

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

The Permissibility of 401(k) Plans and Related Zakat Issues

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Praises are due solely to Allah, the Master of the Universe and all that it contains.
Prayers and blessings be upon the best of creation, our beloved Muhammad, and upon his family and companions, and all who follow in their footsteps.

What is a 401(k) Plan?

A 401(k) plan is a defined-contribution pension account built primarily on deductions from the wages of a participating employee. Often, the employer also contributes to the plan to match the employee's contribution, although it can be more or less. According to research, 78% of 401(k) plans include some sort of employer contribution.¹ The amounts in the plan are tax-free until withdrawal. The Internal Revenue Service (IRS) of the US government considers this as a deferred-tax portion of the employee's compensation in its tax code.² The set withdrawal age is 59 ½ years old. Any withdrawal before this is considered premature. Beyond the benefit of being able to put away amounts for retirement before taxes, the employee also invests these amounts and receives income from interest, dividends and other capital gains.

Although employees are at free will to participate in the 401(k) plan, employers often enroll them automatically and give the choice to opt out actively. Nonetheless, contributions are purely voluntary. This simply means that the employee is putting away a portion of his pay for investing. The employee chooses how much to contribute but to receive the tax break, he must follow the limits set by the IRS. If the employee wishes, he may withdraw amounts as desired. The IRS discourages this and deters it by imposing an immediate 10% tax penalty on early withdrawals in addition to the normal income tax. In case the employment terminates, options of rolling over the amounts to a different plan are available.

Thus, the amounts in a 401(k) plan are clearly owned and controlled solely by the employee. There is however one exception to this. Employers usually have a vesting program for contributions they make to their employees' 401(k) plans. Vesting means that the employee does not have full ownership of the employer contributions until he stays with the company for a certain amount of time. Once this time condition is met, the employee is considered 'fully vested' and owns all amounts contributed to the plan. Until this time requirement, which is usually 1-5 years, is met, the employee owns only a portion of the employer contributions. If he were to withdraw during this period, he is only entitled to take the vested amount, i.e. the amount he completely owns up to that point.

The contributions are fully controlled by the employee but handed over to a third-party administrator to maintain. The employee can choose what to invest in and how to maintain his account. The administrator offers investment vehicles and advice about related risks to help the employee. A wide variety of mutual funds, stocks, bonds, money market accounts, etc. are available for the employee to

¹ www.retirementmadesimpler.org/Library/Hewitt_Research_Trends_in_401k_Highlights.pdf

² www.law.cornell.edu/uscode/text/26/401

choose from. Administrative fees are charged for the maintenance of the plan and calculated as a percentage of it.

The 401(k) plan takes its name from the Internal Revenue Code section number and paragraph enacted into law in 1978 allowing pretax contributions from an employee's income toward such plans. The traditional pension plan places the full burden on the employer whereas a 401(k) plan is at most a mutual agreement between the employer and employee. Measures of reassurance that the invested amount is safe are provided to the employee by periodic account statements, full access and control over the account and even educational material to help the employee make informed investment decisions.

The funds are placed in a custodial account and are accessible regardless of the employer's future stability. The plan administrators look to diversify the investments to provide more security and decrease the overall risk of the plan by investing in a mixture of stocks and bonds. Considering the large number of plans they may maintain, these administrators wield much cash leverage in the markets. This gives them investment opportunities unavailable to an individual investor. All of this is to help secure the after-retirement payments for the employee. Nevertheless, the risk factors associated with all investments are applicable to 401(k) plans as well. The employee agrees to take this risk and accept losses in case they are incurred. The job of the plan administrator is to mitigate this risk and ensure, to the best of their ability, losses are avoided. Bonds, fixed deposit accounts, and other interest-bearing securities are favorites of 401(k) administrators because they generally have lower risks even though the yields are less.

The tax issues involved in a 401(k) plan are as follows:

- (1) The amount contributed to the plan is pre-tax. This means that if an employee earns \$50,000 and contributes \$5,000 to his 401(k), his taxable income is only \$45,000.
- (2) The contributions are tax-deferred. After the employee reaches 59 ½ years of age and begins to withdraw amounts from the plan, his withdrawals will be taxed according to the income tax of his state. If he resides in one of the few states which has no income tax, he will receive the full amount. Even if he pays income tax, his tax bracket may be lower by the time he reaches the set age. This means he will have to pay less tax than what he would have paid on the contribution amount had he taken it as salary.
- (3) If he chooses to withdraw before the set age limit, the IRS will impose excise tax, equal to 10% of the distribution amount, in addition to the ordinary income tax. Very few exceptions are made to this.

In some cases, the employee is allowed to borrow from his 401(k) plan. This loan must be paid back within a set time frame and with interest at a predetermined rate. The loan is not taxed nor penalized as early withdrawals are but the amount must be paid back within the set period, otherwise it may be subject to income tax and excise (penalty) tax. Also, the loan must be paid back from after-tax amounts, i.e. the employee cannot choose to pay it back with future pretax contribution amounts. The principal and interest amounts go back to the 401(k) balance. Employers can place restrictions on such loans or not

allow them at all because they set up this plan system for a particular purpose, which is to provide an employee pension plan, and this may defeat that purpose altogether. In essence, the employee is simply borrowing from himself and paying himself back with interest.³

401(k) is part of a group of retirement plans along with the different types of IRAs (Individual Retirement Account). Similar plans exist for government employees, called 457 (b) plans, and for nonprofit institutions, called 403(b) plans. These are collectively known as defined contribution plans (defined by the employee or employer).

In simple terms, an IRA is a savings account with tax breaks. It is usually initiated by the employee and runs similar to a 401(k) plan. The main difference lies in the regulatory restrictions imposed on the plan. For example, the participant (employee) is allowed to withdraw amounts before the age limit without penalties. However, there are certain disadvantages in IRAs, beyond the scope of this discussion.⁴

Issues Related to the Shariah

The Shariah is the eternal code of commandments revealed by Allah, the Most Exalted, the creator of man and all of his conditions. It ensures all related parties in a transaction receive full rights without impeding on others' rights. It establishes a defined criteria for justice by providing guidance in the different aspects of human life. The benefit of the individual is balanced with the collective benefit at hand in mutual transactions.

Questions about 401(k) plans related to the Shariah:

- (1) Is it permissible to participate in a 401(k) plan?
- (2) Who is the owner of the amounts in the plan? Does the employee have full ownership (*milkiyat taammah*) of the plan?
- (3) How is zakat to be calculated on the amounts?
- (4) When must the zakat be paid?

