On the Invalidity of Directive No. 1104/2025: A Legal Opinion on the Limits of Delegated Rule-Making Authority Under Article 12(2) of Value Added Tax Proclamation No. 1341/2025

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Legal Issue:

The preamble of the Directive on Registration for Value Added Tax (Directive No. 1104/2025) states: ".... NOW THEREFORE, the Ministry of Finance hereby issues this Directive pursuant to the power vested to it under Article 12 sub-article (2) of the Value Added Tax Proclamation No. 1341/2025 ". This raises the following questions: (1) Does Article 12(2) of Value Added Tax (VAT) Proclamation No. 1341/2025 empower the Ministry of Finance to impose categorical VAT registration, irrespective of annual turnover? (2) If the Ministry does has this power, what is the policy goal behind granting such authority, particularly given that non-professional businesses are required to register based on their annual turnover? (3) What is the Ministry's justification for imposing categorical VAT registration upon all professional services providers?

This legal note briefly examines the scope of the rule-making power granted to the Ministry of Finance under Article 12(2) of VAT Proclamation No. 1341/2025, its objective, and other related matters. This note applies three standard canons of legal interpretation to Article 12(2) of VAT Proclamation No. 1341/2025, in addition to other relevant factors. In this Note, I have touched on the legal issue with the aim of providing a starting point for further discussions rather than a comprehensive answer.

Legal Analysis:

1. The Plain Meaning/Literal Rule of Legal Interpretation

Understanding what the law is depends inescapably on the texts and its structure[1]. Based on this principle, Article 12(2) of VAT Proclamation No. 1341/2025 states:

[1] . Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012), PP. 3 and 567.

"The registration threshold is 2,000,000 Birr or such other amount as specified in the Directive to be issued by the Ministry."

The controlling phrase under this provision is "or such other amount" (of money). The word "amount" (of money) unambiguously refers to a numerical, financial value. It does not state "such other criteria," "such other categories," or "such other persons." “Amount” in ordinary English also means a sum of money. It does not, under its plain meaning, extend to categories of taxpayers, persons, or conditions. Thus, this provision grants the Finance Ministry the specific power to substitute the monetary figure of 2,000,000 Birr for another monetary amount (e.g., 1,500,000 or 3,000,000 Birr). It is a power to adjust the quantitative benchmark, not to redefine the qualitative nature of the obligation itself, which is fundamentally based on exceeding a financial threshold.

The Amharic version of Article 12(2) of the VAT Proclamation reinforces this interpretation. The Amharic version of Article 12(2) of VAT Proclamation No. 1341/2025 states:

"፪/ ለተጨማሪ እሴት ታክስ የመመዝገብ ግዴታ የሚኖረው ብር ፪ ሚሊዮን (ሁለት ሚሊዮን ብር) የጠቅላላ አቅርቦት ድምር ሲኖር ወይም ሚኒስቴሩ በመመሪያ የሚወስነው ሌላ ታክስ የሚከፈልበት የአቅርቦት የገንዘብ መጠን ያለው ሰው ነው።"

The controlling phrase of the Amharic text is "**ወይም ሚኒስቴሩ በመመሪያ የሚወስነው ሌላ ታክስ የሚከፈልበት የአቅርቦት የገንዘብ መጠን**" (another monetary value of supply on which tax is paid) centers on the financial measure ("**ሌላ ታክስ የሚከፈልበት የአቅርቦት የገንዘብ መጠን**"), not on creating new taxpayer categories. Under the Amharic version, the term "**የገንዘብ መጠን**" (amount of money) unequivocally refers to a numerical, financial value.

