

Tax Exemption through Letters: Issues of Legality and Equality

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Abstract

Employment income is one source of income tax in Ethiopia. Employees, in addition to their periodic salary, may be entitled to other payments or gains in cash or in kind during the employment relationship. The main concern of this article is to assess whether payments other than periodic salary of an employee, particularly house and transportation allowances, are taxable or not. The income tax proclamation, income tax regulation and income tax exemption directive provide employment incomes exempted from taxation. However, house and transportation allowances are not among those exempted. Practically, the writer traced that some federal government institutions, including Ethiopian Revenues and Custom Authority (ERCA) employees' incomes received in the form of house and transportation allowances and one regional government institution employees' income paid for house allowance are exempted from taxation via letters written by the Office of the Prime Minister and the regional government Supreme Court respectively. The exemptions for the federal government institutions employees are granted following the request of their employers. These exemptions being made by bodies not authorized by law to grant exemption and the means of exemption, i.e., the letters raise basic questions of legality. The exemptions also violate the principle of equality as similar incomes of

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other institutions employees are not exempted. The acts of those institutions that request exemption of tax liability and the office that grant exemption violate the income tax proclamation which imposes an obligation on them to cooperate in the enforcement of the proclamation. Particularly, ERCA, the principal body in the administration of tax, fails to respect and ensure compliance of tax laws.

Key terms: allowance, employment income, letter, principle of equality, principle of legality, tax authority, tax exemption, withholding agents.

Introduction

Income may be defined as the receipt in the form of money or money's worth which is derived from definite source with some sort of regularity or expected regularity.¹ For the purpose of the charging of income tax and computation of total income, all income shall be classified under the following heads of income: salaries, income from house property, profits and gains of business or profession, capital gains, and income from other sources.²

¹Gurminder, K., Lesson 4, Income under the Head, Salaries – I, P 30, available at http://www.dawnhrs.co.in/pdf/Income_Under_Various_Heads.pdf, Consulted 11 June, 2015, [here in after Gurminder]. In Ethiopia, the income tax defines income as: "Income" shall mean every sort of economic benefit including nonrecurring gains in cash or in kind, from whatever source derived and in whatever form paid credited or received. See, Income Tax Proclamation, 2002, Art 2(10), Pro.no.286/2002, *Fed. Neg. Gaz.*, year 8, no. 34, [here in after Income Tax Proclamation No. 286].

² Tax Payers Information Series 31, Taxation of Salaried Employees Pensioners and Senior Citizens, p 3, available at <http://www.incometaxindia.gov.in/booklets%20%20pamphlets/tax-salaried-employees.pdf>, Consulted 3 June, 2014, [here in after Tax Payers Information Series 31]. Note that classification of bases of income can be found differently in other documents. For instance, Lee, B. and Richard K., Provide that, income is commonly divided into employment, business, and investment income. There are often supplementary definitions of each category of income and, in the case of investment income, definitions of amounts included in

Once we know what incomes of a person are taxable, then we need to know how to compute total taxable income according to the provisions of income tax law.³ The taxable income of a person for a tax period is commonly defined as the gross income of the person for the period less the total deductions allowed to the person for the period.⁴ The gross income of a person for a tax period is the total of amounts derived by the person during the period that are subject to tax.⁵ The gross income of a person, therefore, will not include amounts that are exempt from tax.⁶ The total deductions of a person for a tax period are the total of expenses incurred by the person during the period in deriving amounts subject to tax plus any capital allowances and other amounts allowed as a deduction on a concessional basis (e.g., charitable

investment income (e.g. dividends, interest, rent, and royalties). Lee, B. and Richard K., Individual Income Tax in Victor Thuronyi, (ed.), *Tax Law Design and Drafting*, International Monetary Fund, vol. 2, 1998, Pp 8-9 [here in after Lee and Richard, *Tax Law Design and Drafting*]. Under the Ethiopian jurisdiction, sources of income are listed in a non-exhaustive manner. That is, Income taxable under this proclamation shall include, but not limited to: a) income from employment; b) income from business activities; c) income derived by an entertainer, musician, or sports person from his personal activities; d) income from entrepreneurial activities carried on by a non-resident through a permanent establishment in Ethiopia; e) income from movable property attributable to a permanent establishment in Ethiopia; f) income from immovable property and appurtenances thereto, income from livestock and inventory in agriculture and forestry, and income from usufruct and other rights deriving from immovable property if such property is situated in Ethiopia; g) income from the alienation of property referred to in (e); h) dividends distributed by a resident company; i) profit shares paid by a resident registered partnership; j) interest paid by the national, a regional or local Government or a resident of Ethiopia, or paid by a non-resident through a permanent establishment that he maintains in Ethiopia; k) license fees (including lease payments, and royalties paid by a resident or paid by a nonresident through a permanent establishment that he maintains in Ethiopia. Income Tax Proclamation No. 286, *Id*, art 6

³ Gurminder, *Supra note*, p. 30

⁴ Lee and Richard, *Supra note* 2, p 7. In Ethiopia, "Taxable Income" shall mean the amount of income subject to tax after deduction of all expenses and other deductible items allowed under this Proclamation and regulations issued there under. Income Tax Proclamation No. 286, *supra note* 1, art 2(11)

⁵ Lee and Richard, *supra note* 2, P.7

⁶ *Ibid*

donations).⁷ Consequently, there are three key elements in the definition of the tax base: first, the inclusion of amounts in gross income; second, the identification of amounts that are exempt income; and third, the allowance of amounts as deductions.⁸ Computation of income from employment as one source of income is subject to exempt and deductible amounts. However, the concern is which incomes are exempted and the manner of the exemption.

This article then explores employment income tax administration from the perspective of legality and equality principles. The focus is to address how employment income tax particularly income derived from *house and transportation allowances* are treated under some federal institutions and *house allowance* in the Amhara National Regional State Supreme Court.

The scheme of the paper is as follows: Section 1 looks into employment income tax in general and principles of legality and equality in particular. These principles are discussed in relation to taxation of allowances under some withholding agents/institutions. Section 2 examines the practice of some withholding agents. It also explores whether the Ethiopian revenue and customs authority is monitoring compliance and administer the tax laws fairly and impartially. Finally, some conclusions are drawn.

⁷ Ibid

⁸ Ibid

1. Employment Income Tax in General

Employment income consists of any income that an employee receives pursuant to employment relationship.⁹ The definition of employment income is broad and comprises periodic salary as well as other cash payments, such as bonuses, sick pay, most lump sum payments to employees and the price of almost all gains collected following the employment relationship.¹⁰ Regardless of the type of payment, to be taxable as employment income, the source of income must be in an employment relationship.¹¹

Payment of employment income is commonly effected as soon as the employee earns the income; for this reason, some describe it as a “pay as you earn” income, abbreviated as PAYE (Pay-As-You-Earn). Under the prevailing arrangement, this timely payment is effected in most countries by withholding at the source, which is generally regarded as the cornerstone of

⁹ Gilberts, Tax Accountants and Business Advisors, Tax and National Insurance Contributions (NICs) on income from Employment, p 1, available at http://www.gilberts.uk.com/cms/filelibrary/treatment_of_employment_income.pdf, consulted 3 June, 2014, [here in after Gilberts]. The definition of employment income may serve a number of purposes in a global or schedular income tax system, and the appropriate definition may differ depending on the use to which it is put. The definition may be used, for example, to identify a category of income for which special deduction rules apply. It may also be used to establish the base for withholding of tax at source by employers. See, Lee and Richard, Tax Law Design and Drafting, Lee and Richard, *Supra note 2*, p. 15

¹⁰ Gilberts, *supra note 9*, p 1, In Japan employment income includes normal salary, wages, bonuses, various allowances, and fringe benefits paid for employment. See National Tax Agency, Withholding Tax Guide, p 9. Available at, http://www.nta.go.jp/foreign_language/withholdingtax2008.pdf, Consulted 5 July, 2014, [here in after National Tax Agency]. Under the Ethiopian income tax proclamation, Employment income includes any payments or gains in cash or in kind received from employment by an individual, including income from former employment or otherwise or from prospective employment. Income Tax Proclamation No. 286, *Supra note 4*, Art. 12(1).

¹¹ Gilberts, *supra note 9*, p 1

an effective income tax system.¹² The withholding tax approach is devised to secure uninterrupted and reliable collection of return for the government.¹³ It is advantageous because:¹⁴ (a) it brings about productive tax administration by enhancing the collection of tax return; (b) it motivates tax compliance and reduces tax evasion and avoidance habits; (c) it saves the taxpayer from financial hardship in obtaining the whole sum of tax when it becomes payable; and (d) it furnishes the government uninterrupted money to fund its activities. How revenue is collected, the impact of revenue-generation endeavor on equity, on the political fate of the government, and on the level of economic welfare may in some course of action be justly (or more) relevant as *how much* revenue is generated.¹⁵

Equity concerns are the most important subject matters during policy consultations on the devise of a personal income tax (PIT).¹⁶ It is usual to state these concerns in relation to the subsequent two commonly-used notions

¹² Lee and Richard, *Supra note 2*, p 61. PAYE is a system for collecting tax on employment income throughout the tax year, by requiring employers to deduct tax under PAYE every time an employee is paid. See Gilberts, *supra note 9*, p 2

¹³ Domo, R., Study on Strengthening the Withholding Tax System on Individual Taxpayers, *NTRC Tax Research Journal*, Vol. XXIII, 2011, p 1[here in after Domo]

¹⁴ Ibid

¹⁵ Richard, B., *Smart Tax Administration*, 2010, p 1

Available at: <http://www.siteresources.worldbank.org/INTPREMNET/Resources/EP36.pdf>, consulted 22 December, 2014, [here in after Richard]

