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**ADDIS ABABA UNIVERSITY**  
**SCHOOL OF GRADUATE STUDIES**  
**COLLEGE OF LAW AND GOVERNANCE STUDIES**  
**BUSINESS LAW STREAM**

**THE APPLICABILITY OF VAT ON E-COMMERCE IN ETHIOPIA:**  
**CHALLENGES IN LAW AND IN PRACTICE**

**Prepared by; Yohanan Bogale (GSE/8860/13)**

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**A Thesis submitted to Addis Ababa University, the school of Graduate Studies, Faculty of Law in Partial fulfillment of the Requirements for the Degree of Master of Laws (LL.M) in Business law**

**May, 2024**


**ADDIS ABABA, ETHIOPIA**

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**Approved By Board of Examiners**

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**Declaration**

I, the undersigned, declare that the thesis comprises my own work, has not been presented for a degree in any other University and that all sources of materials used are aptly acknowledged.

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Signature \_\_\_\_\_

Addis Ababa University

May, 2024

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Signature  \_\_\_\_\_

May, 2024

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## **Acronyms**

**EU**-European Union

**IMF**-International Monetary Fund

**OECD** – Organization for Economic Cooperation and Development

**PE**- Permanent Establishment

**TAG**- Technical Assistance Group

**UN**- United Nations

**UNCITRAL**- United Nations Commission on International Trade Law

**UNCTD**- United Nations Conference on Trade and Development

**US**- United States

**VAT**- Value Added Tax

**WTO**- World Trade Organization

**DEC**-Direct E-Commerce

**IEC**-Indirect E-Commerce

**OIDAR**- Online Information Database Access and Retrieval

## **Abstract**

*The objective of this study was to evaluate how Ethiopia's present VAT structure is adequate to e-commerce. As such, it examines the potential and shortcomings of the current VAT law, and the latest draft, and the practice, learns from other jurisdictions in this respect, shows international issues and challenges of collection of VAT from e-commerce and ascertains the difficulties encountered and potential difficulties ahead in the deployment of the Ethiopian VAT system on e-commerce.*

*The study used qualitative and doctrinal approaches to properly collect data and address the research objectives. Interviews, a review of literatures and legislative documents has made.*

*The study revealed the inadequacy of the VAT law and the practice to collect VAT from e-commerce, which is mainly caused by the incompatibility between the natures of e-commerce, especially direct e-commerce which is totally technology birthed, and the framing of the VAT laws and administration which is traditional. The presumption of physical PE, goods and services and the unknown status of DP and e-services, the employment of inefficient RCS VAT collection mechanism to B2C transaction in digital products, paper based tax invoice and others are among the main gaps of the current law. However the new draft VAT law which expected to fill the gaps of the current law is vague poorly drafted and does not fill the gap, especially in B2C transaction, which is the critical challenge of collection of VAT from e-commerce. The practice also revealed the absence of technological administration of e-commerce.*

***Keywords: E-commerce, Direct E-Commerce, Ethiopia, VAT, Permanent Establishment***

# CHAPTER ONE

## 1. GENERAL INTRODUCTION

### 1.1. Back Ground of the Research

Tax collection started during ancient world governments through different non-monetary forms.<sup>1</sup> The pharaoh of ancient Egypt during the reign of King Scorpion the First's, in southern Egypt between 3300 and 3200 BC was the first to levy tax, though later, the Greeks were the one to distribute it throughout the world.<sup>2</sup> Taxes are now a mandatory levy placed on either a corporation or an individual citizen.<sup>3</sup> Because “Until someone comes up with a better idea, taxation is the only practical means of raising the revenue to finance government spending on the goods and services that most of us demand,”<sup>4</sup> to care for the mentally and physically impaired, to alleviate poverty, to defend the society against the criminal and the mad.<sup>5</sup> 80% of total revenue of world governments is gained from tax.<sup>6</sup>

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<sup>1</sup> C. CARL PLEHN,, Introduction to Public Finance, 4th ed., Macmillan Company, New York, 1921, at.52-55 (accessed, 10/08/2022)

<sup>2</sup> Samson, W.D. (2002). History of Taxation. In: Lymer, A., Hasseldine, J. (eds) The International Taxation System. Springer, Boston, MA. [https://doi.org/10.1007/978-1-4615-1071-0\\_2](https://doi.org/10.1007/978-1-4615-1071-0_2), at 22 (accessed, 5/20/2023)

<sup>3</sup> Yohannes Mesfin & Sisay Bogale., Tax Law Teaching Material, Prepared Under the Sponsorship of the Justice and Legal System Research Institute, 2009, at 4 (accessed, 2/6/2022)

<sup>4</sup> Richard Jones and Subhajt Basu., ‘Taxation of Electronic Commerce: A Developing Problem’, International Review of Law Computers & Technology, 2002, Vol. 16, No.1, P. 35-52, <http://www.bileta.ac.uk/01papers/rjones.htm> (accessed, 07/18/ 2023)

<sup>5</sup> Supra note 1, at 53.

<sup>6</sup> supra note 4, at 36

VAT is a broad-based indirect tax that applies to a variety of products and services offered by a supplier at each step of the production and distribution process. Since it is based on consumption, it is not dependent on how profitable a business is.<sup>7</sup>

After it has been started in America during the 1920s by the German business man Wilhelm Von Siemens,<sup>8</sup> it is now dispersed in to more than 136 nations and typically makes up one-fifth of all tax revenues.<sup>9</sup>

However E-Commerce (EC) a fascinating world where all different sorts of goods and services are purchased and sold online on a global scale has made things difficult for governments all around the world and traditional commerce in a dynamic and quick manner.<sup>10</sup> “Amazon.com sells tangibles, intangibles, and services worldwide that totaled \$34 billion USD in 2010. At eBay.com more than 97 million active users globally meet to sell and buy online in a total amount of \$62 billion USD in 2010. Global clicks at Google.com contributed substantially to its \$10.5 billion USD revenues in its fourth quarter, fiscal year 2011. In the year 2010 Americans spent around \$173 billion USD shopping online. Global EC turnover is expected to grow to up to \$963 billion USD in 2013. These figures illustrate the importance of EC in the global economy today and tomorrow. The taxation of EC as well is very much an important and difficult issue.”<sup>11</sup>

Existing international tax rules, which were evolved in agricultural and industrial stages of the world,<sup>12</sup> assumes territorial, physical goods and a fixed physical place of transaction are

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<sup>7</sup> Theo Steyn., 'VAT and E-Commerce: Still Looking for Answers' (2010) 22 S Afr Mercantile LJ 230, P. 232 (accessed, 7/19/2023)

<sup>8</sup> Misganaw Gashaw, 'Tax Reform Discourse and Its Implications on Development: Evidence from the VAT Introduction in Ethiopia' (2015) 3 Mekelle U LJ 1, at 28 (accessed, 5/13/2023)

<sup>9</sup> Supra note 7, at 230

<sup>10</sup> Rifat Azam, Global Taxation of Cross Border E-Commerce Income, July 2012, at 648 (accessed, 7/18/2023)

<sup>11</sup> Id, at 639

<sup>12</sup> Ertuğrul AKÇAOĞLİf, International Taxation Of Electronic Commerce: A Focus On The Permanent Establishment Concept, at 118 (accessed, 5/26/23)

incompatible and inadequate with the feature of EC which is global, virtual and anonymous.<sup>13</sup> VAT is among taxes affected by EC and a considerable amount of revenue is under stack.<sup>14</sup>

The contemporary taxation system of Ethiopia only emerged after the Italian occupation in 1941 G.C. during the reign of Emperor Haile Selassie.<sup>15</sup> The VAT law came into existence in 2002 through proclamation No. 285/2002 by replacing the 1954 sales tax law<sup>16</sup> as a global tax reform by developing countries consideration of VAT as money machine and developed worlds as the only layout of poverty, with the influence of IMF and WB.<sup>17</sup> However it is still the main source of Ethiopia's government revenue as it is for the rest of world and has a significant impact on the GDP-based growth of the economy as a whole.<sup>18</sup>

Though ICT sector in Ethiopia is one of the least developed,<sup>19</sup> and Ethiopia is ranked 116th out of 121 countries in the world<sup>20</sup> EC does occur in Ethiopia. The level of internet penetration<sup>21</sup> and user's increase from time to time<sup>22</sup> and are expected to increase rapidly.<sup>23</sup> There are a number of EC platforms in Ethiopia.<sup>24</sup> Most of these platforms are B2C and C2C web sites.<sup>25</sup>

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<sup>13</sup> Supra note 10, at 652.

<sup>14</sup> OECD (2019), the Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris. [www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf](http://www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf), at 15, (accessed, 8/27/2023)

<sup>15</sup> Taddese Lencho, Towards Legislative History of Modern Taxes in Ethiopia (1941-2008) at 104, (accessed, 4/21/23)

<sup>16</sup> Id., at 137-9

<sup>17</sup> Supra note 8, at 9 ff

<sup>18</sup> Id., at 40

<sup>19</sup> Senait Wondafrash, E-commerce in Ethiopia: Lessons from the Rules of Ethiopian Commodity Exchange, LLM Thesis, Addis Ababa University, 2015, (Unpublished, available at Addis Ababa Institutional Repository), at 55 (accessed, 5/15/23)

<sup>20</sup> ibid

<sup>21</sup> J. Degenhard, Percentage of households with internet access in Ethiopia from 2001 to 2029, <https://www.statista.com/forecasts/1137737/household-internet-penetration-forecast-in-ethiopia> (accessed, 5/4/2024)

<sup>22</sup> [www.internetlivestats.com/internet-users/ethiopia/](http://www.internetlivestats.com/internet-users/ethiopia/) (accessed, 5/4/2024)

<sup>23</sup> Ibid

<sup>24</sup> <https://shega.co/post/ecommerce-platforms-in-ethiopia/> (accessed, 23/5/23)

<sup>25</sup> ibid

The employment of e-payment by banks in Ethiopia<sup>26</sup> the fact that ETCC has gave 40% of the share of the sector to foreign private investors taking 55 % for itself and left the rest 5 % to local investors<sup>27</sup> the promulgation of electronic transactions proclamation<sup>28</sup> have a great impact for the creation of a favorable environment for the growth of the sector.

All the above facts show the growing EC in Ethiopia and the need to tax the sector to protect government revenue collection and the interests of traditional traders who pay their taxes regularly and to go with the principles of good tax, especially neutrality principle<sup>29</sup>. However, as was previously said, EC taxation presents complications even for those with the most developed one such as Europe.

The Ethiopia's VAT law presupposes bricks and mortar trade. Even then the whole tax system in Ethiopia is faced with problems such as low habit of record keeping, administrative inefficiency, illiteracy, high compliance cost, and corrupt tax officials and extremely narrow tax base, Lack of computerized systems, low VAT education, overdue assessments, low audit capacity, lack of sound risk management practice, unreliable compliant handling, etc. are the often cited administrative problems. Whereas distrust between tax administrators and taxpayers, rampant evasion, non-registration, none or null declaration, non-use or the use of fake or duplicated invoices, exaggerated refund requests, etc. are tax payers centered problems. As such even if the revenue from VAT is increasing from time to time, VAT administration is largely ineffective and excruciating in Ethiopia. to make things worse, now the advent of ICT changes the traditional bricks and mortar trade in to modern EC and the challenge is what we say in Amharic” በእንቅርት ላይ ጆሮ ደግፍ”.<sup>30</sup>

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<sup>26</sup> Dr.B. Barani Sundaram, ‘and others’, Opportunities and Challenges of E-Commerce in the Case of Ethiopia, International Journal for Research in Technological Studies| Vol. 5, Issue 4, March 2018, at 53. ( accessed, 10/31/22)

<sup>27</sup> Communication Service Proclamation, (2019.) Negarit Gazzete, Proclamation No. 1148/2019, 25th Year No. 82.

<sup>28</sup> Electronic Transactions proclamation, (2020) Negarit Gazzete, Proclamation No. 1205/2020, 26th Year No. 57, at preamble.

<sup>29</sup> OECD (2017), International VAT/GST Guidelines, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264271401-en>, at 20-22 (accessed, 10/16/22)

<sup>30</sup> Supra note 8 at 34-36

Although this proclamation under article 4 mentions the applicability of the proclamation to transactions made online too, the rest of the proclamations such as, the definitions of PE, supply of service and rendering of service, the VAT collection method and the overall arrangements of the law halt its adequacy.<sup>31</sup> Ethiopia, in contrast to the rest of the globe, lacks VAT guidance and policy.<sup>32</sup> Ethiopia, however, prepared a new draft VAT Proclamation No. / 2023, to repeal the current proclamation. Therefore, the purpose of this study is to determine whether Ethiopia's VAT law and the draft can be adequately applicable to EC transaction? Does Ethiopia VAT administration and institution is adequate to collect VAT from EC?

