



4GCAPITAL

THE NEOBANK FOR AFRICA



**DRAFT PROPOSALS
FOR FINANCE ACT
2025**

About us

4G Capital (4th Generation Capital) is Africa's fastest fintech providing ethical credit services to those who require it most. We provide rapidly accessible and affordable unsecured loans with strict affordability criteria to prevent unmanageable debt. Our customers are mainly small businesses and entrepreneurs who use our credit to grow their businesses and provide for the unforeseen.

Our Mission is to provide instant access credit for small business growth.



Proposal 1: Treatment of “bad-debts” as deductible expenses



Proposal 1: Amendment of the Income Tax Act to expressly exclude bad debts arising from the ordinary course of business in credit-lending institutions from being classified as capital in nature, thereby allowing such debts to be treated as deductible expenses for tax purposes.

Issue

Paragraph 4 of Legal Notice 37 of 2011 provides as follows:

For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.

The current position by authorities is that the principal amount in a “bad loan” is not deductible as it is capital in nature.

Proposal

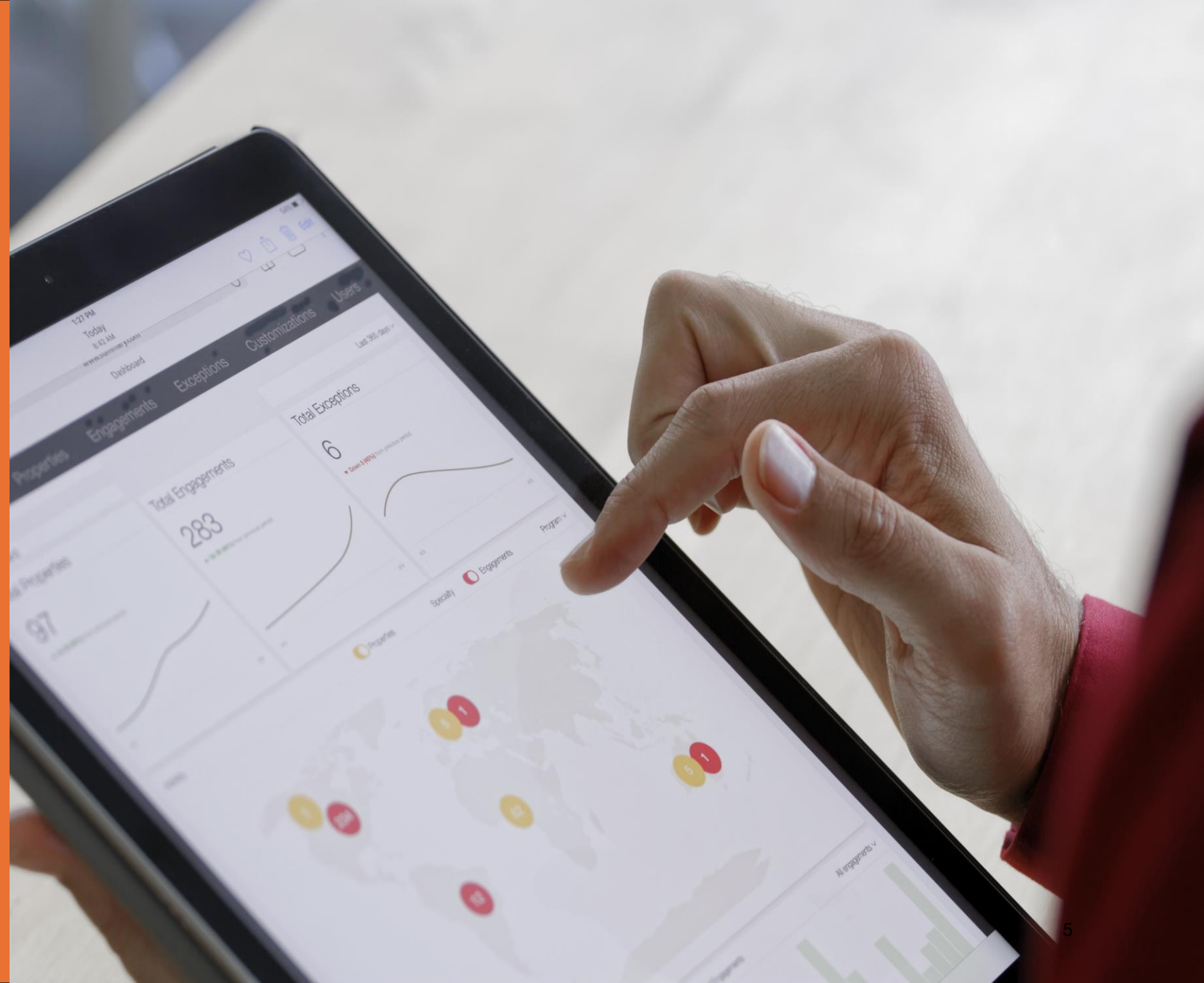
We recommend that the National Assembly amends the Income Tax Act to expressly exclude bad debts arising from the ordinary course of business in credit-lending institutions from being classified as capital in nature, thereby allowing such debts to be treated as deductible expenses for tax purposes.

