

## Singapore Funds and Family Office Update

March 2019

### Singapore Budget 2019 and The Increased Relevance of Singapore for Family Offices

The much awaited Singapore Budget 2019 was delivered by the Finance Minister, Mr Heng Swee Keat, on 18 February 2019.

In a key development for family offices in Singapore, the Minister announced that the existing tax exemptions relating to Qualifying Funds i.e. funds managed by Singapore-based fund managers will be extended. These tax exemptions have been popular among family offices in Singapore and we consider their continued presence to be a welcome development for the industry.

In addition, there are also a number of enhancements that broaden the scope of the tax exemptions and potentially provide greater flexibility for both fund managers and investors.

The extension of the scheme means Singapore remains a strong option for private clients to base their family offices in a world where there is ever greater emphasis on economic substance. A case in point is the recent introduction of economic substance rules in the several popular asset holding jurisdictions, which we will briefly cover in this tax alert.

### Extension of Fund Tax Incentives in Singapore

The Budget confirmed that the existing tax concessions for the funds managed by Singapore-based fund managers i.e. Section 13CA, 13R and 13X schemes, which were due to expire on 31 March 2019, are extended until **31 December 2024**.

### Enhancement of Fund Tax Incentives

These schemes are also broadened, which will reduce the compliance burden for families and fund managers and ensure that they remain relevant. The detailed conditions of these schemes are not discussed for the purpose of this tax alert – please refer to our tax alert 'Family Offices in Singapore' dated June 2018 for further information. The schemes will be refined as follows:

#### Basic Tier Funds - Section 13CA and 13R

The Budget announced the removal of the condition that a basic tier fund must not have 100% of the value of its issued securities beneficially owned, directly or indirectly, by Singapore persons with effect from YA 2020. This levels the playing field for Singapore families or overseas families wishing to move to Singapore.

#### Enhanced Tier Funds - Section 13X

The enhanced tier fund scheme is broadened with effect from 19 February 2019 to:

- ▶ include co-investments (e.g. the Master-SPV no longer needs to be wholly-owned by the master fund), non-company SPVs and more than two tiers of SPVs in an umbrella structure. This provides greater flexibility for fund managers, however the co-investor must be an incentivised fund (i.e. Section 13CA, 13X or 13R scheme) or a foreign entity;
- ▶ allow debt and credit funds to access the "committed capital concession" in meeting the minimum fund size

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condition. This is a welcome change as previously it was only private equity, real estate and infrastructure funds that could rely on this; and

- ▶ include managed accounts (a dedicated investment account directly overseen by a fund manager). This is likely to boost the attractiveness of this scheme for some investors, which should result in an increase in assets under management in Singapore.

The following is applied to the Designate Investments (DI) and Specified Income (SI) lists with respect to income derived on and after 19 February 2019 as part of the Government's commitment to continually review the lists for relevance and to reduce the compliance burdens:

#### ▶ Designated Investments

The list of DIs is expanded by removing the counter-party and currency restrictions, and including investments such as credit facilities and advances. Islamic financial products that are commercial equivalents of DI are also included, further promoting the Singapore Islamic financial market. It is also expected that accounts receivables, letters of credit and emission allowances

will be included. The condition for unit trusts to wholly invest in DI will be removed. The removal of this condition is welcome as it widens the scope that a qualifying fund can participate in.

#### ▶ Specified Income

The list of SIs is enhanced to include income in the form of payments that fall within the ambit of section 12(6) of the Income Tax Act ("ITA") i.e. Singapore-sourced interest income. Clearly, this makes it more attractive for basing these funds in Singapore as this income will be exempt.

In respect of S-REITs and REITs ETFs distributions made during the period from 1 July 2019 to 31 December 2025, qualifying non-resident funds under Sections 13CA and 13X will be able to avail themselves of the 10% concessionary tax rate applicable to qualifying non-resident non-individuals when investing in S-REITs and REITs ETFs. Providing certainty on the position will be welcomed by these funds.

These announced changes should also apply to Singapore Variable Capital Companies ("VCCs") for which

the framework will be confirmed in legislation later this year – please refer to our tax alert 'Introduction of the VCC' dated January 2019 for further information.

More details on the above Budget changes are expected to become available in May 2019.

#### Offshore Economic Substance Legislation

The impact of the extension and enhancement of the tax exemptions should be seen in the light of global developments. Of particular relevance is the shift of focus to economic substance, which can be seen through the new legislation introduced in this area in a number of overseas jurisdictions. The demand for substance in these jurisdictions may cause certain clients to reconsider the efficacy of their current holding structures and whether Singapore may now be better to meet their needs.

#### Why Were These Rules Introduced?

The EU Code of Conduct Group reviewed various tax regimes in over 90 jurisdictions and found that they had concerns with a number of British

Overseas Territories (the British Virgin Islands ("BVI"), the Cayman Islands and Bermuda) and Crown Dependencies (Jersey, Guernsey and the Isle of Man) in respect of the absence of legal substance requirements in the legislation.

