

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

Answer to Question:

Is it permissible for the Sultan (authority) to impose a tax upon the Muslims?

To Khalid Aali Yaseen

(Translated)

Question:

As-Salaamu Alaikum Wa Rahmatullah Wa Barakaatuhu, May Allah allow you to persevere. I have a question that I hope that you can answer...

It is known that "taxes" are Muharramah (prohibited) in Islam. So how can the State treat the deficit and particularly when there does not exist today "At-Tawzheef – Al-'Ushoor – Al-Kharaaj". They do not currently exist.

Answer:

Wa Alaikum Assalaam Wa Rahmatullah Wa Barakaatuhu,

It appears there is some confusion from you in respect to the subject area of the question. That is because you said: "Taxes are Muharram (prohibited) in Islam". That is correct in a general manner however it is specified in specific cases... Similarly, you say: "That there is no 'Ushoor and Kharaaj today" whilst it is known that the land of the Muslims is either 'Ushriyah or Kharaajiyah, and that they are (both) present. You have (also) mentioned: "At-Tawzheef, Al-'Ushoor and Al-Kharaaj" whilst the word 'At-Tawzheef' here has no place (or context) for it...

In any case, I will provide detail to you of this subject area so that the answer is clear and so that there is no ambiguity in it nor vagueness Inshaa'Allah.

1 – The Shar'a has forbidden the Sultan (authority) to impose a tax upon the Muslims based upon an order issued from him according to what he wishes. He (saw) said: «لَا يَدْخُلُ الْجَنَّةَ صَاحِبُ مَكْسٍ» **"One who wrongfully takes an extra tax (sahib maks) will not enter Paradise."** as collected by Ahmad and classified as Saheeh by Az-Zain and Al-Haakim. The 'Maks' is the tax (customs) that is taken from the traders upon the borders of the lands however the forbiddance includes every tax due to the statement of the Messenger (saw) in the Hadeeth, that has been agreed upon, related from Abu Bakrah: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي بِلَدِكُمْ هَذَا» **"Your blood, your properties and your honours are Haraam for you (to take from each other) like the inviolability of tis day of yours in this land of yours in this month of yours..."**. It is 'Aamm (general) including the Khalifah just as it encompasses all of the people... It is therefore not permissible for the Khalifah to impose a tax in order to spend from it but rather he spends from the Bait ul-Maal (State Treasury).

2 – There are however cases or circumstances in which the Shar'a has made an exception from the general prevention of imposing taxes. Shar'iyah texts have been mentioned that explain that spending upon them is (a duty) upon the Muslims and not only the Bait ul-Maal. If what is in the Bait ul-Maal is not sufficient to spend upon them, the spending transfers from the Bait ul-Maal to the Muslims. Then a tax is imposed upon the wealthy in accordance to the amount of Nafaqah (spending) that is obligatory to meet those circumstances. That is done without any increase (above the need) and they are allocated in the places that they have been imposed to meet... The tax in this situation is not based upon the command of the Khalifah based upon his desire and according to his wishes. Rather, it is based upon Allah's commanding of it whilst the Sultan (authority) only implements the command that Allah Subhaanahu has commanded. Based upon this understanding, that which the Shar'a has made obligatory upon the Bait ul-Maal and upon the Muslims to spend, is spent upon from the Bait ul-Maal. Then if there are no funds in the Bait ul-Maal, or it has run out of funds, or it doesn't have sufficient funds to meet the expenditures, then it is for the Khalifah to impose taxes upon the wealthy in accordance to the amount of those expenditures according to the Ahkaam Ash-Shar'iyah... And it is not Haraam (prohibited) in this circumstance or situation.

3 – From what has been mentioned, it is clear that in order for it to be permissible for the tax to be imposed for spending upon a particular case, the following conditions have to be realised (or met):

- That there is not within the Bait ul-Maal sufficient funds to spend upon this circumstance or case (requiring it).

- That a Shar'i text has come indicating that the expenditure in this case or situation is obligatory upon the Bait ul-Maal and upon the Muslims...

