HONG KONG TAX

May 2020

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2019/20 HONG KONG SALARIES TAX RETURN WILL BE ISSUED ON 1 JUNE 2020

CONTENTS

Highlight

The Inland Revenue Department (IRD) used to issue Individual Tax Returns to taxpayers in early May every year. But this year, in view of the outbreak of COVID-19 in the community and the IRD's temporary suspension of services in the past few months, Individual Tax Return for the year of assessment 2019/20 will only be issued to taxpayers on 1 June 2020. For represented cases not involving sole proprietorship business, a block extension for submission of tax returns will be granted to 3 August 2020. For represented cases involving sole proprietorship business, extension will be granted to 2 November 2020.

The 2019/20 Individual Tax Return will include two new sections – (1) qualifying premiums paid for insurance plans under the Voluntary Health Insurance Scheme (VHIS) and (2) qualifying annuity premiums and tax deductible Mandatory Provident Fund (MPF) voluntary contributions.

In addition, a same-sex marriage would now be regarded as a valid marriage for tax purpose. The IRD have updated various relevant Departmental Interpretation and Practice Notes (DIPNs) to reflect the remedial interpretation of the term 'marriage' and certain related terms in the Inland Revenue Ordinance (IRO) as ordered by the Court of Final Appeal (CFA) in *Leung Chun Kwong v Secretary for the Civil Service*.

In details

Insurance premiums paid for VHIS

From the year of assessment 2019/20 onwards, deduction is allowed for premiums paid under a VHIS policy, ie an insurance policy certified to be in compliance with the VHIS.

Tax deduction is allowed in respect of qualified premiums paid by a taxpayer or the taxpayer's spouse as a policy holder of a VHIS policy and the insured person[1] is either the taxpayer himself/herself or a specified relative[2] .

The maximum deduction allowable to each taxpayer for each insured person is HK$8,000 for the year of assessment 2019/20. There is no cap on the number of specified relatives claimed by a taxpayer, the number of taxpayers who can claim deduction for the same insured person, or on the number of policies per insured person. If there is more than one policy holders for a VHIS policy, the qualifying premiums paid is taken as paid by all of the policy holders in equal share.

Where any of the qualifying premiums paid during a year of assessment is refunded, the qualifying premiums paid are taken to be reduced by the amount of the refund. If such a refund is received after the deduction is claimed, the taxpayer must notify the IRD in writing of the refund within three months after the date of the refund and the IRD is empowered to issue additional assessment in this regard despite the six-year statutory limit. Failure to comply with the notification requirement without reasonable excuses may lead to penalty.

Annuity premiums and MPF voluntary contributions

From the year of assessment 2019/20 onwards, taxpayers can claim tax deductions under salaries tax and personal assessment for their premiums paid to qualifying deferred annuities and contributions made to tax deductible MPF voluntary contribution (TVC) accounts. The maximum aggregate tax deductible limit is HK$60,000 each year per taxpayer.

To encourage the use of deferred annuities as a voluntary retirement planning tool, a taxpayer can claim tax deduction for qualifying deferred annuity premiums[3] covering his/her spouse as joint annuitant, or either the taxpayer or the taxpayer's spouse as a sole annuitant. Moreover, a taxpaying couple is allowed to allocate tax deductions for qualifying deferred annuity premiums amongst themselves in order to claim the total deductions of HK$120,000, provided that the deductions claimed by each taxpayer does not exceed the individual limit (ie HK$60,000). Same as premiums paid for VHIS, if a refund of qualifying annuity payment is received after deduction is claimed, the taxpayer has the obligation to notify the IRD in writing of the refund and the IRD is empowered to issue additional assessment in this regard. Failure to comply with the notification requirement without reasonable excuses may lead to penalty.

To enjoy tax deduction through TVC, taxpayer can open a TVC account in an MPF scheme and makes TVC directly to the TVC account without going through his employer. Like MPF mandatory contributions, TVC is subject to the preservation requirements meaning the withdrawal is only allowed upon reaching the age of 65 or on statutory grounds.

Interpretation of the term 'marriage'

'Marriage' for Hong Kong tax purpose was in the past construed as a heterosexual marriage between a man and a woman.

In *Leung Chun Kwong v Secretary for the Civil Service*, the appellant entered into a same-sex marriage in 2014 in New Zealand where such marriage was legally recognised. Amongst others, the appellant complained that he was not able to elect for joint assessment of salaries tax as same-sex marriage did not fall within the meaning of marriage under section 2(1) of the IRO. The appellant's appeal was allowed by the CFA and a remedial interpretation of the IRO was considered appropriate such that a married person, whether in a heterosexual marriage or same-sex marriage, is now entitled to elect for joint assessment or personal assessment jointly with the person's spouse; and is entitled to claim allowances or deductions in respect of the person's spouse. The relevant DIPNs were updated to reflect this remedial interpretation.

1. An insured person should be a Hong Kong Identity (HKID) card holder; if the insured person is under the age of 11 and not an HKID card holder, his/her parent should be a HKID card holder at the time of birth of the insured person.
2. 'Specified relatives' includes: (i) a spouse; (ii) a parent or grandparent who is aged 55 or more or under the age of 55 but eligible to claim an allowance under the Government's Disability Allowance Scheme; or (iii) a child or sibling who is at any time during the year of assessment unmarried and under the age of 18, or aged 18 or more but under 25 and receiving full time education, or aged 18 or more but incapacitated for work by reason of physical or mental disability.
3. Qualifying annuity premium refers to the net sum of moneys that is payable to a qualifying deferred annuity policy under which a regular payment is receivable by an annuitant during an annuity period and that is certified by the Insurance Authority to be in compliance with the specified criteria.

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