* on gold, silver, and goods stocked for trade.

Condition (2): Wealth shall reach the *Nisâb* of *Zakâh*, which is the minimum amount that if the wealth reaches, *Zakâh* becomes due on it.⁽²⁾

This is based on the hadith of the Prophet (peace and blessings of Allah be upon him), in which he says:

“No (obligatory) *Sadaqah* (i.e. *Zakâh*) is payable on less than five *Wasqs* (*Wasq* is a kind of weight equals approximately 180 kg of dates); no (obligatory) *Sadaqah* is payable on less than five heads of camels; and no (obligatory) *Sadaqah* is payable on less than five *Ûqiyyahs* (*Ûqiyyah* is a kind of weight equals 40 dirhams of silver = 119 gm).”⁽³⁾

This is because a wealth less than the *Nisâb* cannot be eligible for *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor).⁽⁴⁾

The obligatory amount paid on crops and fruits is not regarded as *Zakâh* according to Imam Abû *Hanîfah*.⁽⁵⁾ Rather, it is a provision that is obligatory on the land and contains the meaning of worship. It is required whether the amount of the crops or fruits is little or much, as a *Nisâb* is not required for it. This is based on the Prophetic hadith stating:

“On a land irrigated by the sky (i.e. rain water) or by streams (i.e. natural

(1) “*Al-Istidhkâr*”, (9: 27).

(2) “*Hâshiyat Ad-Dusûqî `Alâ Ash-Sharh Al-Kabîr*”, (1: 430); “*Radd Al-Muhtâr*”, (2: 259); “*Al-Muṭli` `Alâ Abwâb Al-Muqni`*”, (P. 122).

(3) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: A property from which the *Zakâh* is paid is not a *Kanz* (hoarded-money), hadith no. (1405); “*Sahîh Muslim*”, hadith no. (979), on the authority of Abû Sa`îd Al-Khudrî.

(4) “*Al-Majmû`*”, (5: 326)

(5) “*Al-Baḥr Ar-Râ`iq*”, (2: 236); “*Ad-Durr Al-Mukhtâr*”, (2: 326).

water channels) or if the land is wet due to a nearby water channel, one-tenth (10%) is compulsory (as Zakâh), and on a land irrigated by the well (i.e. machines are used), half of one-tenth (5%) is compulsory (as Zakâh on the yield of the land).⁽¹⁾

The same opinion is adopted by Abû Hanîfah regarding minerals, as he said that minerals are subject to *Fay'* (i.e. booty gained without fight) not *Zakâh*, and the one-fifth of it is to be paid regardless of its quantity.

Condition (3): Absolute ownership of the *Nisâb*.

So, there is no *Zakâh* on a wealth that does not have a specific owner, nor on a property that is not fully owned. This will be explained in more details in the second treatise of this chapter.

This condition is related to various issues differed upon and are regarded by some scholars of Fiqh as independent conditions. The disagreement over these issues is attributed to *Tahqîq Al-Manâṭ* (i.e. ascertaining the underlying cause) regarding the absolute ownership of the *Nisâb*. They are:

- (a) *Nisâb* shall be in excess of the basic needs.
- (b) *Zakâh* payer shall not have a debt that decreases the *Nisâb*.
- (c) Wealth shall be growing.

Condition (4): A full lunar year is to elapse from the ownership of the *Nisâb*.

This is based on the hadith, in which the Prophet (peace and blessings of Allah be upon him) said:

"No Zakâh is payable on wealth until one year has passed (while under the ownership of the Zakâh payer).⁽²⁾

(1) "*Sahîh Al-Bukhârî*", Book of *Zakâh*, Chapter: '*Ushr* on the yield of the land irrigated by rain or running water, hadith no. (1483), on the authority of `Umar Ibnul-Khattâb (may Allah be pleased with him).

(2) "*Musnad Ahmad*", (1: 213); "*Sunan Abû Dâwûd*", Book of *Zakâh*, Chapter: *Zakâh* on *Sâ'imah* (i.e. freely grazing livestock), hadith no. (1572); "*Jâmi` At-Tirmidhî*"; "*Al-Mujtabâ*", An-Nasâ'î, Book of *Zakâh*, Chapter: *Zakâh* on silver, hadith no. (2476), on the authority of `Ali Ibn Abû Tâlib (may Allah be pleased with him); "*Sahîh Ibn Khuzaymah*", hadith no. (2262); "*Al-Aḥādith Al-Mukhtârah*", Ad-Diyâ, hadith no. (511); "*Al-Mustadrak*", Al-Hâkim, (1: 400).

This is a unanimously-agreed-upon opinion as stated by more than one scholar.⁽¹⁾

An exception of stipulating the elapse of a lunar year includes the crops and fruits, where the elapse of a full lunar year is not a requirement. This is based on Allah's saying:

{“... and give its due (Zakâh) on the day of its harvest...”}⁽²⁾

The same applies to minerals and *Rikâz* (i.e. buried treasures or natural ores).

The wisdom behind this is that this wealth is a growth in itself, unlike other wealth. That is, it is intended for growth, and thus, for *Zakâh* to be obligatory upon it, a year shall elapse in order for the growth to complete.

Note: Some scholars have a good attitude towards conditions of obligating *Zakâh*, which results that the reason for the obligation of *Zakâh* is the zakatable *Nisâb*, and all other conditions are conditions for the cause or conditions for the obligation of *Zakâh*. The reason for this is that the Shari'ah evidences indicate that the reason for obligation is the wealth obtained by owning the *Nisâb* for *Zakâh*.

This is based on the hadith in which the Prophet (peace and blessings of Allah be upon him), said:

“...so, let them know that Allah has made it obligatory for them to pay Sadaqah (i.e. Zakâh) from their property and it is to be taken from the wealthy among them and given to the poor.”

This is why *Zakâh* is attributed to wealth. In this regard, Imam Ibnul-Humâm said:

*“The reason for it is the specific wealth. I mean the growing *Nisâb* as a matter of fact or estimation, and therefore it is attached to *Zakâh* and referred to as *Zakâh* on wealth. Its conditions include: Islam, freedom, adulthood, sanity, and absence of debt”*⁽³⁾

(1) *“Al-Ijmâ’”*, Ibnul-Mundhir, (P. 54); *“Marâtib Al-Ijmâ’”*, (P. 68); *“At-Tamhîd”*, (20: 155); *“Al-Mughnî”*, (4: 74).

(2) Surah *Al-An`âm* (the Cattle): 141.

(3) *“Fath Al-Qadîr”*, (2: 153).

Also, Ibn Muflih said:

“The *Nisâb* of *Zakâh* is a cause for the obligation of *Zakâh*. It implies the absoluteness of ownership as well as the person obligated to pay *Zakâh*. Otherwise, it is said: Islam and freedom are two conditions for the cause, and the absence thereof implies the absence of the cause as well. More than one scholar mentioned these four conditions as requirements for *Zakâh* to be obligatory. For example, the elapse of one lunar year is unanimously agreed upon as a condition for obligation and has no impact on the cause. Solvency, however, is a condition for payment, and thus it is an obligation as mentioned above.”⁽¹⁾

(1) “*Al-Furû*”, (3: 488); “*Hâshiyat Ad-Dusûqî*”, (1: 45); “*Al-Wasîf*”, Al-Ghazâli, (3: 9).

Treatise One

Estimation Regarding General Conditions of *Zakâh* for Joint-Stock Companies



Topic (I)

Estimation Regarding *Zakâh* Payer and the Conditions Thereof

In the preface, the conditions for the obligation of *Zakâh* that relate to the *Zakâh* payer were explained, namely Islam and richness. Since joint-stock companies are based on a financial basis, where no consideration is paid to the legal entity of the shareholders, the financial reports of joint-stock companies are concerned with the statement of financial position of this legal person, and are not concerned with disclosing shareholder information except within the limit that affect the decisions of the legal person, such as the shares of major shareholders who influence the decisions of the company.

It is easier for the concerned authorities and more beneficial to the poor to collect *Zakâh* directly from companies, instead of collecting it from individual shareholders due to the hardship involved in tracking individual shareholders and collecting *Zakâh* from them. This requires considering estimation for the *Zakâh* payer in joint-stock company and then estimating the condition of his obligation, which is the purpose of this topic. This topic is divided into two branches as follows:

Branch (1): The person in charge of *Zakâh* for joint-stock companies

Contemporary scholars of Fiqh have two approaches regarding the person

in charge of *Zakâh* for joint-stock company. Both of these approaches are based on the “Shari’ah-Based Estimations Rule”.

Approach (1): The legal entity of the joint-stock company is the one in charge of *Zakâh*

Accordingly, the responsibility in terms of the sin arising from the non-payment of *Zakâh* falls upon the representatives of this legal entity, just as the sin does not fall upon the minor and the insane in the event of nonpayment, but rather on their guardians.⁽¹⁾

The first to adopt this approach is Dr. Shawqî Ismâ`îl Shihâtah, in his book: “*Zakât Al-Mâl Fiqhan Wa-Muhâsabah*” (*Zakâh* on Wealth in Fiqh and Accounting) published in 1970. He was followed by a number of researchers, including: Dr. Ahmad Al-Majdhûb,⁽²⁾ Dr. Ahmad `Abdullâh,⁽³⁾ Dr. Mansûr Al-Ghâmidî in his Thesis: “*Ash-Shakhshiyyah Al-I`tibâriyyah At-Tijâriyyah*” (Commercial Legal Entity), in 1428 AH,⁽⁴⁾ and Dr. Fawwâz As-Sulaym in his Paper: “*Zakât Ash-Shakhshiyyah Al-I`tibâriyyah Wa-Tatbîqâtuhâ Al-Mu`âsirah*” (*Zakâh* on Legal Entity and Its Contemporary Applications”, 1431 AH.⁽⁵⁾

This opinion is based on the following:⁽⁶⁾

- (a) A condition for *Zakâh* to be obligatory is the capacity of the *Zakâh* payer and the absolute ownership of the *Nisâb*, which are both fulfilled in the

(1) “*At-Tatbîq Al-Mu`âsir Liz-Zakâh*”, Shawqî Shihâtah, (P. 119); “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (4), (1: 285), “*Zakât Ash-Shakhshiyyah Al-I`tibâriyyah*”, Fawwâz As-Sulaym, (P. 219).

(2) “*Zakât As-hum Ash-Sharikât*”, Al-Majdhûb, within the “*Proceedings and Researches of the 11th Symposium on Contemporary Zakâh Issues*”, (P. 151).

(3) “*Zakât Ash-Shakhshiyyah Al-I`tibâriyyah*”, Ahmad Muhammad `Abdullâh, within the “*Proceedings and Researches of the 2nd Scholarly Conference of Zakâh: Levying*”, General Secretariat of the Zakat Chamber in Sudan, (pp. 17-20), Sha`bân 1422 AH, corresponding to 3-7 November 2001 AD.

(4) It is a research submitted to complete the requirements for the master’s of Islamic Studies, Fiqh and Its Fundamentals, King Saud University.

(5) It is a research submitted to complete the requirements for the master’s degree at the Higher Judicial Institute, Department of Comparative Fiqh, Imam Muhammad bin Saud Islamic University.

(6) “*At-Tatbîq Al-Mu`âsir Liz-Zakâh*”, Shawqî Shihâtah, (P. 119); “*Ash-Shakhshiyyah Al-I`tibâriyyah At-Tijâriyyah*”, Mansûr Al-Ghâmidî, (P. 143); “*Zakât Ash-Shakhshiyyah Al-I`tibâriyyah*”, Fawwâz As-Sulaym, (P. 187).

commercial legal entity. Such an entity has full capacity and its financial liability is capable of holding accounts payable and receivable. *Zakâh*, even originally regarded as an act of worship, is most considered as financial obligation. This is why it is obligatory on the wealth of the minor and the insane according to the majority of scholars.

In this regard, Dr. Shawqî says:

“Since a joint-stock company has an independent legal entity, and based on the fact that *Zakâh* is an obligation related to the wealth itself, then *Zakâh* is obligatory for legal entities, since religion-based obligation, represented in adulthood and sanity, is not a requirement.”⁽¹⁾

- (b) Making *Qiyâs* (i.e. analogical deduction and discretion) between the wealth of joint-stock companies and the mixed wealth in case of livestock, for which *Zakâh* is due based on common wealth principle, where the legal entity of each partner is not to be considered when calculating his share of the wealth.

In this regard, Dr. Shawqî says:

“It is as if the partnership of livestock is a corporation in the modern concept, and not an individual partnership. *Zakâh* is due on the wealth of companies not on the wealth of each individual partner thereof. We view that the same can apply, by means of *Qiyâs*, to the joint-stock companies emerged in trade and industry in the modern era. They have become the most important forms of investment and are characterized by a large number of shareholders and by having an independent legal entity. Accordingly, *Zakâh* is to be assessed directly for the whole wealth of joint-stock companies. Based on this, a shareholder who owns a number of shares the value thereof is less than the *Nisâb* of *Zakâh* is not to be exempted from the obligation of *Zakâh*.”⁽²⁾

- (c) The legal entity of the joint-stock company is, by its legal nature, similar in its independence from the liability of its shareholders to the entity of the slave who is authorized to practice trade based on the opinion that

(1) “*At-Taṭbîq Al-Mu`âsir Liz-Zakâh*”, Shawqî Shihâtah, (P. 119).

(2) “*Zakât Al-Mâl Muḥâsabatan Wa-Taṭbîqan*”, Dr. Shawqî Shihâtah, (pp. 92-93).

he is regarded as the owner of the wealth (in which he trades). Thus, they both are similar in the fact that each of them has a financial liability and a capacity and that each of them owns the wealth and is owned at the same time.

Accordingly, *Zakâh* is to be deemed obligatory on legal entity by means of *Qiyâs* to the view stating that *Zakâh* is obligatory on wealth owned by the slave and is to be paid by the slave himself,⁽¹⁾ which is the opinion adopted by Ibn Hazm of the Zahirites.⁽²⁾ Also, this opinion is reported from Ibn Umar,⁽³⁾ and is the famous opinion adopted by `Aṭā' and Abû Thawr.⁽⁴⁾

(d) Drawing *Qiyâs* (i.e. analogical deduction and discretion) to the opinions deeming *Zakâh* as being obligatory with regard to some issues related to legal entities, including:

1- The opinion that *Zakâh* is obligatory on endowed wealth, whether restricted to the endowed wealth upon which one-tenth (‘*Ushr*) is due, as argued by the Hanafites, or on all endowments without restriction, as argued by the Malikites, or on the yield of such wealth if *Zakâh* thereof can be counted, as argued by the Shafiites, or on the asset and the yield if *Zakâh* thereof can be counted, as argued by the Hanbalites.⁽⁵⁾

2- The opinion that *Zakâh* is obligatory on the wealth of Public Treasury, which is attributed to Imam Muḥammad Ibnul-Ḥasan Ash-Shaybânî as reported by As-Sarakhsî in his “*Al-Mabsûṭ*”, stating:

“If the ruler buys, with the money of *Kharâj* (i.e. land tax), freely grazing sheep for trade, and then one full lunar year has passed since the time of purchase, then he shall pay *Zakâh* on such sheep. This is unlike the case where the freely grazing sheep obtained by means of *Zakâh* are in possession of the ruler and then a full lunar year has passed since such possession. In this case, *Zakâh* is not obligatory on such sheep. This is because *Zakâh* is of no benefit in this case as the channels where *Zakâh* and *Kharâj* are to be paid are the same. However, obligating *Zakâh* in the first case is beneficial because the channel where *Kharâj* is to be

(1) “*Ash-Shakhsīyyah Al-I`tibâriyyah At-Tijâriyyah*”, Mansûr Al-Ghâmidî, (P. 143).

(2) “*Al-Muḥllâ*”, (4: 3).

(3) “*Al-Amwal*”, Abû `Ubayd, (2: 121).

(4) “*Al-Majmû`*”, (5: 301).

(5) This will be explained in the next treatise.

paid is the armies (fighting to protect the Muslim community), while the channel where *Zakâh* is to be paid is the poor. That is, when *Zakâh* is beneficial for those to receive it, then it is to be obligated. The great Imam (may Allah confer mercy upon him) said:

‘This differentiation is considerable. *Zakâh* is not obligatory unless the conditions thereof are met with regard to both the owned wealth and the owner. This is why *Zakâh* is not obligatory on the freely grazing livestock of endowment or *Mukâtab* (i.e. a slave having a contract of manumission) unless the condition of wealth is realized with regard to the owner. This does not apply to the case where the ruler buys such sheep, with the wealth of *Kharâj*, for the armies. In other words, *Zakâh* is not due on such sheep unless the ruler buys them for himself since the conditions of ownership and wealth are fulfilled.’⁽¹⁾

Approach (2): Shareholders are the ones in charge of *Zakâh* for joint-stock companies

Based on this, the company shall not pay *Zakâh* unless on behalf of its shareholders:

- ◆ “If its statutes so stipulate;
- ◆ by virtue of a General Assembly ruling;
- ◆ if the law of the land requires that companies must pay *Zakâh* on behalf of its shareholders; or
- ◆ if a shareholder himself empowers the management of the company to pay *Zakâh* on his behalf.”⁽²⁾

“In the absence of any of the conditions indicated..., the payment of *Zakâh* shall become the responsibility of shareholders and holders of the investment accounts. In this case the Institution or the company has to indicate the amount of *Zakâh* payable per share or per a given balance of an investment account.”⁽³⁾

(1) “*Al-Mabsûr*”, (3: 52); “*Ash-Shakhsiyyah Al-I`tibâriyyah At-Tijâriyyah*”, Dr. Mansûr Al-Ghâmidî, (P. 146).

(2) The Islamic Fiqh Academy’s resolution no. (3) of the 4th session. See: “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (4), (1: 881).

(3) “*Shari’ah Standards*”, Shari’ah Standard no. (35): *Zakah*, item: (2/2/5).

This opinion is adopted by most contemporary scholars of Fiqh and is supported by the resolutions of collective *Ijtihâd* institutions, including the 1st *Zakâh* Conference, the OIC International Islamic Fiqh Academy (IIFA),⁽¹⁾ and the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).⁽²⁾

This approach is based on the following:

- (a) *Zakâh* is not a purely financial obligation, but rather a combination of acts of worship and financial obligations. This is why a non-Muslim is not required to pay *Zakâh*. Moreover, acts of worship are directed to human beings based on Allah's saying:

{“And (remember) when your Lord brought forth from the Children of Adam, from their loins, their seed (or from Adam’s loin his offspring) and made them testify as to themselves (saying): ‘Am I not your Lord?’ They said: ‘Yes! We testify,’ lest you should say on the Day of Resurrection: ‘Verily, we have been unaware of this.’”}⁽³⁾

This explains why they cannot be directed to the legal entities such as companies and institutions.

- (b) A legal entity enjoys all rights except those inherent in the natural person, within the limits established by the law and by articles of association of such a legal entity. It is well known that Shari'ah obligations and acts of worship are directed to natural persons, which applies to the obligation of *Zakâh* in Islam. A legal entity, however, cannot be described as a Muslim or non-Muslim because it is not eligible for Shari'ah accountability.

Dr. As-Siddîq Ad-Darîr (may Allah have mercy on him) says:

“A legal entity cannot be described as a Muslim or a non-Muslim, because we have shown that it is not eligible for accountability, and it does not have absolute capacity of payment. Accordingly, it cannot be required to pay *Zakâh* because the condition of ‘being Muslim’ is not met.”⁽⁴⁾

(1) Resolution no. (3) of the 4th session, held in Jeddah, Kingdom of Saudi Arabia, from 18-23 Jumâdah Al-Âkhirah 1408 AH; See: “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (4), (1: 881).

(2) “*Shari'ah Standards*”, Shari'ah Standard no. (35): *Zakah*, item: (2/2/1).

(3) Surah Al-A`raf (The Battlements): 172.

(4) “*Zakât Ash-Shakhsîyyah Al-I`tibâriyyah*”, As-Siddîq Ad-Darîr, (P. 5).

Sheikh `Alî Al-Khaffif says:

“It is not conceivable for institutions, establishments, companies or entities now known as legal entities to have a liability in this sense, as they are not suitable for a religious obligation to be required of them, and this cannot be conceived for them.”⁽¹⁾

The reason for all of this, as Sheikh `Alî Al-Khaffif says, is “that the theory of liability and the rulings established on it are nothing but a legislative organization intended to control and organize rulings, and it may change and develop according to the requirements of transactions and its development if the interest so requires. Nothing in the Qur’an or Sunnah prevents the extension of the concept of liability to include entities other than the natural person, including companies, institutions and public funds, provided that the liabilities restricted to human being (or natural person) cannot be extended to such institutions in terms of accountability. In other words, liabilities directed to natural persons render them accountable for all acts of worship and other religious obligations, in contrast to liabilities directed to legal entities which are restricted to financial obligations only.”⁽²⁾

- (c) If we adopted the opinion stating that *Zakâh* is obligatory on legal entities, for the abovementioned considerations, then this opinion shall be applied to other legal entities, whether in partnerships or in public and private bodies, such as public benefit associations, *Zakâh* on State funds, and endowment funds, the matter they do not abide by.
- (d) If we adopted the legal concept to understand the legal entity, then it would be necessary to prohibit joint-stock companies because the shareholders under law are creditors of the company, and they are not the owners of the company or its wealth, so the company’s contract is a type of the forbidden *Ribâ* (i.e. usurious transaction).

Undoubtedly, this is the most suitable approach in this respect. The scholars arguing that the legal entity is obligated to pay *Zakâh* confuse between the collection of *Zakâh* by the company, which is something that may be required by the nature of such companies, and its obligation to pay *Zakâh*.

(1) “*Ash-Sharikât*”, `Alî Al-Khaffif, (P. 30).

(2) *Ibid.*, (pp. 34-35).

Branch (2): Estimating the conditions of *Zakâh* payer in joint-stock companies

The approaches towards the *Zakâh* payer in joint-stock companies were previously presented. This branch is intended to explain the position of each approach towards the conditions of the *Zakâh* payer, as follows:

(a) Estimating the conditions of obligation based on the opinion stating that the legal entity is obligated (to pay *Zakâh*)

Based on the view stating that the joint-stock company, as a legal entity, is obligated to pay *Zakâh*, it is necessary to consider the application of the conditions related to the *Zakâh* payer to joint-stock companies, which are, as mentioned above, Islam and richness.

Dr. Shawqî did not approach the condition of Islam (i.e. being a Muslim). This is because he considers *Zakâh* as a financial obligation. Many researchers after him, however, approach the condition of Islam, arguing that a legal entity is to be regarded as Muslim if located in a Muslim country even if its shareholders are non-Muslims.⁽¹⁾

This opinion is based on the ruling on foundling, who is to be considered as a Muslim, regardless of his original religion, if found in a Muslim country.⁽²⁾

Based on this condition, a Muslim country is the country that “requires companies to abide by its Islamic system, including the payment of *Zakâh*, and avoiding forbidden transactions. Accordingly, such companies are bound to comply with common Islamic system of the country. This is usually provided for in the company articles of association, which includes the terms and conditions of the company and the applicable law referred to in case of litigation. This may help us to identify the religion of the company.”⁽³⁾

Based on this condition, branches of multinational companies established

(1) “*Ash-Shakhsiyyah Al-I`tibâriyyah At-Tijâriyyah*”, Mansûr Al-Ghâmîdî, (P. 186); “*Zakât Ash-Shakhsiyyah Al-I`tibâriyyah*”, Fawwâz As-Sulaym, (P. 70).

(2) “*Zakât Ash-Shakhsiyyah Al-I`tibâriyyah*”, Fawwâz As-Sulaym, (P. 72).

(3) *Ibid.*, (P. 71).

in Muslim countries are to be regarded as Muslim, while other branches established in non-Muslim countries are to be regarded as non-Muslim.⁽¹⁾

Some proponents of this approach argue that “the original ruling is to consider authenticity, abundance and majority, which requires that as long as a legal entity is a Muslim, which means that it is located in a Muslim country, and is subject to the provisions of the Islamic Shari’ah, then the shares of non-Muslims shall not be excluded from fulfilling financial obligations.”⁽²⁾

As for the condition of richness, which is considered to be the ownership of the *Nisâb* for *Zakâh*, “the *Nisâb* to consider with respect to legal entity is the *Nisâb* of the company’s wealth (assets) as a whole, and the *Nisâb* for each shareholder’s wealth (shares) is not to be considered individually.”⁽³⁾

(b) Estimating the conditions of obligation based on the opinion stating that shareholders are obligated (to pay *Zakâh*)

Based on the conclusion of the majority of contemporary scholars of Fiqh that the shareholder is the one in charge of *Zakâh* for joint-stock companies, the conditions of *Zakâh* for each shareholder are to be considered individually upon calculation of *Zakâh* for joint-stock companies. If a shareholder is not required to pay *Zakâh* for any reason, including shares owned by non-Muslims, state-owned companies or public benefit agencies, or where the *Nisâb* of *Zakâh* or the elapse of a full lunar year is not realized, then the shares of such a shareholder is to be excluded from the total amount of *Zakâh* to be paid by the company.

This is the opinion adopted in the fatwa issued by the Islamic Research Academy in Egypt, in the second conference, which states:

“In joint-stock company, these provisions are not to be applied to the total profits of such companies, but rather on the profit of its shareholder individually.”⁽⁴⁾

(1) “*Zakât Ash-Shakhsiyyah Al-I`tibâriyyah*”, Fawwâz As-Sulaym, (P. 72).

(2) “*At-Tahqîq Fî Zakât Al-As-hum Wash-Sharikât*”, In “*Buhûth Fî Qadâyâ Mu`âsirah*”, (1: 299).

(3) “*Zakât Ash-Shakhsiyyah Al-I`tibâriyyah*”, Fawwâz As-Sulaym, (P. 98).

(4) “*At-Tawjih At-Tashri`î Fî Al-Islâm*”, (within the Research Papers of the Islamic Research Academy Conferences), (2: 170).

But this opinion, though regarded as the original ruling for calculating *Zakâh*, requires either that the competent authorities collect *Zakâh* from the shareholders themselves or from the joint-stock company on behalf of the shareholders after *Zakâh* is calculated on the shares of those obligated to pay *Zakâh* only.

If the company is assigned to pay *Zakâh* on behalf of its shareholders, then determining the shares of those who are not obligated to pay *Zakâh* will lead to two problems as follows:

First problem: It is not easy to determine whether the shareholders fulfill the condition of *Zakâh*, including being Muslims, owning the full *Nisâb* of *Zakâh*, elapse of a full lunar year (*Hawl*), and absence of any indebtedness dropping the obligation of *Zakâh*.

If we take into consideration the exchange of shareholders in companies whose shares are traded in financial markets, and the diversification of their methods of owning the company's shares, as some of them own such shares indirectly, such as investment funds or taking ownership through other companies, then we shall reach the conclusion that it is not certain to determine the conditions underlying the obligation of *Zakâh* for such shareholders.

Second problem: This may lead to a breach of fair competition between companies in commercial markets. That is, considering the status of the shareholders in calculating the amount of *Zakâh* due on joint-stock companies may lead to inequality between companies in terms of rights and obligations. For example, reducing *Zakâh* on a company because the government or some sovereign funds have shares in it violates the principles of fair competition.

Contemporary scholars of Fiqh supporting the opinion that shareholders of joint-stock companies are responsible for paying *Zakâh* adopted two approaches to facilitate the calculation of *Zakâh* for competent authorities, as follows:

First approach: It is the opinion adopted by the 1st *Zakâh* Conference, organized by the Kuwait Zakat House in Kuwait during the period from 29/8/1404 AH to 1/9/1404 AH, corresponding to 30/4/1984 AD to 2/5/1984 AD.

The fatwas and recommendations issued by the conference stated:

“*Zakâh* is to be assessed for joint-stock companies themselves, as being legal entities, if:

- 1- Applicable law provides for such companies to pay *Zakâh* on their wealth.
- 2- The company’s articles of association so provide for.
- 3- A decision by the company’s general assembly is made to that effect.
- 4- The shareholders so agree.

This approach is based on the adoption of the principle of “mixed wealth” mentioned in the Prophet’s Sunnah regarding livestock *Zakâh*, which some of the respected schools of Fiqh decided to apply to other matters. The best way to avoid disagreement is that the company is to pay *Zakâh* by itself, otherwise the committee recommends companies to calculate the *Zakâh* on their wealth and attach to their balance sheets a statement clarifying the *Zakâh* due on each share.”⁽¹⁾

In the fatwas and recommendations of the conference, there was also an indication of the relationship between shareholders and the company with respect to the payment of *Zakâh*. The fatwa states:

“If the company pays *Zakâh* on its wealth, the shareholder shall not pay *Zakâh* on his shares, to prevent duplication. However, if the company does not pay *Zakâh*, then each shareholder is required to pay the *Zakâh* due on his shares.”⁽²⁾

This approach does not mean that the legal entity of joint-stock company is the one in charge of *Zakâh*. Rather, it means that *Zakâh* is to be collected from the company regardless of the status of its shareholders with respect to the obligation of *Zakâh*. Accordingly, the *Zakâh* is to be assessed for the company as a legal entity, and the shareholders’ money is to be treated as one unit. Assessment is a tax term indicating the regulatory and accounting procedures to pay the tax due to the competent authority, then it is borrowed to indicate the regulatory procedures for *Zakâh*.

(1) “*Proceedings and Researches of the 1st Conference of Zakâh*”, (P. 441).

(2) Ibid.

This fatwa, as appears to the researcher, did not gain its due share of research and study, as it is the practice followed in conferences and seminars. Researches and discussions held in the conference did not include detailed opinions regarding this issue as well as the basis for it.

This fatwa includes an indication to mixed livestock, which is based on the opinion of the scholars applying it to general matters other than livestock, which is the view adopted by the Shafites.⁽¹⁾ This is based on the general ruling indicated in the Prophetic hadith stating: “Neither the property of different people may be taken together nor the joint property may be split”. The principle of mixed wealth in livestock is established to achieve easement, which may be applied to matters other than livestock.

However, relying on the principle of ‘mixed wealth’ as a justification for the opinion that the wealth of shareholders is to be considered as one unit for the sake of *Zakâh* gives rise to the following problems:

First: Scholars of the four schools of Fiqh agree that for the principle of ‘mixed wealth’ to be applied, the partner must be subject to the obligation of *Zakâh*.⁽²⁾

In this concern, Imam Ash-Shâfi`î says:

“If partnership is made between a Muslim and non-Muslim, then the Muslim is to pay *Zakâh* on his wealth (shares) individually not on the wealth of the partnership as a whole. This applies to livestock and cash, etc. This is because *Zakâh* is to be paid on combined properties if each of such properties satisfies the requirements of *Zakâh*. But if otherwise, then *Zakâh* is not due.”⁽³⁾

In “*Nihâyat Al-Muhtâj*”, it is stated:

“If one of the two (mixed) wealth is endowed or owned by a *Dhimmi* (i.e. a Jew or a Christian), *Mukâtab* (i.e. a slave having a contract of

(1) “*Nihâyat Al-Muhtâj*”, (3: 62); “*Tuhfat Al-Muhtâj*”, (3: 231).

(2) “*Radd Al-Muhtâr*”, (2: 304); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 181); “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*”, (1: 439-440); “*Ash-Sharh As-Saghîr*”, (1: 602); “*Nihâyat Al-Muhtâj*”, (3: 59); “*Tuhfat Al-Muhtâj*”, (3: 229); “*Kashshâf Al-Qinâ`*”, (4: 378); “*Sharh Muntahâ Al-Irâdât*”, (2: 211-212).

(3) “*Al-Umm*”, (2: 53).

manumission), or public treasury, the principle of mixed wealth (with respect to *Zakâh*) is not to be applied, and the *Zakâh* is to be paid only for the share of the party obligated to pay *Zakâh* (i.e. the Muslim) if it reaches the *Nisâb* of *Zakâh*, or otherwise no *Zakâh* is due.”⁽¹⁾

Accordingly, there is no evidence regarding mixed wealth that *Zakâh* is obligatory on the shares of those who are not eligible for *Zakâh*.

Second: The majority of the Hanafites,⁽²⁾ the Malikites,⁽³⁾ and the Shafiites⁽⁴⁾ stipulate that the partner shall own the *Nisâb* (of *Zakâh*) in order for the principle of mixed wealth to be applied (with respect to *Zakâh*).

They justify their opinion arguing that the wealth to be considered (for the obligation of *Zakâh*) depends on the *Nisâb* of the partner’s share not the *Nisâb* of the mixed wealth as a whole. They depend on the hadith, in which the Prophet (peace and blessings of Allah be upon him) says:

“No (obligatory) *Sadaqah* (i.e. *Zakâh*) is payable on less than five *Ûqiyyahs* (*Ûqiyyah* is a kind of weight equals 40 *dirhams* of silver = 119 gm).”

The Hanbalites,⁽⁵⁾ however, are of the opinion that owning the *Nisâb* by the partner of mixed wealth is not a condition for *Zakâh* to be obligatory. Rather, they argue that a partner, to be required to pay *Zakâh*, shall not be burdened by a debt that consumes his money. This is because, in such a case, he will be of no wealth, and thus he is not eligible for *Zakâh*.

As for imposing *Zakâh* on an absolutely owned wealth which is less than the *Nisâb*, they are of the opinion that the principle of mixed wealth may be applied to reduce the expenses, and thus it may affect *Zakâh* as it is the case with *Sawm* (i.e. free grazing on pasture).⁽⁶⁾

Based on this, if we adopt the opinion of Hanbalites, which is the most comprehensive one, then *Zakâh* is not to be required for the shareholder

(1) “*Nihâyat Al-Muhtâj*”, (3: 60).

(2) “*Radd Al-Muhtâr*”, (2: 304); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 181).

(3) “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqi*”, (1: 439-440); “*Ash-Sharh As-Saghîr*”, (1: 602).

(4) “*Nihâyat Al-Muhtâj*”, (3: 59); “*Tuhfat Al-Muhtâj*”, (3: 229).

(5) “*Kashshâf Al-Qinâ`*”, (4: 378), “*Sharh Muntahâ Al-Îrâdât*”, (2: 211-212).

(6) “*Sharh Muntahâ Al-Îrâdât*”, (2: 312).

burdened with a debt consuming his money, and this does not preclude considering the eligibility of the partner of mixed wealth for *Zakâh*.

Third: The Shafiites⁽¹⁾ and the Hanbalites⁽²⁾ stipulate that in order for the principle of mixed wealth to be applied, a full lunar year (*Hawl*) should have elapsed since the commencement of mixed partnership.

In his "*Al-Umm*", Imam Ash-Shâfi`î said:

"If a person has a flock of sheep on which the *Zakâh* is due, and another person mixed his flock of sheep on which the *Zakâh* is due with him in a pasture, then *Zakâh* on each of the two flocks shall be paid in accordance with its *Hawl* in the year in which the mixed partnership is made. If, however, *Zakâh* for the next year becomes due while their wealth is still mixed, they shall pay *Zakâh* of mixed partnership, as one full lunar year has elapsed since the time their wealth has been mixed together."⁽³⁾

In his "*Sharh Al-Muntahâ*", Al-Buhûtî says:

"If a mixed partnership, proven not to be ended for certain period in the year, establishes the *Nisâb* (of *Zakâh*) by means of inheritance, purchase, etc. and then one lunar year elapses without dividing (ending) such partnership, *Zakâh* is to be paid for mixed partnership as a whole, for the requirement of mixed partnership is achieved."⁽⁴⁾

The Malikites,⁽⁵⁾ however, do not stipulate the elapse of one lunar year (*Hawl*) as a requirement for the principle of mixed wealth to be applied with regard to *Zakâh*. Rather, it is sufficient for the two wealth to be mixed during the *Hawl* for the principle of mixed wealth to be applied if both has the same due date of *Zakâh*, unless such a date is very close, such as a month.

In "*Al-Mudawwanah*", it is stated:

"I asked Mâlik whether the two parties forming a mixed partnership two or three month before the due date of *Zakâh* are to be dealt with

(1) "*Nihâyat Al-Muhtâj*", (3: 60); "*Tuhfat Al-Muhtâj*", (3: 229).

(2) "*Kashshâf Al-Qinâ`*", (4: 382); "*Sharh Muntahâ Al-Îrâdât*", (2: 214-216).

(3) "*Al-Umm*", (8: 139).

(4) "*Sharh Muntahâ Al-Îrâdât*", (2: 214-216).

(5) "*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*", (1: 440); "*Hâshiyat Al-`Adawî `Alâ Kifâyat At-Tâlib Ar-Rabbânî*", (1: 504).

as a mixed partnership with respect to *Zakâh*, or mixed partnership is to be applied only from the beginning of the year. He says: ‘Yes, they are to be dealt with as parties to the mixed partnership, even if such partnership is made about two months before the due date of *Zakâh*. Mixed Partnership may be established two months before the elapse of the lunar year (i.e. due date of *Zakâh*). Based on this, *Zakâh* is to be paid on mixed partnership as a whole if still existing at the due date even if the *Zakâh* collector visits them only two months after concluding the mixed partnership.’⁽¹⁾

But the impact of this disagreement appears in the *Zakâh* on livestock if combination (establishment of partnership) and separation (end of partnership) result in changing the due amount of *Zakâh* because such amount differs in accordance with the number or quantity of the subject matter of *Zakâh*. This is why, Al-Qarâfi says:

“This is only where separation or combination results in reducing the amount of *Zakâh*, otherwise *Zakâh* is to be paid based on the status of mixed partnership.”⁽²⁾

As for the cases where the amount of *Zakâh* on livestock, crops or gold and silver does not change, the ruling governing the obligation of *Zakâh* will not differ with separation or combination (of two wealth or partnership) in terms of the amount of the *Zakâh* if the two parties are eligible for *Zakâh*. Accordingly, reasoning based on the principle of mixed wealth, even considered as a general principle as argued by some scholars, cannot justify the opinion that *Zakâh* is to be paid by the company, as a legal entity, regardless of the conditions of obligation for the shareholders.

However, what can be understood from the four cases in which the permissibility to assess *Zakâh* for the company is restricted to its legal entity is that what counts for such opinion is that the shareholders’ satisfaction with this method of paying *Zakâh*. This is because they invested in this company while knowing that it pays *Zakâh* according to its articles of association. If a shareholder, however, is not one of those eligible to pay *Zakâh*, then the

(1) “*Al-Mudawwanah*”, (1: 370).

(2) “*Adh-Dhakhîrah*”, (2: 501).

amount paid on his shares is be considered as donation from him, and he will be rewarded for it (in the Hereafter), if he is a Muslim.

The general outline of this fatwa made some researchers attribute to the conference a saying that obligation (to pay *Zakâh*) falls upon the legal entity,⁽¹⁾ which appears to be incorrect, for the following:

First aspect: The fatwa of the conference says “*Zakâh* is to be assessed for joint-stock companies themselves”, and it does not say that *Zakâh* is the responsibility (or obligation) of the joint-stock company. Of course, there is a difference here, since assessment implies collecting which does not necessitate obligation.

Second aspect: Restricting the obligation to the four conditions contradicts the assignment of legal entity.

Third aspect: Drawing inference from mixed partnership is an evidence of imposing the obligation on shareholders, as the partnership requires that *Zakâh* be paid from mixed wealth as being one with different owners, who are the ones obligated to pay *Zakâh* on this mixed wealth.

Approach (2): The opinion adopted by the Islamic Fiqh Academy

The conclusion reached regarding this approach is to take *Zakâh* from the company’s wealth as the *Zakâh* of one mixed wealth after deducting the shares of those on whom *Zakâh* is not originally required, such as the shares of non-Muslims, public endowments or public benefit associations. *Zakâh*, then, is to be calculated based on the remaining shares as being one mixed wealth, without taking into consideration the *Nisâb* requirement or the elapse of one lunar year (*Hawl*) for shareholders individually, based on the principle of mixed partnership according to the scholars adopting it in *Zakâh* of items other than livestock.

In item (second) of resolution no. 28 (3/4) of the OIC International Islamic Fiqh Academy (IIFA) regarding *Zakâh* on company shares, it is stated:

“The management of the company shall pay *Zakâh* on shares in the same manner as person pays *Zakâh* on his wealth. In other words, it

(1) “*At-Tahqîq Fî Zakât Al-As-hum Wash-Sharikât*”, In “*Buhûth Fî Qadâyâ Mu`âsirah*”, (1: 293).

shall pay *Zakâh* on the assumption that the capital of all shareholders is the property of a single person, and calculate *Zakâh* accordingly, taking into account the type and value of assets subject to *Zakâh*, its percentage and any other consideration relevant the *Zakâh* of a physical person; according to the principle of mixed assets generally accepted by some Fiqh scholars concerning all assets.

In calculating *Zakâh*, the company shall take due account of shares not liable to *Zakâh*, such as shares owned by the public treasury, charitable institutions, philanthropic societies and non-Muslim shareholders, and make the necessary deductions.”

However, such deductions are considered problematic in practice, and has resulted in a number of *Ijtihâds* aimed at addressing various issues regarding deduction, which can be summarized as follows:

Issue (1): Imposing tax on non-Muslims

This means that the State is to impose tax on non-Muslims, taking into account the principles of calculating *Zakâh*, so that equality between Muslims and non-Muslims regarding fulfilling this duty is achieved, even if it is an act of worship for Muslims, and a tax attributed to social solidarity in the Islamic State for non-Muslims.

A number of contemporary scholars of Fiqh⁽¹⁾ adopted this view, which was also supported by the 1st symposium on “*Contemporary Zakâh Issues*”. In paragraph (6-B) of the fatwas and recommendations of the symposium, it is stated:

“Islamic governments applying the obligation of *Zakâh* are required to adopt the opinion of the contemporary scholars of Fiqh to impose a social solidarity tax on their non-Muslim citizens in the same amount

(1) “*Huqûq Ahl Adh-Dhimmah*”, Al-Mawdûdî, (P. 26); “*Bahth Az-Zakâh*”, Sheikh Abû Zahrah, In “*At-Tawjih At-Tashri`i Fi Al-Islâm*”, (2: 152); “*Fiqh Az-Zakâh*”, (1: 112); “*Ahkâm Adh-Dhimmiyyîn Wal-Musta`manîn*”, `Abdul-Karîm Zaydân, (P. 207); “*Al-Mahsûl Fi Fiqh Az-Zakâh*”, Rafiq Al-Misri, (pp. 49-51); “*Al-Musâwâh Bayna Al-Muwâtin Al-Muslim Wa-Ghayruh Fi At-Takâlîf Al-Mâliyyah Fi Zill Tatbiq Az-Zakâh: Al-Mushkilah Wal-Hulûl*”, `Abdullâh Ath-Thamâli, Journal of Umm Al-Qura University for Shari`ah Sciences and Arabic Language, issue no. (39), (P. 4).

as *Zakâh*, provided that such a tax is to be used as a resource to achieve social solidarity, which includes all citizens who live in the Muslim State.”⁽¹⁾

This was confirmed in the 6th symposium, where, in the symposium’s fatwas and recommendations on practical applications of the obligation to pay *Zakâh*, it is stated:

“The symposium confirms what was stated in fatwas of the first *Zakâh* symposium (6-D) regarding imposing a social solidarity tax on non-Muslims, in a manner that achieves equality with Muslims obligated to pay *Zakâh*.”⁽²⁾

The basic ruling concerning that is the event in which `Umar Ibnul-Khattâb tried to collect *Jizyah* (i.e. tribute) from the Christians of *Banû Taghlib*. They took to flight and some of them went to a distant land, and it was said to him:

“O Commander of the Faithful, the people of *Banû Taghlib* are a body of Arabs who are too proud to pay *Jizyah*, and they do not have money, but they are owners of farms and livestock. However, they are severe in warfare. So, let not your enemies make use of them against you.”

Accordingly, `Umar made an agreement with them subject thereto he doubled the amount to be taken from them as *Sadaqah* (i.e. *Zakâh*) and based on the condition that they shall not baptize their children.⁽³⁾

There is another approach in this issue for a number of contemporary scholars of Fiqh, headed by As-Siddîq Ad-Darîr (may Allah confer mercy upon him), which can be summarized as follows:

Zakâh is an act of worship that is obligatory for a Muslim, and the counterpart thereof is not to be imposed on non-Muslims. Imposing *Zakâh* on Muslims only does not imply any injustice because they pay

(1) “*Proceedings and Researches of the 1st Symposium on Contemporary Zakâh Issues*”, (pp. 444-445).

(2) “*Proceedings and Researches of the 6th Symposium on Contemporary Zakâh Issues*”, (P. 349).

(3) “*Al-Amwâl*”, Abû `Ubayd, (2: 212); “*Muṣannaf `Abdur-Razzâq*”, hadith no. (9974); “*Muṣannaf Ibn Abû Shaybah*”, hadith no. (10684).

it voluntarily aiming at being rewarded for it. "If equality is to be achieved between what is paid by Muslims and non-Muslims, then the proper way is to deduct *Zakâh* from tax which shall be imposed on everyone."⁽¹⁾

The view of Sheikh As-Siddîq is considerable. However, when *Zakâh* is collected from companies, as it is the case in the Kingdom of Saudi Arabia, it is necessary to consider the standard of *Zakâh* in calculating the tax imposed on non-Muslims, despite the fact that it is not considered a Shari'ah-based *Zakâh*.

Issue (2): Imposing *Zakâh* on the State's shares in joint stock companies

It is well-known among the scholars of Fiqh that *Zakâh* is not obligatory on Muslim Treasury. This is because it does not have a specific owner,⁽²⁾ the opinion adopted by the fatwas and recommendations of the 8th symposium on "*Contemporary Zakâh Issues*", where it says:

First: Public wealth is that allocated for public benefit, without being owned by a specific person (or entity, such as wealth belonging to the Muslim treasury (the State's public treasury), and what is called today the public sector.

Second: *Zakâh* is not due on public wealth, as it does not have a specific owner, it cannot be disposed of or possessed by ordinary people, and it is to be spent for the benefit of all Muslims.

Third: The State is not obligated to pay *Zakâh* on the funds of social insurance."⁽³⁾

The majority of contemporary scholars of Fiqh argue that *Zakâh* is not obligatory on public wealth, whether allocated, in the treasury, for ordinary channels or invested in public institutions fully owned by the State. However, they differ regarding *Zakâh* on the State's shares in joint-stock companies, according to two opinions as follows:

(1) "*Proceedings and Researches of the 13th Symposium on Contemporary Zakâh Issues*", (P. 224).

(2) "*Masâ'il Az-Zakâh Al-Mu`âsirah*", Al-Husaynî, (P. 237).

(3) "*Proceedings and Researches of the 8th Symposium on Contemporary Zakâh Issues*", (P. 448).

Opinion (1): *Zakâh* is not obligatory on the State's shares in joint-stock companies, which is the resolution of the Islamic Fiqh Academy.

The basis for this opinion is lacking condition of absolute ownership required for *Zakâh*, as there is no specific owner for such shares, as previously stated in the conditions of obligating *Zakâh*.

Opinion (2): *Zakâh* is obligatory on the public wealth in joint-stock companies, which is the fatwa of the 13th symposium on "*Contemporary Zakâh Issues*".

The fatwas and recommendations of the symposium stated:

"If public wealth is mixed with the wealth of individuals in a profit-making institution, then the share of public wealth is to be subject to *Zakâh* like private wealth. However, there is an opinion stating that *Zakâh* is not obligatory on such a mixed wealth."

The basis for this opinion is the fatwa of the Permanent Committee which states:

"In companies where government agencies have shares, *Zakâh* is to be imposed on all of their zakatable wealth, since these agencies have independent legal entities and commercial purposes."⁽¹⁾

Although it may be understood from such reasoning that obligation is related to legal entity of the company, the following answer to this fatwa of the Committee indicated that this is not intended. The Committee mentioned that if the joint-stock company pays less than the amount due, the shareholder shall pay the difference.

This is the ruling applied to countries that have a law enforcing the payment of *Zakâh*, namely the Kingdom of Saudi Arabia, as stated in Article (2) of the regulations of *Zakâh* collection law, and the Republic of Sudan, as stated in in Article (37) of *Zakâh* Law of 2001.

It appears that the first opinion is stronger and more reasonable in terms of Fiqh fundamentals. However, imposing an amount equivalent to *Zakâh*

(1) "*Fatwas of the Permanent Committee for Scholarly Research and Ifta*", Third Collection, (pp. 542-543).

on public wealth to be spent in *Zakâh* channels does not result in any Shari'ah prohibition, since the people eligible to receive *Zakâh* have rights to public wealth. Accordingly, taking this amount of public wealth is a delivery of the wealth to those who deserve it. There is no problem to apply this meaning in order to facilitate the calculation of *Zakâh* for joint-stock companies, or to achieve fair competition among companies.

Issue (3): *Zakâh* on shares owned by endowments and charities in joint-stock companies

Earlier scholars of Fiqh disagreed regarding the ruling of *Zakâh* on the endowments. Their disagreement can be summarized in four opinions as follows:

Opinion (1): No *Zakâh* is to be paid on wealth endowed except for the wealth where the tenth is to be paid (as *Zakâh*), which is the opinion of the Hanafites.⁽¹⁾

This view is based on the argument that endowed wealth is to be regarded as being divine ownership, and thus no *Zakâh* is to be paid since the principle of absolute ownership (by a human) is not realized here. Meanwhile, the wealth on which the tenth is to be paid as *Zakâh* does not require the condition of absolute ownership, but rather the principle of richness, since its *Zakâh* is considered as land tax.

Opinion (2): *Zakâh* is due on endowed wealth, which is the opinion adopted by the Malikites.⁽²⁾

This view is based on the fact that endowment remains in the ownership of the endower and accordingly *Zakâh* is due on it.

Opinion (3): No *Zakâh* is to be paid on the principal of the endowment money at all, and *Zakâh* is only payable on the yield if endowed to specific persons. This is the opinion of the Shafiites⁽³⁾ and it is the opinion adopted by the 8th symposium on "*Contemporary Zakâh Issues*".⁽⁴⁾

(1) "*Badâ'i' As-Sanâ'i'*", (2: 9 and 56); "*Radd Al-Muhtâr*", (2: 259 and 327).

(2) "*Ash-Sharh Al-Kabîr*", (1: 486); "*Mawâhib Al-Jalîl*", (2: 332).

(3) "*Al-Majmû'*", (5: 312), "*Tuhfat Al-Muhtâj*", (3: 329).

(4) "*Ash-Sharh Al-Kabîr*", (1: 486); "*Mawâhib Al-Jalîl*", (2: 332).

This view is based on the transfer of the endowment principal to the divine ownership, and the transfer of the benefit to the one for whom the endowment is made at the time of the endowment, and accordingly it becomes owned by him.

Opinion (4): *Zakâh* is payable on endowment if those allocated to them can be specified, and it is not payable if those allocated to them cannot be specified. This is the opinion adopted by the Hanbalites.⁽¹⁾

This view is based on the fact that ownership of the property and the benefit thereof are to be transferred to the subject of the *Waqf*/endowment if specified, otherwise, they are to be transferred to the divine ownership.

The fatwas and recommendations of the 8th symposium on “*Contemporary Zakâh Issues*” adopted the opinion of the Shafiites, as mentioned above, where it says:

“Fourth:

- 1- *Zakâh* is not due on *Waqf* wealth.
- 2- *Zakâh* is due on the yield of *Waqf* wealth if allocated specifically, such as the yield of family *Waqf*, while it is not due on the yield of charitable *Waqf*.

Fifth: *Zakâh* is not due on charitable endowment shares in joint-stock companies, where the ruling of acquired money applies to the yield of charitable endowment shares after being paid to those entitled thereto.”⁽²⁾

The opinion deemed most preponderant by the researcher is the opinion that *Zakâh* is due on endowment, whether allocated to specifiable channel or not, based on the argument that endowment remains in the ownership of the endower and based on other considerations, including the argument that the wealth of endowment is a growing wealth and accordingly must be subject to *Zakâh*. *Zakâh* on such growing wealth is to be paid by the endower himself or by the endowment supervisor as his representative, whether such endowment is allocated for public entity or for other specifiable channels. This

(1) “*Ash-Sharh Al-Kabir*”, (1: 486); “*Mawâhib Al-Jalil*”, (2: 332).

(2) “*Proceedings and Researches of the 8th Symposium on Contemporary Zakâh Issues*”, (P. 448).

is because *Zakâh* is due on growing wealth and endowment is not limited to the people entitled to *Zakâh*. Based on this, excluding endowment from *Zakâh* will be regarded as prejudice to the rights of the people entitled to *Zakâh*. Accordingly, imposing *Zakâh* on endowment or endowment-owned shares is not problematic in the Shari'ah's viewpoint.

As for the opinion of those arguing that *Zakâh* is not due on the public endowments, as the symposium concluded, it may lead to *Zakâh* being undue on these shares. Accordingly, adopting the opinion that *Zakâh* is due on public endowment can be regarded as applying the less preponderant opinion for the sake of public interest according to those arguing that *Zakâh* is not due on public endowments, for the purpose of facilitating the calculation and collection of *Zakâh*.

