

Hong Kong Tax News

Proposed Profits Tax Exemption on Private Equity Funds



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In response to the Financial Secretary's proposal in the 2013/14 Budget to extend the profits tax exemption for offshore funds to cover private equity (PE) funds, the Financial Services Development Council (FSDC) released a synopsis paper (Research Paper No.06) on 18 November 2013 proposing tax exemptions and anti-avoidance measures on PE funds.

Summary of proposal

- i. Section 20AC of the Inland Revenue Ordinance (Safe Harbour Rule) should be expanded to cover PE funds, excluding real estate funds or real estate investment trusts, in respect of their direct and/or indirect investments via non-Hong Kong incorporated (or established) special purpose vehicles (SPV) in portfolio companies, which are incorporated or registered outside Hong Kong and do not carry out any business in Hong Kong, provided such portfolio companies do not exceed the "10% de minimis exemption threshold" (i.e. with incidental investments in Hong Kong real estate of less than 10% of their net asset values).
- ii. If a tax exempt PE fund invests through a wholly-owned Hong Kong incorporated SPV, which only derives passive income (e.g. dividend income) from the portfolio companies and profits from disposal of the portfolio companies, the Hong Kong-incorporated SPV should also be exempted from Hong Kong profits tax. If the SPV is held jointly by a tax exempt PE fund and co-investors, and the SPV is majority owned or controlled by the PE fund, profits tax exemption should also be granted to the SPV provided that the remaining co-investors are not Hong Kong residents.

- iii. The deeming provisions under Section 20AE of the Inland Revenue Ordinance should not be invoked in cases where an offshore fund is regarded as “bona fide widely held”. FSDC proposed that “bona fide widely held” should mean that at no time did fewer than 5 persons (as opposed to 50) hold (or have the right to become the holders of) all of the partnership interests of the PE fund. There should also be a grace period of 18 months after the PE fund’s first closing to mitigate any unintended adverse Hong Kong profits tax implications to investors of the PE fund.
- iv. The “prescriptive” list in the Safe Harbour Rule, e.g. for “specified transactions”, should be replaced by an “exclusions list”.
- v. “Specified transactions” should include loans and credit transactions.

Regulatory comments

FSDC suggests that PE funds managed by managers/advised by advisors which do not carry on business in a regulated activity in Hong Kong or which are otherwise exempt from the requirement to be SFC-licensed should be entitled to the extended Safe Harbour Rule, provided that the PE funds constitute eligible “collective investment schemes” as defined in the Securities and Futures Ordinance. It proposes the Financial Services and the Treasury Bureau, Hong Kong Securities and Futures Commission and Inland Revenue Department to work out the framework applicable to this category of PE fund managers/advisors.

The synopsis paper has been submitted to the Government for consideration. Yet, the paper only represents phase 1 of the FSDC’s recommendations. Phase 2 of the proposal will cover areas such as Hong Kong-domiciled limited partnerships, Hong Kong portfolio companies, “central management and control” test for an offshore fund, etc.

The full version of the synopsis paper can be downloaded [here](#).

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香港税务快讯

私募基金豁免利得税的建议



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响应财政司长于《二零一三至一四年度财政预算案》中建议扩阔目前离岸基金税务豁免至私募基金，金融发展局（金发局）于2013年11月18日就该建议的税务宽免范围和反避税措施发表了一份研究报告（Research Paper No.06）。

建议概要

1. 《税务条例》第20AC条（安全港条例）应扩大至涵盖私募基金（不包括房地产基金及房地产投资信托基金）直接或通过非香港注册或成立之特殊目的公司间接投资在香港境外成立，且不在香港经营任何业务的项目公司，而该项目公司没有投资香港房地产或所持有的香港房地产附带投资不超过其净资产值10%。
2. 如果符合税务豁免之私募基金通过其全资持有的香港特殊目的公司，而该公司之收益主要为被动收入（如股息）或出售投资项目所得，则该香港特殊目的公司亦可获豁免香港利得税。如果该香港特殊目的公司由免税私募基金及其合作投资者共同持有，而该免税私募基金拥有香港特殊目的公司之大部分权益或控制权以及其合作投资者均为非香港居民，上述香港特殊目的公司仍应获豁免香港利得税。
3. 目前《税务条例》第20AE条中的推定条文不适用于被视为“真正产权分散”的离岸基金。金发局建议“真正产权分散”的定义应指在有关课税年度内持有基金的所有合伙权益人士（或有权成为持有者的人士）全年不少于5人（而非50人）。而且，政策亦应为基金首期关闭后设定18个月的缓冲期，以减低任何对投资者非故意引起的不利利得税影响。

4. 放松后的安全港条例应以“排除清单”代替目前安全港条例（如针对“指明交易”）使用的“指明清单”。
5. "指明交易"应包括贷款及信贷交易。

监管建议

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报告已呈交政府作详细考虑。有关报告只属金发局的首阶段建议。次阶段建议将涵盖以香港为常驻地的有限合伙企业、香港项目公司、离岸基金的“中央管理和控制”测试等。

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