# INTERGENERATIONAL WEALTH, GOVERNANCE & SUCCESSION FORUM

## WILLS & TAX IMPLICATIONS OF ESTATE PLANNING VEHICLES

27 August 2026

BOWMANS
THE VALUE OF KNOWING

# Contents


WHY SUCCESSION PLANNING MATTERS

# What succession planning is intended to achieve

- Managing family relationships
- Protecting wealth
- Preserving business continuity
- Aligning personal, family and commercial objectives
- Providing flexibility and control

# Consequences of failing to plan

- Disputes between family members over entitlement, ownership or control
- Fragmentation of family businesses or other assets
- Delays in beneficiaries obtaining control or benefits from the assets
- Unintended outcomes for particular family members
- Increased administrative and professional costs in implementing the succession

# LIFETIME TRANSFERS VS SUCCESSION

# Why restructure during the founder's lifetime

**Control**: The founder retains control over the process and can correct mistakes.

**Continuity**: A restructured business with clear governance documents survives the founder's death without interruption.

**Tax planning**: stamp duty exemptions and Capital Gains Tax on certain intra-family transfers during lifetime.

**Companies Act compliance**: A founder can implement new articles, shareholder agreements, and share classes while still in control of the board.

# CHOOSING THE RIGHT VEHICLE

# Instruments for lifetime transfers

**Holding companies:** these are established primarily to hold and manage investments or ownership interests in other companies.

They are used to centralise ownership of family wealth and business interests, transfer and manage interests in the holding company rather than transferring each underlying asset or business separately.

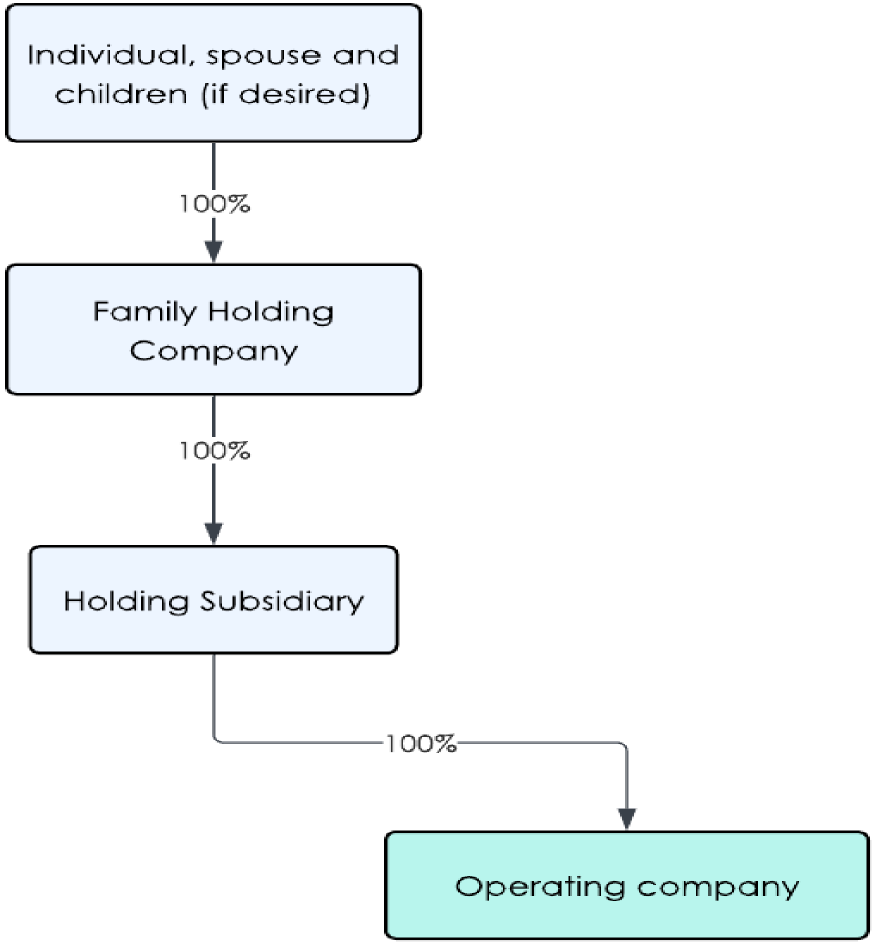
Types of holding companies:

1. A family holding company – companies owned by an individual, spouses or a spouse and immediate family.

2. A subsidiary – incorporated as limited liability companies wholly owned by the Family Holdcos. The aim to facilitate the rebasing of the shares in underlying operating companies.

**Trusts:** An individual may set up registered family trust and subsequently settle their shares and other assets they hold in the Family Holding companies to the registered family trust. The trustees of the family trust may be either an individual or corporate trustee.

# Illustration of instruments of lifetime transfers



# Tax implications on transfer of property to holding companies

**Capital gains tax** - No CGT is applicable on the transfer of property to a company where an individual and spouse or spouse and immediate family hold 100% shareholding.

No CGT is applicable on the transfer of property as part of an internal restructuring within a group that has existed for at least 24 months

**Stamp duty** - The transfer of property to a limited liability company whose shares are wholly owned by the family is exempt from stamp duty.

The transfer of property as part of an internal restructuring within a group is also exempt from stamp duty

**Withholding tax** - distribution of dividends to a Kenyan company that holds more than 12.5% of the voting rights (issued shares) of the company is exempt from WHT.

**Value added tax (VAT)** - No VAT would be applicable on the transfer by the Family Holding companies of the shares they hold to the subsidiaries.

