

RUAHA CATHOLIC UNIVERSITY (RUCU)



FACULTY OF LAW

**LEGAL ANALYSIS ON THE TAX RATE IMPOSED ON FORMAL
EMPLOYMENT AMONG THE PARTNER STATES OF EAST AFRICAN
COMMUNITY: A COMPARATIVE STUDY BETWEEN TANZANIA AND
BURUNDI**

**A Research Paper Submitted in Partial Fulfillment of the Requirement for the awards of
Bachelor of Law Degree (LL. B) At Ruaha Catholic University, Iringa, Tanzania.**

By

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CERTIFICATION

The below signed certify that she has read and here by recommend for acceptance by Ruaha Catholic University Research title: **Legal Analysis On The Tax Rate Imposed On Formal Employment Among The Partner States Of East African Community: A Comparative Study Between Tanzania And Burundi** fulfillment of the requirements for the degree of bachelor of laws of the Ruaha Catholic University.

.....

Ms. ANGELINA MPINDA

Supervisor

Signed on.....day of....., 2024

DECLARATION

I Penina R. Tulian, hereby declare that this research paper is my own work and is original. Other people's literary works and findings have been used in this research and have been acknowledged.

This work has been not been submitted at any university or institution for a similar degree award or any other.

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Date

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DEDICATION

To my parents Mr. and Mrs. Richard Kalolo, for all the life support they have given me throughout my entire life and all the time of my journey in academic studies am nothing without you.

ABSTRACT

This Research aims to make a Legal Analysis on the Tax Rate Imposed on Formal Employment by Partner States of East African Community specifically in Tanzania and Burundi. It mainly focuses on examining the Laws of East Africa Community which promote and provides the obligations to the partner states to ensure that there harmonization of their tax domestic law for ensuring the free movement of workers from other partner states without any complicated requirements.

The Research has examined Tax Domestic Laws of Tanzania and Burundi which is not comply with the requirements of the EAC Laws, and looked also for the effects of imposing the different tax rate on formal employment. The most targeted sector under this research is formal employment, where the researcher has examined the extent to which amount the employee and employer should be charged as the tax from the employment as income source.

After making legal examination, the researcher found that the legal challenge is in main in the Tax Domestic Laws of these two countries because everyone has own tax rate that charged from formal employment. Finally, the researcher has collected data by using Interview method and Library Research and she has come to conclusion that, Tanzania has many requirements on seeking for employment for non-resident and those requirements are cost fully compared to Burundi.

TABLE OF LEGAL INSTRUMENTS

REGIONAL INSTRUMENTS

The Treaty for Establishment of the East African Community, 1999

The East Africa Community Custom Union Protocol, 2009

The East Africa Common Market Protocol, 2010

DOMESTIC INSTRUMENT

The Constitution of United Republic of Tanzania 1977 amended time to time

The Income Tax Act Cap332 Revised Edition, 2019

The National Social Security Act Revised Edition, 2018

The Tax Administration Act Cap 438 Revised Edition, 2019

LAWS OF BURUNDI

The Constitution of Burundi, 2018

The General Tax Code, 2011

The Social Security Code, 1999

LIST OF ABBREVIATIONS

BIF	Burundian Francs
CU	Custom Union
CHOGM	Commonwealth Heads of Government Meeting
CM	Common Market
CAP	Chapter
EAC	East African Community
EU	European Union
GDP	Gross Domestic Product
MU	Monetary Union
NSSF	National Social Security Fund
PU	Political Union
RE	Revised Edition
TZS	Tanzanian Shillings
URT	United Republic of Tanzania

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CHAPTER ONE

GENERAL INTRODUCTION ON TAX RATE IMPOSED ON FORMAL EMPLOYMENT BY PARTNER STATES OF EAST AFRICAN COMMUNITY BETWEEN TANZANIA AND BURUNDI

1.1 Introduction

The research aims at conducting a relatively and comparative review of legislation on tax rate that imposed on formal employment in Tanzania and in Burundi. In this chapter the researcher has explained the background of the problem, statement of the problem, literature review, hypothesis, objectives of study , significance of the study, methodology used in this study and as well as the challenges faced the researcher and the way forward, she employed to solve those challenges. This research aims to make development of law on determine the rate of tax which imposed on formal employment and the levels of coverage and determine the gap on the existing laws and practices.

1.2 Background to the Problem

1.2.1 Historical Background of East Africa Community

The East African Community is the regional intergovernmental organization of the Republic of Kenya, The United Republic of Tanzania, Uganda, Rwanda and Burundi with headquarter in Arusha.¹

However, based on the history of the East African Community (hereinafter referred to 'EAC'), in the past, Kenya, Tanzania and Uganda have enjoyed a long history of co-

¹ Preamble of the Treaty for Establishment of the East Africa Community,1999

operation under successive regional integration arrangements which included; formal economic and social integration in East African Region which commenced with the construction of the Kenya Uganda Railway from 1897 up to 1901, the establishment of the Customs Collection Centre in 1900; the East African Currency Board 1905, the Postal Union 1905, the Court of Appeal for Eastern African 1909, the Custom Union 1919, the East African Governors Conference 1926, the East African Income Tax Board 1940 and the Joint Economic Council 1940; whereas, provision was made by East Africa(High Commission) Orders in Council from 1947 up to 1961, the East African Common Services Organisation Agreements from 1961 up to 1966 and the Treaty for East African Co-operation 1967 for establishment respectively of the East African Community High Commission, the East African Common Services Organisation and the East African Community.

However, in 1977 the Treaty for East African Co-operation establishing the East African Community was officially dissolved, the main reasons contributing to the collapse of the East African Community being lack of strong political will, lack of strong participation of the private sector and civil society in the co-operation activities, the continued disproportionate sharing of benefits of the Community among the Partner States due to their differences in their levels of development and lack of adequate policies to address this situation.²

Also, a scholar from Tanzania has noted that, the collapse of the East African Community drew a little Compassion from East Africans citizens,

² <https://www.eac.int> (Accessed on 6 August 2023)

Where he stated that:

“The former East African Community of States rather than an organization or club of the people of East Africa. Decision making was bureaucratized and vested in institutions that were isolated and far removed from the people. The people of East African Community.”³

What this scholar is trying to pointing out is that, the way the integration was pursued was not as a political extensively consulted of the people of East Africa. Rather, it was pursued as an economic integration in which the treaty kept all powers in the hands of the authority, which was composed of the Heads of States. Consequently, the people of East Africa were powerless from foundation of the Community.

However, the current East African Community integration initiative has its origin in the Mediation Agreement for Division of assets and liabilities of the East African Community, which had collapsed in 1977. That agreement, which was signed on 14th May 1984, contained a provision for three countries to explore areas of future cooperation, It was on that basis that the three Heads States held Min-Summit on the sideline of the Commonwealth Heads of Government Meeting (CHOGM) in Harare (November 1991), in which they announced their intention to re-launch the East African Cooperation. Later, on November 30th, 1993, the Heads of State signed an agreement on the establishment of a Permanent Tripartite Commission for East African Cooperation, However full-fledged cooperation took root after the launching of the Secretariat in Arusha on March 14th, 1996. Efforts to transform the Tripartite Agreement into Treaty began⁴.

³ <https://www.eac.int/about-eac-history.html>(Accessed on 6 August 2023)

⁴ <https://www.eac.int/about-eac/eac-history.html>(Accessed on 7 August 2023)

The revived East African Community goes beyond the earlier attempts at regional integration by aiming at closer and deeper integration among the Partner States, through policies and programs in the political, economic, social and cultural field, research and technology, defense, security, legal and judicial affairs for their mutual benefit⁵. In the economic sphere, the East African Community seeks to focus on trade and investment, monetary, and fiscal policy and labor and capital markets. To achieve these goals the Partner States have established a custom union as the entry point to a common market, a monetary union and ultimately a political federation.

