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Limitation of Actions in Relation to the Recovery of Taxes on Income From Sources Chargeable under Schedule 'C' of the Ethiopian Income Tax Proclamation No. 173/1961 (As Amended)

by

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Introduction

The expressions "prescription" and "limitation" are interchangeably employed in this text, and signify the restriction by law of a right of action to a specified period, after the lapse of which its enforcement may be denied. The role of prescription in the field of obligations is one of the extinguishingof a right of action, and constitutes a pre-emptory defence known as prescriptio temporis, i.e. a plea of limitation to which an obligor (one who has placed himself under a legal obligation) against whom a claim is brought may have recourse.

Does the Ethiopian legal system in its present form allow tax-payers to avail themselves of this defence? This question lies at the very heart of this article, and tends to be highly contentious, since the tax laws provide barely a hint at the answer.

The writer has opted to treat the question in the context of income tax which is assessable and collectable on a yearly basis, in accordance with Proclamation No. 173 of 1961 (as amended), since he is of the opinion that this approach will make for easy comprehension of the analysis. But this does not mean that the submissions are invariably irrelevant to other tax laws. The reader should take into account the pertinent conditions regulated by these other laws, and will then find that the conclusions may be applicable there.

The first section of this article is given over to a general discussion on prescription. The writer tries to elucidate the significance of this ancient legal institution in this section, explaining why it is necessary to fix a time limit for the exercise of a right of action. The last portion of the section contains a number of paragraphsthat forward the reasons for not allowing tax claims to be immune from the operation of limitation, followed by a barebones outline of prescription rules found in the taxation systems of certain countries.

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The second section consists of argumentation and analysis. It represents the writer's attempt to provide an answer to the question: Does the Ethiopian legal system in its present form allow taxpayers to have recourse to a plea of limitation? Beginning with a terse discussion on the conception of obligation, it proceeds on to analysing the issue as to whether the limitation provisions contained in title XII of the Ethiopian Civil Code are applicable to tax claims.

In the final section the writer tries to show how issues of prescription may be resolved under various situations involving actions for the recovery of taxes on income from sources chargeable under schedule-C of the Income Tax Proclamation No. 173 of 1961 (as amended). It is hoped that this modest contribution will be of practical use to those who are charged with the administration and execution of the Ethiopian income tax laws.

I. Significance and Justifications

Prescription, or limitation of actions, is a legal institution of quite ancient antecedents. Its genesis goes back at least to the classical period of the Roman legal system. The contrasting expressions of those days, actiones perpetune and actiones temporalis, are scraps of evidence in point.[1]

Prior to the fifth century A.D., the application of prescription was almost entirely restricted to penal actions, and it was extended only in the course of time to civil actions.[2] Even then, there was not general period of limitation in Roman Law until Theodosius II brought in an imperial enactment to that effect in 424 A.D. With this enactment, a period of limitation of a general character came into force, fixed at thirty (and in exceptional cases forty)years, upon the lapse of which all unexercised actions were to be barred.[3]

One may not have much difficulty in maintaining that all legal systems of modern times exhibit instances of limitations. In countries where Common Law traditions prevail, the standard legislative procedure with regard to limitation of actions is to lay down particular periods of time applicable to specified classes of cases.[4] A statutory provision that stipulates a general period of limitation is quite rare, probably because of the existence in such countries of another legal institution called laches (undue delay).[5]

On the other hand, in countries where Common Law influence is nil or at a minimum, one often comes across provisions that prescribe a general period of limitation, after the expiration of which all claims of whatever kind are barred. This

general period of limitation is in addition to provisions laying down particular periods applicable to specified classes of cases. For example, in France, the Federal Republic of Germany, Austria, Poland and South Africa, there is a general period of limitation fixed at thirty years. Its length is ten years in Italy, Sweden, Mexico and Switzerland, but only three years in Rumania and the U.S.S.R.[6]

Prescription is in evidence in the fields of both private and public law. Here reference shall be made to just a few limitation provisions present in the Ethiopian Civil and Penal Codes, reserving mention of those in the area of taxation for later discussion.[7]

Many famous lawyers have stated that prescription is an essential and useful institution. One Common Law jurist remarks crisply,

> *Rights of action cannot be allowed to endure forever. People must be made to prosecute their causes with reasonable diligence. Hence, rules of limitation have to be made, i.e. rules which prescribe the time within which claims are to be brought.*[8]

A person who is entitled to bring an action is usually expected to do so promptly. As the delay gets longer, the probability of its being imputable to lack of interest or neglect increases; protracted inaction is apt to give rise to the supposition that the claim has been abandoned on grounds of voluntary renunciation, or even because of a belated realization of the claim's untenability at law. Thus, it stands to reason that a delay in the exercise of an action can be tolerated only up to a certain length of time, at the end of which the delay must be held as having the effect of destroying the action. Professor René David, who carried out the vast task of drafting the extensive Civil Code of Ethiopia, has underlined this point in the context of contractual obligations as follows:

> *Limitation is a means of extinguishing obligations, which all legal systems recognize as necessary. Where a creditor fails for many years to exercise his rights, it is proper to declare the rights extinguished. It is probable, in fact, that this extinction has resulted from another cause, either payment of the debt by the debtor or remission of the debt by the creditor. Although there are no doubt cases where this is not true, they are exceptions: and even then the creditor cannot complain about losing a right that he was in so little of a hurry to enforce.*[9]

It does not take much to realize the gravity of the social disruptions and disorder that may result from incertitude and insecurity, if claims are accorded the attribute of perpetuity, in the sense that they remain actionable at any time the claimant wishes to enforce them. Indeed,there is need for fixing a term within which an action is to be exercised, and the lapse of such a term must spell the death of the action,even to the prejudice of the individual who was entitled to bring it, but who failed to prevent the term from running on by initiating legal steps in due time. Society is better served if the period within which a claim must be brought is determined by law, and made known to all. The renowned legal scholar and academician, Planiol, sums it up in the following words:

> *When the creditor remains too long without acting, the law takes away his action ... In the interest of order and social peace, it is desirable to liquidate the past ...*
>
> *There is no doubt that it is possible for prescription to be accomplished without the creditor receiving satisfaction,and without his intention to make a remission of the debt: it results then in a veritable spoliation. But here, ... the system of prescription is justified by the necessity of establishing a term for the exercise of action: to be equitable it suffices that the law give to the creditor a delay long enough in which to act; and the delay ... which may be prolonged almost indefinitely by the causes of suspension and interruption, seems to satisfy equitable principles ... In fact, the rare cases where prescription brings about shocking results cannot be compared with the much greater number of cases where it consolidates and safeguards situations regularly and entirely just.*[10]

However, the virtues of the institution of limitation of actions are allegedly bound to be in conflict with the fiscal interest of the state. This may be one of the reasons that, in Common Law, the defence of laches is held to be of no avail against the right of the sovereign to collect taxes.[11] The fact that the sovereign is traditionally immune from the institution of laches may have inspired the conventional Common Law view on limitation, that the state can institute proceedings to satisfy its tax claims at any time prior to payment, unless there exists an express statutory provision that prescribes a term for the action. But this seemingly strict approach to the application of prescription to tax claims is relaxed by the presence of express limitation provisions that lay down periods within which tax actions must be brought. The state is bound to observe such provisions.[12]

The French tradition as to prescription is quite rigorous, and displayed no instance of favourable treatment to debt owing to the state until 1920. In that year, the legislative body of France brought in an enactment which purportedly made the state immune from the application of limitation in some specified instances.[13] Planiol's guarded remarks about this piece of legislation,under the heading "prescription in favour of the state", seem to reveal his somewhat unwelcoming attitude towards it:

> *Article III of the fiscal law of 25 June 1920 upset the rules of prescription by providing that, in certain cases, prescription, although taking away the rights of the creditor, does not liberate the debtor, who is required to pay to the state the amount of the prescribed credit ... This was justified by the proposition that prescription reposes on a presumption of payment and that this presumption of payment cannot be invoked in ... cases (of debts owing to the government), because it is certain that the payment was not made ... It must be admitted that the debtor is only bound to pay into the hands of the agents of the state the sums as to which prescription had accrued in his favour. But, as the prescription must be pleaded by the debtor, and can always be interrupted by an acknowledgement of the debt,it is to be feared that the debtor will not let a prescription run for the benefit of the state only ... It is impossible to reconcile this new idea with the traditional institution of prescription ... This law is one of the most remarkable examples of the overturning of the Civil Law solely by the pressure of fiscal preoccupations.*[14]

However, plausible it may seem to say that the presumption of payment is inapplicable to debts owing to the state, it does not justify the view that prescription must not be allowed to run against the so-called fiscal interest of the state. This is precisely because the presumption in itself is not a reason for having the institution of prescription, but is merely an expedient way of formulating its rules in law.

To the arguments marshalled earlier in favour of the institution of limitation of actions, one may add the subsequent considerations from the standpoint of taxation, to give reasons why the proposition "prescription must not run against the fiscal interest of the state" sticks in the throat.

