



ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

Taxation of Content Creators' Income in Ethiopia: Legal loopholes and Practical Challenges

Name of Student: Muleta Korme

ID: GSR/9003/14

Advisor: Aschalew Ashagre (PhD)

Addis Ababa, Ethiopia

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A thesis submitted in partial fulfillment of the requirements for the Degree of Master of Laws (L.L.M) in Business Law at the School of Law, College of Law and Governance Studies of Addis Ababa University.

Name of Student: Muleta Korme

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Advisor: Aschalew Ashagre (PhD)

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Declaration

I declare that the study on “Taxation of Content Creators’ Income in Ethiopia: Legal Loopholes and Practical challenges” is my original work and the sources used are duly cited and acknowledged.

Approval Sheet

Candidate Name: Muleta Korme Negasa

Signature: _____

Date: _____

Principal supervisor

Name: Aschalew Ashagre (PhD)

Signature: _____

Date: _____

Approved by the board of examiners

Examiner 1

Name: _____

Signature: _____

Date: _____

Examiner 2

Name: _____

Signature: _____

Date: _____

Acknowledgment

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Acronyms and Abbreviations

Ads - Advertisements

CRBLP - Commercial Registration and Business Licensing Proclamation No. 980/2016

ESIC - The Ethiopian Standard Industrial Classification Directive No. 17/2011 (as amended)

ETP - Ethiopian Electronic Transaction Proclamation No. 1205/2020

ITP - Federal Income Tax Proclamation No. 979/2016

OECD - Organization for Economic Cooperation and Development

OECD Model Tax - OECD Model Tax Convention on Income and on Capital

TAP - Federal Tax Administration Proclamation No. 983/2016

YPP - YouTube Partner Programme

EMA - Ethiopia Media Authority

MoTRI - FDRE Ministry of Trade and Regional Integration,

MoR - FDRE Ministry of Revenue

Abstract

A critical analysis of Ethiopian income tax law and other relevant laws shows that content creators' income generated from divergent activities on various social media platforms, with the exception of royalties, is characterized as business income taxable under Schedule C of the ITP. It remains ambiguous whether royalties derived by content creators should be taxed under Schedule C or D of the ITP.

Although the ITP and business registration laws can be interpreted as capturing content creators' business activities, the ESIC Directive and the presumptive income tax Schedule attached to Income Tax Regulation No. 410/2017 do not include most of content creators' business activities, except for advertising services, which resulted in non-registration of the content creators and non-taxation of their income. Currently, content creators are neither getting registered and obtaining business license nor discharging their income tax obligations, except for traditional content producers working in areas such as music, movies and media. In addition to the legal loopholes, there are also practical challenges that impede taxation of content creators' income. This study recommends for Ethiopia imposition of withholding tax on content creators' income as a separate category of income under Schedule D of the ITP coupled with registration and secondary self-declaration obligations. This tax should be collected through withholding agents as defined under Article 2(26) of the ITP which includes residents of Ethiopia who make payments to content creators.

Key Terms: content creators, social media influencers, income tax

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CHAPTER ONE

1. INTRODUCTION

1.1. Background of the Study

According to the Ethio Telecom Report, there were 29.83 million internet users and 6.35 million social media users in Ethiopia in January 2022.¹ Among the countless social media platforms, Facebook (31.2%), Telegram (25.2%), and YouTube (16.1%) were the top three preferred social media platforms in Ethiopia, followed by TikTok (13.3%) and Instagram (7.5%).² These social media platforms enable creators to create and monetize their content through advertising, sponsorships, subscriptions, merchandise sales, and so on.

The growing number of Internet and social media users has created a fertile business environment for business owners and content creators.³ Traditionally, companies have paid celebrities to show up on TV advertisements or posts on billboards to promote their products and attract more customers.⁴ However, with the advent of social media platforms, brands and businesses can easily promote their products and businesses through sponsored posts and partnerships with influencers.⁵ Therefore, influencer marketing has become an integral part of companies' marketing strategies and new marketing norms. Consequently, new business communities known as "content creators" have emerged worldwide. Currently, over 50 million people around the globe consider themselves content creators, although the creator economy is in its early stages.⁶

¹ Ethio Telecom, 'Ethio Telecom 2014 EFY (2021/22) Annual Business Performance Summary Report', <www.ethiotelecom.et/ethio-telecom-2014-efy-2021-22-annual-business-performance-summary-report> accessed 30 September 2022

² Asrat Seyoum and others, 'Ethiopian Digital Media Information Ecosystem Assessment' (*Internews* 2023) 17 <https://internews.org/wp-content/uploads/2023/08/Ethiopian-Digital-Media-IEA_edited-Final-SinglePage.pdf> accessed 24 August 2023

³ Philippines Bureau of Internal Revenue (BIR), Revenue Memorandum Circular No. 97-2021, Section 1.

⁴ *ibid.*

⁵ *ibid.*

⁶ Yuanling Yuan, 'SignalFire's Creator Economy Market Map', (*SignalFire*) <<https://signalfire.com/blog/creatoreconomy>> accessed 6 September 2023

The concept of content creators is a relatively recent phenomenon that has followed social media platform floods. The term ‘content creator’ is related to, and sometimes used interchangeably with the term ‘social media influencer.’ However, the term content creator is more comprehensive, as it includes social media influencers. Recently, attempts have been made to shape the definition of this term in various scholarly works and tax legislative acts in some countries. In general, content creators are individuals who produce original or curated content on online platforms such as YouTube, Instagram, and TikTok for commercial gain.⁷ On the other hand, social media influencers are content creators who build trust-based relationships with their audience with commercial intent.⁸

In 2021, YouTube has paid over \$30 billion to creators, artists, and media companies in the last three years.⁹ Worldwide, companies spend more than \$ 10 billion annually to promote their products through influencers.¹⁰ This indicates that content creators derive substantial income from social media activities. YouTube is the most monetized platform in Ethiopia.¹¹ Comprehensive data on the amount of income of content creators in Ethiopia is not available. Interviewed content creators were unwilling to disclose the amount they earned from their social media activities due to the sensitivity of the information. However, from an interview with one content creator, the author learned that some mega influencers are paid up to Birr 100,000 for a one-time advertising service they provide on TikTok and Facebook.

One way for Ethiopian social media influencers to promote companies’ products and services is to become brand ambassadors. In this arrangement, influencers agree to advertise a company’s products and services on various social media platforms for an extended period.¹² There are brand

⁷ Article 3(1)(d) of the Income Tax General Communiqué Serial No. 318, Official Gazette of the Republic of Türkiye, N:31717, D:12.01.2022.

⁸ Frithjof Michaelsen and others, ‘The Impact of Influencers on Advertising and Consumer Protection in The Single Market’ (2022) Publication for the committee on Internal Market and Consumer Protection (IMCO) 9.

⁹ Susan Wojcicki, ‘Letter from Susan: Our 2021 Priorities’ (*YouTube Official Blog*, 26 January 2021) <<https://blog.youtube/inside-youtube/letter-from-susan-our-2021-priorities>> accessed 1 March 2023

¹⁰ *ibid.*

¹¹ Asrat Seyoum and others, (n 2) 61.

¹² Kaleab Girma, ‘Social Media Age Envelops Ethiopian Marketing Sector’ *Addis Insight* (14 August 2020) <<https://addisinsight.net/social-media-age-envelops-ethiopian-marketing-sector>> accessed 25 February 2023

ambassador agreements that were settled for three million Birr, but neither the influencers nor the companies paying such an amount of money disclose the deals to the public.¹³ Some companies sign non-disclosure agreements with influencers to keep their dealings confidential.¹⁴

As we can observe, content creators are involved in lucrative businesses from which noticeable revenue is harnessed. The above-mentioned instances are just the tip of the iceberg; many content creators in Ethiopia derive vast income. However, these content creators, who generate significant revenue from social media and blogging activities, are yet to be effectively taxed. On June 14, 2022, Ethiopian Prime Minister Abiy Ahmed (Ph.D.), during the 13th Regular Meeting of the Ethiopian House of Peoples Representatives, stated that YouTubers who earn income in dollars do not pay taxes in Ethiopia.¹⁵ The Prime Minister stressed that any person earning income must pay tax.¹⁶ There are loopholes in Ethiopian tax laws and practical challenges to taxing these business sectors.

1.2. Statement of Problem

The taxation of internet-related businesses poses serious challenges to the old taxation system. It is difficult for tax authorities to trace and tax them because of the inadequacy of the legal framework, lack of skilled human resources, and technological capacity. The same holds true for taxation of content creators as a subset of digital businesses. Beyond this, content creators' income taxation presents unique problems in characterizing their multifaceted income-generating activities.

As a recent phenomenon, the nature of content creators' income and its taxation has been controversial worldwide. The significant income generated by content creators has made tax authorities of several countries seriously consider the taxation of content creators' business to the level of issuing different amendment acts, guidelines, and circulars. For instance, Kenya recently introduced a withholding tax on digital content monetization through the newly enacted Finance

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ ‘የኢዘብ ተወካዮች ም/ ቤት 13ኛ መደበኛ ስብሰባ’ *Fana Broadcasting Corporation* (June 14, 2022).

<<https://www.youtube.com/watch?v=AbRIZdgtDtE>> [36:30 – 38:40] accessed 6 July, 2023

¹⁶ *ibid.*

Act of 2023.¹⁷ Tax authorities in countries such as the Philippines, New Zealand, Singapore, Sweden, Norway, Finland, Canada, Germany, and Egypt have issued normative guidelines or general explanations to clarify the tax obligations of content creators. There are countries which have issued warnings after finding that a large number of content creators are underreporting or not reporting their income to tax authorities¹⁸

However, although the content monetization business is also flourishing in Ethiopia, government organs entrusted with taxation mandates, such as the Ministry of Revenue (MoR), Ministry of Trade and Regional Integration (MoTRI), and Ministry of Finance, have neither issued any directive nor taken any action regarding the taxation of content creators' income

Be that as it may, in Ethiopia, commercial registration and business licenses are legal prerequisites to engage in business activities.¹⁹ Moreover, unless exempted, anyone who makes income should pay income tax.²⁰ However, whether content creators have been registered as business and paying income tax is yet to be explored. There are also uncertainties in Ethiopian income tax and non-tax laws relevant to the taxation of content creators' income. Thus, it is crucial to meticulously characterize and categorize content creators' income-generating activities in the schedular income tax system as stipulated under the Federal Income Tax Proclamation No. 979/2016 (ITP).

Business registration and taxation are intertwined in Ethiopia. Business registration requirement links potential taxpayers to Ethiopian revenue authorities since Taxpayer Identification Number (TIN) is a precondition to secure business license.²¹ Commercial registration and business licensing are implemented based on the Ethiopian Standard Industrial Classification Directive No. 17/2011 (as amended) (ESIC). Nonetheless, content creators' business activities are not explicitly included in the licensing categories of the ESIC Directive. In addition, the ETP under Article 41 only recognized e-commerce operators, e-commerce platform operators, e-commerce intra-platform operators, and express logistics service providers as commercial entities that shall be bound by all laws pertaining to a commercial entity despite the broader definition given to e-

¹⁷ The Finance Act, 2023, Part II, Section 2.

¹⁸ <<https://economictimes.indiatimes.com/news/india/i-t-dept-launches-tax-evasion-probe-against-social-media-influencers/articleshow/101370970.cms?from=mdr>>

¹⁹ Article 23 of the CRBLP.

²⁰ Article 9 and 18(1) of the ITP.

²¹ Article 9(1) of the CRBLP; Article 14(4) of the TAP.

commerce under the same Proclamation. Whether content creators fall within the scope of e-commerce entities bound by all laws governing a commercial entity under the above Proclamation remains to be studied.

Reading Article 2(14), 9, and 63 of the ITP which define income and imposes tax on any income other than exempted, we can conclude that no income may escape from tax. However, characterizing content creators' income is essential because any income can only be taxed under Schedules A to D, as provided under ITP. Specifically, Schedules C and D compete to capture content creators' income because it can be regarded as business income, royalties, or other income. For instance, Google considers its payment to content creators as 'royalty revenue.'²² It withholds tax on this revenue of YouTubers, who are non-residents of the US.²³ Such practices stem from the characterization of content produced by content creators as objects of intellectual property rights. Some countries tax content creators' income as business income.²⁴

One author argued that content creators' income-generating activities are not recognized as business activities under the ITP and the 1960 Ethiopian Commercial Code.²⁵ However, it is also claimed that there is no human activity that may fall beyond the scope of the expansive definition of business under Article 2(2) of the ITP.²⁶ Therefore, it is controversial whether content creators' income is taxable under Schedule C as business income, under Schedule D as "royalty" or "other income" under the ITP. Such uncertainties present a real problem for content creators' income taxation. The characterization of income earned from various activities on social media as business income or royalties affects the income tax obligation of content creators and modes of discharging of the income tax due.

²² Google, 'U.S. tax requirements for YouTube earnings'

<<https://support.google.com/youtube/answer/10391362?hl=en>> accessed 19 September 2023

²³ *ibid.*

²⁴ Andrea Valbuena, 'Taxation of influencers: A double taxation or a non-double taxation issue?' (LLM thesis, Lund University 2020/2021) 14-15; BIR (n 3) Section 4.

²⁵ Endalkachew Abera, 'The Need to Revisit Taxation of Digital Business Income under Ethiopian Tax Law: An Emphasis on Income Derived from social media and Blog Businesses' (LLM thesis, Haramaya University 2020) 55-57.

²⁶ Taddese Lencho, 'The Ethiopian income tax system: policy, design and practice' (PhD thesis, The University of Alabama 2013) 385.

The income tax imposed under Schedule C on business income is administered through self-assessment and self-declaration tax collection methods.²⁷ In such cases, tax authorities need to crosscheck the validity of self-assessed tax amounts and the existence of tax evasion through auditing. Even in cases where income is taxed through withholding mechanisms, such as miscellaneous income under Schedule D, there must be a mechanism for monitoring tax compliance. As stated above, various countries have issued warnings after finding that a large number of content creators are underreporting or not reporting their income to tax authorities. For Ethiopia to conduct such investigations, information on the income of content creators is required. A significant portion of content creators' revenue is the payment they receive from social media companies such as YouTube LLC, Google LLC, and TikTok, headquartered in foreign countries. Therefore, effective taxation of the earnings of these content creators requires obtaining information from payers. Obtaining such information from foreign corporations is difficult in the absence of international mutual assistance agreements on the subject.

Moreover, due to the existence of a parallel foreign exchange market (black market), many content creators receive payments through informal mechanisms. Besides worsening inflation in the country, such practices, coupled with anonymity options for content creators, make it a daunting task for the government to tax content creators and audit their tax returns.

