



Inland Revenue Department

The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 56 (REVISED)

CONCESSIONARY DEDUCTIONS: SECTIONS 26H to 26M

HEALTH INSURANCE PREMIUMS

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

These notes replace those issued in May 2019.

WONG Kuen-fai
Commissioner of Inland Revenue

February 2020

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

No. 56 (REVISED)

CONTENT

	Paragraph
Background	
Voluntary Health Insurance Scheme	1
The Inland Revenue (Amendment) (No. 8) Ordinance 2018	7
 The concessionary deduction	
Conditions for deduction	9
Qualifying premiums	10
Premiums paid during a year of assessment	11
Payment made by the taxpayer or the taxpayer's spouse as policy holder	12
Insured being the taxpayer or a specified relative	13
- Insured person	13
- Spouse	14
- Parent and grandparent	18
- Child	19
- Sibling	20
- Adopted	21
Insured or parent being an HKID card holder	22
Apportionment of premiums paid	23
Maximum allowable deduction	24
Premiums allowable to married persons	26
Qualifying premiums commensurate with risk profile	27
 Excessive claims by married couples	
Deduction claims not considered	29
Additional assessments	30
 Refund of premiums paid	
Circumstances for refund of premiums	31
Statutory requirements	32
 Exercise of powers by the Commissioner	33

Penalties	
Prosecution	34
Additional tax	35
 Administrative provision	
Holding over of payment of provisional salaries tax	37

BACKGROUND

Voluntary Health Insurance Scheme

The Voluntary Health Insurance Scheme (VHIS) is a policy initiative implemented by the Food and Health Bureau (FHB) for maintaining the long-term sustainability of the healthcare system. It is implemented through a non-legislative framework to regulate individual indemnity hospital insurance products, with voluntary participation by insurance companies and consumers. The VHIS seeks to improve the quality of individual indemnity hospital insurance products and offer consumers a more comprehensive quality choice of such products. By improving the accessibility, quality and transparency of individual indemnity hospital insurance products, the VHIS enhances consumers' confidence in purchasing such products for using private healthcare services, thereby alleviating the pressure on the public healthcare system.

2. Individual indemnity hospital insurance refers to an insurance where the insured will be reimbursed or indemnified by the insurer for actual expenses incurred for medical treatments in a hospital or an ambulatory setting. Other health-related insurance products (e.g. non-indemnity critical illness insurance, hospital income/ cash plans, dental insurance coverage, outpatient insurance plans) are not covered by the VHIS.

3. The FHB has established a VHIS Office to certify individual indemnity hospital insurance products that are in compliance with the VHIS rules (Certified Plans). Insurance companies seeking to offer VHIS-compliant products must first register as a VHIS Provider and the products must be certified by the FHB as Certified Plans. There are two types of Certified Plans:

- (a) the Standard Plan which provides a standardized basic protection (e.g. benefit limits for room and board at ward class) according to the minimum requirements of the VHIS prescribed by the FHB; and
- (b) Flexi Plans which provide enhanced protection compared with the Standard Plan (e.g. higher room and board benefit limits, wider benefit coverage with less restriction for enhanced protection).

4. In addition to the Standard Plan that must be made available for new applications, VHIS Providers are allowed and encouraged to offer Flexi Plans that provide top-up protection. They must also provide the existing policy holders of individual indemnity hospital insurance an opportunity to switch to a Certified Plan.

5. Compared with many existing individual indemnity hospital insurance products, the Standard Plan and the basic coverage of Flexi Plans have the following product features which are more attractive to the policy holders and the insured:

- (a) standard policy terms and conditions, benefit coverage and benefit amount;
- (b) guaranteed renewal up to the age of 100 (without re-underwriting);
- (c) no lifetime benefit limit;
- (d) cooling-off period of 21 days during which the policy holders can cancel the policies with full refund of premium;
- (e) premium transparency; and
- (f) coverage extended to include unknown pre-existing conditions, treatment of congenital conditions, day case procedures, prescribed advanced diagnostic imaging tests, prescribed non-surgical cancer treatments, psychiatric treatment, etc.

6. The FHB has published the following VHIS scheme documents, setting out the scheme rules with which VHIS Providers must comply:

- (a) *VHIS Certified Plan Policy Template* which illustrates the minimum requirements on the policy structure, terms and benefits of Certified Plans under the VHIS;
- (b) *Code of Practice for Insurance Companies under the Ambit of the VHIS* which sets out the required conduct and practices for VHIS Providers; and

- (c) *Product Compliance Rules under the Ambit of the VHIS* which sets out the product design requirements for an insurance plan to be certified as VHIS compliant and the relevant product certification procedure.

The VHIS scheme documents can be accessed at the website of the FHB for VHIS (www.vhis.gov.hk). Lists of VHIS Providers and Certified Plans will be published and regularly updated.

