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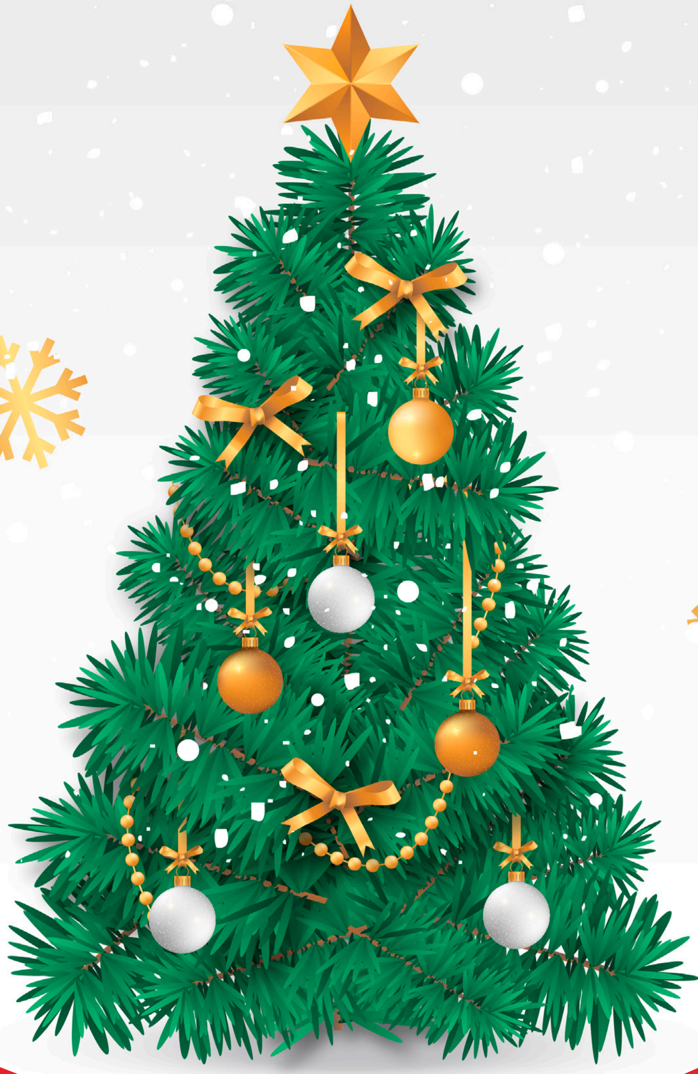

MONTHLY

Newsletter

ISSUE 03
DECEMBER 2024

MWEBESA LAW

Editor's Note
December Edition

As we bring 2024 to a close, it is truly remarkable to reflect on a year of growth and transformation for both our Firm and the nation. October 2024 marked a milestone for us with the launch of our inaugural newsletter, initiating an interactive dialogue that has grown stronger with each edition. This third issue is particularly special, as it represents not just a continuation of that journey but a celebration of the collaborative spirit we share with you, our valued readers.

We are deeply grateful for the feedback, insights, and topic recommendations you have provided, your input has been invaluable in shaping this publication into a resource that resonates with your interests & needs. In this edition, we spotlight key legal developments from 2024, such as the protection of personal data and the practicalities of digital taxation, ensuring these insights remain both relevant and actionable for you.

This year has also been one of exceptional growth for our firm. We proudly welcomed a new Partner from a distinguished law firm, expanded our footprint with the opening of a new branch in Zanzibar, enhanced our resources, & most importantly, deepened our relationships with our esteemed clients. Your continued trust & support have been integral to our success, & we are excited to achieve even greater milestones together in the coming year.

Tanzania, too, has embraced significant legal & economic advancements in 2024. The launch of the **Personal Data Protection Commission (PDPC)**, the **Presidential Commission for Tax Reforms**, the **Fintech Regulatory Sandbox** by the Bank of Tanzania, & the introduction of the **Digital Service** Tax are just a few examples of the bold steps taken to align with the realities of a rapidly evolving global landscape.

Looking ahead, we are optimistic about 2025, even as it brings the dynamics of an election year. History assures us of Tanzania's peaceful transitions, and we anticipate vibrant economic activity in the year to come.