The term "or" ("**ወይም**") in this provision is also crucial[2]. The disjunctive "or" presents two alternatives of the same kind: one monetary threshold or another. It does not grant the power to replace a financial test with a categorical one. It means the phrase "or such other amount" is directly linked to and is an alternative to "2,000,000 Birr." "2,000,000 Birr" is a clear financial registration threshold determined by the legislature. Hence, "or such other amount" must be interpreted as another financial registration threshold (e.g., 1,500,000 Birr or 3,000,000 Birr),

[2] . In legal interpretation, the disjunctive "or" is a conjunction that presents alternatives, indicating that only one of the connected items, conditions, or possibilities may apply.

maintaining the same nature as the original concept. It is not surrounded by words like "category," "sector," or "profession," which would indicate a broader power to discriminate between types of businesses. Accordingly, the delegated power is solely to alter the monetary figure, not to introduce sector-specific registration rules. Therefore, a directive mandating registration based solely on a business category (e.g., all lawyers or doctors) and not on financial turnover would constitute a fundamental change to the registration rule, not an adjustment of the "amount." Such an action would be ultra vires under this specific article.

Furthermore, the fact that this authority is granted within the specific registration threshold clause, as opposed to being a general rule-making power in Article 72(2) of the current VAT Proclamation, buttresses this interpretation. The legislature placed a specific, limited power in a specific context.

Finally, this plain meaning interpretation is further reinforced by the legislative history. Article 16(2) of the Value Added Tax Proclamation No. 285/2002 explicitly stated: 'The Minister of Finance and Economic Development may by directive increase or decrease the threshold provided for under Sub-Article 1.' Pursuant to this provision, the House Peoples' Representatives delegated the Ministry of Finance and Economic Development, by directive, to increase or decrease the obligatory monetary registration threshold, which was originally determined to be annual turnover exceeding 500,000 Birr, for mandatory value added tax registration. Given that, Article 12(2) of VAT Proclamation No. 1341/2025 is a substantive re-enactment and logical consolidation of the provisions in Sub-Article (1)-(2) of Article 16 of the preceding Value Added Tax Proclamation No. 285/2002 but does not expand the ministry's authority, there is no indication – let alone a clear grant - of any intent to broaden this delegated power.[3]

Therefore, the Ministry's authority remains, as before, to issue a directive to increase or decrease the obligatory monetary registration threshold, not to redefine its fundamental nature. The placement of this narrow delegated rule making power within the specific registration threshold clause itself, distinct from any general ministerial delegated rule making authority, definitively reinforces this plain interpretation.

2. The Contextual Legal Interpretation Rule (Noscitur a Sociis)

The phrase "such other amount" is directly linked to and presented as an alternative to "2,000,000 Birr". Since "2,000,000 Birr" is a financial registration threshold, its

[3] . See Value Added Tax Proclamation No. 285/2002, Sub-Articles 1 and 2 of Art. 16.

counterpart, "such other amount," must be interpreted as being of the same character, another financial registration threshold. It is not surrounded by words suggesting a power to discriminate by sector or profession. This contextual interpretation confirms that the delegated rule making power is solely to alter the universal monetary figure applicable to all taxpayers without any sectorial or otherwise distinction among taxpayers. Moreover, this interpretation is corroborated by the structure of the Proclamation.

The definitions under Articles 2(28) and 2(33)-(34) and compulsory registration provisions in Article 12 of the VAT Proclamation solidify that the only path to mandatory registration is exceeding a monetary amount. The structure of the law is entirely based on financial benchmarks. Due to this, introducing a third, non-financial path (categorical registration obligation) would disrupt this logical structure and create a conflict between a financial registration threshold and a non-financial registration threshold. This would be an arbitrary distinction between professional services providers and non-professional services providers and legally unsustainable distinction.

3. The Principle of Legality in Tax Law & Hierarchy of Norms

Administrative Agencies cannot enact any Directive unless Parliament has expressly delegated the authority for them to do so and must not act beyond that authority. An action taken without a clear legislative mandate is ultra-vires and is therefore invalid[4]. "Tax in a democracy may be levied only by an act of the legislature, which is elected by the people to serve as the public's agents .... tax is the product of a collective consent .... government."[5] Germany legal basis of taxation rests on the combination of other constitutional provisions namely the provision guaranteeing personal freedom that can't be restricted except by law and provisions demanding a legal basis for any act of administration including act of tax assessment and collection.[6] In Ethiopia, in principle tax obligations must be created by the legislature according to Articles 55(1), 57, 71(2), 77(13) and 100 of FDRE Constitution. This is the highest source of law and establishes that the power to levy taxes resides with the parliament. This is the ultimate hierarchy of norms.

