



Submitted to:  
Clerk of the National Assembly

**Submitted By:**

Kenya ICT Action Network (KICTANet)

2nd December 2024

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Chairperson,  
Department Committee on Finance and National Planning  
The National Assembly  
Main Parliament Buildings, Nairobi,  
P.O. Box 41842-00100,  
Nairobi

Submitted via email to [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

Dear Hon. CPA Kimani,

**Re: Memorandum on The Tax Laws (Amendment) Bill (National Assembly Bill No. 47 of 2024)**

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Greetings from [KICTANet](#)!

We submit this memorandum with expertise on human rights and Information and Communication (ICTs).

We submit this memorandum in response to the call for input on The **Tax Laws (Amendment) Bill (National Assembly Bill No. 47 of 2024)**

We have included herein a matrix presentation that captures our concerns, and highlights our proposals on relevant provisions of the Bill for your review and consideration. We would be glad to provide further input and perspectives on the Bill, as and when required.

We look forward to your response.

Regards,

*Kenya ICT Action Network (KICTANet)*

*Memorandum on the Tax Laws (Amendment) Bill (National Assembly Bill No. 47 of 2024)*

[Tax Laws \(Amendment\) Bill \(National Assembly Bill No. 47 of 2024\)](#)

Clause No.	Provision	Issue/Concern	Proposal/Recommendation	Justification
4	Taxation of income from digital platforms or marketplaces (e.g., digital content monetization).	Risk of misuse or insufficient protection of personal data shared on digital platforms.	Mandate strict adherence to Data Protection Act (2019) in all digital transactions.	Ensures tax measures adhere to constitutional privacy protections under Article 31 of the Constitution of Kenya.  Supports trust in digital platforms and fosters economic growth. <i>KICTANet's Digital Taxation in Kenya policy brief underscores the need for balancing data security with tax obligations to avoid stifling innovation<sup>1</sup></i>
5	Introduction of "Significant Economic Presence Tax" on digital services by non-residents, based on user location.	<p>a) Increased compliance burdens may discourage international and local investment.<sup>2</sup></p> <p>b) Implementing the SEP Tax is inherently complex. Determining what constitutes a "significant economic presence" involves detailed assessments of various digital activities and income streams.<sup>3</sup></p>	a) To mitigate the increased compliance burdens of the Significant Economic Presence (SEP) Tax and encourage investment, Kenya should implement simplified digital tax reporting tools, modeled after South Africa's e-filing system <sup>4</sup> , and	SEPT broadens Kenya's tax base and aligns with OECD recommendations. However, <i>there is a need for clear, predictable policies to avoid economic disruption and ensure equitable taxation<sup>9</sup></i>

<sup>1</sup> [Understanding Digital Taxation in Kenya: A Pathway to Fair and Inclusive Policy Reforms](#)

<sup>2</sup> [Memorandum on The Finance Bill, 2024 \(National Assembly Bills No. 30 of 2024\)](#)

<sup>3</sup> [Kenya to Transition from Digital Service Tax to Significant Economic Presence Tax](#)

<sup>4</sup> [The 'Uberisation' of e-filing in South Africa](#)

<sup>9</sup> [Kenya's Digital Tax Tightrope: Balancing Revenue with Growth](#)

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			<p>establish a fixed compliance window similar to Australia's streamlined tax lodgment schedules<sup>5</sup>, which allow businesses to adapt gradually while maintaining transparency; additionally, offering targeted incentives for local businesses and startups, as done in Singapore, can help offset initial compliance costs</p> <p>b) To address the inherent complexity of implementing the Significant Economic Presence (SEP) Tax, Kenya should adopt a <b>tiered revenue threshold approach</b>, similar to India's Equalization Levy<sup>6</sup>, where non-resident companies are taxed based on clear, quantifiable criteria such as <b>annual transaction volume</b> or number of users.</p> <p>c) Additionally,</p>	

<sup>5</sup> [Australian Taxation Office | The ATO's Lodgment Program Framework](#)

<sup>6</sup> [Equalisation Levy: Applicability, Due Date, Payment And Returns](#)

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			<p>leveraging technology for automated compliance tools as implemented in the UK and OECD's BEPS framework<sup>7</sup> can simplify assessments and enhance fairness while minimizing administrative burdens.</p> <p>d) Conduct stakeholder engagement on the proposed SEPT framework, considering potential impacts on SMEs and multinationals<sup>8</sup>.</p>	
13	<p>Clause 13 of the Bill proposes to amend section 35 of the Income Tax Act to provide those payments in respect of supply of goods to a public entity or facilitating payment on a digital marketplace is subject to withholding tax.</p>	<p>a) <b>Privacy Risks in Data Collection:</b> The facilitation of payments through digital marketplaces requires collecting and sharing extensive personal and transaction data. Without clear safeguards, this could breach data protection principles under Kenya's Data Protection Act, 2019.</p> <p>b) <b>Potential Barrier to Digital Marketplace Growth:</b> Adding withholding tax</p>	<p>a) <b>Privacy related recommendations:</b></p> <ul style="list-style-type: none"> <li>Adopt Specific Data Protection Measures: Ensure personal data collected for tax purposes is limited to the minimum necessary, such as user identification, transaction amounts, and tax computation details. Other unrelated data</li> </ul>	<p>a)</p> <ul style="list-style-type: none"> <li>Ensures adherence to Sections 25-31 of the Data Protection Act, which stipulate lawful data processing, minimal data collection, and purpose</li> </ul>

