

# Minimum Tax: Some Thoughts...

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# Presentation Outline



Basis of Taxation in Kenya



Minimum Tax and Why?



Some thoughts on Minimum Tax?



Q & A

# Basis of Taxation in Kenya

# Basis of Taxation in Kenya



- Article 2(1) of the Constitution of Kenya - Supreme law of the land
- Article 201(b)(i) - The burden of taxation **shall be shared fairly**
- Articles 209(1)(a), 209(2) and 210(1) - tax to be imposed as set out in legislation
- Sec 3(1) of the ITA - tax on income accrued in or derived from Kenya
- Sec 3(2) - tax on gains or profits from business, rights for use of property, dividends, interest
- Sec 3(2)(e) of the ITA - tax on “an amount deemed to be the income of a person under this Act...”



# Minimum Tax

Uphold public interest

# Minimum Tax



- Sec 12D of the ITA - Minimum tax payable if:
  - a) The person's income is not exempt under the ITA
  - b) The person's income is not subject to tax under sections 5, 6A, 12C, the 8<sup>th</sup> Schedule or 9<sup>th</sup> Schedule
  - c) The **instalment tax payable** under Sec 12 is **higher than the minimum tax**
- Sec 12(1)(a) of the ITA - instalment tax payable but a person shall not be required to pay instalment tax "if the **minimum tax payable** under Sec 12D is **higher than the instalment** tax under this section"

# Minimum Tax



- Para 11 of the 3<sup>rd</sup> Schedule - minimum tax rate is 1% of gross turnover
- Payable on 20<sup>th</sup> of the fourth, sixth, ninth and twelfth month of year of income
- Effective 1 January 2021
- Customized iTax returns and data verification?



# Why Minimum Tax?

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# Why Minimum Tax?



- Mismatch of income and tax collections?
- Consistent nil filers and non-payers?
- Capital allowances rationalization?
- Simpler to administer - hard-to-tax sectors - informal sector? Transport?
- Solution for increased funding needs



# Some Thoughts Around Minimum Tax

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# Some Thoughts Around Minimum Tax



- **What is the tax base under the ITA? Profit or turnover?**
- **Should we consider EBIT/EBITDA as the base for minimum tax?**
- **What is gross turnover...?**
- **Impact of IFRS 15 (revenue recognition)**
- **Is Minimum tax effectively a sales tax?**
- **Relevance of tax loss carry forward of 9 years?**
- **Relevance of separate sourcing of income?**

# Some Thoughts Around Minimum Tax



- **Relevance of compensating tax?**
- **Impact of advance tax and Withholding tax?**
- **Unique sectors eg life insurance companies?**
- **Consider a loss grace period - 2 to 3 years of consecutive losses/tax holidays?**
- **Violation of canon of equity in tax?**
- **Threshold in line with KES 1m ToT base?**
- **Impact of OECD's proposed MNE minimum tax on profits?**

# Some Thoughts Around Minimum Tax



- Clean up the apparent legal conflict?
- Reduced minimum tax rate of 0.5%?
- Exempted critical sectors eg agriculture, incubated businesses?
- Plastic settled transactions - impact of merchant fee on low margin businesses?

# Low Margin Business Impact



- Transaction: purchase of goods worth KES 1,000
- Settled via LIPA na Mpesa
- Till number cost for the transaction = KES 27...2.7% of transaction value
- Add: 1% minimum tax = KES 10
- Basic cost to business =  $\text{KES } 27 + 10 = 37$ ...or 3.7% of turnover
- Commercial: viability if gross margin is less than 5%?

# Some Thoughts Around Minimum Tax



- Other revenue raising options:
  - 2% WHT on goods/30% WHT where supplier has no PIN?
  - Revamped advance tax on PSVs via insurance companies?

# Interactive Session



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