

Tax & Legal Alert
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Tax Alert

New VAT & Income Tax (Registration of Non-Resident Electronic Service Providers) Regulations, 2022

Following the various amendments to the Income Tax Act and the Value Added Tax Act respectively, The Minister of Finance and Planning has issued the Income Tax (Registration of Non-resident electronic service providers) Regulations, 2022 and the Value Added Tax (Registration of Non-resident electronic service suppliers) Regulations, 2022 to prescribe the procedure for assessing and collecting income tax and VAT from non-resident electronic service providers and suppliers.

This update provides a detailed summary of the newly released regulations which came into effect on 1 July 2022 and the tax implications of the same on digital businesses and services in Tanzania.

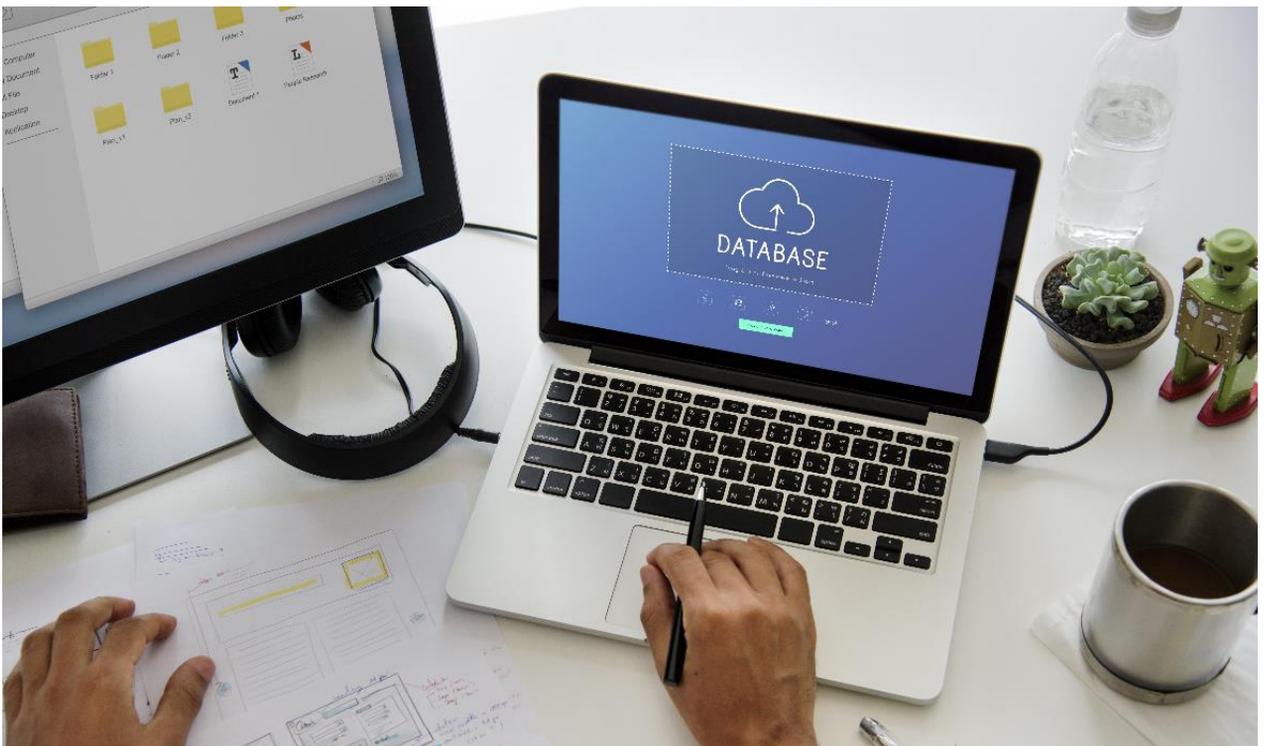
Introduction

The digital economy has become a concern for most tax authorities internationally. Acknowledging that the current tax system is ill-adapted for the digital world, the Government has identified the need to reform the taxation of digital services to address international tax issues.

