
Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Bill 2022

Contents

Clause	Page
1. Short title.....	C459
2. Inland Revenue Ordinance amended	C459
3. Part 4A, Division 8 added	C459

Division 8—Domestic Rents

26V. Application.....	C461
26W. Interpretation	C461
26X. Deduction for domestic rents.....	C465
26Y. Amount of deduction	C467
26Z. Claim of deduction by married persons.....	C475
26ZA. Deduction not allowable in certain circumstances	C479
26ZB. Refund of domestic rents paid.....	C489
26ZC. Exercise of Commissioner’s power.....	C489
4. Section 63CA amended (calculating net chargeable income for computing provisional salaries tax: meaning of certain references)	C489
5. Section 63E amended (holding over of payment of provisional salaries tax)	C491

Clause	Page
6.	Section 89 amended (transitional provisions) C493
7.	Schedule 3G added C493
	Schedule 3G Amount Specified for Deductions for Domestic Rents C495
8.	Schedule 52 added C495
	Schedule 52 Transitional Provisions Relating to Provisional Salaries Tax in respect of Year of Assessment 2022/23 C495

A BILL

To

Amend the Inland Revenue Ordinance to introduce new concessionary deductions concerning salaries tax and tax under personal assessment that may be allowed for domestic rents; and to provide for related and transitional matters.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Ordinance 2022.

2. Inland Revenue Ordinance amended

The Inland Revenue Ordinance (Cap. 112) is amended as set out in sections 3 to 8.

3. Part 4A, Division 8 added

Part 4A, after Division 7—

Add

“Division 8—Domestic Rents

26V. Application

This Division applies in relation to the year of assessment commencing on 1 April 2022 and to all subsequent years of assessment.

26W. Interpretation

(1) In this Division—

contractual period (合約期), in relation to a tenancy of any domestic premises, means the period during which the right to the exclusive use of the premises is given under the tenancy;

domestic premises (住宅處所) means a building in Hong Kong, or part of such a building (including a bed-space, cubicle, room, floor and portion of a floor), that is not prohibited—

(a) by or pursuant to any law; or

(b) by any specified instrument,

from being used, wholly or partly, for residential purposes, at any time during the term of the Government lease or such term under an agreement for the Government lease (whichever is applicable) in respect of the building;

place of residence (居住地方), in relation to a person who has more than one place of residence, means the person's principal place of residence;

qualifying tenancy (合資格租賃), in relation to any domestic premises, means a tenancy in writing in respect of the right to the exclusive use of the premises—

- (a) that is stamped within the meaning of the Stamp Duty Ordinance (Cap. 117); or
- (b) under which the right is given by the Government (including by The Financial Secretary Incorporated as an agent of the Government) at a rent of a fair market value;

rent (租金)—see subsection (2);

specified instrument (指明文書), in relation to a building, means—

- (a) a Government lease or an agreement for a Government lease (whichever is applicable) in respect of the building;
- (b) a deed of mutual covenant (as defined by section 2 of the Building Management Ordinance (Cap. 344)) in respect of the building;
- (c) an occupation permit issued in respect of the building under section 21 of the Buildings Ordinance (Cap. 123); or
- (d) any other instrument that the Commissioner is satisfied effectively restricts the permitted user of the building or any part of it;

spouse (配偶)—see subsection (4);

tenancy (租賃) includes—

- (a) an agreement for a tenancy; and
- (b) a sub-tenancy;

The Financial Secretary Incorporated (財政司司長法團) means the corporation sole incorporated under section 2 of the Financial Secretary Incorporation Ordinance (Cap. 1015).

- (2) In this Division, a reference to a rent does not include any Government rent, rates (as defined by section 2 of the Rating Ordinance (Cap. 116)), management fee, utility charge or charge on any service provided under or in connection with the tenancy concerned (*incidental charge*) unless—
 - (a) the incidental charge is included as rent under the tenancy; and
 - (b) the tenant concerned has no obligation under the tenancy to pay the incidental charge.
- (3) In this Division, a reference to any rents paid under a tenancy in relation to a particular period (*specified period*) is a reference to any rents paid under the tenancy that are attributable to such part of the contractual period of the tenancy that overlaps with the specified period.
- (4) Without affecting the definitions of *marriage* and *spouse* in section 2(1), if a person's spouse is living apart from the person, in this Division (except section 26ZA(1)(d) and (h) and (2))—
 - (a) a reference to a spouse does not include the person's spouse; and
 - (b) a reference to a married person does not include the person.
- (5) A note located in the text of this Division is provided for information only and has no legislative effect.