Following this review, these jurisdictions introduced new economic substance requirements for companies resident in those locations, which are now in effect for some jurisdictions. Any company or limited partnership registered or incorporated in these locations should be aware of this new legislation, which applies for accounting periods commencing on or after 1 January 2019. Further details to supplement the legislation in each jurisdiction, such as regulations and guidance is expected to be published shortly.

### Aims and Scope

The legislation addresses concerns that companies could be used to artificially attract profits that do not reflect the economic activities and substantial economic presence. The legislation varies in each of the relevant jurisdictions, however the approach is broadly consistent.

A resident company must satisfy the economic substance test for any 'relevant activity' carried on from which it derives gross income. Companies must demonstrate they have substance in the jurisdiction of formation by:

- ▶ Being **directed and managed** there, such as board meetings and record keeping; and
- ▶ Conducting an appropriate level of **Core Income Generating Activities** ("CIGA") there; and

Having **adequate employees, premises and expenditure** there.

Each island's legislation precisely defines the nature of each activity affected but, broadly, they fall into the following:

- ▶ Banking, insurance and fund management
- ▶ Finance and leasing
- ▶ Headquarters and holding companies
- ▶ Shipping
- ▶ Intellectual property holding
- ▶ Distribution and service centre

Outsourcing of CIGA is permitted in certain circumstances.

### Reporting

All legal entities must provide information on an annual basis to enable the competent authority to monitor whether the entity is carrying on relevant activities and, if so, whether it is complying with the economic substance requirements.

### Penalties for Non-Compliance

Penalties can be levied if the economic substance requirements are not met and for failure to provide required information. This may include substantial fines, imprisonment and/or strike-off.

### What Does This Mean For Existing Asset Holding Structures

Specific guidance on the application of the new laws is due to be issued shortly and as such the full implications of this new legislation are not yet established. However, it may be prudent to start review the position in respect of existing asset holding structures, considering these new developments and establish whether there are affected entities within the structure.

Particularly relevant is the question of where the economic substance of each arrangement may be. In our experience, many private clients in Singapore use offshore fund companies to hold their assets. In the light of the new economic substance test, these companies may no longer qualify as tax residents of their countries of incorporation, but can still mitigate their tax exposure under the Singapore's newly extended tax exemption schemes.

There are likely to be a number of cases where restructuring is required or further advice is required to ensure that the existing structures are compliant before any penalties for non-compliance take effect.

Please contact us for any assistance and further discussions into this area.

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# 新加坡基金与家族理财室最新政策动态

2019年3月

## 2019年新加坡财政预算案以及新加坡家族理财室的重要性与日俱增

2019年2月18日，财政部长王瑞杰先生公布了备受期待的2019年新加坡财政预算案。

在新加坡家族理财室的重要发展阶段，财政部长宣布将延长与合格基金（即由新加坡基金经理人管理的基金）相关的现行免税政策。这些免税政策深受新加坡家族理财室的欢迎，我们认为，免税政策持续存在将促进家族理财室行业的发展。

此外，还宣布了一系列的深化措施，这些措施扩大了免税政策的覆盖范围，并且可能为基金经理人和投资者提供更大的灵活性。

税收优惠计划的有效期限延长意味着，新加坡仍然是私人客户的一个有力选择，客户可以将其家族理财室设立在一个更强调经济实质的环境中。一个很好的例子就是，多个受欢迎的资产持有管辖区在最近引入了经济实质规定，我们将在税务快讯部分进行简要介绍。

## 延长新加坡基金税收优惠

财政预算案确认，新加坡基金经理人管理的基金所享有的现有税收优惠，即第13CA, 13R和13X节规定的优惠计划，将于2019年3月31日到期，现将其有效期限延长至**2024年12月31日**。

## 深化基金税收优惠

扩大了这些税收优惠计划的范围，有助于减轻家族和基金经理人的合规负担，并确保保持相关性。本税务快讯并未讨论这些计划的详细内容，欲了解更多信息，请参阅2018年6月发布的税务快讯“新加坡家族理财室”。目前，将对这些税收优惠计划作出以下改进：

## 基本层级基金——第13CA和13R节

财政预算案宣布，自2020年起将取消以下条件，即对于新加坡人实益性地直接或间接持有的已发行证券，基本层级基金不得持有此类证券的100%价值。这为新加坡家庭或有意移居新加坡的海外家庭创造了公平的竞争环境。

## 增强型层级基金——第13X节

自2019年2月19日起，增强型层级基金计划的范围，从而：

- ▶ 纳入联合投资（比如，无需再由母基金全资拥有的Master-SPV）、非公司SPV以及呈伞形结构的两层以上的SPV。这为基金经理人提供了更大的灵活性，但是，联合投资者必须是激励型基金（即第13CA, 13X或13R节规定的基金计划）或外国实体；
- ▶ 允许满足最低基金规模条件的债务和信贷基金获得“承诺的资本特许权”。这是一个深受受欢迎的变化，因为在这之前只允许私人股本、房地产和基础设施基金享有前述特许权；以及
- ▶ 纳入托管账户（由基金经理人直接监管的专用投资账户）。这可能会增强该计划对一些投资者的吸引力，从而使由新加坡管理的资产增加。

