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2020 Asia Pacific Investment Management Tax Conference

Webinar 1: Macro Trends and Asia Pacific Country Tax Updates

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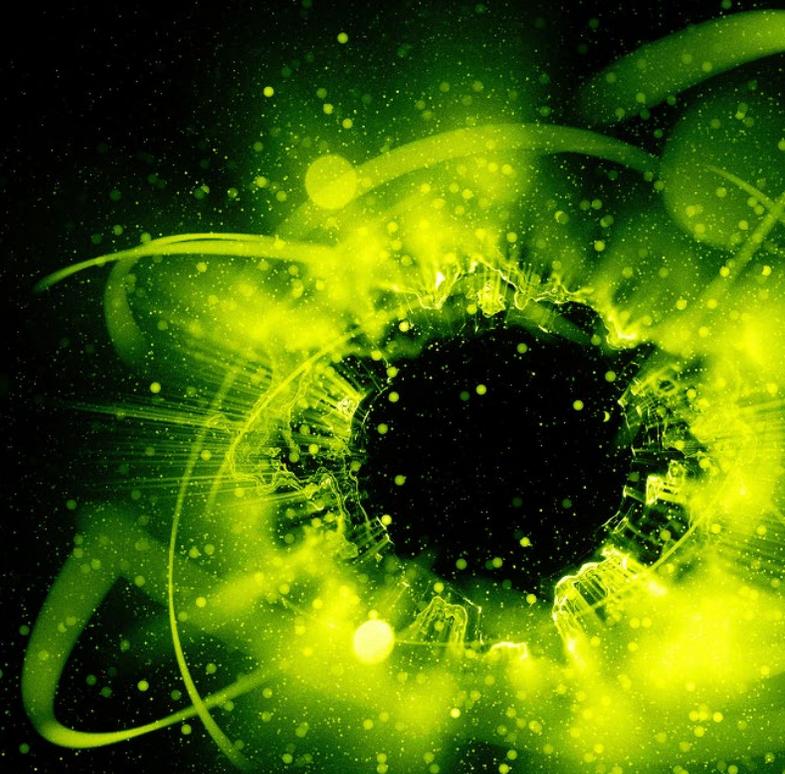
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Today's agenda

- 1 Macro overview**
- 2 Investment management: themes and trends in Asia Pacific taxation**
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 - Hong Kong
 - Singapore
 - China
 - Taiwan
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- 4 Interview with James Maylam, Schrodgers**
- 5 Q&A**



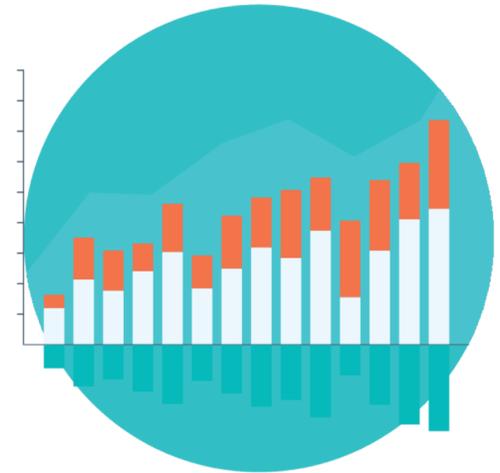
Macro overview



Macro overview

Asia Pacific: Trends Impacting Investment Management

- Trends and developments in Asia Pacific impacting capital inflows and outflows:
 - Countries opening up to foreign investors (e.g. China investment management, Taiwan renewable energy).
 - China is the second largest asset management market after the United States.
 - More significant outbound investments are being made by Asia Pacific investors with substantial capital (e.g. sovereign wealth funds, family offices, Australian superannuation funds).
- Private equity investors are very active in Asia Pacific. A large amount of “dry power” is yet to be deployed.
- Distressed debt opportunities may not emerge until 2021 (given current COVID-19 Government support measures).
- Asia Pacific’s management of COVID-19 is helping the speed of transition into the recovery phase.
- Tax authority review activity has increased (e.g. Global Information Reporting).
- Global tax rules (including “Base Erosion and Profit Shifting” and economic substance) and non-tax factors:
 - Impact on traditional Cayman structures.
 - Increasing “onshorisation” of funds (including new funds structures in Singapore and Hong Kong).



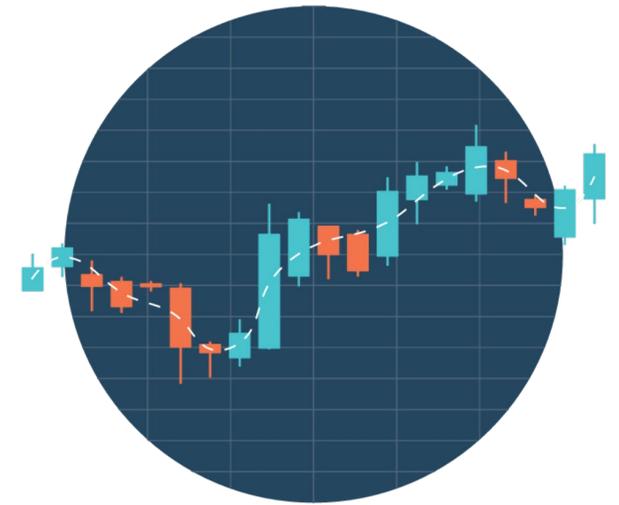


Investment management: themes and trends in Asia Pacific taxation

Asia Pacific Investment Management

Trends and Themes in Taxation

- Investment management activity continues to increase in Asia Pacific. For instance, at the end of 2019:
 - Singapore has 895 registered and licensed fund managers. Total assets under management (AUM) reached US\$2.9 trillion and of that alternatives sector grew to US\$721 billion.
 - In Hong Kong, there are 1808 licensed asset managers. The AUM of the asset and wealth management business in Hong Kong was US\$3.69 trillion.
- The growth of the investment management sector remains a focus in many locations, with developments (both tax and non-tax) designed to grow activity and AUM. For instance:
 - Foreign equity ownership liberalisation in Mainland China: in April 2020, the previous restriction of no-more-than-51% of foreign equity in Public Fund Management Companies was removed.
 - There is a focus on sustainable investment and green finance. In Singapore, the Monetary Authority of Singapore (MAS) will place US\$2 billion with asset managers under the Green Investments Programme that was announced in 2019.
- A notable development has been the launch of new fund vehicles in Hong Kong (e.g., Limited Partnership (LPL) and Singapore (i.e., the Variable Capital Company (VCC)). When coupled with developments such as the Economic Substance Law and Private Fund Law in the Cayman Islands, there are both *push* and *pull* factors driving an onshorisation of fund management and certain fund vehicles.
- A growth in family offices is also observed; this is consistent with the broader growth of wealth management in Asia Pacific. For instance, there are now an estimated 200 family offices in Singapore managing around US\$20 billion in assets. The section 13R/X resident fund schemes have underpinned this growth.



