

ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW
CONSTITUTIONAL AND PUBLIC LAWS STREAM

**THE OPPORTUNITIES AND CHALLENGES OF THE FEDERAL TAX
ADMINISTRATION LEGAL FRAMEWORK OF ETHIOPIA IN COMBATING TAX
CORRUPTION**

A THESIS SUBMITTED TO THE SCHOOL OF LAW AT ADDIS ABABA UNIVERSITY IN
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CONSTITUTIONAL AND PUBLIC LAWS

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Declaration

I hereby declare that “**The Opportunities and Challenges of the Federal Tax Administration Legal Framework of Ethiopia in Combating Tax Corruption**” is my own original work which has not been presented for any degree or examination in any University and the sources used have been duly acknowledged and cited.

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Abstract

The objective of this research was to examine opportunities and challenges of the federal tax administration legal framework to combat tax corruption, in ERCA. To this end, the researcher employed qualitative approach and documentary analysis, and thereby uncovered the following findings.

The legal framework has provided the following types of autonomy to ERCA that are helpful to combat tax corruption. Accordingly, law has given ERCA personnel administration power that is enabling to implement effective hiring, firing, rotation, and salary increment policies. The autonomy of ERCA from the MOFED and the MOCS under law is also enabling, respectively, to create administrative specialization (professionalization) on tax and organizational structure determination. Similarly, law has provided for ERCA planning autonomy that is enabling to strength tax administration accountability. Apart from the foregoing opportunities, the legal framework has failed to give ERCA financial autonomy which is important to protect it from financial limitations may be necessary to undertake effective tax administration operation.

The legal framework which determines ERCA's organization suffers from a number of challenges. Accordingly, it has failed to share clear cut role between the head and the branch offices of ERCA, and provided wide space to the former. It has also centralized power structure of the head office, that is by design legitimize top-down tax administration decision making with fragile control arrangement. It is also not responsive to maximize functional involvement among tax officers (and units) operate on tax assessment, tax information administration, and tax law enforcement tasks. That in turn may open monopoly room to the respective tax officers who are in charge on such tasks. There is also no strong commitment under law to ensure adequate, planning and operational independence, to internal audit and anti-corruption units of ERCA. Consequently, there is a room which exposes tax corruption detection and investigation operation to be influenced by other tax officers of ERCA. Besides, the absence of commitment to establish units which have specific responsibility to conduct periodic review on tax administration operations is limitation to effectively detect tax corruption in ERCA.

Key terms: *The legal framework of tax administration, tax corruption, and ERCA.*

Abbreviations

BPR	Business Process Reengineering
COM	Council of Ministers
ERCA	Ethiopian Revenues and Customs Authority
FDRE	Federal Democratic Republic of Ethiopia
FEACC	Federal Ethics and Anticorruption Commission
MOCS	Ministry of Civil Service
MOF	Ministry of Finance
MOFED	Ministry of Finance and Economic Development
PM	Prime Minister
SARA	Sami Autonomous Revenue Agency
SARS	South African Revenue Service
TIN	Taxpayers Identification Number

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Chapter One: Introduction

1.1 Background of the Study

Tax is one of the sustainable and predictable revenue sources of governments to finance on public services. It is also considered as an exit strategy to get developing countries out of aid dependency.¹ This role of tax is dependent on the presence commitments on the part of governments to combat problems. Tax corruption is one major problem tax administration organs confront, including the Ethiopian Revenues and Customs Authority (ERCA, herein after). If the degree of tax corruption is high, two major distractive consequences are expected. First, it shrinks tax revenue so that negatively affects governments' ability on the provision of public goods and services.² Second, it reduces the distributive function of tax and subsequently broadens income inequality among citizens.³ Thus, it is indispensable to combat tax corruption.

To combat tax corruption, legal framework of a tax administration is one important device.⁴ In this regard, areas of the legal framework which determine the organizational features of tax administration organs and regulate the behaviors of tax officers on tax administration operations are relevant.⁵ These views in turn signify the presence of possibilities to approach or combat the problem, via relevant areas of a tax administration legal framework. In line with this approach, the researcher believes that there should be some room for such roles of legal framework with regard to ERCA. Thus, the purpose of this research is to examine the relevant areas of the federal

¹ Max Everest-Phillips, "Tax, Governance and Development," In *the Commonwealth Secretariat discussion paper No.11* ed. Joan Ross Frankston, (London: Commonwealth Secretariat Marlborough House, 2011), 1.

²Vito Tanzi. "Corruption in the Public Finances: paper presented on 8TH IACC on governance and financial sector" (lima,1997), 5, Accessed June 6, 2013, http://iacconference.org/en/archive/category/workshop_contribution/

³Shimelis Ayalew, "Corruption and Anti-Corruption in Ethiopia: a Case Study of 'the Ethiopian Customs Authority'" (master's thesis, Addis Ababa University, 2005), 3.

⁴Claes Sandgren, "Combating Corruption: The Misunderstood Role of Law" (Lecture presented at London Forum of Initiative, 27 May 2005), 8.

⁵ Herbert Edling, *Preventing Corruption in Public Finance Management* ed. Birgit Pech and Melanie Wiskow, (Escobar: GTZ Division 42, 2005), 4.

tax administration legal framework of Ethiopia to understand its opportunities and challenges to combat tax corruption in ERCA.⁶

1.2 Statement of the Problem

In Ethiopia revenue from tax is expected to play an invaluable role to cover the financial responsibilities of the federal government.⁷ The GTP document of the country also testifies tax revenue to be the meager sources of fund for the federal government.⁸ Ironically, the federal tax administration is not free from limitations, and corruption is one of them. Various studies have shown that the Ethiopian tax administration system is one of the highly prone sectors to corruption.⁹ The problem has recently been a dominant agenda with regard to the federal tax administration organ of Ethiopia. ERCA has dismissed more than 59 employees on suspicion that they have committed some form of corruption since June 2013.¹⁰ The detention of the General Director, Deputy General Director of Law Enforcement Work Sector, and other tax officials and employees of ERCA in the same year up on the suspicion of corruption has further augmented and made the problem worse. This scenario urges the need to conduct research both to understand and provide solutions which are helpful to combat the problem in ERCA.

Generally, factors such as complexity of tax laws and procedures, monopoly power of tax officials and employees, and lack of adequate monitoring and supervision are considered

⁶ The presence of a number tasks and different types of corruption in relation to tax administration triggered the researcher to limit the scope of this study and avoid confusion by providing operational definitions for the term tax corruption and tax administration legal framework. See the operational definitions given under 1.4 of this chapter.

⁷ The vision of ERCA is to be the leading modern and fair tax administration institution in Africa by 2020 (E.C) and finance the entire Government expenditure through domestic tax revenues. The Ethiopian Revenues and Customs Authority Employees Code of Conduct, Directive No 2/ 2008, Vision Statement, ERCA; and The Ethiopian Revenues and Customs Authority Reform Program on Integrity, 2011, Vision Statement, ERCA.

⁸ The Growth and Transformation Plan of Federal Democratic Republic of Ethiopia (2010/11-2014/15), Ministry of Finance and Economic Development (MOFED), September 2010 Addis Ababa, p-20..

⁹ Tesfaye Shamebo, "Anti-Corruption Efforts In Ethiopia" (paper presented on Fighting Corruption and Safeguarding Integrity at Global Forum V, Sandston -South Africa, 2007, 3. See also, Janelle Plummer "Diagnosing Corruption in Ethiopia: Perceptions, Realities, and the Way Forward for Key Sectors," (Directions in Development and Public Sector Governance Study No. 69943, the World Bank, Washington DC, 2012), 300.

¹⁰ Ethiopian Revenues and Customs Authority, "Employees Dismissed from the Tax Authority on Suspicion of Corruption" Gebi Lelmat (Addis Ababa), 6th year, No.62, 2014, 6.

contributory for pervasiveness of corruption in tax administration organs.¹¹ These factors, except the first one -complexity of tax laws and procedures which is an aspect related with the structure and quality of a tax administration legal framework- are practical issues tax administration organs rather than legal. However, it is reasonable to argue that there are some relevant areas of tax administration legal framework which can have important role to limit or rectify arose of such contributory factors on tax administration. In other words, it is possible to argue that legal framework can be used to address the aforementioned contributory factors, if there is political commitment on the part of the lawmakers.

Theoretically, it is possible to correlate legal framework of tax administration and the issue of combating with tax corruption. Accordingly, legal framework may serve as a tool for combating corruption in tax administration organs. For example, it can be used as a tool to provide tax administration organs different types of autonomy which are considered helpful to enhance the effectiveness as well as strength internal control system on tax administration.¹² Besides, it can be used as a devise to design internal structure in tax administration organs that maximizes the functional involvement of tax officers on different types of decisions.¹³ In sum, legal frameworks which determine the organizational autonomy and features of tax administration organs have importance to combat tax corruption.

In Ethiopia, there is no research which has been done by linking the federal government's tax administration legal framework with the issue of combating tax corruption in context of ERCA. Attempts also not made to link and apprise at least one of the relevant aspects of the legal framework with the issue at stake. For example the extent of autonomy ERCA has under legal framework on its personnel, financial, organizational and operational aspects Vis a Vis their implication to combat the tax corruption is blurred. Areas legal framework that provides for the

¹¹ Federal Ethics and Anti-Corruption Commission, "Prevention of Corruption in Tax and Land Administration, and the Processes of Asset Disclosure and Registration (Training Module, Addis Ababa, 2011), 22-28. See also Dhaneshwar Ghura, "Tax Revenue in Sub-Saharan Africa: Effects of Economic Policies and Corruption" (IMF, African Department, WP/98/135, 1998), 11.

¹² Tuan minh Le, "An Overview of Combating Corruption in Revenue Administration," in *The Many Faces of Corruption: Tackling Vulnerabilities at Sector Level*, ed. J Edargo Campos and Sahjay Pradhan (Washington DC: the World Bank, 2007), 337.

¹³ Kevin Davis and Michael J. Trebilcock, "What Role Do Legal Institutions Play In Development?" (Draft prepared for the IMF's Conference on Second Generation Reforms, Faculty of Law, University of Toronto, 1999), 67.

internal structure (design) of ERCA is also equally important to understand the scope and the manner of division of functions and role among the tax officers, but not explored so far. By the same token the areas which determine the organizational designs and the extent of operational independence of the units in charge to detect and investigate tax corruption in ERCA worth important. Thus, the researcher would like to examine the opportunities and challenges of such relevant areas of the legal framework in context of ERCA.

1.3 Objectives of the Study

The overall objective of this study is to examine the opportunities and challenges of the Federal Tax Administration Legal Framework of Ethiopia to combat the tax corruption in ERCA.

Under the ambit of the above general objective, the study is aimed to achieve the following specific objectives:

- ❖ To assess the extent of ERCA's autonomy in light of enabling it implement helpful strategies to combat tax corruption,
- ❖ To explore the feature of tax administration role division between the Head and the Branch offices of ERCA,
- ❖ To describe the features of the division of roles and functions in the internal units of the organization which operate on the three highly susceptible tasks for tax corruption,
- ❖ To assess the organizational features of units which are responsible to, conduct periodic investigation for the detection of tax corruption, and facilitate sanction on tax corruption allegations in ERCA.

1.4 Operational Definition of Concepts

- ❖ The Legal framework of the federal tax administration: comprises the relevant provisions of federal tax proclamations, tax regulations, tax directives and other authoritative manuals which determine the extent of autonomy and the organizational features of ERCA.
- ❖ The extent of organizational autonomy of ERCA: refers to the degree to which the financial, personnel, operational and institutional independence of ERCA on tax

administration from the influence of other central executive organs of the federal government.

- ❖ The organizational features of ERCA: in this study the concept is meant to embrace two sub-dimensions. The first is the features of office centered division of tax administration responsibility in ERCA. In this regard it refers to whether there is clear demarcation of responsibility between the head and the branch offices of ERCA or not. The second relates with the internal structure of ERCA. And refers to whether the organizational structure is enabling to maximize the functional involvement tax units and tax officers of ERCA, on the execution of the three susceptible tasks for the tax corruption, or not.
- ❖ The three tasks susceptible tasks for the tax corruption in ERCA include the tax assessment, the tax prosecution, and the tax information administration.
- ❖ Tax corruption is collaborative criminal acts of tax officers with business income taxpayers up on the tax assessment, the tax information administration, and the tax law enforcement decision makings in ERCA.

1.5 Research Questions

The core questions of this study are:

- ❖ Does the legal framework provide adequate autonomy to ERCA enabling to introduce strategies helping in combat with tax corruption?
- ❖ Does the legal framework provide a clear cut division of role for the Head and Branch offices of ERCA?
- ❖ Does the design of the tax assessment, the taxpayers' information administration, and the tax law enforcement units under the legal framework are enabling to narrow the possible arise of monopoly in the hand the respective tax officers?
- ❖ Does the legal framework provide effective units to detect and investigate tax corruption in the organization?

1.6 Methods and Materials

Primarily, the study is based on documentary method. All pertinent legal documents were thoroughly analyzed. Indeed, it is worthwhile to mention at this point that documentary method was utilized in two ways for this study. As stated by Noaks and Wincup documents can be topics of research by themselves or/and can be source of information for other research topics.¹⁴ Hence, in line with this framework documents were analyzed as topics of study as well as sources of information to illuminate on related issues. More specifically the contents of legal framework which determine the operation of ERCA tax administration like tax proclamations, regulations, directives, work manuals and other authoritative instruments of the federal government of Ethiopia appeared as topics of investigation, as the researcher is interested to unravel their prospects and challenges in combating the tax corruption. In simple terms such documents were treated as subjects of study by themselves. Whereas different documents like the SARA model¹⁵ have been used as sources of information to reveal on how the ideal organizational structure of such institutions like ERCA should resemble thereby serving as basis of comparison.

Sources of Data

Since it is generally aimed to uncover the content and structure of tax administration legal frameworks, the study is based on secondary sources of data.

Data Collection Procedures and Analysis

This is purely a qualitative endeavor which by its very nature is reiterative, hence there is no such strict linear or sequential procedures followed in the due course of data collection. However, the researcher can outline some rough procedures followed as this will be helpful in establishing the reliability of the study. First and foremost, at the outset, even though I collected

¹⁴ Lesley Noaks and Emma Wincup, *Criminological Research: Understanding Qualitative Methods* (London, SAGE Publications. INC, 2004)

¹⁵ SARA model is a widely accepted theoretical model describing how tax administration institutions should be organized for effective and efficient control of tax corruption. You can see the literature and the analysis part of this study for more detail on the nexus between SARA model and combating tax corruption.

legal frameworks governing the tax administration system, I was not certain whether this is a complete list of documents that should be considered to achieve the objectives of the study. It is for this reason that I made a field visit to agencies, I believed most relevant in providing full list of legal documents governing tax and related issues. Accordingly, I visited two prominent organs viz. ERCA head office and Federal Anti-corruption Commission. The relevance of these visits was two-fold. First, I was able to have all legal documents pertinent to the objectives of the study as I incorporated additional documents which were missing in my original list. Second, as a result of some preliminary interviews I made with a handful of employees of the organizations, I was able to reformulate my research questions.

After, I make sure that all relevant legal documents are in my hand and have a roughly articulated guiding research questions, I embark on the task of analyzing the contents of the legal framework in line with my specific questions. Simultaneously, thorough investigation was conducted on theoretical models which were forwarded as ideal types as to how the legal framework of tax administration ought to handle issues of autonomy, accountability, and related issues. Using these ideal types as a standard the researcher has tried to pinpoint where ERCA's legal framework diverges from and converges with them. Hence, the analysis of the information received from the documents were analyzed by comparing theoretical models which served as ideal types to illuminate the discrepancies between them and the reality. Here it is important to note that, given the resources at hand, as it will be unmanageable and cumbersome to investigate every aspect of legal frameworks governing tax, the researcher made a painstaking effort to narrow the analysis in consent with the specific objectives.

1.7 The Scope of the Study

This study basically analyzed The Federal Tax Administration Legal Framework of Ethiopia. And it does not concern the tax administration legal frameworks of the Regional States of the FDRE. It additionally is limited to the relevant aspects of the legal framework which are relevant with the issue of combating tax corruption. To this end, the appraisal is limited on the law or other formal instruments which defines ERCA's organizational power, organization, and division of role between the head and the branch offices and internal structure to detect and investigate

tax corruption. Thus, the parts of the legal framework that concern types of taxes, tax rates, schedules, and similar features of tax laws are not the scopes of this research study. Besides, it is delimited to the areas relevant to combat cases of corruption which fall within the operational definition of tax corruption.

1.8 Significance of the Study

This study attempted to clarify some of the key issues which revolve around The Federal Tax Administration Legal Framework of Ethiopia in relation to combating tax corruption. So, it first provided some additional insights on the area of the study. Furthermore, this study is served as a reference source for others whom like to know more about tax corruption and are interested to undertake further research on anti-corruption aspects related to tax administration. This study is served as an important input for policy makers to understand problems spring from legal framework governing the federal tax administration for combating tax corruption.

1.9 Organization of the Study

This thesis has analyzed the legal framework of the Federal Tax Administration in Ethiopia to create understandings on its opportunities and challenges to combat tax corruption. Indeed, the researcher has approached the subject matter as to the following sequence. Thus, the thesis is divided into four chapters each of them has its own sections and sub-sections. As a prelude to the study, chapter one introduces the background of the study, the statement of the problem, the objectives of the study, operational definition for concepts, research questions, research method and materials, the significance and limitation of the study. The second chapter provides the meaning of tax administration, the meanings and operational definition of tax corruption, avenues and commission mechanisms of tax corruption, its contributory factors, and measures to combat tax corruption. The third chapter deals with the analysis of some selected areas of the federal tax administration legal framework of that are relevant to combat the tax corruption. The analysis encompass the objectives and principles of tax administration law, the tactics and strategies to combat tax corruption which spring from the law on the extent of autonomy provided to ERCA, the tax administration roles for the branches and head offices of ERCA, the roles of work process units and its staffs, its structure and operational procedures for the internal

control system. The fourth chapter contains summarized conclusions and recommendations which are presumed to be instrumental for effectively combating the tax corruption in ERCA via legal framework.

