

Approved for tabling

16/2/2021
SNA
DATE: 16 FEB 2021
TUESDAY
Hon. Kamukama
Chair.
Lemno Mosey

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

PARLIAMENT
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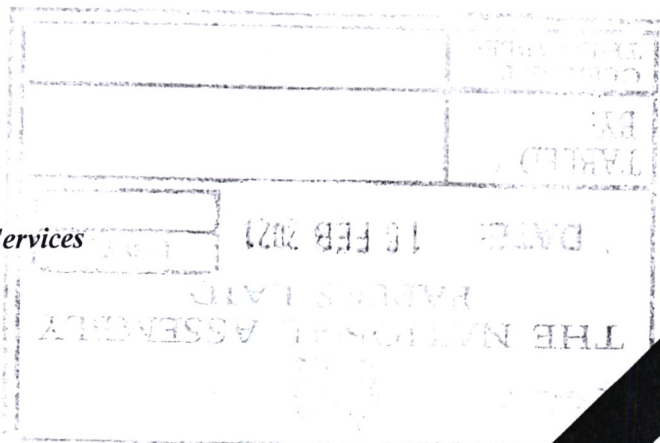
TWELFTH PARLIAMENT- FIFTH SESSION (2021)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE VALUE
ADDED TAX (ELECTRONIC TAX INVOICE)
REGULATIONS, 2020

(Legal Notice No. 189 of 2020)

FEBRUARY, 2021



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

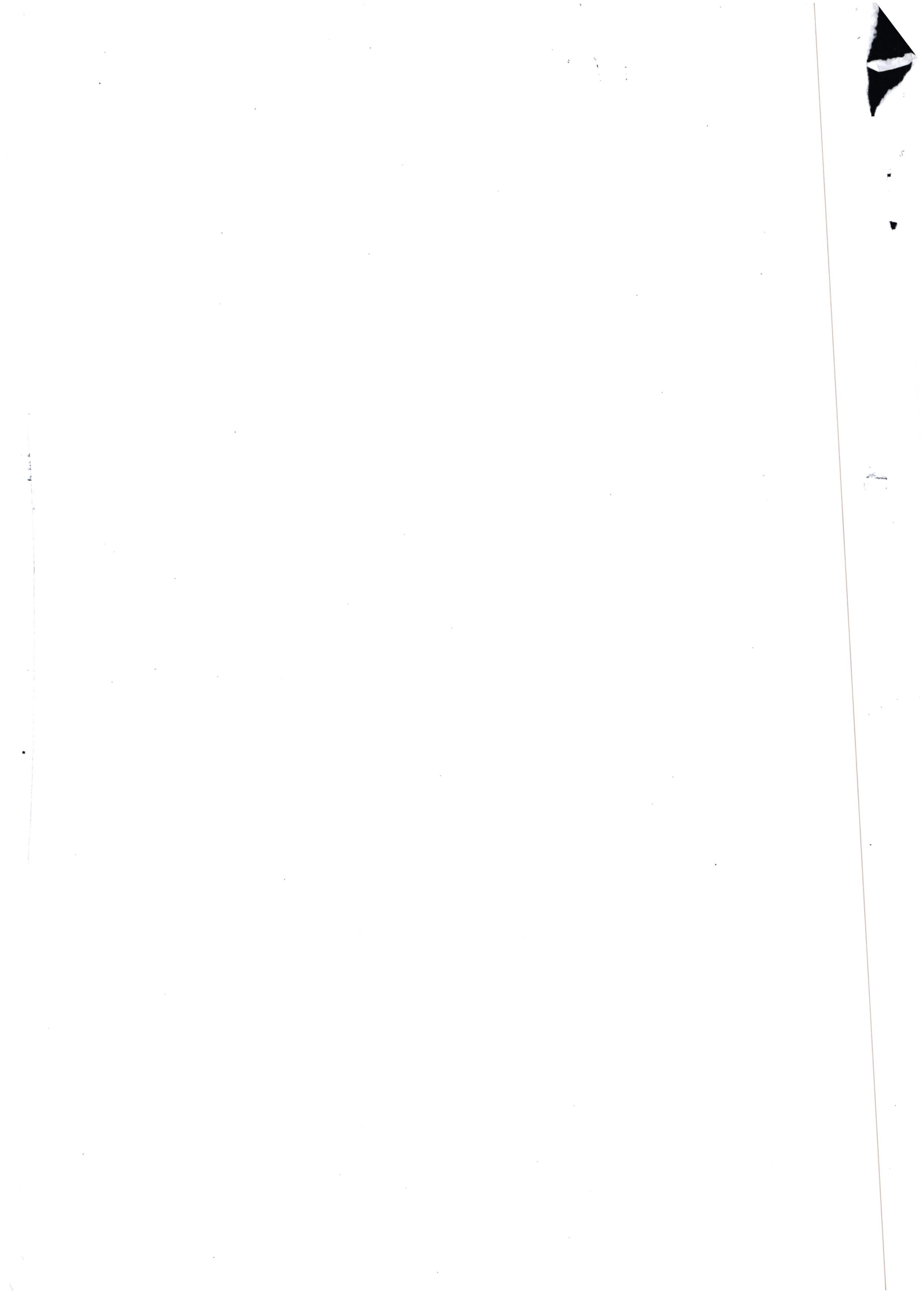


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ABBREVIATIONS

VAT	Value Added Tax
KRA	Kenya Revenue Authority
L.N.	Legal Notice
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

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 (Electronic Tax Invoice) Regulations, 2020 vide Legal Notice No. 189 of 2020 on 25th 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 legal framework to govern the use of Electronic Tax Regulations in line with Section 43(4) of the Value Added Tax Act (No. 23 of 2013). It also provides for an enhanced approach on VAT enforcement and compliance.

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.

Having scrutinized the Value Added Tax (Electronic Tax Invoice) 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 (Electronic Tax Invoice) Regulations, 2020 (Legal Notice No. 189 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 (ELECTRONIC TAX INVOICE) 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 (Electronic Tax Invoice) Regulations, 2020 vide Legal Notice No. 189 of 2020 on 25th September, 2020.
6. The Regulations were submitted to the Clerk of the National Assembly on 9th October, 2020 and tabled before the House on 15th October, 2020.

2.2 Object and Purpose of the Regulations

7. 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.
8. The Regulations also seek to enforce the VAT compliance and minimize fraud and tax evasion by obligating a registered user under section 34 of the VAT Act to generate a tax invoice.
9. 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.

2.3 Legal Basis for Scrutiny

10. The Committee examined the Value Added Tax (Electronic Tax Invoice) 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*). 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.

2.4 Conferring with the Regulation Making Authority

11. 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.
12. The Cabinet Secretary informed the Committee that the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 intends to provide for standardization and uniformity of tax invoices generated. This will enhance effective compliance and enforcement measures, which will result in an increase in revenue by minimizing VAT fraud. The Regulations will support the ease of doing business in the country, as it will facilitate the simplification of VAT tax returns and also facilitate faster processing of VAT refund claims.

13. Businesses with existing electronic tax registers will be facilitated to update the registers to comply with the new system at no cost.

3.0 COMMITTEE OBSERVATIONS

14. Having examined the Value Added Tax (Electronic Tax Invoice) 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

15. The Value Added Tax (Electronic Tax Invoice) Regulations, 2020 were published in the gazette on 10th September, 2020 vide 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.

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

16. The regulation making authority demonstrated that public participation was adequately undertaken by submitting copies of evidence of 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.
17. 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.

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

18. 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).

4.0 COMMITTEE RECOMMENDATION

19. Having examined the Value Added Tax (Electronic Tax Invoice) 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. 189 of 2020 and the Explanatory Memorandum
3. Committee Minutes

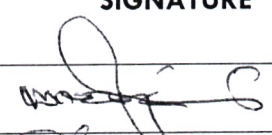
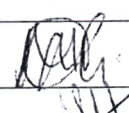
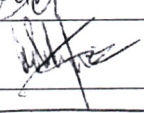
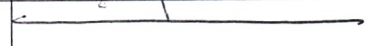
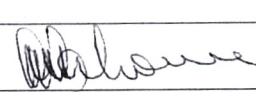

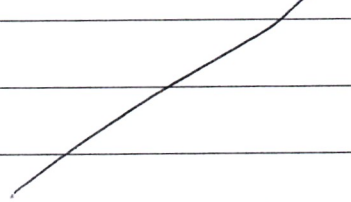
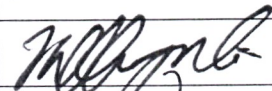
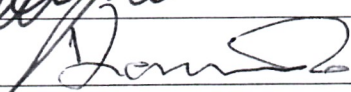

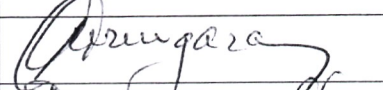
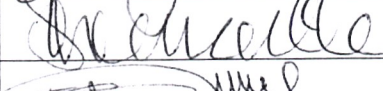



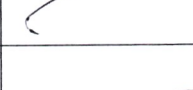
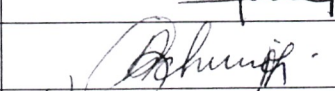
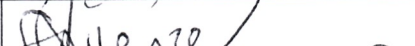



COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on Consideration of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 (Legal Notice No. 189 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)

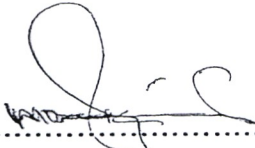
The Committee Members unanimously adopted the Report on the Consideration of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 (L.N. 189 of 2020) as proposed and seconded by Hon. Timothy Wanyonyi, M.P and Hon. Kamoti Mwamkale, MP, respectively.

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 Bumba - 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'.

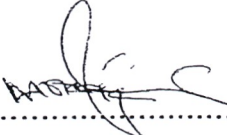
Committee Resolution

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/2021/011ADJOURNMENT

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)

① 43

②

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.....10/24/2021

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

② Head, Table One
to register course taking
reference to Committee &
acknowledge receipt. This
refers to approval of the
House under
Sec. 67(2)
of the Act.
13/10/20



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance - Nairobi
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI
KENYA

When Replying Please Quote

Ref. ZZ/TS/GP/30

7th October, 2020

Michael Sialai, EBS
Clerk of the National Assembly
Parliament Building
NAIROBI

① DWP
to register and
have then
tabled. CNA
14/10/20

Dear Sialai,

**RE: LEGAL NOTICES ON THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE)
REGULATIONS, 2020 AND THE VALUE ADDED TAX (DIGITAL MARKETPLACE
SUPPLY) REGULATIONS, 2020**

The above-mentioned Regulations were Gazetted on 25th September 2020.

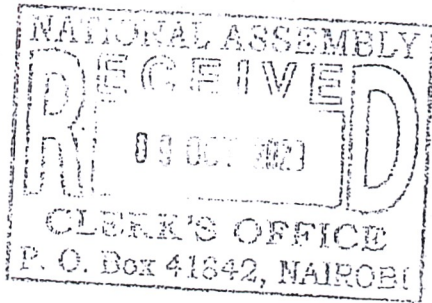
In compliance with section 11 of the Statutory Instruments Act, I hereby submit the above-mentioned Regulations, Explanatory Memoranda and evidence of public participation on the same for tabling in the National Assembly.

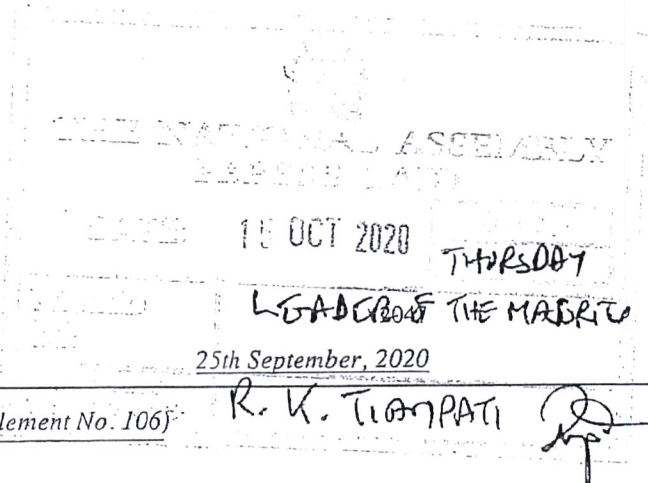
Yours

③ PMK
please process
14/10

**HON. (AMB.) UKUR YATANI, E.G.H
CABINET SECRETARY/THE NATIONAL TREASURY AND PLANNING**

Encl.





SPECIAL ISSUE

Kenya Gazette Supplement No. 171

25th September, 2020

(Legislative Supplement No. 106)

R. K. TIAMPATI

LEGAL NOTICE No. 188

THE VALUED ADDED TAX ACT

(No. 35 of 2013)

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

THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations, 2020. Citation.
2. The Value Added Tax Regulations, 2017, are amended by deleting regulation 9. L.N. 54/2017.

Made on the 10th September, 2020.

[Signature]

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE No. 189

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) REGULATIONS, 2020

ARRANGMENT OF REGULATIONS

Regulation

- 1—Citation
- 2—Interpretation
- 3—Application
- 4—Use of a register
- 5—Availability of a register
- 6—Obligations of a user of a register
- 7—Tax invoices, credit notes and debit notes
- 8—Specifications of a register
- 9—Transmission of invoice data and security
- 10—Offence
- 11—Transitional provisions

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

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

THE VALUE ADDED TAX (ELECTRONIC TAX INVOICES) REGULATIONS, 2020

3. These Regulations may be cited as the Value Added Tax (Electronic Tax Invoices) Regulations, 2020. Citation.
4. In these Regulations, unless the context otherwise requires— Interpretation.
- “authorised officer” means an officer appointed under section 3 of the Tax Procedures Act, 2015; No. 29 of 2015
- “Personal Identification Number” or “PIN” has the meaning assigned to it under section 2 of the Tax Procedures Act, 2015; No. 29 of 2015
- “register” means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and
- “user of a register” means a person registered under section 34.
5. These Regulations shall apply to a person registered under section 34 of the Act. Application.
6. (1) A user of a register shall use the register in accordance with these Regulations and ensure that— Use of a register.
- (a) each sale is recorded with the use of the register;
- (b) an invoice is generated in respect of each sale;
- (c) each invoice generated in respect of each sale shall contain the information specified in regulation 7.
- (2) The user of the register shall—
- (a) transmit or deliver the invoice generated with respect to a purchase to the purchaser; and
- (b) transmit or deliver the invoice details to the Commissioner in accordance with regulation 9 (a) .
- (3) A register shall be exclusively used by the registered user of that register.
7. (1) The user of a register shall ensure continuity of operations of the register if there is an interruption of power supply. Availability of a register.

(2) Where a user of a register cannot use the register for any reason, the user shall—

- (a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the register; and
- (b) record sales using any other means as may be specified by the Commissioner.

(3) Once the user of a register is able to use the register, the user shall enter into the register the sales recorded under paragraph (2) (b).

8. (1) A user of a register shall—

Obligations of the user of a register.

- (a) ensure availability of the register at the point of sale;
- (b) facilitate the inspection of the register by an authorised officer;
- (c) ensure the register is regularly serviced to ensure the register's proper functioning at all times;
- (d) keep and maintain a register ledger in which a record of the servicing of the register shall be entered and which shall contain—
 - (i) the name and address of the person servicing the register; and
 - (ii) an entry for each time the register is serviced, describing the servicing and shall be signed by the person performing the service; and
- (e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a register intends to discontinue the use of a register due to—

- (a) closure of business;
- (b) cessation to supply vatable supplies; or
- (c) any other reason,

that user shall notify the Commissioner, in writing, of the intended discontinuation within thirty days prior to the discontinuation.

(3) Where a notification has been made under paragraph (2), the Commissioner may, by notice in writing and within thirty days, retire the register.

9. (1) A tax invoice generated from a register shall contain—

Tax invoices,
credit notes and
debit notes.