For many years, the taxation of companies has taken a more traditional approach, such as requirements to have a physical presence in Tanzania. However, in this digital era, companies make large profits through their user base data and advertising without a physical presence in a specific country.

The introduction of taxation on Digital Services seeks to ensure that the country increases its tax base from the profits and / or revenues earned by tech-based companies that sell into Tanzania and collect data from, and targets advertisements at local audiences, regardless of their physical presence.

“ The Government has identified the need to reform the taxation of digital services to address international tax concerns where non resident businesses provide digital services to Tanzanian companies. ”



Income Tax (Registration of Non-resident electronic service providers) Regulations, 2022

Section 90A of the Income Tax Act as amended by the Finance Act, 2022 introduces tax on non-resident service providers of services in the digital marketplace at the rate of 2% of the gross payment. As a result of this amendment, the Minister has issued these regulations to prescribe the procedure for assessing and collecting such income tax.

The regulations provide for the following:

- **Scope of electronic services**

The regulations have expanded the scope of electronic services to include amongst other things, various services provided or delivered through; websites, software and software updates, images, access to databases, self-education packages, music, films and gaming activities and broadcasts. The expansion appears to target virtually all of the services that can be provided digitally. An exhaustive list of the aforementioned electronic services is attached in [Appendix I](#).

- **Registration of non-resident electronic service providers**

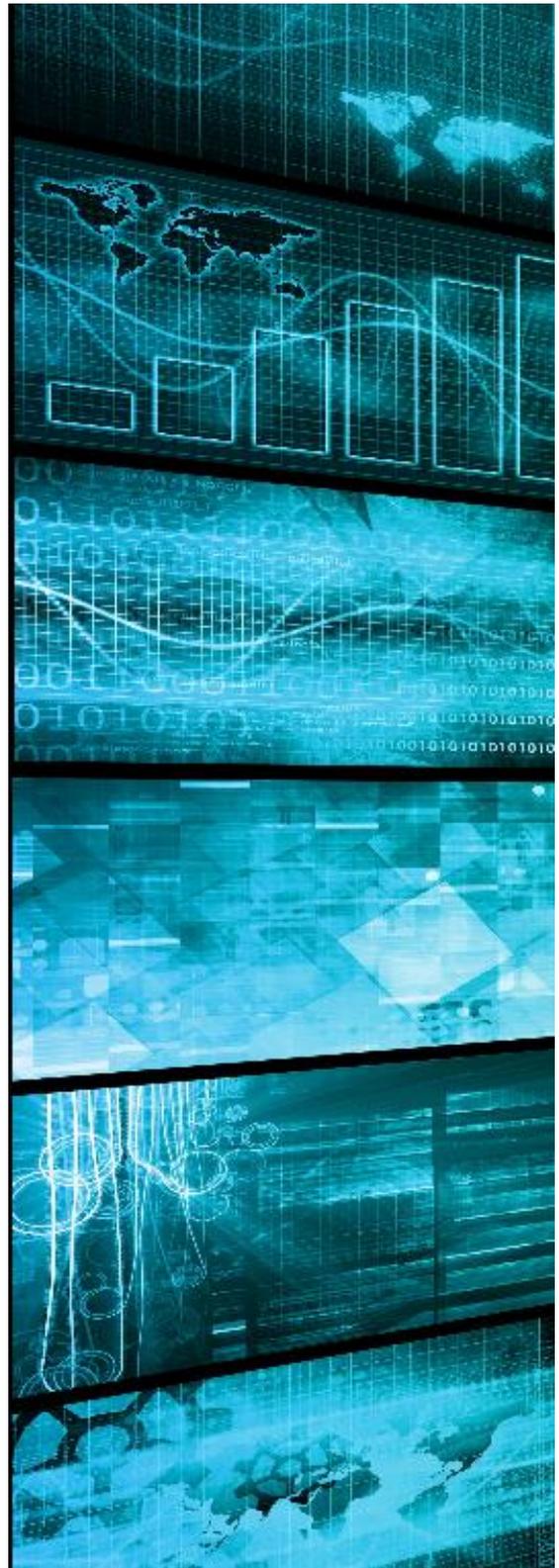
Non-resident providers of electronic services are required to apply for registration to the Commissioner General in the prescribed form provided in the regulations. The application shall be made online and accompanied by the following information:

