DRAFT

PROCLAMATION NO. ___/2016

FEDERAL INCOME TAX PROCLAMATION

WHERAS, it has become necessary to introduce modern and efficient tax system that supports the economic development and which is in accord with the level of economic development achieved so far;

WHERAS, it is found essential to make the tax system fair and bring income that are so far not subject to tax into the tax net;

NOW, THEREFORE, in accordance with Article 55(1) and (11) of the Constitution, it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the "Federal Income Tax Proclamation No./2016".

2. Definitions

A term used in this Proclamation that is defined in the Tax Administration Proclamation shall have the meaning in the Tax Administration Proclamation unless defined otherwise in this Proclamation.

1/ "amount" includes an amount-in-kind;

2/ "business" means

(a) any industrial, commercial, professional, or vocational activity conducted for profit and whether conducted continuously or short-term, but does not include the rendering of services as an employee or the rental of buildings;

(b) any other activity recognised as a trade under the Commercial Code; or

(c) any activity, other than the rental of buildings, of a share company or private limited company whatever the objects of the company;

3/ "business asset" means an asset held or used in the conduct of a business wholly or partly to derive business income;

4/ “business income” has the meaning in Article 21 of this Proclamation;

5/ “derive” means:

a) for the business income tax:

(1) for a taxpayer accounting for tax on an accruals basis, the arising of the right to receive; or

(2) for a taxpayer accounting for tax on a cash basis, received; or

b) for any other tax imposed under this Proclamation, received;

6/ “dividend” means a distribution of profits by a body to a member and includes the following:

a) an amount returned by a body to a member in respect of a membership interest on a partial reduction in the capital of the body to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced;

b) an amount returned by a body to a member on redemption or cancellation of a membership interest, including on liquidation of a company or termination of a partnership, to the extent that the amount returned exceeds the nominal value of the membership interest;

c) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by a body to, or in favour of, a member or a related person of a member to the extent that the transaction is, in substance, a distribution of profits;

d) the net profit of the body after tax for a tax year to the extent that the net profit has not been distributed to members or reinvested in the business of the body as determined under a Directive issued by the Minister;

7/ “employee” means an individual engaged, whether on a permanent or temporary basis, to perform services under the direction and control of another person, other than as an independent contractor, and includes a director or other holder of an office in the management of a body, and government appointees and elected persons holding public offices;

8/ “employer” means a person who engages or remunerates an employee;

9/ “employment income” has the meaning in Article 12 of this Proclamation;

10/ “exempt income” means income exempt from tax under Schedule ‘E’ of this Proclamation;

11/ “financial reporting standards” means the financial reporting standards stipulated under the Financial Reporting Proclamation;

12/ “gross income”, in relation to a person, means the total income taxable under Schedules ‘B’ and ‘C’ derived by the person without deduction of expenditures;

13/ “immovable property” includes a mining or petroleum right, or mining or petroleum information, as defined in Article 36 of this Proclamation;

14/ “income” means every form of economic benefit, including non-recurring gains, in cash or kind from whatever source derived and in whatever form paid, credited, or received;

15/ “independent contractor” means an individual engaged to perform services under an agreement by which the individual retains substantial authority to direct and control the manner in which the services are to be performed;

16/ “interest” means a periodic or lump sum amount, however described as consideration for the use of money or being given time to pay, and includes a discount, premium, or other functionally equivalent amount;

17/ “management fee” means an amount as consideration for the rendering of any managerial or administrative service, but does not include employment income;

18/ “Minister” means the Minister responsible for finance;

19/ “received”, includes:

a) applied on behalf of the Tax Payer either at the request of the Tax Payer or under any law;

b) reinvested, accumulated, or capitalised for the benefit of the Tax Payer;

c) credited to an account or carried to a reserve for the benefit of the Tax Payer; or

d) otherwise made available to the Tax Payer;

20/ "royalty" means a periodic or lump sum amount as consideration for any of the following:

a) the use of, or the right to use any copyright of literary, artistic, or scientific work, including cinematography films, and films and tapes for radio, television, or internet broadcasting;

b) the receipt of, or right to receive, visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;

c) the use of, or the right to use any patent, invention, trademark, design or model, plan, secret formula or process, or other like property or right;

d) the use of, or the right to use any industrial, commercial, or scientific equipment;

e) the use of, or the right to use any information concerning industrial, commercial, or scientific experience;

f) the supply of assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of property or a right referred to in paragraphs (a) - (e) of this sub-article;

21/ "tax year" means:

a) for an individual, the one-year period from 1st Hamle to 30th Sene, unless the Authority has granted permission, by notice in writing and subject to such conditions as may be specified by the Authority in the notice, for the individual to use its accounting year as the individual's tax year;

b) for a body, the accounting year of the body; or

c) a transitional accounting year as determined under Article 28 of this Proclamation;

22/ "taxpayer" means a person liable for tax under this Proclamation;

23/ "technical fee" means a fee for technical, professional, or consultancy services, including a fee for the provision of services of technical or other personnel;

24/ "trading stock" includes:

a) anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange;

b) any raw materials or consumables used in a production or manufacturing process; or

c) livestock, but not including animals used as beasts of burden or working beasts;

25. "underlying ownership", in relation to a body, means a membership interest in the body held directly, or indirectly through an interposed body or bodies, by an individual or by an entity not ultimately owned by individuals;

26/ "withholding agent" means a person liable to withhold tax under Part Ten of this Proclamation from a payment made by the person and includes a person required to self-withhold tax under Article 90 of this Proclamation from an amount received by the person; and

27/ "withholding income" means income from which tax is required to be withheld under Part Ten of this Proclamation.

3. Categories of Taxpayer

1/ For the purposes of this Proclamation there shall be the following categories of business taxpayers.

a) category "A" taxpayer being

1/ a company

2/ any other person having an annual gross income of Birr 1,000,000 or more;

b) category "B" taxpayer being a person, other than a Company, having an annual gross income of Birr 500,000 or more but less than 1,000,000

c) category "C" taxpayer being a person other than a Company, having an annual gross income of less than Birr 500,000

2/ The Authority may, on the basis of tax declarations filed by a taxpayer or any other information available to the Authority, determine whether the taxpayer's category has changed for a tax year.

3/ The Minister may, after ascertaining by economic analysis, change the annual gross income thresholds in sub-Article 1 of this Article for the classification of a taxpayer as a category "A" taxpayer category "B" taxpayer or category "C" taxpayer.

4. Permanent Establishment

1/ A permanent establishment is a fixed place of business through which the business of a person is wholly or partly carried on.

2/ The following are specifically treated as a permanent establishment:

a) a place of management, branch, office, factory, warehouse, or workshop, but does not include an office that has representation of the person's business as its sole activity;

b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of, natural resources;

c) the furnishing of services, including consultancy services, by a person, including through employees or other personnel engaged by the person for such purpose, but only when activities of that nature continue for the same or a connected project for a period or periods aggregating more than ninety days in any one-year period.

3) A building site, or a construction, assembly, or installation project, or supervisory activities connected with such site or project shall be a permanent establishment only when the site, project, or activities continue for more than ninety days.

4/ Despite sub-articles (1) and (2) of this Article, when a person, other than an agent of independent status acting in the ordinary course of business, acts on behalf of another person (referred to as the "principal"), the first-mentioned person shall be a permanent establishment of the principal if the person:

(1) regularly negotiates contracts on behalf of the principal; or

(2) maintains a stock of goods from which the person regularly delivers goods on behalf of the principal.

5/ In this Article, "agent of independent status" means a broker, general commission agent, or other agent acting independently of the person that they represent, but does not include a person who acts solely or principally for another person if their commercial and financial relations differ from those that would have been made between independent person.

5. Residence

1/ The following are residents of Ethiopia:

a) a resident individual;

b) a resident body;

c) the Government of Ethiopia, and any regional state or city government in Ethiopia.

2/ Subject to sub-Articles (3) and (4) of this Article, a resident individual is an individual who:

a) has a domicile in Ethiopia;

b) is a citizen of Ethiopia who is a consular, diplomatic, or similar official posted abroad;

c) is present in Ethiopia, continuously or intermittently, for more than 183 days in a one-year period.

3/ An individual who is a resident individual under sub-article (2) of this Article for a tax year (referred to as the "current tax year"), but who was not a resident individual for the preceding tax year shall be treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in Ethiopia.

4/ An individual who is a resident individual under sub-article (2) of this Article for the current tax year but who is not a resident individual for the following tax year shall be treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was present in Ethiopia.

5/ A resident body is a body that:

a) is incorporated or formed in Ethiopia; or
b) has its place of effective management in Ethiopia.

6/ A resident company is a company that is a resident body.

7/ A non-resident is any person who is not a resident of Ethiopia.

6. Source of Income

1/ Employment income derived by an employee shall be Ethiopian source income:

a) to the extent that it is derived in respect of employment exercised in Ethiopia, wherever paid; or

b) if it is paid to the employee by, or on behalf of, the Government of Ethiopia, wherever the employment is exercised.

2/ Business income derived by a resident of Ethiopia shall be Ethiopian source income except to the extent that it is attributable to a business conducted by the resident through a permanent establishment outside Ethiopia.

3/ Business income derived by a non-resident shall be Ethiopian source income to the extent that it is attributable to:

a) a business conducted by the non-resident through a permanent establishment in Ethiopia;

b) sales in Ethiopia by the non-resident of goods or merchandise of the same or similar kind as those sold by the non-resident through a permanent establishment in Ethiopia; or

c) any other business activity conducted by the non-resident in Ethiopia of the same or similar kind as that conducted by the non-resident through a permanent establishment in Ethiopia.

4/ Despite sub-articles (1), (2), and (3) of this Article, income derived by a person shall be Ethiopian source income if it is:

a) a dividend paid to the person by a resident body;

b) rental income from the lease of:

(1) immovable property located in Ethiopia; or

(2) movable property located in Ethiopia subject to tax under Article 57 of this Proclamation;

c) a gain arising from the disposal of the following:

(1) immovable property located in Ethiopia;

(2) a membership interest in a body, if more than 50% of the value of the interest is derived, directly or indirectly through one or more interposed bodies, from immovable property located in Ethiopia;

(3) shares in, or bonds issued by, a resident company;

d) an insurance premium relating to the insurance of a risk in Ethiopia;

e) income from a performance or sporting event taking place in Ethiopia;

f) winnings from a game of chance held in Ethiopia;

g) interest, a royalty, management fee, technical fee, or other income subject to tax under this Proclamation:

(1) paid to the person by a resident of Ethiopia, other than as an expenditure of a business conducted by the resident through a permanent establishment outside Ethiopia; or

(2) paid to the person by a non-resident as an expenditure of a business conducted by the non-resident through a permanent establishment in Ethiopia.

5/ Foreign income is any income that is not Ethiopian source income.

7. Scope of Application

1/ This Proclamation shall apply to residents of Ethiopia with respect to their worldwide income.

2/ This Proclamation shall apply to non-residents with respect to their Ethiopian source income.

8. Schedules of Income

1/ The Proclamation provides for the taxation of income in accordance with the following schedules:

a) Schedule 'A', income from employment;

b) Schedule 'B', income from rental of buildings;

b) Schedule 'C', income from business;

c) Schedule 'D', other income;

d) Schedule 'E', exempt income.

2/ Subject to Article 60(2) of this Proclamation, a taxpayer that derives income from different sources subject to tax under the same Schedule for a tax year shall be taxable under the Schedule on the total income for the year.

