LIFE ASSURANCE COMPANIES

GENERAL GUIDELINES FOR CALCULATING TAX DUE AND FOR COMPLETING DECLARATION FORMS UNDER THE "GROSS ROLL-UP" TAXATION REGIME

These notes do not have the force of law and do not affect any person's right of appeal. Nor are they, in all instances, a full statement of the law as it applies, or has applied, to life assurance companies. Life assurance companies should refer to the relevant legislation where appropriate.

Unless stated to the contrary, all statutory references are to the Taxes Consolidation Act, 1997 (as amended).

Revenue Commissioners

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1. Introduction

Chapters 4 and 5 of Part 26 – Sections 730A to 730GB of the Taxes Consolidation Act (TCA) 1997, (as inserted by Section 53 of Finance Act 2000), provide for the taxation of life assurance companies and their policyholders. Chapter 4 provides for the taxation of life assurance companies themselves on their new basis business *(see paragraph 4).* Chapter 5 provides for the taxation of the investment return to a policyholder on a life assurance policy where the policy is new basis business of the assurance company. In short, there is no annual tax imposed on policyholders' funds and the investment return is only taxed on the happening of a chargeable event, as defined (see 5.1).

2. Overview of old regime

There were two regimes in place prior to the Finance Act 2000 changes – one for IFSC life assurance companies whose policyholders were non-resident[1] and the other for domestic life assurance companies. IFSC life assurance companies were assessed in a similar fashion to any other "trade" in accordance with the provisions of Case 1 of Schedule D. The profits accruing to the shareholders were liable to corporation tax. The policyholders may have had a liability to tax in their country of residence but they were not liable to tax in this State unless they subsequently became resident here in which case tax would have been payable on the proportion of the gain arising during Irish residence. If the policyholder held the policy for less than six months at the time of returning then the full gain would have been taxed.

The old regime for domestic life assurance companies was that the income and gains accruing to policyholders' funds were effectively taxed within the fund on an annual basis at the standard rate of income tax. The policyholder was not liable to any

[1] Up until 5 April 1997 a non-resident who had an IFSC life policy (or a retirement benefits policy) was required to cash in that policy should he or she take up residence in the State. Provision was made in Finance Act, 1997 to the effect that such an individual who had an IFSC policy for at least 6 months prior to taking up Irish residence (on a date on or after 6 April 1997) need not cash in his or her policy. However, on eventual encashment the growth in the policy less premiums paid, during the period of Irish residence was liable to tax at the standard rate of income tax. (In the case of a retirement benefits policy, 75% of that amount was subject to tax.

further tax on maturity or encashment of a policy. Shareholders' profits were liable to corporation tax.

3. Overview of current regime

There is now just one tax regime for all new basis business. Under this regime all life assurance companies will be charged to tax under Case I of Schedule D on shareholders profits. As regards life assurance policyholders, when a life assurance company makes a payment or when a chargeable event consisting of the ending of an 8-year period occurs (*see paragraph 5.1*), the company has to deduct tax at a rate, effective on or after 1/1/2012, of 25% where the policyholder is a company and 33% in the case of any other policyholder, from the investment gain included in the payment. In the case of a personal portfolio life policy the tax rate is the standard rate of income tax plus 33 percentage points (currently 53%) (*see paragraph 5.1.3*). The tax deducted is a final liability to tax, PRSI and health contribution levy for the policyholder. Tax does not have to be deducted from a payment made to a policyholder who is neither resident nor ordinarily resident in the State and who has complied with the declaration requirements *(see paragraph 5.2.1).* Certain resident entities can also receive payments gross on completion of an appropriate declaration *(see paragraph 5.2.2)* This system, whereby a policyholder's investment grows tax free throughout the term of the policy and is subject to an "exit tax" on payment to or deemed disposal by the policyholder, is referred to as the 'gross-roll-up system'.

4. Taxation of life assurance companies

4.1 General

Chapter 4, Part 26 of TCA 1997, which comprises section 730A, provides that the profits of a life assurance company will be computed and charged to tax under the provisions applicable to Case 1 of Schedule D where the profits arise from new basis business as defined.

Tax Briefing (Issue 43 of April 2001) sets out the Revenue view as to how the provisions of Chapter 4 apply in practice as regards the format of the tax computation.

The relevant article is reproduced at Appendix 1. The article also deals with the situation where there is a mixture of both new and old basis business. With regard to the calculation of notional Case 1 and the income less expenses (I –E) basis of calculation for old basis business, an extract from Tax Briefing (Issue 24 of December 1996) is also reproduced at Appendix 2.

4.2 New Basis Business

New basis business means:-

- Policies and contracts of life assurance companies (other than industrial assurance business) commenced on or after 1 January 2001 together with such companies' existing pension business, general annuity business and permanent health business (insofar as already taxed under Case 1 of Schedule D) and,
- All policies of new life assurance companies set up on or after 1 April 2000, unless such a company elects[2] under section 730A(2) to have policies commenced before 31 December 2000 taxed under the old basis.

Chapter 4 also provides for the following:-

- In making the Case 1 computation a deduction is allowed for amounts allocated to policyholders but not in respect of amounts reserved for policyholders.
- A Case I loss arising under the current regime cannot be set off against profits belonging to policyholders under the old regime (i.e. income less expenses regime);
- Mutual life assurance companies are assessed to tax under Case III of Schedule D on a measure of unallocated profits (see Appendix 1 for guidance as to how this applies in practice).

4.3 Companies with a mixture of new basis business and old basis business

[2] **The section 730A(2) election does not apply to policies or contracts relating to pension business, general annuity business or permanent health business. These must be treated as new basis business irrespective of when they were commenced**

Life assurance companies that were already carrying on life business on 1 April 2000 will have a mixture of both old and new basis business. The old tax regime will continue to be applied for the time being to the old basis business while the current tax regime will apply to the new basis business. Life assurance companies that make a section 730A(2) election will also have a mixture of both old basis and new basis business.

Where a life assurance company has both new and old basis business in the same accounting period, the new basis business is to be treated as if it were a separate business from the old basis business. This means that the life assurance company must have two separate tax computations for the accounting period. The computation in respect of the old basis business is to be made under the pre Finance Act 2000 rules.

5. Taxation of policyholders

Chapter 5, Part 26 of TCA 1997 deals with the taxation of the investment return on life assurance policies and policies in respect of capital redemption business in so far as they are "new basis business". Investment in such policies (hereafter called "life policies") is allowed to grow without the imposition of tax. Tax is due only when a payment is made in respect of such policies to the policyholder or at the ending of an 8-year period (*see paragraph 5.1*).

5.1 When must a life assurance company deduct tax in respect of life policies?

In general, tax must be deducted on the occurrence of a chargeable event. Such chargeable events happen: -

- on the maturity of the life policy, including where payments are made on death or disability[3], which payments result in the termination of the life policy;

[3] *Where benefits are payable in respect of death or disability it is only the investment gain included in those benefits that is subject to exit tax (see Appendix 3).

- on the surrender in whole or in part of the rights conferred by the life policy including where payments are made on death or disability, which payments do not result in the termination of the life policy;
- on the assignment in whole or in part of the life policy;
- on the ending of an 8-year period beginning with the inception of the life policy and each subsequent 8-year period beginning when the previous one ends.

