Bahir Dar University Journal of Law
የባሕር ዳር ዩኒቨርሲቲ የሕግ መጽሔት

ISSN (e): 2709-5827 **ISSN (P): 2306-224X**

Vol. 14 No. 1 December 2023
ቅጽ ፲፬ ቁጥር ፩ ታህሳስ ፳፻፲፮

In This Issue
Articles

በዚህ ዕትም
ጥናታዊ ጽሁፎች

A Biannual Law Journal published by Bahir Dar University, School of Law, Since 2010
በባሕር ዳር ዩኒቨርሲቲ ሕግ ትቤት በዓመት ሁለት ጊዜ የሚታተም የሕግ መጽሔት፣ ከ፳፻፪ ዓ.ም. ጀምሮ

Contents

Articles

Taxing Advocates' Income in Ethiopia: An In-depth Examination of the Presumptive Tax Assessment Regime

Zerihun Asegid [α], Bart Peeters[θ] and Taddese Lencho[ϒ]

Abstract

This article investigates the presumptive income tax regime for advocates in Ethiopia, focusing on the characterization of advocates' income as business income, their categorization into Categories A, B, or C taxpayers, and the presumptive income tax assessment of Category C advocates. The study employs a mixed-methods approach, combining doctrinal analysis of legal frameworks with a qualitative examination of tax administration practices.

The article finds that Ethiopia's treatment of advocates under the business income tax schedule is consistent with international norms, simplifying tax administration. However, issues arise with categorization and presumptive tax determination. Despite the principal income tax laws base advocates' categorization and presumptive tax assessment on annual turnover, the laws lack clear and objective mechanisms for determining this turnover. Administratively, tax authorities have attempted various turnover estimation methods with limited success due to inappropriate approaches and flawed applications. Non-compliance among advocates further exacerbates these challenges. As a result, categorization and presumptive tax assessments are often subjective, uncertain, and prone to evasion.

[α] Lecturer in Law, College of Law, Debre Berhan University; Ph.D. Candidate, Bahir Dar University; Email: zerihun78@gmail.com

[θ] Professor, Ph.D., University of Ghent; Email: Bart.Peeters@ugent.be

[ϒ] Assistant Professor, Ph.D., School of Law, Addis Ababa University; Email: tadboda@yahoo.com

To address these shortcomings, the article proposes modernizing the presumptive tax regime by introducing effective turnover verification methods, requiring Category C advocates to maintain basic records of receipts with an optional standard deduction for expenses, utilizing robust third-party information frameworks for reliable data exchange, and enhancing tax authorities' capabilities to implement these reforms. These measures aim to create a more equitable and efficient income tax system for advocates in Ethiopia.

Key words: Presumptive Taxation; *Advocates' Income*; *Turnover Tax*; *Tax Compliance*; *Ethiopia.*

Introduction

Over the past several decades, the taxation of advocates' income has remained a peripheral concern within the Ethiopian tax system. A form of presumptive taxation known as standard assessment has served as the primary method for assessing the taxes of most advocates. Advocates, based on the type of their advocacy licenses, have been subjected to fixed lump sum taxes collected by tax authorities. Due to its simplicity and predictability, advocates did not voice complaints about this assessment method. Conversely, tax authorities expressed concerns that the fixed taxes were inadequately low, infrequently updated, leading to advocates paying taxes that did not accurately reflect their income status.[1]

Following the enactment of the current income tax laws in 2016/17, specifically the income tax regulation, there has been a shift in the income tax assessment method for advocates, transitioning from an indicator-based to a

[1] *የመደበኛ ቁርጥ ታክስ አወሳሰን* (Standard Assessment) *ሥራ ላይ ለማዋል የቀረበ ሀሳብ፣ ፊስካል ፖሊሲ መምሪያ፣ገንዘብና ኢኮኖሚ ልማት ሚኒስቴር፣ አዲስ አበባ፣1994 ዓ.ም፣ ገጽ 24, 28።*

turnover-based standard assessment.[2] It was during and after this change that various problems surfaced, particularly from the advocates' community. Tax authorities maintained their concerns that advocates were not meeting their tax obligations, accusing them of evading taxes. Despite being significant income earners, advocates reportedly declared only a minimal portion of their taxable income, resulting in negligible or minimal income tax payments, according to tax officials.[3] Consequently, tax authorities in regions like Amhara significantly raised tax amounts for advocates, sparking discontent within the advocates' community. In response to these measures, advocates organized seminars, aimed at raising awareness of the tax challenges they faced due to the authorities' measures, and submitted complaints to both federal and regional government officials, exemplified by letters from the Ethiopian Federal Advocates and Amhara Region Bar Associations to the Ministry of Finance and the Amhara National Regional State Finance Bureau, respectively.[4] Despite these efforts, the disputes persist, and temporary measures seem insufficient to address the root causes of the problems.

Advocates have raised various complaints regarding the law and practice of income tax assessment. The primary issues include advocates' contention that, as professional service providers, they should not be classified as businesses under Schedule C of the Income Tax Proclamation. They argue that advocacy

[2] Council of Ministers Income Tax Regulations, No. 78/2002, *Federal Negarit Gazetta, (2002),* Schedules 2; Council of Ministers Federal Income Tax Regulation, No.410/2017, *Federal Negarit Gazetta,* (2017), Schedule One, Business sector No. 75. While this article primarily addresses the tax matters of regional states, the laws of the federal government are referenced herein for the sake of convenience and simplicity. The income tax laws of the regional states mirror those of the federal government verbatim. Rather than citing multiple identical laws, the approach adopted here is to cite one law that is analogous to the others.

[3] Interview with Getachew Mesfin, Senior Tax officer, Amhara National Regional State Revenue Bureau, (11/02/2015 E.C, i.e Ethiopian Calendar).

[4] *የኢትዮጵያ ፌዴራል ጠበቆች ማህበር፣ ደብዳቤ ቁጥር ኢ/ፌ/ጠ/ማ00087፣ ቀን 17/11/2015 ዓ.ም፤ የአማራ ክልል ጠበቆች ማህበር፣ ደብዳቤ ቁጥር ጠ/ማ- 142/15፣ ቀን 09/12/12015 ዓ.ም።*

services, governed by distinct laws, differ from commercial activities.[5] Additionally, advocates claim that many personal expenses, deemed nondeductible by tax authorities, serve the dual purpose of deriving income from advocacy services. For example, using private cars for transportation from offices to courts is among the nondeductible expenses by the tax authorities. Due to these unique features, advocates argue that Schedule C and the maintenance of books of accounts are unsuitable for them, leading most advocates to eschew bookkeeping and be taxed presumptively.[6]

[5] It is noteworthy that the claim asserting "advocates are not businesses" appears to be a prevalent viewpoint among advocates. This argument has been consistently raised by advocates, extending beyond issues related to income tax. For instance, in his 2014 doctoral dissertation, Taddese Lencho articulated the advocates' resistance to the Ministry of Trade's decision to incorporate consultancy services into the category of trades necessitating business licensing and registration. This resistance was grounded in the argument that advocacy does not qualify as a business and, therefore, should not be classified among activities treated as trade under the prevailing commercial code at that time. Taddese Lencho, The Ethiopian Income Tax System: Policy, Design and Practice, A Dissertation Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, University of Alabama, (2014), p. 377. To the dismay of the advocates, the recently enacted commercial code, which supersedes its predecessor and was promulgated in 2021, categorizes professional services as a form of trade. This categorization implies that advocates are regarded as traders within the framework of the Code, as stipulated in Article 5(31) of the Commercial Code of Ethiopia Proclamation No. 1243/2021. In a scholarly article authored in Amharic language in 2018, Mohamed Dawud reported that advocates have consistently opposed the imposition of indirect taxes, such as value-added and turnover taxes (VAT and ToT). They have advocated for legislative bodies to reconsider applicable tax laws and to grant exemptions for advocacy services from VAT and ToT. These assertions and requests are underpinned by arguments highlighting the purported unconstitutionality of imposing indirect taxes on advocacy services and emphasizing the distinctive professional nature of advocacy, which sets it apart from conventional business activities. *ሙሐመድ ዳውድ አልቃድር፣ በኢትዮጵያ ከሕግ አገልግሎት የሚሰበሰብ የተጨማሪ እሴት ታክስና የተርን አሸር ታክስ፤ አዙሪት ጥያቄዎችና ውሰብስቦች፣ Bahir Dar University Journal of Law*, Vol.8, No.2 (June 2018).

6 *በፌደራል የጥብቅና ስራ የግብር አስተዳደር ስርዐት የህግና አተገባበር ጉድለቶችና መፍትሄዎች፣ የኢትዮጵያ ፌዴራል ጠበቆች ማህበር፣ ታህሳስ 2015 ዓ.ም፣ ገጽ 5,15-16,19,37-38።*

Secondly, advocates criticize the lack of uniformity and predictability in presumptive income tax assessment across different regional states and even within the same region. Advocates across different tax centers are subject to varying assessment methods, with some centers mandating bookkeeping and taxation based on records, while others insist on fixed lump sum taxes. The advocates' opposition to fixed taxes stems from their belief that such amounts lack a clear basis or study. [7] The persistent nature of the presumptive tax problem surrounding the taxation of advocates' income indicates that the concerns between tax authorities and advocates are ongoing.

