The Hong Kong Institute of Chartered Secretaries

Submission:

Proposals to Remove Ring-Fencing Features
from the Tax Regime for Funds

The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會
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Financial Services Branch
Financial Services and the Treasury Bureau
Government of the Hong Kong SAR
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Attn: Miss Renita Au

Dear Sirs

Re: Proposals to Remove Ring-Fencing Features from the Tax Regime for Funds

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. HKICS is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

HKICS's Overall Support

We refer to the consultation paper (CP) of the Financial Services and the Treasury Bureau of 4 April 2018 on Proposals to Remove Ring-Fencing Features from the Tax Regime for Funds. HKICS supports the CP proposals to address the international community's concern as to ring-fencing while minimising disruption to the fund industry and avoiding driving away offshore funds already operative in Hong Kong. We believe that CP proposals will also reduce the risk of Hong Kong being listed as a non-cooperative jurisdiction by the European Union ("EU") on tax transparency, fair taxation and implementation of anti-Base Erosion and Profit Sharing standards. However, we believe that there is scope to consider retaining the current tax exemption for all non-residents, including individuals, companies and trusts, and not only funds for maintaining the competitiveness of Hong Kong's position as an international financial centre.

Support for CP Proposals

As to the CP proposals, based on Member views, HKICS submits that:

- A fund as against non-resident persons (i.e. an offshore fund) should enjoy profits tax exemption, with the definition of funds being based on the definition of collective investment scheme under Schedule 1 of the Securities and Futures Ordinance (SFO) to remove the ringfencing concern and to level the playing field. HKICS has no issue with the need to engage a specified person or to have the fund as a qualifying fund to enjoy tax exemption, nor the extension of the profit exemption to all types of fund sizes. We believe that the proposals under CP paragraphs 7 to 9 are appropriate.

  However, based on Member views, the current tax exemption to non-residents individuals, companies and trusts, and not only funds who trade in securities and other types of routine financial products should be retained. There is benefit to Hong Kong managers and brokers who manage their assets and removal of the tax exemption could have major implications for the asset management and wealth management industries in Hong Kong.

- We note that the proposal is that a fund should be taxed on its profits from (a) direct trading or direct business undertaking in Hong Kong in relation to the non-eligible assets, (b) utilisation of non-eligible assets with a view to generating income in Hong Kong, and (c) investment in private companies that cannot meet the requirements in accordance with CP paragraph 12. We also note that there should be no tainting, i.e. the tax-exempt profits of the fund will not be tainted even if profits tax has to be paid under (a), (b) and/or (c) as set out under CP paragraphs 10 to 13.

  Again, based on Member views the proposals will lead to a more restrictive tax position for non-residents individuals, companies and trusts, and in the interest of promoting Hong Kong as an international financial centre we submit that the current tax exemptions should be retained.

- We have in principle no issue with anti-tax avoidance measures in accordance with the current anti-round tripping provisions or deeming provisions based on direct and indirect holding by resident persons and their associates in 30% of the fund as proposed under CP paragraph 14.

- We have an issue with an express provision that the performance fees and carried interest received by investment managers of the funds in the course of a trade or business carried on in Hong Kong being chargeable to profits tax in accordance with CP paragraph 15. The taxability of carried interest is an issue that the Private Equity industry has always been strongly against as it may drive asset managers away from doing business in Hong Kong if carried interest is to be taxed in Hong Kong.

- There should be extension of the tax exemptions to onshore privately offered open-ended fund companies (OFCs) as referred to under CP paragraph 16 as the OFC is an alternative investment structure to the fund. In fact, the Bill to extend the tax exemption to cover onshore privately offered OFC has been gazetted and for which we have expressed our support already.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at 2881 6177 or research@hkics.org.hk.

Yours faithfully,

David Fu

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President
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