Note: A chargeable event also arose on 31 December 2000 in respect of life policies previously issued by a life assurance company which commenced business between 1 April 2000 and 31 December 2000 where the company was charged to tax on profits of that period under Case 1 of Schedule D – in other words the company did not elect under section 730A(2) to be taxed under the old basis.

5.1.2 The Courts Service

The Courts Service is exempted from the exit tax in respect of Court funds invested in life assurance products on completion of an appropriate declaration. However, the Courts Service is required to operate the exit tax on payments made to it by the life assurance company when it allocates those payments to the beneficial owners.

5.1.3 Personal Portfolio Life Policies

A personal portfolio life policy is defined in broad terms as a policy which allows the policyholder to select, or to influence the selection of, assets which determine the policy benefits. A policy will not be regarded as a personal portfolio life policy where the property to be selected is

- property consisting of units in a unit trust and similar undertakings;
- property allocated by the assurance company to an internal fund so as to fund policy benefits;
- cash or
- any combination of the above.

The above exceptions apply only where the opportunity to select the property concerned is widely available to the public at the time the property is actually available for selection by the policyholder. This wide availability must be evidenced in published marketing or promotional material published by the assurance company. To ensure that the exceptions cannot be exploited and the additional charge (33 percentage points) avoided some additional requirements apply to policies commenced or marketed from 5 December 2001. These additional requirements are that –

- the assurance company must deal with everyone interested in selecting the property on a non-discriminatory basis, and
- where the property to be selected is primarily land and buildings and the assurance company is seeking to raise a pre-determined amount in investments, each investment made by a policyholder is limited to 1% of the amount being sought by the assurance company.

5.2 Exceptions to the requirement to deduct tax

Tax need not be deducted by a life assurance company in the following circumstances:-

5.2.1 ***Non-resident policyholders***

A life assurance company is not required to deduct tax -

- in respect of life policies of corporate policy holders which are not resident in the State;
- in respect of life policies of individuals who are neither resident nor ordinarily resident in the State,

provided the life assurance company is in possession of the appropriate non-resident declaration *(see paragraph 10 and in particular paragraph 10.9 in relation to foreign branch operations).*

5.2.2 ***Certain resident entities***

Tax is not required to be deducted where the policyholder is a resident entity specified below and the life assurance company is in possession of an appropriate declaration at

the time that the chargeable event occurs *(see paragraph 10).* The specified entities are:

- another company carrying on life assurance business;
- an investment undertaking within the meaning of section 739B TCA 1997;
- a body of persons or a trust established for charitable purposes only and entitled to exemption from income tax or corporation tax under section 207(1)(b) TCA 1997;
- a PRSA provider within the meaning of Chapter 2A of Part 30, TCA 1997;
- a credit union within the meaning of section 2 of the Credit Union Act 1997;
- a person entrusted to pay all premiums payable, out of money under the control or subject to the order of any Court;
- the National Asset Management Agency;
- a pension scheme being an exempt approved scheme within the meaning of section 774 TCA 1997 or a trust scheme to which section 784 or 785 TCA 1997 applies, or
- an approved retirement fund within the meaning of section 784A TCA 1997 or an approved minimum retirement fund within the meaning of section 784C TCA 1997.

5.2.3 ***Assignment of a policy as security for a debt***

The assignment of a life assurance policy will not give rise to a chargeable event where the assignment is by way of security for a debt due to a financial institution[4] or for the discharge of a debt due to a financial institution secured by the rights to the policy. However, if the financial institution actually exercises the security in satisfaction of the debt, then a chargeable event occurs. Furthermore, if the debt is one due to any person other than a financial institution, any assignment of the policy rights to secure that debt or for its discharge is an assignment which triggers the exit tax.

5.2.4 ***Assignment of a policy between spouses or between civil partners***

[4] A "Financial Institution" means-

(a) a person who holds a licence under section 9 of the Central Bank Act, 1971;
(b) a person referred to in section 7(4) of the Central Bank Act, 1971, or
(c) a credit institution duly authorised by virtue of Directive No. 2000/12/EC of 20 March 2000.

The assignment of a life assurance policy will not give rise to a chargeable event where the assignment is:-

- between husband and wife or civil partners;
- between the spouses concerned by virtue of an order made following the granting of a divorce or a judicial separation recognised as valid in the State, or following a similar process in a foreign territory but which is recognised as valid in the state;
- between the civil partners concerned by virtue of an order made following the granting of a decree of dissolution in the State, or following a similar process in a foreign territory but which is recognised as valid in the state.

5.3 How much tax is deducted?

The amount of tax to be deducted is calculated by applying a rate of tax to the gain arising on a chargeable event. There are rules for calculating the amount of the gain.

5.3.1 *What gain is taxed?*

(see Appendix 3 for examples of how a gain is calculated)

The taxable gain arising on a chargeable event is: -

- the policy proceeds less premiums paid, where the event is the maturity or total surrender of the policy;
- the value of the policy at the time of assignment less premiums paid, where the event is the total assignment of the policy;
- the amount payable less a proportionate part of the premiums paid, where the event is the partial surrender of the policy;
- the value of the part assigned less a proportionate part of the premiums paid, where the event is the partial assignment of the policy;
- the value of the policy on 31 December 2000 less premiums paid, where a chargeable event is deemed to occur on that date and
- the value of the policy less premiums paid, where the chargeable event is the ending of an 8-year period following inception of the policy .

The amount to be included in respect of premiums paid is the amount of all premiums paid less any such amount taken into account in determining a gain on the happening of an earlier chargeable event.

Credit is given for the exit tax previously charged, where a standard chargeable event (e.g. surrender, maturity etc) occurs after a chargeable event resulting from the ending of an 8-year period (see example 4).

5.3.2 What tax rate applies?

The tax rate which is to be applied to a gain arising on or after 1/1/2012, is –

- at a rate of 25% if the policyholder is a company, otherwise at a rate of 33%, where the gain arises on maturity, surrender or assignment of the policy in whole or in part or the ending of an 8-year period;
- at the standard rate of income tax plus 33 percentage points (currently 53%) where the gain arises on a 'personal portfolio life policy';
- a rate of 40 per cent, where the chargeable event was treated as happening on 31 December 2000.

The life assurance company, or the Courts Service if applicable, is liable for the tax and is entitled to meet that liability from the policyholders' proceeds/funds.

6. Losses

Where losses are incurred on the initial capital investment in a life assurance fund, no loss relief is available.

7. Offset against inheritance tax

Exit tax that has been deducted from a payment arising on the death of a policyholder can be used to offset inheritance tax due in respect of the inheritance arising on the same event subject to the followings conditions: -

- the same event must give rise to both the exit tax and the inheritance tax;
- the exit tax can only be used for offset against inheritance tax in respect of the same policy;

- the amount of exit tax that can be used is restricted to the lower of the exit tax and inheritance tax payable on the same policy and event.

However, the amount of exit tax that can offset against capital acquisitions tax will be limited to the amount of such tax calculated at the normal 33 per cent rate (effective from 1/1/2012), rather than the higher rate that applies in the case of Personal Portfolio Life Policies.