Is it permissible to participate in a 401(k) plan?

The commandments of the Shariah allow a broad spectrum of financial transactions. Impermissibility is subject to a numbered few principles. Under the general rule of “الأصل في الأشياء الإباحة”⁵, by default, all things are permissible until proven otherwise. As far as the basic participation in this type of plan is concerned, there is no cause of impermissibility. Thus, it is, by default, permissible (*mubah*). In essence, the employee is voluntarily giving his money to an agent to invest. In the language of Fiqh, this is referred to as a *wakalah*, or agency. A *wakalah* is defined as:

³ Lee Ann Obringer "How 401 k Plans Work" 21 March 2002. HowStuffWorks.com.

<<https://money.howstuffworks.com/personal-finance/retirement-planning/401k.htm>> 28 October 2017

⁴ money.cnn.com/retirement/guide/IRA_Basics.moneymag/index.htm

⁵ الأشباه والنظائر لابن نجيم ص. 252

تفويض التصرف والحفظ الى الوكيل

*Transfer of (the right of) expenditure and (the task of) preservation to the agent.*⁶

401(k) and Other Retirement Plans of the Past

401(k) is a fairly new system of retirement planning and is solely based on the US Internal Revenue Code, as explained earlier. Thus, extensive Fiqh research has not been conducted on it separately. However, other retirement plans have been researched thoroughly in the past. The closest system found in the books of *fatawa* (edicts of Fiqh) and contemporary Fiqh research pertains to provident funds. There is an abundance of academic work available on this topic.

The Difference Between a Provident Fund and 401(k) Plan

The Ulama have considered the amounts in a provident fund to be a loan (*dain*) owed to the employee, regardless of whether the plan participation is optional or not. In a provident fund, an amount is deducted from the salary of the employee and put away to be given back after retirement. Along with the amount from the employee's salary, the employer contributes an amount as well. Thereafter, interest is collected on these amounts and added to the fund to be given to the employee. All additional amounts, including that which is labeled as interest, are considered bonus salary. The employee does not completely own all amounts in the fund because they are not handed over to him, thus the *zakat* is not calculated until it comes into his complete ownership. The interest amounts are not considered *riba* although it is not completely permissible to consume such amounts if the plan enrollment is optional.⁷

The amounts in a 401(k) plan are transferred to a third-party administrator at the complete choice of the employee, as explained earlier. This third-party is an agent (*wakeel*) of the employee. He gives the administrator the authority to use his salary portion (employee contribution) and all other contributions to invest in a number of options available to him to safeguard and grow the money. Thus, the definition of *wakalah* mentioned above regarding *hifz* and *tasarruf* (preservation and usage) is met. Since the amount is invested, risks are inherently involved but they do not harm the objectives of the *wakalah*. Nonetheless, as it will be discussed later, it is not permissible to invest in many of the available investment options as they involve *riba*.

401(k) is Classified as a *Wakalah* (Agency)

According to the Hanafi school of Fiqh, the only fundamental principle (*rukn*) of *wakalah* is the offer and acceptance (*ijab* and *qabul*)⁸. Effectively, this incorporates the other two principles mentioned by the other Fuqaha: the two parties in the contract, the principal and the agent (*wakeel* and *muwakkil*), and that

⁶ ابن عابدين 239/8 مكتبة زكريا ط. 1417 هـ

⁷ "پراویڈنٹ فنڈ پر زکوٰۃ اور سود کا مسئلہ" جواہر الفقہ 257/3-293 مكتبة دارالعلوم كراچی ط. 1341 هـ

⁸ بدائع الصنائع 426/7

which the contract is bound for (*mawakkal fihi*)⁹. Obviously, the contract is agreed upon (*ijab* and *qabul*) by the two parties (*wakeel* and *muwakkil*) about investments to make (*mawakkal fihi*).

It is necessary for a principal to have authority (*tasarruf*) over that which he is appointing an agent for. He must also be an adult, as is the condition in most other contracts, sane and aware of the agency agreement.¹⁰ All of these conditions are met in the 401(k) plan agreement between the employee and the plan administrator.

Furthermore, this is classified as a *wakalah khassah* (specified agency) as that which the administrator is given agency for is specified by the employee. This type of *wakalah* has no difference of opinion among the Fuqaha in its implications. There are differences of opinion, however, about the other type, *wakala 'ammah*, and what exactly it is valid for.¹¹

A very detrimental issue in *wakalah*, in the Fuqaha's view, is ambiguity (*jahalah*). This can possibly render the *wakalah* impermissible. This problem does not exist in a 401(k) agreement. The investments to partake in are clearly specified. The employee has the option to choose what to invest in.

Once it is established that the plan administrator is the assigned agent (*wakeel*) of the employee, the issues to follow will all apply directly to him as if they were conducted by the employee (*mawakkil*) himself. For example, when the employer transfers the employee contribution amount to the plan, the administrator gains control of it, and thus it also comes into the control of the employee. When the employer contributes a matching contribution, the administrator accepts it as belonging to the plan, thus it belongs to the employee (according to the vesting schedule). Any amounts earned as gains in the plan, come to the administrator and belong to the employee.

Thus, the main difference between a provident fund and a 401(k) plan is the transfer of full ownership of the amounts to the employee. In a provident fund, this transfer does not take place until distributions are made after retirement although they are (at least partially) owed to the employee. The amounts are retained by the employer. In contrast, in a 401(k) plan, the amounts are transferred to the assigned agent of the employee and the employee has full authority over it immediately. No related amount is owed to him by the employer after this transfer.

After establishing the basic permissibility of a 401(k) plan, it is necessary to look at each individual investment involved it separately. An essential matter to look out for is *riba*. *Riba* is a term defined in the Shariah as:

فضل خال عن عوض بمعيار شرعي مشروط لأحد المتعاقدين في المعاوضة

⁹ كتاب الفقه على المذاهب الأربعة 149/3. دار الكتب العلمية ط. 1424 هـ

¹⁰ بدائع الصنائع 426/7

¹¹ الموسوعة الفقهية 27/45

An excess (amount), void of any return (in exchange for it) by Shar'i standard, stipulated for one of the parties in an exchange.¹²

In English, riba is commonly translated as interest or usury. However, both of these terms have their respective definitions in the realm of law and finance, divergent in some cases from the concept of riba.