This article aims to address the limited academic work on the topical issue of income tax assessment for advocates in Ethiopia. It investigates the historical origin, developments, and features of the presumptive income tax regime for advocates, analyzing policy, legal, and administrative issues. The goal is to provide new insights to the academic community and propose measures for resolving the problems faced by both tax administrations and advocates. As regards its scope, the article focuses on individual advocates, not law firms. Individual advocates fall under the taxation power of regional states, while law firms, considered as bodies, fall under the concurrent taxation power of both the federal government and regional states. [8] The article emphasizes the law and practice of presumptive income taxation for advocates, primarily in the Amhara National Regional State, with some coverage in the Addis Ababa City Administration and the Oromiya National Regional State.

The authors employ a mixed-methods approach, combining doctrinal and qualitative methods. The doctrinal method involves a review of legal frameworks governing professional and income tax affairs, while the qualitative method investigates practical matters related to the administration

[7] *የአማራ ክልል ጠበቆች ማህበር ደብዳቤ*, Supra note 4.

[8] The Constitution of Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazetta*, (1995), Articles 97(4), 98(2).

of income tax laws for advocates. The article draws on data from primary sources such as tax proclamations, regulations, directives, and letters. Additionally, interviews with tax officers and advocates in the study areas contribute to exploring relevant administrative and practical issues. Secondary sources, including tax books, journal articles, and newspapers, further enrich the analysis.

The article is structured as follows: The first section offers insights on income tax approaches that apply to advocates, from theoretical perspectives and international practices. It helps evaluate the appropriateness of the current design of Ethiopia's presumptive tax regime for self-employed professionals like advocates. The second section conducts legal and practical analyses of income tax laws applying to advocates in Ethiopia, examining issues such as the characterization of advocates' income, their status as Category A, B, or C taxpayers, and the flaws in the design and application of presumptive tax assessment methods. The final section presents the main conclusions and recommendations.

1. General Overview on Income Taxation of Advocates

In tax literature and systems, individual advocates are typically classified as self-employed professionals or part of the liberal profession. Compared to other ordinary small taxpayers, professionals are perceived as relatively high-income earners capable of maintaining accounting records. This perception has led tax scholars, such as Richard Musgrave and Michael Engelschalk[9], to

[9] Musgrave, R. Income Taxation of the Hard-to-Tax Groups. Cited in Daisy Ogembo, Are Presumptive Taxes A Good Option For Taxing Self-Employed Professionals In Low & Middle-Income Countries?, *Journal of Tax Administration*, Vol 5:2, (2019), p. 32; Richard M. Bird and Sally Wallace, Is it Really so Hard to Tax the Hard-to-Tax? The Context and Role of Presumptive Taxes, in J. Alm et al. (Editors), *Taxing the Hard-to-Tax*, Elsevier B.V. Publishing, (2004), pp. 129-130; Michael Engelschalk, *Designing a Tax System for Micro*

favor the taxation of advocates through an account-based self-assessment. Despite arguments about tax evasion threats posed by professionals, the consensus is that they pose no unique threat compared to other taxpayers, and the tax evasion risk can be mitigated through increased enforcement of account-based income taxation. Since an account-based self-assessment system relies on information supplied and calculations undertaken by taxpayers, there is a risk of tax evasion. To ensure the system functions effectively, several measures must be implemented. For instance, it is crucial to establish a strong tax audit team to identify groups of taxpayers with a high probability of tax evasion and to review their tax returns. This requires well-organized, computerized data storage and processing systems for taxpayers' information. [10] Other supplementary measures to minimize tax evasion risks in a self-assessment system include withholding and third-party reporting schemes. These methods are considered efficient instruments to curb tax evasion and ensure tax compliance. [11]

International experiences reveal that many countries, both developed and developing, do not apply the presumptive assessment method to advocates within the self-employed professional community. [12] Countries like the USA, Australia, Mexico, Kenya, Rwanda, Ghana, Nigeria, and Uganda tax advocates according to conventional self-assessment methods for business income tax rules. In these countries, advocates are required to maintain proper books of accounts related to their income and expenses. The tax base for

and Small Businesses: Guide for Practitioners, International Finance Corporation, (2007), p. 76.

[10] Tapan K. Sarker, Improving Tax Compliance in Developing Countries via Self-Assessment Systems - What Could Bangladesh Learn from Japan?, *AISA-Pacific Tax Bulletin*, Vol. 9, No. 6 International Bureau of Fiscal Documentation, (June 2003), pp.8-9.

[11] Andrew Okello, Managing Income Tax Compliance through Self-Assessment, IMF Working Paper, WP/14/41, (2014), pp 11-12; Konstantin Pashev, Presumptive Taxation: Lessons from Bulgaria, Post-Communist Economies, *Taylor & Francis Journals*, vol. 18(4), (2006), p. 400, 417.

[12] Daisy Ogembo, Supra note 9, p. 35.

advocates is their net income, calculated as gross income less deductible expenses. Advocates in these countries must keep records such as receipts and invoices as evidence for deductible expenses. Developed countries' tax administrations are known for providing specific explanatory notes or guidelines regarding taxable incomes and deductible expenses for advocates. For example, the Australian Taxation Office outlines deductible expenses for advocates, including car expenses for work-related travel, travel expenses, costs related to occupation-specific clothing, fees for training or seminars, advocacy license renewal fees, professional indemnity insurance, Supreme Court Library fees, parking fees, tolls, Bar association membership fees, and fees for professional publications. [13]

Within the framework of the Kenyan income tax system, presumptive taxation is applicable to resident individuals engaged in business activities, provided their annual income does not exceed KSh 5 million (equivalent to 43,271.31 US dollars). Notably, self-employed professionals are expressly excluded from the presumptive regime, even if their annual income meets the stipulated eligibility criteria or threshold. Instead, these professionals are subject to taxation on their net income in accordance with the conventional business income tax rules. The withholding scheme also applies to self-employed professionals whose monthly professional fees are KSh 24,000 or more. The tax rate ranges from 3% to 5% of the gross fee, depending on whether the fee is contractual or non-contractual. [14]

Countries such as those in the Nordic region have introduced third-party reporting information schemes or pre-populated tax returns in their personal

[13] Lawyer expenses A–F | Australian Taxation Office (ato.gov.au), (November 15, 2023).
[14] Daisy Ogembo, Taxation of Self-Employed Professionals in Africa: Three Lessons from a Kenyan Case Study, African Tax Administration Paper 17, (2020), pp. 8-9.

income tax systems to supplement the self-assessment method.[15] These schemes apply to individual taxpayers, including self-employed professionals. Third parties, such as financial institutions, report payment information to the tax administrations, which process and match this information with the submitted tax returns to detect inaccurate declarations. In practice, third-party reporting information methods have proven to be "highly effective in detecting unreported income and have resulted in substantial additional tax revenue". [16] This method requires the collection of extensive taxpayer information from various institutions, matching this data with tax returns, and checking for discrepancies. Consequently, the method necessitates a legislative framework, effective use of information technology, and a well-coordinated and organized tax administration.

Some countries apply a presumptive tax assessment approach to certain categories of self-employed professionals in an optional and limited manner. Self-employed professionals below a certain income threshold are allowed to keep simplified accounts or records of their gross incomes. Their expenses are estimated through presumptive methods, such as a standard deduction where a certain percentage of their gross income is regarded as deductible expenses. This approach is optional because taxpayers can choose to have their incomes and expenses assessed through the account-based self-assessment approach. India is an example of a country using a presumptive tax assessment method for advocates. Under India's 2016 income tax rule, advocates with a gross annual income not exceeding 5 million Indian Rupees (59,850.00 US dollars) can opt for the presumptive tax regime under the "self-employed

[15] Using Third Party Information Reports to Assist Taxpayers Meet their Return Filing Obligations— Country Experiences With the Use of Pre-populated Personal Tax Returns, Forum on Tax Administration Taxpayer Services Sub-group, Organization For Economic Co-Operation and Development, (March 2006), pp. 5-6.

[16] Id.

professionals" category. [17] The eligibility for this regime is based on the records of gross receipts maintained by the advocate. Under the presumptive tax regime, 50% of the advocate's annual gross income is presumed to be taxable income, while the remaining 50% is deemed a deduction for all expenses. The determination of gross income is based on documents such as bills of costs issued to clients, retainer agreements, and other relevant records. Similarly, under the Indonesian income tax system, legal professionals such as advocates with an annual gross income below Rp 4.8 billion (close to 292,560.00 US dollars) are eligible to use a presumptive tax assessment method called the Income Tax Calculation Norm. [18] Instead of detailed bookkeeping of income and expenses, these professionals maintain records of their gross income and calculate their taxable income by taking 50% of their gross income, simplifying the expense accounting process. This 50% is treated as taxable income, which is then subject to progressive tax rates. The Income Tax Calculation Norm is supplemented with a withholding scheme, where clients of legal professionals, both legal entities and individuals, withhold income tax from payments made to the professionals. Eligibility for the presumptive tax regime in Indonesia is determined based on the records of total gross receipts or turnover from professional services provided during the financial year.

2. Income Taxation of Advocates in Ethiopia: Law and Practice

2.1. Characterization of Advocates' Income

[17] Commission, and brokerage (insurance agents) are also not eligible for the presumptive tax method. Presumptive Taxation of Certain Eligible Businesses or professions under income Tax Act 1961, p. 1, available at https://www.incometaxindia.gov.in/Booklets%20%20Pamphlets/15-presumptive-taxation.pdf, (accessed on March 10, 2022).

