THE ACCOUNTING PROFESSION

Q: 5-

Situation 1

Q: (a)The client hands over his bank statements to th accountant. From the bank statements the accountant records any interest charged by the bank or credited by the bank to the client.

(b) What is the position of the auditor who does not himself make the entries but merely checks to see if they are correctly recorded and reports thereon. The report of the auditor is to the shareholders and not to the bank who may also use the financial statements to assess the financial position of the business.

It should be noted that the transactions of interest have already been concluded by the bank and the customer. The historical information is then handed over by the customer to the accountant for the purpose of compiling books of accounts. These books of accounts are necessary in order inter alia to submit proper tax returns to the revenue authorities in terms of the taxation laws of the country. The question arises whether the accountant commits a breach of Islamic Law when he compiles the books of account? Is he regarded as scribe/ writer of interest in a situation where he is not a party to the transaction of interest itself?

Situation 2

An accountant is working for a company. The company charges its debtors interest on their overdue accounts. The accountant is instructed by the directors, as part of his functions, to make appropriate entries in the records of the company in terms of which interest is charged on certain
overdue accounts.

The question arises whether it is permissible in Shari'ah for such an accountant to:-

(2.1) become involved in this manner in the charging, preceding and execution of interest on overdue accounts.

(2.2) remain employed with such an employer who charges interest on overdue accounts.

(2.3) receive a salary??? which is considered as halaal in Shariah from such a company a small portion whose income is represented by interest collected from debtors.

Situation 3

The accountant working for a company writes out the cheques of the company. At times the amount recorded on the cheque includes an amount for interest.

(3.1) What is the position of the person who issues out such cheques?

(3.2) Also what is the position of the signatories to such cheques?

It must be noted that the accountant himself was not an original party to the transaction of loan which gave rise to the interest obligation.

In certain circumstances, even the signatory was not an original party to the transaction.

Situation 4

A motor vehicle salesman sells a vehicle to a customer. The customer finances the vehicle through the bank upon which he pays interest. The salesman in most instances has to assist the customer in completing the application for finance to the bank by filling in details on behalf of the customer. Some application forms also have a place for the signature of the person who assisted the customer in completing his application. Will this assistance to the customer be impermissible? Does the salesman also become a witness to this interest transaction merely by assisting to complete the application? It should be noted that the financing transaction is distinct from the sale transaction and it is solely between the customer and the bank.

Situation 5

Advising on financial options

A client comes to the accountant seeking advice of the best option with regards to undertaking a certain business venture or the acquisition / purchase of an asset. Among the various options which the accountant advises him on the option of financing via a bank whereupon he will be charged interest.

(5.1) What is the position of advising with regards to such an option?

(5.2) If the client is a non-Muslim, will it make any difference?

(5.3) What is the position if the bank leases the asset and profit / rental is based on a fluctuating rate of interest?

Situation 6

For the purpose of reducing the client's taxes, various schemes are adopted. A simple practical example is where several persons (most often immediate family members) are made partners in the business. Part of their profits are accumulated in the business as further investments. For tax purposes these investments are reflected as "loans" from the respective people. Similarly the net profit that is due to them on these investments is also reflected as "Interest" to such people. In reality there is no loan or any interest. It is in fact the capital introduced and profit paid. These are just merely terms adopted in order to save taxes and to comply with the taxation laws of the country. What is the position of the accountant with regards to the recording of such interest in the light of the aforementioned hadith?

It must be noted that these are fictitious records whose source is profit or rentals.

Situation 7

A person working for a non-Muslim company invests surplus funds on instruction, it, in interest bearing securities. What is his position in relation to the said hadith?

Situation 8

In South Africa most investments have some element of interest particularly those controlled by non-Muslims. As an example a syndicate of 50 people may purchase a property. The property is controlled and administered by non-Muslims and a small portion of the income may be in the form of interest - probably less than 5%. If one disposes of the proportion of interest attributable to him, will he be absolved? Similarly how would one handle investment in a listed company on the Stock Exchange which is engaged in Halaal activities but may be involved in payment or receipt of interest as well.

Further Questions

1. With regards to those situations which clearly fall under the prohibition of recording interest, is there any way out of this by avoiding the prohibition and still getting the work done?

2. If the client's business activities are mostly of a nature which the Shariah has declared forbidden, such as he sells liquor, or trades in meat not slaughtered according to Islamic rites, can the Muslim accountant undertake to do his books?

3. A Muslim accountant works for a non-Muslim company which deals generally in Halaal

merchandise, but also sells some Haraam items, such as liquor, etc. Is he committing any Shari' violation in recording the transactions pertaining to the Haraam items?

4. Is it permissible to work as an accountant or auditor for the revenue authorities of a country which is responsible for levying and collecting taxes?