Interest is defined as: (i) a charge for borrowed money, generally a percentage of the amount borrowed; (ii) the profit in goods or money that is made in invested capital; (iii) an excess above what is due or expected.¹³

Usury is defined as: (i) the lending of money with an interest charge for its use; (ii) an unconscionable or exorbitant rate or amount of interest; specifically interest in excess or a legal rate charged to a borrower for the use of money.¹⁴

Thus, the definition of riba does not completely match that of interest nor usury. It is possible that something is labeled as 'interest' but is not considered 'riba' at all. This is regarding the usage of these words in legal and finance context. In common usage, interest and riba are understood to be synonymous and for practical purposes this is generally valid.

Riba in the Quran and Hadith

Riba is of two types: (1) Riba al-Qard and (2) Riba al-Fadl. Riba al-Fadl has an offshoot called (3) Riba An-Nasee'ah. Riba al-Qard is the only type discussed in the Noble Quran. The other two types are mentioned in Hadith Shareef.

Riba al-Qard is the excess amount stipulated in a loan. In the Surah Aal-'Imran, Allah, the Most Magnificent, states:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ﴾

O you who believe, do not eat up the amounts acquired through riba (interest), doubled and multiplied. Fear Allah, so that you may be successful!¹⁵

Riba al-Fadl and Riba an-Nasee'ah are related to bartering. In Hadith Shareef, six particular items are listed which when exchanged with a like item, must be done equally and immediately. If there is more or less on one side, it is Riba al-Fadl. If one part of the exchange is deferred (like a loan agreement) it is Riba an-Nasee'ah. Imam Tirmizhi, may Allah have mercy on him, narrates this hadith as:

¹² ابن عابدين 398/7

¹³ <https://www.merriam-webster.com/dictionary/interest>

¹⁴ <https://www.merriam-webster.com/dictionary/usury>

¹⁵ Surah Aal-'Imran:130

«الذَّهَبُ بِالذَّهَبِ مِثْلًا مِثْلًا وَالْفِضَّةُ بِالْفِضَّةِ مِثْلًا مِثْلًا وَالنَّمْرُ بِالنَّمْرِ مِثْلًا مِثْلًا وَالْبُرُّ بِالْبُرِّ مِثْلًا مِثْلًا وَالْمِلْحُ بِالْمِلْحِ مِثْلًا مِثْلًا وَالشَّعِيرُ بِالشَّعِيرِ مِثْلًا مِثْلًا فَمَنْ زَادَ أَوْ أَزَادَ فَقَدْ أَرَبَى بِيعُوا الذَّهَبَ بِالْفِضَّةِ كَيْفَ شِئْتُمْ يَدًا يَبِيدَ وَيَبِعُوا البُرَّ بِالنَّمْرِ كَيْفَ شِئْتُمْ يَدًا يَبِيدَ وَيَبِعُوا الشَّعِيرَ بِالنَّمْرِ كَيْفَ شِئْتُمْ يَدًا يَبِيدَ»

*Gold for gold, equally; silver for silver, equally; dates for dates, equally, wheat for wheat, equally; salt for sale, equally; barley for barley, equally; whoever increases or wants more (in return) has dealt in riba. Barter gold for silver as you like (in whatever quantity you wish), hand-for-hand (on the spot). Barter wheat with dates as you like, hand-for-hand. Barter barley with dates as you like, hand-for-hand.*¹⁶

From this, the Fuqaha have derived the principles of Riba in bartering and explained the application of this rule to other items as well.¹⁷

An Interesting Note: Usury Is Illegal

Nearly every state of the US has a limit on how much interest can be charged on loans.¹⁸ After this limit, it is considered usurious and unlawful. For example, in the state of New York, the set limit is 16%. If a loan contract stipulates more than this, it is unlawful, invalid and unenforceable. Furthermore, in New York and certain other states, the contract is voided ab initio (i.e. treated as invalid from the beginning).

The reasoning behind this is that usury unfairly benefits the lender and is abusive and unjust to the borrower. The interest limit is set to determine if the interest is unjust and immoral.

Carrying forward this notion of justice and sympathy for the fellow man in need, the Quran orders, “do not eat up the amounts acquired through riba (interest), doubled and multiplied” and “give up what still remains of riba, if you are believers.”¹⁹

Thus, in Islam, it is not allowed to exploit the need of another and take advantage of it to the least bit. All amounts of interest are considered immoral and unjust.

The ‘doubled and multiplied’ in Surah Aal-‘Imran, verse 130, should not be confused with the ‘exorbitant rate’ definition of usury. It does not imply that interest which is not ‘doubled and multiplied’ is acceptable. The other verse quoted (Surah al-Baqarah, 278) clearly prohibits all amounts of riba.

Some have incorrectly inferred from ‘doubled and multiplied’ that compound interest is the only impermissible type. Compound interest is when the periodic interest amount is added to the principal each time it is due. So, if \$100 is lent at 10% monthly interest, \$110 is due at the end of the first month. Then, the \$10 of interest is added to the principal and the interest is now calculated on \$110. Essentially, this is interest upon interest.

¹⁶ Sunan Tirmizhi, 1224

¹⁷ تحفة الاماعي 154-149/4 مكتبة الحجاز ديوبند، انڈیا ط. 1429 هـ

¹⁸ <http://www.lendingkarma.com/content/state-usury-laws-legal-interest-rates/>

¹⁹ Surah al-Baqarah:278

Undoubtedly, the Quran prohibits this injustice upon injustice with much emphasis. However, this does not mean that it allows simple interest. Firstly, the ayat in Surah al-Baqarah clarifies this issue. Secondly, this form of articulation is quite common in the Quran:

﴿فَلَا تَجْعَلُوا لِلَّهِ أَنْدَادًا﴾

...So, do not set up parallels to Allah²⁰

does not mean it is acceptable to take one or two gods besides Allah, but not many gods ('parallels'), Allah forbid!

﴿وَلَا تَشْتَرُوا بِآيَاتِي ثَمَنًا قَلِيلًا﴾

...nor take a paltry price for My verses²¹

does not mean the verses of Allah can be sold at high prices, but not low prices, Allah forbid!

