

2 January 2025

Financial Services and the Treasury Bureau
Hong Kong Government

Email: fund-consultation@fstb.gov.hk

Dear Sir/Madam,

ASIFMA Response to the FSTB's Industry Consultation on Preferential Tax Regimes for Privately-offered Funds, Family-owned Investment Holding Vehicles and Carried Interest

On behalf of the Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)¹, we would like to submit for your consideration our comments and suggestions on the *Consultation on Preferential Tax Regimes for Privately-offered Funds, Family-owned Investment Holding Vehicles and Carried Interest* (“**the Consultation Paper**”) issued by the Financial Services and Treasury Bureau (“**FSTB**”) on 25 November 2024.

We appreciate the opportunity to provide comments on the Consultation Paper, which seeks to enhance the preferential tax regimes for Hong Kong's asset and wealth management (“**AWM**”) industry. This initiative is crucial for attracting more funds and family offices, positioning Hong Kong as a competitive hub in the region and beyond. We welcome these proposals as they represent a significant and long overdue step toward fostering an environment that encourages investment, and establishes a robust presence for financial services, particularly AWM entities in Hong Kong.

We set out our specific comments and concerns that address particular sections and proposals within the Consultation Paper. We hope our insights will contribute to a constructive dialogue and help refine the proposed recommendations.

¹ [ASIFMA](#) is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practice and standards to benefit the region.

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Specific comments

A. Paragraph 3.3.1: Definition of “fund”

Description: Section 20AM of the IRO sets out the definition of “fund” which is modelled on the definition of “collective investment scheme” under Schedule 1 to the Securities and Futures Ordinance (Cap. 571), encompassing the conditions relating to “arrangement”, “participating”, “pooling” and “purpose”. These conditions bring within the meaning of “fund” those arrangements that, broadly, have the characteristics of pooled investment.

Issue: The proposed definition does not address the case of a single investor fund, which is commonly used by institutional investors or family offices as an alternative to a segregated investment mandate for various commercial reasons, which is clearly a hurdle for Hong Kong asset managers in providing a choice or options to their investors. Given that other jurisdictions such as Singapore doesn’t have this restriction, it will undermine Hong Kong’s competitiveness as an AWM hub.

Recommendation: The proposal should expand the scope of the exemption to single investor funds (i.e. fund-of-one) to be competitive with other jurisdictions such as Singapore. This is to ensure the fund entity maintains its tax neutrality to avoid double taxation. Investors will be taxed in their resident jurisdictions (whether Hong Kong or overseas) based on their own tax profile, and the current anti-roundtripping rules and the proposed measures set out in paragraph 3.3.19 should be sufficient to prevent Hong Kong resident investors from using the fund-of-one structure to avoid tax.

B. Paragraph 3.3.3: Consultation question 3

Description: Proposed scope of “endowment fund”: An arrangement that is established and funded by a charitable entity for the purpose of (a) carrying out financial activities; and (b) holding and managing a pool of assets, for the benefit of such charitable entity. In this regard, “charitable entity” means a charitable institution or trust of a public character that is exempt from tax under section 88 of the Inland Revenue Ordinance (“IRO”).

Issue: The proposed definition which refers to section 88 of the IRO unintentionally narrows the scope of the endowment fund that would qualify for the exemption, as overseas charities (e.g. overseas university endowments) may not precisely fit under section 88 of the IRO. For example, a charitable entity established overseas may not be able to qualify for the exemption given that the Inland Revenue Department (“IRD”)’s interpretation in its “Tax Guide for Charitable Institutions and Trusts of a Public Character” provides that the tax exemption for charities will only be given to entities subject to jurisdiction of the courts in Hong Kong.

Recommendation: The definition should be enhanced and broadened on a principles basis rather than referring to Hong Kong local laws and regulations. For instance, the Government can consider making reference to the definition of “non-profit organization” under the Pillar 2 Global Anti-Base Erosion (GloBE) Rules.

C. Paragraph 3.3.6: Consultation question 8

Description: Proposed scope of “carbon credits”: Carbon credits that are traded on the Core Climate set up by the Hong Kong Exchanges and Clearing Limited.

Issue: The proposed definition limits the scope to carbon credits traded on the Hong Kong Exchange which is too narrow and will not be able to address the policy intent as carbon credits are commonly traded on other overseas exchanges.

Recommendation: The definition should be broadened to carbon credits that are traded on established carbon exchanges and market places, e.g., green energy related certificates such as Renewable Energy Certificates (REC) issued in Hong Kong and elsewhere. In addition, to allow more flexibility on the definition of “emission derivatives”, we suggest that the scope be expanded to include “*Derivatives that the payoffs of which are wholly or substantially linked to the payoffs or performance of the underlying emission allowances,...*”.

