

Inland Revenue (Amendment) (No. 4) Bill 2018

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A BILL

To

Amend the Inland Revenue Ordinance to introduce a new concessionary deduction concerning salaries tax and tax under personal assessment that may be allowed for premiums paid in respect of insurance plans certified to be in compliance with the Government's Voluntary Health Insurance Scheme; and to provide for related and transitional matters.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Inland Revenue (Amendment) (No. 4) Ordinance 2018.
- (2) This Ordinance comes into operation on 1 April 2019.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 13.

3. Part 4A, Division 1 heading added

Before section 26B—

Add

“Division 1—Preliminary”.

4. Part 4A, Division 2 heading added

Before section 26C—

Add

“Division 2—Approved Charitable Donations”.

5. Part 4A, Division 3 heading added

Before section 26D—

Add

“Division 3—Elderly Residential Care Expenses”.

6. Part 4A, Division 4 heading added

Before section 26E—

Add

“Division 4—Home Loan Interest”.

7. Part 4A, Division 5 heading added

Before section 26G—

Add

“Division 5—Contributions to Recognized Retirement Schemes”.

8. Part 4A, Division 6 added

Part 4A, after Division 5—

Add**“Division 6—Health Insurance Premiums****26H. Application**

This Division applies in relation to the year of assessment commencing on 1 April 2019 and to all subsequent years of assessment.

26I. Interpretation

(1) In this Division—

adopted (領養) means adopted in any manner recognized by the laws of Hong Kong;

insured person (受保人), in relation to a VHIS policy, means an individual whose risks are covered by the policy;

policy holder (保單持有人), in relation to a VHIS policy, means a legal holder of the policy;

qualifying premiums (合資格保費), in relation to a VHIS policy, means the net sum of moneys that is payable under the policy to the insurer for writing or renewing the policy in so far as it relates to the insurance plan certified by the Secretary for Food and Health to be in compliance with the Government’s Voluntary Health Insurance Scheme (***VHIS***);

specified relative (指明親屬)—see section 26J;

VHIS policy (自願醫保計劃保單) means an insurance policy that is in whole or in part issued under an insurance plan certified by the Secretary for Food and Health to be in compliance with the VHIS.

- (2) A note located in the text of this Division is provided for information only and has no legislative effect.

26J. Meaning of *specified relative*

- (1) An individual is a specified relative of a person in a year of assessment if the individual is, in relation to the person, at any time during the year of assessment—
- (a) a spouse;
 - (b) a parent or grandparent who fulfils the condition mentioned in subsection (2); or
 - (c) a child or sibling who fulfils the conditions mentioned in subsection (3).
- (2) The condition is that the parent or grandparent is, at any time during the year of assessment—
- (a) aged 55 or more; or
 - (b) under the age of 55 but eligible to claim an allowance under the Government's Disability Allowance Scheme.
- (3) The conditions are that the child or sibling is, at any time during the year of assessment, unmarried and—
- (a) under the age of 18;
 - (b) aged 18 or more but under the age of 25 and receiving full time education at a university, college, school or other similar educational establishment; or
 - (c) aged 18 or more but incapacitated for work by reason of physical or mental disability.
- (4) In this section—
- child*** (子女), in relation to a person—

- (a) means a child of the person or of the person's spouse or former spouse, whether or not the child was born in wedlock; and
- (b) includes the adopted or step child of either or both of the following—
 - (i) the person;
 - (ii) the person's spouse or former spouse;

grandparent (祖父母或外祖父母), in relation to a person, means a grandparent or grandparent of his or her spouse;

Note—

See the definition of *grandparent or grandparent of his or her spouse* in section 2(1).

parent (父母), in relation to a person, means a parent or parent of his or her spouse;

Note—

See the definition of *parent or parent of his or her spouse* in section 2(1).

sibling (兄弟姊妹), in relation to a person, means—

- (a) a full or half blood sibling of the person or of the person's spouse;
- (b) an adopted sibling of the person or of the person's spouse;
- (c) a step sibling of the person or of the person's spouse; or
- (d) if the person's spouse is deceased—an individual who would have been the sibling of the person under paragraph (a), (b) or (c) if the spouse had not died.

26K. Qualifying premiums paid under VHIS policy

- (1) Subject to the other provisions of this section and to sections 26L and 26M, a deduction in respect of qualifying premiums paid during a year of assessment for an insured person under a VHIS policy is allowable to a person (*taxpayer*) for the year of assessment if—
 - (a) the qualifying premiums were paid by the taxpayer or the taxpayer's spouse, not being a spouse living apart from the taxpayer, as a policy holder of the policy;
 - (b) the insured person is either—
 - (i) the taxpayer; or
 - (ii) a specified relative of the taxpayer in the year of assessment; and
 - (c) the insured person is either—
 - (i) a holder of an identity card issued under the Registration of Persons Ordinance (Cap. 177) (*HKID card holder*) at any time during the year of assessment; or
 - (ii) under the age of 11 and not an HKID card holder at any time during the year of assessment but an individual—
 - (A) unless the insured person has been adopted—whose natural parent was, at the time of birth of the insured person, an HKID card holder; or
 - (B) if the insured person has been adopted—whose adoptive parent was, at the time of adoption of the insured person, an HKID card holder.

