

CORPORATE TAX LAW AND CORPORATE SOCIAL RESPONSIBILITY IN TANZANIA: AN EXAMINATION OF THEIR RELATIONSHIP*

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Abstract

Whether adopted voluntarily or imposed through legislation, Corporate Social Responsibility (CSR) has an impact on existing laws. This article examines the relationship between CSR and compliance with corporate tax in Tanzania. It is observed that, while on the one hand, ethical and moral aspects of CSR should help to improve tax compliance in a particular jurisdiction on the other hand, adoption of CSR may come with corporate tax benefits to the companies. However, given the wide range of activities of the state which are financed by tax revenue, the article emphasizes on the need to include an item on corporate tax compliance in CSR reports. Also, it calls for deliberate efforts by the state to improve and prioritize provision of public as well as social services. Such measures will reduce reliance on CSR programmes in the provision of public and social services, aspects, which raise issues of legitimacy in a democratic state.

Key Words: CSR and corporate tax, corporate tax law, income tax law, social welfare, public welfare, allowable deductions.

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1. GENERAL INTRODUCTION

1.1 Introduction

Various authors have traced origins of CSR at different times. Some authors have traced CSR from the times of the French revolution,¹ others from the times of industrial revolution,² yet others from debates between Merrick Dodd and Adolf Berleof 1930s.³ Further, other writers trace the origin of this concept from the period which immediately followed the Second World War in 1945.⁴

However, the modern CSR is said to have evolved from publication of a book entitled, “Social Responsibilities of the Businessman” by Bowen in 1953. Bowen regarded CSR as the obligation of Businessmen to be observed in pursuit of policies, in making decision and by acting in a manner which is desirable to realise the objectives and values of the society,⁵ Ever since, CSR

¹ Bichta, C., *Corporate Social Responsibility: A Role in Government Policy and Regulation*, Bath: University of Bath School of Management, 2003. at p. 3.

² Aras, G. and Crowther, D., “Corporate Governance and Corporate Social Responsibility in Context,” in: Aras, G. and Crowther, D. (eds.), *Global Perspectives on Corporate Governance and CSR*, Farnham and Burlington: Gower Publishing, 2009 at p. 22; compare Nehme, M. and Wee, C. “Tracing the Historical Development of Corporate Social Responsibility and Corporate Social Reporting”, Vol. 15, *James Cook University Law Review*, 2008, atp. 143.

³ For comprehensive information on this debate, see Dodd, M. “For Whom are Corporate Managers Trustees”, Vol. 45, *Harvard Law Review*, 1932, at p. 1156; see also Campbell, T. and Vick, D., “Disclosure Law and the Market for Corporate Social Responsibility”, in: McBarnet, D., Voiculescu, A. and Campbell, T. (eds.), *The New Corporate Accountability: Corporate Social Responsibility and the Law*, Cambridge: Cambridge University Press, 2007, at pp. 241-278.

⁴ See Nehme and Wee, “Tracing the Historical Development of Corporate Social Responsibility and Corporate Social Reporting”, above note 2, at pp. 144 et seq.; compare also Wells, H., “The Cycles of Corporate Social Responsibility: A Historical Retrospective for the Twenty-first Century”, *Kansas Law Review*, 2002, pp. 77 et seq.

⁵ See Bowen, H., *Social Responsibilities of the Businessman*, New York: Harper &Brothers 1953. Discussed in *Faber-Wiener*, Gabriele, *Responsible Communication*:

has continued to evolve and gain prominence in the world. The period between 1970s and 1990s saw wide spread and institutionalization of CSR and associated the concept with public relations. During that time, it was advocated that companies were responsible to society.⁶ Thus, by 1990s, with a view to gaining good reputation and image, companies globally, reported variously on their engagement to society in areas of environment, employees' safety, human rights and public welfare. Irregularities associated with practices of reporting led to emergence of CSR reporting standards from various international and national Non-governmental Organisations (NGOs) and Civil Society Organisations (CSOs) to be adopted by companies. The number of the CSR reporting standards has continued to grow to-date.⁷

Discussion of concepts of corporate tax and corporate social responsibility (CSR) appears to be a strange combination on the face of it. However, the examination reveals that the two concepts have two common determinants, namely, a corporation and provision of public and social welfare. On the one hand, corporate tax is a form of income tax⁸ as opposed to transactional taxes such as value added tax (VAT). Like other types of taxes,

WieSie von PR und CSR-Kommunikationzuechtem Verantwortungs management kommen, Berlin/Heidelberg: Springer Gabler, 2015, at p. 4.

⁶ See Aras, G. & Crowther, D., "Corporate Governance and Corporate Social Responsibility in Context," above note 2, p. 22.

⁷ Examples of the common CSR Standards include the OECD Guiding Principles for Multinational Enterprises 2011, the Ten Principles of UN Global Compact 2000, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy 1977, the UN-Guiding Principles for Business and Human Rights 2011 and the Global Reporting Initiative 1997 (GRI).

⁸ In Tanzania income tax is levied on income from employment, business and investment, see Tanzania Bureau of Standards, 2015 Tax and Government Finance Statistics Report Tanzania Mainland, August 2016, p. 2. Available at: <https://www.nbs.go.tz/index.php/en/census-surveys/trade-transport-and-tax/tax-statistics/190-2015-tax-and-government-finance-statistics-report-tanzania-mainland>. Accessed on 10.09.2019.

corporate tax is one of the sources of state or public revenue. One of the uses of state revenue is to finance provision of social and public services.

On the other hand, Corporate Social Responsibility (CSR) is a broad concept, which does not have a commonly world-wide acceptable definition. The context within which CSR has been defined may be said to depend on academic discipline, economic development and institutional conceptions.⁹ For the purposes of this article the definition by the World Business Council for Sustainable Development (WBCSD) is more suitable. Accordingly, the WBCSD defines CSR as:

the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Despite criticisms leveled against this definition, suffice it to mention that, it depicts to a large extent the practices by many companies operating in Tanzania of adopting CSR programmes directed to provision of social and public services. This practice is reflected in many developing countries in Africa. For example, CSR has even been defined as obligations of companies to consider the interests of communities in the areas of their operation, through building of hospitals, schools, roads and

⁹See Amodu, N. (Ed.) *Corporate Social Responsibility and Law in Africa: Theories, Issues and Practices*, London and New York: Routledge Contemporary Africa, 2020, at pp. 10 et seq; See also Shayo, D. Shayo, D. "Regulation of Corporate Social Responsibility in the Eastern African Community: Legislative Developments in Kenya, South Sudan and Tanzania", Vol. 45(1), *Eastern Africa Law Review* 2018, at pp. 22 et seq.

provision of water.¹⁰ Therefore, it appears that both, payment of corporate taxes and CSR programmes in Tanzania have a similar goal. However, while payment of corporate taxes is an indirect way of furthering social and public welfare, adoption of CSR programmes is a direct way of doing the same. At a higher level of abstraction, it may be subsumed that corporate taxes are social contributions to society.¹¹ Furthermore, among others, CSR requires companies to adopt and practice good business ethics as well as morals.¹²

Despite having a common goal, the relationship between CSR and corporate tax may not be easily explained. For instance, in Tanzania, the report of the Special Presidential Committee on Investigation of Legal and Economic Issues Surrounding Export of gold and copper concentrates (*Makinikia*) in June 2017 (hereinafter: *Makinikia* Committee's Report),¹³ shows that investigated mining companies have been evading and avoiding corporate taxes since 1998. Yet, such companies had very good CSR reports showing a number of CSR programmes that they have adopted with a view to providing social and public services to the surrounding communities. Furthermore, the same companies

¹⁰ See Ijaiya, H. "Challenges of CSR in the Niger Delta Region of Nigeria", Vol. 1, *Journal of Sustainable Development Law and Policy* 2014, pp. 60-71.

¹¹ Compare Hansen, R. "Corporate Social Responsibility and Tax Avoidance in Sub-Saharan Africa: A Case Study of the Beverage Manufacturing Sector", A Master Thesis submitted to the University of Roskilde, 2015, at p. 13.

¹² Comprehensively see Carroll, A. 1991, "The Pyramid of Corporate Social Responsibility: Towards the Moral Management of Organizational Stakeholders", Vol. 34(4), *Business Horizons*, pp. 39-48.

