

Clarification on the Definition of “Issued Securities” Under the Offshore Fund Regime

The Offshore Fund Scheme (the “Scheme”) provided under section 13CA of the Income Tax Act is one of the commonly used safe harbour provisions by offshore funds managed by a fund management company in Singapore. The Scheme provides Singapore tax exemption on “specified income” derived by a “prescribed person” from “designated investments. It is a self-assessment scheme that does not require an application to the authorities provided the requisite conditions to be a “prescribed person” are met. The Scheme also imposes qualifying investors test where non-qualifying investors are subject to financial penalty.

Current provisions under the Offshore Fund Regime (in the case of an offshore fund as a company)

One of the conditions to be a “prescribed person” is that the value of the issued securities of the company is not 100% beneficially owned, directly or indirectly, by Singapore persons.

An investor who, whether alone or with his associates, beneficially owns not more than 30% (50% in some cases) of the total value of issued securities of the offshore fund is a qualifying investor.

You will note that both tests use the concept of “issued securities”. Previously, “issued securities” of a company, is defined as:

- a. issued debentures of, or issued stocks or shares in, the company;
- b. any right, option or derivative in respect of any such debentures, stocks or shares; or
- c. such other securities of the company as may be prescribed.

Clarifications per the circular issued by the Monetary Authority of Singapore dated 4 May 2018

Some companies incorporated / constituted outside of Singapore may not issue securities that fall within the definition of “issued securities” above. This poses challenges for such companies intending to rely on the Scheme.

The Monetary Authority of Singapore (MAS) has now clarified that for such foreign companies, the prescribed person test and the qualifying investor test will be applied on the membership or similar interests in that company. This definition is effective from 4 May 2018, and there are no changes to the other conditions under the Scheme.

Impacts on the fund industry

Prior to the clarification made by the MAS, there are often uncertainties as to whether foreign funds set up in other corporate legal forms (e.g. a Delaware Limited Liability Company) can qualify as a prescribed person under the Scheme.

The above clarification provides certainty to the fund management industry players on how the rules are applied to foreign companies that do not issue securities. It is encouraging that the Singapore authorities is responsive to the industry needs as the use of legal forms like limited liability companies are common in the other part of the world such as the United States. This clarification, as such, is seen as a positive move that is definitely welcomed by the fund management industry.