Asia Pacific Investment Management Trends and Themes in Taxation (cont.)

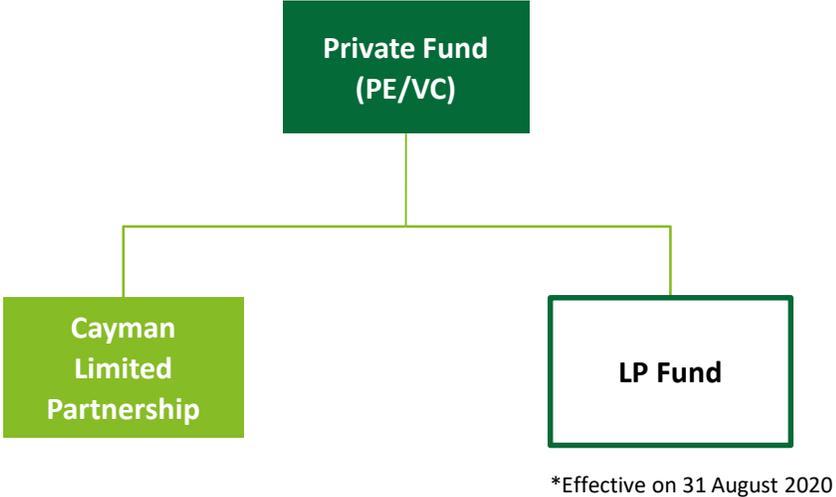
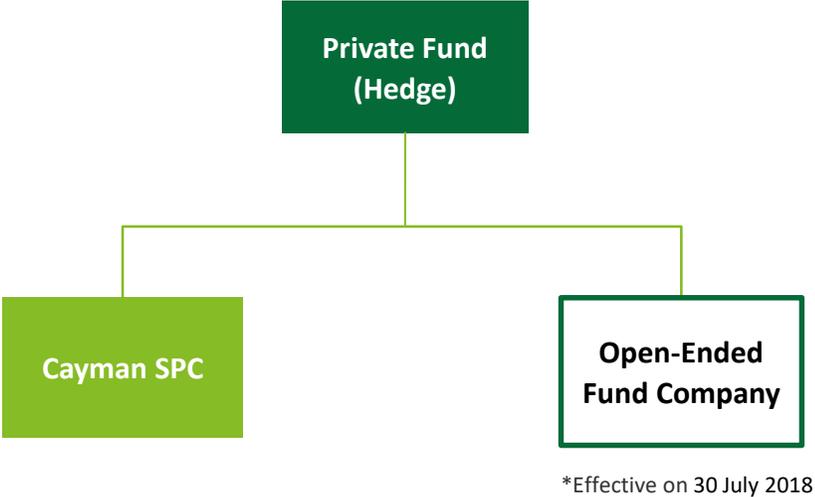
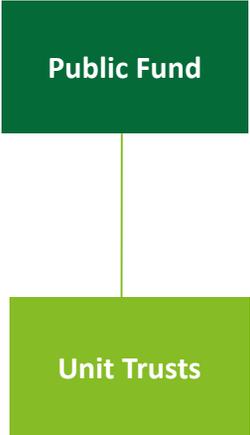
- Tax reform continues. The Omnibus Tax Law in Indonesia awaits signature by the President. The changes therein include a dividend tax exemption (if certain conditions are met). At a product level, the changes may encourage investment into local mutual funds. Relevant developments are seen in the recent Australian budget and earlier budgets such as India. The 2021 Tax Law Reform in Japan is pending.
- Tax authorities continue to focus on the investment management sector. For instance, tax audit activity is re-commencing in Australia. Common Reporting Standard (CRS) reviews and audits have commenced in locations such as Australia, New Zealand, and Singapore as participating locations act to meet their OECD peer review obligations.
- The impact of COVID-19 has been a focus of tax authorities in the region, especially tax residence and permanent establishments. Issues such as the impact of COVID-19 on transfer pricing outcomes have more recently come into focus for both taxpayers and their regulators (e.g. Singapore).
- In short, both investment management and the tax environment in the region are dynamic.