¹³ See Ikulu, Muhtasari wa Ripoti ya Kamati ya Kuchunguza Masuala ya Kisheria na Kiuchumi Kuhusiana na Mchanga wa Madini Unaosafirishwa Nje ya Nchi (Hereinafter: *Makinikia* Committee's Report) Available on the Internet at: http://www.ikulu.go.tz/files/publications/attachments/2_sw.pdf. Accessed on 15.09.2019.

have been subjected to compulsory CSR following the 2017 amendment to the Mining Act of 2010.¹⁴

Consequently, several issues arise in this connection, especially in the Tanzanian perspective. They include the following: Firstly, what is the impact of CSR on corporate tax? Does CSR encourage or discourage payment of corporate tax? Secondly, whether or not corporate tax law can be used to promote CSR and whether or not CSR can be used to promote compliance with corporate tax laws.

2. DEVELOPMENT OF CSR IN TANZANIA

The modern concept of CSR found its way to Tanzania in the late 1980s during the time of privatization of public enterprises in which the promise to carry out CSR activities was used as a convincing strategy for purchasing state owned enterprises.¹⁵ Although before 1980s philanthropic contributions of companies to the society were observed, in the period from 1967-1985 they declined as a result of adoption of the *Arusha Declaration* which advocated for nationalization of private enterprises and establishment of public enterprises. The reasons for this decline were two. On one hand, these contributions normally originated from the private enterprises, and on the other hand, the adoption of *Arusha Declaration* came with the notions of public ownership of all major means of production and a centrally planned

¹⁴ The Mining Act no. 14 of 2010 was by amended the Written Laws (Miscellaneous Amendments) Act, Act no. 7 of 2017, to among other things, impose the obligation to adopt CSR plans on the mining companies.

¹⁵ See Shayo, D. *Die Behandlung von Maßnahmen der Corporate Social Responsibility imdeutschen und tansanischen Gesellschafts und Wettbewerbsrecht*, Hamburg: Verlag Dr. Kovac, 2017, pp. 29 et seq.

economy, in which provision of public and social services to all was the sole function of the state. Therefore, CSR in its modern sense was negligible and it could hardly find justification. However, it is important to note that foreign owned multi-national companies made philanthropic contributions even during colonial times and after independence (1961), before 1967. These contributions may be regarded as CSR in the narrow sense.¹⁶

With the coming of privatization, in 1980s it is worth noting that, for some companies, like those in the mining sector, Mining Development Agreements carried a clause on CSR crafted in a way that imposed responsibility on mining companies to provide social services to surrounding communities.¹⁷ Furthermore, the government of Tanzania enacted a number of policies, which require companies to adopt CSR. Examples of these policies include the First and the Second National Strategy for Growth and Reduction of Poverty (NSGRP I and NSGRP II respectively).¹⁸ Although these policy instruments cover all types of companies in Tanzania, they are very general and are not legally binding. From this background, it can be observed that what came to Tanzania during this time was a voluntary CSR, a product of self-regulation. Until 2015, adoption and reporting of CSR was based on self-regulation and there were no legislative measures.

However, since 2015 to date, two legislative regimes for CSR have emerged in Tanzania under three pieces of legislation. The first regime is that of partially regulated voluntary CSR. Under this regime, companies are not obliged to adopt CSR policies, but they

¹⁶Ibid.

¹⁷ See Ikulu, Makinikia Committee's Report Summary, above note 13, pp. 40-41.

¹⁸ See URT Vice President's Office, *National Strategy for Growth and Reduction of Poverty I* (NSGRP I) 2005, pp. 31-32; and URT Ministry of Finance and Economic Affairs, *National Strategy for Growth and Reduction of Poverty II* (NSGRP II) 2010, pp. 62, 82, 85.

are required to issue CSR reports. The decision to adopt CSR is voluntary. This regime is established under the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015.¹⁹ This law applies to companies in the extractive industry. With the aim of promoting and improving transparency as well as accountability in this sector, this law establishes the Tanzania Extractive Industry (Transparency and Accountability) Committee to supervise the extractive industry.²⁰ This committee is empowered to verify that through transparency and accountability, natural resources must benefit Tanzanians.²¹ In particular, with its reporting requirement mechanism under section 15(1),²² this law is an important instrument in the fight against corruption and promotion of CSR in the extractive industry.

The second one is the compulsory CSR regime established under the Petroleum Act of 2015²³ and the Mining Act of 2010 (as amended in 2017).²⁴ In particular, section 222 of the Petroleum Act requires license holders and contractors, in the oil and gas sector, to prepare credible CSR plans annually. Likewise, section 105 of the Mining Act imposes a duty on companies in the mining sector to prepare CSR plans annually. Under both laws, there is a requirement that CSR plans must be jointly agreed upon between the Local Government Authorities and companies. These legislative developments have formalized CSR in these sectors.

¹⁹ Act no. 23 of 2015 (hereinafter: TEITA Act).

²⁰ See s. 4 (1) TEITA Act.

²¹ See s. 10 (1) *Ibid.*

²² Section 15(1) of TEITA Act requires companies in the extractive industry to issue annual reports with information on local content and CSR.

²³ Act no. 21 of 2015.

²⁴ The Mining Act no. 14 of 2010 was amended by the Written Laws (Miscellaneous Amendments) Act, Act no. 7 of 2017.

2.1 Drivers of CSR in Tanzania

The question, “why would a company adopt CSR in the Tanzanian context?” attracts a number of answers. The simplest answer in respect of companies in the mining and petroleum sectors would be obedience to law. That is to say, because the law requires CSR, companies are obliged to do so, failure of which would lead to a punishment. This is a common practice in relation to fulfillment of legal obligations.

What about other companies not in the above-named sectors? As pointed out earlier, for this category of companies, CSR remains a voluntary engagement of a particular company. However, for companies, the drivers of CSR are many. In relation to Tanzania, they include a desire to obtain the so-called “social-license to operate,”²⁵ to become good corporate citizens²⁶ and to obtain competitive advantage.²⁷ To some scholars, these drivers have

²⁵ See Hodges, C. and Steinholz, R. *Ethical Business Practice and Regulation: A Behavioral and Value-Based Approach to Compliance and Enforcement*, Oxford/Portland: Hart Publishing, 2017, pp. 102 et seq. See also Roussouw G. “Business Ethics and Corporate Governance in Africa,” Vol. 44(1), *Business & Society* 2005, p. 98. See also Wieland, J. & Conradi, W. *Corporate Citizenship: Gesellschaftliches Engagement – Unternehmerischer Nutzen*, Marburg: Metropolis, p. 15.

²⁶ See Shayo, D. “Corporate Social Responsibility and the Law in Tanzania: A Critical Examination of its Mandatory Nature.” Vol. 7, *Zanzibar Year Book of Law* 2017, pp. 118-119. See also Matten, D. and Crane, A., “Corporate Citizenship: Towards an Extended Theoretical Conceptualization.” Vol. 30 (1), *Academy of Management Review* 2005, p. 166; Compare Schneider, A. “Reifegradmodell CSR – eine Begriffsklärung und – abgrenzung” in: Schneider, A. and Schmidpeter, R. (eds.), *Corporate Social Responsibility: Verantwortungsvolle Unternehmensführung in Theorie und Praxis*, (2. ergänzte und erweiterte Auflage) Berlin/Heidelberg: Springer, p. 21.

²⁷ See Martinuzzi, A., “CSR und Wettbewerbsfähigkeit”, in Schneider & Schmidpeter (Eds.), *ibid.* p. 1074; compare Pacher, S. et al. “Abbildung von CSR in der Vorstandsvergütung: Theoretische Grundlagen und Umsetzung in Deutschland,” in: Walden, D. und Depping, A. (Hrsg.) *CSR und Recht: Juristische Aspecten nachhaltiger Unternehmensführung erkennen und verstehen*, Berlin/Heidelberg: Springer-Verlag, 2015, pp. 84-85.

been summarized into “the business case for CSR”; a concept, which is still criticized.²⁸

Can these drivers also be used to explain mandatory CSR? Critically examined, these drivers coincide with the outcomes of adopting CSR. Consequently, there are no circumstances under which it may be assumed that these outcomes cannot apply to companies which are legally obliged to adopt CSR. In this way, it may rightly be argued that these drivers apply to all types of companies, including those found in the mining and petroleum industries in Tanzania.

