



# Understanding Stamp Duty Exemptions in Group Reorganisations

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**Stamp duty, a tax levied on instruments used for share transfers during internal reorganisations, can create significant liabilities if not carefully managed**

**Group reorganisations have become an increasingly essential tool for companies seeking to increase business efficiency, meet shifting regulatory demands or simplify group structures. Group reorganisations refer to the restructuring of a group of companies or entities within a corporate group of one or more individual assets.**

Stamp duty, a tax levied on instruments used for share transfers during internal reorganisations, can create significant liabilities if not carefully managed. To ensure compliance, companies must understand the exemptions available under Kenya's Stamp Duty Act (Cap 480) (the "Act"), particularly those outlined in Sections 95, 96, and 117. This would avoid unnecessary costs and preserve applicable tax reliefs.

Section 95 of the Act outlines when a corporate reconstruction or amalgamation can secure stamp-duty relief. Relief is available if a limited-liability company is newly registered, incorporated after 29th September 1951, or has increased its nominal share capital, and is established specifically to acquire either the entire company or at least 90 percent of the issued share capital of another company.



# 90%

**of the consideration for the acquisition—excluding the assumption of any liabilities—must be satisfied by the issuance of shares in the transferee company to the existing company or its shareholders in exchange for their shares**

Additionally, at least 90 percent of the consideration for that acquisition—excluding any assumption of liabilities—must be satisfied by the issue of shares in the transferee company to the existing company or directly to its shareholders in exchange for their shares.

No stamp duty would be payable on an instrument executed solely to effect the transfer of an undertaking or shares from an existing company to a transferee company. The provision's policy objective is to remove fiscal impediments in a reorganization exercise.

Timing is also critical. For an exemption to apply under Section 95, the instrument facilitating the transfer must be executed within twelve months of either the transferee company's registration date or the date of the resolution that increases its nominal share capital.

Alternatively, the exemption can apply if the transfer is in pursuance of an agreement filed with the Registrar of Companies within that twelve-month period.

Section 96 of the Act offers a stamp duty exemption for transfers of shares between associated companies. The section exempts certain intra-group share transfers from stamp duty.

Where there is a transfer of a beneficial interest from one limited company to another, and the companies are members of the same corporate group—either because one owns at least 90 per cent of the other's issued share capital, or because a third company owns at least 90 per cent of both—the transaction qualifies for stamp duty relief

Recently, the Act was amended through the Finance Act to introduce a new stamp duty exemption following an internal reorganization.

The new exemption is applicable where there is a transfer of property by a company to its shareholders during an internal reorganization, provided that, if the property consists of shares, they must be in a subsidiary of the transferring company.

**To leverage these exemptions, companies must thoroughly understand the Act's provisions and strictly comply with its procedural requirements, including timelines and documentation standards**



While this is a positive move since it reduces costs associated with a transaction, potentially the new legislation may cause ambiguity in application. The absence of specific thresholds (e.g., ownership percentage such as listed in section 96) risks inconsistent interpretations by the collector of stamp duty in implementing this provision.

Companies undertaking internal business restructurings can benefit from the stamp duty exemptions outlined in the Act. To leverage these exemptions, companies must

thoroughly understand the Act's provisions and strictly comply with its procedural requirements, including timelines and documentation standards.

Adhering to these conditions ensures compliance while enabling businesses to optimize restructuring processes. Knowing these exemptions is crucial as it empowers companies to strategically plan restructurings and reduce costs, ultimately supporting long-term financial sustainability.



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