

## Taxation of Electronic Commerce: Prospects and Challenges for Ethiopia

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### Abstract

*Electronic commerce is one of the fastest growing industries in the global economy including in the developing and least developed countries. The advancement in information and communication technologies and the internet has offered the brick-and-mortar businesses additional marketing channels to transact online. The prospects that came with electronic commerce, however, are not without drawbacks. One of the challenges is related to the power of developing economies to levy and collect taxes on such online businesses. This paper seeks to examine the prospects and potential challenges in the taxation of electronic commerce from a legal perspective. It examines the existence or otherwise of an enabling legal and regulatory environment for the taxation of electronic commerce in Ethiopia. In so doing, it employs a qualitative doctrinal research methodology and heavily relies on binding domestic and international legal and policy frameworks as primary sources of data and pertinent literatures as secondary sources. It introduces some possible approaches of addressing potential challenges.*

**Keywords:** 1.Digital products, 2.Electronic commerce, 3.Ethiopia, 4.Taxation, 5.Value Added Tax

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### 1. Introduction

Fiscal sovereignty is one of the manifestations of State sovereignty recognized under international law. It allows States acquire their fair share of revenue from international and domestic transactions. The global shift from conventional commerce to electronic commerce has brought with itself multitudes of opportunities and challenges. On the one hand, it broadens the scope of citizens' choices thereby improving the quality of life. And, on the other, among other things, the new developments challenged the old ways of levying and collecting taxes especially for the least developed economies as they hardly adapt to the changes that came with the borderless advancements in information communication technologies and the internet. The principal difficulty in developing an electronic commerce taxing regime is that the internet is still a new medium whose full ramifications are not close to being understood.<sup>1</sup>For an overview of the taxation problems connected with the electronic new economy, one can, in a first step, distinguish between legal and illegal courses of action of taxpayers. Because of the technical and institutional characteristics of the Internet, such as decentralization, encoding and anonymity, commerce without receipts and disintermediation, infinite

reproducibility of digital products, and the absence of public authorities in the net, tax evasion becomes easy and bears low risk. Accordingly, at least for now, governments at all levels are not eager to commit to rules that could potentially erode their tax bases.<sup>ii</sup>

There are more than 400 million internet users in Africa, which is the second-largest internet-user population on the planet, just after China.<sup>iii</sup>In order to properly utilize the continent's potential in the sector, negotiations were scheduled under the umbrella of the African Continental Free Trade Area (AfCFTA) to include a protocol on e-commerce under Phase III, presenting a unique opportunity for African countries to collectively establish common positions on e-commerce, harmonize digital economy regulations and leverage the benefits of e-commerce.<sup>iv</sup>In terms of regulatory frameworks, by 2021, e-commerce legislation in Africa has failed to meet digital advances as currently only 33 of 54 nations have regulations for electronic transactions and only 25 have online consumer protection laws.<sup>v</sup> The prevailing challenges exist around ICT, logistical infrastructure, customer reluctance due to cyber-crime, low Internet penetration and problems with digital literacy.

Ethiopia has a vast digital audience. The number of mobile connections and internet users in the country is growing rapidly. In January 2020, there were 46.75 million mobile connections and this was equivalent to 41 per cent of the total population.<sup>vi</sup> By then, there were 21.14 million internet users with internet penetration of 19 per cent in the country.<sup>vii</sup> This reaffirms the country's potential for e-commerce. In order to properly regulate the challenges that will come with the development of e-commerce, a close look at the country's taxation regulatory framework on critical issues is essential.

Accordingly, this paper seeks to address whether and how, at this stage of development in the technological and commercial environment, the existing conventional taxation rules and principles can be used in the electronic commerce era. This study employed a qualitative doctrinal research methodology. The primary sources of data are international and domestic binding legal frameworks whereas the secondary ones are non-binding organizational reports, writings of scholars and policy briefs. In order to import best lessons on the subject matter, an extensive comparative approach is utilized by examining the regulatory frameworks of other jurisdictions.

