Inland Revenue Department
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 57 (REVISED)

CONCESSIONARY DEDUCTIONS: SECTIONS 26N to 26U

ANNUITY PREMIUMS AND MPF VOLUNTARY CONTRIBUTIONS

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

These notes replace those issued in May 2019.

WONG Kuen-fai
Commissioner of Inland Revenue

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INTRODUCTION

Background

To encourage the making of financial arrangements for retirement, tax concessions are given to annuity premiums paid under certain deferred annuity policies and certain MPF voluntary contributions. The Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Ordinance 2019 (the Amendment Ordinance), enacted on 29 March 2019, provides concessionary deductions for qualifying annuity premiums and tax deductible MPF voluntary contributions (TVC) respectively.

2. The concessionary deductions for qualifying annuity premiums and TVC are allowable to taxpayers chargeable to salaries tax or tax under personal assessment, and would apply to the year of assessment 2019/20 and onwards.

The Amendment Ordinance

3. Division 7 – Annuity Premiums and MPF Voluntary Contributions, comprising sections 26N to 26U, are found in Part 4A of the Inland Revenue Ordinance (the Ordinance). While the concessionary deductions for qualifying annuity premiums and TVC are both under Division 7, they are two different deductions with different conditions for deduction.

4. Division 7 of Part 4A contains three subdivisions. The main provisions are as follows:

Subdivision 1 – qualifying annuity premiums

(a) section 26N provides for the interpretation of terms used, including annuitant, annuity payment, qualifying annuity premiums and qualifying deferred annuity policy;

(b) section 26O sets out the conditions for deduction in respect of qualifying annuity premiums;

(c) section 26P deals with claims for deduction in respect of qualifying annuity premiums paid by a married couple;

(d) section 26Q contains the provisions for the treatment of refund of qualifying annuity premiums paid and the notifying obligation of the claimant of the deduction;

(e) section 26R provides for the exercise of the Commissioner's power;

Subdivision 2 – TVC

(f) section 26S provides for the interpretation of terms used, namely TVC and TVC account, and sets out the condition for deduction in respect of TVC;

Subdivision 3 – administrative provisions

(g) section 26T provides that a deduction for qualifying annuity premiums and TVC would apply to the year of assessment 2019/20 and all subsequent years of assessment; and

(h) section 26U provides:

    (i) the total deductions in respect of qualifying annuity premiums and TVC may not exceed the amount specified in Schedule 3F; and

    (ii) the order in which qualifying annuity premiums and TVC are to be allowed.

5. This Departmental Interpretation and Practice Note (DIPN) sets out the Department's views and practices on the concessionary deductions for qualifying annuity premiums and TVC.

QUALIFYING ANNUITY PREMIUMS

Deferred annuity

6. An annuity is a long-term insurance contract falling under Class A – Life and Annuity of long term business under Part 2 of Schedule 1 to the Insurance

Ordinance (Cap. 41) (IO). Under an annuity insurance policy, accumulated savings are turned into a stable stream of income over a period of time (i.e. annuity payment). In terms of the manner of annuity payment, an annuity insurance policy may take two forms, deferred or immediate.

7. A deferred annuity insurance policy is a type of insurance policy which has an accumulation phase and an annuitization phase. During the accumulation phase, a policy holder pays premiums regularly over a period of time which is then usually followed by a deferral period to allow the paid up sum to grow through investment by the insurer. At the completion of the accumulation phase, the deferred annuity insurance policy will annuitize, the annuitization phase will begin and the annuitant will receive regular payments during the annuity period (i.e. the annuity payments).

8. An immediate annuity insurance policy is usually purchased via a single premium payment with annuity payments beginning one month after the premium is received. Premiums paid under an immediate annuity insurance policy are not deductible.

Qualifying deferred annuity policy

9. While insurers are free to offer deferred annuity insurance policies on market, not all policies come within the scope of this deduction. To be eligible for deduction, a taxpayer must purchase a qualifying deferred annuity policy (QDAP). The term “qualifying deferred annuity policy” is defined in section 26N(1) as an insurance policy under which a regular payment is receivable by an annuitant during an annuity period; and the insurance policy is certified by the Insurance Authority (IA) to be in compliance with the criteria specified in the guidelines published by the IA under section 133 of the IO.

10. The “Guideline on Qualifying Deferred Annuity Policy” issued by the IA (GL19) sets out the criteria which a deferred annuity insurance policy has to satisfy to obtain the necessary certification from the IA to become a QDAP. GL19 took effect on 1 April 2019. The policy features and disclosure requirements in GL19, which must be complied by a QDAP, can be summarized as follows:

Policy features

(a) minimum total qualifying annuity premium payable of $180,000 and minimum premium payment period of 5 years;

(b) minimum annuity period of 10 years;

(c) annuitization at the age of 50 or beyond (i.e. the annuity period only starts when the annuitant has reached the age of 50 or beyond); and

Disclosure requirements

(d) three major disclosure requirements in the product brochure:

(i) internal rate of return of the policy;

(ii) minimum percentage of guaranteed annuity payment out of total projected annuity payment; and

(iii) clear separation of premiums of all riders.