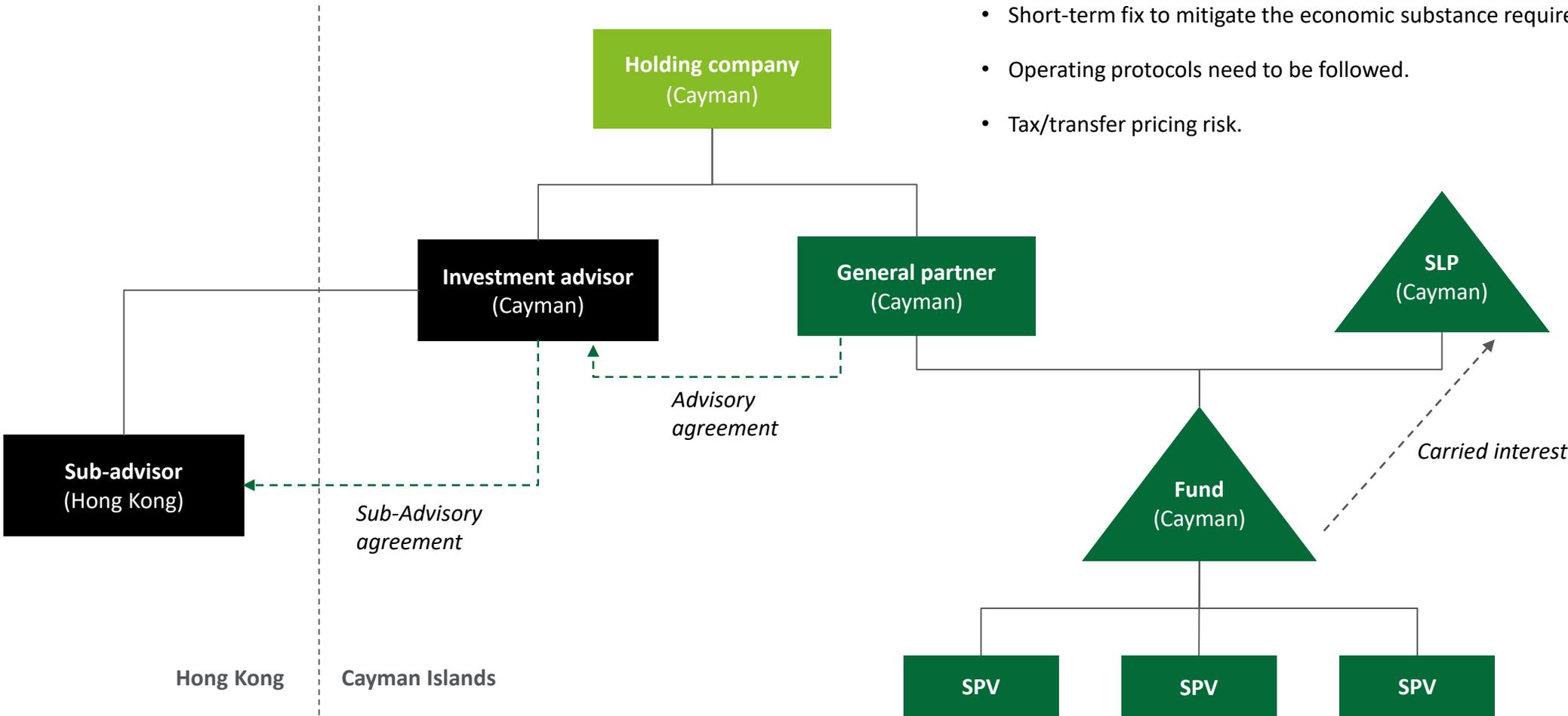
Hong Kong

Hong Kong Local Market Overview



Hong Kong

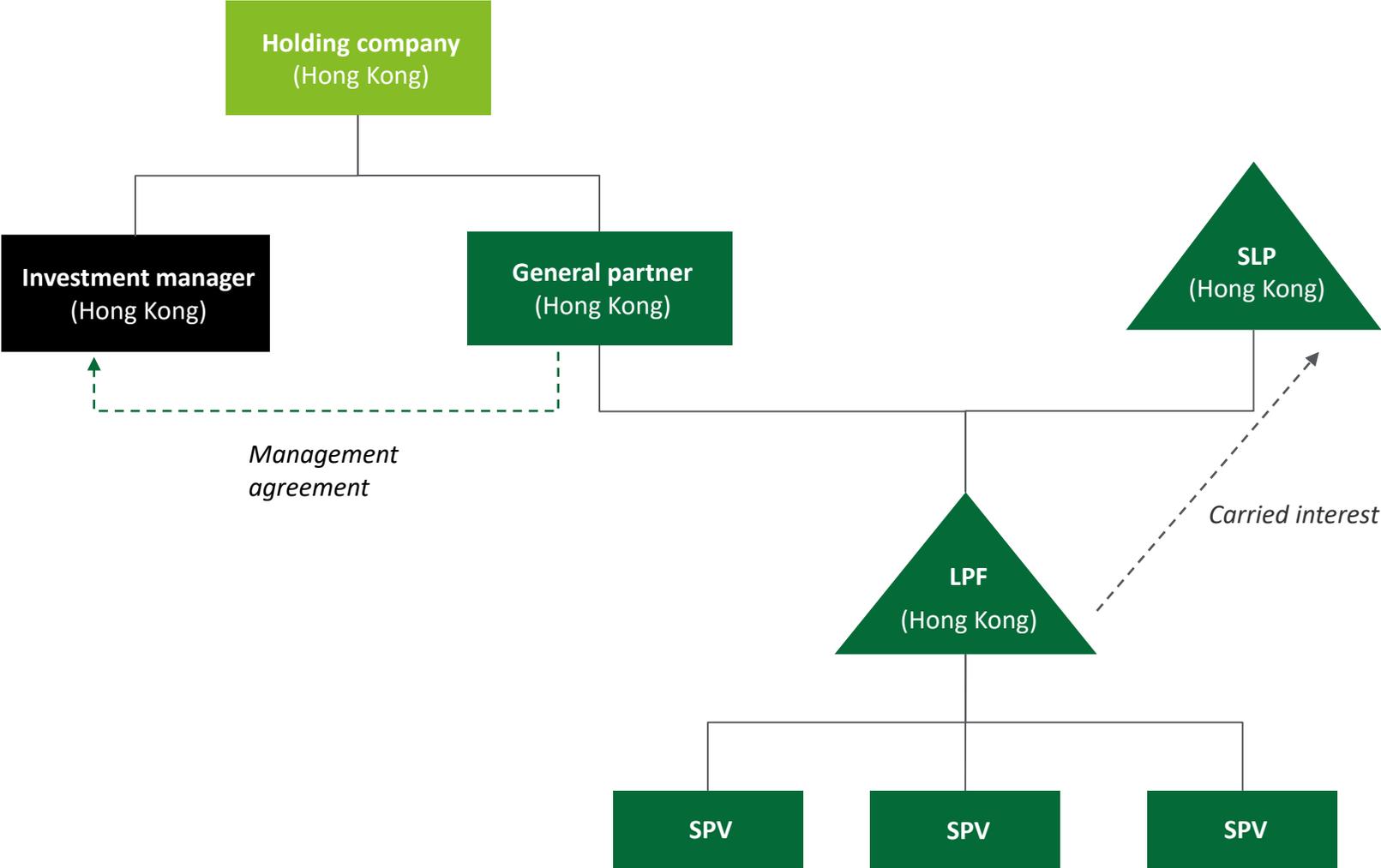
Typical Cayman PE/VC Structure



- Short-term fix to mitigate the economic substance requirement.
- Operating protocols need to be followed.
- Tax/transfer pricing risk.

Hong Kong

Hong Kong “domiciled” PE/VC Fund Structure



- Medium to long term solution.
- Align the domicile of fund with commercial substance under the international tax and regulatory environment (BEPS, economic substance law).
- LPF exempted from tax under the “Unified Fund Exemption” regime.
- Hong Kong tax implications on management fee and carried interest.