Rather, these ayat explicitly mention the most despicable form of the sin, incorporating all which is below it. In riba, the most despicable form is 'doubled and multiplied', or interest upon interest. This does not exclude the lesser forms of the sin from prohibition.²²

Nonetheless, a Muslim must avoid riba at all costs, regardless of what it is called in any given contract. Two very clear messages from the Quran and Sunnah are enough to explain the malignance of riba:

﴿فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ﴾

But if you do not (give it up), then listen to the declaration of war from Allah and His Messenger.²³

«الرِّبَا سَبْعُونَ حُوبًا أَيْسَرُهَا أَنْ يَنْكِحَ الرَّجُلُ أُمَّهُ»

Riba is seventy (degrees of) sins, the least of which is equivalent to a man marrying his mother.²⁴

With this foundation laid down along with the basic principles of what is impermissible and indecent in Islam, the analysis of the more than 20 different investments offered in a 401(k) plan can be deduced. The more common options are analyzed below:

²⁰ Surah al-Baqarah:22

²¹ Surah al-Baqarah:41

معارف القرآن لشيخ التفسير والحديث العلامة إدريس الكندهلوي 53-48/2 مكتبة المعارف، كراچی ط. 1422ھ²²

²³ Surah al-Baqarah:279

²⁴ Sunan Ibn Majah:2360.

إسناده ضعيف لضعف أبي معشر - وهو نجيح بن عبد الرحمن السندي - وقد تابعه غير واحد. وأخرجه البيهقي في «شعب الإيمان» (5522)، وأخرجه ابن أبي شيبة 561/6، وأخرجه هناد بن سري في «الزهد» (1176)،

- a. Money Market Account: a deposit account which pays interest based on current rates in the money market.²⁵
Analysis: Impermissible. Deposit amounts are considered as *qard* (loan) lent to the bank. Thus, interest earnings are purely *riba*.²⁶
- b. Bond: Bonds are simply a promise to pay back the holder the principal amount stated and interest along the way. In other words, a bond is a loan paid back with interest.²⁷
Analysis: Impermissible. The interest payments in bonds are clearly *riba*.
- c. Stable Value Fund: investments in government treasury bonds or high credit rating bonds.²⁸
Analysis: Impermissible. The interest payments in bonds are clearly *riba*.
- d. Stocks: Stocks are small ownership shares of a company. The stock shares have value based on the performance of the company. Dividends (profits) are periodically distributed to the stock holders.²⁹
Analysis: Permissible but with conditions.

Conditions for the Permissibility of Stock Investments³⁰

1. The business conducted by the company must be halal. Investing in companies involved in the business of wine, intoxicants, gambling, *riba*, and other indecencies is not permissible.
2. To sell the stock at a higher or lower price than the face value, the company must have some non-liquid assets (for example: furniture, machinery, buildings, etc.).
3. If the primary business of the company is halal but the company is involved in *riba*, it is necessary to speak out against such practices.
4. If the company has interest income, the percentage of the dividends propionate to it must be donated as charity without the intention of reward.

These are the basic conditions set forth by contemporary Fuqaha after extensive research of the aspects of stock investments related to Fiqh and the common practices in the market. It is important to understand that this is a means of finding a permissible way to solve the issues the Ummah faces in the ever-changing world they live in. It is not meant to encourage such investments. The problems with investing in stocks are many. Some relevant issues to 401(k) plans are discussed below.

²⁵ Dlabay, Les R.; Burrow, James L.; Brad, Brad (2009). *Intro to Business*. Mason, Ohio: South-Western Cengage Learning. p. 482.

²⁶ Fiqhi Maqalat, 3/23

²⁷ Bond. BusinessDictionary.com. WebFinance, Inc. October 03, 2017
<<http://www.businessdictionary.com/definition/bond.html>>.

²⁸ Bedway, Barbara (16 March 2009). "Inside Stable Value Funds". *CBS News Moneywatch*. Retrieved 7 October 2017.

²⁹ Stock. BusinessDictionary.com. WebFinance, Inc. October 03, 2017
<<http://www.businessdictionary.com/definition/stock.html>>.

³⁰ اسلام اور جدید معاشی مسائل 17/2-23 ادارۃ اسلامیات، کراچی ط 1429ھ، جانتھ اسٹاک کمپنیوں میں سرمایہ کاری ص 28-31 جامعہ اسلامیہ بنگلور

Complications in Investing in Stocks

(1) Companies Conducting Haram Business

Investing in a stock share means becoming a partner in the business. Thus, if the business is permissible, so is the investment. Investing in companies involved in any type of haram business is impermissible. If a company is a conglomerate of many businesses, all of them must be halal. If even one of ten different businesses a company is conducting is haram, it is not permissible to buy shares of that company.

(2) Companies which conduct only halal businesses must also comply fully to the commandments of the Shariah in their business practices. It is rare, if not impossible, to find such companies in today's world. Most companies have unacceptable practices, especially in regards to riba, which produce haram income. Investing in companies involved in such practices, like earning or paying riba, is *makrooh* (disliked), unless the investor voices his disapproval of the impermissible practices. This is because it entails a form of supporting sin (*ta'awun 'ala al-ithm*) which is prohibited in the Quran.

Supporting Sin (*Ta'awun 'ala al-Ithm*)

﴿ تَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ﴾

...help each other in righteousness and piety, and do not help each other in sin and aggression.³¹

Hazrat Mufti Muhammad Shafi, may Allah shower his mercy on him, in his detailed treatise on this topic, *Tafseel al-Kalam fi Mas'alat al-I'anat 'ala al-Haram*, explains that aiding in any sinful activity is haram according to the Quran. This is applicable exclusively to those activities in which sin is intended, directly or indirectly. An example of direct intention of sin is entering a contract which clearly states the intent of gambling. An example of indirect intention is selling musical instruments and other such items which have no other use but that of sin. Unless the intention is found, directly or indirectly, the action will not be considered support of sin. Besides this, there is a similar concept called *tasabbub* (cause and effect) which is also haram.

Tasabbub (Cause and Effect)

There are two types of causes (*sabab*) based on the relation to the effect; one that is remote (*sabab ba'id*) and another that is immediate (*sabab qareeb*). The remote cause of a sin is not haram. It is a common cause that anyone can use for any purpose. It does not have any particular connection to the sin. An example of a remote cause of a sin is building a road on which a thief walks on to commit theft. The building of the road is surely a cause but it is remotely related to the theft. Thus, building the road is not considered haram just because of the sin it caused.

³¹ Surah al-Maa'idah:2

The immediate cause of a sin is haram. However, the immediate cause is also of two types, that which induces the sin (the effect) and that which does not. If the immediate cause induces the sin and the sin would not take place without it, the cause is considered haram. For example, women are ordered in the Quran, “do not be too soft in your speech, lest someone having disease in his heart should develop fancies (about you)”³². The immediate cause of the sin is the softness of the woman’s speech. Although the woman does not commit the sin herself nor orders it directly, her action is closely related to it. It induces the sin. It is also a fact that the sin would not take place without it. Therefore, her action is haram.

