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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FIFTH SESSION (2021)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE VALUE
ADDED TAX (DIGITAL MARKET PLACE SUPPLY)
REGULATIONS, 2020

(Legal Notice No. 190 of 2020)

FEBRUARY, 2021

The Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 16 FEB 2021	DAY: <u>TUESDAY</u>
TABLED BY: <u>Hon. Kamket</u>	<u>CHAIR</u>
CLERK AT THE TABLE: <u>Lemuel M...</u>	

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ABBREVIATIONS

B2B	Business-to-Business
B2C	Business-to-Consumer
KRA	Kenya Revenue Authority
L.N.	Legal Notice
PwC	PricewaterHouseCoopers
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order
VAT	Value Added Tax

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning published in the Kenya *Gazette* the Value Added Tax (Digital Market Place Supply) Regulations, 2020 vide Legal Notice No. 190 of 2020 on 10th September, 2020. The Regulations were submitted to the Clerk of the National Assembly on 9th October, 2020 and tabled before the House on 15th October, 2020. The Regulations were subsequently referred to the Committee on Delegated Legislation for consideration.

The Regulations provide a mechanism for collection of VAT on suppliers made through digital marketplace.

In accordance with section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the regulation making authority on 1st February, 2021 in Mombasa. The delegation was led by Hon. (Amb.) Ukur Yattani, EGH, the Cabinet Secretary responsible for the National Treasury and Planning.

The Committee also held a meeting with a private sector stakeholder, PricewaterHouse Ltd., on 2nd February, 2021 in Mombasa. The delegation was led by Mr. Job Kabochi, a Director at the firm and accompanied by Ms. Edna Gitachu, Senior Manager.

Having scrutinized the Value Added Tax (Digital Market Place Supply) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2, the Value Added Tax Act (No. 23 of 2013) and the Statutory Instruments Act (No. 23 of 2013), the Committee resolved to approve it for reasons advanced in this Report.

The Report is submitted to the House in accordance with section 67 of the Value Added Tax, 2013 which requires that the Regulations made under this section of the Act be presented to the National Assembly for approval before they take effect.

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 199 and section 67 of the Value Added Tax, 2013 it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Value Added Tax (Digital Market Place Supply) Regulations, 2020 (Legal Notice No. 190 of 2020)**

HON. WILLIAM KASSAIT KAMKET, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiaty Constituency

KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. William Kamoti, M.P.

Rabai Constituency

Orange Democratic Movement

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

Orange Democratic Movement

The Hon. Jennifer Shamalla, M.P.

Nominated

Jubilee Party

The Hon. Munene Wambugu, M.P.
Kirinyaga Central Constituency
Jubilee Party

The Hon. Patrick Mariru, M.P.
Laikipia West Constituency
Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated
Wiper Democratic Movement – Kenya

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Mohamed Jimale
Clerk Assistant II

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE VALUE ADDED TAX (DIGITAL MARKET PLACE SUPPLY) REGULATIONS, 2020

2.1 Introduction

5. In exercise of the powers conferred by section 67 of the Value Added Act, 2013, the Cabinet Secretary for National Treasury and Planning made the Value Added Tax (Digital Market Place Supply) Regulations, 2020 vide Legal Notice No. 190 of 2020 on 10th September, 2020.
6. The Regulations were submitted to the Clerk of the National Assembly on 9th September, 2020 and tabled before the House on 15th October, 2020.

2.2 Object and Purpose of the Regulations

7. The Regulations seek to facilitate the implementation of VAT on supplies of services made in Kenya through a digital marketplace by non-resident suppliers who have no physical presence in the country. This will create a level playing field for all players by providing a mechanism for collection of consumption tax in the digital space and counter the unfair advantage previously enjoyed by non-resident suppliers over local suppliers.
8. The Regulations also seek to address the scope of taxable supplies in the digital marketplace.
9. The Regulations further provide a simplified framework for VAT registration of non-residents supplying taxable services in Kenya through a digital marketplace.

2.3 Policy Background

10. The National Assembly, through the Finance Act 2019, amended the Value Added Tax Act to clarify that supplies made through a digital marketplace are subject to VAT. This was informed by the current reality that digital technologies are quickly changing the way business is conducted. The increase in the digital space has opened the Kenyan market to the outside world allowing non-residents to supply digital services to Kenyan consumers without having a physical presence in Kenya.
11. Being a consumption tax, the Value added Tax is accounted for by the supplier. To allow equity and fairness, it was deemed necessary to provide a mechanism to allow the non-residential suppliers who account for a large percentage of the digital marketplace in Kenya to register and account for VAT on suppliers made in Kenya.

2.4 Overview of the Regulations

12. The Preliminary provides for citation and interpretation of terms used in the Regulations.
13. Regulation 3 provides for the scope of taxable supplies in the digital marketplace.
14. Regulation 5 provides for registration of tax and appointment of tax representatives in Regulation 6 and a simplified tax registration framework in Regulation 7.
15. Place and time of supply is provided for in Regulation 8 and 9 respectively.

16. Exemption from tax invoice is provided for in Regulation 10 and claim for input tax provided for in Regulation 11.
17. Amendment of returns pursuant to Section 31 of the Tax Procedure Act is provided for in Regulation 13 while offences and penalties are provided in Regulation 14.

2.5 Legal Basis for Scrutiny

18. The Committee examined the Value Added Tax (Digital Market Place Supply) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Act, 2013 and the Statutory Instruments Act (*No. 23 of 2013*).
19. The scrutiny was undertaken following the tabling of the Regulations before the House on 15th October, 2020 and subsequent referral to the Committee on Delegated Legislation.

2.6 Conferring with the Regulation Making Authority

20. In accordance with section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the regulation making authority on 1st February, 2021 in Mombasa. The delegation was led by Hon. (Amb.) Ukur Yattani, EGH, the Cabinet Secretary responsible for the National Treasury and Planning.
21. The Cabinet Secretary reiterated the objectives of the Regulations and informed the Committee that the increase in the utilization of digital space in businesses has opened the Kenyan market to the outside world allowing non-residents to supply digital services to Kenyan consumers without having a physical presence in Kenya. As a result, the local suppliers have been accounting for Value Added Tax on their supplies, while non-resident suppliers offering the same services in Kenya through digital platforms have not been accounting for VAT. This has not only denied the Government VAT revenue but also disadvantaged the local suppliers whose products become more expensive due to VAT component in the price.
22. To ensure equity and fairness, the Government through the Finance Act 2019, amended the Value Added Tax Act to clarify that supplies made through a digital marketplace are subject to VAT. This will enable the non-resident suppliers of services who account for a significant number of digital marketplace suppliers in Kenya, to register and account for VAT on supplies they make in Kenya.

2.7 Meeting with PriceWaterhouseCoopers Ltd.

23. The Committee also held a meeting with a private sector stakeholder, PriceWaterhouseCoopers Ltd., on 2nd February, 2021 in Mombasa. The delegation was led by Mr. Job Kabochi, a Director at the firm and accompanied by Ms. Edna Gitachu, Senior Manager.
24. He informed the Committee that –
 - (i) Regulation 16: Paragraph 3 of Part II of the First Schedule to the VAT Act, 2013 has exempted from VAT the supply of education services. It goes further to define education services to mean education provided by a pre-primary, primary, or secondary school, a technical college or university and an institution established

for the promotion of adult education, vocational training or, technical education. *There is need for clarity that these supplies shall preclude the supply of education services as laid out above whether or not they are provided through electronic means.*

Proposal: Amend Regulation 16(i) as follows:

“distance teaching through pre-recorded medium or e-learning including supply of online courses and training excluding education services which are exempted from VAT under paragraph 3 of Part II of the First Schedule to the VAT Act, 2013 regardless of whether such education services are provided through electronic means.”

- (ii) Regulation 17: The Regulations have not provided for application of tax on B2B supplies by a supplier who is already registered for VAT in Kenya by virtue of providing B2C supplies. Further, to minimize the risk of double taxation on B2C supplies, the Regulations should also provide clarity that B2C transactions taxed under the Regulations will not be subject to VAT on imported services.

Proposal: Amend Regulation 17 as follows:

- a. **“17 (2) Where the supply under regulation 3 (read as 16 in the published regulations) is made in a business-to-business transaction, the provisions of section 10 shall apply regardless of whether the non-resident supplier is registered for VAT or not.”**

- b. **Insert –**

“17 (6) Where the supply under regulation 3 (read as 16 in the published regulations) is made in a business to consumer transaction, the provisions of section 10 shall NOT apply.”

- (iii) Regulation 18: Section 34 (1) of the VAT Act, 2013 provides that a person shall be liable to be registered for VAT when the person has made or expects to make taxable supplies, the value of which is five million Kenyan Shillings or more in revenue over a period of 12 months. VAT is imposed on B2C supplies made on a digital marketplace (as stated in Regulation 17) by virtue of the supplies being deemed to have been made in Kenya, as such Section 34(1) of the VAT Act should apply. Separately, and in order to minimize any interpretational disputes, there is a need to clarify and to align the Regulations to the primary VAT legislation.

Proposal: Amend Regulation 18 (1) as follows:

Insert (c) “Registration under this Regulation is subject to value of taxable supplies threshold set out in Section 34 (1) of the VAT Act, 2013.”

- (iv) Regulation 23: Whilst it is expected that invoices will be issued in foreign currency, the Regulations have not indicated whether value of these invoices need to be translated into the Kenyan Shillings equivalent on the face of the invoice and, if so, the currency conversion rate to be applied on these invoices.

Proposal: Regulation 23 be amended to provide clarity on whether invoices raised in foreign currencies need to be translated to the Kenyan Shillings equivalent, the value of which is to be displayed on the face of the invoice. And, if so, the appropriate currency conversion rates to be used such as foreign exchange rates published by the Central Bank of Kenya.

- (v) Regulation 24: The Regulations have restricted claiming of tax by B2C suppliers for business-to-consumer transactions made on a digital marketplace. Section 17 of the VAT Act provides that a registered person shall be entitled to input tax deduction incurred on a taxable supply to the extent that the same was used to make taxable supplies. This Regulation, therefore, contradicts the primary VAT legislation on input tax deduction.

Proposal: Amend Regulation 24 as follows –

“A deduction of input tax by a supplier shall be allowed for business-to-consumer transactions for a supply on a digital marketplace, but only to the extent that the input tax was incurred to make taxable supplies in Kenya.”

Treasury’s Response: VAT on e-commerce was first introduced in September 2013 following the enactment of the current VAT Act, 2013. The Regulations under the VAT Act exempted tax on some of the educational services and some services relating to education account for VAT payment. Section 8 of the VAT Act requires non-residential suppliers of electronic services to account for VAT on their supplies to non-registered recipient in Kenya.

- (vi) Regulation 25: Section 16 of the Tax Procedures Act, 2015 (“the TPA, 2015”) places an obligation to collect and account for tax on the person making the supply notwithstanding the fact that that such a person has appointed a tax representative. The Regulations seem to contradict the TPA by imposing an obligation to collect and account for tax on the intermediary regardless of whether or not the supplier of the services is registered for VAT. Further, this requirement goes against the principles of basic contract law and agency/principal relationships.

Proposal: Amend Regulation 25(2) as follows:

“Where an intermediary whose place of business is in Kenya makes a digital marketplace supply on behalf of another person, the intermediary shall be required to charge and account for the VAT on such supplies in line with the VAT status of the principal.”

- (vii) Regulation 28: Section 67(2) of the VAT Act, 2013 provides that Regulations made under section 67 section shall be tabled before the National Assembly for approval before they take effect.

Proposal: Amend Regulation 28 to allow taxpayers sufficient time for registration following the approval of the Regulations as follows –

“a supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date these Regulations are approved by the National Assembly as envisaged by section 67 of the VAT Act, 2013.”

National Treasury’s response to PwC’s concerns

The National Treasury responded as follows to PwC’s concerns –

- (i) Regulation 16 relating to VAT on educational services: VAT on e-commerce was first introduced in September 2013 following the enactment of the current VAT Act, 2013. The Regulations under the VAT Act exempts tax on some of the educational services and some services relating to education account for VAT payment. Section 8 of the VAT Act requires non-residential suppliers of electronic services to account for VAT on their supplies to non-registered recipient in Kenya.
- (ii) Regulation 17 relating to business-to-business transactions: Businesses are required to pay for VAT and later claim for VAT refunds. The risk of double taxation does therefore not arise.
- (iii) Regulation 18 on currency conversion: the conversion of foreign currency is undertaken administratively for non-residents who transact business in Kenya.

3.0 COMMITTEE OBSERVATIONS

25. Having examined the Value Added Tax (Digital Market Place Supply) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (*No. 23 of 2013*), the Committee observed THAT –

3.1 Statutory Timelines – Section 11 of the SI Act

26. The Regulations were published in the gazette on 10th September, 2020 vide L.N. No. 190 of 2020, submitted to the Clerk of the National Assembly on 9th October, 2020 and laid on the table of the House on 15th October, 2020 being within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act, 2013.

3.2 Consultations/Public Participation – Section 5 of the SI Act

- 27.** Articles 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.
- 28.** The regulation making authority demonstrated that public participation was adequately undertaken by submitting copies of evidence stakeholder forums held in the development of the Value Added Tax (Digital Marketplace Supply) Regulations, 2020 (*Legal Notice No.190 of 2020*). Various stakeholders and industry players including Netflix, Bolt, KEPSA, Anjarwalla & Khanna Advocates and Africa Practice were consulted and their input factored in the final draft. A Public Notice dated Friday, 29th May, 2020 was also submitted.

3.3 Regulatory Impact Statement – Sections 6, 7 & 8 of the SI Act

29. The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7, and 8 of the Statutory Instruments Act, as they are not likely to impose significant costs on the community and will only affect the non-resident digital market suppliers who had for a long time enjoyed unfair 'exemption'.

4.0 COMMITTEE RECOMMENDATION

30. Having examined the Value Added Tax (Digital Market Place Supply) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Value Added Tax, Act (No. 35 of 2013) and the Statutory Instruments Act (No. 23 of 2013), **the Committee recommends that the House approves the said statutory instrument in accordance with section 67 of the Value Added Tax Act (No. 35 of 2013).**

Signed.....

Date.....

**THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

5.0 ANNEXURES

- 1. Adoption List**
- 2. Legal Notice No. 190 of 2020 and the Explanatory Memorandum**
- 3. Submission by PwC**
- 4. Committee Minutes**

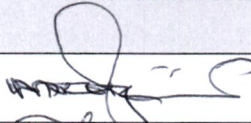
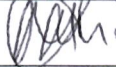


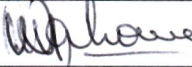
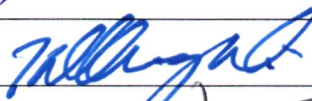
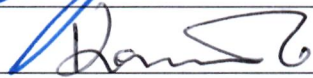
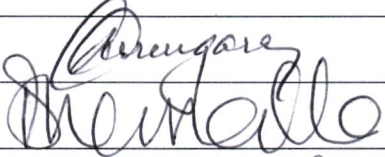
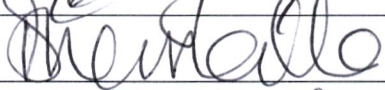


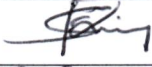
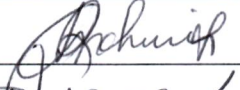
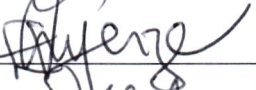
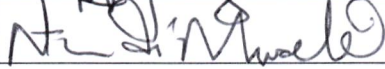
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on Consideration of the Value Added Tax (Digital Market Place Supply) Regulations, 2020 (Legal Notice No. 190 of 2020)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 4th February 2021

	HON. MEMBER	SIGNATURE
1.	Hon. Kamket Kassait, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Cecily Mbarire, MGH, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Robert Mbui, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Ronald Kiprotich Tonui, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	
12.	Hon. Gideon Mulyungi, MP	
13.	Hon. George Gitonga Murugara, MP	
14.	Hon. Jennifer Shamalla, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Patrick Kariuki Mariru, MP	
17.	Hon. (Dr.) Wilberforce Oundo, MP	
18.	Hon. Abdi K. Tepo, MP	
19.	Hon. William Cheptumo, MP	
20.	Hon. Sammy Seroney, MP	
21.	Hon. Robert Gichimu, MP	
22.	Hon. Edith Nyenze, MP	
23.	Hon. Tindi Mwale, MP	

MINUTES OF THE 7TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 4TH FEBRUARY, 2020 AT 10.00 A.M. IN BARAZA 2 CONFERENCE ROOM AT THE WHITESANDS RESORT, MOMBASA

PRESENT

1. **The Hon. Kassait Kamket, M.P.** - **Chairperson**
2. **The Hon. Muriuki Njagagua, M.P.** - **Vice Chairperson**
3. The Hon. Waihenya Ndirangu, M.P.
4. The Hon. Alice Wahome, M.P.
5. The Hon. Cecily Mbarire, MGH, M.P.
6. The Hon. Daniel Maanzo, M.P.
7. The Hon. Kamoti Mwamkale, M.P.
8. The Hon. Martha Wangari, M.P.
9. The Hon. Robert Mbui, M.P.
10. The Hon. Ronald Tonui, M.P.
11. The Hon. Timothy Wanyonyi, M.P.
12. The Hon. (Dr.) Wilberforce Oundo, M.P.
13. The Hon. Abdi Tepo, MP
14. The Hon. Edith Nyenze, M.P.
15. The Hon. George Murugara, M.P.
16. The Hon. Gideon Mulyungi, M.P. (*Virtual Attendance*)
17. The Hon. Jennifer Shamalla, M.P.
18. The Hon. Munene Wambugu, M.P.
19. The Hon. Patrick Mariru, M.P.
20. The Hon. Robert Gichimu, M.P.
21. The Hon. Sammy Seroney, M.P.
22. The Hon. Tindi Mwale, M.P.

ABSENT WITH APOLOGY

The Hon. William Cheptumo, M.P

IN-ATTENDANCE

National Assembly Secretariat

1. Mrs. Florence Abonyo-Atenyo - Director, Audit, Appropriations & Other Select Committees
2. Ms. Susan Maritim - Senior Clerk Assistant
3. Mr. Mohamed Jimale - Clerk Assistant II
4. Mr. Dima Dima - Principal Legal Counsel
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Mr. Anthony Wamae - Serjeant-at-Arms
7. Ms. Beatrice Auma - Personal Secretary
8. Ms. Mary Otieno - Office Superintendent
9. Ms. Yvonne Kiprop - Pupil

MIN.NO. /NA/CDL/2021/025 PRAYER AND PRELIMINARIES

The meeting commenced at 10.30 a.m. with the Prayers.

MIN.NO. /NA/CDL/2021/026 ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2020 (L.N. 188 OF 2020)

The Committee Members unanimously adopted the Report on the Consideration of the Value Added Tax (Amendment) Regulations, 2020 (L.N. 188 of 2020) as proposed and seconded by Hon. Jennifer Shamalla, M.P and Hon. Edith Nyenze, MP, respectively.

MIN.NO. /NA/CDL/2021/027 ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) REGULATIONS, 2020 (L.N. 189 OF 2020)

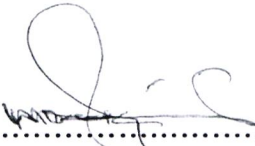
The Committee Members unanimously adopted the Report on the Consideration of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 (L.N. 189 of 2020) as proposed and seconded by Hon. Timothy Wanyonyi, M.P and Hon. Kamoti Mwamkale, MP, respectively.

MIN.NO. /NA/CDL/2021/028 ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE VALUE ADDED TAX (DIGITAL MARKET PLACE SUPPLY) REGULATIONS, 2020 (L.N. 190 OF 2020)

The Committee Members unanimously adopted the Report on the Consideration of the Value Added Tax (Digital Marketplace Supply) Regulations, 2020 (L.N. 190 of 2020) as proposed and seconded by Hon. Sammy Seroney, M.P and Hon. Waihenya Ndirangu, MP, respectively.

MIN.NO. /NA/CDL/2021/029 ADJOURNMENT

The meeting was adjourned at 12.05 p.m. to be reconvened the same day at 2.30 p.m. at the same venue.

