



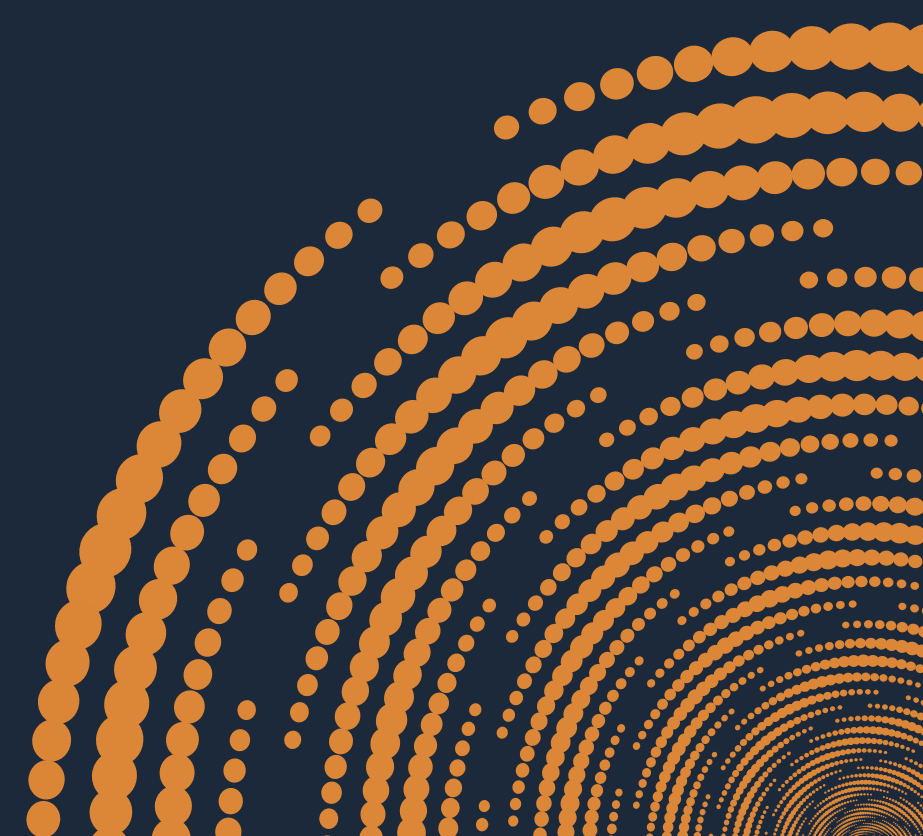
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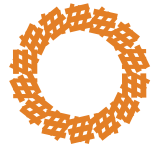
Making Sense of the Internal Reorganisation Exemption as Proposed in the Income Tax (Amendment) Bill, 2026 (National Assembly Bill No. 2 of 2026)

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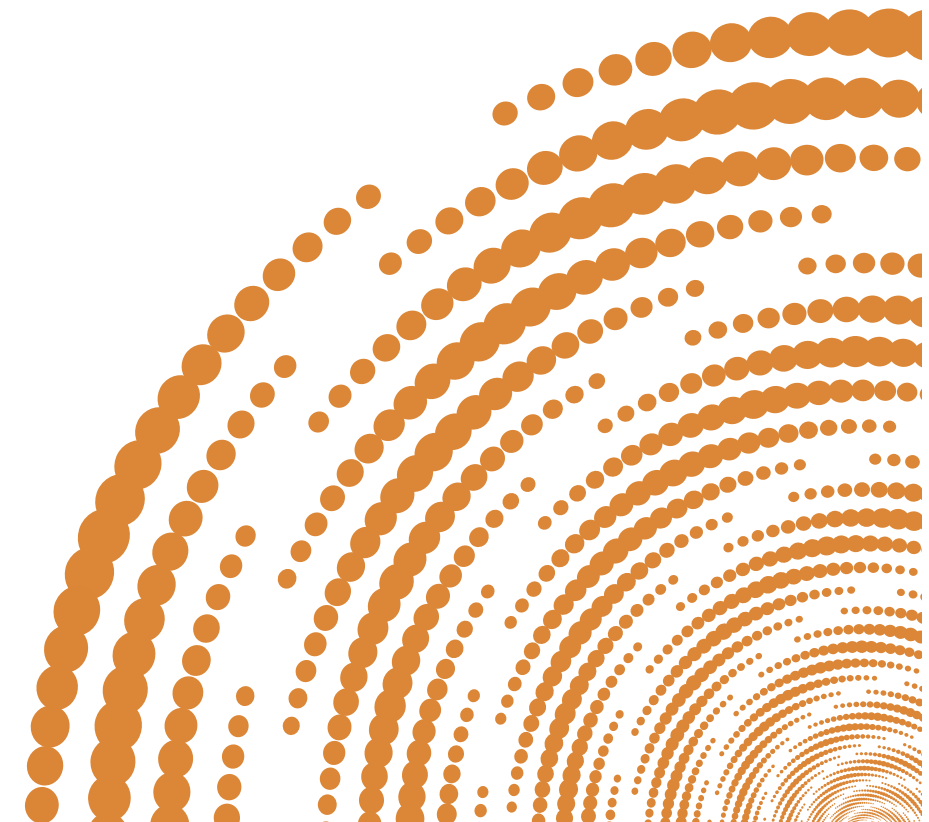