This relief is given under section 104 Capital Acquisitions Tax Consolidation Act 2003 and for this purpose the exit tax is deemed to be an amount of capital gains tax paid in respect of the event which results in a person receiving a payment under the policy on the death of the policyholder.

8. Returns and Payment

8.1 Returns and payments of appropriate tax

A life assurance company, or the Courts Service where applicable, must make a return of appropriate tax to Revenue: -

- in connection with chargeable events occurring between 1 January and 30 June in each year, by 30 July of that year, and
- in connection with chargeable events occurring between 1 July and 31 December in each year, by 30 January of the following year.

The return should be made even where there is no appropriate tax due for the period. Since 1 June 2012 such returns **and payments** are subject to the Mandatory e-Filing regulations.

Returns by a life assurance company or the Courts Service may be subject to audit by Revenue through inspection of the records of such companies. An assessment can be raised where an Inspector of Taxes is dissatisfied with a return and any necessary adjustments or set-offs to secure correct liability of the life assurance company (and if necessary a policyholder) can be made where a return contains any amount of tax deducted in error.

8.2 Annual Return by the Courts Service

In addition to the return of appropriate tax to Revenue, the Courts Service must also make a further return to Revenue on or before 28 February each year, in respect of each year of assessment, which:-

- specifies the total amount of gains arising in respect of each group policy; and
- specifies in respect of each policyholder of a separate policy:
  1. The name and address of the person (where available), and
  2. The amount of the gains to which the person has beneficial entitlement.

This return should be made in an electronic format which has been approved by the Revenue Commissioners and submitted to Financial Services (Insurance) Branch, Large Cases Division, Ballaugh House, 73-79 Lower Mount Street, Dublin 2,

9. Repayment of exit tax

9.1 Incapacitated Individuals

Exit tax must always be deducted from payments to policyholders with the exception of policyholders referred to in paragraph 5.2. The following persons may be entitled to repayment of exit tax provided the conditions outlined in the following sections of the Taxes Consolidation Act 1997, are satisfied: -

- a permanently incapacitated individual who is exempt from income tax under section 189 in respect of income arising from the investment of compensation payments in respect of personal injury claims;
- the trustees of a ‘qualifying trust’ within section 189A where the life policy is held as part of the trust fund (funds raised for the benefit of incapacitated individual(s) through public subscriptions) of the qualifying trust, provided that income from the trust or investment returns from investment of the trust funds is the sole or main income of the incapacitated individual;
- a thalidomide victim who is exempt from income tax under section 192 in respect of income arising from the investment of compensation payments

made by the Minister for Health and Children or by the foundation Hilfswerk für behinderte Kinder.

The life company or Courts Service must deduct the exit tax in the normal manner, but the individual or trust may be entitled to a repayment of the tax. The tax can be reclaimed, where appropriate, when the tax return is submitted to Revenue.

9.2 Correction of errors

S128 and Schedule 4 of Finance Act 2007 provide for repayment of exit tax which a life assurance company paid over, but within one year of the making of the return, subsequent events indicate that the exit tax was incorrectly deducted. In such situations the life assurance company may repay the exit tax to the policyholder. If such refunded amount (i) has already been paid to Revenue, the life assurance company adjusts the next return to Revenue to reclaim such refunded amounts from Revenue or (ii) has yet to be paid to Revenue, the life assurance company simply excludes such refunded amounts from the next return. In the majority of cases the life assurance companies may make the refunds without recourse to Revenue. However, in cases where there is an element of doubt as regards the entitlement to exemption, the details should be forwarded to Financial Services (Insurance) Branch, Large Cases Division, Ballaugh House, 73-79 Lower Mount Street, Dublin 2.

10. Declaration forms

The regime provides for a declaration procedure which, when complied with, may exempt certain policyholders from the deduction of tax on the occurrence of a chargeable event. Section 730E TCA 1997 provides for declarations for various categories of policyholders and also details the content of those declarations. Sample texts for declaration forms are contained in Appendix 4.

10.1 Declaration forms for resident entities

The Revenue Commissioners have authorised separate declaration forms for use by certain resident entities as follows:

- a life assurance company;
- an investment undertaking within the meaning of section 739B;
- a charity;
- a PRSA provider within the meaning of Chapter 2A of Part 30, TCA 1997;
- a credit union within the meaning of section 2 of the Credit Union Act 1997;
- a person entrusted to pay all premiums payable out of money under the control or subject to the order of any Court;
- a pension scheme being an exempt approved scheme within the meaning of section 774 TCA 1997 or a trust scheme to which section 784 or 785 TCA 1997 applies, or
- an approved retirement fund within the meaning of section 784A TCA 1997 or an approved minimum retirement fund within the meaning of section 784C TCA 1997.

As an alternative, a **composite declaration form** has also been authorised for inclusion in a life assurance company's proposal/application form, for use by (i) a pension scheme, (ii) approved retirement fund or approved minimum retirement fund, (iii) a company carrying on a life assurance business, (iv) an investment undertaking, (v) a charity, (vi) a PRSA provider, (vii) a credit union and (viii) the Courts Service.

Where the text of the resident entities composite declaration is included in the life assurance company's proposal form the following conditions apply: -

- the text should be located beside that part of the proposal form requiring signature;
- the proposal form should clearly identify the name and address of the person to whom the proposal/application form should be returned.

In order to make payments gross to the policyholder, the life assurance company must be in possession of the appropriate declaration form **before** a chargeable event occurs.

10.2 Declaration forms for non-resident policyholders

The Revenue Commissioners have authorised a single declaration form for use by a non-resident person.

10.2.1 When is a declaration to be completed?

This declaration may be completed at either the point of sale or the point of claim for policies taken out before the end of April 2006. For policies commenced on or after 1 May 2006 the declaration **must** be completed at the time of the inception of the policy.

Where it is intended to have the declaration completed at the point of sale the text of the declaration may be included in the life assurance company's proposal/application form, subject to the following conditions: -

- the text should be located beside that part of the proposal form requiring the policyholder's signature;
- the definitions of residence, ordinary residence and company residence must be included in the policy conditions issued by the life assurance company;
- the proposal form should clearly identify the name and address of the person to whom the proposal/application form should be returned; and
- the name of the party to whom any changes in the policyholder's residence status should be notified must be clearly stated in the body of the non-resident declaration form.

Where a stand-alone version of the declaration form is being completed by a policyholder it should contain the name and address of the policyholder. Where the declaration form is being incorporated into a proposal/application form that already includes the name and address of the policyholder, there is no need to include it again next to the declaration form.

10.2.2 Transitional arrangements

Finance Act 2006 amendments provide that an assurance company without a declaration of non-residence from a policyholder does not have to deduct exit tax in respect of the ending of an 8-year period for policies taken out before
1 May 2006, if it has reasonable grounds to assume that the policyholder is not resident in the State. However, if a declaration of non-residence is not available at the

time of a subsequent chargeable event, the exit tax in respect of the earlier event also become payable.

10.3 Foreign language declaration forms

The non-resident declaration may be translated into foreign languages on the understanding that the translations are done in good faith.