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- (2) If there is more than one policy holder for a VHIS policy, the qualifying premiums paid during a year of assessment for each insured person under the policy are taken as paid by all of the policy holders in equal shares.
 - (3) The maximum deduction allowable to a taxpayer in respect of qualifying premiums paid during a year of assessment for each insured person, whether the insured person is insured under one or more than one VHIS policy, is the amount specified in Schedule 3E in relation to the year of assessment.
 - (4) If the Commissioner is of the opinion that the qualifying premiums paid during a year of assessment for an insured person under a VHIS policy are not commensurate with the risk profile of the insured person—
 - (a) the Commissioner may determine the amount of qualifying premiums that is, in the Commissioner's opinion, commensurate with the risk profile of the insured person; and
 - (b) the amount so determined is taken to be the qualifying premiums paid.
 - (5) The Commissioner may exercise a power under this Division in the way that the Commissioner considers appropriate having regard only to the information in the Commissioner's possession when exercising the power.

26L. Claim of deduction by married persons

- (1) This section applies in relation to a deduction under section 26K claimed by a married person or the person's spouse or both in respect of the qualifying premiums paid by either or both of them during a year of assessment for an insured person.
- (2) The qualifying premiums paid are allowable as a deduction under section 26K to either the married person or the person's spouse, or to both of them, so long as—
 - (a) the deduction allowed to each of them for the insured person does not exceed the amount specified in Schedule 3E in relation to the year of assessment; and
 - (b) the total deduction allowed to them does not exceed the qualifying premiums paid.
- (3) If the Commissioner has reason to believe that a deduction under section 26K would, if allowed, be contrary to subsection (2)(b), the Commissioner must not consider any claim for the deduction until the Commissioner is satisfied that the married person and the person's spouse have reached an agreement that would result in a total deduction that accords with that subsection.
- (4) Subsection (5) applies—
 - (a) if deductions under section 26K have been allowed to a married person and the person's spouse contrary to subsection (2)(b); or
 - (b) if—
 - (i) a deduction under section 26K has been allowed to a married person; and

- (ii) within 6 months after the date of allowing the deduction, the person's spouse claims a deduction under section 26K that would, if allowed, be contrary to subsection (2)(b).
- (5) The Commissioner may—
 - (a) invite the married person and the person's spouse to reach an agreement that would result in a total deduction that accords with subsection (2)(b); and
 - (b) make additional assessments under section 60 in consequence of—
 - (i) such an agreement reached by the married person and the person's spouse within a reasonable time; or
 - (ii) their failure to reach such an agreement within a reasonable time.

26M. Refund of qualifying premiums paid under VHIS policy

- (1) This section applies if any of the qualifying premiums paid during a year of assessment for an insured person under a VHIS policy is refunded in respect of the insured person.
- (2) The qualifying premiums paid are taken to be reduced by the amount of the refund.
- (3) In addition, if the refund is made after a person claims a deduction under section 26K in respect of the qualifying premiums paid—
 - (a) the person must notify the Commissioner in writing of the refund within 3 months after the date of refund; and

- (b) if the deduction has been allowed, then, despite any time limit for making an additional assessment under section 60, an assessor may, having regard to the reduction, make an additional assessment on the person under that section.”.

9. Section 80 amended (penalties for failure to make returns, making incorrect returns, etc.)

- (1) After section 80(2)(c)—

Add

“(ca) fails to comply with section 26M(3)(a);”.

- (2) Section 80(2), before “the failure to comply with a notice under section 51(1) or (2A)”—

Add

“the failure to comply with section 26M(3)(a);”.

10. Section 82A amended (additional tax in certain cases)

- (1) After section 82A(1)(c)—

Add

“(ca) fails to comply with section 26M(3)(a); or”.

- (2) Section 82A(1)(ii), before “the failure to comply with a notice under section 51(1) or (2A)”—

Add

“the failure to comply with section 26M(3)(a);”.

- (3) Section 82A(4)(a)(i)—

Repeal

“or alleged failure”

Substitute

“, the alleged failure to comply with section 26M(3)(a), the alleged failure”.

11. Section 89 amended (transitional provisions)

Section 89—

Add

“(22) Schedule 46 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2019.”.

12. Schedule 3E added

After Schedule 3D—

Add

“Schedule 3E

[ss. 26K & 26L]

**Maximum Deduction for Qualifying Premiums
Paid for Each Insured Person**

Column 1 Item	Column 2 Year of assessment	Column 3 Amount
1.	For the year of assessment 2019/20 and for each year after that year	\$8,000”.