The Inland Revenue (Amendment) (No. 8) Ordinance 2018

7. The Inland Revenue (Amendment) (No. 8) Ordinance 2018 amended the Inland Revenue Ordinance (the Ordinance) to introduce the concessionary deduction concerning salaries tax and tax under personal assessment that may be allowed for premiums paid in respect of insurance plans certified to be in compliance with the VHIS (i.e. Certified Plans) with effect from the year of assessment 2019/20. The main provisions are as follows:

- (a) Section 26H provides for the application of Division 6.
- (b) Sections 26I and 26J provide for the interpretation of terms used in Division 6 of Part 4A, including qualifying premiums, specified relative and VHIS policy.
- (c) Section 26K provides for the deduction allowable for qualifying premiums paid by a taxpayer or the taxpayer's spouse (not being a spouse living apart from the taxpayer) as a policy holder of a VHIS policy for an insured person. In order for the deduction to be allowable, the insured person must be the taxpayer or a specified relative of the taxpayer in the year of assessment. Also, either of the following conditions must be satisfied:
 - (i) the insured person is a holder of Hong Kong identity card (HKID card holder) at any time during the year of assessment;
 - (ii) if the insured person is under the age of 11 and not an HKID card holder—a natural parent (or an adoptive parent) of the insured person is an HKID card holder at the time of birth (or adoption) of the insured person.

Section 26K also provides that if there is more than one policy holder for a VHIS policy, the qualifying premiums are taken as paid by all of the policy holders in equal shares. The maximum deduction allowable to a taxpayer in respect of qualifying premiums paid for each insured person is specified in Schedule 3E.

- (d) Section 26L deals with claims for deduction in respect of the qualifying premiums 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 additional assessments, for handling excessive claims made by married couples.
- (e) Section 26M provides for requirements in relation to the refund of qualifying premiums paid. For any refund, the qualifying premiums paid are taken to be reduced by the amount of the refund. Moreover, if the refund is made after the claim of the deduction, the person claiming the deduction must notify the Commissioner in writing of the refund within 3 months after the date of refund. It also provides that despite any time limit under section 60, an additional assessment under that section may be made if the deduction claimed has been allowed.

8. The purpose of this Departmental Interpretation and Practice Note is to set out in detail the Department's views and practices on the concessionary deduction in relation to the health insurance premiums paid under the VHIS.

THE CONCESSIONARY DEDUCTION

Conditions for deduction

9. Section 26K provides that a deduction in respect of qualifying premiums paid for an insured person under a VHIS policy is allowable to a taxpayer. The conditions for the deduction are:

- (a) only qualifying premiums in relation to a VHIS policy are eligible for deduction;

- (b) premium was paid in the year of assessment;
- (c) payment was made by the taxpayer or the taxpayer's spouse (not being a spouse living apart) as a policy holder of a VHIS policy;
- (d) the insured person is the taxpayer or a specified relative of the taxpayer in the year of assessment;
- (e) the insured person is an HKID card holder at any time during the year of assessment or a natural/ adoptive parent of the insured person (who is under the age 11) is an HKID card holder at the time of birth/ adoption of the insured person;
- (f) premiums paid by policy holders are apportioned in equal shares;
- (g) deduction allowable to a taxpayer for each insured person cannot exceed the maximum specified amount;
- (h) total deduction allowed to a married couple cannot exceed the premiums paid; and
- (i) qualifying premiums should be commensurate with the risk profile of the insured person.

Qualifying premiums

10. Only qualifying premiums in relation to a VHIS policy are eligible for deduction. “VHIS policy” means an insurance policy that is in whole or in part issued under an insurance plan certified by the Secretary for Food and Health to be in compliance with the VHIS (i.e. Certified Plan). “Qualifying premiums” means the net sum of moneys that is payable under a VHIS policy to the insurer for writing or renewing the policy in so far as it relates to a Certified Plan. For a consumer who has purchased an insurance policy issued under a Certified Plan together with elements of other insurance plans (e.g. an accident insurance, life coverage or hospital cash plan), only the net sum of moneys payable in respect of the Certified Plan is considered as qualifying premiums of the VHIS policy.

Example 1

Mr. A purchased a VHIS policy which comprised a Certified Plan and a life insurance plan. Premiums payable for the VHIS policy were \$10,000 (\$7,000 for the Certified Plan and \$3,000 for the life insurance plan). Mr. A paid the premium annually and was given a 5% premium discount.

Net premiums of \$6,650 (i.e. $\$7,000 \times 95\%$) paid for the Certified Plan would qualify for deduction. Net premiums paid for the life insurance plan would not be deductible.

