

PARLIAMENT
OF KENYA
LIBRARY



Approved
SNA
28/4/29

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

THE CONSIDERATION OF THE INCOME TAX (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 20 OF 2026)

Published by:

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 APR 2026	
DAY: TUESDAY	
TABLED BY:	HON. KURIA KIMANI (CHAIRPERSON)
CLERK-AT THE-TABLE:	INZOU MWALE APRIL 2026

TABLE OF CONTENTS

ANNEXURES	4
CHAIRPERSON'S FOREWORD	5
CHAPTER ONE	6
I PREFACE	6
1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE	6
1.2 COMMITTEE MEMBERSHIP	7
1.3 COMMITTEE SECRETARIAT	8
CHAPTER TWO	9
2.0 OVERVIEW OF THE INCOME TAX (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2026)	9
2.1 Background	9
2.2 Summary of Legal Provisions	9
CHAPTER THREE	11
3. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL	11
3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION	11
3.2 MEMORANDA RECEIVED ON THE BILL	11
CHAPTER FOUR	30
4 COMMITTEE OBSERVATIONS	30
CHAPTER FIVE	31
5 COMMITTEE RECOMMENDATION	31

LIST OF ABBREVIATIONS AND ACRONYMS

COK	-	Constitution of Kenya
ICPAK	-	Institute of Certified Public Accountants of Kenya
IPF	-	Institute of Public Finance
KISM	-	Kenya Institute of Supplies Management
LSK	-	Law Society of Kenya
MP	-	Member of Parliament
OCOB	-	Office of the Controller of Budget
ODM	-	Orange Democratic Movement
PWC	-	PricewaterhouseCoopers
UDA	-	United Democratic Alliance

ANNEXURES

- Annexure 1: Adoption Schedule.
- Annexure 2: Adoption Minutes.
- Annexure 3: The Income Tax (Amendment) Bill, (National Assembly Bill No. 20 of 2026)
- Annexure 4: Advertisement inviting the public to submit memoranda on the Bill.
- Annexure 5: Letter from the Clerk of the National Assembly inviting relevant stakeholders to attend the public participation forum.
- Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026). The Bill was published in the Kenya Gazette on 2nd April 2026 and read a First Time on 16th April 2026. The Bill was thereafter committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

The principal object of this Bill is to amend the Income Tax Act to provide for the exemption of capital gains tax in the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders as consideration for the transfer.

In compliance with Article 118 (1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 17th April 2026, inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No.NA/DDC/F&NP/2026/069 dated 20th April 2026 invited key stakeholders to submit views on the Bill and attend a public participation forum on 24th April 2026. The memoranda were to be received on or before Friday, 24th April 2026, at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received twelve memoranda.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. Similarly, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my pleasure to report that the Committee has considered the Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026) and wish to report to this House with the recommendation that the House **approves the Bill with amendments.**

Hon. FCPA. Kuria Kimani, CBS, M.P.

Chairperson, Departmental Committee on Finance and National Planning

CHAPTER ONE

I PREFACE

I.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

- 1) The Departmental Committee on Finance and National Planning is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - c) *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - d) **To study and review all legislation referred to it;**
 - e) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - f) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - g) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - h) *To examine treaties, agreements and conventions;*
 - i) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - j) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - k) *To examine any questions raised by Members on a matter within its mandate.*
2. The Second Schedule to the National Assembly Standing Orders assigns the Committee the mandate to consider matters in relation to public finance, public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.
3. In executing its mandate, the Committee oversees the following Ministries/Departments:
 - i) The National Treasury.
 - ii) State Department for Economic Planning.
 - iii) State Department for Public Investments and Asset Management.
 - iv) The Commission on Revenue Allocation (CRA)
 - v) Office of the Controller of Budget

I.2 COMMITTEE MEMBERSHIP

- I. The Departmental Committee on Finance and National Planning was constituted by the House on 27th October 2022 and reconstituted on Wednesday, 5th March 2025 and comprises the following Members:

Chairperson

Hon. FCPA Kuria Kimani, CBS, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb.) FCPA Langat Benjamin Kipkirui, CBS, MP
Ainamoi Constituency

UDA Party

Members

Hon. Peter Kaluma, CBS, MP
Homa Bay Town Constituency
ODM Party

Hon. FCPA Oyula, Joseph H. Maero, MP
Butula Constituency
ODM Party

Hon. Mboni, David Mwalika, MP
Kitui Rural Constituency
WDM Party

Hon. Okuome Adipo Andrew, MP
Karachuonyo Constituency
ODM Party

Hon. Chiforomodo, Munga, MP
Lunga Lunga Constituency
UDM Party

Hon. CPA Rutto Julius Kipletting, MP
Kesses Constituency
UDA Party

Hon. Paul Biego, MP
Chesumei Constituency
UDA Party

Hon. Sunkuyia, R. George, MP
Kajiado West Constituency
UDA Party

Hon. Betty N. Maina, MP
Murang'a County
UDA Party

Hon. Sheikh Umul Sheikh, MP
Mandera County
UDM Party

Hon. (Dr.) Shadrack Mwiti, MP
South Imenti Constituency
Jubilee Party

Hon. (Dr.) Ariko John Namoit, MP
Turkana South Constituency
ODM Party

Hon. Machele M. Soud, MP
Mvita Constituency
ODM Party

I.3 COMMITTEE SECRETARIAT

4. The Committee is facilitated by the following staff:

Ms. Tracy Chebet
Principal Clerk Assistant II

Ms. Jennifer Ndeto
Deputy Director Legal Services

Mr. Benson Kamande
Clerk Assistant III

Mr. Salem Lorot
Senior Legal Counsel

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst II

Ms. Nelly W. Ondieki
Research Officer III

Mr. Eugene Luteshi
Audio Officer III

Mr. James Macharia
Media Relations Officer

Mr. Benson Muthuri
Assistant Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Reporter II

Mr. Allan Ngugi
Administrative Officer III

CHAPTER TWO

2.0 OVERVIEW OF THE INCOME TAX (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2026)

2.1 Background

5. The Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026) is a Bill sponsored by Hon. FCPA Kuria Kimani, CBS, MP. The Bill was published on 2nd April 2026 vide Kenya Gazette Supplement No. 100 of 2026. The Bill was then committed to the Committee for its consideration and tabling of the report to the House pursuant to Standing Order 127.

2.2 Summary of Legal Provisions

6. The principal object of this Bill is to amend the Income Tax Act to provide for exemption of capital gains tax in the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders as consideration for the transfer.
7. Currently, under the Eighth Schedule to the Income Tax Act, transfers of property between a company and its shareholders are generally subject to Capital Gains Tax where such transfers result in a disposal for tax purposes. This means that even where a company undertakes internal restructuring involving the transfer of assets within the same economic group, such transactions may still attract Capital Gains Tax if they fall within the definition of a chargeable transfer.
8. The proposed amendment introduces a new exemption under item 6 of the Eighth Schedule to address this gap. It provides that transfers of property between a company and its shareholders, as part of an internal reorganisation, shall not be subject to Capital Gains Tax, provided certain conditions are met. These conditions include that the property must be distributed in proportion to the shareholders' existing shareholding immediately before the transfer, and where shares are involved, they must relate to a subsidiary of the company undertaking the reorganisation.
9. At present, the Income Tax Act does not define the term "internal reorganisation" for purposes of the Eighth Schedule. This lack of definition creates uncertainty in determining which transactions qualify for tax relief and may expose taxpayers to differing interpretations by tax authorities. In some cases, this ambiguity may lead to disputes regarding whether a particular restructuring qualifies for exemption or constitutes a taxable disposal.
10. The Bill also defines "internal reorganisation." Under the proposed Bill, internal reorganisation is defined as any restructuring of the ownership, control, or assets of a company that does not involve a transfer of property to a third party. The effect of this definition is to limit the exemption strictly to intra-group transactions, thereby ensuring that only genuine internal restructuring exercises qualify for relief while excluding transactions involving external parties.

11. Under the current provisions of Section 7 of the Income Tax Act, certain distributions made by a company to its shareholders may be treated as dividends for income tax purposes and therefore subject to taxation. In situations where a company undertakes restructuring involving the transfer of assets to shareholders, such transfers could potentially be reclassified as dividends, depending on their nature and structure.
12. The proposed amendment to Section 7 provides that transfers of property made under the new exemption in the Eighth Schedule, as part of an internal reorganisation, shall not be treated as distributions for purposes of income tax. The effect of this provision is to prevent such transactions from being classified as dividends, thereby ensuring that they are not subjected to income tax under Section 7.

CHAPTER THREE

3. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

13. Article 118 (1)(b) of the Constitution provides that:

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

14. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*“(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 MEMORANDA RECEIVED ON THE BILL

15. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 17th April 2026 inviting the public to submit memoranda on the Bill. Further, the Clerk of the National Assembly vide letter Ref NA/DDC/F&NP/2026/069 dated 20th April 2026 invited key stakeholders to submit views on the Bill and attend a public participation forum on 24th April 2026 respectively.

16. The Committee received twelve memoranda from the following stakeholders:

- i) PricewaterhouseCoopers (PWC);
- ii) KPMG;
- iii) Bowmans;
- iv) SKM Africa;
- v) The Law Society of Kenya (LSK);
- vi) WeCare CBO;
- vii) Westminster Consulting LLP;
- viii) Oxfam Kenya;
- ix) Deloitte & Touche LLP;
- x) Ernest and Associates;
- xi) Kenya Institute of Supplies Management (KISM); and
- xii) Office of the Controller of Budget (OCOB).

Clause 2

17. **KPMG** supported the proposal noting that this provides welcome cash-flow relief for entities undergoing internal reorganizations by exempting deemed dividends from withholding tax (WHT) where a company transfers assets, including shares, to its shareholders. This exemption allows companies to simplify their operational or ownership structures without triggering an immediate tax liability. The amendment directly addresses a long-standing concern that Kenya's tax framework has historically discouraged legitimate intra- group restructurings by treating such transfers as taxable distribution events.
18. **Bowmans** supported the proposal noting that this is an important clarification as it would make it easier for group companies to undertake internal restructurings and other separations of assets, without creating a dividend tax cost merely because property moves from the company to its existing shareholders in proportion to their existing interests.
19. **SKM Africa** supported the proposal. They observed that this a timely amendment as it ensures that internal reorganisations will no longer trigger deemed dividend treatment, eliminating withholding tax costs where no shareholder enrichment occurs. It also aligns tax treatment with economic substance by recognising that internal restructurings do not constitute profit distributions to shareholders.
20. **LSK** noted that the amendment works in tandem with proposed changes to the Eighth Schedule exempting qualifying internal reorganisations from Capital Gains Tax. The Law Society of Kenya supported the amendment to the Income Tax Act. The proposed amendment represents a positive step toward facilitating corporate reorganizations by introducing exemptions intended to remove immediate tax barriers.
21. They proposed expressly excluding transfers that qualify for the reorganization exemption from the application of Paragraph 8(4A) of The Eighth Schedule to the Income Tax Act. This ensures neutrality by not deferring or shifting the burden to the transferee and removes the commercial constraint.

PricewaterhouseCoopers Limited (PWC)

22. Amend the proposed section 7(1)(c) to read as follows: -
“Notwithstanding paragraphs (a) and (b), a transfer of property by a company to its shareholders under paragraph 6(2)(i) of the Eighth Schedule shall not be deemed to be a dividend distribution for the purposes of this Act.”
23. They noted that the current drafting does not clearly disapply deemed dividend treatment under section 7, and whereas clarifying the terminology ensures that qualifying internal reorganisations remain tax-neutral, the amendment will enhance drafting precision, reduce interpretive disputes with the Kenya Revenue Authority, and strengthen certainty for taxpayers.

Committee Observation:

The Committee noted the proposal seeking to amend the drafting to expressly clarify that “distribution” refers to “dividend distribution” for purposes of section 7 of the Income Tax Act. The Committee agreed with the stakeholder that the proposed amendment is clarificatory in nature and enhances precision in drafting by removing ambiguity in the application of deemed dividend treatment to qualifying internal reorganisations under paragraph 6(2)(i) of the Eighth Schedule.

WeCare Youth Organization

24. Amend the proposal as follows: -

Provided that a transfer under paragraph (c) shall only qualify for non-distribution treatment where the Commissioner is satisfied that:

- (i) the transfer is undertaken for genuine commercial purposes and not for the avoidance of income tax or CGT*
- (ii) the company has notified the Commissioner of the reorganisation in the prescribed form within a maximum 30 days of completion and*
- (iii) No artificial arrangement has been done to inflate the value of the transferred property.*

25. This amendment is to introduce conditions requiring that qualifying transfers be undertaken for genuine commercial purposes, be reported to the Commissioner within a prescribed timeline, and not involve artificial valuation arrangements, since excluding such transfers from dividend treatment without safeguards may allow shareholders to extract economic value tax-free, thereby undermining equity and eroding the tax base.

Committee Observation:

The Committee noted the concerns regarding possible abuse of the exemption. However, the Committee was of the view that these concerns are adequately addressed under existing law, including Section 23 of the Income Tax Act on tax avoidance arrangements and the Tax Procedures Act, 2015, which provides for reporting, compliance and enforcement mechanisms. The Committee observed that embedding additional safeguards within this clause would duplicate existing statutory protections and create unnecessary compliance burdens. The proposal was therefore not adopted.

Westminster Consulting LLP

26. Amend the proposal to provide that transactions undertaken pursuant to a qualifying internal reorganisation shall not be deemed to constitute a dividend. This should apply whether the transaction is effected through the transfer of property, cash, or through any accounting entry, credit, allocation or other form of value transfer to shareholders. This amendment is necessary because the current drafting limits relief to physical transfers of property. It does not capture accounting-based restructurings such as the reclassification of reserves or crediting of shareholder accounts. At the same time, the definition of dividend under the Act

already covers such value movements. This creates inconsistent tax outcomes for transactions that are economically identical but differ only in form. Expanding the provision will ensure tax neutrality and eliminate interpretational gaps.

Committee Observation:

The Committee noted the proposal to broaden the scope of the exemption. However, the Committee was of the view that the amendment as drafted, read together with the definition of dividend under Section 2 and Section 7 of the Income Tax Act, provides sufficient interpretive basis for implementation. The Committee further observed that any administrative clarification on the application may be addressed through regulations or guidance by the Commissioner, and therefore, no amendment was necessary.

Oxfam Kenya

27. Amend the clause as shown below: -

- i. Add a wealth/income qualifier. The CGT exemption under this clause should apply only where the total market value of assets transferred to any single shareholder does not exceed Ksh50 million (to be reviewed every 3 years by the Cabinet Secretary on advice of KRA).
- ii. Insert a sunset clause to provide that the provision should lapse 5 years after enactment unless renewed by Parliament following a revenue impact review.
- iii. Add a mandatory disclosure requirement that, companies relying on this exemption must submit a completed reorganisation disclosure Form to KRA within 30 days. (Kenya's Tax Procedures Act, Cap. 469B prescribes 30-day notification windows for several compliance obligations, so it is internally consistent with the existing framework) of the transfer, detailing the nature of the reorganisation, total value transferred, and identities of recipient shareholders.

28. They noted that the current provision applies uniformly regardless of transaction value and may disproportionately benefit high-net-worth individuals, while the absence of periodic review and reporting creates opacity and limits oversight. Incorporating these safeguards will promote progressive taxation, enhance transparency, and enable effective monitoring by the Kenya Revenue Authority.

Committee Observation

The Committee noted the proposal seeking additional safeguards through thresholds, review mechanisms, and disclosures. However, the Committee was of the view that imposing transaction value caps or sunset clauses would undermine certainty and predictability in taxation, contrary to Article 201 of the Constitution, and may reintroduce distortions that discourage legitimate reorganisations and will still cause fragmentation. The Committee further observed that disclosure obligations are already provided for under the Tax Procedures Act, 2015, and need not be duplicated in this amendment. The proposal was therefore not adopted.

Westminster Consulting LLP

Clauses 2 and 3

29. Amend this provision to clarify that the exemption applies to all forms of internal reorganisation. This includes transactions implemented through transfer of property as well as those effected through accounting entries and value reallocations. This clarification is important because modern corporate restructurings are often executed through a combination of legal and accounting mechanisms. Limiting the exemption to form-based transactions creates a disconnect between the law and commercial practice. Extending the scope will ensure consistent treatment of all qualifying reorganisations based on their economic substance. Additionally, adopting a substance-based framework will enhance coherence, reduce complexity, and improve predictability in tax treatment, as well as align the exemption framework with international best practice.

Committee Observation

The Committee noted the stakeholder's proposal but was of a different view that the provisions in the Bill were sufficient and that they address the stakeholder's concerns.

Clause 3 (a)

30. **KPMG** supported the introduction of a tax-neutral regime for internal reorganisations involving a company and its shareholders. They stated that this proposed exemption extends relief to entities conducting internal restructurings outside a formal group context, provided such restructurings already qualify for Capital Gains Tax (CGT) exemption under Paragraph 13 of the Eighth Schedule to the Income Tax Act.

31. However, they noted that the proposed relief is conditional on property being transferred to shareholders in proportion to their respective shareholdings. Any disproportionate transfer, even within the same group, falls outside the exemption and remains subject to tax. This proportionality requirement must be carefully observed in structuring any reorganization. Where the transferred property consists of shares, those shares must be in a subsidiary of the transferring company. The relief, therefore, does not extend to transfers of shares in unrelated companies or associates.

32. **Bowmans** were in support of the provision, noting that it introduces a useful capital gains tax relief for genuine internal reorganisations. They observed that there is a need to provide clarification that the relief applies irrespective of whether the shareholders are related or unrelated, provided the conditions in the clause are met.

33. **SKM Africa** stated that this proposal is a welcome reform that will facilitate efficient internal reorganization within corporate structures. Businesses can restructure, consolidate, or

realign operations without incurring unintended tax outcomes. This enhances flexibility in group structuring, facilitates succession and corporate simplification, and supports ease of doing business. They noted that the proposal is consistent with modern tax policy principles that seek to tax real economic gains.

OCOB

34. The Controller of Budget noted that CGT is a constitutionally sanctioned revenue stream appropriated through Finance Acts. A permanent CGT exemption for internal reorganisations, without a sunset clause or review mechanism, creates an open-ended revenue risk. Additionally, OCOB observed that the reverse transfer limb (shareholders to company) could be susceptible to abuse where property is cycled through a nominally 'internal' reorganisation to achieve a tax-free uplift in the cost base of assets, potentially eroding the CGT base without genuine commercial restructuring.

35. They proposed introducing

- a) a mandatory 3-year post-enactment review of the revenue impact of the exemption;
- b) a requirement that reorganisations exceeding a prescribed threshold (e.g., Kshs 500 million in asset value) obtain an advance ruling from KRA before the CGT exemption applies, and
- c) an anti-avoidance provision requiring that the property transferred back be the same or a directly traceable asset, and that the reorganisation not result in a change of ultimate beneficial ownership within 5 years of completion.

Committee Observation

The Committee noted the concerns raised by the Office of the Controller of Budget. However, the Committee was of the view that the Income Tax Act (Cap. 470), the Tax Procedures Act, 2015, and existing administrative enforcement mechanisms already provide sufficient safeguards against tax avoidance, including the Commissioner's powers of audit, assessment, and application of anti-avoidance provisions under Section 23 of the Income Tax Act.

The Committee further observed that introducing statutory advance ruling thresholds, mandatory post-enactment reviews, and extended ownership continuity tests within this provision would overburden the exemption framework, reduce transaction certainty, and undermine the objective of facilitating efficient corporate restructuring. The Committee was therefore of the view that such safeguards are better addressed through administrative practice and broader fiscal policy review rather than embedded statutory conditions. Accordingly, the Committee did not adopt the proposal.

Deloitte & Touche LLP

36. The stakeholder observed that the current drafting restricts legitimate reorganisations and fails to reflect modern business structures. Anchoring the exemption on ownership continuity and proportionality will ensure that only genuine internal reorganisations benefit, thereby preserving the tax base while enhancing flexibility and investment attractiveness. Therefore, they proposed amending the paragraph to read as follows:

(i) *by the transfer of property—*

- a) *by a company to its shareholders as part of an internal reorganisation or by shareholders to a company as consideration for such a reorganisation; or*
- b) *by a company in a group to any other company within the group or its underlying owners as part of an internal reorganisation;*
- c) *by a partnership or limited liability partnership (LLP) to its partners as part of an internal reorganisation, or by partners to a partnership or LLP as consideration for such a reorganisation; or*
- d) *by a partnership or LLP in a group to another partnership or LLP within the part of an internal reorganisation.*

provided that—

- I. *The property is transferred in proportion to the shareholding or ownership interest of the shareholders or Group companies, Partnerships or LLPs, immediately before the transfer.*
- II. *where the property consists of shares, such shares relate to a direct or indirect subsidiary, Partnership, LLP of the entity undertaking the transfer; and*
- III. *The transfer does not result in a change in the underlying ownership of the property.*

Committee Observation

The Committee noted the proposal by the stakeholder. However, the Committee further observed that the principle of tax neutrality in genuine reorganisations is already achieved through the interaction of the deemed dividend provisions under Section 7 and the Capital Gains Tax provisions under the Eighth Schedule. Accordingly, codifying detailed transactional permutations and ownership tests within this clause may unnecessarily complicate implementation and narrow legitimate restructuring flexibility. The Committee therefore did not adopt the proposal.

WeCare Youth Organization

37. Amend the provision to insert additional safeguards like reporting obligations, a minimum holding period, independent valuation of transferred assets, and a restriction where there is a change in underlying beneficial ownership. The absence of such safeguards may enable abuse of the exemption through artificial restructuring and premature disposal of assets, and whereas anchoring the relief on ownership continuity, transparency, and economic substance will ensure that only genuine internal reorganisations benefit, thereby preserving the tax base while enhancing compliance, investor confidence, and fiscal sustainability.

Committee Observations

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that such safeguards are already adequately provided for under the Tax Procedures Act, 2015 (including reporting and compliance obligations), the Income Tax Act (including anti-avoidance provisions), and valuation requirements under existing tax administration practice and applicable valuation standards.

The Committee further observed that introducing additional statutory conditions, such as minimum holding periods and enhanced beneficial ownership tests within this clause, would impose unnecessary rigidity, reduce commercial flexibility, and potentially discourage legitimate business reorganisations. Accordingly, the Committee did not adopt the proposal.

Oxfam Kenya

38. The current drafting does not adequately address multi-step avoidance arrangements, valuation manipulation, or pre-transaction restructuring designed to meet proportionality conditions. Applying the exemption uniformly across all asset classes exposes high-risk sectors such as land to abuse hence the below proposed amendment.
- i. Expand and strengthen the 'internal reorganisation' definition by adding a step-transaction doctrine clause:
“Where a series of transactions are pre-arranged and, viewed together, result in an effective disposal to a third party, the exemption shall not apply to any step in the series.”
 - ii. Enact a GAAR concurrently where the Finance Bill 2026 should include a comprehensive General Anti-Avoidance Rule applicable to all provisions of the Income Tax Act, including this exemption.
 - iii. Amend the proportionality baseline showing that shareholding should be assessed at the date that is the earlier of (a) immediately before the transfer or (b) 12 months before the commencement of the reorganisation plan.
 - iv. Add an arm's length valuation requirement where all assets transferred under this exemption must be valued by a registered valuer (per the Valuers Act, Cap. 532) and the valuation submitted to KRA.

- v. Apply differentiated treatment by asset class. Land and high-value immovable property transfers should be excluded from this exemption (or subject to a reduced rather than zero CGT rate) given the existing high incidence of land-based wealth accumulation and avoidance in Kenya.

