

**JIMMA UNIVERSITY
COLLEGE OF LAW & GOVERNANCE
SCHOOL OF LAW
LL.M PROGRAM IN COMMERCIAL & INVESTMENT LAWS**



**TAXATION OF AUDIOVISUAL WORKS IN ETHIOPIA:
PROBLEMS AND PROSPECTS**

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(Approval Sheet)**



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Declaration

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been dully acknowledged.

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ABSTRACT

The purpose of this paper is to examine the problems in taxation of audiovisual works in Ethiopia. In order to investigate the problems the writer has employed both doctrinal and non-doctrinal research methods. Tax laws, Copyright and Neighboring Rights Proclamation and other primary sources such as interview & questionnaire as well as review of different literatures were used in the research. The analysis of laws, other primary data and literature review disclose that there are several problems in taxation of audiovisual works. There is no royalty system to collect income tax from the use of audiovisual works. The royalty system provided in the amended Copyright and Neighboring Rights Proclamation No. 872/2014 should be made applicable thereby royalty income should be collected and tax could be imposed on the income accordingly. In addition, there is no deduction and exemption rule in taxation of audiovisual works particularly for those independent producers. In this paper the writer argue that the Ethiopian Income Tax Law should at least provide general tax rules for deduction of research and development costs and exemption of a certain level of income in audiovisual industry. Indirect taxes such as VAT, TOT, custom duty, excise tax and Sur tax is imposed in taxation of audiovisual works. The imposition of high amount of indirect tax on audiovisual industry has a negative impact on the industry. The findings of the research shows that indirect taxes imposed on production materials in audiovisual industry are high. Consequently, the writer argues that it should be reduced. There is also amusement tax imposed on the entertaining activity applicable only in Addis Ababa city administration. Imposing entertainment tax in one parts of the country and reliving the other parts without viable economic reason could create economic imbalances among producers of those works. In order to receive the right amount of tax from the sector the country should adopt a well organized taxation system.

Abbreviations and Acronyms

Art.	Article
Arts	Articles
C.I.F	Cost, Insurance and Freight
E.C	Ethiopian Calendar
ERCA	Ethiopian Revenue and Customs Authority
FDRE	Federal Democratic Republic of Ethiopia
IP	Intellectual Property
No.	Number
OECD	Organization for Economic Co-operation and Development
SNNPR	South Nations Nationalities People Republic
TIN	Tax Identification Number
TOT	Turn over Tax
VAT	Value Added Tax
WIPO	World Intellectual Property Organization

CHAPTER ONE

Introduction

1.1 Background of the Study

The importance of intellectual property to country's business and the economy underscores the need for a sound tax policy governing intellectual property rights in general and audiovisual works in particular.¹ For that matter a country should adopt efficient and wise taxation system for intellectual property in general and audiovisual works in particular. Presently, the Ethiopian Income Tax Proclamation contains only a single provision governing taxation of intellectual property apart from the general provisions.² Actually, other tax regime of the country such as Value Added Tax and custom duty proclamations are equally applicable to intellectual property such as audiovisual works.

Since intellectual property became the dominant source of wealth in the world, the tax implications of intellectual property transactions became more important.³ Similarly audiovisual works as a part of intellectual property, adopting an effective legal framework for taxation of audiovisual works helps a country to receive the expected amount of revenue from the sector.

The researcher in this paper focuses on the taxation of audiovisual works rather than intellectual property in general. Therefore, in order to have a clear understanding of audiovisual works knowing its meaning is essential. So that next I try to put definitions for audiovisual works from Ethiopian copy right law and other literature. The Ethiopian Copyright and Neighboring Rights Protection Proclamation defined audiovisual works as a work that consists of a series of related images, which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible; by any appropriate device, and includes a cinematographic or other film.⁴

¹ X. Nguyen & J. Maine, Equity and Efficiency in Intellectual Property Taxation, Brooklyn Law Review, Vol. 76, No. 1, 2010, , p. 2

² Income Tax Proclamation, Proclamation No. 286/2002, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 8thYear No. 34, ADDIS ABABA, 4thJuly, 2002, Art. 31.

³ X. Nguyen & J. Maine, The History of Intellectual Property Taxation: Promoting Innovation and Other Intellectual Property Goals, SMU Law Review, Vol. 64, 2011, p. 106.

⁴ Copyright and Neighboring Rights Protection Proclamation, Proclamation No. 410/2004, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 10th Year No. 55, ADDIS ABABA, 19th July, 2004, Art. 2.

The other writers called Debande & Chetrit gave a meaning to audiovisual works in terms of the subject matter it constitutes; consequently, they define the notion of the audiovisual works as it covers the film, broadcasting (television and radio), video and multimedia industries.⁵ Audiovisual works in Ethiopia increased through time since 1996.⁶ Therefore, in order to generate revenue and encourage those works, effective and efficient tax system should develop in the country.

Tax is defined as a compulsory payment by the citizen levied by government for which no good or service is received directly in return - that is, the amount of tax people pay is not related directly to the benefit people obtain from the provision of a particular good or service.⁷ While governments faced with less revenue, increasing expenditures and resulting fiscal constraints, taxes becomes the most important means to raise revenue, which serve as the primary means for financing public goods such as maintenance of law and order and public infrastructure. In order to achieve such objective, there are a number of broad tax policy considerations that have traditionally guided the development of taxation systems. These include neutrality, efficiency, certainty and simplicity, effectiveness and fairness, as well as flexibility.⁸

Like other kinds of income, income from audiovisual works is the subjects of the tax law of a country. The current Ethiopia Income Tax law imposes an obligation on withholding agent on payment of royalty income to withhold five percent (5%) and account that amount to the tax authority.⁹ Royalty is defined in the OECD Model Tax on income and capital as:

“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, any patent, trade

⁵ O. Debande & G. Chetrit, *The European Audiovisual Industry: an overview*, EIB sector papers, Eroupean Investment Bank, 2001, p.10 available at:

http://www.researchgate.net/profile/Olivier_Debande2/publication/242745777_THE_EUROPEAN_AUDIOVISUAL_INDUSTRY_AN_OVERVIEW/links/02e7e529d77b422d1a000000.pdf?inViewer=true, accessed on: 20-Mar-2015.

⁶Production of audiovisual works, Available at: <http://www.ethioaudiovisual.org/en/component/content/article/13-hot-news/-28-2012-06-08-10-12-04.html>: accessed on 27-Mar-2015.

⁷ H L Bhatia, *Public Finance*, 24th ed., Vikas Publishing House Pvt. Ltd, Delhi, 2003, p. 37.

⁸ OECD, “Fundamental principles of taxation”, in *addressing the Tax Challenges of the Digital Economy*, OECD Publishing, 2014, pp. 30-31, available at: <http://dx.doi.org/10.1787/9789264218789-5-en>: accessed on 18-Mar-15.

⁹ Supra note, 2

mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience”.¹⁰

The Ethiopia income tax law in a similar fashion to the above one defines the term "royalty":

“as a payment 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 cinematography films, and films or tapes for radio or television broadcasting, any patent, trade work, design or model, plan, secret formula or process, or for the use or for the right to use of any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience”.¹¹

Royalty is defined in multiple ways in Black’s Law Dictionary:¹² That is:

- i) a payment made to an author or inventor for each copy of a work or an article sold under a copyright or patent;
- ii) a share of a product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee’s right to mine or drill on the land. Royalty is defined differently in different literatures. But the researcher used the meaning given by the income tax law and the OECD model tax in this paper.

Next I try to show the problems encountered in taxation of audiovisual works. First, the Ethiopia tax regime does not provide a mechanism of deduction of expenses incurred for developing audiovisual works. However, it is common that taxpayers often incur considerable expenses in creating or developing audiovisual works.¹³

It is also common that the costs incurred in producing audio visual works such as film or in acquiring film rights can be depreciated or amortized.¹⁴ Furthermore, Mittal recognizes that in the production of audiovisual works like film, large number of inputs in terms of crafts and

¹⁰ OECD, Model Tax Convention on Income and on Capital, OECD Publishing, 2012, p. 34, Art. 12, available at: <http://dx.doi.org/10.1787/978926417517-en>; accessed on 18-Mar-15.

¹¹ Supra note 2.

¹² Black’s Law Dictionary, 7thed, edited by Bryan A. Garner, ST.PAUL, MINN: West Group, 1999. pp. 1330-1331.

¹³ R. Oosthuizen, A Framework for The Income Tax Deductibility of Intellectual Property Expenditure Incurred By South African Taxpayers, International Business & Economics Research Journal, Vol. 12, No. 3, 2013, p. 377.

¹⁴ Shuyler M. Moore, Taxation of the Entertainment Industry: 9th ed., Workers Kluwer Business, United States of America, 2008, p. 3.

trades are utilized.¹⁵ The most important inputs are photographic film, human labor and technical equipments. For instance, the distributors may incur expenses for, publicity, prints of films, salary of the staff and advances and other expenses.¹⁶

There are several problems in our tax laws in taxation of audiovisual works. First, there is no royalty system. Second, there are no rules on deduction and exemption of income particularly for independent producers. Thirdly, there is also lack of clarity about taxation of audiovisual works both for the tax payer as well as the tax officials. Clarity in the tax system of income from audiovisual works has paramount importance both for the tax payer and the tax collector. The existence of lack of clarity in taxation of audiovisual works aggravates the enforcement problem. The royalty scheme provided in the Ethiopian income tax law does not clearly provide several issues.

The need for this study is in order to examine and analyze the problems identified herein above so as to provide some light for the effective and efficient system of taxation in audiovisual works. The solutions to the problem identified above are depending on each specific problem. For instance, for the absence of deduction rules in the income tax proclamation the legislature has to include such rules either in their amendment effort or enacting of a new law. While including deduction rules, audiovisual workers will be encouraged to invest in the area. In addition, the income tax law urges tax collection on the real income after a possible deduction if effected. For lack of enforcement, the Ethiopian Revenue and Custom Authority (ERCA) have to devise an effective mechanism of taxing audiovisual works so as to derive revenue from the sector.

The study tries to consider the following topics respectively. Chapter one deals with proposal of the study. The second chapter considers the general overview of tax such as types of taxes will be dealt in brief manner. Chapter three concerned with discussion of copyright in general and audiovisual works in particular. Taxation of audiovisual works will be presented under Chapter four. Under chapter five data analysis, interpretation and presentation will be made. Then under

¹⁵ Ashok Mittal, *Cinema Industry in India: Pricing and Taxation*, 1st ed., Indus Publishing Company, New Delhi, 1995, p. 59.

¹⁶ Id. P. 61.

the last chapter, contemporary problems associated with taxation of audiovisual works will be provided. And also finally, the writer tries to draw conclusion and possible recommendation.

1.2 Review of Literature

Unlike the past regime, currently intellectual works like audiovisual has gained wide recognition as a central driver of economic productivity and growth in the world.¹⁷ The social order is moving through a dynamic shift, from a society whose prosperity is based on tangible assets, to a population whose true riches lie in intangible types of property. Peoples are moving forwards to an era where awareness and thoughts are more precious than physical property.¹⁸

Intellectual property law serves a variety of societal goals, including fostering innovation and promoting economic and cultural development. However, intellectual property law should goes in line with the country's tax system even for the purpose of achieving intellectual property law's innovation objectives.¹⁹The tax implications of intellectual property transactions between taxpayers and the government became full of controversies, as intellectual property's role in the world economy increased.²⁰ The existence of a sound tax policy governing intellectual property rights in general and audiovisual works in particular, has its own contribution for the country's business and economy.²¹ The royalty income obtained from the use of audiovisual works is subject to tax.²²

The subject matter of copyright is extended to literary works, musical works (including accompanying words), dramatic works (including accompanying music), pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, and sound recordings.²³ Copyright provides a legal framework governing market relation. An owner of a copyright is empowered to grant a license to reproduce,

¹⁷ Lily Kahng, The Taxation of Intellectual Capital, *Florida Law Review*, Vol. 66, 2014, p. 2229.

¹⁸ V. Udapudi & B. Ghosh, IPR and Indirect Taxes: A Case Study of India, *EXCEL International Journal of Multidisciplinary Management Studies*, Vol.2, Issue 4, 2012, p.49.

¹⁹ *Supra* note 3, p. 102.

²⁰ *Id.* P. 103.

²¹ *Supra* note 1.

²² *Supra* note 3.

²³ Stanley M. Besen & Leo J. Raskind, An introduction to the Law and Economics of Intellectual Property, *The Journal of Economic Perspectives*, Vol. 5, No.1, American Economic Association, 1991, p. 12.

distribute, perform, or display the copyrighted work and to obtain a royalty for granting the right.²⁴ As a part of copyright, the other writers called Debande & Chetrit gave a meaning to audiovisual works in terms of the subject matter it constitutes, consequently, they define the notion of the audiovisual works as it covers film, broadcasting (television and radio), video and multimedia industries.²⁵

Concerning the issue of deduction, Rudi Oosthuizen recognizes that taxpayers often incur considerable expenses in creating or developing intellectual property rights such as audiovisual works.²⁶ And also, Shuyler M. Moore²⁷ & Ashok Mittal²⁸, the former affirms that the costs incurred in producing audio visual works such as film or in acquiring film rights can be depreciated or amortized. While the later writer recognizes that in the production of audiovisual works like a film a large number of inputs in terms of crafts and trades are utilized. Furthermore, Beach and Hamlen also characterize deduction as a primary tax issue that arises in connection with the development of intellectual property concerning the research and development.²⁹

Literatures on taxation of audiovisual works are quite few. It is difficult to find foreign and domestic literatures on taxation of audiovisual works. In Ethiopia it is hardly possible to find research works on taxation of audiovisual works. However, there is gap in law and practice in the arena.

1.3 Statement of the Problem

In the contemporary world, audiovisual works becomes an important means of income generating activity. Therefore, in order to receive revenue optimally in terms of tax for the government as well as to encourage audiovisual works for their efficient utilization, a developed tax system should exist. In contrast, in Ethiopia there are so many problems in taxation of audiovisual works. First, there is no royalty system. Second, there is no clear and detail rules on

²⁴ Id. P. 14.

²⁵ Supra note 5.

²⁶ Supra note 13.

²⁷ Supra note 14.

²⁸ Supra note 15.

²⁹ Peter T. Beach and Christopher J. Hamlen, Federal Income Tax Treatment of the Development, Acquisition and Disposition of Intellectual Property, *New Hampshire Bar Journal*, 2006, p. 2. Available at <https://www.nhbar.org/publications/archives/display-journal-issue.asp?id=339>, accessed on: 13-Mar-2015.

tax laws about taxation and provision of incentive for audiovisual works. For instance, there are no rules on deductions and exemptions while taxing income generating from audiovisual works. Absence of such kinds of deduction and exemption rules for taxation of audiovisual works may have negative impact. Therefore, since tax payer is expected to pay on the real income after possible deduction and exemption, the Ethiopia income tax law should include them.

Third, tax payers of audiovisual works claim that they have high tax burden³⁰ and are incurring various costs for providing audiovisual works such as high amount of rent for cinema halls.³¹ And also, there is confusion as to payment of tax on audiovisual works, tax payers claims the existence of high amount of tax such as entertainment tax. The confusion as to the taxation of audiovisual works even exists in the tax officials. This confusion leads to difficulty in collection of taxes what is really expected from the sector. Consequently, there is poor enforcement regarding taxation of audiovisual works to the side of tax officials.

The non-existence of clear rules for different aspects of taxation of audiovisual works in the tax regime of the country, aggravate the confusion both to the tax payer as well as the tax collector. In other jurisdictions such as in Kenya & South Africa detail rules is provided for taxation of intellectual property in general.³² However, our income tax regime only provided a single provision for taxation of intellectual property in addition to the general provision.³³ Solving the above problems helps the taxpayer as well as the tax authority and also the community in general. There is therefore, an urgent need to create awareness in order to better understand rights related to these works and their taxation and also a comprehensive policy that needs to be framed for providing further incentives for development of such works. At the same time, emphasis needs to be laid upon audiovisual taxation which is indeed, an area where there is a huge potential for revenue for the government.

³⁰ Aster Bedane, Ethiopian cinema is growing; but there are areas that need attention, Ethiopian Herald, issue 1597, 2012, Ethiopian Press Agency, available at <http://www.ethpress.gov.et/herald/index.php/herald/herald-guest/3735-aster> accessed on: 28-Mar-2015.