# Trust structures

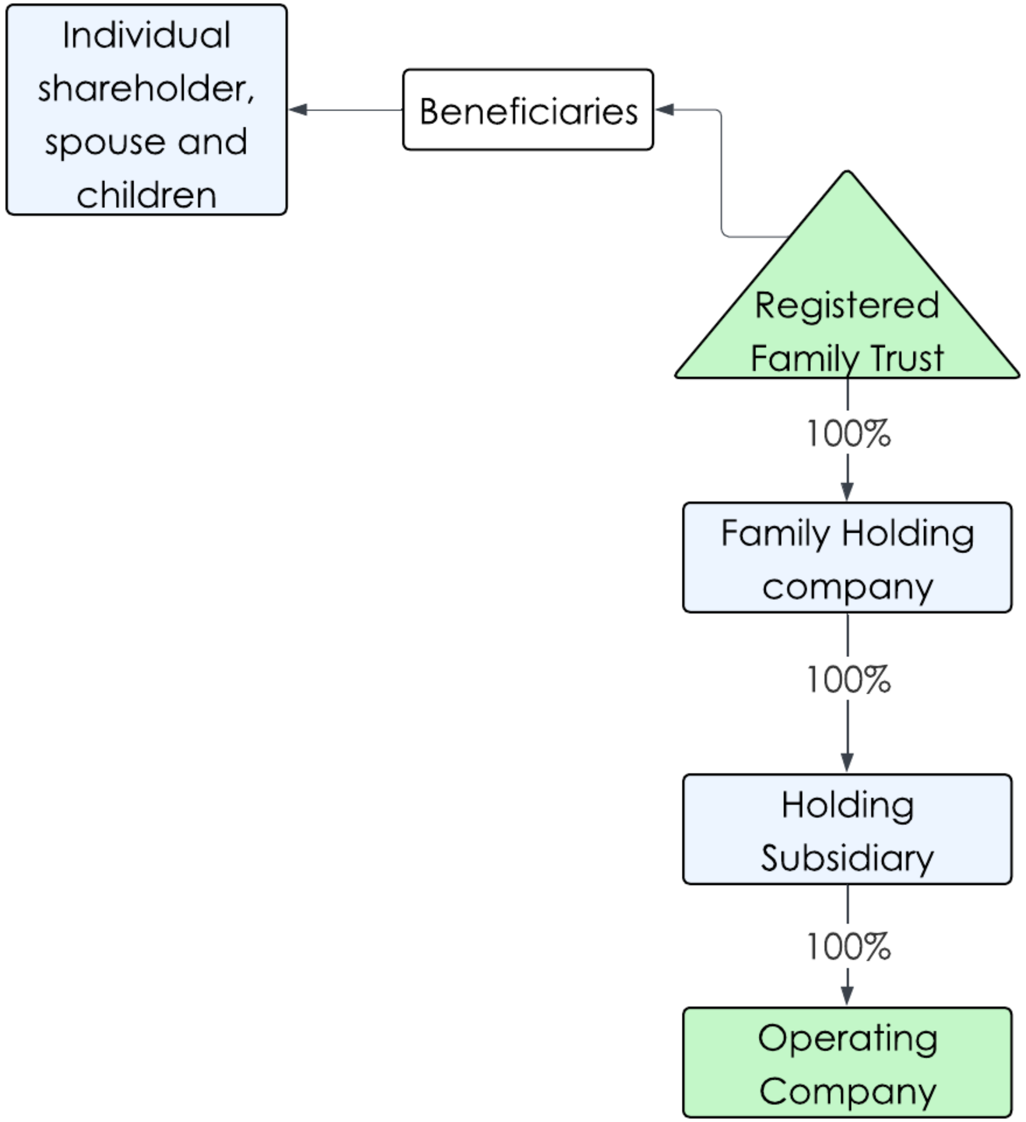
**What is a family trust?** A family trust is a legally binding arrangement where a person or persons settle or transfer assets and property to a trustee on trust for the beneficiaries.

**Who is a beneficiary?** The beneficiaries are persons who receive benefits from the family trust. Beneficiaries may be the individual and their spouse and children.

**Who is a trustee?** A trustee is a person who deals with the assets settled in the trust fund in a manner provided for in the trust deed and the letter of wishes.

**Who is a settlor?** a settlor is the person who creates the trust and decides what goes into the trust deed as well as settles assets into the family trust as the trust fund

# Illustration of holding companies, subsidiaries and trust



# Tax implications on settlement of property to a trust

**Capital gains tax & stamp duty:** The settlement of property to the registered family trusts would be exempt from CGT and stamp duty

**WHT:** WHT at the rate of 5% would be applicable on the dividend paid to registered family trusts

# INSTRUMENTS FOR SUCCESSION

# Wills

01

**A will** is a legal declaration by a person of their intentions or wishes regarding the testamentary disposition of their property after their death.

❑**Testamentary disposition** is the distribution of property intended to take effect upon the death of the testator.

02

Elements of a valid will

❖A. Capacity - Age and mental capacity;

✓B. Knowledge and approval – Knowledge of what is in the will and approval of the contents therein;

✓C. Knowledge of the natural objects of his bounty – who should benefit;

✓D. Understanding of the disposition of assets called for by the will

| Wills | Intestacy |
|---|---|
| ✓ **Greater control over distribution of the estate-** A Will allows you to specify who should receive your property and in what proportions. | ✓ **In intestacy, distribution follows the statutory scheme, which may not reflect your wishes.** |
| ✓ **Appointment of executors-** a will allows you to nominate trusted persons to administer your estate. | ✓ **No executor appointed by the deceased -** Since there is no Will, an administrator must be appointed through the lengthy succession process. |
| ✓ **Greater certainty-**Your written instructions provide evidence of how you intended your estate to be dealt with. | ✓ **Greater potential for disputes -** Family members may disagree over entitlement, administration or the application of the statutory distribution rules. |
| ✓ **Non-family beneficiaries (charities, employees) can be included**. | ✓ Only statutory "next of kin" benefit. |
| ✓ **Specific conditions and staged distributions are possible** -The person making the Will can give instructions about when or how a beneficiary receives property, subject to legal limits. For example, a will might provide that a child receives certain assets at a specified age, or that property is held in trust for a beneficiary. | ✓ **One-size-fits-all distribution** - The estate is distributed according to the statutory intestacy rules. The deceased cannot specify their own preferred timing, conditions or allocation because they left no Will setting out those wishes. |

| Wills | Intestacy |
| --- | --- |
| ✓ **Assets can be clearly identified and recorded.** | ✓ **Undisclosed assets may be lost** — If the deceased leaves no Will or asset record, beneficiaries may not know about all the assets. Assets that are unknown or difficult to trace may remain undiscovered or may take longer to identify and recover. |

# TAX TREATMENT OF ASSETS PASSING UNDER A WILL

# Tax implications of transfer of property under a will

**Capital gains tax (CGT):**

**1.**Transfer of property to beneficiaries upon death is exempt from CGT. This transfer would rebase the value of the shares immediately.

