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The Significance of Advance Tax Rulings for the Property Implementation of Tax Laws in Ethiopia: Lessons from other Jurisdictions

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LL.M PROGRAM IN BUSINESS AND CORPORATE LAW

THE SIGNIFICANCE OF ADVANCE TAX RULINGS
FOR THE PROPER IMPLEMENTATION OF TAX
LAWS IN ETHIOPIA: LESSONS FROM OTHER
JURISDICTIONS

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June, 2016

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THE SIGNIFICANCE OF ADVANCE TAX RULINGS FOR THE PROPER IMPLEMENTATION OF TAX LAWS IN ETHIOPIA: LESSONS FROM OTHER JURISDICTIONS

Thesis

Submitted in Partial Fulfillment of the Requirements for the Degree of
Master of Laws (LLM) in Business and Corporate Law at the School of
Law, Bahir Dar University.

By

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June, 2016

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LL.M PROGRAM IN BUSINESS AND CORPORATE LAW

The thesis titled "The Significance of Advance Tax Rulings for the Proper Implementation of Tax Laws in Ethiopia: Lessons from other Jurisdictions" by Mr. Daniel Ayalew is approved for the degree of Master of Laws (LL.M)

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.



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Abstract

Advance tax rulings have several advantages for both taxpayers and tax authorities in their dealing with tax laws. Advance tax rulings bring certainty on the tax implications of transactions, help to simplify tax laws, help tax authorities to be more efficient, increase voluntary compliance of taxpayers, help to reduce tax authorities' discretion and reduce potential tax disputes. Owing to these advantages, advance tax rulings are considered indispensable in the modern world of tax administration. So far, several tax jurisdictions across the world have incorporated advance tax rulings in their tax system.

However, advance tax rulings have no legal basis in Ethiopia so far though the country has put in place various tax laws. The aim of this paper is to investigate the need and importance of advance tax rulings for the proper implementation of tax laws in Ethiopia. The paper discusses the necessity and significance of advance tax rulings in light of the best practices of selected foreign jurisdictions and problems investigated in Ethiopia.

The study has found out that the Ethiopian tax legislation and administration fields are complex making taxpayers feel uncertain about their tax obligations. In addition to non-simplicity of tax laws, it is also found that there is considerable non-compliance with tax laws. Because of inadequacy of tax education and trainings, it is found that significant number of taxpayers approach officials of the tax authorities in order to seek the opinions/advice of the same. The study has revealed that tax authorities engaged in practices of issuing statements of opinions/advice in order to reduce uncertainties, simplify tax laws, and increase compliance, though inadequate. The research has identified that advance knowledge of tax laws helps to reduce the authorities' discretion and reduces disputes that arise between the tax authority and the taxpayer. It has demonstrated that the current practices of issuing statements of opinions/ delivering advice are not adequate and it is verified that advance tax rulings is necessary and important.

Based on the problems investigated, the study suggested that the Ethiopian advance tax ruling scheme should provide binding rulings like USA, India, and South African regime, to reduce uncertainties of tax law. Like USA, South Africa and Canada, Public and private ruling types are also suggested in order to minimize confusions of taxpayers' on Ethiopian tax laws. Rulings are also suggested to be issued by centralized tax authorities on at least issue of facts, in order to make the application of tax laws consistent and meaningful.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Tax jurisdictions across the world carryout tax reforms with the aspiration that such reforms would help to raise more revenue for government, achieve various economic and social goals, and improve the efficiency of the tax collection process.¹ However, in general, little attention has been given to improving the tax system to make it easy for taxpayers, especially in developing countries.² The cost of compliance with the tax system for a taxpayer is not insignificant and as such simple. Such compliance costs could be induced by the very nature of the tax law itself: ambiguity and complexity³ and the procedure followed by the tax authority to administer⁴ these tax laws.

Often, tax law is characterized by ambiguity and complexity. Ambiguousness exposes the law to different interpretations which in turn leads to imposition of different tax liability. A divergence in tax law interpretations may have its own negative effect on tax equity. Frequent amendments of the tax law also aggravate uncertainty on the tax laws.⁵ Let alone other reasons, the ever increasing complexity and diversity of business transactions may bring instability in the legislation and application of tax laws. This instability makes the consequence of tax law to be uncertain.⁶ Apparently, uncertain tax consequences decrease the attractiveness of business activities.⁷

The complexity of tax law can be expressed through composition of elements such as the tax base; the tax rate structure; and the allowable deductions, exemptions, and credits as well as the

¹ The World Bank Group, *A Hand Book for Tax Simplification*, International Finance Corporation, Pennsylvania Avenue, N.W., Washington D.C., USA, 2009, p.1. [Hereinafter The World Bank Group, *A Hand Book for Tax Simplification*]

² *Ibid.*

³ *Id.* p. 7.

⁴ *Id.* p. 6.

⁵ Givati, Yehonatan, 'Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings', *Virginia Tax Review*, 2009, Vol. 6, No. 30, pp. 1-34, p. 1. [Hereinafter, Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*].

⁶ *Ibid.*

⁷ *Ibid.*

administrative features of the tax code.⁸ Administrative features of the tax law include those tools that help tax authorities and taxpayers to execute their respective responsibilities and obligations provided in the tax law.⁹ These tools are equally as important as the tax base, tax rate structure and other elements of the tax legislation in bringing uncertainty.¹⁰ It follows that the quality of administrative procedures can negatively or positively affect certainty in the consequence of tax law. Particularly, an assistance concerning the possible consequence of a tax issue help to achieve some level of certainty.¹¹

The capacity of tax authorities to reduce or increase uncertainty¹² could invite them to use discretionary power. As the tax authority's discretionary power becomes excessive, tax payers conceive that the implementation of tax law is arbitrary.¹³ This situation can be a source of grievance and discontent for taxpayers and gives rise for potential litigations between the tax authority and the taxpayer.¹⁴ Disputes can destroy the smooth relationship between tax payers and tax authorities which are obstacles in the promotion of good tax administration. Thus, for a tax regime committed of establishing good tax administration system, designing every possible mechanisms or procedures helpful of averting or diminishing uncertain tax consequences may be necessary.

Among other legal mechanisms, advance tax ruling system can be taken as the most important tool to reduce uncertainties in the tax laws.¹⁵ It helps to simplify the tax consequences of a certain proposed business activity. Advance tax ruling is a mechanism that "offers tax payers the

⁸ The World Bank Group, *A Hand Book for Tax Simplification*, p. 15.

⁹ *Ibid.*

¹⁰ American Institute of Certified Public Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*, American Institute of Certified Public Accountants Inc., New York, March, 2001, p.12. [Hereinafter, American Institute of Certified Public Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*].

¹¹ Osofsky, Leigh, 'The Case against Strategic Tax Law Uncertainty', *Tax Law Review*, 2011, Vol. 64, No. 4, pp. 501-551, p. 507. [Hereinafter, Osofsky, *The Case Against Strategic Tax Law Uncertainty*].

¹² *Ibid.*

¹³ The World Bank, *A Hand Book for Tax Simplification*, p. XI.

¹⁴ *Ibid.*

¹⁵ Diller, Markus, *et al*, Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment, *WU International Taxation Research Paper Series No. 2014 – 06*, p. 1, Electronic copy available at: <http://ssrn.com/abstract=2442749> [Hereinafter, Diller, *et al*, *Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment*]

opportunity to learn in advance the regulator's view of the requirements of the tax law."¹⁶ It is a course of action that assures taxpayers about the possible effects of tax law on a planned or an undertaken business activity.¹⁷

Advance ruling is internationally recognized as "a more or less binding statement from the revenue authorities upon the voluntary request of a private person, concerning the treatment and consequences of one or a series of contemplated future actions or transactions."¹⁸ In several jurisdictions it has been defined as "the determination of a question of law or fact regarding the liability to pay duty/tax in relation to an activity which is proposed to be undertaken, by the applicant."¹⁹ In Singapore, the concept of an advance ruling is defined as "a written interpretation of how a provision or certain provision of the Income tax act applies to a specific taxpayer and a proposed arrangement."²⁰ It is an advance decision about the prospective effect of tax legislation on a proposed business or economic activity. It is a forum whereby a taxpayer seeks the intention of the tax authority on the application of tax laws with regard to his/her/its proposed business activities.²¹

Generally, an effective advance tax ruling procedure promotes good relation between the taxpayer and the tax authorities. This is true partly because the taxpayer will have information and confidence on the authority's treatment of the proposed business activity and partly it can be used to bring uniformity in the application of the tax law within a particular jurisdiction.²²

Tax authorities may face some difficulty in keeping up their pace with the increasingly complex and diverse business transactions. Requests for advance ruling on proposed transactions are important sources of information which keep tax authorities updated with latest business

¹⁶ Sawyer, Adrian J., *et al*, 'Advance Tax Rulings in Perspective: A theoretical and Comparative Analysis', *New Zealand Journal of Taxation Law and Policy*, 2014, V. 20, No. 2, pp. 360-389, p. 361. [Hereinafter, Sawyer *et al*, *Advance Tax Rulings In Perspective: A theoretical and Comparative Analysis*].

¹⁷ Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*, p. 1.

¹⁸ Prof. Maarten J, Ellis, General Report, International Fiscal Association congress 1999 as quoted by, Indian Authority for Income tax Advance Rulings, *Handbook on Advance Rulings*, Tan Prints Pvt. Ltd, New Delhi, India, 2008, p. 40. [Hereinafter, Indian Authority for Income tax Advance Rulings, *Handbook on Advance Rulings*]

¹⁹ Indian Authority for Income tax Advance Rulings, *Handbook on Advance Rulings*, p. 7.

²⁰ Inland Revenue Authority of Singapore, *Advance Ruling System*, IRAS printers, Singapore, 2012, p. 3.

²¹ Diller, *et al*, *Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment*, p.1.

²² The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, KKS printing Stanway Street, London, 1996, p. 97. [Hereinafter, The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*].

activities.²³ Advance tax rulings also help to minimize controversy and litigations.²⁴ Taxpayers who are informed of the intention of the tax authority as to the application of the law will be less likely to fight out with the authority. It also used to pinpoint problematic areas of tax matters on which the authority and the legislature need to capitalize with their respective powers.²⁵

Considering the uncertainties in tax laws and their consequences given the magnitude of tax disputes, “most tax scholars see the advance tax ruling procedure as an indispensable tool in the modern world of tax administration and compliance.”²⁶ Due to this, most scholars and practitioners have shown their interest on the issue.²⁷ Additionally, the significance of the advance ruling procedure has been recognized by tax administrations around the world, and in recent years more and more countries have established an advance tax ruling system.²⁸ It is, thus, critical time for Ethiopia to consider such important scheme which advances the tax administration system and improves the performance of implementation of tax laws. However, because the area is not studied yet, the researcher has chosen this topic.

1.2 Statement of the problem

At times, with no exaggeration, the Ethiopian tax regime has been identified by its rudimentary approach to augment the public treasury with the instrumentality of loosely compiled proclamations, regulations, directives and rules.²⁹ The problem on the tax legislation field is persistent in that “chaotic, disorganized, uncoordinated and worse, making it difficult for an average taxpayer to make sense of her obligations under the various tax laws in force.”³⁰ This is apparent from the fact that “tax laws of Ethiopia are presently found scattered not just in different tax laws but in other laws of Ethiopia.”³¹

²³ *Ibid.*

²⁴ Duta, Alia ‘The Harmonization of Advance Tax Rulings Systems In European member States-Why?’, *Journal of Finance-Challenges of the Future*, 2009, Vol. 1, No. 9, pp. 247-249, p. 248. [Hereinafter, Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?*].

²⁵ Taddese Lencho, ‘The Ethiopian Tax System: Excesses and Gaps’, *Michigan State International Law Review*, 2012, Vol. 20, No.2, pp. 328-378, p.368. [Hereinafter, Taddese Lencho, *The Ethiopian Tax System: Excesses and Gaps*]

²⁶ Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*, p. 1.

²⁷ *Ibid.*

²⁸ Sawyer, et al, *Advance Tax Rulings in Perspective: A Theoretical and Comparative Analysis*, p. 363.

²⁹ Taddese Lencho, *the Ethiopian Tax System: Excesses and Gaps*, p. 328.

³⁰ *Id.* p. 355.

³¹ *Ibid.*

Despite the efforts that have been made to improve the Country's tax administration system so far the scheme of advance tax ruling has no statutory base in Ethiopia.³² It follows that the Ethiopian tax system is not benefiting from relative advantage that will be gained from advance tax rulings. The tax regime is not blessed with such an important scheme.

In fact, though there are pieces of practices of issuing "advance rulings"³³ and statements of opinions the legal effect of them is not certainly known. Tax authorities issued such rulings neither because they have the responsibility to do so nor taxpayers have an explicit right to get it. It is not identified that "if the tax authorities were consciously engaged in the practice of advance rulings or doing this just as a matter of administrative courtesy."³⁴ However, these practices seem to reflect the need to have an advance tax rulings scheme which signals the significance of advance tax rulings.

Previous studies show that many taxpayers in Ethiopia have complained of difficulties understanding the operations of VAT.³⁵ Tax payers also complained of lack of clarity of tax regulations, lack of access to information about tax rules and regulations, and unfair tax procedures.³⁶ A number of provisions in the Ethiopian Income Tax laws of 2002 are frequently misunderstood by both the tax administrators and taxpayers.³⁷

Additionally, the "diffusion of tax administration in the hands of multiple government bodies"³⁸ along with the existence of many delegating provisions of the tax laws give rise to an increase of directives in an absolute size and numbers in recent times.³⁹ A vast number of tax directives have been/is being issued by different Federal government agencies by virtue of delegation. Many

³² *Id.* p. 367.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Amin Abdella, *et al*, *The Impact of Tax Reform on Private Sector Development*, Private Sector Development Hub/ Addis Ababa Chamber of Commerce and Sectoral Associations, Addis Ababa, 2010, pp. 37- 38. [Hereinafter Amin Abdella, *et al*, *the Impact of Tax Reform on Private Sector Development*]

³⁶ Temtime Debere. *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, Master's Thesis, Addis Ababa University, The Department of Accounting and Finance, 2014, p. 92. [unpublished available at Addis Ababa University Law Library] [Hereinafter, Temtime Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*]

³⁷ See Estifanos Denbu, *Taxation of Income from Rental of Buildings under Schedule B*, pp. 10-17; Weynalem W/Senbet, *Taxation of Partnerships and Partners under Ethiopian Law, Comparative Study*, pp. 33-56; Solomon Teshome, *Tax Exclusion under the Ethiopian Employment Income Tax Law, Fringe Benefits in Kind*, pp. 12-26, as cited by Tadesse Lencho, *The Ethiopian Income Tax System: Policy, Law and Practice*, PhD Dissertation, University of Alabama, Alabama, 2014, p. 92.

³⁸ Taddese Lencho, *The Ethiopian Tax System: Excesses and Gaps*, 2012, p. 352.

³⁹ *Id.* p. 364.

taxpayers hardly get access of almost all of these directives since these directives remain unpublished.⁴⁰ Inaccessibility of these directives surely worsens uncertainty on the effect of tax laws, since it increases the impossibility to take note of one's tax liability.

These all problems, in one way or another, exacerbate the problem of uncertainty and complexity in the application of tax laws. This is a worrisome progress on the contemporary implementation of tax laws of Ethiopia that is worthy of getting serious attention.

Practically, the Ethiopian tax administration system is experiencing a multitude of problems as are claimed by the tax authority and taxpayers. Among these, for example in Amhara region, "lack of knowledge of tax laws, specifically the calculation of one's tax liability,⁴¹ failure to declare tax liability and to pay it properly and timely, unjust assessment of tax liability based on inappropriate information and failure to collect taxes, are prevalent problems."⁴²

These problems call for a need to give assistance for taxpayers in order to enable them comply with their tax obligations. These problems appeal to, in one way another, forum whereby the taxpayer demands the advice/ ruling of the authority about his tax liability in advance. This calls for, among any other mechanisms, not only devising advance tax ruling but also devising suitable features of advance tax ruling appropriate for the Ethiopian tax regime. This study aims to investigate the need to have advance tax ruling and to pinpoint features of advance tax ruling as a lesson from other jurisdictions.

1.3 Objectives of the Study

The general objective of the study is to investigate the need and importance of advance tax rulings in the implementation of tax laws of Ethiopia and to make possible suggestions for the Ethiopian advance tax ruling system after consulting the experiences of other tax jurisdictions. The specific objectives of the study are the following:

- To indicate the basic features of advance tax ruling as are practiced in different countries

⁴⁰ *Ibid.*

⁴¹ See, የአማራ ብሔራዊ ክልላዊ መንግስት ገቢዎች ባለስልጣን የአምስት ዓመት (ከ2003 እስከ 2007) የአድገትና ትራንስፎርሜሽን ዕቅድ አፈጻጸም ሪፖርት ገጽ 39 (available at the Amhara National Regional State Revenue Authority Office)

⁴² *Id.* p. 55

- To show the importance that advance tax ruling bring for other tax jurisdictions and to check its viability for the Ethiopian tax regime.

1.4 Research Questions

The study aims to address the following questions.

- What are the basic features of advance tax ruling?
- Why is it important to have an advance ruling scheme?
- How advance tax ruling is being practiced in other jurisdictions?
- What should advance ruling look like for the Ethiopian tax regime, if need be?
 - Should it be binding, non binding or both?
 - Should it be fact based or law based ruling?
 - Should it be public or private?
 - Should there be an independent organ to issue rulings or is it enough if the tax authorities issue rulings?

1.5 Significance of the Study

This research is believed to have both legal and academic significance. By indicating the legal gap, the problems within the tax legislation and administration fields, and the advantages of advance tax rulings for the Ethiopian tax regime, the study would inform the legislators to thoroughly consider the introduction of full-fledged advance tax rulings within the Ethiopian tax regime.

Besides, it would provide the tax authorities with important guidance to observe features of full-fledged advance tax rulings scheme and consider it in light the application, effect and importance of existing statements of opinions and advices. Additionally, it would inform taxpayers with the significance of advance tax rulings in their dealing with the tax laws and consider the demand of it. Furthermore, the research would add to the stock of knowledge on the practice of advance tax rulings and its administration in Ethiopia. Lastly, this research would show a path to other researches regarding the implication of advance tax rulings on Ethiopia's international trade.

1.6 Literature Review

Owing to the long existing experience of several countries in the administration of advance tax rulings, many literatures are written with regard to the significance of advance tax rulings. Among them, Diller and others in their research titled as “Boon or Bane? Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment”⁴³ have shown that the significance of advance tax rulings in mitigating tax law uncertainty. Particularly, this research shows how tax law uncertainty affects attractiveness of investments.

On the other hand, another research⁴⁴ investigated taxpayers’ strategic considerations when deciding whether to request an advance tax ruling. This research found out that the strategic disadvantages of applying for an advance tax ruling are usually to outweigh the strategic advantages of such a request. However, the aim of this paper is to show that advance pricing agreements are as important as advance tax rulings. This research does not deny the overall advantage of advance tax rulings. Another research titled with “Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990’s”⁴⁵ also importantly discussed the basic features of advance tax rulings that countries need to consider while designing advance tax rulings procedures. It interestingly point matters to be considered in the advance tax rulings procedure by comparing the ruling system of Canada, New Zealand and Australia.

However, the above mentioned researches did not investigate the need or otherwise of advance tax rulings for the Ethiopian tax regime, neither discussed about the importance of advance tax rulings for Ethiopia.

Along with the elementariness of the Ethiopian tax jurisprudence, scholarly literatures dealing with tax issues are still insignificant. Taddese said that “no one has ever looked at the Ethiopian tax system as a whole (not as legal scholars would have liked it anyway) and it is therefore no surprise if the Ethiopian tax system strikes one as random, disorganized, and incoherent in places.”⁴⁶ It is also true for the issue handled by this research. There are no prior literatures that

⁴³ Diller, et al, *Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment*

⁴⁴ Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*.

⁴⁵ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990’s*, p. 97.

⁴⁶ Taddese Lencho, *The Ethiopian Tax System: Excesses and Gaps*, 2012, p. 329.

are found in the way that this research is designed. However, there are few scholarly written literatures that informatively deal with the issue of advance tax rulings.

To the best effort made to review researches in the area, it is Taddese in his article “The Ethiopian Tax System: Excesses and Gaps” who interestingly highlight the importance of advance tax rulings as a source for the Ethiopian tax laws. Advance rulings can serve as indicators of matters that are to be included in the upcoming directives.⁴⁷

His article aimed to deal with the constitutional and administrative matters concerning the Ethiopian Tax system and the arrangement and sources of tax laws including tax dispute settlement schemes in Ethiopia.⁴⁸ He briefly made a comparative experience of other tax systems to clarify issues that need consideration by the Ethiopian tax system. Specifically, the significant features of advance tax ruling are dealt theoretically and pose with the some questions to be addressed whenever advance tax ruling is set to be applied solidly.

An important recommendation raised in this article is concerning the identification of the legal status of advance tax rulings and statements of opinions. This gives a clue for the inquiry on whether advance ruling, once issued, should be binding or remains merely informative/persuasive, as handled by this research proposal.

Moreover, methodologically, this article is crafted to discuss the theoretical aspect of advance tax rulings. Those elements that are needed to have had a comprehensive advance tax ruling procedure are not substantiated with some inquiry on tax administrators and taxpayers. Excepting, a discussion on the feature of the existing few practices of advance tax rulings, Taddese’s article can be said to adopt a doctrinal approach. He adds that the practice of advance tax rulings is not fully developed and there is still a lot to be said about it.

1.7 Scope and Limitation of the Study

Scope wise the research focuses on the significance of advance tax rulings in the implementation of tax laws that are applied on domestic transactions. Sole emphasis is given to the significance of advance tax rulings for implementation of domestic laws. Therefore, the implication of

⁴⁷ *Id.* p. 370.