<sup>7</sup> [Base Erosion and Profit Shifting \(BEPS\)](#)

<sup>8</sup> [Kenya Navigates Digital Taxation: Balancing Growth and Revenue](#)

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		<p>obligations to payments on digital platforms might discourage participation by SMEs and non-resident entities, thereby stifling innovation and cross-border transactions.</p>	<p>(e.g., behavioral or location data) should not be collected or shared.</p> <ul style="list-style-type: none"> <li>● Implement Consent and Transparency Policies: Platforms must obtain explicit consent from users regarding how their data will be used for tax purposes. Provide users with accessible privacy notices specifying the nature, scope, and purpose of the data processing.</li> <li>● Establish Data Retention Limits: Define specific timeframes for retaining tax-related personal data (e.g., five years as required by tax law). Delete or anonymize data after the retention period lapses to prevent misuse or unauthorized access.</li> <li>● Secure Data Transfers to the KRA: Any transfer of personal data to the Kenya Revenue</li> </ul>	<p>limitation.</p> <ul style="list-style-type: none"> <li>● Enhances user trust in digital marketplaces by ensuring their personal data is safeguarded while meeting taxation obligations.</li> <li>● Avoids unnecessary surveillance or over-collection of personal information, thereby balancing tax enforcement with privacy rights.</li> </ul> <p>b) Promotes innovation and inclusivity in Kenya’s digital economy while ensuring equitable taxation. Encourages compliance by reducing barriers for SMEs and</p>

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			<p>Authority (KRA) must occur over encrypted channels, with verification protocols ensuring only authorized personnel access the data.</p> <ul style="list-style-type: none"> <li>● Undergo Regular Compliance Audits: Digital marketplaces should be required to submit annual data protection compliance reports to the Office of the Data Protection Commissioner (ODPC). Non-compliance should attract penalties under the Data Protection Act, 2019.</li> <li>● Restrict data collection to only what is necessary for calculating withholding tax. Require independent audits of the KRA to ensure compliance with proportionality and necessity principles.</li> </ul> <p>b) Simplify compliance processes for</p>	<p>non-resident providers.</p>

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			withholding tax by using automated tools, such as the SARS eFiling system in South Africa or India's Equalization Levy Portal, to reduce administrative burdens. Provide clear guidelines to non-resident platforms on tax obligations.	
15	<p>Clause 15 of the Bill is intended to amend the Third Schedule to the Income Tax Act to provide for the applicable rates of tax on payment to public entities and on income derived from Kenya by an owner of a digital marketplace.</p> <p>The rate on withholding tax on supplies to public entities by residents are reduced to 0.5%.</p>	<p>a) Broad enforcement mechanisms might collect unnecessary user or transactional data.</p> <p>b) Overregulation or taxation might discourage online participation or digital innovation.</p> <p>c) Tax enforcement may lead to data silos, restricting access to information about tax mechanisms.</p>	<p>a) Introduce privacy-by-design principles in taxation systems, ensuring only necessary data is collected and processed<sup>10</sup>.</p> <p>b) Exempt small-scale creators and startups from strict enforcement mechanisms; provide tax incentives for digital innovation.</p>	<p>a) Ensures that data collected is necessary, lawful, and secure, fostering trust in Kenya's digital tax systems<sup>11</sup>.</p>
17	Amendments to VAT Act to require VAT	Expanding the scope of taxpayer data collected may lead to risks	a) Implement strict data minimization	a) Balances efficient tax

<sup>10</sup> [Privacy by Design | Identity in the Information Society](#)

<sup>11</sup> Section 25 of the Data Protection Act No. 24 of 2019

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	apportionment and related data on taxpayers making zero-rated supplies.	of data breaches and unnecessary surveillance.	<p>principles, limiting collection to what is necessary for VAT computation<sup>12</sup>.</p> <p>b) Require regular impact assessments under the Data Protection Act, 2019<sup>13</sup>.</p>	<p>collection with individual privacy rights as per <b>Article 31 of the Constitution</b><sup>14</sup>.</p> <p>b) Ensures alignment with global data protection standards, mitigating risks of legal challenges<sup>15</sup>.</p>
22(b)	Excise duty on services offered via digital platforms by non-residents.	Cross-border enforcement difficulties may lead to reduced market participation and potential price increases for consumers	<p>a) Create a regulatory framework addressing cross-border data-sharing and taxation.</p> <p>b) Engage multilateral bodies like OECD to align policies with international norms<sup>16</sup>.</p>	<p>a) Facilitates compliance while reducing costs for businesses and consumers.</p> <p>b) Helps prevent potential instances of double/multi taxation.</p>

<sup>12</sup> Regulation 33 of the Data Protection (General) Regulations, 2021.

<sup>13</sup> Part VIII of the Data Protection (General) Regulations, 2021.

<sup>14</sup> [Digital Taxation in Kenya Charting Pathways towards Fair, Inclusive and Sustainable Policy Reforms](#)

<sup>15</sup> [AU DATA POLICY FRAMEWORK](#)

<sup>16</sup> [Cross-border and international tax | OECD](#)