

**Title: A Review of Constitutional Principles Regarding Taxation: Ethiopian and Turkish Perspective**

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## Table of Contents

<b>Content</b>	<b>Page</b>
<b>i.</b> Abstract.....	3
<b>1.</b> Introduction.....	4
<b>2.</b> Tax and power of Taxation: General Overview.....	6
<b>3.</b> ‘Duty to Pay Tax’: Constitutional Perspective.....	7
<b>4.</b> Constitutional Power of Taxation.....	8
<b>5.</b> The Constitutional Principles of Taxation.....	12
<b>5.1.</b> The Principle of Ability to Pay.....	12
<b>5.2.</b> The Principle of ‘Jurisdiction to Sources of Tax and ‘Fairness In Tax Assessment’.....	12
<b>5.3.</b> The Principle of Equality.....	13
<b>5.4.</b> The Principle of Equity .....	14
<b>5.5.</b> The Principle of Tax Legality.....	15
<b>6.</b> Constitutional Tax Immunity .....	16
<b>7.</b> Adjudication of Tax.....	18
<b>8.</b> Conclusion and Recommendation.....	20
<b>9.</b> References.....	22

### **Abstract**

*Constitutions as supreme legal authorities enshrine the principles of taxation which are often used as the guidance to the legislations related to fiscal aspect, requires to be explored critically so as to provide clear understanding on taxation. This article has explored the tax provisions in the constitutions of Ethiopia and Turkey from comparative perspective through the method of doctrinal legal analysis. Both the latest constitution of Turkey and Ethiopia comprise relatively related principles regarding taxation in spite of the disparities of taxation system in these two countries due to the fact that Turkey is a unitary state whereas Ethiopia is federal. In-fact, there are some disparities within these constitutions. For instance, the 1982 Constitution of Turkey specifies the citizens' duties to pay tax and the adjudication system of tax in different way than the Ethiopian 1995 constitution. The Ethiopian constitution enshrines the taxation power in detail among other things in line with the federal system of government.*

**Key words:** *tax, taxation power; principles of tax; tax adjudication; constitutional tax rules; legality principle of taxes; Ethiopian Constitution; Turkish Constitution*

## 1. Introduction

In modern fiscal system, the tax revenue is the backbone of governmental public finances<sup>1</sup>. Constitution as a guideline to understand the functions of governmental organs, it comprises basically the issue related to sources of revenue which enables to cover the expenses of public expenses. Taxes as one of the main sources of public revenue, most countries' constitutions regulate the taxation system in diverse ways. The constitutions of some countries set particular principles of taxes and some others only set general rules of taxes. The administration of taxation aspect also depends on the structure or form of the states. The federal states usually and as a matter of a federal feature sets decentralized system of taxation in the constitutional text. The unitary states such as Turkey, despite some of them applies decentralization of tax administration as a fiscal decentralization policy, may not incorporate the tax administration structural rules in their constitutions.

Historically, the first ever Turkish legal document known as 'Rescript of Gülhane' or [Tanzimat Fermanı] of the 1839 clearly and undoubtedly has shown everyone's duty to pay tax with respect to financial power. In this rescript the unilateral will of the Sultan for taxation was restricted<sup>2</sup>. 'Rescript of Gülhane' recognizes that each individual pays a tax with respect to the estate and the ability to pay. That makes Turkey, one of a few countries who adopt basic tax principles such as the principle of ability to pay tax in early period. The Turkish modern constitutional development, however, traced back to 1876 of the first Ottoman (Turkish) Constitution [Kanun-u Esasî] which had served as a fundamental law of Turkey until 1924. In the Kanun-u Esasî, there is a provision stating that no illegal taxes and other financial responsibilities can't be imposed. In addition to this principle, Kanun-u Esasî contained rules of uniformity, equity, taxation based on ability to pay<sup>3</sup>.

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<sup>1</sup> Dixwell, L. P. the Place of Consumers' Excises in the Tax System, Electronic Law Journal vol 1, - JILT Basu - University of Warwick, 2004, p. 2; Bilici N., Vergi Hukuku [Tax Law], vol 1, Savaş Yayınevi, Ankara 2016, p.5; Bilici, N.- Bilici A., Kamu Maliyesi [Public Finance], Savaş Yayınevi, Ankara 2016, s. 182.

<sup>2</sup> ÜSTÜN Ü.S.-KARAKOÇ G., "The Relationship Between the Democracy and the Development of Tax Law", International Conference on the Changing World and Social Research (ICWSR) August 25-28, 2015, Vienna, ISBN: 978-605-5583-68-2, p. 1004.

<sup>3</sup> Öncel M-Kumrulu A.-Çağan N., Vergi Hukuku [Tax Law], Ankara 2016, p.9; Şenyüz D.-Yüce M.-Gerçek A., Vergi Hukuku [Tax Law], Ekin Basım yayım Dağıtım, Bursa 2016, p. 18; Üstün, Ü.S.-Bilir, F., "The Legality

Between the first Turkish Constitution 1876 and 1924 Constitutions, a short constitution issued in 1921, during the Turkish Independence War period after the World War I. This is a very short Constitution which had not involved any provision related to tax. 1924 Constitution (the first Constitution after the declaration of republic in Turkey), has incorporated the duty to pay taxes and the principles under article 84 and 85.<sup>4</sup>

The 1961 and **1982** (still in force) constitutions have incorporated the taxation duties and principles. In the 1961 Constitution Act, there is a provision that “*Taxes, duties, fees and similar charges shall be enacted by the law*”. Principles of legality, uniformity and equity were arranged in the 1961 Constitution. The Constitutional Court was established by this constitution, thus regulations against the principle of legality could be subject to examination and legal sanction<sup>5</sup>.

