

香港税务快讯

拟议家族办公室的香港税务宽免



继财政司司长陈茂波（Paul Chan）在 2022-23 年度财政预算案中宣布香港计划为单一家族办公室管理的合资格家族投资控股实体（FIHV）提供税务宽免后，香港政府最近发布了相关的咨询文件。

拟议的税务宽免制度

我们将在下文阐述拟议税务宽免制度的主要特点：

- 由单一家族办公室（SFO）在香港管理的合资格 FIHV 将获豁免就**合资格交易**及附带交易（上限为 5%）所取得的利润缴纳利得税。
- 由合资格 FIHV 设立的特殊目的实体（SPE）也可获得免税优惠。
- 最多 50 间由同一 SFO 管理的 FIHV 可受益于拟议的税务宽免优惠。
- 需正式提出选择享受税务宽免优惠，选择一经提出即不可撤回。

合资格的 FIHV

- 在香港或境外登记设立的公司、合伙企业或信托公司；
- 由同一家族（单一家族）的关联人士¹独家持有；

- 在香港进行中央管理和控制；
- 为单一家族持有和管理资产；以及
- 由 SFO 在香港进行资产管理。

SFO

- 在香港或境外注册的私人企业；
- 在香港进行中央管理和控制；
- 由持有 FIHV 的单一家族独家持有；以及
- 不得向其他实体提供服务。

合资格交易

- 《税务条例》附表 16C 指明的资产交易（指明资产）²；以及
- 附带交易不可超过 5% 的门坎³。

合资格交易必须在香港通过 SFO 执行或安排。

最低管理资产价值（AUM）要求

- 由单一家族持有并由同一 SFO 管理的单个或多个 FIHV 的「指明资产」，每年/三年平均价值至少为 2.4 亿港元。

实质活动要求

香港合格的全职员工数量	香港年度经营费用
至少 2 人	不少于 200 万港元

FIHV 和 SPE 发生的亏损

如果 FIHV 或 SPE 在一个课税年度获豁免缴纳税款，则 FIHV 和 SPE 产生的任何亏损都不能用于抵消当前或后续课税年度的任何应纳税利润。

反避税条文

如果设立 FIHV 或 SPE 的主要目的或其中一个主要目的是获取税务优惠，则不再适用此税务宽免。

防止迂回避税条文

防止迂回避税条文将以统一基金免税制度下的现行规定为蓝本，除以下两个例外：

- 居民个人；以及
- 居民个人持有的非个人实体（受某些反滥用措施限制）⁴。

我们的评论

现有的统一基金税务豁免条例（UFE）并不涵盖单一家族办公室，因为其投资工具不太可能满足 UFE 下针对“基金”的定义。基于家族办公室在

资产管理行业内是一个快速发展且日益重要的领域，我们欢迎香港政府为单一家族办公室推出上述的税务优惠制度，以鼓励更多家族办公室在香港建立业务并管理其投资，提升香港作为区内资产管理中心的竞争力。

拟议的税务优惠仅适用于单一家族办公室。在现阶段，由于监控复杂，香港政府并未计划覆盖“多家族办公室”（Multi-family offices）。在满足一定条件的情况下，多家族办公室可以依靠 UFE 获得香港税务豁免。

咨询文件只包含拟议税务宽免制度的主要特点，另有几个方面需要进一步澄清：

- FIHV 必须采用公司、合伙企业或信托公司的形式成立。然而，家族办公室架构可能包括以其他法律形式存在的慈善组织/捐赠基金（如基金会）。这可能会限制拟议税务宽免对此类架构下持有的 FIHV 的适用性。
- 此外，税务宽免制度还要求 FIHV 的所有已发行股权/权益必须由一名或多名属于同一家族的「关联人士」直接或间接独家及实益持有。出于传承的目的，家族资产在全权信托架构下持有并不少见，并且鉴于全权信托的具体特征（例如，受托人可以增加或移除受益人），香港政府须仔细审查这一规定，以确保真正的家族信托架构（包括全权信托）不会被排除在免税范围之外。
- 根据 UFE，香港税务局的立场是，通过「合资格交易」获得的证券的利息收入是附带收入，不可超过 5% 的门坎。如果税务局对拟议的家族办公室税务宽免制度采取相同的立场，这将限制持有大量债务证券组合的单一家族办公室享受免税待遇。此外，香港政府还应考虑是否为家庭办公室可能投资的其他资产类别提供免税优惠，例如艺术品、数字资产等。

香港政府在参考本次咨询中持份者的意见后，将于稍后向立法会提交修订条例草案及详情，计划于 2022/23 课税年度开始生效。作为我们的重要客户，我们将随时向您提供这一税务宽免制度的最新发展。

注释：

1 咨询文件对关联人士有广泛的定义，包括配偶、父母、祖父母、兄弟姐妹、子女、直系后裔等。

2 对于私营企业的投资，目前适用于统一基金免税制度下的不动产测试、持有期测试、控制和短期资产测试也将适用于 FIHV 制度。

3 从附带交易中获得的交易收入不得超过一个课税年度合资格交易和附带交易总交易收入的 5%。

4 反滥用措施包括（a）由单一家族独家持有；（b）没有其他业务的被动投资控股工具或 SFO；（c）没有为获取税务优惠而转移应纳税所得的安排。

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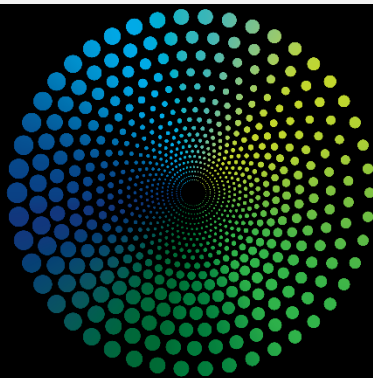
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Hong Kong Tax Newsflash

Proposed tax concession for family offices in Hong Kong



Subsequent to the announcement made by Paul Chan, the Financial Secretary, in his 2022-23 Budget speech that Hong Kong plans to provide tax concessions for the eligible family investment management entities managed by single-family offices, the Hong Kong Government has recently released a consultation paper on the proposed tax concession regime for family-owned investment holding vehicles (FIHV).

