

Peter Barnes Comments on Sharia Finance Compliance in International Tax Review

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There is a lack of government guidance in non-Muslim countries on how to tax financial transactions structured to comply with Sharia law.

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Issuers are using Islamic finance to access additional customers and capital, explained Peter Barnes, Of Counsel to Caplin & Drysdale in the U.S., during a panel discussion.

“If you are a large company that wants to tap the capital markets – yes, today, there is plenty of cash around – but there is an enormous amount of cash available through investing in Islamic finance. The big issuers – General Electrical, Goldman Sachs, the UK government – want to be able to access that cash,” Barnes said.

Issuers want to signal an interest in Muslim-depositor markets and the market goes beyond the Middle East to include Malaysia, Singapore, Indonesia, Morocco, and others.

“Unless the big institutions are engaged with the Muslim-depositor markets, they’re missing out on a big chunk of the financial world - and people want to build expertise for the future. This is an area of growth,” said Barnes.

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“If you go on the website for the IRS, and you search for either the words ‘Sharia’ or Islamic finance’, what you get it: ‘your search returned no results’ – there is no guidance,” said Barnes. “Even though Goldman Sachs, General Electric, and others, had done these transactions, there is zero guidance in the U.S. on how these transactions should be treated.”

“It worries me because U.S. taxpayers are doing these transactions, either directly or through their subsidiaries,” continued Barnes. “Some subsidiaries are reporting transactions on their 5471 forms to some level, and I’m not sure the U.S. tax leaders of these companies even know these transactions are occurring, or have thought about the consequences of these transactions for 5471.”

Barnes quoted a 2017 article written by Virginia La Torre Jeker, international U.S. tax specialist, who said that while “[guidance] from the IRS or the courts on the application of Sharia law to U.S. tax matters would be helpful, it simply does not exist and is unlikely to materialise soon. This is especially so in today’s political climate, given that Sharia law is a hotly contested topic in the United States”.

However, Barnes said La Torre Jeker understated the problem, describing Sharia law as a “toxic topic in the US”. States have tried to pass laws to prevent the use of Sharia principles when dealing with legal matters.

For the full article, please visit *International Tax Review's* website.

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