[18] Tan, D., & Sudirman, L. , Final Income Tax: A Classic Contemporary Concept to Increase Voluntary Tax Compliance among Legal Profession in Indonesia, *Journal of Indonesian Legal Studies, Vol. 5* Issue 1, (2020), pp 129-133.

Ethiopia has organized its income tax system as a schedular income system, currently comprising four tax-charging schedules and a fifth schedule for exempt incomes.[19] Before examining specific tax assessment issues for taxpayers, it is crucial to initially determine the schedule applicable to them. This principle is equally relevant for advocates. As outlined in the introductory section of this article, there are complaints among advocates asserting that they should not be defined as businesses and categorized under Schedule C. Therefore, to comprehensively address this issue, it is imperative to examine how advocates are subject to Schedule C of the Income Tax Proclamation and analyze why doing so is justifiable.

For the purpose of delimiting the scope of application of Schedule C, the Income Tax Proclamation defines "business" to include professional activity conducted for profit. In the government's technical notes explaining the Proclamation, professional activity is defined as intellectual work involving the application of knowledge and skill acquired through higher or specialized educational systems, with advocacy given as one example.[20] What distinguishes professional activity from other business activities is that the personal knowledge and skill of the taxpayer are the most important components, obtained through higher education or specialized training. Additionally, by its nature, professional activity falls under the category of rendition of services rather than the supply of goods.

The first explicit mention of a profession as part of income falling under Schedule C was made by the Income Tax Decree of 1956. The Decree stated that incomes derived from businesses, professional, and vocational

[19] The schedules are listed as follow. Schedule 'A', Income from Employment; Schedule 'B', Income from Rental of Buildings; Schedule 'C', Income from Business; Schedule 'D', Other Income; Schedule 'E', Exempt Income. Federal Income Tax Proclamation No. 979/2016, *Federal Negarit Gazetta*, (2016), Article 8.

[20] Id, Article 2(2); Federal Income Tax Proclamation No. 979/2016 Technical Notes, Ministry of Finance and Economic Cooperation, (2018), p. 3.

occupations are taxed under Schedule C.[21] Another notable change was observed when the Income Tax Proclamations of 2002 and 2016 provided an alternative title to Schedule C as "Business Income Tax" and "Income from Business," respectively. It seems that pre-2002 income tax laws treated the profession as an additional type of activity, other than business, that is a source of income taxable under Schedule C. The 2002 and subsequent Income Tax Proclamations considered the profession as one type of business activity for Schedule C purposes. In the 2016 Income Tax Proclamation, there is an explicit definitional provision defining business broadly to include professional and vocational activities.

The distinction between the profession and business emerged from the older civil law tradition of separately regulating commercial traders and liberal professionals, such as advocates and medical doctors.[22] Traders were considered to conduct their business for profit, while professionals rendered their services with the primary motive of serving the public. The payment received by professionals was labeled as an honorary fee, not a profit. However, apart from France and Germany, the income tax systems of most countries did not follow this old civil law tradition.[23] Income tax systems globally consider self-employed professionals to be engaged in business and their income as business income. Professionals calculate their taxable incomes and deductible expenses in the same way as businesses, using account-based self-assessment. The Ethiopian income tax system follows the conventional approach of defining the profession as a business and subjecting it to business income tax rules. Hence, the advocates' argument that they should not be treated as businesses lacks a valid basis in tax law discourse.

[21] The Income Tax Decree of 1956, Article 4(C).
[22] Lee Burns and Richard Krever, Individual Income Tax, in Victor Thuronyi (ed.), *Tax Law Design and Drafting*, volume 2, International Monetary Fund, (1998), p. 501.
[23] Id.

The structure of income tax systems in general and the categorization of taxable incomes in particular are predominantly guided by fundamental tax principles, such as equity and efficiency. In light of these principles, different categories of income can be brought together and taxed under the same tax rules or vice versa. Self-employed professionals such as advocates share commonality with ordinary businesses regarding the nature of their transactions, income, and expenses. Both provide services to and receive incomes from numerous clients, engaging in multiple transactions and contracting parties on an independent contract basis. They exercise control over matters such as determining the place, time, and means of performance of their activities, aiming to generate income exceeding their expenses. Taxing this income, or what can be called profit, is the goal of income tax law. The notion of an "honorary fee" does not have relevance in this regard. To render their services, they incur different types of capital and ordinary expenses. To make the income tax system efficient by simplifying its structure and the task of tax administration, it is advisable to bring businesses and professional activities under a single set of rules, such as a schedule. Hence, proposing a separate tax schedule for professionals could make the income tax system too complex by allowing different schedules for remaining professionals, like medical practitioners, chartered accountants, and engineers, based on non-tax factors. According to Lee Burns and Richard Krever:

There are no persuasive tax policy reasons for the distinction [between business and profession]. From a tax administration perspective, it is much simpler to have a single set of rules dealing with all business and professional activities. If necessary, targeted rules such as tax accounting rules for work in progress can be applied to professions without the need for a completely separate regime for professional income.[24]

[24] Id.

Another argument raised by advocates in support of their opposition to being treated as businesses is that the keeping of books of accounts is suitable for businesses, but not for professionals like them. This argument lacks validity as it does not conform to the conventional purpose of books of accounts in tax laws. Under tax laws, taxpayers subject to self-assessment are required to present books of accounts to the tax administration as evidence of the correctness of their information, forming the basis for tax assessment. The accounts enable the tax administration to check the accuracy of the reported income and expenses of the taxpayers and help prevent potential tax evasion. As much as possible, taxpayers are required or encouraged to back up their self-assessment report with records or accounts. Within the actual tax systems, exceptions to the requirement to keep books of accounts are made on certain grounds. Certain categories of taxpayers, such as those defined as small businesses, may be considered incapable of maintaining books of accounts. Requiring these businesses to do so could incur high compliance and administrative costs for both the businesses and tax administrations. Hence, small businesses identified as incapable of keeping books may be exempted from this obligation. The high likelihood of submitting falsified books of accounts in certain business activities or sectors can also lead tax systems to devise alternative tax assessment approaches, rather than relying on books of accounts-based self-assessment. Apart from these and related reasons, the exemption of taxpayers based on the assumption that they engage in professional activities does not hold sway. In general, the distinction between profession and business has neither origin nor basis in tax laws.

The argument that advocates' expenses, by their nature, have a dual purpose of generating income from advocacy services and personal benefits does not justify separate tax treatment of advocates from businesses. The dual purpose of some expenses is a tax issue, not only related to advocates but also to other taxpayers or businesses. That is the reason why income tax laws incorporate

allocation rules of expenses between business (deductible) and personal (non-deductible) uses. The Income Tax Proclamation acknowledges that certain expenditures may serve multiple purposes, such as the generation of different classes of income. Expenses associated with both business (taxable) and personal (non-taxable) benefits can be allocated through a process of apportionment, making the business-related portion eligible for deduction while respecting the non-deductible personal aspect.[25] But still, if there are unique circumstances that call for it, it can be possible to prepare special rules or guidelines for either businesses or professionals without fundamentally affecting the efficiency goal of the tax system. It is important to remind that designing an income tax structure requires compromises among different tax principles, needs, and enforcement capacity of tax administrations. To conclude, the evolution of income tax laws globally corresponds with treating self-employed professionals as engaged in business. While advocates argue against being classified as businesses under Schedule C of the income tax system, the Ethiopian framework conforms to international practices.

2.2. Categorization of Taxpayers under Schedule C and its Applicability on Advocates

The primary goal of categorizing taxpayers under Schedule C is to identify those subjected to bookkeeping and presumptive assessments, placing them into "Category A," "Category B," or "Category C." Taxpayers falling into the first two categories bear the legal obligation of maintaining books of accounts, with their income tax liabilities determined based on these records.[26] This

[25] Federal Income Tax Proclamation, Supra note 19, Article 76.

[26] Category A taxpayers encompass entities such as companies and partnerships, regardless of their annual turnover, as well as individuals, specifically sole proprietors, whose annual turnover (gross income) is Birr 1,000,000 or more. In contrast, Category B taxpayers consist of individuals whose annual turnover (gross income) falls between Birr 500,000 and less than 1,000,000. Finally, Category C taxpayers are individuals with an annual turnover (gross

account-based assessment entails assessing gross income, deductible expenses, taxable income, and tax liability, applying conventional deduction rules like depreciation, bad debt, and loss carry forward. Furthermore, Category A taxpayers must keep records of business assets and liabilities. On the other hand, Category C taxpayers are subject to the presumptive tax assessment method unless they voluntarily choose book-account taxation, adhering to the tax authority's accounting standards. (Detailed discussion on the presumptive tax assessment method will follow).

The tax authorities categorize taxpayers as A, B, or C based on the legal form of the business (either a body or sole proprietorship) or the taxpayer's annual turnover. [27] Initial categorization often occurs when issuing the Taxpayer Identification Number (TIN). This categorization may be based on the legal nature of the business or on assumptions about future activity and income generation as estimated by tax assessment officers. The taxpayer provides details such as the business form, initial capital, and expected turnover for the year. Tax authorities use this information to categorize taxpayers and inform them of their associated tax obligations. Changes in turnover may prompt re-categorization as businesses evolve, relying on taxpayers' annual tax declarations and other available information. Methods such as estimating daily sales through on-site observations[28] and collecting third-party information[29] assist in updating categories.

income) of less than Birr 500,000. Federal Income Tax Proclamation, Supra note 19, Articles 3, 18, 49, 82.