As the festive season approaches, we take this moment to extend our heartfelt gratitude to you, our clients, partners, & stakeholders for your unwavering trust and collaboration throughout the year. Your support inspires us to innovate, excel, and deliver the best.

We look forward to walking into 2025 with you, confident that it will be a year of new opportunities and shared success. Until then, we wish you and your loved ones a joyful holiday season and a prosperous New Year.

Warm regards,

Managing Partner
Crispin B. Mwebesa

SAFEGUARDING PRIVACY:
MASTERING DATA PROTECTION COMPLIANCE IN 2025

"In the digital age, privacy is not a privilege; it's a right that must be fiercely protected."

April 2024 marked a significant milestone for Tanzania with the launch of the **Personal Data Protection Commission (PDPC)** under the **Personal Data Protection Act, 2022.** During the inauguration, the President issued a clear directive; that by **31st December 2024**, all public and private institutions that process or control personal data must be registered with the Commission. This directive signifies the government's commitment to safeguarding personal data in an era where data breaches and misuse are growing global concerns.

UNDERSTANDING PERSONAL DATA AND ITS GOVERNANCE

If you have observed recent trends, there has been a surge in discussions surrounding personal data. This heightened attention stems from the rapid evolution of the digital landscape, where system automation, AI integration, & the borderless nature of the FinTech space have elevated data to an invaluable commodity. Today, data is often likened to a mine; a resource as rich and essential as precious minerals. Many e-businesses thrive on the collection, analysis, and sale of data, underscoring its critical role in driving economies and shaping industries.

So, what is data? The General Data Protection Regulation (GDPR), formulated by the European Union, which has also served as a key inspiration for Tanzania's legal framework on data protection defines "personal data" as any information relating to an identified or identifiable natural person (data subject). A person can be identified directly or indirectly through various identifiers, such as a name, identification number, location data, online identifiers, or characteristics specific to their physical, physiological, genetic, mental, economic, cultural, or social identity.

For example, an online retailer collecting information such as your name, email address, phone number, home address, purchase history, & IP address is handling personal data under the GDPR. While identifiers like your name and home address directly identify you, others, such as your email, phone number, or IP address, indirectly link you to your identity. Additionally, your purchase history and browsing patterns further contribute to your profile, making you identifiable even without direct identifiers. Therefore, if such data is misused, it could cause serious harm to individuals, highlighting the necessity for businesses to handle it responsibly and comply with regulations.

In Tanzania, personal data is regulated by three key regulations. The Personal Data Protection Act 2022 which serves as the primary framework, outlining the rights of individuals & the obligations of organizations to safeguard personal data; The Personal Data Protection (Personal Data Collection and Processing) Regulations 2023 providing a detailed guidelines on obtaining consent, data storage, & security measures, as well as managing cross-border data transfers; & The Personal Data Protection (Complaints Settlement Procedures) Regulations 2023 which outline the process for addressing complaints related to data breaches or violations, ensuring a clear path for individuals to seek redress. Together, these regulations aim to protect individuals' privacy and promote responsible data handling practices in Tanzania.

THE RISKS AND CONSEQUENCES OF POOR DATA PROTECTION

Institutions failing to protect personal data face significant consequences. These risks are not only financial but also reputational and operational:

1. **Reputational Damage:** Customers and partners lose trust in organizations that fail to safeguard their data, leading to reduced engagement and potential business losses.
2. **Identity Theft:** A data breach can expose individuals to identity theft, where personal details are misused for fraudulent purposes, such as unauthorized financial transactions.
3. **Financial Loss:** Institutions may face lawsuits, fines, or penalties for failing to comply with regulations. The costs of resolving breaches, including compensation to victims, can be staggering. A stark example occurred in 2018 when British Airways suffered a data breach that exposed the personal details of 420,000 individuals such as usernames, passwords, credit card details, and essential flight-related data. The Information Commissioner's Office imposed a £20 million fine on BA, deeming their failure to protect customer data "unacceptable."
4. **Regulatory Non-Compliance:** Organizations may incur fines, sanctions, or legal action for failing to adhere to the Personal Data Protection Act. The Act imposes fines ranging from 100,000 to 20,000,000, & officials may face imprisonment for up to 10 years.
5. **Operational Disruption:** Breaches can lead to downtime, loss of critical data, or unauthorized access to sensitive systems. A prime example is ransomware attacks where a malware is designed to deny a user or organization from accessing their files in exchange for a ransom for the decryption key. This not only halts normal operations but also leads to significant operational disruptions since employees are locked out of essential systems.