5. Is it permissible for a Muslim accountant to enter into a partnership /association with a non-Muslim accountant?

6. What advice can you give to accountants in general pertaining to their profession? (Muhammad Shoaib Omar, South Africa)

A: it is true that according to a well-known hadith those who invoke the curse of Allah with regard to a transaction of Riba (interest or usury) includes a person "who has written the interest". However, this Hadith refers to the scribe of the transaction i.e. a person who has written an agreement or prepared the document to evidence the transaction. It does not include a person who was not involved in the transaction itself in any away, but while preparing the accounts of a person, has come across reference of the Riba transaction and has recorded it as an event already happened without his involvement. This is how the scholars have interpreted the Hadith. To quote Hafiz Ibn Hajar:

"This (the curse of Allah) is applicable only to a person who has supported the relevant person in the transaction of Riba being agreeable to it. However, if a person who has written the interest as matter of fact or has witnessed the occasion to testify the event as it occurred to facilitate a just action about it, then this is a good intention and is not covered by the warning mentioned in this Hadith. The reference in this Hadith is only to a person who has helped the relevant party in the transaction of Riba by writing its agreement or being a witness to it"

Al-Ubbi, the famous commentator of the Sahih of Muslim has explained the Hadith in the following manner:

"By the word "writer of Riba" the Hadith intends the scribe of the documents evidencing the transaction of Riba, and by the word 'witness" it means a person who attended the occasion to become a formal witness in support of the transaction... The Holy Prophet. has held them, all as equal in sin because the transaction took place with their joint efforts."

It is evident from these references that it is the writing of the document of Riba which invokes the curse of Allah and not its subsequent recording in a statement of the facts already happened. Therefore, the case of an Accountant of a firm or a company is different from the person who is directly responsible for the operation of interest. So far as the Accountant is not involved in initiating, proposing or helping in the transaction itself, he will, hopefully, not invoke the curse of Allah by merely recording the transaction in the books of account or in a financial statement. As a matter of precaution a Muslim should as far as possible avoid this type of recording also, however, it does not fall in the category of the clear prohibition.

In the light of the above discussion all your questions are perhaps answered. However, for the

purpose of more clarity I give you a brief reply to each question seriatim:

1. In both situations (a) and (b) the Accountant does not provide any help to the transaction itself, rather he records the facts as they occurred or checks the correctness of their recording. Therefore, it does not directly fall within the ambit of the warning of the Hadith.

2. So far as the Accountant is not involved in charging interest, claiming it from the debtor or pursuing him for that matter, merely making entries in the books of account will not make him liable to fall within the ambit of the prohibition stipulated in the Hadith.

Unless the major part (at least 51%) of the company is haram it is not prohibited to draw salary for permissible services rendered to that company.

3. If the cheque is intended to be written or issued exclusively for the payment of interest with a clear statement that this should settle the amount of interest due on the issuer of the cheque, it is not permissible for any person to write or issue such a cheque. However, if the cheque is issued for the settlement of different liabilities of which interest is also a part then the issuance or writing of such a cheque cannot be termed as absolutely prohibited. This applies to both issuer and the signatories of the cheque.

4. Of course, any assistance provided to the customer for obtaining an interest bearing loan, including the filling of the application form for the loan, is not permissible according to Shariah and it does fall within the scope of the warning of the Hadith.

5. A Muslim cannot advise any one to opt for a financing based on interest. According to the most authentic view, entering into a transaction of Riba is prohibited, no matter whether the opposite party is Muslim or non-Muslim. Therefore, the above ruling is applicable to that situation also where the client is non-Muslim.

The ruling about the leasing transaction will differ from case to case. The mere fact that the rental in a lease contract has been based on the market rate of interest does not render the transaction unlawful. However, there are certain other conditions which must be fulfilled for a valid lease transaction that cannot be summarized in this letter.

6. It is the essence of the transaction only which is more important in Shariah and not the nomenclature. Therefore, if investment is named as "loan" or the profit is termed as "interest" it will in reality be neither loan nor interest and therefore will not render the transaction unlawful. Specially, when this terminology has been adopted to avoid or reduce taxes. However, if the word "loan" is replaced by the word "finance" it will be more appropriate according to Shariah, while no change is required in the word "interest" because in a wider economic sense profit is included in interest and the word "profit" can be used in that sense without being a false statement. In view of the above there is no problem if an Accountant records such amounts as interest or loans.

7. As mentioned earlier, direct involvement of a Muslim in a transaction of interest is prohibited and comes under the purview of the above Hadith. Therefore, it is not permissible for an

employee of a non-Muslim to invest his surplus funds, on his instruction, in interest-bearing securities, because in this case the employee works as an agent for the employer which is a direct involvement in the transaction of Riba.

8. If the interest is not among the main commercial activities of the syndicate, rather it has accrued through interest-bearing deposits of the surplus funds, it has the same status as that of shares of joint stock companies. Therefore, it is permissible for a Muslim to become a part of this syndicate provided that he tries his best to persuade the syndicate not to be involved in any transaction of interest, and that the proportion of the interest in the aggregate income of the syndicate is given by him to charity without an intention of gaining Thawab through it.

1) I have already highlighted the areas of prohibition and the areas where the Shariah has given a leeway but where there is a clear prohibition there is no option for a Muslim except to abide by it. However, if a person is forced by? his personal circumstances to commit a prohibited act he should turn to Allah in repentance and seek His forgiveness.

2) If most of the activities of a business are Haram, a Muslim should not take up the work of that business.

3) The answer to this question is analogous to the answer to question No. 1 i.e. so far as a Muslim is not involved in a prohibited transaction directly, merely recording that transaction in the books of account is not Haram. However, a Muslim should avoid it also as far as possible.

4) It is not impermissible to work as an Accountant or Auditor for the revenue authorities of a? country which is responsible for levying and collecting taxes.

5) So far as the terms of partnership are in conformity with rules of Shariah and the work of accounting undertaken by the partnership is not violative of the injunctions of Islam, there is no bar against entering into a partnership with a non-Muslim accountant.

6) My advice is to abide by Shariah in every walk of life.

Contemporary fatawaa