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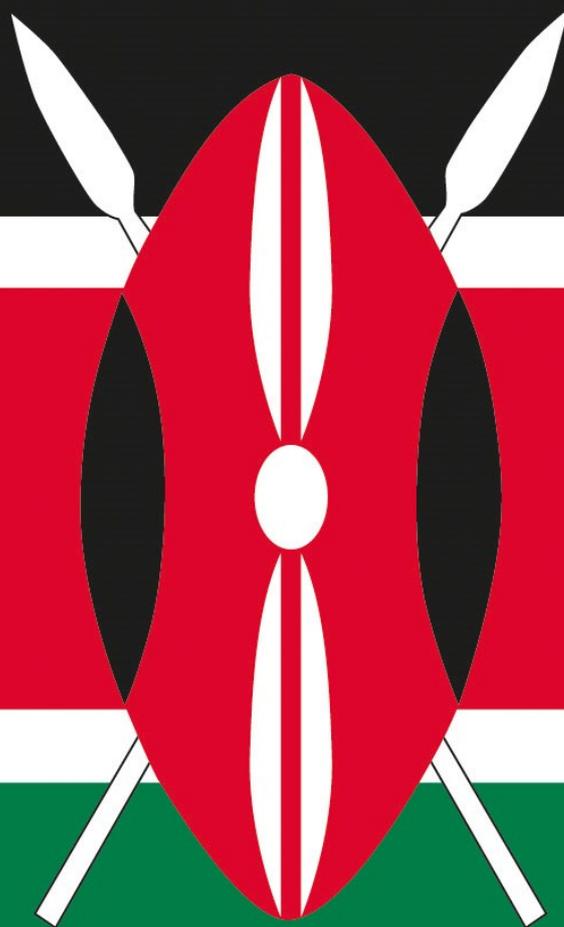
NEWSFLASH KENYA

MINIMUM TAX GUIDELINES

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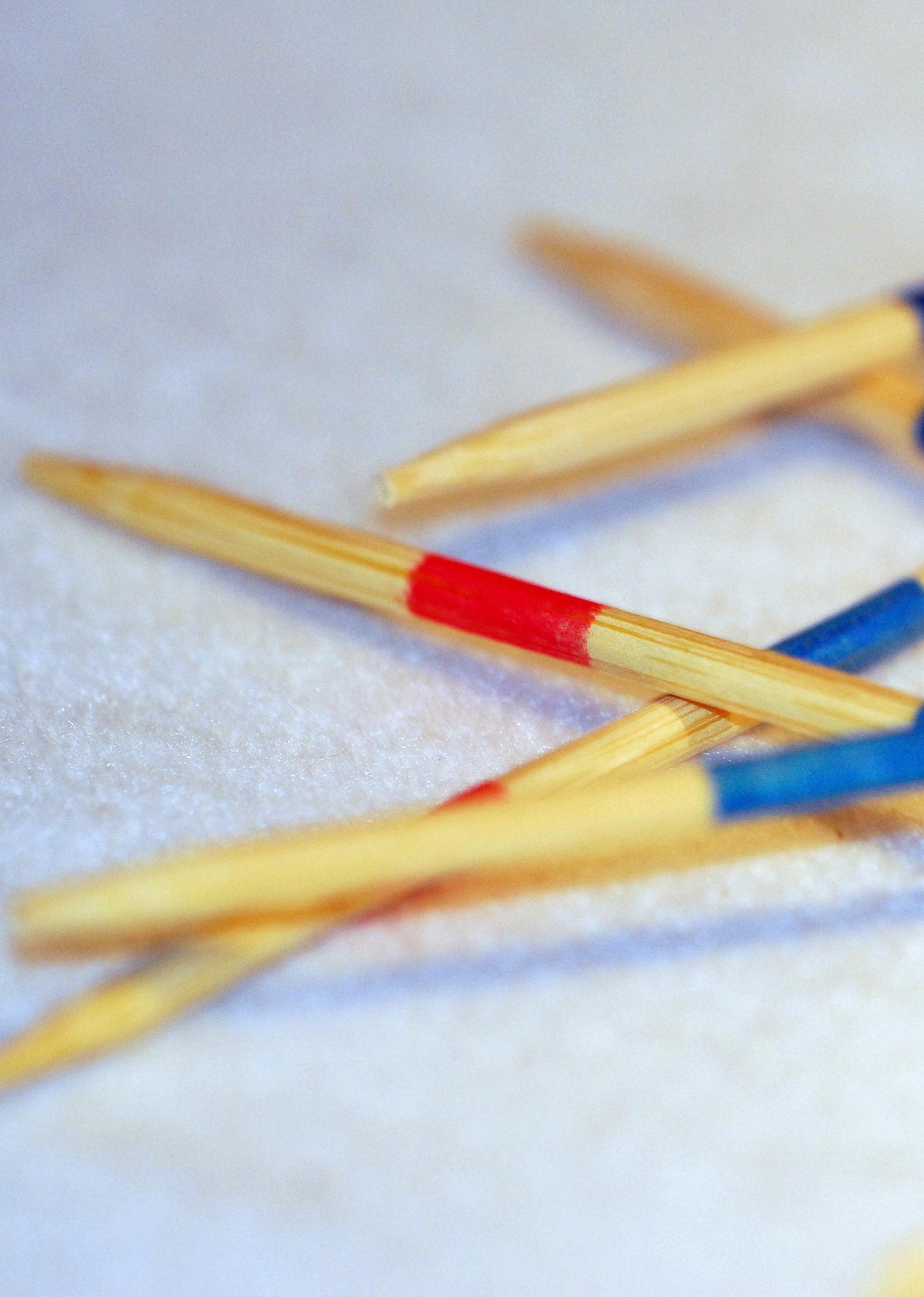
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→ Introduction

