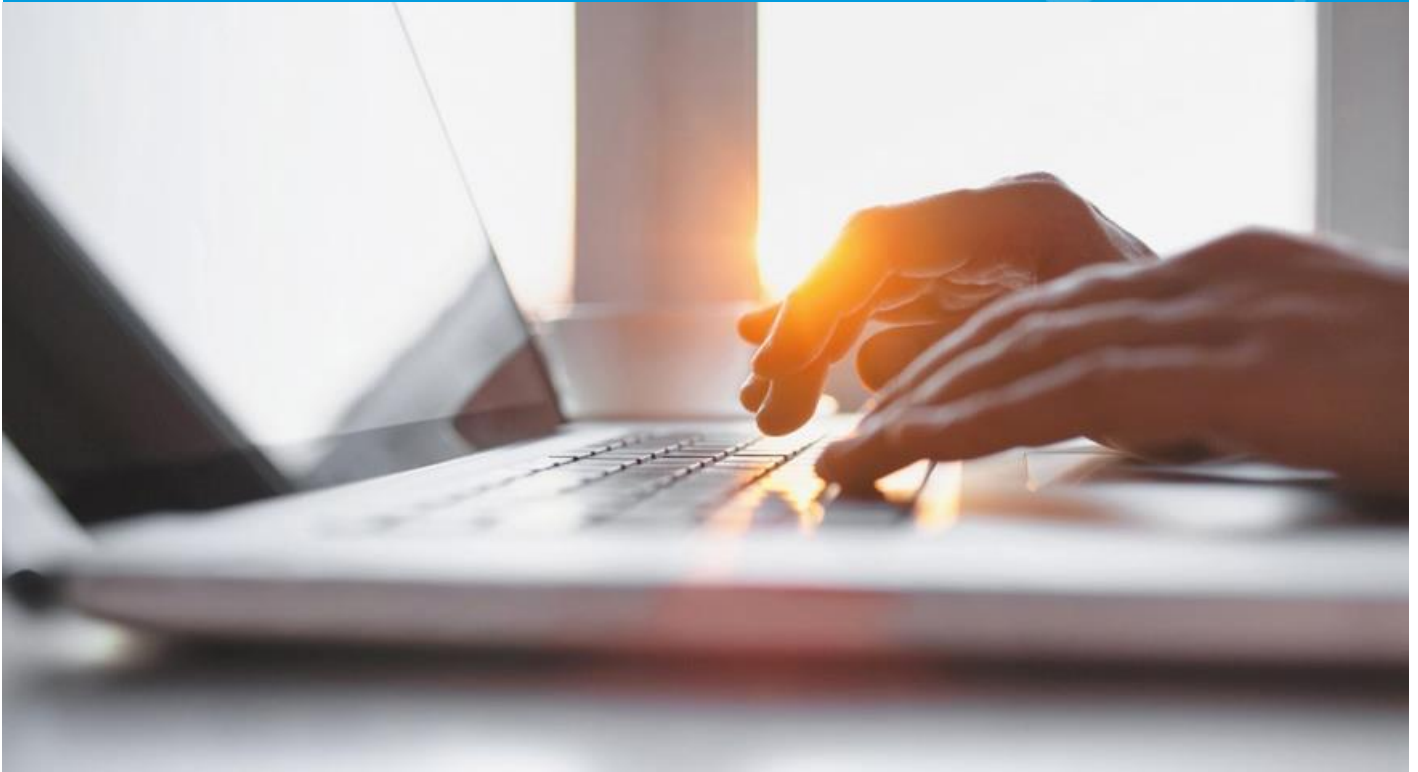


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The proposed family office tax exemption regime in Hong Kong: a comparative view



Hong Kong seems determined to go "head to head" with Singapore in attracting global family offices to bring their wealth to the city. On 24 March 2023, the Hong Kong government issued a new Policy Statement on Developing Family Business in Hong Kong, on the same day when the inaugural closed-door "Wealth for Good in Hong Kong" summit which was reportedly attended by over 100 global family office representatives was held.

In a previous [briefing note](#), we discussed the licensing requirements for family offices under the Securities and Futures Ordinance in Hong Kong. In this article we provide a high level comparison between Hong Kong's proposed profits tax concessions for family-owned investment vehicles (the "**HK Scheme**") and Singapore's Sections 130 and 13U tax exemption schemes for family offices (collectively, the "**Singapore Scheme**") with a view to assisting high net worth ("**HNW**") families to find the legal structures that best suit their wealth preservation needs and long term objectives.

The use of family trusts are allowed under both HK Scheme and Singapore Scheme

We emphasise a holistic and global approach when it comes to advising our HNW clients on setting up legal structures to hold their family wealth including their family office operation. The primary considerations which drive the choice of legal structures and jurisdictions should be non-tax related such as asset protection, wealth preservation and risk management. Using a family trust or trust-like entity (e.g. foundations) to control family wealth structures is often crucial for HNW families that want to ensure that the family wealth can pass on smoothly to the younger generations. Both the HK Scheme and the Singapore Scheme recognise

the need for inheritance arrangement and allow the family wealth holding vehicles to be owned by family trusts or other forms of legal arrangement.