9. Obligation to Pay Income Tax

Every person deriving income shall pay income tax in accordance with this Proclamation and the Tax Administration Proclamation.

PART TWO

SCHEDULE 'A' – INCOME FROM EMPLOYMENT

10. Imposition of Employment Income Tax

1/ Employment income tax shall be imposed for each calendar month at the rate or rates specified in Article 11 of this Proclamation on an employee who receives employment income during the month.

2/ The employment income tax imposed on an employee under sub-article (1) of this Article for a month shall be calculated by applying the rate or rates of tax applicable to the employee under Article 11 of this Proclamation to the total employment income received by the employee for the month.

3/ An employee shall not be allowed a deduction for any expenditure incurred in deriving employment income.

4/ For the purposes of this Schedule and Article 85 of this Proclamation, the employment income attributable to the months of Nehassie and Pagumen shall be aggregated and treated as the employment income of a single calendar month.

5/ If Article 80(1) applies to an employee, the employment income tax payable by the employee shall be a final tax on the employment income of the employee and the tax shall be discharged if the employer has withheld tax from the income in accordance with Article 85 of this Proclamation.

11. Employment Income Tax Rates

The rates of employment income tax are:

Employment Income (per month) Birr	Employment Income Tax Rate
0 – 585	0%
586-1,650	10%
1,651-3,145	15%
3,146-5,195	20%
5,196-7,758	25%
7,759-10,833	30%
Over 10,833	35%

12. Employment Income

1/ Subject to sub-articles (2) and (3) of this Article, employment income means the following:

a) salary, wages, an allowance, bonus, commission, gratuity, or other remuneration received by an employee in respect of a past, current, or future employment;

b) the value of fringe benefits received by an employee in respect of a past, current, or future employment;

c) an amount received by an employee on termination of employment, whether paid voluntarily, under an agreement, or as a result of legal proceedings, including any compensation for redundancy or loss of employment, or a golden handshake payment.

2/ Employment income shall not include exempt income.

3/ If an employer pays the employment income tax payable by an employee, in whole or part, without withholding tax from the employment income of the employee, the amount of tax paid by the employer shall be included in the employment income of the employee.

4/ The Council of Ministers shall make Regulations for determining the value and taxation of fringe benefits.

PART THREE

SCHEDULE 'B' – INCOME FROM RENTAL OF BUILDINGS

13. Imposition of Rental Income Tax

1/ Rental income tax shall be imposed for each tax year at the rate or rates specified in Article 14 of this Proclamation on a person renting out a building or buildings who has taxable rental income for the year.

2/ Subject to sub-article (3) of this Article, the rental income tax payable by a taxpayer for a tax year shall be calculated by applying the rate or rates of tax applicable to the taxpayer under Article 14 of this Proclamation to the taxable rental income of the taxpayer for the year.

3/ This Schedule shall not apply to rental income subject to tax under Article 57.

14. Rental Income Tax Rates

1/ The rate of rental income tax applicable to a body is 30%.

2/ The rates of rental income tax applicable to an individual are:

Taxable Rental Income (per year) Birr	Rental Income Tax Rate
0 - 7,000	0%
7,001-19,300	10%
19,301-37,750	15%
37,751-62,350	20%
62,351-93,100	25%
93,101-130,000	30%
Over 130,000	35%

15. Taxable Rental Income

1/ The taxable rental income of a taxpayer for a tax year is the gross amount of income derived by the taxpayer from the rental of a building or buildings for the year reduced by the total amount of deductions allowed to the taxpayer for the year.

2/ Subject to sub-articles (3) and (4) of this Article, the gross amount of income derived by a taxpayer from the rental of a building for a tax year shall include the following:

a) all amounts derived by the taxpayer during the year under the lease agreement, including any lease premium or similar amount;

b) all payments made by the lessee during the year on behalf of the lessor according to the lease agreement;

c) the amount of any bond, security, or similar amount that, during the year, the taxpayer is entitled to retain as a result of damage to the building and that has not been used by the taxpayer in repairing the damage to the building;

d) the value of any renovation or improvement made under the lease agreement to the land or building when the cost was borne by the lessee in addition to the rent payable to the taxpayer.

3/ If a taxpayer leases a furnished building, the gross amount of income derived by the taxpayer from the lease of the building shall include any amount attributable to the lease of the furniture or equipment.

4/ The gross amount of income derived by a taxpayer from the lease of a building shall not include exempt income.

5/ In computing the taxable rental income for a tax year of a taxpayer who does not maintain books of account, a deduction shall be allowed for the following amounts:

a) any fees and charges, but not tax, levied by a State or city administration in respect of the land or building leased and paid by the taxpayer during the year;

b) an amount equal to fifty present (50%) of the gross rental income derived by the taxpayer for the year as an allowance for the repair, maintenance, and depreciation of the building, furniture, and equipment.

6/ The provisions of sub-article 5 of this Article shall not be applicable for taxpayers who are required to maintain books of account under this Proclamation, for any reason what so ever.

7/ In computing the taxable rental income for a tax year of a taxpayer who maintains books of account, a deduction shall be allowed for any expenditures incurred by the taxpayer in deriving rental income and paid during the year including:

a) the cost of the lease of land on which the building is situated;

b) repairs and maintenance;

c) depreciation of the building, furniture and equipment;

d) interest and insurance premiums; and

e) fees and charges, but not tax, levied by a State or city administration in respect of the land or building leased.

16. Sub-leases

1/ The taxable rental income of a sub-lessor of a building for a tax year shall be the difference between the total rental income received by the sub-lessor during the year and the total rental income paid to the lessor of the building.

2/ The owner of a building who allows a lessee to sub-lease the building shall be liable for the rental income tax payable by the lessee if the lessee fails to pay the tax.

17. New Rental Building Notification

1/ At the earlier of the time construction of a rental building is completed or when the building is rented, the owner of the building and the builder shall notify the kabele administration and local administration in which the building is located about the completion and the name, address, and TIN of the person or persons liable for rental income tax with respect to the building.

2/ The kabele administration and local administration shall communicate the information contained in the notification to the Authority.

PART FOUR

SCHEDULE 'C' – INCOME FROM BUSINESS

CHAPTER ONE

IMPOSITION OF BUSINESS INCOME TAX

18. Imposition of Business Income Tax

1/ Subject to this Part, business income tax shall be imposed for each tax year at the rate or rates specified in Article 19 of this Proclamation on a person conducting business that has taxable income for the year.

2/ The business income tax payable by a taxpayer for a tax year shall be calculated by applying the rate or rates of tax applicable to the taxpayer under Article 19 of this Proclamation to the taxable income of the taxpayer for the year.

19. Business Income Tax Rates

1/ The rate of business income tax applicable to a body is [30%].

2/ The rates of business income tax applicable to an individual are:

Taxable Income (per year) Birr	Business Income Tax Rate
0 - 7,000	0%
7,001-19,300	10%
19,301-37,750	15%
37,751-62,350	20%
62,351-93,100	25%
93,101-130,000	30%
Over 130,000	35%

20. Taxable Income

1/ The taxable income of a taxpayer for a tax year shall be the total business income of the taxpayer for the year reduced by the total deductions allowed to the taxpayer for the year.

2/ The taxable income of a taxpayer for a tax year shall be determined in accordance with the profit and loss, or income statement, of the taxpayer for the year prepared in accordance with the financial reporting standards, subject to any modifications made in this Proclamation, regulations made by the Council of Ministers, and directives issued by the Minister.

21. Business Income

1/ Subject to this Proclamation, the business income of a taxpayer for a tax year shall include the following:

a) the gross amounts derived by the taxpayer during the year from the conduct of a business, including the gross proceeds from the disposal of trading stock and the gross fees for the provision of services (other than employment income);

b) the gross amounts derived by the taxpayer during the year from the investment of the capital of a business, including dividends, interest, and royalties;

c) a gain on disposal of a business asset (other than trading stock) made by the taxpayer during the tax year;

d) any other amount included in business income of the taxpayer for the tax year under this Proclamation.

2/ Business income shall not include an amount that is exempt income.

3/ Subject to sub-article (4) of this Article, the gain on disposal of a business asset included in business income under sub-article (1)(c) of this Article is the amount by which the consideration for the disposal of the asset exceeds the net book value of the asset at the time of disposal.

4/ If a business asset is a taxable asset under Article 58 of this Proclamation:

a) the gain on disposal of the asset included in business income under sub-article (1)(c) of this Article is the amount (if any) by which the cost of the asset exceeds the net book value of the asset at the time of disposal; and

b) any gain above cost is taxable under Article 58.

22. Deductible Expenditures

1/ Subject to this Proclamation, in determining the taxable income of a taxpayer for a tax year, the deductions allowed to a taxpayer shall include the following:

a) any expenditure to the extent necessarily incurred by the taxpayer during the year in deriving, securing, and maintaining amounts included in business income;

b) the cost of trading stock disposed of by the taxpayer during the year as determined in accordance with the financial reporting standards;

c) the total amount by which the depreciable assets and business intangibles of the taxpayer have declined in value during the year from use in deriving business income as determined under Article 25 of this Proclamation;

d) a loss on disposal of a business asset (other than trading stock) disposed of by the taxpayer during the year;

e) any other amount allowed as a deduction to the taxpayer under this Proclamation for the year.

2/ Article 58 of this Proclamation and not sub-article (1)(d) of this Article shall apply to a loss on disposal of a taxable asset except when the taxable asset is a depreciable asset.

3/ For the purposes of sub-article (1)(d) of this Article, a loss on disposal of a business asset is the amount by which the net book value of the asset at the time of disposal exceeds the consideration for the disposal.

23. Interest Expenditure

1/ Subject to this Article and Article 46 of this Proclamation, in determining the taxable income of a taxpayer for a tax year, the taxpayer shall be allowed a deduction for any interest incurred by the taxpayer in a tax year if the taxpayer has used the proceeds or benefit of the debt or other instrument or agreement that gives rise to the interest to derive business income.

2/ No deduction shall be allowed for the following:

a) interest paid or payable by a taxpayer in excess of the rate used between the National Bank of Ethiopia and commercial banks increased by 2 percentage points unless the interest is paid to:

(1) a financial institution recognised by the National Bank of Ethiopia; or

(2) a foreign bank permitted to lend to persons in Ethiopia;

b) interest paid or payable by a taxpayer to a related person who is a resident of Ethiopia except when the interest is included in the business income of the related person.

24. Charitable Donations

1/ In determining the taxable income of a taxpayer for a tax year, the taxpayer shall be allowed a deduction for the amount of a donation when the donation is made:

a) to a non-profit organisation as defined in Article 63 of this Proclamation; or

b) in response to an emergency call issued by the Government to defend the sovereignty and integrity of the country, to prevent or provide relief in relation to man-made or natural disasters or an epidemic, or for any other similar cause;

2/ The total deduction allowed to a taxpayer under sub-article (1) of this Article for a tax year shall not exceed 10% of the taxable income of the taxpayer for the year.

25. Depreciation of Depreciable Assets and Business Intangibles

1/ In determining the taxable income of a taxpayer for a tax year, the taxpayer shall be allowed a deduction for the amount by which the depreciable assets and business intangibles of the taxpayer declined in value during the year through use in deriving business income.

2/ Subject to this Proclamation, the amount by which the depreciable assets or business intangibles of a taxpayer decline in value during a tax year shall be computed in accordance with the Regulations to be issued by the Council of Ministers.

