中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2527 0292)

8 January 2019

Ms TSANG Fung-yi, Noel
Principal Assistant Secretary for Financial Services
& the Treasury (Financial Services)
Insurance and Retirement Scheme
Financial Services & the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Ms TSANG,

Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018

We are scrutinizing the legal and drafting aspects of the captioned Bill and would be grateful if you would let us have your response in respect of the following matters.

Part 2 of the Bill (Amendments to the Inland Revenue Ordinance (Cap. 112))

(1) In the proposed section 26N, "qualifying deferred annuity policy" is defined to mean an insurance policy that is, among others, certified by the Insurance Authority ("IA") to be in compliance with the criteria specified for such purposes in the guidelines published by IA under section 133 of the Insurance Ordinance (Cap. 41). We note that under section 133 of Cap. 41, the guidelines may be published in the Gazette but are not subsidiary legislation. Please let us know:

(a) how the taxpayers would know whether an deferred annuity policy is certified by IA as in compliance with its relevant guidelines or not; and

(b) the factors IA would take into consideration in formulating the criteria for a qualifying deferred annuity policy and whether IA would conduct any public consultation on the criteria to be specified in the guidelines.

(2) The proposed new section 26R provides that the Commissioner of Inland Revenue may exercise a power under Subdivision 1 (Qualifying Annuity Premiums) in a way that the Commissioner, having regard only to the information then in the Commissioner's possession, considers appropriate. Please explain why the proposed section 26R is necessary for Subdivision 1 but not for Subdivision 2 (Tax Deductible MPF Voluntary Contributions).

(3) The proposed new section 26S provides that subject to sections 26T and 26U, a deduction in respect of tax deductible MPF voluntary contributions paid by a person into a TVC account (i.e. for holding tax deductible voluntary contributions) during a year of assessment is allowable to the person for the year of assessment. Please clarify whether a taxpayer may authorize his/her employer to pay voluntary contributions out of his/her salary direct into the taxpayer's TVC account (i.e. similar to the way MPF voluntary contributions are paid to the MPF trustees by employers) and claim deduction under the proposed section 26S.

(4) Under the proposed new section 26U, if deductions are allowable to a taxpayer for both qualifying annuity premiums and MPF voluntary contributions paid by the taxpayer, the deductions are to be allowed for the MPF voluntary contributions first and then for the annuity premiums. Please explain the reason(s) for allowing deductions in such order.

<u>Part 4 of the Bill (Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A))</u>

(5) Please confirm whether the notice to be made by the Mandatory Provident Fund Schemes Authority under the proposed new section 56A(5) of Cap. 485A would be subsidiary legislation subject to scrutiny by the Legislative Council.

We would be grateful if you could let us have your reply in bilingual form at your earliest convenience.

Yours sincerely,

(Clara TAM)
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Jonathan LUK and
Mr Salvador TSANG) (By Fax: 3918 4613)
Clerk to Bills Committee
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