26X. Deduction for domestic rents

- (1) A deduction in respect of rents paid under a qualifying tenancy of any domestic premises is allowable to a person for a year of assessment if—

- (a) the rents are so paid, in relation to the year of assessment, by the person or the person's spouse as a tenant (or by both of them as co-tenants); and
 - (b) the premises are used at any time during the year of assessment by the person as the person's place of residence.
- (2) A deduction under subsection (1) is allowable to the person in respect of rents paid under one or more than one qualifying tenancy in relation to a year of assessment.
- (3) Subsection (4) applies if a tenant mentioned in subsection (1)—
- (a) obtains under the qualifying tenancy a right to the exclusive use of not only the domestic premises but also a car parking space; and
 - (b) does not sublet the car parking space.
- (4) For the purposes of subsection (1), the car parking space is taken—
- (a) to be part and parcel of the domestic premises; and
 - (b) to be used by the person in the same manner and to the same extent as the premises are used as the person's place of residence.

26Y. Amount of deduction

- (1) In this section—
- deduction ceiling*** (扣除上限)—see subsection (7);
- prescribed deduction amount*** (訂明扣除款額)—see subsection (5);

- qualifying rental amount*** (合資格租金款額)—see subsection (6).
- (2) Unless subsection (3) applies, the amount of deduction allowable to a person under section 26X for a year of assessment is—
 - (a) if the rents concerned are paid in relation to the year of assessment under only one qualifying tenancy—the prescribed deduction amount for the tenancy for the year of assessment; or
 - (b) if the rents concerned are paid in relation to the year of assessment under 2 or more qualifying tenancies—the aggregate of the prescribed deduction amount for each of the tenancies for the year of assessment.
 - (3) If the person is married, the total amount of deduction allowable to the person or the person's spouse (or both of them) under section 26X for a year of assessment is—
 - (a) if the rents concerned are paid in relation to the year of assessment under only one qualifying tenancy—the prescribed deduction amount for the tenancy for the year of assessment; or
 - (b) if the rents concerned are paid in relation to the year of assessment under 2 or more qualifying tenancies—the aggregate of the prescribed deduction amount for each of the tenancies for the year of assessment.
 - (4) However, if the person is married during any part, but not the whole, of a year of assessment—

- (a) subsection (2) applies to the person as if a reference to a year of assessment in that subsection were a reference to such part of the year of assessment during which the person is not married; and
 - (b) subsection (3) applies to the person and the person's spouse as if a reference to a year of assessment in that subsection were a reference to such part of the year of assessment during which the person is married.
- (5) For the purposes of this section, the prescribed deduction amount for a qualifying tenancy for a particular period is—
- (a) the qualifying rental amount for the tenancy for the period; or
 - (b) the deduction ceiling for the tenancy for the period,
- whichever is less.
- (6) For the purposes of subsection (5) and subject to subsection (8), the qualifying rental amount for a qualifying tenancy for a particular period is—
- (a) subject to paragraph (b), the amount of rents paid under the tenancy in relation to the period, divided by the number of tenants under the tenancy; or
 - (b) if the premises are not used by the person exclusively as the person's place of residence at any time during the period—such part of the amount calculated under paragraph (a) that is reasonable in the circumstances of the case.

- (7) For the purposes of subsection (5) and subject to subsection (8), the deduction ceiling for a qualifying tenancy for a particular period (*specified period*) is an amount calculated in accordance with the following formula—

$$A = B \times \frac{C}{12} \div D$$

- where:
- A means the deduction ceiling;
 - B means the amount specified in Schedule 3G for the year of assessment concerned;
 - C means the number of months (and pro rata for an incomplete month) during which the contractual period of the tenancy overlaps with the specified period;
 - D means the number of tenants under the tenancy.
- (8) For the purposes of subsection (5), if a qualifying tenancy is one under which any rents are paid by a person and the person’s spouse as co-tenants—
- (a) for determining the qualifying rental amount for the tenancy for a particular period, the amount calculated under subsection (6) is to be multiplied by 2; and
 - (b) for determining the deduction ceiling for the tenancy for a particular period, the amount calculated under subsection (7) is to be multiplied by 2.

