

**Inland Revenue (Amendment) (No. 4) Bill 2017**  
**Debate and voting arrangements**

**Object of the Bill :** To amend the Inland Revenue Ordinance (Cap. 112) to extend profits tax exemption to certain open-ended fund companies (“*OFCs*”)<sup>1</sup> the central management and control of which is exercised in Hong Kong; and to provide for related matters.

<b>First debate</b>	<b>: Clauses with no amendment</b>	<b>– Clauses 1, 2, 3 and 5</b>
<b>Voting</b>	: To vote on the above clauses standing part of the Bill	
<b>Second debate</b>	<b>: Clauses with amendments proposed by Secretary for Financial Services and the Treasury (“SFST”)</b>	<b>– Clauses 4 and 6</b>
Joint debate on the original clauses and the amendments thereto.		
<b>Debate theme: Arrangements for profits tax exemption to certain open-ended fund companies</b>		
<b>Clause 4</b>		
– The proposed section 20AH(1) and (2) in clause 4 of the Bill allows certain OFCs to invest in non-Schedule 16A classes of assets (“ <i>non-Schedule 16A classes</i> ” i.e. non-permissible asset classes) with profits tax exemption in respect of its profits subject to a 10% de minimis limit (i.e. a maximum of 10% of the total gross asset value of an OFC). As the definition of “ <i>securities</i> ” in Schedule 16A to the Bill includes shares or debentures of overseas private companies but not those of private companies within the meaning of section 11 of the Companies Ordinance (Cap. 622), under the proposed tax regime, certain OFCs may invest in securities of overseas private companies (i.e. within the permissible asset classes) without a limit, but is subject to a limit of 10% of its gross asset value in respect of its investments in securities of local private companies (i.e. non-permissible asset classes) under the 10% de minimis rule.		
As the above tax treatment may be considered as harmful ring-fencing by the international community and may give rise to tax leakage, the Administration proposes the following amendments:		
(1) to amend the proposed section 20AH, including:		
(i) deleting subsection (2)(c) on a condition that needs to be met for exemption from the payment of tax in respect of assessable profits of OFCs as follows: An OFC whose (a) trade, profession or business carried on in Hong Kong does not involve transactions in assets of a non-Schedule 16A class, or (b) trade, profession or business carried on in Hong Kong involves transactions in assets of a non-Schedule 16A class but does not exceed 10% of the total gross asset value of the fund;		

<sup>1</sup> According to the Legislative Council Brief on the Bill, an OFC is a collective investment scheme with variable capital set up in the form of a company, but with the flexibility to create and cancel shares for investors’ subscription and redemption in the funds, which is currently not enjoyed by conventional companies. Also, OFCs will not be bound by restrictions on distribution out of capital applicable to conventional companies, and instead may distribute out of capital subject to solvency and disclosure requirements.

- (ii) adding subsection (1)(c) which provides that, certain OFCs, if the conditions set out in subsection (2) have been met, are exempt from the payment of tax in respect of its assessable profits from transactions in assets of a non-Schedule 16A class if the activities that produce assessable profits from the transactions are carried out in Hong Kong by or through a qualified person, or are arranged in Hong Kong by a qualified person;
  - (iii) adding subsections (4A), (4B) and (4C), which specify the various scenarios under which an OFC is not exempt from the payment of profits tax in respect of its assessable profits; and
  - (iv) adding the meanings of “*control*” , “*private company*” and “*short-term asset*” in subsection (9); and
- (2) to make amendments to the proposed sections 20AG, 20AJ and 20AL consequential to the proposed changes to section 20AH.

Besides, as the definition of “*qualified investor*” in the proposed section 20AI(6) may not be sufficient to cover sovereign wealth funds (as they may not always be governmental entities), the Administration adds paragraph (g) to the definition of “*qualified investor*” stipulating that a “*qualified investor*” in relation to an OFC may mean an investment arrangement, which is commonly known as a sovereign wealth fund, established and funded by a state or government (or any political subdivision or local authority of a state or government) for the purposes of carrying out financial activities, and holding and managing a pool of assets, for the benefit of the state or government (or the political subdivision or local authority).

#### **Clause 6**

- To amend the proposed schedule 16A in clause 6 of the Bill by adding item 1A which stipulates that the classes of assets specified for the purposes of section 20AH include shares of, or debentures issued by, a private company within the meaning of section 11 of the Companies Ordinance to ensure that investments in both local and overseas private companies of OFCs will be considered as qualified investments.

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**Voting** : To vote on the above amendments together, and then vote on the original clauses or the clauses as amended standing part of the Bill

#### **SFST’s amendments**

(set out in LC Paper No. CB(3) 420/17-18 issued on 14 March 2018)

Council Business Division 3  
Legislative Council Secretariat  
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