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SEIZURE AND ITS EFFECT UNDER THE INCOME TAX PROCLAMATION No 286/2002

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INTRODUCTION

Taxation is a back bone of every state. It used to fund the government expenditures, regulating the economy of the country and to mitigate the difference between the poor and rich. Tax has been defined in different ways by different writers :- Dr H.L. Bhatia defines: - A tax is a compulsory levy and those who are taxed have to pay the sums irrespective of any corresponding return or service of good by the government. Hence tax payer, do not receive definite and direct benefit from the government for paying their tax liabilities.

In Ethiopia it is difficult to ascertain when and how taxation began, However Ethiopian kings such as, king Zera yacob (1934-1468) and king Zadingel introduced and declared taxes. Based on this legislation the people were obliged to pay taxes to soldiers and clergy's, Emperor menlik established the Ministry to collect revenue and these ministry collected taxes until 1931. There for the Ethiopian tax has got statutory bases. After 30 years proclamation N° 173/61 which is considered as modern tax law, remained in force until the current tax law came in to being.

Among the reason to coming the current income tax law is that the former tax law was backward, be not accommodate the currant situation of and could the Federal Democratic Republic of Ethiopia.

In the modern world there are two kinds of tax systems, these are scheduler tax system which divides the income of a persons into different schedules and Global tax system which take all incomes as a one income and apply the same tax rate for all incomes.

Ethiopia follows scheduler tax system and apply different tax rate according to the schedule of the incomes. A good tax system recognizes not only the duty of tax payers but also the right of tax payers, during imposition of taxes therefore the tax collector must apply principles of equality, principle of certainty, principle of economy and principle of convenience to respect the rights of tax payers.

The current income tax law Nº 286/2002 is proclaimed by harmonizing some changes of the globe. This income tax law has give rights to and obligations to tax collector and tax payers among the rights of tax payers is the right to lodge an appeal to the competent authority and to pay the determined amount.

The new income tax law also has vested different power to the tax authority to enforce tax obligations. Among such powers is the power to give a tax assessment, and to seize and sell tax payers properties, who do not comply with their tax liabilities due.

The objective of this pepper is to show how tax enforcement mechanism which is vested by the law to the tax authority possibly violates the basic principle of Constitution and tax payer rights and it also shows non apply of seizure for the last 6 years at Addis Ababa Revenue Agency for of different reasons. So as the writer opinion the study will help to show the problems for the law maker and amend the tax law by harmonizing the supreme law of the land to create good relationship among tax collector and tax payers.

This paper is divided in to three chapters:-

The first chapter deals with definition and back ground of income tax in Ethiopia. Chapter two deals with the rights and duties of tax payers and the tax authority, Such as right to appeal, right to raise administrative penalty for the tax payers, and how the tax authority enforce the tax proclamation and regulation issued to implement the income tax Proclamation.

Chapter three deals how to apply seizure in accordance with the tax law by Addis Ababa city Revenue Agency and NON ratification of the directive to implement seizure and how the tax law violates constitutional rights of tax payers. The research also has conclusions and recommendation at the end.

In doing the research the writer had used different materials such as, Federal Democratic Republic of Ethiopia constitution; Universal Declaration of Human Right document, African Human rights Charter and documents that can give the necessary information for the research.

CHAPTER ONE

Definition and Back Ground of Income Tax in Ethiopia

1.1 Definition of Taxation

Taxation has been defined by many scholars who studied it as a separate subject of matter. Different Scholars come up with different lines of reasoning as to what taxation means and its relationship with the government. H.L Bhatia, defines the term tax as `` a compulsory levy and those who are taxed have to pay the sums irrespective of any corresponding return of services or goods by the government. [1]

Bahtia definition shows that the major Characteristic of a tax is, its obligatory nature. A tax payer may, not necessarily get proportional benefit for its contribution. In other words a tax-payer may not receive a definite and direct quid proquo, meaning some thing given or taken as equivalent to another from the government. Note the word direct here, it is not a price paid by the tax-payer for any definite service or a commodity supplied by the government.
Black's Law dictionary defines the term tax as:-

> ``........... a charge by the government on the income of an individual, corporation..... as well as the value of an estate or gift. A particular Burden laid upon individual or property to support the government, and it is a payment exacted by the legislative authority.``[2]

From the above definition we can understood that tax is essentially laid upon a person who engaged on business activities and gain income form it. Additionally the payment of tax concerns not only natural persons but also legal persons or corporations, which carry business activities.

However not all payments made to the government are taxes. We seek of income tax, sales tax, Property tax, business tax…however transfer of value to the government are taxes if they don't have the following two character sticks.[3] **Firstly**, if they are not paid directly in the exchange of specific service as user fees. **Second**, if they are not levied particularly to regulate behavior, such levy has to be revenue.

Prof, Boris I.Bittker said taxation is one of the most single sources of revenue for the state and local government. It is levied compulsory on such properties as land, commercial, building and automobile. It is an inherent and indispensable power of sovereign; it is power to coerce individuals to give part of his property or wealth with out his consent.[4] The reason for doing by the state or local government is that if the state has no resource, it can not carry out its mission. `` Taxes are to the government taken as food``[5] the government has to use some of money for its operations of public purposes. For which it leaves and to keep it self, through involuntary contributions administered and enforced by the subject taxation.[6]

Therefore it can be understood as mechanism that enables the government to determine the amount to be generated, the manner in which it is regulated, how to implement the imposed tax. As we see above in all definitions the main objective of taxation is to support the government revenue as the main source of finance, in order to bring the social and economic development of the country.

Before summarizing the general definition of taxation, I would like to see how the concept of income tax defined under Black's law dictionary and under the income tax proclamation of Ethiopia First we see the definition of income:-

> Black's law dictionary defines the term ``income`` as the following:-``………. The money or other form of payment that one receives, usu, periodically, from

employment, business, investments, royalties and
the like``.[7]

On the other hand the term `` Income`` has also defined under the income tax law of Ethiopia as the Following:-

> ``…….every sort of economic benefit including non recurring gains in cash or in kind, from what ever source derived and in what ever form paid credited or received``.[8]

As we see from the above two definitions, the term ``Income`` has defined in a similar way. From both definitions income means any economic benefit in the form of cash or in kind from business, or investment activities or from other source.

To see the definition of ``Income tax`` we should have to see the term `` tax`` definition,

Black's law dictionary define tax as the following.

> ``………………A monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the form embraces all governmental imposition on the person property privileges, occupation, and enjoyment of the people……..``[9]

These definition of tax suggest that, tax is imposed by the government to yield public revenue upon a persons who carries business activities and gain income from it .Similarly to the above definition the Ethiopian tax law gives power to the tax authority to impose tax on the gain of persons like emoluments and profits. The income of natural person or legal person may be from any source, so according to the income tax law, the person who gain income are under the obligation to pay tax and support the government revenue.

1.2 Back Ground of Income Tax in Ethiopia

In history, people were obliged to pay a tax on different bases. For instance, in ancient Roma and Greece consumption tax was an obligation. This event proves that how peoples obliged to pay tax in different states and it is an inherent obligation. In every country of the world the governments levies taxes form individuals for the purpose of satisfaction of various expenditures.

