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THE VALUE ADDED TAX ACT, 2013

(No. 35 of 2013)

THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND  
DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

ARRANGEMENT OF REGULATIONS

*Regulation*

- 1—Citation
- 2—interpretation
- 3—Electronic, internet or digital marketplace supplies
- 4—Application of tax
- 5—Simplified tax registration framework
- 6—Registration
- 7—Appointment of tax representative
- 8—Place of supply
- 9—Time of supply
- 10—Exemption from issuing an electronic tax invoice
- 11—Claim for input tax
- 12—Accounting for and payment of tax
- 13—Amendment of returns
- 14—Penalties
- 15—Revocation

## THE VALUE ADDED TAX ACT, 2013

(No. 35 of 2013)

## THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

## THE VALUE ADDED TAX (ELECTRONIC, INTERNET AND DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2023

1. These Regulations may be cited as the Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023.

Citation

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

Interpretation.

“electronic, internet or digital marketplace supply” means the supply made over the internet, an electronic network or any digital marketplace;

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

“intermediary” means a person who facilitates the supply of an electronic, internet or digital marketplace supply and who is responsible for issuing invoices or collecting payments in respect of the supply;

“recipient”, in relation to any supply of an electronic, internet or digital marketplace supply, means the person to whom the supply is made; and

“tax period” means a calendar month.

3. For the purposes of these Regulations, a taxable electronic, internet or digital marketplace supply includes—

Electronic, internet or digital marketplace supplies.

- (a) downloadable digital content including downloadable mobile applications, eBooks 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 engines and automated helpdesk services including customisable search engine services;
- (h) ticketing services for events, theatres, restaurants and similar services;
- (i) online education programmes including distance teaching programmes through pre-recorded media, eLearning, education webcasts, webinars, online courses and training but excluding education services exempted under the First Schedule to the Act;
- (j) digital content for listening, viewing or playing on any audio, visual or digital media;
- (k) services that link the supplier to the recipient including transport hailing platforms;
- (l) electronic services specified under section 8(3);
- (m) sales, licensing, or any other form of monetizing data generated from users' activities;
- (n) facilitation of online payment for, exchange or transfer of digital assets excluding services exempted under the Act; and
- (o) any other service provided through an electronic, internet and digital marketplace that is not exempt under the Act.

4. Tax shall apply to a taxable electronic, internet or digital marketplace supply made in Kenya.

Application of tax.

5. (1) A person supplying a taxable electronic, internet or digital marketplace supply specified in regulation 3 shall register for tax in Kenya within thirty days after the date of making taxable supply in accordance with section 34 if—

Simplified tax registration framework.

- (a) the supplies are made by a person from an export country to a recipient in Kenya;
- (b) the person is conducting business in Kenya in accordance with section 8(2); and
- (c) 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 services that is made to the supplier in the export country is authorised in Kenya.

(2) A person registered under subregulation (1) shall declare and pay tax on the electronic, internet or digital marketplace supply at the rate specified in section 5(2)(b) of the Act.

6. (1) An application for registration under regulation 5(1) shall be made through an online registration form prescribed by the Commissioner. Registration.

(2) An application under subregulation (1) shall be accompanied by the following information—

- (a) the name of the business including its 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 and email address of the contact person;
- (e) the website or uniform resource locator of the applicant through which business is conducted;
- (f) the national tax identification number issued to the applicant in the applicant's jurisdiction;
- (g) the certificate of incorporation or registration issued to the applicant in the country where the applicant's business is registered or incorporated; and
- (h) any other information that the Commissioner may require.

(3) The Commissioner may require an applicant under subregulation (1) to submit additional documents that may be necessary to substantiate the information provided in the application.

(4) Upon registration, the Commissioner shall issue the applicant with a personal identification number in accordance with the Tax Procedures Act, 2015, for the purpose of filing returns and payment of tax.

(5) A person registered under this regulation who ceases to make taxable electronic, internet and digital marketplace supplies in Kenya shall apply to the Commissioner for deregistration in accordance with section 36 of the Act.

7. Where a person from an export country making an electronic, internet or digital marketplace supply to a recipient in Kenya elects not to register in accordance with regulation 6, that person shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015. Appointment of tax representative.

8. (1) An electronic, internet or digital marketplace supply 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 the 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, is in Kenya;
- (b) whether the residence proxy, including the billing or home address, is in Kenya; or
- (c) whether the access proxy, including internet address or mobile country code of the subscriber identification module card of the recipient, is in Kenya.

9. The time that an electronic, internet or digital marketplace supply is made in Kenya 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 of the supply is issued.

10. (1) A supplier who makes an electronic, internet or digital marketplace supply 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, the tax deducted thereon and the personal identification number of the customer.

(2) The invoice or receipt issued under subregulation (1) shall be deemed to be a tax invoice.

11. A deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.

Claim for input tax.

12. (1) The tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya 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 an electronic, internet or digital marketplace supply 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.

13. (1) Any amendment 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 subregulation (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.

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

Penalties

15. The Value Added Tax (Digital Market Supply) Regulations, 2020, are revoked.

Revocation.  
L.N. 190/2020

Made on the 15th March, 2023.

**NJUGUNA NDUNG'U,**  
*Cabinet Secretary for the  
National Treasury and Economic Planning.*