

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.17 Guidelines on Contribution Arrangement of a Self-employed Person

INTRODUCTION

Section 7C of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides that every self-employed person other than a person less than 18 or, is 65 years of age or more (“SEP”) is required to enrol himself to become a member of a registered scheme. If the relevant income of the SEP is not less than the minimum level of relevant income, the SEP is required to make mandatory contributions for himself before the end of each contribution period. Section 125 of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) also provides that an SEP may make mandatory contributions either on a yearly or a monthly basis. Moreover, section 131 of the Regulation provides that if an SEP contributes to a scheme on a yearly basis, the contribution period would coincide with the financial period of the scheme. For an SEP who elects to contribute on a monthly basis, each contribution period would end on a particular day in each month specified in writing by the SEP.

2. Section 6H of the Ordinance provides that the Mandatory Provident Fund Schemes Authority (“the Authority”) may issue guidelines for the guidance of, inter alia, approved trustees, service providers, self-employed persons and other persons concerned with the Ordinance.

3. The enrolment arrangement for SEPs who participate or are going to participate in registered schemes is set out in “Guidelines on Enrolment and Contribution Arrangements for Self-employed Persons” (Guidelines IV.10).

The Authority hereby issues these guidelines on:

- (a) the determination of relevant income for mandatory contribution purpose of an SEP by reference to the assessable profits of his self-employed business;
- (b) the contribution arrangement of an SEP-
 - (i) on commencement of the self-employment;
 - (ii) who elects to transfer the benefits accrued in a registered scheme to another scheme during a contribution period;
 - (iii) who ceases to be self-employed;
 - (iv) who has more than one business; and
- (c) prepayment of contributions.

DETERMINATION OF RELEVANT INCOME

Assessable Profits as Relevant Income

4. Section 127 of the Regulation provides that an SEP may use the “assessable profits” (as defined in the Inland Revenue Ordinance (Cap. 112)) as the relevant income for mandatory contribution purpose. Those assessable profits will be stated in the most recent notice of assessment issued by the Commissioner of Inland Revenue or, if he has appealed against that assessment, as declared by the SEP for the preceding year of assessment in respect of the self-employed business and calculated in accordance with Part IV of the Inland Revenue Ordinance.

SEP who Contributes on a Yearly Basis

5. For an SEP who elects to contribute on a yearly basis, the relevant income for mandatory contribution purposes for the whole financial year of a registered scheme is equal to the assessable profits as stated in the latest notice of assessment in respect of the self-employed business if the amount of assessable profits covers a period of a whole year.

Declaration of Relevant Income

6. Alternatively, an SEP may declare as his relevant income an amount equal to his assessable profits for the preceding year of assessment under the following three circumstances:-

- (a) The issue date of the most recent notice of assessment is more than 2 years from the date on which the notice is presented as evidence of relevant income;
- (b) The latest tax assessment is objected by the SEP or is under appeal;
or
- (c) The evidence produced by the SEP to the approved trustee in relation to his relevant income does not consist of, or include, his most recent notice of assessment.

Proportional Adjustment if Assessable Profits Covering a Period Longer or Shorter than the Financial Period of the Scheme

7. In the event that the amount of assessable profits as stated in the notice of assessment or as declared by the SEP for the preceding year of assessment relates to a period longer or shorter than the financial period of the scheme for which mandatory contributions are to be made (i.e. the next financial period of the scheme), proportional adjustments have to be made to arrive at the relevant income amount. The proportionally adjusted relevant income should be calculated in accordance with the following formula:-

$$\text{Relevant income} = \frac{\text{AP} \times \text{DC}}{\text{DA}}$$

where-

- AP represents the amount of assessable profits as stated in the notice of assessment or as declared for the preceding year of assessment in respect of the self-employed business;
- DC represents the number of days within the financial period of the scheme for which mandatory contributions are to be made; and
- DA represents the number of days within the period for which the amount of assessable profits as stated in the notice of assessment or as declared for the preceding year of assessment relates to.