2. Direct sale of estate property rather than transfer to a beneficiary within two years of death is exempt from CGT or within two years of finalisation of court proceedings relating to the estate, where applicable.

3. A subsequent disposal may attract CGT, subject to applicable exemptions.

**Stamp duty:** Nominal stamp duty will arise where assets, particularly land or shares, are transferred as part of resolving or restructuring the estate.

**Income tax:** Income generated from inherited assets, such as rental income, interest or dividends, would be subject to income tax in the hands of the beneficiary.

**Tax exemptions and reliefs**: Available exemptions and reliefs would be identified when effecting the succession.

# WHEN THINGS GO WRONG: INTESTACY, DISPUTES AND CHALLENGES TO WILLS

# Grounds under which a will may be challenged

**Lack of mental capacity**

**Suspicious Circumstance** - This happens when the drafter of the will takes substantial benefit from the testator's estate or there is a suspicion of fraud, undue influence or coercion.

**Failure to follow legal formalities** – execution defects

**Forgery or lack of genuine authentication** – signature is not genuine.

**Failure to make reasonable provision for dependants**.

# Common causes of succession disputes

**Intestacy**

**Validity of the will -** whether the will was properly executed or whether the testator had the requisite testamentary capacity when it was made.

**Undue influence -** where it is alleged that the testator was pressured or influenced into making provisions that did not reflect their genuine wishes

**Unfair distribution-** Beneficiaries or dependents may challenge the distribution where they consider that they have been unfairly excluded or inadequately provided for.

**Family and beneficiary disagreements**

**Unclear ownership of assets**

# Tax implications following a succession dispute

**CGT-** Transfer pursuant to a testamentary disposition is exempt from CGT. This transfer would rebase the value of the shares immediately.

The direct sale of estate property rather than transfer to a beneficiary within two years of death is exempt from CGT within two years of the conclusion of court proceedings relating to the estate, where applicable.

A subsequent disposal of inherited assets may attract CGT subject to applicable exemptions.

**Stamp duty:** Nominal stamp duty will arise where assets, particularly land or shares, are transferred as part of resolving or restructuring the estate.

**Income tax:** Income generated from assets during or after the dispute may be taxable in the hands of the person entitled to the income.

**Professional fees:** Delays in succession may result in professional, administrative and other costs chargeable to tax associated with preserving, transferring or restructuring the estate.

# ILLUSTRATIONS

# ILLUSTRATION 1

A Kenyan resident shareholder solely owns three operational companies within the (i) manufacturing, (ii) retail and (iii) real estate industries (the **Operational Companies**)

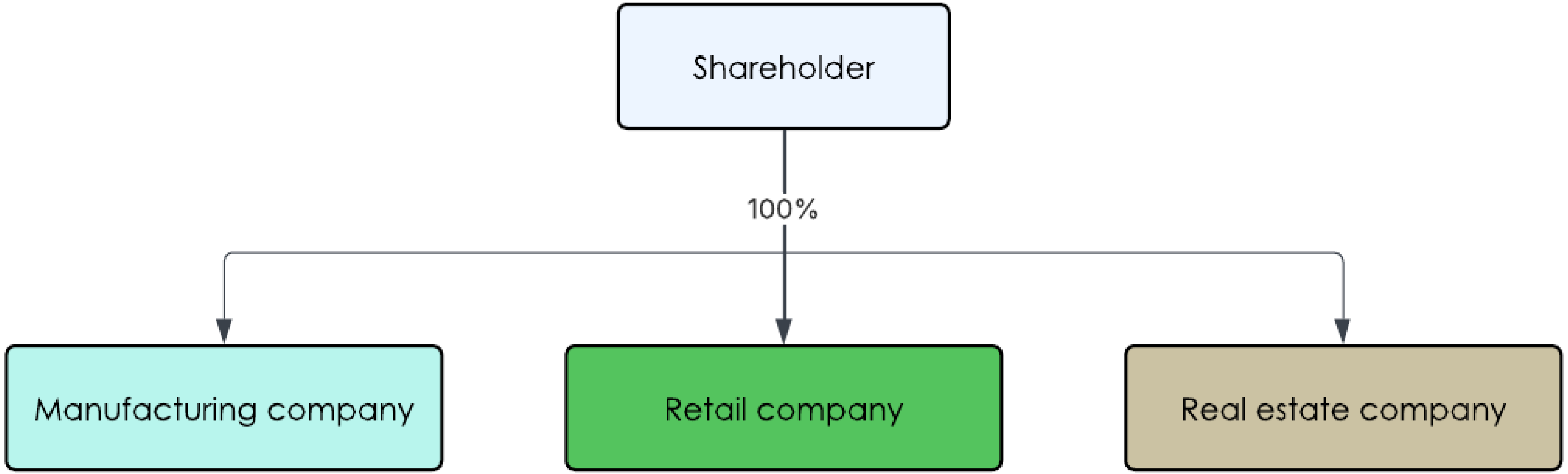
The Operational Companies have been operational close to 2 decades.

