Tax & Exchange Control

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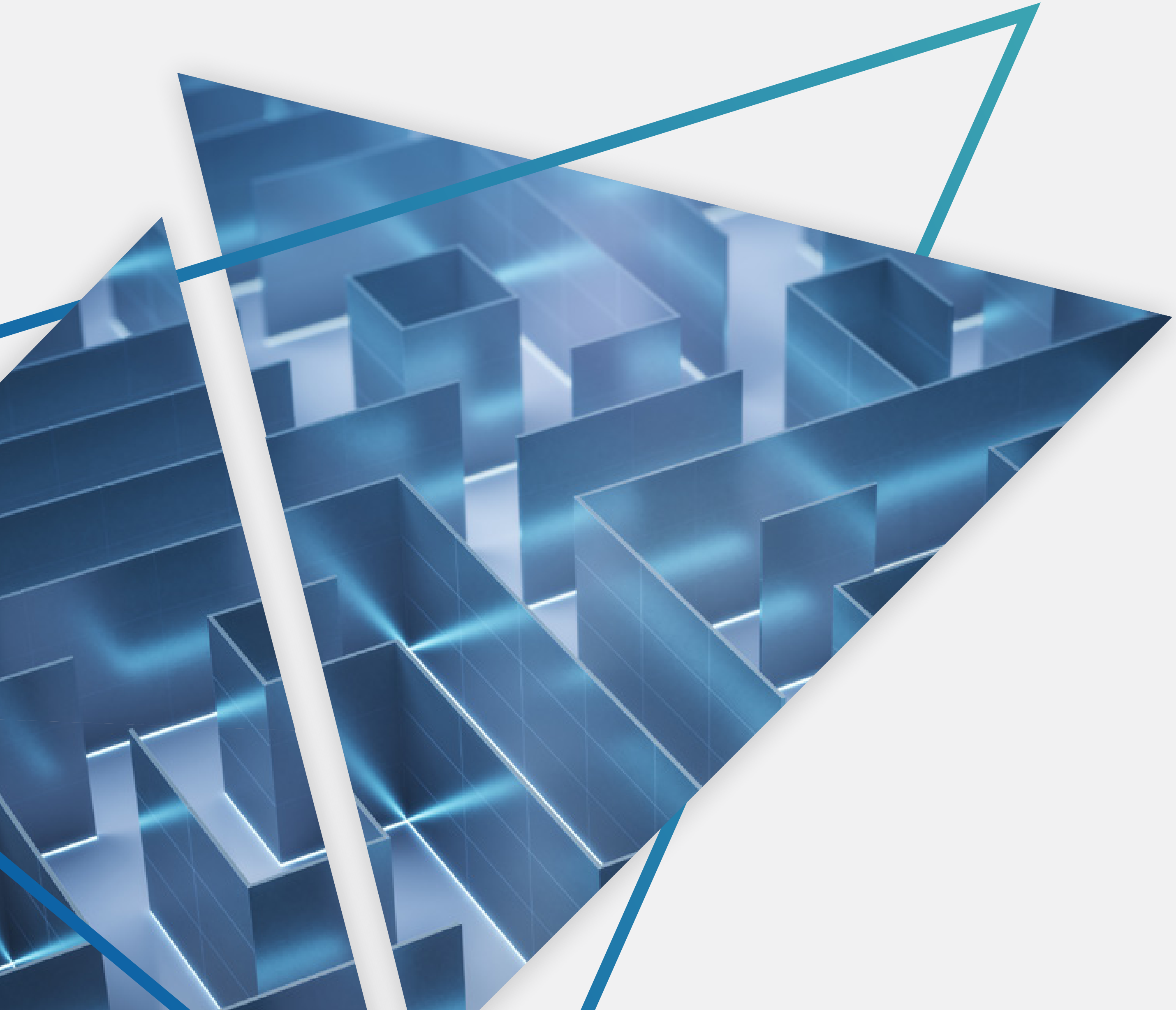

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Kenya issues draft Income Tax (Significant Economic Presence Tax) Regulations, 2025

The Commissioner of the Kenya Revenue Authority (KRA) on behalf of the Cabinet Secretary for National Treasury and Economic Planning has developed the draft Income Tax (Significant Economic Presence Tax) Regulations, 2025 (Regulations). The Regulations revoke the Income Tax (Digital Service Tax) Regulations, 2020. The Regulations seek to broaden the scope of services subject to significant economic presence tax (SEPT) and reflect the Finance Act, 2025 amendment that removed the KES 5 million turnover threshold previously applicable under the digital service tax regime.

Businesses operating through digital platforms should carefully review the new obligations and assess the potential impact on pricing, operations and customer engagement. In this alert, we highlight the key features and potential impact of the Regulations.