Data breaches can cause harm not just to institutions but to individuals whose data is compromised. Common consequences include:

1. **Financial Harm:** Victims may suffer unauthorized withdrawals or fraudulent charges.
2. **Discrimination:** Breaches involving sensitive data, such as health conditions or ethnicity, could lead to unfair treatment.
3. **Loss of Autonomy:** Individuals lose control over their personal information, which could be misused without their consent.
4. **Psychological Harm:** Victims may experience anxiety or distress from being targeted by cybercriminals.

THE ROLE OF INSTITUTIONS IN SAFEGUARDING DATA

The Act has introduced three key roles in data protection:

1. **Data Controller:** An individual, organization, or public body that determines the purpose & methods for processing personal data.without their consent.
2. **Data Processor:** An entity that processes personal data on behalf of the controller under its instructions.
3. **Data Protection Officer (DPO):** An individual appointed by the data controller or data processor charged with ensuring compliance with the obligations provided for in the Act. The first step in being compliant & safeguarding data is registration of an institution as either a Data Controller or Processor. Furthermore, an institution must appoint a DPO whose primary role is to ensure that the control measures are in place to processed personal data collected or processed.

Additionally, data controllers and processors must adhere to the following principles to ensure proper handling of personal data:

1. **Lawfulness, Fairness, and Transparency:** Collect data lawfully, with clear consent from the data subject.
2. **Purpose Limitation:** Use data only for the purpose for which it was collected.
3. **Data Minimization:** Collect only the data necessary for the intended purpose. For instance, a hospital may need a patient's medical history but not their criminal record.

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4. **Data Accuracy:** Maintain accurate records. Data subjects have the right to verify and correct inaccuracies.
5. **Data Security:** Ensure data is securely stored and handled confidentially, embrace encryption of data.
6. **Storage Limitation:** Retain data only for a specified period, after which it should be securely destroyed.
7. **Accountability:** The DPO is responsible for ensuring compliance with these principles.

PRACTICAL STEPS FOR SAFEGUARDING DATA

Organizations can strengthen their data protection measures by adopting the following practices:

1. **Limit Internal Access:** Restrict data access to authorized personnel only, and always ensure that user access permissions are promptly revoked when an employee leaves the organization. Since many cyberattacks are carried out by insiders, safeguarding access is critical to protecting sensitive information from potential misuse.
2. **Maintain Access Logs:** Keep detailed records of who accesses data to ensure traceability and transparency.
3. **Staff Training:** Educate employees on data protection best practices, including how to recognize phishing and other cyber threats. (**MWEBESA LAW** offers tailored training to help your organization stay secure.)
4. **Implement Data Protection Policies:** Create and enforce robust policies to govern data handling.
5. **Centralize Data Storage:** Consolidate data into secure systems to reduce the risk of unauthorized access.
6. **Avoid Unnecessary Retention:** Dispose of data that is no longer needed to minimize exposure to breaches. Cyberattacks are prone to organizations storing a lot of data.
7. **Embrace Encryption:** Protect data during transfers using strong encryption protocols.
8. **Update Systems Regularly:** Install updates and patches promptly to address security vulnerabilities.
9. **Conduct Regular Audits:** Assess your systems periodically to identify and resolve weaknesses.
10. **Privacy by design:** Embedding data privacy measures proactively throughout entire lifecycle of a product, system or service.

CONCLUSION

Institutions are urged to align with these regulations by the December 2024 deadline, not only to ensure compliance but to uphold the trust and privacy of those they serve. Businesses that are not yet registered with the Personal Data Protection Commission (PDPC) may face challenges in renewing their licenses come 2025.

Let this festive season be a reminder to strengthen your data security measures for a successful and smooth year ahead. Wishing you a Merry Christmas and a prosperous New Year filled with growth and security! Contact us today to ensure your business is ready for a secure, compliant and successful year ahead.

NAVIGATING DIGITAL ECONOMY TAXATION IN TANZANIA:

CHALLENGES AND OPPORTUNITIES.

