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**Fresh Thinking Series Webinar | Digital Service Tax and Its
Implementation in Kenya | 5th March 2021 | 11:00 AM - 1:00 PM**



WEBINAR STARTS AT 11:05 AM

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Digital Service Tax (DST) (An overview on legal provisions)

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Legal Framework

- Finance Act, 2019 – Section 3 (3)(ba) introduced to define Digital marketplace.
- The Finance Act, 2020 - Section 12 E introduced
 - i. to cement enforceability of DST
 - ii. to define who is subject to DST
 - iii. Rate of 1.5% of gross transaction value
- On 25th September 2020, The Value Added Tax Regulations (Digital Market Supply Regulations, 2020) and Value Added Tax (Electronic Tax Invoices) Regulations 2020 were gazetted.
- On 2nd December 2020, the Income Tax (Digital Service Tax) Regulations, 2020 (the “**DST Regulations**”) was gazetted. Effective date 1st January 2021.



What is DST?

- It is a tax chargeable on income **derived or accrued in Kenya from services derived** from the digital marketplace (DST). (Sec.12E ITA).
- The **OECD** recognized the emerging tax challenges thus formulating the Inclusive framework on the Base Erosion and Profit Shifting (the “**BEPS Framework**”) that Kenya is a party to, in order to resolve them and develop measures for the implementation of DST.
- The Kenyan Government introduced DST of 1.5% of the gross transaction value (GTV) which took effect on 1st of January 2021.
- GTV is determined by;
 - **Consideration** received by digital service provider and
 - **Commission** or fees paid to, digital marketplace provider.

Definitions

- “**digital service**” means any service that is **delivered or provided** over a digital marketplace
- “**digital marketplace**” is defined as a platform that enables the **direct interaction** between buyers and sellers of goods services through electronic means.
- “**platform**” means any **electronic application** that allows digital service providers to be connected to user of the services, directly or indirectly and includes a website and mobile application.
- “**digital marketplace provider**” means a person who provides a digital **marketplace** platform.
- “**digital service provider**” means a person who provides digital **service** through a digital marketplace.

SCOPE OF CHARGEABLE SERVICE

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Scope of Chargeable Service

- **Downloadable** digital content including downloadable mobile applications, e-books and films;
- Over-the-top services including **streaming television** shows, films, music, podcasts and any form of digital content;
- Sale of, **licensing of**, or any other form of monetising data collected about Kenyan users which has been generated from the users' activities on a digital marketplace.
- Provision of a **digital marketplace**;
- **Subscription**-based media including news, magazines and journals;
- **Electronic data management** including website hosting, online data warehousing, file-sharing and cloud storage services;
- **Electronic booking** or electronic ticketing services including the online sale of tickets

Scope of Chargeable Service – Contd.

- Provision of **search engine** and automated held desk services including supply of customised search engine services;
- Online distance training through pre-recorded media or **e-learning** including online courses and training; and
- **Any other service** provided through a digital market place.



WHO IS ELIGIBLE FOR DST?

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Who is Eligible for DST?

- DST shall apply to **digital service providers** and **digital marketplace providers**.
- DST is paid by both **residents and non-residents** who are either:
 - i. Digital service providers who provide digital services listed **under Regulation 3** of the DST Regulations through a digital marketplace;
 - ii. Digital marketplace providers who provide **a platform that enables the direct interaction** between buyers and sellers of goods and services through electronic means; or
 - iii. Where a digital service provider is non-resident and **doesn't have a permanent establishments** in Kenya, they are required to have tax appointed representative who will be responsible to file their DST returns.

Services Exempt from DST

The regulations are specific that **DST does not apply** to:

- Online services **which facilitate payments**, lending or trading of financial instruments, commodities or foreign exchange carried out by a financial institution specified under the Fourth Schedule of the ITA or a financial service provider approved by CBK.
- Online services provided **by government** institutions.
- Services under Section 9(2) ITA- Income of certain non-resident such provision of **business of transmitting messages** by cable optical fiber, radio Tv broadcasting, VSAT, internet, satellite etc.
- **Withholding tax** (WHT) with respect to management and professional fees, dividends, royalty, rent, deemed interest, pension and winnings as provided for under Section 35 of ITA

IMPLEMENTATION

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How do we implement DST?

Simplified Tax Registration.- Non-resident without permanent establishment

- Registration is done online on the i-Tax platform and one follows promotes stage by stage by providing all requisite information required.
- Upon registration, the Commission shall issue an applicant with Personal Identification Number (PIN).
- They may also elect to appoint a tax representative who shall be responsible to declare and file their returns without registering.
- It is a Final tax.

Accounting and Payment

- The payment of DST shall be done by the digital service provider, the digital marketplace provider or the tax representative appointed per regulation 8.
- Return and payment due 20th of the following month.
- It is an advance tax for resident and non-resident providers with permanent establishment in Kenya.

How do we implement DST? – Contd.

Amendment of Returns

- A taxpayer is permitted to file amended returns as provided under the Tax Procedures Act, 2015.
- Where an amendment results in an overpayment of tax:
 - in the case of a non-resident persons **with no permanent establishments in Kenya**, the overpayment will be retained as a **credit that will be offset against** the digital service tax payable in the subsequent tax period;(hopefully there will be inconsistency issues and
 - in the case of **resident or non-resident persons with permanent establishments** in Kenya, the over paid tax shall **be refunded** in accordance with Section 47 of the Tax Procedures Act.

Maintenance, Filing and Record Keeping

- Tax payers are required to keep the relevant tax records as stipulated in the Tax Procedures Act, 2015.

Disclaimer

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If you require specific advice on this matter, please write to us through legal@oraro.co.ke.



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Thank you