[4]. See Federal Administrative Procedure Proclamation No. 1183/2020, Arts. 2(2), 4(1), 50.

[5] . Yoseph Edrey (2007). Constitutional Review and Tax Law: An Analytical Framework. American University Law Review, Vol. 56, No.5, pp.1187-1228, pp.1192-1193

[6]. Frans Vanistendael. (1996). Legal Framework for Taxation, Chapter 2: In Victor Thuronyi. (ed.), Tax Law Design and Drafting, International Monetary Fund, Vol.1, pp.2-3

In addition to this, a fundamental principle of tax law is that an administrative agency cannot create a new tax liability without a clear and specific legislative mandate according to Articles 2(2), 4(1) and 50 of Federal Administrative Procedure Proclamation No. 1183/2020[7]. Article 12(2) is a narrow delegation to adjust a pre-defined financial criterion, not an authorization to invent a new categorical criterion for liability. It is not an authorization for the Ministry to invent a new categorical criterion for liability. To impose a VAT registration requirement based purely on business category, a specific mandate would be required within the Proclamation itself, or the Proclamation would need to be amended by Parliament.

Moreover, a Directive, as subordinate legislation, cannot override or contradict the fundamental structure of the liability regime established by the parent Proclamation, as provided by Article 50(1)(c) of Federal Administrative Procedure Proclamation. To do so violates the principle of legality and the constitutional hierarchy of laws. The Directive must operate within the framework of FDRE Constitution and the Proclamation[8]. Creating an entirely new criterion for tax liability is a legislative act that sits with the parliament, not the administrative agency. Thus, the constitutional hierarchy of norms dictates that a Directive, as subordinate legislation, cannot alter the fundamental structure of the liability regime established by the Proclamation. This is not a legal interpretation, but a constitutional and legal principle concerning the separation of powers between the legislative and executive[9].

4. The Purpose of the Law (Teleological Interpretation)

Under the Ethiopian VAT Proclamation, the policy objectives of the VAT registration threshold are generally twofold. The primary purpose is to reduce the administrative burden on both the tax authority and small and medium businesses. It achieves this

[7] . The delegation of rule-making authority to administrative agencies is a subject of constitutional challenge. While FDRE Constitution is silent on delegating legislative power to administrative agencies, it explicitly grants to the Council of Ministers under Article 77(13). This contrast implicitly argues that the Ministry's power is therefore derivative and must be construed narrowly.

[8]. The principle of legality, within the framework of the hierarchy of norms, requires that lower-level legislation must conform strictly to higher-level legislation and must not contain contrary provisions.

[9]. The principle of legality is essential to guard taxpayers from intrusive actions of an overreaching executive branch.

by: (A) Exempting very small businesses from the complexities of VAT accounting, invoicing, and filing returns. (B) Allowing the tax authority to focus its compliance resources on larger businesses that collect the majority of VAT revenue. (C) Preventing the tax system from stifling the growth of micro enterprises and startups. The secondary purposes are to foster the growth of small and medium enterprises, promote progressivity and equity in an indirect tax system, and improve economic efficiency through the rationalization of resources.

By exempting small businesses from VAT, the government significantly reduces their compliance costs. This allows entrepreneurs to focus their limited resources on growth rather than tax administration, enabling them to retain more capital for reinvestment or savings. Furthermore, businesses below the threshold gain a competitive advantage by not charging their customers the 15% VAT and avoid potential cash flow problems. The threshold also acts as a "safe harbor," encouraging informal micro-businesses to eventually transition into the formal economy as they grow. Given these administrative, policy, and economic purposes, adjusting the threshold up or down serves clear goals (e.g., raising it to protect more businesses or lowering it to widen the tax base). Thus, the registration threshold is a fundamental part of the Ethiopian VAT system.

