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LEGISLATIVE COUNCIL BRIEF

INLAND REVENUE AND MPF SCHEMES LEGISLATION (TAX DEDUCTIONS FOR ANNUITY PREMIUMS AND MPF VOLUNTARY CONTRIBUTIONS) (AMENDMENT) BILL 2018

INTRODUCTION

A At the meeting of the Executive Council on 27 November 2018, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018 (the Amendment Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Developing the Third Pillar

2. To address the aging population, the World Bank has advocated a multi-pillar conceptual framework for reforming pension systems worldwide[1]. Many recent pension reforms in overseas economies involve improvements to or development of a voluntary "third-pillar" which may take many forms but is essentially flexible and discretionary in nature[2] to compensate for the rigidities in the design of other pillars. Introducing tax incentive to encourage taxpayers to purchase deferred

1 The five pillars are –

(a) Non-contributory zero pillar – publicly-funded pension or social security schemes;
(b) Mandatory first pillar – publicly-managed mandatory contributory plans;
(c) Mandatory second pillar – privately-managed mandatory occupational or private contributory pension plans;
(d) Voluntary third pillar – voluntary contributions or savings to occupational or private pension plans; and
(e) Voluntary fourth pillar – public services, family support and personal assets.

2 An example of such a flexible third pillar is Switzerland's private pension plans which include a restricted option where withdrawal is restricted and an unrestricted option which allows withdrawal anytime without restrictions. However, participants in the unrestricted option will enjoy less tax advantages.

annuities or make Mandatory Provident Fund Voluntary Contributions (MPF VCs) will meet the criteria of flexibility and discretionary in nature.

MPF VCs

3. Mandatory Provident Fund (MPF) is the second pillar of the retirement protection in Hong Kong. It is complementary to other pillars of the retirement protection framework to provide retirement security for the population of Hong Kong. The Mandatory Provident Fund Schemes Authority (MPFA) has been encouraging scheme members to make voluntary contributions to better prepare for their retirement. In 2017, out of the $68.99 billion total MPF contributions received, $3.46 billion were voluntary contributions made by scheme members. There have been suggestions that the Government should introduce tax incentive to encourage scheme members to make more contributions for retirement planning in addition to the current contribution rate of 5% of relevant income (which is further subject to a maximum level of $30,000 per month).

Deferred Annuities

4. An annuity is a long-term insurance contract[3] under which accumulated savings are turned into a stable stream of income over a period of time. There are many variants of annuities. For example, Hong Kong Mortgage Corporation (HKMC)'s life annuity is an immediate annuity where the policy holder pays HKMC a lump sum in exchange for immediate regular payments. Deferred annuities involve an accumulation phase and an annuitisation phase. During the accumulation phase, a policy holder pays premiums regularly over a period of time. Usually, there is an interim period between the payment period and the annuity period to allow the paid up sum to grow through investment by the insurer. Upon annuitisation, the annuitant will receive regular payments during the annuity period.

5. An annuity may cover joint annuitants who are usually couples. It is therefore also a retirement planning tool for an income earner's non-working spouse. Annuities may also come with optional riders such as death benefits, waivers, etc. for extra protection against premature death or loss of earning abilities of the policy holder during the accumulation period.

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[3] Annuities fall under "Class A Life and annuity" of Classes of Long Term Business in the Insurance Ordinance (Cap. 41).

6. A retiree has to hedge against longevity risk, i.e. the possibility that an individual outlives his or her own resources. An annuity is a retirement planning tool that can help an individual transfer investment risk and longevity risk (if the annuitisation phase is sufficiently long) to insurers. Although annuities may not be suitable for all, many countries have policies to encourage the development of the annuity market to enrich the range of retirement planning tools for members of the public. However, whether an annuity is a suitable complementary retirement planning option will depend on an individual's liquidity needs, bequest motive, financial discipline and the availability of other alternatives.

7. In Hong Kong, there has been increasing consumer interest in annuities as public awareness of retirement planning is increasing[4]. We aim to encourage the development of the market of deferred annuities due to the following considerations –

(a) discipline – retirement financial planning is about gratification deferment. It requires strong financial discipline to control spending to save more during the accumulation phase and to execute post retirement preservation to mitigate longevity risk. The very design of deferred annuities with an accumulation phase and annuitisation phase will help inculcate a culture of financial discipline to save regularly for a stable stream of post-retirement income;

(b) choices for tax incentivised savings – an individual may choose to make MPF VCs to invest in MPF constituent funds that suit his or her circumstances and risk appetite. The accumulated sum can be withdrawn in a lump sum or gradually drawn down upon retirement. By taking out an annuity, an individual transfers investment risk and longevity risk (if the annuitisation phase is sufficiently long) to an insurer and enjoys a stable stream of payments upon annuitisation. Providing tax incentives for deferred annuities and MPF VCs will allow choices for members of the public to allocate their tax-incentivised savings according to their needs and preferences; and

(c) no overlapping with HKMC's immediate annuity – the target

[4] The number of annuity policies in force has increased by 139.16% from 63,420 in 2012 to 151,673 in 2017 and the amount of premiums has increased by 313.39% from HK$2,951.2 million in 2012 to HK$12,200 million in 2017.

group of HKMC's product is retirees who are aged 65 or above and can afford to pay a lump sum premium from $50,000 to $1 million. The proposed tax incentive aims to encourage the working population to save a relatively small sum continuously for a stable stream of post-retirement income. There is no overlap between the two target groups.

Implementation Details

MPF VCs

8. At present, MPF Mandatory Contributions (MPF MCs) by employees are tax deductible under salaries tax, personal assessment and profits tax (for self-employment cases) and subject to the preservation requirements, i.e. withdrawal is allowed only upon retirement at the age of 65 or on statutorily permissible grounds[5]. MPF VCs by employees are usually deducted from the employees' monthly salary and paid to MPF trustees by employers, in the same manner as MPF MCs. MPF VCs are not tax deductible and can be withdrawn relatively flexibly, i.e. not subject to the preservation requirements.