Overview of significant economic presence tax

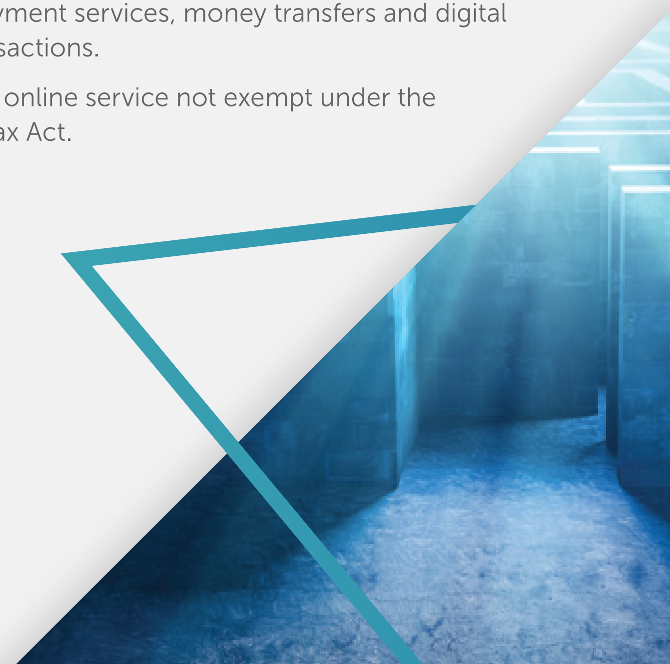
SEPT applies to non-resident persons deriving income from services provided over the internet or an electronic network, including through a digital marketplace. A non-resident is deemed to have a significant presence if the customer is in Kenya. A customer will be treated as located in Kenya if they: (i) access services from a device in Kenya; (ii) make payment through a Kenyan financial institution; (iii) use a Kenyan IP address or mobile code in Kenya; or (iv) provide a Kenyan business, residential, or billing address.

SEPT is a final tax and once paid, the non-resident will not be charged further tax on that income.

Services subject to SEPT

The Regulations list a wide range of services which shall attract SEPT. They include:

- Digital content and media: Downloadable apps, eBooks, films, subscription media and streaming services like music, films, games, podcasts.
- Software and data services: Software programmes, cloud computing, hosting, file sharing, and data warehousing.
- Digital platforms: Ride-hailing, travel booking, accommodation marketplaces and ticketing platforms.
- Emerging technologies: Artificial intelligence, search engines and automated helpdesks.
- Education and training: Online learning platforms, webinars and e-courses.
- User data and payments: Monetisation of user data, online payment services, money transfers and digital asset transactions.
- Any other online service not exempt under the Income Tax Act.



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Exemptions

SEPT shall not apply to a non-resident person offering services through a permanent establishment in Kenya; income from the business of transmitting messages in Kenya through cable, radio, optical fibre, internet, satellite, TV broadcasting, very small aperture terminal or any similar method; management or professional fees, royalties, interest and rents; and a non-resident person providing digital services to an airline in which the Government of Kenya has at least 45% shareholding.

Registration and compliance

A non-resident must register under the simplified tax registration framework or appoint a tax representative. Key registration details include the applicant's business and trading name; contact person responsible for tax matters; postal and registered address of the business and its contact person; telephone number of the contact person; electronic address of the contact person; websites or uniform resource locator of the applicant through which business is conducted; the certificate of incorporation issued to the applicant's business; and any other information the KRA Commissioner may require.

Upon registration, the KRA shall issue the applicant with a personal identification number for filing returns and payment of tax. Returns and payments are due before or on the twentieth of the following month. The tax payable is 30% of the taxable profit. Taxable profit is deemed to be 10% of the monthly gross turnover, with the resultant tax rate being 3% of the monthly gross turnover.

We provide a sample computation where a customer pays a service fee of USD 100 below:

TAX TYPE	BASIS OF TAX	EFFECTIVE TAX RATE	COMPUTATION (USD)	TAX AMOUNT (USD)
SEPT	30% of 10% of the gross service fee	3%	100 x 3%	**3**
Total amount payable by service provider				**3**
Value-added tax on digital market supplies	Service fee	16%	100 x 16%	**16**
Total amount payable by customer			100 + 16	**116**

Non-residents ceasing to provide services subject to SEPT in Kenya shall apply for deregistration as per the Tax Procedures Act (TPA).

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Enforcement and penalties

The KRA may issue an agency notice to a third party, such as a bank, to deduct and remit the SEPT on behalf of the taxpayer. Additionally, non-compliance attracts penalties and interest prescribed in the TPA. A taxpayer is required to keep records for a period of five years.

What can be changed?

The general public, professionals and stakeholders have been invited to submit comments to the KRA for consideration by 7 October 2025.

Stakeholders may wish to recommend the re-introduction of the KES 5 million turnover threshold that was removed by the Finance Act, 2025. This would ensure that only non-resident providers with meaningful business activity in Kenya are caught by the tax net, while smaller operators remain exempt. Such an approach would also align Kenya's regime with other jurisdictions, such as Nigeria, where the threshold is set at NGN 25 million (approximately KES 2 million).

In addition, stakeholders could also propose the introduction of a user threshold to clarify what constitutes a significant economic presence. Currently, the law requires registration even for companies serving a single Kenyan customer, which is impractical. India, for example, applies a threshold of 300,000 users under its significant economic presence rules, ensuring that only businesses with a substantial digital footprint are caught. A similar approach in Kenya would promote clarity and ease compliance.

Without the adoption of reasonable turnover and user thresholds, Kenya risks discouraging non-resident providers from offering services to Kenyan customers or, alternatively, creating compliance challenges that could undermine tax administration.

Conclusion

These draft Regulations underscore Kenya's determination to capture revenue from the growing digital economy. Non-resident companies offering online services to Kenyan customers should be proactive in understanding the rules, reviewing their tax position and preparing for implementation once the regulations are finalised.

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