Also, there is some optimism about the newly revived East African Community. This is attributed to a number of factors; first, all the members States are pursuing similar programs to restructure their economies which is unlike in the past, where all of them are implementing market-oriented economic policies. Furthermore, the private sector is closely involved in the integration processes of the East African Community and participating in its regional institutions. Secondly, there are indications of political will among the leaders to ensure the success of the East African Community. The political leaders have placed hope on a united East Africa to help in resolving tribal and political conflicts in the great lakes region. Thirdly, the region is receiving a lot of support from the donor community to ensure its success⁶. The European Union (Hereinafter referred to 'EU'), for example has provided substantial financial and technical support for this reason, Also, Wangwe has noted that;

⁵Odhiambo. W, *The East African Custom Union and its implication*, Institute of Global Dialogue, South Africa, 2005, 63-75

⁶ www.customs.eac.int (Accessed on 7 August 2023)

“After the collapse of EAC in 1977 the member states negotiated a Mediation Agreement for the division of assets and liabilities, which was signed in 1984. The Mediation Agreement, among other things, established the provisions for exploring areas of future co-operation.⁷

Moreover, these three factors raised provide the foundations for the new EAC integration. The new EAC recognizes that does not exist in isolation. The environment in which the new EAC operates poses challenges and requires a systematic approach in managing the community I order to avoid what happened in 1977 to previous EAC.

The Treaty making process which involved negotiations among the Member States as well as wide participation of public was successfully conclude within 3 years. The Treaty for the Establishment East African Community was signed in Arusha on 30 November 1999 and entered into force on 7 July 2000 following the conclusion of the process of its ratification and deposit of the instruments of ratification with the Secretary General by all the three partner, it is where East African Community came into being.⁸

Moreover, as to the matter of gradual process, the partner states agreed to strengthen their economic, social, cultural, political, technological and other ties for their fast balanced and sustainable development by the establishment of an East African Community, with Custom Union (Hereinafter referred ‘CU’) and a Common Market (Hereinafter referred ‘CM’) as transitional stages to an integral parts thereof, subsequently a Monetary Union (Hereinafter referred ‘MU’) and ultimately a Political Federation (Hereinafter referred ‘PF’). The Treaty, in other words outlines a comprehensive system

⁷ Wangwe. S, “*Proposals to Address Economic and Social Disparities in the East African Community*” Dialogue on the Region Integration in East Africa, East African Dialogue Number 4, EAC, Arusha 2001, 170
⁸ Kasaija. P, *The State of Constitutionalism in East Africa; The Role of the East African Community in Wanza kioko* (Ed), Constitutionalism in East Africa; Progress, challenges and Prospects, Fountain Publishers, Kampala 2009,6-25

of co-operation among the partner states in trade, investment and industrial development; monetary and fiscal policy; infrastructures and services; human resources, science and technology; free movement of factors of production; agriculture and food security; environment and natural resources management; as well as tourism and wildlife management. More particularly provided in Article 5(2) of the Treaty for Establishment of the East African Community, 1999 sets out the objectives of the Community, the ultimate being the realization a Political Federation for the community, which states that:

“In pursuance of the provisions of paragraph 1 of this Article, the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Custom Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, and infrastructural, cultural, social, political.”⁹

So the current East Africa Community consist with 8 member states including Kenya, Uganda, Tanzania, Burundi, Rwanda, South Sudan joined in 2016, Democracy of Republic of Congo joined in 2022 and Federal Republic of Somalia joined in 2023. This member states has the different legal system among of them their legal system is common legal system and others are civil legal system. Although Tanzania and Burundi are both developing countries in East Africa that have implemented various tax reforms to sustain government expenditure, stimulate economic growth and create employment opportunities¹⁰. Tanzania’s economic stability is largely driven by tax revenue which counts for 89% of the government budget. On the other hands, Burundi’s tax revenue accounts for only 11.2% of its Gross Domestic Product (GDP). Therefore, it is important

⁹ Article 5(2) of the Treaty for Establishment of the East African Community,1999

¹⁰ <https://www.usemultiplier.com> (Accessed on 8 August 2023)

to analyze how the tax rates have impacted in the two countries for economic growth and development.¹¹

1.3 Statement of the Problem

Tanzania has imposed the income tax on formal employment through the tax legislation which called the Income Tax Act Cap 332 Revised Edition 2019¹² and Tax Administration Act Cap 438 Revised Edition 2019.¹³ Also in Burundi their main tax legislation is General Tax code of 2011¹⁴. So Tanzania and Burundi their policies of imposing the income tax rate on formal employment is to generate the revenue for the government and promote economic growth in their countries. In terms of tax base between Tanzania and Burundi levies income tax rate on formal employment through imposing charges from salaries, wages, allowances and benefit derived from employment.

Despite progress in region integration within the member of East Africa Community, there is dis-harmonisation in tax rates and policies across member states may discourage cross-border investments. In Tanzania and Burundi both apply the progressive tax rate on income tax for individual. However there is dis-harmonization of the income tax rate especially on formal employment between Tanzania and Burundi this occur when the non-resident has to be employed in this two countries there is requirements which they must fulfill such as in Tanzania the non- resident must make application of work permit and residence permit cost 10% for each. In Burundi the work permit fee for non-resident employee is cost rate of 3% of the annual salary which is paid by the employer and

¹¹ <https://www.Africanews.com>

¹² The Income Tax Act Cap 332 Revised Edition, 2019

¹³ Tax Administration Act Revised Edition, 2019

¹⁴ General Tax code, 2011

residence permit is free for the members of the East Africa Community only. So this varying tax liabilities for individuals with similar income levels working in each countries¹⁵.

The different income tax rate on formal employment limit the free movement of workers between the Partner states in East Africa Community as provided under Article 10(1), (11) and (12) of East Africa Community Common Market Protocol which provides for free movement of workers between the partner states and limitations of the free movement of workers which imposed by the partner state on the ground of public policies¹⁶. Also Article 104 of The Treaty for Establishment of East Africa Community provides the free movement of labor.¹⁷

Therefore the research based on what are the impact of dis-harmonization of tax rate on formal employment and for individuals with similar income levels working in Tanzania and Burundi.

1.4 Literature Review

In this party of study visits and makes a review on the literature which has principally relates with the tax rate imposed on formal employment between the partner states, this study aims to discuss the lacuna in our laws that governing the tax rates by making the comparative of Tanzania and Burundi,

¹⁵ <https://www.womenconnect.org> (Accessed on 10 August 2023)

¹⁶Article 10 of East Africa Community Common Market Protocol, 2010

¹⁷ Article 104 of The Treaty For Establishment of East Africa Community, 1999

Khadka¹⁸, explains the income tax which in Tanzania is known as the Individual income tax and in Burundi known as the business tax which is levied in employment for each income year, where income year is the calendar in Burundi and Tanzania. There is also make extensive use presumptive taxation and withholding taxes as in Tanzania has a large list of income sources that has subjected to final withholding tax.

However the author has exactly not touched to on why there is different income sources between these two countries. So that this research has covered the gap left by the author through comparing the income sources found within these countries.

Turner¹⁹, explains about the social security contribution in East Africa partner state whereby shows the percentage charged between the employer and employee such as in Tanzania the contribution rate for the social security is 20 percent of which the employee cannot contribute more than 10 percent. This contribution rate is considerably higher than for other countries in the region. In Burundi the contribution rate for social security is 6 percent whereby the employer requires contributing and the employee contributes 4 percent for a total of 10 percent, up from 6.5 percent in 2010. The contribution rates were raised because an actuarial study indicated that the previous contribution rate was not adequate to pay for benefits promised.

However the author has not exactly touched on the reasons why the imposition of social security rate in employment is differ between Tanzania and Burundi, this research has covered this gap which left by the author.

¹⁸Khadka. R, *The East African Tax System*, Mkuki na Nyota, Dar es salaam, 2015, 42

¹⁹Turner. J.A, *Social Security and Pensions in East Africa*, W.E. Upjohn Institute for Employment Research, 2014, 215

Ongwamuhana²⁰, explains that a resident taxpayer's total income from all sources world-wide is computed for the year and subjected to income tax. Non-residents are liable income tax only on income derived from Tanzania. A taxpayers, who derive income from employment, business or investment, where the employer is not under the obligation to withhold tax are required to pay income tax by using installment payment arrangement.