- That the imposed tax does not exceed the obligatory amount of expenditure required for that case or situation...

- That it is not imposed except upon the wealthy alone, those who have a surplus above their basic (or fundamental) needs and their complimentary needs as measured by their decent standard of living – (Bil-Ma'roof)...

4 – Consequently, the tax is not imposed in Islam except in accordance to the above mentioned conditions i.e. that the Shar'a has brought a text indicating that the expenditure upon a particular case is not just obligatory upon the Bait ul-Maal but rather it is also obligatory upon the Muslims:

- For example, the Nafaqah (spending) upon the Fuqaraa' (poor). If the Bait ul-Maal is not sufficient to meet the needs of the Fuqaraa', then a tax is imposed in accordance to the amount required to meet this need without an increase upon that and it will be imposed upon the wealthy. That is because spending upon the Fuqaraa' (poor) is not only obligatory upon the Bait ul-Maal but is rather obligatory upon the Muslims as well. Al-Haakim collected in 'Al-Mustadrak' a relation from 'Aa'ishah (ra) that the Messenger of Allah (saw) said: «لَيْسَ بِالْمُؤْمِنِ الَّذِي يَبِيتُ شَبَعَانًا وَجَارُهُ جَائِعٌ إِلَى» **“He is not a believer who spends the night satisfied whilst his neighbour next door is hungry”** and in a narration recorded by At-Tabaraani in 'Al-Mu'jam Al-Kabeer' it is related from Anas Bin Maalik (ra) that he said: The Messenger of Allah (saw) said: «مَا آمَنَ بِي مَنْ بَاتَ شَبَعَانًا وَجَارُهُ جَائِعٌ إِلَى جَنْبِهِ وَهُوَ يَعْلَمُ بِهِ» **“He hasn't believed in me who passes the night satisfied whilst his next door neighbour is hungry and he is aware of that”**. And Al-Haakim recorded in 'Al-Mustadrak' a relation from Ibn 'Umar (ra) that he said: The Messenger of Allah (saw) said: «وَأَيُّمَا أَهْلَ عَرَصَةٍ أَصْبَحَ فِيهِمْ أَمْرٌ جَائِعًا، فَقَدْ بَرِنَتْ مِنْهُمْ ذِمَّةُ اللَّهِ» **“Whichever people of an area where people live together there awakens a person amongst them who is hungry, then the Dhimmah (protection) of Allah has been taken away from them”**.

- For example, the Nafaqah (spending) upon Al-Jihaad. If the Bait ul-Maal was not sufficient to meet the needs of Al-Jihaad, then a tax is imposed in accordance to the amount required to meet this need, without any increase upon that, whilst this would be imposed upon then wealthy. That is because spending upon Al-Jihaad is not only obligatory upon the Bait ul-Maal but rather it is also obligatory upon the Muslims. Allah (swt) said:

﴿وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ﴾

“And strive in Al-Jihaad with your lives and your wealth in the path of Allah. That is better for you if you but knew” [At-Taubah: 41].

There are also other evidences in addition to the above.

- And for example, the Nafaqah upon the Arzaaq (wages) of the soldiers. If the Bait ul-Maal was not sufficient to meet the needs of the soldiers' wages, then a tax is imposed in accordance to the amount required to meet this need, without any increase upon that, whilst this would be imposed upon then wealthy. That is because the Nafaqah (spending) upon the wages of the soldiers is not just obligatory upon the Bait ul-Maal, but is rather also obligatory upon the Muslims. Ahmad recorded in his 'Musnad' a relation from 'Abdullah Ibn 'Amr that he said: The Messenger of Allah (saw) said: «لِلْغَازِيِ أَجْرُهُ، وَلِلْجَاعِلِ أَجْرُهُ وَأَجْرُ الْغَازِيِ» **“The Ghaazi (one who goes out to fight) has his reward and the Jaa'il (one who pays for another to go to fight) has his reward and the reward of the Ghaazi”**.

