FINANCIAL SERVICES

INDUSTRY NEWS

PRIVATE EQUITIES

Profits Tax Exemption for Offshore Funds Extended to Private Equity Funds

The Government published in the Gazette on 17 July 2015 the Inland Revenue (Amendment) (No.2) Ordinance 2015, which seeks to extend profits tax exemption for offshore funds to private equity (PE) funds. This is a move to invigorate PE activities in the territory.

With the implementation of the Amendment Ordinance, transactions conducted by offshore PE funds in respect of securities of eligible overseas portfolio companies will be able to enjoy profits tax exemption.

Under the Amendment Ordinance, to qualify for profits tax exemption,

1. offshore PE funds must carry out specified transactions through corporations licensed by the Securities and Futures Commission, or
2. they must fulfill the following conditions:
   a) they have more than four investors;
   b) the capital commitment made by investors must exceed 90 percent of aggregate capital commitments; and
   c) the portion of net proceeds arising from the fund's transactions to be received by the originator must not exceed 30 percent.

To prevent abuse by local companies by simply converting their taxable profits to non-taxable income via an offshore fund structure, an eligible portfolio company should be an overseas incorporated private company, and it must not hold any Hong Kong properties or carry out any business in Hong Kong within a stipulated time limit. Moreover, the existing deeming provisions, which provide that a resident person holding a beneficial interest of 30 percent or more in a tax-exempt PE fund will be deemed to have derived assessable profits in respect of profits earned by the fund in Hong Kong, will equally apply to offshore PE funds.

Source: http://www.ird.gov.hk

ASSET MANAGEMENT

A New Fund Company Structure to be Introduced – Open-ended Fund Company

On 15 January 2016, the Government gazetted proposed amendments to the Securities and Futures Ordinance to allow for the establishment of open-ended fund companies (OFCs) for both public and private funds. Key features of an OFC include being:

- structured in corporate form with limited liability and variable capital;
- required to (a) be registered with the Securities and Futures Commission (SFC); (b) delegate its investment management functions to an investment manager licensed by or registered with the SFC to carry out asset management regulated activity (Type 9 licence); (c) entrust its assets to a separate, independent custodian for safekeeping; (d) limit its investments in accordance with the SFC's product code requirements and authorisation conditions (for public OFCs) or to the scope of Type 9 regulated activity with a 10 percent de-minimis exemption for other asset classes (for private OFCs);
- permitted to be created as an umbrella fund with a protected cell structure.

For tax matters, among others, the profits tax exemption given to public funds and offshore funds would apply to public OFCs and offshore private OFCs with its central management and control located outside Hong Kong. Moreover, transactions relating to sale or purchase of a share or unit of an authorized open-ended collective investment scheme under specified conditions would be exempt from stamp duty.

The Bill will provide an extra fund structure option (currently, an open-ended investment fund may be established as a unit trust, but not as a corporate due to restrictions on capital reduction under the Companies Ordinance) and create a more flexible business environment for fund managers, which in turn will diversify Hong Kong's fund domiciliation platform and be conducive to its further development as an international asset management centre. The Bill will be subject to further scrutiny of the Legislative Council of Hong Kong in April and May 2016 before enacting into an Ordinance.

Source: http://www.legco.gov.hk

TREASURY

To Develop Hong Kong as a Corporate Treasury Hub

In the 2015-16 Budget, the Financial Secretary announced that the Government planned to amend the Inland Revenue Ordinance to adjust the existing interest deduction rules to allow a corporate borrower, carrying on in Hong Kong an intra-group financing business, deduction from its assessable profits of interest payable on money borrowed from a non-Hong Kong associated corporation under specified conditions.

In addition, to encourage corporates to set up their treasury centres in Hong Kong, the Government will offer a concessionary profits tax rate under the Inland Revenue Ordinance for qualifying corporate treasury centres (CTCs), such that the tax rate for qualifying CTCs will be 50 percent of the prevailing profits tax rate for corporations.

According to market estimates, more than 100 multinational corporations have established CTCs in Hong Kong, with varying scope and size of treasury functions. With these proposed tax incentives, the Government is hoping to compete more effectively for companies looking to establish CTCs in the region.

Enhancing Hong Kong's global competitiveness in attracting corporate treasury activities will help strengthen Hong Kong's position as a major platform for Mainland enterprises to go global and for multinational corporations to manage liquidity for operations on the Mainland and in the region. If more CTCs are established in Hong Kong, this will contribute to the development of the headquarters economy and the Belt and Road initiative by facilitating multinational or Mainland corporations to raise funds and manage financial resources and risks through Hong Kong.

Source: http://www.legco.gov.hk

PAYMENT

Payment Systems and Stored Value Facilities Ordinance

The regulatory regime for retail payment systems and stored value facilities (PSSVF) under the Payment Systems and Stored Value Facilities Ordinance came into force on 13 November 2015.

The law empowers the Hong Kong Monetary Authority (HKMA) to implement a mandatory licensing system for multi-purpose stored value facilities and to perform relevant supervision and enforcement functions. The deadline for obtaining a licence from the HKMA for existing issuers is 13 November 2016. From this date, it will be illegal for any issuers to issue or operate stored value facilities without a licence, unless exempted. The HKMA will exercise supervisory or enforcement action to ensure the issuers' fitness and propriety, appropriate protection of the users' stored float and the facilities' reliable operation, amongst others.

The HKMA is also empowered to designate and oversee important retail payment systems and will determine whether or not a retail payment system should be designated to ensure operators are safe, sound and efficient under prudential regulation.

The new regulatory regime for PSSVF will strengthen the public's confidence in the use of these products and services; foster the development and innovation of fintech products; and start levelling the playing field on risk management, licensing, anti-money laundering and other conduct controls.

Source: http://www.hkma.gov.hk

CONTACT US

If you would like to know more about how InvestHK's Financial Services team can help you to set up or expand your business in Hong Kong, please get in touch. Our services are free, confidential and tailored to your needs.

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