9. To meet the purpose of encouraging extra savings for retirement, the tax incentivised MPF VCs must be subject to the preservation requirements. At the same time, it is not our intention to discourage scheme members who prefer to have more flexible withdrawal options from making MPF VCs. After consulting MPF service providers, we propose to continue to exempt MPF VCs from the preservation requirements but such VCs will not be tax deductible. If a scheme member with an MPF contribution account or personal account wishes to benefit from tax deduction under salaries tax and personal assessment, he or she must put the MPF VCs in a new separate Tax Deductible Voluntary Contribution (TVC) account. All existing MPF MCs' preservation requirements will apply to the accrued benefits in the TVC account. The proposal is considered to be an optimal arrangement after taking into account the following considerations –

(a) minimising administrative costs;

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

[5] Such grounds include early retirement at the age of 60, total incapacity, terminal illness, permanent departure from Hong Kong, death and small balance.

(c) enhancing competition among trustees. Currently, employees can only make contributions to the MPF trustee chosen by their employers. Under the TVC proposal, scheme members are free to choose an MPF scheme to open their TVC accounts.

10. Occupational Retirement Schemes (ORSO schemes) exempted from the provisions of Mandatory Provident Fund Schemes Ordinance (Cap. 485) by virtue of section 5 of Cap. 485 (i.e. MPF-exempted ORSO schemes) are grandfathered ORSO schemes established before the MPF System was introduced[6]. Members of these MPF-exempted ORSO schemes can also open a TVC account with an MPF scheme of their own choice for making MPF TVCs and enjoy the proposed tax deduction.

Deferred annuity

11. We propose that premiums paid for deferred annuity products that satisfy a set of criteria set out in the guidelines to be issued by the Insurance Authority (IA) will be eligible for tax deduction under salaries tax and personal assessment. To meet the objective of promoting the development of a voluntary "third-pillar" for retirement protection, the eligibility criteria should not be too rigid. After consulting insurers, we intend to specify the following eligibility criteria –

(a) **minimum total premium of $180,000 and minimum payment period of 5 years** – to encourage people to save a small sum regularly for a stable stream of post-retirement income, the eligible minimum total premium should not be too high to exclude low income earners nor too low for generating meaningful income payouts.

(b) **minimum annuity period of 10 years** – we consider that too short an annuity period may not be meaningful for retirement planning. We recommend a minimum annuity period of 10 years after consulting the industry.

(c) **annuitisation at the age of 50 or beyond** – we consider that 50 is a reasonable minimum annuitisation age for retirement purpose.

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[6] ORSO schemes are set up voluntarily by employers to provide retirement benefits for their employees. Since the launch of the MPF System in 2000, the MPFA has exempted a number of ORSO schemes that meet the relevant requirements in accordance with the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) from the MPFSO.

(d) **disclosure requirements** – there are three major disclosure requirements –

(i) the Internal Rate of Return (IRR)[7] of the product must be clearly stated in the sales brochure and relevant communications with the holder of an eligible annuity. The IRR is a useful standard yardstick for clients to evaluate and compare eligible products before making an informed purchase decision;

(ii) clear presentation of the guaranteed payment and variable payment, if applicable, where the guaranteed payment should not be less than 70% of the total projected payment; and

(iii) clear separation of premiums of riders such as critical illness, hospitalisation cash, etc. from the premiums for the eligible annuity. Premiums of such riders are not tax deductible.

12. As the deferred annuity market is ever evolving, the IA will closely monitor market development and update the eligibility criteria to strike a reasonable balance between promoting market development and protecting the interests of policy holders. The IA may allow slight deviations from the criteria if it is satisfied that the deviations are not detrimental to the interests of policy holders.

Maximum tax deductible limit per year

13. We originally proposed that the maximum tax deductible limit should be $36,000 per year. It is an aggregate limit for MPF TVCs and deferred annuity premiums for greater flexibility, meaning that a taxpayer may claim tax deductions for deferred annuity premiums and MPF TVCs in aggregate up to this maximum limit.

14. There have been calls from the industry and LegCo members to raise the aggregate maximum tax deductible limit from $36,000 to over $100,000, and to extend the coverage of tax deductions to deferred annuity premiums for a taxpayer's spouse. As an annuity is a convenient tool for a taxpayer to plan for his or her retirement as well as that of his or her spouse, we consider it justified to extend the tax deductions to cover

[7] IRR is the rate at which future cash flows are discounted to equate them to a present value.

deferred annuity premiums for a taxpayer's spouse by increasing the maximum limit from $36,000 to $60,000. Examples to illustrate the tax savings arising from the proposed deductions for MPF TVCs and
B deferred annuity premiums are at **Annex B**. For instance, assuming that a taxpayer is single and taxed at the standard tax rate of 15%, he or she can claim tax deductions of $9,000 per year under the revised limit of $60,000, i.e. 67% more than the amount of $5,400 per year under the
B original limit of $36,000 (see scenario F at **Annex B**).

Deduction arrangements for spouses

15. To encourage the use of deferred annuities as a voluntary retirement planning tool, we propose to allow a taxpayer to claim tax deductions for deferred annuity premiums covering his/her spouse as joint annuitant, or either the taxpayer or the taxpayer's spouse as a sole annuitant.

16. Moreover, in line with the existing arrangements for certain tax deductions which allow flexibility for a taxpaying couple to share their deductions[8], we propose to allow a taxpaying couple to allocate tax deductions for deferred annuity premiums amongst themselves in order to claim the total deductions of $120,000, provided that the deductions claimed by each taxpayer does not exceed the individual limit (i.e. $60,000).

