

THE RULES OF ZAKAAT

By

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*Alms are for the poor
And the needy, and those
Employed to administer the (funds);
For those whose hearts
Have been (recently) reconciled
(To Truth); for those in bondage
And in debt; In the cause of Allah;
And for the wayfarer;
(Thus is it) ordained by Allah,
And Allah is full of knowledge
And wisdom.*

Surah Taubah: (9:60)

*The Believers, men and women, are protectors,
One of another: they enjoin
What is just, and forbid
What is evil: they observe
Regular prayers, practise
Regular charity, and obey
Allah and His Apostle.
On them will Allah pour
His Mercy: for Allah
Is exalted in Power, Wise.*

Surah Taubah: (9:71)

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Foreword

by Jamiatul Ulema, Natal

In more than seventy verses of the Holy Qur'an, the order of Zakaat is given simultaneously with the order of establishing Salaat. Zakaat is one of the pillars of Islam. The edifice of Islam would crumble, the poor and needy would suffer and there would be great imbalance in living standards, if an indifferent and negative attitude is shown towards Zakaat by the rich. Zakaat is not a tax like the burdensome taxes imposed by Governments of the world on their people. Zakaat is an Ibadaat, an act of devotional worship. A believer gains the pleasure of Allah Taala, purifies his wealth, secures the remainder thereof and thereby carries out his role as vicegerent of Allah on earth.

The unfortunate position of Muslim communities throughout the world is that, whilst a very large percentage is guilty of failing to pay Zakaat, an equally great number of Zakaat payers are guilty of miscalculation, improper deduction and haphazard distribution. Although Islamic Libraries contain many books in Arabic on the subject of Zakaat, very few works are available in the English language which provide detailed rules governing Zakaat and their application especially in Modern-day business.

Most of the books available in English deal with the importance of giving Zakaat, its philosophy, its rewards and the severe punishment in store for those who fail in this important duty. The author of this book Mahomed Shoaib Omar is a practising Attorney who had the good fortune of studying Islamic Law under the well known scholar Justice Maulana Muhammad Taqi Usmani of Pakistan.

The author has made a valuable contribution to Islamic Literature in English, adding this work to the very limited number on the subject and making it available to the ordinary Muslim as a handy reference book.

The book correctly records the relevant rules of Zakaat pertaining to gold, silver, cash and merchandise for sale. Its value is enhanced by the citation of authentic references in Arabic and Urdu.

I am sure this book will be welcomed by all those who require something neither too exhaustive nor too brief on Zakaat. We strongly recommend the book as compulsory reading for all.

May Allah reward the author for his efforts and bless readers with the full benefit of the work.

Yunus Patel

(Secretary, Jamiatul Ulema, Natal) 20 January 1986

Foreword

by Darul Uloom, Newcastle

I have perused the Masaail on Zakaat contained in the book. They are written in simple, direct and understandable language. I found no errors.

The book covers practically all the Masaail necessary for a Zakaat payer to know. I am therefore confident that it will serve as a handy guide book on Zakaat for all, and also cater for individual cases.

May Allah accept this timely effort of the author and reward him amply and abundantly.

C.M. SEMA
Principal,
Darul Uloom,
Newcastle.

Foreword

by South African National Zakah Fund

The Zakah Fund's growth is the realization of the yearning of the Ummah for self sufficiency in the field of Islamic Social Welfare. Zakah is a source of social security, and is indeed the social responsibility of Muslims - Alms (Zakah) paid by Muslims for Muslims alone. This is why the Almighty in his infinite wisdom, has made it an obligatory form of worship, indeed, a mercy (rahmah) unto mankind for those who actively participate in this Ibadah.

Our experiences has shown, for active participation - a clear unambiguous understanding of the ground rules surrounding this noble third pillar of Islam is important. This book certainly goes a long way in addressing pertinent issues and answering sensitive questions encountered during the course of the Zakah Fund's daily work.

Well researched and documented information, as well as, easily understood examples, commentaries, and presentation makes this book, only one of a few on the topic - in english, an excellent source of general reference and perusal.

The National Executive of the Zakah Fund sanctions and welcomes this book for distribution.

We supplicate the Almighty to reward the author for his endeavours and similarly for all those who benefit from his work by making it a practical implementation in their lives. Ameen.

HUSEIN E. ASMAL : National Director - SANZAF

Author's Note

The importance of Zakaat in Islam is known to every Muslim. The need therefore of books on the subject will remain until the end of man on earth.

There has for some time been a need for a book on the subject setting forth basic rules clearly and concisely. This book attempts to do that.

I have written the book not as a jurist, but as a student of Islamic Law. Unfortunately, pressure of work did not allow a fuller discussion of contemporary issues such as the analysis of Company balance sheets for the purpose of calculating Zakaat. Nevertheless, comments and suggestions would be welcomed, particularly from accountants and businessmen, with a view to producing a revised edition in the future. Be that as it may any errors are solely my responsibility.

Finally, I wish to sincerely thank all those who read the text and made valuable suggestions.

MAHOMED SHOAIB OMAR
28 FEBRUARY 1986
DURBAN

MEANING OF ZAKAAT

The word Zakaat covers two meanings. The first relates to purification - that is, purification by means of Zakaat from sins and bad qualities such as greed and the inculcation of good qualities such as generosity. The second meaning relates to the growth and increase - that is, giving of Zakaat results in growth, increase and baraka in wealth ⁽¹⁾ Both meanings are referred to in the following verse of the Qur'an.

" Take sadaqah from their property by means of which you may purify them"

(S9: V103)

The word sadaqah is also used to denote Zakaat as in the above verse. In this context, sadaqah relates to the act of giving Zakaat and therefore represents a confirmation (tasdiq) of the giver's Iman and sincerity of his intent ⁽²⁾

In the legal terminology of the shariah, Zakaat means the fard obligation of every Muslim to to pay 2.5% of the value of specified assets to the Muslim recipient entitled thereto for the sake of Allah. The payment has the effect of depriving the Zakaat payer of any indirect benefit in the sense that it cannot be made to his ascendants or descendants or spouse. The payment at the same time results in an unconditional transfer to the recipient entitled thereto, which is denoted as TAMLEEK. Hence, feeding a poor person will not discharge the obligation, but giving him the food will discharge the Zakaat obligation because in such event the recipient partakes of his own property. Similarly, if the Zakaat payer allows a poor person who is entitled to receive Zakaat to reside in his home for a year, free of rental, the obligation will not be discharged because the conferring of a benefit is not sufficient. The obligation is only discharged by the giving of money or property. A creditor releases a poor debtor entitled to receive Zakaat from his debt. The release will not discharge the Zakaat obligation of the creditor in respect of his remaining wealth even if he intends to do so.

1. See Ahkam-e-Zakaat, p 25 Fiqhus Zakaat, p 37-40

2. Fiqhus Zakaat, Al-Masaalibul Aqliyah p.101. The word sadaqah also covers nafl sadaqah. If the word is used unqualified (Mutlaq) in the Qur'an, and the context does not indicate that nafl sadaqah is intended, then the reference is to Zakaat. Ahkam-e-Zakaat, p.30, quoting Tafsir Qurtubi.

BENEFITS OF GIVING ZAKAAT (1)

- a) Parting with a portion of wealth that has been earned through hard work and efforts for the sake of Allah eliminates selfishness. The giving of hard-earned wealth solely to please Allah purifies the nafs ("soul") and strengthens the bonds of relationship with Allah.
- b) Human Brotherhood requires that the poor and needy be assisted. Zakaat is therefore the highest expression of this brotherhood. A person who lacks feelings of brotherhood suffers from a serious defect of character which may be cured by spending on the poor and needy.
- c) Zakaat keeps away sins, increases barakah and protects wealth.
- d) If assistance by means of Zakaat is not rendered to the poor and needy, they will die of hunger.
- e) By giving Zakaat, the Zakaat payer enables the poor recipient to discharge their religious duties.
- f) The Zakaat payer in discharging his Zakaat obligation is expressing his gratitude for the wealth that Allah has bestowed upon him.