Hong Kong

Limited Partnership Fund (LPF) Regime: Key Features

- The Hong Kong SAR Government has passed the LPF Bill on 9 July 2020 and the new Limited Partnership Fund Ordinance (LPFO) has come into operation on 31 August 2020.
- The Regime gives market players flexibility in structuring the fund vehicle and operations. More importantly, aligning the domicile of fund with commercial substance under the international tax and regulatory environment.

Key Features of the Regime

- Not a legal person itself.
- Has to be registered with the Registrar of Companies and has an obligation to file an annual return.
- At least two partners (including one general partner (GP) and one limited partner (LP)).
- Constituted by a LP agreement, i.e., the partners have freedom to contract in respect of the LPF's key operation.
- Appoint a local auditor to carry out audit of the LPF's financial statements according to the Hong Kong Financial Reporting Standards.
- Maintain proper custody arrangements for its assets and record keeping.
- No capital duty on capital contributed by partners.
- No stamp duty on the contribution/transfer/withdrawal of LPF interests.
- The LPF regime currently does not cater for inward re-domiciliation of funds.

Hong Kong

Limited Partnership Fund (LPF) Regime: key features (cont.)

Key features of the proposed regime

- Qualifying carried interest would be taxed at a “highly competitive rate.” However, the consultation paper does not clarify whether this rate would be a tax exemption (i.e. a 0% rate) or some other reduced tax rate.
- It is expected that the proposed tax concession would apply retrospectively from the year of assessment commencing on 1 April 2020.

Eligible funds

- The concession would only apply to carried interest distributed by a “fund” as defined in the Unified Fund Exemption Regime under Inland Revenue Ordinance (IRO), which is similar to the definition of “collective investment scheme” in the Securities and Futures Ordinance (SFO).
- The Hong Kong Monetary Authority would have to pre-“validate” the fund as being eligible for the tax concession.

Definition of carried interest

- Carried interest should be a “profit-related return” which meets the following three criteria:
 - i. It arises only if the validated fund is making profits;
 - ii. It varies by reference to the profits; and
 - iii. The return to external investors is also determined by reference to the same profits.
- Tax concessions only apply to carried interest distributed out of tax-exempted qualifying transactions in PE investments.

Eligible recipients

- Persons who provide investment management services to a validated fund in Hong Kong or arrange for such services to be carried out in Hong Kong would be eligible for the tax concession.
- Substantial activities requirements.

Singapore



Singapore

VCC: Tax Framework

VCC

- Open-ended, protected cell company.
- Available for use from 14 January 2020.
- Grants available from the MAS to defray set-up costs.
- As at the end of October 2020, more than 150 VCCs have been incorporated with the Accounting and Corporate Regulatory Authority.
- Tax framework published on 28 August 2020: first detailed explanation of how it will be taxed at the umbrella and sub-fund levels.

Tax residence

- Will be determined on general principles, at the umbrella level. Residence of all sub-funds will follow the umbrella level.
- Certificates of residence to be issued in name of VCC, and will state the sub-funds in respect of which the certificate is made available.

Income tax

- The Income Tax Act will apply to a VCC at the umbrella level (i.e. as a single entity, irrespective of how many sub-funds it has).
- Tax exemptions (13H, 13R, and 13X); applicable at the umbrella level; satisfaction of economic conditions with reference to all sub-funds together.
- Tax computation: tax computed individually for each sub-fund and then aggregated for filing purposes.
 - Capital allowances, losses, and donations cannot be shared between sub-funds. Foreign tax credits: at sub-fund level.
 - Partial tax exemption, start-up tax exemption, and corporate tax rebate: one single claim, at the umbrella level.
 - 13Z: satisfaction of conditions at sub-fund level (no aggregation of holdings).



Singapore

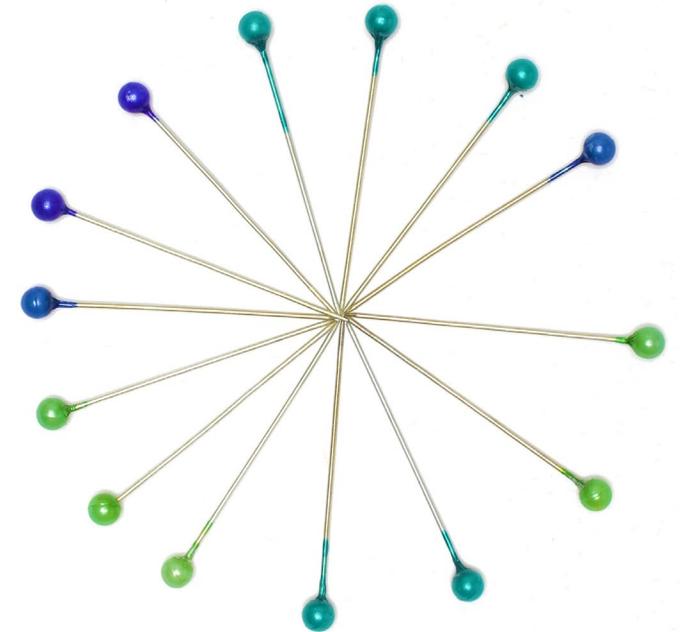
VCC: Tax Framework (cont.)

Goods and services tax (GST)

- Liability to register and account for GST applies individually to sub-funds.
- Sub-funds of an exempt VCC able claim remission of input tax at an annual fixed rate in the normal manner.

Stamp duty

- Sub-funds will be treated as separate persons for stamp duty purposes. Stamp duty will only be imposed at the VCC-level if the VCC has no sub-funds.
- A transfer between two sub-funds of the same VCC will be subject to duty in the same manner as a transfer between two companies.
- Anti-avoidance rule requiring (stampable) notification to the Comptroller where an umbrella VCC effects an acquisition or a disposal with or between its sub-funds in a manner that is not evidenced or signified by an instrument.
- One issue not specifically addressed in the e-Tax Guide is how stamp duty relief could be made available to a VCC and/or its sub-funds pursuant to the Associated Permitted Entity Rules and the Reconstruction Rules.



