

**LEGAL AND PRACTICAL CHALLENGES FACING
CORPORATE TAXATION IN RELATION TO ELECTRONIC
COMMERCIAL TRANSACTIONS IN TANZANIA:
A CASE STUDY OF DAR-ES-SALAAM**

**LEGAL AND PRACTICAL CHALLENGES FACING
CORPORATE TAXATION IN RELATION TO ELECTRONIC
COMMERCIAL TRANSACTIONS IN TANZANIA:
A CASE STUDY OF DAR-ES-SALAAM**

By

Lovililo Aneth

**A Dissertation Submitted in Partial Fulfillment of the Requirements for an
Award of the Degree of Master of Laws in Commercial Law (LL.M-CL) of
Mzumbe University.**

2019

CERTIFICATION

I, the undersigned, certify that I have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled **Legal and Practical Challenges Facing Corporate Taxation in Relation to Electronic Transactions in Tanzania: A Case Study of Dar-es-Salaam** in Partial Fulfillment of the Requirements for an Award of the Degree of Master of Laws in Commercial Law (LL.M-CL) of Mzumbe University.

Major Supervisor

Internal Examiner

Accepted by the Board of Faculty of Law

DEAN FACULTY OF LAW

DECLARATION

I, **Aneth Elisa Lovililo**, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other Degree of Master of Laws.

Signature _____

Date _____

COPYRIGHT

© 2018

This dissertation is a copyright material protected under the Berne Convention, the Copyright Act 1999 and other international and national enactments, in that behalf, on intellectual property. It may not be reproduced by any means in full or in part, except for short extracts in fair dealings, for research or private study, critical scholarly review or discourse with an acknowledgement, without the written permission of Mzumbe University, on behalf of the author.

ACKNOWLEDGEMENT

Accomplishment of this work was not an overnight process. I am therefore indebted to those who lent me their hands and minds in making this work in its current form and content. At the onset, I extol the Almighty God for the gift of life and health HE has granted me in undertaking my dissertation.

It cannot go without mentioning my supervisor, Dr. Laurent Agola whose tireless guidance and advices have occasioned to the successful accomplishment of this dissertation. He has been the light in the dark days of my academic journey. His diligent revision, correction and maintenance of this dissertation accuracy is the success story behind this piece of work.

I am equally indebted to my Husband, Michael John Marere, whose moral and material support helped me come up with this dissertation. I appreciate sacrifice of time and loneliness you have been through during the days of my academic journey. It is undoubted that you will always have a place in my heart for this enriching, unique and unforgettable experience.

Last though not least, I appreciate all persons who involved in this study. I cannot mention them here but the comments and views they offered made me think outside the box. Nevertheless, I take the general responsibility for any errors relating to omission or commission.

DEDICATION

I dedicate this dissertation toward my father and mother Elisa Lovililo and Bertha Lovililo, whom despite the prejudice of sending girls to school acted against the odds and sent me to school.

ABBREVIATIONS AND ACRONYMS

A.E.R	=	All England Report
A.I.R	=	All India Report
AC	=	Appeal Case
B2B	=	Business to Business
B2C	=	Business-to-Consumer
C.G	=	Commissioner General
C.L	=	Commercial Law
C2B	=	Consumer to-Business
C2C	=	Consumer-to-Consumer
CAP	=	Chapter
CEN	=	Capital Export Neutrality
CIR	=	Commissioner for Internal Revenue
D.C.G	=	Deputy Commissioner-General
E.A	=	East Africa
E-Commerce	=	Electronic Commerce
EDI	=	Electronic Data Interchange
Edn.	=	Edition
Eds.	=	Editors
EIT	=	Enterprise Income Tax
EU	=	European Union
G.N	=	Government Notice
GB	=	Great Britain
GUI	=	Graphical User Interface
HR	=	Human Resource
Hrs.	=	Hours
HTM	=	Hypertext Markup
Http.	=	Hypertext Transfer Protocol
i.e.	=	Id Est.
Ibid	=	Ibidem
IT	=	Information Technology

LLM	=	<i>Legum Magister</i> (Master of Laws)
Ltd.	=	Limited
M-commerce	=	Mobile Commerce
Misc.	=	Miscellaneous
MU	=	Mzumbe University
No.	=	Number
NSF	=	National Science Foundation
OECD	=	Organization for Economic Co-operation and Development
OUP	=	Oxford University Press
OUT	=	Open University of Tanzania
p.	=	Page
pp.	=	Pages
R.E	=	Revised Edition
RAs	=	Revenue Authorities
SMEs	=	Small and Medium Enterprises
TCRA	=	Tanzania Communication Regulatory Authority
TRA	=	Tanzania Revenue Authority
Tshs.	=	Tanzanian Shillings
U.K	=	United Kingdom
UDSM	=	University of Dar-es-salaam
UN	=	United Nations
URLs	=	Uniform Resource Locators
Vol.	=	Volume
V.	=	Versus

ABSTRACT

This study generally aimed at making a critical analysis on the effectiveness of the law and practice on the taxation of corporations under electronic commercial transactions in Tanzania. The study specifically intended to explore the activities undertaken by the companies via the electronic transactions in the light of tax laws in Tanzania, examine the legal framework on taxation of electronic commercial transactions in Tanzania and last but not least to examine the practice *vis-à-vis* the taxation of electronic commercial transactions in Tanzania.

The study employed various research methodologies. The study based on case study design. It employed purposive sampling technique and the study used both primary and secondary data. Collection of data was done through questionnaire, interviews and library research.

The study observed a number of issues with regard to the guiding research questions to the following effect: First, the activities undertaken by the companies via the electronic transactions satisfy legal requirements for being taxed in Tanzania. Second, there are number of legal challenges facing taxation of electronic transactions made by the Companies in Tanzania.

The challenges include but not limited to jurisdictional challenges, determination of corporation residence under e-commerce, challenges on the source rule on taxation e-commerce by corporations, challenges on permanent establishment criteria on taxation of e-commerce and challenges on income characterisation under e-commerce by the corporations.

Last though not least is the existence of some practical challenges *vis-à-vis* the taxation of electronic commercial transactions in Tanzania. The practical challenges revealed were poor enforcement mechanism and shortage of competent Tax Administration Staff. It is from this background that the conclusion of the study is subsequently given.

LIST OF LEGAL INSTRUMENTS AND POLICIES

International Instruments

OECD Model Tax Convention on Income and Capital, [2017 Version].

United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries, [2011 Version].

Regional Instruments

Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 2010.

Municipal Instruments

Constitution

The Constitution of the United Republic of Tanzania, 1997 [CAP 2 R.E 2002].

Principal Legislation

The Electronic Transactions Act, 2015 [Act No. 13 of 2015]

The Income Tax Act [CAP 332 RE 2008]

The Tax Administration Act [Act No. 10 of 2015]

The Tanzania Revenue Authority Act [CAP 399 RE 2006]

The Finance Act, [Act No. 2 of 2016]

National Policies

The United Republic of Tanzania (2003), National Information and Communication Technologies Policy, Ministry of Communication and Transport, Dar-es-salaam, Tanzania.

LIST OF CASES

East African Cases

African Barrick Gold Plc. v. Commissioner General Tax Appeal No. 16 of 2015
(Unreported)

Fort Hall Bakery Supply co. v. Federic Muigai Wangoe (1959) E.A. 474

Foreign Cases

Salomon v. Salomon & Co. Ltd. (1897) AC. 22

Lawson v. Interior Trees, Fruits and Vegetable Committee of Directors. (1931) SCR
357

Kerguelen Sealing and Whaling Co. Ltd. v. CIR (1939) AD 487, 10 SATC: 363

De Beer Consolidated Gold Mines Limited v. Howe (1906) AC 445

TABLE OF CONTENTS

CERTIFICATION	i
DECLARATION	ii
COPYRIGHT	iii
ACKNOWLEDGEMENT	iv
DEDICATION	v
ABBREVIATIONS AND ACRONYMS	vi
ABSTRACT	viii
LIST OF LEGAL INSTRUMENTS AND POLICIES	ix
LIST OF CASES	x
TABLE OF CONTENTS	xi
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.0 Introduction	1
1.1 Background to the Problem.....	1
1.2 Statement of the Problem	5
1.3 Research Questions	6
1.4 Objectives of the Study	6
1.4.1 General Objective	6
1.4.2 Specific Objectives.....	6
1.5 Justification for the Study.....	7
1.6 Significance of the Study	7
1.7 Literature Review.....	8
1.8 Research Methodology.....	14
1.8.1 Research Design.....	14
1.8.2 Scope of the Study	14
1.8.3 Population and Sampling Design.....	14
1.8.3.1 Population.....	15
1.8.3.2 Sampling Design	15
1.8.4 Data Collection Methods.....	15

1.8.4.1 Questionnaire Survey	15
1.8.4.2 Interviews	16
1.8.4.3 Library Research	16
1.8.4.4 Media and Search Engines.....	16
1.8.5 Data Collection Instruments	16
1.8.5.1 Interview Guide.....	16
1.8.5.2 Questionnaires.....	17
1.8.6 Data Processing and Analysis.....	17
1.9 Limitations of the Study	17
1.9.1 Reduced Access to Information.....	17
1.9.2 Inadequate Knowledge on the Problem.....	18
1.9.3 Inadequate Literature.....	18
1.10 Conclusion.....	18
CHAPTER TWO	19
CONCEPTUAL FRAMEWORK.....	19
2.0 Introduction	19
2.1 The Meaning of Electronic Transactions	19
2.2 The Relationship between Electronic Transactions and Electronic commercial transactions	20
2.3 The Concept and Scope of Electronic Commercial Transactions	20
2.4 Classification of Electronic Commercial Transactions.....	22
2.4.1 Business-to-Business (B2B) Electronic Commercial Transactions.....	23
2.4.2 Business-to-Consumer (B2C) Electronic Commercial Transactions.....	23
2.4.3 Consumer-to-Business (C2B) Electronic Commercial Transactions.....	23
2.4.4 Consumer-to-Consumer (C2C) Electronic Commercial Transactions	24
2.4.5 Mobile Commerce.....	24
2.5 Benefits Associated with Electronic Commercial Transactions.....	25
2.5.1 Benefits of Electronic Commercial Transactions to Organizations.....	25
2.5.2 Benefits of Electronic Commercial Transactions to the Consumers	26
2.5.3 Benefits of Electronic Commercial Transactions to the Society	26
2.6 Distinctive Features of Electronic Commercial Transactions	26

2.6.1 Ubiquity.....	26
2.6.2 Global Reach	27
2.6.3 Universal Standards	28
2.6.4 Information Richness	28
2.6.5 Interactivity.....	29
2.6.6 Information Density	29
2.6.7 Personalization and Customization.....	30
2.6.8 User-Generated Content	30
2.7 Historical Context of Electronic Commercial Transactions.....	31
2.8 The Status of Electronic Commercial Transactions in Tanzania.....	33
2.9 Theoretical Aspects and Challenges of Electronic Transactions Taxation	33
2.10 Some Concepts on Taxation of Electronic Commercial Transactions	34
2.10.1 The Concept of Tax.....	34
2.10.2 Fundamental Principles of Corporate Taxation	35
2.10.2.1 The Principle of Equity	35
2.10.2.2 The Principle of Certainty	36
2.10.2.3 The Principle of Convenience.....	36
2.10.2.4 The Principle of Economy	36
2.10.2.5 The Principle of Simplicity.....	37
2.10.2.6 The Principle of Elasticity	37
2.10.2.7 The Principle of Productivity.....	37
2.10.2.8 The Principle of Co-ordination	38
2.10.2.9 The Principle of Variety/ Diversity.....	38
2.10.2.10. The Principle of Expediency.....	38
2.10.3 Taxation Principles vis-à-vis Electronic Commercial Transactions.....	38
2.10.3.1 Neutrality Principle and Electronic Commercial Transactions	39
2.10.3.2 Effectiveness and Fairness Principles and Electronic Commercial Transactions.....	39
2.10.3.3 Certainty and Simplicity Principles vis-à-vis Electronic Commercial Transactions.....	40
2.10.3.4 Efficiency Principle and Electronic Commercial Transactions.....	40

2.10.3.5 Flexibility Principle and Electronic Commercial Transactions	41
2.11 The Concept of Residence and Source vis-à-vis Taxation of Electronic Commercial Transactions by Companies in Tanzania	41
2.12 Conclusion	43
CHAPTER THREE	44
LEGAL FRAMEWORK GOVERNING CORPORATE TAXATION IN RELATION TO ELECTRONIC COMMERCIAL TRANSACTIONS	44
3.0 Introduction	44
3.1 International Instruments	44
3.1.1 United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries, [2011 Version]	44
3.1.2 OECD Model Tax Convention on Income and Capital, [2017 Version]	46
3.2 Regional Instruments	50
3.2.1 Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.	51
3.3 Domestic Legal Framework for Taxation of Corporations under Electronic commercial transactions	54
3.3.1 The Constitution of the United Republic of Tanzania, 1977	55
3.3.2 The Income Tax Act [CAP 332 RE 2008]	56
3.3.3 The Electronic Transactions Act, 2015	59
3.3.4 The Tax Administration Act, 2015	61
3.3.5 The Tanzania Revenue Authority Act [CAP 399 RE 2006]	63
3.4 Conclusion	65
CHAPTER FOUR	66
DATA PRESENTATION, ANALYSIS AND DISCUSSION OF RESEARCH FINDINGS	66
4.1 Introduction	66
4.2 Research Findings	66

4.2.1 Legal Requirements for Taxation vis-à-vis Electronic Commercial Transactions by Corporations in Tanzania	67
4.2.2 Legal Challenges facing Taxation of Electronic Commercial Transactions by Corporations in Tanzania.....	68
4.2.2.1 Jurisdictional Challenges vis-à-vis the Taxation of Electronic Commercial Transactions by Corporations in Tanzania	69
4.2.2.2 Challenges on the Corporation Residence base on Taxation of Electronic Commercial Transactions by Corporations in Tanzania	70
4.2.2.3 Challenges on the Source Rule on Taxation of Electronic Commercial Transactions by Corporations in Tanzania	72
4.2.2.4 Challenges relating to Permanent Establishment Criteria on Taxation of Electronic Commercial Transactions by Corporations in Tanzania	73
4.2.2.5 Challenges relating to Income Characterisation Rule on Taxation Electronic Commercial Transactions by Corporations in Tanzania	74
4.2.3 Practical Challenges vis-à-vis the Taxation of Electronic Commercial Transactions by Corporations in Tanzania	74
4.2.3.1 Poor Enforcement Mechanism.....	75
4.2.3.2 Shortage of Competent Tax Administration Staff	76
4.3 Conclusion.....	76
CHAPTER FIVE	77
SUMMARY, CONCLUSION AND RECOMMENDATIONS	77
5.1 Introduction	77
5.2 Summary of the Study.....	77
5.3 Conclusion.....	78
5.4 Recommendations.....	79
5.4.1 Changes in the Tax Legislation	79
5.4.2 Capacity Building for the Tax Administration Staff.....	79
5.4.3 Changing of Enforcement Mechanisms by the Tax Administration.....	80
REFERENCES	81
APPENDICES.....	82

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Electronic transactions undertaken by Corporations pose the challenge on the administration of corporate tax in Tanzania. This study was confined to legal and practical challenges facing corporate taxation in relation to electronic transactions in Tanzania.

The study was a hybrid between tax law and corporate law which falls squarely under the commercial law. The companies when incorporated are obliged to fulfill the legal obligations one of them being the payment of taxes.¹ Therefore, the field of taxation is one of the pertinent fields under commercial law.

The driving factor for the undertaking of this study is the outdated law on the taxation of the corporations in Tanzania. The law still upholds the traditional approach on the taxation of the corporations in Tanzania. This approach cannot be relevant under the electronic transactions which has been a common place for companies in Tanzania. This legal dividing line and many other practical factors have ensued into a number of challenges facing corporate taxation under electronic transactions in Tanzania.

1.1 Background to the Problem

The way in which tax is collected has been affected by enormous growth of technology.² The growth of electronic transactions has offered online retailers and consumers the tax free click. Consequently, the taxing authorities face challenges now than in any time in history.³ The problems in taxing electronic transactions manifest in various jurisdictions despite the initiatives done.⁴ The unprecedented

¹ The Income Tax Act, Section 4.

² Gałuszka, J. (2013). How to tax e-commerce-global or national problem? *Studia Ekonomiczne*, (150), University of Economics Katowice, Poland. pp. 193-202.

³ *Ibid.*

⁴ Srivastava D.K. (2018) Taxation of E-Commerce: Problems and Possible Solutions. In: Nirmal B., Singh R. (Eds.) *Contemporary Issues in International Law*. Springer, Singapore, pp. 447-457.

growth of electronic transactions has been catalysed by the advent of internet which, in return, fostered globalisation.⁵

Tanzania is not the only country in the world facing challenges on how to tax the electronic transactions. This connotes that most of the countries in globe are undergoing the same situation. There has been experienced an under taxation of the electronic transactions.⁶

At the global level, various initiatives have been undertaken to ensure proper taxation of electronic transactions. For instance, in the year 1997 the European Commission “Initiative in Electronic commercial transactions” came into place. This initiative was the reaction to the concerns posed by electronic transactions including but not limited to their taxation.⁷

Moreover, another attempt was as well made by the European Commission in the year 2011. It introduced the proposal for the improvement of the taxation system and Customs administration. The Commission perceived electronic transactions as the catalyst for the avoidance of tax by consumers and the businesses. It therefore encouraged for the development of new approach.⁸

Also, general assumptions and proposals in the field of electronic transactions taxation were also indicated by the WTO and OECD, which plans to play a central role in global electronic commercial transactions regulation.⁹ Nevertheless, the current legal regime as well as the practice constrains tax administrations on taxing corporations on the electronic transactions in the most efficient and optimal manner.