## **1.2. Research Problem**

The lack of compatibility between the current international tax/vat regime and the features of ICT advancement EC presents tremendous problems in taxing global EC income.<sup>33</sup> As such EC sites including the biggest and well-known cloud service providers such as amazon.com and Ali baba.com are gaining a lot from their worldwide retail sale without paying equivalent tax /VAT with respect to cross-border EC income.<sup>34</sup>

In Ethiopia also the amount of internet penetration and number of users is increasing, and EC is keep generating millions of dollars at a continuous basis in the interest of the traders and also consumers but government.<sup>35</sup>

The employment of e-payment by banks in Ethiopia<sup>36</sup> the fact that ETCC giving up of the share of the sector to foreign and local private investors,<sup>37</sup> the promulgation of electronic transactions proclamation<sup>38</sup> all have a great impact for the creation of a favorable environment for the growth of the sector.

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<sup>31</sup> Value Added Tax Proclamation, Federal Negarit Gazeta, Proc. No. 285/2002, 8<sup>th</sup> year, No. 33 , article 4

<sup>32</sup> Interview with Ato Mulay Weledu, head of tax policy department at MOF, (01/25/2024)

<sup>33</sup> Supra note 10, at 652

<sup>34</sup> Id, 652-655.

<sup>35</sup> Supra note 22

<sup>36</sup> Supra note 26

<sup>37</sup> Supra note 27

<sup>38</sup> Supra note 28

The changes in trade way require a law which recognizes such change. Therefore the challenges of collection of VAT from e-commerce have to be studied to check adequacy of the law.

### **1.3. Literature Review**

Taxation of EC has been a concern of area to so many scholars of the world and there is plenty of literature on the topic. These literatures are written in related to different EC issues such as taxation, intellectual property right, and sovereignty of countries, the right to privacy and so many areas which EC posed a challenge.

Taxation of EC and VAT also has been the concern of different international organizations including EU and OECD which they came up with their own guidelines, proposals and recommendation,<sup>39</sup> at Africa level an institution such as ATAF (Africa Tax Administration Forum)<sup>40</sup> and an effort made by Group of third world countries.

Coming to Ethiopia, though it is no abundant as the foreign countries as the trend is recent development to Ethiopia, there are a number of literatures written on taxation of EC and VAT and challenge of taxation of EC and VAT. In addition there are few literatures written on different aspects of EC in Ethiopia. But I will jump to the literatures written on the topics this research.

In this respect the first research undertaken on the topic is taken to check whether or not the Ethiopia VAT proclamation number 285/2002 with its amendment proclamation No. 609/2008 is applicable to EC. To answer this research question the researcher undertake a thorough investigation on the articles of the proclamation and also the practice, and finally it concludes his

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<sup>39</sup> Mpofu, Favourate Y. 2022. Taxing the Digital Economy through Consumption Taxes (VAT) in African Countries: Possibilities, Constraints and Implications. *International Journal of Financial Studies* 10: 65. <https://doi.org/10.3390/ijfs10030065>, Academic Editor: Sabri Boubaker Received: 22 April 2022 Accepted: 15 June 2022 Published: 9 August 2022, at 2 ( accessed, 8/28/22)

<sup>40</sup> Ibid

findings by affirming the inapplicability of the proclamation to EC and the need for EC compatible law and administration.<sup>41</sup>

The next research has made a brief investigation on the Federal Income Tax Proclamation No. 979/2016 but a detailed one on VAT Proc. No.285/2002 applicability to EC. After dealing with current issues of challenges of EC taxation and the status of these laws in this regard it conclude by emphasizing their inapplicability and the need to a serious consideration of the challenge by the concerned government officials of Ethiopia<sup>42</sup>

The last but not the least is the research that dealt with the inapplicability of proclamation No.285/2002 to the current status of EC through detailed analysis of the articles.<sup>43</sup>

Therefore all the above research on the applicability of the Ethiopian VAT law on EC taken on proclamation No. 285/2002 and its amendment proclamations No. 609/2008 and 1157/2019 shows the inapplicability of these laws to EC at all.

However currently the Ethiopia government has come up with a new draft VAT proclamation No.../2023. Therefore this research aims to investigate whether proclamation No. 285/2002 together with its amendment proclamations No. 609/2008 and 1157/2019, and the tax administration is adequate to collect VAT from the sector: Whether the new draft VAT law has prepared in a way to properly be applicable to EC in Ethiopia and fills the gaps of the current VAT law : On the topic “THE APPLICABILITY OF VAT ON E-COMMERCE IN ETHIOPIA: CHALLENGES IN LAW AND IN PRACTICE” special emphasis given to the draft proclamation No...../2023. The thesis thoroughly analyzes the adequacy of the VAT law of EC in Ethiopia vis-à-vis different international literatures on the topic and OECD and EU guidelines, proposals and working papers. In addition the research also will show institutional and administrative challenges. As such it can contribute a value for the development of EC applicable VAT law and institution.

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<sup>41</sup> Andualem Temesgen., a Critical Assessment of the Application of Ethiopian VAT on E-Commerce, LLM Thesis, Addis Ababa University, 2015. ( accessed, 8/3/2023)

<sup>42</sup> Yonas Mekkonen, Challenges of Taxation of e-commerce in Ethiopia, LLM Thesis, Bahir Dar University, 2018.

<sup>43</sup> Abdallah, Abdulkarim. Challenges of Applying Ethiopian VAT on Electronic Commerce Transaction, Amsterdam law forum, 2022. at 5, ( accessed, 5/9/2023)

## **1.4. Research Objective**

### **1.4.1. General Objective**

The main goal of the study is to determine whether the current VAT law of Ethiopia Proclamation 285/2002 and its amendments, and administrative and institutional set up is adequately applicable to EC and whether the draft No..... /2023 VAT law addresses any issues and gaps left by the current VAT law.

### **Specific objectives**

The study's specific goal is:

- To identify and analyze issues in taxation of VAT on EC.
- To evaluate whether or not the current VAT laws of Ethiopia are adequate to tax EC.
- To assess whether or not there is adequate administrative and institutional setup to tax VAT on EC in Ethiopia.

## **1.5. Research questions**

### **1.5.1. Main research question**

The study will provide an answer to the following major research topic in order to meet the aforementioned research objectives.

. Does Ethiopia have adequate legal framework to collect VAT on EC?

### **1.5.2. Specific research questions**

The main research question is further broken down into more particular questions for a more in-depth analysis of the subject in a way that helps to provide an answer to the main research question. Therefore, the following sub-research issues are addressed in this study report.

- Does VAT proc. NO 285/2005 with its amendment proclamations are adequate to collect VAT on EC?
- Does the new draft VAT proclamation NO...../2023 adequate to collect VAT on EC?

- Is Ethiopia administratively and institutionally prepared to collect VAT on EC?
- What are the issues that arise with e-commerce taxation generally and VAT collection specifically?

## **1.6. Significance of the Study**

Since taxes are main source of government revenue and crucial to a nation's economy, the net of tax should be adequate to support businesses that are subject to taxation, and the tax rules should be progressive and up-to-date to keep pace with contemporary societal and technological advancement. This is especially true when it comes to e-commerce, which is expanding at an astonishing rate and has presented taxing challenges since its inception. Therefore, doing study on the legal and practical challenges associated with e-commerce taxation can add its own value to mitigate the challenge.

### **1.6.1. Theoretical Significance**

In Ethiopia, the idea of how VAT and EC interact is unknown though it is one of the topics that require thorough research and crucial knowledge for developing an effective and efficient tax system that addresses the complexity of the EC platform. So, as a qualitative study, it clarifies ideas and relationship about VAT and EC. Because of this, this study will add to the scant existing information in the field and fills the voids.

### **1.6.2. Practical Significance**

Examining whether Ethiopia has a suitable administrative and institutional framework for taxing VAT on EC is one of the study's goals. In order to lessen or, if possible, eliminate the challenge of EC, various mechanisms will be provided depending on the research's findings. These mechanisms include creating new laws or amending existing ones, strengthening current capabilities, and changing the attitude of the VAT collector towards EC.

## **1.7. Scope of the Study**

Though challenges of e-commerce includes Intellectual property protection, sovereignty, and privacy and consumer protection too, the main focus of this research, however, is on the challenge with Ethiopia's VAT law and practice application on EC.

## **1.8. Research Methodology**

Having the above main objective at hand, which necessitates a thorough examination of the VAT law and a direct knowledge exchange with the relevant government officials in charge of the tax administration system such as MOR and MOF, and thorough analysis of the VAT law of Ethiopia and literatures, the research employed qualitative and doctrinal method of data collection, which offers a fuller and more in-depth understanding of the study's subject matter, in order to achieve its desired goals.

## **1.9. Data Source**

The research utilized both primary and secondary sources of data to support the idea on the subject. Domestic laws such as proclamations, regulations, directives, circular letter and policies, whereas International documents such as OECD's guide lines and EU laws are analyzed. In addition, I interviewed representatives from MOF and MOR offices through Purposive sampling or judgment sampling procedures to obtain the essential data and knowledge because this method of sampling allows me to identify individuals who have relevant expertise or experience in the field of research. Literatures such as books, articles, journals, thesis, and internet publication are used as secondary sources.

## **1.10. Data Collection Method**

In order to study the challenges of collecting VAT on EC in Ethiopia, analysis of primary and secondary sources are made. Semi structured interviews employed for a flexible question presentation and direct interaction between me and the research participants, to address the research objectives that the study must achieve and the nature of the research questions that the study is supposed to answer.

### **1.11. Data Analysis**

Content analysis used to assess the data acquired from sources because it is one of the data analyses strategies for qualitative research and may also make the research reliable.

### **1.12. Organization of the Paper**

The thesis organized in to four chapters, each with sections and subsections. The first chapter covers the

introduction to the research, which includes the background of the research, a statement of the problem, objectives, significance, and scope of the study, as well as the research question, research hypothesis, and research methodology. As a conceptual and theoretical chapter, the 2nd chapter will deal about taxation of EC in general, EC and VAT discussion, and selected countries experience with regards to their VAT laws applicability to EC. The third chapter, which is the main body of the thesis, discusses collection of VAT on EC generally and will move on to explanation of Ethiopian VAT and EC briefly. Then content analysis will be made on the collection of VAT on EC in Ethiopia through the application of proclamation No. 285/2002 and its amendments and also the draft VAT proclamation No. /2023. In addition survey findings analyzed. The chapter's conclusion and recommendations is provided under Chapter 4.

### **1.13. The preferred Referencing and Citation Style**

I followed Journal of Ethiopian Law's and OSCALA citation guidelines for internal laws and for the rest of the thesis respectively.

### **1.14. Limitation of the study**

The study's main limitation was the timely responses from respondents and also the time limitation I have due to my full time job, which contributed to the delay of finishing the thesis.

## **Chapter Two**

### **2. Taxation of E-commerce in General**

#### **2.1. Introduction**

This chapter is classified in to four sections. The first section briefly discusses the challenges and causes there of taxation of EC in general and specifically VAT. The second and third sections given to conceptual frame works of EC and digital products, and issues and problems of collection of VAT on EC respectively. The last section discusses countries experiences of collection of VAT from EC.

#### **2.2. Taxation of E-Commerce and its Challenges**

The Internet can now handle almost any type of digital information, including text, sound, images, and video, after its commercial use sparked in the mid-1990s. As a result, businesses may now utilize the Internet to contact millions of individuals worldwide, and the volume of electronic trade has increased significantly.<sup>44</sup> According to OECD, EC has the potential to be one of the great economic developments of the 21st Century".<sup>45</sup> However EC brought its own different challenges, among and the main one is the challenge it brought to collection of taxes by governments and the loss of huge amount of revenue from the sector. Additionally it violates such guiding principles, framed by the Committee of Fiscal Affairs (CFA) of the OECD such as neutrality; efficiency; certainty and simplicity; effectiveness and fairness; and flexibility.<sup>46</sup>

#### **2.3. Causes for Non-Taxation of E-Commerce and Steps Taken**

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<sup>44</sup> Chan, Clayton W., "Taxation of Global E-Commerce on the Internet: The Underlying Issues and Proposed Plans" (2000). Minnesota Journal of International Law. 140. <https://scholarship.law.umn.edu/mjil/140>, at 235-6 (accessed, 7/21/23)

<sup>45</sup> Supra note 7, at 230

<sup>46</sup> Supra note 10, at 660

The cause for significant under taxation mainly with respect to cross-border EC income is the incompatibility of the current international tax code to EC.<sup>47</sup> The questions such as which nation should levy the tax; where the supplier, the client, or the operator of the platform is, from whom VAT should be collected, what kind of object was purchased, how should direct and indirect EC be regulated are among the questions that still need an answer.<sup>48</sup>

In addition problems with auditing and enforcement, the use of e-money, the absence of physical location and central control body,<sup>49</sup> the absence of intermediaries such as wholesalers or local retailers who have historically played a crucial role of collecting VAT particularly from private consumers has its contribution for the challenge of EC taxation.<sup>50</sup>

In Africa, underdeveloped technologies, a lack of resources, and weaknesses in tax administration make the challenge worse.<sup>51</sup> Due to these MNEs such as Amazon, Google, Netflix, Face book and UBER are evading their tax liability.<sup>52</sup>