Committee Observation

The Committee noted the extensive anti-avoidance and structural proposals by the stakeholder. However, the Committee was of the view that Kenya's tax legal framework already contains a comprehensive anti-avoidance regime, including Section 23 of the Income Tax Act on tax avoidance arrangements, as well as valuation, enforcement, and compliance mechanisms under the Tax Procedures Act, 2015. The Committee further observed that introducing additional statutory doctrines such as step-transaction rules and asset-class-based exclusions within this provision would create fragmentation in tax law and undermine uniform application of the exemption.

Ernst & Young (LLB) (EY)

39. The stakeholder stated that the paragraph as currently phrased creates ambiguity about what the property is being transferred in exchange for. They noted that there is need to link consideration to the issuance of an interest or claim on the company thereby resolving the ambiguity. They proposed amending the clause to read as follows; -

"by the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders consideration for as an Interest or claim -transfer on the company to such shareholders pursuant to this paragraph, provided that....."

Committee Observation

The Committee noted the concern raised by the stakeholder however it was of the view that, the Income Tax Act already contemplates transfer of property in exchange for shares under recognised reorganisation provisions, and introducing "interest or claim" may create interpretational inconsistencies. Accordingly, the Committee did not adopt the proposal by the stakeholder

40. Additionally, EY noted that there is need to widen the scope of the proposed provision in the bill to include both indirect and direct transfers of property to shareholders. They proposed amending the clause to read as follows;-

by the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the 9 direct and indirect shareholders consideration for as the transfer pursuant to this paragraph, provided that-

(1) the property is 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 relate to a subsidiary of the company undertaking the transfer.

For the purposes of the subparagraph 6(2)(i) the term shareholders shall include both direct and indirect shareholders

Committee Observation:

The Committee noted the proposal to extend the scope of the provision to include indirect shareholders in addition to direct shareholders. It observes that the Income Tax Act already distinguishes legal and beneficial ownership through defined provisions, and the inclusion of indirect shareholders without a clear statutory framework may create enforcement and tracing challenges; therefore, the Committee did not adopt the proposal by the stakeholder.

41. Also, EY noted that partnerships of any form, trusts, investment vehicles, cooperative societies, and similar vehicles are widely used in Kenya as income-generating and asset-holding structures and frequently undertake internal restructurings with no change in beneficial ownership. Limiting relief to companies creates form-based distinctions that are not aligned with the substance of such transactions. EY noted that extending both the exemption and the accompanying definition ensures internal consistency within the Eighth Schedule, aligns with the bill's policy objective of facilitating tax-neutral restructurings, avoids incentivising artificial corporate conversions, and supports neutrality, certainty and fairness in the application of capital gains tax.

42. They proposed amending the clause to read as follows:-

(i) "by the transfer of property by a company, partnership, limited liability partnership, trust, cooperative society, or any body corporate to its shareholders, partners, members, or equivalent stakeholders as part of an internal reorganisation, or on the transfer of property to the entity by such persons as consideration for the issue of shares, partnership interests, membership units, or equivalent rights pursuant to this paragraph, provided that-

(I) the property is transferred in proportion to the shareholding, partnership membership interest, units or held immediately before the transfer; and

(II) where the property consists of shares or equivalent interests, such relate to a subsidiary or affiliated body corporate undertaking the transfer."

Committee Observation

The Committee noted the concern that restricting the exemption to companies may create unequal treatment between different forms of business vehicles such as partnerships, trusts, and cooperatives. While the Committee acknowledges the importance of tax neutrality across economic actors, it observes that the current structure of the Income Tax Act and the Eighth Schedule is primarily entity-specific and deliberately distinguishes between companies and other forms of associations for purposes of capital gains tax treatment. Expanding the exemption to all entities would require a comprehensive overhaul of the capital gains tax framework and may have unintended fiscal implications. Accordingly, the Committee did not adopt the proposal by the stakeholder.

Clause 3 (b)

43. **KPMG** supported the proposal. They noted it provides clarity on what qualifies as an internal reorganization and aligns with international best practice, which requires that a reorganization reflect a genuine commercial rationale beyond tax exemption.

OCOB

44. The stakeholder observed that the definition of 'internal reorganisation' is minimalist and relies solely on the absence of a third-party transfer. It does not address the treatment of related parties who may not be shareholders, cross-border reorganisations involving foreign subsidiaries and reorganisations effected through trusts or nominee arrangements. This definitional gap may result in inconsistent application and revenue leakage.
45. They proposed expanding the definition to expressly exclude related-party non-shareholder transactions, require that the reorganised entities remain tax-resident in Kenya for a minimum of 3 years post-restructuring, and exclude arrangements structured through trusts or nominees not disclosed to KRA.

Committee Observation

The Committee noted the concerns raised by the OCOB. However, the Committee was of the view that the Income Tax Act (Cap. 470), together with the Tax Procedures Act, 2015, already provides a comprehensive framework for addressing residence, beneficial ownership, and anti-avoidance concerns. The Committee further observed that introducing restrictive statutory conditions such as mandatory post-reorganisation residency requirements and exclusions for trusts or nominees may unduly narrow the scope of legitimate reorganisations and create interpretational complexity. Accordingly, the Committee did not adopt the proposal.

Deloitte & Touche LLP

46. They observed that the current absence of definitions creates ambiguity and reliance on external statutes such as the Companies Act. Embedding these definitions within the Income Tax Act will enhance legal certainty, promote uniform application, and reduce disputes between taxpayers and the Kenya Revenue Authority. Therefore, amend Paragraph I of the Eighth Schedule to the Income Tax Act (ITA) to consolidate all the definitions relevant to corporate reorganization as follows: -

“Internal reorganization” means a restructuring of the ownership or control of a company or its assets which does not involve a transfer of property to a third party.

“group” in relation to a body corporate, means the body corporate, any other body corporate that is its holding company or subsidiary and any other body corporate that is a subsidiary of that holding company.

“Underlying ownership” in relation to a person, means an interest in the person held directly, or indirectly through an interposed person or persons, by an individual or by a person not ultimately owned by the individuals.

“Control” means the capacity to exercise power over the Board of Directors, hold more than half of the voting rights in that other company, or hold more than half of that other company's issued share capital.

“Holding company” is defined as company that (a) controls the composition of that other company's board of directors, (b) controls more than half of the voting rights in that other company, (c) holds more than half of that other company's issued share capital; or (d) is a holding company of a company that is that other company's holding company.

“Subsidiary” is defined as a company of which another company is its holding company.

Committee Observation

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that while clarity in interpretation is important, the proposed extensive definitional framework is already substantially addressed through existing provisions of the Companies Act, 2015, and the Income Tax Act. The Committee further observed that importing detailed corporate law definitions into the tax statute may create duplication, rigidity, and potential inconsistencies with evolving corporate law. Accordingly, the Committee did not adopt the proposal.

WeCare Youth Organization

47. Amend the proposal to refine the definition of internal reorganisation by narrowing its scope and introducing a threshold for changes in ultimate beneficial ownership, since the current definition is overly broad and may capture transactions that effectively result in a disposal. Aligning the definition with principles of clarity, transparency, and international practice will reduce ambiguity, prevent misuse, and ensure that only transactions that do not materially alter ownership qualify for relief.

Committee Observation

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that introducing ownership thresholds and restrictive definitional limitations may undermine the objective of tax neutrality in genuine internal reorganisations and introduce unnecessary complexity in administration. Accordingly, the Committee did not adopt the proposal.

Oxfam Kenya

48. Clause 3(b) should be amended to adopt a positive and functional definition of “*internal reorganisation*”, define “*control*”, introduce a minimum holding period, incorporate a main purpose test, and align the provision with the Companies Act, since the current definition is framed negatively and relies on undefined concepts, creating ambiguity and interpretive uncertainty. The absence of ownership thresholds and purpose tests creates room for abuse. Therefore, a clear, substance-based definition will enhance legal certainty, ensure consistency, and prevent misuse of the exemption.

Committee Observation

The Committee noted the concerns raised by stakeholder. However, the Committee was of the view that the Income Tax Act already incorporates sufficient safeguards against tax avoidance under Section 23, and that the introduction of purpose tests and holding periods within this clause would risk subjective interpretation and reduce certainty in tax administration. The Committee further observed that alignment with the Companies Act is already achieved through existing cross-references in corporate and tax law. Accordingly, the Committee did not adopt the proposal.

PWC

Clauses 3(a) and 3(b)

49. Amend the clauses because the current corporate-centric drafting excludes partnerships, trusts, and LLPs despite their increasing commercial relevance, while undefined concepts such as “third party” and overly broad phrases like “restructuring of assets” create ambiguity and overreach, and provided that the revised provisions adopt a substance-over-form approach anchored on continuity of economic ownership, the following proposed amendments will align the law with modern business structures, improve clarity, and prevent unintended tax exposure.

- (A) Insert the following definitions in Paragraph 1(1) of the Eighth Schedule: -

“person undertaking a reorganisation” means a company, partnership, limited liability partnership, trust or other body of persons;

“interest holders” means, as the case may be, the shareholders of a company, the partners of a partnership or limited liability partnership, the beneficiaries of a trust, or the members of any other body of persons;

- (B) Amend the proposed Paragraph 6(2)(i) of the Eighth Schedule to read as follows:

“(i) by the transfer of property by a person undertaking a reorganisation to its interest holders, or by the interest holders to such person, as part of an internal reorganisation, provided that —

(I) the property is transferred to the interest holders in proportion to their respective interests immediately before the transfer; and

(II) where the property consists of shares or comparable interests, such shares or interests relate to a company, partnership, limited liability partnership, trust or other body of persons in which the person undertaking the transfer controls.”

(C) Replace the proposed Paragraph 6(2A) of the Eighth Schedule with the following:

“(2A) For the purposes of this Schedule, ‘internal reorganisation’ means any transaction or series of transactions that results in a change in the manner in which the property of a person undertaking a reorganisation, or the shares or interests held in or by such person, are held among that person and its interest holders, and includes without limitation —

(a) the distribution of property, including shares or comparable interests, by a person undertaking a reorganisation to its interest holders;

(b) the transfer of property by interest holders to a person undertaking reorganisation in exchange for shares, interests or other consideration;

(c) the consolidation, division or rearrangement of property, shares or interests between a person undertaking a reorganisation and its interest holders provided that the transaction does not involve a transfer of property to any person who was not an interest holder of the person undertaking the reorganisation immediately before the transaction.”

Committee Observation

The Committee noted the comprehensive restructuring proposals by the stakeholder. The Committee was of the view that the Income Tax Act, when read together with the Eighth Schedule and relevant provisions on chargeable income and capital gains, already provides sufficient coverage for qualifying reorganisations. The Committee further observed that introducing expanded statutory definitions across multiple entity types may significantly broaden the scope of the exemption and create interpretational challenges in administration. Therefore, the Committee did not adopt the proposal.

Ernst & Young

50. The stakeholder noted that many corporate groups operate through complex multi-layered ownership structures comprising a mix of companies, partnerships of any form, limited liability partnerships (LLPs), limited liability companies (LLCs), trusts, cooperative societies and other entities. Internal reorganisations within such groups are often undertaken for operational, regulatory or investment structuring purposes without any change in ultimate beneficial ownership. Limiting relief to companies alone may therefore result in otherwise tax-neutral group restructurings attracting capital gains tax solely due to the difference in the body corporates used within the same corporate group.

51. They proposed amending the definition of “internal reorganisation” to read as follows:

“For the purposes of this subparagraph, reorganisation means internal a restructuring of the ownership or control of a company, limited liability partnership, trust, cooperative society or any body corporate, or its assets, which does not involve a transfer of property to a third party.”

Committee Observation

The Committee noted the comprehensive restructuring proposals by the stakeholder. The Committee was of the view that the Income Tax Act, when read together with the Eighth Schedule and relevant provisions on chargeable income and capital gains, already provides sufficient coverage for qualifying reorganisations. The Committee further observed that introducing expanded statutory definitions across multiple entity types may significantly broaden the scope of the exemption and create interpretational challenges in administration. Therefore, the Committee did not adopt the proposal.

New Proposals

52. **Bowmans** observed that there is a need to provide for a similar provision in the Stamp Duty Act. They proposed amending the existing stamp duty exemption so that it also covers the transfer of property by shareholders to the company as consideration in the same internal reorganisation, subject to the same conditions and safeguards. That would ensure consistency and fully give effect to the policy of facilitating tax-efficient internal reorganisations.

Committee Observation

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that stamp duty is governed under a distinct legal and fiscal framework under the Stamp Duty Act (Cap. 480), and any amendments to exemptions therein should be considered within that specific statutory context.

PWC

New Provision

53. Amend the existing Paragraph 13 (c) of the Eighth Schedule by deleting the words “which has existed for at least twenty-four months” to read as follows:
- “(c) an internal restructuring within a group which does not involve a transfer of property to any person who is not a member of the same group”*
54. This proposal is to eliminate reliance on the undefined concept of “third party”, since the time-based condition imposes an arbitrary and economically unjustifiable barrier to genuine post-acquisition restructuring, and whereas the existing clawback mechanism under Paragraph 8(4A) already safeguards revenue by ensuring deferred gains are taxed upon subsequent disposal, removing the restriction will facilitate business integration, improve cash flow efficiency, and enhance Kenya’s investment attractiveness, while aligning the provision with the Bill’s broader objective of ensuring tax neutrality for internal reorganisations that do not alter beneficial ownership.

Committee Observation

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that the existing framework under the Eighth Schedule, including clawback provisions under Paragraph 8(4A), already provides adequate safeguards to preserve the tax base while allowing deferred taxation on qualifying transactions. The Committee further observed that the proposed removal of the time-based restriction could increase exposure to tax planning risks in short-term restructuring arrangements. Therefore, the Committee did not adopt the proposal.

WeCare Youth Organization

New Provision

55. The stakeholder proposed a new provision should be introduced to clarify that the exemption does not limit the application of the general anti-avoidance rule and to require disclosure and reporting of reorganisation transactions, since tax exemptions constitute foregone public revenue and must be subject to oversight. Enhanced transparency and integration with existing anti-avoidance frameworks will strengthen accountability, safeguard fiscal sustainability, and ensure alignment with constitutional principles of equitable tax burden sharing.

Committee Observation:

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that the application of the General Anti-Avoidance Rule under Section 23 of the Income Tax Act is already of general application and applies to all provisions of the Act without requiring repetition in specific clauses. The Committee further observed that disclosure and reporting obligations are adequately provided for under the Tax Procedures Act, 2015. Accordingly, the Committee did not adopt the proposal.

General Submissions

Earnest And Associates LLP

56. The stakeholder supported the Income Tax (Amendment) Bill, 2026, since the proposed amendments promote consistency within Kenya's tax framework by aligning the Income Tax Act with Section 117(1)(r) of the Stamp Duty Act (Kenya), which similarly provides for exemption of transfers undertaken as part of internal reorganisations. Such harmonisation reduces interpretive ambiguity, enhances predictability, and minimizes compliance disputes, the Bill will facilitate more efficient and orderly corporate restructuring.
57. The stakeholder further noted that the amendments play a critical role in resolving long-standing shareholder disputes, particularly in land-holding companies, since such disputes often result in idle or underutilised land, prolonged litigation, and stalled corporate decision-making, and whereas enabling tax-neutral restructuring provides a practical pathway for

unlocking the economic value of such assets, the reforms will support improved utilisation and governance outcomes.

58. In addition, the stakeholder observed that the Bill enables the reversion of land to individual shareholders, since individual ownership allows for more efficient and timely decision-making regarding the use, development, or disposal of land, and whereas corporate ownership structures have in some cases contributed to inactivity and inefficiency, the proposed framework will enhance the productivity of land assets and stimulate investment.
59. The stakeholder also supported the exemption of such transfers from dividend taxation, since imposing dividend tax on non-cash reorganisations would compel shareholders to liquidate assets, incur debt, or utilise limited liquidity to meet tax obligations, and whereas this would undermine the objective of preserving asset value during restructuring, the exemption ensures that internal reorganisations do not erode shareholder wealth and that land remains available for productive use.

Kenya Institute of Supplies Management

60. The stakeholder supported the proposed exemption of internal reorganisations from Capital Gains Tax, since it facilitates business restructuring, enhances continuity, and aligns with the need to promote efficient corporate reorganisation frameworks. Such exemptions are consistent with international best practice and the proposal is considered progressive and supportive of economic activity.
61. The stakeholder, however, recommended that the Bill be amended to incorporate anti-abuse safeguards, since the absence of clear guidelines on what constitutes an internal reorganisation may create opportunities for tax avoidance schemes such as dividend stripping, and whereas providing a precise and legally robust definition will enhance clarity, prevent misuse, and ensure that only genuine restructuring transactions benefit from the exemption.
62. The institute further suggested the introduction of a claw-back mechanism, since tax exemptions granted at the point of reorganisation may be abused where assets are subsequently disposed of to third parties within a short period, and whereas reversing the exemption in such cases will protect the tax base and ensure that the relief is not used to facilitate disguised disposals. In addition, the stakeholder noted that the Bill require asset transfers to be conducted at fair market value based on independent professional valuation, since undervaluation or overvaluation of assets may distort tax outcomes and create opportunities for abuse.
63. The stakeholder also recommended that disposal processes be guided by transparent and competitive principles, since the absence of structured processes may undermine fairness and value for money, and whereas aligning such transactions with procurement principles will enhance accountability, equity, and efficiency in the handling of assets.

Committee Observations

The Committee noted the support expressed by the stakeholder. However, the Committee was of the view that the Income Tax Act (Cap. 470) and the Eighth Schedule already provide a sufficient legal framework for determining chargeable gains, and the tax treatment of qualifying internal reorganizations. The Committee further observed that existing provisions under the Tax Procedures Act, 2015, together with general anti-avoidance provisions under Section 23 of the Income Tax Act, adequately address concerns relating to tax avoidance, including dividend stripping and artificial restructuring.

With regard to proposals for claw-back mechanisms, mandatory independent valuation, and procurement-aligned disposal processes, the Committee was of the view that introducing such procedural and valuation-specific requirements within this exemption clause would overcomplicate tax administration and potentially undermine the objective of facilitating efficient corporate restructuring. . Therefore, the Committee did not adopt the proposed additional safeguards.

Oxfam Kenya

New Provision

64. Introduce a new proposal to establish countervailing measures including a high-net-worth individual surcharge, an increase in capital gains tax rates on non-reorganisation transfers, and a minimum wealth-based contribution. The Bill introduces a tax exemption without corresponding revenue measures, thereby shifting the burden to other taxpayers, while existing gaps in high-net-worth taxation remain unaddressed. Implementing progressive offsets will enhance equity, strengthen domestic resource mobilisation, and safeguard fiscal sustainability.

Committee Observations

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that the Finance Bill operates within a targeted policy framework and that the introduction of new tax surcharges or wealth-based levies within this provision would amount to a broader tax policy shift that extends beyond the scope of the amendment under consideration.

The Committee further observed that matters relating to progressive taxation and wealth redistribution are appropriately addressed through comprehensive fiscal policy and annual budgetary processes rather than being embedded in specific exemption clauses. Accordingly, the Committee did not adopt the proposal.

Westminster Consulting LLP

New Provision

65. Amend Section 15 to empower the Commissioner to prescribe or apply allowable expense margins, ratios or safe-harbour thresholds for specified sectors, classes of taxpayers or categories of transactions. The current reliance on electronic invoicing systems may result in the disallowance of genuine business expenses. This occurs where documentation does not fully comply with system requirements. Introducing safe-harbour mechanisms will ensure that taxation reflects actual economic activity. It will reduce disputes, ease compliance burdens, and improve administrative efficiency while maintaining revenue integrity.

Committee Observation

The Committee noted the proposal by the stakeholder. However, the Committee was of the view that Section 15 of the Income Tax Act, together with the Tax Procedures Act, 2015, already provides sufficient legal basis for the Commissioner to assess allowable deductions based on actual expenditure and supporting documentation.

The Committee further observed that introducing sector-specific safe-harbour ratios or presumptive margins within the statute may undermine the principle of taxation based on actual income and expenditure, and could create inconsistencies in tax treatment across sectors. The Committee also noted that administrative guidance and practice notes issued by the Kenya Revenue Authority are better suited to address implementation challenges arising from evolving digital tax systems. Accordingly, the Committee did not adopt the proposal.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

66. The Committee made the following observations:

1) Object of the Bill

The Bill seeks to amend the Income Tax Act to provide for the exemption of capital gains tax in the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders as consideration for the transfer.

The proposed amendment introduces a new exemption under item 6 of the Eighth Schedule to the Income Tax Act to provide that transfers of property between a company and its shareholders, as part of an internal reorganisation, shall not be subject to Capital Gains Tax, provided certain conditions are met. These conditions include that the property must be distributed in proportion to the shareholders' existing shareholding immediately before the transfer, and where shares are involved, they must relate to a subsidiary of the company undertaking the reorganisation.

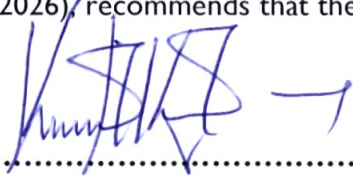
2) Support for the Bill

The majority of the stakeholders who either made oral submissions or submitted memoranda expressed support for the Bill. The amendments proposed sought to further clarify the intention of the amendments, provide necessary safeguards, or expand its scope. The Committee noted the proposals but was of the view that additional proposals could be addressed through a different Bill, preferably in a Finance Bill or a tax Bill.

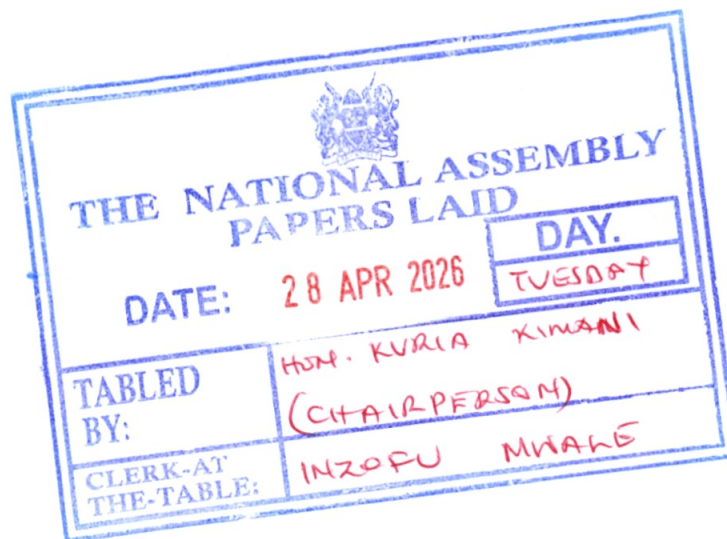
CHAPTER FIVE

5. COMMITTEE RECOMMENDATION

67. The Committee, having considered the Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026), recommends that the House **approves** the Bill with amendments.

SIGNED..........DATE.....

HON. FCPA KURIA KIMANI, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING



CHAPTER SIX

6.0. SCHEDULE OF AMENDMENTS

Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026) Committee proposes the following amendment:

CLAUSE I

THAT, clause 1 of the Bill be amended by inserting the words “and shall come into operation upon publication” at the end of the clause.

Justification

The proposed amendment seeks to provide for the commencement of the provisions of the Act upon publication so as to correct an anomaly occasioned after passage of the Finance Act, 2025. The amendment seeks to align the provisions to amendments passed in the Finance Act, 2025.