1.3. Research Questions

This study endeavored to answer the following primary questions:

1. Are content creators obligated to fulfill commercial registration and business licensing requirements in Ethiopia?
2. How content creators' income is characterized and taxed under Ethiopian Income Tax Law?
3. What are the legal and practical challenges in taxing content creators' income in Ethiopia?
4. How content creators' income is taxed in foreign jurisdictions and what lessons can Ethiopia learn to effectively tax content creators' income?

1.4. Objectives of the Study

The main aim of this study was to investigate the application of business registration requirements and Ethiopian income tax on content creators and their income, focusing on the gaps and

²⁷ Article 83 of the ITP.

inconsistencies in relevant Ethiopian income tax laws as well as the practical challenges faced in taxing content creators' income-generating activities.

This study had the following specific objectives:

- elucidating the nature of content creators' income-generating activities on social media sites and platforms in order to clarify confusion regarding these subject matters;
- analyzing the application of business registration and income tax laws to content creators and their income;
- identifying whether content creators are currently undertaking business registration and paying income tax in Ethiopia;
- investigating the legal and practical challenges faced in the taxation of content creators' income.
- Show the best way forward.

1.5. Scope of the study

This study examined the application of business license requirements and Ethiopian income tax laws to content creators' businesses. Thus, this research was not concerned with the taxation of social media platforms and websites, such as YouTube, Facebook, and TikTok. Moreover, this study does not address other taxes that may apply to creators, such as the valued added tax (VAT) and turnover tax (ToT), which may be levied on content creators' business activities.

1.6. Methodology

This research was conducted mainly based on the doctrinal approach to analyze and evaluate the adequacy of Ethiopian business licensing and income tax laws regarding the taxation of content creators' income. As such, it is carried out through a rigorous assessment of primary sources, such as relevant Ethiopian income tax proclamations, regulations, and directives. Secondary sources, such as books, journals, reports, and Internet sources, were also utilized.

Furthermore, the researcher utilized comparative study of four selected foreign countries, Kenya, Turkey, Philippines and the United States, on the taxation of content creators' income. A comparative study was deemed necessary because there was no adequate literature or specific laws on the taxation of creators' income in Ethiopia, and this research topic is common to most of the

countries in the world. Therefore, the experiences of the countries mentioned above were explored to gain different perspectives on this research topic and to draw lessons for Ethiopia.

Given the limited number of countries that have taken official actions in the form of legislation and normative guidelines on content creators' income taxation, and the fact that characterization of creators' income is more or less equally relevant for both countries following the schedular and global income tax structures, Kenya, Philippines, Turkey, and the USA are selected. Philippines is chosen because of the normative and comprehensive nature of the guidelines issued by the Bureau of Internal Revenue (BIR), in contrast to the general explanation provided by other countries' tax authorities. Kenya and Turkey were selected considering the similarity of their income tax structure with that of Ethiopia and the special recognition given to content creators' income in their amended income tax laws. Finally, the selection of the USA experience is premised on the unique characterization of portions of content creators' income; that is, revenue from platforms is characterized and taxed as royalties, as opposed to the practice in other countries.

Among the model tax conventions, the OECD Model Tax, which is used by most countries, is selected to further enrich the discussion on this research topic by utilizing the sophisticated characterization of content creators' income under the detailed commentaries on this Model Tax Convention. Studying this Model Convention is also paramount because content creators' income-generating activities can be transboundary, giving rise to international tax jurisdictional issues. Thus, understanding creators' income-generating activities under international tax law is crucial.

Even though it is mainly doctrinal, this research employed non-doctrinal approach since it tries to address how content creators' income-generating activities are treated under the CBLP and ITP in practice, as well as to investigate the practical challenges faced by tax authorities in taxing this business group. Thus, semi-structured interviews were conducted with key informants such as staffs working at the registering and taxing authorities, and content creators who generate income from their activities on YouTube, TikTok, and Facebook and blog were interviewed to gather data about their understanding of their income tax obligations.

Finally, database of commercial registration of traders obtained from MoTRI was also consulted to triangulate other evidences obtained on whether currently content creators had been registered as business and pay income tax. The database obtained from the MoTRI consisted of all traders

registered across Ethiopia in six business licensing categories closest to the income-generating activities of content creators.

1.7. Limitation of the Study

The primary constraint in conducting this research was the lack of literature on the taxation of content creators' income in Ethiopia and elsewhere, as this research topic is a recent phenomenon. However, a dearth of literature can be found in this subject. The absence of specific legislation and official acts on the taxation of content creators' income in Ethiopia made this study perplexing. In the comparative study part of this thesis, the researcher found only a few foreign countries with developing experience and limited literature. The experience of the US is not very useful since there is no specific legislation or court cases. The US Internal Revenue Service has not yet issued normative or explanatory guidelines concerning content creators' income taxation. There is also no specific court case on this matter in the US. Despite these odds, the experience of content creators' income taxation in the US, which can be implied from the practice of Google, and few researches is believed to be crucial in showing a unique perspective on taxing creators' earnings compared to the practices of other countries.

1.9. Research Organization

This thesis is organized into four chapters. Chapter one serves as an introduction to this research. This Chapter is further clustered into eight sub-topics: background of the study, statement of the problem, research questions, objectives of the study, scope of the study, limitation of the study, research methodology, and research organization.

Chapter Two of this research provides a conceptual framework of content creators' income taxation and foreign experiences. Specifically, this Chapter presents the definition of content creators, content creators business models, characterization of content creators' income, and experiences of foreign jurisdictions; the experiences of Kenya, Turkey, Philippines and the US.

Chapter three deals with the crucial aspects of this study. In this Chapter, the researcher analyzed the adequacy of Ethiopian business licensing and income tax laws to effectively tax content creators' income. Moreover, a modest attempt was made to investigate the practical challenges regarding the taxation of content creators' income in Ethiopia. The last chapter of the research, Chapter Four, presents the conclusions of this study and some recommendations.

CHAPTER TWO

2. CONTENT CREATORS' TAXATION IN GENERAL: CONCEPTUAL FRAMEWORK AND FOREIGN EXPERIENCE

2.1. Introduction

Nowadays, Internet and social media usage have reached an astounding level. The time spent on social media accounts for a significant portion of an individual's days. Globally, the average person spends approximately 145 minutes a day on social media.²⁸ Among the countless number of social media platforms, as of January 2023, Facebook, YouTube, WhatsApp, Instagram, WeChat, TikTok, Facebook Messenger, Douyin, Telegram, and Snapchat are consecutively ranked as the top 10 most popular social networks worldwide according to the number of their monthly active users, most of them having over one billion monthly active users.²⁹ The birth of social media was followed by the emergence of business profession commonly known as content creation or influencer marketing. Against this backdrop, the author now moves to enunciating the nature of content creators.

There is a lack of proper understanding of the nature of content creators' income-generating activities as they are recent phenomenon. Nonetheless, the significant income generated by content creators has made tax authorities of several countries seriously consider the taxation of content creators' business to the level of passing different amendment acts, guidelines, and circulars. For instance, Kenya recently introduced a withholding tax on digital content monetization through the newly enacted Finance Act of 2023.³⁰ Tax authorities in countries such as the Philippines, New Zealand, Singapore, Sweden, Norway, Finland, Canada, Germany, and Egypt have issued normative guidelines or general explanations to clarify the tax obligations of content creators. In

²⁸ Belle Wong, 'Top Social Media Statistics and Trends Of 2023' *Forbes* (Updated: May 18, 2023) <www.forbes.com/advisor/business/social-media-statistics> accessed 2 September 2023

²⁹ 'Most popular social networks worldwide as of January 2023, ranked by number of monthly active users' (*Statista*) <<https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users>> accessed on 21 August 2023

³⁰ The Finance Act, 2023, Part II, Section 2.

this Chapter, the nature of content creators' business and classification of their income will be discussed from the comparative perspectives.

2.2. Definition of Content Creators

The term “content creator” is related to and sometimes used interchangeably with the term “social media influencer.” Although the term influencer is widely used in the literature, the professionalization of content creation has created a shift from the term “influencer” to the term “content creator.”³¹ The term content creator is more comprehensive as it includes social media influencers. Social media influencers are a subset of content creators with significant online following, distinctive brand personas, and patterned relationships with commercial sponsors.³²

After reviewing various literature, Frithjof Michaelsen proposed the following comprehensive definition of the term influencers based on transactional structure:

*An influencer is a content creator with a commercial intent who builds trust and authenticity-based relationships with their audience (mainly on social media platforms) and engages online with commercial actors through different business models for monetization purposes.*³³

The definition of content creators can also be found in income tax laws and guidelines of some countries. For instance, the Philippine Tax Authority broadly defined social media influencers as taxpayers receiving income from social media sites and platforms in exchange for services performed as bloggers, video bloggers, or influencers and other activities conducted on such social media channels.³⁴

In Türkiye, Social media content producers are broadly defined as:

“those who earn income by influencing other users to purchase a product or service by making promotions and recommendations by sharing on any subject and the natural person who earns all

³¹ Frithjof and others (n 8) 23.

³² Brooke Erin, ‘Social media influencers’ (2020) the International Encyclopedia of Gender, Media, And Communication 1.

³³ Frithjof and others (n 8).

³⁴ BIR (n 3) Section 3.

*kinds of income as a result of content production activities, especially those who receive a share of advertising revenue by monitoring their shares.”*³⁵

Other countries have defined content monetization rather than directly defining influencers or content creators. This is the case in Kenya, where ‘digital content monetization’ is defined in its recently adopted Finance Act, 2023 as ‘*offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel in any forms ...*’³⁶

The Philippines’ BIR Memorandum Circular broadly defines content creators without differentiating between individual and corporate content creators. As opposed to the laws of Kenya and the Philippines, corporations are excluded from the ambit of social media content producers in Türkiye.³⁷

A more comprehensive term “content creator” is adopted for this study. By synergizing the various definitions of the term elaborated above, the following definition is suggested for tax purposes and is used in this study:

“A content creator is a person who receive income, in cash or kind, from social media sites and platforms in exchange for services performed as bloggers, videobloggers, or influencers in general, and from any other activities performed on such social media channels.”

2.3. Content Creators’ Business Models

Generally, terms such as content monetization, influencer marketing, affiliate marketing, online advertising, and online merchandising are used to refer to content creators’ income-generating activities. However, these terms represent only parts of content creators’ businesses and cannot be used interchangeably to express content creators’ commercial activities in general. Content monetization is a relatively broad term denoting the range of content creators’ activities.

There are multiple schemes through which content creators can generate income from their content. However, content creators’ primary revenue source is the income generated through

³⁵ See (n 7)

³⁶ The Finance Act, 2023, Part II, Section 2.

³⁷ *ibid.* See also (n 53).

advertisement.³⁸ Their advertisement services are of two types: direct and indirect advertisements. Indirect advertisements are those added by social media platforms and their partners to content created and published by content creators. In direct advertising, content creators directly publicize promotional messages embedded in their content about the products and services of merchants for consideration.

Based on the transactional structure, content creators' income can be divided into three categories:³⁹

- i) revenue from brands,
- ii) revenue from platforms,
- iii) direct selling

i) Revenue from brands

This business model, also called influencer marketing, is commonly used by a subgroup of content creators, known as influencers. It refers to the income obtained often through contracts concluded outside social media platforms between influencers and brands for advertising purposes.⁴⁰ Influencer marketing is one of the monetization mechanisms most used by influencers to generate income from brands.⁴¹ Content creators receive in cash or kind economic benefits for their advertising services.⁴² This business model can take different forms such as endorsements, affiliate marketing, and bartering.⁴³

³⁸ Sacha Wunsch-Vincent & Graham Vickery, 'Participative web and user-created content: Web 2.0 wikis and social networking' (OECD 2007), p. 57.

³⁹ Frithjof and others (n 8) 37ff. Catalina Goanta & Sofia Ranchordás, *The regulation of social media influencers: An introduction*, University of Groningen Faculty of Law Research Paper 41, 6 (2019).

⁴⁰ Frithjof and others (n 8) 37ff.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

a) Endorsements

Endorsements can be considered as direct advertising services by influencers. Endorsements are influencer marketing mechanisms, whereby influencers promote products or services for direct monetary payments from brands and/or barter exchanges of companies' products and services.⁴⁴

b) Affiliate marketing

Affiliate marketing, as discussed in this section, should be narrowly construed as product placement or sale referrals. It is another mode of revenue generation for content creators, whereby a content creator is paid a percentage of referral sales, often identified through discount codes or URLs.⁴⁵

ii) Revenue from platforms

In addition to the revenue they generate directly from brands, content creators may also earn income from their activities on social media platforms and websites through advertising revenue, subscription/crowdfunding, or tokenization.⁴⁶

a) Publishing contents

The main business of content creators involves publishing contents such as videos, photos, and articles on social media platforms and websites. Through agreements between merchants who want to promote their products or services and social media platforms (or their intermediaries), merchants will add tailored advertising banners to content created and published by content creators. Merchants pay platforms for advertising services provided, not directly to content creators. The platforms then share a percentage of this revenue with content creators. Google AdSense is famous for offering this type of monetization opportunity. Ad revenue can also be generated by displaying ads on websites, and various smartphone and computer software.

b) Charging viewers for services

This monetization method can take the form of pay-per-item or subscription schemes.⁴⁷ In the pay-per-item scheme, users must pay per item to platforms or creators themselves to access individual

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ Sacha Wunsch-Vincent & Graham Vickery (n 50) 47.

pieces of content.⁴⁸ On the other hand, the subscription model entails viewers paying to access premium content and features offered by creators, usually monthly or yearly. Content monetization by charging viewers is available on platforms such as YouTube, Only Fans, and Spotify.⁴⁹

c) Tokenization/crowd funding

The tokenization feature on some platforms enables users watching live streams made by influencers to purchase tokens or virtual currencies used to reward their favorite creators.⁵⁰ Examples include TikTok Live gifts and YouTube Super Chat or Super Sticker, which allow fan comments to be highlighted in the live streams. In addition to tokenization, content creators can also be supported through donations or crowd funding.⁵¹ The income creators earn through tokenization and crowd funding is a voluntary gift or donation.

iii) Direct selling

Content creators can also produce their own branded products, or third parties' products also known as "merch," and put a link to their online shop on social media accounts or feature them in their posts.⁵² Content creators' merchandising activities can be regarded as an online manifestation of traditional brick-and-mortar businesses. Content creators engaging in such activities can be considered as typical traders, simply promoting their products on social media. Thus, the content creators' income derived from this model is not the focus of this study.

2.4. Characterization of Content Creators' Income and Its Tax Implication

Characterizing the income of content creators is especially crucial in countries that follow a schedular system. In its extreme form, income can only be taxed after being categorized into one schedule under this income tax structure.⁵³ Often, income categories that are not foreseen and classified while drafting an income tax law may emerge later, which will be difficult to tax because of the difficulty of classifying them into schedules and the absence of specific provisions that tax

⁴⁸ *ibid.*

⁴⁹ Frithjof and others (n 8) 37ff.

