

*In the name of the Allah, The Beneficent, The Merciful*

Many assets are held under trust, whereby the owner of the assets (settlor) transfers legal ownership to trustees who hold the assets for the benefit of other people known as beneficiaries. There are three main trusts in vogue within the UK legal and legislative framework as follows:

- a. **Bare (simple) trusts** – these involve one person being trustee of an asset on behalf of another and are also referred to as a nominee or declaration of trust arrangement. With regards to bare trust a few examples are as follows:
  1. Nominee structure – I purchase shares in my own name via TD Waterhouse who hold legal title on a nominee basis. This means they are shown on the company register as the legal owners of the shares. However they are holding them on trust on my behalf, and are obliged to do with them as I instruct. Please confirm that *zakat* is liable on me in this instance.
  2. Nominee structure for a minor – I gift my son £1,000 and hold this in an account in my son's name. However prior to his 18<sup>th</sup> birthday he is not able to access that money without my consent. In this instance is he liable for *zakat*?
  3. Is *zakat* payable if the arrangements above in point 2 were put in place for someone else who is not related to me?
  4. Child Trust Fund – the above works legally as in point 2 above, with the difference that even with my consent, my son is not able to access the money prior to his 18<sup>th</sup> birthday. This is because the fund is set up in a manner to prevent it being accessed before this time. Please clarify *zakat* liability on this.
  
- b. **Interest in possession trusts** – these involve nominating a life tenant who has an absolute legal right to all income as and when it arises within the trust. The life tenant however does not have any automatic rights to capital though by law they have to receive some capital. I would assume the income is therefore *zakatable* on the beneficiary. However, it is not immediately apparent on whom the *zakat* liability for the capital would fall, as the trustees have discretion as to who if anyone they allocated this to in any given year. To explain further:
  1. An IIP must nominate a life tenant who has an absolute right to all income as and when it arises in the trust. Therefore if the asset was a house worth £100k, and the rental income was worth £5,000 per annum, then the trustees are obliged by the trust deed to pay the £5,000 every year only to the tenant. They have no discretion in this. I presume therefore that the life tenant is liable for paying *zakat* on the income.
  2. With regards to capital however, depending on how the trust deed is written, the capital can either be paid only to the tenant or to a range of other beneficiaries. In either event, the trustees always have discretion as to when to pay the capital. I therefore presume the beneficiary is only liable to *zakat* on the asset once it comes into their possession.
  3. Please forward me your thoughts on inheritance distribution – if you are proposing that from a Shariah perspective the assets are still to be considered as owned by the settlor for inheritance purposes, then I think we need to discuss the reasons why, as legally the person with the least amount of control and ownership over the asset is the settlor. The trustees have control; the beneficiaries have ownership, leaving the settlor with neither.
  
- c. **Discretionary trust** – these involve giving trustees discretionary powers to choose how they wish to allocate both income and capital from trusts. Virtually all discretionary trusts would have more than one possible beneficiary hence there is no prior certainty as to whom the income or capital is to be awarded to. In this instance we seemed unsure how the *zakat* treatment would apply. It is worth noting these trusts are mostly used by the very wealthy as an asset protection and/or tax mitigation structure.



17<sup>th</sup> Dhul Qa' dah 1428  
27<sup>th</sup> November 2007

## الجواب حامدًا و مصليًا و منه الصدق و الصواب

### a. **Bare (simple) trusts:**

1. Nominee structure – shares held by TD Waterhouse on your behalf. TD Waterhouse is merely an agent, while proprietorship is vested in you. You enjoy possession through the medium of TD Waterhouse and thus you are liable for *zakat*.
2. Nominee structure for a minor – *Zakat* is not payable by either you or your son until he reaches the age of majority. After the age of majority if you consent to your son's possession he is liable for *zakat*, otherwise, as he has hitherto not secured ownership, *zakat* liability will only accrue to him subsequent to him reaching the age of eighteen. In the interim, if the terms of the trust now restrict you from benefiting from the trust property, your ownership will be defective and you also will not be liable for *zakat*.
3. Nominee structure for the unrelated minor – *Zakat* is not payable in any case by the unrelated minor before reaching the age of majority. After the age of majority, if transfer of ownership has been realised and he is also empowered to access the money he is liable for *zakat*, otherwise *zakat* liability will only accrue to him subsequent to him reaching the age of eighteen. However, in the case that ownership is still retained by you and the terms of the trust also restrict you from benefiting from the trust property in the interim, your ownership will be defective and you also will not be liable for *zakat*.
4. Child Trust Fund – *Zakat* is not payable in any case by the child before reaching the age of majority. After the age of majority the child remains non-labile until the age of eighteen. Any money deposited in the fund by the father, agent, guardian or executor in a proprietary capacity during the age of minority transfers into the ownership of the child with immediate effect, and they do not retain any *zakat* liability. Although money deposited by other than the father, agent, guardian or executor under the Child Trust Fund scheme will not transfer into the ownership of the child until the child is able to access the same, they do not retain any *zakat* liability as the terms of the Child Trust Fund restrict them from benefiting from the trust property.

### b. **Interest in possession trusts –**

### c. **Discretionary trust –**

In both of the latter two types of trust:

**Settlor** - while proprietorship rests with the settlor and the trustees perform their functions on his behalf, as a consequence to the terms of the trust, his ownership is defective. Thus, the settlor is not liable to pay *zakat* upon the trust property.

**Trustees** – the trustees are mere agents of the settlor and are not proprietors of the trust property. Thus, there is no question of them being liable to *zakat*.

**Beneficiaries** - the beneficiaries, whether life tenants or remaindermen, do not enjoy proprietorship or possession until, according to the terms of the trust, possession of the income or the capital is secured during the lifetime of the settlor. Until possession, and thus complete ownership, is not realised, the beneficiaries will not be liable for *zakat*. After possession, the normal rules of *zakat* will apply. If the trust is created to

function following the demise of the settlor, it is effectively a bequest. Thus, the trust property will constitute a portion of the settlor's estate and the terms of the trust will be superseded by the laws of bequest. Upon receipt of the inheritance, the normal rules of *zakat* will apply.

And Allah knows best.

Mufti Muhammad Zubair Butt

Chair, Al-Qalam Shariah Panel