



**Andrew Muma | Charles Kanjama**  
 I&M Bank House, 4th Floor  
 2nd Ngong Avenue  
 P. O. Box 528-00100, Nairobi, Kenya  
 Tel: +254-20-2716548, 2716549  
 Email: info@mumakanjama.com  
 VAT NO: 0157487E | PIN NO: P051183409Q

## UNDERSTANDING THE DIGITAL SERVICE TAX

### Introduction and Background

In 2019, the Kenya Revenue Authority (KRA) introduced the Digital Services Tax (“DST” or “the Tax”). In August 2020, the **Income Tax (Digital Services Tax) Regulations, 2020** (the “**Regulations**”) were published as a guide for implementation of the Tax. The Regulations came into effect on **2<sup>nd</sup> January 2021**. The reception of the Tax in the general public has been mixed, with many unsure of its actual mechanism or implications.

### Overview of the Tax

In a nutshell, the tax applies to **transactions made through a digital marketplace**. The Regulations define a digital marketplace as “a platform that enables direct interaction between buyers and sellers of goods and services through electronic means.” Examples of digital marketplaces include Facebook, Instagram, Twitter, Zoom, Google, Amazon, Jumia and Netflix. Key aspects of the Tax as drawn from the Regulations are as follows:

- a) **Tax Rate** – This has been set at **1.5% of the gross transaction value**.
- b) **Transaction Value** – This has been defined as the payment received by a service provider after performance of a digital service or the fee charged by a digital marketplace provider for using the digital platform. The Transaction Value in this case is **exclusive** of VAT.
- c) **What/Who is Being Taxed?**  
 Any income **accrued in Kenya** and **generated over a digital marketplace by any person or entity, whether resident or non-resident**, shall be liable to the Digital Services Tax. The Regulations list several digital services and transactions which shall be subject to the Tax including:
  - i) Downloadable digital content including downloadable mobile applications, e-books and films;
  - ii) Digital streaming content such as online TV shows, films, music and podcasts;
  - iii) 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;
  - iv) Provision of a digital marketplace;
  - v) Subscription-based media including news, magazines and journals; and
  - vi) Electronic data management including web-hosting, file-sharing and cloud services among others.
- d) **How are the payments to be made?** - The return and payment with respect to DST shall be due on or before the 20<sup>th</sup> day following the end of the month the digital service was offered.
- e) **Which digital services are exempt from DST?**
  - i) Online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange carried out by financial institutions or financial service providers authorised by the Central Bank of Kenya (basically financial transactions); and
  - ii) Online services provided by Government Institutions such as KRA.

### Some Concerns surrounding the implementation of the Tax

- a) Noting the inadequate sensitization done by KRA before the institution of the Tax, it is likely that a majority of the target taxpayers have not put in place the infrastructure necessary to comply with the tax.
- b) Many countries with developed DST systems have set “turnover thresholds” to align the expected tax collections to the cost of compliance. So far, KRA has not issued any such threshold for the Tax, which may lead to entities with low-value transactions experiencing administrative burdens.
- c) The Regulations stipulate that residents and non-residents accruing digital income in Kenya are liable to the Tax. However, Kenya is party to various income tax treaties which allow the taxing rights to remain with the residents’ home countries. An update needs to be made on the Regulations to reflect this.

### Conclusion

KRA is determined to tax all income accrued in Kenya, including the rather untested digital space. While DST may seem unpopular, it is here to stay. It is important to note that failure to comply with the Tax’s Regulations shall attract the relevant penalties prescribed under the **Tax Procedures Act, 2015**. At **Muma & Kanjama Advocates**, we have a dedicated team of Tax Advisors who are ready to guide and assist you in this and all other tax matters, to ensure that you stay informed and compliant. Talk to us. We shall be happy to hear from you.

Prepared by: *Olive Wambugu, Lawyer*  
 Email: [onyawira@mumakanjama.com](mailto:onyawira@mumakanjama.com)  
 Cell: +254 726604935

*Simaloi Christine, Tax Advisor*  
 Email: [csimaloi@mumakanjama.com](mailto:csimaloi@mumakanjama.com)  
 Cell: +254 705 728 059

*Charles Kanjama, Mg. Partner*  
 Email: [cnkanjama@yahoo.com](mailto:cnkanjama@yahoo.com)  
 Tel: 020-2716548/9