

# Minimum Tax FAQs

## What is minimum tax?

This is tax payable by the 20<sup>th</sup> of each quarter of a financial year of a person (company or individual) equivalent to 1% of the gross turnover of that person in the year of income where the instalment tax is lower than the minimum tax.

## What is the rationale for charging minimum tax?

The introduction of minimum tax is aimed at levelling the operating playfield for business enterprises by ensuring that all persons contribute towards the government's efforts to mobilize resources for growth and development.

## When is minimum tax effective?

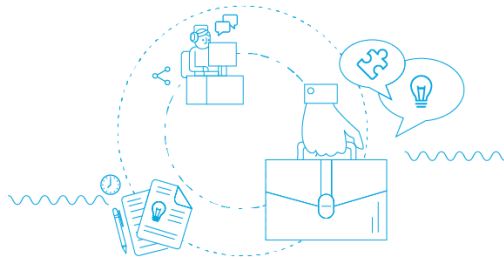
Minimum tax is effective from 1<sup>st</sup> January 2021.

Where a taxpayer has an accounting period ending on a date other than 31<sup>st</sup> December, minimum tax will apply to the first instalment that comes after 1<sup>st</sup> January 2021. This will commence with persons with the accounting period ending 28<sup>th</sup> February 2021 who will compare the gross turnover for the month of January 2021 against the 4<sup>th</sup> instalment tax for 2021 and pay the higher of the two.

## Who is liable to pay minimum tax?

Persons whose estimated instalment tax liability is lower than 1% of their gross turnover are required to pay minimum tax. This includes individuals whose annual tax liability (from income other than employment income) is lower than KShs. 40,000.

Persons include individual, company, partnership, limited partnership, association of persons or a trust.



## Are there any persons exempted from paying minimum tax?

The following persons are expressly exempted from paying minimum tax:

- i. Employment income;
- ii. Income subject to turnover tax;
- iii. Income subject to capital gains tax;
- iv. Income subject to withholding tax, including digital service tax, provided the tax payable at the end of the accounting period exceeds minimum tax payable;
- v. Persons subject to residential rental income tax;
- vi. Persons exempted from tax under the Income Tax Act;
- vii. Persons engaged in the insurance business;
- viii. Persons engaged in the extractive industry; and
- ix. Persons whose retail price is controlled by the Kenyan Government.

## Can minimum tax be used to offset tax liabilities of persons at the end of the financial year?

Absolutely! Minimum tax will be considered to be tax paid in advance and the credits can be used to offset the person's tax liability at the end of each financial year. If the final tax liability is greater than instalment and minimum tax paid, the balance of tax shall be due on or before the last day of the 4<sup>th</sup> month following the accounting period.

Where the sum of minimum tax and instalment tax paid is higher than the minimum tax payable, the excess shall be a tax credit carried forward or set off against the final tax liability.

If a person whose final tax liability is less than the minimum tax paid in the year, the excess tax paid shall not be refundable as minimum tax is the base tax payable.

## What happens if the minimum tax is higher in one quarter and lower in another quarter?

In that case, a person will be required to pay the higher of the minimum tax and installment every quarter. At the end of the financial year, the person will be required to pay higher of the tax liability calculated or the minimum tax computed at 1% of gross turnover for the year. Any amounts unpaid after crediting the instalments or minimum tax paid in the year will be payable as balance of tax.

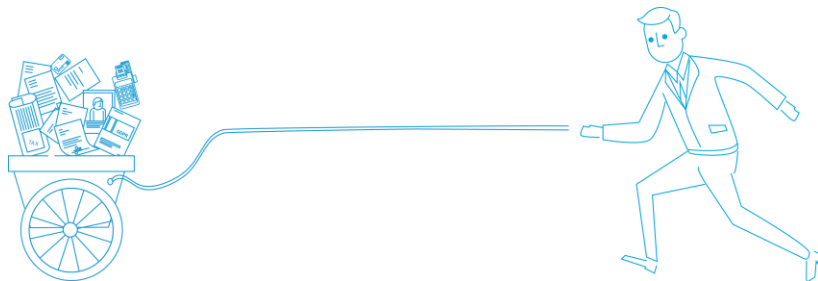
## What about agricultural persons?

Despite the requirement by persons to pay minimum tax by the 20th of every quarter under Section 12D (2) of the Income Tax Act, minimum tax for income derived by persons in the agricultural sector (includes pastoral and horticultural activities) will be payable on the 3<sup>rd</sup> and 4<sup>th</sup> quarter only, in line with their instalment tax due dates.

If the minimum tax is higher than the instalment tax, the minimum tax will be payable on the 3<sup>rd</sup> quarter and 4<sup>th</sup> quarter only.

## What about agricultural persons with other sources of income?

Any agricultural persons whose total income from agricultural activities constitutes 75% of their total income will pay minimum tax as agricultural persons.



## How will minimum tax be payable?

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

Based on the above, where a company has a financial yearend of October 2021, the minimum tax will be computed as follows:

Payment due date	Turnover months to consider
20 <sup>th</sup> February 2021	January 2021
20 <sup>th</sup> April 2021	February 2021 and March 2021
20 <sup>th</sup> July 2021	April 2021, May 2021 and June 2021
20 <sup>th</sup> October 2021	July 2021, August 2021 and September 2021
31 <sup>st</sup> October 2021	October 2021

As minimum tax is applicable from 1<sup>st</sup> January 2021, when considering the balance of tax, minimum tax will be computed at 1% on the gross turnover from January 2021 to October 2021 and this amount will be compared against the final tax liability computed.

For an agricultural person, minimum tax shall be payable as follows:

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

## How is gross turnover declared?

Gross turnover means gross receipts, gross earnings, revenue, takings, yield, proceeds, sales or other income chargeable to tax under Section 3(2) excluding employment income, residential rental income, turnover tax, capital gains tax, income from the extractive sector and any other exempt income under the Income Tax Act.

Gross turnover for each month shall need to be declared on the iTax module by 20<sup>th</sup> of the month succeeding the period. This is applicable for persons not exempt from paying minimum tax.

## What happens where a company is in losses?

Even if the company or person is in a loss position, minimum tax is still applicable. The loss shall be carried forward as provided under the Income Tax Act. The minimum tax paid shall be the final tax as it is the base tax payable.

## Where a company has income subjected to withholding tax, would minimum tax be payable in this scenario?

For example, where company A has income earned from consultancy fees as follows:

Details	Amount in KShs.
Annual Turnover	100,000,000
WHT – 5% deducted at source	5,000,000
Tax liability	3,000,000
Tax refund due	2,000,000
Instalment Tax	-
Minimum Tax	1,000,000

So in the above scenario, every quarter you need to assess WHT paid against Minimum Tax due and pay the higher of:

Period	Withholding Tax (estimated)	Minimum Tax (estimated)
1 <sup>st</sup> Instalment	1,250,000	250,000
2 <sup>nd</sup> Instalment	1,250,000	250,000
3 <sup>rd</sup> Instalment	1,250,000	250,000
4 <sup>th</sup> Instalment	1,250,000	250,000
<b>Total</b>	<b>5,000,000</b>	<b>1,000,000</b>

No tax payable every quarter since WHT paid is greater than minimum tax payable.

However, at the year end, the refund due of KShs 2M will be reduced by the minimum tax payable of KShs 1M so only excess credit of KShs 1M will be now due as a refund due under S47 of the Tax Procedures Act.



### Caveat

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