Signed.....

Date.....10/2/2021.....

**HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

**MINUTES OF THE 3RD SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION
HELD ON TUESDAY, 2ND FEBRUARY, 2021 AT 10.30 A.M. IN BARAZA 2 CONFERENCE
ROOM AT THE WHITESANDS RESORT, MOMBASA**

PRESENT

1. **The Hon. Kassait Kamket, M.P.** - **Chairperson**
2. **The Hon. Muriuki Njagagua, M.P.** - **Vice Chairperson**
3. The Hon. Waihenya Ndirangu, M.P.
4. The Hon. Alice Wahome, M.P.
5. The Hon. Cecily Mbarire, MGH, M.P.
6. The Hon. Daniel Maanzo, M.P.
7. The Hon. Kamoti Mwamkale, M.P.
8. The Hon. Martha Wangari, M.P.
9. The Hon. Robert Mbui, M.P.
10. The Hon. Ronald Tonui, M.P.
11. The Hon. Timothy Wanyonyi, M.P.
12. The Hon. (Dr.) Wilberforce Oundo, M.P.
13. The Hon. Abdi Tepo, MP
14. The Hon. Edith Nyenze, M.P
15. The Hon. George Murugara, M.P.
16. The Hon. Gideon Mulyungi, M.P. (*Virtual Attendance*)
17. The Hon. Jennifer Shamalla, M.P.
18. The Hon. Munene Wambugu, M.P.
19. The Hon. Patrick Mariru, M.P.
20. The Hon. Robert Gichimu, M.P.
21. The Hon. Sammy Seroney, M.P.
22. The Hon. Tindi Mwale, M.P.

ABSENT WITH APOLOGY

The Hon. William Cheptumo, M.P

IN-ATTENDANCE

National Assembly Secretariat

1. Mrs. Florence Abonyo-Atenyo - Director, Audit, Appropriations & Other Select Committees
2. Ms. Susan Maritim - Senior Clerk Assistant
3. Mr. Mohamed Jimale - Clerk Assistant II
4. Mr. Dima Dima - Principal Legal Counsel
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Mr. Anthony Wamae - Serjeant-at-Arms
7. Ms. Beatrice Auma - Personal Secretary
8. Ms. Mary Otieno - Office Superintendent
9. Ms. Yvonne Kiprop - Pupil

The National Treasury and Planning

1. Hon. (Amb) Ukur Yattani, EGH- Cabinet Secretary
2. Mr. Geoffrey Malombe - Senior Deputy Director Accountant General
3. Mr. Livingstone Bumbe - Deputy Director/Economist
4. Ms. CPA Isabella Kogei - Asst. Director, Budget/Parliamentary Liaison Officer
5. Mr. Chris Huka - Adviser to the Cabinet Secretary
6. Mr. Paul J. Oyire - Communication Advisor to the CS

Kenya Revenue Authority

1. Mr. Maurice Oray - Deputy Commissioner, Corporate Tax Unit
2. Mr. Andrew Osiany - Chief Manager, Stakeholder engagements
3. Mr. Ephraim Munene - Manager, Policy and Tax Advisory
4. Ms. Sheila Aduvagah - Assistant Manager/Parliamentary Liaison Officer
5. Mr. Lindstrom Kinoti - Supervisor, Policy and Tax Advisory

PriceWaterhouseCoopers

1. Mr. Job Kabochi - Director, PwC
2. Ms. Edna Gitachu - Senior Manager, PwC

MIN.NO. /NA/CDL/2021/009

PRAYER AND PRELIMINARIES

The meeting commenced at 10.00 a.m. with the Prayers.

MIN.NO. /NA/CDL/2021/010

CONSIDERATION OF THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2020 (L.N. 190 OF 2020)

The Regulations seek to facilitate the implementation of VAT on supplies of services made in Kenya through a digital marketplace by non-resident suppliers who have no physical presence in the country. This will create a level playing field for all players by providing a mechanism for collection of consumption tax in the digital space and counter the unfair advantage previously enjoyed by non-resident suppliers over local suppliers.

The Regulations also seek to address the scope of taxable supplies in the digital marketplace.

The Regulations further provide a simplified framework for VAT registration of non-residents supplying taxable services in Kenya through a digital marketplace.

Submissions by PriceWaterhouseCoopers Ltd

PriceWaterhouseCoopers Ltd. led by Mr. Job Kabochi, a Director at the firm and accompanied by Ms. Edna Gitachu, Senior Manager made the following submissions –

- (i) Regulation 16: Paragraph 3 of Part II of the First Schedule to the VAT Act, 2013 has exempted from VAT the supply of education services. It goes further to define education services to mean education provided by a pre-primary, primary, or secondary school, a technical college or university and an institution established for the promotion of adult education, vocational training or, technical education. *There is need for clarity that these supplies shall preclude the supply of education services as laid out above whether or not they are provided through electronic means.*

Proposal: Amend Regulation 16(i) as follows:

“distance teaching through pre-recorded medium or e-learning including supply of online courses and training excluding education services which are exempted from VAT under paragraph 3 of Part II of the First Schedule to the VAT Act, 2013 regardless of whether such education services are provided through electronic means.”

- (ii) Regulation 17: The Regulations have not provided for application of tax on B2B supplies by a supplier who is already registered for VAT in Kenya by virtue of providing B2C supplies. Further, to minimize the risk of double taxation on B2C supplies, the Regulations should also provide clarity that B2C transactions taxed under the Regulations will not be subject to VAT on imported services.

Proposal: Amend Regulation 17 as follows:

a. **“17 (2) Where the supply under regulation 3 (read as 16 in the published regulations) is made in a business-to-business transaction, the provisions of section 10 shall apply regardless of whether the non-resident supplier is registered for VAT or not.”**

b. **Insert –**

“17 (6) Where the supply under regulation 3 (read as 16 in the published regulations) is made in a business to consumer transaction, the provisions of section 10 shall NOT apply.”

- (iii) Regulation 18: Section 34 (1) of the VAT Act, 2013 provides that a person shall be liable to be registered for VAT when the person has made or expects to make taxable supplies, the value of which is five million Kenyan Shillings or more in revenue over a period of 12 months. VAT is imposed on B2C supplies made on a digital marketplace (as stated in Regulation 17) by virtue of the supplies being deemed to have been made in Kenya, as such Section 34(1) of the VAT Act should apply. Separately, and in order to minimize any interpretational disputes, there is a need to clarify and to align the Regulations to the primary VAT legislation.

Proposal: Amend Regulation 18 (1) as follows:

Insert (c) “Registration under this Regulation is subject to value of taxable supplies threshold set out in Section 34 (1) of the VAT Act, 2013.”

- (iv) Regulation 23: Whilst it is expected that invoices will be issued in foreign currency, the Regulations have not indicated whether value of these invoices need to be translated into the Kenyan Shillings equivalent on the face of the invoice and, if so, the currency conversion rate to be applied on these invoices.

Proposal: Regulation 23 be amended to provide clarity on whether invoices raised in foreign currencies need to be translated to the Kenyan Shillings equivalent, the value of which is to be displayed on the face of the invoice. And, if so, the appropriate currency conversion rates to be used such as foreign exchange rates published by the Central Bank of Kenya.

- (v) Regulation 24: The Regulations have restricted claiming of tax by B2C suppliers for business-to-consumer transactions made on a digital marketplace. Section 17 of the VAT Act provides that a registered person shall be entitled to input tax deduction incurred on a taxable supply to the extent that the same was used to make taxable supplies. This Regulation, therefore, contradicts the primary VAT legislation on input tax deduction.

Proposal: Amend Regulation 24 as follows: “A deduction of input tax by a supplier shall be allowed for business-to-consumer transactions for a supply on a digital marketplace, but only to the extent that the input tax was incurred to make taxable supplies in Kenya.”

- (vi) Regulation 25: Section 16 of the Tax Procedures Act, 2015 (“the TPA, 2015”) places an obligation to collect and account for tax on the person making the supply notwithstanding the fact that that such a person has appointed a tax representative. The Regulations seem to contradict the TPA by imposing an obligation to collect and account for tax on the intermediary regardless of whether or not the supplier of the services is registered for VAT. Further, this requirement goes against the principles of basic contract law and agency/principal relationships.

Proposal: Amendment of Regulation 25(2) as follows:

“Where an intermediary whose place of business is in Kenya makes a digital marketplace supply on behalf of another person, the intermediary shall be required to charge and account for the VAT on such supplies in line with the VAT status of the principal.”

- (vii) Regulation 28: Section 67(2) of the VAT Act, 2013 provides that Regulations made under section 67 shall be tabled before the National Assembly for approval before they take effect.

Proposal: Amend Regulation 28 to allow taxpayers sufficient time for registration following the approval of the Regulations as follows –

“a supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date these Regulations are approved by the National Assembly as envisaged by section 67 of the VAT Act, 2013.”

National Treasury’s response to PwC’s concerns

The National Treasury responded as follows to PwC’s concerns –

- (i) Regulation 16 relating to VAT on educational services: VAT on e-commerce was first introduced in September 2013 following the enactment of the current VAT Act, 2013. The Regulations under the VAT Act exempts tax on some of the educational services and some services relating to education account for VAT payment. Section 8 of the VAT Act requires non-residential suppliers of electronic services to account for VAT on their supplies to non-registered recipient in Kenya.
- (ii) Regulation 17 relating to business-to-business transactions: Businesses are required to pay for VAT and later claim for VAT refunds. The risk of double taxation does therefore not arise.
- (iii) Regulation 18 on currency conversion: the conversion of foreign currency is undertaken administratively for non-residents who transact business in Kenya.

Committee Observations

Having examined the Regulations, the Committee observed THAT –

1. Statutory Timelines – Section 11 of the SI Act

The Regulations were published in the gazette on 10th September, 2020 vide as L.N. No. 190 of 2020, submitted to the Clerk of the National Assembly on 9th October, 2020 and laid on the table of the House

on 15th October, 2020 being within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act, 2013.

2. Consultations/Public Participation – Section 5 of the SI Act

Articles 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.

The regulation making authority demonstrated that public participation was adequately undertaken by submitting copies of evidence stakeholder forums held in the development of the Value Added Tax (Digital Marketplace Supply) Regulations, 2020 (*Legal Notice No.190 of 2020*). Various stakeholders and industry players including Netflix, Bolt, KEPSA, Anjarwalla & Khanna Advocates and Africa Practice were consulted and their input factored in the final draft. A Public Notice dated Friday, 29th May, 2020 was also submitted.

3. Regulatory Impact Statement – Sections 6, 7 & 8 of the SI Act

The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7, and 8 of the Statutory Instruments Act, as they are not likely to impose significant costs on the community and will only affect the non-resident digital market suppliers who had for a long time enjoyed unfair 'exemption'.

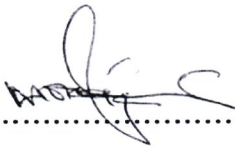
Committee Resolution

Having examined the Value Added Tax (Digital Market Place Supply) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Value Added Tax, Act (No. 35 of 2013) and the Statutory Instruments Act (No. 23 of 2013), the Committee resolved to approve the said statutory instrument in accordance with section 67 of the Value Added Tax Act (No. 35 of 2013).

The decision to approve was proposed by Hon. Robert Mbui, M.P and seconded by Hon. Tindi Mwale, M.P.

MIN.NO. /NA/CDL/2021/011 ADJOURNMENT

The meeting was adjourned at 1.45 p.m. to be reconvened the same day at 3.00 pm at the same venue.

Signed.....

Date.....10/2/2021.....

HON. KASSAIT KAMKET, M.P.

(CHAIRPERSON)



MINUTES OF THE 2ND SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON MONDAY, 1ST FEBRUARY, 2021 AT 2.30 P.M. IN BARAZA 2 CONFERENCE ROOM AT THE WHITESANDS RESORT, MOMBASA

PRESENT

1. **The Hon. Kassait Kamket, M.P.** - **Chairperson**
2. **The Hon. Muriuki Njagagua, M.P.** - **Vice Chairperson**
3. The Hon. Waihenya Ndirangu, M.P.
4. The Hon. Alice Wahome, M.P.
5. The Hon. Cecily Mbarire, MGH, M.P.
6. The Hon. Daniel Maanzo, M.P.
7. The Hon. Kamoti Mwamkale, M.P.
8. The Hon. Martha Wangari, M.P.
9. The Hon. Robert Mbui, M.P.
10. The Hon. Ronald Tonui, M.P.
11. The Hon. Timothy Wanyonyi, M.P.
12. The Hon. (Dr.) Wilberforce Oundo, M.P.
13. The Hon. Abdi Tepo, MP
14. The Hon. Edith Nyenze, M.P.
15. The Hon. George Murugara, M.P.
16. The Hon. Gideon Mulyungi, M.P. (*Virtual Attendance*)
17. The Hon. Jennifer Shamalla, M.P.
18. The Hon. Munene Wambugu, M.P.
19. The Hon. Patrick Mariru, M.P.
20. The Hon. Robert Gichimu, M.P.
21. The Hon. Sammy Seroney, M.P.
22. The Hon. Tindi Mwale, M.P.

ABSENT WITH APOLOGY

The Hon. William Cheptumo, M.P

IN-ATTENDANCE

National Assembly Secretariat

1. Mrs. Florence Abonyo-Atenyo - Director, Audit, Appropriations & Other Select Committees
2. Ms. Susan Maritim - Senior Clerk Assistant
3. Mr. Mohamed Jimale - Clerk Assistant II
4. Mr. Dima Dima - Principal Legal Counsel
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Mr. Anthony Wamae - Serjeant-at-Arms
7. Ms. Beatrice Auma - Personal Secretary
8. Ms. Mary Otieno - Office Superintendent
9. Ms. Yvonne Kiprop - Pupil

The National Treasury and Planning

1. Hon. (Amb) Ukur Yattani, EGH - Cabinet Secretary
2. Mr. Geoffrey Malombe - Senior Deputy Director Accountant General
3. Mr. Ronald Inyangala - D/Director, Financial Sectoral Affairs Department
4. Mr. Livingstone Bumbe - Deputy Director/Economist
5. Ms. CPA Isabella Kogei - Asst. Director, Budget/Parliamentary Liaison Officer
6. Mr. Chris Huka - Adviser to the Cabinet Secretary
7. Mr. Paul J. Oyire - Communication Advisor to the CS

Kenya Revenue Authority

1. Mr. Maurice Oray - Deputy Commissioner, Corporate Tax Unit
2. Mr. Andrew Osiany - Chief Manager, Stakeholder engagements
3. Mr. Ephraim Munene - Manager, Policy and Tax Advisory
4. Ms. Sheila Aduvagah - Assistant Manager/Parliamentary Liaison Officer
5. Mr. Lindstrom Kinoti - Supervisor, Policy and Tax Advisory

Kenya Depositors Insurance Corporation

1. Mohamud A.Mohamud - Chief Executive Officer
2. Ms. Eunice Kitche-Oduor - Head of Legal

Capital Markets Authority

1. Mr. Jairus Muaka - Snr. Manager, Legal Framework
2. Ms. Josephine Kang'ong'a - Manager, Regulatory Framework

PricewaterHouseCoopers

1. Mr. Job Kabochi - Director, PwC
2. Ms. Edna Gitachu - Senior Manager, PwC

MIN.NO. /NA/CDL/2021/005

PRAYER AND PRELIMINARIES

The meeting commenced at 2.35 p.m. with Prayers.

MIN.NO. /NA/CDL/2021/006

CONSIDERATION OF THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2020 (L.N. 188 OF 2020)

The Committee was informed that the Regulations seek to amend the Value Added Tax Regulations, 2017 by deleting Regulation 9, which required that a registered person who makes a taxable supply shall, at tax invoice at the time of supply, furnish the purchaser with a tax invoice.

Committee Observations

The Committee observed THAT –

1. Statutory Timelines – Section 11 of the SI Act

The Regulations were published in the gazette on 25th September, 2020 vide as L.N. No. 188 of 2020, submitted to the Clerk of the National Assembly on 9th October, 2020 and laid on the table of the House on 15th October, 2020 being within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act, 2013.

2. Consultations/Public Participation – Section 5 of the SI Act

Articles 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.

The regulation making authority demonstrated that public participation was adequately undertaken by submitting evidence of stakeholder forums held in the development of the Regulations.

3. Regulatory Impact Statement – Sections 6, 7 & 8 of the SI Act

The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7, and 8 of the Statutory Instruments Act, as they are not likely to impose significant costs on the community and will only affect persons registered under Section 34 of the Value Added Tax, Act (No. 35 of 2013).

Committee Resolution

Having examined the Value Added Tax (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2), Laws of Kenya, the Value Added Tax Act (No. 23 of 2013) and the Statutory Instruments Act (No. 23 of 2013), the Committee resolved to approve the said statutory instrument in accordance with section 67 of the Value Added Tax Act, (No 35 of 2013).

The decision to approve was proposed by Hon. George Murugara, M.P and seconded by Hon. Edith Nyenze, M.P.

MIN.NO. /NA/CDL/2021/007

CONSIDERATION OF THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) REGULATIONS, 2020 (L.N. 189 OF 2020)

The Regulations provide a legal framework to govern the use of Electronic Tax Registers in accordance with Section 43(4) of the Value Added Tax Act (No. 23 of 2013) in order to provide for the interpretation, scope of application, use of the register, tax invoices and transmissions thereof, obligations of the user and creates offences for non-compliance and contravention.

The Regulations also seek to enforce the VAT compliance and minimize fraud and tax evasion by obligating a registered business to generate a tax invoice.

The use of electronic tax register by registered persons will provide for standardization and uniformity of tax invoices generated and enhance effective compliance and enforcement measures by minimizing VAT fraud. The use of electronic tax registers will also ensure enhanced administration of VAT.

Committee Observations

The Committee observed THAT –

1. Statutory Timelines – Section 11 of the SI Act

The Value Added Tax (Electronic Tax Invoice) Regulations, 2020 were published in the gazette on 10th September, 2020 vide as L.N. No. 189 of 2020, submitted to the Clerk of the National Assembly on 9th October, 2020 and laid on the table of the House on 15th October, 2020 being within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act, 2013.

2. Consultations/Public Participation – Section 5 of the SI Act

The regulation making authority demonstrated that public participation was adequately undertaken by submitting copies of evidence stakeholder forums held in the development of the Value Added (Electronic Tax Invoice) Regulations, 2020 (*Legal Notice No.189 of 2020*) in compliance with the law.

The Kenya Revenue Authority sought views from the public and stakeholders through a Public Notice dated Friday, 29th May, 2020. The Authority received feedback from the stakeholders who were in support of the proposed Regulations with few amendments. Taking into consideration the advances in technology, the stakeholders recommended review of some aspects of the Regulations which were incorporated in the final draft.

3. Regulatory Impact Statement – Sections 6, 7 & 8 of the SI Act

The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7 and 8 of the Statutory Instruments Act, as they are not likely to impose significant costs on the community and will only affect persons registered under Section 34 of the Value Added Tax Act (No. 35 of 2013).

Committee Resolution

Having examined the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2), Laws of Kenya, the Value Added Tax Act (No. 23 of 2013) and the Statutory Instruments Act (No. 23 of 2013), the Committee resolved to approve the said statutory instrument in accordance with section 67 of the Value Added Tax Act, (No 35 of 2013).

The decision to approve was proposed by Hon. Alice Wahome, M.P and seconded by Hon. Martha Wangari, M.P.

MIN.NO. /NA/CDL/2021/008 ADJOURNMENT

The meeting was adjourned at 5.15 p.m. to be reconvened the following day at 10.00 a.m. at the same venue.

Signed.....

Date.....

**HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

LEGAL NOTICE No. 190

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY)
REGULATIONS, 2020

ARRANGEMENT OF REGULATIONS

Regulation

- 1—Citation
- 2—Interpretation
- 3—Scope of taxable supply through digital marketplace
- 4—Application of tax
- 5—Registration
- 6—Appointment of tax representatives
- 7—Simplified tax registration framework
- 8—Place of supply
- 9—Time of supply
- 10—Exemption from issuing electronic tax invoice
- 11—Claim for input tax
- 12—Accounting for and payment of tax
- 13—Amendment of returns
- 14—Offences and penalties
- 15—Transitional provisions

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

IN EXERCISE of the powers conferred by section 5 (8) as read with section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2020

14. These Regulations may be cited as the Value Added Tax (Digital Marketplace Supply) Regulations, 2020.

Citation.

