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ASIRI

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# RADAR & SCOPE

## Q4 NEWSLETTER



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## Contributors

**Oscar Matheka** – Tax Manager, Mawji Sennik & Co  
Oscarmatheka@mawji-sennik.com

**Henry Okwatch** – Associate, O&M Law LLP  
henry@omlaw.co.ke

**Gift Kori** – Business Development Manager, Asiri.  
gk@horizonafrika.co.ke

## Is your business ready for the new Digital Services Tax (DST)?



In the recent past, The CS National Treasury has invited stakeholders and the general public for comments on both the income tax and Value Added Tax (VAT) regulations on taxation of the digital market place (DMS). The Digital Services Tax regulations defines a Digital Market Place as “The supply of services through the interaction between the buyer and the seller through electronic means.”

The scope of services subject to DST include; downloading of mobile applications, e-books and movies, subscription-based media such as TV shows and music, podcasts and online gaming, software, website hosting, e-filing services, supply of music, films and games, e-ticketing, e-learning, digital media, transport hailing platforms, among others.

Digitalization has significantly transformed many aspects of our everyday lives more so during the Covid-19 pandemic as most businesses were forced to adopt a work from home (remote working) structure. Globally, digital transformation is taking place at unprecedented speeds and revenue administrations around the globe have to play catch up to tailor the existing policy framework to encompass the ever-changing digital market place.

For most tax administrations, the existing tax frameworks lack the critical efficiency necessary to fully exploit the new business streams within the digital market place hence the push for diversified revenue models.

Revenue authorities around the globe are now responding to the rapid digitization in the market place by aligning their policies to impose taxes where the economic activity is taking place as opposed to where the service provider is located. Notably, the effective revenue collection from digital spaces remains significantly low.

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Whereas the importation of goods into Kenya is taxed at the specific port of entry, owing to its complexity, virtual business presents a plethora of challenges as far as tax administration is concerned. The Digital Market Service (DMS) specifically targets both local and offshore businesses providing digital services to end consumers in Kenya. The effect is that these businesses will be subjected to VAT at the rate 14% and a further 1.5% Digital Service Tax (DST). To ensure

administration of the DST, the Kenya Revenue Authority (KRA) will be appointing DST withholding agents who will deduct 1.5% DST for every payment being made to a DMS supplier with effect from 1st January 2021. Majorly banks will be the first target for appointment as DST withholding agents owing to the nature of their business.

DST deducted on Kenyan companies shall be an advance payment which shall be utilized against taxable profits at the end of the year. For offshore entities, the DST paid is a minimum non-refundable tax payable for their operations in Kenya.

Entities within the DMS space shall be required to register for VAT. Offshore companies shall be required to remit their VAT through the Simplified VAT registration framework. This process will involve submitting an application to the KRA for a PIN specifically for filing of VAT returns.

Alternatively, offshore entities can appoint a local tax representative for their simplified VAT filing purposes. Entities operating under the simplified VAT regime shall be exempt from electronic tax register receipts provided that, they issue an invoice or receipt showing the value of the supply and tax deducted. No input VAT deduction shall be allowed under the simplified VAT regime.

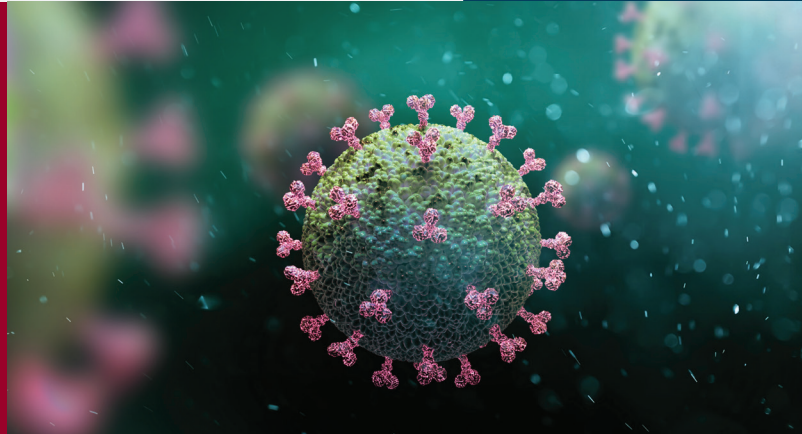
In addition to the existing penalties and interest at the rate of 5% and 1% respectively, any non-compliance with the DST regulations shall result to restriction of access to the digital marketplace in Kenya until full compliance is attained.