⁵Srivastava D.K. (2018) Taxation of E-Commerce: Problems and Possible Solutions. In: Nirmal B., Singh R. (Eds.) Contemporary Issues in International Law. Springer, Singapore, pp. 447-457.

⁶*Ibid.*

⁷*Ibid.*

⁸Taxation and Customs: Commission Proposes New European Cooperation Programme. “Europe East”

November 21 2011.

⁹Gałuszka J, Op. Cit.

Back to Tanzania, the modern tax regime came as the result of colonialism. It should be remembered that, Tanganyika (as then was) as many African countries suffered the effect of colonialism.¹⁰ Soon after the Berlin Conference in German, Tanganyika became her colony.¹¹

The Germans introduced taxation in simple form in the colony. However, at the time taxation was used as the coercive instrument to force the natives' integration in the newly established money based economy. Therefore, tax was not primarily considered as an instrument of financial mobilisation.¹²

However, an effective system of taxation was introduced after the demise of Germans by the British. In 1940 an Ordinance on Income tax was introduced and was the first legislation on the area.¹³ The Ordinance borrowed a lot from British income tax law in force in 1920.¹⁴

One thing to note in the British era was that taxation was in dual system.¹⁵ This means that there were mechanisms for the taxation of the natives and foreigners from Europe. For instance, the natives were charged import duties on the importation as well as excise duty. On the other hand, the Europeans were charged income tax. This tendency was associated with the level of income and literacy.¹⁶

In 1948 the British created the East African High Commission as a statutory corporation to administer and provide in Kenya, Uganda and Tanganyika (The High Commission Territories) certain inter-territorial services.¹⁷ It was at this time when the legislative powers were vested to the colonies. This led to the establishment of an assembly for the exercise of legislative powers. The legislations made had an overriding effect to the conflicting Territorial legislations.¹⁸

¹⁰Makinyika L.F.D.A (1996), A Sourcebook of Income Tax Law in Tanzania, Dar-es-salaam University Press, Dar-es-salaam, Tanzania, p. 3.

¹¹*Ibid.*

¹²*Ibid.*

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵*Ibid.*

¹⁶*Ibid.*

¹⁷*Ibid.*

¹⁸*Ibid.*

After independence in the year 1961, substantial efforts came into place with the motive of improving tax regime in Tanzania.¹⁹ Some of the reforms which took place during the time included: reviewing and amending some laws, enactment of new legislations, establishment of the new tax bases, changing the tax rates, abolition of some taxes introduced in colonial era and re-introducing some of the previous legislations on the area of tax. Most of these events took place between the year 1969 and 1989 which can be referred as reformation period.²⁰

Electronic commercial transactions started taking place in Tanzania lately in 1994. The introduction of internet and website contributed to some transactions being made electronically.²¹ Electronic transactions involve transactions of commercial nature taking place electronically.²²

It should be noted that for quite some times Tanzania had been operating under the controlled economy whereby the State was the chief driver of the economy.²³ This state of affair might have contributed to the delay in the advent of electronic transactions in the country. Even though Tanzania has liberated its market it still suffers the bequest of the controlled economy.²⁴

Besides, taxation of electronic transactions by corporations in Tanzania remains subject to a morass of vagueness and complexity of the legal regime. Therefore, this study targeted at making a critical analysis on the law and practice on how to tax corporations' electronic transactions.

¹⁹Odd-Helge Fjeldstad (1995), Taxation and tax reforms in Tanzania: A Survey, Working Paper, Chr. Michelsen Institute Development Studies and Human Rights, Bergen Norway

²⁰Makinyika L.F.D.A, Op. Cit.

²¹Magille J.K (2006), Impact of e-commerce on Taxation, Presentation to Stakeholders Forum, Tanzania Revenue Authority, p. 1

²²Electronic Transactions Act [Act No. 13 of 2015]

²³Magille J.K (2006), Op. Cit.

²⁴*Ibid.*

1.2 Statement of the Problem

Transactions made electronically act as the barrier on taxation by most tax administrations Tanzania inclusive.²⁵ With the aid of new technologies and platforms, entities can carry out business transactions without having any form of physical existence in a tax jurisdiction.²⁶ This can happen in a number of scenarios under electronic commercial transactions. For instance, the company might operate using server found other than in the country it is having its physical establishment.²⁷ Likewise, a company can undertake its operations using a portable device which can be placed in various places in different times hence posing a challenge.²⁸

The question to consider at this juncture is whether the activities undertaken by the companies via the electronic transactions satisfy legal requirements for being taxed in Tanzania. It is a legal requirement under the tax laws for an entity to have permanent establishment in Tanzania in order for it to be taxed.²⁹

However, basing on specific geographical location in order to impose tax on an entity is considered traditional under the contemporary electronic transactions. This is due to the fact that companies under electronic transactions operate in non-physical 'virtual' environment.

Consequently, relying on the specific geographical location for the purpose of taxation of entities can lead into tax avoidance and/or evasion. This is conceivable on the ground that it is not possible to tax a company that conducts its business transactions electronically via internet but without physical establishment.

It is against this postulation that the study ventured on determining the legal and practical challenges facing corporate taxation in relation to electronic transactions in Tanzania taking Dar-es-salaam as an area of focus.

²⁵Magille J.K (2006), Op. Cit.

²⁶*Ibid.*

²⁷*Ibid.*

²⁸*Ibid.*

²⁹ Income Tax Act, Section 70 (1).

1.3 Research Questions

In achieving its objectives this study designed the subsequent questions:

- i. Are electronic commercial transactions undertaken by companies satisfy legal requirements for being taxed in Tanzania?
- ii. What are the legal challenges facing taxation of electronic commercial transactions by Companies in Tanzania?
- iii. What are the practical challenges *vis-à-vis* the taxation of electronic commercial transactions by Companies in Tanzania?

1.4 Objectives of the Study

In ensuring the focus, objectives have been advanced in this study in general and specific as indicated below:

1.4.1 General Objective

The main objective of the study was to examine the legal and practical challenges facing corporate taxation in relation to electronic transactions.

1.4.2 Specific Objectives

In expanding the above general objective, the following objectives in specific steered the conducting of this research:

- i. To determine whether electronic commercial transactions undertaken by companies satisfy legal requirements for being taxed in Tanzania.
- ii. To examine the effectiveness of the legal framework for taxation of electronic commercial transactions undertaken by companies in Tanzania.
- iii. To identify practical challenges in taxation of electronic commercial transactions undertaken by companies in Tanzania.

1.5 Justification for the Study

This study was undertaken based on the ground that tax revenue is the main source of government revenue. This means that public funds for undertaking development projects and providing social services are utterly derived from the taxes. However, electronic commercial transactions have affected the paradigm of taxation of corporations, a trend which can result into the loss of government revenue via tax evasion and avoidance.

Therefore, in case the study was not undertaken there could be the likelihood that various issues relating to the taxation of corporations under electronic commercial transactions would remain obscured as the *status quo* could be maintained. Therefore, the study examined the legal and practical challenges facing corporate taxation in relation to electronic transactions.

1.6 Significance of the Study

The study is significant to different interested parties in and out of tax regime in Tanzania. For instance, this study will be helpful to the government through its tax collection agent TRA to adopt the better practice to ensure sound taxation of corporations under electronic transactions in Tanzania.

Also, the study is useful to the policy makers as it reveals the practical and legal challenges relevant in taxing electronic transactions in Tanzania. This study is also significant to the members of the parliament as it provides a leeway upon which various legislative measures can be taken to re-enforce the changes.

Nevertheless, the study is helpful to the academicians and researchers as it adds the literature in the existing number of literature which provides a platform for the review in undertaking the future studies. Last but not least, the study is helpful to the students both from legal and out of the legal profession as it adds material for learning in the subject of taxation and commercial law in Tanzania.

1.7 Literature Review

In order for the government to play its welfare role revenue is of paramount significance. The need for revenue by governments has made taxation a core function of the State since time in memorial. It should be recalled that a welfare State has a number of obligations towards its citizens such as provisions of social services to mention but one.

In this regard, tax in general has attracted a number of authors whom have devoted their time to write on it. The following are the literature and the review thereto concerning the effectiveness of the law as well as the practice on taxing electronic transactions made by the companies in Tanzania; -

Rumanyika and Mashenene³⁰ are of the view that one of the great challenges facing Small and Medium Enterprises performance in Tanzania is how to adopt and use ICT technologies such as e-commerce. They examine challenges facing the SMEs in adopting the use of e-commerce. The authors revealed a number of challenges that face the SME's in taking on board the e-commerce in their activities. They mention factors such as few IT experts, poor beliefs by the society, lack of readiness by the members of the SMEs to learn the e-commerce, poor education background by the members of the SMEs, inadequate trainings offered on the e-commerce and IT in general, unsatisfactory infrastructures and lack of adequate security systems for the transactions made under the electronic commercial transactions. The authors give the recommendation to the policy makers to come up with the solution to the said challenges in a manner that is integrated. The study is relevant to the problem as it shows some of the challenges that face the adoption of electronic commercial transactions in the informal sector in Tanzania. However, the authors have not related the aspect of taxation in their study, hence, this study have such consideration.

³⁰Rumanyika, J., & Mashenene, R. G. (2014). Impediments of e-commerce adoption among small and medium enterprises in Tanzania: A review.

McLure³¹ shows how the European Union (EU) has been applying the Value Added Tax (VAT) and income tax on corporation to electronic transactions. The author states that the concept of e-commerce relates to the transactions that are conducted using the networks in the computer. The author also admits that there are challenges when considering the taxation of electronic transactions especially when the same across the borders of one country to another. This paper is relevant to the problem under the study as it inter alia reveals the complications on the taxation of the corporations under the electronic commercial transactions. However, the paper has based much on the EU perspective and hence does not well cover the situation in Tanzania which provides for the different experience. Therefore, this study addresses the problem focusing on the situation in Tanzania.

Shigella³² examines the impact of electronic commercial transactions on taxation in Tanzania. The author has covered a number of issues relating to electronic commercial transactions in a bid to address the problem. Some of the issues that he addresses are the effects that can be posed by the electronic commercial transactions on the applicable laws, the steps which has been in place in ensuring the proper administration of the tax laws to cover the electronic transactions, the challenges that are facing the Authorities in the execution of the said laws together with the solutions. The study remains relevant to the undertaken study as it provides the way forward on how the electronic transactions can be properly handled by the tax legislations in the country. However, the study is too general and hence does not well address the taxation of corporations under the electronic commercial transactions, hence, this study ventured on the same in specific.

³¹McLure Jr, C. E. (2001, October). Taxation of Electronic Commerce in the European Union. In *Prepared for presentation at a conference on " Tax Policy in the European Union" held at the Research Center for Economic Policy, Erasmus University, Rotterdam, October* (Vol. 17, p. 19).

³²Shigella, E. E. (2013). *The Effect of E-Commerce on Tax Laws in Tanzania (The Case Study of Income Tax and VAT Laws Administered by the Tanzania Revenue Authority)* (Doctoral dissertation, The Open University of Tanzania).

Assimakopoulos et al³³ discuss on the means over which the electronic commercial transactions can be properly taxed. The authors have suggested a number of ways which can be put in place to ensure the effective administration of electronic commercial transactions taxation. The authors have also considered the need of identifying the amount of profits earned by the people operating under the electronic commercial transactions. They think that by doing so it can help in improving the taxation of electronic commercial transactions. The authors perceive electronic commercial transactions in the positive way as an economic drive in the contemporary times and hence urge for the keen consideration by the policy makers and legislators. They associate their perception on the electronic commercial transactions to positive contribution made by the same in the commercial perspectives. They acknowledge on the improvement that has be made by the electronic commercial transactions in the world of trade as they argue that, the same has changed the role of the actors in the trade as well as the way work is done. The authors also are of the view that electronic commercial transactions have narrowed the view that existed between the seller and the buyer in the traditional commercial perspective. This in return has led to the reduction of the costs and time of doing business.

However, they challenge the government and the Revenue Authorities to work upon the challenges facing taxation of electronic business so as to attain the full potential of the electronic commercial transactions as they have indicated. This paper stands pertinent to problem under the study as it provides for the systemic methodologies which can be adopted for improvement. Nevertheless, this paper does not focus on the legal challenges especially in Tanzania on taxing electronic transactions. Therefore, this study paid attention on the legal framework and how it has managed or failed to address the taxation of corporations under the electronic commercial transactions.

³³Assimakopoulos, N. A., Kotsimpos, G. K., & Riggas, A. N. International E-Taxation of E-Commerce using Systemic Analysis. pp. 1-2.

Azam³⁴ reveals efforts that have been put in place by China in recent years in modernizing its systems as well as being the part of international community. The author main focus is The Chinese Enterprise Income Tax (EIT). The author has depicted on the mode used in charging taxes to the Chinese enterprises. The author made it clear that in China tax on income is charged to enterprises which have been incorporated or their management is within China regardless of the source of income. This means that, what is considered for the taxation of an enterprise in china is a location (territorial) and not a source of income. The author, however, admits that the Chinese mode of charging taxes on the enterprises faces a number of problems when it comes on the issue of electronic commercial transactions. The paper is as well relevant to the problem under this study due to the fact that, it reveals the challenges facing the taxation of electronic commercial transactions basing on the traditional approaches of residence and source. Nevertheless, the paper has focused much in the foreign jurisdiction which is China and hence it cannot well reflect the situation in Tanzania. Therefore, this study covered the problem squarely basing on the Tanzanian jurisdiction.

Magille³⁵ demonstrates on how the advent of the electronic commercial transactions has shifted the way of thinking in business. The author is of the view that electronic commercial transactions have many positive impacts to the way of conducting business. The author associate the change of association of the partners in business as one of the impact brought about by the electronic commercial transactions. The movement of the information between and among the business stakeholders has increased rapidly due to electronic commercial transactions. The author also reveals how the electronic commercial transactions have impacted the chain of supply from the producer to the final consumer which have now been narrowed and has increased the efficiency of business. However, the author made a clear distinction that exists between electronic business and electronic commercial transactions. On this point, the author considers electronic business to have a wider scope as compared to

³⁴Azam, R. (2013). E-commerce Taxation in China. *Journal of Chinese Tax and Policy*, 3(1), 10.

³⁵Magille (2006). Impact of E-Commerce on Taxation, Tanzania Revenue Authority, Presentation to Stakeholders Forum, Dar-es-salaam, 6th July 2006.

electronic commercial transactions. This work is relevant to the problem since it reveals the positive side brought about by the electronic commercial transactions in Tanzania. However, it does not reveal the legal challenges that can hinder the taxation of corporations under electronic commercial transactions in Tanzania, hence, this study include the same.

Mponguliana³⁶ points out various problems facing tax administration in Tanzania. To this end the author has focused on two issues as the challenge to tax administration in Tanzania which are tax avoidance and evasion. The author considers these two problems as inherent to tax system. The author considers the two challenges to be old as the system of taxation itself. The authors view on the intervention on these challenges is based on the minimization rather than eradication of the same. The author believes that since these challenges are inherent it can never in some point in time be totally abolished rather they can be minimized. The author also adds that most of the arrangements for the avoidance or evasion of tax are done secretly. The author solution towards the raised challenges is the reduction or if possible the elimination of the liability to pay tax by the tax payers. This book is also relevant to the problem under the study since the author shows how the practice in tax management not exempting electronic commercial transactions has proved a failure in combating the problem of tax avoidance and evasion. Nevertheless, the author has not much concentrated on the aspect of taxation of corporation under electronic commercial transactions, hence, this study deals with the same.

Hellerstein³⁷ is of the view that knowledge is the basis for any analysis that can be made on the challenges arising from the electronic commercial transactions. The author is of the further view that without adequate understanding of the background which the electronic commercial transactions operate it is very difficult to make an analysis on the challenges that it faces. The author argues further that electronic commercial transactions unlike the traditional commerce involve two backgrounds

³⁶ Mponguliana. R.G. (2005). *The Theory and Practice of Taxation in Tanzania* (Student's Manual), Business Image, Graphics (BIG), p. 159.

³⁷ Hellerstein, W. (2002). Electronic commerce and the challenge for tax administration. In *Seminar on Revenue Implications of E-commerce on Development*.

which are technology and business. Therefore, it is very important for someone to be well equipped with the technology supporting the operation of electronic commercial transactions as well the business environment of the same. This approach according to the author can make any analysis be it policy or legal pertinent to the problems facing taxation of electronic transactions. The author also, foresees the bright future of the electronic commercial transactions that should act as an alarm towards the proper analysis made on the encounters facing the same. The author argues that analysis is very important for the revenue collected from electronic commercial transactions to correspond with its speedy growth. This work is relevant to the problem under the study since it provides for the wider conceptual framework with regard to the taxation of the electronic commercial transactions. However, the work does not reveal the legal challenges that can lead to ineffective taxation of corporations under electronic commercial transactions in Tanzania and therefore this study comprises the same.

Luoga³⁸ makes a reflection on the challenges facing tax authorities. One of the challenges that the author points out is evasion of tax. The author commences by giving the meaning as to what amount to evasion of tax. The author further shows what entails to tax evasion by giving some examples on the same. For instance, the author mentions failure to file tax returns as one of the scenario leading to tax evasion, since the same is the requirement under the tax law. The author further argues that even one file a return but misstate the income by making a false declaration he/she has evaded the tax.

The book is relevant to the problem under the research as tax evasion has been a commonplace in the taxation of the electronic commercial transactions in Tanzania, since many income accrued under electronic commercial transactions are not accounted for the taxation. However, the book being written many years ago it does not reflect the state of affair in relation to the evasion in the electronic commercial transactions in Tanzania and therefore the same will be covered in the proposed study.