³¹ Aron Yeshitila, 'The Sad Story of our Films' available at <https://arefe.wordpress.com/2011/11/27/the-sad-story-of-our-films/> accessed on: 13-Mar-2015.

³²Income Tax Act of Kenya Revised ed. 2010 and Income Tax Act of South African, section 11, Act No. 58 of 1962.

³³ Supra note 2. Of course, other taxes like VAT, TOT, custom duty, excise taxes are equally imposed on IP.

1.4 Objectives of the Study

1.4.1 General Objective

The general objective of the paper is to demonstrate the law and practice of taxation of audiovisual works.

1.4.2 Specific Objectives

Specifically, the paper has the following objectives:

- ❖ To analyze the legal regime governing taxation of audiovisual works in Ethiopia;
- ❖ Examining the effect of taxation on audiovisual works;
- ❖ To clarify the taxation of royalty income under the current Ethiopia income tax proclamation.
- ❖ Exploring the effect of indirect taxes on the productions of audiovisual works;
- ❖ To show the necessity of having deductions rules in taxation of audiovisual works;
- ❖ To show the need to have tax exemptions in case of taxation of audiovisual works; and
- ❖ To make survey of laws of selected countries on taxation of audiovisual works.

1.5 Research Questions

1.5.1 Main Research Question

Examining the law and practice relating to the imposition of taxes in audiovisual sector is the main research question.

1.5.2 Specific Research Questions

The paper tries to answer the following specific questions:

1. What are the benefits in having deduction and exemption rules in taxation of audiovisual works?
2. What are the effects of indirect taxes on the audiovisual industry in Ethiopia?
3. Whether or not the tax authorities effectively enforce withholding taxes on royalties in audiovisual works?
4. Is the current tax payment over audiovisual works exaggerated?

1.6 Significance of the Study

This paper can serve as a benchmark for the government, policy makers, the legislature and regulators when they consider and evaluate their stance either to maintain or modify the existing tax laws governing taxation of audiovisual works. In addition, it can also serve as a reference materials for prospective researchers. Moreover, the research output can also be used by Ethiopian Revenue and Custom Authority (ERCA) in order to improve problems associated with taxation of audiovisual works that currently exist in practice.

1.7 Research Methodology

Both primary and secondary data are referred to do the research paper. As a primary source, the Ethiopian tax legislations as well as copy right law are used among others. In addition, the writer has conducted interviews and distributed questionnaires to collect information from the stakeholders. Consequently, film producers, music producers, Ethiopian Audiovisual Producers Association, film makers association, cinema houses and tax and custom authority officials were targeted for primary data collection. Focus group discussion were employed with Ethiopian Audiovisual Producers Associations, Ethiopian Musician Associations, Ethiopian Film Makers Association and Ethiopian Film Producers Association.

In the secondary data the main source of the material will be both published and unpublished sources like books, journals and internet. The researcher in due course of the study employed qualitative method because it is the most suitable way for addressing the research questions of the study, its high degree of flexibility and the fact that the study needs acquiring deep information from the informants. Purposive sampling technique is chosen as it enables the researcher to acquire qualified information from selected individuals based on their experience, position, expertise and other attributes the study requires.

1.7.1 Data Analysis

Data obtained from the study will be interpreted and analyzed in appropriate manner to show the existence and/or non-existence of the problems in taxation of audiovisual works.

1.7.2 Ethical Consideration

Realizing the indispensability of ethical considerations in any research work, I considered ethical values of the concerned community/group of people or others. The researcher shall use all the information gathered from respondents confidential and use it for the purpose of the study only.

1.8 Scope and Limitations of the Study

The paper is concerned only with taxation of audiovisual works in the field of copyright. Thus, other types of intellectual property in general and other subject matters of copyright in particular, are out of the purview of the research. The country as a whole is the ideal location for this research. Given the financial and time constraints, the research will focus on major regional administrations producing the largest of the intellectual work. The similarity with regard to taxation of audiovisual works in the country as a whole made the researcher to make the coverage of the topic the whole of the country.

One of the biggest limitations encountered by the writer in the research is scarcity of available material in the area in relation to taxation of audiovisual works. This is due to absence of literatures and research works on the topic of the study. So, it was not easy for the writer to conduct the research in this circumstance. Hence, the writer had to heavily rely on primary sources, internet and articles on journal.

1.9 Organization of the Study

In brief, this study has attempted to explore and explain theoretical discourses, the experience of some countries in relation to taxation of audiovisual works and the Ethiopian tax regime as pertaining to the taxation of audiovisual works. In so doing, the writer has opted to organize the study into six chapters.

Accordingly, the first chapter deals with the proposal of the study. Under chapter two, general overview of Tax will be made. Tax, the type of taxes will be discussed. Then under chapter three copyright in general and Audiovisual Works in particular will be exhaustively dealt. The fourth

chapter discusses the over view of Taxation of audiovisual works. Here the combination of the two subjects will be clearly described. The fifth chapter deals with the data presentation, analysis and interpretation. The final chapter, chapter six, discusses the contemporary problems associated with Taxation of Audiovisual Works. And at the end conclusions are drawn based on the analysis and possible recommendations are forwarded by the researcher based on the findings of the research.

CHAPTER TWO

DEFINITION, PRINCIPLES AND CATEGORIES OF TAX

2.1 Definition of Tax

Many writers of public finance books define taxes as a compulsory payment to the government by the taxpayer the later being not anticipating direct benefit from his payment.³⁴ Similarly, H L Bhatia defined tax as “a compulsory levy payable by an economic unit to the government without any corresponding entitlement to receive a definite and direct quid pro quo from the government.”³⁵ The payment of tax is obligatory in nature; however, a public receipt containing an element of compulsion does not automatically become a tax. In order to be considered as tax, other necessary element of tax that is the absence of quid pro quo should exist. Therefore, tax is paid not based on the willingness or the voluntariness of the taxpayer and the later should not expect direct benefit in return for his tax payment. But this does not mean that the taxpayer gets nothing indirectly from his tax contribution. The government by collecting the tax from the taxpayer may made available public services like schools, health care, defenses and the like.

It is well known that taxation forms a major portion of the public revenue in modern state, and taxation plays a great role in order to manage the public expenditure in an optimal manner.³⁶ Therefore, in a circumstance where governments faced with less revenue, taxes serve as a means of raising revenue. There are a number of broad tax policy considerations that have traditionally guided the development of taxation systems such as neutrality, efficiency, certainty and simplicity, effectiveness and fairness, as well as flexibility.³⁷ Generally, every government imposes tax in order to attain its social objectives in terms of socio-economic development, defense and maintenance of law and order.³⁸

³⁴ Alka Gupta, Public Finance and Tax Planning, 1st ed., Anmol Publications Pvt. Ltd., Mehra Offset Press, Delhi, 2001 p. 417.

³⁵ Supra note 7.

³⁶ Id. p. 44

³⁷ Supra note 7, p. 30.

³⁸ Supra note 34, p. 69.

2.2 Principles of Taxation

A tax system committed itself with various principles such as equality and certainty.³⁹ Adam Smith provided four principles (which he called Canons) of Taxation. Among those Canons, in his Canon of equality, he recognizes that “the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.”⁴⁰

Taxpayers are needed to be protected from unnecessary harassment by the tax officials. Therefore, the time of payment, the manner of payment and the quantity to be paid ought all to be clear and plain to the taxpayer, and to every other person. This is referred to as canon of certainty.⁴¹ To address the dynamic nature of economic transaction, canon of flexibility urges tax structures could be easily revisable.⁴² The tax system should be easily understandable by the taxpayer as well as the tax collector. Complicated tax system makes it difficult to understand and administer and breeds problems of interpretation and legal disputes. Thus, canon of simplicity has to be incorporated in country’s tax system.

2.3 Categories of Taxes

There are so many method of classifying taxes. In this section the classification of taxes in to proportional and progressive taxes on the one hand and direct and indirect taxes on the other hand will be briefly discussed.

2.3.1 Proportional and Progressive Taxes

This type of classification of taxes is adopted on the basis of degree of progression of a tax. Accordingly, in this type of classification there are three types of taxes (i.e. progressive tax, proportional tax and regressive tax). Progressive tax means the tax liability of the taxpayer

³⁹ Supra note 34, p. 40.

⁴⁰ Adam Smith, *The Wealth of Nations*, 3rd ed., The Modern Library, New York, 1984, p. 777.

⁴¹ Supra note 34, p. 42.

⁴² Supra note 40, pp. 777-79.

increases when the base of the tax increases. Progressive tax rates consider the ability to pay of the taxpayer.⁴³ Opposite to the progressive tax in regressive tax type the tax liability of a taxpayer decreases with the increase in income. Here poor taxed more than the rich one. In proportional tax the tax liability increases in the same proportion as the increase in income.⁴⁴ In this tax system both the rich and the poor pay the same rate in their proportion of income. If difficulty arises to decide upon the accurate and appropriate degree of proportion, proportional taxation has been advocated.⁴⁵

2.3.2 Direct and Indirect Taxes

The other mechanism of classifying tax is based on the incidence of taxation. In a direct tax, the incidence of a tax rests upon the person who is expected to bear the tax. That means in direct taxes the taxpayer cannot shift the burden of the tax to others.⁴⁶ On the other hand, in indirect tax, the incidence of tax is easily passed on to others.⁴⁷ However, since modern economic theory comes up with an idea that income taxes which falls under the category of direct taxes may be shifted, the distinction based on the incidence of the tax has been criticized.⁴⁸

2.4 Different Types of Taxes

Above I tried to show the general classification of taxes into different categories. In the next section specially selected taxes shall be exhaustively discussed.

2.4.1 Income Tax

Nowhere, in the Ethiopian income tax system the phrase 'income tax' is defined. But from different provisions of the income tax laws one can understand it as a tax levied, charged and

⁴³ Supra note 7, p. 131. See also Leonard E. Burman, Taxes and Inequality, *Tax Law Review*, Vol. 66, p. 578.

⁴⁴ Libby Rittenberg, Principles of Microeconomics, Flat World Knowledge, New York, 2008, p. 386.

⁴⁵ Supra note 7, p. 128.

⁴⁶ Michael Lang, Pasquale Pistone, Josef Schuch & Claus Staringer, Introduction to European Tax Law: Direct Taxation, 3rd ed. Spiramus Press Ltd, 2013, p. 46.

⁴⁷ V S Krishanan, Indirect Tax Reforms Challenge & Response, Abhinav Publications, New Delhi, 2014, p. 50.

⁴⁸ Alan Schenk & Oliver Oldman, Value Added Tax: A Comparative Approach, Cambridge University Press, New York, 2007, p. 5.

collected by a government on the amount of the taxable income of a taxpayer.⁴⁹ In Ethiopian tax system income tax considered as a source of revenue for both the federal and the regional government. The base of an income tax is the income of the taxpayer defined and estimated based on certain income tax rules.⁵⁰ In the income tax proclamation the income obtained from employment, rental of buildings, business and other income is considered as the base of an income tax which is arranged in terms of schedule.⁵¹ There are four schedules of income that is schedule 'A', schedule 'B', schedule 'C' and schedule 'D' which represent employment income tax, rental of buildings income tax, business income tax and other income tax respectively.

In any income tax laws defining income is an important task. A country may define an income in a broader manner or in a narrower way. The Ethiopian income tax law chooses the former one. It define income as every sort of economic benefit including nonrecurring gains in cash or in kind, from whatever source derived and in whatever form paid, credited or received.⁵² As is in most other income tax laws our income tax law define income as broadly as possible. Defining an income in such a wide manner helps a tax authority in fighting of tax avoidance in an effective way.

Based on the meaning given to income in the Ethiopian income tax law, the existence of economic benefit is an essential element in determination of whether a particular activity is considered as an income or not. The source and form of payment of the income is not a criterion in determination of whether a particular activity is an income or not. Therefore, the source of the income could be generated from business, rental of buildings or income from audiovisual industry. And also there is no limitation as to the form of payment since it can be effected either in terms of cash or in kind. Once an economic benefit is received by an individual it ultimately falls under the definition of income.

Countries follow two approaches in imposition of tax on income. These are scheduler and global approaches. In global approach tax is imposed on aggregation of income whereas, in scheduler

⁴⁹ Misrak Tesfaye, Ethiopian Tax Accounting Principles and practice, 2nd ed., Maruf Kedir Ibrahim, Woinshet Chane Printing Press, Addis Ababa, 2014, p. 141.

⁵⁰ Supra note 7, p. 39

⁵¹ Supra note 2, Art. 8

⁵² Supra note 2, Art. 2(10)

approach each income is taxed independently by grouping them in schedule. The global approach clearly show the ability of a person to pay however, the scheduler approach fails to show the ability to pay off a taxpayer. Ethiopia, like most developing countries, follows a scheduler approach. In this scheduler system income from different sources will be taxed independently.

2.4.2 Value Added Tax

As the name indicates VAT is a tax on the value added to the goods not on the total value of the good being sold.⁵³ Similarly, Carl S. Shoup in his public finance book acknowledges that “VAT is imposed on the value that a business firm adds to the goods and services that it purchases from other firms.”⁵⁴ From this we can understand that the addition of value is an important factor for VAT to work. In addition, Alan Scenk and Oliver Oldman defines Value added tax (VAT) as a type of multistage sales tax which is normally levied on the value added on goods and services at each stage of producing goods or rendition of services.⁵⁵ Its purpose is to impose tax on final consumption.⁵⁶ Therefore, the ultimate tax burden in case of VAT borne by the consumer than the VAT collector (i.e. a person registered for VAT). There is misconception to the side of VAT collector in which they perceived them as VAT payer. Actually, it is the consumer who ultimately bears the burden of VAT.

There are two principles based on which a country define its VAT jurisdiction to tax international transactions i.e. origin and destination principle. Under the origin principle, VAT is imposed in the territorial jurisdiction of the state, irrespective of the place of consumption.⁵⁷ Whereas, under the destination principle, the final consumer that exist within the taxing jurisdiction ultimately bear the tax burden.⁵⁸ Unlike origin principle, destination principle does not impose tax on exports in return it levied tax on imports. Thus, exports are encouraged under destination principle and imports are discouraged, the reverse is true in case of origin principle.

⁵³ Supra note 7, p. 146.

⁵⁴ Carl S. Shoup, Public Finance, Transaction Publishers, New Jersey, 2006, p. 251.

⁵⁵ Supra note 48, p. 23.

⁵⁶ Supra note 7, p. 41.

⁵⁷ Michael Lang, Peter Melz & Thomas Ecker, Value Added Tax and Direct Taxation: Similarities and Differences, IBFD, 2009, The Netherlands, p. 282.

⁵⁸ Supra note 7, p. 43.

Theoretically as well as practically, there is a common understanding that destination principle is preferable to the origin principle.⁵⁹ Ethiopia follows a destination rule in taxation of goods and services subject to VAT.⁶⁰ Therefore, in Ethiopia export is free from VAT even tax credit allowed for purchase of input.

VAT based on the treatment of the base of the tax categorized as tax inclusive or tax exclusive. In case of VAT exclusive the price of the goods or the services presented without adding the VAT that would be levied. However, in the VAT inclusive type the price of the goods or services presented in addition to the VAT. The Ethiopian VAT law follows the VAT exclusive type.⁶¹

2.4.3 Turnover Tax

The Turnover Tax would be payable on goods sold and services rendered by persons not registered for Value Added Tax. It is considered as an equalization tax. It maintains the balance between those who registered for VAT and those who are not. The rate of Turnover Tax is two percent (2%) on goods sold locally, services rendered locally on contractors, grain mills, tractors and combine-harvesters, and ten (10%) on others services.⁶²

The base of computation of the TOT is the gross receipts in respect of goods supplied or services rendered. A person who sells goods and services has the obligation to collect the Turnover Tax from the buyer and transfer it to the Tax Authority. Hence, the seller is principally accountable for the payment of the tax.⁶³ Turnover tax does not take into consideration the value added, it is based on price of goods and services sold. Unlike the VAT system, there is no crediting in the TOT scheme. All goods and services traded by a person are subject to TOT unless they are exempted under art.7 of the proclamation. TOT is paid by category 'B' tax payer since the annual turnover is within the range of one hundred thousand and five hundred thousand.