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION - 2026**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST**

**REPORT ON THE INCOME TAX (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.
20 OF 2026)**

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Tuesday, 28th April 2026.**

S/NO.	NAME	SIGNATURE
1.	HON. FCPA KURIA KIMANI, CBS, MP - CHAIRPERSON	
2.	HON. FCPA (AMB). BENJAMIN KIPKIRUI LANGAT, MP – VICE CHAIRPERSON	
3.	HON. KALUMA PETER OPONDO, CBS, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (FCPA) JOSEPH MAERO OYULA, OGW, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. CHIFOROMODO MANGALE MUNGA, MP	
9.	HON. MAINA BETTY NJERI, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING HELD ON TUESDAY, 28TH APRIL, 2026 IN COMMITTEE ROOM 20, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. FCPA. Kuria Kimani, CBS, MP
2. Hon. Peter Kaluma, CBS, MP
3. Hon. FCPA. Joseph Maero Oyula, MP
4. Hon. David Mwalika Mboni, MP
5. Hon. Julius Kipletting Rutto, MP
6. Hon. Umul Ker Sheikh Kassim, MP
7. Hon. Dr. John Ariko Namoit, MP
8. Hon. Paul Kibichiy Biego, MP
9. Hon. Dr. Shadrack Mwiti Ithinji, MP
10. Hon. George Sunkuyia Risa, MP
11. Hon. Chiforomodo, Munga, MP

-Chairperson

ABSENT WITH APOLOGIES

1. Hon. FCPA (Amb.) Benjamin Kipkirui Langat, CBS, MP
2. Hon. Betty N. Maina, MP
3. Hon. Andrew Adipo Okuome, MP
4. Hon. Mohamed Soud Machele, MP

-Vice-Chairperson

COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|---------------------------------|
| 1. Ms. Jenniffer Ndeto | - | Deputy Director, Legal Services |
| 2. Ms. Tracy Chebet | - | Principal Clerk Assistant II |
| 2. Ms. Winfred Kambua | - | Clerk Assistant III |
| 3. Mr. Benson Kamande | - | Clerk Assistant III |
| 4. Mr. Salem Lorot | - | Senior Legal Counsel |
| 5. Mr. George Ndenjeshe | - | Fiscal Analyst II |
| 6. Ms. Joyce Wachera | - | Hansard Reporter II |
| 7. Ms. Nelly Ondieki | - | Research officer III |
| 8. Mr. James Macharia | - | Senior Media Relations Officer. |
| 9. Mr. Benson Muthuri | - | Sergeant at arms |
| 10. Mr. Allan Ngugi | - | Administrative Officer |
| 11. Ms. Ann Kangethe | - | Administrative Officer |

MIN No. NA/F&NP/2026/051: -

PRELIMINARIES

The chairperson called the meeting to order at 10.06 a.m. This was thereafter, followed with a word of prayer and introductions.

MIN No. NA/F&NP/2026/052:-**AGENDA**

The Agenda of the meeting was adopted having being proposed by Hon. Paul Kaluma, CBS, MP and seconded by Hon. David Mwalika Mboni, MP as follows; -

1. Prayer
2. Adoption of the Agenda
3. Introductions
4. Substantive agenda

Consideration and Adoption of the Report on the Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026) and the Public Finance Management (Amendment) Bill, 2025 (National Assembly Bill No. 17 of 2025)

5. Any Other Business
6. Adjournment

MIN No. NA/F&NP/2026/053:-REMARKS BY THE CHAIRPERSON

The chairperson welcomed the Members to the meeting and thanked them for availing themselves for consideration of the report.

MIN No. NA/F&NP/2026/054: -

**CONSIDERATION OF THE REPORT
ON THE INCOME TAX
(AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 20 OF 2026)
AND THE PUBLIC FINANCE
MANAGEMENT (AMENDMENT)
BILL, 2025 (NATIONAL ASSEMBLY
BILLS NO. 17 OF 2025)**

The Income Tax (Amendment) Bill (National Assembly Bill No. 20 Of 2026)

The Committee observed that;

- i) the Bill seeks to amend the Income Tax Act to provide for the exemption of capital gains tax in the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders as consideration for the transfer.
- ii) the proposed amendment introduces a new exemption under item 6 of the Eighth Schedule to the Income Tax Act to provide that transfers of property between a company and its shareholders, as part of an internal reorganization, shall not be subject to Capital Gains Tax, provided certain conditions are met. These

conditions include that the property must be distributed in proportion to the shareholders' existing shareholding immediately before the transfer, and where shares are involved, they must relate to a subsidiary of the company undertaking the reorganization.

- iii) the majority of the stakeholders who either made oral submissions or submitted memoranda expressed support for the Bill. The amendments proposed sought to further clarify the intention of the amendments, provide necessary safeguards, or expand its scope. The Committee noted the proposals but was of the view that additional proposals could be addressed through a different Bill, preferably in a Finance Bill or a tax Bill.
- iv) the Bill needs to be amended to provide for the commencement date of the Act on a date to be appointed by the Cabinet Secretary through a Gazette. This will ensure that transitional mechanisms on the operationalization of the Act are addressed.

The Public Finance Management (Amendment) Bill (National Assembly Bills No. 17 of 2025)

The Committee observed that;

- i) the Bill seeks to repeal sections 191A, 191B, 191C, 191D, 191E of the PFM Act which provide for intergovernmental agreements between the national government and county governments on conditional additional allocations. Ministries, Departments and Agencies (MDAs) and county governments execute County Participatory Agreements (CPAs) for each conditional allocation thus the provisions in the PFM Act are duplicative since CPAs serve the purpose of intergovernmental agreements.
- ii) despite the repeal of the provisions relating to intergovernmental agreements in the PFM Act, the constitutional and statutory safeguards and oversight mechanisms in the budget process remain intact. Further, the role of the Controller of Budget as provided for in the Constitution and the PFM Act in the budget process within which conditional additional allocations will be considered remain intact.
- iii) the National Treasury, the Commission on Revenue Allocation and the Council of Governors fully supported the Bill underscoring the parallel process that sections 191A, 191B, 191C, 191D, 191E of the PFM Act occasioned, thus duplicating the County Participatory Agreements (CPAs), thus creating bottlenecks and administrative challenges in the management of conditional additional allocations.

MIN No. NA/F&NP/2026/055:-

**ADOPTION OF THE REPORT ON
THE INCOME TAX (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL
NO. 20 OF 2026) AND THE PUBLIC
FINANCE MANAGEMENT
(AMENDMENT) BILL, 2025
(NATIONAL ASSEMBLY BILLS NO.
17 OF 2025)**

The report on The Income Tax (amendment) Bill (National Assembly Bill No. 20 of 2026) and the Public Finance Management (Amendment) Bill, 2025 (National Assembly Bills No. 17 of 2025) were thereafter adopted having been proposed by Hon. Umul Ker Sheikh Kassim, MP and seconded by Hon. Chiforomodo, Munga, MP.

MIN No. NA/F&NP/2026/056:- ANY OTHER BUSINESS / ADJOURNMENT

There being no any other business, the meeting was adjourned at ten minutes past twelve noon. The next meeting will be held on notice.

Signed.....
Hon. FCPA. Kuria Kimani, CBS, MP
Chairperson

Date.....

KENYA RAILWAYS

SPECIFIC PROCUREMENT NOTICE

Country	REPUBLIC OF KENYA
Name of Project	KENYA URBAN MOBILITY IMPROVEMENT PROJECT (KUMIP)
Credit No.	V4940
Contract Title	PURCHASE OF TWENTY-FOUR (24) DIESEL MULTIPLE UNIT (DMU) AIR COMPRESSORS
Reference	KE-KRC-469959-GO-RFB
Tender No.	KR/SCM/WB/002/2025-2026

1. The Government of Kenya has applied for financing from the World Bank toward the cost of the Kenya Urban Mobility Improvement Project (KUMIP) and intends to apply part of the proceeds toward payments under the contract for Purchase of Twenty-Four (24) Diesel Multiple Unit (DMU) air compressors.
2. The Kenya Railways Corporation now invites sealed Bids from eligible Bidders for Purchase of 24 No Diesel Multiple Unit (DMU) air compressors to be delivered at Kenya Railways (KR) Nairobi Central Workshops Stores, Kenya.
3. Bidding will be conducted through international competitive procurement using a Request for Bids (RFB) as specified in the World Bank's "Procurement Regulations for IPF Borrowers" dated in February 2025 (6th Edition) ("Procurement Regulations"), and is open to all eligible Bidders as defined in the Procurement Regulations.
4. Bids will be evaluated in accordance with the evaluation process set out in the bidding documents. The following weightings shall apply for Rated Criteria (including technical and non-price factors): 80%. This should comply with the mandatory requirements for Rated Criteria in the Procurement Regulations and for Bid cost: 20%.
5. Interested eligible Bidders may obtain further information from Kenya Railways Corporation, General Manager - Supply Chain Management, procure@krc.co.ke and inspect the bidding document during office hours 0900 to 1700 hours at the address given below.
6. Interested bidders are encouraged to download the tender document from Kenya Railways Website, Public Procurement Information Portal and World Bank Group Procurement Notices websites, interested eligible bidders upon downloading the document must forward their particulars to the email addressed below for facilitation of any further clarification or addendum:

General Manager - Supply Chain Management,
Kenya Railways Headquarters Office,
Workshops Road off Haile Selassie Avenue,
Opposite Technical University of Kenya,
P. O. Box 30121-00100,
Nairobi, Kenya.
Tel. No: +254 709 907 000, +254 709 907 114

7. Bids must be delivered to the address below on or before 11th May, 2026 Electronic Bidding will not be permitted. Late Bids will be rejected. The outer Bid envelopes marked "ORIGINAL BID", and the inner envelopes marked "TECHNICAL PART" will be publicly opened in the presence of the Bidders' designated representatives and anyone who chooses to attend, at the address below; Workshops Road off Haile Selassie Avenue, Opposite Technical University of Kenya on 11th May, 2026 at 2:00PM (EAT). All envelopes marked "SECOND ENVELOPE: FINANCIAL PART" shall remain unopened and will be held in safe custody of the Purchaser until the second public opening.
8. All Bids must be accompanied by a Bid Security of KES 1,500,000 in form of a Bank Guarantee from a Registered Commercial Bank in Kenya valid for 240 days from the date of tender opening.
9. Attention is drawn to the Procurement Regulations requiring the Borrower to disclose information on the successful bidder's beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the bidding document.
10. The address(es) referred to above is (are):
General Manager - Supply Chain Management,
Kenya Railways Headquarters Office,
Workshops Road off Haile Selassie Avenue,
Opposite Technical University of Kenya,
P. O. Box 30121-00100,
Nairobi, Kenya.
Tel. No: +254 709 907 000, +254 709 907 1

The Managing Director
Kenya Railways



THE NATIONAL ASSEMBLY 13TH PARLIAMENT - FIFTH SESSION - 2026

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION AND IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE INCOME TAX (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2026)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026)** was read a First Time on 16th April 2026 and referred to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House;

IT IS NOTIFIED that the **Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026)** is a Bill sponsored by the **Hon. Kimani Kuria, MP**, that seeks to amend the Income Tax Act, Cap. 470 to exempt **capital** gains arising from the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders as consideration for the transfer, from taxation.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and National Assembly Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the **Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026)** to the Departmental Committee on Finance and National Planning.

A Copy of the Bill is available at the National Assembly Table Office, Main Parliament Building, and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi**; or emailed to ena@parliament.go.ke to be received on or before **Friday, 24th April, 2026 at 5.00 p.m.**

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
17th April, 2026



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 Ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/F&NP/2026/069

20th April, 2026

Mr. Kwame Owino
Chief Executive Officer
Institute of Economic Affairs
1st Ngong Avenue, ACK Garden House
NAIROBI

Mr. James Muraguri
Chief Executive Officer
Institute of Public Finance
Rosami Court, Fourth Floor
NAIROBI

CPA Dr Grace Kamau
Chief Executive Officer
Institute of Certified Public Accountants of Kenya
CPA Center, Ruaraka, Nairobi, Kenya.
NAIROBI

Mr. Charles Kanjama, SC
President
Law Society of Kenya
Lavington, Opposite Valley Arcade
NAIROBI

Ms. Edna Gitachu
Partner,
PricewaterhouseCoopers
PWC Tower, Waiyaki way/Chiromo Road
NAIROBI

Mr. Daniel Ngumy
Managing Partner
Anjarwalla & Khanna
ALN House, Eldama Ravine Close,
NAIROBI

Mr. Kamal Shah
Executive Chairman
Grant Thornton Associates
Avocado Towers, Muthithi Road
NAIROBI

FCPA Phillip Muema
Managing Partner
Andersen Tax LLP
7th Floor Rhapta Heights, Rhapta Road
NAIROBI

Dear *Ms Gitachu*

**RE: STAKEHOLDER ENGAGEMENT ON THE INCOME TAX (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2026)**

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to **study and review all the legislation referred to it.**

The Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026) was read a First Time in the National Assembly on Thursday, 16th April 2026, and thereafter committed to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House.

The principal object of the Bill is to amend the Income Tax Act to provide for the exemption of capital gains tax in the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by the shareholders as consideration for the transfer.

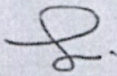
Article 118 (1)(b) of the Constitution of Kenya and Standing Order 127 (3) requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In this regard, the Committee hereby invites you for a meeting to make your submissions and comments on the said Bill. The meeting will be held on **Friday, 24th April, 2026 at a venue to be communicated in due course.**

You are requested to prepare a comprehensive submission on any representations you may have on the Bill and email a soft copy to cna@parliament.go.ke on or before the day of the meeting.

A copy of the Bill is available at the National Assembly Table Office, Main Parliament Buildings, or on <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

The Committee's Liaison Officers for the meeting are **Mr. Benson Kamande** of tel. no **0789459387** or email address benson.kamande@parliament.go.ke and ddc@parliament.go.ke and **Ms. Winfred Kambua Kilonzo** of tel. no. **0720 571 777** or email address winfred.kilonzo@parliament.go.ke.

Yours



JEREMIAH W. NDOMBI, MBS

For: CLERK OF THE NATIONAL ASSEMBLY



April 23, 2026

Mr. Samuel Njoroge

Clerk of the National Assembly
Parliament of Kenya, Parliament Buildings
P.O. Box 41842 – 00100
Nairobi

Email: cna@parliament.go.ke

Dear Mr. Njoroge,

RE: Stakeholder Engagement on The Income Tax (Amendment) Bill, (National Assembly Bill No.20, of 2026)

Greetings from Oxfam in Kenya.

Reference is made to your letter dated 20 April 2026, Ref: NA/DDC/F&NP/2026/070.

Oxfam is an international confederation of 21 organizations working in over 77 countries to end poverty and injustice. In Kenya, Oxfam partners with civil society, government institutions, and the private sector to tackle the structural causes of inequality and promote fairer economic and social systems that enable all Kenyans—especially women and marginalized communities—to thrive.

On behalf of Oxfam Kenya, I write to formally acknowledge receipt of your invitation and to submit our comments on the recently published Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026). We appreciate the opportunity to contribute to this important legislative process and to provide evidence-based perspectives grounded in our work.

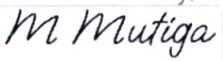
Our submission focuses on the implications of the proposed amendments for equity in taxation, revenue mobilisation, investment and employment, and the protection of low-income and vulnerable groups. In summary, our comments highlight the need to ensure that:

- The tax system remains progressive, with fair contributions from high-income earners and profitable entities;
- Measures to broaden the tax base do not disproportionately impact low-income households, informal workers, and small businesses;
- Incentives and reliefs are clearly justified, time-bound, and aligned with national development priorities; and
- The Bill is coherent with ongoing reforms on domestic resource mobilisation, public finance management, and Kenya's regional and international commitments.

We kindly request that our submission be duly recorded as part of the official public participation record on the Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026), and that it be shared with the Departmental Committee on Finance and National Planning. We will also appear before the Committee to present our submission orally and further elaborate on our analysis and recommendations.

For any clarification or additional information, please do not hesitate to contact **Mr. Edwin Birech** at ebirech@oxfam.org.uk or by telephone at +254 722 991 254.

Yours Sincerely,


box SIGN 4WPZQVRJ-15W55J6L
Mwongera Mutiga
Executive Director

21 April 2026

The Clerk of the National Assembly
P.O. Box 41842 – 00100
Nairobi

Dear Sir,

MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE INCOME TAX (AMENDMENT) BILL, 2026

I have reviewed the Income Tax (Amendment) Bill, 2026, and I wish to record my support for the proposals contained therein. My position is informed by the following considerations:

1. Alignment with the Stamp Duty Act

The amendments bring the Income Tax framework into harmony with the provisions of **Section 117(1)(r) of the Stamp Duty Act**, thereby promoting consistency across related statutes and reducing interpretive ambiguity for taxpayers and administrators.

Section 117(1)(r) of the Stamp Duty Act provides an exemption for:

“the transfer of property by a company to its shareholders as part of an internal reorganisation,”
provided that:

- (a) the property is transferred to the shareholders in proportion to their shareholding in the company immediately before the transfer; and
- (b) where the property consists of shares, such shares are in a subsidiary of the company undertaking the transfer.

The proposed amendments to the Income Tax Act mirror this logic, ensuring that internal reorganisations are treated consistently across both tax regimes. This alignment enhances predictability, reduces compliance disputes, and supports orderly corporate restructuring.

2. Facilitation of Resolving Shareholder Disputes

Some land-holding companies in Kenya remain paralysed by protracted shareholder disputes. These disputes often prevent companies from making essential corporate decisions, resulting in:

- land remaining idle or underutilised,
- prolonged litigation, and
- the inability to unlock the economic value of the underlying assets.

The proposed amendments provide a clearer pathway for addressing such deadlocks by enabling tax-efficient restructuring. This will help unlock land currently tied up in governance stalemates and allow shareholders to move forward with productive utilisation or disposal of the property.

3. Reversion of Land to Individual Shareholders

By enabling the reversion of land to individual shareholders, the Bill has the potential to open up idle or underutilised land for investment. Individual ownership:

- allows for quicker and more decisive action,
- improves utilisation of land that has remained dormant under corporate ownership, and
- creates opportunities for reinvestment, including the monetisation of land through sale, development, or joint-venture arrangements.



PHONE

+254 722 962 194
+254 720 369 054



EMAIL

info@ernestandassociatesllp.com



ADDRESS

Haven Court Block B5, Floor No. 2
Slip Road off-Waiyaki Way,
Westlands Nairobi

This reform supports more dynamic land markets and enhances the economic contribution of land assets.

4. Exemption of the Transfer of Land from Dividend Taxes

The exemption of the transfer of land from dividend taxation is a critical safeguard for preserving asset value. Without this exemption, shareholders would be compelled to:

- liquidate part of the land,
- borrow funds, or
- utilise scarce liquidity

to meet dividend tax obligations arising purely from a paper reorganisation. Such outcomes would lead to unnecessary shrinkage of the asset base and undermine the very objective of unlocking land for productive use.

The exemption therefore ensures that reorganisations do not erode shareholder value and that land remains intact for future investment.

Conclusion

For the reasons outlined above, I support the Income Tax (Amendment) Bill, 2026. The Bill promotes statutory coherence, facilitates the resolution of long-standing shareholder disputes, unlocks idle land for productive use, and preserves asset value during internal reorganisations.

I respectfully submit these views for the Committee's consideration.

Yours sincerely,

Ernest

24 April 2026

The National Assembly

Office of the Clerk, First Floor

Main Parliament Buildings

Parliament Road

Nairobi, Kenya

Email: cna@parliament.go.ke and financecommitteena@parliament.go.ke

Dear Sirs

Bowmans – Submissions on the Income Tax (Amendment) Bill, 2026 (National Assembly Bill No. 20 of 2026)

1. Introduction

1.1 We refer to the Income Tax (Amendment) Bill, 2026 (National Assembly Bill No. 20 of 2026) (the **Bill**), which was gazetted on 2 April 2026, read a First Time in the National Assembly on 16 April 2026, and committed to the Departmental Committee on Finance and National Planning for consideration.

1.2 These submissions are made by and on behalf of Bowmans (Coulson Harney LLP) (**Bowmans**).

1.3 Bowmans is a Pan-African law firm with nine (9) offices in six (6) African countries and over six hundred and fifty (650) specialist lawyers that works for clients across numerous African jurisdictions on corporate, finance, competition, taxation, employment, technology, and dispute resolution matters.

2. General comments

2.1 The Bill represents a welcome reform by proposing to exempt from capital gains tax transfer of property between a company and its shareholders where undertaken as part of an internal reorganisation under the Eighth Schedule to the Income Tax Act, Chapter 470 of the Laws of Kenya (the **Income Tax Act**).

2.2 The proposed changes would improve operational efficiency and by enabling companies realign its assets, efficiently in a tax-neutral manner.

2.3 However, Bowmans has identified drafting and policy gaps that, if not addressed, could undermine the effectiveness of the proposed relief or create unintended consequences. In particular:

2.3.1 the exemptions under the Bill should be aligned to the Stamp Duty Act, Chapter 480 of the Laws of Kenya (the **Stamp Duty Act**); and

2.3.2 clarity on whether the exemption applies to transactions involving multiple shareholders, including those who are unrelated.

2.4 We elaborate in detail below.

No	Clause	Description of the Clause	Proposal	Justification
1.	Clause 2 (Amendment of Section 7(1) of the Income Tax Act)	The Bill proposes to amend section 7(1) of 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 in the Eighth Schedule shall not be deemed to be a distribution for the purposes of the Income Tax Act.	We welcome this amendment and propose that it be retained.	This is an important clarification as it would make it easier for group companies to undertake internal restructurings and other separations of assets, without creating a dividend tax cost merely because property moves from the company to its existing shareholders in proportion to their existing interests.
2.	Clause 3(a) (Amendment of the Eighth Schedule to the Income Tax Act by inserting a new paragraph 6(2)(i))	The Bill proposes to insert a new subparagraph 6(2)(i) in the Eighth Schedule to exempt from capital gains tax: (a) the transfer of property by a company to its shareholders as part of an internal reorganisation; and (b) the transfer of property to the company by the shareholders as	We welcome this amendment. It introduces a useful capital gains tax relief for genuine internal reorganisations.	The requirement that property be transferred to shareholders in proportion to their existing shareholding is intended to prevent abuse. However, it may be rigid and could exclude genuine commercial reorganizations. For example: (a) a demerger where a company with two shareholders (60/40 split) wishes to separate two business lines by transferring each business to a different shareholder would not qualify, even though the restructuring has a genuine commercial purpose; and (b) a situation where one shareholder takes direct ownership of a specific subsidiary, while the others do not, would not qualify, even if the overall value is balanced through other forms of compensation.

consideration for that transfer.

The exemption applies only if:

- (a) the property must be transferred to the shareholders in proportion to their shareholding in the company immediately before the transfer; and
- (b) where the property consists of shares, such shares must relate to a subsidiary of the company undertaking the transfer.

The Bill also 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.

3. General

The Bill proposes to exempt from capital gains tax the transfer of property between a company and its shareholders where undertaken as part of an internal reorganisation

We propose a similar provision is included in the Stamp Duty Act

By contrast, the South African equivalent relief (section 46 of the Income Tax Act, 1962, dealing with unbundling transactions) does require proportionate distribution, but this is combined with a broad range of other restructuring reliefs (sections 42–45) that cover non-proportionate transfers.

Recommendation:

We therefore recommend that the clause be retained, but with one clarification: the legislation should state expressly that the relief applies irrespective of whether the shareholders are related or unrelated, provided the conditions in the clause are met.

If the Committee wishes to cater for non-proportionate internal reorganisations, that should be addressed through a separate relief with defined criteria.

Introduction

This amendment is intended to ensure that a transfer of property by a company to its shareholders in the course of an internal reorganisation is neither treated as a taxable distribution (dividend) nor subject to capital

under the Eighth Schedule to the Income Tax Act.

gains tax. In addition, the proposed changes extend the exemption to cover transfers of property by shareholders to the company as part of the same reorganisation.