D. Paragraph 3.3.6: Consultation question 10

Description: Do you agree with the proposed refinements to the definition of “private company”?

Issue: While it is welcomed that the proposed change to the definition of “private company” can provide more certainty, it may however unintentionally widen the scope of “private company” so that additional tests (e.g. immovable property test and holding period test) would have to be satisfied in order to qualify for tax concession.

Recommendation: To address the above issue, we suggest that item (a) of the refined definition of “private company” be amended as follows:

(a) “Private company” means a company (whether incorporated in or outside Hong Kong) of which the shares or debentures are not traded on any stock exchange, but exclude any company that is allowed to issue any invitations to the public to subscribe for any shares or debentures of the company.

E. Paragraph 3.3.6: Consultation question 12

Description: Do you agree with the proposed scope of “virtual asset” below?

Issue: Note that in [Hong Kong Monetary Authority’s \(“HKMA”\) circular dated February 2024 regarding provision of custodial services for digital assets](#), the HKMA adopts a definition for “digital assets” which is wider than what is proposed by the Consultation Paper.

Recommendation: To align the definition of “virtual asset” to that defined in the HKMA’s circular so that the tax concession can apply to whatever digital assets that can be custodied by banks.

F. Paragraph 3.3.6: Consultation question 13

Description: Do you have any suggestions on other assets to be included as permissible assets?

Issue: Whilst we welcome the inclusion of “interests in non-corporate private entities” as permissible assets, there is uncertainty about whether the definition of “interests in non-

corporate private entities” would cover the investment arrangements commonly used in Japan and other overseas jurisdictions.

Recommendation: To expand the permissible assets to include “interests in non-corporate private entities and other investment arrangements” [Emphasis underlined], including the common investment arrangements used in Japan such as interests in Tokumei Kumiai (“TK”) and Tokutei Mokuteki Kaisha (“TMK”).

G. Paragraph 3.3.16: Consultation question 18

Description: Do you agree with the proposed removal of the control test and short-term asset test, and applying the immovable property test and holding period test to non-corporate private entities?

Issue: The removal of the control test and short-term asset test (in particular the former) would unnecessarily narrow the tax concession for transactions in private companies and non-corporate private entities, and such changes will make the regime even more restrictive than the current rules.

Recommendation: We strongly recommend retaining the “control test” and “short-term asset test” (i.e. status quo) to allow transactions in non-controlling stake in private companies or non-corporate private entities to qualify for tax exemption even if the non-controlling stake is held by the fund (or SPE) for less than two years. Alternatively, we recommend the complete removal of “holding period test”, “control test” and “short-term asset test”. This can align the treatment for investment in private companies or non-corporate private entities with listed securities (except that the “immovable property test” will still be applied to the former).

H. Paragraph 3.3.20: Tax reporting and substantial activities requirements

Description: It is the international standards that tax and accounting data should be readily available for tax authorities to facilitate tax administration and exchange of information. Besides, for the purposes of effective implementation of the enhanced unified tax regime for funds (“UFR”), IRD needs to ensure that a fund will only be granted the tax exemption if relevant conditions under the IRO are met. The Government also needs to gather relevant statistics relating to the benefiting funds and SPEs so as to evaluate the effectiveness of the UFR. Currently, OFCs, limited partnership funds and FIHVs are required to make tax reporting to IRD.

We propose implementing a tax reporting mechanism for funds and SPEs benefiting from the UFR, under which certain accounting data of the funds and SPE concerned, as well as information showing that the tax exemption conditions and substantial activities requirements are satisfied, will be required.

Issue: Like similar exemption regimes offered by other major financial centres, the Hong Kong UFR currently adopts a self-assessment approach where no separate tax reporting is required, which greatly simplifies the administrative process, including time to market, and helps reduce the fund operation costs.

Introduction of the tax reporting will impose significant administrative burden including tax compliance cost on Hong Kong asset managers without any incremental tax revenue to the Hong Kong Government. Hong Kong asset managers manage numerous private offshore funds as a portfolio and some of which have been relying on UFR to get exemption for the private funds and/or their SPEs. The cost and administrative burden to bring all those funds into the Hong Kong tax reporting framework, particularly for global asset managers, should not be underestimated.

This proposal will greatly undermine all the positive changes proposed and will be a major impediment to achieving the overall policy intent.

In addition, the Singapore exemption regime for non-residents funds (Section 13D) is also a self-assessment system. Keeping UFR on a self-assessment approach without requiring any reporting is essential to making it one of the most competitive regimes in the region.

Recommendation: We recommend maintaining the current self-assessment approach with no separate tax reporting requirement.

We appreciate the opportunity to contribute and hope they will be valuable in refining the preferential tax regimes. If you have any questions regarding any of our comments, please contact Eugenie Shen at eshen@asifma.org or Tel: 2531 6570.

Yours sincerely,



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