11. The list of QDAPs, which is published and updated regularly by the IA on its website (www.ia.org.hk), contains the full name of the QDAP, the IA's reference number and the date of certification.

12. Insurers are required to issue separate annual summary of QDAP in respect of each policy, either in hard copy or via electronic means, to the policy holders within 40 days after the end of the year of assessment or a reasonable time after receiving a request from the policy holder to facilitate the completion of tax returns by the policy holders. For a particular year of assessment, the annual summary would show the name of the policy holder and annuitant, the full name of the QDAP with the IA's reference number, and the total amount of qualifying annuity premiums paid and refunded during the year of assessment.

Qualifying annuity premiums

13. A QDAP may come with optional riders, such as terminal illness benefits, for extra protection. For tax deduction purposes, only the annuity premiums in

relation to the annuity payment are regarded as qualifying annuity premiums. The term “qualifying annuity premiums” is defined in section 26N(1) as the net sum of moneys that is payable under a QDAP to the insurer for writing or renewing the policy in so far as it relates to the provision of annuity payments. That is, annuity premiums paid for all riders are not qualifying annuity premiums and hence not deductible. The insurers are required to separate the premiums attributable to the provision of annuity payment and riders in the annual summary of QDAP.

CONDITIONS FOR DEDUCTION

Conditions specified in section 26O(1)

14. Not all qualifying annuity premiums paid under a QDAP are deductible. Certification by the IA is only an indication that the policy complies with the criteria set out in GL19. Section 26O(1) specifies the conditions that have to be satisfied before a deduction for qualifying annuity premiums would be allowed to a taxpayer for a year of assessment. These conditions relate to:

(a) the policy holder;

(b) the annuitant;

(c) the holding of Hong Kong identity (HKID) card by the annuitant; and

(d) the payment of qualifying annuity premiums.

15. Since the tax concession aims to encourage individuals to make use of deferred annuities to save regularly for a stable stream of post-retirement income for himself as well as his spouse, only the taxpayer and the taxpayer’s spouse could qualify for tax deduction purposes as a policy holder and annuitant.

Spouse

16. In section 2(1) of the Ordinance, “spouse” is defined to mean a husband or wife whereas “husband” and “wife” refer to a married man and married woman respectively. “Marriage” is also defined in the same section to mean:

(a) any marriage recognized by the law of Hong Kong; or

(b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so.

Based on the above definitions, "marriage" was in the past construed as a heterosexual marriage between a man and a woman and parties in a same-sex marriage would be incapable of having a "spouse".

17. In *Leung Chun Kwong v Secretary for the Civil Service* (2019) 22 HKCFAR 127, the Court of Final Appeal (CFA) recognized that the protection of the institution of marriage in Hong Kong, being heterosexual and monogamous, was a legitimate aim. However, the differential treatment under the Ordinance between a person in a heterosexual marriage and a person in a same-sex marriage entered into outside Hong Kong was not rationally connected to the legitimate aim and was not justified. As a relief, the CFA considered that a remedial interpretation of the Ordinance was appropriate and ordered the following declaration:

(a) the existing limb (b) of the term "marriage" in section 2 of the Ordinance shall be read as "any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so, provided where the persons are of the same sex and such a marriage between them would have been a marriage under this Ordinance but for the fact only that they are persons of the same sex, they shall be deemed for the purposes of such a marriage to have the capacity to do so"; and

(b) for the purposes of the Ordinance, references to:

(i) "husband and wife" shall be read as "a married person and his or her spouse";

(ii) "not being a wife living apart from her husband" shall be read as "not being a spouse living apart from the married person"; and

(iii) "either the husband or wife" shall be read as "either the married person or his or her spouse".

Therefore, a taxpayer's spouse, whether in a heterosexual marriage or same-sex marriage, could qualify for tax deduction purposes as a policy holder and annuitant.

18. The definition of "marriage" shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a person and any spouse other than the principal spouse. If a person has more than one legal spouse under the laws of other places which permit polygamous marriage, only the marriage between the person and the principal spouse is recognized for the purposes of the Ordinance. Only the taxpayer's principal spouse could qualify for tax deduction purposes as a policy holder and annuitant.

Policy holder

19. Section 26N(1) defines "policy holder" as a legal holder of a QDAP. For a deduction of qualifying annuity premiums paid under a QDAP to be allowable, section 26O(1)(a) provides that the policy holder or policy holders must be:

(a) the taxpayer (i.e. the sole policy holder is the taxpayer);

(b) the taxpayer's spouse (i.e. the sole policy holder is the taxpayer's spouse); or

(c) the taxpayer and the taxpayer's spouse (i.e. the joint policy holders are the taxpayer and the taxpayer's spouse).

