



Legal Notice No. <u>xxxxxx</u>	
<u>THE INCOME TAX ACT</u> <u>(Cap. 470)</u>	
IN EXERCISE of the powers conferred by Section 12E(6) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations:	
THE INCOME TAX (SIGNIFICANT ECONOMIC PRESENCE TAX) REGULATIONS, 2025	
1. Citation and Commencement	These Regulations may be cited as the Income Tax (Significant Economic Presence Tax) Regulations, 2025.
2. Interpretation	<p>In these Regulations, unless the context otherwise requires –</p> <p>“digital asset” refers to any item of value that exists in a digital form and is owned or controlled electronically, which can be used, transferred, or traded.</p> <p>“digital marketplace” has the meaning assigned to it in the Act;</p> <p>“service” means a digital service or any service that is delivered or subscribed over the internet, an electronic network including through a digital marketplace.</p>
3. Application of Significant Economic Presence Tax	<p>(1) Significant economic presence tax shall apply to the income of a non-resident person derived or accrued in Kenya from the provision of services through a business carried out over the internet or an electronic network including through a digital marketplace.</p> <p>(2) A person shall be deemed to have significant economic presence in Kenya where the user of the service is in Kenya.</p> <p>(3) Significant economic presence tax shall be a final tax.</p>
4. Scope of Taxable Services	<p>Significant economic presence tax shall be applicable on the following services;</p> <p>(a) Downloadable digital content including downloadable mobile applications, eBooks and films;</p>



	<ul style="list-style-type: none">(b) subscription-based media including news magazines and journals;(c) streaming, listening, viewing or playing online digital content on any audio visual or electronic media including television shows, films, music, games, podcasts, webcasts and similar content;(d) software programmes including software, drivers, web site filters and firewalls;(e) electronic data management including cloud computing services, website hosting, online data warehousing, file sharing and similar services;(f) search engines and automated helpdesk services;(g) artificial intelligence services;(h) ticketing services for events, theatres, restaurants and similar services;(i) online education programmes including distance teaching programmes through pre-recorded media, eLearning, education webcasts, webinars, online courses and training services tailor made to suit the learners program.(j) services that link the supplier to the recipient including platforms for transport hailing, online travel, rental and accommodation marketplaces and any other platforms that facilitate the provision of services, goods or property.(k) transmission of data collected about users which has been generated from such users' activities on a digital marketplace, however monetized;(l) facilitation of any online payment including, money transfer services and exchange or transfer of digital assets;(m) any other service carried out over the internet or an electronic network including through a digital marketplace that is not exempt under the Act.
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5. Determination of User Location	<p>A user of a service shall be deemed to be located in Kenya if any of the following parameters are present -</p> <ul style="list-style-type: none">(a) The user accesses the digital interface through telecommunication or electronic devices from a terminal located in Kenya;(b) Payment for the services is made using a credit or debit facility provided by any financial institution or company in Kenya;(c) Services are acquired using an internet protocol address registered in Kenya or an international mobile phone country code assigned to Kenya; or(d) The user has a business, residential or billing address in Kenya.
6. Exemption from Significant Economic Presence Tax	<p>For the purpose of these Regulations, significant economic presence tax shall not apply to –</p> <ul style="list-style-type: none">(a) a non-resident person who offers the services through a permanent establishment in Kenya.(b) income chargeable under section 9(2) or under section 10 of the Act;(c) a non-resident person providing digital services to an airline in which the government of Kenya has at least forty-five percent shareholding.
7. Registration	<p>(1) A non-resident person without a permanent establishment in Kenya who provides a service to a user in Kenya shall make an application for registration under the simplified tax registration framework in the prescribed form.</p> <p>(2) The application under paragraph (1) shall include the following information -</p> <ul style="list-style-type: none">(a) the name of the applicant's business including its trading name;(b) the name of the contact person responsible for tax matters;(c) the postal and registered address of the business and its contact person;(d) the telephone number of the contact person;