15. In these Regulations, unless the context otherwise requires—

Interpretation.

“business-to-business transaction” means a transaction between a supplier from an export country to a tax registered or non-registered business entity in Kenya that is required to account for tax on imported services under section 10;

“business-to-consumer transaction” means a transaction between a supplier from an export country and a consumer in Kenya;

“digital marketplace supply” means the supply of a service made on a digital marketplace;

“digital marketplace” has the meaning assigned to it in section 5 (9);

“export country” means any country other than Kenya and includes any place which is not situated in Kenya;

“intermediary” means any person who facilitates the supply of services through the digital marketplace and is responsible for issuing invoices or collecting payments for the supply;

“Personal Identification Number” or “PIN” has the meaning assigned to it in section 2 of the Tax Procedures Act, 2015;

“recipient”, in relation to any supply of services, means the person to whom the supply is made;

“tax” has the meaning assigned to it under section 2 (1); and

“tax period” means a calendar month.

16. Taxable supplies made through a digital marketplace include—

Scope of taxable supply through a digital marketplace.

(a) downloadable digital content including downloadable mobile applications, e-books and films;

- (b) subscription-based media including news, magazines and journals;
- (c) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (d) software programmes including software, drivers, website filters and firewalls;
- (e) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;
- (f) music, and games;
- (g) search engine and automated helpdesk services including customisable search engine services;
- (h) tickets for live events, theatres or restaurants;
- (i) distance teaching through pre-recorded media or e-learning including online courses and training;
- (j) digital content for listening, viewing or playing on any audio, visual or digital media;
- (k) services that links the supplier to the recipient including transport hailing services or platforms;
- (l) ~~electronic~~ services under section 8 (3); and
- (m) any other service provided through a digital marketplace that is not exempt under the Act.

16 m

17. (1) Tax shall apply to taxable supplies specified under regulation 3 when supplied in Kenya.

Application of tax.

(2) Where the supply under regulation 3 is made in a business-to-business transaction, the provisions of section 10 shall apply.

(3) A business entity that is required to account for the value added tax on taxable supplies made on a digital marketplace under section 10 shall notify the supplier from the export country that the supplier is not required to account for the tax in Kenya for the supply.

(4) Where the supplier from an export country is notified as provided under paragraph (3), the supplier shall not be required to charge the tax on the supply to the business entity.

(5) Where a business entity fails to notify the supplier under paragraph (3) and the supplier charges tax, the business entity shall not be allowed to deduct the tax charged.

18. (1) A person supplying the taxable services specified in regulation 3 shall register for tax in Kenya if— Registration.

- (a) the supplies are made by a person from an export country to a recipient in Kenya in a business-to-consumer transaction; and
- (b) the person is conducting business in Kenya in accordance with section 8 (2) and any of the following circumstances apply—
 - (i) the recipient of the supply is in Kenya;
 - (ii) the payment for the services is made to the supplier in the export country from a bank registered under the Banking Act; or
 - (iii) the payment for the services that is made to the supplier in the export country is authorised in Kenya

(2) A person from an export country who makes a business-to-consumer supply of services to a recipient who is in Kenya shall register for tax through a simplified tax registration framework in accordance with regulation 7.

(3) A person registered under paragraph (2) shall declare and pay tax on the supplies made on the digital marketplace at the rate specified in section 5 (2) (b).

19. Despite regulation 5 (2), a person from an export country making a business-to-consumer supply to a recipient in Kenya who elects not to register in accordance with regulation 7 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015.

Appointment of tax representatives.

20. (1) A supplier from an export country who makes supplies on a digital marketplace shall register under the simplified tax registration framework specified under this regulation.

Simplified tax registration framework.

(2) An application for registration under the simplified tax registration framework shall be done through an online registration form prescribed by the Commissioner.

(3) The information required for registration under paragraph (2) shall include—

- (a) the name of the business including the business's trading name;
- (b) the name of the contact person responsible for tax matters;
- (c) the postal address or registered address of the business and its contact person;

- (d) the telephone number of the contact person;
- (e) the email address of the contact person;
- (f) the websites or uniform resource locators (URLs) of the supplier through which business is conducted;
- (g) the national tax identification number issued to the supplier in the supplier's jurisdiction;
- (h) the certificate of incorporation or registration issued to the business in the country where the business is incorporated; and
- (i) any other information that the Commissioner may require.

(4) An applicant under paragraph (2) may be required to submit to the Commissioner additional documents that may be necessary to substantiate the information provided in the application.

(5) Upon registration under this regulation, the Commissioner shall issue the applicant with a PIN for the purpose of filing returns and the payment of tax.

(6) A person registered under this regulation who ceases to make taxable supplies on a digital marketplace shall apply to the Commissioner for deregistration in accordance with section 36.

21. (1) A supply on a digital marketplace shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya. Place of supply.

(2) In determining whether the recipient of a supply is in Kenya, the Commissioner shall consider—

- (a) whether the payment proxy including credit card or debit card information and bank account details of the recipient of the digital supplies is in Kenya; or
- (b) whether the residence proxy including the billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient is in Kenya.

22. The time of supply on a digital marketplace shall be the earlier of— Time of supply.

- (a) the date on which the payment for the supply is received in whole or in part; or
- (b) the date on which the invoice or receipt for the supply is issued.

23. A business-to-consumer supplier on a digital marketplace from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice:

Exemption from issuing an electronic tax invoice.

Provided that the supplier shall issue an invoice or receipt showing the value of the supply and the tax deducted thereon.

24. A deduction of input tax by a supplier shall not be allowed for business-to-consumer transactions for a supply on a digital marketplace.

Claim for input tax.

25. (1) The tax for a supply made on a digital marketplace from an export country to a recipient in Kenya in a business-to-consumer transaction shall be paid by the supplier or the tax representative of the supplier.

Accounting for and payment of tax.

(2) A registered person shall submit a return in the prescribed form and remit the tax due in each tax period to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(3) Where an intermediary makes a supply on a digital marketplace on behalf of another person, the intermediary shall be required to charge and account for the tax on the supply whether such other person is registered for tax or not.

26. (1) Any amendments to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act, 2015.

Amendment of returns.

(2) Where an amendment under paragraph (1) results in the overpayment of tax, the amount overpaid shall be retained as a credit in favour of the person who overpaid and offset against the tax payable in the subsequent tax period.

27. A person who fails to comply with the provisions of these Regulations shall be liable to the penalties prescribed under the Act or the Tax Procedures Act, 2015.

Penalties.

28. A supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date of publication of these Regulations.

Transitional provisions.

Dated the 10th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

**EXPLANATORY MEMORANDUM TO THE VALUE ADDED TAX ACT:
DIGITAL MARKETPLACE SUPPLY REGULATIONS, 2020**

LEGAL NOTICE NO. 190 of 2020

PART I

Name of Statutory Instrument	: Value Added Tax (Digital Marketplace Supply) Regulations, 2020
Name of Parent Act	: Value Added Tax Act, No. 35 of 2013
Enacted Pursuant to	: Section 5(8) read together with section 67 of the Value Added Tax Act, No. 35 of 2013
Name of the Ministry/Department	: The National Treasury and Planning
Gazetted on	: 25 th September 2020

PART II

1. Purpose of the Statutory Instrument

- 1.1. The objective of this Memorandum is to submit the Legal Notice No. 190 of 2020 for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act.
- 1.2. The Legal Notice establishes the Value added Tax (Digital Marketplace Supply) Regulations, 2020 to provide a mechanism for collection of VAT on supplies made through a digital marketplace.
- 1.3. Provide a simplified framework for VAT registration of non-residents supplying taxable services in Kenya through a digital marketplace.

2. Legislative Context

The Legal Notice on Digital Marketplace Supply Regulations is made pursuant to Section 5(8) as read together with section 67 of the Value Added Tax Act, 2013 which empowers the Cabinet Secretary to make regulations to provide mechanism for collection of Value added Tax on supplies made through a digital marketplace.

3. Policy Background

- 3.1. The primary objective of the Legal Notice is to provide the legal instrument to enable the government implement the tax measures necessary for funding its economic development and growth agenda.

- 3.2. Worldwide, digital technologies are quickly changing the way we conduct business, a situation we could not foresee a generation ago.
- 3.3. This increase in the digital space has opened the Kenyan market to the outside world allowing non-residents to supply digital services to Kenyan consumers without having a physical presence in Kenya.
- 3.4. Value added Tax is a consumption tax and is accounted for by the supplier.
- 3.5. The local suppliers have been accounting for Value added Tax on their supplies, while non-resident suppliers offering the same services having not been accounting for Value added Tax leading to unfair advantage to the local suppliers.
- 3.6. To allow equity and fairness, there is need to provide a mechanism to allow the non-resident suppliers who account for a large percentage of the digital marketplace in Kenya, to register and account for VAT on supplies made in Kenya.
- 3.7. In response to this, The National Assembly enacted sections 5(7), 5(8), 5(9) and 8(3) of the Value added Tax through the Finance Act 2019. These provisions clarify that, the supplies made through a digital marketplace are subject to VAT.

4. Consultation Outcome

- 4.1. The Kenya Revenue Authority informed the public and relevant stakeholders of the development of the Value added Tax (Digital Marketplace Supply) Regulations, 2020 in compliance with the law and sought their comments on the same in a Public Notice published on **Friday, the 29th May, 2020** (*Copy attached*). The Kenya Revenue Authority received feedback from various stakeholders and industry players including: Netflix, Bolt, KEPSA, Anjarwalla & Khanna, Africa Practice among others.

5. Impact

The Legal Notice provides for provides a mechanism for collection of VAT on supplies made through a digital marketplace. It is expected that this regulation will lead to an ensure compliance for suppliers in the digital marketplace and thus equity in administration of taxes.

6. Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority and will be operational from the date of publication.

7. Request to the National Assembly

The National Assembly is requested to:

- a) Note the contents of this memorandum.
- b) Approve Legal Notice No. 190 of 2020

8. Contact

Cabinet Secretary,
The National Treasury & Planning,
NAIROBI

SYMPTOMS

JUNE 02, 2020

10 | ADVERTS



"The virus does not move, people move it. We stop moving, the virus dies"



RURAL ELECTRIFICATION & RENEWABLE ENERGY CORPORATION

(Formerly Rural Electrification Authority)

INVITATION TO TENDER

1. The Rural Electrification and Renewable Energy Corporation invites tenders from interested firms to bid for:

Rfx No.	Tender Description	Opening date & time
1000000440	Supply, installation, Testing & Commissioning of Grid Connected Street Lighting And Highmast Floodlights in Embu County, Kajiado North Constituency, Awendo Constituency, Mwalu Constituency & Nyandarua County	03 rd July 2020 10.00AM
1000000441	Tender for procurement of television sets, cameras & accessories	02 nd July 2020 10.00AM

- Tender documents detailing the requirements may be viewed at REREC E-Procurement Web Portal found on the REREC website (www.rea.co.ke) beginning on **3rd June, 2020**
- Bidders who are interested in bidding for this tender **MUST** ensure that they are registered in REREC SAP SRM system and have set up their page. Please ensure compliance to the following:
 - Each company must have two user accounts, Admin Account and Employee Account. Ensure that the following roles are **NOT ASSIGNED** to the employee: Employee Administrator and Supplier Master Data manager.
 - Ensure that the admin account and employee account does not share same email address.
 - Ensure that the Employee user name is between 4 and 12 characters.
 - It is a Mandatory requirement that all Bid Documents/Responses be uploaded to the **COLLABORATION ROOM** in the link with "**RFX Response Number: Company Name**". Bidders shall not attach their documents at any other Tab of the Portal. Attachments placed elsewhere in the portal shall be declared non-compliant and will not be evaluated.
 - Prices **MUST** be entered under item tab of the RFX. The prices entered here shall be similar to the prices in the price/BiQ Schedule and shall form part of the evaluation criteria.
 - For the purpose of this tender bidding, the employee account shall be used to submit your RFX responses. Bidders who require clarification from our office should do so strictly 7 days before tender closing.
- Completed Tenders are to be saved as PDF documents marked with the Tender Number and Description and submitted through the REREC E-Procurement Web Portal found on the REREC website (www.rea.co.ke) so as to be received on or before the dates in the schedule above.
- Tenders will be opened electronically promptly thereafter in REREC Procurement Office at Kawi House, Ground Floor. Opening schedule will be sent electronically to all the bidders who participated in the tender.
- Interested bidders are advised to visit the Corporation's website, homepage, Information Center, SAP SRM Document, SAP SRM Supplier User Guide for registration and creation of their portal and Supplier Bidding Quick Reference Guide for submitting their response.

CHIEF EXECUTIVE OFFICER
RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION



RURAL ELECTRIFICATION & RENEWABLE ENERGY CORPORATION

(Formerly Rural Electrification Authority)

EXPRESSION OF INTEREST: RFX 1000000442

TENDER CLOSING: 19/06/2020

PANEL CLEANING & VEGETATION MANAGEMENT AT THE GARISSA 54.6MW SOLAR POWER PLANT

About the study

The Corporation has developed a 54.6MW grid connected solar power plant located in Garissa County, approximately 15Km North of Garissa Town. REREC is therefore seeking to recruit a contractor for routine cleaning of solar PV panels and vegetation management. The contractor shall be expected to clean the panels using the latest available technology in the market and in conformity with the relevant technical standards, specifications, protocols and regulations and shall be required to demonstrate professional, technical and financial competency to undertake the works under the terms and conditions as shall be set forth herein and in the contract.

About REREC

The Rural Electrification and Renewable Energy Authority (REREC), formerly Rural Electrification Authority (REA), is a state corporation established under Section 43 of the Energy Act, 2019. The Authority's main mandate is to promote renewable energy and accelerate rural electrification throughout the country in order to provide electricity to all Kenyans as well as contribute towards sustainable socio-economic development of the country in the attainment of Vision 2030 and Big 4 agenda.

Main Objective

The objective of the contract is to provide professional and high quality panel cleaning and vegetation management for the Garissa 54.6MW solar power plant to ensure the plant operates at the most optimal conditions.

SCOPE

The Contractor will be required to carry out the following tasks/activities:

Carry out routine inspection and identify panels/strings requiring priority in cleaning of the nature contemplated in the Scope of Works, Carry out routine inspection and identify areas within the plant requiring clearing and vegetation management of the nature contemplated in the Scope of Works, Carry out solar PV panel cleaning in the time and manner specified and prepare necessary reports on the works done for onward transmission to the plant manager and Carry out vegetation management within the plant in the time and manner specified and prepare necessary reports on the works done for onward transmission to the plant manager.

For more information kindly check our website as from **3rd June 2020**



Public Notice

Draft Value Added Tax (Digital Marketplace Supply) Regulations, 2020

Following the amendments to the VAT Act, 2013 by the Finance Act, 2019, clarifying that VAT is applicable to supplies made through a digital marketplace, the Kenya Revenue Authority would like to inform members of the public that the draft **VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2020** have been developed and are currently hosted on the Kenya Revenue Authority website (www.kra.go.ke).

To ensure wide consultation and public participation as stipulated in the Constitution of Kenya and the Statutory Instruments Act, 2013, the Kenya Revenue Authority invites sector players, tax professionals and members of the public to submit their comments on the draft regulations.

The comments should be addressed in writing to the Commissioner General, Kenya Revenue Authority, P.O Box 48240-00100, Nairobi or emailed to; stakeholder.engagement@kra.go.ke to be received on or before **Monday, 15th June 2020** to facilitate the review and finalisation of the Regulations.

For further clarification and facilitation, please contact the Contact Centre on Tel: 020 4 999 999, 0711 099 999 or Email callcentre@kra.go.ke

Commissioner General

www.kra.go.ke

Disclaimer: KRA neither guarantees nor is it not accept responsibility for payments not received credited and debit into the relevant PRA accounts. Corruption Reporting: +254 (0)20 584 666
Email: corruptionreporting@kra.go.ke, [sales@kra.go.ke](mailto:Smart Messaging Services (SMS): 011 5709, or Text to 2572, Contact Centre: +254 (0)20 4 999 999, +254 (0)711 099 999, Email: <a href=)
Complaints & Information Centre Hotlines: +254 (0) 20 281 7700 / 7800, +254 (0) 20 3 343 342, Email: cc@kra.go.ke



Tulipe Ushuru, Tujitegeme!



MWEA RICE MILLS LIMITED



PUBLIC NOTICE

SALE OF RICE HUSK AT MRM LTD YARDS AT WANGURU

Further to our publication on My Gov published in the local dailies on 19th May 2020. The Mwea Rice Mills (MRM) Ltd would like to make the following amendments:

MRM would like to amend the advert to include

- Duration of sales engagement.** The sale of husk will be offered for a period of four (4) year. However, rollover from one year to the next will be subject to satisfactory performance by the buyer.
- Provision for percentage Price increase over the transaction period.** The bidders will be required to propose a percentage Price increment per year to be applied when rolling from one year to the next.

Arising from this amendment the date of submission of offer has been extended from 2nd June 2020 to **9th June 2020 at 12.00 noon local time**

The amended detailed document for sale of husk will be published in from the National Irrigation Authority's website: <http://www.nib.or.ke> from **2nd June 2020**

All other terms and conditions remain the same.