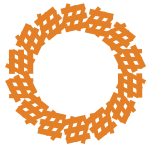
INTRODUCTION

- On 2 April 2026, Kenya published the Income Tax (Amendment) Bill, 2026 (National Assembly Bill No. 20 of 2026) (the **Income Tax Amendment Bill** or **the Bill**).
- The Income Tax Amendment Bill is currently before the National Assembly Departmental Committee on Finance and National Planning for consideration and public participation.

THE PROPOSED AMENDMENT ON INTERNAL REORGANIZATIONS

- The Income Tax Amendment Bill proposes to exempt from capital gains tax (**CGT**) transfer of property between a company and its shareholders where such transfers are undertaken as part of internal reorganisation which do not involve the transfer of property to a third party (the **internal reorganisation exemption**).



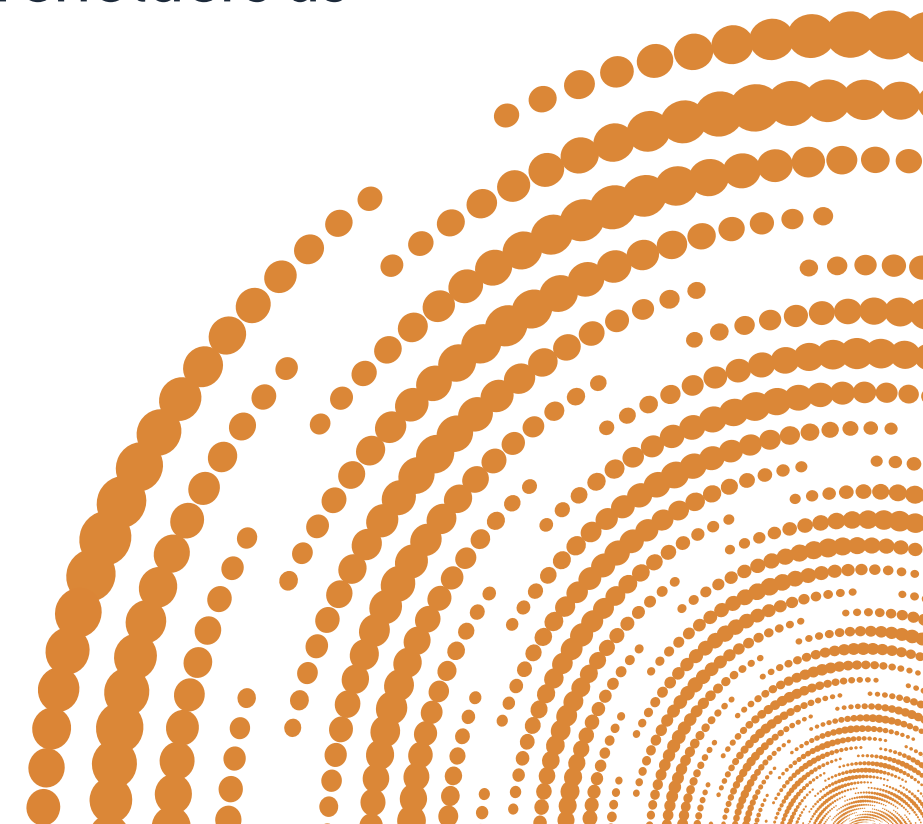


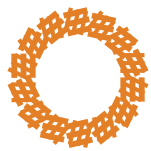
TRANSFER OF PROPERTY BY A COMPANY TO ITS SHAREHOLDERS

- *a)* Clause 2 of the Bill seeks to amend section 7(1) of the Income Tax Act, Chapter 470 of the Laws of Kenya (the **Income Tax Act**) by inserting a new paragraph (c) to provide that a transfer of property by a company to its shareholders under the proposed internal reorganisation exemption shall not be deemed to be a distribution for tax purposes..

