

## Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022

### Debate and voting arrangements

**Object of the Bill :** To amend the Inland Revenue Ordinance (Cap. 112) (“IRO”) to give profits tax concessions to certain family-owned investment holding vehicles (“FIHVs”) and related entities, and to provide for related matters.

**Joint debate : Clauses with no amendment and clauses with amendments by the Secretary for Financial Services and the Treasury (“SFST”) — Clauses 1 to 7**

Joint debate on the original clauses and the amendments.

#### **SFST’s amendments**

Amending the conditions relating to the ownership of eligible single family offices (“ESF Offices”) and FIHVs<sup>1</sup>

#### **Clauses 4 and 7**

*Charitable institutions or trusts (“charitable entities”)*

- To amend sections 1(4), 2 and 5 of the proposed new Schedule 16E to IRO to the effect that **a charitable entity** of a public character that is exempt from tax under section 88 of IRO, subject to certain conditions,<sup>2</sup> **may have up to 25% of beneficial interest (whether direct or indirect)** in an ESF Office and/or an FIHV, so as to cater for families’ philanthropic purposes.

*Specified trusts*

- To amend section 8 of the proposed new Schedule 16E and to add the proposed new Schedule 16FA to IRO to provide that, for holding structures involving one or more than one “specified trust” and it is not possible to rely on the deeming provisions<sup>3</sup> under section 8 of the proposed new Schedule 16E to IRO, **a family member(s) will be taken to have fulfilled the 95% beneficial interest requirement for the ESF Office or FIHV concerned provided that the Commissioner of Inland Revenue is satisfied, after having regard to all the circumstances of the case particularly the relationship between the entities in the structure, that it is highly probable that one or more than one family member will have at least 95%, in aggregate, of the beneficial interest in the ESF Office or FIHV.**

<sup>1</sup> Pursuant to section 5 of the proposed new Schedule 16E to IRO, FIHV is proposed to mean an entity (whether established or created in or outside Hong Kong) in which **one or more than one member of a family has at least 95%, in aggregate, of the beneficial interest (whether direct or indirect)** at all times during the basis period for a year of assessment, and is not a business undertaking for general commercial or industry purposes as mentioned in section 20AM(6) of IRO.

<sup>2</sup> The conditions include: (a) at least 75% of the beneficial interest of the ESF Office and/or FIHV must be held by family members; and (b) the percentage of beneficial interest that an unrelated person has in the ESF Office and/or FIHV, or if there is more than one unrelated person, the total percentage of such beneficial interest, does not exceed 5%.

<sup>3</sup> Section 8 of the proposed new Schedule 16E to IRO provides that, if the aggregate percentage in value of the relevant estate of a “specified trust” is at least 95%, members of the family concerned who are “qualified beneficiaries” of the trust, and those other family members who are entitled to benefit from the trust estate, are taken to have at least 95%, in aggregate, of the beneficial interest (whether direct or indirect) in the “specified trust”.

Amending the requirements relating to the management and control of ESF Office and FIHV

**Clause 7**

- The Bill provides that, to enjoy the proposed tax concessions, the central management and control of an ESF Office and FIHV must be exercised in Hong Kong at all times during the basis period for a year of assessment (“CMC requirement”). The amendments seek to amend sections 2(1), 9(2) and 9(4) of the proposed Schedule 16E to IRO to replace the CMC requirement with provisions that ESF Offices and FIHVs are required **to be normally managed or controlled in Hong Kong**, to provide more flexibility for families to exercise either the management or control of their ESF Offices or FIHVs in Hong Kong having regard to their operations. This will facilitate more FIHVs (including those established outside Hong Kong) fulfilling the conditions specified under the Bill to enjoy the profits tax exemption.

Providing that the qualifying transactions of an FIHV or family-owned special purpose entity (“FSPE”) will not be affected by the non-qualifying transactions of FIHV or FSPE in a private company

**Clause 7**

- To propose drafting amendments to sections 12, 13, 17 and 18 in the proposed Schedule 16E to IRO to the effect that the tests concerned under sections 12, 13, 17 and 18 in the proposed Schedule 16E to IRO will only target the non-qualifying transaction(s) in a particular private company, but not other tax-exempt qualifying transaction(s) of an FIHV or FSPE.

Technical and drafting amendments

**Clauses 6 and 7**

- To propose technical and drafting amendments to the above clauses.

<b>Voting order</b>	: 1. Clauses with no amendment (i.e. clauses 1 to 3 and 5) standing part of the Bill 2. SFST’s amendments (to amend clauses 4, 6 and 7) 3. Clauses 4, 6 and 7 with or without amendments standing part of the Bill
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**SFST’s amendments**

(set out in LC Paper No. CB(3)305/2023(01) issued on 26 April 2023)

Council Business Division 3  
Legislative Council Secretariat  
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