Premiums paid during a year of assessment

11. Deduction is only allowed for qualifying premiums actually paid in a year of assessment. So long as the payment is made within the year of assessment, subject to the other qualifying conditions being satisfied, the premiums are deductible. Premiums due in a year of assessment but paid next year is only deductible in the year of payment. In practice, premium receipt or annual premium statement issued by the insurers may be provided as proof of payment.

Example 2

Ms. B purchased a VHIS policy with quarterly payments of premiums due on 30 June 2019, 30 September 2019, 30 December 2019 and 30 March 2020. Ms. B made the four premium payments on 30 June 2019, 1 October 2019, 31 December 2019 and 2 April 2020 respectively.

For the year of assessment 2019/20, deduction would be granted in respect of premiums paid on 30 June 2019, 1 October 2019 and 31 December 2019. The premium due on 30 March 2020 (i.e. within the year of assessment 2019/20) but paid on 2 April 2020 (i.e. within the year of assessment 2020/21) would be deductible for the year of assessment 2020/21.

Payment made by the taxpayer or the taxpayer's spouse as policy holder

12. Section 26K(1)(a) provides that payment for the qualifying premiums must be made by the taxpayer or the taxpayer's spouse, not being a spouse living

apart from the taxpayer, as a policy holder of a VHIS policy. In other words, for married couples not living apart, a spouse may claim deduction for qualifying premiums paid by the other spouse as a policy holder. “Policy holder”, in relation to a VHIS policy, means a legal holder of the policy.

Example 3

Mr. C was the policy holder of a VHIS policy that was in whole issued under a Certified Plan with his father as the insured person. On 5 April 2019, Mr. C made an annual premium payment of \$8,000 for the policy period from 1 April 2019 to 31 March 2020. On 1 January 2020, Mr. C passed away and the ownership of the VHIS policy was transferred to Mr. D who was the brother of Mr. C.

For the year of assessment 2019/20, Mr. C would be granted full deduction of the qualifying premium of \$8,000 since the premium was paid by Mr. C at the time when he was the policy holder and the payment was made within that year of assessment. On the other hand, Mr. D would not be allowed any deduction even though he was the policy holder for the period from 1 January to 31 March 2020 since he did not pay any qualifying premium during that period.

Example 4

Mr. E and Ms. F were husband and wife. Mr. E was the policy holder of a VHIS policy with Ms. F as the insured person. Mr. E paid qualifying premiums of \$7,200 for the policy period from 1 April 2019 to 31 March 2020. Deduction for the premiums paid was claimed by Ms. F. Mr. E and Ms. F became separated on 15 August 2019.

Scenario 1: Mr. E made an annual premium payment of \$7,200 on 1 April 2019.

Scenario 2: Mr. E made monthly premium payments of \$600 on the first day of each month.

Scenario 1

Mr. E was not living apart from Ms. F at the time when the premium payment was made. Ms. F would be granted full deduction for the premiums of \$7,200 paid by Mr. E.

Scenario 2

Ms. F would only be granted deduction for the monthly premiums paid from April to August 2019 (before the date of separation on 15 August 2019) in the total amount of \$3,000 (i.e. \$600 × 5). Ms. F would not be allowed deduction for the remaining balance of \$4,200, which was paid after separation from Mr. E.

Insured being the taxpayer or a specified relative

Insured person

13. “Insured person”, in relation to a VHIS policy, means an individual whose risks are covered by the policy. Section 26K(1)(b) provides that the insured person must be the taxpayer or a specified relative of the taxpayer in the year of assessment. Section 26J(1) defines “specified relative” to mean an individual who is, at any time during the year of assessment, the taxpayer’s spouse or children, and the taxpayer’s or the spouse’s parents, grandparents or siblings. These types of familial relationships are the same as the relationships covered by the existing dependent allowances under Part 5 of the Ordinance.

Spouse

14. In section 2(1) of the Ordinance, “spouse” is defined to mean a husband or wife whereas “husband” and “wife” refer to a married man and married woman respectively. “Marriage” is also defined in the same section to mean:

- (a) any marriage recognized by the law of Hong Kong; or
- (b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so.

Based on the above definitions, “marriage” was in the past construed as a heterosexual marriage between a man and a woman and parties in a same-sex marriage would be incapable of having a “spouse”.

15. In *Leung Chun Kwong v Secretary for the Civil Service* (2019) 22 HKCFAR 127, the Court of Final Appeal (CFA) recognized that the protection of the institution of marriage in Hong Kong, being heterosexual and monogamous,

was a legitimate aim. However, the differential treatment under the Ordinance between a person in a heterosexual marriage and a person in a same-sex marriage entered into outside Hong Kong was not rationally connected to the legitimate aim and was not justified. As a relief, the CFA considered that a remedial interpretation of the Ordinance was appropriate and ordered the following declaration:

- (a) the existing limb (b) of the term “marriage” in section 2 of the Ordinance shall be read as “any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so, provided where the persons are of the same sex and such a marriage between them would have been a marriage under this Ordinance but for the fact only that they are persons of the same sex, they shall be deemed for the purposes of such a marriage to have the capacity to do so”; and
- (b) for the purposes of the Ordinance, references to:
 - (i) “husband and wife” shall be read as “a married person and his or her spouse”;
 - (ii) “not being a wife living apart from her husband” shall be read as “not being a spouse living apart from the married person”; and
 - (iii) “either the husband or wife” shall be read as “either the married person or his or her spouse”.