The address referred to above is:

Physical Address:
Managing Director
Mwea Rice Mills (MRM) Ltd.
Unyunyizi House, First Floor, Room 309
Lenana Road, Hurlingham
P.O Box 30372-00100
Nairobi, Kenya

Tel: +254-20-271 1380/468
Fax: +254-20-2722821/2711347/2723392
E-mail: enquiries@nib.or.ke, agriculture@nib.or.ke

COMMENTS ON THE VAT (DIGITAL MARKETPLACE SUPPLY) 2020

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
1.	Regulation 3	<p>1. Section 5 of the VAT Act is the charging VAT section in Kenya.</p> <p>2. As currently drafted, Regulation 3(2) does not provide a criteria for determining whether a supply is B2B or B2C and a tax dispute could therefore arise in future (or penalties for non-compliance imposed) where the KRA takes the view that a supply does not qualify as B2B and VAT should have therefore been charged.</p>	<p align="center">Anjarwalla & Khanna (A&K)/UBER</p> <p>1. Regulation 3 should be deleted as a charging section in the Regulations and an amendment made to section 5 (1) of the VAT Act to impose VAT on supplies made through a digital marketplace.</p> <p>2. The VAT Act should be amended to clarify that B2B supplies are outside the scope of the Regulations and should provide for the criteria for determining whether a supply is B2B or B2C.</p> <p>Other recommendations:</p> <p>We would recommend the following amendments to ensure that a non-resident person who registers under the regime is not penalised for failure to charge VAT:</p> <p>a) a non-resident person should be entitled to presume that a supply is B2B and not charge VAT if the customer provides a PIN which is registered for the VAT obligation or if the</p>		<p>Where transactions are carried on a B2B basis, tax is chargeable under section 10 of the VAT act. The challenge of digital transactions is where such transactions are on B2C as these are not visible and therefore need an alternative intervention which is provided for by these regulations. The regulation 3 does not and cannot override the main Act but can only complement it.</p> <p>It would be futile if the obligation to charge VAT by non-residents do not attract penalty. The penalties serve as a deterrent measure to ensure compliance.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
			<p>customer represents that he has a VAT registration number;</p> <p>b) a non-resident person should not be penalised for not charging VAT, where the information set out under (a) has been provided. Any penalties in this regard should be imposed on the customer in this case.</p>		
2.	Regulation 4 - Scope of Taxable Supplies	Clarification of the scope of supplies	<p>1. The scope of taxable supplies should be clarified through an amendment to section 8 (3) of the VAT Act and not through the Regulations. This is to ensure clarity and certainty and to avoid conflicts between the Regulations and the VAT Act.</p> <p>2. Regulation 4(k) should be deleted as it gives the KRA the powers to unilaterally amend the scope of supplies without oversight by Parliament.</p>	As currently drafted, it could be argued that Regulation 4 is inconsistent with the VAT Act since it seeks to include additional services which are not set out in section 8 of the VAT Act.	The stakeholder is not clear as to what is included in regulation 4 that is not in tandem with the law. In addition, the listing provided in the regulations is intended to provide clarity and does not in any way contradict the provisions of section 8 of the VAT act. It is important to note that unless an item is exempt under the VAT act it is either taxable at general rate or zero rate. This regulation does not violate this principle.
3.	Regulation 5 - Registration	1. The Regulations do not provide a VAT registration threshold.	1. A registration threshold based on actual prior sales in Kenya should be provided in the Regulations and it should achieve an appropriate balance between the amount of tax raised compared		VAT is a consumption tax, and it is charged on goods and services. Any good or service that is consumed in Kenya unless exempt from VAT is subjected to the tax

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>2. No Clarity on the role of the tax representative</p>	<p>to the administrative costs imposed on both the taxpayer and the tax administration collecting the tax.</p> <p>2. The role of the tax representative should also be very clear, to avoid third parties rejecting such an appointment (especially due to the apprehension that enforcement measures could be undertaken against them).</p> <p>3. We also recommend that a dedicated non-resident desk (or mailbox) is established within KRA to assist non-resident entities on any issues that may arise in relation to VAT registration.</p> <p>Other recommendations: We recommend the following: The Income Tax Act and the Tax Procedures Act should:</p> <p>(a) exclude local representatives appointed for effecting compliance under the Regulations from creating a permanent establishment for the non-resident entity; and (b) limit the liability of the local representatives to remitting taxes on behalf of the non-</p>		<p>irrespective of the size or volume of trade by the supplier. To introduce a threshold for foreign suppliers will not only distort the market but will create an unfair playground for the foreign suppliers who will be free to sell their goods without VAT.</p> <p>The role of the Tax rep is clarified under section 16 of the TPA 2015 and there's no ambiguity on this matter.</p> <p>The threshold for determination of permanent establishment (PE) is much higher than envisioned by the stakeholder. A P.E does not arise simply through handling the tax obligations of a taxpayer.</p> <p>The enforcement measures of an appointed tax rep are specified under section 16 of the Tax Procedures Act, 2015 and need not to be repeated under these regulations.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
4.	Regulation 6 - Simplified VAT Registration Framework	<p>1. It is not clear what information will be required in relation to the application for registration under Regulation 6(3).</p>	<p>resident entities and no enforcement measures should be taken against them.</p> <p>We recommend that the Regulations are amended to include the information to be provided during the registration process and such information be limited to:</p> <p>(a) name of business, including the trading name;</p> <p>(b) name of contact person responsible for dealing with tax administrations;</p> <p>(c) postal and/or registered address of the business and its contact person;</p> <p>(d) telephone number of contact person;</p> <p>(e) electronic address of contact person;</p> <p>(f) websites or URL of non-resident suppliers through which business is conducted in the taxing jurisdiction; and</p> <p>(g) national tax identification number, if such a number is issued to the supplier in the supplier's jurisdiction to con.</p>		<p>This is agreed and has been incorporated in the Regulations.</p>
		<p>2. The Regulations are silent on whether a non-resident supplier registering for VAT</p>	<p>It would be important for this issue to be clarified, which can be achieved by amending the</p>		<p>As mentioned in the comments under regulation 5, the threshold for</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
5.	Regulation 7 - Determination of place of supply	<p>purposes will be deemed not to have a permanent establishment from a corporate tax perspective.</p> <p>This provision is a substantive provision and should be contained in section 8 of the VAT Act. As currently drafted, the place of supply rules could result in VAT being applied on a supply which is not received by a customer in Kenya. For example, a payment proxy or residence proxy could be in Kenya but the recipient of the supply could be in another jurisdiction and Kenya should therefore not have the taxing right in such circumstances.</p>	<p>definition of the term "Permanent Establishment" under section 2 of the ITA or through an amendment to the VAT Act. The law should clarify that registration of non-residents for VAT purposes in Kenya should not be deemed to have created a taxable presence for corporate tax purposes. This is in line with international best practice and has also been successfully adopted in South Africa and in the European Union</p> <p>We would recommend that Regulation 7 is amended to clarify that a supply would be deemed to have been made in Kenya if at least two of the tests set out in Regulation 7 have been satisfied. This will ensure that transactions which fall within the scope of the Regulations have a clear nexus with Kenya and Kenya therefore deserves the taxing right.</p>		<p>determination of a Permanent Establishment (PE) is very high. A person can only be deemed to have a permanent establishment in Kenya if he has a fixed place of business and does not become a PE merely by selling goods through a digital platform.</p>
6.	Regulation 8 - Time of Supply and Accounting and Payment of tax	<p>This provision should be contained in section 12 of the VAT Act as it is a substantive provision.</p>	<p>Non-resident suppliers should be given the option to account for VAT either on a cash basis or on an accrual basis. This means that non-resident suppliers will have</p>		<p>The regulations as it is gives the condition that for a supply to be deemed to have been made in Kenya, the first condition must be met plus either condition two or three. Hence the regulation already addresses the issue. (The observation by stakeholder is that regulation 7 is already provided for under section 8 of the VAT act 2013)</p> <p>Regulation 8 is in line with what is provided for under S.12 of the VAT act 2013 with regard to accounting for VAT which we cannot contradict</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>1) Regulation 8(1) requires that VAT is accounted for on an accrual basis, which could be prior to the receipt of payment in certain cases. In instances where payment is not received (e.g. due to a bad debt on credit sales), the VAT payment on such credit sales would have been funded by the non-resident and the Regulations do not provide a refund mechanism in such circumstances.</p> <p>2) Regulation 8(4) does not clarify the currency in which filings and payment should be made, although it is the case that the KRA iTax system would only recognise filings/payments in local currency (KES).</p>	<p>the option to account for VAT on their cash sales or at the point of receiving payment on their credit sales, at which stage they would submit VAT due to the KRA. At this point, VAT will have already been paid by the purchasers and therefore the risk highlighted above would be mitigated. This position has been adopted successfully in South Africa.</p> <p>We recommend that the non-resident suppliers should be permitted to submit returns either in Kenya Shillings or in the currency the sale was invoiced. In the alternative, the Regulations should provide guidance on the forex rates which should be applied in converting the forex transactions to KES (for example, the Regulations could clarify that the Central Bank of Kenya exchange rates should be used to convert to KES).</p>		<p>through the regulations. The chance of having credit sales especially for B2C in regard to Digital transactions is minimal and therefore the risk highlighted by the stakeholder may not arise.</p> <p>Section 23(2) of the Tax Procedures Act 2015 outlines the unit of currency to be used when maintaining books of account, records, paper registers, tax returns or tax invoices shall be in Kenya shillings.</p> <p>The standard conversion rate is as prescribed by the CBK.</p>
7.	Regulation 9 - Tax Invoice		<p>This is a welcome provision as it will reduce the compliance costs of the non-resident suppliers which would have otherwise been incurred if the non-resident</p>		<p>This is a welcome commendation</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
8.	Regulation 10 - Claim for Input Tax	Its inequitable for suppliers of e-services registered for VAT in Kenya not to be allowed for input tax claim	Suppliers of e-services that are registered for VAT in Kenya should be allowed to claim input tax credits on VAT incurred in Kenya in the making of those taxable supplies.		The simplified VAT registration framework is only applicable to suppliers from an export country. The claiming of input tax by a registered person is as provided for in the VAT Act 2013
9.	Regulation 11 - Amendment of Returns	Regulation 11(2) provides that it would not be possible for a non-resident supplier to receive a cash refund and any VAT credit arising can only be carried forward to the next tax period. This would have cash flow implications on the supplier, for example in the case of bad debts or payment of VAT in error.	As set out in our recommendations under Regulation 8 above, non-resident suppliers should be permitted to elect to either use the cash basis of accounting for VAT (i.e. account for VAT when paid) or the invoice basis (i.e. upon raising an invoice). This would mitigate the likelihood of being in a VAT credit position. In addition, the Regulations should provide an expedited process for processing of cash VAT refunds in the case of suppliers who adopt the invoice basis for accounting for VAT. Non-resident suppliers should elect to either receive a cash refund or carry forward the VAT credit arising and this should not be prescribed by the Regulations.		In this case of a supplier from an export country, the issue of credit does not arise since there is no offsetting of input tax. However, in the event of an overpayment of tax, the overpaid tax shall be treated as a credit and hence carried forward for offsetting in the subsequent tax period.
10.	Regulation 12 - Record-Keeping	Regulation 12 has not clarified the nature of information to be	This provision should clarify that the records to be maintained		The submission of a return under reg 8(4) and the

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>maintained or submitted by the non-resident supplier.</p>	<p>should be limited to the return set out at Regulation 8(4). There should be no requirement to provide any other information or in any other format, other than the return. The details set out in the return should be limited to the following:</p> <ul style="list-style-type: none"> a) Supplier's registration identification number; b) Tax period; c) Currency and, where relevant, exchange rate used; d) Taxable amount at the standard rate; e) Taxable amount at reduced rate(s), if any; and f) Total tax amount payable. <p>The supplier should be able to file its return online via iTax.</p>		<p>submission of record of supplies under reg 12 can be overburdening to the taxpayer and may defeat the intended purposes of simplification. The prescribed form of return under reg 8(4) should include the envisaged submission of record of all sales under reg 12.</p>
11.	<p>Regulation 13 - Offences and Penalties</p>	<p>The Statutory Instruments Act provides that the maximum penalty which can be imposed for breach of a Statutory Instrument is KES 20,000 or imprisonment for a period of six (6) months. Any penalty which prescribes a higher threshold would be deemed to be void.</p> <p>In addition, the VAT Act already sets out penalties for non-</p>	<p>We would therefore recommend that:</p> <ul style="list-style-type: none"> a) Either the penalty is deleted; or b) The penalty is introduced by way of an amendment to the VAT Act. In addition, the restriction of access to a digital market place should only be imposed by the Tax Appeals Tribunal (TAT) or a Court of Law after the determination of 		<p>To be discussed further.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
12.	Regulation 14 - Transitional Provision	<p>compliance. In any event, the penalty would be void as it contravenes the provisions of the Statutory Instruments Act.</p> <p>Regulation 14 could result in non-resident suppliers having a very short window for implementing the new VAT regime, noting that extensive configurations to systems would need to be made and staff trained on the new requirements.</p> <p>It should also be noted that the VAT regime is proposed to be introduced earlier or concurrently with the introduction of Digital Services Tax, which will require reconfiguration of systems and would also be occurring at a period when businesses are yet to recover from the Covid-19 Pandemic.</p>	<p>a tax dispute filed before the TAT or the Court (as the case may be).</p> <p>In line with international best practice in other jurisdictions where a similar regime has been introduced, we recommend that the Regulations should allow a grace period of at least 12 months prior to the effective date of the new regime. This will provide sufficient time for non-residents to configure their systems to automate compliance for large volumes of small transactions</p>		<p>Three months will be adequate for both the stakeholder and the commissioner to adjust their systems accordingly.</p>
TAXAMO					
13.		<p>Threshold application.</p> <p>There is a trend to remove any threshold. However this may affect small businesses as it will force them to register for a very small amount of sales.</p>	<p>A threshold may help small businesses to access a market before having the burden and cost of administration. It can also help tax authorities who will not have to manage those small businesses. It is easier to focus on larger</p>		<p>VAT is a consumption tax, and it is charged on goods and services. Any good or service that is consumed in Kenya unless exempt from VAT is subjected to the tax irrespective of the size or volume of trade by the</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
14.	Regulation 7 - Determination of place of supply	<p>The pieces of identification that a business is required to collect during the checkout process should be closely linked to the reality of how online commerce functions.</p> <p>It is important to provide clear guidance on what happens if, in certain cases, not enough information on the customer can be collected by the business and provided to the tax authority.</p>	<p>taxpayers who may bring more tax revenue at least at the first stage.</p> <p>there should be a tolerance as long as there is proof that this does not affect the collection of the tax authority (i.e. same logic applied everywhere, low volume of sale concerned - less than 5% of the transactions etc).</p>	<p>The idea is to avoid disturbing the customer journey whenever possible.</p>	<p>supplier. To introduce a threshold for foreign suppliers will not only distort the market but will create an unfair playground for the foreign suppliers who will be free to sell their goods without VAT.</p> <p>This is basic information which forms part of the general reference data used in digital transactions as requested by the export country suppliers. This may not affect the customer experience as claimed by the stakeholder.</p>
15.	Regulation 8 - Time of Supply and Accounting and Payment of tax	<p>Currencies and Foreign Exchange (FX)</p>	<p>Allow affected businesses to select their foreign exchange (FX) conversion source.</p>	<p>In allowing the business to use a suitable FX rate conversion source there is less for tax authorities to concern themselves with in relation to supported currencies, backup FX rates sources, and settlement rate dates.</p> <p>FX rates, in general, are critical. It is often overlooked, but it can significantly increase the cost of compliance for</p>	<p>The standard conversion rate is as prescribed by the CBK. Allowing the taxpayers to choose the source of foreign exchange will create distortions and may lead to tax planning.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
16.	Regulation 9 - Tax Invoice	The requirement in legislation for invoicing adds complexity for a digital business that is attempting to comply mainly if it is e-invoicing.	Taxamo proposes that there should be no invoicing requirement, or only a basic one. If a basic invoicing model is chosen then the invoices should also be acceptable in the English language. Providing bilingual invoices is a very complex requirement for businesses to implement, especially if the description of the service supplied also needs to be translated.	affected businesses. It complicates the integration process from the business side. It may also impact the margin of the business. There is a need for a level of flexibility on this so as to ease the compliance process for the business. The business can engage to always use a consistent approach.	The regulation does not require an electronic tax invoice as you may note that this regulation has been commended by Anjerawalla in item no 7. The language to be used in the invoicing should conform to the requirements of the Tax Procedures Act, 2015
17.	Regulation 11 - Amendment of Returns		Making amendments in the next tax return is the best option.	This is important if the VAT is collected and remitted by an Intermediary, as otherwise it may force them to amend a return many times. The best way to manage this is to refer to the document supporting the transaction, i.e. receipt,	We take this as a compliment.

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
18.	Regulation 12 - Record-Keeping	It needs to be taken into account that the foreign supplier cannot be subject to the same obligation that a local supplier.	Tax authorities may rely on bank information at the time of an audit, and it can be a good starting point. Tax authorities need to take into consideration that this data will never match the actual tax return and can only be used as a starting point for a review. It is likely that the FX rate source used by the bank or the date of the conversion differs from the one used by the business. A requirement for quarterly filing is among the most popular worldwide as it aligns with how modern businesses function.	invoice, confirmation of purchase, or confirmation of refund/credit note.	Reconciliation is an administrative issue. Any changes in the foreign exchange rate is not an obligation to the supplier.
19.	Regulation 8 - Time of Supply and Accounting and Payment of tax				The requirement for charging and accounting for the tax is on a monthly basis and the proposal by the stakeholder will contradict the provisions of the VAT Act, 2013.
NETFLIX					
20.	Regulation 2 - Interpretation	The Draft Regulations seem to only cover supplies made through a 'digital marketplace'. We also note that Regulation 4 of the Draft Regulations, defines the scope of taxable supplies to include supplies made directly by the non-resident suppliers to customers in Kenya – such supplies are not necessarily made through digital	Issue clarifications with respect to the true scope of the term 'digital marketplace' as mentioned in the VAT Act and 'digital marketplace supply' as defined in the Draft Regulations. This is because we understand that the overall aim would also be to capture services such as ours and to be able to levy VAT on said services.		It is agreed and Regulation 4 shall be amended accordingly.

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>marketplaces. Though Regulation 4 is clear, not all services enumerated therein will be supplied through a platform that enables the direct interaction between buyers and sellers of services through electronic means. For example, Netflix provides streaming services directly to its subscribers, i.e., it provides Over-The-Top ('OTT') services and by no means its business model allows an interaction as e.g. digital market platforms take into account. Therefore, Netflix's supplies do not fit within the definition of 'digital marketplace supply' as presented in the Draft Regulations.</p> <p>We find it pertinent to bring to your attention the inconsistency between the definition of 'digital marketplace' in the VAT Act, the definition of 'digital marketplace supply' in the Draft Regulations, and the list of electronic services contained under Regulation 4, some of which will not necessarily be supplied through a digital marketplace.</p>			
21.	Regulation 5 Registration	Under the Tax Procedures Act, 2015, non-residents (with no fixed	We request you to issue clarifications in this regard.		Section 34 of the VAT Act 2013 requires a person who supplies

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>places of business in Kenya and who are required to register under a tax law) are under obligation to register through a tax representative in Kenya. We understand that going forward, non-residents will be allowed to register directly as provided for in the Draft Regulations, and that only those who are not able to register under the simplified VAT registration will be required to appoint a tax representative.</p> <p>There seems to be a conflict between requirements under the Draft Regulations, which are subsidiary, in comparison with the requirements under the primary law, i.e., the TPA in relation to the obligation to appoint tax representatives.</p>			<p>vatable goods or services to register for VAT. It is on this basis that the non-resident is required to register through the simplified framework.</p>
22.	Regulation 12 - Record keeping	<p>We are not clear on the kind or amount of data that should be collected under this provision and therefore seek clarifications in this regard.</p>	<p>We request that minimum information be required from non-residents at the time of filing VAT returns, i.e., the aggregate value of supplies made during the tax period and the total amount of VAT payable thereon.</p> <p>Further, we would like to assure you that when required by law and sought by the tax authorities such as in the case of audits, we will</p>		<p>This is under regulation 11 which allows the commissioner to prescribe a simplified form for filing returns.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
23.	Regulation 14 Transitional provisions	Regulation 14 requires non-resident digital marketplace suppliers to register under the simplified VAT framework within 30 days of the Draft Regulations being published. Please note that once the law is finalised, the affected digital marketplace suppliers will be required to make changes to Enterprise Resource Planning ('ERP') and Billing systems, implement new tax codes, adapt receipt layouts to reflect the correct tax rates and notify consumers of VAT becoming applicable.	We therefore request you to consider the time period to comply with the new regime and to extend this to a minimum of 3 months.		This is agreed and amended accordingly
MEMORANDA TO THE DRAFT VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS					
24.	Regulation 4 - Scope of taxable supplies		Establish a mechanism to differentiate between digital media that is offered for free or charges fees to consume the digital media. Establish a mechanism to enable digital platforms such as YouTube, Twitter, Facebook to include VAT into the pricing so that digital		Section 13 of the VAT Act 2013 provides the determination of value of taxable supply. Platforms are required to establish mechanisms to comply with the VAT Act.