⁵⁰ *ibid.* 40.

⁵¹ *ibid.*

⁵² *Ibid.* 37ff.

⁵³ Ault and Arnold, *Comparative Income Taxation*, pp. 199-200, *as cited on* Taddese (n 25) 212.

such emerged income categories. Countries have faced this challenge in taxing content creators' income. Here it should be noted that characterization is also important in countries which follow global income tax system to properly apply source principles in domestic income tax laws and international double taxation treaties, determination of tax collection methods, and deductible expenses.⁵⁴

Content creators' income crosses the borders of several income categories. As elaborated extensively in the preceding section, the income of content creators working across platforms comes mainly from direct advertising services or endorsements, affiliate marketing, content publishing, subscriptions, and tokenization. From an income tax perspective, this income can be regarded as employment income, business income, royalties, or gifts. In general, we find three common categories of income in the tax laws of countries that have adopted an income tax structure with elements of the schedular system: employment income, business income, and passive income (royalties).⁵⁵ These three categories of income compete to encompass content creators' earnings.

Lumping content creators' income into a single category may lead to erroneous conclusions. Thus, it is imperative to dissect the income of content creators and place them in its appropriate income categories from a tax perspective.

2.5.1. Content Creators Income-generating Activities as Business

Broadly, business can be defined as a commercial or industrial activity of an independent nature undertaken for profit.⁵⁶ According to the OECD Model Tax, business includes the performance of professional services and other activities of an independent character.⁵⁷ Some authors argue that

⁵⁴ Lee Burns and Richard Krever, 'Taxation of Income from Business and Investment' in Victor Thuronyi (ed), *Tax Law Design and Drafting*, Vol 2 (International Monetary Fund 1998) 598.

⁵⁵ Andrea (n 23) 23.

⁵⁶ Lee Burns and Richard Krever, 'Taxation of Income from Business and Investment' (n 66) 598.

⁵⁷ Article 3(1)(h) of the OECD Model Tax.

content creators' businesses should be considered commercial activities because they are essentially advertising.⁵⁸

Content creators are usually classified as self-employed individuals or independent contractors, and their income is taxed as business income.⁵⁹ There are a few instances in which content creators can be considered employees. Where content creators provide services under the direction and control of brands, their income could fall under employment income and be taxed accordingly. However, in most cases, content creators have substantial freedom to control and direct the manner of services they provide. In this scenario, they are considered self-employed or independent contractors who offer independent personal services, and their income is taxed as business income. Advertising is the primary source of income for content creators. Advertising services have never been considered anything but business. Therefore, content creators' advertising services on social media should be treated in a manner similar to classic advertisement services.

Content creators' income directly earned from brands through endorsements and affiliate marketing (sales commission) matches independent personal service, which is taxed as business income in most jurisdictions. Their earnings from their followers/viewers through pay-per-item and subscription can be regarded as either business income or royalty, depending on the nature of the services offered by creators. If the services offered by creators involve giving access to objects of intellectual property rights, the income received in exchange would be regarded as royalties; otherwise, it would be deemed business income.

The income generated from followers during live streams broadcast by content creators through tokenization and other voluntary contributions, such as Superchat or Sticks on YouTube and Gifts on TikTok, is characterized as donations or gifts which are taxed in some jurisdictions and exempted in others.

2.5.2. The Place of Content Creators' Businesses in E-Commerce

⁵⁸ Orçun A. V. C. I, 'Taxation of Those Who Earn Income from social media in Türkiye Problems Encountered and Solution Suggestions' (2023) 2 YBHD 1, 15-16.

⁵⁹ Nicholas Robinson & Jaelyn Shan (n 30).

OECD member countries have suggested two definitions of electronic transactions based on narrower and broader interpretations of communication infrastructure.⁶⁰ According to the narrower definition endorsed by member countries, e-transactions are the sale or purchase of goods or services conducted over the internet.⁶¹

According to this understanding of digital business, content monetization can be validly regarded as a subset of digital business or e-commerce since it is an exchange of digital contents through the Internet. As e-commerce is a chunk of online exchanges of goods and services, there are multiple e-commerce lists with distinctive features. One of the distinguishing characteristics of online advertising compared with other digital businesses presented by Assaf Prussak is the parties involved in the transaction.⁶² E-commerce transactions, in their classic form, include two parties: the seller or provider of goods and services on the one hand and the buyer or recipient of the goods/services on the other.⁶³ However, revenue generation from online advertising involves publishers, advertisers, and users.⁶⁴ Such triangular transactions cannot be split into two separate two-sided transactions because the third party (the user) cannot be seen as a party to a transaction with the publisher or advertising client.⁶⁵ Assaf seems to have missed a fourth party in online transactions, content creators, which further complicates the nature of online advertising.

The recently enacted ETP, after broadly defining e-commerce as “*the transaction of goods and services through the Internet or other information networks,*” recognizes four e-commerce entities as commercial entities, which shall be bound by all laws pertaining to a commercial entity:⁶⁶

- a) e-commerce platform operators,
- b) e-commerce medium platform operators,
- c) e-commerce operators, and

⁶⁰ ‘Measuring the Information Economy’ (ANNEX 4. The OECD definition of internet and E-commerce transactions 2002) 89. <www.oecd.org/sti/ieconomy/2771174.pdf> accessed 8 September 2023

⁶¹ *ibid.*

⁶² Assaf (n 32) 74-81

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Article 2(12) and 41(1) of the ETP.

d) express logistics service providers.

Among these four entities, content creators seem to fall within the scope of e-commerce operators. An e-commerce operator is a person who engages in the business activities of selling commodities or providing services through the Internet or other information networks.⁶⁷ Content creators' main income-generating activities, such as endorsements, content publishing, and affiliate marketing, are provision of services online. Thus, content creators indeed fall within the scope of e-commerce operator entities.

2.5.3. User-Created Content *Vis-à-vis* Intellectual Property

The success of social media stems from its key feature of transforming users from consumers to active producers. Content creators' income is mainly generated through monetization of the UCC.

According to a publication by the OECD, UCC is defined as content made publicly available over the Internet, which reflects a certain amount of creative effort and is created outside professional routines and practices.⁶⁸ There are three main characteristics of UCC in this definition: i) publication requirements, ii) creative effort, and iii) creation outside of professional routines and practices.⁶⁹ The last characteristic element of UCC has become challenging to maintain because of the growing content monetization and involvement of professionals in UCC.⁷⁰

Generally, UCC includes various works, such as blogs, photographs, videos, podcasts, music, wikis, mashups, and personal webpages on Facebook, Myspace, and other sites.⁷¹ UCC can be grouped into two categories: (1) pure UCC, in which all the content is produced by the user(s), and (2) transformative UCC, in which the user's content is mixed with content from others.⁷²

Against this backdrop, let us now delve into the discussion of content creators' works vis a vis intellectual property rights. The relevance of this topic stems from the possibility of taxation of

⁶⁷ Article 2(13) of the ETP.

⁶⁸ Sacha Wunsch-Vincent & Graham Vickery (n 50) 9.

⁶⁹ *ibid.*

⁷⁰ *ibid* 18.

⁷¹ Edward Lee, 'Warming Up to User-Generated Content' 5(2008) University of Illinois Law Review 1500, 1506.

⁷² *ibid.*

creators' income, or at least a certain portion, as royalty. Royalty is taxed differently from business in most jurisdictions.

As per Article 12(2) of the OECD Model Tax on Income and on Capital, royalties include “(...) *payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, (...)*.” A similar definition is given for the term under Article 2(20) of the Ethiopian Income Tax Proclamation No. 979/2016.

As their name suggests, the creators' main activities are publishing various content. These contents include audiovisuals, photos, and blogs. Undoubtedly, these objects can be protected under intellectual property law regimes, as long as they meet the requirements for protection.

Some scholars have also argued for the extended application of intellectual property laws to protect content creators' works. Choudhary posited that original reels, musical works, videos, paintings, blogs, and tweets produced by creators are copyrighted.⁷³ Bulcha Nigussie also argued that the Ethiopian Copyright Proclamation protects pure UCC as *works* and transformative UCC as *derivative works*, which involve the production of a protected category of works that fulfill eligibility requirements; originality and fixation.⁷⁴

The applicability of copyright regimes to digital products created by content creators satisfying eligibility requirements is straightforward. If so, we must divide content creators' work into copyrighted and non-copyrighted. As a result, while the payments received for the use of or the right to use content creators' copyrighted content will be regarded as royalty, their income derived from the exploitation of non-copyrighted content will be deemed as business income and taxed accordingly. In most jurisdictions, the tax rate imposed on royalties is lower than that on business income. In addition, taxes on this income category are collected through withholding mechanisms. Therefore, content creators have at least one good reason to argue that their income should be considered a royalty.

The OECD Technical Advisory Group (TAG) characterized payments made by operators (e.g., social media platforms) to a content provider for the right to display copyrighted material fall under

⁷³ Srusti Choudhary, 'IP for Social Media Influencers and Context Creators' (2022) 2 Jus Corpus LJ 1166, 1171.

⁷⁴ Bulcha (n 42) 18-24.

the definition of royalties.⁷⁵ YouTube seems to follow this line of classifying content creators' income. YouTube considers its payment to content creators as 'royalty revenue' and withholds income tax on this revenue from YouTubers who are non-residents of the US.⁷⁶

2.5. Foreign Experience

The relevance of income characterization for income tax depends on the type of income tax structure that a country follows. Theoretically, there are two personal income tax designs: schedular and global (comprehensive).⁷⁷ In a typical schedular system, the gross income and deductible expenses are computed separately for each type of income.⁷⁸ Notably, the applicable tax rates and procedures for reporting, assessing, and collecting taxes differ from category to category.⁷⁹ Income classification is immaterial in a typical global system, in which all income and expenses are aggregated to arrive at a single net taxable income.⁸⁰ Between these two benchmark structures, there is another income tax design considered the third model, the dual income tax design of the Scandinavian/Nordic countries.⁸¹ It is a hybrid of the global and schedular income tax structures. It should be noted that prototype schedular and global income tax structures are now relics; in practice, they do not exist in their purest form.⁸² Instead, we find an income tax system in most jurisdictions with dominant features of the global and some elements of the schedular, and vice versa.⁸³

⁷⁵ OECD, *Tax Treaty Characterization Issues Arising from E-Commerce – Report to Working Party No. 1 of the OECD Committee on Fiscal Affairs* 28 (2001), p. 31.

⁷⁶ Google (n 21).

⁷⁷ Lee Burns and Richard Krever, 'Individual Income Tax' in Victor Thuronyi (ed), *Tax Law Design and Drafting*, Vol. 2 (International Monetary Fund 1998) 495-498.

⁷⁸ *ibid.*

⁷⁹ *ibid* 496.

⁸⁰ *ibid* 495.

⁸¹ Taddese (n 25) 206.

⁸² Lee Burns and Richard Krever, 'Individual Income Tax' (n 89)

⁸³ Taddese (n 25) 206.

Ethiopia is one of the countries that still use a schedular system. Ethiopia's schedular income tax structure was transplanted from the British tradition of taxing income by schedules, and this legacy of the British income tax structure has remained with Ethiopia to this day.⁸⁴

While the global income model is praised for achieving vertical and horizontal equity, the schedular model is favored for its administrative simplicity, which is achieved mainly through the withholding scheme.⁸⁵ Among its other drawbacks, schedular taxation has been disfavored for resources wasted on classification issues arising at the borders between the different schedules.⁸⁶ Countries aligning with the global system do not face many challenges to tax income from contemporary businesses that were not foreseen when enacting their income tax laws since they define income broadly and income classification is less important. In this sense, the classification of content creators' income is more critical for countries following income tax structures with dominant schedular elements other than the global system.

Nonetheless, it should be noted that classifying creators' income is also essential for countries adopting the mainly global income structure to properly apply source principles in domestic income tax laws and international double taxation treaties, determination of tax collection methods, and deductible expenses.⁸⁷

We do not find many countries with rich experience in the taxation of content creators' income, since it is equally new to all countries in the world. Income tax laws do not explicitly address content creators' income-generating activities. There have been attempts by Tax Authorities in different countries to issue guidelines on the subject. This practice stems from the conviction that their respective countries' existing income tax laws adequately tax content creators' income. Tax authorities in the Philippines, New Zealand, Singapore, and Sweden have issued broad and complete explanations, whereas Norwegian, Finnish, Canadian, and German Tax Authorities have released more general comments.⁸⁸ Kenya and Turkey have adopted a variant approach to deal with the taxation of content creators' income. They imposed a withholding income tax on content

⁸⁴ Taddese (n 25) 1. *See also* Lee Burns and Richard Krever, 'Individual Income Tax' (n 89)

⁸⁵ Lee Burns and Richard Krever, 'Individual Income Tax' (n 89).

⁸⁶ *Ibid.*

⁸⁷ Lee Burns and Richard Krever, 'Taxation of Income from Business and Investment' (n 66) 598.

⁸⁸ Andrea (n 23).

creators by amending their respective income tax legal regimes. In the following subsections, the experiences of Kenya, Turkey, Philippines and the USA regarding the taxation of content creators' income will be explored.

2.7.1. Kenya

Although the Kenyan income tax system has been considered to belong to the Scheduling system as a former British colony, it has currently incorporated the features of both global and scheduling systems.⁸⁹ It borrows the global income tax structure feature of aggregating income from all categories: business, employment, property, dividend and interest, farming, and pension income.⁹⁰ However, when it comes to the computation of income and tax, separate rules exist for each income category identified in the Kenyan Income Tax Act.⁹¹ Moreover, any expenses incurred in respect of each category are deducted in principle from that source of income only.⁹²

Overall, Kenya is making striding reforms to bring the digital economy into its tax system. It introduced a withholding Digital Service Tax (DST) in the Finance Act 2020, which was effective on January 1, 2021.⁹³ Apart from the DST, Kenya has recently introduced a withholding tax on digital content monetization through the newly enacted Finance Act 2023 in an unprecedented move after witnessing a surge in content creators across various platforms such as TikTok, YouTube, social media, Instagram, blogs, and many others.⁹⁴ The withholding tax rate is 5% for residents and 20% for nonresidents.⁹⁵ Initially, a 15% withholding tax rate was proposed for residents. However, after complaints from citizens, the tax was reviewed and reduced to 5%.⁹⁶

⁸⁹ Taddese (n 25) 231-232.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ Kenya Revenue Authority (KRA), 'Introducing Digital Service Tax' <<https://kra.go.ke/images/publications/Brochure-Digital-Service-Tax-Website.pdf>> accessed 14 September 2023

⁹⁴ Kenya's Finance Act, 2023, Part II, Section 2.

⁹⁵ The Finance Act, 2023, Amendment of the Third Schedule to Cap. 470.