If the cause does not induce the sin, but it was done with sinful intention, it is considered supporting sin (*ta’awun ‘ala al-ithm*), and thus haram. If the immediate cause does not induce sin and there was no intention of sin either, but the person was aware of the aspect of sin, it is *makrooh*, or disliked. If he did not know at all, it is not *makrooh*. An example illustrating all three of these situations is renting a house to an alcoholic. Renting the house itself does not induce the sin of drinking although the tenant may do so inside. If the landlord rented it with the intention of facilitating drinking, his renting it out is haram. If he did not intend to facilitate the sin but he knew the tenant is an alcoholic and he drinks regularly, it is *makrooh* to rent to him. If he does not know about the drinking problem at all, it is not *makrooh*.³³

An investor provides the money a company uses to finance its activities. Providing money to pay or produce *riba* (or any other such practice) seems to support the sin. However, this cannot be categorized as supporting sin (*ta’awun ‘ala al-ithm*) because the investor obviously did not intend to commit a sin, directly or indirectly. He invested in a halal business thus the intention will be understood accordingly. If he wanted to invest in a haram business, he could have done so. If he wishes to invest in a *riba* producing business, there is nothing stopping him. His conscious choice of a halal business investment is evident that he does not intend to directly support a sin. His intention, unless explicitly stated otherwise, is clear by his action. Furthermore, his investment does not necessarily have to be used in the *riba* transactions as there are many others expenses it may finance. Thus, the indirect intention possibility is eliminated as well.

As for the cause-effect (*tasabbub*) issue, there is a clear causal relationship between his investment money and the sin of *riba* (the effect). The company uses the funds to directly engage in the sin, by placing it in interest-bearing accounts or paying interest amounts with it. Thus, it is not a remote cause, because it has a particular connection to the sin it causes.

Investing the amount is an immediate cause of the sin but does not induce the sin. It is exactly like the example of the house rental to an alcoholic. The company can use the funds as capital in their regular (halal) business, to pay overhead expenses or any other expense including funding

³² Surah al-Ahzab: 32

³³ 514-505/7 جواهر الفقه

their impermissible practices. The ruling on such immediate causes, which do not induce sin, is that if the investor is aware of the practice, it is *makrooh*, otherwise not.

In the transparent world of mass information available at the fingertips of every investor, it is difficult to imagine he is unaware of the company's business practices. Thus, it is *makrooh* to invest in a company which conducts halal business but is involved in other haram practices, such as riba.

Difference of Opinion About Alleviating the *Makrooh* Ruling

There is a difference of opinion about whether this share investment is permanently *makrooh* or the ruling can be alleviated somehow. If the investor voices his disapproval of the impermissible practices, it may stop the act or at least bar his approval, thus not authorizing the use of his funds for this purpose. Many Ulama feel that one investor speaking out against the ubiquitous practices resulting in enormous monetary sums is left unheard, unconsidered. Thus, they feel it is insufficient to alleviate the ruling of *makrooh* on the investment.

However, other Ulama feel otherwise. Hazrat Mawlana Ashraf Ali Thanwi, may Allah shower His mercy upon him, (and others following him, such as Mufti Muhammad Shafi, Mufti Taqi Usmani and Mufti Shuaibullah Miftahi) explains that if one is aware of the impermissible act and voices his disapproval prohibiting it, he will free himself from the responsibility of the sin. Even if his opinion is not enacted, the resulting sin will not be attributed to him.³⁴

With this bit of leeway, it is permissible, without it being *makrooh*, to invest in such a company so long as the investor voices his disapproval. This can be done possibly by writing to the management, at the annual shareholders meeting, or otherwise. Regardless of whether the voiced opinion is enacted or not, the shareholder clears himself from responsibility of such wrongs.

An important issue to note regarding this condition is that the common 401(k) plan is administered by equity funds which include stocks from dozens of companies. If an employee were to sort through all the companies and their different businesses (which is a burdensome task, as any given company may have multiple businesses it is involved in), it will come down to a list of companies he chooses from, with whom he must communicate his disapproval. Each of these companies, considering that they are publicly traded, are very big and have many questionable activities. To add to the difficulty, his 401(k) administrator may recommend changing companies to invest in very frequently, and may even do so without informing the employee depending on the terms of the agency agreement. All of this simply means that it is quite a formidable task to maintain this and ever the more difficult to steer clear of impermissible income from 401(k).

³⁴ امداد الفتاوى 491/3

(3) What to Do with Haram Income

The income produced from interest-related activities (and other impermissible transactions) in a company which otherwise conducts halal business is not permissible for consumption. Since the haram income can be easily distinguished, it must be donated to the poor without any intention of reward. The income statement of the company can be used to calculate the amount accurately.

Allamah Shami, may Allah shower His mercy on him, writes about this type of income,

ويجب عليه تفريغ ذمته برده الى اربابه ان علموا والا الى الفقراء

It is compulsory to discharge his responsibility by returning it the (original) owners if they are known, otherwise to the poor.³⁵

A percentage of the dividend income received by the investor is represented by the interest income. This percentage is determined from the income statement. Thus, that percent of the income must be donated without intention of reward.

In a 401(k) plan, this is another laborious effort just like the previous point because of the number of companies involved. In addition, riba dealings are very common in business, especially in the corporate world. It is indeed a tiring task to go through all of the financial documents and find the related riba amounts to pay back. A bit of negligence can easily lead to riba consumption.

(4) Condition for Selling Stocks for a Capital Gain

A stock investment represents ownership of a portion of the company. The assets of the company are owned by each shareholder proportionately. Selling the stock for a capital gain means selling ownership of that portion to the buyer. If the assets are only liquid (i.e. cash or its equivalents), the stock must be sold at face value. It is not permissible at a higher or lower price because the share represents the proportionate ownership of the cash. Just like selling \$100 of cash for \$105 or \$95 is impermissible, the sale of a stock share representing the \$100 for more or less is impermissible as well. If there are different types of assets, some liquid and some otherwise, as in most companies, selling the share is permissible at higher prices. The part of the sale price proportionate to the cash assets of the company will be for the cash, the remainder will be for the other assets. For example, a stock of \$10 face value is sold for \$15. At the time of sale, the company had \$11 in cash along with furniture and machinery. \$11 of the sale price is attributed

³⁵ منحة الخالق على بحر الرائق 360/2 (دار الكتب العلمية ط. 1418 هـ)

to the cash and \$4 to the other assets. It is not permissible to sell for less than \$11 because that represents the cash asset.

