



..... Legal Notice No. \_\_\_\_\_

## THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS, 2020

(No. \_\_ of 2020)

IN EXERCISE of the powers conferred by Section 5(8) of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations:

Citation	1. These Regulations may be cited as the Value Added Tax (Digital Marketplace Supply) Regulations, 2020
Interpretation	2. In these Regulations, unless the context otherwise requires – “ <b>Act</b> ” means the Value Added Tax Act, 2013; “ <b>B2B</b> ” means business-to-business transactions between VAT registered entities; “ <b>B2C</b> ” means business-to-consumer transactions where the business is registered for VAT while the consumer is a person not registered for VAT; “ <b>digital marketplace supply</b> ” is defined as any supply of a service made over a platform that enables the direct interaction between buyers and sellers of services through electronic means; “ <b>digital marketplace</b> ” has the meaning assigned to it in the Act; “ <b>export country</b> ” means any country other than Kenya and includes any place, which is not situated in Kenya. “ <b>intermediary</b> ” means any person who facilitates the supply of services through the digital marketplace and who is responsible for issuing invoices and collecting payments for the supply; “ <b>invoice</b> ” means a document notifying an obligation to make payment; “ <b>recipient</b> ”, in relation to any supply of services, means the person to whom the supply is made; “ <b>tax period</b> ” means a calendar month; “ <b>VAT</b> ” means Value Added Tax



Charge to Tax	<p><b>3.</b> (1) Value Added Tax shall be charged on taxable services supplied in Kenya through digital marketplace.</p> <p>(2) Where the supply under sub-regulation (1) is made under a B2B transaction, the provisions of Section 10 of the Act shall apply.</p>
Scope of Taxable supplies	<p><b>4.</b> Taxable supplies made through a digital marketplace shall include electronic services under Section 8(3) of the Act and: -</p> <ul style="list-style-type: none"><li>(a) Downloadable digital content including downloading of mobile applications, e-books and movies;</li><li>(b) Subscription-based media including news, magazines, journals, streaming of TV shows and music, podcasts and online gaming;</li><li>(c) Software programs including downloading of software, drivers, website filters and firewalls;</li><li>(d) Electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;</li><li>(e) Supply of music, films and games;</li><li>(f) Supply of search-engine and automated helpdesk services including supply of customized search-engine services;</li><li>(g) Tickets bought for live events, theaters, restaurants etc. purchased through the internet;</li><li>(h) Supply of distance teaching via pre-recorded medium or e-learning including supply of online courses and training;</li><li>(i) Supply of digital content for listening, viewing or playing on any audio, visual or digital media;</li><li>(j) Supply of services on online marketplaces that links the supplier to the recipient, including transport hailing platforms;</li><li>(k) Any other digital marketplace supply as may be determined by the Commissioner.</li></ul>
Registration	<p><b>5.</b> (1) A person supplying taxable services through a digital marketplace shall be required to register for VAT in Kenya where: -</p> <ul style="list-style-type: none"><li>(a) the digital marketplace supplies are supplied by a person from a place of export country to a recipient in Kenya in a B2C transaction;</li></ul>



