KPMG

HONG KONG TAX ALERT

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The Proposed Family Office Tax Exemption Regime in Hong Kong

Summary

The HKSAR Government has kicked off the formal consultation process on the proposed profits tax exemption for family office business in Hong Kong.

The objective of the tax exemption is to provide tax certainty to investment holding vehicles owned by ultra-high-net-worth individuals and their family members in order to attract family offices to be set up and operated in Hong Kong.

The new tax exemption is expected to apply from year of assessment 2022/23.

The HKSAR Government has just released a consultation paper on the proposed profits tax exemption for family-owned investment holding vehicles (FIHVs) managed by single family offices (SFOs) in Hong Kong.

Subject to certain conditions, an FIHV managed by an SFO in Hong Kong would be exempt from Hong Kong profits tax for its profits derived from certain qualifying transactions and incidental transactions (subject to the 5% trading receipts threshold). The tax exemption may also apply to family-owned special purpose entities (SPEs) set up by an FIHV. An election to enjoy the tax exemption is required and once made, the election is irrevocable.

The proposed tax exemption regime for FHIVs is modelling on the existing unified tax exemption for funds. The key features of the regime as outlined in the government's proposal are summarized below.

1. Key requirements for an FIHV

- the FIHV must be a corporation, partnership or trust set up in or outside Hong Kong with the central management and control (CMC) in Hong Kong;
- the FIHV must be exclusively and beneficially owned by one or more individuals who are "connected persons" of the same family (the Single Family). There is a broad definition of "connected persons" which covers multiple generation;
- the FIHV is allowed to set up SPEs to hold and administer the specified assets;
- the assets of the FIHV must be managed by an SFO in Hong Kong;

- the aggregate average value of assets under management for a family-owned structure (either a single FIHV or multiple FIHVs) should at least be HKD240 million; and
- the FIHV must only serve as an investment vehicle for holding and administering the assets of the Single Family and must not directly engage in activities for general commercial or industrial purposes.

2. Key requirements for an SFO

- the SFO must be a private company with CMC in Hong Kong;
- it must be exclusively and beneficially owned by the Single Family; and
- it must not provide investment management services to other FIHVs not owned by the Single Family.

3. Qualifying transactions of the FIHV

- although not discussed in detailed in the consultation paper, the scope of “qualified transactions” in specified assets is expected to be similar to that under the existing unified tax exemption for funds, which should be broad enough to cover the typical types of assets that family offices are investing in; and
- for investment in private companies that hold Hong Kong immovable property and short-term assets, the same tests that are currently applicable to funds will be applied to determine whether such investment qualifies for the tax exemption.

4. Substantial activities requirements

- the core income generating activities (CIGAs) in relation to the asset management must be performed in Hong Kong; and
- each FIHV or the SFO (if the FIHV outsources the CIGAs to the SFO) should employ at least two full-time qualifying employees in Hong Kong and incur at least HKD2 million operating expenditure in Hong Kong for carrying out the CIGAs.

5. Anti-avoidance provisions

- the number of FIHVs managed by the same SFO cannot exceed 50; and
- the modified anti-round tripping provisions are modelled on the existing ones applicable to funds, with two carve-outs i.e. for (1) Hong Kong resident individuals and (2) Hong Kong resident entities, subject to certain anti-abuse measures including there should not be any arrangement of shifting taxable income from the Single Family to an FIHV for obtaining a tax benefit.

KPMG observations

We welcome the HKSAR Government’s initiative of introducing a tax exemption regime for FIHVs in Hong Kong. It represents a positive step forward to further promote Hong Kong as an asset and wealth management hub in the region. KPMG has been actively providing our comments and suggestions to the government on the design and key features of the regime. We look forward to the timely implementation of the regime and provision of further guidance by the Hong Kong Inland Revenue Department on the practical interpretation and application of the regime.

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