- (a) the PIN of the registered user of a register;
- (b) the time and date of issuance;
- (c) the serial number of the invoice;
- (d) the buyer's PIN;
- (e) the total gross amount;
- (f) the total tax amount;
- (g) the item code of supplies (for exempt, zero-rated and other rate supplies) as provided by the Commissioner in accordance with the Act;
- (h) a brief description of goods and services;
- (i) the quantity of supply;
- (j) the unit of measure;
- (k) the tax rate charged;
- (l) the unique register identifier;
- (m) the unique invoice identifier;
- (n) a quick response (QR) code; and
- (o) any other requirement as may be specified by the Commissioner.

(2) Where a user of a register issues a credit note or debit note, the credit note or debit note shall indicate the PIN and invoice number to which the supply relates.

10. A register shall—

Specifications of a
register.

- (a) be capable of interconnectivity with information technology networks;
- (b) have sufficient storage to maintain records;
- (c) display clear messages in the official languages;
- (d) be secure and tamperproof; and
- (e) be capable of—

- (i) integrating with the Authority's systems;
- (ii) transmitting or connecting to a device that will transmit ~~the recorded data to the systems;~~
- (iii) allowing updates for any changes in the tax laws; and
- (iv) capturing the information required under these Regulations.
11. A register shall be capable of—
- Transmission of invoice data and security.
- (a) transmitting to the Authority's system the tax invoice data and the end of day summary of the respective day's data in the manner specified by the Commissioner;
- (b) printing or providing stored data;
- (c) storing data in an unintelligible manner to persons not authorised to access it;
- (d) maintaining the integrity of the data;
- (e) securing authentication for authorised users;
- (f) capturing the log of all activities; and
- (g) assigning a unique identifier to each invoice.
12. (1) A person commits an offence if that person—
- Offence.
- (a) fails to comply with any of the provisions of these Regulations; or
- (b) tampers, manipulates or interferes with the proper functioning of the register.
- (2) A person convicted of an offence under these Regulations shall be liable to pay the penalty specified under section 63 of the Act.
13. A person who is registered under section 34 of the Act shall comply with these Regulations within a period of twelve months from the coming into operation of these Regulations:
- Transitional provisions.
- Provided that—
- (a) where the person is unable to comply with these Regulations within the period specified under this regulation, that person shall apply to the Commissioner for the extension of time which shall not exceed six months; and
- (b) the application under paragraph (a) shall be made at least thirty days before the expiry of the period specified.

Date the 10th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

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)

LEADER OF THE MAJORITY PARTY

R. K. TRIPATI

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.

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.

LEGAL NOTICE NO. 191

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (FORMS AND FEES)
(AMENDMENT) REGULATIONS, 2020

29. These Regulations may be cited as the Retirement Benefits (Forms and Fees) (Amendment) Regulations, 2020. Citation.

30. Table G in the First Schedule to the Retirement Benefits (Forms and Fees) Regulations, 2000 is amended by inserting the following new row immediately after row 14— L.N. 124/2000.

15. Debt instruments for the financing of 10% infrastructure or affordable housing projects approved under the Public Private Partnerships Act, 2013 or as may be prescribed by the Cabinet Secretary responsible for matters relating to housing.

No. 15 of 2013

Dated the 14th September, 2020.

UKUR YATANI,

Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE NO. 192

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 of the Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (MORTGAGE LOANS)
(AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020. Citation.

2. Regulation 3 of the Retirement Benefits (Mortgage Loans) Regulations, 2009, hereinafter referred to as the principal Regulations, is amended— L.N. 85/2009.

- (a) by deleting the definition of "house".
- (b) by inserting the following paragraph immediately after paragraph (b) of the definition of "institution"—
- (c) any other entity offering a residential house for sale.
- (c) by inserting the following new definitions in proper alphabetical sequence—

“residential house” means a dwelling built wholly or in part for the provision of residential accommodation in urban or rural areas and “house” shall have the same meaning as residential house.

“spouse” has the meaning assigned to it in section 2 of the Marriage Act, 2014.

No. 4 of 2014

3. The marginal note to regulation 10 of the principal Regulations is amended by inserting the words “in relation to the assignment of benefits” immediately after the word “trustees”.

4. The principal Regulations are amended by inserting the following new Part immediately after regulation 12—

PART III—PURCHASE OF RESIDENTIAL HOUSES

Application for approval.

13. (1) A member may utilise a portion of the member’s accrued benefits to purchase a residential house from an institution.

(2) Every scheme shall prescribe the minimum requirements to be met by their members for an application made under these Regulations.

(3) Every scheme shall prescribe the procedure to be followed in relation to the purchase of a residential house under these Regulations.

(4) A member who wishes to utilise a portion of the member’s accrued benefits to purchase a residential house shall apply in writing to the trustees in the manner prescribed by the scheme.

(5) The trustees may require the applicant under paragraph (4) to supply such additional information as may be required for the processing of the application.

(6) The trustees shall determine the application under paragraph (4) within ninety days of the application being lodged, and where an application is not granted, the trustees shall notify the applicant of the reasons thereof in writing.

Portion of benefits.

14. (1) The portion available to a member for the purchase of a residential house at the time of the application under regulation 13 (4) shall be the lower of—

(a) in a defined contribution scheme, an amount not exceeding forty per cent of the member’s accrued benefits:

Provided that such sum shall not exceed seven million shillings;

(b) in a defined benefits scheme, an amount not exceeding forty per cent of the

member's accrued benefits as determined by an actuary:

Provided that such sum shall not exceed seven million shillings; or

- (c) the purchase price of the residential house which shall not exceed the market value of the residential house.

(2) The member may opt to utilise the member's additional voluntary contributions to top up the portion of the benefits available to the member for the purchase of the residential house.

(3) The member's funds contained in a post-retirement medical fund shall not be used to determine the accrued retirement benefits of the member or be used for the purchase of a residential house under these Regulations.

(4) Where the applicant is a member of more than one scheme that have been established by the same sponsor, the trustees shall, on the option of the member, combine the member's accrued benefits in determining the proportion available to the member.

(5) For the purpose of determining the amount available to a member, the trustees shall take into account—

- (a) in the case of a defined contribution scheme, the proportion of remitted contributions; or
- (b) in the case of a defined benefits scheme, the funding level of the scheme where it falls below one hundred per cent according to the scheme's most recent actuarial valuation.

General requirements.

15. (1) Each scheme shall prescribe in the scheme rules the procedure to be followed when a member wishes to utilise a portion of the member's accrued benefits for the purchase of a residential house.

(2) A residential house eligible to be purchased under these Regulations shall only be a house that has been certified for occupation before the intended purchase.

(3) A member shall only be permitted to utilise the member's accrued benefits only once for the purchase of a residential house under these Regulations.

(4) A member who is paid a pension by the scheme, or who has taken early retirement, or has

attained retirement age shall not be eligible to utilise a portion of the member's retirement benefits to purchase a residential house.

(5) Where a member and the member's spouse are both members of the same scheme or different schemes, the trustees shall prescribe in the scheme rules the manner in which the member and member's spouse may combine their accrued benefits and utilise the total amount for the purchase of a residential house.

(6) For the purpose of determining the accrued benefits of a member who has retired before attaining retirement age, the funds applied to the purchase of a residential house under these Regulations shall—

- (a) in the case of a defined contribution scheme, be deemed to have been drawn from the member's contribution together with the earned investment income, and any balance shall be applied from the employer's contribution and employer's earned investment income thereon; and
- (b) in the case of a defined benefits scheme, as shall be determined by an actuary.

(7) Where a member already has mortgage facility from any other institution at the time of the application under regulation 13 (4), that member shall not be allowed to utilise the member's accrued benefits to offset the balance on that mortgage facility.

(8) The trustees of a scheme shall cause the title of the residential house to be encumbered so as to prevent the transfer of the house to any other person unless any of the following occurs—

- (a) the member retires before attaining retirement age;
- (b) the member dies;
- (c) the member becomes incapacitated by ill health or permanent disablement to the extent that it would occasion the member's retirement before attaining retirement age; or
- (d) the member is emigrating from Kenya to another country without the intention of returning to Kenya, and approval has been granted by the Authority for the encumbrance to be removed.

- Duties of trustees in relation to purchase of residential houses.
16. The trustees of a scheme shall—
- (a) consider applications under regulation 13 and determine whether or not they comply with the provisions of the Act and these Regulations;
 - (b) verify the institutions from which the purchase of the residential house is to be made in accordance with these Regulations;
 - (c) ensure the terms of sale between the member and the vendor of the residential house are documented;
 - (d) retain copies of titles of all purchases of residential houses under these Regulations; and
 - (e) keep and maintain records of all transactions relating to the purchase of residential houses under these Regulations.
- Reports.
17. The trustees of a scheme shall submit to the Authority a report of the assignment of benefits and purchase of residential houses by members at least once in every three months from the date of the commencement of the financial year of the scheme.
- Liability by trustees.
18. Where a member utilises a portion of the member's accrued benefits for the purchase of a residential house, the trustees shall be liable to the member for the portion of the member's accrued benefits that remain unutilised.
- Expenses.
19. The member who wishes to purchase a residential house under these Regulations shall bear the transaction costs and taxes relating to the purchase.
- Appeals.
20. Any appeals against a decision of the trustees in relation to the purchase of a residential house under these Regulations shall be heard and determined in accordance with the provisions of the Act.
- Approval by the Authority.
21. The Authority may require the trustees of a scheme to submit for approval any information, rules or procedures relating to the purchase of a residential house under these Regulations.
- Implementation.
22. All schemes shall amend their scheme rules to comply with the provisions of this Part within twelve months from the date of the commencement of these Regulations.

Dated the 14th September, 2020.

UKUR YATANI,
Cabinet Secretary for National Treasury and Planning.

LEGAL NOTICE NO. 193

THE RETIREMENT BENEFITS ACT

(No. 3 of 1997)

IN EXERCISE of the powers conferred by section 55 (8) Retirement Benefits Act, 1997, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE RETIREMENT BENEFITS (UMBRELLA RETIREMENT BENEFITS SCHEMES) (AMENDMENT) REGULATIONS, 2020

31. These Regulations may be cited as the Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2020. Citation.

32. Regulation 2 of the Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017, hereinafter referred to as the principal Regulations, is amended— L.N. 55/2017.

(a) by deleting the definition of “contract of service” and replacing it with the following new definition—

“contract of service” means an agreement whether oral or in writing and whether expressed or implied, to employ or to serve as an employee for any period of time and includes a contract of apprenticeship and internship.

(b) by deleting the definition of “deed of adherence” and replacing it with the following new definition—

“deed of adherence” means an instrument in writing between an employer, the trustees and the sponsor in which the employer irrevocably undertakes and binds itself to the trusts of the scheme upon which the sponsor and the trustees in reliance thereto have without other conditions admitted the employer to join and participate in the provisions of retirement benefits to its employees on the terms expressed in the scheme rules.

(c) by deleting the definition of “existing scheme” and replacing it with the following new definition—

“existing scheme” means an umbrella scheme existing prior to the commencement of these Regulations.

(d) by deleting the definition of “special rules” and replacing it with the following new definition—

“special rules” means the rules that are unique to a specific participating employer and are binding to employees of the participating employer who are members of the scheme.

(e) by deleting the definition of “umbrella scheme” and replacing it with the following new definition—

“umbrella scheme” means a retirement benefits scheme established by a sponsor for the benefit of members employed by participating employers including schemes established under a written law.

- (f) by inserting the following new definition in proper alphabetical sequence—

“partial liquidation” - means transfer of all assets and liabilities attributable to the members related to a withdrawing employer to another registered scheme, but the scheme otherwise continues to function as a normal scheme to the continuing participating employers.

33. Regulation 3 of the principal Regulations is amended in paragraph (1) by deleting subparagraph (a) and replacing it with the following new subparagraph—

- (a) in case of an existing scheme, in Form I set out in the Schedule.

34. Regulation 5 of the principal Regulations is amended by deleting paragraph (1) and replacing it with the following new paragraph—

(1) A sponsor of a scheme shall at all times have in its board of directors and top management at least four persons who are academically and professionally qualified in matters relating to administration of schemes, insurance, law, accounting, actuarial science, economics, banking, finance or investment of scheme funds and a person possessing at least five years' experience in the administration of retirement benefits schemes.

35. The principal Regulations are amended by deleting regulation 6 and replacing it with the following new regulation—

Suitability of sponsor. 6. In order to determine the professional suitability of a sponsor, the Authority shall have regard to the following qualities, in so far as they are reasonably determinable—

- (a) the sponsor's general probity;
- (b) the sponsor's competence and soundness of judgment for the fulfilment of the responsibilities attached to marketing the umbrella scheme;
- (c) the diligence with which the sponsor is likely to fulfil the responsibilities attached to marketing the umbrella scheme;
- (d) qualifications and experience of the sponsor's top management or directors in administration and management of trusts;
- (e) the previous conduct and activities of the sponsor in business or financial matters

and, in particular, to any evidence that any of the directors or top management personnel of the sponsor—

- (i) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or
 - (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services; and
- (f) any additional information as may be necessary in determining the professional suitability of a company proposing to establish or operate an umbrella scheme.

36. Regulation 9 of the principal Regulations is amended in paragraph (1)—

- (a) by deleting subparagraph (g) and replacing it with the following new subparagraph—
 - (g) conditions under which an employer may cease making contributions to the scheme.
- (b) by deleting subparagraph (h) and replacing it with the following new subparagraph—
 - (h) conditions under which an employer may terminate its participation in the scheme;
- (c) by deleting subparagraph (m) and replacing it with the following new subparagraph—
 - (m) the vesting of contributions immediately.
- (d) by deleting subparagraph (o) and replacing it with the following new subparagraph—
 - (o) provision for a member to defer benefits in the scheme or transfer to another scheme including an occupational or individual retirement benefits scheme.
- (e) by deleting subparagraph (s) and replacing it with the following new subparagraph—
 - (s) partial liquidation of the scheme where a participating employer ceases to remit member contributions or commits an act contrary to the provisions of the Act and the trust deed and rules.
- (f) by deleting subparagraph (z) and replacing it with the following new subparagraph—
 - (z) manner of receiving and accounting for the contributions made by or on behalf of each member in the scheme;

(g) by deleting subparagraph (aa) and replacing it with the following new subparagraph—

(aa) the manner in which participating employers are kept informed on a quarterly and annual basis.

37. Regulation 9 of the principal Regulations is amended by deleting paragraph (2) and replacing it with the following new paragraph—

(2) A participating employer may have special scheme rules which may make provision for the following—

- (a) the date of participation;
- (b) the rate of contribution which must not be below the limit of the rate in the trust deed and rules;
- (c) the normal retirement age which must not be less than prescribed in the trust deed and rules; and
- (d) the power of amendment of the special rules by the parties:

Provided that the special rules shall be an enhancement of the general rules of the fund.

38. Regulation 12 of the principal Regulations is amended by deleting paragraph (2) and replacing it with the following new paragraph—

(2) Where the sponsor elects not to appoint a trust corporation under regulation 16 as a sole trustee, the sponsor shall appoint nine trustees of a scheme of whom—

- (a) five shall be nominated by participating employers from amongst members of the management committee constituted under regulation 18; and
- (b) four shall be nominated by the sponsor, of whom two shall not be employees or directors or have any business relationship with the sponsor, and be in good standing in a relevant professional body and approved by the Authority.

39. Regulation 13 is amended in paragraph (1)—

(a) by deleting paragraph (f) and replacing it with the following new paragraph—

(f) ensuring that the agreed contributions have been remitted to the custodian or approved issuer as required by the law and the scheme rules.

