



**KUSCCO LTD.**  
Kenya Union of Savings & Credit Co-operatives Ltd.

-The SACCO Family Union-

KUSCCO Centre  
Kilimanjaro Avenue, Upper Hill  
P.O. Box 28403 - 00200, Nairobi, KENYA  
Tel: 0111027200  
Email: [info@kuscco.com](mailto:info@kuscco.com)  
Web: [www.kuscco.com](http://www.kuscco.com)

Our Ref:

Your Ref:

25 May 2026

The Clerk of the National Assembly  
Departmental Committee on Finance and National Planning  
Parliament Road  
PO Box 41842-00100  
Nairobi, Kenya

Sent via email – [cna@parliament.go.ke](mailto:cna@parliament.go.ke)



Dear Sir,

**RE: INVITATION OF TAX POLICY PROPOSALS FOR THE FINANCE BILL 2026**

We refer to the public notice dated 11 May 2026 issued by the National Assembly seeking proposals on tax policy measures for consideration in the Finance Bill 2026. We, Kenya Union of Savings and Credit Cooperatives Limited ("KUSCCO", "we", "us"), are glad to submit our tax proposals for the financial year 2026/2027.

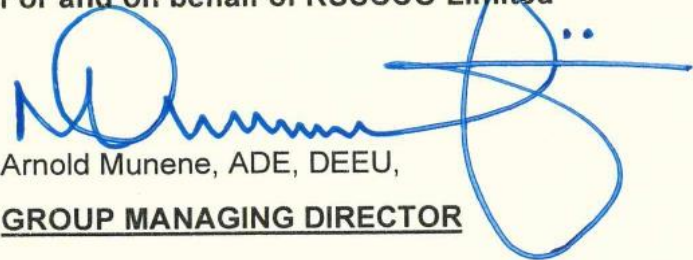
We have provided an executive summary of the legislative proposals in the attached document which also provides detailed analyses of the issues, impact, and recommendations. We are happy to provide any additional information on the proposals should you require us to.

We would be grateful for an opportunity to engage the National Assembly to further deliberate on our proposals and recommendations attendant thereto.

Should you wish to discuss the contents of this letter, please do not hesitate to contact our tax agents, Shreya Shah ([shreya.shah@pwc.com](mailto:shreya.shah@pwc.com)) or Nicholas Kahiro ([nicholas.x.kahiro@pwc.com](mailto:nicholas.x.kahiro@pwc.com)) or the undersigned on [info@kuscco.com](mailto:info@kuscco.com) at your convenience.

Yours faithfully

For and on behalf of KUSCCO Limited

  
Arnold Munene, ADE, DEEU,  
**GROUP MANAGING DIRECTOR**

## 1. Executive Summary

Table 1: Executive summary

	Issue	Provision proposed to be amended/deferred	Proposed amendment	Justification for proposed amendment
1.	Definition of a designated Primary Co-operative society.	<b>Section 19A of the Income Tax Act CAP 470 (ITA).</b>	<p><b>Expand the meaning of the term “designated primary co-operative societies” to include groups of individual persons and corporate persons.</b></p> <p>To expand the meaning of primary society under Section 19A (7), by inserting the following words after individual persons.</p> <p>“- groups of individual persons and corporate persons”</p>	<p>SACCO membership has evolved beyond individual persons to include groups of individuals and corporate persons, such as self-help groups and community associations, as part of financial empowerment initiatives.</p> <p>These groups are recognized as members of co-operatives societies under the Co-operative Societies Act and are welcomed by SACCOs to promote inclusion and access to credit.</p> <p>Section 16 of the Co-operative Societies Act further allows SACCO’s to admit individuals, groups of individual persons and corporate persons into their membership.</p> <p>However, section 19A(7) of the Income Tax Act currently restricts the definition of a primary cooperative society to one whose membership is comprised of individual persons only. This creates punitive tax consequences for SACCOs whose membership includes such groups, resulting in inequitable treatment and discouraging innovative</p>

				<p>cooperative models.</p> <p>This amendment seeks to harmonize the tax treatment of SACCOs whose membership includes both individual persons, groups of individual persons and corporate persons, ensuring fairness and equity by eliminating preferential treatment based on membership structure.</p> <p>It also prevents tax provisions from disincentivizing the formation and operation of SACCOs that serve both individuals and organized groups, thereby supporting financial inclusion and cooperative growth.</p>
<p><b>2.</b></p>	<p>Preserve the current protection against the issuance of agency notices where an appeal has been properly lodged.</p>	<p><b>Section 42(14)(e)</b> of the Tax Procedures Act.</p>	<p><b>Retain Section 42(14)(e)</b> of the Tax Procedures Act to preserve the current protection against the issuance of agency notices where an appeal has been properly lodged.</p>	<p>The proposal seeks to preserve constitutional safeguards by ensuring taxpayers are not subjected to enforcement action before disputes are conclusively determined, thereby upholding the rights to fair administrative action and access to justice.</p> <p>It protects the integrity of the tax dispute resolution framework by ensuring that appeals remain meaningful and not rendered ineffective by premature recovery measures.</p> <p>The proposal also mitigates adverse economic impacts, particularly liquidity constraints and operational disruption for businesses and financial institutions such as SACCOs.</p>

				<p>Further, it promotes proportionality in tax administration by balancing revenue collection with taxpayer rights, while aligning Kenya's framework with international best practice, which generally limits enforcement during bona fide disputes.</p>
<p>3.</p>	<p>Amendment of the definition of other fees in the Excise Duty Act to exclude any fees, charges or commissions earned by SACCOs from members.</p>	<p>Part III of the First Schedule to the Excise Duty Act, Cap 472 ("ED Act").</p>	<p>Amendment of the definition of "Other Fees" in Part III of the First Schedule to the ED Act by inserting the following words;</p> <p>"...or any fees, charges or commissions charged by a SACCO to its members," before "...or interest on loan..." ."</p>	<p>SACCOs function under the doctrine of mutuality, where members pool resources and transact within a cooperative they collectively own. Fees, charges, and commissions paid by members are internal contributions rather than payments to external profit-driven entities. Imposing excise duty on intra-member fees fractures the identity between contributors and beneficiaries and re-characterizes mutual dealings as a taxable trade, contrary to settled doctrine.</p> <p>Excluding fees, charges, and commissions earned by SACCO from their members from excise duty preserves their cooperative character and ensures fair treatment distinct from commercial banks.</p> <p>Additionally, the proposed amendments aim to lower borrowing costs, expand credit access, and boost savings in line with Kenya Kwanza's Bottom-Up Economic Transformation Agenda.</p>

<p>4.</p>	<p>Widen the individual income tax bands, so that the tax-exempt threshold can be increased</p>	<p>Paragraph 1 of Head B of the Third Schedule to the Income Tax Act (“ITA”)</p>	<p>To delete Paragraph 1 of Head B and replace it with the following:</p> <p>The individual rates of tax other than that of the total income comprising fringe benefits and the qualifying interest shall be –</p> <p>“Rate in each shilling</p> <p>On the first Ksh. 480,000 .....0%</p> <p>On the next Ksh. 720,000.....20%</p> <p>On the next Ksh. 4,800,000 ....25%</p> <p>On all income over Ksh. 6,000,000.....30%”</p> <p>-</p>	<p>Widening of the tax bands will make the current tax bands more progressive to cushion low-income earners, in the wake of rising cost of living and inflation rates.</p> <p>Notably, disposable incomes have reduced due to the introduction of the Affordable Housing Levy (“AHL”) under the Affordable Housing Act, 2024, Social Health Insurance Fund (“SHIF”) contributions from October 2024 and the expected increase in the statutory contributions to National Social Security Fund (“NSSF”) from February 2025, which will further impact the net take home pay of employees.</p> <p>Under the proposed amendments, we suggest that the marginal income tax rate is harmonised with the corporate income tax rate, in line with the Government’s objectives under the draft Medium-Term Revenue Strategy (“MTRS”).</p>
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## 2. Tax proposal on updating the definition of a primary designated co-operative society

### 2.1. Background

Cooperative societies in Kenya have evolved significantly over time. Initially, they were associations of individual persons, such as the Lumbwa Cooperative Society formed in 1908 by European settlers. These early cooperatives were primarily for individual members and were formed through member initiatives without active government involvement.

The cooperative movement in Kenya began to evolve with the 1932 amendment to the *Cooperative Societies Registration Ordinance (No, 24 of 1931)*. This amendment allowed persons, partnerships, and companies to form cooperatives, particularly in the timber industry. This evolution enabled cooperatives to pool more resources, share risks, and enhance their capabilities. This evolution in membership and structure laid the foundation for today's diverse co-operative sector, which is now governed by the Co-operative Societies Act (Cap. 490).

The Cooperative Societies Act (CAP 490) recognizes four specific categories of cooperative societies. These include:

- a) primary cooperative societies, which are formed by individual members with common interests;
- b) cooperative unions, which are formed by at least two primary societies to provide regional support;
- c) national cooperative organizations (NACOs), which represent cooperatives at the national level; and
- d) apex cooperative societies, which are national umbrella organizations for all cooperatives.

