



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

I am writing to you to seek guidance on the matter of *zakāt*. In 2001 I joined employment with a firm that offered a Final Salary pension whereby my employer made a contribution and I made a contribution of 5%. In 2004 this was changed to a PACE pension which I believe is based on the average salary. In 2007 I was outsourced to another company and as a result my pension arrangements changed again to a Money Purchase or Defined Contribution scheme, whereby the pension contributions (6% employer/6% employee) were deducted prior to tax and NI. This year my pension has changed yet again to a Personal Pension whereby my employer contributes 12% and my contribution is 5% before tax and NI is deducted. With both the Money Purchase and the Personal Pension, the option to choose specific funds is available once a year but if a choice is not made then the employer makes selects the default fund. As I have been unable to select a fund, the default funds have been applied and I have no idea what that is.

Until now I was not aware that *zakāt* is payable on a pension and may All h swt forgive my ignorance. I wish to seek clarity and ultimately I do not want to underpay my *zakāt*, however I have heard many mixed messages two of which are detailed below:-

- 1) *Zakāt* is only payable on the pension if it is being paid out and I have access to the money (i.e., if not within my physical possession then *zakāt* is not due).
- 2) *Zakāt* is not payable on Final Salary but payable on Personal/Money Purchase pensions

I am a follower of the Hanafī School of fiqh and your advice will be greatly appreciated as I would like to know the following:-

- a) Are pensions considered to be a "zak table" asset?
- b) If pensions are a "zak table" asset then what do we need to pay the *zakāt* on? The entire holding (i.e. fund value) or pay *zakāt* on the annual contribution? Is *zakāt* payable on my contribution alone or mine and my employer's contribution?
- c) Please can you also advice on how I can calculate the *zakāt* I have not paid on pensions from previous years.

Your advice will be much appreciated and may All h swt reward you in this world and the *ākhirah*.

16<sup>th</sup> Rama n 1431  
26<sup>th</sup> August 2010



# AL QALAM

الجواب جامعًا و مطبوعًا و منه الصدق و الصواب

The Al-Qalam Shar'ah Scholars Panel has discussed the issue of *zakāt* on pensions the conclusion of which can be viewed at: <http://www.alqalam.org.uk/UserFiles/File/Zakat%20on%20Pensions%20-revised%20V1a.pdf>

The view of the Al-Qalam Shar'ah Scholars Panel is that *zakāt* is not payable on a Final Salary scheme pension as this is essentially deferred remuneration and a weak debt. The employer retains the right of disposal over the pension contributions and unilaterally determines how they are to be invested, if at all. The employer retains ownership of the contributions and the value thereof remains a weak debt upon him in favour of the employee. Thus, according to the position of Imam Abu Hanifah *rahimahullāh*, the employee does not incur any *zakāt* liability for such contributions unless they are actually received and then one lunar year<sup>1</sup> has lapsed.

However, in Money Purchase schemes and Private Pension schemes wherein the pension fund is invested on behalf of and sometimes at the discretion of the pension-holder remuneration is deemed to have been received by the pension-holder through the agency of the pension provider and all proprietary rights and obligations accrue to the pension-holder. Thus, in this latter case the rules related to *zakāt* on investments will apply.

The stipulation of possession and accessibility for the liability of *zakāt* is to be able to effect increase as *zakāt* is liable only on  $\text{productive wealth}$  - *al-māl al-nāmī*. Wealth may be intrinsically productive - *khilqī*, such as gold and silver, or productivity may result as a consequence of one's action *ó fi 'lī*, i.e., acquisition with the intent of trade. Productivity may be either real - *haqīqī* by way of breeding or profit through trade or it may be constructive - *taqdīrī* on account of having the ability to effect increase through one's possession or that of one's agent. In the case of Money Purchase schemes and Private Pension schemes wherein the pension fund is invested on behalf of and sometimes at the discretion of the pension-holder, the pension fund is deemed to be real  $\text{productive wealth}$  on account of the investment or constructive  $\text{productive wealth}$  on account of the possession of the pension provider as agent of the pension-holder.

Thus:

- Final Salary pension schemes are not *zakāt* table assets. Average Salary schemes also follow the same rule. Money Purchase schemes and Private Pension schemes wherein the pension fund is invested on behalf of and sometimes at the discretion of the pension-holder are *zakāt* table assets.
- The liability of *zakāt* on a *zakāt* table pension scheme depends on the nature of the underlying investment/s of the pension fund. All the *zakāt* table assets represented in the pension fund are liable to *zakāt* and will comprise both employer and employee contributions. These assets and their proportionate value will need to be identified before a calculation of the *zakāt* liability can be made.
- Zakāt* is not payable upon your pension whilst it remained within the Final Salary or Average Salary schemes. *Zakāt* liability begins from 2007 whereat your pension changed to a Money Purchase scheme. If at the time of your *zakāt* anniversary in 2007 you had by then joined the scheme you will need to determine the value of the *zakāt* table assets of your pension fund at the time and pay the *zakāt* accordingly. If you had not by then joined the scheme you are not liable to pay *zakāt* for the pension fund for that year. For subsequent *zakāt* anniversaries you will need to determine the *zakāt* table assets on that anniversary and the *zakāt* due and then deduct any unpaid *zakāt* for previous years where applicable.

And Allāh knows best.

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<sup>1</sup> The condition of lapse of one year is only in the event that the pension-holder is not already owner of *niṣāb*, otherwise anything received will be added to the existing *niṣāb* and paid therewith.