There was no any official document that deals about tax in Ethiopia until 1931. The first ever constitution of Ethiopia has proclaimed in 1931 as a monarchical gift from the emperor to the people and that contained more of framework rules. That constitution had included a single provision stating that the nation is bound to pay legal taxes<sup>6</sup>. Similarly, the 1955 revised Ethiopian constitution introduced the legality principle of taxation by stating that no tax shall be imposed, reduced, and abolished except by law<sup>7</sup>. The 1987 people’s democratic republic of Ethiopian (The PDRE constitution) was the third constitution that recognized the principle of legality of taxation for the first time in brief. It provides that, the power to determine the fiscal policy of the country vested to the national legislative organ known as 'National Shengo' which is the unicameral national parliament. However, the 1987 PDRE constitution did not incorporate other principles of taxation and tax rules. Indeed, it was the socialist constitution that framed based on the model of Soviet Union constitution and made the country a unitary state. The constitution failed to incorporate fiscal decentralization and division of taxation power. The current constitution of Ethiopia has been adopted in 1995 and commonly called federal

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Principle of Taxes in the Constitution of Republic of Turkey”, IISES – International Institute of Social and Economic Sciences, 16th International Academic Conference, 12 May 2015 Amsterdam-Holland, ISBN 978-80-87927-09-0, p. 580; Üstün-Karakoç, p. 1004.

<sup>4</sup> In the 1924 Constitution Act which is the first constitution of Turkey, the principle of the legality of taxes was employed. In the article 85/1 of this constitution, there is a provision saying “The taxes are only imposed and collected by the law”.

<sup>5</sup> Üstün-Karakoç, p. 1004; Üstün-Bilir, p. 580.

<sup>6</sup> Article 21 of the 1931 Constitution of the empire of Ethiopia.

<sup>7</sup> Article 113 of the 1955 constitution of the empire of Ethiopia.

democratic republic of Ethiopian constitution hereinafter referred to as (the FDRE constitution). The details of FDRE constitution regarding taxation in comparison with the 1982 the Constitution of Turkey is the topic for discussion in this article.

The authors of this article are motivated to review the constitution of Ethiopia and Turkey for the following reasons. Both countries have resisted colonialism by winning the wars against western powers with in approximate period of time and both countries are currently in state of emergency. Turkish constitutional development was started nearly half century before Ethiopia. Besides, the tax to GDP ratio of Turkey is 28.8%<sup>8</sup> whereas the tax to GDP ratio of Ethiopia is 12.9 percent<sup>9</sup> in 2014/15. This shows a huge disparity between the Ethiopian and Turkish taxation systems. Although, in-depth research is required to identify the drawbacks of the taxation systems of Ethiopia as it is observed that Ethiopia falls short of its revenue potential, the constitutional foundations of taxation need to be scrutinized in comparative perspective with Turkey so as to identify the shortcomings or developments of legal and political foundation which is commonly constitution. Therefore, this article made an attempt to view the 1982 Constitution of Turkey and the 1995 Constitution of Ethiopia regarding principles of taxation. The comparison has been made by using secondary sources particularly depending on the constitutions of the country and scholarly books, articles and notes.

## **2. Tax and Power of Taxation: General Overview**

The term “tax” is confined to compulsory, unrequited payments to general government<sup>10</sup>. Taxes are unrequited in the sense that benefits provided by government to taxpayers are not normally in proportion to their payments<sup>11</sup>. In other words, taxes are not quid pro-quo. Tax is one of the main sources of revenue in public finance. The power of taxation is derived from the constitution in modern democratic state.

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<sup>8</sup> <https://www.oecd.org/tax/revenue-statistics-turkey.pdf>.

<sup>9</sup> IMF Country Report No. 15/300, <https://www.imf.org/external/pubs/ft/scr/2015/cr15300.pdf>, pp 11.

<sup>10</sup> Definition of Taxes, Negotiating Group on the Multilateral Agreement on Investment (MAI), Expert Group No.3 , on Treatment of Tax Issues in the MAI, DAFFE/MAI/EG2(96)3

<sup>11</sup> Ibid; Pehlivan, O., Kamu Maliyesi [Public Finance], Trabzon 2015, p. 91.

There are different types of tax. For instance, there are direct taxes and indirect taxes. Direct taxes are taxes bear up on persons, possessions and enjoyment of rights.<sup>12</sup> The burden of tax falls directly on the tax payer. If one cannot avoid a taxable activity without sacrificing the ordinary affairs of life, the tax is not indirect, but direct. Employment income tax is the best example of direct taxes. An indirect tax is a tax that you can choose to avoid without giving up the normal affairs of life.<sup>13</sup> An indirect tax is a tax that you can avoid by choosing not become involved in the activity upon which the tax is laid. In other words, indirect taxes are so called because the government does not get them directly from the payer; they are collected for the government by manufacturers and merchants, who recoup their outlay from their customers in the price of goods and services<sup>14</sup>. Value added tax, excise taxes and tariff are some of the examples of indirect taxes.

Some constitutions specified the types of taxes and others do not totally show the tax category. For example the USA Federal Constitution only permits the government to lay two forms of taxation. One is a “direct tax” and the other an “indirect tax”<sup>15</sup>. The 1995 FDRE constitution also mentions types of taxes while making a designation to the federal and regional governments. Nonetheless, the constitution is silent about which taxes are direct and which taxes are indirect. It simply states some tax types such as income tax, excise tax, customs duty and the like. The 1982 Constitution of Turkey has no specification in respect of types of taxes. The range of taxes used and the complexity of the rules used to impose them vary from country to country and can often be correlated with the stage of development of the country in question<sup>16</sup>.

Specifying, the type of taxes in the constitutions is not habitual to most constitutions in the world. As constitutions are guidelines for other laws, the subordinate tax legislations might classify taxes for the purpose of understanding and other technical purposes.