¹⁶ Howell, H., Personal Income Tax Reform: Concepts, Issues, and Comparative Country Developments, IMF working paper, (2005), p 4, (available at: <https://www.imf.org/external/pubs/ft/wp/2005/wp0587.pdf>, consulted 7 April, 2014), [Here in after Howell]. Employment income taxes are sometimes mistakenly referred to as 'personal income taxes' in Ethiopia. There are no personal income taxes in Ethiopia, in the strictest sense of the expression. See, Taddese, L., Income Tax Assignment under the Ethiopian Constitution: Issues to Worry About, *Mizan law review*, Vol. 4 No.1, 2010, P 38 [here in after Tadesse, Income Tax Assignment]

of equity: (1) horizontal equity (HE)—one that treats similarly situated individuals alike; and (2) vertical equity (VE) — tax treatment of differently situated persons differently.¹⁷ With a view to realize horizontal equity, the tax system should avoid unreasonable differentiation among people in equal position.¹⁸ Failure to comply with equity concepts would result in injustice and loss of trust in the tax adjudication process as well as increased non-compliance.¹⁹

Yet, in many cases, some random discriminatory treatment will be unavoidable.²⁰ For instance, even if clearly selective tax legislation can be avoided, but during implementation some randomness or differentiation or mistakes in administration are inevitable, and often important.²¹ Further, arbitrary distinctions may be necessary for convenience purpose (for example, not all fringe benefits that conceptually are income can feasibly be taxed), and

¹⁷ *Ibid.* In modern thought, horizontal equity and vertical equity represent the notion of Aristotelian formal justice used in tax law and tax policy. See Yoseph *infra note 26*, p 1197. Horizontal equity is closely linked to the idea of “vertical equity,” which holds that people with different levels of welfare should be treated differently by the tax system. Vertical equity requires that individuals with a higher level of welfare pay proportionally more tax than those with a lower level of welfare. It has been said that “the requirements of horizontal and vertical equity are but different sides of the same coin – it is impossible to have one without the other. See Marc L., Horizontal equity and the personal income tax system, Library of Parliament Canada, 2005, p 1.

¹⁸ Richard, S., Income Averaging After Twenty Years: A Failed Experiment in Horizontal Equity, 1984 Duke L.J. 509, p 546. Cited in Charles, *infra note 19*, p 630.

¹⁹ Charles, A., Social Science Explanations for Disparate Outcomes in Tax Court Abuse of Discretion Cases: a Tax Justice Perspective, *Capital University Law Review* [33:623], 2005, p 630 [here in after Charles].

²⁰ Louis, k., Horizontal Equity: Measures in Research of a Principle, *National Tax Journal*, Vol. 42, no. 2, 1989, p 143, [here in after Louis]

²¹ *Ibid*

individuals with equal incomes may have acted differently, therefore they may be differentially affected by a given reform.²²

Another concept of equity which does not require detail discussion for the purpose of this work is vertical equity. The fundamental maxim of “vertical equity” implies that tax payers with greater ability to pay should pay more tax.²³ This principle requires that taxpayers with different incomes pay different amounts of tax and it addresses how best to distribute the burden of tax across different economic layer of society.²⁴

As mentioned above, under the fairness requirement, tax levy and collection should be made in compliance with the principles of horizontal and vertical equity. Equal taxpayers should pay equal tax amounts and unequal taxpayers should pay different tax amounts. But the question is: Are there principles or rules used to limit taxation power of governments in order to ensure equity?

The government is empowered only to act within the constitutional limits.²⁵ Restrictions imposed on the government’s power have two aspects: formal and substantial.²⁶ The first deals with simple authorization whether the

²² Ibid

²³ Lars, O., The Problem of Equity in Taxation, p 75, available at <http://www.myweb.dal.ca/osberg/classification/book%20chapters/Whats%20Fair/Fair.pdf>, consulted 21 October, 2014, [here in after Lars]

²⁴ Ibid

²⁵ The Federalist NO. 78, at 467 (Alexander Hamilton) (Clinton Rossiter ed., 1961) *cited in* Yoseph, foot note 1, *infra note 26*,

²⁶ Yoseph, E., Constitutional Review and Tax Law: An Analytical Framework, *American University Law review*, Vol. 56:5, 2007, p. 1190, [here in after Yoseph]

government is empowered to do.²⁷ The second deals with the issue of “how” - what is the correct and pertinent fashion of discharging government’s obligation set by the constitution?²⁸

In general, the fundamental legal principle insists taxation to be made in respect of rule of law.²⁹ The basic elements of this framework are (1) a tax can be levied provided there is a law, (2) a tax should not be applied in preferential or discriminatory manner, and (3) tax collected should be used only for common interests.³⁰

1.1. The Principle of Legality

The first principle in tax is that tax could only be imposed by the express words of the legislature.³¹ History tells us that in the Western world arbitrary taxation by the state was a cause for political campaigns.³² In view of this history, in most countries there is an underlying constitutional principle that tax can only be levied based on predetermined laws.³³ This principle means that any tax is to be levied only by an act of the legislature.³⁴ In other countries, the principle is not explicitly revealed in the constitution, rather

²⁷ Ibid

²⁸ Ibid

²⁹ Frans, V., Legal Framework for Taxation, in Victor Thuronyi (ed.), *Tax law design and drafting*, International Monetary Fund, Vol. 2, 1996, P 1, [here in after Frans, *Tax law design and drafting*]

³⁰ bid

³¹ Id, p 2

³² Ibid

³³ Ibid. See also Yoseph, *supra note 26*, Pp 1191-1192, for instance, in the US, Article I, Section 8 of the Constitution describes the general power of Congress in terms of tax laws as follows: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States”.

³⁴ Ibid

derived from another constitutional rule, as in Switzerland, where the principle of the legality of taxation is derived from the principle of equality of taxation.³⁵

The Federal Democratic Republic of Ethiopia (FDRE) Constitution does not explicitly require that taxation must have a firm basis in law, but the concept can be derived from a provision of the Constitution that grants the Federal Parliament the power to impose taxes and duties on sources reserved to the Federal Government.³⁶ During deliberation on the draft of the FDRE Constitution, one member of the constitutional assembly forwarded his opinion concerning this issue. He proposed the addition of a sub-article to Article 102 of the draft Constitution (now Article 100 of the FDRE Constitution). His proposed sub-article reads:

“በፌዴራል ሆነ በክልል ምክር ቤት ህግ ሳይወጣ ግብር ወይም ታክስ አይኖርም፡፡”³⁷ When translated: “There shall not be taxation unless a law is issued by the federal legislature or regional council”. [Translation mine].

Currently, the federal government has issued a public financial administration law, which appears to recognize the principle of tax legality that any tax must have a firm basis in law.³⁸ Further, the income tax proclamation provides that

³⁵ Ibid

³⁶ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 51(10), Pro.no. 1/1995, *Fed. Neg. Gaz.* year 1, no. 1. [here in after FDRE Constitution], See also Taddese, L., *The Ethiopian Tax System: Excesses and Gaps*, *Michigan State International Law Review*, Vol. 20:2, 2012, p 337, [here in after Taddese, *The Ethiopian Tax System*]

³⁷ Ethiopian constitutional assembly minute, Vol. 6, Addis Ababa, Oct 26-Dec 2, 1987 E.C., p 000017.

³⁸ Taddese, *The Ethiopian Tax System*, *supra note 36*

“[e]very person having income as defined herein shall pay income tax in accordance with this Proclamation”.³⁹ This is to mean that only income whose source is mentioned in the proclamation is taxable. Under the income tax proclamation, income is defined as “every sort of economic benefit including nonrecurring gains in cash or in kind, from whatever source derived and in whatever form paid credited or received.”⁴⁰ Unfortunately this definition seems to be incompatible with the scheduler approach adopted by Ethiopia.⁴¹ This is because an income, which is not assigned under either of the four schedules, will not be subject to tax due to lack of rule of computation particularly tax rate. These laws demonstrate that the principle of tax legality in its minimum requirement is recognized in Ethiopia.

The prevalent principle of legality of taxation has in some countries extended to prohibit the tax administration not to engage in compromise regarding tax liability with the taxpayer.⁴² This is due to the tax administration not being allowed to negotiate on the amount of tax due other than implementing the tax laws. Some countries impose the prohibition against compromise based on the belief of tax law as being public order.⁴³ This means that tax law is accorded

³⁹ Income Tax Proclamation No. 286, *supra note 1*, Article 10

⁴⁰ *Id.*, art 2(10)

⁴¹ *Id.*, art 8. The schedular approach of income taxation, still in use in some countries including Ethiopia, segments income by sources. Each schedule of the income tax has its own rules of computation of gross income, taxable income, tax rates, and methods of assessment. In contrast global income tax systems aggregate the income of a person from ‘all’ sources and apply the tax rate on the whole. *See* Taddese, *Income Tax Assignment, supra note 16*, Pp 37-38

⁴² Frans, *supra note 29*, p.4

⁴³ *Ibid*

similar treatment like that of criminal law, on which agreement between the police authorities and the criminal is prohibited.⁴⁴

1.1.1. Taxation of Allowances

This section discusses how allowances are treated. Are all allowances taxable or exempted? How are allowances under the federal tax law regime and one regional government income tax law treated? To begin with the concept of allowance, “[a]llowance is defined as a fixed quantity of money or other substance given regularly in addition to salary for meeting specific requirements of the employees.”⁴⁵ Different types of allowances are given to employees by their employers. Generally allowances are given to employees to meet some particular requirements like house rent, expenses on uniform, conveyance etc.⁴⁶ In principle, all allowances are taxable in the form of taxable wages unless plainly exempted.⁴⁷

⁴⁴ Ibid

⁴⁵ Taxation of Salaried Employees Pensioners and Senior Citizens, Tax Payers Information Series 31, (2011), p 25, Available at <http://www.incometaxindiapr.gov.in/incometaxindiacr/contents/tpi/Tax-Salaried-Employees.pdf>, consulted 3 June, 2014, [here in after Tax Payer Information]

⁴⁶ Heads of Income, The Institute of Chartered Accountants of India, P12, available at: <http://www.icaiknowledgegateway.org/littledms/folder1/chapter-4-heads-of-income.pdf>, consulted 11 June, 2015, [here in after Heads of Income]

⁴⁷ Tax Payer Information, *supra note 45*. For instance, in India House Rent Allowance (H.R.A.) granted to a person by his employer to meet expenditure incurred on payment of rent in respect of residential accommodation occupied by him is exempt from tax to the extent of least of the following three amounts:

- a) House Rent Allowance actually received by the assessee
- b) Excess of rent paid by the assessee over 10% of salary due to him
- c) An amount equal to 50% of salary due to assessee (If accommodation is situated in Mumbai, Kolkata, Delhi, Chennai) ‘Or’ an amount equal to 40% of salary (if accommodation is situated in any other place).

