

The Hong Kong Institute of Chartered Secretaries

Submission:

Inland Revenue (Profits Tax Exemption for Funds)

(Amendment) Bill 2018

9 January 2019

By Email Only: bc_06_18@legco.gov.hk

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 Sirs

The Legislative Council of the Hong Kong Special Administrative Region – Bills Committee on Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 (the "Bill")

About HKICS

The Hong Kong Institute of Chartered Secretaries ("HKICS") is an independent professional institute representing Chartered Secretaries and Chartered Governance Professionals 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 Supports the Bill

HKICS supports the passage of the Bill. Specifically, as identified in the LegCo Brief relating to the passage of the Bill, the asset and wealth management ("WAM") is a fast-growing sector within the financial services industry with total assets under management ("AUM") estimated at US\$3.1 trillion as at 31 December 2017.

For the development of Hong Kong's position as a leading international financial centre, our Institute has consistently subscribed to legislative initiatives to enhance Hong Kong's funds to be established under different structures to broaden the distribution network for fund products. But above all, our Institute has supported, and in fact called for, the development of a favourable tax environment for funds which we submit is critical for Hong Kong's fund industry, including relating to increasing the AUM under the WAM industry for Hong Kong (as favourable tax treatment is a key factor influencing the choice of jurisdiction for fund domiciliation and management).

We agree that as onshore privately offered funds cannot enjoy profits tax exemption as with their offshore counterparts, this is not conducive to the further development of Hong Kong's WAM industry. As such, and consistent with the Base Erosion and Profit Shifting ("BEPS") standard of the Organisation for Economic Co-operation and Development, the Council of the European Union ("EU"), we support:

- Removal of ring-fencing at the fund level. We support the proposal under the Bill that all funds, regardless of their structure, their CMC location, their size or the purpose that they serve, to enjoy profits tax exemption subject to meeting the conditions set out under the Bill.
- Removal of ring-fencing at the investment level. That an entity that meets the definition of "fund" and fulfills the specified person or qualifying fund requirement as outlined under the Bill should be able to enjoy profits tax exemption on its profits generated from the following transactions: (a) transactions in qualifying assets ("qualifying transactions"); (b) transactions incidental to the carrying out of qualifying transactions ("incidental transactions"), subject to a 5% limit; and (c) if the fund is an OFC, transactions in non-qualifying assets ("non-qualifying transactions").

We do not specifically comment on the anti-tax avoidance measures which is best left for submission by WAM industry professionals.

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,

A handwritten signature in black ink, appearing to read "David Fu". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Fu FCIS FCS(PE)

President

The Hong Kong Institute of Chartered Secretaries