20. If deduction is to be allowable, the QDAP must be purchased by either the taxpayer or the taxpayer's spouse as a sole policy holder, or the taxpayer and the taxpayer's spouse as joint policy holders. If not, no deduction would be allowed in respect of the qualifying annuity premiums paid. No deduction of any part of the premiums paid would be allowable even though the taxpayer or the taxpayer's spouse may be one of the policy holders.

Example 1

On 1 April 2019, Mr. A and Ms. B purchased a QDAP as joint policy holders. They later married on 1 October 2019.

Mr. A and Ms. B were not married during the period from 1 April 2019 to 30 September 2019. After their marriage on 1 October 2019, they became husband and wife, and qualifying annuity premiums paid during the period from 1 October 2019 to 31 March 2020 would be allowable.

Annuitant

21. Section 26N(1) defines "annuitant", in relation to a QDAP, to mean an individual who is designated by the policy holder as being entitled to receive a regular payment during an annuity period under the policy (i.e. the annuity payment). For a deduction of qualifying annuity premiums paid under a QDAP to be allowable, section 26O(1)(c) provides that the annuitant or annuitants must be:

(a) the taxpayer (i.e. the sole annuitant is the taxpayer);

(b) the taxpayer's spouse (i.e. the sole annuitant is the taxpayer's spouse) at any time during the year of assessment; or

(c) the taxpayer and the taxpayer's spouse (i.e. the joint policy holders are the taxpayer and the taxpayer's spouse) at any time during the year of assessment.

22. If deduction is to be allowable, the qualifying annuity premiums must cover either the taxpayer or the taxpayer's spouse as a sole annuitant, or the taxpayer and the taxpayer's spouse as joint annuitants. If not, no deduction would be allowed in respect of the qualifying annuity premiums paid. No deduction of any part of the premiums paid would be allowable even though the taxpayer or the taxpayer's spouse may be one of the annuitants.

23. The "spouse" in section 26O(1)(c) is qualified by the words "at any time during the year of assessment". Irrespective of the actual date of marriage or divorce in a year of assessment, a spouse would be able to satisfy the condition since he or she was the spouse of the taxpayer at some time (i.e. after marriage or before

divorce) during the year of assessment. If the taxpayer's spouse is the sole annuitant or a joint annuitant of a QDAP, the full amount of qualifying annuity premiums paid would be allowed in the year in which the marriage or divorce takes place.

Example 2

Mr. C, as the sole policy holder, purchased a QDAP for the benefit of Ms. D who was the sole annuitant. Mr. C and Ms. D got divorced on 1 October 2019. Qualifying annuity premiums of $30,000 were paid on 1 November 2019 and claimed by Mr. C.

Ms. D was the spouse of Mr. C before 1 October 2019 (i.e. Ms. D was the spouse of Mr. C at some time during the year of assessment 2019/20). Qualifying annuity premiums of $30,000 paid on 1 November 2019, which fell within the period from 1 April 2019 to 31 March 2020, would be fully allowed to Mr. C for deduction in the year of assessment 2019/20.

Example 3

On 1 April 2019, Mr. E as the sole policy holder purchased a QDAP and his father was the sole annuitant. Each month, qualifying annuity premiums of $2,000 would be paid. On 1 November 2019, the sole annuitant was changed from Mr. E's father to Ms. F. Mr. E and Ms. F married on 1 January 2020. Mr. E claimed deduction of $24,000.

Deduction of qualifying annuity premiums would be allowable to Mr. E only if the annuitant was Mr. E or Mr. E's spouse. Ms. F was the spouse of Mr. E at some time during the year of assessment 2019/20. Deduction allowed to Mr. E would be $10,000 (i.e. $2,000 × 5) which were paid during the period from 1 November 2019 to 31 March 2020 (i.e. the period after Ms. F became the sole annuitant).

24. The conditions relating to policy holder and annuitant must both be satisfied. Given that the "spouse" in section 26O(1)(a) (i.e. the condition relating to policy holder) is not qualified by the words "at any time during the year of assessment", full amount of qualifying annuity premiums paid would not be allowed in the year of marriage or divorce if a QDAP is purchased by the taxpayer and the taxpayer's spouse as joint policy holders.

Example 4

A QDAP was purchased for the benefit of Ms. H who was the sole annuitant. Qualifying annuity premiums of $10,000 were paid on 1 April 2019, 1 July 2019, 1 October 2019 and 1 January 2020 respectively. Mr. G and Ms. H married on 1 September 2019.

Scenario 1: Mr. G was the sole policy holder and claimed deduction of $40,000.

Scenario 2: Mr. G and Ms. H were the joint policy holders, and Mr. G claimed deduction of $40,000.

Scenario 1

Deduction of qualifying annuity premiums (i.e. $40,000 paid during the period from 1 April 2019 to 31 March 2020) would be allowable since Mr. G was the sole policy holder and Ms. H, who was the sole annuitant, was Mr. G's spouse at some time during the year of assessment 2019/20 (i.e. on or after 1 September 2019).