In Ethiopia, the income tax laws impose an obligation on employers to withhold tax under the withholding scheme every time an employee is paid unless the payment is expressly made tax-exempt by the Proclamation.⁴⁸ Employees may be entitled to different payments such as allowances particularly for housing and transportation. Thus, employers committed to pay allowances have an obligation to withhold tax so far as it is not exempted. Under the Federal Income Tax Proclamation, house and transportation allowances are not exempted.⁴⁹ Even laws issued subsequent to the income tax law do not exempt *house and transportation* allowances.⁵⁰

In addition, transport allowance is generally given to government employees to compensate the cost incurred in commuting between place of residence and place of work. An amount upto Rs.800 per month paid is exempt. However, in case of blind and orthopedically handicapped persons, it is exempt up to Rs. 1600p.m. *See*, Gurminder, *supra note 1*, p 36 and 38 respectively.

⁴⁸ For instance, *see* Income Tax Proclamation No. 286, *supra note 1*, Art 51 (1). Amhara National Regional State income Tax Proclamation, 2011, Art. 52(1), Pro.no. 189/2011, (as amended), *Zikre Hig*, year 16, no. 27, [here in after ANRS Income Tax Proclamation No. 189], Tigray National Regional State income Tax Proclamation (as amended), 2010, Art. 53(1), Proc. no. 180/2010, *Neg. Gaz.*, year 17, no. 23, [here in after Tigray Income Tax Proclamation No. 180].

⁴⁹ *See* Income Tax Proclamation No. 286. Id, Art. 13 provide exemptions from employment income.

The following categories of income shall be exempt from payment of income tax hereunder: a) income from employment received by casual employees who are not regularly employed provided that they do not work for more than one (1) month for the same employer in any twelve (12) months period; b) pension contribution, provident fund and all forms of retirement benefits contributed by employers in an amount that does not exceed 15% (fifteen percent) of the monthly salary of the employee; c) subject to reciprocity, income from employment, received for services rendered in the exercise of their duties by: i) diplomatic and consular representatives, and ii) other persons employed in any Embassy, Legation, Consulate or Mission of a foreign state performing state affairs, who are national of that state and bearers of diplomatic passports or who are in accordance with inter-national usage or custom normally and usually exempted from the payment of in-come tax; d) income specifically exempted from income tax by: i) any law in Ethiopia, unless specifically amended or deleted by this Proclamation; ii) international treaty; or iii) an agreement made or approved by the Minister; e) the Council of Ministers may by regulations exempt any

In the following section, taxation of allowance incomes, particularly ‘house and transportation’ are discussed based on instances of some federal and one regional governmental institution.

income recognized as such by this Proclamation for economic, administrative or social reasons; f) payments made to a person as compensation or a gratitude in relation to: i) personal injuries suffered by that person, ii) the death of another person.

⁵⁰ See Council of Ministers Income Tax Regulation, 2002, Art. 3, Pro.no. 78/2002, *Fed. Neg. Gaz.*, year 8, no. 37, , [here in after Income Tax Regulation No. 78/2002], Ethiopian Revenue and Customs Authority income tax exemption Directive, 2009, Art. 4, Dir.no. 21/2009, [here in after Directive No. 21/2009]

Note that: we have two types of *transportation allowances* exempted from taxation. The first one is “allowances in lieu of means of transportation granted to employees under contract of employment” which is provided under art 3(b) of Income Tax Regulation No. 78/2002. This provision is further elaborated by Directive No. 21/2009 under art 4(1) as follows: “የመዘዋወርያ አበል ከግብር ነጻ እንዲሆን የሚፈቀደው በአሰሪው/ቀጣሪው/ እና ተቀጣሪው ወይም ሰራተኛው መካከል በተደረገው የሥራ ውል ውስጥ በግልጽ በተመለከተ እና በስራ ጸባይ ምክንያት በመዘዋወር ለሚከናወን ተግባር ሲውል ብቻ ነው”:: That is, Transportation allowance will be exempted provided that there is an express stipulation in the contract of employment and only for a work to be done through travel. [Translation mine]. The second one is “amounts paid to employees in reimbursement of traveling expenses incurred on duty”. This is the wording of art 3(d) of Income Tax Regulation No. 78/2002. This exempted amount of transportation allowance is limited. The directive provides like this: “በወር ውስጥ ከግብር ነጻ የሚደረገው የመዘዋወርያ አበል መጠን ከሰራተኛው ጠቅላላ ደመወዝ እስከ አንድ አራተኛ (1/4) ድረስ ብቻ ሆኖ በማንኛውም ሁኔታ ከብር 1000.00 /አንድ ሺህ/ አይበልጥም”:: (art 4(3) of Directive No. 21/2009). To mean: within a given month the amount of travelling allowance exempted from tax is limited to one fourth of the employer’s salary and by any means should not exceed one thousand Birr. [Translation mine]. Any other transportation allowance is not exempted. This can be understood from the wording of art 4(2) of Directive No. 21/2009. “በዚህ አንቀጽ ንዑስ አንቀጽ (1) የተመለከተው የመዘዋወርያ አበል ቀጣሪው በሚመድበው ተሽከርካሪ ለሚጠቀሙና ከመኖርያ ወደ ሰራ ቦታ እንዲሁም ከሰራ ቦታ ወደ መኖርያ ቤት ለመሄድ የሚደረገውን የትራንስፖርት ወጪ እያካትትም”:: other transportation allowance expense incurred by the employer through supply of vehicle for travelling employees in the performance of their duties or travelling to or from a place they have to attend in the performance of their duties is not exempted from taxation [Translation mine]

a. The case of Ministry of Justice

Public prosecutors under the Ministry of Justice are beneficiaries of *house and transportation* allowances free from tax.⁵¹ The income tax proclamation imposes an obligation on employers to withhold income tax from allowances payable to employees but the Ministry of Justice is not withholding. Rather it requests the Office of the Prime Minister to allow tax exemption on house and transportation allowances payable to its public prosecutors.⁵² Accordingly, the Office of the Prime Minister requested an advisory opinion concerning the official request of the Ministry of Justice from Civil Service Minister.⁵³ The Civil Service Minister forwarded its opinion on the issue to the Office of the Prime Minister as follows:

⁵¹ The Federal Democratic Republic of Ethiopia Office of the Prime Minister *Ref. No. መ 30-899/3, date 07 September, 2006. E.C.*

⁵² The Federal Democratic Republic of Ethiopia Ministry of Justice *Ref. No. ማ.ፌ.ዲ.-15/05* date December 5, 2005, *cited in* The Federal Democratic Republic of Ethiopia Office of the Prime Minister *Ref. No. መ 30-899/24, date 30 July 2005. E.C.*

⁵³ The Federal Democratic Republic of Ethiopia Office of the Prime Minister *Ref. No. መ 30-899/161, date 18/6/2005 E.C. cited in* The Federal Democratic Republic of Ethiopia Ministry of Civil Service *Ref. No. ሲ.ሰ.ሚ.30/ጠ13/45/99, date 19/11/ 2005 E.C.* Here one may ask who is an appropriate organ to give expertise opinion on tax matters. Opinions on respect of issues relating to tax matters are termed as advance ruling. 'Advance Ruling' means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. In India, the power of giving advance rulings has been entrusted to an independent adjudicatory body. *See Manual of Office Procedure, Directorate of income tax, India, Volume-III, p 3, 2003.* The practice of issuing advance rulings is not as well known and established in Ethiopia as it has been in other countries. In fact, one cannot even say that they exist as distinct legal categories. However, there have been few occasions in which the Ethiopian tax authorities were asked to furnish what can only be described as an advance ruling in the circumstances. It is not clear if the tax authorities were consciously engaged in the practice of advance rulings or doing this just as a matter of administrative courtesy. *See Taddese, The Ethiopian Tax System, supra note 36, p 337.* But in the case at hand unlike the common practice, the Ministry of Civil Service is requested to give an opinion on tax matters.