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<sup>12</sup> Constitutional Issues of Taxation retrieved on 5.12.2016 from <http://www.originalintent.org/edu/docs/Constitutional%20Issues%20of%20Taxation.pdf>

<sup>13</sup> Ibid.

<sup>14</sup> Chodorov, F. *The Income Tax: Root of all Evil* The Devin-Adair Company, New York Online edition, The Ludwig von Misses Institute, 2002, p. 7; Pehlivan, p. 165; Bilici-Bilici, p. 210.

<sup>15</sup> Rose, L. *Taxable Income (The Evolution of a Deception)*, 2007, retrieved from <http://www.larkenrose.com/pdf/TaxableIncome2007.pdf> on 17.11.2016.

<sup>16</sup> Angharad Miller, Lynne Oats, & B. Bus, *Principles of International Taxation* 54 (2009), p. 9.

### 3. 'Duty to Pay Tax': Constitutional Perspective

In every country, payment of tax is a duty of everyone unless and otherwise the exemption or immunity is vested by law. The duty to pay tax either imposed by the constitution in a general basis or other subordinate laws of the country in detail manner. Does a constitution of one country require including a provision that shows 'everyone's duty to pay tax'? Or is 'duty to pay tax' an obligation imposed by ordinary laws such as the parliamentary act or regulations of executive organs? If the constitution expressly states that everyone has an obligation to pay tax, the interpretation or application of such constitutional provision of duty to pay tax could be in the jurisdiction of constitutional adjudication. Basically, constitution is a guideline for all other laws of the country. If the constitution sets the foundation of duty to pay tax and the proclamations come up with details, the courts have jurisdiction over interpretation and application of detail laws. However, the constitutional umpiring body should have a power of adjudication on the basic understanding of duty to pay tax.

It is obvious that every country imposes the duty to pay tax so as to incur public expenditure. This duty to pay tax can be declared either by the constitutions or subordinate laws of states. Turkey is one example of those states who explicitly declares the duty to pay tax on the constitution. Article 73 sub-article 1 of the Constitution of Turkey explicitly imposes a duty to pay taxes according to his financial resources, in order to meet public expenditure. "***Everyone is under obligation to pay taxes according to his financial resources, in order to meet public expenditures***"<sup>17</sup>. The FDRE constitution of the 1995 has not included any explicit statement that indicates directly everyone's obligation to pay tax. Unfortunately, the FDRE constitution does not contain duties of citizens. The FDRE constitution rather specifies the entitlements, rights and liberties of everyone in dispersed manner.

Comparatively, there is no any provision except article 9 sub-article 2 of the FDRE constitution which, in fact, declares everyone's obligation for the observance of the constitutional provisions. It is definitely possible to say that article 9(2) of the FDRE constitution has imposed implied

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<sup>17</sup> Üstün, Ü.S., "Vergi Hukuku İle İlgili Anayasal İlkeler" [Constitutional Principles About Tax Law], *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* " [Selçuk University Law Review], Vol. 11, No. 1-2, Yıl 2003, p. 253.



obligation on everyone to pay tax. If the FDRE constitution had a provision that resembles article 73 of the Constitution of Turkey, the taxation issue could have been the constitutional matter.

Because, the issue of 'ability to pay tax' susceptible to subjective interpretation and individuals might submit their cases to the constitutional adjudicatory body for interpretation. It is evident from the fact that, House of the federations has not entertained any case involving tax issue within 2 decades of its establishment.<sup>18</sup> Comparatively, the constitutional amendment law No. 5982, which was enacted by referendum, held on September 12, 2010 concerning the judicial provisions of the 1982 constitution of the republic of Turkey vested two rights for tax payers. Consequently, in Turkish constitutional system taxpayers have the right to apply to the Constitutional Court, and the right to make a constitutional objection by way of individual complaint. The constitutional court of Turkey has also entertained tax related cases.

#### **4. Constitutional Power of Taxation**

Basically, Ethiopia is a federal state whereas Turkey is a unitary. In Ethiopia, the power of taxation has categorized vertically in to two tiers of government as federal exclusive power of taxation and regional exclusive power of taxation. The FDRE constitution comprises a provision that enables the two tiers of government to have concurrent power of taxation. Moreover, the residual power of taxation power has never vested to any tier of government rather the constitution called it 'undesigned tax' and the two federal houses have the power to decide over the issue of which tier of government has the power of taxation<sup>19</sup>. Both tiers of government have the legislative, executive and judicial power in Ethiopia. But there is no such kind of categorization regarding the power of taxation in Turkish constitution.

As a unitary state, the power of taxation in Turkey is unilateral and controlled by the central government. The constitution of Turkey has given the legislative, executive and judicial powers unilaterally to the Turkish Grand National Assembly, to the president and council of ministers,

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<sup>18</sup> House of the federation has been criticized for adjudicating very few cases with in two decades generally. Chi Mgbako, Sarah Braasch, and others, Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights, International Law Journal Volume 32, Issue 1 2008 Article 15, Fordham, pp 25.

<sup>19</sup> The FDRE constitution of 1995, from article 95-100 specified the taxation system.

and to courts respectively<sup>20</sup>. Particularly, the Ministry of Finance is responsible for taxation (collecting taxes) in Turkey<sup>21</sup>; whereas there are dual tax administrators: the federal revenue and customs authority<sup>22</sup> for taxes which are assigned to the federal government and regional revenue offices<sup>23</sup> for the taxes assigned to the regional states in Ethiopia respectively.