⁴⁸ *Ibid.*

advance tax rulings on Ethiopian tax laws that are applied on transactions in the international trade and foreign direct investment is not the focus of this research.

While conducting the research, there was some limitation of extracting the required data as all the interviewees were not knowledgeable. Briefly put, since advance tax ruling is not a legally recognized scheme and even its narrow application was a constraint for the needed data.

1.8 Methodology of the Study

To conduct this research, qualitative research approach has been employed. Some of the research questions are answered through doctrinal qualitative approach. Both secondary and primary data were the sources of data for this research. Firstly, as a secondary source of data books journal articles and reports have been used in order to comprehend the investigation for research questions that require theoretical explanation. The advance tax rulings practices of other countries i.e. India, South Africa, Canada and USA were used to draw a practical and theoretical lesson to Ethiopia.

Some other research questions need qualitative data to address them. The research questions require the investigation of practices of the tax authorities and the taxpayers. For this reason, primary data were collected to conduct this study.

Regarding data collection tool, semi-structured interview with all the research participants was used to collect data. This is because, this tool gives some degree of flexibility in explaining and communicating research questions depending on the understanding of the respondent. This tool is also important because modification of words and explanation of questions is fairly allowed in the already pre-determined research questions. This simplified the extraction of data. However, the data gathering process was not limited to semi-structured interview. It also included observation of assistance given to taxpayers and document analysis basically circulars and statements of opinions.

The data were collected by interviewing all the key persons from both tax authorities having roles in the tax assessment and taxpayers education and assistance departments. Regarding taxpayers, purposive sampling was used and a number of 10-15 taxpayers were selected to conduct interview with them. Thus, those taxpayers who have been seeking advice from these

tax authorities, who have had tax litigations with these tax authorities, which are believed to have the experience of getting advice on the application of tax laws, were interviewed.

Finally, the data collected from primary and secondary sources were compiled based on the problems investigated. This data were analyzed and interpreted qualitatively using descriptive analysis.

1.9 Organization of the Research

The research consisted of different chapters, sections and sub-sections. The first chapter deals with the research proposal.

The second chapter comprises of sections that deal with the general conceptions of advance tax rulings and its significance. Specifically, it deals with the meaning of private and public advance tax rulings, issues up on which advance tax ruling might be sought, the effect of rulings and authorities in charge of issuing rulings. In the section that deals with the significance of advance tax rulings, critical consideration is given to discuss advance tax rulings in light of the certainty, simplicity, efficiency principles in addition to the discussion on role of advance tax rulings in bringing voluntary compliance, reducing future conflicts between the tax authority and the taxpayer and limiting discretionary power of tax authorities.

Chapter three is devoted for the discussion on the nature of advance tax rulings in other jurisdictions. Hence this chapter discusses the experience of India, South Africa, Canada and USA and on the basic features of advance tax rulings.

On chapter four, as the main part of the research, problems in the Ethiopian tax regime are discussed in light of the necessity and importance of advance tax rulings. The current practices of advance tax ruling are analyzed briefly in light of other jurisdictions and possible lessons to Ethiopia's advance tax rulings scheme are suggested.

Finally, the major findings of the research are summarized in the conclusion part and recommendation is forwarded in chapter five.

CHAPTER TWO

GENERAL CONCEPTS, FEATURES AND SIGNIFICANCES OF ADVANCE TAX RULINGS

2.1 Introduction

This section is devoted to the discussion on the essence, features and significance of advance tax ruling. Particularly, the first sub-section discusses about the international definition of advance tax rulings. Next to this, the basic features of advance tax rulings that are importantly considered in the design of rulings procedure is dealt in the second sub-section. Lastly, the significance of advance tax rulings in promoting the principles of certainty, simplicity, efficiency and the role of advance tax rulings in increasing voluntary compliance, reducing discretion of tax authorities and mitigating potential tax disputes is dealt.

2.2 General Concepts about Advance Tax Rulings

According to Carlos Romano “Advance tax rulings (also called advance, private or letter rulings) are legal instruments under which taxpayers (or their tax advisors) may obtain a more or less binding statement from the tax authorities concerning the treatment of a transaction or a series of contemplated future (and sometimes past) actions or transactions.”⁴⁹ These tax rulings are issued to a certain taxpayer or group of taxpayers concerning a business operation or a series of specified facts or business operations.⁵⁰ Often, they are defined as “advance rulings” because they are usually delivered before the taxpayers engage in a business operation or arrangement or, in some tax regimes, after transaction is carried out but before the tax return is filed.⁵¹ Advance tax rulings operate only on/for the person to whom they are issued because they usually consider the factual situations of the person who request and thus not directly applicable to other

⁴⁹ Romano, Carlo, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*, IBFD publications BV, Amsterdam, 2002. p.78. [Hereinafter, Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*].

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

taxpayers.⁵² They may also provide a determination of whether or how a general ruling applies to the facts and circumstances of a particular taxpayer.

2.3 Basic Features of Advance Tax Rulings

It is a fact that tax jurisdictions in countries of the world differ one from the other. Owing to this difference, the nature of advance tax rulings also differs from country to country as it is designed considering the social, political and economic context of each country. This section is devoted to a discussion on contentious features of advance tax ruling scheme that are always worthy of getting serious attention in the move to design a certain advance tax ruling system.

2.3.1 Binding and Non-Binding Advance Tax Ruling

The international definition of advance tax rulings contains the phrase “more or less binding”. A binding tax ruling forces the tax authority to treat transactions based on the interpretation provided in the ruling.⁵³ Non-binding ruling, as its name implies, has no force of obligating the tax authority or the taxpayer.⁵⁴ Thus, the role of non-binding ruling can be taken as an informative ruling to persuade the concerned taxpayer(s). Put simply, the ruling is no more than an expression of opinion.

The absence of binding advance tax ruling is a major criticism against tax jurisdiction with advance tax ruling system.⁵⁵ This does not mean that advance tax rulings should have a perpetual binding effect. However, a certain tax ruling system must incorporate conditions on which the binding effect of a ruling will be revoked.⁵⁶ There are circumstances the ascertainment or non-presence of which makes the ruling void. For example in India, advance ruling will not be binding if the facts of the case or law on the basis of which ruling has been pronounced have

⁵² Ministry of Finance Tax Bulletin, January 2000, Bulletin PTT 021, www.fin.gov.bc.ca/rev.htm, p. 1, May, 02, 2016

⁵³ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 103

⁵⁴ *Ibid*

⁵⁵ *Ibid*

⁵⁶ *Ibid*.

changed.⁵⁷ Ruling is also declared void if it is obtained by the fraudulent or misrepresentation of facts by the applicant.⁵⁸

2.3.2 Public and Private Advance Tax Rulings

Advance tax ruling, be it a private or a public one, has been conceived by many literatures as the most important instrument in tax jurisdictions that follow the self-assessment system.⁵⁹ The above definition of advance ruling recognizes only private ruling. However, some jurisdictions provide rulings without a request for rulings. These are public rulings. Public rulings are published statements of how a revenue authority will interpret provisions of the tax law in particular situations.⁶⁰ Their objective is to clarify the application of the law to the population of taxpayers, particularly in situations where large numbers of taxpayers may be impacted by particular provisions and/or where a particular provision has been found to be unclear and/or uncertain.⁶¹ In the majority of cases, rulings are binding on the revenue body, meaning that taxpayers are protected from further assessment, penalties and interest where they have acted in accordance with the advice given in the ruling.⁶²

On the other hand, private rulings are specific rulings requested by individual taxpayers in order to learn the interpretation of a tax authority on the tax consequences in relation to particular transactions or arrangements.⁶³ The objective of private ruling systems is to provide assistance and early certainty to taxpayers on the tax consequences of certain, often complex or high-risk transactions.⁶⁴ Depending on the jurisdiction, private rulings may be available either (i) only

⁵⁷ Indian Authority for Income tax Advance Rulings, *Handbook on Advance Rulings*, p. 52.

⁵⁸ *Ibid.*

⁵⁹ Sawyer, *et al*, *Advance Tax Rulings in Perspective: A Theoretical and Comparative Analysis*, p. 366.

⁶⁰ Organization for Economic Cooperation and Development, *Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series*, OECD, 2007, p. 86, [Hereinafter, Organization for Economic Cooperation and Development, *Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series*], However there are tax jurisdictions which issue public rulings without regard to the specific issue, for example England, see for example Chan, Winnie, 'Binding Rulings', *Journal of Economic Law, Fiscal Studies*, 1997, vol. 18, no. 2, pp. 189-210, p. 191 [Hereinafter, Chan, *Binding Rulings*].

⁶¹ Organization for Economic Cooperation and Development, *Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series*, p. 86.

⁶² *Ibid.*

⁶³ Chan, *Binding Rulings*, p. 191, see also, The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 107.

⁶⁴ Organization for Economic Cooperation and Development, *Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series*, p. 86.

prior to the implementation of a proposed transaction, or (ii) only where the transaction is already in place, or (iii) when both pre-transaction and post-transaction rulings may be sought.⁶⁵

2.3.3 Rulings on Issue of Fact and/or Law

The essence of advance tax rulings became meaningful when rulings are issued on a specific set of facts presented by the taxpayer.⁶⁶ The international definition of advance tax rulings also recognized that advance tax rulings involve the interpretation and application of tax law to a set of facts.⁶⁷ Accordingly tax jurisdictions differ one from the other in that most jurisdictions provide rulings on issue of law and issue of facts while few others preclude rulings sought on specific set of facts. Exceptionally, in Canada rulings will not be granted where the issue involves an application of tax law to the facts.⁶⁸

2.3.4 Authorities in Charge of Issuing Advance Tax Rulings

The experiences of tax jurisdictions show that there are three possibilities of organizing the authority that is in charge of administering advance tax rulings. These are organizing it as an independent, semi-independent or making the revenue authority issue rulings. In addition to this, the option whether the issuance of advance ruling is confined to the central tax authorities or should subordinates of central authorities be empowered to issue ruling is also an important consideration in federal systems.⁶⁹ For example, Sweden has a unique system for advance rulings, whereby these are issued not by the tax administration but by an independent counsel.⁷⁰

2.4 The Significance of Advance Tax Rulings

As discussed earlier, the scheme of advance tax rulings became an indispensable tool and remains the manifestation of modernity in tax administration. The need for advance tax rulings in

⁶⁵ Chan, *Binding Rulings*, p. 191.

⁶⁶ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 107.

⁶⁷ Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*, p. 7.

⁶⁸ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 107.

⁶⁹ Frans Vanistendael, *Legal Framework for Taxation*, (volume 1; International Monetary Fund: 1996; Victor Thuronyi, ed.), p. 47.

⁷⁰ *Id.* p. 48.

tax jurisdictions across the world arises because of its several advantages. The following are the common significances shared by many jurisdictions.

2.4.1 Advance Tax Rulings and the Principle of Certainty

The principle of certainty remains a conventional⁷¹ and inherent standard in the design of a certain tax policy.⁷² The decisiveness of this principle can be understood from the wordings of the famous philosopher and political-economist, Adam Smith, as “the certainty of what each individual ought to pay is, in taxation, a matter of so great importance that a very considerable degree of inequality, it appears, I believe, from the experience of all nations, is not near so great an evil as a very small degree of uncertainty.”⁷³ The principle of certainty in the words of Adam Smith connotes that “the tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person.”⁷⁴ The Association of Chartered Certified Accountants⁷⁵ also believes that “certainty is a key requirement for the proper operation of a good tax system but that this is an area in which systems in many jurisdictions fall short.”⁷⁶

Certainty enables individuals and businesses to make an informed decision and respond to the intended policy choices.⁷⁷ In an economic decision making, certainty assures some degree of predictability on tax law consequence. Without certainty, neither governments nor taxpayers can effectively budget or plan for their future actions.⁷⁸ Certainty helps the tax authority to sensibly

⁷¹ Tadesse, Lencho, *The Ethiopian Income Tax System: Policy, Law and Practice*, Ph.D Dissertation, University of Alabama, Department of Interdisciplinary Studies, 2014, p. 86 [unpublished].

⁷² Hans, Gribnau, ‘Equality, Legal Certainty and Tax Legislation in the Netherlands - Fundamental Legal Principles as Checks on Legislative Power: A Case Study’, *Utrecht Law Review*, 2013, Vol. 9, No. 2, p. 52-74, p. 69. [Hereinafter, Hans, *Equality, Legal Certainty and Tax Legislation in the Netherlands - Fundamental Legal Principles as Checks on Legislative Power: A Case Study*].

⁷³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, (1776), p. 454, available online at www.feedbooks.com

⁷⁴ *Ibid.*

⁷⁵ The Association of Chartered Certified Accountants is, founded in 1904, the global body for professional accountants. Its aim is to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management. The notes included can be reached at <http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2014/november/certainty-in-tax.html>, last accessed April, 20, 2016.

⁷⁶ *Ibid.*

⁷⁷ OECD, *Addressing The Tax Challenges Of The Digital Economy*, OECD, 2014.

⁷⁸ Gribnau, *Equality, Legal Certainty and Tax Legislation in the Netherlands - Fundamental Legal Principles as Checks on Legislative Power: A Case Study*, p. 54.

estimate the revenue it will collect.⁷⁹ This in turn helps the government to pass a sound decision while planning a budget for future spending. However, proposed plans based on deficient estimation bring risk. This means, uncertainty of tax law is also an important concern of the government too as unscrupulous taxpayers may exploit the deficiency in the tax statutes to the detriment of the public revenue.⁸⁰

Certainty influences taxpayers' decision making in several ways. First, if the taxpayer has a choice of transactions, exact prediction of the different liabilities will aid a rational choice.⁸¹ Second, even if there is no alternative transaction, uncertainty over the tax outcome can influence the decision about whether to proceed, particularly for businesses on narrow margins.⁸²

Generally, the principle of certainty has a role to strike the balance between the unreserved authorities' effort of incorporating every income within the tax net and the taxpayer. It intended to assure and accomplish the rule of law in taxation⁸³ which presupposes tax liability should not be above the meaning, manner and amount provided by the legislature.

Tax law is often ambiguous. The causes of the opacity of tax provisions are several. The massive legislative production of tax rules, with many provisions often being spread across several laws, including those not related to taxation could give rise to its complexity which in turn makes it uncertain.⁸⁴ Again frequent legislative changes, which are often dependent upon a government's coalition partners' pursuing different tax policies could also make tax law uncertain.⁸⁵ Additionally, the fact that the creation, modification, viability and nature of different business transactions are governed by several laws inevitably makes tax law to be interdisciplinary.⁸⁶ This makes also tax law to be uncertain. In other words, uncertainty about the interpretation and

⁷⁹ The Association of Chartered Certified Accountants, *Certainty in Tax*, <http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2014/november/certainty-in-tax.html> p. 3, last accessed April, 20,2016

⁸⁰ Ordower, Henry, 'Restricting the Legislative Power to Tax: Intersections of Taxation and Constitutional Law', *Electronic Journal of Comparative Law*, 2007, Vol. 11, No.13, pp.1-18, p. 11. [Hereinafter, Ordower, *Restricting the Legislative Power to Tax: Intersections of Taxation and Constitutional Law*].

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Daniel Deak, 'Neutrality and Legal Certainty in Tax Law and the Effective Protection of Tax Payers Rights', *Acta Juridica Hungarica*, 2008, Vol. 9, No. 2, pp. 177-201, p. 187.

⁸⁴ Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?*, p. 248.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

application of tax law is inherent because it depends upon transactions (acts or facts) regulated by other fields of law.

Avoiding tax uncertainty is a difficult task.⁸⁷ Even a detailed examination of the underlying legal norm sometimes cannot prevent a tax issue from being interpreted in different ways. There are three types of possible uncertainties in tax law:⁸⁸

1. ambiguity concerning the precise meaning of statutory language.⁸⁹
2. ambiguity concerning the application of the law to a specific factual situation⁹⁰ and
3. ambiguity concerning the type of evidence sufficient to establish necessary facts.⁹¹

In the process of tax law legislation legal certainty has been given considerable weight.⁹² In so doing, among the general principles of limitation on the taxation power, the principle of legality and the principle of fair play and or public trust in tax administration are the major principles that are intended to maintain the principle of certainty in tax law. The principle of legality in tax law means that tax must have a firm statutory basis.⁹³ It intends to avoid taxation by presumption.⁹⁴ On the other hand, the principle of fair play or public trust means that the taxation authority must not be allowed to get an unfair advantage in its dealings with taxpayers.⁹⁵

The principle of legality in tax law emphasizes that the structural elements of the tax law should be clear and understandable so that tax liability is certain from the text of the tax law itself while the principle of fair play or public trust points that the tax authority should not unfairly use the uncertainty of tax law to the detriment of tax payers in the course of enforcing the tax law.⁹⁶ This principle is also a limitation on the discretionary power of the tax authority and underpins, if

⁸⁷ Diller, *et al*, *Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment*, p. 14.

⁸⁸ Susan B. Long & Judyth A. Swingen, 'Taxpayer Compliance: Setting New Agendas for Research', *Law & Society Review*, 2001, Vol. 4, pp 637-647, p. 646.

⁸⁹ See, አስቻለው አሻግራ: 'የታክስ ከፋዮች ቅሬታ አፈታት ሥርዓት በአ.ት.ድ.ደ': *Mizan Law Review*, 2014, Vol. 8, No.1, pp.190-236, p. 201. [Hereinafter አስቻለው: የታክስ ከፋዮች ቅሬታ አፈታት ሥርዓት በአ.ት.ድ.ደ]

⁹⁰ Susan B. Long & Judyth A. Swingen, *Taxpayer Compliance: Setting New Agendas for Research*, p. 646

⁹¹ *Ibid.*

⁹² Hans, *Equality, Legal Certainty and Tax Legislation in the Netherlands - Fundamental Legal Principles as Checks on Legislative Power: A Case Study*, p. 54.

⁹³ Frans Vanistendael, *Legal Framework for Taxation*, in 1 *Tax Law design and Drafting* 1, 16, 18 (Victor Thuronyi ed., 1996). p.1.[Hereinafter Frans Vanistendael, *Legal Framework for Taxation*]

⁹⁴ *Ibid.*

⁹⁵ *Id.* p. 7.

⁹⁶ Frans Vanistendael, *Legal Framework for Taxation*, p. 1.

extended, that procedures employed to administer tax should be fairly available to reduce the uncertainty in the application of the tax law to the facts. The way tax law administered must not be arbitrary or breach accepted standards of fairness and justice.⁹⁷ Put simply, certainty comes not only from clear statute but also from timely and understandable administrative guidance which is available to tax payers'.⁹⁸ This means the authorities' interpretation in the course of implementing tax law is no less to bring to uncertainty than what is brought by the ambiguity of the tax legislation itself. It follows that certainty principle extended up to the quality and transparency of procedures applied throughout the tax administration.

Most often, tax authorities regularly use wide range of guidance services, such as regulations, revenue rulings and procedures, notices, and a variety of internal rulings and documents as well as even less formal announcements.⁹⁹ Taxpayer service usually means service and information, which the tax authority provides to taxpayers so that they can comply with their tax obligations.¹⁰⁰ It should also give the taxpayer a fair guideline of what consequences taxpayers' activities will have in terms of taxes. Among these services, advance tax rulings have been regarded as an indispensable tool in the modern tax administration system.¹⁰¹ Even, with the availability of wide range of administrative guidance, "tax authorities are believed to have a potential to increase or decrease tax law uncertainty."¹⁰²

The way tax law is applied on some transactions and business operations affects not only their attractiveness but also their viability.¹⁰³ It is thus fortunate that the incidence of taxation can be predicted accurately.¹⁰⁴ An advance tax ruling is a fiscal instrument that offers legal certainty on a specific tax issue associated with a future business activity.¹⁰⁵ Advance tax rulings ensure certainty in that these rulings announce the treatment of a certain taxable transactions by tax

⁹⁷ J N Stefanelli & L Moxham (Eds), *Do Our Tax Systems Meet Rule of Law Standards Conference Papers 20 November 2013 (Bingham Centre Working Paper 2014/06)*, Bingham Centre for the Rule of Law, BIICL, London, 2014, p.48, available online at www.binghamcentre.biicl.org, last accessed on May, 02, 2106.

⁹⁸ American Institute of Certified Public Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*, p. 12.

⁹⁹ Osofsky, *The Case Against Strategic Tax Law Uncertainty*, p. 508

¹⁰⁰ Temtime Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p.78.

¹⁰¹ Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*, p.1.

¹⁰² Osofsky, *The Case Against Strategic Tax Law Uncertainty*, p. 501.

¹⁰³ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 95.

¹⁰⁴ *Ibid.*

¹⁰⁵ Diller, et al, *Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment*, p.1.

authorities before the hard application of the law come in to the scene. Especially in systems where there are binding tax rulings, as far as the taxpayer comply and live within the terms of tax rulings, taxpayer will secure the confidence of undertaking a business activity if he/she/it has an advance knowledge and determination of the tax consequences. In a binding advance tax ruling the tax authority is bound by its interpretation and share the risk of tax uncertainty. Presumably, the tax authority's doubt as to the understatement of tax liability by the tax payer will be relatively reduced. The worries of taxpayer on the unpredictable tax consequence of a business activity will be reduced.

In every case, uncertainty of the outcome inevitably leaves scope for appeal if either the taxpayer or the tax authority disagrees with the assessed or submitted liability.¹⁰⁶ The costs of dispute, both direct and indirect, can be considerable and are a waste of otherwise productive resource. It is arguable that, economic units which have fewer resources to resist the uncertain consequences of tax law enforcement need this uncertainty to be resolved by every possible mechanism, if it is not abolished.¹⁰⁷ The other wise of which drive them to the informal sector whereby they shield themselves from the tax incidences. Uncertainty may slow down the tax assessment cycle at any stage; identification of taxable transactions, valuation of them and application of the tax law to them.