በየደረጃው ለሚገኙ ዓቃቢያነ ህግ እንዲፈቀድ ለአስተያየት የተላከው ጥናት በዝርዝር የተፈተሽ ሲሆን፤ ጥናቱ --- በአመዛኙ መሰረት ያደረገው ከግንቦት 2004 ዓ/ም ጀምሮ በሰራ ላይ የዋለውን የዳኞች ጥቅሚ ጥቅም ነው። የዳኞች ጥቅሚ ጥቅም ውሳኔ ያገኘው በዳኞች አስተዳደር ጉባኤ ሲሆን፤ ጥቅሚ ጥቅሞቹ ከማንኛውም ገቢ ግብር ነፃ መደረጋቸውን የሚያመለክት ነው።

የኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን ነሐሴ 2001 ዓ.ም ያወጣውን የገቢ ግብር ነፃ መብቶች አፈጻጸም መመሪያ አንቀጽ 4 ለሰራተኞች ከሚከፈሉ የአበል ዓይነቶች መካከል ከግብር ነፃ የተደረጉ የመዘዋወርያ አበል፤ የውሎ አበል እና የአየር ፀባይ አበል ብቻ ናቸው።

በተጨማሪም የሚኒስትሮች ምክርቤት የገቢ ግብር ደንብ ቁጥር 78/1994 አንቀጽ 3 ከግብር ነፃ ከተደረጉ ክፍያዎች በስተቀር ማናቸውም ክፍያ ወይም ጥቅም ለምሳሌ የቤት አበል፤ በነስ ወ.ዘ.ተ በወር ደመወዝ ላይ እየተደመረ ግብር የሚከፈልበት መሆኑን ያብራራል። በሌላ በኩል የመኖርያ ቤት አበል ለቤት ኪራይ በቀጥታ የሚከፈል በመሆኑ መኖሪያ ቤት ለሚፈቀድላቸው ሰራተኞች ግብር የማይከፍሉ ስለሆነ አበሉ ከሚሰጣቸው ላይ ግብር መቀነሱ አሰራሩን ፍትህዊ ስለሚያደርገው ጉዳዩ በልዩ ሁኔታ ታይቶ ውሳኔ የሚሰጥበት ከሆነ ለዓቃቢያነ ህግ የሚፈቀደው የቤት አበል ከገቢ ግብር ነጻ ሆኖ እንዲወሰን አስተያየት ቀርቧል።⁵⁴

The Amharic quotation can be translated as: the Ministry of Justice conducted a research regarding benefits of public prosecutors. The research mostly bases on benefits obtained by judges which became effective since May 2004 E.C. The judges’ benefits are determined by the Judicial Administration council. It is indicated that these benefits are exempted from any income tax. As per Article 4 of directive no. 21/2009 issued by the Ethiopian revenue and customs authority for income exemption, allowance types exempted from income tax are only transportation allowance, per-diem and hardship allowance.

⁵⁴ The Federal Democratic Republic of Ethiopia Ministry of Civil Service Ref. No.ሲሰሚ30/ጠ13/45/99, Ibid

Further, except those specified under Article 3 of income tax regulation no. 78/2002, any payment or benefit such as house allowance, bonus, etc. will be computed for income tax through aggregating with salary. On the other hand, house allowance is directly payable to house rent. And as those employees who are given house in kind are exempted from taxation, imposition of tax on house allowance is unfair. Therefore if the matter is to be considered exceptionally, it is recommended that house allowance payable to public prosecutors to be exempted from taxation. [Translation mine]

Based on the legal analysis and recommendation given by the Civil Service Minister, the Office of the Prime Minister responded to the request of the Ministry of Justice as follows:

“--- የቤትና የትራንስፖርት አበል ከግብር ነፃ ጥያቄው ከገቢ ግብር አዋጁም ሆነ ከሚ/ም/ደንብ ቁጥር 78/1994 ጋር የሚጣረስ በመሆኑ ተቀባይነት የሌለው መሆኑን እየገለጽን --- ::”⁵⁵

The request for tax exemption of house and transportation allowances is not accepted since it is contrary to the income tax proclamation and council of ministers income tax regulation no. 78/2002. [Translation mine]

Despite the negative response of the Office of the Prime Minister, the Ministry of Justice insisted the former to reconsider and reverse the reply it gave.⁵⁶ At this time the Office of the Prime Minister reversed the response it gave before and rewrote as follows:

⁵⁵ The Federal Democratic Republic of Ethiopia Office of the Prime Minister *Ref. No. መ 30-899/24, date 30 July 2005.E.C.*

⁵⁶ “ከጸ/ቤታችን ሐምሌ 30 ቀን 2005 ዓ.ም. በቁጥር መ30-899/24 በተጻፈ ደብዳቤ የዓቃቤ ሕግ ጥቅማ ጥቅምን በተመለከተ በጻፍነው ደብዳቤ ላይ ያላችሁን ዝርዝር ምክንያቶች በመገለጽ በድጋሚ እንዲታይ ነሐሴ 3 ቀን 2005 ዓ.ም.

“... ለዓቃቤያነ ሕግ የሚሰጠው --- የመኖሪያ ቤትና የትራንስፖርት አበሉ ታክስ የማይከፈልባቸው መሆኑን እንገልጻለን።”⁵⁷

House and transport allowances payable to public prosecutors are exempted from tax. [Translation mine]

Unfortunately, there is no law which authorizes the office of the Prime Minister to aid such kinds of blessings/to rule on this matter. Thus, the letter of the Ministry of Justice, though it achieves the intended purpose at the expense of rule of law, obviously reduces its integrity. Because it would be better and more legally acceptable for it to follow legally acceptable means.⁵⁸

በቁጥር 01/ጸ-3/125/128/5 በተጻፈ ደብዳቤ መጠየቃችሁ ይታወቃል።” When translated: It is known that on August 3, 2005 E.C. with Ref. No. 01/ጸ-3/125/128/5 you have requested reconsideration on the reply given regarding benefits of public prosecutors on July 30, 2005 E.C. with Ref. No. መ30-899/24 [Translation mine]. Federal Democratic Republic of Ethiopia Ministry of Justice Ref. No. 01/ጸ-3/125/128/5 date 3 August, 2005 E.C., cited in The Federal Democratic Republic of Ethiopia Office of the Prime Minister Ref. No. መ 30-899/3, date 07 September, 2006. E.C.

⁵⁷ The Federal Democratic Republic of Ethiopia Office of the Prime Minister Ref. No. መ 30-899/3, date 07 September, 2006.E.C.

⁵⁸ Legitimate authority to grant employment income tax exemption rests on:

- a) The House of Peoples Representatives, through proclamation, as it has so far done, for instance, in Article 13 of the Income Tax Proclamation No. 286.
- b) Council of ministers as authorized by art 13(e) of the income tax proclamation No. 286. and income tax regulation No. 78/2002, *supra note 50*
- c) Ministry of Finance and Economic Development (MoFED) as authorized by art 13(d)(iii) of the income tax proclamation No. 286. So far, MoFED has granted an income tax exemption by a circular to the Cuban medical persons working in Addis Ababa Bureau of Health. See Amanuel Asefa, Ethiopia’s Tax Treatment of Expatriate Academic Staff: Study of the Legal Regime and Practice in the Public Higher Education Institutions, 2013, unpublished, LL.M Thesis, Mekelle University, p 43. See also Income Tax (as amended) Proclamation, 2010, Art 42(e), Pro.no.693 /2010, *Fed. Neg. Gaz.*, year 17, no. 3, MoFED “may exempt any income taxable under this Proclamation for economic, administrative or social reasons.”

The Ministry of Justice, taking the advantage of its membership to the council of ministers, could lobby the council or the Ministry of Finance and Economic Development (MoFED) to come up with such exemptions since the council as well as MoFED are authorized by law to do so. It is also known that the Ministry of Justice is an institution responsible for the enforcement of laws. Most of the Ministry's employees have legal knowledge/are legal practitioners. It is quite obvious that the Ministry of Justice is supposed to know and adhere to the existing laws of the land more than any other institution or entity. Thus, it is presumed that they know how any law can be utilized or amended. As mentioned above, there is no tax law which exempts to withhold tax on house and transportation allowances. However, the Ministry of Justice acts otherwise. Furthermore, it is not clear how the Office of the Prime Minister was convinced by the latter request of the Ministry of Justice, which it says as it contains detailed reasons for its request. However, the Office of the Prime Minister reversed its former decision and allowed grant of exemption with no justification.

The Persistence Act of the Ministry of Justice is preposterous. Clearly there is no legal ground for its request other than what is happening in the judicial organ (but contrary to the tax laws) and used as benchmark for its research on the specific issue. The Ministry of Justice conducted research examining benefits payable to the federal judges which is made free from any income tax. Basically, the research conducted is acceptable and it is logical to claim

d). Ethiopian Revenue and Customs Authority as authorized by art 27 of income tax regulation No. 78/2002. For this effect the Ethiopian Revenue and Customs Authority issued income tax exemption Directive No. 21/2009. *Supra note 50.*

equal/fair treatment of its prosecutors like that of judges. Nevertheless, the income tax exemption regarding benefits of judges was not legal. And it was not lawful to claim similar treatment like those benefited at the expense of the law. Quite the opposite, the Ministry of Justice, as an organ responsible to cooperate with the tax authority for the enforcement of tax laws⁵⁹, should have challenged the unlawful act of the judicial institution rather than striving to share fruits obtained unlawfully.

We cannot say the trend arose out of ignorance whether these incomes are taxable or not because the Ministry of Justice was informed by the response of the Office of the Prime Minister in the former reply that its request is contrary to the income tax laws.

In general, the letters of Ministry of Justice sent to the Office of the Prime Minister raise so many questions. Why the Ministry of Justice request grant of tax exemption for its employees on their house and transportation allowances knowing that these incomes are not exempted? Why does the Ministry of Justice prefer the Office of the Prime Minister to allow exemptions knowing that it is not authorized to do so? What motivates the Ministry of Justice to challenge the prior negative response of the Office of the Prime Minister?