The OECD and UN international guidelines on transfer pricing as well as various unilateral transfer pricing rules (arm's length principle) and Considerable efforts made to regulate BEPS through BEPS projects, at Africa level an institution such as ATAF's technical paper and provision of technical assistance to assist member states in implementing the International VAT Guidelines as promulgated by the OECD are steps taken to mitigate the challenge. ATAF in collaboration with the OECD and World Bank is producing a regional VAT Digital Toolkit for the effective implementation of a "simplified VAT compliance" regime for cross border supply in the digital economy<sup>53</sup>

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<sup>47</sup> Id, at 652

<sup>48</sup> Max Cash, R., 1999. Electronic Commerce and Tax Base Erosion, EPRS: European Parliamentary Research Service. Belgium. Retrieved from <https://policycommons.net/artifacts/1340895/electronic-commerce-and-tax-base-erosion/1951866> /on 25 Apr 2024. CID: 20.500.12592/997bkz. Do , at introduction, at 24, ( accessed, 7/19/2023)

<sup>49</sup> Ibid, at 18-20 and 39 - 40

<sup>50</sup> Supra note 4, at 37

<sup>51</sup> Supra note 39, at 1-3

<sup>52</sup> Ibid

<sup>53</sup> Ibid

The other effort to tackle these challenges is made by Group of third world countries which produced a proposal by which a taxable presence in a country would be created when a non-resident enterprise has a significant economic presence on the basis of factors that are evidence of purposeful and continued interaction with the economy of that country via technology and other automated mean. However the key challenges in taxing the digital economy have remained insufficiently addressed and countries are taking their own individual moves to tax the sector but still with challenges and shortcomings.<sup>54</sup>

## **2.4. Conceptual frame works**

### **2.4.1. Definition of E-commerce**

OECD defines EC as the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. As such OECD defined EC in the sense of both direct and indirect EC, and EC of any forms such as B2B, B2C, B2G and C2C conducted locally as well as internationally.<sup>55</sup>

Whereas WTO defined E-commerce as activities involving goods and services crossing borders electronically, especially the sale or purchase of goods or services conducted over the internet or other computer networks. This definition compared to the other definitions ignores the domestic e-commerce transaction<sup>56</sup>

AU Convention on Cyber Security and Personal Data Protection defines it as the act of offering, buying, or providing goods and services via any kind of network including internet by using electronic, optical or similar media for distance information exchange. The convention defined EC in relation to DEC or IEC.<sup>57</sup>

The common element of the above definitions of EC is commerce in DP or physical goods to which the process involves and/or ends with networks of any kind that can make able the transition.

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<sup>54</sup> Ibid

<sup>55</sup> <https://www.oecd.org/digital/ieconomy/2771174.pdf> (accessed, 8/2/23)

<sup>56</sup> Supra note 42, at 16

<sup>57</sup> Africa Union Convention On Cyber Security and Personal Data Protection, at 5 ( accessed, 8/17/23)

## 2.4.2. Nature of e-commerce

Based on the degree of network involved EC can be direct/ digital/ where the whole process of offering and delivering the goods and services including payment method starts and ends on line and results in transfer of DP, and indirect/non-digital/ where the offer takes place online but the delivery results in physical goods in a physical place such as custom or postal office.<sup>58</sup> E-commerce can also take forms as Business to Business/B2B/; Business to Consumer/ B2C/; Consumer to Consumer/ C2C/; or Business to Government/B2G/ based on the parties involved in .<sup>59</sup> It can also be classified as domestic or cross border based on the territory it covers. Both involve any form of the above discussed taken in a given territory or among different states respectively.<sup>60</sup>

## 2.4.5. Types of Digital Products

Digital product (DP) can be classified in to 3 based on product category and characteristic. 1, tools and utilities are software programs that assist users to accomplish specific goals or tasks (Adobe Acrobat for instance, helps to create and view PDF files) or act as supplementary utilities for achieving other purposes (RealPlayer for instance, allows users to listen to online broadcasts or audio clips.) In general, commercial software, shareware, or freeware that is easily downloadable via the Internet is grouped in this category. 2, content-based (electronic newspapers and journals (the Wall Street Journal) research reports or databases (International Data Corporation, [www.idcresearch.com](http://www.idcresearch.com)), and online entertainment products such as music, magazines, or videos. and 3, online services (includes services that provide access to useful resources like server connections such as Internet telephony (PC-to-Phone) as well as online

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<sup>58</sup> Hamner, K. J. (2001). Taxation of International and Domestic E-Commerce: Inevitability, Structure, Problems and Solutions. Fla. St. U. Bus. Rev., 1, 7, at 3, (accessed, 3/22/2024 )

<sup>59</sup> Kham Tipmart, International taxation of e-commerce, LLD ,Dissertation, Niigata University, School of Modern Society and Culture, 2015[Unpublished], p.11, (accessed 4/25/2024)

<sup>60</sup> The Difference between Domestic e-Commerce & Cross-border E-Commerce <https://www.bing.com/> (accessed 4/25/2024)

utilities that assist users in accomplishing specific tasks such as Online therapy services, online and Consultant Search Service and Searching4U are DP.<sup>61</sup>

## **2.5. E-Commerce and VAT: Issues and Problems**

Taxation of EC is a challenge to traditional VAT regimes than the other forms of taxation because of its requirements of annual minimum threshold and continuous and regular transaction and the difficulty or impossibility of checking the existence of such facts in EC. The current VAT laws of countries are created in response to well-established business practices, and distinctions and classifications have been made with relation to accepted business practices. A variety of services and intangible assets, and content of various kinds are subject to various and inconsistent tax regimes with EC and which in turn results in a significant under or over taxation with respect to cross-border EC income mainly.<sup>62</sup> The next are among the main gaps of the current laws in this respect. .

### **2.5.1. Tax Jurisdiction**

Governments of the world used to collect VAT on international transaction in goods and physical services by the well-known two principles such as origin or destination principles. Under the origin principle countries collect VAT because the value is created in their country. In destination principles they levy VAT because the consumption takes place in their territory. Of course assumption of jurisdiction based on destination principle is approved by WTO also because of practical and theoretical point of view, and it is also the international norm. Because of these supplies of goods, services and intangibles were taxed where consumption takes place.<sup>63</sup> To take origin principle to Ethiopia; since export is zero rated we don't need to employ it.<sup>64</sup> But since every import is VAT able unless exempted, it shows Ethiopia employs destination

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<sup>61</sup>Kai Lung Hui, and Patrick Y.K. Chau, Classifying digital products, Volume 45, Number 6 (2002), Pages 73-79 <https://www.bing.com/ck/> (accessed 8/27/2023)

<sup>62</sup> Supra note 10, at 652

<sup>63</sup> Supra note 29, at 15 ff

<sup>64</sup> Supra note 31, Article 7/2/

principle.<sup>65</sup> Article 4/7/ also support this.<sup>66</sup> These two bases of taxation occasionally lead to double taxation or under taxation.<sup>67</sup>

Now the cause of double and under taxation is the nature of EC, which is conducted in a virtual environment where place of business use or consumption is unknown or where actual places are irrelevant to the operation of the firm: geographical presence or physical location has no or a very small, if any especially in e-services and intangibles, which makes it challenging if not unattainable to assume tax jurisdiction. As such though normally international transaction in e-services and intangibles recommended be taxed according to the rules of the jurisdiction of consumption, now to determine place of taxation, it is recommended by OECD guide line that for international transaction in e-services and intangibles between B2B and B2C, place of taxation has to be where the actual place of business use, and the actual place of consumption takes place, respectively by employing proxies to determine the jurisdiction of taxation based on the features of supply that are known or knowable at the time that the tax treatment of the supply must be determined. It also helps to achieve the objective of neutrality.<sup>68</sup>

### **2.5.2. The Concept of Permanent Establishment**

The concept of physical PE 1<sup>st</sup> promulgated by league of nation and currently embodied in article 5 of the OECD's Model Convention<sup>69</sup> is one critical challenge for taxation of international EC.<sup>70</sup> It is about origin based tax jurisdiction assumption. Here the principle is nations have a fair claim to tax the income produced within their own borders.<sup>71</sup> An example is article 4/7/ of Ethiopia VAT proclamation.<sup>72</sup>

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<sup>65</sup> Id, Article 7/1/b and c

<sup>66</sup> Id, article 4/7

<sup>67</sup> Supra note 29, at 16

<sup>68</sup> Id, 40-41

<sup>69</sup> Supra note 44, at 248

<sup>70</sup> Id, at 252-3

<sup>71</sup> Id, at 248-9

<sup>72</sup>Supra note 31, Article 4/7/

However, the requirements of traditional physical nexus to the decentralized, global, and rapidly evolving network that frequently transmits intangible goods and services isn't proper. As such for some countries the enterprise carrying on business through a web site has the server at its own disposal and operates the server on which the web site is stored and used, the place where that server is located could constitute a PE of the enterprise. And a web site cannot, in itself, constitute a PE. But for others an Internet web site alone should constitute a PE. However as to OECD Clarification on the application of the PE definition on E-Commerce, human intervention is not a requirement for the existence of a PE whether the requirement is an internet web site alone or with the server. However the server on which the web site is stored and through which it is accessible is a piece of equipment having a physical location and such location may thus constitute a "fixed place of business" of the enterprise that operates the server if it meets a requirement of fixation and located at a certain place for a sufficient period of time.

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### **2.5.3. Taxation of supplies of Intangible Things to B2C**

The implications of EC for VAT can be examined relation to 1, supplies of physical goods through B2B or B2C through IEC, and 2, supplies of services and intangibles from B2B and, 3, B2C supplies of services and intangibles.<sup>74</sup> Currently, the first two categories are not a challenging issue but the 3<sup>rd</sup> one. The efficient collection of VAT when supplies of services and intangible property from B2C are made especially across international boundaries is challenging.<sup>75</sup> This is also confirmed by the 2015 report of OECD/G20 BEPS project Action 1 "Addressing the Tax Challenges of the Digital Economy".<sup>76</sup> This is due to the fact that the creation, consumption, and distribution of intangible commodities and services and the value added

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<sup>73</sup> Tax and Commerce @ OECD Clarification on The Application of the Permanent Establishment Definition on E-Commerce: Changes to The Commentary on the Model Tax Convention On Article 5, 22 December 2000, OECD Committee on Fiscal Affairs 2 ( accessed, 4/19/23)

<sup>74</sup> Id, at 647-8

<sup>75</sup> Id, at 648-9

<sup>76</sup> Supra note14, at 12-15

throughout the whole production and distribution process can't be easily tracked down and discovered unlike the traditional physical item.<sup>77</sup>

#### **2.5.4. The Status and Name of Digital Products**

How to classify DP is a crucial issue for appropriate taxation of EC because of the likelihood of a differing tax.<sup>78</sup> A given product can have different status based on their mode of supply. A book sold through IEC and DEC have gain different name. A service delivered through internet has got a different status and VAT treatment.<sup>79</sup> As to article 5 of the EU 6th directives unless there is a transfer of a “tangible property” and a right to transfer and dispose of this property there is no transfer of goods but services. Therefore these current laws which assume physical goods only are inapplicable to DEC since their status and mode of delivery changed and opened the door for tax avoidance and evasion.<sup>80</sup> This is OECD's proposal too.<sup>81</sup>

#### **2.5.5. Identification of Details of Transaction**

The anonymous nature of global EC reduces the transparency of cross-border movements of commodities, capital, and labor and the involvement of intermediaries, and as such locating taxpayers and determine their taxation jurisdiction; make sure that the right records are made; and how to collect taxes in the context of EC is become the challenge, which in turn allowing businesses and people to take advantage of it or even avoid paying any taxes at all.<sup>82</sup>

### **2.6. Countries' Experience**

Since E-commerce is an international challenge, examining some countries approach selected based on their different economic development status and continents representation would

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<sup>77</sup> Supra note 10, at 648-9

<sup>78</sup> Supra note 44, At 255

<sup>79</sup> Id, At 255

<sup>80</sup> Supra note 4, P. 35-52,

<sup>81</sup> Supra note 7, at 237

<sup>82</sup> Supra note 10, at 648

provide an experience and be point of comparison with Ethiopia VAT law. As such next we will see India's, Nigeria's and turkey experience.

