



AMBALE OGOT AND COMPANY

Certified Public Accountants

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MINIMUM TAX GUIDELINES BY AMBALE OGOT AND COMPANY - KENYA

1. Introduction

In Kenya, the Finance Act, 2020 introduced Minimum Tax by inserting Section 12D to the Income Tax Act (CAP 470). This tax shall be payable where the Instalment tax payable by the person under section 12 is lower than the Minimum Tax or where no instalment tax is payable.

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

2. Definition of Terms

For the purpose of Minimum Tax, the following terms defined below have the following meanings:

'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;

"Instalment Tax" is the tax imposed under section 12 of the Income Tax Act;

"Minimum Tax" is the tax imposed under section 12D of the Income Tax Act;

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

3. Effective date

The effective date for Minimum Tax is 1st January, 2021

4. Applicable rate of tax

The rate shall be 1% of gross turnover as provided under Section 34 and the Third Schedule to the Income Tax Act (CAP 470).

5. Exclusions from Minimum Tax

Minimum Tax shall not be applicable to: -

- a) Income that is exempt under the Income Tax Act (CAP 470)
- b) Employment income – Section 5
- c) Income subject to Residential Rental Income Tax – Section 6A
- d) Income that is subject to Turnover Tax – Section 12C
- e) Income that is subject to Capital Gains Tax – Eighth Schedule f) Income of Extractive Sector – Ninth Schedule
- g) A person engaged in business whose retail price is controlled by Government h) A person is engaged in insurance business



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6. Transition 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, the first Minimum Tax payment shall be due and payable on the date when the earliest instalment tax is due after 1st January 2021.
- For purposes of computing Minimum Tax, only the gross turnover realised on or after 1st January 2021 shall apply.

7. Payment of Minimum Tax

7.1 Minimum Tax shall be paid in instalments 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 that 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

7.2 Minimum Tax Payable

- Minimum Tax shall apply where it is higher than instalment tax due for the period.
- Minimum Tax payable shall be reduced by any Advance Tax, Withholding Tax or Digital Service Tax paid for the period.
- In the case of partnerships, the Minimum Tax payable shall be computed based on the partnership turnover but paid by the partners according to their profit sharing ratios.



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- 7.3 A person who upon preparation of final return and accounts for the accounting period, establishes that:
- the tax liability is less than the Minimum Tax, the Minimum Tax shall be the final tax.
 - they are in a loss position, Minimum Tax paid shall be final.
 - the tax payable from taxable income is greater than the sum of Instalment and 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.
 - the sum of the Minimum Tax and/or Instalment tax paid is higher than the tax payable (which shall not be less than Minimum Tax), the excess shall be considered overpaid tax and the provisions of section 47 of the Tax Procedures Act (TPA), 2015 shall apply.

7.4 A person whose tax payable from income earned is less than Minimum Tax, shall not be eligible for refund of the excess Tax.

7.5 At the end of each accounting period, a person shall be required to prepare accounts and submit a return.

8. Minimum Tax is applicable to individuals exempt from instalment taxes under section 12(5)

An individual who is not required to pay instalment tax under section 12(5) of the Income Tax Act shall be required to pay Minimum Tax.

9. Declaration of 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.

10. Filing of end of year income tax returns

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



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11. Application of losses

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

FEBRUARY 2021 – KENYA

AMBALE OGOT AND COMPANY, Certified Public Accountants (K)

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