

LEGAL ALERT

Understanding Kenya's New Digital Tax: What You Need to Know About the Significant Economic Presence Tax (SEPT)

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Introduction

- Kenya has replaced the Digital Services Tax (DST) with the Significant Economic Presence Tax (SEPT) as of 2024.
- Foreign digital service providers with users in Kenya may now be taxed 3% on gross turnover.
- Filing is monthly, with penalties for late submissions.
- Certain exemptions apply, including small businesses with under KES 5M annual turnover.
- Kenya joins several African nations in updating digital tax laws to capture revenue from the growing digital economy.

Who this affects

- Foreign digital platforms (Netflix, Airbnb, Uber, etc.)
- Online educators, app developers, cloud service providers
- Kenyan businesses using or partnering with foreign digital services.



Transition from Digital Services Tax

- The Significant Economic Presence Tax replaced Digital Services Tax
- On 01 January 2021, the defunct DST took effect at the rate of 1.5% under the Finance Act 2020.
- Attempts to increase the DST rate to 3%, under the Finance Bill 2022, flopped.

On 11 December 2024, the enactment of the Tax Laws (Amendment) Act 2024 introduced the Significant Economic Presence Tax (SEPT).



Scope of SEPT

- Tax imposed on non-resident persons for income generated on a digital marketplace. SEPT was introduced to cover;
 - Downloadable digital content
 - Mobile applications
 - Media resources accessible on subscription
 - Software programs
 - Cloud services
 - Search engines
 - Money transfer platforms
 - Online ticketing services
 - Online courses
 - Artificial intelligence services
 - Airbnbs
 - Ride hailing applications
 - Online payment facilitation
 - Online education
 - User data transfer



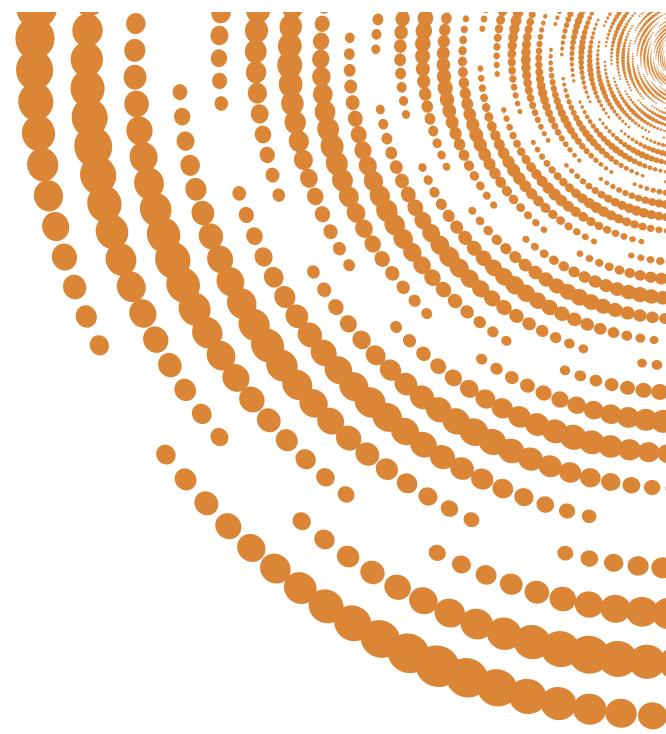
SEPT Rates

- Non-resident persons are subject to SEPT at 3% of the gross turnover
- Example: If a foreign company earns KES 10 million from users in Kenya:
Gross turnover (10%) = KES 1 million
Tax due (30% of KES 1 million) = KES 300,000
This represents 3% of the original KES 10 million.

Due Date

- SEPT is payable on a monthly basis.
- Payable on or before the 20th day of the month.
- Any late filing attracts a penalty of KES 20,000 or 5% of tax due and in addition of 15% interest per month on the unpaid principal tax.





Exemptions

- SEPT does not apply to;
 - Non-resident persons who offer digital services through a permanent establishment in Kenya;
 - Non-resident persons who carry on business of transmitting by cable, radio, television or other methods of communication;
 - Income subject to withholding tax;
 - Non-resident persons providing digital services to an airline which is 45%-owned by the Government of Kenya;
 - Non-resident persons with an annual turnover of less than KES 5,000,000.00.

Uganda

- In 2023, DST at the rate of 5%.
- Non-resident persons at a rate of 15% withholding tax for provision of digital services.
- It includes services such as online advertising and data services.



Tanzania

- Section 90A of the Tanzania Income Tax Act levies tax on non-resident persons at a rate of 15%.
- Under the Tanzania Finance Act 2024, residents and non-residents are required to withhold tax at a rate of 5% while making payments to resident digital content creators.
- Section 83C of the Finance Act 2024 mandates residents and non-residents owning digital asset exchange platforms to withhold tax at a rate of 3% on payments made to resident persons for the exchange of digital assets.

Rwanda

- Under the Rwanda Digital Services Tax (DST) Law No 014/2025, non-resident persons earning an income from providing digital services to consumers in Rwanda will be levied a DST tax at a rate of 1.5% on the gross revenue based on the concept of 'substantial national presence'.



Ghana

- A VAT rate of 15% applies to persons offering telecommunications services or electronic commerce to people for use and/or enjoyment in Ghana.

Nigeria

- Since the enactment of the Finance Act 2021, non-resident companies providing streaming, cloud computing, mobile applications and online advertisement services with a turnover of over USD 25,000 in a year are subject to a 7.5% VAT rate.

The User Principle

- A user is deemed located in Kenya where a device accessed from Kenya, payment made via a Kenyan financial institution, using a Kenyan IP address or mobile country code and through a Kenyan billing or residential address.



Right to Tax

- The question that arises is whether a country has a legal right to tax a business at all.

Transfer Pricing

- SEPT creates the right to tax while Transfer Pricing addresses the question of attribution.

Conflicting Laws

- Most jurisdictions including Kenya designed their tax treaties around two models; The United Nations (UN) model and the Organization for Economic Cooperation and Development (OECD) model tax convention..



Permanent Establishment

- PE is the fixed place of business and taxing rights accorded to the jurisdiction where income is derived.
- With the digital model of business, entities have economic presence without necessarily having a physical presence.

SEPT Tax Registration

- A non-resident person without a permanent establishment in Kenya who provides services to users in Kenya is required to register under the simplified tax registration framework by submitting an application with relevant business and contact details, as well as any additional information requested by the KRA.
- Upon successful registration, the KRA will issue a personal identification number (PIN) for tax filing and payment purposes.



Appointment of a tax representative

- If the non-resident does not register, they must appoint a tax representative in Kenya in accordance with the Tax Procedures Act.

Conclusion

- Shift from physical presence to user-based nexus.
- SEPT establishes taxing rights.
- That question remains one of attribution, not access.
- Transfer pricing therefore becomes the primary gatekeeper.
- For Kenya, this means that while SEPT may trigger tax exposure, the defensibility of any assessment will ultimately depend on the robustness of transfer pricing documentation and functional analysis



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