1. See *Al-Masaalihul Aqliyah*, p 102

CONDITIONS RELATING TO THE ZAKAAT PAYER

a) Islam ⁽¹⁾

The Zakaat payer must be a Muslim. Zakaat is not obligatory on a kafir (non-Muslim) as it is an ibadah ("act of pure worship") and a kafir is not obliged to carry out the ibadah (such as salaah and saum) of Islam. A Muslim, who renounces Islam (murtad) and thereafter accepts Islam again, is not obliged to pay Zakaat for the period of his renunciation - that is, for the period he was a non-Muslim ⁽²⁾ Similarly, the obligation to pay Zakaat falls away if a Muslim renounces Islam, that is, becomes murtad.

b) Majority (Bulug) ⁽³⁾

A person must be major to qualify as a Zakaat payer according to the Hanafi Law. Minors are not under a fard obligation to perform acts of ibadah such as salaah and saum because they lack legal capacity. They are accordingly exempt from paying Zakaat by reason of absence of legal capacity ⁽⁴⁾ accordingly to Hanafi Law only. The remaining mazaaib are of the view that Zakaah is obligatory in respect of the property of a minor or child.

c) Sanity

The Zakaat payer must be sane. In this regard, two situations must be distinguished:

- i.) The child who at maturity is insane. In this case, the insane person upon regaining his intellect is exempt from payment of Zakaat for the duration of his insanity. Liability for Zakaat attaches to him from the time he regains his sanity and accordingly his Zakaat year is calculated from such date ⁽⁵⁾.
- ii) The person although sane at the time of maturity subsequently thereto becomes insane. In this case, if the insanity lasts for a whole year, the insane person is exempt from Zakaat for this period, and his Zakaat year is therefore deemed to commence from the date of recovery of sanity. On the other hand, if the insanity remains for a part of the year, then he is liable for the Zakaat of that year.

1. See generally, Shaami, and Badai-us-Sana'i

2. The Shafei view is that he is obliged to pay Zakaat for the period of his renunciation - Badai.

3. According to the Hanafi law, a child is regarded as major on attaining puberty - that is, discharge of semen in the case of male, and menstruation in the case of the female. If these signs are absent, then the child is deemed to be major at the age of fifteen (15) (Shaami).

4. According to the Shafei view, Zakaat is a right due ("Haqul Abd") to human beings (as opposed to purely the right of Allah). Accordingly, a minor is obliged to pay Zakaat because the obligation is owed to human beings, and, therefore, he has the capacity to carry out such obligation - in the analogy of other obligations owed by the minor to human beings, such as the maintenance of his wife and the payment of Sadaqatul Fitr (Badai).

5. Because he has upon attaining sanity acquired legal capacity (Badai).

d) Freedom from Debts

The Zakaat payer in order to be subjected to Zakaat must be free from debts⁽¹⁾ If he is indebted to his creditors, then the amount of his debts must be deducted from the total value of those assets on which Zakaat is levied according to Hanafi Law. The balance remaining will be subject to Zakaat. According to Maliki Law, only those debts which have been incurred in respect of the acquisition of Zakaatable assets are deductible. On this view, a loan owing in respect of the acquisition of a house is not deductible because the house itself is not subject to Zakaat. On the other hand, the amount owing to trade creditors is deductible because those debts have been incurred in respect of the acquisition of stock in trade which is a Zakaatable asset.

The legal basis on which debts are deducted according to Hanafi Law is as follows: the payment of debts is a basic necessity and the assets of the debtor are to the extent of the debts exposed to the claims of creditors. Accordingly, that proportion of the Zakaatable assets which are necessarily required to pay debts are not subject to Zakaat as the debtor cannot be said to be wealthy⁽²⁾ in relation to such proportion. Zakaat is, bearing in mind, levied on assets which *inter alia* are in excess of basic necessities. (as will more fully appear hereinafter)⁽³⁾.

1. According to the Shafei view, debts are not deductible from the value of Zakaat assets for purpose of calculating the Zakaat payable. This view may be adopted where, for instance, the deduction of long-term liabilities (such as mortgage bond, bank overdraft and shipper's loan) would have the effect of considerably reducing Zakaat liability or otherwise cancelling same. (for the Shafei view, see Badai).
2. Is supported by the following statement of Usman (R.A.), the third caliph:
"This is the month of discharging your Zakaat. Whoever is indebted to another must first pay his debts. Thereafter, he must pay his Zakaat from the balance remaining."
(Muwattaa of Imaam Malik, Bukhari and Baihaqi)-
The sahabah who were present at the time of this statement concurred therein. The companions of Imaam Malik (R.A.) also quote the following Hadis on the authority of Ibn Umar (R.A.):
The Prophet (S.A.W.) said: *"There is no Zakaat on a person who has 1000 dirhams and who is indebted for the same amount"*. (See Ihtaus Sunan vol. 9 p 10).
3. Because the Holy Prophet (S.A.W.) has said: *"Take Zakaat from the wealthy amongst you and give it to the poor amongst you."*
(Tirmidhi and other authentic books of Hadis).

CONDITIONS RELATING TO PROPERTY

In order to impose the least burden on the individual, Allah has indentified the assets which are subject to Zakaat. The principle is that gold and silver and cash money (and shares on the stock exchange and debts) will always be subject to Zakaat. Any other asset will only become subject to Zakaat if that asset was bought with the clear intention to resell in which case such asset is regarded as stock in trade. To decide which of the asset is stock in trade, the intention at the time of purchase only is relevant. Hence, no Zakaat is payable if the asset was bought for personal use (and not to resell) although the buyer intends that if he will sell the asset later he could make a profit. Similarly, if he bought the asset for personal use and subsequently changes his mind, the asset will not be converted into stock in trade.

a) Ownership

The Zakaat payer must be the complete owner of the property which is subject to Zakaat. This is for the reason that the payment of Zakaat represents a transfer of ownership from the rich to the poor. Such transfer is only possible if the transferor (the Zakaat payer) is the owner of that which he transfers to another.

The purported transfer of another's property (eg. money belonging to a third party) cannot be conceived. ⁽¹⁾ The ownership must be complete and unrestricted in the sense that the owner must have physical control or possession (directly or through an agent) over the assets and must be able to use, enjoy and dispose of it for his benefit ⁽²⁾. For example, gold coins which are pledged as security for a debt are for the duration of the pledge not subject to Zakaat because the coins are in the possession of the pledgee (creditor). Similarly, money paid as a deposit to a landlord, or to the electricity department, as security, will not be subject to Zakaat.

Similarly, goods purchased by a trader and not delivered to him are in the absence of possession not subject to Zakaat ⁽³⁾. The reason for this is that the owner cannot be said to be rich if he is not able to derive benefit from property which he does not possess - regard being had to the fact that Zakaat, according to Hadith, is levied on the rich for the benefit of the poor ⁽⁴⁾.

Debts ⁽⁵⁾, on the other hand, cannot be regarded as the property of the creditor as they represent the right to claim payment of the amount owing by the debtor. It follows that it is desirable that debts be subject to Zakaat once payment thereof is made to the creditor and the Zakaat year passes thereon. Debts are nevertheless deemed to be the property of the creditor and therefore, liable to Zakaat because of the strong possibility of realising them (even if by levying execution against the assets of the debtor).

1. Badai

2. Badai

3. Fathul Qadeer

4. Badai

5. see general Badai

Imam Abu Hanifah (R.A.) has classified debts into three categories ⁽¹⁾ namely:

i) Trade Debts

These refer to debts arising in respect of:

- a) goods sold and delivered in the ordinary course of business;
- b) moneys lent and advanced (loans),
- c) the loan of gold and silver.

For example, a trader sells goods (on credit) to another for a purchase price of R5 000=00; or A lends B R10 000=00. The ruling for this class of debts is that the creditor, upon repayment of the amount owing to him, is obliged to pay Zakaat for the entire period of credit - that is, for the Zakaat years calculated from the date of sale giving rise to the debt to the date of repayment. Imam Abu Hanifah (R.A.) was of the view ⁽²⁾ that although the debtor may be a reliable person there exists the possibility of non-payment of the debt. Accordingly, he held that the obligation (wujub) to pay the Zakaat only arises upon payment of the debt to the creditor in which event he is liable to pay the Zakaat of preceding years on the amount of the debt.

ii) Non-Trade Debts

These refer to amounts owing in respect of the sale of goods other than trading stock. For example, the purchase price of the sale of personal clothing, or motor vehicle ⁽³⁾ or land. The preferable view ⁽⁴⁾ in the case of such debts is that Zakaat is not payable for the preceding years but is only payable for the Zakaat year calculated from the time of repayment of the debts. In other words, Zakaat is payable thereon in the year of receipt.