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
25.	Regulation 6 - Simplified registration framework VAT		content creators can easily raise invoices inclusive of VAT. Establish a unified framework for businesses that have both offline and online presence. Establish training sessions for digital marketplace suppliers to understand this framework. Offer a waiver period for digital marketplace suppliers to pay VAT.		A person who has this type of business model is required to register for VAT as a local supplier. Noted and agreed. This is provided for in the regulations which gives three months transitional period.
AMCHAM KENYA					
26.	Regulation 3 (1) - Charge to tax	To avoid any issues linked to sub-regulation (1), which says that VAT must always be charged, sub-regulation (2) should clarify in clear terms, that for B2B transactions, a foreign supplier is not responsible for the VAT. Digital Service Tax was proposed at the rate of 1.5%, is VAT here envisaged at 14%? Or is the Digital Service Tax of 1.5% further subjected to VAT? This needs to be clarified.			This has already been clarified by stating that B2B transactions are not covered by these regulations but are subject to provisions of S.10 of the VAT Act 2013. VAT is a tax on consumption and is paid by the consumer while DST is tax on Income paid by the supplier, therefore there is no double taxation.
27.	Regulation 4 - Scope of taxable supplies	The list of taxable supplies exceeds the list provided by the VAT Act and gives the Commissioner the discretion to determine any other digital marketplace supplies that would	Clarity is required on whether all cloud services for instance Software as a service (SaaS), Platform as a service (PaaS) and Infrastructure as a service (IaaS)		This has been addressed under comments by A&K Item No. 2

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>constitute a taxable supply without stakeholder engagement and lead time to implement a VAT system change.</p>	<p>are in/out of scope under the sections highlighted below; (c) <i>Software programs including downloading of software, drivers, website filters and firewalls;</i> (d) <i>Electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;</i> Some of these services, e.g. Cloud hosting are already included in a company's books of accounts and are currently considered VAT-able supplies. Regulation 4 (k) gives the KRA the powers to unilaterally amend the scope of supplies without oversight by Parliament. It should be deleted.</p>		
28.	Regulation 5 - Registration		<p>1. Clarification is needed on who is responsible for VAT when supplies are made through an online platform, but the platform is not the legal seller, for instance, applications on an app store where the developer is the merchant of record. 2. Clarity needed on whether suppliers of services in a digital marketplace who do not exceed the VAT registration threshold</p>		<p>The clarity on who's responsible is already addressed under Regulation 11. This issue is addressed under comments made by A&K (Item no. 3).</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
			<p>would be required to register for VAT in Kenya. Whilst the VAT Act provides that a person is required to register for VAT in Kenya where the value of the services they provide exceeds KES 5,000,000 (approximately USD 50,000) within a twelve (12) month period, the Draft Regulations do not link the VAT registration threshold to the requirement to register for VAT.</p> <p>3. In clause 5(2), clarification should be provided, that suppliers of services on digital platforms will NOT be required to also charge VAT on B2B transactions once they are registered for VAT in Kenya.</p>		<p>This is also addressed under Regulation 3(2)</p>
29.	Regulation 6 - Simplified VAT Registration Framework	<ol style="list-style-type: none"> The Regulations are silent on whether a non-resident supplier registering for VAT purposes will be deemed not to have a permanent establishment from a corporate tax perspective. There is mention that records need to be submitted monthly, but it is not clear if this is at a transaction or cumulative level. 	<p>4. Appointing a Tax representative will create legal and other barriers for entering the Kenyan market.</p> <ol style="list-style-type: none"> There should be uniformity in the registration requirements between domestic and foreign businesses. Clarity can be achieved by amending the definition of the term "Permanent Establishment" under section 2 of the ITA or through an amendment to the VAT act. The law should clarify that 		<p>The appointment of a tax rep is optional under these regulations.</p> <p>The simplified framework recognises that the suppliers are non-resident and therefore provides minimal requirements for registration.</p> <p>The issue of Permanent Establishment has been addressed under the A&K proposals under item no. 4.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
			<p>registration of non-residents for VAT purposes in Kenya should not be deemed to have created a taxable presence for corporate tax purposes. This is in line with international best practice and has also been adopted in both South Africa and the European Union.</p>		
			<p>3. In addition to electronic registration, provision should be also made for the filing of returns to be done electronically.</p> <p>4. For ease of registration, limit the documents needed for a registration to the absolute minimum. These should be the company's registration documents only.</p>		<p>This is already addressed/ provided for</p> <p>This is already addressed</p>
			<p>5. Clarify that no records other than VAT returns will be needed on a monthly basis since additional records can always be provided as and when needed through official request or audit.</p>		<p>This is already addressed</p>
<p>30.</p>	<p>Regulation 7 Determination of place of supply</p>	<p>1. Accrual vs Cash basis Regulation 8(1) requires that VAT is accounted for on an accrual basis, which could be prior to the receipt of payment in certain cases. In instances where payment is not received (e.g. due to a bad debt on credit sales), the VAT payment on such credit sales</p>	<p>1. We suggest that non-resident suppliers should be given the option to account for VAT either on a cash basis or on an accrual basis. This means that non-resident suppliers will have the option to account for VAT on their cash sales or at the point of receiving payment on their credit</p>		<p>This is already addressed through under A&K comments item no.5.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>would have been funded by the supplier and the Regulations do not provide a refund mechanism in such circumstances.</p> <p>2. It is not clear what 'place of business in Kenya' means. It is not clear if domestic AND foreign intermediaries (marketplace platforms) are covered by 8 (2). i.e. Does 8(2) only apply if the platform business (intermediary) has established itself in Kenya through a local Kenya company/office?</p>	<p>sales, at which stage they would submit VAT due to the KRA. At this point, VAT will have already been paid by the purchasers and therefore the risk highlighted above would be mitigated. This position has been adopted successfully in South Africa.</p> <p>2. If 8(2) does not apply to foreign "intermediaries" not operating through a local company in Kenya, the understanding is that the foreign supplier is responsible for registering and charging VAT on sales to B2C customers in Kenya. Sub-regulation 8(3) should be refined to ensure that foreign suppliers are only held liable for tax due on B2C</p> <p>3. Clarification needed on what Forex rate is to be used for non-local currency transactions. A reasonable and publicly available exchange rate which is already used by the industry in the ordinary course of business would be most suitable.</p>		
31.	Regulation 9 - Tax invoice	This is a welcome provision as it will reduce the compliance costs of the non-resident suppliers which would have otherwise been	Proposed amendment to the wording: <i>"For the purpose of a B2C digital marketplace supply, a supplier</i>		This is a welcome commendation

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>incurred if the non-resident suppliers were required to amend their systems to comply with e-invoicing regulations.</p>	<p><i>from an export country shall be exempt from the requirements of an electronic tax invoice as prescribed under the Act and the relevant Regulations. Provided that, the supplier shall be required to issue an invoice or receipt showing the value of the supply and tax charged in a currency of supplier's choosing.</i></p>		
32.	Regulation 10 - Claim for Input Tax	<p>This would be discriminatory against suppliers of e-services and would increase their costs.</p>	<p>Suppliers of e-services that are registered for VAT in Kenya should be allowed to claim input tax credits on VAT incurred in Kenya in the making of those taxable supplies. This is common practice in such countries such as South Africa.</p>		<p>This is already addressed through comments by A&K under item no. 8.</p>
33.	Regulation 11 - Amendment of Returns	<p>Regulation 11(2) provides that it would not be possible for a non-resident supplier to receive a cash refund and any VAT credit arising can only be carried forward to the next tax period. This would have cash flow implications on the supplier, for example in the case of bad debts or payment of VAT in error.</p>	<p>Non-resident suppliers should be permitted to elect to either use the cash basis of accounting for VAT (i.e. account for VAT when paid) or the invoice basis (i.e. upon raising an invoice). This would mitigate the likelihood of being in a VAT credit position. In addition, the Regulations should provide an expedited process for processing of cash VAT refunds in the case of suppliers who adopt the invoice basis in accounting for VAT. Non-resident suppliers should elect to either</p>		<p>This is already addressed through comments by A&K under item no. 9</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
34.	Regulation 12 - Record keeping	Regulation 12 has not clarified the nature of information to be maintained or submitted by the non-resident supplier.	Our recommendation is that there should be no requirement to provide any other information or in any other format, other than the return. A provision should be included allowing a registered person to apply for a refund if they decide not to do further business and de-register.		This is already addressed through comments by A&K under item no. 10
35.	Regulation 13 - Offences and Penalties	This proposal is very punitive and is prone to abuse especially in instances where a tax dispute has arisen.	Our recommendation would be that the penalty is aligned to that in the Act or is introduced as an amendment to the VAT Act. Furthermore, that the restriction on access to the digital marketplace can only be enacted by the Tax Appeals Tribunal or Court of law.		This is already addressed through comments by A&K under item 11
36.	Regulation 14 - Transitional Provision	The period for applying for registration is too short as the suppliers will be required to update and/or set up new systems.	We propose at least a 3-month period to allow the supplier to adequately prepare. Clarification needed that these regulations do not impact the permanent establishment position from a corporate tax perspective.		This is already addressed through comments by A&K under item no. 12.

BOLT

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
37.	Regulation 2 - Interpretation	The ambiguity of the definition of a "digital marketplace" and "digital marketplace supply"	<p>To ensure that the proposed VAT regime is unambiguous and simple, these should provide more context as to what is considered a "platform" and also "electronic means".</p> <p>There are different web-pages and apps that can in principle qualify for these definitions but the variety of these so-called platforms is so large that it is hard to put them into the same bracket when talking about taxation with VAT.</p>		The proposed Regulation 4(k) has been amended to align with the comment.
38.	Regulation 3 - Charge to tax	There are several ambiguities which should be cleared. Firstly, how are the differently operating business models taxed (is the tax base the same for all the supplies made through Facebook, in a web-shop and in the ride hailing platform or are there any differences?). Secondly, what is the tax base for supplies made through or in relation to ride hailing platforms? Thirdly, does the reference to B2B supplies also apply to supplies between the software services provider and the driver who operates as an independent economic operator?	<p>For clarity it would be necessary to define the tax base as concretely as possible and take into account the different situations and differences in the business models of the various digital marketplaces.</p>		<p>The base is the value of the service which is already clarified in the VAT Act 2013 and the regulations.</p> <p>The transaction between The ride hailing company/platform provider and the drivers/taxi owners is not considered as a B2B transaction within these regulations.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
39.	Regulation 4 - Scope of taxable supplies	<p>Lack of clarity on the scope of the taxable supplies.</p> <p>Whereas VAT is imposed on transport hailing platforms, it is not specified which part of the supplies would be taxed. Is it only the supply of transport service provided from the driver to the rider? Or would VAT only be due on the commission payable from the driver to the platform?</p> <p>Additionally, leaving an open ended list of taxable supplies is not good for clarity and compliance. Therefore we find that the list of supplies that are in the scope of the new VAT regulations should be determined concretely.</p>	<p>Bolt finds that the scope of the taxable supplies should be laid out in more detail and concreteness.</p> <p>We are supportive of the moves to implement DST on supplies made through digital marketplaces as planned, but we are unable to support the introduction of VAT on the digital marketplaces at the same time.</p> <p>We submit that it would be reasonable to wait for the initial effects of the imposition of the DST on businesses to be felt and assessed before beginning a discussion about the possibility of additional VAT being levied on the same marketplace. Thus Bolt proposes to take one step at the time and only after the effects of the DST are visible, to make decisions on the possible introduction of VAT as proposed by the draft regulation.</p>		<p>The scope of taxation is defined by exclusion and it is only services that are exempt under the vat Act that are not subject to tax.</p> <p>The drivers are based in Kenya and therefore fall outside the scope of these regulations, VAT is thus payable on the commission from the driver to the platform.</p> <p>DST is a tax on income while these regulations address tax on Consumption, the two tax regimes are not substitutes, and re addressed separately under the ITA Cap470 and the VAT Act 2013 respectively.</p>

BAKER MCKENZIE LLP

40.	Regulation 13 - Offences and penalties	The Draft Regulations require non-resident persons supplying taxable services through digital marketplaces in Kenya to register for VAT in Kenya; however, the non-resident provider of the	We recommend that Kenya reserve judgment on section 13 until Working Party 9 has released its final recommended global regulatory framework.	We submit that section 13 of the Draft Regulations should not impose a mandate that the platform police compliance by unrelated parties, when the	On the OECD guidelines are not prescriptive and every Jurisdiction has the obligation to make its own laws and regulations based on the circumstances, for example,
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S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>digital marketplace is not required to register with respect to sales through the platform.</p> <p>Section 13 provides that non-compliant sellers might have their access restricted to the Kenyan market. While the Draft Regulations do not state how that restriction might be imposed, we are concerned that KRA might suggest that the digital marketplace provider would be responsible for ensuring that such suppliers do not access the Kenyan market.</p> <p>As KRA is likely aware, OECD Working Party 9 has been tasked to study the role of platforms in VAT compliance for underlying sellers, make recommendations and ultimately propose a global regulatory framework for resolving this issue.</p>	<p>We strongly recommend that this provision be removed from the Draft Regulations.</p>	<p>platform itself does not have VAT compliance obligations.</p> <p>Digital marketplace providers, of course, can be expected to comply with their own legal compliance obligations. Imposing on the platform the additional obligation to police suppliers would create an undue compliance burden, and would not advance the sound and fair application of the tax law to the suppliers. In particular, this proposal raises a number of potential legal and compliance challenges:</p>	<p>the UK requires platform owners to ensure that persons making supplies to the UK charge VAT, failure to which they will be held liable for the unpaid taxes.</p>

CELLULANT

41.	Regulation 3 - Charge to tax	<p>Non-resident digital players will not be able to accurately distinguish between B2B and B2C transactions. This will lead to inadvertent levying VAT on B2B transactions.</p>	<p>We recommend that Cabinet Secretary and the Commissioner General engage with the non-resident digital players on a mechanism of accurately distinguishing B2B and B2C transaction.</p>	<p>Where Kenyan companies are inadvertently charged VAT by non-resident digital players, there is no recourse for recovery of the VAT thus negatively impacting cashflow.</p>	<p>This will be addressed by providing in the regulations that for B2B transactions the recipient of the services will be required to notify the supplier that they are VAT registered.</p>
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S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
			This will ensure smooth implementation of the regulations and eliminate the unintended negative consequences on Kenyan businesses.	The inadvertently levied VAT will be passed as an expense thus negatively impacting revenue from Corporate Income Tax.	
BOWMANS					
42.	Regulation 4 - Scope of taxable supplies	We note that the sub-regulation 4(k) affords the Commissioner wide discretion on what would constitute a digital market place and such discretion may not provide certainty to providers of digital services.	i. The discretion is limited and the addition of any supplies made through digital market platforms be left to the usual process of amending statutory instruments, in the event that KRA wishes to broaden the tax base to include additional services. ii. The Draft Regulations be amended to require an inclusive stakeholder consultation process before the determination of any additional supplies by the Commissioner. iii. Inclusion of a grace period of 3 - 6 months for implementation of any measures with respect to the treatment of any such services classified by the Commissioner as taxable supplies under the Regulations. This will allow the relevant suppliers of the digital services to put in place systems		These have been addressed under A&K under item no. 2.

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
43.	Regulation 4 - Scope of taxable supplies	<p>Noting that Regulation 4 of the Draft Regulations proposes a catalogue of services made through a digital market place that will be taxable, there is a likelihood of conflict with the existing Section 8(3) of the VAT Act.</p>	<p>for compliance with the Regulations.</p> <p>To avoid this conflict, we recommend that an amendment is made to sections 8 (2) and 8 (3) of the VAT Act to delete the taxing provisions in respect of electronic services and delete the definition of "electronic services".</p>		The services listed under regulation 4 expound on the provisions of section 8(3)
44.	Regulation Registration	<p>1. Whereas the simplified VAT registration framework is noble, the VAT Act provides that a person is required to register for VAT in Kenya where the taxable services they provide is of a value of KES 5,000,000 or more within a twelve (12) month period. The Regulations do not expressly incorporate this threshold and it is not clear whether suppliers will need to meet this threshold in order to register.</p>	<p>1. To better achieve the objectives of the Draft Regulations, we recommend the following:</p> <p>i. That the registration requirement be linked to the VAT threshold under Section 34 of the VAT Act which only makes it mandatory to register for VAT if a person supplies taxable services whose value is KES 5,000,000 or more. This will create consistency with the VAT Act and provide the much needed clarity.</p> <p>OR</p> <p>ii. That a new threshold, higher than the existing VAT threshold, be provided for suppliers providing digital services from foreign jurisdictions to only net large digital service providers and</p>		This has been addressed under A&K under item no. 3.

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>2. We note that the Draft Regulations do not provide sufficient grace period within which persons who are affected by the measures can make implementation of a VAT system change. In addition, there is the proposed Digital Services Tax (DST) under the Income Tax Act (Chapter 470 of the Laws of Kenya) that will be chargeable on the turnovers of digital companies under the proposed Finance Bill, 2020 that is currently being deliberated by the National Assembly whose proposed effective date is 1 January 2021.</p>	<p>continue positioning Kenya as a preferred hub for technology startups. For context, a similar regime in Singapore dubbed the Singapore Overseas Vendor Registration (SOVR) is only mandatory for digital service providers with a yearly global turnover of more than US\$1 million that sell more than US\$100,000 worth of digital services to customers in Singapore in a 12-month period.</p>		
		<p>2. Considering that the Draft Regulations introduce a new VAT regime and the digital service providers already operating in Kenya will need to make various operational challenges in order to be in compliance, we recommend as follows: i. That the registration and imposition of the VAT charge on the outlined digital supplies be aligned with the proposed effective date of the proposed DST, that is, 1 January 2021. OR ii. That a longer grace period be provided for the registration of suppliers who will be subject to</p>	<p>2. Considering that the Draft Regulations introduce a new VAT regime and the digital service providers already operating in Kenya will need to make various operational challenges in order to be in compliance, we recommend as follows: i. That the registration and imposition of the VAT charge on the outlined digital supplies be aligned with the proposed effective date of the proposed DST, that is, 1 January 2021. OR ii. That a longer grace period be provided for the registration of suppliers who will be subject to</p>		<p>This has been addressed under A&K comments Item no. 12.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>3. We note that the Draft Regulations require persons who make B2C supplies of services to recipients in Kenya to register for VAT. However, the Draft Regulations do not address whether such suppliers will also be required to charge VAT on B2B transactions once they are registered for VAT in Kenya. Regulation 3(2) indicates that the provisions of Section 10 of the VAT Act shall apply with respect to B2B transactions meaning that recipients of B2B transactions should continue to account for VAT on services received by them using the reverse charge mechanism (as these would constitute imported services).</p>	<p>the new VAT regime, preferably 90 days.</p> <p>3. To provide clarity, the Draft Regulations should indicate whether suppliers of services on digital platforms will be required to also charge VAT on B2B transactions once they are registered for VAT in Kenya.</p>		<p>These have been addressed under A&K Item no. 1.</p>
45.	Regulation 8 - Time of Supply and Accounting and Payment of tax	<p>1. We note that Section 5(1)(a) of the VAT Act stipulates that VAT is chargeable on taxable supplies made by a registered person in Kenya. Consequently, it is not clear whether the intermediaries will be required to register for VAT regardless of their supplies not achieving the VAT registration threshold of Kenya Shillings five million (KES</p>	<p>1. To better achieve the intended objective and align the Draft Regulations with the provision of the VAT Act, we recommend as follows:</p> <p>i. That intermediaries to be required to register, charge and account for VAT only if they meet the existing threshold of KES 5,000,000 under the VAT Act.</p>		<p>These have been addressed under A&K item no. 6.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>5,000,000), as only VAT registered persons can charge and account for VAT on the KRA's online registration platform iTax.</p> <p>2. The requirement to file and remit VAT returns and provide KRA with a monthly record of all supplies made in Kenya indicating the value of the supplies and VAT deducted every month, may pose a significant compliance challenge to many multinational enterprises, considering that it is an additional tax compliance regime in addition to the compliance requirements in their country of residence.</p>	<p>ii. That in the event that a higher threshold is proposed for non-resident suppliers of digital services, that the registration requirement for intermediaries be aligned to that higher threshold before being required to charge and account for VAT.</p> <p>2. the CS should consider adopting a quarterly payment and reporting system, to ease the compliance burden. This has been adopted by countries such as Malaysia to ease compliance.</p>		
46.	Regulation 11 of Amendment Returns	<p>We note that the Draft Regulations do not state whether a person registered under the simplified regime who is in an overpayment position and deregisters from Kenya, will be entitled to a refund of the overpaid tax in accordance with the provisions of the TPA and/or the VAT Act. Section 47(1) of the TPA states that when a taxpayer has overpaid a tax under a tax law the taxpayer may apply to the Commissioner for a refund of the overpaid tax within five (5) years</p>	<p>We recommend that the Regulations be amended to be in alignment with the TPA, to allow non-resident suppliers of taxable digital services who find themselves in an overpayment position and seek deregistration, to obtain refunds from KRA within a prescribed period.</p>		<p>The Regulations provide for a set-off of any overpayments against tax due from a non-resident supplier. This is equivalent to a refund.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
47.	Regulation 12 - Record Keeping	of the date on which the tax was paid. The TPA provides that for VAT, the period of refund is as provided for under the VAT Act (which is twelve (12) months).	We recommend that clarity be provided whether these records refer to the monthly VAT returns or more information will be required under the Regulations.		These have been addressed under A&K under item no. 10.
ARTICLE 19 Eastern Africa					
48.	Regulations 2 and 8 (2) - Interpretation and Time of Supply and Accounting and Payment of tax		<p>We recommend the introduction of substantive amendments to these Regulations as follows:</p> <ol style="list-style-type: none"> Provide a more comprehensive definition of the term 'intermediary'; Explicitly describe the type of infrastructure which will be used by the relevant enforcement agency to monitor compliance with the VAT (DMS) Regulations, 2020 and the safeguards which will be put in place to ensure the protection of consumers' privacy. 	<p>The KRA definition of an 'intermediary' is problematic and adopts a 'one-size-fits-all' definition which: -</p> <p>a) Fails to distinguish overlapping intermediary roles: ARTICLE 19's 'Internet intermediaries: Dilemma of Liability' brief notes that intermediaries, due to their provision of a variety of products and services may have a number of different roles. This is re-affirmed in the OECD Guidelines which note that intermediaries can simultaneously act, in</p>	<p>These regulations address issues of supply and where an intermediary carries any role other than supply of services through a Digital Market Place they remain outside these regulations.</p> <p>The issue of privacy is addressed under various laws including the Constitution of Kenya which KRA abides.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
				<p>practice, as an owner of services being supplied (e.g., "electronic retailers such as Amazon Retail), a 'facilitator' (matching buyers & sellers where an intermediation fee may be paid), an end-user and a content/service provider'9 which further complicates the definitional challenge.</p> <p>b) Introduces unjustified intermediary liability: ARTICLE 19 EA notes that this provision, read conjunctively with Regulation 8(2), places a blanket liability on intermediaries to account for VAT accrued by third parties, and further fails to acknowledge the role being played by the intermediary at the time of the service supply.</p> <p>c) Raises a risk of surveillance: Given the risk of non-compliance, ARTICLE 19 EA notes that the relevant enforcement agency may utilise advanced surveillance tools which</p>	

