



Lee & Yu Certified Public Accountants

李志輝 · 余仲良 會計師事務所

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MAY 2022

Tax Deductions for Domestic Rents - Bill 2022

The Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) second reading of bill 2022 at the Legislative Council (LegCo) on May 11. It seeks to implement the tax deduction for domestic rent proposed in the 2022-23 Budget.

According to the Bill, a taxpayer liable to salaries tax or tax under personal assessment may claim deduction for the rent paid by him/her or his/her spouse (who is not living apart from him/her) as tenant (or by both of them as co-tenants) in relation to a relevant YA for renting eligible domestic premises. The proposed maximum amount of allowable deduction is \$100,000 for each YA.

To meet the eligibility, the relevant premises must be the taxpayer's principal place of residence, and the relevant tenancy must be stamped.

To ensure that it is a targeted measure that supports taxpayers who are most in need, forestall abuse, and prevent potential double tax benefit or tax avoidance, the Bill proposes to provide for certain circumstances in which the deduction is not allowed, including:

- the taxpayer or his/her spouse (who is not living apart from the taxpayer) is a legal and beneficial owner of any domestic premises in Hong Kong;
- the landlord or principal tenant of the rented domestic premises is an associate of the taxpayer or his/her spouse (e.g. the landlord is the taxpayer's spouse, or a parent, child, sibling or partner of the taxpayer or his/her spouse);
- the taxpayer or his/her spouse (who is not living apart from the taxpayer) is provided with a place of residence by his/her employer;
- the taxpayer or his/her spouse (who is not living apart from the taxpayer) is a tenant or authorised occupant(s) of a public rental housing flat;
- the rented premises are not allowed for residential use or the tenancy is prohibited under any law or a government lease;
- the taxpayer or his/her spouse has entered into a lease purchase agreement in respect of the premises concerned with the landlord;
- the sum representing the domestic rent is allowable as a deduction under any other provision of the Inland Revenue Ordinance; or
- the taxpayer or his/her spouse (who is not living apart from the taxpayer) has been allowed deduction for any other domestic rent paid in respect of any other domestic premises for the same period.



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The amount of deduction allowable to a taxpayer is the amount of rent paid under the tenancy in relation to the YA or the deduction ceiling for the tenancy for the YA, whichever is less. If there is more than one tenant under the tenancy, the deduction ceiling will be reduced in proportion to the number of co-tenants. If the tenancy period covers less than 12 months of a YA, the deduction ceiling will be reduced in proportion to the tenancy period falling within the YA.

To facilitate the filing of tax returns by taxpayers, the Inland Revenue Department website has provided explanations on the details of the tax deduction for domestic rent as proposed in the Bill, including the detailed deduction rules. For more information, please refer to the following link: www.ird.gov.hk/eng/tax/drdrd.htm.

Tenant protection law to take effect



The Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance will come into effect upon gazettal on May 1, the date when three-month "protection period" under the ordinance will start until July 31.

When the protection period begins or the day when the tenancy becomes effective if it takes effect within the protection period, in respect of any premises that are wholly or primarily used as specified premises and the tenants concerned have defaulted in rent payment between January 1 and the end of the protection period, the landlords will be barred from taking certain rental enforcement actions during the protection period.

Actions taken before the start of the protection period, if still pending, shall be stayed.

The Government said the ordinance aims to provide a short buffer period for business tenants who are in distress due to the COVID-19 epidemic, so that they will not be forced out of business as a result of legal or other rental enforcement actions taken by their landlords for their inability to pay rent immediately, while providing room for the landlords and the tenants to negotiate on the restructuring of rental arrangements.



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The rental enforcement actions that landlords are barred from taking include terminating the tenancy, suspending the provision of utility services, deducting rent from the deposit held by the landlord, exercising a right of re-entry or forfeiture, bringing an action in court or presenting a bankruptcy or winding-up petition against the tenant concerned etc.

The schedule to the ordinance sets out the types of specified premises covered by the rental enforcement moratorium. They include most of the scheduled premises under the Prevention & Control of Disease (Requirements & Directions) (Business & Premises) Regulation (save for cruise ships and supermarkets), food and catering business premises, retail shops (excluding supermarkets),

education-related premises, and premises used for the business of travel agents, employment agencies and laundry trade etc.

To assist landlord-borrowers who are affected by the rental enforcement moratorium and fail to repay their secured loans, the ordinance stipulates that if the landlord-borrowers can establish that the tenants' inability to pay rent and the rental enforcement moratorium are the sole or significant reason for their default in repayment, the lenders concerned cannot take certain enforcement actions against such landlord-borrowers during the affected period.

Actions taken before the beginning of the affected period, if still pending, shall be stayed.