³⁸Luoga (1996) A Sourcebook of Income Tax Law in Tanzania, Dar-es-salaam University Press (DUP), Dar-es-salaam, Tanzania. Pp. 46-47.

1.8 Research Methodology

The following are research methodologies which the researcher used in making the study a success.

1.8.1 Research Design

The study was designed basing on case study. This design involved the selected area which in this case was Dar-es-salaam. Choice of the case study design was due to insufficient time allocated for the accomplishment of the research it could not be possible for the researcher to collect data from every region in the entire country and therefore case study has been an ideal in reflecting the reality of the problem under the study.

1.8.2 Scope of the Study

In making this study convenient, its scope has been limited in various ways. At the onset, the topic covered under this study is the critical analysis on taxation of corporations under electronic transactions in Tanzania. This topic falls under the tax law, however, slightly the study covers other areas of the studies relevant to the company law.

Geographically, the study was undertaken in Dar-es-salaam basically due to the fact that being the chief commercial city in Tanzania many companies are incorporated and therefore it can be easy for the collection of data by the researcher. The time frame for the undertaking of the study was one (1) year from July, 2017 up to July, 2018 which is reasonable for the collection of data in the field and compilation of the report.

1.8.3 Population and Sampling Design

This section deals with the population and sampling design of the study, which are elaborated hereunder.

1.8.3.1 Population

This study included five (5) groups which were studied and from which conclusion was drawn. The first group consisted of entrepreneurs, second group consisted of corporate legal practitioners, third group consisted of academicians, fourth group consisted of company directors and fifth group consisted of TRA Officials. The choice of the population was influenced utterly by the significance of the information needed from each group.

1.8.3.2 Sampling Design

The study employed purposive sampling technique as distinguished from random sampling technique. This involved only the collection of the information from the specific groups selected. The sample size under the study was thirty five (35) respondents which were categorized in the following groups: seven (7) entrepreneurs, seven (7) corporate legal practitioners, seven (7) academicians, seven (7) company directors and seven (7) TRA Officials. The rationale for the choice of the above sampling method and size was the need for accuracy of the information collected and reduction of the time to be consumed in the collection of data considering the scarcity of the resources.

1.8.4 Data Collection Methods

Moreover, in the collection of data the researcher employed field research as well as library research in the collection of data. Primary data as well as secondary data were collected in meeting the objectives under the study. In specific, the subsequent methods were employed in the collection of the necessary information for the study.

1.8.4.1 Questionnaire Survey

Questionnaires were prepared and presented to the Respondents. The reason behind the use of questionnaire was time saving, the questionnaire is well known for time saving as the questions are given to the respondents in advance for him/her to fill and then give them back to the researcher.

1.8.4.2 Interviews

The study also employed the use of interviews in the collection of the primary data in the field. Interviews assisted the researcher to extract general information from the respondent and allow the flexibility from the respondents to respond to the questions in the more honest way.

1.8.4.3 Library Research

The researcher consulted some books as well as documents in undertaking the study in view of obtaining second hand information. This endeavor was made possible by the use of library research in which some libraries were visited including: Mzumbe University-Main Campus Library, University of Dar-es-Salaam Library and Tanganyika Library for documentary review.

The reason behind the reviewing of various documents and books is that, it furnished the study with pertinent information on the problem researched. The rational conclusion was capable of being made with an aid of this method.

1.8.4.4 Media and Search Engines

In pursuing the study, materials available via internet were also consulted. This was made possible by the use of media such as newspapers, television, radio etc. as well as the search engines. The reason for the deployment of this method in collecting data was the need to fill the gap from the information collected using other methods.

1.8.5 Data Collection Instruments

The study also applied some instruments for purposes of aiding in the collection of data. The following instruments have been put in place to collect data:-

1.8.5.1 Interview Guide

This instrument was used by the researcher during interviews with the respondents to guide her in the collection of data. The interview guide included a number of

guiding questions to be asked by the researcher which in one way or another reflects the research hypothesis and the objectives of the study.

1.8.5.2 Questionnaires

The study also used questionnaire as an instrument for the collection of data in the field. The questionnaires were printed with the questions to be filled with the targeted respondents.

1.8.6 Data Processing and Analysis

Data under the study was processed thematically whereby the information collected was arranged in accordance to the themes or topic they represent to help in their interpretation. Also, an analysis in the study was made qualitatively. Reason for applying this type of analysis underlies on nature of study which is analytical rather than quantitative as it demands for making critical analysis.

1.9 Limitations of the Study

The study faced a number of methodological challenges and other factors which in one way or another can affect the scope of the study. The following are the areas which are considered to be the limitation to the undertaking of the intended study;-

1.9.1 Reduced Access to Information

There is poor documentation and accessibility of relevant information and documents relating to taxation of electronic commercial transactions from relevant authorities. The researcher faced this challenge and it consumed the researcher time. The main reason for this limitation was the confidentiality of some of the information needed by the study.

1.9.2 Inadequate Knowledge on the Problem

Taxation of electronic transactions is a new emerging area in the corporate legal regime and it is therefore not well understood to many. Thus, inadequate knowledge by the respondents on the problem addressed in this study cannot be underrated.

1.9.3 Inadequate Literature

The research experienced inadequacy of literature relevant to the study. However, the researcher made extra effort to ensure that she gets enough literature especially the ones with local content for the sound reflection of the problem. The inadequacy of literature can be associated with a number of factors including but not limited to poor morale on writing among participants in the field of taxation.

1.10 Conclusion

The chapter dealt with general introduction. It has covered the introduction which has given the general perspective and the nature of the study. It also set the backdrop to the problem from the global to the municipal level. The statement given regarding the problem under the chapter has revealed basis of problem under the research.

In addition, the research questions and objectives have been set as the roadmap in the undertaking of the research. The chapter has also given the justification of the study being undertaken. In connection, the significances of this study to different stakeholders have been included in the chapter.

Moreover, the chapter has reviewed a number of literatures in a bid to justify the validity of the problem under the study. Last but not least, the chapter reveals the methodologies employed in the undertaking of the study. It is from this juncture whereby the next chapter takes over to discuss on the conceptual framework.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.0 Introduction

Electronic commercial transactions have substantial influence on the mode over which the business all over the world operates. Undertaking of the commercial transactions electronically has catered the need of most of the companies. This includes, cutting operation costs, accessing the wider market and increase in profit to mention the few.

It is therefore crystal clear as to why most of the corporate transactions are currently done in electronically in cyberspace. However, the enormous increase in the electronic transactions by the companies has changed the paradigms in the tax regime. This chapter is dedicated to enlightening some conceptual issues on the topic under the study.

2.1 The Meaning of Electronic Transactions

The term electronic transaction is legally defined under section 3 of the Electronic Transactions Act³⁹ as a transaction, action or set of transactions of a commercial or non-commercial nature taking place electronically. However, this study was biased only to the transactions which are commercial in nature. OECD defines electronic transaction as the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organisations, conducted over computer-mediated networks.⁴⁰ This definition implies that the goods or services are ordered over the computer networks.⁴¹ In addition, the payment of the goods of services is also done online by the aid of online payment systems.

³⁹ [Act No. 13 of 2015].

⁴⁰ OECD (2000), Glossary of Statistical Terms: Electronic Transaction, OECD Expert Group on Defining and Measuring E-commerce, retrieved from <https://stats.oecd.org/glossary/detail.asp?ID=758> on 30/11/2018.

⁴¹ *Ibid.*

2.2 The Relationship between Electronic Transactions and Electronic commercial transactions

The economies of many countries have been changed by the digital technologies.⁴² The advancement in digital technology has shifted the paradigms in the value creation. Currently, the physical goods are no longer of value to consumers as compared to electronic goods and services.⁴³

The relationship existing between electronic transactions and electronic commercial transactions is that, both electronic transactions and electronic commercial transactions involve conducting of business transactions using computer networks.⁴⁴ However, electronic transactions as it has been discussed above include both commercial and non-commercial transactions while electronic commercial transactions are confined only to commercial transactions.⁴⁵

Therefore, this study is confined on the electronic commercial transactions as distinguished from non-electronic commercial transactions. This means the study focus much on the electronic commercial transactions part of electronic transactions for the purpose of clarity.

2.3 The Concept and Scope of Electronic Commercial Transactions

Electronic commercial transactions comprise a number of technologies. The technologies adopted under the electronic commercial transactions are cross cutting a number of functions such as marketing, mobile money transfer to mention the few. The electronic commercial transactions also help other activities such as managing inventory, collection of data and supply chain.⁴⁶

⁴² Rayport J.F and Jaworski B.J (2003), Introduction to E-Commerce, 2nd Edition, McGraw-Hill, United States of America, p. 3.

⁴³ *Ibid.*

⁴⁴ The Economist (2001), E –Commerce, Profile Book Ltd, 58 A, Hatton Garden, London, EC1N 8 LX, UK.

⁴⁵ [Act No. 13 of 2015], Section 3.

⁴⁶ Verma, D. and Mehla, H. (2014), A Study on E-Commerce – Conceptual Framework & Future Potential in India, International Journal of Engineering, Applied and Management Sciences Paradigms, Vol. 13, Issue 01, March 2014.

In other words electronic commercial transactions are made using the expedited technology. The technology under the electronic commercial transactions helps the participants in the trade or business to make the exchange or transfer the products.⁴⁷ One author⁴⁸ considers electronic commercial transactions as the use of telecommunication networks such as internet and websites in undertaking the business between or among the parties.

The U.K Government⁴⁹ has adopted the working definition of the OECD. The OECD considers electronic commercial transactions as the simplification of commercial transactions or processes by the use of electronic network.

The U.S Government on the other hand refers to electronic commercial transactions as the use of electronic instruments or devices and methods in undertaking the business transactions such as selling and the buying of the goods and services.⁵⁰

The EU Commission perceives electronic commercial transactions on the basis of mode of interactions. The EU Commission considers electronic commercial transactions to the mode of undertaking commercial transaction via electronic interaction this is distinguished from the traditional business in which the commercial transactions needs physical interactions between the buyer and the seller or producer and the consumer.⁵¹

⁴⁷ Rayport J.F and Jaworski B.J (2003), Op. Cit.

⁴⁸ Zwass, V. (1998), Structure and Macro-level Impacts of Electronic Commerce: From Technological Infrastructure to Electronic Marketplaces, E-Commerce paper. P. 3.

⁴⁹ The UK Government (2000) Electronic Commerce, the UK Taxation Agenda, p. 13.

⁵⁰ U.S Government (1996), Department of Treasury, Office of Tax Policy, Selected Tax Policy Implication of Global Electronic Commerce. P.8.

⁵¹ EC Commission (1997), A European Initiatives in Electronic Commerce (the Green Paper) p.3.

The EU Commission has gone further by making a distinction on the definition between direct and indirect electronic commercial transactions. This is described in the EU Commission (Green Paper) ⁵² as follows:

“Direct electronic commercial transactions entail the online ordering, payment and delivery of intangible goods and services; while indirect electronic commercial transactions involve the electronic ordering of tangible goods, which must be physically delivered using traditional channel such as postal services or commercial couriers.”[Emphasis Added]

The Government of Tanzania⁵³ considers electronic commercial transactions as the use of computer networks in the undertaking of business. The computer network that has been referred under this concept of electronic commercial transactions is mainly internet. Therefore, when the participants in the business such as producers, consumers, sellers, buyers etc. make the use of internet network to interact the same can fall squarely under this definition as electronic commercial transactions.

However, this research considers electronic commercial transactions as the conducting of financial or commercial dealings through the use of computerised networks. The financial or commercial dealings that can be included in this concept are selling, buying, transfer and exchange of the products, service and/or information.⁵⁴ The rationale behind the choice of this working definition is its comprehensiveness and clarity.

2.4 Classification of Electronic Commercial Transactions

This section of the study deals with the classification of electronic commercial transactions.⁵⁵The following are the covered classes of electronic commercial transactions: Business-to-Business (B2B), Business-to Consumer (B2C), Consumer-

⁵²EC Commission (1997), A European Initiatives in Electronic Commerce (the Green Paper) p.3.

⁵³ The United Republic of Tanzania (2003), Ministry of Communication and Transport, National Information and Communication Technologies Policy, p. iv.

⁵⁴ Turban, E.; King, David; and Lee, Jae Kyu (2006), Electronic Commerce 2006: A Managerial Perspective. Research Collection School of Information Systems, p. 6.

⁵⁵ Nanehkaran Y.A (2013), An Introduction To Electronic Commerce, International Journal of Scientific & Technology Research, VOLUME 2, ISSUE 4, April 2013.

to-Consumer (C2C), Consumer to-business (C2B) and Mobile Commerce (M-Commerce)⁵⁶ which are explained in detail below:

2.4.1 Business-to-Business (B2B) Electronic Commercial Transactions

This type of electronic commercial transactions as its name suggests involves the undertaking of the commercial transactions using computerised networks between one or more business entities with another business entity or entities. It can as well be the business transaction between one company and another company. Under B2B the products or services can be sold or transferred from one business entity to another using network mainly on wholesale level.⁵⁷

2.4.2 Business-to-Consumer (B2C) Electronic Commercial Transactions

Under the B2C, commercial dealings are done between the business entity and its final consumers. Unlike in B2B whereby the scale of commercial transaction is mainly wholesale under the B2C the commercial level is mainly retail. In this type of electronic commercial transactions there is an online platform that can act as the store in the physical business whereby the customer makes an order of the service or goods and then the business entity delivery to him or her.⁵⁸

2.4.3 Consumer-to-Business (C2B) Electronic Commercial Transactions

In C2B electronic commercial transaction model, the consumers of the services or goods are also having the products or services that are needed by the business entity. This means that the consumer therefore transacts his/her goods or services to the Business entity in need using computerised network.⁵⁹

⁵⁶Nanehkaran Y.A (2013), An Introduction To Electronic Commerce, International Journal of Scientific & Technology Research, VOLUME 2, ISSUE 4, April 2013.

⁵⁷ Nanehkaran Y. A (2013), Op. Cit.

⁵⁸*Ibid.*

⁵⁹*Ibid.*

2.4.4 Consumer-to-Consumer (C2C) Electronic Commercial Transactions

Under C2C electronic commercial transaction, a platform is made for the consumers to interact and exchange the products or services through a computerised network. Under this model network is used as an intermediary whereby the consumers can access the goods or services they need and directly make transactions between themselves.⁶⁰

2.4.5 Mobile Commerce

Mobile Commerce came about in 1977; it entails the use of wireless devices in making commercial transactions. The famous gadgets applied in the mobile commerce include but not limited to smart phones, Personal Computers and Personal Digital Assistants (PDA).⁶¹ These devices are normally connected with networks for them to operate online.⁶²

Through mobile commerce the participants in the commercial transaction are offered an avenue to access the internet without necessarily plugging in their devices. In other words, the marketplace is on ones fingertip at any place where he or she can have an access with the internet. Currently, the mobile commerce have undergone a number of revolutions to the extent it performs various functions such as banking online, paying bills such as water or electricity bills.⁶³

This mode of electronic commercial transactions is more relevant even in Tanzania whereby mobile operators such as Vodacom, Tigo, Airtel etc. offers some services of the like solely or in partnership with other stakeholders such as banks such as CRDB, NMB etc. and the Regulatory Agencies such as DAWASCO, TANESCO etc.

⁶⁰ Nanehkaran Y. A (2013), Op. Cit.

⁶¹ *Ibid.*

⁶² Nanehkaran Y. A (2013), *Op. Cit.*

⁶³ *Ibid.*

2.5 Benefits Associated with Electronic Commercial Transactions

There are number of benefits related to electronic commercial transactions to various stakeholders. This part of the study reveals the benefits associated with electronic commercial transactions so as to find out its potential in the contemporary society.

2.5.1 Benefits of Electronic Commercial Transactions to Organizations

One of the benefits of the electronic commercial transactions to any organisation if properly utilised is exposure. The exposure brought by the electronic commercial transactions to the organisation base of the coverage it has. It should be noted that, electronic commercial transactions are in most cases conducted online using the computer network. This means that anyone anywhere in the globe having an access to internet network can well access the products and services offered by an organisation online and hence exposure.⁶⁴

Another benefit of electronic commercial transactions to an organisation is cost effective. Electronic commercial transactions save a lot of costs to the organisation. For instance, the organisation does not need to have a physical office to operate electronic commercial transactions as the marketplace is online. Likewise, there is no need of hiring many staff for an organisation to operate electronic commercial transactions. This in return saves the cost to the organisation by reducing the administrative costs.⁶⁵

Also, electronic commercial transactions are time saving to the organisation. It should be born in mind that under the electronic commercial transactions customers can serve on themselves without wasting much time by an organisation.⁶⁶ The time for the customer to wait for the product as well can be reduced by electronic commercial transactions, this means that an order can be made online same as to the payment and the customer wait for the delivery of the goods or services.⁶⁷

⁶⁴ Deepa Verma and Harita Mehla (2014), *Op. Cit.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Deepa Verma and Harita Mehla (2014), *Op. Cit.*

2.5.2 Benefits of Electronic Commercial Transactions to the Consumers

The Consumers can also benefit a lot from the electronic commercial transactions. First, the consumers are given a wider range of making the options on which products or services to buy and from which supplier or seller.

This means that unlike in the physical business where one must move from one shop to another under the electronic commercial transactions one may have an access to many products and services without much ado using computer network.⁶⁸

2.5.3 Benefits of Electronic Commercial Transactions to the Society

An effective utilisation of electronic commercial transactions can as well benefit the society. One of the benefits that the society can enjoy is the reduction of disturbances associated with movements from one shop to another. Under the traditional commerce one had to move from one shop to another shop finding a product or service. Such movements led to inconvenience costs and they were time consuming.⁶⁹

2.6 Distinctive Features of Electronic Commercial Transactions

Electronic commercial transactions are having their own features that distinguish them from the traditional commercial transactions. This part of the study reveals the distinctive features of electronic commercial transactions:

2.6.1 Ubiquity

The ubiquity feature of electronic commercial transactions is based on the fact that they are not limited by time or place.⁷⁰ For instance, under the traditional commercial transactions most of the shops are having the business hours to sale their product and services. Likewise, one could not find anywhere the outlets for the products or services he or she is looking for.