1. See generally Badai

2. This view is based on the following statements of Hadrat Ali (R.A.), as reported by Imam Muhammad (R.A.): "If a creditor obtains repayment of debts due to people, then he must pay Zakaat for the preceding years." For a detailed and illuminating discussion of this subject, see the article entitled "Banks and Financial Institutions: The Question of Zakaat" by Maulana Taqi Usmani which appeared in the Urdu journal *Al-Balagh* (p.6-10 — issue of Shawwal, 1401) published by Darul Uloom Karachi.

3. It must be noted that if one is a dealer in motor vehicles, then the motor vehicles would constitute stock-in-trade. Accordingly, the purchase price (or part thereof) owing in respect of the sale of the vehicles would constitute trading debts or hock debts. The same principle applies to a developer who buys land in order to resell the same at a profit. The clear intention to resell an asset at the time of its acquisition converts that asset into stock in trade.

4. See Badai, under "Conditions Relating to Property" the other view is that Zakaat is payable for preceding years on repayment of debt.

iii) Other Debts

These relate to debts that arise from any other cause: that is, debts that do not arise from the sale of goods or property. For example, debts owing in respect of inheritance, dowry, rental, wages, provident fund payments and *diyah*. The ruling for this class of debts is that Zakaat is not payable unless the full amount is paid and one Zakaat year passes thereon after payment. No Zakaat is payable for preceding years.

On the 28 December 1985, The Islamic Fiqh Academy, based in Jeddah, a body of qualified Muslim Jurists, representing Muslim Countries, passed the following resolution relating to the Zakaatability of debts after detailed discussion and debate:

1. Zakaat is payable on debts each year if the debtor is sound and able to pay the debt.
2. Zakaat is payable on the debt once upon repayment if one year passes thereon if the debtor is in financial hardship or if he deliberately delays payment.
- b) Property must have Potential of Growth The assets or property which is subject to Zakaat must have the potential of growth as recognized by the shariah.

This is so because the word "Zakaat" itself means "Growth" or "Increase".

Accordingly, growth or increase in wealth can only be achieved in relation to assets which have the potential of growth ⁽¹⁾. For example, stock in trade is subject to Zakaat because the sale thereof in the ordinary course of business is a source of profit.

This may be expressed in another way, namely that, the property or assets subject to Zakaat must be in excess of basic necessity. Basic necessity means property or assets without which man cannot survive, such as personal clothing, household furniture and effects, tools of trade and residential dwelling ⁽²⁾. On the other hand, assets that have potential of growth and are therefore subject to Zakaat may be broadly classified as follows:

- i) gold, silver and money
- ii) stock-in-trade
- ii) livestock (goat, sheep, cows and camels) ⁽³⁾
- iv) agricultural produce
- c) One Year must Elope over Property and Maal-ul-Mustafaad As stated above, the Zakaat asset must have the potential of growth or increase. It is clear that such growth can only be realized over a period of time which in the normal course is one year ⁽⁴⁾. It is therefore necessary that one year elapses over the property which is subject to Zakaat, in accordance with the following statement of the Holy Prophet (S.A.W.):

"There is no obligation to pay Zakaat on property until a year has elapsed over it"

1. See Badai

2. See Shaami.

3. The discussion of Zakaat on livestock and agricultural produce is beyond the scope of this book.

4. See Badai.

The position of property which is acquired during the course of the year after the completion of nisaab must be distinguished as follows:

- i) If the acquisition or addition during the year is not of the same kind or category as the existing property, then the Zakaat years for each kind of property will be calculated separately, and the acquisition or addition will not be added to the existing property for purpose of calculating Zakaat. For example, a person has gold or silver and thereafter during the course of the year acquires sheep. In this case, the year for the gold or silver and sheep will be calculated separately and there would be no addition or joinder for Zakaat purposes by consensus.
- ii) The property acquired during the year is of the same kind or category as that of the existing property. This may take two forms:
 - a) The subsequent acquisition is an increase deriving from existing property, for example, profit arising during the year from sale of trading stock;
 - b) The subsequent acquisition is not a yield or increase of existing property, but is acquired from another source, for example, a person has cash and thereafter during the year acquires further cash by way of inheritance or donation.

In both cases, (a) and (b), subsequent acquisition will be added or joined to the existing property for Zakaat purposes and the Zakaat for both will be paid together at the end of the Zakaat year for the existing property. In other words, Zakaat years will not be calculated separately for each subsequent acquisition. This is expressed in the principle "*derivations in the course of the year is added to the nisaab of its kind*".

If the subsequent acquisition is made after the expiry of the Zakaat year, then a new year will be calculated. The subsequent acquisition cannot be added to existing property where the latter is below nisaab ⁽²⁾.

If the nisaab is destroyed during the year, then that year no longer applies so that a new year will be calculated for the property acquired after destruction. For example, the sole assets of the sole proprietor is his trading stock which is totally destroyed by fire during the year. If thereafter in that year he acquires further stock, a new year will be calculated for Zakaat purposes.

1. Muwatta, Imam Malik (R.A.), Kitabuszakaat

2. See Aalamgiri (Fatawah Hindiah)

- d) The Property must be Equivalent to Nisaab (Minimum Quantity of Wealth on which Zakaat is Payable).

Zakaat is not levied on property which is below nisaab. When the Holy Prophet (S.A.W.) sent the well known companion Mu'az (R.A.) as governor to Yemen, he instructed him *inter alia* as follows:

"Inform the people of Yemen that Allah has made Zakaat obligatory on them - which (Zakaat) is to be taken from the rich amongst them and distributed amongst their poor"⁽¹⁾.

It follows that Zakaat is levied on the rich. Richness on the other hand relates to quantity of wealth in regard to which the financial positions of people differ. Instead, therefore, of leaving the definition of "rich" to opinion (which would create uncertainty and dispute), the shariah has fixed the nisaab. A person owing nisaab is said to be rich in the sense that he owns wealth in excess of necessities of life, and on which Zakaat is payable⁽²⁾.

It is a condition that nisaab be present at the beginning and end of the Zakaat year. Accordingly, if the property decreases below nisaab during the year but is equal to, or exceeds, nisaab at the end of the year, Zakaat is nevertheless payable⁽³⁾. The nisaab for gold and silver has been fixed by the Holy Prophet (S.A.W.) himself⁽⁴⁾ and has not been left to man's subjective discretion. Consequently, there is consensus of the jurists (ijma) which is supported by the continued and uninterrupted practice of the Muslim community since the time the Holy Prophet (S.A.W.) to present day that the nisaab of silver is two hundred (200) dirhams of pure silver, and that of gold is twenty (20) dinars. The agreed conversion at to-days rates is as follows:

200 dirhams equals 19,687 troy oz. (612,36 grams of silver).

20 dinars equals 2,8125 troy oz. (87,48 grams of gold).

1. Tirmizi, Kitabus Zakaat - in view of the fact that the Prophet's instruction related to the collection and distribution of Zakaat amongst Muslims only, the jurists are unanimous that Zakaat cannot be given to non-Muslims. See commentary to Tirmizi Maulana Taqi Usmani op cit p. 34.
2. Badai and Fathul Qadeer
3. The Shafei view is that the presence of nisaab throughout the year (beginning to the end) is a condition for payment of Zakaat, except in the case of trading stock the nisaab whereof need only be present at the end of the year. (Badai)
4. In a number of Hadis including written instructions to the well known companion Amr Ibn Hazam (R.A.) when the latter was sent as governor to Najran, an area of Yemen (see Qardawi Fiqus Zakaat, vol.1 p. 246-252)

In view of the fact that the nisaab of gold and silver has been fixed by the Holy Prophet (S.A.W.) as aforesaid, the nisaab cannot be changed or varied ⁽¹⁾ on the ground of ijtihad and qiyas. The latter modes of juridical deduction and inference by analogy only apply in the absence of an express Qur'anic text, Hadis or consensus of jurists (ijma). The position is summarized by Imam Malik (R.A.) in his well-known work Al-Muwatta:

"The established path (Sunnah) in which there is no difference of opinion is that Zakaat is obligatory on twenty dinars (of pure gold), just as it is obligatory on two hundred dirhams (of pure silver)"

The agreed amount of Zakaat payable is two and a half percent ⁽²⁾ of:

- i) The value of gold and silver if equal to nisaab in weight;
- ii) Trading stock, or its market value at the time of obligation of payment of Zakaat, if the stock is equal to nisaab ⁽³⁾.
- iii) Cash on hand if equal to nisaab (to which should be added book debts and shares - see example at the end).