Therefore, a taxpayer, whether in a heterosexual marriage or same-sex marriage, is entitled to claim deduction in respect of the premiums paid by the taxpayer for the taxpayer’s spouse.

16. The definition of “marriage” shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a person and any spouse other than the principal spouse. If a person has more than one legal spouse under the laws of other places which permit polygamous marriage, only the marriage between the person and the principal spouse is recognized for the purposes of the Ordinance. Deduction is only allowed in respect of the qualifying premiums paid by a taxpayer for the principal spouse.

17. If a taxpayer is living apart from the spouse, deduction in respect of qualifying premiums paid for the spouse is allowable so long as their marriage has not been dissolved. If a divorce occurs in a year of assessment (year of divorce), the full amount of premiums paid for the ex-spouse during the year of divorce is allowable for deduction. Any premium paid for the ex-spouse after the year of divorce is not deductible.

Example 5

Same facts as in Example 4 with changes. Mr. E and Ms. F subsequently got divorced on 15 March 2020. Deduction for the qualifying premiums of \$7,200 paid for Ms. F was claimed by Mr. E.

Ms. F was Mr. E's spouse during the period from 1 April 2019 to 14 March 2020. Therefore, she was a specified relative of Mr. E in the year of assessment 2019/20. As such, Mr. E would be entitled to claim full deduction for the premiums of \$7,200 paid for Ms. F (whether by annual payment or monthly payments) during that year of assessment. If Mr. E continued to pay the qualifying premium on or after 1 April 2020, no deduction would be allowed since Ms. F was no longer his specified relative starting from the year of assessment 2020/21.

Parent and grandparent

18. “Parent” means a natural, adoptive or step father or mother of a taxpayer or the taxpayer’s living or deceased spouse; whilst “grandparent” means a natural, adoptive or step grandfather or grandmother of a taxpayer or the taxpayer’s living or deceased spouse. The parent or grandparent must, at any time during the year of assessment, fulfill one of the following conditions:

- (a) aged 55 or more; or
- (b) under the age of 55 but eligible to claim an allowance under the Government’s Disability Allowance Scheme.

Child

19. “Child” means a child of a taxpayer or the spouse or former spouse whether or not born in wedlock and includes the adopted or step child of either or

both of them. The child must be, at any time during the year of assessment, unmarried and fulfill one of the following conditions:

- (a) under the age of 18;
- (b) aged 18 or more but under the age of 25 and receiving full time education at a university, college, school or other similar educational establishment; or
- (c) aged 18 or more but incapacitated for work by reason of physical or mental disability.

Sibling

20. “Sibling” means a full blood, half blood, adopted or step sibling of a taxpayer or the taxpayer’s living or deceased spouse. If the taxpayer or the taxpayer’s living or deceased spouse is adopted, the definition of “sibling” includes a natural child of an adoptive parent of either of them. The sibling must be, at any time during the year of assessment, unmarried and fulfill one of the three conditions as stated in paragraph 19 above.

Adopted

21. “Adopted” means adopted in any manner recognized by the laws of Hong Kong. With effect from the implementation of the Adoption Ordinance (Cap. 290) on 1 January 1973, an adoption order validating the adoption must be made under that Ordinance while adoptions made under Chinese law and custom prior to 1 January 1973 are also recognized. For an overseas adoption, it would be considered in accordance with section 17 or 20F of the Adoption Ordinance, having regard to the individual circumstances of the case.

Insured or parent being an HKID card holder

22. The insured person must be a holder of an identity card issued under the Registration of Persons Ordinance (Cap. 177) at any time during the year of assessment. If the insured person is under the age of 11 and not an HKID card holder, a natural parent or an adoptive parent of the insured person must be an HKID card holder at the time of birth or adoption of the insured person. This requirement serves to ensure that the tax incentive is provided for people who have

a nexus to Hong Kong (i.e. the target group that the Government wishes to encourage to purchase hospital insurance products and consider shifting from using public hospital services to private healthcare services). For the avoidance of doubt, the requirement is only applicable for the purpose of tax deduction. Insurers are free to sell Certified Plans to consumers (be they policy holders or insured persons) with or without HKID cards.