Proposed Tax Concession Regime

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

- An eligible **FIHV** managed by a single family office (**SFO**) in Hong Kong would be exempted from the payment of profits tax in respect of profits earned from **qualifying transactions** and incidental transactions (subject to 5% threshold).
- Special purpose entities (SPE) established by the eligible FIVs would also be eligible for the tax exemption.

- The maximum number of FIHVs, which are managed by the same SFO, to be benefitted from the proposed regime is 50.
- A formal election for the tax concession is required. Once the election is made, it is irrevocable.

Eligible FIHV

- Corporation, partnership or trust incorporated, registered or established in or outside Hong Kong;
- Exclusively owned by connected persons¹ of the same family (Single Family);
- Central management and control in Hong Kong;
- Hold and administer assets for the Single Family; and
- Managed by an SFO in Hong Kong.

SFO

- Private company incorporated in or outside Hong Kong;
- Central management and control in Hong Kong;
- Exclusively owned by the Single Family holding the FIHV; and
- Must not provide services to other entities.

Qualifying transactions

- Transactions in assets specified under Schedule 16C to the Inland Revenue Ordinance (specified assets)²; and
- Incidental transactions subject to 5% threshold³.

The qualifying transactions must be carried out or arranged in Hong Kong by the SFO.

Minimum Asset Under Management (AUM) requirement

- Yearly / three-year average value of "specified assets" shall be at least HKD240 million for a single or multiple FIHVs owned by the same family and managed by the same SFO

Substantial activities requirement

Number of full-time qualifying employees in Hong Kong	Annual operating expenditure in Hong Kong
Not less than 2	Not less than HKD2 million

Loss sustained by FIHV and SPE

If an FIHV or an SPE is exempted from the payment of tax for a year of assessment, any loss sustained by the FIHV and SPE is not available for set off against any assessable profits for the current or subsequent year of assessment.

Anti-avoidance provision

If the main purpose, or one of the main purposes, of the FIHV or the SPE is to obtain a tax benefit, the tax exemption would not apply.

Anti-round tripping provisions

The anti-round tripping provisions would be modelled on the existing provisions applicable for funds under the unified fund exemption regime with two carve-outs:

- (iii) Resident individuals; and
- (iv) Resident non-individual entities subject to certain anti-abuse measures⁴.

Our Comments

The existing unified Hong Kong tax exemption for funds (UFE) does not cover single family offices as their investment vehicles are unlikely to satisfy the definition of "fund" under the UFE. We therefore welcome the introduction of a specific tax concession regime for single family offices as it would encourage more family offices to establish a presence and manage their investments in Hong Kong. In particular, family office is a fast growing and increasingly important area within the asset management sector. The proposed tax concession regime would enhance Hong Kong's competitiveness as an asset management hub in the region.

The proposed concession only covers single family offices. At this stage, the Hong Kong Government does not plan to cover multi-family offices for the sake of monitoring complexity. Multi-family offices may rely on the UFE for Hong Kong tax exemption provided certain conditions are satisfied.

The consultation paper only highlights the key features of the proposed tax concession regime, and there are a few areas which need further clarification:

- It is stated that a FIHV must be in the form of a corporation, partnership, or trust. However, family office structure may include charitable organization / endowment fund which may exist in other legal form (e.g. foundation). This could potentially limit the application of the proposed tax concession to FIHVs held under such structure.
- There is also a requirement that all the issued shares / interests of the FIHV must be exclusively and beneficially owned by one or more individuals who are "connected persons" of the same family directly or indirectly. It is not uncommon for family assets to be held under a discretionary trust structure for succession planning purpose, and given the specific features of a discretionary trust (e.g. the trustee can add or remove beneficiaries), the Hong Kong Government needs to review this requirement carefully to ensure that genuine family trust

structures (including discretionary trust) would not be excluded from the tax exemption.

- Under the UFE, the Inland Revenue Department (IRD) has taken a position that receipts of interest income on securities acquired through "qualifying transactions" are incidental income which would be subject to the 5% threshold. If the IRD adopts the same position to the proposed tax concession regime for family offices, this would restrict single family offices that hold significant debt securities portfolio from enjoying the tax exemption. Besides, the Hong Kong Government should also consider whether to provide tax exemption for other asset classes that family offices may invest in, such as art pieces, digital assets, etc.

The tax amendment bill, after taking into consideration of the stakeholders' comments in this consultation, with details will be introduced into the Legislative Council later. It is planned to become effective starting from the year of assessment 2022/23. We will keep you, as our valuable client, updated of the latest development on this tax concession regime.

¹ There is a broad definition of connected person in the consultation paper, including spouse, parent, grandparent, sibling, child, lineal descendant etc.

² For investment in private companies, the immovable property test, holding period test, control and short-term asset test currently applicable to funds under the unified fund exemption regime would also apply under the FIHV regime.

³ The FIHV's trading receipts from incidental transactions must not exceed 5% of the total trading receipts from qualifying and incidental transactions for a year of assessment.

⁴ The anti-abuse measures include (a) exclusively owned by the Single Family; (b) being a passive investment holding vehicles or SFO without other businesses; and (c) no arrangement of shifting taxable income for tax benefit.

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