## 2. General Overview of Electronic Commerce

The digital economy emerged with the Fourth Industrial Revolution have to a large extent assisted businesses in achieving certain efficiencies, extended market reach and global trade, increased profits, and improved customer/client satisfaction.<sup>viii</sup> One of such achievements is the growth of electronic commerce resulted from the advancements in information communication technology and the internet. The term electronic commerce, also known as e-commerce, refers to a business model that encompasses all commercial transactions which take place through any electronic means including over the internet and other online service.<sup>ix</sup>According to the UN, e-commerce is "a commercial activity conducted through an exchange of information generated, stored or communicated by electronic, optical, or analogous means."<sup>x</sup>

On the other hand, the term electronic transaction is defined under the OECD as "the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks."<sup>xi</sup> The goods and services are ordered over those networks, but the payment and the ultimate delivery of the good or service may be conducted on or off-line.<sup>xii</sup> In this sense, the notion of e-commerce transactions can therefore be understood as the application of information and communication technology to any of the activities involved in making commercial transaction.

Be the definition as it may, the platform brings together buyers and sellers for a wide range of transaction of goods and services, the transfer of funds and the exchange of data. The matters dealt with in the transactions could be intangibles, data products or tangible goods.<sup>xiii</sup> E-commerce transactions can be “business to business” (B2B) or “business to consumer” (B2C)<sup>xiv</sup> and can further be categorized into direct and indirect one. Direct e-commerce involves electronic ordering and the subsequent electronic delivery of the ordered product or service whereas indirect e-commerce refers to the electronic ordering and the subsequent physical delivery of the goods.<sup>xv</sup> With respect to the regulation of indirect e-commerce, the conventional administrative procedures already in place for cross-border trade continue to apply because tangible corporeal goods must be cleared through customs at a border post before entering the country. The recipient may effect the required VAT payment at the time of collecting the commodities.

The direct e-commerce with all the challenges has become an increasingly important procurement and sales channel in developed and emerging economies.<sup>xvi</sup> However, the prerequisites that would enable companies in least developed nations to participate in cross-border e-commerce are not yet in place.

Attempts have been in place to regulate electronic commerce at international and national levels. International e-commerce laws have been evolving since the inception of the information technology age. International e-commerce transactions which take place over the vast network of computers have become more streamlined with the advancement of technology. On a global basis, international electronic commerce is now viable and foreseeable; the technologies are providing the backbone for the infrastructure of the global economy.<sup>xvii</sup> However, as it evolves, electronic commerce presents the recurring challenge of attempting to accommodate the new commercial practices to, existing structures of national and international law. It is only a few decades that international electronic commerce has acquired a degree of viability and momentum which requires ongoing legal facilitation efforts in the international community to yield meaningful work products.<sup>xviii</sup>

### **3. Developments in E-commerce Taxation**

#### **i) The Ottawa Taxation Framework Conditions**

Electronic commerce is a central element in the OECD’s vision of the tremendous potential for economic growth and more jobs, for the expansion of world trade and improved social conditions. In recent years, the Organization has worked systematically with its Member countries, the private sector and civil society organizations, to study the development and impacts of the global information economy.<sup>xix</sup> In view of extensive economic and social influences of electronic commerce, the OECD has declared that new transaction rules must be formulated and policies related to traditional business practices be re-evaluated.<sup>xx</sup> One of the areas proposed for reforms is the regulation of e-commerce taxation.

In 1998, the Ottawa OECD Ministerial Conference entitled “A Borderless World – Realizing the Potential of Electronic Commerce” brought together OECD and non-OECD governments and the business community and enabled the adoption of the Ottawa Taxation Framework Conditions, which included a set of broad taxation principles that should apply to e-commerce.<sup>xxi</sup> The OECD has been working to address the following questions:<sup>xxii</sup> How should governments tax e-commerce? What does e-commerce mean for existing international tax principles and systems? What are the administrative challenges of taxing e-commerce, and how can these be tackled? How can governments harness the new technology to improve taxpayer service and reduce compliance costs?

Accordingly, the Ottawa Framework Conditions made it clear that the existing rules on taxation should still be maintained with respect to the taxation of electronic commerce. According to the report:<sup>xxiii</sup>

The taxation principles<sup>xxiv</sup> which guide governments in relation to conventional commerce should also guide them in relation to electronic commerce. The CFA [i.e. Committee on Fiscal Affairs] believes that at this stage of development in the technological and commercial environment, existing taxation rules can implement these principles. This approach does not preclude new administrative or legislative measures, or changes to existing measures, relating to electronic commerce, provided that those measures are intended to assist in the application of the existing taxation principles, and are not intended to impose a discriminatory tax treatment of electronic commerce transactions.

