CHARTERED SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Inland Revenue (Amendment) (No. 4) Bill 2017

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Clerk to Bills Committee on Inland Revenue (Amendment) (No. 4) Bill 2017
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Sirs

Inland Revenue (Amendment) (No. 4) Bill 2017 (the Bill)

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 (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

HKICS supports OFC

HKICS has supported the development of the Open-ended Fund Companies (OFC) structure which contributes to Hong Kong's international reputation as a leading financial centre by providing an alternative to the unit trust structure for a collective investment scheme. In this connection, HKICS as a governance institute had made a submission to the Financial Services Branch of the Financial Services and the Treasury Bureau (FSTB) in relation to the consultation paper on legislative proposal to introduce a new open-ended fund company (OFC) structure in December 2015 focusing on the governance aspects under the OFC structure, along with calls on the Administration to expand the tax exemptions to facilitate the OFC structure in Hong Kong which is now being proposed by the Inland Revenue Department (IRD) under the Bill.

Support for the Bill

We support and agree with the Administration's position explained under the Legislative Council Brief to the Bill that 'when the OFC regime comes into operation, publicly offered OFCs (whether their CMC is exercised in or outside Hong Kong) and offshore OFCs (whether publicly or privately offered) will be exempted from profits tax, while onshore privately offered OFCs cannot enjoy the same exemption. Given such disparity in tax treatment, most privately offered funds would prefer staying offshore rather than domiciling in Hong Kong using the new OFC regime. Therefore, we need to remove this disincentive for fund domiciliation and management in Hong Kong by amending the Inland Revenue Ordinance (Cap. 112) ("the Ordinance") to extend profits tax exemption to onshore privately offered OFCs.'

We also agree to the four conditions set out in the Legislative Council Brief to the Bill, but ask the IRD to consider the practice of our major competitors, like Singapore as to Condition 1, in determining the residency requirements, which have recently been tightened from Member feedback in comparison to our major competitors. Specifically, we agree with:

Condition 1: The OFC must be a Hong Kong resident person

Condition 2: The OFC must be "non-closely held"

Condition 3: The OFC must invest in permissible asset classes specified

Condition 4: Transactions of the OFC must be carried out through or arranged by a qualified person

Additional Observation

In presenting the 2017/18 Budget, Mr Paul Chan, Financial Secretary of the HKSAR, announced that he would shortly consult the industry on a legislative proposal to extend the profits tax exemption to onshore privately-offered open-ended fund companies (OFCs), which are incorporated under the Securities and Futures Ordinance (SFO). This has now been materialised under the Bill.

However, there are other resident fund entities, such as resident unit trusts, would not be covered by the extension. In the interest of promoting its asset and fund management industry, Hong Kong should enact a new tax exemption legislation to cover all types of resident privately-offered funds, i.e., regardless of whether they are OFCs incorporated under the SFO. This is because a key to the success of the OFC initiative is the tax incentives to investors. In the interim, this does not derogate our support for the Bill as a step in the right direction.

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,

Ivan Tam FCIS FCS
President
The Hong Kong Institute of Chartered Secretaries