

Some Legal Controversies Regarding Party-affiliated Endowments and Their Participation in Business Activities: The Case of EFFORT and TIRET Endowments

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“A tree will not grow tall unless it has healthy roots and a solid foundation, the same applies to a company; a company will not succeed in growing unless it first puts in place healthy roots.”

Professor Costas Markides ¹

Abstract

Social service needs in no way can be fulfilled by the government alone. That is why governments are giving due consideration for Civil Society Organizations (hereinafter CSOs) and incorporating them in their legal frameworks. Charitable endowment is among the different classifications of CSOs, which play a significant role in every walk of life as they fill the gaps that the government fails or is unable to discharge its responsibility in various dimensions including human rights protection and socio-economic development. In Ethiopia, party affiliated endowments such as Endowment Fund for the Rehabilitation of Tigray (EFFORT), Amhara National Regional State Rehabilitation and Development Fund (TIRET), Endowment Foundation for the Development of Oromia (TUMSA), and Endowment Fund for the Development of Southern Nation Nationalities and Peoples (WENDO) are established by Tigray Peoples Liberation Front (TPLF), Amhara National Democratic Movement (ANDM), Oromia Peoples Democratic Organization (OPDO), and Southern Nation Nationalities and Peoples Democratic Movement (SEPDM) respectively, on the assumption that the wider public of each regional state community is the beneficiary of these endowments. This article examined the legality of formation, registration, and operation of these endowments and their participation in business by using EFFORT and TIRET endowments as a case study. The article upholds doctrinal legal research which is based

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¹ Professor Costas Markides, David against Goliath: How can Estonian Companies Grow by Challenging Bigger Global Competitors and Conquering New Markets; *London Business School*; (March 2006), pp.1-6.

on the identification, synthesis and analysis of the law defining endowment and their participation in business. The finding shows that there is defective formation of EFFORT and TIRET endowments, and also that their involvement in business activities is contrary to the provisions of the laws regarding commerce, tax, competition, and CSOs.

Key words: *Business Entities; Charity Laws; EFFORT endowments; TIRET endowments; Party affiliated endowments; Registration.*

Introduction

CSOs are prevalent and have been playing an increasing role in complementing the governments' deficiency to address societal needs. These organizations are rampant in virtually every corner of the world in varying forms and nomenclature. As such, even if there is no universal definition for **CSOs**, it can be defined as organizations that are non-governmental, not for profit, not representing commercial interests, and that pursue a common purpose of the public interest.² It includes Civic Organizations, Charitable Endowments, Non-Governmental Organizations (NGOs), Private Voluntary Organizations (PVOs), and Professional Organizations.³

CSOs obtained funds from different sources namely, foreign funds, membership contribution, government support, income generating activities, private donation, and public collection.⁴ All these funds are minimal except income generation activities. Due to this reason different jurisdictions allowed CSOs to take part in trade and investment activities. For example, in USA and UK, CSOs have variety of options to undertake trade and investment activities such as in the form of establishing companies and subsidiaries. Moreover, USA and UK arranged the system of tax exemptions for CSOs.⁵

² Gebre Yntiso et al. Non-State Actors in Ethiopia, Update Mapping Final Report, *European Union Civil Society Fund II (CSF II) and Civil Society Support Programme (CSSP)*, p.13, [hereinafter Gebre, Non-State Actors in Ethiopia, Update Mapping Final Report].

³ Francesco A. Schurr, Charitable Foundations in the Principality of Liechtenstein: Tradition and Recent Developments, *VUWLR*, (2011), p.159. See also Tsehai Wada, The Regulatory Framework for Civil Society Organizations in Ethiopia, (2008), p. 1, available at <http://www.abysinnialaw.com> last accessed on 13 March 2018.

⁴ Gebre, Non-State Actors in Ethiopia, Update Mapping Final Report, supra note 2, p.39.

⁵ James R. Hines Jr., Non-Profit Business Activity and the Unrelated Business Income Tax, *Tax Policy and the Economy*, volume 13, MIT Press, pp. 57 – 84; UK Charity Commission Guidance: Charities Act 2006, Chapter 35, titled on charities and trade, (2006), [hereinafter UK Charities Act of 2006]. See Section 4 and 5 below for more detail information in this regard.

In Ethiopia, CSOs are established with a view to serve different category of communities. The usual forms of establishment include religion⁶, ethnicity or region.⁷ The best example of ethnic or region based CSOs are the so-called EFFORT, TIRET, TUMSA, and WENDO endowments that are established by TPLF, ANDM, OPDO and SEPDM respectively.

This article investigated and analyzed the legal status of these party affiliated endowments and their participation in business activities by using EFFORT and TIRET Endowments as a case study. There is no dictionary or universal definition for the term party affiliated endowments and the business entities owned/managed by them. Thus, for the purpose of this article, the writer gives working definitions: '*Party affiliated endowments*' are endowments in which the party officials either established or managed them by alleging that the wider public is the ultimate beneficiary of the endowments; and '*Party owned/managed business entities*' refer to those business entities that are established by the aforementioned party affiliated endowments as a separate business organization, or businesses that are operated by party affiliated endowments as a sole proprietorship.⁸ The author gives special emphasis to EFFORT endowments and its participation in business activities because it is by far the largest in terms of assets, number of subsidiaries, sectoral coverage and supra- regional orientation.⁹

The article upholds doctrinal legal research which is based on the identification, synthesis and analysis of the law defining endowment and their participation in business activities. Books, journal articles, and different guidelines on the legality of party owned/managed business entities are reviewed and analysed to establish the conceptual framework against which the Ethiopian legislative frameworks and practices are examined. This is followed by identification, analysis and synthesis of both the federal and regional state laws related to party affiliated endowments' formation, registration and operation.

⁶ From religion perspectives, it is the notion of being rooted in a religiously inspired system of beliefs and thoughts of the quest for nearness to God. See Yaacov Lev, *Charity, Endowments, and Charitable Institutions in Medieval Islam*, *University Press of Florida*, (2005), p.1.

⁷ Aychegrew Hadera Hailu, *Towards a History of Non-Governmental Organizations (NGOs) in Ethiopia since the 1960s*, *Bayreuth University*, PhD Dissertation, (2016), p.78.

⁸ Party owned business is a common name in case where a party undertakes business directly or indirectly by using the state machinery. For example, in Taiwan, a dominant party (Known as KMT's) owned the huge percentage of the Country's business sector and as a result, it is known as "*KMT's Business Empire*". See Berhanu Abegaz, *Political Parties in Business*, *the College of William and Mary, Department of Economics, Working Number113*, (April 2011), p.40, [hereinafter Berhanu, *Political Parties in Business*].

⁹ Ibid.

The article has six sections. In the first section the background of party-affiliated endowments and their business entities are examined. Section two of the article evaluated the legal personality of party-affiliated endowments (i.e. their registration, formation and legal personality is evaluated). In section three, the writer assessed the legal permissibility of party-affiliated endowments involvement in business activity. Section four of the article addresses the issue of taxation of party affiliated endowments and their business entities. In section five, the article shows the party owned/managed business entities' non-compliance with the rules of competition laws. Finally, the writer forwarded concluding remarks and recommendations for the identified legal and practical gaps.

1. Background to EFFORT and TIRET Endowments and Their Participation in Business Activities

After the demise of the Dergue regime, there was money and material accumulated during the armed struggle by the TPLF, ANDM, OPDO, and SEPDM.¹⁰ And, there were serious confrontation as regards who shall be the owner of this asset.¹¹ By using the funds and capital the parties had accumulated during the war¹², and members (veterans) contribution, each of the four political parties established their own endowments such as EFFORT, TIRET, TUMSA, and WENDO; established by the then TPLF, ANDM, OPDO and SEPDM respectively.

For example, the EFFORT memorandum provided that it was established by 25 so-called founder members, each of whom contributed a nominal ETB 2,000 (Two thousand birr) startup capital.¹³ In addition, different sources provided that the sources of EFFORT capital are:(1) irrevocably committed contributions

¹⁰ For example, Aregawi Berhe, wrote about one of the first successful operations the then guerilla fighters ever had 'Axum Operation'. It is a military operation that succeeded in raiding a police garrison and a bank in Axum during which the TPLF fighters made away with " substantial amounts of arms and ammunition and 175,000 birr (see Aragew Berhe, A Political History of the Tigray People's Liberation front (1975-1991): Revolt, Ideology, and Mobilization in Ethiopia, California, *Teshai publishers*, (2009), pp. 94-97, [hereinafter Aragew, *A Political History of the Tigray People's Liberation front*].

¹¹ See for example, Tadesse Kassa, Chief Executive Officer of TIRET Corporate, 20 years special video report of TIRET Corporate, *Ethiopian Embassy of London*, (2015), available on <https://youtu.be/bVTNd-xTJWs=56> last accessed on 17 December 2018; Sibhat Nega, Who is the owner of EFFORT Endowment and its business entities and the legality of its registration? Voice of America, (1 May 2017), available on <https://youtu.be/S-6iXStxPII?t=118> last accessed on 17 December 2018.

