98124 - Tawarruq via the bank and differences in fatwas concerning it from fiqh councils and banks' scholars

the question

I found that taking a loan by tawarruq has been permitted by respectful scholars in this field of finance. But I read on your website that the conditions of tawarruq that were stipulated by the bank from the beginning made it haram. I am confused. What I understood after reading on your website about this is that it is not permissible to commit the bank to selling the goods I bought through the same bank. While this is how it works in banks which has been also permitted by other scholars. What is the correct opinion here?
I read the Islamic permission in the bank and this is why I took the loan by tawarruq. I had to take it because I was in debt due to difficult circumstances. My salary is not enough for my children, me and helping my father and brothers. I did not own a flat in Egypt either. So I had to take this loan by tawarruq in order to pay the debt and buy a flat for my children.
I tried not to do any doubtful matter, as I heard many opinions regarding this matter. When I found that known scholars here have permitted it I took it.
If what I did is wrong then how can I correct it? I paid the debts and what is left now is only the instalment of the loan and the interest. May Allah reward you! Make du'a for me to get rid of this grief that keeps me sleepless day and night. I feel so guilty although I prayed istikharah before I took this step.
Some time after this the bank offered me a credit card without annual fees. And I knew that if I pay what I owe to the bank before the deadline, then I will not have to pay any interest. Enlighten me may Allah reward you! How shall I expiate? How shall I repent? I cannot pay the whole loan back at once.

Detailed answer

Praise be to Allah.

Firstly:

Tawarruq may be permissible or haraam. The permissible kind is that which involves buying an item from a trader by instalments, and selling it for cash to someone else. We have discussed the permissibility of this kind of tawarruq and its conditions in the answers to questions no. 45042 and 36410.

As for the haraam kinds of tawarruq, there are two kinds:

1 – Where you buy an item by instalments and sell it to the one from whom you bought it. This is what is called bay' al-'eenah, and it is called al-'eenah because the exact product ('ayn al-sal'ah) that he sold goes back to him. This is haraam, because it is a trick that is used to get a loan with interest, and it is haraam for that reason according to the majority of scholars.

2 – Tawarruq through the banks or organized tawarruq, which means that you buy an item from the bank by instalments – and in most cases it is muraabahah (profit sharing), then you delegate the bank to sell it for cash, and this transaction is also haraam.

A statement issued by the Islamic Fiqh Council held from 19-23/10/1424 AH (13-17/12/2003 CE) states that this transaction is haraam, and warns banks not to exploit this transaction in ways that are not Islamically acceptable. In it, it says:

After listening to the research presented on this topic and the discussions concerning it, it is clear to the council that the tawarruq done by some banks at present means:

That the bank, in a regular procedure, buys an item (that is not gold or silver) from the global market or otherwise for the mustawriq (the person who is engaging in this transaction of tawarruq to obtain cash) and sells it to him for a price to be paid later on, on the basis that the bank will commit – either as a condition of a contract or according to custom – to sell it on his behalf to another purchaser for a price to be paid immediately, and it will hand over that price to the mustawriq.

After examining and studying the matter, the council has determined the following:

Firstly: Tawarruq in the form discussed above is not permissible for the following reasons:

1.The seller’s (i.e., the bank’s) commitment in the tawarruq contract to act as the deputy in selling the item to another purchaser or arranging for someone to buy it makes it akin to the ‘eenah transaction that is forbidden in sharee’ah, whether this commitment is stipulated clearly or is assumed on the basis of what is customary.

2.This transaction frequently leads to a failure to fulfil the condition of taking possession of goods, which is essential according to sharee’ah in order for the transaction to be valid.

3.This transaction is in fact based on providing finance with interest from the bank to the customer, and the process of buying and selling is illusionary in most cases.

This transaction is not the genuine tawarruq that is known to the fuqaha’. In its fifteenth session the Fiqh Council stated that it is permissible with regard to genuine transactions and subject to specific conditions which they described. That is because there are many differences that were discussed in previous statements.

Genuine tawarruq is based on the real purchase of an item for a price to be paid at a later date, which enters into the possession of the purchaser, and he acquires it in a real sense, and he becomes responsible for it, then he sells it for cash because he needs the money, and he may or may not be able to get it. The difference between the price of purchase that is deferred and the sale price does not come into the bank’s possession, and the bank is only introduced into this tawarruq transaction in order to justify getting more for the loan that it gave to that individual by means of transactions that are illusionary in most cases.

Secondly: The Fiqh Council advises all banks to avoid haraam transactions, in obedience to the command of Allaah.

Whilst the Council appreciates the efforts of the Islamic banks to save the Muslim ummah from the calamity of riba, it also urges them to make use of the genuine transactions that are based on the rulings of sharee’ah, without resorting to illusionary transactions that are essentially pure

financing in return for extras that benefit the financing party. End quote.

Shaykh ‘Abd al-Rahmaan ibn Ibraaheem al-‘Uthmaan (may Allaah bless him) said:

The reasons why we say that organized tawarruq as done by the banks is not permissible are as follows:

1.Riba – as stated above – in the report of Sa’eed ibn al-Musayyab (may Allaah have mercy on him).