以下内容适用于指定投资（Designate Investments, DI）与指定收入（Specified Income, SI）清单，该清单适用于在2019年2月19日之后获得的收入，作为政府承诺的一部分，其目的是持续审查清单的相关性，并减轻合规负担：

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### ▶ 指定投资

通过取消对交易对手和货币的限制，并纳入信贷和预付款等投资措施，扩大了指定投资清单的范围。同时，也纳入了伊斯兰金融产品，此类产品是指定投资的商业等价物，进一步促进了新加坡伊斯兰金融市场的发展。据预计，还将纳入应收账款、信用证和排放津贴。将取消单位信托基金对指定投资进行全资投资的投资条件。由于扩大了合格基金的参与范围，该条件的取消深受欢迎。

### ▶ 指定收入

指定收入清单也纳入了《所得税法》（“ITA”）第12（6）节范围内以付款的方式取得的收入，即来源于新加坡的利息收入。很明显，由于该项收入免税，在新加坡设立基金的吸引力大为提高。

对于在2019年7月1日 - 2025年12月31日期间作出的S-REIT和REIT ETF分配，第13CA和13X节规定的合格非居民基金将能够在投资S-REIT和REIT ETF时，享受适用于合格非居民非个人的10%优惠税率。这些基金希望能够确定这一立场。

这些所公布变化也应适用于新加坡可变资本公司（“VCC”），该框架将在今年晚些时候的立法中得到确认。欲了解更多信息，请参阅2019年1月发布的税务快讯“VCC简介”。

更多有关上述财政预算案变动的更多详细信息预计将于2019年5月公布有关。

### 岸外经济实质立法

应当从全球发展的角度来看待延长并深化免税政策所造成的影响。尤为重要，焦点已经转向了经济实质，多个海外管辖区引入这一领域的新立法即证明了这一点。这些管辖区对实质的需求可能会导致某些客户重新考虑其当前持有结构的有效性，以及新加坡现在是否能够更好地满足他们的需求。

### 为何引入这些规定？

欧盟行为准则小组对90多个管辖区的各种税收制度进行了审查，发现一些英国海外领土（英属维尔京群岛（“BVI”）、开曼群岛和百慕大群岛）及皇家属地（泽西岛、根西岛和马恩岛）未有对法律实质作出有关法律要求。

在此次审查之后，这些管辖区对这些地区的公司提出了新的经济实质要求，目前，这些要求已经在某些管辖区生效。在这些地区注册或成立的任何公司或有限合伙企业应注意，这项新的立法适用于在2019年1月1日或之后开始的会计期。预计将很快公布更多详细信息，通过颁布各类条例和指南等方式对各个管辖区的立法进行补充。

### 目标和范围

这项立法解除了大众的担忧，即公司可能被误用于收取利润并未反映经济活动和重大经济业务。尽管各个相关管辖区的立法不相同，但方法大体一致。

本地公司必须通过针对其获得总收入的所有“相关活动”进行经济实质的测试。公司必须通过以下方式，证明其在本公司成立地所属的管辖区存在经济实质：

- ▶ 在该地区**获得指示和管理**，比如董事会会议和记录保存；
- ▶ 在该地区开展适当水平的**核心创收活动**（“CIGA”）；

在该地区雇佣**数量充足的雇员**，**设立了经营场所**，并有**产生本地消费**。

各岛的立法均准确地规定了受影响的每项活动的性质，但大体上，它们可分为以下几类：

- ▶ 银行业、保险和基金管理
- ▶ 融资和租赁
- ▶ 总部和控股公司
- ▶ 货运

- ▶ 知识产权持有
- ▶ 配送及服务中心

外包核心创收活动在某些情况下已获得允许。

## 报告

所有法律实体必须每年提供信息，以便主管部门能够监测该实体是否正在开展相关活动，若是，还必须监测其是否符合经济实质要求。

## 不合规的处罚

如果不符合经济实质要求，或未能提供所需的信息，为规则将受到巨额罚款、监禁和/或公司注销等处罚。

## 这将对现有的资产持有结构产生哪些影响？

关于适用新法律的具体指导意见将于近期发布，因此尚无法确定这项新立法将产生哪些影响。然而，最好开始审查现有的资产持有结构并考虑这些新的发展状况，以确定结构内是否存在受到影响的实体。

尤为重要的问题为每项计划的安排及实际的经济实质。根据我们的经验，新加坡的许多私人客户通过岸外基金公司来持有其资产。根据新的经济实质测试，这些公司可能不再有资格成为其注册国的税务居民，但仍可以根据新加坡最近予以延长的免税计划，来减轻其税务风险

这可能会引起各种情形，并导致需要进行重组或进一步的建议，以确保在不合规的处罚规定生效之前，现有的结构是合规的。

如需获得这一方面的协助和更进一步讨论，请与我们联系。

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