[27] Id, Articles 3 (2).

[28] To ascertain daily sales, tax officers visit business premises and estimate daily sales or gross income. These officers employ guidelines provided by tax authorities to compute the daily sales. Directives pertaining to the "estimation of daily sales" have been issued by tax authorities. The estimated daily turnover is subsequently converted into an annual turnover by multiplying the daily turnover with the designated number of working days per year for the specific business sector in which the taxpayer operates. The tax authorities have

The categorization of taxpayers into A, B, and C, along with its associated tax assessment implications, extends to advocates. Law firms, being established as bodies, are consistently treated as Category A taxpayers. Individual advocates with annual turnovers exceeding the Category C threshold can be categorized as either Category A or B taxpayers, depending on their turnover. Both law firms and Category A and B individual advocates are legally obligated to maintain books of accounts for tax assessments. In determining taxable income, advocates follow fundamental rules, deducting expenses incurred for income generation. However, expenses unrelated to taxable activities are non-deductible. Apportionment becomes crucial for expenses serving both taxable and non-taxable purposes. [30]

Despite the theoretical conformity, legal and practical challenges persist in categorizing individual advocates under the Ethiopian income tax system. Firstly, there is limited opportunity for advocates to be categorized when they commence practice. They are less likely to approach the tax authorities, apply for a Taxpayer Identification Number (TIN), declare their presumed income, and be classified as Category A, B, or C taxpayers at the start of their practice. Unlike the procedure for obtaining business licenses,[31] advocates seeking an advocacy license are not initially required to obtain a TIN. Advocates only need to get tax clearance from the tax authorities and submit it to the

predefined the average number of days for various business sectors. The ultimate result is an annual turnover, serving as the foundational basis for the categorization of taxpayers and the assessment of tax liabilities.

[29] Directive issued to amend the 2009 Category, A, B and C taxpayers Tax Assessment Directive of the Amhara National Regional State, Article 5.

[30] Federal Income Tax Proclamation, Supra note 19, Articles 22(1)(a), 27(1)(l), 76(1)(b).

[31] To obtain a business license, one must visit the tax authorities, obtain a TIN, and submit the TIN certificate to the business license issuing government bodies. This creates an opportunity for the tax authorities to gather information and categorize businesses into Category A, B, or C. Commercial Registration and Licensing Council of Ministers Regulation, No. 392/2016, *Federal Negarit Gazetta*, (2016), Articles 9(1)(e), 10(10), 11(11), 12(7).

advocacy license issuing authority for license renewal or return. [32] This initial lack of a TIN requirement implies that, at the beginning of their practice, the tax authorities have limited opportunities to meet with the advocates to initiate the process of initial categorization and inform them of categorization-related tax information and obligations. At the end of the tax year, advocates are supposed to go to the tax office and obtain a tax clearance certificate to renew their license. It is during this time that advocates declare their income and tax officers could make categorization.

Secondly, the Income Tax Proclamation does not regulate from what sources and how to calculate the annual turnover of taxpayers for initial categorization purposes. It specifies individual taxpayers with certain annual thresholds as Category A, B, and C taxpayers but does not detail the procedures to calculate turnover or the necessity of keeping records for calculation purposes. Records of gross income or turnovers are not required to be kept in advance to identify taxpayers subject to account-based self-assessment and presumptive tax regimes. The tax declaration and associated bookkeeping requirements come into existence only after taxpayers are classified into Category A, B, or C. [33] After initial categorization, the Proclamation instructs authorities to rely on "tax declarations filed by a taxpayer or any other information available to the Authority" to check and decide whether taxpayers shall be re-categorized.

In practice, tax authorities use presumptive tax assessment methods to make the initial categorization of individual taxpayers, including advocates. These presumptive methods typically used for tax assessment purposes also apply to the initial categorization of taxpayers. The main presumptive methods used for categorization involve estimating daily sales (estimated assessment) and

[32] Federal Advocacy Service Licensing and Administration Proclamation No.1249/2021, *Federal Negarit Gazetta*, (2021), Article 20(1), 21(2).
[33] Federal Income Tax Proclamation, Supra note 19, Articles 82, 83.

official assessment methods.[34] As will be further discussed in the next section, these methods have numerous limitations in assessing a reasonable and fair amount of annual turnover of the taxpayers. They are subjective and exposed to manipulations, hence they cannot be proper ways to determine the annual turnover of advocates. There are widespread opportunities for subjective and non-representative estimates of turnovers. For example, according to the official assessment method, advocates make tax declarations without submitting records of their activities and income unless they choose to do so voluntarily.[35]

For taxpayers initially classified as either Category A or B, the determination of their future annual turnover and their next possible re-categorization can be based on books of accounts since they are under book-keeping obligations. However, the determination of future annual turnover and re-categorization of Category C taxpayers continue to rely on presumptive methods due to the absence of an obligation to keep records of turnovers altogether. For Category C taxpayers, the tax authorities rely on the same assessment methods used for initial categorization for determining presumptive income tax liabilities and possible re-categorization. Since the assessment methods are exposed to subjectivity and abuse, they do not prevent Category C advocates from hiding or under-declaring their turnover, allowing advocates to remain in the same category indefinitely.

[34] Interview with Tsegaye Waqweya, Tax officer at Sheno Town Revenue Office, Oromiya National Regional State;
Interview with Demis Degefu, Tax officer at Moja ena wodera Woreda Administration Revenue Office, Amhara National Regional State, (Date 04/02/2015 E.C).

[35] While it is difficult to corroborate with actual evidence, the authors came across information hinting that in the past there was a misconception and practice within the tax authorities that the categorization requirement of the Income Tax Proclamation did not apply to advocates. As a result, the idea of Category A, B, or C advocates had remained almost non-existent within the tax administrations, and the advocates were paying income taxes using the indicator-based standard assessment.

Category A or B advocates are seemingly scarce in Ethiopia. A study by the Federal Advocates Association revealed that in Oromiya Regional State, advocates generally fall under Category C, with regional tax authorities having limited information on Category A and B taxpayers. Another study in 2011 E.C (2018) found no advocates reporting an annual turnover of over 1 million Birr, becoming a Category A taxpayer, and registering for VAT in Amhara Regional State.[36] The rarity of Category A and B taxpayer status is attributed to the inappropriateness or weaknesses of the presumptive methods used for categorization purposes, coupled with the tendency among advocates to under-declare their correct income.

Recently, the Ministry of Finance has mandated that Category A and B advocate-taxpayers keep proper books of accounts and pay income tax based on their accounts starting from the 2023/24 tax year. [37] However, before enforcing bookkeeping duties for Category A and B advocate-taxpayers, it is crucial to identify who Category A, B, and C advocates are. As a result of the absence of effective turnover verification methods, coupled with the taxpayers' failure to declare the correct amount of their income, it has become customary for individual advocates to remain Category C taxpayers, making an upward categorization from Category C to Category B or A a rare practice.

2.3. Presumptive Income Tax Assessment of Category C Advocates

Since the inception of Ethiopia's current income tax system during the reign of Emperor Hailesilasse, individual advocates have been subject to two primary presumptive assessment methods: indicator-based standard

[36] *በፌደራል የጥብቅና ስራ የማብር አስተዳደር ስርዐት የህግና አተገባበር ጉድለቶችና መፍትሄዎች*, Supra note 6, pp. 37-38; *ሙሐመድ ዳውድ አልቃድር*, Supra note 5, p. 259.

[37] *የገንዘብ ሚኒስቴር ደብዳቤዎች፣ ቁጥር ማኢ30/7/10795፣ ቀን 05/12/2015 ዓ.ም፤ ቁጥር ታ/ክ/ቀ/47፣ ቀን 30/12/2015 ዓ.ም።*

assessment and turnover-based standard assessment. [38] The following sub-sections explore the details.

