



The Sacco Sector Conference– Naivasha

Presentation by: CPA Eric Misiani

Taxation of the Sacco sector

Agenda Dashboard



- Introduction to Sacco sector In Kenya
 - Types of Saccos and key definitions
- The concept of mutual trading (mutuality)
- Income tax compliance for Saccos
- Taxation of Saccos as provided by sec. 19A of ITA
- Review of recent case law pertaining to the Sacco sector in Kenya
- Excise duty compliance
- General tax compliance requirements
- Penalties for non - compliance

Types of Saccos and key definitions



Cooperative Union or Apex society

Means a society formed at the national level by the co-operative movement in Kenya and registered under this Act to promote co-operative development and represent the interests of co-operative societies locally and internationally e.g KUSCCO

Primary society

Means a co-operative society registered under the Co-operative Societies Act the membership of which is restricted to individual persons

Types of Saccos and key definitions



❑ Designated co-operative society

Means a co-operative society registered under the Co-operative Societies Act

❑ Deposit

Means a sum of money paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the society to receive it at the risk of the society receiving it

Types of Saccos and key definitions



- Deposit taking saccos
- Non – deposit taking saccos
- Bonus

Means that member's share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member's volume of business with the society bears to the total volume of business done by the society

Mutual Trading (Mutuality principle)



“No man can trade with himself”

“Where income of an organization arises solely from contributions by its members and the members being the owners of the organization, the profits thereon should not be subjected to tax”

Mutual Trading (Mutuality principle)



Characteristics of mutuality

- Collective benefits of all members
- Common purpose/ objective
- Member's contribution to common fund
- All contributions applied for the collective benefits of members
- Members own and control common fund
- Members are entitled to enjoy or share surplus of common fund

Mutual Trading (Mutuality principle)



Organizations enjoying mutuality status

- Saccos
- Trade associations e.g. KAM, FPEAK
- Members clubs e.g. Parklands Members Clubs
- Collective investment schemes
- Family trusts
- Mutual insurance

Taxation of Sacco sources of income



Taxation of BOSA business

BOSA business linked with contributions from members hence any profits arising not taxable (mutuality)

Taxation of FOSA business

FOSA services may be offered to third parties who may not be members of the Sacco. Thus, any profits arising from FOSA business taxable (non - mutuality)

Taxation of Sacco sources of income



Taxation of interest income

Interest arising from members – Not taxable (mutuality principle)

Interest arising from non – members – fifty percent of gross income taxable

Taxation of other incomes

Other income taxed up to 100%

Taxation of Saccos under section 19A of ITA



Sec. 19A (1) This section shall apply to designated co-operative societies other than:

- a society which has been exempted from all the provisions of the Co-operative Societies Act (Cap. 490) under section 92 of that Act; or
- a society in respect of which the Commissioner is of the opinion, having regard to the number of members composing it, the nature of its business, the manner in which its business is conducted, the extent of its transactions with non-members or any other relevant factors, is a body corporate carrying on business for its own profit.

Taxation of Saccos under section 19A of ITA



Sec. 19A (2): Taxation of apex society

- ❑ In the case of every designated co-operative society, other than a designated primary society, the income on which tax shall be charged shall be its total income for the year of income deducting therefrom an amount equal to the aggregate of bonuses and dividends declared for that year and distributed by it to its members in money or an order to pay money; but the deduction shall in no case exceed the total income of the society for that year of income.

Taxation of Saccos under section 19A of ITA



Sec. 19A (2): Taxation of apex society

Profit as per accounts	XXX
Add: Non- allowable expenses	XXX
Less: Allowable expenses	<u>XXX</u>
Adjusted profit	XXX
Less: Bonus, interest or dividends	<u>XXX</u>
Taxable profit @30%	<u>XXX</u>

Taxation of Saccos under section 19A of ITA



Sec. 19A (3): Taxation of primary saccos not operating as credit and savings co-operatives e.g. PSV saccos

❑ In the case of every designated primary society, other than a designated primary society which is registered and carries on business as a credit and savings co-operative society to which the provisions of subsection (4) apply, the income on which tax shall be charged shall be its total income for the year of income deducting therefrom an amount equal to the aggregate of bonuses and dividends declared for that year and distributed by it to its members in money or an order to pay money

Taxation of Saccos under section 19A of ITA



Sec. 19A (4): Taxation credit and savings co-operatives

In the case of a designated primary society which is registered and carries on business as a credit and savings co-operative society its total income for any year of income shall, notwithstanding any other provisions of this Act, be deemed to be the aggregate of:

- (a) fifty per centum of its gross income from interest (other than interest from its members);

Taxation of Saccos under section 19A of ITA



- (a) its gross income from any right granted for the use or occupation of any property, not being a royalty, ascertained in accordance with the provisions of this Act;
- (b) gains chargeable to tax under section 3(2)(f);
- (c) any other income (excluding royalties) chargeable to tax under this Act not falling within paragraph (a), (b) or (c) ascertained in accordance with the provisions of this Act.