Example 6

Mrs. G, a resident of Jurisdiction-F, purchased a VHIS policy in Hong Kong for her daughter aged 8 for the policy period from 1 April 2019 to 31 March 2020. Monthly premium payments of \$500 were made on the first day of each month. Neither Mrs. G nor her husband, Mr. G, was an HKID card holder at the time of birth of the daughter. On 1 May 2019, Mrs. G took up an employment in Hong Kong and obtained an HKID card.

Scenario 1: Mrs. G's daughter was not an HKID card holder at any time during the year of assessment 2019/20.

Scenario 2: Mrs. G's daughter obtained an HKID card on 15 March 2020.

Scenario 1

Even though Mrs. G became an HKID card holder on 1 May 2019, she would not be allowed deduction for the premiums paid for her daughter because neither Mr. G nor Mrs. G was an HKID card holder at the time when the daughter was born.

Scenario 2

Mrs. G's daughter became an HKID card holder sometime during the year of assessment 2019/20. Mrs. G would be granted full deduction for the premiums of \$6,000 paid for her daughter.

Apportionment of premiums paid

23. Section 26K(2) provides that if there is more than one policy holder for a VHIS policy, the qualifying premiums paid for each insured person under the policy are taken as paid by all of the policy holders in equal shares.

Example 7

Mr. H and Ms. I, who were brother and sister, purchased a VHIS policy for their parents. They paid as the policy holders qualifying premiums of \$10,000 for the father and \$12,000 for the mother in the proportion of 6 to 4.

Premiums for the father and mother would be taken as having been paid by Mr. H and Ms. I equally, irrespective of their actual contributions. Allowable deduction would be computed as follows:

Taxpayer and policy holder	Insured person	Actual contribution	Allowable deduction
		\$	\$
Mr. H	Father	6,000 (60%)	5,000 (50%)
	Mother	<u>7,200</u> (60%)	<u>6,000</u> (50%)
Ms. I	Father	4,000 (40%)	5,000 (50%)
	Mother	<u>4,800</u> (40%)	<u>6,000</u> (50%)
		<u>8,800</u>	<u>11,000</u>

Maximum allowable deduction

24. Regarding the deduction for qualifying premiums, there is no cap on the number of:

- (a) specified relatives in respect of whom a taxpayer may claim tax deduction;
- (b) taxpayers who can make a claim for deduction of premiums for the same insured person; and
- (c) policies per insured person in respect of which taxpayers can claim tax deduction.

25. Section 26K(3), however, provides that the maximum deduction allowable to a taxpayer in respect of qualifying premiums paid during a year of

assessment for each insured person, whether the insured person is insured under one or more than one VHIS policy, cannot exceed the amount specified in Schedule 3E to the Ordinance. For the year of assessment 2019/20 and subsequent years, the maximum deduction for each insured person is \$8,000 (subject to any subsequent amendments). Qualifying premiums in excess of the statutory maximum deduction for any year will lapse. The excess of premiums paid cannot be carried forward and claimed as deduction in any subsequent year of assessment.

Example 8

Mr. J purchased one VHIS policy for himself and another five VHIS policies for his specified relatives. Qualifying premiums were paid during the year of assessment 2019/20 as follows:

<i>Insured person</i>	<i>Premiums paid</i>
	\$
<i>Mr. J</i>	<i>5,000</i>
<i>Spouse</i>	<i>4,000</i>
<i>Grandmother</i>	<i>16,000</i>
<i>Father</i>	<i>12,000</i>
<i>Mother</i>	<i>11,000</i>
<i>Son</i>	<i>3,000</i>
	<i><u>51,000</u></i>

Premiums paid in respect of policies for the grandmother, father and mother exceeded the cap of \$8,000. Assuming all the insured persons satisfied the conditions in section 26J, the amount of deduction would be \$36,000 (i.e. \$5,000 + \$4,000 + (\$8,000 × 3) + \$3,000). The excess of \$15,000 (\$51,000 – \$36,000) paid would not be carried forward for deduction in subsequent years of assessment.

Example 9

Mr. K and Miss K were brother and sister. They purchased eight VHIS policies for the benefits of their father, mother and grandmother. Qualifying premiums were paid during the year of assessment 2019/20 as follows:

<i>Policy holder</i>	<i>Policy</i>	<i>Insured person</i>	<i>Premiums paid</i>
<i>Mr. K</i>	<i>No.1</i>	<i>Father</i>	\$ 3,000]
	<i>No.2</i>	<i>Father</i>	\$ 3,000]
	<i>No.3</i>	<i>Mother</i>	\$ 9,000
	<i>No.4</i>	<i>Grandmother</i>	\$ 8,000 <u>23,000</u>
<i>Miss K</i>	<i>No.5</i>	<i>Father</i>	\$ 7,000
	<i>No.6</i>	<i>Mother</i>	\$ 5,000]
	<i>No.7</i>	<i>Mother</i>	\$ 5,000]
	<i>No.8</i>	<i>Grandmother</i>	\$ 10,000 <u>27,000</u>

Both Mr. K and Miss K would be entitled to claim deduction for the premiums paid for the same insured persons. Deductions allowable to them would be computed as follows:

Mr. K

Premiums paid by Mr. K under Policy Nos.1 and 2 for the father in aggregate did not exceed the cap of \$8,000. Premiums paid by Mr. K under Policy No.3 for the mother exceeded the cap of \$8,000 by \$1,000. The amount of allowable deduction would be \$22,000 (i.e. \$23,000 - \$1,000).

