258370 - A woman has invested with her husband in building apartments for commercial purposes, while her husband delays paying Zakat, and she has no control over the funds

the question

I have a question about zakat. I know its obligatory to pay zakat om land and houses when they are bought with the intention of selling them. My husband and I bought a house about 10 years ago with the intention of selling it to make profit. After a few years my Brother in law stayed in the house with his family and a few years after that they left and we gave the house out for rent to other people. This year we sold the house. How do we calculate zakat on this?We also bought another land with the intention of selling it but later on we decided to built appartements on the land and sell these. How do we calculat zakat on this?At this moment we are building the appartements and we don't have any income. We saved money to built the appartements and we are living from this money as well until we sell them. My husband wants to pay the zakat later on because it is a lot and we need the saved money now. Is this alowed? We are married in community of property but i dont have any excess to our money sinds we moved to Turkey 5 months ago and my husband is in full control over all our property. What can I do now? Before we came here i did have excess to the money. Would it have been bether if i payed the money before without permission from my husband? Am i sinning when i dont have excess to money? What can i do? Please advice me.

Detailed answer

Praise be to Allah.

First: Whoever buys land or a house with the intention of trade (meaning to sell it and profit from it), must pay Zakah on it - the Zakat of trade. This is based on what Abu Dawud narrated (with a sound chain of narration) from Samurah ibn Jundub (may Allah be pleased with him) who said: "To

proceed, the Messenger of Allah (peace and blessings of Allah be upon him) used to order us to pay the Zakat on what we prepared for trade" (Narrated by Abu Dawud, 1562).

If one changes from the intention of trade to personal possession (Qunyah), then there is no Zakat due on it. If he changes his intention back to trading, according to the majority of scholars, it will not be considered a trade item until he sells it and receives its price. If a complete lunar year passes on this received price, then Zakah becomes due on it. Or if he bought something for trade with it, then Zakah on trade goods is due on it.

It states in Kashshaf Al-Qina` (2/241): "If someone has trade goods and intends them for personal possession (meaning keeping for personal benefit rather than trade), then later intends them for trade again, they do not become trade goods. This is because personal possession is the default state, so mere intention is sufficient to return it to that state, similar to when a traveler intends to stay" (End quote from Kashshaf Al-Qina`, 2/241).

The second opinion of the scholars states that if someone intends to use goods of personal possession for trade, they become trade goods and Zakah becomes mandatory on them. This is a narration from Ahmad (may Allah have mercy on him), and it is the preferred opinion. Please see the answer to question numbered 95761 .

Based on this, if you changed your intention from trade to personal use, and you housed your brother-in-law in the house, then rented it to others, no Zakah would be due for the period when you changed from the intention of trade. If you later intended trade with it, you would start a new Zakah year from the time of that intention, and Zakah would become mandatory.

However, if you sold the house - not with the intention of trade and profit - but because you needed money or didn't want the house, or because you found a good price, no Zakah is due. This is because there was no intention of trade, which means dealing in goods for profit, not just selling, as we explained in question number 228685. It is good to review fatwa number 231858 and number 211149 which explain what happens if someone intends both trade and rental together.

Second: If you bought a piece of land intending to sell it, then decided to build residential apartments on it and sell them, trade Zakah becomes mandatory on it.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) was asked about someone who bought land intending to sell it after completing its construction. The Shaykh replied: "Zakah is mandatory on this land as trade goods Zakah, because he bought it to profit from it. There is no difference between intending to sell it before or after development, like someone who bought cloth to profit from it after sewing it into clothes" (End quote from Majmu` Fatawa Ibn `Uthaymin, 18/146).

As for how to pay Zakah when a year passes on the money with which you bought the land, here is the detail:

1. If the apartments haven't been built yet, the land must be valued and 2.5% of its value paid.

2. If the apartments have been built, both the apartments and land must be valued together, and 2.5% paid.

3. If the apartments are under construction, they must be valued in their current state, along with the land, and 2.5% paid. Please see: (Fatawa Al-Lajnah Ad-Da'imah, 9/327).

Third: Zakah (obligatory charity) must be paid whenever a year passes. However, if the property hasn't been sold and you don't have other money, it's permissible to delay paying Zakat until after the sale. The Zakah should still be calculated when the year passes but can be paid after completing the sale.

It states in Fatawa Al-Lajnah Ad-Da'imah (9/327): "Question: A person owns land valued at approximately one hundred thousand riyals for trade purposes. A year has passed, and the owner has no other assets. Can this person borrow money from others to pay its Zakah? Or can they pay the Zakah after selling it for all past years, as some people suggest? If paying Zakah after selling it for several years, how should they determine its value for each year, given that it varies from time to time?

Answer: This land should be valued at the completion of each year. If the owner has sufficient

funds to pay Zakah each year, they should pay it. If they have no means to pay its Zakah, they are not obligated to borrow money to pay it. However, if they choose to borrow and pay it, that is permissible."

If he does not borrow, the obligatory charity (Zakah) remains as his responsibility. He should pay it for the previous years when he sells the land or when he has money available to pay it from. And with Allah is success. May Allah send peace and blessings upon our Prophet Muhammad, his family, and his Companions.

`Abdullah ibn Ghudayyan (may Allah have mercy on him)... `Abd Ar-Razzaq `Afifi (may Allah have mercy on him)... `Abd Al-`Aziz ibn `Abdullah ibn Baz (may Allah have mercy on him) (End quote).

If you have the money available, you must pay Zakah immediately. Your husband is not permitted to delay payment under the pretext that the amount is large or that you both want to save money.

Fourth: If your husband refuses to pay Zakah, you must pay it on your share of the property. If you cannot access your money, you are excused from this obligation until you gain access to your funds.

Al-Mirdawi (may Allah have mercy on him) said in Al-Insaf (3/186): "If it becomes impossible to pay it from the Nisab due to absence or other reasons, delay is permitted until ability is restored." (End quote)

The Permanent Committee stated in their Fatwas (9/398): "It is not permissible to delay paying Zakah after the completion of the year except for a legitimate excuse. Such excuses include not finding poor people when the year is complete, inability to deliver it to them, absence of wealth, and similar reasons. As for delaying it for Ramadan, this is not permissible unless the period is short. For example, if the completion of the year falls in the second half of Sha`ban, then there is no harm in delaying it until Ramadan." (End quote)

Fifth: If your husband insists on delaying the payment of Zakah, and you have money with him which he refuses to give you, and you find no way except to take it without his knowledge, this is

permissible for you. This is known among scholars as the matter of Adh-Dhafar, meaning obtaining one's right.

However, you are not obligated to do this, especially if you fear this action will cause your husband's anger and lead to disputes between you. Our advice to you is: Do not proceed with taking without his knowledge except after losing hope of your husband paying the Zakah. Before that, you should advise him and explain that Zakat is immediately obligatory, a person sins by delaying it except with an excuse and it brings blessing and growth to wealth, not decrease. If he responds positively, then praise be to Allah. If not, you may proceed with what we mentioned.

If you don't have money with him, other than being partners in real estate, you have no right to take anything from his money. Instead, you should seek to convince him to pay Zakat, or sell some of the property to take your share of its price, then pay Zakah on your portion of it and the other apartments

And Allah knows best.