To begin with what is obvious, the very function of tax collection demands diligence, as the budget of every state depends on it in no small measure. If the Tax Authority is put under the pressure of prescription, and is held accountable for

revenue losses that may be sustained by the state as a result of a lapse of time, obviously tax actions should be enforced with dispatch, bringing on an increase in the efficiency of tax collection. Conversely, the absence of limitation of actions may not be so beneficial to the revenue intake of the state, since, as a general rule, the risk of belated tax actions becoming irrelevant grows greater as the delay proceeds further.

The diverse socio-economic repercussions of unregulated delay in the exercise of tax actions may have even greater claim on our attention. The enforcement of claims for cumulated overdue taxes may result in the destruction of enterprises that cater for the good of the community, driving their work force into unemployment. The likelihood of children and other dependents becoming victims of such a draconian measure is very high.

The writer is not unaware of the assertion that "the taxing power (of a government) has no limit", that "it carries with it the power to embarrass and destroy", and that a tax need not be invalidated on the sole ground that it causes the liquidation of a business. But one must, at the same time, heed the maxim, that "the power to tax cannot be employed to embarrass and destroy useful and harmless operations which are essential to the prosperity of the people and thus to defeat the very purpose for which the taxing power is conferred".[15] Hence,to condone the ruin of citizens by the enforcement of cumulated overdue tax claims resulting from over-long in action on the part of the Tax Authority amounts to a gross abuse of the taxing power. Sound public policy dictates the establishment of a term within which tax claims are to be brought.

Even when the grim results depicted above do not occur, unregulated delay in the assertion of tax claims is not to play havoc with the well being of taxpayers by putting them in a state of incertitude and worry. This psychological impact is bound to interfere with their day-to-day living, and even to discourage their plans for new ventures. Why should taxpayers be subjected to mental strain for an indefinite time, just because of the inaction of the Tax Authority? Equity demands that relief should be granted to them in the form of a limitation set on the possible delay in delivering tax-claims.

One may toy with the idea that tax remission provisions may be employed to avoid the occurrence of the above undesirable consequences.[16] But it must be noted that the application of remission provisions is, as a rule, made on a case-by-case basis, depending on subjective appreciation of facts. Consequently, such provisions cannot rival provisions of limitation of actions, in the role of consolidating and safeguarding situations which are "regularly and entirely just."

Much has been said in an attempt to lay bare the unwisdom of allowing tax actions to be immune from the application of prescription. It is now time to complement the contention with what is actually seen in practice.

The tax laws of many countries abound with limitation provisions as to the rights of the state to assess taxes and demand their payment. These provisions corroborate the fact that the necessity of establishing a term is given priority over the so-called fiscal interest of the state. The subsequent paragraphs give a glimpse of some of them. The tax system of Brazil features rules of prescription in relation to the assessment and collection of income taxes. An original assessment may be made either on the basis of the taxpayer's return or ex officio, and the period within which this must be accomplished is fixed at five years from the end of the taxable year in question.

Brazilian law also allows for the possibility of carrying out what is called an additional or supplementary assessment. The additional or supplementary assessment must be made within five years from the date on which the taxpayer received notice of the original assessment. This means that an additional assessment cannot be carried out where the Tax Authority fails to make an original assessment within the time prescribed for it.[17] "Under the law in its present form ... the five-year periods referred to are substantive periods of limitation, which extinguish the right to make an assessment. They cannot be suspended or interrupted by an act of government."[18]

The period of limitation as to the right of the state to collect taxes is likewise fixed at five years. It starts to run from the last day of the term fixed for the payment of the tax in the notice of an assessment. This period of limitation may be interrupted, say, where a demand for the payment of the tax is directed to the taxpayer, or a grant of an extension of time for the payment is made. It is also suspended as long as proceedings for the collection of the tax are under way.[19]

In the tax laws of Italy, there is a series of limitation provisions applicable to the government's right to demand the payment of a tax. The approach adopted is to lay down particular periods applicable to particular situations, and this accounts for the multiplicity of the provisions. Nevertheless, subject to the exceptions, the tax administration is barred from demanding the payment of a tax after a lapse of three years from the date on which a return has been filed. In a case where no return has been filed, the period of limitation lasts for twenty years as of the date due for the return. Service of an injunction on the taxpayer or an act of compulsory proceedings interrupts the running of the limitation periods. Where the period is validly

interrupted, it is completed with the running of a whole new term equal to that fixed by the law.[20]

The Swedish tax system provides another interesting example of limitation in respect of the right of the government to collect taxes. The general rule in Sweden is that no claim for the payment of tax may be made against the taxpayer later than five years after the end of the collection year during which the amount in question should have been paid. This is true even where the failure to collect is imputable to criminal conduct on the part of the taxpayer. In this respect, the Swedish approach appears to be a radical departure from what is seen in the tax systems of many countries.

Within the prescribed period, the appropriate Tax Authority may sue a delinquent taxpayer for the recovery of an assessment in the Swedish Civil Courts. It may file a petition for distraining his property or opening bankruptcy proceedings against him. The initiation of such measures shall entitle the Tax Authority to satisfy its claims even after the expiration of the five-year period of limitations.[21]

The fiscal code of the Federal Republic of Germany contains detailed statutory rules on periods within which tax claims must be brought. These rules do not make any distinction as between limitations on assessment and limitations on collection. The period of limitations for both is generally five years, beginning to run at the end of the year in which the tax claim originated, i.e. at the time when all facts have accrued which fix the taxpayer's liability for the tax.[22] In the event that the taxpayer is guilty of a criminal tax evasion, however, the period of limitation consists of ten years.

The rules provide for suspension and interruption on account of certain events or causes. Suspension refers to an extension of the period of limitations in a case where the claim of the government for the payment of a tax cannot be asserted during the last six months of the period of limitations because of an act of God, or of a public enemy.

Any overt act of an appropriate local finance office with a view to establishing the identity of a taxpayer or his liability for tax may also furnish a cause for interruption. Even the usual public request to file returns may constitute such a cause. Other causes may include the admission of liability by the taxpayer in any form, such as by filing a tax return, and the grant of an extension of time given by the Tax Authority for payment. At the end of the year in which such an interruption occurred or ended, a new period of limitation begins to run.

The most striking feature of the West German rules of limitations on tax claims is that they do not require the lapse to be raised as a defence by the taxpayer. Rather, they make the non-expiration of the period a procedural precondition for the assertion of any tax claim - a point which the Tax Authority must examine on its own motion throughout the proceedings. In this respect the West German rules radically depart from prescription rules in other areas of the Civil Law.

With the expiration of the period of limitations, the tax claim of the government is destroyed, together with accessory claims for cost or penalties for delay or additions to the tax. And, if any assessment of income or profits is made after the claim is barred, the assessment shall be void.[23]

Finally, it is only appropriate to turn to the Ethiopian tax system, to see if there are instances where prescription is allowed to run against the fiscal interest of the government. Limitation provisions are, indeed, very scanty in the entire body of the Ethiopian tax legislation, let alone in the income tax law, for they are deficient in many aspects, especially in matters of prescription rules. Here the writer cites two instances, showing that prescriptions have been allowed to run against the fiscal interest of the government.

The first instance relates to the collection of customs duties. Where goods are short-levied by mistake or a refund is erroneously made, the customs director must demand the payment of the difference by or the return of the refund from the individual concerned, within five years. This period begins to run from the date on which the goods were mistakenly short-levied or the refund was erroneously made. Because the person wrongly benefited is bound by the law "to pay the amount short-levied or repay the amount erroneously refunded", upon demand being made by the director within the prescribed period, it follows that no such claim may be asserted after the period expires.[24]

The second instance pertains to the assessment of tax on income, and is relatively much closer to what this paper is concerned with. It is incumbent upon the Tax Authority to finalize the assessment of the taxable income in relation to a given year within five years from the date on which a taxpayer submitted to the Authority a declaration of his income. If this period expires, the Authority loses the right to assess the taxable income to the year in respect of which the declaration was made, for "the income declared shall be deemed to be approved, and the tax shall be deemed to have been assessed on that income", though the taxpayer shall not be released from liability to pay tax on income which has not been set forth in his declaration.[25]

This is the only case where a period of limitations is provided in the Income Tax Proclamation of 173/1961 (as amended). Does it follow, then, that the actions of the Tax Authority to recover tax on income are indefinitely inextinguishable in all other cases? This is the problem that we shall come to gripe within the next section.

II. Relevance of the Civil Code

Book IV of the Ethiopian Civil Code is captioned "Obligations", and, under it, first comes Title XII with the heading "Contracts in General". Section VI of Chapter III of this title lines up twelve articles on limitation of actions.[26] The next task is then to examine the relevance of this part of the code to actions connected with a tax liability.