### **2.6.1. Taxation of E-commerce in India**

After making numerous efforts to reform its laws so as to address the challenges of taxing EC, India has had come up with a committee who examined and thought about the demand regarding the implementation of a unique tax system for online sales or EC. However, the committee argued that the existing laws are sufficient to tax EC and that no separate system for the taxation of EC transactions is necessary based on the principle of "neutrality."<sup>83</sup>

### **2.6.2. E-commerce and VAT in India**

Though India's EC is among the growing market of the world, ranked at number 6th, its CGST Act, 2017 (no. 12 OF 2017), as amended by a number of acts such as The CGST, 2017 (NO. 26 OF 2017); 'and others' seems inadequate to EC.<sup>84</sup>

To begin with the act is issued to levy and collect tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. As such it does not take in to consideration of international EC at all.<sup>85</sup> The act, defines goods in relation to all kinds of movable property, which includes corporeal and incorporeal property too, and service as anything other than goods. As such it does do not make clear the place of DP as a good or services. Hence the definition is vague and ambiguous.<sup>86</sup>

Though Art. 2(44) of the act by define EC as the supply of goods or services or both, including DP over digital or electronic network and Art. 2(45) also define EC operator as any person who owns, operates or manages digital or electronic facility or platform for EC, the act no were tells

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<sup>83</sup>Gurveen Kaur, Taxation of E-Commerce Transactions in India: An Exploratory Study, Vol. 7, Issue: 4, April: 2019 (IJRSML) ISSN: 2321 – 2853, at 47, (accessed, 5/19/23)

<sup>84</sup> The Central Goods and Services Tax Act of India , 2017 (12 OF 2017) As Amended, (accessed, 5/20/23)

<sup>85</sup> Id, at the preamble

<sup>86</sup> The Central Goods and Services Tax Act , 2017 (Last Updated on 1-10-2022), Act No. 12 of 2017, art 2(52) and (102) (accessed, 6/3/23)

it's applicability to EC too.<sup>87</sup> In addition, Art. 2 (3) and Art.2 (50) of the act define address of delivery and fixed establishment in relation to physical goods, and physical place.<sup>88</sup>

This exemplary basic provisions shows the in applicability of the law to EC

However chapter 3 section 5 of the IGST acts, 2017 NO. 13 OF 2017 [12th April, 2017.]<sup>89</sup> which amends the IGST act, 2017 (12 OF 2017) as amended seems fills some gap of the act. By this act, there is Intangible goods and services tax chargeable on supply of Online Information Database Access and Retrieval (OIDAR) services to any person in India, whether the supplier is registered or not and resident or not as far as the recipient of the services is located in India.<sup>90</sup>

With regards to methods of VAT collection for suppliers located outside India the RCM is applicable to B2B supply, and for B2C supply the MNEs is required to register in India. Additionally India has prepared a compliance mechanism for digital services with regards to MNEs in and outside India.<sup>91</sup>

Section 2(17) of the act defined and provides enumerative lists of OIDAR services, as a “services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology. The place of supply of OIDAR services is defined to be the location of the recipient of services hence destination principle of taxation is applies.<sup>92</sup> This act clarifies the gap in the IGST act, 2017 (12 OF 2017) with regards of treatment of DC as a service, since it define the supply of DC as a supply of service through the OIDAR definition.

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<sup>87</sup> Id, article 2(44)(45)

<sup>88</sup> Id, article 2(3)2(50)

<sup>89</sup> The IGST acts, 2017 No. 13 Of 2017 [12th April, 2017], section 5(accessed, 20/6/23)

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

Further India has put a levy for online advertising on the domestic recipient of the service to withhold and remit the tax to the government, and digital services tax on non-resident nonresident entities.<sup>93</sup>

With respects to the sale of online goods and services by non-resident companies to any person resident in India or who uses an Indian internet protocol address from any were, India has introduced a new levy of 2% on the EC operator as far as there is a consideration for the supply made or provided or facilitated by it.<sup>94</sup> Additionally India has a VAT guide line.

Though the backward cash on delivery is still the most common method of payment for online transactions, the market is experiencing rapid growth in debit card and other electronic payments.<sup>95</sup> Therefore to conclude the brief, though the IGST act, 2017 (12 OF 2017) with all its amendments was still not adequate to EC, the next amendments and acts has filled the gap and the government is finally able to tax EC.<sup>96</sup>

## **2.7. Taxation of E-commerce in Nigeria**

The Nigerian Tax law and regime did not envisage the emergence of e-commerce focuses on territorial and individual bases of taxation. Because of this EC poses significant issues to the country's tax system and the tax authority is unaware of the significant of such taxable transactions and the associated tax evasion.<sup>97</sup>

A non-Nigerian company's profit was only subject to taxation in Nigeria if it had a fixed base there, which excludes profit made from EC from being taxed.<sup>98</sup> To fix this, the Finance Act make taxable the profit of a non-Nigerian company if it transmits, emits, or receives signals,

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<sup>93</sup> Era Dabla -Norris, 'and others' Digitalization and Taxation in Asia, Asia-Pacific and Fiscal Affairs Departments, INTERNATIONAL MONETARY FUND, DP/2021/017 , at 40 (accessed, 4/29/23)

<sup>94</sup> *ibid*

<sup>95</sup> A guide to E-Commerce in India, April 2020, at 7, (accessed, 6/3/23)

<sup>96</sup> [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_gl/topics/tax/tax-guides/2023/ey-vat-gst-and-sales-tax-guide](https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/tax/tax-guides/2023/ey-vat-gst-and-sales-tax-guide) (accessed, 05/5/2023)

<sup>97</sup> An examination of the legal framework for electronic commerce taxation in Nigeria: the finance act 2019 in perspective, 2020. at 1-4(accessed, 6/3/2023)

<sup>98</sup> *Ibid*

sounds, messages, images, or data of any kind by cable, radio, electro-magnetic systems, or any other wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application stores, high frequent trading, and electronic market.<sup>99</sup> By this act Profits from EC in Nigeria is taxable against non-business Nigerians, Nigerian businesses, and foreign businesses as long as it has a significant economic presence.<sup>100</sup>

### **2.7.1. E-commerce and VAT in Nigeria**

VAT originated in Nigeria by the VAT Act No. 102 of 1993 as a replacement of the sales tax which had been in operation under Federal government Legislated decree No.7 of 1986, to do away with complex, inelastic, inefficient, inequitable and unfair tax structure and generate revenue.<sup>101</sup> This law was amended several times.<sup>102</sup>

According to art.2 of this VAT act the supply of all goods and services other than exempted supply is chargeable. From the reading of this article it seems that each and every supply of goods and service made in Nigeria is taxable.<sup>103</sup> However the act defines things in relation to physical goods and service but not DC. The act doesn't define goods and services. As such the place of DP is not clear.<sup>104</sup>

In addition there is no single provision which talks about the applicability of the act to EC and clear and express requirement for e-commerce businesses to collect and pay VAT and Nigerian businesses that received supplies of goods and services from non-resident businesses were not paying VAT. As such though Nigeria is evolving in terms of information and computer technology, its VAT law and regime did not envisage the emergence of EC during its promulgation and hence focuses on territorial and individual bases of taxation.

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<sup>99</sup> Ibid

<sup>100</sup> Ibid

<sup>101</sup> Raphael, Etim., Jeremiah, Ofonime., and Udonsek, Augustine., The Implementation of Vat On E-transaction in Nigeria: Issues and Implications, American International Journal of Business Management (AIJBM) ISSN- 2379-106X, [www.aijbm.com](http://www.aijbm.com) Volume 3, Issue 4 (2023), PP 01-09, (accessed, 6/3/23 )

<sup>102</sup> Sanni, A.O (2012) "Current law and practice of value added taxation in Nigeria. 5(2) British Journal of Arts and Social Sciences.( accessed, 5/2/24)

<sup>103</sup> Value Added Tax Act 1993(Nigeria) NO. 102,1993, article 2, (accessed, 5/13/23)

<sup>104</sup> Ibid

However the VAT law is among the laws amended and modernized by Nigeria government through the enactment of the finance act, 2019. As to Section 33 of the Finance Act of the new VAT Act, tax shall be charged and paid on the supply of services in Nigeria as far as the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria and by any means<sup>105</sup>. Nigeria court held that the degree of transactional permanence is irrelevant to the determination of engagement in trade as far as there is a taxable supply. Isolated or casual transactions including one time (one-off transactions) which are of commercial nature (however minute) transactions which are of a commercial nature constitute engagement in trade or business.<sup>106</sup>

The finance act further defines taxable supplies as “any transaction” for the sale of goods or the performance of a service, for a consideration in money or money’s worth. As such a single transaction can be a taxable supply as far as it is for consideration and as far as there is supply.<sup>107</sup> Though this act leaves some gap left by the 1<sup>st</sup> act which needs an interpretation and clarifications to properly be implemented to EC, still the government was able to tax EC efficiently and mitigate the challenge of taxation where EC is conducted between Nigerian resident and non- resident.<sup>108</sup>

Having this fact at hand Federal Inland Revenue Service /FIRS/ issued Information circular, providing clarifications and guidance on the procedure for the implementation of the provisions of the Finance Act dealing with VAT. The Circular also amends, updates and replaces conflicting contents of all other VAT-related circulars, notices and publications previously issued by the FIRS.<sup>109</sup>

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<sup>105</sup> Supra note 97, at 3-4

<sup>106</sup> Banwo & Ighodalo, FIRS CLARIFIES CHANGES INTRODUCED TO NIGERIAN VAT REGIME BY THE FINANCE ACT 2019, analysis tax matters in Nigeria, ISSUE NO: ALERT 14, at 7-8, (accessed, 6/4/23)

<sup>107</sup> Ibid

<sup>108</sup> Supra note 97, at 1-4

<sup>109</sup> Clarification on the implementation of the Value Added Tax (VAT) Act, American International Journal of Business Management (AIJBM) ISSN- 2379-106X, Federal Inland Revenue, [www.aijbm.com](http://www.aijbm.com) Volume 3, Issue 4, 2021, PP 01-09,. <file:///C:/Users/justice/Downloads/vat-modification-order-2020-detailed-list-vat-exempts/.pdf> (accessed, 6/4/23)

According to the circular, non-resident who does not have a PE or fixed base in Nigeria but makes taxable supplies to a person in Nigeria, has to register to VAT using the address of the person to whom it is making the supply, include VAT on its invoice for the supply of goods or services made; and the person who receives the supply is required to withhold and remit the VAT to the government.<sup>110</sup>

FIRS came up with a further guide line in 2021 to fill the remains gap under the VAT act and provide detailed clarification in respect to DC supply by non-resident supplier to business or consumer in Nigeria<sup>111</sup> issues of Procedure for registration for VAT by NRS, Supplies that are taxable in Nigeria, Appointment of representatives as VAT Collection Agents, Procedure for remittance of tax collected, General obligations of NRS under the Act.<sup>112</sup>

There is also a duty on platforms that do not receive payment directly or indirectly from the customer but are entitled to a commission on sales, to collect VAT and remit to the Service.<sup>113</sup>

The guideline provides the types of Services including intangible or services delivered via electronic or similar networks.<sup>114</sup>

With regards to place of supply, services consumed or otherwise utilized in Nigeria are taxable in Nigeria. If it is not possible to determine place of supply through principle of destination, then the origin of the payment for such supplies from a bank or any other financial institution licensed in Nigeria will be employed.<sup>115</sup> A registered NRS is required to issue an electronic tax invoice to.

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<sup>110</sup> Federal Inland Revenue Service, 20 Sodeke Crescent, Wuse Zone 5, P.M.B 33, GARKI, Abuja, Nigeria, guide lines on simplified compliance regime for VAT for non-resident suppliers, No. 2021/19 , 2021 <file:///C:/Users/justice/Downloads/Guidelines-on-Simplified-Compliance-Regime-of-VAT-for-Non-Resident-Suppliers-15102021.pdf> (accessed, 6/4/23)

<sup>111</sup> Ibid

<sup>112</sup> Ibid

<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Ibid

<sup>116</sup> Ibid

In addition B2B and B2C transaction, Collecting Banks, Supply through electronic or Digital Means, Digital platforms, electronic tax invoice, Intermediary, Non-Resident Suppliers, goods and service are critical terms defined by the guide line to the proper application of the act to EC.<sup>117</sup>

As we saw it above, though Nigeria VAT act was not adequate to EC as first issued, through continuous amendments, circulars and guide line, Nigeria is successful in making its VAT law applicable to EC, which even can be taken as exemplary and model state in this regard.