However, maintaining the existing rules as they stand will affect developing countries negatively while it will be to the overwhelming benefit of the developed countries. This is because the existing rules on international taxation is structured around the concept of permanent establishment which requires that before an entity can be subjected to taxation in a country it must have a fixed base in such a country.<sup>xxv</sup> But the advent of e-commerce has made it clear that it is possible to derive profits from a country without having any fixed base in that country.<sup>xxvi</sup> This is further complicated by the fact that most developing countries derive a substantial portion of their revenue from taxes on imported products and this source of revenue can shrink with the advent of e-commerce which allows the importation of digital goods and services which typically bypasses the usual means of importation for physical goods.

## **ii) The EU Experience**

In an attempt to shape the law for global electronic commerce and remove obstacles to trade through a uniform legal and management framework, the EU formulated a series of rules and regulations concerning electronic commerce.

In 2002, the Union adopted Directive on Electronic Communications 2002/38/EC which obliged all non-EU companies selling digital goods and services online to consumers within the EU to register with an EU tax authority and charge, collect and remit VAT.<sup>xxvii</sup> Pursuant to this Directive, therefore, the place of taxation was changed from the origin principle to the destination principle for B2B transactions; and, for B2C transactions, the origin principle was still applicable. Another development was Council Directive 2008/8/EC adopted on 12 February 2008 with the aim of combating tax evasion connected to intra-community transactions. In this Directive, the reverse charge mechanism was introduced on B2B transactions in the European Union according to which the liability to pay VAT was shifted from the supplier to the recipient of the supply with respect to B2B transactions.<sup>xxviii</sup> However, this was not taken as an effective option for B2C transactions mainly because, in B2C transactions, consumers are not registered and have neither the skills to voluntarily proceed to the remittance of the tax nor any incentive to do so given that they have to bear the economic burden of the tax without any possibility of recovering it.

## **iii) Turkey's Experience**

Turkey adopted series of legal and institutional reforms in order to tackle the challenges that came with the development of e-commerce. The reforms include the establishment of an Internet Tax Office and an Internet Supreme Council to deal with issues related to the internet and its effects and follow up the planning, coordination, and monitoring of the Internet infrastructure and its operations.<sup>xxix</sup> The country also established the E-Commerce Coordination Commission (ETKK) in 1997 with the aim of promoting e-

commerce security and legalization via digital signature verifications according to applicable global standards.<sup>xxx</sup> In addition, the country adopted the E-Signature Law No. 5070 on January 15, 2004 which aimed at providing validity to e-signatures for all legal transactions and provides commercial security for e-commerce activities thereby verifying the real identity of the parties involved in e-transactions.

#### **4. Challenges to E-Commerce Taxation**

##### **i) The Understanding on Permanent Establishment**

One of the usual recommendations in the regulation of ecommerce taxation is to determine taxing rights, such as the concepts of “permanent establishment” and the attribution of income.<sup>xxxii</sup> The question this raises is whether a website or a server, owned or used by a foreign company alone can constitute a permanent establishment. According to the revised commentary to Article 5 of the OECD Model Tax Convention, a non-resident enterprise with an internet web site alone would not be regarded as having a PE in the jurisdiction of its consumers.<sup>xxxiii</sup> As is known, a website is not a tangible object, and therefore it cannot be a place of business. On the other hand, the server, being a physical object, can constitute a place of business.<sup>xxxiii</sup> The U.S. Department of Treasury has rejected this view stating that the server is like the owner of a warehouse, which is a passive activity.<sup>xxxiv</sup> Apart from the possibility that a server may be a place of substantial equipment, the room where the server is located would satisfy the concept of place of business.

##### **ii) The Definition of the Place of Consumption**

Nowadays, most developing and least developed countries are importers of digital products from developed countries. Accordingly, businesses based in developed countries can derive lots of profits from consumers of digital products in developing and least developed countries but these foreign businesses can escape taxation because the emergence of the internet has made it unnecessary for them to have permanent establishments in these product importing countries. In order to prevent this problem, it is necessary for developing and least developed countries to come up with proactive and creative strategies to protect their tax base from further erosion. It is suggested here that the best way to do that is to shift the focus from taxation of incomes and profits derived from electronic commerce to consumption based taxes. Foreign businesses deriving profits from the sale of digital goods in developing and least developed countries should pay consumption taxes on their sales irrespective of whether or not they have a permanent establishment or a fixed base in the developing and least developed countries.

Consumption taxes are intended to be borne by consumers and are dependent upon retailers acting as tax collectors. Sellers bear the cost of determining the applicable tax rate, preparing invoices according to tax rules; collecting tax; filing and remitting tax; and maintaining tax records.<sup>xxxv</sup> With the development of e-commerce, there will be discrepancies where foreign suppliers may be tax-exempted, whereas local suppliers would be required to charge VAT or sales taxes.