Singapore

Transfer Pricing

COVID-19

The Inland Revenue Authority of Singapore (IRAS) has noted that taxpayers affected by COVID-19 should provide the following information in their transfer pricing documentation to substantiate the impact of COVID-19 on profitability and transfer pricing outcomes:

- A broad analysis of how your industry has been affected by COVID-19 and the direct impact of COVID-19 on your company.
- Documentation of the functional analysis of your company and the related parties and which entity within the group made decisions relating to management of risks relating to COVID-19. This information will help to indicate which entities are in control of the decisions and thus should bear the related risks.
- The functional analysis of your company and the related parties before and after COVID-19 (i.e. any re-allocation of functions, assets and risks, as well as any recharacterisation).
- The contractual arrangements between the company and its related parties, and highlight whether any obligations or material terms and conditions have been varied, amended or terminated in light of COVID-19.
- A comparison of the budgeted (pre-COVID 19) and actual results of the profit and loss analysis of the company, providing explanation and evidence to support the variances.
- Reasons and supporting evidence to justify how your company's profitability has been negatively impacted by COVID-19.
- Details relating to COVID-19 specific government assistance that the company has received or government regulations imposed on the company which has an impact on its operations.

Interest free loans

In a dialogue session with Singapore Chartered Tax Professionals Limited (SCTP), the IRAS noted that it expected transfer pricing documentation requirements to be satisfied with respect to the use of interest free loans in relevant cases, on the basis that such instruments are de facto not arm's length. In relevant cases, whilst there may not be any basis for transfer pricing adjustments (because of administrative concessions or because of how Singapore's charge to income tax works) penalties could be applicable.

Singapore

Digital Tokens

IRAS Guidance

- e-Tax Guide on income tax treatment of digital tokens issued:
 - Provides guidance on the income tax treatment of transactions involving digital tokens;
 - Types of digital tokens within e-Tax Guide are payment tokens, utility tokens and security tokens.
- Points that warrant further consideration by the IRAS and the MAS include:
 - The potential for inclusion of virtual currencies (along with other categories of crypto-assets) within the definition of Designated Investments for purposes of the fund exemptions (viz. under sections 13CA, 13R, 13X and 13Y of the Income Tax Act), to help ensure that the exemptions remain technology agnostic and take account of distributed ledger technology developments and evolving investment strategies; and
 - The benefits of further guidance from the IRAS concerning the tax treatment of staking activities and decentralised finance (DeFi), particularly given, respectively: the potential for stakeholder confusion due to current guidance being principally relevant to proof of work; and the regional proliferation of platforms through which alternative debt finance is being made available through DeFi applications.



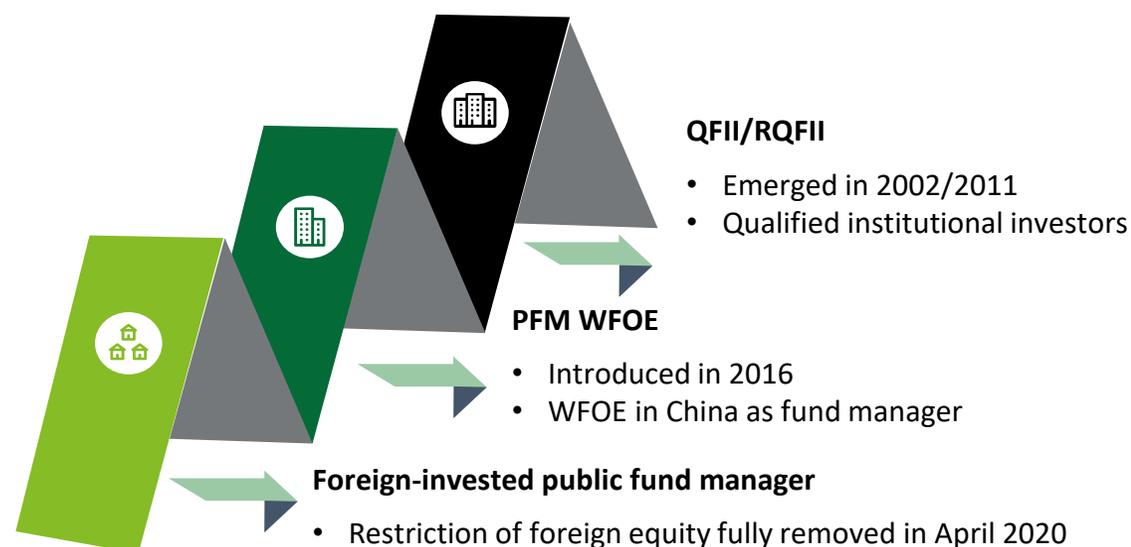
China



Introduction

Investment into China Capital Market

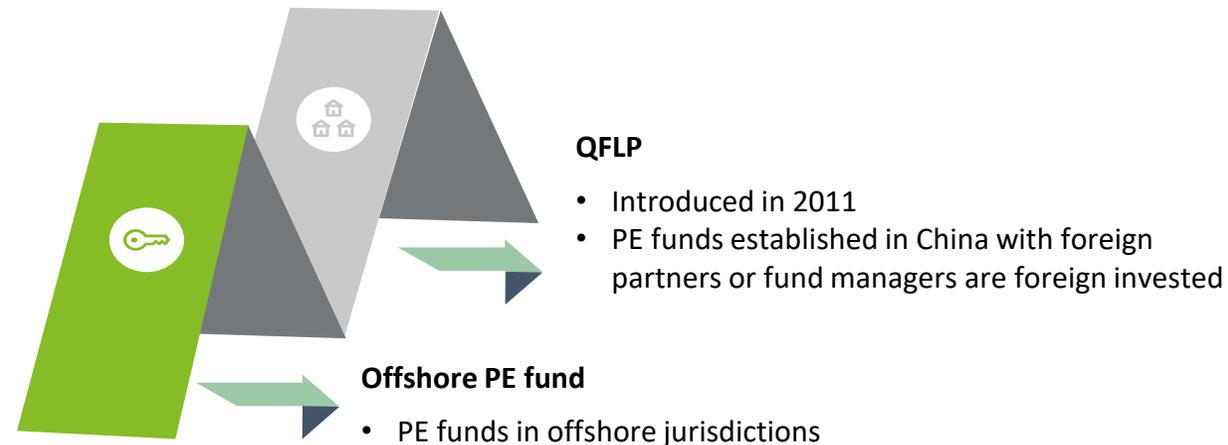
- The Qualified Foreign Institutional Investors (QFII) and RMB QFII mechanisms were introduced in 2002 and 2011 to allow foreign investors to invest into the Chinese capital market. As at the end of 2019, there were 316 QFII and 247 RQFII license holders respectively. Recent QFII/RQFII Reforms offer a more competitive regime for foreign investors.
- From 2016, foreign fund managers were permitted to set up Private Fund Manager Wholly Foreign Owned Enterprises (PFM WFOEs) in China on a pilot basis. By October 2020, there have been more than 30 PFM WFOEs setups.
- Since April 2020, the previous restriction of no-more-than-51% of foreign equity in Public Fund Management Companies was removed, which means foreign investors would be allowed to set up a PFM WFOE to raise mutual funds locally in China.
- New Asset Management Licenses by the Chinese Banking and Insurance Regulatory Commission (CBIRC)—foreign-majority joint venture wealth management company with subsidiaries of Chinese commercial banks/insurance companies; and foreign invested pension fund management companies.



