


Taxation of Digital Services – Income Tax and VAT Regulations 2022

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OVERVIEW



The 21st Century digital infrastructure paved a way for technology giants to reach their customers faster, easier, and cheaper. Cross-border trade is done at the press of a button and these transactions are growing each day with the development of new applications. Advances in technology allow businesses to operate and generate profits in jurisdictions in which they have a limited or no physical presence without creating a taxable presence.

In order to increase the tax base of Tanzania, the Finance Act 2022 presented amendments from the Government's budget for 2022/23, including the introduction of a digital service tax on the income of non-resident digital (electronic) service providers received from individuals in Tanzania in respect of services rendered through a digital marketplace.

Following these amendments which came into effect on 1st July 2022, the Minister of Finance and Planning has issued the Income Tax (Registration of Non-Resident electronic service providers) Regulation, 2022 and the Value Added Tax (Registration of Non-Resident electronic service providers) Regulation, 2022 to guide the administration of Income and Value Added Tax from non-resident electronic service providers.

We have provided a detailed summary of this regulation in this tax alert for your easy reference and understanding.

INCOME TAX

The Finance Act, 2022 amended Section 90A of the ITA 2004, by introducing income tax on services rendered through a digital marketplace at 2% of the gross payments.

Scope of electronic services:

The electronic services covered include websites, web-hosting, software, Images, access to databases, self-educational packages, music, films, games, and the related as seen in **Appendix 1** below.

Registration Application:

A non-resident provider of electronic services shall be required to make an online application for registration to the Commissioner General. The application ought to include the following particulars:

- Name of the business including business trading name;
- Certificate of Incorporation;
- Name of the contact person for tax matters;
- Registered address of the business;
- Telephone number and email address of the contact person;
- Website or uniform resource locator of the supplier through which the business is conducted; and
- Any other information that may be required by the Commissioner General.

- Upon satisfaction with the information provided the Commissioner General may register and issue the applicant with a Taxpayer Identification Number (TIN).
- In an event where a registered person ceases to render electronic services permanently, they shall inform the Commissioner General in the form set out in the Schedule to the Regulations.

1 January 2023 registration deadline for existing non-resident supplying electronic services prior to 1st July 2022 in Mainland Tanzania.



Source of payment:

Payment for electronic services shall be deemed to have source in Tanzania, where the recipient of the service is in the Country. The recipient of the service shall be deemed to be in the Country if:

- The payment proxy including the credit or debit card information and bank account details of the recipient of the electronic services is in Tanzania; or
- The resident proxy including billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient in Tanzania.

Filing of Returns and Tax Payments:

- Returns for tax on electronic services shall be filed online in a form prescribed in the Schedule of the Regulations.
- Returns and payments shall be made on the 7th Day of the month following the month to which the payments relate.
- Tax shall be paid to a bank account designated by the Commissioner General in Tanzanian Shillings or equivalent.

EFD exemption:

A registered non-resident shall not be required to acquire or use an EFD machine.



Penalty, Interest, and Offences:

- False, misleading, or omission of facts in statements shall be liable to a penalty as follows:
 - 50% of tax shortfall for a statement made without reasonable excuse; or
 - 75% of tax shortfall for a statement made knowingly or recklessly.
- Failure to pay tax on the due date shall be liable to interest at statutory rate compounded monthly.
- Failure to comply with the regulations shall commit an offense and shall be liable to a fine not less than TZS 3 million and not more than TZS 4.5 million or imprisonment for a term not exceeding 3 years

VALUE ADDED TAX

Coverage:

- A non-resident supplier of electronic services to Mainland Tanzania, who does not appoint representative is required to apply for registration as Taxable person.
- The application shall be made online to the Commissioner General in a form prescribed in the Schedule to the regulations.
- The information required for registration and deregistration process is similar to the requirements in the Income Tax Regulations and as pointed out above.
- Furthermore, the scope of electronic services, place of supply, filing of returns and mode of payment of VAT shall be similar to those stated in the Income Tax Regulations and as pointed out above

Correction of Errors:

- Correction of errors on the submitted return in accordance with the regulations shall be made through the usual VAT process, with respect to section 78 of the VAT act.

Input Tax:

- A person registered under these regulations shall not claim input tax.



