

INCOME TAX (SIGNIFICANT ECONOMIC PRESENCE TAX) REGULATIONS, 2026

Kenya Operationalizes Significant Economic Presence Tax:

What the 2026 Regulations Mean for Non-Resident Digital Service Providers

Introduction

Kenya has taken a further step in the taxation of the digital economy following the publication of the **Income Tax (Significant Economic Presence Tax) Regulations, 2026**.

Significant Economic Presence Tax ("SEP Tax") was introduced through the Tax Laws (Amendment) Act, 2024, replacing the former Digital Service Tax ("DST") regime with effect from **27th December 2024**. The new Regulations now provide the detailed framework for determining the services covered by SEP Tax, identifying when a user is considered to be located in Kenya, registration of non-resident service providers, computation and payment of the tax, record-keeping and enforcement.

Digital Service Tax ("DST") → **Significant Economic Presence Tax ("SEP Tax")**

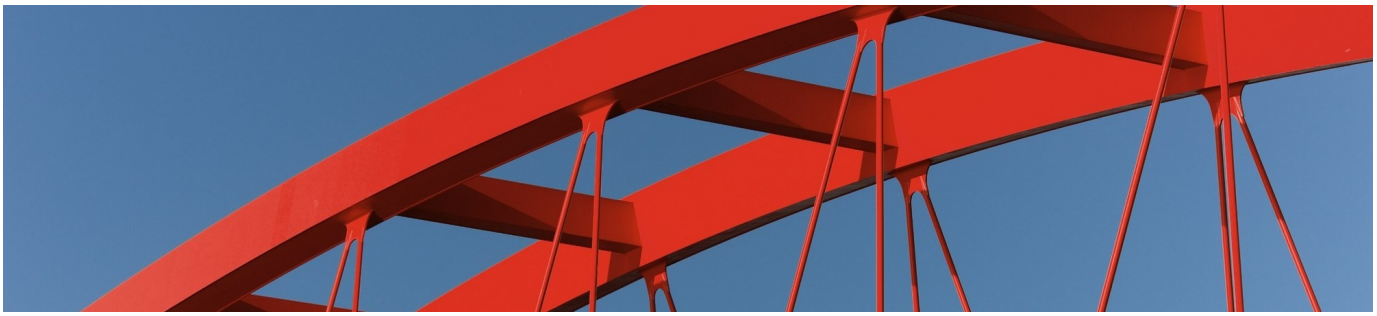
27th December 2024
Tax Laws (Amendment) Act, 2024

What is Significant Economic Presence Tax?

SEP Tax is a tax imposed on income earned by a **non-resident person from the provision of services to users located in Kenya**, where the services are provided through a business carried on over the internet or an electronic network, including through a digital marketplace.

A non-resident person is regarded as having a significant economic presence in Kenya where the **user of the service is located in Kenya**. The tax is expressly treated as a **final tax** in Kenya.

- **Non-resident person**
- **User of the service is located in Kenya**
- **Final tax**



Who is covered by SEP Tax?

The Regulations give a broad meaning to the term **"service"**, defining it as a digital service or other service delivered or subscribed to over the internet or an electronic network, including a digital marketplace.

The Regulations specifically identify the following services as being within the scope of SEP Tax:

01	**Downloadable digital content**, including mobile applications, eBooks and films;
02	**Subscription-based media**, including news magazines and journals;
03	**Streaming and online digital content**, including television shows, films, music, games, podcasts and webcasts;
04	**Software programmes**, including software, drivers, website filters and firewalls;
05	**Electronic data management services**, including cloud computing, website hosting, online data warehousing and file-sharing services;
06	**Search engines and automated helpdesk services**;
07	**Artificial intelligence services**;
08	**Online ticketing services** for events, theatres, cinemas, restaurants and similar services;
09	**Online education**, including distance learning, e-learning, educational webcasts, webinars, online courses and tailored online training;
10	**Digital intermediation and marketplace services** linking suppliers to customers, including ride-hailing platforms, online travel platforms, rental and accommodation marketplaces and platforms facilitating the provision of goods, services or property;
11	**Monetisation of user data** collected through internet activities, electronic networks or digital marketplaces;
12	**Online payment facilitation**, including money transfer services;
13	**Facilitation of exchanges or transfers of digital assets**; and
14	**Any other service provided over the internet, an electronic network or digital marketplace**, unless specifically exempt under the Income Tax Act.