¹² Sarah Vaughan and Mesfin Gebremichael, Rethinking Business and Politics in Ethiopia: The role of EFFORT, *The Africa Power and Politics Programme*, (2011), pp.1-66, p.35, [hereinafter Sarah and Mesfin, *Rethinking Business and Politics in Ethiopia*].

¹³ See EFFORT Endowment Establishment Memorandum of Association, Article 8.

from supporters of EFFORT in Tigray and internationally¹⁴; (2) money and material accumulated during the armed struggle by the TPLF, including by military means¹⁵; and (3) profits from Relief Society of Tigray¹⁶ (hereinafter called REST) own investments, through share companies and other activities.¹⁷ Similarly, the TIRET memorandum and article of association provides that TIRET corporate was established as an endowment organization in 1995 with an initial capital of Birr 26, 053, 813.59 (Birr 20, 860,015.44 in kind and Birr 5,193,798.15 in cash); which was contributed by the then Amhara National Democratic Movement (ANDM) and its 25 founding members each of whom contributed a nominal Birr 2400 startup capital.¹⁸

Concerning party affiliated business entities, let us see the background of one or more business entities of EFFORT Endowments. Initially Alemeda Textile was established by five veterans of TPLF. The former shareholders of Almeda Textile were Yewubmar Asfaw Kidanu, Tsegabirhan Hadush W/mariam, Hailalibanos W/Micheal, Feseha Zerihun Weldu, and Geday G/Egzabhar Meshesha. For example, Hailalibanos W/Micheal was the head of intelligence and security and Yewubmar Asfaw Kidanu, a TPLF Veterans and the wife of Gebru Asrat, who was the then president of Tigray Regional State. Five of them were assumed to contribute Birr 36, 000,000 and the total initial capital of Alemeda was Birr 180, 000,000. Thereafter on Nehassie 1988 E.C all of the five shareholders transferred their shares to REST in the form of donations.¹⁹ Likewise, Guna Trading House was established by 6 veterans of TPLF by

¹⁴ See for example, the famous Band Aid known as Live Aid organized by Bob Geldof generated \$65 million pounds. Some criticized this aid money as it is collected in the name of saving famine victims but actually it had been used by the TPLF to overthrow the Derge regime [See Gebru Asrat, *Sovereignty and Democracy in Ethiopia: Signature Book Publishing, Washington, D.C, Volume 5*, (2016).

¹⁵ See for example, Aragew, *A Political History of the Tigray People's Liberation front*, pp. 94-97, supra note 10.

¹⁶ Relief Society of Tigray was founded in Washington DC, USA in 1978 as an organization providing relief efforts to civilians of Tigray and since the 1990s it is the major NGO operating in Tigray Regional State.

¹⁷ See EFFORT Endowment Establishment Memorandum of Association, Article 8. For further information, see Sarah and Mesfin, *Rethinking Business and Politics in Ethiopia*; supra note 12, pp.36 & 37.

¹⁸ See TIRET Corporate Establishment Memorandum of Association, May 19, 2006 E.C, Articles 8 & 9. The founder of TIRET Corporate were Berket Semhon W/Gerima, Wondosen Kebede Nura, Tefera Walwa Wondemagegn, Tadesse Kassa Ketema, Helawie Yosef Mengistu, Kassa Tekle Berhan G/Hiwot, Kebede Chana Gebru, W/ro Enewye G/Medhen Abera, Tesema G/Hiwot Engeda, Yosef Reta H/Giorgies, Melese Tilahun Degena, Kebede Tadesse Belay, W/ro Genet Zewude Biru, Ayalew Gobeza Workneh, Demeke Mekonen Hassen, W/ro Asefash Tasew Malede, Eyasu Belachew Tefera, W/ro Berhana Abera Lemma, Tewlde W/Medhen, Gualie Kidu Mengesha, Dessie Guben Taye, Major General Haila Tilahun Gebre Mariam, and Colonial Abate Mekonen Shiro. TIRET Corporate is not a proper name and it should be called as TIRET Endowment.

¹⁹ See Ermias Legesse, *Yemeles Leqaqit*, Netsanet Publishing Agency, pp. 333-335, [Hereinafter Ermias, *Yemeles Leqaqit*].

individual contributions of Birr 1,700,000.00, and later on the former shareholders transferred their shares to REST in the form of donations.²⁰

As regards the formation of party affiliated business entities, there is a big difference as between the simulation and the reality. The simulation is that the formation of those party affiliated businesses apparently meets the requirements of the commercial code i.e. at least two members in the case of PLCs or at least five members in the case of share companies.²¹ However, the reality is that those party affiliated endowments such as EFFORT and TIRET endowments are used as a cover to finance party affiliated companies.²²

Of course, a tendency is common in most commercial practice in Ethiopia. A shareholder requires another shareholder, commonly called a sleeping shareholder or fictitious member, just to fulfill the minimum legal requirement and get license of incorporation. In effect, it could be said that some companies in Ethiopia are one-man companies and the members are pseudo. The reason is that there are nominal members who hold insignificant shares in the company, the so called sleeping members.²³ Likewise, in party affiliated business entities, the distribution of shares as between shareholders are skewed and a shareholder with insignificant shares seems to be there only for the purpose of compliance with membership requirements and to supply assistance to the other shareholder to do business. For example, in the table III below, one of the members of the Guna Trading held only 1% while the other shareholders control 99% of the total shares. Thus, one of the shareholders in the company simply lent his name to be included in a memorandum of association to fulfill the minimum requirements of the commercial code; and such a shareholder is obviously nominal.

In this regard, there is a little bit of confusion as Art. 64 (1) of Proc. No. 1113/2019 provided that “CSOs may engage in income generating activities by establishing a separate business organization (company), acquiring shares in an existing company, collect public collections or operating its business as a sole proprietorship”. Here, the confusion is whether the phrase “by establishing a separate business organization/company” indicates that the two or five

²⁰ See the annexed table 3 & 4.

²¹ The Commercial Code of Ethiopia, Proclamation No. 166/1996, *Federal Negarit Gazzeta*, (1960), Articles 510 (2) & 311, [Hereinafter the commercial code].

²² See the annexed table 5 & 6. For example, table 6 shows that TIRET endowment takes the lion shares of several companies. This means that members/shareholders may not come together or associate to contribute capital in cash or in kind and participate in the profits and losses as supposed to be, but simply to fulfill the legal requirements of membership.

²³ Niguse Tadesse, Major Problems Associated with Private Limited Companies in Ethiopia, *The Law and Practice, Addis Ababa University, LL.M Thesis (Unpublished)*, (2009), pp. 133-136.

membership requirement provided under the commercial code is repealed and single member company is allowed for CSOs as per the proclamation.²⁴ In the opinion of the writer, concerning the formation of business organization/companies in general and determining the minimum membership requirement in particular, the commercial code is the governing law. Sub Art. 1(the Amharic version) and sub Art. 3 of Art. 64 of Proc.No.1113/2019 clearly refer to the applicability of other relevant laws including the commercial registration and business licensing laws for the income generating activities of CSOs. As a result, the writer argues that Art. 64 (1) of Proc.No.1113/2019 should be read in line with the relevant provisions of the commercial code and a charity cannot individually establish a one man/single member company.

Moreover, Art 347(1) of the commercial code required share companies to be managed by boards of directors comprised of shareholder directors only. It requires that a person who is in the post of director or chairman must be a person who owns at least a minimum share in a given company. In this regard, Eyessus Worku Zafu once provided that *'party owned/managed companies were first established with not more than three shareholders and yet they were called share companies'*; he added that *'even when they were established with a minimum of five shareholders as per the requirement of the commercial code, they will be found being chaired by persons who do not have any share'*.²⁵

2. Legal Personality of EFFORT and TIRET Endowments: Exploring the Past and Present

One legal issue to be explored is the governing laws for registration or legal personality of party-affiliated endowments. During the imperial regime, the Civil Code of 1960 was the basic text of law that governed the formation and

²⁴ It seems based this confusion that the draft article of association of TIRET endowment includes a provision that allows TIRET to establish a single member company/a company totally owned by TIRET Endowment. Art. 9(2) of the draft provided that *“የድርጅቱን ሀብት ዝ. በሚያስገኙ የፖርት፣ የአገልግሎትና የንግድ ተቋማት በማስማራት ባለአክሲዮን በመሆን እና አዳዲስ የንግድ ድርጅቶች (ከባንዲያዎችን) ወይም የንግድ ስራዎችን በብቸኛ ባለቤታት በማካሄድ የዝ. ማስገኛ ስራዎችን ማከናወን”*. The phrase *“በብቸኛ ባለቤታት በማካሄድ”* indicated that TIRET endowment can establish a one man/single member company.