Despite the structural differences, all cooperatives share the same fundamental principles: voluntary and open membership, democratic member control, economic participation by members, autonomy and independence, education, training, and information, cooperation among cooperatives, and concern for the community.

### 2.2. Issue

The current Income Tax Act ("ITA") in Kenya presents a differential tax treatment among cooperative societies based on membership composition.

Under Section 19A of the ITA, Cooperative societies are classified for taxation as:

- a) Designated primary cooperative societies that are registered and operate as credit and savings cooperatives; and
- b) Other designated cooperative societies.

The definition of a primary society in the ITA, which borrows from the Co-operative Societies Act, is currently limited to individual persons. This creates ambiguity for SACCOs that admit individual persons, groups of individuals (e.g., chamas or self-help groups) and corporate persons. Notably, the Cooperative Societies Act sets out four categories of cooperative societies as shown below:

1. Primary cooperative societies, which are formed by individual members with common

- interests;
2. Cooperative unions, which are formed by at least two primary cooperative societies to provide regional support;
  3. National cooperative organizations (NACOs), which represent cooperatives at the national level; and
  4. Apex cooperative societies, which are national umbrella organizations for all cooperatives.

Notably, the Cooperatives Act does not adequately pronounce itself on the category applicable to a class of cooperative societies which have individual persons, groups of individual persons or corporate persons since such societies do not fall under category 2, 3 or 4 above. Such societies would also not fall under category 1- Primary cooperative societies in strict interpretation of the law since their membership includes groups of individual persons and corporate persons.

Notably, although section 16 of the Co-operative Societies Act expressly permits the admission of individuals, groups of individuals, and corporate persons into the membership of co-operative societies, Section 19A of the ITA does not appear to recognize this broader membership structure for purposes of taxation. Instead, the current provisions under Section 19A of the ITA narrowly define primary cooperative societies in a manner that effectively limits favorable tax incentives to SACCOs whose membership comprises individual persons only.

This disconnect between the enabling provisions of the Co-operative Societies Act and the restrictive interpretation under the Income Tax Act creates a legal and policy inconsistency that undermines inclusivity and penalizes SACCOs for complying with statutory provisions designed to promote financial empowerment and institutional participation. Further it results in uneven tax outcomes: SACCOs with only individual members enjoy favorable treatment, while SACCOs with mixed membership face punitive tax consequences. This discrepancy raises concerns given that all SACCOs, regardless of their membership, share the same fundamental objectives and operate under similar principles of cooperatives.

Differential tax treatment based on a narrow interpretation of “individual persons” creates an uneven playing field, discourages innovation, and undermines financial inclusion. SACCOs with mixed membership may struggle to compete under a heavier tax burden, despite serving the same economic and social purpose.

**Table 1.0 - Uneven Tax outcomes**

Aspect	Income Tax Act (Cap. 470)	Implication
<b>Definition of Primary Society</b>	Section 19A(7): Membership must comprise individual persons only.	SACCOs admitting even a small percentage of groups lose SACCO tax regime benefits entirely
<b>Tax Regime for Primary SACCOs</b>	Section 19A(4): Interest income from members is exempt; only 50% of interest from non-members and other income (rent, gains) is taxable.	SACCOs with individual-only membership enjoy substantial tax relief, enabling competitive lending and member benefits.
<b>Tax Regime for Mixed Membership SACCOs (other designated)</b>	Taxable income = total income less bonuses/dividends declared and distributed; taxed	SACCOs with mixed membership, even minimal, are taxed on all member interest, eroding margins

<b>co-ops under s. 19A(2)/(3) of the ITA</b>	at normal corporate rate.	and market capacity.
<b>Resulting Disparity</b>	No provision for partial or proportional eligibility- under section 19A of the ITA, the law does not allow a SACCO to qualify for the favorable tax regime if its membership includes any groups, even if those groups make up only a tiny fraction of the total membership.	SACCOs with identical operations face unequal tax treatment, penalizing inclusion and discouraging innovation.

Addressing these issues would require a review of section 19A of the ITA to ensure a more equitable tax treatment for SACCOs, recognizing their shared goals and contributions to the economy and community.

### 2.3. Proposal

To address the identified inequities on taxation of SACCOs, it is proposed that the Section 19A of the ITA be amended to provide a uniform tax treatment for all types of cooperatives societies, recognizing their shared goals and contributions to the economy and community regardless of their membership structure. Specifically, the proposed amendment should aim to:

- Align the tax treatment of SACCOs whose membership includes individual persons with that of SACCOs whose membership includes groups of individual persons and corporate persons, ensuring fairness and equity.
- Ensure that the tax provisions do not disincentivize the formation and operation of any type of cooperative society, including SACCOs whose membership includes both groups of individual persons, corporate persons and individual persons.

Implementing these changes will create a tax framework that supports the cooperative movement in Kenya, fostering inclusivity, sustainability, and equitable growth across all cooperative models.

### 2.4. Justification

#### Legal and Policy Consistency

The proposed amendment is necessary to ensure harmony between Kenya's tax laws and the legal framework governing cooperative societies. Section 16 of the Co-operative Societies Act expressly permits SACCOs to admit corporate bodies, alongside individuals and groups of individuals, as members. This statutory provision reflects the evolution of the cooperative movement toward inclusivity and institutional participation.

However, the Income Tax Act currently limits favorable tax treatment to SACCOs whose membership comprises only individual persons, creating a direct conflict between the enabling provisions of the Co-operative Societies Act and the tax regime. Such inconsistency undermines legal certainty and exposes SACCOs to interpretational disputes and compliance risks.

Aligning the Income Tax Act with the Co-operative Societies Act will eliminate this contradiction and uphold the principle of legislative harmony, ensuring that tax statutes complement rather than frustrate sector-specific laws.

Further, the Sacco Societies Act envisages SACCOs as prudentially regulated financial institutions capable of engaging in liquidity management through mechanisms such as the Central Liquidity Facility (CLF). This framework is designed to promote systemic stability and inter-SACCO lending. Penalizing SACCOs that admit corporate members or that participate in CLF transactions through adverse tax treatment contradicts these prudential objectives and risks fragmenting the cooperative financial architecture.

From a policy perspective, Kenya's Bottom-Up Economic Transformation Agenda prioritizes financial inclusion and affordable credit for households and MSMEs. SACCOs are central to this vision, and any tax policy that discriminates based on membership composition undermines these national development goals. Harmonizing tax law with cooperative legislation will therefore promote predictability, reduce operational conflicts, and support inclusive economic growth.

### **Neutrality and Fairness**

The principle of neutrality and fairness in taxation demands that entities engaged in similar economic activities under the same regulatory framework should not be subjected to discriminatory tax treatment based on structural differences that do not alter their core purpose.

SACCOs, whether composed of individual members, groups of individuals, or corporate bodies, operate under the same cooperative principles of mutuality, democratic governance, and member benefit. They share identical objectives: mobilizing savings, providing affordable credit, and promoting financial inclusion.

However, the current Income Tax Act creates an uneven playing field by granting favorable tax treatment only to SACCOs with individual membership, while imposing punitive taxation on those admitting groups or corporate members. This distinction is arbitrary because membership composition does not change the cooperative nature of the institution or its socio-economic role.

Tax neutrality ensures that SACCOs are treated equitably regardless of their membership structure, preventing distortions that discourage innovation and inclusivity. Penalizing SACCOs for admitting groups or corporates undermines financial empowerment initiatives and contradicts national policy goals such as the Bottom-Up Economic Transformation Agenda, which relies on SACCOs to extend affordable credit to households, MSMEs, and community organizations.

Fairness in tax policy also promotes competitive equity within the cooperative sector, allowing SACCOs to grow and thrive without structural bias. By applying uniform tax incentives across all permissible membership categories, the law will uphold neutrality, foster inclusivity, and strengthen the cooperative movement as a pillar of Kenya's financial system.

### **Economic Rationale**

The economic case for granting uniform tax incentives to SACCOs regardless of whether their membership comprises individuals, groups, or corporate bodies is compelling. SACCOs serve as critical engines of financial intermediation, mobilizing savings and channeling them into affordable

credit for households, micro-enterprises, and small businesses.

Allowing diverse membership structures strengthens this role by enabling SACCOs to pool larger volumes of resources, diversify their risk base, and achieve economies of scale. Groups and corporate members often bring substantial deposits and institutional stability, which enhances SACCO liquidity and resilience. This, in turn, lowers borrowing costs for all members and expands access to credit for sectors that drive Kenya's economic transformation, including agriculture, trade, housing, and education.

From a macroeconomic perspective, SACCOs with broader membership bases are better positioned to support MSMEs—the backbone of Kenya's economy—by providing working capital and investment financing at competitive rates. Penalizing SACCOs for admitting groups or corporates through adverse tax treatment constrains their ability to lend, raises the cost of credit, and undermines enterprise growth and job creation.

Conversely, tax neutrality fosters a more inclusive financial ecosystem, enabling SACCOs to complement government initiatives under the Bottom-Up Economic Transformation Agenda by stimulating grassroots entrepreneurship and reducing reliance on informal credit markets. In dynamic terms, strengthening SACCO liquidity through inclusive membership models ultimately expands the tax base over time, as MSMEs financed by SACCOs grow into formal businesses contributing to corporate income tax and VAT revenues.