The digital revolution is not just changing how we do business, it's redefining the very fabric of our economy. The digital economy, encompassing all economic activity enhanced by digital technologies, infrastructure, & data, has emerged as a powerful force reshaping global markets. Innovations like the Internet of Things (IoT), artificial intelligence (AI), blockchain, & virtual reality are driving this transformation, with countries across Africa, including Tanzania, Kenya, and Nigeria, leading efforts to harness its potential.

Recognizing the rapid growth of digital services, Tanzania introduced a Digital Tax framework through the Finance Act, 2022, amending the Income Tax Act and Value Added Tax Act. These amendments marked a pivotal step in broadening the tax base to include transactions conducted on digital platforms, reflecting the nation's commitment to optimizing revenue from its expanding digital economy and fostering technological innovation. However, navigating this framework requires more than compliance; it demands strategic foresight, adaptability, and a keen understanding of the laws that now govern this exciting frontier.

This article unpacks the emergence & implementation of Tanzania's Digital Service Tax (DST), placing it within the broader context of global digital taxation practices. It examines the framework introduced through amendments to the Income Tax Act and VAT Act, highlights challenges such as jurisdictional inconsistencies and enforcement issues. Finally, it offers practical solutions for businesses to navigate compliance while contributing to the nation's digital economy transformation.

BIRD'S EYE VIEW OF DIGITAL TAX ACROSS JURISDICTIONS

Digital taxation strategies differ across jurisdictions, with each country tailoring its approach to effectively capture revenue from the growing digital economy.

In Kenya, the Significant Economic Presence (SEP) tax has replaced the earlier 1.5% Digital Service Tax (DST). This tax applies to income earned by non-resident entities conducting business through digital marketplaces in Kenya. Under this framework, SEP is taxed at 30% of a deemed taxable profit, calculated as 10% of the entity's turnover, ensuring that non-resident digital service providers contribute equitably to the local tax base. India's Equalization Levy, initially targeting digital advertising at 6%, was expanded in 2020 to include a 2% tax on e-commerce transactions involving Indian users, focusing on non-resident tech giants. In Europe, the EU proposed a 3% Digital Services Tax for large digital businesses, with countries like France already implementing it to tax revenues from digital advertising, data sales, and intermediation services. These models highlight diverse approaches, from revenue-focused levies to broader transaction-based frameworks, offering valuable insights for Tanzania to refine its Digital Service Tax framework and address cross-border complexities.

DIGITAL TAX FRAMEWORK IN TANZANIA

Through the Finance Act, 2022, Tanzania significantly expanded its taxation framework to include activities within the digital marketplace. The definition of "business" now explicitly incorporates digital transactions recognizing them as electronic services under Section 51 of the VAT Act. These services, broadly defined, encompass website hosting, remote maintenance, software & updates, digital content, access to databases, music, films, games, online broadcasts, and more.

The current legal framework subjects such electronic services to both Income tax and VAT, specifically through the Digital Service Tax (DST) and withholding tax, alongside the standard VAT rate of 18%.

A. **Digital Service Tax (DST):** Imposed at a rate of 2% on the gross revenue generated by non-resident suppliers of electronic services provided to Tanzanian consumers. This ensures that income earned within Tanzania by foreign entities is subject to taxation.

B. **Withholding Tax:** A 3% withholding tax applies to owners of digital platforms facilitating electronic services when making payments to resident suppliers.

These measures reflect a structured approach to digital taxation, ensuring Tanzania captures revenue from its growing digital economy while establishing a clear tax regime for both resident and non-resident entities involved in digital transactions. To ensure compliance with the payment of these taxes, non-resident entities are required to register with the Tanzania Revenue Authority (TRA).

WHAT COULD BE THE CHALLENGE?

The implementation of the Digital Service Tax (DST) in Tanzania presents several challenges, both practical & structural, particularly as the country seeks to align its taxation framework with the demands of the digital economy. These challenges extend to areas like Zanzibar, where specific mechanisms for digital taxation are absent, creating complexities for entities operating across both jurisdictions.