The guiding principle with respect to consumption taxes under the OECD framework conditions is: rules for the consumption taxation of cross-border trade should result in taxation in the jurisdiction where consumption takes place.<sup>xxxvi</sup> This requires proper understanding of the place of consumption in a given transaction. Defining the place of consumption (and so the place of taxation) for the international cross-border supply of services and intangible property by non-resident suppliers that are not otherwise registered and are not required to register in the destination jurisdiction is the other issue worth considering.<sup>xxxvii</sup> In this regard such challenges as determining the jurisdiction in which tax should apply; determining the correct tax treatment of bundled products and complying with audit requirements are common.<sup>xxxviii</sup>

As a consequence the OECD suggests that the place of consumption entitles the state to impose tax. The main purpose of this rule is to prevent double taxation, or unintentional non-taxation. Secondly, for the purpose of consumption taxes, the supply of digitized products should not be considered as a supply of goods. Accordingly, the OECD proposes that the supply of digitized products, so pure online-business, should be treated as the supply of services.<sup>xxxix</sup> Lastly, a reverse-charge, self-assessment mechanism should be used where businesses and other organizations within a country acquire services and intangible property from outside the country. The OECD countries also agreed that for business to business (B2B) supplies tax should apply in the jurisdiction in which the recipient is located and for business to consumer (B2C) supplies, the place of consumption should be the jurisdiction in which the recipient has his or her usual residence.<sup>xl</sup>

### **iii) Identification of Taxpayers: Withholding Tax as an Alternative**

One of the serious challenges in the taxation of e-commerce is the difficulty in identification of taxpayers. This stems from the fact that e-commerce eliminates intermediaries who are critical for identifying taxpayers in business transactions.<sup>xli</sup> As one of the options to address this problem, the stakeholders could co-develop software or equipment to deal with withholding taxation and other declarations. However, making the virtual stores to collect taxes on behalf of the destination State would substantially increase the cost of compliance thereby impeding the development of e-commerce. This usually affects the developing and least developed countries as the digital product exporters may take advantage of the weak e-commerce infrastructures and poor tax administration in the importing countries.

In this regard, for developing and least developed countries to benefit from the taxation of e-commerce, the most feasible solution for resolving this problem is by levying a withholding tax on electronic commerce transactions.<sup>xlii</sup> The argument is that using a withholding tax approach provides a more stable and appropriate basis for the source-based taxation of international electronic commerce transactions than the current international tax system.<sup>xliii</sup> This would be favorable to most developing countries whose residents purchase digital products from developed countries via the internet as it implies that once residents within a particular country make any online purchase they have an obligation to deduct and withhold taxes on their payments to the foreign supplier of digital goods or services online.

The advantages of utilizing a withholding tax model for taxing electronic commerce are that it is operationally possible with the use of new technologies to assist with the collection, distribution and refund of the taxes withheld and such a model will also avoid issues regarding the characterization of income that could become more complicated in the context of electronic commerce. There are however several shortcomings with the withholding tax model. First, the withholding tax model has been criticized for not being tax neutral as it applies only to cross border sales of goods and services that involve foreign sellers and not local sellers. Second, withholding taxes based on gross receipts could be distorted where it is reasonably certain that the substantial part of the gross receipts consists of net income. Third, taxpayers will incur the compliance costs associated with filing returns to obtain a refund of the amounts withheld, and tax authorities would incur administrative costs to ensure that the system is enforceable. And, finally, the anonymous nature of the internet can make it difficult to levy a withholding tax on electronic commerce. This is because the levying of withholding tax requires the identification of the resident taxpayer who must withhold the tax, from the purchase price paid to the non-resident and pay it over to the tax authorities.

## **5. Taxation of E-Commerce in Ethiopia**

Needless to mention, the FDRE Constitution lays the federal state structure. The federal government has the power to enact a Commercial Code. As e-commerce is an aspect of commercial matter, the federal

government enacted electronic transaction law. It has also enacted several compartmentalized pieces of legislations relevant to e-commerce. In addition, the country has introduced the National Payment System Proclamation,<sup>xliv</sup> the Computer Crime Proclamation,<sup>xlv</sup> the Electronic Signature Proclamation,<sup>xlvi</sup> telecom laws<sup>xlvii</sup> and the Value Added Service Directives.<sup>xlviii</sup>

