

## 香港税务快讯

# 翘首以待的附带权益香港税务优惠建议



因我不同  
成就不凡  
始于1845

继香港财政司司长陈茂波在2020-21年度财政预算案中宣布香港计划对在香港营运的私募股权基金分配的附带权益或提成所得（以下统称“附带权益”）提供税务优惠后，香港政府最近终于公布了相关税务优惠的咨询文件。

### 附带权益香港税务优惠

我们在下文总结了附带权益香港税务优惠咨询文件中列明的建议摘要以供您参考：

- 咨询文件中只提到向符合条件的附带权益提供一个**极具竞争力**的优惠税率，惟咨询文件并没有明确具体说明“极具竞争力的优惠税率”代表完全免税还是只提供较低税率。
- 取决于相关立法程序，上述附带权益税务优惠将具追溯效力，并**适用于2020年4月1日开始的课税年度**。
- 根据咨询文件，只有符合以下条件才能享受附带权益税务优惠：

#### 1. 合资格基金

- 上述税务优惠只适用于由符合统一基金免税条例下所定义的“基金”（与香港《证券及期货条例》下的“集体投资计划”的定义相近）分配的附带权益。

- 基金须得到香港金融管理局的核准（“经核准基金”）。

## 2. 合资格附带权益

- 附带权益被定义为“利润相关回报”，并需具备以下三个特质：
  - (i) 附带权益仅当经核准基金获利时才会产生；
  - (ii) 附带权益会因应经核准基金所产生的利润而有所不同；及
  - (iii) 外部投资者的回报也是根据相同的利润而定。
- 附带权益亦可以由经核准基金从其合资格交易所产生的利润支付的金额，前提是经核准基金已将其所有或大部份投资所产生的金额退还予外部投资者，并且每个外部投资者都已获得以 6% 复息年利率计算的优先回报。
- 仅限于合资格免税**私募股权**交易所分派的附带权益，具体指香港《税务条例》附表 16C 所列投资由私人公司发行的股份、股额、债权证、债权股额、基金、债券或票据的合资格交易。

## 3. 合资格收取人

- 上述税务优惠只适用于下列在香港向经核准基金提供投资管理服务或安排此类服务在香港进行的人仕：
  - (i) 持有香港证监会发出之牌照的公司或为认可金融机构；
  - (ii) 在香港向在统一基金免税条例下定义之“合资格投资基金”提供投资管理服务，或安排此类服务在香港进行的人仕（包括公司、合伙企业等）；或
  - (iii) 受雇于上述 (i) 或 (ii) 的机构，并通过代表其雇主向经核准基金提供投资管理服务而获取应课税收入的雇员。
- 合资格收取人（除上述(iii)外）还需满足以下实质活动要求：
  - (i) 雇用不少于**两名投资专业人员**（或一名投资专业人员及一名法律、合规或财务相关的专业人员）；及
  - (ii) 在该课税年度在香港有**不少于 300 万港元**的本地营运开支。
- 在分配附带权益的课税年度，经核准基金需委任外部审计师以证明其满足税务优惠计划下的实质活动及其他相关要求。
- 经核准基金或其在港授权代表应以书面形式向香港税务局报告分配附带权益的所有细节。

## 我们的观察

在现行后 BEPS 时代及开曼群岛的经济实质法生效后，很多原本使用传统开曼群岛架构的私募股权基金都在重新检视现行基金架构及营运模式，并积极考虑将基金及其管理公司“落地”。我们因此非常欢迎香港政府在此关键时刻推出附带权益税务优惠建议，这显示香港政府乐意处理业界一直对附带权益的香港税务问题的关注。连同近期一系列措施，如统一基金免税条例<sup>1</sup>、有限责任合伙基金条例等<sup>2</sup>，我们认为这将为私募股权基金及其管理公司在香港设立及营运提供更友善的法律及税务环境，并有助加强香港成为地区性基金及资产管理中心的竞争力。

然而，咨询文件还有很多地方尚未明确，如“极具竞争力的优惠税率”是否代表完全免税？税务优惠是否适用由组合型私募股权基金/创投基金 (fund of private equity funds / venture capital funds) 分配的附带权益？合资格收取人需在香港提供多少投资管理服务？

我们将及时向您通报有关这方面的最新动态。我们亦乐意与您商讨上述附带权益税务优惠，连同统一基金免税条例及有限责任合伙基金条例，如何影响您的基金架构及营运模式。

注：

<sup>1</sup> 请参阅我们的 [《税务快讯 - 第 124 期》](#)

<sup>2</sup> 请参阅我们的快讯 [《有限合伙基金条例简介》](#)

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如有任何疑问，请联系我们的专业服务团队：

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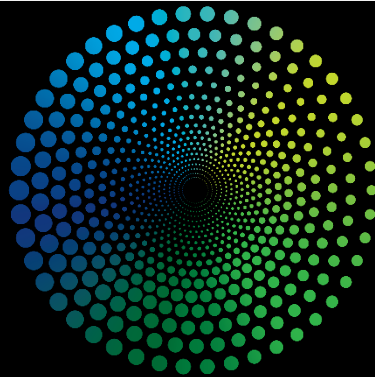
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## Hong Kong Tax Newsflash

### Long awaited proposal and consultation – Hong Kong tax concession for carried interest



Further to the announcement by Paul Chan, the Financial Secretary, in his 2020-21 Budget speech that Hong Kong plans to provide tax concession for carried interest issued by private equity funds operating

in Hong Kong, the Hong Kong Government has recently released a consultation paper on the proposed tax concession regime on carried interest.