1.10. Limitations of the Study

The researcher believes that the following constraints may reduce the quality of the research. The study would require the utilization of both primary and secondary data but, because of financial and time constraints the researcher was not able to incorporate primary data. Hence, the researcher suggests that any further study on the area would benefit more if it includes both primary and secondary data. Besides, as it's a novel area of research there is scantiness of reference materials regarding tax administration legal framework and tax corruption in Ethiopia.

Chapter Two

Theoretical Overview on How to Combat Tax Corruption

Introduction

“Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up at least a bit of the king’s revenue”.¹⁶

The above quotation generally portrays the vulnerability of tax administration organs for corruption and it calls for the need to introduce measures which help to limit its degree and narrow down the door thereby combat the problem. The need to delegate authority to tax officers for determination of taxpayers' true tax liabilities and government’s inadequate ability to monitor the activities of its tax officers are forwarded as the two reasons for the vulnerability of tax administration organs for corruption.¹⁷ There is also views which underscore the need to delegate necessary authority to tax administration organs (and thereby tax officers’) for effective implementation of a tax policy.¹⁸ Bird also argues the major task of tax administration organs to be keeping themselves honest.¹⁹

Generally the above views portray the manners of tax authority delegation to tax administration organs and mechanism available to control the operations of such organs to be one of the relevant issues for combating tax corruption. Speaking differently, the major determinant factors for tax corruption emanate from a haphazardly delegated and controlled tax administration operation. Concomitant with this, there are specific theoretical issues that are more explanatory on the cause and solutions of tax corruption in tax administration organs.

¹⁶Mahesh Purohit, “Corruption in Tax Administration,” in *Performance Accountability and Combating Corruption*, ed. Anwar Shah (Washington DC: the World Bank, 2007), 285.

¹⁷Frank Flatters and W. Bentley Macleod, “Administrative Corruption and Taxation,” *International Tax and Public Finance*, no. 2, (1995): 399.

¹⁸Richard M. Bird, “Asia-Pacific Tax Bulletin: Administrative Dimensions of Tax Reform,” (Washington DC: International Bureau of Fiscal Documentation, 2004), 135.

¹⁹ Ibid

In a nutshell, this chapter is aimed at providing theoretical background on tax administration and combating tax corruption which are essential so as to frame issues for analysis of the federal tax administration legal framework, in next chapter. To this end, the presence of a number of issues which fall within the ambit of the term tax administration dictated the need to search its meaning that is amenable with the objectives of this study. The presence different types of corruption in tax administration forced the researcher to provide an operational definition for the term tax corruption. Besides, the chapter shields light on the response of scholars as to the natures of tax corruption, factors contributory for tax corruption, and helpful measures to combat tax corruption.

2.1 The Meaning of Tax Administration

Scholars in the area forward different views on what amounts to tax administration. One has conceptualized tax administration as an instrument which changes tax policy into tax revenue.²⁰ Accordingly, tax policy represents the determination of tax rates, tax bases, tax concessions, taxable entities, non-compliance penalties and the timing of tax payments and other related issues. And, consider as tax administration all activities that would be done by departments, employees and officials organized within organs which are in charge to implement a tax policy.²¹

Tax administration also viewed to encompass tasks beyond mere collection of tax on the basis of tax policy. Apart from tax collection based on a tax policy it also include considering the effect of tax collection on equity, the political fortunes of governments as a result of tax collection, and the level of economic welfare while collecting tax.²² Accordingly, tax administration is not only an effort to collect of tax on the basis of tax policy but also involve the determination of the extent of revenue that is attributable to enforcement and active intervention.²³ In sum, under this view tax administration is tax policy.

²⁰Arindam Das-Gupta, “Implications of Tax Administration for Tax Design: A Tentative Assessment” In *the Challenges of Tax Reform in a Global Economy*, (International Studies Program Public Finance Conference, 2005), 4.

²¹Ibid

²²Richard M. Bird, cited above at 18,139

²³Ibid,139

There are views which conceptualize tax administration independent from the concept of tax policy. One visualizes tax administration as a general task of a government to raise tax revenues via specific actions and relationships.²⁴ Tax administration is also conceptualized as, “the division of a government tasked with collecting taxes”.²⁵ These two views underscored the organizational aspects of tax collection responsibility of as a central element in their endeavor to conceptualize tax administration. The former view has magnified the inevitability of specific actions which are the interaction between taxpayers and government organs in relation to the payment/collection of taxes and vertical and horizontal administrative relations of tax collecting organs. This it is possible to contemplate additional elements within the latter meaning. Thus, from these views, it is possible to conclude the meaning of tax administration as entire operations of a government organ that shoulder tax collection responsibility. Similarly, but narrow in scope, one has viewed tax administration as, “the interaction of taxpayers and tax authorities for identification of tax liabilities, actual tax payment (collection), and prosecution (penalty) of tax evaders.”²⁶

In more clear and wider sense, tax administration is conceptualized as, “a production processes” that need the provision of inputs such as men, materials and information and targeted outputs such as revenue for the government and taxpayer equity”.²⁷ Under this view, tax administration is process that integrates human, material and other resources for the purpose of equitable tax collection operation. Thus, this conceptualization is considered important in clarifying all of the above ambiguities as to tax administration.

Thus, all the above discussions lead the researcher to conceptualize tax administration as the total sum of activities undertaken by governments while enforcing tax laws. For the purpose of this study the term tax administration should be read in conjunction with the term legal framework. Because, this study basically analyzed some of the relevant provisions of legal

²⁴Stephen Peterson, “A Tale of too Many Systems: The Role of Informatics in Reforming Tax Administration in Eastern Europe and the Former Soviet Union,” (Taxation Research Series, No. 600, Harvard institute of development, 1997), 3.

²⁵Doug Pulse and Anton Kamenov, “Chapter One: Introduction,” in *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, (USA, Deloitte Consulting PLC, 2013), 18.

²⁶Gloria Mesiku, “Tax Administration Procedural Justice: Tax Payers’ Attitude and Tax Compliance among Small Business Income Earners in Arua District of Uganda” (PhD diss., Makerere University, 2011), 1.

²⁷Richard M. Bird, cited above at 18, 139.

framework of the federal government's tax administration in Ethiopia. Accordingly, the term tax administration independently concerns the administration of tax by ERCA. On the other hand the term "tax administration legal framework", represent the provisions federal tax proclamations, regulations, directives and other authoritative documents (work manuals and organizational structure manuals) that have reasonable relevance in combating with tax corruption in ERCA. Thus, the term tax administration legal framework under this study generally represent the provisions of such authoritative documents which determine the autonomy of ERCA, division of roles between its head and branch offices, and its internal structure. The following sub-sections, particularly which define the meaning of the term tax corruption and the major scholarly recommendations made to combat tax corruption, are important to justify the reason why the term tax administration legal framework is operationalized as such for the purpose of this study.

2.2 The Meaning of Tax corruption

To articulate corrupt practices that are commonly committed by employees/ officials of tax administration organs scholars use different terms. Nguyen Thanh,²⁸ Aminur Rahaman²⁹ and Konstantin Pashev³⁰ articulate that scenario as "tax corruption." Others use terms namely "fiscal corruption"³¹, "revenues corruption"³², "corruption on tax administration," "administrative corruption on taxation"³³, "administrative corruption in tax system and "tax corrupt practices."³⁴

²⁸Aminur Rahman, "Tackling Corruption through Tax Administration Reform," in *the In Practice Business Serious 3 of April 2009* (Washington DC, World Bank, 2009).

²⁹Nguyen, Thanh Ha, "Tax Corruption, Public Debt and the Policy Interaction in Emerging Economies" (Research Paper, International University of Japan, Niigata, 2005), 2.

³⁰ Konstantin Pashev, "Corruption and Tax Compliance: Challenges to Tax Policy and Administration" (Research Paper, Bulgaria-Sofia, Center for the Study of Democracy, 2005).

³¹ Odd -Hegel Fjidest, "Tax Evasion and Corruption in Local Governments in Tanzania: alternative economic approaches," (Working Paper 14, CHR Michelson institute, Bergen, 1996). See also Herbert Edling, cited above at 6.

³²Odd -Hegel Fjidest, "Revenue Administration and Corruption: What Works?" (Special Issue Paper Vol.4 No.2, CHR Michelson institute, Bergen, 2005). See also Juancarlos Zuleta, Albertoley Ton and Enrique Fantaivanovic, "Combating Corruption in Revenue Administration: The Case of VAT Refunds in Bolivia," in *Many Faces Of Corruption: Tackling Vulnerabilities at Sectorial Level*, ed. Edgardo Campos and Sanjay Pradhan (Washington DC, World Bank, 2007).

³³Frank Flatters and W. Bentley Macleod, cited above at 17.

Obliviously, the term “fiscal corruption” seems an umbrella term which can be used to express corruption that may be undertaken both on the administration of public expenditures and revenues including tax and non-tax. By the same token, revenues corruption also encompasses corrupt activities undertaken on tax, non-tax and customs and other revenues administration process. Since these two terms are broad, tax corruption is considered suitable for this research. Additionally, for the sake of uniformity the researcher has preferred to use of the term tax corruption in this research, instead of corruption on tax administration, administrative corruption on taxation, and tax administration related corruptions. Thus, on the following paragraphs an attempt is made to conceptualize the term tax corruption and provide its operational definition.

Tax corruption is defined by Herbert Edling as a form of corruption undertaken by tax officers using tax legislations and the process of tax administration as tools for their corrupt practices.³⁵ Accordingly, tax corruption is an act of tax officers while determining the tax liability due by taxpayers in contravention with standards enshrined under tax legislations and administrative procedures. Odd-Helge Fjeldstad also define tax corruption as the act of tax officers in their official capacity, alternatively to extort money from taxpayers, to collude with taxpayers to defraud the state treasury and to find some other means for embezzling money from tax authorities.³⁶ These two views share tax corruption to be the acts of tax officers on the process of tax liability determination and collection.

The endeavors of some scholars to conceptualize tax corruption Vis a Vis tax evasion also indirectly affirm tax corruption to concern the process of tax liability determination and collection. In this regard, there is a view which propones the absence of clear-cut boundaries between tax corruption and tax evasion, because tax officers can ignore taxable income as an exchange for a bribe.³⁷ Similarly, one also considers tax corruption as a situation by which tax officers engage in corrupt activities by allowing widespread evasions.³⁸ Additionally, it also

³⁴One has interchangeably used terms like corruption in tax system and corrupt tax practices to articulate corrupt acts committed within tax administration organs. See, Mukul G. Asher, “The Design of Tax Systems and Corruption,” (Research Paper, Singapore National University, 2001).

³⁵Herbert Edling, cited above at 5.

³⁶Odd-HelgeFjeldstad, cited above at 31, 5

³⁷Juancarlos Zuleta, Albertoley Ton and Enrique Fantaivanovic, cited above at 32, 341

³⁸Nguyen Thanh Ha, cited above at 29, 2

viewed as the central part of tax evasion whereby taxpayers and collectors collude to reduce the amount of tax payment.³⁹ This conceptualization in sum, affirm tax corruption to represent the acts tax officers' to collaborate and give blind eye to taxpayers (possibly business income taxpayers) who are endangering/have endangered tax revenue.

There are also scholars who incline to conceptualize tax corruption as corrupt acts of tax officers committed up on the administration of business income taxes. In this regard, one considers tax corruption as a win-win scenario yielding a lower tax payment for the business and unofficial "tax free" income for tax officers at the expense of national income.⁴⁰ In similar fashion, it is also viewed as a business transaction between two beneficiaries i.e. tax payers and tax officers, at the expense of business competitors and the treasury.⁴¹ These two scholars also underscore collusion of taxpayers and tax officers as basic character of tax corruption.

Thus, it is possible to assume tax corruption to be a kind of corruption arise up on business income taxes administrations. And conceptualize generally as acts of the tax officers to collect unofficial benefit from the taxpayers during the determination and collection of business income taxes at the expense of state revenues. However, the presence of different and a number of tasks on the process of the business income tax administration forced the researcher to provide an operational definition for the term tax corruption which fit the objective and scope of this study.

The FEACC has reported collusion between taxpayers and tax officers up on the determination and collection of business income tax to be the major tax corrupt acts in Ethiopia.⁴² Additionally, it also stated the tax assessment, the taxpayers' information administration and the tax law enforcement tasks to be the most vulnerable areas for the problem.⁴³ The objectives of this research is partly formulated on the basis this information. Thus, tax corruption is collaborative criminal acts of tax officers with business income taxpayers up on tax assessment, tax information collection and organization, and tax offences law enforcement decision makings.

³⁹Frank Flatters and W. Bentley Macleod, cited above at 17,1

⁴⁰Aminur Rahaman, cited above at 28

⁴¹Konstantin Pashev, cited above at 30, 7

⁴² FEACC Training Module, cited above at 11

⁴³ Ibid

And so the subject of the analysis and recommendations and conclusions under this paper are solely relate with to administrative corruptions which arise on these tasks in ERCA.

2.3 Common Tax Corruption Aspects of Tax Administration

To understand the units of tax administration organs that are vulnerable to corruption and the nature of such corrupt practices, it is necessary to conduct study for each economy's tax administration system. This approach is also criticized for to be not satisfactory to expose the key areas of tax corruption in tax administration organs. Because, it is stated that tax officers cannot stop from searching and utilizing new form of opportunities to engage on tax corruption.⁴⁴ It is also difficult to expose corrupt acts committed on tax administration but remained neither detected nor punished or concealed. Bearing in mind these limitations, on the following paragraphs the researcher introduces tax administration areas which are vulnerable to tax corruption and their nature.

The FECC has listed the common tax departments which are prone to corruption and the corrupt acts of tax officers in a table. The researcher has translated into English the Amharic version of such information presented in that table.⁴⁵

NO	Tax Units	Acts of Tax Corruption
1.	Tax Information Administration	<ul style="list-style-type: none"> • deletion or removal of a taxpayer's records from the tax administration's registration; • changing taxpayers daily income other than already registered;
2.	Tax Assessment	<ul style="list-style-type: none"> • Conflict of interest between tax auditors official positions and their family and other form of affiliations

⁴⁴ Vito Tanzi , cited above at 2, 6.

⁴⁵ FEACC Training Manual, cited above at 11, 10.

		<ul style="list-style-type: none"> • Not exhausting all alternatives ways for tax assessment which likely to increase the amount of tax revenues • Rendering decision on issues not passed via tax appeal system, after tax appeal has been logged • Making pre-communication with taxpayers about the coming of tax inspectors in the premises of business for valuation • Not rendering assessment decision in due time to facilitate informal negotiation
3.	Tax Law Enforcement	<ul style="list-style-type: none"> • Presenting cases before the court in the way which is advantageous to the opposite party • Failed to appear before the court on any stage of proceeding to make advantage to the opposite party • Giving blind eyes for tax evaders or taking less serious measures
4.	Information Technology System	<ul style="list-style-type: none"> • Changing tax information from server • Deletion of tax information from server • Being late/ refuse to provide information necessary for concerned body, to facilitate bribe

Some have also enumerated tax units which are prone to corruption like those entrusted with the task of: identification and registration of taxpayers, assessment and collection of taxes, internal monitoring of tax payments, the assessment of refunds, or investigation tax offences and issuance of tax exemptions.⁴⁶ One has also enumerated corrupt acts of tax officers like the provision of tax exemption to unqualified persons, deletion or removal of a taxpayer's records from the tax administration's registration, filing and accounting systems, creation of multiple false taxpayer identifications to facilitate tax fraud, write-off of a tax debt without justification, and closure of a tax audit without any adjustment being made or penalties being imposed for an evaded liability, manipulation of audit selection; and so on.⁴⁷ Others have identified the issuance of tax identification numbers and cards to fictitious taxpayers and falsification of official receipts for tax payments as common corrupt acts of tax officers.⁴⁸

Generally, the above views in sum revealed the presence of a number of tasks in tax administration organs that are prone to tax corruption, unless efforts are made to limit their vulnerability. Tax departments which engage on day to day operation of a tax administration organ based on a direct contact with taxpayers such as tax collection, tax assessment, tax information administration, tax law enforcement units are generally identified as tax corruption prone tasks. This in turn shows the presence of difference among tax administration units in terms of the degree of the opportunity to tax officers to engage on corruption. Thus, the attention paid to appraise the prospects of legal framework to combat corruption arise in ERCA on decision makings namely tax assessment, tax information administration, and tax offences law enforcement, and the amplification the same under the operational definition of the term tax corruption is reasonable.

⁴⁶Odd-HelgeFjeldstad, cited above at 31, 6. See also Patrick A. Imam and Davina F. Jacobs, "Effect of Corruption on Tax Revenues in the Middle East," IMF Working Paper 07, no. 270 (2007) : 7; and Mahesh Purohit , cited above at 14, 2.

⁴⁷ Vito Tanzi, cited above at 2.

⁴⁸Imam and Davina F. Jacobs, cited above at 46, 8

2.4 Factors Contributory for Tax Corruption

To identify factors which contribute for the prevalence of a tax corruption needs an independent study for each jurisdiction's tax administration. This may be due to distinctiveness related to each economy's tax administration systems which are expected to operate under different political, social, economic, cultural, and other environmental constraints. However, since the objective here is to introduce the general scholarly views on the issue at stake, it will be needless to bother about such particularity expected from tax administration environment of each jurisdiction. The following are the general factors which are assumed to be contributory for the pervasiveness of corruption related in tax administration organs in general and tax corruption in particular.

First, the provision of monopoly power and greater degree of discretion to tax officers, and lack of adequate monitoring on tax administration are considered to be contributory for the commission of tax corruption. Accordingly, Robert Klitgaard, consider corruption as the sum of greater level of discretion of public officers and monopoly control they have and the lack of accountability and oversight to which such officers is subjected.⁴⁹ Thus, the presence of monopoly control and discretion to tax officers and inadequate monitoring system on them can be taken as contributory factors for the commission of tax corruption, both individually and in cumulative.

Second, the absence of effective internal and external control system on the operation of tax administration (and thereby tax officers) are considered as contributory factor for commission of tax corruption.⁵⁰ This is based on an idea that tax officer's take into account their perceived risk of detection and punishment. In other words, if the risk of detection and punishment is low -If tax officers feel that the control systems are deficient- they are more likely to engage in tax corrupt practices.