26Z. Claim of deduction by married persons

- (1) If the Commissioner has reason to believe that the total deduction under section 26X claimed by a person and the person's spouse for a year of assessment, if allowed, would be contrary to section 26Y(3), the Commissioner may, for ensuring that the total deduction allowed to them would accord with section 26Y(3), allow an amount of deduction to each of them that is reasonable in the circumstances of the case.
- (2) If the Commissioner has exercised a power under subsection (1)—
 - (a) the person may apply for an adjustment of the amount of deduction allowed to the person;
 - (b) the person's spouse may apply for an adjustment of the amount of deduction allowed to the spouse; or
 - (c) both the person and the person's spouse may apply for an adjustment of the amount of deduction allowed to each of them.
- (3) The application must—
 - (a) be made to the Commissioner in writing; and
 - (b) be made within 6 months after—
 - (i) the date on which a deduction under section 26X is allowed to the person for the year of assessment; or
 - (ii) the date on which a deduction under that section is allowed to the person's spouse for the year of assessment,whichever is the later.

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- (4) On an application under subsection (2), the Commissioner may—
- (a) if—
 - (i) the application relies on an agreement reached between the person and the person’s spouse regarding how the amount of deduction under section 26X is to be allowed to each of them for the year of assessment; and
 - (ii) the Commissioner is satisfied that adjusting the amount of deduction that the application concerns (*subject amount*) in accordance with the agreement would result in a total deduction for the person and the person’s spouse that accords with section 26Y(3)—
adjust the subject amount in accordance with the agreement; or
 - (b) in any other case—exercise a power specified in subsection (6).
- (5) The Commissioner may also, on the Commissioner’s own initiative, exercise a power specified in subsection (6) if deductions have been allowed to a person and the person’s spouse contrary to section 26Y(3).
- (6) For the purposes of subsections (4)(b) and (5), the Commissioner may—
- (a) invite the person and the person’s spouse to reach an agreement that would result in a total deduction for them that accords with section 26Y(3); and

- (b) adjust the amount of deduction allowed to the person or the person's spouse (or each of them) in consequence of—
 - (i) such an agreement being reached by them within a reasonable time; or
 - (ii) their failure to reach such an agreement within a reasonable time,as may be appropriate in the circumstances.
- (7) The Commissioner may decide the way in which an adjustment under subsection (4)(a) or (6)(b) is to be made, including by way of—
 - (a) discharge or repayment of tax; or
 - (b) making an assessment.
- (8) The Commissioner may make an adjustment under subsection (4)(a) or (6)(b) despite any time limit for making such an adjustment under this Ordinance.

26ZA. Deduction not allowable in certain circumstances

- (1) Despite section 26X, no deduction is allowable under that section to a person (*taxpayer*) in respect of any rents (*specified rents*) paid under a qualifying tenancy of any domestic premises (*specified premises*) in relation to a period (*specified period*) within a year of assessment if any one or more of the following conditions are met—
 - (a) that the sum representing the specified rents is allowable as a deduction under any other provision of this Ordinance;

- (b) that a deduction under that section has been allowed to the taxpayer or the taxpayer's spouse for the specified period in respect of any rents paid for any other domestic premises;
- (c) that—
 - (i) during the whole of the specified period, a place of residence (whether or not being the specified premises) is provided to the taxpayer or the taxpayer's spouse in the circumstances described in section 9(1)(b) or (c);
 - (ii) any rents payable by the taxpayer or the taxpayer's spouse for any domestic premises (whether or not being the specified premises) are paid in relation to the specified period in the circumstances described in section 9(1A)(a)(i); or
 - (iii) any rents paid by the taxpayer or the taxpayer's spouse for any domestic premises (whether or not being the specified premises) in relation to the specified period are refunded in the circumstances described in section 9(1A)(a)(ii);
- (d) that a person who receives the specified rents under the tenancy is an associate of the taxpayer or the taxpayer's spouse;
- (e) that the taxpayer or the taxpayer's spouse is, during the whole of the specified period, a legal and beneficial owner of any domestic premises;
- (f) that the taxpayer or the taxpayer's spouse is during the whole of the specified period—