(b) by deleting paragraph (k) and replacing it with the following new paragraph—

(k) notifying the sponsor and employer of the particulars of the manager and custodian of the scheme as may be sought by any or both which particulars shall include—

- (i) the full name of the manager and custodian;

- (ii) the physical and postal address of the registered office of the manager and custodian;
 - (iii) the dates of the first and subsequent financial years of the manager and custodian;
 - (iv) the contents of the agreement limited to duties owed by the trustees to the service provider, duties of the service provider to the scheme and any other fixed timelines; and
 - (v) any other particulars as the sponsor or the participating employer may request from the trustees.
- (c) by deleting paragraph (l) and replacing it with the following new paragraph—
- (l) submitting to the sponsor and participating employers at least once in every three months from the date of commencement of the financial year of the scheme—
 - (i) the valuation of the scheme fund representing all the assets of the scheme, and separately valuation together with the investment return thereof of contributions made by or on behalf of members of the scheme who are employees of each participating employer;
 - (ii) reports reviewing the investment activity and performance of the investment portfolios comprising the scheme fund since the last report date and containing the manager's proposals for the investment of the scheme fund; and
 - (iii) a record of all investment transactions of the scheme during the previous period.
- (d) by deleting paragraph (n) and replacing it with the following new paragraph—
- (n) furnishing the sponsor and participating employers with a copy of the most recent audited financial statements of the manager and custodian and with such other information as may be sought by the sponsor or participating employers.
40. Regulation 14 is amended in paragraph (b) by deleting paragraph (i) of the proviso and replacing it with the following new paragraph—
- (i) the trustees shall meet at least two times in every calendar year.
41. The principal Regulations are amended by deleting regulation 17 and replacing it with the following new regulation—
- Engagement in professional services. 17. A trustee who is an advocate, accountant or person engaged in any other profession or business shall not be engaged to provide professional services done by the trustee or trustee's firm in connection to the scheme.

42. The principal Regulations are amended by deleting regulation 18 and replacing it with the following new regulation—

Management committees.

18. (1) Each participating employer together with its employees who are members of the scheme shall nominate not more than three representatives to form a management committee.

(2) The management committee shall keep its corresponding participating employer and members informed regarding matters and activities of the scheme.

(3) The scheme rules shall provide for—

- (a) the procedure of and grounds for the removal from office of management committee members; and
- (b) the procedure for convening meetings.

43. The principal Regulations are amended by deleting regulation 21 and replacing it with the following new regulation—

Suitability of scheme.

21. (1) In determining whether to participate in an umbrella scheme, an employer shall consider, among other things, whether the scheme—

- (a) is registered under the Act;
- (b) has appointed an administrator, custodian, manager, as the case may be, who has the professional and technical capacity and adequate operational systems to manage the scheme;
- (c) has developed a prudent investment policy for the investment of the scheme fund;
- (d) is fully funded;
- (e) has the professional and technical capacity and adequate operational systems to manage a multi-employer scheme;
- (f) consists only of scheme funds maintained separately at all times from any other funds under the control of the trustees; and
- (g) keeps or has caused to be kept a designated account for the employees of each employer in the scheme.

44. Regulation 23 is amended in paragraph (1) by deleting paragraph (10) and replacing it with the following new paragraph—

(10) An employer shall, in the deed of adherence, state the rate of contributions by the employer and the employees who are members of the scheme:

Provided that the rate of the contributions shall not be less than what is specified in the scheme rules.

45. Regulation 26 is amended by deleting paragraph (a) and replacing it with the following new paragraph—

- (a) restrict eligibility to membership of a scheme on the basis of gender, race, grade, cadre, age, differences in the employees' salary, wages, rank, seniority at the work place, association, religion or in any manner which is discriminatory.

46. Regulation 28 is amended by deleting paragraph (2) and replacing it with the following new paragraph—

(2) Where a member elects in writing to have the retirement benefits referred to in paragraph (1) (c) transferred to another scheme for the purpose of securing a retirement benefit, the basis of paying transfer value where the scheme has a reserve fund shall be reviewed and certified by the actuary as required by the law and the member shall get a proportionate share of the reserve fund at the end of the financial year.

47. Regulation 30 is amended by deleting paragraph (4) and replacing it with the following new paragraph—

(5) Where the scheme rules provide for the purchase of an annuity and income drawdown for members at retirement age, the members shall have the option of selecting the annuity and/or income draw down provider from whom to purchase the annuity and/or income draw down.

48. The principal Regulations is amended deleting regulation 32 and replacing it with the following new regulation—

Cessation of participation by an employer

32. (1) A scheme shall be partially liquidated where a participating employer ceases to remit members' contributions, contravenes the provisions of the Act or contravenes the provisions of the scheme's trust deed and rules.

(2) For the avoidance of doubt, the partial liquidation of a scheme shall not affect the members' benefits which shall be treated in accordance with the rules of the scheme.

49. Regulation 36 is amended—

(a) in paragraph (3) by deleting subparagraph (b) and replacing it with the following new subparagraph—

(b) send to the sponsor and employer a copy of the audited accounts and to each member a summary of the audited accounts of the scheme together with the member's benefit statement by appropriate means.

(b) by deleting paragraph (5) and replacing it with the following new paragraph—

(5) The auditor shall further be required to examine the systems and controls to monitor the receipt of contributions and the reporting of late payments to the fund and render an opinion thereof as to their adequacy for purposes of determining un-remitted contributions.

50. The principal Regulations are amended by deleting regulation 38 and replacing it with the following new regulation—

Distribution of
surplus of scheme
fund.

38. The surplus of a scheme fund shall not be directly or indirectly refunded to the sponsor of the scheme:

Provided that—

- (a) a contribution holiday for both the employer and the member as shall be determined by an actuary shall not be construed to mean a refund of the surplus of a scheme fund, and shall be limited to the surplus above 10% of the scheme's accrued liability;
- (b) if the total accrued liabilities are being transferred to a different scheme, any surplus shall be allocated equally between the members and the employer;
- (c) the portion of the surplus due to the employer may be used as a contribution holiday by the sponsor in the new scheme; and
- (d) subject to the surplus being sufficient for the purpose, where partial liability is being transferred to a scheme, a portion of surplus proportionate to the value of the liability may be transferred.

51. The principal Regulations are amended by deleting regulation 48 and replacing it with the following new regulation—

Amalgamation of
schemes.

48. (1) An amalgamation of schemes shall not take place unless the following conditions have been satisfied and approved by the Authority in writing—

- (a) the arrangements and particulars for the proposed amalgamation, including copies of current actuarial reports, in respect of the schemes and other statements taken into account for the purposes of the amalgamation, have been submitted to and approved by the Authority;
- (b) the Authority has been furnished with such additional particulars, or such specific reports by an actuary or auditor, as it may deem necessary for the purposes of this regulation;

- (c) the Authority is satisfied that the arrangements referred to in subparagraph (a) ~~accords full recognition to the~~ reasonable expectations of the members of the schemes concerned, and that the proposed transaction would not render any scheme which is a party thereto and which will continue to exist if the proposed transaction when completed is unable to—
- (i) meet the requirements of the Act and these regulations;
 - (ii) remain in a sound financial condition; or
 - (iii) in the case of a scheme which is not in a sound financial condition, to attain a sound condition within the period of time deemed by the Authority to be satisfactory;
- (d) the Authority has been furnished with such evidence as it may require to show that the provisions of the scheme rules of the concerned schemes in so far as they are applicable, have been carried out or that adequate arrangements have been made to carry out such provisions at such intervals as may be required by the concerned schemes; and
- (e) the approval referred to herein shall be given within thirty days of receipt of all the information required under paragraph (d).
- (2) An amalgamation of a scheme fund shall not be approved if its intent, purpose or effect will—
- (a) diminish the retirement benefits of the members of such scheme; and
 - (b) reduce the accrued benefits of its members.
- (3) Whenever any transaction comes into force in accordance with the provisions of this regulation, the relevant assets and liabilities of the schemes so amalgamated shall respectively vest in and become binding upon the resultant scheme.
- (4) A transaction effected in terms of this regulation shall not deprive any creditor of any scheme thereto, except in his capacity as a member, of any right or remedy which he had immediately prior to that date against any scheme to the transaction or against any member of such scheme.

52. The principal Regulations are amended by deleting regulation 49 and replacing it with the following new regulation—

Existing schemes to
amend scheme rules.

49. All existing schemes shall within ninety days from the date of commencement of these Regulations amend their scheme rules to comply with the provisions of the Act and these Regulations.

53. The principal Regulations are amended by deleting the Schedule and replacing it with the following new Schedule—

SCHEDULE

(r. 3 (1)(a))

Form I

RETIREMENT BENEFIT AUTHORITY
REGISTRATION OF EXISTING SCHEMES

APPLICATION FOR THE PURPOSE OF REGISTRATION UNDER s. 23 (2) OF THE
RETIREMENT BENEFITS ACT, 1997

(read attached notes before completing the form)

PART I – DETAILS OF THE SCHEME

- A. (i) Name of the scheme
- (ii) Income Tax PIN Number
- B. Any other names under which the scheme has been known previously:
.....
.....
- C. Any other names under which the scheme has been known together with the names of the schemes which have in whole or part been merged with or replaced by the scheme in the past five years:
.....
.....
- D. Provide the following particulars regarding the scheme:
- (i) Is it a provident or pension fund? Yes/No
- (ii) Is it employee based? Yes/No
- (iii) Is the scheme contributory on non-contributory?
- (iv) If other specify
- (v) Current status of the scheme:
1. Is it an open scheme? Yes/No
 2. Is it a paid-up scheme? Yes/No
 3. Is it a closed scheme? Yes/No
 4. If other, specify
- (vi) State whether the scheme is a defined contribution or a defined benefit scheme
- (vii) If other, specify
- E. Give the following information as at the end of the last financial year from20..... to20.....
- (i) State number of members of the scheme.
 - (ii) State the number of members of the scheme who were active members in this service
 - (iii) State the numbers in whom the scheme benefits have been fully vested
 - (iv) Scheme vesting formula
 - (v) State the number of members who are drawing pension, if any
 - (vi) State the numbers of members whose retirement benefits are deferred

- (vii) State the number of the total permanent workforce of the sponsoring employers
- (viii) Is the membership of the scheme compulsory or voluntary?
- (ix) Do permanent employees of the sponsoring employers who are not members of the scheme belong to any scheme? Yes/No
If Yes, give details of the scheme

.....

F. Give the following information as at the end of the last financial year from20..... to20.....

- (i) Where applicable, state the contribution formula for the employee and the employer, and in the case of an individual based scheme, the individual contribution formula

Employee.....
 Employer.....
 Individual contribution.....

- (ii) State the amount contributed:

Employee's contribution:
 Kshs
 Employer's contribution
 Kshs

- (iii) State the total benefits as follows:

Lump sum payments:
 Kshs.....
 Commuted payments:
 Kshs.....
 Death benefits payments:
 Kshs.....
 Disability benefits payments:
 Kshs.....
 Deferred benefits:
 Kshs.....
 Others specify:

(iv) State the total value of the scheme fund. Kshs.....

(v) State the basis of valuation of the scheme fund e.g. Market value, Historical cost, etc.

- G. (i) Provide the following particulars of the schemes:

Country.....
 Date of establishment.....

Registered office of the scheme:

Building.....
 Road.....
 Postal address.....
 Telephone.....
 Telex.....
 Fax/email

(ii) Is the scheme established under an irrevocable trust? Yes /No.

If No, state the basis of the establishment

(iii) Is the scheme approved under the Income Tax (Retirement Benefits Scheme) Rules? Yes/ No

If Yes, state the income Tax Reference Number.....

H. Provide details for the following:

- (i) Members of the Board of Trustees (Appendix A)
- (ii) Fund Managers, if any (Appendix B)
- (iii) Auditors, Legal Advisors, Actuary, Managers, Custodian and Administrators (Appendix C)

(please complete the tables in the above-mentioned appendices)

I. If the scheme does not engage in the services of trustees, a scheme administrator or fund manager, then the following particulars:

(i) Who administers the scheme?

.....

(ii) Who makes decisions on the investment of the scheme funds?

.....

(iii) Are the funds separated from those of the sponsors? Explain

.....

(iv) Are the scheme funds separated from those of the fund manager? Yes/No

(v) Provide the list of investment portfolio as per the latest audited or management accounts for the period from.....20.... to20..... showing the cost, market and book values and the respective percentages in relation to the total fund of the scheme as in appendices D1 and D2 annexed

NOTES:

1. In case the assets of the scheme are managed by an Insurance Company/ Bank/ Asset Manager on a pooled basis, such
2. The said manager in completing appendix D2 to provide the investments of

the pool and submit on a separate list all the schemes which form the pool together with their respective shares of the pooled investment

(vi) Where applicable, state the ratio of fund assets in relation of actuarial liabilities as per the latest actuarial report

.....
.....
.....

J. List all Bankers of scheme funds showing the branches and address for such branches:

.....
.....

K. Custodian of scheme assets

(i) Is the custodian of the scheme assets registered under the Capital Markets Authority Act? Yes/No

(ii) If the custodian is registered by any other authority provide the following:

Full Name.....

Physical Address.....

Building.....

Road.....

Town.....

Postal Address.....

Telephone..... Fax.....

(iii) State in whose name the title documents for the assets of the scheme are registered?

.....
.....
.....

(iv) Give full details of the person who keeps scheme's assets and documents:

Full Name.....

Physical Address.....

Building.....

Road.....

Town.....

Postal Address.....

Telephone..... Fax.....

PART II – PARTICULARS OF SPONSORS

(In case of more than one sponsor, provide the following particulars for each on a separate attachment)

A. Names of Sponsors

.....

B. Contact information of sponsors.

Full Name.....
 Physical Address.....
 Building.....
 Road.....
 Town.....
 Postal
 Address.....
 Telephone..... Fax.....

C. Tax information of sponsor:

Income Tax PIN Number
 Income Tax Reference Number

D. Number of Members in service of the sponsor.....

PART III – PARTICULARS OF EMPLOYERS

(Provide the following particulars for each on a separate attachment)

A. Name of sponsor:

.....

B. If a company, certificate of incorporation number:

C. If not a company state the number of the certification of registered under the Business Names Act:

D. Contact information:

Full Name.....
 Physical Address.....
 Building.....
 Road.....
 Town.....
 Postal Address.....
 Telephone..... Fax.....

E. Tax information:

Income Tax PIN Number
 Income Tax Reference Number

PART IV – ATTACHMENTS

Please attach copies of the following:

- (i) Trust deed and rules
- (ii) Latest actuarial report

If any of the officers has been convicted of a criminal offence, please give the name of the officer, the date and particulars of the offence.

.....
 *(The Chief Executive and his/her core team)

APPENDIX C

	<i>Name of firm</i>	<i>Income Tax P.I.N Number</i>	<i>Address, Telephone No. or Email</i>	<i>Professional body to which partners are members</i>	<i>Date of appointment</i>
Actuaries					
Administrators					
Auditors					
Custodians					
Legal Advisors					

APPENDIX D1

LIST OF INVESTMENT PORTFOLIO

Income Tax P.I.N Number.....

INVESTMENTS	AMOUNT IN KSHS							
	Original cost	%	Original cost	%	Original cost	%	Original cost	%
(a) Real Estate: *								
(i) Land (underdeveloped)								
(ii) Residential								
(iii) Commercial								
(iv) Agricultural								
(v) Any other								
(b) Quoted Equity*								
(i) Agricultural								
(ii) Commercial and allied								
(iii) Financial and Investment								
(iv) Industrial and allied								
(v) Others								

(c) Unquoted Equity*							
.....							
(i) Agricultural							
.....							
(ii) Commercial and allied							
.....							
(iii) Financial and Allied							
.....							
(iv) Industrial and allied							
.....							
(d) Government paper							
(i) Bonds							
(ii) Stock							
(iii) Treasury Bills							
(iv) Any other (specify)							
.....							
(e) Cash and Deposits in Banks (state the name(s) of the Bank(s))							
.....							
(f) Offshore investments							
.....							
(g) Listed REITS							
(h) Others (as applies per investment guidelines)							
.....							
TOTAL		100		100		100	100

*Provide on a separate paper a list of land reference title numbers in which scheme funds are invested

*Provide on a separate paper a list of companies in which investments are held.