⁵⁹ Ibid.

⁶⁰ Value Added Tax Proclamation, Proclamation No. 285/2002, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, ADDIS ABABA 4th July 2002, 8th year No. 33, Arts.7 (1) b & 7(2).

⁶¹ Id., Art.12

⁶² Turn over Tax Proclamation, Proclamation No. 308/2002, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, ADDIS ABABA 31st December 2002, 9th year No. 21, Art. 4

⁶³ Id., Art. 5 & 6

2.4.4 Excise Tax

Excise tax is a producer tax which is imposed on specified types of goods.⁶⁴ Carl S. Shoup in his book said excises tax is imposed on specified types of commodities by applying differing rates to different types of goods.⁶⁵ It is a selective tax that means only selected items shall be subject to the tax and the rest shall be exempt from the tax. The base of excise tax is production cost for locally produced goods and for imports the base of the tax is the combination of cost, insurance and freight.⁶⁶

Excise taxes are an ancient types of tax and currently used by most governments.⁶⁷ Even if the introduction of income tax and VAT abridged the importance of excise tax as a source of government revenue, most governments still impose excise taxes on petroleum products, tobacco products, and alcohol.⁶⁸ John F. Due also describes excise taxes as an early form of taxation, first developed on a significant scale in Holland, and then introduced in Great Britain and other countries in the 16th and 17th centuries.⁶⁹ In developing countries, the introduction of excises occurred primarily when domestic production began of commodities that had been major sources of customs revenue.⁷⁰ Essentially the excises were introduced to protect major revenue sources as domestic production replaced importation.⁷¹ A country may impose excise tax for various economic and social considerations. The Ethiopian excise tax proclamation has several purposes such as to improve government revenue and to avoid social problems.⁷²

⁶⁴ Supra note 54, p. 271.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ James R. Hines Jr., Excise Taxes, working paper series, , No. 2, The Office of Tax Policy Research, 2007, p. 1 available at: <http://www.bus.umich.edu/otpr/WP2007-2.pdf>, accessed on 10-April-2015.

⁶⁸ Ibid.

⁶⁹ F. Due, Excise Taxes, POLICY RESEARCH WORKING PAPER, No. 1251, The World Bank Policy Research Department Public Economics Division, February 1994, p. 2-3 available at: http://www.wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1999/04/28/000009265_3961005232507/Rendered/PDF/multi_page.pdf, accessed on 10-April-2015

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² See the preamble of the Excise Tax Proclamation, Proclamation No. 307/2002, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 9th year No. 20, ADDIS ABABA, 31st December 2002.

2.4.5 Customs Duty

Custom duties are levies imposed on exported goods and on imported goods.⁷³ From economics point of view, since custom duty is considered as commodity taxes, a tax on a commodity is shared between the buyers and the sellers in the ratio of the elasticity of supply and demand.⁷⁴ Currently in Ethiopia goods brought in or taken out of the country are subjected to customs duty which is charged under the Customs Proclamation No. 859/2014. The 2014 customs proclamation of the country repealed the previous customs proclamation of No. 622/2009. The customs law of the country shall apply in the entire territory of the country uniformly.⁷⁵ Thus, any good exported out of the country or imported into the country using any means of transportation shall be subject to the same customs rates and procedures.

In the constitutional division of revenue power between federal and regional governments, the administration of customs and other duties on imports and exports is the power of the Federal government.⁷⁶ Therefore, any good entering into the country or leaving the country using any means of transportation shall be subject to the same law and should be administered by the Federal government.

In any tax types determining the base of the tax is the primary function.⁷⁷ Since in each types of tax the base of the tax varies, in order to determine the tax liability of the tax payer the tax law governing each types of specific tax has to provide the base of the tax.⁷⁸ H L Bhatia, rightly puts that “The base of a tax is the legal description of the object with reference to which the tax is payable.”⁷⁹ The base of custom duty for imports and exports is different. Accordingly, the dutiable value for imported goods shall be the actual total cost of the goods up to the first entry point to the customs territory of Ethiopia.⁸⁰ In addition, based on Art.96 of the proclamation,

⁷³ Inc Ibp, Oman Business Law Handbook: Strategic Information and Basic Laws, Int'l Business Publications, Vol. 1, Washington DC, 2013, p, 90.

⁷⁴ Supra note 7, p. 111.

⁷⁵ Customs Proclamation, Proclamation No. 859/2014, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 20th year No. 82, ADDIS ABABA, 9th December, 2014, Art. 3.

⁷⁶ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 1st year No. 1, ADDIS ABABA, 21st August, 1995, Art. 96(1)

⁷⁷ Supra note 7, p. 39.

⁷⁸ Ibid

⁷⁹ Ibid.

⁸⁰ Supra note 75, Art. 89 (2)

there are several costs that will be effectively added to the transaction value.⁸¹ In the proclamation, charges that are shown separately from the price actually paid or payable, there are also several items that should be deducted in the transaction value.⁸²

For the purpose of identification of the value of the item, the proclamation has also listed down the following items that could be deducted from the transaction value of imported goods.⁸³

- Costs for damages in routes,
- Costs for damages in customs warehouse, and
- The value of dangerous goods destroyed or disposed otherwise.

The dutiable value for export goods shall be the actual total costs of the goods up to the final exit point from the customs territory of Ethiopia.⁸⁴

There are several goods which can be imported in to the country free of custom duties such as goods necessary for trade promotion, technology transfer, tourism and cultural exchange, construction works and consultancy services.⁸⁵ However, upon the attainment of the purpose of their importation, these goods must be re-exported to their place of origin.⁸⁶ And also, the importer of those goods with free of charge required to furnish security for their timely re-exportation.⁸⁷ Using of these types of goods for purpose other than for which they were originally imported is strictly forbidden.⁸⁸

Above I tried to discuss the temporary import rules; in this section discussion of temporary export rules could be made. In accordance with Art.75 of the Custom Proclamation, there are circumstances in which goods exported temporarily by completing customs formalities may be allowed to re-enter the country without payment of duties and taxes: the circumstances are:⁸⁹

⁸¹ Id., Art. 90

⁸² Id., Art. 97

⁸³ Id., Art.98

⁸⁴ Id., Art. 89(3)

⁸⁵ Id., Art. 71 (1)

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Id., Art. 75

- vehicles, equipment and machinery taken out by a person for the purpose of carrying out his work abroad;
- goods exported for trade fair, exhibition or cultural show.

The time period in which goods may be eligible for exemption from duties is only if those goods are returned from abroad within one year, unless a longer period is specified in a directive issued by the Ministry.⁹⁰

2.4.6 Sur Tax

Black's Law dictionary defines surtax as "an additional tax imposed on something being taxed or on the primary tax itself."⁹¹ It is considered as a tax levied on top of another tax. This tax applies to all imported goods save those specifically exempted pursuant to article 5 of the surtax regulation.⁹² According to Art.5 of the regulation, the following items are exempt from the payment of import surtax during import.

- Fertilizers
- Petroleum and lubricants;
- Motor Vehicles for freight and passengers, and special purpose motor vehicles;
- Aircraft, spacecraft, and parts thereof;
- Capital (Investment goods)

Regarding the rate of surtax, it is provided in the regulation that all goods shall be subject to 10% rate unless the good are specifically exempted by the proclamation.⁹³

As discussed in the introductory part that identification of the base of the tax is one of the critical elements involved in the determination of the tax liability of a taxpayer. Regarding surtax, the base of the tax is the aggregation of these two items:⁹⁴

1. Cost, insurance, Freight (CIF) value;
2. Customs duty, value Added Tax and Excise Tax Payable on the good.

⁹⁰ Id., Art. 75(2)

⁹¹ Supra note 12, p. 1472.

⁹² Import Sur-Tax Council of Ministers Regulations, Regulations No.133/2007, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 13th Year No. 23, ADDIS ABABA, 11th April 2007.

⁹³ Id., Art. 3

⁹⁴ Id., Art. 4

CHAPTER THREE

GENERAL OVERVIEW OF COPYRIGHT

3.2 Definition and Nature of Copyright

3.2.1 Definition of Copyright

Copyright is defined as a property right that attaches in certain specified literary and artistic types of works such as books, films and sound recordings.⁹⁵ The Ethiopian Copyright and Neighboring Rights Proclamation defined copyright as “an economic right subsisting in a work and where appropriate includes moral right of an author.”⁹⁶ The proclamation clearly shows that the copyright owner has both economic and moral rights over his work. This definition of copyright in the proclamation is more in line with the Anglo-American tradition because it is based on the economic right. The Ethiopian civil code like the stand taken by the civil law legal tradition attaches copyright with the author’s right.⁹⁷

Copyright law has a long history and its roots can be traced back to before the advent of printing technology, which permitted the printing of multiple copies quickly and at relatively little expense.⁹⁸ In Ethiopia, copyright law framework was included for the first time in the enactment of the 1960 civil code.⁹⁹

In relation to copyright works the owner of the copyright has the exclusive right to do certain acts, such as making a copy, broadcasting or selling copies to the public or by granting permission to another to do this in return for payment.¹⁰⁰ Anyone who committed one of the acts

⁹⁵ Gerald Dworkin & Richard D. Taylor, *Blackstone's Guide to the Copyright, Designs and Patents Act 1988: The Law of Copyright and Related Rights*, Oxford University Press, New York, 1989, p. 1.

⁹⁶ *Supra* note 4, Art. 2(8)

⁹⁷ Civil Code Proclamation, Proclamation No. 165/1960, *Negarit Gazeta of The Empire of Ethiopia*, 19th Year No.2, ADDIS ABABA, 5th May 1960, Art. 1647

⁹⁸ David Bainbridge, *Intellectual Property*, 4th ed., Pitman publishing, Hampshire, 1999, p. 31

⁹⁹ *Supra* note 97, see Articles 1647-1674

¹⁰⁰ P. Mallor & et al, *Business Law: the Ethical, Global, and E-commerce environment*, 14th ed., McGraw-Hill/Irwin, New York, 2010, p. 253. See also *Supra* note 98, p. 29.

protected by copyright without the permission or license of the copyright owner may be sued for infringement of copyright.¹⁰¹

3.2.2 Nature of Copyright

Copyright is not limited to mere literal copying rather it covers acts such as making a translation of a literary work, performing a work in public and other acts relating to technological developments.¹⁰² For the purpose of avoiding the tendency of monopolies by copyright owner, the copyright law permits production of similar works in as long as the person can prove that his work is not a direct copy of previous works.¹⁰³

An important feature of copyright law is it does not protect ideas; it merely protects the expression of an idea.¹⁰⁴ Peter J Groves in his book on IP also recognizes that even if sketching the line between idea and expression is a difficult task, it is well accepted principle of copyright law that a copyright does not protect an idea, but only the expression of the idea.¹⁰⁵ The rationale behind such an assertion is to protect the freedom of expression of an individual that is a commonly accepted constitutional right. There is also a consensus by most writers such as Mallor, T. Bowers, J. Barnes and W. Langvardt that ideas, facts, procedures, processes, systems, methods of operation, concepts, principles, or discoveries should be protected through copyright only in their method of expression, unless copyright protection does not extend to them.¹⁰⁶ The Ethiopian copyright and neighboring rights proclamation also similarly preclude copyright protection for ideas, facts, procedures and the like.¹⁰⁷

In order to exploit a copyrightable work economically, copyright plays an important role. It grants a mechanism for allocation of risks and income derived from the sale of the work.¹⁰⁸ A copyright can be considered to comprise a collection of rights, associated with the acts restricted

¹⁰¹ However, there are circumstances where an act may not constitute copyright infringement for instance, see articles 9-19 of the Copyright & Neighboring Rights Proclamation.

¹⁰² Supra note 98, p. 29.

¹⁰³ Ibid.

¹⁰⁴ William S. Strong, The Copyright Book: A Practical Guide, 6th ed., MIT Press, USA, 2014, p. 1

¹⁰⁵ Peter J Groves, Source Book on Intellectual Property Law, Cavendish Publishing Limited, Sydney, 1997, p. 299.

¹⁰⁶ Supra note 100, p. 252.

¹⁰⁷ Supra note 4, Art. 5(a)

¹⁰⁸ Supra note 98, p. 36.

by the copyright.¹⁰⁹ Acts such as copying, issuing copies to the public, performing, playing or showing the work in public and broad casting the work, are under the control of the copyright owner and are only allowed to do or authorize by him.¹¹⁰

Copyright also serves as a guarantee for the existence of copyright works because it incentivizes the creative individuals.¹¹¹ Had it not been for the existence of copyright, publishers, broadcasters and record companies would not have invested their capital over such works.¹¹² By giving property right for those works it enables copyright owners generate money from their work.¹¹³ Creators of original works of authorship enjoy exclusive rights over the works by the copyright law.¹¹⁴ These rights in copyrights are given to support the progress of science and the use full arts for the benefit of the society.¹¹⁵ Copyright law gives an incentive to innovate for the interest of the society by preventing others from using the work without the permission of the owner.¹¹⁶ However, by allowing fair use defense copyright law tries to balance the interest of the copyright owner and the public, for the latter's ideas, information and commerce to freely move.¹¹⁷

A copyright comes to existence upon the creation and fixation of a protected work. In most country's copyright laws registration is not necessary for the copyright to exist.¹¹⁸ Our copyright law also does not require copyrightable works to be registered as a requirement for copyright to exist.

In principle copyrightable works is required to have some tangible form.¹¹⁹ In works such as sound recordings and films their very existence implies tangibility.¹²⁰ However, works such as

¹⁰⁹ Simon Stokes, *Art and Copyright*, Hart Publishing, North America, 2001, p. 46

¹¹⁰ *Ibid*

¹¹¹ *Supra* note 105, p. 261.

¹¹² *Ibid*.

¹¹³ *Ibid*.

¹¹⁴ *Supra* note 109, p. 46

¹¹⁵ *Supra* note 1, p. 11.

¹¹⁶ *Supra* note 100, p. 251. See also *supra* note 105, p. 277.

¹¹⁷ *Ibid*.

¹¹⁸ Akhil Prasad & Aditi Agarwala, *Copyright Law Desk Book: Knowledge, Access & Development*, Universal Law Publishing, New Delhi, 2009, p. 201.

¹¹⁹ *Supra* note 98, p.45. See also *supra* note 22, p. 11.

literary, dramatic and musical can exist without any material form. For such kinds of works copyright does not subsist unless and until they are recorded, in writing or otherwise.¹²¹ By requiring some tangible existence from copyright works, the copyright law solves the probable problem that would be raised concerning the date of creation of the work since making the work in material form shows the date of creation.¹²²

3.3 Classification of Copyright Works

Copyright work could be classified into various ways. Accordingly, there are works which need to be original such as literary, dramatic, musical and artistic works.¹²³ And also there are other works that need not be original such as films, sound recordings, broadcasts, cable programmes and typographical arrangements which are widely known as derivative works.¹²⁴ Discussion of some categories of copyrightable works is made herein under.

3.3.1 Literary Work

Literary work is a work, other than audiovisual work that is expressed in words, numbers, or other symbols, regardless of the medium that embodies it.¹²⁵ The Ethiopian Copyright and Neighboring Rights Proclamation do not give a meaning to literary works in its definitional part. However, from the body part of the proclamation as well as the meaning given to it in the literature one can understand that literary work is beyond a work of literature.¹²⁶ David Bainbridge in his book also indicates the inclusion of tables, compilations, computer programs, preparatory design materials for computer programs and database in the category of literary works.¹²⁷

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Gregory N Mandel, The Public Perception of Intellectual Property, *Florida Law Review*, Vol. 66, 2014, p. 266.

¹²⁴ Supra note 98, p. 29.

¹²⁵ James Griffin & Ying Jin, *Key Facts: Intellectual Property*, Routledge, New York, 2013, p. 109.

¹²⁶ Supra note 98, p. 47.

¹²⁷ Ibid.