[38] For the sake of clarity, it is important to explain the concept of standard assessment and delineate the distinguishing features between indicator-based standard assessment and turnover-based standard assessment. A presumptive tax assessment system can be configured either as a standard or estimated assessment, contingent upon whether presumptive taxes are to be levied at the business-sector or individual-taxpayer levels. Commonly referred to as an occupational lump-sum tax, standard assessment prescribes fixed taxes corresponding to various business activities or occupations. The determination of presumptive tax liability is correlated with the specific type and/or size of business sectors. Consequently, taxpayers engaged in identical business activities or falling within the same group are obligated to pay an identical tax amount. In the context of standard assessment, which entails occupation-based fixed taxes, various proxies may be employed, including but not limited to the type of business, size of floor space, number of employees, location, value of inventory, capacity of machinery, and years of operation. Turnover-based standard assessment calculates tax liability for business sectors based on the turnover of businesses or occupations. For instance, it may stipulate that advocates generating turnovers ranging between 450,001 and 475,000 or between 475,001 and 500,000 Birr per annum are subject to presumptive income taxes of 24,165 and 26,040 Birr, respectively. Indicator-based standard assessment relies on indicators such as the type of business, size of floor space, number of employees, location, and years of operation. An illustrative instance of indicator-based standard assessment is the imposition of taxes on advocates based on criteria such as the type of their advocacy license or the duration of their work experience. Both standard assessment approaches do not specify the exact tax amounts imposed on individual taxpayers, such as Mr. X or Y. To implement standard assessments on actual taxpayers, it is imperative to categorize them appropriately in the standard assessment table or schedule. This categorization may involve determining factors such as the turnover generated by advocates or their specific type and experience, as illustrated in the aforementioned example. The indicator-based and turnover-based standard assessments differ in their equity and efficiency implications. Indicator-based standard assessment is administratively straightforward but may be inequitable and does not prepare taxpayers for maintaining books of accounts in the future. On the other hand, turnover-based standard assessment, while theoretically capable of determining taxpayers' taxable income, if poorly designed and implemented, will result in subjectivity and susceptibility to tax evasion. To address this, taxpayers should be required to maintain basic records of receipts, using methods like cash accounting, to verify the turnover amount. Estimated assessment entails the establishment of a presumptive tax for each taxpayer based on the proxies integrated into the presumptive tax system. This results in the assignment of specific presumptive taxes to individual taxpayers, leading to potential variations in tax burdens among taxpayers within the same business sector. Gunther Taube and Helaway Tadesse, Presumptive Taxation in Sub-Saharan Africa: Experience and Prospects, International Monetary Fund, Working Paper, WP/96/5, (1996), pp. 12-16; Jean-François Wen, How to Design a Presumptive Income Tax for Micro and

2.3.1. Indicator-Based Standard Assessment: Historically, the initial application of indicator-based presumptive taxes on advocates emerged not from income tax laws but from legislation enacted in the 1940s to regulate the advocacy profession. [39] This pioneering law marked a significant historical development by introducing four fixed lump-sum taxes for advocates based on the nature or type of their advocacy licenses. Advocates registered to practice at all levels of courts were obliged to pay an annual income tax of 200 Maria Theresa Thaler (the Ethiopian currency at that time). Those restricted to Provincial, Regional, and Communal courts paid 100 Thaler; Regional and Communal courts paid 50 Thaler; and Communal courts paid 30 Thaler. [40] A subsequent amendment law reduced the number of fixed taxes to two and reset the tax amounts as follows:

- Advocates registered to practice at all levels of courts were obliged to pay an annual income tax of 300 Birr.
- Advocates practicing in lower-level courts paid 150 Birr. [41]

These taxes, acting as both advance and final payments for the upcoming tax year, were paid to the then Ministry of Justice, in Amharic, *ፍርድ ሚኒስቴር*, a governmental judicial body empowered to register and authorize advocates.

Small Enterprises, NOTE/2023/002, International Monetary Fund, (2023), p. 4; Zerihun Asegid, Standard Assessment of Small Businesses in Addis Ababa City; Legal and Practical Problems in Focus, Business Law Series, Vol. 6, Addis Ababa University, (2014), p. 125.

[39] The Courts (Advocates) Rules of 1944, Legal Notice No. 49 of 1944. It is important to acknowledge the different terminologies used in the law regarding payments made by advocates. The English version of the law uses the term "annual fee" to refer to various payments imposed on advocates. However, the Amharic version uses the terms *"ግብር"* and *"የተቆረጠ ግብር*," which in English ordinarily imply income (standard) taxes. The tax laws enacted in the 1940s used the Amharic term *"ግብር"* to refer to taxes paid by taxpayers.

[40] Id, Article 6.

[41] Courts (Registration of Advocates) Rules, Legal Notice No. 166/ 1952, Article 10.

The law granted the Ministry the authority to revoke advocates' names from the registry and invalidate their advocacy certificates if taxes were not paid—a unique tax enforcement measure.[42] The law made no provision for record-keeping or the assessment of advocates' income, expenses, and taxes based on such records. The reason behind opting for standard assessment as the income tax assessment modality for advocates remains unclear, but one plausible explanation is its prevalence in the traditional and early modern income tax systems of Ethiopia. The concept of levying income taxes based on the nature or type of occupation could have influenced the drafters to incorporate standard assessment for advocates.

Even though the main income tax laws existed in the 1940s, it appears that the first modern income taxation of advocates was introduced by the aforementioned laws. Subsequently, the indicator-based standard assessment from these laws was integrated into the main income tax legislation. From the 1960s to 2017, Ethiopia's income tax laws incorporated indicator-based standard assessments for the following sectors: transport, flour mills, and advocacy, based on indicators such as the number of seats, carrying capacity, energy type, operational years, and advocacy license type.[43]

In 2002, Ethiopia underwent a presumptive income tax reform introducing two standard assessment schedules, one for turnover-based fixed taxes and the other for indicator-based fixed taxes. Advocacy, along with transport and flour mills, fell under the indicator-based schedule. [44] A significant outcome of this reform was an increase in fixed taxes for advocates, responding to concerns that advocates were paying disproportionately low amounts in

[42] Id.

[43] The absence of pertinent historical data within the archives and library of the Ministry of Finance makes it difficult to discuss in detail the transition and subsequent regulation of early presumptive taxes on advocates in the conventional income tax laws, specifically in the presumptive schedules of the 1960s issued by the Ministry of Finance at that time.

[44] See Council of Ministers Income Tax Regulations No. 78/2002, Schedules 1 and 2.

income taxes. For decades prior to 2002, first and second-grade advocates had been paying 340 and 178 Birr in taxes, respectively. These amounts were comparable to the annual employment taxes paid by employees with monthly salaries of 400 and 200 Birr, respectively. The tax rates for advocates remained unchanged for several decades. To address equity issues and boost tax revenues, the Income Tax Regulation of 2002 increased the taxes for first and second-grade attorneys from 340 and 178 Birr to 614 and 327 Birr, respectively. The revised taxes were set to be equivalent to the employment income taxes paid by employees with monthly salaries of 620 and 327 Birr, respectively.[45]

Table 1: Presumptive Tax Payable; Source: Council of Ministers Income Tax Regulations No. 78/2002, Schedule 2

Attorney Services	Presumptive Tax Payable		
	Annual Sales	Net Profit	Tax
First Grade Attorney	11488	6893	614
Second Grade Attorney	7453	4472	327

The federal-level advocacy law, issued two years before the formulation of the Income Tax Regulation of 2002, classified advocacy licenses into three types: federal first instance court advocacy license, federal courts advocacy license, and federal court special advocacy license. In contrast, the regional-level laws retained the decades-old classification of advocacy licenses into two categories, termed: first-class advocacy license and second-class advocacy license.[46] The Income Tax Regulation included first-grade and

[45] *የመደበኛ ቁርጥ ታክስ አወሳሰን*, Supra note 1, p. 26, 28.

[46] Federal Courts Advocates' Licensing and Registration Proclamation, No. 199/2000, *Federal Negarit Gazetta, (2000)*, Article 7; The Proclamation to Provide for the Licensing, Registration, and Controlling of Code of Conduct of Advocates Practicing before the Amhara National Regional State Courts, No. 75/2002, *Zikre Hig Gazetta, (2002)*, Article 7.

second-grade advocacy classifications, matching those stipulated in the regional advocacy profession regulation laws.

The primary strength of indicator-based standard assessment lies in its administrative simplicity and its effectiveness in combating tax evasion. Indicators such as professional licenses are readily observable and difficult for taxpayers to conceal, thereby significantly reducing opportunities for tax evasion.[47] However, within the context of prevailing tax theories and practices, Ethiopia's design and administration of indicator-based standard assessment for well-educated advocates resemble a simpler and less sophisticated form of presumptive taxation akin to the patent system, typically recommended for micro-businesses. Micro-businesses, characterized by primarily cash-based informal transactions, include mobile/street traders, service providers, and small retail outlets. Patent-type presumptive method is recommended for illiterate or semi-literate micro-businesses that cannot practice cash-basis bookkeeping and have net incomes near the poverty threshold. These micro-businesses pay a fixed tax amount without the obligation to maintain books of accounts.[48] Moreover, imposing equal taxes on advocates with the same advocacy license but different incomes could be considered less equitable, failing to consider advocate-specific conditions. Some advocates argue that it is unfair for all advocates to pay the same amount of taxes, especially considering the disparity in earnings, where some earn millions while others earn only a few thousand Birr per year. They propose that taxes should be assessed based on the income earned within the tax year to address this fairness issue. [49]

[47] Victor Thuronyi, Presumptive Taxation of the Hard-to-Tax, in J. Alm et al. (Editors), *Taxing the Hard-to-Tax*, Elsevier B.V. Publishing, (2004), p. 103.

[48] Jacqueline Coolidge and Fatih Yilmaz, Small Business Tax Regimes, World Bank, Note No. 349, (2016),pp.4-5

[49] Interview with Kuma Beyene, Advocate at all levels of Oromiya and Federal courts, (12/03/2016 E.C).

The indicator-based standard assessment of advocates continued until the replacement of the Income Tax Regulations of 2002 by the new Income Tax Regulations of 2017. Following the 2016 income tax reform in Ethiopia, the federal government introduced Council of Ministers Federal Income Tax Regulation No. 410/2017. Notably, this regulation distinguishes itself from its predecessor by relocating the advocacy profession from Schedule Two to Schedule One of the Presumptive tax tables. This shift signifies a departure from fixed taxes based on the "first and second-grade licenses" and signals an era of turnover-based assessment for advocates.

