

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 a Question

Zakat and Debts of the Father and Son

To: Abu Khaled

Question:

As Salaam Alaikum Wa Rahmatullah Wa Barakatuhu our honourable Sheikh, and warm greetings to you.

I have a question regarding Zakat and debts, I hope you have the time to answer my questions.

My father has a lot of debt. Now it is customary with us that we do not distinguish between the money or debts of the father and the son. That means his debts are also mine automatically and we both work to settle them. But how is this explained in Islamic law, especially from the perspective of Zakat? Is the debt on my father only and he is freed from the Zakat or do we both have to pay the debt?

Barkallahu feekum. May Allah protect you and warm greetings to you from the Shabab (members) in Germany

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuhu

1- **The money of the father in terms of Shariah is not the money of the son,** and the father's debt is not the son's debt, so the Sharia made the father in charge of his money and made the son in charge of his money. Shariah put in the father's money rights and duties regardless of the son's money. And it put duties in the son's money regardless of the father's money because each one of them has an independent obligation. For example, the Shari'ah enjoins the father to pay Zakat on his money when it reaches the Nisab and it passes a year regardless of the money of his son. This is the same for the child. For example, the son is allowed to earn money in return for an effort regardless of the money of his father. Thus, each individual in Islam has a special obligation according to the Islamic law.

2- **From the evidences that the son's money is not the father's money, and the father's money is separate to the money of the son:**

A) The son does not inherit all the father's money but shares it with others, Allah (swt) said: ﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَّاتِ﴾ **"Allah instructs you concerning your children: for the male. What is equal to the share of two females"** [An-Nisa: 11]

And He (swt) said: ﴿وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ﴾ **"And for one's parents, to each one of them is a sixth of his estate if he left children"** [An-Nisa: 11]

Allah (swt) gave others the right to share with the father the inheritance of the son. Therefore, it is impossible that the money belongs to the father during the life of his son and later some of it belongs to other than the father. Allah says in the verse of inheritance: ﴿وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ﴾ **"And for one's parents, to each one of them is a sixth"** [An-Nisa: 11]. So, He (swt) gave his mother a share of the son's inheritance after his death. Therefore, since the shari'a gave the mother a share of the son's inheritance, it is impossible that it considers the son's money a property of his father.

B) Before the inheritance is distributed, the father or the child may recommend and carry out his will whether it pleases or does not please the child or the father, and before that his debt must be repaid before the inheritance is distributed, indicating that the deceased's estate is his property and not the money of his father or child. Allah Azza Wa Jal says: ﴿مَنْ بَعْدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ﴾ **"After any bequest he [may have] made or debt"** [An-Nisa: 11]

Hence, since it is obligatory to repay one's debt before distributing his inheritance, it is impossible to consider that one's money is a property of his/her father. In addition, since it is permitted for a Muslim to make a will (wasiyah) before his death, it is impossible to consider his money as a property of his/her father.

C) In the Hadith of sacrifice (Udhhiya) extracted by Ahmad in his Musnad from Abdullah Bin Amr who said: a man came to the Messenger of Allah (saw) and said: " Teach me O Messenger Of Allah... by the one who sent you with the truth, I shall never add anything to it , then he went back, the Messenger of Allah (saw) said:

«أَفْلَحَ الرَّوَيْجِلُ، أَفْلَحَ الرَّوَيْجِلُ»، ثُمَّ قَالَ: عَلَيَّ بِهِ، فَجَاءَهُ، فَقَالَ لَهُ: «أَمَرْتُ بِيَوْمِ الْأَضْحَى، جَعَلَهُ اللَّهُ عِيدًا لِهَذِهِ الْأُمَّةِ»، فَقَالَ الرَّجُلُ: أَرَأَيْتَ إِنْ لَمْ أَجِدْ إِلَّا مَنِيحَةَ ابْنِي، أَفَأَضْحِي بِهَا؟ قَالَ: «لَا، وَلَكِنْ تَأْخُذُ مِنْ شَعْرِكَ، وَتَقْلَمُ أَظْفَارَكَ، وَتَقْصُ شَارِبَكَ، وَتَحْلِقُ عَانَتَكَ، فَذَلِكَ تَمَامُ أَضْحِيَّتِكَ عِنْدَ اللَّهِ»