⁹⁶ Anita Omwenga and Soila Logetei, 'Imposition of 5% Tax on Content Creators' Sparks Concerns Among the Online Community' *Kenya News Agency* (2023) <<https://www.kenyanews.go.ke/imposition-of-5-tax-on-content-creators-sparks-concerns-among-the-online-community>> accessed 14 September 2023

Kenya's Finance Act 2023 defines content monetization rather than influencers or content creators. Moreover, it does not exclude corporate content creators. This Act broadly defines 'digital content monetization' as *offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel in any of the following forms (...)*⁹⁷

Adopting an objective approach, this Act comprehensively lists the different content monetization models used by creators. There was already a withholding tax on royalties under the Income Tax Act Cap 470.⁹⁸ Nevertheless, the withholding tax imposed on content creators neglected the possible characterization of a portion of content creators' income as royalties.

Kenya's practice of imposing a separate tax on content creators' income is unique compared to several countries' experiences, where it is believed that their respective countries' existing income tax laws are adequate to tax content creators' income. The aggregation of content creators' income from all monetization schemes that could have been regarded as business income followed by Kenya seems to be aimed at achieving administrative simplicity, that is, a preference for withholding tax collection methods. This approach is justified given the large number of content creators engaged in content monetization businesses and the difficulty of tracing them.

2.7.2. **Turkiye**

Historically, Türkiye's income tax system was influenced by Germany's schedular income tax structure.⁹⁹ Tax Procedure Law (TPL), which consists of substantive and procedural rules for all types of taxes, governs Türkiye's tax system.¹⁰⁰ Individual income tax is governed by the Personal Income Tax Law of 1960 (PIT Law) as amended,¹⁰¹ which is based on the source theory of the schedular tax system.¹⁰² Seven categories of income are taxed separately under the PIT Law.

- 1) commercial earnings,

⁹⁷ Kenya's Finance Act, 2023, Part II, Section 2.

⁹⁸ Sections 6(1), 10, 35(1)(b), 35(3)(g), and 3(b), 5(g) of Head B of the Third Schedule of the Income Tax Act Cap 470.

⁹⁹ Victor Thuronyi, *Tax Law Design and Drafting*, Vol. 2, xxxiv, xxxiii (International Monetary Fund 1998).

¹⁰⁰ Türkiye Revenue Administration, 'Turkish Taxation System' (2021) 3.

¹⁰¹ *ibid.*

¹⁰² Adnan GERÇEK, 'The need for reform in Turkish tax system: Main problems and recommendations' 34 Turkey, *International Public Finance Conference* 2019) 99, 101.

- 2) agricultural profits,
- 3) salaries and wages,
- 4) self-employment income (income from independent personal services),
- 5) income from immovable property and rights (rental income),
- 6) income from capital investment, and
- 7) other income and earnings.¹⁰³

Separate rules apply to the computation of taxable income and tax, deductions, and collection methods for the different categories of income enumerated above. Salaries are taxed through withholding mechanisms, and filing tax returns on these incomes is not usually required.¹⁰⁴ However, traders, farmers and the self-employed file annual returns, even if they have not earned any profit from their commercial, agricultural and professional activities.¹⁰⁵ Applicable rates and brackets vary for employment and non-employment income.¹⁰⁶

Among the seven categories, it was controversial whether content creators' income should be included in commercial gain or self-employment earnings.¹⁰⁷ Commercial gain is defined as any profit gained from commercial or industrial activity.¹⁰⁸ They must be carried out continuously to tax income from commercial and industrial activities.¹⁰⁹ Generally, occasional activities are not considered commercial and are therefore subject to taxation as other income and earnings, as specified under the PIT Law.¹¹⁰ On the other hand, income generated from all forms of self-employment is considered income from independent professional services.¹¹¹ Independent professional service refers to services provided on behalf of oneself and based on personal effort,

¹⁰³ Turkiye Revenue Administration (n 121).

¹⁰⁴ Article 86 of the Turkiye Income Tax Law No. 193, Number of Official Gazettes - N: 10700, D: 06/01/1961.

¹⁰⁵ *ibid.*

¹⁰⁶ Deloitte, 'Personal Income Tax Return Filing in Turkey' (2023) <<https://www2.deloitte.com/content/dam/Deloitte/tr/Documents/tax/Personal-Income-Tax-Return-Filing.pdf>> accessed 23 September 2023.

¹⁰⁷ Orçun (n 70).

¹⁰⁸ Article 37 of the Turkiye Income Tax Law No. 193, Number of Official Gazettes - N: 10700, D: 06/01/1961.

¹⁰⁹ Turkiye Revenue Administration (n 121) 6-7.

¹¹⁰ *ibid.*

¹¹¹ *ibid* 11-12.

scientific and professional knowledge, or specialization rather than capital.¹¹² It includes those provided by independent professionals such as lawyers, accountants, doctors, consultants, and engineers.¹¹³

However, drawing a line between commercial gain and professional income is difficult. This is why characterizing the content creators' income had raised controversies. Some argue that content creators' income should be deemed commercial gain because they are essentially advertising.¹¹⁴ This debate was settled when the Türkiye Tax Administration ruled that income derived by social media content creators, such as influencers and YouTubers, would be considered commercial earnings.¹¹⁵ For a while, content creators' income was taxed as business income. However, in 2021, Law No. 7338, which amended Income Tax Law No. 193, exempted content creators, referred to as social content producers, from the scope of income tax.¹¹⁶ The detailed principles and conditions under which the exemption applies are laid down through Income Tax General Communiqué Serial No. 318.¹¹⁷

Social media content producers are broadly defined as:

“those who earn income by influencing other users to purchase a product or service by making promotions and recommendations by sharing on any subject and the natural person who earns all kinds of income as a result of content production activities, especially those who receive a share of advertising revenue by monitoring their shares.”¹¹⁸

Duplicate Article 20/B added to Income Tax Law No. 193 provides that the earnings of content producers who share content on social network platforms and the earnings of mobile application developers through electronic application sharing and sales platforms are exempt from income tax. However, there are conditions for exemption of content producers' income. The two main

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ Orçun (n 70).

¹¹⁵ *ibid.*

¹¹⁶ Article 2 of the Law No. 7338, Number of Official Gazettes - Date: 7338 - 14/10/202131640 - 26/10/2021.

¹¹⁷ Orçun (n 70) 17.

¹¹⁸ (n 7).

preconditions are obtaining an exemption certificate and opening a bank account.¹¹⁹ First, content producers must apply for exemption certificates to the Tax Office.¹²⁰ Further, to benefit from this exemption, content producers must receive all payments related to their social media activities through a bank account opened in Turkey.¹²¹ Finally, banks are obliged to withhold a 15% tax from content creators' earnings.¹²²

2.7.3. Philippines

Before directly delving into the taxation of content creators in the Philippines, an overview of the Philippines' income tax structure is helpful. The National Internal Revenue Code of 1997 (NIRC 1997), as amended by Republic Act No. 10963, governs all types of taxes in the Philippines. The history of the Philippines' income tax structure shows oscillations between the global and schedular systems. The first shift from a global system to a schedular system was introduced in 1981 by Cabinet Bill No. 34, known as Batas Pambansa 135, which separated wages from business/professional income from other income.¹²³ Accordingly, three categories of income, namely, compensation income (salaries and wages), business and professional income, and passive income (interest income, royalties, and dividends) were taxed separately.¹²⁴ Compensation income was taxed on a gross basis without any deductions and with only permissible personal and additional exemptions.¹²⁵

However, the 1986 tax reform program merged compensation income and business and professional income into one schedule, signaling a move towards the global structure.¹²⁶ Once again, under the National Internal Revenue Code of 1997 (NIRC 1997), the Philippines' income

¹¹⁹ Orçun (n 70) 17.

¹²⁰ Orçun (n 70).

¹²¹ *ibid.*

¹²² Article 2 of the Law No. 7338, Number of Official Gazettes - Date: 7338 - 14/10/202131640 - 26/10/2021.

¹²³ Reynaldo G. Geronimo, 'Batas Pambansa Blg. 135: New Dog and Old Tricks' (1982) 26 ATENEO LJ 117.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ Renato E. Reside and Lee Burns, 'Comprehensive tax reform in the Philippines: Principles, history and recommendations' (No. 2016-10. UPSE Discussion Paper, 2016) 16.

tax structure rolled back to and remained a schedular tax system that separated compensation income from business income and income from other sources.¹²⁷

Currently, three categories of income are taxed separately under NIRC 1997 based on the schedular system in the Philippines:¹²⁸

- a) compensation income (employment)
- b) business income and professional income; and
- c) passive income, such as interest, royalties, dividends, and capital gains.

Individuals' compensation and business or professional income are taxed separately at similar progressive rates ranging from 0 % to 35 %.¹²⁹ The tax on compensation income is collected through the withholding scheme, and individuals who earn pure compensation income from a single employer are not required to file tax returns as a rule, as described in Sections 79(1) and 51(A)(2)(b) of the NIRC 1997. Thus, the Philippines' income tax structure exhibits robust features of the schedular system.

Against this background, we should explore how content creators' income-generating activities are treated under the NIRC 1997. The Bureau of Internal Revenue issued the most comprehensive and normative guidelines, Revenue Memorandum Circular No. 97-2021 (RMC 97-2021), to clarify the tax obligations of all social media influencers after it received reports that certain influencers have not been registering and paying their income taxes despite earning substantial income from the different social media platforms.¹³⁰ RMC 97-2021 adopted the term social media influencers instead of content creators. It broadly defines social media influencers (SMIs) as:

*all taxpayers, individuals, or corporations receiving income, in cash or kind, from any social media sites and platforms in exchange for services performed as bloggers, video bloggers or "vloggers" or as an influencer, in general, and from any other activities performed on such social media sites and platforms.*¹³¹

¹²⁷ *ibid* 18.

¹²⁸ Angel Q. Yoingco, 'The New Individual Income Taxation in the Philippines' (1984) 7.

¹²⁹ Section 24 of the NIRC 1997, as amended.

¹³⁰ BIR (n 3) Section 2.

¹³¹ *Ibid*, Section 3

The term “taxpayers” in the definition of SMIs excludes individuals earning an annual income not exceeding PHP250,000 exempted from income tax.¹³² RMC 97-2021 lists sources of SMIs’ income comprehensively, similar to Kenya’s Finance Act 2023.

More importantly, RMC 97-2021 classifies social media influencers other than corporations and partnerships for tax purposes as self-employed individuals or persons engaged in trade or business as sole proprietors and their income as business income.¹³³ Therefore, their income derived from doing business as SMIs is taxed based on schedular tax rates under Section 24(A)(2) of the NIRC in the case of individual SMIs.¹³⁴ RMC 97-2021 purposely avoids the possible classification of SMIs’ income as royalty by explicitly stating that ‘income treated as royalties in another country, including payments under the YouTube Partner Program, shall likewise be included in the computation of the gross income of the social media influencer.’¹³⁵ Such stipulation is important for eliminating the possibility of SMIs’ income falling under several income categories and making taxation of content creators’ income easier. RMC 97-2021 also recites various SMIs’ obligations, such as registration, keeping books of accounts, and filing tax returns.

2.7.4 United States

Generally, the United States (US) income tax system is considered an archetypical global income tax model.¹³⁶ However, it is not purely global, because it includes schedular elements.¹³⁷ At any rate, the United States is characterized by a global definition of income.¹³⁸ Gross income is defined under Section 61(a) of the US Internal Revenue Code (IRC) as “income from whatever source derived.”

Income classification is irrelevant in countries that follow ideal global income tax system. However, in reality, there is no country that adopts a purely global income tax design and the

¹³² Ibid, Section 4.

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ Henry Ordower, ‘Schedularity in US income taxation and its effect on tax distribution’ [2013] 108(3) *Nw. UL Rev.* 905, 905-907.

¹³⁷ *ibid.*

¹³⁸ Victor Thuronyi (ed), *Tax Law Design and Drafting*, Vol. 2, xxviii (International Monetary Fund 1998).

characterization of income in general, and content creators' income in particular is also essential for the global system since it is essential for applying source principles in both domestic income tax law and international double taxation treaties, and tax collection mechanisms, the determination of deductible expenses.¹³⁹

All countries' income tax laws are applied based on residence and source (territorial) principles. The source principle entails the imposition of income tax on the domestic income of non-residents and the non-taxation of the foreign source income of residents.¹⁴⁰ The application of source rules requires identifying whether an income is generated within or outside a country's territorial borders.¹⁴¹

There are different source rules for interest, dividends, rents and royalties, personal services, and other income categories under the US IRC.¹⁴² For instance, personal service income is sourced at the place where the service is performed;¹⁴³ income from business or trade will be deemed US source income if it is *effectively connected* with the conduct of a trade or business within the United States;¹⁴⁴ and royalties are sourced based on the place where the property is used.¹⁴⁵ Therefore, to apply these source rules, the classification of income in general and content creators' income in particular is crucial, even for countries following mainly global income tax structure, such as the US.

There are no specific laws or guidelines by the Internal Revenue Service or court cases regarding the tax obligation of content creators in the US. This could be attributed to the global income tax structure of the USA. However, the treatment of creators' income derived directly from social media platforms through advertising revenues, subscriptions, and tokenization under the US IRC can be inferred from the practice of Google and some literature on this subject area.

¹³⁹ Assaf (n 32) 94; Lee Burns and Richard Krever 'Taxation of Income from Business and Investment' (n 66).

¹⁴⁰ *ibid* 721.

¹⁴¹ Assaf (n 32) 94.

¹⁴² *Ibid* 101-102. See Sections 861-865 of US IRC.

¹⁴³ Sections 861(a)(3) and 862(a)(3) of US IRC.

¹⁴⁴ Section 1441 of US IRC.

¹⁴⁵ Sections 861(a)(4) and 862(a)(4) of US IRC.

Among the categories of income listed under the US IRC Section 61(a), business income and royalties are closer to most of the income derived by content creators. As discussed in the preceding sections, content creators' works can be regarded as objects of intellectual property law. Google follows this line of classification for content creators' income. Before 2021, Google LLC was not collecting tax on the advertising revenue it was paying creators, as such revenue was deemed non-employee compensation.¹⁴⁶ However, starting in June of that year, Google announced that it is responsible for withholding taxes when YouTubers earn "royalty revenue" from viewers in the US views.¹⁴⁷ The statement released by Google reads as follows:¹⁴⁸

"Under Chapter 3 of the US Internal Revenue Code, Google is responsible for collecting tax information, withholding taxes, and reporting to the Internal Revenue Service (the U.S. tax authority, also known as the IRS) when a YPP creator on YouTube earns royalty revenue from viewers in the US."

Thus, Google began classifying YouTubers' income from content monetization as royalties. This change is explained by the source rules applicable to royalties under the US IRC. Any person who makes a payment regarded as income within a US source to a non-resident alien must withhold a 30 % income tax, as outlined under the US IRC Sections 1441 and 1442. The US IRC under Section 861(a)(4) states that royalties for the use or right to use copyrights in the United States shall be treated as income from sources within the United States. Thus, classification of content creators' income from content monetization as royalty makes Google responsible for withholding income tax from payments to creators.