Uniform tax treatment is therefore not only equitable but also economically strategic, reinforcing SACCOs as catalysts for inclusive growth and systemic financial stability.

### **Social and Developmental Impact**

Uniform tax treatment for SACCOs regardless of membership composition is critical for advancing Kenya's social and developmental objectives. SACCOs are not merely financial institutions; they are community-based organizations that foster social cohesion, economic empowerment, and grassroots development.

By mobilizing savings and extending affordable credit, SACCOs enable households to invest in education, housing, healthcare, and small-scale enterprises — areas that directly improve living standards and reduce poverty. Groups of individuals, such as self-help associations and chamas, often represent marginalized communities that rely on SACCOs as their primary access point to formal finance.

Similarly, corporate members, including small businesses and institutions, strengthen SACCO capacity to serve these communities by injecting additional resources and stability. Penalizing SACCOs for admitting such members through adverse tax treatment undermines financial inclusion and perpetuates inequality.

From a developmental perspective, SACCOs complement government programs under the Bottom-Up Economic Transformation Agenda by channeling credit to sectors that drive inclusive growth, such as agriculture, trade, and housing. They also reduce the financial burden on the state by providing social safety nets through member-driven welfare initiatives.

When SACCOs are allowed to operate under a neutral tax regime, they can reinvest surpluses into

community projects, expand outreach to underserved regions, and build institutional resilience. Conversely, discriminatory taxation erodes these benefits, constrains SACCO growth, and weakens their ability to deliver social impact. Ensuring tax neutrality across all membership categories therefore promotes equity, strengthens social capital, and accelerates Kenya's progress toward sustainable development goals.

### **Systemic Risks and Operational Distortions from Tax Misalignment**

Failure to harmonize the Income Tax Act with the Co-operative Societies Act and the Sacco Societies Act will create significant systemic and operational challenges for the cooperative financial sector.

First, maintaining a tax regime that penalizes SACCOs for admitting groups or corporate members introduces structural inequities that discourage innovation and inclusivity. SACCOs that comply with statutory provisions allowing diverse membership will face higher tax burdens, eroding their margins and forcing them to increase lending rates.

This undermines the affordability of credit for households and MSMEs—the very segments that SACCOs are designed to serve—contradicting national financial inclusion goals and the Bottom-Up Economic Transformation Agenda.

Second, ignoring the Central Liquidity Facility (CLF) framework under the Sacco Societies Act creates a direct conflict between prudential regulation and tax law. The CLF is intended to promote systemic stability by enabling inter-SACCO lending and short-term liquidity placements.

If these transactions are subjected to adverse tax treatment, SACCOs will be disincentivized from participating in liquidity support mechanisms, weakening the sector's resilience and increasing the risk of contagion during periods of financial stress. Such misalignment could lead to liquidity crises, higher default rates, and erosion of public confidence in SACCOs as safe financial intermediaries.

Finally, these inconsistencies expose SACCOs to compliance dilemmas and potential litigation, as they navigate contradictory obligations under different statutes. The resulting uncertainty discourages investment in cooperative finance, slows sectoral growth, and undermines Kenya's broader economic transformation agenda. In short, failure to align tax policy with cooperative legislation does not merely create technical anomalies—it threatens systemic stability, financial inclusion, and socio-economic progress.

### **2.5. Best practices from other jurisdictions**

#### ***Uganda***

In Uganda, SACCOs have been exempted from paying taxes on their incomes from July 1, 2017, to June 30, 2027. This policy aims to encourage Ugandans to join financial institutions and move away from informal savings methods. The government believes that keeping money in formal institutions will benefit the economy through increased productive work. While SACCOs' incomes are tax-exempt, salaries paid to their staff are still subject to taxation. This initiative is part of a broader effort to integrate more Ugandans into the formal financial system and boost economic growth.

While we do not seek full exemption, Uganda's approach demonstrates how fiscal policy can be used to strengthen cooperative finance and promote sector growth. Kenya can borrow the principle

of creating incentives that do not discriminate based on membership structure, ensuring all SACCOs whether composed of individuals or groups enjoy equitable treatment.

### **India**

In India, the tax treatment of cooperative societies is designed to support their diverse activities and promote growth. Governed by Section 80P of the Income Tax Act, 1961, these provisions allow cooperative societies to benefit from various deductions based on the economic activities they engage in, rather than their membership.

For instance, cooperative societies involved in banking and credit facilities can deduct the entire amount of profits and gains from these activities. Similarly, those engaged in cottage industries, marketing of agricultural produce, and the purchase of agricultural supplies can also fully deduct their profits.

This comprehensive system of deductions reduces the overall tax burden on cooperative societies, supporting their development and sustainability. By focusing on the economic activities rather than the membership, the tax policy encourages cooperatives to contribute to the socio-economic development of the country. This targeted support promotes growth in crucial sectors such as agriculture and rural development, providing valuable lessons for Kenya to consider in its tax policies for cooperatives.

India's system under Section 80P does not differentiate based on whether members are individuals or groups. Instead, it focuses on economic activities. The key takeaway for Kenya is neutrality on membership, tax benefits should not depend on membership structure. Kenya can maintain its current framework but remove structural bias, ensuring all SACCOs are treated equally.

### **Philippines**

In the Philippines, the tax treatment of cooperatives is determined by their relationship with the public and their financial status, rather than their membership, as per the *Philippine Cooperative Code of 2008 (RA 9520)*. 'Member of a cooperative' as defined in RA 9520 includes 'a person **either natural or juridical** who adhering to the principles set forth in this Code and in the Articles of Cooperative, has been admitted by the cooperative as member.'

Turning to the tax treatment, with regard to relationship to the public, all registered cooperatives which do not transact any business with non-members or the general public are not subject to any taxes and fees imposed under the internal revenue laws and other laws. On the other hand, cooperatives transacting business with both members and non-members are not subject to tax on their transactions with members.

The cooperatives that transact with non-members or the general public are further split into two based on their accumulated reserves and undivided net savings. Smaller cooperatives, with reserves and net savings less than or equal to approximately KES 24,500,000, enjoy significant tax benefits. They are exempt from all national and local taxes, customs duties, and taxes on imported machinery and equipment. This exemption helps reduce their operational costs and supports their growth and development within the community.

Larger cooperatives, with reserves and net savings greater than KES 24,500,000, face specific income tax obligations. They are subject to income tax on the amount allocated for interest on capital. However, the same tax is not imposed on the interest individually received by members. Additionally, all cooperatives, regardless of their size, are exempt from income tax from the date of their registration with the Authority. This exemption provides a significant benefit, particularly during the initial stages of a cooperative's operation, helping them to establish and grow without the immediate burden of income tax.

The Philippines demonstrates neutrality on membership composition by not distinguishing between individual and group members. Its tiered system based on size and public engagement shows that incentives can be structured around operational factors rather than membership. Kenya can learn from this by maintaining neutrality between different membership structures while considering proportional incentives for SACCOs serving grassroots communities.

### ***Ghana***

Ghana has implemented a structured exemption framework for SACCOs under its Exemptions Act (2022). Under this system, SAACOs must apply for ministerial recommendation, secure cabinet approval, and undergo parliamentary oversight to obtain statutory tax exemptions. As a result, exemptions are not automatically linked to membership; they depend on formal applications and approval processes.

In contrast, Kenya adopts an automatic, membership-based exemption model, whereas Ghana employs a governance-intensive, approval-driven approach with minimal emphasis on member transactions. This framework shifts focus away from differential treatment based on membership and promotes a case-by-case methodology, enhancing fairness and equity across the industry.

### ***Tanzania***

Tanzania's approach to SACCOs is rooted in prudential regulation rather than fiscal incentives. Under the Microfinance Act and SACCO-specific regulations, the government emphasizes financial soundness, depositor protection, and systemic stability. SACCOs must meet licensing requirements, maintain minimum capital adequacy ratios, and adhere to reserve and liquidity standards. This framework reflects a policy choice: rather than using tax exemptions to stimulate growth, Tanzania seeks to build trust and resilience in the cooperative financial sector, ensuring that SACCOs operate like credible financial institutions.

Membership status plays little to no role in tax policy for SACCOs in Tanzania. Whether income is derived from members or non-members does not affect tax obligations. Instead, the regulatory lens focuses on institutional capacity and governance, not transactional relationships. This signals a shift from membership-based privileges toward institutional accountability.

### ***Spain***

Spain historically provided a special cooperative tax regime designed to recognize and reward adherence to cooperative principles—such as democratic governance, member economic participation, and community benefit. This regime offered preferential tax rates and deductions compared to ordinary corporate taxation. However, recent reforms have scaled back these

advantages, narrowing the gap between cooperatives and conventional companies. Today, benefits vary by cooperative category (e.g., agricultural, consumer, credit) and by specific activities, rather than applying uniformly across all cooperatives.

Unlike Kenya, Spain does not hinge tax treatment on whether transactions involve members or non-members. Instead, relief is tied to cooperative principles and qualifying activities. For example, a cooperative engaged in agricultural marketing may receive benefits regardless of whether it sells to members or external buyers, provided it meets statutory cooperative criteria.