In the history of Ethiopia it is not exactly known when taxation has begun. It is difficult to get documents which tells when and how tax payment started. When we see a material prepared by the ministry of finance entitled ``ABC`` of taxes in Ethiopia. It states that there has been no document or material as to when exactly taxation was introduced and what tax system or kinds of tax existed. However, some Ethiopian kings such as, King Zera Yacob`s (1434-1468) and king Zadangel introduced and declared.[11]. Based on this legislation the people obliged to be soldiers and land owners to pay taxes. Additionally taxation in Ethiopia is believed to have been introduced in 15th C. This legislation was served for several centuries and it was repealed by the modern tax system in the mid 20th century.[12] During Emperor Menelike established different ministries in the year 1900 E.C to carry out government functions, one of this ministry was Ministry of Finance, that had an obligation to collect government revenue.[13]

The task of government gradually increased its commitment to modernization and economic growth grew over time. From this time during the Haile Selasie regiem the 1st written constitution was declared in 1931. Because of this, in Ethiopian tax history the tax proclamation has got statuary bases and the first tax proclamation was proclaimed in 1942 Proclamation No. 8/1942, was a proclamation to provide for taxation on land.[14]

The next proclamation No. 107/1942 was established which was cited as A proclamation to impose tax on persons and business dactivities.[15] In 1961 the Income Tax Proclamation No. 173/1961 was proclaimed, this proclamation served until 2002 for not less than 40 years, with several amendments. The income tax proclamation No.173/1961 (as amended) repelled by the Income Tax Proclamation No. 286/2002.

As we see the historical back grounds of taxation in Ethiopia, reflects that, the concept of taxation passes through long and difficult experiences and it is still in a constant development. Hence it is a part of the society and the advancement of governmental polices in order to achieve a better level of civilization.

1.3 Tax System

A tax is a liability that is imposed on the defined tax payers. Defining a tax payer is identifying who is obliged to pay a specific type of tax. It is the tax law that define tax payers. A certain tax law may define the tax payers based upon different grounds. A good tax system also recognize the basic right of tax payers.[16] So the certain country tax system must respect and implement the main Rights of the tax payers. But as we know many of tax laws vested discretional administrative power for the tax authority. This power must be regulated by the tax system.

A system in which tax is computed Basically, there are two types of income tax system in the world.[17] these are:-

- Scheduler tax system
- Global tax system

1.3.1 Global tax system

Global tax system deals with General idea of income tax and single rate structure.[18] In a country that follows the global tax system, all the incomes the particular tax payer gains from different activities would be taken in the aggregate. For instance a person who engage in different commercial activities and gain monthly salary, all incomes of the person in a particular year would be aggregate and asked by the tax collector to pay the tax in accordance with existing tax rate of that country.

Since the global tax system apply the same tax rate for different incomes, it is also called proportional system. The arguments for and against proportional taxation, some arguments summarized as follows :-

Proportional tax systems are simple and uniform. Tax rates are the same for the rich as well as for the poor. Since the tax rate is uniform for all tax payers, taxation is not very much opposed by them. Tax payers do not fell the pinch of paying proportional taxes.[19] Proportina taxation satisfies the can on of certainty. As the tax rates are the same for all the tax payers, the amount of proportional taxes can be estimated and calculated easily by the government. Therefore, proportional taxation also satisfies the can on of simplicity and has been regarded as better than progressive taxation.[20] Some of arguments in favor of proportional taxation are the above.

On the other hand, the supporters of progressive taxation and the critics of proportional taxation argue that :- proportional tax system, according to some critics, is not just and equitable. According to them proportional taxation would not lead to equitable and just distribution of the burden of taxation, sense the tax burden falls more heavily on small incomes, than on high incomes. Hence the sacrifice involved in paying of a tax, proportion to the income, is greater for the poor than for the rich as the marginal utility is greater for the poor than for the rich. Justice requires that the sacrifice made by each tax- payer in paying a tax should be equal.

Therefore, the rich should be taxed at higher rate than the poor.[21]A system of proportional taxation means, that the tax rates for the rich and the poor are the same. Hence the state can not obtain from the richer section of the society as much as they can give. Therefore, in modern times, with the increasing financial needs of the government, such system may fail to provide adequate resources to the government.[22]

For this and other related reasons Global or proportional tax system is not considered by some as good tax system. Whoever the system is still followed, by U.S.A, Australia, France etc.

Where we take France as example. Before the tax reform of 1959 in France consisted of two separate taxes, the proportional tax (a flat rate, essentially, scheduler tax) and the progressive sure tax (a global tax on income from all sources, foreign or domestic). The 1959 reform abolished the two tax system and adopted a single individual income tax, applied at progressive rates on a global or unitary basis to income from all sources foreign and demestic.[23]

1.3.2 Scheduler Tax System

Scheduler tax system gives emphasis on to particular classes, having rules for each class of tax payers.[24] In this tax system the income of a particular person engaged in different activities could be divided into different schedules. The classifications of schedules are based on the source of the income. In this case the person would have to pay the taxes separately for each schedule by existing rate. For instance, the income of the person gain from business activity could be taxed in accordance with business income schedule. The income that he drives from employment would on the other hand be taxed in accordance with employment schedule. Therefore incomes gained by the same person are treated separately. Since this system apply schedule, it is called a scheduler tax system. The system also follows progressive tax system. There are opposing argument infavour of and against the progressive taxation. Firstly we shall see some argument infavour of progressive taxation: -

Progressive taxation is just and equitable on the ground that it secures equity in sacrifice. In other words, under the system of progressive taxation inequalities would be reduced, because a higher proportion of the income and wealth of the rich would be taken away by way of taxes than that of poor. Hence, a sharply progressive tax system tends to reduce inequalities:- in the distribution of income and wealth and, the sharper the progression, the stronger is the tendency to reduce in equalities, obviously, progressive taxation is desirable in order to bring about a more equitable distribution of wealth as it is based on the principle of ability to pay.[25] The other argument infaviour of progressive taxation, that it reduces inequalities, progressive taxation reduces inequalities of income and wealth by taking away the excessive capacity to pay. In a progressive tax system, the rich are subjected to higher rates of taxation and poor are subjected to lower rates of taxation or exempted from tax obligations Professor kaldor has also emphasized the role of progressive taxation in reducing the inequalities of income.[26]

On the other hand there is also objections for progressive taxation some of this objections are:- Progressive taxation is arbitrary. It is not bound by rules. In other words, there is no guiding principle according to which tax rates are determined. The government in order to increase its revenue, arbitrarily increases the rates of taxes and vice versa.[27] The other arguments against progressive taxation is that it encourages tax evasion. As the rich are subjected to higher rates of taxation, assesses submit false returns of their income and wealth. Hence, in the case of progressive taxation, the motives for evasion would be stronger the means of prevention less effective than in the case of proportional tax.[28]
Because of the above arguments progressive tax system taken as a bad system. Britannia, Australia, Pakistan are the preeminent countries which adopted this scheduler tax system.

1.4 Which tax system is followed in Ethiopia?

The Ethiopia income tax law has adopted the scheduler approach. The income tax classifies income into **four** schedules based on the nature of the income.[29] Article 8 of the Income Tax Proclamation has enumerated these four schedules as follow:-

1.4.1 Schedule `A` income from employment.[30]

Employment income shall include any form of payment or gain, either in the form of cash or in kind, received from current, former or prospecting employment by an individual. In this regard employers have an obligation to withhold the tax from each payment according to the schedule tax rate.

1.4.2 Schedule `B` income from rental of building. [31]

This is the tax imposed on the income from rental, of buildings. If the ax payer leased furnished quarters the amount received attributable to the lease of furniture and equipment shall be included in income. The tax payable on rented houses would be charged in different rate, in relation to bodies tax's are imposed on a flat rate basis. But with regards to persons, the tax rates are provided in a progressive level.

1.4.3 Schedule `C` income from Business with exeeption.[32]

Business income from an industrial or commercial activities earned by a person or a body arising from such activities will be taxed under schedule C.