3/ If a taxpayer does not use a depreciable asset or business intangible for the whole of a tax year in deriving business income, the amount allowed as a deduction under this Article shall be the amount computed in accordance with sub-article (2) of this Article reduced by the proportion of the year that the asset was not so used.

4/ If a taxpayer uses a depreciable asset or business intangible during a tax year partly to derive business income and partly for another use, the amount allowed as a deduction under this Article shall be the proportion of the amount computed under sub-article (2) of this Article (after taking account of any adjustment under sub-article (3) of this Article) that relates to the derivation of business income.

5/ If a taxpayer has used a depreciable asset or business intangible partly in deriving business income and partly for another use and the taxpayer disposes of the asset or intangible during a tax year, the amount of the gain or loss on disposal to which Article 21(1)(c) or 21(1)(d) of this Proclamation applies shall be the fair proportional part of the gain or loss that relates to the derivation of business income.

6/ The depreciation of a depreciable asset or business intangible shall commence when the asset or intangible is ready and available for use in deriving business income, but, in the case of a building constructed by a taxpayer, not before the regulatory authority has issued the taxpayer with a certificate of completion for the building.

7/ In this Article:

"business intangible" means any of the following when used wholly or partly to derive business income:

a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right that has a limited useful life;

b) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible that has a limited useful life;

c) contractual rights (including arising as a result of a prepayment of an expenditure) with a benefit for a limited period, but which exceeds one year;

d) an expenditure that provides an advantage or benefit for a period of more than one year, but not including expenditure incurred to acquire any tangible movable or immovable property;

"depreciable asset" means tangible movable property or a structural improvement to immovable property that:

a) has a useful life exceeding one year;

b) is likely to lose value as a result of normal wear and tear, or obsolescence; and

c) is used wholly or partly to derive business income; and

"structural improvement", means a building or any other addition or alteration to immovable property that becomes part of, or is permanently affixed to, the immovable property including a road, driveway, car park, fence, or wall.

26. Loss carry forward

1/ If the total amount of deductions allowed to a taxpayer for a tax year (other than a deduction allowed under this Article) exceeds the total business income of the taxpayer for the year, the amount of the excess shall be the taxpayer's loss for the year.

2/ Subject to sub-article (4) of this Article, if a taxpayer has a loss for a tax year, the taxpayer shall carry the amount of the loss forward to the next following tax year and the loss shall be allowed as a deduction in computing the taxpayer's taxable income for that following year.

3/ If a taxpayer is not able to wholly deduct a loss under sub-article (2) of this Article, the taxpayer shall carry the amount not deducted forward to the next following tax year and apply the amount as specified in sub-article (2) of this Article in that year, and so on until the loss is fully deducted, but a taxpayer shall not carry a loss forward for more than 5 tax years after the end of year in which the loss was incurred.

4/ If there has been two tax years in which a taxpayer has incurred a loss under sub-article (1) of this Article and each of those losses has been carried forward under sub-article (2) of this Article, the taxpayer shall not be permitted to carry forward any further losses under sub-article (2) of this Article.

5/ A taxpayer shall carry forward a loss under sub-articles (2) and (3) of this Article in accordance with the Regulations.

27. Non-deductible Expenditures and Losses

1/ Except as provided for in this Proclamation, no deduction is allowed for the following:

a) an expenditure of a capital nature except to the extent provided for under Article 22(1)(c) of this Proclamation;

b) an increase in the share capital of a company or the basic capital of a registered partnership;

c) voluntary pension or provident fund contributions in respect of an employee in excess of 15% of the monthly employment income of the employee;

d) dividends and paid-out profit shares;

e) an expenditure or loss to the extent recovered or recoverable under a policy of insurance, or a contract of indemnity, guarantee, or surety;

f) a fine or penalty imposed, or punitive damages awarded, for violation of any law, regulation, or contract;

g) an amount that a person has transferred, in its financial accounts, to a reserve or provision for expenditures or losses not yet incurred but expected to be incurred in a future tax year;

h) income tax paid under this Proclamation or under a foreign tax law, or recoverable value added tax;

i) representation expenditures of an employee in excess of 10% of the employment income of the employee;

j) expenditure incurred in the provision of entertainment, except:

(1) when the person's business involves the provision of entertainment; or

(2) to the extent that the expenditure is allowed as a deduction under a Directive issued by the Minister relating food provided to for free to employees by an employer conducting a mining, manufacturing, or agricultural business;

k) a donation or gift except as provided for in Article 24 of this Proclamation;

l) personal consumption expenditure;

m) a loss on the disposal of a business asset by a taxpayer to a related person;

n) expenditure to the extent disallowed under regulations to be issued by the Council of Ministers.

2/ If a withholding agent is allowed a deduction for a payment from which the agent is required to withhold tax under Part Ten of this Proclamation, the agent shall not be allowed to claim the deduction until the withholding tax has been paid unless to the Authority.

3/ In this Article, "entertainment" means the provision to any person of food, beverages, tobacco, accommodation, amusement, recreation, or hospitality of any kind.

CHAPTER TWO

TAX ACCOUNTING

28. Accounting Year

1/ This Article shall apply to the following taxpayers:

a) an individual who has been granted permission to use the individual's accounting year as their tax year under paragraph (a) of the definition of "tax year" in Article 2 of this Proclamation;

b) a body.

2/ The accounting year of a taxpayer to whom this Article applies is the period of 12 months ending on the date of the annual balance of the financial accounts of the taxpayer.

3/ A taxpayer shall not change its accounting year for tax purposes unless it obtains prior approval, in writing, from the Authority and complies with any conditions that may be attached to the approval.

4/ The Authority may, by notice in writing, revoke an approval under sub-article (3) of this Article if the taxpayer fails to comply with any of the conditions attached to the approval.

5/ When the accounting year of a taxpayer changes as a result of sub-article (3) or (4) of this Article, the period between the last full accounting year prior to the change and the date on which the new accounting year commences shall be treated as a separate accounting year referred to as a "transitional accounting year".

6/ When the accounting year of a taxpayer does not coincide with the fiscal year, the law applicable for the accounting year shall be the law applicable for the fiscal year that ends during the accounting year.

29. Change in Tax Accounting Method

1/ A taxpayer may apply to the Authority, in writing, for a change in the taxpayer's method of accounting and the Authority may, by notice in writing, approve the application but only when satisfied that the change is necessary to properly compute the taxable income of the taxpayer.

2/ If a taxpayer's method of accounting changes under sub-article (1) of this Article including when there is a change in the Category of the taxpayer, the taxpayer shall make adjustments in the tax year of change to items of income, deduction, and credit, and to any other items affected by the change, so that no item is omitted and no item is taken into account more than once.

30. Bad Debts

1/ In determining the taxable income of a taxpayer for a tax year, the taxpayer shall be allowed a deduction for a bad debt when the following conditions are satisfied:

a) the amount of the debt has previously been included in the business income of the taxpayer;

b) the debt or part of the debt is written off in the taxpayer's financial accounts for the tax year in accordance with the financial accounting standards;

c) legal action has been taken to collect the debt but the debt is irrecoverable.

2/ The amount of the deduction allowed to a taxpayer under this Article for a tax year shall not exceed the amount of the debt written off in the taxpayer's financial accounts for that year.

3/ This Article shall not apply to a financial institution to which Article 31 of this Proclamation applies.

31. Financial Institutions and Insurance Companies

The Regulations may provide rules for the following:

a) the deduction of the loss reserve of financial institutions;

b) the deduction of the reserve for unexpired risks of insurance companies (other than life insurance companies);

c) the calculation of the net income of life insurance companies.

32. Long-term Contracts

1/ A taxpayer accounting for business income tax on an accrual basis shall include amounts in business income and claim deductions for expenditures arising under a long-term contract for a tax year based on the percentage of the contract completed during the year.

2/ The percentage of a long-term contract completed by a taxpayer during a tax year shall be determined by comparing the total costs incurred by the taxpayer during year allocated to the contract with the total estimated contract costs, including any variations or fluctuations.

3/ When, at the end of the final tax year of a long term contract, a taxpayer has a final year loss in relation to the contract that the taxpayer is permitted to carry forward under Article 26 but is unable to do so for the reason that the taxpayer ceases to carry on business in Ethiopia at the end of the contract, the taxpayer may carry the loss back to the preceding tax year and the loss shall be allowed as a deduction in that year.

4/ If a taxpayer is not able to wholly deduct a loss carried back under sub-article (3) of this Article, the amount not deducted may be carried back to the next preceding tax year and applied as specified in sub-article (3) of this Article in that year.

5/ A taxpayer has a final year loss under a long-term contract if both the following conditions are satisfied:

a) the taxable income estimated to be made under the contract for the purposes of the percentage of completion method exceeds the actual taxable income, if any, under the contract; and

b) the amount of the excess under paragraph (a) of this sub-article exceeds the difference between the business income and deductible expenditures computed under sub-article (1) of this Article for the tax year in which the contract was completed,

and the amount of the excess under paragraph (b) of this sub-article is the amount of the final year loss.

6/ In this Article, "long-term contract" means a contract for manufacture, installation or construction, or, in relation to each, the performance of related services, that is not completed within the tax year in which work under the contract commenced, other than a contract estimated to be completed within 12 months of the date on which work under the contract commenced.

33. Simplified Tax System for Category 'B' Taxpayers

The taxable income for a tax year of a Category 'B' taxpayer shall be computed in accordance with this Proclamation subject to the following modifications:

a) the taxpayer shall account for business income and deductible expenditures on a cash basis;

b) the rate of depreciation applicable to the depreciable assets and business intangibles of the taxpayer for the purposes of Article 25 of this Proclamation shall be 100%;

c) a deduction is allowed for the cost of trading stock acquired during the year;

d) the period for the retention of documents under Article 17(2) of the Tax Administration Proclamation and the period for the amendment of tax assessments under Article 28(2)(b) of the Tax Administration Proclamation shall be 2 years.

CHAPTER THREE

BODIES

34. Change in Control of a Body

1/ Subject to sub-article (2) of this Article, a body shall carry a loss forward for a tax year (referred to as the "loss year") under Article 25 or 45 of this Proclamation to a subsequent tax year (referred to as the "carry forward year") only when the same person holds more than 50% of the underlying ownership of the body in the loss year, the carry forward year, and all intervening tax years.

2/ Sub-article (1) of this Article shall not prevent the carry forward of loss by a body when the body:

a) conducts the same business in the loss year, the carry forward year, and all intervening tax years; and

b) does not, until the loss has been fully deducted, engage in any new business activity after the change in underlying ownership if the principal purpose of the body or the members of the body in engaging in the new business activity is to utilise the loss so as to reduce the business income tax payable on the income arising from the new business activity.

35. Corporate Reorganisations

1/ If a resident company (referred to as the "transferor") transfers a business asset to another resident company (referred to as the "transferee") as part of a reorganisation:

a) the transfer shall not be treated as a disposal of the business asset by the transferor;

b) the transferee shall be treated as having acquired the business asset for a cost equal to the transferor's cost for the asset at the time of the transfer; and

c) if the transferee has issued shares in exchange for the transferred asset, the cost of the shares is equal to the cost of the transferred asset at the time of the transfer.

2/ If the business asset referred to in sub-article (1) of this Article is a depreciable asset or business intangible, the reference in that sub-article to the cost of the business asset is a reference to the net book value of the business asset at the time of the transfer.