"The man is successful, the man is successful" then he (saw) said: bring him to me, when the man came, he (saw) said to him: "I was ordered (to observe) the Day of Adha, Allah made it a festival (eid) for this Ummah" the man said: If I find nothing but my son's camel shall I sacrifice it? He (saw) said: "No, but cut from your hair, and cut your fingernails, and cut off your mustache, and shave your private part, this will complete your sacrifice to Allah." Abu Da'ud extracted something similar and also in *Sharh Maany Al Athar*. Ad-Darqatny extracted in His Sunnan in a narration: (The man said: If I find nothing but my father's camel or the sheep of my father and my family and then slaughter it? He (saw) said: «لَا وَلَكِنْ قَلَمَ أَظْفَارِكَ وَفَقَصَّ شَارِبَكَ وَاحْلَقَ عَانَتَكَ فَذَلِكَ تَمَامُ أَضْحِيَّتِكَ عِنْدَ اللَّهِ» "No, but cut your fingernails, and cut your mustache, and shave your private part, this will complete your sacrifice to Allah."

And since it is not permissible for the father to sacrifice his son's camel or the son to sacrifice the father's camel, this means that the father's money is not the money of the son.

D- In *Mawahib Al-Galileel Fi Sharh Mukhtasar Khalil* (2/505), written by: Shams Ad-Din Abu Abdullah Muhammad Bin Muhammad Bin Abdul Rahman At-Tarabolsi Al-Maghribi, known as Hattab Al-Ru'ini Al-Maliki (deceased: 954 AH):

" (the ninth) If he has a debt then this is given priority to Hajj with no dispute but he prioritizes Hajj over the debt of his father, whether we say: Hajj immediately or at his pace, and whether the debt is deferred or immediately. This is mentioned in At-Tiraz and the text is: 'if he has a debt and money, it is better to pay the debt than the Hajj, Malik said this in *Al Muwaziyah*. He was told: 'If his father had a debt, should he pay that debt or go to Hajj.' He said: 'He should perform Hajj and this is clear because Hajj is his debt, immediately or at his own pace, and the debt of his father is not his obligation, not immediately or postponed. To carry out an obligation overrides that which is not an obligation'" end of quote

3- Thus the hadeeth of (you and your money) is understood:

In *Sharh Mushkil Al-Athar*: (From Jabir Bin Abdullah that a man came to the Prophet (saw) and said: I have money and children, and my father has money and children, and he wants to combine our money, so the Prophet (saw) said: ... «أَنْتَ وَمَالُكَ لِأَبِيكَ» "You and your money belong to your father"

I asked Bin Abi Imran about it, he said: the saying of the Messenger (saw) in this Hadith: «أَنْتَ وَمَالُكَ ...» "You and your money belong to your father" is like the saying of Abu Baker (may Allah be pleased with him) to the Prophet (saw):" But my money and I are yours, O Messenger of Allah." When the Messenger of Allah said, «مَا نَفَعَنِي مَالٌ مَا نَفَعَنِي مَالُ أَبِي بَكْرٍ» "I benefited the most from money that of Abu Baker" It refers to the Hadith of Abu Huraira that he said: the Prophet (saw) said: «مَا نَفَعَنِي مَالٌ قَطُّ مَا ...» "I benefited the most from money that of Abu Baker"

He said: Abu Baker, may Allah be pleased with him, said: "But my money and I are yours, O Messenger of Allah, Abu Baker that he will carry out all the orders and commands of the Prophet on him and his money just as the owners of things are in full charge on what they own. And this was the saying of the man who asked in the Hadith above and it carries the same meaning, and Allah knows)

Also, it was extracted by Ibn Habban in his Sahih: (from Ayesha (ra) that a man came to the Messenger of Allah (saw) who had a dispute with his father about his father's debt. The Messenger (saw) said: «أَنْتَ وَمَالُكَ لِأَبِيكَ» "You and your money belong to your father"). Abu Hatim said the meaning is that the Messenger rebuked the man from treating his father like a foreigner, and ordered him to show leniency and kindness in both saying and action to until he gets his money, and he said to him that he and his money belong to his father, not that the money of the son owned by the father in his life without the son's consent. Ibn Raslan said: The Lam (letter) is for permissibility and not property, but the money of the son is his property and he must pay its Zakat and it is inherited from him.)