- (i) a tenant, under a tenancy held from the Hong Kong Housing Authority or the Hong Kong Housing Society, of a flat of the kind commonly known as public rental housing; or
 - (ii) a person who is authorized under such a tenancy to reside with the tenant at the flat;
 - (g) that the tenancy is prohibited—
 - (i) by or pursuant to any law; or
 - (ii) by a Government lease or an agreement for a Government lease (whichever is applicable) in respect of the specified premises;
 - (h) that under the tenancy, an option or a right to purchase the specified premises, or a right of pre-emption in respect of the specified premises, is conferred on the taxpayer or the taxpayer's spouse, or on both of them.
- (2) In this section—
- associate** (相聯者), in relation to a person, means—
- (a) a relative of the person;
 - (b) a partner of the person;
 - (c) if a partner of the person is a natural person—
a relative of that partner;
 - (d) a partnership in which the person is a partner;
 - (e) a corporation controlled by—
 - (i) the person;
 - (ii) a relative of the person;
 - (iii) a partner of the person;

- (iv) if a partner of the person is a natural person—a relative of that partner; or
- (v) a partnership in which the person is a partner; or
- (f) a director or principal officer of the corporation mentioned in paragraph (e);

child (子女), in relation to a person—

- (a) means a child of the person or of the person's spouse or former spouse, whether or not the child was born in wedlock; and
- (b) includes the adopted or step child of either or both of the following—
 - (i) the person;
 - (ii) the person's spouse or former spouse;

control (控制), in relation to a corporation, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the corporation or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the corporation or any other corporation,

that the affairs of the corporation are conducted in accordance with the wishes of the person;

parent (父母), in relation to a person, means a parent or parent of his or her spouse;

Note—

See the definition of *parent or parent of his or her spouse* in section 2(1).

principal officer (主要職員), in relation to a corporation, means—

- (a) a person employed by the corporation who, either alone or jointly with one or more other persons, is responsible, under the immediate authority of the directors of the corporation, for the conduct of the business of the corporation; or
- (b) a person so employed who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, exercises managerial functions in respect of the corporation;

relative (親屬), in relation to a person, means a spouse, parent, child or sibling;

sibling (兄弟姊妹), in relation to a person, means—

- (a) a full or half blood sibling of the person or of the person's spouse;
- (b) an adopted sibling of the person or of the person's spouse;
- (c) a step sibling of the person or of the person's spouse;
- (d) if the person or the person's spouse is adopted— a natural child of an adoptive parent of the person or of the person's spouse; or
- (e) if the person's spouse is deceased—an individual who would have been the sibling of the person under paragraph (a), (b), (c) or (d) if the spouse had not died.

26ZB. Refund of domestic rents paid

- (1) This section applies if any rents paid by a person under a qualifying tenancy of any domestic premises are refunded to the person.
- (2) The amount of rents paid under the tenancy is, for the purposes of this Division, taken to be reduced by the amount of the refund.
- (3) In addition, if the refund is made after a person has made a claim of deduction under section 26X in respect of the rents—
 - (a) the person must notify the Commissioner in writing of the refund within 3 months after the date of refund; and
 - (b) if the deduction has been allowed, then, despite any time limit for making an additional assessment under section 60, an assessor may, having regard to the reduction, make an additional assessment on the person under that section.

26ZC. Exercise of Commissioner’s power

The Commissioner may exercise a power under this Division in the way that the Commissioner, having regard only to the information then in the Commissioner’s possession, considers appropriate.”.

4. Section 63CA amended (calculating net chargeable income for computing provisional salaries tax: meaning of certain references)

- (1) Section 63CA(3)(d)—

Repeal

“and”.

- (2) Section 63CA(3)(e)(ii)—

Repeal the full stop

Substitute

“; and”.

- (3) After section 63CA(3)(e)—

Add

“(f) the deduction under section 26X (deduction for domestic rents) allowable to that person not exceeding the amount specified in Schedule 3G for the relevant year of assessment.”.

- (4) Section 63CA(4)(d)—

Repeal

“and”.

- (5) Section 63CA(4)(e)(ii)—

Repeal the full stop

Substitute

“; and”.

- (6) After section 63CA(4)(e)—

Add

“(f) the deduction under section 26X (deduction for domestic rents) allowable to them not exceeding the amount specified in Schedule 3G for the relevant year of assessment.”.

5. Section 63E amended (holding over of payment of provisional salaries tax)

- (1) After section 63E(2)(bf)—

Add

“(bg) that the person assessed to provisional salaries tax, or the person’s spouse (not being a spouse living apart from the person), or both of them, has or have paid, or is or are likely to pay, any rents in relation to the year of assessment (as construed in accordance with section 26W(3)) that—

(i) are allowable for deduction under section 26X; and

(ii) in total, exceed or are likely to exceed the amount of the deduction allowable for the rents as determined in accordance with section 26Y that applies on the basis that the amount specified in Schedule 3G for the year of assessment were the same as the amount specified in that Schedule for the year preceding the year of assessment;”.