EXEMPTIONS FROM CGT

- *b)* Clause 3(a) of the Bill seeks to insert a new subparagraph 6(2)(i) in the Eighth Schedule to the Income Tax Act, to exempt the following transactions from CGT:
 - *i)* the transfer of property by a company to its shareholders as part of an internal reorganisation; and
 - *ii)* the transfer of property to the company by the shareholders as consideration for that transfer.





CONDITIONS FOR THE INTERNAL REORGANISATION EXEMPTION

- The internal reorganisation exemption applies when two (2) conditions are satisfied, namely:
 - i) the property must be transferred to the shareholders in proportion to their shareholding in the company immediately before the transfer; and
 - ii) where the property consists of shares, such shares must relate to a subsidiary of the company undertaking the transfer.

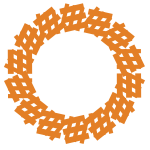
DEFINITION OF INTERNAL REORGANISATION

c) Clause 3(b) of the Bill defines an internal reorganisation to mean a restructuring of the ownership or control of a company or its assets that does not involve a transfer of property to a third party.

COMPARISON OF THE PROPOSED AMENDMENT TO SOUTH AFRICA

- The internal reorganisation exemption borrows from the South African Income Tax Act of 1962 which deals with unbundling transactions but does require proportionate distribution in order to qualify for the exemptions.



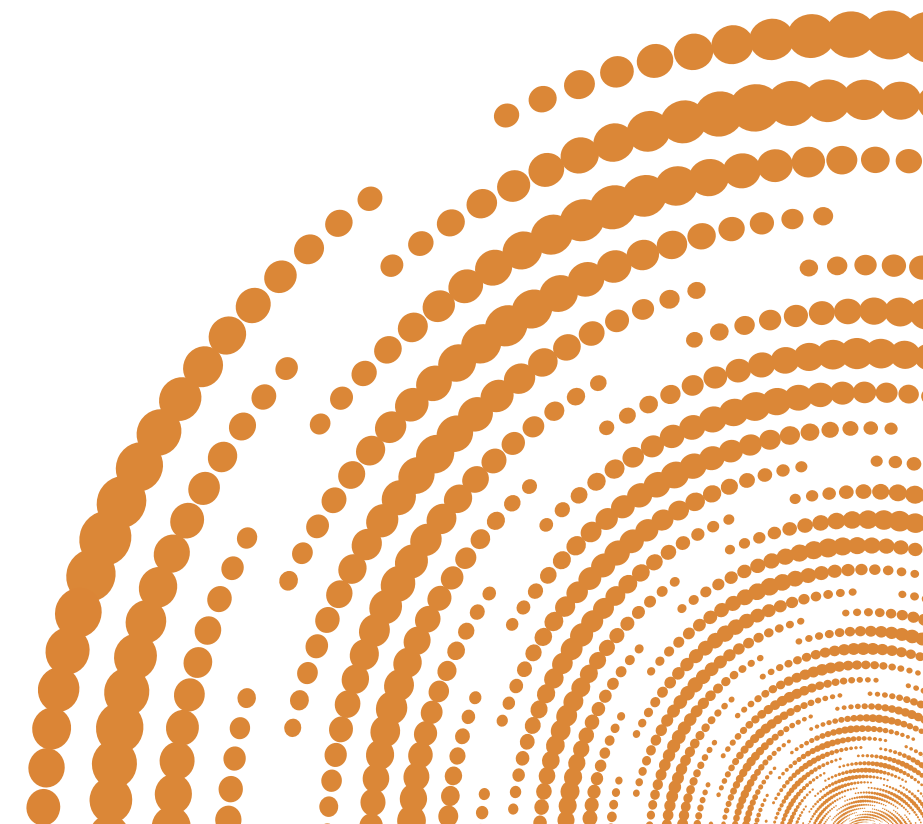


CONCLUSION

- In our view, the internal reorganisation exemption is a welcome move since if enacted, it will allow companies and shareholders to transfer property in a tax efficient manner.
- Additionally, it may be necessary to amend section 117 (1)(r) of the Stamp Duty Act, Chapter 480 of the Laws of Kenya to include a stamp duty exemption for the transfer of property by shareholders to the company as consideration in the internal reorganizations. This would ensure that the CGT and stamp duty exemptions in this regard are aligned.

NEXT STEPS

- For many families and corporates that we serve, this tax exemption will be useful in succession planning and corporate restructuring. Speak to our **specialized tax advisory team today.**





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