PORTCULLIS NOTICES

MCI (P) 050/06/2023

9 June 2023

HONG KONG FAMILY TAX REGIME

The Hong Kong *Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2023* came into operation on 19 May 2023. Upon gazette, the law is effective retrospectively from 1 April 2022 and offers Hong Kong Family Offices certainty in terms of the tax implications for the management of assets in Hong Kong.

Without material change but more relaxed compared to the latest draft bill, the finalized tax regime provides tax exemption on the profits of the Qualifying Transactions under the qualifying Family Office structure. It indicates the determination of the Hong Kong Special Administrative Region government to push Hong Kong forward as the global centre for Family Offices.

A. Conditions for tax exemption

To qualify for the family office tax regime tax exemption, the following conditions should be met:-

1. <u>Minimum total net asset value of specified assets managed by ESFO</u>

   Total net value of the specified assets managed by a ESFO for the FIHV(s) and the FSPEs held by the FIHVs at the end of the FIHVs' basis period for the year of assessment ("subject year") or for the year immediately preceding the subject year ("1st preceding year"), or immediately preceding the 1st preceding year should be at least HK$240 million (around US$30 million);

   The specified assets are listed under Schedule 16C to the Inland Revenue Ordinance:-

   i. Securities;
   ii. Shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a private company ("Relevant Company") (also see item 5 below);
   iii. Futures contracts;
   iv. Foreign exchange contracts under which the parties to the contracts agree to exchange different currencies on a particular date;
   v. Deposits other than those made by way of a money-lending business;
   vi. Deposits (as defined by section 2(1) of the Banking Ordinance (Cap. 155)) made with a bank (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571));

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.

HONG KONG FAMILY TAX REGIME

vii. Certificates of deposit (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571));

viii. Exchange-traded commodities;

ix. Foreign currencies;

x. OTC derivative products (as defined by Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)); and

xi. An investee company's shares co-invested by a partner fund and ITVFC under the ITVF Scheme.

2. <u>Ownership</u>

At least 95% of the beneficial interest of the ESFO and FIHVs should be held by the family. Any interest held by parents, spouse, descendants, siblings, niece, nephews, cousins, and their in-laws can be included in calculating the beneficial interest of the family. Children can include adopted children / stepchildren / illegitimate children of either the person or his spouse.

This can however be reduced to 75% if the remaining 25% is held by a Section 88 tax-exempt charity.

If structure involves a trust arrangement (which complicates the assessment of the family's percentage of beneficial interest), an advance ruling is strongly recommended to confirm structure's compliance with this requirement.

3. <u>Establishment of ESFO, FIHVs</u>

ESFO, FIHVs can be set up outside HK but must register with the Companies Registrar and obtain a Business Registration in HK. The FIHV can be any entity, including any legal arrangement; corporate or unincorporated, partnership and a trust (including a discretionary trust) but the ESFO must be a private company.

FIHVs is not a business undertaking for general commercial or industrial purposes.

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.

HONG KONG FAMILY TAX REGIME

4. Management, control, operations

- Both the ESFO and FIHVs shall normally be managed OR controlled in Hong Kong[1] ;

- The FIHV should meet the requirements below during the fiscal year -

  - Incurred annual operating expenses of at least HK$2 million (around US$260,000) in investment activities in Hong Kong; and
  - Employed at least 2 full time employees (who are qualified to carry out the investment services) in Hong Kong.

  The above should be commensurate with the level of the investment activities in Hong Kong.

  FIHV can outsource the above to be performed by ESFO or (as arranged by ESFO) to be performed by other parties in Hong Kong.

- At least 75% of the ESFO's profits must come from managing the family assets.

5. Anti-avoidance for tax exemption

No tax exemption on the profits generated from the transactions on item 1ii. above if the Relevant Company directly / indirectly holds –

(a) immovable property in Hong Kong; or

(b) share capital in another private company which holds directly/ indirectly immovable property in Hong Kong.

Unless,

- the total value of the aforesaid immovable property and share capital held by the Relevant Company does not exceed 10% of the Relevant Company's total assets fair value, and

[1] *The definition of "normally managed or controlled" is not as yet finalised and the IRD will issue a Departmental Interpretation Practice Note in due course.*

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.

HONG KONG FAMILY TAX REGIME

- the FIHV / FSPE holds the item 1ii. assets items issued by that Relevant Company -

  - at least 2 years; or
  - if below 2 years;
    - FIHV / FSPE does not have control over the Relevant Company; or
    - If FIHV / FSPE has control over the Relevant Company; aggregate value of the short-term assets (i.e. any assets other than Schedule 16C assets, immovable property, and held less than 3 years) directly / indirectly held by the Relevant Company does not exceed 50% of Relevant Company's total assets fair value.

B. Tax implications

Tax exemption for FIHVs and FSPEs

- FIHV(s)

  Assessable profits arising from –

  - Qualifying Transactions ("QT"); and
  - Transactions incidental to QT (subject to 5% of the total FIHV's trading receipts from qualifying transactions and incidental transactions in the basis period) will be exempt.