The children of the shareholder are involved in the management and operation of the Operational Companies but with no ownership rights. The shareholder wishes to restructure his shareholding in the Operational Companies for purposes of:

(a) succession planning and

(b) rebasing the value of the shares in the companies for CGT purposes in the event of a future transfer of the shares (direct or indirect)

# Current shareholding

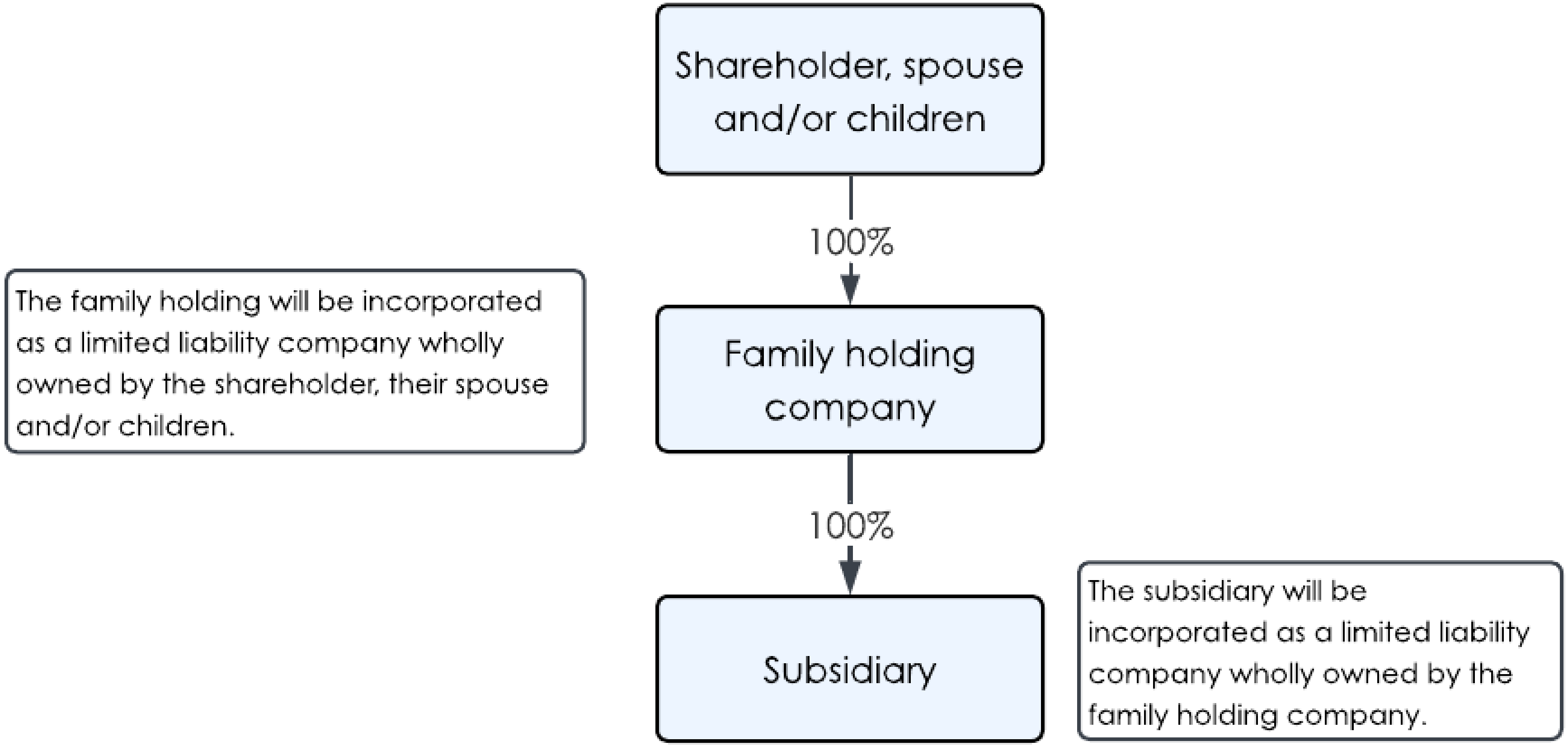



Dividend income paid by the Operating Companies to the Shareholder is subject to withholding tax at the rate of 5%.
Profit = **100**
Corporate income tax = **30**
Dividends = **70**

The transfer or sale by the shareholder of the shares held in the Operating Companies to a third party would be subject to CGT at the rate of 15% on the amount by which the transfer vaue of the shares exceed the adjusted cost of the shares. CGT would be payable by the Subsidiary.