Royalty is not precisely defined in the US IRC or Treasury Regulations, and courts have attempted to do so.¹⁴⁹ In *Sierra Club Inc. v. C.I.R.*,¹⁵⁰ the Ninth Circuit Court referred to IRS Revenue Ruling 81-178, which states that "to be a royalty, a payment must relate to the use of a valuable right. In connection with the self-employment tax under the Self-Employment Contributions Act of 1954, the IRS clarified that an individual who writes only one book as a side job and does not revise it

¹⁴⁶ Andrea (n 23) 41.

¹⁴⁷ Google (n 21).

¹⁴⁸ *ibid.*

¹⁴⁹ *Sierra Club Inc. v. C.I.R.*, 86 F.3d 1526 (9th Cir. 1996). *as cited in* Assaf (n 32) 128.

¹⁵⁰ *ibid.*

is not considered to be regularly engaged in an occupation or profession.¹⁵¹ Thus, royalties from books earned in such a scenario are not considered as self-employment earnings.¹⁵² However, if an individual prepares new editions of the book or writes other materials regularly, it is considered to be the conduct of a trade or business. This ruling suggests that the royalties of content creators who regularly engage in content monetization are classified as business income.

At any rate, Google LL.C. is withholding income tax from YouTuber's earnings, regarding their income as royalties. US non-resident individual YouTubers will be taxed at a 24% withholding rate on their gains of 'US viewers.'¹⁵³ As can be understood from the phrase "from US viewers," the location of viewers is used to establish US taxation power based on the source principle.

The above discussion on the Google practice concerns only non-US resident content creators' income derived directly from social media platforms through advertising revenues, subscriptions and tokenization. Content creators' income is generally taxed as the income of independent contractors or self-employed individuals in relation to their income derived through other monetization mechanisms such as endorsements and affiliate marketing.¹⁵⁴

2.6. Classification of Content Creators' Income under the OECD Model Tax Convention

As a subset of e-commerce, the business activities of content creators often involve transboundary transactions. In effect, the issue of international jurisdictional power to tax income derived from such transactions may arise. For example, when a content creator resident in one state receives payment from a platform located in another, it is necessary to determine which state has the power to tax this income. At times, taxpayers engaged in cross-border transactions may be taxed in two or more countries over the same taxable income because of variations in residence and source definitions in the tax laws of different countries.

Virtually all countries' income tax laws are applied based on residence and source (territorial) principles. While residence establishes a relationship between a country and the taxpayer deriving

¹⁵¹ Claudia Kelley and Tamara Kowalczyk, 'Tax Issues for Individuals Who Create Intellectual Property' (*The Tax Adviser*, 1 December, 2013). <www.thetaxadviser.com/issues/2013/dec/kelley-dec2013.html> accessed 18 June 2023

¹⁵² *ibid.*

¹⁵³ Google (n 21).

¹⁵⁴ Nicholas Robinson & Jaclyn Shan, (n 30) 24. *See also* Andrea (n 23) 28.

income, the source concerns the connection between the income itself and the country.¹⁵⁵ According to the residence principle, a country levies income tax on its residents' domestic and foreign income. On the other hand, the source principle entails the imposition of income tax on the domestic income of nonresidents.¹⁵⁶ However, these two principles are not mutually exclusive but interrelated, since the domestic and foreign incomes of residents and nonresidents are determined based on source rules.

The application of source rules is premised on identifying whether income is generated within or outside a country's territorial borders.¹⁵⁷ Applicable source rules vary for different income categories.

The OECD Model Tax Convention on Income and Capital is a double tax treaty (DTT) model most used among jurisdictions.¹⁵⁸ It provides a means of resolving the most common problems that arise in the field of international juridical double taxation on a uniform basis.¹⁵⁹ Among the model tax conventions, the OECD Model Tax Convention, which is used by most countries, is selected to further enrich the discussion on this research topic due to sophisticated characterization of content creators' income in the detailed commentary on the OECD Model Tax Convention.

Article 7 (business profits) and Article 12 (royalty income) of the OECD Model Tax are relevant to the taxation of content creators' income. Business is defined as the performance of professional services and other independent activities.¹⁶⁰ Royalty consists of payments received as a consideration for the use of, or the right to use intellectual property rights.¹⁶¹ The OECD Technical Advisory Group (TAG) found that the distinction between business profits and royalties is the

¹⁵⁵ Richard j. Vann, 'International Aspects of Income Tax' in Mr. Victor Thuronyi (ed), *Tax Law Design and Drafting*, Vol. 2 (International Monetary Fund 1998) 734.

¹⁵⁶ *ibid* 721.

¹⁵⁷ Assaf (n 32) 94.

¹⁵⁸ Andrea (n 23) 28.

¹⁵⁹ OECD (2019), Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing.

¹⁶⁰ *ibid*, Article 3(1)(h).

¹⁶¹ *ibid*, Article 12(2).

most critical characterization issue arising from e-commerce.¹⁶² Therefore, drawing a line between these two types of income was considered essential.

In 2021, TAG entertained the issue of the characterization of income from e-commerce.¹⁶³ In its final report, TAG identified 28 common e-commerce categories.¹⁶⁴ From the TAG 28 categories of electronic transactions, category 17 (advertising), category 24 (sales referral programs) and category 25 (content acquisition transactions) are relevant to the characterization of content creators' businesses.

TAG described category 17, online advertising, as electronic transactions where advertisers pay to have their advertisements disseminated to users of a given website.¹⁶⁵ The Advisory Group stated that payments arising from these transactions constitute business profits falling under Article 7 rather than royalties.¹⁶⁶ The social media platforms' revenue generated through ads displayed on their sites, sometimes embedded in content uploaded by creators, fits into this category. Bloggers' income generated by displaying ads on their websites can also be grouped in this category.

Category 24 (sales referral programs) matches with the affiliate marketing activities of creators. Sales referral programs entail online providers paying a sales commission to the website operator that refers sales leads to the provider.¹⁶⁷ TAG members agreed that such payments constituted business profits under Article 7.¹⁶⁸ This payment type can be analogized to the income of content creators earned through affiliate marketing or product placement.

The most relevant E-transaction category to characterize content creators' income received directly from platforms is Category 25, labeled as "content acquisition transactions." Content acquisition transactions entail a website operator paying *content providers* for news stories, information, and other online content in order to attract users.¹⁶⁹ TAG characterized payments made by the operator

¹⁶² OECD (n 87) 5.

¹⁶³ Assaf (n 32) 120.

¹⁶⁴ OECD (n 87).

¹⁶⁵ *ibid* 28.

¹⁶⁶ *ibid*.

¹⁶⁷ *ibid* 31.

¹⁶⁸ *ibid*.

¹⁶⁹ *ibid*.

to a content provider for the right to display copyrighted material that fall under the definition of royalties.¹⁷⁰ This characterization aligns with the Google AdSense practice in the U.S. regarding creators' income received directly from platforms through native advertising added to content uploaded by creators.

As discussed above, content creators' income may fall under business income and royalties, as characterized by TAG for the application of the OECD Model Tax. While content creators' earnings from affiliate marketing can be characterized as business income, the revenue generated through ads is generally considered a royalty. TAG did not address the characterization of creators' income received directly from brands through endorsement. The characterization of income earned from endorsements as a business seems straightforward. We can now conclude that, except for a few instances where the earnings of content creators can be regarded as employment income and royalties, all other income generated by content creators is deemed business profit.

After dealing with characterization, the next step is to identify the source rules applicable to content creators' income, which is more straightforward. Article 7 of the OECD Model Tax applies to the portion of creators' income characterized as business income. According to this Article, the taxpayer's state of residence is given taxation power over business profits, except when the business is conducted through a permanent establishment situated in another state. Hence, content creators' income, considered business profits such as income from endorsements, barter exchanges, affiliate marketing, and directing selling, is taxed in a country where the content creator is a resident. In the absence of a permanent establishment, Article 12 of the OECD Model Tax grants taxation power over royalties to the residence state of a beneficial owner.

2.7. Concluding Remarks on Chapter Two

In this Chapter, the author has tried to shed light on the nature of content creators' businesses and foreign experiences in the taxation of creators' income. Most of the creators' commercial activities fall under the broader e-commerce business category since creators provide various contents and services through the Internet. As it has been discussed extensively, a substantial portion of content creators' revenue comes from advertising services and publishing contents on platforms, which are considered as business activities. However, there are valid arguments for considering at least

¹⁷⁰ *ibid.*

a portion of content creators' earnings as royalties owing to the valid characterization of some digital content as objects of intellectual property rights.

The experience of the foreign countries selected for this study shows striking diversity in the characterization and taxation of content creators' income-generating activities. Generally, two approaches are adopted to tax content creators' income:

- i) Issuing guidelines on the applicability of their existing tax laws; and
- ii) Imposing separate withholding taxes by amending tax laws.

Countries that have issued normative guidelines or general explanations on the tax duties of content creators believe that their respective existing income tax laws are adequate to tax the income of these newly emerged business groups. Most of these countries consider all content creators' income-generating activities as businesses. For instance, the Philippines' BIR issued RMC. 97-2021, which regarded content creators as self-employed individuals engaged in business and whose income should be categorically taxed as business income.

Kenya and Turkey imposed withholding tax at source on content creators' income at 5% and 15% rates, respectively, by amending their respective income tax regimes. In Turkey, the exemption of content creators from general income tax is tied to certain preconditions, such as receiving all income earned from content creation through a local bank. On the other hand, the practice of Google LLC evinces the taxation of a portion of content creators' income derived from ad banners, subscriptions, and tokenization as royalties. This practice of Google AdSense is in line with the OECD characterization of payments made for content acquisition (Category 25) as royalties.

CHAPTER THREE

3. TAXATION OF CONTENT CREATORS' INCOME UNDER ETHIOPIAN INCOME TAX LAW

3.1. Introduction

Under Chapter two, the nature content creators, classification and taxation of their income from comparative perspective has been discussed thoroughly. As it has been discussed, the significant amount of income generated by content creators has made tax authorities of several countries seriously consider the taxation of content creators' business to the level of issuing different amendment acts, guidelines, and circulars. However, although the content monetization business is also flourishing in Ethiopia, government organs entrusted with taxation mandates, such as the Ministry of Revenue (MoR), Ministry of Trade Regional Integration (MoTRI), and Ministry of Finance, have neither issued any guidelines nor taken any action regarding the taxation of content creators' income-generating activities. Even though a comprehensive data on the amount of income of content creators is not available the author learned from an interview with one influencer that some well-known influencers are paid up to 100,000 Birr for a one-time advertising service they provide on TikTok and Facebook. There are brand ambassador agreements that were settled for three million Birr, but neither the influencers nor the companies paying such an amount of money disclose the deals to the public.¹⁷¹

Be that as it may, in Ethiopia, commercial registration and business licenses are legal prerequisites for engaging in recognized business activities.¹⁷² Moreover, anyone who makes income over the exempted amount should pay income tax.¹⁷³ Under this Chapter, attempt has been made to meticulously characterize content creators' income-generating activities in the schedular income tax system as stipulated under the ITP in comparison with the experience of some foreign jurisdictions discussed in Chapter two.

3.2. Business Registration Requirements for Content Creators

¹⁷¹ *ibid.*

¹⁷² Article 23 of the CRBLP.

¹⁷³ Article 9 and 18(1) of the ITP.

In Ethiopia, income taxation is intertwined with commercial registration and business licensing. In practice, taxation without registration is rare.¹⁷⁴ Thus, scrutinizing the obligation of content creators to undergo commercial registration and business licensing is imperative before delving into the issue of income tax impositions.

Legally speaking, no person can engage in business activities without a valid business license.¹⁷⁵ The Commercial Code of Ethiopia Proclamation No. 1243/2021 (*hereinafter* the Commercial Code) under Article 82(1) and 83(2) also states that any Ethiopian or foreign person or business organization carrying on commercial activities within the territory of Ethiopia shall be registered before starting to carry on trade.¹⁷⁶ Business registration requirement links potential taxpayers to the revenue authorities since Taxpayer Identification Number (TIN) is a precondition to secure business license.¹⁷⁷ A licensing authority is prohibited from issuing a license to a taxpayer unless the taxpayer has provided the authority with its TIN.¹⁷⁸ Moreover, conducting business activities without a valid business license entails criminal and administrative penalties.¹⁷⁹

Addressing the question of who should undergo the commercial registration and business licensing procedures requires referring to the definition of a ‘business person’ under the CRBLP. Article 2(2) of the CRBLP as amended defines ‘business person’ for commercial registration and business licensing purposes as:

“any person who ‘professionally’ and ‘for gain’ carries on any of the activities specified in the Commercial Code and the Ethiopian Business Licensing Categories Directive.

There are two issues associated with this provision. First, it is unclear whether a given activity should be specified under both the Commercial Code and ESIC to be deemed a business, or any activities specified either under the Commercial Code or ESIC can be classified as business activities. The second problem associated with this provision is that it narrows down the notion of

¹⁷⁴ Taddese (n 25) 385-386.

¹⁷⁵ Article 22(1) of CRBLP.

¹⁷⁶

¹⁷⁷ Article 14(2) and (4) of the TAP. Taddese (n 25) 386.

¹⁷⁸ Article 14(2) and (4) of the TAP. As defined under Article 2(18) of the TAP, licensing authorities are any organs authorized under any law to issue a license, permit, certificate, concession, or other authorization.

¹⁷⁹ Article 49(2) of the CRBLP.

business, as it does not capture business activities recognized as such under laws other than the Commercial Code and ESIC. As I will discuss, other laws, such as Advertisement Proclamation and ETP, explicitly recognize activities such as advertising services and e-commerce operators' activities as business activities. More importantly, the definition of business provided under the CRBLP does not cover all activities regarded as business under the ITP. Before it was amended, Article 2(2) of the CRBLP defined trader as follows:

“any person who professionally and for gain carries on any of the activities specified in the Commercial Code or who dispenses services, or *who carries on those commercial activities designated as such by law.*” (emphasis added)

As we can see, before the amendment, the term business was defined broadly to automatically capture any activities designated as business under other laws. The italicized phrase has been removed from the definition of business after the amendment. At any rate, any activities under Articles 5 and 10(2) of the Commercial Code and the ESIC Directive are incorporated into commercial activities for the purpose of CRBLP. In the following sections, the author discusses the obligation of content creators to apply for commercial registration and business licensing, as stipulated under the Commercial Code, Electronic Transaction Proclamation, Advertisement Proclamation, Media Proclamation, and ESIC.

3.2.1. Content Creators under the Commercial Code

When we refer to the Commercial Code, it defines “traders” under Article 5 as persons who “professionally and for gain” carry on any of the activities listed by the Article or similar activities. Under both the Commercial Code and the CRBLP, a certain activity is regarded as a business activity only if it is conducted “professionally” or habitually. In other words, occasional or incidental activities are not within the purview of the term business, as provided under these laws.

