



9 May 2005

By fax (2877 1082) and by post

Our Ref.: C/TXM, M34632

Mrs. Alice Lau Mak Yee-ming
Commissioner of Inland Revenue
Inland Revenue Department
36/F, Revenue Tower
5 Gloucester Road
Wanchai
Hong Kong

Dear Mrs. Lau,

DIPN 23 (Revised) – Recognised Retirement Schemes

The Taxation Committee of the Hong Kong Institute of Certified Public Accountants has reviewed the revised draft DIPN 23 (*Recognised Retirement Schemes*), which is intended to take into account the provisions of the Mandatory Provident Fund Schemes Ordinance (Cap.485) that have become fully operative since 1 December 2000. The committee's comments are set out below.

Paragraph 19 – deeming provisions regarding accrued benefits from MPF schemes

The first sentence, i.e., "It should be noted that in the case of ROR [recognised occupational retirement] schemes, liability arises when the amount is received", could be liable to misinterpretation. There may be circumstances where the amount received is specifically exempt, e.g. under sections 8(2)(c)(i) and 8(2)(cc)(i) of the Inland Revenue Ordinance ("IRO").

We would like to know whether the second sentence, i.e. "Regarding accrued benefits from MPF schemes, there is a deeming provision", applies to both mandatory and voluntary contributions. It would be helpful if the IRD could separately quote the relevant deeming provisions for mandatory and voluntary contributions.

Paragraph 22 – withdrawing employers' voluntary contribution from an MPF scheme where severance or long service payment has not been paid

According to paragraph 22, the sum withdrawn by an employee attributable to the employer's voluntary contribution would be taxable to the extent that the amount



exceeds the proportionate benefit. It would be helpful if the IRD would further elaborate on the application of 8(7) and (8) of the IRO under such circumstances.

We would also like to know, given that the employee in the circumstances described in paragraph 22 is, in effect, claiming from the scheme a shortfall of his statutory severance or long-service payment, whether in practice the amount should be exempt and not subject to the proportionate benefit rule.

Paragraphs 30 to 33 - accrued benefits taken to have been received from MPF Schemes

According to paragraphs 30 to 32, upon termination of service, employees are taken to have received the employer's voluntary contributions to an MPF scheme and would be taxable on them (in so far as the amount exceeds the proportionate benefit), even though the amount is retained in the scheme. However, mandatory contributions, although taken to have been received, would not be taxable.

The committee does not find the explanations in this part of the DIPN easy to follow. For example, it is not clear why an employer's mandatory contributions are regarded as having been received while they remain in the scheme and the employee is not yet entitled to withdraw the amount. It would be helpful if the IRD could indicate the legislative basis for this proposition.

The effect of paragraph 33 is also unclear. We would suggest that further clarification is required as to whether an employee would be taxable on mandatory or voluntary contributions purely as a result of the employer having transferred the accrued benefits from one MPF scheme to another, without any termination of services having occurred; and, if so, the reason for such.

While we note that paragraph 33 makes reference to section 9(1)(ad) of the IRO, section 9(1)(ad) seems to be applicable only where an employee has received or is taken to have received the accrued benefits. We are not clear about the legal basis on which an employee is deemed to have received the accrued benefits in relation to mandatory and voluntary contributions. As regards the deeming provision in section 8(9) of the IRO, this appears to be applicable only to situations of termination of services and, even then, only to voluntary contributions.

We would suggest the heading of this part of the DIPN might be clearer if changed to *“Accrued Benefits Received or Taken To Have Been Received from MPF Schemes”*

Other matters

The explanations relating to the different retirement schemes appear in different places in the DIPN, under various headings, such as *“Salaries Tax Liability of Employers”* and *“Deduction Allowed to Employees”*. We would suggest that it would facilitate understanding of the tax position in respect of the different



schemes if the relevant information were to be reorganised by way of summaries for each type of scheme, or if such summaries could otherwise be added into the DIPN.

The DIPN does not contain any guidance on the tax impact of SSAP 34/HKAS 19 (*Employee Benefits*). As there will be movements through companies' profit and loss accounts/ balance sheets relating to SSAP 34/HKAS 19, depending on whether there is a surplus or deficit in their defined benefit retirement schemes, we would suggest that the IRD incorporates its views on the relevant SSAP/HKAS in the DIPN, so as to provide more guidance to taxpayers.

I hope that you find our comments to be helpful. If you have any questions in relation to this submission, please feel free to contact me on 2287 7084.

Yours sincerely,

A handwritten signature in black ink that reads 'Peter Tisman'. The signature is written in a cursive, flowing style.

Peter Tisman
Director, Faculties & Advocacy

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