## **2.8. Taxation of E-commerce in Turkey**

Internet uses in Turkey increasing significantly since it started in 1993. In 2019 out of 82.4 million turkey people 59, 36 million were internet users.<sup>118</sup> Ecommerce is doubling in years. In 2021, Turkey's ecommerce volume increased by a 79 percent and made up almost 18 % of all trade.<sup>119</sup> As such the sector needs to be taxed with a proper law. However like the rest of the other countries taxation of EC is a challenge.<sup>120</sup>

Attempting to solve the taxation problem of digital economy, Turkey employed three layered tax measures, applicable to digitalized services by non-resident suppliers to non-taxable final customers in Turkey but from a different perspective. Such as VAT on B2C e-service; Withholding Tax by recipient of the services on payments they made to advertising services, regardless of whether the people who paid to it are taxpayers or not; and Digital Service Tax (DST), a turnover tax, charged on online digital services providers gross revenues who would exceed digital service revenue thresholds both in country and worldwide too.<sup>121</sup>

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<sup>117</sup> *ibid*

<sup>118</sup> Birol UBAY & Hilmi ÜNSAL, (2021) TAXATION OF DIGITAL ECONOMY in TURKEY in THREE STEPS. Journal of Business Innovation and Governance, 4 (1), 1-11.AT 2. <https://dergipark.org.tr/en/pub/jobig/issue/63580/824595> (accessed, 7/27/23)

<sup>119</sup> [www.trade.gov/country-commercial-guides/turkey-ecommerce](http://www.trade.gov/country-commercial-guides/turkey-ecommerce) , (accessed on 2/9/2023)

<sup>120</sup> *Supra* note 118, part IV section 33, At 3-4

<sup>121</sup> *Id.*, at 5-9

### 2.8.1. E-commerce and VAT in Turkey

In Turkey VAT is regulated under the VAT Law No.3065. According to Article 1 of this law VAT is payable on every transaction involving production of goods or the performance of a service and the taxable event is directly connected with delivery or importation of a good or execution or importation of a service.<sup>122</sup> Issuance and delivery of an invoice or similar documents before delivery of goods or rendering of services is evaluated as taxable event.<sup>123</sup>

In respect to the supply of e-services by non-resident supplier to consumers in Turkey (B2C), the VAT is used to be declared and paid by the service recipient. However it is proved inadequate to collect VAT since it based the honesty of the consumer. As such the MOF has published a regulation No. 17 on VAT which put an obligation on non-resident e-services providers to register in Turkey and remit the tax electronically.<sup>124</sup> The supply of DP considered as services and subject to VAT.<sup>125</sup>

The regulation provides enumerative lists of Electronic Services, as: Radio and television broadcasting services; Telecommunication services, and other services provided in electronic environment.<sup>126</sup> Lists to be found on [www.digitalservice.gib.gov.tr](http://www.digitalservice.gib.gov.tr).<sup>127</sup> Where it is hard to detect a non-resident supplier of e-services, the intermediates or platforms would be VAT obligatory.<sup>128</sup> There is no Thresh-hold for foreign e-services provider to register as ESP.<sup>129</sup>

Failure of Non -resident vendors to keep invoices and other related documents but books amount to tax evasion and result in tax assessment together with tax penalty.<sup>130</sup> Place of taxation on international import of B2C digital goods has been always customers' location.<sup>131</sup>

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<sup>122</sup> Ateşagaoglu, Erdem. & Karakaya, Suhyel. (2019). "VAT Liabilities of Electronic Service Providers in Turkey", *International Journal of Public Finance*, Vol.4, No.1, pp. 23-38. At 24, (accessed, 5/26/23)

<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> Id, at 32

<sup>126</sup> Id, at 29

<sup>127</sup> Ibid

<sup>128</sup> Id at 30

<sup>129</sup> ibid

<sup>130</sup> Id 31

The regulation put a responsibility on ESP to electronically declare their VAT return; to keep and exhibit invoices of these transactions. A fine will be arisen in case of negligence<sup>132</sup> VAT rates on B2C online sales is 18% on the sales of newspapers and magazines in electronic environment; e-books and similar publications magazines in electronic environment.<sup>133</sup> Therefore it is possible to conclude that Turkish VAT law and regulation are adequate enough to collect VAT from e-commerce.

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<sup>131</sup> Id 32

<sup>132</sup> Ibid

<sup>133</sup> Ibid

## Chapter Three

### 3. Collection of VAT on E-commerce in Ethiopia

#### 3.1. Introduction

VAT was a huge source of Ethiopia government revenue during the period of bricks and mortar trade. It has a significant impact on the GDP-based growth of the economy as a whole. The trend of VAT to total GDP for the year 1995 which was 0.51 grows to 3.57% in 2002. Whereas the percentage of VAT revenue to total government income for the same years grows from 2.14% to 20.67%.<sup>134</sup> This figure shows the continuity of the progress of the revenue through the use of this money machine. However currently the way trade is taken has changed in a way that it threatens government vat revenue collections right. This is mainly caused by countries current in-adequate vat laws and institutional and administrative framework to collect VAT from E-commerce. In Ethiopia too, the level of internet penetration<sup>135</sup> and users increase through time to time<sup>136</sup> and the e-commerce industry is expected to generate millions in revenue and is anticipated to rise.<sup>137</sup> As such this chapter will show whether Ethiopia have adequate legal, institutional and administrative framework to collect VAT on E-commerce?

#### 3.2. The Need to Tax E-commerce in Ethiopia

E-commerce does occur in Ethiopia too despite its slower growth. The level of internet penetration which was 0.3 in 2008 grows to 24.7 in 2023 and estimated to amount 29.47 percent in 2028.<sup>138</sup> Internet users increase from 10,142 out of 66,443,603 million populations in 2000, to 4,288,023 million in 2016 out of 101,853,268 million.<sup>139</sup> In 2023, the e-commerce industry

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<sup>134</sup>Dakito Alemu, Empirical Analysis Of The Contribution Of VAT For Economic Development and Social Spending in Ethiopia, LLM Thesis, Addis Ababa University, 2011, at 99, ( accessed, 5/23/23)

<sup>135</sup> Supra note 21

<sup>136</sup> Supra note 22

<sup>137</sup> <https://www.statista.com/outlook/dmo/ecommerce/ethiopia/> (accessed on 2/9/2023)

<sup>138</sup> Supra note 21

<sup>139</sup> supra note 21

in Ethiopia is expected to generate US\$1,285.00 million in revenue and is anticipated to rise at an average yearly rate of 18.63% with a predicted market size of US\$2,545.00m by 2027.<sup>140</sup>

Deliver Addis, Zmall, Asebeza, Hellomarket, Addis Mercato, Mercato Online, are among ecommerce websites / platforms that are available in Ethiopia on Web, Play Store, etc. and accepts payment such as cash, CBE, Visa, Master Card, and other forms of payment but not credit card or debt card. Most of these platforms are B2C and C2C web sites.<sup>141</sup>

The employment of e-payment,<sup>142</sup> the fact that ETCC giving up of the share of the sector to foreign and local private investors,<sup>143</sup> and the promulgation of electronic transactions proclamation<sup>144</sup> helps to create a more favorable environment for the growth of Ethiopia's thriving e-commerce industry.

Further, in Ethiopia e-commerce activities that are not registered for VAT but the traditional business, which is against government VAT collection interest and also diminishes the good tax principles of neutrality and equality.<sup>145</sup> All the above facts reveal the potential for the development of e-commerce and need for taxing the sector.

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<sup>140</sup> supra note 137

<sup>141</sup> Supra note 35

<sup>142</sup> Supra note 26, at 53

<sup>143</sup> Supra note 27

<sup>144</sup> Supra note 28

<sup>145</sup> Interview with Ato Mesfen Gulelat, director of legal study on ecommerce taxation, at MOR (08/14/2023)

### 3.3. Collecting VAT under proclamation No. 285/2002

#### 3.3.1. Scope of the Law and Assumption of Jurisdiction

The cumulative reading of article 4(7) and 2(10) of the proclamation tells us Ethiopia assumes jurisdiction and collect VAT over the supply as far as the supply of the goods or rendering of service is in Ethiopia through PE, based on the principle of destination<sup>146</sup> that assumed conventional business against the virtual EC.

#### 3.3.2. The Status of Digital Products

Art. 2 (7) defines goods as all kinds of corporeal movable and immovable.<sup>147</sup> This provision does not consider digital products (DP) as goods since its applicability is only to corporeal/tangible movables and DP's are incorporeal.<sup>148</sup> But the problem is that the proclamation neither defines service to include DP too rather the definition considers services- as "work "done for others which does not result in transfer of goods.<sup>149</sup> Here it defines service in relation to work done not delivery of products in any form. As such it seems it also take in to consideration of remote services to be supplied electronically since the laws application is to trade by internet too. However it doesn't tell the place of DP. As such if DP is not either good or services what else? In this regard OECD proposed DP to be treated as service.<sup>150</sup> At present, countries have different and inconsistent definitions, classifications, and tax rates for the many types of services and intangible property, such as telecommunications, broadcast, consulting, engineering, training and education, data processing, supply of information, access to databases, entertainment, and content of various types that might be considered to be a part of electronic commerce."<sup>151</sup> The same is true for Ethiopia. If someone in Ethiopia buys a DP of any type VAT could not be imposed on such transaction<sup>152</sup> since there is no clear provision of its

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<sup>146</sup> Supra note 31, article 4/7/ and 2/10

<sup>147</sup> Id, article 2/7/

<sup>148</sup> Supra note 7, at 236 ff

<sup>149</sup> Supra note 31, article 2/17/

<sup>150</sup> supra note 1, at 237

<sup>151</sup> Supra note 4, at 37

<sup>152</sup> Ibid

treatment.<sup>153</sup> Art. 4 the definition for the supply of goods and rendition of service do not take in to account DP in the same foot.<sup>154</sup>

### 3.3.3. Taxable Activity

Taxable activity under article 6 of the proclamation defined as “an activity which is carried on continuously or regularly by any person: (1) in Ethiopia, or (2) partly in Ethiopia, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to another person for consideration.

What does that mean carried on in Ethiopia? How carried? Does it require Physical existence only or through internet too? Though it is possible to argue for the laws application to e-commerce too based on article 4/7/, the phrase in Ethiopia or partly in Ethiopia is a general term and not clear in the context of e-commerce, which makes it un-clear and ambiguous.

Art 2(3) of the amendment proclamation replaced the phrases “by any person” with “any registered person” to let go the unregistered e-commerce sites free of VAT and to make things even worse. However this article avoid the requirement of “continuity or regularity” under its article 2(3) for a supply to be taxable.<sup>155</sup>

The cumulative reading of art.7 (1) c and 23 tells us a rendering of taxable service by a un-registered non-resident person is taxable in the rate of 15% when it is rendered for registered business or resident legal person it disregards DP and also the supply to non-business consumers.<sup>156</sup>

### 3.3.4. Place of Supply of Services

Article10/1/ of the VAT proclamation also define place of rendering of services as the location of the person who renders the taxable service. But this article is not clear as to which

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<sup>153</sup> Ibid

<sup>154</sup> Supra note 31, article 4

<sup>155</sup> Value Added Tax (Amendment) Proclamation, 2008, Federal Negarit Gazeta, Proc. No. 609/2008, 15th year, No. 6 , article 2(3)

<sup>156</sup> Supra note 31, article 7 (1) c and 23

type of service is it for. If we assume jurisdiction based on place of rendering of physical service in Ethiopia by the destination principle in use then it ignores the supply of services by non-residents through electronic methods. Again if we assume the supply of services by non-residents through electronic methods, then by making the place of supply out-side Ethiopia where the supplier is, hence how is the VAT to be collected in this case? No answer.<sup>157</sup>

- Art.10 (2) of the proclamation also defines the place of rendition of service in consideration of Immovable and movable property, which works to the mortal and bricks trades only.<sup>158</sup>

### 3.3.5. VAT Collection Methods

The proper selection of tax collection mechanisms among the alternatives approaches is a very important issue in international e-commerce of services and intangibles because, inadequate collection mechanisms is the main sources of tax fraud and the erosion of the tax base.<sup>159</sup> As far as VAT is concerned, there are various approaches including self-assessment/reverse charge, registration of non-residents; tax at source and transfer; collection by trusted third parties, and Technology based solutions.<sup>160</sup>

1. Under a self-assessment collection method by which the recipient would be required to determine a tax owing on imports of services and DP, and to remit this amount to the domestic tax authority<sup>161</sup> has the advantages of verify and enforce compliance since the customer is a resident; the compliance burden shifted from the supplier to the customer who has full access to the details of the supply; has low compliance costs because the supplier is not required to meet tax obligations in an import country such as VAT identification, audits, etc.; it

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<sup>157</sup> Id, article10/1/

<sup>158</sup> Id, article 10/2/

<sup>159</sup> OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. At 99 <http://dx.doi.org/10.1787/9789264241046-en> (accessed, 4/30/23)

<sup>160</sup> Supra note 41, at 31

<sup>161</sup> Ibid

reduces the revenue risks associated with the collection of tax by non-resident suppliers who are outside a jurisdiction.<sup>162</sup>

However, reverse charge supply (RCS) suits well for business to business (B2B) transactions where the recipient business is a registered VAT person in the country of consumption.<sup>163</sup>

Private customer's doesn't have incentive for their purchases to compute input VAT credit and awareness about their tax obligations,<sup>164</sup> which led them to buy imported digital goods or services without paying VAT.

2. In the registration system, where non-resident businesses shall be obliged to register in a jurisdiction and to charge, collect and remit the consumption tax to the country of registration, deemed to be feasible, effective and promote tax neutrality though its effectiveness greatly affected by registration and other hidden costs; difficulties of identifying the suppliers, and enforcing the obligation of registration on non-suppliers.<sup>165</sup>

3. Taxed at source and transfer the revenue to the jurisdiction of consumption is other option.<sup>166</sup> But it increases administration cost and needs international agreements for its enforcement, collection and revenue transfers.<sup>167</sup>

4. The collection of consumption taxes by third parties such as financial institutions is also another approach. However, its feasibility is doubtful.<sup>168</sup>

5. Inventing a new technology that simplifies the tax collection by the use of software, which would automatically calculate the tax due on a transaction and remit the tax to the jurisdiction of consumption, can also be another option.<sup>169</sup>

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<sup>162</sup> Ibid

<sup>163</sup> Ibid

<sup>164</sup> Ibid

<sup>165</sup> Ibid

<sup>166</sup> Ibid

<sup>167</sup> Ibid

<sup>168</sup> Id, at 32

<sup>169</sup> Ibid

When we come to VAT collection method employed by the current proclamation, it is only RCS which is used for registered and unregistered recipients too, which is not efficient and proper, and also ignored all other forms of EC.<sup>170</sup>

### **3.3.6. VAT Invoice**

The VAT invoice is a key control document in the conventional VAT system since it enables the tax authorities to determine the registered supplier's tax responsibility and the purchaser's eligibility for a VAT-related deduction. In this regard a registered supplier of taxable transaction is duty bound to issue VAT invoice simultaneously at the time supply of goods and services.<sup>171</sup> The problem with this provision is that the invoice is paper based and require physical meeting of the parties which is not workable to EC. As such EC ventures in Ethiopia can't issue invoice and also report the transactions. However electronic tax invoice (ETI), which contains details description about the transaction similar to the paper invoices that companies send to their clients are utilized often nowadays though their formats and methods vary from country to country.