This amendment can be made by introducing a proviso to section 16(1)(b) for money lenders moneylenders employing cash in the production of income.

Justification

1. Loans are trading stock not Capital assets
2. Legal Ambiguity and Administrative Inefficiency
3. Comparative Jurisdictions and International Best Practices; Australia, SA, Tanzania.
4. Impact on Financial Inclusion and Economic Development

Proposal 2: Definition of a digital lender.



Proposal 2 : Definition of a digital lender as per Section 2(1) of the Excise Duty Act

Issue

The Finance Bill, 2025 seeks to redefine “digital lender” under section 2 of the Excise Duty Act as follows:

“a person extending credit through an electronic medium but does not include a bank licensed under the Banking Act, a SACCO Society registered under the Co-operative Societies Act, or a microfinance institution licensed under the Microfinance Act.”

Proposal

We recommend that the National Assembly amends the proposed definition under the Finance Bill, 2025 to explicitly exclude digital credit providers licensed by the Central Bank of Kenya.

Justification

Kenya’s digital credit landscape includes both regulated and unregulated entities. Subjecting DCPs to the same excise duty treatment as unregulated entities undermines tax fairness and discourages compliance. Excluding licensed DCPs from the definition will ensure a level playing field.

Thank you

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The Chairman
Departmental Committee on Finance and National Planning
Main Parliament Buildings – 1st Floor.
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Attention: The Clerk of the National Assembly

29 May 2025

Sent via email to: cna@parliament.go.ke and financecommitteena@parliament.go.ke

Dear Sir,

Subject: In the matter under consideration by the National Assembly of the Finance Bill (National Assembly Bills No. 19 of 2025) - Submission of legislative proposal by Fourth Generation Capital Limited

The Clerk of the National Assembly, through a public notice dated 13 May 2025, called for submission of memoranda on the Finance Bill, 2025 (National Assembly Bills No. 19 of 2025) (“the Finance Bill”, “the Bill”) as provided for by Article 118 (1) (b) of the Constitution of Kenya, 2010.

Pursuant to the notice referenced above, Fourth Generation Capital Limited hereby submits one (1) tax proposal to be considered by the Departmental Committee on Finance and National Planning (“the Committee”) in the Finance Bill, 2025.

We have provided a brief background of the company, a detailed analysis of the issue, its impact and our proposed solution with its justifications for your consideration. Additionally, we would be grateful for an opportunity to appear before the members of the Committee to deliberate further on the issues presented. We are happy to provide any additional information upon request and should you wish to discuss the contents of this letter please reach out through julian.mitchell@4g-capital.com

Yours sincerely,

For Fourth Generation Capital Limited

Julian Mitchell

Chief Executive Officer (CEO), 4G Capital

Cc. Maurice Mwaniki,
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Executive summary