The concept of permanent establishment is defined under Ethiopian VAT Proclamation as a fixed place of taxable activities through which those activities of a person are wholly or partly carried on and includes an administrative office, branch, factory, workshop, mine quarry or any other place for the exploitation of natural resources, and a building site or place where construction and/or assembly works are carried out.<sup>xlix</sup> This definition excludes places of taxable activity that are mobile in their nature. This true for websites, which does not have specific premises, equipment, machinery or the like and the software and data constituting the website does not have the degree of permanency required to be considered to constitute a fixed premises.<sup>l</sup> Website information can be moved from one server to another depending on the requirement mostly the internet infrastructure. In this case, it is tough to apply the concept of permanent establishment on e-commerce transactions.<sup>li</sup> Likewise, in e-commerce the location of the seller as well as the location of the buyer is often not made known to each other, presenting a degree of anonymity.<sup>lii</sup> This allows tax evasion, and creates difficulties to determine which jurisdiction country has the right to tax.

Pursuant to Art. 4(7) of the VAT Proclamation, if a non-resident engage in the supply of goods and rendering of service via internet then the VAT Proclamation will be applied. This is true even if a non-resident do not have a permanent establishment in Ethiopia. The provision states that the Proclamation applies to the supply of goods and rendering of services carried out by a nonresident in Ethiopia through a permanent establishment in Ethiopia or through the Internet.

The Reverse Charge Mechanism is recognized under the Ethiopian VAT Proclamation. Article 23 (1 and 2) indicate that if a non-resident person who is not registered for VAT in Ethiopia renders services in Ethiopia for a person registered in Ethiopia for VAT or any legal person, the rendering service is subject to taxation. Accordingly, with regard to B2B e-commerce transactions other than exempted supplies, the recipients of electronic services, the imported service, are required to make use of the reverse-charge mechanism. Pursuant to Article 23(3) of the VAT Proclamation, the amount of tax imposed is determined by a method of calculation to be determined by Regulations issued by the Council of Ministers. In this regard, an author has explained the advantages of recognizing the reverse charge mechanism as follows:

Firstly, the Ethiopian Tax Authority has the opportunity to verify and enforce compliance since that authority has jurisdiction over the customer. Secondly, the compliance burden is shifted from the supplier to the customer and is minimized since the customer has full access to the details of the supply. Thirdly, the compliance costs for the Tax Authority are also low because the supplier is not required to meet tax obligations in Ethiopia (e.g. VAT identification, audits, which would otherwise have to be administered). Finally, it reduces the revenue risks associated with the collection of tax by non-resident suppliers.<sup>liii</sup>

Likewise, Article 23 (1 and 2) provides that the Reverse Charge Mechanism is applicable to B2C e-commerce transactions. This is particularly the case when the goods are ordered online and delivered physically.

The Tax Administration Proclamation of Ethiopia provides that tax authorities may authorize certain activities to be done electronically through a computer system or mobile electronic device.<sup>liv</sup> These include the lodging of an application for registration or for a Tax Identification Number (TIN), the filing of a tax declaration or other document, the payment of tax or other amounts, the payment of a refund, the service of

any documents by tax authorities and the doing of any other act or thing that is required or permitted to be done under a tax law.<sup>lv</sup> In addition, Article 111 of the Proclamation states that when a taxpayer required by the Authority under a tax law to file a tax declaration or pay tax electronically fails to do so, the Authority shall serve the taxpayer with notice in writing seeking reasons for the failure.<sup>lvii</sup> It adds that a taxpayer who fails to provide adequate reasons to the satisfaction of the Authority for the failure to file a tax declaration or pay tax electronically within 14 days of the date of service of the notice shall be liable for a penalty equal to ETB 50,000.<sup>lviii</sup>

## 6. Conclusion

In this study, attempt is made to examine the adequacy of the regulatory frameworks of electronic commerce in Ethiopia with a special emphasis on taxation. In so doing, the paper considered the current developments with respect to the taxation of electronic commerce in some selected jurisdictions including the OECD, the EU and Turkey.

The study finds that, while e-commerce presents a tremendous opportunity for business and employment generation, it poses significant challenges to existing tax law and regulatory mechanisms due to the inherently non-territorial nature of its digital transactions which are hard to trace and could potentially lead to tax revenue losses at sub-national, national and international levels. With all the challenges, the current state of knowledge shows that electronic commerce can and will be taxed. However, focus has to be on how to levy and collect appropriate tax fairly and efficiently. The challenges that Ethiopia will be facing in the course of taxing e-commerce include, but not limited to, verifying the details of taxable transactions, identifying taxpayers engaged in e-commerce and determining tax jurisdiction, ensuring that appropriate records are created of business conducted by e-commerce and collecting taxes in the e-commerce environment.