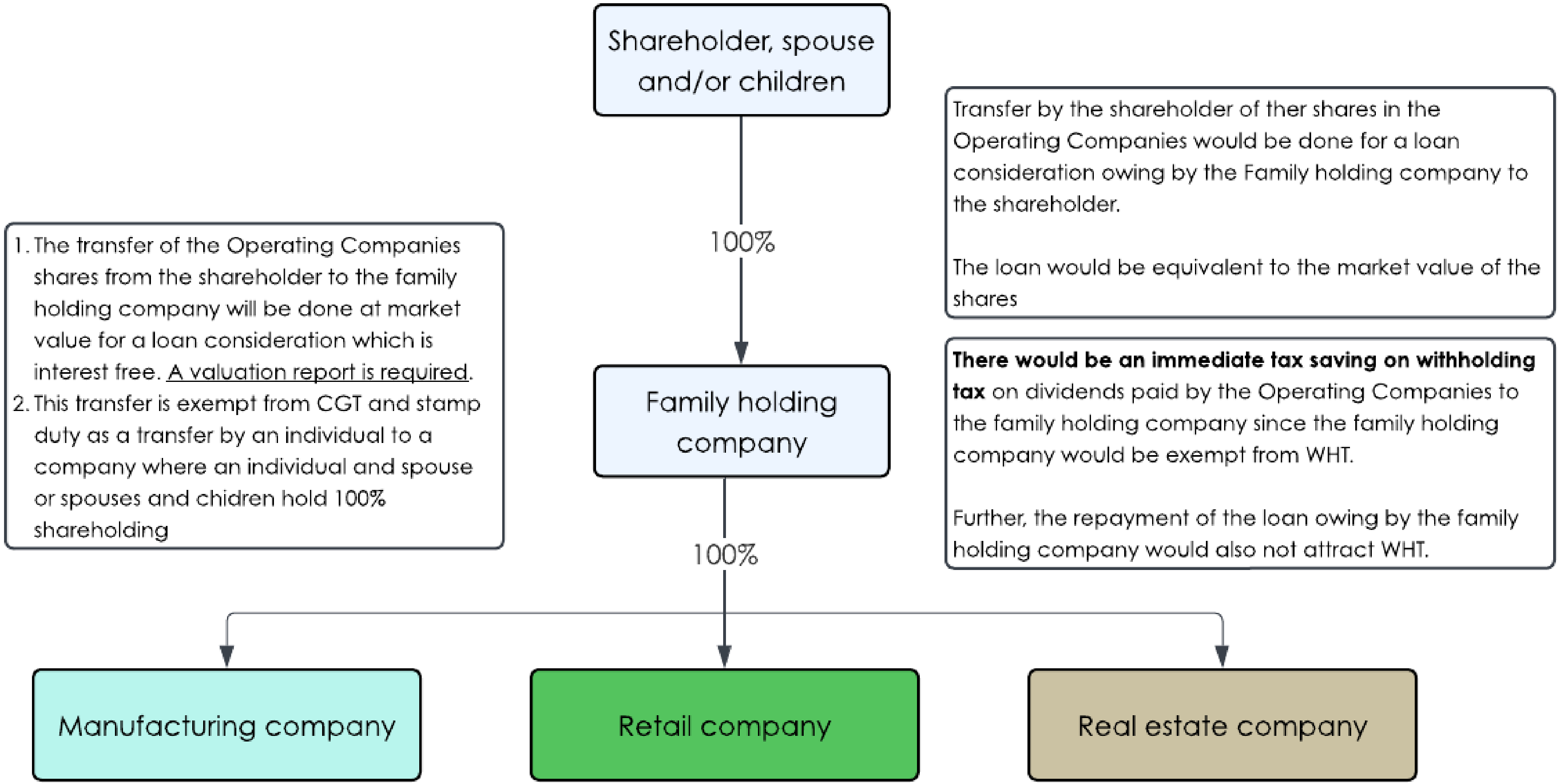
Stamp duty at the rate of one percent (1%) of the higher of the consideration payable or the market value of the shares would be payable by the third-party buyer.