The analysis chiefly focuses on Article 1677 and Article 1845, as they are susceptible to controversy. The first raises the basic question of determining the scope of Title XII,[27] the second poses the issue of whether the ten-year period of limitation prescribed under it is of a particular (special) character, in the sense that it relates only to contracts, or of a general character, in the sense that it may apply to obligations irrespective of their source.[28] But the writer shall begin by expounding that a tax liability constitutes an obligations, for it is on this very point that the whole analysis turns.

Diverse legal meanings are accorded to the word "obligation". But the classical definition of the term, as P.W. Lee puts it, is "a legal bond whereby we are constrained by a necessity of performing something according to the laws of our country",[29] signifying a duty imposed by law which manifests itself in the performance of or forbearance from certain acts. Its widely accepted and current conception consists in the whole legal relationship existing as between a creditor and a debtor, the essence of which is a right and a corresponding duty.[30]

In broad terms, obligations may be classified as contractual or non-contractual, depending on their source. Contractual obligations owe their existence to voluntary agreements of contracting parties, while non-contractual obligations are either consequences of legal-sanctioned acts of individuals, or creations attributable to the sole authority of the law.[31]

It has long become standard procedure in scholastic circles to elaborate the principles of obligations in the context of private law, in particular that of contracts. But this approach to the treatment of the subject need not make one doubt that

obligations also arise from the authority of laws of a public nature. Revenue laws that impose the duty to pay taxes are typical examples of this.

Obligations are inherently amenable to civil suits and not to criminal prosecutions, and, as a rule, a tax liability is amenable to civil actions. But, since public interest is at stake in tax matters, revenue laws also provide for the possibility of instituting a criminal prosecution against a delinquent taxpayer.[32] This duality of civil and penal actions, however, must not be allowed to blur one's understanding of a tax liability as a kind of obligation, for each recourse is independent of the other.[33]

A tax liability is an obligation with legal relations that closely resemble those existing as between a creditor and a debtor under a contract. Admittedly, there is little sense in calling a tax a debt in its ordinary meaning, for it is by definition an enforced contribution exacted by virtue of the legislative authority in the exercise of the taxing power on grounds of necessity.[34] As such, it is held to be, for example, not subject to set-off.[35] Nevertheless, the position of the Tax Authority vis-a-vis the taxpayer is to all intents and purposes identical to that of a creditor vis-a-vis a debtor under a contractual obligation. What they both have as a right is a right in personam, actionable against a designated person or persons or a defined class of persons. Both obligations are not, in principle, designed teach rate in favour of the obligee a general right of control over all the acts of the obligor. Just as the debtor may liberate himself from the contractual obligation by sacrificing a portion of his property for the purpose of settling the debt, so may the taxpayer obtain a discharge from his tax liability by sacrificing a portion of his property to satisfy the tax claim.

Having underscored the fact that a tax liability constitutes an obligation, the writer shall now deal with the scope of Title XII.

Article 1677 states that the relevant provisions of the title under discussion shall apply to obligations "notwithstanding that they do not arise out of a contract" unless there exist special provisions applicable to them. This means that, where special provisions concerning the obligations are laid down by the legislator, they override those in Title XII. Conversely, where special provisions are non-existent, such provisions of this Title as are relevant are useful to solve a particular problem of non-contractual obligation.

The language of the article in question leaves no room for doubt that the scope of Title XII is extended beyond the realm of the laws of contract. The possibility of applying its relevant provisions to those non-contractual obligations are envisaged by the Civil Code may not be contested either. The crux of the matter is, however,

whether the scope is widened so as to embrace all non-contractual obligations, without exception.

Some people may argue that the legislative intent as the scope of the Title on "Contracts in General" is only that of creating a possibility of applying the relevant provisions of the Title to such non-contractual obligations as are present within the province of the Civil Code (such as those arising out of the laws of status, succession, property, tort and unlawful enrichment). In an attempt to substantiate this, they may resort to the comment of the expert draftsman under Article 1677, quoted below advocating that the word "Law" as employed there stands only for the Civil Code.

> *Obligations are created by the law itself and by contracts and other juridical acts of individuals. There is no real opposition between these various sources, however, since, in a broad sense, even the obligatory force of contracts depends on the law, which regulates them and ensures their enforcement. Moreover, the law often supplements the agreements of the parties. It defines the contents of the contract and provides for various problems that may not be foreseen by the parties at the time of contacting, but that may arise subsequently. Finally, since the legislator is charged to do justice, he imposes some contract clauses and certain rules required by equity and the interest of society.*[36]

Granted, the word "law" in the context of the above quotation may appear to be a substitute for the Civil Code, since its mention is purely in connection with contracts. One also fully acknowledges that the expert draftsman is entitled to his own opinion. But attention need be drawn first to the fact that the work "Commentary on Contracts in Ethiopia" is said to be "an English translation of David's hasty French Commentary ... on his preliminary French draft of what is now only a part of the Civil Code's Title (XII) ... [37] Second, even if the comments were in his final draft, they would not be allowed to supplant the provisions of the Civil Code which have been incorporated in the law of Ethiopia after going through the scrutiny of the Codification Commission and the Parliament of the time. That they may be of help in clarifying such doubts and settling such ambiguities as may exist in the provisions is conceded. Their persuasive role in winning support for a stand taken by means of manoeuvreing the letter and spirit of the articles may equally be admitted. But they must not be simply looked upon as authoritative dicta to which one must consent, as they are not part of the law of the land in their own right-a viewpoint solely based on these comments should simply be dismissed as untenable in so far as determining the application of the provisions of the code is concerned.

When one gets down to the law, a comparison between Article 1676 and Article 1677 provides the solution to the problem. Both declare the extension of the scope of the Title on "Contracts in general" beyond its normal bounds, and are couched in terms which are more or less similar, except that the former deals in terms of "contracts", while the latter deals in terms of non-contractual obligations. Article 1676 enunciates the possibility of applying the provisions of Title XII to all types of contracts, "regardless of the nature thereof and the parties thereto". Unlike Article 1677, however, it makes a specific reference to where, in the law, special provisions applicable to certain contracts are available, namely Book V of the Civil Code and the Commercial Code.[38] Article 1677 does not do the same, and it is natural to ask for a reasoned explanation of the omission.

May one put down the absence of such a reference in Article 1677 to inadvertence on the part of the legislator, and maintain that the extension of the scope of Title XII is designed only for such non-contractual obligations as are contained in the Civil Code? Certainly one may, but such a contention is virtually meaningless, as the two articles are in immediate numerical succession. If the legislator had intended to set limits to Title XII's influence, surely he would have indicated where such non-contractual obligations are provided, as he does under the preceding article in respect of "special provisions applicable to certain contracts".

The writer therefore holds that the omission is made on purpose, aiming at allowing Title XII to pervade the entire sphere of the law of obligations. The application of the relevant provisions of the Title goes beyond the confines of the Civil Code. They are meant to play the role of filling gaps that may be encountered in areas of legislation that create obligations, and, as a source of fiscal obligations, tax laws present no exception in this respect.

Professor George Krzeczunowicz, who will go down in the legal history of Ethiopia as an authority on Ethiopian Civil Law, draws attention to this crucial point in the introduction to his comments on Title XII, and therefore it is reproduced verbatim:

> *In the German Civil Code, the rules common to all obligations from whatever source precede the law of contracts. The Ethiopian legislator uses the opposite technique. He starts with the main source of obligations, i.e. the Contracts, but the Law of Contracts in general shall, where relevant (art. 1677), apply to all obligations from whatever source.*[39]

The author is even more categorical on this point while commenting on Article 1677. Here he is not only emphatic about the possibility of applying the relevant provisions of the Title on "Contracts in General" to all obligations, irrespective of their source, but also emphasises that it is permissible to fall back on them to get an answer for any problem of a civil nature, wherever solutions are not available in the pertinent area of the civil or public law. His words are instructive and enlightening:

> *... The law of obligations is a subsidiary source of law for the whole Civil Law for even Public Law, e.g. for fiscal obligations. Therefore, the far-reaching importance of the Title on Contracts in general, which contains not only provisions common to all contracts, but also provisions common to all obligations, is obvious. It is to provisions of this Title, when relevant to the problem at hand, that we shall turn in case of doubt, not only in the field of obligations, but also, with due caution, in other fields of Civil Law. Such subsidiary resort to analogy is not prohibited by the Civil Code. (Conversely, resort to analogy is prohibited by Art 2, Penal Code).*[40]

The issue raised in connection with the scope of Title XII is thus resolved. But there is a need to comment briefly on what is meant by "relevant provisions" in the context of Article 1677. It should be noted that certain provisions under Title XII are purely of a contractual character. Such provisions remain within the bounds of the law of contracts, if they have no bearing on obligatory relations of a non-contractual nature. One should use one's reason to determine which of the provisions of Title XII are purely of a contractual character, and Article 1677 is merely signalling this point by the adjective "relevant". Quoting once again Professor George Krzeczunowicz where he refers to some of the provisions that may have relevance to non-contractual obligations:

> *The qualification "relevant" excludes provisions which, by rules of logical relevance or, to put it simply, by sheer common sense, cannot apply to non-contractual obligations, e.g. the provisions of Chapter 1 on formation of contracts. On the other hand, certain rules of Chapter 2 on performance and non-performance of contracts may relevantly apply to performance and non-performance of non-contractual obligations; while, under Chapter 3 rules of extinction of obligations through remission of debt, novation, set-off, merger, limitation, may properly apply to the extinction of non-contractual obligations (emphasis supplied).*[41]

The above quotation not only explains what should be understood by the adjective "relevant" in the context of Article 1677, but also answers in a positive way

the principal question set forth at the very beginning of our analysis. It affirms to our complete satisfaction that there is nothing wrong in applying the relevant limitation provisions of Title XII of the Civil Code to claims arising out of a tax liability in a case where special provisions with regard to them are not provided. Thus, the issue framed in relation to the application of Article 1845 may seem unworthy of discussion. Indeed, the fact that Article 1845 speaks in terms of contracts does not require analysis and is not the reason for our comments on that article, since nearly every second provision of the Title on "Contracts in General" speaks in terms of contracts. But it becomes necessary to examine the issue, as some people may advocate in favour of restricting the application of article 1845 only to contracts manipulating the subsequent statement of the expert draftsman:

> *Article 1845 deals only with contractual rights. While the rules dealing with limitation will no doubt be of use with respect to other types of problems, it seems that limitation needs to be considered from different points of view in the areas of property and family law than in connection with contracts. This fact seems to justify the restrictions contained in Article 1845.*[47]

This excerpt may be held as supporting the argument that the ten-year period of limitation prescribed under Article 1845 is of a particular (special) character, in the sense that it applies only to contractual obligations. But it does not take much to see that the view is untenable when set against the very design of the Title on "Contracts in General".

It has already established that the legislative intent enshrined in Article 1677 with regard to the scope of the application of Title XII is the comprehensive extension of it to all obligations, irrespective of their source, with a view to solving any problem for which no pertinent special provision is provided elsewhere in the Civil Law. It has also been shown that the question as to whether a given provision under this title applies to such situations should be resolved purely on the basis of rules of logical relevancy. Hence, restricting its application only to contracts on grounds other than its irrelevancy to non-contractual obligations constitutes an aberration from the avowed objective of the Title.

Considering the question of whether Article 1845 is relevant to actions stemming from non-contractual obligations, it readily becomes apparent that the answer is in the affirmative. However restrictively the provision is said to be worded, there is nothing that makes it of a purely contractual character and nothing goes against logic if one applies the ten-year period of limitation to actions arising out of

non-contractual obligations in respect of which no other special prescription provision is laid down. Perhaps it may be of interest to cite one example of such an instance, from the work of a scholar who used the ten-year period of limitation to solve a limitation problem relating to a non-contractual situation:

> *The Civil Procedure Code does not specify a period in which the first application to execute the decree must be filed. Since the decree creates an obligation for the benefit of the decree-holder, the ordinary period of limitation for the enforcement of obligations, which is ten years, should be applicable, and if the application in field more than ten years after the date of the decree sought to be executed, it should be barred by limitation.*[43]

How should one then understand the words quoted previously from the expert draftsman? While commenting under Article 1845, Professor Rene David makes reference to some periods of limitation of a general character available in foreign legal systems, and contrasts them with the ten-year period of limitation prescribed under the said article. In doing so, the expert draftsman makes no secret of general disapproval of a longer general period of limitation than ten years. He states:

> *The French Civil Code (Article 2262) sets the time after which recovery is barred at thirty years, but everyone now agrees that this is too long. In light of these criticisms, Article 1845 fixes a ten-year period of limitation, as do the code of Switzerland (Code of Obligations, Article 127), Japan (Article 167), Lebanon (Article 349), and Italy (Article 2946).*[44]

Despite this fact, there are certain provisions for longer periods of limitation in the fields of family and property law of the Ethiopian Civil Code.[45] Hence, what he submits in relation to the restriction of the application of Article 1845 may well be understood in the light of those provisions that lay down limitation periods exceeding ten years. It may not be taken as a statement that excludes all non-contractual obligations from the scope of the application of the article.

To sum up, the ten-year period of limitation prescribed under Article 1845 is of a general character, in the sense that it applies to actions born of obligations from whatever source, as long as special limitation provisions are missing. Thus the writer fully subscribes to the view that the pre-emptory defence of limitation may validly be pleaded by taxpayers as a preliminary objection by virtue of Article 244 (2) (f) of the Civil Procedure Code, to frustrate actions brought for satisfying tax claims in the event that they are not instituted within the legally permissible time. This conclusion may

cause an outcry of despair from some quarters,yet it is in accord with the legislative intent embodied in Article 1677 of the Civil Code.

III. Application Propositions

What remains now is to demonstrate under different situations how we think limitation issues affecting actions aimed at the recovery of the tax on income from sources chargeable under Schedule C ought to be resolved.[46] This part of the article is consecrated to this purpose, in the hope that it will be of some practical benefit to those who are entrusted with the responsibility of implementing and enforcing the income tax laws.

1. Where a taxpayer has not declared his annual income and has not paid the tax thereon

The liability for the tax on income from sources chargeable under Schedule C is determined on a yearly basis,and all taxpayers are under the obligation to declare their annual income and pay the tax thereon every year.[47] Suppose a taxpayer did not fulfil these obligations with regard to a particular year. Now should a decision be rendered on the limitation issue as to the right of the Tax Authority to enforce its claims for the tax in question?[48] The disposition of such a case is apparently involved, as we shall be see below.

There are no special limitation provisions applicable to the situation under discussion. Therefore, the general period of limitation prescribed under Article 1845 of the Civil Code comes into its own. This means that the rights of the Tax Authority to assess and collect the tax in respect of a given year are to be barred after a lapse of ten years. No tax ascribable to a particular year may be recoverable where it results from an assessment made after this period has run out without interruption, provided a plea of limitation is raised by the taxpayer in question, to render the action brought ineffective.

This holding may come into question where the identity of a given taxpayer or his place of work and residence is unknown to the Tax Authority, and the lapse is imputed to this reason. Here, there is a need to consider the issue of whether a lack of such knowledge constitutes grounds for the dismissal of a plea of limitation under the law in its present form.

As far as extinction of ownership by prescription goes, unawareness of the existence of a right furnishes no legally valid excuse for setting aside a plea of

limitation.[49] No similar express provisions are contained in Section VI of Chapter III of the Title on "Contracts in General". But it is not prohibited to apply by analogy the rule referred to above, of limitation of actions whose object is the extinction of obligations. Further, Article 1853 of the Civil Code, which proves the fact that the legislator has adverted to the question as to what may bring about the dismissal of a plea of limitation, makes no mention whatsoever of a lack of knowledge as to the existence of a right while stipulating the conditions under which this defence may not be available.[50] Finally, it must be noted that Article 1854 give recognition to the rule that a plea of limitation can be set up even by a defendant who is in bad faith.[51] For the above reasons, therefore, there is no legal ground to deprive the taxpayer of this defence, even where the lapse is alleged to be a consequence of a lack of knowledge as to his identity, or residence and place of work.[52]

The other important point that must be made clear while considering such a case concerns the beginning of the period. As a matter of general rule, any period of limitation starts to run as of the date on which an obligation falls due or a right becomes exercisable.[53] There may be instances where an obligation becomes due on a certain date, while the right to demand its execution remains not actionable until a future date. The suspension may be caused by the operation of law, as shall be seen hereunder, or by a judgement. In such instances, the period of limitation shall begin to run as of the date on which the right becomes actionable, not as of that date on which the obligation has fallen due. By the application of this rule, one is able to solve the problem raised in connection with the beginning of the period.

The yearly tax obligation becomes due at the end of each accounting period, which normally corresponds to the Ethiopian fiscal year, running from the first of Hamle to the thirtieth of Sene[54] (that is, 8 July to 7 July in the next year, Gregorian Calendar; 9 July or 8 July respectively, if the date falls in a Gregorian Leap Year). Nonetheless, the right of the Tax Authority to determine assertively the liability of the taxpayer in respect of the year in question is not actionable forthwith. This is due to the suspension caused by the prescribed terms within which taxpayers are legally bound to fulfil the obligations to declare their annual income and pay the tax thereon. As breach of these obligations entails penalties assessable as part of the tax liability, the Authority must keep check on the expiry of these terms, to be certain that compliance has not been observed by the taxpayers. Hence, as a rule, it is as of the end of these terms that the right of the Authority to determine assertively the tax liability of taxpayers becomes actionable, and the ten-year period of limitation begins when the terms of obligation actually expire.