Scenario 2

Ms. H, the sole annuitant, was Mr. G's spouse at some time during the year of assessment 2019/20 (i.e. on or after 1 September 2019). Mr. G and Ms. H, though joint policy holders, were not husband and wife before 1 September 2019. Deduction of qualifying annuity premiums would be restricted to $20,000 paid during the period from 1 September 2019 to 31 March 2020.

25. The policy holder of a QDAP may designate another person as the annuitant. Any subsequent change of the annuitant would not affect a deduction which is already allowable. A deduction for qualifying annuity premiums would be allowable if at the time of payment of premiums, the taxpayer or the taxpayer's spouse is the sole annuitant, or the taxpayer and the taxpayer's spouse are joint annuitants.

Example 5

Mr. I, as the sole policy holder, purchased a QDAP with Mrs. I as the sole annuitant. Payment of qualifying annuity premiums would be required for 10 years starting from 1 April 2019. Subsequently, Mr. I designated his son as the sole annuitant.

Mr. I would not be allowed to claim the qualifying annuity premiums paid for the period after his son was designated as the sole annuitant. However, any deduction allowable prior to the change of the annuitant would not be recouped since Mrs. I was the sole annuitant at the time of the payment of the qualifying annuity premiums.

Holding of HKID card by the annuitant

26. Section 26O(1)(d) provides that the annuitant must hold an identity card issued under the Registration of Persons Ordinance (Cap. 177) at any time during the year of assessment. Deduction is allowed in full in the year of assessment when the annuitant holds an HKID card. The actual date when the annuitant is issued with an HKID card is not relevant.

Example 6

Mr. J and Ms. K were husband and wife. Mr. J, as the sole policy holder, purchased a QDAP for the benefit of Ms. K who was the sole annuitant. Qualifying annuity premiums of $16,000 and $32,000 were paid on 1 October 2019 and 1 April 2020. On 20 December 2020, Ms. K was issued an HKID card. Mr. J claimed deduction of $16,000 and $32,000 in the year of assessment 2019/20 and 2020/21 respectively.

Deduction of qualifying annuity premiums would be allowable if Ms. K was able to satisfy the two prescribed conditions relating to the annuitant: Ms. K, as the sole annuitant, was Mr. J's spouse at some time during the year of assessment; and Ms. K held an HKID card at some time during the year of assessment. Ms. K remained the sole annuitant for both years of assessment but she was issued an HKID card in the year of assessment 2020/21. No deduction would be allowed in the year of assessment 2019/20. Deduction allowed in the year of assessment 2020/21 would be the amounts paid during the period from 1 April 2020 to 31 March 2021 (i.e. $32,000).

Payment of qualifying annuity premiums

Premiums paid during a year of assessment

27. Qualifying annuity premiums may be payable monthly, quarterly or annually depending on the terms and conditions of a QDAP. Deduction is only allowed for qualifying annuity premiums paid during a year of assessment. Section 26N(2) clarifies the meaning of the words "qualifying annuity premiums paid during a year of assessment" under section 26O(1). The words are to be interpreted as a reference to those premiums paid to the extent that they are due during the year of assessment. Qualifying annuity premiums that are already due and paid in a year of assessment is deductible in the year of payment. Qualifying annuity premiums that are due in a year of assessment but not paid until a subsequent year is deductible in the year of payment.

> <u>Example 7</u>
>
> *Mr. L, as the sole policy holder, purchased a QDAP for the benefit of himself as the sole annuitant. Qualifying annuity premiums of $25,000 were due and payable on 1 May each year. Mr. L failed to pay the premiums which were due on 1 May 2019 and 1 May 2020. Qualifying annuity premiums of $50,000 were paid on 31 December 2020 to settle the outstanding premiums for 2019 and 2020.*
>
> Qualifying annuity premiums of $50,000 would be allowable in the year of assessment 2020/21 (i.e. the year during which the premiums were paid). No deduction would be allowed in the year of assessment 2019/20 even though the premiums paid on 31 December 2020 related to the policy period which commenced within 2019/20.

Prepaid premiums

28. A policy holder may choose to pay the qualifying annuity premiums in one lump sum before they are due for payment (e.g. to enjoy a discount on the premiums). The premiums paid in advance are regarded as prepaid premiums. Prepaid premiums made by a policy holder to the insurer may be withdrawn or applied for other purposes (e.g. setting off other charges due to the insurer). No deduction would be allowed in the year of assessment when the prepaid premiums are made by the policy holder to the insurer. Prepaid sums used to pay for any premiums subsequently become due would be allowed in the year of payment.

Example 8

Mr. M, as the sole policy holder, purchased a QDAP for the benefit of himself as the sole annuitant. Annual payment of qualifying annuity premiums of $10,000 would be required for 20 years starting from 1 April 2019. To enjoy a 5% discount on the premiums, Mr. M paid qualifying annuity premiums of $47,500 ($10,000 × 5 × 95%) for the first 5 years in one lump sum on 1 April 2019 and, upon receipt, 4/5 of the amounts were recognized by the insurer as deposits. Instruction was given to the insurer by Mr. M to transfer $9,500 on 1 April annually to settle premiums which would become payable in 2020 to 2023.

