A Proposed Equitable Solution to the Problem of "Offsets" Against Individual Mandatory Provident Fund Balances

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Introduction 引言

- The "Offsetting" of the severance payment and long-service payment to an employee with the employee's Mandatory Provident Fund (MPF) account balances is a controversial issue.
- I shall try to approach this problem by first examining the original purposes of the severance payment and long-service payment to see whether there are today better and more efficient ways of fulfilling these purposes without reducing the benefits to the employee nor increasing the costs of the employer.

Introduction 引言

- The institutions of both severance payment (遣散費) (first enacted in 1974) and long-service payment (長期服務金) (first enacted in 1986) predate the establishment of the Mandatory Provident Fund (MPF) Scheme in Hong Kong in 2000.
- Both the severance payment and the long-service payment are payable by an employer to an employee upon the employee leaving its employment, depending on the circumstances of the departure of the employee. Both payments are computed in the same way, and the same employee cannot be simultaneously the beneficiary of both types of payments. Thus, they are mutually exclusive alternatives.

Introduction 引言

- Both the severance payment (遣散費) scheme and the long-service payment (長期服務金) scheme have elements of retirement provision, especially the latter.
- Given that there is now an active Mandatory Provident Fund Scheme in Hong Kong that provides basic retirement benefits for almost every employee from contributions made by both the employer and the employee, it is useful to consider whether the various schemes for the provision of employee benefits can be rationalized and integrated.
- The fact that "offsetting" exists under our current law signifies a recognition that some of the benefits provided by the various schemes may be duplicative in nature.

Introduction 引言

- The genius and an important reason for the success of Chinese economic reform in the 1980s and 1990s was that no losers were created. Everyone was better off. It was win-win. That is why there was little or no opposition to and in fact a great deal of support for the economic reform in China.
- One basic underlying principle of the Chinese economic reform during that period is **"Old way for old people; and new way for new people" (舊人舊辦法、新人新辦法)**. In other words, the privileges of the "old" people are grandfathered, i.e., preserved and protected under the reform.
- We can take a page from the Chinese experience to make sure that however we decide to deal with the problem of "offsets", neither the employer nor the employee should become worse off. And everyone should have the potential to win.

The Purposes of the Severance Payment 遣散費的目的

- When the severance payment was first introduced in 1974, there was no MPF Scheme as yet. Severance payment as practiced in Hong Kong today constitutes a form of unemployment insurance since it is triggered by the lay-off of an employee on account of redundancy.
- Unemployment insurance is best offered by a third party, such as the government, rather than by the employer itself. By the time an employer has to lay off an employee, its business is already not doing too well, and hence is not in a good position to marshal the additional resources required for the severance payment. Worse, it may be forced into bankruptcy, which may mean that the employee receives nothing. Thus, self-insurance by the employer, as is the existing practice, is not likely to be viable.
- Insurance on commercial terms is likely to be costly, especially for small and medium enterprises.
- The provision of unemployment insurance through the severance payment scheme as the sole responsibility of the employer is costly, inefficient, socially inequitable and undependable.

The Purposes of the Long-Service Payment 長期服務金的目的

- One intended purpose of the long-service payment, first introduced in 1986, is to provide for the retirement of the employee and a survivors benefit in the event of death of the employee. However, this purpose is already subsumed in the Mandatory Provident Fund Scheme introduced in 2000. The existing long-service payment provision is therefore somewhat duplicative.
- The "offsetting" of the long-service payment from the Mandatory Provident Fund balances of the employee is an explicit recognition that the retirement and survivors benefits features of the long-service payment scheme are actually duplicative with the MPF scheme.
- However, since contributions to the MPF scheme are not retroactive to before the introduction of the Scheme, in the transition from a long-service payment scheme to a MPF scheme, appropriate adjustments are necessary so as not to reduce the benefits to be received by the employee nor increase the total obligations of the employer.

The Purposes of the Long-Service Payment 長期服務金的目的

- Another intended purpose of the long-service payment is to provide a basic benefit upon the medical disability of a long-service employee. The disability benefits can be substituted by mandatory social disability insurance, whether provided by the government or by the private sector.
- In effect, the current regulation requires the employers to self-insure against the possible disability of its employees. For small employers, this can be a real hardship, as their individual risk pool is too small. They therefore cannot afford to self-insure. Nor can they find affordable commercial insurance because they are too small by themselves and the insurance premium required can be prohibitively high. Social insurance is the way to go.

How Do Other Economies Handle These Problems? 其它經濟體如何解決這些問題？

- In other economies, there will be separate unemployment insurance and disability insurance provided by the government.
- For example, in the U.S., OASDI, which stands for "old age, survivors and disability insurance", is provided by the Federal Government as part of its universal mandatory contributory "Social Security" scheme for all employees.
- In the U.S., unemployment insurance is also mandatory for all employees at the level of the individual states, under federal regulation and supervision. For example, the Unemployment Insurance (UI) program of the State of California pays benefits to workers who have lost their jobs and meet the program's eligibility requirements. It is intended to tide the worker over until he or she begins the next job. The amount payable is approximately half of the employee's previous weekly earnings, up to a maximum level of benefit (US$450 per week in the State of California) for up to 26 weeks. The Federal Government can extend the benefit period in times of economy-wise recession and most recently it was set at 73 weeks.

A Proposed Solution Based on Social Insurance 基於社會保險的建議解決辦法

- I believe a useful way to look at the problem is to consider an employee entering employment for the first time in or after 2000, after the introduction and implementation of the MPF Scheme. This employee would be covered by the MPF Scheme and would have provision for retirement benefits and also survivors benefits under the MPF Scheme.
- What this employee would not have under the MPF Scheme is unemployment benefit and disability benefit.
- Thus, an equitable solution would be for the Government to introduce unemployment insurance and disability insurance to cover these employees and to exempt employers of these employees from both the severance payment and the long-service payment. And since they will no longer be liable for these payments, the question of "offsets" will disappear as far as these employees are concerned.