⁴⁹Robert Klitgaard, "International Cooperation Against Corruption, in *Finance and Development*, Vol. 35, No.1, (1998), 4.

⁵⁰Tuan minh Le, cited above at 12, 335

Third, complexity of tax laws and tax administration procedures are also considered as contributory factor for the commission of tax corruption.⁵¹ This view revolves around two different issues. On one hand the presence of gaps and inconsistencies in tax legislations is expected to make difficult for tax payers understand their rights and duties. This scenario in turn assumed to compromise the uniform application of tax laws and thereby create fertile ground for tax officers to commit tax corruption. On the other hand complexity related to the procedures of tax administration also assumed to result temptation on the part of taxpayers to pay bribe (to participate on tax corruption) so as to reduce uncertainty about how much tax to pay. It also assumed to result for frequent interaction between the tax administration and tax payers.

Fourth, unreasonableness of tax personnel salary also assumed to be contributory factor for the commission of tax corruption. This idea is forwarded by Bird who argues if the wages of tax officers are very low, they may be consider corruption as an acceptable means to supplement income.⁵²

All the above scholars has provided different contributory factors for commission of corruption in tax administration organs. There are also literatures which share complexity of tax laws and procedures, the monopoly power of tax officials and employees, and lack of adequate monitoring and supervision as contributory factors for commission of a tax corruption.⁵³ Thus, the researcher concludes that the individual and/or cumulative presence the above factors to be shared among scholars of the area as contributory for the commission of corruption in tax administration organs. In the next section the researcher will provide the response of some scholars on how to combat tax corruption.

⁵¹Michael Schaeffer, *Corruption and Public Finance Management Systems* (Washington DC: USAID, 2002), 9.

⁵²Richard M. Bird, cited above at 18.

⁵³FEACC Training Module, cited above at 11, 22-28. See also Dhaneshawar Ghura, cited above at 11.

2.5 Recommendable Measures to Combat Tax Corruption

There is no doubt on the importance of combating tax corruption. Accordingly, Prof. Richard M. Bird states ‘keep itself honest is the core task of tax administration organs.’⁵⁴ In line with this view, there are different views which are helpful to combat tax corruption in tax administration organs. The researcher has attempted to present the principal measures which are suggested to combat corruption on the following paragraphs.

First, Prof. Dr. Herbert Edling has paid attention on the need to address tax administration procedural complexities, monopoly control of tax officers, fragile accountability and monitoring system on tax administration, tax personnel administration and payment related limitations. To rectify these limitations he has forwarded the need to improve the standards of documentation and procedures of tax administration, introduce strict division of responsibilities and diffuse top managerial power in tax authorities, improve their internal and external monitoring system, and strength sanctions, increase tax administration personnel professionalism and ethical standards, and introduce fair salary and reward and rotation system in tax administration organs.⁵⁵

Second, Arindam Das-Gupta, Michael Engelschalk and William Mayville suggest twofold measures who assum tax officers are surrounded by incentives and opportunities that make them engaged in corrupt activities.⁵⁶ Legislative stipulations of a strong penalty on corrupt tax officers with effective enforcement, and the betterment of tax personnel salary and other form of financial benefits are considered important disincentives for commission of tax corruption. Measures which are expected important to close the opportunities of tax officers are reducing the degree of monopoly power and discretion of tax officers. Such measures include rotating officials both geographically and functionally and hierarchical review, clarifying rules and procedures, and dividing large decisions into discrete parts carried out by different agents or groups.⁵⁷ Like Prof. Dr. Herbert Edling, these three scholars are also very sensitive about the

⁵⁴Richard M. Bird, cited above at 18, 141

⁵⁵Herbert Edling, cited above at 5

⁵⁶Arindam Das-Gupta, Michael Engelschalk and William Mayville, An anticorruption strategy for revenue administration, in *PREM note series*, no.33(Washington DC : World Bank, 1999), 3-4

⁵⁷Kevin Davis and Michael J. Trebilcock, cited above at 13, 67

need to minimize monopoly control of tax officers, clarify tax administration procedures, limit the discretionary power of tax officers, strength the monitoring system, strong penalties for corrupt activities, and enhance the financial benefits of tax personnel in their suggestion to combat corruption in tax administration organs.

Third, Alfred Bridi has forwarded the formulation and the implementation of an effective human resource management and development policy in tax authorities to be important measures to combat a tax corruption. Accordingly, he has suggested measures such as introducing transparent tax employee recruitment system, effective staff professional development program, a system of reward for tax officers based on their achievement, and stringent testing procedures in tax authorities to weed out corrupt employees.⁵⁸ Aminure Raman also forwards the betterment of tax personnel administration system and salary as important measures. To this end, he has suggested the need to disassociated tax administration staff salaries and their scale from the general civil service and the introduction of system which enable managers to give performance-based bonuses for tax officers.⁵⁹

Fourth, there are scholars who suggest the introduction of SARA model as an effective measure to combat corruption in tax administration.⁶⁰ The personnel and budgetary autonomy of tax authorities via this model have expected to increase their effectiveness and efficiency to promote merit-based recruitment, performance based career development, and professional skill development. Besides, this model is also considered as best answer to minimize and limit the involvement of central executives on tax administration and thereby political corruption and client favoritism.⁶¹ However, there is a view which assumes the inevitable rise of corruption as SARA matures and forward it should be accompanied with effective internal audit and anticorruption investigation systems, to overcome the problem.⁶²

⁵⁸ Alfred Bridi, "Corruption in Tax Administration,"(U-4 expert answer no. 229, Chr. Michelson Institute, 2010), 7

⁵⁹ Aminur Raman, cited above at 28

⁶⁰ Tuan Minh Le, cited above at 12

⁶¹ Aminur Rahman, cited above at 28

⁶² Arthur J. Mann, "Are Semi-Autonomous Revenue Authorities the Answer to Tax Administration Problems in Developing Countries?- a Practical Guide" (Research paper for the project: Fiscal Reform in Support of Trade Liberalization, USAID, 2005), 7.

Finally, scholars suggest combating measures which concern the organization and structure of tax administration organs and their operational procedures. One has suggested the introduction of clear description and separation of the roles of tax officers at each organization, structure, and functional area.⁶³ In addition to this, it is also suggested the introduction of clear-cut written procedures for both horizontal and vertical communication and interaction, the development of reliable monitoring and operational control system as combating measure.⁶⁴ It is also suggested the stipulation of clear and separate spheres of tax administration responsibility to units along functional lines. On procedures, reduction long-term personal interactions between taxpayers and tax officials of in procedures, adjustment of the tax audit strategy, monitoring of tax audit results and, if appropriate, punishment of tax inspectors where tax evasion has been concealed, and increased utilization of third-party data for tax assessment. Generally, simplifying tax procedures has assumed to reduce tax officer's discretion and abuse of tax laws, and lessen the burden for firms to comply tax law.⁶⁵

2.6 Concluding Remarks

What can be stated as a general conclusion from the preceding discussions is the manners of delegation a tax authority to tax administration organs (thereby to tax departments and officers), and the quality of governments monitoring systems on the activities of the tax officers are the major determinant factors for the commission of corruption in tax administration organs. To limit this risk enhancing the accountability of tax administration organs considered indispensable. To that end, particularly to address tax officers' monopoly power, the presence of clear cut division of responsibilities in tax administration organs and maximizing the functional involvement of the tax units and the officers on a tax administration operation obtained the front position. Besides, the organization of tax administration organs based on the SARA model (by incorporating the different types of autonomy which are important to enhance/ promote effectiveness as well as specialization and professionalization on tax administration) is considered responsive to combat

⁶³Konstantine Pashev, cited above at 30, 68

⁶⁴Ibid

⁶⁵Aminur Rahaman, cited above at 28, 1

tax corruption. Furthermore, the presence of effective internal audit and anticorruption investigation systems, also considered important to overcome the problem.

Thus, theoretically, the individual or cumulative reflections of such recommendable features in tax administration organs are helpful to combat tax corruption. By the same token it can be also considered as challenge the absence of such recommendable features from tax administration organs. Finally, it can be said that tax administration legal frameworks can play important role in providing such responsive features on tax administration or/ and otherwise can be considered as challenge. By having in mind this, in the next chapter some of the relevant areas of the federal tax administration legal framework of Ethiopia are analyzed to unravel its opportunities and challenges to introduce some of the above measures which are considered essential to combat tax corruption, for the case of ERCA.

Chapter Three

The Role of Legal Framework to Minimize the Risk of Tax Corruption in ERCA

Introduction

Under this chapter the researcher has attempted to examine opportunities and challenges spring from some of the relevant areas of the federal tax administration legal framework of Ethiopia to combat the tax corruption in ERCA. To this end, the following four different aspects of legal framework have identified.

First, the researcher has examined the relevant provisions of legal framework governing the authority and obligations of ERCA Vis a Vis the business income taxpayers, in relation to the tax information administration, the tax assessment, and the tax offences law enforcement tasks. Eventually, the researcher has identified the underlining principles of law on the nature of relationships between ERCA and the taxpayers. Second, an attempt is made to analyze the relevant area that provides the degree of ERCA's autonomy, in terms of institutional, personnel, financial, operational and organizational structure determination power, and its implications to combat the tax corruption. Third, legal framework that determines the role of the Head and the Branch offices of ERCA is examined. This appraisal is ultimately aimed at identifying whether the legal framework has introduced clear cut tax administration role between the tax offices of ERCA. Besides, the appraisal also extends to the areas of the legal framework which determine the internal structure of ERCA for the accomplishment of the tax assessment, the tax information administration, and the tax law enforcement tasks. This is important to understand the efforts made via the legal framework to do away with monopoly power in ERCA up on the accomplishment of the above three tasks. Finally, the relevant areas of the legal framework that

govern the features of Internal Audit and Anti-corruption Inspection units of ERCA are examined. Subsequently, this examination has unraveled the extent of planning and operational autonomy of units which undertake internal investigations in ERCA, respectively, for detecting tax corruption and facilitating sanctions on tax corruption allegations.

3.1 The Principles and Objectives of Tax Administration Legal Framework

The House of People's Representative, the law making organ of the Ethiopian federation, has neither enacted a tax code nor reduced the administrative provisions of the federal tax in to one coherent piece of legislation. Consequently, the provisions the federal tax administration legal framework are dispersed in different set of tax proclamations, regulations, directives and other administrative guidelines. This kind of framework is considered as not good practice, instead enacting a tax code, with clear tax administration principles and basic provisions that provide adequate legal authority to tax administration organs is affirmed to be paramount for effective tax administration, and for combating tax corruption too.⁶⁶ Apart from such arrangement character manifested on the of the federal tax administration legal framework, for the sake of clarity, it is essential to pinpoint its underlying principles and objectives.

The scope of this examination is limited on the relevant provisions types of the legal framework that generally affect ERCA's operation up on the business income tax administrative tasks namely the tax information administration, the tax assessment, and the tax law enforcement. Eventually, the researcher has defined the nature of relationships contemplated under law between ERCA and business income taxpayers in relation to the accomplishments of the aforementioned tasks.

3.1.1. Tax Information Administration

It is not an exaggeration to state that transparent and equitable tax assessment and liability determination would be impossible without providing adequate power for tax administration

⁶⁶Artoure Jacobes, "Chapter Three: Legal Framework," in *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, (USA, Deloitte Consulting PLC, 2013), 44-45.

organs to access information. For this reason tax information collection and analysis task is considered one of the fundamental responsibility and duties of ERCA under law.⁶⁷ In this connection the tax registration is one of the most important tasks of ERCA which is in charge to organize and facilitate the federal tax registration process.⁶⁸ On the other hand, Article 43(a) of the federal income tax proclamation No, 286/2002 has imposed obligation on persons who have intended to engage on business to require and obtain a TIN, which is one related duty of taxpayers on the process of the tax registration.⁶⁹ This law has made the tax registration the prime responsibility of the taxpayers and their noncompliance to this responsibility attracts administrative and criminal sanction.⁷⁰ Furthermore, to maximize compliance on the tax registration, the law has imposed obligation on all Government Organs which are entrusted with the power to issue/ renew business license to require applicants submit TIN as a precondition for the latter to issue or renew their business license.⁷¹

Business income taxpayers (except category C) are required under the law to keep records of relevant information as to their business transactions.⁷² The law also made, category A and B taxpayers, under obligation to prepare income declaration to ERCA.⁷³ It is also imposed on them the duty to deliver information deemed necessary and requested by ERCA, while enforcing tax laws.⁷⁴ The law expects these categories of taxpayers to provide ERCA full, accurate and timely information. Because, taxpayers falsification of tax information or/ and failure to provide full information requested by ERCA attracts administrative and criminal sanction under law.⁷⁵

⁶⁷Ethiopian Revenues and Customs Authority Establishment Proclamation, Proclamation No. 587/2008, Federal Negarit Gazeta, 14th year No.44, 2008, Art 6 (2) and (6)

⁶⁸The Federal Income Tax Proclamation, Proclamation NO 286/2002, Federal *Negarit Gazeta*, 8th Year NO.34, 2002, Art 46

⁶⁹. Ibid Art. 43(a). See also ERCA Directive on Issuance and Implementation of Taxpayers Identification Number, ERCA Directive No. 11/2009, Art. 4 (1), (5) and (6)

⁷⁰Tax registration Directive of ERCA, cited above at 69 Art. 13 and the Income tax proclamation, cited above at 68, Art. 91

⁷¹The income tax proclamation, cited above at 68. Art. 45

⁷²Ibid, Art. 48 (1) and (2)

⁷³Id, Art. 66 (1) (a) and (b)

⁷⁴Id, Art. 38 (2) (b)

⁷⁵Id, Art. 87 and 89, and 97, respectively

Since the power to enforce federal tax laws is entrusted to ERCA, it is responsible to ensure the observance of the above tax information related obligations of the taxpayers. There is a clear legislative contemplation to ensure the accuracy on tax information administration in ERCA. To this end, law empowered ERCA to crosscheck tax information supplied by taxpayers via different mechanisms. Some of the mechanisms include requiring the disclosure of particulars of any information or transactions from any person including body, municipality, financial institutions, and organs of the federal and regional governments.⁷⁶ The law also empowered ERCA to inspect and seize of any documents under the possession of any person (including taxpayers).⁷⁷ In sum, the law gives adequate power to ERCA which are enabling so as to maximize the size of tax related information both in quantity and quality.

Generally, the tax law provides ERCA legitimate and multi-dimensional tax information sources and collection methodologies. Besides, it has also imposed legal obligation on ERCA to ensure the accuracy of taxpayers' information on their collection, organization, and recording. These two legislative stipulations in cumulative portrays the prospects of the legal framework to access accurate and adequate taxpayers information for the ERCA.

Thus, the rationales of the law, on collection and organization of tax information, is to enable ERCA access adequate and accurate information and oblige the same to organize and develop secured tax information database. In other words, the very principle and objective of the law on tax information is to enable ERCA undertake transparent and fair decisions on the basis of adequate, accurate and clear tax information. It also gives the general guidance for the tax officers of ERCA to make the utmost endeavor for the collection and organization of the accurate and the adequate taxpayers' information. And it can be concluded that one of the principle of the legal framework is, to have effective and fair tax administration. In other words, the legal framework is straightforward to combat the tax corruption, may be committed via deletion, falsification tax information or providing decision based incorrect and inadequate tax information to favor taxpayers at the expense of the general interest.

⁷⁶Ibid, Art. 38 (c). Besides, the law has also imposed a duty on all organs of the federal and regional states of FDRE to cooperate with ERCA as to the implementation of tax law so that such cooperation also include provision of tax information. See Ibid, Art 41.

⁷⁷The Establishment Proclamation of ERCA, cited above at 67, Art 6 (11).

3.1.2. Tax Assessment

Tax assessment is not defined expressly under the federal income tax proclamation No 286/2002. The proclamation has merely stated the presence of tax assessment on business income tax administration except, category C taxpayers.⁷⁸ And to understand the concept of tax assessment, it is inevitable to go through the relevant provisions of law. Accordingly, the law has imposed obligation on the taxpayers to prepare and submit annually income declaration including the amount of tax due to ERCA.⁷⁹ On the other hand the law has provided power to ERCA to amend such assessment made by taxpayers in case it has reason to believe there is error or omission.⁸⁰

The rationale behind such additional tax assessment, under the law, is to enable ERCA examine the accuracy of the income declaration and the accounting systems that produced the declared liability (assessed tax). In other words it has the purpose of enabling ERCA evaluate the credibility of the declared income or assessed tax liability by taxpayers. It also serve the purpose of deterring the taxpayers from continuing to under-declare or manipulate their liability thereby not to evade tax, because their detection attract criminal and administrative sanction. Thus, the objective of tax assessment task under tax law is uncontroversial, even though not plainly articulated. In sum the law directs ERCA to utilize all opportunities and mechanisms which are important to uncover undeclared liabilities of the taxpayers and collect the amount of tax due.

3.1.3. Tax Offence Investigation and Prosecution

There are substantive tax offences provisions, concerning business income taxpayers, under Proclamation No 414/2006 of the FDRE Criminal Code and Income Tax Proclamation NO 286/2002 and its amendment.⁸¹ The criminal code has also few provisions, under its general part, which worth relevant for our discussion.⁸²

⁷⁸The Income tax proclamation, cited above at 68, Art. 66 (1) (a) and (b)

⁷⁹Ibid, Art 66(1)

⁸⁰Id, Art 65(6)

⁸¹Id, Art. 96-102; The Income Tax Amendment Proclamation, Proclamation No. 608/2008, *Federal NegaritGazeta*, 15th year, No. 15, Art. 2 (9); and the Criminal Code of Federal Democratic Republic of Ethiopia Proclamation No. 414/2002, *Federal NegaritGazeta*, Art 349 – 351.