2.3.2. Turnover-Based Standard Assessment: Under the Income Tax Regulation of 2017, Schedule One of the standard assessments categorizes each business sector, including advocacy, into 19 sub-groups, each associated with specific turnover thresholds. These thresholds, ranging from "Up to 50,000" to "475,001-500,000 Birr", form the basis for setting 19 tax liabilities. The table encompasses three key numerical elements: annual turnover thresholds divided into 19 bands, profit rates, and fixed taxes corresponding to each turnover band. The profit rate signifies the portion of turnover considered as the taxpayer's net income, indirectly reflecting the amount of turnover deemed as an expense (standard deduction). For advocacy, the 25% profit rate implies that 25% of annual turnover is presumed as net income, while the remaining 75% is considered an expense incurred to generate turnover.

Table 2: Turnover-Based Presumptive Business Tax Per Year: Source: Council of Ministers Federal Income Tax Regulation No.410/2017.

Business Sectors	Average Annual Profit Rate	Turnover-Based Presumptive Business Tax Per Year																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		Up to 50,000	50,001-75,000	75,001-100,000	100,001-125,000	125,001-150,000	150,001-175,000	175,001-200,000	200,001-225,000	225,001-250,000	250,001-275,000	275,001-300,000	300,001-325,000	325,001-350,000	350,001-375,000	375,001-400,000	400,001-425,000	425,001-450,000	450,001-475,000	475,001-500,000
Attorney services	25%	530	1155	2040	2978	3915	5120	6370	7620	8870	10408	11970	13533	15095	16665	18540	20415	22290	24165	26040

To levy fixed taxes under Schedule One, tax authorities must ascertain the annual turnover of each advocate and place them within the appropriate turnover band. Once categorized, the tax payable can be derived directly from the table or calculated using the Schedule C tax rates for individual taxpayers. Unfortunately, the Income Tax Regulation fails to specify how to determine taxpayers' turnover for enforcing Schedule One. In designing the turnover-based standard assessment of Schedule One, the federal government, specifically the Ministry of Finance, neglected to incorporate a straightforward yet objective turnover determination method. Historically, federal tax laws are initially issued by the federal government, after which regional states adopt the same law with a modified title. This practice has inadvertently led to legal gaps in regional tax laws mirroring those in federal tax laws. Regional states have integrated the federal income tax regulation

into their own laws, reproducing the turnover-based standard assessment for advocates verbatim but omitting the turnover-reporting mechanism. [50]

One distinctive feature of the presumptive income tax system for Category C taxpayers is the absence of any obligation to maintain books of accounts. The reliance on turnover-based standard assessment occurs in the absence of legally mandated and practically submitted records of taxpayers. In turnover-based presumptive tax systems, the contemporary understanding is the absence of "standard" books of accounts, not the absence of books of accounts altogether. Small taxpayers within the turnover-based presumptive tax regime should be required to maintain basic books or records, without onerous accounting requirements. For example, they could keep simple records of receipts and purchases using cash accounting.[51] According to Alan Carter,

All but the very smallest (micro-level) operators in all [developed and developing] countries should more or less know what their basic cash receipts are. A cash receipts journal is sufficient as a foundation for a simple presumptive regime suitable for most small businesses.[52]

What makes the Ethiopian presumptive income tax system for Category C taxpayers very unique is that it does not require self-employed professionals, such as advocates, to maintain simplified books of accounts. This departs from theoretical perspectives and international practices, as discussed previously.

[50] See for example, Council of Regional Government Regulation Issued for the Execution of the Income Tax Proclamation in the Amhara National Regional State, No. 162/2018, *Zikre Hig Gazette*, (2018).

[51] Jean-François Wen, How to Design a Presumptive Income Tax for Micro and Small Enterprises, NOTE/2023/002, International Monetary Fund, (2023), p. 4.

[52] Alan Carter, *International Tax Dialogue: Key issues and debates in VAT, SME Taxation and the Tax Treatment of the Financial Sector*, International Tax Dialogue, (2013), p. 74.

The absence of a turnover-reporting mechanism in Schedule One compels tax authorities to resort to the notorious and outdated method of estimating daily sales for Category C taxpayers under Schedule One. Despite occasional intentions to apply this method to advocates,[53] it is rarely employed due to its incompatibility with the nature of advocacy. Estimating daily sales is more suited to businesses with tangible goods and fixed locations, unlike advocacy, which involves the provision of intellectual services rather than physical goods. The unpredictable nature of rendering legal services, both in terms of place and time, poses a significant challenge for tax administrations attempting to observe and estimate advocates' daily and annual turnovers. Consequently, tax authorities have explored the following methods, each with varying degrees of application and impact, to enforce the turnover-based standard assessment system.

i. Official Assessment: When inquired about the method used to ascertain the annual turnover or income of advocates, many tax officers simplistically respond with *"ጠበቆቹ ባሳወቁት"* (based on advocates' declaration).[54] Advocates interviewed also corroborate this method. During the annual tax payment period (from July 01 to 30 each year), tax assessment officers instruct advocates to complete a tax declaration form, disclosing the annual turnover derived in the tax year, accompanied by their signature as an affirmation of the accuracy of their declaration. [55] The officers are responsible for calculating tax liabilities based on the information received from the

[53] Directive Issued to determine Tax Assessment of Amhara National Regional State Category A, B and C taxpayers, Amhara National Regional State Finance Bureau, (2009 E.C), Article 3(10).

[54] Interview with Esayas Teshale, Head of Bole Sub-City Woreda 13 Revenue Office, Addis Ababa City Administration, (27/07/2014 E.C); Interview with Demis Degefu, Supra note 34.

[55] While Category C taxpayers are not required to maintain books of accounts, they must make a tax declaration within 30 days of each July in the Ethiopian fiscal year. In the context of Category C taxpayers, a tax declaration entails reporting turnover or income using a form provided by tax authorities, without the necessity of supporting records or accounts. Federal Income Tax Proclamation, Supra note 19, Article 83(6).

advocates. The tax assessment procedures involve some steps: first, the annual income or turnover declared by the advocates is adjusted to taxable income, using the 25% profit rate designated for advocacy. Subsequently, the tax rates specified in schedule C are applied to the taxable income to determine the amount of taxes payable by the advocates.

The problem with this official assessment method lies in advocates making declarations without the support of accounts or records, which raises concerns about the accuracy of the declared amount. Tax officers lack effective verification means to ascertain its accuracy, which becomes a source of worry for tax authorities and a potential cause of disputes between authorities and advocates. There is a prevailing perception among tax authorities that such declarations rarely reflect the true income of advocates, with a high likelihood of under-declaration. One interviewed tax officer vividly described a concerning scenario: *"ጠበቃው በፊት ዳኛ ወይም አቃቤ ህግ እያለ በየወሩ ከደሞዙ ላይ 35% ግብር ይከፍል የነበረ አሁን ጠበቃ ሲሆን መኪናውን እየነዳ መጥቶ ምንም አልሰራሁም ብሎ አንድ ሺህ ወይም ሁለት ሺህ ብር አመታዊ ግብር ከፍሎ ይሄዳል::"* [56] Translated, "The advocate used to pay 35% tax on his salary every month while he was a judge or prosecutor. Now he is an advocate. He drives his car to the revenue office and pays a thousand or two thousand Birr as annual tax, saying that he did nothing."

From a revenue mobilization perspective, the officer contends that the previous indicator-based standard assessment is far superior to the currently applied official assessment of the turnover-based standard assessment. In its letter sent to its branches, the Amhara National Regional State Revenue Bureau expressed the problems associated with the official assessment as

[56] Interview with Getachew Mesfin, Supra note 3.

follows: *"አሁን ባለው ሁኔታ በክልላችን የጠበቆች ግብር እና ታክስ አወሰሰንና አከፋፈል ሁኔታ ወጥነት የጎደለውና ሰፊ የፍትሃዊነት መዛባት የሚስተዋልበት ከመሆኑ ባሻገር ከዘርፉ ትክክለኛውን የመንግስት ገቢ እየተሰበሰበ አለመሆኑን ራሳቸው ጠበቆች በተለያዩ ግዜያት በነበሩ የጋራ የምክክር መድረኮች ያረጋገጡት ሀቅ ነው።"* [57] Translated, "In the current situation, the tax assessment and payment conditions of advocates lack uniformity, and [it] is exposed to unfairness. [In addition], the advocates themselves confirm that the proper amount of tax is not being collected from advocacy service."

Under the existing defective official assessment method, the officers have limited evidence and opportunity to verify the accuracy of the declared turnover.[58] Ultimately, they are left with the decision to either accept or reject the declared amount. If accepted, 25% of it is considered a taxable income, with the remaining 75% deemed deductible expense. This approach may result in advocates paying lower taxes, leading to revenue loss and unfairness due to the high likelihood of under-declaration of correct income. If assessment officers reject the declared amount and provide their own estimate, a dispute arises without a clear benchmark and reliable evidence to judge each side's position. The estimated amount may or may not accurately reflect the advocates' actual income, raising fairness concerns from their perspective. Dissatisfied advocates can formally lodge complaints with tax dispute settlement forums, such as the grievance review department and tax appeal commission. [59] However, as previously mentioned, the lack of a clear benchmark and reliable evidence complicates the resolution process. Recent

[57] *የአማራ ብሄራዊ ክልላዊ መንግስት ገቢዎች ቢሮ ደብዳቤ፣ ቁጥር ገቢዎች 4.1/1569/14፣ ቀን 08/11/2014 ዓ.ም።*

[58] Interview with Esayas Teshale, Supra note 54; Interview with an anonymous advocate in Addis Ababa City Administration and Amhara National Regional State, (April 18, 2022).