### **3.3.7. Keeping Books and Records**

The requirement to keep records and books of account and retain it to a maximum of ten years of every taxable transaction under Art. 37<sup>172</sup> can't go with the nature of EC were the only record available is may be electronic record.

### **3.3.8. Procedure of Serving Notice**

The procedure of serving notice requires being in writing and delivered in person<sup>173</sup> is ineffective for EC for which the location is an online store.

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<sup>170</sup> Supra note 31, article 23

<sup>171</sup> Supra note 31, article 22(1), supra note 174, article 2(10)

<sup>172</sup> Id, at article 37

<sup>173</sup> Id, at article 38

### 3.3.9. Collection Enforcement Methods

And also Collection Enforcement methods assume traditional trade where physical property of the trader exists in Ethiopia but not EC.<sup>174</sup>

As such, though Art. 4(7) of the proclamation tell its applicability to the supply of goods and rendering of services through internet too, the rest of the provisions found inadequate to EC. And also it makes domestic online businesses free rider since 4/7/ talks about international EC only.

## 3.4. VAT collecting under the Draft VAT proclamation no. .... /2023

### 3.4. 1. Scope of Application

Article 3 of the draft bill determine the application of the law on Taxable Transactions carried out within the territory of Ethiopia, Taxable Import and RCS made by a person outside of Ethiopia without a fixed place of business in Ethiopia.<sup>175</sup> Where is the territory of Ethiopia when we deal about ecommerce? How carried? By who carried? The draft does not answer it.

The application of the law is unlimited, to include each and every transaction made in Ethiopia whether off or on line and international or local to businesses or consumer as far as it is not exempted.<sup>176</sup>

The phrase Taxable import also does not answer the question through which means? However from the reading of article 2/46(b)<sup>177</sup> we can say that its application is on physically imported goods through custom/postal office. This is the intention of the drafter too.<sup>178</sup> However it does not includes electronically ordered goods (EOG) in respect of which if and only an operator of an electronic distribution platform (EDP), who is a registered person, has collected VAT from the recipient of the goods in advance.

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<sup>174</sup> Id, article 30-36

<sup>175</sup> VAT proclamation, latest draft, 2023, article 3 (accessed, 10/1/23)

<sup>176</sup> Interview with Ato Abereham Rega, higher public prosecutor, at ministry of justice, (08/31/2023)

<sup>177</sup> Supra note 175, article 2/46/ b

<sup>178</sup> Supra note 176

The law is to be applicable on a supply of DC too made by non-resident supplier without fixed place of resident in Ethiopia when it supplies to registered person, government entity and large unregistered persons. However from the reading of the scope it is not clear whether the draft covers international transaction in downloadable contents between B2C, C2C, and C2B, which is the current challenge the draft expected to address.<sup>179</sup>

### 3.4. 2. The Supply of Services

A supply of service under article 2/41 is “anything done” that is not a supply of goods or a supply of money or digital currency. This is what we called in Amharic “ሻላ ቢድፍን”. What is anything done means? What are those services does not to be found in the sub articles? Does digital products and e-services included in?

However a Supply of service is just like an umbrella of all about inside and outside electronic services including telecommunication services (TCS) and broadcast institutions when they engaged in to the supply of e-services.<sup>180</sup> The law is indifferent about the modality of the supply and does not need to be framed in such a way and is similarly applicable to supply of services of all kind.<sup>181</sup> However, EC changes their status and products which used to be treated as a services or goods are now changed their status, and the way of supply and consumption, place and time of consumption, etc. too. As such to apply the same law does not hold water, especially DEC, which necessitates a different name and legal treatment.

If it is as simple as such to regulate DEC by the same law which governs bricks and mortar trade why is it an international challenge? Additionally if it encompasses all types of supply of services all together, which is not possible off course, why does it isolate the supply of remote services (RS/ EOG) as different from other supply of services?<sup>182</sup>

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<sup>179</sup> Interview with Ato Yonas Mekonen, a lawyer, (08/25/2015)

<sup>180</sup> Interview with Ato Shehir Shemolo, Managing Partner at RSM consulting PLC, (08/29/2023)

<sup>181</sup> Supra note 176

<sup>182</sup> Supra note 175, article 2/14/

And also it is obvious that the sub-articles under 2/41/ a- d are not talking about DEC but other forms of supply of services, however “e” is not clear as to what kind of supply of services is taken by a similar modality with RS/EOG under Article 2/ 14/?

For Ato Shehir “e” talks about DEC and he assimilates the means of transition such as cable or wire with EDP through which digital contents supply. But for Ato Abereham “e” is about distribution of a product/ content such as ‘drama’ by broadcastings such as DS TV but not about digital content at all. However for Ato Yonas 2/41/e and article 2/48/ talks about TCS. Because TCS is defined as a supply of service/products such as signals, writing, images, sounds, or information of any kind their supply is undertake by wire, radio, optical, cable, or other electromagnetic systems, or by a similar technical system just like article 2/41/e. The draft is not does not make clear the different between supply of services under 2/48/ and 2/41/e. All this different interpretation of the provision, even by legal professionals, shows the vagueness of the law.

Coming to TCS, sub article ‘b’ of article 2/48/ talks about 1, pure TCS to be given such as provision of network and also 2, when it engages in to supply of e-services for example, ethio-telecom or safari-com engages in to supply of items, images, writings, sounds and information’s etc. such as ringing tones sales, apparatus, cards, etc. which is VAT able. The inclusion of TCS is to specifically deal about TCS as sub state of supply of services, when it engages in to supply of services of any kind.<sup>183</sup>

EU VAT guide line defined TCS as a “means of ‘transmission’ ‘only’ of signal” of any nature by wire, optical, electromagnetic or other system for the transmission of other contents.<sup>184</sup>

### **3.4. 3. The Supply of Remote Services**

The definition given to remote service /RS/ under article 2/35/ is a broad and unclear one because the word which says “remote” and the phrase which says “a place of business outside Ethiopia” seems talks about physical establishment, which does not go with DEC. however for the question what kind of service is supply of RS through EDP, the drafter explained as cross-

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<sup>183</sup> Id, article 2/48/

<sup>184</sup> EU VAT rules, July 1, 2021

border supply of downloadable contents and e-services.<sup>185</sup> However the draft does not illustrate the types of such services unlike the VAT rules of the EU on cross-border e-commerce activities.<sup>186</sup> The EU guide line states detail types of electronically supplied services (ESS) unlike the draft includes programs on demand; online magazines; website supply or web hosting services; distance maintenance of programs and equipment; supplies of software and software updates and advertising space on a website.<sup>187</sup>

#### **3.4.4. The supply of Electronically Ordered Goods**

Article 2/15/of the draft defined EOG as only their ordered is taken by way of an electronic communication. It seems it is talking about IEC. As such the draft seems intentionally excludes the laws application to digital products either because of the absence of technology which control the details of transaction or other policy reason.<sup>188</sup> However article 2/14/ define EDP as a means by which electronically ordered goods is to be supplied. Therefore the place of EOG as a good or DP is not clear.

#### **3.4. 5. The Status of Digital Products**

Countries treated DP as services or goods clearly. In this respect the draft defines goods under article 2/20/ by excludes incorporeal products from its ambit and service under Article 2 (37) provide a broad and shallow definition by saying a service is anything which is not goods or money. As such the place of DP and e-services as good or service either is not clear.

As we saw it above EC changes the status of products that necessitates different treatment. As such the law needs to clearly define the place of DP as services or goods just like other countries.<sup>189</sup>

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<sup>185</sup> Interview with Ato Waseyehun , higher legal expert at MOF, (08/11/2023)

<sup>186</sup> Supra note 184

<sup>187</sup> Ibid

<sup>188</sup> Supra note 179

<sup>189</sup> Ibid

### 3.4.6. Imposition of VAT

VAT shall be imposed on the taxable supply made by a registered person (RP) and (reverse charge supply) RCS made to a RP, government entity (GE), or large unregistered person (LUP). Here also the draft doesn't differentiate between the supply of DP and goods and make taxable each and every supply made by whatever means off or on line; in or out of Ethiopia. However the imposition of VAT on supplies of DP between C2C and C2B supply seems ignored.<sup>190</sup>

### 3.4.7. Taxable Activity

The draft makes activity or supply that doesn't continue or rarely taken, even if result in a supply of goods or services, un-taxable.<sup>191</sup> Which is not the case for other countries such as Nigeria, where Isolated or casual transactions including one time transactions, by any means, which are of a commercial nature to a person of any status in there constitute engagement in trade or business for tax purposes. The degree of transactional permanence is irrelevant to the determination of engagement in trade or business for tax purposes as far as there is a taxable supply.

### 3.4.8. Place of supply of Electronically Ordered Goods

A supply of EOG by a person carrying on a taxable activity outside Ethiopia and who does not have a physical place of business in Ethiopia occurs in Ethiopia if the "goods" is delivered in Ethiopia through an EDP operated by an operator of the platform who procures, arranges, or facilitates the delivery of the goods in Ethiopia.<sup>192</sup> Here also the use of the word goods as its delivery takes place through an EDP is confusing since it transmits a message that DP is goods.<sup>193</sup>

However Ato Abereham explained it as it is talking about IEC than DEC. But for Ato Shehir it is problem of wording but talks about DEC too, which is terminology issue than substance. Rather for him it is not clear why article 24 has added once 23 have covered it.

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<sup>190</sup> Supra note 175, article 7/1/ "a"

<sup>191</sup> Id, article 6 and 2/47/

<sup>192</sup> Id ,article 23(2)

<sup>193</sup> Supra note 179

However with all its confusion, it is telling that Ethiopia can collect VAT from the supply goods /services by non-resident supplier to recipient in Ethiopia as far as the goods/services are delivered in Ethiopia by whatever means.

### **3.4.9. Place of Supply of Services**

Article 24/1/ there is a supply of services in Ethiopia “if the place of business of the supplier from which the services are supplied is in Ethiopia”. This provision does not tell us how the supply is to be taken.

24/2/ A supply of services, other than a RCS, by a person who carries on business “outside Ethiopia” and does not have a physical place of business in Ethiopia shall occur in Ethiopia if the services are RS supplied to a resident of Ethiopia through EDP. Here 1<sup>st</sup> the law does not tell what types of service is a RS than telling us that it is a service from foreign country. 2nd, what is the place of supply for RCS since in both cases the recipient is in Ethiopia and the modality is EDP? 3rd it is possible to tell that the provision is telling about DEC between B2C. Then what about supply of services between other transactions? 4th, the requirement of residency is not clear again. The phrase which says “outside Ethiopia” is not clear in the context of EC.

Here the draft doesn't clear what to take in to account to say the supply is in Ethiopia. The server or the website? The draft doesn't answer what to take as a PE for EC purpose. Is it the server or the web site or both?<sup>194</sup>

Human intervention is not a requirement for the existence of a PE whatever the requirement is. However as to OECD the server is convenient to be considered a “fixed place of business” if it meets a requirement of fixation and located at a certain place for a sufficient period of time.<sup>195</sup>

The draft seems talks about the PE in physical person/juridical person sense than EC sense.<sup>196</sup> However the main point is the law has to be clear for taxpayers and tax authorities.<sup>197</sup>

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<sup>194</sup> Supra note 73

<sup>195</sup> Ibid

<sup>196</sup> Supra note 175

<sup>197</sup> Supra note 194

### **3.4.10. VAT collection Methods**

#### **3.4.10. 1. Reverse charge Supply**

As we saw it earlier choosing the right VAT collection methods is critical to properly collect VAT from the transaction and this choice is dependent on the form of the transaction. In this regard Ato waseyehun said, RCS the main VAT collection method, under the draft, to be applicable for DEC between B2B, B2G and B2LUP. Whereas for the supply between B2C registrations will come on the front.<sup>198</sup>

However under the draft there is no clear and express provision which describes for the different types of VAT collection methods for the different types of EC, though it possible to suspect, from the reading of article 5 and 65 that RCS is the VAT collection method for international B2B, B2G and B2LUGP. The aim of the provision with regards to GE & LUP is to inform them of their obligation to collect and pay VAT behalf of the government while they buy a product or get service.<sup>199</sup>

With regards to the status of this LUP, Ato Abreham explained them as a consumer that buys a large amount of digital product or e-services from platforms/suppliers such as Google, YouTube, etc. and are non- profitable institutions such as Addis Ababa University (AAU), NGO's etc.<sup>200</sup> However article 2/28/ has defined LUP as a supplier than recipient of services.