The HK Scheme provides a bit more flexibility for family office legal structures

While in Singapore the asset holding vehicle must be a fund in the form of a company incorporated and resident in Singapore in order to qualify for the tax incentives under Section 130 (Offshore Fund Tax Exemption), for the HK Scheme both the asset holding vehicle and the single family office can be established in or outside Hong Kong for the purposes of qualifying for tax concessions. However, there is an additional requirement that both entities' central management and control must be exercised in Hong Kong.

One of the conditions for qualifying for the tax concessions under the HK Scheme is that at least 95% of the beneficial interest of each of the asset holding vehicle and its single family office must be owned by one or more "members of a family". The concept of a "family" under the HK Scheme is broader than the concept of a "family" under the Singapore Scheme. For example, a person's lineal descendants and lineal ancestors, his spouse, the siblings of himself and his spouse, and the nieces and nephews of himself or his spouse are all members of a family for the purposes of the HK Scheme. By contrast, a "family" for the purposes of the Singapore Scheme includes lineal descendants of a single ancestor, in addition to their spouses, ex-spouses, adopted children and stepchildren.

The HK Scheme allows up to 5% of the beneficial interest of each of the asset holding vehicle and its single family office to be owned by non-family members. This enables the HNW families to incorporate charities or philanthropic causes in setting up their wealth structures while still qualifying for the tax concessions for single family offices in Hong Kong. However, it is not clear yet how or whether a discretionary trust with specified philanthropic purposes or named charity beneficiaries can be the owner of the asset holding vehicle in Hong Kong without exceeding the 5% ownership threshold.

Asset under management ("AUM") and local substance requirements at a glance

	Hong Kong	Singapore
Minimum AUM	HK\$240 million	S\$10 million at point of application with increase to S\$20 million within 2-year grace period (13O) S\$50 million (13U)
Substantial activities requirement	Minimum requirements: <ul style="list-style-type: none"> At least two full-time, qualified employees* At least HK\$2 million in operating expenditure incurred in Hong Kong for carrying out core income generating activities* Adequacy test: the number of employees and amount of operating expenditure are "adequate" in the opinion of the Commissioner of Inland Revenue *can be outsourced to a single family office	13O: <ul style="list-style-type: none"> At least two investment professionals employed At least annual total business spending of S\$200,000 for AUM below S\$50 million (and tiered for larger funds) 13U: <ul style="list-style-type: none"> At least three investment professionals employed, with at least one being non-family member At least annual local business spending of S\$500,000 for AUM below \$100 million or S\$1 million otherwise

The HK Scheme does not impose local investment restrictions but only profits from "qualifying transactions" can be exempted from Hong Kong profits tax

The Section 130 and Section 13U tax incentives under the Singapore Scheme both require that the fund managed by the family office must invest at least 10% of its AUM or S\$10 million, whichever is lower, in local investments at any one point in time. Local investments may include equities listed on Singapore-licensed exchanges, qualifying debt securities, funds distributed by Singapore-licensed/registered fund managers and/or private equity investments into non-listed Singapore-incorporated companies (e.g. start-ups) with operating businesses in Singapore.

The HK Scheme does not impose any specific local investment restrictions, but only profits from "qualifying transactions" are tax exempted, with incidental transactions subject to a 5% threshold. Qualifying transactions are transactions in assets specified in Schedule 16C to the Inland Revenue Ordinance which include, among others, securities (including interests in collective investment schemes), shares, stocks, debentures, loan stocks, funds, bonds or notes of a private company, exchange-traded commodities, foreign currencies and OTC derivative. In order to be eligible for tax concessions, investments in private companies are subject to the immovable property test, holding period test, control test and short-term asset test which are similar to the rules under the unified tax exemption regime for funds.

While the HK Scheme appears to allow for a broader range of the investment activities in comparison to the Singapore Scheme, fund managers in Hong Kong would have to monitor (i) the scope of asset classes invested by the particular family asset holding vehicle against the scope of the qualifying assets under the HK Scheme; and (ii) profits from incidental transactions such as interest income and dividends from securities against the 5% threshold. In addition, while a concessionary tax rate of 10% is available to qualified single family offices in Singapore, single family offices in Hong Kong are still subject to normal profits tax rules.

How we can help

We regularly act for HNW families and professional trustees in implementing designing and implementing family office structures in multiple jurisdictions. We work with our colleagues across different practice groups and in different offices such as Singapore and London to deliver bespoke solutions which are multi-disciplinary with strong cross-border elements.

Please feel free to reach out to our team with any questions or views for further discussion.

Contact us



Wei Kang

Partner, Hong Kong
T: +852 2533 2727
E: wei.kang@shlegal.com



Kevin Lee

Partner, Hong Kong
T: +852 2533 2843
E: kevin.lee@shlegal.com



Sheetal Sandhu

Partner, Singapore
T: +65 6661 6523
E: sheetal.sandhu@shlegalworld.com



Yi Lee

Managing associate, Singapore
T: +65 6622 9562
E: yi.lee@shlegal.com



Tze-wei Ng

Associate, Hong Kong
T: +852 2533 2754
E: tzewei.ng@shlegal.com

Singapore law aspects of the article were written by Sheetal Sandhu of Virtus Law LLP (a member of the Stephenson Harwood (Singapore) Alliance).

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