Taxation of Saccos under section 19A of ITA



Sec. 19A (4): Taxation credit and savings co-operatives

50% of gross interest (excluding interest from members)	XXX
Add: 100% income from rent	XXX
Add: 100% income from other sources (excluding royalties)	<u>XXX</u>
Total chargeable income @30%	<u>XXX</u>

Review of recent Sacco tax cases



- ❑ Muramati District Tea Growers Sacco Society Ltd (Unaitas Sacco) Vs Kenya Revenue Authority (Income Tax Appeal No 4 Of 2013)
- ❑ Nyeri Teachers Sacco Vs The Commissioners Of Domestic Taxes (Income Tax Appeal No 6 Of 2013)
- ❑ Sheria Sacco Society Limited Vs The Commissioner Of Domestic Taxes (Income Tax Appeal Case No. 36B Of 2017)

Review of recent Sacco tax cases



Muramati District Tea Growers Sacco Society Ltd (Unaitas Sacco) Vs Kenya Revenue Authority (Income Tax Appeal No 4 Of 2013)

- ❑ The respondent (KRA) served the appellant (Muramati District Tea Growers) with income tax additional assessment for the years of income 2004 – 2005 under section 19(4) (d) of ITA.
- ❑ The appellant objected to the additional assessment. However, the responded confirmed the additional assessment.

Review of recent Sacco tax cases



- ❑ Subsequently, the appellant filed an appeal at the Local Area Committee for Nairobi Tax District.
- ❑ After hearing the appeal, the Local Area Committee dismissed the appeal culminating to appeal to High Court.

Issue for determination:

- ❑ Whether income arising from FOSA business was exempted from taxation under mutuality principle?

Review of recent Sacco tax cases



High Court ruling

The court ruled that income arising from FOSA services (Sale of credit forms, services, appraisal fees, cheque commissions, sale of crop forms and ledger fees/credit Sale of Bank Card) were within contemplation of sec. 3(2)(a)(I) and (II) of ITA hence subject to tax.

(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of—

(a) gains or profits from—

- (i) any business, for whatever period of time carried on;**
- (ii) any employment or services rendered;**

The appeal was dismissed with costs to the respondent.

Review of recent Sacco tax cases



Nyeri Teachers Sacco Vs The Commissioners Of Domestic Taxes

(Income Tax Appeal No 6 Of 2013)

- ❑ The appellant's (Nyeri Teachers Sacco) Memorandum stipulated that "they carried out BOSA and FOSA business.
- ❑ Appellant is a member of KUSCCO and receives dividends as a return on their savings
- ❑ The respondent (The Commissioner of Domestic Taxes) levied tax on dividend income received by the appellant from KUSCCO.

Review of recent Sacco tax cases



- The responded also levied tax on FOSA activities income for the years of income 2008 & 2009. The FOSA activities include; Commission on advances, Commissions on loan transfers, Commission on salary transfers, Commission on standing orders, Commission on closed accounts, Commission on cash withdrawals, Commissions on cheques clearance, Commission on sundry services and, Sales of various stationery items

Issue for determination

- Whether income from FOSA activities is mutual in nature?
- Whether the responded erroneously levied tax at the corporation tax rate?

Review of recent Sacco tax cases



- Significant funds were deposited with Co-operative Bank and KUSCCO to earn a return
- Receipt and onward transfer of salaries for a fee

High Court ruling

- The appeal dismissed.

Review of recent Sacco tax cases



Sheria Sacco Society Limited Vs the Commissioner of Domestic Taxes (Income Tax Appeal Case No. 36B of 2017)

The appellant (Sheria Sacco) with 9,963 members all belonging to BOSA business. 7,501 of the members subscribed to FOSA business.

The respondent carried out an audit for the years of income 2011 - 2015 and issued an additional assessment (KES 8,158,718) in relation to PAYE and undeclared non - interest FOSA income.

Review of recent Sacco tax cases



- ❑ The appellant was unable to segregate FOSA services interest earned between members and non – members. The burden of proof was on the appellant.

The court ruling

- ❑ The appeal dismissed with costs to the responded.

Excise duty compliance



- ❑ Part II of 1st schedule of Excise Duty Act establishes excise duty on other fees charged by financial institutions at the rate of 20 percent.
- ❑ Saccos need to assess whether the other fees offered to their members and customers are subject to excise duty and comply
- ❑ Excise duty Act defines financial institutions to include Sacco society registered under the Sacco Societies Act, 2008.

Definition of “Other fees”

- ❑ Finance Act, 2021 deleted the words “fees or commissions” thereby expanding the scope of the definition of “other fees” to include any fees charged by financial institutions relating to their licensed financial institutions, but does not include interest on loan or return on loan

General tax compliance



- Compliance with PAYE requirements
- Compliance with withholding tax req on dividend paid to members
- (b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend;
- Maintain all financial transactions records for at least 5 years in either of the official language
- Account for reverse VAT when procuring foreign services
- Submission of tax returns

Penalties for non - compliance



OFFENCE	PENALTY	Tax Law
Late submission of return on account of employment income	25% of tax due (minimum Ksh10,000).	Sec 83(1)(a), TPA
Late submission of any other return except for VAT and excise duty	5% of tax due (minimum Ksh 20,000).	Sec 83(1)(d)(i), TPA
Late Payment Penalty	5% of unpaid tax	Sec 83A, TPA
Interest on unpaid tax	1% per month simple interest on unpaid tax, not subject to waiver.	Sec 38, ITA

Penalties for non - compliance



OFFENCE	PENALTY	Tax Law
Failure to kept records	The higher of – 10% of the amount of tax payable under the tax law to which the document relate – Ksh.100,000	Sec 82, TPA
Failure to submit documents other than return on due date	Ksh 1,000 for each day the default continues subject to a maximum of Ksh 50,000	Sec 83(2), TPA

Penalties for non - compliance



OFFENCE	PENALTY	Tax Law
Failure to comply with electronic tax system	Ksh 100,000	Sec 86, TPA
Failure to appear before the Commissioner upon being served with notice to do so	Ksh 10,000 in case of individual and Ksh 100,000 for any other case	Sec 87, TPA
Tax avoidance schemes	Double the tax avoided	Sec 85, TPA

Interactive Session