However, eliminating this threshold for a specific sector directly contravenes these stated purposes. It would impose the full compliance burden, specifically the costs the threshold was designed to avoid, on a small sole practitioner with minimal turnover, while exempting a much larger business in a different sector that remains above the general turnover threshold. This creates an arbitrary discrimination[10] and unfair distinction that undermines the policy rationale for the registration threshold itself.

5. Corroboration from Article 17 (Cancellation of Registration)

The provisions of Article 17 of the VAT Proclamation (Cancellation of Registration) further support this interpretation. Article 17 provides a mechanism for a registered person to apply for cancellation if their annual taxable supplies "are below the registration threshold." This right is integral to a threshold-based system. This right is a fundamental feature of a threshold based system. A directive that eliminates the financial threshold for a category of taxpayers would effectively and unlawfully snatch this statutory right away from all professional service providers,

[10] . See FDRE Constitution, Art. 25 (enshrining the principle of equality and non-discrimination).

contradicting a threshold-based system established by the Proclamation itself. A Directive cannot lawfully nullify a right explicitly granted by the primary legislation. A Directive for categorical registration irrespective of turnover would create a glaring inequality between professional services providers and non-professional services providers and directly contradict the clear right granted by Article 17 of the Proclamation. Hence, the right to cancel registration is incompatible with categorical registration. Therefore, Article 17 of the VAT Proclamation No. 1341/2025 reinforces the interpretation that the Ministry of Finance cannot use Article 12(2) of the VAT Proclamation to issue a Directive that requires all professional service providers to register for VAT regardless of their annual turnover.

6. Rebuttal of the Ministry's Justifications and Ultra-Vires Action

The foregoing interpretation is further bolstered when considering the Ministry's justifications, which are fundamentally flawed for the following reasons. The Ministry's justification, as stated in the preamble, is to ensure "fairness" by requiring VAT registration for "any person providing professional services whose annual turnover is less than 2 million birr and who is not classified as a Category 'B' taxpayer." The Ministry's logic is that such professionals are already classified as Category 'A' taxpayers under Article 50(4)-(5) of the Income Tax Proclamation (as they are excluded from the Category 'B' turnover threshold) and are therefore already subject to rigorous accounting standards. It is deemed "unfair" that they escape the VAT net due to the turnover threshold, while a larger business in a different sector must register. These justifications are fundamentally flawed for the following reasons:

Firstly, ultra vires action and strict interpretation of taxing provisions: The principle of strict interpretation of taxing provisions (in dubio contra fiscum) requires that any ambiguity in a law imposing a tax burden be resolved in favor of the taxpayer[11]. This principle precludes reading a broad categorical power into the narrow phrase "such other amount" in Article 12(2) of the VAT Proclamation. The Ministry's power is limited to specifying a different numerical value for the turnover threshold. It does not grant the authority to replace the entire turnover-based registration system with a new set of criteria based on a taxpayer's profession or their classification under a completely different tax law. By attempting to do so, the Ministry has acted ultra vires, beyond the powers granted to it by the Proclamation. Secondly, the flawed premise of the Directive: The Ministry's justification, as stated in the preamble, is based on an incorrect legal premise. It asserts the necessity to register professionals

[11] . See 4 Mertens Law of Federal Income Taxation § 3:29 (2024).

who are "not classified as a Category 'B' taxpayer," implying they are necessarily Category A. This is a fundamental error. A professional with an annual turnover below 2 million Birr is not automatically excluded from Category B classification under the Income Tax Proclamation (as amended). The Proclamation does not universally classify all professionals as Category A; such a classification would be determined by their specific circumstances and compliance with the definitions and thresholds within the Income Tax law itself. Therefore, the entire foundational justification for the Directive is built on an incorrect assumption of law, rendering it arbitrary and legally unsound.