Spain's cooperative tax regime adopts a functional perspective, meaning tax relief is granted not simply because an entity is a cooperative or on the basis of its membership, but because it fulfills roles that deliver broader social and economic benefits or operates under structural limitations inherent to the cooperative model. For example, agricultural cooperatives that support rural development and smallholder farmers create positive externalities such as food security and regional equity, which justify fiscal incentives. Tax benefits therefore serve as a compensatory mechanism, ensuring these socially valuable and structurally constrained organizations remain viable while advancing public-interest objectives.

### **3. Proposal on Protection of Taxpayer Rights in Enforcement (Agency Notices)**

#### **3.1. Background**

Section 42 of the Tax Procedures Act (TPA) provides the Commissioner with powers to recover taxes through third-party agency notices. This mechanism plays an important role in safeguarding revenue by enabling the Commissioner to access funds held by third parties on behalf of taxpayers.

Historically, the TPA has incorporated safeguards to ensure that enforcement powers are exercised in a manner that respects taxpayer rights. In particular, Section 42(14)(e) prevents the issuance of agency notices where a taxpayer has lodged an appeal against an assessment before the Tax Appeals Tribunal or the courts.

The Finance Bill 2026 proposes to delete this provision, thereby allowing the Commissioner to issue and enforce agency notices even where a dispute is actively under appeal.

It is notable that similar attempts to expand enforcement powers have been proposed in previous Finance Bills, reflecting an ongoing policy tension between strengthening revenue collection and preserving taxpayer protections. However, Parliament has previously maintained safeguards recognising the need to balance efficient tax administration with due process, legal certainty, and economic stability.

The current proposal therefore represents a significant policy shift, as it would allow enforcement to proceed notwithstanding the existence of an unresolved dispute within the statutory dispute resolution framework.

#### **3.2. Issue**

The proposed deletion of Section 42(14)(e) removes a key statutory safeguard and permits enforcement action on contested tax liabilities before the conclusion of the dispute resolution process. This fundamentally alters the balance within the tax system and raises significant legal and practical concerns.

By allowing enforcement during an active appeal, the amendment risks rendering the dispute resolution process ineffective in practice, as taxpayers may be compelled to settle disputed taxes to avoid disruption. It also exposes taxpayers to the possibility of premature and potentially irreversible recovery of amounts that have not been finally determined as due.

In addition, the issuance of agency notices during disputes may significantly disrupt business operations by restricting access to working capital and liquidity. This risk is particularly pronounced for SACCOs and other financial institutions, whose operational stability depends on the continuous availability of funds. More broadly, the proposal introduces uncertainty into the tax system and weakens confidence in the fairness and predictability of tax administration.

#### **3.3. Proposal**

We propose that the Finance Bill 2026 retain Section 42(14)(e) in its current form in order to preserve the existing safeguard against enforcement during appeals.

#### **3.4. Justification**

## **a) Constitutional Safeguards and Rule of Law**

The proposal is necessary to uphold constitutional guarantees enshrined under Articles 47 and 48 of the Constitution of Kenya, which protect the rights to fair administrative action and access to justice. These provisions require that administrative decisions, including tax enforcement actions, be lawful, reasonable, proportionate, and procedurally fair.

Allowing enforcement action through agency notices prior to the conclusion of a dispute risks undermining these constitutional protections by subjecting taxpayers to coercive recovery measures before their liability has been conclusively determined by an independent adjudicative body. In effect, such enforcement pre-empts the outcome of the dispute resolution process and compromises its integrity.

Further, the right to access justice is not merely procedural but substantive. It requires that taxpayers be afforded a meaningful opportunity to challenge tax assessments without being placed under undue financial or operational pressure. Where enforcement proceeds during an appeal, taxpayers may be compelled, as a practical matter, to settle disputed amounts to avoid business disruption, thereby rendering the right of appeal illusory.

From a rule of law perspective, a fair and predictable tax system must be grounded in the principle that **adjudication should precede enforcement in respect of contested liabilities**. Departing from this principle risks creating a regime where administrative power overrides judicial and quasi-judicial processes, undermining confidence in both the tax system and the broader legal framework.

Preserving the restriction on enforcement during appeals therefore ensures that tax administration remains consistent with constitutional standards, reinforces procedural fairness, and safeguards the legitimacy of the dispute resolution process.

## **b) Preservation of the Dispute Resolution Framework**

Kenya's tax system is anchored on a structured and sequential dispute resolution framework, beginning with the objection process before the Commissioner, followed by appeals to the Tax Appeals Tribunal, and ultimately judicial review by the courts. This framework is designed to provide taxpayers with an independent, orderly, and effective mechanism for resolving disputes while ensuring that tax administration remains fair and accountable.

Allowing enforcement to proceed during the pendency of an appeal fundamentally undermines this framework by depriving it of its practical utility. While the procedural steps of objection and appeal would technically remain in place, their substantive value would be significantly diminished if taxpayers are exposed to enforcement action notwithstanding their engagement with the prescribed dispute resolution channels.

In such circumstances, the appeals process risks becoming merely formalistic rather than genuinely remedial. Taxpayers may feel compelled to prioritise immediate financial survival over the pursuit of legitimate claims, particularly where enforcement measures such as agency notices restrict access to working capital or disrupt operations. This dynamic effectively shifts the balance of power away from adjudicative bodies and toward administrative enforcement, weakening the institutional role of the Tribunal and the courts.

Moreover, the integrity of any dispute resolution system depends on the availability of meaningful relief while a dispute is under consideration. A framework that permits enforcement before a determination is reached fails to provide such relief and may be perceived as lacking fairness and impartiality. This perception can erode confidence in the tax system and discourage taxpayers from utilising formal dispute mechanisms, potentially increasing informal settlements or non-compliance.

Preserving the restriction on enforcement during appeals is therefore essential to maintaining the credibility, effectiveness, and legitimacy of Kenya's tax dispute resolution framework. It ensures that disputes are resolved through established legal processes, rather than being pre-empted by administrative enforcement actions.

### **c) Economic Stability and Liquidity Considerations**

Agency notices have immediate and direct liquidity implications, as they operate by attaching funds held by third parties on behalf of the taxpayer. Unlike other enforcement mechanisms, they do not merely create a liability but actively intercept cash flows, often without prior notice sufficient to allow for operational adjustments. This characteristic makes agency notices particularly intrusive and potentially disruptive, especially when applied to contested tax liabilities.

For SACCOs, the impact is especially acute given their cooperative structure and reliance on pooled member funds to sustain core operations. Funds held within SACCO accounts are not idle reserves but are actively deployed to support lending, member withdrawals, and ongoing financial obligations. The issuance of agency notices against such funds can disrupt lending cycles, delay access to member savings, and undermine the confidence of members who depend on SACCOs as reliable financial institutions. Over time, this may erode trust in the cooperative model and weaken a critical pillar of Kenya's financial inclusion ecosystem.

Beyond the SACCO sector, premature enforcement of disputed taxes can have wider macroeconomic implications. For businesses, the attachment of funds through agency notices constrains working capital, limits the ability to meet operational expenses such as payroll and supplier obligations, and may trigger liquidity crises. This can lead to disruptions in business continuity, reduced productivity, and in some cases, insolvency—particularly for small and medium enterprises that operate with limited cash buffers.

From an investment perspective, the risk of aggressive enforcement during unresolved disputes introduces uncertainty into the business environment. Investors and enterprises require predictability in tax administration to make long-term decisions. A regime that permits immediate enforcement of contested liabilities may be perceived as high-risk, thereby discouraging both domestic and foreign investment.

Accordingly, maintaining safeguards against enforcement during the pendency of appeals is critical to preserving liquidity within the economy, protecting the operational stability of key financial institutions such as SACCOs, and fostering a predictable and investment-friendly tax environment.

### **d) Proportionality and Administrative Fairness**

While the protection of government revenue is an important and legitimate objective of tax administration, enforcement measures must be exercised in a manner that is proportionate, balanced, and consistent with the principles of administrative fairness. Proportionality requires that

the severity and timing of enforcement actions be appropriately calibrated to the circumstances of each case, particularly where a tax liability remains contested.

Allowing recovery of disputed amounts through agency notices before those amounts are conclusively determined introduces a disproportionate burden on taxpayers. It effectively treats contested liabilities as if they were final and undisputed, thereby collapsing the distinction between assessed tax and confirmed tax. This approach is especially problematic in cases involving complex transactions, interpretative issues, or high-value assessments, where the likelihood of legitimate dispute is significantly higher.

From an administrative fairness perspective, taxpayers should not be subjected to intrusive recovery measures in respect of liabilities that are still under bona fide challenge. Doing so creates an imbalance in the relationship between the taxpayer and the revenue authority, as it places the taxpayer at an immediate financial disadvantage while the underlying dispute remains unresolved. In practical terms, this may compel taxpayers to settle or compromise disputes primarily to avoid the adverse effects of enforcement, rather than on the merits of their case.