²⁵ Eyessus Worku Zafu, the then Managing Director of the United Insurance Company S.C and Vice President of the Addis Ababa Chamber of Commerce, The Impact of Party Owned/Managed Companies on the Private Enterprises, *the Ethiopian Addis Tribune*, (17 May 2002), p.1, [hereinafter Eyessus Worku, The Impact of Party Owned/Managed Companies on the Private Enterprises]. Moreover, the annexed table 3 & 4 shows that most party owned/managed companies have at least one physical person holding some nominal shares. For instance, the annexed table 2 & 5 indicated that in 1995 the chairman of Almeda Textile Factory, Sheba Tannery Factory, Beruh Chemical Factory, and Addis Pharmaceuticals Production were Abadi Zemu, who hold a nominal share in those companies. Similarly, the annexed table 5 shows that the chairman of Sur Construction, Addis Engineering Consultancy, Star Pharmaceuticals, and Mesfin Industrial Company were Arkebe Ekubay, who hold a nominal share in those companies.

registration of endowments in the country. Concerning the controlling and supervisory organ of an endowment, the cumulative reading of Art.468 & 506 of the Civil Code gave the mandate to an office of association/endowments that was established in the capital of each province. The Civil Code designated the Ministry of Internal Affairs as the registering organ of associations and endowments, which in turn, issued registration regulations No. 321/1966.²⁶ However, the power of Ministry of Internal Affairs to register and supervise associations and endowments were lifted by the transitional government.

On December 1993, the Transitional Government had ratified the “National Policy on Disaster Prevention and Management”. This policy in its article 10 had designated Disaster Prevention and Preparedness Commission (CDPP) to be the supervisory body concerning all NGOs including endowments operating within the country.²⁷ In addition, Proclamation No. 41/1993, which defines the Powers and Duties of the Central and Regional Executive Organs of the Transitional Government of Ethiopia”, had made CDPP and BDPP (Bureaus for Disaster Prevention and Preparedness) the supervisor and coordinator of NGOs’ activities at the federal and regional level, respectively.²⁸ Later on in 1995, Art. 23 (9) of Proc. No. 4/1995 gave the power of registration of NGOs including endowments to the Ministry of Justice.²⁹ At regional level, at different time span the power of Bureaus for Disaster Prevention and Preparedness had been transferred to their respective Justice Bureaus.³⁰

²⁶ It is the regulation issued pursuant to the control of associations’ provision of the Civil Code of 1960. Regulation No. 321/1966 lays the registration procedure which among other things sets rules and standards for the: (1) application form for registration; (2) contents of the memorandum and articles of association; (3) verification and review of application; (4) supervision of the organizations/associations after registration; and (5) dissolution of the associations/organizations.

²⁷ See also Art. 6/10 of Proc. No.10/1995 which was endorsed the mandate of Disaster Prevention and Preparedness and Relief Commission to coordinate and supervise relief activities of NGOs including endowments at the federal level.

²⁸ For further information see Jeffrey Clark, Civil Society, NGO, and Development in Ethiopia, A Snapshot View, The World Bank, Washington, D.C, (2000), p. 12.

²⁹ See the Definition and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proc. No. 4/1995, (1995), Article 23(9). Later on Proc. No. 4/1995 was repealed by Proc. No. 471/2005, but the power of the Ministry of Justice to register endowments was intact (see the Definition and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proc. No. 471/2005, (2005), Article 23 (8)).

³⁰ See Proc. No. 87/2004 of Oromia; Proc. No. 64/1995 (E.C.) of SNNP; Proc. No. 58/2006 of Benishangul-Gumuz; Proc. No. 167/2009 of ANRS. In 2010, the Amhara Regional state further lifted the power of Justice Bureaus to register and supervise associations and endowments and given the mandate to the Bureau of Administration and Security Affairs (See the Definition and Duties of the Executive Organs of the Amhara National Regional State, Proc. No. 176/2010, *Zikre Hig*, (2010), Article 32 (4). And, currently, the power of registration and supervision of CSOs in Amhara Region is given to the bureau of attorney general.

EFFORT and TIRET endowments were established in 1995, as per Article 483-506 of the Civil Code provisions.³¹ The issue is that the Civil Code is enacted at the time when Ethiopia was a Unitary State but, EFFORT and TIRET endowments are established while the political system of Ethiopia changed from Unitary into a Federal structure. Here, the Civil Code is regulating civil matters and comprises several laws including but not limited to family, contract, property, and endowments/associations. Each regional state has the primary jurisdiction to enact a civil law.³² On the other hand, there is a scenario for enactment of civil law by the federal government in cases where the House of Federation recommends doing so for the purpose of creating one civil community with in the country.³³

The writer argues that to make the Civil Code as the laws of each regional state or federal government, they are expected to endorse it by their laws. However, neither the federal government nor the regional states explicitly endorsed the Civil Code, which makes the legal bases for establishment of EFFORT and TIRET Endowments uncertain and questionable.

But, in practice, both levels of governments did endorse and apply the Civil Code. The provisions of the Civil Code governing contract and property are the applicable laws throughout the country without explicit endorsement by the federal government. Concerning family matters, while the Amhara, Tigray, and Oromia regional states enacted their own family laws; the rest continued to apply the Civil Code by default.³⁴ Till 2009, the case of charitable endowment was not an exception as the Civil Code was an applicable law throughout the country without endorsement of the federal or regional governments. Besides, the then director of registration of association and endowments at the office of Ministry of Justice, Getachew Gonfa, once disclosed the fact that EFFORT and TIRET were not registered as per the provisions of the Civil Code.³⁵ In 2009, the federal government enacted a charity and societies proclamation, Proclamation Number 621/2009, which was applied, among other things, to charitable endowments operating in more than one region or charities operating

³¹See the preambles of the memorandum and article of associations of EFFORT and TIRET endowments.

³² Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazeta*, (1995), Article 52 (1) cum. Article 55 (6), [Hereinafter the FDRE Constitution].

³³ Article 55(6) of the FDRE Constitution provides "...the House of People Representatives shall enact civil laws which the House of the Federation deems necessary to establish and sustain one economic community".

³⁴ None of each regional state endorsed the Civil Code by the law rather they are simply applying it by default.

³⁵ See Getachew Gonfa, the then Director of Charitable Endowments Registration and Supervision, Former Ministry of Justice, *the Ethiopian Reporter*, (February 24 1996 E.C).

in Addis Ababa and Dire Dawa.³⁶ On the other hand, with the exception of the Amhara National Regional State, no other region has enacted a special law to govern the activities of CSOs in their respective region. The Amhara National Regional State enacted Proclamation No. 194/2012 and Regulation No. 117/2013 to register and administer charities and societies established to operate only in the region. Accordingly, TIRET Endowments was registered at the Amhara National Regional State Bureau of Administration and Security Affairs,³⁷ by alleging that the Amhara Community is the ultimate beneficiary of TIRET endowments. Until that time EFFORT Endowments continued to be regulated by the provisions of Civil Code.

In February 2019, the federal government enacted Proc. No. 1113/2019, which defined a charitable endowment as “an organization through which certain property is perpetually and irrevocably designated by donation, money, or will for a purpose that is solely charitable”.³⁸ The proclamation is applicable to: Organizations operating in two or more regional states; Foreign Organizations; Organizations established in Ethiopia to work on International, Regional or Sub Regional issues or not operate abroad; Organizations operating in the City Administration of Addis Ababa or Dire Dawa; and, Charitable Organizations established by religious Institutions.³⁹

In the opinion of the writer, neither EFFORT nor TIRET endowments are within the ambit of this proclamation as their level of operation is limited to Tigray and Amhara National Regional States, respectively.⁴⁰ Currently, TIRET Endowment is accountable to the Council of the Amhara National Regional State.⁴¹ However, the Council has not any legal basis to decide on the fate of a chartable

³⁶ See The Charities and Societies, Proclamation No. 621/2009, *Federal Negarit Gazeta*, (2009), Article 3, [hereinafter Proc. No. 621/2009). Art. 6(1) (a) of Proc. No. 621/2009 gave the charities and societies agency the power to license, register and supervise charities and societies.

³⁷ The Bureau of Administration and Security Affairs is the responsible organ to register and supervise charitable endowments operating in Amhara Region. See the Charities and Societies Proclamation No. 194/2012, *Zikre Hig*, (2012), Article 5, [hereinafter, Proc. No. 194/2012] ; See also the Definition and Duties of the Executive Organs of the Amhara National Regional State, Proclamation No. 176/2010, *Zikre Hig*, (2010), Article 32 (4).

³⁸ The Organization of Civil Societies, Proclamation No. 1113/2019, *Federal Negarit Gazeta*, (2019), Article 21, [hereinafter, Proc. No. 1113/2019].

³⁹ *Ibid*, Article 3(1).

⁴⁰ However, practically, for example, TIRET Endowment is registered as per Proc. No. 1113/2019. See the Council of the Amhara National Regional State 5th round, 5th year and 14th regular meeting (*የአማራ ክልል የሥነ ስር ሁገት ማመንገጫ ደብዳቤ ዘመን 14ኛ መደበኛ ጉባኤ*). The Council affirms that TIRET Endowment is registered as per the proclamation.