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49.	Regulation 13 - Offences and Penalties		We recommend the deletion of Regulation 13	<p>may threaten consumers' right to privacy and data protection in Kenya. ARTICLE 19 EA insists that KRA should explicitly outline the infrastructure which will be used to monitor compliance for all persons falling within the scope of 'taxable supplies' under Regulation 4, VAT (DMS) Regulations, 2020.</p> <p>Instructively, KRA should specify whether, and how, equipment such as the Electronic Signature Devices (authentication of invoices, cash receipts, etc.,) will be used, and what technical, personnel and procedural safeguards will be put in place to ensure the protection of consumers' privacy.</p>	These have been addressed under A&K under item no. 11

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				<p>third parties using a non-compliant platform/service and end users. Article 24, Constitution of Kenya (2010) clearly stipulates that a right or fundamental freedom in the Bill of Rights can only be limited where this is 'provided by law, and is necessary and proportionate.' Notably, Article 24 (1)(e) maintains that any person (natural or legal) seeking to restrict a right or freedom must assess whether there are less restrictive means to achieve the purpose.'</p> <p>ARTICLE 19 EA calls on KRA to delete this proposal and adopt a more proportionate and measured response in the VAT (DMS) Regulations, 2020.</p> <p>Secondly, these restrictions - when read conjunctively with the general penalty under section 63, VAT Act (2013) - are punitive. Section 63, VAT Act (2013) provides for " a fine not exceeding one million</p>	

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
				<p><i>shillings, or to imprisonment for a term not exceeding three years, or to both .” ARTICLE 19</i></p> <p>EA urges the deletion of criminal penalties in the VAT Act (2013), in favour of civil remedies, which often amount to a sufficient and proportionate deterrent which pays homage to the right of FOE.</p> <p>Lastly, this proposed restriction threatens to impact Kenya's universal access goals, given the failure in Regulation 4, VAT (DMS) Regulations, 2020 to exempt telecommunications services. We note that South Africa has explicitly exempted telecommunication services from its electronic services Regulations. 10 Crucially, a failure to exempt telecommunications operators will retard digital rights drives in the country by exacerbating and accessibility</p>	

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
				affordability concerns, by raising the cost of accessing the Internet and fixed and mobile telephony services.	
Anonymous					
50.	Regulation 4 - Scope of Taxable supplies	<p>1. The use of the word 'and' signifies that the CS is introducing new taxable supplies through regulations.</p> <p>This also presupposes that regulations can introduce new provisions beyond those of the primary Act that enables the regulations</p> <p>2. A proportion of the supplies indicated in the section are also offered for free on the various platforms</p>	<p>1. The taxable supplies under this section should only be enacted through an amendment of the primary VAT Act 2013 and not introduced through regulations</p> <p>2. Clarity should be provided on the tax status when the service is provided for free</p>		These have been addressed under A&K under item no. 2.
51.	Regulation 5 - Registration	<p>1. This will be problematic since in most cases, the intention is not to supply the services in Kenya or export for that matter only that the online subscriptions can be bought by anyone with an acceptable payment channel.</p> <p>For instance, an online newspaper subscription paid for using a credit card is not necessarily an export of the service to Kenya as the provider does not make</p>	<p>1. The proposal should be removed and only retain part b where there is an actual conduct of business in Kenya.</p> <p>2. The section should be amended to align to section 34 of the VAT Act 2013</p>		<p>So long as the service is consumed in Kenya, the supplier will be deemed to have made a supply in Kenya and therefore required to charge VAT.</p> <p>The issue of threshold has been addressed under A&K Item no. 3.</p>

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
52.	Regulation 7 - Determination of place of supply	<p>consideration for the jurisdiction where the card is issued.</p> <p>2. Section 34 of the VAT Act 2013 provides for a registration threshold of KES 5 Million per annum before registration for VAT.</p> <p>Section 5(2) of the regulations does not incorporate this requirement</p> <p>Section 8(2) of the VAT Act 2013 outlines the place of supply requirements where the place of business of the supplier is not in Kenya. The section does not include how the payment is made. The provision of part 2 and 3 do not necessarily translate to a supply made in Kenya. A person holding a card issued in Kenya can pay for and consume the service while abroad. Additionally, a person domiciled in Kenya can make payment for a service consumed by a person outside the country e.g. a parent paying for services of a child studying abroad. This therefore creates an implementation challenge</p>	Delete sub-regulations 2 and 3 as they are beyond the provisions of the enabling Act or introduce the changes through an amendment of the VAT Act		These have been addressed under A&K under item no. 5.
53.	Regulation 8 - Time of Supply and Accounting and Payment of tax	An intermediary is a conduit between the buyer and the seller and not necessarily involved in	The section should be deleted		These have been addressed under comments by ARTICLE

S/NO	Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
		<p>the transactions taking place. As such, the intermediary cannot take on the tax obligations of the seller.</p> <p>Section 5(3) of the VAT Act 2013 provides that tax on the taxable supply is the liability of the registered person making the supply and in the case of imported supplies under section 5(6) the liability of the person receiving the supply.</p> <p>The regulations can therefore not introduce tax obligations on third parties that are not party to the transaction</p>			<p>19 Eastern Africa under item 48.</p>

GENERAL COMMENTS

No.	Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
1.	<p>Kipkorir Kibowen Email: kipkorirkibowen@gmail.com</p>	<p>➤ The application of the digital tax to various platform will choke the growth and expansion of local entertainment production.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to;</p> <ul style="list-style-type: none"> ➤ Provide clarity on what is already provided for in the law and ➤ provide mechanism for non-residents to remit VAT charged.
2.	<p>Mzee Paul Mwandoc Email: paulmombo@gmail.com</p>	<ul style="list-style-type: none"> ➤ Subscriptions based payments to Residential Associations in the country. ➤ Subscriptions based payments to Security firms & unique residential based organizations offering security services. ➤ People in Kenya offering AirBnB services by renting out their rooms, apartments, cottages & homes and whose bookings & payments are made from overseas, must be made to pay their fair share of taxes as the properties are located in Kenya. A lot of these privately owned homes are owned by residents and overseas owners who reside outside Kenya but receive their rents from their Kenyan homes. ➤ Online-Foreign Exchange business- a lot of people are trading & making money by trading online in foreign currencies so they should register to pay tax. ➤ Please note that a lot of foreigners & Kenyans who reside outside Kenya own homes in Kenya where they rent them but do not pay their taxes as they are not registered for KRA PINS. They do not have Kenya bank accounts as they use 	<p>The issues raised do not fall within the scope of these regulations. They are mostly compliance related issues which can be addressed administratively.</p>

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		<p>credit cards to pay Security guarding firms and rents are received in their foreign countries where they reside.</p> <p>➤ KRA should also rope in Private Security guarding companies to mine data to get foreigners & wealthy people who pay them for their services and yet these foreigners & wealthy people are not registered to pay KRA Tax.</p>	
3.	<p>Evans Njuguna Email: mbuthianjuguna18@gmail.com</p>	<p>➤ At such a time when the country is reeling on all ends, I believe imposing this law would hamper local owned businesses within the country and cause unnecessary losses to the business owners and to the Kenyans themselves.</p> <p>➤ Right now due to the effects of COVID19 it is best to encourage more businesses to continue transacting in order to get the economy back on its feet, and I believe the bill above would hamper these goals and cause businesses to unceremoniously close up shop, and for international investors/companies to leave the Kenyan market altogether.</p> <p>➤ I therefore ask the committee in charge to review the proposal and to make amends where needed in order to prevent unnecessary loss to the Kenyan market and encourage the continuation of business so that the authority themselves can plan on newer ways of remittance collection that do not hamper the businesses in place.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
4.	<p>Nali Gita Email: natgee12@hotmail.com</p>	<p>➤ I would like to express my deep disappointment on this particular piece of legislation. We as Kenyans are already very heavily taxed as you are well aware, and you are also well aware of the corruption that ensures our money barely goes to where it is supposed to go. What irks me in particular is needing to tax downloadable mobile content, a lot of which is FREE, drivers, a lot of which are also FREE, electronic data management, customized search engines, event tickets,</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and

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		<p>supply of teaching material and supply of online market materials.</p> <p>➤ Please consider the effects all these taxes will have on SMEs and the Kenyans who use internet to get the information they find it very hard to get elsewhere. I highly doubt that there is another country that would wish to tax. essentially, all services that are gotten from the internet, and it would not be a good look to pioneer things that seem so regressive. I implore you as a simple Kenyan citizen to absolutely not consider this legislation and use the taxes we are already giving you well. Does it make sense to try and get income from free products surely? We get content for free online and you would not even want us to enjoy that? I do not think that is fair.</p>	<p>➤ mechanism for non-residents to remit VAT charged.</p>
5.	<p>Moses Ngigi Email: mngigi19@yahoo.com</p>	<p>➤ We're already overburdened by the existing taxes, this restricts online learning, what kind of life will we have when the digital market place vat comes into effect?. Most youths are jobless and they make their living by developing digital content, sale wares online. Some undertake their online tuition and some e-learning.</p> <p>➤ This government is employing double standards, one hand they speak of youthful innovations some are film producers, software developers the list is endless</p> <p>➤ What type of country will our children grow up in?</p> <p>➤ Why aren't our own MPs still not paying taxes?</p> <p>➤ The revenue collected how much was lost? If the taxes we pay, don't cater for us and end up in people's pockets. why should we pay more</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <p>➤ clarity on what is already provided for in the law and</p> <p>➤ mechanism for non-residents to remit VAT charged.</p>
6.	<p>Inger Brenda</p>	<p>➤ I strongly disagree with tax imposition on supplies made through the digital market place at this stage. According to</p>	<p>It should be noted that VAT is already applicable on these services and is not being</p>

No.	Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
	<p>Email: ingersilole@gmail.com</p>	<p>the United Nations Conference on Development and Trade (UNCTAD), Digital advances have generated enormous wealth in record time, but that wealth has been concentrated around a small number of individuals, companies and countries. Under current policies and regulations, this trajectory is likely to continue, further contributing to rising inequality. The same organisation suggests that taxation will truly generate revenue, as digital market places is a key area to tap into but not at this stage in Kenya. Inclusivity is essential to building a digital economy that delivers for all.</p> <ul style="list-style-type: none"> ➤ People go to work or strive to earn a living daily to get out of poverty. The digital marketplace has proved to be one of the youth's main source of income as they have turned to content creation and selling of merchandise through various platforms. Let the government ensure that there is proper and strong internet connectivity all over the country before it moves forward at this stage. ➤ Even developed countries have not yet set the right tax incentives for the digital market place yet they have strong internet infrastructure. Let's not rush to push western countries' policies before we strengthen our own infrastructure. It will broaden the economic divide that is already experienced in this country! We'll have to tax it, but it's still too soon! Please take this into consideration. 	<p>introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
7.	<p>Cosmas Muisis</p> <p>Email: cosmasmuisis@gmail.com</p>	<ul style="list-style-type: none"> ➤ I would like to kindly request that this bill should not be passed. This regulation in particular will help our fellow businessmen in running the business without crippling the current economic crisis in our midst. Other factors will definitely be offset with this decision. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and

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8.	<p>Gracia Oletsa, Mutinda Muthoka, Jeremiah Ngugi, Muthoni Njoroge & Wambui Kariuki</p> <p>Emails: jonolletsa@gmail.com mutindabmuthoka@gmail.com jeremiabhkamama@gmail.com soninjoroge@gmail.com wambuikariukid@gmail.com</p>	<p>I have gone through the document and feel that the proposed laws if enacted may hamper the cycle and ability to do business within the country by the affected players.</p> <p>As you know COVID-19 has currently ravaged the world and has made the fulfilling of business much more difficult to most Kenyan businesses and hence a lot of belt tightening measures had to be employed, even by the authority in order to ensure the survival of Kenyan businesses as well as any international stakeholders in the country.</p> <p>The proposed bill, though drafted in good faith, may hinder the restarting or the resumption of some of the players in which the proposed rules is targeting. For example, the local online retailers may already be paying taxes on any remittances they acquire from doing business. The proposed bill may incur additional tax expenditure upon them which may prevent gradual company growth and long term sustainability in their finances.</p> <p>Another example would be the event organizing companies, whom have basically stopped business entirely due to the pandemic. In such, they may need time to get back up on their feet in order to make up for the major losses that have been incurred as a result of the pandemic hitting the nation</p> <p>Together with business owners and consumers alike, I would like to implore the authority to re-convene and look at the proposal once more as well as gain further insight into the markets they wish to enter and how to do so in the least abrasive ways, as a good number of the players here are international companies, and as you know encouraging</p>	<p>mechanism for non-residents to remit VAT charged.</p> <p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<p>international investment at this time is a crucial step in getting the economy humming again.</p> <p>➤ I look forward to seeing your decision as we all ensure that things get back on track in the best of ways while also promoting local and international business in the country.</p>	
9.	<p>Jane Chebet Movie Maniac</p> <p>Email: chebet95@gmail.com</p>	<p>➤ I am not in favor of this because of the following reasons:</p> <ul style="list-style-type: none"> • Adding VAT means that the prices of these products will go up which a lot of Kenyans are not able to afford, as it is even now, a lot of people are barely able to pay for these services constantly from month to month, check the statistics. • According to the proposed, this means that things that we weren't being charged for before, we will have to start paying for them like for example YouTube etc. In order to upload content, I am against this because this will stifle a lot of artists, we barely have an established music and film industry in Kenya, many artists struggle to get their content aired as is and the only refuge we have had all this time has been the online platforms, which has allowed many artists to penetrate the industry. Also, for many people in the slums, art has been a gateway for them to better their lives, for people who are living below the poverty line and can barely afford to pay for their daily meals how are they supposed to pay for these services? It honestly feels like the government is against them. How do you take from someone who already has nothing? • I am well aware that some states in the US have already imposed this tax on streaming services however it is important to note that we are nothing like the US, our 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<p>standard of living and our economic development is not the same as the US, we are simply not at the same level, we are a developing country. A large percentage of the people in Kenya are poor, also cannot afford this, we do not pull the same number of users as the people in the US, we are not at that point to be doing this.</p> <ul style="list-style-type: none"> • Imposing taxes on such services may lead to a lot of the foreign developers pulling out of this country therefore denying us opportunities, jobs etc. As of now, streaming platform Netflix, and other production companies cannot film in Kenya because of the heavy fee imposed thereby denying artists, both actors and musicians major opportunities and jobs that would give Kenya's music and film industry global recognition. Remember when Sportpesa was taxed heavily and ended up moving it's operations to Tanzania, the government in turn lost a huge source of revenue. Let's say the same thing happens with the other companies? Jobs will be lost in turn less revenue. • On taxing of theatre tickets, at the moment, there are very few Kenyans that watch movies in theatres, because they can't afford it, if you check the numbers our theatres are not doing so well, if we want our theatres to succeed we should be making things better not worse, things are already hard we shouldn't make them harder. <p>➤ In conclusion, this move aims to stifle the people of Kenya as they struggle to better themselves and also as they try to express themselves. For the limited opportunities available, this will end up being another block put up by the government towards the Kenyan people.</p>	

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<p>10.</p> <p>Alfred Mbatia</p> <p>Email: alfredmbatia@gmail.com</p>	<ul style="list-style-type: none"> ➤ All chargeable products that haven't been taxed at source of purchase to be taxed. For example if I am using the digital marketplace to sell bread which has already been taxed at source the way drop shippers do then the bread shouldn't be taxed as that is double taxation. ➤ All online companies or digital marketplaces that are based in Kenya which are reselling products or services for their clients to fully tax these clients gross income whether Kenyan or not as long as they are using their marketplace. For non-Kenyans whose countries have tax treaties with Kenya will be eligible for less taxes. ➤ All persons whose taxes have already been taxed due to using the digital marketplace to sell a product or service shall be exempt from double taxation on the same when filling KRA returns. 	<p>The regulations deal with VAT and therefore do not fall within the scope of tax treaties. Nevertheless, there's no double taxation since VAT is a consumption tax that is payable by the final consumer.</p>	
<p>11.</p> <p>Robert Mwaura</p> <p>Email: robertmuigai@gmail.com</p>	<ul style="list-style-type: none"> ➤ In regard to the proposed VAT taxable on marketplaces, I'd suggest making an exemption to companies that have been locally incorporated in Kenya to boost investment within the region. ➤ Streaming companies like TIDAL, which is large in the states, have no presence here. Imposing the VAT will discourage investment. However, encouraging them to incorporate locally with the VAT exemption will not only create employment but provide a gateway to the wider East African region. 	<p>The regulations apply only to non-resident suppliers. For suppliers whose place of business is in Kenya, the normal VT regime applies.</p> <p>The proposal to exempt streaming services from VAT should be made in through the normal Budget cycle.</p>	
<p>12.</p> <p>Emmanuel Chebukati</p> <p>Email: echebukati@heptanalytics.com</p>	<ul style="list-style-type: none"> ➤ I welcome the above referenced draft regulations from the perspective of enabling Kenyan business to interact with Foreign Service providers (e.g. cloud service providers) from a VAT perspective. 	<p>Noted.</p>	