8. For example, if the amount of assessable profits as stated in the latest notice of assessment of an SEP is HK\$200,000 and the period covered by the notice of assessment is from 1 January 1999 to 31 March 2000, the relevant income to be reported by the SEP to the scheme trustee for mandatory contribution purposes for the whole financial period of the scheme from 1 January 2001 to 31 December 2001 would be HK\$160,088 (being HK\$200,000 x 365 / 456, where 365 represents the number of days within the financial period of the scheme and 456 represents the number of days within the period covered by the notice of assessment).

9. For another example, in March 2002 a scheme changes its financial year end from 31 December to 30 September. In December 2001, an SEP has reported to the trustee that his assessable profits as stated in the notice of assessment for mandatory contribution purposes for the period from 1 January

2002 to 31 December 2002 is HK\$240,000. The relevant income of this SEP for the period from 1 January 2002 to 30 September 2002 (the new financial period end of the scheme) would be HK\$179,507 (being $\text{HK\$}240,000 \times 273 / 365$, where 273 represents the number of days between 1 January 2002 and 30 September 2002 and 365 represents the number of days within the period covered by the notice of assessment).

10. For cases where the amount of assessable profits as stated in the notice of assessment or as declared by the SEP for the preceding year of assessment relates to a period longer or shorter than 1 year but equal to the financial period of the scheme for which mandatory contributions are to be made, no adjustment to the amount of relevant income is required and the relevant income would be equal to the amount of assessable profits.

SEP who Contributes on a Monthly Basis

11. Section 129(2) of the Regulation provides that for an SEP whose relevant income is determined by reference to the assessable profits as stated in the notice of assessment or as declared by the SEP for the preceding year of assessment and who elects to contribute on a monthly basis, the amount of relevant income for each contribution period is to be calculated by dividing the assessable profits by the number of whole months in the financial period to which the assessable profits is related.

12. For example, the relevant income of an SEP for the year ending 31 December 2002 for mandatory contribution purposes is determined by reference to the assessable profits of \$100,000 for the period from 15 June 2000 to 31 December 2000. If the SEP elects to contribute on a monthly basis in the year ending 31 December 2002, the relevant income for each month in 2002 would be HK\$16,667 (i.e. HK\$100,000 divided by 6, being the number of whole

months in the period from 15 June 2000 to 31 December 2000).

CONTRIBUTION ARRANGEMENT

On Commencement of Self-employment

13. A new SEP is required to enrol himself into a registered scheme within the permitted period (now set at 60 days) from the date on which the person becomes self-employed and to report to a scheme trustee his relevant income for payment of mandatory contributions to the scheme for the financial period of the scheme in which he becomes a member. Since a new SEP will not have a notice of assessment issued by the Inland Revenue Department, the SEP may use the basic allowance (as defined in section 28 of the Inland Revenue Ordinance (Cap. 112)) to calculate his relevant income for the relevant period. Alternatively, the SEP may agree with the scheme trustee to make mandatory contributions based on the maximum level of relevant income.

Calculation of First Contribution

14. The mandatory contribution for the first contribution period after joining a registered scheme of an SEP should be calculated from the day on which the person becomes an SEP or 1 December 2000, whichever is later.

15. If a person becomes an SEP at the age less than 18, his/her mandatory contribution for the first contribution period after joining a registered scheme should be calculated from the day on which the person becomes 18 or 1 December 2000, whichever is later.

SEP who Elects to Transfer the Benefits Accrued in a Registered Scheme to Another Scheme during a Contribution Period

16. Section 148 of the Regulation provides for the transfer of accrued benefits of an SEP on his election. An SEP who elects to transfer the benefits

accrued in a registered scheme to another scheme should make mandatory contributions to the original scheme up to the day the transferor trustee is notified by the transferee trustee of the election to transfer.

Contribution Arrangement before the Transfer

17. An SEP who elects to transfer the accrued benefits to another registered scheme should make the last contribution to the original scheme on or before the day just before the transfer takes place. The transferor trustee cannot effect the transfer before receiving the last contribution to the scheme.