The Federal Government and the States have a constitutional duty to share revenues taking the federal arrangement into account in Ethiopia<sup>24</sup>. The constitution of Ethiopia itself formulates a clear division of revenues between the federal and the regional states. Based on the constitutional assignment of tax revenues, the federal Government has entitled to levy and collect custom duties, taxes and other charges on imports and exports, levy and collect income tax on employees of the Federal Government and international organizations; income, profit, sales and excise taxes on enterprises owned by the Federal Government; tax the income and winnings of national lotteries and other games of chance; on the income of air, rail and sea transport services; and on income of houses and properties owned by the Federal Government.<sup>25</sup> In addition it has the power to fix rents; determine and collect fees and charges relating to licenses issued and services rendered by organs of the Federal Government; levy and collect taxes on monopolies and levy and collect Federal stamp duties<sup>26</sup>. The states, on the other hand, has the power to levy and collect income taxes on employees of the State and of private enterprises; on the incomes of private farmers and farmers incorporated in cooperative associations; profit and sales taxes on individual traders carrying out a business within their territory; levy and collect taxes on income from transport services rendered on waters within their territory; on taxes on income derived

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<sup>20</sup> The Constitution of the Republic of Turkey, 1982, specified it.

<sup>21</sup> Tax and investment in Turkey: reach, relevance and reliability: a publication of deloitte Touche Tohmatsu Limited, 2014, pp 15. Retrieved from <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-turkeyguide-2014.pdf> at 19.11.2016; Üstün, Ü.S., Kamu Alacaklarında Rüçhan Hakkı [Priority (Preferential Right) of Public Receivables], Legal Yayınevi, Istanbul 2013, s. 23.

<sup>22</sup> The federal customs and revenue authority is established by proclamation 587/2008 by replacing the former Ethiopian inland revenue authority.

<sup>23</sup> All of 9 regional states of Ethiopia and the two city administrations have their own revenue authorities. These revenue authorities are responsible for collection of taxes in the respective regional states.

<sup>24</sup> Article 95 of the FDRE constitution of 1995.

<sup>25</sup> Article 96 of the FDRE constitution of 1995.

<sup>26</sup> Ibid.

from private houses and other properties within the State<sup>27</sup>. States are also entitled to determine and collect fees for land usufructuary rights and to collect rent on houses and other properties they own; levy and collect profit, sales, excise and personal income taxes on income of enterprises owned by the States levy and collect taxes on income derived from mining operations, and royalties and land rentals on such operations. Furthermore, they are also empowered by the FDRE constitution to determine and collect fees and charges relating to licenses issued and services rendered by State organs as well as to fix and collect royalty for use of forest resources<sup>28</sup>.

The Federal Government and the States are also empowered jointly to levy and collect profit, sales, excise and personal income taxes on enterprises they jointly establish; to levy and collect taxes on the profits of companies and on dividends due to shareholders as well as to levy and collect taxes on incomes derived from large scale mining and all petroleum and gas operations, and royalties on such operations.

The constitution devised a means to decide on the exercise of power of taxation which has not been specifically provided for in the constitution. The means is that the two federal assemblies i.e. House of the Federation and the House of Peoples' Representatives has the entitlement, in a joint session, determine by a two-thirds majority vote on the issue at hand<sup>29</sup>. That means, the two houses have the power to decide over which tier of government the power to get revenue of a particular tax. Value added tax has been assigned to the federal government by this way in 2002.

There is no such kind of division in the 1982 Constitution of Turkey for the very reason that Turkey is not a federal country. But taxes are collected by different administrations besides Ministry of Finance, provincial private administrations and municipalities. And also customs administrations are governed by the tax procedure law of Turkey. Moreover, there is no such division of expenditure responsibilities and revenue authorities among the provinces in the Turkish constitutional taxation system. Rather, the division has been made only to decentralize

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<sup>27</sup> Article 97 of the FDRE constitution.

<sup>28</sup> Article 97 of the FDRE constitution.

<sup>29</sup> Article 99 of the FDRE constitution.

the tax governance. The local administrations in Turkey are supplied with revenue sources in proportion to their duties<sup>30</sup>.

Hence, the 1995 FDRE constitution has detail issues regarding taxation power due to the fact that the federal structure of the government as well as the bicameral parliament character of the government. The 1982 Turkish constitution is not much concerned with dividing the tax revenue sources to different government levels because of absence of diverse tiers of government in Turkey.

Practically, the Ethiopian model of dividing taxation power between the federal and regional governments does not escape from conflicts of jurisdiction. For-instance, Federal water works construction enterprise; a public enterprise owned by federal government of Ethiopia was engaged in water works in Fidelitu local area of Somali regional state. The enterprise was construction water works that were financed by the regional government for the benefit of the people of local administration. The Somali language speakers were employed by the enterprise and the employees are obliged by law to pay employment income tax. The issue was that which government should collect the employment income tax? Whether the Somali regional state or the federal government? Apparently the employees are residents of Somali regional state and the work is financed by the regional government too. On the other hand, the enterprise is owned by the federal government, i.e., the enterprise was established and registered by the federal government. The issue is finally decided by the federal supreme cassation court that, as long as the enterprise is owned by the federal government the employment income tax from the employees of that enterprise is belongs to the federal power of taxation. The court based its decision on article 5(2)(c) of proclamation number 33/1992 which is impliedly replaced by the FDRE constitution in 1995.

First of all, the court has no jurisdiction to decide on this issue due to the fact that house of the federation has the power to adjudicate constitutional dispute. This jurisdictional conflict of two tiers of government over taxation power is a constitutional dispute. The federal supreme cassation court has applied the abrogated proclamation (proclamation number 33/1992) which was enacted at the transitional charter period and Ethiopia was not formally transformed to

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<sup>30</sup> Ruşen Keleş, Municipal Revenues, Ankara University, retrieved from [http://www.todaie.edu.tr/resimler/ekler/13d660c8e0b8d2b\\_ek.pdf](http://www.todaie.edu.tr/resimler/ekler/13d660c8e0b8d2b_ek.pdf), Accessed at 5.12.2016.

federal state. Nonetheless, had the house of federation adjudicate this particular case, the decision could not have been different. Because, Article 96(3) provides that the federal government shall levy and collect income, profit, sales and excise taxes on enterprises owned by the Federal Government. The Amharic version of this provision clearly stipulates that the federal government has the power of collecting employment income tax from the enterprises owned by the federal government. The reluctance of a constitutional adjudication system in Ethiopia is one of the causes of tax payers problem related to tax.