Prepaid premiums of $38,000 (i.e. $47,500 × 4/5) would not be allowable for deduction in the year of assessment 2019/20 because the premiums were not due for payment on 1 April 2019. Deduction allowable in the year of assessment 2019/20 would be restricted to $9,500 (i.e. $47,500 × 1/5). Per Mr. M's instruction, qualifying annuity premiums of $9,500 would be paid on 1 April 2020, 2021, 2022 and 2023 respectively. Deduction of $9,500 would be allowable in each of the four succeeding years of assessment 2020/21 to 2023/24.

Premiums paid by the taxpayer or the taxpayer's spouse as policy holder

29. For a deduction of qualifying annuity premiums paid under a QDAP to be allowable, section 26O(1)(b) provides that the premiums must be paid by the following policy holder or policy holders:

(a) the taxpayer (i.e. the premiums are paid by the taxpayer as a sole policy holder);

(b) the taxpayer's spouse, not being a spouse living apart from the taxpayer (i.e. the premiums are paid by the taxpayer's spouse, not being a spouse living apart from the taxpayer, as a sole policy holder); or

(c) the taxpayer and the taxpayer's spouse, not being a spouse living apart from the taxpayer (i.e. the premiums are paid by the taxpayer and the taxpayer's spouse, not being a spouse living apart from the taxpayer, as joint policy holders).

30. A taxpayer may claim qualifying annuity premiums paid by him as a policy holder. For a married couple not living apart, a taxpayer may also claim qualifying annuity premiums paid by the taxpayer's spouse as a policy holder. That is, the taxpayer is allowed to claim qualifying annuity premiums paid by the taxpayer's spouse, not being a spouse living apart from him, as a policy holder.

Example 9

Mr. N, as the sole policy holder, purchased a QDAP for the benefit of himself as the sole annuitant. Qualifying annuity premiums of $48,000 were paid during the year of assessment 2019/20. On 1 January 2020, the policy holder of the QDAP was changed to Mr. N's son who was also designated as the sole annuitant.

Scenario 1: Premiums would be payable annually and $48,000 was paid on 1 April 2019.

Scenario 2: Premiums would be payable monthly and $4,000 was paid each month starting from 1 April 2019.

Scenario 1
Qualifying annuity premiums of $48,000 paid on 1 April 2019 would be fully allowed to Mr. N in the year of assessment 2019/20 since the premiums were paid at a time when Mr. N was the sole policy holder. No deduction would be allowed to Mr. N's son because he did not pay any premiums after becoming the sole policy holder on 1 January 2020.

Scenario 2
Qualifying annuity premiums allowed to Mr. N for the year of assessment 2019/20 would be reduced to $36,000 (i.e. $4,000 × 9) since Mr. N ceased to be the sole policy holder after 1 January 2020. Qualifying annuity premiums of $12,000 (i.e. $4,000 × 3) paid by Mr. N's son during the period from 1 January 2020 to 31 March 2020 would be allowed to Mr. N's son.

Example 10

Mr. O was the sole policy holder and annuitant of a QDAP, and qualifying annuity premiums of $24,000 were paid in the year of assessment 2019/20. Ms. P was the sole policy holder and annuitant of a QDAP, and qualifying annuity premiums of $36,000 were paid in the year of assessment 2019/20. Mr. O and Ms. P became separated from 1 November 2019. Mr. O claimed deduction of $60,000.

Scenario 1: Premiums for Ms. P's QDAP would be payable annually and $36,000 was paid on 1 December 2019.

Scenario 2: Premiums for Ms. P's QDAP would be payable monthly and $3,000 was paid each month starting from 1 April 2019.

Scenario 1
Deduction of $24,000 paid by Mr. O would be allowed to Mr. O in the year of assessment 2019/20. Deduction of $36,000 paid by Ms. P on 1 December 2019 would not be allowed to Mr. O because the premiums were paid after Mr. O and Ms. P had separated.

Scenario 2
Deduction of $45,000 (i.e. $24,000 + $21,000) would be allowed to Mr. O in the year of assessment 2019/20. Premiums of $21,000 (i.e. $3,000 × 7) paid by Ms. P during the period from 1 April 2019 to 31 October 2019 would be allowed to Mr. O because the premiums were paid before the couple had separated.

Premiums paid by joint policy holders

31. When a QDAP is held by the taxpayer and the taxpayer's spouse as joint policy holders, the qualifying annuity premiums paid by either or both of them are taken as paid by them in equal shares under section 26O(3). The actual premiums paid by each of them for the policy need not be considered.

Example 11

Mr. Q and Mrs. Q were the joint policy holders and annuitants of a QDAP, and qualifying annuity premiums of $24,000 were paid during a year of assessment. Mr. Q and Mrs. Q respectively contributed $19,000 and $5,000 towards the payment.