Reference	Issue of Concern	Recommendation	Rationale Justification
Section 15 of the Income tax Act and Paragraph 4 of Legal Notice 37 of 2011	<p>Paragraph 4 of Legal Notice 37 of 2011 provides as follows:</p> <p><i>For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.</i></p> <p>The current position by authorities is that the principal amount in a “bad loan” is not deductible as it is capital in nature.</p>	<p>We recommend that the National Assembly amends the Income Tax Act to expressly exclude bad debts arising from the ordinary course of business in credit-lending institutions from being classified as capital in nature, thereby allowing such debts to be treated as deductible expenses for tax purposes.</p> <p>This amendment can be made by introducing a proviso to section 16(1)(b) for moneylenders employing capital in the production of income.</p>	<p>1. Loans as Trading Stock, Not Capital Assets</p> <p>The current provision fails to distinguish between capital losses and trade-related bad debts in the context of financial institutions. For credit-lending businesses, such as banks, microfinance institutions, digital lenders, and SACCOs, loans are not capital investments but the core trading stock from which income is generated. These institutions do not lend as a form of capital deployment but as a commercial activity. When a loan becomes irrecoverable, it represents a direct operational loss, not a capital loss. Denying deductibility in such cases is inconsistent with Section 15(1) of the Income Tax Act, which allows deductions for expenses “wholly and exclusively incurred in the production of income.” For lenders, bad debts are revenue costs incurred in doing business and should be treated as such.</p> <p>2. Legal Ambiguity and Administrative Inefficiency</p> <p>The current language of Paragraph 4 introduces legal ambiguity and administrative inefficiency. The term “capital nature” is not defined in the Legal Notice or the Income Tax Act, leading to inconsistent interpretations by tax authorities and courts. This uncertainty creates compliance challenges for taxpayers and increases the risk of litigation. Smaller and emerging lenders, in particular, may lack the resources to contest adverse tax assessments, resulting in disproportionate burdens on institutions that are critical to financial inclusion.</p> <p>3. Comparative Jurisdictions and International Best Practices</p> <p>Comparative international tax regimes recognize the deductibility of bad debts incurred in the ordinary course of lending. Australia’s Income Tax Assessment Act 1997, under</p>

			<p>Section 25.35, allows a deduction for bad debts if the debt was previously included in assessable income or if it arose from money lent in the ordinary course of a lending business.</p> <p>Impact on Financial Inclusion and Economic Development</p> <p>The current provision undermines national economic objectives, particularly those related to financial inclusion and access to credit. Kenya's Vision 2030 and the Central Bank's Financial Sector Stability Reports emphasize the importance of expanding access to credit, especially for underserved populations. However, the disallowance of bad debt deductions increases the effective tax burden on lenders, discouraging risk-taking and reducing the availability of credit.</p>
<p>Clause 38(a)(i) of the Finance Bill, 2025 Section 2 (1) of the Excise Duty Act. Amendment of Digital lender definition</p>	<p>the Finance Bill, 2025 seeks to redefine "digital lender" under section 2 of the Excise Duty Act as follows:</p> <p><i>"a person extending credit through an electronic medium but does not include a bank licensed under the Banking Act, a SACCO Society registered under the Co-operative Societies Act, or a microfinance institution licensed under the Microfinance Act."</i></p>	<p>We recommend that the National Assembly amends the proposed definition under the Finance Bill, 2025 to explicitly exclude digital credit providers licensed by the Central Bank of Kenya.</p> <p>These entities operate under a robust regulatory framework established by the CBK and are subject to prudential, consumer protection, and reporting standards similar to those applicable to traditional financial institutions. As such, they should not be grouped with unregulated credit providers for purposes of excise duty.</p> <p>The revised definition should read:</p>	<p>Kenya's digital credit landscape includes both regulated and unregulated entities. While it is appropriate to bring unregulated credit providers into the excise duty net, CBK-licensed Digital Credit Providers operate under strict regulatory oversight and are comparable to traditional financial institutions defined under Part III of the First Schedule to the Excise Duty Act.</p> <p>Subjecting DCPs to the same excise duty treatment as unregulated entities undermines tax fairness and discourages compliance. Excluding licensed DCPs from the definition will ensure a level playing field.</p>

		<p><i>“Digital lender” means a person who extends credit through an electronic medium, but does not include—</i></p> <p><i>(a) a bank licensed under the Banking Act;</i></p> <p><i>(b) a SACCO Society registered under the Co-operative Societies Act;</i></p> <p><i>(c) a microfinance institution licensed under the Microfinance Act; or</i></p> <p><i>(d) a digital credit provider licensed by the Central Bank of Kenya under the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022.”</i></p>	
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1. Background

1.1 Fourth Generation Capital Limited

Fourth Generation Capital Limited (“4G Capital” or “the Company”) is a licensed digital credit provider incorporated in Kenya in 2013. The Company’s mission is to unlock the potential of micro and small enterprises (MSEs) by offering tailored financial solutions that integrate working capital loans with business training. Since its inception, 4G Capital has developed a range of innovative products designed to address the diverse needs of its clients. These include Kuza, which provides short-term unsecured loans to help businesses restock inventory; UPIA, a mobile-based loan product designed to be accessible and affordable; and Smart Duka, a program developed with collaboration with TechnoServe that equips micro-retailers with business skills and credit education to improve their profitability.