1.4.4 Schedule `D` other incomes .[33]

Schedule `D` of the Ethiopian income tax includes a number of incomes that are not categorized under schedule `A` `B` or `C` or the previous schedules. All incomes under schedule `D` are taxed on flat tax rate which varies in accordance with the source of income. The major income types that are included under schedule `D` are:-

1.4.4.1 Royalities.[34]

Royalties is a payment of any kind received as a consideration for the use of, or the right to use, any copy right of literary or, artistic or scientific work including cinematography films, or tapes radio or television or broad casting. The income shall be liable to tax at a flat rate.

1.4.4.2 Tax on income from games of chance.[35]

Every person gain income from winning of games of chance means from tom bola, lotteries are subjected to take flat tax rate.

1.4.4.3. Income paid for services rendered out side of Ethiopia.[36]

All payments made in consideration of any kind of technical services rendered out side of Ethiopia to resident persons are subject to a flat tax rate.

1.4.4.4. Income from dividends.[37]

This income is income received in the form of dividend from a share company or withdrawals of profits from a private limited company. Dividend income are also subject to flat tax rate.

1.4.4.5. Income from causal rental of property.[38]

This income is derived from causal rental of property, including machinery and movable assets. This income also subject to flat tax rate.

1.4.4.6. Interest income.[39]

Every person deriving income from interest on deposit shall pay flat tax rate.

1.4.4.7 . Specified non business capital gains.[40]

Every person deriveing income from transfer of building held for business, factory, office, and shares of companies, subject to tax in two different rates-Buildings held for business, factory, and office at the rate of 15% and share of companies at the rate of 30%.

The above enumerated under schedule `D` each incomes are taxable by flat rate, the payment of tax also performed by with holding system the payer has an obligation to reduced the tax at the time of payment.

As we see from the above **four** schedules the Ethiopia tax law has categorized different incomes based on nature of the business. Because of this we can categorize Ethiopia in scheduler tax system.

1.5 The Principle of Income Tax

Taxation has certain Principles. These principles are the rules to be followed when taxes is assessed. The basic economic principles on which a good tax system have been understand for many years. As quoted by ALKA Gupta The 18th century philosopher Adam Smith in his book called `` the wealth of nations `` outlined the following **four** principles of sound tax system design.

1.5.1 Principle of Equality

This principle of taxation deals with the issue of Equality among tax payers, even if there may be other difference like geographical seating ethnic difference, color and religion. Every tax payer pays the tax towards the support of the government in proportion to their abilities. This principle tries to address the objectives of economic justice.

The tax payers are obliged to pay tax due, for all perform their activities, under the equal protection of the state. But according to the Justice, payment of tax shall be on the bases of the income gained. Even if the rich man who gain more income and who gain less get equal protection from the state, the person who got more income should pay the higher proportion of its income and the person who gets less income should be obliged to pay in proportion of his income.[41]

1.5.2 Principles of Certainty

The principle of certainty is aimed at protecting the tax payers from unnecessary harassment by the tax officials, because in every good tax system, Tax payers should not be harassed by tax officials.

There is a number of ways that would help to achieve the certainty of taxes. In many of countries the tax laws dictate and stipulate provisions how to govern the relation between the tax payer and the authority.

More over the tax law has to make it clear as to who is obliged to pay the particular tax, by indicating the mode of payment, the quantity to be paid and the time of payment by clearly and known. If these important points are clearly identified, tax payers wouldn't be subjected to the discretion of tax officials. If the right and duties of tax payers are to be determined by the discretion of tax officials it would create a room for corruption. The corrupt practices of tax officials would make tax payers loose their trust in the tax system. Therefore, tax laws should reflect certainty.[42]

1.5.3 Principle of Convenience

The principle of convenience is another principle of taxation. According to this principle, the mode and timing of tax payment should be, as far as possible, convenient to the tax payers. The time of payment highly related with the opportunity of the tax payer to get money from their client and to pay tax for tax authority before it is spent for other purposes. In addition the tax notice and other technological ways of assessing shall be written in simple language, by considering the understanding of the taxpayer. Hence the above principles should be designed in a way that would be convenient to the tax payer.[43]

1.5.4. <u>The principle of Economy</u>

The principle of economy deals with relation between the cost of collection of taxes and the revenue generated from the tax. Every tax has a cost of collections. Some of these costs are like the salaries of the tax office personnel and the cost of maintaining the office. The principle of economy dictates that the cost of collection so taxes should take in to consideration and should not cause additional administrative expense.

So far the effective and procure economic and social development, the tax Authority shall apply the above **four** principles of taxation. To apply this principles the tax officials has to obey for the tax laws and expected to avoid a complex tax administration.

Chapter Two

Collection of Income Tax

Any legislation gives a power to appropriate organ to implement or enforce the law. Income tax proclamation No. 286/2002 gives power to collect and implement the proclamation and the regulation issued in accordance with the proclamation.[1]

The collection of income tax, starts with the formal assessment of the tax authority. As we see above the tax authority has vested powers in order to implement and maintain the proper tax administration we will see in detail about the power of tax authority as the follows:-

2.1.The power of tax Authority

Before looking the power of tax authority let see the meaning of power:-

Power means ``Legal authorization``[2] when used in sense, the word is related with right. From the definition, we can understand that power and right are highly related. Because if you have power you also have a right to that power, then you can apply your power, you can claim, you can say, you can punish, etc. Based on a given power in which vested by the legislation or any appropriate material.

The tax Authority under the income tax proclamation is defined as the following,

> Tax Authority`` shall mean the federal inland revenue head office or any of its branch offices established in any part of Ethiopia and the tax authorities of the regional states.[3]

The definition indicate constitutional right of states in which vested power to collect taxes.[4] The federal government in which vested power to collect tax.[5] and the Addis Ababa City Government have the power to collect taxes.[6]

So as we see the definition of tax authority it includes federal in land revenue, regional state, Addis Ababa and Diredawa city.

From this, the tax Authority shall have the following powers:

To implement and enforce the tax proclamation and regulation issued to implement the income tax proclamation.[7] To investigate any statements, records and books of account submitted by tax payers. By sending duly accredited inspectors to the place of business or practice of the tax payer to check some or any vouchers, stocks of other material items of the tax payer.[8] Enter into agreement with other government for the avoidance of double taxation on activities or transactions liable to tax in the territories of both parties.[9] Asses the tax by estimation, If no records and books are kept where the books are rejected the reason, the record and books of accounts are unacceptable, with in the time prescribed by the proclamation.[10] To conclude an agreements in advance with persons carrying on entrepreneurial activities for the implementation of transfer pricing between persons carrying on businesses.[11] Require a withholding agent to submit the records to be maintained under sub-Article (1) of Art. 56 of Proclamation No. 286/2002.[12] By notice in writing revoke an approval granted a company, if the body fails to comply with any of the conditions attached to the approval promised to fulfill,[13] Impose penalties, If tax payers do not declare the truth income he/she gained,[14] the power to impose penalty by the tax authority is supported by said `` Effectiveness of the collections is largely empowered when adequate penalties are proviyed.[15] From this we can under stood tax payers would perform their due on the time to escape from the penalties.

Because of this the income tax proclamation provided two kinds of penalties, these are:- Administrative penalties and criminal penalties. First we see Administrative penalties:-

Administrative Penalties are principally imposed for failure to file a tax return and failure of an individual or corporation to pay estimated income tax within the time prescribed by the law. Administrative penalty imposed for tax delinquency is a civil obligation, it is remedial and coercive in its nature and it is different from penalty for a crime. Because it only impose a monetary sanction.