⁵⁹ All Federal and Regional government authorities and their agencies, Bodies, Kebele Administrations and Associations shall have the duty to co-operate with the Tax Authority in the enforcement of this Proclamation. Income Tax Proclamation No. 286, *supra note 1*, art 41 (1)

b. The Case of Federal Ethics and Anti-Corruption Commission

The Federal Ethics and Anti-corruption commission's investigators and prosecutors receive *house and transportation allowances* free from taxation. This is because the Federal Ethics and Anti-corruption commission, like the Ministry of Justice wrote a letter to the office of the Prime Minister to ask tax exemption of house allowances payable to the commission's investigators and prosecutor. The Amharic version of the letter is:

“መሥሪያ ቤታችሁ መስከረም 22 ቀን 2006 ዓ.ም. በቁጥር 10/መመ6-ፈ6/135 በጻፈው ደብዳቤ --- በየደረጃው ለሚገኙ የኮሚሽኑ መርማሪና ዐቃቤያነ ሕግ ተፈቅዶ የነበረው የቤትና የትራንስፖርት አበል ከፍተኛ ከወቅቱ የኑሮ ሁኔታ ጋር ሊመጣጠን በሚችል መልኩ እንዲሻሻል እና የቤት አበሉ ከግብር ነፃ እንዲሆን በማለት ጠይቋል።”⁶⁰

The Federal Ethics and Anti-corruption commission wrote a letter via Ref. No. 10/መመ6-ፈ6/135 on September 22, 2006 E.C. to request increase on the existing house and transport allowances payable to the commission's investigators and prosecutors at all level taking in to account the current living condition. It also requested the house allowance to be exempted from taxation. [Translation mine].

The Office of the Prime Minister with no delay and with additional exemption, which was not requested by the Commission, corresponds positively as follows:

⁶⁰ Federal Ethics and Anti-corruption commission Ref. No. 10/መመ6-ፈ6/135 date 22 September, 2006 E.C, cited in The Federal Democratic Republic of Ethiopia Office of the Prime Minister Ref. No. መ 30-899/7, date 28 September, 2006.

“... የመኖርያ ቤትና የትራንስፖርት አበሉ ታክስ የማይከፈልባቸው መሆኑን እናስታውቃለን።”⁶¹

To put it in English: ... the Office of the Prime Minister here by notifies that house and transportation allowances are exempted from tax [Translation mine]. The immediate response of the office of the Prime Minister revealed that the decision given to the request of the Ministry of Justice was taken as a precedent which is bad lesson.

The Federal Ethics and Anti-corruption commission like the Ministry of Justice is duty bound to withhold tax from the income payments and then remitting the same to the government. In addition, it is obligated to cooperate with the Tax Authority in the enforcement of the tax laws. Despite these multiple obligations, the Commission acts contrary to the income tax regime.

c. The Case of Ethiopian Revenues and Customs Authority (ERCA)

As discussed in section 2.2 below, the main functions of the revenue authority are to collect the taxes and ensure compliance of the tax laws by tax payers and withholding agents. As mentioned below, ERCA tries to discharge its responsibility. For instance, it wrote a notice for all concerned withholding agents to withhold properly from payments including allowances they paid to their employees. However, ERCA failed to fully ensure compliance of tax laws particularly, with respect to the above withholding institutions. ERCA, knowing that these institutions are not withholding, remains silent.

⁶¹ The Federal Democratic Republic of Ethiopia Office of the Prime Minister *Ref. No.* 30-899/7, date 28 September, 2006.

Recently, ERCA itself like the Ministry of Justice and the Federal Ethics and Anti-Corruption Commission requested the office of the Prime Minister to provide similar treatment to its prosecutors on their allowance incomes. The original wording of the letter it wrote is that:

“... ባለሥልጣን መስሪያ ቤቱ ከመንግስት የተሰጠውን ኃላፊነት በብቃት ለመወጣት እንዲችል በሥራቸው ልዩ ባህሪ ምክንያት የራሳቸው ዐቃብያነት ሕግ ካላቸው ተቋማት አንዱ በመሆኑና እነዚህ ባለሙያዎች የታክስ ማጭበርበርንና የኮንትራባንድ ንግድን በመዋጋት ረገድ ያላቸው ድርሻ የላቀ እንደሆነ በመግለጽ በሌሎች አገር ተቋማት ውስጥ ተግባራዊ እየተደረገ ያለውን የዐቃብያነት ሕግ ጥቅማጥቅም ከባለስልጣኑ የደመወዝ ስኬል ጋር በማመጣጠን እንዲፈቀድ አቅርቧል።”⁶²

The Authority is one of those institutions which have their own prosecutors owing to their very particular nature. In order to discharge its responsibility competently and as its prosecutors play great role in tackling tax evasion and contraband, it claimed similar entitlement of allowances payable to other similar institutions’ prosecutors taking in to account the authority’s salary scale. [Translation mine]

The office of the Prime Minister responded as follows:

“በመሆኑም ለጀማሪ ዐቃብያነት ሕግ የቤት አበል ብር 1760.00፣ ለከፍተኛ ዐቃብያነት ሕግ II እና I ብር 1850.00፣ ረዳት ም/ዋና ዐቃብያነት ሕግ እና ዐቃብያነት ሕግ ብር 2000.00 እነዚህም ትራንስፖርት አበል ብር 600.00 ለሁሉም እንዲከፈል የተወሰነ መሆኑን እየገለጹን የመኖሪያ ቤትና የትራንስፖርት አበል ከገቢ ግብር ነፃ መሆኑን እናስታውቃለን።”⁶³

⁶² Federal Democratic Republic of Ethiopia, Ethiopian Revenues and Customs Authority Ref.No. 1.01/173/07, date 10 February, 2007 E.C. cited in The Federal Democratic Republic of Ethiopia Office of the Prime Minister Ref. No.፬ 240-899/2, date 04 March, 2007 E.C.

⁶³ The Federal Democratic Republic of Ethiopia Office of the Prime Minister Ref. No.፬ 240-899/2, date March 04, 2007 E.C.

Accordingly, house allowance for beginner prosecutors Birr 1760.00 (one thousand six hundred Birr), senior prosecutors level II and I Birr 1850.00 (one thousand eight hundred eighty Birr) and assistant vice chief prosecutor and chief prosecutor are entitled to Birr 2000.00 (two thousand Birr). In addition all prosecutors are to be paid Birr 600.00 (six hundred Birr) transport allowance. And both house and transport allowances are exempted from taxation. [Translation mine]

Since the ERCA itself secured exempted allowances for its prosecutors like that of the above institutions, it fails to ensure the compliance of tax laws in relation to allowance. As a result, the ERCA will not have the moral courage to challenge others non-compliance of tax laws. That is, to condemn others, one must be innocent. This reminds me of the well known saying: “Practice what you preach.”

d. The Status and Effect of Letters Written by the Office of the Prime Minister

In the preceding discussion, it is observed that the Office of the Prime Minister granted exemptions for those who requested them. Here several questions deserve consideration, these include: Is the Office of the Prime Minister authorized to grant tax exemptions? Is the Office of the Prime Minister unaware of how taxes are levied and exempted? What is the legal effect of letters of the Office of the Prime Minister? Can the tax authority be bound by these letters?

The executive branch is responsible to administer and enforce tax laws, in the course of which it issues regulations, decrees, circulars, and general rulings ("executive rules").⁶⁴ It is in the very nature of this branch of the government that it is also vested with quasi-judicial power whereby it applies and interprets the law to individual cases to arrive at rulings and decisions.⁶⁵ Determination of scope of executive's roles to interpret and enforce tax laws is the most difficult task of tax officials in developing and transition countries.⁶⁶ It is clear that the legislature is authorized for enacting the law, but what is the proper scope for administrative interpretation? There are also further issues in relation to the extent of detail in executive rules such as the type of document to be issued; the nomenclature of the document; the authority to issue the document (tax administration, minister of finance, cabinet); the effective date of the document; and the legal effect to be given to the executive rule.⁶⁷ These points at issue can be hard to answer because there is considerable dissimilarity in application by revenue authority.⁶⁸ The legal effect a particular type of executive rule is determined taking in to account a country's general constitutional and administrative law, doctrines of legislative interpretation advanced by courts of that country or passed by law

⁶⁴ Frans, *supra* note 29, p 19.

⁶⁵ *Ibid*. Rulings are similar to what courts would do in specific cases except that rulings make use of hypothetical cases or transactions and they apply to cases with similar factual situations set out in hypothetical case or transaction of a ruling. *See* Taddese, the Ethiopian Tax System; *supra* note 36, p 365.