Public education and point-of-sale conduct

17. The IA will publish the list of eligible deferred annuity products on its website for public information. The IA and the MPFA will also collaborate with the Investor Education Centre and the industry as appropriate to enhance public understanding of annuity products and MPF TVCs, and how to evaluate different retirement planning tools to suit one's needs.

18. Insurers will be encouraged to enhance training on annuity products for intermediaries. At the same time, the IA and the MPFA will continue to closely monitor the point-of-sale conduct of intermediaries.

[8] The existing tax deductions which allow a taxpaying couple to share their tax deductions are those for elderly residential care expenses, approved charitable donations and premiums paid for plans certified under the Government's Voluntary Health Insurance Scheme.

OTHER OPTIONS

19. There is no other alternative to provide for the proposed tax deductions without introducing the Amendment Bill.

THE AMENDMENT BILL

20. The Amendment Bill is divided into four parts and contains the following provisions –

(a) **Part 1** sets out preliminary provisions such as the short title and provides for the commencement of the Amendment Bill;

(b) **Part 2** contains amendments to the Inland Revenue Ordinance (Cap. 112). The main provisions of this Part are set out as follows –

   (i) **Clause 3** – adds a new Division 7 to Part 4A of Cap. 112, which sets out the tax deductions for deferred annuity policy premiums and MPF TVCs;

   (ii) **Clause 4 to 7** – amend existing sections 63CA, 63E, 80 and 82A of Cap. 112 to allow for calculation of net chargeable income for computing provisional salaries tax, holding over of payment of provisional salaries tax, penalties and additional tax in certain cases;

   (iii) **Clause 8** – adds a new Schedule 3F to Cap. 112, which sets out the maximum total tax deductions for qualifying annuity premiums and MPF TVCs;

   (iv) **Clause 9** – amends Schedule 46 to Cap. 112, which sets out the transitional provisions;

(c) **Part 3** and **Part 4** contain the related and consequential amendments to Cap. 485 and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) to provide for the opening of TVC accounts to hold MPF TVCs and relevant requirements. The main provisions of these two Parts are set out as follows –

(i) **Clause 10** – amends existing section 2 of Cap. 485 to provide for the key definitions;

(ii) **Clause 13** – adds a new section 11A to Cap. 485 to set out the eligibility for opening a TVC account, and to provide that the accrued benefits derived from TVCs under TVC accounts are subject to the same preservation requirements as those imposed on MPF MCs; and

(iii) **Clause 19** – adds a new section 56A of Cap. 485 sub. leg. A to require MPF approved trustees to provide TVC account holders with a contribution summary of TVCs within a certain period after each year of assessment. This will facilitate the filing of tax return by TVC account holders.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be –

Publication in the Gazette	7 December 2018
First Reading and commencement of Second Reading Debate	12 December 2018
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

22. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. There are no environmental, productivity or civil service implications arising from taking forward the proposals. The proposals will not affect the binding effect of the existing provisions of Cap. 112 and Cap. 485 as well as their subsidiary legislation (including Cap. 485 sub. leg. A). The proposals have financial, economic, sustainability, gender, and family implications as set
C out in **Annex C**.

PUBLIC CONSULTATION

23. The Financial Services and the Treasury Bureau, the IA and the MPFA have discussed the implementation details with the industry before drawing up the proposals. We also consulted the Panel on Financial Affairs of LegCo on the proposals on 15 May 2018. Panel Members were supportive of the proposals in general.

PUBLICITY

24. We will issue a press release upon the gazettal of the Amendment Bill, and arrange a spokesperson to answer media enquiries.

BACKGROUND

25. In the 2018-19 Budget Speech, the Financial Secretary suggested introducing tax concessions to encourage the development of the deferred annuity market so as to offer more options to people in making financial arrangements for retirement, and the same tax concessions would also be applicable to MPF VCs. The IA has been tasked to issue guidelines such that premiums for deferred annuity products that meet the requirements in the guidelines will be tax deductible. MPF VCs that enjoy tax deductions will be subject to the same preservation requirements as applicable to MPF MCs.

ENQUIRY

26. Enquiries on this brief may be directed to Ms Noel Tsang, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2201.

Financial Services and the Treasury Bureau
5 December 2018

Annex A

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

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Amendments to Mandatory Provident Fund Schemes Ordinance

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A BILL

To

Amend the Inland Revenue Ordinance to introduce new concessionary deductions concerning salaries tax and tax under personal assessment that may be allowed for annuity premiums paid under certain deferred annuity policies and for certain tax deductible voluntary contributions; to amend the Mandatory Provident Fund Schemes Ordinance and the Mandatory Provident Fund Schemes (General) Regulation to provide for the tax deductible voluntary contributions; and to provide for related and transitional matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Ordinance 2018.

(2) This Ordinance comes into operation on 1 April 2019.

2. Enactments amended

(1) The Inland Revenue Ordinance (Cap. 112) is amended as set out in Part 2.

(2) The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended as set out in Part 3.

(3) The Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended as set out in Part 4.

Part 2

Amendments to Inland Revenue Ordinance

3. Part 4A, Division 7 added

Part 4A, after Division 6—

Add

"Division 7—Annuity Premiums and MPF Voluntary Contributions

Subdivision 1—Qualifying Annuity Premiums

26N. Interpretation

(1) In this Subdivision—

annuitant (年金領取人), in relation to a qualifying deferred annuity policy, means an individual who is designated by the policy holder as being entitled to receive a regular payment during an annuity period under the policy;

annuity payment (年金款項), in relation to a qualifying deferred annuity policy, means a regular payment receivable by an annuitant during an annuity period under the policy;

Insurance Authority (保監局) means the Insurance Authority established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);

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

qualifying annuity premiums (合資格年金保費), in relation to a qualifying deferred annuity 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 provision of annuity payments;

qualifying deferred annuity policy (合資格延期年金保單) means an insurance policy—

(a) under which a regular payment is receivable by an annuitant during an annuity period; and

(b) that is certified by the Insurance Authority to be in compliance with the criteria specified for the purposes of this Subdivision in the guidelines published by the Insurance Authority under section 133 of the Insurance Ordinance (Cap. 41).