The prescribed terms within which the obligations to declare annual income and pay the tax thereon are to be complied with consist of four months, two months, and one month, all being calculable from the end of the annual accounting period for which the tax is due.[55] This is in line with the three categories, namely (a), (b) and (c), into which all taxpayers are classified.[56] Accordingly, the question as to when the period of limitation actually starts to run must be determined on the basis of the category to which the taxpayer in question belongs. We shall illustrate this by taking the annual accounting period of 1968 Ethiopian Calendar as an example:

The term beginning on 1 Hamle 1967 E.C. and ending on 30 Sene 1968 E.C. (8 july 1975 G.C. to 7 July 1976 G.C.) makes up the annual accounting period in question. The terms prescribed for submissions of declarations of annual income to the Income Tax Authority and for the payment of the tax thereon all begin to run on 1 Hamle 1968 E.C. (8 July 1976 G.C.). As the tax is due on 30 Sene 1968 E.C., the expiry of the term applicable to taxpayers belonging to category (a), (b) and (c) occurs on 30 Tikimt 1969 E.C., 30 Nehase 1968 E.C. and 30 Hamlé 1968 E.C., respectively, (9 November 1976 G.C., 5 September 1976 G.C. and 6 August 1976 G.C. respectively), according to the pertinent article of the rules on the provisions as to time.[57] (See also footnote 55.) The date immediately following the expiry of each term then marks the beginning of the ten-year period of limitation, and its end shall be determined according to the rule set out in Article 1848 of the Civil Code.[58]

2. Where a taxpayer has declared all his annual income in respect of a particular year and fully paid the tax thereon within the appropriate prescribed term

The disposition of the limitation issue that may come up in the situation under consideration is not very complicated. It is quite plain that there is no need to have recourse to article 1845, since the special limitation provision of Article 41 of the Income Tax Proclamation overrides it.

Pursuant to Article 41 the right of the Tax Authority to determine the liability of the taxpayer in respect of the annual accounting period shall be barred after five years as of the date on which it received from the taxpayer the declaration of his annual income. It is important to note that this period may begin to run as of any date on which the taxpayer submits the declaration of his annual income to the Tax Authority, and not necessarily as of the date following the date on which the appropriate term prescribed for fulfilling the obligation expires.

The Authority may not exercise its right to make an assessment with regard to the annual income pertaining to the year in question once the five-year time-limit is

over. Not only that; the Tax Authority may have nothing to collect in this particular instance, since the taxpayer in the case not only declared his annual income in respect of the year in question, but also fully paid the tax on the declared income in due time. In a case where all the annual income is declared and the tax thereon is fully paid in due time, there is little sense in speaking of the Authority's right to collect the tax after the five-year time-limit has run out without the time-limit having been utilized.

What about a case where the taxpayer is under the obligation to keep books of accounts and records but has failed so to do? Can the penalty for the breach be collectable after the time-limit for assessment has lapsed without being used?[59] This may be a rare encounter, but it is quite interesting. The writer's stand on this question is that it must be possible. The tax paid on the declared annual income furnishes the basis for computing the penalty. The general period of limitation applies to the right of demanding its payment.

3. Where the taxpayer has declared all his annual income in respect of a particular year within the appropriate prescribed term, but has not paid the tax thereon

In this situation, the question of whether the payment of the tax on the declared annual income in due time is a precondition for the application of Article 41 of the Income Tax Proclamation has a serious claim on one's attention. In fact, the writer is very much alive to the contention that the answer is "yes", and has opted to dispose of the issue straight away. In doing so, he shall first state the argument in favour of the precondition mentioned above, and submit his refutations next.

The contention that the five-year period of limitation may not run in consequence of declaration of annual income alone is said to repose on Article 46 of the Proclamation: "The tax on the declared taxable income shall be paid simultaneously with the submission of the declaration of income." Because Article 46 here makes an express enunciation, it is said that Article 41 becomes operative only where there is compliance with both obligations, of declaring annual income and of paying the tax thereon at the same time. An excess of zeal to validate this stand is usually expressed in assertions that Article 41 is intended to create a right for the benefit of taxpayers,who may not avail themselves of it unless they fulfil all their tax obligations.

The above reasoning may sound plausible, yet, when one looks into it wearing legal spectacles, it amounts to distortion. To begin with, the distinctions in purpose, as between the sections under which Article 46 and Article 41 come, do not warrant

any such construction. The section under which Article 46 comes is designed purely to govern the discharge of tax liability,and its point of reference is the taxpayer.[60] Conversely, the section under which Article 41 falls aims at defining and regulating the power relating to the assessment of the tax, and its point of reference is the Tax Authority.[61] In fact, Article 41 is a restriction on the right of the Tax Authority to make an assessment.

Secondly, the insertion of compliance with the obligation to pay the tax in the provisions of Article 41 would out clear across the widely accepted precepts of legal interpretation. The language of the article is plain and shows no signs of ambiguity. It can by no means be called absurd, since there are instances of its meaningful application. Thus, only at the risk of being called usurpers of the legislative function, may one bring into Article 41 the obligation to pay the tax on the declared annual income.

Cognizant of the general rule that tax provisions need to be strictly construed in favour of the Tax Authority. But one cannot condone the impropriety of its employment to justify the arbitrary introduction of foreign legal elements into provisions whose language and purpose are quite plain and unequivocal. Such an act constitutes an abuse of the aforementioned rule.

Thirdly, as a matter of principle, it is necessary to act on a fair and reasonable interpretation, in order to arrive at the true intent as to the scope of tax provisions, and to ensure their just application. It is clear from the language of Article 41 that the legislative intent is none other than the regulation of the time within which an assessment on the declared annual income shall be made. To this end, the provision fixes a term and sets the time when it commences to run as the date on which the declaration of the annual income is made available to the Tax Authority. Hence, its reference to the declaration of annual income must be understood only in the context of limitation of actions, i.e. as a marker of the date which ushers in the running of the time-limit.

Article 41 aims at making the Tax Authority diligent in determining the liability of taxpayers once the Authority has received information as to the annual income. The article's role, as a limitation provision, is to destroy the Authority' right to assess the tax upon the lapse of the term,[62] but not to extinguish the liability of taxpayers. What Article 41 has in view is not, then, the creation of a right for the benefit of taxpayers - an assumption which would show a crass misreading of the purpose and role of the legal institution of prescription.

Fourthly, a comparison between Article 41 and its counterpart in Proclamation No. 77 of 1976 (as amended), namely, Article 26, reveals a uniformity in legislative intent as to what is decisive for the operation of the limitation period.[63] Article 26, which imposes a time-limit of the same length in respect of the Tax Authority's right to determine the liability for the tax on the declared annual income from agricultural activities, makes no mention of the obligation to pay the tax as a condition of the limitation. It simply states that the prescription shall begin to run as of the date on which the annual income is declared. This approach, similar to that manifested in the two provisions discussed above, supports the contention, in disregard of the opposite view. Incidentally, the reader is advised to look at Articles 15 (c) and 21 (c) of the Transaction Proclamation No. 205 of 1963 (as amended), where there is an express mention of payment as a condition of the limitation.[64]

Having made this point, one nonetheless feels the necessity of examining the implication of the apparent requirement of Article 46 that the obligations to declare annual income and pay the tax thereon need to be carried out simultaneously: it is hoped that this will set at ease the minds of those whose view may be different to the one maintained in the article. This treatment of the question should be considered from the perspective of sanctions.

Despite what is stipulated under Article 46,the law imposes separate penalties applicable to the breach of each of the two obligations. Non-compliance with the obligation to submit declaration of annual income within the prescribed term carries the penalty laid down under Article 66 of the proclamation.[65] Breach of the obligation to pay the tax on declared annual income in due time, on the other hand,entails the penalty set out under Article 76.[66] When it comes to the request for concurrence in the execution of the two obligations, however, no legal sanction threatens its non-observance. To put it plainly, a taxpayer may not be penalized for not concurrently carrying out the obligation to declare his annual income and pay the tax thereon. Thus, if a given taxpayer has declared his annual income within the appropriate prescribed term, but fails to pay the tax thereon in due time, he shall be liable for penalty pursuant only to Article 67, and not to Article 66. The purpose of that part of Article 46 pertaining to the requirement under consideration can be seen only as a reminder to taxpayers that they should have sufficient cash in hand whenever they appear to submit the declaration of their annual income before the Tax Authority, so that they may discharge forthwith their liability as computed on the basis of what they declared. This is laid down in law in the interest of tax collection.

In summation, the writer maintains that the right to assess the tax in respect of the particular accounting period for which the taxpayer declared his annual income

within the appropriate prescribed term shall be barred after five years as of the date on which the taxpayer submitted his declaration, in the event it is not exercised in due time by the Tax Authority. Non-payment of the tax on the declared annual income in due time produces only that penal consequence laid down under Article 67 of the proclamation. It in no way constitutes a legal cause the effect of which is to render the limitation of Article 41 inoperative.