⁶⁶ *Id*, p. 41

⁶⁷ *Ibid*

⁶⁸ *Ibid*

and particular provisions in tax laws.⁶⁹ However, these executive rules must be consistent with constitutional and statutory law.⁷⁰

As discussed above, the basic legal framework calls for taxation according to the rule of law. To this end, one development in tax legislation achieving international acceptance is to abolish discretionary power of the Minister of Finance or any other government official to allow exemptions or to negotiate tax agreements.⁷¹ Unlike this international progressive practice, the income tax proclamation of Ethiopia authorizes the Ministry of Finance and Economic Development (MOFED) to use discretionary power on specified grounds and up to a limited amount.⁷² Research conducted in Latin America and the Caribbean asserted that tax payers have perceived this practice as something that create opportunity for wide spread corruption and discrimination among tax payers.⁷³

⁶⁹ Ibid

⁷⁰ Id, p 19

⁷¹ Arturo, J., Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean, 2013, P 49, available at http://www.usaid.gov/sites/default/files/LAC_TaxBook_Entire%20Book%20-%20ENGLISH.pdf, consulted 9 June, 2014, [here in after Arturo]

⁷² Article 42 sub-articles (b)&(c) Provides:

In addition to any powers specifically vested in him in this Proclamation the Minister of Finance and

Economic Development may:

(b) in his discretion, waive tax up to an amount of birr 100,000 in cases of grave hardship due to natural or supervening calamity or disaster, or in cases of exceptional personal hardship not attributable to negligence or any failure on the part of the taxpayer to discharge any duty under this Proclamation; and

(c) no amount of tax in excess of Birr 100,000 shall be waived except with the approval of the Council of Ministers. Income Tax Proclamation No. 286 *supra note 1*

⁷³ Arturo, *supra note 71*

At this time, many countries have a constitutional or statutory provision that authorize exemptions only by a law of general application.⁷⁴ With respect to income from employment, Ethiopia has detailed rules governing exemptions. The income tax proclamation, income tax regulation and income tax exemption directive at different levels allow tax exemptions. Despite the existence of these enabling legislations, the institutions mentioned above lobbied the Office of the Prime Minister to extend the scope of exempted incomes.

Here the concern with regard to the act of the Office of the Prime Minister is not the amount of money forgone due to grant of exemptions but the issue of rule of law. That is, the very idea of Office of the Prime Minister issuing these letters goes against the principle of legality.

e. The Case of Amhara National Regional State (ANRS) Supreme Court

The practice of using letters to challenge tax laws is not limited to the above mentioned federal institutions. In the Amhara National Regional State (ANRS) too, the regional Supreme Court experienced similar practice. The ANRS income tax regulation provides that “house rent allowances shall be excluded from computation of income taxable under schedule ‘A’”.⁷⁵ The regulation under article 3(2) authorized the ANRS Bureau of Finance and Economic Development (BoFED) only to determine the amount of payment excluded from being computed for income tax purpose. As per the

⁷⁴ *Id*, p 50

⁷⁵ Amhara National Regional state Income Tax Regulation, 2003, Art. 3(1)(g), Pro.no. 4/2003, *Zikre Hig*, year 8, no. 2, [here in after ANRS Income Tax Regulation No. 4/2003]

authorization, BoFED issued a directive which determines payment types and amounts exempted from income taxation.⁷⁶ This directive provides that ‘*house allowance*’ payable to cabinet members is free from taxation. The rest of ANRS government employees who are entitled to *house allowance* are not entitled to exemption. This shows that the directive issued by BoFED was inconsistent with the income tax regulation issued by ANRS council. Because any ANRS government employee who is entitled to *house allowance* has right to receive a certain amount of money free from tax like what is determined recently by a directive.⁷⁷

As a result, directive no. ገፀ-5/1995 was opposed by ANRS Supreme Court. The Supreme Court wrote a letter to the regional administration head office, the content of which is:

መመሪያ ቁጥር ገፀ-5-1995 የክልሉ መስተዳድር ም/ቤት ከአወጣው ደንብ ቁጥር 4/1995 ጋር የማይጣጣም ስለመሆኑ እና ለካቢኔ አባላት የተወሰነው የቤት አበል ከገቢ ግብር ነፃ ሲሆን በዳኝነት ተቋሙ ተሹመው በማገልገል ላይ ያሉ ዳኞች የሚከፈላቸው የቤት አበል የገቢ ግብር እንዲከፈልበት መደረጉ ተመሳሳይ አፈፃፀም የሌለው መሆኑን በመግለጽ ማስተካከያ እንዲደረግ በቁጥር አብክ/ጠ/263/01/06 በ12/02/2006 ዓ/ም ለአብክመ ር/መስተዳድር ጽ/ቤት ጥያቄ ቀርቧል፡፡⁷⁸

⁷⁶ Amhara National Regional State Bureau of Finance and Economic Development for determination of payment types and amounts exempted from income taxation Directive, 1995, Dir.no. ገፀ-5/1995, [here in after ANRS BoFED directive No. ገፀ-5/1995]

⁷⁷ ANRS Finance and Economic Development Bureau for determination of payment types and amounts exempted from income taxation Directive, 2006, Art. 3, Dir.no.ገባ-13/2006, [here in after ANRS BoFED directive No. ገባ-13/2006]. This directive repealed directive no. ገፀ-5/1995. The new directive No.ገባ-13/2006, determines those who are entitled to totally exempted house allowance and of partially exempted, which is discriminatory.

⁷⁸ Amhara National Regional State Supreme Court, Ref. No.አብክ/ጠ/470/01/ date 17/04/2006

When translated: Directive No.ገፀ-5/1995 is not consistent with Regulation No. 4/1995 that was issued by the regional administration council. House allowance payable to judges is not exempted while such payment to that of cabinet members is exempted which causes dissimilar treatment in implementation. And thus we hereby requested the ANRS administration head office for its correction via letter with Ref. No. ኡብከ/ጠ/263/01/06 on 12/02/2006. [Translation mine]

Accordingly, the ANRS administration head office wrote a letter regarding the matter to the ANRS Civil Service Bureau and BoFED as follows:

“የርዕሰ መስተዳድር ጽ/ቤት “ ... “ ለኡብከመ ሲቪል ሰርቪስ ቢሮ በኢድራሻ በግልግጭ ለገ/አ/ልማት ቢሮ በተጻፈ የቤት አበል አከፋፈል ለዳኝነት አካሉም በተመሳሳይ እንዲፈጸም ጉዳዩ ተጣርቶ የጽሁፍ ምላሽ እንዲሰጥ ጠይቋል። ነገር ግን እስካሁን ምላሽ አልተሰጠም።”⁷⁹

The ANRS administration head office wrote a letter to the ANRS Civil Service Bureau in its address and to BoFED via copy that payment of house allowance should be made similarly to employees of the judicial organ too and the matter to be investigated and responded in written form. But response is not yet given. [Translation mine].

Following the delay in response, the ANRS Supreme Court responded and communicated the ANRS procurement, finance and property administration supportive process owner under the Supreme Court as follows:

“---” ስለሆነም በጉዳዩ ላይ ስልጣን ያለው አካል መመርያ ቁጥር ገፀ-5/01995 እስኪያሻሽል ድረስ ለዳኞች የተወሰነው የቤት አበል የገቢ ግብር ሳይከፈልበት እንዲቆይ ማስፈለጉን

⁷⁹ ANRS administration head office Ref. No. 11/74/ፀ/ሠ-12 date 12/03/2006 cited in The Amhara National Regional State Supreme Court, Ref. No.ኡብከ/ጠ/470/01/. Ibid

እስታውቃለሁ። የዞን ከፍተኛ ፍ/ቤት የግዥ/ፋይ/ን/አስተዳደር የሥራ ሂደትም በዚህ መሰረት እንዲፈፀም ግልግጭ ተደርጎለታል።⁸⁰

“---” until directive no. ፖፌ5/1995 is amended by an authorized organ; house allowance payable to judges should remain untaxable. The zonal high court procurement, finance and property administration process owner is also communicated through a copy to make payment as per this notice. [Translation mine]

Here, there is a basic question regarding the act of ANRS Supreme Court. *How should a directive inconsistent with a regulation be challenged? Is refusal to comply with it an appropriate measure?* The writer of this article is of opinion that it is not. It is known that when a legally recognized right is taken away or interfered by a law subordinate to the law that vests the right, nobody is authorized to take self-help mechanism. Anybody who believes that his/her right is taken away by a law, which is subordinate, is required to take the matter to the judicial organ which is mandated to check whether a right is actually violated or not.⁸¹ Had it not been the case, there would have been no need of dispute settlement organ. But contrary to this universally accepted

⁸⁰ The Amhara National Regional State Supreme Court, Ref. No. *አብክ/ጠ/470/01/*, *Ibid*

⁸¹ A regulation that extended the scope of the tax law, changed its conditions, or altered the meaning of the law would have to be declared illegal and inapplicable by the courts. *See*, Frans, *supra note 29*, p 44. It is possible to deduct that a right secured by regulation cannot be taken away by a directive. And in case where a directive contradicts with a regulation, it should be declared inapplicable by courts. In addition to this, it was possible to take the matter to the attention of ombudsman institution. The institution is authorized to “supervise that administrative directives issued, and decisions given, by executive organs and the practices thereof do not contravene the constitutional rights of citizens and the law as well.” *See*, Institution of the Ombudsman establishment Proclamation, 2000, Art 6(1), Pro.no.211/2000, *Fed. Neg. Gaz.*, year 6, no. 41, [here in after Institution of the Ombudsman establishment Proclamation, 2000]

practice, the ANRS Supreme Court challenged the directive that affects right of its judges through a letter. This act is contrary to the purpose for which it is established. It also amounted to abuse of power.

