

LEGAL NOTICE NO. 188

THE INCOME TAX ACT

(Cap. 470)

THE INCOME TAX (SIGNIFICANT ECONOMIC PRESENCE TAX)
REGULATIONS, 2026

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THE INCOME TAX ACT

(Cap. 470)

IN EXERCISE of the powers conferred by section 12E (6), the Cabinet Secretary for the National Treasury makes the following Regulations—

THE INCOME TAX (SIGNIFICANT ECONOMIC PRESENCE TAX) REGULATIONS, 2026

1. These Regulations may be cited as Income Tax (Significant Economic Presence Tax) Regulations, 2026. Citation.
2. In this Act, unless the context otherwise requires—
“service” means a digital service or other service that is delivered or subscribed over the internet or an electronic network including a digital marketplace. Interpretation.
3. (1) The significant economic presence tax shall apply to the income of a non-resident person that is derived or accrued in Kenya from the provision of services. Application of the tax.
(2) A non-resident person shall be deemed to have a significant economic presence in Kenya where the user of the service offered by the non-resident person is in Kenya.
(3) The significant economic presence tax shall be a final tax.
(4) The significant economic presence tax shall not apply to—
 - (a) the income of a non-resident person who offers services through a permanent establishment in Kenya;
 - (b) income chargeable to tax under section 9(2) or section 10 of the Act; or
 - (c) the income of a non-resident person providing services to an airline in which the Government has at least forty-five per cent shareholding.
4. The income derived from the following services shall be subject to significant economic presence tax— Taxable services.
 - (a) downloadable digital content including downloadable mobile applications, eBooks and films;
 - (b) subscription-based media including newsmagazines and journals;
 - (c) streaming, listening, viewing or playing online digital content on an audio-visual or electronic media including television shows, films, music, games, podcasts, webcasts and similar content;
 - (d) software programs including software, drivers, website 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, cinemas, restaurants and similar services;
- (i) online education programs including distance teaching programmes offered through pre-recorded media, eLearning, education webcasts, webinars, online courses and training services tailor-made to suit a learner's programme;
- (j) services that link suppliers to recipients including platforms for transport hailing, online travel, rental and accommodation marketplaces, and other platforms that facilitate provision of services, goods or property;
- (k) the monetisation, in any manner whatsoever, of data collected about users which is generated from such users' activities over the internet, electronic networks or digital marketplaces;
- (l) facilitation of online payments including money transfer services;
- (m) facilitation of the exchange or transfer of digital assets; and
- (n) any other service offered over the internet, an electronic network or digital market place that is not exempt under the Act.

5. A user of a service shall be deemed to be located in Kenya if—

- (a) the user accesses the service through a telecommunication or electronic device from a terminal located in Kenya;
- (b) payment for the service is made using a debit facility, credit facility or electronic payment system, including by way of transfer or withdrawal from a wallet provided by any person, financial institution or company in respect of the payment, in Kenya;
- (c) the service is acquired using an internet protocol address registered in Kenya;
- (d) the service is acquired through any network transmission or other electronic method of communication originating from Kenya;
- (e) the service is acquired through an international telephone country code assigned to Kenya; or
- (f) the user has a business address, residential address or billing address in Kenya.

Determination
of user location.

6. (1) A non-resident person without a permanent establishment in Kenya who provides a service to a user in Kenya shall apply to the Commissioner for registration under the simplified tax registration framework in the prescribed form.

Registration.

(2) An application under subregulation (1) shall be accompanied by the following information—

- (a) the name of the applicant's business including its trading name;
- (b) the name, telephone number, electronic address and postal address of the applicant's contact person in Kenya responsible for tax matters;
- (c) the postal and registered address of the applicant's business;
- (d) the websites or uniform resource locator of the applicant through which the applicant conducts business; and
- (e) the certificate of incorporation issued to the applicant's business.

(3) Upon registration, the Commissioner shall issue the applicant with a personal identification number for the purposes of filing returns and payment of tax.

(4) The Commissioner may register a person eligible to be registered under subregulation (2)(a) where the person fails to register within the periods specified in section 8 of the Tax Procedures Act.

Cap. 469B.

(5) A person registered under these Regulations who ceases to provide services in Kenya shall apply to the Commissioner in the prescribed form for deregistration in accordance with section 10 of the Tax Procedures Act.

7. A non-resident person without a permanent establishment in Kenya who elects not to be registered under regulation 6 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act.

Appointment of
tax
representatives.

Cap. 469B.

8. (1) For the purposes of computing tax under these Regulations—

Computation of
tax.

- (a) the taxable profit of a person subject to significant economic presence tax shall be deemed to be ten per cent of the person's gross turnover; and
- (b) the rate of tax shall be thirty per cent of the deemed taxable profit.

(2) The gross turnover of a person subject to significant economic presence tax shall be the income of the person derived from or accrued in Kenya through a business carried on over the internet or an electronic network, including a digital marketplace, and—

- (a) in the case of the provision of services, the payment received as consideration for the services; and
- (b) in the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the digital marketplace.

(3) Gross turnover shall not include the value added tax charged for the service.

9. Each person liable to pay significant economic presence tax or the person's tax representative shall submit to the Commissioner 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 income subject to the tax was derived from or accrued in Kenya.

Accounting and payment of tax.

10. (1) A person who has submitted a return to the Commissioner under regulation 9 may amend the return and submit the amended return in accordance with section 31 of the Tax Procedures Act.

Amended returns and refunds of overpaid taxes. Cap. 469B.

(2) Where an amended return results in an overpayment of tax, the amount overpaid shall be retained as a credit in favour of the person who overpaid the tax and—

- (a) shall be used to offset any significant economic presence tax payable in the subsequent tax period; or
- (b) where the person subject to significant economic presence tax is ceasing business in Kenya, the provisions of section 47 of the Tax Procedures Act shall apply.

11. Each person required to deduct, account for and remit to the Commissioner the significant economic presence tax shall keep records in accordance with section 23 of the Tax Procedures Act.

Records.

12. Section 42 of the Tax Procedures Act shall apply in any case where a person liable to pay significant economic presence tax has unpaid tax or the Commissioner has reasonable grounds to believe that the person will not pay the tax by the due date for the payment of the tax.

Cap. 469B.

Power to collect tax from person owing money to the taxpayer. Cap. 469B.

13. (1) The Income Tax (Digital Service Tax) Regulations are revoked.

Revocation and transitional provisions. Sub. Leg.

(2) A person who was registered under the revoked Regulations shall be deemed to have been registered under these Regulations.

(3) In this regulation—

“revoked Regulations” means Income Tax (Digital Service Tax) Regulations.

Dated the 12th August, 2026.

JOHN MBADI NG'ONGO,
Cabinet Secretary for the National Treasury.