Without this carve-out, the transfer could attract withholding tax on dividends at five percent (5%) for resident shareholders and fifteen percent (15%) for non-resident shareholders which would defeat the purpose of the capital gains tax exemption that would be applicable to the transfer of property as part of an internal reorganisation.

Alignment with the Stamp Duty Act

The current Stamp Duty Act already exempts the transfer of property by a company to its shareholders as part of an internal reorganisation. However, that exemption does not, on its face, extend to the reverse transfer by shareholders to the company.

The Bill would therefore create full capital gains tax relief, but stamp duty may still arise on one leg of the same reorganisation.

Recommendation

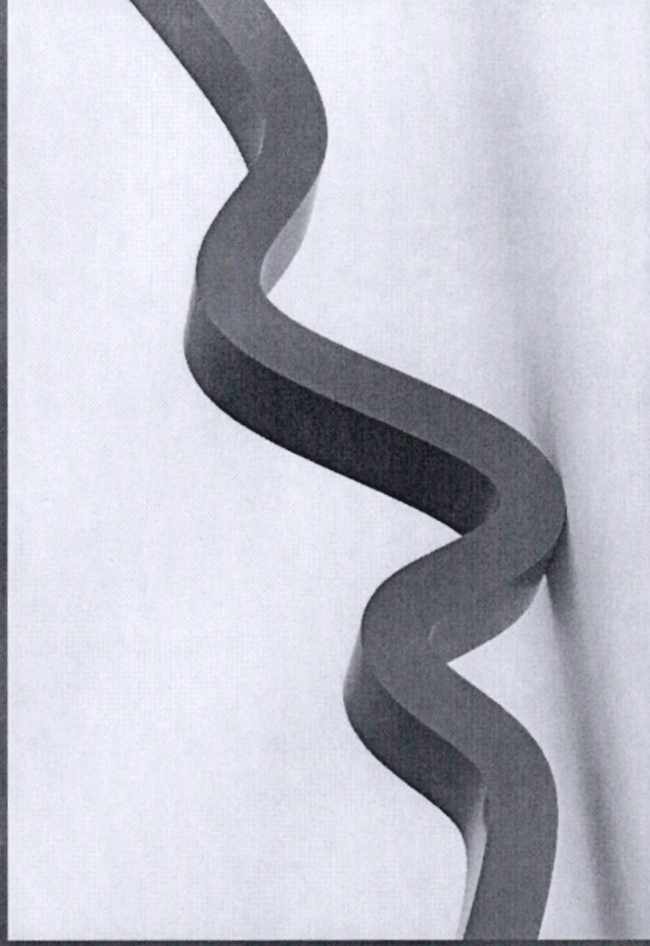
The Committee should amend the existing stamp duty exemption so that it also covers the transfer of property by shareholders to the company as consideration in the same internal reorganisation, subject to the same conditions and safeguards. That would ensure consistency and fully give effect to the policy of facilitating tax efficient internal reorganisations.



KPMG submissions on the Income Tax (Amendment) Bill 2026

Clive Akora
Partner – Tax & Regulatory Services

24 April, 2026





KPMG Kenya
8th Floor ABC Tower
Waiyaki Way
PO Box 40612- 00100
Nairobi, Kenya

Telephone: (020) 2806000
Telefax + 254 020 215695
www.kpmg.co.ke

Private and confidential

The Cabinet Secretary
National Treasury and Economic Planning
Treasury Building
Harambee House
P.O Box 30007-00100
Nairobi, Kenya.

24 April, 2026

Dear Sir,

KPMG Kenya

Submissions to the Ministry of National Treasury and Economic Planning on the Income Tax (Amendment) Bill, 2026

We refer to the stakeholder engagement letter on the Income Tax (Amendment) bill no. 20 of 2026 from the Clerk of the National Assembly requesting our comprehensive submissions on the Bill.

Please find enclosed KPMG's comments and proposed areas of consideration.

In preparing our submissions we have focused on issues we consider critical to the efficient functioning of a sound taxation regime, including clarity of scope, administrative procedures, and interaction with other taxes. Our recommendations are informed by international best practice on tax-neutral treatment for bona fide internal reorganisations and by practical considerations for implementation and compliance in the Kenyan context.

We would be delighted to provide any clarifications that you may require regarding our submissions.

Yours sincerely,

Clive Akora

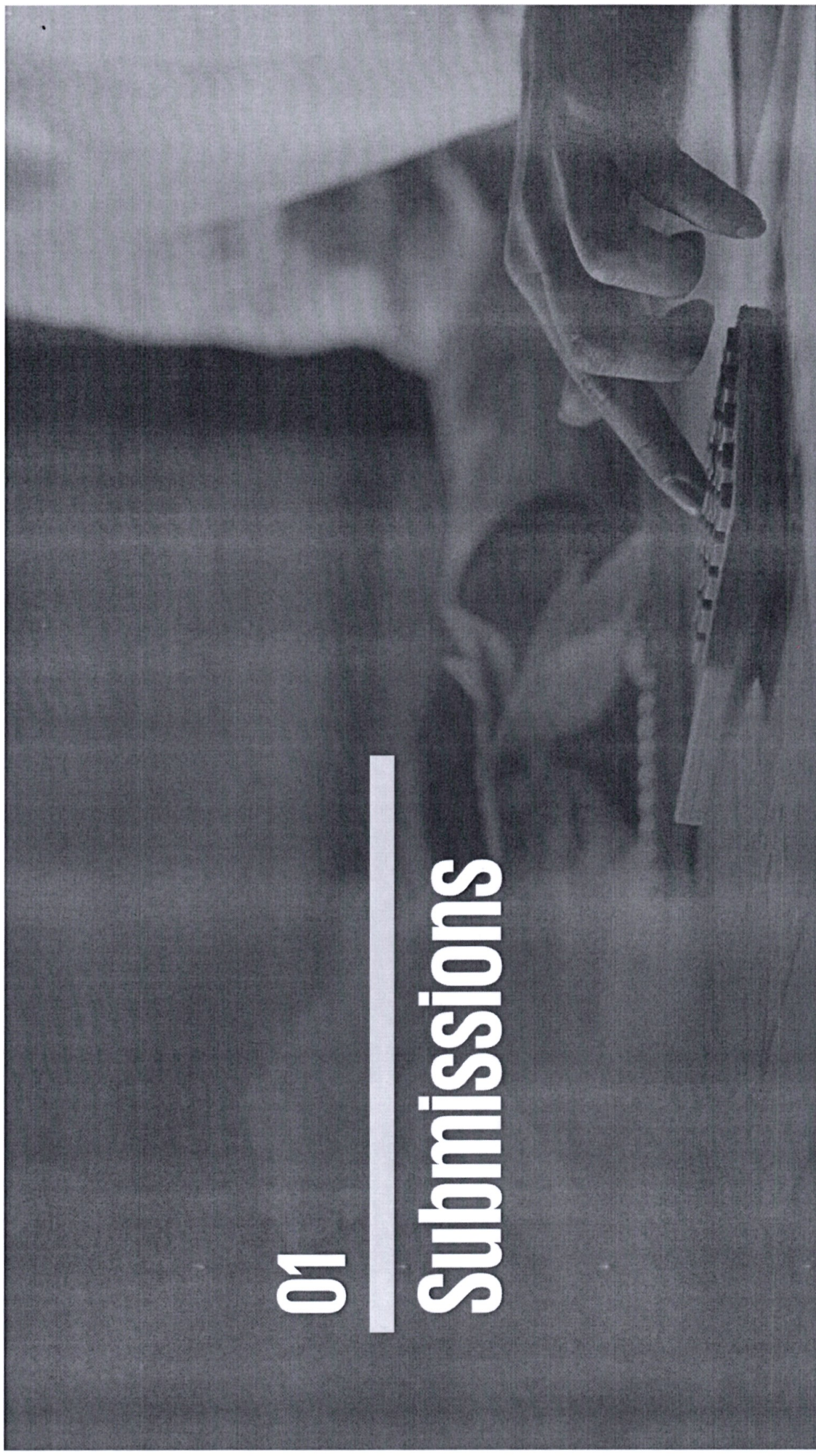
Partner – Tax & Regulatory Services



© 2026 KPMG Kenya, a registered partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

01

Submissions



SUBMISSIONS ON THE INCOME TAX (AMENDMENT) BILL 2026

Proposal Area	Suggestions/comments	Rationale/Justification
Section 7(1)(c) of the Income Tax Act The Income Tax (Amendment) Bill, 2026 proposes to amend the Income Tax Act by inserting the following new paragraph immediately after paragraph (b) - (a) notwithstanding paragraphs (a) and (b), a transfer of property by a company to its shareholders under paragraph 6(2)(i) of the Eighth Schedule shall not be deemed to be a distribution for the purposes of this Act.	Retain this change.	The Bill provides welcome cash-flow relief for entities undergoing internal reorganizations by exempting deemed dividends from withholding tax (WHT) where a company transfers assets, including shares, to its shareholders. This exemption allows companies to simplify their operational or ownership structures without triggering an immediate tax liability. The amendment directly addresses a long-standing concern that Kenya's tax framework has historically discouraged legitimate intra-group restructurings by treating such transfers as taxable distribution events.
The Eighth Schedule Paragraph 6(2)(h) The Eighth Schedule to the principal Act is amended in item 6- (i) by the transfer of property by a company to its shareholders as part of an internal reorganisation, or on the transfer of property to the company by the shareholders as consideration for the transfer pursuant to this paragraph, provided that- I. the property is 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 relate to a subsidiary of the company undertaking the transfer.	We support the introduction of a tax-neutral regime for internal reorganisations involving a company and its shareholders.	This proposed exemption extends relief to entities conducting internal restructurings outside a formal group context, provided such restructurings already qualify for Capital Gains Tax (CGT) exemption under Paragraph 13 of the Eighth Schedule to the Income Tax Act. The proposed relief is conditional on property being transferred to shareholders in proportion to their respective shareholding. Any disproportionate transfer, even within the same group, falls outside the exemption and remains subject to tax. This proportionality requirement must be carefully observed in structuring any reorganization. Where the transferred property consists of shares, those shares must be in a subsidiary of the transferring company. The relief therefore does not extend to transfers of shares in unrelated companies or associates.

SUBMISSIONS ON THE INCOME TAX (AMENDMENT) BILL 2026

Proposal Area	Suggestions/comments	Rationale/Justification
The Eighth Schedule Paragraph 6(2)(h) (b) by inserting the following sub paragraph immediately after subparagraph (2)- (2A) For the purposes of this subparagraph, internal reorganization means a restructuring of the ownership or control of a company or its assets which does not involve a transfer of property to a third party.	This change is welcome since it provides clarity on what qualifies as an internal reorganization	This aligns with international best practice, which requires that a reorganization reflect a genuine commercial rationale beyond tax exemption. The definition of internal reorganization explicitly excludes any transfer involving a third party which is a targeted anti-avoidance measure designed to prevent the exemption from being used to facilitate disposals to external parties.



kpmg.com/socialmedia

© 2026. KPMG Kenya, a registered partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

Document Classification: KPMG Confidential



SKM Africa LLP
Certified Public Accountants
5th Floor, Rainbow Tower
32 Muthithi Rd, Westlands
P.O. Box 28727 – 00100
Nairobi, Kenya

Mobile +254 700 039 147
Telephone +254 202 000 535
Website www.skm.co.ke
Email info@skm.co.ke

24 April 2026

Clerk's Chambers
National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
Nairobi, Kenya

Attention: **JEREMIAH NDOMBI**

Dear Sirs,

RE: SUBMISSION ON THE INCOME TAX (AMENDMENT) BILL, 2026

We refer to the above matter and your invitation to the stakeholder engagement requesting for comments on the Income Tax (Amendment) Bill 2026 (the Bill).

We are pleased to submit our Memorandum highlighting our comments to the Bill. Should you require any clarifications, please do not hesitate to contact us through info@skm.co.ke.

Yours sincerely,

For: SKM Africa LLP

A handwritten signature in dark ink, appearing to be 'K. Mokaya', written over a horizontal line.

Karaya Mokaya
Partner

Issue	Current Position	Proposed Amendment	Our Comments/Impact
Deemed dividends	WHT levied at a rate of 15% of the amount payable	The Bill proposes to amend Section 7 to ensure that property transfers between a company and its shareholders during an internal reorganization are not treated as taxable dividends.	The Proposal is welcome and timely, as it ensures that internal reorganisations will no longer trigger deemed dividend treatment, eliminating withholding tax costs where no shareholder enrichment occurs. It also aligns tax treatment with economic substance by recognising that internal restructurings do not constitute profit distributions to shareholders. The amendment works in tandem with proposed changes to the Eighth Schedule exempting qualifying internal reorganisations from Capital Gains Tax.
Transfer of property by a company to its shareholders	CGT is levied at a rate of 15 percent on the gains	The Bill proposes to amend the Eighth Schedule to exclude transfer of property by a company to its shareholders as part of an internal reorganisation, or transfer of property to the company by shareholders as consideration for the transfer from capital gains tax (CGT), provided that: a) Property is transferred to the shareholders in proportion to their shareholding in the company immediately before the transfer b) Where the property consists of shares, such shares relate to subsidiary of the company undertaking the transfer	This proposal is a welcome reform that will facilitate efficient internal reorganisation within corporate structures. Businesses can restructure, consolidate or realign operations without incurring unintended tax outcomes. This enhances flexibility in group structuring, facilitates succession and corporate simplification, and supports ease of doing business. The proposal is consistent with modern tax policy principles that seek to tax real economic gains.
Transfer of property to the company by shareholders			



LAW SOCIETY OF KENYA
South C, off Red Cross Road
P.O. Box 72219-00200 Nairobi, Kenya
Tel: +254 799 595 800
Website: www.lsk.or.ke
Email: lsk@lsk.or.ke

MEMORANDUM

TO

THE NATIONAL ASSEMBLY

ON

INCOME TAX AMENDMENT BILL, 2026

APRIL, 2026

Charles Kanjama, SC, President Law Society of Kenya

South C, off Red Cross Road
P.O Box 72219 - 00200 Nairobi | Kenya

Tel: +254 111 045 300

Email: president@lsk.or.ke

Website: www.lsk.or.ke

INTRODUCTION.

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Charles Kanjama, SC
- Vice President, Teresia Wavinya
- General Membership Representatives, Tom K'opere, Vivienne Eyase, Wanjohi Wambugu
- Nairobi Representatives, Effie Sheila Achieng, Muthoni Gachara, Wycklife Oyoo
- Up-country Representatives, Hiram Kirimi, Faith Jappann, Hezekiah Aseso, Sharon Oyoko
- Coast Representative, Titus Mukanzi
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration of justice and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes a presentation on the **Income Tax Amendment Bill, 2026**.

GENERAL COMMENTS

The Income Tax Amendment Bill, National Assembly Bill No. 20 of 2026 seeks to amend section 7 and the 8th Schedule of the Income Tax Act to provide for the exemption of capital gains tax in the transfer of property by a company to its shareholders as part of an internal reorganization, or on the transfer of property to the company by shareholders as consideration for transfer

The Law Society of Kenya supports the proposed amendment to the Income Tax regime as it facilitates corporate reorganizations by introducing exemptions intended to remove immediate tax barriers.

However, the effectiveness of these reforms is limited by the interaction with existing anti-avoidance provisions, particularly the restriction on subsequent transfers within a five-year period. While the policy objective of preventing abuse is legitimate, the blanket application of such restrictions to transactions that already qualify for reorganization relief risks undermining the principle of tax neutrality.

In practice, the current framework does not fully eliminate the tax burden but rather defers often to the transferee. This creates uncertainty and may expose taxpayers to heightened Capital Gains Tax (CGT) liability upon subsequent disposal, especially where the asset is transferred at or deemed to be at market value. Additionally, the five-year holding requirement imposes a commercial constraint, limiting the flexibility of businesses to respond to changing economic conditions.

Accordingly, the amendments would benefit from refinement to ensure that qualifying reorganizations are treated as genuinely tax-neutral transactions. In particular, anti-avoidance provisions should be more narrowly targeted so as not to capture legitimate restructuring, or alternatively, qualifying transactions.

SPECIFIC COMMENTS

NO.	PROVISION	ISSUE	PROPOSAL	JUSTIFICATION
1.	Paragraph 8(4A) of The Eighth Schedule to the Income Tax Act	Restricting subsequent transfer of the property within 5 years, effectively deferring the Capital Gains Tax to the transferee	The Bill should expressly exclude transfers that qualify for the reorganization exemption from the application of Paragraph 8(4A) of The Eighth Schedule to the Income Tax Act	This ensures neutrality by not deferring or shifting the burden to the transferee and removes the commercial constraint.

CONCLUSION

The Law Society notes that the proposed amendments are well-intentioned and represent a step towards easing corporate reorganizations. However, their current design only partially achieves the objective of tax neutrality. By refining the exemption to align more precisely with anti-avoidance provisions, the framework can provide greater certainty, preserve neutrality, and better support legitimate commercial activity. In this way, the reforms will uphold constitutional principles of fairness, reduce unintended burdens on taxpayers and strengthen Kenya's income tax regime as an instrument of equitable economic growth.

Charles Kanjama

President Law Society of Kenya.



Income Tax Act

- (3) Where a company issues to any of its shareholders shares—
- (a) that do not constitute a dividend under section 7 (1)(d) or (e), the cost of the shares—
 - (i) shall be the sum paid for the shares; or
 - (ii) if no sum is paid for the shares, shall be deemed to be nil,
 and the shareholder shall allocate, in the manner prescribed, the cost of his existing shares between such old shares and such new shares; or
 - (b) that constitute, wholly or partly, a dividend under either of those paragraphs, the amount which constitutes a dividend shall be treated as part of the cost of the shares, and the shareholder shall allocate, in the manner prescribed, the cost of the existing shares between such old shares and such new shares.
- (4) Where there is a part transfer of property the adjusted cost of the property shall be allocated to the part transferred in accordance with a method approved by the Commissioner.
- (4A) Where property is transferred in a transaction that is not subject to capital gains tax, and the property is subsequently transferred in a taxable transaction within a period of less than five years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted cost as determined in the first transfer.
- (5) The Commissioner may make rules for the purposes of subparagraph (3) prescribing the manner of allocation to be prescribed under that subparagraph.

[Act No. 4 of 2023, s. 28(b)]

- 8A. Notwithstanding any other provision of this Act, the deduction of costs of property shall not apply in the case of securities listed on any securities exchange approved under the Capital Markets Act (Cap. 485A).

[Act No. 14 of 2015, s. 19(b).]

9. Market value

- (1) Where property is acquired or transferred—
- (a) otherwise than by way of a bargain made at arms length;
 - (b) by way of a gift in whole or in part;
 - (c) for a consideration that cannot be valued; or
 - (d) as the result of a transaction between persons who are related then, for the purposes of—
 - (i) paragraph 7 of this Schedule, the amount of the consideration for the transfer of the property shall be deemed to be equal to the market value of the property at the time of the transfer; and
 - (ii) paragraph 8 of this Schedule, the amount of the consideration for the acquisition of the property shall be deemed to be equal to the market value of the property at the

The Mandate of the Institute *inter alia* is to register, license, train, discipline and regulate supply chain management practitioners in Kenya, across all sectors.

This Memorandum is submitted pursuant to the invitation by the National Assembly vide a letter **Ref. No. NA/DDC/F&NP/2026/062 dated 15th April, 2026 to make submissions on the: Sovereign Wealth Fund Bill, 2026; The Public Finance Management (Amendment) Bill, 2025; And the Income Tax (Amendment) Bill, 2026.**

The Institute appreciates the opportunity to submit its views during stakeholder engagement on the above legislative proposals. This memorandum consolidates input from supply chain professionals and sector practitioners.

1. THE SOVEREIGN WEALTH FUND BILL, 2026

Observations:

The Bill establishes a framework for intergenerational savings and macroeconomic stabilization.

Recommendations:

- i. **Governance and Independence:** Ensure a transparent, competitive, and merit-based appointment process for the Board to safeguard independence.
- ii. **Inclusion of Supply Chain Expertise:**
 - a) Amend Clause 29(1)(c) to include procurement and supply chain qualifications for Board membership.
 - b) Amend Clause 35(1)(b) to include procurement and supply chain qualifications for the Chief Executive Officer.
- iii. **Alignment of CEO Qualifications:** Harmonize Section 35(2)(a) and (b) to ensure consistency between minimum academic requirements.
- iv. **CEO Tenure:** Review Section 35(3)(a) to consider extending the term from four (4) to five (5) years for alignment with prevailing public service practice.
- v. **Removal Provisions:** Expand Section 36(b) to include removal upon conviction of offences related to public procurement.
- vi. **Interim**

Management: Provide a clear maximum duration for an Interim Manager under Section 60 to avoid governance uncertainty.

vii. **Procurement of Fund Managers:** Clause 49(1) should explicitly require that fund managers be procured competitively in line with the Public Procurement and Asset Disposal Act, 2015. viii. **Service Level Agreements (SLA):** Cap annual management fees under the Third Schedule to ensure value for money. ix. **Withdrawal Controls:** Strengthen and clearly define trigger conditions for withdrawals from the Stabilization Component.

2. THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2025

Observations:

The deletion of Sections 191A–E is a progressive step that eliminates duplication in approvals and enhances efficiency in intergovernmental fiscal transfers.

Recommendations:

- i. **Retention of Efficiency Gains:** The consolidation of approvals under Section 191 should be maintained to streamline processes for additional allocations to counties.
- ii. **Treatment of Donor Funding:**
 - a) Amend Section 191 to **exclude donor funding from being subjected to the annual County Government Additional Allocations Bill**, given the time-sensitive nature of such funds.
 - b) Introduce a **permanent subsection under Section 191** to provide a clear framework for the administration and expedited disbursement of donor funds to counties.
- iii. **Timeliness and Absorptive Capacity:** Recognize that donor funds may arise at any point within the financial year and require prompt disbursement to avoid withdrawal or reallocation by development partners.
- iv. **Procurement Efficiency:** Ensure the revised framework facilitates timely procurement of goods and services at the county level.
- v. **Transparency Safeguards:** Maintain strong disclosure requirements for intergovernmental transfers and agreements to uphold fiscal transparency.

- vi. **Transition Clarity:** Clearly define the regulatory framework that will apply following the repeal to avoid any legal or administrative gaps. **3. THE INCOME TAX (AMENDMENT) BILL, 2026**

Observations:

The proposed exemption of internal reorganizations from Capital Gains Tax supports business restructuring and continuity.

Recommendations:

- i. **Anti-Abuse Measures:** Provide clear guidelines on what constitutes "internal reorganization" to prevent tax avoidance schemes such as dividend stripping.
- ii. **Claw-back Mechanism:** Introduce a provision to reverse tax exemptions if assets are disposed of to third parties within a defined period (e.g., 24 months).
- iii. **Valuation and Disposal Standards:** Require that asset transfers be conducted at fair market value based on independent professional valuation.
- iv. **Competitive Process:** Encourage transparent and competitive disposal processes guided by procurement principles to ensure fairness, equity, and value for money.

CONCLUSION

KISM supports the policy direction underpinning these legislative reforms, noting their alignment with global best practices in fiscal management, taxation, and sovereign fund governance.

