125854 - Scholarly views concerning zakah on debts, and the most correct view

the question

I ve invested money in his business as a sleeping partner, but his way of conducting business wasnt upto my satisfaction and i didnt ask for any profit nor he gave me,so i asked him after a year to give my amount back and he has been making excuses for the last 3 years,he sweared upon ALLAH that his condition is not good but he keeps on giving me tentative dates,i am hopeful that he will pay me back but i want to ask if i should pay zakah on amount when i get it or should i pay on all the years,i cant say that during all these times if he had enough resources or if he is just faking it and using my money,its just that i believe his financial status when he swears upon ALLAH,and i believe whatever he says.kindly do guide,i ve tried to express my question to the best of my ability and i hope that you will figure out what i am intenting to ask.Sorry for not being able to make question precise,hope you will not mind it.

Detailed answer

Praise be to Allah.

When a Muslim is owed a debt by someone else, one of two scenarios must apply:

(i)That it is owed by someone who admits it and knows the amount and is willing to pay it.

(ii)It is owed by someone who admits it, but he is in difficulty or is delaying payment, or it is with someone who denies it.

In the first case, he should pay zakah on the debt in addition to the wealth he has with him, so he should pay zakah on all his wealth, and do that every year, even if he has not received it from the debtor, because it is like trust. And it is permissible for him to delay paying zakah on the debt until the time he receives it, and then pay zakah for all the past years.

In the second case, he does not have to pay zakah, but when he does receive it, in order to be on the safe side he should pay zakah on it for one year, even if it was kept with one who was hard up or delayed payment, or denied it, for several years.

This is a summary of the correct scholarly view concerning this issue. There are differences among them concerning the issues that we have mentioned. This is a brief look at their opinions concerning that:

It says in al-Mawsoo'ah al-Fiqhiyyah (23/238, 239):

The debt is the property of the lender, but because it is not in its owner's possession, the fuqaha' differed concerning it. Ibn 'Umar, 'Aa'ishah and 'Ikrimah the freed slave of Ibn 'Abbas (may Allah be pleased with them) were of the view that there is no zakah on a debt, and the reason for that is that it cannot grow (through investment), so its zakah is not due on it, like items that are kept for personal use.

The majority of scholars are of the view that debt which is due is of two types: that which it is hoped will be paid off, and that concerning which there is no hope that it will be paid off.

A debt which it is hoped will be paid off is that which is owed by one who admits it and is willing to repay it, and there are several views concerning this. The view of the Hanafis and Hanbalis, which is also the view of al-Thawri, is that zakah must be paid on it by its owner every year, because it is wealth that belongs to him; he does not have to pay zakah on it whilst it is not in his possession, but when he does take possession of it, he must pay zakah on it for all years past.

The basis for this opinion is that it is a debt that is confirmed to be owed, so he does not have to pay zakah on it before he takes possession of it, and because he is not making use of it at present, so he does not have to pay zakah on wealth that he is not making use of. But the entrusted item whose owner can take it at any time does not come under this category, rather he must pay zakah on it when one year has passed.

The more correct view of al-Shaafa'i, and of Hammaad ibn Abi Sulaymaan, Ishaaq and Abu 'Ubayd

is that he must pay zakah at the end of every year on the debt that he hopes will be repaid , as in the case of wealth that is in his possession, because he is able to take it and dispose of it.

The Malikis regarded debts as being of different types: the zakah of some debts is to be paid every year, namely the debt of the merchant who buys and sells for trade; zakah is to be paid on the price that he is owed for the trade goods.

In other cases, zakah is to be paid when one year has passed since [the lender] first acquired it, and it is to be paid for only one year, even if it stays with the borrower for many years.

There is no zakah on some kinds of debt, which is that which he did not take possession of, such as a gift, mahr, or compensation for an injury and the like.

In the case of a debt for which there is no hope of repayment, which is what is owed by one who is hard up, or who denies it, or is delaying repayment, there are several opinions. The opinion of the Hanafis in this case, which is the view of Qataadah, Ishaaq and Abu Thawr, and is mentioned in one report from Ahmad, and is the view of al-Shaafa'i, is that there is no zakah on it, because it is not fully in his possession, because he is not able to make use of it.

The second view, which is the view of al-Thawri and Abu 'Ubayd, and is narrated in another report from Ahmad, and is the more correct view of al-Shaafa'i, is that he should pay zakah on it when he takes possession of it, for all years past, because of the report narrated from 'Ali (may Allah be pleased with him) concerning the uncertain debt: "If he is sincere then let him pay zakah when he takes possession of it for what is past."

Maalik was of the view that he should pay zakah when he takes possession of it for one year, even if it stayed with the debtor for several years. This is the view of 'Umar ibn 'Abd al-'Azeez, al-Hasan, al-Layth and al-Awzaa'i. End quote.

What we think is most correct in this case is that which was mentioned in a fatwa issued by the scholars of the Standing Committee for Issuing Fatwas and by Shaykh Muhammad ibn Saalih al-'Uthaymeen. See the answer to question no. 1117.

Shaykh Muhammad ibn Saalih al-‘Uthaymeen (may Allah have mercy on him) said, after discussing the scholarly views on this matter:

The correct view is that zakah must be paid on it each year, if it is owed by one who is rich and willing to pay, because it comes under the same ruling as wealth that you have with you; but he should pay it when he takes possession of the debt, and if he wishes he may pay zakah on it with the zakah of the rest of his wealth. The former is a concession (rukhsah) and the latter is a virtue, and is more expedient in discharging one’s duty.

But if it is owed by one who is delaying payment or one who is hard up, then no zakah is due on it, even if it remains for ten years, because he is unable to dispose of it, but if he takes possession of it, he should pay zakah once, for the year in which he took possession of it, and he does not have to pay zakah for the time that has passed.

This opinion was mentioned by Shaykh al-‘Anqari in his commentary on Shaykh al-Islam Muhammad ibn ‘Abd al-Wahhaab, and his grandsons (may Allah have mercy on them). It is also the view of Imam Maalik (may Allah have mercy on him) and this is the correct view, for the following reasons:

1.It is akin to crops on which zakah must be paid when they are acquired, and rent, concerning which Shaykh al-Islam favoured the view that zakah must be paid on them when taking possession of them, even if a full year has not yet passed.

2.One of the conditions of zakah being obligatory is that one must be able to pay it; when one is able to pay it, then zakah must be paid.

3.A few months of the year may have passed before he gave it as a loan.

4.Waiving zakah for what has passed and making it obligatory to pay zakah for the year in which one takes possession of it only makes things easier for the owner, because how can we oblige him to pay zakah when he is obliged to give the one who is hard up more time? It is also making things easier for the one who is hard up, by giving him more time.

An example of that is wealth that is buried and forgotten. If a person buried his wealth for fear that it might be stolen, then he forgets its whereabouts, he should pay zakah only for the year in which he found it.

Another example is stolen wealth, if it remains with the thief for several years, then its owner manages to find it; he should pay zakah for one year only, like the debt that is owed by one who is hard up. End quote.

Al-Sharh al-Mumti' 'ala Zaad al-Mustaqni' (6/27, 28).

To sum up:

You have to pay zakah on this money for the three years during which you were a partner with your friend.

After that – from the beginning of your agreement with him to repay the money – this money changes from the money held by a partnership to money that is owed by your friend. It seems from your friend's situation that he is hard up, so you do not have to pay zakah on this money until you take possession of it, then you have to pay zakah on it for one year only, even if it remained in your friend's possession for several years.

And Allah knows best.