18. The mandatory contribution for the last contribution period to be made by the SEP should be calculated in accordance with the following formula :-

$$A = MC \times \frac{DT}{DC}$$

where -

- A represents the amount to be determined;
- MC represents the mandatory contributions that would have been payable for the whole contribution period in which the transfer takes place if the transfer should not have taken place;
- DT represents the number of days within the period, beginning with the first day of the contribution period in which the transfer takes place and ending on the day when the transferor trustee receives the notification of the election to transfer; and
- DC represents the number of days within the contribution period in which the transfer takes place.

19. For example, the trustee of a registered scheme that has a financial year ending on 31 December each year receives notification of the election to transfer an SEP's accrued benefits on 15 August 2001. The SEP has elected to contribute on a yearly basis and reported to the scheme trustee of his relevant income for payment of mandatory contributions for the financial period of the scheme to be HK\$200,000. Since the SEP elects to transfer his accrued benefits in the scheme before the end of the forthcoming contribution period (i.e. 31 December 2001), the mandatory contributions payable by the SEP for the last contribution period would be HK\$6,219 (i.e. HK\$10,000 x 227 / 365, where HK\$10,000 represents the mandatory contributions payable for the whole financial period of the scheme (i.e. 5% of HK\$200,000), 227 represents the number days between 1 January 2001 and 15 August 2001 and 365 represents the number of days within the contribution period in which the transfer takes place).

Contribution Arrangement after the Transfer

20. For mandatory contribution purposes, an SEP would be treated as a new member of the scheme to which the accrued benefits are transferred from the day the transferee trustee notifies the transferor trustee the election to transfer the accrued benefits.

SEP who Contributes on a Yearly Basis

21. If an SEP who contributes to a registered scheme on a yearly basis becomes a scheme member otherwise than on the first day of a financial period of the scheme, the mandatory contribution for the first contribution period to be made by the SEP should be calculated in accordance with the following formula:-

$$A = LS \times \frac{ND}{365}$$

where-

- A represents the amount to be determined;
- LS represents the mandatory contributions that would be payable for the whole of the financial period of the scheme in which the SEP becomes a member if the length of the relevant financial period is 1 year; and
- ND represents the number of days within the period, beginning with the day on which the person becomes a scheme member and ending on the last day of that financial period.

22. For example, during a contribution period, an SEP changes his membership from a registered scheme to another registered scheme that has a financial year ending on 31 December each year. The transferee trustee notifies the transferor trustee of his transfer on 5 June 2001. On enrolment, the SEP elects to contribute on a yearly basis and reports to the scheme trustee that his relevant income for payment of mandatory contribution for the financial period of the scheme ending on 31 December 2001 is the maximum level of relevant income (i.e. HK\$240,000). Since the SEP becomes a member of the new scheme otherwise than on the first day of the financial period of the scheme (i.e. 1 January 2001), the mandatory contribution for the first contribution period payable by the SEP to the new scheme would be HK\$6,904 (being $\text{HK\$}12,000 \times 210 / 365$, where HK\$12,000 represents the mandatory contributions payable for the whole financial period of the scheme (i.e. 5% of HK\$240,000) and 210 represents the number of days between 5 June 2001 and 31 December 2001).

SEP who Contributes on a Monthly Basis

23. Similarly, if an SEP who elects to contribute to a registered scheme

on a monthly basis becomes a scheme member otherwise than on the first day of a contribution period, the mandatory contribution for the first contribution period to be made by the SEP should be calculated in accordance with the following formula:-

$$A = \frac{MM \times DF}{DM}$$

where-

- A represents the amount to be determined;
- MM represents the mandatory contribution that would be payable for a whole month in the financial period of the scheme in which the SEP becomes a scheme member;
- DF represents the number of days within the period, beginning with the day on which the person becomes a scheme member and ending on the last day of that contribution period; and
- DM represents the number of days within the month in which the SEP becomes a member of the scheme.