1. This is why the Qur'an describes the amount of Zakaat payable as a "Fixed Right" in the verse:
"In their property is a fixed and known right for the poor and the needy."
2. In accordance with the statement of the Holy Prophet (S.A.W):
"Give two and a half percent of your property (as Zakaat)" (see Badai).
3. See Badai

Recipients of Zakaat

In view of the fact that opinions may differ as to the recipients of Zakaat, the Qur'an has fixed eight categories of recipients in verse 60 of Surah Taubah, as follows:

"Zakaat is only the right of the poor, the needy, those employed to collect it, those whose hearts are made to be attracted to Islam, for freeing the slaves, for the debts of debtors, for Jihad and for the traveller - this order has been prescribed by Allah. And Allah is most knowing and wise"

There is consensus (ijma) amongst the jurists that the disbursement of Zakaat is solely confined to these recipients and no other. To the extent that the Holy Prophet (S.A.W.) was once asked by a companion to give the latter Zakaat. The Holy Prophet (S.A.W.) replied:

"Allah has fixed eight categories of recipients. If you qualify as being from amongst these, I will give you your right" ⁽¹⁾

We shall now briefly deal with each of the eight categories:

5.1 Fuqarah and Masakeen ("Poor and Needy")

The Holy Qur'an has mentioned these two classes of recipients at the beginning of the verse. It follows that the essential purpose of Zakaat is to assist and uplift the poor and needy in society ⁽²⁾.

The Fuqarah and Masakeen are extremely poor persons:

- a) who do not own any property or assets at all ⁽³⁾; or
- b) who do not own any property or assets in excess of basic necessity (eg. house, furniture and effects, personal clothing, servants, tools of trade), ⁽⁴⁾ or
- c) who own property in excess of basic necessity but the excess is below the value of nisaab.

1. Reported by Abu Daud

2. Qardawi, Fiqus Zakaat, vol. 2, p. 544

3. Masakeen according to the Hanafi jurists. Amongst them are those who do not have a day's food or clothing and are unable to work. They can therefore beg to the extent of necessity. (Shaami).

4. (b) and (c) are defined as fuqarah. It follows that relatively the masakeen are more needy than the fuqarah. The distinction however has no relevance to Zakaat, as both are specified as recipients. Fuqarah, however, cannot beg.

5.2 Aamileen ("Zakaat Collector")

Does the worker of a national body in a non-Islamic State, which collects Zakaat, qualify as AAMILEEN?

In this regard, MUFTI KIFAYATULLA, a distinguished Mufti, states:

"the collectors of Zakaat may be paid a salary from the Zakaat collected by them, even if they are rich. Provided that they shall under no circumstances be paid an amount exceeding one half of the total collected by them." ⁽⁸⁾

The salary which the aamileen receive is a reward for their labour and effort in collecting Zakaat. Accordingly, a rich person ⁽¹⁾ if employed in this capacity is entitled to receive a salary from the Zakaat collected. In regard to the remaining seven categories of recipients, NEED as defined is a requirement ⁽²⁾ and a rich person therefore cannot be a recipient of Zakaat.

In view of the fact that the primary recipients of Zakaat are the poor and needy, the sum total of the salaries payable to the aamileen must not exceed half of the amount of the Zakaat collected ⁽³⁾.

The head of the Islamic State is responsible for the needs and welfare of the poor within his jurisdiction ⁽⁴⁾. He is therefore deemed to be their agent. The aamileen accordingly, as employees of the head of state, are likewise agents of the poor and needy. It follows that the Zakaat obligation is discharged as soon as the Zakaat is paid to the aamileen ⁽⁵⁾ in accordance with the principle that the agents possession is deemed to be possession by the principal.

1. By consensus (ijma)

2. According to Imams Abu Hanifah and Malik: Mufti Shafei, op city p.46

3. Ruhul Maani

4. By virtue of his overriding authority, (Wilayatul Aamah)

5. By consensus

6. Mufti Shafei (R.A.). The system of Zakaat in the Qur'an, Urdu, 1978 ed.p. 37-38

7. Qardawi, vol.1 p. 66-71. For example, portion of verse 20 of Surah Muzammil, namely "Establish Salaat and Pay Zakaat" is amongst the early Meccan verses. The nisaab, however, was fixed in Medina. See also: Maulana Taqi Usmani, Lectures on Tirmidhi, Vol.2, 1983, Darul Uloom, Karachi, p. 395-397

8. KIFAAYATUL MUFTI, VOL. 3, PAGE 269.

5.3 Mu-Allafate-Quloobuhum ("*Those whose Hearts are Allured to Islam*")

This category of recipients refer to the poor and needy Muslims ⁽¹⁾ (fuqarah and masaakeen) who are given Zakaat for the express purpose of strengthening their hearts and making them incline to Islam. Non-Muslims are excluded in accordance with the general principle that they do not qualify as recipients of Zakaat ⁽²⁾. According to Imams Shafei and Ahmad a rich person possessing nisaab may receive Zakaat under this category ⁽³⁾.

5.4 Ar-Riqaab ("*Freeing the Slaves*")

The word Riqaab is the plural of Raqabah which literally means "*neck*". In usage, it is applied to the whole person of a human being and therefore refers to a slave.

The jurists have in the context interpreted Riqaab in two senses: the first as disbursing Zakaat for the purpose of freeing a slave ⁽⁴⁾, the second as disbursing Zakaat for the purpose of assisting that class of slave known as Mokatib in obtaining his freedom. Mokatib is that slave who enters into a contract with his master in terms of which the latter undertakes to free him against payment of a fixed sum of money.

The general body of the jurists ⁽⁵⁾ (jumhur) are of the view that this category is confined to the Mokatib. This is for the reason that in paying Zakaat the recipient thereof must be made owner of the Zakaat property. In addition, Zakaat cannot be paid as consideration for services rendered or for counter-performance on the part of the recipient. In the case of disbursing Zakaat to free a slave, the master becomes owner of the Zakaat in return for the slave's freedom. The slave himself cannot own property for want of legal personality. On the other hand, payment of Zakaat to the Mokatib makes the latter the owner thereof ⁽⁶⁾.

1. According to Imams Abu Hanifah (R.A.) and Malik (R.A.)
2. The Ahadis in which the Holy Prophet (S.A.W.) is reported to have given property to non-Muslims for the purpose of attracting them to Islam refer to property given from booty (Ganimah) and not from Zakaat. The Baitul Mal (public treasury) is comprised of four independent and separate sections. One of these is that of holding one-fifth share of booty which may be agreement of jurists be distributed amongst both needy Muslims and non-Muslims. Tafsir Qurtubi, Mufti Shafei op cit.p. 39-47.
3. Mufti Shafei (R.A.), op cit.p. 46
4. one view attributed to Imam Malik (R.A.), Mufti Shafei op cit, p. 49
5. Tafsir Ruhul Maani: including Imam Abu Hanifah and Shafei (R.A.)
6. Badai

5.5 Gaarimeen ("Debtors")

The word Gaarim (singular of Gaarimeen) means debtor. The verbal noun (Gurm) refers to the obligation of the debtor to pay his debts and the reciprocal right of the creditor to demand payment of the amount owed to him.

It is clear that Zakaat is only permissible to the poor in accordance with the statement of the Holy Prophet (S.A.W) ⁽¹⁾

"I have been ordered to take Zakaat from the Rich and distribute it among the poor"

It follows that the verse refers to a specific type of debtor, namely, the debtor who is poor. Accordingly, and in order to qualify as a recipient under this category, a debtor can only be said to be poor if:

- 1) his debts exceed his assets, or
- 2) his net assets (the difference between his assets and liabilities) is below nisaab.

In determining whether a debtor qualifies as Gaarim, the basic necessities of life (house, household furniture and effects, personal clothing, servant, vehicle) must not be taken into account. Hence, for purposes of Zakaat, a debtor will not be obliged to sell his only house in which he resides to pay off his debts.

A governor of Umar Ibn Abdul Aziz ⁽²⁾ once wrote to him in regard to the payment of Zakaat to a Gaarim: ⁽³⁾

"Does a person who owns a house, servant, horse and household furniture still qualify as a Gaarim?"

The righteous caliph replied:

"Most certainly, it is necessary for a Muslim to own a house in which he may reside, a servant who suffices for his needs, a horse on which he may battle against his enemy, and household furnitureYes, give him Zakaat as he is a Gaarim."