## 5. The Constitutional Principles regarding Taxation

There are fundamental principles of taxation which are applicable to all taxation systems<sup>31</sup>. ‘The principle of certainty’ that states the tax which each individual is bound to pay ought to be certain, and not arbitrary<sup>32</sup>; ‘the principle of equality or proportionality’ states that subjects of every state ought to contribute towards the support of the government, as nearly as possible in proportion to the revenue which they respectively enjoy under the protection of the state; ‘the principle of equity’ expresses the idea that taxes should be fair as one of the principles that guide tax policy; and ‘the principle of legality’ dictates the idea that the tax should be imposed only by law or it assures the theory of no taxation without representation are some of the basic principle of taxation which are relevant to all taxation systems. Beyond such universally accepted principles that are developed by notable economists like Adam Smith<sup>33</sup>; the constitutions of some countries sets specific principles of taxation which are more or less similar with the accepted principles of taxation. It is necessary to examine the constitutions of both Turkey and Ethiopia in terms of the principles of taxation.

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<sup>31</sup> The two central principles of taxation relate to the impact of tax on efficiency concerned with the allocation of resources) and equity (concerned with the distribution of income).

<sup>32</sup> Adam Smith Institute. (no date). Simpler Taxes: Tax Simplification as a Systematic Tax Policy. Briefing paper. Retrieved February 23, 2015 from <http://www.adamsmith.org/sites/default/files/images/stories/simpler-taxes.pdf>; ÜSTÜN, Ü.S., Türk Vergi Hukukunda İdarenin Takdir Yetkisi [Discretionary Authority of Administration in Turkish Tax Law], Turhan Kitabevi, Ankara 2007, p. 192.

<sup>33</sup> An early categorization of taxation principles, which is still influential up to the present day, stems from Adam Smith’s book of 1776 about the “Wealth of nations”.

### 5.1. The Principle of 'Ability to Pay'

The principle of ability to pay tax is significant tax principle in Turkish constitutional system. The first paragraph of article 73 of the Constitution of Turkey insists on the principle of ability to pay principle as it states that '*Everyone is under obligation to pay taxes according to his financial resources, in order to meet public expenditure*'. The phrase 'according to his financial resources' denotes the leverage of tax should depend on the taxpayer's capacity to pay the tax. This principle is very noteworthy principle in many of the tax systems. The FDRE constitution, however, is silent about the principle of ability to pay tax. There is no any provision that explicitly states that everyone should pay tax based on his/her ability. But, it does not mean that the constitution is totally dumb about the issue. The constitution, all way round, states about the principle of ability to pay tax under article 100 sub article 1 that, in exercising their taxing powers, States and the Federal Government shall ensure that any tax is related to the source of revenue taxed and that it is determined following proper considerations<sup>34</sup>. In fact, the provision has an aim to deal with the relation between the federal and state government in respect with taxation. The phrase following proper considerations shows the procedural fairness is required and the peoples' ability to pay should also be taken in to consideration.

The 1982 constitution of Turkey recognizes the principle of ability to pay tax in better way. This principle is significant for the tax payers to defend themselves from excessive tax burden and it has also implication to other fundamental rights and freedoms. For instance, if one person is obliged to pay tax more than his/her earnings, he/she might be susceptible to violation of his/her socio economic rights. Unfortunately, the 1995 FDRE constitution has not recognized the principle of ability to pay. But, other tax related proclamations have explicit rules about ability to pay principle. So, the citizens socio-economic rights might not be violated in-guise of non incorporation of this principle in the constitution.

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<sup>34</sup> The title of Article 100 has discrepancy in Amharic and English version. The Amharic version '፳፻፳፻ ፳፻ ፳፻፳፻ ፳፻፳፻' has equivalent meaning of 'Principle of tax' in English. Article 106 of the FDRE constitution states that the Amharic version of the Constitution shall have final legal authority. Hence, it is possible to argue that Article 100 specifies the principle of tax mainly that the directive forwarded to the inter relation between the federal government and states regarding tax.

## 5.2. The Principle of 'Jurisdiction to Sources of Tax' and 'Fairness In Tax Assessment'

The FDRE constitution is different from the Turkish counterpart on the principles of jurisdiction to sources of tax and fairness of tax assessment. The FDRE constitution has tried to incorporate the principle of certainty to sources of tax by stating that under article 100 that in exercising their taxing powers, States and the Federal Government shall ensure that any tax is related to the source of revenue taxed and that it is determined following proper considerations.<sup>35</sup> Ethiopia as a federal state has a system of taxation that divides between the federal government and regional states. The FDRE constitution article 100 has two purposes. The first one is a purpose of protection of taxpayers from double taxation by the federal and regional government. The second one is to avoid potential conflict of jurisdiction between the federal and regional government over sources of taxation.

The Constitution of Turkey has no such kind of provision due to the fact that Turkey is a unitary state on the one hand and the Grand National Assembly of Turkey has the sole power of legislative power on tax matters on the other hand. However, it does not mean that there will not potential conflict of jurisdiction between the central government and provinces in unitary states. Fiscal decentralization can be exercised by the unitary states and sometimes the taxation power between the central government and provinces might create a risk of double taxation and conflict of jurisdiction. In this situation, the constitutional principle of jurisdiction on the source of taxes and principle of fair assessment of taxes can play pivotal role.