3.3.2 Dramatic Work

Dramatic work is a play for performance on the stage or television or in a movie etc.¹²⁸ Similarly, Kamina defined it as is one in which a series of events is presented to the audience by characters through dialogue and action as the events happen, such as in play.¹²⁹ A dramatic work is a subject matter of copyright. It is a work of dance or mime. Similar to literary and musical works, dramatic works must be recorded for copyright to subsist in them.¹³⁰

3.3.4 Musical Work

Since it is common for different persons to write the music and the lyrics, a song will have two copyrights, one in the music and one in the words of the song.¹³¹ A musical work is one consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.¹³² In addition to the original musical work, making an arrangement of an existing piece of music may attract its own copyright.¹³³

3.3.5 Artistic Works

Paintings, drawings, fine arts, sculpture categorized under artistic works.¹³⁴ Normally there are various classifications of artistic works.¹³⁵ Even it is difficult to determine the scope of some artistic works.¹³⁶ Artistic works are subject to their own rules. Artistic works such as graph, chart, building & sculpture in most cases is physically indivisible and have a complete copyright

¹²⁸ Lionel Bently & Brad Sherman, *Intellectual Property Law*, 4th ed, Oxford University Press, London, 2014, p. 69

¹²⁹ Pascal Kamina, *Film Copyright in the European Union*, Cambridge University Press, UK, 2002, p. 67.

¹³⁰ Catherine Colston & et al, *Modern Intellectual Property Law*, Routledge, Hampshire, 2010, p. 300.

¹³¹ Charlotte Waelde & et al, *Contemporary Intellectual Property: Law and Policy*, 3rd ed. Oxford University Press, Hampshire, 2013, p. 67.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Supra* note 4, Art. 2(30)

¹³⁵ *Supra* note 98, p.51.

¹³⁶ *Ibid.*

work in itself.¹³⁷ Since their very existence implies some form of tangibility, artistic works are not required to be recorded.¹³⁸

3.3.6 Derivative Works

Under this category there are sound recordings, films, broadcasts or cable programmes. Copyright laws give protection to derivative works. The copyright and neighboring rights proclamation of Ethiopia also extends protection to derivative works.¹³⁹ As name derivative indicates, they are usually based on original literary, dramatic, musical and artistic works.¹⁴⁰ However, there may be a derivative works type that is not based on one of the ‘original’ works.¹⁴¹ In derivative works few problems arises in question of copyright subsistence, unlike in the case of ‘original’ works of copyright, because there is no requirement that this works be original.¹⁴²

Peter J Groves in his book on intellectual property gave a meaning to derivative work as a translation into a variety of language or any medium of sound recordings, films and other.¹⁴³ Anyone who is interested to make a derivative work has to get permission from the original copyright owner when the work is not entered the public domain.¹⁴⁴ The owner of a copyrighted work has a right to prevent the making of a derivative work and can sue the maker of the work for infringement of the original.¹⁴⁵ The derivative work at least to be different from the original work, it must have expressive elements not found in the original work unless it is meaningless to give copyright to such works.¹⁴⁶

¹³⁷ Supra note 98, p. 52

¹³⁸ Ibid.

¹³⁹ Supra note 4, Art. 4

¹⁴⁰ Supra note 98, p.54.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Supra note 105, p. 265.

¹⁴⁴ Ibid.

¹⁴⁵ Id., p. 275.

¹⁴⁶ Id., p. 276.

3.4 Ownership of Copyright

Commonly, the author being the originator of the work and made necessary arrangements for the creation of the work, he is the owner of the work.¹⁴⁷ But that does not mean that other than the author may not own the copyright work.¹⁴⁸ One of the cases where another person will own copyright work is the existence of employment relationship.¹⁴⁹ In such circumstance the employer will own the copyright. However, the existence of employment relationship does not totally preclude the author from owning the copyright. The instance where the author becomes owner of the copyright work even in the course of employment relationship is the existence of the otherwise agreement.¹⁵⁰ The Copyright and Neighboring Rights Proclamation similarly in principle attaches copyright ownership to the author, but employer could own copyright over the work that produced in the course of employment.¹⁵¹ However, previously upon the enactment of the civil code it is only the author has the ownership right over his work notwithstanding that the contract of employment is existed.¹⁵²

Mallor, Barnes & Bowers in their writing confirms that unless the creator of the work transfer it to another person, primarily copyright ownership resides in the creator of the copyrighted work.¹⁵³ Transfer of ownership over copyrighted works may take various forms such as assignment or license.¹⁵⁴

3.5 Duration of Copyright

Copyright law limited the duration in which the copyright owner could benefit.¹⁵⁵ Once the period provided by the copyright law ends, the work enters the public domain thereby it is available for every person wish to make of it.¹⁵⁶ The Copyright and Neighboring Rights

¹⁴⁷ Tanya Aplin & Jennifer Davies, *Intellectual Property Law: Text, Cases, and Materials*, 2nd ed., Oxford University Press, Hampshire, Aug 29, 2013, p.129.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Supra* note 4, Art. 21

¹⁵² *Supra* note 97, Art. 1647(3)

¹⁵³ *Supra* note 100, p. 253.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Supra* note 100, p. 252, see also *supra* note 98, p. 30.

¹⁵⁶ *Ibid.*

Proclamation also provided the duration of economic rights over the work.¹⁵⁷ The rules for determining the duration of copyright depend on the nature of the work in question.¹⁵⁸ There are two economic arguments for limiting the duration of a right in works of intellect.¹⁵⁹ The first one is such a limitation reduces the potential monopoly profits and the second one is it reduces tracing costs.¹⁶⁰

3.6 General Overview of Audiovisual Works

3.6.1 Definition and History of Audiovisual works

3.6.1.1 Definition of Audiovisual Works

The WIPO Treaty on International Registration of Audiovisual Works defines audiovisual works as: “any work that consists of a series of fixed related images, with or without accompanying sound, susceptible of being made visible and, where accompanied by sound, susceptible of being made audible.”¹⁶¹ The other writers called Debande & Chetrit gave a meaning to audiovisual works in terms of the subject matter it constitutes; consequently, they define the notion of the audiovisual works as it covers the film, broadcasting (television and radio), video and multimedia industries.¹⁶² Similar to the WIPO Treaty, Copyright and Neighboring Rights Proclamation defined Audiovisual work as a work that consists of a series of related images, which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible; by any appropriate device, and includes a cinematographic or other film.¹⁶³

Once audiovisual works fulfill the requirement of originality and fixation in accordance with Art.6 of the proclamation, they are automatically got copyright protection.¹⁶⁴ The proclamation does not define originality. But the common understanding of the concept is the work should originate from the author himself. Even if it is not mean novelty, at least it should avoid

¹⁵⁷ Supra note 4, Art. 20

¹⁵⁸ Based on Art.20 (8) of the proclamation the economic rights relating to an audiovisual work shall be protected for fifty years but photographic works shall be protected for twenty-five years from the making of the work according to Art.20(7).

¹⁵⁹ Supra note 105, p. 280.

¹⁶⁰ Ibid.

¹⁶¹ International Treaty Registration of Audiovisual Works (“Film Register Treaty”), adopted by WIPO, entered into force on 18 April, 1989, Art. 2.

¹⁶² Supra note 5, p. 10.

¹⁶³ Supra note 4, Art. 2. (1).

¹⁶⁴ Id., Art. 2(30)

plagiarism. However, fixation is defined as the embodiment of works or images or sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device prepared for the purpose.¹⁶⁵ Once the elements provided in the article such as embodiment, a device, and the content could be retrieved from the device, and could be reproduced, the formality requirement is assumed to be fulfilled.

3.6.1.2 History of Audiovisual Works

The beginning of modern audiovisual era started since 1927 when the first feature length film with synchronized dialogue called *The Jazz Singer* was released.¹⁶⁶ The coming in to effect of the synchronized dialogue to the motion pictures was an indication for the progress of creativity and technology in the audiovisual industry.¹⁶⁷ More significantly, from 1930s through the early 1960s the studio system that dominated Hollywood flourished because of the high costs of the industry coupled with the transition to sound pictures.¹⁶⁸ Writers, directors and actors became part of the audiovisual industry as mere employees through contractual arrangements as a result of the studio system.¹⁶⁹

The Ethiopian audiovisual works production industry has been existed for years. Through several ups and downs the sector due to the enactment of Copyright and Neighboring Rights Proclamation in 1996 E.C it has been produced 300-338 per a year.¹⁷⁰ Audiovisual works in Ethiopia increased through time since 1996 E.C. In order to have a clear view, look at the table (1) below for the increment of those works through time.

¹⁶⁵ Estelle Derclaye, *Research Handbook on the Future of EU Copyright*, Edward Elgar Publishing, UK, 2009, p. 102. See also *Supra* note 4, Art. 2(11)

¹⁶⁶ John L. Schwab, *Audiovisual Works and the Work for Hire Doctrine in the Internet Age*, *Columbia Journal of Law & The Arts*, Vol. 35, No. 1, 2011, p. 147.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Mulatu Astatke, *The Art Industry in Ethiopia*, available at: <http://ethioaudiovisual.org/en/component/content/article/4-newsflash/30-2012-06-20-07-08-09.html>, accessed on 30 April, 2015

Table 1: Production data for audiovisual works by members of Ethiopian Audiovisual Producers Association from 1995-2003 E.C

Year	Production of audiovisual works in number
1995	63
1996	89
1997	101
1998	305
1999	339
2000	325
2001	211
2002	189
2003	128

Source: Ethiopian Audiovisual Producers Association

It seems that the enactment of the Copyright and Neighboring Rights Proclamation in 1996 E.C motivates audiovisual workers to do their business. As a result, production of audiovisual works successively increased from 89 in number in 1996 E.C to 339 in 1999 E.C. But before the enactment of the proclamation the audiovisual works produced were minimal that is only ranges from 60-80 per year.¹⁷¹ The factor is fear of infringement of those works by the creative individuals. Even after the enactment of the proclamation copyright infringement is an obstacle to the sector.¹⁷²

In order to curb such problem and benefit from the fruit of audiovisual works by the right owner and the society in general, Ethiopian Audiovisual Producers Association is established by the

¹⁷¹ Mulatu Astatke, The Art Industry in Ethiopia available at: <http://ethioaudiovisual.org/en/component/content/article/4-newsflash/30-2012-06-20-07-08-09.html>, accessed on 30 April, 2015

¹⁷² Mulatu Astatke, The Art Industry in Ethiopia available at: <http://ethioaudiovisual.org/en/component/content/article/4-newsflash/30-2012-06-20-07-08-09.html>, accessed on 30 April, 2015.

strong initiative of a few private owners of music and film producing enterprises found in Addis Ababa as a non-profit and non-governmental organization in 1988E.C.

3.7 Ownership in Audiovisual Works

Mostly ownership to audiovisual works is given to the producer or in case of employment relationship to the employer. Screen writer, actor and other role player in the sector entitled to get remuneration for their contribution.¹⁷³ In the film industry since creative contributions are the product of a combination of many individuals such as directors, screenwriters, editors, actors and cameraman, difficulty arises in the determination of copyright ownership.¹⁷⁴

In Ethiopia, ownership over audiovisual works rests on the producer of the work.¹⁷⁵ However, the script writer, Director, Cameraman, lyricist, composer and other authors have the right to receive remuneration pursuant to the contract concluded with the producer.¹⁷⁶ And also they entitled to enjoy the right of authorship in the work.¹⁷⁷ On top of this, the authors of the screen play, musical works and other works shall be entitled to exercise their copyright independently.¹⁷⁸ In case of audiovisual works created by employment contract, the work will be owned by the employer or the person who commissioned the work subject to the otherwise agreement of the parties as stipulated under Art.21(4). This proclamation repealed the 1960 civil code provisions that only provide ownership in favor of the author alone.¹⁷⁹ During the enactment of the civil code copyright is assumed to be a protection to creative minds, thus since legal persons lack that mental faculty they were not entitled to ownership of the economic rights. Therefore, the civil code was blamed for not encouraging investment by investors in audiovisual industry or other similar works. The owner of the audiovisual copyright has an ownership right over the work. Accordingly, he may transfers or assigns it to another person or entity, who becomes the owner of the copyright.

¹⁷³ Supra note 130, p. 142.

¹⁷⁴ Marjut Salokannel, *Ownership of Rights in Audiovisual Productions: A Comparative Study*, Martinus Nijhoff Publishers, The Netherlands, 1997, p. 93.

¹⁷⁵ Supra note 4, Art. 21.

¹⁷⁶ Supra note 174, p. 146 and see also supra note 4, Art. 21(5)

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Supra note 97, Art. 1647

3.8 Duration of Audiovisual Works

As provided above in the section dealing with copyright, there is time limitation for copyrightable works. Being part of copyrightable works there is also a certain duration in which the audiovisual owner benefits from copyright in his work. The proclamation provides that in the case of audiovisual work, the economic rights shall be protected for fifty years beginning from the latest date of the making of the work or communication of the work to the public.¹⁸⁰

3.9 Important Elements in the Production of Audiovisual

Audiovisual works require the involvement of various role players commonly called performers. The copyright and neighboring rights proclamation defined performers as:

“Actors, singers, musicians, dancers, and other persons, who act, sing, deliver, declaim, play in, interpret or otherwise perform audiovisual works.”¹⁸¹

The main elements from the above meaning are screenplay, motion picture and sound track. Let's discuss them below.

3.9.1 Screenplay

A screenplay is a written work by screenwriters for audiovisual works such as film, music clip and television program.¹⁸² These screenplays can be original works or adaptations from existing pieces of writing.¹⁸³ The movement, actions, expression, and dialogues of the characters are narrated in screenplay.¹⁸⁴

3.9.2 Motion Picture

Motion pictures as a group of audiovisual works consisting of a series of related images that, when shown in succession, impart an impression of motion, together with any accompanying

¹⁸⁰ Supra note 2, Art. 20(8)

¹⁸¹ Id., Art. 2(19)

¹⁸² Ted Nannicelli, *A Philosophy of the Screenplay*, Routledge, New York, 2013, p. 11.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

sounds.¹⁸⁵ In a motion picture one could not expect a picture actually is moving rather it is comprised of a series of still images, that when viewed in rapid succession appears to be moving. Displacement and persistence of vision create the illusion of smooth movement.¹⁸⁶ For the motion pictures come to alive its embodiment in film, videotape, or videodisk is a typical feature.¹⁸⁷ Due to the nature of the motion picture when the work is created and fixed in a copy that works automatically receive copyright.¹⁸⁸ Since copyright does not protect ideas and concepts motion picture as a part of copyrightable work only the expression fixed in a motion picture is protected under copyright.¹⁸⁹

3.9.3 Sound Recording

The Copyright and Neighboring Rights Proclamation defined sound recording as:

“an exclusively aural fixation of the sounds of a performance or other sounds or a representation thereof, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied. However, it does not include a fixation of sound and images such as the sound track of an audiovisual work”.¹⁹⁰

The United States copyright law defined Sound recordings as “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work.”¹⁹¹ The subject matter of copyright in sound recording is the particular series of sounds that are fixed or embodied in a recording.¹⁹² Sound recording helps for the preservation of sounds. Conversion of one form of energy to another is a difficult task in sound recording system.¹⁹³

¹⁸⁵ U.S. Copyright Office, Copyright Registration for Motion Pictures, Including Video Recordings, 2014, p. 1, available at: <http://copyright.gov/circs/circ45.pdf>, accessed on 10-April-2015.

¹⁸⁶ An Introduction to the Motion Picture Camera, available at: <http://www.chrischomyn.com/Documents/Book/03-TheMotionPictureCamera.pdf>, accessed on: 6-May-2015.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Supra note 4, Art. 2(28)

¹⁹¹ Copyright Registration for Sound Recordings, United States Copyright Office, p. 1, available at: <http://copyright.gov/circs/circ56.pdf>, accessed on: 2-Mar-2015.

¹⁹² Ibid.

¹⁹³ Sound Recording: An Introduction and Overview, available at: https://ccrma.stanford.edu/courses/192a/Sound_Recording-An_Introduction.pdf, accessed on: 18-April-2015.