The traditional tax principles can be applicable and be implemented for e-commerce through the existing tax rules with some modifications provided that government intervention should be proportionate, transparent, consistent, predictable and technologically neutral. There is growing realization and acceptance that without appropriate policy interventions, the tax base erosion that has been underway for many years is expected to persist as e-commerce usage continues expanding across the globe. Policy makers will therefore be forced to rethink their tax policies in order to come up with a feasible way of taxing e-commerce activities.

In spite of the potential for the development of e-commerce in Ethiopia, the existing legal frameworks are far from being responding to the needs of the day. This will pave via which the digital product exporters exploit the lax regulatory standards thereby eroding the revenue collecting capacity of the country. Therefore, the government has to work on developing the legal and policy frameworks so as for the country to generate the fair share of revenues from electronic transactions.

## Endnotes

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<sup>ii</sup>Bach Stefan et al, *Taxation of E-Commerce: Persistent Problems and Recent Developments*, *Vierteljahrshefte zur Wirtschaftsforschung*, ISSN 1861-1559, Duncker&Humblot, Berlin, Vol. 69, Iss. 4, 2000, at 657-678.

<sup>iii</sup>Georges Desvaux and Sacha Poignonnec, *How e-commerce supports African business growth*, January 17, 2019.

<sup>iv</sup>Karishma Banga, Mohamed Gharib, Max Mendez-Parra and Jamie Macleod, *E-commerce in preferential trade agreements Implications for African firms and the AfCFTA*, February 2021, at 9.

<sup>v</sup>*Awakening of Africa: Kenya's Ecommerce on the Rise*, October 21, 2021.

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<sup>vi</sup>Simon Kemp, *Digital 2020: Ethiopia*, 17 February 2020.

<sup>vii</sup>*Id.*

<sup>viii</sup>Jeff Buckland & Zaheer Moosa, *E-Commerce and consumer protection*, July 29, 2020, 2021.

<sup>ix</sup>Andrew Bloomenthal, *Electronic Commerce (Ecommerce)*, updated September 16, 2021.

<sup>x</sup>Hill R. & Ian Walden I., *The Draft UNCITRAL Model Law for Electronic commerce: Issues and Solutions*, *Computer L.*18, 1996, P. 13.

<sup>xi</sup>*Measuring the Information Economy*, ANNEX 4. *The OECD definition of internet and E-commerce transactions*, 2002, P. 89.

<sup>xii</sup>*Id.*

<sup>xiii</sup>Konstantinos Siliadis, *Taxation of e-Commerce - A Task for Jugglers*, *Masaryk University Journal of Law and Technology*, at 142.

<sup>xiv</sup>*Id.*

<sup>xv</sup>*Id.*

<sup>xvi</sup>Giz, *Promoting e-commerce in Africa*, January 2021. *The leading e-commerce platforms in Africa include Jumia (Nigeria), Takealot (South Africa), Kilimall (Kenya), Konga (Nigeria) and Bidorbuy (South Africa). See She Leads Africa (SLA), 5 top e-commerce platforms in Africa.*

<sup>xvii</sup>Jeffrey B. Ruer and Judith Y. Gliniecl, *International Electronic Commerce and Administrative Law: The Need for Harmonized National Reforms*, *Harvard Journal of Law and Technology*, Vol. 6, Spring Issue, 1993.

<sup>xviii</sup>Jeffrey B. Ritter, *Defining International Electronic Commerce*, *Northwestern Journal of International Law and Business*, Vol. 13, Issue 1, Spring, 1992.

<sup>xix</sup>*Progress report on the oecd's work on electronic commerce OECD Emerging Market Economy Forum on Electronic Commerce Dubai, U.A.E, 16-17 January 2001.*

<sup>xx</sup>Min Wang, *Establishment of an international legal framework for cross-border electronic commerce rules: Dilemmas and solutions*, *World Customs Journal Volume 11, Number 2.*

<sup>xxi</sup>OECD, *Implementation of the Ottawa Taxation Framework Conditions*, *The 2003 Report*, at 11.

<sup>xxii</sup>OECD iLibrary, *Taxation and Electronic Commerce*, 04 May 2001.

<sup>xxiii</sup>See, OECD, *'Electronic Commerce: Taxation Framework Conditions'*, *A Report by the Committee on Fiscal Affairs*, 1998 at paragraph II.4&5.