We emphasize that the effectiveness of these laws will depend on:

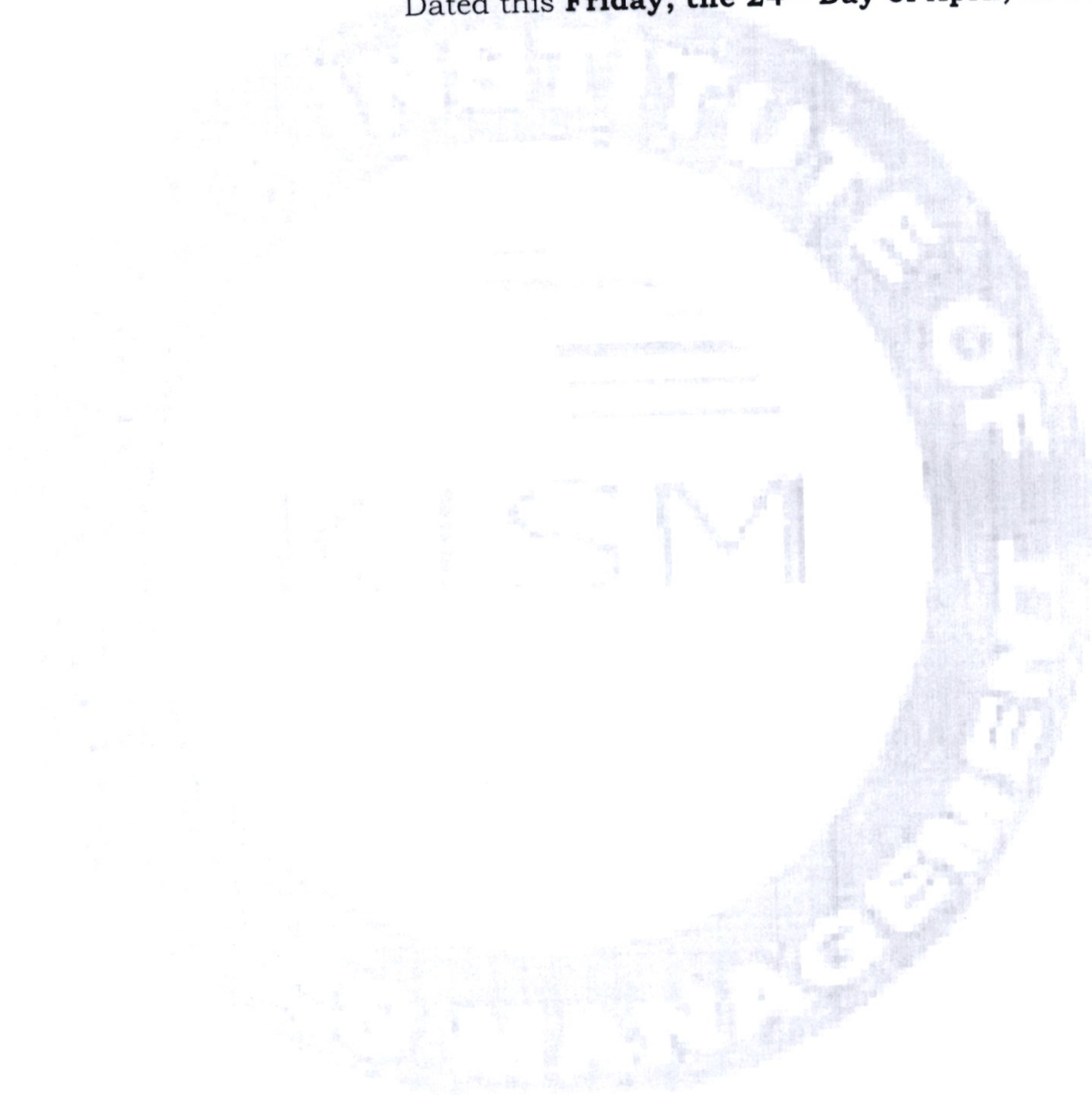
- i. Strong governance and institutional independence;
- ii. Clear legal frameworks that eliminate ambiguity;
- iii. Integration of sound procurement and supply chain practices; and
- iv. Safeguards to ensure transparency, efficiency, and value for public resources.

The Institute remains available to provide further technical support to the Committee.

Kenneth Matiba, MBS, MKISM

Secretary/Chief Executive Officer
Kenya Institute of Supplies Management

Dated this **Friday, the 24th Day of April, 2026.**



Ref: NA/DDC/F&NP/2026/068

24 April 2026
The Clerk
The National Assembly
Main Parliament Buildings
Parliament Road
P. O. Box 41842-00100
Nairobi

By email: cna@parliament.go.ke

Dear Sir,

Re: Submissions on the Income Tax (Amendment) Bill, (National Assembly Bill No 20 of 2026)

We, Deloitte & Touche LLP, refer to the ongoing stakeholder engagement on the Income Tax (Amendment) Bill (National Assembly Bill No. 20 of 2026) and appreciate the opportunity to participate in this important process, as outlined in your communication and the recent invitation from the Departmental Committee on Finance and National Planning dated 20 April 2026.

We note that the principal object of the Bill is to amend the Income Tax Act to provide for the exemption of capital gains tax on the transfer of property by a company to its shareholders as part of an internal reorganisation, or on the transfer of property to the company by the shareholders as consideration for the transfer.

Our submissions are made pursuant to Article 118(1)(b) of the Constitution of Kenya, 2010, the Public Finance Management Act, Cap. 412A, and in accordance with Standing Order 127(3), which require public participation in the legislative process.

We have carefully reviewed the Bill and, drawing on our experience as tax and legal advisors, we have identified areas where the provisions could be enhanced to better facilitate legitimate corporate reorganisations, provide clarity, and safeguard the integrity of the tax system. Our representations set out the issues to be addressed, proposed amendments, and justifications for the proposed changes, with a particular focus on the exemption for internal reorganisations under the Eighth Schedule to the Income Tax Act.

We hereby enclose our detailed submissions as an **Appendix** to this letter.



Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

Please feel free to reach out to the undersigned on fomondi@deloitte.co.ke or Maurice Lugongo on mlugongo@deloitte.co.ke or Fred Kimotho on fkimotho@deloitte.co.ke should you require additional information or clarification regarding our submissions.

Yours faithfully,

For: Deloitte & Touche LLP

Fred Omondi
Partner, Tax & Legal Leader

Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

No	Issue to be addressed	Proposal	Justification and likely impact
1.	Meaning of “transfer” under the Eighth Schedule The Income Tax (Amendment) Bill, 2026 (“the Bill”) proposes to amend Paragraph 6(2) of the Eighth Schedule to the Income Tax Act (“ITA”) by introducing the following subparagraph immediately after subparagraph (h): (i) by the transfer of property by a company to its shareholders as part of an internal reorganization, or on transfer of property to the company by the shareholders as a consideration for the transfer pursuant to this paragraph, provided that: I. the property is transferred in proportion to their shareholding in the company immediately before the transfer; and II. where the property consists of shares, such shares relate to a subsidiary of the company undertaking the transfer. Paragraph 6(2) lists transactions that are not transfers for purposes of the Eighth Schedule, therefore, exempt	While this proposal is a welcome move, we propose that it is expanded to cover other possible forms of group reorganizations and not only transfers between a company and its shareholders. We recommend that the provision be extended to include partnerships and limited liability partnerships (LLPs), so that transfers between such entities and their partners, as well as within groups of partnerships or LLPs, are also covered. We propose the proposed new subparagraph to be amended to read as follows: (i) by the transfer of property— a) by a company to its shareholders as part of an internal reorganisation or by shareholders to a company as consideration for such a reorganisation; or b) By a company in a group to any other company within the group or its underlying owners as part of an internal reorganisation; c) by a partnership or limited liability partnership (LLP) to its partners as part of an internal reorganisation, or by partners to a partnership or LLP as consideration for such a reorganisation; or d) by a partnership or LLP in a group to another partnership or LLP within the	The current proposal as set out in the Bill seeks to exempt from capital gains tax (CGT), the transfer of property by a company to its shareholders as part of an internal reorganisation, or by shareholders to a company as consideration for such a transfer. While this is a positive step towards facilitating and easing business restructuring, the scope of the CGT exemption contained in the Bill is <u>limited</u>. It does not extend to transfers that occur <u>between group companies or with underlying owners</u>, and the <u>conditions attached</u> are relatively narrow, focusing primarily on proportionality of shareholding and the nature of shares transferred. In contrast, our proposed amendment is broader, more robust, and incorporates essential safeguards on retention of the underlying shareholding. Our proposal not only covers company-to-shareholder and shareholder-to-company transfers, but also envisages <u>transfers between companies</u> that are members of the same group or transactions with underlying owners. It strengthens the proportionality requirement, ensures that share transfers relate to subsidiaries or fellow subsidiaries, and crucially introduces an additional safeguard: that there is no change in ultimate beneficial ownership. By extending the exemption to <u>intra-group transfers</u>, the provision recognises the <u>practical realities of modern business</u> - corporate groups often need to move assets or shares between different entities within the group to achieve operational efficiency, regulatory compliance, or strategic

Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

No	Issue to be addressed	Proposal	Justification and likely impact
	from capital gains tax (CGT). The introduction of subparagraph (i) means that certain internal reorganisations involving transfers between a company and its shareholders will be exempt from CGT.	group, or to their underlying owners, as part of an internal reorganisation. provided that— I. the property is transferred in proportion to the shareholding or ownership interest of the shareholders or Group companies, Partnerships or LLPs, immediately before the transfer. II. where the property consists of shares, such shares relate to a direct or indirect subsidiary, Partnership, LLP of the entity undertaking the transfer; and III. the transfer does not result in a change in the underlying ownership of the property.	realignment without change in the ultimate ownership of the property. Further, the provision contained in the Bill may inadvertently penalise such legitimate reorganisations, especially where a transfer is undertaken between companies of the same group which may not necessarily have a direct shareholding relationship thus creating unnecessary costs and administrative burdens that hinder business flexibility and growth. Our proposed amendment to the provision removes this obstacle, ensuring that genuine internal reorganisations, either between companies and shareholders or between related Group companies, are treated neutrally for tax purposes. For example, if a parent company wishes to transfer an asset from one subsidiary or Group company to another, or if two subsidiaries need to exchange assets to streamline operations, these transactions would not qualify for relief under the Bill (as currently drafted) even though there is no change in the group's underlying ownership of the asset. Further, our proposed amendment to strengthen the proportionality requirement and limit the exemption to subsidiaries and Group companies ensures that the exemption is not manipulated for tax advantage. Specifically, by requiring that transfers reflect existing ownership interests and relate only to group entities, the provision closes potential loopholes and maintains the integrity of the tax system.

Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

No	Issue to be addressed	Proposal	Justification and likely impact
			In addition, we recommend that the provision be extended to include partnerships and limited liability partnerships (LLPs), so that transfers between such entities and their partners, as well as within groups of partnerships or LLPs, are also covered. Partnerships and LLPs frequently form part of wider corporate groups, and the ability to transfer assets or interests within these structures is essential for operational efficiency, succession planning, and regulatory compliance. Extending the exemption to cover transfers between partnerships, LLPs, and their partners, as well as within groups of such entities, would acknowledge the commercial realities of modern business. Finally, our proposal provides much-needed clarity and certainty for both taxpayers and the tax authority. By clearly defining the scope of the exemption and the conditions under which it applies, our proposal seeks to reduce the risk of protracted disputes, abuse of reliefs and unintended tax consequences. This certainty is vital for encouraging investment into the country and supporting Kenya's reputation as a competitive and business-friendly jurisdiction.
2	Definition of “internal reorganisation” under the Eighth Schedule The Bill seeks to introduce a definition of “internal reorganisation” for the purposes of Paragraph 6(2)(i) by	We welcome the proposed provision clarifying the meaning of an internal reorganisation, which represents a positive step towards improving certainty in the tax framework. We, however, note that its practical application is inherently linked to group structures. In this regard, the absence of clear and comprehensive	We recommend amending Paragraph 1 of the Eighth Schedule to insert the proposed definition of internal reorganisation, rather than introducing it solely through Paragraph 6(2A). This approach ensures that the definitions will apply consistently across the Eighth Schedule including to Paragraph 6(2)(i) and Paragraph 13 of the Eighth Schedule. We similarly recommend an amendment to Paragraph 1 of the Eighth Schedule to

Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

No	Issue to be addressed	Proposal	Justification and likely impact
	inserting Paragraph 6(2A), which provides that - (2A) For the purpose of this subparagraph, internal reorganization means a restructuring of the ownership or control of a company or its assets which does not involve a transfer of property to a third party.	definitions of key related terms such as “Group”, “Beneficial owner”, “Holding Company”, and “Subsidiary” could significantly limit the effectiveness of the proposal. The continued omission of these definitions from the ITA has long created uncertainty and inconsistent interpretation among taxpayers, who are compelled to exercise subjective judgement or to rely on definitions borrowed from other legislations, including the Companies Act (Cap. 468) (“Companies Act”). We strongly recommend that these terms be expressly defined within the ITA to enhance legal certainty, promote uniform application, and reduce unnecessary disputes between taxpayers and the tax authority. We recommend amending Paragraph 1 of the Eighth Schedule to the Income Tax Act (ITA) to consolidate all the definitions relevant to corporate reorganization as follows: “Internal reorganization” means a restructuring of the ownership or control of a company or its assets which does not involve a transfer of property to a third party. “group” in relation to a body corporate, means the body corporate, any other body corporate that is its holding company or subsidiary and any other	include the additional definitions omitted from the ITA, and which closely relate to internal reorganisations and the interpretation of the applicability of CGT exemptions. Based on our experience with private ruling applications, the Kenya Revenue Authority (“KRA”) typically relies on the definitions provided under Section 3 of the Companies Act to assess eligibility for group CGT relief under the Eighth Schedule of the ITA. We would recommend that these definitions are included in the ITA, and specifically in the Eighth Schedule given that CGT matters are dealt with under this Act. The incorporation of these definitions directly into Paragraph 1 will facilitate the effective implementation of both the proposed Paragraph 6(2)(i) and Paragraph 13 of the Eighth Schedule. Paragraph 13(c) exempts CGT on transfers of property arising from transactions such as incorporation, recapitalisation, acquisition, amalgamation, separation, dissolution, or similar corporate restructurings, provided the transfer is an internal reorganisation that does not involve a transfer to a third party and occurs within a group that has existed for at least twenty-four months. At present, the ITA does not define key terms such as “internal reorganisation”, “group”, “holding company”, “Control” or “subsidiary” which are key in the application of Paragraph 13. The introduction of the proposed definitions will provide much-needed clarity and predictability for both taxpayers and the KRA,

Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

No	Issue to be addressed	Proposal	Justification and likely impact
		body corporate that is a subsidiary of that holding company; “Underlying ownership” in relation to a person, means an interest in the person held directly, or indirectly through an interposed person or persons, by an individual or by a person not ultimately owned by the individuals. “Control” means the capacity to exercise power over the Board of Directors, hold more than half of the voting rights in that other company, or hold more than half of that other company's issued share capital. “Holding company” is defined as company that (a) controls the composition of that other company's board of directors, (b) controls more than half of the voting rights in that other company, (c) holds more than half of that other company's issued share capital; or (d) is a holding company of a company that is that other company's holding company; “Subsidiary” is defined as a company of which another company is its holding company.	thereby ensuring consistent interpretation and application of the group CGT relief provisions.

Appendix: Submissions on the Income Tax (Amendment) Bill, 2026

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

© 2026 Deloitte & Touche LLP



WESTMINISTER
CONSULTING

Aligning Tax Policy with Economic Reality

Strengthening Kenya's Income Tax Framework for
Corporate Re-Organisations and Deductible Expenses



Your Ref: NA/DDC/F&NP/2026/068

Our Ref: WLLP/2304/2026/HS/LO

24 April 2026

The Chairperson
Departmental Committee on Finance and National Planning
The National Assembly
Republic of Kenya

REF: SUBMISSIONS ON THE PROPOSED AMENDMENTS TO THE INCOME TAX ACT (CAP. 470), VIA THE INCOME TAX (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2026)

Westminster Consulting LLP (WCL) appreciates the opportunity to submit its views on the proposed amendments to Section 7 of the Income Tax Act and Item 6 of the Eighth Schedule, as contained in the Income Tax (Amendment) Bill, 2026. We make these submissions in our capacity as tax and regulatory advisers, with a focus on ensuring that the proposed changes achieve their intended policy objective while remaining clear, practical and administrable in real-world transactions.

The proposed amendments introduce a welcome framework for the tax-neutral treatment of internal corporate reorganisations. In particular, the exclusion from dividend treatment of transfers undertaken pursuant to such reorganisations reflects an important policy shift towards aligning taxation with economic substance. We fully support the policy direction underpinning the amendment, particularly the move towards enabling tax-neutral internal restructurings within corporate groups.

Under the Act, a “dividend” is broadly defined to include any distribution (whether in cash or property) made by a company to its shareholders, including amounts distributed, credited or otherwise dealt with in favour of a shareholder. This definition is intentionally wide, and captures not only direct transfers of assets, but also value flows effected through accounting entries and other non-cash mechanisms.

It is against this broader statutory context that we consider the scope and effectiveness of the proposed amendment.

1. Scope of “Transfer of Property”

The proposed amendment to Section 7 is anchored on the concept of a “transfer of property” undertaken pursuant to an internal reorganisation.

However, the Income Tax Act does not provide a comprehensive definition of “property”. While certain forms of property, such as immovable property, are defined, the Act does not set out a general definition applicable across its provisions, including the Eighth Schedule.

In practice, the term “property” is therefore likely to be interpreted as referring to identifiable assets, including land, shares and other legally recognised rights. While appropriate in a conventional sense, this formulation does not fully reflect the manner in which internal reorganisations are implemented in modern corporate structures.

2. Practical Implementation of Internal Reorganisations

In practice, internal reorganisations are not limited to the physical transfer of assets. They are frequently effected through accounting-based mechanisms, including:

- the crediting of shareholder current or loan accounts;
- the capitalisation or reclassification of reserves; and
- the recognition or restructuring of intra-group balances without an immediate transfer of identifiable assets.

From a tax perspective, such transactions may still fall within the scope of a “distribution”, given the breadth of the dividend definition under the Act, which extends to amounts credited or otherwise dealt with in favour of shareholders.

3. Resulting Gap in the Proposed Amendment

Against this background, limiting the exemption solely to a “transfer of property” creates a disconnect between:

- the form-based language of the proposed amendment; and
- the substance-based operation of the dividend provisions under the Act.

The practical implication being that:

- An internal reorganisation effected through a direct transfer of assets may qualify for relief;
- while an economically equivalent reorganisation effected through accounting entries or value reallocations may remain subject to dividend taxation.

This creates a risk that the amendment will apply inconsistently across transactions that are substantively identical, depending only on the form in which they are implemented.

To illustrate the practical implications of the proposed amendment, we set out below two simplified examples of internal reorganisations that are economically identical but differ in form:



Example 1: Transfer of Property (Covered by Proposed Amendment)

A company owns a piece of land and, as part of an internal restructuring, transfers that land directly to its shareholders in proportion to their shareholding.

- The shareholders receive the land in the same proportions as their ownership.
- There is no change in overall economic ownership.
- No third party is involved.

Under the proposed amendment, this would be treated as a transfer of property pursuant to an internal reorganisation and would not be considered a dividend, thus not chargeable to income tax.

Example 2: Accounting-Based Reorganisation (Not Clearly Covered)

Instead of transferring land, the company undertakes a restructuring through its accounting records by:

- reclassifying retained earnings; and
- crediting amounts to shareholder accounts in proportion to their shareholding.
- No physical asset is transferred at that stage.
- The shareholders' economic position remains unchanged.
- The transaction is part of the same internal restructuring.

However, under the current drafting, this may be treated as a distribution (dividend) because value has been credited to shareholders, even though no real economic gain has arisen.

In both examples:

- the shareholders' ownership does not change;
- no third party is involved; and
- no real economic gain is realised.

The only difference is how the transaction is implemented, whether through a transfer of property or through accounting entries.

If the exemption applies only to "transfer of property":

- Example 1 is not taxed;
- Example 2 may still be taxed.

This results in different tax outcomes for transactions that are economically identical, which is inconsistent with the principle of tax neutrality.

For the amendment to fully achieve its intended purpose, the exemption should apply to all forms of internal reorganisation, regardless of whether they are implemented through:

- transfer of property; or
- accounting entries and value reallocations.

This distinction is particularly important in practice, as many internal reorganisations are implemented in stages, often beginning with accounting entries before legal transfers are completed.

4. Comparative Perspective

We note that comparable jurisdictions, including the United Kingdom and South Africa, provide for tax-neutral treatment of internal reorganisations by focusing on continuity of ownership and economic substance, rather than limiting relief to specific forms of asset transfer.

These regimes recognise that corporate restructures may be implemented through a range of legal and accounting mechanisms, and accordingly frame the relief in a manner that captures the full spectrum of value movements within a group.

5. Our view

In our view, the proposed amendment represents a positive and necessary reform. However, the reliance on the term “transfer of property” renders the provision unduly narrow, and may not fully achieve the intended policy objective of tax neutrality for internal reorganisations.

As currently drafted, the provision addresses direct asset transfers, but does not clearly extend to non-asset-based value movements, which are equally common and economically equivalent.

6. Recommendation

We respectfully recommend that the scope of the exemption be clarified and broadened to reflect both the legal and accounting reality of internal reorganisations.

In particular, the provision may be refined to provide that; “Transactions undertaken pursuant to a qualifying internal reorganisation shall not be deemed to constitute a dividend, whether effected through the transfer of property, cash, or through any accounting entry, credit, allocation or other form of value transfer to shareholders.”

This approach would:

- align the exemption with the existing definition of a dividend under the Act;
- eliminate interpretational ambiguity; and
- ensure consistent treatment of all qualifying internal reorganisations, irrespective of form.

FURTHER PROPOSAL: AMENDMENT TO SECTION 15 ON ALLOWABLE EXPENSES

In addition to the foregoing proposals relating to Section 7 and the Eighth Schedule, we respectfully submit that the ongoing amendments to the Income Tax Act present an opportunity to address an emerging issue in the operation of Section 15 on allowable expenses, particularly in light of recent legislative and administrative developments in income and expense validation.

We note that Section 23A of the Tax Procedures Act introduced a framework for electronic tax invoicing, under which the Commissioner may require taxpayers to issue and receive invoices through prescribed electronic systems. This provision has been operationalised through the implementation of TIMS/eTIMS.

Pursuant to this framework, the Kenya Revenue Authority (KRA), through a public notice issued in early 2026, communicated that for returns relating to the 2025 year of income, expenses claimed would be subject to validation primarily against TIMS/eTIMS-generated invoices, with system-based checks applied at the point of filing.



1. Practical and Structural Constraints

In practice, a significant portion of legitimate business expenditure arises in circumstances where strict compliance with electronic invoicing requirements is not always feasible, despite the expenditure being wholly and exclusively incurred in the production of income. This is not a reflection of non-compliance, but rather a function of the structure of the Kenyan economy, which is characterised by a high degree of informality and deeply interconnected supply chains, even within otherwise compliant and formal businesses.

It is common, for instance, for businesses to procure goods and services from suppliers operating within the informal or partially compliant sector, including small-scale traders, transport providers, casual labour, agricultural suppliers and independent service providers. In many of these cases, electronic invoices are either not issued at all, not transmitted correctly, or are transmitted without the correct buyer PIN, often due to system limitations, human error or lack of technical capacity on the part of the supplier. Even where systems are in place, transactions may occur in fast-moving operational environments where capturing buyer details at the point of transaction is not always practical, and retrospective correction is either difficult or impossible.

Further complexity arises from timing and system mismatches, including situations where transactions are recorded in different accounting periods between supplier and purchaser, or where the timing of invoicing, payment and withholding tax obligations are not perfectly aligned within the system. In other cases, transactions are supported by legitimate commercial documentation such as contracts, delivery notes, receipts or internal records, but do not meet the specific format or transmission requirements prescribed under the electronic invoicing framework. These challenges are particularly pronounced in relation to historical transactions, where it may not be possible to retrospectively align documentation with current system requirements.