	<p>(b) the person is conducting business in Kenya as provided under Section 8 (2) of the Act; and any of the following circumstances are present:</p> <ul style="list-style-type: none"><li>(i) the recipient of the supply is in Kenya; or</li><li>(ii) the payment made to the supplier in the export country, for the supply of digital marketplace supplies, originates from a bank registered or authorized in Kenya, under the Banking Act, Cap 488; or</li><li>(iii) the recipient of that digital marketplace supply has business, residential or postal address in Kenya.</li></ul> <p>(2) A person from an export country who makes B2C supply of services to a recipient who is in Kenya shall be required to register for VAT through a simplified VAT registration framework as provided under these regulations and shall declare and pay VAT at the rate specified in Section 5(2)(b) of the Act</p> <p>(3) Notwithstanding sub-regulation (2) a person from an export country, making B2C digital marketplace supplies to recipients in Kenya, who is not able to register under the simplified VAT registration framework shall appoint a tax representative under Section 15A of the Tax Procedures Act, 2015 to account for the VAT on their supplies.</p>
Simplified VAT Registration Framework	<p><b>6.</b> (1) A digital marketplace supplier under these regulations who is from an export country shall be required to register under the simplified VAT registration framework.</p> <p>(2) Application for registration under the simplified VAT registration framework shall be done through an online registration form prescribed by the Commissioner.</p> <p>(3) An applicant under sub-regulation (2), shall be required to submit to the Commissioner through electronic means any documents necessary to substantiate the information provided in the application.</p> <p>(4) Upon registration, the applicant shall be issued with a Personal Identification Number for the purpose of filing and payment of VAT accrued on digital marketplace supplies.</p> <p>(5) A person registered under these Regulations who ceases to make taxable supplies, shall apply for deregistration to the Commissioner as specified under Section 36 of the Act.</p>



<p>Determination of place of supply</p>	<p><b>7.</b> A digital marketplace supply shall be deemed to have been made in Kenya where: -</p> <p>(1) the recipient of the supply is in Kenya;</p> <p>(2) the payment proxy including credit card information and bank account details of the recipient of the digital supplies is in Kenya; or</p> <p>(3) the residence proxy including: the billing or home address or access proxy including Internet Proxy address, mobile country code of SIM card of the recipient is in Kenya.</p>
<p>Time of Supply and Accounting and Payment of tax</p>	<p><b>8.</b> (1) The time of digital marketplace supply shall be the earlier of the date on which payment for the supply is received, in whole or in part or the date on which the invoice or receipt for the supply is issued.</p> <p>(2) Where an intermediary whose place of business is in Kenya makes a digital marketplace supply on behalf of a person, the intermediary shall be required to charge and account for the VAT on such supplies whether such other person is registered for VAT or not.</p> <p>(3) Tax on a digital market place supply made by a person from an export country shall be the liability of the supplier from an export country or their tax representative.</p> <p>(4) 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 20<sup>th</sup> day of the month following the end of the tax period.</p>
<p>Tax Invoice</p>	<p><b>9.</b> For the purpose of a B2C digital marketplace supply, a supplier from an export country shall be exempt from the requirements of an electronic tax invoice as prescribed under the Act and the relevant Regulations.</p> <p>Provided that, the supplier shall be required to issue an invoice or receipt showing the value of the supply and tax deducted.</p>
<p>Claim for Input Tax</p>	<p><b>10.</b> Deduction of input tax shall not be allowed under the simplified VAT registration framework.</p>
<p>Amendment of Returns</p>	<p><b>11.</b> (1) Where a person registered under the simplified VAT registration framework has made an over declaration or an under declaration, amendments to the return shall be done in accordance with Section 31 of the Tax Procedures Act 2015.</p> <p>(2) Where amendments under sub-regulation (1) result in a the registered person being in an over-payment position, the amount overpaid shall be</p>



	retained as a credit to be offset against VAT payable in subsequent tax periods.
Record-Keeping	<b>12.</b> A digital marketplace supplier from an export country shall, for every tax period, submit to the Commissioner, a record of all the supplies made in Kenya indicating the value of the supplies and VAT deducted.
Offences and Penalties	<b>13.</b> A person who fails to comply with the provisions of these Regulations shall, in addition to the penalties prescribed under the Act, be liable to restriction of access to the digital marketplace in Kenya until such obligations are fulfilled.
Transitional Provision	<b>14.</b> A digital marketplace supplier from an export country who is required to register under the simplified VAT registration framework shall apply to the Commissioner for registration within thirty days from the publication of these regulations.

Dated the \_\_\_\_\_ 2020

**Hon. Amb, Ukur Yattani,  
Cabinet Secretary for the National Treasury and Planning.**