<sup>xxiv</sup>*The recommended principles include the following:*

*Neutrality: Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.*

*Efficiency: Compliance costs for taxpayers and administrative costs for the tax authorities should be minimized as far as possible particularly for small- to medium-sized enterprises.*

*Certainty and simplicity: The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted.*

*Effectiveness and Fairness: Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimized while keeping counter-acting measures proportionate to the risks involved.*

*Flexibility: The systems for the taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments. See, OECD, *Addressing the Tax Challenges of the Digital Economy*, Annex A, *Prior Work on the Digital Economy*, at 162.*

<sup>xxv</sup>See Article 5 of the *OECD Model Tax Convention on Income and on Capital (Condensed Version, 2010)*.

- <sup>xxvi</sup>Philip A. Folarin, *Taxation of Electronic Commerce in Developing Countries: A Case for Shifting of Focus to Consumption Taxes*, NAUJILJ 10 (1) 2019, at 44. a
- <sup>xxvii</sup>European Commission, *Council Directive 2002/38/EC: Amending and amending temporarily directive 77/388/EEC as regards the Value Added Tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services*, 2002.
- <sup>xxviii</sup>Under the reverse charge mechanism, the person liable for the payment of the VAT on the particular transaction is the recipient/ buyer. In other words, in this mechanism the liability to pay VAT is shifted from the seller to the buyer. The supplier/service provider would be solely responsible for indicating the transaction to the Revenue Authorities.
- <sup>xxix</sup>HG.org, *Development of E-Commerce Legislation and Taxation of Revenues from Online Content in Turkey*.
- <sup>xxx</sup>*Id.*
- <sup>xxxi</sup>OECD, *Electronic Commerce: Taxation Framework Conditions, A Report by the Committee on Fiscal Affairs, as presented to Ministers at the OECD Ministerial Conference, "A Borderless World: Realising the Potential of Electronic Commerce" on 8 October 1998*, at 7.
- <sup>xxxii</sup>OECD, *Clarification on the Application of The Permanent Establishment Definition In E-Commerce: Changes To The Commentary On The Model Tax Convention on Article 5, 2000*, P. 3.
- <sup>xxxiii</sup>Arvid S., 'Erosion of the Concept of Permanent Establishment: Electronic Commerce', *Intertax*, 2000, Vol. 28. No. 5, P. 189. Also see B. Downey, 'E-Commerce : The Taxman's Nemesis' (2002) 2 *Asper Review International Business and Trade Law* p.53.
- <sup>xxxiv</sup>See *Selected Tax Policy Implication of Global Electronic Commerce*, Nov. 1996, Department of the Treasury Office of Tax Policy. See also J.G.S. Yang, *Emerging Issues in E-Commerce Taxation (2012 – 2013)* 31 *Journal of State Taxation* p. 15. This is in consonance with the OECD which indicates that a permanent establishment will not be created if the server merely performs preparatory or auxiliary activities which include provision of a communication link, advertising goods and services, etc. Similarly, the OECD Model Tax Treaty exempts storage, display, delivery of goods and collection of information from its definition of permanent establishment. Even where a server is used for active transactions as opposed to passive transactions, Cockfield opines that the high mobility and flexibility of a server may make it unqualified to fit into the concept of permanent establishment. See A.J. Cockfield, 'Transforming the Internet into a Taxable Forum: A Case Study in E-Commerce Taxation' (2000-2001) 85 *Minnesota Law Review* p.1171.
- <sup>xxxv</sup>Richard Jones and SubhajtBasu, *Taxation of Electronic Commerce: A Developing Problem*, *International Review of Law Computers and Technology*, Vol. 16, No. 1, 2002.
- <sup>xxxvi</sup>OECD, *International VAT/GST Guidelines*, 2006, P. 10.
- <sup>xxxvii</sup>OECD, *Implementation Issues for Taxation of Electronic Commerce*.
- <sup>xxxviii</sup>*Id.*
- <sup>xxxix</sup>*Id.*
- <sup>xl</sup>OECD, *Consumption Taxation of Cross-Border Services and Intangible Property in the Context of E-commerce, A Guidelines on the Definition of the Place of Consumption*, 2001, P. 1-2
- <sup>xli</sup>Peter MisianiMwencha, *Taxation of Electronic Commerce- A Commentary, Financing for Development*, Vol. 1, Issue 1, 2019, at 75.
- <sup>xlii</sup>See R.S.Avi-Yonah., 'International Taxation of Electronic Commerce', (1997) 52 *Tax Law Review* 507; see also R. Doernberg, 'Electronic Commerce and International Tax Sharing', (1998) 16 *Tax Notes International* 1013; D. Pinto, 'The Need to Reconceptualize the Permanent Establishment Threshold', (2006) 60 *Bulletin for International Fiscal Documentation* 266 at 277. A withholding tax should be applied by source countries (i.e. countries where online goods and services are purchased) on active income at a uniform rate to all international electronic commerce transactions generating withholding income.