# Incorporation of a family holding company and subsidiary

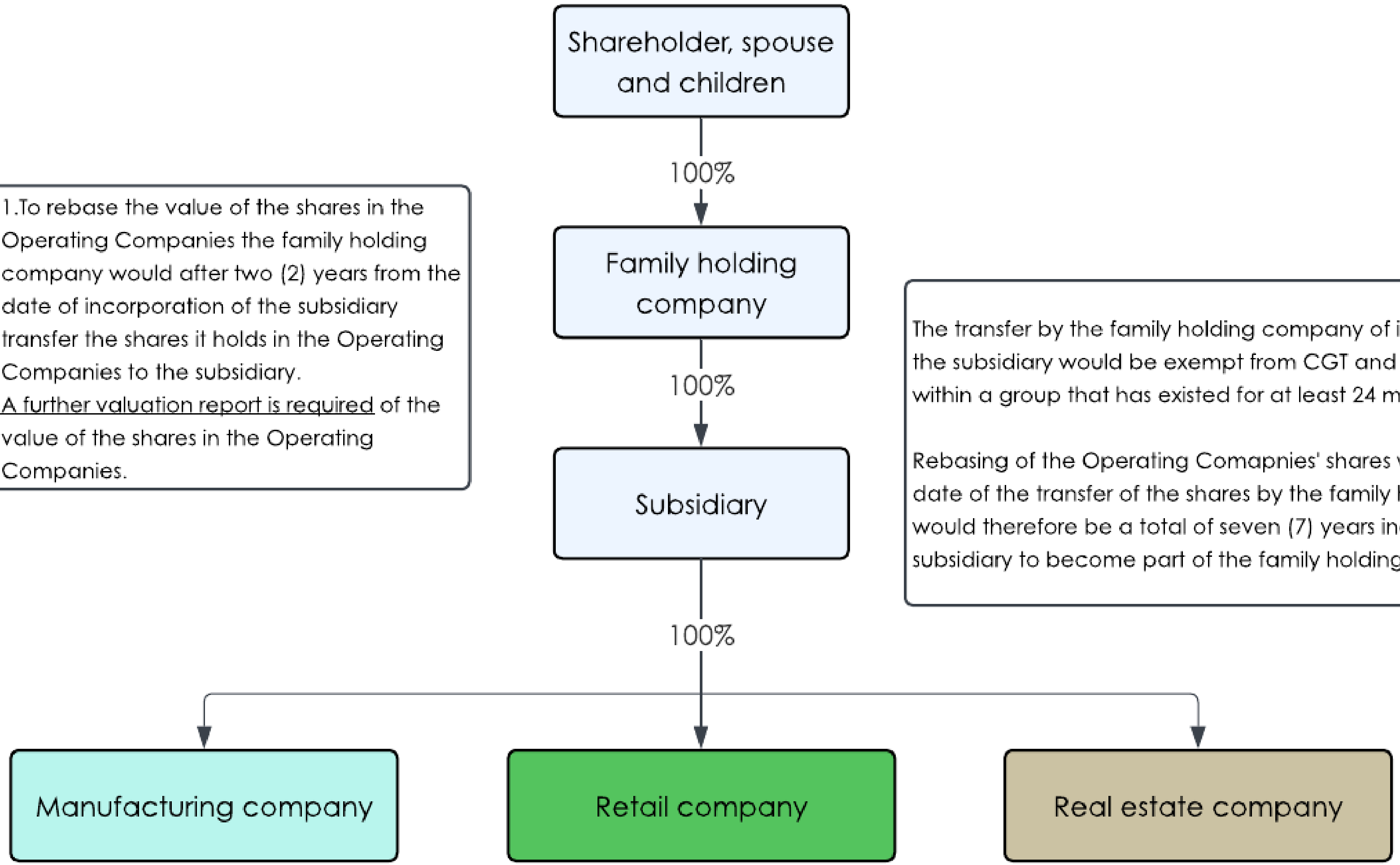



No tax implication on incorporation of the companies

# Transfer by the shareholder of their shares in the Operating Companies to the family holding company



# Rebasing of the shares in the Operating Companies

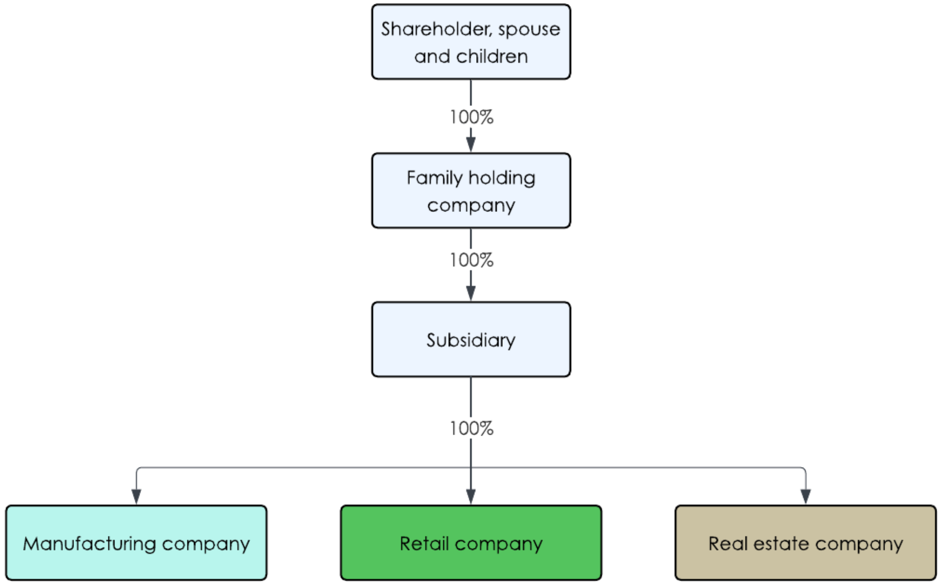



1. 1.To rebase the value of the shares in the Operating Companies the family holding company would after two (2) years from the date of incorporation of the subsidiary transfer the shares it holds in the Operating Companies to the subsidiary.
2. A further valuation report is required of the value of the shares in the Operating Companies.

The transfer by the family holding company of its shares in the Operating Comapnies to the subsidiary would be exempt from CGT and stamp duty as an internal restructuring within a group that has existed for at least 24 months.

Rebasing of the Operating Comapnies' shares would occur after five (5) years from the date of the transfer of the shares by the family holding company to the subsidiary. This would therefore be a total of seven (7) years inclusive of the two (2) years for the subsidiary to become part of the family holding's group.

# Illustration of rebasing




<u>Illustration of rebasing</u>

1. Value of the Operating Company shares at incorporation = **100**

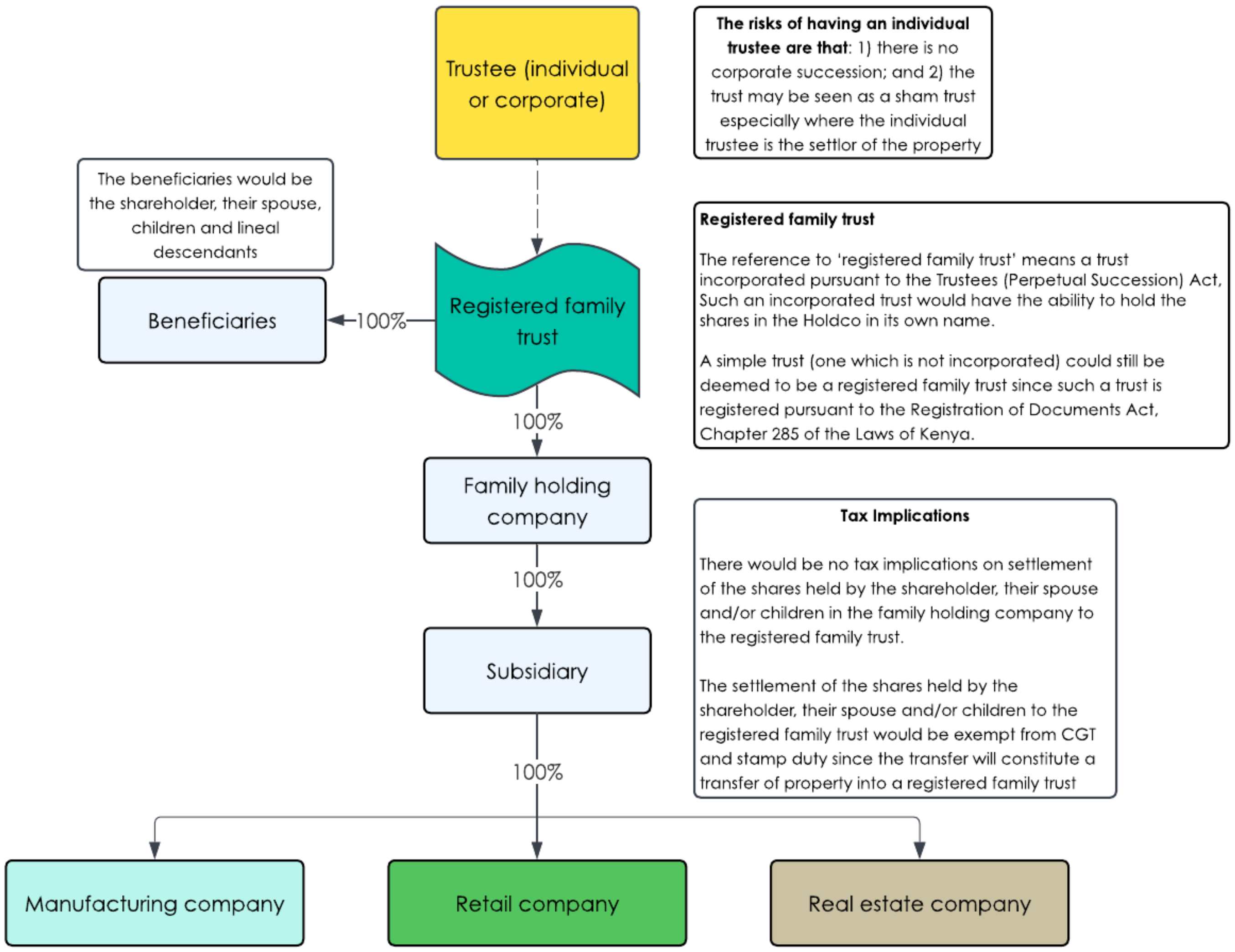
2. Market value of the Operating Company shares as at the first transfer from the shareholder to the family holding company = **1,000**