⁸²Ibid, the Criminal Code of FDRE, Art. 3(1)

The general part provisions of the Criminal Code, including provisions which stipulate the objective and principles of criminal law, are applicable on the administration of tax offences provisions that are provided under the income tax proclamation. Thus, it can be argued that tax crime investigation and prosecution task should be undertaken based on the objective and principles of the criminal code.⁸³

Accordingly, the objective of the tax offences enforcement in ERCA is to enhance tax law compliance in general, the criminal provisions of tax crime in particular. Speaking differently, providing effective punishment on taxpayers who have committed tax offenses to make them honest taxpayers and deter other taxpayers from committing on tax crime is the objective of tax offence investigation in ERCA. This is clear legislative direction on the tax officials and employees of ERCA, that operate on its intelligence, investigation and prosecution tasks, to undertake effective operation and measure on taxpayers who have breached the provisions of tax offence. In short, the legal framework is against collusive acts tax officers with taxpayers to participate on tax corruption, viz. giving blind eye for tax evasions in exchange of unofficial payments from taxpayers.

3.2 The Degree of ERCA's Autonomy under Legal Framework

Proclamation NO 587/ 2008 established ERCA by providing it some of the identifiable features of the SARA (Semi-Autonomous Revenue Agency) model.⁸⁴ Consequently, ERCA is branded together with the South African Revenue Service (SARS) as the most autonomous revenue agency in Africa.⁸⁵ The establishment of tax administration organs based on the SARA's model, in Africa and Latin America, is affirmed based the rational of combating corruption at

⁸³Id, Art. 1

⁸⁴There are three significant features which identify SARA from other models. The first one is, granting the tax administration organ some autonomy from central executive power. The second is providing it, in principle, to be quite independent of the financing and personnel rules that govern the public sector in general. The third one is integrating and entrusting all government tax operations for one single tax administration organ. See, Odd-Helge Fjeldstad and Mick Moore, "Revenue Authorities and Public Authority in Sub Saharan Africa" *Cambridge University journal of African studies*, 47, no. I, (2009) : 2.

⁸⁵Samuel Bwalya "Revenue Administration in Sub-Sahara Africa," ed. Revenue Administration Division of the IMF (International Tax dialogue comparative Series No.1, 2010, 9

forefront.⁸⁶ The responsiveness of this model to address tax corruption is explained based on its implication in providing adequate autonomy to tax administration organs on human resource management, budget administration, organizational structure determination, and planning.⁸⁷ The provision these different types of autonomy, obviously needs legislative commitment on part of governments, expected to enhance effectiveness of tax administration on personnel management, allocate adequate operational budget from revenue collected, limit the political influences of central executives on tax administration operation, and strengthen their internal control systems.⁸⁸

On the following five sub-sections, the researcher has apprised some of the relevant provisions of the federal tax administration legal framework which define the extents of ERCA's autonomy on personnel administration, institutional, financial, and planning in light of the implications in combating tax corruption in the organization.⁸⁹

3.2.1 Institutional Autonomy of ERCA

According to Odd-Helge Fjeldstand MOF's (ministry of finances) involvements on day-to-day operations of the tax collection undermine the strength and effectiveness of the daily leadership of tax administration.⁹⁰ This assertion is grounded on the idea that tax administration organs possess unique data sets on taxpayers and revenue bases, so that the creation of specialization on tax are essential for improving tax policy and legislation. Thus, the provision of role to Ministry of finances to formulate and design a tax policy, and revenue administration organs to implement such policy, is considered important.⁹¹ In Tanzania the organization revenue department out of its Ministry of Finance in to -a semi-autonomous revenue authority- Tanzanian Revenue Authority (TRA) - was one strategic response to combat tax corruption.⁹² The philosophy behind this move

⁸⁶Tuan minh Le, cited above at 12, 337

⁸⁷Aminur Rahman, cited above at 28,4

⁸⁸Ibid

⁸⁹ Legal framework appraisal in this section is limited on these relevant types of autonomy that are essential and helpful to combat tax corruption. The degree of autonomy of powers delegated to ERCA, under law, can be explained on the basis of other several factors but irrelevant for the purpose of this study.

⁹⁰Odd-Helge Fjeldstand, cited above at 32, 2

⁹¹Ibid

⁹² Similar moves are made in other states of Africa ,for example Ghana (1985), Uganda (1991), Zambia (1994), Kenya (1995), Malawi (1995), Tanzania (1996), South Africa (1997), Rwanda (1998), Zimbabwe (2001), Sierra

in Tanzania has been to eliminate the direct political influence of the Ministry of Finance on the day-to-day operations of the tax administration and strengthen the accountability of the tax authority.⁹³ ERCA is organized by law, in 2008, in similar institutional fashion.

Proclamation NO 587/ 2008 established ERCA autonomous from the MOFED.⁹⁴ This autonomy gives ERCA an opportunity to create, sustain, and develop specialization on tax administration. This in turn enhances ERCA's accountability, leadership, and effectiveness as to administration of the federal tax. These would be the difficult ones if the legal framework vested the MOFED power to administer tax or supervise the same, because it has wider power viz. to execute the developmental, economic, social and financial policies and laws of the federal government.⁹⁵ Thus, the autonomy of ERCA under the legal framework from the MOFED provides the tax officers of ERCA incentives to perform their tasks solely in accordance with the objectives of the tax administration. Consequently, this incentive contributes for promotion of tax administration accountability and integrity.

3.2.2 Personnel Administration Autonomy

The proclamation establishing the ERCA has inaugurated a new chapter by making the personnel administration of the federal tax administration organ of Ethiopia independent from the institutional and legal framework influences commonly exerted on other executives organs from the Ministry of Civil Service and Civil Service Laws, respectively.⁹⁶ The extent of autonomy provided to ERCA, under this law is enabling to introduce different tactics and strategies which are helpful to combat the tax corruption effectively. In this regard the following are the main opportunities of the legal framework.

Leone (2002), Lesotho (2003), The Gambia (2005) and Mauritius (2005) have established their revenue authority outside MOF. See Odd-Helge Fjeldstand, cited above at 84, 3

⁹³Odd-Helge Fjeldstand, "Fighting Fiscal Corruption: Lessons From The Tanzania Revenue Authority, (Norway: Chr. Michelsen Institute, 2003) ,169.

⁹⁴The Establishment Proclamation of ERCA, cited above at 67, Art. 3(1) and (2)

⁹⁵ Proclamation on Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, Proclamation No. 691/2010, *Federal NegaritGazeta*, 17th year, No. 1, Art.18(1), (2), (4),(5),(6),(7), (8),(9), and (10)

⁹⁶The Establishment proclamation of ERCA, cited above at 67, Art. 19(1) (b) and (c)

First, the law has unequivocally provided power to ERCA to study special salary scale and employment benefit scheme for its employees.⁹⁷ This in turn nullifies the possible intervention of Ministry of Civil Service on the determination and evaluation of tax employee's payment and remuneration and adjustments.⁹⁸ However, the autonomy of ERCA on the determination of the amount of salary both on recruitment new tax employees and make adjustments for the existing ones is not absolute. Because, on one hand the law has put limitation on ERCA to set equal starting salary for posts which require the same qualification and standard.⁹⁹ Exceptionally the law has given ERCA autonomy to recruit and hire employees above three levels the normal salary scale, if it has a reason to believe that the vacant post in question is suffering from lack of qualified person on market.¹⁰⁰

On the other hand the limitation of the law on the autonomy of ERCA to make salary increment for its employees is reflected in terms of time interval and performance criteria. In this connection the law has stated for increments (adjustments) of salary to the employees of ERCA on two years intervals and only for those employees who have scored at least average work performance.¹⁰¹ ERCA is also provided special autonomy (power) to propose to the Government different types of payments and per diem which are necessary for its functions and implement up on approval.¹⁰² Besides, it has also given the power to propose for bonuses for its employees who have scored beyond the average performance point at the end of every year- based on the amount of salary and ethics of employees.¹⁰³

In sum the autonomy of ERCA, under law, put it in better position to attract, recruit and retain qualified employees without confined itself on the salary adjustment and increment determination process which are applicable to the rest of civil service in uniform period interval

⁹⁷ Ibid, Art.19(1) (c)

⁹⁸ The Proclamation on Definition of Power and Duties of the Federal Executive Organs of Ethiopia, cited above at 95, Art 17 (d)

⁹⁹ Council of Ministers Regulation to Provide for the Administration of Employees of the Ethiopian Revenues and Customs Authority, Regulation No.155/2008, *Federal Negarit Gazeta*, 14th year, No.49, 2008. Art 5(2)

¹⁰⁰ Ibid, Art. 5(3)

¹⁰¹ Id, Art. 5(4)

¹⁰² Id, Art. 6

¹⁰³ Id, Art. 19

and standard. Such autonomy under law in turn enhances professionalization in ERCA and thereby promotes effectiveness on the quality of tax administration service including its capacity on internal monitoring and control. Besides, it can be argued that the presence of legal inclination for the betterment of salary and other form payments for employees of ERCA is important devise to combat tax corruption. Because the possibility of better salary can be taken as one kind of disincentive for tax officers on tax corruption or incentive to them to abide ethical and legal standards of ERCA. The legality of providing summery dismissal based on mere suspicion of a tax officer on a tax corruption in ERCA also strengthens the above argument of the researcher.¹⁰⁴

Second, ERCA has given the autonomy to apply special law, not to adhere the provisions of the federal civil service law, while hiring, promoting and firing its employees. Accordingly, the law has stipulated different methods to hire employees, which are foreign under The Civil Service Law. The special hiring methods include making institutional connection with Higher Education Institutions to recruit qualified candidates, based on expert evaluation applicants who have given credible recommendations from third parties, selection among former job applicants who have relevant qualifications and fulfill ethical standards, and computing based on website of the tax authority.¹⁰⁵In addition to these the law has provided power to ERCA to employ any other hiring methods as it thinks appropriate.

The stipulation of the above hiring flexibility, under the law to ERCA has different consequences. On one hand some of these methods expected to widen the opportunity to have a long list of applicants and pick best among the list and on the other hand narrow competition ERCA to compete. The flexibility (discretion) given for ERCA to employ any of the above recruitment methods and other unstated appropriate methods under the law shows its inclination creates doubt on the presence of transparent recruitment policy under ERCA. In other words even if there are different recruitment methods they does not guarantee the presence of transparent tax employee hiring mechanisms that enhance its transparency thereby helpful to combat tax corruption.

¹⁰⁴ Id, Art. 37

¹⁰⁵Id, Art. 11

The Regulation has also introduced additional formality requirements for eligibility to make compete and hire in ERCA, which make stringent the hiring policy of ERCA thereby help to combat tax corruption. In this connection the law has considered as ineligible job applicants who are dismissed from other offices due to disciplinary problem, who are considered as unethical in his/her community, and unwilling for the registration of his/her personal property. Besides, the law has extended the probation period for newly recruited tax officer for one year, which in turn expected to create good opportunity for ERCA to test the ethical conduct of the prospective tax employee.¹⁰⁶The law has introduced in addition to the necessary work experience and passing written exam ethical standard as parameter for the promotion of tax employees. Besides, it has introduced a system of competition to select model employees and their promotion based on ethical and performance consideration. On the other hand, the law excludes from making application of promotion those employees who have committed greave disciplinary offences for five years starting from the date of disciplinary decision or already accused but decision has not yet given.

The Regulation has also provided special power for the General Director of ERCA to dismiss employees based on suspicion of corruption (tax corruption) without the need to follow the disciplinary procedures stipulated under civil service law.¹⁰⁷ This power is considered important tool to sanction tax corrupt effectively which may remain unpunished due to limitations to find tangible evidences which are required under normal disciplinary procedure. There are criticisms against this power of the General Director mainly on the basis of its constitutionality.¹⁰⁸ In support of such power Dr. Fasil Nahom argues:

¹⁰⁶Id, Art. 13

¹⁰⁷The Establishment proclamation of ERCA, cited above at 73, Art 37

¹⁰⁸ Yamane Kassa, “The Judiciary and Its Interpretive Power in Ethiopia: A Case Study of the Ethiopian Revenues and Customs Authority (master’s Thesis, Addis Ababa University, 2011), 98-99. Accordingly, first, the provision is contested to be against the procedural justice (due process of law) of employees. Because it provides no chance for them both to be informed about the allegation made against them by the authority and their right to defend against the allegation. Second, it also contested to have prejudice against individual right due to the possibility resorting summery dismissal, based on insufficient standard. Third, it is also criticized for totally removing the remedy option

“Requiring the authority to follow the formal procedure that requires proving the commission of corruption by staff of the authority is very burdensome and may amount to letting corrupters stay in the authority because of inadequacy of evidence.¹⁰⁹

The researcher also shares the above position of Dr. Fasil Nahom. There are 19 branch offices and 116 tax collection centers which totally form ERCA.¹¹⁰ Thus, the decision of the General Director, to pass summary dismissal, is dependent on different form of information gathered from different sources (colleagues, taxpayers, and other informants outside ERCA). For example, the decisions of tax officers with respect to a particular task may serve as important parameter to evaluate the degree of tax officers corrupt behavior. It is also possible to argue, the tax enforcement and internal audit system of the authority also supplement important information to the decision General Director as to the level of tax compliance (and the level of tax evasion) and the adherence of work rules on the decisions of tax officers, respectively. Thus, it is not solid to state that summary dismissal under law solely undertaken personally by the General Director based on insufficient standard.

It is also necessary to bear in mind that the principle of the legal framework is entertaining such cases through the normal disciplinary procedures in ERCA.¹¹¹ And summary dismissal procedure is applicable in case when there is corrupt (unethical behavior) on the part of an employee, below the minimum legal standards¹¹² expected from the employees of ERCA, and there is difficulty to proof such corrupt behavior via the normal disciplinary procedures. Thus, the applicability of summary dismissal procedure is narrow and exceptional circumstances in ERCA. Besides, it is important to bear in mind the workloads of the General Director due to his/her legal responsibility to ensure the effectiveness of ERCA on its functions. Similarly, the commitment

that aggrieved employees could have against the authority. Finally, the fact that it limits the jurisdiction of courts to review its decision also considered as another criticism on such power of the General Director.

¹⁰⁹ Ibid,102

¹¹⁰ The ERCA Head And Branch Offices Organizational Structure Manual, ERCA, Addis Ababa, September 2011, 12

¹¹¹ERCA Employees Administration Regulation, cited above at 99, Art. 34

¹¹²The income tax proclamation, cited above at 68, Art. 40 and ERCA

made under the legal framework to organize internal units/ officials with the duty of facilitating and supporting the internal disciplinary system of ERCA support the same.

The General Director has powers and obligations to ensure the overall effectiveness of ERCA while enforcing tax law. The power given to the General Director to resort summary dismissal should be read together his/her wide responsibility as to the overall effectiveness of ERCA. In this connection, it is important to underscore the dilemma the General Director may confront either to rescue the tax administration from the risk of corruption or tolerate the tax officer under suspicion until evidence is gathered and organized adequately to resort through the normal disciplinary procedure.

Third, the other important aspects of personal administration autonomy the law are those areas which provide for easy internal transfer and rotation of tax employees ERCA to do so. This can be taken as another safety valve to ERCA to transfer its employees in case they show unethical (corruption) behaviors.¹¹³ The power of ERCA to establish and implement spatial and post rotation system under the legal framework¹¹⁴ gives good opportunity to do away with long term contact between the taxpayers and the employees on a particular post and monopoly control of tax employees a particular post for long period of time. Besides, it also gives good opportunity for the detection of a tax corruption committed by before rotation/ transfer thereby exerts psychological influence on them to deter from the tax corruption.

Finally, the law impose obligation on ERCA to establish tax employees training center and develop curriculum which are directly relevant to the expected post of prospective tax employee. This stipulation is important for enhance staff professionalization in ERCA.¹¹⁵ This in turn enhances the effectiveness of ERCA including the internal control and monitoring system, and promotes its integrity and help to combat tax corruption.

¹¹³ERCA Employees Administration Regulation, cited above at 99, Art 9(1)

¹¹⁴Ibid Art. 9(2)

¹¹⁵Id, Art 15 and 16

3.2.3 Financial Autonomy of ERCA

To combat tax corruption as well as to improve the performance of revenue bodies the presence of funding autonomy for them is another important issue. This type of autonomy is explained in terms of the need of providing tax administration organs an operational budget that is independent of the normal annual national budgeting process technically allowing them to appropriate a fixed share of revenues they collect.¹¹⁶ Besides, providing such organs an annual budgetary allocation with an additional allocation based on a percentage of collections above an agreed target is considered as another option.¹¹⁷ Generally the presence of such type of special funding mechanisms can be taken as an important incentive for tax administration organs to counter financial limitations they may confront to score effective performance as well as to strength their internal monitoring and control system. In other words, the provision of such funding mechanism is recognized to enhance the integrity of tax administration organs since that is enabling them to, formulate and implement a plan on fully costed and prioritized operations. Having in mind this opportunities steam from such autonomy, the core issue at this juncture is identifying the funding mechanisms available for ERCA under the legal framework.

The legal framework has incorporated a clear provision which stipulates ERCA to undertake its tax administration responsibility sonly based on a budget to be allocated by the federal government.¹¹⁸ The power of ERCA in this connection is to develop budget proposals and bid/compete for funding from the consolidated fund just like any other government ministry, department, or agency of the federal government.¹¹⁹ Thus, the manner of budget preparation ERCA is under the influence of other entities of the federal Government namely the COM and PM of FDRE up on approval; and MOFED, via its mandate to prepare the budget of the Federal

¹¹⁶Odd-Helge Fjeldstad and Mick Moore, cited above at 84, 6.

¹¹⁷Sandra C. Hadler , “Improving Tax Administration in Sub-Saharan Africa: The Potential of Revenue Agencies and Electronic Service Delivery” (paper presented on Ad Hoc Expert Group Meeting, UN, Montreal, 2 - 6 October 2000), 8.

¹¹⁸The Establishment Proclamation of ERCA, cited above at 67, Art. 10

¹¹⁹Ibid, Art 8(2) (d)

Government.¹²⁰In sum the kind of budget allocation mechanism available to ERCA is similar to that of the Federal Government Executives of Ethiopia.¹²¹

In sum, according to the legal framework, the tax administration operation of ERCA is expected to be funded only from allocation made by the Federal Government on annual basis. Thus, the response of the legal framework on the degree of ERCA's financial autonomy not ensures it to undertake effective tax administration operation. Because financial limitations may limit ERCA, at least, to conduct periodic and uninterrupted anti-corruption sensitive reviews, particularly on vulnerable tasks for the tax corruption. Hence, the absence of adequate financial guarantees under the legal framework can be taken as one challenge to limit the nature of tax enforcement, the size tax personnel, and the quality organizational structure in ERCA.