Advance tax rulings are important tools in tax jurisdictions with the self-assessment system. It is clear that, self-assessment tax system loads the taxpayer with uncertainty of the prospective penalty, by putting it under responsibility of making accurate tax assessments.¹⁰⁸ Self-assessment means; where taxpayers, with access to information and assistance from the tax administration, calculate their own liabilities and refund entitlements, file returns, and pay tax and claim refunds that they themselves assess.¹⁰⁹ If they fail to make accurate assessments and pay insufficient tax, or falsely claim refunds, they may run the risk of being audited and subjected to penalties. Self-

¹⁰⁶ The Association of Chartered Certified Accountants, *Certainty in Tax*, <http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2014/november/certainty-in-tax.html>, p. 3, last accessed April, 20,2016

¹⁰⁷Diller, *et al*, *Boon or Bane of Advance Tax Rulings as a Measure to Mitigate Tax Uncertainty and Foster Investment*, p. 4.

¹⁰⁸ James, Simon and Wallschutzky, Ian 'The Design of an Appropriate System of Tax Rulings', *Revenue Law Journal*, 1995, Vol. 5, No. 2, pp. 175-196, p. 187.

¹⁰⁹ Okello, Andrew. *Compliance Risk Management: Managing and Improving Tax Compliance Workshop*, Nairobi, Kenya – November 3-7, 2008, p. 11. [Hereinafter, Okello, *Compliance Risk Management: Managing and Improving Tax Compliance Workshop*].

assessment is critical and can only function effectively if taxpayers get sufficient information to accurately determine their correct tax liability.¹¹⁰ The ability of tax administrators to interpret and equitably enforce an extensive body of tax law also greatly affects the efficiency of self-assessment.¹¹¹ Taxpayers will be uncertain, sometimes for long periods, whether the calculation that they have filed and the assumptions that they have made are accepted by the tax authorities. To avoid penalties for incorrect tax returns the taxpayers need more information and greater certainty about the application of the law.¹¹² Hence, advance tax rulings can ensure certainty in tax assessment by putting tax authorities in a duty to provide accurate information to the taxpayer. In Australia, for example, a new system of public and private rulings was included as part of the change to self-assessment in order to help taxpayers interpret and apply the law.¹¹³

2.4.2 Advance Tax Rulings and the Principle of Efficiency

The general notion of the principle of efficiency is that the cost of collecting tax for tax authorities and the cost of compliance to tax laws for tax payers should be minimized as far as possible.¹¹⁴ Efficiency is also one of the maxims forwarded by Adam Smith. He said that “Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.”¹¹⁵ This implies that the revenue made from taxes must not remain sunk and ruined by the costs incurred during the tax collection process.¹¹⁶ Tax should be collected with least cost so that the largest amount of the collected tax should join the public finance.

The concept of efficiency has three dimensions.¹¹⁷ The first one being on the revenue rose, with efficient systems raising high revenues.¹¹⁸ The second dimension is on the time spent on paying

¹¹⁰ Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, USA, Deloitte Consulting LLP., 2013, p.172. [Hereinafter, Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*].

¹¹¹ Temtim Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p. 75.

¹¹² *Ibid*.

¹¹³ *Ibid*.

¹¹⁴ OECD, *Addressing the Tax Challenges of the Digital Economy*, OECD, 2014, p. 31.

¹¹⁵ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, (1776), p. 454, available online at www.feedbooks.com

¹¹⁶ Aschalew Ashgre, *Tax Law Teaching Material*, College of Law and Governance Studies, School of Law, Addis Ababa University, 2013, p. 18, [unpublished].

¹¹⁷ Ndemo Alfonse Mosomi, Determinants of Tax Efficiency Perceptions by Domestic Taxpayers in Kenya: The Case of Nairobi, *International Journal of Economics, Finance and Management Sciences*, 2015, Vol. 3, No. 5, pp. 541-545, p. 542.

or collecting revenue.¹¹⁹ Efficient systems ensure that taxes are paid and collected in the shortest time possible. The last dimension of tax efficiency is on the cost of collecting tax.¹²⁰ Efficient systems ensure that the cost of paying and collecting tax is minimized as much as possible. This is in line with the canon of economy in taxation. Therefore, tax efficiency involves maximizing tax revenue while at the same time minimizing the cost and time of raising the tax revenue.

Beyond, tax policy and tax laws whose basic role is legalizing the sources of revenue, the collection of real amount of taxes is largely dependent up on the efficiency and effectiveness of tax administration. The way tax law administered affects the efficiency of the tax system.¹²¹ On the other hand, weakness in tax administration cannot produce the desired tax revenue yield. The desired objectives of tax policy can be achieved only when it is properly administered. Hence, the efficiency of a tax system is not determined only by appropriate legal regulation but also by the efficiency and integrity of the tax administration.¹²²

Tax administration is not an easy task.¹²³ It involves a variety of activities such as, the identification of tax liability based on the existing tax law, the assessment of this liability, and the collection, prosecution and penalties imposed on non-complying taxpayers. Briefly put, tax administrations mainly exist to enforce taxpayers' compliance with tax laws.¹²⁴ In order to bring higher level of compliance and increase clarity of the tax laws and regulations, tax authorities need to provide different types of services for taxpayers.¹²⁵ Taxpayers' service department is by far the most important section in which tax administrator and taxpayers or the general public interacts.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ The World Bank, Smart Tax Administration, October, 2010, No.36, p.1, available at www.worldbank.org/economicpremise, last accessed April, 20, 2016 [Hereinafter, The World Bank, Smart Tax Administration].

¹²² Kaldor, 1980, as cited by Temtime Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p.78.

¹²³ The World Bank, Smart Tax Administration, available at www.worldbank.org/economicpremise, last accessed April, 20, 2016.

¹²⁴ James Alm and Denvil Duncan, 'Estimating Tax Agency Efficiency', *Journal of Public Budgeting and Finance*, 2014, Vol. 34, No. 3 pp. 92-110, p. 93.

¹²⁵ United nations Meetings, Efficiency and Effectiveness of Revenue Administration *Ad Hoc Expert Group Meeting on Strategies for Improving Resource Mobilization in Developing Countries and Countries with Economies in Transition*, Montreal, 2 – 6, October 2000, Vol.4, p. 3.[Hereinafter, United nations Meetings, Efficiency and Effectiveness of Revenue Administration *Ad Hoc Expert Group Meeting on Strategies for Improving Resource Mobilization in Developing Countries and Countries with Economies in Transition*]

The attitude and conduct of tax authorities' may shape the taxpayers' feelings towards the tax administration. Most taxpayers' services are the common means to facilitate communication between tax authority and taxpayers. In so doing, tax authorities are expected to have a good working knowledge of tax law, tax office procedures, filing requirements and the tax obligations of the taxpayer. It is essential that advice given by the taxpayer service function is correct and consistent.¹²⁶ In order to foster high level of compliance and minimize misunderstandings of the tax laws and regulations tax administrators need to disseminate different types of information through rulings and other mediums.¹²⁷

It is also said that, the quality of relationship between the tax administration and the taxpayers is an indispensable element for proper tax administration particularly for an optimum revenue raising.¹²⁸ The complexity and consequent uncertainty of tax law has increased the role and the importance of an efficient information system for both taxpayers and tax authorities.¹²⁹ The experience of most tax administrations shows that introduction different forms of dialogue between tax authorities and taxpayers are found helpful to improve the quality of the services rendered to the taxpayers. It is undeniable that advance tax rulings play an important role in improving dialogue, maintaining open and transparent relationship and give rise to a more fruitful communication of information between the tax authority and the taxpayer.¹³⁰

Apparently, the rationale for providing quality taxpayer services is to raise tax awareness and enhance the level of voluntary tax compliance.¹³¹ This can be achieved through availing taxpayers and their agents with clear, precise and timely tax information, simplifying the tax forms and tax laws, translating the laws into local understood dialects by the taxpayers, ensuring courtesy and considerate treatment is extended unconditionally to all taxpayers, responding expeditiously to every taxpayer's enquiry, compliant or request, explaining the grounds for

¹²⁶ Baurer, *Tax Administrations and Small and Medium Enterprises (SMEs) in Developing Countries' Consultant Small and Medium Enterprise*, 2005, p. 15. [Hereinafter, Baurer, *Tax Administrations and Small and Medium Enterprises (SMEs) in Developing Countries' Consultant Small and Medium Enterprise*].

¹²⁷ International Monetary Fund, *Designing a Tax Administration Strategy Experiences and Guidelines*, 1997, Working Paper 97/30, p. 25.

¹²⁸ United Nations, *Efficiency and Effectiveness of Revenue Administration, Ad Hoc Expert Group Meeting on Strategies for Improving Resource Mobilization in Developing Countries and Countries with Economies in Transition*, p.1.

¹²⁹ Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?*, p. 248.

¹³⁰ *Ibid.*

¹³¹ Temtim Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p. 78.

derivation of every tax assessment, providing proper technical advice to the taxpayer requests about tax implications, assisting new taxpayers to register, educating the taxpayers and the general community about tax obligations and rights.¹³² One method of achieving these activities is by issuing advance tax rulings. This is because; advance tax rulings can serve as a forum whereby taxpayer seeks the intention of the tax authority regarding the tax incidences of an already undertaken or proposed business transaction.¹³³

Tax administration may become more efficient and transparent as the decision making process of tax authorities improved.¹³⁴ This is because, the practice of issuing advance tax ruling increase the uniformity in the tax policy and the higher consistency in the interpretation and application of tax law provisions.¹³⁵ This is so because, the issuance of rulings helps the authority to be familiar with tax laws and latest business operations which in turn serve as an input while dealing with similar matters. In other words, by having available a body of law represented by the tax rulings previously issued, tax authorities may be faster in taking their decisions and, generally, more efficient in the heavy burden of the administration of the tax system.¹³⁶ The existing tax rulings may represent a point of reference for the tax administration to readily solve the same or similar questions over the time.

Generally, efficiency of tax administration can be supported by setting the advance tax ruling mechanism. Advance tax ruling scheme saves resources and time which might be consumed in the course of tax declaration, tax assessment, and collection. It has been said that, as its advantages outweigh, "offering advance tax rulings is a low-risk and low-cost endeavor."¹³⁷

In recent years the Ethiopian government has been undertaking substantial efforts in reforming and modernizing the revenue administration with the aim of simplifying the tax system and increasing government revenue. Despite the efforts taken by government, recent studies show that there is still poor tax revenue collection and inefficient tax administration.¹³⁸ Hence, it is

¹³² Jenkins and Khadka, 2000, as cited by Temtime Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p.78.

¹³³ Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?*, p. 248.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ Sawyer, *et al*, *Advance Tax Rulings in Perspective: A theoretical and Comparative Analysis*, p. 365.

¹³⁸ Temtim Derebe, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p. 4.

important to consider the advance tax ruling scheme within the tax administration, so that the latter will benefit from this scheme.

2.4.3 Advance Tax Rulings and the Principle of Simplicity

The principle of simplicity in taxation connotes that “tax law should be simple so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.”¹³⁹ Thus, a tax system can be said simple when tax rules and obligations are well known, easily understood.¹⁴⁰ Simple tax system enables taxpayers to predict the tax implication of a business activity, in advance, with less difficulty and uncertainty.¹⁴¹ The ascertainment of tax liability and obedience efforts to it should be as plain and straightforward as possible.

A very complex tax system and an unclear tax obligation leave a room for potential mistakes and intentional law-breaking.¹⁴² Due to the inevitable change and lag in administrative guidance that bring complexity, it also heightens taxpayer uncertainty. Complexity also increases the costs of tax administration including the costs related with collecting taxes, examining returns, and resolving disputes.¹⁴³ Complexity in tax system blurs taxpayers’ expectation how tax law will be applied on them and on others which is detrimental to the transparency and visibility missions of a tax administration.¹⁴⁴ This means, complexity may also cause the treatment of similarly-situated taxpayers with different tax liabilities. As a result a simple tax system desired mainly because of the aforementioned problems brought by a complex tax system.

The task of simplifying tax system necessitates keeping the volume of tax laws to the minimum, especially, those that change tax breaks or incentives which have formed the basis of business decision making should be kept to an absolute minimum.¹⁴⁵ Compliance with tax laws can be

¹³⁹ American Institute of Certified Public Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*, p. 10.

¹⁴⁰ Fiscal Commission Working Group, *Principles for a Modern and Efficient Tax System in an Independent Scotland*, Published by the Scottish Government, Scotland, Edinburgh, 2013, p. 126.

¹⁴¹ *Ibid.*

¹⁴² Association of Chartered Certified Accountants, *Foundations for a Sound Tax System: Simplicity, Certainty and Stability*, June 2015, available at <http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2013/november/simplicity-in-the-tax-system.html>, last accessed on April, 20, 2016

¹⁴³ American Institute of Certified Public Accountants, *Guiding Principles for Tax Simplification*, American Institute of Certified Public Accountants, Inc., New York, 2002, p. 8.

¹⁴⁴ *Ibid.*

¹⁴⁵ Association of Chartered Certified Accountants, *Tax principles: From Adam Smith to Barack Obama*, April 2009, p. 4.

ensured by administrative procedures which increase taxpayers understanding of the tax consequences of transactions in which they engage in or plan to engage.¹⁴⁶

Basically, the goal of simplifying a tax system is to increase the ease of compliance, reflected in the costs and time saved. An efficient tax system should allow taxpayers to calculate their tax liability easily, pay their taxes and file their tax returns, and redress their grievances with limited costs. In addition, it should include taxpayer-friendly methods for tax administrators to verify tax liability and ensure that correct taxes have been paid.¹⁴⁷ The simplification of the tax system improves the collection of more revenues and makes paying taxes easier for citizens and businesses and managing them simpler for administrations.¹⁴⁸

The scheme of advance tax rulings can have significance in simplifying the tax system in general. Regulations, instructions, circulars, and rulings all provide greater information on the intent of the law to both taxpayers and tax administrators.¹⁴⁹

The experience of most countries indicates that tax regulations and laws are amended almost every year as part of annual budget process.¹⁵⁰ This amendment might bring a change in tax rates, exemptions, deductions making the existing regulations no longer applicable in the future. This situation will lead taxpayers to make mistakes and necessitates taxpayers to rely on several sets of procedures to inform them of the tax law at a particular point in time. This implies that, the process of tax law simplification goes beyond just drafting changes to provide an opportunity to correct and introduce important changes to tax policy and tax administration.¹⁵¹

In the process of simplification of tax laws, defining the intent of the tax laws to the plain language level is desirable. However it is not necessary for tax laws to be easily readable by a layperson.¹⁵² This is because the goal of tax laws is to ensure legality of taxation and the

¹⁴⁶ American Institute of Certified Public Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*, p. 12.

¹⁴⁷ The World Bank, *A Hand Book for Tax Simplification*, p. 6.

¹⁴⁸ European Commission's Directorate-General for Taxation and Customs Union, *Recent Reforms of tax Systems in the EU: Good and Bad News*, European Union, London, 2013, p. 31.

¹⁴⁹ World Bank, *A Hand Book For Tax Simplification*, p. 69.

¹⁵⁰ Mohd Rizal Palil, *Tax Knowledge and Tax Compliance Determinants in Self Assessment System in Malaysia*, Ph.D Dissertation, Department of Accounting and Finance Birmingham Business School The University of Birmingham 2010, p. 194, [unpublished]

¹⁵¹ World Bank, *A Hand Book for Tax Simplification*, p. 70.

¹⁵² *Id.* p. 69.

simplification of tax law should not be at the expense of defining the intent of the law in precise terms.¹⁵³ However, whatever amount of detailed tax law is enacted, it will still be unable to keep abreast of the changing circumstances of contemporary world. The trade-off between making tax laws simpler and the need to keep the tax law in briefly precise terms necessitate the tax law to be accompanied by other explanatory instruments.

2.4.4 The Role of Advance Tax Rulings in Enhancing Voluntary Compliance with Tax Laws

Apparently, the primary objective of any tax administration is to promote, facilitate, achieve, and preserve a high degree of self-assessment and voluntary compliance of taxpayers with their tax obligations.¹⁵⁴ Indeed, it has never been simple to persuade all taxpayers to fulfill their obligations under tax law. Along with the development and problems associated with the self-assessment system, the emergence of the global economy and electronic commerce, tax compliance attain a significance part of tax policy.¹⁵⁵

Tax compliance can be defined as the degree to which taxpayers comply (or fail to comply) with the tax rules, for example by declaring income, filing a return, and paying the tax due in a timely manner.¹⁵⁶ However, this definition seems to focus on the compulsory aspect of compliance through the instrumentality of economic sanctions on taxpayers. On the other hand, it has been argued that a successful tax administration requires taxpayers to comply willingly, without the need for enquiries, obtrusive investigations, reminders or the threat or application of legal or administrative sanctions.¹⁵⁷

Thus, as distinct from compulsory compliance, voluntary compliance can be defined as the timely filing and reporting of required tax information, the correct self-assessment of taxes owed,

¹⁵³ *Ibid.*

¹⁵⁴ Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean, USA*, Deloitte Consulting LLP, 2013, p. 27. [Hereinafter, Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*].

¹⁵⁵ James, Simon and Alley, Clinton, 'Tax Compliance, Self-Assessment and Tax Administration', *Journal of Finance and Management in Public Services*, 2004, Vol.2, No. 2, pp. 27-42, p. 28 [Hereinafter, James and Alley, *Tax Compliance, Self-Assessment and Tax Administration*].

¹⁵⁶ OECD, *Compliance Risk Management: Managing and Improving Tax Compliance*, Guidance Note, October 2004, p. 43.

¹⁵⁷ Simon James *et al*, *Tax Compliance, Self-Assessment and Tax Administration*, p. 30.

and the timely payment of those taxes without enforcement action.¹⁵⁸ It is all about providing taxpayers with everything necessary to enable compliance.

Good compliance outcomes begin with good legislation.¹⁵⁹ Law that is clear and unambiguous with regards to its intent and interpretation provides a solid base upon which to build administrative compliance programs and compliance risk management. However, enforcement of compliance in situations where a taxpayer has no services that clarify their tax obligations will result in a perception that the tax administration system is unfair. Difficult or ambiguous law creates increased opportunities for taxpayers to behave in ways that were unintended by the law, which is non-compliance. Hence, in the move to deal with such non-compliance behavior priority should be given to tasks that make tax obligations clear, transparent, easy to understand, simple and non- confusing.¹⁶⁰ These tasks might include consideration of readily accessible clear interpretative products, such as advance tax rulings.¹⁶¹

A certain tax administration could design a lot of strategies to achieve optimum level of compliance. Apparently, these strategies range from conducting consultative forums, education, rulings and advice to prosecutions, sanctions and investigations. However, in the promotion of voluntary compliance, helping taxpayers understand their obligations and entitlements under the tax law should be the principal aim the self-assessment tax system.¹⁶² This strategy is accomplished basically by providing the taxpayers with clear, precise and timely tax information, simplifying the tax forms and tax laws, translating the laws into locally understood dialects by the taxpayers, ensuring courtesy and considerate treatment is extended unconditionally to all taxpayers, responding expeditiously to every taxpayer's enquiry, compliant or request, explaining the grounds for derivation of every tax assessment, providing proper technical advice to the taxpayer requests about tax implications, educating the taxpayers and the general community about tax obligations and rights.¹⁶³

¹⁵⁸ IMF, *Designing a Tax Administration Reform Strategy: Experiences and Guidelines*, Discussion paper, March 1997, p 11

¹⁵⁹ OECD, *Compliance Risk Management: Managing and Improving Tax Compliance*, Guidance Note, October 2004, p. 43 and the following, available at <http://www.oecd.org/dataoecd/44/19/33818656.pdf>

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² Okello, *Compliance Risk Management: Managing and Improving Tax Compliance Workshop*, p.16

¹⁶³ *Ibid.*

It has to be noted that, the rationale for providing quality taxpayer services is to raise tax awareness and enhance the level of voluntary tax compliance.¹⁶⁴ The knowledge of tax laws significantly helps taxpayers to comply with their tax liabilities.¹⁶⁵ It follows that, voluntary compliance demands the proactive provision of taxpayer services than being reactionary. Any country's tax administration can be benefited from a high degree of voluntary compliance in that it enables the tax administration to use its resources on identifying and dealing effectively with those taxpayers who fail to fully comply with their tax obligations.¹⁶⁶ In so doing, however, promotion of voluntary compliance demands the management of the tax administration to be capable of realizing a proper balance between service to taxpayers and enforcement of the tax laws and regulations.¹⁶⁷ It also requires the tax administration to use taxpayer-friendly administrative procedures such as an advance tax rulings system.¹⁶⁸

It has been recommended that advance tax ruling along with other education and advice services should take the largest share of the strategies in the effort to promote voluntary compliance.¹⁶⁹ It is thus imperative that advance tax ruling is a reliable compliance tool that tax authorities need to exhaust and capitalize on. In this regard, what makes advance tax ruling service important is that it provides some degree of certainty so that compliance can be achieved with a reduced cost in addition to increasing integrity for the tax system.¹⁷⁰

¹⁶⁴ Jenkins and Khadka, 2000, as cited by Temtime Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, 2014, p.78, [unpublished]

¹⁶⁵ Abubakari Abdul – Razak ,etal, Evaluating taxpayers' attitude and its influence on tax compliance decisions in Tamale, Ghana, *Journal of Accounting and Taxation*, 2013, Vol. No. 3, pp 48-57, p. 55

¹⁶⁶ Jacobs, et al etal, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean, USA*, August, 2013, p. 27.

¹⁶⁷ IMF, *Designing a Tax Administration Reform Strategy: Experiences and Guidelines*, Discussion paper, March 1997, p. 11.

¹⁶⁸ OECD, *Principles of Good Tax Administration*, practice note Issued on, 25, 1999, p.3.