- (a) Name of the business including the business trading name;
- (b) Certificate of incorporation;
- (c) Name of the contact person for tax matters;
- (d) Registered address of the business;
- (e) Telephone number of the contact person;
- (f) Email address of the contact person;
- (g) Website or uniform resource locator of the supplier through which the business is conducted; and
- (h) Any other information as the Commissioner General may require.

Upon being satisfied with the information provided by the applicant, the Commissioner General shall register and issue the applicant with a Tax Identification Number (TIN)

Deregistration

Where a non-resident ceases to render electronic services permanently, they should inform the Commissioner General in the form set out in the Schedule to the Regulations.



Note: Non-resident electronic service providers that supply electronic services prior to the regulations coming to effect are required to register within 6 months from 1 July 2022.

Income Tax (Registration of Non-resident electronic service providers) Regulations, 2022

“Similar to withholding tax returns, returns for tax on electronic services shall be filed online on the 7th day of the month following the month to which the payment relates.”

• Source of payment

Payments for electronic services will be deemed to have a source in the United Republic of Tanzania where the recipient of the service is in the United Republic. A recipient of a service shall be deemed to be in the United Republic of Tanzania in the following circumstances:

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

• Filing of returns

Similar to withholding tax returns, returns for tax on electronic services shall be filed online on the 7th day of the month following the month to which the payment relates. The return shall be in a simplified form as prescribed by the schedule to the regulations and accompanied with the tax payable in respect of electronic services rendered in the tax period.

Note: Tax shall be paid to a bank account designated by the Commissioner General, in Tanzanian Shilling or its equivalent as per the Bank of Tanzania’s prevailing exchange rate on the date of payment.

Penalties, Interest and Offences

Making false or misleading statements or omitting to include material facts in a statement.	50% of the tax shortfall where the statement is made without reasonable excuse or; 75% of the tax shortfall where a statement is made knowingly or recklessly.
Failure to pay tax on the due date.	Interest at the statutory rate compounded monthly.
Failure to comply with the regulations (for non resident persons registered under the regulations).	A fine of not less than 200 currency points and not more than 300 currency points* or imprisonment for a term not exceeding 3 years.

*Currency point: Means a value prescribed by a tax law for the purpose of protecting value of currency against the effects of inflation. 1 Currency point = 15,000 TZS

Value Added Tax (Registration of Non-resident electronic service suppliers) Regulations, 2022

Similar to the Income Tax regulations, the Ministry of Finance also issued the Value Added Tax (Registration of non-resident electronic service suppliers) regulations to prescribe the manner in which Value Added Tax will be assessed and collected for non-resident electronic services.

The regulations provide for the following:

- **Registration for non-resident electronic service suppliers**

A non-resident person who supplies electronic services to an unregistered person in Mainland Tanzania, who does not appoint a tax representative is required to apply for registration as a taxable person to the Commissioner General. The application shall be made online in the prescribed form provided for in the Schedule to the regulations.

Upon being satisfied with the information provided by the applicant, the Commissioner General shall register and issue the applicant with a VAT Registration Number (VRN).

Deregistration

Where a non-resident ceases to render electronic services permanently, they should inform the Commissioner General in the form set out in the Schedule to the Regulations.

- **Place of supply**

A supply of electronic services by a non-resident person shall be treated as a supply delivered in Mainland Tanzania when supplied to an unregistered person.

