Summary of Webinar
FSDC Industry Exchange Series

Webinar title

"Mirror, mirror on the wall, is Hong Kong the private funds domicile for all?"

Speakers

Moderator

- Dr Au King-lun, Executive Director, Financial Services Development Council

Panellists

- Ms Christina Choi, Executive Director, Investment Products, Securities and Futures Commission
- Mr Jeremy Lam, Member, New Business Committee, FSDC; Partner and Head of Financial Services Practice, Deacons
- Mr Franco Ngan, Chief Executive Officer, Zeal Asset Management Ltd.
- Mrs Florence Yip, Asia Pacific Asset & Wealth Management Tax Leader and China Private Equity Tax Leader, PwC Hong Kong

Discussion summary

To develop Hong Kong as a full-service fund management, domicile and administration centre, the open-ended fund companies (OFC) regime was introduced in July 2018. The limited partnership fund (LPF) regime was introduced in August 2020 and further enhances and complements the fund structure choice in Hong Kong. Both OFCs and LPFs benefit from the unified fund tax exemption regime in Hong Kong implemented in April 2019 and have access to Hong Kong's extensive tax treaty network.

Setting up a private OFC in Hong Kong is a simple and fast process, with the Securities and Futures Commission (SFC) providing a one-stop and a streamlined approach to regulation consistent with its regulation of all types of private funds in Hong Kong focusing on the eligibility and conduct of the investment manager under the Fund Manager Code of Conduct, directors and custodians.

- The SFC does not regulate the investment strategy or types of assets invested into by a private OFC. All investment restrictions for private OFCs have been removed since September 2020.

- Licensed or registered securities brokers may act as custodians for private OFCs.

- There is no restriction on sub-delegation of investment functions, and no prior vetting of offering documents

- Consultation with the SFC is always encouraged and welcomed and a dedicated enquiry mailbox is available at ofc-enquiry@sfc.hk

Furthermore, private OFC enjoys Hong Kong's tax exemption treatment under the Unified Profits Tax Exemption for Funds (UFE) regime introduced in April 2019. To the extent it engages in direct trading or direct business undertaking in non-qualifying transactions that generates Hong Kong sourced profits of revenue nature, only such profits will be taxable. There will be no tainting to the OFC.

- The Inland Revenue Department issued a Departmental Interpretation and Practice Note 61 (DIPN 61) in June 2020 to confirm the OFC tax status.

- A LPF and its SPVs can be profits tax exempt if the relevant conditions in the UFE are fulfilled. One notable feature is that in case the LPF's fund manager is not SFC licensed, as long as the LPF is a "qualifying investment fund", then profits tax exemption will still be available if other conditions are satisfied.

- The Government is seeking to have the bill for Tax Concession for Carried Interest passed into law before the end of the current legislative term.

- In view of the Greater Bay Area (GBA) Circular 95, managers may explore using OFC/LPF as a master/feeder fund or parallel fund for QDLP/QDIE/QFLP in the Mainland Cities of GBA.

To further enhance the OFC regime, a re-domiciliation mechanism will be introduced to enable overseas corporate funds to re-domicile to Hong Kong. This is an opportune time to consider or reconsider domiciling in Hong Kong in light of the economic substance requirements introduced in offshore jurisdictions. The decision will no doubt be based on a consideration of operational effectiveness, costs and the market access to the region that comes hand in hand with domiciling in Hong Kong. Notably, the fees paid to the SFC and the Companies Registry for setting up an OFC is very low and the extra layer of offshore costs can be avoided. With the up and coming Greater Bay Area initiatives, domiciling in Hong Kong will enable both private and public funds to capture the opportunities presented.

In conclusion, the OFC and LPF regimes position Hong Kong as an attractive domicile for both public and private funds, with huge Mainland China market access potential, going forward.

- Ends -