We note that the Kenya Revenue Authority has introduced a workaround through the inclusion of manual or non-eTIMS expense capture mechanisms and additional reconciliation schedules, intended to address some of these issues. However, in practical terms, this approach does not fully resolve the underlying challenge. It assumes that taxpayers are able to reconstruct transactions in sufficient detail, often requiring engagement with suppliers who may be unresponsive or unable to provide compliant documentation. It also introduces an additional layer of compliance through manual capture and document upload, thereby increasing administrative burden, particularly for small and medium-sized enterprises.

Importantly, the workaround does not provide certainty at the point of filing, as such claims remain subject to post-filing validation and potential adjustment. As a result, it does not eliminate the risk of disallowance, but rather defers that risk to a later stage in the compliance cycle, including audit and dispute resolution processes. The combined effect of these constraints is that genuine and commercially necessary expenses may ultimately be disallowed, not due to any lack of economic substance or business purpose, but due to limitations in documentation or system integration. This has the effect of artificially inflating taxable income by excluding real costs from the tax computation, thereby penalising otherwise compliant taxpayers and creating a divergence between accounting profit and taxable profit.

From an administrative perspective, this framework is also likely to result in a significant increase in assessments arising from expense disallowances, a corresponding rise in objections and appeals, and increased pressure on dispute resolution mechanisms, including the Tax Appeals Tribunal and the courts. In effect, it creates a volume of fact-intensive disputes that could be more efficiently addressed through a structured and principled approach.

In essence, the current validation framework operates as a binary test, in which expenses are either fully validated through electronic systems or exposed to disallowance, without sufficient accommodation for the realities of business operations in Kenya. A more balanced approach is therefore required, one that preserves the integrity of the tax system while recognising that economic activity does not always align perfectly with system-based validation mechanisms.

2. Economic Considerations and International Practice

From an economic perspective, businesses within specific sectors typically operate within predictable cost structures and expense margins, which can be reasonably determined using industry data and historical performance patterns.

Tax systems in several jurisdictions recognise this reality and *incorporate safe harbour rules, presumptive margins, or standard expense ratios* to approximate allowable deductions where strict verification is impractical.

For example:

- South Africa provides for simplified and deemed expense frameworks in certain sectors and intra-group contexts;
- India applies presumptive taxation regimes based on fixed profit margins for specified classes of taxpayers; and
- the United Kingdom permits simplified expense bases for certain categories of businesses.

These approaches are grounded in the principle that taxation should reflect real economic activity, even where perfect documentation is not available.

3. Our view

In our view, the current validation framework, while well-intentioned, risks producing artificially inflated taxable income by disallowing genuine expenses that cannot be fully validated through electronic systems.

There is therefore a need to introduce a structured, administratively efficient mechanism that allows for reasonable estimation of expenses in appropriate cases.

4. Recommendation

We recommend that Section 15 of the Income Tax Act be amended to empower the Commissioner to: *"prescribe or apply allowable expense margins, ratios or safe-harbour thresholds for specified sectors, classes of taxpayers or categories of transactions, in determining deductible expenditure."*

Such a provision would:

- ensure taxation reflects real economic income;
- provide consistency in handling validation gaps;
- significantly reduce disputes, objections and litigation; and
- enhance administrative efficiency while maintaining revenue integrity.



5. Conclusion

The proposed amendments to Section 7 and the Eighth Schedule represent a significant and welcome step towards aligning the Income Tax Act with economic substance in the context of internal corporate reorganisations. Our recommendation is therefore not to reconsider these amendments, but to refine their scope to ensure that their intended policy objective of tax neutrality is fully realised in practice, irrespective of the form through which such reorganisations are implemented.

In addition, we respectfully submit that the ongoing reforms present a timely opportunity to address emerging challenges in the operation of Section 15 on allowable expenses. As currently implemented, the increasing reliance on system-based validation introduces a risk that genuine business expenditure may be excluded from the tax computation, resulting in outcomes that do not accurately reflect the economic position of taxpayers.

Taken together, these issues point to a common underlying consideration the need to ensure that the Income Tax Act continues to operate on the basis of real economic outcomes, rather than distinctions driven by legal form or limitations in documentation and system integration.

The proposed refinements to Section 7 and the complementary amendment to Section 15 are therefore not discrete interventions, but form part of a coherent approach to strengthening the integrity, fairness and administrability of the tax system. By ensuring that both internal reorganisations and allowable expenses are treated in a manner that reflects their true economic substance, the Act will better achieve its fundamental purpose of taxing actual income, and not artificially constructed gains.

Sincerely,

George Mbatai

Partner

WESTMINSTER CONSULTING LLP (WCL)



WESTMINISTER CONSULTING

Contact Info:

Westminister Consulting Limited
P.O. Box 2881 - 00606
Nairobi, Kenya.

Tel: +254 703 333 444

Email: info@westministerconsulting.com

Chair of
Committee Copy



THIRTEENTH PARLIAMENT — THIRD SESSION
NATIONAL ASSEMBLY — FINANCE & NATIONAL PLANNING COMMITTEE
MEMORANDUM ON THE INCOME TAX (AMENDMENT) BILL, 2026
National Assembly Bill No. 20 of 2026
Submitted by: WeCare Youth Organization | 24th April, 2026

Section A — Objective of the Bill

The *Income Tax (Amendment) Bill, 2026* (National Assembly Bill No. 20 of 2026), introduced by Hon. chair Kimani Kuria, Member of Parliament, seeks to amend the Income Tax Act (Cap. 470) to provide a **Capital Gains Tax (CGT) exemption** on the transfer of property by a company to its shareholders as part of an internal reorganisation, or on the transfer of property to the company by the shareholders as consideration for such a transfer. The Bill amends Section 7 and the Eighth Schedule of the Cap. 470 of the Income Tax Act.

This Bill is important because Kenya's CGT regime was reinstated in January 2015 (Finance Act, 2014) after a 30-year suspension, initially at 5% and later raised to 15% by the Finance Act, 2022. Since then, CGTs have emerged as a growing revenue stream. This Bill, therefore, if enacted without adequate guardrails, risks creating an avenue for structured tax avoidance that erodes this base.

Section B—Personal Information

I. Name: WeCare Youth Organization

WeCare Youth Organization is a youth-led community-based organization committed to advancing transparency, accountability, and participatory governance amongst young people and Persons with Disabilities in Kenya. Our work focuses on strengthening public finance management, promoting equitable taxation, and ensuring that fiscal policies reflect the interests of current and future generations.

Having looked at the proposed Bill, we welcome the proposed *Income Tax (Amendment) Bill, 2026*, which seeks to clarify the tax treatment of internal corporate reorganisations, particularly the exemption of Capital Gains Tax (CGT) on transfers of property between companies and their shareholders under specific conditions.

Section C—Views on Bill

2. What are your views on the Bill? (Fill Table as appropriate)

While the proposed amendments aim to improve tax neutrality and facilitate the restructuring of businesses, these exemptions must be carefully designed to prevent abuse, protect the tax base, and align with constitutional and fiscal responsibility principles. We hereby ground our justifications and recommendations for this Bill in Kenya's current fiscal and revenue landscape as indicated below:

Fiscal Indicator	Data / Figures
Kenya Revenue Authority (KRA) Total Revenue Target — FY 2024/25	KSh 2.788 trillion
Total Tax to GDP Ratio (2023)	14.1% (below the average of 16%)
CGT Rate (current, post Finance Act 2022)	15% on net gains from property transfers
Domestic Revenue Mobilisation Gap (per IMF Kenya Article IV, 2023)	KSh 300–500 billion annually
Kenya's Public Debt (FY 2024/25 Budget)	KSh 10.6 trillion (approx. 70% of GDP)
Youth Unemployment Rate (KNBS, 2023)	67% of the unemployed are youth (15–34 years)
Population below the upper-middle-income poverty line	36% (World Bank, 2023)

We source this data from the Kenya National Treasury Budget Estimates 2024/25; KRA Annual Revenue Performance Reports; IMF Kenya Article IV Consultation 2023; World Bank Kenya Economic Update 2023; and 7KNBS Labour Force Reports.

It is against this background that any tax expenditure, including Capital Gains Tax exemptions carry a direct fiscal cost that must be weighed against its developmental benefit. The Public Finance Management Act, Section 15(2c) requires that fiscal policy promote the equitable sharing of the tax burden and ensure the responsible use of public resources.

WeCare notes that:

- The Bill introduces CGT exemptions for internal reorganisations, which is a common feature in modern tax systems.
- However, the Bill lacks sufficient anti-avoidance safeguards, clear valuation rules, and oversight mechanisms.
- Without safeguards, the provisions may create tax avoidance loopholes, leading to revenue loss and inequitable tax burdens.

S/No	Clause/Page of the Bill	Proposal	Justification
1	Clause 2: Amendment of Section 7 of Cap. 470 Inserts Section 7(1)(c): Provides that a transfer of property by a company to its shareholders under the new 8th Schedule paragraph 6(2)(i) shall not be deemed as a distribution for income tax purposes.	Amend Clause 2 to include a provision that: <i>Provided that a transfer under paragraph (c) shall only qualify for non-distribution treatment where the Commissioner is satisfied that:</i> <i>(i) the transfer is undertaken for genuine commercial purposes and not for the avoidance of income tax or CGT</i> <i>(ii) the company has notified the Commissioner of the reorganisation in the prescribed form within a maximum 30 days of completion and</i> <i>(iii) No artificial arrangement has been done to inflate the value of the transferred property.</i>	(a) Constitutional Justification on Principles: - Section 7 of Cap. 470 currently treats distributions as taxable income. Amending this clause without conditions, the Bill risks enabling shareholders — particularly in closely-held companies — to receive economic value equivalent to a dividend without bearing any tax liability. This violates the constitutional principle of equitable burden sharing. Where an ordinary salaried Kenyan in the PAYE bracket pays income tax on every shilling received, a well-advised shareholder can receive property of equivalent value tax-free through a reorganisation. - Therefore, excluding such transfers from distribution may allow shareholders to extract value tax-free, undermining equity. (b) Kenyan Jurisprudence - In Republic v Kenya Revenue Authority ex parte Bata Shoe Company (Kenya) Limited, the court emphasized that tax exemptions must be strictly interpreted and not used to unjustly avoid tax liability. - In the Commissioner of Domestic Taxes v Barclays Bank of Kenya Limited, courts reaffirmed the importance of substance over form in tax matters. (c) Tax Principles - It violates the principle of neutrality if companies can distribute assets without tax consequences. - It risks erosion of the tax base, especially among high-net-worth shareholders.) International Best Practice Comparison

			• Countries like the UK and South Africa apply a rollover relief only where transactions meet none avoidance tests.
2	Clause 3a: Amendment of Eighth Schedule that seeks to Creates a CGT exemption for: (1) Transfer of property by a company to its shareholders as part of an internal reorganisation; OR (2) Transfer of property by shareholders to the company as consideration.	Insert additional safeguards: - Require prior approval or post-transaction reporting to KRA; - Introduce a minimum holding period (e.g., 2–3 years) post-reorganisation; - Require independent valuation of transferred assets; - Limit exemption where the transaction results in an ultimate change in beneficial ownership.	(a) This prevents potential abuse where a reorganisation of a company may be treated as a taxable disposal. South Africa's Income Tax Act No. 58 of 1962, Section 42–47 (Corporate Rollover Rules) imposes a minimum 18-month lock-up; Kenya should adopt a comparable or stricter period, given its smaller tax base. (b) Kenyan Jurisprudence • In Cape Brandy Syndicate v Inland Revenue Commissioners (applied in Kenyan courts), tax statutes must be applied strictly but not to permit abuse of legislative gaps. • Kenyan courts increasingly apply the economic substance doctrine in tax matters. (c) This aligns with the PFM Act Section 36 on (Tax Expenditure Statements), which enables KRA to monitor compliance and COK Article 10(2)(c) transparency requirements. - CGT contributes to domestic revenue, and imposing Tax exemptions without safeguards may reduce fiscal space for Youth employment programs & Education and social services.
3	Clause 3b: New Subparagraph 6(2A): Definition of Internal Reorganisation	Refine the definition to include a restructuring of the ownership or control of a company or its assets, which does not involve a transfer of property to a third party. We feel it is too broad - Include a provision that this does not result in a change of ultimate beneficial ownership exceeding 50 per cent	(a) This aligns with Article 201, which requires transparency and accountability in public finance. (b) The Courts in Kenya have emphasized clarity in tax laws to avoid arbitrary interpretation. This was in the case of (c) International Practice and India define internal reorganisations narrowly and include anti-avoidance triggers.

--	--	--	--

Other Cross-Cutting Issues and Recommendations

(a) Integration of the General Anti-Avoidance Rule (GAAR) Framework

We recommend inserting a saving clause in the Bill: 'Nothing in this Act shall be construed to limit the application of Section 23 of the principal Act to any transaction that, in the opinion of the Commissioner, was entered into with the main purpose, or one of the main purposes, of avoiding liability under this Act. *This is because Kenya's Section 23 GAAR is the primary fiscal guard against structured avoidance.*

(b) Transparency and Reporting

We recommend that entities benefiting from the exemption abide by the following:

- File an annual Declaration of Reorganisation Tax Relief with KRA within 3 months of the end of the year of its reorganisation.
 - Disclose summary information (names of entities, asset categories, estimated value, shareholding before and after) in their annual income tax returns.
 - Ensure such information is captured in the National Treasury's Tax Expenditure Statement under PFM Act Section 36.
- Our justification is that Article 35 of the Constitution guarantees every citizen the right to access information held by the State. Tax expenditure revenues foregone by the government are public funds in the form of subsidies. Therefore, citizens have a constitutional right to know how much tax relief is being granted, to whom, and for what purpose.

(c) Definition of "Property" in Land-Rich Entities

We recommend that the Bill explicitly defines 'Property' in the context of this exemption to exclude transactions where more than 50% of the value of the company being reorganised is derived directly or indirectly from immovable property (land) in Kenya, unless the reorganisation is for the purpose of a documented succession or family trust.

Our Justification is that since CGT is predominantly collected from the top 5% of property-owning entities, a blanket exemption for land-rich companies creates a massive loophole for the high-end real estate sector.

Without this distinction, the wealthiest segment of the economy receives a disproportionate benefit, widening the inequality gap noted in the **UNDP Kenya Human Development Report**.

(d) Inclusion of Public Benefit Organizations (PBOs)

We recommend amending the definition of 'Shareholder' in **Clause 3(b)** to include 'members or trustees' in the case of organizations registered under the **Public Benefit Organizations Act**."

Our Justification is based on regulatory consistency; The PBO Act creates a distinct framework. Since PBOs do not have "shareholders" in the traditional corporate sense, they might be technically excluded from this relief, hampering the restructuring of NGOs committed to youth and disability advocacy.

(e) Youth and Equity Considerations

We recommend that the National Treasury and KRA conduct a **Tax Expenditure Impact Assessment to entities** within 12 months of enactment to examine:

- Distributional impact
- Effect on inequality gaps
- Impact on youth employment and SME competitiveness.



Our justified data is as follows;

- According to the Kenya National Bureau of Statistics (KNBS) Economic Survey 2023, youth-owned enterprises account for less than 8% of registered corporate entities. CGT exemptions designed for corporate reorganisations will almost exclusively benefit the 92% of companies not youth-owned.
- The Kenya Revenue Authority's 2023 Tax Compliance Report noted that CGT is predominantly collected from the top 5% of property-owning entities, meaning a blanket exemption would disproportionately benefit the wealthiest segment of the economy.
- UNDP Kenya's Human Development Report (2022) ranked Kenya 152nd out of 191 countries on the Human Development Index, with inequality remaining a structural challenge. Tax policy that benefits the wealthy without equity tests widens this gap.

(f) Impact on Public Benefit Organizations (PBOs)

We ask the committee to provide clarity that PBO reorganisations that are aligned with public benefit purposes should remain tax-exempt under the existing framework. Our justification is that the Public Benefit Organisations Act, 2013 (PBO Act) creates a distinct regulatory and tax framework for civil society. The ambiguity in the Bill's internal reorganisation definition could be exploited by rogue PBOs restructuring commercial holdings, which will undermine the integrity of the PBO sector and public revenue.

(g) Sustainability and Long-Term Fiscal Practices

We recommend that the bill introduces a clause to have the National Assembly review the exemption every 5 years, with a mandatory Tax Expenditure Statement analysis. Our justifications are as follows;

- Kenya's Vision 2030 Medium-Term Plan III and the Government's Bottom-Up Economic Transformation Agenda (BETA) both emphasize on domestic resource mobilisation as a foundation for development financing.
- Kenya's external debt service obligations consume approximately 38% of national revenue (National Treasury, FY 2024/25 Budget). Reducing the tax base without compensating revenue measures directly threatens fiscal sustainability under PFM Act Section 15(2).
- Linking the exemption to an explicit review process ensures parliamentary accountability aligning with Article 94 of the Constitution, which vests legislative authority in Parliament.

Conclusion

Kenya stands at a fiscal crossroads. With a public debt load exceeding KSh 10.6 trillion, a domestic revenue mobilisation gap of KSh 300–500 billion annually, and over 67% youth unemployment — every shilling of tax revenue matters. Every exemption enacted without adequate safeguards is not merely a corporate benefit; it is a reduction in the funds available for public hospitals, schools, youth programmes, and county-level services that Kenyans in Kisumu West and across the country depend upon.

WeCare Youth Organization acknowledges the importance of modernizing Kenya's tax framework to support business efficiency and economic growth. The proposed amendments to the Income Tax Act represent a positive step toward aligning Kenya with international practices on corporate reorganisations.

However, we emphasize that while the **Vision 2030** and **BETA** agendas encourage business efficiency, they must not supersede **Article 201** of the Constitution, which demands that the tax burden be shared fairly. By adopting these 'Clawback' and 'UBO' safeguards, Parliament ensures that the **KSh 10.6 trillion debt** is not serviced solely by ordinary citizens and the 67% of unemployed youth, but through a robust tax system. Tax exemptions must be carefully balanced with safeguards to protect public fairness, and prevent abuse. Without adequate controls, the proposed provisions risk undermining Kenya's domestic resource mobilisation efforts and shifting the tax burden disproportionately onto ordinary citizens, including young people.

We therefore urge Parliament to adopt the recommendations outlined in this memorandum to ensure that the law promotes equity, transparency, fiscal sustainability, and intergenerational justice.

WeCare Youth Organization remains committed to supporting inclusive and accountable fiscal policy in Kenya.

SIGNED: _____



DATE: April 24, 2026





Submission of Proposals to the National Assembly's Departmental Committee on Finance and National Planning– Income Tax Bill 2026

Presentation by **PwC Kenya**
24 April 2026



Contents

- 1** Deemed dividend carve-out — clause 2
- 2** Proposal 2: Clauses 3(a) and 3(b) — internal reorganisation framework
- 3** Corporate reorganisation relief — paragraph 13
- 4** Appendices

Proposal 1: Clause 2 — deemed dividend carve-out



Issue

- The proposed section 7(1)(c) states that a qualifying transfer under paragraph 6(2)(i) is not deemed to be a distribution.
- The wording does not expressly refer to a dividend distribution.
- This creates interpretive uncertainty as to whether deemed dividend treatment is fully disapplied under section 7.



Proposal

Amend clause 2 to include the word “dividends” before the word distribution to read as follows:

*“Notwithstanding paragraphs (a) and (b), a transfer of property by a company to its shareholders under paragraph 6(2)(i) of the Eighth Schedule shall not be deemed to be a **dividend** distribution for the purposes of this Act.”*



Justification

- Makes the dividend exclusion express.
- Reduces interpretive uncertainty and ensures clarity.
- Aligns the wording with the Bill’s tax-neutrality objective.
- Minimises the scope for disputes with the KRA.

Proposal 2: Clauses 3(a) and 3(b) – internal reorganisation framework



Issue

The Bill introduces paragraph 6(2)(i), which exempts transfers of property between a company and its shareholders as part of an internal reorganisation, and paragraph 6(2A), which defines “*internal reorganisation*”. The current drafting raises several issues:

- the definition is too narrow for pro-rata distributions to existing shareholders;
- the reference to “its assets” is too ambiguous;
- “third party” is undefined;
- The wording is confined to corporate structures and does not accommodate partnerships, limited liability partnerships, and trusts.



Proposal

- Insert new definitions in paragraph 1(1) of the Eighth Schedule for: “*person undertaking a reorganisation*”, and “*interest holders*”.
- Amend paragraph 6(2)(i) so the exemption applies to transfers: by a person undertaking a reorganisation to its interest holders, or by the interest holders to that person, as part of an internal reorganisation.
- Replace paragraph 6(2A) with a structure-neutral definition of “*internal reorganization*”;
- Proposed definition – **Appendix 1**



Justification

- Provides a functional and accurate description of an internal reorganization that is structure neutral and aligned to the definitions in the Income Tax Act.
- Improves certainty through an inclusive, non-exhaustive list.
- Clarifies the internal boundary and reduces ambiguity around third parties.
- Supports pre-IPO structuring and group simplification before listing.
- Advances the Government’s objective of encouraging Nairobi Securities Exchange listings.

Proposal 3: Paragraph 13 — corporate reorganisation relief (not in Bill)



Issue

- Paragraph 13(c) denies relief unless the group has existed for at least 24 months.
- That condition can deny relief for genuine internal reorganisations, including post-acquisition integrations and newly formed groups.
- The provision also relies on the concept of a third party without sufficient clarity in a group context.



Proposal

- Amend paragraph 13(c) by removing the words *“which has existed for at least twenty-four months”*.
- Clarify that relief applies where the transfer is within a group and does not involve a transfer to a person who was not a member of the same group.
- Full proposed wording is set out in **Appendix 2**.



Justification

- Removes an arbitrary timing hurdle that does not serve as an effective anti-avoidance rule.
- Preserves the tax base through the existing clawback mechanism in paragraph 8(4A).
- Improves Kenya’s investment climate by supporting genuine internal reorganisations.
- Aligns paragraph 13 with the Bill’s internal reorganisation framework.

Appendices

Appendix 1

Appendix 1

(A) Insert the following definitions in Paragraph 1(1) of the Eighth Schedule:

“person undertaking a reorganisation” means a company, partnership, limited liability partnership, trust or other body of persons;

“interest holders” means, as the case may be, the shareholders of a company, the partners of a partnership or limited liability partnership, the beneficiaries of a trust, or the members of any other body of persons;

(B) Amend the proposed Paragraph 6(2)(i) of the Eighth Schedule to read as follows:

“(i) by the transfer of property by a person undertaking a reorganisation to its interest holders, or by the interest holders to such person, as part of an internal reorganisation, provided that —

(I) the property is transferred to the interest holders in proportion to their respective interests immediately before the transfer; and

(II) where the property consists of shares or comparable interests, such shares or interests relate to a company, partnership, limited liability partnership, trust or other body of persons in which the person undertaking the transfer controls.”

(C) Replace the proposed Paragraph 6(2A) of the Eighth Schedule with the following:

“(2A) For the purposes of this Schedule, ‘internal reorganisation’ means any transaction or series of transactions that results in a change in the manner in which the property of a person undertaking a reorganisation, or the shares or interests held in or by such person, are held among that person and its interest holders, and includes without limitation —

- (a) the distribution of property, including shares or comparable interests, by a person undertaking a reorganisation to its interest holders;
- (b) the transfer of property by interest holders to a person undertaking a reorganisation in exchange for shares, interests or other consideration;
- (c) the consolidation, division or rearrangement of property, shares or interests between a person undertaking a reorganisation and its interest holders;

provided that the transaction does not involve a transfer of property to any person who was not an interest holder of the person undertaking the reorganisation immediately before the transaction.”