In addition to these core offerings, 4G Capital partners with several organizations to expand its impact and reach. Through a partnership with Powerhive, the Company finances electric motorcycles for youth and women, while its collaboration with Roam supports the provision of affordable e-mobility loans for riders. Working alongside the Consultative Group to Assist the Poor (CGAP), 4G Capital has also contributed to the development of a digital tool that identifies financial stress and safeguards low-income consumers from over-indebtedness, thereby promoting safer and more inclusive digital lending practices.

Today, 4G Capital employs nearly 1,500 people across Kenya and Uganda. Since 2013, the Company has disbursed over 5.3 million small working capital loans, amounting to more than USD 660 million. It serves approximately 617,000 clients, 72 percent of whom are women, with 65 percent operating MSEs in rural areas. With a visionary leadership team and more than 114,000 loans issued monthly, 4G Capital continues to scale its inclusive and profitable model, empowering Africa’s informal economy. By 2030, the Company aims to reach 100 million people, deepening its impact through accessible and responsible financial solutions.

Over the years, 4G Capital has received global recognition for its responsible fintech innovation and measurable social impact. In 2019, it was named a pioneering African fintech by the London Stock Exchange Group. This was followed in 2021 by its inclusion among the world’s top 150 impact firms by Real Leaders. In 2022, it received the Best for The World™ accolade, and in 2023, the International Finance Corporation recognized it as a Responsible Digital Innovator. That same year, the Financial Times ranked 4G Capital among Africa’s Fastest-Growing Companies, further reaffirming its leadership in inclusive and sustainable finance.

Kenya currently faces a USD 19 billion financing gap for small and medium-sized enterprises, leaving many MSEs without access to formal credit. 4G Capital has helped to bridge this gap by disbursing millions in unsecured working capital loans to more than 350,000 Kenyan entrepreneurs. As a result, clients report an average annual revenue increase of 82 percent. Through its model, 4G Capital continues to foster inclusive growth, job creation, and financial resilience across Kenya’s informal economy.

1.2 Financial inclusion and the Bottom-up Economic Transformation Agenda

The Bottom-Up Economic Transformation Agenda (“BETA”) is anchored on five pillars, with the finance and production sector being among the most pivotal to improving the economic welfare of Kenyans, particularly through enhanced access to credit and financial inclusion.

In line with BETA, the Government has developed the Fourth Medium Term Plan 2023–2027 (“MTP IV”)¹ as a strategic framework to accelerate the realization of Kenya’s Vision 2030. The plan is centered on five sectors of immediate focus:

¹ <https://www.planning.go.ke/wp-content/uploads/2024/03/MTP-IV-2023-2027.pdf>

- i) Finance and Production,
- ii) Infrastructure,
- iii) Social Services,
- iv) Environment and Natural Resources, and
- v) Governance and Public Administration.

Under the Finance and Production Sector, the Government has prioritized the development of a robust and inclusive financial services ecosystem. This includes a strong emphasis on digital finance, virtual assets, and digital lending platforms as key enablers of financial inclusion and economic empowerment.

The MTP IV outlines several initiatives aimed at modernizing the financial sector, including:

- Strengthening the financial sector architecture;
- Modernizing supervision and regulatory frameworks;
- Promoting digital finance and innovation;
- Supporting Virtual Asset Service Providers (VASPs), and
- Expanding access to credit for MSMEs, women, youth, and persons with disabilities.

The Plan also acknowledges the need to address regulatory gaps and ensure that emerging financial technologies are effectively integrated into the formal economy. This includes aligning tax and regulatory policies to support innovation while safeguarding consumer interests.