A person qualifies as a recipient under this category if his sole asset is the cash sum of R10 000=00 and his debts amount to R11 000=00. On the other hand, he cannot take Zakaat if he has R10 000=00 and debts only of R1 000=00. In the latter case, he would be deemed as rich by the Shariah.

1. See generally: Ahkamul Qur'an, Jassas, vol.3, p.126, commentary on S9: V:60

2. One of the rightly-guided caliphs

3. Kitabul Amwal, quoted by Qardawi, op cit, vol.2, p.629

According to the certain jurists, ⁽¹⁾ a person who has borrowed money or incurred a debt in respect of an unlawful act (for eg. purchase of wine or gambling) is not entitled to Zakaat under this category because payment of Zakaat to him would amount to assisting and participating in sin which is Haraam.

5.6 Fi-Sabeelillah (*"In the Cause of Allah"*)

The words Fi-Sabeelillah in their literal grammatical sense cover every sincere act (enjoined by shariah) which brings a person closer and nearer to Allah. They therefore cover generally all forms of good deeds and works ⁽²⁾.

The majority of jurists (Jumhur) ⁽³⁾ agree that this category refers to Jihad and the soldiers (mujahideen) who participate therein ⁽⁵⁾.

The jurists are unanimous that Zakaat cannot be spent on projects that would promote the interests of and be beneficial to the Muslim community, for example, the construction of mosques, madressas, educational institutions, the building of hospitals, roads, bridges and the like ⁽⁶⁾. This is so because the transfer of Zakaat from the Zakaat payer to a natural person entitled thereto in terms of the eight categories specified by the Qur'an (Tamleek) is a condition precedent to the discharge of the Zakaat obligation. Moreover, the primary purpose of Zakaat, apart from the spiritual benefits referred to herein, is to assist and uplift the extremely poor and needy, that is the financially lowest segment of society. This appears clearly from the fact that the poor and needy have been prescribed as the first class of recipients. This purpose would be frustrated if Zakaat moneys were utilised for purposes other than those laid down in the Qur'an. In an Islamic State moneys would be allocated for such projects from non-Zakaat revenues paid into the baitul maal (public treasury) such as from taxes (kharaaj) and booty (ganimaah).

1. See generally Qardawi, op cit, vol.2, p. 625

2. Ibn Athir, Anihayah, quoted by Qardawi, op cit, p. 635

3. Hedayah, section under Zakaat relating to recipients of Zakaat, see also, Fathul Qadeer.

4. Jumhur, including the four Maza'ib

5. Qardawi, op cit, p. 643-644. In view of the fact that need (Faqr) is a prerequisite for entitlement in all eight categories except Aamileen according to the Hanafi jurists, they therefore are of the view that a poor soldier only qualifies as a recipient under this category. On the other hand, Imam Shafei (R.A.) is of the view that a rich soldier also is entitled to receive Zakaat under this category on the basis of the following Hadis:

"A rich person cannot receive Zakaat except one who fights in the way of Allah..." (Abu Daud)

6. The views expressed by Allamah Rashid Rida (R.A.) and Sheik Shaltut to the contrary are incorrect. For their views see Qardawi, op cit, p. 648-649 and Tafsir Manaar.

Furthermore, if the meaning of Fi-Sabeelillah in this verse were to be extended to cover such public welfare projects, and by implication all good acts, then there was no need for the Qur'an to specify eight classes of recipients. To avoid repetition, reference to Fi-Sabeelillah simply would have sufficed.

Imam Khaasaani ⁽¹⁾, the great jurist of Islam, writes:

"The expression Fi-Sabeelillah refers to all good deeds It embraces within its meaning every Muslim who strives in the obedience of Allah and in the path of good works, provided that he is in need"

Although, he extends the meaning of Fi-Sabeelillah to all Muslims performing good acts enjoined by the shariah, he specifies clearly that the recipient must be poor and needy person (fuqarah and Masakeen). Accordingly, Zakaat could be given to poor and needy Muslims engaged in the noble service of Da'wah.

On the other hand, Zakaat cannot be used for payment of expenses incurred in carrying out Da'wah work such as, petrol expenses, purchase of vehicle, etc.

The Islamic Fiqh Academy established by RABITA in a majority resolution in 1990, whilst reaffirming that the majority of the jurists (jumhur) have restricted the meaning of Fi-Sabeelillah to the soldiers who participate in a Jihaad, held as follows:

"Dawah for the sake of Allah and all efforts in the cause of Dawah should be included in the category of Fi-Sabeelillah referred to in the verse".

The reason stated for the extension was that Dawah is an example of Jihaad.

5.7 Ibnu Sabeel ("Traveller")

This category refers to a traveller who, whilst wealthy at his place of residence⁽²⁾, is in need during his journey, and is accordingly deemed to be poor at that time. It is permissible to give such traveller Zakaat to the extent of his needs. On the other hand, it is not permissible for such travellers to take Zakaat in an amount which exceeds his needs and requirements ⁽³⁾. It is however, preferable for such traveller to borrow funds if he is able to do so than to accept Zakaat.

1. Badai, section in chapter on Zakaat relating to recipients of Zakaat.
2. Jassas, Ahkaamul Qur'an: the term excludes the person who intends to travel but doesn't have any provisions to do so.
3. Fathul Qadeer: he is not obliged to give any excess Zakaat remaining to charity on his return home.

THE PRINCIPLES OF TAMLEEK

Tamleek means the transfer of ownership of Zakaat from the Zakaat payer to a poor and needy person entitled thereto in terms of the eight categories fixed by the Qur'an. It is, in the context of Zakaat subject to the following conditions.

- i) the transferor must be the Zakaat payer (or his agent)
- ii) the transferee (or recipient) must be a natural person entitled to receive Zakaat in terms of the eight categories.
- iii) the transfer of Zakaat must be unconditional.
- iv) the transfer of Zakaat must not be in consideration for services rendered by the recipients.
- v) the transferee (or recipient) must acquire physical possession of the Zakaat and thereby become the owner thereof.

If these conditions are not met, as for instance where Zakaat is paid as salary or used for building a mosque, the Zakaat obligation is not discharged.

We set out below the statements of leading Hanafi jurists in regard to the requirement of Tamleek.

- a) *"Sadaqah is the transfer of ownership (Tamleek) to poor and needy persons. The conditions for the validity of sadaqah in the Qur'an (S9:V60) is Tamleek...and sadaqah is owned by means of physical possession (of the recipient)."* ⁽¹⁾
- b) The Zakaat obligation is not discharged if Zakaat is used to pay the debts of a deceased person, his burial expenses, or for the building of a mosque. The principle (underlying the fulfilment of Zakaat) is the act of giving a portion of one's wealth. Such "giving" can only be realised and effected by Tamleek. Every act of charity which is free of Tamleek does not discharge the Zakaat obligation ⁽²⁾.
- c) *"Surely sadaqah requires Tamleek. Because the condition for Sadaqah is the realization of the ownership in the recipient titled"* ⁽³⁾.

1. Imam Muhammad (R.A.), commentary to Siyar, chapter on Wasiyah Fi-Sabeelillah, vol. 4, p. 244.
2. Mabsut, vol.2, p. 202
3. Jassaas, Akhaamul Qur'an, vol. 3, p. 125

It is clear from the foregoing that the principle of Tamleek is inherent in the word Sadaqah itself and is therefore based on the Qur'anic verses relating to Zakaat. Apart from this, Zakaat is the fixed right of the poor and needy as appears from the following verse of the Qur'an:

"And in their property is a fixed right for the poor and needy"

The right of the poor and needy to receive Zakaat in terms of this verse can only be fulfilled if ownership of Zakaat is physically transferred to their possession so as to vest in them the power of disposition and control over the Zakaat so transferred. On the other hand, if Zakaat is used, for example, to build a hospital for the poor, the right is not fulfilled.

The position is analogous to that of a borrower who can only be said to have repaid his loan if the amount loaned is repaid to the lender. If the borrower pays the loan amount as a contribution towards building a mosque, the right of the lender to repayment of the loan cannot be said to have been fulfilled.

In Islamic History, Zakaat was always disbursed in the manner prescribed. This is supported by the fact that the baitul mal (public treasury) comprised of four distinct and separate facets, one of which relate to the collection of Zakaat. Funds for public welfare projects (building of roads, bridges, canals, etc.) were never drawn from the Zakaat fund but were utilized from the other funds. Although Zakaat was not permitted for the Holy Prophet and his family ⁽¹⁾, the latter received payments from the non-Zakaat funds. It follows therefore that if there was no distinction between the manner of utilisation of Zakaat and non-Zakaat funds both type of funds would have been merged.