Selecting the most preponderant opinion

After presenting the approaches of the contemporary scholars of Fiqh regarding the person in charge of *Zakâh* for joint-stock company and their evidence thereto, as well as the impacts of each approach, the following may be concluded:

- (a) The most preponderant opinion is that adopted by collective *Ijtihâd* (legal reasoning and discretion), stating that the party responsible for *Zakâh* for joint-stock companies is the shareholder, and that establishing Shari'ah obligation for legal entities is not recognized in the Shari'ah rulings.
- (b) The company may not pay *Zakâh* on shareholders' wealth except in the cases defined by the Islamic Fiqh Academy, based on the argument that *Zakâh* is an act of worship requires intention. Accordingly, shareholder's approval is required for the company to pay *Zakâh* on his behalf.
- (c) Since it is difficult to consider the conditions of obligation for each shareholder in calculating *Zakâh* for joint-stock companies, and that the interest can be achieved by collecting *Zakâh* from joint-stock companies and not from individual shareholders, this necessitates considering a way that facilitates the calculation of the *Zakâh* due on shareholders, and paying it as one mixed wealth, including other shareholders not eligible for *Zakâh*, such as non-Muslims, endowments, philanthropic societies, government funds, institutions and companies, in addition to the shareholders who do

not own the *Nisâb* or have debts in excess of their zakatable wealth. The way to achieve this goal is based on two principles:

First principle: Imposing a tax on those who are not eligible for *Zakâh*, provided that such a tax is to be estimated at the amount of *Zakâh* and allocated for the same channels as *Zakâh*. It has been previously mentioned that the preponderant opinion assumes that tax is to be imposed on non-Muslims and estimated at the amount of *Zakâh* to be spent or allocated for the same channels as *Zakâh*, without being considered as Shari'ah-based *Zakâh*.

As for philanthropic societies and endowments, there is no Shari'ah objection to levy an amount equivalent to *Zakâh* on their funds to be spent in the same channels as *Zakâh*, especially that they share the same channels with *Zakâh* in most cases and accordingly imposing the same amount of *Zakâh* on them cannot be unquestionable. If, however, they have different channels from *Zakâh*, as it is the case with philanthropic societies aimed at specific categories and are not of public benefit, and family *Waqf*/endowment, they are to be charged with an amount equal to the prescribed amount of *Zakâh*. However, the researcher holds the view that *Zakâh* is to be imposed on all kind of endowments, as argued by Mâlik.

Second principle: Mixed wealth (Partnership). This is useful in considering the condition of the elapse of one lunar year (*Hawl*) and the *Nisâb* (i.e. minimum amount determining a person's zakatability) in the obligation of *Zakâh* for all shareholders who are eligible for *Zakâh*, based on the opinion of those regard *Zakâh* as due on all kinds of wealth. Accordingly, *Zakâh* is to be paid on this wealth as being one mixed wealth. This opinion, despite being less preponderant, is to be applied for the public interest, and cannot to be taken into consideration as a method to impose *Zakâh* on those who are not eligible for *Zakâh*.

Topic (II)

Estimation Regarding the Condition of Absolute Ownership

The discussion on this topic is divided in to a preface, and two branches, as follows:

Preface: Meaning of absolute ownership

In the previous topic, the condition of obligation, upon which those obligated to pay *Zakâh* for joint-stock companies are to be determined, has been discussed. In this topic, the Fiqh adaptation of share, upon which the wealth owned by the shareholder is to be determined, will be approached. This topic will then tackle the condition of absolute ownership and its impact on calculating *Zakâh*. It is useful here to pave the way for this topic through clarifying the meaning of absolute ownership in both Fiqh and law.

First: Ownership in language and terminology

Linguistically speaking, the Arabic word “*Milk*” (i.e. ownership) is the infinitive of the two Arabic verbs *Malaka* (Past tense. i.e. he owned) *Yamliku* (Present tense. i.e. he owns), which indicate the meaning of ownership and having the sole right to dispose of something. Also, *Milk* means the owned wealth or properties. The root of this word (i.e. *M L K*) indicates strong and valid possession of something.⁽¹⁾

In Fiqh terminology, the Arabic word “*Milk*” (i.e. ownership) has many close definitions.⁽²⁾

The following are the definitions of ownership as given by the different schools of Fiqh:

(1) See the root “*Mîm, Lâm, Kâf* (i.e. *M L K*) [ك ل م]” in “*Maqâyis Al-Lughah*”, (5: 351-352); “*Mukhtâr As-Sihâh*”, (P. 298); “*Tâj Al-`Arûs*”, (27: 346-347).

(2) For more information about the definition of ownership in both Fiqh and law, see: “*Al-Milkiyyah Fî Ash-Shari`ah Al-Islâmiyyah*”, `Abdus-Salâm Al-`Abbâdî, (1: 160-189).

Ibnul-Humâm defines ownership as:

“An ability to dispose (of something) subject to law.”⁽¹⁾

Ibn Nujaym said that such a definition must be modified by adding: “unless a prohibition occurs.”⁽²⁾

Al-Qarâfi defines ownership as:

“A Shari’ah ruling estimated for a property or usufruct, which requires the person to whom such a property or usufruct is transferred be able to make use of it and of its consideration under normal circumstances.”⁽³⁾

In his “*Al-Ashbâh Wan-Nazâ’ir*”, Ibnus-Subkî adopted the definition of Al-Qarâfi and explained it in details, saying:

“The best definition is that it is a moral thing. It can be said that it is a Shari’ah ruling estimated on a property or usufruct, which requires the person to whom such property or usufruct is transferred to be able to make use of it and receive consideration therefrom under normal circumstances.”

As for our saying “a Shari’ah ruling”, this is because is it unanimously agreed upon and belongs to Shari’ah reasons, which makes it a Shari’ah ruling.

As for being “estimated”, this is because it depends on permissibility subject to law. Dependency, here, is descriptive not real. That is, it is estimated for the property and usufruct when the requirements proving the ownership are realized.

As for our saying “on a property or usufruct”, this is because usufructs are owned just like property and are subject to *Ijârah* (lease) contracts.

As for our saying “requires the person to whom such a property or usufruct is transferred be able to make use of it”, this is to remove the right of judges and custodians to dispose of such property, as their disposal, in this case,

(1) “*Fath Al-Qadîr*”, (6: 248).

(2) “*Al-Ashbâh Wan-Nazâ’ir*”, (P. 411). In his “*Ghamz ‘Iyûn Al-Basâ’ir*”, (2: 461), Al-Hamawî said that Ibnul-Humâm mentioned this definition with this limitation literally. However, I could not find it in any place in “*Al-Fath*”. But perhaps it is attached to some other copies.

(3) “*Al-Furûq*”, (2: 208-209).

is restricted to the benefit of the owners of such property not for their own benefit.

As for our saying “its consideration”, this to exclude permissible hospitality. That is, hospitality is permitted without receiving any consideration thereto. Also, to exclude mosques, public places, and markets, which cannot be owned or disposed of.

As for our saying “under normal circumstances”, this is because the right to dispose of, or making use of something may be suspended, as in the case of interdiction or attachment, where the ownership exists while the right to disposal is deprived due to something out of the owner’s control.

After all, it must be noted that the definition of ownership here is aimed at restricted ownership which belongs to human beings. But the true ownership of everything belongs to Allah alone.⁽¹⁾

Ibn Taymiyyah defines ownership as:

“A Shari’ah-based ability to dispose of a property.”⁽²⁾

Dr. `Abdus-Salâm Al-`Abbâdî defines ownership as:

“Owning something by person whereby he may lawfully make use and dispose of such a thing unless a prohibition exists.”⁽³⁾

In law, As-Sanhûrî defines the right to ownership as:

“The right to exclusive and permanent use, benefit and disposal of a property possessed subject to law.”⁽⁴⁾

Second: The concept of absolute ownership

It might come to mind that ownership has one meaning. However, ownership has various types with regard to restrictions imposed on use or disposal. That is why *Zakâh* requires absolute ownership of a property in order to be distinguished from other types of ownerships.

(1) “*Al-Ashbâh Wan-Nazâ’ir*”, Ibn Nujaym, (1: 232- 233); See: “*Al-Ashbâh Wan-Nazâ’ir*”, As-Suyûtî, (P. 316).

(2) “*Majmû` Al-Fatâwâ*”, (4: 106).

(3) “*Al-Milkiyyah Fî Ash-Shari`ah Al-Islâmiyyah*”, Al-`Abbâdî, (1: 189).

(4) “*Al-Wasîl*”, (8: 493).

Imam Ibn Taymiyyah says:

“Ownership is the Shari’ah-based ability to dispose of a property. It is a real ability, as the ability to dispose of may be established by Shari’ah as well as by practice. This is why ownership is classified by Shari’ah into different types. The absolute ownership, for example, is where the owned property can be disposed of whether by sale, gift or inheritance. The usufruct thereof can be disposed of by borrowing, lease, use, etc.”⁽¹⁾

If so, the reason why the scholars of Fiqh restrict ownership, which is the condition of *Zakâh*, to absolute ownership or to growing wealth can be understood. This is to exclude the ownership for which the condition of eligibility and wealth is not realized, such as the Muslim’s right (share) to Muslim Treasury. This right does not imply the right to disposal, since such a right is restricted to the ruler subject to the public interest. This is why the ruler is not to be regarded as the absolute owner of the property of the treasury. However, he has the right to dispose of such property.

Imam Al-Ghazâlî⁽²⁾ (may Allah confer mercy upon him) stated that the weakness of ownership may be attributed to three reasons as follows:

- 1- Instability of ownership.
- 2- Forfeitability of the owned property for others.
- 3- Inability to dispose of the owned property.

Accordingly, an ownership may be either stable or not. If stable, it may be forfeitable for others or not. If it is stable and is not forfeitable for others, then it may not be completely non-disposable or not. If not, then it may be regarded as an absolute ownership.⁽³⁾

These three reasons (points) of weakness can be explained as follows:

First reason: Instability of ownership. It means lacking the cause of ownership subject to which disposal is realized. A number of issues come under this reason, including:

(1) *“Majmû’ Al-Fatâwâ”*, (4: 106).

(2) *“Al-Wasîf”*, (3: 51); See: *“Al-‘Azîz Sharh Al-Wajîz”*, (4: 47); *“‘Iqd Al-Jawâhir Ath-Thaminah”*, (1: 208).

(3) *“Al-‘Azîz Sharh Al-Wajîz”*, (4: 47).

- 1- Elapse of one lunar year for the sold item before taking delivery thereof.
- 2- Elapse of one lunar year for speculator's share in profits before distribution of profits.
- 3- Elapse of one lunar year for the inheritance before distribution thereof.

Second reason: When someone else has the authority to take over or remove the ownership from the owner. The difference between this reason and the aforementioned one is that the cause of the ownership is already established and the owner has the right to dispose of and grow the wealth, but others have the right to take over such a wealth and remove the ownership from the owner.

Examples include:

- 1- The control of the seller over the sale subject to option (to cancel the transaction).
- 2- The control of the owner over *Luqatah* (i.e. lost object) after taking its ownership by its finder after the elapse of the second year from the time when he had found it.
- 3- The control of the creditor over the wealth of bankrupt who is authorized to trade.
- 4- The control of the lessee over the rental paid in advance when unable to have the usufruct.
- 5- The control of the husband over half of the dowry subject to the marriage contract before consuming the marriage.

Third reason: The inability to grow the wealth. Inability to grow the wealth may be attributed to the owner as when he is under captivation or lost, or attributed to the wealth itself, which is called *Dimâr* (i.e. inaccessible wealth) by the scholars of Fiqh.

The scholars of Fiqh disagree regarding the obligation of *Zakâh* for all of these issues. This difference arises from the disagreement concerning whether the absolute ownership regarding them is established.

Generally, the scholars of Fiqh agree upon this condition, but they differ greatly in ascertaining the underlying cause thereof to the extent that Ar-Râfi`î

mentioned that such a difference may amount to a disagreement regarding whether such a condition is to be taken into consideration.⁽¹⁾

Reflecting on the examples cited by the scholars of Fiqh for this condition, I could not attain an agreed upon example in which *Zakâh* is not obligatory. Perhaps the most famous example given by scholars is the wealth of the *Mukâtab* (i.e. a slave having a contract of manumission), which is also a matter of disagreement in this regard. Ibn Hazm believes that *Zakâh* is obligatory on the wealth of the *Mukâtab*,⁽²⁾ attributing this opinion to Ibn `Umar (may Allah be pleased with him).⁽³⁾

The most suitable opinion is that the condition of absolute ownership is among the conditions agreed upon in general among the four schools of Fiqh⁽⁴⁾ but they differ regarding the purpose thereof.

The aspects of agreement can be summarized into the two following points:

1- The wealth shall be owned by a specific person. The evidence of this is the fact that wealth, in the Qur'an, is attributed to its owners, as stated in the following Quranic Verses:

“Take Sadaqah (i.e. Zakâh) from their wealth...”;⁽⁵⁾ and

“And those in whose wealth there is a known right.”⁽⁶⁾

Zakâh is a method by which wealth is to be transferred to those entitled thereto, and transferring wealth is one step of establishing its ownership. Thus, ownership is a prerequisite for *Zakâh*.

Accordingly, *Zakâh* is not obligatory on the wealth owned by unspecified persons, such as the wealth which does not have a known owner, and the wealth of Muslim Treasury, because this wealth does not have a specific owner.

(1) “*Al-`Aziz Sharh Al-Wajiz*”, (4: 47).

(2) “*Al-Muḥallâ*”, (4: 3).

(3) “*Al-Amwâl*”, Abû `Ubayd, (1: 121).

(4) “*Fath Al-Qadîr*”, (2: 153); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 172), “*Ash-Sharḥ Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*”, (1: 432); “*Mawâhib Al-Jalîl*”, (2: 255), “*Al-`Aziz Sharh Al-Wajiz*”, (4: 47); “*Tuḥfat Al-Muhtâj*”, (3: 329); “*Sharḥ Al-Muntahâ*”, (2: 172 and 177).

(5) Surah *At-Tawbah* (Repentance): 103.

(6) Surah *Al-Ma`ârij* (The Stairways): 24.

- 2- The cause of ownership shall be stable and irrevocable, which does not apply to the wealth of the *Mukâtab* where the ownership of such a wealth is not established to either the slave or his master. This why no *Zakâh* is payable on either of them with regard to such a wealth.

Aspects of disagreement can be summarized into two following points:

- 1- Absolute ownership comes with the ability to grow the owned wealth practically and subject to Shari'ah. This is the opinion of the Hanafites and the Malikites.

In "*Al-Jawharah An-Nayyirah*", it is said:

"Absolute ownership is where ownership and possession (i.e. control) are realized together. If ownership is realized alone without possession as in the case of owning a sold subject or a dowry before taking delivery thereof, or if the possession alone is realized without ownership, as in the case of the wealth of the *Mukâtab* (i.e. a slave having a contract of manumission) or the debtor, then *Zakâh* shall not be obligatory."⁽¹⁾

In "*Al-Binâyah*", it is said:

"Absolute ownership is when all conditions of ownership are fulfilled where the owned wealth does not belong to a debtor or a *Mukâtab*, and is not *Dimâr* (i.e. inaccessible wealth), a compensation of *Khul'* (i.e. compensatory divorce), or a dowry that has not been received yet."⁽²⁾

Ibn Rushd (the grandfather) says:

"Inability to grow (the owned wealth) is the true cause (for waiving *Zakâh*) subject to the main Shari'ah principles."⁽³⁾

Al-Bâjî says:

"*Zakâh* is to be payable on a property where such property can be grown (by the owner) and where it is not under the possession of any person other than the owner."⁽⁴⁾

(1) "*Al-Jawharah An-Nayyirah*", (3: 153).

(2) "*Al-Binâyah Sharh Al-Hidâyah*", (3: 289).

(3) "*Al-Bayân Wat-Tahsîl*", (2: 273).

(4) "*Al-Muntaqâ*", (2: 113).

This condition is expressed by the Hanafites as growability⁽¹⁾ and by the Malikites as the ability to grow.⁽²⁾

2- Absolute ownership comes with the ability to dispose of the owned wealth subject to Shari'ah even if benefiting thereof cannot be practically achieved. This is the opinion of the Shafiites⁽³⁾ and the Hanbalites.⁽⁴⁾

This is why *Zakâh* is deemed payable on every debt and property, even if it is not under the possession of its owner, such as extorted or lost property, bad debt, and the debt of a procrastinating insolvent.

In "*Sharh Al-Muntahâ*", it is said:

"The meaning of absolute ownership is that no other person, except the owner, shall have any right to the owned object. That is, the owner shall be able to dispose of, and benefit from the owned object at his sole discretion, an opinion expressed by Abul-Ma`âlî in different words."⁽⁵⁾

Two additional conditions, attributed to condition of absolute ownership, are mentioned within the conditions of the obligation of *Zakâh*. They are as follows:

First condition: The *Zakâh* payer shall not have a debt that diminishes *Nisâb* of *Zakâh*, which is a matter of disagreement based on two approaches as follows:

1- A debt has an impact on the ownership of the *Nisâb* of *Zakâh*, which is the opinion of the majority of the Hanafites, the Malikites and the Hanbalites.

(1) "*Al-Bahr Ar-Râ'iq*", (2: 218).

(2) "*Al-Bayân Wat-Tahsil*", (2: 273).

(3) "*Al-'Azîz Sharh Al-Wajîz*", (4: 47); "*Mughnî Al-Muhtâj*", (1: 409).

(4) "*Kashshâf Al-Qinâ`*", (4: 314); "*Sharh Muntahâ Al-Îrâdât*", (2: 178).

(5) "*Sharh Muntahâ Al-Îrâdât*", (2: 178). The phrase of Abul-Ma`âlî as in "*Kashshâf Al-Qinâ`*", (4: 314): "An absolute ownership is where the owned object is under the control of the owner and no other person has any right thereto, and where the owner may dispose of and benefit from it at his discretion." This opinion is expressed by Al-Buhûfî in "*Al-Muntahâ*" with an amendment to avoid the wrong assumption that the meaning of "under control" is the same as possession, since this is not a condition (for absolute ownership) where disposal of something can be realized through ownership without such thing being under the possession of the disposer.

- 2- A debt owed by *Zakâh* payer does not affect the ownership of the *Nisâb* of *Zakâh*, which is the opinion of the Shafiites as will be detailed later.⁽¹⁾

Second condition: The *Nisâb* shall be in excess of the basic needs. There is a disagreement regarding this matter, which can be summarized into two approaches:

- 1- The *Nisâb*, if counterbalanced by the need of the person, is to be deemed as nonexistent, which is the opinion of the Hanafites and the Malikites.
- 2- The ownership of the *Nisâb* is not to be affected by basic needs of the *Zakâh* payer, which is the opinion of the Hanbalites and the Shafiites.

Both approaches apply the “Shari’ah-Based Estimations Rule”. The scholars stipulating this condition consider the wealth to satisfy the basic need as nonexistent (for the purpose of *Zakâh*). Meanwhile, the scholars who do not stipulate this condition consider the basic need itself as nonexistent. Accordingly, the basic need, before being established, shall not have the same ruling as debt, based on the opinion of the Hanablites who consider debt as having impact on *Zakâh*. The Shafiites, however, are of the opinion that debt has no impact on *Zakâh* originally.

Branch (1): Legal adaptation of shares and its impact on the condition of absolute ownership

We have clarified the condition of absolute ownership with regard to the obligation of *Zakâh*. This branch is intended to explain the disagreement with regard to the definition of share, and the impact of such a disagreement on the condition of absolute ownership. This is one of the important issues over which there is a lot of disagreement, and whose impact appears in a number of issues as follows:

First: Shares: Concept and characteristics

A share is defined in the commercial law as:

“The share provided by the partner in joint-stock companies, and it represents a specific part of the company’s capital. The share is represented in a deed given to the shareholder to prove his rights in the company.”

(1) This issue is discussed in (P. 354).

The shares issued by joint-stock companies are characterized by many advantages, among which the most important are: They have equal values, they are negotiable, and they are indivisible before the company. This in addition to the basic feature of corporations, namely the limited liability of the shareholder, according to which the shareholder's liability does not exceed the value of the shares he owns.

A share may represent a cash share in the capital of the company if it is provided the shareholder in cash, and it may represent an in-kind share if the shareholder offers a movable property or real estate.

The share, whether in cash or in kind, is considered movable property, even if the company is working in real estate, and even if the share offered by the shareholder is a real estate.

Corporations are not based on the personalities of the shareholders, as is the case with individual partnerships. Rather, they are based on a legal entity with limited liability, independent from the shareholders' personality and their financial liabilities. Multiplicity of shareholders is not considered a basis for the formation of corporations, as a corporation may be owned by one person, as approved by the new companies law.⁽¹⁾

Many laws have referred to this independence of the legal entity from shareholders, so they impose income or profits tax on companies separate from the income tax imposed on individuals. In this case, the company pays tax on the total of its profits, whether or not it distributes them, and the investor also pays tax on its share from the dividends, without this being considered double taxation. This is because the company or the investment fund is a legal entity and a financial liability that is independent of individual or collective investors.⁽²⁾

(1) *"Al-Wajiz Fi Al-Qânûn At-Tijârî"*, Mustafâ Kamâl, (pp. 192, 300 et seq.); *"Al-Qânûn At-Tijârî: Ash-Sharikât At-Tijâriyyah"*, `Alî Hasan Yûnus, (pp. 113, 161 and 175); *"Al-Wasîf Fi Sharh Al-Qânûn Al-Madani"*, (5: 222-223); *"Al-Qânûn At-Tijârî As-Su`ûdî"*, Muḥammad Hasan Al-Jâbr, (P. 289 et seq.); *"Ash-Sharikât At-Tijâriyyah"*, Khâlid Ar-Ruways, (P. 318).

(2) *"Zakât Al-As-hum Was-Sanadât"*, Ash-Shubîlî, within the *"Proceedings and Researches of the Symposium on Zakâh on Shares and Investment Funds"*, the International Islamic Bureau for Economics & Finance.

Second: Fiqh-based adaptation of shares

The Fiqh-based adaptation of shares is consistent with the legal view that it represents a shareholder's right of ownership in the joint-stock company, but the nature and limits of this ownership are not the subject of agreement among contemporary scholars of Fiqh, which has been reflected in the *Ijtihâd* (i.e. legal reasoning and discretion) regarding *Zakâh* on shares. The following are the most important opinions concerning Shari'ah-based adaptation of shares:

Opinion (1): A share is a document that represents ownership of unidentified portion in all the assets of the company that issued it, including goods, benefits, and debts.

This is the prevalent opinion in institutions of collective *Ijtihâd*, including:

1- The resolution of the OIC International Islamic Fiqh Academy (IIFA) in Jeddah in its resolution no. 63 (1/7), in which it stated:

“The object of contract in the sale of shares is the unidentified portion of the company assets and the share certificate is a document attesting to entitlement to the said portion.”

2- The resolution of the MWL Islamic Fiqh Council,⁽¹⁾ in its 4th resolution in the 15th session held in 1415 AH, which stated:

“A share represents an unidentified portion in the company's capital, and the shareholder owns an unidentified portion in the company's assets.”

3- Shari'ah Standard no. (21), issued by the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), where the share is defined in item (2/8) as:

“A document that is deemed evidence of ownership of the shareholder for his undivided share in the assets of the company.”

(1) Headquartered in Mecca, the MWL Islamic Fiqh Council is an Islamic scholarly body with an independent legal entity, within the framework of the Muslim World League. It consists of a selected group of jurists and scholars of the Muslim Nation. The Council was established upon the recommendation of the MWL Constituent Council. The decision of the General Secretariat to establish the Council was issued in 1396 AH. The Council's first session was held in 1398 AH. See: The Muslim World League website on the Internet (www.themwl.org).

Item (3/1) provides for:

“A share represents an undivided share in the capital of a corporation, just as it represents an undivided share in its assets and the rights associated with it upon conversion of the capital into tangible things, benefits, debts and so on. The subject-matter of the contract at the time of trading of shares is this undivided share.”

This opinion is based on the fact that the joint-stock company, despite being disagreed upon regarding its Fiqh-based adaptation, does not deviate from the companies known in Islamic Fiqh. Moreover, the shareholder in the joint-stock company is a partner who owns his share in the company's assets, and the fact that the company has a legal entity does not negate the shareholder's right to own its assets.⁽¹⁾

The supporters of this approach believe that accepting joint-stock company by contemporary scholars of Fiqh does not mean accepting all the provisions decided by the law regulating these companies, as the provisions violate the Shari'ah rules shall be excluded, if any.⁽²⁾

Opinion (2): A share is a security that does not represent the assets of the company, and the owner of the share does not own these assets, nor does he have any rights to them. Rather, these assets are owned by the company under its legal entity.

Dr. Muḥammad Al-Qarī was one of the first to establish this opinion from the Fiqh and legal point of view, in his valuable research: “*Ash-Shakhsīyyah Al-I`tibāriyyah Dhāt Al-Mas`ūliyyah Al-Mahdūdah*”.⁽³⁾

(1) “*Ash-Sharikât Fî Al-Fiqh Al-Islâmî*”, `Alî Al-Khaffî, (P. 127); “*Ash-Sharikât Fî Ash-Sharî`ah Al-Islâmiyyah*”, Dr. `Abdul-`Azîz Al-Khayyât, (2: 159); “*Al-Mu`âmalât Al-Mâliyyah Asâlah Wa-Mu`âsarah*”, Ad-Dubyan, (13: 118).

(2) “*Proceedings and Researches of the 11th Symposium on Contemporary Zakâh Issues*”, (P. 26); “*Al-Multaqayât Al-Fiqhiyyah*”, (pp. 68-69).

(3) It is published in the Islamic Economic Studies Journal, Volume (5), Issue (2), in 1419 AH. The author's adaptation of this issue was presented in the discussions of the OIC International Islamic Fiqh Academy (IIFA) in 1418 AH. See: “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (13), (2: 397).

He presented a research paper on this matter to the 5th Shura Fiqh Conference 1435 AH entitled: “*Athar Al-Ikhtilâf Bayn Ash-Shakhsīyyah At-`Tabî`iyyah Wal-I`tibāriyyah*” =

He put the basis for legal entity through a Shari'ah issue, which is the master's ownership of the slave authorized to trade, as the master does not bear the slave's commercial liabilities in excess of the value of the slave.⁽¹⁾

The supporters of this approach believe that joint-stock company differs from the well-known companies in Islamic Fiqh, such as *'Inân* (i.e. cooperative) partnership, and that it only applies to individual partnership, and cannot be applied to joint-stock company. Dr. Al-Qarî says:

“All contemporary fatwas about joint-stock companies, as well as Fiqh-based researches on this subject, are based on a definition that a share is an unidentified portion in the assets of the company. This is a true definition of the share in *'Inân* partnership, but it is not the case for modern joint-stock companies. The reason for this difference is that the quality of limited liability in joint-stock company generates a legal entity independent of shareholders, and isolates ownership from the ability to dispose of... This point in joint-stock companies has been overlooked by all contemporary Fiqh-based studies, and in our view, it is the most important element of the issue that has very important implications.”⁽²⁾

Dr. Al-Qarî explains that his agreement with the legal view does not mean giving priority to law over Shari'ah evidence, so he says:

“Positive laws are not an argument against us, and by referring to such laws, we do not depend on, or adopt them as a substitute for our tolerant Shari'ah, but the form of the limited liability joint-stock company is an innovated matter that needs consideration to arrive at a Shari'ah ruling thereon.”⁽³⁾

This approach has received the attention of many contemporary scholars of Fiqh, whose writings appeared in line with this Fiqh adaptation, such as,

= (i.e. The Impact of the Difference between Natural and Legal Entities.) He also presented a paper to the 6th Shura Fiqh Conference in 1437 AH, entitled: “*At-Takyîf Al-Fiqhî Li-As-hum Ash-Sharikât Al-Musâhimah*” (i.e. Fiqh-Based Adaptation of the Shares of Joint-Stock Companies).

(1) “*Ash-Shakhsîyyah Al-I`tibâriyyah Dhât Al-Mas`ûliyyah Al-Mahdûdah*”, (P. 35).

(2) *Ibid.*, (P.19).

(3) *Ibid.*

Dr. Nazîh Hammâd,⁽¹⁾ Sheikh Muḥammad Al-Mukhtâr As-Sallâmî,⁽²⁾ Sheikh Nizâm Ya`qûbî,⁽³⁾ and others.

Opinion (3): A share is a security that represents an unidentified portion in the legal entity of the company. This legal entity has a financial liability independent of its owners, who are the shareholders. It has full capacity, as it is subject to obligations, commitments, concluding contracts, and bearing debts, liabilities and damages incurred by others within the limit of its sole liability, without affecting the shareholders' liabilities. Moreover, all rights or obligations are to be attributed to the company itself as principal not as a representative of its shareholders.

Accordingly, the shareholder, by owning a share in this entity, owns, consequently, its tangible and intangible assets. This ownership, however, is not absolute ownership, as the shareholder does not have the right to dispose of any of the assets, and if the value of these assets exceeds the value of his shares, he has no right to claim them. Also, he does not bear debts or damages to others as a result thereof. This is because he does not directly own these assets and the company does not have control on them by means of *Wakalah* (i.e. Agency).

This adaptation is adopted by Dr. Yûsuf Ash-Shubîlî in his valuable research on *Zakâh* on shares.⁽⁴⁾

(1) In his Paper submitted to the 6th Shura Fiqh Conference: "*At-Takyîf Al-Fiqhî Li-As-hum Ash-Sharikât Al-Musâhimah*" (i.e. Fiqh-Based Adaptation of the Shares of Joint-Stock Companies), in 1437 AH.

(2) In his Paper: "*Al-Mutâjarah Bi-As-hum Sharikât Gharaduhâ Wa-Nashâtuhâ Mubâh Wa-Lâkinnahâ Tuqrîd Wa-Taqtarîd Bi-Fâ'idah*" (i.e. Trading in Shares of Companies Whose Purpose and Activity Are Permissible, But Lend and Borrow with Interest), submitted to the 5th Fiqh symposium of the Kuwait Finance House, where he said: "A share is a security that represents a right to an unidentified portion in the capital of the company and subsequent rights thereof ... but the owner of the share does not own the amount of his share in the assets of the company". See: "*Kuwait Finance House Symposiums*", (5: 14).

(3) "*Kuwait Finance House Symposiums*", (5: 76).

(4) This research was submitted to the "*Symposium on Shares and Investment Funds*" organized by the International Islamic Bureau for Economics & Finance, in 1430 AH. He submitted a Paper entitled: "*Isdâr Wa-Tadâwul Al-As-hum Was-Sukûk*" (i.e. Issuance and Trading of Shares and Sukuk), in 1431 AH. He also submitted a Paper entitled: "*At-Tawsîf Ash-Shar`î Lil-As-hum Wal-Âthâr Al-Mutarattibah `Alayh*" (i.e. Shari'ah Description of Shares and Their Implications" to the 6th Shura Fiqh Conference in 1437 AH.

He said that this adaptation, in addition to its compatibility with the legal view, is consistent with views of the scholars of Fiqh regarding the counterpart of the legal entity of joint-stock company, namely the legal entity of endowment allocated for specific persons. This is because endowment has an entity and a financial liability independent from the endower or the party for which endowment is allocated. However, the Hanbalites and the Shafiites are of the view that the ownership of the endowed object is to be transferred to the parties for which endowment is allocated.⁽¹⁾

Third: The impact of Fiqh-based adaptation of shares on the condition of absolute ownership for *Zakâh* on joint stock companies

Contemporary scholars of Fiqh agree that a share is a growing wealth on which *Zakâh* is due, but they differ in determining the amount of this obligation, based on their disagreement regarding the Fiqh-based adaptation of the shares. This can be categorized into two opinions:

Opinion (1): The estimation of the *Zakâh* per share for the shareholder is based on the zakatable assets which the share represents in the company's assets.

This opinion is adopted by the supporters of the first adaptation who view that the share represents a portion in the assets as well as by the supporters of the third adaptation, who attach the consequent ownership of the assets to the ownership of the share.

Accordingly, the obligation of *Zakâh* for joint-stock companies, in the event that the company pays *Zakâh*, whether by an obligation from the State or at the request of the shareholders, or as stipulated in the company's articles of association, depends on the assets.

This approach is the most prevalent among the institutions of collective *Ijtihâd*, including the resolution of the Islamic Fiqh Academy, which states:

“The management of the company shall pay *Zakâh* on shares in the same manner as person pays *Zakâh* on his wealth. In other words, it

(1) “*Proceedings and Researches of the Symposium on Zakâh on Shares and Investment Funds*”, (P. 153); “*Sharh Al-Muntahâ*”, (2: 408); “*Al-Hâwi Al-Kabîr*”, (7: 516).

shall pay *Zakâh* on the assumption that the capital of all shareholders is the property of a single person, and calculate *Zakâh* accordingly, taking into account the type and value of assets subject to *Zakâh*, its percentage and any other consideration relevant the *Zakâh* of a physical person.”

They differ regarding impact of intention to trade in shares (speculation) based on what will be explained later.

Opinion (2): The estimation of the *Zakâh* per share for the shareholder is based on his intention behind investment.

If the investor intends to benefit from the share proceeds, then he shall pay *Zakâh* on the share as *Zakâh* on exploited assets, and *Zakâh* is due on its return. If he, however, intends to trade in shares, he shall pay *Zakâh* on share as *Zakâh* on goods stocked for trade, whether *Zakâh* is paid by the company or the shareholders.⁽¹⁾

The Islamic Fiqh Academy adopted this approach regarding shareholder who does not know the assets of his shares, as it was stated in its resolution:

“If, for any reason, the company did not pay *Zakâh* on its assets, each shareholder liable to *Zakâh* must do so on shares he owns. If the shareholder can calculate the amount the company would have paid on his behalf, had it done so, he should then pay the same, since that is the basis for calculating *Zakâh* on shares.

If the shareholder has no mean of knowing these elements of information for calculating the amount due, then:

If he had invested in the company to benefit from the annual dividends of his shares, and not for trading purposes, then the owner of such shares will not pay *Zakâh* on the market value of shares, but only on the basis of the dividends, at the rate of 1/4 of 1/10 (2.5%) after the elapse of one year from the date of the actual reception of the dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the

(1) “*Fiqh Az-Zakâh*”, (1: 527); “*Proceedings and Researches of the 11th Symposium on Contemporary Zakâh Issues*”, (1: 166); “*Sûq Al-Awrâq Al-Mâliyyah*”, (P. 318).

Academy at its 2nd session, with respect to *Zakâh* on the rented real estates and non-agricultural leased lands.

If, on the other hand, the shareholder has invested in shares for trading purposes, then his shares are subject to *Zakâh* as commercial goods. After the elapse of one year period, and if they are still in his ownership, he shall pay *Zakâh* on their market value; if there is no stock market, he will pay *Zakâh* on their value as appraised by qualified experts. He will pay 1/4 of 1/10 (2.5%) of their market value plus their dividends, if they yield any dividend.”

This is adopted by the Permanent Committee in many fatwas, including fatwa no. (18585):

“*Zakâh* is due on the shares that are allocated for trading and are offered for sale. However, fixed shares that are not offered for sale and are just for investment, *Zakâh* is due on their revenues if they reach the *Nisâb* (i.e. minimum amount determining a person’s zakatability) by themselves or when added to other properties and a *Hawl* (i.e. *Zakâh* year) passes while they are in the possession of their owner.”⁽¹⁾

Also, fatwa no. (17747) states:

“Share capital: If this is intended for trade and achieving profits, *Zakâh* becomes due on the yield that reaches the *Nisâb* when they are received. If the shares are offered for sale and trade, *Zakâh* becomes due on the shares by estimating their value upon the completion of a *Hawl*.”⁽²⁾

This opinion is distinguished by its ease of use for *Zakâh* payers and for the authorities concerned with collecting *Zakâh*, and it does not entail problems regarding the method applied to calculation of *Zakâh* based on zakatable assets of the company. Highlighting this meaning, Dr. Al-Qarî says:

“*Zakâh* is one of the pillars of Islam, and it must be characterized by clarity and simplicity, which is the attribute of all obligations that Allah has enjoined upon the servant. But, to be complicated and based on

(1) “*Fatwas of the Permanent Committee for Scholarly Research and Ifta*”, Second Collection, (6: 128).

(2) *Ibid.*, (6: 157).

mathematical equations that even a specialist is unable to do, is not a feature of the acts of worship (ordained by Allah), and it renders this pillar difficult to be performed, not accessible to the average Muslim.”⁽¹⁾

Selecting the most preponderant opinion

The reality of the share is that it represents a portion in the assets of the company, as agreed upon by collective *Ijtihâd* in this issue. This goes in line with the reality of the legal entity clarified earlier. As for what contemporary laws state regarding transferring the ownership of the funds contributed by the shareholders to the legal entity of the joint-stock company, it is not intended to negate the shareholders' ownership of such funds. To prove, this ownership is established for the shareholders upon the company liquidation. This is expressed by Dr. Al-Qarî as being an implicit ownership because such ownership does not appear until the company is liquidated.

In this regard, Dr `Alî Ḥasan Yûnus says:

“Even though the company is a legal entity independent of the shareholders' entities, such an independence does not mean the exclusion of other entities altogether, nor does it lead to the elimination of their existence. These entities, however, are only hidden behind the entity of the company. This is why when the entity of the company does not appear to defend its interests, there appear the entities of its shareholders to defend such interests.”⁽²⁾

Rather, what is meant by transferring the ownership of these assets to the company is to negate the shareholders' ability to dispose of them. This is because the right to dispose of such assets is transferred completely to the company with its legal entity while the growth of these assets returns to the shareholders. It is known that the inability to dispose of a property does not originally negate the right of its ownership, as in the case of the person under interdiction or attachment, who, despite not having the right to dispose of the attached property, still owns such a property.

(1) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (13), (2: 396).

(2) “*Ash-Sharikât*”, `Alî Ḥasan Yûnus, (P. 77); “*Sharikat Al-Musâhamah*”, Sâlih Al-Baqmî, (P. 172).

But the problem appears when it comes to whether permanent inability to dispose of a property prevents the establishment of the ownership thereof, as in the case where the endower is prevented from disposing of the subject matter of endowment, or where the female slaves who are mothers of little babies are not allowed to be sold. Here, establishment of ownership is a matter of disagreement. But with regard to the issue in question, the sound view is that the ownership of the shareholders is not to be negated as a result of their inability to dispose of their shares. This is because transfer of ownership here is not an actual transfer. Further, shareholders are entitled to the return on their shares. Furthermore, their ownership of the shares appears at the liquidation of the company. Accordingly, these assets are owned by shareholders on an unidentified basis, and accordingly, the share represents an unidentified portion in the assets of the company, which is the opinion resolved by collective *Ijtihâd*. This matter will be discussed in more details later.

Imam Ibn Taymiyyah stated that these restrictions on ownership may be a matter of dispute regarding whether the ownership is established or not. This is because ownership in this case cannot be determined, with regard to establishment, based on analogy with absolute ownership or with termination of ownership. This is similar to the disagreement on the ownership of specified *Hady* (i.e. sacrificial animal), the ownership of the wealth vowed to be paid as charity, and the ownership of the endowed wealth allocated for specific persons, with regard to which a question arising whether to be regarded as wealth the right thereto is transferred to Allah, or remains in the ownership of the endower, or transferred to the person for whom the endowment is allocated?⁽¹⁾

Imam Ibn Taymiyyah, reached an important conclusion, which is that persons, in their transactions, must set out conditions whereby the ownership is to be restricted in such a manner that achieve the interests of the parties of the transaction. In this case, transferring the ownership of the wealth is to be limited to the right to dispose of, as meant by his saying:

“If ownership is of various types where some types represent absolute ownership while others represent restricted ownership, this should not

(1) *“Majmû’ Al-Fatâwâ”*, (29: 178-179).

prevent the establishment of such an ownership to be at the discretion of persons, as they may establish the ownership where the interest is to be achieved and does not establish it where no interest is to be achieved. Shari'ah only prohibits actions implying probable or actual corruption. Accordingly, an action, not implying corruption or implying hidden or insignificant corruption, is not to be forbidden."⁽¹⁾

What Imam Ibn Taymiyyah mentioned applies to the equity in joint-stock companies, as the shareholders own these assets represented by their shares without any right to dispose thereof, except for selling these shares that represent the equity in the company on an unidentified basis. They, under the portions they own in the assets, are entitled to the dividends, and have the right to choose the company's managers and participate in the important decisions of the company. So, the shareholders, in this case, agree on transferring the ownership of their shares with such restrictions.

Accordingly, the basic principle with regard to calculating *Zakâh* is that it must be based on what the share represents in the zakatable assets. As for the opinion that *Zakâh*, in all cases, is due on the shares if acquired with the intention to be invested, it needs further consideration. This is a kind of estimation in calculating *Zakâh* based on drawing *Qiyâs* (i.e. analogical deduction) between such shares and exploited assets or goods stocked for trade based on the shareholder's intention to invest in such shares. This is a kind of similarity-based *Qiyâs*, which is a weak evidence in establishing Shari'ah rulings. It has been explained previously with regard to the conditions of applying estimation that estimation in calculating *Zakâh* may be applied to the condition that it is not to be opposed by a more important matter in terms of proximity to the Shari'ah ruling.

It is better for the shareholder to calculate *Zakâh* on the assets when paying *Zakâh* on the dividends. This opinion is more preponderant than applying similarity-based *Qiyâs* and it is the opinion adopted by the resolution of Islamic Fiqh Academy in its 13th session, which repealed the previous resolution requiring applying *Zakâh* of exploited assets on the shares of whoever cannot pay *Zakâh* based on the assets of the company.

(1) "*Majmû' Al-Fatâwâ*", (29: 180).

This resolution states:

“If companies have assets on which *Zakâh* is payable such as cash, goods stocked for trade, and debts owed by solvent debtors, and the *Zakâh* due on their assets has not been paid, and the shareholder cannot find out from the company’s accounting information the amount of zakatable assets for his shares, then thorough investigation shall be done as much as possible, and *Zakâh* shall be paid in accordance with the equivalent value of his shares of the zakatable assets. This applies in the case where the company is not in a major deficit to the extent that debts are greater in value than the assets.

If the companies, however, do not have assets on which *Zakâh* is payable, then their ruling shall be in conformity with resolution no. 28 (3/4) that the owner of such shares will not pay *Zakâh* on the market value of shares, but only on the basis of the dividends.”

Branch (2): Estimating *Zakâh* on *Harâm* (i.e. unlawful) wealth in joint stock companies

Since many companies are not free from prohibited transactions, and few of these companies get rid of prohibited returns received from their transactions, the purpose of this branch is to study this unlawful wealth in terms of the obligation of *Zakâh* thereof, particularly since it may be difficult to distinguish such unlawful wealth in these companies.

First: The concept of *Harâm* (i.e. unlawful) wealth

What is meant by unlawful wealth is everything that the Shari’ah forbids a Muslim to own and benefit from.⁽¹⁾

Unlawful wealth can be divided into two sections as follows:⁽²⁾

- (a) A thing unlawful for itself. It is something forbidden in itself by Shari’ah, such as wine, flesh of swine, and dead animals.
- (b) A thing unlawful for violating the rights of others. It is a thing that in itself is lawful, such as food, accommodation, clothes, vehicles, wealth, etc., but

(1) “*Ahkâm Al-Mâl Al-Harâm*”, `Abbâs Al-Bâz, (P. 40).

(2) “*Al-Furûq*”, (3: 96); “*Adh-Dhakhîrah*”, (13: 322); “*Majmû` Al-Fatâwâ*”, (28: 593-594).

unlawful because the right of others is attached thereto, i.e. obtained by prohibited ways.

Ibn Taymiyyah said:

“The prohibition of all these matters is due to injustice. There are two reasons behind such prohibition as follows:

- 1- It is taken without the satisfaction of its owner and in an illegitimate manner, which is a form of complete injustice, such as theft, treason, absorption, and this is the most popular types of prohibited acts.
- 2- It is acquired in an illegitimate manner without the permission of the Lawgiver, even if with the permission of its owner, such as forbidden contracts, including *Ribâ* (i.e. usurious transactions) and *Maysir* (i.e. gambling).”⁽¹⁾

Second: Zakâh on unlawful wealth

Scholars of Fiqh agree that *Zakâh* is not due on unlawful wealth. This is the famous opinion of the Hanafites,⁽²⁾ the Malikites,⁽³⁾ the Shafites⁽⁴⁾ and the Hanbalites.⁽⁵⁾

To support their opinion, they cited the hadith narrated by Abû Hurayrah (may Allah be pleased with him) stating:

“The Messenger of Allah (peace and blessings of Allah be upon him) said: ‘Allah, the Almighty, is Good and accepts only that which is good (lawful). And verily Allah has commanded the believers to do that which He has commanded the Messengers. So, He says: {“O Messengers, eat from the good foods and work righteousness. Indeed I, of what you do, am Knowing”}⁽⁶⁾ and He also says: {“O you who believe! Eat of the lawful things that We have provided you...”}⁽⁷⁾.”⁽⁸⁾

(1) “*Majmû’ Al-Fatâwâ*”, (28: 593-594).

(2) “*Al-Bahr Ar-Râ’iq*”, (2: 218 and 221); “*Radd Al-Muhtâr*”, (2: 288).

(3) “*Ash-Sharh Al-Kabîr*”, (1: 431); “*Ash-Sharh As-Saghîr*”, (1: 588).

(4) “*Al-Hâwî*”, (9: 400); “*Al-Majmû’*”, (9: 431).

(5) “*Kashshâf Al-Qinâ’*”, (5: 22); “*Sharh Muntahâ Al-Irâdât*”, (2: 263).

(6) Suarh *Al-Mu’minîn* (The Believers): 51.

(7) Suarh *Al-Baqarah* (The Cow): 172.

(8) “*Sahîh Muslim*”, Book of *Zakâh*, hadith no. (1015).

Illegally acquired wealth shall be returned to its owner or rid of, and thus actual ownership thereof cannot be established, and accordingly *Zakâh* is not payable thereon.

This is the opinion adopted by the fatwa of the 4th symposium on “*Contemporary Zakâh Issues*”, which reads as follows:

- “1- The wealth unlawful in itself is not subject to *Zakâh*, because it is not subject to valuation in the view of Shari’ah, and it shall be rid of in the manner prescribed by Shari’ah with regard to such wealth.
- 2- The wealth prohibited for reasons related to others’ rights, which is acquired illegally, is not subject to *Zakâh* while at the possession of its (illegitimate) holder. This is because it lacks the condition of absolute ownership necessary for *Zakâh*. If such wealth, however, is returned to its (legitimate) owner, *Zakâh* shall be paid for it for only one lunar year even if many years have elapsed while *Zakâh* had been to be paid for it, according to the selected opinion in this regard.
- 3- If the holder of unlawful wealth does not return it to its legitimate owner and only pays the amount of *Zakâh* due thereon, the sin remains unforgiven with respect to the amount of wealth that remains in the holder’s possession after the payment of *Zakâh*. The amount paid as *Zakâh* is regarded as a refunded part of the total wealth to be returned in full under Shari’ah and cannot be regarded as a fulfilment of the obligation of *Zakâh* on the part of the holder. In such case, the only way for the holder to discharge his liability with regard to such an unlawful wealth is to return the money to its legitimate owner, if known to him, or to pay the amount in full as charity if otherwise.”⁽¹⁾

Third: Estimation of *Zakâh* on unlawful wealth

Many joint-stock companies have unlawful transactions, which in return produce prohibited returns. Getting rid of such prohibited returns by the concerned company is the original Shari’ah ruling to be followed. If the company, whoever, does not get rid of such returns, and if *Zakâh* is deemed

(1) “*Proceedings and Researches of the 4th Symposium on Contemporary Zakâh Issues*”, (P. 627).

undue on such returns for being illegitimate, particularly where *Zakâh* is imposed by law, this can be regarded as an implicit approval for such prohibited returns, which may encourage illegitimate (Shari'ah non-compliant) forms of investment. Moreover, some investors choose to pay from their own wealth an amount equal to the prohibited investment as a way of getting rid of the unlawful wealth in their shares, which makes it difficult to determine with certainty the amount of unlawful wealth in the company.

For this reason, and others, a number of contemporary scholars⁽¹⁾ are of the opinion that the amount of *Zakâh* is to be taken from this unlawful wealth, even if this amount is not considered as Shari'ah-based *Zakâh*, and does not render the unlawful wealth as lawful. Here, it is more appropriate to take an amount of such unlawful wealth than to keep it at the disposal of such companies.

Imam Ibn Taymiyyah issued a similar fatwa regarding the wealth of the Bedouin robbers, where he said:

“*Zakâh* is to be paid for the wealth at the hands of these Bedouin robbers if its legitimate owner is unknown. This is because if such a wealth is owned by the person who possesses it at his hand, then he has to pay *Zakâh* for it. If, however, he is not the owner of such a wealth and its owner is unknown, then he must pay all of it as charity. Hence, it is better to pay an amount thereof, which is equal to the amount of *Zakâh*, as charity than not to pay anything thereof at all.”⁽²⁾

This opinion is adopted by Islamic Fiqh Academy in India⁽³⁾ in its resolution no. 27 (11/5), which states:

(1) “*Buhûth Wa-Fatâwâ Fî Ba`d Masâ'il Az-Zakâh*”, Ibn Manî`, (P. 148); “*Buhûth Fî Az-Zakâh*”, Rafiq Al-Misri, (P. 156).

(2) “*Majmâ' Al-Fatâwâ*”, (30: 325).

(3) The Islamic Fiqh Academy in India is a scholarly body established in 1988 AD at the initiative of Judge Mujâhid Al-Islâm Al-Qâsimî. Its objectives include reaching Islamic solutions for the problems resulting from economic, social, political and industrial changes, in accordance with the Islamic frameworks. The Academy holds an annual Fiqh symposium to discuss the topics and issues raised by recent changes. The Academy consists of members from different countries of the Islamic World in addition to a number of scholars of India. The Academy publishes a number of researches and studies in Arabic language, and translates a number of encyclopedias, books and research papers from =

“If returning the unlawful wealth is obligatory for whoever such a wealth is in his possession but he has not returned it, and kept it in his possession, while no one claims such a wealth back, then *Zakâh* is to be paid for it. At the same time, the wealth must be returned to its legitimate owner, if known, and if not, it may remain in the possession of the other person to be paid as charity without the intention to get rewarded thereof.

The basic principle with regard to unlawful wealth is to be returned to its legitimate owner if known, or otherwise it must be given as charity. If unlawful wealth is mixed with lawful wealth, then the amount of lawful wealth is to be determined through investigation and *Zakâh* must be paid thereon only.

But it is desirable to pay *Zakâh* on all wealth so that there is a certainty that *Zakâh* is to be paid for all wealth, and to discourage people from obtaining wealth illegally through oppression and prohibited methods. Also, to prevent the holder of unlawful wealth from benefitting from it, and from not paying the amount of *Zakâh*.”⁽¹⁾

Accordingly, unlawful wealth is to be estimated as lawful wealth with regard to the collection of *Zakâh*, and *Zakâh* shall be paid for it.



= the Arabic language into Urdu and Hindi, and verifies Fiqh manuscripts. Refer to the website of the Academy on the Internet: <http://www.ifa-india.org/>.

(1) “*Fatâwâ Fiqhiyyah Mu`âsirah*” [Contemporary Fiqh Fatwas], The Islamic Fiqh Academy in India, (P. 166).

Topic (III)

Estimation Regarding the Condition of the Elapse of Hawl

This topic is aimed at studying the estimation regarding the condition of the elapse of Hawl (i.e. Zakâh year) in the Zakâh for joint-stock companies, which at the present time prepare their balance sheets and all their work in the Gregorian calendar (solar year), with which it becomes difficult to consider the provisions of Zakâh based on the Hijri calendar (lunar year).

First: Fiqh basis for the condition of the elapse of Hawl

As previously stated, the elapse of a full lunar year (i.e. Hawl) is one of the conditions of Zakâh, based on the Prophetic hadith stating:

“No Zakâh (is to be paid) for a wealth until Hawl (i.e. Zakâh year) has passed.”⁽¹⁾

The nation is unanimously agreed on this condition,⁽²⁾ which is limited to cash and livestock, unlike crops based on Allah’s saying:

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- (1) “*Sunan Ibn Mâjah*”, Chapters on Zakâh, Chapter: Those who acquire wealth, hadith no. (1792); “*Sunan Ad-Dâraquṭni*”, Book of Zakâh, Chapter: The Obligation of Zakâh upon the elapse of Hawl, hadith no. (1872); “*As-Sunan Al-Kabîr*”, Al-Bayhaqî, Book of Zakâh, Chapters of Zakâh on freely grazing livestock, Chapter: No Zakâh is to be paid for a wealth until a full lunar year has passed, (4: 103), on the authority of `Ā'ishah (may Allah be pleased with her) from the Prophet (peace and blessings of Allah be upon him). This hadith is not Ṣahîh (i.e. authentic) as a Marfû` (i.e. traceable) hadith. However, it is Ṣahîh as a Mawqûf (i.e. untraceable) hadith narrated by a number of the Prophet’s companions, including Ibn `Umar (may Allah be pleased with him). It is also narrated by Imam Mâlik in “*Al-Muwatta`*”, (1: 211); “*Muṣannaf Ibn Abû Shaybah*”, hadith no. (7030); “*Muṣannaf `Abdur-Razzâq*”, hadith no. (7030 and 7031). Having deemed this hadith as a Da`îf (i.e. weak) hadith, Al-Bayhaqî said in his “*Sunan Al-Bayhaqî*”: “The basis for that is the authentic Āthârs (i.e. narrations from the companions) regarding it on the authority of Abû Bakr, `Uthmân, `Abdullâh Ibn `Umar and other companions.” In “*Al-Amwâl*”, Abû `Ubayd commented on this hadith saying: “If this hadith has a basis, then it is the Sunnah (to be adopted); otherwise, there is a good example to be followed in the companions we named.”
- (2) “*Al-Ijmâ`*”, Ibnul-Mundhir, (P. 54); “*Marâtib Al-Ijmâ`*”, (P. 68); “*At-Tamhîd*”, (20: 155); “*Al-Mughnî*”, (4: 74).