In order to ensure compliance with the DST, offshore entities within the DMS ought to consider a number of factors. Firstly, whether to appoint a local tax representative for remittance of the VAT. Secondly, whether to incorporate entities in Kenya to serve their customers in a responsive manner while ensuring full compliance with Kenya's tax architecture.

As implementation of the DST nears, we expect that the final DST regulations will address a few clarifications, for example, there is no clarity on the applicability of the DST on transactions which have an element of both a good and a service. Additionally, there is no room for refunds especially where an offshore entity has VAT overpaid through the simplified VAT regime and the entity has shut down its operations in Kenya.

Undoubtedly, the imposition of both DST and VAT on the digital market place by the Kenya revenue authority will make significant contributions to the exchequer and hopefully reduce the budget deficit.

# How technology is redefining access to justice amid the COVID 19 pandemic



The COVID 19 pandemic brought with it a massive disruption on access to justice as hitherto known to us. Various justice processes were moved online while in person hearings and mentions were also suspended. According to the gazette notice number 2357 published on 4th March, 2020, the Chief Justice inaugurated the practice directions on electronic management to give legal impetus to the electronic filing regime in the case of civil disputes. However, the system has only been piloted in Nairobi courts. Courts in other towns have improvised various methods of filing of cases mostly based on email platforms. Similarly, the criminal justice sector was not left behind as the persons in custody attended court via video links.

Moreover, various registries including the companies' registry, the lands registry and the Kenya Industrial Property registry have also moved most of their operations online. Perhaps one might argue, that the pandemic has done more to accelerate the electronic revolution in the justice sector. Previous legal procedures such as searches and filings that were manual have also migrated to online platforms.

The electronic revolution indeed brings various advantages in the delivery of justice and further expands the modes in which ordinary citizens may access justice and other government services. As it stands now, the filing processes can now be performed from the comfort of one's desk. Further, rulings, decrees and judgments are delivered directly to the parties, without delay, by the respective judges and magistrates. Parties are also able to mutually agree on dates for Hearings electronically. This has helped cut costs.

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Suffice it to note that even though the Companies' registry, through the Business Registration Service had spearheaded the migration to electronic filing, this has been made better over the pandemic period. The Service provided a fully functional customer service email and telephone contacts where customer queries are answered and various registration challenges resolved, hence providing quicker outcomes.

Most legal practitioners laud the move to electronic provision for legal services as a good move, bearing in mind the history of disappearing court files and parties claiming not to have been served. The electronic filing system creates a clear paper trail with time stamps for every action taken by the parties. Parties can therefore not claim any mischief in filing of pleadings or disappearance of files.

Corruption and the risk thereof in the justice system is also systematically reduced in the electronic justice ecosystem. The number of intermediaries is systematically reduced before any government service is offered. This, therefore, makes for seamless transaction and clear justice mechanisms. The government payment systems have also been linked to methods ordinarily used by citizens.

With Kenyans increasingly getting access to smart phones and internet connectivity, going beyond brick justice will literally be in everyone's pockets. This further demystifies the legal process beyond the legal jargon by advocates. The challenge is therefore on the courts to adapt to the needs of their clientele in the dispensation of justice. Challenges however continue to abound especially in areas characterized by lack of access to electricity and poor network coverage.

Perhaps one of the downsides of the electronic filing revolution is failure by technology. It is noteworthy that when the e-filing system was launched, the system was inundated by the high number of log in requests it received. This necessitated the system to be suspended for a while before being brought back up. It is not inconceivable that the judiciary e-filing system may encounter the same problems in the near future. The system may also be a target of unscrupulous hackers, keen on subverting the course of justice. Suffice it to note also that courts outside Nairobi are still operating their e-filing systems using Gmail and other google-based platforms. These systems are especially vulnerable to hackers as they are not encrypted and do not have elaborate in-built protection features such as those on the judiciary servers.