A proportionate approach would distinguish clearly between **undisputed tax liabilities**, which should remain fully enforceable, and **contested amounts**, which should be preserved pending the outcome of the dispute resolution process. This distinction ensures that revenue collection continues where there is no disagreement, while safeguarding taxpayers from undue hardship in respect of amounts that have not been finally adjudicated.

Maintaining this balance reinforces fairness in tax administration, promotes voluntary compliance, and ensures that enforcement powers are exercised in a manner that is both effective and justifiable within a modern and rights-based tax system.

#### **e) Refund Delays, Property Rights, and Irreversible Prejudice to Taxpayers**

Another critical concern arising from premature enforcement through agency notices relates to the practical difficulty and delay in obtaining refunds where a taxpayer ultimately succeeds in a dispute. Kenya's tax dispute resolution process, from objection to Tribunal and court determination, is often lengthy. Where enforcement is permitted during this period, taxpayers may be compelled to part with significant funds well before their liability is conclusively determined. However, even where the taxpayer is successful, recovery of those funds is neither automatic nor immediate.

In such circumstances, the taxpayer must await the conclusion of the dispute, formally apply for a refund, and undergo the administrative processes prescribed under the Tax Procedures Act. In practice, refunds are often subject to verification, audit checks, and budgetary constraints, which can significantly delay repayment. This creates a situation where taxpayers are deprived of the use of their funds for prolonged periods, effectively bearing a financing cost for taxes that were never ultimately due.

This outcome raises important constitutional considerations under Article 40 of the Constitution, which guarantees the right to property and protects individuals from arbitrary deprivation of property. Funds held in bank accounts or by third parties on behalf of a taxpayer constitute property within the meaning of this provision. The premature attachment and retention of such funds through agency notices, particularly in respect of contested liabilities, may amount to a limitation of property rights that is neither proportionate nor justified.

From a rule of law perspective, a system that allows the State to access and retain private funds before liability is established and then subjects their return to a potentially slow and uncertain refund process, creates a real risk of irreversible prejudice. Businesses and financial institutions such as SACCOs may suffer lasting harm due to lost liquidity, missed investment opportunities, or disruption of operations—harm that cannot be fully remedied even if the principal amount is eventually refunded.

Accordingly, maintaining safeguards against enforcement during disputes is essential not only to protect due process rights but also to prevent unjust deprivation of property. It ensures that taxpayers are not forced to finance the State at their own expense during unresolved disputes and preserves confidence in the fairness and balance of the tax system.

### **3.5. Best practices from other jurisdictions**

## **5. International Best Practices**

A review of comparative jurisdictions—including OECD countries and regional peers shows a clear trend toward protecting taxpayers from enforcement while disputes are under consideration, particularly where appeals are pursued in good faith.

### **The United Kingdom**

In the United Kingdom, tax authorities generally suspend enforcement of disputed liabilities once a valid appeal has been lodged, focusing collection efforts on undisputed amounts. This approach ensures that the appeals process remains meaningful and protects taxpayers from premature recovery of contested taxes. Its key advantage is the strong protection of procedural fairness and taxpayer confidence, although it may delay revenue collection in prolonged disputes.

### **Canada**

Similarly, in Canada, the tax authority typically refrains from enforcing collection of disputed taxes until the appeals process is concluded, except in high-risk cases where there is a likelihood of asset dissipation. This model is widely regarded as reinforcing the integrity of the dispute resolution process by ensuring that taxpayers are not subjected to enforcement before liability is confirmed. The trade-off is that it places greater reliance on post-dispute recovery.

### **OECD Nations**

Across OECD jurisdictions more broadly, there is a consistent emphasis on suspending or limiting enforcement during bona fide disputes, often coupled with risk-based exceptions. This approach reflects a recognition that enforcement actions should not undermine access to justice or the effectiveness of dispute resolution mechanisms. These systems prioritise fairness and long-term compliance outcomes over immediate recovery.

In contrast, some jurisdictions adopt more revenue-protective approaches with built-in safeguards:

### **South Africa**

In South Africa, the “pay now, argue later” principle formally applies, but taxpayers may apply for suspension of payment pending appeal. In practice, this often results in enforcement being paused

where the taxpayer demonstrates compliance and where the dispute has merit. This creates a hybrid model that balances revenue interests with taxpayer protection, although it introduces administrative discretion.

### **Australia**

In Australia, while assessments are generally payable, administrative practice allows for deferral or negotiated payment arrangements during disputes, particularly where enforcement would cause hardship. Although not a strict legal suspension, this effectively mitigates the impact of enforcement in many cases.

### **East African Practice**

Within the East African region, the position is more revenue-focused, though with varying degrees of taxpayer protection:

#### **Tanzania**

In Tanzania and Rwanda, taxpayers are generally required to pay a portion of the disputed tax before an appeal can proceed. While this approach safeguards government revenue and discourages frivolous disputes, it places a significant financial burden on taxpayers and may restrict access to justice, particularly for smaller entities.

#### **Uganda**

In Uganda, while enforcement powers exist, there is greater room for administrative discretion, including payment arrangements during disputes. However, the absence of clear statutory protection can create uncertainty and inconsistent outcomes.

## **4. Tax Proposal to Amend the Excise Duty Act to Exclude Fees Derived from Mutual Dealings between SACCOs and their members from excise duty.**

### **4.1. Background**

SACCOs are member-owned financial institutions that aggregate members' savings to extend affordable credit and related financial services. Functioning in a credit union model, a SACCO typically is a not-for-profit financial institution organized to promote thrift and provide credit to members. Being member-owned and controlled through a board of directors elected by the membership. The board serves on a volunteer basis and may hire a management team to run the credit union. The board also establishes and revises policy, sets dividend and loan rates, and directs certain operations.

The result is that members are provided with a safe and convenient place to save and borrow; with reasonable rates at an institution that exists to benefit them, not to make a profit and thereby offer lending rates lower than those of commercial banks and are structured to advance community

welfare. As you may appreciate, members simultaneously serve as both shareholders and beneficiaries, earning dividends on their equity contributions while accessing loans for economic empowerment or business investment. This dual role fosters financial empowerment and strengthens socio-economic resilience among SACCO members.

SACCOs in Kenya were formally recognized as financial institutions with a specific regulatory framework through the enactment of the SACCO Societies Act in 2008 distinguishing them as key players in the financial sector. The Act further provided for the licensing, regulation, and supervision of SACCOs that take deposits from their members vide the SACCO Societies (Deposit-Taking SACCO Business) Regulations, 2010 which were put in place, making the Act operational and requiring deposit-taking SACCOs (DTS) to be licensed and supervised by SACCO Societies Regulatory Authority (“SASRA”)

Over time, SACCOs have undergone significant institutional growth while consistently adhering to their core mandate of providing affordable credit and advancing financial inclusion. This evolution has resulted in the expansion of regulated SACCO operations, with 355 entities serving approximately 7.39 million members in Kenya as of 31 December 2024. Furthermore, the aggregate assets of regulated SACCOs accounted for 6.63% of the national Gross Domestic Product (“GDP”) in 2024<sup>1</sup>, underscoring their systemic relevance and socio-economic importance within the financial sector.

As you may appreciate, SACCOs have been central to the way that many Kenyans plan for the future and for decades, SACCOs provided the only way for many Kenyans to save and borrow providing accessible and friendly financial services in a way that traditional commercial banks were not. Even now, with a much more diverse financial sector, many people continue to choose SACCOs, often as part of a portfolio of financial instruments<sup>2</sup>.

## 4.2. Issues

The ED Act imposes excise duty on fees charged by financial institutions under Part II of the First Schedule to the Act currently at fifteen percent (15%) of the excisable value for money transfer services and twenty percent (20%) on other fees charged by financial institutions i.e

Paragraph 4, Part II of the First Schedule to the ED Act provides that,

*“Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value”.*

We further note from the definitions provided, Part III of the First Schedule to the ED Act defines financial institutions, money transfer services and other fees as provided below. “financial institution” means

- a. a person licensed under
  - i. the Banking Act (Cap. 488);

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<sup>1</sup> <https://www.sasra.go.ke/download/the-SACCO-supervision-annual-report-2024/>

<sup>2</sup> <https://www.fsdkenya.org/wp-content/uploads/2024/09/For-their-mutual-benefit-Kenyas-SACCOs-history-and-prospects.pdf> page 6

- ii. *the Insurance Act (Cap. 487);*
- iii. *the Central Bank of Kenya Act (Cap. 491); or*
- iv. *the Micro Finance Act (Cap. 493C);*
- b. *a SACCO society registered under the SACCO Societies Act (Cap. 490B); or...*
- c. *the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act.*

*“money transfer services” includes services of sending and withdrawal of money;*

*“other fees” includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder;*

From the above definitions, we note that money transfer services entail movement of money and equivalent to the services provided by the other financial institutions as Banks involving movement of money to third party accounts including outside the SACCO's accounts. However, the definition of the other fees as currently provided applies blanketly to all the listed financial institutions without regard to the peculiarity of SACCO business thereby imposing excise duty on fees derived from mutual dealings between SACCOs and their members.

We wish to highlight that SACCOs are organizations founded under the Doctrine of Mutuality with the primary revenue streams in addition to interests earned from members being the fees, charges, and commissions levied in connection with the issuance of credit facilities to the SACCO members.

