KPMG

Hong Kong (SAR) Tax Alert

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The latest updates on developing family offices in Hong Kong

Summary

Recently, there have been a number of important developments related to family offices in Hong Kong SAR (Hong Kong), including (1) the amendments proposed by the government to the bill on the proposed tax concession regime for family-owned investment holding vehicles (FIHVs), (2) the introduction of a new Form IR1479 to be completed and filed by FIHVs electing to enjoy the proposed tax concession and (3) the government's policy statement on developing family office businesses in Hong Kong.

In this tax alert, we discuss these three important developments and share our observations.

The Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022[1] (the Bill) was gazetted on 9 December 2022 to introduce a concessionary tax regime for FIHVs managed by eligible single family offices (ESFOs) in Hong Kong[2], subject to fulfilment of various specified conditions. Since the gazettal of the Bill, a number of important developments have taken place.

Key amendments to the Bill

Having considered the submissions made by various parties (including that from KPMG), the HKSAR Government has proposed various amendments to the Bill (as Committee Stage Amendments)[3] to refine the proposed tax concession for FIHVs. The key proposed amendments are summarised below.

1. Replacing the "central management and control" requirement with the "normally managed or controlled" requirement

The Bill originally required the central management and control (CMC) of ESFOs and FIHVs be exercised in Hong Kong, with the CMC of FIHVs being required to be exercised in Hong Kong at all times during the basis period of a given year of assessment (YOA). The proposed amendments replace the CMC requirement for both ESFOs and FIHVs with "normally managed or controlled" in Hong Kong (the NMC requirement).

The proposed NMC requirement represents a lower threshold and provides certain flexibility to taxpayers, especially those wealthy families based outside Hong Kong, as it only requires the families to normally exercise either the management or control of their ESFOs and FIHVs in Hong Kong.

2. Relaxing the beneficial interest requirement for ESFOs and FIHVs

The Bill originally required that at least 95% of the beneficial interest of an ESFO and FIVH be directly or indirectly held by one or more members of the relevant family. The remaining 5% beneficial interest can be held by non-family members (including charitable organisations).

1 The Bill can be accessed via this link.
2 Please refer to our previous Hong Kong (SAR) Tax Alert issued in December 2022 in this link for a discussion of the Bill.
3 The Committee Stage Amendments proposed by the government can be accessed via this link.

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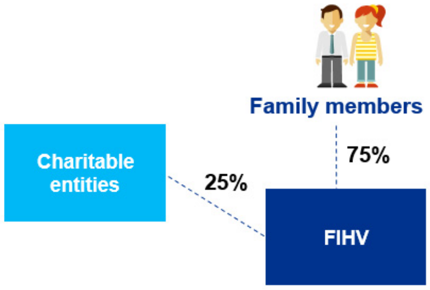
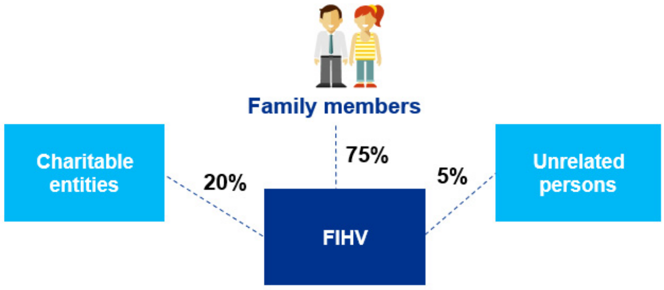
Under the proposed amendments, one or more charitable entities (i.e. entities which are exempt from tax under section 88 of the Inland Revenue Ordinance) can have beneficial interest in an ESFO and/or FIHV of up to 25% (i.e. at least 75% beneficial interest of the ESFO and FIHV has to be held by one or more family members). The maximum level of beneficial interest that can be held by non-family member(s) that is not a charitable entity (i.e. unrelated persons) remains to be 5%. We set out below two examples of holding structures that are allowed under the proposed revised beneficial interest requirements:

Holding structure 1



Holding structure 2



3. Dealing with complex holding structures involving multiple "specified trusts"

For complex holding structures involving multiple "specified trusts" or multiple layers of "specified trusts" where it is not possible to determine whether the 95% beneficial interest requirement for an ESFO and FIHV is met under other existing provisions of the Bill, provisions will be added to the Bill to provide flexibility for the Commissioner of Inland Revenue (CIR) to regard that the family member(s) have at least 95% of the beneficial interest in the ESFO / FIHV concerned, provided that the CIR is satisfied, after having regard to all the circumstances of the case (particularly the relationship between the entities in the holding structure), that it is highly probable that the family member(s) will have at least 95% of the beneficial interest in the ESFO / FIHV.