However the author has not exactly touch on how to overcome the issues on non-compliance by a taxpayer's unwillingness to pay taxes at specific time which cause by the tax payment procedures and payment periods. This research will cover the gap which left by the author.

Saitu²¹, argue that there is the rule governing the chargeable income of person from the sources of income which provided under section 6 of the Income Tax Act²² whereby the chargeable income of the person for the year of income shall be in the case of a resident person's income from employment, business or investment for the year of income irrespective of the source of income, this rule covers residents who are charged basing on world-wide system of taxation irrespective of their source of income. This implies that they pay tax on their domestic income and also foreign income basing on residence principle.

²⁰Ongwamuhana. K, *Tax compliance in Tanzania*, Mkuki na Nyota Publishers, Dar es Salaam, 2011, 132-133

²¹Saitu. B, *Tax Law and Practice in Tanzania*, First Edition, Mkuki na Nyota Publishers, Dar es Salaam 2018, 50-52

²² Section 6 of Income Tax Cap 332 Revised Edition 2019

Also in the other hand the chargeable income of a person for a year of income shall be in the case of non-resident person, the person's income from employment, business, or investment for the year of income, but only to the extent that income has a source in United republic of Tanzania, so this rule in most case applies to non-resident who having the source of income in United Republic in Tanzania. State has connection with the source of income rather than the tax payer since the state has prepared policy and economic opportunities for tax payer to be in position to generate income. The imposition of tax is limited to income which has only the source in the Tanzania and not otherwise.

However author has not exactly touched on the principle which applicable basing on charging the income from non-resident who has the employed in Tanzania. This research has covered this gap through finding the applicable principle on that issue.

Makinyika²³, argued that the imposition of income tax is levied on an annual basis. The charge is upon the income which accrues to or derived by any person assessable to tax in the course of the year of income. Therefore, in ascertaining the tax liability of a taxpayer the tax authorities must compute the income of a taxpayer over a period of one calendar year. An employer must withhold tax at source from employment income. An employer who fails to withhold tax as required by law is liable to the government as if the amount of tax uncollected was a debt due from him to the government and interest is payable thereon.

²³Makinyika. L, *Income Tax Law in Tanzania*, DUP (1996) Limited, 2015. 62-73

However the author explains how the income tax is chargeable on annual basis but he has not exactly touched on the percentage in which the taxpayer should pay as final withhold tax. This research will cover the gap which left by the author.

1.5 Hypothesis

It seems that the tax rate on formal employment between Tanzania and Burundi are not harmonised in terms of income tax rate.

1.6 Objective of Study

1.6.1 General Objective

The main objective of this study is to analyze the tax rate imposed on formal employment between Tanzania and Burundi.

1.6.2 Specific Objective

i. To assess the impact of tax rate on formal employment in Tanzania and Burundi.

1.7 Significance of the Study

i. To provide valuable insights into regional tax harmonization efforts within East Africa Community.

ii. To help policymakers, tax authorities and stakeholders to understand the tax potential impacts of tax rate on formal employment, identify areas for improvement and propose recommendations for effective harmonization, ultimately contributing to regional economic growth and development.

1.8 Methodology

The major sources of research are primary sources and secondary sources which makes the research more credible.

1.8.1 Research design

The study will be doctrinal research design and non-doctrinal research design, means field research and library based research that based on the collection of data of both primary and secondary data in order to ensure availability and reliability of data. The research design which adopted is Qualitative approach of data collection to identify the impacts of dis-harmonization of tax rate on formal employment between Tanzania and Burundi.

1.8.2 Primary Data Collection

During the research the researcher will use the interviews with the government officials, tax experts and tax officers in Tanzania.

i. Interview

This method of collecting data involves the presentation of oral-verbal communication and the reply is in term of oral-verbal response. This methods can be used through personal interviews and through the telephone interviews.²⁴ Interview in this research helps in collection of quantitative and qualitative data and its simple way and quick.

Under interview the researcher had 8 different respondent, 2 were Tanzania Revenue Authority Officers in Iringa and 2 were National Social Security Officers from Songwe in Mbozi District and also 2 was lectures from Sauti university of Mwanza and 1 Lecture

²⁴ Kothari. R.C, *Research Methodology Methods and Techniques*, Second Edition, New Age International (P) Limited, Publishers, New Delhi,2004,97

from Ruaha Catholic University and 1 employee from Mzumbe University at Mbeya. The interview was done through face to face between researcher and respondent and through telephone communication to those who are far.

Starting with Iringa at Tanzania Revenue Authority where the interview was conducted on 5th March 2024 and 7 March 2024 at 11:45 am up to 12:00 pm, where it involves two officers but was in different time on the same place and date, also one. From that interview the researcher obtain the information on the reason why Tanzania and Burundi dis-harmonized the tax rate on formal employment.

Songwe in Mbozi District at Vwawa, (2) officers from National Social Security Fund office on 8th April 2024 at 9; 45am up to 10:10 am through via Mobile phone communication .From that interview the researcher obtained the information on why Tanzania has imposed the complex procedures and requirements for non-resident being employed in public sectors.

In Mwanza, (2) Lecture from Sauti University on 10th March 2024 at 12:35 pm up to 13:50pm. And the two remaining are Lecture and other employees from Ruaha Catholic University and Mzumbe university at Mbeya on 22nd March 2024 and on 26th March 2024 respectively and the interview was at noon time and it is because the interview was conducted differently on the matter of time. And due to that information obtained the researcher observed that on how the dis-harmonization of tax rate that imposed on formal employment affects the labor market specifically in Tanzania.

The researcher also used both two kinds of interview questions namely structured and unstructured interview questions.

In Structured questions; the researcher had prepared the sample of questions which she targeted to ask some interviewees. And in unstructured interview the researcher asked the respondents different questions depending on how they were responding to the first questions. The interview questions have been annexed at the end of this research paper. Interview helped to collect data from respondent that assisted to get more information on research scope, the method is useful because the method promote communication and it is more easy to get answer and reduce laziness to some respondent who are not ready to answer provided questions in paper.

ii. Library Research

The researcher used the library research as method of collecting data in order to have wide understanding about the tax rate imposed on formal employment in Tanzania and Burundi. For that the reason, the researcher used this research method to examine the existing sources including books, journals, article, commentary reports which are found in Ruaha Catholic University Library and other online sources like Google online and Google books where by the researcher obtain two Google books which explains on why it is necessary or important to harmonize tax rate on formal employment and another book was explained on the what are impacts of dis-harmonization of tax rate imposed on formal employment in Tanzania and Burundi. The researcher used this method in order to be in good position of examining the laws which govern the taxation system by imposing the tax rate in formal employment.

1.9 Scope and limitation of Research

1.9.1 Scope of Research

The legal scope of this study on the tax rate imposed on formal employment in East Africa Community, comparing between Tanzania and Burundi. The geographical scope of this study will cover much in Tanzania Mainland and Burundi.

1.9.2 Limitation of the Research

While conducting research on tax rate imposed on formal employment in East Africa Community, comparing between Tanzania and Burundi, there are several limitations that need to be acknowledged;

- i. Time constraints, the researcher may face time constraints due to extensive nature of the topic and the need to gather data from multiple sources. As a result, it may not be possible to delve deeply into every aspect on comparative of income tax rate on formal employment between Tanzania and Burundi. The researcher has managed time on gathering data through using different ways on managing time.
- ii. Resource limitation, the availability of resources such as funding, access legal documents and expert consultations, may impact the comprehensiveness of study. Limited resources may restrict the scope data collection and analysis especially in Burundi it will be difficult to reach for data collection. So the researcher decided to use library materials and internet materials to get those data.

CHAPTER TWO

CONCEPTUAL FRAMEWORK ON TAX RATE IMPOSED ON FORMAL EMPLOYMENT BETWEEN TANZANIA AND BURUNDI

2.1 Introduction

In this chapter the research will analyse the meaning and concept applied in research. The key term applied in research it will be discussed in general at this phase as the way of legal interpretation as the legal concepts for the leader. For the matter the key term in our discussion its tax rate on formal employment.