3. THE PLACE OF CORPORATE TAX LAW IN TANZANIA

3.1 The Constitutional Basis for Corporate Tax

The connection between taxation and a country’s culture, legal system and ultimate development of the state is undeniably a strong one. In particular, taxation is said to have a potential of assisting and empowering a state in the process of allocating resources and enabling wealth distribution.²⁹ On the basis of these arguments, a state incurs expenses in the common interest of its citizens. To be able to defray these expenses, governments impose compulsory contributions in support of the government and other public purposes.³⁰ One of the most commonly used

²⁸ See Campbell, T. and Vick, D., “Disclosure Law and the Market for Corporate Social Responsibility,” in: McBarnet, D., Voiculescu, A. Campbell, T. (Eds.), above note 3, at pp. 277 et seq.; see also Talbot, L. *Great Debates in Company Law*, London: Palgrave Macmillan, 2014, pp. 156 et seq.; see also Schreck, P. “Der Business Case for Corporate Social Responsibility,” in: Schneider & Schmidpeter (Eds), above note 26, pp. 84-85.

²⁹ Compare Salter, D., “Taxing Constraints on Developing Countries and the Global Economic Recession,” in: Faundez, J. and Tan, C. (Eds.) *International Economic Law, Globalization and Developing Countries*, Cheltenham/Northampton: Edward Elgar, 2010, p. 138.

³⁰ Compare Hermann, U., “CSR und Steuerrecht: Steuerliches Verhalten im Lichte von CSR”, in Walden & Depping, (Hrsg.) above note 27, p. 214..

compulsory contributions is charging of taxes or taxation.³¹ Thus, taxation is essential because it forms one of sources of government revenue. Yet to citizens, taxation is viewed as a burden because it erodes their personal property interests. For this reason, it is a known principle of law in relation to levying of taxes that no tax shall be levied without clear provisions of the law imposing it.³² This principle has been enshrined in Article 138 (1) of the United Republic of Tanzania (URT) Constitution of 1977 which prohibits imposition of taxes without clear mandate of the law enacted by the Parliament.

This provision emphasizes on importance of law in taxation matters. In other words, it represents two cardinal principles of taxation: (1) no one should be charged tax if there is no law authorizing such levy and (2) charging of tax must be according to law. The former aspect touches substantially on legitimacy of taxation while the latter concerns matters such the manner, procedure and quantum thereof.

The Constitution restricts the process of enacting tax laws by imposing specific conditions. Article 99 (1) (a) (i) of the Constitution of the URT of 1977 prohibits the National Assembly from dealing with any matter concerning a Bill to enact a law providing for levying of a tax or alteration of tax rates otherwise than by reduction. An exception to this requirement would be

³¹ According to National Bureau of Statistics, the term “taxes” is confined to compulsory, unrequited payments to general government.

³² Complementing this view is the argument by the Court of Appeal of Tanzania in *Bulyanhulu Gold Mine Ltd. v. Commissioner General (TRA)* that, in ordinary life taxes are in fact as complex as life itself because they are in derogation of personal rights and property interests worldwide and therefore no tax can be levied and collected without the authority of law, see Massati J.A., Oriyo, J.A. and Mugasha, J.A. in *Bulyanhulu Gold Mine Ltd v. Commissioner General (TRA)*, Consolidated Civil Appeals No. 89 and 90 of 2015, Court of Appeal of Tanzania at Dar es Salaam (Unreported).

where the President has proposed that the matter be dealt with by the National Assembly and the proposal is submitted to the National Assembly by a Minister. In summary, two important restrictions are discernible from this provision. First, the National Assembly may not introduce new taxes on its own even where it wishes to do. The President must be involved. Second, the National Assembly may not raise tax rates without involving the President. It is important to note that these conditions also apply to a motion or any amendment of a motion for the purpose of introducing a new tax or raising tax rates.³³ However, the National Assembly may lower tax rates without involving the President. It should be noted that the requirements of Article 99(1) (a) (i) do not necessarily state radical changes because Article 62(1) of the Constitution of the URT of 1977 vests the legislative power in relation to all Union matters to the URT parliament and Article 64(1) of the Constitution of the URT provides that the URT Parliament is made up of two parts, namely, the President and the National Assembly.³⁴ Therefore, the only new aspect here is the requirement that the President makes the proposal and that proposal should be brought to the National Assembly by the Minister.

Furthermore, given the importance of the duty to pay taxes by individuals, the Constitution restricts persons who have been charged and criminalized for tax evasion³⁵ from contesting for

³³ See Article 99 (2) (b) of the Constitution of the URT of 1977.

³⁴ Art. 97(1) of the Constitution of URT of 1977 provides that the National Assembly shall exercise its power through the process of debating and passing Bills which eventually shall have to be assented to by the President.

³⁵ Comprehensive on tax evasion see Fisher, J. "Fairer Shores: Tax Havens, Tax Avoidance and Corporate Social Responsibility," Vol. 94, *Boston University Law Review* 2014, 338-365, pp. 339-341.

certain offices including offices of the President and Vice-President of URT and the post of a Member of Parliament.³⁶

From what has been stated above, there are two important notable aspects. Firstly, the Constitution recognizes the importance of taxation as being one of the major sources of revenue of the government for financing public and social welfare in the state. Secondly, by imposing stringent conditions in relation to imposition of taxes and increase in tax rates. Thus, it may be argued that the Constitution aims at protecting people from arbitrary, unjustified and non-procedural imposition of taxes as well as increase in tax rates. This argument is supported by the remark by Massati J. A. in *Bulyanhulu Gold Mine Ltd v. Commissioner General (TRA)* discussed above.³⁷

3.2 The Statutory Justification for Corporate Tax

The law governing corporate tax in Tanzania, for the purposes of this article, includes the Income Tax Act of 2004 (hereinafter: ITA),³⁸ the Income Tax Regulations 2004,³⁹ the Tax Administration (General) Regulations⁴⁰ and the Transfer Price Regulations.⁴¹ As the nomenclature suggests, ITA imposes payment of income tax generally. Section 4 of ITA imposes income tax as a direct tax on

³⁶ See Art. 39 (1) (e), Art. 47 (4) (e) and Art. 67 (1)(c) URT Constitution of 1977.

³⁷ See Massati J.A., Oriyo, J.A., and Mugasha, J.A, in *Bulyanhulu Gold Mine Ltd v. Commissioner General (TRA)*, above note 32.

³⁸ Income Tax Act 2004, Cap. 332 R.E. 2008; According to s.141 ITA 2004, this law repealed and replaced the Income Tax Act of 1973.

³⁹ Income Tax Regulations 2004, G.N. No. 464 published on 5th November 2004, made under s. 129 of the Income Tax Act 2004.

⁴⁰ Tax Administration (General) Regulation, 2016, Government Notice No. 101 published on 18th March, 2016, made under ss. 28, 30, 35, 92, 94 and 98 of the Tax Administration Act, 2015, Act no. 10.

⁴¹ See the Tax Administration (Transfer Pricing) Regulations, 2018, Government Notice No. 166 published on 27 April 2018, which repealed and replaced the Income Tax (Transfer Pricing) Regulations, 2014, Government Notice No. 27 of 2014.

income accruing to a person from employment,⁴² business⁴³ and investment.⁴⁴ Corporate tax falls under the category of income from business. Briefly explained, companies are required to file returns prepared or certified by a certified public accountant in public practice with the Commissioner of Income Tax not later than three (3) months after the end of each year of income,⁴⁵ upon which their corporate tax liability is to be assessed.⁴⁶ Corporate tax is calculated by using a legally pre-determined tax rate. The current corporate tax rate in Tanzania is 30 percent.⁴⁷

Furthermore, this law provides for all aspects concerning calculation and payment of income tax including rules governing amounts to be used in calculating income tax base,⁴⁸ rules governing deductions⁴⁹ and exemptions from tax.⁵⁰

4. RELATIONSHIP BETWEEN CSR AND CORPORATE TAXATION

4.1 The Goal

In the context of third world countries, social responsibility of companies has, to a large extent, the goal of promoting social and public welfare of people. Common areas in which CSR in these jurisdictions capitalize include provision of social and public services. In addition, CSR aims at preservation of the environment which is also linked to people's welfare. It also emphasizes on

⁴² Income from employment is defined under s. 7 ITA.

⁴³ Income from business is defined under s. 8 ITA.

⁴⁴ Income from investment is defined under s. 9 ITA.

