HKVCA
香港創業及私募投資協會
The Association for Private Capital in Asia

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Dear Kenneth,

Comments on the Revised Guideline on the Certification of Funds

We greatly appreciate that HKMA has accepted most of our recommendations from the previous letter in respect of the guideline on the Certification of Funds.

The revised application procedures should be welcomed by the industry, as they represent a more reasonable and practical application procedure, whilst maintaining integrity of the process in order to qualify for the incentive.

The updated application guidance is a significant improvement on the earlier version, and we only have a few relatively minor additional comments to make. We would be pleased to discuss with you in relation to any questions or comments you may have.

Individual Tax Filing

In order to benefit for the concessionary tax rate on qualifying carried interest, the fund manager or employee would need to ensure that the conditions for the concession have been satisfied at the time of filing the relevant tax returns. There may be some timing issues for employees who may need to file their personal tax return before the fund manager (employer) has confirmed that the concession applies to the carried interest paid to the employee.

Further clarification is sought on how to deal with this issue and whether an employee can first claim the concession if there are reasonable grounds to believe that the carried interest paid qualifies for the concession and amend their tax filing if it was subsequently found to not qualify for the concessionary tax rate.

Auditor's Report

The guidance on the auditor's report has yet to be provided and we will provide our comments on this once the draft has been made available. This report should be an opinion on whether the carried interest qualifies for the concession and we would expect that it should only cover that carried interest paid from a fund that is being treated as subject to the concessionary tax rate in Hong Kong. That is, it should not be an opinion that covers all carried interest paid by the fund.

Annex A Form

We would like to confirm that the details to be provided on Annex A should be for all employees of the Hong Kong based employer carrying out Investment Management Services as opposed to only those eligible carry recipients.

Annex B Form

We would like clarification that the expenditures to be reported on Annex B would exclude any carried interest payment routed through the Qualifying Person (HK employer).

DIPN and IRD Form

We understand that that IRD will draft a DIPN on the concessionary tax regime for eligible carried interest. As with the issue of prior guidance from the IRD, we trust that the IRD will issue a draft of that guidance note for the industry's review and comments prior it to being finalized. We believe that this would be important so that the IRD can take into account the industry's views on the interpretation of the new rules.

Carried Interest Paid into Hong Kong

We would like clarification that the construct of the exemption provisions does not require carried interest to be paid into Hong Kong. As noted, this is how we interpret the new rules as an amount does not need to be paid into Hong Kong for it to be 'chargeable to tax'. This tax principle under the IRO and the new carried interest concession is quite clear.

If the IRD were to require the carried interest to paid into Hong Kong and booked in the

Hong Kong Advisor / Manager's profit and loss statement, then it would severely negate the application of the concession to many fund managers and the eventual success of the incentive. This is because from our discussions with members, fund managers would be unlikely to change the way in which they structure their carried interest arrangements so that the carry flows through Hong Kong simply to benefit from the new incentive. In our view, there are sufficient mechanisms in place to ensure that there is sufficient substance in Hong Kong and there is proper oversight of the new concession.

Further, clarification is still required on how global funds will be able to make use of the incentive in respect of carried interest that may be given to Hong Kong based employees. As previously noted, such funds may not be managed directly or indirectly from Hong Kong and we do not see the need for such funds to have to specifically apply for certification. However, we agree an opinion on the application of the concession to the carried paid to Hong Kong based employees would still be necessary, but there needs to be a practical way that such global funds can otherwise meet the 'certification' requirement.

Conclusion

HKVCA is delighted that the industry feedback has been heard by FSTB, HKMA and IRD. The association would be keen to submit further comments to optimize the process in order to cement the position of Hong Kong as PE Fund hub.

We are at your disposal should you wish to discuss further as you finalize the guideline.

Your Sincerely,

Bonnie Lo
Chair, HKVCA Technical Committee

About HKVCA

HKVCA is a member-based trade association which was established in Hong Kong in 1987. It currently has 480 members of whom 300 are Hong Kong based private equity managers across the full spectrum of the industry from venture capital, through growth capital and growth buyouts to institutional fund investors, fund of funds and secondary investors. HKVCA represents small teams investing in start-ups as well as the world's 10 largest private equity firms.