One significant issue lies in identifying and enforcing taxation on non-resident digital service providers. For instance, a global streaming service operating in Tanzania without a physical presence may not readily register for DST, complicating the Tanzania Revenue Authority's (TRA) efforts to ensure compliance. This gap can lead to revenue leakage, especially when service providers do not perceive a direct obligation to comply.

Additionally, the risk of double taxation looms large, given that many East African countries, including Tanzania, are bound by bilateral & multilateral agreements that were designed before the rise of the digital economy. These agreements do not account for digital services, leaving companies vulnerable to taxation in multiple jurisdictions. For example, a Kenyan tech firm providing e-learning platforms in Tanzania might face DST in Tanzania while also being taxed under Kenya's local laws, increasing its operational costs.

The differing VAT structures between Mainland Tanzania and Zanzibar further complicate matters. While digital service providers may comply with DST & VAT on the Mainland, the lack of a specific registration mechanism for digital economy taxation in Zanzibar creates a fragmented framework. An e-commerce business aiming to expand across both territories may find it challenging to navigate these inconsistencies, resulting in increased administrative burdens.

On the consumer side, the DST could lead to higher costs as digital service providers may pass the tax burden onto end-users. For example, a local entrepreneur subscribing to cloud-based tools might see subscription fees rise due to the added DST costs, potentially limiting access to essential digital services.

Moreover, enforcing compliance requires robust digital infrastructure, which remains underdeveloped in some areas. Monitoring cross-border transactions & ensuring that all relevant providers are taxed demands advanced systems and expertise. Without these, it becomes difficult to capture the full scope of taxable revenue, especially in cases where transactions are bundled or obscured through international operations.

The lack of clear exemptions for double taxation, combined with inconsistencies across jurisdictions and limited technological capacity, poses significant challenges. As Tanzania moves forward, addressing these issues will require harmonizing tax frameworks across Mainland and Zanzibar, updating bilateral agreements to account for digital services, & investing in infrastructure to support enforcement. Only then can Tanzania effectively balance its digital economy's growth with equitable and efficient taxation.

POSSIBLE SOLUTIONS

A. **Understanding Jurisdictional Tax Obligations**

Businesses must familiarize themselves with the distinctions in tax frameworks between Mainland Tanzania and Zanzibar.

NAVIGATING DIGITAL ECONOMY TAXATION IN TANZANIA:

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A. For example, companies planning to operate across both regions should account for Zanzibar's lack of specific digital taxation mechanisms. Engaging with tax professionals or legal experts to map out these differences can help avoid inadvertent non-compliance.

B. **Leverage Bilateral and Multilateral Agreements**

Although many existing agreements do not directly address digital taxation, businesses can still utilize provisions within these treaties to avoid or minimize double taxation. For instance, a Kenyan company operating in Tanzania could explore relief options under the East African Community Tax Treaty where applicable. Businesses should seek legal advice to determine eligibility and processes for claiming such benefits.

C. **Invest in Technology for Enhanced Data Management**

Businesses can adopt advanced software to monitor revenue streams and automatically allocate tax obligations based on jurisdiction. For example, an international streaming service operating in Tanzania can use geolocation tools to identify Tanzanian users, ensuring DST is accurately calculated and remitted.

D. **Advocate for Regulatory Clarifications**

Companies can engage with industry groups or trade associations to collectively advocate for clearer regulations or harmonized tax frameworks. This approach can help address inconsistencies, such as those between Mainland Tanzania and Zanzibar, and improve the overall ease of doing business.

CONCLUSION AND RECOMMENDATIONS.

As Tanzania continues to embrace the digital economy, the Digital Service Tax (DST) represents a significant step toward aligning the nation's taxation framework with the realities of a rapidly evolving digital landscape. For businesses, this era demands more than just compliance; it calls for innovation, strategic planning, and a commitment to responsible data management & fair taxation practices. By understanding the intricacies of the law & adopting proactive measures, businesses can not only thrive in this dynamic environment but also contribute to Tanzania's economic transformation.

As we approach the end of the year, may the festive season bring joy, reflection, and renewed opportunities for growth.

From all of us, we wish you a **Merry Christmas** and a prosperous **New Year** filled with success, innovation, and progress.

This analysis is for informational purposes and should not be considered legal advice. For specific legal concerns, please consult with a qualified professional.

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MERRY Christmas
& HAPPY NEW YEAR

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