Grant Thornton

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

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Background



The Cabinet Secretary for the National Treasury has, under section 12E(6) of the Income Tax Act, issued the Income Tax (Significant Economic Presence Tax) Regulations, 2026 through Legal Notice No. 188 of 2026.

The Income Tax (Significant Economic Presence Tax) Regulations, 2026 ("SEPT Regulations") have replaced the Income Tax (Digital Service Tax) Regulations, which were issued under Legal Notice No. 207 of 2020.

The key changes include: increase in the scope of services, determination of user location, registration and deregistration, and alignment to the provisions of the Tax Procedures Act, 2015.

Our summary and comments on the key provisions of SEPT Regulations are presented below.

Summary

Rule(s)	Description	Our comments
1. Commencement	**SEPT Regulations were issued under Legal Notice No. 188 on 12 August 2026.**	The commencement date of SEPT Regulations has not been explicitly stated. Therefore, SEPT Regulations take effect on the date of publication in the Kenya Gazette.
3. Finality of the tax	**SEP Tax is a final tax.**	Section 12E of the ITA did not state whether SEP Tax was a final tax. However, in practice, SEP Tax was being treated as a final tax, by relying on the provisions of the Income Tax (Digital Service Tax) Regulations, 2020. SEPT Regulations now explicitly provide that SEP Tax is a final tax.

Summary

Rule(s)	Description	Our comments
4. Additional transactions subject to SEP Tax	Other than the services which were subject to Digital Service Tax per the Income Tax (Digital Service Tax) Regulations, 2020 ("DST Regulations"), the SEPT Regulations have increased the scope of services subject to SEP Tax to include: • Software programs, including software, drivers, website filters and firewalls. • Artificial intelligence services. • Facilitation of online payments, including money transfer services. • Facilitation of the exchange or transfer of digital assets.	SEP Tax is no longer limited to consumer-facing digital platforms. Business-to-business services such as cloud hosting, software, artificial intelligence ("AI"), data analytics and payment services provided by non-residents to Kenyan businesses are within scope. Some of these payments may be subject to withholding tax under Section 10 of the Income Tax Act, under the definition of royalties or management and professional fees, whereas Regulation 3(4)(b) of the SEPT Regulations excludes such income from SEP Tax. Non-residents and their Kenyan customers will need to classify each payment to determine whether withholding tax or SEP Tax applies, which is likely to be an area of dispute. The broad scope gives the Kenya Revenue Authority ("KRA") wide discretion and may create uncertainty for new business models. We recommend that KRA issues guidance with practical examples.

Summary

Rule(s)	Description	Our comments
5. Determination of user location	Other than the instances where a user was deemed to be located in Kenya per the DST Regulations, the SEPT Regulations have increased the instances where a user will be deemed to be located in Kenya to include, where: • Transfer or withdrawal from a wallet provided by any person, financial institution or company. • The service is acquired through any network transmission or other electronic communication originating from Kenya.	Payments from e-wallets (e.g. mobile money) and network transmissions originating from Kenya are now subject to SEP Tax. The Regulations give no tie-breaker where indicators conflict, such as instances where a person having a foreign IP address, uses a Kenyan card.
6. Registration	Other than the information required for a person to register under the simplified tax registration per the DST Regulations, SEPT Regulations require a person to provide details of the contact person in Kenya responsible for its tax matters. Further, SEPT Regulations provide that the Commissioner may register an eligible person who fails to register within the appropriate periods.	There is a new requirement that the contact person must be in Kenya. Therefore, non-residents will be required to have a local contact or agent. Mandatory registration now exists for persons within scope of SEPT Tax.

Summary

Rule(s)	Description	Our comments
9. Accounting and payment of tax	The SEPT Regulations provide that a person liable to SEP Tax, or its tax representative, should file a return and pay the tax due by the 20th day of the month following the month in which the income was derived from or accrued in Kenya. However, Section 12E of the ITA provides that a person subject to SEP Tax should submit a return and pay the tax due to the Commissioner on or before the 20th day of the month following the end of the month in which the service was offered.	There is a contradiction regarding the tax point, whereas the SEPT Regulations refer to the tax point as the month when the income was derived from or accrued in Kenya, Section 12E of the ITA refers to the month the service was offered. In such an instance, the Act prevails over the Regulations. We recommend that KRA should provide clarity.
12. Power to collect tax from persons owing money to the taxpayer	The SEPT Regulations provide that Section 42 of the TPA applies where a person liable to SEP Tax has unpaid tax, or where the Commissioner has reasonable grounds to believe the person will not pay the tax by the due date. Section 42 of the TPA gives the Commissioner power to recover taxes directly from third parties who hold money for, owe money to, or are authorized to pay money to a taxpayer who has tax arrears or is unlikely to pay taxes when due.	Kenyan banks, payment service providers, customers and agents that hold or owe money to a non-resident may be appointed as agents.

Key Takeaways

The Regulations provide a wider scope of services that are subject to SEP Tax, most notably AI agents.

Businesses supplying digital services to users in Kenya should evaluate the interaction between SEP Tax and withholding tax, to avoid mischaracterization.

Kenyan businesses making payments to affected non-residents should also prepare for possible agency notices.



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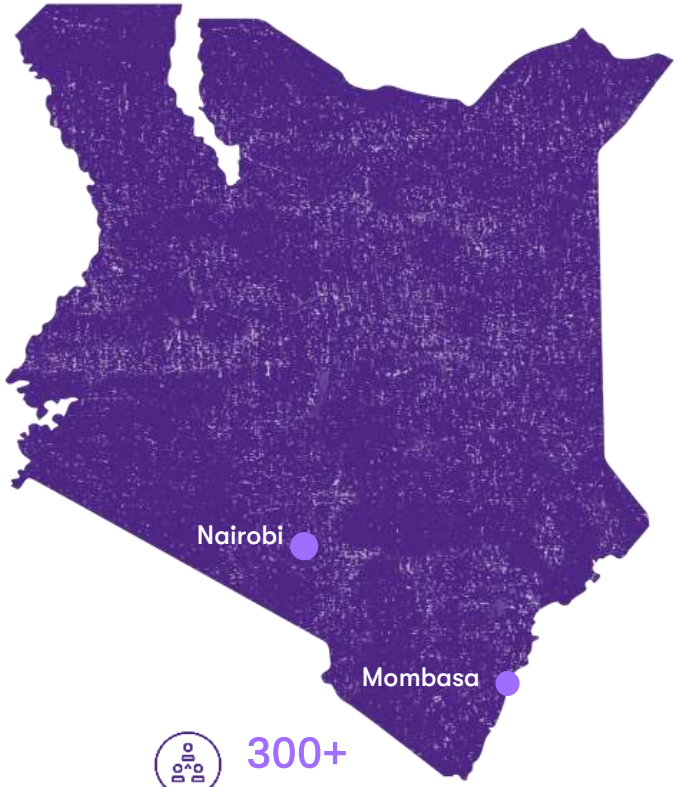
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