- For example, the spending to set up a hospital in a town that does not have another one in the case where harm will befall the people if there was no hospital. If the Bait ul-Maal was not sufficient to meet the need of the setting up of the hospital, then the tax will be imposed in accordance to the amount required to meet the need without any increase upon that whilst that would be imposed upon the wealthy. That is because the spending upon the setting up of a hospital is an essential matter and harm results from its absence. This setting up is not Waajib

upon the Bait ul-Maal alone but is rather also obligatory upon the Muslims and that is because the Nahi (forbiddance) of the Darar (harm) is general: Al-Haakim related in 'Al-Mustadrak', whilst he said that the "This Hadeeth is Saheeh in its Isnaad (chain)", that it was related from Abu Sa'eed Al-Khudri (ra) that the Messenger of Allah (saw) said: «لَا ضَرَرَ وَلَا ضِرَارَ، مَنْ ضَارَّ ضَارَّهُ اللَّهُ، وَمَنْ شَاقَّ شَاقَّ اللَّهُ عَلَيْهِ» **"There is no Darar and no Diraar (harming and reciprocation of harm), whoever harms, Allah harms him and whoever causes hardship (or inconvenience) then Allah brings hardship (or inconvenience) upon him"**.

- And for example, the spending upon the emergency and sudden events or incidents that occur upon the Ummah like a famine (drought), flood or earthquake... If the Bait ul-Maal is not sufficient to meet this emergency spending, then a tax is imposed in accordance to the amount of the required expenditures without any increase whilst that would be imposed upon the wealthy. That is because the spending upon emergency events and occurrences is not only Waajib upon the Bait ul-Maal but rather it is also obligatory upon the Muslims. Abu Dawud extracted in his 'Sunan' in a relation from Ibn Hujair Al-'Adawi that he said: I heard 'Umar Ibn Al-Khattaab relate from the Prophet (saw) in respect to this story he said: «وَتُعِيثُوا الْمَلْهُوفَ وَتَهْدُوا الضَّالَّ» **"And to come to the assistance of the anxious (or troubled) and guide the astray"**. The evidences of the famine that we have mentioned above also apply upon this.

5 – As for the Nafaqaat (expenditures) which are only obligatory upon the Bait ul-Maal and not also obligatory upon the Muslims, then these are not spent upon unless there are sufficient funds within the Bait ul-Maal (treasury). If there are not sufficient funds, then taxes are not imposed for them but rather it is waited until there are funds within the Bait ul-Maal. That is like the spending upon a Maslahah (interest) form amongst the interests of the Muslims which their absence does not bring about a harm upon them. That is like the opening of a secondary road whilst there exists another or opening a second hospital whilst there is another than can be sufficed with. It also includes the like of opening up production projects, upon which their absence will not incur a harm upon the Ummah or the setting up of a factory to extract coal or a reservoir to build trade ships and so on... These matters and what are similar to them are not spent upon from the Bait ul-Maal unless there are sufficient funds for that...

6 – As for the taxes not be imposed except upon the wealthy alone, then that is because the tax is not taken from the individual except from that which is surplus or excess of the satisfaction of his basic or fundamental needs (Al-Haajjaat Al-Asaasiyah) and the luxury or complimentary needs according to the usual or customary standard of living (Bil-Ma'roof). So in respect to the one, from amongst the Muslims, who has a surplus beyond the satisfaction of his basic and complimentary needs, taxes are taken from him. That is whilst the one who does not have any surplus after the satisfaction (of his needs) does not have anything taken from him. That is due to the statement of the Messenger of Allah (saw): «خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنَى» **"The best Sadaqah is that which was (given) on the back of Ghinaa (sufficiency)"** recorded by Al-Bukhari and related from Abu Hurairah. The 'Ghinaa' is that which the person can do without, which refers to the level of his sufficiency in respect to satisfying his needs. And Muslim related from Jaabir that the Messenger of Allah (saw) said: «أَبْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا، فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِيكَ» **"Begin with your own self and give Sadaqah to it. And then if there is anything left over from it, give it to your own family, and then if there is anything left over from your family, then give it to your relatives, and if there is something left over after giving to your relatives, give it in such and such way - saying 'to whoever is in front of you, to whoever is to your right and to whoever is to your left'"**. And so the one whom he must spend upon is delayed from himself. The tax is similar to that because it is like the Nafaqah and like the Sadaqah, as Allah (swt) says:

﴿وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوُ﴾

"And they ask you about what they should spend. Say: 'Al-'Afwā' [Excess beyond needs]" [Al-Baqarah: 219].

Which means that which in there is no effort in respect to its spending and that is the surplus beyond the need. Therefore, the tax is taken from the wealth that is surplus to the need which means that it is only taken from the wealthy. Consequently, a tax is not taken from the Fuqaraa' (poor) whilst the Aghniyaa' are known within the (state) department that deals with the Zakaah.

7 – As for the taxes not being imposed except in accordance to the amount of the need and sufficiency, then that is because the Shar’iyah texts have permitted the taking of the tax to meet needs of particular types and that is which it has exempted from the prevention (or forbiddance) of taking from the property of the individual without his consent. It is therefore obligatory to stop at the limit that has been mentioned in the texts otherwise it would be a Zhulm (unjust or oppressive act). That is because it not permissible to take the property of a person except by Tayyib An-Nafs (consent) from him, whilst specific cases or circumstances are exempted where the text has permitted the imposition of taxes for them in accordance to the amount or level of need and sufficiency.

8 – From what has been previously mentioned, it becomes evident that the assumption of the presence of a deficit “permanent or semi-permanent” in the “budget” within the Khilafah State, represents an assumption that is out of its context. That is because the deficit, where the sources of revenue do not meet the expenditures, is a matter that is contrary to the original position in the case where Islaam is applied well... That is due to two important matters:

A – The Ahkaam Ash-Shar’iyah have explained in detail the manner of raising funds by the State and how it should be spent and it did not make that fall under the Ijtihad of the people and their estimations... It made the spending upon some matters unrelated to the existence of funds or the non-existence of funds within the Bait ul-Maal and that is because the spending is an obligation upon the Bait ul-Maal and upon the Muslims... And we have explained above the matters in which it is obligatory for spending to be undertaken upon whether there are funds in the Bait ul-Maal or there are not... And taxes are imposed for these if there are no funds in the Bait ul-Maal for them.

As for the obligatory Nafaqaat (expenditures) that are only a duty upon the Bait ul-Maal and not also a duty upon the Muslims, then they will not take place unless there are sufficient funds in the Muslim’s Bait ul-Maal for the spending, whilst taxes are not imposed for them as we have previously explained...

B – The continuous (or permanent) revenues of the Bait ul-Maal are: Al-Fa’l, Al-Ghanaa’im, Al-Anfaal, Al-Kharaaj and Al-Jizyah... In addition to that are the revenues of the public owned properties with their various types, the revenues of the state owned properties, the ‘Ushoor, the Khumus (5th) of the Rikaaz (buried treasure), the minerals and the Zakaah properties... **The original situation is for the funds of the permanent revenues of the Bait ul-Maal to be sufficient for the spending upon what it is obligatory for the Bait ul-Maal to spend upon, in the case of the existence of the funds or its non-existence... In that way the occurrence of a financial deficit to cover the expenditures is a matter that is unlikely to occur...**

There are more elaborate details that we have explained in our books: *The Economic System*, *The Funds in the Khilafah State*, and the *Introduction to the Constitution*...

I hope that this answer has been sufficient by Allah’s permission.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

12th Sha’ban 1437 AH

Corresponding to 19/05/2016 CE

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

<https://www.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/479863058877437/?type=3&theater>

The link to the answer from the Ameer’s Google Plus page:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/BQgszg2GFZZ>

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

<https://twitter.com/ataabualrashtah/status/735549331533615104?lang=ar>