This is a compliance issue. Although the regular companies listed on any given index have many kinds of assets besides cash, there can be rare situations with only cash assets. However, the problem that the share cannot be sold less than the cash ratio it represents is a matter of worry. The stock market is a very volatile environment where companies can drop in value very quickly. If ever, a stock (of the many stocks it owns) owned in a 401(k) plan loses so much value that its price does not suffice to represent the cash ratio of the company's assets, this stock must not be sold at this point. This is a matter to discuss with the 401(k) plan manager.

(5) Business Conducted with Riba Loans

A doubt arises from the interest dealings of companies which otherwise conduct halal business. If the company takes a riba-based (haram) loan to fund their primary business activities, will the resulting profit be affected? Will the income from the regular business of company be halal if it is funded by riba loans? The solution to this is found in Allamah Shami's explanation of loans. He clarifies that a loan means borrowing money in the beginning and exchange between the parties at the end. The borrower owns the loan amount and anything he does with it. Any business he conducts from the borrowed money is his and it is halal.

لأن القرض اعارة ابتداء حتى يصح بلفظها و معاوضة انتهاء، لأنه لا يمكن الإنتفاع به الا بالاستهلاك ... ويملكه المستقرض
بالقبض كالصحيح³⁶

It is important to remember however that taking loans on riba is a grave sin. The issue under discussion is the resulting effect of the loan contract itself, not the riba aspect of it. Thus, the companies in a 401(k) plan investment which engage in impermissible practices, namely riba, do not contaminate all of their halal income due to their partial riba involvement.

(6) Speculation is Not Gambling

Selling stocks to earn a capital gain is permissible. A stock share represents the percentage of ownership of the company assets it is related to. As mentioned earlier, in order to sell at a higher price than what it was bought for, the company must have assets other than cash. The mere estimation of when stocks will gain or lose value to decide whether to hold on to the investment or not, referred to as speculation, does not render it impermissible. Some contemporary scholars have stated that buying a stock with the sole intention of capital gain is impermissible because of

³⁶ رد المحتار 161/5

speculation. This is not correct because the permissibility of a sale cannot depend solely on intention. There must be a valid reason adversely affecting the sale itself to deem it impermissible.

Speculation is a matter in every business investment. The investor anticipates gains and thus retains an investment, otherwise he may sell it to prevent further loss. The speculation factor in a capital gain must not be confused with gambling. Decisions based on speculation do not amount to gambling.

Gambling is defined in the Shariah by two things³⁷:

- 1- The input amount is fixed but the output is only conjectured (*mawhoom*).
- 2- The input amount is at risk of complete loss or may cause additional losses with it.

Investing in a stock while anticipating its gain is not based merely on conjecture. Rather, it is an understood fact that a company's performance will raise its share price. Future performance can be anticipated based on previous performance, business policies, market conditions and other factors. Thus, the investor can make an informed decision and hope for the best. There will still remain a risk of loss, as with all other businesses. This risk is natural and expected. On the contrary, if this risk was not present at all, it can lead to *riba*, because it is only *riba* that guarantees gains to one side. The amount invested is not at any more risk of complete loss or of causing further losses than in any other business investment. Although highly improbable, this amount of risk is present in every business.

This is also a misconception about the 401(k) plan itself. The objective is to provide retirement funds for the employee. The plan manager works to ensure that the money grows. The investments which guarantee growth involve *riba*. The permissible options for growing investments are limited. They do not provide any guarantees. There is always a risk of loss. The plan manager may spread this risk or mitigate it by different investment techniques (within permissible means), as does every businessman. Doing so does not equate to gambling nor does it lead to *riba*.

(7) Stock Sales Before Complete Ownership

Any stock sales made before the seller has complete ownership of the share is impermissible.

Rasulullah, peace and blessings be upon him, clearly prohibited:

³⁷ اسلام اور جدید معیشت و تجارت: 90 إدارة المعارف کراچی

« لا تبع ما ليس عندك »

*Do not sell what you do not have.*³⁸

This happens in stock trades regularly in the forms of forward trading, spot trading, day trading, and others such methods. The key is to determine when the share comes into full ownership in a transaction. The stock share is not the name of the certificate, although it provides proof of ownership. In reality, the stock share transfers to a new owner when it is recognized by a set system and its responsibilities are transferred as well. In other words, its gains and losses are attributed to the new owner. In the increasingly fast pace, speedy world of finance today, stocks are bought and sold very quickly. However, in certain situations, the transactions happen a bit too quickly. It happens such that an investor buys a share and, before he receives full ownership, he sells it to another. In a spot trade, the new exchange takes place immediately after the original transaction. The actual ownership never transfers completely; only the agreement between the first two parties takes place. In a future trade, the price is specified along with the time but the ownership transfer is deferred. Both of these transactions are not permissible because the subsequent trade occurs before the first one is completed. Full transfer of ownership is not found.

Advice About Ambiguous Matters

All of the matters discussed above affect the permissibility of participating in a 401(k) plan. As stock (equity) investment is the only permissible investment vehicle commonly found in a 401(k) plan, some details were discussed. Nonetheless, stocks are not the ideal investment either. There is more than one complication in its permissibility. The safe way is to avoid all doubtful and ambiguous matters altogether. The hadith of Rasulullah, peace and blessings be upon him, speaks clearly,

الْحَلَالُ بَيِّنٌ وَالْحَرَامُ بَيِّنٌ وَبَيْنَ ذَلِكَ أُمُورٌ مُشْتَبِهَاتٌ لَا يَدْرِي كَثِيرٌ مِنَ النَّاسِ أَمِنَ الْحَلَالِ هِيَ أَمْ مِنَ الْحَرَامِ فَمَنْ تَرَكَهَا اسْتِيزَاءً لِدِينِهِ وَعِزِّهِ فَقَدْ سَلِمَ وَمَنْ وَقَعَ شَيْئًا مِنْهَا يُوشِكُ أَنْ يُوَاقِعَ الْحَرَامَ

*Halal is clear and haram is clear; between them are doubtful issues which most people do not know whether they are halal or haram. The one who abstained from them (these doubtful issues) to protect his Deen and his honor is safe. The one who indulged in some of it is very likely to soon indulge in haram.*³⁹

The options in a 401(k) plan are not clear in terms of permissibility. If an employee were to try to maintain all the issues in it and steer clear of all impermissible income, it is possible but difficult. In such a case, it is permissible to participate in 401(k). However, the better option is to plan for retirement in a

³⁸ Tirmizhi, 1153

³⁹ Tirmizhi, 1205

safer way, like simple savings, real estate or a direct business partnership without so many complications involved.