Introduction

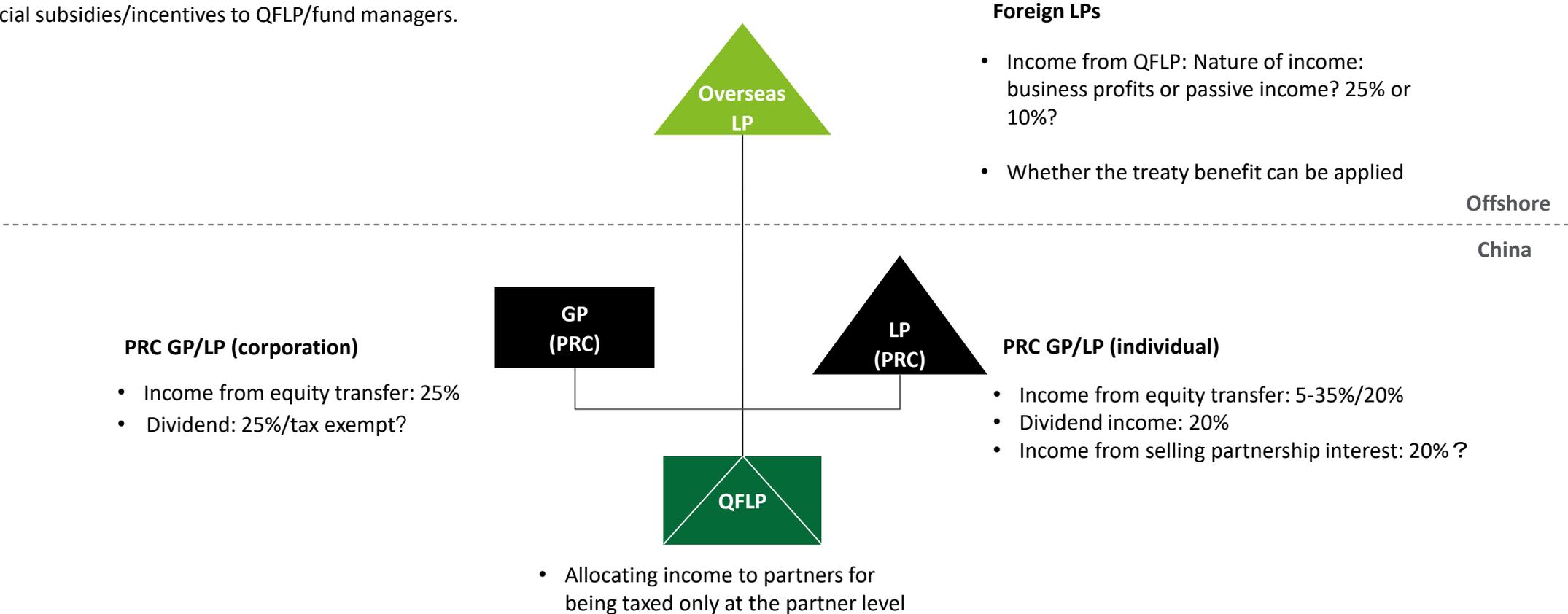
Developments—PE Investments

- Offshore PE funds has been a mainstream vehicle to attract foreign investors for PE investment into China, including those Chinese companies which set up offshore structures to seek public offerings in the offshore markets (the so-called “red-chip companies”).
- Qualified Foreign Limited Partners (QFLPs) are Chinese Domestic PE funds with foreign investors. China started to launch the QFLP regime from 2011 on pilot cities such as Beijing and Shanghai where foreign investors could participate in domestic private companies through domestic established PE funds. There have been also attempts by other cities recently including Great Bay Area (Shenzhen/Shuhai/Guangzhou). Hainan Free Trade Zone just announced its QFLP rule. All cities provided various supports and incentives to attract QFLP set up.



QFLP—Tax Considerations

- For a locally established partnership, income is generally not taxed at the partnership level but rather in the hands of the partners themselves.
- Tax uncertainties on the foreign partners.
- Local financial subsidies/incentives to QFLP/fund managers.



Comparison of Foreign Investment Regimes

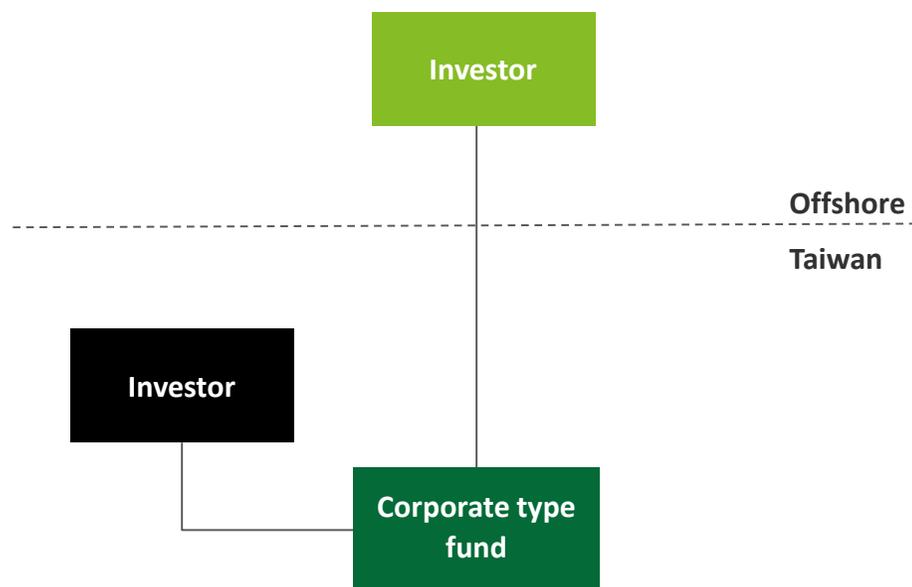
QFII and RQFII	Onshore funds managed by PFM WFOE	Onshore funds managed by foreign-invested public fund manager		QFLP	Offshore PE funds
Foreign fund managers with QFII/RQFII licenses	Local incorporated fund managers with foreign shareholder(s)	Local incorporated fund managers with foreign shareholder(s)	 Fund manager	Locally incorporated fund managers with foreign shareholder(s)	Foreign fund managers
Funds raised offshore	Funds raised onshore	Funds raised onshore	 Source of funds	Fund raised onshore and offshore	Fund raised offshore
Foreign investors	Domestic investors/QFII and RQFII* *Note: QFII and RQFII are allowed to invest in such funds according to new QFII/RQFII rule	Domestic investors/QFII and RQFII	 Investors	Foreign/domestic investors	Foreign/domestic investors
Stocks and bonds listed and traded in the relevant exchanges in China, bonds traded at China Inter-Bank Bond Market (CIBM), etc.	Stocks and bonds listed and traded in the relevant exchanges in China, bonds traded at CIBM, etc.	Stocks and bonds listed and traded in the relevant exchanges in China, bonds traded at CIBM, derivatives, futures, etc.	 Investment target	Private Chinese companies	Private Chinese companies or red-chip companies
N/A	Shanghai, Shenzhen, Tianjin	N/A	 Pilot city	Beijing, Shanghai, Shenzhen, Zhuhai, Guangzhou etc. Hainan is just launching QFLP	N/A