⁴⁵ The year of income is defined under s. 20 of ITA to be a calendar year. This may upon application to the Commissioner of Income Tax be changed to another duration.

⁴⁶ See section 91 (1) and (2) (b) ITA.

⁴⁷ See section 4(6) read together with item 3(1) of the First Schedule to ITA.

⁴⁸ See ss. 20 et seq. ITA.

⁴⁹ See ss. 11-19 ITA.

⁵⁰ See s. 10 read together with the 2nd Schedule to ITA.

observance and improvement of human and employment rights. Furthermore, CSR aims at instigation of good morals and ethics in business. Linked to business ethics and morals, CSR also contributes to the fight against bribery and corruption in business. All these aspects have a direct or indirect connection to the welfare of people. Consequently, CSR can be said to have a broad agenda for the whole society.

As already noted, corporate taxation is one of forms of income tax, which contributes to public revenue administered, collected and applied by the state. Being public revenue, it is supposed to be used for public purposes, to meet public demands. Such revenue is used, for example, to meet expenses of running the state through payment of salaries and other entitlements of public officials or public servants as well as meeting various expenditures of the state incurred in the course of administering the country. Above all, public revenue is used to ensure provision of public services such as construction and operation of public health institutions, schools and different infrastructures, which are aimed at benefiting people in general. It is in this last area that one of the goals of corporate tax meets with one of CSR's objective.

It is observed that under the current state of affairs part of incomes of companies are used to finance public and social services. The financing takes place either directly or indirectly or both directly and indirectly to beneficiaries. In Tanzania, the direct route is made possible through CSR in which companies finance provision of public and social services. Thus, it is common for companies to build or renovate schools, health centers as well as construct facilities for water supply and so forth through their voluntarily adopted programmes. The indirect route takes place through payment of taxes (including corporate taxes) to the

government. The government, in turn, allocates part of the collected revenue to provision of public and social services.

It is therefore submitted that under the current set up, companies provide public and social services to people through CSR and corporate taxes. For companies in the mining, oil and gas sectors, this is the only model they must adhere to. The Mining Act of 2010 (as amended in 2017) and the Petroleum Act of 2015 require companies in these sectors to adopt CSR plans for every year. In this way, they contribute to public and social services twice as mandated by the law. Contribution to provision of public and social services for companies other than those in mining, oil and gas sectors is mostly indirect through taxes (corporate tax). Direct contribution through CSR for these companies is optional because their CSR is voluntary.

4.2 Impact to Beneficiaries

When CSR and corporate tax practices in Tanzania are compared, it can be observed that corporate tax takes a longer route to reach beneficiaries than CSR. Furthermore, corporate taxes normally involve costs of collection, planning and allocation on the government. Although there are costs involved in planning for CSR by companies, such costs are normally lower than those involved in taxation. Moreover, management of corporate taxes carries a potential danger of being affected by bureaucracy and corruption. Above all, it may be argued that part of corporate tax, which is allocated to the public and social services may not address immediate needs of society. The amount allocated for public and social services may also not be enough because the

economies of the developing countries are poor.⁵¹ Also, it is submitted here that such jurisdictions are characterized by ineffective expenditure of the collected taxes; for taxes are sometimes used for irrelevant causes.⁵²

It is argued further that ideally, if CSR is properly managed by companies, many problems associated with corporate tax may be avoided because CSR is associated with morality, ethics and reputation of companies. However, CSR practices in Tanzania are far from being reliable because of their inherent weaknesses. From the law point of view, weaknesses of CSR practices in Tanzania include lack of supportive legal environment, unsupported selectivity of existing legal instruments for CSR, limited awareness of companies on the CSR concept and abuse of the CSR concept through misleading reporting as well as advertisements. Other weaknesses include lack of sufficient funding, lack of communities' participation in CSR activities, lack of transparency, narrow perception of CSR initiatives, absence of monitoring, review as well as verification mechanisms and undefined scope of CSR activities and budgets.⁵³ Absence of legal sanctions and enforcement mechanisms also adds to the weaknesses of CSR.⁵⁴ These weaknesses do not make the Tanzanian CSR practices a suitable option in provision of public and social services compared to the existing corporate tax system.

⁵¹ In India it was made clear that, the CSR of companies under s. 135 Indian Company Act, 2013 is aimed at complementing the state revenue because the country is poor.

⁵² An example is the purchase of expensive vehicles (Landcruisers, porsche cars, SUVs) for the Members of Parliament, Ministers and Presidents, in a country where schools, hospitals and roads are in shambles.

⁵³ Comprehensively see Shayo, D. "Corporate Social Responsibility and the Law in Tanzania: A Critical Examination of its Mandatory Nature." *Zanzibar Year Book of Law* 2017, Vol. 7, pp. 109-159.

⁵⁴ Even the mandatory CSR regime does not provide for clear sanctions, See Shayo, D. *Ibid.* pp. 141-142.

This implies that there is a need to improve the CSR practices and the corporate tax system in order to achieve a sufficient level of provision of public and social services in Tanzania.

4.3 Interdependence

Both CSR and corporate tax depend on income of particular companies. However, the issue is whether or not there is any interdependence between corporate tax and CSR. The answer to this issue is pragmatic. It has been observed that practices of compliance with corporate tax laws and adoption of CSR may depend on each other for better outcome(s). However, the major assumptions in interdependency of the two concepts are, first, that adoption of CSR is likely to enhance responsibility to pay taxes including corporate taxes; and second, that adoption of CSR is likely to come with some tax benefits to the company. Indeed, the best outcome is not guaranteed because at some point, benefits of CSR to corporate tax may be offset by tax benefits that accrue to the company as a result of CSR practices.

4.3.1 Improved Corporate Tax Compliance

Payment of taxes may be said to be one of the ethical and legal behaviors of business. This is because it is a fulfillment of a legal duty. In elucidating the relationship between compliance with corporate tax law and CSR, one needs to answer two questions. The first is whether or not the act of payment of corporate tax is in itself a CSR, and the second is, whether or not adoption of CSR can improve tax payment practices.

With regard to the first question a strict reading of tax laws found in many jurisdictions, including Tanzania, shows that tax laws do not cover CSR or even mention it. In relevant literature, for example, this has been described as a missing

link.⁵⁵ Notwithstanding this *lacuna*, the best answer to this question requires exploration of theoretical foundations of two schools of thought on CSR and contextualization of the same with the question at hand. While one of the schools considers CSR as an obligation which goes beyond fulfillment of the requirements of the law,⁵⁶ the other school considers CSR to be a concept that imposes more responsibility on companies; in that they are supposed to behave ethically and to contribute to economic development while considering interests of workers, local community and society.⁵⁷ In the first school of thought, CSR is viewed as doing something extra, which is self-imposed and should distinguish a particular company from other companies that are in the same business. In the second school of thought CSR is looked at as a holistic concept. In this school, CSR is about doing what is legally and ethically right. Fulfillment of legal obligations (obedience to law) is, therefore, considered to be part and parcel of CSR.⁵⁸

⁵⁵ Comprehensive on this see Desai, M. and Dharmapala, D. "Corporate Social Responsibility and Taxation: The Missing Link," *Leading Perspectives* (Winter 2006). See also Herman, U. "CSR und Steuerrecht: Steuerliches Verhalten im Lichte von CSR." In Walden & Depping, (Eds.), above note 27, p. 214.

⁵⁶ This school of thought dominates the developed (western) countries. See for instance, Brown, D. and Knudsen, J. "From Self-Regulation to Government Programs: CSR in European Welfare States," Paper presented to the CES Conference on 23 March, 2012, p. 3; compare McBarnet, D. "Corporate Social Responsibility Beyond the Law, through the Law, for the Law", in: McBarnet, D., Voiculescu, A. and Campbell, T. (eds.), above note 3, at pp. 11-12.

⁵⁷ See Kumar, A. and Tayal, P., "Corporate Social Responsibility and Companies Act 2013 – A Critical Analysis", Vol. 36 (12), *The Company Lawyer* 2015, p. 383. See also Gautam, R.. Integrating CSR into the Corporate Governance Framework: The Current State of Indian Law and Signposts for the Way Ahead, 2012, p. 334, available at: http://www.nseindia.com/research/dynaContent/CG_12.pdf. Accessed on 06.03.2016; compare it with, for example, Warhurst, A., "Corporate Citizenship and Corporate Social Investment." Vol 1, *Journal of Corporate Citizenship* 2001, at p. 61.