{“... and give its due (Zakâh) on the day of its harvest...”}⁽¹⁾

It is established in Shari’ah that the Hijri (lunar) year is the *Hawl* (i.e. *Zakâh* year) considered in determining the *Zakâh* and other Shari’ah times, based on Allah’s saying:

{“They ask you (O Muhammad) about the new moons. Say: These are signs to mark fixed periods of time for mankind and for the Pilgrimage.”}⁽²⁾

Imam Ash-Shâfi`î (may Allah confer mercy upon him) said:

“Allah has made times to be based on new moons for Muslims, for Allah, the Almighty, says:

{“They ask you (O Muhammad) about the new moons. Say: These are signs to mark fixed periods of time for mankind and for the Pilgrimage.”}

This means that all times are to be based on new moons for Muslims, and no calendar is to be adopted by Muslims except for that depends on new moons.”⁽³⁾

This principle is well-established to the four Schools of Fiqh and to others who see the *Hawl* as a condition for *Zakâh*. Also, there is no disagreement among the four Schools of Fiqh that the time of harvest is the time considered for *Zakâh* on wealth for which the one-tenth thereof is to be paid as *Zakâh*, although the harvest is mostly related to the Gregorian calendar (i.e. solar year) and the four seasons. But, the basis on which the Shari’ah makes the obligation of *Zakâh* dependent is the harvest itself.

Based on the above, the Imam (i.e. ruler) shall send the collectors to collect *Zakâh* near the due time, so he sends the collectors to collect *Zakâh* on crops on the day of harvest, and *Zakâh* on livestock at a specific time based on

(1) Suarh *Al-An`âm* (Cattle): 141.

(2) Surah *Al-Baqarh* (The Cow): 189.

(3) “*Al-Umm*”, (3: 96); “*Badâ’i` As-Sanâ’i`*”, (2: 13); “*Tabyîn Al-Haqâ’iq*”, (1: 253); “*Al-Muqaddimât Al-Mumahhidât*”, (1: 279-280); “*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*”, (1: 431); “*Al-Majmû`*”, (5: 327); “*Tuhfat Al-Muhtâj*”, (3: 232); “*Kashshâf Al-Qinâ`*”, (4: 327); “*Sharh Muntahâ Al-Îrâdât*”, (2: 184).

the Hijri (lunar) year. This is the opinion adopted by the Shafiites⁽¹⁾ and the Hanbalites.⁽²⁾

Imam Ash-Shâfi'i preferred that the collectors be sent before the month of Muharram.

In this regard, Imam Ash-Shâfi'i said:

“The ruler shall send the collectors of *Zakâh* before the year has passed, so that they come to *Zakâh* payers upon the elapse of the *Hawl*, to collect *Zakâh* from them. I prefer that *Zakâh* be collected in the month of Muharram. I saw the collectors collect it in Muharram whether in summer or winter. Yet, collecting *Zakâh* shall have specific month. This is because if we link its due months to the summer, we would make its time based on calendar other than the new moons, which Allah has made as fixed periods of time.”⁽³⁾

Based on this, “when the collector arrives in Muharram, he shall collect *Zakâh* from those upon whose wealth a full lunar year has passed. As for those upon whose wealth a full lunar year has not yet passed, *Zakâh* may be collected in advance upon their consent, but if they refuse to accelerate *Zakâh* payment, they shall not be forced to do so. In such a case, the collector has the choice either to appoint someone to collect *Zakâh* on its due time or to collect it himself.”⁽⁴⁾

The Malikites are of the opinion that the Imam (i.e. ruler) shall send the collectors to collect *Zakâh* on livestock before the summer at the appearance of Pleiades, as stated in “*Al-Mudawwanah*”:

“Mâlik said: ‘It is the tradition of the rulers to send the collectors before summer and when the Pleiades appears. The people then would walk with their livestock to their waters. This is the opinion we adopt because it implies leniency to people as they meet near water, and to the collector due to the gathering of people.’”⁽⁵⁾

(1) “*Mughnî Al-Muhtâj*”, (4: 192); “*Tuhfat Al-Muhtâj*”, (7: 175).

(2) “*Kashshâf Al-Qinâ’*”, (4: 419); “*Matâlib Uli An-Nuhâ*”, (2: 129).

(3) “*Al-Umm*”, (2: 18).

(4) “*Al-Hâwi Al-Kabîr*”, (4: 119).

(5) “*Al-Mudawwanah*”, (1: 376).

This requires depending on the Gregorian calendar (solar year). Because the Pleiades, as estimated by earlier scholars, rises on the 12th of May of the solar year. Ibn `Abdul-Barr said:

“The Pleiades rise in the morning according to the scholars. They may rise after twelve nights pass in the month of May.”⁽¹⁾

The apparent meaning of the scholars’ opinions is to forgive the excess of the solar year.

The following are the texts of the Malikites on this issue:

- In his “*Adh-Dhakhîrah*”, Al-Qarâfi said:

“According to the Qur’an and the Sunnah, the collectors are to be sent at the appearance of the Pleiades at the beginning of the summer. Our Sheikh said: ‘They shall be sent before Muḥarram to collect *Zakâh*, so that the poor take, at the beginning of the *Hawl* (i.e. *Zakâh* year) what is sufficient for them for the entire year.’ This is based on the saying of `Uthmân: ‘*This is the month for you to pay your Zakâh...*’ Moreover, linking the time of *Zakâh* to Pleiades leads to an increase in the *Hawl*, since the solar year is longer than the lunar year. The answer to the first argument is that it is aimed at satisfying the need (of the poor), which

(1) “*Al-Istidhkâr*”, Ibn `Abdul-Barr, (19: 25); “*Sharḥ Mushkil Al-Âthâr*”, (6: 75); “*Al-Jâmi` Li-Ahkâm Al-Qur`ân*”, (8: 477). The first appearance of Pleiades is the time when the fruits are fragrant and safe from blight, as stated by Al-Qurtubî regarding the explanation of Allah’s saying: {“...*Look at their fruits when they begin to bear, and the ripeness thereof...*”}, and His saying: {“... *and give its due (Zakâh) on the day of its harvest...*”}. He said: “This is the ripeness on which the permissibility of selling and eating dates depends and the time where they are safe from blight, which is at the rise of the Pleiades, according to the tradition set by Allah, the Almighty, based on His knowledge and wisdom.” In this regard, he narrated a hadith related by Imam Aḥmad in his “*Musnad*”, (2: 341), and Aṭ-Tahâwî in “*Sharḥ Mushkil Al-Âthâr*”, hadith no. (2287) on the authority of Abû Hurayrah as a *Marfû`* (i.e. traceable) hadith, stating: “*When a star appears in the morning, then the blight will be lifted.*” The *Isnâd* (i.e. chain of transmission) of this hadith is weak. Al-Bukhârî related a *Mu`allaq* (i.e. suspended) hadith from Khârîjah Ibn Zayd Ibn Thâbit that Zayd Ibn Thâbit did not use to sell the fruits of his land until the Pleiades appeared, so that the yellow (fruits) can be distinguished from the red (fruits). What is meant here is that the first appearance of Pleiades is the time when the collectors are to be sent to collect *Zakâh* on livestock, and it is the appropriate time for the dates to be estimated for *Zakâh* on palm trees, because it is the time when their owners dispose of it by sale.

is not a matter of disagreement, and to the second argument is that it is based on gold and silver, for which a debt is to be cancelled. As for the third argument it is that this is forgiven for the reason that livestock in the winter are satisfied with grass instead of water, so when summer comes, they gather at the water. Hence, the collectors are not overburdened by movement (from one place to another), and because it is the practice of the people of Medina. Sanad said: 'And they (the collectors) go out for crops and fruits when they ripen.'⁽¹⁾

- In "*Mawâhib Al-Jalîl*", Al-Hattâb said:

"The opinion adopted by many scholars of the School is that the *Zakâh* on livestock is to be taken in this manner, even if it leads to one *Hawl* being dropped from every thirty-three years.

In "*At-Tawdîh*", he said: 'Mâlik rested the ruling here on solar years, even if it leads to one *Hawl* being dropped from every thirty-three years, for the sake of public interest...'

Ibn `Arafah said: 'Sending (the collectors) at that time is in the interest of the two parties; for the people gather for water, not because it is a *Hawl* (i.e. *Zakâh* year) for all people, but for everyone subject to the lunar *Hawl*. Accordingly, the one whose lunar-year-based *Hawls* exceed his solar-year-based *Hawls* with one *Hawl*, shall pay *Zakâh* for such a *Hawl*, as it is the case when the collector does not collect the *Zakâh* due on him for one year. The preponderant opinion, however, is different from what he mentioned; otherwise, the condition of the collector will be of no use.'

In "*Al-Mudawwanah*", he said about the one who died after the elapse of the *Hawl* before the arrival of the collector: As if he died before the elapse of the *Hawl*, since the *Hawl* is the arrival of the collector upon the elapse of a full lunar year. This definitely indicates that one year has passed and accordingly *Zakâh* should have been paid.'

In Ibnul-Mawwâz's book, Mâlik is reported to have said: 'He (the payer) may slaughter and sell after the year has elapsed before the collector

(1) "*Adh-Dhakhîrah*", (2: 271).

arrives, even if doing so leads the amount of *Zakâh* to decrease. However, whoever does so to evade *Zakâh*, must pay an amount equal to such amount of *Zakâh* thus evaded.’

In the same book, Mâlik also said: ‘If the (*Zakâh*) collector does not come to him (*Zakâh* payer), he shall wait for him without paying anything out of the *Zakâh*. The same applies where a *Hawl* elapses shortly after the collector has come to him if the Imam is just and trustworthy. But if he is not so, the person may pay the *Zakâh* due for this year if the Imam (i.e. ruler) is unaware of such obligation, otherwise, he is to wait until the collector comes to him.’⁽¹⁾

Second: The ruling on paying *Zakâh* based on the solar year in joint-stock companies

Contemporary scholars of Fiqh differed regarding this issue into three opinions as follows:

- (a) It is absolutely impermissible to pay *Zakâh* based on the Gregorian calendar (i.e. solar year), or depend on it as to determine the due time of paying *Zakâh*. Accordingly, the Hijri calendar (i.e. lunar year) shall be taken into account in all the rulings related to *Zakâh*.

This is the opinion implied in the fatwa of the Permanent Committee,⁽²⁾ where it answered a question about institutions issuing their balance sheet based on the Gregorian calendar, and pay *Zakâh* accordingly. The committee stated:

“*Zakâh* is due on property after the passing of 12 months according to the Hijri calendar (i.e. lunar year). Allah, Exalted be He, says: {“***They ask you (O Muhammad) about the new moons. Say: These are signs to mark fixed periods of time for mankind and for the Pilgrimage.***”}⁽³⁾ It is impermissible to delay the payment of *Zakâh* beyond the fixed time unless a legal excuse preventing the payment is verified. Allah, Exalted be He, says: {“***... and give its due (Zakâh) on the day of its harvest...***”}⁽⁴⁾

(1) “*Mawâhib Al-Jalîl*”, (2: 269-270).

(2) “*Fatwas of the Permanent Committee for Scholarly Research and Ifta*”, (9: 200).

(3) Surah *Al-Baqarh* (The Cow): 189.

(4) Suarh *Al-An`âm* (Cattle): 141.

Allah, Exalted be He, also says: {“...and perform *As-Salâh (Iqâmat As-Salâh)*, and give *Zakâh*...”}⁽¹⁾ This command indicates immediate response.”

- (b) It is permissible to depend on the Gregorian calendar (i.e. solar year) to determine the time of payment but not the due time of *Zakâh* based on the permissibility of delaying the payment of *Zakâh* when necessary. Accordingly, all the rulings on *Zakâh* are to be established based on the Hijri calendar (i.e. lunar year), taking into account the difference of days between the lunar year and the solar year, the difference to be estimated as a way of accelerating *Zakâh*.

This is the opinion adopted by the Shari’ah Board at Al-Rajhi Bank (Paragraph 23), and by the Preparatory Committee of the Shari’ah Board of Bank Al-Bilad (Minute 26), which reads as follows:

- “1- Calculating *Zakâh* on the basis of the Gregorian calendar (i.e. solar year) contradicts with the Shari’ah principle. This is because the provisions of Shari’ah are based on the lunar months.
- 2- Calculating *Zakâh* on the basis of the Gregorian calendar (i.e. solar year) implies injustice for both the owner of the wealth and the poor (entitled to *Zakâh*). As for the owner of the wealth, this is because he shall pay *Zakâh* for the lunar year only, and paying any excess amount based on the solar year is not justified. As for the poor, it is because calculating *Zakâh* based on the solar year at the same rate as *Zakâh* calculated based on the lunar year despite the difference in the number of days between the two years involves injustice.
- 3- The Hijri calendar (i.e. lunar year) is that upon which influential rulings are based on regarding whether or not *Zakâh* is due, such as the ruling on a shareholder who invest in to the company before or after the due time of *Zakâh*, or the loss of the entire wealth before or after the due time of *Zakâh*, or the occurrence of a loss or profit after or before the due time of *Zakâh*, etc.
- 4- Calculating *Zakâh* on the basis of the Hijri calendar (i.e. lunar year) is

(1) Surah *Al-Baqarh* (The Cow): 43.

inclusive of profit and capital with precision and certainty, which achieves justice in this regard.”

- (c) It is permissible to depend on the Gregorian calendar (i.e. solar year) in all the provisions of *Zakâh*, with regard to the due time as well as the time of payment.

This is the opinion adopted by the First Conference on *Zakâh*, where it is stated in its recommendations that:

“If there is a difficulty, then the committee sees that it is permissible, as a facilitation if the balance sheets continue to be prepared based on the Gregorian calendar (i.e. solar year), to take into account the number of days by which the solar year exceeds the lunar year, whereby *Zakâh* to be determined at approximately 2.575%.”⁽¹⁾

In the recommendations of the Second Conference, it is stated:

“The symposium on the *Hawl* (i.e. *Zakâh* year) confirmed that the fiscal year for *Zakâh* is the lunar year, not the solar year, and therefore it is necessary to take this issue into account when calculating *Zakâh* for companies that prepare their financial statements on the basis of the Gregorian calendar (i.e. solar year) according to the conclusion of the First Conference on *Zakâh*.”⁽²⁾

This is the opinion adopted by the Kuwait Zakat House, where “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” states:

“If it is difficult to prepare the data necessary for *Zakâh* according to the lunar year, then it is permissible to adopt the solar year, taking into account the difference with regard to the obligation of *Zakâh*.”⁽³⁾

The Shari’ah Standard no. (35) on *Zakâh*, however, may be interpreted to imply the first and the second opinions, where it states:

“In case of adopting the solar year for cash and commercial assets, the *Zakâh* rate becomes 2.577%.”⁽⁴⁾

(1) “*Fiqh Researches on Contemporary Zakâh Issues*”, (2: 872).

(2) *Ibid.*, (2: 879).

(3) “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*”, (P. 23).

(4) “*Shari’ah Standards*”, Shari’ah Standard no. (35): *Zakah*, item: (3/2/3).

The research, as presented above, is concerned with the practical reality of many companies, which is that they pay *Zakâh* on the basis of the Gregorian calendar (i.e. solar year). Hence, in such a case estimation is to be made based on either of two ways, as follows:

First: Adherence to the lunar *Hawl* (i.e. *Zakâh* year), based on the original ruling regarding the due time of *Zakâh*. In this case, consideration is given to estimating the method of determining the due amount of *Zakâh* without knowing the company's assets.

This aspect of estimation is appropriate for the shareholder who personally pays *Zakâh* on all his wealth in a specific time of the year. Estimating *Zakâh* for the shareholder who lacks appropriate knowledge of financial statements will be discussed later.

Second: Payment of *Zakâh* based on the solar year because it is the calendar adopted in preparing the financial statements. This is appropriate for companies that give *Zakâh* to the authorities concerned with *Zakâh*. In this case, paying *Zakâh* based on the Gregorian calendar (i.e. solar year) requires consideration of two matters:

- (a) Looking into the Shari'ah rulings related to the reason behind the time of obligation.
- (b) Looking into the amount of *Zakâh* due according to the Gregorian calendar (i.e. solar year).

Third: The impact of paying *Zakâh* based on the solar year on the amount of *Zakâh*

The scholars arguing that it is permissible to rely on the Gregorian calendar (i.e. solar year) in calculating *Zakâh* agree that the difference in the number of days between the solar year and the lunar year shall be taken into account when calculating the amount of *Zakâh*, but they differ regarding determining the amount into two methods:

First method: 2.5775% is to be paid in the event that *Zakâh* is calculated based on the Gregorian calendar (i.e. solar year), without distinguishing between a leap year and a normal year.

This is the opinion adopted by the First Conference on *Zakâh*, the Kuwait Zakat House,⁽¹⁾ and the Shari'ah Board of Al-Rajhi Bank.⁽²⁾

Second method: 2.577% is to be paid in the event that *Zakâh* is calculated for a normal solar year and 2.5775% for a leap (solar) year.

The same applies to the Shari'ah Standard no. (35) on *Zakâh* issued by the Shari'ah Board of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI),⁽³⁾ and the Shari'ah Board of Bank Albilad.⁽⁴⁾

Fourth: Estimation regarding the condition of the elapse of Hawl in the *Zakâh* for joint-stock company

The balance sheet does not show the company's assets and liabilities except at the end of the period with comparison to the beginning of the statement period. This implies that there is a change in the company's assets during the lunar Hawl of the zakatable assets. This change, in terms of its impact on the calculation of *Zakâh*, is either of no impact on the Hawl, such as converting from cash to goods stocked for trade or vice versa, or it impacts the Hawl due to wealth increase or decrease affecting the calculation of *Zakâh*.

There is no doubt that verifying the origins of this wealth, its sources, and the date of its acquisition is possible, but it entails difficulty of calculation. The opinion appearing to be the preponderant is that the Gregorian calendar (i.e. solar year) may be relied upon in the calculation of *Zakâh* for joint-stock companies, which is supported by the following:

- 1- The opinion adopted by the Malikites based on the argument that the ruler shall send the collector at the first appearance of Pleiades in order to achieve the interest of people in gathering around the water. The Malikites argue that the consequent increase or decrease in the wealth on which *Zakâh* is due is not be considered.

(1) "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*", (P. 23). In the fatwas of Kuwait Finance House, "*Shari'ah Fatwas on Economic Issues*", volume 4, fatwa no. (751), according to which the difference between the Hijri calendar (i.e. lunar year) and the Gregorian calendar (i.e. solar year) is equal to (0.077%) without a distinction between a leap year and a common year.

(2) Paragraph (24).

(3) "*Shari'ah Standards*", Shari'ah Standard no. (35): *Zakah*, item: (3/2/3).

(4) "*Standards Abstracted from Resolutions of Shari'a Board of Bank Albilad*", Standard (486).

Although Malikites do not consider the difference between the solar year and the lunar year with regard to the amount of *Zakâh*, the conclusion reached by the contemporary *Ijtihâd* that the difference in the amount of *Zakâh* is to be taken into account so that the amount due as *Zakâh* shall be estimated at 2.5775% is the most appropriate and closet opinion to the original ruling on calculating *Zakâh*. This is because when it is not possible to apply the original ruling, then the ruling most appropriate and closest to it is to be applied instead.

- 2- The opinion adopted by the Hanafites that the wealth acquired during the *Hawl* (i.e. *Zakâh* year) is subordinate to the zakatable wealth in the *Hawl*. The Malikites agree with them regarding apparent wealth. So, it is to be estimated that one lunar year (*Hawl*) has passed on all the wealth, whether a full *Hawl* has actually passed on it or not. The same ruling applies to profits and acquired wealth.

An exception may be made if the amount of the wealth acquired affects the calculation of *Zakâh*, such as the increase of capital in joint-stock companies. In such a case, *Zakâh* is to be calculated on this increase from the date of the increase to the end of the fiscal year, which is an intermediate estimation between the opinion of the Hanafites and the Malikites, stating that the wealth acquired is to be added to the *Nisâb* of *Zakâh* with regard to both the *Hawl* and the amount of *Zakâh*, and the opinion of the Shafiites, stating that a new *Hawl* is to be started for the acquired wealth. This is consistent with the aforementioned Shari'ah purpose of balancing between the rights of the poor and the rich, and the facilitation in calculating *Zakâh*.

- 3- According to all scholars of Fiqh, for a *Hawl* (i.e. *Zakâh* year) to be considered, the *Nisâb* of *Zakâh* shall not be interrupted during this *Hawl*, an assumption which, though possible, is unlikely to apply to joint-stock companies, and accordingly is not to be considered as it is inconsistent with the original ruling in this regard.

Treatise Two

Estimation Regarding Conditions of Zakatable Wealth in Joint-Stock Companies



This treatise is divided into four topics as follows:

Topic (I)

Estimation Regarding Conditions of *Zakâh* on Gold and Silver

The original ruling regarding *Zakâh* on cash is that it relates to gold and silver exclusively with regard to dealing with currencies or goods stocked for trade, unless the condition of *Zakâh* on goods stocked for trade is fulfilled as will be explained later. However, since gold and silver are no longer used as currencies as they used to be in the past, this topic will discuss contemporary currencies with regard to their relation to gold and silver.

Estimation regarding *Zakâh* on contemporary currencies

It is known that contemporary currencies such as riyal, dollar and other currencies issued by the central banks are not gold or silver. Yet, the Shari'ah rulings regarding *Zakâh* on cash are related to gold and silver. So, shall *Zakâh* on currencies be treated as *Zakâh* on gold and silver or as another kind of *Zakâh*? This issue caused a lot of disagreement at the time of when these currencies were circulated.

Contemporary *Ijtihâd* (i.e. legal reasoning and discretion) has paid particular attention to the issue of *Zakâh* on currencies because of the refusal to deal with gold and silver as a mediator when exchanging for these currencies.

I decided to lay the Shari'ah basis for this contemporary *Ijtihâd* based on the *Ijtihâd* of earlier scholars of Fiqh regarding *Zakâh* on *Fulûs* (i.e. cash), as follows:

Linguistically speaking, Arabic "*Fulûs*" (i.e. cash or money) and "*Aflus*" are the plural forms of "*Fals*". They refer to currencies made of metals other than gold and silver which have become the currency used by people in different transactions.⁽¹⁾

The scholars of Fiqh differed regarding the ruling of *Zakâh* on cash into two views:

First view: It has the same ruling as goods stocked for trade, so *Zakâh* is due on cash if it is intended for trade. However, *Zakâh* will not be due on cash if it is intended to be acquired and saved.

This is the approved view according to the Hanafites,⁽²⁾ the Malikites,⁽³⁾ the Shafiites⁽⁴⁾ and the Hanbalites.⁽⁵⁾

The basis for this view is that the obligation of *Zakâh* is limited to zakatable wealth defined by Shari'ah, and cash does not enter into any of the zakatable wealth unless it is intended for trade.

Imam Mâlik reported the consensus of scholars that *Zakâh* is undue on cash, as stated in "*Al-Mudawwanah*":

"I said: If a man had cash at value of two hundred dirhams, then a full lunar year (*Hawl*) had passed over it, what does Mâlik say about that? He said: 'No *Zakâh* is due on this cash. There is no disagreement regarding this, except when cash is used for trade, then it will be treated as goods stocked for trade with regard to *Zakâh*."⁽⁶⁾

Second view: *Zakâh* shall be due on cash if it is circulated or used for trade.

(1) See the Arabic root "*Fâ', Lâm, Sîn* (i.e. *FLS*) [ف ل س]" in "*Mukhtâr As-Sihâh*", (P. 511); "*Tâj Al-'Arûs*", (16: 343); "*Mu'jam Al-Mustalahât Al-Iqtisâdiyyah*", Nazîh Hammâd, (P. 355).

(2) "*Al-Mabsût*", (2: 198); "*Al-Fatâwâ Al-Hindiyyah*", (1: 179).

(3) "*Âsh-Sharh Al-Kabîr*", (1: 455); "*Hâshiyat Al-'Adawi 'Alâ Al-Khurashî*", (2: 177-178).

(4) "*Al-Umm*", Ash-Shâfi'i, (3: 89); "*Mughni Al-Muhtâj*", (1: 394).

(5) "*Kashshâf Al-Qinâ'*", (5: 5); "*Matâlib Uli An-Nuhâ*", (2: 83 and 89).

(6) "*Al-Mudawwanah*", (1: 341).

This is a view of the Hanafites,⁽¹⁾ the Malikites,⁽²⁾ and the Hanbalites.⁽³⁾

This is the view adopted in the resolutions of Fiqh Academies and Councils regarding *Zakâh* on contemporary currencies, such as the Council of Senior Ulema⁽⁴⁾ in its resolution no. (10) dated 17/8/1393 AH,⁽⁵⁾ the MWL Islamic Fiqh Council in its resolution no. 22 (6/5),⁽⁶⁾ the OIC International Islamic Fiqh Academy (IIFA) in its resolution no. (9) 3/7/86,⁽⁷⁾ and the Shari'ah Board of the Accounting and Auditing Organization for Islamic Institutions (AAOIFI) in its Shari'ah Standard no. (35) on *Zakâh*, item 3/1/2.

The basis for this view is that contemporary currencies have replaced gold and silver in being the values of things, the stock of wealth, and a medium of exchange. Rather, it has become a measure of gold and silver, so currencies shall be considered as being stand-alone units of wealth, as it is the case with gold and silver.

The view adopted by the majority of scholars is more suitable in terms of Fiqh-based consideration. This is because *Zakâh* on cash is related to gold and silver, which are originally valuable and priceable, unlike currencies which acquires its value by the people circulating it.

It is "originally from the category of goods stocked for trade, and the priceability is a result thereof."⁽⁸⁾ But, when it has become circulated and a substitute for gold and silver, it was added to money. In this regard, Imam Ibn Taymiyyah says: "The circulated money is most subject to the rulings on

(1) "*Hâshiyat Ash-Shurunbulâlî 'Alâ Durar Al-Hukkâm*", (1: 181).

(2) "*Al-Fawâkih Ad-Dawâni*", (1: 329).

(3) "*Al-Insâf*", (7: 9).

(4) The Council of Senior Ulema, the Kingdom of Saudi Arabia: A Shari'ah body consists of a number of senior specialists in Islamic Shari'ah in Saudi Arabia. They are selected under a royal decree. Under its law, the Council studies Fiqh-related issues referred to it by the ruler, and makes recommendations regarding religious issues related to the determination of general provisions to guide the ruler. The Council was established in 1391 AH, and is a highly-esteemed reference in the Kingdom of Saudi Arabia and the Islamic world. See: "*The Law and Regulations for the Workflow of the Council of Senior Ulema*", (P. 3); "*Al-Futyâ Al-Mu`âsirah*", p. 808.

(5) "*Researches of the Council of Senior Ulema*", (1: 88).

(6) "*Resolutions of the Islamic Fiqh Council*", (P. 110).

(7) "*Journal of the International Islamic Fiqh Academy (IIFA)*", issue no. (3), (3: 1965).

(8) "*Majmû' Al-Fatâwâ*", (29: 459).

priceable units.”⁽¹⁾ Accordingly, *Zakâh* on it shall be subject to the “Shari’ah-Based Estimations Rule”.

Contemporary collective *Ijtihâds* considered the difference between the reality of money in earlier times and the reality of currencies in our present time, and the consequences of not applying *Zakâh* to each of them. Money was not in the rank of gold and silver in terms of being a medium of exchanges and a means of accumulating wealth and valuating objects. But in our present time, currencies have become the main medium of exchange and the main means of accumulating wealth and valuating objects, to the extent that gold and silver themselves are valued by these currencies.

As for the consequences of not applying *Zakâh* to them, the opinion that *Zakâh* is not due on money if being for saving and expenditure does not breach the Shari’ah purpose regarding achieving justice between the poor and the rich. However, the opinion that *Zakâh* is not due on contemporary currencies if intended for saving would breach this Shari’ah purpose.

In this regard, Imam Muḥammad Al-Khadir Husayn says:

“The paper money used in place of gold and silver are subject to *Zakâh* just like gold and silver. This is because considering them as goods stocked for trade will lead to waive the right of the poor, which will, in turn, jeopardize a pillar of Islam (*Zakâh*).”⁽²⁾

(1) Ibid., (29: 469).

(2) “*Fatâwâ Al-Imâm Muḥammad Al-Khadir Husayn*”, (P. 371).

Topic (II)

Estimation Regarding

Conditions of *Zakâh* on Goods Stocked for Trade

First: The concept of goods stocked for trade (Arabic: *'Urûd*)

The Arabic “*'Urûd*” (i.e. Goods) is the plural of “*'Ard*” which means any commodity other than money, including animals, real estate, clothes, and all forms of properties.⁽¹⁾

Second: Legitimacy of *Zakâh* on goods stocked for trade

Zakâh must be paid on goods stocked for trade according the majority of scholars.

In this regard, Abû `Ubayd says:

“This applies to the money of our merchants, as all Muslims agree that *Zakâh* is due on goods stocked for trade. As for the other opinion, it does not belong to the schools of our scholars.”⁽²⁾

Ibnul-Mundhir says:

“The Muslim scholars unanimously agree that *Zakâh* is due on goods stocked for trade, if a full lunar year (*Hawl*) has passed thereon.”⁽³⁾

The original ruling concerning this matter is that adopted by the Prophet’s companions and those who followed them which renders *Zakâh* due on goods stocked for trade, based on Allah’s Saying:

{“Take Sadaqah (i.e. Zakâh) from their wealth in order to purify them and sanctify them with it...”}⁽⁴⁾

(1) See the root “*'Ayn, Râ', Dâd* (i.e. ` R D) [ع ر د]” in “*Maqâyis Al-Lughah*”, (4: 269); “*Al-Misbâh Al-Munir*”, (pp. 328-329); “*Mu`jam Al-Mustalahât Al-Iqtisâdiyyah*”, Nazih Hammâd, (P. 313).

(2) “*Al-Amwâl*”, (2: 85).

(3) “*Al-Mughni*”, (4: 248).

(4) Surah *At-Tawbah* (Repentance): 103.

And Allah's saying:

{“And those in whose wealth there is a known right, For the beggar who asks...”}⁽¹⁾

This is in addition to other Quranic Verses in this regard.

As for the Sunnah, this is confirmed by hadiths implying some weakness, or not regarded as decisive texts in this regard, including:

- 1- The hadith narrated by Abû Dâwûd from Samurah (may Allah be pleased with him) who said:

“Allah’s Messenger (peace and blessings of Allah be upon him) used to order us to pay Zakâh from whatever we prepare for sale.”⁽²⁾

- 2- The hadith narrated by Ad-Dâraqutnî from Abû Dharr (may Allah be pleased with him) in which he said:

“I heard Allah’s Messenger (peace and blessings of Allah be upon him) saying: “Zakâh is due on camels, Zakâh is due on sheep, and Zakâh is due on clothes.”⁽³⁾

Also, there are numerous *Athars* (i.e. narrations from the companions of the Prophet) concerning this issue, including:

- 1- The narration of Himâs, who said:

“`Umar passed by me, and said: ‘Pay Zakâh on your property.’ I said: ‘I have no property but quivers and leather.’ He said: ‘Valuate them and then pay their Zakâh.’”⁽⁴⁾

(1) Surah *Al-Ma`ârij* (The Stairways): 24-25.

(2) “*Sunan Abû Dâwûd*”, Book of *Zakâh*, Chapter: *Zakâh* on goods stocked for trade, hadith no. (1562); “*Al-Bulûgh*”, Al-Hâfiz, hadith no. (623), Al-Hâfiz said: “With a *Layyin* (i.e. Lenient) *Isnâd* (i.e. chain of transmission).”

(3) “*Sunan Ad-Daraqutnî*”, Book of *Zakâh*, Chapter: No *Zakâh* is due on vegetables, (2: 128); “*As-Sunan Al-Kabîr*”, Al-Bayhaqî, Book of *Zakâh*, Chapters of *Zakâh* on silver, Chapter: *Zakâh* on trade, (4: 147). Ad-Dâraqutnî said: “Its narrators are trustworthy.”

(4) “*Muṣannaf `Abdur-Razzâq*”, Book of *Zakâh*, Chapter: *Zakâh* on goods stocked for trade, hadith no. (7099); “*Muṣannaf Ibn Abû Shaybah*”, Book of *Zakâh*, Chapter: What they said about goods in the possession of a man and one lunar year (*Hawl*) elapses thereon, hadith no. (10557); “*Al-Amwâl*”, Abû `Ubayd, (2: 80); “*As-Sunan Al-Kabîr*”, Al-Bayhaqî, Book of *Zakâh*, Chapter: *Zakâh* on trade, (4: 417).

Ibn Qudâmah said:

“This is an issue whose similarities are well known and was not denied, so it is a consensus.”⁽¹⁾

- 2- The narration of Abû `Ubayd that Ibn `Umar (may Allah be pleased with him) said:

“*Zakâh* is due on slaves or clothes intended for trade.”⁽²⁾

Another narration is reported from him stating:

“There is no *Zakâh* on goods except for goods stocked for trade.”⁽³⁾

- 3- The narration of Abû `Ubayd that Ibn `Abbâs (may Allah be pleased with him) used to say:

“There is no problem if one waits until he sells his goods, while *Zakâh* is due on him (i.e. on his goods).”⁽⁴⁾

As for consideration, goods stocked for trade are growing wealth, and thus *Zakâh* is due on them, as it is the case with freely grazing livestock. In this regard, Abû `Ubayd said:

“As for the wealth of trade, it is intended for growth and benefit. In such a case, it is similar to freely grazing livestock whose offspring and increase are sought, and thus *Zakâh* shall be due on them, except that each one of them is subject to *Zakâh* according to its requirements. That is, *Zakâh* on goods stocked for trade is based on the value of the goods, and *Zakâh* on livestock is based on the amounts specified by Shari`ah.”⁽⁵⁾

Third: Estimation regarding *Nisâb* of goods stocked for trade

Zakâh on goods stocked for trade is originally attached to *Zakâh* on gold and silver. This is why its *Nisâb* (i.e. minimum amount determining a person's

(1) “*Al-Mughni*”, (4: 249).

(2) “*Al-Amwâl*”, (2: 81).

(3) “*Al-Umm*”, Ash-Shâfi`i, (2: 49); “*Ma`rifat As-Sunan Wal-Âthâr*”, Al-Bayhaqî, hadith no. (8314). Ash-Shâfi`i deemed its *Isnâd* (i.e. chain of transmission) as being authentic in his old book, and Al-Bayhaqî reported it from him in his “*As-Sunan Al-Kabîr*”, (4: 147).

(4) “*Al-Amwâl*”, (2: 81).

(5) *Ibid.*, (2: 85).

zakatability) is estimated at the *Nisâb* of *Zakâh* on gold and silver, and it is valued with them, and added to them in completing the *Nisâb*. It was stated in the fatwas and recommendations of the 1st symposium on “*Contemporary Zakâh Issues*”:

“The trustworthy scholars of Fiqh unanimously agree that the *Nisâb* and the amount to be paid do not differ with regard to *Zakâh* on cash and *Zakâh* on goods stocked for trade.”⁽¹⁾

The scholars of Fiqh differed as to whether estimating the *Nisâb* of goods stocked for trade shall be based on gold or silver, into the following opinions:

Opinion (1): Any of them (silver or gold) may be selected for valuation in the event of equality. But when they differ in value, then the valuation shall be set according to the one reaches the *Nisâb*. If both of them reaches the *Nisâb* while one of them is more circulated, then the valuation shall be based on it, as adopted by the Hanafites.⁽²⁾

Opinion (2): The valuation is to be based on the metal for which it was bought. If they were bought for other goods, they shall be valued at the metal circulated in the country. If there are two metals circulated in the country, then the valuation shall be based on the one reaches the *Nisâb*. If both of them reaches the *Nisâb*, then valuation shall be based on the most beneficial to the poor, as adopted by the Shafiites.⁽³⁾

Opinion (3): The valuation is to be based on the most beneficial to the poor, regardless of the type of metal for which they were bought, as adopted by the Hanbalites.⁽⁴⁾

Opinion (4): The commodities often sold for gold is to be valued for gold and commodity often sold for silver is to be valued for silver, as it is the value of consumption. If a commodity is sold for both gold and silver, and both are equal in terms of *Zakâh*, either of them may be selected for valuation, as adopted by the Malikites.⁽⁵⁾

(1) “*Proceedings and Researches of the 1st Symposium on Contemporary Zakâh Issues*”, (P. 443).

(2) “*Ad-Durr Al-Mukhtâr*”, (2: 99); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 179).

(3) “*Mughni Al-Muhtâj*”, (2: 108); “*Tuhfat Al-Muhtâj*”, (3: 103).

(4) “*Kashshâf Al-Qinâ`*”, (5: 42); “*Sharh Al-Muntahâ*”, (2: 272).

(5) “*Adh-Dhakhîrah*”, (3: 686); “*Kifâyat At-Tâlib Ar-Rabbâni*”, (2: 169).

Opinion (5): Valuation is to be based on the *Nisâb* of gold in particular. This opinion has been adopted by contemporary scholars of Fiqh, including `Abdur-Rahmân Hasan, `Abdul-Wahhâb Khallâf, Abû Zahrah⁽¹⁾ and Dr. Muḥammad Sulaymân Al-Ashqar.⁽²⁾

This is due to the stability of the purchasing power of gold, and the fact that stability in the purchasing power of gold helps achieving the wisdom behind estimating the *Nisâb* in the most complete manner, unlike the *Nisâb* of silver. The *Nisâb* of gold, which is twenty dinars, was used in the era of the Prophet (peace and blessings of Allah be upon him) to buy approximately twenty of the Hejazi sheep. The *Nisâb* of silver, which is two hundred dirhams, was used to buy approximately twenty sheep as well. Meanwhile, the twenty *Mithqâls* (i.e. a unit of weight equal to 4.25 grams) are now (1417 AH) enough to buy twenty or less of the Hejazi sheep.⁽³⁾

What appears is that the opinion that gold is specified in valuating the *Nisâb* has its share of consideration. However, it did not appear to me that it is necessary to deviate from the opinion of the majority of scholars regarding considering the most beneficial to the poor when valuating the *Nisâb* of paper money and goods stocked for trade. This is because the obligation of *Zakâh* cannot be realized unless the *Nisâb* which the *Zakâh* payer owns is surplus to his basic needs and the payment of his debts. Yet, imposing such an amount of *Zakâh* does not cause any hardship to the *Zakâh* payer, and if this is true, then the *Nisâb* of *Zakâh* on silver shall not be considered and the valuation is to be based on the *Nisâb* of gold, the opinion, in my belief, has not been adopted by anyone of the earlier or late scholars. Hence, if it is correct to consider the *Nisâb* of silver in *Zakâh* at the present time despite its low value, then it is correct to consider it in the *Zakâh* on paper money.

The scholars of Fiqh agreed to consider the elapse of a full lunar year (*Hawl*) for *Zakâh* on the wealth of trade, and they also agreed that *Zakâh* is not obligatory on goods stocked for trade unless it reaches the *Nisâb* by itself, or if it is combined with other cash owned by the *Zakâh* payer. However, scholars

(1) "*Halaqat Ad-Dirâsât Al-Ijtimâ`iyyah*", Third Session, (P. 377).

(2) "*Al-Uṣûl Al-Muḥâsabiyyah Lit-Taqwîm Fî Al-Amwâl Az-Zakawiyyah*" (within Fiqh Researches on "*Contemporary Zakâh Issues*"), (1: 30).

(3) Ibid.

differed regarding the ruling on decreasing the *Nisâb* at the beginning of the *Hawl* (i.e. *Zakâh* year) or during it into the following opinions:

Opinion (1): It is a condition that the *Nisâb* should be complete at the begging and the end of the *Hawl* without considering the middle thereof, as the decrease in the *Nisâb* during the *Hawl* does not affect, as stated by the Hanafites.⁽¹⁾

Their argument is that performing valuation for the entire *Hawl* (i.e. *Zakâh* year) is difficult, so it was pardoned except at the end of the *Hawl*, and so it is considered in accordance with this manner, and because the value of the *Nisâb* shall be known all the time to make sure that the *Nisâb* is reached, and this is very difficult too. As for stipulating that *Nisâb* shall be reached at the beginning of the *Hawl*, this is to achieve sufficiency of the poor, and at the end of the *Hawl*, to entail the obligation of *Zakâh*.

Opinion (2): The *Hawl* is to be considered even if the *Nisâb* is not reached during it, and if it is reached at the end of the year, *Zakâh* falls due, as stated by the Malikites⁽²⁾ and Shafiites.⁽³⁾

Opinion (3): It is a condition that the *Nisâb* is complete during the entire *Hawl*, so that the *Hawl* is not to be considered for goods stocked for trade until the *Nisâb* is reached. If the *Nisâb* decreases during the *Hawl*, it is to be regarded as interrupted, as stated by the Hanbalites.⁽⁴⁾

Their argument is based on the fact that this is a form of wealth for which *Hawl* and *Nisâb* are to be considered, and thus the *Nisâb* shall be complete during the entire year, as it is the case with other wealth to which this rule applies.

Fourth: Conditions of *Zakâh* on goods stocked for trade

The scholars of Fiqh differed regarding the conditions under which *Zakâh* is due on goods stocked for trade. Their disagreement, in general, can be traced back to three principles:

(1) "*Tabayin Al-Haqâ'iq*", (1: 280); "*Al-Bahr Ar-Râ'iq*", (2: 229).

(2) "*Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dusûqî*", (1: 431); "*Sharh Al-Khurashî*", (2: 147).

(3) "*Nihâyat Al-Muhtâj*", (3: 101); "*Tuhfat Al-Muhtâj*", (3: 392).

(4) "*Kashshâf Al-Qinâ`*", (4: 333); "*Sharh Muntahâ Al-Îrâdât*", (2: 186).

First principle: The intention to trade

The scholars of the four schools of Fiqh have agreed that the intention to trade is a condition for *Zakâh* to be due on goods. The point of their disagreement, as mentioned above, lies in the act to which the intention must be associated. The original ruling regarding this is the *Athar* reported from Ibn `Umar, stating:

“There is no Zakâh on goods except for goods stocked for trade.”⁽¹⁾

The intention to trade is more specific than the absolute intention to sell. This is because trade involves exchanging wealth with the intention of making profits, but in sale a person may sell something he no longer needs, as in the case when a person owns a land for the purpose of constructing a building, and then he offers it for sale to purchase something else. Here, the land is not aimed at trade because the intention to sell here is not to realize profit, but rather because he no longer needs it, even if he will be keen to obtain a higher price for sale.

In this regard, Sheikh Muḥammad Ibn `Uthaymîn (may Allah have mercy on him) says:

*“There is a difference between someone who makes a property to be sold a capital to trade with, and another one who no longer needs a property he owns and wants to sell it. In the first case, *Zakâh* is due according to the most preponderant opinion, while *Zakâh* is not due in the second case.”⁽²⁾*

The opinion of the Permanent Committee is that the intention to sell is to be considered for the obligation of *Zakâh* on goods. Accordingly, *Zakâh* is due on whatever goods a person offers for sale, even if they are originally obtained for *Qunyah* (i.e. acquisition and personal use), such as a piece of land or a car, after being valuated in case a *Hawl* elapses on them after being offered for sale. Their argument is based on the hadith narrated by Samurah stating:

“..from whatever we prepare for sale.”

(1) *“Al-Umm”*, Ash-Shâfi`i, (2: 46); *“Musannaf Ibn Abû Shaybah”*, (3: 183-184); *“As-Sunan Al-Kabîr”*, Al-Bayhaqî, (4: 147).

(2) *“Ash-Sharḥ Al-Mumtî”*, (6: 143).

In fact, I could not find a similar opinion in the views of the earlier scholars of Fiqh. Generally, the researcher concluded that the intention to be considered is the intention to trade.

Second principle: Owning goods as a result of trade

The scholars of Fiqh differed in defining the act of trade required for the obligation of *Zakâh* on goods, as follows:

Opinion (1): It is a condition that his ownership of goods shall be through a financial *Mu`âwadah Mahdah* (i.e. absolute exchange) contract, such as selling and the like. If goods are owned by means of a gift, inheritance, blood money, dowery, compensation of *Khul`* (i.e. compensatory divorce), or reconciliation for retribution, or if it is acquired by work or effort like gathering wood, then *Zakâh* is not due on them even if intended for trade, as stated by the Hanafites⁽¹⁾ and the Malikites.⁽²⁾

The Hanafites did not stipulate any condition with regard to the price, and so, goods shall be aimed at trade whether the price for which it was purchased is gold or silver, goods stocked for trade, or properties obtained for *Qunyah* (i.e. acquisition and personal use).

As for the Malikites, they stipulated that the origin of the price shall be gold or silver, or goods owned for cash in a financial exchange, even if it is obtained for *Qunyah*. They also stipulated that goods shall be sold for in-kind compensation, and if not sold, or if not sold for in-kind compensation, then no *Zakâh* shall be due on them, unless the seller does so to evade *Zakâh*.

The Malikites differentiate, with regard to goods stocked for trade, between the monopolistic-trader and the managing-trader. According to them, the monopolistic-trader is the one who buys commodities when prices are low. He speculates on the needs of others and does not sell these commodities until there is a brisk trade in the market and a huge profit. A year or even years may elapse without selling that commodity. The managing-trader, however, is a storeowner in a market who purchases commodities, and sells them every day as much as he can.

(1) *"Fath Al-Qadîr"*, (2: 169); *"Radd Al-Muhtâr"*, (2: 273).

(2) *"Al-Fawâkih Ad-Dawâni"*, (1: 331); *"Ash-Sharh As-Saghîr"*, (1: 637).

The above-mentioned conditions of *Zakâh* on goods stocked for trade apply to both of them. But they differ in that the managing trader values the commodities he owns and pay *Zakâh* on them every year, while the monopolistic-trader does not have to pay *Zakâh* until he sells such commodities at the *Nisâb*. So, if he sold such commodities even after several years, he has to pay *Zakâh* on them for one year only if he sold them for cash. If he, however, sells it for a debt, then he shall not pay *Zakâh* on this debt until he receives it and a full one-year period (*Hawl*) elapses over its original asset.

Opinion (2): It is a condition that his ownership of goods shall be through a *Mu`âwadah Mahdah* (i.e. absolute exchange) contract, which becomes invalid upon the invalidity of its compensation, such as sale, lease and similar contracts, or through a *Mu`âwadah Ghayr Mahdah* (i.e. relative exchange) contract, which does not become invalid upon the invalidity of its compensation, such as dowry, compensation of *Khul`* (i.e. compensatory divorce), and gift. This is the opinion adopted by the Shafiites⁽¹⁾ and Abû Yûsuf of the Hanafites.⁽²⁾

Among the goods stocked for trade according to the Malikites, the Shafiites and the Hanbalites is the case when a person leases the usufructs of a property and then leases them out for the purpose of trade. Hence, if a person leases a piece of land in order to lease it out, then he has to pay *Zakâh* on the usufruct of this land. Thus, he shall value it based on the rental of similar properties for the entire *Hawl* (i.e. *Zakâh* year), and then pay *Zakâh* on such a rental, even if he has not collect it yet, because a *Hawl* has elapsed on a property under his possession aimed at trade.⁽³⁾

Opinion (3): It is a condition that his ownership of goods shall be through his own work or effort. This includes sale, marriage, *Khul`* (i.e. compensatory divorce), gift, will, and acquisition of permissible properties, unlike inheritance and the like which are to be included in his ownership automatically, as they are not trade transactions, as adopted by the Hanbalites.⁽⁴⁾

(1) "Asnâ Al-Matâlib", (1: 381); "Tuhfat Al-Muhtâj", (3: 269).

(2) "Fath Al-Qadîr", (2: 169); "Radd A-Muhâr", (2: 273).

(3) "Ash-Sharh Al-Kabîr Ma`a Hâshiyat Ad-Dustaqî", (1: 465); "Tuhfat Al-Muhtâj", (3: 294); "Kashshâf Al-Qinâ'", (5: 47).

(4) "Kashshâf Al-Qinâ'", (5: 39); "Sharh Muntahâ Al-Irâdât", (2: 271).

The three opinions are based on the original principle stating:

“Properties are of two types: Properties whose original purpose is for trade, such as gold and silver, whereby the ruling of trade is to be applied until such properties change to be subject to another ruling; and properties whose original purpose is for *Qunyah* (i.e. acquisition and personal use), such as clothes, animals and food, whereby the ruling of *Qunyah* is so be applied until such properties change to be subject to another ruling. Hence, a property whose original purpose is for trade, like gold and silver, may not change to the ruling of *Qunyah* except through intention and work, which, in this case, is goldsmithery. Likewise, a property whose original purpose is for *Qunyah* may not change to the ruling of trade except through intention and work, which, in this case, is purchase.

That is, whoever purchases a commodity but does not intend to trade in it, such a commodity is to be subject to the ruling of *Qunyah* until an intention to trade in it is found. Also, whoever inherits a property and intends to trade in it, such a property is to be subject to the ruling of *Qunyah* because such an intention is not accompanied by the work or effort required to transfer such a property to the ruling of trade. However, if this property is purchased for trade, then the intention and work are combined, whereby it is to be subject to the ruling of trade, subject to what has been mentioned above.”⁽¹⁾

The conclusion of the three opinions is that they agreed that intention does not act alone in goods stocked for trade. Those who stipulated *Mu`âwadah Mahdah* (i.e. absolute exchange), namely the Hanafites and the Malikites, said that the intention of trade does not act except in conjunction with the work of trade, and this is achieved in *Mu`âwadah Mahdah*. The Shafiites attached, to this ruling, *Mu`âwadah Ghayr Mahdah* (i.e. relative exchange) because it shares some rulings with *Mu`âwadah Mahdah*, and thus *Shuf`ah* (i.e. right of preemption) is established by it, in contrast to absolute gift and inheritance.⁽²⁾ The Hanbalites, however, stipulated the absolute work

(1) “*Al-Muntaqâ*”, (2: 120-121).

(2) “*Tuhfat Al-Muhtâj*”, (3: 297).

or effort based on the aforementioned ruling, and they did not stipulate *Mu`âwadah* (i.e. exchange) contract, for the general meaning of the hadith narrated by Samurah stating, "...from whatever we prepare for sale."⁽¹⁾

Opinion (4): No condition is to be applied to his ownership of goods, and that the goods become aimed at trade merely with the intention of trade. This is based on a narration on the authority of Imam Ahmad,⁽²⁾ based on the general meaning of the hadith narrated by Samurah stating:

"Allah's Messenger (peace and blessings of Allah be upon him) used to order us to pay Zakâh from whatever we prepare for sale."⁽³⁾

By intention the goods are to be regarded as prepared for sale, based on the general meaning of the Prophetic hadith stating:

"Deeds are to be judged only by intentions, and a man will have only what he intended..."⁽⁴⁾

This is the opinion adopted by the Permanent Committee for Scholarly Research and Ifta⁽⁵⁾ and Sheikh Muhammad Ibn `Uthaymîn (may Allah confer mercy upon him).⁽⁶⁾

Selecting the most preponderant opinion

In my belief, the preponderant opinion, in this regard, is the opinion of the Malikites, which is that for *Zakâh* to be due on goods stocked for trade, it is required that such goods shall be owned through a *Mu`âwadah* (i.e. exchange) contract based on gold and silver (and cash is attached to them) or goods stocked for trade based on cash, and that the owner shall sell a part thereof for cash during the *Hawl* (i.e. *Zakâh* year) if he is a managing-trader. In my belief, the basis for *Zakâh* being due on goods stocked for trade is that such goods are

(1) "*Kashshâf Al-Qinâ`*", (5: 40).

(2) Refer to: (P. 58).

(3) "*Al-Mughnî*", (4: 251) .

(4) "*Sahîh Al-Bukharî*", Book of Revelation, Chapter: How the Divine Revelation started being revealed to Allah's Messenger (peace and blessings of Allah be upon him), hadith no. (1); "*Sahîh Muslim*", Book of the Government, hadith no. (1907) on the authority of `Umar Ibnul-Khattâb.

(5) "*Fatwas of the Permanent Committee for Scholarly Research and Ifta*", (9: 330).

(6) "*Ash-Sharh Al-Mumtî`*", (6: 143).

aimed for exchange based on gold and silver, and so the obligation of *Zakâh* on such goods is dependent on the obligation of *Zakâh* on gold and silver. This is why the *Nisâb* of gold and silver can be completed with it, the *Hawl* for their principal of gold and silver is not to be interrupted, and *Zakâh* is due on their value. This explains why the majority of scholars do not view that *Zakâh* is obligatory on the goods which the *Zakâh* payer acquires by means of inheritance even if intended for trade. This is because the reason why *Zakâh* is due on goods stocked for trade is that their origin is cash or cash equivalent acquired by means of trade. So, if such goods are not aimed for trade, and thus no profit is generated thereof, or are intended to be sold later to obtain a higher profit, *Zakâh* will not be due on them. However, *Zakâh* is to be paid on them for one year only when they are sold because the concept of growth is realized at the beginning and the end of the *Hawl*.

Third principle: Combination of two reasons for the obligation of *Zakâh* on goods stocked for trade

The scholars of Fiqh agree that if two reasons for the obligation of *Zakâh* on wealth are combined together, then *Zakâh* is not to be paid for each reason separately,⁽¹⁾ based on the Prophetic hadith stating: “*There shall be no duplication in Sadaqah (i.e. Zakâh),*”⁽²⁾ (which means that *Zakâh* may not be paid twice for the same *Hawl*). The scholars of Fiqh, however, differed as to the *Zakâh* due in such a case, into three opinions, as follows:

Opinion (1): *Zakâh* on wealth shall be given priority over *Zakâh* on goods stocked for trade, as adopted by the Malikites⁽³⁾ and the Shafiites.⁽⁴⁾

They justified this opinion based on two reasons,⁽⁵⁾ as follows:

1- *Zakâh* on the wealth of freely grazing livestock, crops and cash is more established than *Zakâh* on goods stocked for trade because it is obligated under a Shari’ah text and is unanimously agreed upon. *Zakâh* on goods

(1) “*Al-Mabsût*”, (2: 170).