⁶⁸Deepa Verma and Harita Mehla (2014), *Op. Cit.*

⁶⁹*Ibid.*

⁷⁰ Qasem A.S, Features of E-Commerce Technology, Faculty of Computer & Information Technology, Department of Computer Science, Al-Madinah International University.

This is contrary to electronic commercial transactions as a person can buy the product or service at any time he/she wants and at any place in the globe as far as he is having a computer network.⁷¹ The ubiquity feature gives a consumer and businesses many advantages including but not limited to freedom of choice and reduction in operational costs.⁷²

2.6.2 Global Reach

Electronic commercial transactions are also characterised by global reach. This means that, people all over the globe can have an access to electronic commercial transactions. This is made possible by the use of computerised network like internet in which the hosted websites can be accessed all over the world.⁷³

It should be noted that, electronic commercial transactions are not confined to the geographical locality. In this sense, anyone in the world can make an order over the website and the products or services being delivered to him or her wherever he or she is.⁷⁴ The global reach feature of electronic commercial transactions gives more advantage than the traditional commercial transactions such as increase in efficiency of doing business as well as the exposure from the globe.⁷⁵

On the other hand, the feature of global reach is not found in traditional business. This is due to the fact that the traditional business is much confined to the locality to which it is operating and not further. This means that the services and products provided under the traditional commerce cannot cross national boundaries to global audiences.

⁷¹Qasem A.S, Features of E-Commerce Technology, Faculty of Computer & Information Technology, Department of Computer Science, Al-Madinah International University.

⁷² Qasem A.S, *Op. Cit.*

⁷³ Efraim Turban, Jae K. Lee, David King, Ting Peng Liang, and Deborrah Turban (2010), *Electronic Commerce: A Managerial Perspective*, Prentice Hall. p.720.

⁷⁴ Qasem A.S, *Op. Cit.*

⁷⁵*Ibid.*

2.6.3 Universal Standards

The standards applicable under the electronic commercial transactions are universal in their nature in the sense that they are shared all over the world. This means that, people participating in the electronic commercial transactions are all using the same standards. The use of the universal standards helps in the simplification of the interactions by the participants in electronic commercial transactions such as people, companies and institutions. The universal standards under the electronic commercial transactions include; technology, media and Internet standards.⁷⁶

The universal standards feature of electronic commercial transactions offers a number of advantages to the participants in the electronic commercial transactions. For instance, since the standards which are applicable in the electronic commercial transactions are universal they tend to reduce the costs of doing business by the participants. This is unlike in traditional business in which the standards tend to differ from one jurisdiction to another.⁷⁷

2.6.4 Information Richness

Another feature of the electronic commercial transactions is the information richness. This refers to the complexity and content of a message. The information in electronic commercial transactions has less richness as compared to traditional business. For instance, the traditional commercial transaction provides a wider range of information relating to the products and services that is sold.⁷⁸

In electronic commercial transactions the content and the complexity of the information depend on the advertisement and brand. Therefore, there are many ways in which the product can be promoted under electronic commercial transactions, for example, short video or audio as well as animation.⁷⁹ Therefore, in electronic

⁷⁶ Qasem A.S, *Op. Cit.*

⁷⁷ *Ibid.*

⁷⁸ Qasem A.S, *Op. Cit.*

⁷⁹ *Ibid.*

commercial transactions one can only find information richness if availed with advertisement.⁸⁰

2.6.5 Interactivity

Also, one of the features of electronic commercial transactions is interactivity. This means that electronic commercial transactions offer an avenue for the consumer to interact with the content unlike in traditional business. For instance, it is the consumer of the electronic commercial transactions using a website who can control such a website. Therefore, he or she can command on the manner and time should the website behave.⁸¹

In addition, the level of interactivity offered by electronic commercial transactions varies from one website to another.⁸² Likewise, under the electronic commercial transactions the views of the consumers can as well be obtained in a simple way as compared to the traditional commercial transactions.⁸³

2.6.6 Information Density

Another feature of electronic commercial transactions is information density which entails the amount and quality of the information that can be accessed by the participants.⁸⁴ Under the electronic commercial transactions information density is very high as compared to traditional commercial transactions. This is due to the fact that, the technologies that are applicable in electronic commercial transactions are more convenient than the ones in traditional commerce.⁸⁵

The information density feature of electronic commercial transactions makes it more advantageous than traditional commerce. This is due to the fact that the dealers in the electronic commercial transactions are availed by more information than in traditional commercial transactions. On top of this is the reduction of cost of doing

⁸⁰Qasem A.S, *Op. Cit.*

⁸¹Qasem A.S, *Op. Cit.*

⁸² Maria Sicilia, Salvador Ruiz, and Jose L. Munuera (2005), Effects of Interactivity in a Web Site, *Journal of Advertising*, vol. 34, no. 3 (Fall 2005), pp. 31, American Academy of Advertising.

⁸³*Ibid.*

⁸⁴ Kenneth Laudon, and Carol Traver (2006), *Op. Cit.*

⁸⁵Qasem A.S, *Op. Cit.*

business as well as easy obtaining of information under electronic commercial transactions. Also, high information density under the electronic commercial transactions increases openness of the information provided by the sellers or manufacturers to their consumers.⁸⁶

2.6.7 Personalization and Customization

Electronic commercial transactions also offer personalization and customization of the content. The content can be personalized or customized depending on the recipients.⁸⁷ Electronic commercial transactions consider the choices of the recipients of the messages and therefore customize or personalize the services offered including the messages accordingly.⁸⁸

In addition, the marketing under the electronic commercial transactions also base on customization and personalization. This means that if the message on certain services is delivered it can be filtered basing on customization and personalization and reach only the interested or targeted customers.⁸⁹ This is different from the traditional commercial transactions whereby marketing is done generally to the public without considering their preferences and hence this can increase the costs.⁹⁰

2.6.8 User-Generated Content

The other feature of electronic commercial transactions is user-generated content. This means that the public members or consumers of the services and products are also given the room to share their content. This feature is made possible especially by the use of social media such as Facebook or WhatsApp in which users can generate and share the content on the products or services.⁹¹

⁸⁶ Qasem A.S, *Op. Cit.*

⁸⁷ *Ibid.*

⁸⁸ Qasem A.S, *Op. Cit.*

⁸⁹ *Ibid.*

⁹⁰ Qasem A.S, *Op. Cit.*

⁹¹ Qasem A.S, *Op. Cit.*

2.7 Historical Context of Electronic Commercial Transactions

It is difficult for one to state with precise when exactly the electronic commercial transactions commenced. However, the genesis of electronic commercial transactions can be associated with growth Electronic Data Interchange (EDI). It was the EDI that allowed the transfer of documents from one device to another device in a standardised form.⁹²

The EDI can be traced in 1960s especially in the transportation business as well as retail business. The same was much pushed by the need to establish paperless operation in the said industries. However, the EDI formalization and adoption took place around 1970.⁹³ At the initial stage the EDI performed minimal functions especially the transfer of trade records and placing of orders via computer.⁹⁴

Yet, EDI did not spread extensively among the companies both in USA and Europe. For instance, only about one percent of all companies in USA and Europe had adopted EDI by 1990s. The stagnant growth of EDI was much associated by factors such as undue cost of EDI itself as well as technical difficulties.⁹⁵

Another growth stage of electronic commercial transactions was made possible by the advent of internet. Despite the fact that internet emerged as the tool for research it was later on adopted in commercial field. This phase of development of electronic commercial transactions was featured by the transactions of services and goods being made using internet network. This move was made possible under the initiative of Advanced Research Projects Agency Computer Network (ARPANET) in 1960s.⁹⁶ However, it was until the year 1982 when the terminology 'internet' was coined.⁹⁷

⁹² Tian, Y. and Stewart, C. (2006), History of e-commerce, in Encyclopedia of e-commerce, e-government, and mobile commerce (pp. 559-564), IGI Global

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Tian Y and Stewart C, *Op. Cit.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

In the year 1983 there was an introduction of Internet Protocol (IP). It was later on accepted as the sole method of data transmission on the internet. It was from this point when the computers all over the world started to interchange information on the equal basis.⁹⁸ In 1986 the move was made to improve the communication links speed by the National Science Foundation (NSF) in USA.⁹⁹

However, until 1980s internet was non-commercial in its nature. This means there was no use of internet by the commercial community. Therefore, the most of users of the internet were the researchers for the research purposes and it was freely available.¹⁰⁰ This state of affairs was mostly contributed by the sophistication of the technology itself at that particular time. So, frankly speaking researchers and academics were the only section of the society that was in the position to utilise internet.¹⁰¹

Nevertheless, the great revolution on the use of internet was made by the invention of Graphical User Interface (GUI) and World Wide Web (WWW). These two inventions helped the rest of the members of the community including the commercial community being capable to utilise internet.¹⁰² Later on in 1990s internet gained its current form by the advent of Hypertext Mark-up Language (HTML) and Uniform Resource Locators (URLs).¹⁰³

It was until during this time that internet ceased to be a technical realm and it was adopted in various common use in the society.¹⁰⁴ This led to the enormous growth of the members of the community who used internet. Due to the popularity of internet at that particular time the trading community saw an opportunity and electronic commercial transactions became tenable.¹⁰⁵ However, it was until 1991 when

⁹⁸Tian Y and Stewart C, *Op. Cit.*

⁹⁹*Ibid.*

¹⁰⁰*Ibid.*

¹⁰¹ Eccleson, P. (1999). New technology briefing: An overview of the Internet. *Interactive Marketing*, 1(1), 68-75.

¹⁰²*Ibid.*

¹⁰³ Eccleson, P. (1999), *Op. Cit.*

¹⁰⁴*Ibid.*

¹⁰⁵ Tian Y and Stewart C, *Op. Cit.*

electronic commercial transactions became full flagged following the lifting of commercial restriction on using network by NSFNET.¹⁰⁶

2.8 The Status of Electronic Commercial Transactions in Tanzania

Number of internet users has been enormously increasing in Tanzania.¹⁰⁷ This trend shows how electronic commercial transactions are increasingly a commonplace in Tanzania.

It is approximated that by 2017 the number of internet users in Tanzania rose to 23 million.¹⁰⁸ Significantly, this enormous development of the people who are using internet against conventional modes of communication is the revelation that electronic commercial transactions have incredibly grown in the country.¹⁰⁹

2.9 Theoretical Aspects and Challenges of Electronic Transactions Taxation

This section focuses on theoretical aspects and challenges of electronic transactions taxation. Electronic transactions have implications on the established taxing regimes which bases on territoriality.¹¹⁰ Electronic transactions are conducted regardless of geographical boundaries or size of the company.¹¹¹ The challenge posed to tax administration is therefore the increase in cost administration by tax administrators.¹¹²

Another challenge associated with electronic transactions is difficulties in defining the source of income.¹¹³ The digitization of information the conversion of text, sound, images, video, and other content into a series of ones and zeroes that can be

¹⁰⁶Tian Y and Stewart C, *Op. Cit.*

¹⁰⁷ The United Republic of Tanzania (2010), Report on Internet and Data Services in Tanzania: A Supply-Side Survey, Tanzania Communications Regulatory Authority, Dar-es-salaam, Tanzania, p. 18.

¹⁰⁸<http://www.thecitizen.co.tz/News/Business/Report--Number-of-internet-users-hits-23m-mark-in-TZ/1840414-4312348-r6cru3z/index.html> accessed on 6/5/2018.

¹⁰⁹ The United Republic of Tanzania (2010), *Op. Cit.*

¹¹⁰ Hellerstein, W. (2002).

¹¹¹*Ibid.*

¹¹²*Ibid.*

¹¹³ Neubig, T. S., & Poddar, S. (2000). Blurred tax boundaries: The new economy's implications for tax policy. Tax Notes, August, 28.

transmitted electronically fuels this situation.¹¹⁴ The internet is a borderless technology and servers can be located anywhere in the world without affecting the substance of an Internet-based business transaction.¹¹⁵ The principal challenge is to determine how to implement geographically limited taxing systems in a technological environment that renders geographical borders essentially irrelevant.¹¹⁶

Moreover, the technical features of Internet transactions create enormous problems for taxing authorities in establishing audit trails, in verifying parties to transactions, in obtaining documentation, and in fixing convenient taxing points.¹¹⁷ By eliminating the need for intermediaries, particularly financial intermediaries on which governments have traditionally relied to facilitate tax compliance through reporting obligations, the Internet enhances the danger of increased tax avoidance and evasion.¹¹⁸

2.10 Some Concepts on Taxation of Electronic Commercial Transactions

Since the problem under this study is cross cutting on the field of taxation it is important to reveal the fundamental concepts on taxation pertinent to the taxation of electronic commercial transactions especially by the companies.

2.10.1 The Concept of Tax

Generally, it is harder to have a precise definition of the term tax. However, it remains mandatory to conceptualize the term tax in order to have the common understanding. This venture can successful be done by revisiting various pieces of literature which defines the term tax as hereunder discussed:

Concise Oxford Dictionary¹¹⁹ explains the concept of tax as a mandatory contribution charged over the persons, property, income, commodities, transactions

¹¹⁴Hellerstein, W. (2002).

¹¹⁵*Ibid.*

¹¹⁶*Ibid.*

¹¹⁷*Ibid.*

¹¹⁸*Ibid.*

¹¹⁹ 10th Edition, Oxford University Press, United Kingdom.

etc. aimed at supporting the government. Another author known as Seligman defines tax as a contribution from individuals out of their private property for the maintenance and defense of government, so that it may perform its functions and the ends of the state be realised.¹²⁰

Mengesha defines the term tax in a simpler way to mean a financial charge or other levy imposed on an individual or a legal entity by government.¹²¹ Prof. Bastable gives a general definition of the term tax as a compulsory contribution of the wealth of a person or body of persons for the services of public powers.¹²²

Basing on the above definitions of the term tax, this study defines tax as obligatory contribution to the government revenue that are charged by the government or its agents on the persons, property, income, commodities, transactions etc. with the motive of raising the government revenue or as a policy instrument.¹²³

2.10.2 Fundamental Principles of Corporate Taxation

Taxation of corporations is governed by various principles which are applicable in determining if the taxations system is optimum. This part of the study discusses principles of taxation:

2.10.2.1 The Principle of Equity

The principle of Equity entails that individuals should pay taxes to the Government in accordance to their abilities.¹²⁴ This principle of taxation was propounded by great English Economist Adam Smith in his book dubbed the 'Wealth of Nations' published in 1776 and it is relevant on electronic transaction taxation.

Under the principle of equity it is expected that the more an individual is earning the income the more he should pay for the taxes and vice versa. Therefore, equity

¹²⁰ Seligman E.R.A (1909), *Essays in Taxation*, 6th Edition, New York: Columbia University Press.

¹²¹ Mengesha G.W (2008), *Tax Accounting in Ethiopian Context*, 2nd Ed., Ethiopia, Alem Printing Press.

¹²² Kulkami M et al. (2001), *Business Taxation and Auditing*, Precedes Source, p.2.

¹²³ Oxford Dictionary, *Op. Cit.*

¹²⁴ Kulkami M et al. (2001), *Op. Cit.*

requires that the person with equal economic status should be imposed with equal tax burden.

Therefore, the principle of equity is categorised into two: first, horizontal equity which requires for equal treatment of persons with comparable abilities to pay;¹²⁵ and second, vertical equity, which requires appropriate differences in the tax treatment of persons with different taxable capacities.¹²⁶

2.10.2.2 The Principle of Certainty

The principle of certainty requires for the taxes which are levied by the Government to be certain and not arbitrary. It was advocated by Adam Smith as well and it aims at protecting the taxpayers.¹²⁷

The principle emphasize the amount of tax, the time of payment, the method of payment, the place of payment, and the authority to whom the tax is to be paid to be known to the taxpayers to avoid arbitrariness by the tax administrators.¹²⁸

2.10.2.3 The Principle of Convenience

The principle of convenience requires tax to be levied at the time, in the manner; it is most likely to be convenient for the contributor to pay it.¹²⁹ Likewise, the principle of convenience was advocated by Adam Smith. Under the principle of convenience, the manner over which taxes are paid should not be an obstacle to the taxpayer.

2.10.2.4 The Principle of Economy

Another principle advocated by Adam Smith is the principle of economy. The principle of economy requires correspondence between revenue yield and the cost of collection.¹³⁰ It entails that the cost used in the collection of tax revenue should be as

¹²⁵ Kulkami M et al. (2001), *Op. Cit.*

¹²⁶ *Ibid.*

¹²⁷ Kulkami M et al. (2001), *Op. Cit.*

¹²⁸ *Ibid.*

¹²⁹ Bhatia. H.L. (2002), *Public Finance*, 23rd Edition, p.42.

¹³⁰ *Ibid.*

economical as possible.¹³¹ In other words, the revenue collected from taxes should exceed the cost used in their collection.

2.10.2.5 The Principle of Simplicity

The principle of simplicity requires the tax system to be simple and understood by the taxpayers. It is urged that, a tax system should not be complicated to the taxpayers.¹³² The complicated tax system leads to challenges in the administration of tax laws. Also, lack of simplicity can lead to tax disputes between tax authority and taxpayers.

