

香港税务快讯 拟议优化家族办公室的税务宽减

INspire HK 躍動香港

香港特区政府考虑过法案委员会收集的意见后，拟议就《2022 年税务（修订）（家族投资控权工具的税务宽减）条例草案》（《条例草案》）作出修正。

在本文中，我们将介绍拟议的修正案。有关家族办公室税务宽减的特点，请参阅我们的[香港税务快讯（第 166 期）](#)。

家族办公室税务宽减的拟议修正案

管理及控制

《条例草案》规定具资格单一家族办公室（具资格办公室）及家族投资控权工具（家控工具）的中央管理及控制必须在香港进行。中央管理及控制是指对实体的营运进行最高层次的控制和指导。对于在香港以外的家族而言，其高层管理人员或重要成员或难以在香港进行中央管理及控制。为了方便更多家控工具（特别是在海外成立的家控工具）符合条件从而豁免缴付利得税，政府建议放宽有关规定，只要求具资格办公室及家控工具通常在香港受管理¹或控制²。换言之，如果具资格办公室及家控工具在香港进行日常运营管理或最高层次的控制，即可符合该要求。

具资格办公室及家控工具的拥有权

《条例草案》规定具资格办公室及家控工具最少 95% 的实益权益由单一家族的一名或多于一名成员持有。该规定限制了涉及慈善实体的控权架构享受税务宽减。

涉及慈善实体³ 控权架构的拟议修正

为顾及家族的慈善安排，政府建议根据《税务条例》第 88 条获豁免缴税的慈善实体，最多可持有具资格办公室及／或家控工具 25% 的直接或间接实益权益，並仍可享受税务宽减，但须符合以下拥有权要求：

- 具资格办公室及／或家控工具最少 75% 的直接或间接实益权益须由单一家族的一名或多于一名成员持有；及
- 具资格办公室及／或家控工具不超过 5% 的直接或间接实益权益由一名或多于一名的无关连人士⁴ 持有。

涉及「指明信托」⁵ 控权架构的拟议修正

考虑到一些控权架构或涉及多个或多层指明信托，政府建议为税务局局长提供弹性，让其在考虑有关个案的所有情况（特别是有关架构内各实体之间的关系）后，决定有关具资格办公室及／或家控工具是否符合 95% 的实益权益要求⁶。

厘清税务宽减的适用性

政府清晰说明合资格交易不会受不合资格交易所影响（即不合资格交易不会令合资格交易会失去享受税务宽减的资格）。例如，如果家控工具就私人公司进行的某些交易不符合有关要求（即不动产测试、持有期测试、控制测试和短期资产测试），其他从合资格交易所得的利润的税务豁免将不会受到影响。

我们的评论

我们很高兴政府回应了业界和从业员的意见，并完善了家族办公室的税务宽减措施。此举将让更多的家控工具享受税务宽减，并吸引更多富裕家族，特别是在香港以外的家族和具有慈善安排的家族来港设立家族办公室。话虽如此，《条例草案》仍有一些方面尚待厘清，例如，如有多个家控工具，其经济实质门槛应如何厘定、反避税条款将如何适用于转让资产或业务至家控工具等。我们希望税务局在其指引中作出说明。

1「管理」指对日常业务营运的管理，或施行管理层决策等。

2「控制」指最高层次对整体业务的控制，包括厘定业务方针、制定公司的策略性政策、选择业务融资、评估业务成绩等。

3「慈善实体」指根据《税务条例》第 88 条获豁免缴税、属公共性质的慈善机构或慈善信托。

4「无关连人士」就某特定家族而言指：(a)符合以下说明的实体：该家族中没有成员对该实体享有直接或间接实益权益；或(b)并非该家族成员的自然人士。「无关连人士」不包括慈善实体。

5「指明信托」指根据信托文书设立或成立的信托，该信托须有一名或多于一指明受益人和／或有一个或多于一个类别的人或实体，而该等类别中有任何成员属指明受益人。

6《条例草案》订明，如某「指明信托」的有关产业价值的合计百分率是最少 95%，属该信托的「合资格受益人」的家族成员，以及其他有权从信托产业受益的家族成员，即视为对该「指明信托」享有最少 95% 的实益权益。

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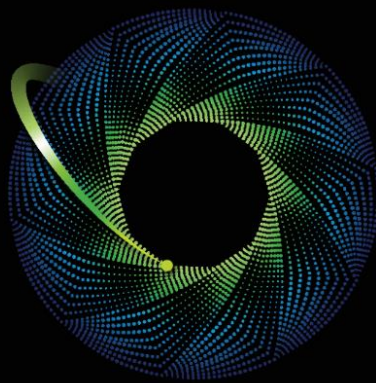
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Hong Kong Tax Newsflash

Proposed enhancements to family office tax concessions

INspire HK 躍動香港

The Hong Kong SAR government proposed to make some amendments to the *Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022* (Bill) after taking into account the views and comments collected by the Bills Committee.