The circumstances in which a non-resident supply of electronic services will be deemed as supplied in Mainland Tanzania is similar to those mentioned in the Income tax (registration of non-resident electronic service suppliers) regulations for source of payment.

- **Filing of returns**

Returns shall be filed online on or before the 7th day of the month following the month to which the return relates in the form prescribed by the schedule to the regulations and accompanied with the tax payable in respect of electronic services rendered in the tax period.

Note: Tax shall be paid to a bank account designated by the Commissioner General in Tanzanian Shilling or its equivalent as per the Bank of Tanzania's prevailing exchange rate on the date of payment

Correction of errors

Correction of errors on return submitted in accordance with these Regulations shall be made through the normal VAT process in accordance with section 78 of the Act.

Input tax

A person registered under these regulations shall not be allowed to claim any input tax.

"A supply of electronic services by non-resident person shall be treated as supply delivered in Mainland Tanzania."

Note: A Non-resident person that supplies electronic services prior to the regulations coming to effect is required to register within 6 months from 1 July 2022.



Key Concluding Takeaways

Understandably, the taxation of revenue derived from digital services is not straightforward. Particularly due to the issues of valuation and the determination of where such revenue should be taxed. Normally, corporate income taxation relies on the concept of value creation to decide where a business pays taxes. Attributing value to a user that accesses a free service is economically challenging because there is no price signal connected to the single user and treating a network of users as a value-creating asset comes with major measurement and valuation challenges.

That being said, the Minister may continue to issue regulations to provide further guidance. However, it is not certain whether the grace period of 6 months will be sufficient to process all applications considering the volume of electronic service providers and suppliers. At the moment we encourage taxpayers to make their applications as soon as practicable.

Appendix I: Scope of electronic services

<p>For websites, web-hosting or remote programs and equipment:</p> <ul style="list-style-type: none"> (i) search engine and automated helpdesk services; (ii) customizable search engine services; and (iii) downloadable digital content including downloadable mobile applications, eBooks and films. 	<p>For software and updating thereof:</p> <ul style="list-style-type: none"> (i) application software; (ii) system software; (iii) drivers; (iv) filters and firewalls; and (v) plugins.
<p>For images, texts or information:</p> <ul style="list-style-type: none"> (i) desktop theme; (ii) photographic image; (iii) pictorial image; (iv) screensaver; and (v) any right to view any item listed under this paragraph. 	<p>Access to database:</p> <ul style="list-style-type: none"> (i) subscription-based media- news, magazines, journals, periodical and publication; blog; database; information system services; games; internet based auction services; social networking services; and webcast, webinar, website, web application or web; (ii) electronic data management- online data warehousing; and file sharing and cloud storage services; (iii) sharing and gig economic services including transport hailing services or platforms; and (iv) electronic booking or electronic ticketing services.
<p>For self-education packages:</p> <ul style="list-style-type: none"> (i) distance teaching programme; (ii) educational webcast; (iii) internet-based course; (iv) internet-based education programme; (v) webinar; and (vi) digitised content of any book or electronic publication. 	<p>For music, films and games including gaming activities:</p> <ul style="list-style-type: none"> (i) audio clip; (ii) broadcast not simultaneously broadcast over any conventional radio network; (iii) jingle; (iv) live streaming performance; (v) ringtone; (vi) song; (vii) broadcast not simultaneously broadcast over any conventional television network in Mainland Tanzania; (viii) documentary; (ix) home-made video; (x) streaming services; (xi) movie; (xii) music video; (xiii) program; (xiv) television series; (xv) video clip; (xvi) sound effect; and (xvii) games and games of chance- internet-based game, including electronic game and multiplier role-playing game; interactive games, where such interactive game is a game of chance or game where the result is influenced by the skill of the player and game which is a combination of chance and skill; and electronic betting or wagering.
<p>Political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.</p>	

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