It should be noted that, in the context of the non-resident declaration, the terms "Ireland" or "Republic of Ireland" and the terms "not resident or ordinarily resident in Ireland" or "not resident or ordinarily resident in the Republic of Ireland", may be used in the text of the declaration.

10.4 To whom should a declaration be made?

Declarations should be made to the life assurance company or to any person who is authorised to act on its behalf and does so on a regular basis. Revenue does not accept that this requirement is met if, for example, the declaration is made to a person who is merely providing insurance advice or performing functions of an analogous nature.

The life assurance company or any person authorised to act on its behalf must ensure that the person responsible for making payments to policyholders has access to completed declaration forms and also has access to the most up-to-date information about the policyholder's circumstances (e.g. a charity's exemption, policyholder's residence status etc).

A person responsible for making payments to policyholders is required to deduct tax where a valid declaration has not been provided by the policyholder. In addition, if that person has information that reasonably suggests that a declaration that has been provided to them is not materially correct or that the 'declared' non-resident policyholder is resident or ordinarily resident in the State, tax should be deducted from the payment.

10.5 Who should sign a declaration?

Declaration forms must be signed by the policyholder or by the personal representative(s) signing on behalf of a deceased person.

10.5.1 Definition of a policyholder

"Policyholder" in relation to a life policy, at any time means-

a) where the rights conferred by the life policy are vested at that time in a person as beneficial owner, such a person,
b) where the rights conferred by the life policy are held at that time on trusts created by a person, such a person, and
c) where the rights conferred by the life policy are held at that time as security for a debt owed by a person, such a person.

10.5.2 Assignment of policies

It is the status of the transferor which determines whether tax is to be deducted:

- if the transferor is Irish resident, tax must be deducted.
- where the transferor is neither resident nor ordinarily resident, tax is not deducted provided a non-resident declaration has been completed by the transferor.

A declaration may also be signed by a person who holds a power of attorney from the policyholder and in such a case, a copy of the power of attorney must be furnished in support of the declaration. Where the policyholder is a company, the declaration must be signed by the company secretary or other authorised officer. In the case of an authorised officer, a copy of the resolution of authorisation should be obtained and retained by the person with responsibility for retaining declarations. The signature of the company secretary or authorised officer is required even in a case where the proposal form is executed under seal. Depending on how it is constituted, the administrator or trustee of a pension scheme must sign the declaration. In the case of an Approved Retirement Fund or Approved Minimum Retirement Fund, the qualifying fund manager or person beneficially entitled to the fund assets must sign the declaration.

In addition to the foregoing, the following are also permitted to sign a declaration: -

- the trustees or other authorised officer of a body of persons or trust established for charitable purposes only within the meaning of sections 207 and 208, in the case of a charity;
- the authorised officer, in the case of the Courts Service.

10.6 Form of declaration

A declaration must be made in writing by the policyholder to the life assurance company. In this regard, the life assurance company must be in possession of an **original** signed declaration. Faxed declarations are not acceptable and will not satisfy the declaration requirements provided for in the legislation.

Where a life assurance company accepts a completed proposal/application form in an electronic format from a policyholder and regards this electronic document as a legally binding contract, the Revenue authorised declaration, which is an integral part of the proposal/application form, will satisfy the requirements of the legislation, provided that the proposal/application form, including the declaration, is supported by electronic data which serves as a method of authenticating the purported identity of the policyholder. For this purpose, Revenue regard an electronic signature within the meaning of the Electronic Commerce Act 2000, as providing assurance as to a policyholder's identity.

10.7 How many declarations must a policyholder make?

10.7.1 Non-resident policyholders

The general rule is that a life assurance company must be in possession of a Revenue approved non-resident declaration in respect of **each policy** taken out by a policyholder in order to make a gross payment to a policyholder. The declaration can be provided at either the point of sale or the point of claim **(but see paragraphs 10.2.1 and 10.2.2).** Where the declaration is completed at the point of sale, this declaration will satisfy the declaration requirements on the basis that the policyholder must notify the insurer of any change in residence status. If the declaration is being completed at the point of claim, life assurance companies must not be in possession of any information to suggest that the policyholder is resident or ordinarily resident in

Ireland at the time of the chargeable event and the making of a payment to the policyholder.

Where a number of policies are taken out or cashed in at the same time by the same policyholder, one declaration will satisfy the policyholder's declaration obligations, provided that there is a documented link between all of those policies and the declaration. However, where the same policyholder takes out or cashes in a further policy/policies at a later date, a further declaration is required in respect of such policy/policies as outlined above.

Where a series of regular withdrawals is being set up or in the case of partial encashments, the declaration completed at first encashment will satisfy the declaration requirements for future encashments, provided that there is a documented link between the policies and the declaration, on the basis that the policyholder is obliged to advise the life assurance company of any change in residence status.

10.7.2 Resident Entities

The general rule is that a life assurance company must be in possession of a declaration from each resident entity in respect of **each policy** before making a gross payment to such policyholders. As previously stated these entities are (i) a company carrying on life business, (ii) an investment undertaking, (iii) a charity, (iv) a PRSA provider in respect of a life policy which is held by the PRSA provider in the course of the business of PRSA provider, (v) a credit union, (vi) the Courts Service, (vii) the National Asset Management Agency, (viii) an exempt approved pension scheme and (ix) an approved retirement fund or approved minimum retirement fund. Life assurance companies must be able to satisfy themselves as to the continued exempt status of the policyholder at the time of the chargeable event and the making of a payment to the policyholder.

Where a number of policies are taken out or cashed in at the same time by the same entity, one declaration will satisfy the policyholder's declaration obligations, provided there is a documented link between all those policies and the declaration. However,

where the same entity takes out or cashes in a further policy/policies at a later date, a further declaration is required in respect of such policy/policies as outlined above.

10.8 How long should declarations be retained?

Completed declaration forms must be retained by the life assurance company or by any person authorised to act on the company's behalf, and regularly does so, for a period of six years from the time the policyholder in respect of which a declaration was made ceases to be a policyholder.

10.9 Declaration requirement for branches situated outside Ireland

Where:

1) a life assurance company offers its policies through a branch established in an offshore state[5] and the commitment represented by that life policy is covered by that branch, or
2) where the life assurance company carries on business on a freedom of services basis as provided for in Regulation 50 of the European Communities (Life Assurance) Framework Regulations 1994 or under an equivalent arrangement in an EEA state and the policy holder resides in an EU or an EEA Member State other than Ireland ,

the requirement to obtain a declaration of non-residence from the policyholders may be waived where the life assurance company has obtained written approval from the Revenue Commissioners absolving it from the obligation to obtain a declaration of non-residence before making a payment to a policyholder without deduction of exit tax. However, such approval is subject to certain conditions as follows: -

- that the branch or company has a full legal as well as a tax presence in the local jurisdiction in which it is established;
- that the branch or company will not sell any products to Irish residents and will not offer any products in Ireland;
- that the branch or company will not knowingly distribute any material in connection with any products in Ireland;

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[5] An "offshore state" is a state, other than Ireland, which is a member of the European Union or is an EEA state. A non-EU EEA state is Iceland, Liechtenstien and Norway.