2.2 Concept of tax

Has been defined by Adam Smith as, compulsory payment levied by the government on individuals or companies to meet the current expenditure which is required for public welfare.²⁵ Also Taxation must be legally provided for by the law and not otherwise. This implies that no tax should be imposed if it is not provided for by the law. In the Constitution of the United Republic of Tanzania Article 138(1) prohibits taxation except in accordance with laws duly enacted by the legislative authority, This Article provides that “no tax of any kind shall be imposed save in accordance with the law enacted by the Parliament or pursuant to a procedure lawfully prescribed and having the force of law or by virtue of a law enacted by the Parliament.”

Also tax has defined by Crowe as a compulsory contribution to the government in common interest of all for the purpose of defraying the expenses incurred in carrying out the public functions or imposed for the purpose of regulation without reference to the

²⁵ Mahangila. D.N & Nchimbi. M.M, *Income Tax in Tanzania*, KH Publishers, Kampala Uganda, 2013, 1

special benefits conferred on the one making payment. Also this definition is fairly comprehensive since it includes not only charges that are imposed to raise revenue but also charges that are imposed to regulate other aspects such as tariffs, liquor and tobacco taxes. The definition further separates those who pay from those who benefit since those who pay may not be the people benefiting from taxes paid.²⁶

2.3 Types of tax

There are two types of taxes which include Direct tax and Indirect tax;

2.3.1 Direct tax

This is kind of tax which imposed directly on the tax payer and paid directly to the government by persons on whom it is imposed. The burden of direct tax cannot be shifted by the taxpayer to someone else. Also direct taxes are progressive in nature which implies that they are based on the principle of ability to pay, this implies that higher rates of taxes are paid by the people having higher ability and vice versa for example of direct taxes including Income Tax, corporate tax, property tax, withholding tax on dividends, interest and royalties. The government needs money to maintain law and order in the country, safeguard the security of the country from foreign powers and promote the welfare of the people.²⁷

²⁶ McGee. R.W, *The Philosophy of Taxation and Public Finance*, Kluwer Academic Publishers. New York, 2004, 16

²⁷ Hiregange. M.N, *Student's Handbook on Indirect Taxes*, Notion Press , Chennai, 2015, 7

2.3.2 Indirect tax

An indirect tax is one whose incidents is borne by consumers who ultimately consume the products or service, while the immediate liability to pay the tax falls upon another person such as the manufacturer of goods or seller of goods or provider of services. The burden of indirect tax can be shifted by the tax payer to another person. Indirect taxes are regressive in nature, which implies that all consumers, including the economically challenged one bear the burden of indirect taxes equally. Examples of indirect taxes are excise duty, customs duties, Value Added Tax.²⁸

2.4 Meaning of tax rate

Is the amount of tax paid as proportion of the tax base. The concept is primarily used with respect to income tax, where it describes the proportion of person's income paid in tax. It is therefore an indication of the effect a tax can have on taxpayer's net income. In the analysis of the ways in which taxes can influence behavior, this is known as the income effect. Taxpayer may also influenced by the marginal rate of tax.²⁹

In Tanzania uses a progressive tax rate system imposed by the government whereby with such a system, the tax charged increases as the amount of the person's income or entity's taxable income increases. A progressive tax collects more money from taxpayers with higher incomes so the way person income increase is more the tax rate increase. Also is taxed from individuals or corporation from their income of profits by the government. It is the rate at which taxes are levied on taxable income or profits and it varies depending on the tax laws and regulations of particular country. The progressive tax rate on

²⁸ Albi. A & Mrtinez. J, *The Elgar Guide to Tax Systems*, Edward Elgar Publishing, Incorporated, 2011, 3.

²⁹ James. S, *A Dictionary of Taxation*, Edward Elgar Publishing, 2nd Edition, 2012, 22.

individual income of Tanzania is ranging from 0% to 30% and in Burundi the progressive tax rate on individual income is ranging from 0% to 35%.

2.5 Meaning of income tax

There is no one common definition of income since the definition of the term varies from one tax jurisdiction to another but also has different meaning in different fields. Economics have their way of defining income likewise the accountants and also tax legal practitioners.

According to the Hicks, has defined income as is the maximum value which a person can consume during the period and still expect to be as well off at the end of the period as he or she was at the beginning.³⁰ This based on the quantum of income earned or received by tax payers at specific period for examples corporate tax, PAYE for employee.³¹ This also is the direct tax levied on the total income of a person arising year of income. A year of income is a calendar year which commencing on the 1st January and ending on 31st December. Each year of income, all person are assessed to the tax on their total income. The total income of a resident person is the total of his income derived from all source in East African Community.³²

³⁰ Gary. W.C, *Issues in Income Tax Reform in Developing Countries*, Oxford University Press, New York, 1989,9

³¹ Maneno. A.P, *Public Finance and Taxation*, Published by National Board of Accounts and Auditors, 2019,35

³² Cardale. T.W, *A Guide to Income Tax in Tanzania*, Co-operative College, 1975,10

2.6 Classification of income tax

The income has classified into two which are;

2.6.1 Income in kind

Is income received or to be received in monetary terms of salary, interest and dividend.

The income in kind on the other hand is the income received in non-monetary terms such as free house, car, air time and driver. Furthermore the income in kind can be categorized into convertible and non-convertible income.

2.6.2 Income exempt

Is income not taxed because the source is exempt. The income does not form part of the total income to be include in the income tax return. Also this derived forms part of the tax base but because of some particular circumstances by the operation of any regulation, law, order or rule such income is exempt from income tax for example minimum threshold for employment income, the salary of Members of Parliament of United Republic of Tanzania and scholarship income³³.

2.7 Basis of income taxation

Generally, there are different bases of taxation. However, the most common bases used by nations for imposing income tax are nationality or citizenship, domicile, country of source and country of destination and residence. It is important to highlight that most taxing systems use a combination of these bases not necessarily use one base only. These are going to be discussed in details in this chapter;

³³ Jain. K.P & Tyagi. K.R, *Income Tax and Accounts*, SBPD Publishing House, 13rd Edition, 2022, 1

2.7.1 Nationality or Citizenship

This is a tax base used in some nations or states when imposing taxations to their citizens. Under this base income tax is imposed on the people as an obligation for them as nationals to support the state through paying income tax regardless of whether they are living within the state or not. This indicates that citizens are supposed to pay tax to their home country from wherever they are in the globe. Taxation based on citizenship or nationality is easy test to apply, however it attaches overstated and obsolete importance to the jurisdiction in which an individual was born or obtained nationality. This tax base may also facilitate tax evasion by expectant mothers awaiting the birth of their child in a tax haven.³⁴

2.7.2 Domicile

This is also a base of income taxation in some states. Domicile of choice involves two things, first is the presence within the jurisdiction and second is the intention on the part of the individual to maintain his permanent home in the jurisdiction. This demonstrates that income tax under this base is charged to those who live within the jurisdiction or those with permanent home within the jurisdiction.³⁵

2.7.3 Country of Source and Country of Destination

Under this base the states impose income tax on all income that originates in that state as its source. It can be an income earned from working in that country, investing or carrying on business in such a country. Some states also impose income tax to all the incomes that

³⁴Manby. B, *Citizenship Law in Africa*, African Minds Publisher, 2016,1

³⁵Oppong. F. R, *Private International Law in Common Wealth Africa*, Cambridge University Press, 2013, 34

are earned by its residents all over the world through working, investing or doing business. An example of this is Tanzania which imposes income tax on her residents in respect of income earned worldwide.³⁶

2.7.4 Residence

This is a tax base where a state imposes income tax upon its people on the ground that being residents it is their obligation to support the state through paying taxes. Under this base income tax is imposed on the residents of a state on income earned by them worldwide. An example of states using this base is Tanzania, which imposes income tax to its residents for incomes earned worldwide.³⁷