As noted, SACCOs are organizations that exist primarily to serve their members and as such fees and charges that arise from dealings between a SACCO and its own members embody mutual receipts and under the mutuality doctrine, member-derived receipts are not “income” in a sense. Imposing excise duty on intra-member fees fractures the identity between contributors and beneficiaries and re-characterizes mutual dealings as a taxable trade, contrary to settled doctrine.

As highlighted, Section 5(1)(b) of the ED Act as read together with Paragraph 4 of the First Schedule to the ED Act, such fees, charges, or commissions earned by SACCOs from mutual dealings with the SACCO members are currently subject to excise duty at a rate of 20%. The imposition of this duty thus starkly contradicts the underlying mutuality doctrine; a cornerstone of SACCO taxation that preserves the cooperative character of SACCOs, recognizing that members collectively own, control, and benefit from the common fund. The excise duty imposition also effectively raises the overall cost of credit extended to the members and thereby watering down the underlying objective of the SACCOs which is to extend affordable credit to members.

#### **4.3. Proposal**

While the Excise Duty Act defines “other fees” for financial institutions (including SACCOs), it does not expressly abrogate mutuality. We therefore propose:

Legislative amendment to explicitly exclude member-derived fees (e.g., administrative, loan processing/appraisal fees charged within BOSA) from “other fees,” consistent with mutuality Doctrine. Kenya's Income Tax Act (Section 19A) already recognizes and protects mutual

receipts, exempting member receipts while taxing non-member income.

It is on this basis that we propose an amendment to the definition of “**other fees**” in the Excise Duty Act to exclude excise duty on fees, charges, and commissions that SACCOs levy on financial services provided to their members, as follows:

Inserting the words-

“... **any fee charged by a SACCO to its members,**” before “...or interest on loan...”

The amended provision will read as follows:

*“other fees” includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include **any fee charged by a SACCO to its members,** interest on loan or return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder;”*

#### **4.4. Justification**

**SACCO Credit is Household-Focused and Directly Advances the Bottom-Up Economic Transformation Agenda; excise on mutual receipts thus erodes disposable incomes, undermining BETA’s cost-of-living goals**

SACCO lending is heavily oriented towards household and grassroots economic needs, which aligns closely with the Bottom-Up Economic Transformation Agenda (BETA). In the year to September 2025, regulated SACCOs disbursed KES 131.84 billion in credit, with large shares going to land and housing (KES 32.70 billion), education (KES 31.71 billion), agriculture (KES 21.94 billion), trade (KES 16.79 billion), and consumption and social services (KES 12.52 billion). This pattern shows that SACCO funds are primarily used for school fees, housing, basic welfare, and small business activities which are core needs of low- and middle-income households.

BETA emphasises wealth creation, employment and poverty reduction by strengthening agricultural value chains, local manufacturing, construction, and MSMEs. SACCO credit to agriculture and trade directly supports these value chains by financing farm inputs, small-scale processing, retail, and transport. At the same time, SACCOs mobilise small deposits from households and micro-entrepreneurs and recycle them into affordable credit for working capital and investment, complementing BETA’s focus on Jua Kali, MSMEs, and local value addition.<sup>2</sup>

Excise duty on financial “other fees” is a high, ad-valorem transaction tax that is typically passed through to users; expanding it to internal SACCO member charges raises day-to-day costs of saving, borrowing, and account services for households already targeted by BETA for relief. Excise duty shift from a narrow “sin tax” to a broad levy has the effect of burdening financial services thereby reducing affordability and access if applied injudiciously. Shielding mutual receipts from excise helps protect member cash flows and aligns with BETA’s priority to bring down the cost of living

In light of the above, exclusion of mutual receipts from excise duty thus boosts disposable incomes, underscoring BETA’s cost-of-living goals.

**Taxing mutual receipts dilutes SACCOs’ cheaper credit model, counteracting BETA’s MSME**

## **pillar.**

SACCOs operate on a cooperative model where members pool resources for mutual benefit, enabling relationship-based lending at significantly lower costs than commercial banks. Imposing excise duty on internal charges such as loan processing or appraisal fees has forced SACCOs to either increase these costs or absorb them through internal cross-subsidies, eroding the cost advantage that makes them the preferred financing channel for small businesses and low-income households.

This distortion directly conflicts with BETA's MSME pillar, which prioritizes expanding access to affordable credit for the "bottom of the pyramid." As you may appreciate, MSMEs rely on SACCO financing to sustain operations, manage cash flow, and invest in growth. When excise duty inflates transaction costs, borrowing becomes more expensive, reducing the competitiveness of SACCO loans and pushing entrepreneurs toward costlier alternatives or informal credit markets. Such outcomes not only weaken MSME resilience but also slow job creation and economic dynamism which are the core objectives of BETA's turnaround strategy.

Preserving the SACCO pricing model by exempting mutual receipts from excise duty is therefore a strategic imperative. It ensures that cooperative finance remains inclusive, affordable, and aligned with national development priorities. By shielding SACCO members from unnecessary tax burdens, policymakers can protect disposable incomes, sustain low-cost credit channels, and reinforce the role of SACCOs as engines of financial inclusion and MSME empowerment. This approach harmonizes tax policy with BETA's vision of equitable growth and a thriving grassroots economy.

### **MSMEs as key growth engines in BETA depend on SACCO liquidity; excise here would dampen enterprise dynamism.**

The Bottom-Up Economic Transformation Agenda (BETA), as operationalized in the Fourth Medium-Term Plan (MTP IV, 2023–2027), places MSMEs at the centre of job creation and inclusive growth, with explicit objectives to lower the cost of living, expand access to finance, and catalyse grassroots enterprise. Imposing excise duty on mutual SACCO receipts (intra-member fees tied to BOSA activities) introduces transaction-level frictions that compress margins and slow cash cycles for micro and small firms that bank and borrow through cooperatives contrary to BETA's value-chain approach to economic turnaround. Parliamentary and budget analyses on operationalizing BETA similarly emphasize reducing financial intermediation costs and widening MSME participation in formal finance; excise on mutual receipts moves in the opposite direction by raising the effective price of liquidity for the very firms BETA seeks to empower.

Mechanically, excise on "other fees" is a high-friction pass-through that lifts the all-in cost of cooperative credit. Excise duty on financial-services "other fees" operates as a broad transaction levy (charged at 20% and due at the time of supply) that institutions either pass on to customers or absorb via cross-subsidies, both of which erode affordability. Extending the excise duty to mutual receipts within SACCOs (e.g., member loan appraisal/processing or account-maintenance fees tied to BOSA) thus dilutes the cooperative pricing model that keeps credit cheaper than market alternatives, and risks pushing lower-income entrepreneurs toward costlier or informal lenders. The exemption of mutual receipts will preserve SACCOs' relationship-based, low-cost finance that BETA relies on to crowd in MSMEs.

Strategically, safeguarding mutual receipts strengthens the tax base over time and fully consistent

with BETA's revenue objectives. BETA's macro-fiscal agenda includes expanding the tax base while fostering MSME growth, allowing SACCOs to keep mutual dealings excise free thus sustains higher net returns on borrowed funds enabling reinvestment, and supports formalization which are mechanisms that increase taxable corporate income as firms scale. In dynamic terms, the near-term excise foregone on mutual receipts is offset and ultimately surpassed by broader CIT collections from more profitable, larger MSMEs operating in a lower-cost financial ecosystem. This alignment lowers friction now while enabling stronger revenues later thus matches MTP IV's goals to deepen inclusive finance and raise revenue collection as a share of GDP.

### **Aligning Excise Duty with the Doctrine of Mutuality in SACCOs**

SACCOs operate on the doctrine of mutuality: members pool resources and transact with one another through a cooperative they collectively own. Fees, charges, and commissions paid by members are effectively contributions within the same member pool, not payments to an external profit-seeking entity.<sup>3</sup> Imposing excise duty on these member-to-member charges undermines this principle by taxing internal mutual dealings and reducing the surplus that would otherwise be returned to members as dividends, interest on deposits, or institutional capital.

Under the mutuality doctrine, a SACCO cannot “derive income from itself”; receipts from dealings with members are mutual and not taxable income. Kenya's Income Tax Act Section 19A already reflects this by exempting member interest and distinguishing it from market-facing income clear legislative intent to protect intra-member finance. Treating mutual receipts as excisable “other fees” would contradict that intent and blur the line between BOSA (mutual) and FOSA (market) activities. Preserving mutuality therefore supports BETA's objective of inclusive growth and lower cost of living by keeping cooperative self-help outside punitive transaction taxes.

Excluding SACCO member fees from excise duty aligns the tax law with this mutuality doctrine and recognises SACCOs as distinct from commercial financial institutions. It reduces distortions where community-based, member-owned cooperatives face the same transactional excise burden as profit-driven banks, despite serving lower-income, higher-risk segments at thinner margins. This clarification supports a fairer, more inclusive financial system while preserving the cooperative character of SACCOs.

Upholding mutuality thus advances BETA's inclusion-first economic turnaround.