Taiwan



Taiwan—Domestic Fund

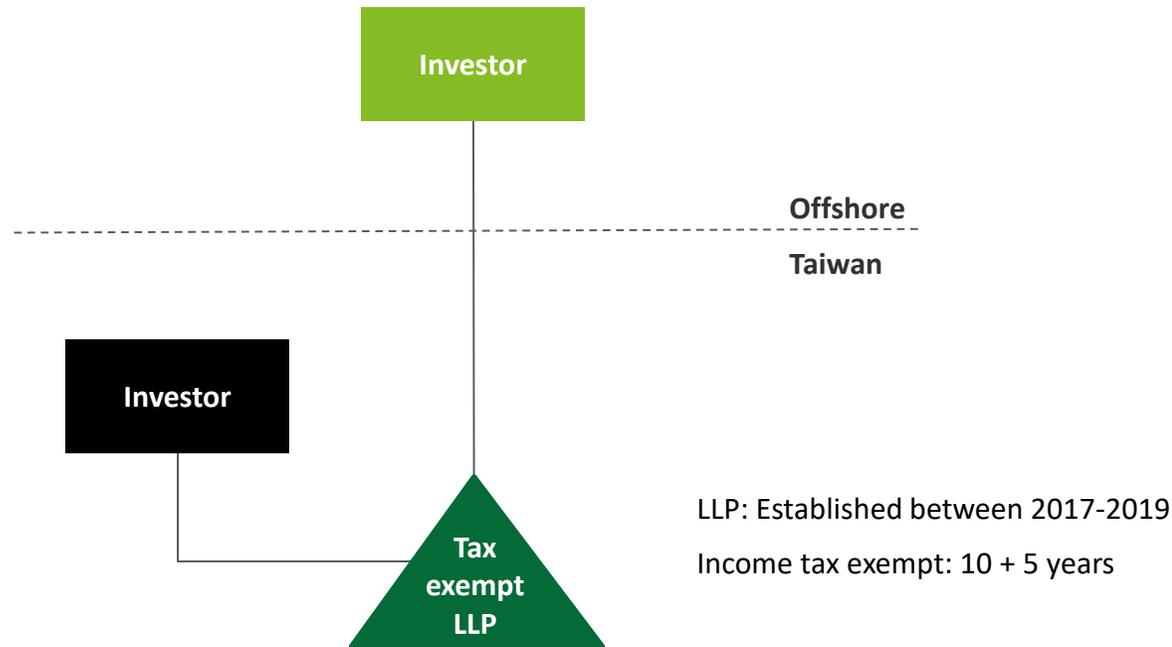
Corporate Type Fund



Income	Corporate type fund	Investor's tax (onshore/offshore)
Capital gain	<ol style="list-style-type: none"> 12% alternative minimum tax (AMT) (or 6% if the fund holds the investment for more than three years) STT on transfer price (0.3%) 	<ol style="list-style-type: none"> Dividend income: <ul style="list-style-type: none"> Onshore individuals: 28% Onshore corporate investor: tax exempt Offshore investor: 21% (or tax treaty rate)
Dividend	Income tax exempt	<ol style="list-style-type: none"> Capital gain: <ul style="list-style-type: none"> Onshore individuals: tax exempt, may start to impose AMT at 20% in 2021 Onshore corporate investor: 12% AMT (or 6% → three years holding period) Offshore investor: income tax exempt
Interest	20% corporate income tax (CIT)	

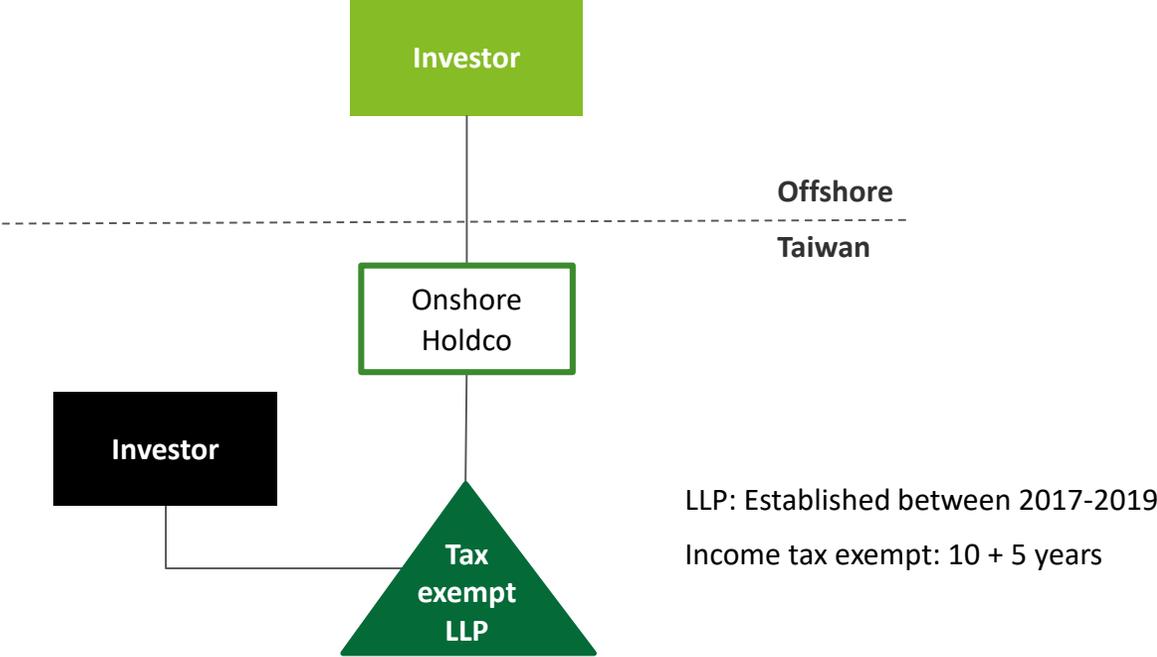
- The disposal of Taiwan corporate's shares will be subject to STT at 0.3% of the transfer price.