(2) In this Subdivision, a reference to qualifying annuity premiums paid during a year of assessment is to be interpreted as a reference to those premiums paid to the extent that they are due during the year of assessment.

26O. Deduction for qualifying annuity premiums

(1) Subject to the other provisions of this section and to sections 26P, 26Q, 26R, 26T and 26U, a deduction in respect of qualifying annuity premiums paid during a year of assessment for an annuity payment receivable by an annuitant under a qualifying deferred annuity policy is allowable to a person (***taxpayer***) for the year of assessment if—

(a) the policy holder or policy holders are—

(i) the taxpayer;

(ii) the taxpayer's spouse; or

(iii) the taxpayer and the taxpayer's spouse;

(b) the qualifying annuity premiums were paid by—

(i) the taxpayer;

(ii) the taxpayer's spouse, not being a spouse living apart from the taxpayer; or

(iii) the taxpayer and the taxpayer's spouse, not being a spouse living apart from the taxpayer;

(c) the annuitant or annuitants are—

(i) the taxpayer;

(ii) the taxpayer's spouse at any time during the year of assessment; or

(iii) the taxpayer and the taxpayer's spouse at any time during the year of assessment; and

(d) at any time during the year of assessment, the annuitant or annuitants hold an identity card issued under the Registration of Persons Ordinance (Cap. 177).

(2) A deduction under subsection (1) is allowable to a taxpayer in respect of qualifying annuity premiums paid during a year of assessment under one or more than one qualifying deferred annuity policy.

(3) If the policy holders of a qualifying deferred annuity policy are a taxpayer and the taxpayer's spouse, the qualifying annuity premiums paid by either or both of them during a year of assessment are taken as paid by them in equal shares.

26P. Claim for deduction by married persons

(1) This section applies in relation to a deduction under section 26O claimed by a married person or the person's spouse or both in respect of the qualifying annuity premiums paid by either or both of them during a year of assessment.

(2) The qualifying annuity premiums paid are allowable as a deduction under section 26O to either the married person or the person's spouse, or to both of them, so long as—

(a) the total deductions allowed to each of them under sections 26O and 26S do not exceed the amount specified in Schedule 3F in relation to the year of assessment; and

(b) the total deduction or deductions allowed to them under section 26O do not exceed the qualifying annuity premiums paid.

(3) If the Commissioner has reason to believe that a deduction under section 26O, if allowed, would 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 26O 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 26O 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 that section that, if allowed, would 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.

26Q. Refund of qualifying annuity premiums

(1) This section applies if any of the qualifying annuity premiums paid during a year of assessment under a qualifying deferred annuity policy is refunded.

(2) The qualifying annuity 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 26O in respect of the qualifying annuity 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.

26R. Exercise of Commissioner's power

The Commissioner may exercise a power under this Subdivision in the way that the Commissioner, having regard only to the information then in the Commissioner's possession, considers appropriate.

Subdivision 2—Tax Deductible MPF Voluntary Contributions

26S. Deduction for tax deductible MPF voluntary contributions

(1) Subject to sections 26T and 26U, a deduction in respect of tax deductible MPF voluntary contributions paid by a person into a TVC account during a year of assessment is allowable to the person for the year of assessment.

(2) In this section—

tax deductible MPF voluntary contributions (可扣稅強積金自願性供款) means tax deductible voluntary contributions as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

TVC account (可扣稅自願性供款帳户) has the meaning given by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

Subdivision 3—Administrative Provisions

26T. Application

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

26U. Total deductions allowable under sections 26O and 26S

(1) The total deductions allowable to a person (***taxpayer***) under sections 26O and 26S in relation to a year of assessment may not exceed the amount specified in Schedule 3F for the year of assessment.

(2) If deductions are allowable to a taxpayer under both sections 26O and 26S in relation to a year of assessment, the deductions are to be allowed in the following order—

(a) firstly, the deductions under section 26S;

(b) secondly, the deductions under section 26O.".

4. Section 63CA amended (calculating net chargeable income for computing provisional salaries tax: meaning of certain references)

(1) Section 63CA(3)(c)—

Repeal

"and".

(2) Section 63CA(3)(d)—

Repeal the full stop

Substitute

"; and".

(3) After section 63CA(3)(d)—

Add

"(e) either or both of the following deductions allowable to that person, to the extent that the total amount does not exceed the amount specified in Schedule 3F for the relevant year of assessment—

(i) the deductions under section 26O (deduction for qualifying annuity premiums);

(ii) the deductions under section 26S (deduction for tax deductible MPF voluntary contributions).".

(4) Section 63CA(4)(c)—

Repeal

"and".

(5) Section 63CA(4)(d)—

Repeal the full stop

Substitute

"; and".

(6) After section 63CA(4)(d)—

Add

"(e) either or both of the following deductions allowable to them, to the extent that the total amount does not exceed the amount specified in Schedule 3F for the relevant year of assessment—

(i) the deductions under section 26O (deduction for qualifying annuity premiums);

(ii) the deductions under section 26S (deduction for tax deductible MPF voluntary contributions).".

