立法會
Legislative Council

LC Paper No. LS29/18-19

Paper for the House Committee Meeting on 14 December 2018

Legal Service Division Report on Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018

I. SUMMARY

1. **The Bill**	The Bill seeks to: (a) amend the Inland Revenue Ordinance (Cap. 112) to introduce new concessionary deductions concerning salaries tax and tax under personal assessment for deferred annuity premiums and for voluntary contributions to Mandatory Provident Fund with a total deductible limit of $60,000 per year; and (b) make consequential amendments to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).
2. **Public Consultation**	According to the Administration, the Financial Services and the Treasury Bureau, the Insurance Authority and the Mandatory Provident Fund Schemes Authority have discussed the implementation details with the industry before drawing up the proposals.
3. **Consultation with LegCo Panel**	The Panel on Financial Affairs ("FA Panel") was consulted on 15 May 2018. Members had no objection to the introduction of the Bill into the Legislative Council but enquired about the eligibility criteria and other implementation details of the proposed deductions.
4. **Conclusion**	The Legal Service Division is scrutinizing the Bill. In view of the issues discussed at the FA Panel meeting, Members may consider setting up a Bills Committee to examine the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 12 December 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: INS/2/18C) issued by the Financial Services and the Treasury Bureau ("FSTB") dated 5 December 2018 for further details.

Object of the Bill

2. The Bill seeks to:

(a) amend the Inland Revenue Ordinance (Cap. 112) 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;

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

(c) provide for related and transitional matters.

Background

3. In the 2018-2019 Budget Speech[1], the Financial Secretary ("FS") proposed introducing tax concessions for contributions made to deferred annuity products to encourage the development of the deferred annuity market so as to offer more options to people in making financial arrangements for their retirement. FS also proposed that the same tax concessions would be applicable to voluntary contributions made to the Mandatory Provident Fund ("MPF").

Provisions of the Bill

4. The Bill is introduced to implement FS's proposal and comprises four parts. Part 1 provides for the short title and the commencement of the Bill. Part 2 sets out the amendments to Cap. 112. Part 3 and Part 4 contain related and consequential amendments to Cap. 485 and Cap. 485A respectively. The main provisions are summarized in the ensuing paragraphs.

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[1] 2018-2019 Budget Speech, paragraphs 92 and 93.

<u>Proposed amendments to Cap. 112</u>

5. Part 2 of the Bill seeks to, among others, add a new Division 7 (proposed sections 26N to 26U) to Part 4A of and a new Schedule 3F to Cap. 112 to introduce new concessionary deductions concerning salaries tax and tax under personal assessment and to provide for the transitional arrangements as follows:

(a) *Proposed deduction for deferred annuity premiums*

The proposed section 26O provides for tax deductions 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 a holder or holders of the policy and provides for the eligibility to the proposed tax deductions. Under the proposed section 26N, a qualifying deferred annuity policy is defined to mean an insurance policy under which a regular payment is receivable by an annuitant during an annuity period and that is certified to be in compliance with the criteria specified in the guidelines to be published by the Insurance Authority.

(b) *Proposed deduction for MPF voluntary contributions*

At present, only MPF mandatory contributions by employees are tax deductible under salaries tax, personal assessment and profits tax (for self-employment cases)[2] and accrued benefits derived from mandatory contributions are subject to certain preservation requirements.[3] The proposed section 26S provides that deductions in respect of tax deductible MPF voluntary contributions paid by a person into a Tax Deductible Voluntary Contribution account ("TVC account") (proposed to be provided under Part 3 and Part 4 of the Bill) during a year of assessment would be allowable to the person for the year of assessment.

(c) *Maximum deductible limit for deferred annuity premiums and MPF voluntary contributions*

Under the proposed section 26U and Schedule 3F, the total deductions allowable to a taxpayer for deferred annuity premiums and MPF voluntary contributions may not exceed $60,000 per year.

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2 Section 26G of Cap. 112.

3 Withdrawal is allowed only upon the retirement of an employee at the age of 65 or on statutorily permissible grounds including the early retirement of an employee at the age of 60, total incapacity, terminal illness and permanent departure from Hong Kong (section 15 of Cap. 485).

(d) *Transitional arrangements*

Clause 9 of the Bill proposes transitional arrangements for a taxpayer to apply to the Commissioner of Inland Revenue for holding over payment of provisional salaries tax in respect of the year of assessment 2019/20 in view of the introduction of the new deductions.

Proposed amendments to Cap. 485 and Cap. 485A

6. In the light of the amendments proposed to Cap. 112, consequential amendments are proposed to Cap. 485 and Cap. 485A. The main provisions in Part 3 and Part 4 of the Bill are summarized as follows:

(a) clause 10 of the Bill proposes to provide in section 2 of Cap. 485 a definition of "TVC account" which means an account opened under the proposed section 11A(1) of Cap. 485 and a definition of "tax deductible voluntary contributions" which means the contributions that are paid into a TVC account;

(b) clause 13 of the Bill proposes to add new section 11A to Cap. 485 to provide for the opening of a TVC account in a registered MPF scheme to hold tax deductible voluntary contributions for the purpose of claiming the relevant tax deductions. Under the proposed section 11A(3) of Cap. 485, the accrued benefits including the employee's voluntary contributions derived from the TVC account would be subject to certain preservation requirements as those imposed on MPF mandatory contributions; and

(c) clause 19 of the Bill proposes to add a new section 56A to Cap. 485A to require MPF approved trustees to provide TVC account holders with a contribution summary setting out the amount of tax deductible voluntary contributions paid during a financial year. Failure to do so would render the approved trustees to a financial penalty (i.e. $5000 to $20,000) as proposed under clause 24 of the Bill.

Commencement

7. The Bill, if passed, would come into operation on 1 April 2019 (clause 1(2) of the Bill).

Public Consultation

8. According to paragraph 23 of the LegCo Brief, FSTB, the Insurance Authority and the Mandatory Provident Fund Schemes Authority have discussed the implementation details with the industry before drawing up the proposals.

Consultation with LegCo Panel

9. As advised by the Clerk to the Panel on Financial Affairs ("FA Panel"), the FA Panel was briefed by the Administration on 15 May 2018 on its proposal for introducing tax deductions for deferred annuity premiums and MPF voluntary contributions up to a limit of $36,000 per year. Members considered that such limit was too low and called on the Administration to raise the limit to enhance the incentive for taxpayers to take out deferred annuities and/or make MPF voluntary contributions. Members also discussed other issues including the eligibility criteria for deferred annuity products, the protection for scheme members and policy holders against default risks, and whether the tax deductible MPF voluntary contributions could enjoy the same protection as MPF mandatory contributions.

Conclusion

10. The Legal Service Division is scrutinizing the Bill. In view of the issues discussed at the FA Panel meeting, Members may consider setting up a Bills Committee to examine the Bill in detail.

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13 December 2018