2.10.2.6 The Principle of Elasticity

The principle of elasticity requires the flexibility in the tax system. The tax system shall be capable of adapting to the changing circumstances in the society.¹³³ The tax system should not be rigid to changes in accordance with the government and social needs. It means the tax bases may be increased or decreased depending on the prevailing circumstances.¹³⁴

2.10.2.7 The Principle of Productivity

Another principle of taxation is Productivity. The principle of productivity requires taxes imposed by the Government to yield sufficient revenue which can accommodate its financial needs.¹³⁵ Therefore, the tax system shall aim at increasing of the economic sectors in the Country.¹³⁶ Notably, the Government depend on taxes to undertake its various projects.¹³⁷

¹³¹ Kulkami M et al. (2001), *Op. Cit.*

¹³² *Ibid.*

¹³³ Bhatia. H.L. (2002), *Op. Cit.*

¹³⁴ *Ibid.*

¹³⁵ Kulkami M et al. (2001), *Op. Cit.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

2.10.2.8 The Principle of Co-ordination

The principle of co-ordination aims at higher efficiency and effectiveness.¹³⁸ The principle of co-ordination emphasise on orderly arrangement of group efforts to provide unity of action in the pursuit of common purpose.¹³⁹ There should not be an overlapping of taxing authorities, for instance, central and local government.

2.10.2.9 The Principle of Variety/ Diversity

Another principle of taxation is diversity, this canon requires for the diversification within a tax system. The tax system should have multiplicity of taxes and not depending on only one source of tax.¹⁴⁰ The disadvantage of depending on one source of tax is that, it leads to uncertainty to the Government revenue.¹⁴¹

2.10.2.10. The Principle of Expediency

Last but not least, the principle of expediency needs for no justification of tax system as well as not subject to criticism.¹⁴² This implies that the imposition of tax shall have its base. For instance, income tax is charged basing on the income from various sources such as employment, business and investment.

The principle of expediency emphasise on the democratisation of tax system.¹⁴³ The principle also focuses on increasing the existing tax rates. All in all, these principles should be treated in harmonious to achieve a common objective in the taxation policy.

2.10.3 Taxation Principles vis-à-vis Electronic Commercial Transactions

At this juncture it is crucial to discuss on the relationship that exist between the taxation principles as discussed above and electronic commercial transactions.

¹³⁸ Kulkami M et al. (2001), *Op. Cit.*

¹³⁹ *Ibid.*

¹⁴⁰ Kulkami M et al. (2001), *Op. Cit.*

¹⁴¹ *Ibid.*

¹⁴² Bhatia. H.L. (2002), *Op. Cit.*

¹⁴³ *Ibid.*

2.10.3.1 Neutrality Principle and Electronic Commercial Transactions

It is the cardinal principle that any system of taxation must be neutral. The principle of neutrality requires the tax system to be unbiased on imposing tax to the entities. It is from this point that it can be argued that it very important to maintain the principle of neutrality in the taxation of electronic transactions.¹⁴⁴

Likewise, in tax policy planning for the taxation of the electronic transactions the policy makers should bear in mind the principle of neutrality. The similarity must be made to the taxation of traditional business on the same level with the one doing business under the electronic commercial transactions.¹⁴⁵

2.10.3.2 Effectiveness and Fairness Principles and Electronic Commercial Transactions

Effectiveness and fairness is another principle of taxation. It requires the tax system to be effective by ensuring the proper revenue is collected in the respective period of time. An effective tax system acts against any risk that can lead into the loss of revenue legally or illegally.¹⁴⁶

In the same manner that tax system should be effective and fair in taxation of the traditional commerce should be the same way that it should be to the electronic commercial transactions. However, it has been observed that in most cases electronic commercial transactions has posed challenge on the principle of effectiveness and therefore the concerned authorities has an uphill task to cure the situation.

¹⁴⁴ 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 Global Electronic Commerce" 8 October 1998.

¹⁴⁵ Klaus Vogel (1988), Worldwide vs Source Taxation of Income – A Review and Re-evaluation of Arguments (Part II) 1988, *10 intertax* 310.

¹⁴⁶ Department of the Treasury (1996), Selected Tax Policy Implication of Global Electronic Commerce, for discussion of the Treasury's paper, see James D. Cigler and Susan Stinnett (1997), Treasury seeks Cybertax Answers with Electronic Commerce Discussion Paper, 8 J. Int'l Tax'n 56.

2.10.3.3 Certainty and Simplicity Principles vis-à-vis Electronic Commercial Transactions

Under the principal of certainty and simplicity it is required that a tax system be certain and predictable as well as simple to be understood by the reasonable member of the society.¹⁴⁷ However, in area of e-commerce it is held that, simplicity is particularly difficult to uphold since the commercial transactions carried out often are complicated and complex.¹⁴⁸

This is demanding for legislators to transform the rules for traditional commerce onto e-commerce, especially if the objectives of certainty should be upheld, since the use of simple language in the provisions increased the degree of certainty.¹⁴⁹

2.10.3.4 Efficiency Principle and Electronic Commercial Transactions

Under the efficiency principle a concern is made of the costs perspective of taxation. An efficient system of taxation must have the low compliance level. This means that taxpayers' compliance to pay tax shall be at a reasonable low cost for instance voluntary payment of tax. On the other hand, the tax administration authorities must also lower the cost in the administration of tax.¹⁵⁰

However, considering the sophistication of the electronic transactions it is not easy for the principle of efficiency to be met. This is due to the fact that most of the entities operating under electronic commercial transactions cannot easily being detected. On the other hand, the morale for the voluntary payment of the tax is low generally but also to the electronic commercial transactions participants. This in return will increase the compliance cost and the administrative costs for the administration.

¹⁴⁷Department of the Treasury (1996), Selected Tax Policy Implication of Global Electronic Commerce, for discussion of the Treasury's paper, see James D. Cigler and Susan Stinnett (1997), Treasury seeks Cybertax Answers with Electronic Commerce Discussion Paper, 8 J. Int'l Tax'n 56.

¹⁴⁸Department of the Treasury (1996), *Op. Cit.*

¹⁴⁹*Ibid.*

¹⁵⁰ 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 Global Electronic Commerce" 8 October 1998.

2.10.3.5 Flexibility Principle and Electronic Commercial Transactions

Flexibility as the principle of tax requires the tax system to be very dynamic in order to cope up with any changes in the society.¹⁵¹ The principle of flexibility advocates on the legislative changes on the tax legislations whenever necessary.

However, taking a case of electronic commercial transactions, it can be argued that the tax laws in Tanzania have failed to meet this principle on the taxation of electronic commercial transactions. This is due to the fact that the tax laws have been very stagnant in developing the clear legal rules for the taxation of electronic transactions.

2.11 The Concept of Residence and Source vis-à-vis Taxation of Electronic Commercial Transactions by Companies in Tanzania

The companies in Tanzania being tax persons are charged tax on income basing on the residence or source of income. This means, on the first instance, the company to be charged tax it should qualify to be a resident of Tanzania. However, even if the company does not qualify as the residence still it can be charged tax if part or wholly of its generated income has a source from Tanzania.

Notably, determination of a residence of the company and its sources of income is the legal matter as provided for under sections 66, 67, 68, 69 of the Income Tax Act¹⁵² which provides principles for Residence of persons and Source of income and loss. In specific, a company is considered to be resident if it is incorporated or formed under the laws of Tanzania or its management and control is done in Tanzania.¹⁵³

¹⁵¹OECD, 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 Global Electronic Commerce” 8 October 1998.

¹⁵² The Income Tax Act [Cap 332] R.E 2008.

¹⁵³*Ibid.*

On the issue of the source, the companies are supposed to calculate the income or loss from any employment, business, or investment that has source in the United Republic separately from income or loss from that employment, business or investment that has a foreign source.¹⁵⁴

Therefore, it can be argued that for the taxation of corporate to work, the company must be a resident in Tanzania. However, as it has been revealed above test for residence of a company are in twofold, first, place of incorporation and second, management and control.¹⁵⁵

Critically, most of companies under electronic commercial transactions can use this loophole by incorporating a company outside Tanzania and hence not qualifying for residence under the first tier of incorporation. On the other hand, the companies can as well not establish its management or control in Tanzania but having electronic platforms which can be accessed by Tanzanians through internet connections and hence commercial transactions taking place.

Even if it can be argued that, the company not falling under the residence criteria can fall in the trap of source of income, still there can be challenges. For instance, since most of the electronic commercial transactions are done online and payment done online as well it is difficult for the tax administrators to notice the transactions for the purpose of charging withholding tax as per sections 81 and 82 of the Income Tax Act.¹⁵⁶

¹⁵⁴ The Income Tax Act [Cap 332] R.E 2008, section 67 (1).

¹⁵⁵ *Ibid.*

¹⁵⁶ The Income Tax Act [Cap 332] R.E 2008.

2.12 Conclusion

This chapter has revealed the conceptual framework on the taxation of corporation under the electronic commercial transactions. The chapter aimed at imparting the basic knowledge of the fundamental concepts relevant to the topic. It can be concluded that a good analysis of the law and practice on the taxation of electronic transactions of corporation needs the clear comprehension of the technical and ordinary terms which are basically applied in that particular context.

CHAPTER THREE

LEGAL FRAMEWORK GOVERNING CORPORATE TAXATION IN RELATION TO ELECTRONIC COMMERCIAL TRANSACTIONS

3.0 Introduction

Taxation is creature of law in most of countries, Tanzania not spared. In this case it is very vital to discuss the legal framework relating to the taxation of corporation under the electronic commercial transactions. This chapter therefore aims at pondering on the legal framework governing the taxation of corporation under the electronic commercial transactions. The chapter take a look of the legal framework from the international level, regional level and at last but not least the domestic level.

3.1 International Instruments

Normally, the mode of operation of electronic commercial transactions reveals that the same is not confined to geographical limits as things are done in cyberspace.¹⁵⁷ This tendency has been problematic not only to the specific jurisdiction but also the international community. As the result, nations have been struggling ever since the invasion of internet on the appropriate framework on taxation under the electronic commercial transactions. This part of the study analyse the legal frameworks which are pertinent on the taxation of electronic transactions by corporation at the international level:

3.1.1 United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries, [2011 Version]

United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries is also one of the legal frameworks pertinent to the electronic transactions taxation done by companies. However, this instrument is non-binding as

¹⁵⁷ Department of the Treasury, Office of Tax Policy (1996), Selected Tax Policy Implications of Global Electronic Commerce.

it only provides guidance to countries in designing double tax treaties. This part of the study expounds the fundamental and pertinent provisions of the Convention and where necessary comparison with the OECD Model Convention is availed. Article 1 of the Convention shows the persons who are covered under it and includes residents of one or both of the Contracting States.¹⁵⁸ Unlike the OECD Model Convention, this Convention does not include partnerships as person.¹⁵⁹ To this effect, the member States are given a room to treat the Partnerships in accordance to their municipal laws.¹⁶⁰

Article 2 of Convention covers the meaning of the terms that have been applicable in the entire Convention.¹⁶¹ The inclusion of this Article in the Convention can be a need for clarity and the avoidance of doubts on its enforceability.¹⁶² On the subject matter the Convention is applicable to the amounts derived from the income as well as capital regardless of the administering authority in a particular State.¹⁶³

On other hand, Article 3 of the Convention reinforces Article 2 of the same Convention by supplementing it by giving the meaning to some terms of general nature.¹⁶⁴ This provision is very crucial for the better comprehension and applicability of the Convention.¹⁶⁵ For instance, the term “person” under Article 3 Convention includes individual persons, corporate bodies and other body of persons. However, definition under this provision has been considered to be narrow and hence a concern has been raised for it to be given a very broad interpretation for the inclusion of other entities such as partnerships.

¹⁵⁸ United Nations (2011), United Nations (UN) Model Double Taxation Convention between Developed and Developing Countries, 2011 Version, United Nations, New York, Article 1.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ United Nations (2011), *Op. Cit.*

¹⁶² *Ibid.*

¹⁶³ United Nations (2011), *Op. Cit.*

¹⁶⁴ United Nations (2011), *Op. Cit.* Commentary.

¹⁶⁵ *Ibid.*

On the issue of permanent establishment, Article 5 of the Convention has elaborated the same. The importance of determining permanent establishment cannot in any circumstances be ignored. This is due to the fact that determination of permanent establishment is the paramount factor to be considered when determining whether an enterprise qualify for taxation or not. To make it clear an entity cannot be taxed if permanent establishment have not been established. For instance, for one State to tax the profits derived from an enterprise of another State permanent establishment must be established.¹⁶⁶ This being the case permanent establishment have part and parcel of the international tax instruments. The Convention has considered the concept of permanent establishment in its own way.

The Convention concept of permanent establishment under the Convention is having a wider scope as it commences from the preparation up to the time when operation starts perpetually.¹⁶⁷ However, an exception is give on setting up the business, this means that the period spent by the enterprise to set up its business premises should not be considered to form permanent establishment.¹⁶⁸

Likewise, when the business activity of an entity comes to an end the permanent establishment will also cease.¹⁶⁹ Basing on perspective under the UN Model Convention it can fairly been argued that the same has paid little consideration for the electronic commercial transactions or transactions performed by the company. This leaves a number of questions on the treatment of the electronic commercial transactions conducted by the companies.

3.1.2 OECD Model Tax Convention on Income and Capital, [2017 Version]

The OECD Model Tax Convention on Income and Capital¹⁷⁰ is one of the key legal frameworks providing for the guidance on how to tax corporations under the electronic commercial transactions sphere. The Convention¹⁷¹ under Article 1 shows

¹⁶⁶United Nations (2011), *Op. Cit.* Commentary.

¹⁶⁷*Ibid.*

¹⁶⁸*Ibid.*

¹⁶⁹*Ibid.*

¹⁷⁰ OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing.

¹⁷¹*Ibid.*

the persons covered therein. This Convention is applicable to the residents of the State Parties regardless of their national identity. However, terminology ‘resident’ is given the meaning under Article 4 of Convention whereas the municipal laws will be applicable in determining whether a person is a resident.

Article 2 of the Convention defines the terminologies applicable in the entire Convention.¹⁷² The Article therefore deals with scope and the applicability of the Convention. The Convention as per the hitherto mentioned Article covers both taxes derived from income as well as capital.¹⁷³ Notably, use of the word ‘direct taxes’ has been avoided for being too imprecise.¹⁷⁴

On the other hand, Article 3 of the Convention gives the meaning of the term person in a wider sense to include individuals, companies and other bodies of persons. It also follows that persons includes even foundations and partnerships.¹⁷⁵ The term company is also defined to mean in the first place anybody corporate.¹⁷⁶ However, the term also include taxable unit deemed as body as per the municipal laws.¹⁷⁷ Article 5 of the Convention construes permanent establishment a fixed place of business.¹⁷⁸ For entity to be considered having a permanent establishment it has to fulfil some conditions under the Convention. First, it must a place whereby a business is conducted. Second, the place where business is conducted must be fixed. Last but not least business must be carried out in that designated place.¹⁷⁹

The term place of business under the Convention includes both premises and facilities in which business is operated.¹⁸⁰ In considering the place of business it does not matter if the same is owned or rented by an entity.¹⁸¹

Nevertheless, there has been a challenge on whether permanent establishment can be constituted under electronic commercial transactions for them to be taxed under the

¹⁷² OECD (2017), *Op. Cit.*

¹⁷³ *Ibid.*

¹⁷⁴ OECD (2017), *Op. Cit.*

¹⁷⁵ *Ibid.*

¹⁷⁶ OECD (2017), *Op. Cit.*

¹⁷⁷ *Ibid.*

¹⁷⁸ OECD (2017), *Op. Cit.*

¹⁷⁹ *Ibid.*

¹⁸⁰ OECD (2017), *Op. Cit.* Article 5

¹⁸¹ OECD (2017), *Op. Cit.* Commentary to Article 5

auspice of hitherto provision. The gist of the challenges on the taxation of electronic commercial transactions for the want of permanent establishment as stipulated under the Convention can well be pictured basing on the following issues:

Under the electronic commercial transactions two things are involved, first, the equipment and second the data and software. This means that if someone considers the location of the equipment as the permanent establishment still it can lead to doubts as the same instruments cannot as well operate without the software being stored in the equipment operating under the electronic commercial transactions.¹⁸²

Moreover, it remains important to distinguish between a server and the website. This is due the fact that in some cases two operators might be involved. For instance, one operator is operating a server and another is operating the website. This is the common case in most of the enterprises in Tanzania engaging in electronic commercial transactions.¹⁸³ Therefore, this poses challenge on the aspect of taxation of electronic commercial transactions since it can be difficult to determine the place of business.

In other cases, it is very possible under electronic commercial transactions for a company to conduct its business using a website which it does not host. In this arrangement the website is hosted by the Internet Service Provider (ISP) and everything related to the business are stored in the ISP server.¹⁸⁴

In this perspective it is as well difficult for one to establish the permanent establishment of the company due to the fact that the ownership criteria under the Convention is not met since the server is not at the disposal of the company operating the business and hence it can result to the failure of taxing the company conducting electronic transactions.¹⁸⁵

¹⁸²OECD (2017), *Op. Cit.* Commentary to Article 5

¹⁸³*Ibid.*

¹⁸⁴ OECD (2017), *Op. Cit.* Commentary.