On the other hand when we see a criminal offence under the income tax proclamation certain acts constitute a criminal offence and hence subject to a criminal liability. Those income tax proclamation No. 286/2002 has laid down a number of acts which constitute a criminal offence. On of the serious offenses is income tax evasion.[16] Since the major challenges of any tax system is tax evasion, in almost all countries income tax evasion is a serious crime punishable by fine or imprisonment or both. Tax payers must get the message that the tax evasion would be punished.[17]

Under the income tax proclamation No. 286/2002 the authority shall form time to time publish by notice in daily Gazzetas a list of persons who have been convicted offenses in violation of the Proclamation.[18] This is accessory penalty for convicted persons, the purpose of publication of names of persons convicted offences is meant to deter tax offences. Other power of tax authority is the following:-

- Seize the property of tax payer to collect tax when the tax payer fails his obligation.[19]

From the above assertion we can say, that the tax authority has a tremendous power to enforce the income tax proclamation. So the tax officials shall have great responsibility to implement the laws by considering the social and economic situation of the tax payers.

2.2 The tax payer right and duty

Rights and duties are two important and indispensable elements in a good tax system like in the activities of ones life. So, it is possible to say a commitment that give a right and take a duty between the tax payer and the tax authority.

Now let see first, the rights of tax payers enumerated under the Ethiopian income tax proclamation these are:-

The right to receive income tax assessment notice or other notice which is issued by the tax Authority.[20] by including, such as, gross income and deductions, taxable income, rates applied on the tax, or percentage, tax expected to pay any administrative penalty, TIN, the name of tax payer, address and a brief explanation how to assess the tax and statement of the tax payer's rights.[21] The right to receive to fund.[22] The right to reduce or raise administrative penalties which imposed for tax due.[23] The Right to have information kept confidential by the tax authority and all persons who are or its agents or employees.[24] The right to get an interest if he/she has not received the refund with in the time prescribed.[25] The right to submit application for reconsideration to review committee within ten days from the notice served.[26] The right to lodge an appeal with in thirty (30) days following the day of receipt of the assessment notice or from the data of decision of the review committee.[27] The right to appeal on the decision of the appellate commission, if it has error of law to the competent court.[28] The Right to be served notice before seizure of property.[29]

The law has also imposed a duty or an obligation on the tax payers. Before looking the duty of the tax payers let see the meaning of duty :- Duty means :- `` A complex of Rights and standards of Care imposed by a legal relationship.[30]

The definition points us the source of duty is relationship. Therefore, if there is a legal relation there is duty. Because of this, the income tax proclamation is a law that create the legal relationship between the tax payer and the tax Authority.

The income tax proclamation also imposed duty on the tax payers these are:-

- To Hold Tax payer identification number. (TIN)[31] This is a system which is incorporated by the new income tax proclamation the tax payer also forbidden from obtaining more than one TIN, [32]. To declare income and pay with in the time prescribed by the law. This declaration performed by two ways. This are the tax payer himself required to declare and with holding system.

The income required to declare by the tax payer himself is category `A` with in four months from the end of the tax payers tax year.[33] Category `B` tax payers with in two months from the tax payers tax year.[34] Category `C` these payers within one moth from tax payer tax year. [35] The tax payer who has schedule `D` shall submit their declaration which is prepared by tax authority within two months from the end of Ethiopian fiscal year. [36]

On the other hand when we see withholding tax it is not the tax payer him self that will be required to declare, but the payer will hold it at the source. The withholding system conducted by employer from every payment to an employee, unless the payment is expressly made tax exempted by the proclamateion.[37] In addition with holding of income tax on payments conducted by organizations having legal personality, government agencies, private non profit institutions, and non-governmental organizations has a duty to withhold taxes and declare to tax Authority.[38]

- To keep books and records that is except for category ``C`` tax payers.[39] These tax payers obliged to keep books and records shall keep information such as a record of a business assets and liabilities, a record of all purchase and sales of goods and services, a record of trading stock on hand at the end of the accounting period, and any other document related to the business activity showing.[40]

- To submit a Copy of memorandum of association and to notify the tax Authority of any subsequent change there in.[41]
- To notify any change of business address, cessation within thirty days.[42]

These above mentioned are not all the rights and duties of tax payers rather the major one.

2.3 Enforcement Mechanism

Before we discuss in detail the enforcement mechanism let see the term definition of enforcement.

Blacks law dictionary defines the term Enforcement as:-

> `` Enforcement is the act or process of compelling compliance with a law, mandates, command, decree, or agreement.[43]

The definition suggest that the enforcement emanated from the law and it applies to discharge ones obligation who have a duty to perform by the law and it applies to discharge ones obligation who have a duty to perform by the law or by agreement.

The Ethiopian Income tax proclamation also provides an obligation on every person having income defined under the Proclamation to pay income tax.[44]

This due or obligation is expected to pay before regular assessment, by way of advance payment and deduction of tax at a source. After completion of regular assessment, if any tax, interest, penalty such due is found payable by the tax payer, the tax authority is required to serve upon the assess notice of demand in the subscribed form by specifying the sum so payable with in subscribed time by the law. The tax payer also should pay the amount as demanded under the tax notice of demand in due time in order to escape, penalties, prosecution, and recovery proceeding.

It is of course true that all tax payers do not comply with the rules and tie provided by the law for tax payment and, this tax necessitates the application of enforcement mechanism.

The income tax proclamation vested power to the tax authority to enforce the un paid tax. [45] Tax collection enforcement is enforcement of tax obligation. This mechanism takes place after the following tax payers right completed.

As we see on the previous sub topic the tax payers have the right of appeal when they disagree with the content of the assessment. This appeal is hierarchically starting from the review committee, then the appeal is lodged to the tax appeal Commission and finally to a court of law.

This institution has different authorization to see the appeals, we see this in detail as the follows:-

2.3.1 Appeal to Review committee

The first and simplest way to those tax payers who are aggrieved by the assessment is apple to review committee.[46] There is not formality requirement to lodge appeal to review committee, These review committee are given the power to examine and decide on all applications submitted by tax payers for compromise of penalty, interest, and waiver of tax liability. [47]

But the head of the authority must approve the decision of these committees, if the head disagree with the decision of the committee, the head can remand the case to the committee with his observations. [48] The only requirement of the law is to submit the application to the review committee with in ten days after receiving the assessment notification from the authority.[49]

2.3.2 Appeal to the Appeal Commission

If the tax payer do not submit his case to the review committee or not satisfied with the decision of review committee, he has the right to appeal to the Tax Appeal Commission with in 30-days.[50] The Appeal Commissions are established at federal, regional, and Addis Ababa City level. To submit appeal to the Appeal Commission, the tax payer is required to make 50% payment in advance of the disputed tax amount for the tax authority. [51] This requirement is raised as one of the problems by the writer, since it denies constitutional ``right of access to justice``.[52]

Tax payers are allowed to lodge appeal only after depositing 50% of the disputed amount to the tax authority, then he can submit the appeal to the Appeal Commission. If he doesn’t pay with in that time, he will be give 5 additional work days. After that if he don’t pay the amount in advance the appeal will be rejected.[53]

If the tax payer pay 50% of the disputed amount and submit his appeal to the Appeal Commission, the commission, has the power, to confirm, reduce or annul any assessment appealed against on the basis of established factual grounds and the law, and make such further consequential order thereon as may seem just and necessary for the final disposition of the matter.[54] The Appellate Commission also empowered to instruct the tax Authority or that tax payer to submit new facts. [55] To order the tax authority or the tax payer or any other person, to produce supporting evidence relevant to the tax payers allegation.[56]

2.3.3. Appeal to Courts

The final remedy of the tax payer is to make an appeal to ordinary courts. The appeal must be made with in 30 days after the final decision of the Appeal Commission.[57] The ordinary court has power to hear and determine errors on the grounds of law only. The court of appeal after making its decision will return to the tax Appeal Commission. [58] If the a tax payer is not satisfied with the decision of the court, he can submit his appeal with in 30 days after the final decision of the court, But to submit this appeal he should pay the remaining 50%.[59] After the above tax payer rights completed or expired the submission of appeal to the appellate court and who doesn't pay the final assessments is in default.[60] Because of this the property of default taxpayer will be seized for the purpose of the obligation.