(2) “*Al-Amwal*”, Abû `Ubayd, (2: 24); “*Musannaf Ibn Abû Shaybah*”, Book of *Zakâh*, Chapter: Those who viewed that *Zakâh* is not to be paid except once per year, hadith no. (10837), on the authority of Fâtimah Bintul-Husayn Ibn `Alî, sister of Zaynul-`Âbidîn.

(3) “*Adh-Dhakhîrah*”, (2: 348); “*Hâshiyat Ad-Dusûqî*”, (1: 472).

(4) “*Mughni Al-Muhtâj*”, (2: 109); “*Tuhfat Al-Muhtâj*”, (3: 294).

(5) “*Al-Hâwi Al-Kabîr*”, (4: 317).

stocked for trade, however, is obligated by means of *Ijtihâd* (i.e. legal reasoning and discretion) with disagreement thereon. Accordingly, a unanimously agreed upon matter shall be given priority over a disagreed upon matter.

- 2- *Zakâh* on wealth is due on the asset, while *Zakâh* on goods stocked for trade is due on value, and whenever both of them are combined together for the same object, *Zakâh* on asset shall be given priority, as it is the case of the mortgaged slave who generates profit.

The Malikites' opinion suggests that *Zakâh* on wealth is to be given priority in all cases. However, the Shafiites are of the opinion that in order for priority to be given to *Zakâh* on wealth, the two types of *Zakâh* shall be combined together in the same *Hawl*. Hence, if the *Hawl* of *Zakâh* on goods stocked for trade precedes the *Hawl* of *Zakâh* on wealth, then *Zakâh* on goods stocked for trade shall be given priority. By the same token, if the *Hawl* of *Zakâh* on freely grazing livestock precedes, it shall be given priority over *Zakâh* on wealth.

According to the aforementioned, if the condition of the obligation of *Zakâh* on wealth, such as freely grazing livestock, is not realized, *Zakâh* on goods stocked for trade is to be due. The Shafiites, however, are of the view that there is no *Zakâh* due on an exchanger who exchanges, even for trade, during the *Hawl*, the gold or silver at his possession for another gold or silver. This is because trade in gold and silver is not common compared to trade in other objects, and the *Zakâh* due is *Zakâh* on wealth, and thus it shall be given priority, and the interruption of *Hawl* has an impact on it, in contrast to *Zakâh* on goods stocked for trade.⁽¹⁾

Opinion (2): *Zakâh* on goods stocked for trade shall be given priority over *Zakâh* on wealth, and so *Zakâh* on goods stocked for trade becomes due but not *Zakâh* on wealth, as is adopted by the Hanbalites.⁽²⁾

They justified this opinion based on two reasons, as follows:

- 1- *Zakâh* on goods stocked for trade is more general and beneficial (to the poor) than *Zakâh* on wealth, for it combines both the original and the

(1) "Tuhfat Al-Muhtâj", (3: 294).

(2) "Kashshâf Al-Qinâ'", (5: 43-44); "Sharh Al-Muntahâ", (2: 274).

branch (i.e. the asset and the yield), while *Zakâh* of wealth is restricted to the branch (i.e. the yield).

2- *Zakâh* on goods stocked for trade is more established than *Zakâh* on wealth, for it is due on all goods and commodities, unlike *Zakâh* on wealth which is due only on certain properties.

Opinion (3): *Zakâh* on goods stocked for trade is given priority over *Zakâh* on wealth with regard to freely grazing livestock, but not for the wealth for which one-tenth thereof is to be paid as *Zakâh*, as adopted by the Hanafites.⁽¹⁾

They argued that the intention to trade negates the purpose of *Zakâh* on freely grazing livestock because the concept of growth is intended in the assets of livestock, and this cannot be realized unless the ownership thereof is established first. However, the intention of trade negates such a purpose, and thus the principle of *Sawm* (i.e. free grazing on pasture) becomes unreal and cannot be realized in the livestock, which turns to be the true objects of trade, and accordingly *Zakâh* of goods stocked for trade shall be given priority. As for giving priority to *Zakâh* on wealth with regard to the wealth for which one-tenth thereof is to be paid as *Zakâh* and *Kharâji* land,⁽²⁾ this is based on the original ruling that *Ushr* (i.e. one-tenth) and *Kharâj* (i.e. land-tax) are all the maintenance of the land (i.e. the expense and work incurred by the owner), and that it is not to be forfeited by the removal of the owner, which is more established than *Zakâh* on goods stocked for trade the obligation of which is based on the intention.

Fifth: Estimation regarding conditions of *Zakâh* on goods stocked for trade in joint stock companies

It is known that the balance sheet shows the assets owned by the company

(1) "*Tabyîn Al-Haqâ'iq*", (1: 259); "*Radd Al-Muhtâr*", (2: 273).

(2) **Translator:** Lands that are either conquered in war, but left in the hands of local farmers instead of being confiscated and distributed among the Muslim conquerors, (like the lands of Iraq, Persia, Syria, Egypt, and North Africa) or land whose owners entered under the authority of the Islamic state as a result of treaties that included a clause to this effect (such as some areas in the southern tip of the Arabian Peninsula, some areas in Persia, and certain Armenian areas). Whatever taxes are imposed on these lands is called *Kharâj* and goes to the State budget, to be spent for the general interest of Muslims. See: "*Al-Amwâl*", (pp. 512-513).

at the end of the fiscal year. Goods stocked for trade appear in the financial statements in one of the following forms:

- (a) **Shares and investment *Sukâk* (certificates)**, which will be discussed in chapter five, and which relates to the combination of the intention to trade and the intention to participate in the shares of these companies. Please refer to chapter five.
- (b) **Inventory**, which is defined as: "Assets held for sale in the ordinary course of business, or in the process of production for such a sale, or in the form of materials or supplies to be consumed in the production process or in the rendering of services."⁽¹⁾

The basic rule concerning inventory is that the condition of intention to trade is fulfilled in it, but it is not possible to verify other conditions if reliance is on the financial statements unless the notes include details in this regard. Likewise, the same applies to the act (work) of trade. The basic rule with regard to the ownership of companies is that it occurs through financial *Mu'âwadah* (i.e. exchange) with the intention of trading. In most cases, the *Nisâb* remains complete during the entire *Hawl*, as the *Nisâb* is not likely to be interrupted during the *Hawl* for joint-stock companies, and thus the *Nisâb* is to be considered complete unless proven otherwise.

However, some aggregated items, such as other assets, which are disclosed in such a way because they are less important, may include zakatable assets and non-zakatable assets, whereby similar cases are to be considered, and the amount most believed to be subject to *Zakâh* is to be added to the *Zakâh* base.



(1) "IAS 2- Inventories", Paragraph (6).

Topic (III)

Estimation Regarding Conditions of *Zakâh* on Livestock

Livestock, which includes camels, cows and sheep, is a kind of zakatable wealth subject to the consensus of the scholars. The rulings on such a *Zakâh* are detailed in books of Fiqh and *Zakâh* studies. The aim of this topic is to clarify the Shari'ah principles with regard to estimation of the conditions of *Zakâh* on livestock, which underlie the livestock fulfilling the conditions for the obligation of *Zakâh*, and the knowability of the *Zakâh* amount to be paid by the *Zakâh* payer.

First: Special conditions for *Zakâh* on livestock

In addition to the general conditions mentioned above, which are Islam and richness achieved by means of absolute ownership of the *Nisâb* of *Zakâh*, there are special condition for *Zakâh* on livestock, which are as follows:

Condition (1): Livestock shall be *Sâ'imah* (i.e. freely grazing livestock). This condition is adopted by the majority of scholars, including the Hanafites,⁽¹⁾ the Shafiites⁽²⁾ and the Hanbalites.⁽³⁾

They based their opinion on the letter of Abû Bakr regarding *Zakâh*, in which he said: “*With regard to Zakâh due on freely grazing sheep...*”

Other categories of livestock were included under this condition by means of *Qiyâs* (i.e. analogical deduction).

As for the meaning, *Zakâh* is due on the growing wealth. Yet, accumulation of the expenses of fodder necessary for livestock (to be artificially fed) negates the meaning of growability (and thus artificially fed livestock are not to be subject to *Zakâh*).⁽⁴⁾

(1) “*Tabayin Al-Haqâ'iq*”, (1: 259); “*Al-Bahr Ar-Râ'iq*”, (2: 234).

(2) “*Nihâyat Al-Muhtâj*”, (3: 63); “*Tuhfat Al-Muhtâj*”, (3: 235 and 237).

(3) “*Kashshâf Al-Qinâ'*”, (4: 345); “*Sharh Muntahâ Al-Îrâdât*”, (2: 194-195).

(4) “*Al-Bahr Ar-Râ'iq*”, (2: 234).

They differed regarding the period of *Sawm* (i.e. free grazing on pasture) with which *Zakâh* becomes due, where the Hanafites⁽¹⁾ and the Hanbalites⁽²⁾ are of the view that *Sawm* shall take place in most of the *Hawl* (i.e. *Zakâh* year).

They justified their opinion arguing that little fodder cannot be avoided at all, and accordingly *Sawm* is to be considered in most of the *Hawl* so that natural feed prevails. "Considering it (*Sawm*) in all the year includes prejudice against the poor, and considering it in some of the year includes prejudice against the owners, so considering it in most of the year is a just compromise between the two states, and it wards off the two greater harms by choosing the lesser one of them, and 'the most' takes the ruling of 'all' in many rulings."⁽³⁾

The Shafiites⁽⁴⁾ are of the opinion that the amount of feed is to be taken into account. Hence, if the livestock is artificially fed for the most of the *Hawl*, or if it is artificially fed, for a part of the *Hawl*, a quantity without which it cannot survive, or without which it can survive with an apparent harm, then there would be no *Zakâh* on it, due to the expenses of fodder, with which *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor) cannot be realized.

The Malikites are of the view that *Sawm* is not to be considered, and thus *Zakâh* is due on livestock whether it is naturally grazing or artificially fed.⁽⁵⁾

They founded their opinion on the general meaning of the Prophetic hadith stating: "*For every forty sheep, one sheep (is to be paid as Zakâh),*" as the general meaning of the hadith includes both the naturally grazing and the artificially fed livestock.

They responded to the restriction mentioned in the hadith about freely grazing sheep arguing that it represents the status quo. That is, free grazing is general in all sheep as they are unlikely to be otherwise, especially in Hejaz. This is why it is stipulated with regard to sheep but not with regard to cows

(1) "*Tabyîn Al-Haqâ'iq*", (1: 259); "*Al-Bahr Ar-Râ'iq*", (2: 229).

(2) "*Kashshâf Al-Qinâ`*", (4: 345); "*Sharh Muntahâ Al-Îrâdât*", (2: 194-195).

(3) "*Kashshâf Al-Qinâ`*", (4: 345).

(4) "*Nihâyat Al-Muhtâj*", (3: 63); "*Tuhfat Al-Muhtâj*", (3: 235 and 237).

(5) "*Ash-Sharh Al-Kabîr*", (1: 430); "*Ash-Sharh As-Saghîr*", (1: 592).

and camels. Accordingly, restriction, here, is to reveal a status quo, and thus it is of no effect.⁽¹⁾

Condition (2): Livestock shall be prepared for milk production and offspring, so *Zakâh* is not due on working livestock, intended for plowing. This condition is adopted by the majority of scholars, and it is the opinion of the Hanafites,⁽²⁾ the Shafiites⁽³⁾ and the Hanbalites.⁽⁴⁾

They founded their opinion on the hadith narrated by `Alî Ibn Abû Tâlib (may Allah be pleased with him) as *Marfû`* (i.e. traceable) hadith, stating:

“No Zakâh is due on working cows.”⁽⁵⁾

It was also narrated by Jâbir and Ibn `Abbâs.

They said that *Zakâh* is not due on working livestock. This is consistent with the Shari`ah rule that *Zakâh* is not due on whatever animal is kept for properties obtained for *Qunyah* (i.e. acquisition and personal use) and service.

In this regard, the Prophet (peace and blessings of Allah be upon him) said:

“No Sadaqah (i.e. Zakâh) is due from a Muslim for his slave or horse.”⁽⁶⁾

(1) *“Al-Muntaqâ”*, (2: 130); *“Al-Furûq”*, (2: 40).

(2) *“Al-Bahr Ar-Râ`iq”*, (2: 229); *“Radd Al-Muhtâr”*, (2: 275).

(3) *“Nihâyat Al-Muhtâj”*, (3: 63); *“Tuhfat Al-Muhtâj”*, (3: 238).

(4) *“Kashshâf Al-Qinâ`”*, (4: 345); *“Sharh Al-Muntahâ”*, (2: 194).

(5) *“Sunan Abû Dawûd”*, Book of *Zakâh*, Chapter: *Zakâh* on freely grazing livestock, hadith no. (1572); *“Sunan Ad-Dâraquṭni”*, Book of *Zakâh*, Chapter: No *Zakâh* is due on working livestock, hadith no. (1940); *“Ṣaḥîḥ Ibn Khuzaymah”*, Book of *Zakâh*, Chapter: Mentioning the interpreting report of the wording mentioned, hadith no. (2270); *“As-Sunan Al-Kabîr”*, Al-Bayhaqî, Book of *Zakâh*, Chapter: How *Zakâh* on cow was imposed, (4: 99). All of these hadiths are narrated from Abû Badr: Zuhayr narrated to us: Abû Ishâq narrated to us from Al-Hâriṭh and `Âsim Ibn Damrah from `Alî from the Prophet (peace and blessings of Allah be upon him). Al-Bayhaqî, (4: 11) said: “Abû Badr Shujâ` Ibnul-Walîd narrated it as a *Marfû`* (i.e. traceable) hadith from Zuhayr conveying no doubt with regard to being a *Marfû`* hadith. An-Nufaylî, however, narrated it from Zuhayr conveying doubt, as Zuhayr said: I think it is traced back to the Prophet (peace and blessings of Allah be upon him). Other narrators reported it from Abû Ishâq as a *Mawqûf* (i.e. untraceable) hadith. In his *“Al-Bulûgh”*, (604), Al-Hâfiẓ gave preponderance to the opinion stating that it is a *Mawqûf* hadith. See: *“Tanqîḥ At-Tahqîq”*, (3: 44); *“Al-Badr Al-Munîr”*, (5: 460).

(6) *“Ṣaḥîḥ Al-Bukhârî”*, Book of *Zakâh*, Chapter: No *Zakâh* is due for a Muslim on his servant, hadith no. (1463); *“Ṣaḥîḥ Muslim”*, Book of *Zakâh*, hadith no. (982) on the authority of Abû Hurayrah (may Allah be pleased with him).

Ibnul-Qayyim said:

“The argument of the advocates of this opinion is based on *Athars* (i.e. narrations from the companions) and due consideration. To explain, any wealth allocated for the benefit of its owner, such as his clothes, servant, home, or his riding animal or books used by him or by others, are not to be subject to *Zakâh*. The same applies to jewelry, which the woman wears or lends. Drawing *Qiyâs* to this rule, there will be no *Zakâh* due on working livestock used for plowing and other works, the opinion which is also supported by Shari’ah texts. Here, the difference between working livestock and freely grazing (*Sâ’imah*) livestock is clear, since the first is not acquired for the purpose of growing, as it is like clothes, salve and home with regard to the ruling of the *Zakâh* due.”⁽¹⁾

The Malikites,⁽²⁾ however, are of different opinion, in this regard, as they said that *Zakâh* is due on working livestock.

In his “*Al-Muwatta*”, Imam Mâlik said:

“I see that *Zakâh* is due on *Nawâdih* (i.e. camels used for transporting irrigation water), *Sawânî* cows (i.e. cows used for watering or for operating waterwheels), and plowing cows, whenever the conditions of *Zakâh* are fulfilled.”⁽³⁾

Ibn `Abdul-Barr said:

“This opinion is also adopted by Al-Layth Ibn Sa`d, and I do not know anyone else who adopts this opinion except them both.”⁽⁴⁾

They founded their opinion on the aforementioned hadith narrated by Abû Bakr, stating: “*For twenty-four camels...*”, arguing that it includes both freely grazing and foddered animals, and thus its general meaning shall be observed unless a limitation is produced by Shari’ah evidence.

(1) “*T’lâm Al-Muwaqqi`în*”, Ibnul-Qayyim, (2: 387).

(2) “*Ash-Sharh Al-Kabîr*”, (1: 430); “*Ash-Sharh As-Saghîr*”, (1: 592).

(3) “*Al-Muwatta*”, (1: 354).

(4) “*Al-Istidhkâr*”, (9: 170). In “*At-Tamhîd*”, (20: 141), it is said: “This is the opinion of Makhûl and Qatâdah, and a narration on the authority of Al-Layth narrated by Ibn Wahab”.

Al-Bâjî said:

“Our evidence with regard to the meaning is that the amount of expenditure, whether big or small, is to affect the amount of *Zakâh* only, not to be used as a basis to confirm or cancel the obligation of *Zakâh* (in certain case), such as mixed partnership and separation or irrigation by the sky or springs or by carried water. Also, there is no difference between freely grazing and foddered livestock except with regard to the amount of expenditure. As for the benefit obtained from both of them, which is milk production or offspring, is achieved in both kinds.”⁽¹⁾

The view of the majority of scholars regarding non-obligation of *Zakâh* on working livestock is more preponderant, for the *Athar* (i.e. narration from the companions) narrated in this regard, which, despite the fact it is attributed only to the companions who have narrated it, is more appropriate to be adopted as Shari’ah proof, especially that the majority of scholars adopt it. This is consistent with the Shari’ah rule that *Zakâh* is not due on whatever property kept for *Qunyah* (i.e. acquisition and personal use), based on the Prophetic hadith stating:

“No *Sadaqah* (i.e. *Zakâh*) is due from a Muslim for his slave or horse.”

Second: Estimation regarding conditions of *Zakâh* on livestock

If we look into financial statements of joint-stock companies, we find that the data and information they contain is not sufficient to calculate the *Zakâh* due on livestock. This is because:

- (a) Determining the *Nisâb* of *Zakâh* requires determining the number of heads in each category of livestock, which is not shown in the statement of financial position, unless mentioned in the notes of financial reports.
- (b) The knowability of whether the condition of *Sawm* (i.e. free grazing on pasture) is met and whether livestock is kept for milk production and offspring cannot be obtained based on the data of the statement of financial position, unless mentioned in the notes. There is nothing in the accounting standards requiring the companies to disclose such information.

(1) “*Al-Muntaqâ*”, Al-Bâjî, (2: 136).

Therefore, it can be said that the financial statements of joint-stock companies are not suitable for *Zakâh* on livestock. This is why the collection of *Zakâh* in the Kingdom of Saudi Arabia and Sudan is not based on the financial statements.

However, the reality is that many agricultural companies invest in livestock, with various aims and purposes. The original ruling is that *Zakâh* is not due on this livestock unless it is most likely that the conditions of *Zakâh* are fulfilled, and no *Zakâh* is to be imposed based on uncertainty. This is because Shari'ah rulings can never be based on uncertainty. To determine that such conditions are surely or most likely fulfilled, inquires and presumptions are to be used. The following are a number of matters by which the conditions of *Zakâh* on livestock in joint-stock companies can be estimated:

- (a) The concept of prevailing assumption is to be adopted to estimate the achievement of *Nisâb*, which is simple, since it is most likely that the joint-stock companies will not own livestock that is below the *Nisâb*.
- (b) Presumptions, by which prevailing assumption can be obtained, are to be used with regard to the condition of *Sawm* (i.e. free grazing on pasture), in accordance with the tradition of the country. It may be said that *sawm* is not probable for livestock owned by the companies. This is because companies are more likely to use special plans and formulas to feed their own livestock in order to maximize the profit resulting from its milk or meats.

It is possible to estimate the conditions of the obligation of *Zakâh* from another aspect, which is to apply the Malikites' opinion that the conditions of *Sawm* and being prepared for milk and offspring are not required for *Zakâh* to be due on livestock, since it is easier to determine the due *Zakâh*. The concept of the prevailing assumption is to be used with regard to the condition of owning the *Nisâb*. The value of livestock is to be estimated by dividing the total value by average value, whereby *Zakâh* is to be calculated and paid.

- (c) When it appears that the livestock is intended for trade, then *Zakâh* is to be imposed on such livestock as being goods stocked for trade, based on the opinion adopted by the Hanafites and the Hanbalites that *Zakâh* is due on freely grazing livestock if acquired for trade.

Topic (IV)

Estimation Regarding Conditions of *Zakâh* on Minerals

First: The concept of mineral (Arabic: *Ma`din*)

Linguistically, the Arabic word "*Ma`din*" (i.e. mineral) is formed on the measure of the word "*Majlis*" (i.e. a place for sitting).

Originally, it is used to indicate the place where precious metals, such as gold, are extracted. The root of this word (i.e. `DN) indicates residence. In Arabic, it is said: "*Adana Bil-Makân*" which means (he resides in this place). In the Qur'an, Allah says: {"(For them are) gardens of perpetual residence (*Adn*) which they will enter."}(1)

Minerals refer to precious metals extracted from the earth. which is the definition intended here. The plural form of "*Ma`din*" (i.e. mineral) is "*Ma`â-din*" (i.e. minerals).(2)

The Arabic Language Academy in Cairo approved the term "*Ma`din*" in the science of chemistry as:

"Inorganic compounds found in the earth, and fossils left over from organic materials such as mineral oil and coal."(3)

As for Fiqh terminology, the term "*Ma`din*" (i.e. mineral) has two meanings, as follows:

- (a) "What is extracted from the earth of various materials, such as gold, silver, iron, copper, aquamarine, crystal, agate, kohl, ocher, bitumen, oil, sulfur, etc."(4) Or: "Every component of various materials generated in the earth,

(1) Surah *Ar-Ra`d* (Thunder): 23.

(2) See the Arabic root "`Ayn, Dâl, Nûn (i.e. `DN) [ن د ع]" in "*As-Sihâh*", Al-Juharî, (6: 2162); "*Maqâyis Al-Lughah*", (4: 248); "*Tâj Al-'Arûs*", (35: 381).

(3) See the Arabic root "`Ayn, Dâl, Nûn (i.e. `DN) [ن د ع]": "*Al-Mu`jam Al-Wasîf*", (2: 588).

(4) "*Al-Kâfî*", Ibn Qudâmah, "2: 153); "*Al-'Inâyah Sharh Al-Hidâyah*", (2: 233); "*Adh-Dhakhîrah*", (2: 249); "*Tuhfat Al-Muhtâj*", (3: 282).

with the exception of plants.”⁽¹⁾ This is the most popular definition in the Fiqh and the definition intended with regard to *Zakâh*.

- (b) The place of the land from which minerals are extracted. An example is the saying of Al-Mâwardî in “*Al-Ahkâm As-Sultâniyyah*”:

“As for granting concessions of minerals, that is, those areas in which Allah has deposited the precious materials of the earth...”⁽²⁾

Second: Disagreement regarding *Zakâh* on minerals

Imposing *Zakâh* on minerals other than gold and silver is an opinion adopted only by the Hanbalites,⁽³⁾ and it is one of the issues about which the scholars of Fiqh disagreed in the past and in the present times. The following are the approaches of the scholars of Fiqh in this regard:

Approach (1): The opinion of the Hanafites,⁽⁴⁾ who held the view that there is no *Zakâh* on minerals extracted from the earth, and the *Khumus* (i.e. one-fifth) is to be paid out of it, and it is to be spent in the same channels of *Fay'* (i.e. booty gained without fight), based on three conditions, as follows:

- 1- The mineral must be one of such minerals that can be shaped and melted by fire, such as gold, iron, lead, copper, brass, etc. This excludes other element that cannot be melted, such as pearls, rubies and all other stones as well as fluids like water, salt, bitumen and oil.
- 2- The extractor must be one of those entitled to the spoils of war, be he Muslim or *Dhimmi*, free or slave, young or old. Accordingly, the *Harbî* (i.e. someone fighting against the Muslim State) and the *Musta'man* (i.e. non-Muslim with a peace agreement permitting him to enter and stay temporarily in a Muslim country) are to be excluded, because the entitlement to such a wealth is the same as entitlement to booty.
- 3- The minerals are to be extracted from a land that is not owned by a specific person and accordingly the *Khumus* is not due when such minerals are extracted from a land owned by a specific person, contrary to the opinion

(1) “*Kashshâf Al-Qinâ'* ”, (4: 440).

(2) “*Al-Ahkâm As-Sultâniyyah*”, (P. 247).

(3) “*Al-Minah Ash-Shâfiyât Bi-Sharh Al-Mufradât*”, (1: 279).

(4) “*Majma' Al-Anhur*”, (1: 212); “*Al-Bahr Ar-Râ'iq*”, (2: 252).

of the two companions of Abû Hanîfah (i.e. Abû Yûsuf and Muḥammad Ibnul-Hasan).

The conditions of *Nisâb* and elapse of the *Hawl* are not applied here.

They founded their view on the Prophetic hadith in which the Prophet (peace and blessings of Allah be upon him) says:

“There is no compensation for one killed or wounded by a dumb animal or by falling in a well, or because of working in mines; but Khumus (i.e. one fifth) is due on Rikâz (i.e. buried treasure or natural ores).”⁽¹⁾

Basis for inference: *Rikâz* (i.e. buried treasure or natural ores) is used expressly for minerals and metaphorically for treasure. This is because *Rikâz* is derived from *Rakz* having the meaning of *Markûz* (i.e. buried). Here, it applies to both naturally buried or man-buried element.

They said: Attaching (Arabic: *Idâfah*) the ruling on the amount due on *Rikâz* to the Prophet’s saying: “...or because of working in mines...” does not negate the obligation on minerals. This is because “the mine was specifically given a ruling, stating its specific name. then it was given another ruling with another name. Thus, the name referring to them both was used to indicate the obligation thereof. That is, the ruling of the due *Khumus* is related to every kind of *Rikâz*, and thus the *Khumus* is due on every mineral that can be called *Rikâz*.”⁽²⁾

Approach (2): The opinion of the Malikites⁽³⁾ and the Shafiites,⁽⁴⁾ who held the view that a quarter of one-tenth is payable for minerals as *Zakâh*, based on three conditions, as follows:

- (a) The mineral must be gold or silver, as *Zakâh* is payable for both of them as confirmed by Shari’ah texts and the consensus of scholars.
- (b) The extractor must be a person eligible to pay *Zakâh*, because it is an act of worship and only applied subject to the conditions of eligibility.

(1) “*Sahîh Al-Bukhârî*”, Book of *Zakâh*, Chapter: One fifth is payable on *Rikâz*, hadith no. (1499); “*Sahîh Muslim*”, Book of *Hudûd*, hadith no. (1710) on the authority of Abû Hurayrah.

(2) “*Fath Al-Qadîr*”, (2: 234).

(3) “*Sharḥ Al-Khurashî*”, (2: 207); “*Ash-Sharḥ As-Saghîr*”, (1: 650).

(4) “*Asnâ Al-Matâlib*”, (1: 385); “*Tuhfat Al-Muhtâj*”, (3: 282).

- (c) The extracted mineral shall reach the *Nisâb* if it is from one place, even if the extracting work is slow.

A quarter of one-tenth is payable for such metal upon extraction, the amount which equal to the amount of *Zakâh* due on gold and silver. However, the condition of the elapse of the *Hawl* is not applicable here.

The bases of their opinion are as follows:

- 1- The basic ruling is that *Zakâh* is not due here, while it has been unanimously proven that *Zakâh* is payable for gold and silver, and thus it is not payable for anything else except with clear evidence.
- 2- The Prophetic hadith stating that Allah's Messenger (peace and blessings of Allah be upon him), assigned the mines of *Al-Qabaliyyah*, located in Hejaz in the direction of *Al-Fur`*, to Bilâl Ibnul-*Hârith Al-Muzanî*, and nothing has been taken from these mines up to this day except *Zakâh*.⁽¹⁾
- 3- The term of *Rikâz* (i.e. buried treasure or natural ores) is specific to element buried at the time of *Jâhiliyyah* (i.e. pre-Islamic period) as explained by the majority of scholars.

In this regard, *Mâlik* said:

“I have heard the scholars say that *Rikâz* is what is buried at the time of *Jâhiliyyah*, so long as it is not extracted in return for money or by great amount of work. If it is, however, is extracted in return for money or by great amount of work, it is not to be considered as *Rikâz*, which is the opinion we adopt.”⁽²⁾

(1) “*Muwatta’ Mâlik*”, Book of *Zakâh*, Chapter: *Zakâh* on minerals, hadith no. (285); “*Sunan Abû Dâwûd*”, Book of *Kharâj*, Spoils, and Rulership, Chapter: Allocation of land, hadith no. (3057), as a *Mursal* (i.e. transmitted) hadith.

It was also narrated by *Abû Dâwûd*, *At-Tabarânî*, *Al-Hâkim*, and *Al-Bayhaqî* as a *Mawsûl* (i.e. uninterrupted) hadith, without the phrase “*Zakâh* was due on them”. In his “*Al-Umm*”, (2: 94), *Ash-Shâfi’î*, after narrating the hadith from *Mâlik*, said: “This hadith is not approved by the scholars of Hadith. It does not include a narration from the Prophet (peace and blessings of Allah be upon him), but the assignment of the mines. As for *Zakâh* on minerals less than the *Khumus* (i.e. one-fifth), it is not narrated from the Prophet”. *Al-Bayhaqî* said: “It is as *Ash-Shâfi’î* said with regard to the narration of *Mâlik*. It was also narrated on the authority of *Ad-Darâwirdî*, on the authority of *Rab’ah*, as a *Mawsûl* (i.e. uninterrupted) hadith”.

(2) “*Al-Mudawwanah*”, (1: 340).

A fact which supports the opinion that minerals do not belong to *Rikâz*, is that it is not man-buried, which indicates that there a difference between treasure and minerals.

Approach (3): The opinion of the Hanbalites who held the view that *Zakâh* is due on minerals, subject to three conditions:

1- A mineral shall be one for which *Zakâh* is payable, which is:

“Everything extracted from the earth, which is not a plant, and has a value, such as gold, silver, iron, ruby, crystal, kohl, etc. as well as liquid metals such as bitumen, oil, sulfur, etc. *Zakâh* is also due on precious valuable stones, such as marble and sharpening stone.”⁽¹⁾

Zakâh is not due on minerals extracted from the sea, since the original ruling regarding this is that *Zakâh* is not due on them. Such minerals were existing at the time of the Prophet (peace and blessings of Allah be upon him) and the obligation of *Zakâh* thereof had not been reported from them. In addition, *Zakâh* is not payable for stones of no value.

2- The extracted minerals, having been leached and casted, must reach the *Nisâb* if they are gold or silver, or the amount lesser than the *Nisâb* of gold and silver if not.

3- The extractor shall be eligible to pay *Zakâh*, because it is an act of worship.

If the land is owned by a specific person, the minerals extracted shall be for the landowner, whether he is the one who extracted it or not, because the ownership of the metal, in this case, is attached to the ownership of the land. If the land, however, it is not owned by a specific person, the minerals extracted will be for the one extracting them.

The basis of their opinion is as follows:

1- The general meaning of Allah’s saying: {“**O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you...**”}⁽²⁾

2- The hadith narrated by Rabî`ah Ibn `Abudr-Rahmân on the authority of more than one person that the Messenger of Allah (peace and blessings of

(1) “*Kashshâf Al-Qinâ`*”, (4: 440); “*Matâlib Uli An-Nuhâ*”, (2: 76).

(2) Surah *Al-Baqarah* (The Cow): 267.

Allah be upon him) assigned the mines of *Al-Qabaliyyah* (which is in the neighborhood of *Al-Fur`*) to Bilâl Ibnul-Hârith, and nothing has been taken from these mines up to this day except *Zakâh*.⁽¹⁾

- 3- It is a right for the poor that is not permitted for rich relatives, and thus *Zakâh*, but not the *Khumus* (i.e. one-fifth), is due on it, like all other categories of *Zakâh*.

A quarter of one-tenth is payable as *Zakâh* for minerals at the time of extraction.

Selecting the most preponderant opinion

In my believe, what is to be paid for minerals is the amount due as *Fay`* (i.e. booty gained without fight) not as *Zakâh*, which is the opinion adopted by the Hanafites, as mentioned above. This is due to the weakness of the proofs regarding the obligation of *Zakâh* on minerals extracted from the earth, whether because of the weakness attributed to the text itself as it is the case with the hadith of assigning the mines to Bilâl Ibnul-Hârith, or due to the weakness of its signification. Accordingly, the *Khumus* (i.e. one-fifth) is to be paid on whatever valuable minerals extracted from the earth or the sea, provided that such minerals are lawful matters owned by means of extraction.

Accordingly, the *Khumus* is due on whatever valuable minerals extracted from the earth or the sea, provided that such minerals are lawful matters permitted by the State and are owned by means of extraction. A quarter of one-tenth is not due on such minerals if they are gold or silver.

But if the State acquires these metals and does not authorize the possession thereof except by virtue of concession contracts, then nothing is to be paid on the State's share of these minerals because there is no specific owner.

The holder of the concession contract is not required to pay anything on the minerals extracted. However, such minerals are to be subject to the ruling of acquired wealth if they are gold or silver. In this case, *Zakâh* on such minerals is to be paid along with *Zakâh* on other wealth the *Zakâh* payer owns

(1) Related by Mâlik and Abû Dâwûd.

subject to the elapse of *Hawl*. Meanwhile, if the mineral and marine wealth are not gold or silver, then they shall have the same ruling as goods stocked for trade if intended for trade at the time of extraction, and *Zakâh* is to be paid on them based on the elapse of the *Hawl*.

This is the opinion adopted by the 13th symposium on “*Contemporary Zakâh Issues*”.

The fatwas of the symposium regarding *Zakâh* on mineral and marine wealth stated:

“The participants in the symposium discussed the researches presented on this topic, and concluded the following:

- 1- Mineral and marine wealth is resources found in the earth and sea that have a material value among the people, and which the Legislator permitted the benefit and circulation thereof.
- 2- Mineral wealth, whether in the earth or the sea, is publicly owned by the State which has the exclusive right to dispose of it, and to grant natural or legal entities the right to own or use it as required by the Shari’ah-based interest.
- 3- If the State owns mineral or marine wealth and allocates it for public interests, then no *Zakâh* is due on it, paying attention to the recommendations of the 13th symposium (Recommendation no. 19).
- 4- The amount due on mineral and marine wealth shall be paid upon the extraction thereof if absolutely owned by natural or legal entities, which is the *Khumus* for minerals and treasures if extracted without cost, and a quarter of one-tenth if extracted with cost, taking into account the fulfillment of the *Nisâb* of gold for minerals but not for treasures.
- 5- The basic ruling concerning marine wealth other than minerals and treasures, such as fish, pearls, and coral, is that they are lawful objects for which *Zakâh* is not due unless one or more conditions of *Zakâh*, such as being intended for trade, are realized whereby *Zakâh* on goods stocked for trade is to be applied.”

The 23rd symposium on “*Contemporary Zakâh Issue*” also addressed the topic of *Zakâh* on concession contracts, and the fatwas of the symposium stated the following:

“The participants in the symposium discussed the researches presented on the topic, and concluded the following:

First: Concession contract is a contract whereby the State (or whoever represents it) assigns to the contractor the task of establishing, managing and running a public utility (at his expense and responsibility) in exchange for the right to receive cash sums from the beneficiaries of the utility’s services, under the State’s supervision and control, and for a return to the State.

As for the concession contract in the field of mining, it is an agreement between the State (or its representative) and a specialized entity (a local or foreign company), whereby the entity (the company) is granted the (exclusive) right to search, extract and invest in a mineral substance(s) for a specific period within a (specified) geographical area in exchange for a percentage of production or specified (or specifiable) amounts in accordance with the agreed upon conditions achieving the public interest.

Second: One of the most important rights established by the concession contract is non-competition on the part of other companies or entities (the exclusive right to search and mining).

Some concession agreements may allow the company or the party holding the concession the right to assign such concession to another party or company, with or without compensation, according to certain conditions.

Third: Forms of concession contracts

Concession contracts related to mineral wealth have several forms, the most important of which are:

- (a) Agreements concluded between the State and a company specialized in prospecting, extracting, mining and marketing in return for receiving specific amounts of money.

- (b) Agreement concluded between the State and a (local or international) company whereby the company provides technical service in exchange for money (service or construction contracts).

Fourth: Zakâh on minerals acquired by activating the concession contracts

Subject to the recommendations of the 14th symposium:

- (a) For each contract granting a right for the concessionaire (the company) to own a share of the mineral product, *Zakâh* on minerals shall be due on such shares.
- (b) For each contract whereby the concessionaire (the company) receives specific amounts of money in exchange for mining service, *Zakâh* shall be due on such amounts, as stated in “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” (i.e. Corporate *Zakâh* Calculation Guide).
- (c) The amount due on mineral wealth acquired by concession contracts is a quarter of one-tenth of the product.
- (d) The right of concession, if disposed of in return for financial consideration, shall be subject to *Zakâh* on acquired wealth.”

Third: Estimation regarding conditions of Zakâh on minerals in joint-stock companies

It is known that international agreements and laws consider mineral wealth to be the right of peoples, and that the State’s duty lies in managing this wealth in a way that preserves the rights of present and future generations. This requires reconsidering *Tahqîq Al-Manâh* (i.e. ascertaining the underlying cause) for *Zakâh* on minerals in these times, since mineral extraction has become different in terms of form and content as it is no longer a pure growth as it used to be in the past.

Based on this change in the reality of mineral extraction in terms of the laws regulating it, in addition to the costs of extraction, it appears that neither *Zakâh* nor *Khumus* is to be paid on extracted minerals at the time of extraction, based on the abovementioned, and because it is no longer owned by its extractor but by the State itself. Minerals in the earth have become in

the possession of the State, which has the exclusive right to dispose of them in a way that achieves the public interest.

In addition, the State, if it does extract these minerals by its own companies and authorities, grants the concession right to other companies in exchange for rights that must be given to the State in exchange for this concession. Accordingly, what the concessionaire acquired is nothing but compensation for extraction services. The concessionaire is to be subject to the ruling of *Zakâh* on acquired wealth if the extracted minerals are gold or silver, and the company shall pay the *Zakâh* due along with *Zakâh* on its wealth subject to the elapse of the *Hawl*.

But if the extracted mineral is not gold or silver, and is intended for trade, then it is likely to be subject to the ruling of goods stocked for trade, based on the fact that the companies acquired these minerals by means of purchasing the concession right, which is considered a *Mu`âwadah* (i.e. exchange) contract and accordingly an act of trade.

However, the problem with this argument is that the concession right is not considered as a *Mu`âwadah* contract for the extracted minerals, and thus such minerals are more appropriate to be subject to the ruling of wealth other than minerals, such as marine or plant wealth for which *Zakâh* is not due, such as flowers, tea, or rubber extracted from trees. Nothing is to be paid as *Zakâh* on such objects when they are extracted or planted. In addition, *Zakâh* is not due on the inventory thereof even if intended for trade unless and until they are sold for cash, where the company shall pay *Zakâh* on them along with its property subject to the elapse of the *Hawl*. This is based on the aforementioned opinion of the majority of scholars stating that it is a condition for *Zakâh* to be due on goods stocked for trade to be owned through a *Mu`âwadah Mahdah* (i.e. absolute exchange) contract, or through a *Mu`âwadah Ghayr Mahdah* (i.e. relative exchange) contract.

As for the famous opinion of the Hanbalites that *Zakâh* is due on goods stocked for trade which the *Zakâh* payer owned by his act (work) with the intention to trade, or the second opinion that *Zakâh* is payable for goods stocked for trade owned with the intention of trade even if not combined with the actual act of trade, then *Zakâh* is payable for the inventory of minerals

other than gold and silver, whether possessed through a concession contract or by means of extraction from his own property. This is because the person has owned such inventory by his own work, which, however, must be combined with the intention to trade in order for *Zakâh* to be payable for such inventory. Also, based on the opinion that the act of trade is not required for *Zakâh* to be due on goods stocked for trade, *Zakâh* is payable for such inventory subject only to the intention to trade (even if not combined with the act of trade).

In the fatwas of the 13th symposium on “*Contemporary Zakâh Issues*” regarding *Zakâh* on mineral and marine wealth, the following is stated:

“The participants in the symposium discussed the researches presented on this topic, and concluded the following:

- 1- Mineral and marine wealth is resources found in the earth and sea that have a material value among the people, and which the Legislator permitted the benefit and circulation thereof.
- 2- Mineral wealth, whether in the earth or the sea, is publicly owned by the State which has the exclusive right to dispose of it, and to grant natural or legal entities the right to own or use it as required by the Shari’ah-based interest.
- 3- If the State owns mineral or marine wealth and allocates it for public interests, then no *Zakâh* is due on it, paying attention to the recommendations of the 13th symposium (recommendation no. 19).
- 4- The amount due on mineral and marine wealth shall be paid upon the extraction thereof if absolutely owned by natural or legal entities, which is the *Khumus* for minerals and treasures if extracted without cost, and a quarter of one-tenth if extracted with cost, taking into account the fulfillment of the *Nisâb* of gold for minerals but not for treasures.
- 5- The basic ruling concerning marine wealth other than minerals and treasures, such as fish, pearls, and coral, is that they are lawful objects for which *Zakâh* is not due unless one or more conditions of *Zakâh*, such as being intended for trade, are realized whereby *Zakâh* on goods stocked for trade is to be applied.”

The 23rd symposium on “*Contemporary Zakâh Issue*” also addressed the topic of *Zakâh* on concession contracts, and the fatwas of the symposium stated the following:

“The participants in the symposium discussed the researches presented on the topic, and concluded the following:

First: Concession contract is a contract whereby the State (or whoever represents it) assigns to the contractor the task of establishing, managing and running a public utility (at his expense and responsibility) in exchange for the right to receive cash sums from the beneficiaries of the utility’s services, under the State’s supervision and control, and for a return to the State.

As for the concession contract in the field of mining, it is an agreement between the State (or its representative) and a specialized entity (a local or foreign company), whereby the entity (the company) is granted the (exclusive) right to search, extract and invest in a mineral substance(s) for a specific period within a (specified) geographical area in exchange for a percentage of production or specified (or specifiable) amounts in accordance with the agreed upon conditions achieving the public interest.

Second: One of the most important rights established by the concession contract is non-competition on the part of other companies or entities (the exclusive right to search and mining).

Some concession agreements may allow the company or the party holding the concession the right to assign such concession to another party or company, with or without compensation, according to certain conditions.

Third: Forms of concession contracts

Concession contracts related to mineral wealth have several forms, the most important of which are:

- (a) Agreements concluded between the State and a company specialized in prospecting, extracting, mining and marketing in return for receiving specific amounts of money.

- (b) Agreement concluded between the State and a (local or international) company whereby the company provides technical service in exchange for money (service or construction contracts).

Fourth: *Zakâh* on minerals acquired by activating the concession contracts

Subject to the recommendations of the 14th symposium:

- (a) For each contract granting a right for the concessionaire (the company) to own a share of the mineral product, *Zakâh* on minerals shall be due on such shares.
- (b) For each contract whereby the concessionaire (the company) receives specific amounts of money in exchange for mining service, *Zakâh* shall be due on such amounts, as stated in “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” (i.e. Corporate *Zakâh* Calculation Guide).
- (c) The amount due on mineral wealth acquired by concession contracts is a quarter of one-tenth of the product.
- (d) The right of concession, if disposed of in return for financial consideration, shall be subject to *Zakâh* on acquired wealth.”



Chapter Four
Estimation Regarding Calculating
Zakatable Wealth for Joint-Stock Companies

Introduction



In chapter three, we reviewed the conditions of obligating *Zakâh* and the basis for its estimation in joint-stock companies. We also clarified that the fruit of this estimation lies in identifying the payer of *Zakâh* for joint-stock companies, and determining the zakatable wealth.

As for chapter four, we will discuss the estimation regarding calculating zakatable wealth according to the “Shari’ah-Based Estimations” through the information provided by financial reports in accordance with the basis of accounting measurement. The discussion in this chapter is arranged into three treatises as follows:

Treatise One: Estimation regarding calculating *Zakâh* on cash and debts.

Treatise Two: Estimation regarding calculating *Zakâh* on goods stocked for trade.

Treatise Three: Estimation regarding calculating *Zakâh* on products of land, grazing livestock, and minerals.



Treatise One

Estimation Regarding Calculating *Zakâh* on Cash and Debts



This treatise aims at measuring the basis of estimation in cash and its equivalents, as well as the debts of all kinds. The treatise is divided into six topics as follows:

Topic (I)

Estimation Regarding Calculating *Zakâh* on Cash

Naqd (i.e. Cash) is one of the most important financial items recognized in financial statements, and it is included in the list of current assets, given that it is the most liquid form of current assets. This topic aims at defining cash, identifying its ruling as to *Zakâh* from the Fiqh-related perspective, explaining its accounting treatment in financial statements, and clarifying estimation regarding calculating its *Zakâh*.

First: Definition of *Naqd* (i.e. cash)

(a) Linguistic meaning of *Naqd*

Naqd in Arabic language is an infinitive of the trilateral root “*Nûn, Qâf, Dâl* (i.e. N Q D) [ن ق د]”, meaning to project something and thrust it out.

In Arabic it is said: “*Naqadtuhu Ad-Darâhim* and *Naqadtu Lahu*”, meaning I gave him dirhams, and he received them; and “*Naqada Ad-Darâhim* and *Intaqadahâ*”, meaning he checked the dirhams’ state, and detected their

counterfeiting. It is used to refer to the *Manqûd* (i.e. the coined gold and silver).⁽¹⁾

(b) Terminological meaning of *Naqd*

The scholars of Fiqh use the term *Naqd* (i.e. cash) to refer to gold and silver in particular, be it coined or uncoined in the form of dirhams or dinars. This is the intended meaning as to *Zakâh*. It also refers to coined gold and silver, and to the opposite of deferment.⁽²⁾

(c) Legal meaning of *Naqd*

In the legal convention, *Naqd* (i.e. cash) means anything that gains general acceptance, by virtue of custom, law, or value of the thing itself, as a medium of exchange for goods and services, and is acceptable means of quittance and settlement of debts.⁽³⁾

(d) Accounting meaning of *Naqd*

In the accounting convention, “Cash and Cash Equivalents” are widely used and listed on the statement of financial position under assets column.

In its broadest sense, *Naqd* (i.e. cash) comprises cash on hand and demand deposits.⁽⁴⁾

As for cash equivalents, they are short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.⁽⁵⁾

This definition imposes two restrictions on cash equivalents:

The first restriction is that the money should be readily convertible; then the funds that are subject to limitations preventing their use to pay the

(1) See: the trilateral root “*Nûn, Qâf, Dâl* (i.e. *N Q D*) [ن ق د]” in “*Maqâyis Al-Lughah*”, (5: 467); “*Mukhtâr As-Sihâh*”, (P. 317); “*Al-Mutli*”, (P. 318).

(2) “*Al-Manthûr*”, (3: 279); “*Tuhfat Al-Muhtâj Ma`a Hâshiyat Al-`Abbâdî*”, (3: 263).

(3) “*An-Nuqûd Wal-Masârif*”, Nâzîm Ash-Shimari, (P. 34); “*Nazariyyat An-Nuqûd*”, Rayyân Khalîl, (pp. 36-38).

(4) “*IAS 7- Statement of Cash Flows*”, Paragraph (6); “*Al-Muhâsabah Al-Mutawassitah*” [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 269).

(5) *Ibid.*

company's liabilities, or representing cash assigned for a specific purpose are not included. This is because these funds are disclosed separately, and are not included in the cash or cash equivalents, such as regulatory or restricted deposits.

The second restriction is that the money should be converted to known amounts of cash which are subject to an insignificant risk of changes in value; then shares, although they are readily liquidatable, are not included because they are subject to a significant change in their value.⁽¹⁾

In this topic, we will discuss the meaning of cash in the accounting concept, and the *Zakâh* due on cash, while discussion about deposits will be postponed for the next treatise.

Second: The accounting treatment for cash and cash equivalents

Cash is the only item listed on the statement of financial position in which the measurement does not vary due to the difference of the accounting basis adopted in preparing financial statements, whether on the cash or accounting accrual basis. This is because cash is the unit by which assets and liabilities are measured in financial statements.⁽²⁾

If cash item included foreign currencies, then all currencies and assets owned by the company should be valued at the same currency that the company used in preparing its financial statements. Yet, the basis for valuating these foreign currencies should be the fair value at the date of issuing the statement of financial position.

Wherever the fair value is mentioned in accounting standards, it means: "The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."⁽³⁾ This means the price that the company receives when exchanging these currencies to the purchase price of the currency in money markets.

(1) "*Al-Muḥâsabâh Al-Mutawassitâh*" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 269).

(2) *Ibid.*

(3) "*IFRS 13- Fair Value Measurement*".

Third: Estimation regarding calculating *Zakâh* on cash and cash equivalents

It has been clarified that the measurement of cash and cash equivalents is originally consistent with the principles of *Zakâh* calculation. This is because cash is the unit of measurement in financial statements, but estimation relates to recognition and they relate to the conditions of obligating *Zakâh*, such as the elapse of a full lunar year (*Hawl*) on this cash. That is, the cash may include acquired money that its *Hawl* has not yet elapsed, and it may also include ill-gotten money that is not subject to *Zakâh*. This has already been discussed earlier, and it seems sufficient in this respect.



Topic (II)

Estimation Regarding Calculating *Zakâh* on Bank Deposits

Bank deposits are one of the most important assets listed in the statement of financial position, and this topic is meant to illustrate their essence, identify their ruling as to *Zakâh*, and explain their accounting treatment in financial statements.

First: Definition and types of bank deposits

A bank deposit is defined as:

“Funds which individuals and institutions entrust the bank to keep, provided that the bank assumes the commitment to repay such funds or their equivalent to depositors or any other specific person, on demand or subject to the conditions agreed upon.”⁽¹⁾

Second: Types of bank deposits

Bank deposits are numerous. The names and types of these deposits vary from one bank to another, but most of these deposits fall into three basic types as follows:⁽²⁾

(a) Demand deposit (current deposit)

This is a bank account whereby the client agrees with the bank to withdraw the funds deposited on-demand at any time. An agreement that when the funds to be withdrawn exceed a certain amount the client shall notify the bank of his repayment request before a certain period of time, may be concluded. The bank does not usually pay interest on these deposits, and sometimes it may pay a low interest.

(1) “*ʿAmaliyyât Al-Bunûk Min Al-Wijhah Al-Qânûniyyah*”, ʿAlî Jamâlud-Dîn ʿAwad, (P. 26); “*Al-Qânûn At-Tijârî*”, Mahmûd Ash-Sharqâwî, (2: 533).

(2) Ibid.

(b) Notice deposit (savings deposit)

This is a bank account whereby the bank agrees with the client that the funds deposited shall not be repaid except after a certain period of notifying the bank of the repayment. The interest rate on this type of deposits is close to the interest rate in current deposits.

(c) Term deposit (investment deposit)

This is a bank deposit whereby the bank agrees with the client that he shall not ask the bank to repay the funds deposited except after a certain term ends; such as three or six months, or even a year. The bank usually pays high interest on this type of deposits.

Third: Fiqh-based adaptation of bank deposits

The majority of contemporary scholars of Fiqh are of the view that bank deposits are loans from the clients to the bank.

This is the view adopted by the OIC International Islamic Fiqh Academy (IIFA) in Jeddah, in its resolution no. 86 (3/9) which resolved:

“Demand deposits (current accounts), whether at Islamic banks or interest-based banks, are considered as loans, from a Shari'ah perspective, since the bank taking delivery of these deposits is answerable for their safety and bound by Shari'ah to return them on demand. The ruling applicable to the loan is no way affected by the bank's (the borrowers) solvency or otherwise.”

Whereas these deposits are loans from the Fiqh-based perspective, then it is not permissible to take returns or interests on these bank deposits; because this falls under *Ribâ* (i.e. usurious transaction) of loans, as adopted by the OIC International Islamic Fiqh Academy (IIFA) in its resolution no. 86 (3/9) which resolved:

“Deposits for which an interest is paid, as in the case of interest-based banks, being usury loans, are prohibited (*Harâm*) whether they are demand deposits (current accounts) or term deposits, notice deposits, or savings accounts.”

Fourth: Shari'ah alternatives to interest-based bank deposits

Since it is not permitted to pay interest to the clients on their bank deposits, the banks providing Shari'ah-compliant banking services offer alternatives to these deposits. The most important of these alternatives are:

(a) *Mudârabah*-based investment deposits:

“These are the amounts which the institution receives from investors on the basis of participatory *Mudârabah* (*Al-Mudârabah Al-Mushtarakah*). The holders of such accounts delegate the institution to invest their funds through *Mudârabah*. Investment accounts can be divided into two types: The first type is investment accounts that are managed on the basis of unrestricted *Mudârabah* where the *Mudârib* is delegated to invest the *Mudârabah* funds in any field of investment he deems suitable. The second type is investment accounts which are managed on the basis of restricted *Mudârabah*, where the *Mudârib* has to invest the *Mudârabah* funds in a specific type of investment to be determined by *Rabul-Mâl* (i.e. owner of the capital). The relationship between the holders of these accounts and the institution is the typical relationship between the *Mudârib* (the work provider) and *Rabul-Mâl*.”⁽¹⁾

(b) *Murâbahah*-based investment deposits:

These are the amounts which the banks receive from investors. The holders of such accounts delegate the bank to buy a specific commodity (and he gives the price of it to the bank) in cash, then the bank buys this commodity from the client for a deferred payment basis, in return for a specified profit (agreed upon with the client).⁽²⁾

If the client sold the commodity he owned on the bank, this is called “direct investment deposit”, “reverse *Tawarruq*”, or “reversed *Murâbahah*”.

