

Tax Newsflash



Hong Kong Tax News

Expansion of the Offshore Funds Law - Inland Revenue (Amendment) Bill 2015

On 20 March 2015, the Inland Revenue (Amendment) Bill 2015 (the "Bill") was published in the Gazette. The Bill seeks to amend the existing provisions of The Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 to extend Profits Tax exemption to non-resident private equity funds. To this end, the key amendments are as follows:

Transactions in securities in an excepted private company as tax exempt "specified transactions". Such an excepted private company should be a private company incorporated outside Hong Kong; and:

1. within the three years prior to the transaction taking place, it did not carry on any business through or from a permanent establishment in Hong Kong, and
2. not more than 10% of the aggregate value of its assets comprises:
 - a. share capital in private company(ies) that carry on a business through or from a permanent establishment in Hong Kong,
 - b. immovable property in Hong Kong, or
 - c. share capital in private company(ies) that directly or indirectly hold immovable property in Hong Kong.

"Qualifying fund". A non-resident private equity fund that is not managed by a person licensed under the Securities and Futures Ordinance may also enjoy Profits Tax exemption if it meets the following criteria of a "qualifying fund"; that is, at all times after the fund's final closing:

1. The number of investors of the fund exceeds 4,
2. Capital commitments made by investors exceed 90% of the fund's aggregate capital commitments, and
3. The originators of the fund and their associates should not receive more than 30% of the net proceeds of the fund, after deduction of capital contributions.

Special purpose vehicle ("SPV"). An SPV, whether incorporated in or outside Hong Kong, will be exempt from Profits Tax in respect of its assessable profits arising from certain transactions. Moreover, a non-resident private equity fund will be exempt from Profits Tax in respect of profits derived from the disposal of an SPV, provided that certain conditions are satisfied. One of the key conditions is that the SPV should be established solely for the purpose of holding, directly or indirectly, and administering one or more excepted private companies.

The Bill will come into operation on the day on which the enacted Inland Revenue (Amendment) Ordinance 2015 is published in the Gazette.

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