[59] The examination of the challenges encountered by judges, taxpayers, and tax authorities arising from presumptive tax assessment methods within dispute settlement forums and procedures is beyond the purview of this paper.

tax issues concerning advocates, including subjective and uncertain assessment procedures and outcomes, have been attributed to this flawed assessment method.

In addition to the subjectivity and fairness issues discussed, presumptive income taxation of advocates faces legal uncertainties. Assessment methods are prone to unpredictable and frequent changes through subsidiary legislations and circular letters. Discrepancies between the law and administrative practices of tax authorities are common. The legal uncertainty and inconsistency in presumptive tax assessments of advocates are evident in cases observed in the Amhara and Oromiya Regional States. Until the enactment of the current income tax proclamations and regulations in 2016/17, advocates were taxed based on the indicator-based standard assessment method. Following a new regulation in 2017 that replaced indicator-based assessment with turnover-based assessment, the Amhara Regional Finance Bureau issued a directive in 2017 instructing the regional revenue bureau to assess income taxes of advocates based on either the estimation of daily sales or third-party reporting methods.[60] However, the estimation of daily sales method is administratively inappropriate for professional activities like advocacy, which involve intellectual work rather than the acquisition and disposal of physical goods. The use of third-party information is not well-developed due to the absence of effective legal and institutional frameworks that establish relationships between third-party institutions and the Revenue Bureau. As a result of these limitations, the Amhara Region Revenue Bureau has been left with the difficult option of using the defective official assessment method, which has created several problems mentioned above. In 2023, a new directive was issued instructing the Regional Revenue Bureau to collect taxes from advocates based on

[60] Supra note 53.

indicator-based standard assessment, implying the repeal of the official assessment method.[61] Accordingly, advocates were classified into two categories and required to pay the following annual fixed taxes: First-grade advocates: 32,400 Birr, Second-grade advocates: 21,615 Birr. When the regional Revenue Bureau began to collect the fixed taxes based on this directive, it faced fierce opposition from regional advocates who submitted official complaints to the regional Finance Bureau. They argued that the levies were excessively high and succeeded in having the newly increased fixed standard levies repealed. In August 2023, after one month of the issuance of the above directive, the regional Finance Bureau wrote a letter to the regional Revenue Bureau instructing the latter not to apply the indicator-based standard assessments for the 2022/23 (2015 E.C) tax year. For this tax year, the Finance Bureau urged the Revenue Bureau to determine advocates' income tax liability based on the combined use of official assessment and third-party reporting information. Furthermore, the Finance Bureau instructed the regional Revenue Bureau to conduct a study and prepare a new income tax assessment directive for advocates for the 2023/24 (2016 E.C) tax year. [62] Until the completion of writing this paper, which occurred just before the end of the tax year, no official announcement had been made regarding the outcome of the study, particularly concerning the applicable tax assessment method. Consequently, the frequent changes and uncertainties in assessment modalities create frustrations among tax officers and the advocates' community.

In the Oromiya Region, the practice seems to persist with the decades-old indicator-based standard assessment, despite the introduction of turnover-

[61] Tax Assessment Directive for Category A, B and C Business and Rental Income Taxpayers Located in the Amhara Region, (Amharic), Amhara National Regional State Finance Bureau, No. 15/2015, Article 9(e).

[62] *የአማራ ብሄራዊ ክልላዊ መንግስት ፋይናንስ ቢሮ ደብዳቤ፣ ቁጥር አብክመ ገ/ቢ/ክቢ-01/14፣ ቀን 25/12/2015 ዓ.ም።*

based standard assessment. Advocates with "first and second level-advocacy licenses" were required to pay presumptive income taxes of 2800 and 2350 Birr, respectively, before 2017. Post-2017, many advocates were asked to pay a fixed presumptive tax of 5000 Birr, regardless of their advocacy license type or income. This amount increased to around 12,000 Birr for the 2015 E.C tax year.[63] The regional tax authorities' reliance on fixed taxes for administrative simplicity contradicts the potential implementation of turnover-based standard assessment, and it does not consider variations in income levels among advocates.

ii. Third-Party Reporting Information: According to the estimated assessment directives, third-party information refers to sale or purchase documents aiding in determining the taxpayer's tax obligations.[64] Third parties may include both suppliers and clients of taxpayers. Suppliers provide goods or services, referred to as inputs, enabling taxpayers to conduct business activities and generate taxable income. The information obtained from suppliers represents the purchase or expenses incurred by taxpayers. Conversely, clients contribute information about the sales made or turnover received by taxpayers. Tax authorities can obtain transaction details from either suppliers or clients.

Concerning advocates, third-party information typically refers to details about payments advocates receive from their clients, as inferred from advocacy

[63] President of Oromiya Region Bar Association, cited in *በፌደራል የጥብቅና ስራ የማብር አስተዳደር ስርዐት የህግና አተገባበር ጉድለቶችና መፍትሄዎች*, Supra note 6, p. 36; *የጠበቆች ማብር እና ታክስ አከፋፈል ላይ የሚታዩ ችግሮች አጭር ዳሰሳ፤ ከጠበቆች የተሰበሰቡ መረጃዎችን መሰረት ያደረገ፣ 2015 ዓ.ም፣ ገጽ 4*; Interview with Kuma Beyene, Supra note 49.

[64] Estimated Assessment Implementation Directive, no. 158/2013, Ethiopian Revenues and Customs Authority, Article 2(7). The tax authorities issue estimated assessment directives in accordance with the authority vested in them by the Tax Administration Proclamation. Federal Tax Administration Proclamation, No. 983/2016, *Federal Negarit Gazetta*, (2016), Article 26 (8)).

contracts. The understanding between tax authorities and advocates often overlooks the costs incurred by advocates for necessary inputs in rendering advocacy services, such as office rent, printing, and transportation expenses. While agency documents indicate the type and extent of legal representation, they do not provide information on the fees clients pay to advocates. Advocacy contracts are more informative, revealing the total fee to be paid to advocates and the mode of payment. Identifying third parties as potential sources of information for advocates' income involves government institutions that should deposit agency and advocacy contracts. These institutions include courts, the Federal Document Authentication and Registration Agency, and regional justice offices. These institutions deposit agency and advocacy contracts, providing potential sources for third-party information.

The general process assumes that information obtained from third parties, like courts, is transferred to tax administration. This data serves as the basis for calculating annual turnover, with turnover amounts or fees from documents like advocacy contracts summed up.[65] Applying a profit rate of 25% on the annual turnover helps determine the taxable income, which is subject to tax.

Third-party reporting information, if properly designed and implemented, has the potential to yield beneficial results. Courts and similar institutions can assist tax authorities by collecting agency and advocacy contracts from advocates and subsequently reporting relevant financial information. This information plays a crucial role in tax assessment by identifying the sources and amounts of payments received by advocates. Despite its potential benefits, the application of the third-party reporting information method for

[65] Directive Issued to revise the Amhara National Regional State Category C taxpayers Tax Assessment Directive No. ፖ-04/2000 E.C, Article 3.

assessing advocates' turnover and tax liability faces legal and administrative limitations.

Firstly, there are no mandatory and uniform rules obligating advocates to submit agency and advocacy contracts to third parties or directly to tax authorities through third-party instructions. Consequently, the collection of these documents by third parties is irregular and fragmented. Different regions exhibit varying practices, resulting in inconsistencies. For example, justice offices in Amhara and Oromiya National Regional States require advocacy contracts from advocates as a precondition for authenticating agency contracts, whereas in Addis Ababa City, the Federal Document Authentication and Registration Agency authenticates agency contracts without such requirements.[66] Conversely, courts in Addis Ababa City mandate advocates to submit advocacy contracts when they file their pleadings, while courts in Amhara and Oromiya National Regional States do not impose this requirement.[67] Secondly, a uniform legal framework governing the information-sharing mechanism between third parties and tax administrations is absent. There is no law binding third-party institutions to regularly share documents or information with tax authorities, resulting in an undeveloped practice of information reporting by these entities. Attempts in Amhara Regional State to collect advocacy contracts from justice offices rely on letters from regional finance and tax authorities, which may not be legally binding on the justice offices. [68] Thirdly, even when information is transferred, administrative challenges hinder its use for tax assessment purposes. Processing information from third parties requires specialized

[66] Interview with Animaw Demis, Advocate at Federal and Amhara Regional State' Courts, (20/03/1016 E.C); Interview with Kuma Beyene, Supra note 49.

[67] Id.

[68] See for example, *የአማራ ብሄራዊ ክልላዊ መንግስት ፋይናንስ ቢሮ ደብዳቤ*, Supra note 62; *የአማራ ብሄራዊ ክልላዊ መንግስት ገቢዎች ቢሮ ደብዳቤ*, Supra note 57.

information technology and skilled tax assessment officers, resources that are often lacking in Ethiopian tax authorities.[69] Moreover, the geographical distribution of justice offices and courts across Ethiopia complicates the collection and sharing of agency and advocacy contracts. Advocates, who operate in multiple locations, are assessed and taxed based on the tax center corresponding to their registered address, further burdening institutions involved in the third-party reporting system.