¹⁸⁵*Ibid.*

Another challenge that comes on board is failure of the website to have a physical presence. It has hitherto been noted that electronic transactions are conducted in the cyberspace rather than the physical world. This means it is difficult to establish permanent establishment which base on the physical presence of the business hence the electronic transactions might be out of the scope.¹⁸⁶

Another issue is that, when considering the mode of operation under the electronic commercial transactions it is challenging to establish whether the business is fixed or not as required under the Convention.¹⁸⁷ This needs the thinking out of the box in the sense that currently there have been an advancement in which a server should cannot necessarily being physical. The invention of cloud server add more challenge in the sense that the criteria for an enterprise being fixed cannot be met and hence failure to taxa electronic commercial transactions. However, it should be noted that under the Convention it is not necessary for the company have the employees in the business location for it to be the permanent establishment. Therefore, even if no any employee is at the place of business if the criteria set out in the Convention are met the same can qualify to be a permanent establishment.¹⁸⁸

This rule was established in order to cover the electronic commercial transactions made by the companies.¹⁸⁹ Yet, it is difficult for the same to work as the challenge have been posed above with the invention of cloud server it becomes difficult for the electronic transactions to meet the criteria for permanent establishment for the same to be taxed.

In addition, a company under the electronic commercial transactions cannot be considered to have a permanent establishment when it is undertaking the preliminary activities for the preparation of the main work to be done.¹⁹⁰ However, in determining whether the activities undertaken by the company under electronic

¹⁸⁶ OECD (2017), Op. Cit. Commentary

¹⁸⁷ *Ibid.*

¹⁸⁸ OECD (2017), Op. Cit. Commentary

¹⁸⁹ OECD (2017), Op. Cit. Commentary

¹⁹⁰ *Ibid.*

commercial transactions are preliminary one should be very careful and the same must base on case to case.¹⁹¹

In exception, in case the preliminary activities of the company under the electronic commercial transactions are significant depending on the nature of the company, permanent establishment criteria will be met as per the Convention.¹⁹² For instance, in case a company is the ISP providing hosting to a server of another entity cannot be considered as a preliminary activity rather significant and can be said to qualify for the criteria of permanent establishment.¹⁹³

The last but not least issue, at what time an ISP said to form a permanent establishment under Convention. It should be remembered that an ISP only host the website of some companies engaging in electronic commercial transactions and not in itself conduct the electronic commercial transactions.¹⁹⁴ The holding of an ISP liable for electronic commercial transactions conducted through the website it hosts is contrary to the principles of taxation as the burden has to be borne by the one who has gained the income out of the business or activity.

Also, an ISP cannot be considered as an agent of the website owner as such for it to be liable. This is simply due to the fact that agency is based on contract and rooted in the agreement and thus it will be unfair compelling an ISP to be the agent of the Website owner for the purposes of taxation.¹⁹⁵

3.2 Regional Instruments

At the regional level many efforts are in place to harmonise the tax regimes. This part of the study deliberates the regional legal framework on the taxation of corporation under the electronic commercial transactions. However, much attention has been paid to the East African legal framework as Tanzania is one of the Partner States.

¹⁹¹ OECD (2017), *Op. Cit.* Commentary

¹⁹² OECD (2017), *Op. Cit.* Commentary

¹⁹³ OECD (2017), *Op. Cit.* Commentary

¹⁹⁴ *Ibid.*

¹⁹⁵ OECD (2017), *Op. Cit.* Commentary

3.2.1 Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.

This Agreement is sub-regional tax treaty among the States members to the EAC. An agreement aims among other things on the elimination of double or multiple taxation and combat tax evasion within the East African Community region. The rationale behind the discussion of this Agreement is that, the same focus on the area of income taxation that inter alia covers corporate taxation which is the topic under this study. The following are the provisions in the Agreement which are pertinent to the problem under this study:

At the onset, the Agreement under Article 1 provides for the scope of applicability of the Agreement. Like other international instruments this Agreement is applicable to person qualifying being the residents of partners States to EAC. This provision of the Agreement shows that the same have not departed much from the other international tax treaties which have considered in their personal scope residence to be the criteria.

Article 2¹⁹⁶ is to the effect that, the Agreement covers subject matter scope. Unlike the two discussed Tax treaties discussed above which covered income and capital tax, this Agreement is narrow on the subject matter as it only considers income tax. It has followed the trend of domestic income tax legislations as it covers the main scope of income tax which includes income from business, income from employment as well as income from investment.¹⁹⁷

Article 4¹⁹⁸ gives the meaning as to who qualify to be a resident of a Contracting State. This provision has left the determination of residence to the domestic laws of the Contracting States. However, the same has set the benchmark for someone to

¹⁹⁶ Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Article 2 (2)

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

become a residence and includes place of management, domicile, residence, incorporation place etc. which can result to a person being taxed in the Contracting Stated under the income tax.¹⁹⁹

The Agreement has also given the rule on double or multiple residences to individuals of the Contracting States. There are a number of rules which have been developed to ensure proper treatment of the double or multiple residences as indicated below:²⁰⁰

The first criterion introduced by Agreement to resolve double or multiple residences is permanent home. This means that in case of two or more residence by an individual within the Partner States the Country in which he or she has permanently established the home should be considered to be his or residence for the purpose of taxation under the Agreement.²⁰¹ However, the rule above does not well address the problem of double or multiple residences as it might happen that a person is having more than one permanent home. In order to resolve this riddle the Agreement has imposed a new rule in which a person with double or more permanent home within the Partner States the State which he or she has a vital interests shall be considered to be his or her residence.²⁰²

Likewise, the rule above does not clear the doubts on the establishment of residence in case of double or multiple residences under the Agreement. This is due to the fact that in some cases it cannot be easy to define where the person is having the vital interests among the places he or she is having double or multiple residence. Therefore, a new rule has been established under the Agreement to resolve this challenge. The rule to resolve this situation base of the habitual residence. This means that in case it is not easy to find the vital interest of a person among the permanent homes he or she has or in case of failure to define his or her permanent

¹⁹⁹ Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Article 4 (1)

²⁰⁰ *Ibid*, Article 4 (2)

²⁰¹ *Ibid*, Article 4 (2) (a)

²⁰² *Ibid*.

home a place where he or she is habitually residing shall be taken into consideration as his or her residence for the purpose of income taxation.²⁰³

However, it can also happen that the person habitual residence is not clear under the above set rule. This can as well cause difficult in the determination of the residence of an individual. This means that a new rule is important in resolving this challenge. Therefore, the Agreement set the criteria of nationality in case the above criteria of determining his residence by looking on habitual abode fails. It implies that the State to which an individual is a national should be considered to be his or residence for the purposed of income taxation under the Agreement.²⁰⁴

Nevertheless, it might also happen that all the criteria set in the Agreement fail to lead in the determination of an individual residence. This situation has been foreseen by an Agreement which came up with the rule to be applicable in case of such situation under it. This last but not least rule base of the powers vested to the competent authority. An Agreement vests the power for the competent authority to determine the residence of an individual in case all the rules established has failed. However, the competent authority while making a determination of the residence of an individual must consider the mutual agreement.²⁰⁵

In accordance with Article 7 of the Agreement the authority to tax the profits is vested to the Partner State. However, the provision allows in some circumstances for the State different from the one with authority to tax profits to do so. This scenario might occur when the person undertakes business in other States as well. However, for such State to impose the income tax it must ensure that the person is having a permanent establishment in that State.²⁰⁶ In this case the tax on income has to be attributed basing on the permanent establishment.²⁰⁷

²⁰³Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Article 4 (2) (b).

²⁰⁴*Ibid*, Article 4 (2) (c).

²⁰⁵*Ibid*, Article 4 (2) (d).

²⁰⁶*Ibid*, Article 7 (1).

²⁰⁷*Ibid*, Article 7 (2).

This principle under the Agreement is consonance with the hitherto discussed Convention principles which also requires for the enterprise to have the permanent establishment for it to be levied tax. However, it has been argued that this principle of taxation is inconsistency in a number of ways to the taxation of electronic transactions undertaken by the companies or enterprises.

Double taxation has also been well addressed under the Agreement. This has been done specifically under Article 24²⁰⁸ which requires in case of taxation by two or more State on the same base deduction to be made. Therefore, provision establishes deduction method as one of the method to eliminate double taxation. In any case deduction under this provision cannot go beyond the computed income tax prior to the deduction being made.²⁰⁹

Moreover, the Agreement in a bid to eliminate double taxation it prohibits the Partner States to increase the tax burden. This implies that, the amount of tax imposed in the State which a person is conducting a trade or business should be a benchmark and whenever it happens he or she trade in other States on the same matter the tax burden should not be higher than of his or her State.²¹⁰

3.3 Domestic Legal Framework for Taxation of Corporations under Electronic commercial transactions

At the domestic level, Tanzania has been striving for the proper taxation of electronic commercial transactions. The measures have included but not limited to some legal reforms. It has to be born in mind that taxation in any country must be imbedded on the constitutional principle of the rule of law. Specifically, for the taxes to be charged there must be a legislation made by the National assembly or any legislative body. Also, the principles of taxation must be considered when taxes are imposed in the country such as neutrality, fairness, effectiveness, efficiency etc. It needless to say that, the purposes over which any taxes are imposed must as well be

²⁰⁸ Agreement between the Governments of the Republics of Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Article 24, Proviso.

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*, Article 25(1).

legitimate and one must be afforded to challenge tax decisions in case aggrieved in the competent adjudication bodies such as the Courts of law or Tribunals specially established.²¹¹

This being a case it is of paramount important at this stage of the study to examine the legal framework at the domestic level to scrutiny on how the same has been pertinent in the taxation of corporations under the electronic commercial transactions.

3.3.1 The Constitution of the United Republic of Tanzania, 1977²¹²

Article 138 of the Constitution is said to be the bedrock of taxation in Tanzania. This particular provision of the Constitution prohibits the imposition of tax by any other body save for the Parliament. In explicit, the provision requires tax imposition to be a monopoly of the parliament that shall enact the substantive and the procedural law on taxation.

However, above Article of the Constitution is in tandem with the powers vested to the House of Representative in case of Zanzibar.²¹³ This means that the House of Representatives of Zanzibar is also having a mandate to enact tax legislation that are not falling under the union matter.²¹⁴

Also, it is important to consider Article 4 (3) of the Constitution together with item 10 in the First Schedule to the Constitution. These provisions when read together can be construed to mean that the powers given to the parliament under Article 138 of the Constitution are having some restrictions. One of the restrictions under these provisions is that the parliament can only impose taxes on matters which fall under union such as domestic taxes and customs taxes.

²¹¹Luoga F.D.A.M (2002), Taxation in the Advent of Democratisation and Transition to Free Market Economy in Tanzania and Concerns on the Rule of Law and Human Rights, Law, Social Justice & Global Development (An Electronic Law Journal).

²¹² [CAP 2 RE 2002].

²¹³ *Ibid.*

²¹⁴ *Ibid.*

On the other hand, the general legislative powers are vested to the Parliament under Article 64 (1) of the very Constitution. In specific, Article 64 (1) of the Constitution tries to avoid the doubt by making the laws enacted by the Parliament but ought to be in the legislative jurisdiction of the House of Representatives of Zanzibar null and void.

Despite the fact that the Constitution is not comprehensive on the issues of taxation its discussion is worthwhile. This is due to the fact that in our legal system the Constitution is the fundamental or mother law of the land and hence all other laws of land must comply with the same. In addition, the Constitution under Article 138 has substantively provided for the governing principle for taxation.

3.3.2 The Income Tax Act [CAP 332 RE 2008]²¹⁵

The Income Tax Act²¹⁶ to be referred herein as an Act is the fundamental law concerning taxes imposed on income in Tanzania. Since corporate taxation base on the income tax it is relevant to analyse the Income Tax Act²¹⁷ in order to examine how it addresses the taxation of corporations under the electronic commercial transactions.

At the onset, the term ‘corporation’ is defined under Section 3 the Act.²¹⁸ The provision gives a wider concept of the term corporation by including both incorporated and unincorporated business associations. However, the provision excludes partnership as one of the corporations. A close look at this provision shows how the concept of corporation differs from the commercial law field and the tax law field.

The Act²¹⁹ under Section 3 gives a concept of business in tax perspective. The definition of business as given under this provision is very wide and covers profession, trade, manufacturing and vocation. It is well recognised business in

²¹⁵Revised Edition 2008.

²¹⁶*Ibid.*

²¹⁷Revised Edition 2008.

²¹⁸*Ibid.*

²¹⁹

present context and the future context. However, the provision has excluded any employment to form part of business.

Section 4 of the Act²²⁰ imposes income tax liability to persons. First, under the provision any person who is having a total income is liable to pay income tax. However, the total income as per this provision is calculated basing on the year of income.²²¹

Second, an income tax is as well imposed to any person with permanent establishment within Tanzania. This means that even if a person is not a Tanzanian but he or she has established himself or herself in Tanzania the liability to pay income tax is imposed to him or her on the repatriated income. Likewise, repatriated income as per this provision is calculated basing on the year of income.²²²

Last but not least, an income tax is imposed to any person with final withholding payment.²²³ This means that a person qualifies to pay income tax under the Act²²⁴ if he or she receives withholding payment. However, the final withholding payment must be made within the year of income.²²⁵

Notably, for the purpose of calculating a total income of a person in the respective year of income consideration must be given to all income derived by such as person from his business, investment and employment.²²⁶ However, the Act²²⁷ allows some deductions from the total income. In case of business income consideration is made to any gain or profit resulting from such business.²²⁸ However, the Act requires as well some inclusions being made to the income from business. The inclusions include: fees resulting from services offered by the person,²²⁹ stock,²³⁰ any gain from the disposition of the asset or liabilities relating to business etc.²³¹

²²⁰ Revised Edition 2008.

²²¹ Revised Edition 2008, Section 4(1) (a).

²²² Revised Edition 2008, Section 4(1) (b).

²²³ *Ibid*, Section 4(1) (c).

²²⁴ Revised Edition 2008.

²²⁵ *Ibid*.

²²⁶ Revised Edition 2008.

²²⁷ *Ibid*, section 61.

²²⁸ *Ibid*, section 8(1).

²²⁹ *Ibid*, Section 8 (2) (a).

The Act under Section 66 (1) ²³² sets the criteria for an individual to become a resident in Tanzania. The criteria set under the provision are: first, permanent home, second, presence in Tanzania and third, employment by the Government in case a person is working abroad such as Ambassadors and Consular. The residence of partnership under the Act depends on the residence of the partners. It should be remembered that the Income Tax Act does not recognise a Partnership as corporation and therefore it lacks legal personality for being not being a corporate body. Therefore, in case one or more of the partners is a resident of Tanzania in the respective year of income, such Partnership shall be considered to be a resident Partnership in Tanzania as per the Act.²³³

On the other hand, the basis of residence for the Trust is quite different from that of Partnership. This difference might be justified by the fact that the Income Tax Act has recognised Trust in its definition of corporation. Therefore, a Trust is said to be a resident at the moment it is established in Tanzania.²³⁴

In addition to the above criteria, a Trust can also be recognised to be a resident in case one or more of its trustees is a resident in Tanzania.²³⁵ Moreover, the Trust can as well qualify to be a resident for the purpose of income taxation in case one of the decision makers is a resident of Tanzania.²³⁶ The residence of corporation for the purpose of taxation is governed by Section 66 (4) of the Act.²³⁷ In case of corporation the first criteria of formation or incorporation under Tanzanian laws. According to the mentioned provision the concern under this criterion is under which law was the corporation formed for it to become a resident. Therefore, in case the corporation was formed or incorporates using the laws of Tanzania, it is said to be a resident in Tanzania for the purpose of income taxation.²³⁸

²³⁰ Revised Edition 2008, Section 8 (2) (b).

²³¹ *Ibid*, Section 8 (2) (c).

²³² Revised Edition 2008.

²³³ *Ibid*, Section 66 (2).

²³⁴ Revised Edition 2008, Section 66 (3) (a).

²³⁵ *Ibid*, Section 66 (3) (b).

²³⁶ Revised Edition 2008, Section 66 (3) (c).

²³⁷ *Ibid*.

²³⁸ Revised Edition 2008, Section 66 (4) (a).

Another criterion that governs the residence of the corporation under the Income Tax Act is control and management.²³⁹ This criteria disregard whether the corporation is formed or incorporated under Tanzanian laws. The criterion focuses on the handling of the business of the corporations. It pays attention on where the activities of the corporation are managed and controlled. This means in case the activities of the corporation are undertaken in Tanzania such corporation qualify to be a resident for the purpose of income taxation.²⁴⁰

3.3.3 The Electronic Transactions Act, 2015

The Electronic Transactions Act²⁴¹ is the most pertinent and the current law in as far as electronic transactions *inter alia* being electronic commercial transactions is concerned in Tanzania. The law was enacted among other things to ensure that electronic transactions made in Tanzania are given due legal acknowledgment.²⁴²

It should be remembered that, it is just some few years back whereby one could not tender electronic evidence in the Court for admissibility. It is therefore health to comment that The Electronic Transactions Act came to cure some mischiefs that existed with regard to electronic transactions. The law also act as the catalyst to the electronic commercial transactions in Tanzania. The following are the provisions within the law that are relevant to the problem under this research;-

At the onset, electronic transactions under the Act have been construed as the transactions whether commercial or non-commercial which are made electronically.

²⁴³Under this definition it is crystal clear that all the commercial transactions made under the electronic commercial transactions and now recognised and protected under the Electronic Transactions Act.

²³⁹Revised Edition 2008, Section 66 (4) (b).

²⁴⁰*Ibid*, Section 66 (4) (b).

²⁴¹Act No. 6 of 2015.

²⁴²Act No. 6 of 2015, Long title.

²⁴³*Op. Cit.* Section 3.

The recognition of the electronic transactions is made clear under Section 4 of the very Act²⁴⁴ to the effect that electronic transactions must be given equal weight by the law as the traditional or conventional transactions. The Act under section 5(1)²⁴⁵ requires the substitution being made from the electronic form to writing in case there is a legal requirement for writing.

Moreover, section 9 of the Act²⁴⁶ emphasises on the electronic record keeping as it allows any information or document being kept electronically if there is such a legal obligation. However, for the same provision to have effect some conditions set out under Section 9 (1) (c) of the Act²⁴⁷ must be met.