2. 4G Capital submission

2.1. *Amendment of the ITA to introduce a definition of what entails a bad debt especially in context of the business of Digital Credit Providers. KRA has taken the position that the principal amount in a “bad loan” is not deductible as it is capital in nature.*

2.1.1. Background

Legal Notice No. 37 of 2011 was issued under the authority of the Income Tax Act (Cap. 470) of Kenya, specifically to provide clarity on the deductibility of bad debts for tax purposes. The Notice was part of a broader effort by the Kenya Revenue Authority (KRA) to standardize tax treatment and reduce ambiguity in the application of Section 15(1) and 15(2)(a) of the Act, which govern allowable deductions in the computation of taxable income.

The Notice outlines the conditions under which a debt may be considered bad and therefore deductible. These include circumstances where the debtor is insolvent, where legal recovery is no longer possible, or where the cost of recovery exceeds the value of the debt. However, Paragraph 4 of the Notice introduces a critical limitation by stating:

“For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.”

This clause was intended to prevent taxpayers from claiming deductions for losses on capital investments, which are not considered operational expenses under standard tax principles. The phrase “of a capital nature” is not defined in the Legal Notice or the Income Tax Act, which has led to significant interpretive challenges. In most industries, this distinction is relatively straightforward. However, in the context of credit-lending institutions, the application becomes problematic. For these businesses, the issuance of loans is not a capital investment but a core trading activity.

2.1.2. Issue

The core issue with the ITA as read together with Paragraph 4 of Legal Notice No. 37 of 2011 is that it fails to distinguish between capital losses and operational losses in the context of credit-lending institutions. By broadly disallowing the deductibility of bad debts “of a capital nature” without defining what constitutes a capital debt, the law creates ambiguity that has led to the misclassification of ordinary trade debts such as unrecovered loans issued in the normal course of lending as capital in nature.

2.1.3. Proposal

In light of the above, we propose that the ITA be amended to expressly exclude bad debts arising from the ordinary course of business in credit-lending institutions from being classified as capital in nature. This amendment would allow such debts, when properly written off and in compliance with other requirements of Legal Notice 37 of 2011, to be treated as deductible expenses for tax purposes.

2.1.4. Justification

a) Legal Ambiguity and the Need for Statutory Precision

Paragraph 4 of Legal Notice No. 37 of 2011 states:

“For the purposes of these guidelines, a bad debt which is of a capital nature shall not be an allowable expense.”

This provision was introduced to prevent taxpayers from claiming deductions on losses that are capital in nature such as investments in shares or long-term assets which are not considered part of ordinary business expenses. However, the phrase “of a capital nature” is not defined anywhere in the Legal Notice or in the parent statute, the Income Tax Act (Cap. 470). This omission has created a significant interpretive gap that has led to inconsistent application by the Revenue Authority.

In practice, the Revenue Authority has interpreted this clause to mean that the principal amount of a loan that becomes irrecoverable is not deductible, on the basis that it is capital in nature.

Amending Paragraph 4 to explicitly exclude bad debts arising from the ordinary course of lending from being classified as capital in nature would resolve this ambiguity and align the law with its intended purpose.

b) Recognition of Lending as a Core Revenue-Generating Activity

In the context of credit-lending institutions, including banks, microfinance institutions, and Digital Credit Providers (DCPs), the issuance of loans is not a capital investment but a core operational activity. These institutions do not lend money as a one-off investment; rather, they do so repeatedly and systematically as part of their business model. Their revenue is derived from interest and fees charged on these loans, and the principal amounts lent out are part of their working capital.

When a loan becomes irrecoverable, it represents a direct operational loss. Disallowing the deduction of such losses misrepresents the financial reality of the business and results in the taxation of gross income rather than net income. This contradicts the foundational principle of income taxation, which is to tax profits defined as income minus allowable expenses, not turnover.

Section 15(1) of the Income Tax Act provides that:

“For the purpose of ascertaining the total income of a person for a year of income there shall be deducted all expenditure incurred wholly and exclusively in the production of that income.”

Bad debts arising from loans issued in the ordinary course of business clearly fall within this definition. They are not discretionary or speculative investments; they are part of the institution's normal trading cycle. Denying their deductibility undermines the integrity of the tax system and penalizes institutions for engaging in legitimate business activities.

c) Administrative Efficiency and Reduction of Tax Disputes

The current ambiguity in Paragraph 4 of Legal Notice 37 of 2011 has led to an increase in tax disputes between credit-lending institutions and the KRA. These disputes often revolve around whether a particular bad debt is “capital in nature” and therefore non-deductible. The lack of a clear legal standard forces both taxpayers and the tax authority to rely on subjective interpretations, resulting in inconsistent assessments and prolonged litigation.