Qualifying annuity premiums paid of $24,000 were taken to have been paid by Mr. Q and Mrs. Q in equal shares (i.e. $12,000 each). The actual amounts paid by each of them were irrelevant.

CLAIM FOR DEDUCTION BY MARRIED PERSONS

Premiums allowable to married persons

32. Where a deduction is claimed by a married taxpayer or the taxpayer's spouse or both in respect of the qualifying annuity premiums paid by either or both of them during a year of assessment, the qualifying annuity premiums paid are allowable under section 26P(2) as a deduction to either the married taxpayer or the taxpayer's spouse, or to both of them if:

(a) the total deductions allowed to each of them under sections 26O (i.e. deductions for qualifying annuity premiums) and 26S (i.e. deductions for TVC) do not exceed the amount specified in Schedule 3F (i.e. $60,000); and

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

Example 12

Mr. R and Mrs. R were a married couple. Mr. R, as the sole policy holder, purchased a QDAP for the benefit of himself as the sole annuitant. Qualifying annuity premiums of $110,000 were paid during the year of assessment 2019/20 and no TVC was made.

Scenario 1: Both Mr. R and Mrs. R had income chargeable to tax. Mr. R and Mrs. R claimed deduction of $60,000 and $50,000 respectively.

Scenario 2: Mrs. R had no income chargeable to tax. Mr. R had income chargeable to tax and claimed deduction of $110,000.

Scenario 1

Deduction allowable to Mr. R and Mrs. R for the year of assessment 2019/20 would be $60,000 and $50,000 because the deduction to each would not exceed $60,000, and the total deductions to them would not exceed the premiums paid of $110,000.

Scenario 2

Deduction allowable to Mr. R would be restricted to $60,000. No deduction would be allowed to Mrs. R since she did not have any salary income, property income or profits chargeable to tax under the Ordinance against which the unallowed premiums of $50,000 could be claimed for deduction (i.e. Mr. R and Mrs. R would not be eligible to elect for joint assessment or personal assessment jointly).

Resolving double claims by married persons

33. To ensure that the same qualifying annuity premium amount would not be allowed to both the taxpayer and the taxpayer's spouse, the provisions in section 26P(3) to (5) provide for the related arrangement and the Commissioner's power to deal with double claims for qualifying annuity premiums made by married persons.

Deduction claims not considered

34. Section 26P(3) makes it clear that if the Commissioner has reason to believe that deduction claims made by a married couple in respect of qualifying annuity premiums paid, if allowed, would exceed the qualifying annuity premiums paid, the Commissioner must not consider any claim for the deduction until the Commissioner is satisfied that the taxpayer and the taxpayer's spouse have reached an agreement that would result in a total deduction not exceeding the qualifying annuity premiums paid.

Additional assessments

35. The provisions in section 26P(4) and (5) enable the Commissioner to

resolve double claims made by married persons after deductions for qualifying annuity premiums have been allowed: total deductions allowed to a taxpayer and the taxpayer's spouse exceeded the qualifying annuity premiums paid; or a deduction has been allowed to a taxpayer and, within 6 months after allowing the deduction, the taxpayer's spouse makes a claim that, if allowed, would exceed the qualifying annuity premiums paid.

36. The Commissioner would invite the taxpayer and the taxpayer's spouse to reach an agreement that would result in a total deduction not exceeding the qualifying annuity premiums paid and make additional assessments under section 60 in consequence of the agreement reached by them. If the married couple are unable to reach an agreement within a reasonable time, additional assessment(s) will be made in respect of the deduction(s) already granted.

Exercise of power by the Commissioner

37. In dealing with claims for qualifying annuity premiums made by married persons, the Commissioner would exercise a power under section 26R in the way that he considers appropriate having regard only to the information in his possession.

REFUND OF PREMIUMS PAID

Treatment of refund

38. A deferred annuity policy may be terminated and premiums paid would be refunded to the policy holder under limited circumstances. The most common circumstance under which premiums paid would be refunded is cancellation of a policy within the cooling-off period, which is 21 days after the delivery of the policy or issue of a notice (in which the policy holder is informed of the availability of the policy and the expiry date of the cooling-off period) to the policy holder or the policy holder's representative, whichever is the earlier.

39. If any of the qualifying annuity premiums paid under a QDAP is refunded, section 26Q(2) stipulates that the qualifying annuity premiums paid are taken to be reduced by the amount of the refund. If the refund is made before a taxpayer claims the tax deduction, the taxpayer can only claim the reduced amount of the qualifying annuity premiums paid.

Example 13

Mr. S purchased a QDAP and paid qualifying annuity premiums of $20,000 on 5 May 2019. He cancelled the policy within the cooling-off period and the premiums were refunded on 20 May 2019. Later, Mr. S purchased another QDAP and paid qualifying annuity premiums of $50,000 on 1 February 2020.

Assuming that other deduction conditions were satisfied, qualifying annuity premiums of $50,000 paid under the second policy would be allowed to Mr. S. Since qualifying annuity premiums of $20,000 paid under the first policy were refunded, the qualifying annuity premiums paid under that policy would be reduced to nil.

