



By email (bc_06_18@legco.gov.hk) and by hand

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Clerk to Bills Committee on
Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sir,

[Inland Revenue \(Profits Tax Exemption for Funds\) \(Amendment\) Bill 2018](#)

The Hong Kong Institute of Certified Public Accountants would like to thank the Bills Committee on Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 ("the Bill") for inviting the Institute's comments on the Bill. The Institute's Taxation Faculty has reviewed the Bill and welcomes the introduction of the key features in the Bill. Overall the new comprehensive exemption represents a significant step forward and should contribute to the Government's long stated objective of further developing the asset and wealth management industry in Hong Kong.

Removal of the tainting provisions that have applied to the previous iterations of the fund exemptions is a big step forward; and the Bill should encourage fund organizations to bring more of their key investment management activities onshore without running the risk of not being able to rely on the exemption for all investments as a result of inadvertently making one non-qualifying investment.

Another welcoming move in the Bill is to combine separate exemptions for non-resident persons (including offshore funds) and an exemption for open-ended Fund Companies ("OFCs") incorporated in Hong Kong. The existing non-resident person's exemption remains in place for persons other than funds would potentially address the concern of the wider wealth management industry from the earlier proposal of repealing the existing exemption for non-resident persons.

While overall, the new exemption is a significant step forward, there are a number of issues that should be addressed to ensure that funds can obtain sufficient comfort to place reliance on the new exemption:

1. Fund level – definition of "fund"

According to Section 20AM of the Bill, a fund, apart from the other features, is defined to mean an arrangement in respect of any property under which the "participating persons" do not have day-to-day control over the management of the property. It is not entirely clear whether this definition could encompass a fund in the form of a limited partnership (which is typical for a private equity fund). This is because the general partner of a limited partnership generally should be responsible for the ultimate management, control and decision-making in relation to the limited partnership, in which the general partner may also hold an interest (e.g. 1%) in the limited partnership, and hence it would disqualify a limited partnership from meeting the definition of a fund if the meaning of a fund is to be taken too literally.



In view of the above, we would appreciate it if the Government can provide better clarity on the interpretation of a fund in this regard.

2. Status of listed security investments held by an special purpose entity of a fund

If a private equity fund makes a range of listed and non-listed investments and uses special purpose entity ("SPE") to hold those investments, the SPE exemption would appear not to apply to the listed investments. This is because the SPE can only hold and administer investments in private companies. However, the listed securities should be exempted if they are held directly by the fund, but legal and other non-tax considerations would often preclude this.

There does not appear to be any clear policy reason why listed investments or other non-corporate investments (e.g., partnership, trusts) should not be covered by the SPE exemption. We trust that the Government should consider amending the Bill to reflect this as opposed to addressing the issue through guidance.

3. Asset holding period requirement

Both the Fund exemption and SPE exemption are subject to carve-outs in relation to investments held for less than two years. For any such investments, the exemption does not apply where the fund or SPE has control over a portfolio company and that company has (directly or indirectly) "short term assets", the value of which exceeds 50% of the value of that company's total assets.

The definition of short term assets is quite broad and could inadvertently capture a portfolio company of a fund with trading stock or other trading assets that represent more than 50% of the total value of that portfolio company regardless as to the location of that business or those assets. It is unclear what arrangements these provisions are trying to address, but at a minimum it should be limited to portfolio companies with assets in Hong Kong but not global assets.

4. Exemption for pension plans or other single investor investment vehicles

The Bill specifically mentions that Sovereign Wealth Funds can qualify as "funds" for the purposes of the new exemption. However, it is less clear on the status of pension plans or other single investor investment vehicles. It appears that the intention is that the exemption should cover these types of investment vehicles, but further clarification on this aspect would be helpful.

Should you have any questions on this submission, please contact the undersigned at 2287 7075 or ericchiang@hki CPA.org.hk.

Yours faithfully,

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