These disputes consume significant administrative resources, delay tax resolution, and create uncertainty for taxpayers. By amending the ITA to explicitly exclude bad debts arising from ordinary lending activities from being classified as capital in nature, the law would provide a clear and objective standard. This would reduce the volume of disputes, enhance compliance, and improve the efficiency of tax administration.

d) Economic Impact and Support for Financial Inclusion

The digital credit sector has emerged as a transformative force within Kenya's financial ecosystem, playing a pivotal role in expanding access to credit and deepening financial inclusion. Over the past decade, Digital Credit Providers (DCPs) have leveraged mobile technology, data analytics, and alternative credit scoring models to reach millions of Kenyans who were previously excluded from formal financial services. These include individuals in rural areas, informal sector workers, youth, and micro-entrepreneurs' segments that have traditionally faced barriers such as lack of collateral, limited credit history, and geographic inaccessibility to brick-and-mortar banking infrastructure²

According to the World Bank's Global Findex Database, Kenya has one of the highest rates of financial account ownership in Sub-Saharan Africa, with 79% of adults owning an account as of 2021.³ Much of this growth has been driven by mobile money and digital credit platforms, which have enabled borrowers to access small, short-term loans instantly via mobile phones often within minutes and without the need for physical documentation or in-person verification

This innovation has not only enhanced convenience but also empowered individuals to manage cash flow, invest in small businesses, and respond to emergencies thereby contributing to household resilience and economic activity at the grassroots level.

However, the very nature of digital lending characterized by high transaction volumes, low loan amounts, and limited borrower information inevitably entails elevated credit risk. Many borrowers lack formal employment, stable income, or verifiable credit histories, making it difficult to assess repayment capacity using traditional underwriting methods. As a result, a certain level of default is an inherent and statistically predictable feature of the business model. These defaults, or bad debts, are not anomalies or signs of mismanagement; they are operational realities that must be accounted for in the financial and tax treatment of DCPs.

Despite this, the current interpretation of Paragraph 4 of Legal Notice No. 37 of 2011 disallows the deduction of bad debts on the grounds that they are “of a capital nature.” This interpretation fails to

² [financial-inclusion-in-sub-Saharan-Africa-overview](#)

³ <https://www.worldbank.org/en/publication/globalfindex>

recognize that for DCPs, the issuance of loans is not a capital investment but a core revenue-generating activity. Disallowing the deduction of unrecovered principal amounts artificially inflates taxable income, resulting in an inequitable tax burden. This, in turn, discourages DCPs from extending credit to higher risk but underserved populations, thereby undermining national policy objectives aimed at promoting inclusive economic growth and financial access

Moreover, the inability to deduct bad debts distorts the financial statements of lending institutions. It creates a misleading picture of profitability by failing to reflect the true cost of doing business. This can have cascading effects: investors may overestimate returns, regulators may misjudge risk exposure, and policymakers may base decisions on inaccurate data. In a sector that is still evolving and subject to close regulatory scrutiny, such distortions can lead to suboptimal outcomes in capital allocation, compliance expectations, and sectoral oversight.

2.1.5. Regional and international best practice

a) Tanzania

Tanzania's Income Tax Act, under Section 25(5), provides a clear and structured basis for the deductibility of bad debts specifically for financial institutions. The law allows a financial institution to write off a debt as bad once it has been classified as such in accordance with the standards set by the Bank of Tanzania (BoT).⁴ These standards are part of the prudential regulatory framework that governs how banks and other lenders assess credit risk and determine when a loan is no longer recoverable.

