



Finance Bill, 2024

Digital Marketplace:

Ong'anya Ombo Advocates LLP's Recommendations for Fiscal Year 2024/2025 Budget Considered

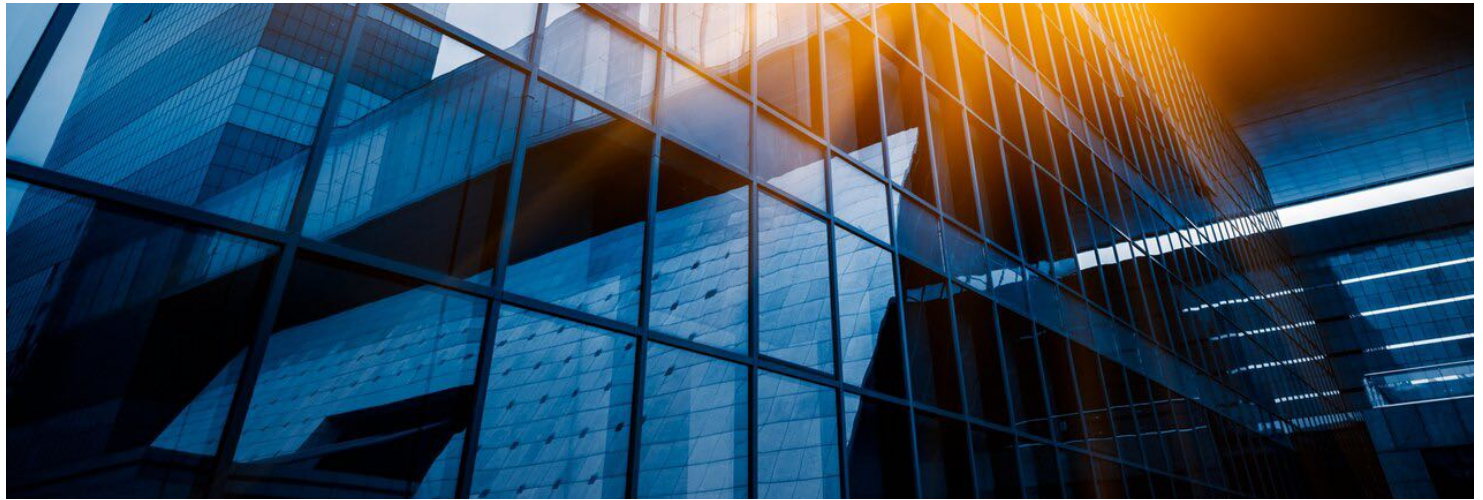


On November 10, 2024, Ong'anya Ombo Advocates LLP shared its recommendations concerning the Fiscal Budget for the Financial Year 2024/2025 to the Ministry of National Treasury & Economic Planning. On March 08, 2024, the Budget Team for the Ministry of National Treasury & Economic Planning invited us to make oral submissions and make clarifications on March 14, 2024, whereby one of our recommendations focused on matters Digital Marketplace, and Payment Service Providers (PSPs).

Our recommendations followed by oral submissions on tax concerning the digital market space has been considered by the National Treasury and Economic Planning's Budget Team. Our proposal was focused on expanding the tax base within the digital marketplace as one of the key areas that the government can tap in while also offering a different tax classification for digital marketplace that are not sellers or owners of the products being promoted on the marketplace for sale.

Our major proposal was that digital marketplace that only offer their digital marketplace for sellers and buyers to use have to be subjected to Income Tax only on the commission and not Value Added Tax (VAT) on the commission, and introduce payment service providers (PSP) to take the responsibility of remitting the tax to Kenya Revenue Authority (KRA).





Our Recommendations have influenced the following:

Our Proposal

3. ... it addresses the difference between an Active Digital Marketplace (ADM) and Passive Digital Marketplace (PDM).
...

7. In light of the above, the proposed amendments do not cover PDM, particularly as described herein in the paragraph above, but those falling under ADM. ADMs that ought to be considered for this proposed amendment are those that do not own the products on the platform, have disclosed the vendors, and offer other extra services such as last mile services, after sale services, warehousing on behalf of vendors, customer service on behalf vendors, product verification, among others.
...

15. In light of the above, the Commissioner, in waiving taxes applicable to the digital service commissions earned, but not to the extent of excluding Corporate Tax when declaring profits and losses or when transacting on different levels that require payment of a certain tax or applying withholding tax (WHT)...

Proposed Changes in the Finance Bill, 2024

Subheading of the Income Tax to be affected if Finance Bill, 2024, is assented to law is: **Income from management or professional fees, royalties, interest and rents**

s 7 of the Finance Bill, 2024:

Section 10 of the Income Tax is amended by inserting the following new subsections immediately after subsection (3)-

(4) Where a resident or non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetisation, goods, property or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya.

(5) In this section, “platform” means a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer.

Our Proposal

Proposed Changes in the Finance Bill, 2024

c) A resident Digital Marketplace Provider described in Regulation of 6A (a) shall whereby it works with an independent supplier to collect payment for sales made by the vendors, such a payment [service provider] shall be responsible to effect reverse charge on applicable tax per the Income Tax Act and Value Added Tax Act.