3.2.4 Planning Autonomy of ERCA

Planning autonomy of tax administration organs relates with the extent their power to formulate and implement strategic and operational plans. The provision of this type of autonomy to tax administration organs is another relevant issue for combating a tax corruption. Because the provision of this power to tax administration organs and their effective exercise is considered enabling for such organs respond more rapidly to changed circumstances, thereby contributing to its overall efficiency and effectiveness.¹²² On the following paragraphs the researcher has attempted to examine the relevant areas of legal framework so as to understand the extent of ERCA's planning autonomy on tax administration.

¹²⁰Id, Art 18 (7)

¹²¹Proclamation on Definition of Power and Duties of the Executive Organs of FDRE, cited above at 95, Art 10 (1) (a). To make comparison on the issue at stake, among countries of the sub-Saharan Africa; the majority of revenue bodies are funded through parliamentary appropriations, likewise ERCA. In some countries, however upper limits have been set for funding revenue bodies (Kenya 2%; Malawi 3.5%; Rwanda 3.5% of estimated revenue collection).Rwanda and Malawi have mandated their revenue body to deduct and retain a portion of revenue collection as the cost of collection. Botswana too has similar provisions but they are subject to approval by the Minister of Finance via a gazette notice. Samuel Bwalya, cited above at 85, 49

¹²² Samual Bawleya, cited above at 85,16

Under Article 77(2) of the FDRE constitution, COM (the council of ministers) is given the power to provide leadership on the activities of ministries and organs of federal government which are responsible to the COM.¹²³ The establishment proclamation of ERCA has made it directly accountable to the prime minister, so that the former is one exceptional organ not accountable for the COM.¹²⁴ Therefore, it is possible to state that the leadership role of the COM can be limited on planning and operations of ERCA. Since these provisions are less explanatory on the sizes of ERCA's planning independence on tax administration, it is important to see other relevant areas of the tax administration legal framework.

Article 8 (2) (d) of the establishment proclamation of ERCA has clearly vested power to the General Director of ERCA (the General Director herein after) to prepare strategic plans and annual programs as well as budget of the Authority and implement the same upon approval. Sub article 2(e) of the same provision allows the General Director to effect expenditure in accordance with the approved budget and work programme of the Authority. These provisions of the legal framework are self-explanatory on the presence of other federal entities, which have participation on the process of strategic plan formulation of ERCA. Thus, the central question, worth answer from the relevant areas of legal framework, is who/which organ/ entity have power to approve the strategic plane “may be” prepared by the General Director of ERCA, and the size of the intervention (participation).¹²⁵

Plan Formulation and Implementation Manual of ERCA is one important authoritative document which also form the core component of the legal framework on the issue at hand.¹²⁶ The manual has incorporated provisions which define the general contents of strategic plan (and annual plan), the procedures and the entities which involve on the formulation of the same in ERCA. The manual has established the plan preparation, implementation and evaluation process unit in

¹²³ The Constitution of Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st year, No.1, 21 august, 1995. Art. 77(2)

¹²⁴ Establishment proclamation of ERCA, cited above at 67, Art 3(2)

¹²⁵ Even if, the law has established an Advisory Board for ERCA it does not have meaningful role on the issue at hand rather its role is limited to provide advice on policy and strategy matters. *Ibid*, Art. 12 and 14

¹²⁶ Ministry of revenue, Plan Formulation, and Implementation Evaluation and Inspection Work Process Manual, 2007

ERCA by providing it the role to facilitate the formulation of both the strategic and annual plan of the authority on tax administration. The manual has defined strategic plan preparation to be a fundamental work management device (guidance) that shows in advance the destination of the federal tax administration within three or five years, if necessary reviewed annually. As to the major contents of strategic plan the manual has included the priority areas, methodologies, objectives and goals and human resources and budget plan. The time, procedures and entities that have participation on the preparation of the same is also indicated under the manual.

Accordingly, the manual stated the need of organizing different committees such as steering committee and virtual Team, from the management unit of the sector, including the head of the planning work process unit of the authority. This committees are assumed to prepare the first draft of strategic plan. The manual does not state the entity that has the mandate to review and approve but it simply the presence of the procedure. In meantime, between the preparation of the first draft and approval, the procedures of consultation with the employees of the authority and other entities are stated.

The plan manual also stated the need of preparation of annual plan of ERCA, particularly based on its strategic plan. The manual has made clear the core contents of the annual plan namely the attention issues of tax administration plan in a fiscal year, the reasons for the plan, the objective, goal and functions to be achieved in a fiscal year, and the human resource, budget and revenue plan of a fiscal year with specific functions and sequences and action plan. The entities of the federal government which have legitimate involvement on the formulation of the annual plan of ERCA is more clear, under the plan manual. Accordingly, it has provided the mandate to formulate preliminary plan jointly to the management committee of ERCA, the head of plan process unit and adhoc committees. And then the next procedure is, after discussion and deliberation are made with the management committee of ERCA on the preliminary plan, finalizing the draft, based on the feedbacks given, disseminate to other stakeholders outside ERCA.

One of the expected stakeholder from the organs of the federal government, under the manual, is the HPR. And based on comments and recommendation provided by the house, annual action plan will be reviewed by ERCA, in light of budget and revenue plan. Thenafter the draft will be

dissiminated to each work sector and to the management team of ERCA discussion and comment. Finally, the manual dgives direction that the plan preparation, implementation and evaluation work process, to be the unit in charge to organize the feedbacks and prepare the final draft of the annual action plan of ERCA disseminate the same to each work sectors of the authority, MOFED, HPR, and PM office for approval, until July 30 G.C.

Based on the above examinations made on the relevant areas of the legal framework it is found that the HPR, the COM, and the MOFED are organs of the federal government which are expected to take part on tax administration plan formulation together with ERCA. However, it is possible to argue that ERCA has adequate operational autonomy under legal framework is enabling to respond its problem such as tax corruption. For one thing the creation of institutional specialization, on tax administration under the authority of ERCA, makes it enabling to identify the major attention areas and problems as to the federal tax administration. Besides, the provision of power to initiate the formulation of the draft plans also good opportunity for ERCA to affect significantly both the process and outcome of the federal tax administration planning.

The response of areas of the legal framework which determine ERCA's power on tax information administration, tax assessment, and tax offences prosecution operations are also explanatory on its planning autonomy. Accordingly, the establishment proclamation of ERCA has given power to investigate and prosecute tax crimes, without referral to the federal government prosecution and investigation organizations and the intervention of other executive organ on this task.¹²⁷ The income tax proclamation has also provided basic enforcement powers to ERCA associated with administration of tax information. These include the power to obtain information from taxpayers and third parties and require any federal and regional offices provide the necessary information for the purpose of executing tax administration functions, the power to develop and administer its own in-house IT systems, the power to enter and search business premises and taxpayers' dwellings without a court warrant, and the power to provide incentives/rewards to informers to encourage provision of credible tax information. Furthermore on tax assessment the income tax proclamation has provided power to ERCA to undertake tax

¹²⁷ The Establishment Proclamation of ERCA, cited above at 67, Art. 6 (10)

assessment and impose administrative penalties on non-filers, late filing, and incorrect declaration of tax liabilities.

3.2.5. Organizational Structure Determination Autonomy of ERCA

The legal framework has provided another important form of autonomy, for combating tax corruption, to ERCA that is the power to determine organizational structure. Accordingly, proclamation NO 587/2008 has given autonomy for ERCA to undertake study and implement organizational structure for its functions.¹²⁸ In other words the law gives ERCA the autonomy to design internal structures for tax administration operations, which include determination of the division of roles and the necessary interactions between the head and the branch offices and the tax departments and the geographical location and jurisdictions of such offices. This power makes ERCA the exception one among federal government offices in relation to them the COM has constitutional mandate to review and decide on their organizational structures.¹²⁹

The autonomy of ERCA on determination of its organizational structure is not absolute. Because there are general directions under the legal framework which should be respected by ERCA, while assigning and distributing tax administration roles. Accordingly, COM regulation NO 155/2008 has recognized the power of ERCA on organizational structure but put limitation on it to respect the decision of government made via the 2007 BPR study on the internal features of the federal tax administration organ.¹³⁰ In this connection one of the pillar decisions undertaken under the BPR study and recognized under the regulation is the need to respect internal organization based on work process units on the basis of their appropriateness for the organization structure therein.¹³¹ Hence, the stipulation of the work process oriented distribution of roles and functions, under the legal framework, is another limitation on ERCA's autonomy on the determination of its internal structure.

¹²⁸Id, Art.19 (1) (a)

¹²⁹The Constitution of Federal Democratic Republic of Ethiopia, cited above at 123, Art. 77(2)

¹³⁰ Revenues Sector BPR Research Document, Ministry Of Revenues, Addis Ababa, 2007

¹³¹ERCA Employees Administration Regulation, cited above at 99, Art 4 and the Establishment Proclamation of ERCA, cited above at 67, Art.19 (1) (a)

The autonomy of ERCA, under the legal framework is enabling it to devise an organizational structure which is sensitive for combating the tax corruption, if there is clear commitment. For example, this autonomy can make easy for ERCA to structure internal units/ posts that shoulder the responsibility of reviewing vulnerable tax administration tasks which is appropriate for easily detect the tax corruption. Besides, the stipulation of the legal framework internal organization based on work process centered approach is also enabling to diffuse the federal tax administration decision making among the tax officers organized in different process units of ERCA. This approach is important to limit the creation of monopoly on tax administration and can be taken as one of the important strategy for combating the tax corruption.

Thus, the contribution of this type of autonomy to combat the tax corruption is dependent on the presence of commitment on the part of ERCA while determining its legal framework which concerned with the organizational features tax offices. To this end, the legal framework should provide clear cut tax administration roles between head and branch offices of ERCA. On the other hand, it should be responsive for the increase of the functional involvements of the tax departments (and thereby the tax officers) on a tax administration operation and decision. This in turn limits the degree of tax administration decisions exposure to monopoly. Furthermore, the decision of ERCA as to the features of its internal control system is also another important issue to combat the tax corruption from the organization. On the following parts of this research the responsiveness of the relevant areas of the legal framework to combat the tax corruption is appraised in light of the above three issues.

3.3 Division of Tax administration Roles under Legal Framework

Proclamation NO 587/2008 has vested power on ERCA to determine the necessary and appropriate organization and structure to implement its duties and responsibilities provided by law.¹³² Consequently, at this juncture ERCA has issued an instrument that shows the organization of one Head Office which is already established under the act of the federal legislator; and 19

¹³²Ibid, Art. 19(a)

Branch offices having separate Federal tax administration jurisdiction in terms of taxpayers' segmentation and spatial distribution of taxpayers.¹³³

The mandate to define the job positions inside the head and the branch offices are also the part of ERCA's power on the organizational structure determination. In this connection, Proclamation NO 587/2008 has already determined the incorporation of job posts such as a General Director, Deputy General Directors, Prosecutors, Investigators, and intelligence in ERCA. These stipulations limit the power of ERCA on determination of the kinds of job posts its internal structure.¹³⁴ Besides, the major functions and responsibilities provided by law to ERCA on tax administration also exert a profound influence on the possible components of its internal structure.¹³⁵ For, instance ERCA has assumed the powers to investigate and prosecute tax offenses so this dictates ERCA to structure tax offences prosecution and investigation departments.¹³⁶ By the same token, the powers and functions given for ERCA to undertake the tax registration, tax assessment, tax payers' education, tax collection and others related aspects of tax collection general guidelines on the possible components of its internal structure.

ERCA's power on its internal structure determination also extends to the setting of the roles and functions and, the necessary interactions of tax departments and the respective tax officials and employees. In this regard, the BPR study which was undertaken under the supervision of Ministry of Revenues in 2007 had inaugurated work process based internal structure in ERCA.¹³⁷ This internal structures formula of the organ under the BPR study is given implicit recognition by law. Accordingly, law provides ERCA to reorganize the prospective tax units based on, their input-output, information utilization, and continues and uninterrupted process and, work process units already structured under the BPR Study.¹³⁸

ERCA is the major source of the tax administration legal framework concerning the features of its organization and structure, the researcher has attempted to evaluate this type of the legal

¹³³ The Organizational Structure Instrument of ERCA, cited above at 110, 12

¹³⁴ The Establishment Proclamation of ERCA, cited above at 67, Art 7 and 16

¹³⁵ *Ibid*, Art.19 (1) (a)

¹³⁶ *Id*, Art 6

¹³⁷ Revenues Sector BPR Research Document, cited above at 130, 135

¹³⁸ ERCA Employees Administration Regulation, cited above at 99, Art 4(2) and (3)

framework in light of two distinct points which are relevant on the issue of combating the tax corruption. First, the researcher assessed relevant areas of this type of legal framework which divide the tax administration role between the Branch and the Head Offices of ERCA. The objective is to identify whether the legal framework has introduced clear cut tax administration role between these offices of ERCA or not.¹³⁹ The presence of clear demarcation in this regard is recommendable for the sack of enhancing accountability and thereby to minimize the risk of tax corruption. The second issue of this section paid attention on the part of legal framework that set the internal structure of ERCA for the operation of tax assessment, taxpayer's information administration, and tax offences law enforcement tasks. Ultimately, the objective is to comprehend the prospects of the legal framework to minimize the possible fall of these three tasks under monopoly control of the respective tax officials and employees of ERCA.

3.3.1 Division of Roles between the Head and the Branch Offices

This appraisal on areas of legal framework which defines roles between the Head and the Branch offices in ERCA is relevant issue to combat the tax corruption. Because, the provision of role to head offices to set organization-wide policies and operating procedures, and the execution of operational tasks to branch offices is vital for the effectiveness of any tax administration.¹⁴⁰ Additionally, it is considered important to avoid the creation of confusion for taxpayers and tax administration organs staff at all levels about "who is in charge" and strengthen tax administration accountability.¹⁴¹ Thus, it is important to examine the presence of clear cut demarcation of tax administration roles between the head and the branch office of ERCA. To this end, on the following two sub-sections, an attempt is made to examine the structure and role of these offices one by one in light of relevant areas of legal framework.

3.3.1.1. Roles of the Head Office under Legal Framework

¹³⁹Since the organizational structure instrument provide the same power for the branch offices of ERCA and perceive them as single entity on determination of their role and internal structure, this paper also follow the same i.e. considers the branch offices of ERCA as one and the head office another.

¹⁴⁰Artoure Jacobes, "Chapter Four: Organizational Structure And Management," in *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, (USA, Deloitte Consulting PLC, 2013), 71.

¹⁴¹ Ibid

The establishment proclamation of ERCA furnished all-encompassing powers on the federal tax administration to the Director General who is structurally the part of the head office post in ERCA.¹⁴² The law also stipulates the Director General to delegate his/her power to the other tax officials and employees partially not in excess of those essential for the efficient performance of the activities of ERCA.¹⁴³ These provisions indirectly reveal the role of the remaining tax officials and employees of ERCA on tax administration, both at head and branch offices, to have sprung from such delegation.¹⁴⁴ Speaking differently, the intention of the law is to use the General Director as a transformer on the distribution of the power of ERCA to the remaining tax officials and employees. And the organizational structure instrument of ERCA is one device to this effect and expected to be issued under the authority of the General Director. The following paragraphs are devoted to examine the roles and functions of the Office of General Director, the Five Work Sectors and the Directorates which totally form the major head office organs of ERCA.