⁵⁸ See Carroll, A., "A Three Dimensional Conceptual Model of Corporate Performance", Vol. 4(4), *The Academy of Management Review* 1979, p. 500. Also Rühmkorf argues that CSR is partly law. For details, see Rühmkorf, A., *Corporate*

On the basis of the foregoing, it is argued here that in both schools of thought, payment of taxes (of corporate taxes, in particular) may be regarded as CSR, although, the reasoning is not the same.

In relation to the first school of thought, payment of taxes, in the first place, would not be regarded as CSR in itself. It would be regarded as doing that which the law requires. It follows that since every company, which receives income in Tanzania is obliged to pay corporate tax, a company that pays corporate tax cannot be considered to have done any CSR. The company must do something else over and above corporate tax compliance.⁵⁹ What could this be? The OECD Guidelines for Multinational Enterprises state, *inter-alia*, that:

... enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation.⁶⁰

Social Responsibility, Private Law and Global Supply Chains, Cheltenham and Northampton: Edward Elgar Publishing, 2015, p. 10.

⁵⁹ See Hermann, U., "CSR und Steuerrecht: Steuerliches Verhalten im Lichte von CSR", in Walden & Depping, (Hrsg.) above note 27, at pp. 214-215.

⁶⁰ See OECD, Guidelines for Multinational Enterprises, 2011, XI. Taxation, p. 60. Available in the internet at: <https://www.oecd.org/daf/inv/mne/48004323.pdf>. Accessed on 09.09.2019.

A commentary on taxation at the same page makes it categorical that Corporate Citizenship (CC)⁶¹ in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax law, cooperate with the authorities and give relevant information to tax authorities as required by law.⁶² This explanation from the OECD does not leave room for CSR in the sense of voluntary actions. It should also be noted that the Tanzanian tax law does not leave room for voluntary tax payments. Doing so would contravene provisions of article 138 (1) of the Constitution of URT, which prohibits payment of tax without a clear provision of the law.

CSR aspects may come in if one examines issues like the manner in which financial transactions are arranged under which corporate taxes are paid as well as aspects of tax planning. All these are issues which may avoid the mandate of the tax law. Despite this, it is argued here that such transactions cannot escape aspects of ethics and morality, which are part and parcel of CSR. A number of scholars have identified schemes utilized by corporations to avoid taxes. Benari, for example, identifies three types of tax schemes, namely, the financial transaction schemes,⁶³ geographical location schemes,⁶⁴ and cost of goods' schemes.⁶⁵

⁶¹ See Matten, D. and Crane, A. "Corporate Citizenship: Towards an Extended Theoretical Conceptualization", Vol. 30(1), *Academy of Management Review* 2005, p. 166; see also Schneider, A., "Reifegradmodell CSR – eine Begriffsklärung und – abgrenzung" in: Schneider, & Schmidpeter, (eds.), above note 26, p. 21.

⁶² OECD, Guidelines for Multinational Enterprises, above note 84, at pp. 60-61.

⁶³ These include practices such as use of debt buying, over payment and use of dividends. Debt financing is a method of transferring profits to low tax jurisdictions which involves intra-group loans, comprehensive on this see Zucman, G. "Taxing Across Borders: Tracking Personal Wealth and Corporate Profits." *Journal of Economic Perspective* 2014, 28(4): 121-148, 126. Debt financing by mining companies operating in Tanzania was reported in the Makinikia Report, see Ikulu, Makinikia Committee's Report Summary (note 1), p. 17.

⁶⁴ These include practices such as use of tax havens and outward domestication. Tax havens are described as financial conduits that in exchange for a fee, use their one

He argues further that companies use a combination of such schemes to create a complex scheme. To qualify as a tax avoidance scheme, the cardinal principle is that it must have the only purpose of reducing the tax bill.⁶⁶ It should be noted that tax avoidance, unlike tax evasion, is legal.⁶⁷

Tax avoidance schemes are, normally, associated with multinational companies. This fact finds support in Tanzania as well whereby the *Makinikia* Committee's Report, which involved multinational companies, revealed the prevalence of such practices.⁶⁸ The reason for such practices in multinational

principal asset – their sovereignty – to serve a non-resident constituency who bring a demand for extremely low tax rates comprehensive on this see Fisher, J. "Fairer Shores: Tax Havens, Tax Avoidance and Corporate Social Responsibility," *Boston University Law Review* 2014, 94:338-365, pp. 343 et seq. Outward domestication is a way of transferring assets across borders to countries with lower tax rates, comprehensive on this see Benari, G. *Tricky Tax: Two Tax Avoidance Schemes Explained*. Washington DC: Financial Transparency Coalition, p. 3. Available in the Internet at: <https://financialtransparency.org/reports/tricky-tax-two-tax-avoidance-schemes-explained/>. Accessed on 11th September 2019.

⁶⁵Comprehensive on this concept see Law, J. and Smullen, J. (Eds.) *Transfer Pricing., A Dictionary of Finance and Banking*. Oxford: Oxford University Press, 2008; see also Hanlon, M., Mills, L. and Slemrod, J. *An Empirical Examination of Corporate Tax Non-Compliance*. Working Paper. University of Michigan, 2005. See also Benari, G. *Tricky Tax: Two Tax Avoidance Schemes Explained*. Washington DC: Financial Transparency Coalition, p. 4. Available in the Internet at: <https://financialtransparency.org/reports/tricky-tax-two-tax-avoidance-schemes-explained/>. Accessed on 11th September 2019.

⁶⁶This principle was established in the famous decision of the House of Lords in *WT Ramsay Ltd v IRC* [1982] AC 300, (1981) 54 TC 101.

⁶⁷It refers to a legal way of reducing tax payment, Fisher, J. "Fairer Shores: Tax Havens, Tax Avoidance and Corporate Social Responsibility," *Boston University Law Review* 2014, 94:338-365, pp. 339-341.

⁶⁸The *Makinikia* Committee's Report, for instance, revealed that transfer pricing is being used by the multinational mining companies in Tanzania, see Ikulu, *Makinikia Committee's Report Summary*, above note 13 at pp. 15-16.

companies is said to be that they find them lucrative and legal.⁶⁹ Consequently, directors and managers of some of these companies have attempted to justify these practices by arguing that by doing so they act in fulfillment of their fiduciary duties owed to the company and the shareholders.⁷⁰ However, it is argued taxing companies, especially the successful multinational companies, is one of the most progressive forms of taxation, in which companies must pay their fair share of taxes, according to their means, because corporate tax is enormously important to developing countries.⁷¹ The practice of tax avoidance by multinationals allows them to prosper unequally at the expense of the countries from where they derive their economic value.⁷² On this basis, in 2015, the G20 states led by OECD released the Base Erosion and Profit Shifting (BEPS) Action Plan with the aim of reforming the international taxation rules which would ensure taxation of multinational companies, where economic activities take place and where value is created.⁷³ The discussions on the implementation of BEPS Plan are ongoing. Furthermore, tax avoidance strategies are regarded as being ethically and morally wrong for they obscure the shared trust between regulators and regulated and that they undermine the positive business culture.⁷⁴

⁶⁹The practice of tax avoidance by multinational corporations is also discussed comprehensively in Fisher, J. "Fairer Shores: Tax Havens, Tax Avoidance and Corporate Social Responsibility," *Boston University Law Review* 2014, 94:338-365.

⁷⁰See *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (Mich. 1919). Comprehensive on this see Chaffee, E. and Davis-Nozemark, K. "Corporate Tax Avoidance and Honoring the Fiduciary Duties Owed to the Corporation and its Stockholders," *Boston College Law Review* 2017, 58:1425-1481, 1440 et seq.

⁷¹See Oxfam, Oxfam Media Briefing: Africa: Rising for the Few, 2nd June 2015, p. 4.

⁷²Ibid. p. 5.

⁷³See OECD, Action Plan on Base Erosion and Profit Shifting, available in the Internet: <http://www.oecd.org/ctp/BEPSActionPlan.pdf>. Accessed on 24.09.2019.

⁷⁴See Chaffee, E. and Davis-Nozemark, K. "Corporate Tax Avoidance and Honoring the Fiduciary Duties Owed to the Corporation and its Stockholders," Vol 58, *Boston College Law Review* 2017, at pp. 1440 et seq.

