RSMEA Newlsetter

The Income Tax (Significant Economic Presence Tax) Regulations, 2026

Introduction

Kenya's digital tax regime has evolved to capture income derived from the digital economy. Digital taxation was introduced through the Finance Act, 2019, followed by the introduction of Digital Service Tax (DST) at 1.5% of gross transaction value under the Finance Act, 2020, effective 1st January 2021. The Tax Laws (Amendment) Act, 2024 repealed DST and replaced it with Significant Economic Presence Tax (SEPT), effective 27th December 2024. SEPT applies to qualifying non-residents earning income from digital services provided to users in Kenya and is imposed at an effective rate of 3%, subject to specified exclusions.

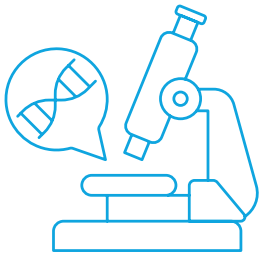
To operationalize SEPT, the Cabinet Secretary issued the Income Tax (Significant Economic Presence Tax) Regulations, 2026 through Legal Notice No. 188 of 12th August 2026. The Regulations set out the compliance and administrative framework for SEPT, including registration, tax computation, filing obligations, user-location rules, and enforcement.
This alert highlights the key provisions of the Regulations and their implications for non-resident businesses providing services to users in Kenya.

Snapshot of the SEPT Regulations, 2026

Key item	Summary
Key legislative reference	Section 12E of the Income Tax Act (Significant Economic Presence Tax) – This is the principal provision establishing Kenya's SEPT regime. The provision sets out the scope of persons subject to SEPT, the categories of income and services that may be subject to the tax, applicable exclusions, the effective tax rate of 3% and the circumstances under which a non-resident is considered to have a significant economic presence in Kenya. The Income Tax (Significant Economic Presence Tax) Regulations, 2026 supplement Section 12E by providing the detailed operational, computational and compliance framework for the administration of SEPT.
Effective date	SEPT applies to in-scope incomes earned from 27th December 2024 onwards.
Persons covered	Non-residents providing services to users located in Kenya through the internet, electronic networks or digital marketplaces
Deemed taxable profit	10% of gross turnover
SEPT rate	30% of deemed taxable profit
Effective tax rate	3% of gross turnover
Payment due date	20th day of each following month
Registration	Mandatory under the simplified registration framework for qualifying non-residents
Exclusions from SEPT	Services provided through a Kenyan permanent establishment, income already subject to withholding tax, and services provided to qualifying airlines with at least 45% government shareholding
Key change	Provides the operational framework for the implementation and administration of SEPT

Analysis of the SEPT Regulations

Key Provision(s)	Details
Interpretation	The word "service" is used in this Regulations to mean a digital service or other service that is delivered or subscribed over the internet or an electronic network including a digital marketplace
Application of SEPT	The Regulations, issued pursuant to section 12E of the ITA, apply to income derived or accrued by a non-resident person from the provision of services where the user of the services is located in Kenya, thereby establishing a significant economic presence in Kenya. No further income tax is payable on the income already subject to SEPT as it is a final tax. The following are exempted from SEPT ▪ The services are provided through a permanent establishment in Kenya; ▪ Income chargeable to tax under section 9(2) or section 10 of the ITA, i.e the income has already been subject to Withholding tax ▪ the person is providing services to an airline in which the Government has at least 45% shareholding.
Scope of services subject to SEPT	The income derived from the following services is subject to SEPT: ▪ downloadable digital content including downloadable mobile applications, eBooks and films; ▪ subscription-based media such as news magazines and journals; ▪ streaming, listening, viewing or playing online digital content on an audio-visual or electronic media such as TV shows, films, music, games, podcasts, webcasts and similar content; ▪ software programs including software, drivers, website filters and firewalls; ▪ electronic data management including cloud computing services, website hosting, online data warehousing, file sharing and similar services; ▪ search engines and automated helpdesk services; ▪ AI services; ▪ ticketing services for events, theatres, cinemas, restaurants and similar services; ▪ online education programs including distance teaching programmes offered through pre-recorded media, eLearning, education webcasts, webinars, online courses and training services tailormade to suit a learner's programme; ▪ services that link suppliers to recipients including platforms for transport hailing, online travel, rental and accommodation marketplaces, and other platforms that facilitate provision of services, goods or property; ▪ the monetisation of data collected about users which is generated from such users' activities over the internet, electronic networks or digital marketplaces; ▪ facilitation of online payments including money transfer services; ▪ facilitation of the exchange or transfer of digital assets; and ▪ any other service offered over the internet, an electronic network or digital market place that is not exempt under the ITA.