The Office of the General Director represents one of the internal units of the Head Office of ERCA. The instrument does not provide the roles and functions this office. Instead, it has provided indirectly while providing the roles and functions of tax officials who are actors within this office such as the General Director, the Director of the Office of the General Director , and the three Tax Advisors of the General Director therein. Accordingly, the role of the General Director of ERCA include development of policy of the authority; preparation and drafting of proclamations and regulations; cause the approval of the strategic plan of the authority; making consultation with relevant persons on issues fall under the orbits of policy making; evaluation and inspection on implementation of policies and planes, and provide recommendation for problems therein; perform international obligations and commitments; lead and develop change and modernization ideas; ensure the provision of a transparent, an equitable and efficient tax

¹⁴²The Establishment Proclamation of ERCA, cited above at 67, Art 8 (1) and (2) (a) Cum. Art.6

¹⁴³Ibid, Art. 8 (3)

¹⁴⁴ This statement should not be conceived as a move to ignore the legal personality of ERCA and the Director General to be one of its components. Instead it is to amplify and underscore the basic principle of the law on the manner of tax administration power distribution in ERCA. Ibid, Art. 3 and 7(1) also affirm this idea. There are also some exceptions to this statement, for example the investigators and prosecutors of ERCA have statute based powers and functions, respectively, to investigate and prosecute criminal cases which are committed in violation of tax and customs laws. Id, Art. 16(1)

administration service for the customers; and other related roles.¹⁴⁵ For the head (Director) of the Office of the General Director the instrument has given the role to lead, administer and evaluate works of the office of the General Director and help and facilitate the exercise of power of General Director and implement his/her orders.¹⁴⁶ The instrument has structured the Tax and Costumes Affairs, Strategic and Intelligence Affairs and Communication and Human Resource Affairs Advisors who are supposed to provide advice to the General Director on policy development and different decisions that concern the General Director.¹⁴⁷

The establishment proclamation has contemplated the organization of the Deputy Director Generals posts in ERCA which are below the office of the General Director and accountable to the General Director.¹⁴⁸ In response to this legislative stipulation, the organizational structure instrument has inaugurated five Deputy General Directors who are mandated to lead five Work Sectors in ERCA which individually have the following roles and functions.¹⁴⁹

The Branch Offices Coordination and Support Work Sector has provided with the role and function to lead, support, evaluate the day to day functions of the branch offices of ERCA; ensure uniform implementation policies, laws, and work procedures in all branch offices of ERCA; employ facilitation work for customers.¹⁵⁰ The role of this work sector seems very wide, because it is in charge to control the operation of the branch offices of ERCA throughout the corner of Ethiopia.¹⁵¹

The Law Enforcement Work Sector is mandated to establish the system of intelligence; investigation and prosecution for administration of tax crimes and at the same time implement the result; bring criminal charges before the court and follow its execution; and give decision and

¹⁴⁵The Organizational Structure Instrument of ERCA, cited above at 110, 56

¹⁴⁶Ibid, 36

¹⁴⁷Id, 37

¹⁴⁸The Establishment Proclamation of ERCA, cited above at 67, Art.9

¹⁴⁹The Five Work Sectors of ERCA are the Law Enforcement Work Sectors, the Operation Program Design and Development Work Sectors, the Branch Offices Coordination and Support Work Sectors, the Corporate Works Sector; and the Change and Modernization Work Sectors. The organizational structure instrument of ERCA, cited above at 110, 37- 42

¹⁵⁰Ibid, 37

¹⁵¹Id

announce the implementation to branch offices on issues which are beyond their decision making power and perform other law enforcement roles.¹⁵²

The Corporate Works Sector is mandated to enhance the access, use and security of information technology; establish the system of evaluation and inspection and cause their implementation; establish the resource administration system of the organ and evaluate and ensure its effectiveness; develop the system of information and risk management, implement and evaluate the same; and other related tasks..¹⁵³

The Operation Program Design and Development Works Sector have provided with roles such as to develop and reform national policy on tax ; develop and draft law in cooperation with law enforcement works sector; work on the development and design of work system of the authority to make it compatible with international tax system; develop the system of voluntary compliance and self-assessment model; work on the establishment of new tax centers for the promotion of tax administration accessibility and efficiency; ensure the quality of tax assessment and collection, tax audit; and cause the development and research of other work systems.¹⁵⁴

The Change and Modernization Works sector is mandated to conduct applied research, develop change and modernization policies and strategies of the organ, and develop project proposals on the same; follow up the implementation of treaties signed by the authority; develop human resource development system that enable the authority to build an organizational structure of the authority enabling for the creation of strong developmental human resource; develop taxpayers education policy and strategy and non-formal curriculum and enhance the capacity of the training center (institute) of the tax authority and other related roles.¹⁵⁵

The Directorates¹⁵⁶ of ERCA are the lower units at head office level which are in charge to ensure the implementation of the decisions and directions given from the General Director and Deputy

¹⁵²Id, 39

¹⁵³Id, 40

¹⁵⁴Id, 41

¹⁵⁵Id, 42

¹⁵⁶ The Directorates of ERCA are: Investment Support and Inspection Directorate, Operation Program Design and Development Directorate, Tax Collection and Operation Program Development Directorate, Tax Audit Operational Program Development Directorate, Tax Law Compliance and Risk Operation Program Directorate, Branch Office

General Directors, based on their specialization and mandate.¹⁵⁷ The Directorates and respective Directors are made directly accountable to the Deputy General Directors of the Five Work Sectors within which their directorate belongs. Besides, these Directors and Deputy General Director are made under direct supervision and leadership of the General Director. There are also few Directorates of ERCA which are organized independently of the five Work Sectors and have direct accountability relations with the General Director.¹⁵⁸

The legal framework which establishes the internal structure and defines the roles of the head office of ERCA failed to provide clear tax administration role and responsibility to the units and tax officials of the head office. Because, the role of the Five Work Sectors (and their respective Directorates) under the legal framework seem limited on policy, strategy, work process design and reform, human resource development, technical support, evaluation and inspection of branch offices. Ironically, there are some indicators under the legal framework which open room for Branch Office Facilitation and Support, and Law Enforcement Work Sector of ERCA to involve on operational aspects of tax administration- which is in principle the mandates of the branch offices. Accordingly, the legal framework has empowered the former Work Sector to lead and administer the day to day functions of branch offices, and the latter operate directly on the tax offences investigation and prosecution.

Generally, the Work Sectors and the Directorates of ERCA are also expected, under the legal framework, to exercise their respective role based on a directive provided by the General Director.¹⁵⁹ This stipulation in turn allows the General Director to have wide involvement on the decisions of Work Sectors and Directorates as well as the branch offices operations. There is no clear stipulation under the legal framework that unconditionally limits the involvement of the

Facilitation and Support Directorate, Domestic Tax Branch Office Facilitation and Support Directorate, Revenue Accounting administration Directorate, Customer Service Directorate, Law Enforcement Directorate, Intelligence Directorate, Criminal Investigation Directorate, Prosecution Directorate, Corporate Works Directorate, Information Technology Works Management Directorate, Planning and Implementation Inspection Directorate, Tax Information Administration Directorate and Financial Administration Bureau. Id, 42-55

¹⁵⁷Since the above attempts made to enumerate the roles of the Five Work Sectors of ERCA generally serve as guidance, it is needless to enumerate and explain the specific role of each Directorate. Besides, it is also possible to infer the scope of their role from the name provided for each Directorate.

¹⁵⁸These are the Internal Audit Directorate, Ethics Inspection Directorates and Women's Affair Directorate of ERCA. The organizational instrument of ERCA, cited above at 110, 42

¹⁵⁹The Establishment Proclamation of ERCA, cited above at 67, Art 9

General Director and gives operational autonomy the staff of the head office. Thus, the legal framework has created centralized and uncontrollable power relations within the head office of ERCA. What is the response of the legal framework providing the role of the branch offices of ERCA?

3.4.1.2. The Role of Branch Offices of ERCA under the Legal Framework

The establishment proclamation OF ERCA has given bold attention on the establishment of tax administration organ at Head Office, and failed to reflect certainty as to the establishment of Branch Offices.¹⁶⁰ Besides, the presence of legislative stipulation to provide all inclusive tax administration powers to the General Director of ERCA and the absence of corresponding stipulation on the Branch offices portray the same uncertainty.¹⁶¹ Apart from this legislative indifference, the core issue is how far the remaining parts of the legal framework attempted to provide clear and predictable tax administration role to Branch offices of ERCA.

In principle, the organizational structure document of ERCA seems interested to limit the role of the Head Office on policy, strategy, work process design and reform, human resource development, technical support, evaluation and inspection of branch offices; and it provides operational aspects of tax administration for the branch offices.¹⁶² Ironically, the instrument has opened room for the involvement of the head office on operational aspects of tax administration. This can be inferred from the organizational structure document which has provided roles to the Branch Office Facilitation and Support and the Law Enforcement Works Sectors, respectively, to lead and administer branch office's day to day function and direct involvement on investigation and prosecution of tax offences. In sum the legal framework extends the tax administration spaces to the head office and limits the operational independence of branch offices.

¹⁶⁰Ibid, Art 4

¹⁶¹Id, Art. 4 Cum. Art 7, 8 and 9

¹⁶²The Organizational Structure Instrument of ERCA, cited above at 130, 36 and 63

The stipulation made under the organizational structure document on the need of establishing direct work relations between Work Process Units of Branch offices and Head Office counterparts (directorates) also likely open room for the involvement of the latter on operational tax administration task.¹⁶³This in turn negatively influences the scope and the stability (predictability) of the branch offices tax administration decision making roles thereby lowers their accountability.

The attempts made to enumerate some of the aspects of the work relations between the head and branch offices such as information exchange, technical support, and work procedure may give clue on the presence legal contemplations to limit the involvement of the head office on branch offices operational tasks, but not bold and unconditional.¹⁶⁴ Because, stipulations that require the branch offices to undertake their tasks based on the directives to be issued from the head office also put in question the operational autonomy of the former; even if this is dependent on the contents and frequency of such directives.¹⁶⁵ However, if the content of the directive is general cannot be considered as head office intervention on day to day functions of the branch offices.

There are also some stipulations under the legal framework which allow the head office to units undertake some tasks which sought to be implemented in the branch office. Accordingly, both the planning and implementation of tasks namely the Intelligence, the Information Technology and the Internal Audit fall under direct control of the respective units (directorates) of the head office. According to the legal framework the branch office tax officials and employees who involve on these three tasks retain relations with the Branch Manager on resource utilization and reporting issues only.¹⁶⁶

Thus, the areas of the legal framework which determine the division of the tax administration role between the Head and the Branch offices of ERCA lacks clarity and provides for the concentration of power in the head offices. This is because, first, there is no clear picture from the organizational structure document that provides independent tax administration space to the

¹⁶³Ibid, 64

¹⁶⁴Id, 74

¹⁶⁵Id, 64

¹⁶⁶Id

branch offices of ERCA and protects them from the intervention of the head office encroachment. Second, there are clear stipulations under the same which are more permissive for the involvement of the Head Office on the operation of the Branch offices via the system of accountability (their accountability to Branch Office Facilitation and Support Work Sector of ERCA); directive giving involvement of the Head Office; the power provided for each Work Sectors and Directorates tax officials and employees in corresponding to branch offices counterparts. Finally, there are provisions under the establishment proclamation of ERCA which provide sweeping powers to head office tax officials such as the General Director and Deputy General Directors and thereby it has failed to provide adequate and independent power for branch offices counterparts.

3.3.2 Division of Roles and Functions in Internal Units of ERCA

Under 3.3.1 the researcher assessed the legal framework on the organizational division tax administration roles between the head and the branch offices of ERCA. In this section an attempt is made to examine the areas of legal framework which set structure and roles to the internal units of ERCA (and thereby tax officers) which are in charge on tax assessment, taxpayer's information administration, and tax offences law enforcement operations. This area is relevant, because dividing large decisions into discrete parts carried out by different tax units and, stipulating clear and separate spheres to them along functional lines is considered paramount to limit the arise of monopoly. Thus, on the following sub-sections an attempt is made by the researcher to examine legal framework that define roles and responsibilities to units of ERCA which are in charge on the tax information administration, the tax assessment, and the tax law enforcement tasks.

3.3.2.1 Tax Assessment

ERCA undertakes two types of tax assessments namely the Pre-Tax Assessment and the Post-Tax Assessment. And for the accomplishment of these two tasks the legal framework has mandated the Tax Assessment and Collection Inspection Work Process, and the Post Tax Assessment (Audit) Processes Units, respectively.¹⁶⁷ On the following two sub-sections the

¹⁶⁷Id, 13

distribution of tax assessment roles and functions within these distinct work process units and the involvement of the tax officials/ employees on each type of the tax assessment decision makings are appraised based on the relevant areas of legal framework.

1. Pre-Tax Assessment

According to the organizational structure manual the Tax Assessment and Collection Inspection Work Process Unit is a front office unit to be organized at the branch offices of ERCA, and empowered to undertake the pre- tax assessment together with the tax collection and inspection tasks. The manual structured four sub- processes units within this work process unit namely the Tax Declaration and Revenue Accounting Unit, the Pre-Tax Assessment Unit, the Undeclared Taxpayers Inspection Unit, the Tax Debt Collection Unit, and the Tax Return Unit.¹⁶⁸ While the manual determining the functional responsibility, the first three of these sub-possess units are charged on the pre-tax assessment.¹⁶⁹ For this reason, the roles and the functional interaction of these three sub units on the accomplishment of the pre-tax assessment task worth further explanation.

The Tax Declaration and Revenue Accounting sub-work process unit is mandated to accept tax declaration forms from taxpayers and make sure the accuracy of the information provided by the taxpayers, encode the result the data base (system) of ERCA, accept tax payments, undertake bank reconciliation on the payments, and send the declaration forms to the pre- assessment sub-unit.¹⁷⁰ The decision making role of this unit on the task of tax assessment is furnishing the declaration forms provided by taxpayers to pre-tax assessment unit so that it doesn't have substantial size on tax assessment, rather on tax collection.

The legal framework has made in charge the Pre-Tax Assessment Sub-Work Process Unit to have monopoly control on the task of the pre- tax assessment. For this reason it is possible to state that the legal framework widens monopoly exertion room for tax officers of ERCA who are in charge in this sub-work process unit. Because, the involvements of other units within the processes unit is not significant and this sub-work process Unit has mandated to involve on the

¹⁶⁸Id

¹⁶⁹Id

¹⁷⁰Id

major decision making steps which are necessary and significantly affect the outcome of pre-tax assessment task such as classifying declaration forms in accordance with their batches, evaluate the match between the declarations and other attached documents with other information, if there is discrepancy summon taxpayer for explanation, and make assessment and notify the result to the taxpayer.¹⁷¹

Similarly the response of the legal framework, while designing the Undeclared Taxpayers Inspection Unit, also opens room for monopoly control of tax officers in charge in this sub-process unit. Because, this unit is mandated to involve on identification, notification, and inspection of taxpayers who failed to declare their tax liability in due time. The unit is also entrusted with the collection of information on taxpayers who have failed to respond to the notice provided. The final role of undertaking tax assessment is vested on this unit.¹⁷²

The legal framework designed two other sub-work processes, within the mother Work Process Unit, namely the Tax Debt Collection Sub- Unit and the Tax Return Sub Unit but nothing is shared to them to function on the pre-tax assessment task. Thus, the response of the legal framework while structuring the units in charge of the pre-tax assessment in ERCA inclined to provide room for the creation of monopoly control to tax officers organized within the Pre- Tax Assessment and Undeclared Taxpayers Inspection Units. In other words it has not attempted to maximize the functional involvement of tax officers of ERCA on the accomplishment of the pre-tax assessment. Thus, the fate of tax assessment in ERCA is dependent on the decision of a tax officer of ERCA

2. Post Tax Assessment

According to the organizational structure document, the Branch offices of ERCA are entrusted to conduct the post-tax assessment (audit). And the legal framework have organized the Tax Audit Sub-Process units therein to undertake tax audit on taxpayers files which are identified and sent from the information and the investigation work process units of ERCA.¹⁷³ For this reason, the

¹⁷¹Id

¹⁷² Id, 14

¹⁷³ ERCA's Unlawful Trade and Tax Evasion Prevention and Control Work Manual , ERCA, Addis Ababa, 2007, 20

commencement of the post-tax assessment tasks in ERCA is dependent on the decisions of the Information and Investigation Processes Units. After such files of the taxpayers are sent to the Tax Audit Process unit, there is no other unit that has functional role on the accomplishments of the tax audit process. Because the legal framework empowers the tax audit unit to undertake the major tax audit decision making functions namely the classification of the taxpayers files on the basis of their priority (risk level), the Preparation of taxpayers files for the audit, the disk and comprehensive audit, and the preparation of the tax assessment notice.¹⁷⁴

Thus, the legal framework has contributed for the creation of wider room for monopoly on the tax audit at the hand of the tax officers of the tax audit process unit. This in turn provides a fertile ground for such tax officials and employees to collude with taxpayers and abuse the tax audit for their privet end. However, the Tax Audit Quality Assurance Directorate of the head office has one important intervention on the task of tax. The legal framework has mandated this directorate to develop the standards the tax assessment and ensure the adherence such standards, and based on its finding follows their implementation.¹⁷⁵ And so this can be considered as the prospects of the legal framework so as to strengthen the accountability of the tax audit undertaken at the branch offices of ERCA. However, the provision of such role to a process unit on the tax assessments decisions of the 19 branch offices of ERCA opens another form of monopoly in the hand of the respective tax officers of the head office.

3.3.2.2 Tax Information Administration

Inaccurate tax information inevitably lead to ineffective tax administration decisions in ERCA such as tax assessment, tax collection, tax law enforcement, and so on. The Tax Record Work Management Sub-Processes¹⁷⁶ and the IT Administration and Development Work Process Units of ERCA have special role on the administration of tax information in ERCA. Since the IT administration task of ERCA is relevant under this study, on the following paragraph the

¹⁷⁴ The Organizational Structure Instrument Of ERCA, cited above at 110, 26

¹⁷⁵ Ibid, 27

¹⁷⁶ This Unit is mandated to accept issues from taxpayers and other persons, transfer (distribute)the same to concerned work process, accept finished tasks after making sure their fullness, register, organize, administer and support such information with system the files of taxpayers. Id, 18

researcher has attempted to appraise legal framework that provides for the internal division of roles to units which are in charge on information technology administration in ERCA.

The legal framework empowered the IT Administration and Development Work Process unit to undertake all activities of ERCA in relation to technology based information administration. Accordingly, the unit is mandated to establish and implement the IT system, develop and implement IT data base and administer the server of ERCA. Such concentration role also creates the opportunity of a monopoly control in the hand of the tax officers of the work process unit and widens room for the abuse tax information for tax officer privet end.

Thus, to limit the possible arise of monopoly in the unit it is important to bisect the major roles of this process unit in to two different units. On one hand it is important to in charge a unit to develop (establish) the IT system and data base of ERCA. This in turn elevate specialization on this task which also includes the task of designing system which make commission of the tax corruption on tax information administration harder and easily detectable. On the other hand it is important to provide the role of IT system implementation and administration of the server of ERCA to another unit. This in turn enhances specialization on the collection, organization, and protection of taxpayers' information and thereby tax information administration accountability.

3.3.2.3 Tax Law Enforcement

The administration of tax law enforcement in ERCA mainly concern Sub-Work Process Units such as the Intelligence, Investigation and Prosecution. These Units, respectively, are mandated to collect and analyze information as to taxpayers' unlawful transactions and transfer the result for concerned unit, conduct criminal investigation in relation to tax offences, and frame and follow criminal charge on taxpayers. For the commencement of these tasks legal framework supports top- down decision by allowing the higher tax officials of ERCA to provide directive.¹⁷⁷ This is one signal for the creation of monopoly control at the hand of those tax officials and thereby opens room for them to make the law enforcement process non-operational on certain tax

¹⁷⁷ The commencement of the information collection task of the intelligence unit presupposes the directives of higher officials that shows the area of interest; the commencement of investigation also dependent up on the direction of higher officials; by the same token the decision of higher officials is also necessary for the prosecutors to press charge. See, ERCA's Law Enforcement Work Manual, cited above at 173, 6, 29, and 33, respectively concern the Intelligence, Investigation and Prosecution Work Processes Units.

payers or groups under the guise of tax corruption. Additionally, the provision of power to issue directives and supervise the operation of branch offices on this task to the Law Enforcement Work Sector widens the opportunity of monopoly control for tax officials head this work sector and respective directorates. This in turn opens wide door to such tax officials to abuse the tax offence law enforcement decision to commit tax corruption. Apart from the above responses made under the legal framework it is necessary to question further its place on the creation of another kind of monopoly to tax officers inside tax law enforcement work process units. Thus, the following parts are devoted to appraise legal framework which define and distribute law enforcement roles to the intelligence, the investigation and prosecution work processes units of ERCA.