2.3.4 Seizure of Notice

The tax authority sends different notices to tax payers or the concerned party for the purpose of enforcement of tax collection. One such notice is the seizure notice. Tax payers who evade or delinquent in paying their tax obligation will receive seizure notice.[61].This notice is the last requirement sent to the tax payer, before starting enforcement. This notice serves as a warning to the tax payer to appear in person and pay the tax by the tax authority, unless he appears or through his agents and pay the tax, his property will be seized and will be sold to satisfy his tax obligation, interest, administration penalties and costs of seizure and sale of the property·[62] The notice should be give full information about the tax obligation.[63] The notice will be serve to the tax payer by different mechanisms.

In case of resident individual the notice may be served by registered letter or by delivering to the tax payer in person or delivering by registered letter and actual delivery to the tax payer being one and the same. If the tax payer is absent, constructive services will be used the officer delivering the notice in such cases can deliver it to any adult member of tax payer family or any employed by him at his residence, or place of business or professional practice, provided that, if no person can be found to accept such notice, then, the same may be effected by affixing the notice to the door or other available part of the residence or place of business. [64]

On the other hand for resident bodies under the proclamation there is only one means of delivery of notice, the law provides as the following.

> ``In the case of resident body, by registered letter to the registered address of the body or by delivery to any director or employee of the body at any of its places of business``. [65]

The above provision shows us notice delivering can also effected by handing the notice to their agents in Ethiopia, Therefore personal service is the fist means, deliver to agents are the second means, where the agents are not available the notice can be affixed to the door or other available part of the residence or place of business of such agent. Finally if the above method of delivering notice are not effective the tax authority may publicize the notice in any news paper. The cost of such publication shall be cover by the tax payer.

2.3.5 Security Right of the authority

To enforce the tax due the authority must exert their effort to prevent the property of the tax payers from any deterioration, and they must also take the necessary measures to collect the tax prior the debtor of the taxpayer. Under the income tax law there is a preferential claim on the tax debtor assets. This claim start when tax becomes due and payable.

When the tax payer as not discharge his obligation, the tax authority may notify the person, the authorities intent to apply to the Registering Authority as to any recorded a security interest on any assets owned by the tax payer.[66] If the tax payer fails to pay the tax with in 30 days after notice served, the authority may register the tax payer property as a security of the tax liability to the extent of the tax debt. [67] The Registering Authority shall register the notice of security with out fee, and this registration shall subject to any prior mortgage over or charge operate while it subsists in all respects as a legal mortgage over or charge on the land or building to secure the amount due.[68] Registering tax defaulting persons property is very important to enforce the obligation and to prevent the property from deterioration.

2.3.6 Seizure of Property to Enforce Tax Due

The Tax Proclamation empowers the Authority to seize of goods belonging to the tax payer who fails to pay the assessed tax, whoever seizure is conditional or receiving tax on assessment notification from the tax authority and failure to make payment or making appeal to the appeal committee or Tax Appeal Commission.

If payment of the tax is not made by the tax payer with in the time subscribed by the law seizure would be apply and the tax payer would be considered to have defaulted by the tax law.

> ``……… If any person liable to pay any tax imposed by
> this Proclamation is in default under article 73/3/
> it hall be law full for the tax authority to collect such and
> such further amount as shall be sufficient to cover the
> expenses of seizure by seizing any property belonging to
> such person……[69]

Such seizure may be made on the accrued salary or ways of any employee, including a government employee, by serving a notice server on the officer who has the duty of paying the salary or wages.

This power of seizure is subject to a notice requirement. The law obliges the authority to serve to seize the gods. The notice must be delivered in not less than 30 days before seizure of the goods. [70]

But there is one exception to the obligation to serve notice this is when the authority makes a finding that the collection of tax is in jeopardy.

``If the tax authority makes a finding that the collection of the tax is in jeopardy, a demand for immediate payment of such tax may be made by the tax authority and, on failure or refusal to pay the tax, collection there of by seizure shall be law full with out regard to the 30 days period provided in sub-Article (1) and the days provided in sub-article (4).[71]

Although there is no clear definition in the legislation regarding `` Jeopardy`` article 81 of the tax proclamation seems to imply that this is when the authority has reasonable grounds to believe that the collection of tax is in Jeopardy and where a state of urgency exists.

In such situations the tax authority may make immediate collection by seize and sale of the tax payer property or by serving notice to third parties who possess such property. In addition the authority may issue administrative order to the bank with a statement of justification for its order that the bank block the accounts of the person liable for the tax. The order may also demand that the bank provide information relating to the accounts, in such cases authorization from the court with in 10 days is a requirement for the action that it took. [72]

The property of seizure differs according to the nature of seizing property at a particular time by the Proclamation and Directives, there are properties which are exempt from seizure. Movable properties which are not exempt form seizure in the hands of the tax payer shall be physically seized by the authority from the hands of the tax payer.[73] If the property seized is subject to natural and speedy decay or if the cost of keeping it in custody unlikely to exceed its value, the property may be sold immediately.[74] Regarding agricultural produce, since the produce can not be seized physicality, the authority will be seize by a Affixing seizure warrant on the land on which the crop is growing. [75] The copy of the notice also affixed on any part of the tax payer residence. After this the produce is deemed to have passed into the possession of the collector. Because of this any person cannot remove the produce with out the permission of the tax collector or the Authority. The tax payer may get permission to cut, gather and store the produce, but if he has not willingness the process will be made by third parties who are hired by the tax authority, the cost of the remuneration for hired persons will be added from the process of sale.[76]

In case of immovable properties since physical seizure of the property impossible, seizure will be made by giving order to register the tax payers property to government authorities which register the tax payer property,[77] the Registration serve to protect from transfer or sale to third party.[77] The copy of the order sent for the purpose of registration may be affixed on the property it self and in the compound of the tax authority, the tax payer also receive one copy of the notice. The authority may also seize tax payer's property form other persons who has no connection with tax obligation. The authority may require third parties to hand the tax payer property or effect payment the tax payer due.

If a person refuses or fails to comply with a demand by the authority to surrender the property subject to seizure, the person is liable to an amount equal to the value of the property that was not surrendered. But this liability shall not exceed the tax, cost and interest that served as the basis for the seizure. Where a person's failure or refusal to surrender property on which seizure is made is without reasonable cause, such person shall be personally liable to the tax authority for additional charge equal to 50% of the value of the property.[78]

Where the tax payer own special properties such as shares found in a company or in the capital of corporation, seizure will be made by a written order to the company or the corporation to not transfer for third parties the share or gave any dividend to the tax payer. [79] The copy of the order sent the company may deliver to the tax payer. In addition the tax authority has the right to receive tax payer's property or share from these persons.

If the tax payer has no property to be seized, such as movable, immovable, or shares, or seizure of theses properties could not cover the tax due, the authority would resort to seize the salary of the tax payer, this will be done by deliver an order to the tax payers employer to deduct and pay from the tax payer salary either on one payment by monthly installments. If there is no prior order of account to withhold the tax payers salary, the employer obliged to deduct the stated amount and remit it to the tax authority. However where there is prior order from the court, the employer must return the order given by the authority together with the reason which makes seizure of salary impossible.[80]

The tax authority also has the right to seize properties found in safe box of the tax payer, during this time if the tax payer not willing to give keys of the safe box the representative of the bank with the authority will count and register these property.[81] The safe box will be kept by the bank till further order sent from the tax authority.