3.10 Role Players in the Production of Audiovisual

The production of audiovisual works is a teamwork which demands participation of different professional in the field. Michael Rabiger in his book on 'Directing Film Techniques and Aesthetics' describes the production of audiovisual works like cinema production as a place of encounter, collaboration, and compromise among writers, dramatists, actors, image and illusion makers, choreographers, art directors, scene builders, sound designers, make-up artists and costumers, musicians, editors, artists, and technicians of every kind.¹⁹⁴ In Ethiopia audiovisual industry also there are so many individuals like producer, actors, screenwriters, directors and cameraman who involved in the sector.¹⁹⁵ Hence the production of audiovisual depends on the collaboration of different expert. The main participants in the production of a film are producer, director, screenwriter, actors and cameraman.¹⁹⁶

3.10.1 Producer

As a creator of the audiovisual work, the producer has an obligation to initiate, supervise and control issues like fund raising, contracting with key personnel and arranging means of distribution.¹⁹⁷ The Ethiopian Copyright and Neighboring Rights Proclamation defines producer as a person that undertakes the initiative and responsibility for the making of the audiovisual works.¹⁹⁸ Sara Royster and Dennis Vilorio in their article define producers as a film's managers, with a task of securing the financing at the beginning to approving the completed film at the end.¹⁹⁹

3.10.2 Director

Director is a person who directs the making of a film so that he controls a film's artistic and dramatic aspects, and visualizes the script while guiding the technical crew and actors in the

¹⁹⁴ Michael Rabiger, *Directing Film Techniques and Aesthetics*, 3rd ed., Focal Press, USA, 2003, p. 3

¹⁹⁵ Tomas Getachew, Vice Manager, Film Producers Association, 1-May-2015. And Dawit Yifru, President, Ethiopian Music Association, 15-May-2015

¹⁹⁶ *Ibid.*

¹⁹⁷ Yemane Gesesew, *Infringement and Remedies of Economic Rights of Audiovisual Works under the Ethiopian Copyright Law: Law and Practices in Addis Ababa*, unpublished, Addis Ababa University Library, 2010, P. 36.

¹⁹⁸ *Supra* note 4, Art. 2(20)

¹⁹⁹ Sara Royster & Dennis Vilorio, *From Script to Screen: Careers in film production*, *Occupational Outlook Quarterly*, 2013, p. 19, available at: www.bls.gov/ooq, accessed on 17-May-2015.

fulfillment of that vision.²⁰⁰ In addition, the director has a key role in choosing the cast members, production design, and the creative aspects of filmmaking.²⁰¹ Similarly, Sara Royster and Dennis Vilorio describe director as a developer and Implementer of the artistic vision for the film.²⁰² Michael Rabiger describes a director as a leader responsible for the overall dramatic statement of a film therefore, he or she must know how to choose a piece of writing for the screen and how to shape and develop it.²⁰³

3.10.3 Scriptwriter

The screenwriter or the scriptwriter is responsible for writing the film in to paper and film in appropriate manner to make part of the screen of film.²⁰⁴ The screenwriter while attempting to convert the script should made it suitable for director and studio.²⁰⁵ The screenwriters after completing the script find a producer willing to fund the project. In order to discuss, edit, and develop the script, the screenwriters work with the producer and director.²⁰⁶ The best thing in scriptwriting is combining the various audiovisual and story elements together in orderly manner.²⁰⁷

3.10.4 Actor

The characters in the script are represented by the actors.²⁰⁸ So that, the roles of the actors in the audiovisual works are paramount, they are usually called as a character in the film.²⁰⁹ Actors read some of the character's lines, or spoken parts, from the script in front of the director and producers during the trial period.²¹⁰

²⁰⁰ David Richard Jones, Great Directors at Work: Stanislavsky, Brecht, Kazan, Brook, university of California press, London, 1986, p.78.

²⁰¹ Ibid.

²⁰² Supra note 199.

²⁰³ Supra note 194, p. 31.

²⁰⁴ Id., p. 36.

²⁰⁵ Id. P. 37.

²⁰⁶ Supra note 199, p. 17.

²⁰⁷ Trisha Das, How to write a documentary script, a monograph, p. 47, available at:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/programme_doc_documentary_script.pdf, accessed on 24-Mar-2015

²⁰⁸ Supra note 199, p. 23.

²⁰⁹ Ibid.

²¹⁰ Ibid.

3.10.5 Editor

The tasks of the editor in audiovisual works are to put together the works using the footage recorded during production.²¹¹ In order to establish which take of each scene best reflects the director's side, editors' works closely with the director.²¹² The editor must adjust the story of the audiovisual work such as film since sometimes a scene has gone as planned during shooting.²¹³

3.10.6 Cameraman

A cameraman is a professional operator of a film or video camera.²¹⁴ The cameraman is responsible for physically operating the camera and maintaining composition and camera angles throughout a given scene or shot.²¹⁵ In narrative filmmaking, the cameraman will collaborate with the director, director of photography, actors and crew to make technical and creative decisions.²¹⁶

CHAPTER FOUR

TAXATION OF AUDIOVISUAL WORKS

4.1 Introduction

Governments impose taxes on different sources. One source in which taxes could be imposed is on audiovisual sector. In Ethiopia, both direct and indirect taxes are imposed on audiovisual works. On the category of direct taxes income tax and entertainment tax are imposed on the sector. Additionally, indirect taxes such as VAT, TOT, custom duty, excise tax and surtax are

²¹¹ Id., p. 24.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Vlada Petric , *Constructivism in Film: The Man with the Movie Camera : a Cinematic Analysis*, Cambridge University Press, Cambridge, 1993, p. 71.

²¹⁵ Dennis Schaefer & Larry Salvato, *Masters of Light: Conversations with Contemporary Cinematographers*, University of California Press, California, Jan 1, 2013, p. 264

²¹⁶ Supra note 214.

levied on the industry. In this section both direct and indirect taxes that are imposed on audiovisual industry are discussed.

4.2 Income tax

Income tax is a type of direct tax imposed on economic benefit a person gets. Income from audiovisual works is one of the economic benefits subject to the payment of tax. An income tax system governing audiovisual works should incorporate the principle of efficiency and fairness. Efficiency in tax theory refers to both economic and administrative efficiency.²¹⁷ A tax system is considered as efficient when it promotes economic growth and inefficient when it stifles beneficial economic behavior. In addition to promoting economic efficiency, tax system should be administratively efficient. Administrative efficiency is measured based on the extent to which a tax system minimizes tax payer compliance costs and government enforcement costs.²¹⁸

In Ethiopia, income tax comes under the category of direct taxes and is collected by both the federal and regional governments in accordance with the federal constitution and the income tax proclamations.²¹⁹ For the purpose of producing as much high revenue as possible most countries define income as broadly as possible. For instance, the Income Tax Proclamation defined income as “every sort of economic benefit including nonrecurring gains in cash or in kind, from whatever source derived and in whatever form paid credited or received”.²²⁰

There are two different types of tax system in the world. These are global approach of taxation and scheduler approach. Ethiopia follows scheduler approach of taxing income. Accordingly, the income tax proclamation categorizes the income of a person under different heads and provides for the manner of computation of taxable income of each head. These are employment income, rental income, business income and others income. They are classified respectively, under schedule (A), schedule (B), schedule (C) and schedule (D).²²¹

²¹⁷ N. Mankiw, Principles of Economics, 7th ed., Cengage Learning, Stamford, 2014, p. 252

²¹⁸ John F. Witte, The Politics and Development of the Federal Income Tax, University of Wisconsin Press, England, 1986, p. 31.

²¹⁹ Supra note 76, Arts. 96 & 97

²²⁰ Supra note 2, Art. 2(10)

²²¹ Id., Art. 8.

Royalty income which is obtained in using of audiovisual works is categorized under schedule (D). In order to have a clear overview of royalty income, understanding its meaning is essential. The term royalty has diverse meanings across different jurisdictions as well as in various laws of the same country.²²² The Income Tax Proclamation defined royalty as “a payment 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 cinematography films, and films or tapes for radio or television broadcasting, any patent, trade work, design or model, plan, secret formula or process, or for the use or for the right to use of any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience”.²²³

The Copyright & Neighboring Rights Amendment Proclamation defines royalty as “fees payable to an owner of a work protected under this proclamation by the user of such work for commercial purpose”.²²⁴ Thus, a film owner may be paid royalties for the use of that film that contains the producer’s copyrighted material. And also a musician may be paid royalties for the right to produce and sell tapes or compact discs containing the musician’s work.

A taxpayer who receives royalty income from audiovisual works is expected to pay tax.²²⁵ When the transaction is between a resident person the payer is expected to withhold 5% and accounts it to the tax authority. Whereas, if the transaction is between a resident and non-resident person the former or the payee is the one who withheld the amount and account it to the tax authority.²²⁶

The amount to be withheld by the party making a payment to another party and to be paid to the tax authority referred to as withholding tax.²²⁷ The withholding agent whether an individual or an organization is obliged by tax laws to withhold and transfers the same to the tax authority within the time prescribed in the tax laws. It is a very effective and widely used means of collecting taxes in modern tax system. As provided in the proclamation this tax is a final tax with regard to

²²² Victor Thuronyi, *Tax Law Design and Drafting*, vol. 2; International Monetary Fund: 1998, p. 4. For instance, in our mining and income tax proclamation royalty has different meaning for the laws’ interest.

²²³ *Supra* note 2, Art. 31 (5)

²²⁴ Copyright and Neighboring Rights Protection (Amendment) Proclamation, Proclamation No. 872/2014, Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 21st year No. 20, Addis ABABA, 14th January, 2015, Art. 2(31)

²²⁵ *Supra* note 2, Art. 31

²²⁶ *Id.*, 2, Sub- Art. (3) of Art.31

²²⁷ *Supra* note 49, p. 114.

such royalty income. However, a 2% withholding on entertainment programmes provided in the income tax regulation is not a final tax, rather the tax is to be credited against the tax payer tax liability at the end of the year.

In the next part, the relationship of indirect taxes with audiovisual works could be dealt. In Ethiopia, like other countries indirect taxes are imposed on audiovisual industry. Accordingly value added tax, custom duty, excise tax, turnover tax and surtax is among the category of indirect taxes imposed on audiovisual works. Therefore, a brief summary of indirect taxes in relation to audiovisual works would be made below.

4.3 Value Added Tax

As it was clearly shown under chapter two, VAT is an indirect tax imposed on the added value on transaction of certain goods and services. Intellectual works such as audiovisual works that involves a business transaction with annual income of greater or equal to 500,0000birr is expected to register for VAT. Therefore, during such transaction the tax collector is obliged to collect VAT. Countries follow different VAT rates to taxable goods and services. Some countries have adopted VAT with a single rate and others with multiple rates. There are standard form of VAT rate and zero-VAT rate in charging of VAT on taxable supplies.²²⁸ Ethiopia charges VAT on taxable supplies at a standard rate of 15% and zero rate on other taxable supplies of VAT.²²⁹

Therefore, any taxable transaction of audiovisual works which fall under the VAT scheme should be taxed within these rates. A taxpayer once entered in the VAT scheme, he is expected to collect VAT from the transaction. In film business, like Tom film production, is expected to collect VAT at a rate of 15% from the viewer in the cinema of his film works.²³⁰ When Tom film production pays VAT in his purchase of products credit could be claimed by him.²³¹

²²⁸ Supra note 49, p. 603.

²²⁹ Supra note 60, Art. 7

²³⁰ Tomas Getachew, Vice Manager, Ethiopian Film Producers Association, 1-May-2015.

²³¹ Ibid.

4.4 Excise Tax

Excise tax, as it is described under chapter two, is mainly meant to be imposed on luxurious goods and goods hazardous to health.²³² Since excise tax is one of the important tax revenue sources of a government, many governments in the world incorporate it in their tax system.²³³ The base of excises tax in respect of goods produced locally is the cost of production and in respect of goods imported the base of the tax is the combination of cost, insurance and freight (C.I.F.)²³⁴ There are so many audiovisual production materials which are subject to payment of excise tax in the country. Video decks and video cameras are among those materials necessary for the production of audiovisual works in which excise tax is imposed on them. The excise tax proclamation imposes a 40% excise tax on video decks and video cameras.²³⁵

4.5 Custom Duty

Currently, in Ethiopia customs duty is charged under the Customs Proclamation No. 859/2014. Even intangible property like audiovisual works would come under the reach of the provisions of the custom proclamation. Goods brought in or taken out of the country are relied to customs duty which is levied at a rate reached under the Customs proclamation. With regard to imports into Ethiopia, only when equipment is imported along with the bringing in of any technical know-how, would there take place any IP related issue while with regard to the price of the imported goods for the reason of valuation of customs duty.

4.6 Turn over Tax

Unlike VAT, TOT is imposed on the total turnover or sales value of goods and services rather than their added value of goods.²³⁶ Like other transactions subject to payment under the turnover tax (TOT) scheme, a person who deals with audiovisual works is expected to pay a TOT. The TOT proclamation imposes either a 2% or 10% tax on a transaction of certain goods and

²³² Supra note 49, p. 725.

²³³ Id., p. 724.

²³⁴ Supra note 72, Art. 5

²³⁵ Refer schedule attached to the Excise Tax Proclamation. Supra note 72.

²³⁶ Supra note 49, p. 706.

services.²³⁷ Accordingly, on goods sold locally and on services rendered locally such as on contractors, grain mills, tractors and combine-harvesters the proclamation imposes 2% flat rate tax whereas, for services different from these specified 10% TOT is imposed.²³⁸

4.7 Sur Tax

Based on Sur tax regulation all imports into Ethiopia except those specifically exempted under article 5 is subject to an import Sur tax of 10%.²³⁹ As an import tax, sur tax is under the jurisdiction of the federal government in accordance with the revenue division of the regional and the federal government in Ethiopia.²⁴⁰ Therefore, importation of production materials for audiovisual works is subject to the import Sur tax of the country. Since materials necessary for the production of audiovisual works are not exempted under article 5 of the import Sur tax regulation, the coming into the country of those things entails 10% tax levies.

4.8 The Entertainment Tax

As discussed above both direct and indirect taxes are imposed on audiovisual works. In this part one of the oldest taxes of the country, that is, entertainment tax is discussed. Entertainment tax is defined as a tax on enjoyment of entertainment and recreational activities.²⁴¹ The Amusement Tax Regulation was enacted during the regime of Haile Sellasie and is still applicable in the Municipality of Addis Ababa.²⁴² It was introduced to discourage music and film industries which were considered as sinful by the then religious standards. The regulation imposes a flat rate of 10% tax on all incomes from entertainment activity.²⁴³ This regulation obliged the owner of the public amusement to collect entertainment tax from the admitted tickets.²⁴⁴ Failure to collect the said tax shall make the owner of the public amusement liable for the tax.²⁴⁵ However, currently it is the tax authority that collects the entertainment tax at the rate of 10% from owner or right

²³⁷ Supra note 62, Art. 4

²³⁸ *ibid.*

²³⁹ Supra note 92, Arts. 2 & 3

²⁴⁰ Supra note 76, Art. 96 and see also supra note 49, p. 742.

²⁴¹ Biswadeb Chatterjee, *Tax Performance in Indian States: A Comparative Study*, 1st ed., Mittal Publications, New Delhi, 1997, p. 179.

²⁴² Amusement Tax Regulation, Legal Notice No. 291/1964, *Negarit Gazeta* No. 20, 24th June 1964.

²⁴³ *Id.* Art., 4

²⁴⁴ *Id.* Art., 6

²⁴⁵ *Ibid.*

holder of audiovisual works such as theater and film.²⁴⁶ Accordingly, everyone who generates income from entertainment activity is expected to comply with the amusement tax regulation.

CHAPTER FIVE

DATA PRESENTATION, ANALYSIS & INTERPRETATION

This part of the paper deals with the presentation, analysis and interpretations of the data gathered from documents, questionnaires and interviews.

Data from different documents, questioners, and interviews are presented and analyzed for the purpose of identifying the problems associated with taxation of audiovisual works. The analytical analysis method is used to classify, organize and compare the contents of the document or communication. The responses of questionnaires, interviews or discussions and observations are made part of the communication. Questions relevant for the topic are prepared both in Amharic and English.

Documents published by different organizations such as the Ethiopian Audiovisual producers Association are used in the paper. These are presented and analyzed under table one above to show the production of audiovisual works such as film and music clip as a means of generating an income in the country and the production is increasing every year.