3/ In this Article, "reorganisation" means:

a) a merger of two or more resident companies;

b) the acquisition or takeover of 50% or more of the voting shares and 50% or more of all other shares by value of a resident company solely in exchange for shares in another resident company that is a party to the reorganisation;

c) the acquisition of 50% or more of the assets of a resident company by another resident company that is a party to the reorganisation solely in exchange for shares with voting rights but no preferential right to dividends;

d) a division of a resident company into two or more resident companies; or

e) a spin off.

4/ This Article shall apply only when the Authority is satisfied that the merger, acquisition, takeover, division, or spin off does not have a principal purpose of tax avoidance.

CHAPTER FOUR

MINING AND PETROLEUM OPERATIONS

36. Chapter Four Definitions

In this Chapter, unless the context otherwise requires:

1/ "contractor" means a person who has entered into a petroleum agreement;

2/ "contract area" means the area designated as the contract area under a petroleum agreement;

3/ "farm-out agreement" means an agreement to which Article 42 of this Proclamation applies;

4/ "development expenditure" means capital expenditure incurred by a licensee or contractor in undertaking development operations, other than expenditure incurred in acquiring a depreciable asset, and includes the following:

a) expenditure whenever incurred in acquiring:

(1) an interest in a mining right or petroleum agreement, other than an interest referred to in paragraph 6(a)(1) of the definition of "exploration expenditure" in this Article; or

(2) mining or petroleum information, other than information referred to in paragraph 6(a)(2) of the definition of "exploration expenditure" in this Article;

b) social infrastructure expenditure incurred relation to development operations under a mining right or petroleum agreement;

5/ "development operations" means:

a) for mining operations, authorised operations under a mining licence; or

b) for petroleum operations, authorised operations relating to development and production under a petroleum agreement;

6/ "exploration expenditure" means capital expenditure incurred by a licensee or contractor in undertaking exploration operations, other than expenditure incurred in acquiring a depreciable asset, and includes the following:

a) expenditure incurred in acquiring:

(1) an interest in an exploration right from the Government or under a farm-out agreement; or

(2) exploration information from the Government or under a farm-out agreement;

b) social infrastructure expenditure incurred in relation to exploration operations under a mining exploration right or petroleum agreement;

7/ "exploration information" means information relating to the search for:

a) minerals under a mining exploration right; or

b) petroleum under a petroleum agreement;

8/ "exploration operations" means:

a) for mining operations, authorised operations under a mining exploration right; or

b) for petroleum operations, authorised operations relating to exploration under a petroleum agreement;

9/ "exploration right" means a mining exploration right granted under Mining Proclamation or an exploration licence issued under a petroleum agreement;

10/ "licence area" means the area that is the subject of a mining right;

11/ "licensee" means a person who has been granted a mining right;

12/ "mining exploration right" means a reconnaissance, exploration, or retention licence granted under the Mining Operations Proclamation;

13/ "mining information" means information relating to mining operations;

14/ "mining operations" means authorised operations under a mining right;

15/ "mining right" means a reconnaissance, exploration, retention, or mining licence granted under the Mining Operations Proclamation;

16/ "petroleum agreement" means an agreement that a person has entered into with the Government under the Petroleum Operations Proclamation;

17/ "petroleum information" means information relating to petroleum operations;

18/ "petroleum operations" means authorised operations under a petroleum agreement;

19/ "social infrastructure expenditure" means capital expenditure that a licensee or contractor is required to incur under a mining right or petroleum agreement on the construction of a public school, hospital, road, or similar social infrastructure; and

20/ "subcontractor" means a person supplying services to a licensee or contractor in respect of mining or petroleum operations undertaken by the licensee or contractor, other than a person supplying services as an employee.

37. Taxation of Licensees and Contractors

1/ This Proclamation shall apply to a licensee or contractor subject to the modifications in this Chapter.

2/ If there is any inconsistency in the taxation of a licensee or contractor as between this Chapter and the other parts of this Proclamation, this Chapter shall prevail.

3/ The business income tax rate applicable to a licensee or contractor is 25%.

4/ The rate of non-resident tax applicable to an amount paid by a licensee or contractor to a non-resident subcontractor is 20%.

38. Limitation of Deductions Relating to Mining or Petroleum Operations

1/ A deduction for expenditure to the extent incurred by a licensee in undertaking mining operations in a licence area during a tax year shall be allowed only against the business income derived by the licensee from the mining operations in the licence area during the year.

2/ If a licensee has a loss in respect of mining operations in a licence area for a tax year, the amount of the loss shall be carried forward and allowed as a deduction against the business income of the licensee derived from mining operations in the licence area in the next following tax year of the licensee.

3/ The amount of a loss of a licensee for a tax year that is not deducted under sub-article (2) of this Article shall be carried forward by the licensee to the next following tax year and deductible in that year in accordance with sub-article (2) of this Article, and so on until the loss is fully deducted or the mining operations in the licence area cease.

4/ A licensee has a loss in relation to mining operations in a licence area for a tax year if the total deductions of the licensee in respect of mining operations undertaken by the licensee in the licence area during the year exceed the total amount of business income derived from such operations in the area for the year.

5/ When:

a) a licensee has ceased mining operations in a licence area (referred to as the "original licence area");

b) the licensee has a loss in respect of the original licence area that has not been fully deducted under sub-article (3) of this Article; and

(c) the licensee has mining operations in another licence area,

the licensee can elect, by notice in writing to the Authority, to treat the loss in respect of the original licence area as a loss carried forward to which sub-article (2) or (3) of this Article applies in relation to the other licence area.

6/ In this Article, "licence area", in relation to the mining operations of a licensee, means the area covered by the mining right of the licensee under which the mining operations have been undertaken and, in the case of a mining licence, includes:

a) the original area covered by a mining exploration right of the licensee when the area covered by the mining licence falls wholly within the original area covered by the mining exploration right; or

b) the area covered by another mining licence of the licensee when the area covered by the other mining licence is adjacent to the first-mentioned mining licence.

7/ This Article shall apply, with the necessary changes made, to a contractor in relation to a contract area of the contractor under a petroleum agreement.

39. Exploration Expenditure

1/ For the purposes of Article 25 of this Proclamation, exploration expenditure incurred by a licensee or contractor shall be treated as a business intangible with a useful life of one year.

2/ The depreciation rate for a depreciable asset that has its first use in exploration operations shall be 100%.

40. Development Expenditure

1/ For the purposes of Article 25 of this Proclamation and subject to sub-article (2) of this Article, development expenditure of a licensee or contractor shall be treated as a business intangible with a useful life of 4 years.

2/ Subject to sub-article (4) of this Article, if a licensee or contractor incurs development expenditure before the commencement of commercial production, Article 25 of this Proclamation shall apply on the basis that the expenditure was incurred at the time of commencement of commercial production.

3/ Subject to sub-article (4) of this Article, if a depreciable asset for use in development operations is acquired or constructed by a licensee or contractor before the commencement of commercial production, Article 25 of this Proclamation shall apply to the asset on the basis that it was acquired or constructed at the time of commencement of commercial production.

4/ The amount of the deduction allowed for development expenditure referred to in sub-article (2) of this Article or the depreciation deduction allowed for a depreciable asset referred to in sub-article (3) of this Article for the tax year in which the commencement of commercial production occurs shall be computed according to the following formula:

$$\mathbf{A \times {}^{B}/_{C}}$$

where:

A is the amount of the expenditure or the cost of the asset;

B is the number of days in the period beginning on the date of commencement of commercial production and ending on the last day of the tax year in which commercial production commenced; and

C is the number of days in the tax year in which commercial production commenced.

5/ If, other than under a farm-out agreement, a licensee disposes of an interest in a mining right or a contractor disposes of an interest in a petroleum agreement, any gain arising on the disposal is reduced by any development expenditure incurred by the licensee or contractor that has not been deducted or otherwise recouped by the licensee or contractor at the time of the disposal.

6/ In this Article, "commencement of commercial production" means the first day of the period of 30 consecutive days during which the average level of production on the 25 highest production days in the 30-day period reaches a production level as determined by the Ministry of Mines, Petroleum and Natural Gas to be commercial production.

41. Rehabilitation Expenditure

1/ A contribution made by a licensee or contractor to a rehabilitation fund in accordance with an approved rehabilitation plan in relation to mining or petroleum operations shall be allowed as a deduction in the tax year in which the contribution was made.

2/ An expenditure incurred by a licensee or contractor in carrying out work required by an approved rehabilitation plan in respect of the mining or petroleum operations of the licensee or contractor shall be allowed as a deduction for the tax year in which the expenditure is incurred provided that the work is not paid for, directly or indirectly, from money made available out of a rehabilitation fund.

3/ An amount accumulated in a rehabilitation fund, or an amount withdrawn from a rehabilitation fund to meet expenditure incurred under an approved rehabilitation plan, shall be exempt income.

4/ An amount withdrawn from a rehabilitation fund and returned to the licensee or contractor is business income of the licensee or contractor for the tax year in which the amount was returned.

5/ Any surplus in a rehabilitation fund of a licensee or contractor at the time of completion of rehabilitation is business income of the licensee or contractor for the tax year in which rehabilitation is completed.

6/ In this Article:

"approved rehabilitation plan" means a plan for rehabilitation of a mine or petroleum site approved by the Ministry of Mines, Petroleum and Natural Gas, including rehabilitation obligations specified in a mining right or petroleum agreement; and

"rehabilitation fund" means a fund or account required to be established under a mining right or petroleum agreement to provide for the future payment of remedial work to the licence area covered by the mining right or contract area under the petroleum agreement and is managed jointly by the Ministry of Mines, Petroleum and Natural Gas and the licensee or contractor.

42. Farm-outs

1/ The provisions of this Article shall apply if the following conditions are satisfied:

a) a licensee or contractor (referred to as the "transferor") has entered into an agreement (referred to as a "farm-out agreement") with a person (referred to as the "transferee") for the transfer of part of the interest of the transferor in a mining right or petroleum agreement;

b) the consideration given by the transferee for the transferred interest wholly or partly includes the transferee agreeing to incur expenditure, or undertaking some or all of the work commitments of the transferor, in respect of the part of the interest retained by the transferor.

2/ If this Article applies:

a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor shall not be included in:

(1) the consideration received by the transferor for the transferred interest; or

(2) the business income of the transferor; and

b) the following applies to any amount in money received or receivable by the transferor for the transferred interest:

(1) Article 71 of this Proclamation shall apply to the amount in money on the basis that it is a recoupment by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest;

(2) if the amount in money exceeds the amount of deducted expenditure to which Article 71 of this Proclamation applies, the excess shall be treated as consideration received for the transferred interest.

43. Indirect Transfers of Mining or Petroleum Rights

1/ If there is a 10% or more change in the underlying ownership of a licensee or contractor, the licensee or contractor shall immediately notify the Authority, in writing, of the change.

2/ Subject to sub-article (3) of this Article, if the person disposing of the membership interest in a body to which a notice under sub-article (1) of this Article relates is a non-resident, the licensee or contractor shall be liable, as agent for the non-resident, for any tax payable under this Proclamation by the non-resident person in respect of the disposal.

3/ Sub-article (2) of this Article shall not apply when the disposal of the interest is by way of a trade in shares on a stock exchange.

4/ Any tax paid by a licensee or contractor on behalf of a non-resident under sub-article (2) of this Article shall be credited against the tax liability of the non-resident under this Proclamation.

5/ The membership interest in a body referred to in sub-article (2) of this Article shall be treated as a business asset for the purposes of this Proclamation.