(2) Section 63E(2B)—

Repeal

“or (bf)”

Substitute

“, (bf) or (bg)”.

6. Section 89 amended (transitional provisions)

Section 89—

Add

“(27) Schedule 52 has effect in relation to a person liable to pay provisional salaries tax in respect of the year of assessment commencing on 1 April 2022.”.

7. Schedule 3G added

After Schedule 3F—

Add

“Schedule 3G

[ss. 26Y, 63CA & 63E]

Amount Specified for Deductions for Domestic Rents

Column 1	Column 2	Column 3
Item	Year of assessment	Amount
1.	For the year of assessment 2022/23 and for each year after that year	\$100,000”.

8. Schedule 52 added

The Ordinance—

Add

“Schedule 52

[s. 89(27)]

Transitional Provisions Relating to Provisional Salaries Tax in respect of Year of Assessment 2022/23

1. Interpretation

In this Schedule—

year of assessment 2022/23 (2022/23課税年度) means the year of assessment commencing on 1 April 2022.

2. Application for holding over payment of provisional salaries tax on additional ground

- (1) A person who is liable to pay provisional salaries tax in respect of the year of assessment 2022/23 may apply to the Commissioner to have the payment of the whole or part of the tax held over until the person is required to pay salaries tax for the year.
- (2) An application may be made under subsection (1) if, for the year of assessment 2022/23, a deduction under section 26X is, or is likely to be, allowable to the person mentioned in subsection (1).
- (3) This section does not affect the operation of section 63E.

3. Provisions supplementary to section 2 of this Schedule

- (1) This section applies to an application under section 2 of this Schedule.
- (2) The application must be made in writing.
- (3) The application must be made not later than—
 - (a) the 28th day before the day by which the provisional salaries tax is to be paid; or
 - (b) the 14th day after the date of the notice for payment of provisional salaries tax under section 63C(6),whichever is the later.
- (4) However, the Commissioner may, if satisfied that it is appropriate, either generally or in a particular case, postpone the deadline.

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- (5) On receipt of the application, the Commissioner—
 - (a) must consider the application; and
 - (b) may hold over the payment of the whole or part of the provisional salaries tax.
 - (6) The Commissioner must, by written notice, inform the applicant of the Commissioner’s decision.”.
- _____

Explanatory Memorandum

The main object of this Bill is to amend the Inland Revenue Ordinance (Cap. 112) (*principal Ordinance*) to introduce a new concessionary deduction concerning salaries tax and tax under personal assessment that may be allowed for domestic rents.

2. Clause 3 adds a new Division 8 (new sections 26V to 26ZC) to Part 4A of the principal Ordinance.
3. The new section 26V provides for the application of the new Division 8. The new section 26W provides for the interpretation of terms used in that Division.
4. The new section 26X provides for the new deduction allowable for rents paid under a tenancy of domestic premises. In general, for the deduction to apply, the tenancy must be stamped in accordance with the Stamp Duty Ordinance (Cap. 117).
5. The amount of deduction allowable to a taxpayer in respect of domestic rents in various circumstances is provided for in the new section 26Y. The amount is to be determined based on the amount set out in the new Schedule 3G (added by clause 7) to the principal Ordinance.
6. The new section 26Z deals with claims for deduction under the new section 26X in respect of domestic rents paid by a married person or the person's spouse (or both of them). It provides for the related arrangement, and the related power to make adjustments, under which the domestic rents paid will be allowable as a deduction to the married person and the person's spouse.

7. The new section 26ZA provides that no deduction is allowable for domestic rents in certain circumstances.
8. The new section 26ZB provides for requirements where there is a refund of domestic rents paid. For any refund, the amount of the domestic rents paid is taken to be reduced by the amount of the refund. Moreover, if the refund is made after a claim for a deduction, the person claiming the deduction must notify the Commissioner of Inland Revenue in writing of the refund within 3 months after the date of refund.
9. Clauses 4 and 5 amend sections 63CA and 63E of the principal Ordinance to provide for the computation, and holding over, of provisional salaries tax in relation to the deduction under the new section 26X.
10. Clause 6 amends section 89 of, and clause 8 adds a new Schedule 52 to, the principal Ordinance to provide for a transitional arrangement under which an application may be made for the holding over of payment of provisional salaries tax in respect of the year of assessment 2022/23 in view of the deduction under the new section 26X.