- that the branch or company should take all reasonable steps to satisfy itself that all policyholders of the branch are neither resident nor ordinarily resident in Ireland.

Applications for approval should be forwarded to Financial Services (Insurance) Branch, Large Cases Division, Ballaugh House, 73-79 Lower Mount Street, Dublin 2.

11. Revenue audit/inspection

The power to conduct an audit of a life assurance company derives from section 904C TCA 1997. This section empowers an authorised officer of the Revenue Commissioners to conduct an audit of the return of appropriate tax made by a life assurance company. The authorised officer may also, through the inspection of the records of life assurance companies:-

- examine the procedures put in place by the life assurance company to ensure compliance with all aspects of the law;
- examine all or a sample of the declarations made to the life assurance company;
- examine a sample of life assurance policies to ensure that the correct amount of appropriate tax has been deducted and returned to Revenue.

Records in this context include all records used in the business of a life assurance company and documents relevant to a policyholder’s circumstances (e.g. residence status etc.). It is the duty of the life assurance company or of any person acting on behalf of the company to ensure that original copies of declarations are safely held and are available for inspection.

Where the life assurance company or an employee of a life assurance company fails to comply with the requirements of the auditor they will be liable to penalties in accordance with section 904C TCA 1997.

A life assurance company is liable for the tax that should have been deducted, whether or not it was deducted by it, on the happening of a chargeable event. It should be noted that the provisions of the Taxes Act in relation to: -

- interest on late payments;
- penalties; and
- publication of the names of defaulters

will apply where there is a failure to deduct and remit appropriate tax.

12. General

Any questions on the content of these guidelines may be referred to Financial Services II Branch, Corporate Business and International Division, Stamping Building, Dublin Castle, Dublin 2 (Telephone 01-6748194; Fax no. 01-6795814).

These guidelines may be subject to amendment from time to time by the Revenue Commissioners.

Appendix 1

New Life Assurance Regime – Tax computations

(Tax Briefing - Issue 43 April 2001)

Introduction

Section 53 Finance Act 2000 introduced new Chapters 4 and 5 into Part 26 of the TCA 1997. Chapter 5 deals with the new exit-tax regime, the details of which have been outlined in the general guidelines. Chapter 4 (including changes made by Finance Act 2001) brings all life assurance companies within a Case I taxing regime, but keeps domestic life business within the I-E provisions to the extent that it relates to life policies written before 31 December 2000. This article sets out the Revenue view as to how the provisions of Chapter 4 will apply in practice as regards the format of the tax computation.

The position as set out in this article represents an amendment of the practice as outlined by ***Tax Briefing,*** Issue 24 (December 1996). The essential difference is that the article in ***Tax Briefing 24*** was concerned with Notional Case I, which is not a real Case I liability, but rather a factor which in the I-E system determines the level of restriction, if any, of management expenses. By way of a long-standing practice the Notional Case I figure was taken as the shareholders profits figure for the purpose of calculating 'pegged rate' relief. As we are now moving on to a full Case I system, regard must be had to what is the true profit after exclusion of amounts belonging to the policyholders. In the case of IFSC companies, there was some ambiguity as to the correct methodology for calculating Case I profits following the article in ***Tax Briefing 24***. As a matter of practice, IFSC companies were allowed to avail of a Notional Case I type calculation, however it should be noted that this practice no longer applies post 31 December 2000.

The majority of life companies will, post 1 January 2000, have a mixture of old and new life business and therefore the tax computation will be on the I-E basis for old business and on a Case I basis for new business. Ultimately, when the old business has become negligible, the new regime will be fully operational for all types of business.

New Basis Business only

Case I Computation - Proprietary Companies

- The basis of computation will be the transfer to the non-technical account.

- A proportion of the transfer to the fund for future appropriation (FFA) will be regarded as taxable shareholder profits with the balance treated as belonging to policyholders. The proportion of the transfer to FFA, which will be regarded as shareholder profits, will be that proportion which represents the upper limit under the company's constitution, which may be allocated to shareholders out of any surplus, but subject to a minimum or 'floor' of 5% of the transfer. In the case of negative transfers to the fund, the same proportion will be deductible but only to the extent that the cumulative transfers post 1 January 2001 exceed the value of the fund as at 31 December 2000.
- The annual transfer to the shareholder non-distributable reserve will be taxable - it is allocated fully to shareholders.
- Normal add-backs/deductions for tax purposes will be made.
- A deduction will be allowed in respect of Irish dividend income included in shareholder profits. This will be calculated as follows:

Total Irish Dividend Income 5 Profit on Activities (per non-technical a/c)
Total Technical Income

The following graphic illustrates the position:

	Transfer from technical account	X
Add	Taxation	X
		X
Add	Investment Income	X
	Profit on Ordinary Activities	X
Add	Transfer to fund for future appropriations	X
	Normal add-backs	X
Less	Normal deductions	X
	Capital Allowance	X
	Irish Dividend Income	X
	Taxable profits	X
	Tax payable	X
Less Credits	Tax deducted at source	X
	Double Tax Relief (net basis)	X
	Net Tax Liability	X

Notes

(i) Technical Income:

This is the gross income per the technical account comprised of the following.

- Earned Premiums net of reinsurance
- Investment Income
- Gains on Investments
- Any other technical income

(ii) The reference in the graphic to ‘investment income’ is a reference to the investment income taken directly to the non-technical account.

(iii) Total profits will now be assessed under Case I of Schedule D, except for the exceptional circumstances where shareholder assets are disposed of. In that case CGT will apply (e.g. disposal of assets which are not part of the Insurance funds).

Mutual Companies

- 5% of the transfer to the fund for future appropriations will be deemed to be profits chargeable under Case III at the trading CT rate.
- 5% of negative transfers from the FFA can be carried forward against the deemed profits of the following year or carried back against the deemed profits of the preceding year.
- In the case of a company trading in the State through a branch/agency, the Irish deemed profits will be:

$$\text{5\% of transfer} \times \frac{\text{Irish Mean Liabilities}}{\text{World-Wide Mean Liabilities}}$$

In view of the fact that the FFA is concerned solely with “with-profits” policies the numerator and denominator in the above fraction will exclude non “with-profits” business.

- Capital Allowances can be set against deemed profits under Case III.

Mix of New Basis and Old Basis Business

Case I Computation - Proprietary Companies

Case I - The total Case I will be calculated on the basis outlined above. However the computation will be adjusted to extract the profits attributable to the ‘old basis’ business. The methodology would be to attribute income and expenditure into each category to the extent that such income/expenditure is identifiable. Where income/expenditure cannot be the subject of specific attribution e.g. general expenses, capital allowances, then they will be allocated by reference to actuarial valuation. In practice each company will submit a computation with accompanying notes on specific items, as appropriate.

