

TAX ALERT

SUSPENSION OF MINIMUM TAX

The Finance Act, 2020 introduced Minimum Tax at the rate of 1% of Gross Turnover. Effectively, the tax is to apply as an alternative to installment taxes for companies with losses or very low profits.

Section 12D of the Income Tax Act and the Commissioner's Guidelines on Minimum Tax (revised in March 2021) outlined on how the tax is to be applied. It is imposed on **only where the value of instalment tax is lower than the Minimum Tax applicable.**

The following incomes are exempted from the application of minimum tax:

- Income tax exempt persons
- Employment income
- Residential rental income
- Persons taxed under the Turnover Tax Regime
- Capital Gains
- Extractive Industries taxed under the Ninth Schedule to the ITA
- Insurance companies
- Businesses whose retail price is controlled by the Government such as petroleum companies
- 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.

The Minimum Tax Guidelines payment deadlines are to be as indicated 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 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 the last day of the 4 th month after the accounting period

Table 1: Minimum Tax Computation Basis

The first minimum tax payment would have been due on 20th April 2021 for December year-ends.

Two petitions have been filed by the business community challenging the Minimum Tax law mainly on constitutional points that the law aims to charge tax on losses and not profits and would adversely affect business since the tax would have to be paid from capital, where no profits are realized.

KRA contested that the law was validly passed by Parliament and their work is to implement the same.

On 19th April 2021, the High Court of Kenya issued Conservatory Orders restricting the Kenya Revenue Authority (“KRA”) from enforcing Minimum Tax pending the hearing and determination of a case presented before it challenging the legality of the tax.

The same day, KRA issued a Press Statement indicating that they will not collect the tax until the matter, before the High Court, is heard and determined. Persons who had already paid the tax are to retain the said amounts in their iTax account ledgers as credits.

The Judge has given strict deadlines on the hearing and determination of the case and it is likely that the Judgement will be out within three months. In the event KRA succeeds, the taxes will become payable from the first installment.

We endeavor to update you, our Esteemed Client, on any further developments on Minimum Tax.

CONTACT US

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