NOTES FOR APPLICATION FOR REGISTRATION

The following words and phrases as used in the application form have the following respective meanings:

(1) Actuarial liabilities: A debt or an obligation of a retirement benefits scheme arrived at using actuarial principles and assumptions

(2) Administrator: A person charged with the responsibility of day to day management of a scheme such as keeping records, paying benefits to and providing members with information relating to their benefits

(3) Banks: Bank of financial institution licensed under the Banking Act and registered as custodian by the Authority in which schemes accounts are operated or held.

(4) ~~Committed payment: Whole or part of a pension entitlement paid to a member on retirement subject to scheme rules and/ or Income Tax regulations.~~

(5) Contribution formula: The rate(s) of contribution of the fund by members and/or employers.

(6) Contributory scheme: A retirement benefit scheme in which both the employer and the members contribute to the fund.

(7) Non-contributory scheme: A retirement benefit scheme in which only the employers contributes to the fund.

(8) Custodian: A person who has custody of scheme assets including cash and title documents, as an agent of the scheme.

(9) Defined Benefit Scheme: A scheme in which benefits to be provided or paid are specific based on a specified criterion such as service, earnings e.t.c.

(10) Defined Contribution (money purchase) scheme: A scheme which specified the contributions to be made whether by employer and or employee. The accumulated contributions and interest earned determine the value of the benefit.

(11) Financial year: Financial year of the scheme.

(12) Fund manager: A person charged with the responsibility of investing scheme funds.

(13) Lump sum: Full and final payment of retirement benefit upon cessation of employment on attaining the normal retirement age.

(14) Open scheme: A running scheme which is open to new members to join.

(15) Paid up scheme: A scheme where contributions to the scheme have ceased e.g. due to winding up.

(16) Closed scheme: A scheme which is closed to new members but which otherwise function as a normal scheme for its continuing members.

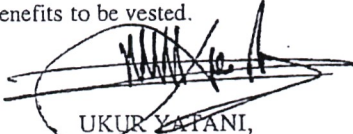
(17) Scheme: Any scheme or arrangement (other than a contract for life assurance) whether established by a written law for the time being in force or by any other instrument, under which persons are entitled to benefits in the form of payments, determined by age, length of service, amount of earnings or otherwise and payable primarily upon the retirement, or upon death, termination of service, or upon the occurrence of such other event as may be specified in such written law or other instrument.

(18) Vested benefit: Any accrued benefit to which a member would be immediately entitled to on withdrawal from service of the sponsor from the scheme or at retirement.

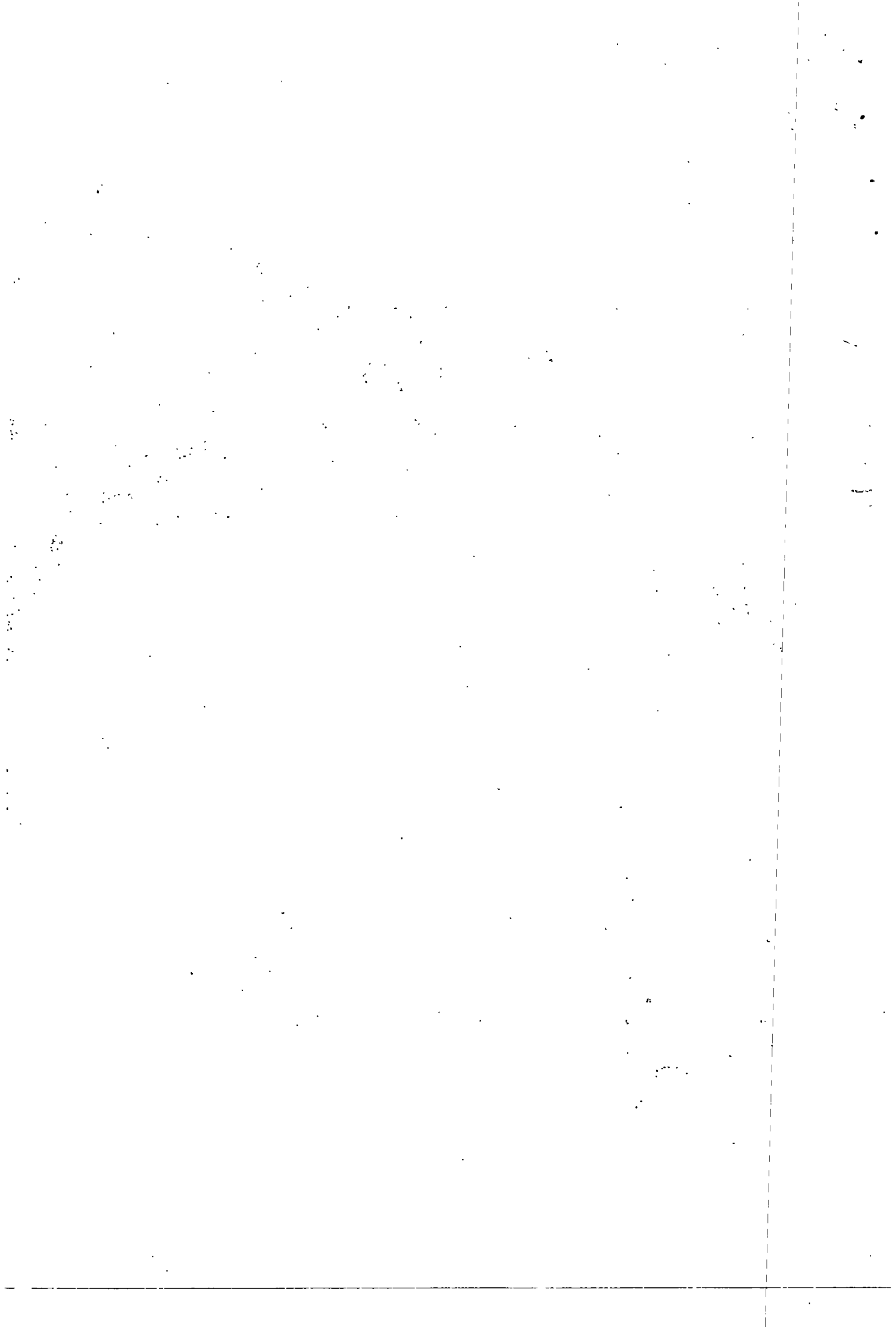
(19) Vesting formula: The method of determining the benefits to be vested.

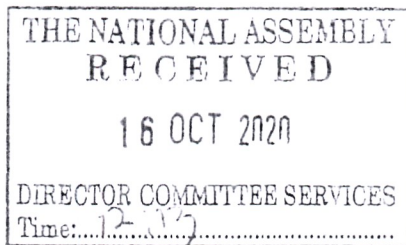
**person includes a body corporate or a company.*

Dated the 10th September, 2020.


UKUR YATANI,

Cabinet Secretary for the National Treasury and Planning.





SUSAN
Please deaf
19/10/20

EXPLANATORY MEMORANDUM TO THE VALUE ADDED TAX
ACT, 2013: ELECTRONIC TAX INVOICE REGULATIONS, 2020

LEGAL NOTICE NO. 189 of 2020

PART I

Name of Statutory Instrument	: The Value Added Tax (Electronic Tax Invoice) Regulations, 2020
Name of Parent Act	: The Value Added Tax Act (No. 35 of 2013)
Enacted Pursuant to	: 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

THE NATIONAL ASSEMBLY
16 OCT 2020 THURSDAY
LEADER OF THE MAJORITY
R. U. TIAPATI

PART II

1.0 Purpose of the Statutory Instrument

- 1.1. The objective of this Memorandum is to submit the Legal Notice No. 189 of 2020 for tabling in the National Assembly in accordance with the provisions of Section 11 of the Statutory Instruments Act, 2013.
- 1.2. The Legal Notice provides a legal framework to govern the use of Electronic Tax Registers in line with Section 43(4) of the Value Added Tax Act, 2013. In addition, the Legal Notice offers an enhanced approach on VAT enforcement and compliance.

2.0 Legislative Context

The Legal Notice on the Value Added Tax (Electronic Tax Invoice) Regulations 2020, is made pursuant to Section 67 of the Value Added Tax Act, 2013 which empowers the Commissioner to require any person to use an electronic tax register, of such type and description as may be

prescribed, for the purpose of accessing information regarding any transaction which may affect the tax liability of the person.

3.0 Policy Background

- 3.1 The Value Added Tax (Electronic Tax Registers) Regulations, 2004 (repealed in 2017) first came into operation in 1st January 2005 to support the use of the electronic tax registers which was being rolled out at the time.
- 3.2 These Value Added Tax (Electronic Tax Registers) Regulations, 2004 were repealed in 2017. Subsequently, the VAT Regulations, 2017 in Regulation 9 (1) provided for a registered person to furnish a purchaser with a tax invoice containing details as per the VAT Regulations.
- 3.3 Regulation 9(2) of the VAT Regulations 2017, does not mandate the registered person to generate a tax invoice by use of an electronic tax register. This has created a challenge in the enforcement of compliance of the use of electronic tax registers.
- 3.4 The use of electronic tax registers by registered persons will provide for standardization and uniformity of tax invoices generated. In effect, this will enhance effective compliance and enforcement measures, which will result in an increase in revenue by minimizing VAT fraud.
- 3.5 In support of the ease of doing business initiatives in the country, the standardization of tax invoices is crucial as it will facilitate the simplification of VAT tax returns as per the envisioned KRA's revenue enhancement strategy. In addition, this will also facilitate faster processing of genuine VAT refund claims by reducing the time taken in verification of tax invoices.
- 3.6 In view of the above, the use of the electronic tax registers will put mechanism in place to ensure enhanced administration of VAT.

4.0 Consultation Outcome

- 4.1 The Kenya Revenue Authority informed the public and relevant stakeholders of the intention to introduce the Value Added Tax (Electronic Tax Invoice) Regulations 2020 and sought their comments on the same in a Public Notice published on **23rd August 2019** and **6th November, 2019 (copy attached)**. Feedback was received from professional accountants, audit firms, members of the business community and general public.
- 4.2 KRA conducted public consultation on the proposal to introduce the Value Added Tax (Electronic Tax Invoice) Regulations 2020, between August to November 2019.
- 4.3 The feedback revealed that the stakeholders were in support of the proposed Regulations with few amendments. Taking into consideration the advances in technology, the stakeholders recommended review in some aspects of the Regulations which were incorporated in the final draft. Please find attached the following documents: -

5.0 Impact

The Legal Notice provides for an increase in VAT Revenue collected. It will minimise VAT fraud by ensuring that VAT is accurately accounted for at the trader tills. It is also expected that this provision will have a general ripple effect in form of increase in tax revenue.

6.0 Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority and may be reviewed periodically as the need may arise depending on the feedback from stakeholders during its implementation and also considering the policy objectives of the Electronic Tax Invoice in facilitating businesses in VAT accounting.

7.0 Request to the National Assembly

The National Assembly is requested to:

a) Note the contents of this memorandum.

b) Approve Legal Notice No. 189 of 2020

8.0 Contact

Cabinet Secretary,

National Treasury & Planning,

NAIROBI



KENYA REVENUE
AUTHORITY
ISO 9001:2015 CERTIFIED

Ref: KRA/M&CD/08/6

1st November 2019

Ms. Phyllis Wakiaga
Chief Executive Officer
Kenya Association of Manufacturers
15 Mwanzi Road opp West Gate Mall, Westlands
Nairobi.

Dear Ms. Wakiaga,

**INVITATION FOR A MEETING ON THE PROPOSED VALUE ADDED TAX
(ELECTRONIC TAX INVOICE) REGULATIONS**

Following our public notice date 23rd August, 2019 on Value Added Tax (Electronic Tax Invoice) Regulations, the Kenya Revenue Authority would like to invite the Kenya Association of Manufacturers for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 2.00pm.

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholderengagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the KAM members.

Yours Sincerely,

Grace Wandera

Grace Wandera

Deputy Commissioner, Marketing & Communication



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Ref: KRA/M&CD/08/6

1st November 2019

Mr. Edward Kerich
Director
Pricewaterhouse Coopers
PwC Tower, Waiyaki Way/Chiromo Road, Westlands
Nairobi.

Dear Mr. Kerich,

**INVITATION FOR A MEETING ON THE PROPOSED VALUE ADDED TAX
(ELECTRONIC TAX INVOICE) REGULATIONS**

Following our public notice date 23rd August, 2019 on Value Added Tax (Electronic Tax Invoice) Regulations, the Kenya Revenue Authority would like to invite the Pricewaterhouse Coopers for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 2.00pm.

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder.engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the PWC members.

Yours Sincerely,

Grace Wandera
Deputy Commissioner, Marketing & Communication



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Ref: KRA/M&CD/08/6

1st November 2019

Ms. Wambui Mbarire
Chief Executive Officer
Retail Trade Association of Kenya
Ojjo Plaza, Chiromo Ln, Westlands,
Nairobi.

Dear Ms. Mbarire,

**INVITATION FOR A MEETING ON THE PROPOSED VALUE ADDED TAX
(ELECTRONIC TAX INVOICE) REGULATIONS**

Following our public notice date 23rd August, 2019 on Value Added Tax (Electronic Tax Invoice) Regulations, the Kenya Revenue Authority would like to invite the Retail Trade Association of Kenya for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 2.00pm.

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder.engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the RETRAK members.

Yours Sincerely,

Grace Wandera

Deputy Commissioner, Marketing & Communication



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AUTHORITY**
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Ref: KRA/M&CD/08/6

1st November 2019

Ms. Carole Kariuki, MBS
Chief Executive Officer
Kenya Private Sector Alliance
P.O. Box 3556-00100
NAIROBI.

Dear Ms. Kariuki,

**INVITATION FOR A MEETING ON THE PROPOSED VALUE ADDED TAX
(ELECTRONIC TAX INVOICE) REGULATIONS**

Following our public notice date 23rd August, 2019 on Value Added Tax (Electronic Tax Invoice) Regulations, the Kenya Revenue Authority would like to invite the Kenya Private Sector Alliance for a meeting on Thursday, 7th November 2019, to deliberate on the same regulations. The meeting will be held at Times Tower, 5th floor, from 2.00pm.

We kindly request you to confirm attendance by Wednesday, 6th November 2019 through email stakeholder.engagement@kra.go.ke or contact us on 020 2812045.

We thank you and look forward to your participation, as well as that of the KEPSA members.

Yours Sincerely,

Grace Wandera

Deputy Commissioner, Marketing & Communication



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Public Participation Fora for Proposed Tax Regulations
The Value Added Tax (Electronic Tax Invoice) Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 2:00PM
VENUE: TIMES TOWER, 5TH FLOOR CONVENTION CENTER

Sl. No.	NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1.	Peter Kariuki	VSL LTD	pkariuki@vsl.com	0998897353	
2.	Hedding Mwangi	Wells	pkariuki@wells.com	0711765024	
3.	M. Peter Mwangi	Wells	pkariuki@wells.com	0711765024	
4.	John Mwangi	Wells	pkariuki@wells.com	0711765024	
5.	Edmund Mwangi	KQ	edmund.mwangi@kq.com	072234411	
6.	Frank Mwangi	PSC	frank.mwangi@psc.com	0720004713	
7.	Daniel Mwangi	PSC	daniel.mwangi@psc.com	073589200	
8.					
9.	John Mwangi	KQ	john.mwangi@kq.com	0722308795	
10.	John Mwangi	PSC	john.mwangi@psc.com	0724213736	
11.					
12.	John Mwangi	MCA	john.mwangi@mca.com	0724311647	
13.	John Mwangi	ACTOR	john.mwangi@actor.com	0721523490	
14.					
15.					



Tufipe Ushuru Tujitegeme!