2.8 Withholding taxes

Is the amount of income tax retained by payer when making payments to another person in respect of goods supplied or services rendered by the payee. Withholding taxes is applicable for certain specific types of payment mentioned in section 81, 82, and 83 of Income Tax Act of 2019. In Tanzania the withholding tax for annual of resident is started in 0% to 30 and for non-resident is 20% for individual and for corporation is 30%. This is calculated per annual year of the income of person's from the income source allocated in United Republic.³⁸

³⁶Makinyika. L, *A Sourcebook of Income Tax Law in Tanzania*, DUP (1996) Limited, 2000,51

³⁷ Kamal. S, *Individual Tax Residence*, Sweet & Maxwell Publisher, 2011, 2

³⁸Ngowi. H.P, *The Architecture of Tax System in Tanzania*, Mkuki na Nyota, 2012, 36

2.9 Meaning of employment

Refer to the responsibilities and benefits associated with job as agreed upon by an employer and employee at the time of hiring. These terms which may also be referred to as conditions of employment or employment relationship, generally include job responsibilities, work hours, dress code, time of the job and starting salary, they may also include benefits such as health insurance, life insurance and retirement plans.³⁹

2.9.1 Types of Employment

There are two types of employment which are, Formal Employment and Informal Employment

i. Formal employment

Refers to a type of work arrangement where the employees have a structured and legally organized employment relationship with an employer. This often involves an official hiring process, written contracts or agreements outlining the terms of employment commonly includes benefits such as social security contribution, health insurance, paid time off and other legal protections and entitlements provided by employer. So in most cases, formal employment is subject to taxation and requires compliance with the labor standards and work place regulations. This type of employment can provide a sense of job security and stability for workers.⁴⁰

³⁹ Moran. J.J, *Employment Law*, Butterworth Publisher, 15th Edition, 2011,1

⁴⁰ C.C. Williams *et al*, *The Role Of Informal Economies in the Post- Soviet World*, Taylor & Francis Publisher, 2013,59-60

ii. Informal employment

Refers to work that is not structured or regulated by formal labor arrangements. It often involves activities where workers are not covered by formal contracts, do not receive employment benefits such as social security or health insurance, and may not have legal protections provided by the employer. Informal employment can take various forms including independent constructor, part-time or temporary work, day labor and other types of flexible or non- standard arrangements. Also in many cases informal

Employment may involve activities in the formal economy, such as street vending, domestic work or small- scale entrepreneurship.⁴¹

2.10 Free movement of workers

The East Africa Common Market permits the East Africa Community citizen to enter each other's territory freely without any restrictions for the citizen who seek to enter, transit or exit another Partner state for the purpose of employment which must present immigration officers with valid national travel document or national identity card and declare all information related to entry and exit. Workers shall be entitled to enjoy social security benefits and employment assistance as accorded to workers of host partner state. However, labor movement is confined to private sector endeavors unless the laws of partner states provide for entry to the public service and other limitation may be made

⁴¹Gall. G, *Handbook of Politics of Labour, Work and Employment*, Edward Elgar Publishing, 2019,305

subject to notification to other partner state on the basis of public policy, public security or health.⁴²

2.11 Meaning of work permit

This is an official document issued by a government that allows a foreign national to legally work in a specific country for a certain period of time.⁴³ It grants permission for employment and usually has a specific conditions and restrictions on providing the employment to the non-resident person. This document is typically required for individuals who are not citizens or permanent residents of the country where they wish to work.

2.11.1 Categories of work permit

There are five categories of work permits as follows;

- a) Class A which shall be issued to foreign investor who is a self-employed.
- b) Class B which shall be issued to non- citizen who is in possession of prescribed profession.
- c) Class C which shall be issued to non-citizen who is in possession of such other profession.
- d) Class D which shall be issued to non-citizen employed or engaged in a registered religious and charitable activities. Proof of issuance of charitable certificate from

⁴² Hermann. C & Terhechte. P.J, *European Year Book of International Economic law*, Springer Berlin Heidelberg Publisher, 2011, 510

⁴³Cholewinski. I.R, *The Legal status of Migrants Admitted for Employment*, Council of Europe Publishing, 2004, 52-60

Tanzania Revenue Authority (TRA) should be proved in submitting application by a charitable organization.

e) Class E which shall be issued to refugees.⁴⁴

2.12 Conclusion

Therefore, each law of the state must recognize it in their objective of the establishment of their laws which govern the tax rate imposed on formal employment in their state. In Tanzania there still have a problem on seeking for formal employment especially for non-resident there are many requirements and are very cost full, also the tax rate is charged at very higher rates compared to Burundi the tax rate is lower even to non-resident workers and the requirements are not cumbersome like in Tanzania whereby the residence permit in Burundi is free to all East Africa Community Member States

⁴⁴ *ibid*

CHAPTER THREE

LEGAL FRAMEWORK GOVERNING TAX RATE IMPOSED ON FORMAL EMPLOYMENT IN TANZANIA AND BURUNDI

3.1 Introduction

In this chapter the research will analyse the legal framework and institutional framework that provides for tax rate imposed on formal employment. Therefore, it contains legal framework and institution framework of law from international to national level.

3.2 Regional level instruments

At regional level there were various instruments on the promoting and ensure the harmonization of tax rate on formal employment among the Members state especially Tanzania and Burundi

3.2.1 The Treaty for Establishment of East Africa Community

The treaty for establishment of the East African Community was signed at Arusha on 30 November 1999. The treaty entered into force on 7 July 2000 following the conclusion of the process of its ratification and deposit of the instruments of ratification with the secretary-general by all the three Partner States. In June 2007 the Republic of Burundi accede to East Africa Community Treaty then in July 2007 Burundi become full members of the East Africa Community.⁴⁵

⁴⁵ <https://www.eac.int/eac-history.com> (Accessed On 20 November 2023)

The main objective of establishing this Treaty is provided under Article 5 (1) (3) of the treaty for establishment of the East African Community provides that;

1. The objectives of the Community shall be to develop policies and programs aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, 13 security and legal and judicial affairs, for their mutual benefit.

3. For purposes set out in paragraph 1 of this Article and as subsequently provided in particular provisions of this Treaty, the Community shall ensure;

(a) The attainment of sustainable growth and development of the Partner States by the promotion of a more balanced and harmonious development of the Partner States;

(b) The strengthening and consolidation of co-operation in agreed fields that would lead to equitable economic development within the Partner States and which would in turn, raise the standard of living and improve the quality of life of their populations;

(c) The promotion of sustainable utilization of the natural resources of the Partner States and the taking of measures that would effectively protect the natural environment of the Partner States.⁴⁶

Also Article 104(1) of the treaty provides for free movement of workers among the Partner States also under sub- Article 3 paragraph (d) this provide that the partner states should maintain common employment policies.⁴⁷

⁴⁶ Article 5 (1) (3) of the Treaty for Establishment of the East African Community, 1999

3.2.2 The East Africa Common Market Protocol

This was signed and entered into force in 2010. It was projected that by December 2015, the common market would be fully implemented. The deadline was not met but there have been progressive steps towards the implementation of single market. The common market is the second Regional integration milestone of East African Community, which has been in force since 2010, in line with the provisions of the East African Community Treaty.⁴⁸

The Protocols accelerate economic growth and development, it means that the East Africa Community Partner States maintain a liberal stance towards the four freedom of movement for all the factors of production and two rights between themselves. The freedom and rights which are provided under Article 2(4) of the East Africa Common Market Protocol states that “In accordance with the provisions of Articles 76 and 104 of the Treaty, this Protocol provides for the following: Free of movement of Goods, Free Movement of Person, Free Movement of Labor, Right of Establishment, Right of Residence, Free Movement of Services and Free Movement of Capital”⁴⁹

Also underlying the East Africa Community Common Market are operational principles of the community, which provide under Article 3(2) of the East Africa Community Common Market Protocols those principles including, Non-discrimination of nationals of other Partner states on grounds of nationality, Equal treatment to nationals of other Partner