The Finance Act 2020 introduced Minimum Tax under Section 12D of the Income Tax Act (ITA) effective 1 January 2021. Following the introduction, the Commissioner has now issued

guidelines to assist taxpayers in implementation of the tax and to address ambiguities surrounding the tax.

→ Minimum Tax rate

Minimum Tax is a tax payable at the rate of 1 per cent of an entity's gross turnover. Minimum tax shall be payable by persons in instances where the

instalment tax payable by the person is lower than the Minimum Tax or where no instalment tax is payable.

→ Definition of gross turnover for applying Minimum Tax

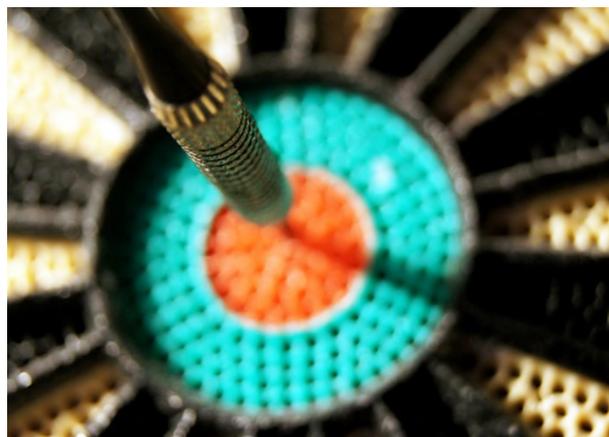
The ITA does not define gross turnover. However, the guidelines have now provided the definition of gross turnover to mean gross receipts, gross earnings, revenue, takings, yield, proceeds, sales or other income chargeable to tax under section

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.

→ Target for Minimum Tax

Minimum Tax will be applicable on individuals, companies, partnerships, limited partnerships, association of persons or a trust and individuals exempt from instalment tax under section 12(5) of the Income Tax Act. However, Minimum Tax will not be applicable to:

- Income that is exempt under the ITA
- Employment income - Section 5
- Income subject to Residential Rental Income Tax - Section 6A
- Income that is subject to Turnover Tax - Section 12C
- Income Subject to Capital Gains Tax - Eighth Schedule
- Income of Extractive Sector - 9th Schedule
- A person engaged in business whose retail price is controlled by Government
- A person 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.

→ Due dates for Minimum Tax

Minimum Tax shall be paid in instalments in four instalments as follows :

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

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

→ Carry forward of Minimum Tax overpayments

The guidelines provide that a person who upon preparation of accounts for the accounting period, establishes that:

- the sum of the Minimum tax and instalment 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 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 tax liability is less than the Minimum Tax, the Minimum tax will be the final tax.
- They are in a loss position, minimum tax paid shall be final.

This is a welcome move since it was not clear whether minimum tax could be offset against corporate tax liability. Additionally, taxpayers can carry forward losses as provided for by the ITA.

→ Refundability of Minimum Tax

Taxpayers with excess minimum tax in a financial year will not be eligible for a refund of the excess minimum Tax.

→ Increased cost of compliance

Taxpayers who qualify for minimum tax are now to declare their turnover for each period on iTax and to prepare accounts and submit a return at the end of each financial year as per section 52B of the ITA. However since minimum tax is based on gross turnover reported per tax quarter, it will be

important for taxpayers to maintain true and accurate up-to-date management reports. This may necessitate need for internal audits to ascertain the correctness of periodic interim reports. This may increase the compliance costs for taxpayers who will consider interim audits.

→ Conclusion

Minimum tax was designed to prevent taxpayers from escaping their fair share of tax liability by bringing them into the tax net. However, the current minimum tax structure will result in an additional tax to taxpayers who are already captured under the tax net thus defeating its purpose. In order to address the issues surrounding minimum tax, there is need for KRA to

relook at the guidelines provided in order to allow taxpayers to utilize overpaid minimum tax to offset future corporation tax liability and/or to be able to claim refund of excess minimum taxes paid in a particular period.

If you have any specific queries or require assistance in compliance with minimum tax please contact us.



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This is a general guideline Tax alert and should not be a substitute for proper advice. For queries and clarification, kindly get in touch with Rödl & Partner.

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