KENYA 2030



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Public Participation Fora for Proposed Tax Regulations

The Value Added Tax (Electronic Tax Invoice) Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 2:00PM

VENUE: TIMES TOWER, 5TH FLOOR CONVENTION CENTER

NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1. Lucas Gachonyo	TAI Stakeholders	lucas.gachonyo@ntia.go.ke	0731541947	[Signature]
2. Luc Ndungu	Axiom Ltd	ndungu@axiom.co.ke	0721435552	[Signature]
3. Teutza Muriuki	QuirkMark	teutza@quirkmark.com	010554869	[Signature]
4. Jennifer Mbatia	Kyrtal Limited	teutza@quirkmark.com	0733641002	[Signature]
5. Gillian GNYA	CMC MOTOR	gillian.gny@cmcmotor.com	0722998812	[Signature]
6. MOSES OULLETHA	HYPERMART KENYA	mosesoulletha@hypermart.com	0722-256101	[Signature]
7. Wadhwa Josphine Kang'wa	MOSELEMINEH	wadhwa.josphine@moselemineh.com	0722-289167	[Signature]
8. Stephen Kiribela	CEP Share Invest.	stephen@cepshare.com	0722157587	[Signature]
9. John Kamau	Warren Buffett Group	johnkamau@warrenbuffettgroup.com	073957477	[Signature]
10. PAVU CHEKE	CMC	pvu@cmcmotor.com	092-792923	[Signature]
11. RUTH CAROL	ETHIOATORS	ruth@ethioators.com	0719178264	[Signature]
12. Monica Ngugi	FENOVATOC Ltd	monica@fenovato.com	0701555775	[Signature]
13. Satorinder Jami	Bluekey Seidor	satorinder@seidorcpa.com	072280909	[Signature]
14. KEH MAKENY	PERBAND LIMITED	keh@perbandgroup.com	0724118874	[Signature]
15. HARALSON K MANWA	HM CONSULTANTS	haralson@hmconsultants.com	0722982690	[Signature]



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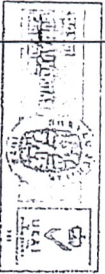
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VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

Sl. No.	NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1.	Marius Wa Nthungu	Office Dynamics Ltd	lifa@officedynamics.com	0723 803502	
2.	L Esomran MURAH	FDV PVT LTD	ledomran@fdv.com	0722 389 724	
3.	Samwel KADOTUR	KINISTALINE SMT LTD	Samwel.Kadotur@kinistaline.com	09234 43233	
4.	Wainaina Mwangi	SAT Automobile	Sniwainaina@sat.com	0922 772 77	
5.	Joseph Mwangi	Autostyle EA Ltd	joseph.mwangi@autostyle.com	0703 110 65	
6.	MURRAY MURRAY	Revel	muraymurray@revel.com	0723 232303	
7.	DEWESH HARDI HERMI	COSMOS LTD	hermide@cosmos-pharm.com	0735 777470	
8.	Daniel Nduru	Petrol Oil	daniel@petrolengr.petrol.com	0721 492108	
9.	Alex King'ara Kenani	Louisa Kenya	alex.king'ara@louisa.com	0721 408333	
10.	Francis KIPKOR	Sun Oil Kenya	Francis.Kipkor@sunoil.com	0792 211958	
11.	Peter Muthengi	MUTHENGI P&S	pmuthengi@pandp.com	0722 527570	
12.	Herbert Kaimu	CONCRETE	herbert.kaimu@concrete.com	0712 343125	
13.	Abdullahi Abdullahi	Bahari Auto	abdullahi@bahari.com	0777 705670	
14.	John Mwa	Ragadi Auto	john@ragadi.com	0722 517956	
15.	Geetha Wanjau	Fidonet Kenya	geetha@fidonet.com	0723 175519	



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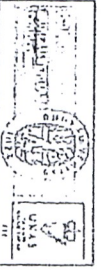
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DATE: 7TH NOVEMBER, 2019 TIME: 2:00PM
VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1. Rachel Muthithi	Furniture Aid	rachelmuthithi@gmail.com	0706173991	
2. Betty Nyawie	Niska	betty.nyawie@niska.com	0725165011	
3. Karen Kikweli	Ny C	Karen.kikweli@nyc.com	072621287	
4. Steven Muriu	HELIX	stevenmuriu@helix.com	0726556451	
5. Jennifer Kariuki	BBU Beverages	jenkariuki@bbu.co.ke	0701494007	
6. Steve Maura	Mombasa State Energy	Steve.maura@yemas.co	01-22980746	
7. MOSES KAMBU	GRANDNORGE ASS	moseskambugu@grandnor.com	0111368462	
8. Edwin Kariuki	Edwin Kariuki Law	edwin.kariuki@edwinlaw.com	021204326	
9. Willy Wambui	APRILIA (C) LTD	wambui.willy@aprilialtd.com	0710520705	
10. Joseph Kipwani	Manic Finance Co-ops	Joseph.kipwani@manic.co.ke	0721192816	
11. Josphine Mwangi	Miriam Insurances	josphine.mwangi@miriamins.com	0725876583	
12. Josphine Mwangi	Miriam Insurances	josphine.mwangi@miriamins.com	0725876583	
13. EDITHA HIRSI	-	EDITHA.HIRSI@GMAIL.COM	0720739444	
14. FELICIA HUSSEIN	PRYSALE (K)	FELICIA.HUSSEIN@PRYSALE.COM	0722707422	
15. LABAN MUREIT	EAST AFRICA F.	labanmureit@eastafrica.com	0925532553	



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Public Participation Fora for Proposed Tax Regulations
The Value Added Tax (Electronic Tax Invoice) Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 2:00PM
VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1. Tesneem Jannah	SPICE USED BLEND	accounts@spiceandherbals.com	0112698962	Tesneem
2. Tawelle Kwarui	Yaji Herbs	hr@yajiherbs.com	011297066	Tawelle
3. Miriam PATEK	Chimboraria	miriam@chimboraria.com	0712011282	Miriam
4. Mgr Paul A. TULL	WISSE	paull@wisse.com	0726819986	Paul
5. Ndabon Mucia	Ndabon & Company	ndabon@ndabon.com	072976258	Ndabon
6. Stephen Mwangi	Kenya Flowers	stephen@kenyaflowers.com	072915772	Stephen
7. Abdikani Ateu	Muga Butlers	muga@butlers.com	0724849843	Abdikani
8. J. Liel Mwangi	Hece Retailer	liel@hece.com	0729450624	J. Liel
9. SHELLO M. WASHUKU	LIMITED STORE LTD	shello@lmsltd.com	0727822196	Shello
10. Joyce Mwangi	Kenya Retail	joyce@kenyaretail.com	0727591402	Joyce
11. S. Mwangi	WUWUK	swangi@wuwuk.com	0716204335	S. Mwangi
12. Tesneem Jannah	FARAZ TECH	tesneem@faraztech.com	0124636110	Tesneem
13. Dhadah Oulhi	Dhadah Retailer	hadah@hadah.com	0725085780	Dhadah
14. Bernard O. Mwangi	PISSIS	bernard@pissis.com	0722765079	Bernard



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Public Participation Fora for Proposed Tax Regulations

The Value Added Tax (Electronic Tax Invoice) Regulations, 2019

DATE: 7TH NOVEMBER, 2019 TIME: 2:00PM

VENUE: TIMES TOWER 5TH FLOOR CONVENTION CENTER

NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1. FUXIX	SICE KLOPID LTD	fx@spreadsheets.co.ke	0742932941	<i>[Signature]</i>
2. ANNKROUSE KANI SIKILI	NKAVUKS LTD	annkrose.kenya@nkavuks.co.ke	0112124894	<i>[Signature]</i>
3.	ITHANIBORAI INVESTMENTS	sthalika@iborai.com	077284230	<i>[Signature]</i>
4.				
5. Geoffrey Karwa	ClassBuddy	geoffrey.karwa@classbuddy.com	0720700253	<i>[Signature]</i>
6.				
7.				
8. Genrick Mugo	Nvo Energy	genrick.mugo@nvoenergy.com	0722729492	<i>[Signature]</i>
9. Moses Apui	U.R.A	adm@ubkallenges.org	0714765171	<i>[Signature]</i>
10. Audience Chokoch	QUESTMORKS	Audience78@gmail.com	0727379386	<i>[Signature]</i>
11. Adv. Lawrence Adurakinyo	CIETHKI INVESTMENT	lawrenceadurakinyo@gmail.com	0722450051	<i>[Signature]</i>
12. Evelyn Nguyo	Sunrise Consulting	evelyn.nguyo@sunriseconsulting.com	0729373371	<i>[Signature]</i>
13. MARVIN NGELI	ELL LOGISTICS	marvinngeli@fahve.com	0727220725	<i>[Signature]</i>
14. HANUVELI KARIRI	DIKEY QUALITY	ckayueli@dikeyquality.com	0735-631750	<i>[Signature]</i>
15. HANUVELI W. KARIRI	DIKEY QUALITY	ckayueli@dikeyquality.com	0725-631750	<i>[Signature]</i>



Tulipe Uchumi Tufiteganoe!

KRA



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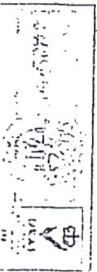
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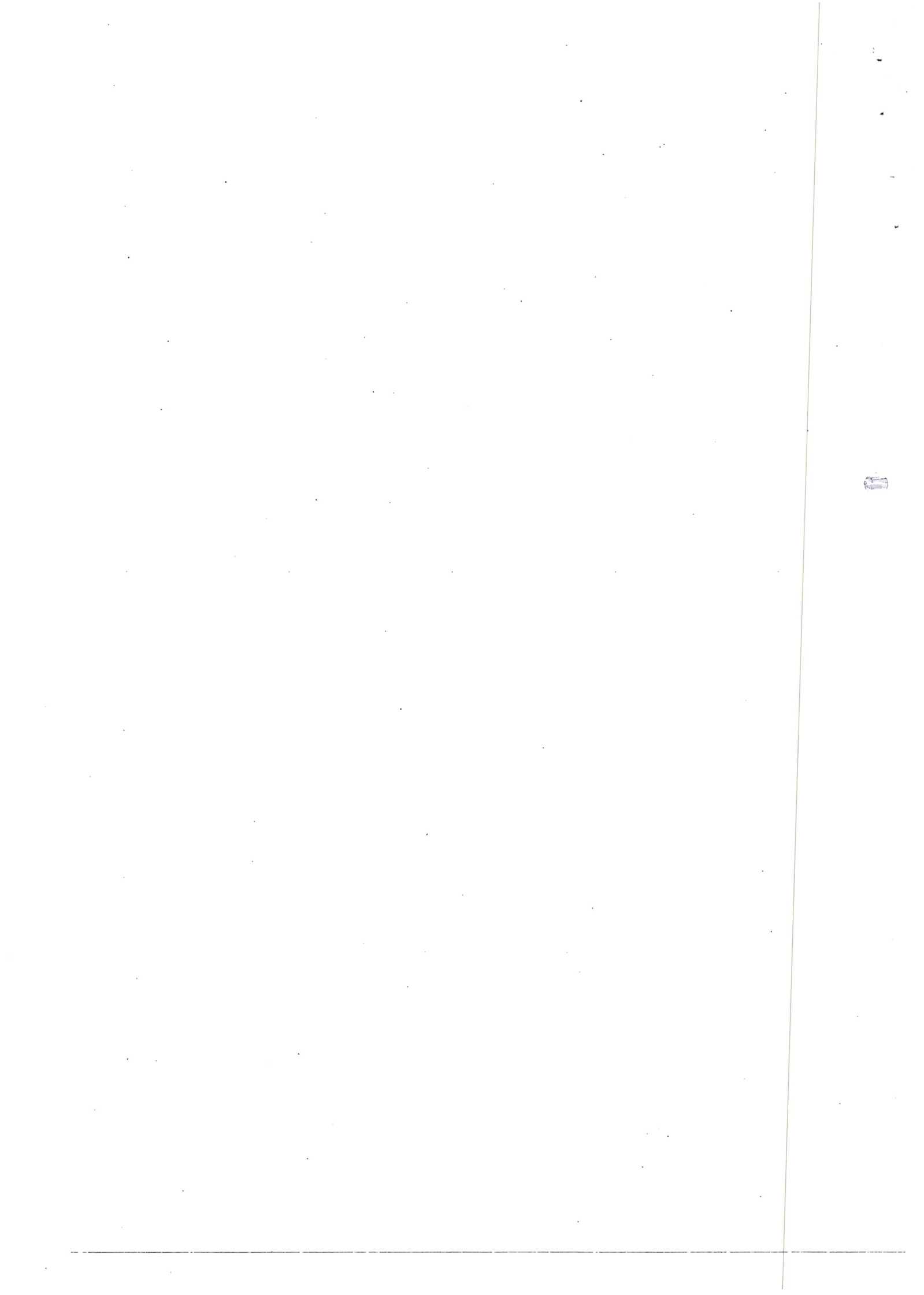
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	NAME	ORGANISATION	EMAIL ADDRESS	PHONE NUMBER	SIGN
1.	Jessica Mwangi	N/A	Jessica Mwangi R.@gmail.com	0722514735	[Signature]
2.	Nancy Wicheria	RETRAK	nancywicheria@retrak.co.ke	0116 717 082	[Signature]
3.	Jessica A. Ateka	KABU LS APC	Jessica.ateka@kabu.co.ke	0725589998	[Signature]
4.					
5.					
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Walter Uthuru Tufiigemwa

11/11/2019





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**STAKEHOLDERS' COMMENTS ON THE DRAFT VALUE ADDED TAX (ELECTRONIC TAX INVOICE)
REGULATIONS, 2019**

PRICEWATERHOUSECOOPERS			
S/NO	Regulation	Issue	Comments
1.	Regulation 5 (1) (b) (ii)	This regulation requires that a receipt for each sale is printed. Further that the original receipt for each sale containing information set out in Regulation 10 should be delivered to the purchaser.	<p>Draft Proposal/ Recommendation</p> <p>a) Define the term "original" and specify whether scanned and soft copy invoices generated via the ERP system are original.</p> <p>b) Regulation 10 does not specify any information to be contained in the original receipt.</p> <p>c) Confirm whether this regulation is referring to Regulation 11, which contains the requirements of a tax invoice printed from an ETR.</p> <p>d) If the intention is as described under (d) above, KRA should consider having an ETR integrated with a taxpayer's ERP system similar to the ESDS as opposed to having an ETR receipt printed separately.</p> <p>Recommended</p> <p>a) The term "original receipt" to be replaced with "generated receipts".</p> <p>c) refers to Regulation 10</p>
	5. Use of register (1) A user of a register shall - (b) ensure— ii) the printing of the receipt in respect of each sale and which receipt shall contain the information set out in Regulation 10 and deliver the original receipt to the purchaser.		