The following is an illustration of the position:

€millions	Old Basis	New Basis	DETE Total	Old Basis	New Basis	Accounts Total
Premiums	70	30	100	70	30	100
Investment Income	40	10	50	40	10	50
Expenses	(5)	(25)	(30)	(5)	(10)	(15)
Claims	(20)	(5)	(25)	(20)	(5)	(25)
Movement in Reserves	(65)	(20)	(85)	(65)	(20)	(85)
Surplus/Profit	20	(10)	10	20	5	25
DETE Transfer	25	(10)	15	N/A	N/A	N/A

Assume that the above example represents the position after a few years into the new regime by which time say shareholder tax is 12.5% and standard rate tax is 20%.
The company only writes Old Basis business and New Basis business i.e. no pensions or PHI etc. The totals for DETE and for the Accounts bases are from the audited respective annual returns.

It is assumed for simplicity that the only material difference between the two bases is in the treatment of acquisition expenses, these being deferred under the Accounts basis. We also ignore any FFA complications.

The following comments are made in respect of the allocation between Old Basis and New Basis:

- Premiums will be actual.
- Investment Income will be actual or mean fund based or a mixture of both.
- Expenses will be attributed using similar techniques as are currently used to attribute between pensions and life business.
- Claims will be actual.
- Movement in Reserves will be actual.
- Surplus or Profit will then fall out from these allocations.
- It would seem appropriate that the DETE Transfer would be allocated in proportion to Surplus, but restricting any negative transfer on the new basis to the level of negative surplus.

In deriving the tax computation we ignore second order adjustments and in particular we assume that the NCI would equal the DETE Transfer. Accordingly the tax computation would be as follows:

Old Basis: I - E = 35 of which 25 (NCI) is taxed at 12.5% and 10 is taxed at 20%.

New Basis: 5 is taxed at 12.5% (of course policy policyholders will have been debited with any exit taxes due).

Tax deducted at source - This will follow the relevant attribution of investment income.

Double Taxation Relief (DTR)

Again this will follow the relevant attribution of investment income and therefore the amounts of DTR available under each system should be readily available. For new basis business DTR will be available at the CT rate only in respect of the following:

(i) Investments attributable to new basis life business investments.

(ii) Investments attributable to Pension, Annuity, and PHI (if already Case I).

Any excess credit will be treated in accordance with the general rules applicable to DTR.

Pension (PAB) and General Annuity Business (GAB) Case IV

These are to be integrated into Case I going forward. The question of the allowability of pre-31 December 2000 losses arises. It is proposed to deal with these as follows:

- To allow for carry forward of PAB losses to the extent that they can be shown to relate to "unit-linked" business. In the case of non-linked business, losses will only be allowed forward to the extent that the valuation of assets in the Case IV tax computation is consistent with the valuation of liabilities in the tax computation. Any other PAB losses are seen as essentially due to timing and therefore adequately covered by the untaxed portion of the FFA.
- To allow carry forward of GAB losses as reduced by any Foreign Fund Relief previously allowed.

Permanent Health Insurance (PHI)

To allow any losses forward into the new regime, where PHI previously assessed under Case I of Schedule D.

Mutual Companies

- Deemed profits chargeable under Case III (as outlined above) to be reduced by the proportion of the FFA transfer attributable to 'old basis' business. In practice, each

company should submit notes outlining the methodology used for attribution between new and old business.

- PAB & GAB losses to be allowed on the same basis as for proprietary companies.
- 5% of negative transfers to the FFA will be deductible only to the extent that the cumulative transfer post 1 January 2001 exceeds the value of the fund as at 31 December 2000 and is so far as they relate to new basis business.

I-E Basis

This will continue for ‘old basis’ life business. The existing law and practice will continue to apply and in particular the Notional Case I will be calculated by reference to the position outlined in the ***Tax Briefing*** article in Issue 24. *(relevant extract from article is reproduced below)*

IFSC Companies

- The existing practice will cease on 31 December 2000.
- The new basis for calculation of Case I profits will be effective from 1 January 2001. A separate charge for shareholders investment income will no longer apply from 1 January 2001 and accordingly the losses forward will be available against all IFSC profits.
- IFSC and domestic business will continue to be treated as separate trades for tax purposes. The provisions of *Section 730A(3) TCA 1997* as they apply to IFSC companies are to be interpreted as preventing the set-off of IFSC losses against domestic business written post 1 January 2001, but not over-riding the legislation already in place as regards business written under the IFSC certificate.

Industrial Branch Business (IB)

All IB business falls within ‘old basis’ business including business written on or after 1 January 2001.

Appendix 2

Tax Implications for Life Assurance Companies
E.C. (Insurance Undertakings: Accounts) Regulation, 1996

(extract from Tax Briefing - Issue 24 December 1996)

Notional Case 1 (NCI) Computation

Historically the NCI computation is derived from the transfer made to shareholders from the Revenue account, regrossed to take account of tax deducted in arriving at the Revenue account surplus. The transfer is increased by any investment income or profits on disposals allocated directly to the shareholders in the Profit & Loss Account. The figure is then adjusted having regard to capital allowances due and normal disallowable expenditure (e.g. entertainment expenses) to give the final NCI profit for the year. The changes in the Insurance Accounts Directive that could impact on the existing method of NCI calculations are:

- deferral of acquisitions costs
- inclusion of realised and unrealised gains/losses on non-linked investments
- allocation of part of the Life Fund Investment Return to the shareholders

These changes have the effect of recognising non-distributable amounts as profits. As with embedded value accounting the result can be very different to the statutory result (as shown on form 28 of the Department of Enterprise and Employment (DEE) return), on which the NCI computation is historically based.

Having regard to the above and on the basis that the non-distributable part of the non-technical account is comprised of what are essentially unrealised profits it is confirmed that there will be no change for tax purposes to the starting point in the NCI computation. This confirmation ensures:

- Case 1 principles will continue to apply and therefore unrealised gains/losses will continue to be excluded from the computation;
- continuity of the existing practice that any surpluses carried forward unallocated are regarded as reserved for policyholders under section 35 CTA 1976;

- that companies wishing to publish embedded value accounting results will not suffer adversely for NCI purposes. This confirms the existing practice whereby the preparation of accounts on the embedded value basis is not prejudicial as regards the calculation of NCI;
- the Deferred Acquisitions Cost adjustment will not impact on the profit attributable to shareholders for NCI purposes.

As the methodology of accounting for the shareholders in Life Assurance Companies is still being developed, the changes outlined in this article may be subject to review in light of accounting developments at some future date. Any changes as a result of any future review will be applied from a specified future date.

Appendix 3

Calculating a gain

Section 730D TCA 1997 sets out the rules (including formulae) for calculating the amount of the gain to be taxed on the different types of chargeable events outlined in paragraph 5.1.

