



Tax Caution - Minimum Tax

1. What is Minimum Tax?

This is a base income tax payable by the 20th day of the 4th, 6th, 9th and 12th month of a financial year of every person (individual, company, partnership, limited partnership, association of persons or a trust) equivalent to 1% of the gross turnover of that person in the year of income where the Installment Tax is lower than the Minimum Tax. This was after the amendment of the Finance Act, 2020 that introduced Minimum Tax by inserting Section 12D to the Income Tax Act (CAP 470).

2. Who is eligible for paying Minimum Tax?

All Persons i.e. individual, company, partnership, limited partnership, association of persons or a trust whose estimated Installment Tax liability is lower than 1% of their gross turnover are required to pay Minimum Tax. This includes individuals whose annual tax liability derived from income other than employment income, is lower than Ksh. 40,000.

3. What is the justification of introducing Minimum Tax?

Minimum Tax was introduced to ensure that every person makes a fair and just contribution towards the provision of the government services regardless of the person's profit position.

4. What is the effective date of Minimum Tax?

The effective date of Minimum Tax is 1st January, 2021. Where a taxpayer has an accounting period ending on a date other than 31st December, Minimum Tax will apply to the first Installment that falls due after 1st January 2021.

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5. Who is excluded from paying Minimum Tax?

The following persons and/or income derived by persons are not subject to Minimum Tax:

- Income that is exempt under the Income Tax Act
- Employment income
- Income subject to Residential Rental Income Tax
- Income that is subject to Turnover Tax
- Income subject to Capital Gains Tax
- Income of Extractive Sector
- A person engaged in business whose retail price is controlled by Government
- A person is engaged in insurance business
- Income that is subject to Withholding Tax, including Digital Service Tax provided that at the end of the accounting period, the tax payable on taxable income exceeds Minimum Tax payable.

6. What is the transition provision for persons whose accounting period ends on a date other than 31st December?

Where a taxpayer has an accounting period ending on a date other than 31st December, Minimum Tax shall become due and payable on the date when the first Installment is due after 1st January 2021.

7. How is Minimum Tax computed?

Minimum Tax shall be computed at 1% of gross turnover as provided under Section 34 and the Third Schedule of the Income Tax Act (CAP 470). Where 'Gross turnover' means gross receipts, gross earnings, revenue, takings, yield, proceeds, sales or other income chargeable to tax under section 3(2) excluding a person's income which is chargeable to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules and exempt income under any provision of the Income Tax Act, Cap 470

8. When is the Minimum Tax payable?

Minimum Tax shall be paid in Installments which shall be due on the 20th day of the 4th, 6th, 9th and 12th month of the accounting period at a rate of 1% of the turnover as provided in the table below.

Payment	Applicable Turnover	Date Payable
1 st Payment	1 st , 2 nd & 3 rd months	By 20 th of the 4 th month
2 nd Payment	4 th & 5 th months	By 20 th of the 6 th month
3 rd Payment	6 th , 7 th & 8 th months	By 20 th of the 9 th month
4 th Payment	9 th , 10 th & 11 th months	By 20 th of the 12 th month
Balance of Tax	12 th month	By last day of the 4 th month after the accounting period

Provided where more than two-thirds of a person's income is derived from agricultural, pastoral or horticultural activities, Minimum Tax shall be computed and remitted as follows:

Payment	Applicable Turnover	Date Payable
1 st Payment	1 st to 8 th months	By 20 th of the 9 th month
2 nd Payment	9 th , 10 th & 11 th months	By 20 th of the 12 th month
Balance of Tax	12 th month	By last day of the 4 th month after the accounting period

9. What is a person supposed to do where Minimum Tax is higher in one quarter and lower in the other compared with Installment Tax?

A person is supposed to pay the higher of tax liability arising from Minimum Tax or Installment Tax at the end of every Quarter. In the event that on filing the returns at the end of the financial year the tax liability is higher than the Installment Tax and/or Minimum Tax paid during the year, the balance of tax is payable by the last day of the 4th month after the year end.

10. Can the Minimum Tax be offset against tax liability at the end of the financial year?

Minimum Tax can be used to offset against the tax liability of a person at the end of the year. A person who upon preparation of accounts for the accounting period, establishes that:

- The Minimum Tax and/or Installment Tax paid is higher than the Minimum Tax payable, the excess shall be considered as a tax credit to be carried forward or set off against the final tax liability.
- Tax payable from taxable income is greater than the Installment and/or Minimum Tax paid, the balance outstanding shall be paid as balance of tax on or before the last day of the 4th month following the end of the accounting period.

11. Can a person claim extra tax in the event that Minimum Tax paid is more than the final tax?

A person who upon preparation of accounts for the accounting period, establishes that the tax liability is less than the Minimum Tax, the Minimum Tax will be the final tax hence shall not be eligible for refund of the excess Tax.

12. Can a person claim Minimum Tax paid in the event that a person incurs losses?

A person who upon preparation of accounts for the accounting period, establishes that the person is in a loss position, Minimum Tax paid shall be final hence shall not be eligible for refund of the excess Tax.

13. Are persons exempt from paying Installment Tax eligible for paying Minimum Tax?

Minimum Tax is applicable to individuals exempt from Installment Taxes under section 12(5): An individual who is not required to pay Installment Tax under section 12(5) of the Income Tax Act shall be required to pay Minimum Tax.

14. Are persons eligible for paying Minimum Tax supposed to file monthly returns?

Any person whose income is not exempt from Minimum Tax shall be required to declare turnover for each period in iTax module by 20th of the month succeeding the period.

15. Are persons who have paid Minimum Tax required to file Income Tax returns at the end of the financial year?

A person who has paid taxes for the year of income through Minimum Tax shall be required to file income tax returns under section 52B of the Act.

16. Are persons who have paid Minimum Tax and yet at the end of the financial year turns out that they have incurred losses allowed to carry forward the losses?

Where a person is liable to pay Minimum Tax and at a loss position, the loss shall be carried forward, subject to limitations under the Income Tax Act.

17. Is the Installment Tax still applicable and payable?

Yes, where the Installment Tax payable by a person in any quarter is higher the Minimum Tax then the person shall pay the Installment Tax and vice versa.

For clarity on this publication contact:

James Ndambiri

Managing Partner & Principal Consultant
ceondambiri@mncconsulting.co.ke

Everlyn Ninga

Partner & Principal Consultant
eve@mncconsulting.co.ke

Walter Gicheru

Tax Associate & Consultant
advisory@mncconsulting.co.ke

Head Office - Nairobi;
Blessed House, 3rd Floor, Suite 66
Thika Road, Opp. Garden City Mall
Call: +254 720 502 505
Email: advisory@mncconsulting.co.ke
Website: www.mncconsulting.co.ke

Mt. Kenya Region Offices - Embu Office;
Pearl Centre, Opp. Kenyatta University
3rd floor, Suite C3
Call: +254 780 306 560
Email: advisory@mncconsulting.co.ke
Website: www.mncconsulting.co.ke