5.1 Profile of the Respondents Questionnaires Distributed

Table 2: Members of Respondent

No.	Particulars	Respondents	
		No.	Percentage
1	Ethiopian Audiovisual Producers Association	10	9.9%
2	Film Producers Association	10	9.9%

²⁴⁶ Masresha Degefa, Tax Decision Officer, Ethiopian Revenue and Customs Authority Arada Sub City Lower Tax Payers Branch Office, 11-May-2015. And, Hassen Mohammed, Vice Administrator, Addis Ababa Cinema Houses Administration, Office of the Administration, 27-April-2015.

3	Film Makers Association	10	9.9%	
4	Ethiopian Music Association	10	9.9%	
5	Audiovisual Distribution Shops	10	9.9%	
6	Cinema Houses	5*	4.95%	
7	Tax and Custom Authorities	ERCA Main Branch	1	0.99%
		ERCA Arada Sub-City Lower Taxpayers Branch Office	10	9.9%
		ERCA Jimma Branch	10	9.9%
		Oromiya Regional Jimma Zone Revenue Authority	10	9.9%
		SNNPR Regional Revenue Authority	10	9.9%
		ERCA Bahir Dar Branch	5	4.95%
Total		101	100%	

*The cinema houses are Cinema Ethiopia, Cinema Ampere, Cinema Ambassador, Jimma Cinema & Ethio-Cinema.

The table indicates the composition of the respondents. As it is shown from the table, the respondents are from different institutions having different backgrounds, roles and responsibilities in relation to audiovisual works. This creates a fertile ground to understand the issues of taxation of audiovisual work in various aspects.

The first five respondents provided in the table that is the Ethiopian Audiovisual Producers Association, Film Producers Association, Film Makers Association, Ethiopian Music Association and Audiovisual Distribution Shops are those who are concerned with audiovisual works such as in the transaction part so that the issues of taxation over those works are directly related with their day to day activities. For that matter, five of them constitute 49.5% of the total questionnaire distributed.

The second one that is the cinema houses as service provider of entertainment activities such as film and theatre. While performing their duty issue of taxation over entertainment activities are happened at least indirectly. So that the researcher accounts to them a total of 4.95%

questionnaire in order to answer the problems raised in taxation of audiovisual works in their undertaking.

Finally, the custom and tax authority officials as an enforcement body of the tax law of the country they are also made part of respondent for the questions regarding taxation of audiovisual works. They play a significant role in the collection of taxes from audiovisual works such as in imposition of tax and talking deduction of expenses. They have a crucial role in giving effect to the tax law of the country including taxation of intellectual works like audiovisual works. In addition, these groups of respondents are presumed to have high legal knowledge with regard to taxation of audiovisual works since taxation is their daily activities. As a result, a total of 45.54% questionnaire distributed for them. The similarity with regard to taxation of audiovisual works is discerned during observation of different tax authorities in the different parts of the country except with regard to taxation of entertainment activities. Entertainment tax is collected in Addis Ababa city administration only based on the regulation enacted during the Haile Sellassie regime for the administration. However, in order to make the population representative the researcher tried to select tax and custom authorities from different parts of the country based on the needs of the research.

Table 3: Response of Respondents Concerning Issues in Taxation of Audiovisual Works ²⁴⁷

No.	Questions	Agree	Disagree	I don't know
1	The current taxes imposed on intellectual works such as on audiovisual industry solve the problem raised in taxation.	5%	55%	40%
2	Currently, owners of intellectual works are paying taxes on royalty income based on article 31 of the income tax	0%	75%	25%

²⁴⁷ Note, however that the percentage is prepared by writing the full number to which the percentage is in close proximity.

	proclamation No. 286/2002.			
3	The indirect taxes imposed on audiovisual works are high so as to inhibit the cultural growth of the society.	65%	0%	35%
4	Practically, in taxation of intellectual works such as audiovisual industry there is no exempted income from tax.	73%	0%	27%
5	There is high tax imposed on owners of audiovisual industry while compared with other tax payers of the country.	55%	30%	15%
6	Taxes imposed on audiovisual industry are income tax, entertainment tax, VAT, TOT, excise tax, custom duty, and surtax.	35%	25%	40%
7	There is deduction of expenses incurred for production of audiovisual works before taxing income of the owner of such works and there is no problem raised in taking expenses.	35%	48%	17%
8	There is amusement tax imposed on entertaining activity.	45%	30%	25%
9	Do you agree that you withhold tax on entertaining activity on payment of admission charge? (Only for owners of public cinema houses)*	0%	100%	0%
10	Do you believe that the existing tax laws are comprehensive enough to give solution to the problem of taxation of audiovisual works?	0%	85%	15%

*This question is administered for Addis Ababa Cinema Houses Administration.

As it is easily discerned from the above table, ten (10) questions were administered for the respondents. The general purpose of the questionnaires is to assess the level of knowledge of the respondents in respect to the tax law of the country governing audiovisual works and their appreciation of the existing problems with regard to taxation of the works, and the remedies they suggest.

From the questions and the respondents, concerning the first question that is the current tax laws on audiovisual works solve the problems in relation to tax, most of the respondents which accounts 55 % and 40% disagree or they didn't know the reality respectively. Only individuals from tax authority which accounts 5% believe that the current tax system of audiovisual works solve the problem raised in their taxation. The second question is about whether or not owners of audiovisual works are paying tax on royalty income based on the income tax proclamation. The response to this question shows that 75% of the respondents mostly from audiovisual producers, film producers, music association and tax authority professionals agree that the said income tax is not imposed on royalty income. And, the remaining respondents disclose the fact that they didn't know whether or not tax is collected from royalty income. No one agreed that income tax is imposed on royalty income in the country.

Concerning the third question, that is, the effect of indirect taxes on audiovisual works, a total of 65% respondents agree that the current indirect taxes imposed on audiovisual works are so discouraging to the extent of deterring progress of culture. The majority of these respondents comprise Ethiopian audiovisual and film producers associations, Ethiopian music association, cinema houses and tax authority professionals. For this question no one agree that the current indirect taxes are a positive role for development of culture by reducing taxes imposed on audiovisual industry. The remaining 35% mostly from audiovisual distributing shops discloses the fact that they have insufficient knowledge with regard to the effect of indirect taxes on audiovisual works.

The fourth question relates to the existence or non existence of, at least in practice, the exemption of certain income level from tax in case of audiovisual works. The largest share of

the respondents from the audiovisual and film producers' association, music association and tax authority officials and also partly from audiovisual distribution shops which constitute 73% agree that there is no exempted income in taxation of audiovisual works practically. The remaining one from cinema houses and partly those in distribution area didn't have information about the question.

The fifth question is concerned with the presence of horizontal equity among taxpayers of audiovisual works and other taxpayers. Respondent which accounts 55% mostly from film producers association, music association and cinema houses agree that audiovisual industry is paying high tax than other groups of tax payers. The Ethiopian audiovisual producers association and the tax authority officials that accounts 35% disagree that the audiovisual owner are paying high tax compared with other tax payers. The remaining 15% mostly from distribution shops didn't have information to the question. Question six is purposely administered in order to examine the level of the tax knowledge of the respondents. Surprisingly, from the total respondents mostly from distribution shops 40% of them didn't know the taxes imposed on audiovisual sector. Even 25% of the respondents disagree that some taxes provided in this question such as surtax and excise tax are imposed on audiovisual industry. Only 35% of the respondents from film producer, music association and the audiovisual association and also from tax authority know the fact that taxes provided in the question are imposed on the audiovisual works.

Question seven deals with deduction of expenses incurred for production of audiovisual works and the problems associated with it. Respondents from audiovisual producers association, music association, film producers and tax authority which accounts 35% disclose the fact that deduction of expenses for audiovisual works are made in similar fashion with business expenses. Taxpayers are, however, required to produce evidences in order to secure the deduction. The other part of the respondents to this question argue that since so many transactions in audiovisual sector is undertaken without proper invoice they are faced with problem of costs that are not acceptable in the tax authority.

Regarding question eight, from the total respondents mostly from audiovisual producers association, film producers association, film makers association and custom and revenue authority which accounts 45% responds positively that entertainment tax is imposed on audiovisual works. The respondents mostly from customs authority that works in the region and regional tax authorities and cinema houses of the regions particularly Jimma cinema which constitute 30% disclose that there is no tax on entertainment activity. Entertainment tax is practical in Addis Ababa administration. The remaining respondents from audiovisual distribution shops that constitute 25% do not know whether such tax is imposed on the industry.

Question nine is only administered for cinema houses. As it is easily discerned from the above table, all the cinema houses do not withhold amusement tax. They disclose the fact that tax authority is collecting the tax rather than the withholding scheme by the cinema houses.

Last but not the least, for the general question that whether or not the existing tax legal framework is comprehensive enough for taxation of audiovisual works, all most all respondents that share 85% agrees that the existing tax frameworks are not comprehensive enough to give solution for the problems in taxation of audiovisual works. 15% mostly from the respondents of the audiovisual distribution shops disclose that they did not have information for the question.

CHAPTER SIX

CONTEMPORARY PROBLEMS IN TAXATION OF AUDIOVISUAL WORKS

6.1 Synopsis of the Problems

In the current tax system of the country there are several problems with regard to taxation in the audiovisual sector. In the next sections these problems are briefly discussed.

6.1.1 Royalty in Ethiopia Tax System

There are so many problems in taxation of royalty income in Ethiopia. First, the Copyright and Neighboring Rights Proclamation No. 410/2004 does not provide the mechanism of collecting

royalty income such as the institutions that empower to collect the same and the manner of collection. It is only after the enactment of the Copyright and Neighboring Rights Amendment Proclamation that the institution entitles to collect royalty income and distribute the same to the right owner after withholding taxes recognized in the tax law.²⁴⁸ The anticipation of the existing Income Tax Proclamation that tax could be imposed on royalty income is only become operational when fertile grounds for collection of such income is organized such as the existence of relevant bodies like collective management society that is expected to be established based on the copyright and neighboring rights amendment proclamation. Thus one can conclude that the previous (before amendment) copyright and neighboring rights system of the country is backward by not providing necessary infrastructure for facilitation of tax collection from the royalty income anticipated by the income tax proclamation.

The interview conducted with General Manager of Ethiopian Audiovisual Producers Association indicates that as a result of the absence of royalty system in the country, tax is not collected from the royalty income.²⁴⁹ Similarly, both the vice manager of Ethiopian Film Producers Association and the president of Ethiopian Music Association confirms the absence of the collection of royalty income and as a result no tax is imposed.²⁵⁰ That means the interviewees argue that audiovisual owners are not getting royalty income so that they are not expected to pay taxes on what they are not getting income. In addition, the vice administrator of cinema houses confirms that as an administrator they are not seeing tax withholding on royalty income from audiovisual works like films.²⁵¹ This shows that the existing income tax proclamation that imposes tax on royalty income is only remains paper value. That means in Ethiopia tax system tax is not properly collected from royalty income. The law is yet not enforced.

As I get from the interview made with the general manager of Ethiopian Audiovisual Producers Association still the collective management society expected to be established based on the

²⁴⁸ Supra note 224, Art. 34

²⁴⁹ Hailay Tadesse, General Manager, Ethiopian Audiovisual Producers Association, Office of the Association, 25-April-2015.

²⁵⁰ Supra note 195.

²⁵¹ Hassen Mohammed, Vice Administrator, Addis Ababa Cinema Houses Administration Organization, Office of the Administration, 27-April-2015.

amended copyright and neighboring rights proclamation is not operational. So that, no royalty income is collected and consequently tax is not collected from such income.²⁵²

Second, the royalty system provided in the Ethiopian income tax law is not sufficient and also lacks clarity. For instance, the Amharic version of Art.31 sub-Art.5 of the income tax proclamation define ‘royalty’ as ‘an income gained from rent of intellectual property right’ that means literally “የፈጠራ ሙብትን በማከራየት የሚገኝ ገቢ” if the meaning attached to royalty is in such a manner then how rights over IP like audiovisual works in case of transfer or sale is governed under the income tax law of the country? Because the proclamation specially, the Amharic version only deals with the rent aspect of IP. This meaning could make controversy over the taxation of economic benefit received from royalty income. Therefore, the Amharic version of such provision should be corrected in line with the English version of the proclamation.

6.1. 2 Deduction of Expenses for Audiovisual Works

Since it is a well known fact that a taxpayer may incur expenditure in creating or devising his or her own intellectual property like in production of film or music clip, it is a must to have deduction rules in tax laws.²⁵³ In most countries tax system deduction rule for expenses incurred for generation of income is a well accepted norm. That is why a writer called Lily in her article concludes that rules of deduction of expenses in tax laws for intellectual works such as audiovisual sector serves as an incentive for those who invest in the area.²⁵⁴ Similarly Alka Gupta in his public finance book asserts that tax is only payable when there is net income and also he further says that the size of net income should be proportionate or progressive with the amount of tax payment.²⁵⁵ In the OECD Guideline it is confirmed that income tax is generally due on the net income realized by the taxpayer over an income period.²⁵⁶ Furthermore, Klein and Bankman in their book called ‘Federal Income Taxation’ argues that taxing gross income without proper deduction is considered as unfair and would produce unsound economic

²⁵² Supra note 249.

²⁵³ Supra note 13, p. 377.

²⁵⁴ Supra note 17, pp. 2264-2265.

²⁵⁵ Supra note 34, p. 107.

²⁵⁶ Supra note 8, p. 32.

results.²⁵⁷ Therefore, a country's tax system should incorporate such rule in their tax laws for taxation of every income including income from audiovisual works.

In Ethiopia, under article 31 of the income tax proclamation, rules for taxation of intellectual works are provided.²⁵⁸ This provision deals all about with issue of duty of withholding agent, an amount of tax that this withholding agent expected to withheld and account it to the tax authority. That means other tax considerations like issue of deduction of expenses and exemption of a certain income is not incorporated. Therefore, the occurrence of problems with regard to deducting expenses incurred in the production of like audiovisual works is inevitable. This is particularly grave when royalty income is generated by the audiovisual owner of independent producer because one cannot find rules of deduction of expenses for such transaction in Ethiopia tax law. So that if expense incurred by independent producer of audiovisual works not properly deducted during taxation of income, the owner will face a problem.²⁵⁹ But in case of organized business forms since they considered as a business income they will be treated under schedule 'C' of the income tax proclamation and expenses can be deducted accordingly.

Most countries income tax laws such as Kenya and South Africa provide at least a general tax deduction rules for all income received by tax payers.²⁶⁰ However, in the Ethiopian income tax law there is no common rule of deduction for all incomes and also it does not provided deduction rules for expenses in the production of audiovisual works. The proclamation only provides deduction rules specifically for other groups of tax payers such as for those who pay business income tax.²⁶¹

Practically, as I come across from the interview, deduction of expenses for audiovisual works such as film and music production in their taxation process is common particularly for those organized in business form. In such circumstances once tax payer of audiovisual works produce relevant evidences like vouchers for incurring expenses while generating income the tax authority take it as expenses and made deduction accordingly. However, the difficulty rests with

²⁵⁷William A. Klein & Joseph Bankman, *Federal Income Taxation*, 11th ed., Aspen Law & Business A Division of Aspen Publishers, Inc., New York, 1997, p. 18.

²⁵⁸ Supra note 2.

²⁵⁹ Sisay Asrat, *Film Producer*, 12- May-2015.

²⁶⁰ Supra note 32.

²⁶¹ Supra note 2, Art. 20

whether or not the tax payers have relevant evidences for ascertaining those expenses because they may not have those evidences due to other factor.²⁶² The reason is mostly many of the transactions are being conducted orally and many of the payments without proper invoice. That makes it difficult to get proper deductions and refunds according to the tax laws. Consequently, the absence of deductions and refunds makes it difficult for the creators to recoup their costs.²⁶³ Even for those in business form in the film industry like Tom film production it has been disclosed during the interview that expenses are deducted from the gross income. However, there are also controversies with regard to some expenses like expenses for food and clothes.²⁶⁴ In addition, in music industry as it is disclosed from the interview conducted with the president of the Ethiopian Music Association there is also a disagreement with regard to taking evidences for the purpose of deduction of expenses.²⁶⁵

6.1.3 Absence of Exemption in Taxation of Royalty Income

As we observed from article 31 of the income tax proclamation every income generated from royalty in audiovisual works is subject to 5% tax irrespective of the amount of income. That means a tax payer who gets even five birr is expected to pay tax with a 5% tax because the law does not provide exemption. However, the proclamation provides exemption for other tax payers such as for those who pay tax on employment, rental of building and business income.²⁶⁶ The purpose of allowing exemption of income from tax in a country's tax system is in order to protect the interest of the tax payer that is in line with the well established principle of tax known as rule of ability to pay.