Miss K

Premiums paid by Miss K under Policy Nos.6 and 7 for the mother in aggregate exceeded the cap of \$8,000 by \$2,000. Premiums paid by Miss K under Policy No.8 for the grandmother exceeded the cap of \$8,000 by \$2,000. The amount of allowable deduction would be \$23,000 (i.e. \$27,000 - \$4,000).

Premiums allowable to married persons

26. Where a deduction is claimed by a married person or the person's spouse or both in respect of the qualifying premiums paid by either or both of them for an insured person, the qualifying premiums paid are allowable as a deduction under section 26L(2) to either the married person or the person's spouse, or to both of them if:

- (a) the deduction allowed to each of them for the insured person does not exceed the maximum amount specified in Schedule 3E; and
- (b) the total deduction allowed to them does not exceed the qualifying premiums paid.

Example 10

Mr. and Mrs. L were a married couple. Mr. L purchased a VHIS policy for his mother and paid qualifying premium of \$15,000 during the year of assessment 2019/20.

Scenario 1: Mrs. L had no income chargeable to tax.

Scenario 2: Both Mr. and Mrs. L had income chargeable to tax and they claimed deduction of \$8,000 and \$7,000 respectively.

Scenario 1

Deduction allowable to Mr. L would be capped at \$8,000. No deduction would be allowed to Mrs. L since Mrs. L did not have any salary income, property income or profits chargeable to tax under the Ordinance against which the unallowed amount of \$7,000 could be claimed for deduction (i.e. Mr. L and Mrs. L would not be eligible to elect for joint assessment or personal assessment jointly).

Scenario 2

Deduction claims of Mr. and Mrs. L would be accepted. Deduction allowed to each of them would not exceed the cap of \$8,000 and total deduction would not exceed the premiums of \$15,000 paid.

Example 11

Mr. and Mrs. M were a married couple. In the year of assessment 2019/20, while Mr. M purchased a VHIS policy for their son and paid qualifying premiums of \$9,000, Mrs. M purchased another VHIS policy for their daughter and paid qualifying premiums of \$12,000. Both Mr. and Mrs. M had income chargeable to tax and they claimed for deduction of the premiums paid for the son and daughter as follows:

<i>Taxpayer</i>	<i>Deduction claimed in respect of</i>	
	<i>the son</i>	<i>the daughter</i>
	\$	\$
<i>Mr. M</i>	8,000	4,000
<i>Mrs. M</i>	<u>1,000</u>	<u>8,000</u>
	<u>9,000</u>	<u>12,000</u>

Deductions claimed by Mr. and Mrs. M in respect of their son and daughter would be accepted. Each deduction for the son and daughter would not exceed the cap of \$8,000, and the total deductions would not exceed the premiums of \$9,000 and \$12,000 paid for them.

Example 12

Mr. and Mrs. N (husband and wife) and Mr. O and Miss P (son and daughter) were the holders of a VHIS policy with Mrs. N as the insured person. Qualifying premiums of \$24,000 were paid during the year of assessment 2019/20. By virtue of the provisions in section 26K(2), the premiums would be taken to have been paid by Mr. and Mrs. N, Mr. O and Miss P as policy holders in equal shares (i.e. \$6,000 would be regarded as having been paid by each of them). Mr. and Mrs. N, Mr. O and Miss P claimed deductions for the premiums paid for Mrs. N as follows:

<i>Taxpayer and policy holder</i>	<i>Premiums deemed paid</i>	<i>Deduction claimed</i>
	\$	\$
<i>Mr. N</i>	6,000 (25%)	8,000
<i>Mrs. N</i>	6,000 (25%)	4,000
<i>Mr. O</i>	6,000 (25%)	8,000
<i>Miss. P</i>	<u>6,000 (25%)</u>	<u>6,000</u>
	<u>24,000</u>	<u>26,000</u>

Claims made by Mr. and Mrs. N would be accepted since: each deduction claimed would not exceed the cap of \$8,000; and the total deduction of \$12,000 would not exceed the premiums taken to have been paid by them.

Deduction allowable to Mr. O would be restricted to \$6,000 (i.e. the amount of premiums taken to have been paid by him). The claim made by Miss. P would be accepted.