There is inconsistency between the notion of business as construed under the CRBLP and the New Commercial Code on the one hand, and the understanding of the term under ITP on the other. Specifically, the term ‘professionally’ is omitted from the definition of business activity under Article 2(2)(a) of the ITP. Consequently, there could be individuals who conduct taxable business activities but are not required to undergo commercial registration and business licensing requirements. This inconsistency makes taxation of income of content creators who are not professionally or habitually engaged in social media monetization even more perplexing because

they are not required to register. Many creators engage in content monetization as a sideline hustle to their main professions.

As discussed in Chapter Two, a large number of content creators regularly engage in income-generating social media activities. Although user-created content (UCC) was initially purported as content produced with no commercial intent, and created outside professional exercise, nowadays it has become clear that some creators produce contents for commercial profits, and the participation of professionals in the production of UCC on social media has been growing. Hence, some content creators' income-generating activities satisfy the two defining elements of business stipulated under the Commercial Code: continuity and commercial intent. The literature on this area and the practices of foreign countries such as the Philippines, Canada, Singapore, Kenya, and Turkey also reveal that, in most cases, content creators are considered as self-employed individuals or independent contractors who earn business income from their diversified activities on social media.¹⁸⁰

Among the 37 illustrative lists of commercial activities under the Commercial Code, the following two newly added categories cover the activities of the content creators:

- a) publishing of works through (...) internet or any other means – Article 5(19); and
- b) Operating news and any information transmission services – Article 5(23).

Contents published for commercial gain by creators on various social media platforms can be regarded as publishing of works through internet or as operating news and any information transmission services as provided under Articles 5(19) and (23).

Therefore, it is sound to conclude that content creators who are engaged in income-generating activities on various social media platforms such as YouTube, Facebook, TikTok, and Instagram in the form of endorsements, ad revenue, subscription fees, and affiliate marketing/product placements are legally obligated to undergo commercial registration and business licensing preconditions since they hold the status of traders under the CRBLP and the New Commercial Code in Ethiopia. However, it should be noted that even though content creators' income-generating activities are recognized as commercial activities under the CRBLP and New Commercial Code, the obligation of content creators cannot be implemented without referring to

¹⁸⁰ Nicholas Robinson & Jaclyn Shan (n 30); Andrea (n 23) 14.

the ESIC Directive. Even though the ESIC Directive was amended after entering into force of the Commercial Code, it failed to incorporate the publishing of works through the Internet into lists of business licensing categories, which are recognized as commercial activities under the former.

3.2.2. Content Creators under the ETP

It is also critical to examine the status of content creators under ETP. We have discussed that content monetization can be validly regarded as a subset of digital business or e-commerce since it is an exchange of various services through the Internet. The recently enacted ETP, after broadly defining e-commerce as “*the transaction of goods and services through the Internet or other information networks*”, recognizes four e-commerce entities as commercial entities; namely:¹⁸¹

- a) e-commerce platform operators,
- b) e-commerce medium platform operators,
- c) e-commerce operators, and
- d) express logistics service providers.

Among these four entities, content creators fall within the scope of e-commerce operators. An e-commerce operator is a person who engages in the business activities of selling commodities or providing services through the Internet or other information networks.¹⁸² Content creators’ main income-generating activities, such as endorsements, content publishing, and content monetization, involve the provision of services online. Thus, content creators are e-commerce operators. All laws pertaining to a commercial entity, including the CRBLP and ITP, apply to e-commerce entities recognized under the ETP.¹⁸³ Consequently, content creators, such as e-commerce operators, are obliged to obtain business licenses and pay business income tax.

3.2.3. Content Creators under Advertisement Proclamation

Providing advertising services in the form of endorsements, affiliate marketing, and sponsored posts are the core business activities of content creators. The obligation of any person who wants to partake in advertising to undergo commercial registration and business licensing is provided

¹⁸¹ Article 2(12) and 41(1) of the ETP.

¹⁸² Article 2(13) of the ETP.

¹⁸³ 41(1) of the ETP

under the Ethiopian Advertisement Proclamation No.759/2012. Article 5(1) and (2) of the Proclamation states that any person who wants to engage in the activities of an advertising agent or advertisement disseminator must obtain an advertising business license from the appropriate governmental body.¹⁸⁴ Hence, at least, content creators are under duty to obtain business license to engage in any advertising activities on social media platforms or elsewhere.

3.2.5. Content Creators under ESIC

As previously pointed out, any activities specified under the ESIC Directive are incorporated into commercial activities for the purpose of CRBLP. In practice, commercial registration and business licensing cannot occur beyond the scope of the ESIC. The Ethiopian tax authorities' understanding of "businesses" or "trades" is restricted to those for which business and/or professional licenses have been issued.¹⁸⁵ Thus, it is important to assess the recognition of content creators' income-generating activities under ESIC business licensing categories. The amended ESIC includes 9 major business categories and 526 business licensing categories.¹⁸⁶ Among the 526 business licensing categories, licensing category 34311 (printing and related activities), licensing category 86811 (advertising), licensing category 93111 (movie, films, theatre, video, and related works video recording, production, and distribution activities), licensing category 93123 (activities of media entertainment production and distribution programs), licensing category 93121 (commercial broadcast services) and licensing category 93124 (online media activities), are relevant for identifying whether income-generating activities of content creators are recognized under ESIC.

Advertising services provided by content creators can be licensed under category 86811, as required under the Advertisement Proclamation. The scope of category 93111 is too narrow to encompass all content produced by social media content creators since content published by content creators is not limited to movies, films, theatres, videos, and related works, video recording, and distribution. Contents published by creators, which include blogs, photographs, and any kind of video, are wider in scope than what category 93111 tries to capture. Moreover, publishing and monetizing content by individuals may not be licensed under 93121, 93123 or

¹⁸⁴ Article 5(1) and (2) of the Advertisement Proclamation No. 759/2012.

¹⁸⁵ Taddese (n 25) 385-386.

¹⁸⁶ Article 4 of ESIC Directive.

93124 mainly because the term “media” is narrowly constructed under relevant laws, as discussed in the preceding section.

After the enactment of the ETP, upon the request of the MInT, the MoTRI amended ESIC thereby including e-commerce platform operators and e-commerce medium platform operators, was added to the list of business categories that require commercial registration and business licensing.¹⁸⁷ However, there is no e-commerce operator business licensing category under the amended ESIC. The assumption is that e-commerce operators will be licensed according to existing business registration laws.¹⁸⁸ Practically, e-commerce operators do not always easily fit into business categories under Ethiopian business licensing legal regimes. For instance, when it comes to online contents and services provided by content creators, the nature of the services is a complicated issue that requires further analysis and classification. As discussed in Chapter Two, there are 28 categories of e-commerce according to the TAG classification conducted 20 years ago. Therefore, not all e-commerce operators, including content creators, should have been left to ordinary laws.

Database of commercial registration and business licensing of traders obtained from MoTRI is consulted to identify whether currently content creators are undergoing the commercial registration and business licensing procedures stipulated under CRBLP and other relevant laws. The database obtained from the MoTRI consists of traders registered in six business licensing categories closest to the income-generating activities of content creators organized according to the licensing categories of the ESIC Directive, i.e., advertising services; printing and related activities; movie, films, theatre, video, and related works video recording, production, and distribution activities; activities of media entertainment production and distribution programs; commercial broadcast services; and online media activities. After critically examining this database manually and using filtering tools available in Microsoft Excel, the researcher found that content creators other than traditional producers has not been getting registered. This is also confirmed by interviews with content creators and staffs working at MoTRI. Traditional producers engaged in areas such as music, movies, and media are licensed under business categories such as printing and related

¹⁸⁷ A letter from MInT to MoTRI dated October 11, 2022. Licensing Category 85125 and Serial Number 428, Licensing Category 85126 of the Annex 1 to the ESIC Directive (as amended).

¹⁸⁸ *ibid.* See also Licensing Category 85125 and Serial Number 428, Licensing Category 85126 of the Annex 1 to the ESIC Directive (as amended).

activities, advertising services, movie, films, theatre, video, and related works video recording, production, and distribution activities; activities of media entertainment production and distribution programs; commercial broadcast services; and online media activities.¹⁸⁹

In conclusion, although almost all activities of content creators are recognized as business activities under the main laws, i.e., CRBLP, the Commercial Code, ETP, and Advertising Proclamation 759/2012, with the exception of advertising services, most of content creators' income-generating activities such as providing contents for social media remain unrecognized under the ESIC business licensing categories, which makes the implementation of income tax imposed on them ineffective. This is also what staff members working at the registration office of MoTRI and the taxing authority of the MoR have raised as the main challenges in registering content creators and taxing their income. Nonetheless, content creators engaged in advertising activities are bound to apply for commercial registration and business licenses.

3.3. Tax Registration for Content Creators

In the preceding section, we observed that there are no licensing categories under ESIC for most content creators' activities. Consequently, it is impossible to implement commercial registration and business licensing requirements. However, there is a separate registration requirement for tax purposes that applies regardless of whether a person is required to obtain commercial registration certificate and business license.

The Federal Tax Administration Proclamation No. 983/2016 (TAP) under Article 9(1) obliges any person who becomes liable for tax under a tax law to apply to the Authority for registration. The implication is that, despite not being required to be registered for the purpose of CRBLP, any person having taxable income must undergo tax registration, which involves mainly obtaining a taxpayer identification number (TIN). However, among others, a person who is liable for final tax

¹⁸⁹ Interview with Mr. Habtamu Tilaye, Business Registration and Licensing Customer Service Team Leader at Addis Ababa City Government Trade Bureau; Interview with Mrs. Abaynesh Abate, Director of the Declaration Directorate at the MoR; Traders database of six business licensing categories closest to the income-generating activities of content creators obtained from MoTRI (on the file with Author).

under Schedule D and non-residents who are subject to only Ethiopian source income under Articles 51 and 53 of the ITP are not required to undergo tax registration.¹⁹⁰

One may ask if there is a separate tax registration, why we worry about commercial registration and business licensing for tax purposes. The answer to this question lies in the difference between commercial registration and business licensing and tax registration, which is related to the timing, criteria, and consequences of non-compliance. While commercial registration and business licensing bring any trader into the tax net even before having taxable income at the time when the trader starts to carry on trade, tax registration is carried out only after being liable for income tax.¹⁹¹ Business licensing also fosters income tax compliance since traders are required to provide tax clearance every year to renew their business licenses.¹⁹² There is no renewal requirement concerning tax registration.

Additionally, the sanctions attached to failure to undergo commercial registration and business licensing procedures are far more severe than the sanctions that follow failing to apply for tax registration. There is no criminal punishment for failing to apply for tax registrations.¹⁹³ Therefore, commercial registration and business licensing play important roles in bringing potential taxpayers into the tax net and in enhancing tax compliance.

By now, the obligations of content creators who have become liable for tax to apply for tax registration must be straightforward. As we will see in the subsequent sections, content creators in Ethiopia are liable to pay business income tax as provided under Schedule C of the ITP whether or not they are required to apply for commercial registration and business license under the CRBLP. Generally, any content creator who earns more than 7,200 Birr in a tax year is liable for income tax and duty bound to apply for tax registration at the relevant tax authority and to secure

¹⁹⁰ Article 9(2) of the TAP. This also specified under Article 8(5) of the Taxpayers Registration and Cancellation Directive No. 202/2013), which states that a taxpayer on whom final tax is levied on according to Schedule D cannot register for tax.

¹⁹¹ Tax registration is a prerequisite for commercial registration and business licensing. Article 14(2) and (4) of the TAP.

¹⁹² Article 27 of the CRBLP

¹⁹³ Article 49(2) of the CRBLP and Article 101(1) of the TAP.

TIN.¹⁹⁴ Failure to apply for tax registration will make them liable for a penalty of 25% of the tax payable by the person for the period commencing on the date that the person was required to apply for registration and ending on the date that the person files the application for registration or that the person is registered on the authority's own motion.¹⁹⁵

3.4. Characterization and Taxation of Content Creators' Income under Ethiopian Tax Law

The relevance of characterizing content creators' income lies mainly in the schedular structure of the Ethiopian income tax system. Ethiopia's schedular income tax structure was transplanted from the British tradition of taxing income by schedule or source, and this legacy of the British income tax structure has remained with Ethiopia to this day.¹⁹⁶ Nevertheless, the denotation of income as "*every sort of economic benefit (..) from whatever source derived*" under Article 2(10) of the repealed Income Tax Proclamation 286/2002 and Article 2(14) of the current Income Tax Proclamation 979/2016 that capture all "economic benefits" in the classic sense of the accretion concept of income is seen as a stark departure from the source concept of income under the British tax system.¹⁹⁷ Additionally, the inclusion of "other income" under Article 63 of the ITP is considered as the introduction of the global income tax structure into the Ethiopian income tax system.

Be that as it may, the current Ethiopian Tax system has five schedules:¹⁹⁸

- A) Schedule A, income from employment;
- B) Schedule B, income from rental of buildings;
- C) Schedule C, income from business;
- D) Schedule D, other income;
- E) Schedule E, exempt income.

Of these five schedules, Schedule B (business income) and Schedule D (other income) compete to encompass content creators' income. After defining income generally, the ITP further defines

¹⁹⁴ Article 19(2) of the ITP.

¹⁹⁵ Article 49(2) of the CRBLP and Article 101(1) of the TAP.

¹⁹⁶ Taddese (n 25) 1. *See also* Lee Burns and Richard Krever, 'Individual Income Tax' (n 97) 497.

¹⁹⁷ Taddese (n 25) 260.

¹⁹⁸ Article 8 of ITP.

income from various sources such as employment income, income from rental of buildings, business income, and miscellaneous income, which are taxable under the different schedules listed above. The reading of Articles 2(14), 9, and 63 of the ITP, on its face, gives the impression that no income may escape from income tax, except those exempted explicitly for different policy reasons. However, any income can only be taxed under schedules A to D, as provided under the ITP. Content creators' income generated from diversified activities on social media such as endorsements, publishing contents, charging viewers, affiliate marketing/product placements, tokenization, crowdfunding, and direct selling do not readily fit into these schedules.

3.4.1. Content Creators' Income as Business Income

The general definition of income is supplemented by definitions of income from different sources that are taxable under different schedules of the ITP. Business income taxed under Schedule C consists mainly of the gross amount derived from the conduct of a business.¹⁹⁹ The definition of business has the following three inclusions, as defined under Article 2(2) of ITP:

- a) any industrial, commercial, professional, or vocational activity '*conducted for profit*' and whether conducted '*continuously or short-term*', '*but does not include the rendering of services as an employee*' or the rental of buildings; (italics added)
- b) any other activity recognized as a trade under the Commercial Code; or
- c) any activity other than rental of buildings of a share company or private limited company, regardless of the company's objects.