24. For example, if the SEP (as referred to in paragraph 22) elects to contribute on a calendar month basis, the mandatory contribution for the first contribution period payable by the SEP to the new scheme would be HK\$867 (i.e. HK\$1,000 x 26 / 30) where HK\$1,000 represents the mandatory contributions payable for a whole month (i.e. 5% of HK20,000), 26 represents the number of days between 5 June 2001 and 30 June 2001 and 30 represents the number of days in June 2001.

SEP who Ceases to be Self-employed

25. If an SEP ceases to be self-employed (i.e. cessation of all his self-employed business or businesses), the SEP should, under section 148(7) of

the Regulation, inform the scheme trustee of his cessation of self-employment and make the last contribution to the scheme on or before the last day of the contribution period in which the SEP ceases to be self-employed.

26. In the event that an SEP ceases his self-employment before the last day of a contribution period, the SEP should make mandatory contributions to the registered scheme up to the day of his cessation of self-employment. The mandatory contributions for the last contribution period to be made by the SEP should be calculated in accordance with the following formula:-

$$A = MC \times \frac{DS}{DC}$$

where -

- A represents the amount to be determined;
- MC represents the mandatory contributions that would have been payable for the whole contribution period in which the SEP ceased to be self-employed if the self-employment should not have ceased;
- DS represents the number of days within the period, beginning with the first day of the contribution period in which the SEP ceased to be self-employed and ending on the day of cessation of the self-employment; and
- DC represents the number of days within the contribution period in which the person ceased to be self-employed.

27. For example, if an SEP, who elects to make mandatory contributions on a calendar month basis and reports to the scheme trustee that his relevant income for mandatory contribution purposes for the financial period of the scheme is the maximum level of relevant income (i.e. HK\$20,000 a

month), ceases to be self-employed on 15 June 2001, the SEP should inform the scheme trustee of his cessation of self-employment and make the last mandatory contributions to the scheme on or before 30 June 2001. The mandatory contributions for the last contribution period payable by the SEP would be HK\$500 (being $\text{HK\$}1,000 \times 15 / 30$, where HK\$1,000 represents the mandatory contributions payable for the whole month of June (i.e. 5% of HK\$20,000), 15 represents the number of days between 1 June 2001 and 15 June 2001 and 30 represents the number of days in June 2001).

SEP who has More Than One Business

28. Section 129(4) of the Regulation provides that if an SEP carries on 2 or more businesses, the person's relevant income for a financial period of the scheme concerned should be:

- (a) an amount equal to the aggregate of the person's relevant income derived from all of those businesses for that period; or
- (b) if any of the businesses is carried on by the person in partnership with others, an amount equal to the aggregate of the person's relevant income calculated by making proportional adjustments according to the person's share of the profits in respect of the businesses during that period and the person's relevant income in respect of all of the other businesses of the person during the period.

29. An SEP is required to make mandatory contributions only if the net result from all his businesses (including his share of the results of all his partnership businesses and deducting losses from any of his businesses) gives rise to a relevant income of HK\$48,000 a year or higher. However, enrolment is still necessary irrespective of the income levels.

PREPAYMENT OF CONTRIBUTIONS

30. In the event that an SEP has paid mandatory contributions to a scheme but the amount payable is reduced because of changes in circumstances, such as change of financial year end of a scheme or cessation of self-employment, the excess amount should be regarded as a prepayment.

DEFINITION OF TERMS

31. Except where otherwise specified in the Guidelines, the terms common to the Ordinance and the subsidiary legislation of the Ordinance carry the same meanings as defined in the Ordinance and the subsidiary legislation. Reference should be made to the Ordinance and the subsidiary legislation, where necessary.

WARNING

32. While the above represents the current view of the Authority, it must be stressed that the Authority is not empowered to definitively interpret the law. The Authority, therefore, urges you to obtain advice from your own professional advisers, particularly your solicitor. In the event that the Authority's advice or opinions are subsequently determined to be wrong by a court of law, the Authority will not be held liable for consequent loss or damage.