The following are some examples of how a gain is calculated: -

Example 1 – maturity or full surrender* in less than 8 years

Single premium policy, which matures or is fully surrendered after 6 years.
P = premiums (amount invested) €100,000
B = benefits (amount paid on maturity/surrender) €200,000

The gain is determined under section 730D(3)(a) by the formula (B – P):
Gain = (€200,000 - €100,000) = €100,000
Tax = €100,000 x 33% = €33,000

*** Where this occurs on the death of a policyholder and, assuming a unit-linked policy that pays out 101% of the bid value at the date of death, the policy is treated as having been surrendered the day before death. The additional 1% benefit is not subject to exit tax as it is a benefit that only becomes payable on death and accordingly had no value the day before death occurred.**

Example 2 – full assignment in less than 8 years

Regular premium policy, with annual payments of €20,000 is fully assigned after 5 years.
P = premiums (amount invested: €20,000 x 5) €100,000
V = value of the rights assigned €160,000

The gain is determined under section 730D(3)(b) by the formula (V – P):
Gain = (€160,000 - €100,000) = €60,000
Tax = €60,000 x 33% = €19,800

Example 3 – deemed disposal (an 8-year event or at 31/12/2000)

Single premium policy

P = premiums (amount invested) €100,000

V = value immediately before chargeable event €210,000

The gain is determimed under sections 730D(3)(da) and (e) by the formula V – P

Gain = €210,000 - €100,000 = €110,000

Tax = €110,000 x 33%* = €36,300

* 40% where the deemed disposal is at 31/12/00

Example 4 – maturity or full surrender following an 8-year event

Single premium policy, which matures or is fully surrendered after 12 years.
P = premiums (amount invested) €100,000
V = value after 8 years €210,000

B = value on maturity after 12 years €250,000
F = first tax €36,300

Step 1: The gain on the deemed disposal after 8 years is determined under section 730D(3)(da) by the formula (V – P).
Gain = (€210,000 - €100,000) = €110,000
Tax = €110,000 x 33% = €36,300

Step 2: The gain on the maturity/full surrender after 12 years is determined under section 730D(3)(a) by the formula (B – P), as for example 1. However, this is subject to section 730D(1A), as follows:

- The gain is calculated as if the 8-year event had not happened (section 730D(1A)(a)), and
- As the event after 12 years is not a partial disposal, the tax paid (and not refunded) on the 8-year event is added to the value of the rights under the policy (section 730D(1A)(b))

Gain = (B + F – P) = (€250,000 + €36,300 - €100,000) = €186, 300
Tax = €186,300 x 33% = €61479

Step 3: The tax paid on the deemed disposal after 8 years is available for offset in accordance with section 730F(1A) as follows:

A = first tax paid and not repaid €36,300
B = gain on the second event €186,300
C = gain on maturity of the policy €186,300

Proportion of first tax available for offset = A x B/C = €36,300 x €186,300/€186,300 = €36,300 x 1 = €36,300
Tax now payable = €61,479 – €36,300 = €25,179

Example 5 – partial surrender within an 8-year period

Single premium policy, which is partially surrendered after 5 years.
P = premiums (amount invested) €100,000
V = value of the policy before the partial surrender €200,000
B = benefits payable on the partial surrender €50,000

Step 1: The gain is determined under section 730D(3)(c) by the formula (B – (P x B)/V):
Gain = €50,000 – (€100,000 x €50,000/€200,000) = €25,000
Tax = €25,000 x 33% = €8,250

Step 2: The premiums used in calculating gains on future chargeable events must be adjusted to take account of the amount used in calculating the gain above. Section 730D(4)(a) provides that the allowable premiums is the lesser of B and (P x B)/V:
B = €50,000
(P x B)/V = €100,000 x €50,000/€200,000 = €25,000

The allowable premiums for future gains = €75,000 (i.e. the €100,000 originally invested less the €25,000 used in calculating the gain on the partial surrender at step 1).

Example 6 – maturity following a partial surrender

The policy in example 5 matures 2 years later.

B = amount payable on encashment €220,000
P = allowable premiums (calculated at step 2 in example 5) €75,000

The gain is determined under section 730D(3)(a) by the formula (B – P).
Gain = (€220,000 - €75,000) = €145,000
Tax = €145,000 x 33% = €47,850

Example 7 – partial disposal following an 8-year event

Single premium policy, which is partially surrendered after 12 years.
P = premiums (amount invested) €100,000
V = value after 8 years €210,000

Step 1: The gain on the deemed disposal after 8 years is determined under section 730D(3)(da) by the formula (V – P):
Gain = (€210,000 - €100,000) = €110,000
Tax = €110,000 x 33% = €36,300

Step 2: The gain on the partial surrender after 12 years is determined under section 730D(3)(c) by the formula (B – (P x B)/V), as for example 5. However, this is subject to section 730D(1A), as follows:

- The gain is calculated as if the 8-year event had not happened (section 730D(1A)(a)), and
- As the event after 12 years is a partial disposal, the first tax paid on the 8-year event is deducted from the amount of the premiums taken into account on the part surrender of the policy (section 730D(1A)(c)).

B = value of the rights or benefits €125,000
F = first tax paid that has not been refunded €36,300
V = value of the policy before the partial surrender €250,000

Gain = (B – ((P – F) x B)/V) = (€125,000 – ((€100,000 – €36,300) x €125,000)/€250,000) = €93,150
Tax = €93,150 x 33% = €30,740

Step 3: The tax paid on the deemed disposal after 8 years is available for offset in accordance with section 730F(1A) as follows:

A = first tax paid and not repaid €36,300
B = gain on the second event €93,150
C = gain on maturity of the policy €186,300*

*If the policy had matured, the gain would be (B + F – P) = €250,000 + €36,300 - €100,000 = €186,300 (see step 2 of example 4).

Proportion of first tax available for offset = A x B/C = €36,300 x €93,150/€186,300 = €36,300 x ½ = €18150
Tax now payable = €30740 – €18150 = €12590

Example 8 – maturity following a partial surrender following an 8-year event

The policy in example 7 matures 3 years later.
B = amount payable on encashment €300,000

Allowable premiums

The premiums allowable in calculating the gain on this event take account of the amount previously used in calculating gains.

- €50,000 of the €100,000 originally invested was used in calculating the gain on the partial surrender (step 2 in example 5), so the allowable premiums for this calculation = €50,000.
- Note also that, while the premiums of €100,000 were taken into account in determining the gain on the deemed disposal after 8 years (step 1 in example 7), this amount is not deducted from the allowable premiums figure. (This is because the premium in a deemed disposal is not repaid – see definition of "P" in section 730D(3).)

Step 1: The gain on the maturity of the policy is determined under section 730D(3)(a) by the formula (B – P), but this is subject to section 730D(1A) as follows:

- The gain is calculated as if the 8-year event had not happened (section 730D(1A)(a)), and
- As this event is not a partial disposal, the tax paid on the 8-year event (and that hasn't been repaid) is added to the value of the rights under the policy (section 730D(1A)(b))

Therefore, the gain = (B + F – P), where

B = amount payable on encashment	€300,000
F = first tax paid and not repaid = (€36,300 – €18,150)	€18,150
P = allowable premiums	€50,000

Gain = (€300,000 + €18,150 - €50,000) = €268,150

Tax = €268,150 x 33% = €88489

<u>Step 2</u>: The tax paid on the deemed disposal after 8 years that has not already been credited is available for offset in accordance with section 730F(1A) as follows:

A = first tax paid and not repaid	€18,150
B = gain on this event	€268,150
C = gain on maturity of the policy	€268,150

Proportion of first tax available for offset = A x B/C = €18,150 x €268,150/€268,150 = €18,150 x 1 = €18,150

Tax now payable = €88,489 – €18,150 = €70,339

Example 9 – maturity after more than one 8-year event

Single premium policy is cashed in after 20 years.