CHAPTER FIVE

INTERNATIONAL TAX

44. Foreign Tax Credit for Foreign Business Income

1/ If a resident taxpayer has foreign income taxable under "Schedule C" in respect of which the resident has paid foreign income tax, the taxpayer shall be allowed a tax credit (referred to as a "foreign tax credit") of an amount equal to the lesser of:

a) the foreign income tax paid; or

b) the business income tax payable under "Schedule C" in respect of the foreign income.

2/ The business income tax referred to in sub-article (1)(b) of this Article shall be computed by applying the average rate of business income tax applicable to the resident taxpayer for the year against the net foreign income of the resident for the year.

3/ The foreign tax credit of a resident taxpayer for a tax year shall be computed separately for foreign income mentioned in Article 21(1)(b) of this Proclamation taxable under this Schedule (referred to as "passive foreign income") and the other foreign income of the taxpayer.

4/ When sub-article (3) of this Article applies, deductions are apportioned for the purposes of paragraph (b) of the definition of "net foreign income" in sub-article (8) of this Article in accordance with Article 73 of the Proclamation on the basis that passive foreign income of a resident taxpayer and the other foreign income of the taxpayer are separate classes of income.

5/ A foreign tax credit shall be allowed under this Article only if:

a) the resident taxpayer has paid the foreign income tax within 2 years after the end of the tax year in which the foreign income was derived by the taxpayer or within such further time as the Authority allows; and

b) the resident taxpayer has a receipt for the tax from the foreign tax authority.

6/ In computing the business income tax payable by a resident taxpayer for a tax year, the taxpayer shall apply the foreign tax credit under this Article before applying any other tax credits of the taxpayer for the tax year.

7/ If a foreign tax credit of a resident taxpayer for a tax year is not fully credited for the year, the excess credit shall not be refunded, carried back to the preceding tax year, or carried forward to the following tax year.

8/ In this Article:

"average rate of business income tax", in relation to a resident taxpayer for a tax year, means the percentage that the business income tax payable by the taxpayer for the year, before the allowance of any tax credit under this Proclamation, is of the taxable income of the taxpayer for the year;

"foreign income tax" means income tax, including withholding tax, imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include a penalty, additional tax, or interest payable in respect of such tax; and

"net foreign income", in relation to a resident taxpayer for a tax year, means the total foreign income of the taxpayer for the year taxable under this Schedule, as reduced by any deductions allowed to the person under this Schedule for the year that:

a) relate exclusively to the derivation of the foreign income; and

b) are apportioned to the derivation of the foreign income in accordance with Article 73 of this Proclamation on the basis that foreign income is a separate class of income.

45. Foreign Business Losses

1/ An amount that a resident taxpayer is allowed as a deduction under this Proclamation in deriving foreign income taxable under "Schedule C" shall be deductible only against that income.

2/ If a resident taxpayer has a foreign loss for a tax year, the amount of the loss shall be carried forward to the next following tax year and allowed as a deduction in that year against the taxpayer's foreign income taxable under "Schedule C" for the following year.

3/ If a resident taxpayer is not able to wholly deduct a foreign loss under sub-article (2) of this Article, the amount not deducted shall be carried forward to the next following tax year and applied as specified in sub-article (2) of this Article in that year, and so on until the loss is fully deducted, but a taxpayer shall not carry a foreign loss forward for more than five tax years after the end of year in which the loss was incurred.

4/ If there has been two tax years in which a taxpayer has incurred a foreign loss and each of those losses has been carried forward under sub-article (2) of this Article, the taxpayer shall not be permitted to carry forward any further losses under sub-article (2) of this Article.

5/ A taxpayer shall carry forward a foreign loss under sub-articles (2) and (3) of this Article in accordance with the Council of Ministers Regulations.

6/ In this Article, "foreign loss", in relation to a resident taxpayer for a tax year, means the amount by which the deductible expenditures incurred by the taxpayer in deriving foreign income taxable under this Schedule exceeds the amount of that income for the year.

46. Thin Capitalisation

1/ Subject to sub-article (2) of this Article, if a foreign-controlled resident company, other than a financial institution, has an average debt to average equity ratio in excess of 2 to 1 for a tax year, a deduction shall be disallowed for the interest paid by the company during that year calculated according to the following formula:

$$\mathbf{A \times {}^{B}/_{C}}$$

where:

A is the company's total amount of deductible interest for the year;

B is the company's excess debt for the year; and

C is the company's average debt for the year.

2/ If the average debt to average equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a tax year, sub-article (1) of this Article shall not apply if the amount of the average debt of the company for the year does not exceed the arm's length debt amount.

3/ This Article shall apply to a non-resident company with a permanent establishment in Ethiopia on the basis of the following:

a) the permanent establishment is treated as a foreign-controlled resident company; and

b) the average debt to average equity ratio of the permanent establishment is calculated by reference to:

(1) the debt obligations of the non-resident company attributable to the permanent establishment; and

(2) the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

4/ In this Article:

"arm's length debt amount", in relation to a foreign-controlled resident company, means the amount of debt that a financial institution would be prepared to lend to the company in an arm's length transaction having regard to all the circumstances of the company;

"average debt", in relation to a foreign-controlled resident company for a tax year, is the amount calculated according to the following formula:

$$^{A}/_{12}$$

where:

A is the sum of the amount of debt of the company at the end of each calendar month in the tax year;

"average equity", in relation to a foreign-controlled resident company for a tax year, is the amount calculated according to the following formula:

$$^{A}/_{12}$$

where:

A is the sum of the amount of equity of the company at the end of each calendar month in the tax year;

"debt", in relation to a foreign-controlled resident company, means the debt obligations of the company on which interest is payable as determined according to financial reporting standards;

"debt obligation" means an obligation to make a repayment of money to another person, including obligations arising under promissory notes, bills of exchange, and bonds, but not including:

a) accounts payable; or

b) an obligation to make a repayment of money in respect of which no interest is payable;

"equity", in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the equity of the company as determined according to financial reporting standards and includes an obligation to make a repayment of money in respect of which no interest is payable;

"excess debt", in relation to a foreign controlled resident company for a tax year, means the amount by which the company's average debt for the year exceeds the maximum average debt allowed for the year according to the 2 to 1 ratio; and

"foreign-controlled resident company" means a resident company in which more than 50% of the membership interests in the company are held by a non-resident either alone or together with a related person or persons.

47. Tax Treaties

1/ The Minister may enter into a tax treaty with a foreign government or governments.

2/ If there is any conflict between the terms of a tax treaty having legal effect in Ethiopia and this Proclamation, with the exception of sub-article (3) of this Article and Part Eight of this Proclamation, the tax treaty shall prevail over the provisions of this Proclamation.

3/ Subject to sub-article (4) of this Article, when a tax treaty provides that Ethiopian source income is exempt or excluded from tax, or the application of the tax treaty results in a reduction in the rate of Ethiopian

tax, the benefit of that exemption, exclusion, or reduction is not available to a body that, for the purposes of the tax treaty, is a resident of the other contracting state when fifty per cent or more of the underlying ownership or control of that body is held by an individual or individuals who are not residents of that other contracting state for the purposes of the tax treaty.

4/ Sub-article (3) of this Article shall not apply if the resident of the other contracting state is:

a) a company listed on a stock exchange in that other contracting state; or

b) a company carrying on an active business in that other contracting state and the Ethiopian-source income derived by the company is attributable to that business.

5/ In this Article:

"active business" does not include the business of holding or managing shares, securities, or other investments unless the company is a financial institution or insurance company; and

"tax treaty" means an international agreement for the avoidance of double taxation and the prevention of fiscal evasion.

CHAPTER SIX

PRESUMPTIVE BUSINESS TAXES

48. Taxation of Category 'C' Taxpayers

A Category 'C' taxpayer shall pay business income tax for each tax year based on a standard assessment as determined under Regulations made by the Council of Ministers.

49. Taxation of International Air Transportation Business of Non-residents

1/ A non-resident conducting an international air transportation business shall pay business income tax at the rate of 3% of the gross amount derived by the non-resident for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Ethiopia and destined for a place outside Ethiopia.

2/ This Article shall not apply to the following:

a) an amount that is exempt income;

b) an amount derived in respect of the following:

(1) a passenger who is in Ethiopia as a result of being in transit between two places outside Ethiopia;

(2) the transhipment of livestock, mail, merchandise, or goods.

PART FIVE

SCHEDULE 'D' – OTHER INCOME

50. Income of Non-residents

1/ A non-resident who has derived an Ethiopian source dividend, interest, royalty, management fee, technical fee, or insurance premium shall be liable for non-resident tax at the rate specified in sub-article (2) of this Article.

2) The rate of non-resident tax is:

a) for an insurance premium, 5% of the gross amount of the premium;

b) for a dividend, interest, or royalty, 10% of the gross amount of the dividend, interest, or royalty; or

c) for a management or technical fee, 20% of the gross amount of the fee.

3/ Sub-article (1) of this Article shall not apply to a dividend, interest, royalty, management fee, technical fee, or insurance premium that is attributable to a business carried on by the non-resident through a permanent establishment in Ethiopia and, in that case, the amount shall be taxable under Schedule 'C" or 'D", as the case may be.

51. Taxation of Recharged Technical Fees and Royalties

1/ This Article shall apply when the following conditions are satisfied:

a) a non-resident supplies technical services or the lease of equipment other than through a permanent establishment in Ethiopia;

b) the technical services are supplied, or equipment leased, to a person (referred to as the "recipient") who is:

(1) a resident of Ethiopia, other than in relation to a business conducted by the resident through a permanent establishment outside Ethiopia; or

(2) a non-resident conducting business in Ethiopia through a permanent establishment;

c) the technical fee or royalty in respect of the supply or lease is paid to the non-resident by another non-resident that is a related person of the recipient;

d) the technical fee or royalty is recharged by the related person to the recipient.

2/ If this Article applies, the Proclamation shall apply as if the related person is supplying the technical services or leased equipment to the recipient and the recharged amount is the technical fee for the services or royalty for the leased equipment.

52. Taxation of Non-resident Entertainers

1/ A non-resident entertainer or group of non-resident entertainers who has derived income from the participation by the entertainer or group in a performance taking place in Ethiopia shall be liable for income tax at the rate of 10% on the gross income derived from the performance without deduction of expenditures.

2/ When the income for a performance by an entertainer, including as member of a group, is derived not by the entertainer but by another person, sub-article (1) of this Article shall apply to the gross income derived by that other person.

3/ In this Article:

"entertainer" includes musician and sportsperson;
"group" includes a sporting team; and

"performance" includes a sporting event.

53. Royalties

1/ A resident of Ethiopia who derives a royalty shall be liable for income tax at the rate of 10% on the gross amount of the royalty.

2/ A non-resident who derives an Ethiopian source royalty that is attributable to a permanent establishment of the non-resident in Ethiopia shall be liable for income tax at the rate of 10% on the gross amount of the royalty.

54. Dividends

1/ A resident of Ethiopia who derives a dividend shall be liable for income tax at the rate of 10% of the gross amount of the dividend.

2/ A non-resident who derives an Ethiopian source dividend that is attributable to a permanent establishment of the non-resident in Ethiopia shall be liable for income tax at the rate of 10% on the gross amount of the dividend.

55. Interest

1/ A resident of Ethiopia who derives interest shall be liable for income tax at the rate of:

a) in the case a savings deposit with a financial institution that is a resident of Ethiopia, 5% of the gross amount of the interest; or

b) in any other case, 10% of the gross amount of the interest.