## 5.3. The Principle of 'Equality'

The Constitution of Turkey has recognized the principle of equality and proportionality in taxation system. It states that an equitable and balanced distribution of the tax burden is the social objective of fiscal policy. The second paragraph of article 73 includes a provision that, "*An equitable and balanced distribution of the tax burden is the social objective of fiscal policy*".

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<sup>35</sup> Article 100 of the FDRE constitution under the title of 'Principle of tax' meaning with Amharic language which has prevalence effect in-case of discrepancies between the English and Amharic version. However, the English version states the title that 'directives of taxation'.

It is an unnecessary repetition of the principle of ability to pay tax according to financial power<sup>36</sup>. Article 2 of the Constitution of Turkey also guarantees that everyone is equal before the law without distinction as to language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such grounds.<sup>37</sup>

Although, there is no special principle of equality for taxation in FDRE constitution, article 89 sub 2 underlines the principle of equality as economic policy principle by stating that government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic condition. Moreover, Article 25 of the FDRE constitution has also stated that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.<sup>38</sup> In this respect, the constitution also guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.<sup>39</sup>

Comparatively, the Turkish constitution is clearly sets the principle of equitability and fairness in taxation than the Ethiopian constitution. However, it is possible to take a general understanding of the presence of the principles of equality, equitability and fairness from the very reading of Article 25 and article 89(2) of FDRE constitution.

#### 5.4. The Principle of 'Equity'

The principle of Equity in taxation expresses the idea that taxes should be fair as one of the principles that guide tax policy. Regarding the principles of equity, the Turkish constitution has specified explicitly under article 73 that an equitable and balanced distribution of the tax burden is the social objective of fiscal policy. There are two types of Equity: either, vertical or horizontal equity. Horizontal Equity addresses questions of whether or not a tax system makes arbitrary distinctions among taxpayers, or distinctions based on irrelevant criteria<sup>40</sup>.The principle of

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<sup>36</sup> Üstün, 2003, p. 261.

<sup>37</sup> Article 2, the 1982 constitution of Turkey.

<sup>38</sup> Article 25, FDRE constitution.

<sup>39</sup> Article 25, FDRE constitution.

<sup>40</sup> According to Kurt Wise and Noah Berger of the Massachusetts Budget and Policy Centre, For example, it violates the principle of horizontal equity if one person buys an item in a local store and must pay sales tax, while another person buys the same item over the Internet, and does not pay sales tax. Musonda



generality of taxes is coincides with the principle of equality, in terms of rule of law<sup>41</sup>. In this regard, the Turkish constitution is better than the Ethiopian constitution at least in giving recognition for the principle. Vertical Equity addresses questions of how people at different income levels should be taxed, taking into account their relative abilities to pay<sup>42</sup>. With vertical equity it is expected that high income earners pay a larger percentage of their income in taxes than lower income earners<sup>43</sup>. The balanced distribution of tax as a social objective of the Turkish constitution, vertical equity has also a place in the Turkish constitution. Taxes are taken according to taxpayers' financial power (ability to pay tax). Everyone has to pay taxes "according to his financial resources". This principle is only valid for taxes. This doesn't apply to fees, duties and other such financial obligations. Everyone's income and wealth levels are different from each other. These differences must be taken into account during taxation. The financial power of taxation is related to the principle of the welfare state on tax justice<sup>44</sup>.

The FDRE constitution under article 89 specifies that the government has the duty to ensure that all Ethiopians get equal opportunity to improve their economic condition and to promote equitable distribution of wealth among them. The acontrario-reading of this provision of course shows that the FDRE constitution recognizes the principle of equity as economic principle of the country than social objective.<sup>45</sup> Hence, it is possible to say that the principle of equity is recognized in both the FDRE and Republic of Turkey constitutions.

### 5.5. The Principle of 'Tax Legality'

The principle of Tax legality is a principle that requires a tax to be based on law. The tax should have legal basis either by the constitutions or by other subordinate laws. Normally, most

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Kabinga, Principles of Taxation, retrieved December 5, 2016 from [http://www.taxjustice-and-poverty.org/fileadmin/Dateien/Taxjustice\\_and\\_Poverty/Introduction/05\\_Principles.pdf](http://www.taxjustice-and-poverty.org/fileadmin/Dateien/Taxjustice_and_Poverty/Introduction/05_Principles.pdf)

<sup>41</sup> Öncel-Kumrulu-Çağan, p. 40; Üstün-Bilir, p. 578.

<sup>42</sup> Kurt Wise Noah Berger, Understanding Our Tax System: A Primer For Active Citizens, September 9, 2010, Massachusetts Budget And Policy Center • [Www.Massbudget.Org](http://www.massbudget.org), Pp 9.

<sup>43</sup> Ibid.

<sup>44</sup> Üstün-Bilir, p. 579; Öncel-Kumrulu-Çağan, p. 52; Üstün, 2003, p. 260-261.

<sup>45</sup> The FDRE constitution Article 90 specifies Social Objectives that to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security. Education shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices.

countries' constitutions have a guideline of taxation at least in a framework level<sup>46</sup>. In the history, the struggles for limiting the taxation underlie the base of legislative authorities of the parliaments. As a result of such struggles, the first examples of parliaments in the history have emerged and the parliaments have gained the authority of legislation. As a result of the struggles throughout the history, the principle of “no taxation without representation” was accepted<sup>47</sup>. The third paragraph of article 73: “Taxes, fees, duties, and other such financial obligations shall be imposed, amended or revoked by law”. Both Ethiopian and Turkish constitutions have precept of taxation though different in scope and content one another.