In this article, we highlight the proposed amendments. For the features of the family office tax concession, please refer to our [Hong Kong Tax Newsflash Issue 166](#).

Proposed amendments to the family office tax concessions

Management and control

The original Bill required the central management and control of eligible single family offices (ESF Offices) and family-owned investment holding vehicles (FIHVs) to be exercised in Hong Kong. Central management and control refer to the highest level of control and direction over the operations of an entity. For families based outside Hong Kong, it may be impractical for their top management or senior members to exercise central management and control in Hong Kong. In order to facilitate more FIHVs (especially those established outside Hong Kong) to fulfil the condition to enjoy the profits tax concessions, the government proposed to relax the requirement by requiring the ESF Offices and FIHVs to be normally managed¹ or controlled² in Hong Kong. In other words, the requirement would be fulfilled if the management of daily operations or the highest level of control of the ESF Offices and FIHVs were exercised in Hong Kong.

Ownership of ESF Offices and FIHVs

The original Bill required the beneficial interest of an ESF Office and FIHV to be at least 95% held by one or more than one member of a single family. This limited the room for structures involving charitable entities to enjoy the tax concession.

Proposed amendments for structures involving charitable entity³

To cater for families' philanthropic purposes, the government proposed that a Section 88 tax exempt charitable entity may hold up to 25% of beneficial interest (direct or indirect) in an ESF Office and/or an FIHV and still eligible for the tax concession, subject to the following ownership requirement:

- at least 75% of the beneficial interest of the ESF Office and/or FIHV is being held (direct or indirect) by one or more than one member of a single family; and
- not exceeding 5% of the beneficial interest of the ESF Office and/or FIHV (direct or indirect) is held by one or more than one unrelated person⁴.

Proposed amendments for structures involving "specified trust"⁵

Considering that there may be holding structures involving multiple specified trusts or multiple layers of specified trusts, the government proposed to provide flexibility for the Commissioner of Inland Revenue to determine whether the 95% beneficial interest requirement⁶ have been fulfilled, having regard to all the circumstances of the case particularly the relationship between the entities in the structure.

Clarification on the application of tax concessions

The government clarified that qualifying transactions will not be affected by the non-qualifying transactions (in other words, no "tainting" effect). For example, if some of the FIHV's transactions in a private company fail to meet the relevant requirements (i.e. immovable property test, holding period test, control and short-term asset test), the tax-exempt status of the profits from other qualifying transactions would not be tainted.

Our comments

We are pleased that the government has responded to the industry and practitioner feedbacks and refined the family office tax concessions. It would allow more FIHVs to enjoy the tax concessions and attract more wealthy families, especially those not based in Hong Kong and families with philanthropic cultures, to establish their family offices in Hong Kong. Having said that, there are still some areas which are subject to clarification, e.g. how the threshold for economic substance should be determined if there are multiple FIHVs, the application of anti-avoidance provisions on the transfer of assets or businesses to an FIHV, etc. We hope the Inland Revenue Department will provide clarification in its guidelines.

¹ "Management" refers to management of daily business operations, or implementation of the decisions made by top management, etc.

² "Control" refers to control of the whole business at the top level, including formulating the central policy of the business, making strategic policies of the company, choosing business financing, evaluating business performance, etc.

³ "Charitable entity" means a charitable institution or trust of a public character that is exempt from tax under section 88 of the Inland Revenue Ordinance.

⁴ "Unrelated person" in relation to a particular family means: (a) an entity in which no member of the family has a beneficial interest (whether direct or indirect); or (b) a natural person who is not a member of the family. An "unrelated person" does not include a charitable entity.

⁵ "Specified trust" is a trust created or established under a trust instrument under which there is one or more than one specified beneficiary and/or one or more than one class of persons or entities any of the members of which is a specified beneficiary.

⁶ The original Bill provided that, if the aggregate percentage in value of the relevant estate of a specified trust is at least 95%, members of the family 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% of the beneficial interest in the specified trust.

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