Tulipe Usbury, T. Mwangi

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<p>2.</p>	<p>Regulation 5 (2) A register shall exclusively be used to record the sales of the user of a register.</p>	<p>This regulation requires that an ETR is exclusively used to record sales of the user.</p>	<p>This may not be practical, since some users will also be paying tax on behalf of their principals. This means that some of the sales recorded through an ETR may not necessarily belong to the users.</p>	<p>Not recommended It is critical that an ETR machine is only used to record sales of the registered user. Otherwise, the information relayed through the machine will not be reliable for purposes of computing output tax for that user.</p>
<p>3.</p>	<p>Regulation 6 (3 and 4) Availability of a register (3) In case of non-availability for use of the register, the user of a register shall, immediately and not exceeding twenty four hours of such eventuality, report to the Commissioner. (4) Where a register is reported under Paragraph (3) (a) the Commissioner shall approve substitute means of recording the sales; (b) the user of a register shall record sales with the use of such substitute means as approved by the Commissioner under this paragraph. (c) Once the register is available, the user of a register shall conform to the provisions under Paragraph 5(1)(b)</p>	<p>Report of unavailability for use of the register to the commissioner.</p>	<p>a) Whether there is a prescribed format for the report; b) Time frame for the commissioner to approve; c) Substitute means to be used by the taxpayer to record sales when the ETR is unavailable; d) Why this provision does not take into account weekends and public holidays. Given the volume of sales in the retail sector, it would not be practical to halt sales waiting for the Commissioner's approval. Consider incorporating consequences to the Commissioner (or in favour of the taxpayer) in the event he fails to approve the substitute means for recording sales within the required time frame.</p>	<p>Recommended Proposed Amendment 6 (3) In case of non-availability for use of the register, the user of a register shall, immediately and not exceeding twenty four hours of such eventuality, report the non-availability in a manner prescribed by the Commissioner. 6 (4) Where a register is reported under Paragraph (3), the Commissioner shall within a period not exceeding 24 working hours approve the recording of sales using substitute means for a period not exceeding 48 working hours;</p>





4.	<p>Regulation 7 (g) Obligations of a user</p> <p>7. A user of a register shall –</p> <p>(g) ensure the inspection of the register by a service person every six months;</p>	<p>The requirement to service the ETR every 6 months.</p>	<p>KRA to explain the rationale for this prescriptive. The regulation fails to note that ETR machines should be serviced at intervals determined by the frequency of their use as opposed to fixed time.</p>	<p>Not recommended.</p> <p>This is a minimum requirement to ensure the ETR machines are in proper working condition.</p> <p>The Commissioner needs to be satisfied that the information generated through the machines is reliable and hence providing for regular servicing of the machines is critical.</p> <p>Retain service every 6 months.</p>
5.	<p>Regulation 7 (i)</p> <p>(i) keep and maintain a register ledger in which a record of the servicing of the register shall be maintained which shall contain –</p> <p>(ii) the name and address of the person servicing the register;</p> <p>(iii) an entry for each time the register is serviced, describing the servicing and</p> <p>(iv) shall be signed by the person performing the service;</p>	<p>Taxpayers are required to maintain an ETR service ledger.</p>	<p>This has not been a requirement in the past. There should be an explanation on the rationale behind this requirement.</p>	<p>Not Recommended.</p> <p>The service ledger is required to confirm that the machines are regularly serviced as required under these regulations.</p>
6.	<p>Regulation 9</p>	<p>This regulation deals with suspension of rogue</p>	<p>Clarity on how a registered person seeking to purchase an</p>	<p>Recommended.</p>





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<p>Suspension of suppliers</p> <p>(1) The Commissioner may suspend a supplier where the supplier-</p> <p>(a) commits an offence under the tax laws;</p> <p>(b) fails to comply with the requirements of these regulations</p> <p>(c) supplies a register(s) that does not meet the requirements of these regulations;</p> <p>(d) fails to comply with such other requirements as may be specified by the Commissioner;</p> <p>(2) Where a person is suspended under this Regulation, that person shall-</p> <p>(a) immediately cease to supply registers;</p> <p>(b) Comply with such other directives as may be specified by the Commissioner.</p> <p>(3) A Supplier who has been</p>	<p>suppliers</p>	<p>ETR will identify a suspended supplier.</p>	<p>A list of approved Suppliers will be published on the KRA website, which shall be updated regularly.</p>
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<p>suspended under this Regulation may be reactivated upon complying with the directives specified by the Commissioner</p> <p>(4) (a) A supplier may make an application for deregistration in the prescribed form.</p> <p>(b) Upon de-registration to the commissioner, the supplier shall cease to supply registers</p>			
<p>7. Regulation 11</p> <p>A tax invoice printed from a register shall contain—</p> <p>k) Barcode of the goods (For Exempt and Zero rated);</p>	<p>Requirements for a proper tax invoice.</p>	<p>a) Sub-regulation (k) capturing of Bar Code information for exempt and zero-rated goods. What is the rationale and why does this not apply to taxable goods.</p> <p>b) Sub-regulations d, f, g, k, l, and n can only be adhered to using an ETR machine that is linked to a computer or an ESD machine. In essence, this would render all simple ETR machines obsolete and require their replacement with more expensive equipment.</p>	<p>a) This was a typo. Bar code to read code</p> <p>b) ETR machines are to be upgraded to meet the TIMS Specifications.</p>
<p>8. Regulation 15 & 16</p> <p>Any person who fails to comply</p>	<p>This repeals regulation 9 of the VAT Regulations 2017 (Tax invoice)</p>	<p>• Regulation 9 contains requirements of a valid tax</p>	<p>Not recommended</p> <p>Everyone registered for VAT must use an ETR machine.</p>





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	with these Regulations shall be guilty of an offence.		invoice. • Does deletion of this regulation mean that it will be no longer mandatory to include details such as name, address, PIN of the buyer/recipient of the invoice, discounts allowed?	Proposed Amendment Any person who fails to comply with these Regulations shall be guilty of an offence as stipulated in the VAT Act 2013, Section 63.
9.	Lack of an exemption clause	All registered VAT taxpayers are required to use an ETR without exception.	Exemptions should depend on special circumstances and to be approved by the Commissioner under certain circumstances.	Not recommended All registered VAT taxpayers are required to use ETR machines.
10.	Misc. comments	Commissioner to allow taxpayers recover the cost of acquisition of the register from the VAT payable. This was provided for in the repealed VAT Act Cap 476 where taxpayers were allowed to recover the cost of purchasing an electronic tax register from VAT.		Not recommended There will be minimal costs in upgrading the existing ETR machines. Further, any VAT incurred in purchasing and upgrading of the machines is recoverable.
ERNEST MUGUKU				
S/NO	Issue	Issue	Recommendation	Comments
11.	The regulations be made under section 23 of the Tax Procedures Act and in particular section 25(3) in addition to the requirements under the VAT Act.	THE VALUE ADDED TAX ACT (No. 35 of 2013) IN EXERCISE of the	The Tax Procedures Act, No. 29 of 2015 and THE VALUE ADDED TAX ACT (No. 35 of 2013) IN EXERCISE of the powers	Not recommended Tax Procedures Act deals with procedural matters of income tax, VAT and excise duty. These regulations are applicable to VAT only



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		remit VAT on projected income which is delayed thus causing a great strain on cash flows.		
14.	Diana	The regulations do not specify what happens to a user of a register once he ceases to supply vatable goods/services.	To include retirement of Control Unit under regulation 7(2) as follows:- Upon closure of business or in the event a user ceases to supply vatable goods/services or any other valid reason, the user is required to apply for retirement of the register in the prescribed form, subject to approval by the Commissioner. Kindly arrange for a platform where we may ask questions so as to be enlightened more especially when one considers the cost of an electronic tax register.	Recommended. Amended as proposed.
15.	James Ochenge Ombaba Email: ochengeja@yahoo.com	Efforts to understand the draft have been not easy due to the way the language is crafted, e.g. I don't know who is or will be the registered user of the electronic tax invoice, Is it every business person?		<ul style="list-style-type: none"> The user of the electronic tax invoice is defined in the Regulations as a person registered for VAT under Section 34 of the Act. KRA will carry out further stakeholder engagements that will provide opportunities for clarifications. Sensitizations will be done on the Regulations once they are legislated. In addition, guidance on application of the Regulations and use of the ETR machine can be sought from any KRA Tax Service Office. Public participation was conducted on 7th November, 2019.
KEVIN & ASSOCIATES				
S/N/O	Regulation	Issue	Recommendation	Comments



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16.	<p>Regulation 6(3) Availability of a register (3) In case of non-availability for use of the register, the user of a register shall, immediately and not exceeding twenty four hours of such eventuality, report to the Commissioner.</p>	<p>Mode of reporting</p>	<p>Should be specific as to the mode of reporting. Can the user report by making a call, writing an email to the commissioner on ITax or can being offline during normal working hours be construed to be a report of non-availability?</p>	<p>Not Recommended The regulations require that a report will be made within 24 hours. The taxpayer is at liberty to choose the means within which to report to the Commissioner. It will be unfair to restrict the taxpayer to a specific mode given the timelines.</p>
17.		<p>Ambiguity</p>	<p>What amounts to non-availability? Can a temporary power interruption be construed as non-availability? Define what non-availability means.</p>	<p>Not Recommended The regulations require that a report will be made within 24 hours. The taxpayer is at liberty to choose the means within which to report to the Commissioner. It will be unfair to restrict the taxpayer to a specific mode given the timelines.</p>
18.	<p>Regulation 6(1) Availability of a register The user of the register shall provide power supply back up to ensure availability of the register at all times.</p>	<p>This is a burden to the user/taxpayer</p>	<p>The cost of implementing the register is high. It defeats the fundamentals of a good tax system such as simplicity and administrative ease. The regulation also assumes that mere supply of a back-up for power solves the question of availability unless technical.</p>	<p>Not Recommended The requirement is to manage instances of abuse by taxpayers who may claim non-availability due to power outage.</p>
19.	<p>Regulation 6 (4) (a) (2) Where a register is reported under Paragraph (3)</p>	<p>Substitute means of approving sales</p>	<p>• Whereas the regulation empowers the commissioner to approve substitute means of recording sales, it does not give the period within which</p>	<p>Recommended and amended. Refer to comments on proposal 3.</p>



Tulipa Media, Johannesburg

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	<p>(a) the Commissioner shall approve substitute means of recording the sales;</p>		<p>the commissioner is bound to respond.</p> <ul style="list-style-type: none"> • What happens if the commissioner delays in approving the substitute means? Does a user close shop or suspend sales pending such approval? • What happens when the register is suddenly not available when recording sales? We suggest that the commissioner should approve a substitute within two hours of reporting.
<p>20.</p>	<p>"....approve..."</p>	<ul style="list-style-type: none"> • Is it the case that the user is the one to propose what is to be used as a substitute? We are of the opinion that the process is administratively engaging and a waste of time. • In order to have a smooth flow of the register, we propose that the regulations should list down all the features that a substitute means should have, such that where there is non-availability, the user should immediately adopt an internal substitute that meets the said conditions provided the same is reported within 	<p>Not Recommended This is for control purposes.</p> <p>Each taxpayer has unique circumstances and the Commissioner will prescribe the substitute to be used.</p>

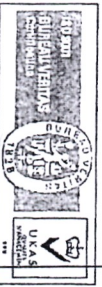


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21.	<p>Regulation 6(4) (c) Availability of a register (4) Where a register is reported under Paragraph (3) (c) Once the register is available, the user of a register shall conform to the provisions under paragraph 5(1)(b)</p>	<p>Conformity with provisions under 5 (1) (b) once register is available.</p>	<p>24hours.</p> <ul style="list-style-type: none"> We are of the view that para (b) (ii) burdens the taxpayer and is unrealistic. Read wholly, the said paragraph obligates the user to print, look and /or locate the purchaser and deliver the receipts. This is not feasible. We suggest you either amend the substance of conformity as to delivery of original receipts or exclude para (ii) from such conformity. 	<p>Recommended. "Generate" to replace the need for printing.</p>
22.	<p>Regulation 7(b) Obligations of a user 7. A user of a register shall – c) ensure that the register has the approved software and program;</p>	<p>This regulation is unreasonable and shifts the commissioner's obligation to the taxpayer. It is the responsibility of the commissioner to ensure that suppliers sell approved registers to the users. Once the commissioner has approved a supplier, it is the responsibility of the supplier to sell merchantable register. The merchantability of a register means that it must have approved features by the commissioner including approved software. The user therefore does not come in to verify the authenticity of the software used. In any event, on what basis or comparison is the</p>	<p>Recommended. Amend to read "ensure that the register is purchased from a supplier registered by the Commissioner"</p>	





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23.			<p>taxpayer supposed to verify the software?</p> <p>The accuracy and legitimacy of the register seems to be the underpinning point of the regulations. To this end we propose that in order to protect the users, the regulations should make it mandatory that the commissioner shall publish , on a monthly basis , the names, physical address, postal address, registration number and phone contacts of suppliers. This will protect the users who want to buy or service a register.</p>	<p>Recommended.</p> <p>The Commissioner will publish an up to date register of approved suppliers.</p>
24.	<p>Regulation 7 (f) and 8 (1)</p> <p>Obligations of a user</p> <p>7. A user of a register shall –</p> <p>(f) promptly report any malfunctioning of the register to a service person;</p> <p>Obligations of the supplier</p> <p>8. (1) A supplier of a register shall-</p> <p>(a) apply to the Commissioner for registration as a supplier in the prescribed form;</p> <p>(b) ensure supply of the register only to registered</p>		<p>These regulations imply that servicing of a register can only be done by a registered supplier. We suggest that there should be an express clause to that effect.</p>	<p>Not recommended.</p> <p>This is provided for under regulation 8(1) (c)</p>



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<p>persons</p>	<p>(c) ensure regular servicing of registers;</p> <p>(d) ensure that all the registers supplied meet the requirements imposed under these regulations;</p> <p>(e) respond promptly to any report of a malfunctioning reported by the user;</p> <p>(f) Update the software of the register as may be required by the Commissioner; comply with such other requirements as may be specified by the Commissioner on registration.</p>			
<p>25.</p>	<p>Regulation 9 (1) (a)</p> <p>Suspension of suppliers</p> <p>9. (1) The Commissioner may suspend a supplier where the supplier-</p> <p>(a) commits an offence under the tax laws;</p>		<ul style="list-style-type: none"> This regulation is ambiguous and open to manipulation by ill-motivated officers. For instance, why would the commissioner suspend a supplier who has failed to honour summons in a completely unrelated tax issue? It is our view that such suspension should only be pegged on breach of the regulations. Additionally, the decision to suspend a supplier is 	<p>Not recommended.</p> <p>These are sanctions against specific acts of omission by registered suppliers of the machines.</p>





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26.	<p>Regulation 11</p> <p>Specifications of a tax register</p> <p>11. A register shall—</p> <p>(a) display clear messages;</p> <p>(b) be secure and tamperproof;</p> <p>(c) have capability for interconnectivity with Information Technology networks;</p> <p>(d) Have secure and sufficient storage to maintain records.</p> <p>(e) have capability to be activated by the system prescribed by the Commissioner, recording the following data—</p> <p>(i) the date and time of commencing and ceasing the operations in its module;</p> <p>(ii) the information required under these regulations.</p>		<p>administrative in nature. In order to protect the business interest of suppliers and to shield the commissioner from unnecessary legal suits, reasons must be given to the supplier for such suspension.</p> <ul style="list-style-type: none"> • In addition to the list, we propose that the name of the user should be one of them, • As regards digital signature, how will the Commissioner treat companies especially where a director whose signature was used during acquisition of the register has resigned? This needs clarification. 	<p>Not recommended.</p> <p>The compliance obligation on the ETR is not on individual employees but on the person registered for VAT.</p> <p>The digital signatures refers to the unique electronically generated signature that identifies a particular tax invoice and transaction.</p>
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<p>27.</p>	<p>Regulation 16</p>	<p>This regulation should be deleted entirely for being unconstitutional. These are regulations, not substantive law. For an offence to qualify as such, it must pass through the proper legislative process. We believe it was never the intention of parliament to delegate the responsibility of criminalising an act.</p>	<p>Not recommended. The provision is in line with the general penalty provided under the VAT Act, 2013.</p>
<p>(F) have capability to—</p> <p>(i) integrate with any system as required by the Commissioner;</p> <p>(ii) transmit or connect to a device that will transmit the recorded data to a system as required by the Commissioner;</p> <p>(iii) perform updates for any changes as required by the tax law such as change in tax rates and classification of supplies;</p> <p>(iv) Support capturing of the buyer's PIN or Passport number either manually or automatically.</p>			



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RICHARD COMPULYNX

28.	<p>Regulation 7 (b) and (d) Obligations of a user 7. A user of a register shall – (b) ensure that the register has the approved software and program; (d) facilitate inspection of the register by an authorized officer;</p>	<p>How will the user know the approved software and program? Will there be a checklist, which will enable the user the user, know that he has the approved software and program?</p>		<p>Recommended Amended to provide that user shall buy register from approved supplier.</p>
29.	<p>Regulation 7 (d) Obligations of a user 7. A user of a register shall – (d) facilitate inspection of the register by an authorized officer;</p>	<p>Please specify who is an authorized officer? Is it KRA Staff?</p>		<p>Means an authorized officer as defined under the VAT Act</p>
30.	<p>Regulation 7 (h)</p>	<p>Who shall do the inspection? Is it KRA or Supplier?</p>		<p>The person carrying out the inspection is a KRA officer under 7(d).</p>
JAMES MUHORO				
31.	<p>Regulation 6. (1) The user of the register shall provide power supply back up to ensure availability of the register at all times. (2) The register shall operate without loss of continuity in the event of interruption in</p>		<p>The register should be equipped with a backup battery to facilitate the above instead of adding these costs to the user. Most SME do not have this capacity. The onus should be on the provider of the registers and KRA to ensure that operation is flawless and</p>	<p>Not recommended. Refer to comments on proposal 3.</p>



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	Power supply.			continuous.	
32.	(3) In case of non-availability for use of the register, the user of a register shall, immediately and not exceeding twenty-four hours of such eventuality, report to the Commissioner.			The Mode and method of communication should be specified. There should be an online form and email for the same to be sent. Reporting should be easy and available.	Addressed under Comment 7.
33.	Regulation 7. A user of a register shall – (b) ensure that the register has the approved software and program;	How is the user to know the latest software required?		The Supplier should have this mandate to ensure all registers sold by him are up to date. Its not within most users knowledge or capacity to maintain this	Addressed under Comment 24.
34.	(g) ensure the inspection of the register by a service person every six months;	This is adding the cost of doing business in Kenya.		KRA should ensure the registers are robust enough like the present ones not to require any periodic maintenance or inspection e.g. the DP50 ETR is very reliable and robust.	Not recommended. Inspection is to ensure continuity of operation of ETR machines.
	(i) keep and maintain a register ledger in which a record of the servicing of the register shall be maintained which shall contain – (i) the name and address of the person servicing the register; (ii) an entry for each time the register is serviced, describing the servicing and			A specification of the new ETR and their working should be released to the Public so that they know what they are expected to have and not to rely entirely on Sales pitches from the suppliers.	Recommended. ETR specifications are published on the KRA website and accessible by members of the public.