On the other hand when the tax authority seizes organizations established to giving services such as laundry or garage, it will return the property of the tax payer customers, if they themselves are not liable for the tax due, they will be pay the remaining price that they owe the tax payer for the tax Authority. [82]

The tax authority has also prohibited from seize certain properties, the proclamation and seizure directive make certain properties free from attachment by the tax authority, this rule aims to protect tax payers necessary needs for his life and professional activity. The tax Proclamation provides that.

> `` Such amount of employee remuneration or other periodic income payable to an individual as doesn't exceed the exempt amount according to schedule A.........``[83]

According to the above provision the amount of the employees remuneration or other periodic income payable to an individual doesn't exceed birr 150, is exempt from seizure by the tax authority. In addition the Proclamation provides other exemption as the follows.

`` All other income and property that are not liable to attachment or lien under Ethiopian law``.[84]

In this respect for instance we can recall Civil Procedure code of Ethiopia.

According to article 404 of the Civil Procedure Code in the process of execution of Judgment, such as bed, tools any kind used by the Judgment debtor in his profession, necessary wearing, coking vessels and moneys use for the judgment adepter and his family for a period of three months, pensions and alimonies are some of non attachable properties. Since the above provision recognizes the Civil Procedure Code, those which are enumerated under the Code are also exempt from seizure.

The seizure directive also exempted the following properties from seizure: - Lawyers, accountants and doctors files and computers which is loaded with private and profession files.[85] If the tax payer is a farmer or engaged in agriculture austerity, the tax authority decides to be enough property for the tax payer activities.[86].The directive also exempted some properties which is exempt by the Civil Procedure code.

According to article 77/7/ of the Tax proclamation the above are not exhaustive; we can also find exempted property from seizure by other law of the country.

After seizure completed, the tax authority may sell the property that is seized. The sale of the property could be either at public auction or in any other manner the authority approves. The sale of property shall be conducted in not less than 10 days after seizure. However for perishable goods the authority can sell after reasonable time having regarded to the natural conditions of the goods.

If the tax payer property doesn't satisfy the entire clime of the Tax Authority, the Authority is empowered to make additional seizures till the amount due, and cost incurred to enforce seizure fully paid.

CHAPTER THREE

Seizure to collect un paid tax

Before we discus in detail the chapter, it is essential to define the term "seizure". Black's law dictionary defines the term seizure as:-"The act of taking possession of property, E.g. For a violation of law or by virtue of an execution of a judgment"[1]

What we can understand from the above definition is that seizure is taking or removal of some thing from the possession of the judgment debtor, for satisfaction of the debt. Different countries tax laws also authorizes their tax Authority to enforce tax due by seizing and selling the tax payers property for the satisfaction of tax obligation.

3.1 Seizure Experience of Other Counties

The writer intends to show experience of different countries unfortunately the writer obtained only the experience of South Africa. This information obtained from the delegation of Ministry of Finance and Economic Development who visited the South Africa Tax Authority in PRITORIA, from Sep.4-8/2003.the main purpose was that to understand how the south Africa Tax Authority enforce and implement tax proclamation. In South Africa, the major tax enforcement methods are:-

- Tax auditing
- Tax court
- Seize the property of tax payer

- cancel the tax debt
- Search goods on the airport

Investigate a crime against tax etc. So the Authority assesses and collected tax and duties properly at the right time and enforce properly all relevant statutory provisions.

For the aspiration of this paper the writer wants to arrange only how the Administration of income tax authority seizes the properties of non-tox payers. The tax Authority of South Africa have the power to seize property of non- tax payer, In order to apply this power the authority follows the following method:

The Authority submit petition in which supported by oath to the court, that seize the property of tax payer due to the failerity of paying and non-declaring of taxes.

The Tax Authority make summons to affix the decision of the court, that the tax payer failed to pay the amount of tax due with in 14days. If the tax payer couldn't discharge his duty within the time given, the Authority will make petition to the court that order for attachment proper to be sold. The decision of the court should be passed to the executive organ and this organ sells the property and pay tax debt for the tax Authority.

On the next topic the writer attempt to show expanse of Ethiopia and it help to know the difference

3.2 Experience of Seizure

When we came to Ethiopia the modern tax laws of the country had started during the regime of Emperor Haile Selase, different tax enforcement mechanisms. One of the enforcement mechanisms was bringing the case to the court to obtain execution order.

This tax enforcement mechanism had served until the current tax Proclamation to proclaimed or till the former tax proclamation no 173/61 was repealed. Since the current tax proclamation No 286/2002 proclaimed, enforcement mechanism which is provided under the Proclamation are not yet been implemented. The directives issued to implement the tax enforcement are till now at a draft level.

3.2.1 The Draft Directive of Tax Seizure

The writer wants to show how tax enforcement is intend to be implemented by the draft Directive issued by Addis Ababa City Government Finance and Economy Development Bureau. The draft is issued by harmonizing the seizure directives issued by the Ministry of Finance and Economic Development .The draft has 36 Articles with are divided in to **four** parts, this Directive enumerated methods of tax enforcement.

The first part of this draft express how tax collection and implementation conducted the power and function of tax Authority and the power of the officer of the tax Authority.[4] The second part of the draft shows how to seize the property of tax payer could be made reason of un paid tax.[5] The third part of the Derivative shows how to sell the seize of property by public auction.[6] The fourth and the last part of the draft contain miscellaneous provision which include applicable law and effective date of the draft,[7] this Draft Directive was issued on April 2006, but until now it is at a drift level.

As we see earlier the tax payers are required to submit their tax declaration and pay it with in the time prescribed by the tax proclamation. If the tax payer does not comply with the Proclamation, they will be punished by sevier penalties i.e. Administrative penalties, criminal penalties, seize their property and sell for the satisfaction of tax obligation.

However for the last 6 years, at Addis Ababa level seize and sell of tax payer property couldn't be implemented, because of lack of directives.[8] in the tax Proclamation.

Since the power to issue directives given to the Ministry of Finance and Economic Development, the Addis Ababa City Government is also given the power to issue directives to the Finance and Economic Development Bureau. But as I indicated above the bureau had only issue a mere draft Directive.

There are different opinions and views to the late of tax seizure, some tax payers say the government couldn't be issue the Directive since it is not good for the government it creates bad relation ship between the tax payer and Authority. On the other hand the main reason for the late tax seizure is the problem of infrastructure the nature of seizes and sells need special precaution.[9]

According to Ato Gebrelibanos Wolde Aregay, head of Addis Ababa Revenue Agency legal department, the draft directive issued had been sent to the Addis Ababa care taker Administration for further infrastruction and to approval. But until now the city government response had no there for the Agency, can not implement tax seizure.[10]

A data obtained from the Addis Ababa Revenue Agency, shows that there is 6.465.606. 11 (six million four hundred sixty five thousand six hundred six birr and eleven cents) on the hands of the tax payers, from this **90** tax payers property which cover birr 2, 598.726.34 (two million five hundred ninety eight million seven hundred twenty six birr and thirty four (cents) tax payer assets had been registered and attached not to be transferred for third party.[11] From the above discussion we can understand the tax authority can not implement the power to enforce taxes which is vested by the tax proclamation. It also deters tax payers from transaction.

The current Income Tax Law seizure provisions well criticized by the Chamber of Commerce. The main grounds of their oppositions are as follows :-

The tax collecting body may not take final measurement on the tax payer by presuming that the estimate and tax collector body is correct.

Because as we all know in practice the tax collector body works his job by human being and human being by nature can make error and also exposed to corruption. Now a days the government tried to rectify these problems. But still now we can't say that the tax collector, Employees is free from error and corruption in the investment implementation of this Proclamation. This is seen in all governmental Authorities hence, giving power directly to the tax collector to size and sell the properties of the tax payer is not fair and just, because individuals rights is guaranted under the constitution to appear and settle their problems by the court. So the act of the tax collector is clearly contradicted with the constitution, so this proclamation is un constitutional.[12]

3.3 Importance of Seizure for Ethiopia

Income Tax Proclamation N° 173/1961 and its subsequent amendment which served for forty one years are repealed by the current Income Tax Proclamation N° 286/2002.

