
Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Ordinance 2019

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 7 OF 2019



Matthew CHEUNG Kin-chung
Acting Chief Executive
28 March 2019

An Ordinance 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.

[1 April 2019]

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 2019.

(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.
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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戶) 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 Item	Column 2 Year of assessment	Column 3 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.”.
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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 5,000 10,000 20,000”.
respect to provision
of contribution
summaries for
TVC accounts to
scheme members