CONCLUSION



From the International viewpoint, taxation of the digital economy is still a challenge due to the rapid technological progress that has led to a number of emerging trends and potential developments. Although this rapid change makes it difficult to predict future developments with any degree of reliability, the Organization for Economic Co-operation and Development (OECD) is coordinating the multilateral consensus approach with the framework designed to ensure that multinational enterprises (MNEs) pay a fair share of tax where they operate and that they pay a minimum corporate tax (OECD Statement, 2021).

In this regard, we look forward to more regulations for guidance on the administration of Digital Economy Taxation in the United Republic of Tanzania.

APPENDIX

Appendix 1: Scope of Electronic Services

The electronic services provided or delivered through the internet, or any other electronic means shall include:

A. For websites, web-hosting or remote programs and equipment:

- Search engine and automated helpdesk services;
- Customizable search engine services;
- Downloadable digital content including e-books, and films.

B. For software's and updating thereof:

- Application software;
- System software;
- Drivers;
- Filters and firewalls; and Plugins.

C. For images, texts or information:

- Desktop theme;
- Photographic image;
- Pictorial image;
- Screensaver; and
- Any right to view any item listed under this paragraph.

D. Access to database:

- Subscription-based media
 - News, magazines, journals, periodical and publications;
 - Blog;
 - Database;
 - Information system services;
 - Games;
 - Internet-based auction services;
 - Social networking services; and
 - Webcast, webinar, website, web application or a web;
- Electronic data management-
 - Online data warehousing and
 - File sharing and cloud storage services;
- Sharing and gig economic services including transport hailing services or platforms;
- Electronic booking or electronic ticketing services.

E. Self-education packages:

- Distance teaching program;
- Educational webcast;
- Internet-based course;
- Internet-based education program;
- Webinar; and
- Digitized content of any book or electronic publication.

F. Music, films, games including gaming activities:

- Audio clip;
- Broadcast not simultaneously broadcast over any conventional radio network in Mainland Tanzania;
- Documentary
- Homemade video;
- Streaming services;
- Movie;
- Music video;
- Program;
- Television series;
- Video clip;
- Sound effects; and
- Games and games of chance
 - Internet-based games, including electronic games and multiplier role-playing games;
 - Interactive games where such an interactive game is a game of chance where the result is influenced by the skill of the player and game which is a combination of chance and skill.
 - Electronic betting or wagering

G. Political, cultural, artistic, sporting, scientific and other broadcast and events including broadcast television.

OUR SERVICES

Audit and Assurance

- Statutory audits
- Internal audits
- Forensic audit and risk assessment
- Assurance engagements
- Drafting Standard Operating Policies (SOPs)
- Fixed Assets Register preparation
- Fraud audits and inspection
- IFRS reporting
- Management and operational audits
- Business control services
- Corporate reporting

Tax and Advisory

- Tax Audits
- Transfer Pricing
- Transactions based advisory
- Transfer of shares and securities
- VAT refund applications
- Post clearance Customs Audit
- Account Reconciliations with Tanzania Revenue Authority
- Tax applications on Mergers and acquisitions
- Due Diligence reports
- Tax training
- Tax Health checks
- International Tax Services

Finance and Accounts

- Cloud accounting and accounts compilation
- Reconciliation of statutory compliances such as sales, imports, purchase, payrolls, bank and VAT control
- Ledger scrutiny, Variance and ratio analysis
- MIS reporting
- Business Plans
- Financial Projections and Cash Flow Forecast
- Valuation of business
- Financial reporting
- Payroll processing

Secretarial Compliance

- Incorporation of company
- Change in company particulars
- Corporate Advisory
- Human Resource Management
- BRELA compliance
- Mortgages and charges
- Employee Litigation
- Registration with TBS TMDA
- Processing permit applications
- Merger and Acquisitions & FCC compliance
- Loan registration with BOT
- Business License
- Trademark and Patent rights
- Winding up of business

REACH US

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Disclaimer:

Our review highlights the main aspects of the Income and Value Added Tax (Registration of Non-Resident electronic service providers) Regulations, 2022 published through the Government Notice No. 478U and 478Q respectively, published on 01 July 2022. Any opinions or estimates contained in this publication represent our understanding at this time and are subject to change without notice. While all reasonable care has been taken in the preparation of this highlight, we accept no responsibility for any errors it may contain or for any omissions or otherwise or for any loss, howsoever caused or sustained, by the person who relies on it.