The principle of tax legality is also one of the main principles of taxation that ensures the supremacy of the legislature over tax matters and as a principle that constrains the powers of the legislature<sup>48</sup>. There are several consequences of this principle. “In compliance with this principle, interpretation must be done within legal limitations. Comparison (analogy), gap filling and law making are not allowed unless it is stated in a law. The executive body cannot impose tax by an administrative transaction or judicial bodies can not levy, revoke or amend taxes, otherwise there is a danger of issuing new tax subjects and tax bases by way of comparison. As a result of legality, taxes must be evident. In other words, tax laws must contain every aspect of taxation”<sup>49</sup>.

The constraints the power of the legislature in this case means to delegate taxation powers to the other branches of government. The principle of tax legality also can be understood in two extremes that no delegation of taxation powers whatsoever in one extreme and delegation of taxation powers is permissible for the legislature so long as a constitution allows delegation of legislature powers generally on the other extreme<sup>50</sup>. Hence, as far as the principle of taxation concerned, the extent of power of the legislature regarding taxation in light of delegation of such power and its limits come in to picture.

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<sup>46</sup> Lencho, T. The Ethiopian Tax System: Excesses and Gaps. *Michigan State International Law Review* 20(2), 2012, p. 7.

<sup>47</sup> Üstün, 2003, p. 262; Üstün-Karakoç, p. 1003-1004.

<sup>48</sup> Frans Vanistendael, Legal Framework for Taxation, in 1 TAX LAW DESIGN AND DRAFTING 1, 16, 18 (Victor Thuronyi ed., 1996). As cited by Lencho, T. THE ETHIOPIAN TAX SYSTEM: EXCESSES AND GAPS. *Michigan State International Law Review* 20(2), 2012.pp.9

<sup>49</sup> Üstün-Bilir,p. 582.

<sup>50</sup> Supra note 40, p. 8.

The 1982 Constitution of Turkey vested the legislative power in the Turkish Grand National Assembly on behalf of the Turkish Nation<sup>51</sup>. The FDRE constitution has also provided the legislative power on the matters of federal government to the House of Peoples' representative. Relatively, house of the federation which is, the upper house of Ethiopian government, despite its passive role in law making, has little legislative role in tax matter. House of the Federation in joint session with the House of Peoples' Representatives has the power to determine by a two-thirds majority vote on the exercise of powers of taxation which have not been specifically provided for in the Constitution<sup>52</sup>.

On the issue of delegation the constitution of Turkey explicitly prohibits delegation of legislative power to any other organ from the Grand National assembly on a general basis<sup>53</sup>. However, on the matter of tax, the Council of Ministers may be empowered to amend the percentages of exemption, exceptions and reductions in taxes, fees, duties and other such financial obligations, within the lower and upper limits prescribed by law<sup>54</sup>. The Constitution of Turkey is very particular about what elements of tax might be specified in a tax act enacted by the Council of Ministers and such power is within the scope of minimum and maximum limits which would be approved by the Grand National assembly. In this regard, the Constitution of Turkey has chosen one extreme that delegation of tax legislation is permitted in limited extent. The 1995 FDRE constitution permits the delegation of legislative power to the council of ministers on a general basis<sup>55</sup>. The constitution is silent on the particular delegation of legislative power on tax matters to the executive organ of government. It is not clear in the FDRE constitution that at what extent the parliament can delegate the power of legislation on taxes.

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<sup>51</sup> Article 7 of the 1982 constitution of the republic of Turkey.

<sup>52</sup> The FDRE constitution Article 99 states that House of the federation is normally an upper chamber which has the power to interpret the constitution.

<sup>53</sup> Article 7, the 1982 constitution of the republic of Turkey.

<sup>54</sup> *"The Council of Ministers may be empowered to make amendments on provisions of exemptions, exceptions, reductions and rates related to taxes, duties, fees and other such financial obligations within the lower and upper limits prescribed by the law"*. Article 73 paragraph 4, the 1982 constitution of the republic of Turkey.

<sup>55</sup> Although the FDRE constitution has no any provision that explicitly states that the house of people's representative can delegate the power of legislation to others, Article 77 sub-article 13 states that the council of ministers has the power to enact regulations pursuant to powers vested in it by the House of Peoples' Representatives.

## 6. Constitutional Tax Immunity

The other effect of a federal system of Ethiopia on the constitutional provisions of taxation reflected in the intergovernmental tax immunity. Article 100(3) of the FDRE constitution provides that neither States nor the Federal Government shall levy and collect taxes on each other's property unless it is a profit-making enterprise. The tax immunity vested to non-profit-making enterprise which is owned by one of the two tiers of government.

Regarding tax immunity in general; all tax exemptions and exceptions must be regulated by law, according to the legality principle of taxation. The Constitution of Turkey despite absence of direct exemption of to foundations provides indirectly the possibility of tax immunity to some enterprises. The difference between the Ethiopian constitution and Constitution of Turkey regarding constitutional recognition of tax immunity to the enterprises, the Ethiopian one provides federal – constituent-unit tax immunity.

## 7. Adjudication of Tax

Most constitutions of modern states comprise specific provisions that deal with adjudication power. The adjudication power is vested to courts by many constitutions and adjudication remains the inherent power of courts. Ordinary, administrative, military or other classification of judicial jurisdiction, however, is made by some constitutions depending on the legal systems and governmental structures they followed. Both the Ethiopian and Turkish constitutions have vested judicial power to courts, although they are quite different each other in-terms of structure and division of functions. The Ethiopian judicial system follows two tiers of court system (federal and regional) while the Turkish counterpart follows solitary court system. On the other hand, the Ethiopian constitution has not made any division of judiciary in the same way with Turkish constitution as civil and administrative judiciary<sup>56</sup>. Both constitutions, nonetheless, do not establish special court for tax adjudication. The Constitution of Turkey provides the tax adjudication prevalence to the 'high administrative court' known as 'Council of State'

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<sup>56</sup> Turkish constitution Article 140 paragraph 1, states that Judges and public prosecutors shall serve as judges and public prosecutors of civil and administrative judiciary. These duties shall be carried out by professional judges and public prosecutors.

