

香港税务快讯

香港税务局就统一基金税务豁免条例 颁布释义及执行指引



因我不同
成就非凡
始于 1845

于 2020 年 6 月 30 日，香港税务局颁布《税务条例释义及执行指引第 61 号》(DIPN 61)，就《2019 年税务(豁免基金缴付利得税)(修订) 条例》(统一豁免条例)，作出进一步解释。统一豁免条例于 2019 年 4 月 1 日起生效，将香港税务豁免**延伸向所有基金**，为所有满足一定条件的基金，**不管基金是否在香港进行中央管理和控制，提供香港利得税豁免**。此税务快讯将提供关于 DIPN 61 的摘要。

DIPN 61 概要视频



统一豁免条例概览

如欲获得统一豁免条例下的香港利得税豁免，基金必须满足以下三项条件：

- 第一，实体须符合“基金”的定义，方可获得豁免。
- 第二，所产生的利润须来自合资格交易或以 5%为限的附带交易。对于私募基金而言，须另外满足其他条件，方可在进行私募股权投资交易时获得豁免。
- 第三，合资格交易必须由“指明人士”在香港进行或安排。“指明人士”包括获香港证监会发牌的公司。否则，该基金则须符合“合资格投资基金”的定义。

DIPN 61 摘要

“基金”的定义

DIPN 61 指出“基金”的界定范围应足以包含本质为“集体投资计划”的相关安排。DIPN 61 同时表明，在特定情况下，即使某项安排在某特定时期仅有一名投资者，亦可将其视为基金。例如，在初创期间，由投资管理人的关联人士通过单一种子投资所发起的基金。

基金持有的特殊目的实体(SPE)的税务豁免

根据定义，SPE 只可持有私人公司，而不可持有上市公司股份。香港税务局于 DIPN 61 指出，在特定情况之下，如果 SPE 持有的上市公司股份原本为经过首次公开募股上市的私人公司股份，该 SPE 仍然会被香港税务局视为合格的 SPE。

“合资格投资基金”的定义

要被视为“合资格投资基金”，基金的第三方投资者数量必须达到一定数目，而且第三方投资者的资本认缴以及收获的净收益须超过指定额度。在 DIPN 61 中，香港税务局举例说明了主基金及其下平行基金或母基金及其子基金可视为同一基金的情形，用于判定统一豁免条例是否适用。

总之，我们欢迎 DIPN 61 的发布，不过当中仍存在一些尚待明确之处。我们在即将发布的税务分析中，将分享有关 DIPN 61 的更多洞察。

附带权益税务宽免计划

此外，于 2020 年 2 月 26 日發佈的财政预算案中，香港特区政府宣布计划为在港运营的私募基金所分发的附带权益提供税务宽免。税务宽免安排将待立法工作完成后，有望自 2020 至 2021 年度起适用。我们希望附带权益的税务宽免提案终将有助於香港提升综合竞争力。

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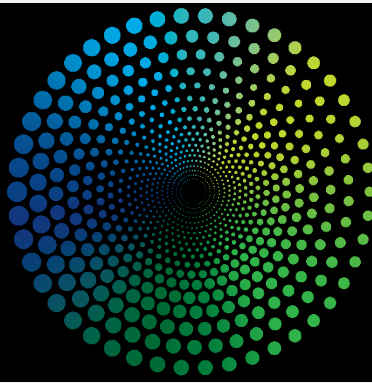
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Hong Kong Tax Newsflash

Inland Revenue Department issued guidance on Unified Tax Exemption Regime for funds



Earlier this week on 30 June, the Inland Revenue Department (IRD) issued Departmental Interpretation and Practice Notes No. 61 (DIPN 61) to clarify the provisions of the *Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019* (Unified Regime). The Unified Regime, which has come into operation on 1 April 2019, **extends profits tax exemption to all funds, irrespective of whether the central management and control is exercised in Hong Kong or not**, provided conditions are satisfied. This Tax Newsflash provided a snapshot of the key highlights of DIPN 61.

Video – Key highlights on DIPN 61



Recap of the Unified Regime

As a quick recap, three conditions must be fulfilled in order for an investment fund to qualify for the tax exemption from Hong Kong profits tax under the Unified Regime:

- First, the entity must qualify as a "fund" for purposes of the exemption.
- Second, the profits must be derived from qualifying transactions or incidental transactions that are subject to a 5% threshold. In the context of private equity funds, additional conditions have to be met for a transaction in private companies to be tax-exempt.
- Finally, the qualifying transaction must be carried out or arranged in Hong Kong by a "specified person", which includes a corporation licensed by the Securities and Futures Commission. If not, the fund must meet the definition of a "qualified investment fund."

Key highlights on DIPN 61

Definition of "fund"

DIPN 61 states that the term should be broad enough to encompass arrangements that carry the nature of a pooled investment. DIPN also clarifies that, in certain circumstances, an arrangement may be considered a fund even if it has one investor at a certain point in time.

Tax exemption for special purpose entity (SPE) owned by a fund

By definition, an SPE should only hold investments in private companies, but not in listed shares. The IRD clarifies in DIPN 61 that in a given situation, if the SPE holds listed securities converted from the SPE's previous interests in investee private company after initial public offering, the IRD would continue to accept that the SPE remains an SPE.

Definition of a "qualified investment fund"

To meet the above definition, a fund must have a minimum number of external investors, and the capital commitments made and net proceeds received by such investors must exceed specified thresholds. In DIPN 61, the IRD provides examples of where a principal fund and its parallel funds or a master fund and its feeder funds may be regarded as a single fund for the purpose of Unified Regime.

Overall, we welcome the issuance of DIPN 61, but some aspects remain unresolved. We will provide more detailed observations on DIPN 61 in an upcoming Tax Analysis.

Proposed tax concession for carried interest

On a separate note, in the Budget speech on 26 February, the government announced the plan to introduce a tax concession for carried interest issued by private equity funds operating in Hong Kong. The tax concession is expected to apply starting from 2020-21, upon completion of the legislative process. We hope that the proposed tax concession on carried interest will help enhance Hong Kong's competitiveness.

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