Subheading of the Income Tax to be affected if Finance Bill, 2024, is assented to law is: Deduction of Tax from Certain Income

s 20 of the Finance Bill, 2024:

Section 35 of the Income Tax Act is amended-

1. in subsection (1), by adding the following new paragraphs immediately after paragraph (q)-

(r)

(s) making or facilitating payment on a digital marketplace;

2. in subsection (3), by adding the following new paragraphs immediately after paragraph (l)-

(m)

(n) making or facilitating payment on a digital marketplace;

Tax Percentage: this was one of our clarification points during the meeting with the Budget Team on March 14, 2024, during our oral submissions.

Subheading of the Income Tax to be affected if Finance Bill, 2024, is assented to law is: Third Schedule, Head B – Rates of Tax

We proposed that five per cent (5%) was a decent rate on the direct income as a commission made by a digital marketplace.

s 25 (b) (iii) (F) of the Finance Bill, 2024:

(F) by adding the following new subparagraphs immediately after subparagraphs (m)-

(n)

(o) in respect of income deemed to have accrued in or been derived from a digital marketplace, five per cent.

Our clearer explanation on how digital marketplace work and providing various distinction concerning Active Digital Marketplace (ADM) and Passive Digital Marketplace (PDM) may have informed the Budget Team of the need to relook or even replace Digital Service Tax.

Intended repealing of Digital Service Tax and replacing it with Significant Economic Presence Tax



The Team



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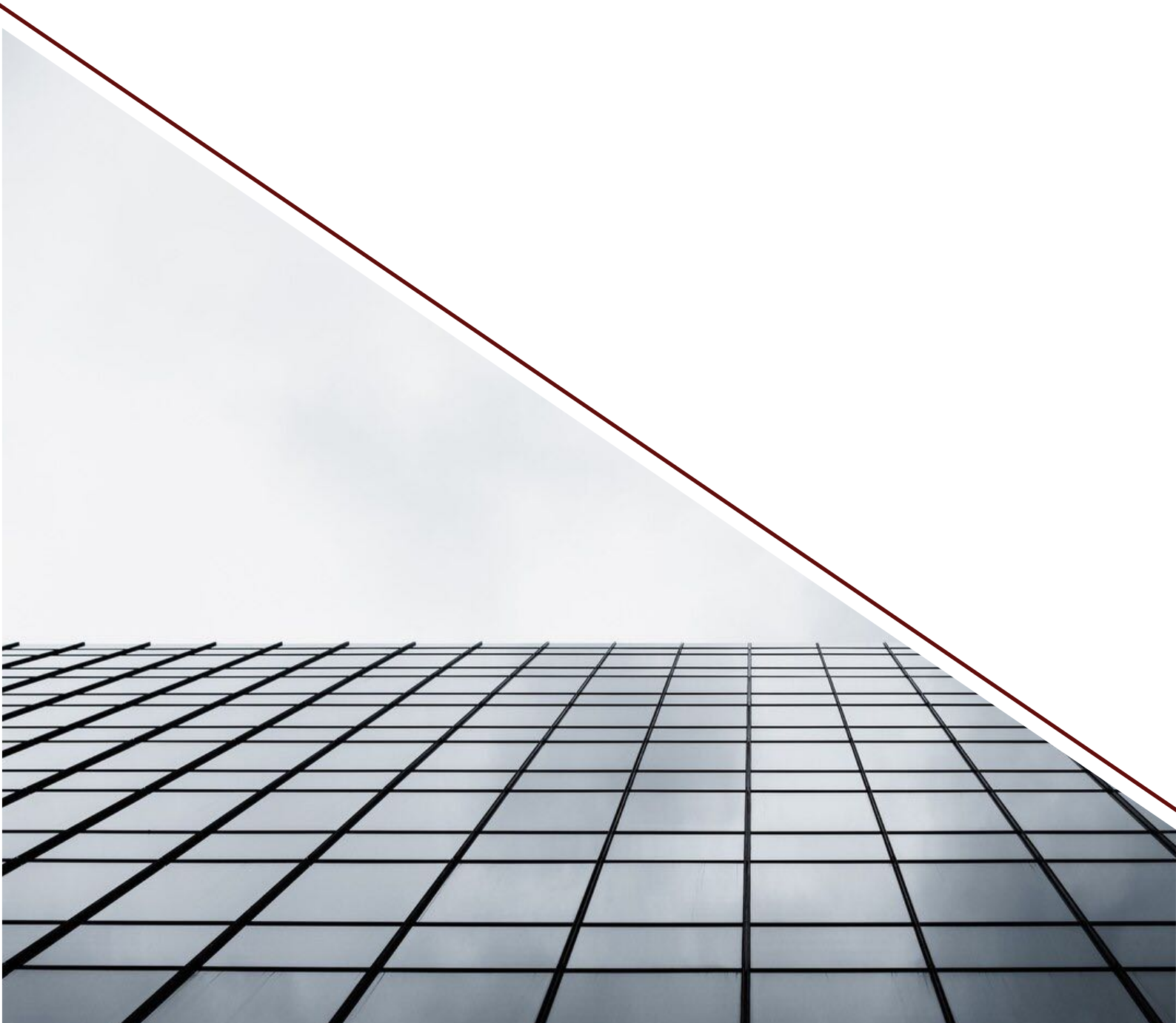


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