¹⁶⁹ Kevin Woodley, *Compliance Risk Management: Managing and Improving Tax Compliance*, Workshop by East AFRITAC, Nairobi, Kenya – November 3-7, 2008, p. 11[unpublished]

¹⁷⁰ American Institute of Certified Public Accountants, *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*, p.12

2.4.5 The Role of Advance Tax Rulings in Limiting Discretionary Power of the Tax Authorities and Mitigating Future Disputes between the Taxpayer and the Tax Authorities

In an effort to improve the tax administration all tax reforms always consider a minimized discretion to tax officials.¹⁷¹ Tax authorities may have choices to determine aspects of liability, which is discretion. Tax authorities' enforcement discretion is likely to negate of the principle of certainty and predictability.¹⁷² Laws that give excessive discretion to tax authorities, ambiguous tax provisions, several tax instruments and arbitrary implementation of tax laws increase are sources for discontent of taxpayers.¹⁷³ The complexity of tax laws and procedures increases the magnitude of corruption in the tax system. Tax evasion is more likely to occur in a highly corrupt environment. Lack of requisite information makes taxpayers unaware of their rights and more exposed to discretionary treatment and exploitation.¹⁷⁴

As a matter of power or responsibility, tax law administration requires tax authorities to interpret the law, for example definition of 'income', so as to reach in a meaningful result that drags transactions to live within the scope of tax law.¹⁷⁵ In other words, tax authorities always, by way of interpretation, exert unreserved effort to incorporate each income within the tax net.¹⁷⁶ The decision executed among the many arguments to drag a certain 'income' within the tax net is purely discretionary power. Transparency would also make the tax law more predictable.¹⁷⁷ If taxpayers, know that the tax authority interprets 'income' as a standard informed by tax values that implicate what it is reasonable and administratively feasible to include in the tax base they may more accurately predict whether the tax authority would likely interpret a particular transaction as constituting income. This is a clear manifestation of how discretionary power of the tax authority affects the predictability and certainty of transactions undertaken by taxpayer.

¹⁷¹ Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, p. 300.

¹⁷² Abreu, Alice G. & Greenstein, Richard K., *Tax as Every law: Interpretation, Enforcement, and the Legitimacy of the IRS*, Temple University, *Legal Studies Research Paper Series*, Research Paper No. 2016-16 Date: 04-19-2016, at p. 10. [Hereinafter, Abreu & Greenstein, *Tax as Every law: Interpretation, Enforcement, and the Legitimacy of the IRS*]

¹⁷³ The World Bank, *A hand Book for Tax Simplification*, p. XI.

¹⁷⁴ Temtime Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, 2014, p.77

¹⁷⁵ Abreu & Greenstein, *Tax as Every law: Interpretation, Enforcement, and the Legitimacy of the IRS*, p. 11.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

However, in order to attain predictability and certainty legal provisions and related procedures should aim to be nondiscretionary and transparent.¹⁷⁸

Each of the strategic objectives in the business of tax administration: to achieve uniformity in applying tax laws; to provide quality service and taxpayer education and others require the design and application of different approaches.¹⁷⁹ For example, uniformity in applying tax law can be achieved through other activities that reduce discretion.¹⁸⁰ This means that, since "advance tax rulings are used to bring consistency in the application of tax law"¹⁸¹, it also helps to reduce/limit the discretionary power of tax authorities. Put simply, an advance tax ruling, especially a binding ruling, compels the tax authority to live within the meaning it gave for a certain tax provision which is a clear limitation of the authority's discretionary power.¹⁸²

With the view to enforce the general tax anti-avoidance rules there could be a possibility that tax authorities interpret tax laws in order to grab many transactions within the taxable zone. These rules continue to increase in order to fend off inappropriate and illegal tax planning.¹⁸³ Here, the diversity and complexity of transactions can be attributable for the proliferation of tax anti-avoidance rules. In both the United States and Australia, the tax administrator, through various types of rulings, combats taxpayers' exploitation of unintended statutory flaws, which the legislature is unable to address sufficiently quickly to prevent wide-scale losses of tax revenue.¹⁸⁴ On the other hand, these unintended statutory flaws could enable tax authorities to exercise discretion, given their effort is always to include every income within their jurisdiction.¹⁸⁵ Here, it has to be noted that the scheme of advance tax rulings is designed to limit the discretionary power of the tax authority, in the absence of which tax authority's use of its discretionary power inevitable.

There are situations whereby some schedule of allowances will be approved by the director of the revenue authority and may be relied up on the taxpayer. A formal procedure affording an

¹⁷⁸ Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*, p. 285.

¹⁷⁹ *Id.* p. 338

¹⁸⁰ *Ibid.*

¹⁸¹ Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?*, p.248.

¹⁸² The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 101.

¹⁸³ Ordover, *Restricting the Legislative Power to Tax: Intersections of Taxation and Constitutional Law* p. 11.

¹⁸⁴ *Ibid.*

¹⁸⁵ Abreu & Greenstein, *Tax as Every law: Interpretation, Enforcement, and the Legitimacy of the IRS*, p. 11.

opportunity to obtain advance rulings on depreciation questions for which the schedules do not adequately cover would have clear benefits.¹⁸⁶ Likewise, binding rulings should be available in respect of other matters that are subject to administrative discretion.¹⁸⁷ The experience several jurisdictions show that to the extent that administrative discretions exist, there is a strong case for an advance tax ruling process.¹⁸⁸

The other discussion in this section is regarding the role of advance tax rulings in reducing future disputes between the tax authority and taxpayer. The sources of disputes between the tax payer and tax authority are plenty.¹⁸⁹ One of the most effective ways to reduce disputes is to implement systems to inform and assist taxpayers in fulfilling their duties.¹⁹⁰ There is a consensus among scholars that one of the positive contributions of a functional tax rulings system is a decrease in tax litigation.¹⁹¹ The reduction of potential disputes, in its own also, can decrease the congestion of courts by tax disputes and costs associated with it. Advance tax rulings reduce the potential disputes between taxpayers and tax authorities in those taxpayers who learn tax authority opinion on the tax implication of a certain transaction will be less likely/less motivated to litigate the result.¹⁹² However, the successfulness of advance tax rulings in mitigating controversy depends on the binding effect of the ruling. The decrease in disputes is sought when the tax authority is hold to comply with the ruling and does not violate the expectations of the taxpayer who is watching the result of the ruling. In other words, in order for a tax rulings system to serve dispute mitigation purpose, it is necessary to make effects of rulings binding at least on the side of the tax authority.¹⁹³

¹⁸⁶ The Association of Chartered Certified Accountants, Certainty in Tax, <http://www.accaglobal.com/gb/en/technical-activities/technical-resources-search/2014/november/certainty-in-tax.html>, p 4, last accessed May,6,2016

¹⁸⁷ The Institute for Fiscal Studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990s*, 1999, p. 100.

¹⁸⁸ *Ibid.*

¹⁸⁹ See the details on አስቻለው፣ የታክስ ከፋዮች ቅሬታ አፈታት ሥርዓት በኢትዮጵያ , p. 201

¹⁹⁰ Victor Thuronyi, How Can an Excessive Volume of Tax Disputes Be Dealt With? December 2013, as cited by አስቻለው፣ የታክስ ከፋዮች ቅሬታ አፈታት ሥርዓት በኢትዮጵያ , p. 201

¹⁹¹ Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?* p. 248.

¹⁹² The Institute for Fiscal Studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990s*, p. 97.

¹⁹³ Duta, *The Harmonization of Advance Tax Rulings Systems In European member States-Why?*, p. 248

CHAPTER THREE

ADVANCE TAX RULINGS IN FOREIGN JURISDICTIONS

3.1 Advance Tax Rulings in India

The Income-tax Act 1961 of India in Chapter XIX-B incorporated a scheme of Advance Rulings.¹⁹⁴ India recognized such scheme of advance ruling with the objectives of:¹⁹⁵ planning income-tax affairs well in advance, providing the facility of ascertaining the income-tax liability of tax payers, avoiding long drawn and expensive litigation on any question of law or fact which might arise from normal income-tax assessment proceedings, promoting better taxpayer relations. According to the Indian definition¹⁹⁶ advance ruling means the determination by the Indian Authority for Advance Rulings in relation to a transaction which has been undertaken, or is proposed to be undertaken, by a non-resident applicant and such determination shall include the determination of any question of law or of fact in the application.

The scheme of advance ruling in India has constituted the Authority for Advance Rulings. It is legally established as a high-level quasi judicial authority with the view to making the ruling binding upon both the taxpayer and the tax authority.¹⁹⁷ The Authority for Advance Rulings was set up to provide guidance in the correct interpretation of the Indian tax laws which the non-residents may not otherwise be familiar with and helps them in taking investment decisions under an environment of certainty thereby avoiding unnecessary tensions and conflicts.¹⁹⁸ It is composed of a Chairman (head), who is a retired Judge of the Supreme Court and two members; one from the Indian Revenue Service, who is qualified to be member of the Central Board for

¹⁹⁴ Shah, Harshal and Ajinkya, Bijal 'The Rising Popularity of Advance Rulings in India', *Tax Notes International*, 2009, Vol. 5, No. 3, pp 219-224, p. 219. [Hereinafter, Shah and Bijal, *The Rising Popularity of Advance Rulings in India*]

¹⁹⁵ *Ibid*

¹⁹⁶ See, the Income Tax Act in S. 245N(a), as cited by Indian Authority Income tax Advance Rulings (Income-tax), Hand book on Advance Rulings, p. 5.

¹⁹⁷ Paras S. Savla, *etal*, 'Authority for advance Rulings-Concept and Scope of Advance Rulings under Direct Taxes', *The Chamber's Journal*, 2015, Vol.7, No.8, pp, 16-18, p. 17.[Hereinafter Paras S. Savla, *etal*, *Authority for advance Rulings-Concept and Scope of Advance Rulings under Direct Taxes*]

¹⁹⁸ Harshal Shah *etal*, *The Rising Popularity of Advance Rulings in India*, p. 219

Direct Taxes and another, an officer of the Indian Legal Service, who is of the rank of an Additional Secretary to the Government of India.¹⁹⁹

The Authority, thus, constituted is not a part of the revenue administration but is an independent, quasi-judicial tribunal. Its constitution is specially structured to give it a high status to combine in itself judicial, revenue and legal expertise, to function in a manner totally independent of the tax administration and thus to command the confidence of the taxpayers.²⁰⁰ The Authority for Advance Ruling has empowered with the responsibility to determine and pronounce rulings on question of law or fact arising out of any transaction/proposed transactions which are relevant for the determination of his tax liability.²⁰¹

In India, advance ruling issued by the Authority is binding, on the commissioner including its' subordinates and the applicant taxpayer, in respect of the transaction(s) ruling is sought.²⁰² However, there is no classification of rulings as public and private rulings. This is because the Authority for Advance Rulings considers the need for such classification redundant as the goals of consistency and uniformity are already existent. Rulings are published in the public interest.²⁰³ This not only ensures the due process of law but also provides for equality before the law.

Generally, Advance ruling in India is characterized as inexpensive, expeditious and binding arrangement. Accordingly, it has brought the following benefits for both the country and its tax payers. Advance rulings bring certainty in determining the tax liability and overcome the obvious disadvantage of an uncertain tax position.²⁰⁴ Thus, the taxpayer is forewarned in advance about the tax implication of the action he proposes to undertake. It also plays a vital role in avoiding long drawn and expensive litigation.²⁰⁵

¹⁹⁹ *Ibid.*

²⁰⁰ Amit Baargava, *Taxman's Income Tax Act*, Taxman Publications Pvt. Ltd., New Delhi, 2003, p. 32.

²⁰¹ See, S. 245 N(a), (b) and (c) of the Indian Income Tax Act, as cited by Harshal Shah *etal*, *The Rising Popularity of Advance Rulings in India*, p. 219

²⁰² Indian Authority for Income tax Advance Rulings, *Hand book on Advance Rulings*, p. 52.

²⁰³ Paras S. Savla, *etal*, *Authority for advance Rulings-Concept and Scope of Advance Rulings under Direct Taxes*, p.

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²⁰⁴ Harshal Shah *etal*, *The Rising Popularity of Advance Rulings in India*, p. 223.

²⁰⁵ *Ibid.*

3.2 Advance Tax Rulings in South Africa

Advance ruling in South Africa had a *de facto* existence before a scheme of Advance Tax Rulings has been introduced since October, 2006.²⁰⁶ This means that before October, 2006, South Africa did not have a formal tax ruling system. Taxpayers often approached the South African Revenue Service for guidance on the interpretation of certain provisions of the legislation administered by SARS.²⁰⁷ To a certain extent, South Africa Revenue Service complied with these requests and the responses are divided into general views and specific views. General views were often developed and formulated by the South Africa Revenue Service and communicated to stakeholders through interpretation notes, guides and brochures. On the other hand, specific views were informal rulings given based on a specific set of circumstances relating to a transaction to be entered into by the taxpayer. As there was no statutory basis for these views, they were not binding on either South Africa Revenue Service or the taxpayer.²⁰⁸

It has been said that some provisions in the South African Income Tax Act result in increased uncertainty for many legitimate business transactions²⁰⁹ and become a real obstacle for genuine and commercially desirable transactions. Considering this, a scheme of Advance Tax Rulings has been introduced with effect from 16 October 2006 under section 76 of the Income Tax Act, section 41A of the VAT Act and under section 75 of the tax administration act.²¹⁰ The main reasons and objectives for the introduction of advance tax rulings scheme are the following.²¹¹

- In order to attain a level of certainty would be conducive to the business environment, as a response to the existing problem
- In order to promote consistency in the interpretation and application of a tax act.
- In order to avoid litigation.

²⁰⁶ Frank Mosupa, *advance tax ruling system by the tax department*, November 2006, available at: <http://www.ens.co.za/newsletter/briefs/taxAdvance.html>, last accessed on May, 2, 2016

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ For example, the anti-avoidance provision in the form of section 80A-L of the Income Tax Act

²¹⁰ Tax Administration Act, No. 28 of 2011, *Government Gazette* 35491 dated 4 July, 2012.

²¹¹ Legal and Policy Division of The South Africa Revenue Service, *Comprehensive Guide to Advance Tax Rulings*, 2013, www.sars.gov.za, at p, 1, see also, Frank Mosupa, *advance tax ruling system by the tax department*, November, 2006, available at: <http://www.ens.co.za/newsletter/briefs/taxAdvance.html>, p. 15.

Advance tax rulings in South Africa is defined as a letter in the form of a complete written statement on the interpretation of the relevant tax laws and how they would apply to the proposed transaction.²¹²

The South Africa Revenue Service pronounces its advance ruling in writing on the question specified in the application. In the circumstances, taxpayers are encouraged to make full disclosure of the transaction in the application, as material non-disclosure will render the ruling void *ab initio*.²¹³ This also applies where the transaction differs from that described to South Africa Revenue Service in the application. The South Africa Revenue Service may issue four basic types of rulings, namely:²¹⁴

- binding private rulings,
- binding class rulings and
- binding general rulings
- non-binding private opinions

In South Africa binding rulings are fact-specific.²¹⁵ Binding private ruling means a written statement issued by the Revenue Service regarding the application of a tax Act to one or more parties to a proposed transaction.²¹⁶ Binding class ruling means a written statement issued by the Revenue Service regarding the application of a tax Act to a specific class of persons in respect of a proposed transaction.²¹⁷ While binding general ruling means a written statement issued by a senior Revenue Service official under section 89 regarding the interpretation of a tax Act or the application of a tax Act to the stated facts and circumstances.²¹⁸ Non-binding private opinions are informal guidance issued by the Revenue Service in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have a binding effect up on the Revenue Service.²¹⁹ Regarding the binding effect, a binding class ruling and binding

²¹² Legal and Policy Division of The South Africa Revenue Service, *Comprehensive Guide to Advance Tax Rulings*, 2013, p. 2, available at www.sars.gov.za, last accessed on May, 02, 2016

²¹³ *Id.*, p. 43.

²¹⁴ Tax Administration Act of South Africa, 2011, No. 28, *Government Gazette*, Section 75

²¹⁵ Legal and Policy Division of The South Africa Revenue Service, *Comprehensive Guide to Advance Tax Rulings*, 2013, p.42, www.sars.gov.za, last accessed on May, 02, 2016

²¹⁶ Tax Administration Act of South Africa, 2011, No. 28, *Government Gazette*, Section 75

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

private ruling has a binding effect upon the South Africa Ruling Service in respect of the affected class members/ affected private applicant identified in the ruling.²²⁰ Third parties cannot rely on the statements indicated in the private or class binding rulings, other than beneficiaries.²²¹

The more interesting rulings will be the binding private rulings issued to taxpayers providing guidance on how South Africa Revenue Service interprets and applies the tax law to specific transactions.²²² These will only apply in respect of transactions to be implemented by the taxpayer. Such rulings will be valid for a specific period and will be binding on the Revenue Service, but not on taxpayers. Such rulings may be withdrawn or modified under various specified circumstances, in particular dealing with a change of law.²²³

3.3 Advance Tax Rulings in Canada

In Canada, the establishment of an advance tax ruling system is recommended by the 1967 report of the Carter Commission.²²⁴ The recommendation provides that the establishment of the formal ruling system is advantageous to foster and encourage self-assessment, to contribute to good relations between income-tax administrators and the general public, to give certainty to transactions, to give more consistency in the application of the law, to minimize controversy and litigation and to achieve a more coordinated system.²²⁵ In 1970 in response to the recommendations of the Carter report and considering the government's position to reform the tax law the Department of National Revenue established a rulings division to deal with advance tax ruling requests and general questions of interpretations.²²⁶ In Canada, an advance income tax ruling is defined as a written statement given by the directorate to a taxpayer confirming how Revenue Canada will interpret and apply the income tax law to a proposed transaction or transactions that the taxpayer is seriously contemplating.²²⁷

²²⁰ *Ibid.*

²²¹ Legal and Policy Division of The South Africa Revenue Service, *Comprehensive Guide to Advance Tax Rulings*, 2013, p. 43, www.sars.gov.za, last accessed on May, 02, 2016

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ Indian Authority for Income tax Advance Rulings, *Hand book on Advance Rulings*, p.53.

²²⁵ David Williamson *et al*, 'The Income Tax Rulings Process: Dispelling the Mystery', *Canadian Tax Journal*, 1998, Vol. 46, No. 2, pp. 274-302, p. 278. [Hereinafter David Williamson *et al*, *The Income Tax Rulings Process: Dispelling the Mystery*].

²²⁶ *Id.*, p. 276

²²⁷ *Id.* P. 278

In Canada neither an advance tax ruling nor a technical interpretation given by the Canadian Revenue Authority has any legally binding effect on the taxpayer or the Revenue Authority.²²⁸ In principle, however the Canadian Tax Authority considers itself bound by its advance rulings, subject to any particularities provided in a certain ruling and subject to general limitations.²²⁹ If there is material omission or misrepresentation in the statement of facts or proposed transactions continued in the ruling request the Revenue Authority will not consider itself bound by the ruling it issued. Advance tax ruling will be invalid if it is based on the interpretation of the law and this law is subsequently repealed.

Regarding the authority in charge of issuing advance tax rulings, the Canadian Income Tax Ruling and Interpretation Directorate has the power to process a request for an advance income tax ruling or a technical interpretation. An advance tax ruling may be requested only in respect of a proposed transaction that is seriously contemplated by the taxpayer.²³⁰ The procedures governing advance rulings and technical interpretations are part of the tax administration. There is no legal basis for the procedures and they are not referred to anywhere in the Income Tax Legislation.²³¹ However, the importance and legitimacy of both advance tax rulings and technical interpretations have been well recognized by the courts.²³² This indicates that the Canadian tax jurisdiction is being benefited from the advance tax ruling scheme.

Regarding the issuance of public and private rulings the decision to give a ruling of technical interpretation is entirely at the discretion of the Authority since there is no legal obligation to give them. Both advance rulings and technical interpretations are private rulings which are issued as an administrative service.²³³

²²⁸ Paras S. Savla, *etal*, Authority for advance Rulings-Concept and Scope of Advance Rulings under Direct Taxes, *The Chamber's Journal*, April 2015, Vol.7, No.8, pp, 16-18, at p,18; see also Indian Authority for Income tax Advance Rulings, *Hand book on Advance Rulings*, P, 53

²²⁹ David Williamson *etal*, *The Income Tax Rulings Process: Dispelling the Mystery*, p, 291.

²³⁰ *Ibid*.

²³¹ *Id*. p. 279.

²³² Indian Authority for Income tax Advance Rulings, *Hand book on Advance Rulings*, p. 53.

²³³ *Id*. p. 45.

3.4 Advance Tax Rulings in USA

The year 1919 marks the birth of advance tax rulings in the United States, following the implementation of the 1918 Revenue Act and a statement delivered by the commissioner of the Bureau of the Internal Revenue.²³⁴ The statement of the commissioner dictates that

.... It is impossible to answer every question which the invention or ingenuity of the inquirer may devise with neglecting the fundamental duty of determining tax liability up on the basis of actual happenings. Under these circumstances the administrative necessity is obvious of giving precedence over abstract or prospective cases to actual cases in which the taxpayer desires to know what his immediate liabilities are under the law.²³⁵

Although the purpose of this statement was to limit the scope of guidance provided by the Bureau, it appears certain that the introduction of letter rulings in the United States was because of the uncertainty on the increasing level of complexity of the Federal Tax law.²³⁶ It was in 1954 that the Internal Revenue Service regularly started the issuance of a letter rulings program.²³⁷

Most of the rulings rendered by the Internal Revenue Service are in written form. When taxpayers' request for advice is made orally and the employee of the Internal Revenue Service respond to it orally the answer is not binding.²³⁸ When a binding ruling is issued a taxpayer other than one to whom the ruling was issued cannot rely on the ruling.²³⁹ A letter ruling may be revoked by the commissioner if the letter ruling is issued based on erroneous interpretation of law.²⁴⁰ However, such revocation should be communicated to the taxpayer to whom it was issued.²⁴¹

The authority responsible for issuance of rulings is the Internal Revenue Service.²⁴² In the United States, the most significant types of rulings are the following

²³⁴ Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*, p. 14

²³⁵ Commissioner's mimeographed published opinion 2228, I.C.B, 310, the private letter ruling program at half century mark, 42, USC Law Center Tax Institute 12-1, 1990, at 1205, as quoted by Carlos Romano, p.14.

