



Room 1302, 13/F Winsome House
73 Wyndham Street, Central, Hong Kong
+852 2526 0211
info@aima.org

aima.org

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

Sent via email (bc_06_18@legco.gov.hk)

11 January 2019

Dear Sirs

Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018

The Alternative Investment Management Association (AIMA)¹ welcomes the invitation made by the Bills Committee to provide submissions on the measures set out in the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 (the Bill) in connection with the removal of ring-fencing features under the existing tax regimes for privately offered offshore funds and offshore private equity (PE) funds.

AIMA has argued for some years for measures such as the introduction of onshore open-ended fund companies and reform of the profits tax exemption for funds. We welcome the measures in the Bill and believe that these, once enacted, will contribute to the development of modern regulatory and tax regimes for Hong Kong as both a fund domicile and a fund management location and to the success of Hong Kong as a financial centre.

We support the action to eliminate ring-fencing measures by providing a tax exemption to privately offered funds regardless of fund structure or their location of central management and control ("CMC") and by removing the distinction between investment in Hong Kong and non-Hong Kong unlisted equities. We welcome the removal of the "cliff edge" operation of the tax exemption. However, there remain features (which apply also to the various other exemption regimes applicable to funds) which we consider should be relaxed.

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US\$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 80 members that manage US\$500 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

Some key concerns remain which arise from the framework set out in the Bill:

- It appears that the definition of “collective investment scheme” would not apply to certain types of institutional investor which may be regarded as equivalent to funds. These would include pension funds, whether as direct investors or when investing through “fund of one” structures;
- Employee co-investment arrangements are not unusual and should not be excluded as funds;
- The restriction of the exemption to special purpose entities investing in securities of private companies excludes such entities used to hold interests in listed securities (e.g., where these are ringfenced for the purposes of finance arrangements) or where the securities become listed after they are acquired;
- The provisions excluding business undertakings are broadly worded and may leave unclear the position of funds investing in assets such as commodities, distressed debt or alternative credit;
- The treatment of interest as income from incidental transactions is anomalous, inconsistent with the approach taken in other jurisdictions, and prejudices the management of bond and credit funds from Hong Kong;
- The provisions relating to investments in private companies holding or not holding real estate in Hong Kong (sections 20AP and 20AQ) require identification of short term assets held by the investee company. This may be impractical in many cases, and we believe this requirement to be of limited relevance to the exemption;
- We consider that losses incurred in respect of incidental transactions should be available to offset or carry forward against taxable income from such transactions; and
- The Bill appears to be drafted with corporate funds in mind. Its application to funds (and their investors) which are partnerships, unit trust schemes or contractual arrangements in nature should be clarified.

We would also like to offer the following observations:

- In the case of some asset classes, a manager is not required to be licensed in Hong Kong and so will not be a “specified person” for the purposes of s.20AN(3) and therefore the exemption will not be available unless the fund is a “qualified investment fund”; and
- The definition of “qualified investment fund” is appropriate to PE and other closed-ended funds but it is not clear how it should apply to open-ended funds (which have no “final closing of sale of interests”).

We would be pleased to provide further explanation or to meet to discuss our concerns.

Yours faithfully,



Kher Sheng Lee
Managing Director
Co-Head of APAC
Deputy Global Head of Government Affairs