<sup>xliii</sup>A.W. Oguttu & S. Tladi, 'The Challenges E-Commerce Poses to the Determination of a Taxable Presence: The Permanent Establishment Concept Analyzed from a South African Perspective', (2009) (4) (3) *Journal of International Commercial Law & Technology* 213.

<sup>xliv</sup>National Payment System Proclamation No. 718/2011.

<sup>xlv</sup>Computer Crime Proclamation No. 958/2016. The Computer Crime Proclamation criminalises persons who intentionally commit a 'computer crime.' Computer crime is defined as a crime committed against a computer, computer system, computer data, or computer network; a conventional crime committed by means of a computer, computer data, or computer network; or dissemination of illegal computer content data through a computer, computer system, or computer network. (Article 2(1) of the Computer Crime Proclamation).

<sup>xlvi</sup>Electronic Signature Proclamation No. 1072/2018. This law validates electronic signatures in commercial transactions and, therefore, can be taken as a step forward in the development of e-commerce laws in Ethiopia. The law has a legal presumption that states, 'In any civil proceedings involving electronic message signed with a reliable electronic signature, it shall be presumed, unless the contrary is proved, that: (1) the electronic signature is the signature of the subscriber; (2) the electronic signature was affixed by that person with the intention of approving the electronic message; and (3) the electronic message and the signature has not been altered since the specific point in time to which the electronic signature was affixed.

<sup>xlvii</sup>For instance, see Telecommunications (Amendment) Proclamation No. 281/2002, Telecommunications Proclamation No. 49/1996, Ethiopian Telecommunications Corporation Establishment Council of Ministers Regulations No. 10/1996, and Ethio-Telecom Establishment Council of Ministers Regulation No. 197/2010, Ethio-Telecom Establishment Council of Ministers Regulation No. 197/2011 and Ethio-Telecom Establishment (Amendment) Council of Ministers Regulation No. 480/2021.

<sup>xlviii</sup>For instance, see Value Added Service Directive No. 2/2005.

<sup>xlix</sup>VAT Proclamation No. 285/2002, Art.2(10.).

<sup>l</sup>Nufransa W., 'Permanent Establishment for E-commerce in International Taxation', 2006, P. 336.

<sup>li</sup>Andualem Temesgen, A Critical Assessment of the Application of Ethiopian VAT on E-Commerce, LL.M Thesis, Addis Ababa University, 2018, at 5.

<sup>lii</sup>Basu S., 'To Tax or Not To Tax? That is the Question? Overview of Options in Consumption Taxation of E-Commerce', *The Journal of Information, Law and Technology*, 2004, No. 1, Part 1.

<sup>liii</sup>Andualem, *supra* note <sup>liii</sup>, at 34. The author also criticized the payment system in Ethiopia for heavy reliance on the traditional payment mechanisms such as Letter of Credit and Cash against Document and not legalizing the new e-commerce payment systems such as credit card and debit card.

<sup>liv</sup>Federal Tax Administration Proclamation, Fed. Neg. Gaz. Extraordinary issue Proc. No. 983/2016.

<sup>lv</sup>*Id.* Art.82(1). Sub articles 2-5 are reproduced below:

2/ Subject to sub-article (4) of this Article, the Authority may direct that a taxpayer shall do anything referred to in sub-article (1) of this Article electronically through the use of a computer system or mobile electronic device.

3/ Subject to sub-article (4) of this Article, the Authority may do anything referred to in sub-article (1) of this Article electronically through the use of a computer system or mobile electronic device.

4/ Sub-articles (2) and (3) of this Article shall not apply to a taxpayer if the Authority is satisfied that the taxpayer does not have the capacity to receive or make communications or payments electronically. 5/ A taxpayer who files a tax declaration and pays tax electronically under this Article shall continue to do so unless otherwise authorized by the Authority.

<sup>lvi</sup>*Id.* Art.111(1).

<sup>lvii</sup>*Id.* Art.111(2).

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