2/ A non-resident who derives Ethiopian source interest that is attributable to a permanent establishment of the non-resident in Ethiopia shall be liable for income tax at the rate of:

a) in the case a savings deposit with a financial institution that is a resident of Ethiopia, 5% of the gross amount of the interest; or

b) in any other case, 10% of the gross amount of the interest.

3/ A non-resident who derives Ethiopian sources interest in any other case shall be liable to pay 10% of the gross amount of the interest;

56. Income from Games of Chance

1/ A person who derives income from winning at games of chance held in Ethiopia shall be liable for income tax at the rate of 15% on the gross amount of the winnings.

2/ In computing the gross amount of winnings under sub-article (1) of this Article, no deduction shall be allowed for any loss incurred by the person from games of chance.

3/ Sub-article (1) of this Article shall not apply when the winnings are less than [100 Birr].

4/ In this Article, "games of chance" means a game whose outcome depends primarily on chance rather than the skill of the participant, including a lottery, card game, or tombola.

57. Income from Casual Rentals

1/ A person who derives income from the casual rental of property in Ethiopia (including any land, building, or movable property) shall be liable for income tax on the annual gross rental income at the rate of 15% of the gross amount of the rental income.

2/ This Article shall not apply to income that is a royalty taxable under Article 50 or 53 of this Proclamation.

58. Gains on Disposal of Certain Investment Property

1/ A person who derives a gain on the disposal of immovable property, a share, or bond (referred to as a "taxable asset') shall be liable to pay income tax at the rate specified in sub-article (2) of this Article on the amount of the gain.

2/ The rate of income tax under sub-article (1) of this Article shall be:

a) for a class 'A' taxable asset, 15%;
b) for a class 'B' taxable asset, 30%.

3/ The amount of a gain on disposal of a taxable asset by a person shall be the amount by which the consideration for the disposal of the asset exceeds the cost of the asset at the time of disposal.

4/ If a person makes a loss on disposal of a taxable asset during a tax year, the loss shall be recognised and be available to offset a gain on disposal of a taxable asset of the same class during the year subject to the following:

a) the loss may be used only to offset gains under this Article;

b) the unused amount of a loss can be carried forward indefinitely for offset against gains on disposal of taxable assets of the same class until fully offset;

c) no loss is recognised on the disposal of a taxable asset by a person to a related person;

d) the person has substantiated the amount of the loss to the satisfaction of the Authority.

5/ The amount of a loss on disposal of a taxable asset is the amount by which the cost of the asset at the time of disposal exceeds the consideration for the disposal.

6/ Article 35 of this Proclamation shall apply when the taxable asset transferred is also a business asset.

7/ In this Article:

a) "immovable property" shall not include a building held and wholly used as a private residence for 2 years prior to the disposal of the property;

b) "Class 'A' taxable asset" means immovable property; and

c) "Class 'B' taxable asset" means shares and bonds.

59. Windfall Tax

1. Windfall profit obtained from businesses prescribed in a directive to be issued by the Minister shall be liable to tax at a rate to be determined in such Directive.

2. The Minister is empowered to prescribe by a directive

a) the amount of income to be considered as windfall profit;

b) businesses that are subject to tax levied on windfall profit;

c) the date on which such tax shall become effective;

d) the manner in which the tax is assessed and factors that need to be taken into consideration;

3. The Minister may, taking into consideration the nature of the business, prescribe different amounts to be considered as windfall profit and rates for different types of businesses.

4. In this Article, "windfall gain" means any unearned, unexpected, or other non-recurring gain.

60. Other Income

A person who derives any income that is not taxable under Schedule A, B, C, or the other Articles of this Schedule shall be liable for income tax at the rate of 20% on the gross amount of the income.

61. General Provisions Relating to Schedule 'D' Income

1/ Tax under Schedule D shall not apply to:

a) an amount that is liable to tax under another Schedule; or
b) an amount that is exempt income.

2/ Tax imposed on income under this Schedule shall be a final tax on the income.

3/ If a royalty, dividend, interest, gain on disposal of a taxable asset, or income referred to in Article 59 of this Proclamation derived by a resident of Ethiopia is foreign income, the resident is allowed to reduce, but not below zero, the tax payable under this Schedule in respect of the income by the amount of any foreign tax paid in respect of the income.

4/ There shall be no carry forward of any unused foreign tax under sub-article (3) of this Article.

5/ The liability of a person for income tax under Article 50, 51, 52, 53, 54, or 55 of this Proclamation shall be discharged if a withholding agent has withheld tax from the income in accordance with Part Nine of this Proclamation.

PART SIX

SCHEDULE 'E' – EXEMPT INCOME

62. Exempt Income

1/ The following amounts are exempt income for the purposes of this Proclamation:

a) the following provided to an employee to the extent provided for in a Directive issued by the Minister:

(1) an amount paid by an employer to cover the actual cost of medical treatment of an employee;

(2) an allowance in lieu of means of transportation granted under a contract of employment;

(3) a hardship allowance;

(4) an amount as reimbursement of travelling expenses incurred in the course of employment;

(5) travelling expenses paid to an employee recruited from place other than the place of employment on joining or completion of employment, including, in the case of a foreign employee, travel expenses from and to their country of origin, but only if the travel expenses have been paid pursuant to specific provisions of the employee's contract of employment;

(6) food and beverages provided for free to an employee by an employer conducting a mining, manufacturing, or agricultural business;

b) allowances paid to members and secretaries of boards of public enterprises, public bodies, or study groups established by the Federal or a State Government or City administration;

c) contributions by an employer to a pension, provident, or other retirement fund for the benefit of an employee provided the monthly total of contributions does not exceed 15% of the monthly employment income of the employee;

d) a pension to the extent exempt from tax under the Public Servants Pension Proclamation or the Private Organisation Employees Pension Proclamation;

e) an amount derived by the Federal, or a State or Local Government of Ethiopia, or the National Bank of Ethiopia, from activities that are incidental to official operations;

f) an amount exempt from tax to the extent provided for under an international agreement;

g) an amount exempt from tax to the extent provided for under a provision (referred to as an "exemption provision") in an agreement entered into by the Government of Ethiopia when the following conditions are satisfied:

(1) the agreement is for the provision of financial, technical, humanitarian, or administrative assistance to the Government; and

(2) the Minister has concurred, in writing, with the exemption provision;

i) a public award for outstanding performance in any field or an award granted under Article 134 of the Tax Administration Proclamation;

j) an amount as compensation for personal injury or the death of another person;

k) a cash amount, or the value of property, acquired by gift or inheritance, other than a gift that is employment or business income;

l) a scholarship or bursary for attendance at an educational institution;

m) maintenance or child support payments;

n) the income of a non-profit organisation other than business income that is not directly related to the core function of the organisation;

o) a cash indemnity allowance paid by an employer to an employee, but only to the extent that the allowance compensates the employee for shortfalls on money counts;

p) an amount that is specifically exempted from income tax under a law in force in Ethiopia.

2/ The Council of Ministers may, by regulations, exempt any income for economic, administrative, or social reasons.

63. Non-profit organisation

1/ A non-profit organisation is an organisation that satisfies the following conditions:

a) the organisation is established solely to provide relief to those suffering ill-health or for the advancement of education;

b) no part of the income or other funds of the organisation is used, or is available for use for the personal benefit of the founders or member of the organisation;

c) the Charities and Societies Agency has certified, by notice in writing, that the organisation is a non-profit organisation.

2/ An organisation can apply to the Charities and Societies Agency, in the approved form, for certification that the organisation is a non-profit organisation.

3/ The certification of an organisation as a non-profit organisation shall remain in force until the Charities and Societies Agency withdraws the certification by notice in writing.

4/ An organisation certified as a non-profit organisation shall notify the Charities and Societies Agency, in writing, of any change in circumstances that results in the organisation no longer satisfying sub-article (1)(a) or (b) of this Article.

PART SEVEN

COMMON RULES

CHAPTER ONE

ASSETS

64. Acquisition of an Asset

A person acquires an asset when legal title to the asset passes to the person, including, in the case of an asset that is a right or option, the granting of the right or option to the person.

65. Disposal of an Asset

1/ A person disposes of an asset when the person has sold, exchanged, or otherwise transferred legal title to the asset, and includes when the asset is cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

2/ If a person creates an asset in another person being an asset that did not previously exist, the first-mentioned person shall be treated as having made a disposal of the asset to the second-mentioned person at the time the asset is created.

3/ If an asset is transmitted by succession or under a will, the deceased shall be treated as having disposed of the asset at the time the asset is transmitted.

4/ A disposal shall include the disposal of a part of an asset.

5/ The vesting of an asset of a person (referred to as the "owner") in a liquidator, trustee-in-bankruptcy, or receiver shall not be treated as a disposal of the asset for the purposes of this Proclamation, and acts done in relation to the asset by the liquidator, trustee-in-bankruptcy, or receiver shall be treated as done by the owner.

66. Cost of an Asset

1/ Subject to this Article, the cost of an asset (other than a business intangible) of a person shall be the total of the following amounts:

a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced, or developed, the cost of construction, production, or development;

b) any incidental expenditure incurred by the person in acquiring or disposing of the asset;

c) any expenditure incurred by the person to install, alter, renew, reconstruct, or improve the asset.

2/ Subject to this Article, the cost of a business intangible is:

a) in relation to a business intangible referred to in paragraph (a), (b), or (c) of the definition of "business intangible" in Article 25(7) of this Proclamation, the total expenditure incurred by the person in acquiring, creating, improving, and renewing the intangible, and any incidental expenditure incurred in acquiring or disposing of the intangible; or

b) in relation to a business intangible referred to in paragraph (d) of the definition of "business intangible" in Article 25(7) of this Proclamation, the amount of the expenditure.

3/ The cost of an asset acquired by way of gift in the circumstances specified in Article 81(2) of this Proclamation shall be the fair market value of the asset at the time of the acquisition.

4/ The cost of an asset shall not include any amount allowed as a deduction under this Proclamation.

5/ The cost of an asset of a person shall include any amount given by the person for the grant of an option to acquire the asset.

6/ The cost of an asset of a person shall not be reduced by an impairment write down in relation to the asset made in the financial accounts of the person.

7/ If a person disposes of a part of an asset, the cost of the asset shall be apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.

8/ The cost of an asset of a person shall not include the amount of any grant, subsidy, rebate, commission, or other financial assistance received or receivable by a person in respect of the acquisition of the asset, except to the extent to which the amount is included in the business income of the person taxable under this Proclamation.

9/ The Council of Ministers may make regulations to provide further rules for determining the cost of an asset.

67. Net Book Value of a Business Asset

1/ Subject to sub-article (2) of this Article, the net book value of a business asset of a taxpayer is the cost of the asset reduced by any deductions allowed to the taxpayer in respect of the asset under Article 25(1) of this Proclamation, or that would have been allowed but for Article 25(4) of this Proclamation.

2/ If Article 66(7) of this Proclamation applies to a business asset of a taxpayer, the net book value of the asset is the cost apportioned to the asset under that Article reduced by any deductions allowed to the taxpayer in respect of the asset under Article 25(1) of this Proclamation, or that would have been allowed but for Article 25(4) of this Proclamation, that relate to the cost apportioned to the asset under Article 66(7) of this Proclamation.

68. Consideration for the Disposal of an Asset

1/ The consideration for the disposal of an asset by a person is the total amount received or receivable by the person for the asset, including the fair market value of any consideration-in-kind determined at the time of disposal.