## Proposed Tax Concession Regime

We set out below the key features of the proposed tax concession regime for your reference:

- The consultation paper only mentions that the qualifying carried interest would be charged **at a highly competitive rate**. It is not clear as to whether this "highly competitive rate" actually refers to tax exemption (i.e. 0%) or other reduced tax rate.
- Subject to legislative procedures, the proposed tax concession is expected to take **retrospective effect from the year of assessment commencing on 1 April 2020**.
- To qualify for the tax concession, the following conditions should be met:

### 1. Eligible Funds

- Tax concession is only eligible to carried interest distributed by a fund falling within the definition of "fund" under the Unified Fund Exemption Regime, which is similar to the definition of "collective investment scheme" under the Securities and Futures Ordinance (SFO).
- The fund must be "validated" by the Hong Kong Monetary Authority upfront regarding its eligibility to the tax concession on carried interest

### 2. "Qualifying" Carried Interest

- The term "carried interest" is defined to mean a "profit-related return" - the following three conditions should be encompassed:
  - (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.
- Includes sum paid out of the profits derived from the qualifying transactions of a validated fund, subject to the condition that sum arises after all or substantially all of the fund's investments have been repaid to external investors; and each external investor has received a preferred return at an annual rate of 6% compound interest.
- Only carried interest distributed out of tax-exempted qualifying transactions in **private equity investments** (i.e. shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company under Schedule

16C to the Inland Revenue Ordinance) is eligible for the tax concession.

### 3. Eligible Carried Interest Recipients

- Tax concession is eligible to the following persons who provide investment management services to a validated fund in Hong Kong or arranging such services to be carried out in Hong Kong:
  - (i) SFO licensed corporation or authorised financial institution;
  - (ii) Non-SFO licensed person (defined to include a corporation, partnership, etc.) providing investment management services (or arrange such services to be carried out) in Hong Kong to a "qualifying investment fund", as defined under the Unified Fund Exemption Regime; and
  - (iii) An employee deriving assessable income from the employment with (i) or (ii) above by providing investment management services to validated funds on behalf of his/her employer.
  
- Eligible carried interest recipients (except for (iii) above) should also **fulfil the following substantial activities requirements**:
  - (i) Not less than two investment professionals (or one investment professional and one related professional in legal, compliance or finance); and
  - (ii) Not less than HK\$3 million local expenditures for a year.

### 4. Administration

- For the year of assessment where carried interest distributions are made, the validated fund is required to appoint an external auditor to certify that the substantial activities requirements and other conditions under the tax concession regime are fulfilled.
  
- Validated funds or local authorised representative should report in writing all particulars of the carried interest distributions to the Inland Revenue Department.

### Our observation

Under the current post-BEPS era and after the implementation of the Economic Substance Law in the Cayman Islands, many industry players using the typical Cayman Islands structure are now under pressure to revisit their fund structure and operational model, which include the potential "onshorisation" of their funds and fund management entities.

We welcome this long-awaited tax concession for carried interest, which has shown the Government's willingness to address the industry's concern in recent years regarding the current Hong Kong tax treatment

on carried interest. Coupled with the other measures introduced in recent years, such as the Unified Fund Exemption Regime<sup>1</sup>, Limited Partnership Fund Regime<sup>2</sup>, etc., we believe that the Government is setting the right tone in terms of providing a legal and tax friendly environment for private equity funds and fund managers to set up and operate in Hong Kong, with a view to enhancing Hong Kong's competitiveness as a fund management / asset management hub in the region. That being said, there are still certain areas in the consultation paper that require further clarification, such as whether the "highly competitive rate" refers to complete tax exemption, whether the tax concession covers carried interest distributed by a fund of private equity / venture capital funds, what is the extent of "investment management services" that needs to be carried out in Hong Kong in order to qualify for the tax concession, etc.

We will keep you, as our valuable client, updated of the latest development on this tax concession regime. In the meantime, we are happy to discuss with you as to how the new regime (together with the Unified Fund Exemption regime and the Limited Partnership Fund regime) would impact your fund structure and operational model.

<sup>1</sup> Please refer to our [Tax Newsflash Issue 124](#)

<sup>2</sup> Please refer to our newsletter [Introduction of limited partnership regime for funds](#)

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