⁴¹ *Ibid*. See also Draft TIRET Endowment Article of Association, 2020, Article 15, 16, and 19.

endowment as it is the jurisdiction of Bureau of Amhara National Regional State Administration and Security Affairs.⁴²

Therefore, in the opinion of the writer, there is defective registration and formation of EFFORT and TIRET endowments that could lead to deprivation of their legal personality and their assets could be transferred to another charitable endowment that has similar or related objectives.⁴³

3. Party Affiliated Endowments Participation in Business Activities

Charitable endowments often take part in trading and investment activities, to raise money for their charitable purposes.⁴⁴ The term ‘business activities’ in the context of CSOs can be defined as all activities of producers, traders and persons supplying for the purposes of obtaining income therefrom on a continuing basis.⁴⁵ Passive investments are traditionally excluded from this definition.⁴⁶ Passive investments means investment in shares or bonds, renting activities, place funds in interest-bearing bank accounts, and from these activities charities generate passive income in the form of dividends, interest, rents, royalties, and capital gains.⁴⁷

There are three approaches concerning the permissibility of charities involvement in business activities. The First approach is allowing charities to involve in any kind of business activities without limitation. However, the charities are not allowed to distribute the profit earned and business activities should not be their primary purposes. This approach is commonly adopted by Western Europe Countries.⁴⁸ The second approach is allowing charities to involve in business activities with condition/requirements (relatedness requirement), which require a relationship between the business activities and

⁴² Proc. No. 194/2012, Article 5. This power is given to the Justice bureau for other regional states and for Organization of Civil Society Agency at federal level; the agency is in turn accountable to the federal attorney general (See Proc. No. 1113/2019, Article 78).

⁴³ The CSOs law required that in case a charitable endowment is dissolved and cease its legal personality, the asset or property of that charitable endowment should be transferred to another charitable endowment that have similar or related objectives (See Proc. No. 194/2012, Article 89; Proc. No. 1113/2019, Article 84).

⁴⁴ UK Charities Act of 2006, *supra* notes 5.

⁴⁵ Volker Then et al, The European Foundation, a New Legal Approach, A Project of Bertelsmann Stiftung, *Cambridge University Press*, (2006), p. 329, [hereinafter Volker et al, The European Foundation, a New Legal Approach].

⁴⁶ *Ibid*.

⁴⁷ Leon E. Irish, Jin Dongsheng and Karla W. Simon, China Tax Rules for Not-for-Profit Organizations, A Study Prepared for the World Bank, (2004), pp. 30 & 57, [hereinafter Leon et al, China’s Tax Rules for Not-for-Profit Organizations].

⁴⁸ European Center for Not-for-Profit Law (ECNL), Legal Regulation of Economic Activities of Civil Society Organizations, Policy Paper, (2005), p. 8, [hereinafter ECNL, Legal Regulation of Economic Activities of CSOs].

the purpose of the organization.⁴⁹ The relatedness requirement is expressed in different ways. It may be described as a requirement that the business activities pursued by the charities need to be related to their ‘*statutory purpose*’.⁵⁰

This means that a charity which is established to provide education to the poor could be allowed to open a private school and generate income there from. It cannot, however, run a clinic or a shop for the purpose of income generation, even though the money will be used to finance its charitable activities.⁵¹ On the other hand, the relatedness requirement may be defined in terms of the charities involvement in business activities as ‘*incidental/auxiliary*’ to the primary purpose of the charities. Incidental means less important than the main purpose of the charity, which does not necessarily have to be ‘*related*’ to the statutory purpose.⁵² Moreover, the charity may be required to identify the business activities that they wish to carryout in their ‘*founding documents*’ and it is allowed to involve only in activities indicated in the governing documents that are related to their primary purposes. For example, Slovenia, Serbia and Montenegro adopted this approach.⁵³

The third approach is prohibiting charities involvement in business activities, but allowing them to engage in business activities indirectly through business corporations. For example, Turkey adopted this approach.⁵⁴ There are also countries that are applying one or the other approach, depending on different contexts. For example, in France, as a principle, CSOs can engage directly in any business activity, and the relatedness issue becomes relevant if there is a concern that the business activities of the CSOs are creating unfair competition with the commercial sector.⁵⁵ In United Kingdom, Chapter 35 of UK Charities Act of 2006 provided that trade and investment can be carried out by a charitable endowment in the form of primary purpose trading⁵⁶, ancillary

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Users ‘Manual for the Charities and Societies Law, Taskforce on Enabling Environment for Civil Society in Ethiopia, Addis Ababa, (2011), pp.1-91, p.48, [hereinafter Users’ Manual for the Charities and Societies Law].

⁵² ECNL, Legal Regulation of Economic Activities of CSOs, p. 9.

⁵³ Ibid.

⁵⁴ Ibid, p.12 cited TUSEV: Monitoring Matrix on Enabling Environment for Civil Society Development, Country Profile Turkey, 2013.

⁵⁵ Ibid, p. 9.

⁵⁶ Primary purpose trading means the trade is carried out of a primary purpose of the charity that is directly related to the aims of the charity; or the work of the trade is mainly carried out by the beneficiaries of the charity. For example: a charity charging for a training session or selling a religious publication; sale of goods manufactured by disabled people who are beneficiaries of a charity for the disabled; sale of tickets for a show put on by a charitable theatre, or for an art exhibition held in a charitable art gallery.

trading⁵⁷, non-primary purpose trading,⁵⁸ and trading subsidiary⁵⁹. In USA, endowments are allowed to engage in trade and investment activity in the form of incidental profits⁶⁰, by establishing for profit subsidiaries,⁶¹ by forming business partnerships,⁶² via program related investment,⁶³ and through social impact investment tools.⁶⁴

In Ethiopia, Art. 483 of the Civil Code provided that *"an act of endowment is an act whereby a person destines certain property irrevocably and perpetually to a specific object of general interest other than the securing of profits."* The last phrase "... to a specific object of general interest *other than the securing of profits...*" indicated that an endowment shall not be established for maximizing profits/profit motive. This requires charities to be established to pursue altruistic objectives. However, to achieve its altruistic purpose, a charity may engage in income generating activities. In relation to this, art 25 of the commercial code prohibited associations from undertaking trade activity. Here what is prohibited

⁵⁷ Ancillary trading is trading which is in some way complementary (or ancillary) to a charity's primary purpose. It is therefore legally part of the charity's 'primary purpose trading'. For example: a museum cafe, selling goods to visitors of the museum'; a gallery selling goods to visitors; and a theatre restaurant selling meals to members of the audience.

⁵⁸ Non-primary purpose trading means trading intended to raise funds for the charity, rather than trading which in itself furthers the charity's objects. For example: a theatre restaurant selling meals to members of the public who have not bought tickets to the theatre production; a charity buying pre-made Christmas cards then selling them for a profit; and some fundraising events and corporate sponsorship. Charity law allows the Non-Primary Purpose Trading, if it doesn't involve significant risk to the resources of the charity.

⁵⁹ Trading subsidiary is any non-charitable trading company owned by a charity or charities to carry on a trade on behalf of the charity (or charities). For example: the Depaul Box Company sells boxes for moving, profits go to Depaul UK, a youth homelessness charity.

⁶⁰ An incidental profit includes fees and charges collected from the service they provide. For example, tuition fee for educational centers and charges for hospitals.

⁶¹ Establishing for profit subsidiaries means establishing separate business entity and investing in them so long as the endowments are investors in the company and the profits of such an investment is used for the running of the non-profit and not distributed to the members of the non-profits [see Mechais Viravaidya & Jonathan Hayssen, Strategies to Strengthen NGO Capacity in Resource Mobilization via Business Activities, *PDA and UNAIDS Joint Publication*, (2001), p.44.

⁶² Formation of business partnerships means that joint venture and /or partnership between an endowment and for-profit companies. For example, the American Cancer Society allowed for the use of its logo and name on Florida Citrus Industry that use Citrus which is a contributor to cancer prevention. This helps the NPO in teaching the benefits of citrus on the one hand and receiving payments for the endorsement at the same time. The Florida Citrus Company in turn the benefits of credibility, [See Paul E. Waddell, *Unlocking Profit Potential: Your Organization's Guide to Social Entrepreneurship*, (2002), p. 9].

⁶³ Program related investment indicated, for example, there may be investments in business in deteriorated urban areas under a plan to improve the economy of the area by providing employment or training for unemployed residents, and investments in NGO combating community deterioration [See Sisay Habte Gemed, *Doing Business via Non-profits: Lessons from the US for Ethiopia*, Central European University, LLM Thesis, p. 48, [hereinafter Sisay, *Doing Business via Non-profits*].

⁶⁴ *Ibid*, p.49; According to Sisay social impact investment tools includes: loans, credit enhancements, social impact bonds, and Qusi-public investment funds. For example, International Finance Corporation (IFC) providing funding to 23 private Schools in Kenya with 300, 000\$ and provided 113 others with advisory support.

is an association but not endowments. Therefore, in the opinion of the writer the Civil Code followed the first approach that permits a charity to undertake any business activities.

EFFORT and TIRET endowments are assumed to be established as regional charitable endowments, as per Arts. 483-506 of the Civil Code.⁶⁵ As usually claimed by some politicians, the wider public in Tigray and Amhara regions, being ‘ultimate beneficiaries’ of EFFORT and TIRET endowments, respectively; it could be argued that EFFORT and TIRET endowments are not ultimately meant for profit. And, it is clear that to achieve their altruistic purpose, EFFORT and TIRET endowments can engage in income generating activities. Meaning, an endowment is to be established to pursue altruistic objectives. It shall not be established for maximizing profits. And, its involvement in business activities is simply to achieve its altruistic purpose. However, EFFORT and TIRET endowment put in their memorandum and article of associations that their primary objectives are undertaking sustainable investment and trading activity.⁶⁶ So, it is clearly against Art. 483 of the Civil Code that stated the primary purpose of an endowment should not be involvement in profit driven business activities.