2/ If an asset is disposed of by way of gift, other than as a donation to a non-profit organisation, the consideration for the disposal shall be the fair market value of the asset at the time of the disposal.

3/ The consideration for the disposal of an asset by a person includes the consideration for the grant of an option in relation to the disposal of the asset, but only if the person has not been subject to tax in respect of any gain made on the grant of the option.

4/ If an asset has been lost or destroyed by a person, the consideration for the asset includes any compensation, indemnity, or damages received or receivable by the person as a result of the loss or destruction, including amounts received or receivable:

a) under an insurance policy, indemnity, or other agreement;

b) under a settlement; or

c) as a consequence of a judicial decision.

5/ If two or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration shall be apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

6/ If a taxpayer is unable to provide documentary evidence of the consideration for the disposal of an asset, the consideration shall be the fair market value of the asset at the time of disposal.

69. Deferral of Recognition of Gain or Loss

1/ For the purposes of this Proclamation and subject to sub-article (2) of this Article, no gain or loss shall be taken to arise on the disposal of an asset:

a) between spouses as part of a divorce settlement;

b) by reason of the transmission of the asset on the death of a person to an executor or beneficiary;

c) by reason of the loss or destruction, or compulsory acquisition of the asset (referred to as the "replaced asset") if the consideration for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a "replacement asset") within one year of the disposal or within such further period as the Authority shall allow; or

d) if the asset is a depreciable asset (referred to as the "replaced asset") and the person acquires a depreciable asset of a like kind to be wholly used to derive amounts included in business income (referred to as the "replacement asset") within six months after the disposal or within such further period as the Authority allows.

2/ Sub-article (1)(a) or (b) of this Article shall not apply if the person acquiring the asset will not be subject to tax under the Proclamation in respect of a subsequent disposal of the asset.

3/ If sub-article (1)(a) or (b) of this Article applies, the person acquiring the asset shall be treated as acquiring the asset for an amount equal to the cost of the asset for the person disposing of the asset at the time of the disposal.

4/ If sub-article (1)(c) or (d) of this Article applies and the cost of the replacement asset exceeds the consideration for the replaced asset, the cost of the replacement asset shall be the cost of the replaced asset at the time of disposal increased by the amount of the excess.

5/ If sub-article (1)(c) or (d) of this Article applies and the consideration received for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset shall be the net book value of the replaced asset at the time of disposal reduced by the amount of the excess, but not below zero.

6/ Any part of the excess under sub-article (5) of this Article that is not used to reduce the net book value of the asset shall be included in the income of the person.

7/ If the asset disposed of is a depreciable asset or business intangible, the reference:

a) in sub-article (3) of this Article to the "cost of the asset", shall be treated as a reference to the net book value of the asset; and

b) in sub-articles (4) and (5) of this Article to the "cost of the replaced asset", shall be treated as a reference to the net book value of the replaced asset.

70. Registration of Transferred Assets

Any person authorised by law to accept, register, or in any way approve the transfer of an asset shall not accept, register, or approve the transfer unless satisfied that any tax payable under this Proclamation in respect of the transfer has been paid.

CHAPTER TWO

OTHER COMMON RULES

71. Recovered Expenditure

If a taxpayer has been allowed a deduction for an expenditure incurred, or bad debt written off, in a tax year and, subsequently, the taxpayer has received, in cash or in kind, any amount as a reimbursement or recovery of, or an indemnity for the expenditure or bad debt, the amount received shall be treated as income derived by the taxpayer in the tax year in which it is received and the income shall have the same character as the income to which the deduction related.

72. Cessation of Income Earning Activity

1/ When:

a) any amount is derived by a taxpayer in a tax year from a business, activity, or investment that had ceased before the amount was derived; and

b) if the amount had been derived before the business, activity, or investment ceased it would have been income subject to tax under this Proclamation,

this Proclamation shall apply to the amount on the basis that the business, activity, or investment had not ceased at the time the amount was derived.

2/ An expense incurred to derive an amount to which sub-article (1) of this Article applies shall be deductible to the extent allowed under the Proclamation.

73. Amounts in Kind

Subject to Article 12(4) of this Proclamation, the value of an amount derived or incurred as a benefit-in-kind shall be the fair market value of the benefit at the time that the benefit is derived or incurred and determined ignoring any restriction on transfer.

74. Apportionment of Expenditures

1/ Subject to this Proclamation, an expenditure relating to:

a) the derivation of more than one class of income; or

b) the derivation of a class of income and to some other purpose,

shall be apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure relates.

2/ The following shall be treated as a separate class of income:

a) employment income;

b) income from the rental of buildings;

c) business income;

d) each amount taxable under Schedule D is a separate class of income; and

e) exempt income.

75. Currency Translation

1/ An amount taken into account under this Proclamation shall be expressed in Birr.

2/ If an amount is in a currency other than Birr, the amount shall be translated to Birr at the National Bank of Ethiopia exchange rate applying between the foreign currency and Birr on the date the amount is taken into account for the purposes of this Proclamation.

3/ All gains and losses arising from transactions in foreign exchanges shall be brought to account for tax purposes as additions to taxable income or deductible losses in the tax year in which they are realised.

4/ The Authority may issue a Directive providing for the translation of amounts in a foreign currency to Birr.

PART EIGHT

ANTI-AVOIDANCE

76. Income Splitting

1/ If a taxpayer attempts to split income with a related person, the Authority shall adjust the income and tax credits of both persons to prevent any reduction in tax payable as a result of the splitting of income.

2/ A taxpayer shall be treated as having attempted to split income when:

a) the taxpayer transfers income or the right to income, directly or indirectly, to a related person; or

b) the taxpayer transfers property, including money, directly or indirectly, to a related person with the result that the related person receives or enjoys the benefit of the income from that property,

and the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor and the transferee.

3/ In determining whether a person has attempted to split income, the Authority shall consider the value, if any, given for the transfer.

77. Transfer Pricing

1/ The Authority may, in respect of any transaction that is not an arm's length transaction, distribute, apportion, or allocate income, gains, deductions, losses, or tax credits between the parties to the transaction as is necessary to reflect the income, gains, deductions, losses, or credits that would have been realised in an arm's length transaction.

2/ If a party to a transaction to which sub-article (1) of this Article applies is located in, and subject to tax in, Ethiopia and another party to the transaction is located outside Ethiopia, any distribution, apportionment, or allocation of income, gains, deductions, losses, or tax credits shall be made in accordance with a Directive issued by the Minister.

3/ The allocation of income and deductions to a permanent establishment in Ethiopia of a non-resident or to a permanent establishment of a resident of Ethiopia outside the Ethiopia shall be made in accordance with a Directive issued by the Minister.

4/ The Directive referred to in sub-article (2) of this Article may apply also to transactions that take place wholly in Ethiopia.

5/ A taxpayer shall include details of transactions with related persons during a tax year with the taxpayer's tax declaration for the year.

6/ In this Article, "arm's length transaction" means a transaction between independent persons who are dealing at arm's length with each other.

78. Tax Avoidance Schemes

1/ This Article shall apply when the Authority is satisfied that:

a) a scheme has been entered into or carried out;

b) a person has obtained a tax benefit in connection with the scheme; and

c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit referred to in paragraph (b) of this sub-article.

2/ Despite anything in this Proclamation, when this Article applies, the Authority may determine the tax liability of the person who obtained the tax benefit and of any other person related to the scheme as if the scheme had not been entered into or carried out or in such manner as in the circumstances the Authority considers appropriate for the prevention or reduction of the tax benefit.

3/ If a determination is made under this Article, the Authority shall serve a notice or notices of assessment to give effect to the determination.

4/ In this Article:

"scheme" includes:

a) an agreement, arrangement, promise, or undertaking, whether express or implied and whether or not enforceable by legal proceedings; or

b) any plan, proposal, course of action, or course of conduct; and

"tax benefit" means:

a) a reduction in a liability of a person to pay tax;

b) a postponement of a liability of a person to pay tax; or

c) any other avoidance of a liability of a person to pay tax

PART NINE

ADMINISTRATIVE AND PROCEDURAL RULES

79. Application of Tax Administration Proclamation

The Tax Administration Proclamation shall apply for the purposes of the administration of this Proclamation but subject to this Part.

80. Record-keeping

1/ Category A taxpayers liable for business income tax shall keep books of account prepared in accordance with the financial accounting standards and, in particular shall keep the following:

a) a record of the business assets and liabilities of the taxpayer, including a register of fixed assets showing the acquisition date, the cost of acquisition, any costs of improvement in relation to the asset, and the current net book value of the asset;

b) a record of all daily income and expenditures related to the taxpayer's business;

c) a record of all purchases and sales of trading stock, and services provided and received by the taxpayer showing the following:

(1) the particular trading stock sold and services supplied or received;

(2) the name and TIN (if any) of the purchasers from, and suppliers to, the taxpayer of trading stock or services;

(3) pre-numbered invoices containing the supplier's TIN;

d) a record of trading stock on hand at the end of the taxpayer's tax year, including the type, quantity, and cost of the stock, and the method of valuation used;

e) any other document relevant in determining the tax liability of the taxpayer.

2/ Category 'B' taxpayers liable for business income tax shall keep the following:

a) a record of daily income and expenditures;

b) a record of all purchases and sales of trading stock;

c) a salary and wages register

d) any other document relevant in determining the tax liability of the taxpayer.

3/ Category 'C' taxpayers may keep a record of gross income and shall keep such other records as may be specified in the Regulations.

4/ A taxpayer liable for tax under Schedule B of this Proclamation shall keep the following:

a) a record of rental income received;

b) a record of fees and charges paid to a State or city administration in relation to the building;

c) unless Article 15(5)(b) of this Proclamation applies, a record of any expenditures incurred in relation to the building;

d) a register of rental buildings showing the acquisition date, the cost of acquisition, any costs of improvement in relation to the building, and the current net book value of the building;

e) a record of any sub-lease arrangement in respect of the building.

5/ A taxpayer taxable under Article 58 of this Proclamation shall keep a record of the acquisition date of the taxable asset, the cost of acquisition, any costs of improvement in relation to the asset, and the consideration received on disposal of the asset.

6/ The Authority may disallow a claim by a taxpayer for the following:

a) a deduction for an expenditure;

b) the inclusion of an amount of expenditure in the cost of an asset,

if the taxpayer is unable to produce documentary evidence relating to the circumstances giving rise to the claim for the deduction or the inclusion of the amount in the cost of an asset.

81. Tax Declarations

1/ An employee whose income for a tax year consists exclusively of employment income shall not be required to file a tax declaration unless the employee has more than one employer for a calendar month.

2/ If an employee has more than one employer for a calendar month, the employee shall file a tax declaration for the month within 30 days after the end of the month.

3/ For an employee who is not required to file a tax declaration, the withholding tax certificate provided by the employer to the employee under Article 94 of this Proclamation for a month shall be treated for the purposes of this Proclamation and the Tax Administration Proclamation as an assessment of the amount of tax payable by the employee for the month being that amount as set out on the statement.

4/ A Category 'A' or Category 'B' taxpayer shall file a tax declaration for a tax year within:

a) for Category A taxpayers, 4 months from the end of the tax year; or

b) for Category 'B' taxpayers, 2 months from the end of the tax year.

5/ A tax declaration filed under sub-article (4) of this Article for a tax year shall be accompanied by:

a) for a Category 'A' taxpayer, the taxpayer's profit and loss statement and balance sheet for the year; or

b) for a Category 'B' taxpayer, the taxpayer's profit and loss statement for the year.