Borrowing from 401(k)

Borrowing from the 401(k) plan is simply 'borrowing' money from one's own account. In the Shariah, this is not considered 'borrowing' in reality because a loan must be done between two separate parties. Thus, the interest payments made to oneself are not considered riba either. It is permissible to borrow and payback oneself more than the withdrawal. The set rates and time frames are all requirements of the tax code, to maintain the tax break allowed to the participant. They do not amount to a loan paid back with an excess amount because there is no second party in the agreement. One simply promises himself to put a certain amount back into his savings after taking an amount out, which is not considered riba.

Zakat on 401(k) Plan

The first matter to resolve is whether the invested amounts count as assets for zakat calculation.

How much of the investment amount does the employee really own?

In order for the 401(k) plan amounts to be counted for zakat purposes, the ownership must be complete.

In the Shariah, full ownership (*milkiyah*) is defined as the famous Hanafi faqih, Ibn Nujaim, may Allah shower him with His mercy, explains:

الكامل (أي الملك الكامل) وهو المملوك رقبة ويذا

*Full ownership is ownership of the asset and its possession.*⁴⁰

Similarly, Allamah Shami, may Allah have mercy on him, writes:

لان المراد بالتام المملوك رقبة ويذا

*Because the meaning of complete [ownership] is ownership of the asset and its possession.*⁴¹

The amount contributed by the employee from his paycheck most definitely belongs to him. The employee takes possession of this pay amount as soon as the third-party plan manager receives it on his

⁴⁰ البحر الرائق 302/2

⁴¹ در المختار مع شامي 259/2

behalf. The manager is his agent (*wakeel*) and his reception is considered the principal's (*muwakkil*, i.e. the employee) reception.

حكم التوكيل صيرورة المضاف اليه وكيلًا، لان التوكيل اثبات الوكالة وللوكالة احكام: منها ثبوت ولاية التصرف الذي تناوله التوكيل⁴²

المال الذي قضه الوكيل بالبيع والشراء وايفاء الدين واستيفائه ... هو في حكم الوديعة بيد الوكيل⁴³

The next portion of the investment amount comes from the employer. The employer contributes a set amount, if any, as additional compensation to the employee. This is like a bonus for him, except it is fixed.

The final portion of the plan is the amount collected as profits from the investments.

As soon as the employer determines the amount is earned by the employee, the employer separates this portion of company assets and considers it owed to the employee. It is an amount due to him. It comes into his ownership when they actually give it to him. Thus, any amount the employer contributes to the plan belongs to the employee immediately. There is one exception however. The employer withholds certain amounts for vesting. They may transfer the entire amount to the plan manager, giving the employee possession of it (*yadan*), but the ownership is still retained by the employer until the vesting schedule requirements are met. The unvested amount in a 401(k) plan is not owned by the employee in reality (*raqabatan*), thus it will not be calculated for zakat.

How much of the investment amount does the employee pay zakat for?

In summary, the employee must pay zakat on all amounts invested in the 401(k) plan, regardless of whether it is his contribution, the employer's contribution (excluding the unvested amount) or accrued gains from the investments.

The Effect of Taxes and Penalties in Zakat Calculation

The 401(k) plan amounts are tax-deferred, not tax-free. Normal income tax will be deducted from the withdrawal after 59 ½ years of age. This has no effect on zakat calculation. Tax is not deductible from zakat assets until it is imposed. The entire amount remains in the ownership of the employee until the tax or penalties are levied.

⁴² بدائع الصنائع 417/7

⁴³ شرح المجلة ص. 784

Furthermore, it is not possible to accurately calculate the tax liability before it is imposed at withdrawal (59 ½ years of age) due to a number of reasons. Firstly, there is no guarantee the employee will survive to withdraw the amount and owe taxes on it. Secondly, he may be in a lower tax bracket than he is now. This is a very probable situation depending on how old he is at withdrawal. Thirdly, the income tax imposed on his withdrawal amount is based on the state tax laws of his residence. At the time of withdrawal, he may live in a state which has no income tax or a different tax code from the current. All of these factors render the accurate tax calculation impossible.

Even if it was calculated accurately, the rules of zakat do not allow any deductions from the assets until it is imposed as a liability against it.

Another issue to consider is the possible tax penalty if the employee withdraws amounts before 59 ½ years of age. Can this impending loss be deducted from the zakat assets?

Possible penalties, losses or uncertainties cannot be deducted from the zakat assets until they are imposed. They are treated just like expected future expenses and foreseeable losses when calculating zakat. Regarding this, Allamah Ibn Abideen Shami, may Allah shower His mercy on him, writes:

إذا أمسكه لينفق منه كل ما يحتاج فحال الحول وقد بقي معه نصاب فانه يزكي ذلك الباقي، وان كان قصده الانفاق منه أيضا في المستقبل لعدم استحقاق صرفه الى حوائجه الاصلية وقت حولان الحول⁴⁴

When one keeps it to spend on his needs and a year passes while at least the nisab amount remains, he will pay zakat on the remainder, even if his intention is to spend it in the future because he does not have the right to spend it on his basic needs at time the year completes (i.e. his zakat calculation date)

At the time when the 401(k) participant calculates his zakat, the expenditure (tax or penalty related to withdrawal) has not already taken place although it is foreseeable and expected. Thus, this penalty amount is not to be deducted from zakat assets until the employee actually withdraws the amount. After the tax penalty is imposed, the tax amount can be deducted from the assets when calculating zakat because it is due immediately (if not already deducted upon withdrawal).

How to Calculate Zakat on 401(k) Plans

The amount in a 401(k) plan is an investment. Zakat is due on the entire investment amount as it is the income of the employee handled by his agent, the plan manager. The zakat due will be 2.5% of the entire amount.