Qualifying premiums commensurate with risk profile

27. According to section 26K(4), if the Commissioner is of the opinion that the qualifying premiums paid for the insured person under a VHIS policy are not commensurate with the risk profile of the insured person, the Commissioner may determine the amount of qualifying premiums, that is, in the Commissioner's opinion, commensurate with the risk profile of the insured person; and the amount so determined is taken to be the qualifying premiums paid. This is an anti-avoidance provision aimed at guarding against any possible abuse of tax deduction by claiming unreasonably high premium for a VHIS policy.

28. If a taxpayer disputes an assessment for the amount of qualifying premiums as determined by the Commissioner, the taxpayer can give a notice of objection within one month after the date of the assessment. The objection will be processed in accordance with the relevant provisions under Part 11 of the Ordinance.

EXCESSIVE CLAIMS BY MARRIED COUPLES

Deduction claims not considered

29. Section 26K(1) allows a taxpayer to claim deduction for qualifying premiums paid by the taxpayer or the taxpayer's spouse (not being a spouse living apart). Therefore, for married couples not living apart, a spouse may claim a deduction for qualifying premiums paid by the other spouse as a policy holder. Section 26L(2), however, stipulates that the total deduction allowed to the married couple should not exceed the qualifying premiums paid by them. According to section 26L(3), if the Commissioner has become aware of the existence of claims by a married couple that would, if allowed, result in a total deduction exceeding the qualifying premiums paid by them, the Commissioner must not consider any claim for the deduction until the married couple have reached an agreement that would result in a total deduction not exceeding the qualifying premiums paid.

Example 13

Mr. and Mrs. Q, husband and wife, purchased a VHIS policy for their daughter. They paid qualifying premiums of \$10,000 during the year of assessment 2019/20. Mr. and Mrs. Q claimed deduction for the premiums paid of \$8,000 each.

The claims of \$16,000 (i.e. \$8,000 + \$8,000) in aggregate made by Mr. and Mrs. Q, if allowed, would exceed the premiums of \$10,000 paid. Mr. Q and Mrs. Q would be invited to reach an agreement that would result in a total deduction not exceeding the premiums paid. In the absence of an agreement, both claims made by Mr. Q and Mrs. Q would not be considered.

Additional assessments

30. The provisions in section 26L(4) and (5) enable the Commissioner to resolve excessive claims made by married couples after deductions for qualifying premiums have been allowed: total deduction allowed to a taxpayer and the taxpayer's spouse exceeded the qualifying premiums paid; or a deduction has been allowed to a taxpayer and, within 6 months after allowing the deduction, the taxpayer's spouse makes a claim that would, if allowed, exceed the qualifying premiums paid. In such circumstances, the married couple will be invited to reach an agreement that would result in a total deduction not exceeding the qualifying premiums paid and additional assessments under section 60 will be raised in consequence of the agreement reached by them. If the married couple are unable to reach an agreement within a reasonable time, additional assessment(s) will be made in respect of the deduction(s) already granted.

REFUND OF PREMIUMS PAID

Circumstances for refund of premiums

31. According to the *VHIS Certified Plan Policy Template* issued by the FHB, refund of premiums paid would generally arise under the following circumstances:

Cancellation within the cooling-off period

- (a) The policy holder may exercise the right of cancellation of the policy with full refund of paid premium during the cooling-off period of not less than 21 days, if no benefit payment has been made or is to be made.

Misstatement of personal information/ misrepresentation of health related information

- (b) If personal (non-health related) information or health related information of an insured person that may impact the risk assessment of the insurer is misstated, the insurer shall have the right to declare the policy void as from the policy effective date. In such circumstances, the insurer shall have the right to demand refund of the benefits previously paid and the obligation to refund the premiums received.

Termination of policy

- (c) In case the policy is automatically terminated due to the death of the insured person or the insurer ceased to have the requisite authorization under the Insurance Ordinance to write the policy, the insurer shall refund the relevant premiums paid for the current policy year on a pro rata basis.

Compliance with law

- (d) If the policy is or becomes illegal under the law applicable to the policy holder or the insured person, the insurer shall have the right to terminate the policy from the date it becomes illegal. The insurer shall refund the relevant premiums paid for the policy year in which the policy is terminated on a pro rata basis.

Statutory requirements

32. Pursuant to section 26M(1) and (2), if any of the qualifying premiums paid for an insured person is refunded, the qualifying premiums paid are taken to be reduced by the amount of the refund. Therefore, in the case where the refund is made before a taxpayer claims the tax deduction, the taxpayer can only claim the reduced amount of the qualifying premiums paid. According to section 26M(3)(a)

and (b), if the refund is made after a taxpayer has claimed the tax deduction, the taxpayer must notify the Commissioner in writing of the refund within 3 months after the date of refund. Despite any time limit under section 60, the Assessor may, having regard to the reduction, make an additional assessment on the taxpayer under that section if the deduction has been allowed.