6/ A Category 'C' taxpayer shall file a tax declaration within the period specified in Article 82(4) of this Proclamation.

7/ A taxpayer who has Schedule 'D' income for a tax year that is not discharged by the withholding of tax from the income shall file a tax declaration within two months after the date of the transaction giving rise to the income.

82. Payment of Tax

1/ The employment income tax payable by an employee for a calendar month shall be due on the date that the taxpayer's tax declaration for the month is due.

2/ The tax payable for a tax year by a Category 'A' or Category 'B' taxpayer shall be due on the date that the taxpayer's tax declaration for the year is due.

3/ The tax payable by a taxpayer to whom Article 81(7) applies in respect of a transaction shall be due on the date that the tax declaration in relation to the transaction is due.

4/ A Category 'C' taxpayer shall pay tax on the 7th day of July to the 6th day of August each fiscal year in accordance with the standard assessment applicable to the taxpayer.

83. Advance Payment of Tax in Relation to Imports

1/ A taxpayer under Schedule 'C' importing goods for commercial use shall make an advance payment of business income tax to the Authority equal to 3% of the CIF value of the goods.

2/ The tax payable under sub-article (1) of this Article shall be paid before the goods are released from Customs control and shall be credited against the taxpayer's business income tax liability for the tax year in which the import occurred.

3/ If the total amount of advance payments of tax credited under sub-article (2) of this Article for a tax year exceeds the business income tax liability of the taxpayer for the year, the excess is applied in accordance with Article 49 of the Tax Administration Proclamation.

4/ The Minister may issue a Directive defining "commercial use" for the purposes of this Article.

84. Instalment of Tax

1/ Subject to sub-article (2) of this Article, a Schedule 'C' taxpayer may pay an instalment of business income tax for a tax year on the last day of the month following the end of the sixth month of the year.

2/ Subject to sub-article (4) and (5) of this Article, the amount of the instalment of tax for a tax year payable by a taxpayer shall be one-half of the amount of the business income tax payable by the taxpayer for the previous tax year.

3/ If a taxpayer did not have a business income tax liability for the previous year, the amount of the instalment shall be one-half of the amount of the business income tax payable in the most recent tax year in which the taxpayer had a business income tax liability.

4/ The amount of an instalment payable by a taxpayer for an instalment period as determined under sub-article (3) of this Article shall be reduced, but not below zero, by any advance tax paid under Article 82 of this Proclamation or any withholding tax paid under Article 89 of this Proclamation in respect of the business income derived by the taxpayer during the instalment period.

5/ An instalment of tax paid by a taxpayer under this Article for a tax year shall be credited against the business income tax liability of the taxpayer for the year.

6/ If the amount of the instalment of tax credited under sub-article (5) of this Article for a tax year exceeds the business income tax liability of the taxpayer for the year, the excess shall be applied in accordance with Article 49 of the Tax Administration Proclamation.

7/ This Article shall apply to a Schedule 'B' taxpayer on the basis that a reference in this Article to "business income tax" shall be treated as a reference to "rental income tax".

8/ In this Article, "instalment period", in relation to the tax year of a taxpayer, means the period of six months ending on the sixth month of the year.

85. Collection of International Air Transportation Income Tax

1/ A non-resident liable for tax under Article 49 of this Proclamation shall file a tax declaration with the Authority for each quarter by the last day of the month following the end of the quarter.

2/ The tax under Article 49 of this Proclamation payable by a non-resident for a quarter shall be due on the due date for filing the tax declaration for the quarter.

3/ If the tax payable by a non-resident for a quarter is not paid within three months of the due date, the Authority may issue to the Ethiopian Civil Aviation Authority a certificate specifying the name of the non-resident and the amount of tax due, and the Ethiopian Civil Aviation Authority shall refuse clearance from any airport in Ethiopia to any aircraft owned or chartered by the non-resident until the tax due has been paid.

4/ In this Article, "quarter" means the period of three months ending on 31st March, 30th June, 30th September, and 31st December of each year.

PART TEN

WITHHOLDING TAX

86. Withholding of Tax from Employment Income

1/ Subject to sub-article (2) of this Article, an employer paying employment income to an employee who is subject to employment income tax under Article 10 of this Proclamation shall withhold tax from the gross amount of each payment of employment income made to the employee at the rate or rates applicable to the employee as specified in Article 11 of this Proclamation.

2/ If an employer is aware that an employee has more than one employment and that the other employer, or none of the other employers, are withholding tax based on the aggregated employment income, the employer shall withhold tax based on the aggregated employment income.

3/ The obligation of an employer to withhold tax from a payment of employment income to an employee shall have priority over any obligations of the employer to withhold any other amount from a payment of employment income to an employee.

87. Withholding of Tax from Payments to Non-residents

1/ A resident of Ethiopia or a permanent establishment in Ethiopia of a non-resident making a payment of a dividend, interest, royalty, management fee, technical fee, or insurance premium that is subject to non-resident tax shall withhold tax from the gross amount paid at the non-resident tax rate applicable to the income as specified in Article 50(2) of this Proclamation.

2/ A resident of Ethiopia or a permanent establishment in Ethiopia of a non-resident making a payment to a non-resident entertainer that is income of the non-resident entertainer subject to tax under Article 52 shall withhold tax from the gross amount paid at the tax rate specified in Article 52(1) of this Proclamation.

88. Withholding of Tax from Dividends, Interest, and Royalties

1/ A resident of Ethiopia or a permanent establishment in Ethiopia of a non-resident paying a royalty that is subject to tax under Article 53 of this Proclamation shall withhold tax from the gross amount of the royalty at the rate specified in that Article.

2/ A resident body paying a dividend that is subject to tax under Article 54 of this Proclamation shall withhold tax from the gross amount of the dividend at the rate specified in that Article.

3/ A resident of Ethiopia or a permanent establishment in Ethiopia of a non-resident paying interest that is subject to tax under Article 55 of this Proclamation shall withhold tax from the gross amount of the interest at the rate specified in that Article.

89. Withholding of Tax from Income from Games of Chance

A person paying winnings from a game of chance subject to tax under Article 56 of this Proclamation shall withhold tax from the gross amount of the winnings at the rate specified in that Article.

90. Withholding of Tax from Domestic Payments

1/ A registered person for VAT authorized by the Authority, body having legal personality, government agency, non-profit organisation, or non-governmental organisation shall withhold tax at the rate of 2% of the gross amount of a payment made for the following:

a) the supply of goods in Ethiopia involving more than 10,000 Birr in one transaction or supply contract;

b) the supply of services involving more than 5,000 Birr in one transaction or supply contract

2/ Sub-article (1) of this Article shall apply to separate supplies of goods or services for an amount that is less than the amount specified in sub-article (1) of this Article when it would reasonably be expected that the goods or services would ordinarily be supplied in a single supply for an amount exceeding the amount specified in sub-article (1) of this Article.

3/ When sub-article (2) applies, the Authority may determine the amount any unpaid withholding tax and, by notice in writing, recover the unpaid withholding tax from either the supplier or purchaser.

4/ If the supplier in a transaction to which sub-article (1) applies has failed to provide their TIN to the withholding agent, the withholding agent shall withhold tax at the rate of 30% of the gross amount of the payment made.

5/ The withholding tax payable under sub-article (4):

a) shall be a final tax on the income derived by the supplier from the supply; and

b) shall not be waivered by either a Directive or administrative decision.

6/ The Minister may, by Directive, change the amounts specified in sub-article (1) of this Article.

91. Self-withholding

1/ An employee employed by an international organisation or working in an embassy, diplomatic mission, or other consular establishment in Ethiopia of a foreign government shall withhold tax from the employment income paid by the international organisation or foreign government as required under Article 86 of this Article.

2/ Sub-article (1) of this Article shall apply only when the international organisation or foreign government does not withhold tax as required under Article 86 of this Proclamation.

3/ When the payer of income:

a) subject to tax under Articles 53 or 55 of this Proclamation is a non-resident without a permanent establishment in Ethiopia; or

b) subject to tax under Article 54 of this Proclamation is a non-resident body,

the resident of Ethiopia deriving the income shall withhold tax from the income as required under Article 88 of this Proclamation.

92. No Withholding from Exempt Income

A withholding agent shall not withhold tax under this Chapter from an amount that is exempt income of the recipient.

93. Time of Payment of Withholding Income

For the purposes of this Part, withholding income shall be treated as having been paid by a withholding agent to a person if any of the following applies:

a) the withholding income is actually paid to the person;

b) the withholding income is applied on behalf of the person either at the instruction of the person or under any law;

c) the withholding income is reinvested, accumulated, or capitalised for the benefit of the person;

d). the withholding income is credited to an account for the benefit of the person.

94. Withholding Tax Certificate

At the time of withholding tax from withholding income, a withholding agent shall provide the recipient of the withholding income with a withholding tax certificate in the approved form.

95. Payment of Withholding Tax

1/ Tax that a withholding agent is required to withhold from withholding income shall be paid to the Authority within 30 days after the end of the month in which the withholding income was paid.

2/ A withholding agent required to pay withholding tax under sub-article (1) of this Article shall file a withholding tax declaration in the approved form with the payment.

3/ If a withholding agent:

a) fails to withhold tax as required under this Part; or

b) having withheld tax fails to pay the tax to the Authority as required under sub-article (1) of this Article,

the withholding agent shall be personally liable to pay the amount of tax to the Authority.

4/ A withholding agent personally liable for an amount of tax under sub-article (3) of this Article as a result of failing to withhold the tax is entitled to recover the tax paid from the recipient of the payment.

96. Credit for Withholding Tax

1/ If the withholding income of a taxpayer for a tax year is not subject to final taxation under Article 10(5) or 59(2) of this Proclamation, the taxpayer shall be allowed a tax credit for the withholding tax.

2/ If the amount of the tax credit allowed under sub-article (1) of this Article is less than the total tax liability of the taxpayer for the year, the taxpayer shall pay the difference by the due date for filing the taxpayer's tax declaration for the year.

3/ If the amount of the tax credit allowed under sub-article (1) of this Article exceeds the total tax liability of the taxpayer for the year, the excess shall be applied in accordance with Article 49 of the Tax Administration Proclamation.

PART ELEVEN

MISCELLANEOUS PROVISIONS

97. Power to Issue Regulations and Directives

1/ The Council of Ministers may issue Regulations necessary for the proper implementation of this Proclamation, including in relation to transitional matters.

2/ The Minister may issue Directives necessary for the proper implementation of this Proclamation and Regulations issued under sub-article (1) of this Article.

98. Repeal

The Income Tax Proclamation No. 286/2002 is hereby repealed and shall be referred to in Article 98 of this Proclamation as the "repealed law".

99. Transitional Provisions

1/ The repealed law shall continue to apply to tax years prior to the tax year in which this Proclamation comes into force.

2/ A reference in this Proclamation to a previous tax year includes, when the context requires, a reference to a tax year under the repealed laws.

3/ A reference in Article 71 of this Proclamation to a previously deducted expenditure, loss, or bad debt includes a reference to expenditure, loss, or bad debt deducted under the repealed law.

100. Effective Date

1/ This Proclamation shall enter force on the date of its Publication in the Federal Negarit Gazeta.

2/ This Proclamation shall apply to tax years commencing on or after.

Done at Addis Ababa, this ____ day of ___/ 2016.

MULATU TESHOME (Dr.)
PRESIDENT OF THE FEDER DEMOCRATIC
REPUBLIC OF ETHIOPIA