In addition to regulatory classification, the law requires that the institution demonstrate that it has taken all reasonable steps to recover the debt and that it has a sound basis for believing the debt will not be repaid. This ensures that deductions are only allowed for genuinely irrecoverable debts, while also recognizing the operational realities of the lending business. This provision supports our position that bad debts in credit-lending institutions should be treated as deductible business expenses. It avoids the vague and problematic concept of "capital nature" and instead uses a practical, industry-specific standard based on regulatory compliance and recovery efforts

b) South Africa

South Africa's Income Tax Act, under Section 11(i), permits the deduction of bad debts if the amount was previously included in the taxpayer's gross income and has become irrecoverable during the year of assessment. The debt must be written off in the books of account, and there must be sufficient evidence that it is no longer collectible. This provision is particularly relevant for financial institutions, where interest income is taxed, and bad debts are a routine part of business. The law does not require an assessment of whether the debt is capital in nature; instead, it focuses on whether the debt was part of the taxpayer's income and whether it has been properly written off. South Africa's model supports the view that deductibility should be based on income recognition and write-off, not on whether the debt is capital.

c) Australia

Australia's Income Tax Assessment Act 1997, under Section 25.35, allows a deduction for bad debts if the debt was previously included in assessable income or if it arose from money lent in the ordinary course of a lending business. The law requires that the debt be written off during the income year and that there be a genuine expectation that it will not be recovered.⁵

⁴ Section 25(5) Income Tax Act 2004.

⁵ Section 25.35, Income Tax Assessment Act, 1997 (Australia).

This provision is designed to accommodate the needs of financial institutions and other businesses that extend credit as part of their operations. It does not rely on the classification of the debt as capital or revenue in nature, but rather on whether the debt was part of the business's income-generating activity. Australia's approach directly supports the principle that bad debts from ordinary lending operations should be deductible. It provides a clear, objective standard that reflects the commercial function of lending and avoids the ambiguity of "capital nature".

2.2. Amendment of the definition of a ‘digital lender’ by reinstating the reference to ‘digital credit providers licensed by the Central Bank of Kenya’, as previously defined under Section 2 of the Excise Duty Act.

2.2.1. Background

The Finance Act, 2022 (“FA 2022”) introduced a significant change to the taxation of digital financial services by imposing excise duty at the rate of 20% on fees charged by digital lenders. However, the Act did not define the term “digital lender,” creating a legislative gap that led to uncertainty in the interpretation and application of the provision.

Concurrently, the Central Bank of Kenya (“CBK”) issued the Digital Credit Providers Regulations, 2022, which required all non-deposit-taking digital lenders to obtain licenses as Digital Credit Providers (DCPs). This regulatory development was aimed at formalizing the digital lending sector, enhancing consumer protection, and promoting responsible lending practices.

The absence of a statutory definition of “digital lender” under the Excise Duty Act Cap 472 (“the Excise Duty Act” or “EDA”), juxtaposed with the CBK’s licensing framework, created confusion regarding the scope of excise duty. Specifically, questions arose as to whether licensed digital credit providers were to be taxed on all fees charged to customers under Paragraph 6 of Part II of the First Schedule to the Excise Duty Act, or whether they should be treated similarly to traditional financial institutions—who are only subject to excise duty on “other fees” as defined under Paragraph 4 of Part II of the First Schedule to the Excise Duty Act.

This ambiguity led to numerous disputes between the tax authority and industry players, with divergent interpretations on whether the Finance Act, 2022 was intended to bring unregulated digital lenders into the tax net or to impose a blanket excise duty on all digital lenders, including those licensed and regulated by the CBK.

In response to stakeholder concerns, the Tax Laws (Amendment) Act, 2024 (“TLAA 2024”) effective 27 December 2024, introduced a much-needed definition of “digital lender,” aligning it with the CBK licensing framework. It also clarified the scope of excisable fees, thereby resolving the prevailing uncertainty and restoring predictability in the tax treatment of digital lending services.

However, the Finance Bill, 2025 now proposes to amend this definition once again—removing the reference to CBK-licensed digital credit providers. This has reintroduced confusion and raises fresh concerns about the regulatory and tax treatment of licensed digital credit providers.

2.2.2. Issue

The proposed amendment under the Finance Bill, 2025 seeks to redefine “digital lender” as:

“a person extending credit through an electronic medium but does not include a bank licensed under the Banking Act, a SACCO Society registered under the Co-operative Societies Act, or a microfinance institution licensed under the Microfinance Act.”

Notably, this definition removes the reference to digital credit providers licensed by the Central Bank of Kenya (CBK), which had been introduced under the Tax Laws (Amendment) Act, 2024. The intent appears to be to broaden the tax base by capturing non-traditional and unregulated digital credit providers under the excise duty regime.