2.(Which is similar to what we have mentioned above) the mustawriq is not interested in the product per se, rather he is interested in the money, and the sale in question is an illusionary sale. The whole issue boils down to obtaining cash immediately, to be paid for later on with a greater amount.

What indicates that this sale is something illusionary is the following:

The bank does not take possession of the product purchased from the global market in any real sense, and it does not receive any original receipts from the warehouses where this product is kept; the product is traded on the stock market and moves from one purchaser to another until it ends up with the final consumer, who is able to take possession of what he has bought.

In the case of the mustawriq it is even worse: he does not take possession of the product in a real sense or even on paper. Hence he is selling something that he has never acquired and that is not even specified, because what the bank sells to its customer is something that is owned by the bank, which is defined by a number used to identify the product, and this number does not refer to small quantities of the product, but it is a number that is used for the big unit that the bank divides among those who seek tawarruq.

3.Appointing the bank to act on behalf of the customer in the case of bank-type tawarruq is contrary to what is expected of the agent, because what the bank is doing in its role as agent is contrary to the interests of the mustawriq, which is selling the product for a lower price than that for which the mustawriq bought it. (If there is any aim to be achieved from a contract in the true

sense of the word, and there is a condition stipulated that contradicts this aim, then this contract is self-contradictory in that it both affirms and denies the aim of the contract, so nothing can be achieved and this kind of condition is invalid.) Appointing the bank as one's agent in this tawarruq is one such condition, even though it is not stipulated. If there was no such appointment, the mustawriq would not have bought from the bank in the first place.

4.Giving guarantees to the last purchaser. The bank makes a deal with an independent party that commits to buying the product that is being used in this transaction. This commitment ensures that the selling price will not go beyond a certain limit as a protection against fluctuation in prices. In return for this assurance, the bank is committed to selling it for him, in the sense that the bank is not entitled to sell the product in the open market even if the price rises above the price agreed upon with the second purchaser. Thus these assurances come from both parties: from the bank which commits to sell to the second purchaser, and from the purchaser who agrees to buy it at a certain price.

5.Organized tawarruq differs from the kind of tawarruq which is permitted by the majority of fuqaha' in several ways, such as the following:

(a)The bank is in charge of selling the product that was bought from it, to whomever it wants, whereas when the mustawriq is the one who is in charge of selling when he enters into a tawarruq transaction by himself, and the first seller has nothing to do with the sale of the product to the final purchaser.

(b)There is prior agreement between the bank and the final purchaser which guarantees that he will purchase whatever the bank offers at the price for which the bank bought it, as stated above, whereas in individual tawarruq, the mustawriq is the one who sells the item for the price that he paid for it, or more or less.

6.Organized tawarruq comes under the heading of bay' al-'eenah which is haraam, because the bank is the source of cash for the mustawriq in both cases. Cash is acquired via the bank and through its mediation; if the purchaser did not know that the bank would give him cash later on,

he would not have embarked on this transaction in the first place.

7.Organized tawarruq through the bank is not the same as bay' al-'eenah which is permitted by al-Shaafa'i, because he stipulated that there should be no connection between the two sales, and that one should not show any intention of acquiring cash; neither condition is met in this case.

8.It nullifies the aims of Islamic banking in many ways:

(a)It imitates the riba-based banks in offering financing and insurance.

(b)It limits itself to this and no other forms of investments. Tawarruq now represents 60% of the bank's financing services.

(c)It creates confusion between Islamic and riba-based banks.

(d)It negates the efforts to encourage Islamic banks to offer financing in the form of investments via mushaarakah (partnerships), mudaarabah (profit sharing), and so on.

9.It causes Muslim money to leave the country, because tawarruq transactions take place in the global market, so Muslim money leaves the country in order for others to benefit from it.

From the Muslim.com website.

Secondly:

With regard to the questioner's comment that this transaction is permitted by senior scholars, that is not correct. Those who said it is permitted are the sharee'ah committees in Islamic banks, or the Islamic departments in riba-based banks! It should also be noted that not all of them regard this transaction as permissible.

Many of them have refuted the view of these sharee'ah committees that it is permissible. Shaykh Khaalid al-Mushayqih has undertaken comprehensive research on the prohibition of this transaction. See Majallat al-Buhooth al-Islamiyyah (73/234-237). There are also refutations by Dr. 'Ali al-Saloos, Dr. Saami Suwaylim and Dr. 'Abd-Allaah ibn Hasan al-Sa'eedi – who have all

presented research on this issue to the Fiqh Council – as well as Shaykh ‘Abd al-Rahmaan al-‘Uthmaan and Dr. Muhammad ibn ‘Abd-Allaah al-Shabaani. Please see Muslim.com website.

See also the answer to question no. 60185.

With regard to your own situation: so long as you trusted those committees and followed their opinion, and you did not know that their view is weak, then we hope that there is no blame on you, but you should resolve not to do it again in the future.

We ask Allaah to guide you to all that is good and help you to pay off the debts that you have.

And Allaah knows best.