⁴⁷ The Treaty for Establishment of the East African Community, 1999

⁴⁸ www.eac.int/Common-market.com (Accessed on 21 November 2023)

⁴⁹ Article 2(4) of the East Africa Common Market Protocol, 2010

States, Ensure transparency in matters concerning the other Partner States and Share information for smooth implementation of Protocol.⁵⁰

3.2.3 East Africa Community Custom Union Protocol

A protocol for establishment of the East Africa Community Custom Union was signed by the three East African Heads of State on 2 March 2004 in Arusha, Tanzania. The Republic of Burundi joined the Custom Union in 2008 and started applying its instrument in July 2009.⁵¹

The objectives of the Customs Union is established under Article 3 of the East Africa Community Custom Union Protocol as it aims to further liberalize intra-regional trade in goods on the basis of mutually beneficial trade arrangements among the partner states, promote efficiency in production within the Community, enhance domestic, cross border and foreign investment in the Community and promote economic development and diversification in industrialization in the Community.⁵²

3.3 Domestic instrument

Tanzania domestic legal frame work on the taxation on formal employment

In Tanzania there are different laws that govern taxation on formal employment that is different from other country that have a single major law regulating taxation and regulation. The first law regulating taxation is the Constitution of United Republic of

⁵⁰ Ibid, Article 3(2) of East Africa Community Common Market Protocols,2010

⁵¹ www.eac.int/customs.com (Accessed on 21 November 2023)

⁵² Article 3 of the East Africa Community Custom Union Protocol, 2009

Tanzania 1977, which is the source of all laws, the Income Tax Act Cap 332 of 2019 and Tax Administration Act Cap 438 of 2019

3.3.1 The Constitution of the United Republic of Tanzania, 1977 as amended time to time

This is the mother of the land in our country so any law that violate or conflict with the constitution become void for ground of inconsistence. In the matter of taxes the Constitution of United Republic of Tanzania has provide under Article 138(1) prohibits taxation except in accordance with laws dully enacted by the legislative authority, This Article provides that “No tax of any kind shall be imposed save in accordance with the law enacted by the This is the supreme law of the land in which all other law it supports to conformity with its provision. Parliament or pursuant to a procedure lawfully prescribe and having the force of law or by virtue of a law enacted by the Parliament”.⁵³ All the revenue laws derive validity and enforceability from the Constitution for the purpose of collection of revenue by tax authority.

3.3.2 The Income Tax Act [Cap 332 Revised Edition 2019]

This Act is made by the Parliament of United of Republic of Tanzania. The aims of this law is to calculating the income of the individuals which obtained from different sources of income such as from employment, business or investment. Section 7 of the Income Tax Act provides for the income from employment which states that “An individual's income from an employment for a year of income shall be the individual's gains or profits from

⁵³ Article 138(1) Constitution of United Republic of Tanzania 1977 as amended time to time

the employment of the individual for the year of income.”⁵⁴ This law shall cover all employer and employee who their income sources is from employment. And their income are chargeable during for the year of income as provided under Section 6(1) paragraph (a and b) of the Act provide that “Subject to the provisions of subsection (2), the chargeable income of a person for a year of income from any employment, business or investment shall be;

(a) In the case of a resident person, the person's income from employment, business or investment for the year of income irrespective of the source of the income;

(b) In the case of a non-resident person, the person's income from employment, business or investment for the year of income, but only to the extent that the income has a source in the United Republic of Tanzania. ⁵⁵

Also the withholding tax by employer provided under Section 81(1) of the Act which states that “A resident employer who makes a payment that is to be included in calculating the chargeable income of an employee from the employment shall withhold income tax from the payment at the rate provided for in paragraphs 1 and 4(a) of the First Schedule”⁵⁶

3.3.3 Tax Administration Act [Cap 438 Revised Edition 2019]

This laws was enacted in order to deal with taxpayers and collect the right amount of tax, the most significant taxes governed by national are Value Added Tax, Corporate Income

⁵⁴ Section 7 of the Income Tax Act Cap332 Revised Edition 2019

⁵⁵ Ibid, Section 6(1) paragraph (a and b)

⁵⁶ Ibid, Section 81(1)

Tax and Personal Income Tax. Also is aimed at providing a legal framework for the administration and enforcement of various tax laws in the country. This law outlines the rights and obligations of taxpayers and the Tanzania Revenue Authority (TRA), the authority responsible for tax collection. It also sets out procedures for filling tax returns, making payments, audits, collection of tax debts and dispute resolution. The primary purpose of this law is to ensure efficient and effective tax administration while promoting compliance with tax laws.⁵⁷

3.3.4 The National Social Security Act [Cap 50 Revised Edition 2018]

This law requires both employer and employees to contribute to the National Social Security Fund (NSSF), which provides social security benefits such as retirement, disability, and survivorship pension as well as related to other benefit. Under Section 13 of the National Social Security Act provides that “the employers are require to deduct and remit contribution from their employees’ salaries and wages and also make matching contributions as per the prescribed rates”⁵⁸. Also the contributions are calculated based on the employee’s pensionable salary, subject to maximum limit. This provides for the percentage in which both employer and employee can contribute for making profit such the employer and employee are able to contribute on 20%, whereby the employer can contribute 10% and employee also contribute 10% from the salaries or wages which they gain from employment.⁵⁹

⁵⁷ Tax Administration Act Cap 438 Revised Edition, 2019

⁵⁸ Section 13 of the National Social Security Act Revised Edition, 2018

⁵⁹ <https://www.usemultiplier.com>(Accessed on 10 January 2024)

3.4 Burundi domestic legal framework on Taxation on formal employment

3.4.1 Burundi Constitution of 2018

This is the supremacy law of the land of the Republic of Burundi which providing the framework for the governance, fundamental rights and freedoms, the structure of the government and the principle state. Article 166 of the Constitution of Burundi states that “Taxes and other public contributions are established by law.” This Article establishes the legal basis for the creation and implementation of tax laws and regulations in Burundi. Also the Constitution may also include the principle of equity, fairness and transparency in taxation.⁶⁰

3.4.2 General Tax Code of 2011

This Code provides detailed information regarding tax rates from employment and withholdings from employment. The Code typically outlines the progressive tax rate applicable to different income brackets, which determine the amount of tax that individuals are required to pay on their earnings from employment, also the Code describe the rules and procedures related to withholding taxes from employment income. This includes the responsibilities of employers to deduct the appropriate amount of tax from employee salaries and remit it to the tax authorities. The General Tax Code of Burundi often specifies any allowances, deductions, and exemptions that may apply to

⁶⁰ Article 166 of the Constitution of Burundi, 2018

employment income. These provisions are designed to ensure that the tax system is fair and takes into account various person and family circumstances.⁶¹

3.4.3 Social Security Code of 1999

This was the new law in Burundi which provides that every worker is entitled to the benefits and contribute to the basic social security schemes as provided for by the relevant legislation as provided under Article 1 of the Social Security Code of 1999 which states that “Any person as a member of society has the right to social security; it based on the satisfying of economic rights and on the free development of his or her responsibility through national effort and international cooperation”⁶². The principle of the right to basic social security is therefore mandatory to both employers and employees⁶³. Whereby the employer must contribute 6% and employee contribute 3.5% are required to contribute for social security fund.⁶⁴

3.4 Conclusion

These laws provide for taxation on formal employment established among Tanzania and Burundi. All this law is established the needs of government to protect their people from tax system and consider the principles of paying tax through determining on the amount which a person earn from the income sources, although the imposition of tax in

⁶¹ The General Tax Code of 2011

⁶² Article 1 of the Social Security Code, 1999

⁶³ I. Ahmad & Bigirimana. L, *Burundi Decent Work Check*. Amsterdam, WageIndicator Foundation Publisher, 2023, 32.

⁶⁴ <https://Africa-deployment.com/>(accessed on January 2024)

employment help the government to generate the revenue for the public expenditures, capital mobilization for investment purpose and economic stabilization.