There is consensus amongst the four Mazha'ib that Zakaat cannot be used for public welfare projects. The position is summarized by a great jurist ⁽²⁾ of Islam as follows:

"In relation to paying the debts of a deceased person, or paying his burial expenses, or building a mosque, or digging a stream, or similar public welfare schemes - Hadral Sufyaan Thuri, and all the Ulema of Iraq and other ulema are unanimous (ijmaa) that these works cannot be under taken with Zakaat money because they are not included in the eight categories of recipients mentioned by the Qur'an" ⁽³⁾.

1. Banu Hashim, by consensus (ijmaa)
2. Imam Abu Ubayd Qassim Ibn Sallaam, (born 154 Hijrah died 224 H) who was regarded as the most learned scholar of his times, and regarded by one jurist as even more learned than Imams Shafei and Hanbal. He was the author of many works including his well known treatise on Zakaat "Kitabu ul Amwaaal".
3. Kitabu ul Amwaaal, p.610, quoted by Mufti Shafei (R.A.) in an article headed "Removal of Doubt in the Ascription of Tamleek to Zakaat" (Urdu), Fataawah Darul Uloom Deoband, vol.2, p.1066.

IMPORTANT RULES RELATING TO RECIPIENTS OF ZAKAAT

As stated earlier, Zakaat cannot be given to a person who owns any property equal in value to nisaab but excluding, and not taking into account, his assets of basic necessity or HAAJATUL ASLIA. Hence, Zakaat may be given to a person who only owns a house, household furniture, a servant, one vehicle, and personal clothing. If he owns any other property equal to nisaab, he cannot take Zakaat.

7.1 The Zakaat payer may distribute his Zakaat to each of the eight categories of recipients specified in the Qur'an, or any one of them ⁽¹⁾. He may even pay his Zakaat to one individual.

7.2 Zakaat cannot be given to ascendants (parents, grandparents, etc.), or descendants (children, children's children, how low-so-ever) because the benefits of Zakaat in such cases would normally be shared between them. This would therefore in a sense amount to giving Zakaat to ones self and thereby detract from the principle of Tamleek. For the same reason, Zakaat cannot be given to one's wife⁽²⁾ (by consensus). Zakaat, however, may be given to all other near relatives (apart from ascendants and descendants) such as brothers, sisters, uncles, aunts due to the absence of shared benefit therein. In fact, giving of Zakaat to such relatives is preferable ⁽³⁾.

7.3 Zakaat cannot be given to a minor child of a rich man because such minor is deemed to be rich by virtue of the wealth of his father. If the child is major and needy, Zakaat may be given to him irrespective of the financial standing of the parent. On the other hand, Zakaat may be given to a child of a rich mother.

7.4 It is permissible to give Zakaat to a poor woman whose husband is rich because she is not considered rich by virtue of the right to being maintained by him. Similarly, it is permissible to give Zakaat to a poor person whose child is rich ⁽⁴⁾.

7.5 It is not permissible to give Zakaat to non-Muslims by consensus of jurists. Besides Zakaat, other forms of voluntary charity (sadaqah naafilah) may be given to them ⁽⁵⁾.

1. According to Imam Shafei, it is necessary to distribute Zakaat amongst each of the eight categories if available.

In the Hadis *"Take from the rich and give to the poor"* the Holy Prophet (S.A.W.) mentions only one category. The purpose of the Qur'anic verse (V.60:59) is to restrict the recipients to the eight categories to the exclusion of others, and not to intend an equal distribution amongst them, Badai

2. Conversely, there is a difference of opinion amongst the Hanafi jurists, as to whether or not the wife may give Zakaat to her husband. Imam Abu Hanifah (R.A.) says that she may not do so. Abu Yusuf (R.A.) and Muhammad (R.A.) say that the wife may give Zakaat to her husband on the basis that the Holy Prophet (S.A.W.) granted Zainab (R.A.) the wife of Abdullah Ibn Masud (R.A.) permission to give her husband (Abdullah) Zakaat. This Hadis is construed as referring to Nafil Sadaqah, Hedaayah. The view of Abu Hanifah is preferred.
3. In accordance with the statement of the Holy Prophet (S.A.W.) that sadaqah to near relatives brings double reward: reward of maintaining relationship. (Tirmidhi)
4. Badai
5. Moreover, according to Imam Abu Hanifah and Muhammad, Sadaqatul Fitr may also be given to non-Muslims although it is preferable to give same to Muslims. Imams Abu Yusuf and Shafei differ (Badai).

7.6 Zakaat cannot be given to Banu Hashim ⁽¹⁾ out of respect and honour for the Holy Prophet (S.A.W.) and in accordance with the Hadith ⁽²⁾: *"This Sadaqah is the dirt (of the property) of the people. It is not permissible to Mu'ammad (S.A.W.) or his family"*.

7.7 If the Zakaat payer considers a Muslim recipient to be probably poor ⁽³⁾ and consequently gives the latter Zakaat, the obligation is discharged even if such recipient is not entitled to take Zakaat. Conversely, if the Zakaat payer doubts the recipient's entitlement to Zakaat, or does not apply his mind as to such entitlement, but nevertheless gives such recipients Zakaat, the obligation is not discharged if the recipient is not entitled to receive Zakaat. The obligation is obviously discharged in all cases where the recipient is entitled to receive Zakaat.

7.8 Zakaat may be transferred for distribution in another country if the poor of that country are more needy than the poor of one's own country, or if one's needy relatives are living in the foreign country ⁽⁴⁾.

7.9 Zakaat may be given to a normal healthy person who has the potential for earning a livelihood if he is poor and does not own nisaab ⁽⁵⁾.

7.10 It is permissible for the Zakaat payer to pay his Zakaat in advance after the completion of nisaab ⁽⁶⁾ but before the expiry of the Zakaat year in question. On the other hand, the Zakaat payer is obliged to pay his Zakaat immediately upon completion of the Zakaat year concerned and cannot delay or postpone payment to a future date without valid reason ⁽⁷⁾. He should preferably pay his Zakaat within twelve months.

7.11 A person owns a house which is large and he does not require the whole house. The owner is still a recipient of Zakaat and the whole house will be counted as basic necessity.

7.12 According to Imam Mahommed (R.A.), a person is receiving income from a property but the income is not sufficient to maintain him and his dependants, he will be considered Faqir and will be entitled to receive Zakaat (Raddul Muhtaar).

1. Family of Ali, Abbas, Ja'far, 'Aqeel and Haarith Ibn Abdul Muttalib, Hidayah.

2. Reported by Sahih Muslim.

3. Judging, for example, by his outward appearance, as for instance a person sitting amongst the ranks of the poor and wearing their apparel (Shaami). In the case of debtors (gaarimeen) however, an investigation should be made to verify the existence of the debts. Such investigation is normally easy. (Qurtubi as quoted by Mufti Shafei (R.A.) op cit, p. 61).

4. According to Imam Shafei (R.A.) it is not permissible to transfer Zakaat for distribution in a foreign country unless there are no entitled recipients in one's own country. (See Maulana Taqi Usmani, commentary to Tirmidhi, op cit, p. 474)

5. However, in view of the fact that a person who does not have food for a day and night is only entitled to beg, it is impermissible for such healthy poor person to beg, in accordance with the Hadith: "Zakaat is not permitted to a rich person and it is not permissible for a normal healthy person to beg." Tirmidhi, Maulana Taqi Usmani ibid p. 476.

6. If he pays before completion or existence of nisaab, the Zakaat obligation will not be discharged by consensus and the Zakaat purportedly paid will be deemed to be Nafil Sadaqah. this is so because the existence of nisaab is the cause of the obligation of Zakaat. Maulana Taqi Usmani, op. cit, p. 508

7. Aalamgiri, the delaying of payment without valid reason is a sin. The order of payment of Zakaat to the poor and needy persons is conditioned by the context of immediate payment, namely, that the purpose of Zakaat is to remove need, hardship and difficulty. Fathul Qadeer, quoted by Qardawi, op cit, p 821.

INTENTION AND ZAKAAT

8.1 In the light of the fact that Zakaat is an ibadah and one of the five fundamental pillars of Islam, the intention to give Zakaat is a prerequisite for the discharge of the Zakaat obligation (as in the case of salaah and saum). In the absence of such intention (whether due to ignorance or forgetfulness) the Zakaat obligation is not discharged and the amount paid over to the recipient will be deemed to be nafl sadaqah. The requirements of an intention to fulfil Zakaat is necessary in order to distinguish payment of Zakaat from other forms of compulsory (eg. Nazr, Kaffaarah) and voluntary payments to poor and needy persons ⁽¹⁾. The absence of an intention shows that the payment was made without the purpose of fulfilling a Divine (Shari) obligation and thereby achieving closeness to Allah.