5. Section 63E amended (holding over of payment of provisional salaries tax)

(1) After section 63E(2)(be)—

Add

"(bf) that—

(i) either or both of the following apply—

(A) the person assessed to provisional salaries tax, or the person's spouse (not being a spouse living apart from the person), or both of them, has or have paid, or is or are likely to pay, during the year of assessment, qualifying annuity premiums (as defined by section 26N(1)) that are allowable for deduction under section 26O;

(B) the person assessed to provisional salaries tax has paid or is likely to pay, during the year of assessment, tax deductible MPF voluntary contributions (as defined by section 26S(2)) that are allowable for deduction under section 26S; and

(ii) the amount of the qualifying annuity premiums mentioned in subparagraph (i)(A), the amount of the tax deductible MPF voluntary contributions mentioned in subparagraph (i)(B), or the total of both of these amounts exceeds or is likely to exceed the amount specified in Schedule 3F for the year preceding the year of assessment;".

(2) Section 63E(2B)—

Repeal

"or (be)"

Substitute

", (be) or (bf)".

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

After section 80(2)(ca)—

Add

"(cb) fails to comply with section 26Q(3)(a);".

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

(1) After section 82A(1)(ca)—

Add

"(cb) fails to comply with section 26Q(3)(a); or".

(2) Section 82A(4)(a)(i)(A)—

Repeal

"section 26M(3)(a)"

Substitute

"section 26M(3)(a) or 26Q(3)(a)".

8. Schedule 3F added

After Schedule 3E—

Add

"Schedule 3F

[ss. 26P, 26U, 63CA & 63E]

Maximum Total Deductions for Qualifying Annuity Premiums and Tax Deductible MPF Voluntary Contributions

Column 1	Column 2	Column 3
Item	Year of assessment	Amount
1.	For the year of assessment 2019/20 and for each year after that year	$60,000".

9. Schedule 46 amended (transitional provisions relating to provisional salaries tax in respect of year of assessment 2019/20)

(1) Schedule 46, section 1—

Add in alphabetical order

"***qualifying annuity premiums*** (合資格年金保費) has the meaning given by section 26N(1);

qualifying deferred annuity policy (合資格延期年金保單) has the meaning given by section 26N(1);

tax deductible MPF voluntary contributions (可扣稅強積金自願性供款) has the meaning given by section 26S(2);".

(2) Schedule 46, after section 2(2)—

Add

"(2A) An application may also be made under subsection (1) if, for the year of assessment 2019/20, either of the following deductions is, or is likely to be, allowable to the person mentioned in subsection (1)—

(a) a deduction under section 26O in respect of qualifying annuity premiums paid under a qualifying deferred annuity policy;

(b) a deduction under section 26S in respect of tax deductible MPF voluntary contributions paid.".

Part 3

Amendments to Mandatory Provident Fund Schemes Ordinance

10. Section 2 amended (interpretation)

(1) Section 2(1), definition of ***master trust scheme***, paragraph (d)—

Repeal

"first-mentioned scheme,"

Substitute

"first-mentioned scheme; and".

(2) Section 2(1), definition of ***master trust scheme***, after paragraph (d)—

Add

"(e) persons who—

(i) are existing members of an occupational retirement scheme;

(ii) are exempted from the provisions of this Ordinance under section 5; and

(iii) wish to pay tax deductible voluntary contributions into a TVC account in the registered scheme,".

(3) Section 2(1)—

Add in alphabetical order

"***tax deductible voluntary contributions*** (可扣稅自願性供款) means the contributions that are paid into a TVC account under section 11A(2)(a);

TVC account (可扣稅自願性供款帳戶) means an account opened under section 11A(1);".

11. Section 5 amended (members of certain occupational retirement schemes to be exempted from this Ordinance)

(1) Section 5(3), after "do not"—

Add

", subject to subsection (3A),".

(2) Section 5(3), after "members of the scheme"—

Add a comma.

(3) After section 5(3)—

Add

"(3A) However, if the members or relevant class of members of the occupational retirement scheme has a TVC account, subsection (3) does not operate in relation to the members or class to disapply the provisions of this Ordinance that relate to tax deductible voluntary contributions and TVC accounts.".

12. Section 11 amended (voluntary contributions)

After section 11(9)—

Add

"(10) Tax deductible voluntary contributions are not voluntary contributions for the purposes of this section.".

13. Section 11A added

After section 11—

Add

"11A. Tax deductible voluntary contributions

(1) A person may open an account in a registered scheme for the purposes of Subdivision 2 of Division 7 of Part 4A of the Inland Revenue Ordinance (Cap. 112) (***TVC account***) if the person—

(a) holds a contribution account or personal account in a registered scheme; or

(b) is a member of an occupational retirement scheme in respect of which an exemption has been granted under section 5.

(2) The person—

(a) may pay contributions into the TVC account; and

(b) may hold in the account—

(i) the person's accrued benefits derived from those contributions; and

(ii) the person's accrued benefits transferred to the account in accordance with Part 12 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).

(3) The following provisions apply to accrued benefits in a TVC account in the same way as they apply to accrued benefits that are derived from mandatory contributions—

(a) the provisions of this Ordinance (other than sections 12A and 16);

(b) the governing rules of the registered scheme in so far as they are not inconsistent with this Ordinance.".

14. Section 13 amended (preservation of accrued benefits derived from contributions)

(1) Section 13(b)—

Repeal the full stop

Substitute a semicolon.

(2) After section 13(b)—

Add

"(c) no scheme member has any right or entitlement otherwise than in accordance with the provisions of this Ordinance to any part of those accrued benefits in a TVC account.".

15. Section 14 amended (portability of accrued benefits)

After section 14(2)—

Add

"(2A) However, if the accrued benefits are held in a TVC account in the registered scheme, those benefits may only be transferred to another TVC account in another registered scheme.".

Part 4

Amendments to Mandatory Provident Fund Schemes (General) Regulation

16. Section 2 amended (interpretation)

(1) Section 2, definition of ***participation agreement***, paragraph (b)—

Repeal

"or".