Example 14

Mr. R purchased a VHIS policy for his mother and paid qualifying premiums of \$8,000 on 20 March 2020. He exercised his right to cancel the policy during the cooling-off period on 15 April 2020. He was fully refunded of the premiums paid on 30 April 2020. The 2019/20 tax return was issued to Mr. R for completion in May 2020.

Given the full refund of the premiums paid, the deductible amount would be reduced to nil. Mr. R would not be entitled to claim deduction for any premiums paid in his 2019/20 tax return.

Example 15

Mr. S purchased a VHIS policy for his father. On 1 April 2019, he paid a qualifying premium of \$8,000 for the policy period from 1 April 2019 to 31 March 2020. Subsequently, his father passed away on 31 December 2019 and the VHIS policy was automatically terminated on that date. On 15 April 2020, part of the premium paid in the amount of \$2,000 was refunded to Mr. S on a pro rata basis. The 2019/20 tax return was issued to Mr. S for completion in May 2020.

Given the partial refund of the premium paid, the deductible amount should be reduced to \$6,000 (\$8,000 – \$2,000). Mr. S should claim deduction for the reduced amount in his 2019/20 tax return.

Example 16

Mr. T purchased a VHIS policy for himself and paid a qualifying premium of \$8,000 on 1 April 2019. He claimed and was allowed deduction of the premium paid for the year of assessment 2019/20. Owing to Mr. T's misstatement of certain personal information, the insurance company subsequently declared the VHIS policy void and fully refunded the premium to Mr. T on 1 September 2020.

Since the refund was made after Mr. T had claimed the tax deduction, Mr. T should notify the Commissioner in writing of the refund within 3 months after the date of refund (i.e. on or before 1 December 2020). An additional assessment for the year of assessment 2019/20 would be made on Mr. T to withdraw the deduction previously allowed.

EXERCISE OF POWERS BY THE COMMISSIONER

33. For the purposes of the tax deduction, the Commissioner may exercise power to determine the amount of qualifying premiums that is commensurate with the risk profile of the insured person under section 26K(4); refuse to consider claims made by a married couple or raise additional assessment in the absence of an agreement reached between them under section 26L(3) to (5). Section 26K(5) empowers the Commissioner to exercise such powers in the way that the Commissioner considers appropriate having regard only to the information in the Commissioner's possession when exercising the power.

PENALTIES

Prosecution

34. If a taxpayer, without reasonable excuse, fails to comply with section 26M(3)(a) by not notifying the Commissioner in writing of the refund of the qualifying premiums paid within 3 months after the date of refund, the taxpayer commits an offence under section 80(2). The Commissioner may institute prosecution against the taxpayer for the offence committed. The maximum penalty for each offence is a fine at level 3 and a further fine of treble the amount of tax undercharged. As an alternative to proceeding with a prosecution, the Commissioner may compound the offence (i.e. accept a monetary settlement instead of sanctioning the institution of a prosecution) under section 80(5).

Additional tax

35. If no prosecution under section 80(2) has been instituted against the taxpayer in respect of the taxpayer's failure to comply with section 26M(3)(a), the Commissioner may impose additional tax under section 82A. The maximum penalty is treble the amount of tax which has been undercharged in consequence of

the taxpayer's non-compliance, or which would have been undercharged if the non-compliance had not been detected.

36. Before making an assessment of additional tax, the Commissioner will arrange for a notice to be given to the taxpayer stating the offence in respect of which the Commissioner intends to assess additional tax. The taxpayer is then allowed a specified period of at least 21 days to make written representations with regard to the proposed assessment to additional tax. The Commissioner will consider and take into account any representations received during the specified period when determining the amount of additional tax. The taxpayer, if aggrieved by an assessment to additional tax, can appeal to the Board of Review against the assessment.

ADMINISTRATIVE PROVISION

Holding over of payment of provisional salaries tax

37. Under section 63E(2)(be), a taxpayer may apply to the Commissioner to have the whole or part of the provisional salaries tax held over until the taxpayer is required to pay salaries tax for the year of assessment on the ground that the taxpayer or the taxpayer's spouse (not being a spouse living part from the taxpayer), or both of them, has or have paid, or is or are likely to pay, during the year of assessment, qualifying premiums that are allowable for deduction and in total, exceed or are likely to exceed the amount specified in Schedule 3E for the year preceding the year of assessment.

38. Schedule 46 to the Ordinance provides for a transitional arrangement under which a taxpayer may apply for the holding over of payment of provisional salaries tax in respect of the year of assessment 2019/20 on the ground that a deduction for qualifying premiums paid is, or is likely to be, allowable to the taxpayer.