4-Therefore, you pay zakat on your money, and your father will pay Zakat on his money if it reaches the nisaab and one year passes over it if there is no debt on the money. If he pays the debt, he can pay Zakat on the remaining money if it is more than the Nisab because the stronger opinion we follow is that the debt frees a person from zakat if all money is used up or was less than the Nisab. In

our book "Funds in the Khilafah State", when we talk about Zakat on debt page 150, the following is stated:

(Whoever has wealth, which has reached the Nisab and a year has passed over it, and has a debt which engrosses the Nisab or renders the remaining wealth after repaying the debt less than the Nisab does not pay any Zakat. For example, if one possesses 1,000 Dinars and owes 1,000 Dinars, or if one possesses 40 gold Dinars and is indebted by 30 gold Dinars, there is no Zakat upon him in these two cases as he does not own the Nisab. From Nafi from ibn 'Umar who said: The Messenger of Allah said: «إذا كان لرجل ألف درهم، وعليه ألف درهم، فلا زكاة عليه» **"If a person has 1,000 Dirhams and is in debt of 1,000 Dirhams, then there is no Zakat upon him."** Mentioned by Ibn Qudama in Al Mughni.

When the wealth, after paying the debt, reaches the Nisab, then Zakat is obligatory upon him due to what was narrated by As-Saib b. Yazid who said: I heard Uthman b. Affan saying: "This is the month of your Zakat. Whoever has a debt should pay it so that you give the Zakat on your wealth." In another narration, mentioned by Ibn Qudama in Al Mughni: "Whoever has a debt should pay it off and pay Zakat on his remaining wealth." He said this in the presence of the Sahabah who did not deny it; thus, this indicated their consensus (Ijma'a). That was the end of quote from the Book **Funds in the Khilafah State**.

Therefore, if the father of the questioner has money that reached the nisaab and passed the year and has a debt, then he deducts the debt from his money. If the debt takes all the money, or if some remains from it that is less than the Nisab, he will be free from paying the Zakat. If his money that remains is more than the Nisab, then he pays Zakat on what remains of the money after deducting his debt.

As for the children of the debtor "the father", they are not obliged to pay the debt as understood from the question, but it is a debt on their father and it is his obligation not theirs. **What they are doing is helping their father to pay off his debt which is a matter of righteousness for the parents (Bir Alwalidain)**. A matter that Islam encourages immensely, ﴿وَبِالْوَالِدَيْنِ إِحْسَانًا﴾ "... and to parents, good treatment" [Al-Isra': 23]

Al-Bukhari extracted

عن عَبْدِ اللَّهِ بْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ: سَأَلْتُ رَسُولَ اللَّهِ ﷺ: يَا رَسُولَ اللَّهِ، أَيُّ الْعَمَلِ أَفْضَلُ؟ قَالَ: «الصَّلَاةُ عَلَى مِيقَاتِهَا»، قُلْتُ: ثُمَّ أَيُّ؟ قَالَ: «تُحْرِيمُ الْوَالِدَيْنِ»، قُلْتُ: ثُمَّ أَيُّ؟ قَالَ: «الْجِهَادُ فِي سَبِيلِ اللَّهِ».

From Abdullah bin Masood may Allah be pleased with him: I asked the Messenger of Allah (saw): O Messenger of Allah, which is the best action? He said: "Praying on time", I said: Then what? He said: «Then righteousness of the parents», I said: Then what? He said: Jihad for the sake of Allah."

Therefore, the children's help to their father is a matter of righteousness to the parents, **but the children are responsible for the Zakat on their money after they pay their debt**. If their money reaches the Nisab and passes the year, they must pay Zakat on their money. If they pay off the debt of their father from their money before the year passes, then they do not pay Zakat on that money because it was removed from their money before the obligation of Zakat on it, and they have to pay Zakat on the money that is left after paying off the debt if the remaining money reaches the Nisab or above and a passes a year.

Your brother,
Ata Bin Khalil Abu Al-Rashtah
22 Shawwal 1438 AH
16/7/2017 CE

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/660689260794815/?type=3&theater>

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

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/6KBHDZgvxMk>

The link to the answer from the Ameer's page on Twitter:

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