The Act²⁴⁸ also makes the recognition of electronic (e) government under Section 13. The provision allows the government institutions to handle information or documents electronically.²⁴⁹ The Act further emphasizes that the technical statutory requirements such as writing or signature requirements shall not be the bar for the application of electronic format.²⁵⁰ The Act also allows service of the documents electronically under section 14(1).²⁵¹

Remarkably, section 18 of the Act deals with the admissibility of electronic evidence. It should be noted that admissibility of electronic evidence in Tanzania jurisdiction has been a legal debate over a long period of time. Consequently, the Act²⁵² came deliberately to cure *inter alia*, the mischiefs that were caused by courts failure to admit electronic evidence. Therefore, as per the Act evidence can no longer be inadmissible only on the ground that it is presented electronically.²⁵³ Nevertheless, the Act²⁵⁴ set the criteria to be considered before the court admits evidence presented electronically. The Act emphasizes on reliability, integrity and

²⁴⁴ *Op. Cit.* Section 3.

²⁴⁵ Act No. 6 of 2015.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ Act No. 6 of 2015, Section 13 (1).

²⁵⁰ *Ibid.*, Section 13 (2).

²⁵¹ Act No. 6 of 2015.

²⁵² Act No. 6 of 2015.

²⁵³ *Ibid.*, Section 18 (1).

²⁵⁴ Act No. 6 of 2015, Section 18 (2).

originality of the data. Therefore, for the electronic evidence to be admissible the court has to consider whether the same can be relied upon, whether the same is having enough integrity and whether it is the original document or information in order to get rid with the evidential rule against hearsay.²⁵⁵

On its pinnacle, the Act²⁵⁶ has managed to make the recognition of electronic contracts. It is therefore without a doubt under the Act²⁵⁷ that parties to the contract are given an avenue for the formation of contract in electronic form.²⁵⁸ This means that an electronically made contract is having the same validity and enforceability as the written or oral contracts.²⁵⁹

The Act²⁶⁰ has gone an extra mile in a bid to protect electronic transactions consumers. This is due to the fact that the same has imposed an obligation to the electronic transactions merchants or suppliers to avail the necessary information to their buyers or consumers in relation to what they are selling or supplying online.²⁶¹

3.3.4 The Tax Administration Act, 2015

One of the important legislation relevant to the topic under this study is the Tax Administration Act.²⁶² It is aimed at easing tax administration by consolidating the tax laws which were governing tax administration.²⁶³ One of the peculiar features of the Act is that, it applies both in Tanzania Mainland and Zanzibar.²⁶⁴

At the outset, Section 3 of the Act²⁶⁵ defines the term tax for the purpose of administration as tax, charges, fees, tolls, rates, levies, duties, penalty and any interest imposed under the tax law. This definition very inclusive as it cut across various aspects of taxation. The same section defines withholding tax as income tax

²⁵⁵ Act No. 6 of 2015, Section 18 (2) (a-d).

²⁵⁶ *Ibid.*

²⁵⁷ Act No. 6 of 2015, Section 21(1).

²⁵⁸ *Ibid.*

²⁵⁹ Act No. 6 of 2015, Section 21(2).

²⁶⁰ *Ibid.*, Section 28(1).

²⁶¹ *Ibid.*, Section 28(1) (a-f).

²⁶² [Act No. 10 of 2015].

²⁶³ *Ibid.*, Long Title.

²⁶⁴ [Act No. 10 of 2015], Section 2.

²⁶⁵ *Ibid.*

which is required to be withheld by a withholding agent from a payment under the Income Tax Act.²⁶⁶

Section 15 of the Act recognises Tanzania Revenue Authority as the organ responsible for the administration of tax laws in Tanzania.²⁶⁷ The Act indicates the Commissioner General as the overall administrator of tax laws, however, with the possibilities of delegation as per section 16.²⁶⁸

Section 21 of the Act requires all the information obtained in the course of employment by tax administrators to be handled with confidentiality. However, the law provides for the flexibility for disclosure where the circumstances so allow.²⁶⁹

Section 22 of the Act requires every taxpayer to acquire the Taxpayer Identification Number (TIN). The law requires TIN to be applied for within fifteen days from the commencement of business by an individual or an entity.²⁷⁰

Section 26 of the Act, requires the taxpayer to be furnished with information regarding his or her position in accordance to the provision of the respective tax laws. The taxpayer is also vested with the right to representation in tax matters under section 27 of the Act.²⁷¹

Section 34 of the Act is one of the important provisions as it allows the Commissioner General to establish an electronic document system. This system allows the furnishing and filing of the documents electronically. This provision is expected to reduce congestion in the TRA offices as one can submit the relevant documents while at the office or home. Also, it can at least reduce the challenges considering the growth of electronic commercial transactions in which physical documents are fading out.

The law under section 35 place the duty on the taxpayer to maintain the tax records either in physical or electronic form.²⁷² The records are required to be kept in accordance with the general accepted principles of accounting or as per the requirement of the respective tax law.

²⁶⁶ [Act No. 10 of 2015], Section 3.

²⁶⁷ *Ibid.*

²⁶⁸ [Act No. 10 of 2015].

²⁶⁹ [Act No. 10 of 2015], section 21 (2).

²⁷⁰ *Ibid.*, Section 22 (1).

²⁷¹ *Ibid.*

²⁷² [Act No. 10 of 2015].

Moreover, section 36 of the Act²⁷³ emphasises on the use of electronic fiscal device. The law is clear that a person who renders any service or sell goods shall issue electronic fiscal receipt using the electronic fiscal device. This applies also to a person who receives payment in respect of the goods sold or service rendered.²⁷⁴ Section 37 (2) of the Act²⁷⁵ requires for the entities to file tax returns. The return to be filed shall be complete and accurate as per the requirement of the law. The manager and the public accountant who is a practitioner shall make a declaration to show that the return filed is complete and accurate. In addition, the Commissioner General is vested with power to investigate and audit taxpayers under section 45 (1) of the Act.²⁷⁶

The taxpayer is allowed under section 46(1) of the Act to make self-assessment. This is done through filing of return. However, in case a person fails to file return for self-assessment, the Commissioner General is allowed by the law to make jeopardy assessment in accordance with section 47 of the Act.²⁷⁷ Moreover, the Commissioner General is vested with the power to make adjusted assessment under section 48 of the Act in order to ensure that the correct amount of tax is assessed.²⁷⁸

3.3.5 The Tanzania Revenue Authority Act [CAP 399 RE 2006]

At this stage, it is paramount important to consider the institution governing taxation in Tanzania and its legal framework. The Tanzania Revenue Authority Act²⁷⁹ to be referred herein as the Act was enacted with motive to establish Tanzania Revenue Authority (TRA).

TRA is the chief body in Tanzania that is vested with the power to administer tax. Under its mandate it can cause the assessment, collection and accounting to the central government on the revenue collected.²⁸⁰ It is under the Act²⁸¹ whereby the

²⁷³[Act No. 10 of 2015].

²⁷⁴*Ibid.* Section 36 (1).

²⁷⁵ [Act No. 10 of 2015].

²⁷⁶*Ibid.*

²⁷⁷ [Act No. 10 of 2015].

²⁷⁸*Ibid.*, Section 48 (1).

²⁷⁹ [CAP 399 RE 2006].

²⁸⁰*Ibid.*, Long Title of the Act.

²⁸¹[CAP 399 RE 2006].

institutional framework on taxation in Tanzania is grounded. The following are the provisions within the Act which are pertinent to this research;-

Section 4(1) of the Act establishes TRA its Departments as well as the Governing Board. The functions of TRA are stipulated under section 5 (1) ²⁸² which as have been early indicated are: assessing, collecting and accounting for the revenue. In addition, TRA also plays an advisory role as it is also mandated to advise the Minister of Finance and other government officials on matters that are affecting fiscal policies. ²⁸³

TRA is also vested with some powers under the Act which are enshrined under section 5 (2).²⁸⁴ One of the powers vested in TRA under the provision is to initiate legislative reforms on tax laws. This requires TRA to conduct different studies relating to revenue legislations and come up with the better way to improve the legal framework.²⁸⁵ In addition, to this TRA also conduct revenue forecasting for a particular financial year and has to set the target for the collection of revenue.²⁸⁶

In its organisation structure apex there is a Board which is established under section 10 (1).²⁸⁷ The Board comprises of both the appointed members as well as the *ex-officio* members. The Board is the driving engine of the TRA and it is the one that come up with the strategic plans and it is the overall overseer of the activities conducted by the TRA.²⁸⁸

Also, as the matter of institutional arrangement below the Board there Commissioner General of the Authority. The Commissioner General is an appointee of the President, however, upon him consulting the Minister concerned with issues of finance.²⁸⁹ The commissioner general oversees the day to day business of the TRA.

²⁸²[CAP 399 RE 2006].

²⁸³*Ibid*, Paragraphs (a-e).

²⁸⁴*Ibid*.

²⁸⁵ [CAP 399 RE 2006]

²⁸⁶*Ibid*, Paragraphs (a-g)

²⁸⁷ [CAP 399 RE 2006]

²⁸⁸ [CAP 399 RE 2006], Section 10 (2).

²⁸⁹*Ibid*, Section 16 (1).

However, in performing his functions the Commissioner General has to give consideration to the general and specific directions given to him by the Board.²⁹⁰

The Commissioner General is also assisted by the Deputy Commissioner General. The Deputy Commissioner General is as well a presidential appointee subject to the recommendation of the Minister responsible for finance.²⁹¹ General speaking the Deputy Commissioner General assist the Commissioner General in undertaking the day to day business of the TRA.²⁹² Therefore, Deputy Commissioner Generally works under the instructions of the Commissioner General as well as the Governing Board.²⁹³

3.4 Conclusion

This chapter has discussed the legal framework relating to the problem undertaken by the study. It has been depicted that the legal bases for the taxation of entities companies inclusive are residence and permanent establishment. However, an analysis from some of the legal frameworks have exposed that there are still challenges mounting when it comes on the taxation of the corporations under the electronic commercial transactions. However, this discussion will have much consideration in subsequent chapter that considers findings and data analysis.

²⁹⁰ [CAP 399 RE 2006], Section 16 (2).

²⁹¹ *Ibid*, Section 17 (1).

²⁹² [CAP 399 RE 2006], Section 17 (1) (a).

²⁹³ *Ibid*, Section 17 (1) (b) and (c).

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND DISCUSSION OF RESEARCH FINDINGS

4.1 Introduction

The chapter presents the research findings and data analysis. It is a very crucial chapter of the study as it responds to questions posed by this research in the general introduction. Furthermore, this chapter is the litmus test of the objectives of the study as it reveals on whether the same have been met or not and the magnitude thereof.

4.2 Research Findings

The findings of this study revolve on the population selected during the field research as well as the secondary data collected via library research both physical and virtual. The population involved five (5) groups of respondent who were entrepreneurs, corporate legal practitioners, academicians, company directors and TRA Officials.

In the collection of pertinent data from the aforementioned population the study engaged interview and questionnaires which were supplied to the respondents. In adding value to the findings secondary data have been used to supplement the primary data. Therefore, secondary data were collected via library research (physical and virtual) in which various information concerning the problem have been obtained to supplement the primary data.

It is worthwhile to note that the findings of this study are presented thematically basing on the questions raised in the general introduction. In addition to this, the analysis of data is done qualitatively whereby in-depth explanations are offered in support of the research findings. The rationale behind the use of qualitative data analysis method is the nature of the study itself as it did not involve quantifications.

The following findings have been revealed by this study in as far as the problem under the study is concerned:

4.2.1 Legal Requirements for Taxation vis-à-vis Electronic Commercial Transactions by Corporations in Tanzania

On the question as to whether the activities undertaken by the companies via the electronic transactions satisfy legal requirements for being taxed in Tanzania, this study has found out in affirmative that the same satisfy the legal requirement for being taxed. Most of the respondents to whom this concern was issued were positive on the activities undertaken by the companies via the electronic transactions satisfying the legal requirements for being taxed. Among the respondents who responded to such question 21 of them which is about 60% of the respondents strongly agree while 10 respondents which is equal to 28.6% agree on the same. However, 4 respondents which amount to 11.4% of the total respondents were not sure as to whether the electronic transactions undertaken by the companies satisfy the legal requirements for taxation or not. Therefore, the study on this issue concludes that the activities undertaken by the companies via the electronic transactions satisfy legal requirements for being taxed in Tanzania as most of the respondents about 88.6% subscribed to the same.

One of the major reasons that were given by most of the respondents in their subscription was that, the activities undertaken by the companies under the electronic commercial transactions are income generating and thus must be taxed. Taking a close look to section 4 (1) of the Income Tax Act²⁹⁴ it is observed that tax on income is imposed on any person (the companies inclusive) who has *inter alia* the total income in respective year of income. Therefore, reasonably it can include income generated by the companies via the electronic commercial transactions as they meet the criteria for being charged tax. In addition, Section 8 of the same

²⁹⁴ [CAP 332 RE 2008].

Act²⁹⁵ makes it clear on what is the income from the business as well as the inclusions and exclusions on the same.

To be precise, Income Tax Act²⁹⁶ under Section 8 (1) signifies the income derived from business to include gains or profits which have resulted from the undertaking of such business in the respective year of income. This implies that, the electronic transactions conducted by the companies under the electronic commercial transactions can lead into gains and/or profits to the companies and hence charging them tax is proper under the tax laws auspices.

Moreover, Section 8 (2) of the Act²⁹⁷ contains comprehensive list of the inclusions to the business income *inter alia* being services fees and incomings for trading stock. It is crystal clear that most of the companies are now trading over the internet (e-commerce) and charging some service fees for the use of their services online.

4.2.2 Legal Challenges facing Taxation of Electronic Commercial Transactions by Corporations in Tanzania

On the question as to what are the legal challenges facing taxation of electronic transactions made by the Companies in Tanzania, this study has revealed that there are number of legal challenges facing taxation of electronic transactions made by the Companies. The majority of the respondents revealed that there are a lot of legal challenges associated with the taxation of electronic transactions made by Companies in Tanzania. In specific, 25 respondents which amount to 71.4% agreed that there were legal challenges on the taxation of electronic transactions made by the Companies in Tanzania. On the other hand 10 respondents amounting to 28.6% strongly agreed on the prevalence of legal challenges in taxation of electronic transactions made by the Companies.

Therefore, the exposition given by the most of the respondents above convince the study to conclude that taxation of electronic transactions made by the Companies in Tanzania faces a number of legal challenges. However, the following were the

²⁹⁵[CAP 332 RE 2008].

²⁹⁶*Ibid*

²⁹⁷*Ibid*, [Paragraphs a& b].

specific revealed legal challenges on the taxation of electronic transactions made by the Companies:

4.2.2.1 Jurisdictional Challenges vis-à-vis the Taxation of Electronic Commercial Transactions by Corporations in Tanzania

Notably, jurisdiction is of paramount importance when thinking of imposing tax to the subjects. However, this study has observed that the first legal challenge in the taxation of electronic transactions made by the Companies in Tanzania is based on the jurisdiction to tax.

The reasonable question at this juncture is where is the nexus between a company that is undertaking electronic commercial transactions and the tax jurisdiction (Tanzania)? The possible response for this can be the State in which the seller (company) originates, second it can be the State from which buyers (consumers) of the electronic commercial transactions originate, third, it can be the state of residence of the Seller, Consumer or ISP. These challenging responses show how the determination of jurisdiction can be intricate in case of the electronic transactions made by the Companies.

It has to be borne in mind that, under the electronic commercial transactions, transactions are made in cyberspace. This implies that, there is no physical existence that can be easily used to connect the enterprise with a certain jurisdiction. The debate was raised in the previous chapter in which a number of questions were raised on how to establish the jurisdiction in relation to the website used in undertaking electronic commercial transactions.

It has been observed under this research that even if the place in which a server is located could be applicable in determining the jurisdiction with regard to the website, the practice has shown that most of the participants in electronic commercial transactions are not the owners of the servers and their websites are hosted in the ISP servers. Also, the new emerging cloud server makes it even more difficult to trace the jurisdiction of the website as there is no physical presence of server.

4.2.2.2 Challenges on the Corporation Residence base on Taxation of Electronic Commercial Transactions by Corporations in Tanzania

Taxing of income rely much on residence or personal jurisdiction. However, this study has revealed that determination of the residence of the company under the electronic commercial transactions for the purpose of taxation stand as one of the legal challenges. Tanzania is one of the countries that consider residence as the base for income taxation. This means that once residence is established a person can be charged income tax regardless as to whether he or she has the permanent establishment or not. Therefore, it is very vital to establish the residence of companies in as far as the electronic transactions are concerned.²⁹⁸

The study observed the main challenge to be the determination of the residence of the company under electronic commercial transactions for the purpose of taxation. It clear that some corporations under the electronic commercial transactions environment do not have the physical existence something which poses challenges in determining their actual residence for taxation purposes.

Another challenge is that, the term ‘residence’ does not have an exhaustive meaning under the income tax law, however, one should recall that Section 66 (4) of the Income Tax Act²⁹⁹ which deliberates on the corporation residence for the purpose of taxation to the effect that:

*“A corporation is Resident Corporation for a year of income if: It is incorporated or formed under the laws of the United Republic, or at any time during the year of income, the management and control of the affairs of corporation are exercised in the United Republic.”***[Emphasis Added]**

In *Kerguelen Sealing and Whaling Co. Ltd. vs. CIR*,³⁰⁰ the Court was of the view that residence is applicable in establishing tax liability basically due to the benefits accrued by someone with the residence status from the government. A clear look on

²⁹⁸ Mesenbourg T.L (2001), *Measuring Electronic Business: Definition, Underlying Concepts and Measurement Plans*, U.S. Bureau of the Census, Suitland, United States of America, pp. 5-7

²⁹⁹ CAP 332 RE 2008

³⁰⁰ (1939) AD 487, 10 SATC: 363

this view might associate it with the benefit theory on tax distribution discussed in the second chapter of this research.³⁰¹

On the other hand, it should not go without mentioning that the Company being superficial does not also have tangible existence. This means that a company does not exist because of it has an office. Therefore, it is very possible for the company to operate its activities without a formal physical office under the electronic commercial transactions and hence posing another challenge.