The limitation question as to the right of the Authority to collect the tax on the declared annual income is another matter. As the taxpayer in the situation under consideration paid no tax in respect of the accounting year in question, the Authority's right to demand the payment of the tax on the declared annual income is regulated by the general ten-year period of limitation. Needless to say,the right to collect the tax on the declared annual income remains actionable, even after the right to make an assessment in respect of the accounting period in question is barred by the expiry of the five-year time-limit, as long as the general period of limitation has not run out.

4. Where a taxpayer has declared all his annual income in respect of a particular year after the expiry of the appropriate prescribed term, and has paid no tax thereon.

Such an act on the part of the taxpayer produces the following legal consequences: first, it interrupts the ten-year period of limitation which has started to run in respect of the Authority's right to determine the liability for the tax and demand its payment. Second, it causes the five-year time-limit to run, to the prejudice of the right to assess the tax. Third, it also causes a new term of ten years to begin running, to the prejudice of the right to demand the payment of the tax.

When the taxpayer submits the declaration of his annual income, he is in effect, making an acknowledgement of his liability for the payment of the tax. Such an admission in writing interrupts the general period of limitation which has commenced to run in respect of the Tax Authority's right to assess and collect the tax as of the expiry of the appropriate term. As the declaration of the annual income is made in a form supplied by the Tax Authority for the purpose, the admission of the liability for the tax consists in filling in and signing the form [67] As a result, all the time that expired prior to the submission of the declaration shall not be counted, but shall be completed by a new period of ten years.[68] But this period runs only in respect of the right to collect the tax, as the submission of the declaration causes Article 41 of the Income Tax Proclamation to apply.

The writer is well aware that there may be some who advocate in favour of restricting the application of the five-year time-limit only to those cases where the declaration of the annual income in respect of a particular year is made in due time. There is no point in repeating here what has been said earlier in relation to the purpose of Article 41, by way of refuting this stand. Here it suffices to underscore the fact that there is neither explicit nor implicit reference to a requirement of this sort in the provision. Submission of the declaration of annual income with regard to a particular annual accounting period may be made in due time without penalty, or out of time with penalty, and in both cases without affecting the application of Article 41.

Incidentally, the writer would like to indicate that the other legal consequence ensuing from the breach of the obligation to declare annual income in due time is the determination of tax liability by estimation.[7]

5. Where a taxpayer has declared all his annual income in respect of a particular accounting period, and has fully paid the tax thereon after the expiry of the appropriate term

The limitation analysis under this situation is not so very hard to grasp, thanks to the previous discussions. Upon the taxpayer's submission of the declaration of his annual income and payment of the tax thereon, the ten-year period of limitation which was set in motion by the expiry of the appropriate term for fulfilling the obligations ceases to run to the prejudice of the Tax Authority's right to determine the liability for the tax and demand its payment. In lieu of it, the time-limit of Article 41 of the Income Tax Proclamation begins to run, producing such consequences as are outlined in Proposition 2, above. Note that the situation in this Proposition 5 involves penalty, while that in Proposition 2 does not.

6. Where an Assessment notification has been served on the taxpayer

Generally speaking, the issuance of an assessment notification to a given taxpayer in accordance with the law signals the exercise of the right to determine the tax liability. Thus it is in connection with the right to demand the payment of the tax pursuant to the assessment notification that one can talk about limitation.

From the standpoint of limitation, an original valid assessment notification in respect of a given annual accounting period may be served on a taxpayer,

a. within ten years in a case where no declaration of the annual income has been submitted to the Tax Authority.

b. within five years in a case where the declaration of the annual income has been submitted to the Tax Authority.

Service of such a valid original assessment notification shall interrupt any period of limitation which has commenced running in respect of the Tax Authority's right to demand the payment of the tax. This is due to the legal consequences that it produces, set out below.

When a taxpayer is in receipt of an assessment notification, the law requires him to carry out either of the following two actions within one month:

1. To settle accounts with the Tax Authority and pay the tax, if there is any (Article 46 of the Income Tax Proclamation);

2. To exercise his right of appeal to the Tax Appeal Commission. See Article 54 of Proclamation No. 173 of 1961 (as amended).

In a case where the taxpayer fails to take either of the alternatives mentioned above, the cause for the interruption lasts only for one month as of the date on which the assessment notification has been duly served on the taxpayer. Thereafter, the status of the assessment notification is to all intents and purposes identical to that of a decree passed by the courts, for it becomes ipso jure immediately executive.[70] The law deems the tax liability expressed in the assessment notification as final and conclusive, and creates the obligation of enforcing it for the benefit of the Tax Authority.[71] The right to make the first application for the execution of the assessment notification must be exercised within the general limitation period of ten years, exactly as in the case of a decree rendered by the courts. The period shall begin to run at the end of the month fixed for the taxpayer either to settle accounts with the Tax Authority or exercise his right to appeal. If the Tax Authority fails to execute the assessment notification within the said period, its right to demand the payment of the tax shall be barred.

In a case where the taxpayer takes an appeal to the Tax Appeal Commission from the decision of the Tax Authority on his tax liability, its right to demand the payment of the tax shall obviously remain not actionable while the proceedings are under way. If the outcome of the case is in favour of the Tax Authority, the decision of the Commission is considered as final and executive, subject to the possibility of

its being altered at a higher level of appeal.[72] Thus, the right to demand the payment of the tax according to the decision of the Tax Appeal Commission shall be barred if no application to enforce it is made to the courts within ten years.

The suspension of the right to demand the payment of the tax is definitely further prolonged in the event that the decision of the Commission is against the Tax Authority. Here, the Authority is entitled to take an appeal to the regular court of appeal from the decision of the Commission, and the final disposition of the case may even be made at the level of the Supreme Court. [73] If the case is decided for the Tax Authority, the limitation as to the execution of such decision is governed by the rule applicable to any other decree. Thus, if no application for its enforcement is made within the general limitation period of ten years, the Tax Authority shall lose its right to demand the payment of the tax.

7. The Tax Authority's Right to Revise its Previous Assessment

Article 70 (c) of the Income Tax Proclamation,which purportedly derogates from the provisions of Articles 41 and 55, is designed for the purpose of rectifying short levies caused by the fraudulent acts of taxpayers.[74] It farms out to the Tax Authority the right to revise any of its previous assessments at any time where taxpayers appear to have:

1. omitted to give a full and proper declaration of their income;
2. refused to supply information as to the amount and source of their income and the size of their operation; or submitted false information regarding these matters;
3. committed any tax offence punishable under the Penal Code. Incidentally, Article 70 (c) (1) is presumed to be consequent upon the last provision of Article 41, which, in effect,states that the expiry of the five-year time-limit may not relieve taxpayers from liability to pay the tax on the income which they have not set forth in the declaration.[75]

When one considers Article 70 (c) from the aspect of limitation, it does not take much effort to realize that the most important words in the provisions are "at any time". What impression does these words give when they are seen in connection with the discovery the Tax Authority of the aforementioned fraudulent acts? This is the crucial question, and there seem to be two possible ways of looking at it.

First, it is possible to see the words "at any time" in the context of infinity, and maintain that the Tax Authority can determine afresh the liability of taxpayers in

respect of a given annual accounting period, whenever it acquires knowledge as to the commission of any one of the aforesaid fraudulent acts in relation to the previous assessment, regardless of the number of years that have gone by. This conception, in effect, leads to the conclusion that the Tax Authority's right to revise any of its previous assessments is virtually immune from the operation of limitation rules. We may tend to imagine a bar to the Tax Authority's right resulting from the Authority's failure to exercise it within ten years after the coming of the fraudulent acts to its notice. Yet this is a remote possibility, as it is very unlikely that the taxpayer in question can succeed in establishing the date on which the Tax Authority acquired knowledge of such facts.

Second, it is equally possible to understand the words "at any time" in the context of the general period of limitation of Article 1845 of the Civil Code. Based on this concept, one may put forward the view that the Tax Authority must discover the fraudulent acts in relation to a previous assessment pertaining to a given annual accounting period, and must exercise its right to determine afresh the tax liability, within ten years, as of the date on which;

1. the tax payable on the income declared by the taxpayer in question is deemed as approved, by virtue of Article 41, [76]

2. the assessment notification served on the taxpayer in question becomes final and conclusive, by virtue of Article 55.[77] Of the two approaches referred to above, we recommend the adoption of the latter on the following grounds:

    1. Generally speaking, all the theoretical and legal reasons discussed above for laying down rules on limitation appear to favour the second approach.

    2. In particular, as the right to revise a previous assessment presupposes a contact already established between the tax Authority and the taxpayer, it appears unreasonable to allow the right to endure forever.

    3. The second approach offers a precise and more meaningful way of determining the time on which the tax liability of taxpayers in respect of a given annual account year must close conclusively in respect of a given annual accounting year.

    4. As the duty to hunt out fraudulent acts perpetrated against the revenue intake is included within the right to revise a previous assessment, the

> second approach is better co-ordinated for making the Tax Authority pursue this duty with diligence. It puts pressure on the Authority to resort to effective deployment of the inspection force at its disposal, and to active solicitation for co-operation and collaboration from appropriate governmental bodies and mass organizations to that end.