8.2 The intention to give may be made in the heart ⁽²⁾ or expressed verbally.

8.3 The Zakaat obligation is discharged if the intention is made at either of two points of time:

- a) at the time of giving of Zakaat; OR
- b) at the time of separating and setting aside the Zakaat ⁽³⁾ amount for distribution. In this case, the Zakaat would only be discharged if the physical transfer to the needy recipient (faqir) is made.

8.4 If a person gives an amount of money or property to a poor and needy person who does not own nisaab, and fails to make any intention of Zakaat ⁽⁴⁾, then:

- i) if such property or money is still in the hands of the poor and needy persons, the Zakaat obligation will be discharged;
- ii) if the property or money is no more in the hands of the poor and needy person, the intention so made does not suffice and the Zakaat obligation is not discharged.

1. Barur Raa'iq, chapter on Zakaat: reference to intentions as condition for validity of Zakaat.
2. It is preferable that the intention be expressed in the heart which is the source or place of beliefs.
3. So that if Zakaat is paid thereafter in instalments over intervals of time, it is not necessary at the time of each payment to make separate intention. This is to avoid difficulty and burden on the Zakaat payer (Shaami).
4. In respect of such money or property: see Aalamgiri.

8.5 If the Zakaat payer or owner pays the Zakaat amount to an agent for distribution to the recipients entitled and makes the intention at the time of such payment to the agent, then the Zakaat obligation will be discharged if the agent gives the Zakaat to the poor without any intention on his part. This is so because the intention of the Zakaat payer only is relevant for purposes of Zakaat⁽¹⁾.

8.6 It is not necessary to inform the recipient of Zakaat (faqir) that the amount given to him constitutes Zakaat. A person may permissibly give Zakaat to a poor and needy person and inform him that the amount so given is a "gift" or "loan"⁽²⁾.

8.7 A person pays the Zakaat of another from the latter's property and without his permission, and thereafter such owner sanctions the payment. In such a case, if the amount paid is still in the hands of the needy recipient the Zakaat obligation is discharged. If not, the Zakaat obligation will not be fulfilled and the payment will be lieu of Nafil Sadaqah⁽³⁾.

8.8 A person gives an agent an amount of money for distribution as voluntary charity (nafl sadaqah). Prior to payment thereof by the agent to a poor and needy person (faqir), the owner makes an intention that the amount so given should represent Zakaat in which event if such amount is thereafter given to the poor then the Zakaat obligation would be discharged⁽⁴⁾.

1. Aalamgiri; Bahrur Raa'iq
2. Aalamgiri
3. Badai
4. Bahrur Raa'iq

AGENCY AND ZAKAAT

An owner is not obliged to distribute his Zakaat to the entitled recipients himself. He may validly appoint an agent (whether natural person or organisation) to pay Zakaat on his behalf.

In appointing such an agent, the Zakaat payer must bear in mind that the Zakaat obligation is not discharged if the agent fails to distribute the Zakaat to the entitled recipients. At the same time, possession of the Zakaat amount by the agent will be deemed to be possession by the principle (Zakaat payer). Certain organisations are guilty of serious maladministration by collecting Zakaat and not distributing same for a number of years without valid reason therefor. It follows that the Zakaat payer must exercise utmost care in appointing an agent who must be both trustworthy and conversant with the laws of Zakaat.

The agent unless instructed to the contrary may validly give Zakaat to his wife and children ⁽¹⁾ if the latter do not own nisaab. On the other hand, the agent himself cannot take Zakaat unless he had express authority to do so. For example, he may take if the Zakaat payer gives him a mandate in the following terms: *"Pay the Zakaat to whomsoever you wish"* ⁽²⁾.

If the Zakaat payer without handing over his Zakaat to the agent merely says: *"Give Zakaat on my behalf"*, and the agent distribute Zakaat on behalf of the principal, then the Zakaat obligation is discharged. The amount so paid by the agent as Zakaat will be owed to him by the principal (Zakaat payer).

1. Minor children may only take if their fathers are poor. If their fathers are rich, they are deemed to be rich, (Shaami).
2. Shaami

ZAKAAT ON TRADING STOCK

The Muslim jurists are unanimous that Zakaat is payable on trading stock if the value thereof is equal to the value of nisaab ⁽¹⁾. This is so because Zakaat means "growth", and growth in wealth is achieved through commerce in the form of profits ⁽²⁾. In addition, one year must pass over the stock-in-trade so that, notwithstanding fluctuations in stock levels during the course of the year, Zakaat will only be calculated on the market value of stock in trade existing as at the end of the Zakaat year in question.

In order for the goods to qualify as trading stock, the purchaser must have the clear intention at the time of the contract of purchase and sale to purchase the goods for the purpose of resale. Consequently, goods that have been purchased for the personal ⁽³⁾ and not for purposes of resale are not subject to Zakaat irrespective of their value. Similarly, goods originally bought for personal use are not subject to Zakaat if the purchaser subsequently intends to sell them for trade. Once sold, however, the purchase price would be subject to Zakaat if one year passes thereon ⁽⁴⁾. Moreover, a person may purchase goods for personal use with the intention that if he is able to obtain a profit thereon he would sell the goods in which event no Zakaat is payable on such goods ⁽⁵⁾.

It follows that Zakaat is not levied on fittings and fixtures and on plant and machinery. These are not assets of growth and depreciate in value over time. On the other hand, if a person conducts business in the sale of such assets (that is, they constitute his trading stock), then Zakaat would be leviable thereon - for example, a business specialising in the sale of certain types of machinery.

Zakaat on stock-in-trade must be calculated at the market value thereof at the time of arising of obligation, namely, at the end of the Zakaat year. Market value represents the price which a willing buyer of such stock-in-trade would pay to a willing seller at the end of the Zakaat year if the whole stock were sold in bulk in a single transaction. Experience, however, shows that it is extremely difficult for the owner of a business to sell his entire stock in trade in a single transaction at the end of the Zakaat year at the selling price. In the case of sales of businesses, stock-in-trade is generally sold at cost price.

1. Liability for Zakaat on trading stock is based on Qur'an, Hadis and Ijma (consensus of jurists) and is supported by the continuous practice of the preceding generations of Muslims - see generally Qardawi, vol. 1, p. 315-326.
2. Badai
3. Excluding gold and silver which are subject to Zakaat under all circumstances - whether for personal use or trade (Badai).
4. Hedayah
5. Durrul Mukhtar

If the stock were to be sold by public auction, it would normally realise a price lower than the cost price. Accordingly, it would be permissible for the Zakaat payer to estimate a bulk price ⁽¹⁾ - that is, the market value of the stock-in-trade if sold in bulk in a single transaction at the end of the Zakaat year for the purpose of calculating Zakaat.

According to Hanafi Law, the partners of a partnership must pay their Zakaat separately from their respective shares in the partnership property ⁽²⁾. In other words, the partnership will not be treated as a single person and accordingly Zakaat will not be levied on the partnership property as a whole.

A company, although regarded as a separate legal person in law, is a form of partnership. Accordingly, a person possessing nisaab who owns shares in a public company must pay Zakaat on the market value of those shares ⁽³⁾ at the end of the relevant Zakaat year notwithstanding fluctuations in the value of the shares during the year.

In assessing Zakaat liability, the Zakaat payer must take into account the value of his trading stock together with the value of his other Zakaatable assets (such as, cash, gold and silver jewellery) and Zakaat must be calculated on the aggregate whole.

1. See Qardawi
2. According to the Shafei Mazhab, the partnership will be treated as a single person and Zakaat will be levied thereon as a whole.
3. Technically, the value of the shares should be reduced by the proportion which represents the value of Non-Zakaatable assets (such as, fittings and fixtures, machinery), on which Zakaat is not payable. For example, a person owns shares valued at R10 000 and he is able to ascertain that 10% of the assets of the Company constitute furniture, fixture and fittings and plant and machinery on which Zakaat is not payable. Accordingly he is obliged to pay Zakaat on R9 000. In determining the Zakaatable value of the share, he should refer to the last balance sheet of the company in order to ascertain the proportion that the Non-Zakaatable assets bears to the whole assets of the relevant Company. See Maulana Taqi Usmani, commentary on Tirmidhi, vol.2, p.418-428.

