



Legal Notice No. \_\_\_\_\_

## THE INCOME TAX ACT

(CAP. 470)

IN EXERCISE of the powers conferred by Section 3(2A) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations.

### THE INCOME TAX (DIGITAL SERVICE TAX) REGULATIONS, 2020

Citation and Commencement	<p>1. (1) These Regulations may be cited as the Income Tax (Digital Service Tax) Regulations, 2020.</p> <p>(2) These Regulations shall come into effect on 1<sup>st</sup> January 2021.</p>
Interpretation	<p>2. In these Regulations, unless the context otherwise requires –</p> <p>“Act” means the Income Tax Act, Cap 470;</p> <p>“digital marketplace provider” means a person who provides a platform that enables the direct interaction between buyers and sellers through a digital marketplace, website or other online applications;</p> <p>“digital marketplace” has the meaning assigned to it in the Act;</p> <p>“digital service” means any service that is delivered or subscribed over the internet or other electronic network where the delivery of the service is essentially automated;</p> <p>“digital service provider” means a person who provides digital services through a digital marketplace;</p> <p>“digital service tax agent” means an agent appointed under</p>



	<p>Section 42B of the Tax Procedures Act;</p> <p>“digital service tax collection service” means a tax collection service that identifies, deducts and remits digital service tax to the Commissioner;</p> <p>“payment service provider” means an entity that accepts, authenticates and processes payment transactions for merchants operating in the digital marketplace;</p> <p>“platform” means an application, website, or other internet-based content service used to transact or facilitate trade through an electronic system.</p>
Scope of Taxable Services	<p><b>3.</b> (1) Digital services upon which digital service tax shall be applicable shall include the following -</p> <ul style="list-style-type: none"><li>(a) streaming and downloadable services of digital content, including but not limited to movies, videos, music, applications, online games and e-books;</li><li>(b) transmission of data collected about users which has been generated from such users’ activities on a digital marketplace, however monetized;</li><li>(c) provision of a digital marketplace, website or other online applications that link buyers and sellers;</li><li>(d) subscription-based media including news, magazines and journals;</li></ul>



	<p>(e) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;</p> <p>(f) supply of search-engine and automated helpdesk services including supply of customized search engine services;</p> <p>(g) tickets bought for live events, theatres, restaurants e.t.c purchased through the internet:</p> <p>(h) online distance teaching via pre-recorded medium or e-learning, including online courses;</p> <p>(i) any other service provided or delivered through an online digital or electronic platform excluding any service whose payment is subject withholding tax under section 35 of the Act.</p> <p>(2) The services of a licensed financial service provider carrying out online services which facilitate payments, lending, or trading of financial instruments, commodities or foreign exchange shall not be digital services for the purposes of these Regulations.</p>
Digital Service Tax	<p>4. (1) Digital service tax shall apply to the income of a resident or non-resident person derived or accrued in Kenya from the provision of services through a digital marketplace.</p> <p>(2) Where a resident or non-resident person with a permanent establishment in Kenya provides digital services through a digital marketplace, the person shall offset the digital service tax paid against the tax payable for that year of income.</p>



<p>Determination of User Location</p>	<p><b>5.</b> (1) A person shall be subject to digital service tax if the person provides or facilitates provision of a service to a user who is located in Kenya.</p> <p>(2) A user of a digital service shall be deemed to be located in Kenya if any of the following parameters are present -</p> <ul style="list-style-type: none"><li>(a) The user accesses the digital interface from a terminal (computer, tablet or mobile phone) located in Kenya;</li><li>(b) Payment for the digital services is made using a credit or debit facility provided by any financial institution or company in Kenya;</li><li>(c) Digital services are acquired using an internet protocol address registered in Kenya or an international mobile phone country code assigned to Kenya;</li><li>(d) The user has business, residential or billing address in Kenya.</li></ul>
<p>Gross transaction value.</p>	<p><b>6.</b> (1) The digital service tax shall be imposed on the gross transaction value of the service which shall be -</p> <ul style="list-style-type: none"><li>(a) in the case of a digital service provider, the payment received as consideration for the services; and</li><li>(b) in the case of a digital marketplace provider, the commission or fee paid for the use of the platform.</li></ul> <p>(2) The transaction value of the service in paragraph (1) shall not include Value Added Tax charged for the service.</p>



<p>Accounting and Payment</p>	<p>7. (1) Payment of digital service tax shall be the liability of the digital service provider or any person that collects the payments for digital services.</p> <p>(2) Digital service tax shall be due and payable at the time of the transfer of the payment for the service to the service provider.</p> <p>(3) A non-resident person without a permanent establishment in Kenya may appoint a tax representative through in accordance with the provisions of Section 15A of the Tax Procedures Act, 2015 to account for the digital service tax.</p> <p>(4) Notwithstanding paragraph (2), where a non-resident person appoints a tax representative to account for the digital service tax, the tax representative shall remit the tax due to the Commissioner by the twentieth day of the month following the end of the month that the digital service was offered.</p> <p>(5) The Commissioner may appoint a digital service tax agent who shall deduct, account and remit the digital service tax to the Commissioner through a digital service tax collection service in the case of -</p> <ul style="list-style-type: none"><li>(a) a resident person and non –resident person with a permanent establishment in Kenya; and</li><li>(b) a non-resident who has not appointed a tax representative under paragraph (3).</li></ul> <p>(6) A digital service provider required to pay the tax through the appointed digital service tax agent, shall use -</p>
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	<p>(a) a payment service provider that is connected to a digital service tax collection service of an appointed digital service tax agent to process payments for its services; or</p> <p>(b) a payment service provider appointed by the Commissioner as a digital service tax agent.</p> <p>(7) A digital service provider or their tax representative shall be required to submit a return in the prescribed form indicating the value of transactions and the tax remitted by the twentieth day of the month following the end of the month that the digital service was offered.</p>
Keeping of records	<p><b>8.</b> A person required to deduct, account and remit the digital service tax to the Commissioner under these Regulations shall be required to keep records in accordance with section 23 of the Tax Procedures Act, 2015.</p>
Offences and Penalties	<p><b>9.</b> A person who fails to comply with the provisions of these Regulations may, in addition to the penalties prescribed under the Tax Procedures Act, 2015, be liable to restriction of access to the digital marketplace in Kenya until such obligations are fulfilled.</p>

**Hon. Amb. Ukur Yatani, EGH**  
***Cabinet Secretary for the National Treasury and Planning.***