It is imperative for the tax laws to contain provisions that deal adequately with the question of limitation. Recommendations to this effect may be not so hard to make, but unfortunately the introduction of tax reform of this sort does not seem to arrive fast, as shown by experience. Meanwhile, one has to resolve such legal knots as are dealt with in this discussion with the aid of the relevant provisions of the Civil Code. As stated recourse to the Civil Code is not prohibited by the law, and the writer urges that it should be made use of properly and with confidence.

The proposed applications of limitation may be at variance with the prevailing concept of limitation in relation to tax claims; some of them may even radically diverge from what has actually been followed by the courts in the disposition of much issues. Yet the writer remains satisfied that the proposals are the most practical to offer, in the absence of elaborate rules governing limitation in the field of taxation.

REFERENCES AND FOOTNOTES

[1]The meanings of the two expressions are "actions without a limitation period" and "actions subject to a limitation period", respectively.

[2]Rodolf Shom, The Institutes of Roman Law (Oxford: Clarendon Press, 1901), pp. 298-300.

[3]Ibid.

[4]international Encyclopedia of Comparative Law, "Period of Limitation" (Dordrecht, Boston, Lancaster: Tuebingen and Martinus Nijhoff Publishers, 1986), Vol. XI, Part II, Chapter 13, p. 23.

[5]In Common Law, laches is a defence which a defendant may raise to prevent the suit from proceeding on grounds of delay in the exercise of a right on the part of the plaintiff. The delay must be long enough to be attributable to neglect or want to diligence operating to the prejudice of the defendant or giving rise to the presumption that the right is abandoned. Note that "limitation" and "laches" are not identical. The former signifies the fixed statutory term within which an action must be brought, whereas the latter denotes a more unreasonable delay in making a claim, independent of statutes.

[6]International Encyclopedia of Comparative Law, p. 23.

[7]See Civil Code Articles 1165 (2), 1192, 1000, 1810, 1024, 2143; Penal Code Arts. 226-231.

[8]Philip S. James, Introduction to English Law (London: English Language Book Society and Butterworth, 10th edition, 1984), p. 301.

[9]Rene David, Commentary on Contracts in Ethiopia, translated by Michael Kindred (Addis Ababa, Haile Selassie I University, Faculty of Law, 1973), p. 89.

[10]Marcel Planiol, Treatise on the Civil Law, translated by Louisiana State Law Institute (Paris: Louisiana State Law Institute, 1959), pp. 345-346.

[11]Corpus Juris Secundum, Taxation (St. Paul, Minnesota, West Publishing Co., 1954), Vol. 84, p. 1429.

[12]Ibid, p. 1430.

[13]Note that these instances had nothing to do with taxes. They dealt only with transference of titles and sums of money which were considered as vacant property or property without owners.

[14]Planiol, pp. 378-380.

[15]Corpus Juris Secundum, p. 46.

[16]As examples of remission provision, see Proclamation No. 173 of 1961 (as amended), Art. 72, and Proclamation No. 77 of 1976 (as amended), Art. 45.

[17]World Tax Series, Taxation in Brazil (Boston, Toronto: Little, Brown and Company Limited, 1957), p. 262.

[18]Ibid.

[19]Ibid, pp. 262-263.

[20]World Tax Series, Taxation in Italy (Chicago: Commerce Clearing House, Inc., 1964),pp. 248-249.

[21]World Tax Series, Taxation in Sweden (Canada: Little, brown and Company Limited, 1959), p. 592.

[22]World Tax Series, Taxation in the Federal Republic of Germany (Chicago; Commerce Clearing House limited, 1963), pp. 686-688.

[23]Ibid.

[24]Proclamation No. 145 of 1955, Art. 106: When any duty has been short-levied or erroneously refunded, the person who should have paid the amount short-levied or to whom the refund has erroneously refunded been made shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Director within five years of the date of such levy or refund.

[25]Proclamation No. 173 of 1961, Art. 41: If a taxpayer has submitted a declaration of income, but does not receive, within a period of five (5) years from the date of the receipt of the declaration by.the Tax Authority, a notice of assessment different from

the amount of tax declared, the income declared shall be deemed approved and the tax shall be deemed to have been assessed on that income; provided, however, that the provisions of this Art. 41 shall not relieve the taxpayer from liability for the payment of income tax on income which has not been set forth in the said declaration.

Note that the three-year period stipulated in Art. 41 of the principal proclamation is amended by Proclamation No. 65 of 1975 to five years.

[26]Civil Code, Arts. 1845-1856.

[27]Civil Code, Art. 1677 Scope of Application of This Title. (1) The relevant provisions of this Title shall apply to obligations notwithstanding that they do not arise out of a contract. (2) Nothing in this Title shall affect the special provisions applicable to certain obligations by reason of their origin or nature.

[28]Civil Code, Art. 1845: Period of Limitation. Unless otherwise provided by law, actions for the performance of a contract actions based on the non-performance of a contract, and actions for the invalidation of a contract shall be barred if not brought within ten years.

[29]Robert Warden Lee, The Elements of Roman Law (London: Sweet and Maxwell, 1956), p. 256.

[30]Ibid.

[31]Amos and Walton, Introduction to French Law (Oxford: Calrendon Press, 1969), p. 140.

[32]Art 70 (a) of the Income Tax Proclamation No. 173 of 1961 (as amended). For example, "Any taxpayer who violates any of the provisions hereof shall be punishable in accordance with the Penal Code of 1957".

[33]Civil Code, Art. 2149: Effect of Criminal on Civil Action. In deciding whether an offence has been committed, the court shall not be bound by an acquittal or discharge by a Criminal Court.

Penal Code, Art. 232: Effect as to the Civil Action. The limitation of the Civil Action for reparation of the damage caused, whether or not brought conjointly with the Criminal Action, is governed both as to its conditions, period of limitation and its effect by the ordinary provisions of Civil Law.

In the event of the Criminal Action being barred before the Civil Action, this action may no longer be brought before the Criminal Court, but must be heard by the appropriate Civil Court.

[34]Corpus Juris Secundum, p. 32.

[35]It is interesting to compare the following two provisions of the Civil Code in this respect: Art. 1833: Negative Conditions. Set-off shall occur regardless of the cause of either obligation except where: (b) the obligation is owing to the state or municipalities. Art. 3178: Set-off. Set-off may not be invoked by a person contracting with the administrative authorities except in the case of debts other than fiscal debts.

Note that there is no such contradiction between Art. 1833 (b) and Art. 3178 in the Amharic version of the Civil Code. Both of them declare that it is impossible to raise set-off against debts representating taxes.

[36]David, p. 7.

[37]George Krzeczunowicz, Formation and Effects of Contracts in Ethiopian Law (Addis Ababa: Faculty of Law, Addis Ababa University, 1983), p.v. (Preface).

[38]Civil Code, Art. 1676: Provisions Applicable to Contracts. (1) The general provisions of this Title shall apply to contracts regardless of the nature thereof and the parties thereto. (2) Nothing in this Title shall affect such special provisions applicable to certain contracts as are laid down in Book V of this Code and in the Commercial Code.

[39]Krzeczunowicz, p.1.

[40]Ibid, p. 5.

[41]Ibid.

[42]David, p. 89.

[43]Robert Allen Sedler, Ethiopian Civil Procedure (Addis Ababa: Faculty of Law, HSIU in Association with Oxford University Press, 1968), p. 271.

[44]David, p. 89.

[45]Civil Code, Art. 1168: Principle. (1) The possessor who has paid for fifteen consecutive years the taxes relating to the ownership of an immovable shall become the owner of such immovable .....

Note. This provision has been made obsolete since 1975 by the legislation which brought to an end private ownership of land. Art. 1000: periods of Time. (1) An action of "petitio haereditates" shall be barred after three years from the plaintiff having become aware of his right and of the taking possession of the property of the inheritance by the defendant. (2) It shall be absolutely barred after fifteen years from the death of the deceased or the day when the right of the plaintiff could be enforced, unless the action relates to family immovable.

[46]Art. 4(b) of Proclamation No. 173 of 1961 (as amended): Without prejudice to the Rural Land Use Fee and Agricultural Activities Income Tax Proclamation No. 77 of 1976 (as amended), on income from all other sources not specifically mentioned in Paragraphs (a), (c), (d), (e) and (f) of this Article: under Articles 12 through 17 inclusive hereof (Schedule C).

[47]Proclamation No. 173 of 1961 (as amended) V. Schedule C, Art. 12 (a), The tax on income from sources mentioned in paragraph (c) of Article 4 hereof shall be charged, levied, collected and paid annually, and shall be imposed on taxable income of the preceding year, which shall, in principle, correspond to the Ethiopian fiscal year; provided, however, that the Income Tax Authority may, at its discretion, allow the use of a different accounting year.