(2) Section 2, definition of ***participation agreement***, paragraph (c)—

Repeal the semicolon

Substitute

"; or".

(3) Section 2, definition of ***participation agreement***, after paragraph (c)—

Add

"(d) between a person intending to maintain a TVC account in the scheme and the approved trustee of the scheme;".

17. Section 31 amended (non-refusal of scheme applicants and notice of participation)

(1) Section 31(5)(a)—

Repeal

"; or"

Substitute a semicolon.

(2) Section 31(5)(b)—

Repeal the full stop

Substitute

"; or".

(3) After section 31(5)(b)—

Add

"(c) in the case of a scheme member with a TVC account, with the written agreement of that member given not earlier than 60 days before the termination.".

(4) After section 31(5)—

Add

"(5A) Subsection (5)(c) does not apply in relation to termination by the approved trustee if at termination the TVC account—

(a) has no accrued benefits; and

(b) has had no activity for 365 days.".

18. Section 56 amended (approved trustee to provide scheme members with annual benefit statements)

After section 56(3)—

Add

"(3A) For the purposes of subsection (3)(b), (c) and (f), the benefit statement of a scheme member with a TVC account must provide separate information with respect to—

(a) the tax deductible voluntary contributions paid by the member into the account; and

(b) all accrued benefits—

(i) derived from those contributions; and

(ii) transferred to the account in accordance with Part 12.".

19. Section 56A added

After section 56—

Add

"56A. Approved trustee to provide scheme members with tax deductible voluntary contributions summaries with respect to TVC accounts

(1) This section applies if, during a financial year, a scheme member—

(a) holds a TVC account in a registered scheme; and

(b) has paid tax deductible voluntary contributions into the account.

(2) The approved trustee of the registered scheme must provide the scheme member with a contribution summary setting out the amount of tax deductible voluntary contributions paid by the member into the TVC account during the financial year.

(3) Subject to subsection (4), a contribution summary for a financial year must be provided to the scheme member before the end of a period of 40 days from the beginning of the next financial year (***specified period***).

(4) If the last day of a specified period is not a specified working day, the specified period is taken to end with the next specified working day.

(5) The Authority may, by notice published in the Gazette, amend the number of days in subsection (3).".

20. Section 78 amended (separate accounts for each scheme member)

After section 78(8)—

Add

"(8A) In the case of a scheme member who holds a TVC account in the scheme, the trustee must arrange for the account to specify—

(a) all tax deductible voluntary contributions paid by the member into the account;

(b) all accrued benefits—

(i) derived from those contributions; and

(ii) transferred to the account in accordance with Part 12; and

(c) the income or profits arising from any investments of those contributions and accrued benefits, with any losses in respect of the investments and any amounts paid in respect of the member being taken into account.".

21. Sections 149A and 149B added

After section 149—

Add

"149A. Transfer of accrued benefits in TVC account in registered scheme

(1) If a scheme member holds a TVC account in a registered scheme, the member may, at any time, elect to have all accrued benefits in the account transferred to another TVC account of the member in another registered scheme which the member is eligible to join.

(2) An election under subsection (1) is effective when written notice of the election is given to the transferee trustee.

149B. Transfer of accrued benefits in TVC account in employer sponsored scheme

(1) Subsection (2) applies if—

(a) a member of an employer sponsored scheme is an employee of a participating employer; and

(b) accrued benefits are held by the member in a TVC account in the scheme.

(2) The member must, when the member ceases to be employed by the participating employer, elect to have all accrued benefits in the TVC account transferred to another TVC account of the member in a master trust scheme or an industry scheme.

(3) An election under subsection (2) is effective when written notice of the election is given to the transferee trustee.

(4) If a member fails to notify an election in accordance with this section within 3 months after the approved trustee of the employer sponsored scheme concerned has been notified, by the member's participating employer or by the member, that the member has ceased to be employed by the participating employer—

(a) the member is taken at the end of that period to have elected to have all accrued benefits in the scheme transferred to a TVC account in a master trust scheme nominated by the transferor trustee concerned and administered by either that trustee or another approved trustee; and

(b) the transferor trustee is taken at the end of that period to have been notified of the election.".

22. Section 153 amended (duty of approved trustee on being notified of election)

(1) After section 153(3A)—

Add

"(3B) A transferor trustee who is taken by a particular date to have been notified of an election under section 149B(4)(b) must, within 30 days after that date, arrange for the accrued benefits concerned to be transferred to a TVC account referred to in section 149B(4)(a).".

(2) After section 153(5)—

Add

"(6) Subsection (3B) is subject to section 157.

(7) Subsection (3B) is not complied with unless all the accrued benefits concerned are transferred in accordance with the election.".

23. Section 154 amended (approved trustee to give transfer statement to scheme member)

Section 154(1)—

Repeal

"or (3A)"

Substitute

", (3A) or (3B)".

24. Schedule 4 amended (financial penalties)

Schedule 4, Part 2, after item 16—

Add

"16A	56A	Requirements with respect to provision of contribution summaries for TVC accounts to scheme members	5,000	10,000	20,000".

Explanatory Memorandum

The main object of this Bill is to—

(a) amend the Inland Revenue Ordinance (Cap. 112) (***IRO***) to introduce new concessionary deductions concerning salaries tax and tax under personal assessment that may be allowed for annuity premiums paid under certain deferred annuity policies and for certain tax deductible voluntary contributions; and

(b) amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (***MPFSO***) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (***MPFSGR***) to provide for the tax deductible voluntary contributions.

2. The Bill contains 4 Parts.

Part 1—Preliminary (Clauses 1 and 2)

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to IRO (Clauses 3 to 9)

4. Clause 3 adds a new Division 7 (new sections 26N to 26U) to Part 4A of the IRO. The new Division 7 contains 3 Subdivisions.