Thus, it may be argued that a company which pays corporate tax without involving itself in such schemes will be assumed to have acted not only in compliance with the law, but also ethically and morally right.

Regarding notions of CSR compliance a company, which does not engage in aggressive tax planning (ATP)⁷⁵ or does not engage any of the schemes already mentioned may be assumed to passively practice CSR. The practice of aggressive tax planning as well as employment of tax avoidance schemes is associated with loss of government revenue, erosion of the tax base, unfair tax treatment of companies, loss of tax morale and even unfair competition between companies of the same rank.⁷⁶ In general, these practices have bad effects not only to the governments but also to the other companies.⁷⁷ In this way, CSR becomes important because it improves ethics and morals of companies, which, in turn, assures proper compliance with tax laws.

In relation to the second school of thought which holds that CSR includes observance of the law, it is easier to link compliance with corporate tax law with CSR. That means, the very act of paying tax, which is fulfillment of a legal duty is a CSR. Furthermore, avoidance of practices such as aggressive tax planning and resort to schemes which seek to lower the tax bill are also applicable to

⁷⁵ Aggressive tax planning (ATP) is a term which means: taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems. "See European Commission," Aggressive tax planning indicators, Final Report, Taxation papers, Working Paper No. 71-2017, p. 21. Available in the Internet at: https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_papers_71_atp_pdf. Accessed on 09.09 2019.

⁷⁶ Compare European Commission, *ibid*.

⁷⁷ See Hay, Johanna, "Kampf gegen aggressive Steuerplanung und – hinerziehung BEPS – Base erosion and profit shifting: Wende im internationalen Steuerrecht?" In: *Der Betrieb*, Heft 13, 2013, pp. 21-22.

such companies. This explanation leads to the conclusion that the second issue, already raised, has been answered in the affirmative. That is to say, adoption of CSR can improve tax payment practices. This argument falls in line with two empirical studies on the relationship between tax compliance and CSR. The first came out with findings that the higher level of CSR performance of a firm lowers the likelihood of tax avoidance,⁷⁸ while the second found out that the higher level of CSR disclosure of a corporation lowers the level of corporate tax aggressiveness.⁷⁹ Contrary to these findings, other scholars have argued that there is lack of empirical evidence proving that companies with good CSR reports or high CSR indexes pay more taxes.⁸⁰

Practices invoked by the Tanzanian mining companies raise doubts because the companies which were involved always published very good CSR and sustainability reports indicating that they have adopted various CSR programmes. However, one

⁷⁸ Comprehensive see Lanis, R. and Richardson, G., "Corporate Social Responsibility and Tax Aggressiveness: A Test of Legitimacy Theory." Vol. 26(1), *Accounting, Auditing & Accountability Journal*, 2012, at pp. 75-100.

⁷⁹ Comprehensive see Lannis, R. and Richardson, G. "Is Corporate Social Responsibility Performance Associated with Tax Avoidance?" 127(2), *Journal of Business Ethics*, 2015, at pp. 439-57. See also Hoi, C., et al., "Is Corporate Social Responsibility (CSR) Associated with Tax Avoidance? Evidence from Irresponsible CSR Activities." *Accounting Review* 2013, June, p. 33, available in the Internet at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2280558. Accessed on 11.09.2019; see also Müller, A. and Kolk, A., "Responsible Tax as Corporate Social Responsibility: The Case of Multinational Enterprises and Effective Tax in India." *Business and Society* 2012, pp. 1-41.

⁸⁰ See Davis, A., et al. "Taxes and Corporate Accountability Reporting: Is Paying Taxes Viewed as Socially Responsible?" Working Paper, Eugene: Lundquist College of Business, University of Oregon, 2013, p. 22. Available as pdf in the Internet at: https://www.researchgate.net/publication/272289980_Taxes_and_Corporate_Sustainability_Reporting_Is_Paying_Taxes_Viewed_as_Socially_Responsible. Accessed on 11.11.2019. See also Ylönen, M. and Laine, M. "For Logistical Reasons Only? A Case Study of Tax Planning and Corporate Social Responsibility Reporting." Vol. 33, *Critical Perspectives on Accounting* 2014, pp. 5-23.

should be able to identify one salient feature of the CSR of the mining companies, which might account for the consequences. The *Makinikia* Committee's Report noted that provision of social services to the surrounding communities in mining areas is a contractual requirement under the Mining Development Agreements. Therefore, it was a contractual obligation. On the higher level of abstraction, such a practice may have had nothing to do with ethical aspects of CSR. The Committee also noted that this was a very small contribution from companies compared to their incomes and they called for a proportional rate to be fixed by law.⁸¹ The same argument can be made in relation to mandatory CSR. However, it is very difficult to associate such argument with voluntary CSR.

Expectation of higher corporate tax compliance as a result of adoption of CSR finds justifications in the arguments about living and demonstrating the ethical values. Hodges and Steinholz argue that:

It is no longer enough for businesses to have perfunctory codes of ethical practice. The organizations that claim to live by such statements of ethical values must be genuine; in other words, the values must be lived and demonstrated in the decision-making and behaviours of everyone working for the organization daily.⁸²

⁸¹ See the *Makinikia* Committee's Report Summary, above note 13, pp. 40-41.

⁸² See Hodges & Steinholz, *Ethical Business Practice and Regulation*, above note 25, p. xxxi.

On this basis, the living and demonstration of ethical values in decision-making in tax matters of a corporation raises an inevitable expectation that adoption of CSR enhances the morale of the company to obey laws, including those on corporate tax. A good example of how CSR may achieve this can be found in the area of anti-corruption. Many companies have adopted anti-bribery and anti-corruption policies as part of their CSR.⁸³ These policies are likely to minimize or eliminate corruption altogether in the area of taxation. As the ethics of the company grow, practices such as tax evasion, and aggressive tax planning as well as tax avoidance schemes are expected to be either eliminated or minimized.⁸⁴ Hence, it may be submitted that CSR (especially voluntary CSR) is likely to enhance corporate tax compliance.

4.3.2 Superiority of Corporate Tax over CSR

The fact that companies comply with tax laws to the letter and the state collects revenue does not in itself guarantee that the collected money will be used to address public and social concerns. In some cases, the collected revenue may be misused, misallocated or even embezzled by the state. This is true in situations where the governments are ineffective or corrupt. Brautigam and colleagues argue that the main reason for tax avoidance in developing countries is likely to be lack of trust in the government because taxes are misused.⁸⁵

⁸³ For example, Anglo Gold Ashanti has developed an anti-corruption policy for the company, see AGA, *AngloGold Annual Integrated Report 2012*, p. 90.

⁸⁴ Tax evasion and tax avoidance are not compatible with CSR, see Hermann, U., "CSR und Steuerrecht: Steuerliches Verhalten im Lichte von CSR", in Walden & Depping, (Hrsg.) above note 27. p. 218; See also Avi-Yonah, "Corporate Taxation and Corporate Social Responsibility," in N.Y.J.L.B.2014, p. 12. See also Chaffee, E. and Davis-Nozemark, K. "Corporate Tax Avoidance and Honoring the Fiduciary Duties Owed to the Corporation and its Stockholders," Vol. 58, *Boston College Law Review* 2017, at p. 1481.

⁸⁵ See Brautigam, D. *et al*, *Taxation and State Building in Developing Countries*. Cambridge, Cambridge University Press, 2008, p. 4.

Avi-Yonah argues further that in such situations, strategic tax planning by corporations may be regarded as a positive behavior because funds may be put into better use in the private sector.⁸⁶ He submits that this provides a reason for acceptability of CSR, the assumption being that under such circumstances, corporations will be better suited than such governments in addressing social problems.⁸⁷

The argument by Avi-Yonah is only acceptable where CSR is well planned in the sense that companies have policies, plans and programmes on CSR, which are developed and commonly owned by the companies and the society. It also presupposes that companies will have enough funds to finance social and public matters affecting people. Moreover, companies will have to budget for the CSR in a way that does not result into aggressive tax planning or tax avoidance. For instance, if a company is proactive to see needs of the community surrounding the place where it does business, it may then proceed to engage itself with needs of that community through sustainable projects and programmes, which are jointly developed by the company and people through their local government representatives. However, this does not take away their duty to pay corporate taxes. In this way, the company expenditure in such projects may be arranged in such a way that they qualify for deductions available under tax laws of the particular jurisdiction. Thus, it is argued that the state should tax corporations, not only in order to encourage small tax payers to improve their tax compliance behavior, but also to prove their legitimacy by showing that they are able to use tax revenues for

⁸⁶ Avi-Yonah, "Corporate Taxation and Corporate Social Responsibility", p. 27.