The reason to repeal the former Income Tax Proclamation is that it didn't reflect the realities of the current international tax and business environment. The proclamation was difficult for the Tax Authority to administer and to be understood by the tax payer and can not accommodate the current federal structure of the country.[13] These conditions are the major causes for the coming in to force of the current Income Tax Law.

So to be strong the new Income Tax Proclamation be clearly stated the procedure of Appeal against the assessment, when a person waive this right or after the court of appeal render its final decision, the tax payer are expected to pay their tax obligation. If this person not with in the time prescribed by law, the Authority can seize their property from their hand or from third pay party to collect the tax.[14] According to Ato Gebrelibanos Welde Aregay, the importance of seizure to execute the tax obligation when tax payers fails to pay their tax obligation seizure would enable the Authority to collect the tax due in short time.[15]

From the above discussion we can understand that seizure is a new phenomenon to Ethiopia introduced by the current income tax law and its importance lies in its ability to avoid tax litigation from the court and to collect tax with in a short time.

3.4 Problems of seizure

As elaborated in Chapter Two of this paper The Income Tax Proclamation empowers the Tax Authority to seize goods belonging to the tax payer and to collect unpaid tax and the expenses of seizure.
Since seizure is a new phenomena for the Ethiopia tax system it is facing implementation problems and seems to be inconsistent with the supreme law of the land i.e. the constitution.

3.4.1. Contradiction with the Constitution Principle

The Federal Democratic Republic of Ethiopia constitution declares in its Article 9, that is the constitution supreme law of the land.[16] Therefore, any law, customary practice or decision of an organ of state or public official which contravenes the constitution principle shall be of no effect,[17] from this constitutional provision, it could be understood that laws made by legislative organ by other organs, customary practice ,decision of the government (executive action) etc. can not be made in away that they contradict the Constitution. Since this topic is an essential part of this paper to determine whether seizure to enforce tax liabilities are in consistent with major principle of the Constitution and the supremacy of constitution and the separation of power, right of access to justice and the right to property .

A. Violation of Supremacy of the Law

In a democracy no one is above the law, even if he is a king or an elected president this general principle of law is called supremacy of the law. It means that every one must obey the law and be held accountable. So when every thing is done according to the law, there is Supremacy of law. Supremacy of the Saw has significant bearing on the liberty of the individual .Because governmental powers which may seriously affect the right of the individuals. Supremacy of the Law is one of the important of constitutional principles most democratic, constitutions today consider supremacy of law as the basis of their constitution.

In addition countries which have good constitution have incorporated the concept of due process of law .The main objective of incorporating the concept is to protect the right of person from arbitrary actions of governments .Due process of law is a bar or a limitation on the power of law the government. Most countries constitutions have a phrase; no person shall be deprived of life, liberty, and property with out due process of law.

The phrases have also incorporated in different articles of the EFDR constitution. As we see above due process of law is the procedure that must be followed before the passing of any decision that would affect different rights of individual. If this due process performed we can say there is supremacy of law. But when we see the Income Tax Proclamation Nº 286/2002, some provisions violated the principle of supremacy of law. These are:-

"…the term "seizure" includes seizure by any mean, as well as collection from a person who owes money or property to the tax payer ….it shall have the right to sell the seized goods at public auction or in any other manner …."[18]

"If the tax Authority makes a finding that the collection of such tax is in jeopardy, a demand for immediate payment of such tax may be made by the tax Authority and on failure or refusal to pay the collection there of by seizure shall be law full with out regarding to the 30 days period ….."[19] So as we understand from the above two provisions the legislature can not protect Citizens right enumerated in the Constitution which is considered as the supreme law of the land.

Rather the legislature violate the supremacy of law and the concept of due process of law by stipulating power in arbitrary words, such as by any means and in any other manner; this phrases give a wider discretionary power and open- ended opportunity to the Authority in violation of the principle of supremacy of law.

B. Violation of Separation of Power

The principle of separation of power is essential principle for one country to build a democratic legal system and it is helpful to protect liberty and freedoms of an individual, It also control abuse of powers which is exercised by state organs.

The idea of separation of powers was developed by Montesquieu French jurist and philosopher who was considered as a father of separation of powers. Montesquieu says:-

“ There can be no liberty when legislative and executive powers are joined in the same person or body of lords, because it is to be feared that the monarch or body of lords will make tyrannical laws to be administered in a tyrannical way nor is there any liberty if the judicial power is not separated from the legislative and executive power. If the three functions merge into one organ, everything will come to end.” [20]

The doctrine of separation of powers as explained by Montesquieu explained that the legislative, executive and judicial functions in a state aught to be kept separate organs for each, working together, but none of them should be dependant on and discharge the function belonging to the other.

Because of this each of the three organs of government, that is the legislative, executive and the Judiciary could not disturb each other. The function of legislative organ is to make, change and repeal laws, the executive exercises executive functions, and the functions and the judiciary to determine or resolve disputes on the basis of question of fact and law.

The writer tries to compare the concept of separation of power with the Tax Proclamation as follows:-

Obviously the income Tax Proclamation No. 286/2002 was enacted by the legislative organ and proclaimed by the competent Authority. But many provision of this Proclamation empowers the tax Authority to play the role of judicial organs. We see this power as follows:-

“If any person liable to pay any tax imposed by this proclamation is in default…………it shall be lawful for the tax Authority to collect such tax amount, as shall be sufficient to cover expenses of the seizure by seizing any property belonging to such person.[21]

From the above provision we can understand that the tax Authority have discretionary power to seize any property of the tax payer with out demanding judicial interference.

In addition the Authority have the following right regarding execution.

"………It shall have the right to sell the seized goods at a public auction or in any other manner approved by the Authority [22]

This provision also tells us as the Authority have to sell the seized goods in any manner appropriate to the Authority with out follow the execution process enumerated under the Civil Procedure Code of Ethiopia. So from the above two provisions we can under stand how the Tax Proclamation vested power in contrary to the above concept of separation of powers. Because seizing and selling of any property require court decision, at the time of litigation in courts may raises question of fact and laws, on the other hand the court is considered as independent organ which is different from the Tax Authority and the tax payer. When we came to the Tax Proclamation, the Authority has authorized to impose and excuse tax obligations. Because of the above reason that the Tax Authority has taken away the power of judiciary that was vested by the Constitution and empower it self to entertain all justice able matters. This situation make easily violate the rights of tax payers by who have deep and arbitrary power. Since decision making power and executing power on the hand of the Tax Authority the concept of separation of power is violated.

C. Violation of the Right to Property

Before the discussion of this topic, I want to show how black's law dictionary defines the term property:-

"The right to possess, use and enjoy a determinate thing (either a tract of land or a chattel) the right of ownership < the institution of private property is protected from undue governmental interference>- also termed bundle of rights………" [23]

In the strict legal sense it is a bundle of right which are guaranteed and protected by the government. The term property is extend to every species valuable right and interest, specially ownership is unrestricted and exclusive right to a thing to possess the right to dispose of a thing in every legal way, and to exclude every one from interfering with it, the above expression shows that there is a right and legal relations among the holders and the states or individuals. So property is expected to protect such right and relation by public law. On the other hand the issue of property is the concern of all and subject of discussion on many occasions at a global level. The universal declaration of human rights /UDHR/declares regarding to the to property as follows:-

"No one shall be arbitrary deprived of his property except in accordance with the law" [24]

In addition the African human right charter declared as follows:-

"The right to property shall be guaranteed "[23]

As we see from the above two provisions the right to property is the part of human rights, this right can not be violate with out due process of law, but in practice most of this right is violated by one of the organ the government mainly by the executive organ. This organs uses arbitrary powers and take away the property of individuals contrary to the principle of due process of law.