⁴⁴ ابن عابدين 179/3

If the plan consists solely of stock investments and the manager proves the current value of the plan based on the market prices of the stocks, this amount should be used to calculate zakat.⁴⁵

If the plan consists of impermissible investments, wholly or partially, the principal amount of the investment, i.e. the employee's halal earnings, along with the employer's contributions are to be calculated for zakat. The haram income (riba amounts or earnings from impermissible businesses) is not qualified for zakat. Firstly, it is not owned by the employee as haram money does not belong to him (in terms of *milkiyah*). Hafiz Ibn Hajr, may Allah have mercy on him, narrates from Imam Qurtubi, may Allah have mercy on him,

وانما لا يقبل الله الصدقة بالحرام لأنه غير مملوك للمتصدق وهو ممنوع من التصرف فيه

*Allah does not accept sadaqah with haram because the donor does not own it and its use is prohibited.*⁴⁶

Amounts from impermissible sources must be returned to the original owner. As this is obviously not possible in the 401(k) plan, it must be donated to the needy without the intention of reward, as Allamah Shami, may Allah have mercy on him, states:

لو كان الخبيث نصابا لا يلزمه الزكاة لأن الكل واجب التصديق عليه

*If the impure (impermissible amounts) meets the quantum (criteria) of zakat, there is no zakat on it because it must be donated entirely.*⁴⁷

Also, as quoted earlier, Allamah Shami narrates from Imam Shurunbulali, may Allah have mercy on him:

ويجب عليه تفريغ ذمته برده الى اربابه ان علموا والا الى الفقراء

*It is compulsory to discharge his responsibility by returning it to the (original) owners if they are known, otherwise to the poor.*⁴⁸

Allah, the Most High, is pure and accepts nothing but pure.⁴⁹ Donating haram with the intention of reward is beyond question. Furthermore, it is not possible to purify haram income by simply paying 2.5% zakat on it. Thus, there is no zakat on haram income.

⁴⁵ اسلام اور بريد معيشت اور تجارت, 93

⁴⁶ فتح الباري 328/3 دار الريان للتراث ط. 1407 هـ

⁴⁷ ابن عابدين 218/3

⁴⁸ منحة الخالق على بحر الرائق 360/2 (دار الكتب العلمية ط. 1418 هـ)

⁴⁹ Sahih Bukhari, 1321; Muslim, 1683

When to Pay Zakat?

Zakat is to be paid as soon as it is due. Zakāt is calculated periodically. Each period is one Islamic year long and is called a *hawl*. A person's *hawl* date (on which he calculates his zakāt every year) is set by the date on which (1) his zakātable assets reached the amount of *nisāb*⁵⁰ for the first time and (2) one full Islamic year has passed after that date, the assets are at least *nisāb* value as long as (3) some of the wealth remained throughout the course of this year (i.e. the wealth did not diminish to zero at any point throughout the course of this year). Thereafter, the zakāt *hawl* date remains constant on that date every year.

For example: Zaid owns *nisāb* amount, \$400, on Rajab 1, 1434. He did not own any wealth prior to this. He continues to own some wealth (it did not diminish to zero at any point) throughout the following year. On Rajab 1, 1435, he calculates his wealth again and sees that he owns \$450, which is more than the *nisāb* amount. This date (Rajab 1) becomes the set date on which Zaid calculates his zakāt *hawl* every year.⁵¹ As discussed earlier, the employee has full ownership over the amount in a 401(k) plan, He must pay zakat on it as he does on all other eligible assets. He must pay zakat on his set *hawl* date for all applicable amounts in his 401(k) plan.

Difficulty Paying the Zakat Immediately

The amounts in a 401(k) start adding up very quickly. The contributions may be fairly small but considering the matching policies of many employers and the income revenue from the investments, the amount grows fast. In a matter of few years, the zakat due can also be a considerable amount. The right way is to pay it immediately. However, if this is difficult, payment may be deferred to a future date but zakat must be calculated properly on the due date and paid as soon as possible.

ويجب على الفور عند تمام الحول حتى يأتى بتأخيرته من غير عذر⁵²

If even this is difficult, the zakat rule for loans may be applied too. A lender may defer zakat payment of the loan he lent to someone until he receives his money back. When returned, he pays the zakat of all the past years at once. In other words, the employee is allowed to pay all of the accumulated zakat due throughout the years when he withdraws the amounts from the plan.

تجب زكاتها إذا تم نصابا وحال الحول لكن لا فورا بل عند قبض أربعين درهما من الدين⁵³

⁵⁰ The amount of wealth which makes one liable for zakāt is called *nisāb*. *Nisāb* is the threshold line, which separates those who are obligated to give zakāt from those who are not. In other words, *nisāb* is the minimum amount of wealth whose owner is deemed to be wealthy in the conception of Shari'ah and zakāt is obligatory on him.

⁵¹ For more on zakat, see SBNY's publication, *Zakat in Brief*.

⁵² الفتاوى الهندية 170/1

⁵³ الدر المختار ص. 132

This may, however, prove to be even more difficult. Firstly, because the objective of the plan is to provide a retirement fund when the employee may not be earning as much at the time of withdrawal. The employee may even become dependent on the retirement fund amount, making it ever the more difficult to pay so many years of zakat at once. Secondly,

﴿الشَّيْطَانُ يَعِدُكُمُ الْفَقْرَ وَيَأْمُرُكُم بِالْفَحْشَاءِ وَاللَّهُ يَعِدُكُم مَّغْفِرَةً مِّنْهُ وَفَضْلًا وَاللَّهُ وَاسِعٌ عَلِيمٌ﴾

*Satan frightens you with poverty, and bids you to commit indecency, and Allah promises you forgiveness from Him, and grace as well. And Allah is All-Embracing, All-Knowing.*⁵⁴

This makes it seem even more difficult to pay such a large amount of zakat.

Furthermore, Rasulallah, peace and blessings be upon him, said,

« يَهْرُمُ ابْنُ آدَمَ وَتَشِبُّ مِنْهُ اثْنَتَانِ الْحِرْصُ عَلَى الْمَالِ وَالْحِرْصُ عَلَى الْعُمْرِ »

*The son of Adam ages while two things in him get younger: the desire for wealth and the desire for life.*⁵⁵

The employee may find it difficult to pay the zakat amount at his older age due to the increased love of wealth he is prone to develop as he ages. Thus, it is best to pay zakat on the 401(k) plan yearly or at increments periodically. As a last resort, he may delay the zakat payment until the withdrawal but with much caution and diligence.

And only Allah knows best.

– وصلى الله على نبينا محمد وآله وصحبه وسلم تسليما كثيرا كثيرا –

⁵⁴ Surah al-Baqarah:268

⁵⁵ Sahih Muslim, 1047