The contemporary scholars of Fiqh disagreed as to direct investment deposit on two opinions:

(1) Shari'ah Standard no. (40): “*Distribution of Profit in Mudârabah-Based Investment Accounts*”, item (2/1).

(2) See: “*Wadî'at Al-Murâbahah Fî Al-Bunûk Al-Islâmiyyah*”, Yûsuf Ash-Shubîlî.

First opinion states the prohibition of direct investment deposits, and considers them as a type of organized *Tawarruq* (i.e. monetization), but the *Mustawriq* (i.e. monetization beneficiary) in this form is the bank.

This opinion was adopted by the OIC International Islamic Fiqh Academy (IIFA) in Jeddah, and the MWL Islamic Fiqh Council, as well as a group of contemporary scholars of Fiqh.

They justified their opinion stating:

“... This is because simultaneous transactions occur between the financier and the *Mustawriq* (monetization beneficiary), whether it is done explicitly or implicitly or based on common practice, in exchange for a financial obligation. This is considered a deception, i.e. in order to get the additional quick cash from the contract. Hence, the transaction is considered as containing the element of *Ribâ*.”⁽¹⁾

Thus, “This transaction is similar to *‘Inah* (i.e. sale for immediate cash to repurchase the object with a profit) which is forbidden by Shari’ah, considering that the sold commodity is not intended for itself, and so it takes the same ruling, especially that the bank assumes the commitment to buy this commodity from the client.”⁽²⁾

Second opinion states the permissibility of direct investment deposits if the contract was concluded on a specific commodity, which is possessed before the sale takes place, provided that the client himself sells the commodity to the bank, so that the bank does not represent the two parties of the contract.

This opinion was adopted by a group of Shari’ah boards in a number of banks.⁽³⁾

This research is not concerned with giving a preponderance to one of these two opinions about this issue, or giving a judgement on the applications of

(1) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (19), (3: 874), resolution no. 179 (5/19), item (second).

(2) “*Journal of the Islamic Fiqh Council*”, issue no. (23), (P. 355).

(3) Such as: The Shari’ah Panel of International Islamic Financial Market (IIFM); the Shari’ah Board of Al Rajhi Bank in its resolution no. (553); and Bank Albilad Shari’ah Committee.

these deposits to the banks offering them, because this distracts attention from the main purpose of this research. Rather, I intended to point out the disagreement over this issue, which entails considering the *Zakâh* on interests of these deposits based on the disagreement in this respect.

However, if the commodity is sold to a third party, then it is regarded as investment agency, which is permissible as long as *Murâbahah* (i.e. sale for a profit) is compliant with Shari'ah.

Fifth: Accounting treatment for bank deposits

Current deposits are included in the concept of cash. Accordingly, they are recognized and measured like cash in fund, while other deposits are considered cash equivalents. However, when preparing financial statements, bank deposits require that their accounts be settled in order to ensure that they are matching the amounts appropriated in the company's records.⁽¹⁾

Also, cash includes negative balances, which are the results of the overdraft from bank accounts. Thus, they are listed on financial statements under cash and cash equivalents, not under liabilities on the statement of financial position.⁽²⁾

From an accounting perspective, Shari'ah-compliant investment deposits are treated the same as the interest-based investment deposits. The Saudi Organization for Certified Public Accountants (SOCPA) stipulates that the nature of deposits and their general conditions shall be disclosed, particularly concerning their compliance with the Shari'ah controls (traditional lending, *Murâbahah* deposit).⁽³⁾

Sixth: Estimation regarding calculating *Zakâh* on bank deposits

We clarified earlier that bank deposits are adapted as being loans between the bank and its clients, and that when an agreement is concluded to receive

(1) "*Al-Muḥāsabah Al-Mutawassitah*" [*Intermediate Accounting*, Kin Lo, George Fisher], Kin Lo, George Fisher, (1: 272); "*Al-Muḥāsabah Al-Mâliyyah*" [*Financial Accounting*, Walter Harrison, Charles Horngren, William Thomas, Themin Suwardy], (P. 325).

(2) "*Al-Muḥāsabah Al-Mutawassitah*" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 12).

(3) See: Amendments of SOCPA to "*IFRS 7- Financial Instruments: Disclosures*".

interests on these loans, then such interests fall prohibited (*Harâm*), and shall be rid of. If they have not been rid of, and thus mixed with lawful money, then the rate of *Zakâh* shall be paid out of them as stated earlier.

When considering *Zakâh* on current deposits, however, we find that it takes the same ruling as the received money, as resolved by the accounting standards, and that disagreement regarding *Zakâh* on debt does not work out for these deposits. This is a form of “Shari’ah-Based Estimations”, so current deposits are judged to have the same ruling as cash in terms of *Zakâh*, even if originally having the same ruling as loan/debt. Accordingly, the payer gives *Zakâh* on current deposits in the same manner as he pays the due *Zakâh* on his money deposited in the fund, based on the following reasons:

- (a) Current accounts are a reliable method of keeping money. Rather, keeping money in accounts is considered more reliable than keeping it in safes or vaults. This is why it is considered unsafe to keep large amounts of currency in the form of banknotes.
- (b) The meaning considered by the scholars of Fiqh regarding disagreement over *Zakâh* on debt is weak ownership because of the inability to develop it, or even to return it, and this meaning is excluded in current accounts. Rather, the current accounts enable the owner of money to develop it in a manner that is better than keeping it in safes or vaults.
- (c) Accounting entries for current deposits are not only mere recognitions of paper money that the account holder owns in the bank, but they also are forms of cash. Rather, most of cash issued under the supervision of central banks takes the form of accounting entries, and the banknotes printed by central banks does not exceed 10% of the total cash.

In his valuable study regarding *Zakâh* on the contemporary debts, Dr. `Abdullâh Al-`Âydî was among the first researchers who referred to this meaning of *Zakâh* on current deposits. He stated:

“The most preponderant opinion regarding current account wavers between loan and cash. That is, it is similar to loan considering that it is a payment of money to a beneficiary who guarantees its equivalent to the lender, and it is similar to cash considering that the account holder is a quasi-recipient of the money deposited in his account.

Thus, it is conceivable to include the requirements of both loan and cash, and so it is acceptable to prohibit interest on current account...; but concerning *Zakâh*, current accounts shall not be given the ruling of *Zakâh* on loan.”⁽¹⁾

A similar meaning could be found in the statement of Imam At-Tâhir Ibn `Âshûr regarding *Zakâh* on banknotes that they are debt securities. He stated:

“Then these debts, expressed in bank cards, reached, through strong trust in indebted companies and government’s guarantee on them, an extent that they became as popular among people as gold and silver, so they were worthy of having the same ruling on gold and silver, taking into consideration their gold exchange value in world financial markets. This is because rulings are based on meanings, not names/words, as Ibn Rushd (may Allah be merciful to him) said: ‘If the meanings are correct, there shall be no scope for words.’ ”⁽²⁾

As for the investment deposits, there are two points of view regarding them:

First: To pay *Zakâh* on these deposits according to the zakatable assets they represent. This is the basic ruling regarding *Zakâh* on investments. However, the practical reality in these accounts is that they are quite often invested in bank’s financing activities. That is why the interest on these returns is related to returns of financing activities, which are related to the traditional rate of interest.

It is well-known that bank financing activities are directed as a whole to *Murâbahah* and financing lease, and according to the preponderant opinion to the researcher that lease debts are established in the liability, and treated as *Murâbahah* debts as will be discussed later,⁽³⁾ then the investment base for these deposits is zakatable. Yet, if we consider the other opinion regarding *Zakâh* on financing debts, then calculating *Zakâh* on these deposits is influenced by activity of financing lease, and this approach seems to be difficult, if not impossible.

(1) “*Zakât Ad-Diyûn Al-Mu`âsirah*”, (P. 118).

(2) “*Fatâwâ Ash-Shîkh Al-Imâm Muḥammad At-Tâhir Ibn `Âshûr*”, (P. 252); and see (P. 270).

(3) See: (P. 370).

Second: To pay *Zakâh* on these deposits considering that they are to be periodically liquidated, on a daily or monthly basis. Therefore, *Zakâh* thereof is based on their balance at the date of *Zakâh* accrual. This approach is a kind of estimation of *Zakâh* in these deposits, and is the approach adopted by collective *Ijtihâd* (i.e. legal reasoning and discretion). Also, it was adopted in the Shari'ah Standard no. (35) regarding *Zakâh*, item (5/1/3/2), which stipulates:

“The owners of these accounts should pay *Zakâh* from the investment balances as well as the profits, whether such accounts represent short, or long-term deposits, and even if drawing from the account is restricted by the investment institution or the owner.”

The recommendation of the 27th symposium on “*Contemporary Zakâh Issues*” referred to these two approaches giving preponderance to the second approach, stating:

“The basic ruling on unrestricted investment accounts is to pay *Zakâh* on the balance of the investment accounts (principal plus profit), and if it is possible to know the zakatable assets related to these accounts, then its *Zakâh* is paid out according to the zakatable assets that they represent.”

Topic (III)

Estimation Regarding Calculating *Zakâh* on Commercial Papers

This topic is meant to study the *Zakâh* due on commercial papers, considering that they are among the financial items recognized in the column of current assets and current liabilities. Commercial papers are regarded as one of the instruments for documenting debts in commercial transactions.

First: Definition of commercial papers

Commercial papers are defined as, “Tradable certificates (*Sukûk*) that represent pecuniary rights payable at sight or after a short period. Customary practice regards them as instruments of payment and they act as substitutes for cash in transactions.”⁽¹⁾

Second: Types of commercial papers

Commercial paper refers to every certificate meeting the above definition. However, commercial papers that have been regulated in international and local laws are three basic kinds as follows:⁽²⁾

- 1- **Bill of exchange:** Bill of exchange, also called *Suftajah* (i.e. demand note), not of hand, and draft, is the most prominent and oldest regulated type of commercial papers. It is defined as, “A certificate issued in a particular legal form containing an order from a person known as the drawer directed to another person (known as the drawee) to pay a certain sum of money at sight, or on a particular or determinable date, to a third person (called the beneficiary).”
- 2- **Promissory note:** Promissory note (also called a note payable) is defined as, “A certificate whereby the issuer promises to pay a certain sum of

(1) “*Al-Qânûn At-Tijâri*”, Mustafâ Tâha, (P. 7); “*Al-Awrâq At-Tijâriyyah*”, Samîhah Al-Qalyûbi, (P. 7); “*Al-Awrâq At-Tijâriyyah*”, `Abdullâh Al-`Umrân, (P. 10)

(2) Ibid.

money on a particular or determinable date, or at sight, to another person (called the beneficiary).” The promissory note differs from the bill of exchange considering that the note includes only two parties, namely the note’s issuer or maker, and the beneficiary.

- 3- **Check:** It is defined as, “A certificate that is issued in a particular form containing an order issued by a person (known as the payer) to another person (known as the payee) to pay a certain sum of money to a third person (known as the beneficiary) when the check is presented.” The check is similar to the bill of exchange considering that both of them include three parties, and differs from it considering that the check is payable at sight, and that the drawee is a bank.

Third: Accounting treatment for commercial papers

Financial statements disclose commercial papers existing already in the company, which are not yet due, within the current assets, under the item: Receipt Papers. They are valued at the current value of the receipt papers at the end of fiscal year, after deducting the rate of discount or interest.

Fourth: Estimation regarding calculating *Zakâh* on commercial papers

This research is not meant to expand the Fiqh-based adaptation of these commercial papers and its consequent rulings. Rather, it will only explain the descriptions affecting the *Zakâh* due on these commercial papers. That is, the subject matters of these papers are specific amounts of money, so their ruling shall be the same as the ruling of *Zakâh* on debts. Later, we will discuss in more detail the ruling of *Zakâh* on debts owed to the payer, and the effect of his debts owed to others on the *Zakâh* base.

Like other debts, the Shari’ah ruling on these papers requires considering the amount which is the subject matter of commercial paper: Is it a due or deferred debt? Is the debt of paper resulting from a loan or sale? If it is resulting from a loan, does it involve a usurious interest?

“*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” (i.e. Corporate *Zakâh* Calculation Guide) has illustrated the Shari’ah ruling regarding the *Zakâh* due on receipt papers based on the aforementioned details. It stipulated:

“If the value of receipt papers represents a usurious interest-based loan, or a debt for a commodity sold on a deferred payment basis in return for an increment, then *Zakâh* shall be paid out on the principal of the loan or the debt (amount of the note), whether the debt is due or deferred so long as no difficulty is going to be encountered in its collection. Yet, if there is difficulty in its collection due to a reason beyond one’s control, such as the debtor’s procrastination or his insolvency, then *Zakâh* on it shall be paid for only one year after receiving it. The creditor may delay the payment of *Zakâh* on the deferred debt whose *Zakâh* becomes due until he collects it in whole or in part. When he collects it, he shall pay its *Zakâh* for the previous period, deducting from it the period during which difficulty has been encountered in collecting the debt, if any, and all usurious interests shall be disbursed in charitable channels... But if the receipt papers represent a commodity sold on a deferred payment basis for more than its spot price, then this increment shall be permissible so long as it is included in the price. The value of the receipt papers shall be included in the zakatable assets.”

Similar relevant details are provided in the Shari’ah Standard no. (35) regarding *Zakâh*, item (5/3/4/3).

By examining the details of calculating *Zakâh* on receipt papers (bills, promissory notes and checks), we find that they can be considered in case the company pays *Zakâh* itself, but if the *Zakâh* is calculated by someone other than the company, then it is imperative to act according to estimation. So, the following considerations should be taken into account to estimate their *Zakâh*:

- (a) The unlawful money in the debt of receipt papers is regarded as lawful (*Halâl*), unless the company gets rid of the unlawful returns or discloses them. In such a case, this amount is to be deducted from the total *Zakâh* base, and the *Zakâh* shall be calculated after deducting this amount.
- (b) Commercial papers are measured at their value upon issuing the financial statement, and the entire debt is not recognized. This is based on the issue of measuring deferred debts, which will be discussed later. The preponderant opinion to the researcher is the view of the Malikites on

measuring the debts of the managing trader, and the view that the *Zakâh* on deferred debt is being paid at its number (i.e. nominal value). Thus, considering the estimation recognized in financial statements leads to the adoption of a non-preponderant view, since financial statements do not disclose the full amount of debt.

- (3) Doubtful debts in receipt papers are regarded as bad debts (non-repayable debts), as will be discussed later.



Topic (IV)

Estimation Regarding Calculating *Zakâh* on Receivables

The debts owed to the company by others (known as receivables) are among the common financial items recognized in financial statements. Like other items on the statement of financial position, receivables are divided into current and non-current liabilities. This topic aims at studying current liabilities.

According to the International Accounting Standards (IAS):

“An entity shall classify an asset as current when: (a) it expects to realize the asset, or intends to sell or consume it, in its normal operating cycle; (b) it holds the asset primarily for the purpose of trading; (c) it expects to realize the asset within twelve months after the reporting period; or (d) the asset is cash or a cash equivalent (as defined in IAS-7) unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting period. An entity shall classify all other assets as non-current.”⁽¹⁾

First: Definition of *Diyûn Fî Dhimam Al-Ghayr* (i.e. receivables)

- In Arabic language, “*Diyûn*” (i.e. debts) is the plural of “*Dayn*” (i.e. debt), meaning a loan and a price of deferred sale.

In Arabic, it is said: “*Dâna* (Past tense. i.e. he lent) *Yadînu* (Present tense. i.e. he lends) *Fa Huwa Dâ'in* (i.e. so, he is a creditor)”; the passive participle is *Madîn* (i.e. debtor).⁽²⁾ The scholars of Fiqh use the term “*Dayn*” to indicate:

“A liability to pay, which results from any credit transaction.”⁽³⁾

(1) “IAS 1- *Presentation of Financial Statements*”, Paragraph (66).

(2) See, the trilateral root “*Dâl, Yâ', Nûn* (D Y N) [ذ ي ن] in “*Al-Misbâh Al-Munîr*”, (P. 172); “*Al-Qâmûs Al-Muḥîṭ*”, (p. 1198).

(3) “*Mu`jam Al-Mustalahât Al-Mâliyyah Wal-Iqtisâdiyyah*”, Nazîh Hammâd, (P. 208).

- “**Dhimam**” is the plural of “**Dhimmah**”. It means “a covenant, a security, a guarantee.”⁽¹⁾

The scholars of Fiqh use the term “**Dhimmah**” to indicate:

“A person’s Shari’ah-based capacity to have rights and obligations.”⁽²⁾

The meaning intended here is: “Persons’ rights and liabilities.”

- “**Al-Ghayr**” is an Arabic noun meaning: “Other”, and it often comes as an indefinite adjective. However, it may be attached to the Arabic definite article “الـ” (i.e. *Al-*), for the purpose of specification (Arabic: *Takhṣīs*). It is commonly used in the legal contracts in the sense of “the third party”.⁽³⁾
- In accounting convention, receivables are debts owed to a company by others (its debtors or customers) for goods or services provided by the company, or for any other reason. These debts are agreed to be repaid in a short-time.

Receivables are classified into two types:

- 1- **Receivable trade (Trade-receivables):** Accounts which originate from the ordinary course of sales transactions.⁽⁴⁾ They refer mainly to the amounts received for selling goods or providing services. These accounts do not necessarily require written contracts owing to the flexibility of commercial transactions.
- 2- **Receivable other (Non-trade receivables):** Accounts which originate from transactions other than or outside the sales. They are characterized by being non-recurring transactions with longer terms. They arise from written contracts, such as receivables from owners, managing-traders, or employees, and they represent the loans among companies, or payable real estate revenues, or prepaid money.

(1) See, the trilateral root “*Dhâl, Mîm, Mîm* (i.e. *Dh MM*) [د م م]” in “*Al-Misbâh Al-Munîr*”, (P. 176).

(2) “*Kashf Al-Asrâr*”, (4: 238); “*Sharh Mayyârah ‘Alâ Tuḥfat Al-Aḥkâm*”, (2: 79); “*Asnâ Al-Maṭâlib*”, (2: 15); “*Mu’jam Al-Mustalahât Al-Mâliyyah Wal-Iqtisâdiyyah*”, Nazîh Hammâd, (P. 216).

(3) See, the trilateral root “*Ghayn, Yâ, Râ’* (*Gh YR*) [ج ي ر]” in “*Al-Misbâh Al-Munîr*”, (p. 373); “*Al-Mu’jam Al-Wasî’*”, (2: 668); “*Maqâlât Maḥmûd At-Tanâhî*”, (1: 204).

(4) “*Al-Muḥâsabâh Al-Mutawassitah*” [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 278).

Second: Accounting treatment for accounts receivable

Accounts receivable are financial assets, because they ultimately generate future cash flows, and they are divided, as aforementioned, into receivable trade (trade-receivables) and receivable other (non-trade receivables). The receivable trade accounts in the company are usually large, because they arise from the primary activity of the company.

The basic ruling regarding these liabilities is to be valued at their fair value. However, since the receivable trade accounts (trade-receivables) are mostly due within 90 days or less, and less likely to be due after more than a year, taking into account the cost constraint on useful financial report, we find that the benefits resulting from the calculation of the current value of accounts receivable are short-term and limited compared to the costs of recognizing them. Accordingly, these liabilities are recognized at their nominal value, while the time value of money is not taken into account in the accounts of receivable trade.⁽¹⁾

There are three things that affect the accounts receivable and the determination of amounts owed to the company in its contracts with customers, which are as follows:

- (a) **Cash discount or cash back:** An incentive which is given based on certain conditions; such as cash purchase, payment at a specified time, or reaching the sales to a certain rate. When the company records the amounts owe to it, they are recognized at the amounts the company expects to collect after deducting these discounts.⁽²⁾
- (b) **Allowance of doubtful accounts (ADA):** It is a contra-asset account associated with accounts receivable, and represents an estimation of the amounts not expected to collect from the customers. It is also referred to as a bad debt reserve, or the allowance for uncollectible accounts.⁽³⁾

(1) "Al-Muḥāsabah Al-Mutawassīṭah" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 279); "IFRS 9- Financial Instruments", Paragraph (5/1/1) and Paragraph (5/1/3).

(2) "IFRS 15- Revenue from Contracts with Customers", Paragraph (53); "Al-Muḥāsabah Al-Mutawassīṭah" [*Intermediate Accounting*, Kin Lo, George Fisher], (pp. 279-280).

(3) "Al-Muḥāsabah Al-Mutawassīṭah" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 28).

There are two methods for estimating this allowance:

- 1- **A percentage of sales (income statement entry):** This method calculates the allowance for doubtful accounts based on a percentage of the total future sales; and to estimate this percentage, previous experience and economic conditions are to be taken into account.
- 2- **Accounts receivable aging (statement of financial position entries):** The aging method categorizes accounts receivable based on the length of time an invoice has been outstanding. For each category of these accounts, a specific percentage is estimated, taking into account previous experience, economic conditions, etc. This percentage shall increase with the accounts receivable aging increase.

Many companies use a combination of these two methods. The first method is used in initial reports such as quarterly reports, and the second method is used at the end of the fiscal year. Both methods are intended to determine the amounts that customers may stop to repay according to available information at the date of issuing financial statements.⁽¹⁾

- (c) **Bad debts (non-repayable debts):** They represent customers' accounts that are uncollectable. Their accounting treatment is to recognize a loss in the income statement, without affecting the amount recognized in the statement of financial position.

As for receivable other (non-trade receivables), they are recognized at the current value of the debt, which is the amortized cost method, owing to the low cost of recognition and the importance of the time value of money.

Third: Fiqh-based controversy regarding Zakâh on debts owed to the payer

Debt is a wealth owned by the creditor, but is not in his physical possession and his disposal of it is incomplete. Early and contemporary scholars of Fiqh differed strongly on this issue. The difference of opinions emerges from the controversy over *Tahqîq Al-Manâ't* (i.e. ascertaining the underlying cause)

(1) "*Al-Muhâsabah Al-Mutawassitah*" [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 284).

for the condition of absolute ownership. The views of the scholars of Fiqh regarding *Zakâh* on debt can be classified into three approaches:

Approach (1): *Zakâh* on debts is not required at all, since it is a non-growing wealth, as it is the case in privately owned property (i.e. non-commercial goods).

This view is reported on the authority of Ibn `Umar, `Â'ishah, and `Ikrimah, the freed slave of Ibn `Abbâs, (may Allah be pleased with them),⁽¹⁾ and it is the view of Ibn Hazm Az-Zâhirî too.⁽²⁾

The basis for this approach is that debt is not an existent wealth in reality in order to require *Zakâh*. Rather, "the creditor has only a number (i.e. nominal value) and description, and not an asset of wealth, in the debtor's liability. Further, the silver or gold in the debtor's liability may still be raw minerals, or the silver may still be dust, and perhaps the livestock in the debtor's liability have not been created yet. So, how can *Zakâh* be paid for an item of such a description? Thus, it is proper to say that no *Zakâh* is due on him in this respect."⁽³⁾

Approach (2): Debt in terms of *Zakâh* is corollary to the cause and principal of the debt, and *Zakâh* is required on the growing debt that is repayable, but not the non-repayable debt.

This is the view of the Hanafites and the Malikities. However, they disagreed on some issues.

The view of each school can be clarified as follows:

(a) Hanafi school

Imam Abû Hanîfah⁽⁴⁾ classifies debts into the following three categories:

1- Strong debt: A counter-value of loan, and commercial goods (i.e. a debt that arises from a loan or is incurred in consideration of commercial goods).

(1) "*Muṣannaf Ibn Abû Shaybah*", (3: 53); "*Al-Mughnî*", (4: 270).

(2) "*Al-Muḥallâ*", (4: 221).

(3) *Ibid.*, (4: 223).

(4) "*Fath Al-Qadîr*", (2: 187); "*Radd Al-Muhtâr*", (2: 305).

- 2- **Medial debt:** A counter-value of non-commercial goods (i.e., a debt that is incurred in consideration of non-commercial goods), such as the price of grazing or non-grazing livestock, service slaves and the like.
- 3- **Weak debt:** A counter-value of matters that is not properties (i.e. a debt that incurred in consideration of matters that is not properties), such as dowry, blood money, *Mukâtabah* (i.e. contracted manumission) and *Khul'* (i.e. compensatory divorce).

Hawl (i.e. *Zakâh* year) of the strong debt is calculated from the time in which its original asset first started. The medial debt is calculated from the date of sale, not from the date of actual receipt (collection) according to the most preponderant view. The weak debt takes the same ruling as acquired wealth, so it is to be combined together with the (amount of) *Nisâb* (i.e. minimum amount determining a person's zakatability) in his ownership, or otherwise a new *Hawl* shall start for it.

Zakâh is required on each of these debts if a full lunar year (*Hawl*) has elapsed and they reached the *Nisâb*. However, the *Zakâh* payer is not asked to pay it unless the collected amount reaches the *Nisâb*. This is based on the view approved by the Hanafi school concerning *Waqas* (i.e. the value between two mandatory values in *Zakâh*, which does not increase the rate of the *Zakâh* due) in the *Nisâb* of gold and silver, and that *Zakâh* is not required in *Kasr* (i.e. what falls below minimum threshold for obligatory *Zakâh*) of the second *Nisâb*.

The Hanafites' view is based on the argument that "there is no way to prove the *Nisâb* except through *Tawqîf* (i.e. being bound by a Shari'ah text and not amenable to legal reasoning and discretion) or agreement, and there is no way to prove it through *Qiyâs* (i.e. analogical deduction). The *Nisâb* agreed upon combines both ownership and physical possession together. If the ownership is separated from the physical possession, then it is an amount disagreed upon whether it is a *Nisâb* or not, so we do not prove it except from an aspect to which the *Nisâb* is proved correctly."⁽¹⁾ Therefore, these three categories are viewed as follows:⁽²⁾

(1) "*Sharh Mukhtasar At-Tahâwi*", (2: 342-343).

(2) *Ibid.*; "*Al-Mabsûf*", (2: 195).

The strong debt, which is a counter-value of commercial goods: *Zakâh* is required on it while being a debt because its original asset is a zakatable wealth, and it becomes a debt by the creditor's disposal. Accordingly, the right of the poor in it can never be waived owing to the combination of both physical possession and disposal together, and its *Hawl* shall be calculated from the time in which its original asset first started.

The medial debt, which is non-commercial goods in his possession: It is a counter-value of goods that are in the creditor's physical possession, and they become a debt by his disposal. Yet, they fall within the types of zakatable wealth, and thus, *Zakâh* on them is obligatory owing to the combination of both physical possession and disposal together. However, *Zakâh* due on them shall be paid only after collecting the *Nisâb* because the *Zakâh* correlated to the asset, and if the asset was ruined, then *Zakâh* due on it is to be waived.

The weak debt, which is matters that is not properties, such as inheritance, dowry, and debt of *Khul'*: It is to be established in one's possession when it becomes a debt. Hence, the combination of both physical possession and disposal together did not take place except with the actual receipt, and thus the elapse of *Hawl* shall be taken into account.

In all cases, *Zakâh* is not required according to the Hanafites except for the repayable debt. As for bad (non-repayable) debts, *Zakâh* is not due regarding them owing to the fact that they lack the condition of growth. The same applies to lost property, or property extorted without an evidence, and the repudiated debt.

The two companions of Abû *Hanîfah* (i.e. Abû *Yûsuf* and *Muhammad Ibnul-Hasan*) disagreed with the Hanafites in this respect. They view that all debts are subject to *Zakâh* whenever they were valid, and whenever the creditor receives any amounts, be they little or much, he shall pay *Zakâh*, except for the debt of *Mukâtabah* (i.e. contracted manumission) and *Si'âyah* (i.e. slave's requirement to work to pay for his freedom), and blood money, in a narration.

Their view is based on the argument that ownership is considerable in every valid debt. Yet, the money of *Mukâtabah* and blood money before being

decreed by a judge is not a valid debt, and so its ownership becomes absolute only after receiving it.

(b) *Mâlikî* school

According to the Malikites,⁽¹⁾ debts can be classified into three categories:

- 1- If the principal is an asset in one's possession, such as a loan, then *Zakâh* shall be due on it, and its *Hawl* is to be calculated from the time in which its original asset first started. When the debt is received, its *Zakâh* shall be paid for only one year, even if it remained in the debtor's liability for years, unless this was done to evade paying *Zakâh*.
- 2- If the principal is goods stocked for trade, then *Zakâh* on debt is to be based on the type of trade, according to the Malikites' differentiation between the monopolistic-trader and the managing-trader:

The monopolistic-trader is the one who buys commodities when prices are low. He speculates on the needs of others and does not sell these commodities until there is a brisk trade in the market and a huge profit. A year or even years may elapse without selling that commodity. If he sold it after years, then he has to pay *Zakâh* for only one year after selling it, but if he sold it for a debt, then he shall not pay *Zakâh* on this debt until he receives it and a full lunar year (*Hawl*) elapses over its original asset.

The managing-trader is a storeowner in a market who purchases commodities, and sells them every day as much as he can. The *Zakâh* due on his commercial goods is to be valued in cash because they are like the assets stocked for trade. So, he has to set for himself a month of the year during which he values the goods stocked for trade in his possession, and count what he owns of assets and cash. If he reaches the zakatable rate, then he shall pay *Zakâh*. Also, he shall pay *Zakâh* on debts owed to him, if they are expected to be collected, before receiving them.

“What to be considered in *Zakâh* on due debt (i.e. immediate payment) is its number (i.e. the nominal value) if it is an asset, and its value (i.e.

(1) “*Al-Muntaqâ*”, Al-Bâji, (2: 114-116); “*Al-Bayân Wat-Tahsîl*”, (1: 303); “*Iqd Al-Jawâhir Ath-Thamînah*”, (pp. 233-235); “*Ash-Sharh Al-Kabîr*”, (1: 466); “*Ash-Sharh As-Saghîr*”, (2: 632-636); “*Zakâtul-`Ayn*”, Muḥammad At-Tawîl, (P. 168).

the fair value) if it is a commodity. However, value is to be considered in *Zakâh* on deferred debts.”⁽¹⁾

Cash is not valued by cash, because it is not permissible to exchange cash for cash on a deferred payment basis. Rather, knowing the spot value of the deferred debt is reached by valuing it against a commodity deferred to its delivery date. Then, this deferred commodity is to be valued at its cash price when sold on the spot. By this way, the deferred debt is valued.

- 3- If the debt is in consideration of a property not subject to *Zakâh*, such as privately owned property (i.e. non-commercial goods), dowry, *Khul'* (i.e. compensatory divorce), or *Arsh* (i.e. compensation for hurt), or if the principal is a gift or an inheritance, then *Zakâh* shall be paid only after the elapse of a full lunar year (*Hawl*) starting from the day of receiving the debt.

The Malikites stipulate growth of assets and debts, according to the ability to develop them, for the *Zakâh* to be due. So, whenever the growth of an asset or debt is complete, its *Zakâh* shall be obligatory every year, and whenever the growth is incomplete, such as *Dimâr* (i.e. inaccessible wealth) including bad debt (non-repayable debt) and *Zakâh* of the monopolistic-trader, its *Zakâh* shall be obligatory for only one year after receiving it.

Accordingly, it is concluded from the (three) categories of debts that some debts are zakatable even before receiving them, such as the debt of the managing-trader, some debts are zakatable upon receiving them, and some other debts are zakatable after the elapse of a full lunar year (*Hawl*) starting from the day of receiving them. Further, debts are to be calculated for *Zakâh* in number (i.e. the nominal value) where they are paid based on this calculation, or at value (i.e. the fair value). The debt calculated in number is the debt regarding which there is solvency and certainty (of collecting it), while the debt calculated at value is the one whose growth decreases, such as the deferred debt, and the debt due on an insolvent so the debt is to be valued until one hundred becomes fifty, because the debt becomes due out of insolvency.⁽²⁾

(1) “*Iqd Al-Jawâhir Ath-Thamînah*”, (1: 228).

(2) “*Fatâwâ Ash-Shaykh Al-Imâm Muḥammad At-Tâhir Ibn ‘Āshûr*”, (P. 220).

The Malikites came to the conclusion that “the debt owed to someone other than the managing-trader are not subject to *Zakâh* ... so long as it is a debt.”⁽¹⁾

The Malikites’ view is based on the argument that *Zakâh* is obligatory on wealth not on anything else, as Allah, the Almighty, says: {“**Take, (O, Muhammad), from their wealth a Sadaqah (Zakâh)...**”}⁽²⁾ meaning for their wealth. This indicates that *Zakâh* is payable on all kinds of wealth, and as long as a debt is established in liability, hence it is not a wealth.⁽³⁾

In case of debts owed to other than the managing-trader, *Zakâh* is to be restricted to one year, because the creditor takes possession of the wealth, as being an asset, at the beginning and at the end of the *Hawl*, but not in between as it was not an asset. The same ruling applies to *Zakâh* payable on debt of monopolist’s trade.

Approach (3): *Zakâh* is due on debt by all means, as it is the case regarding all the creditor’s wealth. This is the view of the Shafiites⁽⁴⁾ and the Hanbalites⁽⁵⁾.

If the debt is due on a solvent person who is a non-procrastinating debtor, then *Zakâh* is due on this debt, because it is owned by him and he is able to benefit from it, such as a deposit. However, the Shafiites held the view that he should pay the *Zakâh* immediately, even if he has not received it yet, because he is able to get it back and dispose of it, as it is the case with a deposit. As for the Hanbalites, they viewed that he is not required to pay *Zakâh* of such a debt unless he receives it or takes consideration for it, or when he transfers it to a third party. In this case, he shall pay its *Zakâh* for the previous years, because *Zakâh* is obligatory by way of *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor) which would be meaningless if *Zakâh* is paid on a non-beneficial wealth.

If *Zakâh* is due on an insolvent person who is a non-procrastinating debtor, or if the debt is deferred or repudiated or extorted without an evidence, then

(1) “*Al-Ishrâf Fî Nukat Masâ’il Al-Khilâf*”, (2: 128-129).

(2) Surah *At-Tawbah* (Repentance): 103.

(3) “*Al-Ishrâf Fî Nukat Masâ’il Al-Khilâf*”, (2: 128-129); “*Sharh Ar-Risâlah*”, Judge `Abdul-Wahhâb, (1: 400).

(4) “*Nihâyat Al-Muhtâj*”, (3: 131); “*Tuhfat Al-Muhtâj*”, (3: 335-336).

(5) “*Kashshâf Al-Qinâ`*”, (4: 317); “*Sharh Al-Muntahâ*”, (2: 174).

the predominant view of the Shafiites and the Hanbalites is that, if he receives that debt, *Zakâh* shall be due on him for previous years. This is because he is able to dispose of it by means of *Hawâlah* (i.e. transfer of debt) and quittance, and hence it is like all his wealth.

Zakâh is not due, according to the Hanbalites and the Shafiites, on debt of livestock, because the obligation of *Zakâh* on them is conditional upon *Sawm* (i.e. free grazing on pasture), and a debt is in the liability cannot be described as fulfilling the condition of *Sawm*.

Their view is evidenced by the narration of `Alî (may Allah be pleased with him), concerning *Zakâh* due on a man who has a doubtful debt, when he said:

“He shall pay its *Zakâh* for the previous years if he has actually received it.”⁽¹⁾

Also, Ibn `Umar (may Allah be pleased with them) said:

“Pay *Zakâh* due on your wealth year by year, and if there is a debt which is repayable, then pay its *Zakâh*, or otherwise if the debt is doubtful, then no *Zakâh* is required on it until the creditor receives it.”⁽²⁾

Collective *Ijtihâd* (i.e. legal reasoning and discretion) regarding *Zakâh* on debts

Debts are among the main issues of *Zakâh* that the collective *Ijtihâd* has given considerable attention. So, I viewed that it would be appropriate to distinguish the contemporary collective *Ijtihâds* of previous schools of Fiqh regarding this issue, indicating what I think more preponderant concerning it.

- (1) “*Muṣannaf Ibn Abû Shaybah*”, Book of *Zakâh*, Chapter: *Zakâh* on debts, hadith no. (10356); “*As-Sunan Al-Kubrâ*”, Al-Bayhaqî, Book of *Zakâh*, with regard to the *Sadaqah* on *Wariq*, Chapter: *Zakâh* on debt if the debtor is insolvent or repudiated, (4: 150). Regarding this, Ibn Hâzim said: “It is highly authentic.”
- (2) “*Muṣannaf Ibn Abû Shaybah*”, Book of *Zakâh*, Chapter: *Zakâh* on debts, hadith no. (10351); “*Muṣannaf `Abdur-Razzâq*”, Book of *Zakâh*, Chapter: No *Zakâh* is required except for the ready money, hadith no. (7112); “*As-Sunan Al-Kubrâ*”, Al-Bayhaqî, Book of *Zakâh*, with regard to the *Sadaqah* on *Wariq*, Chapter: *Zakâh* on debt if the debtor is insolvent or repudiated, (4: 150).

Collective *Ijtihâds* regarding this issue can be summarized in the following points:

First point: The contemporary *Ijtihâd* generally agrees that *Zakâh* is obligatory on debts if it is due (immediate) on a solvent person who is a non-procrastinating debtor. However, scholars disagree as to the method of paying *Zakâh* on deferred debt into two views:

View (1): *Zakâh* for a deferred debt shall be paid in full. This is the view adopted by most institutions of collective *Ijtihâds*, such as the OIC International Islamic Fiqh Academy (IIFA) in Jeddah, and the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). This is also the conclusion of the fatwa of 12th symposium on “*Contemporary Zakâh Issues*”.

- The OIC International Islamic Fiqh Academy (IIFA) in Jeddah resolved:

“The lender is obligated to pay *Zakâh*, every year, on his loaned money, if the borrower is solvent (who is a non-procrastinating debtor).”⁽¹⁾

- The Shari'ah Standard concerning *Zakâh* stipulated:

“If the debt owed to the institution is a cash amount, the institution should pay *Zakâh* on it annually, whether such debt is due or not, since the institution will certainly receive it.”⁽²⁾

- The fatwas of the 12th symposium on “*Contemporary Zakâh Issues*” states:

“If the debt is a cash amount or commercial goods, then the creditor should pay *Zakâh* on it, whether the debt is due or deferred, since the creditor will certainly receive it.”⁽³⁾

View (2): *Zakâh* is obligatory on the debt or the remaining portion thereof plus one-year profit, after excluding the profits deferred for the years subsequent to the year during which *Zakâh* is paid out. This is the view adopted by the MWL Islamic Fiqh Council and the 19th symposium on “*Contemporary Zakâh Issues*”.

(1) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (2), (1: 113), resolution no. 1 (1/2).

(2) Shari'ah Standard no. (35): *Zakâh*, item (5/3/1).

(3) “*Proceedings and Researches of the 12th Symposium on Contemporary Zakâh Issues*”, (P. 313).

- In its resolution no. (1/21), the MWL Islamic Fiqh Council resolved:
“It is obligatory to pay *Zakâh* on the principal of an investment debt agreed to be paid in installments, plus one-year profit during which *Zakâh* is paid out, without the profits of subsequent years.”
- The fatwas of the 19th symposium on “*Contemporary Zakâh Issues*” states:
“The payer’s repayable debts, whether they are due or deferred, should be added to the zakatable assets every year after excluding the deferred profits; that is the profits counted for the *Zakâh* payer (creditor) for the years subsequent to the zakatable year.”⁽¹⁾

What appears to be the case is that the second view is more preponderant; as it is so close to the Malikite’s view about paying *Zakâh* on deferred debt at its value. Further, this opinion is supported by the fact that these deferred debts are paid out at this value when being compensated on a Shari’ah-based basis, such as writing off a debt in exchange for accelerated repayment, or in Shari’ah-based products alternative to purchasing debts. Moreover, it is the opinion that is more applicable to calculation of *Zakâh* for joint-stock companies based on financial statements, in which the deferred profits of these debts are not disclosed. As for other views, they require that the internal accounts of the company be checked to know the total debt, which is inaccessible to individual investors in the company.

Second point: The collective *Ijtihâd* generally agrees about the non-obligation of *Zakâh* on bad debt (non-repayable debt), but they disagree as to the case when the debt amount is received into the following views:

View (1): A new *Hawl* shall be counted, as it has the same ruling as acquired wealth.

This is the view adopted by the OIC International Islamic Fiqh Academy (IIFA) which resolved:

“The lender is obligated to pay *Zakâh*, after the elapse of one year starting from the day he actually receives his loaned money, if the borrower is impoverished or controverting.”⁽²⁾

(1) “*Proceedings and Researches of the 19th Symposium on Contemporary Zakâh Issues*”, (P. 216).

(2) “*Journal of the Islamic Fiqh Council*”, issue no. (2), (1: 61).

View (2): *Zakâh* shall be paid for only one year, and this is the fatwa of the 12th symposium on “*Contemporary Zakâh Issues*” and the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).

- The fatwas of the symposium states:

“If he (the creditor) encountered difficulty in its collection due to a reason beyond his control, such as the debtor’s procrastination or his insolvency, then he should not pay *Zakâh* on it except for only one year after receiving it.”⁽¹⁾

This view agrees with the *Mâlikî* school stating that *Zakâh* is obligatory for only one year. Also, the *Mâlikî* school agrees with the *Hanafî* school maintaining that *Zakâh* is not obligatory on bad debt (non-repayable debt), but it renders *Zakâh* obligatory on such a debt for only one year if the creditor receives it, even if the debt remained in the debtor’s liability for years. The obligation of *Zakâh* for only one year does not contradict with the non-obligation of *Zakâh* on bad debt. Rather, this is due to the growth of this money at both the beginning and the end of the period during which the debt was non-repayable, and the payer did not pay its due *Zakâh*. Let’s suppose that the payer’s *Hawl* started at the beginning of Muḥarram of the year 1440 AH, then in the month of Safar of the same year he sold a commodity to an insolvent merchant on a deferred payment basis for two months, but the merchant managed to repay it in Dhul-Hijjah of the same year 1440 AH, then he should pay *Zakâh* for only one year because the payer took possession of money in the month of Muḥarram of the year 1441 AH for which *Zakâh* has not been paid yet. Hence, *Zakâh* for this period is to be paid on the basis of estimation, and then a new *Hawl* shall be counted for this money considering that it has the same ruling as acquired wealth.

As for Abû Ḥanîfah’s view, he did not obligate the creditor to pay *Zakâh* on this money for this period, but he obligates him to combine this money, after receiving it, together with the *Hawl* of the money reaching *Nisâb* in his

(1) “*Proceedings and Researches of the 12th Symposium on Contemporary Zakâh Issues*”, (P. 313).

possession, which requires to accelerate the *Hawl* of this acquired money. This corresponds to paying *Zakâh* upon taking its possession at both the beginning and the end of the period during which the repayment of money was uncertain according to the Malikites, which is another approach of estimation and approximation in calculating *Zakâh*.

The view held by Imam Mâlik cannot be applied to joint-stock companies unless they are paying their *Zakâh* themselves. This is because paying *Zakâh* for only one year on the wealth received from the doubtful debts involves a considerable hardship, not to mention that considering a new *Hawl* for each wealth received is too difficult. Accordingly, the Hanafites' view stating that nothing shall be paid upon receiving a doubtful debt, and that it should be combined together (in *Zakâh* and *Hawl*) with the company's wealth, is more preponderant and much easier for calculating *Zakâh* for joint-stock companies.

Third point: The collective *Ijtihâds* issued in this respect agree generally with the statement of the two companions of Abû Hanîfah (i.e. Abû Yûsuf and Muḥammad Ibnul-Ḥasan) that *Zakâh* is obligatory on every valid debt, taking into consideration the difference between the debt due on a solvent and the debt due on an insolvent. This is the view adopted in the resolution issued by the OIC International Islamic Fiqh Academy (IIFA) in Jeddah, and the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), as well as the fatwas of *Zakâh* symposiums.

However, fatwa of the 22nd symposium on “*Contemporary Zakâh Issues*” excluded the deferred “*Qard Ḥasan*” (i.e. interest-free or benevolent loan) from the obligation of *Zakâh* stating:

“If the loan is deferred, and made out of courtesy, then the lender should not pay *Zakâh* on it unless he receives it, and its *Zakâh* is to be paid for only one year.”⁽¹⁾

This fatwa gives a sense that the non-obligation of *Zakâh* on the “*Qard Ḥasan*” is made out of courtesy.

(1) “*Proceedings and Researches of the 22nd Symposium on Contemporary Zakâh Issues*”, (P. 447).

Apparently, the fatwa of the symposium differs from the Mâlikî school in both ruling and reasoning. With regard to its ruling, the symposium restricted the non-obligation of *Zakâh* to the deferred, but not the due (immediate), loan, while the *Mâlikî* school holds no difference between them unless such debts are given with the intention of evading *Zakâh*. As for its reasoning, it is apparent from the fatwa that the meaning is relevant to the lender's purpose of showing courtesy (toward the borrower), while the considerable meaning in the *Mâlikî* school is the absolute ownership, which is achieved by taking possession of the debt along with the ability to develop it. Hence, it shall have the same ruling as privately owned properties (i.e. non-commercial goods) on which *Zakâh* is not due. This is why Mâlik deems *Zakâh* obligatory on the debt of managing-trader only considering that it is a growing wealth through trade, which is realized in both the due (immediate) and the deferred debt equally. Therefore, Al-Qarâfi says:

“A loan, which is not associated with trade management, shall have the same ruling as privately owned property kept for clothing or private use (i.e. non-commercial goods).”⁽¹⁾

Fourth: Estimation regarding *Zakâh* on receivables

As previously mentioned, receivable trade accounts are to be recognized at their nominal value, taking into account the cost constraint on useful financial report. As for the Shari'ah perspective, the nominal value in this regard is very close to intangible value, given that the purpose of financing does not appear in this item. The commercial customary practice considers payments made before 90 days as cash payments, and hence, the trader is entitled to discounts resulting from cash payments. Thus, the nominal value and the fair value of less-than-90-days debt, are close to each other, and can be considered pursuant to the Shari'ah rule stating “similarities take the same judgment,” whether *Zakâh* on debt is paid at number (which is the nominal value), or paid at value (which is the fair value).

As for deferred debts, they are to be valued at their current value (the fair value) according to the amortized cost method, which is the value of

(1) “*Adh-Dhakhîrah*”, (3: 21); “*Zakât `Urûd At-Tijârah*”, Qays Âl Mubâarak, (P. 80).

the deferred debt excluding the deferred profits. This corresponds to the resolution of the MWL Islamic Fiqh Council regarding obligating *Zakâh* on the principal of debt plus one-year profit.

With regard to doubtful debts, the views of the scholars of Fiqh hold that giving a ruling on a debt is contingent on supposing the inability to collect it from the debtor, which is to be based on the debtor's status in terms of his ability to repay, acknowledge the debt, and desire to repay without procrastination. In accounting, this meaning is considered generally in the concept of good debt and doubtful debt. However, it depends on experience in estimating these debts, as mentioned above, and not on examining the debtors' status in estimating the allowance of doubtful debts in consideration of cost constraint, unlike classifying the debt as being bad, which requires examining the debtor's status, and providing a tangible evidence for judging the debt as being bad, and then recognizing it as a realized loss in income statement.

Anyway, what appears to be the case is that the method of accountants in calculating doubtful debts considers customary practice, which appears to be a considerable Shari'ah estimation.



Topic (V)

Estimation Regarding Calculating *Zakâh* on Payables

Accounts payable are one of the financial items listed on the statement of financial position under liabilities column. We have mentioned earlier that liabilities, according to the International Accounting Standards (IAS), are broader than debt in its Shari'ah and legal meanings. Liability is defined as:

“A present obligation of the entity to transfer an economic resource as a result of past events. The settlement of such an obligation is expected to result in an outflow from the entity of resources embodying economic benefits.”⁽¹⁾

According to the International Accounting Standards (IAS):

“An entity shall classify a liability as current when: (a) it expects to settle the liability in its normal operating cycle; (b) it holds the liability primarily for the purpose of trading; (c) the liability is due to be settled within twelve months after the reporting period; or (d) it does not have an unconditional right at the end of the reporting period to defer settlement of the liability for at least twelve months after the reporting period. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification. An entity shall classify all other liabilities as non-current.”⁽²⁾

First: The concept of accounts payable

Accounts payable are defined as:

“Obligations to provide cash or other assets to external parties.”⁽³⁾

(1) “*Itâr Mafâhîm At-Taqrîr Al-Mâli*” [*Conceptual Framework for Financial Reporting*], item (4.4).

(2) “IAS 1- *Presentation of Financial Statements*”, Paragraph (69).

(3) “*Al-Muhâsabâh Al-Mutawassitâh*” [*Intermediate Accounting*, Kin Lo, George Fisher], (2: 33).

Accounts payable are classified as current liabilities, and are divided into:

1- **Trade payables** (also called trade accounts payable or accounts payable) are obligations to pay for goods delivered or services provided to the company.

It is usually difficult to determine all the bills and liabilities disclosed at the end of the financial period, because the actual receipt of these bills may be later than the date of issuance of the financial report. If these amounts can be determined with a degree of accuracy, then they should be determined at the amount expected to be actually repaid by the company. Thus, the cash discounts or cash back that the company can receive shall be deducted from the nominal value of these liabilities.

2- **Other payables**, which include a number of obligations, such as sales taxes payable, income taxes, or franchise fees owed by the company. They also include cash dividends owed to the shareholders.

Second: Fiqh-based controversy regarding impact of debts on Zakâh of wealth

We have clarified earlier that absolute ownership is a precondition for the obligation of *Zakâh*, and that the controversy of the scholars of Fiqh regarding the effect of debts on the payer's possession of the zakatable wealth he owns is one of the points of their disagreement regarding *Tahqîq Al-Manâh* (i.e. ascertaining the underlying cause) in this issue.

The scholars of Fiqh agree that a debt established in the debtor's liability after *Zakâh* has become obligatory for him shall not prevent the obligation of *Zakâh* thereof. However, they disagree regarding the impact of debt on *Zakâh*, and whether its counter-value is to be deducted from the zakatable wealth, into two approaches:

Approach (1): The debt has an impact on zakatable wealth

This is the view of the majority of the scholars of Fiqh, and it is the approved opinion of the Hanafites,⁽¹⁾ the Malikites⁽²⁾ and the Hanbalites.⁽³⁾

(1) *Al-Bahr Ar-Râ'iq*, (2: 218); *Radd Al-Muhtâr*, (3: 260).

(2) *Âsh-Sharh Al-Kabîr Ma'a Hâshiyat Ad-Dusûqî*, (1: 481); *Sharh Al-Khurashî*, (2: 202).

(3) *Kashshâf Al-Qinâ'*, (4: 324); *Sharh Al-Muntahâ*, (2: 181).

Their view is reasoned as follows:

(a) `Uthmân Ibn `Affân (may Allah be pleased with him) used to say:

“This is the month for you to pay your *Zakâh*, he who is in debt should pay it off so that you can pay the due *Zakâh* on your (remaining) wealth.” And in another narration, “He who is in debt should repay his debt and then he should pay the due *Zakâh* from the rest of his possessions (if it reaches the *Nisâb* that obligates *Zakâh*).”⁽¹⁾

They argued that `Uthmân said this in the presence of a gathering of the companions who did not deny it, so it is indicative of their agreement on this issue.

(b) Ibn `Umar (may Allah be pleased with them) narrated that the Prophet (peace and blessings of Allah be upon him) said:

“If a man owns one thousand dirhams, and he owes one thousand dirhams, then Zakâh is not obligated for him.”⁽²⁾

The advocates of this approach agree that the amount of debt should be deducted from the zakatable wealth, whether the debt is due or deferred, and whether the debt is an asset or goods. However, they disagreed regarding some types of debts, such as maintenance of parents or children, or *Arsh* (i.e. compensation for hurt). But these branches have no impact on the *Zakâh* of financial institutions, so they are left for brevity.

(1) “*Muwatta’ Mâlik*”, Book of *Zakâh*, the *Zakâh* due on debt, hadith no. (873); “*Muṣannaf `Abdur-Razzâq*”, Book of *Zakâh*, Chapter: *Zakâh* is not obligatory except with amount over and above the amount of debt, hadith no. (7086); “*Muṣannaf Ibn Abû Shaybah*”, Book of *Zakâh*, those who said that whoever is in debt should not pay *Zakâh* due on it, hadith no. (10658); “*As-Sunan Al-Kubrâ*”, Al-Bayhaqî, Book of *Zakâh*, with regard to the *Sadaqah* on *Wariq*, Chapter: the *Zakâh* on debt with *Sadaqah*, (4: 148). Al-Bukhârî related the beginning of this narration in his “*Sahîh Al-Bukhârî*”, Book of Holding Fast to the Qur`ân and Sunnah, Chapter: The religious learned men should not differ, with the wording: “*That he heard `Uthmân Ibn `Affân delivering a sermon to us on the pulpit of the Prophet (peace and blessings of Allah be upon him).*”

(2) The scholars of Fiqh often mention this tradition, but it is unknown in the well-known Books of Hadith.

In this regard, Ibn `Abdul-Hâdî said in “*At-Tanqîh*” (2: 142):

“This is a *Munkar* (i.e. denounced) hadith, even it seems *Mawḍû`* (i.e. fabricated), because one of its narrators is `Umayr Ibn `Imrân.”