Appendix 2

Appendix 2

(c) an internal restructuring within a group which does not involve a transfer of property to any person who is not a member of the same group ;



Thank you

pwc.com

© [2025] PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.



The Clerk of the National Assembly
Departmental Committee on Finance and National Planning
Parliament
Parliament Road
P.O BOX 41842-00100 Nairobi
Nairobi, Kenya
Sent via email to cna@parliament.go.ke

24 April 2026

Dear Sirs,

Subject: PricewaterhouseCoopers Limited - Submission of tax proposals on the Income Tax (Amendment) Bill 2026

Pursuant to the Public Notice released by the National Assembly Committee on Finance and National Planning on 17 April 2026 and Article 118(1)(b) of the Constitution of Kenya, 2010, we, PricewaterhouseCoopers Limited ("PwC"), are glad to submit tax proposals on the Income Tax (Amendment) Bill 2026 as set out in this document.

We are happy to provide additional information, clarification, or submission to you as appropriate. We would be grateful for an opportunity to appear before you to deliberate on our proposals and recommendations. Should you have any query, please do not hesitate to contact the undersigned at edna.gitachu@pwc.com or mobile on +254 795 737709.

Yours faithfully

For and on behalf of PricewaterhouseCoopers Limited

A handwritten signature in purple ink, appearing to read 'Edna Gitachu', enclosed within a faint circular stamp.

Edna Gitachu
Partner

B. PROPOSALS

	Clause / Provision	Description of the Clause / Current Position	Proposal	Justification
1.	Clause 2 of the Bill Amendment to proposed section 7(1)(c) of the Income Tax Act	Current Bill drafting: The proposed new section 7(1)(c) provides that: <i>“Notwithstanding paragraphs (a) and (b), a transfer of property by a company to its shareholders under paragraph 6(2)(i) of the Eighth Schedule shall not be deemed to be a distribution for the purposes of this Act.”</i> Issue: The current wording refers only to a “distribution”. While the apparent intention is to exclude dividend treatment for qualifying internal reorganisation	Amend the proposed section 7(1)(c) to read as follows: <i>“Notwithstanding paragraphs (a) and (b), a transfer of property by a company to its shareholders under paragraph 6(2)(i) of the Eighth Schedule shall not be deemed to be a dividend distribution for the purposes of this Act.”</i>	The proposed amendment improves drafting precision and makes explicit that the carve-out fully disapplies dividend treatment for qualifying transfers under paragraph 6(2)(i). This better aligns the language of section 7(1)(c) with the policy objective of the Bill, namely that genuine internal reorganisations should be tax-neutral and should not give rise to deemed dividend consequences. It also reduces interpretive uncertainty, strengthens certainty for taxpayers, and minimises the scope for disputes with the KRA.



Clause / Provision		Description of the Clause / Current Position	Proposal	Justification
		transfers, the drafting does not expressly refer to a dividend or dividend distribution. This may create interpretive uncertainty as to whether the carve-out fully disapplies deemed dividend treatment under section 7.		
2.	Clauses 3(a) and 3(b) of the Bill Proposed new Paragraph 6(2)(i) and Paragraph 6(2A) of the Eighth Schedule Together with Paragraph 1(1) of the Eighth Schedule (Interpretation)	The Bill proposes to insert a new Paragraph 6(2)(i) exempting transfers of property between a company and its shareholders as part of an internal reorganisation, and a new Paragraph 6(2A) defining “internal reorganisation.” Several drafting and conceptual issues arise:	(A) Insert the following definitions in Paragraph 1(1) of the Eighth Schedule: <i>“person undertaking a reorganisation” means a company, partnership, limited liability partnership, trust or other body of persons;</i> <i>“interest holders” means, as the case may be, the shareholders of a company, the partners of a partnership or limited liability partnership, the beneficiaries of a trust, or the members of any other body of persons;</i> (B) Amend the proposed Paragraph 6(2)(i) of the	(a) Structure-neutral application. The reorganisation provisions as currently drafted are confined to companies and shareholders. As Kenya’s economy grows and becomes more sophisticated, partnerships, limited liability partnerships, and trusts are increasingly used for commercial and investment purposes. A partnership distributing property to its partners, or a trust distributing to its beneficiaries, as part of a genuine internal reorganisation

Clause / Provision	Description of the Clause / Current Position	Proposal	Justification
	(a) The definition refers to “a restructuring of the ownership or control of a company” — but the primary exempt transaction, namely a pro-rata distribution to existing shareholders, does not change the ownership or control of the distributing company. (b) The alternative limb — “restructuring of... its assets” — is so broad that it captures any distribution of any property. (c) “Third party” is undefined. Shareholders are separate legal persons from the company and could be characterised as third	Eighth Schedule to read as follows: <i>“(i) by the transfer of property by a person undertaking a reorganisation to its interest holders, or by the interest holders to such person, as part of an internal reorganisation, provided that —</i> <i>(I) the property is transferred to the interest holders in proportion to their respective interests immediately before the transfer; and</i> <i>(II) where the property consists of shares or comparable interests, such shares or interests relate to a company, partnership, limited liability partnership, trust or other body of persons in which the person undertaking the transfer controls.”</i> (C) Replace the proposed Paragraph 6(2A) of the Eighth Schedule with the following: <i>“(2A) For the purposes of this Schedule, ‘internal reorganisation’ means any transaction or series of transactions that results in a change in the manner in which the property of a person</i>	where there is no change in economic ownership, is economically identical to a company distributing to its shareholders. There is no policy basis for confining the relief to corporate structures alone. The proposed amendment extends the relief to all commonly used legal vehicles in a structure-neutral manner. (b) Definitions placed in the Eighth Schedule’s existing interpretation section. The new terms “person undertaking a reorganisation” and “interest holders” are defined in Paragraph 1(1) of the Eighth Schedule — the Schedule’s established interpretation provision where “company”, “individual”, “property”, “land”, “transfer”, and “transfer value” are already defined. This follows the Act’s existing convention for introducing new



Clause / Provision	Description of the Clause / Current Position	Proposal	Justification
	parties. (d) The second limb of Paragraph 6(2)(i) – the transfer of property by shareholders to the company – is drafted as contingent on the first limb. (e) Condition (II) limits the exemption to shares in a “subsidiary”, which is undefined and implicitly requires more than 50%, excluding associates and joint ventures. (f) The provisions are drafted exclusively in corporate language – “a company”, “its shareholders”, “their shareholding”, “a subsidiary” – and do not accommodate other	<i>undertaking a reorganisation, or the shares or interests held in or by such person, are held among that person and its interest holders, and includes without limitation –</i> <i>(a) the distribution of property, including shares or comparable interests, by a person undertaking a reorganisation to its interest holders;</i> <i>(b) the transfer of property by interest holders to a person undertaking a reorganisation in exchange for shares, interests or other consideration;</i> <i>(c) the consolidation, division or rearrangement of property, shares or interests between a person undertaking a reorganisation and its interest holders;</i> <i>provided that the transaction does not involve a transfer of property to any person who was not an interest holder of the person undertaking the reorganisation immediately before the transaction.”</i>	defined terms within the Eighth Schedule and avoids introducing terminology that is foreign to the Act’s drafting style. (c) Independent limbs. The two directions of transfer are drafted as independent alternatives, not making the shareholder-to-company transfer contingent on a simultaneous company-to-shareholder distribution. (d) Broadened condition (II). The reference to “a subsidiary” is replaced with a company, partnership, limited liability partnership, trust or other body of persons in which the transferor holds more than twenty per cent of the issued share capital or equivalent interest. This captures subsidiaries, associates, and joint venture vehicles across all legal forms. Aligns with the existing definition of “control” in Section 2

Clause / Provision	Description of the Clause / Current Position	Proposal	Justification
	legal structures such as partnerships, limited liability partnerships, and trusts, which are increasingly used in Kenya's economy for commercial and investment purposes. A partnership distributing property to its partners, or a trust distributing to its beneficiaries, as part of a genuine internal reorganisation is economically identical to a company distributing to its shareholders but would not qualify under the Bill as currently drafted. (g) The term "property" is used consistently in the Eighth Schedule; any reference to "asset"		of the Act. (e) Functional definition of internal reorganisation. The recast definition accurately describes the exempt transactions — a change in how property or interests are held among a person and its interest holders — without requiring a change in ownership of the person itself, and without the over-breadth of the current "restructuring of its assets" formulation. (f) Inclusive list with safe harbours. The "includes without limitation" clause provides certainty for the most common transaction types while preserving flexibility for other legitimate reorganisation structures. (g) Objective perimeter test. The undefined "third party" concept is replaced with a clear, positive-



Clause / Provision		Description of the Clause / Current Position	Proposal	Justification
		should be aligned.		inclusion test based on interest holder status at a fixed point in time. (h) “Shares or comparable interests.” This phrase ensures Condition (II) and the inclusive list cover partnership interests, trust units, LLP membership interests, and any other economic interest that is the functional equivalent of shares.
3.	New Clause (proposed) Amendment of Paragraph 13 of the Eighth Schedule to the Act (corporate reorganisation relief)	Current position: Paragraph 13 of the Eighth Schedule provides that no gain or loss shall be included in the computation of income under section 3(2)(f) in the case of a transfer of property that is <i>“necessitated by a transaction involving the incorporation,</i>	Amend the existing Paragraph 13 (c) of the Eighth Schedule with the following by removing the words an <i>“which has existed for at least twenty-four months”</i> to read as follows: <i>(c) an internal restructuring within a group which does not involve a transfer of property to any person who is not a member of the same group ;</i>	The proposed replacement of Paragraph 13 is justified for the following reasons: (a) Removal of the 24-month requirement: The 24-month prior group existence condition is an arbitrary time-based hurdle that does not serve as an effective anti-avoidance measure. A genuine change of ownership triggers CGT at the point of acquisition. Requiring the acquirer to then wait

Clause / Provision	Description of the Clause / Current Position	Proposal	Justification
		<i>recapitalisation, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity", where such transfer is:</i> ... <i>(c) an internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months; or</i> ... Issues with the current provision: (a) Third party" is undefined: The provision relies on the concept of "a third party" without	24 months before undertaking any internal integration without additional CGT is punitive and economically unjustifiable. The condition imposes cash-flow strain on businesses, delays post-acquisition integration, and reduces business agility, all without any corresponding revenue benefit where beneficial ownership has not changed. (b) Existing statutory revenue-protection mechanism under paragraph 8(4A): The proposed broadened definition does not expose the revenue to abuse because the Income Tax Act already contains a specific clawback mechanism under paragraph 8(4A). That provision applies where property is transferred in a transaction that is not subject to capital gains tax and is subsequently transferred in a taxable transaction within a period

Clause / Provision		Description of the Clause / Current Position	Proposal	Justification
		defining it. In a group context, this creates ambiguity (b) 24-month group existence requirement: The condition in Paragraph 13(c), that the group must have existed for at least 24 months, can deny relief for genuine internal reorganisations that do not change ultimate beneficial ownership, particularly for newly formed groups or post-acquisition integrations. For example, an acquirer that purchases a business and		of less than five years. In such a case, the adjusted cost for purposes of the subsequent taxable transfer is required to be based on the original adjusted cost as determined at the time of the first transfer. This rule ensures that unrealised gains are preserved within the tax base and brought into charge on a later disposal, preventing base erosion through temporary non-taxable reorganisations. As a result, the proposed definition appropriately facilitates genuine internal reorganisations while maintaining an effective, legislated safeguard against the conversion of taxable gains into permanent exemptions. (c) Competitiveness and investment climate: Removing the arbitrary time hurdle, extending the relief to non-corporate vehicles, and anchoring the exemption in beneficial

Clause / Provision	Description of the Clause / Current Position	Proposal	Justification
		immediately needs to integrate it into its existing structure faces a 24-month waiting period before any internal transfer of acquired assets qualifies for relief, even though the entire group is under common ownership from day one.	ownership continuity will significantly improve the attractiveness of Kenya's tax regime for both domestic and international investors. It signals that Kenya's tax system is modern, substance-oriented, and aligned with international norms, supporting the country's ambitions as an investment destination and regional financial hub. (d) Consistency with the Bill's objectives: The Bill's proposed definition of "<i>internal reorganisation</i>" in the new Paragraph 6(2A) does not include a group existence requirement and focuses on the absence of third-party transfers. The proposed amendment to Paragraph 13 brings that provision into alignment with the Bill's own approach, ensuring internal consistency within the Eighth Schedule.





Office of the Controller of Budget

Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya

Tel: 020 2211068/66/56/51, 0709910000
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

INTRODUCTION

The Office of the Controller of Budget is established under Article 228 of the Constitution of Kenya to oversee the implementation of the budgets of the National and County Governments by authorising withdrawals from public funds under Articles 204, 206, and 207. Section 5(b) of the Controller of Budget Act, 2016, provides that the Controller of Budget shall ensure prudent and efficient use of public funds by, among other functions, monitoring, evaluating, reporting, and making recommendations to the National and County Governments on measures to improve budget implementation.

The Office of the Controller of Budget submits this matrix in response to the invitation by the Departmental Committee on Finance and National Planning of the National Assembly (Ref: NA/DDC/F&NP/2026/071, dated 20th April 2026) for stakeholder engagement on the Income Tax (Amendment) Bill, 2026 (National Assembly Bill No. 20 of 2026). The Office of the Controller of Budget is not a revenue collection authority, that function is vested in the Kenya Revenue Authority (KRA). However, the Controller of Budget's oversight mandate is inextricably linked to the integrity and predictability of public revenues for the following reasons:

- a. Revenue as the foundation of budget implementation: Article 206 of the Constitution establishes the Consolidated Fund, into which all national government revenues must be paid. Any legislative measure that alters the revenue base directly affects the envelope within which the national budget is implemented. The Controller of Budget monitors budget implementation against approved estimates. Unexplained revenue shortfalls attributable to unquantified tax exemptions undermine the fidelity of that monitoring and distort the fiscal picture reported to Parliament.
- b. Intergovernmental fiscal implications: National tax revenues form part of the pool from which the equitable share of county governments is calculated pursuant to Articles 202 and 203 of the Constitution and the Division of Revenue Act. A reduction in the national

revenue base has the potential to constrain future county allocations. As the office charged with monitoring the implementation of national and county governments' budgets, the Controller of Budget has a direct interest in ensuring that tax expenditure decisions are fully costed and transparently disclosed.

- c. Budget transparency and the Article 201 standard: Article 201(d) of the Constitution requires that public finance be managed in a manner that promotes transparency and accountability. The Controller of Budget is mandated to promote adherence to these principles in its reports to Parliament. A tax exemption introduced without an accompanying fiscal impact assessment or post-enactment reporting framework is inconsistent with the constitutional standard of transparency that the Controller of Budget is duty-bound to uphold.

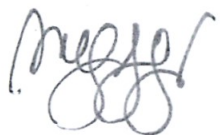
The Bill proposes targeted amendments to the Income Tax Act (Cap. 470) concerning the Eighth Schedule. Specifically, it introduces a capital gains tax (CGT) exemption for property transferred between a company and its shareholders as part of an internal reorganisation, and inserts a new definition of 'internal reorganisation' to demarcate the scope of the exemption.

Provision	Bill Text / Subject Matter	OCoB Observations	OCoB Recommendations
Amendment of Eighth Schedule – Capital Gains Tax (CGT) Exemptions (Cap. 470)			
Section 3(a) (New para 6(2)(i))	CGT exemption on transfer of property from a company to shareholders as part of an internal reorganisation, or transfer to the company by shareholders as consideration, subject to: (I) proportionate transfer; (II) where shares, they must relate to a subsidiary.	Public Revenue Safeguard: CGT is a constitutionally sanctioned revenue stream appropriated through Finance Acts. A permanent CGT exemption for internal reorganisations, without a sunset clause or review mechanism, creates an open-ended revenue risk. The CoB notes that similar provisions in other jurisdictions are typically time-limited or require pre-approval by a tax authority.	The CoB recommends that the Committee introduce: (a) a mandatory 3-year post-enactment review of the revenue impact of the exemption; (b) a requirement that reorganisations exceeding a prescribed threshold (e.g., Kshs 500 million in asset value) obtain an advance ruling from KRA before the CGT exemption applies.
Section 3(a) – Transfer to the company by shareholders	Property transferred back to the company by shareholders as consideration for the reorganisation also qualifies for the CGT exemption.	Anti-Avoidance Risk: The reverse transfer limb (shareholders to company) could be susceptible to abuse where property is cycled through a nominally 'internal' reorganisation to achieve a tax-free uplift in the cost base of assets, potentially eroding the CGT base without genuine commercial restructuring.	The CoB recommends Parliament insert an anti-avoidance provision requiring that the property transferred back be the same or a directly traceable asset, and that the reorganisation not result in a change of ultimate beneficial ownership within 5 years of completion.

Provision	Bill Text / Subject Matter	OCoB Observations	OCoB Recommendations
Section 3(b) (New para 6(2A))	Definition: 'Internal reorganisation' means a restructuring of the ownership or control of a company or its assets which does not involve a transfer of property to a third party.	Definitional Adequacy: The definition of 'internal reorganisation' is minimalist and relies solely on the absence of a third-party transfer. It does not address: (i) the treatment of related parties who may not be shareholders; (ii) cross-border reorganisations involving foreign subsidiaries; (iii) reorganisations effected through trusts or nominee arrangements. This definitional gap may result in inconsistent application and revenue leakage.	The CoB recommends that the definition be expanded to: (a) expressly exclude related-party non-shareholder transactions; (b) require that the reorganised entities remain tax-resident in Kenya for a minimum of 3 years post-restructuring; (c) exclude arrangements structured through trusts or nominees not disclosed to KRA. Alignment with the Income Tax (Transfer Pricing) Rules, 2006 should also be specified.

CONCLUSION

The CoB does not object in principle to the policy objective of facilitating genuine internal corporate reorganisations without triggering CGT liabilities, as such provisions can reduce transactional friction and support investment climate improvements. However, as the three provisions examined in this matrix demonstrate, the Bill as currently drafted presents significant concerns relating to public revenue safeguards, anti-avoidance risk, and definitional adequacy that must be addressed before enactment. The CoB urges the Committee to adopt the specific recommendations set out against each provision in this matrix. The CoB remains available to provide technical briefings to the Committee and its staff as required.



FCPA Dr Margaret Nyakang'o, CBS

CONTROLLER OF BUDGET



MEMORANDUM TO PARLIAMENT THE SOVEREIGN WEALTH FUND BILL, 2026

Introduction

Kenya stands at a historic crossroads. The Sovereign Wealth Fund Bill, 2026, represents the most consequential public finance legislation this country has considered since independence. Kenya's Sovereign Wealth Fund proposal has a long legislative history dating back at least to the 2014 and 2019 National Sovereign Wealth Fund Bills. The current, third, Bill retains the original resource-governance logic, which is to manage mineral and petroleum revenues, together with other monies allocated to the Fund, through stabilization, infrastructure, and future generations components. This Fund is not simply a new financing vehicle but a long-debated constitutional and fiscal instrument whose legitimacy depends on whether it is anchored in Kenya's public finance principles and devolution framework. It is a National Interest imperative, and the establishment of an independent, accountable National Sovereign Wealth Fund is expressly identified as a Core Strategic Interest grounded in Articles 201 and 203(1) of the Constitution. Done well, it could permanently transform how Kenya manages its mineral and petroleum wealth, shielding future generations from the resource curse that has undermined so many African economies. Done poorly, it risks repeating the institutional failures that saw the Industrial and Commercial Development Corporation (ICDC) hollowed out by political interference, and the National Bank of Kenya (NBK) brought to its knees by governance deficits that no law adequately prevented. These examples squandered the magic opportunities that would translate resource wealth into enduring national sovereignty.

Properly designed, the Sovereign Wealth Fund could serve as Kenya's anchor national-interest fund: a rules-based vehicle that translates constitutional principles into disciplined long-term savings, stabilization, and strategic investment. Improperly designed, however, it risks undermining the Kenyan National Interest with insufficient safeguards against arbitrariness, duplication, and executive overreach.

Comparative Analytics: Sovereign Wealth Fund Models

To get a wholesome regional and global picture of existing Sovereign Wealth Fund (SWF) Models, we undertook a comprehensive comparative analysis of SWFs established by Ghana, Nigeria, Norway, Malaysia, Singapore, and Sweden. Our review of models in these countries shows that Norway, Singapore, and Sweden exemplify robust Sovereign Wealth Fund (SWF) governance. On the other hand, Ghana, Nigeria, and Malaysia reveal structural vulnerabilities. We noted that Norway's Government Pension Fund Global is globally lauded for its transparency, rule-based investment strategy, and insulation from political interference, funded by surplus petroleum revenues. It has since diversified revenue sources and anchors Norway's Welfare State.

Singapore's Temasek and Government of Singapore Investment Corporation (GIC)¹ operate as commercially driven entity with diversified portfolios and professional boards, drawing from fiscal surpluses and state-owned enterprise returns. It is not anchored on petroleum revenues like Norway. Sweden's Allmänna Pensionsfonderna (AP)² Funds, though pension-oriented, are similarly rules-based and professionally managed. In contrast, Nigeria's Excess Crude Account and Sovereign Investment Authority face recurrent political withdrawals and weak fiscal rules, while Ghana's Heritage and Stabilization Funds, though constitutionally anchored, suffer from inconsistent deposits and limited transparency. Malaysia's Khazanah, though commercially active, has faced criticism for political appointments and opaque decision-making. South Africa's Public Investment Corporation

¹ This is a sovereign wealth fund established in 1981 to manage Singapore's foreign reserves with a long-term, global investment strategy.

² Sweden's national pension buffer funds, including AP1 through AP7, which manage assets to support the public pension system.



(PIC)³, which manages public pensions, is not a sovereign fund per se but illustrates the risks of political capture in state-managed capital.

From the foregoing analysis, it is our view the model proposed by the Kenya Sovereign Wealth Fund Bill, 2026 is not a Sovereign Wealth Fund as globally understood, but a mongrel of a slush-fund with attributes of the worst-case examples of Ghana, Nigeria, Malaysia and South Africa. We believe the Kenya Sovereign Wealth Fund Bill, 2026 is deliberately and poorly drafted in a manner that undermines its constitutional and procedural legitimacy.

We support the establishment of the Fund, subject to adhering to the right process. We believe the time is right and the need is urgent, however, the development of the Bill should have been preceded by a Sessional Paper approved by the National Assembly. To achieve true sovereignty, the Fund must be institutionally protected and built deliberately, law by law, institution by institution. We therefore find in the onset that this critical step has been skipped.

Having carefully analyzed the Bill against the Constitution of Kenya, 2010, the Public Finance Management Act (Cap. 412A), the Conflict of Interest Act, 2025, the Leadership and Integrity Act (Cap. 182), and internationally recognized standards including the Santiago Principles for Sovereign Wealth Funds, we are compelled to draw Parliament's attention to a number of provisions that, left unrevised, could expose the Fund and every Kenyan, to serious constitutional, governance, and financial risk. This Memorandum is deliberately focused, and our intention is not to delay this Bill but to strengthen it, so that when the Fund is eventually established, it is built on a foundation strong enough to last. The issues we raise cluster around five fundamental questions that Parliament must answer before this Bill is passed:

- What policy framework underpins the development of the Bill? There is no Sessional Paper that provides the broad architecture of the Fund linking it to Kenya's National Interest as provided for under article 203 of the Constitution.
- Who truly controls the Fund, the Board, the Cabinet, or the Cabinet Secretary? The current answer is deeply ambiguous, and ambiguity in public finance is always exploited.
- How will the Bill ensure that its main goal, particularly intergenerational savings, is achieved in the absence of clear safeguards against arbitrary allocation and withdrawals?
- What prevents the Fund from being used as a political instrument, particularly in the months before an election, or during a period of economic crisis when the pressure to dip into reserves will be at its greatest?
- How will the Bill ensure communities and county governments where the resources are located benefit and are protected? Currently it is too silent on the role of Senate and devolved governments in the process.
- When things go wrong, and in the life of an institution that will outlast many governments, something will, is there a robust enough accountability framework to catch failures early, name them publicly, and correct them?