Thirdly, conflation of separate legal regimes and arbitrary targeting: Obligations under the Income Tax Proclamation are separate and distinct from obligations under the VAT Proclamation. The Ministry's attempt to use a directive under the VAT law to compel registration based on a perceived status in the income tax regime is a clear conflation of two independent legal frameworks. This leads to arbitrary and unfair treatment. The Directive singles out a specific profession for a harsher treatment—denying them the universal turnover threshold benefit available to all other sectors. This is the antithesis of fairness, which in tax law is achieved through the neutral and universal application of clear, predictable rules. Fourthly, a matter for primary legislation: The administrative impracticality of defining "professional service providers" and the significant policy shift from a general turnover rule to a targeted occupational one underscore that this change is a matter for primary legislation to be debated and enacted by Parliament. It is not a matter to be decided by administrative directive, especially under a delegated rule-making power only granted to change an "amount."

For these reasons, Directive No. 1104/2025 is apparently unlawful. It exceeds the Ministry's delegated rule-making authority, is based on a flawed legal premise, unfairly targets a specific profession, and attempts to enact a major policy shift that should be reserved for primary legislation. The Directive No. 1104/2025 should be struck down, and the original, clear turnover threshold regime of Article 12 of the VAT Proclamation should prevail.

Furthermore, the above legal interpretation is bolstered by overarching legal principles. The principle of strict interpretation of taxing provisions (in dubio contra fiscum) requires that any ambiguity in a law imposing a tax burden be resolved in favor of the taxpayer. This principle precludes reading a broad categorical power into the narrow phrase “such other amount” in Article 12(2) of the VAT Proclamation. Even if the phrase were considered ambiguous, this principle dictates that the ambiguity must be resolved against the Ministry’s authority to impose a broader

categorical obligation. The benefit of the doubt afforded to the taxpayer means the Ministry's rule-making power under this clause is limited to adjusting the numerical threshold, not replacing the turnover-based system with an entirely new set of criteria. Furthermore, the administrative impracticality and arbitrariness inherent in defining 'professional service providers' for this purpose underscore that such a significant policy shift is a matter for primary legislation debated and enacted by Parliament, not an administrative directive issued by the Ministry. Hence, the Ministry's directive represents a significant overreach of its delegated authority and is based on a flawed and arbitrary interpretation of the law.

Finally, a written paper[12] prepared by the Ministry of Revenue to explain the revisions in the current VAT Proclamation explicitly stated that the VAT registration threshold was raised to 2,000,000 Birr to account for the decrease in the Birr's purchasing power. The paper clarified that taxpayers below this threshold would remain subject to the turnover tax, demonstrating the legislature's original intent for the two regimes to operate on a complementary basis. However, the subsequent repeal of the Turnover Tax Proclamation a year later does not, by itself, empower the Ministry of Finance to impose a categorical VAT registration. The Ministry's authority remains circumscribed by the specific delegation in Article 12(2) of the VAT Proclamation, the power to adjust a monetary threshold. The legislature's decision to repeal one law cannot be construed as an implicit grant of a new, significant rule-making power in another. The creation of a new, categorical registration requirement would require a clear legislative amendment, not an administrative directive.

7. Distinguishing Income Tax Obligations From VAT Obligations

Some may argue that since Article 50(4)-(5) of the Income Tax Proclamation No. 979/2016 (as amended) states that all professional services providers shall maintain books of account, they shall be registered for VAT without a registration threshold. This argument is a non sequitur and legally unsound. Article 50(4)-(5) of the Income Tax Proclamation (as amended) deals exclusively with income tax obligations and is completely separate from the VAT registration rules under Proclamation No. 1341/2025. The inapplicability of the Income Tax Proclamation (as amended) is clear. It is legally unsound to conclude that all professionals are excluded from presumptive tax so that they must be VAT-registered.