A Proposed Solution Based on Social Insurance 基於社會保險的建議解決辦法

- The insurance can be either contributory or non-contributory (in which case it will be financed through general government revenue), with a ceiling for the amount payable by the insurance to each affected employee. The reason for the involvement of the government is to make sure that the insurance pool is large enough and that the expenses are low enough so that the insurance premium rates can be affordable. The government is also in an excellent position to self-insure.

A Proposed Solution Based on Social Insurance 基於社會保險的建議解決辦法

- What about employees who began their employment with their existing employers before 2000, before the introduction of the MPF Scheme?
- First, they should also be covered under unemployment insurance and disability insurance.
- Second, the potential liabilities for long-service payment by such an employer under the old long-service payment scheme to such an employee can be calculated as of a certain date, say, 31 December 2016. (2016 is chosen because this proposed solution is predicated on the government mandating unemployment insurance and disability insurance for all employees, which will take some time.)
- Third, the value of such an employee’s MPF account balance due to the employer’s prior contributions since the introduction of the MPF Scheme in 2000 can also be calculated as of the same date.

A Proposed Solution Based on Social Insurance 基於社會保險的建議解決辦法

- If the liabilities of the employer are less than the value of the MPF account balance attributable to employer contributions, then the employer will have no further long-service payment obligations to this employee.
- If the liabilities are greater than the value, then the employer will be given the following irrevocable options:
- (1) continuing with the long-service payment scheme (and its offset provisions); (2) making a one-time contribution to the employee's MPF account equal to the shortfall; or (3) committing to make up the shortfall over the following three years in three annual installments.

A Proposed Solution Based on Social Insurance 基於社會保險的建議解決辦法

- With these arrangements, “offsetting” will become a historical relic, except for those employers who choose to continue with the long-service payment scheme. Every employer previously operating under the long-service payment scheme will be relieved forever if it so chooses.
- This should greatly reduce expected costs to employers, especially those with a small number of employees, without affecting the benefits enjoyed by the employees. Arguably the employees are also better off because their benefits will become more dependable and not subject to the fluctuations of the economic fortunes of their employers.

Some Principles for Basic Retirement Provision 提供基本退休保障的一些原則

- "Pay as you go" schemes, which are predicated on a working-age population that grows over time and the ratio of retirees to the working-age population falling over time, are no longer possible in Hong Kong and elsewhere. The working-age population is no longer growing in many economies, and the ratio of retirees to working-age population has been rising rapidly. The improvement in life expectancy worldwide also makes it more urgent to have basic retirement provisions that are adequate for at least subsistence living for the retirees.
- In the current economic and demographic environment, an able-bodied person should earn during his or her working life a sufficient cumulative income to support himself or herself financially from adulthood through retirement. This will require savings to be accumulated during the working years to finance the living costs post retirement.

Some Principles for Basic Retirement Provision 提供基本退休保障的一些原則

- What the society can do is to enable the intertemporal transfer of resources from the working years to the retirement years in an efficient and low-cost manner.
- The mandatory saving schemes such as the MPF Scheme of Hong Kong or the Central Provident Fund Scheme of Singapore or the Social Security Scheme of the United States aim at providing sufficient funds for at least basic subsistence living for a worker post retirement. (In the U.S., the maximum social security retirement benefit is approximately US$2,000 per month after federal taxes.)

Some Principles for Basic Retirement Provision 提供基本退休保障的一些原則

- It is not envisaged that there will be any direct social transfer among the able-bodied population. Retirement benefits will be based entirely on prior contributions into individual retirement accounts by the employers and the employee.
- For those with disabilities and hence no earning power, their retirement needs can and should be provided through social insurance or social welfare.

Some Principles for Basic Retirement Provision 提供基本退休保障的一些原则

- The difficult problem is the transition to a fully self-financed contributory retirement system from an old system or no system at all. How can the basic needs of a generation of workers that have not begun a systematic savings program be supported in their retirement?
- Once a viable self-financed contributory system is in place, it is in principle sustainable. But how can we solve the problem of the transitional generation having to support the retirement of not only themselves but also their parents' generation?
- There are actually feasible solutions for the transition but the right time to discuss it is when there is broad agreement on the workings of the self-financed contributory basic retirement system in the future. Then the problem becomes simply one of managing the transition.

Concluding Remarks 結語

- With the introduction of (1) Unemployment insurance and (2) Disability insurance, and the existence of the Mandatory Provident Fund (MPF) Scheme, the purposes of the severance payment and the long-service payment schemes will be fully met. Thus, there is no need to continue to have provisions for severance payment or long-service payment. If these two schemes are no longer necessary, then the problem of "offsets" will also disappear altogether.

Concluding Remarks 結語

- Under the proposed arrangement above, the obligations of the employers are not reduced since they will continue to contribute to the MPF; but they are relieved of the obligations for the severance and long-service payments, which are replaced by unemployment insurance and disability insurance respectively. The benefits of the employees are also not abridged at all, but instead are provided from different sources. Their entitlements and privileges are completely preserved, but without "offsets". The employees do not lose anything. There is also a gain in the clarity of their benefits, and they are more protected from the risks of failure of their employers.
- In the transition to the new system proposed above, if the long-service payment amount "owed" exceeds the value of the current balances in the MPF account of an employee attributable to the contributions of the employer, the employer may have to make up the difference, possibly over time.