²³⁶ Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*, p.14.

²³⁷ *Id.* P. 16

²³⁸ *Id.* p. 84

²³⁹ *Id.* p. 85

²⁴⁰ *Ibid*

²⁴¹ *Id.* p. 86

²⁴² Tadesse Lencho, *The Ethiopian Tax System: Excesses and Gaps*, 2012, p. 366.

1. Revenue Rulings- These are an official published interpretation by Internal Revenue Service on how the law is applied to a specific set of facts.²⁴³ Revenue rulings are compilations from the select of private rulings which are issued in the form of memorandum of law.²⁴⁴ These rulings are considered as binding because U.S taxpayers can rely on them as far as the factual situations of their business transactions fall under these rulings.²⁴⁵ These rulings are also public rulings in that they are issued with the view to make them accessible to the general population of taxpayers.²⁴⁶
2. Letter Rulings- These are written statements issued by Internal Revenue Service National Office to the taxpayer on interpretation and application of tax laws law to a specific facts presented by a certain taxpayer.²⁴⁷ These rulings are private rulings because they are applicable only on the individual who requests their issuance, and they bind only the Internal Revenue Service.²⁴⁸ In the US private letter rulings are important to evaluate the consistency of application of statutes.²⁴⁹
3. Revenue Procedures- These are guidance issued by the National Office to the local Internal Revenue Service to clarify technical and procedural matters in relation to services provided by the Internal Revenue Service.²⁵⁰

²⁴³ Indian Authority for Income tax Advance Rulings, *Hand book on Advance Rulings*, p. 45.

²⁴⁴ James R. Lapenti, Hugh J. Ault & Brain J. Arnold, *Comparative Income Taxation, a Structural Analysis* 192 (3d ed. 2010, as cited by Tadesse Lencho, *The Ethiopian Tax Syatem: Excesses and Gaps*, 2012, p. 366.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ Indian Authority for Income tax Advance Rulings, *Hand book on Advance Rulings*, p. 54.

²⁴⁸ *Ibid.*

²⁴⁹ Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*, p. 84.

²⁵⁰ *Ibid.*

CHAPTER FOUR

MAJOR FINDINGS OF THE STUDY

4.1 The Significance of Advance Tax Rulings Scheme for the Proper Implementation of Tax Laws in Ethiopia

So far, the significance of advance tax rulings for implementing tax laws followed by the experiences of some selected jurisdictions is dealt theoretically. This section is devoted to discuss the practical challenges that the Ethiopian tax system is encountered with and is organized based on the narration on the problems investigated by the in-depth interview, document analysis and literatures. Due to the similarity of responses of the employees in the tax authorities and taxpayers and shortage of time to approach all the targeted tax payers, 5(five) taxpayers were interviewed. The responses of interviewees are discussed within each respective problem. For the purpose of building comprehensive idea and give the sections meaningful coherence, this chapter is organized in two sections: in the first section discussion will be on the need and importance of advance tax rulings followed by a discussion on the possible lessons from the selected tax jurisdictions to the Ethiopian tax regime.

Accordingly, the outcomes of interviews made to the taxpayers and tax authorities revealed that the Ethiopian tax system both in its administration and legislation field is complex and uncertain making it difficult for taxpayers to fulfill their tax obligations.²⁵¹ Particularly, the promulgation of tax proclamations with many delegating provisions gave an increase in issuance of numerous regulations and directives. The regulations and directives also followed by the issuance of countless circulars making taxpayers unable to grasp a clear and reliable idea of their tax liabilities and put tax authorities in a difficulty when assessing tax.²⁵² What worsen this problem is that taxpayers have no access to these regulations and directives because there is absence of

²⁵¹ Interview with Getachew Mesfin, and Abebe Shimekaw, who are employees in the Revenue Collection Department of The Amhara region Revenue Authority, interview with Yibekal Admasu, who is a Coordinator of Tax Audit Core Process at The ERCA Bahir Dar branch made on May 16, 2016, interview with Taye Yehulaeshet, Manager of Abay Ena Tana Market Center, Lubaba Mohammed manager of AHAD Trading PLC, Temesgen Melak, manager of Sefene Selam Market Center P.L.C, made on May 17, 2016.

²⁵² Ibid.

publication.²⁵³ Though these laws are available online²⁵⁴ still the capacity of taxpayers to access them is questionable. Yibekal stressed that “tax auditing which requires consultation of these dispersed and numerous circulars, let alone principal tax laws, is becoming a difficult task and adds the tax legislation area is uncertain”.²⁵⁵ These circulars are not organized in a way that they are simple for reference.²⁵⁶ Both the interviewed taxpayers and tax authorities acknowledged that the majority of taxpayers as well as significant number of employees in the tax authorities have limitation in understanding these tax laws. Emphasizing this, Getachew added that “before, he is employed in the Authority, 2012, the former head and several employees of the authority used to tax a building rented together with the lease of furniture and equipment under Schedule “C” as if the taxpayer leases of a business.”²⁵⁷ This resulted in confusion and uncertainty of the taxpayers at that time.²⁵⁸ Such type of practice apparently affects the business decision making freedom of taxpayers. Additionally, such inconsistencies in the application of tax law creates equity problem, Getachew added.

There are numerous circulars issued by different ministries and tax authorities in order to clarify the interpretation and application of the tax laws to the specific facts. A typical example is a circular written by the Ministry of Finance and Economic Development to The Ethiopian Customs and Revenue Authority. This circular stipulates that “private limited companies and share companies have been shifting dividends in to their retained earnings account with the assumption that an undistributed dividend is not taxable, which is a misinterpretation of the tax law”.²⁵⁹ For the implementation of this circular this ministry issued subsequent detailed letters to the Ethiopian Revenue and Customs Authority. The details of these letters requires the concerned companies to, in order to be free from the dividend tax, interest and penalty, present evidence, until April 28/ 2014/15, that show the dividend from the year 2002/2003 up to 2012/2013 is paid

²⁵³ Interview with Ato Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws* May, 16, 2016

²⁵⁴ Information is available at Ethiopian Revenues and Customs Authority, www.erca.gov.et

²⁵⁵ Interview with Yibekal Admasu, a Coordinator of Tax Audit Core Process at The Ethiopian Revenue and Customs Authority Bahir Dar Branch, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016. Getachew Mesfin also, shares this idea.

²⁵⁶ *Ibid.*

²⁵⁷ Interview with Ato Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016... This was practiced in Dessie area; however such interpretation problem is corrected after 2004 E.C

²⁵⁸ *Ibid.*

²⁵⁹ See Circular No. ታ/ከ/ቀ/5/4, date of issuance የካቲት19 ቀን2005 ዓ.ም

for the capital contribution, and failure to present this evidence would oblige companies to pay all dividend back in those years.

The same scenario is revealed from the interview with Temesgen. Temesgen said that he has requested the opinion of the ERCA Bahir Dar if tax liability is there when the ground classes of the company building are distributed to members, keeping the other classes to the ownership of the company.²⁶⁰ At a later time, because the Authority did not respond, the ground classes are distributed to the members. Following this, the Authority levied a capital gain tax on the company.²⁶¹ Temesgen resentfully told to this author that it is unfair to tax their company while the authority failed to give its advice and had he know the tax consequence, the company would adjust its actions and those distributed classes of the building would remain to the ownership of the company.²⁶² He added that avoiding / minimizing risks of the tax law is the main reason that pushed him to request so.

It is observed that the ERCA Bahir Dar branch and the Amhara Region Revenue Authority issued several statements of opinions on the interpretation and application of tax laws to specific facts which are requested by applicants.²⁶³ Most of the applicants of such inquiries are government organizations. However, there are also individuals who come for the same purpose. During the interview with Yibekal,²⁶⁴ the researcher observed and attended the inquires of group of individuals approaching the Ethiopian Revenues Customs Authority Bahir Dar branch in order to seek the advice of Yibekal on their tax liability if they distribute buildings of the private limited company to members of the company. It is said that the legal status of these services is not clearly defined though tax authorities engaged in such practices with the feeling that it is administrative responsibility to assist taxpayers. However, regarding the legal effect of these

²⁶⁰ Interview with Temesgen Melak, a manger of Sefen-SelamMarket Center P.L.C, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May,16, 2016

²⁶¹ *Ibid*

²⁶² *Ibid*

²⁶³ See for example, inquiry as to the implementation of VAT withholding by Amhara Region Road and Transport Bureau Ref. No መናገ/001/159, issued on 15/04/08 and the reply of Ethiopian Revenue and Customs Authority Bahir Dar branch Ref.No.10.06/11603/08, issued on 18/04/2008, see also inquiry as to the implementation of service charge on cattle traders by The Amhara Region Trade, Industry and Market Development Bureau, Ref. No, 01-ገለገል29/1524 issued on 02/05/08 and the reply of the Amhara Region Revenue Authority Ref. No. 0/ አከ10/1823 issued on 05/05/08

²⁶⁴ Interview with Yibekal Admasu, is a Coordinator of Tax Audit Core Process at The Ethiopian Revenue and Customs Authority Bahir Dar branch, *on the significance of advance tax rulings for the proper implementation of tax laws*, May 16, 2016. Abebe Shimekaw, Lubaba, Temesgen, Taye also shares this idea.

statements tax authorities are not sure if they are bound by these statements or otherwise.²⁶⁵ Concerning circulars issued by the Ministry of Finance and Economic Development the interviewees informed this author that those circulars are binding.²⁶⁶

Attributable to the inadequate knowledge of tax laws in both sides and complex tax law making area and administration, the above situations imply that, tax laws are bringing a considerable uncertainty. These prove that how the uncertain consequence of the tax laws affects the business decision making of taxpayers. These scenarios also imply that how taxpayers are reacting against the unintended consequences of tax laws on transactions. Apparently, such reaction of taxpayers necessitates the importance of seeking the opinion of the tax authorities about the tax outcome of a certain transaction. However, respondents are not quite sure about the binding or otherwise effects of statements of opinions and advice upon the tax authorities. These also imply a need to setup a mechanism to save at least a prudent taxpayer from the risks of tax law uncertainty. Thus, it is imperative to say that there should be a mechanism whereby these taxpayers seek the advice of the tax authorities so that they get rid of/ minimize the risk of tax uncertainty, which is purely a demand of an advance tax ruling scheme.

The problem on simplicity of the tax laws and administration is also found critically commented by the interviewed taxpayers and employees in those tax authorities. Though the complexity of tax laws does not necessarily mean that those laws are not simple, still the language of significant number of tax laws of Ethiopia is not clear and difficult to give a meaning that is easily understood by a layman taxpayer. Most often, tax authorities in Ethiopia issue directives for the purpose of interpreting tax laws.²⁶⁷ There are many directives which explain, restrict, and expand upon the meanings of terms and concepts mentioned in proclamations and regulations.²⁶⁸ These directives delineate the scope of benefits and/or obligations mentioned along with explaining technical concepts that are left undefined or ambiguous in the proclamations or regulations. However, the increase in the number of these directives is found inadequate to simplify the tax laws of Ethiopia. Still, there are many provisions of the tax laws which are

²⁶⁵ Interview with Yibekal Admasu, is a Coordinator of Tax Audit Core Process at The Ethiopian Revenue and Customs Authority Bahir Dar branch, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016. Ato Getachew also shares this idea.

²⁶⁶ *Ibid.*

²⁶⁷ Taddese Lencho, *The Ethiopian Tax System: Excess and Gaps*, 2012, p. 360.

²⁶⁸ *Ibid.*

difficult to understand and define their connotation.²⁶⁹ There are many transactions the parallel meaning of which is impossible to find in local dialects.²⁷⁰ Yibekal further said the basic reason for such problem of simplicity is the transplantation of these tax laws from other jurisdictions and adds that these laws are difficult to apply in the contemporary economic context of Ethiopia. In order to increase taxpayers' understanding and simplify tax obligations these authorities are undertaking various educations and training programs by arranging a meeting with taxpayers.²⁷¹ For this purpose, manuals, brochures and different types of forms are made available. However, it is said that these educations and trainings are not enough to simplify the tax laws and thereby answer the inquiries raised by taxpayers.²⁷² The content of these education and training programs is limited to explanation of the rights and duties of taxpayers which is unable to solve the practical problems that taxpayers face while dealing with certain business transactions. It is true that the real sense of tax law is felt when it is solidly applied. This makes advance tax rulings scheme useful as it stands to crystallize the meaning of the law on specific set of facts.

As discussed above, the increase of applicants who seek the opinions of the tax authorities and the engagement of tax authorities in such practice indicates that the tax rules are not simple enough to allow taxpayers to see easily what they have to do. Moreover, all interviewed taxpayers and employees of these tax authorities agreed that those opinions of the tax authorities regarding the interpretation and application of the tax laws to a certain set of facts are more helpful to simplify than educations and trainings programs. The recommendation that the Ethiopian tax authorities should focus on simplifying and clarifying the tax laws to encourage taxpayers to fulfill their obligations also confirms that the tax laws are not simple for taxpayers.²⁷³

²⁶⁹ Interview with Yibekal Admasu, Coordinator of Tax Audit Core Process at The Ethiopian Revenue and Customs Authority Bahir Dar branch, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016

²⁷⁰ *Ibid.*

²⁷¹ Interview with Aemiro, A coordinator of Tax Education and Trainings Core Process at Bahir Dar City Administration Revenue Office, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 15, 2016, Getachew also shares this idea.

²⁷² *Ibid.*

²⁷³ Temtim Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa, Ethiopia*, p, 93

The other problem investigated is the presence of non-compliance. Though tax compliance has got a proper attention in the plan to boost revenue in Ethiopia²⁷⁴, the outcome of in-depth interviews reveals that there is a significant level of non-compliance with the tax laws.²⁷⁵ It is said that, most of the time, there is no trust between the tax authorities and taxpayers on the self-assessed tax as the latter always declare an understated income and an over stated expenses.²⁷⁶ Getachew added that as a result of such understatements and overstatements auditors are frequently forced to conduct tax field audits.²⁷⁷

In order to improve such compliance the tax authorities are conducting education and training programs with taxpayers together with implementation of risk-based audit selection method. However, it is said that, these measures are insufficient to bring voluntary compliance. Desalegn noted that the impact of giving advice for taxpayers' fact-based inquiries on voluntary compliance is not easy. He said that some taxpayers break the sales registered machines with the assumption that their sales will not be taxed which is a misconception.²⁷⁸ Desalegn also said that in such type of cases it is not useful to enforce such taxpayer to use these machines rather delivering education and prompt advice for the inquiries presented is the best solution to make such a taxpayer comply voluntarily.²⁷⁹ However, Desalegn responding to a counter argument against the need to give advice about tax laws,²⁸⁰ stressed that, now days, much amount of revenue remains uncollected not because taxpayers avoid tax using the loopholes in the tax laws but because most taxpayers lack knowledge of their liabilities under the tax laws. Additionally, Getachew remarked that those taxpayers who seek the counseling of his office on the

²⁷⁴ Legal and administrative instruments ranging from principal tax laws to minute administrative brochures, pamphlets reiterate tax compliance as their goal. For example the Growth and Transformation Plan of the 2010/11-2014/15 states that efforts will be geared towards promoting compliance during the GTP period, at, p 32. See also, the Amhara Region Revenue Authority annual plans for the year 2015/16 and the GTP plan of the year 2015/16-2019/20 at p, 21 and 42 respectively, state that ... “ባለሥልጣኑ የግብር ህግ ተገዥነትን ለማሻሻል በዋናነት እየሠራ የሚገኘው ትምህርት በመስጠትና አመለካከትን በመቅረፅ ነው። የገቢ ተቋሙ የግብር ህግ ተገዥነትን ከረዥም ጊዜ አኳያ ለማሻሻል በዋናነት እየሠራ የሚገኘው የግብር ከፋዮን ግብር የመክፈል ባህል በትምህርትና ስልጠና ለማሻሻል በልዩ ልዩ ስልጣኖች (በመድረክ፣ቤት ለቤት በመንቀሳቀስ፣ በሚዲያና በሌሎች ወጣቶች እንዲሁም በግብር ከበባት) የግንዛቤ ማስጨበጫ ሥራዎችን በማከናወን ላይ ይገኛል።”

²⁷⁵ Interviews with persons mentioned in foot note 230.

²⁷⁶ *Ibid.*

²⁷⁷ Interview with Getachew Mesfin, a senior tax expert and an advisor in the Amhara Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016

²⁷⁸ Interview with Desalegn Chekol, Coordinator of The Tax Assessment Core Process at ERCA Bahir Dar branch, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 17, 2016

²⁷⁹ *Ibid*

²⁸⁰ During the interview with Ato Desalegn another anonymous attendant of the interview commented that clarifying and giving advice about tax laws to the level that taxpayers know the defects of tax laws could bring a risk of tax avoidance, on May, 17, 2016

implementation of VAT withholding found assess their tax liability correctly than those who do not ask assistance.

These scenarios imply that the negative effect of lack of knowledge on voluntary tax compliance. These also show the importance of assistance about the application of tax laws to a specific case in enhancing voluntary compliance. This confirms the recommendation that, in the effort to promote voluntary compliance, advance tax rulings, education about tax laws and other similar services should take the largest role.²⁸¹ Now, this situation puts the necessity of having advance tax rulings scheme to be considered.

Moreover, the fact that the Ethiopian tax assessment system is based on the fundamental concept of self-assessment system, demands the knowledge of tax laws so that taxpayers can be certain of the correctness of the tax they assessed. Self-assessment can only function effectively when taxpayers get sufficient information to accurately determine their tax liability.²⁸² The efficiency of self-assessment system depends not only on the availability of tools to interpret the tax laws but also the skill of the tax authorities to enforce the tax laws equitably.²⁸³ A question may follow, from the above statements, to the Ethiopian tax system that how fair is it to expect full compliance of the taxpayer while there is no formal mechanism to seek the tax authorities' opinions on the interpretation and application of the tax laws? This is why, it is said that, the promotion of voluntary compliance demands the management of the tax administration to be capable of realizing a proper balance between service to taxpayers and enforcement of the tax laws and regulations.²⁸⁴ Therefore, as has been discussed in the proceeding chapter, service to taxpayers basically includes assistance to taxpayers on the application and interpretation of tax laws, typically an advance tax rulings service.

The other problem that is investigated is the problem of efficiency. Despite the efforts taken by government, recent studies show that there is still poor tax revenue collection.²⁸⁵ This problem is found still persistent in that all the interviewed employees of tax authorities remark that tax

²⁸¹ Kevin Woodley, *Compliance Risk Management: Managing and Improving Tax Compliance Workshop by East AFRITAC*, Nairobi, Kenya – November 3-7, 2008, unpublished, p. 11.

²⁸² Jacobs, *et al*, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean, USA*, p. 172.

²⁸³ Temtim Debere, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p. 75.

²⁸⁴ IMF, *Designing a Tax Administration Reform Strategy: Experiences and Guidelines*, Discussion paper, March 1997, p. 11.

²⁸⁵ Temtim Derebe, *Business Taxpayers' Satisfaction with the Tax System in Addis Ababa*, p. 4

authorities are not efficient in collecting the revenue generated by the economy.²⁸⁶ It is also said that, the current pattern of collection of revenue is costing these tax authorities a considerable amount of resources.²⁸⁷ Expenses for taxpayers' education and training programs and expenses for tax field audits are the major costs that these tax authorities incur.²⁸⁸ Getachew and Yibekal stressed that the main reason for conducting frequent re-assessment is the existence of non-compliance. Always, it is only little number of taxpayers' self-assessment are found correct when re-assessments are made.²⁸⁹ This means, keeping other interfering factors intact, the self-assessment system is not being fully exploited and implemented by the tax administration. This also means that the tax administration system is not getting the relative advantage gained from the self-assessment system. The justification for setting self-assessment system is to make the tax administration efficient. The self assessment system stipulates that "no tax administration necessitates resources to determine the correct tax liability of every taxpayer."²⁹⁰ However, such self-assessment is not granted for free; it holds tax authorities to provide appropriate assistance for taxpayers to determine their tax liability.²⁹¹ In so doing, here too, tax authorities are expected to give advice or ruling about the implication of tax law on transactions, like any other assistance given to taxpayers. Moreover, interviewees responded that advance knowledge of the consequence of tax law enable the tax authorities to save resources exploited for compliance works that could be wasted.²⁹² The other attractive feature of advance tax rulings scheme is that the installation and administration of it does not negate the overall efficiency of the tax administration. This is because, "offering advance tax rulings is a low-risk and low-cost endeavor."²⁹³

²⁸⁶ Interview with Getachew Mesfin, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016, Mr. Abebe Shimekaw, Mr. Yibekal Admasu, Mr. Desalegn Chekol also shares this idea.

²⁸⁷ Interview with Desalegn Chekol, Coordinator of The Tax Assessment Core Process at ERCA Bahir Dar branch, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 17, 2016

²⁸⁸ Interview with Getachew Mesfin, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016, Abebe Shimekaw, Yibekal Admasu, Desalegn Chekol also shares this idea.

²⁸⁹ Interview with Getachew Mesfin, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016, Abebe Shimekaw, Yibekal Admasu, Desalegn Chekol also shares this idea.

²⁹⁰ Andrew Okello, *Compliance Risk Management: Managing and Improving Tax Compliance Workshop*, Nairobi, Kenya – November 3-7, 2008, unpublished, p 11

²⁹¹ *Ibid.*

²⁹² Interview with Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016, Taxpayers mentioned in footnote 230 also share this idea.