5. The new Subdivision 1 (new sections 26N to 26R) provides for new deductions in respect of qualifying annuity premiums paid under qualifying deferred annuity policies, in particular—

(a) the new section 26N provides for the interpretation of terms used in that Subdivision, including ***annuitant***, ***annuity payment***, ***qualifying annuity premiums*** and ***qualifying deferred annuity policy***. That new section 26N also provides that a reference to qualifying annuity premiums paid during a year of assessment is to be interpreted as a reference to those premiums paid to the extent that they are due during the year of assessment;

(b) the new section 26O provides for the new deduction allowable for qualifying annuity premiums paid by a taxpayer, the taxpayer's spouse (not being a spouse living apart from the taxpayer) or both of them under a qualifying deferred annuity policy, as policy holders of the policy. In order for the deduction to be allowable, the policy holders and annuitants must be the taxpayer, the taxpayer's spouse, or the taxpayer and the taxpayer's spouse. The annuitant or annuitants must hold a Hong Kong identity card. Also, if the policy holders of a qualifying deferred annuity policy are a taxpayer and the taxpayer's spouse, the qualifying annuity premiums paid by either or both of them during a year of assessment are taken as paid by them in equal shares;

(c) the new section 26P deals with multiple claims for deduction under the new section 26O in respect of the qualifying annuity premiums paid by a married person or the person's spouse or both of them. That new section 26P provides for the related arrangement, and the related power, to make additional assessments, under which the qualifying annuity premiums paid will be allowable as a deduction to either the married person or the person's spouse or both of them;

(d) the new section 26Q provides for requirements where there is a refund of qualifying annuity premiums paid. For any refund, the qualifying annuity premiums paid are taken to be reduced by the amount of the refund. Moreover, if the refund is made after a claim for a deduction, the person claiming the deduction must notify the Commissioner of Inland Revenue in writing of the refund within 3 months after the date of refund (the new section 26Q(3)(a)). That new section 26Q also provides that despite any time limit under section 60 of the IRO, an additional assessment under that section may be made if the deduction claimed has been allowed;

(e) the new section 26R provides for the exercise of the Commissioner of Inland Revenue's power.

6. The new Subdivision 2 (new section 26S) provides that the new deductions in respect of tax deductible MPF voluntary contributions paid by a person into a TVC account during a year of assessment are allowable to the person for the year of assessment. The new section 26S also provides definitions of ***tax deductible MPF voluntary contributions*** and ***TVC account***.

7. The new Subdivision 3 (new sections 26T and 26U) contains 2 administrative provisions. The new section 26T provides for the application of the new Division 7. The new section 26U(1) provides that the total deductions allowable under the new sections 26O and 26S may not exceed the amount specified in the new Schedule 3F (added by clause 8) to the IRO. The new section 26U(2) provides for the order in which deductions under the new sections 26O and 26S are to be allowed.

8. Clause 4 amends section 63CA of the IRO to include references to the deductions under the new sections 26O and 26S for the purposes of calculating the net chargeable income of a person for the year preceding a year of assessment to ascertain the provisional salaries tax of the person for the year of assessment.

9. Clause 5 amends section 63E of the IRO to add an additional ground for holding over payment of provisional salaries tax for a year of assessment in order to reflect the introduction of the deductions under the new sections 26O and 26S.

10. Clause 6 amends section 80 of the IRO to provide a penalty for a failure to comply with the new section 26Q(3)(a).

11. Clause 7 amends section 82A of the IRO to provide that additional tax may be assessed against a failure to comply with the new section 26Q(3)(a) in lieu of prosecution.

12. Clause 9 amends Schedule 46 to the IRO to provide for a transitional arrangement under which an application may be made for holding over payment of provisional salaries tax in respect of the year of assessment 2019/20 in view of the introduction of the deductions under the new sections 26O and 26S.

Part 3—Amendments to MPFSO (Clauses 10 to 15)

13. Clause 10 amends section 2 of the MPFSO to revise the definition of ***master trust scheme***. That clause also defines ***tax deductible voluntary contributions*** and ***TVC account***.

14. Clause 11 amends section 5 of the MPFSO so that despite section 5(3) of the MPFSO, the provisions of the MPFSO that relate to tax deductible voluntary contributions and a TVC account still apply to members or relevant class of members of an occupational retirement scheme who has a TVC account.

15. Clause 12 amends section 11 of the MPFSO to clarify that tax deductible voluntary contributions are not voluntary contributions for the purposes of that section.

16. Clause 13 adds a new section 11A to the MPFSO to provide for tax deductible voluntary contributions paid into a TVC account.

17. Clause 14 amends section 13 of the MPFSO so that no scheme member has any right or entitlement otherwise than in accordance with the provisions of the MPFSO to the accrued benefits in a TVC account.

18. Clause 15 amends section 14 of the MPFSO to provide for the portability of the accrued benefits in a TVC account.

Part 4—Amendments to MPFSGR (Clauses 16 to 24)

19. Clause 16 amends section 2 of the MPFSGR to revise the definition of ***participation agreement*** to include an agreement between a person intending to maintain a TVC account in a registered scheme and the approved trustee of the scheme.

20. Clause 17 amends section 31 of the MPFSGR to provide for terminating membership of a scheme member with a TVC account by the approved trustee.

21. Clause 18 amends section 56 of the MPFSGR to provide for benefit statements of scheme members with a TVC account.

22. Clause 19 adds a new section 56A to the MPFSGR to provide that the approved trustee of a registered scheme must provide a scheme member with a contribution summary. The financial penalties for not complying with the requirement are provided in the new item 16A of Schedule 4 (added by clause 24) to the MPFSGR.