⁸⁷ Ibid.

greater good of society.⁸⁸ Furthermore, it is argued that the ability of a government to tax and raise tax revenue affirms its legitimacy and right to rule, which in case of a developing country may also reflect a growing economic strength.⁸⁹ In case of Tanzania, it is submitted here that, the growth in economic the strength has an impact of reducing dependency on donors and reinforces self-reliance.

In the final analysis, even with corporations, which are well equipped with CSR policies and plans, the government responsibility to provide social and public services to people is not replaced but rather, only complemented. Furthermore, given resources that the government has in terms of human and other resources, it may be argued that it is better suited to deal with social problems compared to companies. The reasoning of Indian authorities may be of help in this area. Contesting validity of tax deductions in respect of CSR expenditure, it is argued, among others, that the objective of CSR is to share burden of the Government in providing social services by companies.⁹⁰ Thus, the solution to the problem of misallocation and corruption should be solved partly by tasking the government to be highly responsible during elections and establishing strong institutions to

⁸⁸ Compare Hansen, R. "Corporate Social Responsibility and Tax Avoidance in Sub-Saharan Africa", above note 11 at p. 22; compare also Keen, M. *Taxation and Development-Again*, International Monetary Fund Working Paper No. 12/220, 2012, p. 22. Available in the Internet at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2169764. Accessed on 12.09.2019.

⁸⁹ Compare Salter, D., "Taxing Constraints on Developing Countries and the Global Economic Recession," in: Faundez, J. and Tan, C. (Eds.) *International Economic Law, Globalization and Developing Countries*, Edward Elgar, Cheltenham/Northampton, 2010, pp. 139.

⁹⁰ See paragraph 13.2 of the Explanatory Notes to the Provisions of the Finance (No. 2) Act, 2014, Circular No. 01/2015, F. No. 142/13/2014- TPL, Government of India Ministry of Finance Department of Revenue, dated 21st January 2015, available at http://www.taxmann.com/applicationsoftware/pdf/circular/circular1_2015.pdf; Accessed on 13th September 2019.

fight corruption from and within the government system. If companies resort to tax evasion and avoidance on the pretext that they have adopted CSR programmes, which provide social and public services to society, they are just breaching not only the tax laws but also provisions of the constitution by avoiding their constitutional duty to pay taxes imposed by the law.

4.4 Promotion of CSR through Tax Benefits

In most tax jurisdictions, tax benefits may be obtained in form of provision of tax holidays, exemptions from tax, and allowable tax deductions, among others. However, among objectives of tax benefits under various tax laws, there is promotion of certain activities such as local and foreign investments in certain areas or sectors of the economy.⁹¹ The issue, therefore, is whether or not the existing corporate tax law regime in Tanzania promotes CSR. To answer this issue, the Income Tax Act is examined in order to establish its potential to promote CSR. The discussion narrows down to only two types of incentives under the Income Tax Act, namely exemptions from tax and allowable deductions, for this purpose.

4.4.1 Exemptions from Tax

Tax exemptions are provided for under the provisions of section 10 of ITA. This provision empowers the Minister for Finance to exempt any income or class of income accrued in or derived from the United Republic of Tanzania from tax. The exemption may be full or partial. The second schedule to the ITA provides a list of income or classes of incomes which are exempt from tax. A scrutiny of the list indicates that exemptions are in respect of recipients of certain types of income such as salaries and

⁹¹ In Tanzania for instance, tax benefits in favour of local and foreign investments are generally found in the Tanzania Investment Act, 1997.

allowances of the president, diplomats, amounts in respect of scholarships as well as educational grants, foreign living allowances and incomes derived from investments exempted under the Export Processing Zones Act, among others. It is also argued that tax exemptions are granted to non-profit organisations because they are not part of the tax base and they undertake activities out of motives of public service and from which they derive no personal monetary gains.⁹² Above all, regulation 3(1) of the Income Tax Regulations 2004⁹³ restricts the powers of the Minister to grant or vary exemptions under section 10 of ITA. Such power has to be exercised only for purposes of alleviating the effects of an emergency and with prior approval of the Cabinet. Regulation 3(2) of the same Regulations defines an emergency to mean any occasion for which assistance is needed to supplement local efforts to (a) save lives and protect property and public health and safety, or (b) to lessen or avert the threat of a catastrophe.

Companies which are liable to pay corporate taxes do not fit in any of the mentioned categories. Thus, although section 10(2) of ITA empowers the Minister for Finance to amend the list by a ministerial order, this kind of incentive does not fit promotion of CSR by companies. Furthermore, regulation 3 of the Income Tax Regulations 2004 which restricts the powers of the Minister to occasional matters of emergency does not favour sustainable or long-term CSR plans and programmes in this respect. It limits the application of this provision to ad hoc events, something which, if used in the context of companies, is more associated with philanthropy.

⁹² Comprehensive on this view see Kelley, M. "A New Meaning for Tax Exemption?" *Journal of Church and State* 1983, 25(3), pp. 415-426.

⁹³ Income Tax Regulations 2004, G.N. No. 464 published on 5th November 2004, made under s. 129 of the Income Tax Act 2004.

4.4.2 Allowable Deductions

Since CSR entails an expense rather than income to a particular company, rules governing deductibility of expenditures appear to be highly appropriate in this area. These rules are critically assessed in the light of their usefulness in promotion of CSR in Tanzania. Deductions may be either fully or partly allowable deductions. The material provisions under which CSR expenditures may qualify as deductible expenses include sections 11, 15 and 16 of ITA.

4.4.2.1 Deductibility under Section 11 of ITA

The general principles on deduction of expenses in calculating the taxable income of a person are provided for in section 11 of ITA. Section 11(1) of ITA comes with the first pre-condition that deductions shall be in accordance with the income tax law. Furthermore, section 11 (2) of ITA requires that all expenditures incurred “wholly and exclusively in the production of income from business or investment” should be deductible. Nevertheless, the issue is whether or not CSR expenditure may be regarded as an expenditure incurred wholly and exclusively in production of income from business or investment. In 2015, the Court of Appeal of Tanzania made a decision on matters, which are directly related to CSR and emphasized on this requirement.⁹⁴

Given interpretation from this decision, it is appropriate to conclude that in the absence of express provisions to the contrary, CSR expenditure should be regarded as expenditure incurred wholly and exclusively in production of income from business or investment. For this reason, if the other conditions are fulfilled, CSR expenditure is deductible under section 11(2) of ITA.

⁹⁴ See Massati J.A., Oriyo, J.A., and Mugasha, J.A, above note 37.

However, the provisions of section 11(3) of ITA may affect the presented conclusion. This provision prohibits deduction of expenditure of a capital nature. The expenditure of capital nature is defined under section 11(4) of ITA to mean an expenditure, which, *inter-alia*, secures a benefit lasting longer than twelve months. Critically examined, CSR expenditure may be regarded as falling under this provision. In an ideal voluntary CSR, it can be observed that CSR has two beneficiaries, i.e., the corporation and the community/society. To the corporation, CSR brings reputation and sustainability both of which exceed the duration of 12 months. To the community/society, CSR may come with long lasting projects such as schools, water supply, health centers/hospitals and construction of infrastructures, among others. Although the provision is unclear as to who is the beneficiary envisaged (whether the corporation or the community) in relation to CSR, indeed, it may be very easy to exclude the CSR expenditure from the ambits of section 11(2) of ITA.

4.4.2.2 Deductibility under Sections 15 and 16 of ITA

Section 15 of ITA provides for an avenue whereby the expenditure on the environment, among other expenditures,⁹⁵ may be deductible. Since environment forms an indispensable category in the CSR discourse, environmental related CSR expenses may be regarded as deductible if they fulfill preconditions of this provision.

In *Bulyanhulu Gold Mine Ltd. v. Commissioner General (TRA)*,⁹⁶ the Court of Appeal of Tanzania held that costs for rehabilitation of environment at the close of mining operations are allowable expenditure under section 15 (1) (2) (3) of ITA provided that the

⁹⁵ Other expenditures which may be deductible under this provision include expenditure on agricultural improvement and expenditure on research and development and environmental expenditure, see s. 15(1) ITA.