[Danıştay]<sup>57</sup>. The Turkish constitution under article 160 paragraph 2 states that in case of conflict between the decisions of the Council of State and the Court of Accounts, regarding taxes, similar financial obligations and duties, the decision of Council of State shall prevail. This provision clearly shows that the council of state which is the highest administrative court has final adjudicative power over tax matters.

The Ethiopian Constitution has no such particular approach regarding tax adjudication. Moreover, the Federal Supreme Court shall have the highest and final judicial power over Federal matters while state Supreme Courts shall have the highest and final judicial power over State matters.<sup>58</sup> The Federal Supreme Court, however, has a power of cassation over any final court decision containing a basic error of law no matter where the cases come from<sup>59</sup>. As far as, the tax matter raises the issue of constitutionality, the Constitutional Court of Turkey [Anayasa Mahkemesi]<sup>60</sup> has the power of adjudication, whereas, the house of federation<sup>61</sup> with recommendatory assistance of counsel of constitutional inquiry<sup>62</sup> has the power to adjudicate the

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<sup>57</sup> The Turkish constitution Article 140 paragraph 1, states that, the Council of State is the last instance for reviewing decisions and judgments given by administrative courts and not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law.

<sup>58</sup> Article 80(1) (2) of the FDRE constitution.

<sup>59</sup> Article 80(3)(A), FDRE constitution.

<sup>60</sup> ARTICLE 148- (As amended on September 12, 2010; Act No. 5982) states that the Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law and the Rules of Procedure of the Grand National Assembly of Turkey, and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form. However, decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.

<sup>61</sup> The FDRE constitution Article 62, House of the Federation has the power to interpret the Constitution and to organize the Council of Constitutional Inquiry. Article 83(1), (2) provides that all constitutional disputes shall be decided by the House of the Federation and within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry.

<sup>62</sup> The FDRE constitution article 84(1) provides that the Council of Constitutional Inquiry has the powers to investigate constitutional disputes; upon consideration of the matter, find it necessary to interpret the Constitution, it shall submit its recommendations thereon to the House of the Federation. Article 84(2) states that where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council shall consider the matter and submit it to the House of the Federation for a final decision. Article 84(2) states that when issues of constitutional interpretation arise in the courts, the Council shall: (a) Remand the case to the concerned court if it finds there is no need for constitutional interpretation; the interested party, if dissatisfied with the decision of the Council, may appeal to the House of the Federation. (b) Submit its recommendations to the House of the Federation for a final decision if it believes there is a need for constitutional interpretation. Article 84(4)

constitutionality of any matter including tax issues. For instance, on 15 October 2009, the Turkish Constitutional Court ruled to annul the income tax law provision which required that carried forward investment allowances as of 31 December 2005 could only be deducted from corporate profits for the years 2006, 2007 and 2008. The Court found the provision to be inconsistent with the Turkish Constitution<sup>63</sup>.

## 8. Conclusion

Constitution as the main source of taxation laws, should consists of the underlining principles of taxation and rules related to the administration of taxation. The 1982 constitution of the Republic of Turkey and the 1995 FDRE constitution contain a few principles of taxation and diverse system of tax administration. The 1982 constitution of the Republic of Turkey under Article 73 specifies the principle of ability to pay, equality, equity, fairness and legality. The 1995 FDRE constitution also comprises the principle of equality in a general basis rather than specific to taxes and the principle of equity as the underlying economic principle. Regarding the principle of legality, both Turkey and Ethiopian constitutions recognize the principle. The 1982 Constitution of Turkey is clearer about the delegation of legislative power over taxation that the Council of Ministers may be delegated to amend the percentages of exemption, exceptions and reductions in taxes, fees, duties and other such financial obligations, within the minimum and maximum limits prescribed by law. However, the 1995 FDRE constitution is silent about the delegation of legislative power on taxation. It is not clear in the Ethiopian constitution that at what extent the legislative power over taxation can be subjected to delegation.

The implication of incorporating fundamental tax principles with in constitutions to the fiscal system of a specific state can be taken as the guidance to the legislative, judicial and administrative institutions. Constitution as a legal and political document, it can be considered as a foundation for a legal system, power map of governance institutions and the rights of citizens. When there are points of disparities among citizens, government, and institutional systems

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states that the Council shall draft its rules of procedure and submit them to the House of the Federation; and implement them upon approval.

<sup>63</sup> Ernst & Young, International Tax Alert, Istanbul, Turkish Constitutional Court rules income tax law provision regulating deductibility of certain investment allowances is unconstitutional, 2009, retrieved from <http://www.vergidegundem.com/files/30.oct.09-10.pdf>, on 12.12.2016.

regarding the fiscal aspect of a state, constitutions are the guiding materials which would enable to provide amicable solutions for the problems at hand.

The constitutions of Turkey and Ethiopia have distinct types of tax administration. Turkey as a unitary state, the constitution does not come across with the issue of dual or parallel tax administration system rather the central government has a unilateral taxation power in-terms of legislation, adjudication even in the administration(except few tax administration power vested to municipal government in Turkey). The FDRE constitution nevertheless contains vertically decentralized tax administration. The taxation power is designated to the federal government and regional states exclusively on the one hand and to both governments concurrently on the other hand. The power of taxation on the remaining undesigned tax is also can be decided by the two third majority vote in the joint session of the two federal houses of federal democratic republic of Ethiopia.

The adjudication of tax matter is not decentralized in Turkey than Ethiopia. The final adjudication power on taxes is vested to the highest administrative court of Turkey commonly known as ‘Council of State’ (Danıştay). The tax adjudication power in Ethiopia is vested to both the regional courts and federal courts. The federal supreme cassation court of the federal democratic republic of Ethiopia is off-course the final decision rendering body on all matters including taxes.

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