The writer argues that EFFORT and TIRET endowments can involve in different business or commercial activities either by way of establishing business organizations or being shareholders in different companies. However, all these should not be stated as their primary objectives rather their involvement in business activity is to achieve their altruistic purpose.

The other problem of EFFORT and TIRET endowments is concerning timely disbursement and adequacy of distribution. In several jurisdictions, there is a requirement of timely disbursement, which requires charities to spend a certain income that may be derived from business activities or other sources, for their charitable purposes, within a fixed period of time.⁶⁷ Accordingly, all profits

⁶⁵ See the preamble of the memorandum and article of associations of EFFORT & TIRET endowments.

⁶⁶ See for example, TIRET Memorandum of Association, Article. 4, 5, & 6, and TIRET Article of Association, Article 2; see also EFFORT Memorandum of Association, preamble, Art 3 & 4, and EFFORT Article of Association, Article 2. For example, let us see the following provisions of TIRET memorandum of association: “Article 5(1) : ጥርት የሚከተሉት አላማወች ይኖሩታል...የአገሪቱና የክልል ህጎች በሚፈቅዱት መሰረት በማንኛውም የንግድ ማህበር ባለአክሲወን በመሆን ለኢንቨስትመንት የሚውል ሀብት መፍጠር...፤ Art. 6(4): የኢንቨስትመንት ስራወቹን በልማታዊ አግባብ ማከናወን...፤ Art. 6(5): ጥርት አላማወቹን ለማሳካት የሚከተሉት አላማወች ይኖሩታል...ለቁ ተወዳዳሪና ትርፋማ የሆኑ ተቃማትን መገንባት...”

⁶⁷ For example, in **Germany** Charities should spend most of their annual income within two year; in **Finland** within a reasonable time frame, in **Spain** within four years, in **UK** and **Turkey** within reasonable time. See European Foundation Center, Comparative Highlights of Foundation Laws, Operating Environment for Foundations in Europe, (2015), pp. 10-42.; Klaus J. Hopt et al, Feasibility

generated from IGAs shall be distributed in goods or services to the beneficiaries or the funds received should be used for subsidizing the delivery of services. However, in Ethiopia, there is no mandatory provision that requires charities to spend their income for charitable objectives and practically party affiliated endowments are accumulating their income for a long period of time without spending it for their charitable objectives. EFFORT and TIRET endowments are usually being criticized as their practice is ‘*investment over investment*’. This means the profit acquired by one company is allocated for the establishment of another company; the latter is also expected doing the same.⁶⁸

Additionally, concerning TIRET Endowment in Amhara National Regional State, the Civil Code provisions governing endowments is repealed by Proc. No. 194/2012.⁶⁹ Art.6 of the proclamation clearly provided that a Charity is established for charitable benefit to the public at large or certain social sections, such as women, children, disabled etc. This means that an endowment is established as a not for profit to pursue altruistic objectives and serving the public at large or a given social section. Art.97 of Proc. No. 194/2012 states that

Study on a European Foundation Statute, *Final Report, European Commission*, (2015), pp.85-99; Leon et al, China’s Tax Rules for Not-for-Profit Organizations, *supra* note 47, p.36.

⁶⁸ See, Manaye Jemberie, Critical Assessment of the Legal Regime of Income of Income Generating Activities of Charitable Endowment’s in Amhera Region: A case of TIRET endowment, *Bahir Dar University, LLM Thesis (Unpublished)*, (2017), pp.31 & 38, [hereinafter Manaye, *Critical Assessment of the Legal Regime of Income of Income Generating Activities of Charitable Endowment’s in Amhera Region*]. See also, Draft Article of Association of TIRET Endowment, Article 13(1) provided that “የጥረት አጠቃላይ ሀሳብ ዘላለማዊ እና በተጣይነት ለአማራ ብሔራዊ ክልል ሕዝብ የተሰጠ በመሆኑ በኢንቨስትመንት በመስማራት የሚገኝ ትርፍ ለአዳዲስ ኢንቨስትመንት፣ ለነገር ከላይኛዎች ማስፋፊያ፣ ለበጎ አድራጎች ስራዎች እና ለድርጅቱ አስተዳደራዊ ወጭዎች ከሚውል በስተቀር ለግለሰቦች አይከፋፈልግም” There is no requirement for timely disbursement and adequate distribution within a certain time limit.

⁶⁹ The Civil Code provisions governing endowments (Art. 483-506) was repealed by Proc. No. 621/2009 though the later itself is also repelled by Proc. No.1153/2019. However, do not forget that the scope of application of the two proclamations (Proc. No. 621/2009 and Proc. No.1153/2019) is at the federal level. On the other hand, EFFORT and TIRET Endowments are deemed to be established as regional endowments for the benefit of the Tigray and Amhara community, respectively. Accordingly, while the TIRET Endowment is governed by Proc. No. 194/2012, EFFORT endowment is yet governed by the Civil Code provisions. That is why the writer focused his discussion on Proc. No. 194/2012 instead of Proc. No. 621/2009 and Proc. No.1153/2019. Of course, there is no such difference between Proc. No. 194/2012 and Proc. No. 621/2009 concerning the permissibility of endowments involvement in business activities. Concerning, Proc. No. 1113/2019, this new proclamation has been coming with a new approach by lifting the income generating activities restrictions of the repealed proclamation (Proc. No. 621/2009). Art 63(1(b)) of the new proclamation entitled CSOs the right to engage in any lawful business and investment activity in accordance with the relevant trade and investment laws in order to raise funds for the fulfillment of its objectives. Art 64(1) of the same proclamation provides that CSOs which engages in income generating activities may do so by establishing a separate business Organization (company), acquiring shares in an existing company, collect public collections or operating its business as a sole proprietorship. Even, art 25 of the commercial code that was restricting association’s engagement in trade activity is repealed by art 87 of this new proclamation. Thus, likewise the Civil Code, Proc. No. 1113/2019 followed the first approach that permits charities to undertake any business activities so long as the profit obtained from business activities is not distributed for members.

charities and societies may, upon a written approval of the Bureau, engage in income generating activities which are *incidental to the achievement of their purposes*.⁷⁰ A charity will be eligible for permission when the activities are related to its altruistic purposes, and the income derived there from will be used to further their objectives. The proceeds must not be distributed among members or beneficiaries of the charity and must only be used to further the purpose for which the charity was established.

Therefore, in the opinion of the writer, Proc. No. 194/2012 followed the second approach that permits a charity to undertake business activities with the fulfillment of the relatedness requirement. However, it is difficult to evaluate as to whether TIRET endowment involvement in investment and trade activities has met the “*relatedness*” requirement of Proc. No. 194/2012 because TIRET endowment lacks clear and precise objectives.⁷¹

4. Taxation of Party Affiliated Endowments

Usually different jurisdictions provide favorable tax treatments for charities of diverse kind. The justifications include: (1) Charities perform tasks that are supportive of central values that a government wishes to encourage or give incentives⁷²; (2) Charities relieve a government from burdens it would otherwise have to bear⁷³; (3) The objectives of charities are not profit, but rather public benefit purposes. Taxing their income would deter them from achieving their purpose⁷⁴; and (4) Usually charities provide public goods and services in which market failure is likely to happen unless government intervenes in the form of subsidy or tax incentives⁷⁵.

There are also different approaches followed by different jurisdictions concerning the scale and extent of privileges. These are (1) full exemption in which charities are exempt from paying tax on their all business income; (2) partial exemptions which provide exemptions to some business income or

⁷⁰ See the above discussion on ‘relatedness requirement’ for better understanding of the term ‘*incidental to the achievement of their purposes*’.

⁷¹ Article 11 of the Memorandum of Association of TIRET endowment simply stated that ‘the wider Amhara community is the beneficial of TIRET endowment’. It would be better to put some specific objectives and purpose of TIRET endowments in the form of health (prevention of cancer), education (accessibility of education for vulnerable communities), etc.

⁷² Kimberly Scharf and Sarah Smith, Charitable Giving and Tax Policy, A Historical and Comparative Perspective, in Gabrielle Fack and Camille Landais (eds.), Chapter Five, Charitable Donations and Tax Relief in the UK, *CEPR Conference*, Paris School of Economics, (May 2012), p.121.

⁷³ Volker et al, The European Foundation, a New Legal Approach, *supra* note 45, p.301,

⁷⁴ *Ibid*.

