

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.18 Guidelines on Contribution Arrangement of a Self-employed Person who Sustains a Loss

INTRODUCTION

Section 130 of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) provides that if the business or businesses carried on by a self-employed person (“SEP”) sustains a net loss in relation to a financial period of the registered scheme concerned, the SEP may discontinue payment of mandatory contributions until the relevant income of the SEP’s business or businesses exceeds the minimum level of relevant income.

2. Section 6H of the Mandatory Provident Fund Schemes Ordinance (“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 Authority hereby issues these guidelines on the contribution arrangement of an SEP who sustains a net loss in relation to a financial period of the scheme concerned.

CONTRIBUTION ARRANGEMENT OF AN SEP WHO SUSTAINS A NET LOSS

SEP to Lodge a Statement of Loss to the Scheme Trustee

4. In order for an SEP to apply for suspension of payment of mandatory contributions, the SEP should lodge with the scheme trustee a statement showing the computation of the amount of net loss in respect of his business. The net loss should cover the latest complete financial period of the self-employed business (which will be used to determine the relevant income of the SEP for the next financial period of the scheme). The loss should be calculated based on results of the financial period concerned only and no loss can be brought or carried forward to offset any profits in relation to other financial periods of the business.

5. Section 130(2) of the Regulation also provides that the net loss of the self-employed business must be calculated in accordance with Part IV of the Inland Revenue Ordinance (Cap. 112).

Suspension of Payment of Mandatory Contributions

6. After an SEP has lodged with the scheme trustee a statement showing the computation of the amount of net loss in respect of his business, the SEP can discontinue the payment of mandatory contributions from the current contribution period and any forthcoming contribution periods (for SEP who contributes on a monthly basis) within the current financial period of the scheme. The SEP is still required to report to the scheme trustee at least 30 days before the end of each financial period of the scheme the relevant income for mandatory contribution purposes for the next financial period of the scheme.

Resumption of Mandatory Contributions

7. Mandatory contributions should be resumed when the assessable profits of any subsequent financial period of the self-employed business are ascertained and the amount of profits is not less than the minimum level of relevant income as set out in Schedule 2 to the Ordinance (i.e. HK\$48,000 per annum). If mandatory contributions are resumed in a contribution period where no mandatory contribution is payable, the SEP should make deferred mandatory contributions in the same manner as if there had been no suspension of contributions until all deferred contributions are made or the contribution period for which no mandatory contribution is payable is over. Contributions should be made in accordance with normal arrangements thereafter. An illustrative example is set out in the Annex for reference.

SEP having More Than One Business

8. In case an SEP has more than one self-employed business, the SEP is required to prepare a computation statement of the assessable profits / losses for each of his businesses and a summary showing the total assessable profits or losses for the preceding financial period of all his businesses. The SEP can only claim for suspension of payment of mandatory contributions if a net loss is resulted from all his businesses, including his share of the results of all his partnership businesses, if any.

DEFINITION OF TERMS

9. 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

10. 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.

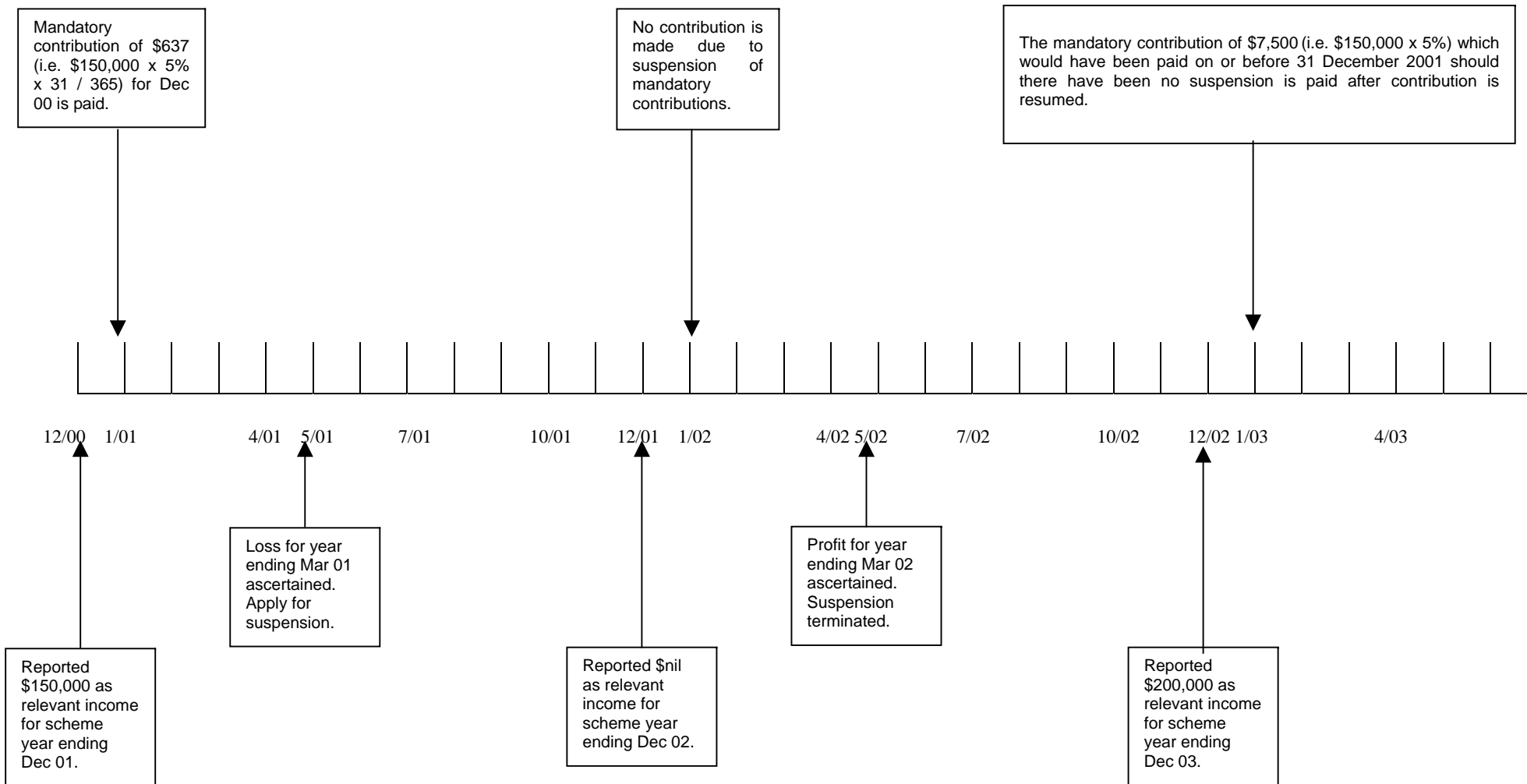
Illustrative Examples on the Suspension of Mandatory Contributions for a Self-employed Person (“SEP”)

Basic assumptions:

1. The financial period of the registered scheme ends on the 31 December of each year.
2. The financial period of the self-employed business ends on the 31 March of each year.
3. The SEP enrolls in a scheme in December 2000.
4. The self-employed business takes 1 month after the financial year-end to calculate its assessable profits for a financial year, i.e. the assessable profits for the year ended 31 March will be known by 30 April.
5. Tax assessable profits / loss of the self-employed business for the financial year ended:

31 March 2000	-	Profit of \$150,000
31 March 2001	-	Loss of \$10,000
31 March 2002	-	Profit of \$200,000

For an SEP who elects to contribute annually



For an SEP who elects to contribute on a calendar month basis