²⁹³ Sawyer, *et al*, *Advance Tax Rulings in Perspective: A theoretical and Comparative Analysis*, p. 365.

In addition to this all the interviewed taxpayers remarked that the tax authorities' discretionary power should be controlled in any possible way in order to create a smooth and healthy relationship.²⁹⁴ Advance knowledge of tax laws is important for the taxpayer. Lubaba told this author that "having litigation with the tax authorities regarding assessment is tiresome"²⁹⁵ in that, though she had complain on the tax assessed by Bahir Dar City Administration Revenue Office, finally she opted to pay the tax assessed by the tax authority, as a result of delayed and bureaucratic procedures of the tax litigation. Temesgen also added that, because his company was taxed more than 2 million birr on the capital gained from the transfer of certain number of classes of the building, he filed a complaint this amount. However, he regretted that had the tax Authority responded the tax implication of transferring these classes of the building, he would not have resorted in to litigation.²⁹⁶ Additionally, the interviewed taxpayers and employees of tax authorities remarked that seeking the opinions of tax authorities as to the way tax law is interpreted and implemented is helpful to minimize disputes and corruption.²⁹⁷

To sum up, the response the interviewees implies that both subjects of the tax system need a forum whereby the tax authorities' opinions are formally available to the addressees so that the mentioned intricacies can at least be minimized.

So far, the entire message of the interviews' outcome revealed that there is an implicit recognition of the significance of learning the intention of the tax authorities' tax treatment of transactions. Statements of opinions issued, applicants approaching to seek advice, specific cases happened as a result of misunderstandings in the interpretation and applications of the tax laws are clear examples that trigger the need to have the advance tax rulings scheme. If the status of the existing statements of opinions and circulars is questioned they may be categorized as preliminary advance tax rulings. The engagement in the practice of issuing statements of opinions or delivering oral advice on the tax affairs of transactions are not adequate to minimize the intricacies caused by tax law uncertainty.

²⁹⁴ Interview with Getachew Mesfin, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016, Amare Ayalew, an officer in the Finance Department of Gambi Teaching General Hospital also share this idea.

²⁹⁵ Interview with Lubaba Mohamed, Manger of Ahad Trading P.L.C, Muhabaw a shop owner, *on the significance of advance tax rulings in reducing for the proper implementation of the tax laws*, May, 16, 2016.

²⁹⁶ Interview with Temesgen Melak, Manger of Sefene Selam Market center P.L.C, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016.

²⁹⁷ Interview with persons mentioned under foot note 230.

For example, the education and training programs fall short of providing the meaning of tax laws in particular cases. Statements of opinions and oral advices are not found reliable to undertake transactions accordingly. Enforcement of tax laws and trainings are found inadequate to improve voluntary compliance without damaging the smooth relationship between the two subjects. The existing procedures cannot decrease the costs incurred to collect taxes.

Generally, an increase in engagement tax authorities in issuance of circulars and statements of opinion together with the importance of such services to taxpayers indicate that there is a demand and move towards the need to have a full-fledged advance tax ruling scheme. Thus, advance tax rulings scheme is necessary and important for the proper implementation of the tax laws in Ethiopia. The next section will be a discussion on the basic features of advance tax ruling features that Ethiopian advance tax ruling scheme should learn from the selected jurisdictions.

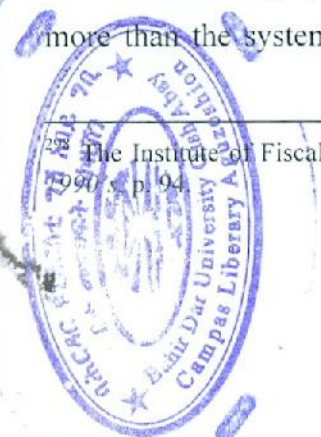
4.2 Lessons from the Selected Jurisdictions

The different aspects of the environment within which the ruling has to be operated give some guidelines as to the features a successful tax ruling system is likely to include. The experience of the selected tax jurisdictions indicate that the problems associated with tax legislation and administration is the main reason to consider the advance tax rulings system. For stronger reason, the features of the ruling system are reflections of the recourse against the problems that the tax jurisdiction encounters. Having this in mind, this section will discuss the basic features of advance tax ruling scheme that Ethiopia's tax regime should have.

Should the Ruling be Binding or Non-binding?

The distinction between non-binding and binding advance tax rulings is clear: the former has no force of law while the latter has. The main reason to set a non-binding ruling is to reserve to tax authority right to change its mind.²⁹⁸ Enabling tax authority to change its mind widens the discretionary power which is dangerous to certainty and predictability of the tax system. An advance tax ruling system with a non-binding feature makes taxpayers feel the pain of discretion more than the system without advance tax rulings scheme. Where advance tax rulings do not

The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the*
1990, p. 94



bind the tax authorities they offer no greater security to the taxpayer than any other soft law instrument.²⁹⁹ For an advance tax rulings scheme “such lack of certainty is a shame, if for no other reason than that the advice from the revenue authority should mean more than advice from the person who sits down next to you on the bus.”³⁰⁰

The Indian, South African and USA tax regimes provide binding rulings to taxpayers. The main reason for making binding ruling is to ensure certainty to taxpayers on the tax outcome of transactions and to minimize litigation. In Canada, rulings have no force of law, however the Canadian Revenue Authority considers itself bound by the rulings it issued.

Regarding Ethiopia’s advance tax ruling system the following are reasons that attract rulings to have a binding force of law.

Firstly, it is ascertained that the Ethiopian tax legislation and administration is problematic for taxpayers making them uncertain and unaware of their tax liability. The duty to self-assess their tax liability needs to be secured with reliable information on the tax affairs of their transaction. There is no guarantee as to the reliability of the current statements of opinions /advice practices.³⁰¹ It is imperative to force tax authorities to respect the interpretation they deliver, so that the tax affairs of transactions will become predictable. It is therefore, necessary to have binding rulings that assure taxpayers against unintended authorities’ tax treatment of transactions. It is also binding rulings that forces tax authorities to share the risk of tax law uncertainty.

Secondly, it is a fact that advance tax rulings serve to bring consistency in the application of law. This consistency in interpretation and application of tax law is determinant towards achieving the goal to create “one economic community”³⁰² stated in the constitution. However, consistency in the interpretation and application of tax law is best achieved through a minimized discretion of tax authorities. It is less likely to achieve consistency in the application of tax law in the existence of wide discretion of tax authorities than limited discretionary power bound by rules.

²⁹⁹ Sawyer, *et al*, *Advance Tax Rulings In Perspective: A theoretical and Comparative Analysis*, p. 373.

³⁰⁰ *Ibid*.

³⁰¹ Interview with Ato Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016

³⁰² See Preamble of The Federal Democratic Republic of Ethiopia Constitution, 1995, *Federal Negarit Gazette*, proc. No.1, 1st Year, No.1

The case discussed in the preceding section is worth to mention here. The interview with Getachew revealed that before 2012 the former head and several employees of the Amhara Region Revenue Authority used to tax a building rented together with the lease of furniture and equipment under Schedule "C" as if the taxpayer leases a business.³⁰³ This interpretation was practiced only in Dessie area but, later such interpretation problem is corrected after a meeting conducted in 2004 E.C.³⁰⁴ This situation clearly shows inconsistency in the application of these specific provisions of the Income tax law.³⁰⁵ For such type of cases, for example, a binding public ruling is helpful to make the application of tax laws consistent.

Moreover, much of the significances of advance tax rulings scheme is attached to its binding effect. In other words, it is the rulings force of law that yields the fruits of the scheme. The main objectives and achievements of the selected tax jurisdictions are to bring certainty in their tax system and reduce litigation between tax authorities and taxpayers. Once a while, the necessity of advance tax rulings is senseless without giving advance tax rulings binding force of law. This is because, the installation of non-binding rulings serve no better purpose than the current practices of issuing statements of opinions and delivering oral advice. Thus, Ethiopia's advance tax rulings system should make ruling to have a binding force of law upon the tax authorities. However, it should not bind the taxpayer: the taxpayer has to have the freedom to transact without worrying to live within the terms of the ruling.

On the side of tax authorities, however, such binding effect shall not be long lasting. This means the underlying law has to provide grounds which finalize the binding effect of the ruling. For example, tax authorities should not be bound by the terms of the ruling if there was material omission or misrepresentation in the application by the taxpayer. Likewise taxpayers shall not invoke the terms in the ruling if there is a change in tax law that the ruling was based on. These

³⁰³ Interview with Ato Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016

³⁰⁴ *Ibid.*

³⁰⁵ See The Amhara National Regional State Income Tax Proclamation, 2002, *Zikre Hig*, Proc. No.76, 7th Year, No.23, article 16(1)(a), and Amhara National Regional State Income Tax Regulation, 2003, *Zikre Hig*, Proc. No. 4, 8th Year, No.2, article 9

grounds are commonly applicable in all the selected tax jurisdictions. The reason for this is that, a taxpayer should not be in a more favorable position than other taxpayers.³⁰⁶

Should the Rulings be Public or Private Rulings or both?

The choice between making rulings available to the private applicant or to the general public (as granted by the tax authority) is basically considerate of whether there are many ambiguous provisions of tax law that affect the majority of taxpayer population or not. If there are many potentially affected taxpayers, it is relatively cost-effective to issue public ruling.³⁰⁷ Private rulings are issued for private applicants while public rulings are usually granted by tax authorities and are published for the public use. Among the selected jurisdictions it is only India that provides private rulings while others make both rulings accessible. The justification for the Indian tax regime is that as far as private rulings achieve the goals of uniformity and consistency, classifying rulings into public and private is unnecessary. Regarding accessibility of rulings, they may be published based on public interest.

However, like USA and South Africa, Ethiopia's advance tax ruling should have to encompass both private and public rulings because of the following reasons.

Firstly, the number of taxpayers impacted determines whether it is due to issue public rulings. For example, the circular³⁰⁸ written by the Ministry of Finance and Economic Development, the statements of opinions³⁰⁹ issued by tax authorities on implementation of VAT withholding and service charge on intra-zonal cattle traders are found to have many addressees. This indicates the presence of many taxpayers that get uncertain and unclear about the interpretation and implementation of tax laws in the mentioned cases. Thus, it is imperative to issue public rulings in such types of cases so that tax authorities can reach a number of taxpayers having the same

³⁰⁶ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 103

³⁰⁷ Sawyer, *et al. Advance Tax Rulings in Perspective: A theoretical and Comparative Analysis*, p. 385.

³⁰⁸ See Circular No. ታ/ከ/ቀ/5/4, date of issuance የካቲት 19 ቀን 2005 ዓ.ም, available at the office of Ethiopian Customs and Revenue Authority Bahir Dar branch.

³⁰⁹ See for example, inquiry as to the implementation of VAT withholding by Amhara Region Road and Transport Bureau Ref. No መናገሥ.001/159, issued on 15/04/08 and the reply of Ethiopian Revenue and Customs Authority Bahir Dar branch Ref.No.10.06/11603/08, issued on 18/04/2008, see also inquiry as to the implementation of service charge on cattle traders by The Amhara Region Trade, Industry and Market Development Bureau, Ref. No. 01-ገለገል29/1524 issued on 02/05/08 and the reply of the Amhara Region Revenue Authority Ref.No0/አከ10/1823 issued on 05/05/08, available at the Amhara Region Revenues Authority office.

inquiries on the intention of the tax laws. However, publication of this type of rulings is necessary. Regarding private rulings, these are the most important sources of information helping tax authorities to keep their affair ahead with newly established business transactions. Private rulings should be available to satisfy the demand for a rapid response on which urgent commercial decisions can be taken in specific cases.³¹⁰ Likewise, it is also important for the tax regime as well as for taxpayers to consider private rulings.

Secondly, it is said that many directives are serving as interpretation tools in the Ethiopian tax system.³¹¹ Excepting the situation that directives are issued without giving regard to factual cases the bulkiness of them imply that they are serving a lot of interpretative functions that could be done by public rulings. Given that task of simplifying tax system necessitates keeping the volume of tax laws to the minimum;³¹² however, the number of directives in Ethiopia could not be this much voluminous, had there been public rulings. Moreover, public ruling as a soft law has little or no legislative basis and is therefore relatively inexpensive and easy to issue and change as required.³¹³ Therefore, public rulings are important in that they could have an advantage to minimize the increase in tax laws in addition to simplifying principal laws.

Should Rulings be given on Issue of Fact and/or Law?

The essence of revenue rulings is that the rulings authority pronounces upon a set of facts presented by the taxpayer. The international definition of advance tax rulings also recognizes that advance tax rulings involve the interpretation and application of tax law to a set of facts.³¹⁴ In Canada rulings will not be granted where the issue involves an application of tax law to the facts.³¹⁵ The experience of Canada is exceptional making it hardly possible to sense the meaning of tax laws without the information of facts subject to the tax law. The rest of the selected jurisdictions provide rulings on both issues of law and issues of fact. Regarding Ethiopia, the forgoing discussions on interview results show that the majority of taxpayers approach tax

³¹⁰ James, *et al*, *The Design of an Appropriate System of Tax Rulings*, p.194.

³¹¹ Taddese Lencho, *The Ethiopian Tax System: Excesses and Gaps*, 2012, p. 378.

³¹² Association of Chartered Certified Accountants, *Tax principles: From Adam Smith to Barack Obama*, April 2009, p. 4.

³¹³ Sawyer, *et al*, *Advance Tax Rulings In Perspective: A theoretical and Comparative Analysis*, p. 385.

³¹⁴ Carlo Romano, *Advance Tax Rulings and Principles of Law: Towards a European Tax Rulings System*, P. 7.

³¹⁵ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 107.

authorities with specific facts. This implies that, the need to provide advance tax rulings on issue of facts. After all, it is said that, rulings on issue of laws will not serve more than the education and trainings service provided by the tax authorities.³¹⁶ Therefore, the Ethiopian advance tax rulings system should at least consider rulings on issue of facts.

Which Authority/ Authorities is/are better to Issue Rulings?

The choice between the tax (revenue) authority and separate independent authority responsible for administration of rulings is based on the reason to make rulings binding by avoiding conflict of interest and to assure taxpayers confidence. For example, in the Indian tax regime, the ruling authority is constituted independent of the revenue authority and is equipped with a quasi-judicial power. Following this, rulings issued by this authority are binding upon the commissioner and the tax authorities subordinate to him with respect to the applicant. On the other hand, in South Africa, USA and Canada it is the revenue authority that administers rulings. Moreover, these countries have given the issuance and administration of rulings to the highest revenue authority. The reason for this is that centralization helps to create a body of knowledge and experience that enables rulings to be given speedily and accurately.³¹⁷

Regarding Ethiopia, like USA, South Africa and Canada, the tax authorities in a centralized mode of issuance shall better issue and administer advance tax rulings, because of the following reasons.

Firstly, the main reason that makes rulings to be administered by Ethiopian tax authorities is the cost of administering rulings. If independent and autonomous institution is opted, it will follow with the costs of legislative process and other matters in relation to its institutionalization. However, if tax authorities handle administration of advance tax rulings, it will not be as costly. Here, though it is difficult to figure out costs empirically, a comparison between recruiting judges and additional staff members, allocating a separate budget to run an independent ruling authority seems costly than administering rulings within the existing tax authorities. In relation

³¹⁶ Interview with Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016.

³¹⁷ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 103.

to this, it is said that, it seems unlikely for the Ethiopian government to institute a separate and an independent body to administer such rulings.³¹⁸

Secondly, advance tax rulings serve as a means of dialogue between tax authorities and taxpayers. This dialogue in turn helps to create a smooth relationship between the tax authorities and the taxpayers. Such relationship improves voluntary compliance messaging a perception that the tax system is fair and transparent. However, such advantage is less likely to ensue for the Ethiopian tax administration system if the advance tax rulings administration is constituted independently. Moreover, the tax authorities as are acquainted with the application of the tax laws, experience of handling taxpayers' inquiries and their flexibility make them in a better position to exhaust the relative advantages gained from advance tax rulings.

Thirdly, the Ethiopian tax system is characterized by the diffusion of tax administration in the hands of multiple government bodies. There are many ministries and agencies that issue directives and circulars on tax matters. The Ministry of Finance frequently issues tax exemptions and directives on the implementation of the principal tax laws. Likewise, the Federal Investment Agency, the Ministry of Mines and Energy, Ministry of Tourism and Culture, and the National Bank of Ethiopia, are also involved in tax administration in more limited capacity. The Ethiopian Investment Board is active in the area of tax incentives, where it has issued directives to define and determine the extent of tax incentives provided by the Investment laws of the country.³¹⁹

In fact, administration of tax laws, among many other activities, involves interpretation of these laws. However, the task of issuing advance tax rulings does not presuppose the power to issue directives. Therefore, the issuance of circulars (whose content and effect resemble with advance tax rulings) by different ministries and agencies can not be a reason to worry about while proposing the centralized approach of administering advance tax rulings in Ethiopia. However, diffusing the interpretation of tax laws to all of these organs serves no more than increasing complexity of the tax system. This reason favors the argument that administration of rulings remains within the tax authorities.

³¹⁸ Interview with Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016.

³¹⁹ The Council of Ministers Regulation on Investment Incentives and Investment Areas Reserved for Domestic Investors, 2003, *Federal Negarit Gazeta*, Reg. No. 84, 9th year, No. 34, article 4

In Ethiopia, the other point that is worthy of consideration is the implication of division of power of taxation and concurrent power of taxation on the administration of advance tax rulings. As a federal system of governance, the Regions and the Federal government have their own autonomous power of taxation. If rulings are proposed to be administered by tax authorities, for stronger reason, the pattern of administration of advance tax rulings must follow the path of division of power of taxation. Therefore, Regions in Ethiopia should have the power to issue and administer rulings issued based up on their tax laws. The same works true for the Federal government. What follows is the appropriateness or otherwise of issuance of rulings by each administrative constituent within the regions. Regarding this, Ethiopia should learn from the experience of India and USA. The latter countries make rulings issued by the supreme revenue authority binding up on the subordinate revenue offices. The reason for this is distributing issuance of rulings to this level will not achieve consistency in the application of tax laws.³²⁰ Ethiopia's advance tax ruling administration should also remain centralized to Regions main Revenue Authorities at regional level and to the Ethiopian Customs and Revenue Authority at the Federal level. This is because, owing to the lack of competent and skilled man power, empowering District and Zonal revenue offices, the advantage of setting rulings cannot outweigh the inconsistency that will happen.³²¹ Yibekal added that, "let alone employees at Districts and Zonal revenue offices, professionals at the Ethiopian Revenues and Customs Authority Bahir Dar branch are sometimes unable to understand the meaning of some provisions of tax laws."³²² Hence, the administration of advance tax rulings should be confined to the main revenue authorities of the regions' and the federal government.

The other concern is regarding the implication of concurrent power of taxation on the administration of advance tax rulings. As discussed above, interpretation of tax laws does not necessitate the power of legislation. Hence, the administration of advance tax rulings should better follow the same path.

³²⁰ The Institute of Fiscal studies, *Striking the Balance: Tax Administration, Enforcement and Compliance in the 1990's*, p. 113.

³²¹ Interview with Getachew Mesfin, a senior tax expert and an advisor in the Amhara Region Revenue Authority, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May, 16, 2016

³²² Interview with Yibekal Admasu, a Coordinator of Tax Audit Core Process at The Ethiopian Revenue and Customs Authority Bahir Dar branch, *on the significance of advance tax rulings for the proper implementation of the tax laws*, May 16, 2016

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The jurisprudence of taxes continued to exist as a blend of reflections of the social, political, economic and cultural environment of a given society. Apparently, these dimensions of tax laws are operated through a tax administration. It follows that the quality of tax administration affects the outcome of objectives that the tax laws sought to achieve. On the other hand, the evolution of legislation and administration of tax laws is not stagnant. This is because the complexity and diversity of transactions give rise to frequent tax law reforms. Frequent tax law reforms also force the administration of tax laws to keep abreast with these new developments. Owing to this, the approach towards the design of administration of tax laws is always evolving. As a result, countries make frequent tax reforms to keep the tax laws and their administration abreast of the increasingly complex and diverse transactions.

Countries reform their tax administration with the view to raise more revenue for government; achieve various economic and social goals and improve the efficiency of the tax collection process. It is obvious that taxes are important sources of government revenue in both developing and developed countries. Such revenues, however, cannot be generated to the desired level unless the tax administration is equipped with tax-payer friendly procedures and services, apart from enforcement of tax laws. In so doing, advance tax rulings scheme, among many other tools, is recognized as indispensable equipment in the administration of modern tax laws.

At the international level, advance tax ruling is recognized as a more or less binding statement from the revenue authorities upon the voluntary request of a private person, concerning the treatment and consequences of one or a series of contemplated future actions or transactions. Advance tax rulings scheme has several advantages. To mention some of them: firstly, it helps to reduce uncertainties and ambiguities in tax laws. The uncertainties in tax laws affect the decision making freedom in business transactions. Uncertainty in tax law also makes the taxpayer not to comply with its tax liabilities. Secondly, advance tax rulings also help to simplify tax laws by holding the tax authorities to define the scope and meaning of vague provisions of tax laws.

Thirdly, it helps to increase efficiency of tax collection by reducing the resources wasted for compliance works. Fourthly, it also promotes respect for and compliance with fiscal laws by increasing the awareness of the taxpayer. Fifthly, it also limits the discretionary power of tax authorities by holding the latter to treat transactions according to the interpretation it provided in the ruling. Sixthly, advance tax ruling brings uniformity in the application of tax laws. Seventhly, advance tax rulings scheme also mitigates disputes that will potentially arise between the taxpayer and the tax authority. Finally and by large, this scheme contributes a lot to the prevalence of good tax administration as it is important medium of communication between the taxpayer and the tax authorities.