#### **3.4.10. 2.Registration**

The current VAT law collection method for B2B transaction is RCS. The problem and the draft expected to correct is that the current law use of RCS for B2C transaction of intangibles too.<sup>201</sup> There has to be an express legal obligation of registration and the associated punishment such as

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<sup>198</sup> Supra note 204

<sup>199</sup> Ibid

<sup>200</sup> Supra note 195

<sup>201</sup> Supra note 31, article 23

banning for non-compliance. For instance, Kenya has banned Tik-tok from supply its digital products and services to its consumer in Kenya.<sup>202</sup>

There is mandatory and voluntary registration of tax under the draft. Thus, “any person” who anticipates or makes a taxable supply with a total value or that exceeds the stipulated threshold value of 2, 000,000 for twelve months of periods are required to register as a taxpayer and is duty bound to pay VAT.<sup>203</sup> For the question whether the minimum requirement is applicable to EC, as Ato Wasihun, it is applicable.<sup>204</sup> A single transaction result in obligation to pay VAT in other jurisdiction such as Nigeria (explained under the title countries exprience) since it is not legally possible, due to jurisdiction and other issues to get the details of other country’s trader annual total transaction, and this requirement amounts to rejecting possible government revenue.

However from the reading of art. 24/6/ and 25/3/ it is possible to “grasp” that there is a duty of registration on the non-resident supplier or the operator of the EDP for the supply made by platforms to consumers in Ethiopia.

Additionally Article 64 put an obligation on a non-resident supplier through EDP failed to register, to lodge security, with the possibility of appointing a VAT representative in Ethiopia who has the duty of performing the entire underline supplier. This provision has a power of forcing the supplier to register so that to be able to supply such products. As such it is possible to conclude that the draft secretly address transaction between B2C, which needs to be “accurate”. As to Ato Wasihune and Abereham, since the government currently restrict the free movement of foreign currency by individuals it is not possible to down load digital contents from MNEs. Therefore DEC is not a challenge. And also though it is possible to download through different illegal ways, since the platforms themselves don’t even know the down load in Ethiopia and the payment also is from foreign source we cannot do anything about it. Additionally our laws related to technology do not permit social Media’s such as face book, you tube to come and establish in Ethiopia. As such they do not exist in Ethiopia. Therefore currently downloadable contents are not challenging in Ethiopia.<sup>205</sup>

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<sup>202</sup> Supra note 179

<sup>203</sup> Supra note 175, article 12

<sup>204</sup> Supra note 185

<sup>205</sup> Ibid

However this is not the fact on the floor and in-fact suppliers such as Netflix are supplying a considerable amount of DC but never paid VAT due to the absence of an express obligation and system to track the transaction. Also the main question has to be where the supply consumed? A law also has to predict the future rather than be amendable now and then.

But ministry of revenue (MOR) is already reaching an agreement with foreign non-resident supplier agents in Ethiopia to register and withhold the VAT on the supply they made to Ethiopia consumer. For those who doesn't have an agent the supplier will be banned from supply in Ethiopia, unless it register, by using a "technology" called Integrated Tax Administration System (ITAS) to be purchased from American government,<sup>206</sup> which is a very effective technology in identifying the details of e-transaction, by the use of software, which would automatically calculate the tax due on a transaction and remit the tax to the jurisdiction of consumption. With the coordinated work with different stake holders such as INSA, MOR could be successful in this case.<sup>207</sup>

To determine the residency of the consumer the fulfillment of two of the grounds under article 24/3/ such as billing address, bank account etc., is enough. This grounds has great power to indicate the details of transaction and one of the very helpful variables in establishing a credit history and with the ITAS technology it is possible to know the details of electronic transactions and digital supplies consumed in Ethiopia territory better than the old transaction.<sup>208</sup> However using them is not visible since currently the market for foreign currency free movement by individual is restricted and the payment do no go through banks, but through other illegal means.

Tax the suppliers at source and transfer the revenue to the jurisdiction of consumption, cannot work to Ethiopia because Ethiopia does not have any agreements in respect to VAT.<sup>209</sup>

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<sup>206</sup> Ibid

<sup>207</sup> [www.lawinsider.com/dictionary/integrated-tax-administration-system-ITAS](http://www.lawinsider.com/dictionary/integrated-tax-administration-system-ITAS) (accessed on 9/27/2023)

<sup>208</sup> <https://globalbanks.com/what-is-billing-address/> (accessed on 9/27/2023)

<sup>209</sup> Supra note 32

### **3.4.11. Tax Invoices**

The draft provides for a paper based receipts but not electronic.<sup>210</sup> This can hinder the opportunities for business to reduce their costs of transactions conducted via internet, and hence they are forced to conceal the transaction while collecting the tax from the payers.

## **3.5. Practical Challenges in Relation to Tax Administration**

### **3.5.1. Lack of Awareness**

Awareness of a given subject matter precedes everything else that comes later. As such from my practical overview which I undertake in different districts of MOR and also the ministry itself I noticed the employees, even the seniors surprisingly do not differentiate between e-tax and e-commerce. Let alone understanding the tax challenges of EC, they don't even understand what e-commerce is. I faced with the challenges of creating an awareness and making clear the subject matter of my study to them. This makes my work of getting the necessary information more tiresome and time taking. Of-course this is not without denying the existence of a number of tax officers who have the necessary understanding of the subject matter not because of MOR but by their own efforts.

### **3.5.2. Absence of Technology**

As we saw in the previous pages collection of VAT especially from DEC demand an advanced technology since it is a result of technology itself, which currently we don't have.<sup>211</sup> However currently since the government is preparing to employ ITAS technology it is believed to solve issues related to this.<sup>212</sup>

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<sup>210</sup> Supra note 175

<sup>211</sup> Interview with Ato Ayub Abedulkarim, tax officer at legal compliance study strategy preparation group, custom office at Lidetta district, (8/11/ 2023)

<sup>212</sup> Supra note 185

### 3.5.3. The perception of E-commerce as a VAT Challenge

Though the government considered EC as a challenge and has been trying to solve the issue since 2004, there was no effort to legally regulate the sector until 2012 E.C., a time COVID 19 pandemic occurred which created a conducive environment for the vast online trade necessitates regulation of the sector to collect tax. Accordingly the responsibility was given to MOF to study the possibility of making banks and telecom a tax collector of the transaction. But the ministry can't come to a solution because regulating the sector demands the involvement of many stake holders.<sup>213</sup>

The ministry of trade (MOT) by it-self has prepared around 25 e-commerce strategy, which is expected to come in to effect in 2016 E.C., in respect to how the platform should function, to which MOR participated. However it was taken only in respect to domestic e-commerce and to which a comment has been given to include international EC too.<sup>214</sup>

### 3.5.4. Non-registration of E-Commerce Ventures in Ethiopia

E-commerce ventures in Ethiopia are not-registered for VAT though there are local EC ventures that register voluntarily and pay VAT.<sup>215</sup> The absence of clear law to demand registration and technology to know the details of the transaction disabled MOR from collecting VAT. As such even though we know the existence of the transaction we are not able to collect VAT.<sup>216</sup> To make things worse MOF do not issue directives to implement the proclamation.<sup>217</sup>

The absence of electronic invoice and other electronic system discourage the registration of ecommerce sites.<sup>218</sup> Now MOR is not collecting VAT from the sector at all.<sup>219</sup>

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<sup>213</sup> Supra note 145

<sup>214</sup> Ibid

<sup>215</sup> Supra note 145

<sup>216</sup> Ibid

<sup>217</sup> Ibid

<sup>218</sup> Ibid

<sup>219</sup> Ibid

### **3.5.5. Absence of Integrated work between Stake Holders**

As discussed it earlier EC is a complex phenomenon and its regulation needs the involvement of different stake holders in the system. However there is no integrated work between MOT, MOR, INSA, Banks, telecommunication and others stake holders in Ethiopia taxation system.<sup>220</sup>

### **3.5.6. The Existence of Hustle**

The existences of hustle to be a registered VAT payer, for a given EC venture, discourage them to register. As such they use their own method of supply which is unknown and uncontrollable by Ethiopian government. Therefore the existence of one door service can add a value in this regard.<sup>221</sup>

### **3.5.7. Unknown Details of Transaction**

Like the rest of the world knowing the details of transaction is a challenge to Ethiopia tax system. The case for VAT is severing because of the hardness to know the threshold. As such unless the EC ventures themselves come and register for VAT no one can trace it. The draft seems mitigate this challenge which employ the fulfillment of two of the grounds under article 24/3/ such as billing address, bank account etc., to determine the residency of the consumer of the supply unlike the current law.<sup>222</sup> However the restriction on transaction of foreign currency by itself has its own contribution to mitigate the challenges.<sup>223</sup>

In regards to this domestic ecommerce sites that are registered for VAT are not register as EC ventures but as a traditional trade with in the sector. For example, ride registered in the transport sector but not as EC venture. But still there are a lot which did not registered and even the

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<sup>220</sup> Ibid

<sup>221</sup> Supra note 211

<sup>222</sup> Supra note 164

<sup>223</sup> Interview with Ato Barise Geremewe Lema, tax payers registration and cancelation head , Mulege District, ( 20/08/23)

government don't get means to register them for VAT since it is not possible to know the transaction it-self and the fulfillment of minimum threshold.<sup>224</sup>

### **2.5.8. The Need for Different Treatment**

It is obvious that EC will be the future trend of trade in Ethiopia. Therefore unless the sector properly taxed it will result in loss of huge revenue for government. As such it needs its own independent institution and ministry as MOT or MOF etc. with its own specialized manpower, resources and institutional setup.<sup>225</sup>

### **2.5.9. The Absence of VAT Policy and Guidelines**

Tax policy which is a set of guidelines that control how taxes are levied, it's dispersed, and the systems are managed, has main goal of increase government revenue for the necessary expenses. Additionally its absence can lead to several issues, including: inefficient allocation of resources, lack of transparency and clarity: increased economic inequality, inability to respond to economic shocks such as recessions and inability to collect enough revenue to the necessary expenses. As a result Governments must have a well-defined tax policy that is open, effective, and equitable. This can ensure that public goods and services receive enough funding, minimize economic inequality, and improve the economy's capacity to absorb shocks.

However in Ethiopia let alone to have a VAT policy we do not have tax policy at all unlike other sectors such as agriculture or industry except in the form of Preamble in the main proclamation.<sup>226</sup> Additionally there is no guide line too.<sup>227</sup>

There is no single e-commerce case which passes through tax appeal commission level also.<sup>228</sup> The same is true for formal courts.<sup>229</sup>

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<sup>224</sup> Interview with Ato Gebre Eyesus Zeray, tax payers registration and cancelation head, custom lidetta district; (08/11/ 2023)

<sup>225</sup> Supra note 211, supra note 223

<sup>226</sup>Supra note 33

<sup>227</sup> Ibid

<sup>228</sup> Interview with W/ro Serkalem Eniyew, judge at federal tax appeal commission, (15/9/ 2023)

Therefore from the above discussion it is not hard to conclude that Ethiopia not yet have an adequate legal, institutional and administrative frame work to collect VAT from e-commerce.

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<sup>229</sup> Interview with Ato Negash, Judge at Federal High Court Ledeta Bench, (6/12/2015)

## CHAPTER FOUR

### 4. CONCLUSION AND RECOMMENDATIONS

#### 4.1. Conclusion

VAT is the main source of world government's revenue, and has a significant impact on the GDP-based growth of the Ethiopia economy as a whole and the fast and continuous growing of VAT to total GDP as well as the percentage of VAT tax revenue to total government income.

However the fast development of technology birthed EC world-wide and in Ethiopia affects its status, and which caused by the mismatch with the existing backward VAT laws and tax administration. As such e-services and DP are subject to various and inconsistent tax regimes. DP neither classified as goods nor as services and the current law assumed physical services and goods. To apply the same law and system to e-commerce is impossible.

Accordingly How to treat supplies of intangibles and e-services and tax them, how to identify their details of, especially in cross border B2C and C2C, transaction are among the issues of collection of VAT from e-commerce. This necessitates a different legal treatment.

International and regional organizations such as EU, OECD, ATAF and plenty of foreign literatures has worked and are still working and prepared guide lines, proposals, and recommendations in order to mitigate the challenge, though none of these effort become enough to solve the problem once for all. Because of this, individual countries have taken individual step and try to solve the challenge.

Ethiopia VAT proclamation no 285/2002 with its amendment proclamations and the institutional framework found inadequate to collect VAT on e-commerce, mainly in digital items and e-services, since it is crafted by assuming physical trade. Surprisingly the draft also does not fill the gap of the current law in this respect for the reason that it is vague and purely drafts though it assumes transaction in DP.

