

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 as specified in the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”).

2. The minimum and maximum relevant income levels are specified in Schedule 2 and Schedule 3 to the Ordinance respectively. The amendment history of these two levels is set out below:

- The Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (Ordinance No. 4 of 1998) stipulated the minimum and maximum relevant income levels with effect from 1 December 2000;
- The Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2002 (Ordinance No. 29 of 2002) amended the minimum relevant income level with effect from 1 February 2003;
- The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (L.N. 119 & 120 of 2011) amended the minimum relevant income level with effect from 1 November 2011; and

- The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 (L.N. 167 & 168 of 2011) amending the maximum relevant income level was approved by the Legislative Council on 23 November 2011 and becomes effective on 1 June 2012.

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

4. 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.

MINIMUM AND MAXIMUM RELEVANT INCOME LEVELS

5. The amendment history pertaining to the minimum and maximum relevant income levels in respect of SEPs is summarized as follows:

Ordinance No./ L.N.	Contribution Frequency	Minimum Level of Relevant Income	Maximum Level of Relevant Income
Ord. No. 4 of 1998	Monthly	\$4,000	\$20,000
	Yearly	\$48,000	\$240,000
	Effective for contribution periods commencing	Before 1 February 2003	Before 1 June 2012

Ordinance No./ L.N.	Contribution Frequency	Minimum Level of Relevant Income	Maximum Level of Relevant Income
Ord. No. 29 of 2002	Monthly	\$5,000	Not applicable*
	Yearly	\$60,000	
	Effective for contribution periods commencing	Between 1 February 2003 and 31 October 2011 inclusive	
L.N. 119 & 120 of 2011	Monthly	\$6,500	Not applicable*
	Yearly	\$78,000	
	Effective for contribution periods commencing	On or after 1 November 2011	
L.N. 167 & 168 of 2011	Monthly	Not applicable [#]	\$25,000
	Yearly		\$300,000
	Effective for contribution periods commencing		On or after 1 June 2012

* Only the minimum relevant income level was amended (see paragraph 2 above).

[#] Only the maximum relevant income level was amended (see paragraph 2 above).

CONTRIBUTION ARRANGEMENT OF AN SEP WHO SUSTAINS A NET LOSS

SEP to Lodge a Statement of Loss to the Scheme Trustee

6. 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.

7. 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

8. 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

9. 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. 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

10. 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

11. Where a term used in the Guidelines is defined in the Ordinance or the subsidiary legislation then, except where specified in the Guidelines, that term carries the meaning as defined in the Ordinance or the subsidiary legislation.

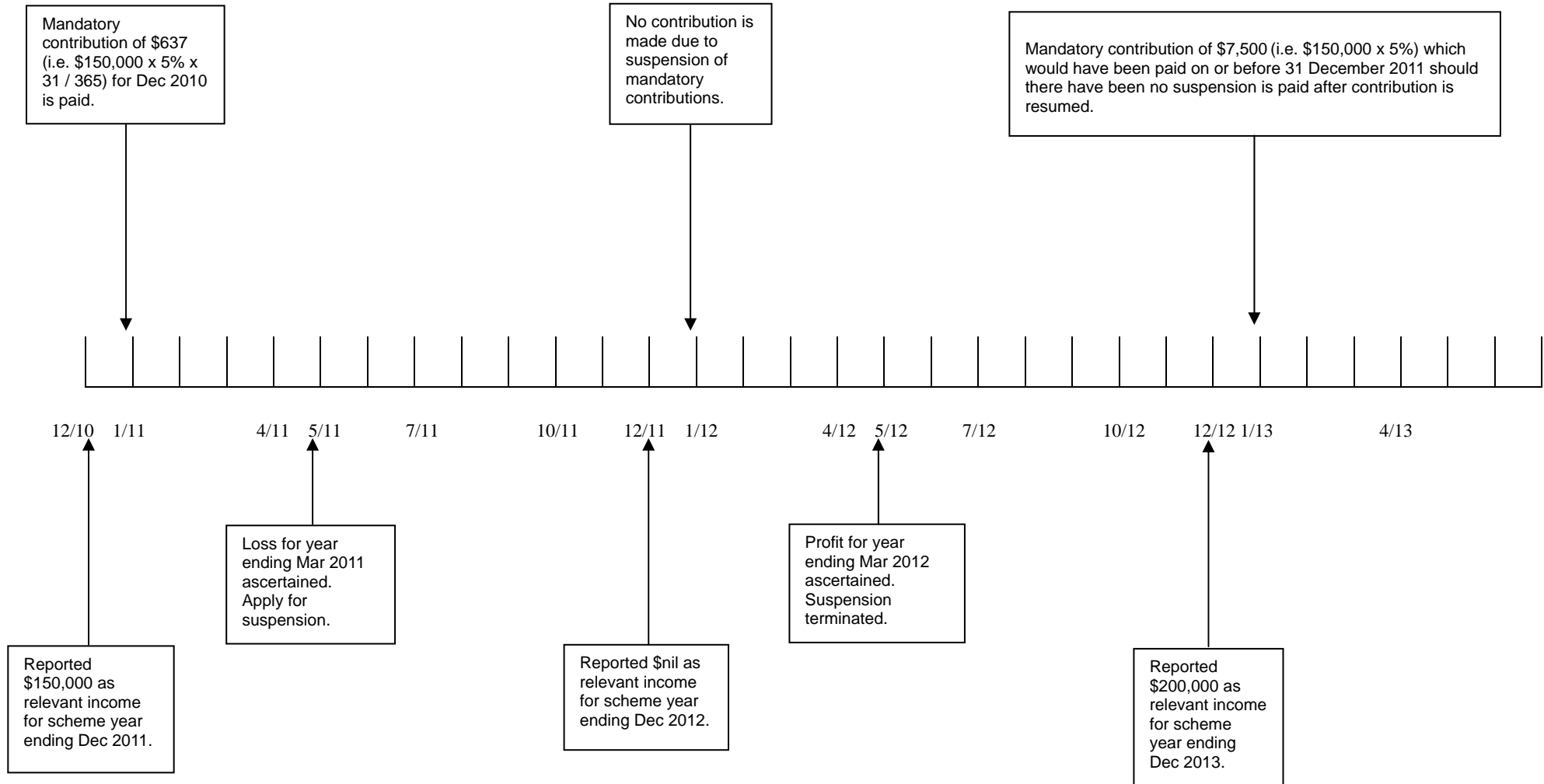
Illustrative Examples on the Suspension of Mandatory Contributions for a Self-employed Person (“SEP”)

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 2010.
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 2010	-	Profit of \$150,000
31 March 2011	-	Loss of \$10,000
31 March 2012	-	Profit of \$200,000

For an SEP who elects to contribute annually



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