In practice, third-party reporting information seems more of a supplementary tool for the official assessment-based presumptive assessment method. Advocates, during tax declaration filing, report their income, and tax authorities may use third-party information to cross-check reported income correctness. For example, in a letter, the Amhara National Regional State Finance Bureau instructs tax officers as follow: *"በየደረጃው የሚገኝ የገቢ ተቋማት ከፍትህ ተቋማት የሚያገኙትን እና በራሳቸው ጥረት የሚያገኙትን የሶስተኛ ወገን መረጃ በማሰባሰብ ዳግም ውሳኔ በመወሰን ግብር ከፋዩ አሳውቆ ከከፈለው የሚበልጥ ገቢ ከተገኘ ማብርና ታክስ መሰብሰብ ይኖርባቸዋል"* [70] In English, "Revenue institutions at different levels must gather third-party information from the justice institutions and through their own efforts, make re-assessments, and collect taxes if the re-assessed income is greater than what the taxpayer declared and paid."

[69] Due to the prevailing manual tax administration, tax assessment officers need to review the print or hard copies of agency and advocacy contracts submitted by advocates. Additionally, they may encounter various technical challenges during tax assessments. For example, advocacy contracts may not cover all income scenarios, potentially resulting in under-declaration. Some advocates receive income without formal written contracts. Conversely, payments documented in advocacy contracts may span multiple tax years, complicating accurate assessment. Furthermore, the presence of payment provisions in advocacy contracts does not guarantee their actual receipt by advocates, as clients may fail to make final payment installments.

[70] *የአማራ ብሄራዊ ክልላዊ መንግስት ፋይናንስ ቢሮ ደብዳቤ*, Supra note 62.

Finally, it is necessary to note that the problems explored so far stem not only from administrative limitations or improper conduct by tax authorities and advocates. Poor design and formulation of presumptive tax methods, such as Schedule 1 of the presumptive tax regime, contribute to these problems by leaving tax authorities and taxpayers to rely on defective tax assessment rules. The existing income tax proclamations and regulations introduced turnover-based categorization and a presumptive tax regime, but without explicit turnover-verification methods. They neither require Category C advocates to keeping records of turnover nor incorporate other methods to determine turnover amounts.

It is under such a legal gap that the tax authorities attempted to apply various methods to assess the annual turnover of the advocates, including estimated assessment, official assessment, and third-party reporting information. However, due to their inappropriateness or flawed application, these methods did not result in effective assessment of advocates' turnover. As a result of both legal and administrative gaps, the practice of advocates' categorization and presumptive tax assessment becomes subjective, uncertain, and prone to potential tax evasion. Therefore, it is crucial to scrutinize the government bodies responsible for designing presumptive tax assessment methods for Category C taxpayers, particularly advocates, and to assess their contribution to the tax problems discussed here.

Unlike the repealed income tax proclamations, the current proclamations transfer the determination of the presumptive tax assessment method from the legislature to the executive body, specifically the Council Of Ministers at the federal level (or the Councils of Regional Governments).[71] These bodies

[71] Federal Income Tax Proclamation, Supra note 19, Article 49; See also, Amara National Regional State Income Tax Proclamation, No.240/2016, *Zikre Hig Gazette*, (2016) Article 48.

decide, through regulations, that Category C taxpayers shall be taxed using indicator or turnover-based standard assessment and prepare two different assessment schedules, with instructions for finance authorities to revise the schedules every three years.[72] As observed in our preceding discussions, the assessment of annual turnover is a crucial factor in establishing the presumptive income tax liability of Category C taxpayers under Schedule 1. However, the finance authorities responsible for overseeing and revising the legal frameworks governing the schedule have not provided tax authorities with an objective and effective means to determine taxpayers' annual turnover.

A significant problem arises in Ethiopia where finance authorities lack administrative readiness and capacity to monitor and reform the schedules. For example, the Amhara Finance Bureau lacks a dedicated section or officers for tax responsibilities, including revising standard assessment schedules.[73] The issuance of tax directives is often drafted by the Regional Revenue Bureau and distributed in the name of the Finance Bureau's head.[74] Similar issues persist in Addis Ababa City Administration, where the Fiscal Policy and Revenue Study Directorate reportedly does not conduct independent studies or revisions of the presumptive tax regime for Category C taxpayers. The Ministry of Finance is assumed to harmonize the country's tax systems, with the City Administration following the Ministry's direction.[75] This highlights a lack of proper performance by the finance authorities in

[72] Council of Ministers Federal Income Tax Regulation, No.410/2017, Supra note 2, Articles 49, 60; The Income Tax Proclamation Execution, Council of Regional Government Regulation, No. 162/2018, *Zikre Hig Gazette*, (2018), Articles 49, 60.

[73] Interview with Worku Gashaw, Director of Revenue Sharing Formula and Regions' Balanced Growth Study Directorate, Amhara National Regional State Finance Bureau, (10/02/2015 E.C).

74 Interview with Getachew Mesfin, *Supra* note 3.

75 Interview with Yirgalem Eshetu, Director of Fiscal Policy and Revenue Study Directorate, Addis Ababa City Administration, (21/03/2015 E.C)

designing, monitoring, and reforming presumptive tax regimes for advocates and other Category C taxpayers.

Concluding Remarks

This article examined the income taxation of advocates in Ethiopia, focusing on the application of Schedule C of the Income Tax Proclamation. Three critical issues were addressed: the characterization of advocates' income, the determination of their status as Category A, B, or C taxpayers, and the methods of presumptive income tax assessment.

Ethiopia's income tax system categorizes advocates under Schedule C, treating them as businesses. This classification conforms to international practices and simplifies tax administration by applying consistent rules to similar income sources, whether professional or business. Advocates' arguments against this classification lack a basis in tax law, as professional activities like advocacy are considered businesses that require bookkeeping for accurate tax assessment and the prevention of evasion. While some advocate expenses have a dual purpose, tax laws allow for apportionment to distinguish between deductible business expenses and non-deductible personal expenses.

The categorization of taxpayers into Categories A, B, and C under Schedule C faces significant challenges, particularly concerning advocates. First, obtaining an advocacy license does not require a TIN as a precondition. This initial lack of a TIN requirement implies that, at the beginning of their practice, the tax authorities have limited early opportunities to meet with advocates to initiate the process of categorization and inform them of tax obligations. Second, the Income Tax Proclamation lacks clear guidelines for calculating annual turnover for initial categorization, leading to reliance on advocates' self-declarations or other subjective presumptive methods. This

reliance results in advocates often remaining in Category C, as upward categorization is rare due to inaccurate turnover estimates.

Since the inception of Ethiopia's current income tax system during Emperor Haile Selassie's reign, advocates have been assessed using two primary presumptive methods: indicator-based and turnover-based standard assessments. The initial indicator-based assessment, introduced in the 1940s, imposed fixed taxes on advocates based on their license type. However, these fixed taxes, though simple to administer, did not account for income variations among advocates, leading to equity concerns. The 2016 income tax reform transitioned to a turnover-based assessment, aiming to align tax liabilities more closely with actual incomes. However, like the categorization problem, the turnover-based presumptive assessment system lacked clear mechanisms for determining annual turnover. The Income Tax Proclamations and Regulations have not provided an objective and effective means to determine advocates' annual turnover. Administratively, tax authorities attempted to apply several methods to assess the annual turnover of advocates, including estimated assessments, official assessments, and third-party reporting information. However, due to their inappropriateness or flawed application, these methods did not result in an effective assessment of advocates' turnover. These administrative limitations are exacerbated by non-compliance behaviors among advocates. As a result, the practice of presumptive tax assessment for advocates becomes subjective, uncertain, and prone to potential tax evasion.

Drawing from theoretical perspectives and international experiences, it is evident that Ethiopia's presumptive tax regime for Category C advocates lacks sophistication, treating well-educated professionals similarly to micro-businesses. This departure from recommended practices poses challenges to equity, efficiency, and revenue mobilization, contradicting international norms emphasizing the importance of maintaining records for accurate tax

assessment. These findings extend beyond the advocacy profession, urging a broader examination of other self-employed professionals under similar presumptive tax regimes, such as accountants, doctors, and engineers.

Consequently, the article recommends a series of reforms aimed at modernizing the income tax regime for advocates in Ethiopia. It is crucial to establish effective turnover verification methods to ensure accurate categorization of advocates as Category A, B, or C taxpayers. The reforms should also include implementing a presumptive tax approach, where Category C advocates maintain basic records of receipts with the option of a standard deduction for expenses. Effective utilization of third-party information is recommended, supported by a robust legal framework and collaboration between courts/justice organs and tax authorities. This collaboration will ensure reliable data exchange and enhance the accuracy of turnover assessments. Additionally, enhancing the administrative capacity of tax authorities through training programs and infrastructure improvements is essential. A well-trained and equipped tax administration is crucial for effectively implementing the recommended reforms, particularly in developing expertise in auditing and verifying financial records specific to the legal profession. Lastly, regular monitoring, evaluation, and reform of the presumptive tax regime by responsible government bodies are necessary to address emerging challenges and improve the regime's effectiveness and efficiency.