ZAKAAT ON GOLD AND SILVER

Gold and silver in their nature and essence are minerals that have the potential of growth and increase. Accordingly, Zakaat is obligatory on gold and silver whether acquired for personal use or trade if the weight thereof equals the prescribed nisaab and one year elapses thereon. The nisaab for silver is 19,6875 troy ounces (612,36 grams) and that of gold is 2,8125 troy ounces (87,48 grams).

Apart from gold and silver, Zakaat is not payable according to overwhelming majority of jurists on any kind of jewel, gem or precious stone, such as diamonds, rubies and the like⁽¹⁾. This is so because the original position is the absence of the obligation of Zakaat. If the Shariah has prescribed Zakaat on only gold and silver from amongst the metals, it follows that all other metals are excluded. In addition, all metals other than gold and silver are metals which do not have any intrinsic potential of growth or increase. If these metals (besides gold and silver) are, however, acquired for resale, then Zakaat will be payable thereon as they would then constitute trading stock. It follows that Zakaat is payable on gold and silver jewellery⁽²⁾.

In the case of an alloyed metal, if the preponderating constituent is gold and silver, then the metal would respectively be deemed for purposes of Zakaat to be gold or silver⁽³⁾ (as the case may be). If the preponderating element is a metal other than gold or silver then no Zakaat is payable thereon⁽⁴⁾ unless the value thereof added to the other Zakaatable assets such as cash all in the aggregate equal Nisaab in which case Zakaat will be payable on the whole value.

Zakaat is similarly payable on gold and silver ornaments and utensils, whether for personal use or otherwise. In regard to cash, Zakaat is payable thereon if the amount thereof equals nisaab by consensus, as cash is deemed to fall within the ruling of gold and silver⁽⁵⁾.

1. According to the consensus of the scholars (ijma) and the uninterrupted practice of the preceding generations including Sahabah - see *Ilaus Sunan*, vol.9, p. 72-73
2. According to the Shafai view, Zakaat is not payable on gold and silver jewellery. The Hanafi viewpoint that Zakaat is payable on gold and silver jewellery is supported by authentic Hadis see generally, Maulana Taqi Usmani, *op cit*, p. 452-455.
3. And Zakaat would be payable on the whole metal, as if it were gold or silver. Fathul Qadeer, *op cit*.
4. If the gold and silver (as the case may be) could be separated and used beneficially, then Zakaat would be payable thereon, if it reached value of nisaab. If the gold or silver content equals the content of the non-gold and silver metals, then, it is preferable on the side of precaution to pay Zakaat on the whole. (Fathul Qadeer and Shaami).
5. Shaami.

MISCELLANEOUS RULES

12.1 If a person is in doubt as to whether he has paid his Zakaat or not, then he must pay Zakaat as if he has never paid, that is to say, he must repay his Zakaat ⁽¹⁾.

12.2 The Zakaat payer has a choice ⁽²⁾: he must pay Zakaat from the Zakaat asset itself, or he may pay the value of his Zakaat liability in cash. For example, the sole Zakaat taxable asset of a person is his stock-in-trade comprising of 200 shirts valued at the end of his Zakaat year at R5 000 (five thousands rands). The person may give five shirts ($1/40\text{th} = 2.5\%$) as Zakaat, or he may pay the value as Zakaat, namely, R125 (2.5% of R5 000).

12.3 If the entire property on which Zakaat is levied is destroyed without any fault on the part of the Zakaat owner after arising of the Zakaat obligations (that is, after expiry of the Zakaat year and before payment of Zakaat), the Zakaat obligation is discharged and no Zakaat is payable ⁽³⁾. If part of the property is destroyed, the Zakaat obligation is discharged proportionately ⁽⁴⁾.

12.4 A person is obliged to pay Zakaat on R10 000, namely the sum of R250. He sets aside this amount with a view to paying his Zakaat. The sum of R250 is thereafter lost or stolen in which event the Zakaat obligation is not discharged. If the Zakaat payer dies after setting aside the sum of R250, it will constitute part of his estate to be transmissible to his heirs ⁽⁵⁾.

12.5 An owner is obliged to pay Zakaat but refuses or neglects to do so in which event it will not be permissible for a poor person who does not own nisaab to take the Zakaat so payable from the owner's property or assets without his permission. If the poor person so takes the Zakaat without permission, the owner is entitled to claim the return of the property taken if still in existence. If the property has been consumed or is destroyed, the poor person is bound to compensate the owner.

1. Aalamgiri
2. According to Shafei view, Zakaat must be paid from the thing itself, and the value cannot be paid in cash. Qardawi, op cit, vol. 2, p. 799-808.
3. Fathul Qadeer: according to Imam Shafei, if the Zakaat payer was able to pay his Zakaat prior to such destruction, then the Zakaat obligation is not discharged and he is nevertheless liable to pay Zakaat which would be a debt on him, Hedayah.
4. Aalamgiri
5. Aalamgiri
6. Ibid

12.6 A person purchases an immovable property consisting of a block of flats and shops for purposes of investment (that is not for resale) and not for purposes of business, then the value of such property will be exempt from Zakaat. The rental income together with other Zakaatable assets will be taken into account for purposes of Zakaat provided that one year passes thereon.

A person may similarly own a number of immovable properties for investment (and not resale) in which event the value of all such properties will be exempt from Zakaat. As stated earlier, if the person acquired the property with the clear intention to resell the same, then the asset will be stock in trade and the value thereof at the end of the relevant Zakaat year will be subject to Zakaat. The clear intention to buy for resale must be present at the time of acquisition and not thereafter.

HOW TO CALCULATE ZAKAAT

ASSETS	ASSETS SUBJECT TO ZAKAAH		ASSETS EXEMPT FROM ZAKAAH	
	TOTAL R	ZAKAAH R	TOTAL R	ZAKAAH R
1. House	120 000	—	120 000	—
2. Furniture, household effects	5 000	—	5 000	—
3. Motor Vehicles	15 000	—	15 000	—
4. Gold coins (Kruger Rand)	5 000	5 000	—	—
5. Diamonds, gems stones (not for re-sale)	10 000	—	10 000	—
6. Cash on hand and at the bank	25 000	25 000	—	—
7. Stock in trade-at the market value	100 000	100 000	—	—
8. Plant, machinery, fixtures & fittings	100 000	—	100 000	—
9. Trade debtors (book debts)	25 000	25 000	—	—
10. Shares in Public Companies				
- Listed shares-at market value	5 000	5 000	—	—
- Unlisted shares-at market value	3 000	3 000	—	—
- Unit trusts-at market value	2 000	2 000	—	—
11. Immovable property acquired for letting whether company or privately owned	200 000	—	200 000	—
12. Loan a/c in companies-income of credited, loan a/c (excl capital introduced)	20 000	20 000	—	—
13. Gold and silver (metal)	40 000	40 000	—	—
14. Deposits (rental, electricity etc.)	6 000	6 000	—	—
15. Stamp collection (not for re-sale)	6 000	—	6 000	—
16. Pledge of moveable (eg. gold coins)	6 000	—	6 000	—
17. Painting (not for re-sale)	6 000	—	6 000	—
18. Goods purchased but not delivered exempt	6 000	—	6 000	—
19. Loan debts	20 000	20 000	—	—
TOTAL ASSET → → → → → → → →	725 000	251 000	474 000	
LIABILITIES	TOTAL DEDUCTIBLE		NOW DEDUCTIBLE	
	R	R	R	
1. Mortgage Bond on house	50 000	—	50 000	
2. Bank overdraft (to fund stocks, trade debtors only)	5 000	5 000	—	
3. Trade creditors	40 000	40 000	—	
4. Instalment sale and lease creditors to fund motor vehicles/plant and equipment	60 000	—	60 000	
5. Any other liabilities incurred in respect of an asset on which Zakaat is not payable	10 000	—	10 000	
6. Shipping loans to finance stock in trade &/or trade debtors	30 000	30 000	—	
TOTAL LIABILITIES → → → → → → → →	195 000	75 000	120 000	

SUMMARY

Total value of assets subject to Zakaat	R 251 000
Deduct: Liabilities relating only to assets subject to Zakaat	(75 000)
NET AMOUNT SUBJECT TO ZAKAAT =	176 000
ZAKAAT 2.5% R176 000 → → → → → → →	4 400

NOTES

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