⁷⁵ Mollay F. Sherlock and Jane G. Gravelle, an Overview of the Non-profit and Charitable Sector’, *Congressional Research Service*, (2009), p.41.

preferential tax treatment under certain conditions; and (3) full taxation as any other for profit business entities.⁷⁶ For example, in France, in principle, full exemption is provided without any condition. However, when the issue of competition with the commercial sector comes in to picture, the exemption will be lifted.⁷⁷ In UK, where an endowment is trading, the trading profits are, in principle, subject to income tax, other than as specifically exempted. However, there are considerable tax advantages for charitable endowments as compared to ordinary commercial companies such as exemption from value added tax (VAT).⁷⁸

In USA, American non-profit organizations including endowments are generally exempt from federal income tax, with the exception that profits earned from activities that are "unrelated" to exempt purposes are subject to the Unrelated Business Income Tax (UBIT).⁷⁹ On the other hand, in Turkey and Slovenia all profits from business activities of charities are subject to tax under the same conditions as any other for profit business entities.⁸⁰ As discussed earlier, several jurisdictions separately treat business activities and passive investments of charities. There are countries that fully exempt, partially exempt passive

⁷⁶ ECNL, Legal Regulation of Economic Activities of CSOs, supra note 48, pp.13-15.

⁷⁷ Caroline L. Newman, Recent Ministerial Instructions Regarding the Tax Treatment of NPOs, in Leon et al, China's Tax Rules for Not-for-Profit Organizations, *International Journal of Not for Profit*, (2000), p.33.

⁷⁸ UK Charities Act 2006, Chapter 35, p.4, supra note 36. It provided that the profits of primary purpose trading are exempt from tax. There is no blanket exemption from VAT. In relation to Non-Primary Purpose Trading, the profits will probably be taxable with limited exemption for:

1. *Sale of donated goods = the sale of donated good does not constitute trading for tax or charity law purposes. The sale of donated goods by charity law is zero rated for VAT purposes. The entitlement to rate relief is not affected if the trade is carried out by the charity;*
2. *Small scale trading: the total turnover from all the charity's non-exempt trading activity must not exceed the annual turnover limit. The annual turnover limit for non-primary purpose trading is £5,000 if the charities total annual income is less than £20,000. If the annual income is above £20,000, the limit is either 25% of the charity's total incoming resources up to a maximum of £50,000;*
3. *Certain fundraising events: a range of fundraising activities may involve trading for example lotteries, marketing and corporate sponsorship. In that case, there is a tax and a VAT exemption for one off fundraising events and a tax exemption for lottery income.*

⁷⁹ Title 26 of Internal Revenue Code, § 501(c)/3 and § 511 of IRC; in James R. Hines Jr., Non-Profit Business Activity and the Unrelated Business Income Tax, Tax Policy and the Economy, *MIT Press, Volume 13*, pp. 57 – 84. The UBIT is intended to prevent "unfair" competition between tax-exempt non-profits and taxable for-profit firms, and also to prevent erosion of the federal tax base through tax-motivated transactions between taxable and tax-exempt entities. State also exempt Non-profit Organization, including endowments from sale tax, income tax and property tax. See, for example, State Taxation and Non-profit Organization, North Carolina Department of Revenue, available at <https://www.dor.state.nc.us/publications/nonprofit2008> last accessed on March 5 2018.

⁸⁰ ECNL, Legal Regulations of Economic Activities of CSOs, p.15, supra note 40; See also Peter Pajas, Economic Activities of Not-for Profit Organizations, Conference Report in Regulating Civil Society, Budapest, Hungary, May (1996), p.9.

income of the charities, and there are others that subject this income of charities to full taxation.⁸¹

In Ethiopia, the Federal income tax proclamation, Proc. No. 979/2016 under Art.65 (1) (m) provides that “*the income of non-profit organization other than business income that is not directly related to the core functions of the organizations is tax exempt*”.⁸² This means that any income except business income of non-profit organizations is exempted without any condition. So, the charities income from passive income is fully exempted without any condition, including the relatedness requirement. Dividend, interest, capital gain and the like are the main source of income of EFFORT and TIRET endowments.⁸³ Dividend is defined as a distribution of profits by a body (includes the charities) to a member.⁸⁴ Capital gain is derived from the disposal of immovable property, a share, or bond including the transfer of any interest in shares or bonds, such as, in the case of shares, a right or option to acquire shares.⁸⁵ An interest income may be derived from savings/deposits in financial institutions or other sources such as a loan extended to others.⁸⁶ All this income of EFFORT and TIRET endowments is under the category of passive investments that can be fully exempted without any condition as per Art. 65(1) (m) of income tax proc. No. 979/2016.

In relation to business income of charities, it will be exempted if it is derived from a business activity that has a direct relation to their function.⁸⁷ In foreign countries, the primary purpose of a charity (specified in its memorandum or

⁸¹ While USA and most European countries adopted the fully exempted approach, Countries like Turkey, China, Madagascar and Slovenia fully taxed the passive income of charities. And, there are also countries that adopted the partial exemption approach. See ECNL, Legal Regulation of Economic Activities of CSOs, p.18, supra note 40; see also Feng Xiaoming, China’s Charitable Foundations, Development and Policy Related Issues, Stanford Center for International Development, Working Paper No. 485, 2013, p.21; Billur Yalti, Taxation of Charities in Turkey, Koc University, Faculty of Law, p.11, available at <http://www.springer.com/document> last accessed August 2018.

⁸² The Federal Income Tax Proclamation of Ethiopia, Proclamation No.979/2016, *Federal Negarit Gazette*, (2016), Article 65 (1) (m), [hereinafter, Income Tax Proc. No.979/2016]. In this regard, Art. 64 of Proc.No.1113/2019 simply refer to the applicability of tax laws.

⁸³ For example, from the table attached below, we can discern that EFFORT and TIRET endowments involve in business activity in the form of establishing companies or purchasing shares in other business entities. As a result, they can acquire dividends from the distribution of profits.

⁸⁴ See Income Tax Proc. No. 979/2016, Article 2(6) & 55.

⁸⁵ Ibid, Article 59 and also see the Federal Income Tax Regulation of Ethiopia, Regulation No. 410/2017, *Federal Negarit Gazette*, (2017), Article 6, [hereinafter, Income Tax Regulation, No. 410/2017].

⁸⁶ Income Tax Proc. No. 979/2016, Article 2(16) & 56; see also Income Tax Regulation, No. 410/2017, Article 3.

⁸⁷ Here, there is discrepancy between the Amharic and English version of Article 65(1) (m). While the Amharic version requires a simple ‘relation’ (ድርጅቱ ከተቆይታዎቹ ለሰማ ጋር የሚይዘው የንግድ ስራ ገቢን ላይጨምር), the English version requires the income generation activities to have a ‘*direct relation to the core function of the charities*’.

article of associations) serve as a reference point to determine whether a certain business income of that charity is related or unrelated. As a result, the charities are required to adopt more measurable, specific and particular objectives.⁸⁸ However, in Ethiopia, neither the income tax nor the charity laws set the mechanism of determining the related and unrelated business income of charities. In addition, party affiliated endowments in Ethiopia expressed their charitable purpose activities in general terms such as poverty alleviation, economic and social development, bringing technology transfer, etc.⁸⁹

Moreover, there is lack of clarity as regards the competent organ to determine the relatedness requirement of the law. In this regard, there will be power overlap between the Organization of Civil Society Agency and the tax authority. As a result, the absence of a guideline to determine the relatedness or unrelatedness of business income together with the absence of mandatory requirement to adopt a specific measurable objective may create a problem to apply the exemption rule for business income of charities in general and EFFORT and TIRET endowments in particular.⁹⁰

In the opinion of the writer, for tax purposes, EFFORT and TIRET Endowments and their business entities shall be treated separately. Accordingly, EFFORT and TIRET owned business entities shall not get tax privileges and they should be treated as for profit companies established by individual persons. This means that the tax exemption provided under Art. 65(1) (m) of the income tax Proc. No. 979/2016 is not applicable for EFFORT and TIRET owned business entities.

However, usually EFFORT and TIRET owned business entities are being criticized as they are not transparent and accountable.⁹¹ In particular, they do not open their accounts for government audit and there is no clear information as regards whether they are paying any tax at all.⁹² They are being found in running their business in fraudulent manner by reporting more expenses than the actual costs, and without paying value added taxes collected from their customers.⁹³ For example, the federal First instance court of Lideta on 19th December 2012

⁸⁸ Richard Jenkins, *Governance and Financial Management of Endowed Charitable Foundations, Associations of Charitable Foundations*, (2012), pp.22 -224

⁸⁹ See, for example, the Memorandum Association of TIRET Endowments, the Preamble and Article 5.

⁹⁰ Income Tax Proc. No. 979/2016, Art. 65(1) (m).

⁹¹ Eyessus, *The Impact of Party Owned/Managed Companies on the Private Enterprises*, supra note 25, p.1. Eyessus said that no one can give accurate and qualified information about party owned/managed companies as there is not much information available.

⁹² Berhanu, *Political Parties in Business*, supra note 8, p.42.