Notifying obligation

40. If any of the qualifying annuity premiums are refunded after a taxpayer has claimed the tax deduction, section 26Q(3)(a) imposes a notifying obligation on the taxpayer in respect of the refund. Having claimed deduction for the qualifying annuity premiums, the taxpayer must notify the Commissioner in writing of the refund within 3 months after the date of refund. If a deduction has been allowed in respect of refunded premiums, section 26Q(3)(b) provides that the assessor may make an additional assessment on the taxpayer under section 60 despite the 6-year statutory limit.

41. A taxpayer who without reasonable excuse fails to comply with section 26Q(3)(a) commits an offence under section 80(2). The Commissioner may institute prosecution against the taxpayer for the offence committed. The maximum penalty for the offence is a fine at level 3 and a further fine of treble the amount of tax undercharged. As an alternative to proceeding with a prosecution, the Commissioner may compound the offence (i.e. accept a monetary settlement instead of sanctioning the institution of a prosecution) under section 80(5).

42. If no prosecution under section 80(2) has been instituted against the taxpayer in respect of his failure to comply with section 26Q(3)(a), the Commissioner may impose additional tax under section 82A. The maximum penalty is treble the amount of tax which has been undercharged in consequence of the taxpayer's non-compliance, or which would have been undercharged if the non-compliance had not been detected.

43. Before making an assessment of additional tax, the Commissioner will arrange for a notice to be given to the taxpayer stating the offence in respect of which the Commissioner intends to assess additional tax. The taxpayer is then allowed a specified period of at least 21 days to make written representations with regard to the proposed assessment to additional tax. The Commissioner will consider and take into account any representations received during the specified period when determining the amount of additional tax. The taxpayer, if aggrieved by an assessment to additional tax, can appeal to the Board of Review against the assessment.

TAX DEDUCTIBLE MPF VOLUNTARY CONTRIBUTIONS (TVC)

Amendments to MPFSO and MPFSGR

44. TVC means "tax deductible voluntary contributions" as defined under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO). To provide for TVC made to an MPF scheme under the Ordinance, amendments were made to the MPFSO and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (MPFSGR). The relevant provisions under the MPFSO and MPFSGR are:

(a) section 2(1) of the MPFSO defines "tax deductible voluntary contributions" to mean the contributions that are paid into a TVC account under section 11A(2)(a); and "TVC account" to mean an account opened under section 11A(1);

(b) section 11A the MPFSO provides that an MPF scheme member who holds a contribution account or personal account, or a member of an occupational retirement scheme in respect of which an exemption has been granted under section 5 of the MPFSO (i.e. MPF-exempted ORSO scheme) may open a TVC account in an MPF scheme and make TVC into a TVC account; and

(c) section 56A(2) and (3) of the MPFSGR stipulates that the MPF trustees are required to provide the scheme member with a contribution summary setting out the amount of TVC paid by the scheme member into the TVC account during the financial year (i.e. ending on 31 March) and the contribution summary must be

provided to the scheme member before the end of a period of 40 days from the beginning of the next financial year.

TVC

45. TVC, defined in section 11A of the MPFSO, is a new type of contributions under the MPF system different from the employment-related voluntary contributions under section 11 of the MPFSO. A taxpayer who wishes to make TVC may open a TVC account in an MPF scheme offering TVC of his own choice and makes TVC directly to the TVC account without going through his employer. A taxpayer may make TVC to his TVC account at any time at any amount. Like MPF mandatory contributions, TVC is subject to the preservation requirements meaning that withdrawal is allowed only upon retirement at the age of 65 or on statutory grounds (including early retirement at the age of 60 or above, total incapacity, terminal illness, permanent departure from Hong Kong, death or small balance).

46. In terms of tax deduction, there is no interface between MPF mandatory contributions and TVC, or MPF voluntary contributions and TVC. Reference may be made to DIPN No. 23 on "Recognized Retirement Schemes" which concerns deductibility of MPF mandatory and voluntary contributions under the Ordinance. There is no change to the provisions relating to MPF mandatory contributions and voluntary contributions:

(a) MPF mandatory contributions paid by employees and self-employed persons are deductible under sections 26G and 16AA respectively; and

(b) MPF voluntary contributions paid by employees and self-employed persons are not deductible.

Condition for deduction

47. Two terms are defined in section 26S(2): "tax deductible MPF voluntary contributions" means "tax deductible voluntary contributions" as defined by section 2(1) of the MPFSO; and "TVC account" has the same meaning given by section 2(1) of the MPFSO.

48. A deduction for TVC would be allowable under 26S(1) to a taxpayer in respect of the amounts paid into a TVC account during the year of assessment. The taxpayer needs not be an employee or a self-employed person when the contributions are paid into a TVC account. Unlike qualifying annuity premiums, TVC paid by a taxpayer into a TVC account would not be allowable to the taxpayer's spouse.