#### **4.5. Best practices from other jurisdictions**

<b>Jurisdiction</b>	<b>Applicability of Excise on mutual dealings</b>	<b>Rationale</b>
<b>United Kingdom</b>	Exempt	Excise on financial services is avoided to protect financial inclusion and economic growth
<b>European Union</b>	Exempt	Excise reserved for products with externalities
<b>South Africa</b>	Out of scope	Excise applies only to consumables with

<sup>3</sup> <https://ronalds.co.ke/the-principle-guiding-taxation-of-SACCOs-in-kenya/>

		negative externalities; mutual dealings between SACCO and members do not amount to a supply.
<b>Singapore</b>	Exempt	GST-exempt financial services. Imposing excise on SACCO member charges raises borrowing costs,
<b>United States of America</b>	Exempt	Member dealings charges are mutual income not subject to Excise Duty.
<b>Uganda</b>	Exempt	BOSA services are mutual dealings exempt from excise duty. Excise applicable on money transfer services.
<b>Nigeria</b>	Out of scope	Excise applies only to consumables with negative externalities; financial intermediation services are out of scope.

## Uganda

The Excise Duty Act, 2014 imposes excise duty on specific Front Office Financial Services. Under the current Schedule 2, excise is charged as follows:

- i. money transfers (other than transfers by banks) are subject to excise at 15% of the fees charged;
- ii. mobile money transactions involving withdrawals of cash are subject to excise at 0.5% of the value of the transaction; and
- iii. payment service withdrawals of cash provided through a payment system (other than withdrawals provided by a financial institution, a microfinance deposit-taking institution, or through agent banking) are also subject to excise at 0.5% of the value of the transaction.<sup>3</sup>

Importantly, the excise applies to the Front Office Services Activity (“FOSA”) fees and charges on these non-bank transfers and withdrawals, rather than to ordinary account operations (Back Office Services Activity, BOSA) within SACCOs or banks themselves. This practice effectively excludes members mutual dealings from the ambit of excise duty.

## United States of America (United States)

In the United States, excise duty is not applicable on ordinary member transactions (such as deposits, withdrawals, or loan repayments) in credit unions. Federally chartered credit unions remain exempt from federal corporate income tax, and the fees they charge members such as account maintenance fees, ATM fees, loan-related charges are not subject to transactional excise regime aimed at cooperative financial institutions.

Member-facing transactions are not burdened by excise-type taxes and as such does not raise the cost of everyday financial services to members, allowing credit unions to continue offering relatively low-cost, inclusion-oriented services.

## **United Kingdom (UK)**

In the UK, there is no excise-style tax specifically targeting SACCO-equivalent entities (credit unions and cooperatives) or their member fees. Financial services such as interest, loan arrangement fees, and basic account maintenance fees are not subject to excise tax. Where taxation arises in the financial sector, it is mainly through stamp duties on certain securities transactions, the Bank Levy on large banking groups, and corporation tax on profits.

The rationale for exclusion financial intermediation from excise is because it is considered not to be a consumption activity but a facilitative process.

## 5. Tax proposal on the widening of the individual income tax bands

### 5.1. Background

Kenya's individual income tax regime is structured progressively under the ITA. Since July 2023, there are multiple graduated bands with marginal rates ranging from 10% at the lowest income levels to 35% for the highest earners. Under the PAYE framework, these rates are applied monthly, with a tax-free threshold of KES 24,000 and a personal relief of KES 2,400 per month.

While recent Finance Bills have introduced minor adjustments such as changes to allowances and benefits, the core tax bands and entry thresholds have remained largely unchanged. This rigidity persists despite sustained inflation, rising living costs, and additional statutory deductions, including enhanced National Social Security Fund ("NSSF") contributions, Social Health Insurance Fund ("SHIF") payments, and the Affordable Housing Levy ("AHL"). The combined effect has been an increase in the effective tax burden on low- and middle-income earners.

International best practice, as highlighted by Organisation for Economic Co-operation and Development ("OECD") tax policy reviews<sup>4</sup>, underscores the importance of periodically adjusting thresholds and bands to counter inflation-induced bracket creep and maintain fairness. Economic theory further cautions against excessive reliance on higher tax rates. The Laffer Curve suggests that beyond a certain point, increasing tax rates does not yield proportional revenue gains.

Tax policy also influences Kenya's competitiveness as a regional business hub. High personal tax rates, combined with mandatory contributions, risk deterring multinational corporations ("MNCs") from stationing expatriate staff in Kenya. Such relocations could deprive the economy of ancillary benefits, including spending on housing, education, hospitality, and travel, while also dampening wider multiplier effects that arise from increased household consumption, local investment, and the circulation of income across supply chains.

Finally, the cumulative impact of higher taxes and statutory deductions may exert sustained upward pressure on labour costs. As employees seek to offset reduced net pay by demanding higher salaries, employers are likely to respond with cost-containment measures such as voluntary redundancies, early retirements, or layoffs. Beyond threatening employment stability, these dynamic risks erode household purchasing power, weaken consumer demand, and constrain private sector investment. Left unchecked, these ripple effects could slow job creation, widen inequality, and undermine Kenya's broader economic transformation agenda.

### 5.2. The issue

Kenya's current income tax structure is not sufficiently progressive, and bracket creep has worsened due to inflation and rising statutory deductions. Taxation begins at KES 24,000 per month at 10%, with a 25% marginal rate applying up to KES 32,333 per month, and the 30% rate triggered immediately above this level.

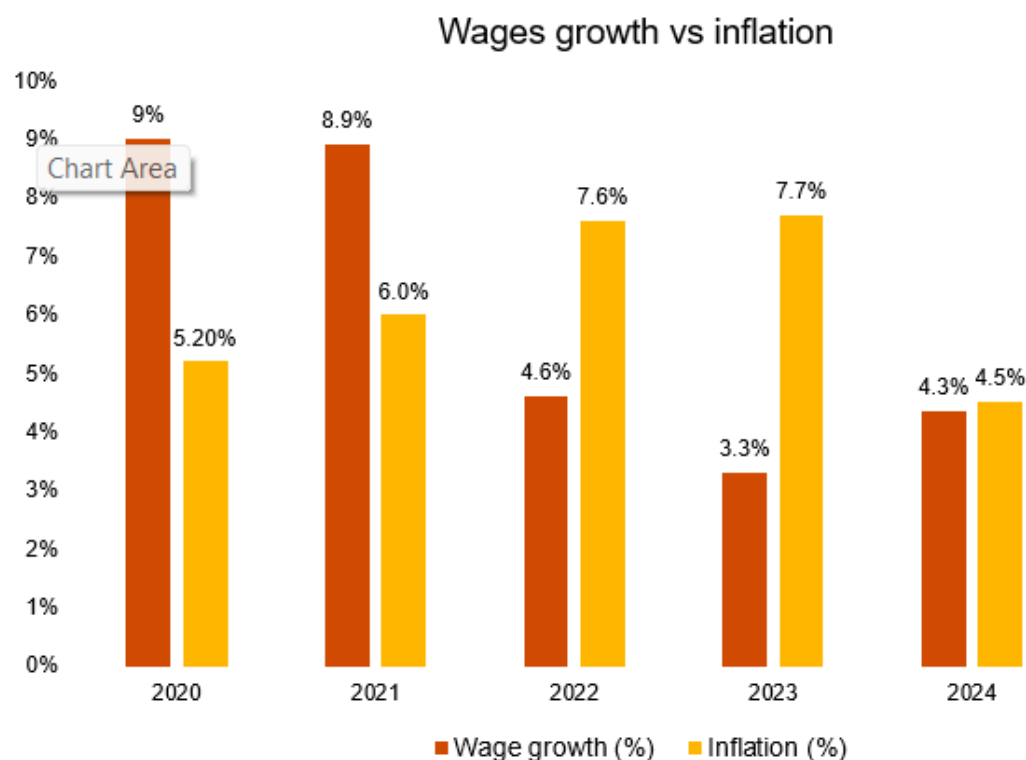
For example, an individual earning KES 30,000 per month pays KES 732 in income tax and KES

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<sup>4</sup> <https://taxfoundation.org/data/all/eu/income-tax-inflation-adjustments-europe/>

3,075 in statutory deductions, leaving only KES 26,193 as disposable income. See simulation as Appendix 1 to this paper. At this level, covering rent, school fees, utilities, and transport is increasingly difficult given rising living costs. The chart below illustrates this clearly by comparing wage growth to inflation.

**Chart 1: Comparing growth to national average earnings to inflation<sup>5</sup>**



While wages have increased in nominal terms, these gains have not translated into improved purchasing power. KNBS data show that average annual earnings rose from KES 894,200 in 2023 to KES 933,100 in 2024, but this occurred alongside elevated inflation, which averaged 7.7% in 2023, eased to 4.5% in 2024, and rose again to about 5.6% by April 2026. The rise in prices, particularly for food and transport, has placed sustained pressure on household budgets.

At the same time, wage growth has moderated in recent years relative to inflation. After strong growth of 9% in 2020 and 8.9% in 2021, earnings growth slowed to 4.6% in 2022 and 3.3% in 2023, when inflation peaked at 7.6% and 7.7% respectively. As a result, increases in salaries have largely been absorbed by higher living costs and rising statutory deductions, limiting improvements in disposable income.