⁹³ See, for example, Amare Argawi, *EFFORT Endowment and its Business Entities*, *Ethiopian reporter*, (23 January 2005 E.C), p.1.

ruled that one of EFFORT's companies, Mega Entertainment Center, had not paid taxes for eight years.⁹⁴ Moreover, there was a report that exposed EFFORT companies have imported different materials including cars without paying custom duty worth of Birr 24, 000,000.⁹⁵

5. Party Affiliated Endowments Participation in Business Activities and Their Non-compliance with the Rules of Competition Law

Since 1991 the ruling government (EPRDF) advocated free-market economy, privatization, and competitive policy. To translate the policy in to an operative document, different laws have been enacted at different times such as trade practice proclamation, Proc. No. 323/2003; Trade Practice and Consumer Protection Proclamation, Proc. No. 685/2010; and Consumer Protection and Competition Proclamation, Proc. No. 813/2013. And also for the proper implementation of these laws, trade competition and consumer protection authority (formerly known as trade practice commission) is established. All these policies, laws, and organs have been advocating free trade based on efficiency. Accordingly, the Competition and Consumer Protection Proclamations prohibited anti-competitive trade practice and agreements.⁹⁶

Though a free-market and liberalized economy has been launched and it is an attractive and applauding ongoing process in Ethiopia, there are some practical and legal lacunas concerning **EFFORT** and **TIRET** business entities. The legal gaps are absence of a requirement for charities to have particular objectives; lack of clarity on the scale of income generation activities; absence of a requirement for timely disbursement/distribution; full tax exemption of passive investments and generous business income tax exemption so long as the income is related with the objectives of the charity. All these legal lacunas enable party affiliated endowments to engage in a wide range of income generation activities, which creates unfair competition and negatively affect the commercial sector.

Moreover, in practice, the World Bank, many internal and external observers, as well as, business people have noted that party-affiliated endowments such as EFFORT companies enjoy preferential access to contracts, capital, physical

⁹⁴ Yohannes Equbay v. ERCA, Federal Supreme Court Cassation Decision, Criminal Case File No. 100079, (4 March 2007 E.C); see also Fekadu Petros, Ethiopian Company Law, *Far East Trading publisher PLC's*, Vol.2, (2016), p.349; see also Amare Argawi, EFFORT Endowment and its Business Entities, *Ethiopian reporter*, (23 January 2005 E.C), p.1.

⁹⁵ Ethiopian Television, EFFORT Companies importing different raw materials without proper tax payment, (29 February 1996).

⁹⁶ See Trade Competition and Consumer Protection Proclamation of Ethiopia, Proclamation No. 813/2013, *Federal Negarit Gazeta*, (2013), Article 5-13.

infrastructure and administrative services, tax breaks and other politically motivated and privileged supports.⁹⁷ Party-linked enterprises/companies accomplish win-win outcomes by reducing coordination failures in investment, training, marketing, raising investible resources via rent seeking (government contracts, state policy, differential enforcement of laws and regulation); entering into high-risk, high-return sunrise industries.⁹⁸

Accordingly, EFFORT companies undermine competition on trade and investment and adversely affect the society because:(1) the TPLF deliberately give privileged and monopolistic economic power to control huge amounts of assets; (2) they create barriers to new market entrants; (3) they create an endemic culture of obscene corruption by leveraging state resources and unfair trade practices through granting privileged access to land and information regarding procurement; and (4) since they operate across various sectors, some have real strategic influence on other sectors. Their affiliation with the state create advantages which are unavailable to firms owned by private investors such as access to information on policies and programs which influence profitability of firms, and access to bank credit.⁹⁹

Amare Aregawi, who was the then editor in chief of the Ethiopian Reporter, disclosed the fact that Almeda textile once borrowed 1.8 billion Birr from the Commercial Bank of Ethiopia without legal security, and failed to pay its debts and interests. To shield this fact from World Bank & IMF, the commercial bank transferred the debts of Almeda Textile to the Development Bank of Ethiopia and then, the later canceled 1.8 billion birr debts of Almeda textile.¹⁰⁰ Besides, the Ethiopian military armed forces and police force uniform were all supplied by Almeda Textile. Sur construction were also handed big government construction projects like Gebba dam project, Zarema River May Day Dam Project, Tekeze Hydro plant and Tis Abay II hydro project. Electromechanical projects were handled by Mesfin Industrial Engineering. Messebo cement which is also a subsidiary of EFFORT was the sole supplier of cement for the Great Renaissance Dam.¹⁰¹

⁹⁷ See World Bank, Ethiopia: Toward the Competitive Frontier, Report No. 48472-ET, 2009a; World Bank, Doing Business in Ethiopia, Report No. 50491, (2009b).

⁹⁸ Berhanu, *Political Parties in Business*, supra note 8, p.47.

⁹⁹ Ibid, 48.

¹⁰⁰ See Amare Argawi, EFFORT Endowment and its Business Entities, *Ethiopian reporter*, (5 December 1996 E.C); (16 October 2005), (23 October 2005), (30 October 2005), (23 January 2005 E.C).

¹⁰¹ Sarah and Mesfin, *Rethinking Business and Politics in Ethiopia*, supra note 12, pp., 1-66; See also, Emias, *Yemeles Leqaqit*, *Supra Note 19*. pp.220-222.

Moreover, Addis Fortune, in 2011, reported that the government authorized the Ethiopian Petroleum Enterprise (EPE), a government agency, to import 650,000 ton of coal worth US\$29.5 million from abroad to supply it to Messobo cement factory.¹⁰² EFFORT Companies are growing in the form of vertical integration which means material and service processed by one company is often an input to another company, which likely destroys free trade and healthy competition. This in turn hurts other business and discourages other new ones from entering into the market.¹⁰³

Concluding Remarks

The case of party affiliated endowments and their participation in business is a very complicated issue that requires dialogue between all stakeholders. This article attempts to review some legal issues concerning their formation and operation. EFFORT and TIRET endowments were established in 1995, as regional charitable endowments, as per Arts. 483-506 of the Civil Code. The issue is that the Civil Code is enacted at the time when Ethiopia was a Unitary State but, EFFORT and TIRET endowments are established while the political system of Ethiopia is a Federal state structure. So, to make the Civil Code as the laws of each regional state or the law of federal government, they are expected to endorse it by the law. However, neither the federal government nor the regional states explicitly endorsed the Civil Code, which makes the legal personality of EFFORT and TIRET Endowments questionable. So, in the opinion of the writer, there is defective registration and formation of EFFORT and TIRET endowments that could lead to deprivation of their legal personality and their assets could be transferred to another charitable endowment that has similar or related objectives.

Moreover, Art. 347(1) of the Commercial Code provided that the directors of share companies should have been appointed from the shareholders. However,

¹⁰² -----, Landlocked Ethiopia further locked out by ruling party's corrupt endowments, *Ethiopian Addis Fortune*, (3 July) 2012, pp.1 &2, available on http://www.addisfortune.net/fortune_editors_note.htm) last accessed on 5 November 2017. The report provided that the entire process of modernizing and increasing the role of the private sector is delayed to this day due to the private sector is unable to compete with EFFORT owned companies. Addis Fortune added that “*Landlocked Ethiopia further locked out by ruling party's corrupt endowments*” and those of party-affiliated companies monopolized the Ethiopian economy and beat the private sector to the extent never seen anywhere in the African continent.

¹⁰³ For example, Ezana Mining (subsidiary of EFFORT) which includes the building of a new gold processing plant at a cost of 700 million birr. The electro mechanical is undertaken by Mesfin Industrial Engineering. There are also distribution and supply arrangements between Mesebo, Guna and Trans Ethiopia. Sarah and Mesfin, *Rethinking Business and Politics in Ethiopia*, p.41, supra note 7.

the directors of most of EFFORT and TIRET owned/managed companies are non-shareholders, which is a clear violation of the law that should be considered by the relevant organ. There is also political intervention in the day-to-day business of EFFORT and TIRET endowments, and there is a trend of appointing senior government officials as a board member of the party owned/managed companies. Thus, compliance with appropriate laws is required.

Furthermore, several jurisdictions allow CSOs to engage in business activities as long as their activities do not constitute the primary objectives of the organization. However, the objectives provided under the memorandum and article of association of EFFORT and TIRET endowments indicated that the primary purpose of the endowments is involvement in business activity and being profitable. And in fact there is investment over investment as the profit acquired by one company will be allocated for the establishment of another company; the latter is also expected to do the same. Thus, the writer recommends EFFORT and TIRET endowments to revise their memorandum and article of associations and make only altruistic purpose as their primary objectives.

Besides, the absence of a requirement for charities to have a particular objective; absence of clarity on the scale/restriction on the scale of income generation activities; absence of a requirement for timely disbursement/distribution; and full tax exemption of passive investments of charities is another problem. All these legal lacunas enable party affiliated endowments to engage in a wide range of income generation activities, which in the opinion of the writer creates unfair competition and negatively affects the commercial sector. Therefore, the writer recommends the government to include mandatory provisions on the CSOs laws that incorporate a requirement for charities to have specific objectives, fixing the scale of income generation activities, limiting the amount of profit subject to tax exemption, and requirements for timely disbursement of income.

Finally, usually party owned/managed business entities are being criticized as they are not transparent and accountable. In particular, they do not open their accounts for government audit and there is no clear, accurate and qualified information concerning the extent of tax they pay each year. So, in the opinion of the writer recommends that the government should strictly follow up the party affiliated endowments and their participation in business activities, in particular strict administrative measures should be taken at the time where they fail to give proper records or reports.