²⁶² Hailay Tadesse, General Manager, Ethiopian Audiovisual Producers Association, Office of the Association, 25-April-2015. And Dawit Yifru, President, Ethiopian Music Association, 15-April-2015. And also, Tomas Getachew, Vice Manager, Film Producers Association, 1-May-2015

²⁶³ Supra note 2, Art. 20 and declaration form available at: <http://www.erca.gov.et/declaration-forms>. Based on this article and declaration form any person who wants to benefit by deduction of expenses must produce evidences for the costs that he incurred.

²⁶⁴ Supra note 230.

²⁶⁵ Dawit Yifru, President, Ethiopian Music Association, 15-May-2015.

²⁶⁶ Supra note 2, Arts. 11, 13, 15 & 19 Exemption rules for other tax payers like employment income, income from rental of buildings and business income is provided under these articles.

The proclamation permitting exemption of income from tax for one group of tax payer on the one hand and precluding the same to the other tax payer on the other hand is against the well entrenched tax principle of fairness. So that the tax proclamation should provide a rule for exempting a certain income from audiovisual works like that of income from employment, rental of building and business income. Practically in the film industry as I found from interview tax is imposed on every income of film without exemption of a certain income particularly for independent producers.²⁶⁷ For those who organized in business form exemption is made based on schedule 'C'. Similarly, the President of the Ethiopian Music Association discloses the non existence of exemption from tax of a certain amount of income from music industry as the industry is mostly not organized in business form.²⁶⁸

6.1.4 The Entertainment Tax

The general overview of entertainment tax is made under chapter four of this paper. Here under, problems with regard to this tax type on audiovisual industry could be made. As it is clearly provided in the entertainment regulation it is meant to be enacted only applicable for Addis Ababa City Administration. There is no legal framework for imposing amusement tax on entertaining activities for other parts of the country. And also practically the interview conducted with the owner of Jimma Cinema (Jimma Town Cultural and Tourism Office) and Jimma Zone Revenue Authority disclose the fact that amusement tax is not imposed while a film owner shows his film in Jimma cinema.²⁶⁹ In addition, from the questionnaires administered for other parts of the country such as Southern Nations Nationalities and Peoples Republic and the Amhara Regional state, it is made known that amusement tax is not imposed on entertaining activity. The imposition of entertainment tax in one parts of the country and relieving the other parts from such tax without viable economic rational is disgusting. A film producer while showing the film in Addis Ababa is expected to pay entertainment tax but he is not expected to pay in regional states. Such kind of arrangement could create economic imbalances between film producers who are producing film in Addis Ababa and those producing in other parts of the

²⁶⁷Masresha Degefa, Tax Decision Officer, Ethiopian Revenue and Customs Authority Arada Sub City Lower Tax Payers Branch Office, 11-May-2015. And Tomas Getachew, Vice Manager, Film Producers Association, 1-May-2015.

²⁶⁸ Supra note 265.

²⁶⁹ Negib Aba Jebel, Officer, Jimma Town Cultural and Tourism Office, 12-April-2015. And Jibril Hassen, Tax Officer, Jimma Zone Revenue Authority, 13-April-2015.

country. Therefore, each regional state according to the circumstances should have entertainment tax laws.

Even though film producers argue that the existing amusement tax in Addis Ababa imposed on entertaining activity is burdensome,²⁷⁰ the experience of other countries such as Kenya shows that eighteen percent entertainment tax is imposed on enjoyment activities.²⁷¹ Since everyone is expected to pay tax on economic benefit he received, the problem is not with regard to the imposition of such tax.

6.1.5 Effect of Indirect Taxes on Audiovisual Works

While examining the indirect tax such as excise tax and custom duty the proclamation imposes an average of 45% tax on materials necessary for the production of audiovisual works. Indeed, imposition of such amount of tax over such materials has a hindering effect over production of audiovisual works therefore; in effect it inhibits cultural growth in a certain society.

Table 4: Indirect Taxes imposed on Audiovisual Production Materials

No.	Audiovisual production Materials	Indirect Taxes					
		Customs Duty (%)	Excise Tax (%)	Withholding (%)	VAT (%)	Surtax (%)	Total Tax (%)
1	Cinematographic cameras	30		3	15	10	58
2	Parts and accessories for Cinematographic Cameras	30		3	15	10	58
3	Magnetic discs for sound or other recording	20		3	15	10	48

²⁷⁰ Supra note 242.

²⁷¹ Entertainment Tax Act of Kenya, Revised 2012, Art.3

4	Desktop computers	-	-	3	15	-	18
5	Laptop computers	-	-	3	15	-	18
6	Cinematographic projectors	30	-	3	15	10	58
7	Accessories for Cinematographic projectors	30	-	3	15	10	58

Source: Harmonized System (HS code) of ERCA

As it is made known from the above table, there is an average of 45% indirect tax on many of the materials that could be used to produce audiovisual works. The heavy tax burden on these materials makes the production of such as film and music expensive, ultimately affecting the price of the product in the market. In addition, since audiovisual works much to do with the cultural progress of the society the deterrent effect of indirect taxes over such works have negative impact.

The interview conducted with different respondents such as Ethiopian Audiovisual Producers Association, Ethiopian Music Association and Film Producers Association shows that indirect taxes like custom duty and excise tax over audiovisual production materials such as film and music are very high so as to inhibit the progress of audiovisual works which are in fact necessary for the development of culture.²⁷² Actually, it is commonly known that audiovisual works have a lot do with the culture of the society.²⁷³ These audiovisual works serves as a means for facilitation of the culture of the society. Therefore, while imposing tax on audiovisual works, the tax system has to give due attention that whether it puts undue tax burden on audiovisual owners.

²⁷² Supra note 262.

²⁷³ For that matter, The FDRE Cultural Policy which enacted and come in to effect on October 1997 in its document Number 7 provides an initiative and encouraging mechanisms for Artists and other professionals who participated in cultural research activities.

6.1.6 Horizontal Equity Consideration of Taxpayers

Horizontal equity in tax means every tax payers who are in a similar situation should be taxed similarly.²⁷⁴ A country's tax law should treat tax payers fairly so that everyone who earns an income in a similar situation should be taxed in a similar fashion. In Ethiopia, most tax payer of income from audiovisual works claim that they are paying high tax than other tax payer in tax system.²⁷⁵ Conversely, tax professionals from the tax authority deny the fact that audiovisual owners or right holders of audiovisual works are paying high tax than others.²⁷⁶

The current Income Tax Proclamation imposes a 5% tax on royalty income. When one compared such amount of tax payment on intellectual works with other tax payers such as tax payers on employment income, it is obvious that tax over income of intellectual works like audiovisual is insignificant. A tax payer who receives employment income is expected to pay tax at a rate of at least 10% with a tendency of increment of the rate of tax with the increment of income whereas, tax payer of audiovisual works are only required to pay income tax at a flat rate of 5% at every income level.²⁷⁷ Similarly according to the proclamation tax on business income is higher than tax on intellectual works.²⁷⁸ In order to have a clear overview of comparison among different group of tax payers with those tax payers of intellectual works such as audiovisual industry consult the following table.

Table 5: Comparison of different Income Taxes

No.	Types of Taxes	Tax Rate
1	Employment income tax	10%-35%
2	Business income tax	10%-35%
3	Rental income tax	10%-35%
4	Tax on intellectual works (Tax on royalty income)	5% flat rate

Source: Ethiopian Income Tax proclamation No. 286/2002.

²⁷⁴ Supra note 1, p. 3.

²⁷⁵ Supra note 30 & 31. And supra note 256.

²⁷⁶ Masresha Degefa, Tax Decider Officer, Ethiopian Revenue and Customs Authority Arada Sub City Lower Tax Payers Branch Office, 11-May-2015.

²⁷⁷ Supra note 2, Art. 11

²⁷⁸ Supra note 2, Art. 19

As you can see from the above table tax payers of employment income, business income and income from rental of building is expected to pay tax a minimum of at least 10% whereas, those who received royalty income from intellectual works such as audiovisual works are expected to pay only a 5% flat rate tax at every income level. For instance, a person who received 100,000Birr as a royalty income from transaction of audiovisual works is taxed with an amount of 5% flat rate tax but other tax payers such as business income or rental income with the same income level is taxed with an amount of 35%. With this in mind one can possibly argue that the Ethiopian income tax law seems to favor for tax payer of intellectual works that is contrary to what has been thought by these tax payers.

6.1.7 Tax Evasion in Audiovisual Works

Tax evasion refers to illegal practices such as concealment of taxable income, misrepresentation of the amount and the source of the income and overstatement of deductions, exemptions or credits for the ultimate end of escaping from taxation. Tax evasion is an activity involving an element of deceit, misrepresentation of facts, falsification of accounts and any other fraudulent means with a view to violate civil and criminal provisions of tax laws.²⁷⁹ In audiovisual industry such as film and music production there are many transactions that entitle a person to earn income but that transactions remain untaxed. For example, based on the contractual agreement the producer of audiovisual works as an owner of the same could make payment for their contribution for different persons like payment for director or cameraman or lyricist in film and music industry but they are not taxed from this economic benefit.²⁸⁰ The payer of royalty income is expected to withhold 5% from the income based on the income tax proclamation but practically it is not enforced because there is no royalty system in the country.

In addition, in music industry due to the nature of the business particularly economic benefit stage players received are out of the reach of tax payment.²⁸¹ Mr. Dawit Yifru who is a president of Ethiopian Music Association and existed for a long period of time in music industry disclosed that even if the organization is expected to withhold tax from the income of music performers it

²⁷⁹ Supra note 49, p. 102.

²⁸⁰ Supra note 195.

²⁸¹ Supra note 265.

is not practical.²⁸² During observation of night clubs I come across that music performer is generating income from their activity without paying tax. In order to collect the tax share of this audiovisual industry withholding scheme has to be adopted. And also the interview conducted with the tax professionals shows the fact that tax evasion in the area of stage playing is rampant. In addition, it has been said that the tax authority tried to solve the problem by devising a mechanism of tax withholding but a lot has to be done to curb the problem at the grass root level.²⁸³

6.1.8 Lack of Knowledge of the Tax System

Most tax payers in audiovisual industry do not know the main taxes imposed on the sector. Lack of adequate knowledge of the tax laws has negatively affected the taxpayers. Many musicians do not have Tax Identification Number (TIN) as a result they are obliged to pay high tax than what really expected of them for the mere absence of TIN.²⁸⁴ In Ethiopian tax system, a TIN is defined as “a unique code consisting of a ten-digit numeric numbers which is given to all taxpayers in a country level and it represents an individual (natural) or a non-individual person registered to pay tax”.²⁸⁵

6.1.9 Enforcement Problem

Even if the income tax proclamation under article 31 imposes a 5% tax on royalty income received by the owner, until the time of the completion of this paper, tax on royalty income provided in the proclamation is not enforced yet. The focus group discussion with tax authority officials indicates that the income tax provision imposing tax on royalty income is suspended for unknown reason. Even most of those officials do not know the existence of such kind of tax on intellectual works. In addition, the interview conducted with the manager of the Ethiopian Audiovisual Producers Association shows that with the absence of royalty system in the country

²⁸² Ibid.

²⁸³ Supra note 276.

²⁸⁴ Supra note 265.

²⁸⁵ Supra note 49, p. 159.

that means since no royalty income are collected to the benefit of the owner; tax is not imposed on the sector.²⁸⁶

6.2 Conclusion and Recommendations

6.2.1 Conclusion

In every country anyone who earns an income and engaged in taxable activities is expected to pay tax. Governments impose tax, among others, for the purpose of raising revenue necessary for public expenditure.

The Ethiopian copyright and neighboring rights proclamation confers exclusive ownership right to copyright holders of audiovisual works such as the right to transfer the same to other person. Unlike other property rights, the exclusive right in case of intellectual works only extends to certain duration of time.

In Ethiopia owners or right holders of audiovisual works are expected to pay tax from their income. In addition, indirect taxes such as VAT, TOT, custom duty, excise tax and surtax are imposed on audiovisual industry.

Based on the analysis of the law, literature review, interview conducted and the questionnaire distributed the researcher comes up with the following conclusions with regard to taxation of audiovisual works. To begin with, even though the current income tax proclamation in the country provides a rule of taxation of royalty income from audiovisual works under article 31, there is no income tax collected from the sector. The probable reason for non taxation of royalty income from audiovisual works for several years is the absence of royalty system in the country. It is only after the enactment of the amended copyright and neighboring rights proclamation No. 872/2014 that the collective management society is established which is entitled to collect royalty income. Unless royalty income is collected from the use of audiovisual works, the base of the income tax for such works is absent. Therefore, in accordance with the provisions of the

²⁸⁶ Supra note 249.

copyright and neighboring rights amendment proclamation royalty income should be collected so as to receive tax revenue from the sector competently.

Currently, in Ethiopia audiovisual owners who are organized in the form of business form are treated in similar fashion with other business person and taxed based on schedule 'C'. Therefore, deduction and exemption rules provided under this schedule would be applicable for audiovisual owners. Independent producers of audiovisual works who are not organized in the form of a business firm are expected to pay income tax based on schedule 'D'.

The problem with regard to taxation of royalty income concerning deduction and exemption becomes an issue when the audiovisual industry is undertaken by independent producer. In such circumstance the income tax proclamation does not provide deduction and exemption rules for taxation of royalty income. The Ethiopia income tax proclamation does not provide rules for deductions of expenses for taxation of royalty income from audiovisual works particularly for independent producers. However, since tax should be imposed on the net income there should be rules of deduction for expenses.

In addition, every income earned by independent audiovisual producer is subject to tax. That means there is no exempted income from tax. So that, even a person who earns a negligible amount of income from audiovisual industry, is required to pay tax. Of course, the existence of exemption rules in tax laws for a certain income level is a widely accepted norm. Therefore, the Ethiopian income tax law should incorporate a rule of exemption for a certain income level of audiovisual works particularly for independent producer of audiovisual works.

Next, concerning indirect taxes VAT is one form of indirect tax imposed on audiovisual industry. As a result, an audiovisual owner who performs taxable transaction with annual turnover of greater than or equal to 500, 000Birr on audiovisual works is obliged to collect VAT. VAT is actually not a tax on traders rather the burden of tax ultimately falls on the consumer. Therefore, audiovisual owners who are in film industry is expected to collect VAT from person who are viewing his film.

The second type of indirect taxes imposed on audiovisual works is turnover tax. Similar to other types of taxable transactions, transactions over audiovisual works is subject to the payment of

TOT. Therefore, an audiovisual owner of transactions with an annual turnover of greater than 100, 000Birr and less than 500, 000Birr is expected to pay turnover tax.

The third type of indirect tax an audiovisual owner expected to pay is excise tax. This type of tax is imposed on the materials necessary for the production of audiovisual works. For instance, a film producer and music producer while buying video camera and video decks he is expected to pay excise tax.

The fourth type of indirect tax imposed on audiovisual work is custom duty. Such type of tax is imposed during importation and exportation of audiovisual works.

Finally, audiovisual owner is expected to pay Sur tax on audiovisual works. Such type of tax is imposed on the aggregate of Cost, Insurance, Freight (CIF) value and customs duty, value added tax and excise tax payable on the good at the rate of 10%. Generally, as it is discerned from the indirect tax laws of the country such as excise tax and custom duty as well as the response of the interview and questionnaire, there are high indirect taxes on materials necessary for the production of audiovisual works. An average of 45% indirect tax imposed on materials necessary for production of audiovisual works.

The other type of tax imposed on audiovisual industry is entertainment tax. In Ethiopia amusement tax is imposed on audiovisual works such as film industry that is only in Addis Ababa city administration. Entertainment tax is imposed at a rate of 10%. Audiovisual owner in the other parts of the country is free from payment of entertainment tax. The disparity in payment of entertainment tax within Ethiopia creates economic imbalances between producers of audiovisual works who exists in Addis Ababa and other parts of the country.

