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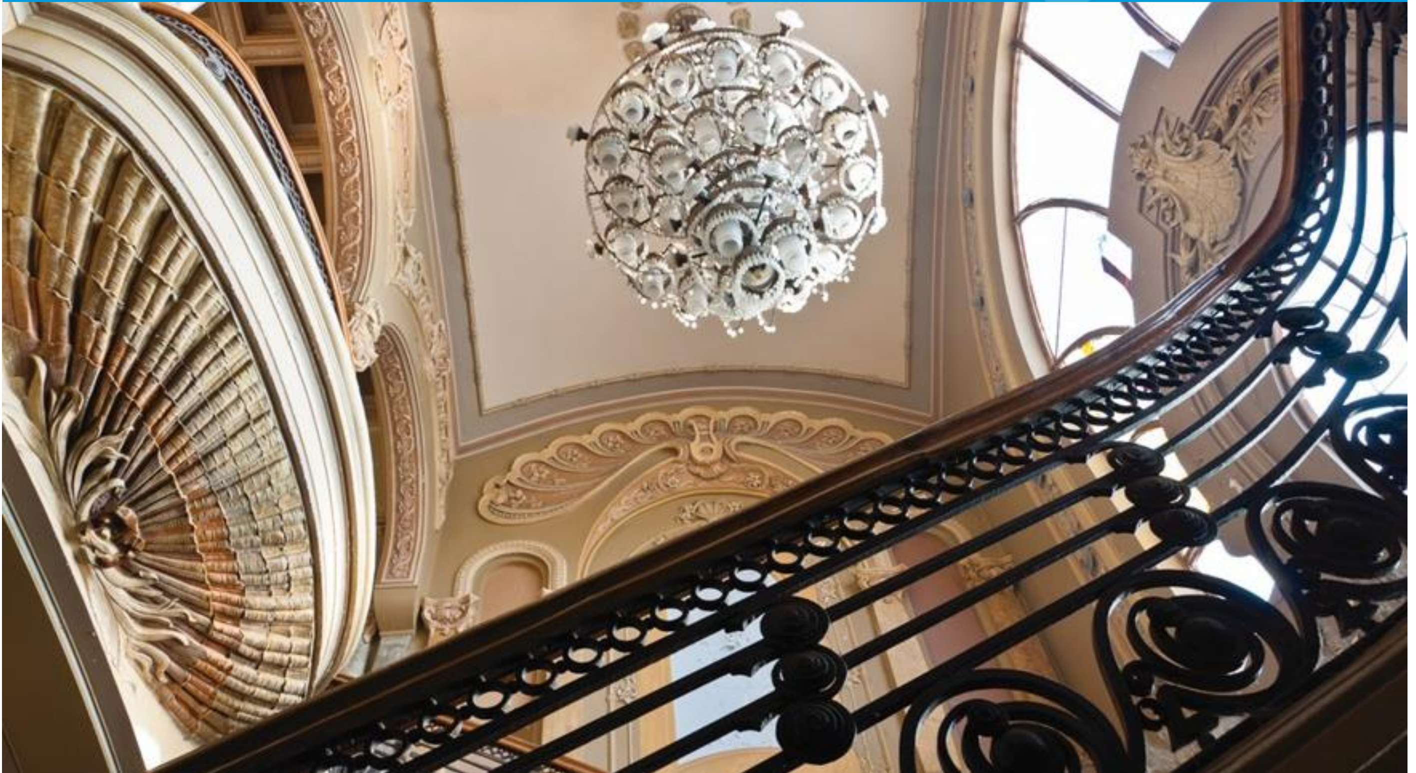
# Revisions to the proposed family office tax exemption regime in Hong Kong: the key takeaways



In our previous briefing note, we provided a high level comparison between the proposed tax concession scheme for family offices in Hong Kong (the "**Scheme**") and how it stacks up against Sections 13O and 13U tax exemption schemes for family offices in Singapore.

The legislation to implement the Scheme, the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Bill 2022 (the "**Bill**") was gazetted on 9 December 2022. Having received input from various concerned parties and stakeholders, the Hong Kong Government has, in April 2023, proposed revisions to the Bill, further relaxing the eligibility of tax concessions of eligible single-family offices and family-owned investment holding vehicles in Hong Kong under the Scheme (the "**Amendment**"). In this briefing note, we provide the key takeaways of these revisions.

## Up to 25% of the family wealth holding structure can be owned by Section 88 charities

Originally, the Scheme required 95% of the beneficial interest of each of the asset holding vehicle and its single-family office to be owned by one or more "members of a family". Whilst the Scheme provides a wide definition of what would constitute a "member of a family", there has been feedback that this high beneficial interest threshold is not adequate in facilitating the philanthropic culture that many wealthy families are engaged in.

With the Amendment, the beneficial ownership threshold for members of a family is reduced from 95% to 75% in circumstances where the entity holding the remaining 25% beneficial interest is a charitable entity (i.e. those which are exempt from taxation under Section 88 of the Inland Revenue Ordinance). Where the non-family entity is not a charitable entity, the maximum beneficial ownership for such non-family entity remains at 5%.

### Pragmatic approach for assessing family wealth holding structures owned by family trusts

We previously commented on the use of family trusts or trust-like entities such as foundations as crucial structuring tools for high net worth ("**HNW**") families to ensure that their family wealth can pass on smoothly to the younger generations. Under the original Scheme, where HNW families elect to use discretionary trust structures to hold their family wealth, there is a degree of uncertainty on how to prove to the relevant authorities that a family office structure with multiple layers of ownership vehicles can meet the beneficial interest ownership threshold, which is one of the requirements for being eligible for the tax concessions for family offices in Hong Kong.

The Amendment introduces a new mechanism to resolve issues where the 95% (or 75%, as the case may be) beneficial interest threshold for an asset holding vehicle and its single-family office cannot be clearly determined to be fulfilled. The mechanism grants power to the Commissioner of Inland Revenue (the "**Commissioner**") to deem that the beneficial interest threshold of an asset holding vehicle and its single-family office are met, provided that the Commissioner can be satisfied, having considered all the circumstances of each case, particularly with regards to the relationship between the entities in the structure, that it is highly probable that members of a family hold at least 95% (or 75%, as the case may be) of the beneficial interest in the asset holding vehicle and its single-family office.

### Greater flexibility and clarity for structuring family office activities

The Scheme originally required that an asset holding vehicle and its single-family office are to be "centrally" managed and controlled in Hong Kong. This is a high threshold to meet, especially for HNW families who reside outside of Hong Kong and for pre-existing family offices during transition periods where they are relocating their operations from other jurisdictions into Hong Kong.

The proposed requirement has now been relaxed to "normally" managed or controlled in Hong Kong. This affords an added layer of flexibility for family office structures as the requirement of "normally" is less than that of "centrally" and furthermore, the managed and controlled requirements are no longer conjunctive.

The Amendment provides an additional clarification in respect of the investment activities of the family wealth holding structures. To the extent that any transactions do not meet the "qualifying transactions" requirements of the Scheme, the profits arising from the non-qualifying transactions will not affect the otherwise tax-exempt status of the qualifying transactions.

### Our comments

With the Amendment, it is envisioned that an even larger number of family offices will become eligible for tax concessions under the Scheme. Furthermore, the amended Scheme now also accommodates for more sophisticated wealth holding structures, which can be better utilised to achieve family objectives, to be set up in Hong Kong whilst enjoying the same tax concessions.

It is clear that the Hong Kong government is committed to implementing a practical and competitive scheme which aims at providing significant benefit for family offices looking to relocate or establish in Hong Kong.

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