Because tax bands have not been adjusted over this period, more low- and middle-income earners are being pushed into higher tax brackets without a corresponding increase in real income, undermining fairness and progressivity.<sup>6</sup>

<sup>5</sup> [www.knbs.or.ke/wp-content/uploads/2025/05/2025-Economic-Survey.pdf](http://www.knbs.or.ke/wp-content/uploads/2025/05/2025-Economic-Survey.pdf)

<sup>6</sup> [https://ipcid.org/sites/default/files/pub/en/WP195\\_The\\_tax\\_system\\_of\\_OECD\\_countries\\_and\\_main\\_recommendations.pdf](https://ipcid.org/sites/default/files/pub/en/WP195_The_tax_system_of_OECD_countries_and_main_recommendations.pdf)

Further, the marginal tax rate of 30% applies just above KES 32,333 per month, close to the median formal sector wage. This structure penalizes middle-income earners and contradicts the principle of progressivity. Moreover, the proposed removal of personal relief (KES 2,400 per month) under the Medium-Term Revenue Strategy (2025–2027) will further reduce disposable income unless tax bands are revised.

Raising the tax-free threshold and widening bands would restore fairness, protect disposable income, and align with Kenya Kwanza’s bottom-up economic transformation agenda.

### 5.3. Proposed amendment

To delete Paragraph 1 of Head B and replace it with the following:

*1. The individual rates of tax other than that of the total income comprising fringe benefits and the qualifying interest shall be –*

*“Rate in each shilling*

*On the first Ksh. 480,000 .....0%*

*On the next Ksh. 720,000.....20%*

*On the next Ksh. 4,800,000 ....25%*

*On all income over Ksh. 6,000,000 .....30%”*

### 5.4. Justification

#### **Harmonisation of the income tax rate with the corporation tax rate**

Kenya’s current personal income tax (“PIT”) structure creates inequities and economic inefficiencies that need urgent correction. The top PIT rate of 35% applies to monthly incomes above KES 800,000, while the corporate income tax (“CIT”) rate remains at 30%. This disparity disadvantages sole proprietors compared to incorporated businesses and encourages tax planning based on legal form rather than productive investment. Harmonising the PIT and CIT rates at 30% would restore neutrality and align with the Government’s objectives under the MTRS, which calls for equity and predictability in tax policy.

#### **Increase in disposal income will stimulate economic growth**

Beyond fairness, widening tax bands and lowering the top personal income tax rate would significantly boost household disposable income, creating a strong foundation for economic growth. Although nominal average annual earnings rose by 4.3% between 2023 and 2024, real earnings declined by a mere 0.3%. This decline underscores that purchasing power has eroded despite headline wage gains. Inflation averaged 7.7% in 2023 before easing to 4.5% in 2024, following several years of high price increases.

By increasing disposable income, households will have greater capacity to spend on goods and services, stimulating demand in sectors such as hospitality, education, and retail. This additional spending can also encourage investment in small businesses, creating a virtuous cycle of growth through job creation and innovation.

Reducing the top PIT rate will further strengthen purchasing power, enabling higher discretionary

spending on non-essential goods and services. This ripple effect will benefit sectors like tourism, entertainment, and hospitality, while the government stands to gain from increased revenues through corporate income tax and consumption-based taxes such as VAT and excise duty.

### **Rising cost of living and inflation rates**

The case for reform is strengthened by the rising cost of living and static tax thresholds. The entry point for PAYE taxation (KES 24,000 per month) has remained unchanged since April 2020, and the 25% band up to KES 32,333 has been static since January 2021. Meanwhile, consumer prices for essentials such as food, transport, and housing have surged. KNBS data shows that food inflation stood at 8.8% and transport inflation at 10.0% as at April 2026, categories that account for a large share of household spending and place the greatest pressure on low- and middle-income earners.

As a result, taxpayers face increasing financial strain while being pushed into higher tax brackets. This disconnect between tax thresholds and living costs undermines equity and weakens the progressivity of the tax system.

### **Increased statutory social security contributions and levies**

Statutory deductions have compounded the squeeze on net pay. Employees contribute 1.5% of gross salary to the Affordable Housing Levy and 2.75% to the Social Health Insurance Fund, while NSSF contributions continue to rise, with further increases expected in 2027 as the upper earnings limit is adjusted. These mandatory deductions, combined with unchanged tax bands, continue to erode disposable income and increase the effective tax burden on workers, while also raising overall labour costs for employers.

### **Expansion of the tax base**

Finally, expanding the tax base remains critical. KNBS estimates total employment at 21.6 million in 2024, with the informal sector accounting for 83.8% of jobs<sup>7</sup>. Yet only 6.3 million individuals filed returns on time in 2023, according to KRA<sup>8</sup>. Simplifying compliance for small businesses, leveraging digital tools, and linking business permits to tax filing could help close this gap. A broader base, combined with fairer bands, will improve revenue collection without overburdening already compliant taxpayers.

## **5.5. Regional best practice and comparative analysis**

Kenya's current top marginal personal income tax rate of 35% is not the highest in Africa, but it remains relatively high compared to many countries in the region. For instance, Mauritius applies a flat rate of 15%<sup>9</sup>, while Nigeria caps its top rate at 24%<sup>10</sup>. In East Africa, Rwanda<sup>11</sup> and Tanzania<sup>12</sup> maintain a top rate of 30%, which is significantly lower than Kenya's 35%. In Southern Africa, rates

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<sup>7</sup> <https://www.knbs.or.ke/reports/2026-economic-survey/>

<sup>8</sup> <https://www.kra.go.ke/news-center/press-release/1947-6-3-million-kenyans-file-their-income-returns-on-time>

<sup>9</sup> <https://mauritiustrade.com/personal-income/>

<sup>10</sup> <https://fctirs.gov.ng/wp-content/uploads/Guideline-to-Personal-Income-Tax-Computation.pdf>

<sup>11</sup> <https://www.rra.gov.rw/en/taxes-fees/domestic-taxes/income-tax/personal-income-tax-pit-1>

<sup>12</sup> <https://www.tra.go.tz/page/income-tax-for-individuals>

are higher; South Africa stands at 45%<sup>13</sup>, and Zimbabwe at 40%<sup>14</sup>. However, these jurisdictions typically provide extensive social benefits such as free healthcare and subsidized education, which offset the tax burden for residents.

Recent data shows that countries with higher marginal tax rates often complement them with robust social safety nets. For instance, South Africa pairs its 45% top rate with free basic healthcare and free primary and secondary education for low-income families. Likewise, Algeria<sup>15</sup>, which applies a 35% marginal tax rate, provides free healthcare<sup>16</sup> in public facilities, while Ghana<sup>17</sup>, with a similar 35% top rate, offers free primary and secondary education<sup>18</sup>.

When benchmarked against East African peers, Kenya's 35% rate is clearly above the regional norm of 30%, and its tax bands are relatively narrow. This structure places a disproportionate burden on middle-income earners and risks discouraging investment and formal employment. By contrast, Rwanda and Tanzania maintain lower rates but apply tighter brackets, which still allow for progressivity without imposing steep marginal rates early in the income scale.

Our proposal to harmonize the PIT top rate with the CIT rate of 30% is therefore justified on multiple grounds. First, it aligns with the Government's strategic focus under the MTRS to create a predictable and equitable tax environment that supports investment and competitiveness. Second, lowering the top PIT rate and widening tax bands will raise disposable incomes, enabling households to spend more on goods and services. This increased consumption will stimulate growth in sectors such as tourism, hospitality, education, and entertainment, while also boosting government revenues through corporate income tax and consumption-based taxes like VAT and excise duty.

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<sup>13</sup> <https://www.sars.gov.za/tax-rates/income-tax/rates-of-tax-for-individuals/>

<sup>14</sup> <https://www.zimra.co.zw/domestic-taxes/tax-tables>

<sup>15</sup> <https://tradingeconomics.com/algeria/personal-income-tax-rate>

<sup>16</sup> <https://p4h.world/en/countries/algeria/>

<sup>17</sup> <https://www.taxlawgh.com/ghana-tax-rates>

<sup>18</sup> <https://www.modernghana.com/news/1397386/30-years-of-free-basic-education-in-ghana-a-repor.html>

**Appendix 1: Computation of PAYE and other statutory deductions at applicable current rates**

<b>Particulars</b>	<b>KES</b>
<b>Basic salary (A)</b>	30,000.00
<b>Gross emoluments</b>	<b>30,000.00</b>
<b>Less:</b>	
<b>NSSF deduction</b>	1,800.00
<b>SHIF deduction</b>	825.00
<b>AHL deduction</b>	450.00
<b>Taxable income</b>	<b>26,925.00</b>
<b>PAYE before reliefs</b>	3,131.25
<b>Less:</b>	
<b>Personal relief</b>	(2,400.00)
<b>PAYE due</b>	<b>731.25</b>
<b>Employee NSSF contribution</b>	1,800.00
<b>Employee AHL contribution</b>	450.00
<b>SHIF contribution</b>	825.00
<b>Total deductions</b>	<b>3,806.25</b>
<b>Take home pay</b>	<b>26,193.75</b>