The first and second inclusions are relevant for the characterization and taxation of content creators' income. Although intended to widen the notion of business as much as possible, these three elements of business are redundant. All trade activities included in the business definition under Paragraphs (b) and (c), or under the commercial code, can be found in the elements of business, as defined in Paragraph (a). The reference made to the Commercial Code by the ITP seems to be intended to take advantage of the enumerative list of the trade activities under the

¹⁹⁹ Article 2(4), 21(1)(a) of the ITP.

former.²⁰⁰ The expansive inclusion of activities in the definition of business under paragraph (a) has made Taddese to boldly contend that:²⁰¹

“almost all human activities can be treated as ‘trade’. Literally, there is no human activity that cannot intrinsically be conducted as a ‘trade’.”

With all its redundancies, as stated above, Article 2(2) of the ITP defines the term business in a comprehensive manner, with three alternative inclusions.

The first inclusion under Article 2(2)(a) of the ITP states that any industrial, commercial, professional, or vocational activity “conducted for profit” “continuously or for short-term” fall within the scope of business for the purpose of income tax. The commercial activity under Paragraph (a) was intended to be broadly interpreted to include any activity conducted for financial gain.²⁰² The explanatory notes on ITP prepared by Lee Burns on behalf of ERCA, MoFEC, and the WBG have identified two key indicators of an activity conducted for financial gain:²⁰³

- a) profit motive and
- b) the existence of a system and organization for the activity conducted (i.e., it is more than just a hobby or recreational activity).

However, the second indicator specified in the explanatory notes mentioned above seems to diverge from the phrase “whether conducted for short term or continuously’ under Article 2(2)(a) of the ITP. Even the notion of business activities under the Commercial Code only requires continuity and not the existence of a system or organization. As stated above, the continuity element of has been purposely eliminated under Paragraph (a) by capturing any activities conducted for profit, even for a short period of time as business activities. Hence, it is not tenable to consider the existence of system and organization as key indicators of commercial activities.

²⁰⁰ Taddese (n 25) 385. According to Tadesse, the Income Tax Proclamation refers to the Commercial Code only as an additional reference, having already made a list of activities subject to income tax (commercial, professional, vocational, etc.).

²⁰¹ Taddese (n 25) 382.

²⁰² Ministry of Finance and Economic Cooperation, Federal Income Tax Proclamation No. 979/2016 Technical Notes, 2018, p.3.

²⁰³ *ibid.*

In conclusion, an activity does not need to be conducted regularly or professionally to be regarded as a business under the ITP. Some occasional activities that are not deemed business under the CRBLP and Commercial Code can be considered business under the ITP. Therefore, content creators' activities on social media such as endorsements, publishing contents, charging viewers, affiliate marketing/product placements, tokenization, crowdfunding, and direct selling conducted for profit, whether conducted continuously or for short term can be regarded as business and the income derived from these activities can be deemed business income. However, it should be noted that income from some of content creators' activities mentioned above such as publishing contents and charging viewers can also be classified as royalties as it will be discussed under the next Sub-Section.

The second dimension in the definition of business provided under Article 2(2)(b) of the ITP imports commercial activities recognized under the Commercial Code. Thus, commercial activities recognized under the Commercial Code have the same status under the ITP. Concerning the implications of the notion of business as construed under the Commercial Code and other laws, Taddese asserts the following:²⁰⁴

“While the operation of the Income Tax Law is not constrained by other laws of Ethiopia, it is naïve to assume that the understanding of “trade” in some of these other laws will not have a bearing on the scope of the Income Tax Proclamation. It is therefore imperative to analyze the notion of “trade” by reference to some of these other laws and assess the impact of these upon the taxation of business income in Ethiopia”

The New Ethiopian Commercial Code under Article 5 indirectly defines business or trade generally as activities carried on professionally and for gain and lists illustratively 37 activities considered as business in particular. Under the Commercial Code, a certain activity is regarded as a business activity only if it is conducted “professionally” or habitually. Any occasional or incidental activities are not within the purview of the term business under the Commercial Code. In contrast, the continuity element in the business definition is eliminated under Article 2(2)(a) of the ITP. However, this incompatibility does not relieve any person deriving income from occasional activities from being subjected to income tax, since the definitions given to business

²⁰⁴ Taddese (n 25), at 374.

under Paragraph (a), (b), and (c) of Article 2(2) of the ITP are alternatives. In other words, any activity recognized as business under Paragraph (a) will be taxable under Schedule C, even though such activities do not constitute business under Paragraph (b). Therefore, content creators' occasional social media activities conducted for profit that are not deemed business under Paragraph (b) or under the Commercial Code are regarded as taxable business activities under Paragraph (a).

In fact, all trade activities included in the business definition under Paragraph (b) and (c) or under the Commercial Code are found within the scope of business, as defined in Paragraph (a). As stated above, the reference made to the Commercial Code by the ITP seems to be intended to benefit from the enumerative list of the trade activities definition under the former.²⁰⁵ Nonetheless, the inconsistency between the notion of business as construed under the CRBLP and the Commercial Code on the one hand, and the understanding of the term under ITP has its own implications on the implementation and effectiveness of business income tax imposed on those individuals who are engaged in occasional income-generating activities, since they may not be required to undergo commercial registration and business licensing procedures.

As discussed in Chapter Two, a large number of content creators regularly engage in income-generating social media activities. Even though user-created content (UCC) was initially purported as content produced with no commercial intent, and created outside professional exercise, nowadays it is has become clear that some creators produce contents for commercial profits, and the participation of professionals in the production of UCC on social media has been growing. Hence, some content creators' income-generating activities satisfy the two defining elements of business stipulated under the Commercial Code: continuity and commercial intent.

Among the 37 illustrative lists of commercial activities under the Commercial Code, the following two newly added categories cover the activities of the content creators:

- a) publishing of works through paper printing, photographs, audio and audiovisual records or television, radio, internet or any other means – Article 5(19); and

²⁰⁵ Taddese (n 25) 385. According to Tadesse, the Income Tax Proclamation refers to the Commercial Code only as an additional reference, having already made a list of activities subject to income tax (commercial, professional, vocational, etc.).

b) operating news and any information transmission services – Article 5(23).

Therefore, content creators who are professionally engaged in income-generating activities on various social media platforms such as YouTube, Facebook, TikTok, and Instagram through monetization mechanisms such as endorsements, content publishing, subscription fees, and affiliate marketing/product placements constitute business as provided under Article 2(2)(b) of the ITP.

Another important point to consider when identifying whether content creators' income falls within the scope of business income taxable under Schedule C is the distinction between employees and independent contractors. ITP defines business income in contradistinctions to income categories taxed under other schedules. Employment income and income from the rental of buildings are excluded from the ambit of business income, which are taxed under Schedules A and B, respectively. Employment income tax is imposed on employees' income generated in an employment relationship.²⁰⁶ An employee is an individual engaged, whether on a permanent or temporary basis, to perform services *under the direction and control* of another person other than as an *independent contractor* (...).²⁰⁷ The exclusion of independent contractors from the scope of employees brings them under Schedule C. In other words, independent contractors' income is considered business income and taxed accordingly. Independent contractors are individuals engaged in performing services under an agreement by which they *retain substantial authority to direct and control* the manner in which services are to be performed.²⁰⁸

Therefore, the existence or absence of the authority to direct and control the manner of service provision by another person serves as a litmus test to distinguish employees from independent contractors. In contrast to employees, independent contractors retain substantial control over the services that they provide. This distinction is important for classifying the income of content creators. In most of literature, content creators are classified as self-employed individuals or independent contractors.²⁰⁹ This classification is also supported by the experiences of several countries, such as the Philippines, Canada, Singapore, Kenya, and Turkey, where content creators

²⁰⁶ Article 10(1) of the ITP.

²⁰⁷ Article 2(7) of the ITP.

²⁰⁸ Article 2(15) of the ITP.

²⁰⁹ Nicholas Robinson & Jaclyn Shan (n 30); Andrea (n 23) 14.

are regarded as self-employed individuals or independent contractors.²¹⁰ The main reason for classifying content creators as independent contractors is because of the substantial authority they retain to direct and control the manner of the various services they provide on social media. Therefore, classifying content creators as independent contractors, whose income is taxable under Schedule C, is plausible for Ethiopia.

In conclusion, the analysis of relevant Ethiopian laws supports characterization of most of content creators' income as business income. However, there is an issue of whether income from some of content creators' activities such as publishing contents and charging viewers can also be classified as royalties taxable under Schedule D of the ITP.

3.4.2. Content Creators' Income as Royalties

The various categories of income taxable under Schedule D do not share a common feature, except that most are taxed primarily through the withholding scheme.²¹¹ The application of the withholding scheme does not completely relieve taxpayers earning the miscellaneous income included in Schedule D from filing tax declarations. If the tax imposed under Schedule D is not withheld by a withholding agent, it should be discharged by filing a tax declaration.²¹²

It is generally admitted that drawing a border line between various income taxable under Schedules A to D under the ITP is sometimes complicated. In particular, the conflict between Schedules C and D is significant.²¹³ The ITP has attempted to resolve this conflict under Article 64(1). Nonetheless, Article 64(1) does not adequately delineate the income taxable under Schedules C and D.

Among the miscellaneous income taxed under Schedule D, royalty and 'other income' apparently seem to be competing with Schedule C to cover at least portions of content creators' income. As discussed in Chapter Two in detail, content creators' works can be regarded as objects of intellectual property rights. Some authors have argued that some works, even if not all, produced

²¹⁰ Ibid.

²¹¹ Article 64(5) of the ITP. *See also* Taddese Lencho, 'Towards Legislative History of Modern Taxes in Ethiopia (1941-2008)' (2012) 25 J ETHIOPIAN L 121.

²¹² Article 83(7) of the ITP.

²¹³ Taddese (n 25) 373.

by content creators, known as user-created content (UCC), are valid objects of intellectual property rights.²¹⁴ In effect, a portion of content creators' income generated from licensing of digital contents can be considered royalties, which are taxed separately from business in many jurisdictions.

We have seen that, from the TAG's 28 e-commerce categories, the most relevant e-transaction category to characterize content creators' income received directly from platforms as remuneration for the ad displayed on their content is category 25, labeled as "content acquisition transactions." Content acquisition transactions entail a website operator paying *content providers* for news stories, information, and other online content in order to attract users.²¹⁵ TAG characterized the payments made by the operator to a content provider for the right to display copyrighted material as falling under the definition of royalties.²¹⁶ This characterization aligns with the Google AdSense practice in the U.S. regarding creators' income received directly from platforms through native advertising added to content uploaded by creators. Before 2021, Google LLC was not collecting tax on the ad revenue it was paying creators, as such revenue was deemed non-employee compensation.²¹⁷ However, starting in June of that year, Google announced that it is responsible for withholding taxes from YouTubers' royalty revenue earned from viewers in the US.²¹⁸ On the other hand, Philippine's BIR explicitly disregarded the possibility of content creators' income classification as royalties, subjecting any income generated by content creators to business income tax.²¹⁹

Royalties are defined under Article 2(20) of the ITP as any periodic or lump-sum payment as a consideration for the use of or right to use intellectual properties. In Ethiopia, royalties are taxed under Schedule D (miscellaneous income) under Articles 51 and 54 of the ITP. While Article 51 concerns royalties earned by non-residents, Article 54 deals with royalties derived by Ethiopian resident and permanent establishment of non-residents. Accordingly, any non-resident who has

²¹⁴ Sristi (n 85). *See also* Bulcha (n 42) 18-24.

²¹⁵ OECD (n 95).

²¹⁶ *ibid.*

²¹⁷ Andrea (n 23f) 41.

²¹⁸ Google (n 21).

²¹⁹ BIR (n 3) Section 4.

derived an Ethiopian source royalty and a resident of Ethiopia and permanent establishment of non-residents who derive a royalty are subject to a final withholding income tax at the rate of 5% on the gross amount of the royalty.²²⁰ Thus, content creators' income received from platforms for the use of copyrighted content produced by content creators can be considered as royalties taxable under Articles 51 and 54. However, the application of Articles 2(2) and 64(1)(a) of the ITP leads to taxation of content creators' income, regarded as royalties under Schedule C, as business income.

Another category of income taxable under Schedule D that competes to cover content creators' earnings is "other income". Any income that is not taxable under Schedule A, B, C, or the other Articles of Schedule D is taxed at a rate of 15% on the gross amount of the income.²²¹ The residual income category is included under schedule D to tax any income that cannot be taxed under other schedules. However, as asserted in the preceding section, since content creators' income is covered under Schedule C, there is no need to resort to the residual income category under Article 63 of the ITP.

The issue of whether any content creators' income should be taxed under Schedule D as royalties or other income can be resolved based on Article 64(1)(a) of the ITP, which states that the income tax imposed under Schedule D should not apply on income taxable under another schedule. The implication is that Schedule D gives priority to other schedules and does not apply simultaneously with another schedule over the same income. This is a manifestation of the mutual exclusivity of the schedules in the schedular income tax structure. Thus, all income derived by content creators that is taxable as business income under Schedule C cannot be taxed under Schedule D.

There is incompatibility between the mutual exclusivity principle under Article 64(1)(a) and the expansive definition of business under Article 2(2) of the ITP. The definition given to business under Article 2(2) of the ITP does not explicitly exclude various miscellaneous income included under Schedule D. Owing to the expansive definition given to business, most of miscellaneous income taxable under Schedule D including royalties can be considered business income taxable under Schedule C. To once again quote Taddese, there is no human activity that may not be

²²⁰ Article 51(1), 54, and 64(2) of the ITP.

²²¹ Article 63 of the Schedule D.

regarded as business as defined under Article 2(2)(a) of the ITP.²²² This renders most of the income tax imposed under Schedule D inapplicable as regards to most of the miscellaneous incomes listed under the schedule.

For instance, Article 2(2)(c) of the ITP states that any activity of a share company or private limited company is always deemed a business activity except for the rental of buildings. This leads to the characterization of miscellaneous income listed under Schedule D derived by a company as business income taxable under Schedule C. Thus, all income of a company derived from content monetization on social media, including those income deemed royalties, is taxable as business income.

However, there is one characteristic of content creators' income that should be evaluated while attempting to categorize content creators' income under Schedule C or D of the ITP, which is the regularity of income. Schedule D intends to take advantage of withholding tax collection method for occasional income. By contrast, Schedule C relies on self-declaration collection methods. Therefore, we should interpret Article 2(2) of the ITP that defines business in a way that leaves room for the proper implementation of income tax imposed on miscellaneous income under Schedule D. As stated above, Schedule D is primarily intended to tax casual income through a withholding mechanism. Based on this assumption, an attempt can be made to draw a line between business income and royalties.