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shall be signed by the person performing the service

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Tulipe Ushur Tujitegemeel



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:

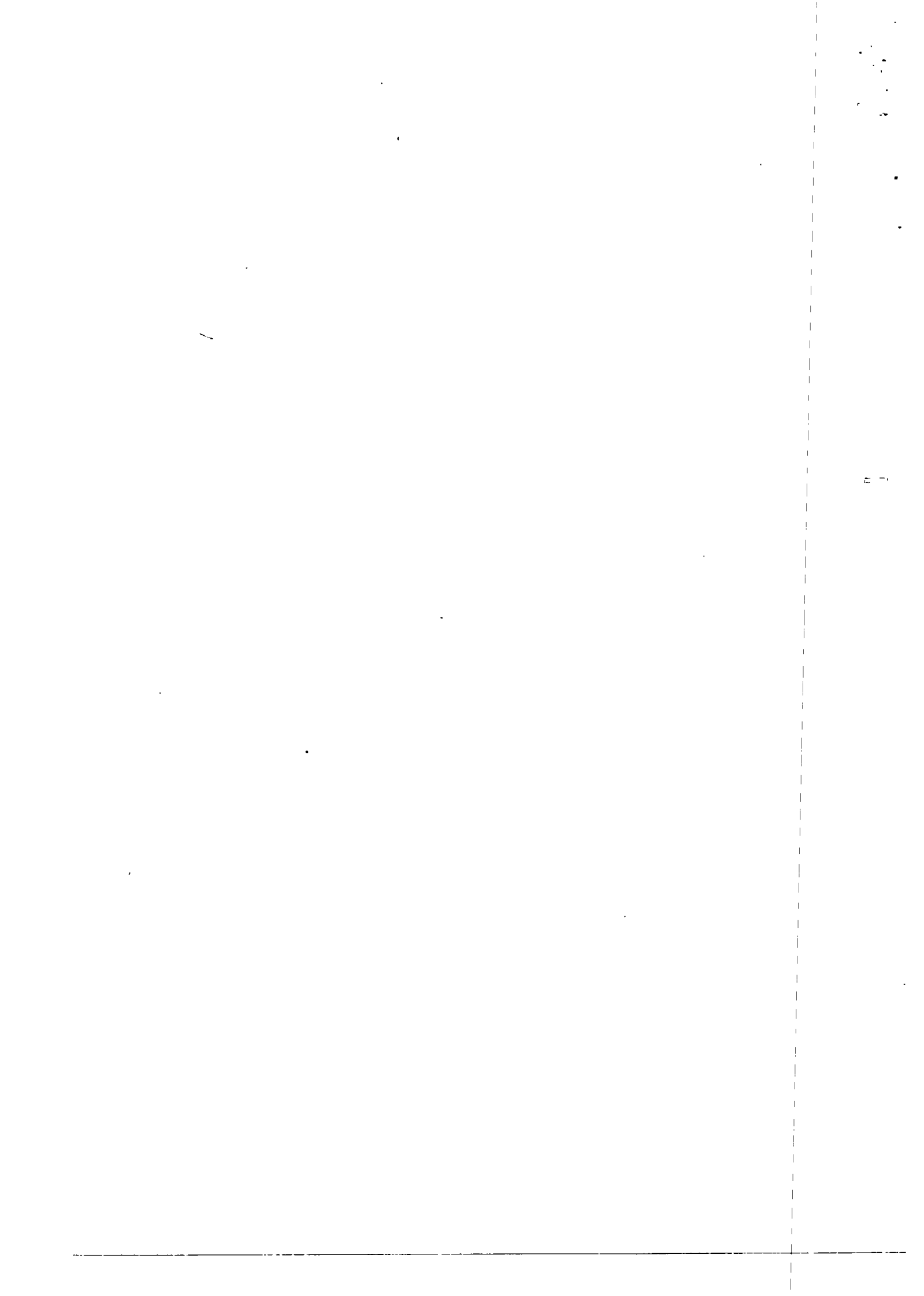
- a) Note the contents of this memorandum.
- b) Approve Legal Notice No. 190 of 2020

8. Contact

Cabinet Secretary,

The National Treasury & Planning,

NAIROBI



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

PUBLIC NOTICES 29/05/2020

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.

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

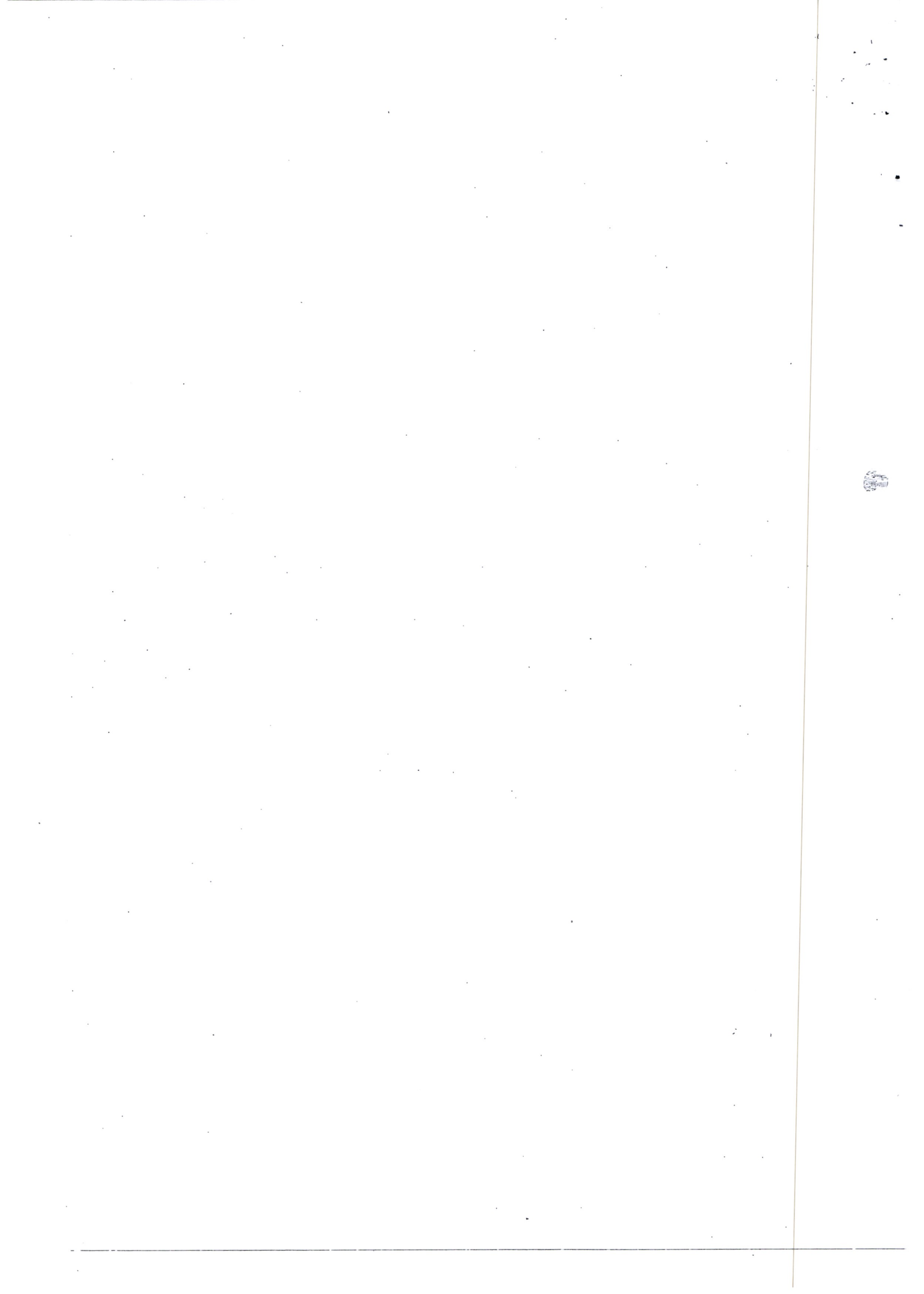
Commissioner General

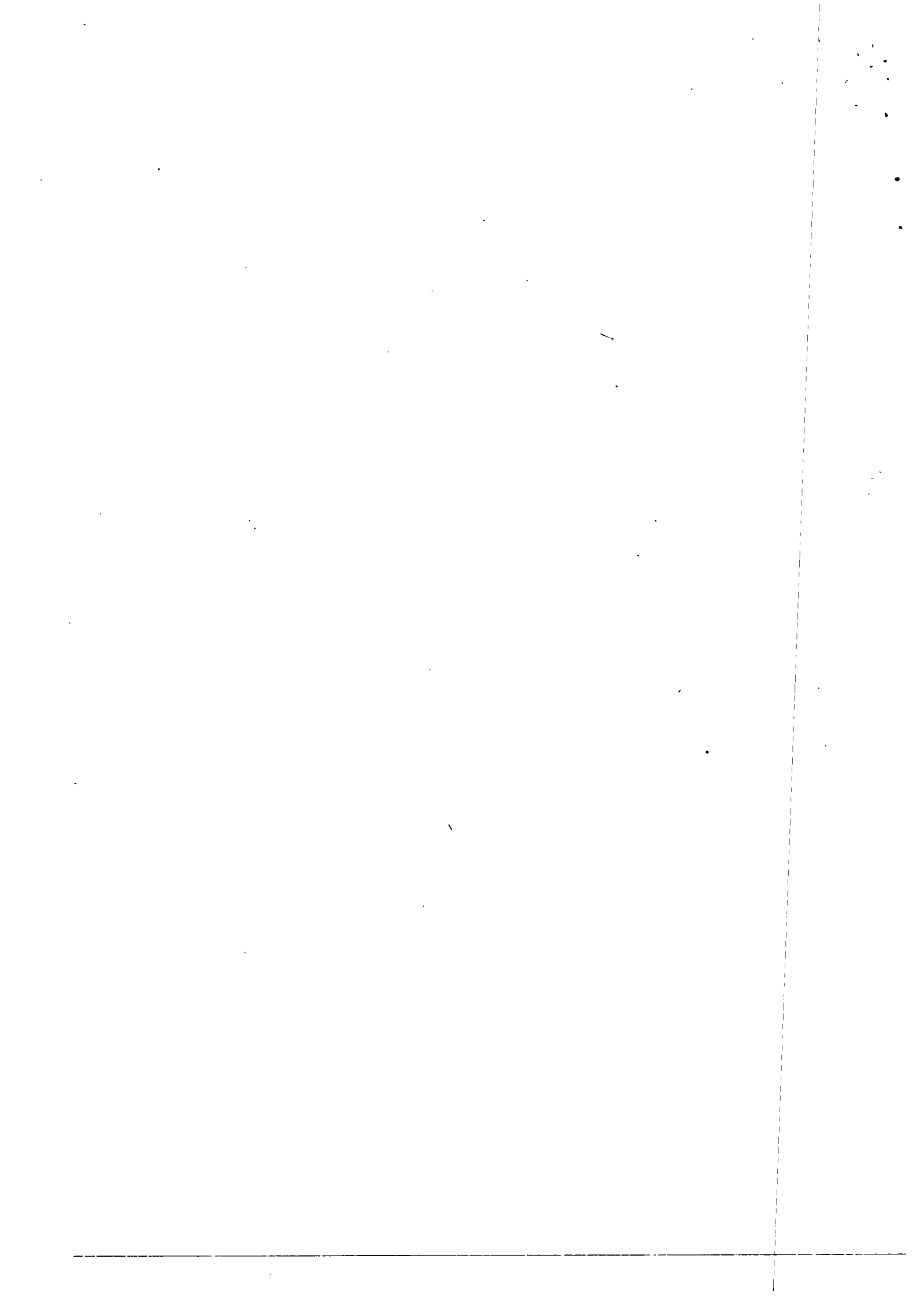
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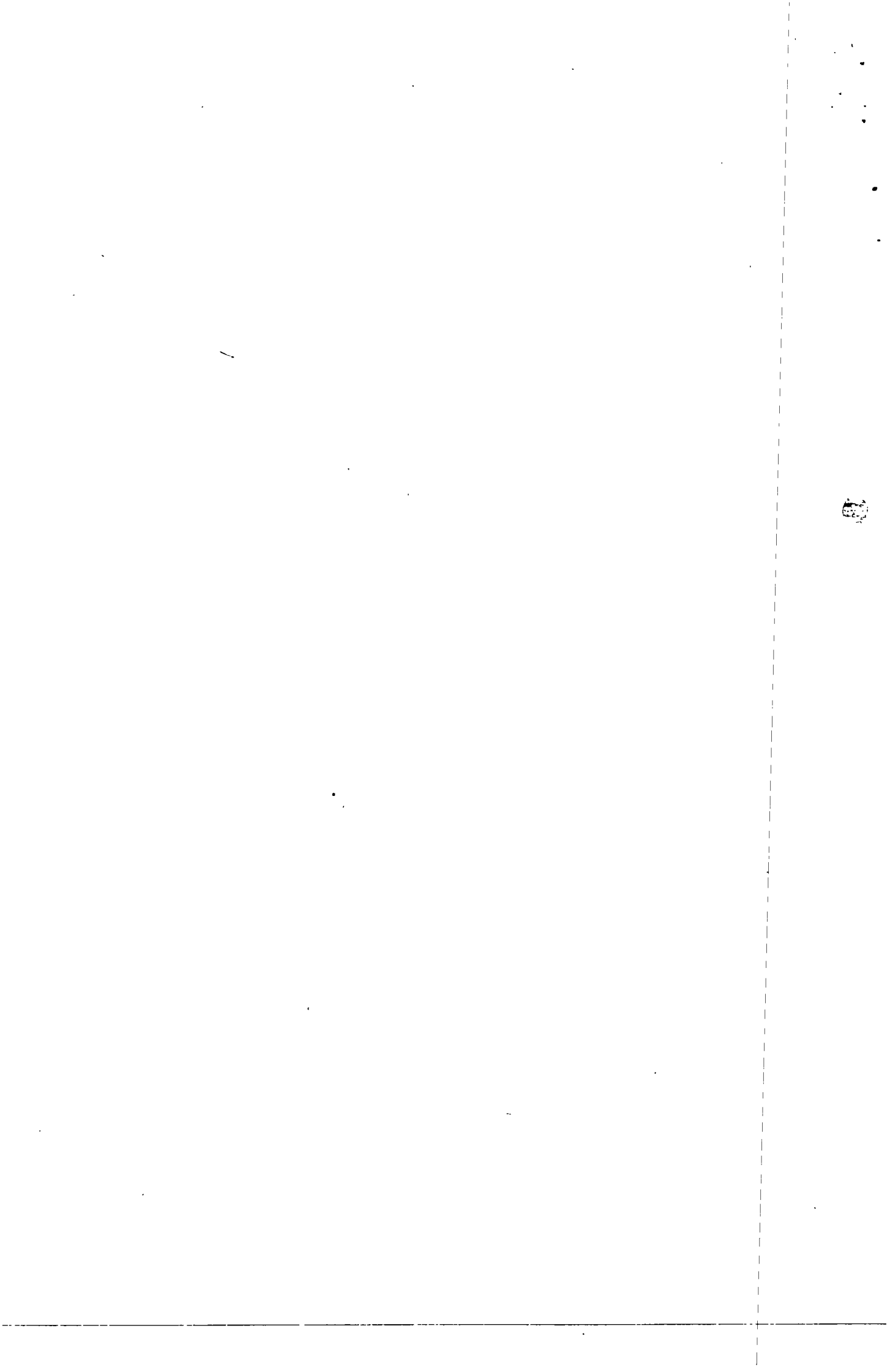
KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

MEETING TITLE:	Discussion of Stakeholder Comments on VAT (Digital Marketplace supply) regulations		
CONVENER:	CPV		
DATE:	30/06/2022	VENUE:	23 rd Floor Boardroom Kan.

