

Practical Considerations of the Fund Tax Exemption Schemes



Practical Considerations of the Section 130 and 13U Tax Exemption Schemes with effect from 5 July 2023 (For Family Office Structures)

The refinements to the conditions under Section 130 (i.e. resident fund tax exemption scheme) and Section 13U (i.e. enhanced-tier fund tax exemption scheme) as introduced by the Monetary Authority of Singapore (“MAS”) for funds managed or advised by certain family offices have brought about new challenges. Broadly, the refinements as outlined in the MAS’ refreshed guidelines (first communicated to the industry on 11 April 2022, followed by another update on 1 December 2022 and with the most recent one on 5 July 2023) have impacted, amongst others, the minimum asset under management (“AUM”), investment professionals’ requirements, business spending and local investment obligations.

While these conditions may appear stringent at first glance (read - higher barriers to entry), they reflect Singapore's growing prominence as a preferred destination for family offices. As the asset management industry matures and reaches an inflection point, the government has refined these conditions to align with broader policy objectives - stimulating the local economy, creating more job opportunities and fostering a higher level of professionalism within the industry. Set out as follows are some of the practical issues to keep a look out for:-

i) Minimum AUM under the Section 130

With effect from 5 July 2023, the fund must have a minimum fund size of S\$20million at the point of application and throughout the incentive period. This appears to be an intrepid move to “sieve out the boys from the men” – to deter families who are using Singapore merely as a convenient pitstop to store a bit part of their private wealth and not committed to sink roots in Singapore and / or serious in contributing more or grow their AUM here. It should also be noted that private banks seem to have leveraged on this minimum AUM requirement and appear to be more selective in accepting new private banking relationships unless a certain level of AUM can be brought in (e.g. beginning from US\$5million and above). In gist, if the clients are unable to commit to a S\$20million AUM, it is a showstopper at the get-go for the Section 130 scheme (not to mention the Section 13U scheme, which requires a higher level of AUM, starting from S\$50million).

ii) Operating other businesses under the family office

The MAS has indicated that the family office should serve the needs of the single family only and that it should not provide any products or services to any third party. It is commonly understood, amongst others, that the family office should not be advising other third parties in relation to investments that are not owned by the family office and / or be taking in other third parties' monies for the purpose of investing on behalf of these third parties.

However, oftentimes, there are cases where the principals and / or the employees of the family offices have skillsets that span beyond the asset / investment management realm and are able to offer services (e.g. IT consultancy, management consultancy, philanthropy advisory, etc.) through the same family office entity to outside parties in return for a fee, which ultimately benefits and supplement the management fee income that the family offices usually derive from managing their own funds.

At the point of writing, the writers are still unclear as to whether the above scenario would flout any conditions under the Section 130/U schemes and are awaiting clarifications from the MAS. On a prudent basis, applicants should not attempt to commit to any other business endeavours apart from managing / advising its own funds.

iii) Investment professionals

There is greater emphasis on the academic background and professional experience of the investment professionals in recent times. This can be observed in recent applications where the proposed investment professionals of the family office applicants are being rejected on the basis that they do not hold the appropriate academic qualifications and do not possess relevant professional investment management experience – the MAS has made it clear that investments made in one's personal capacity do not count as professional experience.

Also, the MAS appears to have certain expectations of how these investment professionals should look like – academically and professionally (think finance / accounting degrees and portfolio managerial / research analyst and trader type roles). Failing which, the family offices should expect to assert a good amount of time and effort to justify why a particular individual qualifies as an “investment professional”. Although one might find the level of scrutiny these days somewhat pedantic in this respect, it is necessary so as to spur further professionalism required in the industry and also as a means to get these family offices to look deeper into our local talent pool to seek out suitable candidates that could fit the bill and to fill the minimum investment professionals’ conditions under the said schemes.

iv) Review process and timeframe

Generally, the review and approval process for the fund tax exemption schemes takes between 6 to 12 months. However, this is slowly turning out to be a statement that has to be taken with a pinch of salt. It has been observed in recent times (even with funds that are managed by licensed / registered fund managers) that the entire process could stretch longer than the aforesaid timeframe. This is not unexpected due to the popularity of the tax exemption schemes and the additional time required to vet through all of these applications to ensure integrity and that the country is only granting these schemes to deserving applicants. This prolonged wait time can pose significant challenges for structures with immediate investment plans, potentially hindering their ability to execute timely transactions and capitalise on market opportunities. In such cases, family offices may consider seeking permission from the MAS to hold transferred-in assets / acquire investments before enjoying the fund tax exemption scheme. This may be achieved by presenting the relevant *bona-fide* commercial justifications. Based on experience, MAS has shown flexibility in granting waivers or permissions on a case-by-case basis.

For structures without immediate investment plans, family offices can explore exceptions provided by the MAS. Under these exceptions, the MAS is prepared to accept and exclude taxable income arising from activities like warehousing of investments (i.e. the fund acquiring investments at an initial stage of the fund’s existence, prior to closing the fund), setting up bank accounts in anticipation of commencing operation and placement of monies in deposits or money market instruments on a temporary basis before a fund tax exemption scheme application is made.

The above are often taken for granted and seemingly skimmed through without much thought until it becomes a stumbling block for the clients. Family offices should be well advised that the MAS now undertakes a greater deal of scrutiny of all family office structure applications. By anticipating these (unknowing) complications, practitioners can manage clients' expectations upfront and move more confidently in helping family offices successfully navigate the fund tax exemption scheme application process and achieving the desired outcomes.

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