Taiwan—Domestic Fund Tax Exempt Fund (LLP)



Income	LLP	Investor's tax (onshore/offshore)
Capital gain	<ol style="list-style-type: none"> Income tax exempt (10+5 years) Security transaction tax on transfer price (0.03%) 	<ol style="list-style-type: none"> Dividend income: <ul style="list-style-type: none"> Onshore individuals: 28% Onshore corporate investor: tax exempt Offshore investor: 21% (or tax treaty rate) Capital gain: <ul style="list-style-type: none"> Onshore individuals: 40% Onshore corporate investor: 20% Offshore investor: 20%
Dividend	Income tax exempt (10+5 years)	
Interest	Income tax exempt (10+5 years)	

Taiwan—Domestic Fund Tax Exempt Fund LLP (cont.)



Adding onshore Holdco to mitigate the Taiwan tax burden

- The dividend from LLP is tax free;
- Exit from onshore Holdco level can be free from capital gains tax (CGT).

Taiwan—Tax Reclaim Update

Guidance to clarify the application of the term “beneficial owner” (BO)

1. Taiwan’s Ministry of Finance (the MOF) issued a guidance (the Guidance) in June 2019 to clarify the term “beneficial owner” (BO) for tax treaty application purposes. The Guidance is intended to provide greater clarity for taxpayers as it specifies the situations where BO status will be granted or denied. Such position aligns with the OECD2 Model Tax Convention Commentary, MOF practices and approaches taken by other countries.
2. The Guidance clarifies that a foreign resident deriving Taiwan source income seeking to claim treaty benefits can identify themselves as the BO for treaty purposes simply by providing a BO declaration to the MOF. The Guidance also confirms that a qualified fund or trust that is a resident of the treaty country and has invested in Taiwan in the capacity of a foreign institutional investor can apply for BO treatment in the same manner. Prior guidance regarding the application of BO status to an Australian legal person, a United Kingdom Authorised Unit Trust, or a United Kingdom Open-ended Investment Company will be withdrawn.
3. Where a foreign recipient of income is acting in the role of an agent, a nominee, a financial conduit entity, or a similar arrangement, the MOF will deny BO status.



Indonesia



Indonesia

Update on Omnibus Law—Tax

Income	Old regulation	Omnibus law	Notes
Inbound dividend	<ul style="list-style-type: none">• Dividend received by Indonesian tax payers is subject to 22% CIT.• Foreign tax credit (FTC) can be creditable against CIT.	<ul style="list-style-type: none">• Dividend received by Indonesian tax residents from offshore is free of tax if the dividend is reinvested into Indonesia.• FTC is not creditable, deductible, or refundable.	Further regulation is awaited for type of instrument and how long the dividend should be retained in Indonesia.
Deemed dividend (CFC Rule)	<p>Deemed dividend under CFC rule applies on net passive income dividend, interest, royalty, capital gain, and rental.</p> <p>It applies to 100% of net passive income.</p>	<p>Deemed dividend is applied to 30% of the net profit after tax while 70% can still be non taxable and offshore (30:70 rule).</p> <p>The dividend is free of tax if it is reinvested into Indonesia.</p>	
Interest WHT	Statutory domestic WHT is 20% (can be reduced under relevant tax treaty).	Statutory domestic WHT can be lower than 20% based on government regulation (can be reduced under relevant tax treaty).	<p>Implementation regulation is awaited on type of transaction that can enjoy the facility.</p> <p>Gross-up WHT is reduced.</p>

Indonesia

Update on Omnibus Law—Tax (cont.)

Income	Omnibus law	Notes
Sovereign wealth fund	<p>Indonesian government will establish a Sovereign Wealth Fund valuing of US\$20 billion consisting of:</p> <ol style="list-style-type: none">1. US\$5 billion derived from Government of Indonesia’s cash of US\$2 billion and shares of SOEs as well as other assets of US\$3 billion2. US\$15 billion derived from<ul style="list-style-type: none">• Japan Softbank• UAE• International Development Financial Corporation (IDFC)	<p>The fund is to be invested in the area of:</p> <ol style="list-style-type: none">1. Infrastructure2. Health3. Technology4. Energy5. Tourism

Indonesia

Update on tax treaty between Indonesia and Singapore

Income	Existing tax treaty	Proposed tax treaty	Notes
Interest from Indonesian government bonds issued in Indonesia paid to Singapore	<p>Interest paid to Singapore tax resident is exempted from Indonesian WHT in respect of:</p> <ul style="list-style-type: none">• Indonesian government bonds• Loan made and guaranteed by Bank Indonesia <p>Otherwise 20% WHT applies or 10% based on tax treaty (upon availability of DGT-form).</p>	<p>Interest is only exempted if it is paid to Government of Singapore</p> <p>Government of Singapore includes:</p> <ol style="list-style-type: none">1. MAS and its subsidiary2. Entities incl. special purpose investment funds i.e.<ul style="list-style-type: none">• GIC Private Limited• GIC (Realty) Private Limited• GIC (Ventures) Pte. Ltd• Eurovest Pte. Ltd• 15 wholly-owned (direct or indirect) subsidiaries	<p>It is estimated that the tax treaty will be ratified in January 2021.</p>



**Interview with James Maylam
Head of Tax Asia Pacific, Schroders**



Questions



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