No.	Name	P/Number	Department	Designation	Sign
1.	Festus Wene	9507	SIRM-CPV	SUP	
2.	Elwyn Muneo	9032974	DD	Mgr	
3.	Joseph Nyang'oro	7575	LSFBC	Mgr	
4.	John Joshua Karanja	10108	SIRM-CPV	Officer	
5.	Tago Halohende	8488	SIRM-CPV	AM	
6.	SILAS OURE	9498	SIRM-CPV	Sup.	
7.	Leonard Chesere	9508	SIRM-CPV	SUP	
8.	Beatrix Kosgey	8444	SIRM-CPV	AM	
9.	Maurice Dzy	5540	SIRM-CPV	MC	
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COMMENTS ON THE VAT (DIGITAL MARKETPLACE SUPPLY) 2020

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 3	<p>Section 5 of the VAT Act is the charging VAT section in Kenya.</p> <p>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>Anjarwalla & Khanna (A&K)/UBER</p> <ol style="list-style-type: none"> 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. 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>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> <ol style="list-style-type: none"> 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>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 a penalty. The penalties serve as a deterrent measure to ensure compliance.</p>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 4 - Scope of Taxable Supplies	Clarification of the scope of supplies	<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>	<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.</p>	<p>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.</p>
Regulation 5 - Registration	1. The Regulations do not provide a VAT registration threshold.	<p>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</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</p>

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:</p> <p>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</p> <p>(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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
<p>Regulation 6 - Simplified VAT Registration Framework</p>	<p>1. It is not clear what information will be required in relation to the application for registration under Regulation 6 (3).</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> <ul style="list-style-type: none"> (a) name of business, including the trading name; (b) name of contact person responsible for dealing with tax administrations; (c) postal and/or registered address of the business and its contact person; (d) telephone number of contact person; (e) electronic address of contact person; (f) websites or URL of non-resident suppliers through which business is conducted in the taxing jurisdiction; and (g) national tax identification number, if such a number is issued to the supplier in the supplier's jurisdiction to con. 	<p>It would be important for this issue to be clarified, which can be achieved by amending the</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>As mentioned in the comments under regulation 5, the threshold for</p>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
	<p>purposes will be deemed not to have a permanent establishment from a corporate tax perspective.</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>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>
<p>Regulation 7 - Determination of place of supply</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>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>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 - Time of Supply and Accounting and Payment of tax</p>	<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>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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 9 - Tax Invoice	<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>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>The National Treasury & Planning Comments</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> <p>This is a welcome commendation</p>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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
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.
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

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
<p>Regulation 13 - Offences and Penalties</p>	<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>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>The National Treasury & Planning Comments</p> <p>of 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> <p>To be discussed further.</p>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
	<p>compliance. In any event, the penalty would be void as it contravenes the provisions of the Statutory Instruments Act.</p>	<p>a tax dispute filed before the TAT or the Court (as the case may be).</p>		
<p>Regulation 14 - Transitional Provision</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>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>
<p>TAXAMO</p>				
	<p>Threshold application. 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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
<p>Regulation 7 - Determination of place of supply</p>	<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. 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>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>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>
<p>Regulation 8 - Time of Supply and Accounting and Payment of tax</p>	<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. 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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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
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.

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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.	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.
Regulation 8 - Time of Supply and Accounting and Payment of tax		A requirement for quarterly filing is among the most popular worldwide as it aligns with how modern businesses function.		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				
Regulation 2 - Interpretation	The Draft Regulations seem to only cover suppliers made through a 'digital marketplace'. We also note that Regulation 4 of the Draft Regulations, defines the scope of taxable supplies to include suppliers made directly by the non-resident suppliers to customers in Kenya – such suppliers 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.

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 5 - Registration	<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>	We request you to issue clarifications in this regard.		Section 34 of the VAT Act 2013 requires a person who supplies

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 12 - Record keeping	<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>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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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.	definitely share the required information along with all transaction level details for the relevant tax period. 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

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.
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Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 6 - VAT Simplified registration framework		content creators can easily raise invoices inclusive of VAT. Establish a unified framework for businesses that have both offline and online presence.		A person who has this type of business model is required to register for VAT as a local supplier.
		Establish training sessions for digital marketplace suppliers to understand this framework. Offer a waiver period for digital marketplace suppliers to pay VAT.		Noted and agreed. This is provided for in the regulations which gives three months transitional period.

AMCHAM KENYA

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.
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 market place 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

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;</p> <p>(c) <i>Software programs including downloading of software, drivers, website filters and firewalls;</i></p> <p>(d) <i>Electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;</i></p> <p>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.</p> <p>Regulation 4 (k) gives the KRA the powers to unilaterally amend the scope of supplies without oversight by Parliament. It should be deleted.</p>		
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.</p> <p>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.</p> <p>This issue is addressed under comments made by A&K (Item no. 3).</p>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
<p>Regulation 6 - Simplified VAT Registration Framework</p>	<p>1. 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.</p> <p>2. 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>	<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>4. Appointing a Tax representative will create legal and other barriers for entering the Kenyan market.</p> <p>1. There should be uniformity in the registration requirements between domestic and foreign businesses.</p> <p>2. 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>		<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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 7 Determination of place of supply	<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>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>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>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</p> <p>This is already addressed</p> <p>This is already addressed</p> <p>This is already addressed</p> <p>This is already addressed through under A&K comments item no. 5.</p>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 9 - Tax invoice	<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> <p>Proposed amendment to the wording: <i>"For the purpose of a B2C digital marketplace supply, a supplier</i></p>		This is a welcome commendation

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>		
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>
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.</p> <p>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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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
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
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

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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.
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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 4 - Scope of taxable supplies	Lack of clarity on the scope of the taxable supplies. 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? 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.	Bolt finds that the scope of the taxable supplies should be laid out in more detail and concreteness. 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. 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.		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. 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. 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.
BAKER MCKENZIE LLP				
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,

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>
Regulation 3 - Charge to tax	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 style="text-align: center;">CELLULANT</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>	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.	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.

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

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.	<p>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.</p> <p>ii. The Draft Regulations be amended to require an inclusive stakeholder consultation process before the determination of any additional supplies by the Commissioner.</p> <p>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</p>		These have been addressed under A&K under item no. 2.
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Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 4 - Scope of taxable supplies	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.	for compliance with the Regulations. 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".		The services listed under regulation 4 expound on the provisions of section 8(3)
Regulation 5- Registration	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.	1. To better achieve the objectives of the Draft Regulations, we recommend the following: 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. OR 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		This has been addressed under A&K under item no. 3.

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:</p> <p>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.</p> <p>OR</p> <p>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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
	<p>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>
<p>Regulation 8 - Time of Supply and Accounting and Payment of tax</p>	<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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
Regulation 11 - of Amendment Returns	<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>	<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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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				
Regulations 2 and 8 (2) - Interpretation and Time of Supply and Accounting and Payment of tax		We recommend the introduction of substantive amendments to these Regulations as follows: a. Provide a more comprehensive definition of the term 'intermediary'; b. 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.	The KRA definition of an 'intermediary' is problematic and adopts a 'one-size-fits-all' definition which: - a) Fails to distinguish overlapping intermediary roles; ARTICLE 19's <i>'Internet intermediaries; Dilemma of Liability'</i> 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	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. The issue of privacy is addressed under various laws including the Constitution of Kenya which KRA abides.

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>	

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
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
			KRA's proposed restriction of access to the digital marketplace in Kenya is disproportionate and risks punishing a host of parties, including compliant	

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
			<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>	

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."</i> ARTICLE 19 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 accessibility and</p>	

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

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.
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>

Regulation	Issue	Recommendation	Justification	The National Treasury & Planning Comments
	<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>			
Regulation 7 - Determination of place of supply	<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.
Regulation 8 - Time of Supply and Accounting and Payment of tax	<p>An intermediary is a conduit between the buyer and the seller and not necessarily involved in</p>	The section should be deleted		These have been addressed under comments by ARTICLE

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

Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
<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.
<p>Mzee Paul Mwandoe Email: paulmombombo@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>

Name and Contacts	Submission/ Comments	Comments by National Treasury and Planning
<p>Evans Njuguna Email: mbuthianjuguna8@gmail.com</p>	<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>	<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>Nali Gita Email: nalgeei2@hotmail.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

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<p>Moses Ngigi</p> <p>Email: mngigi119@yahoo.com</p>	<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>➤ 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>➤ 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> <p>➤ clarity on what is already provided for in the law and</p> <p>➤ mechanism for non-residents to remit VAT charged.</p>
<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>

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<p>Email: ingerslisle@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 market place 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.
<p>Cosmas Musis</p> <p>Email: cosmasmusis@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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<p>Gracia Oletsa, Mutinda Muthoka, Jeremiah Ngugi, Muthoni Njoroge & Wambui Kariuki</p> <p>Emails: ionoletsa@gmail.com mutindabmuthoka@gmail.com jeremiahkamama@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> <p>➤ clarity on what is already provided for in the law and</p> <p>➤ mechanism for non-residents to remit VAT charged.</p>

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<p>Jane Chebet Movie Maniac</p> <p>Email: chebet95@gmail.com</p>	<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> <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>Alfred Mbati</p> <p>Email: alfredmbati@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>Robert Mwaura</p> <p>Email: robertmwigai@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>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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<p>Wahu Tuju</p> <p>Email: wahutuju9@gmail.com</p>	<p>➤ 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.</p> <p>➤ 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.</p> <p>➤ 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.</p> <p>➤ 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>	<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>Gatabaki Sieka</p> <p>Email: sgatabaki@students.uonbi.ac.ke</p>	<p>➤ 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.</p> <p>➤ 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>	<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>Nivi Amit</p> <p>Email: nivi.mukherjee@gmail.com</p>	<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> <p>➤ I urge more consideration and thought be put to these factors and the framing of the regulations adjusted accordingly</p> <p>Please don't enact these regulations for the following reasons:</p> <p>➤ 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.</p> <p>➤ By having to submit details of all individuals on a platform, privacy is infringed</p> <p>➤ 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>	<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>
<p>Mark Makund</p> <p>Email: makundimarc@gmail.com</p>	<p>➤ 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.</p> <p>➤ 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>	<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>
<p>Mukabwa Isaac Anol</p>	<p>➤ 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>	<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> <p>➤ clarity on what is already provided for in the law and</p> <p>➤ mechanism for non-residents to remit VAT charged.</p>
<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> <p>➤ clarity on what is already provided for in the law and</p> <p>➤ mechanism for non-residents to remit VAT charged.</p>
<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> <p>➤ clarity on what is already provided for in the law and</p> <p>➤ mechanism for non-residents to remit VAT charged.</p>
<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>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.
<p>Mutaru Luthale</p> <p>Email: mutaruluthale@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 resorted 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>KWS Root</p> <p>Email: kwsroot@gmail.com</p>	<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. ➤ 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 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>Jerry Estifanos</p> <p>Email: jerryestifanos@yahoo.com</p>	<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.
<p>Evan Njagi</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 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 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. <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>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>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>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>John Karima</p> <p>Email: karimajohn24@gmail.com</p>	<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.
<p>Maina Gats</p> <p>Email: mainagats@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.
	<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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<p>Michael Bailey</p> <p>Email: michaelbaileymarshall72@gmail.com</p>	<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> <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 SOCIAL DISTANCING.</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 SOCIAL DISTANCING and I think its malicious in that it indirectly helps spreading COVID-19.</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>	<ul style="list-style-type: none"> ▪ mechanism for non-residents to remit VAT charged. 	<ul style="list-style-type: none"> ▪ mechanism for non-residents to remit VAT charged.
<p>Joan Mwende</p> <p>Email: joanmwende.im@gmail.com</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>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>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>Collins Mutua</p> <p>Email: collinsmutua39@gmail.com</p>	<p>just a safer option because this country cannot guarantee our safety!</p> <p>➤ Digital space is just for people with hobbies not really making money out of it why take?</p> <p>➤ These government entities can't even account for the taxes they already take!</p> <p>➤ 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 mwanaanchi is trying to do to support themselves.</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>Eric Mogz</p> <p>Email: erimimi85@gmail.com</p>	<p>➤ 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 mwanaanchi.</p> <p>➤ 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.</p> <p>➤ We are a creative and hardworking slot 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> <p>➤ 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.</p> <p>➤ 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>	<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>Sam Njoroge</p> <p>Email: skihulha@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.
<p>Kevy Kimz</p> <p>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>Mwangi Kirubi</p> <p>Email: mwarv@click.co.ke</p>	<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> <p>> We're currently registered to charge VAT on our transactions. Our PIN is P051532718X</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 ISO (Tax Service Office) for action.</p>
<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.
<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 start ups 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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<p>Bella Charmed Chaos</p> <p>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 Kira 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>Prudence Okoth</p> <p>Email: prudy.okoth@gmail.com</p>	<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> <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>▪ clarity on what is already provided for in the law and</p> <p>▪ mechanism for non-residents to remit VAT charged.</p>
<p>George Mucheru</p> <p>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>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> <p>The regulations are in compliance with the Constitution of Kenya and various laws on privacy.</p>
<p>Pendo Nzingo</p> <p>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> <p>▪ clarity on what is already provided for in the law and</p> <p>▪ mechanism for non-residents to remit VAT charged.</p>

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<p>Blacky Whity</p> <p>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.
<p>Ian Ndung'u</p> <p>Email: chagnobora.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.
<p>Jordan Warari</p> <p>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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<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>	<ul style="list-style-type: none"> ▪ 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> <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>Ryan Marvin</p> <p>Email: marvinryan@ymail.com</p>	<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. ➤ 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>Jason Todds</p> <p>Email: jasontodds1090@gmail.com</p>	<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> <p>➤ 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.</p> <p>➤ Effective tax rate on local businesses dealing online will increase and they will be disincentivized to deal online</p> <p>- 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.</p> <p>➤ 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.</p> <p>➤ While I can understand the needs of KRA to meet budget deadlines, the proposed bill poses a number of challenges.</p> <p>1. Slow down innovation</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>

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<p>Stacey Adhiambo</p> <p>Email: staradh@gnail.com</p>	<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> <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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<p>Samuel Karumbi</p> <p>Email: samkar059@gmail.com</p>	<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. ➤ 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 a 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>		