Example 14

Mr. T received monthly salaries of $35,000 from his employer. During the year of assessment 2019/20, Mr. T made MPF mandatory contributions of $18,000 and voluntary contributions of $20,000. He opened a TVC account in an MPF scheme offered by Trustee U and made TVC of $50,000 on 1 December 2019.

MPF mandatory contributions of $18,000 and TVC of $50,000 would be allowable to Mr. T under section 26G and section 26S respectively. MPF voluntary contributions would not be allowable.

Example 15

Ms. V, under her previous employment, was required to make MPF mandatory contributions of $1,000 monthly. After resignation, Ms. V opened a TVC account in an MPF scheme offered by Trustee W and made TVC irregularly. TVC of $20,000, $3,000, and $30,000 was made on 1 May 2019, 1 November 2019 and 1 February 2020. Ms. V received rental income from letting her property during the year of assessment 2019/20 and she elected for personal assessment.

TVC of $53,000 would be allowable to Ms. V in the year of assessment 2019/20 under personal assessment, if eligible, for setting off against her rental income.

ADMINISTRATIVE PROVISIONS

Maximum allowable deduction

49. Section 26U(1) stipulates that the total deductions allowable to a taxpayer in respect of qualifying annuity premiums and TVC cannot exceed the amount specified in Schedule 3F to the Ordinance. For the year of assessment 2019/20 and subsequent years, the maximum total deduction is specified at $60,000 (subject to any subsequent amendments) and it is an aggregate limit for qualifying annuity premiums and TVC.

50. There is no restriction on the number of QDAP or TVC account and a taxpayer may be allowed the maximum total deduction of $60,000 if he paid:

(a) qualifying annuity premiums of $60,000 only;

(b) TVC of $60,000 only; or

(c) both qualifying annuity premiums and TVC totaling $60,000.

Deduction order

51. If deductions are allowable to a taxpayer in respect of both qualifying annuity premiums and TVC in a year of assessment, section 26U(2) sets out the deduction order:

(a) the deductions for TVC are to be firstly allowed; and

(b) the deductions for qualifying annuity premiums are to be secondly allowed.

52. The deduction order is essential since the amount specified in Schedule 3F to the Ordinance is an aggregate limit for both deductions. The deduction order ensures that married couples would receive a more favorable taxation consequence since qualifying annuity premiums exceeding the reduced cap (i.e. $60,000 reduced by TVC) could be claimed by the taxpayer's spouse. If the deduction order is reversed, TVC exceeding the reduced cap (i.e. $60,000 reduced by qualifying annuity premiums) could not be claimed by the taxpayer's spouse.

Example 16

Mr. X paid qualifying annuity premiums of $26,000 for a QDAP and paid TVC of $45,000 into his TVC account. Mrs. X paid TVC of $20,000 into her TVC account. The amounts were paid during the year of assessment 2019/20. Mr. X claimed deduction of $71,000.

Since both qualifying annuity premiums and TVC would be allowable to Mr. X, the deduction cap of $60,000 would firstly be reduced by TVC of $45,000 and secondly by qualifying annuity premiums of $15,000. Deduction given to Mr. X would be capped at $60,000. The unallowed qualifying annuity premiums of $11,000 (i.e. $26,000 - $15,000) could be claimed by Mrs. X. Deduction allowable to Mrs. X would be $31,000 (i.e. $20,000 + $11,000).

Holding over of payment of provisional salaries tax

53. If a taxpayer has been assessed to provisional salaries tax for a year of assessment, the taxpayer may apply to the Commissioner to have the payment of the whole or part of the provisional salaries tax held over on any of the following grounds specified in section 63E(2)(bf):

(a) the taxpayer or the taxpayer's spouse (not being a spouse living apart from the taxpayer), or both of them, has or have paid, or is or are likely to pay, during the year of assessment, qualifying annuity premiums that are allowable for deduction and the amount of qualifying annuity premiums exceeds or is likely to exceed the amount specified in Schedule 3F for the year preceding the year of assessment;

(b) the taxpayer has paid or is likely to pay, during the year of assessment, TVC that is allowable for deduction and the amount of TVC exceeds or is likely to exceed the amount specified in Schedule 3F for the year preceding the year of assessment; or

(c) the taxpayer or the taxpayer's spouse (not being a spouse living apart from the taxpayer), or both of them, has or have paid, or is or are likely to pay, during the year of assessment, qualifying annuity premiums that are allowable for deduction; and the taxpayer has

paid or is likely to pay, during the year of assessment, TVC that is allowable for deduction; and the total amounts of the qualifying annuity premiums and TVC exceed or are likely to exceed the amount specified in Schedule 3F for the year preceding the year of assessment.

54. Schedule 46 to the Ordinance provides for a transitional arrangement under which a taxpayer may apply for the holding over of payment of provisional salaries tax in respect of the year of assessment 2019/20 on the ground that a deduction for qualifying annuity premiums paid or TVC paid is, or is likely to be, allowable to the taxpayer.