CHAPTER FOUR

DATA ANALYSIS AND RESEARCH FINDINGS ON THE TAX RATE IMPOSED ON FORMAL EMPLOYMENT BETWEEN TANZANIA AND BURUNDI

4.1 Introduction

In this chapter researcher has collected a lot of information from different sources. In different time the researcher visited the different areas and different respondents who gave her some information which is useful to this research. The researcher visited to Tanzania Authority revenue office of Tanzania at Iringa and National Social Security Fund Office at Songwe and Sauti University at Mwanza and Ruaha Catholic University at Iringa and Mzumbe University at Mbeya, the researcher succeeded to make interview with the respondents. Also she has made interview with lecture and other respondent through via mobile phone.

4.2 Discussion on the Dis-harmonization of tax laws among the EAC Members on formal employment.

4.2.1 Meaning of dis-harmonization of tax rate on formal employment

The researcher in her findings, she has become aware that the dis-harmonization of tax rate in Tanzania and Burundi has been defined as is the situation of having the different tax rates and tax laws systems across various jurisdictions or countries in search of common policy objective.⁶⁵

⁶⁵ Uyioghosa. O & Omozuwa, I.I, *African Development finance Journal*, Vol.5, University of Nairobi,2023,24

The purpose of dis-harmonization of taxes has provided under Article 10 (11) of the East African Common Market Protocol “The free movement of workers shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health”.⁶⁶

4.3 Requirements for harmonization of domestic tax laws and policies on formal employment between Tanzania and Burundi

A researcher in her findings she found several international law which provides those requirements which are following The Treaty for Establishment of East African Community ⁶⁷under 83(2) (e) requires the partner states to maintain the common employment policies and in East African Common Market Protocol under Article 32 requires the partner states to harmonise their tax laws, policies and administrative procedures to comply with the East African Community Law and objectives.⁶⁸

4.4 Tanzania and Burundi has harmonized their tax laws on the issue of tax rate imposed on formal employment

The researcher has found that the most country which has not harmonized her tax rate on formal employment is Tanzania and regarding on the free movement of workers in East African Community.

In particular Section 4(a)(i to iii) First Schedule of the Income Tax Act has provide the withholding tax rate through basing on the payment which provided under section 81 of the same Act, whereby in case of non-resident withholdee is 20%.⁶⁹

⁶⁶ Article 10 (11) of the East African Common Market Protocol,2010

⁶⁷ Article 83(2) (e) of The Treaty for Establishment of East African Community of 1999

⁶⁸ Article 32 of East African Common Market Protocol of 2010

⁶⁹ Section 4(a) (i to iii) First Schedule of the Income Tax Act (CAP 332) Revised Edition, 2019.

Whereas the Second schedule of Tax General Code of Burundi provides for the withholding tax rate for individuals especially non-resident are taxed at the proportional tax rate 15%. Also in Burundi their tax laws ensures that the person who are employed in formal employment sectors has ability to pay tax through determining the salary amount which the individual either resident or non-resident earnings through the year from the income source.⁷⁰

Now, after the researcher has asked on that question, the respondent No. 01(Officer from the office of Manager of Tanzania Revenue Authority at Iringa Municipal response that; Her response was based on the public policies and national security, she argues that the harmonization of tax rate on formal employment will hinder the development and competition in the country as you know that the purpose of imposing tax on formal employment is to generate capital for investment and revenue for government expenditure for the economic growth in both countries.⁷¹ So her response made the researcher made Library research to see the reality of her answer, then the researcher found to be true.

4.5 Reasons for Tanzania not harmonized tax rate imposed on formal employment compared to Burundi as required by the East African Community Laws

The researcher has found several reasons which influence Tanzania not to comply with some requirements of the East African Community laws, the policies and objectives of as follows;

⁷⁰ Tax General Code, 2011

⁷¹ Respondent No. 01(Officer from the office of Manager of TRA), the interview made at Iringa Municipal on 5th March 2024 at 11:45 am.

i. For public policy, public security and public health, Respondent No. 2, Human Resource Officer from Tanzania Revenue Authority, said that there is reason of imposing the limitation on formal employment for imposing the higher tax rate especially to non-resident for the purpose of national securities, so as the government has imposed complex requirements for an individual who is not resident of United Republic of Tanzania being employed in public sector for example in order the citizen of Burundi to be employed in the any government sector he or she must fulfill all requirements needed such as there must be the application of work permit whereby it applies by employer and residence permit which are charged at rate of 10% compared to Burundi in for any Tanzanian to be employed in this country also there must be the application of work permit which is charged at rate of 3% from annual salary of employer and for residence permit is free only for the member of East African Community.⁷²

The facts given by respondent No.2 is relevant to the provision of Article 10

(11) of East African Community Common Market Protocols which provides the limitations that imposed by the host Partner State on grounds of public policy, public security or public health.⁷³

⁷² Respondent No. 2(Human Resource Officer) of Tanzania Revenue Authority, the interview made at Iringa Municipal on 7th March 2024 at 16:20 pm.

⁷³Article 10(11) of East African Community Common Market Protocols, 2010

ii. Imposition of complex requirements and procedures for non-resident person(s) on seeking for employment specifically in public sectors in Tanzania

In Tanzania there is small number of employees who are from Burundi and has employed either in private sector or in public sectors, compared to Burundi which there is no complex requirement and procedures of seeking for employment.

In this the 3rd respondent views that, this caused by the complex requirements and essential qualifications which imposed by the government for the non-resident to be employed in public sectors so is confined to private sector endeavors unless the laws of partner states provide for entry to the public service and other limitation may be made subject to notification to other partner state on the basis of public policy, public security or health.⁷⁴

Also 4th respondent views, in the issue of contribution in National Social Security Fund in Tanzania has imposed higher rate in contribution where by both employer and employee are able to contribute 20% from their salary, this means the employer may contribute 10% and employee also contribute 10% from the salaries or wages which they gain from employment. This may influence the small number of employees from Burundi to Tanzania compared to Burundi the citizen from Tanzania may get the employment easy because there is no complex requirements even though in Social Security contribution for both employer and employee is note the same like in Tanzania whereby the employer

⁷⁴Respondent No.03 (Director), National Social Security Office, at Vwawa from Mbozi District at Songwe 8th April 2024, at 16: 38 pm.

must contribute 6% and the employee contribute 3.5% from their salaries gain from employment.⁷⁵

However, the researcher after communicate with the one officer from the National Social Security Fund offices from Mbozi district at Songwe, she has informed that Burundi has imposed flexible requirements and those national security contribution in their country for the purpose to be comply with the EAC laws, then she visited the website of Africa deployment to observe it.⁷⁶

4.6 Importance of harmonizing tax rate on formal employment between Tanzania and Burundi

There are several reasons as the well as importance for harmonizing the tax rate on formal employment between these countries like economic reason, legal reason, political reason and social reason, as why is necessary to harmonize the tax rate on formal employment between Tanzania and Burundi as follows;

i. Economic reasons, the system of imposing the tax rate on formal employment as the source of income is for the purpose of generating revenue for government expenditure and capital for investment. Therefore the harmonization of tax rate will increase the domestic collection of revenue in both countries⁷⁷. The speech of the Minister for Finance and Economic Affairs as per the Tanzania Ministry of Finance and Economic Affairs the government tax policy is to increase domestic revenue collections at a faster rate than

⁷⁵ Respondent No.04, National Social Security Officer, at Vwawa from Mbozi District at Songwe 8th April 2024, at 16: 50 pm.

