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21 January 2019

Ms Clara TAM
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(By Fax : 2877 5029)

Dear Ms Tam,

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

Thank you for your captioned letter dated 8 January 2019. I write to provide our response to the matters as set out in your letter.

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

(1)(a): clause 3 – proposed section 26N

As mentioned in paragraph 17 of the LegCo Brief on the captioned, the Insurance Authority ("IA") will publish the list of the qualifying deferred annuity products on its website (www.ia.org.hk) for public information. The list will be maintained and updated by the IA. Members of the public can visit the IA's website to find out which product is eligible for tax deduction. We are also considering a compliance mark system such that the product brochures of a qualifying product will bear an indication that it is a compliant product for consumers' easy identification.

(1)(b): clause 3 – proposed section 26N

The guidelines to be published by the IA are to set out the technical details of the eligibility criteria and other related requirements for compliance by insurers. The IA has conducted an industry consultation on the guidelines given the technical nature of the exercise.

In formulating the criteria for a qualifying deferred annuity policy to be specified in the guidelines, the following two factors are taken into consideration –

(i) whether the product serves the purpose of long-term retirement financial planning (some products are more akin to short-term savings plan); and

(ii) consumer protection.

(2): clause 3 – proposed section 26R

Under the proposed section 26P(2) in Subdivision 1, a deduction for qualifying annuity premiums paid may be allowed to either a taxpayer, or the taxpayer's spouse (not being a spouse living apart from the taxpayer), or to both of them. If the qualifying annuity premiums paid are claimed for deduction by both the taxpayer and the taxpayer's spouse and the amounts claimed exceeded the actual amounts paid, the Commissioner of Inland Revenue ("the Commissioner") will need to deal with such double claims. In such situations, the proposed section 26R allows the Commissioner to decide on these claims based on the information in his possession since the information provided might be conflicting.

Under the proposed section 26S in Subdivision 2, a deduction for tax deductible MPF voluntary contributions paid can only be claimed by and allowed to the taxpayer. As such, no double claims will arise and the power under the proposed section 26R (i.e. Exercise of Commissioner's power) is not necessary.

(3): clause 3 – proposed section 26S

Tax deductible voluntary contributions ("TVC") is a new type of contributions and is different from the voluntary contributions as defined in section 11 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

Unlike the existing employment-related voluntary contributions, a taxpayer who wishes to make TVC could open a TVC account with an MPF trustee of his own choice and make TVC directly to the account without going through his employer. The taxpayer can make TVC to his TVC account at any time at any amount.

The above arrangement is considered to be the optimal arrangement after taking into account the following considerations –

(i) minimization of administrative costs;

(ii) maintaining flexibility to meet different financial needs and preference of different scheme members; and

(iii) enhancing competition among trustees. Currently, it is employers who choose the MPF trustees for their employees. Under the TVC proposal, employees are free to choose an MPF trustee to open a TVC account.

Under the proposed section 26S in Subdivision 2, a taxpayer may claim a deduction in respect of tax deductible MPF voluntary contributions paid by him into his TVC account in a year of assessment. Notwithstanding the above, a TVC account holder can authorize his employer to make TVC into his TVC account as a private arrangement. It would depend on the agreement between the scheme member, his employer and the MPF trustee concerned. However, in practice, it may be administrative cumbersome for an employer to make TVC on behalf of his employees because different employees may open TVC accounts with different trustees and make TVC of varying amounts at different intervals.

(4): clause 3 – proposed section 26U

A deduction for qualifying annuity premiums paid may be claimed by a taxpayer or the taxpayer's spouse (not being a spouse living apart from the taxpayer) while a deduction for tax deductible MPF voluntary contributions paid can only be claimed by the taxpayer. The deduction order under the proposed section 26U(2) (i.e. deductions are to be firstly allowed for tax deductible MPF voluntary contributions and secondly allowed for qualifying annuity premiums) ensures that married couples will receive a more favourable taxation consequence. Qualifying annuity premiums exceeding the reduced cap (i.e. $60,000 reduced by tax deductible MPF voluntary contributions) can be claimed by the taxpayer's spouse. In case the deduction order is reversed, tax deductible MPF voluntary contributions exceeding the reduced cap (i.e. $60,000 reduced by qualifying annuity premiums) cannot be claimed by the taxpayer's spouse.

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

(5): clause 19 – proposed section 56A

The notice to be made under the proposed section 56A(5) to amend the number of days within which the approved trustee of a registered scheme must provide a scheme member with a contribution summary would be subsidiary legislation.

Yours sincerely,

Noel

(Ms Noel TSANG)
for Secretary for Financial Services and the Treasury

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