The migration to online based platforms for delivery of justice will inevitably render certain jobs redundant. Clerks and messengers are likely to be declared redundant if they do not evolve and adapt to the electronic management systems being currently put in place. Court clerks have, however, received an expanded mandate of assisting judges and other court users on how to operate in the online justice environment.

As the electronic filing system is itself a mystery to certain advocates, the same cannot also be said of the ordinary man on the street. Consequently, it impedes access to justice to Kenyans. Nevertheless, the more the judiciary creates awareness on the electronic filing system, the more accessible the system will be to citizens, as parties will be able to access justice at the comfort of their mobile phones.

The Kenyan judiciary is set to have a giant leap forward with the digital transformation of the judiciary. This will improve access to justice a great deal, as previously opaque court procedures will now be simplified. The challenge therefore is on the judiciary to create awareness on the online case management systems. Further, much more can be done to upscale the judiciary electronic management systems to other court stations countrywide.

Technology is the future of justice delivery in Kenya.

## How businesses can benefit from outsourced CFO services



If you run a small to medium-sized organization you are most likely to have grappled with question of when to hire a CFO, or whether it's actually necessary to hire a CFO. It is important to note that the modern CFO plays both the role of the captain and the compass, managing the financial actions of a company while providing strategic advice on market opportunities, expansion plans, products and services, pricing and competition.

As is with many companies, even those that have attained maturity, an in-house CFO is not only viewed as expensive but may also be easily disqualified as an unnecessary expense where a standard accounts department already exists. More than a controller, however, the CFO is meant to be the financially-oriented voice to you as the owner or CEO of the business. He or she understands the story behind the numbers, particularly, the business drivers, risks and potential areas of value creation.

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Therefore, in a case where your company has limited resources, outsourcing the CFO function presents a highly viable option. As a result, a virtual CFO can generate additional value for an organization in the following ways:

#### Cost saving

Hiring a full-time CFO can be expensive for both start-ups and mature companies since the role forms part of the senior management and comes with many responsibilities. Whereas an in-house CFO will be entitled to a monthly salary, bonuses, health coverage, entertainment allowance and other employee related expenses, a virtual CFO is only compensated for the services offered. The payments can also be flexible – structured in a monthly or quarterly fee – depending on the size and specific needs of your organization.

#### Multiple industry experience

A virtual CFO typically has diverse experience gained from working in multiple industries. This provides your organization with a unique opportunity to benefit from multi-layered insights and opportunities that you might have otherwise missed out on in the absence of a

CFO or with an industry-specific CFO.

#### Wide networks of financial institutions

Assuming the CFO works within a firm, his or her contact list will automatically include the firm's network. Consequently, companies seeking to grow can gain access to a wider pool of resources, new markets and customers. Furthermore, the virtual CFO has relationships with multiple financial institutions and may be able to match your company with the institutions that offer the best financial products and facilities. In addition to the traditional lenders, an outsourced CFO may have previously worked with other financial providers such as venture capitalists, private equity and Development Finance Institutions which would come in handy in case your company is looking to raise funds.

#### Holistic financial services

Outsourced CFO services can go beyond the traditional accounting and book-keeping services. A blend of the virtual CFO's wide industry knowledge and in-depth financial expertise enables them to provide critical financial analysis which enables the management to make critical data-driven decisions. An outsourced CFO can provide other services including: financial modelling, capital raising and balance sheet restructuring, budgeting and forecasting, business valuation, risk management, cash flow analysis among other services.

#### Smaller learning curve

The average employee will typically take between 6-12 months before they can be fully on-boarded into a company and attain maximum productivity. With a virtual CFO, their wide exposure to different organizations enables them to hit the ground running almost immediately. They are able to quickly assess the current situation and begin implementing workable strategies to mitigate risks, resolve challenges and achieve your organization's goals.



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**Address: 5th Floor, The Promenade,  
General Mathenge Drive, Westlands**

**Website: [www.asiri.co.ke](http://www.asiri.co.ke)**

**Email: [info@asiri.co.ke](mailto:info@asiri.co.ke)**