Yet, they disagreed regarding the zakatable wealth on which the debt has an impact as follows:

View (1): The debt has an impact on all zakatable wealth.

This is the most preponderant view among the Hanbalites,⁽¹⁾ and their argument is based on the previous evidences.

View (2): The debt has an impact on all zakatable wealth except for the agriculture goods.

This is the view of the Hanafites,⁽²⁾ and it is based on their original ruling that *Ushr* (i.e. one-tenth) and *Kharâj* (i.e. land-tax) are all the maintenance of the land (i.e. the expense and work incurred by the owner). Therefore, they must be levied on the endowed land and the land of *Mukâtab* (i.e. a slave having a contract of manumission), even if *Zakâh* is not obligated for it.

View (3): The debt has an impact on *Zakâh* of non-apparent wealth, but not the apparent wealth which are livestock, grains and fruits.

This is the view of the Malikites,⁽³⁾ and it is based on the argument that the Prophet (peace and blessings of Allah be upon him) used to send the collectors (of *Zakâh*) to take the *Sadaqât* (i.e. *Zakâh*) from the payers, and the caliphs after him used to do the same. The collectors would take what they find without asking about the debt owed by the payer. This indicates that he (peace be upon him) does not prevent the obligation of *Zakâh* thereof.

Also, they argued that *Zakâh* is obligatory on the assets of apparent wealth, such as livestock, grains, fruits, and minerals, unlike *Zakâh* on wealth itself which is obligatory in the liability because its requirement is not established by receiving the exact specifications.

View (4): The debt has an impact on *Zakâh* of non-apparent wealth, but not the apparent wealth, except for crops and fruits. Accordingly, what he borrowed to spend on this wealth shall have an impact on it specifically.

This is a narration on the authority of Imam Ahmad who reported:

(1) *"Kashshâf Al-Qinâ' "*, (4: 324); *"Sharh Al-Muntahâ"*, (2: 181).

(2) *"Al-Mabsûṭ"*, (2: 6); *"Fath Al-Qadîr"*, (2: 160-162).

(3) *"Ash-Sharh Al-Kabîr"*, (1: 480); *"Ash-Sharh As-Saghîr"*, (1: 647).

“Ibn `Umar and Ibn `Abbâs once differed (regarding *Zakâh* on debt). Ibn `Umar said, ‘One shall pay off what he has borrowed for or spent on his own fruit and his family, and then pays *Zakâh* on what remains.’ The other said, ‘One shall pay off what he has borrowed for his own fruit, and then pays *Zakâh* on what remains.’ I view that one shall not pay *Zakâh* for what he has spent on his own fruit specifically, but he has to pay it on what remains. This is because when the collector comes and finds camels, cows, or sheep, he does not ask about the debt of its owner, and the wealth is unlike.”⁽¹⁾

His justification was that when he borrowed for what is zakatable, he counted it on the poor, unlike what he has borrowed for his family or for a non-zakatable wealth.⁽²⁾

The advocates of this approach differed: Is it a condition that he should not have in possession a property he privately owns (i.e. non-commercial goods) that is surplus to his basic need from which he pays off?

The Hanafites⁽³⁾ and the Hanbalites⁽⁴⁾ held the view that it is not a condition, and that the debt is paid off from the same type in the event of dispute, so rendering the debt in lieu thereof is preferable, as if the two *Nisâbs* are zakatable.

The Malikites⁽⁵⁾ stipulated that one should not have in possession a property he privately owns (i.e. non-commercial goods), which are not subject to *Zakâh*, that is surplus to his basic need from which he pays off.

For example, if someone owes two hundred dirhams, and he owns two hundred dirhams plus privately owned property in excess of his basic need which are equal to two hundred, then he renders the debt in lieu of the privately owned property; because he owns two hundred which are more than the amount of his debt, so he must pay *Zakâh* on it.

(1) “*Al-Mughnî*”, (2: 265).

(2) “*Al-Kâfi*”, (2: 93).

(3) “*Al-Mabsûl*”, (2: 197); “*Al-Fatâwâ Al-Hindiyyah*”, (1: 173).

(4) “*Kashshâf Al-Qinâ`*”, (4: 324); “*Sharh Al-Muntahâ*”, (2: 181).

(5) “*Ash-Sharh Al-Kabîr*”, (1: 459); “*Ash-Sharh As-Saghîr*”, (1: 647).

Approach (2): The debt has no impact on zakatable wealth

This is the view of Ash-Shâfi`î in his new school,⁽¹⁾ Ibn Hazm Az-Zâhirî,⁽²⁾ and the fatwa adopted by the Permanent Committee for Scholarly Research and Ifta,⁽³⁾ as well as Sheikh `Abdul-`Azîz Ibn Bâz, and Sheikh Muḥammad Ibn `Uthaymîn.⁽⁴⁾

Their view is based on the argument that if a free Muslim owned the *Nisâb* for a full lunar year (*Hawl*), he shall pay *Zakâh* on it. This is because the evidences for *Zakâh* on owned wealth are unrestricted, so he resembles a non-debtor and is entitled to have full benefit of the wealth in his ownership.

In his "Al-Umm", Ash-Shâfi`î said:

"`Uthmân's hadith seems like, and Allah knows best, a command to pay off the debt before giving the *Sadaqah* (i.e. *Zakâh*) due on wealth in his saying: 'This is the month for you to pay your *Zakâh*'. It is valid to say, 'This is the month the elapse of which renders your *Zakâh* due,' as it is said: 'The month of Dhul-Hijjah (i.e. the month of Pilgrimage), but *Hajj* (i.e. Pilgrimage) begins after some days of it elapse.'"⁽⁵⁾

Third: Contemporary *Ijtihâds* regarding the impact of debts on *Zakâh*

This topic is one of the most important issues affecting *Zakâh*, because of the prevalence of debt dealings in companies. Among the main reasons that call for paying attention to this issue are the consequences thereof, which, in many cases, contradict the Shari'ah purpose regarding establishing justice between the rich and the poor in *Zakâh*. That is, it may result in depriving the poor of the *Zakâh* due from the wealth of these companies, or otherwise inflicting harm upon these companies and their shareholders.

(1) "Mughnî Al-Muhtâj", (2: 12); "Tuhfat Al-Muhtâj", (3: 337).

(2) "Al-Muḥallâ", (6: 101).

(3) Fatwas of the Permanent Committee for Scholarly Research and Ifta, (9: 18), headed by Sheikh `Abdul-`Azîz Ibn Bâz, and membership of Sheikh `Abdur-Razzâq `Afiifi and Sheikh `Abdullâh Ibn Qa`ûd (may Allah confer mercy upon them).

(4) "Ash-Sharḥ Al-Mumtî", (6: 35).

(5) "Al-Umm", (2: 53).

This meaning was highlighted in the fatwas of the 1st *Zakâh* conference held in Kuwait which stated:

“If the borrower used the debt for commercial purposes, he should exclude its counter-value from the zakatable assets. As for using it for the purpose of possessing the leased asset such as real estate, machinery, or the like, given that the established opinion that debt excludes, when paying *Zakâh*, an equal amount of it from the zakatable assets, and that it results in waiving *Zakâh* on the wealth of many individuals, companies and institutions despite of the enormous profit they collect, the committee, therefore, draws attention to the necessity of studying this topic and focusing research on it.”⁽¹⁾

The collective *Ijtihâds* regarding the impact of debts on the wealth of *Zakâh* can be summarized as follows:⁽²⁾

- (a) The debt, whether due or deferred, is to be deducted in full (i.e. the principal, or the remaining portion thereof, plus its full profit until the end of the term) from the zakatable assets.
- (b) The debt, whether due or deferred, is to be deducted in full at its current value. The current value refers to the remaining portion of the principal plus the profit due on it only for the current year.
- (c) The debt owed by the payer is to be deducted in the current year and the subsequent year only.
- (d) Like the first view, the debt is to be deducted in full except for the debt financing non-zakatable assets.
- (e) Like the second view, the debt is deducted in full at its current value except for the debt financing non-zakatable assets.
- (f) Debt is never deducted.

I would not like to go beyond the objective here by examining and discussing these views, because they did not exceed the scope of the aforementioned views of the early scholars of Fiqh in general. However, there are two points that necessitate the re-examination of this issue:

(1) “*Proceedings and Researches of the 1st Zakâh Conference*”, (P. 444).

(2) “*Proceedings and Researches of the 19th Symposium on Contemporary Zakâh Issues*”, (P. 31).

- 1- The purpose-based consideration for the consequences of the previous views, in terms of their impacts on companies and on the rate payable from *Zakâh*. This because the purpose of the Legislator is not to prejudice the right of the rich and inflict harm upon him, or to prejudice the right of the poor in the wealth of the rich. Rather, the Legislator's purpose is to pay a little amount of much wealth on such a way showing *Muwâsâh* (i.e. charity and support which does not cause hardship to the owner and is sufficient for the poor).
- 2- The inconsistency among the conclusions reached by many *Ijtihâds* and what the financial statements disclose, the matter which causes hardship and trouble in adopting these *Ijtihâds*.

Among all these *Ijtihâds*, the *Ijtihâd* appears to be the most well-founded in terms of Fiqh-based consideration, and the most compliant with accounting principles is the one adopted by the committee entrusted with studying the topic of Fiqh-based approaches regarding *Zakâh* on debts of commercial transactions and the most preponderant thereof. The committee submitted its study to the 19th symposium on "*Contemporary Zakâh Issues*"⁽¹⁾ which concluded:

"The principal or the remaining portion thereof, whatever its term may be, plus the profit of the zakatable year (which is usually listed on the statement of financial position) should be added to the zakatable assets, and the principal or the remaining portion thereof, whatever its term may be, plus the profit due on it should be deducted for the zakatable year only, provided that nothing should be deducted from the long-term debts except for what is in excess of non-zakatable assets."

This view conforms generally with the Malikites' view regarding the valuation of deferred debts, and the deduction of what is in excess of one's basic need from the payer's privately owned assets. However, the two views

(1) This committee was formed based on the recommendation of the 19th symposium on "*Contemporary Zakâh Issues*". It included Prof. `Abdur-Rahmân Al-Atram, Prof. Yûsuf Ash-Shubîlî, Prof. `Isâm `Abdul-Hâdî Abun-Nasr, Dr. `Isâm Khalaf Al-`Anzî, and Sheikh `Alî Sa`ûd Al-Kulayb. In the accounting and practical aspect, the committee engaged Dr. Muḥammad `Ôd Al-Fuzay`, Prof. Sa`d `Abdul-`Azîz As-Sa`îdân, Prof. Khâlid `Ubayd Az-Zâhirî, Prof. `Amr Diyâ` Râshid, and Prof. Muḥammad `Alâ` Al-`Assâl.

disagree regarding the issue that the debt is deducted at its number (the nominal value) according to the Malikites, considering that the deferred debt becomes due at its number upon insolvency or death, unlike the debt that he owns, as mentioned by Ibn Yûnus in “*Al-Jâmi`*”:

“As for the debt owed by him, it should be calculated at its number (the nominal value), whether the debt is due or deferred. This is because if he died or went insolvent, the deferred debt owed by him would become due, and thus it became a strong debt resembling the due debt. As for the one who owns a debt, the due debt is to be calculated at its number, while the deferred debt is to be calculated at its value (the fair value) since the deferred debt may be sold to his debtors if they wish.”⁽¹⁾

Supposing that the deferred debt becomes due by death, then the second view regarding this issue (stating that it does not become due in full; rather, its profit is to be waived in return for the term, which is the approved view in the *Hanafi* school and a view among the Hanbalites), is approbated by the author of “*Al-Insâf*”⁽²⁾ and chosen by both Sheikh `Abdur-Rahmân As-Sa`dî,⁽³⁾ and Sheikh Muhammad Ibn `Uthaymîn,⁽⁴⁾ may Allah have mercy on them all.

In “*Ad-Durr Al-Mukhtâr*”, it is stated:

“When the debtor pays off the deferred debt before its accrual date or when the debt becomes due by the debtor’s death and thus, creditor receives it from the debtor’s inheritance, then nothing shall be deducted from the *Murâbahah* (i.e. sale for a profit) that took place between them except insomuch as the previous days. This is the view of late scholars, and the fatwa adopted by Abus-Su`ûd Afandî, the mufti of the Romans, who justified it by courtesy toward both parties.”⁽⁵⁾

In “*Tanqîh Al-Fatâwâ Al-Hâmidiyyah*”, it is mentioned:

“It is as if the point is that the borrower has not bought the commodity at a high price except in exchange for the term of loan, then the term, even

(1) “*Al-Jâmi` Li-Masâ’il Al-Mudawwanah*”, (2: 1213-1414); “*Hâshiyah Ad-Dusûqî*”, (1: 482).

(2) “*Al-Insâf*”, (13: 328).

(3) “*Al-Fatâwâ As-Sa`diyyah*”, (P. 405).

(4) “*Ash-Sharh Al-Mumtî*”, (9: 289).

(5) “*Ad-Durr Al-Mukhtâr*”, (6: 757).

if it is not money and no price is paid in lieu thereof, is considered to be money here, because it is given in return for an increase in the price. So, if all the price is received before the accrual date, then its actual receipt shall occur for no consideration, and this would involve the suspicion of *Ribâ* (i.e. usury) which is an ancillary thereof in reality, and if he dies and the accrual date becomes due, then an amount proportional to the remaining period of the debt term shall be deducted from the price of the commodity.”⁽¹⁾

However, the fatwa of the 19th symposium on “*Contemporary Zakâh Issues*” came in contradiction to what the committee has concluded, as it states:

“The debts owed by the payer, whether they are due or deferred, should be deducted from the zakatable assets every year after excluding the deferred profits; that is the profits counted on the *Zakâh* payer (debtor) for the years subsequent to the zakatable year in deferred transactions. The debts used in financing non-zakatable assets shall not be deducted from the zakatable assets.”⁽²⁾

This fatwa is problematic in two points:

- (a) The considerable meaning in *Zakâh* is the richness represented in absolute ownership of the zakatable *Nisâb*. The presence of a debt in the payer’s liability undermines the ownership of the wealth in his possession. This is why the insolvent’s disposal of his wealth at the period of doubt shall be declared null and void even if he is not interdicted, since the creditors’ rights are attached to this wealth. This meaning requires no distinction between the debt financing zakatable assets and the debt financing non-zakatable assets.
- (b) The argument presented in considering this distinction does not stand up except with some kind of hardship because it is based on a narration on the authority of Imam Ahmad pertaining to apparent, but not non-apparent, wealth. It suggests that the debt which has an impact on the *Zakâh* of crops

(1) “*Al-`Uqûd Ad-Durriyyah Fî Tanqîh Al-Fatâwâ Al-Hâmidiyyah*”, (6: 757); “*Radd Al-Muhtâr*”, (6: 757).

(2) “*Proceedings and Researches of the 19th Symposium on Contemporary Zakâh Issues*”, (P. 217).

and fruits is the one borrowed to spend on them not any other debts. As for non-apparent wealth, the impact of debt on this wealth relies on one narration in his school. Even if the reasoning mentioned by Ibn Qudâmah in “*Al-Kâfi*”, which is that when the debt was spent on zakatable wealth, it was counted on the poor, without what was spent on non-zakatable wealth, proved to be unfounded, it may indicate the generalization which the symposium has concluded.

Apparently, the fatwa of the 19th symposium is based on the principle of *Istihsân* (i.e. Shari’ah approbation), and its consideration is the purpose of Shari’ah in ensuring a just compromise between the poor and the rich, and this does not go beyond the views of the early scholars of Fiqh. As mentioned before, there is no explicit text treating this issue, and both the old and contemporary scholars of Fiqh disagree regarding it. Further, any scholar of Fiqh does not overlook considering the consequences of the views regarding such issues, taking into consideration the purposes of Shari’ah.

Fourth: Estimation regarding receivables

Based on the opinion the researcher finds to be preponderant, measuring the impact of debt on the base of *Zakâh* is generally compliant with accounting standards, especially after adopting the principle of fair value for fixed assets, instead of historical cost; which would recognize fixed assets based on the cost of receiving them.

However, according to the conclusion of the symposium in this respect, estimation is required due to the difficulty of distinguishing the debts financing zakatable assets from the debts financing non-zakatable assets. Further, this may be a way to circumvent one’s duty to pay *Zakâh* when the payer claims that his funds are to finance his zakatable assets, so he renders them in return for the zakatable wealth in his possession, so that the *Zakâh* due on him is cancelled.

Hence, Shari’ah Standard no. (35) regarding *Zakâh* issued by the Shari’ah Board came to address this issue in item (6/2/3), which states:

“When it is difficult to know the amount of debt that has arisen from acquiring zakatable assets, the ratio of zakatable assets to total assets

should be used for valuating such debt which has to be deducted from the *Zakâh* base. If, for instance, zakatable assets constitute 40% of total assets, 40% of total debts should be deducted from the *Zakâh* base.”



Topic (VI)

Estimation Regarding Calculating *Zakâh* on Operating and Financing Lease

This topic is meant to study the estimation regarding the calculation of *Zakâh* on operating and financing lease for joint-stock companies.

First: Concept of operating and financing lease

Ijârah (Lease) in Arabic language is a consideration in exchange for work or usufruct, as it provides compensation for any loss caused by the work or usufruct. *Ijârah* refers to the action as it is said: “*Ajara Ya’juru*” on the form “*Qatala*”, and “*Ajar Ya’jiru*” on the form “*Daraba*”, and “*Âjar Yu’jiru*”.⁽¹⁾

Terminologically, the scholars of Fiqh use the term “*Ijârah*” to indicate “transferring the ownership of usufructs in exchange for a consideration,” and it is divided according to the majority of scholars into asset lease and work lease. The Malikites differentiate between *Ijârah* and *Kirâ’*, as *Kirâ’* often refers to asset lease, while *Ijârah* refers to work lease.⁽²⁾

In legal convention, *Ijârah* (lease) refers to asset lease, and does not include work lease, considering that their provisions are regulated by the labor contract laws.

In accounting convention, the lease is defined as:

“A contract, or part of a contract, that conveys the right to control the use of an identified asset (the underlying asset) for a period of time in exchange for consideration.”⁽³⁾

Finance Lease Law promulgated by the Royal Decree no. (M/48) on 13/8/1433 AH defined the financing lease as:

(1) See, the trilateral root “*Alif, Jîm, Râ’* (i.e. *A J R*) [ج ج ر] in “*Maqâyis Al-Lugh*”, (1: 62); “*Al-Misbâh Al-Munîr*”, (P. 16); “*Mukhtâr As-Sihâh*”, (P. 6).

(2) “*Tabyîn Al-Ḥaqâ’iq*”, (5: 105); “*Ash-Sharḥ As-Saghîr*”, (4: 5); “*Tuḥfat Al-Muhtâj*”, (6: 21); “*Matâlib `Ulî An-Nuhâ*”, (3: 579); “*Mu`jam Al-Mustalahât Al-Mâliyyah Wal-Iqtisâdiyyah*”, Nazîh Hammâd, (P. 30).

(3) “*IFRS 16- Leases*”.

“A contract under which the lessor leases fixed or movable assets, rights, services or intangible rights in the lessor’s capacity as owner or owner of proceeds thereof, or a person able to own or produce such assets, provided that the lessor has obtained such assets for the purpose of leasing them, as a business, to a third party.”

This definition depends on the presence of a third party, who obtains the asset or the right/usufruct for the purpose of leasing it as a business to others (a third party). The lessor is not required to be the owner of the asset, or the ownership of the leased asset to be transferred to the lessee at the end of the financing lease contract. Also, the financing lease is not restricted to the usufructs of the assets, rather it is valid that the financier undertakes it for the purpose of financing services (benefits to others).

The International Accounting Standards (IAS) define the financing lease contract as:

“A lease that transfers substantially all the risks and rewards incidental to ownership of an underlying asset.”⁽¹⁾

According to the standards’ definition, a lease contract is classified as a financing lease if it transfers substantially all the risks and rewards/usufructs incidental to ownership of an underlying asset, and it is classified as an operating lease if it does not transfer substantially all the risks and rewards/usufructs incidental to ownership of an underlying asset. The lease contract is classified as a financing lease or an operating lease depending on the substance of the transaction rather than the form of the contract.⁽²⁾

The standards specify examples of situations that would normally lead to a lease being classified as a financing lease, including: the lease transfers ownership of the underlying asset to the lessee by the end of the lease term; or the lessee has the option to purchase the underlying asset at a price that is expected to be sufficiently lower than the fair value.⁽³⁾

At the commencement date, a lessee shall recognize a right-of-use asset (the lessee’s right to use the leased asset during the lease term) and a lease liability.

(1) “IFRS 16- Leases”.

(2) Ibid., Paragraph (62).

(3) Ibid., Paragraph (63).

The right-of-use asset shall be measured at cost, and this shall comprise: the amount of the initial measurement of the lease contract; any lease payments made at or before the commencement date, less any lease incentives received; and any initial costs incurred by the lessee.⁽¹⁾

At the commencement date, a lessee shall measure the lease liability at the present value of the lease payments that are not paid at that date. The lease payments shall be discounted using the interest rate implicit in the lease, if that rate can be readily determined.⁽²⁾

At the commencement date, a lessor shall recognize assets held under a financing lease in its statement of financial position and present them as receivables at an amount equal to the net investment in the lease.⁽³⁾ A lessor shall recognize financing income over the lease term, based on a pattern reflecting a constant periodic rate of return on the lessor's net investment in the lease.⁽⁴⁾

A lessor shall recognize lease payments from operating leases as income on either a straight-line basis or another systematic basis. The lessor shall apply another systematic basis if that basis is more representative of the pattern in which benefit from the use of the underlying asset is diminished.⁽⁵⁾

Second: Fiqh-based foundation of *Zakâh* on leased property

It is established that the lease is a binding contract, which requires the lessee's entitlement to the usufruct specified in the contract and the lessor's entitlement to the rental. However, since usufruct is to be obtained gradually, this will be a reason for reconsidering the realization of the lessor's possession of the rental, whether it has been received or still in the lessee's liability, before the usufruct is enjoyed. This is because "the lease contract requires that each party is entitled to what he has contracted, and the non-delivery of the usufruct undermines the ownership."⁽⁶⁾ Thus, if the contract is to be

(1) "IFRS 16- Leases", Paragraphs (22, 23, 24).

(2) Ibid., Paragraph (26).

(3) Ibid., Paragraph (67).

(4) Ibid., Paragraph (75).

(5) Ibid., Paragraph (81).

(6) "Adh-Dhakhîrah", Al-Qarâfi, (2: 42); "Ash-Sharh Al-Kbir", (1: 485).

annulled before enjoying the usufruct thereof, the rental of non-delivered usufruct shall be returned.

The scholars of Fiqh differed regarding the realization of the lessor's possession of the rental. The cause of their difference is *Tahqîq Al-Manâṭ* (i.e. ascertaining the underlying cause) for the condition of absolute ownership. The scholars' views can be summarized as follows:

(a) *Hanafi* school

The Hanafites concluded that *Zakâh* is obligatory on the received rental because the lessor has actually owned the rental by receiving it. Upon the annulment of the lease contract, the lessor shall not refund the exact rental received, but rather its value, as if it is a debt incurred after the elapse of a full lunar year (*Hawl*).

As for the lease debt (non-received portion of the rental), it is to be considered based on the Hanafites' original ruling on differentiation between the strong debt and the weak debt, as mentioned above.

If the leased asset is not subject to *Zakâh*, such as a service slave or a house, then it is a weak debt, and no *Zakâh* is to be paid on it except after its receipt, like the acquired wealth. However, if the leased asset is a commercial property, then it is a strong debt, and *Zakâh* shall be paid on it and its *Hawl* (i.e. *Zakâh* year) is to be calculated from the time in which its original asset first started.

in "*Fath Al-Qadîr*", it is mentioned:

"In case a person leased his slave or his house in exchange for a *Niṣâb*, if this is not made for commercial purposes, then no *Zakâh* is to be paid as long as a full lunar year (*Hawl*) has not elapsed since its actual receipt according to Abû Hanîfah's view. However, if this is made for commercial purposes, it shall take the same ruling as strong debt, because the rental of the commercial property is like the price of the commercial property according to the authentic narration."⁽¹⁾

According to the Hanafites, the acquired wealth should be combined with the (amount of) *Niṣâb* in his possession from the same type and according

(1) "*Fath Al-Qadîr*", (2: 176).

to its *Hawl*. If he received the rental while having an amount of *Nisâb* in his possession from the same type, then he should combine it together with the (amount of) *Nisâb* in his possession and during its *Hawl*, or otherwise a new *Hawl* shall start counting from the date of receipt.

(b) *Mâlikî* school

The Malikites elaborate the issue of *Zakâh* on rental pursuant to the subject matter of lease as follows:

1- **The lease concluded on privately owned property (i.e. non-commercial property)**, such as a house intended for residential purposes, and then offered to lease, or the lease concluded on a person's work, such as a person leasing himself (to work for another person) for three years.

Regarding these issues, the Malikites view that *Zakâh* is payable on the received rental if a full lunar year (*Hawl*) has elapsed from the date of taking absolute ownership of it. The absolute ownership is realized through enjoying the usufruct in exchange for this rental.

Zakâh is not due on lease debt except after it has been received, even if the usufruct thereof is enjoyed. This is based on the Malikites's original ruling that *Zakâh* is not due on debts except for the debt of managing-trader.

2- **The lease concluded on commercial property**, such as the case in which the merchant has goods stocked for trade and leased them. In such a case, *Zakâh* shall be paid on the lease debt, and its *Hawl* shall be calculated from the time in which its original asset first started, and it is to be deemed as a profit.⁽¹⁾

Likewise, if he has obtained an asset for the purpose of leasing it (as a business to a third party), then the usufruct shall be among the goods stocked for trade. If, however, the asset is bought for profit-producing purposes, then the rental shall take the ruling of interests, as stated in "*Al-Mudawwanah*":

"I view that no *Zakâh* is due for the yield of rented houses, slaves and livestock, even if such assets are purchased for obtaining the yield, until a full lunar year (*Hawl*) has elapsed from the date it was received."⁽²⁾

(1) "*Ash-Sharh Al-Kabîr Ma'a Hâshiyât Ad-Dusûqî*", (1: 465); "*Ash-Sharh As-Saghîr*", (1: 360); "*Zakâtul-'Ayn*", Muhammad At-Tâwîl, (pp. 173-175).

(2) "*Al-Mudawwanah*", (1: 322).

(c) *Shâfi`i* school

The Shafiites conclude that absolute ownership is conditional on receiving the rental once the usufruct is enjoyed, whether the lease debt has been already received or not yet received. So, *Zakâh* is payable on lease debt and the received rental if a full lunar year (*Hawl*) has elapsed from the time when the lease contract takes effect.

In "*Nihâyat Al-Muhtâj*", it is stated:

"If he leased a house to someone else for a period of four years in return for eighty dinars, specified or described in the liability, to paid as twenty dinars every year, and then he received them from the lessee, then the preponderant view is that he is not obliged to pay *Zakâh* except for what has been already received. This is because what is not yet received may be waived if the house demolished, so its ownership is weak."⁽¹⁾

(d) *Hanbalî* school

The Hanbalites concluded that absolute ownership of the rental is realized from the time when the lease contract takes effect. Hence, *Zakâh* shall be payable on the lease debt and the received portion thereof, whether or not the usufruct is enjoyed. This is evidenced by the permissibility for the lessee to dispose of it, even if a debt may be incurred after the elapse a full lunar year (*Hawl*) as a result of annulment due to force majeure.⁽²⁾

Contemporary *Ijtihâd* regarding *Zakâh* payable on the rental

Contemporary scholars of Fiqh have different approaches regarding the way of paying *Zakâh* on the rental of leased assets, the most important of these approaches are as follows:

Approach (1): *Zakâh* is payable on yield or the remaining portion thereof if a full lunar year (*Hawl*) has elapsed from the date of its actual receipt

This approach agrees with the Malikites about considering the rental of the leased assets among the acquired wealth, and it is the view adopted by

(1) "*Sharh Al-Muḥallâ `Alâ Al-Minhâj*", (2: 52); "*Tuḥfat Al-Muhtâj*", (3: 340).

(2) "*Kashshâf Al-Qinâ`*", (4: 316-317); "*Sharh Muntahâ Al-Irâdât*", (2: 173).

the OIC International Islamic Fiqh Academy (IIFA) during its second session held in Jeddah, 1406 AH, in its resolution no. 2 (2/2), which resolved:

- “1- No *Zakâh* is levied on assets of the real estate and rented lands.
- 2- *Zakâh* is due and payable on its yield, which is one fourth of the one tenth (2.5%), after elapsing a full one-year period (*Hawl*) from the date of its actual receipt, if all other conditions are present and no impediments exist.”

Also, the 5th symposium on “*Contemporary Zakâh Issues*”, held in Lebanon 1415 AH, has concluded the same in its recommendations:

“Physical assets that generate yields for a project, such as industrial machinery and rented houses. This type of assets is not obligatory to pay *Zakâh* on its asset, rather it is payable on its net yield, which is one fourth of the one tenth (2.5%), after elapsing a full one-year period (*Hawl*) from the date of generating income, and it is combined together with other zakatable wealth of the payer.”⁽¹⁾

Approach (2): *Zakâh* is payable on yield upon its actual receipt if a full lunar year (*Hawl*) has elapsed from the beginning of the lease contract

This approach agrees with the view of the Hanbalites that the rental is required from the time the lease contract takes effect, and it is the view adopted by the MWL Islamic Fiqh Council, 1409 AH, in its resolution no. (60/11), which resolved by majority:

“**Third:** For a real estate acquired for lease, *Zakâh* is payable only on the rental without the asset.

Fourth: Given that the rental is due on the lessee’s liability to the lessor from the date of the lease contract, then *Zakâh* on the rental shall be paid, at the end of a full one-year period (*Hawl*) from the time when the lease contract takes effect, after its actual receipt.”

(1) “*Proceedings and Researches of the 5th Symposium on Contemporary Zakâh Issues*”, (P. 414).

Also, the Permanent Committee for Scholarly Research and Ifta has adopted this view in its fatwa no. (16994), which states:

“There is no *Zakâh* due on the building prepared for rent, but *Zakâh* is due on the rental thereof. Thus, after the passing of the *Hawl* from the time when the lease contract takes effect, one fourth of the one tenth (2.5%) of the rental should be paid out as the due *Zakâh*.”

Approach (3): The rental is combined together, in both the *Nisâb* and the *Hawl*, with the profit-producing property in the owner’s possession including wealth and goods stocked for trade, then one fourth of the one tenth (2.5%) shall be paid out as the due *Zakâh*

This approach agrees with the view of the Hanafites regarding the acquired wealth, and it is the view concluded by the 1st *Zakâh* conference held in Kuwait 1404 AH, which recommended:

“The Committee agreed that no *Zakâh* is payable on the assets of these profit-producing property, but *Zakâh* is payable on their yields. Opinions differed regarding how to pay this *Zakâh*: The majority of scholars view that the yield is to be combined together, in both the *Nisâb* and the *Hawl*, with the profit-producing property in the owner’s possession including wealth and goods stocked for trade, and one fourth of the one tenth (2.5%) should be paid out as the due *Zakâh*, and the payer’s liability is to be discharged thereby. Other scholars view that *Zakâh* is payable on its net yield in excess of the basic needs of its owners, after deducting the costs and the counter-value of consumption (percentage), and its *Zakâh* is paid out as soon as it is actually received, which is one-tenth (10%) by analogy to the *Zakâh* due on crops and fruits.”⁽¹⁾

This view was adopted also by the *Zakâh* symposium in its sixth session, which recommended:

“No *Zakâh* is payable on any profit-producing or income-generating project until it is completed and generates income, then its income is subject to *Zakâh* by combining it together with other zakatable wealth of the payer.”⁽²⁾

(1) “*Proceedings and Researches of the 1st Symposium on Contemporary Zakâh Issues*”, (P. 442).

(2) “*Proceedings and Researches of the 6th Symposium on Contemporary Zakâh Issues*”, (P. 414).

Also, the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has adopted this view in its Standard no. (35) regarding *Zakâh*, item (4/2), which stipulated:

“There is no *Zakâh* on fixed assets which generate income like *Mustghallât* (leased assets), if such assets are not acquired for trade. Nevertheless, *Zakâh* is obligatory, at the end of the year, on the unexpended portion of the income generated by such assets, by adding that portion of income to the other zakatable assets and applying the *Zakâh* rate.”

Zakâh on the assets leased by financing lease ending with ownership (Ijârah Muntahia Bit-Tamlîk)

As mentioned above, the financing lease is characterized in the law by the presence of a financier who takes ownership of the usufruct for the purpose of leasing it to others, whether or not the lessor has taken ownership of the asset, or for the purpose of transferring the ownership of the leased asset to the lessor. The controversy arises when the lease contract is intended for ownership.

The fatwa of the 23rd symposium on “*Contemporary Zakâh Issues*” has concluded the following:

- (a) Collectible installments, whenever repayable, shall be added to the installments already collected, then they are to be included together in the *Zakâh* base.
- (b) Depreciation installments, the non-operating maintenance expenses, and the assets insurance expenses is to be considered expenses deductible from the revenues.
- (c) *Zakâh* payable on the price of the sold item is to be paid out upon the date of concluding the contract of sale, be this during the period of lease or at its end.
- (d) Installments payable from the lessee to the lessor are considered expenses deductible from the lessee's revenues throughout the period of lease.

The symposium's fatwa is based on the argument that these assets involve both the intention to lease and the intention to sell from the date of taking its

ownership, so it is not valid to consider one of the two intentions without the other. Yet, the existence of the lease contract does not interrupt the intention to sell.

On this basis, *Zakâh* due on the leased assets is to be paid out during the years of leasing, while *Zakâh* due on goods stocked for trade is to be paid out in the year of taking their ownership. Therefore, *Zakâh* is payable in the year the sale takes place for one year; that is, *Zakâh* due on the price is to be paid in full upon sale for only one time. However, it is not possible for the companies to pay *Zakâh* upon sale, because they have only one *Hawl* (i.e. *Zakâh* year) at the end of the fiscal year.

Accordingly, if the payer pays out the payments that he will collect for the next year, then he will pay *Zakâh* in consideration of owning the asset one time. Consequently, we have taken into account the two intentions in calculating *Zakâh*: the intention to lease and the intention to sell.⁽¹⁾

Selecting the most preponderant approach

What appears to be the case is that the rental received in advance is completely owned by the lessor, whether in terms of work lease or asset lease, and whether or not the usufruct is enjoyed. This is because the lessee has the ability to develop the usufruct, and the possibility of demanding a portion of the rental is not to be considered unless its effective cause is ascertained, and it is to be regarded as a new debt in his liability.

But if the rental is a debt (not received yet), then a distinction shall be made between asset lease and hiring persons (work lease).

The debt in asset lease is established in the liability from the time when the lease contract takes effect, and the *Zakâh* thereof shall be paid if it is repayable. It is to be treated as debts, and thus the *Zakâh* of the due debt is to be paid at its number, while that of the deferred debt is to be paid at its value. It is not required to pay *Zakâh* on anything until it is actually received like all other debts. Also, the realizable value in accounting estimation is

(1) "*Turuq Hisâb Zakât Al-As-hum Wad-Diyûn At-Tamwîliyyah*", Yûsuf Ash-Shubîlî, "*Researches of Al Baraka 34th Symposium*", (P. 32).

a considerable value in estimating the lease debt if the purpose of financing is apparent therein, or if the rental is variable.

If an agreement is concluded with the lessee on transferring the ownership of the leased asset after the end of the contract, then the lessor shall combine the sale price (the ownership payment) together with the (amount of) *Nisâb* in his possession and then pay their *Zakâh* in accordance with their *Hawl* considering that it is a profit-producing property which *Zakâh* is not required for its asset, and in this case changing the intention into sale does not give the asset the ruling on goods stocked for trade. Or it may be said that it takes the ruling on goods of the monopolistic-trader according to the Malikites, and thus *Zakâh* on the price of the asset is to be paid for one time only at the date of selling, and the last payment, whatever its amount, is to be regarded as the value of this asset, because the value of these assets is affected by their attached rights and liabilities.

As for the debt in hiring persons (work lease), it does not appear to be a debt established in the liability. The difference between hiring persons (work lease) and asset lease is that when the asset was in the lessee's possession, it was regarded as the possession of its usufructs, so its debt was established in the liability through possessing the leased asset. This is why it is permissible for him to lease it to others, unlike the debt in work lease.

Also, it may be said that the lease debt (non-received rental or a portion thereof) is not originally subject to *Zakâh* according to the majority of scholars, and it is to be combined together with the (amount of) *Nisâb* in the payer's ownership and the *Zakâh* due on them is to be paid according to their *Hawl*, excluding the financing lease whose *Zakâh* is payable according to accounting estimation because it involves one of two cases:

- 1- **It does not end with ownership**, and thus *Zakâh* is payable on it. This is based on the *Mâlikî* school that the asset obtained for the purpose of lease (as a business to a third party) is to be deemed as a commercial debt on which *Zakâh* is obligatory.
- 2- **It ends with ownership**. This case is to be attached to the previous issue, even if the Malikities do not view that, since the usufruct is owned by the financier for the purpose of re-leasing it, so it has the same ruling as an

asset obtained for the purpose of leasing (as a business to a third party). Otherwise, it may be said that *Zakâh* is not payable on the rental, but it is payable on the leased asset, and it is to be valued as the lease debt in financial statements because assets' value varies according to the requirements of contracts. The assets of financing lease are valued at their value, and thus *Zakâh* is payable on it every year.



Treatise Two

Estimation Regarding Calculating *Zakâh* on Goods Stocked for Trade



Topic (I)

Estimation Regarding Calculating *Zakâh* on Inventories

As mentioned earlier, the basic ruling on goods stocked for trade is that their *Zakâh* is payable at their value. We have also clarified that the Legislator has not determined a specific *Nisâb* for them, and that the scholars of Fiqh unanimously agree that their *Nisâb* is the same as the *Nisâb* of gold or silver. The determination of their *Nisâb* and the rate of *Zakâh* payable are specified through valuating these goods.

First: The concept of inventories

The International Accounting Standards (IAS) define inventories as:

“Assets that are: (a) held for sale in the ordinary course of business; (b) in the process of production for such sale; or (c) in the form of materials or supplies to be consumed in the production process or in the rendering of services.”⁽¹⁾

Inventories shall be measured at the lower of cost and net realizable value. The cost of inventories is not limited to the purchase price; rather, it shall comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition. It may

(1) “IAS 2- *Inventories*”, Paragraph (6).

also be included in the borrowing costs in limited circumstances, but this cost may be reduced to the realizable value for items whose realizable value is lower than their cost.⁽¹⁾

The net realizable value refers to the net amount that an entity expects to realize from the sale of inventory in the ordinary course of business. It differs from the fair value, which reflects the amount for which the same inventory could be exchanged between knowledgeable and willing buyers and sellers in the marketplace. The former is an entity-specific value (according to its method of selling and the obligations with its customers); the latter is not. Net realizable value for inventories may not equal fair value (expressed as the market value in the terminology of International Valuation Standards) less costs to sell.⁽²⁾

Second: Shari'ah valuation of goods socked for trade

The general Shari'ah rule regarding valuation is to be based on justice, to eliminate any prejudice on the part of the *Zakâh* payer or the *Zakâh* recipients, as Imam Al-Bâjî stated:

“The managing-trader shall value his commodity with a fair value at the date of valuation. Regardless of its purchase value, he should consider its value in the ordinary course of business (i.e. the market value), without the sale carried out due to necessity, because this is what he owns at that time which is the considerable date in wealth and *Nisâbs*, not before or after that.”⁽³⁾

The majority of scholars held the view that valuating goods stocked for trade shall take place at the market value at the date of *Zakâh* accrual, as Jâbir Ibn Zayd said:

“Value it at its (current) price at the date of *Zakâh* accrual, and then pay its *Zakâh*.”⁽⁴⁾

(1) “IAS 2- *Inventories*”, Paragraphs (9, 10, 17).

(2) *Ibid.*, Paragraph (7).

(3) “*Sharh Al-Muntaqâ*”, (2: 124).

(4) Related by Abû `Ubayd in “*Al-Amwâl*”, hadith no. (1123); and its *Isnâd* (chain of transmitters) is acceptable.

And as Maymûn Ibn Mihrân said: "... then value it at the value of cash."⁽¹⁾

The scholars of Fiqh disagreed regarding the date of valuation: Shall it be at the date of *Zakâh* accrual or at the date of payment? There are two views in this respect:

First view: The valuation shall take place at the date of *Zakâh* accrual, and this is the view of the Hanafites,⁽²⁾ the Malikites,⁽³⁾ the Shafites⁽⁴⁾ and the Hanbalites.⁽⁵⁾

Second view: The valuation shall take place at the date of *Zakâh* payment, and this is the view of the two companions of Abû Hanîfah (i.e. Abû Yûsuf and Muḥammad Ibnul-Ḥasan).⁽⁶⁾

This disagreement is founded on the basis that, according to the majority of scholars, the rate payable is the value initially, so it falls established in one's liability at the date of *Zakâh* accrual. However, according to Abû Hanîfah, one shall have the option to the asset or the value, so he considers the time when the option is established, which is the date of *Zakâh* accrual. The two companions of Abû Hanîfah, however, view that the rate payable is a portion of the asset, and he has the option to pay its value, so it is considerable at the date of payment.

Valuation place

I could not find any text of the *Mâlikî*, *Shâfi'î* and *Hanbalî* scholars regarding the place of valuation. However, the Hanafites state that goods shall be valued at the price of the country where the wealth exists, and not at the price of the country where the owner exists. If the wealth exists in a desert, then it shall be valued at the price of the nearest country to it. In "*Fath Al-Qadîr*", it is stated:

"His saying (he shall value it), that is the owner in the country where the wealth exists, even if it is sent upon trading to another country

(1) Related by Abû 'Ubayd in "*Al-Amwâl*", hadith no. (1125); and its *Isnâd* is authentic.

(2) "*Fath Al-Qadîr*", (2: 219); "*Al-Fatâwâ Al-Hindiyyah*", (2: 179).

(3) "*Sharḥ Al-Muntaqâ*", (2: 142); "*Al-Fawâkih Ad-Dawâni*", (1: 331).

(4) "*Al-Bayân*", Al-Imrâni, (3: 319); "*Tuḥfat Al-Muḥtâj*", (3: 300).

(5) "*Kashshâf Al-Qinâ*", (5: 42); "*Sharḥ Al-Muntahâ*", (2: 272).

(6) "*Fath Al-Qadîr*", (2: 219); "*Al-Fatâwâ Al-Hindiyyah*", (2: 179).

for a need and a full lunar year (*Hawl*) has elapsed, then its value in that country is to be considered. If it is in a desert, then its value in the nearest country to that place is to be considered. The same is mentioned in *Al-Fatâwâ*.”⁽¹⁾

Valuation of unsalable goods (dead stock)

The majority of scholars view that there is no difference in valuation between unsalable goods (dead stock) and other goods, as valuation is required for all of them.

The Malikites, as mentioned earlier, differentiate between managing-trader and monopolistic-trader. According to them, the goods of monopolistic-trader take the ruling on *Dimâr* (i.e. inaccessible wealth), so their *Zakâh* is to be paid for only one year after being sold for a *Nisâb* of cash. As for the managing-trader, he shall value the goods in his possession every year if they met the conditions. If the goods become unsalable, he shall include them in the valuation and pay their *Zakâh* every year, because their unsalability does not render them as privately owned or monopolized properties. This is the preponderant view in the *Mâlîkî* school, and it is the view of Ibnul-Qâsim. Also, they differentiate between monopoly and unsalability, although the trader, in both, waits for a brisk market, on the basis that what is expected in monopoly is a significant profit, while what is expected in the unsalability is any profit or even selling the goods without incurring loss.

Ibn Nâfi` and Saḥnûn held the view that if goods became unsalable, they are to be regarded as monopolized goods.

Al-Lakhmî and Ibn Yûnus restricted the disagreement to the case in which the lesser part of the goods becomes unsalable, but if half or most of the goods becomes unsalable, then goods shall not be unanimously valued. However, Ibn Bashîr unrestricted the disagreement on the basis that the ruling is subject to intention, because if he were to find a buyer, he would sell, or otherwise he waits for a brisk market.⁽²⁾

(1) *“Fath Al-Qadîr”*, (2: 219); *“Al-Fatâwâ Al-Hindiyyah”*, (2: 179).

(2) *“Al-Mudawwanah”*, (1: 311); *“At-Tabṣirah”*, (2: 897); *“At-Tanbîh ‘Alâ Mabâdi’ At-Tawjîh”*, (2: 804); *“Sharḥ Al-Khurashî”*, (2: 19).

It appears more preponderant that when unsalable goods (dead stock) are still put up for sale, then their *Zakâh* shall be paid every year, and are valued at their price. This is the fatwa of the 23rd symposium on “*Contemporary Zakâh Issues*” which states:

“*Zakâh* on unsalable goods stocked for trade is to be paid every year at their market value, whatever this value is, at the date of *Zakâh* accrual.”⁽¹⁾

Collective *Ijtihâd* regarding valuation of inventories

The contemporary collective *Ijtihâd* (i.e. legal reasoning and discretion) has concluded, as stated in item (5/2/2) of the Shari'ah Standard no. (35) regarding *Zakâh* issued by the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI):

“Articles of trade should be valued at selling market price in the place where they exist, and according to the method of their sale (retail, or wholesale, or if both whichever the predominant). Articles of trade should not be valued at cost or market price whichever the less. However, when other methods of valuation are extremely difficult, valuation at cost can be used for *Zakâh* purposes. When there is a price change during the period between the date of accrual and date of payment of *Zakâh*, the price at the date of *Zakâh* accrual should be adopted.”

Sheikh Muḥammad Sulaymân Al-Ashqar⁽²⁾ holds the view that the valuation of goods stocked for trade takes place through their cost, because this is more accurate in determining the financial value, considering that their value was disclosed once through the cash with which the purchase has been executed, and it seemed that the buyer has bought it with its actual value since overcharging (*Ghabn*) is difficult.

Further, Sheikh Al-Ashqar views that accounting valuation does not contradict the Shari'ah-based method. He says:

“We believe that this issue is subject to reconsideration, and the argument that the valuation is to be considered at the cost price proved

(1) “*Proceedings and Researches of the 23rd Symposium on Contemporary Zakâh Issues*”, (P. 300).

(2) “*Abḥâth Fiqhiyyah Fî Qadâyâ Az-Zakâh Al-Mu`âsirah*”, *Al-Uṣûl Al-Muḥâsabiyyah Lit-Taqwîm Fî Al-Amwâl Az-Zakawiyah*, (1: 44).

to be well-founded. Our view is based on the argument that the increase in the market price over the cost amount results usually from an effort made by the trader through taking good measures and efficient administrative activity, followed by the transportation of goods from one country to another, or from an advertising he carries out. The increase may also occur without effort as a result of an unforeseen rise in prices, or high prices over time during which the commodity needs to be stored. Yet, the scholars of Fiqh view that if the trader exerts an effort to manufacture raw materials which increases their value, then *Zakâh* shall be payable only on the value of the raw material, because the increase is not included in his ownership by means purchase. The increase arising from importation, management, storage, and others is the same as that arising from manufacturing effort; rather, it may be even more worthy of such an increase in some cases. The valuation at the market price has good advantages for the valuation intended for *Zakâh*, by which it is distinguished from the valuation at the cost price. This is because the latter requires to consider the various administrative costs and expenses, and a wide gap may exist between the cost price and the present price if the prices raised. In case the market price is to be considered in the valuation, then I view that the market price is not the price at which the trader can sell his commodity; rather, it is the price at which he can buy a commodity that is completely identical to his own, and this is the price at which justice is realized. As for the price at which he sells, the valuation with this price obligates the trader to include amounts in the valuation which have not been realized in reality.”⁽¹⁾

Apparently, Sheikh Al-Ashqar’s view provokes further reflection. The view that valuation is to be executed at the replacement value (i.e. the value of obtaining an identical commodity), without the owner of commodity makes any effort relating to marketing, workers or display in the stores, whose effect appears on the value of commodity later, is well-founded view.

(1) “*Abhâth Fiqhiyyah Fî Qadâyâ Az-Zakâh Al-Mu`âsirah*”, *Al-Uṣūl Al-Muhâsabiyyah Lit-Taqwîm Fî Al-Amwâl Az-Zakawiyah*, (1: 44-45).

Third: Estimation regarding *Zakâh* on goods stocked for trade

Based on the accounting definition, inventories can originally be considered as goods stocked for trade since the concept of inventories depends on goods purchased with the intention of sale. However, a problem arises regarding raw materials that may be needed in production process or services provision if they do not enter into the manufacture of goods intended for sale, in view that the conditions of goods stocked for trade do not apply to them.

Another problem is the valuation of inventories at cost or realizable value whichever the less, as they are difficult, if not impossible, to be valued at the market value. For this reason, the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has permitted the adoption of the actual cost whenever it is difficult, or even impossible, to value these goods, as stated in item (5/2/2) of the Shari'ah Standard no. (35) regarding *Zakâh*:

“Articles of trade should be valued at selling market price in the place where they exist, and according to the method of their sale (retail, or wholesale, or if both whichever the predominant). Articles of trade should not be valued at cost or market price whichever the less. However, when other methods of valuation are extremely difficult, valuation at cost can be used for *Zakâh* purposes.”

What appears to be the case is that the two problems can be treated by calculating the approximate realizable value of this inventory through multiplying the total cost of inventory by the rate of company's profit in sales, which can be identified through dividing the total sales by the cost of sales in the income statement. Thus, the realizable value can be identified based on the following equation:

$$\text{Realizable Value of Inventory} = \text{Cost of Inventory} \times (\text{Total Sales} \div \text{Cost of Sales})$$

It also appears that the realizable value is closer than the market value in the valuation of goods stocked for trade, because the benefit it entails for the payer is to be considered, the matter taken into consideration by the contemporary Fiqh-based *Ijtihâd* (i.e. legal reasoning and discretion),

even if it is expressed as the market value. However, when giving this further consideration, the difference between them becomes clear, giving that the market value reflects the value in markets, which is the fair value according to the accountants. As for the realizable value, it relates to the sale circumstances in the company. It is expressed as the fair value in the terminology of International Valuation Standards, which is fair to both parties to the transaction in terms of their benefits and needs. This value may increase or decrease from the value at which the market price is to be considered.

Topic (II)

Estimation Regarding

Calculating *Zakâh* on Investment Assets

First: The concept of investment assets

In financial markets, investment assets (also called financial instruments) are any securities designed to generate profits. They are defined as:

“Any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.”⁽¹⁾

These financial instruments are divided into three categories:⁽²⁾

- 1- **Equities:** A contract gives its holder the right to a share of the residual value of the issuing entity after deducting all of its liabilities, including stocks, *Sukûk* (certificates), and investment funds.
- 2- **Derivatives:** Any financial instrument characterized by the following: (a) its value changes in response to a specific variable, such as the interest rate, and stock prices; (b) it requires no initial net investment or a small investment compared to other types of contracts that would be expected to have a similar response to changes in market factors; and (c) it is to be settled at a future date, such as stock options.
- 3- **Debt instruments:** They represent financial debts owed by others, such as bonds and treasury bills.

This topic is concerned with investments in stocks, *Sukûk* (certificates) and investment funds. As for debt instruments, they take the ruling on debts which have been previously discussed. *Zakâh* on derivatives, however, needs a separate study which explain the ruling on them in detail.

Second: Estimation regarding *Zakâh* on investment assets

Referring to the collective *Ijtihâds*, we find that these assets are generally

(1) “IAS 32- *Financial Instruments: Presentation*”, Paragraph (11).

(2) “*Al-Muhâsabâh Al-Mutawassitâh*” [*Intermediate Accounting*, Kin Lo, George Fisher], (1: 389).

considered as a vehicle including a number of assets and liabilities. Hence, we can say that *Zakâh* due on stocks, *Sukûk* (certificates) and investment units is to be paid according to the zakatable assets they represent.

This statement is correct in theory, but it is problematic in practice. This is because it is not easy to find out what these assets represent, as they are disclosed in the aggregate, as it is the case with the investment funds, *Sukûk* (certificates) or stock portfolios. Rather, it can be said that this is impracticable unless the company, the fund manager, or the *Sukûk* (certificates) issuer takes charge of calculating the rate of *Zakâh* due on each of these financial instruments.

In this regard, the resolution of the OIC International Islamic Fiqh Academy (IIFA) regarding *Zakâh* on shares has given due attention to this problem in its thirteenth session, emphasizing on investigation on the part of the shareholder who cannot find out the amount of zakatable assets for his shares, stating:

“If companies have assets on which *Zakâh* is payable such as cash, goods stocked for trade, and debts owed by solvent debtors, and the *Zakâh* due on their assets has not been paid, and the shareholder cannot find out from the company’s accounting information the amount of zakatable assets for his shares, then thorough investigation shall be done as much as possible, and *Zakâh* shall be paid in accordance with the equivalent value of his shares of the zakatable assets. This applies in the case where the company is not in a major deficit to the extent that debts are greater in value than the assets. If the companies, however, do not have assets on which *Zakâh* is payable, then their ruling shall be in conformity with resolution no. 28 (3/4) that the owner of such shares will not pay *Zakâh* on the market value of shares, but only on the basis of the dividends.”

