



INTRODUCING
DIGITAL
SERVICE TAX

DIGITAL SERVICE TAX (DST)

1. What is Digital Service Tax (DST)?

Digital Service Tax (DST) is payable on income derived or accrued in Kenya from services offered through a digital marketplace.

2. What is a Digital Market Place?

A digital marketplace is a platform that enables direct interaction between buyers and sellers of goods and services through electronic means.

3. When is the Effective date for DST?

Digital Service Tax was introduced in the Finance Act 2020, and becomes effective from 1st January 2021.

4. What is the rate of DST?

1.5% of the gross transaction value:

- In the case of the provision of digital services, the payment received as consideration for the services; and
- In the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the platform

Note: The gross transaction value is exclusive of VAT.

5. How will KRA collect DST?

Digital service providers operating in the digital market place in Kenya will be required to file a DST return and make payment for the tax due, on or before the 20th day of the following month that the digital service was offered.

6. What is the due date for DST?

DST is due on a monthly basis, on or before the 20th day of the following month that the digital service was offered.

7. Who pays DST?

Resident and Non – Resident:

- Digital service providers
- Digital market place providers, or
- Their appointed tax representatives (in the case of non-resident digital service providers or digital marketplace providers without a permanent establishment in Kenya).

8. What constitutes:

- Resident
- Permanent Establishment

For taxation purposes, a) a resident is in case of:

i). Individual

- An individual entity with a permanent home in Kenya and was present in the country in the year of income under review.
- An individual with no permanent home in Kenya but has been in the country for 183 days or more in the year of income under review.
- An individual with no permanent home in Kenya but has been in the country for an average of 122 days in the year of income under review and two other preceding years.

ii). Non-individuals {Company}

On the other hand, a company is deemed to be resident in Kenya where:

- The company is registered under Kenyan laws.
- The Cabinet Secretary for National Treasury and Planning declares the company as registered in the country.
- The management and control of the company is domiciled in the country

(b) Permanent Establishment (PE)

A non-resident person with a fixed place of business in Kenya which has existed for a period of 6 months or more or as determined under the Double Tax Agreement (DTA)

9. Is DST a final tax?

For resident digital service providers, DST can be considered to be an advance tax, which means that at the point of filing the annual income tax return, you will be able to offset/deduct the DST paid during the year from the total tax due at the end of the year.

For non-resident digital service providers without a permanent establishment in Kenya, DST will be a final tax.

10. If I already pay WHT on a digital service, will I still pay DST?

DST shall not apply to income that has already been subjected to withholding tax.

11. How does one determine whether the digital services have been provided in Kenya?

A digital service provider shall be subject to digital service tax if they provide or facilitate provision of a service **to a user who is located in Kenya.**

12. How does one determine that the user is located in Kenya?

If any of the following parameters are met:

- i). Payment for the digital services is made using a credit or debit facility provided by any financial institution or company in Kenya.
- ii). The user accesses the digital interface from a terminal (computer, tablet or mobile phone) located in Kenya.
- iii). The supplies or digital services are acquired using an internet protocol address registered in Kenya or an international mobile phone country code assigned to Kenya.
- iv). The user has a business, residential or billing address in Kenya.

13. Does DST apply to those selling goods via digital or social media platforms?

DST is applicable to **digital services**, thus for goods sold on digital or social media platforms the suppliers are required to declare the income earned under the self-assessment regime provided under the relevant Tax Laws.

14. Individuals and companies use my website to sell their products, am I liable to Digital Service Tax?

Yes, DST is applicable on the commission of fee charged for the use of the platforms enabling direct interaction between buyers and sellers through a digital marketplace, website, or other online applications.

15. Under the DST Regulations, what is the scope of taxable services?

- a). downloadable digital content including downloadable mobile applications, e-books and films;
- b). over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- c). sale of, licensing of, or any other form of monetising data collected about Kenyan users which has been generated from the users' activities on a digital marketplace;
- d). provision of a digital marketplace;
- e). subscription-based media including news, magazines and journals;

- f). electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;
- g). electronic booking or electronic ticketing services including the online sale of tickets;
- h). provision of search engine and automated held desk services including supply of customised search engine services;
- i). online distance training through pre-recorded media or e-learning including online courses and training; and
- j). any other service provided through a digital marketplace.

16. There are many overseas companies operating in the digital market place in Kenya, but do not have physical offices locally. How will they account for DST?

A non-resident without a permanent establishment (overseas companies) who provides digital services in Kenya may register under the simplified tax registration framework via the iTax portal; itax.kra.go.ke/KRA-Portal/

The User guide for the simplified registration process is accessible on the KRA Website using this link;

<https://www.kra.go.ke/images/publications/USERGUIDE---DST-NON-RESIDENT-REGISTRATION-REVIEWED-FINAL-18.12.2020-1.pdf>

Upon successful registration on iTax, the digital service provider will be able to file the tax return and make payment for the DST due within the stipulated timelines.

In the event a non-resident without a permanent establishment (overseas company) chooses not to register through the simplified registration framework, they shall appoint a tax representative. A tax representative shall be responsible for performing any tax obligations required, including the submission of returns and the payment of taxes.

17. In which currency should the tax payments be made?

The tax due will be paid in Kenyan currency (Kenya shillings) and deposited into the KRA account of the authorized Kenyan banks.



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Tel: +254 (020) 4 999 999, +254 (0711) 099 999 | Email: callcentre@kra.go.ke



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Tulipe Ushuru, Tujitegemee!