We respectfully submit that the Bill, in its current form, does not adequately answer any of these questions. We believe it can, with the amendments proposed below.

³ a state-owned asset management firm that primarily manages pension funds for public sector workers, including the Government Employees Pension Fund (GEPF).

DETAILED ANALYSIS OF THE SOVEREIGN WEALTH FUND BILL, 2026

Clause	Provision in the Bill	Issue / Gap / Concern	Recommendation	Justification
Cl 3(2)	Guiding values and principles of the Act	Clause 3 incorporates several constitutional principles, including Article 201, but does not include Article 203, which expressly provides for the consideration of national interest, equitable sharing of resources, and intergenerational equity.	The Bill should be amended to explicitly incorporate Article 203 of the Constitution within the guiding principles, and to require that the management and utilization of the Fund be guided by considerations of national interest, equitable resource sharing, and intergenerational equity. Amend Clause 3(2) by inserting the following paragraph— “(g) the principles of equitable sharing of national resources under Article 203 of the Constitution, including the need to take into account national interest and to balance the interests of present and future generations.”	Article 203 requires that national resources be allocated with due regard to national interest, equity, and the need to balance present and future needs. These considerations are directly relevant to the management of a sovereign wealth fund, which is designed to manage resource revenues for both current development and future generations. Incorporating Article 203 would therefore ensure that the Fund is guided not only by principles of public finance, but also by broader constitutional considerations of national interest and equitable resource use.
Clause 5 (2)		Section 5 assigns equal weight to stabilization, infrastructure, and savings. This is conceptually flawed. A sovereign wealth fund exists primarily to convert finite natural resource revenues into enduring	Clause 5 should be amended to expressly provide that: “The principal object of the Fund shall be to promote intergenerational equity through	Sovereign wealth funds that are assigned multiple, competing objectives tend, in practice, to gravitate toward short-term expenditure, budgetary

		financial assets for future generations. By placing infrastructure financing on equal footing with savings, the Bill undermines this principle.	the long-term saving and investment of revenues derived from exhaustible natural resources, and revenue surplus.” Stabilization should be secondary. Any clause on Infrastructure component should not be a component of the Sovereign Wealth Fund.	support, at the expense of long-term savings. The experience of Nigeria demonstrates that effectiveness depends on clear institutional separation and ring-fencing of mandates across stabilization, infrastructure, and intergenerational savings. By contrast, where mandates are diffuse and insufficiently delineated, as seen in Brazil’s experience, the result is weakened discipline, erosion of the savings function, and overall ineffectiveness.
Cl. 5 (2) (b)	The purpose of the fund shall be to - (b) provide finance for strategic infrastructure investment priorities to foster strong and inclusive growth and development	Section 5(2)(b) makes infrastructure financing one of the core purposes of the Sovereign Wealth Fund, while the Strategic Infrastructure Investment Component is separately dedicated to financing strategic infrastructure priorities. Yet Kenya has also moved to establish a National Infrastructure Fund specifically for infrastructure financing. This duplication raises a serious design problem where infrastructure is being catered for by a separate dedicated fund, while the Sovereign Wealth Fund also allocates a	Infrastructure financing should be removed as a core function of the Sovereign Wealth Fund. If retained at all, it must be strictly limited, residual, and subject to clear statutory constraints.	Avoids institutional duplication, fragmentation of public investment, and inefficiency. International best practice separates SWF savings from development spending.

		full component to the same purpose. This creates overlap, institutional confusion, and the risk of fragmented accountability. Section 4 presents the Sovereign Wealth Fund as serving both current and future generations, invoking intergenerational equity. However, Section 5 contradicts this by prioritizing present-oriented uses, particularly stabilization and infrastructure financing, thereby directing significant resources toward immediate expenditure rather than long-term savings. This creates a core inconsistency: the Bill claims to preserve future wealth while enabling its immediate use through budgetary support. By failing to clearly separate savings from spending functions, the Bill invites policy drift, where short-term pressures undermine long-term wealth preservation, ultimately risking the Fund's transformation into a supplementary budgetary tool rather than a true sovereign wealth fund.		
Cl.8 & Cl.15	Allocation of the Holding Account, prioritization of the	While Clause 15 establishes that the future generations component is intended to serve as a savings base for future generations and promote	The Bill should be amended to:	The central purpose of sovereign wealth funds is to ensure intergenerational equity by preserving a

	future generations' component	intergenerational equity, Clause 8 leaves the allocation of funds across the stabilization, strategic infrastructure investment, and future generations components to the discretion of the Cabinet Secretary. The Bill does not guarantee any minimum allocation or priority to the future generations' component. This creates a disconnect between the stated objective of long-term savings and the operational framework for fund allocation. There is ambiguity in defining what the component shall prioritize.	Establish the future generations component as a priority savings mechanism Provide for a minimum guaranteed 50 percent allocation to this component; and Introduce stronger restrictions on withdrawals from the future generations' component compared to other components. Amend the priority functions by omitting the budgetary support initiatives and including investments in Quality Public Education, Quality public healthcare, financing of youth-based enterprises, and social welfare.	portion of national wealth for future citizens. While the Bill recognizes this objective in Clause 15, the absence of binding allocation rules under Clause 8 means that short-term fiscal and development priorities may dominate in practice. Comparative experience highlights this risk. Nigeria's sovereign wealth fund safeguards long-term savings through a dedicated future generations component, while in countries such as Brazil and Argentina, weak or subordinated savings mechanisms have led to the erosion of sovereign wealth under fiscal pressures. Without clear prioritization, savings components are often underfunded or depleted, reducing the Fund to a short-term stabilization and development tool. Establishing minimum allocation rules for the Future Generations
--	--------------------------------------	--	---	--

				Component would therefore strengthen fiscal discipline and ensure long-term sustainability.
Cl. 11(3)	A withdrawal from the Stabilization Component must be approved by Cabinet and submitted to the National Assembly for appropriation under a Supplementary Budget.	The sequencing here matters enormously. The Bill requires Cabinet approval before a withdrawal, and parliamentary appropriation after, through a Supplementary Budget. This means Parliament is asked to ratify a decision already made and funds potentially already deployed. A Supplementary Budget is a parliamentary rubber stamp, not a check. It cannot stop the withdrawal that has already happened. In a crisis, which is precisely when the Stabilization Component should be drawn upon, the political pressure to act quickly will be enormous. Without prior parliamentary approval as a mandatory gate, the Stabilization Component could be depleted through a series of Cabinet-approved Gazette notices before Parliament has a meaningful opportunity to scrutinize the decision. The Bill does not specify when the Board should start making withdrawals from the different components of the fund. This gives room for unnecessary	Amend Cl. 11 to require the National Assembly to approve any withdrawal from the Stabilization Component before funds are released. In declared national emergencies, a post-withdrawal ratification mechanism may apply, but it must be mandatory and time bound. Amend by including a moratorium of a minimum of five years withdrawal from the date of SWF establishment.	Article 206(4) of the Constitution requires withdrawals from the Consolidated Fund to be authorized by an Appropriation Act. The same constitutional logic applies to a sovereign fund of this magnitude. Post-hoc Supplementary Budget approval has historically proven an ineffective oversight tool in Kenya's public finance architecture resulting in continued abuse of Article 223 of the Constitution. Parliament should not accept a reduced constitutional standard for the most significant public investment fund in the country's history. The clause shall give sufficient room for return on investment and capital preservation.

	Missing role of the Controller of Budget	withdrawals that can work against the main objective of the fund to save for future generations The Bill omits any role for the Controller of Budget in the authorization or oversight of withdrawals from the Sovereign Wealth Fund. Although withdrawals require Cabinet approval and appropriation by the National Assembly, they are not subject to independent prior authorization, thereby weakening accountability safeguards.	The Bill should be amended to explicitly require that: All withdrawals from the Sovereign Wealth Fund and its components be subject to authorization by the Controller of Budget in accordance with Article 228 of the Constitution; and The Fund be expressly recognized as a public fund for purposes of constitutional oversight; and The Fund's administrators submit periodic reports to the Controller of Budget on withdrawals and utilization. Under Article 228 of the Constitution, the Controller of Budget oversees budget implementation by authorizing withdrawals from public funds. Given that the Sovereign Wealth Fund is financed by public resources and its withdrawals are linked to the national budget, such oversight is constitutionally necessary. The omission of the Controller of Budget creates a parallel withdrawal framework that bypasses independent prior authorization, weakening accountability and increasing the risk of politically driven or premature withdrawals, particularly given the discretion vested in the Cabinet Secretary. Comparative experience shows that weak
--	---	---	---

			independent controls over withdrawals can undermine fund integrity and expose sovereign funds to short-term fiscal pressures. Incorporating the Controller of Budget would therefore strengthen constitutional compliance, enhance transparency, and safeguard the Fund's long-term sustainability.
Cl. 18	Upon significant depletion of mineral and petroleum resources, all Fund components shall be consolidated into one account at the CBK, and the distinct components shall cease to exist.	This provision addresses what happens at the end of Kenya's resource era, the moment when the Fund's purpose shifts from accumulation to preservation and distribution. It is the most important long-term provision in the Bill, and yet it is also the thinnest. The consolidation of three distinct components with different investment mandates into a single undifferentiated account is a significant event. The Bill provides no transition governance plan, no revised investment mandate for the merged fund, no rules for withdrawal from the consolidated account, and no requirement for parliamentary approval of the consolidation itself. There is a further risk where the fund shall only serve one purpose, strategic	Insert a new sub-clause requiring the Board, upon declaration of significant depletion under Cl. 2, to prepare and submit to the National Assembly for approval, within 6 months of the declaration, a Depletion Transition Plan that sets out: the governance structure of the Consolidated Fund, a revised investment mandate, rules for withdrawal and distribution, and ongoing parliamentary reporting obligations. Also introduce another sub-clause to sustain the main focus on benefiting future generations through social welfare, youth enterprise investment, quality public education and healthcare. The purpose of a Future Generations Component is precisely to outlast the resource era. If the legal framework that governs that component ceases to provide meaningful guidance at the moment of resource exhaustion, the Fund's most important promise to future generations will be made in a governance vacuum. Parliament should not pass a Bill that creates a generational fund without ensuring the framework survives for the next generation.

		infrastructure investment, while losing its main goal of protecting future generations. Whoever governs Kenya when this depletion event occurs will inherit an institution whose statutory framework has effectively run out of instructions.		
Cl. 25(2)	There is established a board to be known as Sovereign Fund Board	The Bill provides for the appointment of the Chairperson, Chief Executive Officer, and Board members but does not require vetting or approval by the National Assembly or any independent body.	The Bill should be amended to: Require National Assembly approval for the Chairperson and Chief Executive Officer; and Provide for a transparent, competitive, and merit-based appointment process for Board members, consistent with Chapter Six of the Constitution.	The Fund will manage significant public resources and exercise substantial discretion over investment decisions. The absence of vetting of the CEO and the Chair of the board weakens accountability and increases the risk of politically influenced appointments. Parliamentary approval and transparent processes would enhance public confidence and align the Bill with constitutional principles of leadership and integrity.
Cl. 27(d)	The Board shall develop investment policies of the Fund for approval by the Cabinet.	This single clause could determine the Fund's fate. Requiring Cabinet approval of investment policies means that every major investment decision, involving what to buy, what to sell, and how much risk to take, is ultimately a political decision. In a democracy with regular	Amend Cl. 27(d) so that the Board develops and adopts investment policies independently. The Cabinet Secretary should receive the approved policy for information and may raise concerns to the Board in writing but shall have no power of veto or approval.	The Santiago Principles (GAPP 15-19), to which Kenya has expressed commitment, require that investment decisions be made on purely financial grounds. Article 201 of the Constitution requires that public money be

		changes of government and the pressures that come with them, this is not a theoretical risk. It is the exact mechanism through which the ICDC's portfolio was degraded over decades. There is no equivalent in any credible sovereign wealth fund globally. Norway, Singapore, and Botswana, all separate investment decision-making from political oversight by design.	The Cabinet's role should be limited to approving the Fund's high-level Investment Policy Statement once every three years, not individual investment strategies.	managed with openness and accountability, not with accountability to the executive alone. Cabinet approval of investment policy is not accountability, it is control.
Cl. 28(1)(b)-(e)	The Principal Secretaries for Treasury, Mining, and Petroleum, and the CBK Governor (or their representatives) are voting members of the Sovereign Wealth Fund Board.	The government, as the owner of the Fund, sits on the same Board that is supposed to manage the Fund independently of the government. These are not independent non-executive members, they are the same officials who advise on resource allocation, negotiate petroleum agreements, and set fiscal policy. When the PS Treasury votes on the Board's investment decisions, they are simultaneously acting as the government's representative, the government's financial adviser (PS), and a Fund manager. That is three roles in one person, and a textbook conflict of interest under any applicable law. The Conflict-of-Interest Act, 2025 (ss. 10-14) is explicit: persons in public trust positions must disclose and recuse from decisions where they have	Restructure the Board so that government representation is limited to one non-voting observer, the PS National Treasury or their nominee, whose sole function is to represent the government's ownership interest without participating in investment or management decisions. Replace the CBK Governor's membership with a technical liaison arrangement, ensuring the CBK's monetary policy expertise informs the Board without creating an additional conflict between the Fund's investment mandates and the CBK's regulatory functions.	The Conflict-of-Interest Act, 2025 is Kenya's most current legal standard on this issue and must be the primary reference. The Bill's reference to Chapter Six of the Constitution is necessary but insufficient. This structural conflict is not incidental; it is baked into the Board's composition. Parliament has an opportunity to design it out before the Fund is born.

		conflicting interests. A structural conflict of this nature cannot be recused away meeting by meeting. It must be removed from the architecture of the institution.		
Cl. 29 & Cl. 38	Qualifications for Board members reference Chapter Six of the Constitution. The code of conduct requires adherence to the code governing public officers.	The Conflict-of-Interest Act, 2025 is Kenya's most recent and comprehensive legislation on this subject. It is not referenced anywhere in the Bill. Chapter Six of the Constitution and the public officer code of conduct are important, but they do not impose the specific mechanisms the Conflict-of-Interest Act requires, such as mandatory declaration of interests, a publicly accessible conflict of interest register, recusal protocols, and post-employment cooling-off periods. For Board members and investment fund managers who will make decisions affecting assets potentially worth hundreds of billions of shillings, the absence of these mechanisms is not a technical oversight. It is a governance gap large enough to drive a truck through.	Amend Cl. 29 and Cl. 38 to explicitly incorporate the Conflict of Interest Act, 2025, including: mandatory annual declaration of interests for all Board members and senior staff; a publicly accessible conflict of interest register; clear recusal protocols with consequences for non-compliance; and a minimum two-year cooling-off period before any Board member may be employed by, or receive income from, any entity that received a Fund investment during their tenure.	The 1MDB scandal in Malaysia, the most catastrophic sovereign wealth fund failure in history, was enabled not by the absence of laws, but by the absence of enforceable conflict of interest mechanisms among decision-makers. Kenya's Conflict of Interest Act, 2025 exists precisely to prevent such failures. Not referencing it in the Bill is a missed opportunity that Parliament should correct.
Cl. 43(2), 44(2), 45(2)	None of the Fund's components shall be invested in securities issued by a Kenyan	The rationale for this provision is sound, to prevent the Fund from creating domestic inflationary pressures and to maintain the	Introduce a limited developmental carve-out allowing the Strategic Infrastructure Investment Component in Kenya-based	Ireland's Ireland Strategic Investment Fund (ISIF), Singapore's Temasek, and Botswana's Pula Fund all

	issuer, real estate located in Kenya, or funds whose primary purpose is to invest in Kenya.	independence of monetary policy. We understand why it is there. However, as an absolute prohibition with no exception, it creates a paradox: the Strategic Infrastructure Investment Component's stated purpose is to 'provide funding for strategic infrastructure investment priorities aligned to the national development plan'(Cl. 12). But it cannot invest in Kenyan infrastructure. This means the Fund will finance Kenyan development priorities indirectly, by investing overseas and channeling returns to Kenya, when in some cases, direct co-investment in Kenyan strategic projects would be more efficient, commercially sound, and developmentally impactful.	qualifying instruments, subject to: (a) Board approval by a supermajority; (b) parliamentary ratification by resolution; (c) an independent investment-grade certification that the investment is commercially sound; and (d) full public disclosure of the investment rationale.	permit calibrated domestic investment windows for strategic national purposes, with appropriate safeguards. A blanket prohibition, while understandable as a default, should not be constitutionally locked in for a Fund whose own statute declares strategic national infrastructure as a core investment purpose.
Cl. 56(1)-(3)	Fund monies shall not be withdrawn or transferred during the three months before a general election. The Board must certify balances and report to National Treasury, Auditor-General, and National Assembly.	The election-period freeze is one of the most important provisions in the Bill, and its intent is commendable. But it has no enforcement mechanism worth the name. The certification is prepared by the Board itself, not an independent auditor. There is no criminal or civil liability specified for a breach of the withdrawal freeze beyond the general penalty provisions. There is no whistleblower protection for a Board	Amend Cl. 56 to: (a) make any withdrawal during the restricted period automatically classified as misappropriation under Cl. 54, with its specific and more severe penalties. (b) require that the balance certification be conducted by the Auditor-General independently, not the Board. (c) insert an explicit whistleblower protection clause for any person	Article 81 of the Constitution guarantees free and fair elections. The constitutional right to a fair election is compromised if a sitting government can access a national fund in the critical months before voters go to the polls. The election-period protection in this Bill is a

Cl. 60	The Cabinet Secretary may appoint an interim manager and staff to administer the Fund pending the constitution of the Board.	member or staff member who reports a violation. A provision that can be violated with only a general penalty is not a safeguard. It is a suggestion. The transitional provision has no time limit, no qualification requirements for the interim manager, no restrictions on what the Fund may or may not do during the transition, and no oversight mechanism. An institution without a board, managed by a government-appointed interim manager of unspecified qualifications, with no defined end date, is not a sovereign wealth fund in any meaningful sense. It is a ministerial account. Kenya's history of 'transitional' arrangements that become permanent, in parastatals, regulatory bodies, and state corporations, should make Parliament very cautious about open-ended interim provisions in legislation of this importance.	who reports a suspected violation, consistent with whistleblower protection legislation. (d) require the Auditor-General to publish the certification report publicly within 7 days of completion. Amend Cl. 60 to: (a) cap the transitional period at 90 days from the Act's commencement date, with no extension. (b) require the interim manager to meet the same qualifications as the CEO under Cl. 35. (c) prohibit any withdrawal from the Fund during the transitional period except with the prior written concurrence of the Controller of Budget (CoB). (d) require the interim manager to report monthly to the National Assembly.	good idea that needs better engineering. The period between an institution's legal establishment and the constitution of its governing board is when public funds are most vulnerable. Ghana's Petroleum Revenue Management Act, 2011, one of Africa's most respected SWF frameworks, requires an independent oversight committee to begin functioning from day one, before the fund's board is constituted. Kenya should adopt a similar precautionary approach.
----------------------	---	---	--	--

ANNEX: RECOMMENDED CONSTITUTIONAL COMPLIANT INSTITUTIONAL ARRANGEMENTS

Table 1: Proposed Institutional Arrangement

Constituency/ Expertise	Nominations & Appointment Path	Independence & Eligibility	Terms & Rotation	Notes/ Rationale
Chairperson (Independent Finance/ Investments)	Publicly advertised; shortlisted by an independent panel; approved by Parliament; formally appointed by President	No current/ last 3 years role in Treasury/ CBK, or any MDA supervising the Fund	4 years; staggered	Keeps Chair independent of Executive line control.
Treasury CS designate (non-voting ex-officio)	Ex-officio	Non-voting; Observer rights only	-	Policy coordination without vote capture
CBK nominee (macro/markets)	Nominated by CBK Board; approved by Parliament	Not a sitting MPC member; no current supervision over fund	3 yrs	Monetary/FX linkage, still independent of daily ops
Parliament (National Assembly) nominee	Vetted by the National Assembly; Elected by the House	Not a sitting MP; must be an independent expert	3 yrs	Legislative oversight without political capture
Parliament (Senate) nominee	Vetted and Elected by the Senate	Not a sitting Senator	3 yrs	Devolution lens and counties' interests
Council of Governors (CoG) Representative	Nominated by CoG; vetted by Senate	County finance/ investment background	3 yrs	Aligns national-county fiscal interface
ICIFA/ ICPAK seat (professional body)	Joint shortlisting by ICIFA/ ICPAK; vetted by Parliament	CFA/ CPA; 10+ yrs in asset management/ Treasury	4 yrs	Professional competence & fiduciary standards



Youth/ Labor & MSMEs Economy	Public call; shortlist by National Youth Council & FKE/ COTU panel; approved Parliament	5+ years enterprise/ labor finance	3 yrs	Future generations and labor productivity lens
Private Pension/ Insurance capital	Association of Pension Trustees & Insurers joint slate; vetted by Parliament	10+ yrs ALM/portfolio risk	3 yrs	Long-term capital perspective
Environmental science/ climate risk	Presidential nomination; approved by Parliament	PhD/MSc; tailings/water/ESG or climate finance	4 yrs	Ensures transition and ESG discipline
Executive appointee #1 (independent)	Open recruitment; shortlist by Public Service Commission; appointed by President	Independence tests apply	3 yrs	
Executive appointee #2 (independent)	As Above	As above	3 yrs	
Executive appointee #3 (independent)	As Above	As above	3 yrs	



CONCLUSION

Establishment of the Sovereign Wealth Fund in our view should have been preceded by a Sessional Paper approved by the National Assembly. The Sessional Paper would have provided the logic behind the establishment of the Fund and should have been finalized after extensive consultations with stakeholders in the extractive industry and most importantly the host communities within which natural resources are found. This in our view would include the host County Governments. This step seems to have been skipped given the significance of the Fund and the attendant National Interest.

Kenya's generation of leaders faced a similar moment of institutional promise in the years after independence, when the ICDC held the potential to become a genuinely transformative vehicle for indigenous economic empowerment. That potential was squandered, not because the idea was wrong, but because the governance architecture was not strong enough to protect the institution from the pressures that inevitably descend on anybody that holds significant public resources.

We are asking Parliament to learn from that history. The Sovereign Wealth Fund Bill 2026 has every ingredient of a transformative institution. What it needs, urgently, and before it is enacted, is a governance framework robust enough to protect it from the same pressures that have undermined its predecessors. Further, adequate public participation is required to ensure that all relevant voices on the matter are heard.

The issues identified in this Memorandum are not minor technical points, they go to the heart of who controls this Fund, whether Parliament can effectively oversee it, and whether Kenyans who will benefit from it, in the next forty years, will inherit a thriving institution or an empty one.

We urge the Departmental Committee on Finance and National Planning to recommend the amendments proposed in this Memorandum and require that a Sessional Paper is presented to the National Assembly for approval prior to enactment of the Bill. The Committee has a historic responsibility to ensure that this third attempt to establish the Fund does not fail for the same reasons the previous ones did, and that when established, is not reduced to another state body vulnerable to the political pressures, but constitutionally anchored, independently governed, and genuinely accountable expression of Kenya's National Interest.