Also, the fatwas of the 21st symposium on “*Contemporary Zakâh Issues*” states:

“If there is no mean of knowing zakatable assets of the fund, portfolio or *Sukûk* (certificates), then they shall be calculated on the basis of estimation. As a guidance to arrive at a fair estimation, financial results of previous years or the nearest estimation conducted, and financial

indicators in the markets in which these investment vehicles operate, as well as their counterparts of similar investment vehicles can be used.”⁽¹⁾

Apparently, the most suitable method of investigation and estimation is to adopt the rule of prevalence, so the amount of the *Zakâh* base in most joint-stock companies is to be considered to provide an average indicator, taking into account the purpose of just compromise between the rights of the poor and that of the rich.

This indicator can be reached through conducting applied studies into a number of companies in each sector, and then the average of these applied studies is to be regarded as an indicator used in calculating *Zakâh* for those who do not know the rate payable in these companies.

It seems that the best and most suitable indicator to rely upon in estimating *Zakâh* is the ratio of zakatable assets to total equities, and that the way to identify such indicator is through conducting studies into a number of companies of different sectors inside and outside the Kingdom to reach this indicator. It has emerged through calculating *Zakâh* for a number of joint-stock companies that the total zakatable assets in joint-stock companies vary between 25% to 60% of the total equities. So, 40% can be regarded as an average for the zakatable assets in joint-stock companies (in non-financial sector). Then, the rate payable is to be 1% of the book value per share.

However, the researcher views that more applied studies are needed to verify the quality of this percentage. Such a quality can be verified through increasing the number of companies under study and reconsidering this indicator periodically, or through determining it based on sectors. This issue may be a subject of a number of scientific theses in accounting.

With regard to derivatives, they are among the problematic issues in the calculation of *Zakâh* because they fall within the contracts of options, swaps, and forwards. In this respect, the 24th symposium on “*Contemporary Zakâh Issues*” has concluded the following:

“Revenues generated from Shari’ah non-compliant financial derivatives are considered ill-gotten gains, and they should become subject to the

(1) “*Proceedings and Recommendations of the 21st Symposium on Contemporary Zakâh Issues*”, (P. 357).

rulings of *Zakâh* on ill-gotten wealth indicated in the 4th symposium, as well as the 6th symposium on Contemporary *Zakâh* Issues.”⁽¹⁾

Nevertheless, the fatwa of the symposium considered derivatives among the off-budget activities. Yet, in the International Accounting Standards (IAS) derivatives have turned to be listed on the company’s statement of financial position at the fair value. Hence, it is not easy to estimate the ill-gotten revenue mixed, without any distinction, with the principal amount of the invested wealth. Moreover, the ill-gotten revenue may mix with some of the Shari’ah-compliant alternatives to these contracts, which are intended for hedging. In any case, what appears here to be the case is that the revenue generated from these derivatives is to be regarded as lawful revenue, and what is paid out is not to be considered as *Zakâh* on this ill-gotten wealth. However, detailed study is still needed for each type of these derivatives in terms of the financial aspect of these contracts, and the realization of the absolute ownership condition.

As for *Sukûk* (certificates), they are to be valued in financial statements on the basis that they are debt instruments, and their assets are not to be disclosed in financial reports. It appears that if the rate payable on the zakatable assets of these *Sukûk* is not disclosed, then they are to be subject to estimation according to the following:

- If they are acquired for investment purposes for a period exceeding one year or until the date of redemption, then they shall take the ruling on monopolistic-trader’s goods stocked for trade, given that these assets are intended to be sold to the issuer at the end of the period. Hence, *Zakâh* on their price is to be paid at the date of redemption, and the cash dividends are to be combined together (in *Hawl* and *Zakâh*) with the property and cash in the payer’s possession.
- If they are acquired for commercial purposes, then they are to be treated as goods stocked for trade, and their *Zakâh* is to be paid based on their value.

(1) “*Proceedings and Researches of the 24th Symposium on Contemporary Zakâh Issues*”, (P. 316).

Topic (III)

Estimation Regarding Calculating *Zakâh* on Trading Securities

First: The concept of trading securities

Trading securities are stocks, bonds and *Sukûk* (certificates) acquired for commercial purposes in financial markets.

Second: The ruling of *Zakâh* on trading securities

The basic ruling regarding stocks, *Sukûk* (certificates) and investment units is that they represent investment assets, and their *Zakâh* shall be paid according to the zakatable assets they represent. Contemporary scholars of Fiqh have disagreed regarding the impact of the intention to trade in these securities on their *Zakâh*. We will discuss this issue in detail in chapter five.



Topic (IV)

Estimation Regarding Calculating *Zakâh* on Real Estate and Projects under Development

This topic aims at studying *Zakâh* on real estate and projects under development (construction) prepared for commercial purposes, but they are not usually put up for sale except after the completion of construction.

***Zakâh* on real estate under development**

Contemporary scholars of Fiqh have disagreed regarding the ruling on real estate under construction, when the real estate is not usually sold during construction or put up for sale, into two approaches:

Approach (1): *Zakâh* is due on real estate under construction

“*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” (i.e. Corporate *Zakâh* Calculation Guide) has adopted this approach. In item (12) regarding capital projects under implementation, the guide states:

“If it is acquired for the purpose of being sold, then it shall be included in the zakatable assets and valued at the market value at the date of *Zakâh* accrual.”

Also, the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has adopted this approach in its Shari'ah Standard no. (35) regarding *Zakâh*, item (5/2/6/3):

“Works under implementation (constructions): To be valued for *Zakâh* in their current state on the day of *Zakâh* accrual.”

Approach (2): *Zakâh* is not due on real estate prepared for trade before the completion of construction

Al Baraka symposium in its sixth session has adopted this approach, as its recommendations state:

“If the project is prepared for sale, then no *Zakâh* shall be due for it until it is completed, provided that the parts which become salable

shall be subject to *Zakâh* at their value. At all events, it is required to pay *Zakâh* on the money allocated for financing the project in case it has not been spent on it. However, if the project is halted and put for sale in its current state, then it shall be valued and its *Zakâh* shall be paid as the *Zakâh* on goods stocked for trade.”

Similarly, the Permanent Committee for Scholarly Research and Ifta has adopted this approach in its fatwa no. (19924), when the Committee was asked the following question:

“I have a villa under construction on a plot of land, which is mine, and I intend to sell it. It should be noted that the period of construction may take two years. How should I calculate the due *Zakâh* (obligatory almsgiving) on it? Is *Zakâh* due during the first year of construction or after the completion of construction after two or more years?”

The Committee replied:

“No *Zakâh* is due on the villa you are building during the period of construction even if it takes two or more years unless you intend to sell it before completing the construction under any accidental occasion or need. If there is an intention to sell, the *Zakâh* will be due after the elapsing of a full *Hawl* (one lunar year calculated from the time a property reaches the minimum amount upon which *Zakâh* is due) from the time when the intention of sale takes place when the villa is still unsold. Thus, it should be valued by the end of the *Hawl* according to the spot price and one fourth of the one tenth (2.5%) of its value should be paid as due *Zakâh*. Similarly, if you continue the construction until the villa is ready for residence and then you intend to put it up for sale, *Zakâh* will be due after the elapsing of one *Hawl* from the time you intended to sell it. That is because the villa in this case and the previous one becomes a commercial commodity, for it is put up for sale. It should be valued by the end of the *Hawl* and the *Zakâh* should be one fourth of the one tenth (2.5%) of its value. The ruling is applicable on a yearly basis; whenever the *Hawl* elapses, it should be valued and one fourth of the one tenth (2.5%) should be paid as *Zakâh* as long as it is not sold.”

In its fatwa no. (18586), the Committee replied with the text:

“For the period of building, construction and preparation, no *Zakâh* is due on the mentioned land until the construction is finished and the building becomes ready for sale, only then the *Zakâh* becomes due for each year that elapses while it is put up for sale. It should be valued by the end of every year and one fourth of the one tenth (2.5%) of its value should be paid as the due *Zakâh*.”

Selecting the most preponderant approach

It appears that *Zakâh* on real estate projects or other industrial projects, whose construction period exceeds one year, shall take the same ruling as goods of speculative trader (the monopolistic-trader), due to the length of the work cycle in these projects, so its due *Zakâh* shall be paid one time after selling each unit of the project. If the whole project or a part thereof is sold in installments, then its due *Zakâh* shall be paid on each payment upon its receipt or at the end of the fiscal year, as it is the case with the debt of the monopolistic-trader's goods. This is because it does not hold true that the developer in these projects utilizes the money, or that he buys whenever he sells. The Malikites considered the meaning of exchanging and utilizing the money in the *Zakâh* payable on the managing-trader, so the obligation of *Zakâh* on him is conditional on liquidating something thereof during a full lunar year (*Hawl*), i.e. receiving cash during the *Hawl*. Then, if a full lunar year (*Hawl*) has elapsed on the goods of managing-trader, then no *Zakâh* is due on him.

If the whole project or a part thereof is put up for sale, the ruling will not change thereby. This is because the goods of speculative trader (the monopolistic-trader) do not turn to management by changing the intention from speculation to management.

Topic (V)

Estimation Regarding Calculating *Zakâh* on Goods under Delivery

First: The concept of goods under delivery

The goods under delivery or goods on the way are the goods the company has bought during the financial period and they have been shipped, but not received in warehouses. That is, they are still on the way by the end of the financial period. These goods are valued in financial statements at the cost price, i.e. the purchase price plus their purchase expenses, such as shipping, insurance, and other expenses.

Second: Estimation regarding calculating *Zakâh* on goods under delivery

The goods under delivery are to be considered under company's ownership, but the problem is that they are valued in financial statements at the cost price, not at market value. As mentioned above, the basic ruling is that *Zakâh* here shall be paid at the market value. According to "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*" (i.e. Corporate *Zakâh* Calculation Guide), the valuation is carried out in the place where the goods are sold,⁽¹⁾ and it is known that it will not be easy to reach such a value.

The Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has permitted the adoption of the actual cost whenever it is difficult to value the goods, as stated in item (5/2/2) of the Shari'ah Standard no. (35) regarding *Zakâh*:

"Articles of trade should be valued at selling market price in the place where they exist, and according to the method of their sale (retail, or wholesale, or if both whichever the predominant). Articles of trade should not be valued at cost or market price whichever the less. However, when other methods of valuation are extremely difficult, valuation at

(1) See: (P. 375).

cost can be used for *Zakâh* purposes. When there is a price change during the period between the date of accrual and date of payment of *Zakâh*, the price at the date of *Zakâh* accrual should be adopted.”

As spelled out earlier, the method of calculating the value at which a company sells its goods has been provided on the basis of valuation, which is more suitable than the cost value.



Treatise Three

Estimation Regarding Calculating *Zakâh* on Products of Land, Grazing Livestock, and Minerals



The common methods of collecting *Zakâh* are concerned with *Zakâh* on cash and goods stocked for trade in joint-stock companies. This treatise is concerned with estimating the payable rate of *Zakâh* on zakatable wealth of products of land, livestock, and minerals. The treatise is divided into three topics as follows:

Topic (I)

Estimation Regarding Calculating *Zakâh* on Products of land

First: The concept of products of land

The products of land refer to grains and fruits that are measurable and storable, be they food or not. This issue is a point of disagreement among earlier scholars of Fiqh. This research is not concerned with clarifying the point of disagreement regarding payable *Zakâh* on the products of land.

Second: Estimation regarding zakatable *Nisâb* of grains and fruits

Zakâh is not due on grains and fruits, unless it reaches the amount of zakatable *Nisâb*, which is five *Wasqs* (a kind of weight equals 180 kg approx.). One *Wasq* is equal to sixty *Ṣâ`*'s, one *Ṣâ`* is equal to four *Mudds*, one *Mudd* is equal to a handful of both palms of an average man's hands, as stated by the Prophet (peace and blessings of Allah be upon him):

“No Sadaqah (i.e. Zakâh) is payable on grains and dates unless the amount reaches five Wasqs.”⁽¹⁾

In Shari'ah, the amount of *Niṣāb* is determined in a certain measure, the method which is not common at present. Therefore, *Ijtihād* (i.e. legal reasoning and discretion) has been performed to bring these measures as approximate as possible to their equivalents of the Shari'ah-compliant weights according to each type of these grains and fruits. Although this method is not accurate, it is easy for a company to estimate the *Niṣāb* because the customary practice is that these companies deal in large quantities.

The rate of *Zakâh* payable on crops and fruits varies according to the method of irrigation. If the crops and the fruits are irrigated without any expenses or effort, such as being irrigated by rains water or streams (i.e. natural water channels), then one-tenth (10%) shall be due. However, if they are irrigated with some expenses and efforts, such as being irrigated using a machine, for example, to lift water, then half of one-tenth (5%) is due. This is indicated by the hadith of Ibn `Umar that the Prophet (peace and blessings of Allah be upon him) said:

“On a land irrigated by the sky (i.e. rain water) or by streams (i.e. natural water channels) or if the land is wet due to a nearby water channel, one-tenth (10%) is compulsory (as Zakâh), and on a land irrigated by the well (i.e. machines are used), half of one-tenth (5%) is compulsory (as Zakâh on the yield of the land).”

Third: Estimation regarding calculating *Zakâh* on crops and fruits

Zakâh due on crops and fruits is a type of wealth whose estimation in financial statements is problematic since *Zakâh* is not obligatory on all crops and fruits, but on specific kinds only. The payable rate of *Zakâh* on these kinds is either one-tenth (10%) or half of one-tenth (5%). The zakatable kinds of crops and fruits are to be determined based on the most likely assumption, and the expenses of crops are to be determined based on the prevailing

(1) *“Ṣaḥīḥ Muslim”*, Book of *Zakâh*, hadith no. (979), on the authority of Abû Sa`id Al-Khudrî (may Allah be pleased with him).

customary practice that the process of irrigation incurs expenses. Then, an amount of the inventories is to be added at the double of its realizable value (which is reached through multiplying the total value of the inventories by the rate of the company's total sales to the cost of sales), plus the rate of sold crops from the sales value (without duplication), then one fourth of the one tenth (2.5%) is to be paid from the sum total. The doubled amount is not taken from the income statement so as to prevent duplication in *Zakâh* payment (in one year) along with the cash acquired from the sale which are added to *Zakâh* base.



Topic (II)

Estimation Regarding Calculating *Zakâh* on Livestock

Livestock was regarded among the most important zakatable property in the Prophet's era and the early ages of this nation until recent times, contrary to late times during which livestock lost the importance it had in the past. Chapter three has discussed the estimation regarding the conditions for obligating *Zakâh* on livestock, and this chapter is concerned with estimating the rate of *Zakâh* payable on livestock for joint-stock companies.

Estimation regarding *Zakâh* on livestock

Estimating the rate of *Zakâh* payable on livestock for joint-stock companies is a problematic issue because the payable rate is variable. That is, one goat will be sufficient for forty sheep as it will be sufficient for one hundred and twenty. Moreover, the original ruling on the payable rate is to pay from the livestock according to a certain age in each type. What appears to be the case is that the rate is to be valued on the basis of one fourth of the one tenth (2.5%) because this is the basis for calculating *Zakâh* in general. This rate is noticeable in estimating what is payable for forty sheep, forty cows, and forty camels, and the Lawgiver's pardon for *Waqas* (i.e. the value between two mandatory values in *Zakâh*, which does not increase the rate of the *Zakâh* due) in these rates was only for the purpose of facilitation so as to avoid *Tab`id* (i.e. dividing the payable rate into parts or portions). So, if the payable rate is allowed to be paid at its value, then paying one fourth of the one tenth (2.5%) of the total estimated portion of this *Zakâh* will be a reversion to the original ruling on the payable rate of *Zakâh* to avoid *Tab`id* for the purpose of facilitation.

In his book "*Mahâsin Ash-Sharî`ah*", Imam Al-Qaffâl Ash-Shâshî indicated this meaning stating:

"Gold and silver should be considered when determining the rate of *Zakâh* payable on any property at values other than gold and silver. If the rate thereof is estimated to be one fourth of the one tenth (2.5%),

then this rate shall be the basis for all the rates of obligatory *Zakâhs*, crops, etc. Ash-Shâfi`î intended this meaning concerning the *Zakâh* payable on livestock and crops when he said: 'It is not allowed for anyone possessing various types of property to pay (as *Zakâh*) less than one fourth of the one tenth (2.5%).'⁽¹⁾

Based on this consideration, if one goat is sufficient for five camels, and the value of *Zakâh* is ten dirhams (as reported by him), then whoever is required to pay a camel of certain age (as *Zakâh*) that does not exist among his property but there is an older age in his possession, shall give the older age and take two goats or twenty dirhams (as a value differential). Hence, the value of five camels will be four hundred dirhams. This case of valuating five average dromedaries (one-humped camels) at four hundred dirhams shall not be ruled out. This was performed at that time, at a near value that may be up or down without any negligence.

The same applies to *Zakâh* due on sheep which is one goat for every forty sheep, and this is one fourth of the one tenth (2.5%), and to *Zakâh* due on cows which is one *Tabî`* (i.e. young bull in its second year) for every thirty cows. Conceivably, the value of *Tabî`* may be five dirhams, and the value of the thirty cows may be four hundred dirhams. Thus, all rates of *Zakâh* payable on cash and livestock are quite arranged at one fourth of the one tenth (2.5%). This is not applicable to the *Zakâh* due on crops because the Shari'ah text has decided their rate at one-tenth (10%) and half of one-tenth (5%), then their payable rate is the double of the rate payable on livestock and cash."⁽²⁾

Accordingly, the rate of *Zakâh* payable on livestock is to be estimated at one fourth of the one tenth (2.5%) of their value in case their number and considerable ages are unknown, and the value rate at which it is measured in financial statements of companies is to be considered in this respect.

(1) "Al-Umm", (8: 137); "Bah'r Al-Madhhab", (3: 43).

(2) "Mahâsin Ash-Shari'ah", (P. 181).

Topic (III)

Estimation Regarding

Calculating *Zakâh* on Minerals

We have discussed in chapter three the estimation regarding the conditions of *Zakâh* on minerals and the wealth relevant to it. It was explained that nothing is payable on such wealth because they are not among the property that could be owned by extraction according to the enacted laws and regulations governing the ownership and extraction of these wealth as being owned by the State. As a result, the condition of absolute growth does not apply to them any longer, as it was the case in the early times of this nation.

As for what is extracted among these minerals, if it is gold or silver, then *Zakâh* is to be paid on it considering that it is acquired wealth. If it is not gold or silver such as iron, oil and other materials extracted from the earth, or plants such as flowers or vegetables which are not subject to the *Zakâh* due on goods stocked for trade, or what is extracted from trees such as palm oil or rubber, then the obligation of *Zakâh* on what is stocked for commercial purposes among these materials is based on the aforementioned disagreement regarding the reason of ownership considerable in the obligation of *Zakâh* on goods stocked for trade. In this respect, the researcher gives preponderance to the view of the majority of scholars who argued that *Zakâh* is not obligatory on this inventory because his ownership of these materials is not realized by an exchange-based financial contract. Rather, *Zakâh* is due on its price if it is cash, and hence the same ruling as acquired wealth applies to it.

However, assuming that the reason considered for ownership is to actually take the possession of goods with the intention of trading, or that *Zakâh* is obligatory under the intention of trading even if taking ownership is not associated with the business of trade, then *Zakâh* shall be obligatory on inventory of these minerals and the like. Hence, they are to be combined together with cash and goods stocked for trade in the payer's possession, and the *Zakâh* thereof is to be paid during their *Hawl*.

If the payer's *Hawl* elapses, then the inventory of minerals in financial statements of companies is to be examined to check whether *Zakâh* is due on it. The items of this inventory that meet or most likely to meet the conditions for obligating *Zakâh* are to be added to the *Zakâh* base. It has been previously stated that the inventory is valued at the cost or the market value, whichever the less, the matter which requires that this value be treated according to what has been mentioned regarding the *Zakâh* payable on goods stocked for trade.



Chapter Five
Estimation of *Zakâh*
Base for Joint-Stock Companies

Introduction



The foregoing chapter has set forth the Shari'ah fundamentals of determining the zakatable wealth from the financial reports of joint-stock companies, and specifying the basis for their estimation. This chapter is meant to explain the methods of calculating the *Zakâh* base for these companies, and to clarify the impact of the shareholder's intention to invest on estimating the payable rate of *Zakâh*.

The discussion in this chapter is arranged into a preface and two treatises:

Preface: Concept of *Zakâh* base.

Treatise One: Methods of estimating *Zakâh* base in joint-stock companies.

Treatise Two: Impact of shareholder's intention on estimating *Zakâh* base.



Preface

Concept of *Zakâh* Base



“*Wi`â*” (pl. *Aw`iyah*) in Arabic language is something used to hold and keep things in.⁽¹⁾ “*Wi`â* *Az-Zakâh*” (i.e. *Zakâh* base) or “*Al-Wi`â` Az-Zakawî*” (i.e. *zakatable* base) is among the contemporary terminologies that have been taken from tax accounting. Terminologically, the scholars of *Fiqh* use the term “*Wi`â*” to indicate the wealth on which *Zakâh* is due.⁽²⁾

In contemporary usage, the terms of “*Mâ`ûn Az-Zakâh*” and “*Wi`â` Az-Zakâh*” are used interchangeably. There is no wrong with that, but the usage of “*Mâ`ûn*” in the strict sense of “*Wi`â*” is not known in the linguistic lexicons. This is because the term “*Mâ`ûn*” in Arabic language (as in “*As-Sihâh*” and others) is a wide-ranging noun referring to house equipment, such as a pot, an ax and the like. It also indicates water and obedience. *Abû`Ubaydah* said, “The term “*Mâ`ûn*” in the period of *Jâhiliyyah* (pre-Islamic period) was used to denote every equipment or gift. In the Islamic convention, it means obedience and *Zakâh*.”⁽³⁾ Its origin suggests the assistance, as in the saying of Allah, the Almighty: {“*And withhold (simple) assistance.*”}.⁽⁴⁾

In the “*Mu`jam Al-Lughah Al-`Arabiyyah AL-Mu`âsirah*” (i.e. Dictionary of the Contemporary Arabic Language), it is mentioned: “The common people use it specifically to denote the vessel in which the food is eaten.”⁽⁵⁾

(1) “*Al-Wi`â` Az-Zakawî*”, *Al-Faryân*, (P. 51).

(2) See, the trilateral root “*Wâw, `Ayn, Yâ`* (i.e. W ` Y) [و ع ي]”: “*Al-Misbâh Al-Munîr*”, (2: 666); “*Mukhtâr As-Sihâh*”, (P. 336); “*Tâj Al-`Arûs*”, (40: 212-214).

(3) See, the trilateral root “*Mîm, `Ayn, Nûn* (i.e. M ` N) [م ع ن]”: “*As-Sihâh*”, (6: 2204-2205); “*Tahdhîb Al-Lughah*”, (3: 13); “*Tâj Al-`Arûs*”, (36: 180-181).

(4) *Surah Al-Mâ`ûn* (Kindnesses): 7.

(5) “*Mu`jam Al-Lughah Al-`Arabiyyah AL-Mu`âsirah*”, (3: 2110).

Treatise One

Methods of Estimating

***Zakâh* Base in Joint-Stock Companies**



We have previously clarified the Shari'ah fundamentals of estimation regarding the calculation of *Zakâh*, their application to the conditions of *Zakâh* obligation for joint-stock companies, then the application of estimation to the zakatable assets of the company and the liabilities that affect these zakatable assets. This treatise is meant to study the accounting methods by which the *Zakâh* base of the companies is calculated, with the aim of determining the payable rate of *Zakâh*. The treatise is divided into four topics as follows:

Topic (I)

Equity Method

Equity is among the well-known and approved methods of calculating *Zakâh*, and it is preferred by the authorities responsible for collecting the compulsory *Zakâh*, such as Zakat, Tax and Customs Authority (ZATCA). This method was originated from tax accounting, and thus it deals with the sources of wealth and profits more than it deals with assets, and it is concerned with calculating the profits accurately.

First: The concept of equity method

The equity method, also called the method of “net invested funds”, “sources of funds”, or “invested capital”, mainly depends on the left column of the statement of financial position which represents the sources of funds listed on the assets column. These sources are divided into internal sources represented in equity, which is the basis for calculating the *Zakâh* base according to this method; and external sources, which are the company's liabilities of debts and finances added to the equity as an additional capital.

The equity method can be summed up in the following equation:

$$\text{Zakâh Base} = (\text{Equity} + \text{Non-Zakatable Liabilities}) - \text{Non-Zakatable Assets}$$

Non-zakatable liabilities mean any liabilities that are not deducted from the *Zakâh* base, which are the liabilities financing non-zakatable assets as adopted by the *Zakâh* Symposium and the Shari'ah Standards.

This method has been considered by "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*" (i.e. Corporate *Zakâh* Calculation Guide), issued by the Kuwait Zakat House, as well as the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in its Shari'ah Standard no. (35) regarding *Zakâh*, item (2/1), which stated:

"There are two methods for the calculation of *Zakâh* base: the first is the method of net assets, and the second is the method of net investment assets. The two methods have different basis for valuation, yet if such difference is well recognized the final outcome will be the same."

However, both of "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*" and the Shari'ah Standard have relied on the method of net investment assets to calculate *Zakâh*, given that it is closer to the zakatable principle with regard to the conditions of *Zakâh*.⁽¹⁾

Second: Advantages of this method

The equity method has a number of advantages, which can be summarized as follows:

- 1- It enables the authorities responsible for collecting *Zakâh* to curb *Zakâh* evasion that may occur as a result of manipulating the financial items in the assets statement. This takes place through tracking the sources of funds, which consist of internal sources represented in equity, or external sources represented in the company's liabilities, as well as the assets of the company, and making the necessary deduction against them from the *Zakâh* base after verifying that no *Zakâh* is due on them.
- 2- It enables the institutions to treat some items in the income statement that affect the calculation of the company's gross profit and the calculation of

(1) See, "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*", (P. 25).

Zakâh; such as the profits given to board members as fees for managing the company, because they primarily represent an increase in the profit in return for increasing their share in the work, so they become subject to *Zakâh* based on this point.

- 3- It provides a different treatment for the estimation regarding the condition of the elapse of *Hawl* (i.e. *Zakâh* year) for the funds received by the company from external sources; such as loans and finances, or government aid, or as a result of an increase in the capital, as the company may receive funds from different sources. According to this method, the opening balance is adopted to the liabilities considering that it is the amount over which we certainly know that a full lunar year (*Hawl*) has elapsed.

Third: Disadvantages of this method

- 1- It is primarily developed for *Zakâh* on cash and goods stocked for trade, and it is not prepared to calculate *Zakâh* on other zakatable wealth.
- 2- It involves some degree of complexity; because it determines the calculation of the zakatable wealth using in an indirect manner. This is why this method is more difficult to understand and apply.



Topic (II)

Zakatable Net Assets Method

Zakatable net assets is the most popular method for calculating *Zakâh*. “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” and the Shari’ah Standard no. (35) regarding *Zakâh* have relied upon this method to calculate the *Zakâh* base. It is also used in many compilations and studies for the calculation of *Zakâh*.

First: The concept of net assets method

The net assets method is used to calculate the *Zakâh* base in a direct manner. It is the method approved by scholars of Fiqh, and this is why it is called (the scholars of Fiqh’s method). Calculating the *Zakâh* base using the net assets method is done as follows:

$$\text{Zakâh Base} = \text{Zakatable Assets} - \text{Zakatable Liabilities}$$

Second: Advantages of this method

- 1- It is characterized by clarity and easiness; because it determines the calculation of zakatable assets in a direct manner, after checking the financial items in the financial statements.
- 2- It is closer to the zakatable principle, and agrees with the scholars of Fiqh’s method.

In this regard, Maymûn Ibn Mihrân said:

“If the date of your *Zakâh* accrual became due, check what is in your possession of cash or goods for sale (i.e. commercial goods), then measure it at the value of cash, calculate any debt owed to you by a solvent (who is a non-procrastinating debtor), and subtract the debts you owe, then pay the due *Zakâh* on the remaining wealth (if it reaches the *Nisâb* that obligates *Zakâh*).⁽¹⁾”

(1) Related by Abû `Ubayd in “*Al-Amwâl*” with this wording, hadith no. (1125); and its *Isnâd* is authentic.

In another wording:

“If the date of your *Zakâh* accrual became due, check the debts you owe, subtract them and then pay the due *Zakâh* on your remaining wealth.”⁽¹⁾

Al-Hasan Al-Basrî said:

“If the month of *Zakâh* accrual became due, a person shall pay the *Zakâh* due on all his wealth, and all what he has bought for trading (i.e. commercial goods), as well as every debt owed to him except that which is uncertain and non-repayable.”⁽²⁾

Third: Disadvantages of this method

- 1- It is primarily developed for *Zakâh* on cash and goods stocked for trade, and it is not prepared to calculate *Zakâh* on other zakatable wealth.
- 2- It gives a way to circumvent one's duty to pay *Zakâh* through reducing the *Zakâh* base when the payer manipulates the two sides of the zakatable equation, namely assets and liabilities, by reducing the value of current assets, or ballooning the value of current liabilities. This is why this method is not preferred by the authorities responsible for collecting compulsory *Zakâh*.

(1) Related by Abû `Ubayd in “*Al-Amwâl*” with this wording, hadith no. (1168); and words to that effect were related by Ibn Abû Shaybah in “*Al-Musannaf*”, (3: 162, 194).

(2) Related by Abû `Ubayd in “*Al-Amwâl*”, hadith no. (1126); and its *Isnâd* is authentic.

Topic (III)

Working Capital Method

Working capital represents the liquidity available to manage the company's business. The working capital is calculated on the basis of difference between current assets and current liabilities: If the current assets are greater than the current liabilities, this indicates the financial liquidity available to the company to pay off its short-term liabilities. But if the current assets are less than the current liabilities, an entity has a deficiency in the working capital, which is also called a working capital deficit.

First: The concept of working capital method

The working capital is a direct method to reach an approximate calculation of *Zakâh*, and it is called "net current assets method" or "net current assets". Calculation of the *Zakâh* base by using the working capital method is done as follows:

$$\text{Zakâh Base} = \text{Current Assets} - \text{Current Liabilities}$$

Sudanese Zakat Chamber has mentioned the working capital as one of the approved methods for the calculation of *Zakâh* so as to estimate the *Zakâh* base of goods stocked for trade in joint-stock companies.⁽¹⁾

Second: Advantages of this method

Calculation of the *Zakâh* base by using the working capital method is much easier and does not involve any complexity.

Third: Disadvantages of this method

1- Working capital indicates the financial liquidity available to the company, and it is one of the indicators for measuring the company's financial ability to pay off its liabilities. The ability to pay off short-term liabilities is not a measure of richness, which is the description considered in the Shari'ah for the obligation of *Zakâh*. This is because a person may have a lot of

(1) See, "*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*", (P. 12).

wealth on which *Zakâh* is due according to its Shari'ah-based conditions, but he may not have the financial liquidity that would enable him to pay *Zakâh* when a full lunar year (*Hawl*) elapses over his zakatable wealth.

Rather, practical application clarified that a number of high-profit companies have negative working capital because of their reliance on short-term finances to finance their business. They, however, are unlikely to be considered as not subject to *Zakâh*.

- 2- This method entails the non-obligation of *Zakâh* on long-term zakatable assets, namely long-term investments or long-term debts owed to company, which contradicts the rules of estimation in calculating *Zakâh*.



Topic (IV)

Net Profit Method

The net profit is among the methods used for calculating *Zakâh* on an estimation basis, with no need to check the company's assets and liabilities. This method can be explained as follows:

First: The concept of net profit method

The net profit of the company is considered as *Zakâh* base in this method, and the payable *Zakâh* is calculated based on the profit distributed or realized.

This method has been adopted in calculating *Zakâh* on an estimation basis by a number of contemporary *Ijtihâds* (i.e. legal reasoning and discretion), which are explained as follows:

Approach (1): The shareholder pays *Zakâh* on shares in the same manner as *Zakâh* on exploited assets, and the dividend (the distributed profit) represents the yield from which *Zakâh* is paid. This is in case the joint-stock company does not pay *Zakâh* on behalf of the shareholders, and the shareholder does not know the amount of *Zakâh* due if the company paid it out on his behalf, and he intends for a long-term investment. By then, a shareholder shall pay the *Zakâh* due on his shares at the same rate as *Zakâh* on exploited assets.

The OIC International Islamic Fiqh Academy (IIFA) in Jeddah has adopted this approach in its resolution no. 28 (3/4) concerning payment of *Zakâh* on company shares, which addressed the case when the shareholder is unable to determine the amount of zakatable assets for his shares if the company would have paid *Zakâh* out on his behalf:

“If the shareholder has no mean of knowing these elements of information for calculating the amount due, then:

If he had invested in the company to benefit from the annual dividends of his shares, and not for trading purposes, then the owner of such shares will not pay *Zakâh* on the market value of shares, but only on the basis of the dividends, at the rate of one fourth of the one tenth (2.5%) after the elapse of one year from the date of the actual reception of the

dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the Academy at its second session, with respect to *Zakâh* on the rented real estates and non-agricultural leased lands.”

As-Siddîq Ad-Darîr is among the contemporary scholars of Fiqh who have adopted this approach.⁽¹⁾

Further, the Permanent Committee for Scholarly Research and Ifta has adopted this approach in many fatwas with respect to *Zakâh* on shares without placing the restrictions of the IIFA’s resolution. Apparently, this does not contradict the IIFA’s resolution, but it seems that the fatwa considers the common status of payers regarding the *Zakâh* payable on shares.

This approach is an implementation of the “Shari’ah-Based Estimations Rule”, so the share in this case takes the same ruling as *Zakâh* payable on exploited assets. This is to spare payer of *Zakâh* the difficulty of knowing the amount of *Zakâh* due according to the zakatable assets represented in the share, and owing to the similarity in purpose of gaining profit between the shares and the exploited assets.

However, this approach is problematic because considering the share’s yield in this case as the *Zakâh* base represents a departure from the original ruling regarding calculating *Zakâh* on the basis of assets. As we have mentioned before, the closest approaches to the departed original ruling are to be used in estimation. Yet, considering shares as exploited assets is problematic in two points:

- 1- No *Zakâh* is levied on the zakatable assets. Thus, the zakatable assets are regarded as non-zakatable, and this is not the case in reality. In addition, this will prejudice the right of the poor in this zakatable wealth.
- 2- The original ruling regarding dividend (distributed profit) in the shares of joint-stock companies is that it shall be subject to the ruling on its original zakatable assets, including cash and goods stocked for trade. Considering it as profit exploited assets requires that a new *Hawl* is to start counting for these profits, as concluded by the resolution of the OIC International Islamic Fiqh Academy (IIFA) regarding the profit-producing property.

(1) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (4), (1: 766).

For this and other reasons, the International Islamic Fiqh Academy has overruled its resolution regarding *Zakâh* on the shareholder who is unable to know the zakatable assets of the shares he owns, and stated that he shall use investigation as stipulated by the resolution of the OIC International Islamic Fiqh Academy (IIFA) in its 13th session.

Approach (2): The shareholder pays *Zakâh* on shares in the same manner as person pays *Zakâh* on exploited assets on the basis of the dividend (the distributed profit) so long as he intends a long-term investment, and there is no need to check the company's assets. This approach is adopted by Dr. Muḥammad Al-Qarî.⁽¹⁾

The basis for this approach is that a shareholder owns a part of the joint-stock company, and does not own anything from the company's assets, and the company is not obligated to pay *Zakâh* on these assets. The shareholder, however, shall pay *Zakâh* on the profit if he intends to invest, because it represents a yield per share.

Approach (3): *Zakâh* is due on the net profit realized by the company. The realized net profit is to be considered as a base for the companies whose *Zakâh* base is negative, or whose assets-based *Zakâh* base is less than the net income adjusted for the purposes of *Zakâh*, and 2.5% of this profit (income) is to be paid out as *Zakâh*.

Zakat, Tax and Customs Authority has adopted this approach. To this regard, the authority has issued the circular no. (122/1), dated 19/8/1414 AH, in which the item (first / 2) stipulated:

“In the event that the *Zakâh* base is negative, *Zakâh* is to be required for the adjusted net income (profit), taking into account the deduction of adjusted losses brought forward. If this deduction resulted in the existence of a negative base, then *Zakâh* shall not be required even if the results of the year's business showed profits.”

This was confirmed by the Ministerial Letter no. (3/8974), dated 6/8/1417 AH, which approved the resolution of the Appeal Committee no. (163) for the year 1417 AH, and it concluded that the *Zakâh* base is the net profit.

(1) “*Proceedings and Researches of the 11th Symposium on Contemporary Zakâh Issues*”, (1: 166).

The judgment delivered by the authority combines two methods for determining the *Zakâh* base. The authority has explained the grounds for this judgment from its perspective through a question directed to the Permanent Committee, in its fatwa no. (23408), which states:

“Some payers oppose the authority’s judgment on the grounds that the realized net income (profit) has been used to purchase fixed assets. Thus, there is no *Zakâh* payable on this income because it has been converted to a form of properties obtained for *Qunyah* (i.e. acquisition and personal use) on which *Zakâh* is not due.

Some specialists in Zakat, Tax and Customs Authority support the argument that there is no *Zakâh* payable on any wealth used to buy fixed assets before a full lunar year (*Hawl*) has elapsed over it, even if its source is the year’s net income (*Hawl* of the net income is calculated from its original asset first started). However, other specialists support the Authority’s judgment on the grounds that the net income for the financial period of *Zakâh* assessment is undeterminable except after closing the accounts at the end of the financial year. Thus, it cannot be said that the purchase of fixed assets during the year was carried out from the net income that has not been realized and determined except at the end of the year.

We hope that your eminence will give the Shari’ah verdict on the validity of the current judgment of Zakat, Tax and Customs Authority, which is represented in deducting the net value of fixed assets listed on the payer’s accounts within the limits of equity provided that *Zakâh* base should not be less than the net income of the year.”

The Committee replied as follows:

“Whatever revenues of the factory -on which *Zakâh* is due- are used to purchase assets or spent on non-commercial goods before a full lunar year (*Hawl*) has elapsed over them, there shall be no *Zakâh* payable on these revenues, because they were spent for non-commercial purposes before a full lunar year (*Hawl*) has elapsed over them.”⁽¹⁾

(1) “*Fatwas of the Permanent Committee for Scholarly Research and Ifta*”, Third Collection, (1: 252).

What appears to be the case is that the Authority's consideration for the net income (profit) does not establish a new Shari'ah ruling, rather it reconsiders the basis resulting the negative base. It also appears that the unrealized net income could not be spent wholly on fixed assets. Moreover, there is another basis whereby the Authority acts, which is to add the sources of funds from financing and loans at the opening balance date, so that the condition of the elapse of a full lunar year (*Hawl*) over the funds is met, which reduces the base against the deduction of all fixed assets of the company.

Second: Advantages of this method

- 1- It is characterized by clarity and easiness in determining the payable rate of *Zakâh*, especially when it considers the dividend (the distributed profit) for the *Zakâh* base.
- 2- It agrees with the income-based tax regulations in terms of its reliance on the dividend (the distributed profit) for the determination of the *Zakâh* base, which facilitates the consideration thereof in imposing a similar tax rate on those who are not eligible to pay *Zakâh*.
- 3- It brings a sense of courtesy toward the shareholder, because it is paid out only in the event that the company has realized profit or distributed its revenues, so *Zakâh* is paid on a realized growth.

Third: Disadvantages of this method

- 1- It entails the non-obligation of *Zakâh* on the company's assets in the event that the company has not realized profit or distributed its revenues, which may prejudice the right of those entitled to receive *Zakâh*.
- 2- It is based on *Qiyâs Ash-Shabah* (i.e. correlational inference by resemblance), which is a weak evidence for the establishment of the Shari'ah rulings.
- 3- Considering *Zakâh* on the realized profit requires treating and adjusting the accounting profit (the net income) according to the fundamentals of *Zakâh*.

Treatise Two

Impact of Shareholder's Intention on Estimating *Zakâh* Base



As mentioned before, the original ruling regarding *Zakâh* payable on the shares of joint-stock companies is that it is to be calculated according to the assets these shares represent. However, since the shares are tradable, the shareholder's intention to invest in these shares may vary. That is, he may intend to sell the shares in a short period, or to keep them until their price rises. This treatise is aimed at studying the impact of this intention on estimating the calculation of *Zakâh*.

The treatise is divided into a preface and four topics as follows:

Preface

Types of Investment in Shares and Its Impact on *Zakâh*

First: Types of investment in financial papers

Investment in shares is divided, in financial markets, into two types:⁽¹⁾

- 1- **Trading in financial markets:** It is called *Mudârabah* (i.e. speculation), which refers to the act of buying and selling financial papers in a manner that usually involves a substantial risk, in expectation of achieving significant capital gains by trading in financial papers within a relatively short period.

(1) See, the definition of "Speculation" on this website: (<https://www.investopedia.com/terms/s/speculation.asp>); "Al-Mudârabah Fî Al-Aswâq Al-Mâliyyah", Muḥammad As-Suḥaybânî, (pp. 2-3).

2- Investing in financial markets: It is defined as purchasing financial papers for the purpose of receiving their generated returns represent in the dividends, or the increase in their value at the end of the investment period. The investor's primary purpose here is to invest his savings in less risky investment for a relatively long period.

As for the Fiqh-based perspective, there is no agreed-upon control to differentiate between the trader and the investor in shares. It is well-known that the investor intends to benefit by the share's returns, while the trader intends to profit from the increase in the share's value in the financial markets. This differentiation is not identical to reality. In this regard, Dr. Yûsuf Ash-Shubîlî states:

“The common distinction drawn by some scholars between the investor and the speculator (i.e. the trader) that the investor intends to benefit by the dividends while the speculator owns the share with the intention of benefiting by the increase in the share's value, is a moot point. This is because the motive for purchasing the share is one or more of three matters:

- 1- Dividends (distributed profits).
- 2- Capital increase through bonus issues (bonus shares).
- 3- Increase in the share's market value.

The first matter is nothing compared to the last two matters, because most of return-generating companies often retain most of their profits in the company (retained earnings) so that their impact would reflect on the market value of their shares, or they make these profits as a capital increase through bonus shares, and nothing is distributed to the shareholders except for a little bit thereof.

Generally, this view considers all shareholders as speculators, because no one takes an investment decision in the share market unless he takes into account the expectations of the increase in the share's market value and the expected bonus shares. It is known that the only way to benefit by bonus shares is to sell them.”⁽¹⁾

(1) “*Zakât As-Sukûk Wal-Mahâfiz Was-Sanâdiq Al-Istithmâriyyah*”, Yûsuf Ash-Shubîlî, =

Accordingly, Dr. Yûsuf Ash-Shubîlî decided that the control to differentiate between the trader and the investor in shares is founded on the intention to sell the shares. That is, the investor is the one who purchases the shares and does not intend to sell them during the year, while the trader (the speculator) is the one who purchases the shares with the intention of selling them during the year.⁽¹⁾

The view held by Dr. Ash-Shubîlî regarding the differentiation between the investor and the speculator agrees with the Malikites' view regarding *Zakâh* on goods stocked for trade, and their distinction between the managing-trader who purchases the commodity with the intention of exchanging and utilizing it in the markets, and the monopolistic-trader who purchases the commodity with the intention of increasing its value in the markets. The Malikites view that the managing-trader shall pay *Zakâh* every year, while the monopolistic-trader shall pay *Zakâh* for only one year after selling.⁽²⁾

Some researchers have approbated this control, and adopted it to differentiate between shares considered as goods stocked for trade, and those are not.⁽³⁾ However, this differentiation is not accurate and does not agree with the Fiqh foundation upon which Dr. Yûsuf Ash-Shubîlî has relied, since the majority of the scholars of Fiqh do not consider the period whenever there is an intention to sell, whether the sale is for a period of more than one year or for a lesser period.

Second: Impact of the intention to invest on the payer's *Zakâh*

Contemporary scholars of Fiqh have two approaches regarding the classification of the shareholder's intention to own shares in terms of its impact on estimating the calculation of *Zakâh*:

Approach (1): The intention to own shares is classified into two forms, namely the intention to invest, and the intention to trade (speculation) in the financial markets.

= within the "Proceedings and Researches of the 21th Symposium on Contemporary Zakâh Issues", (P. 266).

(1) Ibid.

(2) "Al-Fawâkih Ad-Dawâni", (1: 331); "Ash-Sharh As-Saghîr", (1: 637).

(3) "Zakât Sanâdiq Al-Mu'ashshirât", As-Suhaybâni and Al-Ghuffli, (P. 22).

This is the predominant approach among the contemporary *Ijtihâds* (i.e. legal reasoning and discretion) that addressed the shareholder's *Zakâh*. It agrees with the majority of scholars' method that does not differentiate between the managing-trader and the monopolistic-trader regarding the obligation of *Zakâh* on goods stocked for trade.

Approach (2): The intention to own shares or the shareholder's intention to own the share is classified into three forms, which are: the long-term investment intention, the intention to trade, and the intention to save.

This is the approach adopted by Dr. Yûsuf Ash-Shubîlî, and it agrees with the Malikites' view concerning the *Zakâh* due on goods stocked for trade, with regard to the distinction between the managing-trader, and the monopolistic-trader.

It bears a close resemblance to the classification of the generally accepted accounting principles (before the transition to the International Standards), which divided the investments in financial papers into three types:⁽¹⁾

- 1- **Held-for-investing financial papers:** These are the instruments held according to the equity method (if they are equity instruments such as shares), or held-to-maturity (if they represent debts such as bonds and *Murâbahah Sukûk*).
- 2- **Held-for-trading financial papers:** These are the instruments purchased with the intention of being resold in the short term, namely for less than one year.
- 3- **Available-for-sale financial papers:** These are the instruments that have neither met the conditions of held-for-investing financial papers, nor the conditions of held-for-trading financial papers.

However, the International Standards have changed this classification, by dividing the investments in shares and financial papers (which are not held for investing in equities) into two types:

First: Assets held at fair value through profit or loss (FVPL): They are the shares acquired with the intention of benefitting by the changes in value,

(1) See, "*Al-Ma`âyir Al-Muhâsabiyyah As-Su`ûdiyyah: Mi`yâr Al-Istithmâr Fî Al-Awrâq Al-Mâliyyah*" [Saudi Accounting Standards: Investment in Financial Papers], (P. 1511).

which are measured at fair value through profit or loss (FVPL), so that any changes in the values of investments are to be recognized in the net income.

Second: Assets held at fair value through other comprehensive income (FVOCI): They are the shares acquired with the intention of making profits through changes in value, and collecting cash flows thereof, which are measured at the fair value.

Away from the details related to the recognition of the profit in these two types, both of them are recognized at the fair value in the company's statement of financial position, which is the market value of these shares in the financial market.



Topic (I)

Estimation Regarding *Zakâh* for an Investing Shareholder

We have previously mentioned concerning the calculation of *Zakâh* for joint-stock companies that when the company pays *Zakâh* according to one of the previous forms of estimation, the shareholder's liability shall be discharged thereby.⁽¹⁾ This topic is aimed at studying the forms to be considered for the estimation of *Zakâh* when the shareholder is an investor and the company has not paid out *Zakâh* on his behalf. These forms are measured at rates all of which involves the sense of estimation.

Impact of the intention to invest in shares on *Zakâh*

Contemporary scholars of Fiqh have different approaches with regard to how the investor pays his *Zakâh*, the most important of which are the following three approaches:

Approach (1): *Zakâh* on shares is to be paid based on its corresponding portion of the company's zakatable assets.

This approach has been established by contemporary Fiqh-based *Ijtihâd*, as it has been adopted in the resolutions issued by the institutions of collective *Ijtihâd*, such as the OIC International Islamic Fiqh Academy (IIFA) in its resolution no. 28 (3/4), the Kuwait Zakat House in the 11th symposium on "*Contemporary Zakâh Issues*",⁽²⁾ and the Shari'ah Board of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in its Standard no. (35) regarding *Zakâh*.

The basis for this approach is that the share represents a portion in the company's assets, and that the share as a financial paper has no value in itself, but its value is considered in the rights it represents in the company.

(1) See, Chapter Three: Treatise One.

(2) "*Proceedings and Researches of the 11th Symposium and 12th Symposium on Contemporary Zakâh Issues*", (1: 184).

Approach (2): *Zakâh* on shares is to be paid in the same manner as *Zakâh* on exploited assets. Accordingly, no *Zakâh* is payable on the market value of share, but only on the basis of its dividends (the distributed profits).

According to this approach, the payer of *Zakâh* is the shareholder who receives these profits, and who owns the shares at the date on which the company determines the entitlement to profits, which is usually the date of general meeting. However, the company can undertake the responsibility of paying the amount of *Zakâh* before distributing the profits.

The basis for this approach is that the shareholder neither owns any of the company's assets, nor does he have the right to dispose of them. Rather, the company owns these assets under its legal entity. Hence, if the shareholder intends to invest, then the share will represent to him an asset exploited with the purpose of receiving its periodical returns.

Approach (3): *Zakâh* on shares is to be paid in the same manner as *Zakâh* on goods stocked for trade, regardless of the activity of the company issuing the shares or the business in which its capital is invested.

This view is adopted by a number of contemporary scholars of Fiqh.⁽¹⁾

The basis for this approach is that shares are purchased and sold with the aim of generating profits for their holders. Also, the shares' market value differs from their nominal value which bear a close resemblance to goods stocked for trade, and thus they take the same ruling by means of *Qiyâs* (i.e. analogical deduction) to *Zakâh* payable on goods stocked for trade.

The advocates of this view argue that this approach is closer to the practical application, and there is no way to differentiate between the shares of one company and another, and that *Qiyâs* and justice entail that *Zakâh* becomes obligatory on the shares of all companies, excluding none of them.

Selecting the most preponderant approach

I believe that the most preponderant approach concerning this issue is the one established by contemporary Fiqh-based *Ijtihâd* that the original ruling

(1) See, "*Mudawwanat Al-Fiqh Al-Mâlikî Wa-Adillatuh*", Al-Ghiryâni, (2: 52); "*Zakât Al-'Ayn Wa-Mustajaddâtuhâ*", (P. 111).

concerning shares is that they represent portions in the company's assets. Therefore, *Zakâh* is payable according to the assets these shares represent.

The other two approaches can be criticized as follows:⁽¹⁾

- 1- They ignore the fact that share is a mere document/certificate representing the shareholder's right to the company's assets, and that the transactions (purchasing and selling) are not concluded on the paper itself, but on what it represents in the assets of the company. This is similar to the purchase of documented debt (certificate of indebtedness) in Fiqh, whereby the purchaser only buys the debt in the debtor's liability be it cash, food or goods, and receives the debt document to prove his entitlement to such a debt. Thus, the purchase does not buy the document, and the creditor does not sell it, but the subject matter of transaction is the debt which established in the debtor's liability.
- 2- If the share is assumed to be a commodity entirely independent of the company's assets, whether it is considered as an exploited asset or goods stocked for trade, then by what means could the shares of alcohol companies and interest-based banks be prohibited. Further, those who view that the shares do not represent the assets have not said that the shares of these companies are lawful, which indicates that their finances are attached to these assets.
- 3- The obligation of *Zakâh* on shares as being goods stocked for trade represents a departure from the original ruling that *Zakâh* on shares shall have the same ruling as *Zakâh* on assets not the market value.

(1) "*Zakât Al-'Ayn Wa-Mustajaddâtuhâ*", (P. 112).

Topic (II)

Estimation Regarding *Zakâh* for a Trading Shareholder (Speculator)

This topic is meant to study the impact of the intention to trade (speculate) in shares on the payable *Zakâh* on shares. This is one of the most important issues with regard to calculating *Zakâh* on shares, which can be explained as follows:

First: The concept of trading shareholder (speculator)

A speculative or trading shareholder is an investor in shares and financial papers, which he intends to sell during a period of less than one year.

We have previously explained the difference between owning a share with the intention of investing and owning it with the intention of trading (speculation).

Second: Impact of the intention to trade in shares on the calculation of *Zakâh*

Before reviewing the contemporary Fiqh-based controversy regarding the impact of the intention to trade (speculate) in shares, it is proper to pave the way for this controversy through an agreed upon Fiqh issue, namely the prevention of duplicating *Zakâh*,⁽¹⁾ as the Prophet (peace and blessings of Allah be upon him) said:

“There shall be no duplication in Sadaqah (i.e. Zakâh).”⁽²⁾

Based on this hadith, the scholars of Fiqh have agreed that it is not permissible to impose *Zakâh* twice a year on the same wealth, and that if there are two reasons for paying *Zakâh* on the wealth, it shall be paid for one reason

(1) See, *“Al-Mabsûṭ”*, (2: 170); *“Radd Al-Muhtâr”*, (2: 273); *“Adh-Dhakhîrah”*, (2: 348); *“Hâshiyat Ad-Dusûqî”*, (1: 472); *“Mughni Al-Muhtâj”*, (2: 109); *“Tuhfat Al-Muhtâj”*, (3: 294); *“Kashshâf Al-Qinâ”*, (5: 43); *“Sharh Al-Muntahâ”*, (2: 274).

(2) Related by Abû `Ubayd in *“Al-Amwâl”*, hadith no. (982); Ibn Abû Shaybah in *“Al-Muṣannaf”*, (3: 218); Ibn Zanjawayh in *“Al-Amwâl”*, hadith no. (1437).

only. So, if, for example, the reason for paying *Zakâh* on gold and silver, on crops and fruits, or on livestock, is combined with the reason for paying *Zakâh* on goods stocked for trade, then *Zakâh* is to be paid for only one reason of them.