Annexed Tables

Table 1: The former shareholders of Alemeda Textile before transfer in 1988 E.C.¹⁰⁴

NO.	Shareholders of Alemeda Textile	No. of Shares	Per value of a share	Total value of the share
1.	Yewubmar Asfaw Kidanu	1,000,000.00	36.00	36,000,000.00
2.	Tsegabirhan Hadush W/mariam	1,000,000.00	36.00	36,000,000.00
3.	Hailalibanos W/Micheal	1,000,000.00	36.00	36,000,000.00
4.	Fescha Zerihun Weldu	1,000,000.00	36.00	36,000,000.00
5.	Geday G/Egzabhar Meshesha	1,000,000.00	36.00	36,000,000.00
Total				180,000,000.00

Table 2: The shareholders of Alemada Textile after transfer of shares, in 1988 E.C.¹⁰⁵

No.	Shareholders of Alemada Textile	No. of Shares	Per value of a share	Total value of the shares
1.	REST	8,729,999.00	20.00	174,599,980.00
2.	Guna Trading	90,000.00	20.00	1,800,000.00
3.	Hiwot Agricultural Mechanization	90,000.00	20.00	1,800,000.00
4.	Shaba Lether Factory	90,000.00	20.00	1,800,000.00
5.	Abadi Zemu	1.00	20.00	20.00
Total				180,000,000.00

Table 3: The former shareholders of Guna Trading House before transfer of shares on Nehassie, 1987 E.C.¹⁰⁶

No.	Shareholders of Guna Trading	No. of shares	Per Value of a share	Total Value of the share
1.	Girmay G/medihen	1,700.00	1,000.00	1,700,000.00
2.	Gidey G/Micheal	1,700.00	1,000.00	1,700,000.00
3.	Hibur G/Kidan	1,700.00	1,000.00	1,700,000.00
4.	Solomon G/Hiwot	1,700.00	1,000.00	1,700,000.00
5.	Mulu Hagos	1,700.00	1,000.00	1,700,000.00
6.	Tsegaye Teamyalew	1,700.00	1,000.00	1,700,000.00

Table 4: The shareholders of Guna Trading S.C. after transfer of shares on Nehassie, 1987 E.C.¹⁰⁷

No.	Shareholders of Guna Trading S.C	No. of Shares	Per Value of a share	Total Value of the Share
1.	REST	9,699	1000.00	9,699,000.00
2.	Alemeda Textile	100	1000.00	100,000.00
3.	Trans Ethiopia	100	1000.00	100,000.00
4.	Mesebo Cement Factory	100	1000.00	100,000.00
5.	Sibhat Nega	1	1000.00	1000.00

¹⁰⁴ See Ermias, *Yemeles Leqaqit*, supra note 19; pp. 333-335, 374-375

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

Table 5 : Some List of EFFORT Companies¹⁰⁸

Company Name	Year.EC	Capital	HQ	Board Chairman	Shareholders for the company
1. Selam Transport	1995	10,000,000 Birr	Mekele	Arkebe Ekubay	
2. Segel Construction	1995	10,000,000 Birr	Mekele	Araya Zerihun	
3. Mega Net Corp	1993, 1995	10,000,000 Birr	Mekele	Alemseged Gebreamlak	Trans Ethiopia; Mesebo Building Materials; Guna Trading House; Mesfin Industrial Engineering; and Meskerem Investment.
4. Hitech Park Axion Association	1995	10,000,000 Birr	Mekele	Shimelis Kinde	-
5. Fana Democracy plc	1995	6,000,000 Birr	Mekele	Negash Sahle	-
6. Express Transit	1995	10,000,000 Birr	Mekele	G/selassie Gidey	-
7. Ethio Rental Axion Association	1995, 1996	72,000,000 Birr	Mekele	Atkilit Kiros	-
8. Dilate Brewery	1995	15,000,000 Birr	Mekele	Kahsay Tewolde Tedla	-
9. Dessalegn Caterinary	1995	5,000,000 Birr	Mekele	Dr. Maru Erdaw	-
10. Addis Consultancy House	1995	10,000,000 Birr	Mekele	Sibhat Nega	-
11. Birhane Building Construction	1995	10,000,000 Birr	Mekele	Bereket Mazengiya	-
12. Sheba Tannery Factory Axion Assoc.	1993, 1995	94,000,000 Birr	Wukro	Abadi Zemu	-
13. Meskerem Investment	1995	20,000,000 Birr	Axum	Tewodros Ayes Tesfaye	-
15 Global Auto Sparepart	1995	26,000,000 Birr	A.A	Teklebirhan Habtu	-
16. Experience Ethiopia Travel	1993, 1995	3,000,000 Birr	Mekele	Tony Hiki	-
17. Addis Engineering Consultancy	1995	25,000,000 Birr	A.A	Arkebe Ekubay	-
18. Hiwot Agriculture Mechanization	1995	25,000,000 Birr	Mekele	Yohannes Kidane	REST; Almada Textile; Guna Trading House; Tesfa Livestock; and Yemane Kidane
19. Beruh Chemical Axion	1994, 1995	25,000,000 Birr	Mekele	Abadi Zemu	Mega Net Corporation; REST; Almada Textile; Sheba Tannery; and Abadi Zemu
20. Rahwa Yebegina Fiyel Export	1995	25,000,000 Birr	Mekele	Yassin Abdurahman	-
21. Star Pharmaceuticals	1995	25,000,000 Birr	Mekele	Arkebe Ekubay	-
22. Tesfa Livestock	1995	20,000,000 Birr	Mekele	Yohannes Kidane	-
23. Almedan Garment Factory	1995	660,000,000 Birr	Mekele	Abadi Zemu	
24. Mesfin Industrial Engineering	1993, 1995	100,000,000 Birr	Mekele	Arkebe Ekubay	Sur Construction; Trans Ethiopia; and Hiwot Agricultural Mechanization
25. Mesob Cement Factory	1995	240,000,000 Birr	Mekele	Abadi Zemu	
26. Almada Textile Factory	1993, 1995	180,000,000 Birr	Mekele	Abadi Zemu	REST; Guna Trading House; Hiwot Agricultural Mechanization; Sheba Tenary; and Abadi Zemu
27. Sur Construction	1992, 1995	150,000,000 Birr	A.A	Arkebe Ekubay	Trans Ethiopia; Mesebo Building Materials; Mesfin Industrial Engineering ; Saba Tannery
28. Trans Ethiopia	1995	100,000,000 Birr	Mekele	Shimelis Kinde	-
29. Dedebit Saving & Loan	1995, 1997	60,000,000 Birr	Mekele	Atkilit Kiros	-
30. Ezana Mining Development	1995	55,000,000 Birr	A.A	Tewodros H. Berhe	-
31. Addis Pharmaceuticals Production	1992, 1995	53,000,000 Birr	A.A	Abadi Zemu	-
32. Tana Trading House Axion Association	1995	50,000,000 Birr	A.A	Sibhat Nega	-

¹⁰⁸ See Sarah and Mesfin, *Rethinking Business and Politics in Ethiopia*, supra note 22, pp. 66 & 67; Ermias, *Yemeles Leqaqit*, supra note 19, pp. 333-335, 374-375; Berhanu, *Political Parties in Business*, supra note 8, p. 45.

N.B. Some Board Chairmen might have moved within the subsidiaries and the list of EFFORT owned/managed companies are not exhaustive because information is lacking.

Table 6: Some List of TIRET Corporate Companies¹⁰⁹

No	Name of the Company in which Tiret is a shareholder/an investor	Amounts of Tiret investment/ shareholding in percentage (%)
Manufacturing Cluster/sector		
1	Tana Communication PLC	86
2	Tekrerwa Plastic Factory PLC	90
3	Azila Electronics PLC	90
4	Waliya Korki factory PLC	56.46
5	Gondar Malt Factory PLC	90.16
6	Jirie Spring Water PLC	70
7	Telaje Garment PLC	10
8	Tana Pulp and Paper Share Company	13
9	Lapalma PLC	45
10	Jerba Carton Packaging PLC	93.33
11	Eshet Starch and Starch Bi-products PLC	72
12	Blue Nile Pharmaceutical Manufacturing Share Company	40
13	Dventus Wind Technology PLC	94
14	Dashen Brewery Share Company	49.9
Service cluster/sector		
15	Tikur Abay Transport PLC	95
16	Ambassel Trading PLC	80
17	Belesa Logistics PLC	20
18	MVR Consulting PLC	89
Agro Processing Cluster /sector		
19	Zelege Mechanized Agriculture PLC	82
20	Woldiya Fruit and Vegetable PLC	99.8
21	Gendawuha Cotton Processing Factory PLC	94
22	Tiza Milk PLC	95
23	Yeju Honey Processing PLC	80
24	Ma'ed Food Complex Share Company	60
25	Tikob Trading PLC	90

N.B. The List is not exhaustive, for example, the percentage/share value of TIRET Corporate on financial institutions such as Abay Bank, Wogagen Bank, Africa Insurance, and Abay Insurance is not provided because the information is lacking.

¹⁰⁹ Manaye: Critical Assessment of the Legal Regime of Income of Income Generating Activities of Charitable Endowment's in Amhera Region, supra note 68, pp. 30 & 31, citing the compiled reports of TIRET Charitable Endowment [*Sic*].