1.2. The Principle of Equality

Principle of equality is another mechanism used to limit taxing powers of governments. In a modern democratic community, acts of legislature should respect the fundamental principle of non-discrimination.⁸² “Because it is in the nature of laws to classify or discriminate, the principle of equality demands treating likes alike”.⁸³ This is also true for tax laws which, like all legislations, must be consistent to the tenet of the principle of equality.⁸⁴ The principle of equality has two meanings, one is essentially procedural and the other one is substantive.⁸⁵ The procedural equality deals that the law must be applied completely and impartially, regardless of the status of the person involved.⁸⁶ This means that no one may receive either preferential or

⁸² Yoseph, *supra note 26*, P 1197

⁸³ Ibid

⁸⁴ J.L.M. Gribnau & C. Peters, Introduction, in *Legal Protection Against Discriminatory Tax Legislation: The Struggle for Equality in European Tax Law 1* (Hans L.M. Gribnau ed., Kluwer Law International 2003) [hereinafter *Equality in Europe*] *Cited in Yoseph Id.* It can be viewed as an application of the concept of legality, under which the law must be applied without exception to all those in the same circumstances. Frans, *supra note 29*, p. 5. Difficulties arise, however, when they have to be given operational contents. For HE, there are questions about both the definition of “equals” (e.g., equality of income or welfare, endowment or outcome, at a given point in time or over the life cycle) and the specification of “equal tax treatment” (e.g., equality in absolute tax payments or in tax payments relative to income). See Howell, *supra note 16*, p.64

⁸⁵ Frans, *supra note 29*, p.5

⁸⁶ Ibid

discriminatory treatment in the application of the law or may be denied procedural rights to challenge application of the law to him or her.⁸⁷

The substantive meaning of the principle of equal treatment starts from the position that persons in equal circumstances should be treated equally.⁸⁸ Without clarification, this principle does not mean very much, because it admits that people who are not in the same circumstances can be treated differently.⁸⁹ In Ethiopia, equality principle has constitutional status.⁹⁰ Here, in relation to the topic under the spotlight, employees in the same circumstances should be treated equally. However, practically employees in the same circumstances are treated differently in respect of their allowance incomes. Under the legality principle discussed above certain categories of employees of the Ministry of Justice, the Federal Ethics Anti-Corruption Commission, the ERCA and the Federal Judicial organ are entitled to tax exemptions on their allowance incomes. The exemptions made for the above mentioned government institutions purely violate the underlying principle of equality. The employees of these institutions are entitled to preferential treatment. But employees of other governmental institutions who are entitled to allowances are not given similar treatment. For instance, the writer of this article is an employee of Bahir Dar University, which is a governmental

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status. FDRE Constitution, *supra note* 36, Art. 25.

institution; who is entitled to house allowance. However, this house allowance has been taxable by computing it with his salary since 18-06-2005 E.C.⁹¹

Thus, the practices of the above mentioned governmental institutions including the one that allows the tax exemptions through letters, i.e., Office of the Prime Minister are against basic constitutional principles of legality and equality.

2. The Role of Withholding Agents and Response of Tax Authority

With respect to taxation of employment income, three parties are involved—namely the employee, the employer and the tax authority. Under the subsequent sub-sections the roles of the withholding agents and tax authority in tax administration will be discussed.

2.1. The Role of Withholding Agents

Taxation law imposes various duties on different groups of persons.⁹² These comprise the duty to give information to tax authorities about one's own or other person's business, the obligation to report a tax return, the obligation to

⁹¹ Bahir Dar University Office of V/president for Business and Development wrote a letter to Plan, Budget and Finance process owner which its content is that “--- የፌዴራል ዋና ኮዲተር በሰጠው አስተያየት መሰረትና በከፍተኛ ትምህርት ተቋማት የአስተዳደር ካውንስል በተቀመጠው አቅጣጫ መሰረት ለመምህራን ከሚከፈለው የቤት አበል ላይ እና ለድህረ ምረቃ ተማሪዎች ከሚሰጥ ድጋፍ ላይ ከየካቲት ወር 2005 ዓ.ም. ጀምሮ ግብር እየተቆረጠ እንዲከፈል እንዲደረግ እናሳስባለን።” when translated “--- as per the recommendation given by the Federal Auditor General and higher institutions administrative council direction, house allowance payable to instructors’ and stipend payable to post graduate students are subject to tax as of February 2012.[Translation mine]. Bahirdar University Office of V/president for Business and Development Ref. No. 1/8928/2.6.3 Date 18-06-05 [here in after Bahirdar University Ref. No. 1/8928/2.6.3]

⁹² Lee and Richard, *supra note 2*, p 42.

pay tax, and the obligation to withhold tax from payments made to other persons.⁹³

Under the withholding tax system, persons obliged to withhold income tax and pay it to the government are called “withholding agents.” Being the withholding agent by law, the employer is involved in collecting income tax from wages. Employers collect the PAYE withholding tax, although the employees are responsible to pay, under the PAYE provisions. Employees whose earnings have been liable to PAYE withholding are considered to have paid the gross (pretax) amounts of money due from them.⁹⁴ At first they compute, collect, and account for the income tax on wages and save the tax into the government accounts.⁹⁵ It is when the withholding agents discharge these duties that the standard of the PAYE system determined.⁹⁶ Administrative and collection provisions impose on employers the duty to withhold and to transfer, and comparable penalty and interest provisions will apply to those who fail to withhold or transfer.⁹⁷

When analyzed, the law and practice of withholding agents under the Ethiopian income tax laws, the laws impose an obligation on employers to collect tax under the withholding scheme every time an employee is paid unless the payment is expressly made tax-exempt by law. From the

⁹³ Ibid

⁹⁴ Id, P 61

⁹⁵ Koenraad, v., The Pay-As-You-Earn Tax on Wages, in Victor Thuronyi, (ed.), *Tax Law Design and Drafting*, International Monetary Fund, Vol. 2, 1998, p 13 [here in after Koenraad]

⁹⁶ Ibid

⁹⁷ Lee and Richard, *supra note 2, p 61*

perspective of *house and transportation allowances*, as long as no law exempted those payments, employers have an obligation to withhold if any. But practically the federal governmental institutions, which I have discussed above, do not withhold tax from *house and transport allowances* they paid to their employees.

Moreover, there used to be and there are also institutions do not withhold from *house and transport allowances* they paid to their employees. Indeed, my employer, Bahir Dar University, used to treat house allowance as exempted from tax and did not withhold from house allowance it paid to instructors⁹⁸ until 18-06-2005 E.C. Another instance is the case of House of Peoples Representatives. ERCA in its Inter-Office Memo requested its legal counsel and amendment group to forward its recommendation that the House of Peoples Representatives unlike the House of Federation is not withholding income tax from the payees' *house and transport allowances*; and it requested recommendation on that.⁹⁹ The finding of the group was the act of the House of Peoples Representatives is against what is provided under the income tax proclamation, income tax regulation and income tax directive.

⁹⁸ Bahir Dar University Ref. No. 1/8928/2.6.3, *supra* note 91

⁹⁹ የፌዴራሽን ምክር ቤት የቋሚ ኮሚቴ አባል አመራሮች የቤት፣ የትራንስፖርት፣ የመዘዋወርያ እና የስልክ አበል እንዲሁም ተጨማሪ አበልን ከወር ደመወዛቸው ጋር ተደምሮ የስራ ግብር ተቀናሽ የሚደረግ ሲሆን ነገር ግን የህዝብ ተወካዮች ምክር ቤት ከላይ የተጠቀሱትን ጥቅማ ጥቅሞች በደመወዝ ላይ በመደመር የስራ ግብር የማያስከፍል በመሆኑ በተገለፀው ልዩነት ላይ ከህግ አንፃር አስተያየት እንዲሰጣቸው በመጠየቃቸው የህግ አስተያየት በቡድኑ እንዲሰጥበት ጠይቃቸዋል። House, transport, travelling and phone allowances as well as additional allowance payable to members of standing committee of House of Federation are taxable by computing with their monthly salary. However, the House of Peoples Representatives is not withholding these allowances from its members. As a result, the legal counsel committee is requested to forward its recommendation on this difference. [Translation mine]. Ethiopian Revenue and Customs Authority Ref.No. ለ/ም/ማ/29/2003 Date 30/11/03.

“--- የቤት አበል፣ የቤት ሰልክ ወጪ፣ ተጨማሪ አበል ከገቢ ግብር ክፍያ ነፃ ያልተደረገ ሲሆን --- የፌዴሬሽን ምክር ቤቱ በግብር/ታክስ አሰባሰብ በኩል እየተከተለ ያለው አሰራር በህግ የሚደገፍ መሆኑን በመግለፅ ይህንን አሰተያየት ልከናል።”¹⁰⁰

House allowance, cost of fixed telephone, additional allowances are not exempted from income taxation. Hence, it recommended that the practice of the House of Federation in respect of tax collection is legally acceptable. [Translation mine]. Generally, the above discussions prove that, the withholding agents failed to comply with the provisions of income tax laws which impose an obligation to withhold from payments they made to their employees.

2.2. The Response of Ethiopian Revenues and Customs Authority (ERCA)

The main objective of a revenue authority is to collect the taxes and duties owed as per the tax laws and to do this in such a way that will maintain trust and confidence in the tax system and its administration.¹⁰¹ As long as taxes are determined by law(s), the tax administrator is empowered to execute the provisions of the law(s).¹⁰² In the process of tax administration authority is

¹⁰⁰ Ethiopian Revenue and Customs Authority *Ref.No.ሐ/ም/ማ/29/2003, Id*

¹⁰¹ Forum on Tax Administration, *Compliance Risk Management: Managing and Improving Tax Compliance*, 2004, p 7. The tax administration is the division of the government tasked with collecting taxes. Available at <http://www.oecd.org/tax/administration/33818656.pdf>, consulted 12 May, 2014, [here in after Forum on Tax Administration]. See *Doug and Anton, infra note 100*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, 2013, P 18.