1. Tax Intelligence in ERCA

Under legal framework, Tax Intelligence Unit of ERCA has the role to collect, identify, organize and analyze information revolves around of taxpayers transaction that also serve as the source of information as to the commission of tax offences.¹⁷⁸ For this reason it is possible to assume the commencement of the administration of tax offences is dependent on the decision of this work process. This does not mean that there are no other sources of information which may serve as source of information as to the commission of tax offences in ERCA.¹⁷⁹ However, the intelligence unit has both organizational specialization and responsibility on information collection, analysis and organization in ERCA. Besides, the legal framework clearly stipulated the commencement of tax offence investigation in ERCA to be partly dependent on the transfer of information from the intelligence work process.

The legal framework mandated the Intelligence Work Process Units to involve on identification and organizations of sources of information, analyzing the same, and determination and registration of their risk level and dissemination for concerned work processes. Provision of each of these roles to a single unit under the legal framework *per se* give signal on the exposition of the intelligence task for monopoly control at the hands of tax officers organized therein. This in

¹⁷⁸ Ibid, 48 and 70

¹⁷⁹ For example the findings of post audit may discover the commission of tax evasion, the pre-tax assessment process may reveal the presence of false declaration and the use of false/forged receipts, the IT system may show the issuance of more than one TIN for a taxpayer, and so on.

turn gives fertile ground for easily abuse both the operation and outcome of intelligence task for the commission of tax corruption. Additionally, the need of keeping in secrete the process of the intelligence task also make difficult the detection of tax corruption and enable taxpayers escape criminal liability thereby pursue their tax offence commission endeavors.

2. Tax Offence Investigation and Prosecution in ERCA

The legal framework has structured Investigation Work Process Unit for the task of investigation of tax offences. The unit has provided the role of investigate whether there is reason or not to press criminal charge on taxpayers and thereby either transfer the case for prosecutors or close the file. There is no division of role contemplated under the legal framework so as to functionally distribute the task of investigation among sub units which may take a part individually to make preliminary investigation, investigation and follow the adherences of procedural and substantive laws and standards and others. Instead it has made the tasks to be finished within a single unit so that opens room for the possible fall of the task under monopoly control of tax officers therein. This in turn gives them an opportunity to abuse the process of investigation for the commission of tax corruption and affect the electiveness of tax law enforcement.

The legal framework has structured the Prosecution Work Process is responsible to give decisions on files conveyed from the investigation work process unit. The major roles of the unit in relation to criminal prosecution are decide the provision of law on which the act of taxpayer fall, press criminal charges, follow the case before the court, remand the file for further investigation, and close the files in case there is reason to charge. There is no attempt made under the legal framework to distribute functionally among sub-units these tasks so that the prosecution work process unit has given dominant role in this respect. It is totally failed to distribute to individual sub-units the role to make preliminary assessment so as to identify the dimension of the case at hand, preparation of criminal charges at office level, follow the criminal cases before the court, and evaluation of the process of prosecution and its outcome including the adherences of procedural and substantive laws. This in turn opens room for the creation of monopoly to tax officers of the unit and thereby gives them an opportunity to abuse the process of investigation for the commission of the tax corruption and affect the electiveness of tax law enforcement

3.4. Internal Audit and Anticorruption Investigation under Legal Framework

To combat tax corruption, granting of the relevant types of autonomy to tax administration organs, should be accompanied by an effective internal audit and anticorruption investigation systems.¹⁸⁰ Therefore, the researcher has attempted to examine the relevant areas of legal framework that determines the features of the units of ERCA that are responsible to conduct internal audit and anticorruption investigation. And the core questions are the following. Does the legal framework established internal units which are responsible to make periodic investigations for detecting tax corruption, and facilitate the provision of sanction on tax corruption allegations in ERCA? Does the legal framework have provided adequate guarantee of independence on the operation of the tax officers of ERCA who shoulder internal audit and anticorruption investigation?

Internal Audit and Ethics Inspection Units are the responsible units to undertake investigation on detection of tax corruption and facilitate the provision of sanction on tax corruption allegations in ERCA, respectively. For this reason the researcher has attempted to explore the responsiveness of the legal framework, which determine the features these units in ERCA, to combat the tax corruption. The degree of independence given for such units within the internal structure of ERCA is one important issue worth discussion, in light of the legal framework. To this end the following two sections are devoted to examine the relevant areas of the legal framework that determine the features of the Internal Audit and the Ethical Inspection Units in ERCA.

3.4.1. Organizational Features of ERCA for Tax Corruption Detection

Establishment of a unit specifically responsible to undertake internal investigation to detect corruption in tax administration organs considered important to combat tax corruption.¹⁸¹ This kind of specialization is important to enhance the probability the tax corruption detection in tax administration organs. The legal framework has not yet established units which have special responsibility to conduct periodic investigation for the purpose of detection of the tax corruption (corruption in general) in ERCA. In this connection, it has given the Internal Audit Work Process

¹⁸⁰ Arthur J.Mann, cited above at 62, 7.

¹⁸¹ Mahesh C. Purohit, cited above at 16, 294

Unit the role to check the quality and the efficiency of service delivery, procedures, and performance, compliance, finance, and information technology in ERCA's.¹⁸² This contemplation of the legal framework is one indicative undertaking investigation for the purpose of detection of tax corruption in ERCA one important and additional activity (task) of the Internal Audit Unit. In addition to this, the Internal Audit work manual clearly stated undertaking of investigation to guarantee the adherence (compliance) of legal and ethical standards on tax collection, tax audit and information technology in ERCA, in other words the responsibility of tax corruption detection, to be the role of this unit.¹⁸³

The establishment of internal audit unit in ERCA, under the legal framework, testifies its inclination to fulfill minimum standard necessary for strengthening tax administration accountability thereby for effectively combating tax corruption. However, the indifference reflected under the legal framework to create specialization on the task of tax corruption detection (corruption in general) in ERCA is one limitation. Because, the internal audit unit is mandated to ensure the effectiveness and efficiency of the tax administration under ERCA. This wide role in turn makes the unit not concentrate and specialize on the detection of tax corruption. Besides, there is no attempt made under the tax administration legal framework to structure a sub-work process unit within the Internal Audit Work Process Unit of ERCA which is specifically mandated to deal on the issue at stake.

The independence of the internal audit unit is another important aspect for combating tax corruption effectively. The provision of independence to the unit enabling to contain the interference of other tax officers of ERCA on the operation of tax corruption detection is important. In this respect, the establishment proclamation of ERCA does not made explicit stipulation. However, the imposition of obligation on ERCA to establish accountable and transparent tax administration on the part of law is self-explanatory on the need to establish watch dog units that are structurally independent from other units of ERCA.¹⁸⁴ This is legislative

¹⁸² Ministry Of Revenue, Work Manual of Audit Inspection, Addis Ababa, 2007, 14 – 19, 25 and 26

¹⁸³ The Audit and Inspection Manual, cited above at 182

¹⁸⁴ The Establishment Proclamation of ERCA, cited above at 67, Art. 6 (2)

direction to ERCA, to structure independent unit that works for the promotion of accountable and transparent tax administration in the organization.¹⁸⁵

The organizational structure instrument of ERCA has established internal audit units in its head and branch offices with relative structural independence. Accordingly, at head office level it is made accountable to the Director General and its branch office counterparts expect supervision and have accountability with the internal audit directorate of the head office.¹⁸⁶ For this reason the planning and operation of the internal audit under the control of tax officials /employees who are organized within the Office of General Director. Obviously, this put in doubt the independence and thereby effectiveness of internal audits activities of ERCA on decisions that concern tax officials/employees of the Office of General Director or others who have good attachment with them. Thus, the legal framework is not interested to structure the Internal Audit unit to reach at independent determination on how, what, where and when to conduct tax corruption sensitive investigations in ERCA.

The presence of enabling legal framework that safeguards the Internal Audit Unit to acquire timely, full, and unrestricted information from each tax administration units is profound for the purpose of detecting tax corruption effectively. Under the legal framework there are no clear protections which have specific objective to oblige other tax officials/employees of ERCA to access timely and full information to the internal audit units that is helpful for effective detection of tax corruption. In absence of these kinds of protection under the legal framework, it will be difficult to expect fruitful result from the functioning of the internal audit on the task of detection of tax corruption.

Additionally, the introduction penalty system for the internal audit officer's failure to reach at detection of tax corrupt deviations and positive reward for their achievement also create more accountable and effective internal investigation thereby helpful for combating tax corruption. There is no stipulation that provides for reward and impose penalty on tax officers of the internal audit for their achievements and failures to detect tax corruption, respectively.

¹⁸⁵ This should be read with the mandate of ERCA to determine appropriate organizational structure for its effective operation under the legal framework.

¹⁸⁶The organizational structure instrument of ERCA, cited above at 110, 42 and P-74

Thus, mere provision of mandate to the unit of ERCA which expected to involve on internal investigation to detect tax corruption, without corresponding enabling procedures and protections that enhance the free flow/acquisition of timely information cannot be expected to enhance the effectiveness of the internal audit of ERCA. The presence of different tasks with special administrative processes and tax corruption commission opportunities in ERCA dictates the need to impose individual obligation on the existing tax units (thereby tax officers) to cooperate the internal audit units on provision of information fully and timely.

3.4.2. Organizational Features of ERCA for Tax Corruption Allegation Investigation

Article 4 of COM Regulation NO 144/2008 has stipulated the establishment of ethics lesions in each of the federal executive organ mandatory.¹⁸⁷ It also stated that such lesions should be organized, both at head and branch offices, by being directly accountable to the head of the respective offices. The role the ethics lesions in relation to investigation of corruption offences are receive and verify reports on ethical violations, in accordance with the rules and directives of the respective office, and submit to the head of the organ recommendations. However, these unites do not have the jurisdiction to conduct full-fledged criminal investigation for the purpose of prosecution. Because, the FEACC has statutory power to investigate and cause the investigation of corruption offences committed in the federal government offices, including ERCA.¹⁸⁸ The law has also imposed on such units the duty to report the commission of corruption to the FEACC and facilitate and support the process of investigation, by the latter.¹⁸⁹ Thus, the ethics inspection units are mandated to ensure the investigation and exposition of perpetrators of corruption in public offices.

The above stipulations of the anti-corruption law as to the Ethics Lesion Unit's mandatory establishment, accountability, power and functions in public offices of the federal government are important godliness for ERCA up on it determine the anti-corruption investigation system of the authority both at the head and the branch offices. On the following paragraphs attempts are

¹⁸⁷Council of Ministers Regulation the Functioning of Ethics Liaison Units, Regulation No. 144/2008, *Federal Negarit Gaztta* 14th No. 12, Art. 4

¹⁸⁸The Establishment Proclamation of the Federal Ethics and Anti-Corruption Commission, Proclamation NO 235/2001, *Fedral Negarit Gazeta*, 7th Year, NO. 23, Art.7(4)

¹⁸⁹Regulation for the Functioning of Ethics Liaison Units, cited above at 187, Art 7(6,8,9, 16,17,18)

made to appraise of the legal framework the federal tax administration, which establishes the units of ERCA that undertake investigation of tax corruption allegations, particularly their planning and operational independence, and power under the same.

Under ERCA Ethics Inspection Directorate/ units at its head and branch offices, respectively, are in charge of undertaking investigations of alleged or suspected tax corruption cases, in which the commencement of this task presuppose tax corruption allegation information addressed from different persons/organs both inside and outside ERCA. According to the organizational structure manual of ERCA Ethics Inspection Directorate is organized by being directly accountable to the office of the General Director, so that its planning, reporting, supervision and evaluation of the tasks at head office level expected to be implemented in relation to the Office of the General Director.¹⁹⁰ At branch office level the unit is established by having accountability relation with the Branch office Manager but independent from tax officials and employees of other units. In both cases the response of the legal framework on the issue of accountability of Ethics Inspection Directorate/ units is amenable with the anti-corruption law of the federal government.¹⁹¹

The response of the legal framework while structuring the Ethics Inspection unit within the Office of the General Director and Branch Manager at head and branch offices, respectively, put in doubt their independence. This doubt is bold particularly how this unit undertakes effective investigation on a tax corruption allegations made against such top tax officials (individually or in chain) of ERCA. To tackle this kind of scenarios law has clearly imposed obligation on the General Director and Branch Managers of ERCA to support the operation of the ethics inspection units and abstain from negatively affecting any investigation process.¹⁹² There is also additional safeguard under law which allows the Ethics Inspection Units of ERCA to communicate the FEACC in case other tax officials exert undue influence on to abuse the investigation.

¹⁹⁰ The organizational structure manual of ERCA, cited above at 110, 42

¹⁹¹ The Regulation for the Functioning of Ethics Liaison Units, cited above at 187, Art.6 (1) and (2)

¹⁹² Ibid, Art 9(3) and (5)

Chapter Four

Conclusions and Recommendations

4.1. Conclusion

In Ethiopia, tax administration organs are the ranked public sectors in terms of their exposure for corruption. To combat this problem, tax corruption, legal framework which underpins the operation of tax administration plays promising role. Tax administration legal framework generally encompasses rules that govern the different aspects of tax administration, and on the other hand there are different types of tax corruption. Thus, it found reasonable to operationalize the two multidimensional terms- tax corruption and tax administration legal framework- for the purpose of analysis and recommendation in this study.

Eventually, the term tax corruption is operationalized as ‘the corrupt doing of tax officers of ERCA in collusion with business income taxpayers up on tax assessment, tax information administration, and tax law enforcement decisions. On the other hand, tax administration legal framework represents areas and provisions which determine the extent of ERCA’s autonomy, provides the roles to the head and branch offices of ERCA, establishes the design of ERCA’s internal structure for the purpose of tax assessment, tax information administration and tax offences enforcement tasks, and establishes the units of ERCA that are in charge to detect and investigate tax corruption. The analysis has revealed the following opportunities and challenges which arise from the legal framework to combat tax corruption.

First, the extent of ERCA’s autonomy under the legal framework reflects both opportunities and challenges to combat tax corruption. In this regard the following findings are unraveled by the researcher.

- ✓ The legal framework has given adequate personnel autonomy to ERCA which are enabling to introduce the following tactics and strategies which have invaluable contribution to combat tax corruption. First, the legal framework gives ERCA the autonomy to introduce salary and other form of payment based incentive for its staffs. This is important incentive for the staff not to participate on corruption to supplement

their income. The stipulation of special hiring, promotion, and firing powers also boosts the capacity ERCA to overcome tax corrupt behaviors and manage its personnel effectively. The presence of clear legal underpinnings which ensure staff transfer and rotation also important to limit possibility of long contact between taxpayers and tax officers of a particular office or post.

- ✓ The legal framework has provided institutional autonomy to ERCA, from MOFED, on administration of federal tax. That in turn would widen the opportunity of creating professional behavior on the federal tax administration. Consequently, such autonomy makes easy internal monitoring and control system and hence contributes for the promotion of accountability and integrity in ERCA. In sum, the legal framework which provides institutional autonomy to ERCA from MOFED can be taken as a good opportunity for combating tax corruption.
- ✓ The legal framework has failed to provide ERCA financial (budgetary) autonomy which is one limitation, so as to enhance operational capacity of ERCA on tax administration including its internal control and monitoring.
- ✓ The examinations made on the extent of ERCA's autonomy on tax administration operations under the legal framework it is found that the HPR, the COM, and the MOFED are organs of the federal government which have involvement on the formulation of operational plan for ERCA's tax administration. But the involvement of ERCA on formulation of operational plan is significant under the legal framework. Besides, ERCA has given clear autonomy on tax information administration, tax assessment, and tax offences prosecution operations under legal framework which is enabling to combat the tax corruption.

Second, the researcher has appraised on the legal framework to understand its position to limit (minimize) monopoly and enhance accountability of tax administration in ERCA. The core questions raised by the researcher were the presence of clear cut demarcation of roles between the head and branch offices of ERCA, and the commitments made to maximize the involvement of tax officers of different units, under the legal framework. In this regard, the findings of the researcher are the following.

- ✓ The legal framework has generally mandated the Head Office on the formulation of strategic plan and policy, monitoring and control, and issuance of operational and organizational structure instruments. On the other hand the legal framework has provided role to the branch offices to involve on the operational aspects of tax administration. Ironically, the same instrument has opened rooms for the interferences of the head offices of ERCA on the operational aspects of tax administration. There is also no clear picture under the legal framework that provides independent role for branch offices to involve on operational aspects of tax administration. Generally the findings of the researcher reveal that the legal framework has inclination for the creation of centralized tax administration in ERCA. And this inclination is not helpful to enhance accountability and thereby to combat the tax corruption in ERCA.
- ✓ As to the power division inside the head office of ERCA the appraisal of the legal framework revealed the stipulation that meant to provide monopolistic role to the General Director on the operation of the tax officials and employees within the Work Sectors. There is no stipulation under the legal framework that limits the involvement of the General Director and thereby to give guarantee operational autonomy tax employees of the head office. Thus, the legal framework on the power relations of staffs at the head office of ERCA bends towards centralization, top-down and against checks and balance.
- ✓ With regard to the relationship between the branch offices and head offices there are also provisions under the legal framework which imply both intervention and monopoly control of the head offices. The roles of the Branch Office Facilitation and Support Work Sector and Branch Office Facilitation and Support Directorate under the legal framework on the inspection, leadership, and monitoring of the existing 19 branch offices is *prima facie* evidence for these. There is also provision under the legal framework that oblige the work processes units of branch office to perform their task based on the directions of the head office counterparts. Generally, the legal framework does not give adequate guarantee autonomous roles for the branch offices. Instead it has introduced top down management approach and centralization at the hands of Head Office tax officials in different degree.

