262489 - If the lender tells the debtor to give what he owes to a poor person as Zakah, is it permissible for him to keep the money for himself?

the question

A – Loan Taker.

B – Loan Provider.

A requested B to provide loan which he will return soon, as he borrowed money several times from B earlier as usual. Now years are passing, but this time he is not returning the amount. Last year B paid Zakat on the amount borrowed by A & he was aware about that. Is it possible that B will advise A that B is taking out the borrowed amount as Zakat & advise A to give it to a needy person? Now it is up to A, either keep it for his own use or give it to other needy individual. Is this will be considered as Zakat on behalf of B?

Detailed answer

Praise be to Allah.

First: The lender paying Zakah on the debt owed to him has some details:

1. If the debt is owed by a wealthy person who is able to pay and acknowledges the debt, the lender must pay Zakah on it.
2. If the debt is owed by an insolvent person or someone who denies the debt, the lender is not obligated to pay Zakah on it until he receives it. Then he pays Zakah on it once.

Please see the answer to question number (125854).

Second: It is permissible for the lender to say to the debtor: Give what you owe to such and such poor person, intending it as Zakah, if the debt is present with the debtor and he has offered it to

its owner. This falls under delegating the payment of Zakah, as if the lender received his debt and then gave it to the poor person.

As-Sarakhsi (may Allah have mercy on him) said: "If he gives it in charity to another poor person and orders him to receive it from him, intending it as his Zakah, it is sufficient for him. This is because that poor person is his agent in receiving it, as if he received it himself and then gave it in charity to him, intending it as his Zakah. Similarly, if he receives it and then gives it in charity to the debtor, intending it as his Zakah, it is sufficient if he is poor, just as if he gave it in charity to someone else. If he is rich and he knows that, it does not count as Zakah and he is liable for the Zakah on this thousand." (Al-Mabsut, 3/36)

But does the debtor have the choice - as mentioned in the question - between giving it to the poor person or keeping it for himself? The answer: No, and there are three scenarios for this:

First: If the lender specifies a poor person to whom the Zakah should be given, the debtor cannot give it to anyone else.

Second: If he does not specify a poor person and allows the debtor to take the Zakah for himself, this is waiving the debt and counting it as Zakah, which is not allowed.

It is stated in "Al-Mawsu`ah Al-Fiqhiyyah" (23/300): "It is not permissible for the creditor to waive his debt from his poor, insolvent debtor who has nothing to pay his debt with, and count it as part of his Zakah. If he does so, it does not count as Zakah. This is the opinion of the Hanafi, Hanbali, and Maliki schools except for Ashhab, and it is the most correct view according to the Shafi`i school, and the opinion of Abu `Ubayd."

The reason for prohibition is that Zakat is a right of Allah Almighty. Therefore, it is not permissible for a person to spend it on benefiting himself, reviving his wealth, or fulfilling his debt. The Shafi'is in one opinion, Ashhab from the Malikis, and it is narrated from Al-Hasan Al-Basri and `Ata': It is permissible because if he gave him his Zakat and then took it back for his debt, it would be permissible, so this is the same.

If the creditor pays the Zakat of his wealth to his debtor, and the debtor returns it to him to settle his debt, or if the debtor borrows what he needs to pay off his debt, gives it to the creditor, and the creditor returns it to him and counts it as Zakat, then if this is not a trick, collusion, or intended to revive his wealth: it is permissible according to the majority, and it is an opinion of the Malikis.

The third scenario: The lender does not specify a poor person, nor does he give permission to the debtor. Rather, the debtor takes it for himself without his knowledge. If he is not eligible for Zakat, this is a betrayal that is not permissible. If he is eligible, the majority opinion is that it is prohibited for the agent distributing Zakat to take it for himself. Please see: Tabyin Al-Haqa'iq (1/305), Kashshaf Al-Qina` (3/363). Please see the answer to question number (49899).

It is clear here that the lender intended to deliver the Zakah to a poor person other than the debtor. If he had intended it for the debtor, it would not have been permissible, as mentioned in the second scenario. This clarifies that it is not permissible for the debtor to keep the money for himself, even if he is eligible for Zakah.

And Allah knows best.