However, for the tax systems to work, corporations must be made to reside somewhere, but the whole concept of corporate residence is also artificial. The application of the concept of residence to companies for taxation purposes has created a series of problems. First and foremost, it has been noted under the Income Tax Act³⁰² that, there is no statutory definition of the “residence” of corporation.

Notably, what the Income Tax Act³⁰³ has postulated in the hitherto discussed provision are the tests to be applicable in the determination of the residence of the companies. The given tests under the Act³⁰⁴ are mainly based into objective and subjective categories. The objective test is simply to determine a company’s residence based on its place of incorporation or its “legal seat” i.e. generally its registered office. The weakness of this test is that if a company does not want to be a resident of Tanzania, it could incorporate outside of Tanzania territory, notwithstanding that its real physical and economic presence is in Tanzania.

³⁰¹ *Supra*

³⁰² CAP 332 RE 2008

³⁰³ *Ibid.*

³⁰⁴ CAP 332 RE 2008

The objective test was discussed in the case of *African Barrick Gold Plc. vs. Commissioner General*³⁰⁵ whereby the court had the following view:

“Applying the purposive method of interpretation, which we have just endorsed, we think it is quite in order that the word “formed” in section 66 (4) of the Income Tax Act, 2004 can be construed to include the registration of company under the Act. That means the issuance of the Certificate of Compliance under section 453 of the Companies Act, would also be included. The date of that registration is the date of the certificate (or re-incorporation, for that matter) of the company in Tanzania, it is correct to conclude that that registration amounted to the company’s formation in Tanzania as a foreign company”

This observation by the Tribunal is the manifestation of the challenge on the applicability of the place of incorporation test especially when considering electronic commercial transactions environment in which a company can be incorporated in the foreign jurisdiction but undertaking its activities in the cyberspace across Tanzania.

On the other hand, the subjective test invoked to establish the residence of corporation bases on the management and control of the corporation’s activities. This principle was first upheld in relation to company in the leading and landmark case of *De Beer Consolidated Gold Mines Limited vs. Howe*³⁰⁶ whereby Lord Loreburn L.C with whom the other Lords of Appeals concurred having referred to the test of whether a company is resident in the country or not, had view that the matter is a pure question of fact, or can be determine accordingly principles of statutory interpretation. However, his Lordship added that due consideration must be given when determining the residence of the company on the course of business and trade.

4.2.2.3 Challenges on the Source Rule on Taxation of Electronic Commercial Transactions by Corporations in Tanzania

Another legal challenge that was observed by the study is the applicability of the source rule on the taxation of income derived from e-commerce undertaken by

³⁰⁵ In the Tax Revenue Appeals Tribunal [Tax Appeal No. 16 of 2015] (Unreported)

³⁰⁶ 1906 AC 445.

corporations. Notably, the Income Tax Act³⁰⁷ under section 67 (1) set the legal principle that income with the source from United Republic of Tanzania being charged tax.

Remarkably, it can without hast be commented that source rule cannot squarely apply in electronic transactions made by the Companies. This can simply be associated with the fact that the rule solely rely on territoriality. On the other hand, electronic commercial transactions mode of operation reveals that the same is not territorial in nature as transactions are undertaken in cyberspace.³⁰⁸

Therefore, the way a source rule is designed cannot accommodate the electronic commercial transactions operation. This being the case justifications and concepts of source rules are under critique under electronic commercial transactions. This recalls for adopting another rules apart from the source rules that can be more pertinent to the taxation of electronic transactions made by the companies.

4.2.2.4 Challenges relating to Permanent Establishment Criteria on Taxation of Electronic Commercial Transactions by Corporations in Tanzania

Another legal challenge that have revealed by the study is on applicability of permanent establishment rule of taxing income from electronic transactions made by the companies. It has been revealed under this study that the mode of operation under the electronic commercial transactions does not necessarily need the company to have a permanent establishment.

Consequently, by the use of internet a company without any physical office can operate under electronic commercial transactions. This situation raises the question as to whether under such arrangement can a company form a permanent establishment. Accordingly, the response is negative as among the legal criteria for the company to have a permanent establishment is the fixed place of business which under the electronic commercial transactions is not necessarily the case.

³⁰⁷CAP 332 RE 2008.

³⁰⁸ Sweet, J. (1998) Formulating International Tax Laws in The Age of Electronic Commerce: The Possible Ascendancy of Residence –Based Taxation in An Era of Eroding Traditional Income Tax Principles, 146 U.P.A.L. REV 1949. 1960-72.

4.2.2.5 Challenges relating to Income Characterisation Rule on Taxation Electronic Commercial Transactions by Corporations in Tanzania

Also, income characterization rule has been observed as an obstacle in taxation of electronic transactions undertaken by corporations. It is crystal clear that the nature of transactions undertaken under the electronic commercial transactions differs grossly with the ones undertaken under the traditional transactions.

One of the notable differences between the traditional transactions and electronic transactions is their scope. The traditional transactions are having narrow scope and hence can easily being categorized for the purpose of taxation as per the income tax law. However, the case is not the same on electronic transactions which involves a number of processes hence making it difficult to characterize the transaction for the purpose of taxation.

For instance, someone in Kenya using an internet network can get connected to a computer in Tanzania and download an audio in consideration of the fee. In this instance it is difficult to characterize the income for the purpose of taxation as the same downloaded audio music can have various functions depending on the copyright by the proprietor.

4.2.3 Practical Challenges *vis-à-vis* the Taxation of Electronic Commercial Transactions by Corporations in Tanzania

Upon seeing the legal challenges facing the taxation of the electronic commercial transactions by the corporations in Tanzania it is now the high time to have a look on the practical challenges facing the same. On the question as to what are the practical challenges *vis-à-vis* the taxation of electronic commercial transactions in Tanzania, this study discovered some practical challenges facing taxation of electronic transactions made by the Companies.

The large number of the respondents was of the views that there is existence of practical challenges in as far as the taxation of electronic transactions made by the Companies in Tanzania. To be precise, 30 respondents which is equivalent to 86% strongly agreed that there were practical challenges on the taxation of electronic

transactions made by the Companies in Tanzania. On the other hand, 5 respondents amounting to 14% were not sure on the prevalence of practical challenges in taxation of electronic transactions made by the Companies.

Consequently, confined on the above views of the majority respondents this study has reasonably concludes that taxation of electronic transactions made by the Companies in Tanzania faces some legal challenges. In specific, the following were the specific revealed practical challenges on the taxation of electronic transactions made by the Companies:

4.2.3.1 Poor Enforcement Mechanism

This study has revealed poor enforcement mechanisms as one of the practical challenges facing taxation of electronic commercial transactions conducted by the corporations in Tanzania. This following are some of the challenges that have been linked with poor enforcement mechanism of taxation of electronic transactions made by corporations. The challenges facing the enforcement of taxation of electronic commercial transactions are confined by its features. As it was discussed in the second chapter of this research one of the features of electronic commercial transactions is global reach. This means that electronic commercial transactions are available in the cyberspace and accessible anyone in the globe connected to the internet. It is therefore challenging for the tax administrators to establish liability for taxation for the participants in the electronic commercial transactions.

In addition, since the electronic commercial transactions apply the universal standards unlike the traditional commerce it also poses the challenge. For instance, under electronic commercial transactions it is the device address that can be traced but the identity of person operating the same remain uncertain. Therefore, this makes it difficult for the tax administrators to identify the participants in electronic commercial transactions. Hence, it cannot be possible to tax a person whom you cannot identify.

4.2.3.2 Shortage of Competent Tax Administration Staff

Another challenge revealed by the study on the practical aspect of taxation of electronic commercial transactions by corporations is inadequate competence of the tax administration staff. Considering the complex nature of the electronic transactions made by the companies it is obvious that high skilled and competent staff are needed in order to properly tax the same.

Conversely, it has been discovered under the study that most of the tax administration staff have little or no knowledge on the taxation of electronic commercial transactions in Tanzania. This means that, with the little or no knowledge on the electronic commercial transactions taxation it is not easy for them to properly tax the transactions made by the corporations under the electronic commercial transactions.

4.3 Conclusion

The findings under this chapter have given the true picture in as far as the taxation of electronic transactions made by the companies is concerned. This study has raised some concerns which, if taken into consideration by the policy makers, legislators and the law enforcers can lead into improvement and the positive changes to the current *status quo*. However, the recommendations will be made in the subsequent chapter in expectation for theme being worked upon accordingly.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This is the last though not least chapter of the research depicting the summary, conclusion and recommendations given by the study. This chapter is very important as it explains the entire study in a nutshell and paving the way for the future study to be undertaken. The following is the summary, conclusion as well as the recommendations offered by the study:

5.2 Summary of the Study

Title over which the research was undertaken was “Legal and Practical Challenges facing Corporate Taxation in Relation to Electronic Commercial Transactions in Tanzania: A Case Study of Dar-es-Salaam”. This study generally aimed at making a critical analysis on effectiveness of law and practice on the taxation of electronic commercial transactions undertaken by the corporations in Tanzania. The study specifically intended to explore the activities undertaken by the companies via the electronic transactions in the light of tax laws in Tanzania, examine the legal framework on taxation of electronic commercial transactions in Tanzania and last but not least to examine the practice *vis-à-vis* the taxation of electronic commercial transactions in Tanzania.

The study was guided by three research questions which were as follows: whether the activities undertaken by the companies via the electronic transactions satisfy legal requirements for being taxed in Tanzania? What are the legal challenges facing taxation of electronic transactions made by the Companies in Tanzania? And, what are the practical challenges *vis-à-vis* the taxation of electronic commercial transactions in Tanzania?

The study examined the above questions using various tools in the collection of data. On the collection of primary data the study employed mostly questionnaires and interviews the rationale being their utility and the nature of the respondent. On the other hand, the study on the aspect of secondary data employed library research whereby materials from physical and virtual sources have been consulted to supplement the obtained data in the field.

Upon employing the above tools of data collection the study observed a number of issues with regard to the guiding research questions to the following effect: First, the activities undertaken by the companies via the electronic transactions satisfy legal requirements for being taxed in Tanzania.

Second, there are number of legal challenges facing taxation of electronic transactions made by the Companies in Tanzania. The challenges include but not limited to jurisdictional challenges, determination of corporation residence under e-commerce, challenges on the source rule on taxation e-commerce by corporations, challenges on permanent establishment criteria on taxation of electronic transactions and challenges on income characterisation under electronic transaction made by the corporations.

Last though not least is the existence of some practical challenges *vis-à-vis* the taxation of electronic commercial transactions in Tanzania. The practical challenges revealed were poor enforcement mechanism and shortage of competent Tax Administration Staff. It is from this background that the conclusion of the study is subsequently given.

5.3 Conclusion

The modern tax laws seems to have been designed during the industrial age and hence confined on the transactions occurring in the physical jurisdictional borders. However, with the internet age the *modus operandi* has enormously changed as a number of transactions are made in the cyberspace with the aid of internet.

Consequently, the advent of this new era has challenged the classical tax laws principles as well as theories. In return, the tax administrations have been struggling

in a bid to find a proper way of taxing electronic transactions made *inter alia* by the companies.

This study having ventured in the same quest discovered a number of gray areas in the taxation of corporations under the electronic commercial transactions. Supported by the findings observed under this study it is compelled to conclude that still the taxation of electronic commercial transactions faces challenges that needs the intervention not only of the tax administrations but the entire community of the stakeholders.

5.4 Recommendations

Basing on findings in previous chapter the research came up with some recommendations. The recommendations given here are expected to be of paramount importance to the community of stakeholders once taken into consideration. The following are the recommendations offered by the study:

5.4.1 Changes in the Tax Legislation

This study recommends that tax legislation should be changed to accommodate the special requirements of proper imposition of tax on electronic transactions undertaken by the corporations. For instance, the rules governing taxation of traditional commerce such as residence, permanent establishment etc. needs to be revised with view of finding the better way in which they can be made applicable to electronic transactions.

5.4.2 Capacity Building for the Tax Administration Staff

The study also recommends for the capacity building for the tax administration staff on how electronic transactions made by the corporations can be charged tax. For instance, Staff can be equipped with skills required in order to effectively tax the electronic transactions made by the companies.

5.4.3 Changing of Enforcement Mechanisms by the Tax Administration

It has been discovered under this study that poor enforcement mechanism is among practical challenges encumbering taxation of electronic transactions made by the corporation in Tanzania. Therefore, this being the case this study recommends for the changes of enforcement mechanisms by the tax administration as the enforcement for the payment of tax by participants in electronic commercial transactions is not a simple task and one has to understand such environment first.

REFERENCES

- Abibu, N. (2010) Empowering Tanzanians in the Management of their Communication Resources, UNESCO National Commission of the United Republic of Tanzania.
- Amor, D. the E- Business (R) evolution, Prentice Hall PTR, Upper Saddle River NJ 07458.
- Comer, D.E. (2004); Computer networks and Internets with Internet Applications, 4th Edition, Pearson Prentice Hall Pearson Education, Inc. Upper Saddle River, New Jersey 07458.
- Laidon, K. C. and Traver, C. (2007) E-commerce: business, technology, society, Pearson, Prentice Hall, 3rd ed, USA
- Ravi, K. and Andrew, W. (2009) Frontiers of Electronic commercial transactions, Pearson Educations, Dorling Kindersley (India), 482, F.I.E, Patparganj, Delhi 110 092.
- Reed, C. (2010) Internet Law; Text and Material, 2nd edit, Second Indian Reprint, Universal Law Publishing Co Pvt. Ltd, New Delhi.
- Senkondo C. and Karsan A. (2009) National Internet Governance Forum, Dar-es-Salaam
- Souter, D. (2012) Assessing National Internet Governance Arrangements, A Framework for Comparative Assessment, ICT Development Associates Ltd, Nairobi Kenya.
- Stair R. and Reynolds G. (2008), Principles of Information Systems, A Managerial Approach, Course Technology, Cengage Learning, 8th ed, Australia.
- United Nations Conference on Trade and Development (2003), Background Paper on Development and Main Issues in Electronic commercial transactions and Information and Communication Technologies, TD/B/COM.3/49, Geneva.
- United Nations Conference on Trade and Development (2004), Use of the Internet for Efficient International Trade; Guide for SME Managers; UNCTAD Secretariat. United Nations New York and Geneva.

APPENDICES
QUESTIONNAIRE

PART A: Introduction

Dear respondent,

This questionnaire has been developed to facilitate a research on ‘**A Critical Analysis on Corporate Taxation under Electronic commercial transactions in Tanzania: Case Study of Dar-es-salaam**’ in the partial fulfillment of the requirements for the award of Master of Laws (LL.M) Commercial Law of Mzumbe University. It intends to obtain your opinion on taxation of corporations under the electronic commercial transactions atmosphere in Tanzania. Be informed that the information obtained is exclusive for the purposes of this research and will be treated with utmost confidentiality.

Thank you in advance for your co-operation and valuable time.

PART B: Personal Information

Please put a tick (✓) for the selected answer

1. Sex:

Male [] Female []

2. Job Category:

Tax Practitioner [] Tax Officer [] Advocate [] Academician []

Legal Officer [] Others. (specify).....

3. Age:

Below 20 years [] 20-30 years [] 31-40 years [] 41-50 years []

51 years and above []

4. Level of Education:

Primary [] Secondary [] Advanced Secondary [] Diploma [] Degree [] Post-graduate []

PART C: Please put a tick (√) for the selected answer whereas:

1	2	3	4	5
Strongly Agree	Agree	Strongly Disagree	Disagree	I don't know

S/N	QUESTION	1	2	3	4	5
1.	Do the activities undertaken by the companies through electronic means qualify for taxation?					
2.	Are the activities undertaken by the companies through electronic means in Tanzania properly taxed?					
3.	Are the criteria for taxation of income by the corporations in Tanzania adequate to cover electronic commercial transactions undertaken by the companies?					
4.	Is the legal framework on the taxation in Tanzania sufficient on the taxation of electronic commercial transactions conducted by the companies?					
5.	Is the practice on the taxation in Tanzania sufficient on the taxation of electronic commercial transactions conducted by the companies?					
6.	Does the Revenue Authority (TRA) take effective measures in the taxation of the electronic commercial transactions undertaken by the companies in Tanzania?					
7.	Are the legislative measures undertaken by the Parliament sufficient on the taxation of electronic commercial transactions by companies in Tanzania?					
8.	Are the stakeholders (corporate taxpayers) aware of the laws on the taxation of electronic commercial transactions?					
9.	Are there any challenges facing the legal framework on the taxation of companies under the electronic commercial transactions?					
10.	Are there practical challenges facing the taxation of companies under the electronic commercial transactions?					

PART D: Please answer the question by filling in the blanks below:

11. What are the activities relating to taxes commonly undertaken by the companies through the electronic means?

.....
.....
.....
.....
.....
.....
.....

12. What are the legal challenges facing taxation of activities relating to taxes commonly undertaken by the companies through the electronic means?

.....
.....
.....
.....
.....
.....
.....

13. What are the practical challenges facing taxation of activities relating to taxes commonly undertaken by the companies through the electronic means?

.....
.....
.....
.....
.....
.....

14. What should be done to improve the taxation of activities relating to taxes commonly undertaken by the companies through the electronic means?

.....
.....
.....
.....
.....
.....
.....
.....

-END-