[12]. በአዲሱ ተጨማሪ እሴት ታክስ አዋጅ ቁጥር 1341/2016 የተካተቱ ወይም ከቀድሞ የተጨማሪ እሴት ታክስ አዋጅ ቁጥር 285/1994 የተደረጉ ለውጦችንና አዳዲስ ድንጋጌዎችን ለማመላከት በገቢዎች ሚኒስቴር በደብዳቤ ቁጥር 30/10/17 ሐምሌ 04 2016 ዓ.ም ተጽፎ የተዘጋጀና የተሰራጨ ጽሁፍ ከመሸኛው ደብዳቤው ጋር 14 ገጽ

A business could be a professional but have a turnover below the VAT threshold. It would be excluded from presumptive tax under 50(4)(a) but would not be forced to register for VAT. A business could be a retailer (not a professional) but have a turnover above the VAT threshold. It would be excluded from presumptive tax under 50(4)(b) because it is VAT-registered. Thus, Article 50 of the Income Tax Proclamation is irrelevant. Article 50(4)-(5) of Income Tax Proclamation No. 979/2016 imposes stricter income tax accounting rules on professionals. It deals with calculating net profit, not VAT on turnover. That means, it does not mention VAT, alter VAT thresholds, or provide a legal basis for the Ministry's action under the VAT Proclamation. This conflation of two distinct tax regimes is a critical legal error.

8. Differentiating Turnover Tax Obligations From VAT Obligations

Some may argue, as the Ministry does under its short explanatory note on the Directive at issue, that since the Turnover Tax law has now been repealed all taxpayers registered for Turnover Tax shall be registered for VAT with a zero registration threshold. This argument conflates the legislature's power to repeal a law with executive's need for a clear delegation of authority to create a new one. As previously stated, however, the legislature's decision to repeal the Turnover law cannot be construed as an express or implicit grant of new, significant rule-making power under the Value Added Tax regime. If the legislature had intended to create equalization following the repeal of Turnover Tax laws, it would have clearly stated the solution on this regard when it entirely repeal Turnover Tax regime from the Ethiopian tax system. Had it been intended, the legislature would have expressly stated so in its repealing provision or proclamation.

This interpretation further exposes a critical flaw in the Ministry's rationale. The Turnover Tax was a levy on medium-sized businesses (those with a turnover above 500,000 Birr), not on small businesses. Consequently, a significant number of professional service providers, particularly lawyers, operating below that old registration threshold were never registered for any turnover-based tax. The Ministry's directive, which mandates their VAT registration based on category alone, does not merely continue an existing administrative practice; it imposes an entirely new regulatory burden on a class of taxpayers who were previously exempt from Turnover Tax. This outcome is fundamentally different from adjusting a pre-existing financial threshold and falls outside the delegated authority of Article 12(2) of the VAT Proclamation.

Conclusion and Recommendation

Conclusion: The Ministry of Finance may issue a Directive to increase or decrease the universal financial registration threshold (the 2,000,000 Birr figure). The Ministry's power under Article 12(2) of the VAT Proclamation is limited to issuing a Directive that changes the numerical value of the registration threshold for all taxpayers. It cannot use this provision to issue a Directive that requires all professional service providers to register for VAT regardless of their annual turnover. The Ministry of Finance may not use Article 12(2) of the VAT Proclamation to eliminate the financial registration threshold for a specific sector and mandate categorical VAT registration. To require all professional service providers to register irrespective of turnover, the government would need to amend the VAT Proclamation itself through Parliament to include such a specific provision.

Recommendation: If the policy goal is to mandate VAT registration for all providers of professional services irrespective of turnover, the government must pursue one of two lawful pathways:

1. Amend the VAT Proclamation: Parliament can amend Article 12 and other related provisions of the Proclamation to explicitly state that "providers of professional services must register for VAT regardless of their annual turnover."

2. Seek Broader Delegated Authority: Parliament could amend Article 12(2) to grant the Ministry of Finance the specific power to "define categories of taxpayers who must register irrespective of the financial threshold."

A Directive issued under the current Article 12(2) attempting to achieve this goal would be susceptible to legal challenge and struck down as ultra vires and unlawful.