## 4.2. Recommendations

The next recommendations are forwarded believing if implemented, may improve the gaps. Thus;

- ❖ The government needs to take adjustments implemented by the other jurisdictions to mitigate the challenge of collecting VAT on e-commerce, and how the existing VAT legislation and practice is lacking in realizing it.
- ❖ The government needs to frame a distinct well-defined tax/VAT policy that is open, effective, and equitable on the collection of VAT from e-commerce.
- ❖ The over-all VAT rules and administration with regards to e-commerce should be different from the mortar and bricks trade.
- ❖ The rules have to be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction.
- ❖ Critical terms in relation to e-commerce should be defined.
- ❖ There have to be illustrative lists of the types of DP and e-services delivered via electronic or similar networks.
- ❖ The whole process of, especially DEC, should be simple and electronic
- ❖ There has to be a clear provision on whether web sites and/or servers will be considered to be permanent establishment.
- ❖ The employment of the technology such as ITAS should be employed as fast as possible due to its huge use to control the whole system of the transaction.
- ❖ There has to be cooperation between different stake holders such as MOF, MOR, and INSA.
- ❖ There should be a training programs and conferences that help stake holders to adjust their new roles and learn more about the organization and its works and be aware of the overall challenges of e-commerce.
- ❖ Awareness of the consumer should be raised with regards to the fact that the VAT they are paying is consumed by the seller against government revenue interest and hence themselves.
- ❖ The last but not the list is that it is quite understandable that the challenges of collection of VAT from e-commerce are not easily manageable by just make the main laws adequate.

Rather since it is a new phenomenon new issues can/might arise through practice which the law cannot anticipate. As such MOF and MOR, and other responsible organ should try to mitigate these gaps by preparing its own policy, guide lines, circulars, publications and etc.

## **Bibliography**

### **I. Primary sources**

## **National Legislations**

- ❖ Communications Service proclamation,( 2019) Federal Negarit Gazeta, Proclamation No.1148/2019, 25th year, NO 82
- ❖ Electronic Transactions proclamation, (2020) Federal Negarit Gazeta, Proclamation No. 1205/2020, 26th Year No. 57
- ❖ Value Added Tax Proclamation, (2002) Federal Negarit Gazeta, Proclamation No. 285/2002, 8th Year No. 33
- ❖ Value Added Tax (Amendment) Proclamation, (2008), Federal Negarit Gazeta, Proc. No. 609/2008, 15th year, No. 6
- ❖ Value Added Tax proclamation No...../2023, (latest draft) (accessed, 10/1/23)

## **Foreign Legislations**

- ❖ Africa Union Convention On Cyber Security and Personal Data Protection (Accessed, 8/17/23)
- ❖ EU Directive/77/388/EEC (accessed 4/25/2024)
- ❖ The Central Goods and Services Tax Act of India , 2017 (12 OF 2017) As Amended (accessed, 5/20/23)
- ❖ The IGST acts, 2017 No. 13 Of 2017 [12th April, 2017](accessed, 20/6/23)
- ❖ Value Added Tax Act (Nigeria) No. 102, 1993 (accessed, 15/13/23)

## **Interviews**

- ❖ Interview with Ato Mesfen Gulelat, director of legal study on ecommerce taxation at MOR, *on the overall VAT collection from e-commerce*, (08/14/2023)
- ❖ Interview with Ato Abereham Rega, higher public prosecutor, at ministry of justice, *on e-commerce adequacy of the latest draft VAT law*, (08/31/2023)
- ❖ Interview with Ato Yonas Mekonen, a lawyer, *on e-commerce adequacy of the VAT law*, (05/5/2023)
- ❖ Interview with Ato Shehir Shemolo, managing partner at RSM consulting PLC, *on e-commerce adequacy of the new draft VAT law*, (08/29/2023)

- ❖ Interview with Ato Ayub Abedulkarim, tax officer at legal compliance study strategy preparation group, custom Lidetta District, *on the taxation e-commerce*, (8/11/ 2023)
- ❖ Interview with Ato Barise Geremewe Lema, higher tax payers, Mulege district, *on the registration of e-commerce suppliers*, ( 6/12/15)
- ❖ Interview with W/ro Serkalem Eniyew, judge at federal tax appeal commission, *on the existence of e-commerce cases*, (15/9/ 2023)
- ❖ Interview with Ato Negash kefele, Judge at Federal High Court, Ledeta Bench, *on the existence of e-commerce cases*, (6/12/2015)
- ❖ Interview with Ato Gebre Eyesus Zeray, tax payers registration and cancelation head, custom Lidetta district, *on the registration of e-commerce suppliers*, (08/11/ 2023)
- ❖ Interview with Ato waseyehun, *on the adequacy of the latest VAT draft to e-commerce*, (8/11/23)
- ❖ Interview with Ato Mulay Weledu, *on the existence of VAT policy, treaty, and circular* (01/25/24)

## II. Secondary Sources

### 1. Books and Articles

- ❖ An examination of the legal framework for electronic commerce taxation in Nigeria: the finance act 2019 in perspective, 2020(accessed, 6/3/23)
- ❖ AKÇAOĞLIf E., International Taxation Of Electronic Commerce: A Focus On The Permanent Establishment Concept (accessed, 5/26/23)
- ❖ Azam, R., Global Taxation of Cross Border E-Commerce Income, July 2012 ( accessed, 7/18/23)
- ❖ Cash M., and Schuman R. Scholar., 1999. Electronic Commerce and Tax Base Erosion, EPRS: European Parliamentary Research Service. Belgium. Retrieved from <https://policycommons.net/artifacts/1340895/electronic-commerce-and-tax-base-erosion/1951866/> on 25 Apr 2024. CID: 20.500.12592/997bkz. Do (accessed, 7/19/23)
- ❖ Clayton C. W., "Taxation of Global E-Commerce on the Internet: The Underlying Issues and Proposed Plans" (2000). Minnesota Journal of International Law. 140. <https://scholarship.law.umn.edu/mjil/140> (accessed, 7/21/23)

- ❖ Clarification on the implementation of the Value Added Tax (VAT) Act, American International Journal of Business Management (AIJBM) ISSN- 2379-106X, Federal Inland Revenue, www.aijbm.com Volume 3, Issue 4, 2021 <file:///C:/Users/justice/Downloads/vat-modification-order-2020-detailed-list-vat-exempts/.pdf> (Accessed, 7/18/23)
- ❖ D W Samson. (2002). History of Taxation. In: Lymer, A., Hasseldine, J. (eds) The International Taxation System. Springer, Boston, MA [https://doi.org/10.1007/978-1-4615-1071-0\\_2](https://doi.org/10.1007/978-1-4615-1071-0_2) (accessed,5/10/23)
- ❖ Era Dabla -Norris, 'and others' Digitalization and Taxation in Asia, Asia-Pacific and Fiscal Affairs Departments, , I N T E R N A T I O N A L M O N E T A R Y F U N D, DP/2021/017 (accessed, 4/29/23)
- ❖ Erdem, A. & Suhyel, K., (2019). "VAT Liabilities of Electronic Service Providers in Turkey", International Journal of Public Finance, Vol.4, No.1 (accessed, 5/26/23)
- ❖ Etim, R., Ofonime, J., and Augustine, U., The Implementation of Vat On E-transaction in Nigeria: Issues and Implications, American International Journal of Business Management (AIJBM) ISSN- 2379-106X, www.aijbm.com Volume 3, Issue 4 (2023)(6/3/23)
- ❖ Favourate M Y. 2022. Taxing the Digital Economy through Consumption Taxes (VAT) in African Countries: Possibilities, Constraints and Implications. International Journal of Financial Studies 10: 65. <https://doi.org/10.3390/ijfs10030065>, Academic Editor: Sabri Boubaker Received: 22 April 2022 Accepted: 15 June 2022 Published:9 August 2022 (accessed, 8/28/22)
- ❖ Federal Inland Revenue Service, 20 Sodeke Crescent, Wuse Zone 5, P.M.B 33, GARKI, Abuja, Nigeria, guide lines on simplified compliance regime for VAT for non-resident suppliers, No. 2021/19 , 2021 <file:///C:/Users/justice/Downloads/Guidelines-on-Simplified-Compliance-Regime-of-VAT-for-Non-Resident-Suppliers-15102021.pdf> (accessed, 6/4/23)
- ❖ Jones R. and Basu S., 'Taxation of Electronic Commerce: A Developing Problem', International Review of Law, Computers & Technology, 2002, Vol. 16, No.1 <http://www.bileta.ac.uk/01papers/rjones.htm> (Accessed, 7/18/23)
- ❖ Kaur G, Taxation of E-Commerce Transactions in India: An Exploratory Study, Vol. 7, Issue: 4, April: 2019 (IJSML) ISSN: 2321 – 2853 (accessed, 5/19/23)
- ❖ K. Hamner, J. (2001). Taxation of International and Domestic E-Commerce: Inevitability, Structure, Problems and Solutions. Fla. St. U. Bus. Rev., 1, 7 (accessed, 3/22/24)

- ❖ Lencho, T., Towards Legislative History of Modern Taxes in Ethiopia (1941 2008) (accessed, 4/21/23)
- ❖ PLEHN, C., Introduction to Public Finance, 4th ed., Macmillan Company, New York, 1921 (Accessed, 10/8/22)
- ❖ Sanni, A.O (2012) "Current law and practice of value added taxation in Nigeria. 5(2) British Journal of Arts and Social Sciences (accessed, 5/2/24)
- ❖ Steyn T., 'VAT and E-Commerce: Still Looking for Answers' (2010) 22 S Afr Mercantile LJ 230 (accessed, 7/19/23)
- ❖ UBAY B. & ÜNSAL H., (2021) TAXATION OF DIGITAL ECONOMY in TURKEY in THREE STEPS. Journal of Business Innovation and Governance, 4 (1), 1-11.AT 2. <https://dergipark.org.tr/en/pub/jobig/issue/63580/824595> (accessed, 7/27/23)
- ❖ Venkatesh A., Sun D., and Miss S., Opportunities and Challenges of E-Commerce in the Case of Ethiopia, International Journal for Research in Technological Studies| Vol. 5, Issue 4,(2018) (accessed, 10/31/22)

## **2. Guidelines, Reports and working papers**

- ❖ OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. At 99 <http://dx.doi.org/10.1787/9789264241046-en> (accessed, 4/30/23)
- ❖ Tax and Commerce @ OECD Clarification on The Application of the Permanent Establishment Definition on E-Commerce: Changes to The Commentary on the Model Tax Convention On Article 5, 22 December 2000, OECD Committee on Fiscal Affairs 2
- ❖ A guide to E-Commerce in India, April 2020 (accessed, 6/3/23)
- ❖ OECD (2019), the Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris [www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf](http://www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf) (accessed, 8/27/23)
- ❖ OECD (2017), International VAT/GST Guidelines, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264271401-en> (accessed, 10/16/22)

## **3. Thesis and dissertation**

- ❖ Abdulkarim, A., Challenges of Applying Ethiopia VAT on Electronic Commerce Transaction, Amsterdam law forum, 2022(accessed, 2/26/23)
- ❖ ALEMU, D., Empirical Analysis of the Contribution of VAT for Economic Development and Social Spending In Ethiopia, LLM Thesis, Addis Ababa University, 2011(5/23/23)
- ❖ MEKONNEN Y., Challenges of Taxation of e-commerce in Ethiopia, LLM Thesis, Bahir Dar University, 2018(accessed, 5/28/23)
- ❖ Gashaw, M., (2015) 'Tax Reform Discourse and Its Implications on Development: Evidence from the VAT Introduction in Ethiopia' 3 Mekelle U LJ 1(accessed, 5/13/23)
- ❖ Temesgen A., A Critical Assessment of the Application of Ethiopian VAT on E-Commerce, LLM Thesis, Addis Ababa University, 2015 (accessed, 8/3/23)
- ❖ Wondafrash S., Regulating E-commerce in Ethiopia: Lessons from the Rules of Ethiopian Commodity Exchange, LLM Thesis, Addis Ababa University, 2015, (Unpublished, available at Addis Ababa Institutional Repository)(accessed, 5/15/23)
- ❖ Yohannes M. & Sisay B., Tax Law Teaching Material, Prepared Under the Sponsorship of the Justice and Legal System Research Institute, 2009(accessed, 2/6/22)

#### 4. Internet sources

- ❖ The Difference between Domestic e-Commerce & Cross-border E-Commerce <https://www.bing.com/> (accessed 4/25/2024)
- ❖ Kai Lung Hui, and Patrick Y.K. Chau, Classifying digital products, Volume 45, Number 6 (2002), <https://www.bing.com/ck> (accessed, 8/27/23)
- ❖ J. Degenhard, Percentage of households with internet access in Ethiopia from 2001 to 2029 (accessed, 13/2 /2023) <https://www.statista.com/forecasts/1137737/household-internet-penetration-forecast-in-ethiopia>
- ❖ [www.internetlivestats.com/internet-users/ethiopia/](http://www.internetlivestats.com/internet-users/ethiopia/) on internet users In Ethiopia (accessed,5/4/2024)
- ❖ [www.trade.gov/country-commercial-guides/turkey-ecommerce](http://www.trade.gov/country-commercial-guides/turkey-ecommerce) , on the growth of EC in turkey (accessed on 2/9/2023)
- ❖ <https://shega.co/post/ecommerce-platforms-in-ethiopia/> (accessed, 23/5/2023)

- ❖ [www.lawinsider.com/dictionary/integrated-tax-administration-system-ITAS](http://www.lawinsider.com/dictionary/integrated-tax-administration-system-ITAS)(accessed 9/27/2023) on
- ❖ <https://globalbanks.com/what-is-billing-address/> ( accessed on 9/27/2023)