13. Schedule 46 added

The Ordinance—

Add**“Schedule 46**

[s. 89(22)]

Transitional Provisions Relating to Provisional Salaries Tax in respect of Year of Assessment 2019/20**1. Interpretation**

In this Schedule—

insured person (受保人) has the meaning given by section 26I(1);

qualifying premiums (合資格保費) has the meaning given by section 26I(1);

VHIS policy (自願醫保計劃保單) has the meaning given by section 26I(1);

year of assessment 2019/20 (2019/20課稅年度) means the year of assessment commencing on 1 April 2019.

2. Application for holding over payment of provisional salaries tax on additional ground

- (1) A person who is liable to pay provisional salaries tax in respect of the year of assessment 2019/20 may apply to the Commissioner to have the payment of the whole or part of the tax held over until the person is required to pay salaries tax for the year.

- (2) An application may be made under subsection (1) if, for the year of assessment 2019/20, a deduction under section 26K in respect of qualifying premiums paid for an insured person under a VHIS policy is, or is likely to be, allowable to the person mentioned in subsection (1).
- (3) This section does not affect the operation of section 63E.

3. Provisions supplementary to section 2 of this Schedule

- (1) This section applies to an application under section 2 of this Schedule.
 - (2) The application must be made in writing.
 - (3) The application must be made not later than—
 - (a) the 28th day before the day by which the provisional salaries tax is to be paid; or
 - (b) the 14th day after the date of the notice for payment of provisional salaries tax under section 63C(6),whichever is the later.
 - (4) However, the Commissioner may, if satisfied that it is appropriate, either generally or in a particular case, postpone the deadline.
 - (5) On receipt of the application, the Commissioner—
 - (a) must consider the application; and
 - (b) may hold over the payment of the whole or part of the provisional salaries tax.
 - (6) The Commissioner must, by notice in writing, inform the applicant of the Commissioner's decision.”.
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Explanatory Memorandum

The main object of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*principal Ordinance*) to introduce a new concessionary deduction concerning salaries tax and tax under personal assessment that may be allowed for premiums paid in respect of insurance plans certified to be in compliance with the Government's Voluntary Health Insurance Scheme.

2. Clauses 3 to 7 divide Part 4A of the principal Ordinance into 5 Divisions to improve the presentation of that Part.
3. Clause 8 adds a new Division 6 (the new sections 26H to 26M) to Part 4A of the principal Ordinance.
4. The new section 26H provides for the application of the new Division 6. The new sections 26I and 26J provide for the interpretation of terms used in that Division, including *qualifying premiums*, *specified relative* and *VHIS policy*.
5. The new section 26K provides for the new deduction allowable for qualifying premiums paid by a taxpayer or the taxpayer's spouse (not being a spouse living apart from the taxpayer) as a policy holder of a VHIS policy for an insured person. In order for the deduction to be allowable, the insured person must be the taxpayer or a specified relative of the taxpayer. Also, either of the following conditions must be satisfied—
 - (a) the insured person is a holder of Hong Kong identity card (*HKID card holder*);

- (b) if the insured person is under the age of 11 and not an HKID card holder—a natural parent (or an adoptive parent) of the insured person is an HKID card holder at the time of birth (or adoption) of the insured person.
6. The new section 26K also provides that if there is more than one policy holder for a VHIS policy, the qualifying premiums are taken as paid by all of the policy holders in equal shares. The maximum deduction allowable to a taxpayer in respect of qualifying premiums paid for each insured person is specified in the new Schedule 3E (added by clause 12) to the principal Ordinance.
7. The new section 26L deals with multiple claims for deduction under the new section 26K in respect of the qualifying premiums paid by a married person or the person's spouse or both of them. It provides for the related arrangement, and the related power to make additional assessments, under which the qualifying premiums paid will be allowable as a deduction to either the married person or the person's spouse or both of them.
8. The new section 26M provides for requirements in relation to the refund of qualifying premiums paid. For any refund, the qualifying premiums paid are taken to be reduced by the amount of the refund. Moreover, if the refund is made after the claim of the deduction, the person claiming the deduction must notify the Commissioner in writing of the refund within 3 months after the date of refund (the new section 26M(3)(a)). It also provides that despite any time limit under section 60 of the principal Ordinance, an additional assessment under that section may be made if the deduction claimed has been allowed.

9. Clause 9 amends section 80 of the principal Ordinance to provide for penalty for a failure to comply with the new section 26M(3)(a).
10. Clause 10 amends section 82A of the principal Ordinance to provide that additional tax may be assessed against a failure to comply with the new section 26M(3)(a) in lieu of prosecution.
11. Clause 11 amends section 89 of, and clause 13 adds a new Schedule 46 to, the principal Ordinance to provide for a transitional arrangement under which application may be made for the holding over of payment of provisional salaries tax in respect of the year of assessment 2019/20 in view of the new deduction.