This redefinition omits any reference to digital credit providers licensed by the CBK, thereby creating uncertainty as to whether such entities fall within or outside the scope of excise duty under Paragraph 6 of Part II of the First Schedule to the Excise Duty Act.

2.2.3. Proposal

We propose that the Finance Bill, 2025 be amended to reinstate the reference to digital credit providers licensed by the Central Bank of Kenya. The revised definition should read:

“Digital lender” means a person who extends credit through an electronic medium, but does not include—

- (a) a bank licensed under the Banking Act;*
- (b) a SACCO Society registered under the Co-operative Societies Act;*
- (c) a microfinance institution licensed under the Microfinance Act; or*
- (d) a digital credit provider licensed by the Central Bank of Kenya under the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022.”*

2.2.4. Justification

We acknowledge that the digital lending ecosystem in Kenya is diverse and rapidly evolving, encompassing a range of business models beyond traditional digital credit providers. These include, but are not limited to:

- Peer-to-Peer (P2P) Lending Platforms;
- Buy-Now-Pay-Later (BNPL) Services;
- Embedded Finance Providers;
- Marketplace Lending, and
- Mobile App-Based Micro-Lenders.

While many of these models operate within the broader digital credit space, they may not meet the regulatory threshold required to be licensed as DCPs under the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022. As such, they remain outside the formal regulatory perimeter.

In light of this diversity, we recognise the Government’s legitimate interest in ensuring that all digital credit activities contribute fairly to the tax base. However, it is equally important that the excise duty framework adheres to the principles of equity, neutrality, and predictability—cornerstones of sound tax policy. A one-size-fits-all approach risks penalizing compliant, licensed DCPs while inadvertently creating a competitive advantage for unregulated players and even traditional financial institutions that are subject to more favorable tax treatment.

Rather than reinstating a definition that includes DCPs within the scope of “digital lenders,” we propose that CBK-licensed DCPs be explicitly excluded from this definition under the Excise Duty Act. This would preserve a fair and equitable tax environment and recognize the distinct regulatory status of DCPs.

This distinction is particularly critical for institutions like 4G Capital, whose business model is built on regulatory compliance, responsible lending, and financial inclusion. By ensuring that licensed DCPs are clearly recognized and appropriately categorized within the excise duty framework, the Government will be:

- Supporting a level playing field that encourages formalization;
- Protecting consumers through the promotion of regulated credit services; and

- Reinforcing Kenya's commitment to a predictable and equitable tax regime.

This approach will also foster continued collaboration between the public and private sectors in delivering inclusive, responsible, and sustainable financial services to underserved communities.

2.2.5. International best practice

OECD Guidance on Taxation of Digital Financial Services

In its Consumption Tax Trends 2024⁶, the OECD emphasizes that excise-type levies, like other consumption taxes, should be technology-neutral and activity-based. This principle ensures that similar financial services are taxed similarly, regardless of whether they are delivered through digital platforms or traditional channels.

The OECD cautions against the over-taxation of digital financial services, particularly when such services are already regulated and play a critical role in advancing financial inclusion. In the context of digital credit, the OECD recommends that only value-added components, such as service fees, commissions, or platform usage charges, should be subject to excise duty. Core financial services, including interest income, loan disbursements, and principal repayments, should remain exempt, consistent with the treatment of banks and microfinance institutions.

This approach ensures that regulated Digital Credit Providers (DCPs) are not disadvantaged relative to their traditional financial institution counterparts. It also promotes regulatory equity, where entities subject to similar levels of oversight and compliance are treated similarly for tax purposes. Importantly, the OECD's guidance supports the idea that tax policy should not create competitive distortions or disincentivize formalization, especially in sectors that are vital to economic development.

For Kenya, aligning with this best practice would mean:

- Exempting core lending functions of CBK-licensed DCPs from excise duty;
- Applying excise duty only to ancillary, value-added services; and
- Clearly distinguishing between regulated and unregulated digital financial service providers by excluding DCPs from the definition of 'digital lenders'.

3. Conclusion

We trust that we have provided sufficient information to warrant consideration of our proposals, however we are still open to have another consultative meeting with the Committee to provide additional information or clarifications as appropriate should there be a need for one. Please do not hesitate to contact the undersigned on julian.mitchell@4g-capital.com at your convenience.

⁶ https://www.oecd.org/en/publications/consumption-tax-trends-2024_dcd4dd36-en.html