Several tax jurisdictions across the world have incorporated advance tax rulings in their tax systems with the view to make tax affairs of transaction certain, to make the application of tax laws transparent, to enhance good relation between taxpayers and tax authorities and to minimize tax controversies. Even though the adoption of advance tax rulings helps various countries to achieve their principal objectives they sought, there are fundamental differences across those countries in the design of the features of advance tax rulings. Such differences are attributable to the context of the particular tax system of the country and existing problems in that same country.

Accordingly, some jurisdictions make rulings binding upon the tax authorities while others reserve option for tax authorities to change their mind making rulings non-binding. These jurisdictions also provide rulings for the consumption of the general public and /or to the private applicants and/ or both rulings. In terms of matters that the ruling will be relied upon, some jurisdictions deliver rulings only on question of law, while others permit rulings to be issued on both question of law and fact. Regarding the body responsible for the administration of rulings, some jurisdictions establish an independent institution while others give this task to the tax/revenue authority.

In Ethiopia, advance tax rulings scheme has no statutory basis. Neither is there a tax administration law which authorizes the provision of advance tax rulings through administrative service. However, piecemeal and undeveloped ruling-kind statements have been issued by Ethiopian tax authorities.

Having the non-existence of advance tax rulings as a legal gap in Ethiopia, this research has investigated the need and importance of advance tax rulings in light of the problems that the Ethiopian tax regime has been facing. Based on the findings, this research also proposes basic features of advance tax rulings, on the basis of the drawn lesson from the selected jurisdictions, which are to be considered in the design of advance tax rulings scheme in Ethiopia.

The research verified that the Ethiopian tax system both in its legislation and administration stream is complex making it uncertain for taxpayers to have a clear understanding of their tax liability. Irrespective of the presence of ample number of directives, circulars and statements of opinions that are issued for the purpose of clarifying tax liability, the tax laws and their administration is not simple to employees let alone to a layman taxpayer. The problem of publication of these instruments is also another big reason that made taxpayers feel uncertain about their tax obligations. It is also identified that there is a considerable degree of non-compliance with tax laws. Particularly, works to improve voluntary non-compliance, which are basically caused by lack of knowledge of tax laws, are limited to taxpayers' education and trainings. The training and education programs are also found insufficient to solve the tax implication of transactions. On the side of tax authorities too, compliance works are becoming irreducibly costly, contributing to the inefficiency of the tax administration. In particular, the self-assessment system is found not serving the tax administration in its full capacity, as a result of which frequent re-assessments has been conducted.

The study also revealed that, there have been attempts to avoid or mitigate the uncertainties caused by complexities of tax laws. Tax authorities have been trying to issue circulars and statements of opinions and deliver oral advice. Significant numbers of taxpayers are found to get such type of services on the tax affairs of their proposed/ undertaken transactions. Merit wise, these services are found to reduce tax law uncertainties, simplify tax laws and administration, improve efficiency, mitigate potential tax disputes and limit tax authorities' discretionary power.

5.2. Recommendations

Based on the findings of the research, the researcher recommends the following to be considered while advance tax rulings scheme is set to be introduced.

1. The legislatures both at the federal and regional level should consider the introduction of advance tax rulings scheme in their respective tax regime by giving the scheme a firm basis of law. The statutory basis of advance tax rulings is more preferable than leaving them as administrative matters. This is because the application of advance tax rulings will be consistent and available indiscriminately to all subjects of the tax system. Moreover, the binding effect of rulings is more likely to remain secured if advance tax rulings have a statutory basis.
2. The proposed tax authorities to administer advance tax rulings should be equipped with necessary financial and skilled man power so as to appropriately run the scheme and exploit the relative advantages it has.
3. While issuing public rulings, tax authorities should consider publication and matters to be ruled on based on the importance and the number of taxpayers benefited. Tax matters that will be issued as public rulings should be carefully selected. Likewise, there has to be a reasonable amount of fee paid for the service of private rulings. This will push taxpayers to be honest in presenting facts on which ruling is going to be sought and save the authorities' resources that will be wasted on rulings based on hypothetical facts. While issuing public rulings, it is appropriate to select them from private rulings as the latter are expected to be practically tested.
4. The law should contain detailed preconditions on which the ruling will be sought or will not be sought. These conditions might include, for example, rulings on question of law that should be disregarded while the case of the same interpretation of law is pending in a court of law. Be it private rulings or public rulings, the legislature should consider the conditions upon which the effect of rulings will expire. Likewise, the law should provide that establishment be made by the applicant as to the importance of the requested ruling. This procedure helps to avoid/minimize rulings on frivolous applications.

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Annex I

Interview Guide Questions for Employees in the Tax Authorities

Personal Detail of Respondent

Name of the Respondent (if he or she consented) _____

Type of the Study: A Master Thesis in Law (LL.M Thesis)

Title: The significance of Advance Tax Ruling for the Proper Implementation of Tax Law in Ethiopia: Lessons from Other jurisdictions

Objective of this Interview: To gather information as to the remarks of the taxpayers on the investigation of the need and importance of an advance tax rulings scheme for the Ethiopian tax regime and to indicate suitable features of the advance tax rulings procedure.

So, you are kindly requested to respond to the interviews as the information you give will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation.

1. What do you think about the necessity of giving an advice about the implication of tax laws, before a certain taxpayer enter in to a business activity or while this taxpayer is already operating a taxable business activity? Please elaborate the advantage of knowing the tax implication of a certain business activity, be it a proposed one or an already undertaken, if any?
2. What do you think about the certainty of taxpayers about the correctness of the tax they assessed and paid to your office?
3. Have you ever conduct a re-assessment on the tax already assessed by taxpayers? If yes, what causes the re-assessment of the tax please?
4. What do you think about the complexity or otherwise of the Ethiopian tax system in general and the interpretation and application of tax laws in particular?
5. If you think that the Ethiopian tax system is complex what could be done in order to make it easy for the taxpayer community?

6. What do you think about the compliance of taxpayers with their tax obligations or otherwise? If there is no or less compliance what do you think is the reason for such compliance problem and what should be done to avert this problem?
7. Have you ever face a case whereby the meaning of the tax law became unclear and ambiguous to solve so? If yes, what do you think the importance and otherwise of discretionary power of the tax authorities in applying tax laws, particularly in interpreting the tax law to determine your tax liability?
8. What mechanisms does your office design in order to reduce the uncertainty of the tax law?
9. What do you think is the importance of giving an early awareness of the authority's interpretation and application of the tax law on future disputes that may arise between the tax authorities?
10. What do you think about the practical applicability and importance if an advance tax ruling system is incorporated in the Ethiopian legal system?
11. If you are of the opinion that this scheme will bring advantages such as certainty and reducing tax disputes, what force of law is appropriate for this interpretation service? Should it be binding or non-binding ruling? Why? Should it be public or private ruling? Why?
12. Which tax authorities should better give such rulings, considering the federal system of governance in our country? Why?

Annex II

Interview Guide Questions for Taxpayers

Personal Detail of Respondent

Name of the Respondent (if he or she consented) _____

Type of the Study: A Master Thesis in Law (LL.M Thesis)

Title: The Significance of Advance Tax Ruling for the Proper Implementation of Tax Law in Ethiopia: Lessons from Other jurisdictions

Objective of this Interview: To gather information as to the remarks of the taxpayers on the investigation of the need and importance of an advance tax rulings scheme for the Ethiopian tax regime and to indicate suitable features of the advance tax rulings procedure.

So, you are kindly requested to respond to the interviews as the information you give will be helpful for effective accomplishment of the study and as it will be kept confidential and analyzed anonymously unless you consented for the disclosure of your identity and personal views.

Thank you, in advance, for your co-operation!!!

1. What do you think about the necessity of knowing /seeking an advice about the implication of tax laws, before you entering into in the current business activity or while you think of engaging in a new business activity? Please elaborate the advantage of knowing the tax implication a certain business activity, be it a proposed one or an already undertaken, if any?
2. After learning tax deduction or exemption or tax return rules and other similar tax obligations under the tax laws of Ethiopia, do you ever been certain of the correctness of the tax liability you assess and pay for the tax authority? If no, what are those situations that make you uncertain about the tax liability you assessed?
3. What do you think about the complexity or otherwise of the Ethiopian tax system in general and the interpretation and application of tax laws in particular?
4. If you think that the Ethiopian tax system is complex what could be done in order to make it easy for the taxpayer community?

5. Do you think that complying with the tax obligations is costly and difficult? If yes what aspects of the tax administration system need to be improved?
6. What do you think about the discretionary power of the tax authorities in applying tax laws, particularly in interpreting the tax law to determine your tax liability?
7. What do you think is the effect of having an early awareness of the authority's interpretation and application of the tax law on future disputes that may arise between the tax authorities?
8. What do you think is the importance of giving an early awareness of the authority's interpretation and application of the tax law on future disputes that may arise between the tax authorities?
9. What do you think about the practical applicability and importance if an advance tax ruling system is incorporated in the Ethiopian legal system?
10. If you are of the opinion that this scheme will bring advantages such as certainty and reducing tax disputes, what force of law is appropriate for this interpretation? Should it be binding or non-binding? Why? Should it be public or private ruling? Why?
11. Which tax authorities should better give such rulings, considering the federal system of governance in our country? Why?

disposal mechanisms. In so doing, the auditing group has identified a number of weaknesses. In its examination the group has identified the following major weaknesses:-

- The tannery's solid waste collection, treatment and disposal mechanism was found to be very poor;
- The effluents from washing, submerging, tanning and painting rooms pass through a non-functional waste refining ponds and then discharged to the soils and Abay river;
- The volume and amount of tannery's effluent was not known;

Once observing these weaknesses, the auditing group also suggested corrective measures to be undertaken immediately. However, to the researcher's dismay, these serious weaknesses are not still solved. The researcher confirmed the existence of these problems while he conducted his site observation in Bahirdar tannery. The researcher asked a coordinator in the sustainable environmental protection assurance core process²²⁵ to know the reason why the identified serious problems are not still solved. According to him the tannery targets only on profit maximization and expanding foreign market shares and unfortunately they frequently ignores the environmental responsibility despite subsequent comment given by the authority. The authority tried to take variety of measures including suspension of the tannery operation, however, as the coordinator stated, the government ordered the authority to change its decision.

To have a full picture on the tanneries' waste disposal system and related adverse impacts the sample respondents were consulted. All the interviewees who are from the nearby farmers and dwellers asserted that both tanneries release their waste to the field they graze their cattle and the abay river. This has been also confirmed by the researcher's during site observation (look Figure 3). The researcher observed the effluent of the tanneries being discharged to the Abay River via long ditch. The researcher was interested to know the opinion of the managers about the poor management of wastes disposal that is continuously enters in to the abay river. During the researcher's interview, the manager of both tanneries and the expert from Habesha tannery indicated that the effluent that is discharged to the abay river from the respective company contains, inter alias, a chromium chemical. Further, they added that, despite chromium is a hazardous chemical which potentially exposes individuals for cancer, the level of its concentration is very

²²⁵ Ato Tesfaye Asnakew Derso, supra note 182

minimal from its initial release and due to the water dilution its concentration decrease downstream from the point where the effluent joins the river to the last downstream site. However, some studies, for instance, a study carried out by Assefa Wosnie and Ayalew Wondie reveals that Chromium concentration level in Bahirdar tannery that is discharging to Abay River is 36 times higher than the discharge limit set out by EEPA²²⁶. Similarly, they stated that sulphide and chloride values of the waste were above the discharge limit.

Though it requires detail experimental analysis to determine the extent of pollution to the river water by both tanneries, from a mere observation to the effluents discharged to the river one could guess the extent of pollution. Studies have also documented that direct disposal of effluents to land and water bodies has the potential to contaminate air, surface and ground water as well as soils and crops grown on the soils which will have bearing on human health²²⁷.

River Abay is the main source of water for domestic water consumption (i.e. for drinking, bathing, cooking and washing cloth) of the community around Bahir Dar and Habesha tanneries (look picture 5). Since the two tanneries are located in neighborhood, the same samples of surrounding communities are taken as interviewee. All participants of the interview from the surrounding community claimed that the contamination of the water by the effluents of both tanneries has resulted in different health hazards (as typhoid, giardia, skin disease/irritation and head ache) to their families. For instance, an interviewee from the downstream site of the river responded that:

Abay River was the whole thing for us. We use it for drink, hygiene and swimming. We consider it as a holy water. Right now, it is highly contaminated by the tanneries. It causes a different illness for families. Before the establishment of these factories, I had a healthy family. But, right now, my wife and my little daughter are sick with giardia. They are on the bed. I was, even, sick that kind of illness. When I recovered from that, other members of the family in turn went to bed. You can go and see every house hold, you can get patients.

Another respondent also notes that:

I have a family with four members. We sometimes feel illness. Coughing, head ache, diarrhea and itch are to some extent common. We believe that the chemical effluent of the tanneries is the real cause. We went to health centers frequently. They cannot tell us the real cause of our illness. Sometimes, they said one and some other time, they said the other. We are really in a social disorder.

²²⁶ Assefa W. & Ayalew W., 'Bahir Dar tannery effluent characterization and its impact on the head of Blue Nile River', *African journal of environmental science and technology*, 2014, vol 8, No 6, pp 312-318 <http://www.academicjournals.org/AJEST>

²²⁷ Aklilu Asfaw, 'Heavy metal concentration in tannery effluents associated surface water and soil at Ejersa area of East Shoa, Ethiopia', *Herald Journal of Geography and Regional Planning*, 2014, Vol. 3, No. 3, pp 124-130.

In support of the earlier contributions, another participant indicated that: "the tanneries come to our habitat and destroy our healthy condition. We are forced to displace from the land where we and our ancestors lived for long because we should not live with pains."

Cattle are also affected by the effluents of the tanneries. Both tanneries effluent is being discharged in to the abay river through long ditch. These ditches are built along the field where the community grazes its cattle. This is confirmed during the researchers field visit. (Look at picture 5). The participant of the interview indicated that due to the hazardous chemical release from the tanneries the health of the cattle is deteriorating.

A farmer who was the participant of the interview explained that:

The chemical effluent of the tanneries is very salty. Due to the salty nature of the effluent the cattle are aggressively needed to drink it. Hence, children cannot keep and care cattle here rather we fathers are spent our time in keeping and looking after our cattle. Those cattle which drunk the waste shows symptoms of diarrhea, mange and emaciation. My cattle show these symptoms while they drunk that poisoned water.

Additionally, another participant responded that:

The health of my oxen and cows are severely affected. They are becoming emaciated. The oxen are losing energy to pull farm equipments. My cow is in a series infection right now. After it drunk the salty chemical water, it has been got diarrhea. I cannot fetch milk from the cow fearing that the milk could be contaminated." Similarly, the other participant of the interview concluded that: "I have different kinds of animals, such as, Sheep, cows and goat. Because of the hazardous chemical in the water and grazing land, these all got sick and thereby lost their quality. The matter what I already have is the number but the quality of them is coming to be deteriorated. When we took them for sale, they couldn't afford good price.

Regarding to the plant life, the participants of the interview indicated that they use the water from the abay river for cultivation of variety of plants, such as, mango, khat and other vegetables. The respondents in this regard said that due to the high contamination of the water the plants in the downstream site were started to drying. However, in this day, they diverted uncontaminated water from the upstream site via a long canal. During his field visit, the researcher observed the canal built by the community. By this fact, the respondents added that due to the reckless management of wastes by the tanneries, we are forced to incur costs to build canal from the long distance upstream site without any support from the tanneries.

From the above discussion, despite there is a need to more scientific research to know the extent of health damages on this case, it is possible to draw conclusion that the health of the community, animals and plants in the close downstream site is affected by untreated effluent of both tanneries. The respondents whom the researcher is consulted are highly vulnerable since they reside on the downstream side of the river. In this regard, different

experimental research works on environmental impacts of tanneries²²⁸ found out that the extent of pollution in surrounding downstream water bodies is quite significant; and the concentration of heavy metals in different water sampling sites decrease with increasing distance from tannery.

From the above discussion one can understand that, despite there is a need to more scientific research to know the extent and degree of health damages/effect of the waste disposal on the surrounding community and aquatic life of the river, it is possible to draw conclusion that the health of the community, animals and plants in the close downstream site is highly affected by untreated effluent of both tanneries. Unlike to the problem related with water contamination, the problem related to the bad odor of the tannery is commonly shared by the nearby residents. As to the report of USAID,²²⁹ strong smells can damage the quality of life around the tannery site and may reduce or destroy community support for further production or expansion. Thus, as the surrounding community is complaining about the waste discharging system of Bahir Dar and Habesha tanneries, the tannery is highly recommended to design and implement some efficient waste treatment and discharge mechanisms.

Hence, tanneries' wastewater management inefficiency can be seen in their adverse effects on the surrounding environment and community in that the pollution threatens the ecology and human wellbeing. In all cases, they are the poorest that are the most severely affected. These all cases show that the activities of Bahirdar and Habesha tanneries are not in comply with national and international laws (such as, EIA, EPC etc.).

Furthermore, besides the non-compliance with the legal frameworks, Bahirdar and Habesha tanneries are not discharging their responsibilities beyond the legal duty. Both tanneries haven't participated in any environmental protection projects yet. The managers of both tanners depicted that their company is not actively involved with supporting environmental protection programs. However, in a simple case, Bahirdar tannery is supporting an individual researcher who is conducting a research on a plant species that can possibly absorb and treat the effluent of the tannery. The support is actually giving only a plot of land in the premises for experiment. So, regarding to the support of

²²⁸ Supra note 157, & P. Indira, T. Ravi, Germination Changes of Vegetables of *Vigna Mungo L.* under Tannery Effluent Stress, 2006, retrieved from: <https://www.researchgate.net/publication/49615342>

²²⁹ Supra note 144,

environmental protection projects, the tanneries have poor records. Moreover, awareness creation by the tanneries in light of the environmental protection systems and responsibilities in which the workers could have is almost nonexistent in practice. The worker respondents in the focus group discussion depicted that “the employers are always telling us how we make high profit not how we should be responsible to the environment and society.”

Generally, both tanneries are running their business in setting aside the CSR agendas in which they are expected to do. Respecting laws and regulations relating to environment; creating ethical business activities that should not contravene with the public morality; supporting environmental protection projects and creating awareness to the workers about the need and the ways of protecting the environment are some of the activities for which the environmental responsible business should be in line with. However, almost equally, both tanneries are ignoring the responsibilities mentioned here above. By doing so, they contribute to environmental pollution to the area in which they operate their business.

4.3.3. *CSR in Terms of Community Welfare*

Nirmala L.²³⁰ Studied about CSR as “the Social and Environmental Impacts of Leather Production”. The study indicates health problems which are related to tanneries. People who work in or live near tanneries are dying from cancer caused by exposure to toxic chemicals used to process and dye the leather. As a result leather companies in different countries should spot the incidence of disease among residents near to tannery. Companies have made public stands against the inhumane slaughter of animals and improper processing of hides. The remedies of the social and environmental injustices are as varied and in some cases as obscure as the victims. In each country, governing agencies should supposedly regulate and watch over the processes involved. Hadi C. and Raveed K.²³¹ also described CSR in terms of “social values and behavioral issues” in order to reduce unemployment level of the community. According to these and other research findings, Community welfare dimension of CSR are described in four variables namely community service, local purchase, dialogue with the community and supplying beneficial products for the society.

²³⁰ Nirmala L., the Social and Environmental Impacts of Leather Production, Presentation Transcript, 2008

²³¹ Hadi C. and Raveed K, 'Iranian Corporations and Corporate Social Responsibility: An Overview to Adoption of CSR Themes', SAGE, 2011

Therefore, the analysis for this part of the study is based on the activities of Bahirdar and Habesha tanneries in relation to upgrading the welfare of the surrounding community. The assessment is in terms of the above mentioned standards.

Regarding to social service, Bahirdar and habesha tanneries do not have a continual plan to participate in social investments. Apparently, Bahirdar tannery is better in participating in some social activities. It is allocating certain amount of fund for social development activities, more particularly, in the entertainment sector. The tannery established a foot ball club so called "Bahirdar Tannery Foot Ball Club." The club is competing for the entrance of national league. The club is fully sponsored by the tannery. Additionally, the tannery is investing on some social groups. It helps four HIV positive women in paying 400 birr each per month permanently. The Plant Manager of the tannery stated that the tannery is believed to be responsible for community aids as moral obligation. In addition to making economic contributions and paying taxes companies should participate for social developments directly, he said. Moreover, he added that, though it is expected more, it is still contributing less in this regard. The researcher during his field visit ascertained that, despite the above very some activities are existed, they are implemented in an organized way. They are not taken as a tanner's continual commitment and are done like any incidental activities without integrating the activities into the annual tannery's business plan.

However, Habesha tannery is not experienced with any type of involvement in social investment activities. As it is stated before, the tannery does not perceive social responsibility of company's in terms of, inter alia, funding in social development activities. Hence, the Plant Manager of the tannery declares that the focus of the tannery is making sustainable economic developments by producing quality products and expanding the market share. Finally, attaining maximum profit is the goal. Hence, he added that, social investment is not taken as current agenda in the tannery. But, he pointed that the tannery will take the issue into account.

Regarding to the local purchase, the tanneries had great benefits in creating local market opportunities. The tanneries collect hides and skin from the nearby wholesalers and collectors. This account of the workers and residents is in agreement with the information provided by the Plant Managers of the tanneries. The managers reported that, currently the tanneries gain the bulk of their inputs (the hides and skin) from local wholesaler of

Bahirdar town, Bure town, Gonder town and Addis Ababa city administration. Moreover, the bulk of the chemicals used for the tanning processes are also collected from Addis Ababa though sometimes imported from Europe. So, it is possible to say both tanneries are socially responsible in terms of the local purchase policy of tanneries.

Regarding to dialogue with the community, tanneries have no a culture in this respect. Basically tanneries have no organized and planned social projects. Therefore, it is difficult to deal about the social dialogue and participation upon the proposed projects.