To limit the scope of Schedule C with regard to income tax imposed on royalties under Schedule D, we need to distinguish between casual and regular royalties. The US IRS ruled on this issue in a case involving characterization of royalty from writing books.²²³ In this ruling, the IRS clarified that an individual who writes only one book as a side job and does not revise it is not considered to be regularly engaged in an occupation or profession.²²⁴ Thus, royalties from books earned in such a scenario are not considered as self-employment earnings.²²⁵ However, if an individual prepares new editions of the book or writes other materials regularly, it is considered to be the

²²² Taddese (n 25) 382.

²²³ Rev. Rul. 55-385, 1955-1 C.B. 100; Rev. Rul. 68-498, 1968-2 C.B. 377 *as cited in* Claudia Kelley and Tamara Kowalczyk (n 163).

²²⁴ *ibid.*

²²⁵ *ibid.*

conduct of a trade or business. This ruling suggests that the royalties of content creators who are regularly engaged in content monetization should be classified as business income. There is no such principle under the Ethiopian income tax laws that helps to draw scenarios where royalties and other residual income listed under Schedule D should be taxed as business income under Schedule C of the ITP, and vice versa.

Applying the approach taken by the IRS to the Ethiopian context, in conjunction with the expansive definition of business and the precedence given to Schedule C over Schedule D under the ITP, the royalties of content creators who are regularly engaged in content monetization can be deemed business income taxable under Schedule C. In most cases, generating income through content monetization on social media requires continuous effort to attract large audiences. As such, almost all content creators deriving income from content monetization are engaged in this activity on a regular basis, which makes the taxation of their income received from platforms in the form of royalties under Schedule C plausible. In conclusion, all forms of income generated by content creators from regular activities on social media conducted for profit including regular royalties should be taxed as business income under Schedule C.

3.5. Challenges in Taxing Content Creators' Income

3.5.1. Legal Challenges

Based on the characterization all forms of income generated by content creators from regular activities on social media conducted for profit including regular royalties as business income taxable under Schedule C, the power of taxing individual content creators' income is conferred on the regional state and chartered cities, as it is individuals' trade profit.²²⁶ Although some regions have issued their own income tax laws, they are replica of the 2002 federal income tax law.²²⁷ Against this backdrop, legal challenges in content creators' income taxation are enunciated in this part of the study.

The characterization of content creators' income as business income taxable under Schedule C instead of Schedule D has both advantages and disadvantages. One advantage is that content

²²⁶ The FDRE Constitution, Article 97(4)

²²⁷ Taddese Lencho, 'Income Tax Assignment under the Ethiopian Constitution' [2010] 4(1) Mizan Law Rev 32, 45 <doi.org/10.4314/mlr.v4i1.57148> accessed 6 September 2023.

creators' income will be taxed with progressive rates under Schedule C, which aligns with the principle of equity. However, it will be difficult for the tax authority to trace and tax content creators' income, since Schedule C relies on self-declaration. To tackle this challenge, several jurisdictions, such as Kenya and Türkiye, adopted a separate withholding tax or a tax deducted at source as the most preferable method of taxing all content creators' income generated from content monetization.

Another implication of characterizing content creators' income as business income is that content creators should declare their income to tax authorities and discharge their tax obligations by themselves.²²⁸ Moreover, content creators qualifying as category "A" and "B" as defined under Article 3(1) of the ITP are required to keep books of account as provided under Article 82(1) and (2). Category C content creators earning gross income not exceeding Birr 500,000 in a tax year are not required to keep books of account, unless they voluntarily opt to do so.²²⁹

Category C content creators are subject to presumptive income tax. The presumptive business income tax to be paid by category "C" taxpayers is calculated in accordance with the schedule attached to Income Tax Regulation No. 410/2017.²³⁰ The Schedule attached to this Regulation provides for presumptive income tax for 99 income categories. Except for advertising services or endorsements, other main income-generating activities of content creators such as content monetization on social media are not explicitly included in the lists of income categories for which presumptive income tax is determined under the Schedule attached to the above-mentioned Regulation. There is 'other services' category under the Schedule which seems intended to serve as a catch-all category. However, what constitutes services is nowhere defined under the ITP and the Income Tax Regulation. The ITP uses business activities generally to refer to various activities generating business income under Schedule C. This legal loophole can be one of the main challenges that will be faced in taxing content creators' income generated from content monetization. Nonetheless, the Schedule has room for content creators' income derived from various advertising or endorsements services.²³¹ Thus, Category C content creators should

²²⁸ Article 9(1) of the TAP; Article 83(4) and (6) and Article 84(4) of the ITP.

²²⁹ Article 3(1) and 82(3) of the ITP.

²³⁰ Article 49 of the ITP and Article 49 of the Council of Ministers Federal Income Tax Regulation No.410/2017.

²³¹ The Schedule attached to the Council of Ministers Federal Income Tax Regulation No.410/2017.

discharge their income tax obligation with regard to their earnings from advertising or endorsement services as provided under the Schedule.

The incompatibility between the mutual exclusivity principle under Article 64(1)(a) and the expansive definition of business under Article 2(2) of the ITP creates confusion as to whether content creators' revenues received from published digital content should be taxed under Schedule C as business income or Schedule D as royalties. The definition of business activities provided under Article 2(2) does not exclude miscellaneous income listed under Schedule D, as it excludes income taxable under Schedules A and B. For instance, content creators' income that can be regarded as royalties can also be characterized as business income. The demarcation between business income taxable under Schedule C and royalties taxable under Schedule D is not adequately dealt with under the ITP.

Dividing content creators' income into business income and royalties creates significant challenges for administration. The first challenge stems from the difficulty of identifying contents that are copyrighted and not copyrighted, given the massive amounts of contents created every minute. Not all contents published by content creators qualify as copyrighted works. Second, creators produce content regularly, unlike traditional producers, who occasionally publish copyrighted works. The *raison d'être* of taxing royalty differently from other businesses is twofold: encouraging the production of intellectual property objects and the casual nature of royalty.²³² However, because creators publish content regularly, taxing them with tax rules intended for occasional income is not tenable.²³³

Moreover, the absence of business licensing categories for most of content creators' activities is among the main legal challenges that affect the taxation of content creators' income.²³⁴ There are no clear licensing categories for content creators to apply for commercial registration and business license under the ESIC Directive. Currently, content creators other than traditional producers working in areas such as music, movie and media, are neither getting registered and obtaining business license nor discharging their income tax obligations. Staff working at the Ministry of

²³² The Provisional Military Government of Socialist Ethiopia, Office of the Chairman of the Council of Ministers, Tikimt, 3, 1975 E.C., in Amharic, unpublished, as cited in Taddese (n 25) 439.

²³³ Endalkachew (n 24) 53.

²³⁴ *ibid.*

Trade and Regional Integration (MoTRI) have raised the absence of licensing categories for content creators' various income-generating activities on social media. As it is recalled, commercial registration and business licensing procedure plays a significant role in enhancing tax compliance. Although there is separate tax registration, it will not replace the role of commercial registration and business licensing requirements in increasing the income tax compliance of content creators. Mrs. Abaynesh Abate, director of the Declaration Directorate at the MoR and other staffs working at revenue authorities stated that there is no content creator who had declared her/his income from social media activities. Moreover, they opined that Ethiopian tax laws do not cover digital businesses in general, including the business of content creators. They also raised the absence of registration and the difficulty of establishing content creators' identities and verifying their income as challenges to taxation of content creators' income.

Finally, the absence of guidelines or directives that clarify the income tax obligation of content creators is also one of the contributing factors to the non-taxation of content creators' income. This has caused a lack of awareness among both content creators and staff working at registering and tax-collecting authorities. Moreover, there will be only insignificant amount of tax that can be raised from content creators' ad revenue in Ethiopia because of double taxation issue in the absence of double taxation agreements. This income of content creators is taxed in countries where the platforms are headquartered with most of which Ethiopia does not have double taxation treaty.

3.5.2. Expected Practical Challenges

The study of practical challenges faced in taxing content creators' income could not be conducted in depth since there is no practice in this area. However, some foreseeable practical bottlenecks that hinder the effective taxation of content creators' income could be identified from the interviews conducted with registering and taxing authorities, content creators, and the author's personal observation of Ethiopia's context.

The first step in bringing content creators' businesses to the formal economy involves creating a system of commercial registration and business licensing. As discussed, only content creators engaged in advertising activities can be registered as per relevant laws, as there are no business licensing categories for other business activities of content creators. Be that as it may, the content creators consider the requirement for a physical address for commercial registration and business

licensing as one of the factors that discourage them from being registered.²³⁵ Having an office is the last thing most of content creators need for their businesses, as they can work from home or anywhere, and it is expensive to lease office, which contributes a little to nothing to their businesses.²³⁶

All of the eight interviewed content creators were not registered and not paying income tax due on their earnings because they are not clear about their tax obligations.²³⁷ Similarly, officials and staff working in the MoTR and MoR offices have not a clear understanding of the nature of content creators' income and its tax consequences as interviews conducted with them revealed. Most of them believe that content creators' activities and income are not recognized under the ITP, although the Proclamation has adequate room for taxation of content creators' income. Lack of awareness has much to do with the absence of guidelines or directives on this subject matter.

Another practical challenge is the existence of parallel foreign exchange markets.²³⁸ One of the main sources of content creators' revenue is the payment they receive in foreign currency as remuneration for their content published on platforms incorporated abroad, such as YouTube, Google AdSense, and TikTok. Because of the wide gap between formal and informal foreign exchange rates, content creators are not willing to receive international payments through local financial institutions. Thus, tax authorities cannot easily access information on the payments made by social media platforms to content creators from local financial institutions such as banks. This problem worsens the difficulty faced by tax authorities in identifying and taxing content creators' income. Moreover, the preference for accepting payments from platforms through informal channels makes implementing a withholding tax on content creators' earnings challenging.

²³⁵ Interview with W/ro Frezer Negash, President of the Online Media Association; Interview with other eight content creators.

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ National Bank of Ethiopia, 'National Digital Payments Strategy 2021–2024' 43.

CHAPTER FOUR

4. CONCLUSION AND RECOMMENDATION

4.1. Conclusion

Content monetization on social media in various business models has become a blossoming economy, in which individuals commonly known as content creators or influencers are able to generate a fortune due to the increasing popularity of social media. Content creators are regarded as independent contractors or self-employed individuals engaged in business in several jurisdictions. After observing the substantial amount of income generated from content monetization, tax authorities in many countries have started to seriously consider the taxation of content creators' income.

There are two approaches to taxing content creators' earnings, as observed from the experiences of the foreign countries selected for this study. The first approach is to issue normative guidelines on the income tax obligation of content creators under their existing income tax laws, as in the Philippines. In the Philippines, RMC 97-2021 classifies social media influencers as persons engaged in business as sole proprietors and their income as business income. Thus, they are taxed similarly to other traders or business persons. The second approach involves imposing a separate withholding tax on all content creators' income derived from the content monetization of social media. Turkey and Kenya adopted the second approach as their preferred method of taxing content creators' income.

Although content monetization economy is also flourishing in Ethiopia, MoR and MoFEC have not issued any directive or guidelines that clarify content creators' income tax obligations. It was found that content creators other than traditional content producers working in areas such as music, movies and media, have not been undergoing business licensing procedure and discharging their income tax obligations in Ethiopia. This problem is related to some legal loopholes and practical impediments. Staffs and officials working at registering and taxing authorities believe that content creators' businesses are not recognized under Ethiopian income tax law. However, despite a few legal loopholes, the analysis of Ethiopian business registration law and income tax law leads to a conclusion that all forms of income generated by content creators from regular activities on social

media conducted for profit including regular royalties should be taxed as business income under Schedule C.

Although the ITP and other relevant laws can be interpreted as capturing content creators' business activities, the ESIC Directive and the presumptive income Schedule 1 attached to Income Tax Regulation No. 410/2017 do not include most of content creators' business activities except for advertising services, which resulted in non-registration and non-taxation of content creators' income.

In addition to these legal loopholes, the requirement for physical address or office for registering a business discourages content creators from securing business license. Moreover, the substantial gap in foreign currency exchange in the formal and informal markets has made content creators opt to receive payments from social media platforms such as YouTube and TikTok through informal channels. Content creators' preference of accepting payments from platforms through informal channels is another challenge faced in implementing a withholding tax on their income.

Moreover, all of the interviewed content creators stated that they were not registered and paying income tax on their earnings because they are not clear about their tax obligations. Lack of awareness has much to do with the absence of guidelines or directives on this subject matter. There is also lack of interest on the part of Ethiopian tax authorities to bring content creators' income into the tax because of the difficulties of tracing and taxing content creators, and due to their belief that only low tax revenue can be generated from taxing content creators.

4.2. Recommendations

To tackle the existing challenges and effectively tax content creators' income, this study puts forward the following recommendations:

- The business definition provided under Articles 2(2) and (3) of the CRBLP should be amended to be in congruent with the broad definition of the term under Article 2(2) of the ITP so as to impose the obligation to apply for business registration on all content creators who are liable for business income tax.
- To resolve the issue of whether portions of content creators' income that may be characterized as royalties should be taxed under Schedule C or D, the definition of business provided under Article 2(2) of the ITP should identify circumstances under which miscellaneous income listed under Schedule D should be taxed under Schedule C.
- The business activities of content creators' income should be comprehensively included in the ESIC.
- The FDRE Ministry of Finance should issue a binding directive or explanatory guideline on the registration and taxation of content creators' business activities on social media to clarify the issue and raise awareness among content creators and the staff working in relevant government institutions such as the MoTRI and MoR.
- Schedule 1 attached to Income Tax Regulation No. 410/2017, which provides for presumptive income tax, should also be amended to impose a presumptive income tax on category C content creators business activities.
- Alternatively, a withholding tax on content creators' income as a separate category of income should be added under Schedule D of the ITP coupled with registration and secondary self-declaration obligations. Turkey's inventive approach can be used as the starting point.
- Taking measures from issuing warnings to criminal charges and administrative penalties on top content creators who did not discharge their tax obligations, as several countries did.

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3. Interview with Mrs. Abaynesh Abate, Director of the Declaration Directorate at the MoR.
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7. Interview with Mrs. Elsabet Admasu, Customer Service at Gulalle Sub-City Small Taxpayers Branch of Addis Ababa City Government Revenue Bureau.
8. Interview with Mr. Habtamu Tilaye, Business Registration and Licensing Customer Service Team Leader at Addis Ababa City Government Trade Bureau.
9. Interview with Mr. Bailu Zeleke, Registration and Licensing Customer Service Team Leader at Licensing Directorate of Bole Sub-City Trade Office.

10. Interview with Abraham Regga, Senior Legal expert at the Legal Directorate of MoFEC.
11. Interview with Dessie Kefiyalew, Public Relations Director at the Ethiopia Media Authority.
12. Interview with W/ro Frezer Negash, President of the Online Media Association.
13. Interview with eight Content Creators.
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