	<p>(e) the electronic address of the contact person;</p> <p>(f) the websites or uniform resource locator of the applicant through which business is conducted;</p> <p>(g) the certificate of incorporation issued to the applicant's business; and</p> <p>(h) any other information that the Commissioner may require.</p> <p>(3) Upon registration, the Commissioner shall issue the applicant with a Personal Identification Number for the purpose of filing returns and payment of the tax.</p> <p>(4) The Commissioner may register a person who is eligible for registration under paragraph (1), where the person fails to register within the timelines stipulated in Section 8 of the Tax Procedures Act, Cap. 469B.</p> <p>(5) A person registered under these Regulations who ceases to provide services in Kenya shall apply to the Commissioner for deregistration in the prescribed form as stipulated in section 10 of the Tax Procedures Act, Cap. 469B.</p>
8. Appointment of a Tax Representative	<p>A non-resident person without a permanent establishment in Kenya who elects not to register in accordance with Regulation 7 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, Cap. 469B.</p>
9. Computation of tax	<p>(1) For the purposes of computing the tax under these regulations;</p> <p>(a) the taxable profit of a person liable to pay the tax shall be deemed to be ten per cent of the gross turnover; and</p> <p>(b) the rate of tax shall be thirty per cent of the deemed taxable profit.</p> <p>(2) Gross turnover shall be the income of a non-resident person derived from or accrued in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace and</p> <p>(a) in the case of the provision of the services, the payment received as consideration for the</p>



	<p>services; and</p> <p>(b) in the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the platform.</p> <p>(3) The gross turnover shall not include the value added tax charged for the service.</p>
10. Accounting and Payment	<p>A person liable to pay significant economic presence tax or its appointed Tax Representative shall submit a return in the prescribed form and remit the tax due on or before the twentieth day of the month following the end of the month in which the service was offered.</p>
11. Amendment of Returns	<p>(1) Amendment to a return submitted under these Regulations shall be in accordance with section 31 of the Tax Procedures Act, Cap. 469B.</p> <p>(2) Where an amendment results in an overpayment of tax, the amount overpaid shall be retained as a credit and offset against the significant economic presence tax payable in the subsequent tax period.</p> <p>(3) Where an amendment in paragraph (1) results in an overpayment and the non-resident person is ceasing business in Kenya, a refund will only be available if the non-resident person has a bank account with an institution registered and licensed under the banking Act, in Kenya and the transfer of the refund may be made into a holding company, a subsidiary or fellow subsidiary's banking account or account with a similar institution in Kenya, upon written notification to the Commissioner and indemnification of the Commissioner against any loss as a result of such instruction.</p>
12. Keeping of records	<p>A person required to deduct, account and remit the significant economic presence tax to the Commissioner under these Regulations shall be required to keep records in accordance with Section 23 of the Tax Procedures Act, Cap. 469B.</p>
13. Powers to collect tax from persons owing money to the taxpayer	<p>(1) The Commissioner may by notice in writing require any person including financial institutions, customers, agents or related parties to deduct all taxes due and remit the tax on behalf of the taxpayer in</p>



	<p>accordance with Section 42 of the Tax Procedures Act, Cap. 469B.</p> <p>(2) The Commissioner shall credit any amount paid by the person so appointed against the tax owed by the taxpayer.</p> <p>(3) A person appointed under paragraph (1) who without reasonable cause fails to comply with a notice or a requirement by the Commissioner under this Regulation shall be personally liable for the amount specified in the notice or requirement in accordance with Section 42 of the Tax Procedures Act, Cap. 469B.</p>
14. Penalties and Interest	<p>A person who fails to comply with the provisions of these Regulations will be liable to the penalties and interest prescribed under the Tax Procedures Act, Cap. 469B.</p>
15. Transitional Provisions	<p>A person registered under the Income Tax (Digital Service Tax) Regulations, 2020 shall be deemed registered under these Regulations.</p>
16. Revocation L.N. 207/2020	<p>The Income Tax (Digital Service Tax) Regulations, 2020 are revoked.</p>