[48]This might indeed be a rare encounter in reality, if the requirement to obtain license for carrying on a trade or a business is rigorously applied (Art. 3 (1) of Proclamation No. 294 of 1971, as amended by Art. 11 of Proclamation No. 76 of 1976), and if the Income Tax Authority makes effective use of its right to gain access to information about the operations and incomes of taxpayers (Proclamation No. 173 of 1961, as amended, Arts 23-27).

[49]Civil Code, Art. 1192: Prescription. The owner of corporeal chattel shall lose his rights as an owner where he fails to exercise them for a period of ten years by reason of his not knowing where such chattel was or that he was the own thereof.

[50]Civil Code, Art. 1853 Special Relations Between the Parties. (1) The court may set aside a plea based on limitation where it is of opinion that the creditor failed to exercise his rights in due time on account of the obedience he owed to or fear he felt of the debtor to whom he is bound by family relationship or subordination. (2) In

such a case, third parties who guaranteed the payment of the debt shall however be released.

[51]Civil Code, Art. 1854: Bad Faith. A party may plead limitation notwithstanding that he is in bad faith.

[52]Some people may be put out by our contention (thinking that it plays into the hands of delinquent taxpayers), but they are advised to gauge the analysis in the eyes of the law. After all, even criminal actions, which appear to be more serious, are barred by a lapse of time, as indicated earlier, Incidentally, the ordinary limitation as to unaggravated tax offenses is fixed at five years. (See Penal Code Art. 226 (e) in conjunction with Art. 355 (1), Art. 360 (12) and Art. 361 (1), as well as Art. 15 of Proclamation No. 214 of 1981). Absolute limitation as to unaggravated tax offenses is fixed at ten years, according to the rules set out under Art. 231 of the Penal Code. The periods begin to run from the day on which the offender first exercised his criminal activity: see Penal Code,Art. 228 (2).

[53]Civil Code, Art. 1846: Beginning of Period. The period of limitation shall run from the day when the obligation is due or the rights under the contract could be exercised.

[54]Proclamation No. 162 of 1959 (as amended), Art. 2. The fiscal year is hereby fixed at a period of one (1) year commencing on 1st Hamle and ending on 30th Sene of the following year.

[55]Proclamation No. 173 of 1961 (as amended), Art. 35 (c). Income from sources chargeable under Schedule C of this proclamation shall be declared annually as follows:

(I) If the taxpayer is required by regulations issued by Our Minister of Finance to keep books of account and records in such a way as to be able to submit to the Income Tax Authority at the end of the year a balance sheet and a profit-and-loss account with necessary specifications: within four (4) months from the end of the annual accounting period for which the tax is due:

(II) If the taxpayer is required to keep only such books of account and records as may be necessary for him to submit to the Income Tax Authority at the end of the year a summary of his daily revenue and expenditure, divided, or not, in certain groups, as it may be prescribed by regulations issued by Our Minister of Finance: within two (2) months from the end of the annual accounting period for which the tax is due:

(III) If the taxpayer is not required to keep any books or records: within thirty (30) days from the end of the annual accounting period for which the tax is due.

[56]In connection with classification of tax periods and the obligation to keep books of accounts and records, see Arts. 25-29 of Legal Notice No. 258 of 1962.

[57]Civil Code, Art. 1860 (1) and (3); Period Fixed in Months (analogy). (1) Where the period is fixed in months, or so as to include several months, the debt shall be due on such day of the last month as corresponds by its number to the day of the making of the contract. (2) The thirteenth month of the Ethiopian calendar shall not be taken into account.

[58]Civil Code, Art. 1848: Calculation of Period. (1) The period of limitation shall not include the day from which such period begins to run. (2) The action shall be barred where the last day of the period of limitation has expired without having been used. (3) Where the last day of the period of limitation is a holiday at the place of payment, the action shall be barred on the next working day.

[59]Proclamation No. 173 of 1961 (as amended), Art. 68. Any taxpayer in one of the categories specified below who fails to maintain such records and books of account as may be prescribed by Our Minister of Finance shall pay a penalty of twenty per cent (20%) of the amount of the tax due.

[60]Proclamation No. 171 of 1961 (as amended), Section XI, Payment of Tax. Arts. 44-48 inclusive.

[61]Proclamation No. 173 of 1961 (as amended), Section X, Assessment of Tax. Arts. 38-43 inclusive.

[62]Civil Code, Art. 2164: Undue Payment. (1) Whosever has paid what he was not required to pay may recover it. Civil Code, Art. 2166: Sufficient Cause. (1) Recovery shall not be admitted where the payment was in discharge of a barred debt.

[63]Proclamation No. 77 of 1975 (as amended), Art. 26.

[64]Proclamation No. 205 of 1963 (as amended), Art. 15 (c). If a manufacturer has submitted his monthly declarations and paid tax thereon in due time, and does not receive, within a period of five (5) years from the date of receipt of the declaration by the Tax Authority, a notice assessing an amount of tax different from the amount of tax declared, the tax declared shall be deemed to have been approved and shall

become final and conclusive: provided, however, that the provisions of this paragraph (c) shall not relieve the taxpayer from liability from the payment of tax which has not been set forth in the said declaration. Art 21 (c). If a trader has submitted his quarterly returns and paid the turnover tax in due time, as prescribed in Article 20 hereof, and if no different assessment has been made by the Tax Authority within five (5) years from the end of the quarter of the year of which the tax was due, the tax as calculated on the basis of quarterly returns submitted by the trader shall be final and conclusive.

[65]Proclamation No. 173 of 1961 (as amended), Art. 66. Any taxpayer who, being required to do so, fails to declare his or (of an organization) its income within the period specified in Article 35 hereof may be assessed by Income Tax Authority, as penalty, twenty per cent (20%) of the amount of tax finally assessed by the said Income Tax Authority.

[66]Proclamation No. 173 of 1961 (as amended), Art. 67. Any taxpayer who fails to pay the full amount of tax due within thirty (30) days after the payment is due shall pay a penalty equal to two per cent (2%) of the amount of tax which is in default, in respect of every thirty (30) days during which payment is in default, up to a maximum penalty of fifty per cent (50%) of the amount due.

[67]Proclamation No. 173 of 1961 (as amended), Art. 37. Declarations shall be made on special forms supplied by the Income Tax Authority, which forms shall contain particulars regarding all revenues and expenditures to be taken into account in computing taxable income.

[68]Civil Code, Art. 1852: Effect of Interruption. (1) A new period of limitation shall begin to run upon each interruption. (2) Such period shall be of ten years where the debt has been admitted in writing or established by a judgment.

[69]Proclamation No. 173 of 1961 (as amended), Art. 40. If no records and books of account are maintained by the taxpayer, or if for any reason the records and books of accounts are unacceptable to the Income Tax Authority, or if the taxpayer fails to declare his or its income within the time specified in Art. 35 hereof, the Income Tax Authority may assess the tax by estimation (emphasis supplied).

[70]Proclamation No. 173 of 1961 (as amended), Art. 55. An appeal must be made within thirty (30) days from the date of delivery of the notification of the assessment to the taxpayer; if no appeal is made within this period, or if the appellant fails to deposit or pay, within the same period, the amounts referred to in paragraphs (b), (c),

(d) or (e) of article 54 hereof, the assessment of tax made by the Tax Authority shall be considered as final and conclusive and immediately executive.

[71]See Art. 62 of Proclamation No. 173 of 1961 (as amended).

[72]See Arts. 57 and 61 of Proclamation No. 173 of 1961 (as amended).

[73]See Arts 58-61 of Proclamation No. 173 of 1961 (as amended).

[74]Translated literally into English, the introductory provision to Article 70 (c) of the Amharic text reads without prejudice to the provisions of Art. 41 of this Proclamation and Art. 55 of the principal Proclamation ..." Thus, if the Amharic version is adopted for application, it appears to defeat the whole purpose of Art. 70 (c).

[75]Proclamation No. 173 of 1961 (as amended), Art. 70 (c). Notwithstanding the provisions of Article 41 of this Proclamation and Art. 55 of the principal Proclamation, the Income Tax Authority is authorized to revise, at any time, any of its previous assessments of the tax in cases where it appears that the tax payer: (i) omitted to give a full and proper declaration of income; (ii) refused to supply information or supplied the Tax Authority with false information concerning the sources of his income or size of his operations; (iii) committed any other (tax) offence punishable under the Penal Code of the Empire of Ethiopia.

Note: The words "any other offence" must be taken to mean tax offenses.

[76]It is important to note that there is a problem in applying Article 70 (c) to the case governed by Article 41 owing to the absence of a previous assessment made by the Tax Authority in the ordinary sense. As a result, we have no choice but to regard the payable on the income set forth in the declaration, and deemed to be approved by virtue of Article 41, as the original assessment of the Tax Authority.

[77]Incidentally writer would like to point out that the right to revise a previous assessment in virtue of Article 70(c) may not be supplied to the situation where an appeal is made against an assessment notification, and a decision is rendered by the Tax Appeal Commission or by the regular appellate courts.