So to bring dynamic economic development and legal and social stability in any country the right to property must be protected by harmonizing with the above two human right provisions. Because ignoring the right to property is the cause for poor economic development, social crises.

The writer relates and discusses the issue of property right protection in the Federal Democratic Republic of Ethiopia Constitution and address the problem under the Income Tax Law.

The Federal Democratic Republic of Ethiopia Constitution categorizes property in various ways as any tangible product that has value and produced by the labor creativity enterprise or capital an individual citizens, association which enjoy judicial personality under the law to own such property and provides specific protection for each category [26]

On the other hand, the Constitution explains how to restrict the right to property [27] The objectives for such restrictions are:- safe guarding national security, prevention of crime, public peace, protection of health, public morality and rights and freedoms of others.

The enumerated objectives of limitation up on such right may be justified by economic political or social reasons.

In spite of this, the Income Tax Proclamation. N°. 286/2002 has empowered the Tax Authority to seize the property of tax payers for the purpose of collecting tax due.

The legal concept of seizure is: - "The act of taking possession of property for violation of law or by virtue of execution of judgment ," [28]

from the concept we can understand that to seize somebody's property first, violation of the law by person must be ascertained by the court, then the Judgment debtor money, prosperity seize and sold through due process of law or by proper authority to satisfy the judgment.

On the contrary the above the tax Authority seizing and sell the tax payer property with out Authorization of the competent court and with out due process of law.

D. Violation of the Right to Access to Justice

The Federal democratic Republic of Ethiopia Constitution recognizes the right to access to justice as a fundamental human right:-

"Every one has the right to bring a justice able matter to and to obtain a decision or judgment by a court of law or any other competent body with judicial power"[29]

According to the above provision when the legal interest of an individual or an association is violated by government organ or by any association, the one who has legal interest so affected or violated can bring the case to the court or another competent body with judicial power.

Tax Proclamations have also tried to harmonize with the above constitutional principle as follows: -

"Any tax payer who objects to an assessment may appeal to the Tax Appeal Commission …. upon the fulfillment of the requirements here under"[30] As we understand from the above provision to lodge appeal against the Tax Authority decision, there is a requirement to be fulfilled. Other wise the appeal will be rejected. One of the requirements to be fulfilled by the tax payer to lodge and appeal is provided as follows:-

"No appeal shall be accepted by the Tax Appeal commission unless; a deposit of fifty/50% of the disputed Amount is made to the Tax Authority" [31]

This means where a person received an assessment from the Tax Authority to pay 1,000,000.00 /one million Birr/ and if he went to submit his appeal, the tax payer will be required to deposit 500,000 /five hundred thousand Birr/ with in 30 days from the receipt of the assessment notification or from the date the review committee gives decision. If this requirement fulfilled by the tax payer he can submit his appeal, if he doesn't his appeal will be rejected.

On the other hand if the tax payer dissatisfied by the decision of the Appeal Commission he has right to submit his appeal with in 30 days of regular courts. The jurisdiction of this appellate court is confined to review a question of law.[32] But to submit appeal to the regular court the tax payer or the appellant required to pay full payment of the tax determined by the appeal commission. [33] Other wise the appellate regular court shall net be accepted the appeal.[34]

As we seen from the above discussion any tax payer who is dissatisfied with the assessment of the tax Authority to submit his objections for the independent judicial body he will be required to fulfill requirement. These requirements are absolute requirements, there is no exception to poor tax payers, who have no money for advance deposit. Because of these constitutional guaranties of access to justice of citizens is highly violated by the Income Tax Law and it makes the tax Authority as a judge and judgment creditor.

3.5. Practical problems

The Addis Ababa City Government faced many problems relating to the selling of the seized items. The main problem is the non- ratification of the draft Directive. [33]

The Addis Ababa City Government Finance and Economy Development Bureau had submitted the Draft Directive before two years, to the city is care taker administration. [34]

Some of the major decisions required to be fulfilled, the place where the collected items are stored.[35] Who and how to determine the amount of property to be seized and by who auction to be conducted.[36] To facilitate for the management of the un sold items. The Agency had also mentioned some solutions on the later regarding the problems with reference to the experience of the Commercial Bank of Ethiopia, and to be represented a person from Addis Ababa city courts for the executed the size item.[37] But until now no organ of the government gave answers to the latter.[38] because of this the agency Draft is not implemented in accordance with the tax law.

CONCLUSION AND RECOMMENDATION

The tax system of every country play great role in the maintenance of peace and stability of the government. A good tax system also should respect all rights and ascertained by the Constitution of the country.

In Ethiopia tax collecting was started in 15^{th}c, with out statutory bases. In the history of Ethiopia Proclamation No 8/1942 the first Proclamation, this Proclamation was proclaimed in 1942 and impose taxes on certain incomes only. After 19 years In 1961 Income Tax Proclamation No 173/1961 proclaimed and served for around 40 years.

The federal law makers repealed this law and introduced the new Income Tax Proclamation No 286/2002 at the year 2002. This Tax Llaw based on the 1995 FDRE constitution and with a view to rising government revenue and to bring effective resource distribution by harmonizing the current federal structure of the country.

Regarding on how to enforce tax obligation the former Tax Proclamation the tax Authority have to go to courts to get execution order. on the other hand the current Tax Proclamation empowers the Authority to size and sell the tax payers properly in any manner appropriate for the Tax Authority. The Authority has also the right to attach the salary or wages of an employee due to the failures of paying tax with out the Authorization of courts.

However, seizure and sell of the tax payer’s property is not conducted immediately after the assessment notice delivered, except under jeopardy of assessment situations. To size tax payer’s property the Authority must fulfill the requirement provided by the tax law.

In order to implement the law, the draft directive is not ratified for different reasons, and can not implemented seizure for the last 6 year's beyond registering tax payer's property and attached the property so as not transfer to third party. Whoever, as we have seen above the Tax Proclamation has vested powers to the Authority in contradiction with the principles of Constitution, such as supremacy of law, separation of power, right of access to justice and the right to property.

Therefore, we can say judicial power is usurped and transferred it to the Tax Authority in violation of the Constitutional principle, and proclamation No. 286/2002 proclaimed with out harmonizing it to the supreme law of land.

Based on discussion the recommended solutions are:-

A. Normally the law maker can not issue laws which contradict with the supreme law of the land, but as we see in the above discussion, Proclamation Nº 286/2002 issued in contradiction Article 9 of the Federal Democratic Republic of Ethiopia Constitution.

So the tax laws have to be amended to be Harmon with the supreme law of the land.

B. The idea of separation of power is highly violated by the Income Tax Proclamation. Because as we see in the discussion the Tax Authority has vested power on Tax Authority to impose tax and enforce the obligations by seizing tax payer's property. This power also makes the Authority judiciary and executive, so the Tax Proclamation needs to be amended by taking the judicial power from the Authority back to the judicial body.

C. The right of access to justice is excluded by the Income Tax proclamation. Any tax payer who objects to an assessment of the authority and submit his objection for the judicial body. The law obliges the tax payer to pay full or half of the disputed money in advance with out exception including poor tax payer.

Since the requirement provided on the tax law contradicts the right to bring justice able matter to a court of law and to obtain decision by the judicial body. Therefore these provisions of the law contradict with the right of accesses to juice. Hence there is a need to have requirement for the poor people to seek and access justice with out advance payment like suits by poor people as provided under the Civil Procedure Code.

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Statement of Declaration

I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name----------------------------

Signed ----------------------------

ANNEX'S

- **D**raft Directive of Tax Seizure.-------------------
  Annex 1