3. Market value of the Operating Company shares as at the second transfer from the family holding company to the subsidiary after 2 years = **1,500**

If the sale of any of the Operating Companies' shares occurs on a date that is after 5 years from the date of the transfer of the shares in those companies by the Family Holding Company to the Subsidiary, the shares in the company will have rebased to their market value **(KES 1,500)** at the time of the transfer, to the Subsidiary, therefore reducing the CGT liability.

If the sale of any of the Operating Companies' shares occurs on a date that is before the expiry of 5 years from the date of the transfer of the shares in those companies by the Family Holding Company to the Subsidiary, the adjusted cost of the shares will be the original cost of acquisition of the shares in the Operating Companies (**KES 100**) by the Shareholder since the Operating Companies' shares will not have rebased thereby increasing the CGT liability.

# Settlement of the shares held in the family holding company to the registered family trust



# ILLUSTRATION 2

**Facts**

A company owns properties that are occupied by the shareholders/directors for residential purposes.

**The challenge**

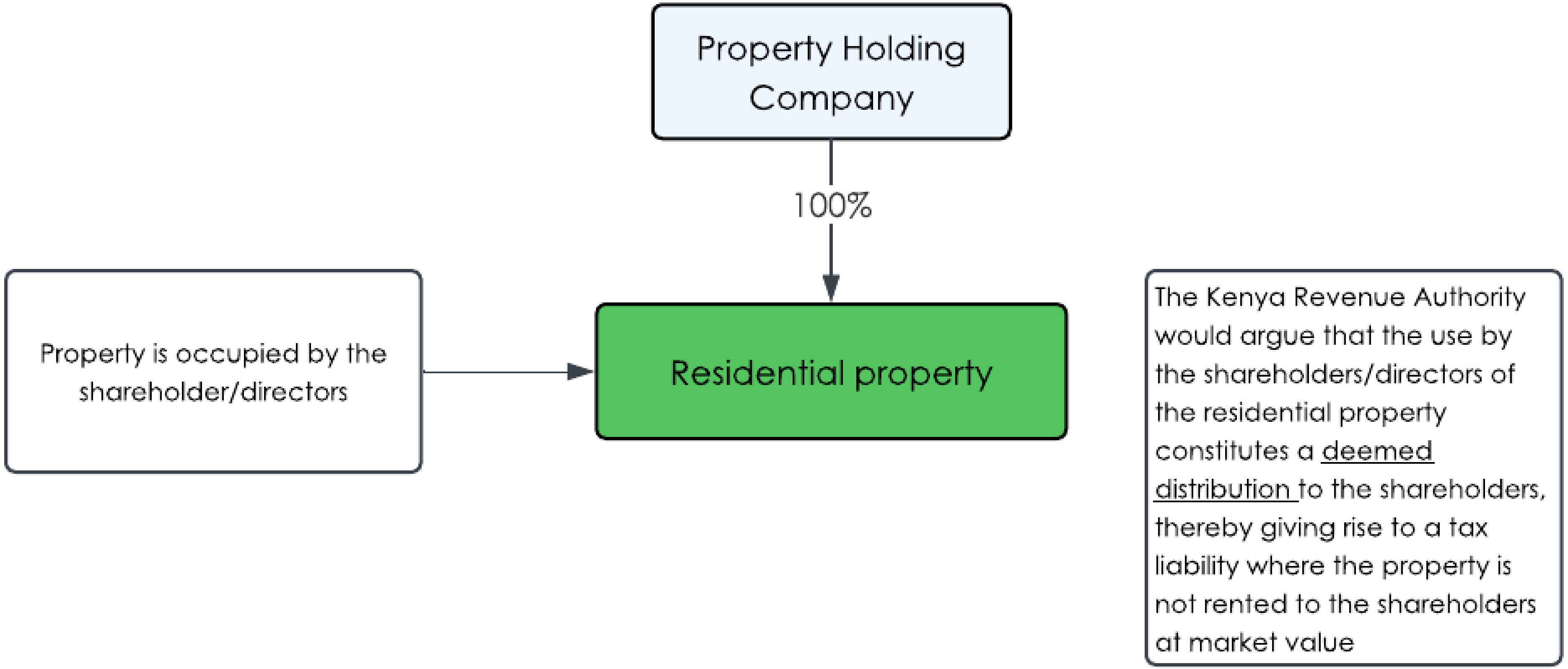
The Kenya Revenue Authority would argue that the use by the shareholders/directors of the company property for residential purposes constitutes a deemed distribution to the shareholders, thereby giving rise to a tax liability where the property is not rented to the shareholders at market value.