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13.	<p>Wahu Tuju</p> <p>Email: wahutuju9@gmail.com</p>	<ul style="list-style-type: none"> ➤ I, however, have concerns about applicability and enforcement, which are wide-ranging and sweeping right from the definitions themselves. As a result, subsequent offences and penalties are likely to be disruptive to both local businesses and individuals without notice to readjust. ➤ Thresholds and sensitization ought to be established so as to be very clear on exactly who is being targeted as opposed to casting a wide net that may see the negative effect of stifling the digital space instead. A more measured and targeted approach would suffice in this instance starting with the larger players then trickling down to the smaller ones in order to protect this fairly young and emerging industry. ➤ It is my opinion that these regulations are based on a faulty principle that digital service providers profit significantly off of user created value when the user just consumes and most of the revenue is made by the companies. ➤ This draft will just incur a heavy burden to the user instead and therefore would not be in the best interests of the citizens. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
14.	<p>Gatabaki Sieka</p> <p>Email: sgatabaki@students.uonbi.ac.ke</p>	<ul style="list-style-type: none"> ➤ The above mentioned regulations could adversely affect gains made in creating employment opportunities for youth especially through local digital marketplace start-ups. There should be consideration of the origin of the start-up and separate amendments made for entities of Kenyan and perhaps African origins. ➤ Potentially, international digital market places may elect to ignore the Kenyan market due to these regulations or render their services to the wealthy few who can afford. This will lead to limited choice of goods and services to local Kenyan 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<p>and an overall reduction in lifestyles. Perhaps if preferential treatment is given to local start-ups, then some of these issues can be mitigated.</p> <ul style="list-style-type: none"> ➤ I urge more consideration and thought be put to these factors and the framing of the regulations adjusted accordingly 	
15.	<p>Nivi Amit Email: nivi.mukherjee@gmail.com</p>	<p>Please don't enact these regulations for the following reasons:</p> <ul style="list-style-type: none"> ➤ This is a time the government should be advocating for increased use and subsidising digital platforms, not discourage it by driving the costs up. The COVID-19 pandemic response encourages social distancing and reliance on digital platforms. ➤ By having to submit details of all individuals on a platform, privacy is infringed ➤ Kenya's digital economy is still very young - a measure like this will stifle innovation and youth entrepreneurship in the industry. If it has to be done, it should be done for big players only that are earning more than KES 36m annual revenue 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
16.	<p>Mark Makund Email: makundimarc@gmail.com</p>	<ul style="list-style-type: none"> ➤ The young entrepreneurs who can't find jobs and have to resort to the digital airspace... You will choke us to death with these taxes that are really suffocating us. ➤ As a young man who is really trying to figure out how I can earn money through the digital space... you are really making it hard for those that are. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
17.	<p>Mukabwa Isaac Anol</p>	<ul style="list-style-type: none"> ➤ First, the bill contradicts the data protection laws passed late last year since the digital companies can't submit tax without giving customer information on purchases. 	<p>It should be noted that VAT is already applicable on these services and is not being</p>

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	<p>Email: mukabwaisaac@students.uonbi.ac.ke</p>	<p>➤ Second, Kenya's digital economy is still very young with entrepreneurs struggling to create sustainable marketplaces. This is because less than 5% of local transactions are digital.</p> <p>➤ This bill will just continue to make it harder for digital startups since they'll be already heavily taxed and young entrepreneurs will continue struggling in this already harsh economy for them.</p>	<p>introduced by the proposed regulations. The regulations are meant to;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
18.	<p>S Bumbuazi</p> <p>Email: sbumbuazi@gmail.com</p>	<p>➤ While I recognise the need for the government to find sources of revenue to meet its deficit. The draft regulations are punitive to a sector that is still in its inception stages.</p> <p>➤ The digital space is yet to grow and if these regulations are put in place now they will kick out others who had have otherwise benefitted from it.</p> <p>➤ I therefore do not support these regulations and as a Kenyan citizen advise the government to postpone the proposed regulations.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
19.	<p>Hillary Noel</p> <p>Email: hillanoel82@gmail.com</p>	<p>➤ As a youth who has been fortunate enough to graduate and still have been jobless for years now with no entrepreneurial skills, the digital market has been the only way I can get food on the table.</p> <p>➤ And I can swear to you that its not great and adding this tax to me and a few people who know who barely make ends meet will do us a great disservice so I would request this bill be shelved for now mostly during this pandemic where we are barely making anything would go on to hurt us even further.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
20.	<p>Kala Print</p>	<p>➤ This bill in the current climate seeks to do a lot of harm to youth who are really struggling to make ends meet. The terms underlined in the bill seeks to tax even podcasts which</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed</p>

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	<p>Email: kalaprint@gmail.com</p>	<p>traditionally are a free medium that no one charges except your data cap for streaming.</p> <ul style="list-style-type: none"> ➤ My input would be the bill be put away. Because for the millions of unemployed youth this is the only way they will ever be made to make a living. Why tax the digital space and leave the jua kali people out who make the same money. 	<p>regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
<p>21.</p>	<p>Rose Blue</p> <p>Email: rosebluo9@gmail.com</p>	<p>This bill is not pro people. Us the youth who use these platforms as the only way to give our lives purpose is a tough pill to swallow. It will stifle the economy as is. With people unable to spend money because, it is going into tax. It's hard.</p> <ul style="list-style-type: none"> ➤ The money made on online platforms go to the mama mbogas of the world and the barbers and salons to help put money back into the economy so we are in one way or another still helping the country. ➤ But if the tax man takes a good chunk of that money then how will people who depend on that disposable income benefit from it. The internet should be free. A place of solace for the ones with nothing and imposing yourselves in it will seek to destroy a relatively young space. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
<p>22.</p>	<p>Kate Kendy</p> <p>Email: katekendywanjiku@gmail.com</p>	<p>I do not support this bill and it should not be passed. Reason being that most people on the digital space are young and unemployed. We are barely surviving and the digital market place is our only way out.</p> <ul style="list-style-type: none"> ➤ We've worked really hard to build ourselves on these platforms by ourselves without the help of the government for you to come in and take a share of it. The tax will not be accounted for or help us. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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23.	<p>Renova Cas</p> <p>Email: casrenova@gmail.com</p>	<p>My thoughts on the digital marketplace supply bill are as follows:</p> <ul style="list-style-type: none"> ➤ The people who you want to tax for running the marketplace are just looking for a way to survive. Single mothers and people with families who cannot secure jobs anywhere else. ➤ There isn't enough money made digitally to cater for this infrastructure. For the youth like us where the markets are very homogenous it's difficult to make consistent income and that's why this bill would tend to do more harm. ➤ The people who have benefited from the digital marketplace would be doing other nefarious things now like crime but have managed to keep themselves busy and taxing them would be a major blow to them. ➤ The current pandemic has already strained a lot of these businesses already and taxing them just adds to the burden. And burying them in taxes would be a disaster. ➤ This of the people. This of us the youth. Loans and all to make these businesses barely make profit. Think of us. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
24.	<p>Liz Kamau</p> <p>Email: iziekamau21@gmail.com</p>	<ul style="list-style-type: none"> ➤ I personally don't support this Bill at all. In Kenya for years there have been increased rates of unemployment and youths end up getting into criminal activities to put food on the table. Now, when the youths are trying to get themselves back on their feet and using social media and the digital platforms to make an income the government wants to tax it Why? ➤ This Bill will lead to a lot of closer for small businesses on social media and loss of income for so many youths. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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25.	<p>Loice Medium</p> <p>Email: loicemedium@gmail.com</p>	<ul style="list-style-type: none"> ➤ We are in the middle of a Pandemic and rates of unemployment are increasing. This Bill will lead to increase unemployment among the Youth. ➤ I would like to raise concerns regarding the subject of proposed digital tax laws. ➤ As a country, we are still trying to build a digital economy, and imposing these laws will hurt both the average Kenyan and the entrepreneurs. ➤ For once, may the government stop thinking about its own profits and actually think about and consider what is beneficial, in the long-term for our children's children? 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.
26.	<p>Mutanu Lukhale</p> <p>Email: mutanulukhale@gmail.com</p>	<ul style="list-style-type: none"> ➤ The government is doing absolutely nothing for us as the youth when it comes to youth employment. We go to school, get a good education then look for jobs only to be told that they employ people with a certain qualification in a specific field for a certain amount of time. How are we supposed to earn a living if we don't have jobs? ➤ Self-employment. The government has been singing year in year out about how we should be self-employed yet they still do not help us in any way to achieve that. We have retorted to the online digital platform for us to earn a living using our creativity. ➤ Online digital platforms enable people to enhance and perfect their creativity and use it to educate and better their community. So not only does it act as a source of income but also helps a lot of people out here to acquire information and a lot more. ➤ We are living in a tough economic time. We live in a country where people diligently wake up early in the morning, go to work and do what they have to do in order to at every end of 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<p>the month are required to pay taxes but yet all we see and here are scams here there and everywhere. We are told and we know for a fact that taxes are meant for development of the country but we see no developments at all. It's always about the corruption scandals involving the money we put our blood sweat and tears to create and that is why we resort to earn our income through the digital space because we are certain that we will still have a steady source of income in case anything happens.</p> <ul style="list-style-type: none"> ➤ If you didn't know some people use the digital space to earn money to support their families and families who are unable to fend for themselves especially now during this pandemic. Every single day there are people asking influencers to use their platform in order for them to get food or to help them out with hospital bills and things like that. Taxing them would cause them such a strain and a lot of sacrifices will be made and these sacrifices will only benefit the creators and not the community in general as it should. ➤ There's so much I can say and state as to why this bill should not be passed but that's all for now. ➤ I humbly request you to please listen to us and not allow the bill to be passed for it will cause a huge loss for all the digital space and everyone in general. 	
27.	<p>KWS Root Email: kwsroot@gmail.com</p>	<ul style="list-style-type: none"> ➤ The new VAT regulations are wrong faith to the common mwananchi who are trying to grow themselves in the harsh economy we are in. ➤ Access to information should not be only accessible to the rich people. ➤ Example; I want to buy a book online to improve my skills so that I can get a good job, If I don't have enough money due 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and

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		<p>to the increased price of the book due to the VAT you are adding I can't access the book. Which means I don't learn a new skill leading to me never getting a job leading to me staying in poverty. If this bill is in good faith should look at better ways of collecting tax and kill the only source of income to young people out here who are trying to make ends meet.</p> <p>> Bottom line is, KRA did not consult (recommendations were ignored) because what is contained in this bill is just heart breaking on the greed and lack of understanding of how to improve the lives of people they are supposed to serve.</p> <p>> It is important to acknowledge the importance of paying tax but not at the expense of an entire industry that is yet to reach its potential growth.</p> <p>> My comment: This bill should not see light of day. People involved in making the bill should rethink again on the best way to collect tax on digital marketplace without killing it entirely.</p>	<ul style="list-style-type: none"> ▪ mechanism for non-residents to remit VAT charged.
28.	<p>Jerry Estifanos</p> <p>Email: jerryestifanos@yahoo.com</p>	<p>> I ask that this bill not be amended as it would cripple online Entrepreneurship in Kenya. Please have the best interests of the citizenry at heart.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ provide mechanism for non-residents to remit VAT charged.
29.	<p>Evan Njagi</p>	<p>> It is unacceptable it is unfathomable that you seek to extort young and unemployed Kenyans by implementation pathetic digital taxes that will only make our lives harder!</p>	<p>It should be noted that VAT is already applicable on these services and is not being</p>

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	<p>Email: evanjargie@yahoo.com</p>	<p>➤ You need to account for all the tax money you collect before even thinking of making our lives harder!</p>	<p>introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
<p>30.</p> <p>Jobu</p> <p>Email: job47@protonmail.ch</p>	<p>➤ As a citizen and regular internet user, I believe it is wrong to charge taxes on goods sold and bought over the internet, some that are not even produced in the country. The sale and purchase of goods on the internet should be free from charges imposed by any country as it is a global marketplace.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged. 	
<p>31.</p> <p>Alex Muriuki</p> <p>Email: alexmuriuki855@gmail.com</p>	<p>➤ I as a citizen am expressing my concern of the new tax and disapprove of it as it would negatively affect consumers since the burden of the tax would be passed onto them, therefore cost more, and reduce income that is better spent within the economy to help it grow and develop.</p> <p>➤ Why doesn't the KRA look into reducing taxes for locally made phone applications and other digital enterprises, therefore increasing their demand and usage and increasing tax revenue and at the same time promote Kenyans and their businesses as well as platforms.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged. 	
<p>32.</p> <p>Tony Miyoro</p> <p>Email: amiyoro@gmail.com</p>	<p>➤ Engaging in a Digital Marketplace Tax is short sighted as it will lead to a decline in the digital economy with which young people in this country rely on to stave off poverty and joblessness.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p>	

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		<p>➤ There is a net benefit to allowing Kenyans to transact online without tax as it will allow us to start and work on our businesses effectively. This kind of tax can be considered draconian as many countries avoid such practices in order to attract foreign investment into the country from what will be one of the largest and most profitable fields in the world</p> <p>➤ Please consider the future generations of this country when implementing such directives.</p>	<ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
33.	<p>John Karima Email: karimajohn24@gmail.com</p>	<p>➤ I am a concerned taxpayer writing with regards to the aforementioned proposed tax increment in the digital marketplace. As opposed to aiding in your quest, "To be the leading revenue authority in the world respected for professionalism, integrity and fairness", this tax increment instead directly contradicts your fundamental Fairness principle.</p> <p>➤ I enjoy several digital goods that may soon become priced at an exorbitant premium that would lock me out of the digital marketplace. Be it eBooks, educational podcasts and even local music distributed internationally. I ask you to reconsider this bill and instead leave the digital marketplace as is, so as to aid me and many others in my position to better our education and directly support our local content creators.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
34.	<p>Maina Gats Email: mainagats@gmail.com</p>	<p>➤ Introducing a digital tax on marketplaces is going to kill ecommerce before it even takes root in Kenya. Only 5% of the population transacts digitally and if we're going to get where we want to be by 2030, we need more people to take it up. What will introducing this tax do?</p> <ul style="list-style-type: none"> • Increase prices for digital goods and services • Deter start-up businesses from doing online business 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and

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		<ul style="list-style-type: none"> • Deter normal mwananchi from buying goods/services online (Offline is cheaper) • Reduce online economic activity which is proven to be higher • Increase cases of tax evasion <p>➤ Please relook at the tax. As a suggestion, it would be more appealing to have it once a business reaches a certain revenue threshold. This would apply the tax on big established businesses like Uber and allow room for start-ups thus allowing innovation in the economy.</p>	<ul style="list-style-type: none"> ▪ mechanism for non-residents to remit VAT charged.
35.	<p>Michael Bailey</p> <p>Email: michael.bailey.marshall72@gmail.com</p>	<p>➤ This law will discourage digital innovation in Kenya.</p> <p>➤ Digital marketplaces in Kenya are at an infancy stage and KRA should think of tax laws, which are inclusive of all businesses in Kenya. Tax breaks for businesses with an online presence will help in increasing trade and adhering to SOCIALDISTANCING.</p> <p>➤ If that can't happen, Kenya will experience a brain-drain to Rwanda or Europe and ignore selling their services to the Kenya simply because it is not viable for the business. I'd also be happy to denounce my Kenyan citizenship and become a citizen in a country that respects my work.</p> <p>➤ This law doesn't even encourage SOCIALDISTANCING and I think it's malicious in that it indirectly helps spreading COVID-19.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
36.	<p>Joan Mwende</p> <p>Email: joanmwende.jm@gmail.com</p>	<p>➤ This is outrageous and uncalled for. This country wants to steal from already poor people; the economy will collapse to benefit people who are already very wealthy. Netflix for instance is already too expensive for a common mwananchi not to mention Uber and other can apps which are mostly</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p>

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		<p>just a safer option because this country cannot guarantee our safety!</p> <ul style="list-style-type: none"> ➤ Digital space is just for people with hobbies not really making money out of it why take? ➤ These government entities can't even account for the taxes they already take! ➤ We cannot be supporting a government that is out to enrich themselves and leave us in debt and still take away the little the common mwananchi is trying to do to support themselves. 	<ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
37.	<p>Collins Mutua Email: collinsmutua39@gmail.com</p>	<ul style="list-style-type: none"> ➤ I oppose the move to tax online businesses that the government did not help build. It is so unfortunate that you people want to steal from every corner of the common mwananchi. ➤ Please, sort out the mess that you people designed and promise us that our taxes will be used appropriately in the future. For now, please leave us alone. ➤ We are a creative and hardworking lot of Kenyans who want to see a better future for this country. Unlike you people who want to steal and enrich your selfish egos. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
38.	<p>Eric Mogz Email: erimimi85@gmail.com</p>	<ul style="list-style-type: none"> ➤ I have gone through the proposed amendments to the finance act and in my opinion, these amendments are flawed. Taxing these platforms will be taking us a step back, especially for the numerous unemployed youth who over the years have now become innovative and started using these platforms to try and make ends meet. ➤ As it is, the cost of internet is still too high for most of us, and by adding this proposed tax, it will make the rather steep mountain even worse to climb. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.

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39.	<p>Sam Njoroge Email: skihuha@gmail.com</p>	<p>➤ Kindly reconsider these proposed amendments.</p> <p>➤ I have recently been checking the new proposed digital tax bill and truthfully it will so many of our businesses because we depend on small commissions to survive with tax. This is will make our goods less appealing to customers due to growing prices.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
40.	<p>Kevy Kimz Email: Kevy.kimz@outlook.com</p>	<p>➤ You will probably disregard my sentiments because you are hell bent on forcing the tax no matter what we say but if you can take a minute to evaluate the consequences of your taxes and do a little bit more research you may discover:-</p> <p>1) Digital market place is in its infancy . Most unemployed youth who have sought to go the extra mile are struggling to even get a footing in the digital space and are not making as much. Unless it's an essential service, their clients will shrink because of the increased taxes. You will shrink your benefits (Remember Senator Keg) - So instead of taxing, why not support them to grow first and maybe when Kenya reaches a healthy threshold in the digital space, maybe 100 Billion, then you can think of taxing?</p> <p>2) The digital market requires internet connection. you can retrieve data from CAK on the percentage of internet penetration in Kenya as well as from the recently conducted census. Of all who are connected, Many of</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.

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		<p>them are struggling with data bundles. My point is, an enabling environment needs to be provided first.</p> <p>3) When you do your research comprehensively, Request google, Netflix, apple and any other digital foreign subscription entity in Kenya for data on their subscription numbers. In Kenya Netflix has 29,500 only. Now, on the total subscriber numbers in Kenya which are barely 100,000 combined for all these foreign services, adding the Punitive extra costs will not only slow down penetration, but will just kill their subscriber bases in Kenya where many Kenyans are still struggling with data bundles. The 14% will NOT be beneficial in the long term. You will only scare away investors and leave us in the stone age.</p> <p>4) The above include the proposals to tax software downloads, drivers e.t.c. Benefits will be negligible as there are not many frequent software or driver purchases in Kenya. Do research.</p> <p>5) Additional Taxing of online transacted products will force us revert to retail. It will be counterproductive. If I sell a product in my retail shop @Kshs20 including VAT and through Innovation and cost savings, I decide to go online to sell @ Kshs 19 including VAT. I should not be subjected to any additional taxes. If I am additionally taxed, I will simply revert back to the physical shop. I may advertise my products online and will direct my clients to visit my shop. They can transact online only when they see the need to. but if online has additional costs, why even bother. Again, Counterproductive.</p>	

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		<p>➤ I can only recommend to set up an enabling environment for digital market to grow first before being punished with Taxes. Then later introduce taxes gradually. Start with 1%, see how it goes, then as the market grows, the taxes can grow with the increased revenue from the space. This practice in Kenya of suddenly slapping a growing space with maximum Tax is uncouth and counterproductive.</p>	
41.	<p>Mwangi Kirubi</p> <p>Email: mwarv@click.co.ke</p>	<p>➤ We're currently registered to charge VAT on our transactions. Our PIN is Po51532718X</p> <p>➤ We are setting up a website where one can license images from our library. Most of our clients will be from overseas so it will be considered as works for export which are not VATable.</p> <p>➤ Does the new law mean that we should now charge VAT on all digital purchases even for overseas clients contrary to the VAT law?</p>	<p>These regulations address supply of services by non-resident suppliers through a digital market place.</p> <p>The stakeholders Issue has been forwarded to the relevant TSO (Tax Service Office) for action.</p>
42.	<p>Simon Muthii</p> <p>Email: smuthii39@gmail.com</p>	<p>➤ As a tax paying citizen, who is already overburdened by the current tax regime, I believe it's unreasonable for the government to introduce VAT on online businesses. As youths, formal employment jobs are already in scarcity so turning to online business is our only option of succeeding in life. Consequently, I don't support this new tax amendments on the digital market space</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
43.	<p>Kithinji Esther</p> <p>Email: kies.95@gmail.com</p>	<p>➤ 80% of Kenyan youth are unemployed as a result they've sort to digital platforms as a way to make meagre income.</p> <p>➤ They have launched startups to survive. As you know startups do not have a high survival rate as opposed to corporations.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p>

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44.	<p>Bella Charmed Chaos Email: bellacharmedchaos@gmail.com</p>	<ul style="list-style-type: none"> ➤ Taxing young entrepreneurs is literally killing the support local entrepreneurship as repeatedly stated by the President and his government. ➤ If 95% of Kenyans are not buying things online, why introduce tax laws at this point that make it harder for them to enter that digital economy, and make it twice as hard for local entrepreneurs to build successful marketplaces? ➤ A threshold should be put by Kra on Taxing entrepreneurs such as not taxing until they hit target x in annual revenues. ➤ Also charging taxes on digital platforms will also hurt young people who are the main consumers of this. Charging 14% with a breakdown of 1.5%WHT to the organizations themselves and leaving the consumer to take care of the 12.5% is exploitative if not bizarre. ➤ Find alternate ways that do not hurt our digital space. Otherwise we'd rather go back to the olden ways of doing things and it will be a huge loss to the government. ➤ Until we are very clear on data privacy laws and regulations in this country and keen on observing this. I believe this the digital space is not an area the government has muscle to deal with. ➤ Kindly look into addressing corruption which has resulted in bringing down our economy over and above the current natural calamities ➤ You are in receipt of this, as I believe my voice as a Kenyan should be heard. The imposing of VAT on the Digital Market Supply comes across as an additional weight or burden to the common mwananchi. 	<ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
			<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p>

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		<p>➤ First of all, breaking through the digital market is a struggle that mostly takes years. Why is it then that the tax collector only comes in after I have just come up for air and stated stabilising myself? It's already tough as it is and most youth are relying on this to make miniscule earnings. What do we take home after being taxed?</p>	<ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
45.	<p>Prudence Okoth Email: prudy.okoth@gmail.com</p>	<p>➤ I personally do not support the idea of apps being taxed, it is completely unnecessary because not only do those apps not belong to the government but also it's a way of showing us how the government will do anything and everything to exploit us for money.</p> <p>➤ It is such a shame and right now, the power of the internet is very strong, if they want us to fight, we will fight to our best ability, so I strongly suggest that they don't tax our apps.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
46.	<p>George Mucheru Email: george@mucheru.media</p>	<p>➤ I think its wrong to require a digital marketplace (whether local or international) to submit a record of supplies.</p> <p>➤ It infringes on the privacy of the customer fundamentally. Its government's responsibility to go after VAT remittances from the vendors themselves.</p>	<p>The regulations are in compliance with the Constitution of Kenya and various laws on privacy.</p>
47.	<p>Pendo Nzingo Email: pendo.nzingo@gmail.com</p>	<p>➤ I'm writing in reply to the draft that was published proposing that the government wants to start taxing items that are digitally supplied such as podcast, YouTube videos and so on and so forth. The young people in the country are already suffering with a huge number of them being unemployed. They are barely making it in life. Only for the government to take the little they have managed to create for themselves (without Help from the government).</p> <p>➤ It's too much. Also the fact that we never see changes as a result of the regular taxes paid through Employed people, we</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.