⁹⁶ Massati J.A., Oriyo, J.A., and Mugasha, J.A., above note 37.

conditions therein are met. It went further to state that such expenditure should be carried forward in the following year of income. This means that such expenditure is deductible if it is actually incurred, or provided for, with the approval of the Commissioner of Income Tax.

Section 16 of ITA provides an avenue for deductibility of expenses in the form of donations made by companies under certain circumstances. In particular, it states that the amounts contributed during the year of income to a charitable institution referred to in subsection (8) of section 64 of ITA or to social development project, or any donation made under section 12 of the Education Fund are deductible expenses. Furthermore, it states that the amounts paid to local government authority, which are statutory obligation to support community development projects, are as well deductible expenses.

Pre-conditions set out in section 16 of ITA were also partly discussed by the Court of Appeal of Tanzania in *Bulyanhulu Gold Mine Limited v. Commissioner General* [(TRA)⁹⁷]. In this appeal one of the issues was whether or not contributions to community development around the mine were an allowable expenditure under provisions of section 16 (1) (a) and (c) of ITA. The court held that such expenditures are deductible if the conditions therein are satisfied.

There are CSR expenses which may benefit from section 16 of ITA. Practice shows that corporations donate on several occasions to different individuals and institutions for various causes including construction and maintenance of hospitals,

⁹⁷ Ibid.

schools, contributions to the poor and the sick, contributions to local governments and so forth. Corporations have, on various occasions, contributed to charitable institutions, sponsored education and supported local governments. However, most of such contributions were based on voluntarism, except for the statutory contributions to local governments for community development projects. Furthermore, donations to the Education Fund⁹⁸ are common. Notable contributions have originated from mining companies, which appear to have a strategic view of their donations and contributions. It may be observed that some donations and contributions from the corporations may not qualify for a deduction under section 16 of ITA. Section 16 of ITA covers contributions to charitable institutions referred to under section 64 (8) of ITA or those made to social development projects, or donations made under section 12 of the Education Fund Act and amounts paid to local government authority which are statutory obligations to support community development projects. Furthermore, section 16 (2) of ITA limits the amount of deduction made in respect of a contribution to a charitable institution to a maximum of only 2 percent of the person's income from the business calculated without a deduction under this section.

4.4.3 Implications of the Deductibility of CSR Expenses

The implications of the provisions of sections 11, 15 and 16 are that CSR expenses are deductible, if the conditions for deductibility are fulfilled. The type of CSR does not matter. In relation to sections 15 and 16 of ITA, it may be argued that although the decision of the Court of Appeal was made before the enactment of laws mandating CSR in the mining and oil and gas sectors, its principles apply to both mandatory CSR and voluntary

⁹⁸ This Fund is established under s. 4 of the National Education Fund Act, Act no. 9 of 2001 for deposition of grants or loans for improvement of the quality, access, and equality of education in Tanzania.

CSR. This is so because these laws did not make any provision in relation to treatment of CSR expenses. The position in Tanzania can be contrasted with the position of compulsory CSR under section 135 of the Indian Companies Act of 2013 in which it has been stated categorically that CSR expenses under the company law regime are not allowable deductions.⁹⁹ The implication of the Indian compulsory CSR expenditure is more of a hidden tax and hence, a second tax on the same profits; which amounts to double taxation. This argument may be supported by the argument by Friedman that businesses which foster social responsibility are in effect imposing taxes on themselves.¹⁰⁰

On the contrary, the Court of Appeal's line of interpretation is likely to encourage companies to align their CSR expenditures to provisions that allow deductibility. Consequently, the differences between voluntary CSR and compulsory CSR in relation to the net effect on the company's income becomes vague. Furthermore, the interpretation of CSR, something, which goes beyond the law also disappears. Flowing from this argument is a fact that deductibility of the CSR expenses has the effect of lowering tax revenues. Indeed, in such circumstances, there is a significant danger of tax avoidance arrangements. This tallies with the general observation, which has been made by various scholars that the connection between tax and CSR is that "high tax equals low CSR and vice

⁹⁹ See s. 13 of the Finance (No. 2) Act, 2014 (India). See also Circular No. 1/2015 of 21st January 2015 from the Ministry of Finance Department of Revenue (India). See also paragraph 13.2 of the Explanatory Notes to the Provisions of the Finance (No. 2) Act, 2014, Circular No. 01/2015, F. No. 142/13/2014- TPL, Government of India Ministry of Finance Department of Revenue, available in the Internet at: http://www.taxmann.com/applicationssoftware/pdf/circular/circular1_2015.pdf; Accessed on 13.09. 2019.

¹⁰⁰ See Friedman, M. "The Social Responsibility of Businessman is to Increase Its Profits", *New York Times Magazine*, September, pp. 122-26.

versa.”¹⁰¹ This observation presupposes two things. Either that the high taxes mean more revenue to finance social and public services so that there is little room left for CSR, or the high taxes will have left very little to the corporations to spend on CSR. Both arguments are plausible.

4.5 Communications/Reporting of Tax Payments?

Companies engage in voluntary CSR with a view to enhance their images or reputations. This is achieved by CSR communications and CSR reporting. Classifying the payment of corporate tax as CSR may come with consequences that companies should communicate to the public on their tax payments through reports with a view of gaining reputation, instead of making them confidential. Hansen argues that inclusion of tax parameters into existing CSR frameworks in which tax payments would be acknowledged as part of the CSR performance of a company could potentially decrease tax avoidance behavior and thus, assure more government revenue.¹⁰²

5. CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This article assessed the relationship between compliance with corporate tax law and adoption of CSR in Tanzania. In particular, it explored the theoretical and legal foundations of CSR and corporate tax in Tanzania. It established that although the theoretical and legal foundations of the two concepts differ, they have a similarity in one of their goals, namely provision of social and public services. This meeting point has both pros and cons. On the one hand, it is good that even companies contribute to the

¹⁰¹ See Hansen, R. “Corporate Social Responsibility and Tax Avoidance in Sub-Saharan Africa”, above note 11,, p. 76.

¹⁰² *Ibid.* p. 69.

social and public welfare of the people, but on the other hand, provision of social and public services is an area to be financed by corporate tax revenue through the state. Thus, proliferation of CSR programmes in the direction of provision of public and social services is an indication that the state has failed to provide such services.

Furthermore, it has been shown that the concerns of double taxation of the same income, which are connected to mandatory CSR of mining, petroleum and gas companies can easily be accommodated by provision of avenues for allowable deductions with respect to CSR expenditure in the Income Tax Act. Since there are no provisions in the laws imposing mandatory CSR, it is assumed that the Income Tax Act rules on deductible expenses apply to CSR expenses of such companies as well. It has been shown that, such rules apply to the companies engaged in voluntary CSR. There is a warning, however, that if this state of affairs continues, the state is likely to lose its legitimacy to collect tax revenue or in the alternative, corporations will become stronger than the state because as tax revenue falls, the state will also find it harder to spend on promotion of public and social services. It is submitted here that CSR should not be taken as a substitute for corporate tax because corporations have different missions and compared to the state, they lack democratic legitimacy to pursue public interests. Thus, in the area of provision of public and social services, CSR should only complement state efforts.

Finally, the article observes that while ethical and moral aspects of CSR may help to avoid aggressive tax planning in relation to multinational companies and local companies, inclusion of tax compliance theme in the CSR reports may improve compliance.

5.2 Recommendations

For the purposes of strengthening CSR practices and corporate tax compliance, the article recommends as follows:

1. That the state should reinforce its income tax laws in order to collect sufficient revenue to finance the social and public services instead of relying on the CSR of companies. This aspect should go hand in hand with prioritization of government expenditures on the social and public services.
2. The state should refrain from reliance on imposition of mandatory CSR because of its hidden tax element. The granting of allowable deductions in respect of CSR (even in cases of mandatory CSR) is unsound because the company cannot claim to do more than other companies to win a good image or reputation, if it gets allowable deductions in respect of CSR expenditures. Instead, the state should come up with a legislation on the mandatory CSR reporting, prescribing the content of CSR reports with hard consequences on false reporting or false CSR communications.
3. It is also recommended that, the legislation on CSR reporting should include a theme on companies' tax compliance practices.