The express inclusion of **artificial intelligence services, digital assets, user-data monetisation and payment facilitation** is particularly noteworthy. It provides greater certainty around areas of the digital economy that were not expressly addressed under the former DST framework.

How is a Kenyan user determined?

One of the most important aspects of the 2026 Regulations is the introduction of detailed rules for establishing whether the user of a service is located in Kenya.

A user is considered to be located in Kenya where **any of the prescribed indicators** connects the user or transaction to Kenya.

These include where:

1	the user accesses the service through a telecommunications or electronic device from a terminal located in Kenya;
2	payment is made using a debit facility, credit facility or electronic payment system in Kenya, including payment or withdrawal through a digital wallet;
3	the service is acquired using an **internet protocol (IP) address registered in Kenya**;
4	the service is acquired through a network transmission or other electronic communication originating from Kenya;
5	the service is acquired using an **international telephone country code assigned to Kenya**; or
6	the user has a **business address, residential address or billing address in Kenya**.

What is the SEP Tax rate?

The Regulations retain the deemed profit approach provided for under section 12E of the Income Tax Act.

The taxable profit of a person subject to SEP Tax is deemed to be **10% of gross turnover derived from Kenya**.

The applicable income tax rate is then **30% of the deemed taxable profit**.

3% This produces an **effective tax rate of 3% of gross turnover**.

Therefore:

SEP Tax = **Kenyan gross turnover** × **10% deemed profit** × **30% tax rate**

What constitutes gross turnover?

The 2026 Regulations provide important clarification on the amount upon which SEP Tax is calculated.

- For a service provider, gross turnover is generally the **payment received as consideration for the services provided to users in Kenya**.
- However, for a **digital marketplace**, gross turnover is the **commission or fee paid to the digital marketplace provider for the use of the marketplace**.
- The Regulations further clarify that **VAT charged on the service is excluded from gross turnover** for purposes of calculating SEP Tax.

SEP exemptions

SEP Tax does not apply to:

- income of a non-resident person that provides the relevant services through a **permanent establishment in Kenya**;
- income that is chargeable to tax under **section 9(2) or section 10 of the Income Tax Act**; and
- income of a non-resident person providing services to an airline in which the Government of Kenya has at least **45% shareholding**.

Registration of non-resident service providers

A non-resident person without a permanent establishment in Kenya who provides services to a user in Kenya is required to apply to the Commissioner for registration under the **simplified tax registration framework**.

Simplified tax registration framework



Can a non-resident appoint a tax representative?

Yes.

A non-resident person without a permanent establishment in Kenya who elects not to register directly under the simplified registration framework is required to **appoint a tax representative** in accordance with section 15A of the Tax Procedures Act.

Filing and payment of SEP Tax

SEP Tax operates on a **monthly filing and payment basis**.

The taxpayer, or its appointed tax representative, must submit the prescribed SEP Tax return and pay the tax due **on or before the 20th day of the month following the month in which the income was derived from or accrued in Kenya**.

Monthly
filing and payment basis

20th
day of the month following the month in which the income was derived from or accrued in Kenya





Conclusion

The publication of the **Income Tax (Significant Economic Presence Tax) Regulations, 2026** provides much-needed administrative and technical detail on the application of Kenya's SEP Tax regime.

The Regulations make clear that the regime potentially reaches a broad range of non-resident businesses supplying services to Kenyan users through the internet or electronic networks. They also provide practical rules covering the identification of Kenyan users, registration, tax representatives, determination of taxable turnover, filing, amendments, records and enforcement.