- ✓ The legal framework which sets the internal structure of ERCA has not attempted to minimize the possible arise of monopoly up on tax assessment, taxpayer's information and tax offences law enforcement tasks of ERCA. The legal framework has established for the administration this tasks within a single process units, even if there administration involve different procedures and steps which would be distributed among one more other units. Thus, the legal framework is comfortable to create monopoly to tax officers who are in charge of tax assessment, tax offence investigation, intelligence, prosecution in their respective units.

Finally, the appraisal related to the legal framework that determines the systems of detection and sanction in ERCA for the tax corruption has revealed both prospects and limitations to combat tax corruption. These include:

- ✓ The Internal Audit and Ethics Inspection Directorates (teams at branch office level) are the units of ERCA which are in charge for detection and investigation of tax corruption, respectively under the legal framework. These unites are organized by having direct accountability relationship with the General Director and thereby made independent from the other units of ERCA. This in turn makes them to plan, implement and thereby report their tax corruption detection and sanction functions based on the direction given from the office of the General Director. The researcher has appreciated the relative structural independence of these unites under the legal framework. However, the absence of stipulations under the legal framework that contain the possible influences may be exerted from the Office of the General Director on the decision makings process of these units can be one limitation on their independence and thereby effectiveness.
- ✓ The legal framework has not established special unit in ERCA that shoulders the responsibility of conducting periodic investigation for the detection of tax corruption (corruption in general). It has given this mandate to the internal audit process unit which has also wide mandates in relation to ensuring the effectiveness and efficiency of tax administration in ERCA. At worse the legal framework has not structured sub- unit within the internal audit work process unit which specifically shoulder the task of periodic investigation so as to detect tax corruption. This is found to be one challenge, of

the legal framework, on creation of specialization and professionalization on the task and thereby the endeavor of combating the problem in ERCA.

4.2. Recommendations

The researcher provides the following recommendations which are expected to enhance further the opportunities and cure the challenges of the federal tax administration legal framework to combat the tax corruption in ERCA.

- ❖ It is essential to reduce the provisions of the federal tax administration legal framework into one comprehensive and coherent piece of legislation and clearly determine the principles and objectives of tax information administration, tax assessment and tax law enforcement tasks.
- ❖ The legal framework should provide financial autonomy that is enabling ERCA allocate adequate budget for effective tax administration operations, including internal audit and anti-corruption and ethics inspection. This need to assess the extent of additional finance or to set the amount of share to necessary for ERCA to undertake effective and efficient performance, including internal monitoring and control system.
- ❖ It is essential to maximize the number of internal units and thereby tax officers of ERCA which /who operate on tax assessment task. To that end, it is important to review the legal framework in the following manner.
 - ✓ The Pre-Tax Assessment Unit should be provided to two independent units, one with the role to classify declaration forms based on their batches and evaluate the match between information provided on such forms and other attached documents, and another unit that have the role to further investigate the reason of the mismatch and conduct pre-tax assessment.
 - ✓ The Undeclared Taxpayers Inspection Unit should be provided to two independent units, one with the role to identify, notify and inspect those undeclared taxpayers in due time, and another unit that have the role to collect and organize information on those taxpayers who failed to respond to the notice, and conduct pre- tax assessment.

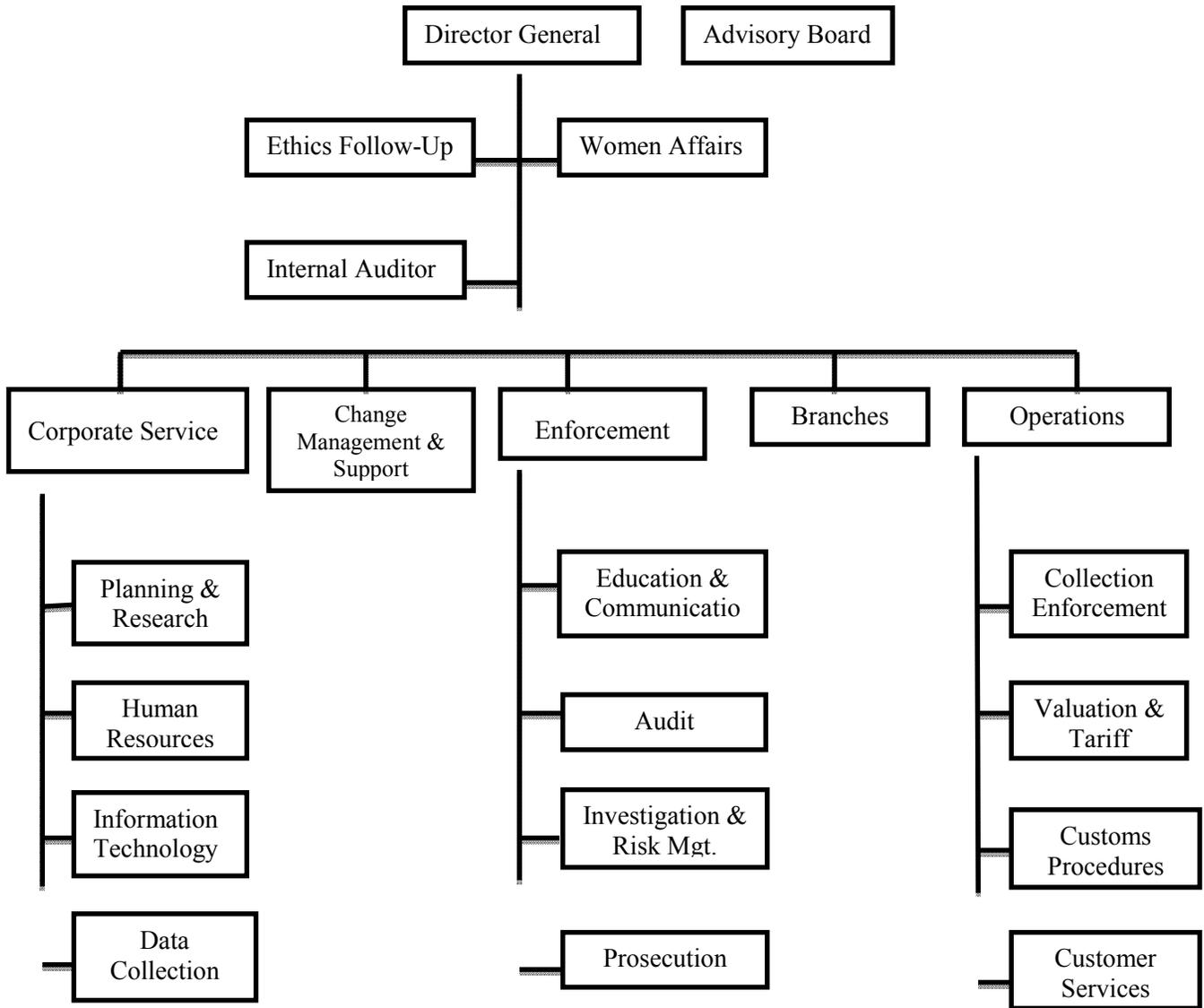
- ✓ The Post-Tax Assessment Sub-Work Process Unit should be provided to two independent units, one with the role to classify the files (issues) on the basis of their priority for assessment and determine their level of risk, prepare taxpayers' files for audit, and another unit that have the role to conduct disk and comprehensive audit, and tax assessment.
- ❖ The legal framework should give adequate guarantee to limit the direct involvement of higher officials of ERCA (such as the General Director, Deputy General Director, Directors, Branch Managers, and others) on the operation of intelligence, investigation of tax offences, and prosecution of tax offences. To that end, it is important to have clear provision that protects the operational autonomy these units (and tasks) and their operation from the influences of higher officials of ERCA.
- ❖ The legal framework should give adequate response to restructure and redistribute the role of tax officials and employees in the intelligence unit. Hence :
 - ✓ The task of general risk assessments on the noncompliance level of taxpayers should be given to independent units which are responsible to provide general information that are helpful for effective planning for intelligence operation.
 - ✓ The operation of the intelligence task should be shared between two units, one that shoulders the collection and organization of information based on a standard that guide the content and scope of information required, and another unit with the role to analyze such information and transfer for the investigation units.
- ❖ The legal framework should provide for the investigation and prosecution work process units the role:
 - ✓ To assess the operations of the intelligence units and the result achieved,
 - ✓ To conduct periodic review and make the necessary amendment on the guidelines which may state the item and standards of information to be collected and organized and the extents of efforts required from the intelligence units.
- ❖ The legal framework should structure new units (posts) which conduct:
 - ✓ Periodic review on the adherence of procedural and substantive laws by the investigation and prosecution work process units.

- ✓ Pre-investigation and pre-prosecution screening to guarantee the predictability of tax crime investigation and prosecution.
- ❖ The legal framework should bisect the roles provided to the IT Administration and Development Work Process Unit. Thus, the role to:
 - ✓ Establish and develop IT system and data base of ERCA should be provided for an independent unit. Because it is important so as to create specialization and thereby elevate the capacity of ERCA in designing, updating and developing effective tax information administration as well as control mechanisms which are responsive for detecting tax corruption and promote the security of tax information in ERCA.
 - ✓ Implement the IT system and administration of the server of ERCA should be provided for to another independent work process unit. This is essential so as to create specialization on utilization of IT on tax administration and on promotion of tax information security and accountability.
- ❖ The legal framework should be reviewed so as to introduce clear and unambiguous demarcation line between the roles and function of the head and the branch offices of ERCA on tax administration. To that end:
 - ✓ The legal framework should unequivocally state the role of the Head Office to be limited on formulation of strategic planning and policy, issuance of directive and evaluate, inspect, and support Branch Offices.
 - ✓ The legal framework should unequivocally state the role of the Branch offices to be involved on operational aspects of tax administration, and which is important to contain the intervention of tax officials and employees of the Head Office.
 - ✓ The use of general and open ended terms under the legal framework, while providing the roles and functions to tax offices and units of ERCA, should be rectified.
 - ✓ To establish and develop predictable and accountable relationships between the Head and Branch offices of ERCA and identify the body which is in charge such relationships. To these ends, the legal framework should introduce clear

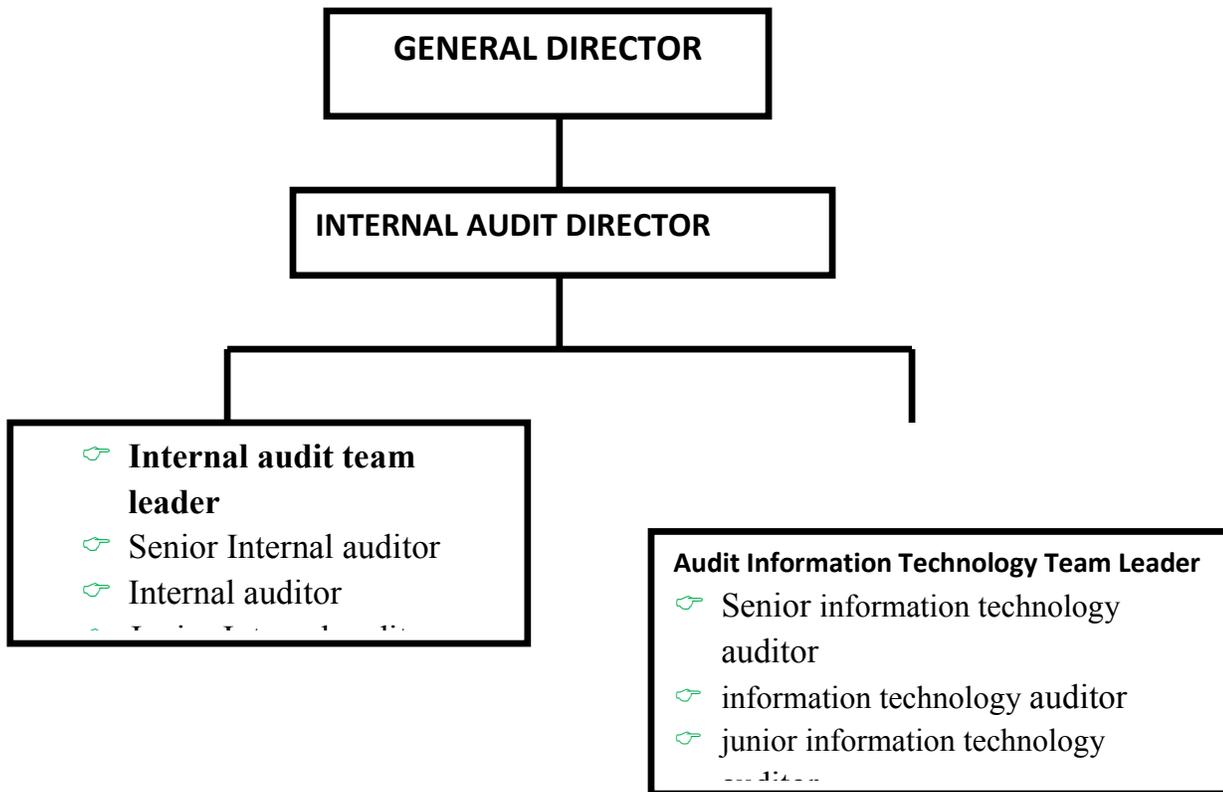
procedural provisions which promote such kind of relationships between the Head and Branch offices of ERCA.

- ❖ The legal framework should be amended to erode and limit the power of the General Director, and thereby provide independent powers and responsibilities to the Deputy General Directors, Branch Managers, and other important positions of ERCA.
- ❖ The legal framework should establish a unit which shoulders the role to conduct periodic investigation (for the purpose of tax corruption detection) on decision making processes of ERCA. Furthermore, to guarantee the effectiveness of such investigation it is essential to insert clear provisions which:
 - ✓ Direct such unit to plan and undertake independent investigation on tax administration decision making processes,
 - ✓ Provide reward to tax officials and employees of the unit based on their achievement on tax corruption detection,
 - ✓ Provide reward to persons who provide tangible information on the commission of tax corruption in ERCA.
- ❖ Finally, since it is good practice to strengthen the accountability of branch offices on tax administration operations the legal framework should further cluster the monitoring and inspection jurisdiction the branch office inspection and evaluation unit of ERCA in terms of branch offices which are mandated to administer tax on specific geographical areas in the FDRE. The presence of clear legal a provision that is enabling to make staff Rotation in ERCA should also strengthen the monitoring and inspection if implemented at least after the introduction such cluster.

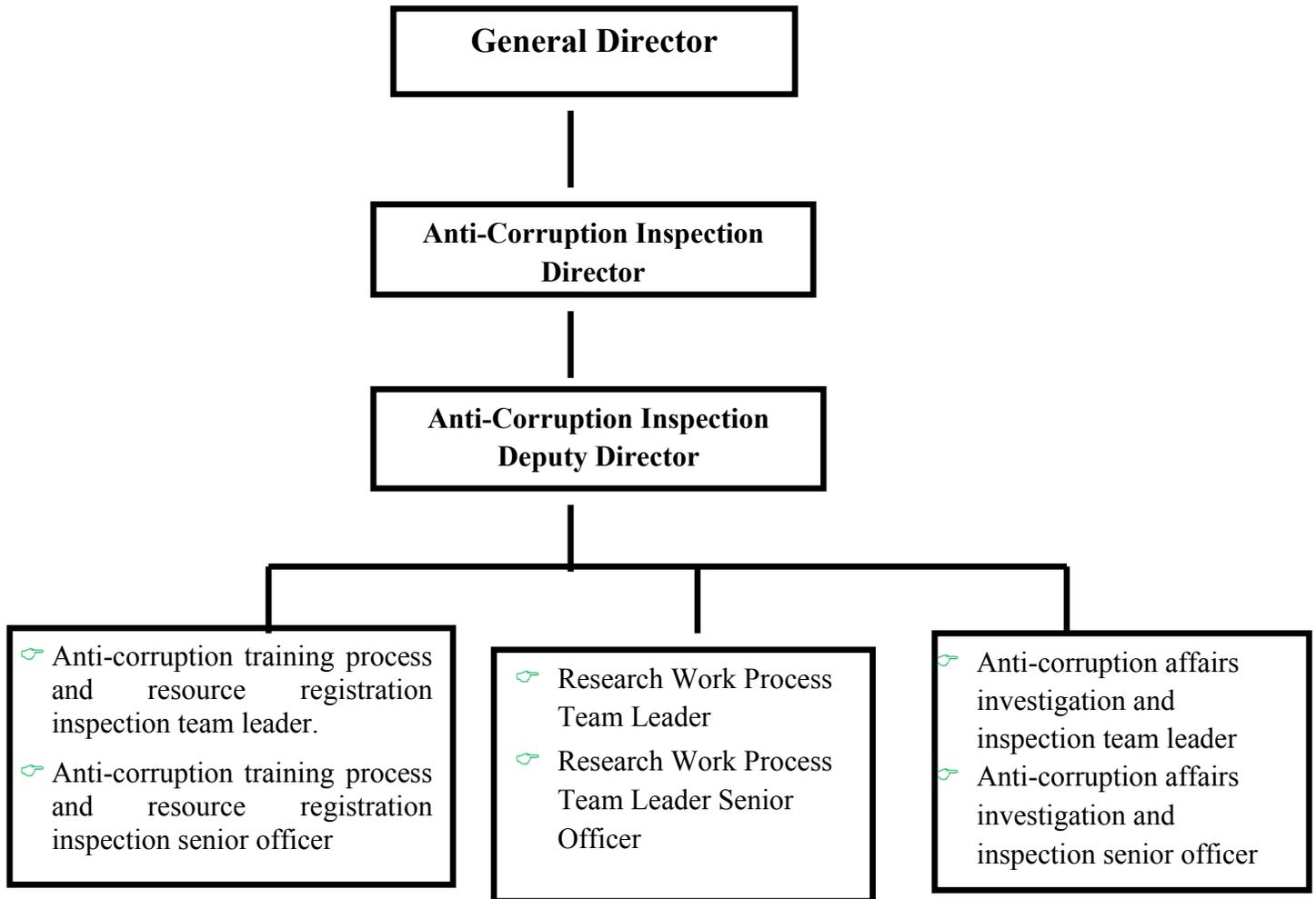
Appendixes



Appendix 01: the Organogram of ERCA



Appendix 02: the organogram of the Internal Audit unit of ERCA



Appendix 03: the organogram of the Anti - Corruption Inspection unit of ERCA

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