For example: If the payer owns freely grazing sheep reaching the *Nisâb* (i.e. minimum amount determining a person's zakatability), which is 40 cheep, and their value is 40,000 riyals, and at the same time his intention is to trade in them, and the condition of *Zakâh* on goods stocked for trade are met, then it is unanimously impermissible to pay *Zakâh* because of both reasons. So, he shall not give one sheep for every forty freely grazing sheep, and then pay one quarter of the one-tenth (2.5%) of its value, which is an amount of 1000 riyals, as *Zakâh* on goods stocked for trade. Rather, the scholars of Fiqh agree that *Zakâh* shall be paid because of only one of the two reasons. The same applies to *Zakâh* on cash or on crops when two reasons are combined together with the reason for the obligation of *Zakâh* on goods stocked for trade.

However, the scholars of Fiqh disagreed regarding the reason to be given priority in this case: Shall *Zakâh* on cash, crops, fruits and livestock be given priority over *Zakâh* on goods stocked for trade or vice versa? We have already discussed this case in estimation regarding conditions of goods stocked for trade.⁽¹⁾ The views of the scholars of Fiqh are either to give priority to the reason of *Zakâh* on assets, which is the view of the Malikites and the Shafiites, in addition to the Hanafites with regard to the wealth for which the tenth thereof is to be paid as *Zakâh*, or to give priority to the reason of *Zakâh* on value, which is the view of the Hanbalites, and the Hanafites agree with them concerning wealth other than that for which the tenth thereof is to be paid as *Zakâh*.

In both approaches, the scholars of Fiqh agree that if *Zakâh* on wealth is to be paid on the basis of cash, crops, or livestock, there shall be no *Zakâh* payable on it on the basis of goods stocked for trade until a full lunar year (*Hawl*) elapses over it. In this regard, Imam Ibn `Abdul-Barr says:

“If *Zakâh* due on any grains is paid, there shall be no *Zakâh* on it, or on its

(1) See, (P. 286).

value until a full lunar year (*Hawl*) elapses over it. This is unanimously agreed-upon.”⁽¹⁾

If that is the case, then contemporary scholars of Fiqh have disagreed regarding the impact of the intention to trade in shares on *Zakâh* payable on these shares, and whether the shareholder shall pay an extra amount of *Zakâh* over what is payable on the zakatable assets of shares, be they paid by the shareholder himself or by the company on his behalf? The scholar’s disagreement on this issue can be explained in the following three views:

View (1): *Zakâh* on shares is due according to the zakatable assets of shares regardless of the shareholder’s intention, whether his intention is aimed at trade (speculation) or long-term investment, and whether the company pays *Zakâh* on his behalf or he himself pays it based on his knowledge of the zakatable assets of his shares. Thus, the shareholder’s liability shall be discharged thereby so as to prevent paying *Zakâh* twice (in one year), since the wealth payable cannot be levied twice.

This is the view adopted by the 1st *Zakâh* Conference held in Kuwait on 29 Rajab 1404 AH, which stated in its fatwas:

“If the company pays the *Zakâh* due on its wealth, then the shareholder shall not be required to pay another *Zakâh* for himself, so as to prevent duplication.”

The view was also adopted by the OIC International Islamic Fiqh Academy (IIFA) in its resolution no. 28 (3/4) concerning payment of *Zakâh* on company shares, which states:

“**First:** Shareholders may pay *Zakâh* on their shares. The company’s management may pay *Zakâh* on their behalf:

- If its statutes so stipulate;
- by virtue of a General Assembly ruling;
- if the law of the land requires that companies must pay *Zakâh* on behalf of its shareholders; or

(1) “*Al-Istidhkar*”, (1: 269); “*Al-Iqnâ` Fi Masâ’il Al-Ijmâ`*”, (2: 644).

- if a shareholder himself empowers the management of the company to pay *Zakâh* on his behalf.

Second: The management of the company shall pay *Zakâh* on shares in the same manner as person pays *Zakâh* on his wealth. In other words, it shall pay *Zakâh* on the assumption that the capital of all shareholders is the property of a single person, and calculate *Zakâh* accordingly, taking into account the type and value of assets subject to *Zakâh*, its percentage and any other consideration relevant the *Zakâh* of a physical person; according to the principle of mixed assets generally accepted by some scholars of Fiqh concerning all wealth.

In calculating *Zakâh*, the company shall take due account of shares not liable to *Zakâh*, such as shares owned by the Public Treasury, charitable institutions, philanthropic societies and non Muslim shareholders, and make the necessary deductions.

Third: If, for any reason, the company did not pay *Zakâh* on its assets, each shareholder liable to *Zakâh* must do so on shares he owns. If the shareholder can calculate the amount the company would have paid out on his behalf had it done so, he should then pay the same, since that is the basis for calculating *Zakâh* on shares.”

The basis for the council’s resolution is the saying of the Prophet (peace and blessings of Allah be upon him): “*There shall be no duplication in Sadaqah (i.e. Zakâh),*”⁽¹⁾ and that it is not permissible to levy *Zakâh* on the same wealth twice a year. It is also based on the scholars’ agreement on the impermissibility of duplication in the payment of *Zakâh*, and that if there are two reasons for paying *Zakâh* on the same wealth, such as when the *Zakâh* payer owns cash, crops and fruits held for trade purposes, it is impermissible to impose *Zakâh* on it twice.

Accordingly, the OIC International Islamic Fiqh Academy (IIFA) holds that the shareholder who can know (from the company’s accounts) the amount of zakatable assets for his shares is required to pay *Zakâh* on his shares from those

(1) Related by Abû `Ubayd in “*Al-Amwâl*”, hadith no. (982); Ibn Abû Shaybah in “*Al-Musannaf*”, (3: 218); Ibn Zanjawayh in “*Al-Amwâl*”, hadith no. (1437).

zakatable assets. This is regardless of the shareholder's intention, and whether he owns the shares for the purpose of trade (speculation) or for long-term investment. Also, the payable rate of *Zakâh* shall not differ anyway, whether the shareholder himself pays the *Zakâh* due on his shares, or the company paid it on his behalf.

As for the shareholder who cannot know the amount of zakatable assets for his shares; the council's resolution has detailed his case based on investigation, as it is stated:

“If the shareholder has no mean of knowing these elements of information for calculating the amount due, then:

If he had invested in the company to benefit from the annual dividends of his shares, and not for trading purposes, then the owner of such shares will not pay *Zakâh* on the market value of shares, but only on the basis of the dividends, at the rate of one fourth of the one tenth (2.5%) after the elapse of one year from the date of the actual reception of the dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the Academy at its second session, with respect to *Zakâh* on the rented real estates and non-agricultural leased lands.

If, on the other hand, the shareholder has invested in shares for trading purposes, then his shares are subject to *Zakâh* as commercial goods. After the elapse of one-year period, and if they are still in his possession, he shall pay *Zakâh* on their market value; if there is no stock market, he will pay *Zakâh* on their value as appraised by qualified experts. He will pay one fourth of the one tenth (2.5%) of their market value plus their dividends, if they yield any dividend.”

View (2): Making a distinction between the intention to trade and the intention to invest when calculating *Zakâh*. The advocates of this view argue that the investor shall pay the *Zakâh* due on the basis of the zakatable assets of the shares he owns, while the trader shall pay the *Zakâh* due on his shares in the same manner as paying the *Zakâh* due on goods stocked for trade, after making the necessary deductions against the amount paid in the event that the company have paid it out on his behalf.

This is the view adopted by the fatwa of the 11th symposium on “*Contemporary Zakâh Issues*”, whose recommendation includes the adoption of Article (20) of “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*” (i.e. Corporate Zakâh Calculation Guide), which reads:

“If the company pays *Zakâh* on its assets and the shares are owned with the intention to trade, then the shareholders shall calculate their *Zakâh* and make the necessary deductions against the amount paid by the company, and then pay *Zakâh* on the remaining portion if the payment of *Zakâh* at the market value of his shares is greater than what the company has paid on his behalf. If the market value, however, is lesser, the shareholder might calculate the amount exceeding the market value within his *Zakâh* payable on other zakatable wealth, or make it a *Zakâh* paid in advance for the upcoming year.”⁽¹⁾

On further reflection, we find that this view is problematic in some aspects which make it the less preponderant view from the Fiqh perspective, and that it is difficult to be practically applied. This is reasoned by the following points:

- 1- The treatment adopted by this view to avoid duplication in *Zakâh* is not supported by any view of the early schools of Fiqh. Rather, it results in levying *Zakâh* on the same wealth twice a year.
- 2- The adoption of this treatment incurs costs and implies difficulty of application, whether for the authority responsible for collecting *Zakâh* or for the payers of *Zakâh*. This is because every speculator has to calculate what the company have paid on his behalf and, then divide it by the number of the company’s shares, and multiply it by the number of his shares, regardless of the number of companies he invests in.

Knowing what the company have paid on behalf of the shareholder is unattainable unless the *Hawl* of the company coincides with the *Hawl* of the shareholder intending trade, which is very infrequent matter. Thus, how can the payer be charged with making the necessary deductions against the amount paid by the company from its assets at a past time, but not against

(1) “*Proceedings and Researches of the 11th Symposium and 12th Symposium on Contemporary Zakâh Issues*”, (1: 184); and refer to: “*Dalîl Al-Irshâdât Li-Hisâb Zakât Ash-Sharikât*”, Article (20).

the amount paid by the company from its assets in accordance with the payer's *Hawl*?

- 3- Making the necessary deductions against the amount paid by the company for the fiscal year shall not be made from what the company have initially paid (the initial assessment with Zakat, Tax and Customs Authority in Saudi Arabia). This is because the company may be regulatory required to pay additional amounts for *Zakâh* after the Authority has examined the *Zakâh* declaration and the final assessment with the Authority. Without prejudice to his right to oppose the Authority's judgment, the *Zakâh* payer can appeal to the objections committees or the appeals committee to adjudicate on the matter and he may obtain judgment against the Authority, but this usually takes years. Further, it is difficult and consequently impermissible to charge the payer with tracking these disputes regarding every share he owned one day with the intention of trading until he determines the amount payable.

Furthermore, it is not conceivable that the payer is required to take the precaution for the obligation of what is not proved to be obligatory, since the basic principle regarding this is that his liability is discharged, and whenever doubt raises, the certainty is that *Zakâh* on these shares has been paid in accordance with the zakatable assets they represent, and the payer's liability shall be discharged thereby.

- 4- If it is assumed that paying *Zakâh* for the past year is sufficient from the Shari'ah perspective, then the amount of *Zakâh* on every share is required to be calculated several times, because the time of *Zakâh* obligation for the payers is different. For example, if four investors succeeded each other in owning one hundred shares of the same company with the intention of trading, each of them owned his shares for three months, and a *Hawl* elapsed over each one of them since they had owned the shares, then this should entail making the necessary deductions against the amount paid by the company four times for four different shareholders. That is why Dr. Yûsuf Ash-Shubîlî holds that the shareholder who invests for the purpose of trading should make the necessary deductions against the amount paid by the company in proportion to the days of his ownership of the share, so each one of them should deduct one-fourth of the amount paid by the

company.⁽¹⁾ This view, besides its further difficulty in calculation, entails that *Zakâh* on the companies' shares owned by the shareholder before the time of *Zakâh* obligation is not to be deducted. Further, if it is assumed that the shareholder is to deduct all the mounts paid by the companies for his shares owned in one year in accordance with the number of days of his ownership of each share, then this is sufficient to indicate the difficulty of such a method.

View (3): *Zakâh* is obligatory for a speculator at the market value of his speculative shares, regardless of the amount of *Zakâh* paid by the company for its zakatable assets. Sheikhs `Abdur-Rahmân Hasan, Muḥammad Abû Zahrah and `Abdul-Wahhâb Khallâf adopted this view, as it has appeared in their research submitted to the third session of the Social Studies Seminar at the League of Arab States in 1952 AD, which included the following:

“Held-for-trading wealth, such as shares and bonds, whose owner trades in it, by purchasing and selling, are aimed for the purpose of receiving earnings as every trader earns from his commodity, and its real value estimated in the markets differs in terms of purchasing and selling from its nominal value, so it shall be considered as goods stocked for trade. Accordingly, it is only right and proper to be a base for *Zakâh*, like all other held-for-trading wealth, and the rulings applicable to goods stocked for trade are to be applicable to it.

It is noted that *Zakâh* paid for held-for-trading shares and bonds differs from that paid by the companies themselves. This is because the *Zakâh* paid by the company is taken on the basis that the company's wealth is growing through industry or the like, while held-for-trading shares and bonds are growing wealth considering that they are goods stocked for trade.”⁽²⁾

(1) See, “*Qadâyâ Mu`âsirah Fî Az-Zakâh: Zakâtud-Diyûn At-Tijâriyyah Wal-As-hum Al-Mamlûkah Lish-Sharikât Al-Qâbidah*”, Yûsuf Ash-Shubîlî, submitted to *Al Baraka 31st Symposium on Islamic Economics*, held fom 8-9 Ramadân, 1431 AH, (P. 56); and “*Turuq Hisâb Zakât Al-As-hum Wad-Diyûn At-Tamwiliyyah*”, Yûsuf Ash-Shubîlî, submitted to *Al Baraka 34th Symposium on Islamic Economics*, held from 8-9 Ramadân, 1434 AH, (P. 18).

(2) “*Halaqit Ad-Dirâsât Al-Ijtimâ`iyyah (Social Studies Seminar)*”, Third Session: *Wasâ'il Tanzîm At-Takâful Al-Ijtimâ`î Fî Ad-Duwal Al-'Arabiyyah (Means of Organizing Social =*

Zakat, Tax and Customs Authority in Saudi Arabia has adopted this approach, and it relies on the fatwa no. (22665) of the Permanent Committee for Scholarly Research and Ifta in which it answers a number of relevant questions were directed by the Authority to the Permanent Committee, on 15/4/1424 AH. The Committee answer was as follows:

“Payment of *Zakâh* for the shareholders in joint-stock companies necessarily implies one of the following cases:

- 1- The company is commercial, and the shareholder’s purpose is to acquire the share and benefit by its profits. Hence, the shareholder is to be satisfied with the amount received by Zakat, Tax and Customs Authority, unless it is less than the rate of obligatory *Zakâh*. If it is less than the rate of obligatory *Zakâh*, he shall pay the difference.
- 2- The company is non-commercial, and the shareholder’s purpose is to acquire the share and benefit by its profits. Hence, the company is not to pay *Zakâh*. Rather, every shareholder shall pay *Zakâh* on his portion of the profits if it reaches a *Nisâb* (by itself or combined with other assets) and a full lunar year (*Hawl*) has elapsed over it.
- 3- The shareholder’s purpose is to trade in shares by purchasing and selling. In this case, the shareholder shall value the shares he owns after a full lunar year (*Hawl*) has elapsed over his capital and then pay the *Zakâh* due on them, provided that the company’s transactions and activities are lawful.”⁽¹⁾

Another question, directed by the Authority, states:

“Is there a difference in *Zakâh* between the shareholder who speculates in shares by buying and selling, and the shareholder who acquires these

= *Solidarity in the Arab Countries*, (P. 373). This research is the first collective *Ijtihâd* on the contemporary *Zakâh* issues, and it appears that Sheikh Abû Zahrah is the one who wrote its draft because of the noticeable similarity between it and his research submitted to the 2nd session of the Islamic Research Academy, as in the publication of the Research Academy titled: “*At-Tawjîh At-Tashrî’î Fî Al-Islâm*”, within the researches of Islamic Research Academy Conferences, (2: 170).

(1) “*Fatwas of the Permanent Committee for Scholarly Research and Ifta*”, Third Collection, (1: 543).

shares for the purpose of receiving their profits in the first place, and if a suitable purchase price is offered to him, he will sell them?”

The Committee replied as follows:

“Yes, there is a difference. Whoever speculates in shares by buying and selling is obligated to pay *Zakâh* on these shares considering that they are goods stocked for trade. As for whoever acquires these shares for the purpose of receiving their profits in the first place, and if a suitable purchase price is offered to him, he will sell them, then he is not required to pay *Zakâh*, because he does not hold these shares as commercial goods, rather it is quite often that he holds them as properties obtained for *Qunyah* (i.e. acquisition and personal use). However, if it is quite often that he holds them as goods stocked for trade and thus waits for high prices to sell them, then he shall pay *Zakâh* on them.”⁽¹⁾

After examining the fatwas of the Committee or other institutions, I have not found a clear statement indicating that the amount of *Zakâh* paid by the company for its assets is not to be considered with regard to the ruling of *Zakâh* on shares.

I found a fatwa in a television interview with Dr. Yûsuf Ash-Shubîlî, in which he mentioned that *Zakâh* on shares is due at the market value with no regard to the amount of *Zakâh* paid by the company. Concerning *Zakâh* of the speculator, Dr. Ash-Shubîlî said:

“When a person owns shares with the intention of trading in the stock market, through purchasing shares and waiting for the price to raise so as to sell it in the market. Such a person considers the shares as goods stocked for trade, and thus he shall pay *Zakâh* on shares in the same manner as he pays *Zakâh* on goods stocked for trade, even if the company is paying *Zakâh*. This is because the company pays *Zakâh* on its own assets, and does not pay *Zakâh* on this market value, which is much more in value than the assets of this company.”⁽²⁾

(1) “*Fatwas of the Permanent Committee for Scholarly Research and Ifta*”, Third Collection, (1: 544).

(2) A television interview in a program called: “*Yastaftûnak*” on Al-Resalah TV Channel on 11/8/1435 AH, which is published on YouTube at the link: <https://www.youtube.com/watch?v=oU0qQXmJfMw>.

The view of Dr. Yûsuf Ash-Shubîlî in this TV interview contradicts his opinions mentioned in a number of researches regarding *Zakâh* on shares, in which he stated that the shareholder who owns the shares with the intention of trading shall make the necessary deductions against the amount paid by the company in proportion to the number of days during which he owned each share. Further, the problematic aspect raised by Dr. Ash-Shubîlî in this respect refers to the separation between the company's ownership of its assets and the shareholder's ownership of his shares, obligating *Zakâh* on the company's assets and the shareholder's goods.

Whatever the case may be, it appears that this issue still needs further consideration. It may be proper here to adopt the resolution of the International Islamic Fiqh Academy (IIFA) stating that the company's payment of *Zakâh* on behalf of the shareholders according to its zakatable assets shall discharge the shareholder's liability, regardless of the intention to trade or acquisition (*Qunyah*), whether the shareholder pays *Zakâh* himself or the company pays it out on his behalf. As for other approaches, they need to be reconsidered in view of their problematic implications inconsistent with the Shari'ah principle of preventing duplication in the payment of *Zakâh*, and due to the purpose of facilitation in the Islamic Shari'ah and the clarity of its rulings.

There are two points that shall be highlighted in this regard:

- (a) There are some fatwas stating that *Zakâh* on shares owned with the intention of trading shall be paid in the same manner as *Zakâh* on goods stocked for trade, without detailing the cases in which the company pays *Zakâh* on behalf of the shareholders and the cases in which it does not. However, this ruling shall be restricted by necessary deductions made against the amount paid by the company, so that their statement is not to be interpreted as duplicating the amount of *Zakâh* paid by the company on behalf of the shareholders. Yet, the scholars of Fiqh unanimously agree to prevent duplication in the payment of *Zakâh*. Therefore, this should be restricted by deducting the amount which the company pays as *Zakâh* according to the zakatable assets. The recommendation of the 11th symposium on "*Contemporary Zakâh Issues*" provided a treatment for this case, as follows:

“If the company pays *Zakâh* on its assets and the shares are owned with the intention to trade, then the shareholders shall calculate their *Zakâh* and make the necessary deductions against the amount paid by the company, and then pay *Zakâh* on the remaining portion if the payment of *Zakâh* at the market value of his shares is greater than what the company has paid on his behalf. If the market value, however, is lesser, the shareholder might calculate the amount exceeding the market value within his *Zakâh* payable on other zakatable wealth, or make it a *Zakâh* paid in advance for the upcoming year.”⁽¹⁾

Therefore, it appears more proper that the fatwa of the Permanent Committee on this issue, even though it gives no details in some places, shall not be interpreted as indicating duplication in *Zakâh*, as stated in its fatwa no. (22665), dated 15/04/1424 AH, which detailed the rulings on the payment of *Zakâh* by the shareholders in joint-stock companies, as follows:

“**Fifth:** Payment of *Zakâh* for the shareholders in joint-stock companies necessarily implies one of the following cases:

- 1- The company is commercial, and the shareholder’s purpose is to acquire the share and benefit by its profits. Hence, the shareholder is to be satisfied with the amount received by Zakat, Tax and Customs Authority, unless it is less than the rate of obligatory *Zakâh*. If it is less than the rate of obligatory *Zakâh*, he shall pay the difference.
- 2- The company is non-commercial, and the shareholder’s purpose is to acquire the share and benefit by its profits. Hence, the company is not to pay *Zakâh*. Rather, every shareholder shall pay *Zakâh* on his portion of the profits if it reaches a *Nisâb* (by itself or combined with other assets) and a full lunar year (*Hawl*) has elapsed over it.
- 3- The shareholder’s purpose is to trade in shares by purchasing and selling. In this case, the shareholder shall value the shares he owns after a full lunar year (*Hawl*) has elapsed over his capital and then pay

(1) “*Proceedings and Researches of the 11th Symposium and 12th Symposium on Contemporary Zakâh Issues*”, (1: 184); and it is adopted by “*Dalîl Al-Irshâdât Li-Hisab Zakât Ash-Sharikât*”, Article (20).

the *Zakâh* due on them, provided that the company's transactions and activities are lawful.

Sixth: There is a difference in *Zakâh* between the one who speculate in shares and the one who acquires these shares for the purpose of receiving their profits. Whoever speculates in shares by buying and selling is obligated to pay *Zakâh* on these shares considering that they are goods stocked for trade. As for whoever acquires these shares for the purpose of receiving their profits in the first place, and if a suitable purchase price is offered to him, he will sell them, then he is not required to pay *Zakâh*, because he does not hold these shares as commercial goods, rather it is quite often that he holds them as properties obtained for *Qunyah* (i.e. acquisition and personal use). However, if it is quite often that he holds them as goods stocked for trade and thus waits for high prices to sell them, then he shall pay *Zakâh* on them.”

- (b) Many researchers misconstrue the resolution of the International Islamic Fiqh Academy (IIFA), and confuse the case when the company pays *Zakâh*, or the shareholder knows (from the company's accounts) the amount of zakatable assets for his shares, with the case when the shareholder cannot know the amount of zakatable assets for his shares. They interpret the Academy's resolution in line with the recommendation of the 11th Symposium on “*Contemporary Zakâh Issues*”, which requires that the speculator shall pay *Zakâh* on goods stocked for trade in all cases, regardless of his knowledge of the company's assets, and whether the company pays *Zakâh* or not.

In this regard, it is suitable to cite the explanation of Dr. As-Siddîq Ad-Darîr, given that the Islamic Fiqh Academy relied in drafting its resolution on his research submitted to the Academy's session.⁽¹⁾ Dr. Ad-Darîr, as a member of the resolution drafting committee,⁽²⁾ explained the point of disagreement between the resolution of the Islamic Fiqh Academy and the resolution of the International Shari'ah Board of Zakat, in which

(1) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (2), (1: 757-769).

(2) See, Composition of the Resolution Drafting Committee in: “*Journal of the International Islamic Fiqh Academy (IIFA)*”, Issue no. (2), (1: 867).

he has participated objecting to their disagreement with the Academy's resolution,⁽¹⁾ in the 13th session of the Academy held in Kuwait, as follows:

“As can be seen from reading these two resolutions, the difference between them is founded on whether the intention of the shareholder in joint-stock company is considerable or not: Is it for the purpose of trading in shares, or for the purpose of acquiring shares and benefiting by their profits?

The resolution of the Islamic Fiqh Academy does not consider the shareholder's intention in case the company pays *Zakâh*, but it considers his intention in case the company does not pay *Zakâh* and shareholder cannot know the amount to pay if the company paid the due *Zakâh*. Hence, the company's payment of *Zakâh* is considered sufficient as it discharges the shareholder's liability regardless of his intention. As for the resolution of the International Shari'ah Board of Zakat, it considers the shareholder's intention whether the company pays *Zakâh* or not. Accordingly, the shareholder is to pay *Zakâh* on his shares in the same manner as *Zakâh* on goods stocked for trade, if he owns these shares with the intention of trade, whether or not the company pays *Zakâh*, as stipulated in Article (19) and Article (22). This is why the resolution of the Shari'ah Board appears to be inconsistent with the resolution of the Academy in case the company pays *Zakâh*.⁽²⁾



(1) “*Proceedings and Researches of the 11th Symposium on Contemporary Zakâh Issues*”, (1: 37).

(2) “*Journal of the International Islamic Fiqh Academy (IIFA)*”, issue no. (2), (1: 757-769).

Topic (III)

Estimation Regarding *Zakâh* for a Saving Shareholder

We have mentioned above that this approach is based on the classification of the generally accepted accounting standards to investments in financial papers. After the transition to the International Standards, this approach is no longer distinct when considering the company's investments in its financial statements.

Nevertheless, the outcome of discussing this issue appears in the estimation of *Zakâh* for the investor in these companies, particularly if the company invested in does not pay the *Zakâh*. The discussion about this topic can be summarized as follows:

First: The concept of investment with the intention of saving

It refers to investment by owning shares and financial papers with the intention of holding them for a period of time exceeding one year so as to benefit by the increase in their value, or to receive their dividends (the distributed returns).

Second: Impact of the intention to invest with the intention of saving on *Zakâh*

The intention to invest with the intention of saving combines the two characteristics of investment and trade in financial papers. The contemporary scholars of Fiqh did not tackle this approach in detail because the majority of scholars held the view that there is no differentiation between the managing-trader and the monopolistic-trader.

As we mentioned above, Dr. Yûsuf Ibn ` Abdullâh Ash-Shubîlî was the first, among the contemporary scholars of Fiqh, to explain this approach in his valuable research regarding *Zakâh* on shares.⁽¹⁾ His research concluded

(1) "*Proceedings and Researches of the Zakâh Symposium on Shares and Investment Funds*", (pp. 173-177).

that the shareholder shall pay *Zakâh* as being an investor during the years of saving, and that he shall pay *Zakâh* on the cash he received in the year of sale for once according to the Malikites view regarding *Zakâh* for the monopolistic-trader,⁽¹⁾ stating that he shall pay *Zakâh* for one year only when selling them. This statement is considerable as it considers the condition of growth in the zakatable wealth to determine the payable rate.

However, this statement is problematic in terms of the fact that it obligates paying *Zakâh* on these shares because of two reasons of *Zakâh*, which contradicts the established principle that *Zakâh* on wealth is not to be due because of two reasons (i.e. i two reasons for the obligation of *Zakâh* on wealth are combined together, then *Zakâh* is not to be paid for each reason separately). The Malikites hold the view that *Zakâh* is due on sale price of the monopolistic-trader's goods, and they did not obligate any amounts on him no matter how many reasons of *Zakâh* are involved.

The researcher's gives preponderance to the opinion that *Zakâh* on shares, regardless of the shareholder's intention, be it to invest, trade or save, shall be paid in accordance with its assets. If the shareholder, however, cannot know (from the company's accounts) the amount of zakatable assets for his shares, then he shall investigate the most suitable methods to determine the payable rate of *Zakâh*. The most suitable method of estimation and approximation is to adopt the rule of prevalence in such companies in proportion to the book value per share. When the *Zakâh* payer is unable to determine the amount of zakatable assets for his shares, then 40% of the book value can be considered as a *Zakâh* base, and hence 1% of the book value per share is to be paid as the rate of *Zakâh* due.



(1) See, "*Sharh Al-Khurashi*", (2: 197); "*Minah Al-Jalil*", (2: 61).

Conclusion

Conclusion



Praise be to Allah for what He has favored and blessed me with. I ask Him, the Almighty, to accept my endeavor, grant me success and proper guidance.

The following is a review of the most important findings that I have concluded in this thesis titled: “*Fiqh At-Taqdîr Fî Hisâb Az-Zakâh: Dirâsah Ta’sîliyyah Tatbîqiyyah Li-Manhajîyyat At-Taharrî Wat-Taqrîb Fî Zakât Sharikat Al-Musâhamah*” (Fiqh of Estimation in Calculating *Zakâh*: An Applied Fundamental Study of the Methodology of Investigation and Approximation to *Zakâh* for Joint-Stock Companies).”

The most important findings of this research can be summarized as follows:

As going through Preface (which included definitional introductions of *Zakâh* and *Zakâh* accounting, joint-stock company, and the purposes of Shari’ah in calculating *Zakâh*), some findings stand out as follows:

- 1- *Zakâh*, in the sense of giving wealth as a means of *Qurbah* (i.e. seeking closeness to Allah), implies the meanings of *Tahârah* (purity/cleansing) and tangible increase/growth, as the two meanings are derived from the root indicating the absolute increase, but the meaning of *Tahârah* is so closer to *Zakâh* than tangible increase.
- 2- In Shari’ah and the terminology of Fiqh scholars, the term “*Zakâh*” is used in its nominal sense to denote the determined share of wealth to be paid, which is the common usage among the majority of scholars, but the Hanafites used it specifically in its infinitive sense (i.e. the action of payment).
- 3- In the terminology of Fiqh, the term “*Zakâh*” indicates the obligatory almsgiving. When it is mentioned in general meaning, it refers to *Zakâh* on wealth. Although *Zakatul-Fitr* is an obligatory *Zakâh*, it is not obligatory because of the wealth, which is *Zakâh* on the (individual persons’) bodies.

- 4- The wise Legislator has specific purposes in calculating *Zakâh*, which are:
 - 4/1 Clarification and explanation as to the rulings of *Zakâh*, and the basics of determining the rate payable in this respect, so that it would be easy for both payer of *Zakâh* and its collector.
 - 4/2 Facilitation: The main point here is facilitation for wealth owners. However, this purpose also includes facilitation for the collectors and distributors of *Zakâh*, as well as the recipients of *Zakâh* in terms of benefitting from it.
 - 4/3 Justice, which means to maintain balance between the right of wealth owners and that of the recipients regarding the estimation of *Zakâh*, so that *Zakâh* would neither inflict prejudice against the owners of wealth nor the poor.
- 5- Accounting, as a firmly established and applied science, is an outcome of the environment that produced it. The intellectual framework of accounting and international accounting standards was not intended to be suitable for the Shari'ah approach in calculating *Zakâh*, the matter that reflected on the use of this accounting system in the process of calculating *Zakâh* according to the Shari'ah approach.
- 6- Calculating *Zakâh* according to the Shari'ah approach precedes the accounting system itself, and thus its rulings can be applied without the need to use the outputs of the accounting system. Rather, the need for the accounting system arises in cases where it is difficult to know the zakatable wealth according to the Shari'ah approach of calculating *Zakâh*. Accordingly, resorting to the accounting system depends on urgent need or necessity, and thus the accounting system is subject for the Shari'ah approach of calculating *Zakâh*.

In Chapter One titled: “*Fiqh of Estimation in Calculating Zakâh: A Fundamental Study*”, which is regarded as a theoretical basis for the Fiqh of Estimation in calculating *Zakâh*. It sets out, with its treatises, the principles of a scientific theory for Fiqh of Estimation in calculating *Zakâh*. The study has concluded some findings, among which the following stand out:

- 7- Estimation in calculating *Zakâh* for joint-stock companies means: “Practicing *Ijtihâd* (i.e. legal reasoning and discretion) to determine *Zakâh* for joint-stock companies on a basis of approximation.”

- 8- The concept of estimation in calculating *Zakâh* falls under the “Shari’ah-Based Estimations Rule”, which is to give an existing matter the ruling of nonexistent, and to give a nonexistent matter the ruling of existent. However, it is limited to *Ijtihâd* in cases where the accounting system fails to provide the *Zakâh* payer with the information necessary to calculate *Zakâh* in accordance with the Shari’ah-based amounts of *Zakâh*, or where the *Zakâh* payer fails to realize this information. Understanding deficiencies in the accounting system and practicing *Ijtihâd* (i.e. legal reasoning and discretion) to estimate such deficiencies requires observing “Shari’ah Estimates” in *Zakâh*.
- 9- There are two types of estimation in calculating *Zakâh* for joint-stock companies, namely overall estimation and partial estimation:
- 9/1 **Overall estimation:** Where estimation of *Zakâh* is made in a way that does not depend on companies’ financial statements. This is due to the inability to access to these statements, or the inability to deal with the outcomes of the financial system.
- 9/2 **Partial estimation:** It is related to single examples of partial questions when relying on the outputs of the accounting system in calculating *Zakâh*.
- 10- The need for applying estimation to calculation of *Zakâh* for joint-stock companies appears in the following:
- 10/1 The financial reports of joint-stock companies are intended to help the beneficiary to make his investment decision. It is not intended for providing the user with the information required for Shari’ah-based calculation of *Zakâh*.
- 10/2 The overlap and interdependence among joint-stock companies makes it impossible to know the reality of the assets represented by the shares of these companies.
- 10/3 Joint-stock companies may invest in other companies or investment vehicles whose financial data cannot be accessed.
- 10/4 Accounting information provided by financial reports imply estimation and assumption.
- 10/5 Considering the cost and difficulty of calculating *Zakâh* that exceed the desired interest in disregarding the potential error in estimation,

whether this error is corrected in favor of the *Zakâh* payer or the person entitled to *Zakâh*.

11- Shari'ah evidences indicating the permissibility of applying estimation to calculation of *Zakâh* can be summarized as follows:

11/1 The general evidences for relieving this (Muslim) nation from hardship.

11/2 The general evidence for making compliance with Shari'ah commands conditional on ability to do so.

11/3 Permissibility of using *Kharṣ* (i.e. assessment) in *Zakâh* payable on crops and fruits.

11/4 Extrapolation of Shari'ah rulings and *Ijtihâd* of the scholars of Fiqh regarding *Zakâh* indicate that estimation can be used in calculating *Zakâh*.

12- The conditions for the permissibility of applying estimation are as follows:

12/1 **It is very difficult or impossible to calculate *Zakâh* accurately.**

Regarding the rule of considerable need to calculation of *Zakâh*, it can be said: It is the public or individual hardship incurred by *Zakâh* payer when calculating *Zakâh*, and which results in violation of one of the Shari'ah purposes with regard to calculation of *Zakâh*, where a *Zakâh* payer lacks the information required for calculating *Zakâh* in accordance with Shari'ah, or where calculation of *Zakâh* results in a breach of the purpose of justice between the rights of the poor and the rich. This considerable difficulty may be related to the payer, the collector or the recipient of *Zakâh*.

12/2 **Estimation is to be based on Shari'ah principle:** Estimation in calculating *Zakâh* does not deviate from the proof of *Istiḥsân* (i.e. Shari'ah approbation), which is to give a ruling on a certain question that is different from the ruling on its equivalents for a reason requiring mitigation.

12/3 **Applying estimation shall not contradict with another more considerable principle:** That is, applying estimation shall not contradict with a prohibition that, initially, prevents the exercise of estimation, or contradict another more considerable estimation, and the estimation resorted to is to be more likely to achieve Shari'ah interests.

13- Applying estimation to calculation of *Zakâh* has the following impacts:

13/1 Removing hardship that a person (*Zakâh* payer) may experience in calculating *Zakâh*. In such a case, estimation is considered as a Shari'ah license bestowed by Allah.

13/2 If a *Zakâh* payer, having paid the *Zakâh*, finds that, due to the application of estimation, the amount paid differs from the amount due in terms of type, such as when a person is required to pay *Zakâh* for goods stocked for trade but he pays it as *Zakâh* for livestock, then the amount of *Zakâh* paid shall be considered sufficient if its value is equal to the rate of the *Zakâh* due.

13/3 If the amount paid (as *Zakâh*) is found to be less than the amount due, then the payer is required to pay the difference established in his liability.

13/4 If the amount paid (as *Zakâh*) is found to be more than the amount due, the excess is to be regarded as a voluntary act of worship, and not an early payment of *Zakâh*, and the payer shall not be entitled to recover what he has paid if it has been delivered to its recipient. If it has been paid to the ruler, then it shall be regarded as a debt owed by the treasury and the payer may recover it or regard it as a *Zakâh* paid in advance for the next years.

In Chapter Two titled: “*Financial Disclosure of Joint-Stock Companies: Concept, Principles, and Zakâh-Related Issues*”, the study has concluded the following:

14- The accounting principles represented in the Conceptual Framework for Financial Reporting are prepared to provide the user with the information that help him taking the proper economic decision, and not to provide him with the information necessary to calculate *Zakâh* in accordance with the Shari'ah principles. Accordingly, the financial reports prepared according to these principles will not be sufficient to acquaint the user with the rate of the *Zakâh* due, which affects the qualitative characteristics of information in financial reports.

15- The failure of the accounting system with regard to calculating *Zakâh*, can be classified as follows:

- 15/1 Failure in recognition.
 - 15/2 Failure in measurement.
 - 15/3 Failure to disclose the conditions for the obligation of *Zakâh*.
 - 15/4 Failure related to cost constraint.
 - 15/5 Failure to disclose the times affecting calculation of *Zakâh*.
- 16- Means of solving financial disclosure problems related to *Zakâh* are divided into:
- 16/1 **Preventive measures**, represented in the company's payment of *Zakâh*, the company's disclosure of the payable rate on its assets, or the company's disclosure of the concepts affecting the calculation of *Zakâh* in financial reports.
 - 16/2 **Solutions**, represented in applying estimation to calculation of *Zakâh*.

In Chapter Three titled: “Estimation Regarding Conditions of Zakâh for Joint-Stock Companies”, which entails specifying the person obliged to pay *Zakâh*, and then determining the wealth subject to *Zakâh*. The study has concluded the following findings:

- 17- Giving preponderance to the opinion adopted by collective *Ijtihâd* (i.e. legal reasoning and discretion), stating that the party responsible for *Zakâh* for joint-stock companies is the shareholder, and that establishing Shari'ah obligation for legal entities is not recognized in the Shari'ah rulings.
- 18- The company may not pay *Zakâh* on shareholders' wealth except in the cases defined by the Islamic Fiqh Academy, based on the argument that *Zakâh* is an act of worship requires intention. Accordingly, shareholder's approval is required for the company to pay *Zakâh* on his behalf
- 19- Since it is difficult to consider the conditions of obligation for each shareholder in calculating *Zakâh* for joint-stock companies, and that the interest can be achieved by collecting *Zakâh* from joint-stock companies and not from individual shareholders, this necessitates considering a way that facilitates the calculation of the *Zakâh* due on shareholders, and paying it as one mixed wealth. The way to achieve this goal is based on the two following principles:
 - 19/1 **First principle: Imposing a tax on those who are not eligible for *Zakâh***, provided that such a tax is to be estimated at the amount of

Zakâh and allocated for the same channels as *Zakâh*. This includes the shares of non-Muslims, philanthropic societies and endowments.

- 19/2 **Second principle: Mixed wealth (Partnership)**. This is useful in considering condition of the elapse of one lunar year (*Hawl*) and the *Nisâb* (i.e. minimum amount determining a person's zakatability) in the obligation of *Zakâh* for all shareholders who are eligible for *Zakâh*, based on the opinion of those regard *Zakâh* as due on all kinds of wealth. Accordingly, *Zakâh* is to be paid on this wealth as being one mixed wealth.
- 20- The reality of the share is that it represents a portion in the assets of the company, as agreed upon by collective *Ijtihâd* in this issue. As for what contemporary laws state regarding transferring the ownership of the funds contributed by the shareholders to the legal entity of the joint-stock company, it is not intended to negate the shareholders' ownership of such funds. To prove, this ownership is established for the shareholders upon the company liquidation. Rather, what is meant by transferring the ownership of these assets to the company is to negate the shareholders' ability to dispose of them.
- 21- If the joint-stock company does not get rid of unlawful wealth, then the amount of *Zakâh* is to be taken from this unlawful wealth, even if this amount is not considered as Shari'ah-based *Zakâh*, and does not render the unlawful wealth as lawful. Here, it is more appropriate to take an amount of such unlawful wealth than to keep it at the disposal of such companies.
- 22- The Gregorian calendar (i.e. solar year) may be relied upon in the calculation of *Zakâh* for joint-stock companies, that issue their statements according to the Gregorian calendar, and this is considered a date for obligation and payment, and the due rate is to be estimated at 2.5775%.
- 23- In joint-stock companies, it is to be estimated that one lunar year (*Hawl*) has passed on all the wealth, whether a full *Hawl* has actually passed on it or not. The same ruling applies to profits and acquired wealth, according to Imam Abû *Hanîfah*. An exception may be made if the amount of the wealth acquired affects the calculation of *Zakâh*, such as the increase of capital in joint-stock companies. In such a case, *Zakâh* is to be calculated on this increase from the date of the increase to the end of the fiscal year.

- 24- The contemporary currencies, even not covered with gold and silver, are treated as gold and silver, because such currencies have replaced gold and silver as a measure of value, reserve of wealth, and medium of exchange.
- 25- *Nisâb* of *Zakâh* on cash and goods stocked for trade is valued based on the most beneficial to the poor, which is, in these later times, to be valued at silver, as no difficulty appears in this respect that entails changing it to the *Nisâb* of gold if the conditions of *Zakâh* obligation are being considered.
- 26- One of the conditions for *Zakâh* on goods stocked for trade is that they are to be owned with the intention of trading, and the intention to trade is not the same as absolute intention to sell.
- 27- *Zakâh* is due on goods stocked for trade, given that they involve exchanging gold and silver, and its obligation is attached to gold and silver. That is why it is stipulated for the obligation of *Zakâh* on goods stocked for trade to be owned by means of trade. The most preponderant opinion in this regard is that of the Malikities, which is that they are to be owned through a *Mu`âwadah* (i.e. exchange) contract based on gold and silver, or goods based on gold and silver. The trading-manager is to value these goods every year if he liquidated something thereof, but the speculative trader (the monopolistic-trader) shall pay their *Zakâh* for only one year after selling them.
- 28- If two reasons for the obligation of *Zakâh* on wealth are combined together, then the reason for obligation of *Zakâh* on the basis of the asset is given priority to the reason of *Zakâh* on the basis of the value, which is goods stocked for trade. However, it is permissible to give priority to the reason of *Zakâh* on the basis of value by way of “Shari’ah-Based Estimations” if necessary.
- 29- The conditions for *Zakâh* on livestock to be due is to stipulate *Sawm* (i.e. free grazing on pasture) and being prepared for milk production and offspring. Presumptions, by which prevailing assumption can be obtained, are to be used with regard to applying these conditions to joint-stock companies. However, it is permissible to act according to the view of the Malikites that does not stipulate such conditions, which represents a deviation from the most preponderant view for a major benefit.

30- No *Zakâh* is payable on minerals extracted by companies based on concession contracts when they are extracted. However, their *Zakâh* is to be paid along with wealth in possession if intended for trade. Hence, financial statements are to be considered in calculating *Zakâh* at the end of the fiscal year.

31- In minerals that cannot be melted, such as oil or marine wealth extracted from the sea, nothing is to be paid as *Zakâh* on them when they are extracted. In addition, *Zakâh* is not due on the inventory thereof unless and until they are sold for cash, where the company shall pay *Zakâh* on them along with its property subject to the elapse of the *Hawl*.

In Chapter Four titled: “Estimation Regarding Calculating Zakatable Wealth for Joint-Stock Companies”, which is aimed at applying “Shari’ah-Based Estimations” to zakatable wealth through the information provided by financial reports in accordance with the basis of accounting measurement. It highlights the knowability of the *Zakâh* payer and the determination of the zakatable wealth. The study has concluded some findings, among which the following stand out:

32- Current deposits have the same ruling as loan/debt. However, it shall be treated in the same manner as received wealth with regard to *Zakâh*, and thus the disagreement as to *Zakâh* on debts is applicable to these deposits, which is regarded as a form of “Shari’ah-Based Estimations”.

33- The basic ruling on investment deposits is to pay *Zakâh* on the balance of the investment accounts (principal plus profit). This is a kind of estimation in calculating *Zakâh* which based on the constructive liquidation in these accounts. If it is possible to know the zakatable assets related to these accounts, then its *Zakâh* is to be paid according to the zakatable assets they represent.

34- *Zakâh* on deferred debts is to be paid at their value, and this is to be measured on an approximation basis by paying *Zakâh* on the principal of debt plus one-year profit. This is the view of the Malikites regarding *Zakâh* on deferred debts, which is consistent with the accounting measurement of deferred debts in financial statements.

35- Doubtful debts are not subject to *Zakâh*, and the method of accountants in estimating these debts, even though it is not based on examining the

debtors' positions in terms of solvency, can be considered in the light of "Shari'ah-Based Estimations Rule".

- 36- The debts owed by the *Zakâh* payer have an impact on the zakatable wealth. Such an impact is measured inasmuch as the spot value of the due debt (i.e. immediate payment) according to the accounting method by excluding the deferred profits. This impact is conditional on the nonexistence of any non-zakatable wealth to pay off the debt thereof.
- 37- According to the view that the impact of debt on the wealth of *Zakâh* is conditional on financing zakatable assets, it is to be measured at the ratio of zakatable assets to the total assets.
- 38- The rental received (in advance) is completely owned by the lessor, whether in terms of leasing works or leasing assets, and the *Zakâh* thereof shall be paid.
- 39- *Zakâh* shall be payable on the debt of financing lease, such as all other debts owed to the payer, and the conditions of the obligation thereof is to be taken into account. As for the debt of non-financing lease, it appears that debt of leasing assets is a debt established in the liability, unlike the debt of hiring service (benefits to others).
- 40- The accounting valuation of inventories is inconsistent with the Shari'ah-based valuation. Yet, the approximate value can be identified based on the following equation:

Realizable Value of Inventory = Cost of Inventory × (Total Sales ÷ Cost of Sales)

- 41- *Zakâh* on real estate projects or other industrial projects, whose construction period exceeds one year, shall take the same ruling as goods of speculative trader (the monopolistic-trader), so its due *Zakâh* shall be paid one time after selling each unit of the project. If the whole project or a part thereof is sold in installments, then its due *Zakâh* shall be paid on each payment upon its receipt or at the end of the fiscal year, as it is the case with the debt of the monopolistic-trader's goods. If the whole project or a part thereof is put up for sale after its completion, the ruling will not change thereby.
- 42- Presumptions, by which the prevailing assumption can be obtained, are to be used with regard to crops expenses. Then, the rate payable is to be

estimated accordingly, and an amount of the inventories is to be added at the double of its realizable value (which is reached through multiplying the total value of the inventories by the rate of the company's total sales to the cost of sales), plus the rate of sold crops from the sales value (without duplication), then one fourth of the one tenth (2.5%) is to be paid from the sum total. The doubled amount is not taken from the income statement so as to prevent duplication in *Zakâh* payment (in one year) along with the cash acquired from the sale which are added to the *Zakâh* base.

- 43- The rate of *Zakâh* payable on livestock is one fourth of the one tenth (2.5%) of their value, after estimating their conditions of *Zakâh*, namely *Sawm* (free grazing on pasture) and being prepared for milk production and offspring.
- 44- The rate of *Zakâh* payable on the inventory of minerals is one fourth of the one tenth (2.5%), and nothing is payable on these minerals upon extraction.
- 45- Inventories are wealth whose assets are not subject to *Zakâh*, such as marine wealth owned by catching, or flowers and rubber extracted from trees, since they are not acquired by means of trade. So, their price shall be combined together with the property in possession and the *Zakâh* thereof is to be paid according to the *Hawl*. However, if they are owned by means of *Mu`âwadah* (i.e. exchange) contract with the intention of trade, then they shall have the same ruling as goods stocked for trade.

In Chapter Five titled: “*Estimation of Zakâh Base for Joint-Stock Companies*”, which is intended to calculate the rate of the *Zakâh* due), the researcher reviewed the applicable methods to calculation of *Zakâh* and concluded the following:

- 46- Equity method and net assets method are among the adopted methods for calculating *Zakâh*. They both agree in terms of the outcome, provided that the items are classified and valued in a consistent manner, taking into account the difference in the basis for valuation.
- 47- Working capital is among the methods used to estimate *Zakâh*, but it has many disadvantages that prevent its acceptance.

- 48- Adopting profit as a method for estimation is a considerable approach, but it is most preponderant to consider the methods by which the zakatable wealth of the company can be calculated, even if by investigation.
- 49- The intention to trade in shares (speculation) does not affect the payable rate of *Zakâh*, since the original ruling on shares is that *Zakâh* is payable for them according to the assets they represent, which is the view adopted by the OIC International Islamic Fiqh Academy (IIFA), unlike those who interpreted the Academy's resolution in a sense that is not intended.
- 50- Whenever it is difficult, or even impossible, to check the financial statements of investment vehicles and papers, such as *Sukûk* (certificates), investment portfolios, and investment funds, *Zakâh* is to be estimated according to the prevailing practice used in their counterparts of similar investment vehicles, and the rate of the *Zakâh* due is to be paid according to the prevailing assumption.

Recommendations of Thesis:

Based on my study of the research, I would like to cite some recommendations that I ask Allah to make useful, which are as follows:

- 1- Commending the Shari'ah and Accounting Standards, as well as the Guides related to the calculation of *Zakâh* for joint-stock companies, clarifying the Shari'ah rulings on calculating *Zakâh*, and the commendable efforts exerted in this respect. In this regard, the researcher recommends the following:
 - (a) Developing these Shari'ah Standards and Guides to go in line with the International Accounting Standards and the emerging issues regarding the calculation of *Zakâh*.
 - (b) Developing a Shari'ah Standard regarding estimation in calculating *Zakâh*, as companies' undertaking of *Zakâh* calculation does not mean that all relevant problems have been addressed.
 - (c) Formulating a Standard for governance and ethics of those officials responsible for calculating *Zakâh*, aiming at developing methods and systems that contribute to organizing the procedures of calculating *Zakâh* in companies, and to free their procedures from errors and conflict of interests.

- 2- Including provisions addressing a number of problems related to the calculation of *Zakâh* in laws regulating *Zakâh*, such as imposing a tax rate that equals *Zakâh* on persons who are not eligible to pay *Zakâh*, the calculation of which shall be based on the same methods as *Zakâh*, to be spent in the same designated channels of *Zakâh*. This is to spare joint-stock companies the difficulty of calculating *Zakâh* without considering the condition of shareholders with regard to obligation.
- 3- Preparing applied studies for estimating *Zakâh* according to the financial sectors, so as to provide benchmarks that can be used in calculating the assets of joint-stock companies on the basis of estimation.
- 4- Preparing economic studies aimed at explaining the impact of Fiqh-based *Ijtihâd* (i.e. legal reasoning and discretion) regarding *Zakâh* on shares on the behavior of investors in financial markets. This is because the researcher argues that obligating the shareholder, with the intention of trading in financial markets, to pay *Zakâh* on shares at the market value leads the investors to direct investment in financial markets, instead of institutional investment, the matter inflicting negative consequences on financial markets.
- 5- Inviting universities, colleges and research centers to actively engage in qualifying the researchers with regard to contemporary issues of *Zakâh* through mastering the Shari'ah, legal and accounting aspects related to the emerging issues of *Zakâh*.
- 6- Calling for the rationalization of contemporary *Ijtihâd* through considering the consequences, advantages and disadvantages of issues, and not limiting consideration to the Fiqh-based adaptations without paying attention to consequences thereof.
- 7- Studying the Fiqh basis for estimating unlawful wealth in joint-stock companies, and examining the practical problems of estimating this wealth according to financial reports issued by joint-stock companies, aiming at getting rid of this unlawful wealth.



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Transliteration System



Arabic Character	Symbol	Example		Arabic Character	Symbol	Example	
ء	'	مؤتة	<i>Mu'tah</i>	غ	gh	مغرب	<i>Maghrib</i>
أ	a	ثور	<i>Thawr</i>	ف	f	فقه	<i>Fiqh</i>
ب	b	بدر	<i>Badr</i>	ق	q	قرض	<i>Qard</i>
ت	t	تكافل	<i>Takâful</i>	ك	k	كوثر	<i>Kawthar</i>
ث	th	تقيف	<i>Thaqîf</i>	ل	l	لقمان	<i>Luqmân</i>
ج	j	حج	<i>Hajj</i>	م	m	مروة	<i>Marwah</i>
ح	h	حوالة	<i>Hawâlah</i>	ن	n	نسيئة	<i>Nasî'ah</i>
خ	kh	خرسان	<i>Khurasân</i>	هـ	h	هلال	<i>Hilâl</i>
د	d	دعاء	<i>Du`â'</i>	ة	h/at	زكاة/ زكاة الفطر	<i>Zakâh/ Zakâtul-Fitr</i>
ذ	dh	ذكر	<i>Dhikr</i>	و	w	وتر	<i>Witr</i>
ر	r	ربا	<i>Ribâ</i>	ي	y	تلبية	<i>Talbiyah</i>
ز	z	زمزم	<i>Zamzam</i>	ـ	a	فضل	<i>Faḍl</i>
س	s	سقر	<i>Saqar</i>	ـ	i	نكاح	<i>Nikâh</i>
ش	sh	شرك	<i>Shirk</i>	ـ	u	خطبة	<i>Khutbah</i>
ص	s	أصول	<i>Uṣûl</i>	آ	â	سواك	<i>Siwâk</i>
ض	ḍ	إفاضة	<i>Ifâdah</i>	ؤ	û	داود	<i>Dâwûd</i>
ط	ṭ	طهارة	<i>Tahârah</i>	ي	î	حنفي	<i>Hanafi</i>
ظ	ẓ	ظهر	<i>Zuhr</i>	وَ	aw	عورة	<i>`Awrah</i>
ع	'	عمرة	<i>`Umrah</i>	أي	ay	بيان	<i>Bayân</i>



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