4. No tainting effect of non-qualifying transactions

Certain textual amendments to the Bill are proposed to clarify that, in case an FIHV or a family-owned special purpose entity (FSPE) has any transactions in specified securities of a private company that do not qualify for the tax exemption under the immovable property test / the holding period test / the control test / the short-term assets test, the FIHV and / or FSPE can continue to enjoy a tax exemption on its qualifying transactions (i.e. there is no tainting effect).

Form IR1479 – Tax concessions for family-owned investment holding vehicle

Starting from the year of assessment 2022/23, taxpayers (who are an FIHV) electing to enjoy the proposed tax concession are required to complete and file Form IR1479[4] electronically together with their profits tax return. Only high-level information about (1) the taxpayer, the ESFO and the FSPEs (if any), (2) the net asset value of Schedule 16C assets managed by the ESFO and (3) the fulfilment of the economic substance requirement is required to be reported in the form. In addition, taxpayers are only required to tick the appropriate boxes in the form or input the relevant numerical figures for most of the information requested.

However, Form IR1479 is required to be submitted together with a statutory declaration in paper form to confirm that a person is a member of the family concerned for a given year of assessment. The sample statutory declaration has not yet been made available on the IRD's website. It has yet to be seen whether each family member has to make a separate declaration and how much details about the family members are required to be disclosed in the declaration(s).

Separate profits tax returns should be filed by FSPEs (if applicable) and an election for the FSPEs to enjoy the proposed tax concession should be made in the returns filed by the FSPEs.

The government's policy statement on developing family office businesses in Hong Kong

The HKSAR Government issued a policy statement[5] on developing family office businesses in Hong Kong on 24 March 2023, the same day on which the "Wealth for Good in Hong Kong Summit" was held by the government. The statement set out the policy stance and measures on developing a vibrant ecosystem for global family offices and asset owners in Hong Kong. We highlight below some of the key policy measures mentioned in the statement:

[4] The form can be accessed via this link.
[5] The government's policy statement can be accessed via this link.

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- **The new Capital Investment Entrant Scheme** – While details of the scheme will be announced later, it is proposed that the permissible assets for the scheme will include various types of assets such as equities listed in Hong Kong, debts issued or fully guaranteed by companies listed in Hong Kong or by the government, subordinated debts issued by authorised institutions and eligible collective investment schemes. Besides assets denominated in Hong Kong dollar, assets denominated in RMB will also be considered.
- **Market facilitation measures** – The Securities and Futures Commission has recently issued a quick reference[6] guide about the licensing requirements for family offices and set up a dedicated communication channel for family office related enquiries. Furthermore, a set of more risk-based measures will be introduced to streamline the intermediaries' suitability assessment and disclosure process for sophisticated or ultra-high-net worth individual clients.
- **Talent development services** – The government will fund the setup of a new Hong Kong Academy for Wealth Legacy. The Academy will offer talent development services to industry practitioners and next-generation wealth owners, with a view to cultivating a deep talent pool for the family office sector in Hong Kong.
- **Expansion of the role of the dedicated family office team of InvestHK** – The dedicated family office team will expand its role to also cover services like facilitating philanthropic endeavors of wealth owners and assisting in education related matters in order to step up efforts in facilitating global family offices to set up and expand in Hong Kong.
- **Tax concession measures** – In addition to the implementation of the proposed tax concession for family office businesses, the Government will also further review the existing preferential tax regimes for funds and carried interest.

KPMG observations

We welcome the various amendments to the Bill proposed by the government. The proposed amendments reflect the government's commitment to making the proposed tax concession for FIHVs more practical and business friendly based on the feedback received from the industry and tax profession[7] and developing Hong Kong into a family office / asset and wealth management hub.

For other issues surrounding the practical interpretation and application of the proposed tax concession (e.g. the administration of the safe harbour rule for ESFOs, the minimum asset thresholds and the substantial activities requirement, etc.), it is expected that the IRD will issue a Departmental Interpretation and Practice Note to provide more guidance and illustrative examples after the enactment of the tax concessionary regime.

The policy statement demonstrates the government's determination to develop Hong Kong into a leading global family office hub, which would further enhance Hong Kong's position as a world-class financial and business centre. Wealthy families and family offices wishing to set up or expand their wealth management activities in Hong Kong should stay tuned of any further developments on the proposed tax concession and other government measures related to developing the family office businesses in Hong Kong.

[6] The reference guide can be accessed via this link.

[7] Please refer to this link for the government's responses to submissions on the Bill from deputations, including KPMG's submission.

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