Even though tax payers in audiovisual industry claim that there is higher tax imposed on them than other group of taxpayers, consultation of different tax laws of the country and observations of different documents disclose the fact that there is no greater tax burden on audiovisual sector when compared with other group of tax payers. As it is easily discerned from table five one rightly argue that tax payers in audiovisual sector is even treated better than other tax payers such as employment income tax payer.

The findings of the research show that the number of audiovisual works entering in the market is increasing every year. The availability of modern audiovisual production materials made production and distribution easier as a result, the number of new audiovisual products is booming every year. Had it not been for the existence of pirating, the audiovisual industry would have been generating high income so that the government could benefit a large share of revenue through tax collection.

In summary, currently there is no royalty income collected from transaction of audiovisual works as a result, there is no tax collected from such activity. There is no deduction and exemption rule in taxation of royalty income from audiovisual works particularly for independent producers of audiovisual works. The indirect taxes particularly excise tax imposed on audiovisual works in Ethiopia are high so as to discourage the progress of audiovisual industry. Entertainment tax is imposed only on producer of audiovisual works showing their work in Addis Ababa, such kinds of differences could create economic imbalances with other producer of the works showing their products in other parts of the country.

6.2.2 Recommendations

On the basis of the above findings of the research and the conclusions drawn above, the writer forwards the following recommendations:

1. Deductions should be allowed for costs incurred in the production of audiovisual works. In addition in order to encourage starting and small companies engaged in production of audiovisual works exemptions has to be allowed for small incomes. The exemption provided in schedule 'C' could be used as a bench mark.
2. The royalty system which is introduced in the country recently after the enactment of the copyright and neighboring rights amendment proclamation has to be implemented in practice. Owners of copyright and neighboring rights should hasten the establishment of the collective management society so that royalty income would be collected from the use of audiovisual works.

3. In order to benefit in terms of tax revenue from the audiovisual industry the government should enact appropriate policy in audiovisual sector and enact tax laws which accommodate the particular nature of the industry.
4. In an effort to amend the indirect tax laws of the country the legislator should consider the existing taxes on audiovisual production materials. The amount of such tax should be reduced to the interest of the progress of culture and the audiovisual industry as a whole.
5. The Ethiopian Customs and Revenue Authority (ERCA) should undertake a mechanism of fighting tax evasion in audiovisual sector particularly in stage plays in the music industry. In addition, the authority should reconsider the suspended provision of income tax proclamation in taxation of royalty income.
6. The different associations in audiovisual industry that exists in the country should be strong and vibrant so as to conduct continuous training on tax for its members since many of the problems occurred due to lack of knowledge of the tax system.

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Annexes

Annex one

**Questioner to be filled by Audiovisual Producers Association & Its members,
Film producers Association & Its members, Film Makers Association & Its
members, Music Association & Its members & Tax Authority officials.**

Dear sir/madam

My name is Getahun Teshome conducting research for LLM thesis on taxation of audiovisual works in Ethiopia: problems & prospects. I have devised some question related to the theme of my research. I anticipate you are too busy handling other matters. However, your genuine and diligent response is indispensable for the successful completion of my study. Hence I kindly requested to help me in filling this questionnaire.

Thanks in advance.

I. Part one

1. General information

1.1 Name _____

Position _____

Responsibility _____

Work experience _____

2. Questionnaire

1. What are the common types of audiovisual works?

-----::

2. What types of tax audiovisual owner is expected to pay?

-----::

3. Is there deduction of expenses in taxation of audiovisual works? If yes, what type of expenses considered as expenses?

-----::

4. Is there any income exempted from taxation of audiovisual works? If yes, to what extent the income is exempted?

-----::

5. What are the effects of indirect taxes on audiovisual works?

-----::

6. Do you think that the existing tax amount over audiovisual works exaggerated when compared with other tax payers? Yes No

7. How do you assess the tax system in combating problems in taxation of audiovisual works? -----

-----::

8. Are the existing tax laws comprehensive enough to give solution to the problem of taxation of audiovisual works? Yes No

9. What the possible solution would you propose to curb the problem in relation to taxation of audiovisual works? -----

-----::

10. Is there tax imposed on royalty income in accordance with article 31 of the income tax proclamation No. 286/2002? If yes, how many percent tax imposed? -----

-----::

11. Is there entertainment tax? How do you assess it? -----

-----::

12. Any other comment if you have,

-----::

በአዲሱ-ቪዥን ስራዎች ማህበር እና በዓባላቱ፣ ሙዚቃ ፍሬም ማህበር እና በዓባላቱ፣ በፊልም ስራዎች ማህበር እና በአባላቱ እንዲሁም በታክስ ባለሙያዎች የሚሞላ መጠየቅ፤

እኔ ስም ጌታሁን ተሾመ ስምን በ ጅም ዩኒቨርሲቲ የማስተር ተማሪ ነኝ በመጨረሻ የመመረቄያ ጽሑፍ አዲሱ-ቪዥን ስራዎች ታክስ የሚደረጉበት አግባብን በሚመለከት በማጥናት ላይ እገኛለሁ። በርግጠኝነት ብዙ ስራ እንደሚኖረት አወቃለሁ። ይሁን እንጂ የእርሶ በጥምና ይህን መጠይቅ መሙላቱ ለጥናቱ ወሳኝ በመሆኑ እንዲሞሉልኝ በማክበር አጠይቃለሁ።

በቅድሚያ አመሰግናለሁ።

ክፍል አንድ አጠቃላይ ሁኔታ (Optional)

1. ስም _____
 ኃላፊነት _____
 የስራ ልምድ _____

ክፍል ሁለት

1. አዲሱ-ቪዥን ስራዎች የሚባሉት ምን ምን ናቸው? _____

 _____::
2. ምን ዓይነት ታክስ (ዎች) ነው የአዲሱ-ቪዥን ባለቤት/ባለሙያ/ የሚከፈለው? _____

 _____::
3. የአዲሱ-ቪዥን ስራዎች ታክስ በሚደረጉ ሰዓት ወጪዎች ይቀናሳሉ? አዎ, ከሆነ መልሱ ምን ዓይነት ወጪዎች ናቸው እንደ ወጪ የሚያዙት? _____

 _____::
4. ከታክስ ነፃ የሆነ የአዲሱ-ቪዥን ስራዎች ገቢ አለ? አዎ, ከሆነ መልሱ ምን ያህሉ ከታክስ ነፃ ነው? _____

 _____::
5. ቀጥተኛ ያልሆኑ ታክሶች በአዲሱ-ቪዥን ስራዎች ላይ ምን ዓይነት ተፅዕኖ አላቸው? _____

 _____::
6. በአሁኑ ሰዓት በአዲሱ-ቪዥን ስራዎች ላይ የሚጣለው ታክስ ከሌሎች ታክስ ከፋዮች አንፃር ሲተይ የተጋነነ ነው ብለው ያምናሉ? አዎ አይደለም
7. የታክስ ስርዓቱ አዲሱ-ቪዥን ስራዎችን ታክስ በማድረግ ላይ ያለውን ችግር ከመፍታት አኳያ እንዴት ይገመግሙታል? _____

 _____::
8. በአሁኑ ሰዓት ያሉት የታክስ ሕጎች አዲሱ-ቪዥን ስራዎችን ታክስ ከማድረግ አኳያ አዲሱ-ቪዥን ስራዎችን ታክስ በማድረግ ላይ ያለሁን ችግር በበቂ ሁኔታ በመፍታት መፍተሌ ይሰጣሉ ብለው ያምናሉ? አዎ አይደለም
9. አዲሱ-ቪዥን ስራዎችን ታክስ በማድረግ ላይ የሚስተዋለውን ችግር ለመፍታት ምን ዓይነት መፍተሌ ይጠቁማሉ? _____

 _____::
10. በታክስ ዓዋጅ ቁጥር 286/94 አንቀጽ 31 መሰረት ከፈጠራ መብት የሚገኝ ገቢ (Royalty income) ላይ በአሁኑ ሰዓት የሚጣል ታክስ አለ? አዎ፤ ከሆነ መልሱ ስንት ፐርሰንት ታክስ ይጣልበታል? _____

 _____::
11. የመዝናኛ ግብር አለ? አዎ፤ ከሆነ መልሱ እንዴት ይገመግሙታል?
12. ማንኛውም አስተያየት ካለህ _____

 _____::

አመሰግናለሁ፤

Annex Two

Questionnaire to be filled by Distributor of Audiovisual Works

Dear sir/madam

My name is Getahun Teshome conducting research for LLM thesis on “Taxation of audiovisual works in Ethiopia: problems & prospects”. I have devised some question related to the theme of my research. I anticipate you are too busy handling other matters. However, your genuine and diligent response is indispensable for the successful completion of my study. Hence I kindly requested to help me in filling this questionnaire.

Thanks in advance.

I. Part one

1. General information

1.1 Name _____

Position _____

Responsibility _____

Work experience _____

2. Questionnaire

1. What type of tax film and music distributor expected to pay? -----

-----::

2. How do you assess the market transaction of film and music? -----

-----::

3. How many films and music clips are sold in a day? -----

-----::

4. How do you consider the tax system? -----

-----::

በኦዲዮ-ቪዥዮ ስራ አከፋፋዮች የሚሞላ መጠይቅ፤

እኔ ስም ጌታሁን ተሾመ በጅም ዩኒቨርሲቲ የማስተር ተማሪ ስሆን በመጨረሻ የመመረቂያ ጽሑፍ ኦዲዮ-ቪዥዮ ስራዎች ታክስ የሚደረጉበት አግባብን በሚመለከት በማጥናት ላይ እገኛለሁ። በርግጠኝነት ብዙ ስራ እንደሚኖሩት አወቃለሁ። ይሁን እንጂ የእርሶ በጥምር ይህን መጠይቅ መሙላቱ ለጥናቱ ወሳኝ በመሆኑ እንዲሞሉልኝ በማክበር እጠይቃለሁ።

ክፍል አንድ አጠቃላይ ሁኔታ

- 1. ስም -----
 ኃላፊነት -----
 የስራ ልምድ -----

ክፍል ሁለት

- 1. እንደ ፊልም እና እንደ ሙዚቃ ክሊፕ አከፋፋይ ምን ዓይነት ታክስ ነው የሚከፍለው? -----

-----::
- 2. የፊልምና የሙዚቃ ክሊፕ ስራ የገበያ እንቅስቃሴ እንዴት ይገመግሙታል? -----

-----::
- 3. በቀን ምን ያህል ፊልም እና ሙዚቃ ክሊፕ ይሸጣሉ? -----

-----::
- 4. የሚከፍሉት ታክስ የተጋነነ ነው ብለው ያምናሉ? -----

-----::

Annex Three

Questionnaire to be filed by the Cinema Houses

Dear sir/madam

My name is Getahun Teshome conducting research for LLM thesis on taxation of audiovisual works in Ethiopia: problems & prospects. I have devised some question related to the theme of my research. I anticipate you are too busy handling other matters. However, your genuine and diligent response is indispensable for the successful completion of my study. Hence I kindly requested to help me in filling this questionnaire.

Thanks in advance.

I. Part one

1. General information

1.1 Name _____

Position _____

Responsibility _____

Work experience _____

2. Questionnaire

1. Is there any type of tax required from film owners while they are showing their films in the cinema houses? If yes, what type of tax film owners is expected to pay? -----

-----::

2. Do you withhold tax on film owners? If yes, at what amount or percent? -----

-----::

3. How do you assess the progress of film production throughout the years? -----

-----::

በሲኒማ ቤቶች የሚሞላ መጠይቅ፤

እኔ ስም ጌታሁን ተሾመ በጅማ ዩኒቨርሲቲ የማስተር ተማሪ ስሆን በመጨረሻ የመመረቂያ ጽሑፍ አዲዮ-ቪዥዎል ስራዎች ታክስ የሚደረጉበት አግባብን በሚመለከት በማጥናት ላይ እገኛለሁ። በርግጠኝነት ብዙ ስራ እንደሚኖሩት አወቃለሁ። ይሁን እንጂ የእርሶ በጥሞና ይህን መጠይቅ መሙላቱ ለጥናቱ ወሳኝ በመሆኑ እንዲሞሉልኝ በማክበር እጠይቃለሁ።

ክፍል አንድ አጠቃላይ ሁኔታ

- 1. ስም -----
 ታላላቅነት -----
 የስራ ልምድ -----

ክፍል ሁለት

- 1. አንድ የፊልም ባለቤት ፊልም ለማሳየት በሲኒማ ቤቶች ሲመጣ እንዲከፍል የምትጠይቁት ታክስ አለ? አዎ፣ ከሆነ መልሱ ምን ዓይነት ታክስ ነው? -----

-----::
- 2. ከፊልም ባለቤት ላይ ታክስ ዊዝሆልድ ታደርጋላችኋል? አዎ፣ ከሆነ በምን ያህል መጠን? -----

-----::
- 3. በየአመቱ ካለዉ ስታቲክስ/መረጃ አንጻር ሲታይ የፊልም ምርት እድገት እንዴት የገመገሙታል? -----

-----::

Annex four
Interview questions for Audiovisual Producers Association, Film producers Association, Film Makers Association, Music Association & Tax Authority officials

1. What are the common types of audiovisual works?
2. What types of tax audiovisual owner is expected to pay?
3. Is there deduction of expenses in taxation of audiovisual works?
4. Is there any income exempted from taxation of audiovisual works?
5. What are the effects of indirect taxes on audiovisual works?
6. Do you think that the existing tax amount over audiovisual works exaggerated when compared with other tax payers?
7. How do you assess the tax system in combating problems in taxation of audiovisual works?
8. Are the existing tax laws comprehensive enough to give solution to the problem of taxation of audiovisual works?
9. What the possible solution would you propose to curb the problem in relation to taxation of audiovisual works?
10. Is there tax imposed on royalty income in accordance with article 31 of the income tax proclamation No. 286/2002?
11. How do you assess the entertainment tax?

በአዲሱ-ቪዥን ስራዎች ማህበር ፣ ሙዚቃ ፣ ፊልም ማህበር ፣ በፊልም ስራዎች ማህበር እንዲሁም በታክስ ባለሙያዎች የሚቀርብ የቃል ጢያቄ ፤

1. አዲሱ-ቪዥን ስራዎች የሚባሉት ምን ምን ናቸው?
2. ምን ዓይነት ታክስ (ዎች) ነው የአዲሱ-ቪዥን ባለቤት/ባለሙያ/የሚከፍለው?
3. የአዲሱ-ቪዥን ስራዎች ታክስ በሚደረጉ ሰዓት ወጪዎች ይቀናሳሉ?
4. ከታክስ ነፃ የሆነ የአዲሱ-ቪዥን ስራዎች ገቢ አለ?
5. ቀጥተኛ ያልሆኑ ታክሶች በአዲሱ-ቪዥን ስራዎች ላይ ምን ዓይነት ተፅዕኖ አላቸው?
6. በአሁኑ ሰዓት በአዲሱ-ቪዥን ስራዎች ላይ የሚጣለው ታክስ ከሌሎች ታክስ ከፋዮች አንፃር ሲተይ የተጋነነ ነው ብለው ያምናሉ?
7. የታክስ ስርዓቱ አዲሱ-ቪዥን ስራዎችን ታክስ በማድረግ ላይ ያለውን ችግር ከመፍታት አኳያ እንዴት ይገመግሙታል?
8. በአሁኑ ሰዓት ያሉት የታክስ ሕጎች አዲሱ-ቪዥን ስራዎችን ታክስ ከማድረግ አኳያ አዲሱ-ቪዥን ስራዎችን ታክስ በማድረግ ላይ ያለውን ችግር በበቂ ሁኔታ በመፍታት መፍተሌ ይሰጣሉ ብለው ያምናሉ?
9. አዲሱ-ቪዥን ስራዎችን ታክስ በማድረግ ላይ የሚስተዋለውን ችግር ለመፍታት ምን ዓይነት መፍተሌ ይጠቁማሉ?
10. በታክስ ዓዋጅ ቁጥር 286/94 አንቀጽ 31 መሰረት ከፈጠራ ሙብት የሚገኝ ገቢ (Royalty income) ላይ በአሁኑ ሰዓት የሚጣል ታክስ አለ?
11. የመዘናኛ ታክስን እንዴት ይገመግሙታል?

አመሰግናለሁ፤