⁷⁶<https://Africa-deployment.com>

⁷⁷ Harvin. H, *Income Tax and Practice*, Published by University of California, 2023,12

Gross Domestic Product growth in order to finance increased the expenditure and reduce dependence on donor funding in the budget.⁷⁸

ii. **Legal reason**, the harmonization of tax laws in Tanzania and Burundi it is their obligation after signing and ratifying the East African Community Laws. As provided in Article 83(2)(e) of The Treaty For Establishment of East African Community and Article 32 of East African Community Common Market Protocol which impose the obligation for both Tanzania and Burundi to harmonize their tax policies, laws and administrative procedures to comply with the East African Community Law and objectives. However, The East African Business Council CEO, Mr. John Bosco Kalisa in his speech argued that East Africa Community Partner states should harmonize their domestic taxes to attract more investments into East Africa Community region. He speaking during the Webinar on Domestic Tax Regimes and proposed measures for the year of 2022 and 2023 budgets. Also argued to the Treaty for the establishment of East African Community obliges Partner states to harmonize the tax policies with a view of removing tax distortion in order to bring about more efficient allocation of resources within the community. He further elaborated East Africa Community Partner States have retained the mandate over domestic taxes namely, income tax. The freedom of developing and managing domestic taxes at the national levels has to some extent resulted in huge differences among the tax

⁷⁸ Speech by the Minister for Finance and Planning, Hon. Dr. Mwigulu Lameck Nchemba Madelu (MP.) Presenting to the national assembly, the estimates of government revenue and expenditure for 2023/2024 at Dodoma on June 15, 2023.

system of the East African Community Partner States resulting unfair tax competition unequal treatment of tax payers, goods and services.⁷⁹

iii. The factor of Political and diplomatic relationship; when a states harmonizes its laws with the laws of the community it indicates the political willingness of other states. It actually builds confidence to other states and increases the diplomatic relationship among other member's states.

iv. Social and security reasons for harmonization; harmonization of state domestic laws to both countries may increase security confidence among the member states which eventually creates the condition of peace trustfulness within the members of the community. It's because each partner state creates the confidence and trust to another state as the neighbor believing that it takes part in security for the mutual benefits. It increases social interaction in East African Community.

4.6 The effects of dis-harmonizing the tax rate that imposed on formal employment to the labor market

7th respondent viewed that many employees from outside the country they confined to private sector endeavors than to public sector, then their withholding tax per annual year is higher for example in Tanzania the non-resident charge at flat rate of 20% from the salaries gained from employment so this affect the free movement of workers from other

⁷⁹ The speech of the East African Business Council CEO, MR. JOHN BOSCO KALISA in Webinar on Domestic Tax Regimes and proposed measures for the year of 2022 and 2023 budgets. On Friday 20th May 2022, Arusha, Tanzania

countries to seek for employment in a country which has charged the higher tax rate from formal employment like Tanzania.⁸⁰

4.7 The impacts of dis-harmonization of tax rate on formal employment in Tanzania and Burundi

8th respondent views that the impacts of tax rates on formal employment between Tanzania and Burundi is complex issue that involves a variety of economic, social and policy factor. The tax rate can have both direct and indirect effects on formal employment in these countries, where by every country has to look for benefit which they gain from formal employment after imposing the different tax rate on it.⁸¹

Also there other impacts of dis-harmonizing tax rate on formal employment for both countries as followings;

- i. Dis-harmonization of tax rates discourage formal employment by reducing the incentive for businesses to hire workers and for individuals to seek formal employment. This is the problem which hinder the implementation of formal employment.⁸²
- ii. Dis-harmonization of taxes increase the cost of labor for employers and reduce the net of income received by workers which may lead to preference for informal or under table employment arrangements. So if there is a lower tax rates between these countries can potentially incentivize formal employment by reducing the cost of labor and increasing

⁸⁰ Respondent No.07 (Lecture) from Sauti University at Mwanza, interview conducted through Via Mobile phone, on 10 March 2024 at 15:30 pm.

⁸¹ Respondent No.08 (Lecture) from Ruaha Catholic University, interview conducted on 14 March 2024 at 12: 12 pm

⁸² www.read.oecd-library.org/taxation/taxation-and-employment/the-effects-of-taxation-on-employment (Accessed on 20 April 2024)

take-home pay for workers. This can make formal employment more attractive compared to informal work or unemployment.⁸³

iii. Dis-harmonization of tax rates also impact overall economic growth, investment and business development which in turn affect the availability of formal employment opportunities.⁸⁴

4.8 Conclusion

Generally, the tax rate imposed on formal employment in Tanzania and Burundi differ significantly, with Tanzania imposing a progressive tax rates and higher contribution to the social security schemes compared to Burundi. These disparities may have implications for economic integration within EAC as they could create incentives for businesses to operate in countries with lower tax burdens, so it is therefore important for partner states of EAC to harmonize their tax systems to promote economic integration and achieves the objectives of the regional organization.

⁸³Gordon. H.R, *Taxation in Developing Countries*, Columbia University Press, 2010, 265

⁸⁴ <https://ink.springer.com>(Accessed on April 10,2024)

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS ON THE TAX RATE IMPOSED ON FORMAL EMPLOYMENT BETWEEN TANZANIA AND BURUNDI

5.1 Introduction

This chapter presents the general conclusion and recommendations where regional instrument, domestic laws and policies are analyzed in term of strength and weakness. The way forward on what ought to be done are suggested at the recommendations party.

5.2 Conclusions

After analysis of different laws, the researcher determines that failure of harmonizing the domestic tax law especially in tax rate imposed on formal employment in order to give equal opportunity to taxpayer in East African Community Partner States especially in Tanzania and Burundi because their law has dis-harmonized the tax rate on formal employment and their final withholding tax are differ to both employers and employees from the employment source of income.

5.3 Recommendations

Basing on the objectives the following recommendations are suggested.

Recommended that Partner States embark on harmonizing their domestic tax laws on tax rate imposed on formal employment. The Partner States should undertake the appropriate way to harmonize their tax policies, laws and programs to facilitate the free movement of labor within the community.

There must be the harmonization of National social security policies, laws and systems must also be reviewed across the region to provide for social security of employed persons who are citizens of other Partner States. Currently, many of the Partner States regulate social security issues in general laws that address those specific issues, and it is assumed that those laws and policies cover workers since they “apply to all employees”. Furthermore, Partner States must accelerate the process of formulating and adopting a protocol on the portability or transferability of social security among themselves. The study found that two of the Partner States have a bilateral agreement to transfer social security benefits among themselves, but this agreement was found critical due to the high exchange of workers between the two countries. With the East African Community Common Market, for the free movement of workers to be fully effective and facilitated, it is critical that the portability of retirement funds is considered a priority for the region.

There must be the harmonization of the withholding taxes on employment especially in formal employment among the partner states because there imposition of huge tax rate on formal employment which limit the free movement of work due to the difficulties procedures of seeking employment to another partner states and the withholding of income tax is huge even if the person do the similar work in this different two countries such as the tax rate which the worker charged within Tanzania is differ with the tax rate charged to the person who work in Burundi. The harmonization of tax system will facilitate the free movement of workers even if goods and capital and thus lay the basis for greater real convergence.

The member states should exchange the data whereby each state member has tax information which will help them to be easily shared to ensure that enforcement activity is properly supported. So this will reduce contradiction to taxation system to the member states because this arises where the citizen from another partner states seeks for employment or any activity to another state.

There must be the same definition of the tax base and tax policies in all Members of East African Community which comply with the East African Community laws because the differences rises on the definition of income and the expenses that are allowable and disallowable for deduction for tax purposes.

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APPENDIX

THE SELECTED INTERVIEW QUESTIONS ASKED BY RESEARCHER TO INTERVIEWEES

A: INTRODUCTION

Mr. or Ms. Respondent these are interview questions for Academic Research prepared by the researcher so as to collect data which shall be used to accomplish the research. Thus your positive response and correct answers will be more helpful.

B: QUESTIONS

1. What are the requirements for harmonizing the tax laws and policies on formal employment?
2. Has Tanzania and Burundi harmonized their domestic tax laws on the issue of tax rate imposed on formal employment?
3. What do you think are the reasons on why Tanzania dis-harmonized the tax rate on formal employment compared to Burundi?
4. Why Tanzania has imposed the complex procedures and requirements for non-resident person(s) being employed in public sectors?
5. Why it is necessary or important to harmonize the tax rate on formal employment?
6. How the dis-harmonization of tax rate which imposed on formal employment affects the labor market?
7. What are the impacts of dis-harmonization of tax rate imposed on formal employment between Tanzania and Burundi?