Regarding to the community benefit from the manufactured goods, both tanneries are export oriented producers. Goods are produced to the foreign market. As the managers of the two tanneries responded about the local benefit of the products, only ten percent of the total product of each tannery is supplied to the local market i.e. Addis Ababa.²³²

That means tanneries do not produce goods which could be confirming to the interest of the local community, such as, in price and usefulness. Hence, the local community around tanneries is not benefiting from the products of the tanneries.

Generally, though Communities located around tanneries are living with variety of social problems, community development participation of both tanneries is so poor.

²³² *Supra note 136*

CHAPTER FIVE

5 CONCLUSION AND RECOMMENDATION

5.1 CONCLUSSION

This article addressed the various concepts of CSR and laws regulating CSR in Ethiopia and also examined the practices of selected leather factories.

CSR is a strong component of new business and corporate self regulation models for long-term sustainability. The social and environmental principles of CSR, inter alia, are being integrated into the core policy objectives of global enterprises, and they are moving beyond their individual traditional business objective. Viewing this transition in retrospect, CSR notions have become more formalized and more incorporated into company strategies.

In strong economies, CG has embraced these principles, and it has pushed their internal regulation to implement these principles at the core of their strategies. Company self-regulation in these economies uses different strategies to encourage various business stakeholders to reach an economically optimal level of investment in firm-specific human and physical capital. Institutional investors, regulators, non-governmental organization (NGOs) and civil society groups have generally responded by collaborating with the private sector to make this self-regulation more enforceable and effective. Pension funds, consumer coalitions, non-profit organizations and other groups have developed monitoring schemes that incorporate CG aspects into their CSR guidelines, ratings and best practices.

However, in weak economies, corporate self-regulation is not under pressure to have adequate strategies to fulfill social responsibilities. They are not under the continuous watch of civil society groups, as is seen in strong economies. Rather, due to insensitive consumers, unorganized civil society groups, inadequate private institutions to watch corporate performances and corrupt public organizations, business enterprises do not incorporate the culture of CSR at the core of their policies. In labor-intensive, environmentally degraded and drought prone weak economies, there is no CSR-driven social coalition; NGOs and media are not mirroring companies' conscience; and the regulatory strategies do not possess the required features to ensure corporate societies' long-term commitment to stakeholder accountability.

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List of interviews

1. Interview with Ato Tesfaye Asnakew Derso, coordinator of sustainable environmental protection assurance core process, Environment, Forest and Wild Life Protection and Development Authority, Amhara Regional State, in Bahir Dar, Amhara, May, 12 2016
2. Interview with Ato Nibretu Genetu Belay, the head of the industrial peace and occupational safety and health protection department in Amhara Regional State Government Labor and Social Affairs Bureau, May, 20/2016
3. An interview with Ato Melese Mebratu, an expert of the marketing department in Bahirdar tannery, on the motivation of Bahirdar tannery for CSR practice, may 20, 2016
4. An interview with Ato Nishan Mengesha, the plant manager of Habesha leather factory, on the conceptual understanding of CSR by the tannery, April 20, 2016
5. Interview with ato Wossen Tegene, the plant manager of Bahirdar leather factory, on the perception of the concept of CSR in Bahirdar tannery, April 20, 2016
6. Interview with Ato Daniel Temare Sisay, project supervision and control coordinator in Amhara Regional State Investment Bureau, Bahirdar, may, 10/2016

Appendix

Interview guiding question is for the research titled “corporate social responsibility in Ethiopia: case study on Bahirdar and Habesha leather factories”

Beginning of the interview

Thank you for participating on the interview.

This study is part of the academic research carried out to pursue my LLM degree in business and corporate law in Bahirdar University.

The aim of the study is to create deeper insight in the way in which Corporate Social Responsibility is practiced in Bahirdar and Habesha leather factories. This study will collect information on the way in which the tanneries engage in Corporate Social Responsibility. The perception of CSR and labor, environment and community welfare related CSR practices of the tanneries will be explored. The results of the study will provide a baseline assessment of the state of CSR in both tanneries.

Participation is completely voluntary and granted confidentiality. The outline contains categories of guiding questions.

Appendix 1

Interview Guide to managers and experts of the tanneries

Section A: Tannery characteristics

1. Name of the tannery.....
2. Year of operation.....
3. Employee base.....

Section B: The Tanneries conceptualization of the term CSR

4. Are you familiar with the concept of CSR?
5. Does your tannery have a CSR policy or strategy?, and tell me more about your CSR policy and programs/activities
6. How does your tannery conceptualize the term CSR?
7. How much money your tannery allocates for CSR costs annually?
8. What are the CSR areas in which your tannery select to participate?
9. What motivates your tannery to be engaged with CSR?

Section C: CSR practices existing in the tanneries

10. Explain whether your tannery make reference to CSR in its mission statement or not?
11. Tell me about the extent of your tannery’s social responsibility practice.

12. To what extent your tannery pays a significant attention to social and environmental responsibilities?

Section D: CSR activates in relation to employees of the tanneries

13. To what extent is the tannery obeying and abiding by national and international labor legislations?
14. Do you provide a family friendly environment? And how?
15. How do you explain the commitment of your tannery to the health and safety of workers?
16. What are the initiatives taken by your tannery to encourage workers to develop real skill and long term carrier?
17. Does your company respect freedom of association and the right to collective bargaining, providing the facilities and information required for meaningful negotiation?
18. What are the important issues you invite workers to consult, if any?
19. What are the mechanisms that your tannery puts to supervise the compliance of labor obligation stated under the labor laws?

Section E: CSR activities in relation to environment

20. Explain the extent of your tannery involvement in the following CSR issues in relation to environment:
 - Obeying and abiding by environmental laws and regulations.
 - Disclosure of environmental and legal performance.
 - Monitoring, minimizing and taking responsibility for release to the environment.
 - Reduction of all forms of pollution
 - Waste management and reduction.
 - Environmental requirements for the supplier and
 - Environmental audits.
 - Encouraging workers to Environmental protection projects.
 - Funding environmental protection projects
 - Effective emergency response mechanism.
 - Others.

Section F: CSR activities of tanneries in relation to the community

Explain the extent of your tannery involvement in the following CSR issues in relation to community:

- Obeying and abiding by national laws.
- Tannery and staff members and involved in a charity and volunteer work on behalf of the tanner.
- Invest in communities in which the tannery operates.
- Launch community development activities.
- Encourage workers participation in community development projects. the tannery actively involved in projects with local communities
- tannery donate to charities
- company have recruitment polices that favored the local communities in which it operates
- others

Appendix 2

Guiding questions to the focus group discussion:

For employees

1. May you please describe the relationship between the tannery and the employees/workers?
2. Do you agree the tannery should be responsible to the community and employees/workers?
3. can you tell me if the tannery has a CSR policy/program
4. Could you tell me some of main sectors that the tannery engages in CSR?
5. please can you tell me if and how the tannery engage in the following activities for you(workers/employees);
 - Comply with labor related laws and regulations.
 - provide a family friendly work environment
 - Committed to the health and safety of employees e.g. by providing certain occupational safety materials, giving information in this regard, and health facilities.
 - Placing a good working environment

- Initiatives taken by your tannery to encourage workers to develop real skill and long term carrier through performance appraisal, training and development.
- Freedom of association and the right to collective bargaining compliance of the tannery by providing the facilities and information required for meaningful negotiation
- Consult in important issues that could impact to you or by you.
- The mechanisms placed to supervise the compliance of labor obligation stated under the labor laws and regulations and
- Others.

Appendix 3

Interview guiding questions for Community participants

1. Can please describe any CSR projects in the community undertaken by the tannery?
2. Please tell me if and how the tannery engaged in community development activities.
3. What are the impacts of the tanneries to:
 - The environment you live?
 - Your health?
 - Your animals' health?
 - Your agricultural works (plants, vegetables, fruits) and
 - The community welfare?

Appendix 4

Interview guiding questions for the officials and experts of the amhara regional state labor and social affairs bureau and the amhara regional environmental protection authority

1. How do you perceive about CSR in which the leather factories should incorporate in their business strategy, specially, interms of workers and environmental their responsibility?
2. What should be the role of the tanneries in respecting workers rights and protecting the environment?
3. Did they comply with the labor and environmental impact assessment standards?

4. What are the activities done by your office to supervise tanneries whether they are compliance with the labor and environmental protection standards?
5. What are the practical problems your office is facing to enforce labor and environmental standards in tanneries?
6. What are the main reasons that your office can not enforce labor and environmental laws and take possible measures against the violations of the labor and environmental standards of Bahirdar and Habesha leather factories?

Thank you!

Appendix five

The letter from the environmental authority showing that the authority has no scientific equipments to test the effluent standards



የአማራ ክልል አካባቢ ጥበቃ ሚኒስቴር አስተዳደር ቢሮ
The Amhara National Regional State
Environmental Protection, Land Administration and Use Bureau (BoEPLAU)

33

ቁጥር 2057/1765-114
Ref.No 29-9-06
Date

ለባዳር ከተማ አስረተ-ዳይር ጤና አጠባበቅ ጽ/ቤት
ባህር ዳር

ጉዳይ:- የሁለት ቆዳ ፋብሪካዎች መረጃን ይመለከታል

በባህር ዳር ከተማ በአዲስ አለም ቀበሌ ሁለት ቆዳ ፋብሪካዎች መኖራቸው ይታወቃል። እነዚህ ቆዳ ፋብሪካዎች ባዳር ቆዳና አበሻ ቆዳ ፋብሪካ የሚባሉ ሲሆን በቀበሌው ህብርተሰብ ላይ በሰጠው በአገሳትና በአጽዋት ላይ ከፍተኛ የሆነ ብክለት እያደረሱ እደሆነ የቀበሌው ነዋሪዎች በየደረጃው ላሉ የመንግስት መ/ቤቶች በተደጋጋሚ ቅሬታቸውን እያሰሙ ይገኛሉ። በመሆኑም እነዚህ ፋብሪካዎች የአካባቢ ጥበቃን ሆነችን እየጣሉ መሆኑንና በአካባቢው ላይ የሚያደረሱት አሉታዊ ተጽእኖ ከፍተኛ መሆኑን በመተቀስ ቢሮአትን በተለያዩ ጊዜ የማስተካከያ አርምጃ እንዲወስዱ መመሪያ የሰጠ ከመሆኑም በላይ ስራ እንዲያቆሙ ደብዳቤ በመጻፍ ለሚመለከታቸው አካላትም ሁሉ ጉዳዩን እንዲያወቁት አድርገናል።

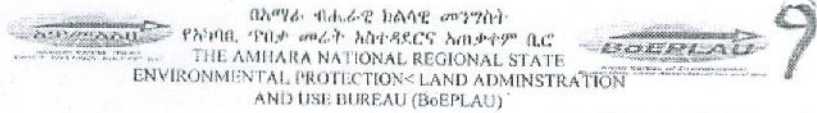
ይሁን እንጂ የተሰጠውን አቅጣጫ ከመፈጸም ይልቅ በአካባቢና በቀበሌው ህብርተሰብ ላይ የሚያደርሱትን ጉዳት በመቀጠል ሆነን አየተጻረሩ ይገኛሉ። ስለዚህ በእነዚህ ፋብሪካዎች ላይ ህጉ በሚፈቅደው መሰረት በማያዳግም ሁኔታ አርምጃ ለመወሰድ ያመቻኑ ዘንድ በጽ/ቤታችሁ ለተጠቀሱት ፋብሪካዎች በተለያዩ ጊዜ የተሰጡ መ-ያዩ አስተያየት፣ የማሰጠንቀቂያ ጽሁፍ፣ የተሰራ የፍላጎት ቆይታ የላባራቶሪ ውጤትና ሌሎችም ካለ ኮፒ ተደርገው እንዲላኩልን እንጠይቃለን።

20/9/06

ከሰላምታ ጋር

ህዝብ ጥበቃ ሚኒስቴር ቢሮ

Suspension order from the authority given to Bahirdar tannery



በአማራ ብሔራዊ ክልላዊ መንግስት
የአካባቢ ጥበቃ መረት አስተዳደርና አጠቃቀም ቢሮ
THE AMHARA NATIONAL REGIONAL STATE
ENVIRONMENTAL PROTECTION & LAND ADMINISTRATION
AND USE BUREAU (BoEPLAU)

ቁጥር/Ref/ አካ/11/493/አተ-6

ቀን/Date/17/04/2005

ለዴ.ል ኢምፕሪክ ኢንተርግራይዝ ባህር ቆዳ ፋብሪካ
ባህር ዳር

ጉዳዩ፣ አገናን ስለማሳወቅ

አካ/ጥ/መ/አሰ/አጠ/ ቢሮ ከሚያከናውኖቸው ዋና ዋና ተግባራት መካከል አንዱ የልማት ስራዎች ከአካባቢ ጋር ተጣጥመው መተግበራቸውን ማረጋገጥና በአካባቢ ላይ ጉዳት የሚያደርሱ ካሉም መጀመሪያ ማስተማር በዚህ የሚይመሰሱ ከሆነ ደግሞ አስረላጊውን እርምጃ በመውሰድ ሀብረተሰቡ እና በሰነ ምህዳሩ ላይ የሚደርሱ ጉዳቶችን ማስቆም ዋና ዋናዎቹ ናቸው።

በመሆኑም ዴ.ል ኢምፕሪክ ኢንተርግራይዝ ቆዳ ፋብሪካ ከዚህ በፊት እያደረሰ ያለው ብክለት የጎላ በመሆኑ የአካ/ጥ/መ/አሰ/አጠ/ቢሮ የጤና ቢሮ እና በተለያዩ አካላትና በተዋጊድ ባሉ መቤቶች ብክለቱን እንዲታገስ የሚያስገኘሉ ተግባራትን እንዲያከናውን የተገለጸለት መሆኑ ይታወሳል ።

ነገር ግን ፋብሪካው አሁንም ያልታየው ፍላጎት ቆይቶ በተጥታ በአባይ ወንዝና የመስኖ ቦይ የሚለቅ ሲሆን ወደ ወንዙ የሚሰጠው አጠቃቀም ቆይቶ በወንዙ ተጠቃሚዎች ህይወት፣ ጤና ወይም በልማታቸው ላይ የጎላ ተጽዕኖ እያሳደረገው።

ስለዚህ መንግስት የሚያውባቸው ሀገሃገና ደንቦች አሰማራትም ሆነ አስመራም ከተጠያቂነት የማያደን መሆኑን እየገለጸን ፋብሪካው አጠቃቀም የማሻሻያ እርምጃ እስኪወስድ ድረስ ስራ እንዲቆም በዚህ ደብዳቤ እየገለጸን ከሰረላጊው ሳይረደም ቢቀር በተጣይ ፋብሪካው በሆን

TEL 058 226 5458 Fax 058 226 5479 PoX 145

አባዛዎ መለሰ ሰጸ፣ የደብዳቤ ጥያቄ ቁጥር ቆይቶ
e-mail/Amharaenvironment@gmail.com



የሚጠየቅ መሆኑን ከወዲሁ እያሳሰብን በግልጽ የተገለጸውን አካላትም የሰጣችሁትን ፈቃድ እንድትመልሱና ህግ እንዲከበር የበኩላችሁን እንድትፈልጉ እንጠይቃለን።

ከሀላፊ ጋር
Handwritten signature
18/04/05

ግልጽ/

- ለዕርሰ መስተዳድር ጽ/ቤት
- ለሰነድ ኮተማና ኢንዱስትሪ ልማት ቢሮ
- ለሰነድ ንግድና ትራንስፖርት ቢሮ
- ለሰነድ ጤና ቢሮ
- ለሰነድ ግብርና ቢሮ
- ለሰነድ ፖሊስ ኮሚሽን
- ለባህር ዳር አስተዳደር ጽ/ቤት
- ለባህር ዳር ከተማ አስተዳደር ፍትህ ጽ/ቤት
- ባህር ዳር
- ለቢሮ ኃላፊ
- ለም/ቢሮ ኃላፊ
- አካ/ጥ/መ/አስ/አጠ/ቢሮ

Handwritten mark

ነገር ግን በመንግስት ክፍተኛ ወጭ እየወጣ ይህ ሁሉ ድጋፍ እየተደረገ ባለበት ሁኔታ ፋብሪካዎቹ የመጀመሪያ ደረጃ ማጣሪያ አሟልተው እየሰሩ ባሉበት ጊዜ አንዱም ላቅ ባለ ደረጃ ተሻግሮ ባለበት ሁኔታ ካለምንም የማስተካከያ ጊዜ ማስጠንቀቂያ እንዲያቆሙ ማገድ አግባብ አልመሰለንም።

እነዚህ ፋብሪካዎች ለክልሉም ሆነ ለሀገር ያላቸው ኢኮኖሚያዊና ማህበራዊ ፋይዳ ክፍተኛ ከመሆኑም በላይ ከሀገር አቀፍ ደረጃ የማኑፋክቸሪንግ ኢንዱስትሪ ልማት በትራቴኔ ከተለዩት ውስጥ በአንዱ የቆዳ ኢንዱስትሪ ዘርፍ የተሰማሩ ናቸው። በቆዳው ዘርፍ በእድገትና ትራንስፎርሜሽን ዕቅድ የተጣለውን ግብ ለማሳካት ሁለቱ ኢንዱስትሪዎች ድርሻ ያላቸው ከመሆኑም በላይ በተለይም የያዘነው አመት ቀጣዮቹ 6 ወራት የዕትዱን ሰስተኛ ዓመት ማጠናቀቂያ በመሆኑና የደረሰንበትን ደረጃ የምንለካበት በመሆኑ ሁሉም አካል እነዚህን ፋብሪካዎች ደግፎ የበለጠ እንዲሰሩ ማድረግ የሚጠበቅበት ነው።

እነዚህ ከላይ የተጠቀሱት ጉዳዮች የአካባቢ ጥበቃ ዘላቂነትን የማረጋገጥ ዋና የሥራ ሃይት የማያውቃቸው ጉዳዮች ናቸው ብለን አይደለም። እነዚህን ዕቅዶች የምናሳካውም አካባቢያችንን አየበክልን ነው የሚልም ሃሳብ የለንም። ነገር ግን ምርቱን ሳናገድል አካባቢያችንን ጠብቀን ለመጓገጥ በጋራ ምን መስራት ይኖርብናል የሚለው ጥያቄ አልታየም የሚል እምነት አለን።

በአዲስ አበባና ኦሮሚያ አካባቢ ያሉትን ቆዳ ፋብሪካዎች ሞጆ አካባቢ በማሰባሰብ አንድ የጋራ ማጣሪያ እንዲኖራቸው ለማድረግ መንግስት እየሰራ ሲሆን በየክልሉ ያሉትንም ቢሆን በፌዴራልና በክልል መንግስታት እገዛ በየአካባቢያቸው የተሟላ የፍላጎት ማጣሪያ እንዲኖራቸው መስራት እንደሚያስፈልገው ይታመናል። ይህ ለፋብሪካዎቹ ብቻ የሚተው ሳይሆን የመንግስትም እርዳታ ያለበት በመሆኑ በጋራ ተረባርቦ መፍትሄ አስክናበደለት ድረስ ፋብሪካዎቹ ሰራ ማቆም አሳባቸው ብለን አናምንም።

ሰለሆንም የተከበረው ቢሮ ይህንን ተመልክቶ ከአዲስ አበባ እና ከኦሮሚያ አካባቢ ጥበቃ ቢሮ ጋር እንዳደረገው ለስድስቱም ቆዳ ፋብሪካዎች የጋራ እቅድ አውጥተንና ሁሉም ያሉበትን ደረጃ ለይተን ለሁን ያሉበትን ወደፊት በተቀመጠው መሰኪያ መሠረት የት መድረስ እንዳለባቸው የክልሉ የአካባቢ ጥበቃ ቢሮ፣ ቆዳ ኢንዱስትሪ ልማት ኢንስቲትዩት እና ፋብሪካዎቹ የጋራ እቅድ አውጥተን እንድንሰራ አይራ አያልን በአንድ ቀን ዝጉ ማለት በሂደት

[Handwritten signature]

ላይ ያለው የቆያና የኪሚካል ኪሳራ ክፍተቻ በመሆኑ በኋላ ፋብሪካዎቹን እንዳይነሱና እንዳያገግሙ ስለሚያደርጋቸው ይኸው ታውቆ ሁለቱ ፋብሪካዎች ተከፍተው ስራቸውን እንዲጀምሩ እንዲደረግ ታላቅ ልማታዊ ትብብራችሁን እንጠይቃለን።



ከሠላምታ ጋር
ገደ ሰገራ
ግጥም ገገ

እንዲያውቁት

ለከቡር አቶ መኮንን ማንያዘዋል
የኢንዱስትሪ ሚኒስቴር ሚኒስትር
አዳሲ አበበ

ግልጻዊ

ለከቡር አቶ አያሌው ገበዜ
የአማራ ብሄራዊ ክልላዊ መንግስት ርዕሰ መስተዳድር
ባሕር ዳር

ለከቡር አቶ አርክበ እቶጊይ
ለኢ.ፌ.ዲ.ሪ ጠ/ሚኒስቴር አማካሪ ሚኒስትር
አዳሲ አበበ

በአማራ ክልላዊ መንግስት
ሰነድ ጥበቃ መሬት አስተዳደርና አጠቃቀም ቢሮ
ባሕር ዳር

ለዶ.ቭ ኢምፔክስ ባህር ዳር ቆዳ ፋብሪካ
ባሕር ዳር

ለሀበሻ ቆዳ ፋብሪካ
ባሕር ዳር

ለአቶ ብርሃኑ ንጉሰ
የአካባቢ ጥበቃ ኮሚቴ ሰብሳቢ
የቆዳ ኢንዱስትሪ ልማት ኢንሱቲትዩት

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