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

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Ms Helen Chung,
Principal Assistant Secretary for Treasury
Financial Services and the Treasury Bureau
24/F Central Government Offices
2 Tim Mei Avenue, Tamar,
Hong Kong

By email to: ogdei@fstb.gov.hk

Dear Helen,

Consultation on 'Enhancing Tax Certainty of Onshore Gains on Disposal of Equity Interests'

Many thanks for your invitation on 6th April to provide views on the Proposal to enhance tax certainty of onshore gains on disposal of equity interests. The Hong Kong Venture Capital and Private Equity Association (HKVCA) welcomes the chance to comment on the consultation paper – and is strongly supportive of this initiative by FSTB.

The general proposal set out in the paper is excellent – and most of the key 'must have' features are included. However, we have two comments (see below) that mostly relate to further enhancing the rule for users. The details do, however, matter.

i) In respect of the basic conditions, the association concurred on the criteria of 24+ months holding period. However, we are concerned about the requirement of at least 15% of the total equity interest in the investee entity.

In fact, some European countries (i.e. Netherlands and Ireland) relax the limitation to at least 5% of the investee's capital and Belgium requires no minimum threshold. As such, we recommend lowering the minimum threshold to 5% in order to enhance Hong Kong's overall attractiveness as business and financial hub. This would also be in line with the minimum threshold under the 'FSIE' regime for offshore disposals and would be consistent with the BEPS Pillar Two rules. The minimum threshold should be the same for both types of disposal gains.

ii) We understand there are concerns that the inclusion of companies holding real estate within the scope of the concession would facilitate tax avoidance. In practice, we consider this risk is low. It is already possible to avoid paying tax on the disposal of any company holding Hong Kong real estate by holding the shares from a company not carrying on business in Hong Kong. For this reason, any tax loss is likely to be insignificant. However, the exclusion would discourage real estate funds and related sophisticated investors operating in Hong Kong.

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We understand the exclusion in respect of real-estate rich companies has been extended to cover real estate outside Hong Kong because of concerns that other jurisdictions might regard Hong Kong as facilitating tax avoidance if shares in companies owning real estate in their jurisdictions were treated differently from shares in companies holding Hong Kong real estate. In our view, this concern is misplaced. Uniquely with companies deriving their value from real estate, the right to tax the disposal of the shares is always given to the jurisdiction where the real estate is situated. The tax rules of the jurisdiction where the vendor is located are irrelevant to this. As the location where the property is located will always have the right to tax the disposal, it is hard to see how they could consider there has been any tax avoidance. Conversely, given the special position of real estate in international tax law, it is acceptable for jurisdictions to preserve their right to tax domestic real estate notwithstanding the introduction of preferential tax regimes. We note there are examples elsewhere of domestic real estate alone being excluded from similar rules.

We expect the proposal for enhancing tax certainty of onshore gains on disposal of equity interests to be welcomed by users. The Association would be keen to submit further comments to provide additional details around the issues discussed in this letter.

Yours sincerely,

Darren Bowdern
Vice Chairman, HKVCA Technical Committee

About the HKVCA

The HKVCA is a member-based trade association was established in Hong Kong in 1987. It currently has 510 members, of whom 320 are Hong Kong based private equity managers. Our members work 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. The HKVCA represents small teams investing in startups as well as the world’s 10 largest private equity firms.