**Solution**

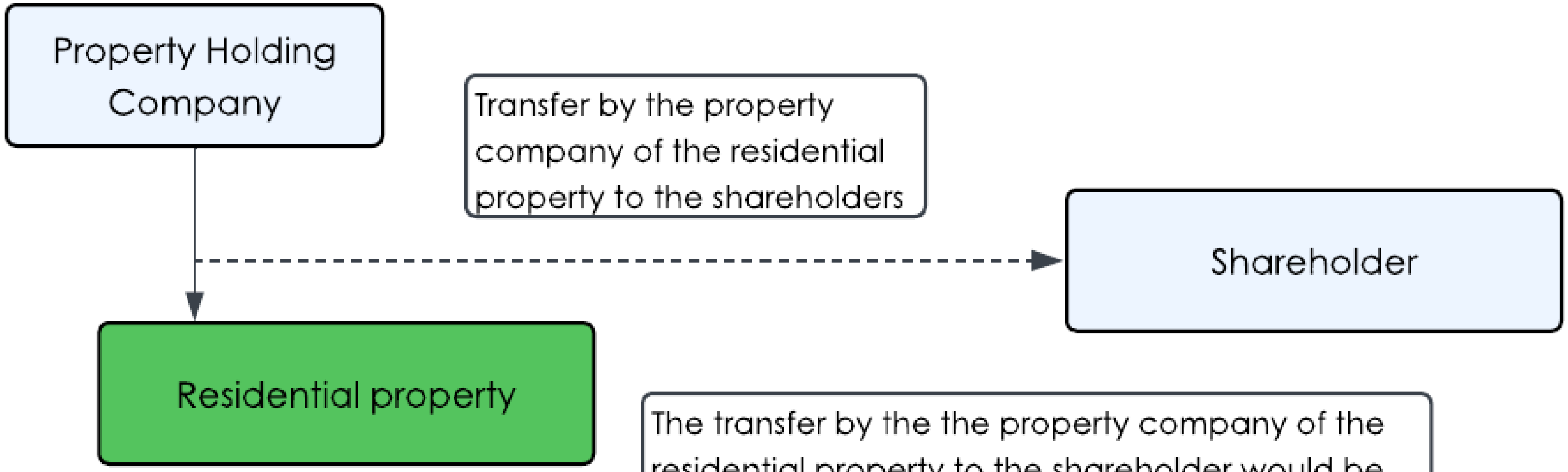
The Company should transfer the property to the shareholders on the basis that the transfer would be exempt from CGT and stamp duty as a transfer of property by a company to its shareholders as part of an internal reorganisation, provided that the property is transferred in proportion to the shareholders' existing shareholding.

Further no withholding tax would be applicable on the basis that the transfer is not considered to be a deemed distribution for income tax purposes.

# Current ownership



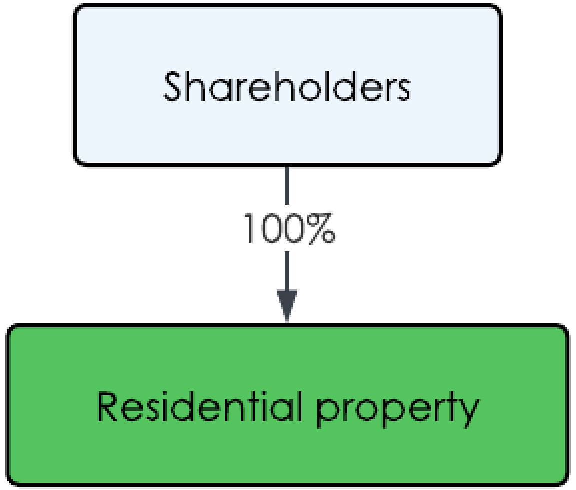
# Transfer by the Property Company of the residential property to the shareholder




The transfer by the the property company of the residential property to the shareholder would be exempt from CGT and stamp duty as a transfer of property by a company to its shareholders as part of an internal reorganisation, provided that the property is transferred in proportion to the shareholders' existing shareholding.

No withholding tax would be applicable on the basis that the transfer is not considered to be a deemed distribution for income tax purposes.

# Ultimate structure



# Our Locations

**Cape Town, South Africa**
**T:** +27 21 480 7800
**E:** info-cpt@bowmanslaw.com

**Dar es Salaam, Tanzania**
**T:** +255 76 898 8640
**E:** info-tz@bowmanslaw.com

**Durban, South Africa**
**T:** +27 31 109 1150
**E:** info-dbn@bowmanslaw.com

**Johannesburg, South Africa**
**T:** +27 11 669 9000
**E:** info-jhb@bowmanslaw.com

**Lusaka, Zambia**
**T:** +260 211 356 638
**E:** info-zb@bowmanslaw.com

**Moka, Mauritius**
**T:** +230 460 5959
**E:** info-ma@bowmanslaw.com

**Nairobi, Kenya**
**T:** +254 20 289 9000
**E:** info-ke@bowmanslaw.com

**Windhoek, Namibia**
**T:** +264 61 382 800
**E:** info-na@bowmanslaw.com

**Swakopmund, Namibia**
**T:** +264 64 406 320
**E:** info-na@bowmanslaw.com

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**www.bowmanslaw.com**

**Alliance Firms:**

**Aman & Partners LLP,**
**Addis Ababa, Ethiopia**
**T:** +251 11 470 2868
**E:** info@aaclo.com

**Udo Udoma & Belo-Osagie,**
**Lagos, Nigeria**
**T:** +234 1 277 4920-2, +234 1 271 9811-3
**E:** uubo@uubo.org

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