23. Clause 20 amends section 78 of the MPFSGR to provide for the matters to be specified by an approved trustee of a registered scheme in a TVC account.

24. Clause 21 adds new sections 149A and 149B to the MPFSGR to provide for the transfer of accrued benefits in a TVC account.

25. Clauses 22 and 23 amend sections 153 and 154 of the MPFSGR respectively to provide for amendments consequential to the new sections 149A and 149B.

Annex B

Examples to illustrate the tax savings arising from the proposed tax deductions for MPF TVCs or deferred annuity premiums

I. With existing deduction for MPF MCs only

	A	B	C	D	E	F
	Single, monthly salary $15,000	Single, monthly salary $20,000	Single, monthly salary $30,000	Single, monthly salary $60,000	Married, 1 child (4 years old), monthly salary $60,000, spouse not working	Single, monthly salary $200,000
Total income ($)	180,000	240,000	360,000	720,000	720,000	2,400,000
Less: deduction ($) (MPF MCs)	9,000	12,000	18,000	18,000	18,000	18,000
Net income ($)	171,000	228,000	342,000	702,000	702,000	2,382,000
Less: Allowance(s) ($)	132,000	132,000	132,000	132,000	264,000 120,000	132,000
Net chargeable income ($)	39,000	96,000	210,000	570,000	318,000	2,250,000
Tax payable ($) (a)	780	3,760	17,700	78,900	36,060	357,300

II. With an additional total maximum tax deductible limit of $36,000 or $60,000 for MPF TVCs or deferred annuity premiums fully claimed

	A*		B*		C*		D		E		F	
	Single, monthly salary $15,000		Single, monthly salary $20,000		Single, monthly salary $30,000		Single, monthly salary $60,000		Married, 1 child (4 years old), monthly salary $60,000, spouse not working		Single, monthly salary $200,000	
Total income ($)	180,000		240,000		360,000		720,000		720,000		2,400,000	
Less: deduction ($)(MPF MCs)	9,000		12,000		18,000		18,000		18,000		18,000	
	Cap $36,000	Cap $60,000	Cap $36,000	Cap $60,000	Cap $36,000	Cap $60,000	Cap $36,000	Cap $60,000	Cap $36,000	Cap $60,000	Cap $36,000	Cap $60,000
Less: deduction ($)(MPF TVCs or deferred annuity premiums)*	9,000	9,000	12,000	12,000	18,000	18,000	36,000	60,000	36,000	60,000	36,000	60,000
Net income ($)	162,000	162,000	216,000	216,000	324,000	324,000	666,000	642,000	666,000	642,000	2,346,000	2,322,000
Less: Allowance(s) ($)	132,000		132,000		132,000		132,000		264,000 120,000		132,000	
Net chargeable income ($)	30,000	30,000	84,000	84,000	192,000	192,000	534,000	510,000	282,000	258,000	2,214,000	2,190,000
Tax payable ($) (b)	600	600	3,040	3,040	14,880	14,880	72,780	68,700	29,940	25,860	351,900	348,300
							(Diff: 4,080)		(Diff: 4,080)		(Diff: 3,600)	
Tax savings ($) (a) - (b)	180	180	720	720	2,820	2,820	6,120	10,200	6,120	10,200	**5,400****	**9,000****

* For scenarios A, B and C, it is assumed that given his or her relatively low income, the taxpayer will not make claims with the full tax deductible amount for MPF TVCs or deferred annuity premiums, no matter the cap is set at $36,000 or $60,000.

** As illustrated in paragraph 14 of the main body of the Legislative Council Brief.

Note: Scenarios A to E are taxed at progressive rates on net chargeable income, while scenario F is taxed at standard rate on net income.

Annex C

Financial, Economic, Sustainability, Gender, and Family Implications

Financial Implications

Based on the deductions claimed for the year of assessment 2016/17, the annual revenue forgone arising from the existing tax deduction for MPF MCs and contributions to Recognized ORSO schemes is about $1.25 billion. While $3.46 billion MPF VCs were made by scheme members in 2017, given the difference in the nature of MPF VCs and TVCs as well as the respective tax incentives, the revenue forgone arising for the new deduction cannot be readily assessed.

2. As for annuities, the amount of premiums for all types of annuities in-force in 2017 was $12.2 billion. Only some in-force annuities may meet the proposed eligibility criteria and hence part of the premiums paid may be eligible for the proposed tax deductions. As new eligible annuity products may emerge thereafter, it would be difficult to assess the tax revenue forgone arising from the proposed tax deduction for deferred annuities.

3. On the other hand, assuming that the proposed tax deductions would achieve its intended objectives, one could expect the deductions to be claimed would increase steadily in due course.

Economic Implications

4. The proposed tax deductions would provide incentives flexibly for taxpayers to take out qualified deferred annuities, or make MPF TVCs, or do both according to his or her own risk appetite and post-retirement financial needs. It will also help raise public awareness of the need to make voluntary personal savings early for retirement.

Sustainability Implications

5. The proposed tax deductions encourage retirement savings and should help promote the concept of post-retirement preservation in the light of increasing longevity risks.

Gender Implications

6. The proposed tax deductions to encourage savings to prepare for one's retirement may have a positive impact on female's retirement protection given their longer life expectancy, and hence higher longevity risks, as well as the observed lower average accrued benefits held by female members of MPF compared to male members. Besides, the provision extending the tax deduction to cover deferred annuity premiums for a taxpayer's non-working spouse, while benefiting both sexes, may have a more pronounced effect for women as presently the majority of non-working spouses are females and often primary family carers.

Family Implications

7. The proposal is flexible enough to provide incentives for a taxpayer to take out a deferred annuity covering a couple as joint annuitants or solely for his or her working or non-working spouse to maximize tax deduction. This is positive to fostering family responsibility and stability.