¹⁰² Doug, P., and Anton, K., *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, 2013, P.18, available at http://www.usaid.gov/sites/default/files/LAC_TaxBook_Entire%20Book%20-%20ENGLISH.pdf, consulted 9 June, 201, [here in after Doug and Anton]

responsible to: foster voluntary tax compliance by taxpayers as per the tax laws, administer the tax laws fairly and impartially, make tax compliance easier for the taxpayer, monitor compliance and reduce tax evasion, enforce the country's tax laws in cases of non-compliance, use its resources efficiently and effectively, and ensure to keep tax officials honest and reinforce the legitimacy of the tax system.¹⁰³

The tax administrator checks the filing and payment accordance of employers and make sure that they have abided by the law in computing and remitting the withheld tax by conducting audits where necessary.¹⁰⁴ Tax administration with qualified and accountable personnel is almost the most relevant requirement for achievement of "tax potential" of the state.¹⁰⁵ The efficiency of a tax system is not determined only by appropriate legal regulation but also by the efficiency and integrity of the tax administration.¹⁰⁶ In many countries, especially in developing countries, small amounts of collected public revenue can be explained by either incapability of the tax administration in realization of its duty, or with some degree of corruption.¹⁰⁷ Jenkins underlines that the tax system can never perform better than its tax administration, but even the best tax administration would surely unable to transform a poor tax system

¹⁰³ Arturo, *supra note 71*, pp 25-26

¹⁰⁴ Koenraad, *supra note 95*, p 13.

¹⁰⁵ Gloria M., tax administration, procedural justice, tax payers' attitude and tax compliance among small business income earners in Arua district, Makerere University, 2011, p.8, available at http://www.mubs.ac.ug/docs/masters/acc_fin/Tax%20administration,%20procedural%20justice,%20tax%20payers%20attitude%20and%20tax%20compliance%20among%20small%20business%20income%20earners.pdf, consulted 29 May, 2014, [here in after Gloria]

¹⁰⁶ Ibid

¹⁰⁷ Ibid

into a well-operating one.¹⁰⁸ Tax legislation demanding high willful deference and administrative control, but enforced by a weak tax administration and unskilled withholding agents and collected from involuntary tax payers will not generate the required revenue, nor achieve the proposed allocation of the tax burden, or realize the planned distribution of the tax benefits.¹⁰⁹

In the Ethiopian Federal Government, tax administration is entrusted to the ERCA.¹¹⁰ Accordingly, the ERCA wrote a letter that dictates all government offices and development enterprises as well as other enterprises and institutions to withhold from payments they made to their employees in the following manner:

ጉዳዩ፡- የመንግስት መ/ቤቶችና ልማት ድርጅቶች እንዲሁም ሌሎች ድርጅቶችና ተቋማት ከተቀጣሪዎቻቸው ሊቀንሱት የሚገባውን የሥራ ግብር ይመለከታል፤

--- በገቢ ግብር አዋጅ ቁጥር 286/94 አንቀጽ 13 እና በገቢ ግብር ደንብ ቁጥር 78/94 አንቀጽ 3 ከግብር ነፃ ከተደረጉ ገቢዎች በስተቀር ማናቸውም ክፍያ ወይም ጥቅም (ለምሳሌ የቤት አበል፣ በነስ፣ የዓመት ፈቃድ ክፍያ፣ የአገልግሎት ካሣ --- ወዘተ) ከወር ደመወዝ ጋር እየተደመረ ግብር እንደሚከፈልበት አዋጁና ደንቡ በግልጽ ያመለክታሉ።¹¹¹

Re:-Employment income tax to be withheld by all government offices and public enterprises as well as other enterprises and institutions

¹⁰⁸ Ibid

¹⁰⁹ Koenraad, *supra note* 95, p 18

¹¹⁰ Income tax proclamation No. 286, *supra note 1*, Art. 38(1), Ethiopian Revenues and Customs Authority Establishment, 2008, Art. 6, Pro.no. 587/2008, *Fed. Neg. Gaz.*, year 14, no 44, [here in after ERCA Pro. No. 587]

¹¹¹ Ethiopian Revenue and Customs Authority *Ref.No.4አውግ-54/96* Date 19/12/2000

Except those exempted under Article 13 of the income tax proclamation and Article 3 of the income tax regulation No. 78/94, any payment or benefit (such as house allowance, bonus, annual leave payment, compensation for service, etc) are subject to tax through aggregating with their monthly salary as per the proclamation and regulation. [Translation mine]

To get emphasis of the notice, the ERCA requested all ministers, authorities and agencies to cooperate in forwarding this message to their responsible offices as follows:

“ሰለዚህ ሁሉም የሚኒስቴር እና የባለሥልጣን መ/ቤቶች እንዲሁም ኤጀንሲዎች ለተጠሪ መ/ቤቶቻችሁ ይህንኑ መልዕክት በተቻለ ፍጥነት በማሳወቅ በአዋጁና በደንቡ መሰረት እንዲፈጸሙ ጥብቅ ማሳሰቢያ እንድትሰጡልን የተለመደ የሥራ ትብብራችሁን እንጠይቃለን።”¹¹²

When translated in to English: the ERCA requested all ministers, authorities and agencies to cooperate in communicating this notice seriously to those offices responsible to them to act as per the proclamation and the regulation.[Translation mine]

Practically, when scrutinized whether the ERCA is actually discharging its duty based on the above discussion, the answer is no! The ERCA, rather than challenging acts contrary to the tax laws, requested grant of tax exemption on allowances of its prosecutors by citing unlawful exemptions made to prosecutors of other institutions.

The tax authority has sufficient information regarding payments made to employees and whether employers are complying with the law or not. This is

¹¹² Ibid

because employers are required to maintain wage withholding records for each employee, containing entitlement to personal allowances, other deductions authorized by the tax authority, totals of taxable wages and PAYE withheld, and pay the withheld tax to the Tax Authority within thirty (30) days of the end of each calendar month.¹¹³

Despite the existence of clear information as to non-compliance of the law by those who are duty bound to withhold and co-operate with the tax authority in the implementation and enforcement of the income tax proclamation, the tax authority took no measure against the actions of these withholding institutions. Thus, the tax authority has failed to monitor compliance and administer the tax laws fairly and impartially which obviously reduce public trust in the tax administration.

Anyone who fails to withhold or under withholds he shall be made to pay the full amount of the tax to the Tax Authority.¹¹⁴ The law also provides civil and criminal sanction for non-withholding agents. Regarding civil liability, a withholding agent that fails to withhold tax in accordance with the income tax proclamation is personally liable to pay to the Tax Authority the amount of tax which has not been withheld.¹¹⁵ In addition, an agent who fails to withhold tax in accordance with the income tax Proclamation shall be liable

¹¹³ Income tax proclamation No. 286, *supra note 1*, Art 51(3). In addition, ERCA knew that the Ministry of Justice and the Federal Anti-Corruption Commission are not withholding income taxes from allowances payable to their public prosecutors and prosecutors and investigators respectively. Hence, ERCA requested similar entitlement for its prosecutors and lastly secured. See discussion under section 2.1.1 sub-section C above.

¹¹⁴ *Id.*, art 53(5)

¹¹⁵ *Id.*, art 90(1)

for a penalty of 1,000 Birr for each instance of failure to withhold the proper amount.¹¹⁶

Here one may ask: Can the letter of the Office of the Prime Minister limit the tax authority from taking legal action against those not withholding? The answer is absolutely “no”. Not only a letter but also a law contrary to the income tax law will not prevent it from taking appropriate action.¹¹⁷ Rather it provides a sanction against those who aid for its violation. That is:

*A person who aids, abets, incites, or conspires with another person to commit a violation against this Proclamation also commits an offence under this proclamation and shall be subject to prosecution, and shall on conviction be liable to a fine and imprisonment not in excess of the amount of fine or period of imprisonment provided for the offence aided or a betted.*¹¹⁸

The income tax proclamation also provides additional sanction against those who obstruct tax administration. A person who, otherwise impedes or attempts to impede the administration of the Proclamation, commits an offence and is liable on conviction to a fine of not less than 10,000 Birr and not more than 100,000 Birr, and imprisonment for a term of two years.¹¹⁹

However, the tax authority remains silent despite legal authorization which enables it to challenge the letters and practices of withholding agents and those who aid them to act contrary to the law.

¹¹⁶ Id, art 90 (3)

¹¹⁷ Notwithstanding anything to the contrary in any other law, the Tax Authority shall be empowered to investigate any statements, records and books of account submitted by any taxpayer at any time. Id, art 38(2)

¹¹⁸ Id, art 101

¹¹⁹ Id, art 98 (b)

3. Concluding Remark

Legality principle in taxation requires that any tax must have a firm basis in law. This principle gives rise to another principle that the tax administration may not conclude an agreement on tax liability with the taxpayer. This is because when the statute says that tax is due, it must be strictly applied, and it is not within the power of the tax administration to agree to reduce the amount of tax. The basis for the prohibition of such agreements is based on the idea that tax law as being of public order. This means that the tax law has a special status as a statute that is essential to an organized society, similar to that of criminal law, on which agreement between the police authorities and the criminal is not possible either.

In Ethiopia, the income tax proclamation particularly federal provides that every person having income as defined by law shall pay income tax in accordance with this law. In case of income derived from employment, the law imposes an obligation on employers to withhold from any payment they made to their employees unless exempted by law.

Despite the absence of a law that exempts house and transportation allowances payable to employees, the Office of the Prime Minister through letter grant exemption to public prosecutors of the Ministry of Justice, prosecutors and investigators of the Federal Anti-Corruption Commission and prosecutors of the ERCA. Resorting to letters to grant exemption on income derived in the form of house and transportation allowances is against the principle of legality. This is because for one thing issuance of a letter does not amount to issuance of law. Furthermore, the organ that issued these letters is

not authorized to grant exemption. The act of granting exemption via letter not only violates the principle of legality, it is also contrary to the principle of equality. Simply put, employees of other institutions who are entitled to same allowances are not beneficiaries of the same exemption. Persons found in like circumstances are treated differently.

The principles of legality and equality are not respected because the ERCA fails to ensure compliance of the income tax law. The ERCA, not only fails to assure compliance but is also itself involved in violation of the tax law.