Key Provision(s)	Details
Determining whether a user is in Kenya	The Regulations provide six alternative indicators for determining whether a user is located in Kenya. Meeting any one of these indicators may be sufficient; it is not necessary for all six to be met. ▪ **Device location:** The service is accessed through a device or terminal located in Kenya. ▪ **Payment method:** Payment is made through a debit or credit facility or an electronic payment system in Kenya, including a wallet. ▪ **IP address:** The service is acquired using an internet protocol address assigned to Kenya. ▪ **Origin of communication:** The relevant network transmission or electronic communication originates in Kenya. ▪ **Telephone country code:** The service is acquired using Kenya's international telephone country code. ▪ **Address:** The user has a Kenyan business, residential or billing address. These rules broaden the indicators used to establish a Kenyan connection. In particular, the expanded payment criteria and the inclusion of the origin of network transmission may capture arrangements that would not necessarily have been identified using payment-card or IP-address information alone.
Registration and deregistration for SEPT	Non-residents who provide services to Kenyan users without a permanent establishment in Kenya are mandated to register with the Commissioner under the simplified tax registration framework. The registration application should be accompanied by the following information: ▪ the name (including trading name) of the applicant's business; ▪ the name, telephone number, electronic address and postal address of the applicant's contact person in Kenya responsible for tax matters; ▪ the postal and registered address of the applicant's business; ▪ the websites or uniform resource locator of the applicant through which the applicant conducts business; and ▪ the certificate of incorporation issued to the applicant's business. **Notes:** The Commissioner will issue the applicant with a PIN for purposes of filing returns and payment of tax upon registration. The Commissioner may also register an eligible person who fails to register within the timelines prescribed under section 8 of the Tax Procedures Act. Once a registered person ceases to provide the in-scope services highlighted above in Kenya, they must apply for deregistration to the Commissioner in accordance with section 10 of the Tax Procedures Act .
Appointment of tax representatives	A non-resident who opts not to register for SEPT must appoint a tax representative in accordance with section 15A of the Tax Procedures Act
Computation of SEPT	SEPT is calculated using a deemed-profit approach rather than the non-resident's actual accounting profit. The effective tax rate is 3% of gross turnover. **What constitutes gross turnover?** ▪ Service provider: Generally, the consideration received for the qualifying services. ▪ Digital marketplace operator: Generally, the commission or fees earned for use of the marketplace, rather than automatically treating the entire underlying transaction value as the operator's turnover. ▪ Value-added tax: VAT is excluded from gross turnover.
Accounting and payment of tax	A person liable to pay SEPT or their tax representative shall submit a return in the prescribed form to the Commissioner. The amount of tax due shall be remitted on or before the 20th day of the month following the end of the month in which the income was earned.

Key Provision(s)	Details
Amendment of returns	A person may amend a submitted return in accordance with section 31 of the Tax Procedures Act that permits a taxpayer to amend a self-assessment return within the prescribed statutory timelines. Any tax overpayment arising from an amended return will be credited to the taxpayer and applied against SEPT due in the subsequent tax period. However, where the non-resident ceases business in Kenya, the refund provisions under section 47 of the Tax Procedures Act will apply - provides the mechanism through which a taxpayer may apply for a refund of overpaid tax.
Record keeping	Persons required to deduct, account for and remit SEPT to the Commissioner is mandated to keep records in accordance with section 23 of the Tax Procedures Act - requires taxpayers to maintain records necessary to determine their tax liability and generally retain such records for at least five years.
Power to collect tax from person owing money	Section 42 of the Tax Procedures Act shall apply in any case where a person liable to pay SEPT has unpaid tax or the Commissioner has reasonable grounds to believe that the person will not pay the tax by the due date for the payment of the tax.

Our insights

The Income Tax (Significant Economic Presence Tax) Regulations, 2026 provide the operational framework for the administration of SEPT in Kenya and broaden the scope of the country's digital taxation regime. Given the wide range of services covered, non-resident businesses providing digital or technology-enabled services to users in Kenya should assess whether they fall within the ambit of the Regulations and whether any of the prescribed exemptions are available.

Affected businesses should also evaluate the adequacy of their systems and processes for identifying Kenyan users, tracking revenue attributable to such users, and supporting the monthly computation, filing and payment of SEPT. Particular attention should be paid to the user-location tests, which rely on various indicators, including payment methods, IP addresses, network origination and customer address information.

In addition, qualifying non-residents should ensure timely registration for SEPT, or where appropriate, appoint a tax representative, to facilitate compliance with their obligations under the Regulations.



Should you need further specific guidance on how the above changes impact your business, kindly feel free to contact any of the below or your usual RSM contact who will be always available to offer guidance and assistance that you need.

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