No.	Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
48.	<p>Blacky Whity Email: blackywhity62@gmail.com</p>	<p>wouldn't want to put money where there are no visible returns.</p> <p>➤ The draft VAT for the digital marketplace is not a good idea Commissioner. You can all remember exactly what happened when KRA decided to increase taxes on beers such as Senator, you not only collected fewer taxes but also made the company stop producing the beer as its consumption decreased.</p> <p>➤ This is exactly what will happen if you go ahead with the Drafted VAT regulations 2020 (Digital Marketplace Supply). The better way is to decrease taxes and foster a favourable environment for people to do business and they will willingly pay tax.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
49.	<p>Ian Ndung'u Email: chaguobora.20@gmail.com</p>	<p>➤ The government has failed to create jobs for the youth. The online marketplace has provided options for the youth. As a recent graduate with no employment, my only source of income is from online platforms. Why suppress that? The drive should be to encourage the youth to explore the digital world.</p> <p>➤ The government should be working on policies that make the digital market platforms lucrative not suppress a section that has barely grown. It should be nurtured not exploited. Give the local digital platforms a chance to grow. They are the future.</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.
50.	<p>Jordan Warari Email: jordanwtr@gmail.com</p>	<p>➤ As a stakeholder within the digital economy whose livelihood depends on the internet, I submit my disappointment in this bill that seeks to stifle an industry that has barely grown, in which people are still struggling to make careers out of it.</p> <p>➤ Not only does it lock out foreign companies whose services are used by Kenyans, but Kenyans as well who have far too</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and

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51.	<p>Teresa Harris</p> <p>Email: teresaharris834@gmail.com</p>	<p>long been locked out of the job market and made a living for themselves with the help of the internet.</p> <p>➤ A tax implies the provision of a service. The propositions laid out under this tax bill are outright extortionate - to artists, creatives, film makers, small businesses, students, enterprises and so many more who depend on the internet and the digital economy. The government has offered no tangible support aside from rosy promises in speeches that are read out by, and in front of people who do not care about the wellbeing of Kenyans.</p> <p>➤ As a youth with a business education and background, I have read thoroughly the Value Added Tax (Digital Marketplace Supply) Regulations, 2020.</p> <p>➤ I am completely opposed to the application of these regulations for a number of reasons.</p> <p>➤ It is well known that taxes imposed on these digital companies will be passed down to the consumer. This will only increase the tax burden on the consumer. This is counterproductive on the government's part because a decrease in demand of these digital products & services will soon choke a budding market. As we know, the future is digital. We cannot afford to throw our country back into the dark ages. This is regressive.</p> <p>➤ Many Kenyan youth depend on the self-employment opportunities afforded by the digital space owing to a direct failure by the government of Kenya to provide jobs. Such taxes form part of the high barriers to entry of foreign direct investors which in turn lowers the creation of jobs. To apply these VAT regulations now also takes away the opportunities that youth are trying to create for themselves.</p>	<p>▪ mechanism for non-residents to remit VAT charged.</p> <p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ▪ clarity on what is already provided for in the law and ▪ mechanism for non-residents to remit VAT charged.

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		<ul style="list-style-type: none"> ➤ Enforcement of these laws appears to breach the privacy of consumers, requiring that companies disclose personal details of their consumers such as bank details and proxy details in order to confirm the origin of supply. The government is overreaching. ➤ These regulations are oppressive and predatory and I urge the Commissioner General to do away with them. 	
52.	<p>Ryan Marvin Email: marvinryan@ymail.com</p>	<ul style="list-style-type: none"> ➤ Addition of bureaucracy will disincentivize smaller companies from supplying services to Kenyans - The beauty of the internet and the rapid innovation that is its hallmark is that it removes the human and physical elements. To register for some service, there is no need for paperwork to be filled or some registry to be manually updated by a human being. It is immediate and automated. As a software engineer, majority of the services I consume to enable my work have no entity registered in Kenya and several of these sellers will be individual software engineers like I, selling small software components that I then use in the solutions I build. The addition of a tax representative will inevitably create a bottleneck for suppliers in getting their goods to customers immediately. ➤ Record-keeping overheads will be passed to consumer - Big and small companies alike fall under this law. The record keeping required for the fulfilment of this law will see small companies either exit the Kenyan market or they'll need to increase accounting services expenditure. This cost will inevitably be added onto the cost of the digital service. ➤ Unenforceable without bringing considerable infringement on privacy of citizens - Besides the bill not sufficiently describing the privacy requirements for the records of supplies to protect the Kenyan consumer, it is unenforceable 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<p>from a technical standpoint. The government will not have the capability to tax every single entity supplying digital services since a good amount of foreign digital service suppliers will be small companies or of 1 - 5 people or individuals. This means only the biggest foreign players will be taxed and the tax burden will be shared unfairly.</p> <ul style="list-style-type: none"> ➤ Eventual retaliation by other countries will lock out Kenyan businesses currently exporting digital services from global marketplace - Several countries have threatened retaliation against Kenya as this will amount to double taxation. This will inevitably affect Kenyan innovators making a livelihood on the global marketplace. The internet democratises innovation and expands the market size for any given innovation. It is a means of communication, a utility that enables the proliferation of trade. ➤ Effective tax rate on local businesses dealing online will increase and they will be disincentivized to deal online <ul style="list-style-type: none"> - Local businesses will have to increase the cost of their goods and services sold online to contend with this. Customers will invariably change their behaviour and avoid buying goods online in order to get the goods cheaper physically. Here, you will have disincentivized e-commerce and there will be a shift back to physical commerce, a major step backwards. 	
53.	<p>Jason Todds Email: jasontodds1090@gmail.com</p>	<ul style="list-style-type: none"> ➤ I would love to know the main points you are putting forth this proposed tax. I think this information is imperative to the Kenyan public just as you are proposing the bill trying to meet budget deadlines. ➤ While I can understand the needs of KRA to meet budget deadlines, the proposed bill poses a number of challenges. <ol style="list-style-type: none"> 1. Slow down innovation 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and

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		<p>Some local businesses trying to start up shop will find starting a business more about costs and less about profits. Given our own start up costs of course. An e-commerce platform here will have an added layer of tax if they use the following</p> <ul style="list-style-type: none"> - Wordpress - Shopify - BigCommerce - Magento <p>These are just a few foreign companies that provide e-commerce as a service and the owner will probably have to buy plugins, or renew subscription fees. This is all before even breaking even and breaking even for a business is already a hurdle on its own. This already adds more burden in terms of cost.</p> <p>Slowing down innovation or at least provides opportunities for local folk to innovate means we slow down our chance of being a tech hub. Investors will definitely not want to be around</p> <p>2. Online training and courses</p> <p>As an engineer there are online training courses I regularly follow. These courses are expensive as I endeavour to master more advanced courses in my craft. Adding this VAT on top of my subscription will slow down my learning. Let me explain. I use Frontend Masters to learn more advanced concepts on a programming language I use regularly i.e. Javascript.</p> <p>The course is already \$39 a month if I take the monthly option. Let's use Kshs.1 = \$0.01 for exchange rate</p>	<p>> mechanism for non-residents to remit VAT charged.</p>

No.	Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
54.	<p>David Svarrer</p> <p>Emails: david.t.svarrer@gmail.com CC: mary.njambi.muthoni@gmail.com jerngreb@gmail.com</p>	<p>So that is Kshs.3900 plus the new VAT on top of what was already there. Cumulative say 25% (on the higher side, VAT, advertising tax etc Also this is what Sweden do) My course could probably be Kshs.4875 which is already more than the WIFI service I pay Zuku - Kshs.4000. This seems a little excessive.</p> <p>3. What criteria will the commissioner follow to include an entity to be subjected to this ? Can the criteria be made available to the public ?</p> <p>4. What new goods or services as a result of digital markets are not captured in the current system and need a special act, exist?</p> <p>➤ Thanks a lot for your clarification. We are making use of this opportunity to recommend to your esteemed KRA, that you create an online system, where those of us who do online trade, simply can copy our transactions directly to iTax !!! Imagine how much easier it would be, if we can simply call an API-function or a micro-service (online service) on your SIMBA system or what the name is of your tax system - such that all transactions are being registered where they occur.</p> <p>➤ We think, that it is very good that you are extending the tax base into the digital domain. We actually fail to understand how anyone would get the idea that by changing a sales point to "online" would remove the VAT responsibility.</p> <p>➤ It is key, in our view, for successful implementation, that your esteemed KRA may be create an API service for obtaining ETR receipt or ETP receipt, however digital, such that there will remain being full control.</p>	<p>This is noted and forwarded to the relevant department for consideration</p>

No.	Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
		<p>➤ Whether or not the corporate would issue invoice, or cash receipt, it would be of importance also to have the reversal in place, such that one can reverse an already issued ETR receipt. It would be smart to implement this as a function linked to the return of the payment to the client. There are, net, loads of returns of goods, and thereby return of payments too. It is important that this does not end up like a road block - while it is ALSO important to ensure that this system cannot be abused. We think, that the abuse would be possible to detect by creating a dynamic and intelligent - maybe AI trained (use for instance Random Forest algorithm) - system for detection of what is usual and unusual within each sector of the tax base. One way to deal with it (but let it not be the only one), is to take the Class of the business, ie. "Office", or "Information Technology" or "Manufacturing" - etc. - and then create an average of returns from within that class - then compare it with the particular tax payer - and if the tax payer is for instance 30% outside the normative value, then you can do a look up. Thereby - and with other small simple rules too - you could be able to create a very flexible system, while you would catch all those cheaters who issue a ETR receipt and then reverse it shortly after.</p> <p>➤ We are open for consultation. That is naturally not for free - but - we would issue an invoice for the work, and, we would also give you an ETR receipt.</p>	
55.	<p>Stacey Adhiambo Email: staradhhis@gmail.com</p>	<p>➤ After reading the proposed regulations, I have the following comments and questions that need to be looked into for the prosperity of the country:</p> <p>➤ How are you going to ensure that consumers don't get double taxed?</p>	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p>

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		<ul style="list-style-type: none"> ➤ Consider the scenario of banks with online services. Any transaction done online already have the tax applied to them. Introducing the digital tax will make the consumer taxed twice, thereby raising their cost of living ➤ Have you thoroughly considered the repercussion of the digital tax on youths and the employment situation in the country? ➤ Majority of the youths who are unemployed do menial online jobs, getting irregular income just for them to be able to get food to eat and insufficiently take care of their daily needs. Introducing the digital tax may affect this source of income as the owners/businesses with the menial jobs who are outside Kenya may just decide to blacklist the country. How are you going to ensure that the channels of those menial jobs are still available for the unemployed youths? ➤ Local businesses with online platforms have already factored the VAT tax into their goods/online services. ➤ How are you cushioning them against double taxation that will ultimately be shouldered by consumers? ➤ Kenya doesn't have some services or products that someone may require. ➤ Consider an online e-learning platform where people get their certifications to upskill themselves. If the digital tax is introduced, some of those (if not all) of those platforms may decide to withdraw their services from Kenya. In such a situation, how can the citizens get to upskill themselves for better job opportunities? How are you going to ensure that the digital tax does not limit further learning opportunities for citizens? 	<ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<ul style="list-style-type: none"> ➤ Most innovativeness happens quickly due to the internet platform being free. ➤ Implementing the digital tax will cease this advantage, thereby stifling innovative spirit for the local mwananchi who is also poor. Have you considered a way forward that will ensure the digital tax does not stifle innovation in the country? ➤ How will the introduction of digital VAT affect diplomatic relationships? ➤ Have you considered the impact of any retaliatory action by other countries due to the digital tax on the economy? ➤ There is already tax levied on internet. ➤ Introduction of this tax also implies that the consumer will pay another tax on something they buy over the internet. The internet is the raw material and the consumer is already paying the tax. Isn't the introduction of this digital tax implying that as a citizen, I will be working just to pay taxes instead of relieving my financial burdens? ➤ I hope you will consider my comments and questions seriously as you consider the best proposal for the citizens. 	
56.	<p>Samuel Karumbi</p> <p>Email: samkaro59@gmail.com</p>	<ul style="list-style-type: none"> ➤ My thoughts are that the authority would like to target firms that are in the digital space and these businesses are offering services to Kenyans that are profitable. ➤ I believe the only way to do this without MSMEs that are not able to get a premises due and tangible goods to sell subjected to VAT from being DOUBLE taxed is through an online business framework that looks at firms that offer streaming services of non-Kenyan Content according to The Kenya film and classifications board. 	<p>It should be noted that VAT is already applicable on these services and is not being introduced by the proposed regulations. The regulations are meant to provide;</p> <ul style="list-style-type: none"> ➤ clarity on what is already provided for in the law and ➤ mechanism for non-residents to remit VAT charged.

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		<p>➤ I believe that the tax ought NOT to target businesses that have a premises and an online presence as well and firms that offer critical services towards the advancement of access to education and the internet such as website domain hosts, bloggers and online classes</p>	

SYMPTOMS

APRIL 28, 2020

10 | ADVERTS



"The virus does not move, people move it. We stop moving, the virus dies"



Public Notice

Service of Court and Tax Appeals Tribunal Documents

Kenya Revenue Authority (KRA) informs members of the public that service of Court and Tax Appeal Tribunal documents shall now be done through the following email address:

LegalServices@kra.go.ke

For clarification please contact the Legal Office on
Tel. Number: +254 709 011 688

Commissioner for Legal Services & Board Coordination

www.kra.go.ke

Disclaimer: KRA notifies taxpayers that it will not accept responsibility for payments not received, credited and validated in the relevant KRA accounts. Corruption Reporting: +254 (0) 20 3 343 342. Email: corruptionreporting@kra.go.ke. Short Messaging Services (SMS): Dial (*572#) or Text to 22572. Contact Centre: +254 (020) 4 999 999, +254 (0711) 099 999, Email: callcentre@kra.go.ke. Complaints & Information Center Hotlines: +254 (0) 20 281 7700 / 7800, +254 (0) 20 3 343 342, Email: ci@kra.go.ke



Tulipe Ushuru, Tujitegemeel



**Public Notice
Land Rent**

Kenya Revenue Authority in conjunction with the Ministry of Lands and Physical Planning notifies all leasehold owners about the obligation to pay land rent annually as required under Sect 28 of the Lands Act.

KRA has observed that most leasehold owners only pay land rent on transfer or charge of their property. In this regard, leasehold owners are notified to pay all land rent arrears including interest accrued as prescribed under the Lands Act 2012.

KRA informs leasehold owners that audits are ongoing and demand notices that include penalties and interest, will be issued against those who have failed to pay as required by law.

All land rent payments shall be made through itax.kra.go.ke

For further clarification and facilitation, please contact the
Contact Centre on Tel: 020 4 999 999, 0711 099 999 or
Email callcentre@kra.go.ke

Commissioner for Domestic Taxes

www.kra.go.ke

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Tulipe Ushuru, Tujitegemeel



Public Notice

Service of Documents in Support of Objections to VAT Automated Audit (VAA) Assessment

The Kenya Revenue Authority informs all our esteemed customers that all documents in support of objections to VAT Automated Audit (VAA) Assessments for VAT Returns for the period January 2018 to May 2018 should be scanned and sent to the following e-mail address:

VAAlegalservices@kra.go.ke

For clarification please contact the Legal Office on
Tel. Number: +254 709 011 688

Commissioner for Legal Services & Board Coordination

www.kra.go.ke

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Tulipe Ushuru, Tujitegemeel



Public Notice

Taxation of Sales Transactions through the Digital Marketplace (Online Trading Platforms)

It has come to the attention of Kenya Revenue Authority that some businesses engaged in trading on digital platforms are not charging VAT on transactions made through their platforms (digital market places). Specifically some of the digital market place owners and the persons trading through such platforms have been found not to honour their tax obligations. KRA wishes to inform such persons and owners that they are obligated under the VAT Act, 2013 to charge and remit VAT on:

- All the sales made through their digital platforms
- The commission charged to the vendors for the use of their digital platforms to transact.

KRA emphasizes to the owners of the digital market places (online trading platforms) that they are required to charge and account for the VAT on all sales made on their platform. All non-compliant owners, operators and persons are hereby advised to comply with the provisions of the VAT Act on digital market places in order to avoid being charged penalties and interests on outstanding taxes, which may be determined during compliance checks. Please also note that in cases where fraud is detected, appropriate criminal proceedings shall be brought against the offenders.

For clarification please call the Contact Centre on
Tel. Number: 020 4 999 999; 0711 099 999 or
Email: callcentre@kra.go.ke

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KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

MEETING TITLE:	DISCUSSION OF Stakeholder Comment ON VAT (Digital Marketplace supply) Regulation		
CONVENER:	CPV		
DATE:	30/06/2022	VENUE:	23 rd floor Board room Kan.

No.	Name	P/Number	Department	Designation	Sign
1.	Festus Wene	9507	SIRAM-CPV	SUP	
2.	Christina Muma	9002974	DD	Mgr	
3.	Joseph Nyang'oro	7575	LS&BE	Mgr	
4.	John Joshua Kerayo	10108	SIRAM-CPV	Officer	
5.	Tago Halohende	8488	SIRAM-CPV	AM	
6.	SILAS OURE	9498	SIRAM-CPV	Supr.	
7.	Leonard Chesere	9508	SIRAM-CPV	SUP	
8.	Beakia Kosgey	8444	SIRAM-CPV	AM	
9.	Maurice Ory	5540	SIRAM-CPV	DC	
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