- FSPE(s)

  Portion of any assessable profits arising from transactions listed below that corresponds to the percentage of beneficial interest held by the FIHVs (under the same Family Office structure) –

  i. Assets under Schedule 16C as detailed in Part A. item 1 above;

  ii. Shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, an investee private company or an interposed FSPE (IFSPE);

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.

HONG KONG FAMILY TAX REGIME

iii. Items below in relation to item ii in Part B :

- Rights, options or interests;
- Certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase;

iv. Any transactions incidental to carrying out the transactions in Part B items i, ii, iii,will be exempt.

- Tax exemption mechanism:

Reliance on self-assessments of FIHVs and FSPEs with completion of a supplementary form to elect for the tax exemption (Yes/No form, state actual total investment asset value, etc.) to Profits Tax Return.

Once elected for tax exemption, it will apply for all subsequent years of assessment (i.e. no annual election is required) and irrevocable.

No pre-approval from Inland Revenue Department is required. However, after the tax submission, the IRD will review whether the level of the Family Office's operating expenses and employees are commensurate with the level of the core income generating activities carried out by the Family Office Structure in Hong Kong.

<u>Taxation on ESFO</u>

- Any income derived by an ESFO from FIHVs and the Family for the provision of services shall be on an arm's length basis and subject to Hong Kong Profits Tax at the tax rate of 16.5%.
- An ESFO will be entitled to the two-tiered Profits Tax Rates Regime (i.e. enjoy lowered tax rate of 8.25% on its first HK$2,000,000 assessable profits) if the ESFO has no connected entity nominated to be chargeable at the two-tiered rates.

A simplified mind map is on Portcullis website for illustrative purpose.

The simple requirements and tax exemption mechanism are highly attractive for global high-net worth families to set up their family office structures in Hong Kong.

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.

HONG KONG FAMILY TAX REGIME

Other government measures in support of the Family Offices

The above Tax Exemption is one policy measure for creating a conducive and competitive environment for the businesses of global family offices and asset owners in Hong Kong.

There are other measures outlined in the Government's "Policy Statement on Developing Family Office Businesses in Hong Kong" dated 24 March 2023 which include:-

1. The Hong Kong Academy for Wealth Legacy

The Government will fund the setup of a new Hong Kong Academy for Wealth Legacy under the Financial Services Development Council. It will be supported by partnerships with the industry, professional service providers, universities, and the dedicated Family Office HK team under Invest Hong Kong (InvestHK). It will offer talent development services to industry practitioners and next-generation wealth owners, with a view to cultivating a deep talent pool for the family office sector in Hong Kong.

2. Art storage facilities at the airport

The Hong Kong Airport Authority is actively exploring the establishment of storage, display and appreciation facilities for art and treasures at the Hong Kong International Airport, as part and parcel of the Airport City development. It will enable global family offices with capital allocation in art to benefit from the thriving art ecosystem in Hong Kong.

3. Hong Kong as a philanthropic centre

The goal of Hong Kong is to develop Hong Kong into a philanthropic centre for global family offices and philanthropists to deploy charitable capital benefiting Hong Kong, the Mainland and the overseas. Hong Kong will enhance the processing of applications for recognition of tax exemption status of charities. The Inland Revenue Department ("IRD") will devise a standard form to facilitate the submission of applications and streamline processing. The IRD will also provide further guidance for applicants to facilitate precise statement of charitable objects.

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.

MCI (P) 050/06/2023

9 June 2023

HONG KONG FAMILY TAX REGIME

We are more than happy to discuss with our clients about the Family Office Tax Regime. Should you have any questions to the above, please feel free to contact –

Pisces Wong
Senior Manager
15/F, BOC Group Life Assurance Tower,
No. 136 Des Voeux Road Central, Central, Hong Kong
Tel: (General) (852) 2525 9991 (Direct): (852) 3173 1046
Email: pisces.wong@portcullis.co

Index
ESFO = Eligible Single Family Office
FIHV = Family-owned Investment Holding Vehicle
FSPE = Family-owned Special Purpose Entities

PORTCULLIS GROUP
www.portcullis.co

PORTCULLIS GROUP

6 Temasek Boulevard
Suntec Tower Four #09-05
Singapore 038986
Tel: +65 6496 0496
+65 6836 9555
Info.Singapore@portcullis.co
www.portcullis.co

This Circular does not constitute and is not to be construed as the provision of legal, investment or tax advice or as an invitation or solicitation to make any investment. Readers should not act in reliance on any statement contained in this publication without first obtaining appropriate professional advice. The information contained in this Circular should not be relied on as a substitute for advice. While all reasonable attempts have been made to ensure that the information contained in this Circular is accurate, we, Portcullis Tax Services (HK) Ltd and our affiliated companies of the Portcullis Group (a list of which can be viewed at www.portcullis.co) accept no responsibility for any errors or omissions it may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relied on it.