P = premiums (amount invested)	€100,000
B = benefits (amount payable on maturity)	€400,000

<u>Step 1</u>: The gain on the deemed disposal after 8 years is calculated in accordance with section 730D(3)(da) by the formula (V – P):

Let V = value after 8 years €200,000

Gain = (€200,000 - €100,000) = €100,000

Tax = €100,000 x 33% = €33,000

<u>Step 2</u>: There is a second deemed disposal (8-year event) after 16 years. Again, this is calculated by the formula (V – P) in accordance with section 730D(3)(da), as for step 1. However, as this is an event that occurs subsequent to a deemed disposal, section 730D(1A) comes into play to provide that:

- The gain is calculated as if the first 8-year event had not happened (section 730D(1A)(a)), and

– As the second event is not a partial disposal, the tax paid on the first 8-year event is added to the value of the rights under the policy (section 730D(1A)(b))

Let V = value after 16 years €300,000
F = first tax paid that has not been refunded €33,000

Gain = (V + F – P) = (€300,000 + €33,000 – €100,000) = €233,000
Tax = €233,000 x 33% = €76,890

Step 3: The tax paid on the deemed disposal after 8 years is available for offset in accordance with section 730F(1A) as follows:

A = first tax paid and not repaid €33,000
B = gain on the second event €233,000
C = gain on maturity of the policy €233,000*

*If the policy had matured, the gain would be (B + F – P) = €300,000 + €33,000 - €100,000 = €233,000 (see step 2 of example 4).

Proportion of first tax available for offset = A x B/C = €33,000 x €233,000/€233,000 = €33,000 x 1 = €33,000
Tax now payable = €76,890 – €33,000 = €43,890

Step 4: The gain on the maturity of the policy is determined under section 730D(3)(a) by the formula (B – P), but this is subject to section 730D(1A) as follows:

– The gain is calculated as if the first and second deemed disposal (i.e. after the 8 and 16 years at steps 1 and 2 above) had not happened (section 730D(1A)(a)), and
– As this event is not a partial disposal the tax paid, and not repaid, on the first and second deemed disposals is added to the value of the rights under the policy (section 730D(1A)(b))

Therefore, the gain = (B + F – P), where
B = amount payable on encashment €400,000
F = first and second tax paid and not repaid = €76,890
P = allowable premiums €100,000

Gain = €400,000 + €76,890 – €100,000 = €376,890
Tax = €376,890 x 33% = €124,373

Step 5: The tax paid on the first and second deemed disposals after 8 and 16 years is available for offset in accordance with section 730F(1A) as follows:

A = first and second tax paid and not repaid (€33,000 & €43,890) €76,890
B = gain on the third event €376,890
C = gain on maturity of the policy €376,890

Proportion of first tax available for offset = A x B/C = €76,890 x €376,890/€376,890 = €76,890 x 1 = €76,890Tax now payable = €124,373 - €76,890 = €47483

Example 10 – partial assignment in less than 8 years

Single premium policy, which is partially assigned after 5 years

P = premiums (amount invested) €100,000

V = value before partial assignment €200,000

A – value of part of rights assigned €50,000

The gain is determined under section 730D(3)(d) by the formula A – (P x A)/V

Gain = €50,000 – (€100,000 x €50,000/€200,000) = €25,000

Tax = €25,000 x 33% = €8,250

Appendix 4

Declaration of Residence outside Ireland

Policyholders resident outside Ireland are required by the Irish Revenue Commissioners to make the following declaration, which is in a format authorised by them, in order to receive payments without deduction of Irish tax.

I/we* declare that

- I/we* have read the explanation of the terms detailed in the note entitled "Residence Definitions" attached;
- I am/we are/the company is* the policyholder in respect of which this declaration is being made;
- I am/we are/the company is* not resident or ordinarily resident in Ireland.

If you are making this declaration whilst in the process of setting up your policy, setting up a series of regular withdrawals or making a first partial encashment:

- I/we/the company* hereby undertake to inform the insurance company of any change in my/our/the company's* country of residence during the life of the policy.

*Delete as appropriate.

Name and principal place of residence/address of Policyholder:______________________

____

____

Signature of Policyholder or Authorised Signatory:_______________________________

Capacity in which declaration is made:

____**Date**:____________

Joint Policyholders:

Names & Principal places of residence **Signatures**

________________________________ ____________________________

________________________________ ____________________________

________________________________ ____________________________

Notes

1. This form may be subject to inspection by the Irish Revenue Commissioners. It is an offence under Irish law to make a false declaration.

2. This declaration must be signed by policyholders who are neither resident nor ordinarily resident in Ireland or by personal representatives signing on behalf of deceased persons. Where the policyholder is a company, the declaration must be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the policyholder. A copy of the power of attorney should be furnished with this declaration.

Residence Definitions

Residence - Individual

An individual will be regarded as being resident in Ireland for a tax year if s/he:

- spends 183 days or more in the State in that tax year; or

- has a combined presence of 280 days in the State, taking into account the number of days spent in the State in that tax year together with the number of days spent in the State in the preceding year.

Presence in a tax year by an individual of not more than 30 days in the State will not be reckoned for the purpose of applying the two-year test. Presence in the State for a day means the personal presence of an individual at any time during that day.

Ordinary Residence -Individual

The term “ordinary residence” as distinct from “residence” relates to a person’s normal pattern of life and denotes residence in a place with some degree of continuity. An individual who has been resident in the State for three consecutive tax years becomes ordinarily resident with effect from the commencement of the fourth tax year. An individual who has been ordinarily resident in the State ceases to be ordinarily resident at the end of the third consecutive tax year in which s/he is not resident. Thus, an individual who is resident and ordinarily resident in the State in 2004 and departs from the State in that year will remain ordinarily resident up to the end of the tax year in 2007.

Residence - Company

A company which has its central management and control in Ireland (the State) is resident in the State irrespective of where it is incorporated. A company which does not have its central management and control in Ireland but which is incorporated in the State is resident in the State except where:-

- the company or a related company carries on a trade in the State, and either the company is ultimately controlled by persons resident in EU Member States or countries with which the Republic of Ireland has a double taxation treaty, or the company or a related company are quoted companies on a recognised Stock Exchange in the EU or in a tax treaty country.
  or
- the company is regarded as not resident in the State under a double taxation treaty between the Republic of Ireland and another country.

It should be noted that the determination of a company’s residence for tax purposes can be complex in certain cases and declarants are referred to the specific legislative provisions which are contained in section 23A Taxes Consolidation Act, 1997.

Company Carrying on Life Business

[6]Declaration referred to in Section 730D(2)(b)(i) Taxes Consolidation Act, 1997

Name of Policyholder:____

Address of Policyholder:____

____

[7]Tax Reference Number of Policyholder:____

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is a company carrying on life business.
- I undertake, that should the policyholder cease to be a company carrying on life business, I will notify the assurance company accordingly.

[8]Signature of Declarer or Authorised Signatory:____

Capacity in which declaration is made:____

Date:________________

Notes

[6] This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.
[7] Tax reference number in relation to a person, has the meaning assigned to it by section 885 TCA 1997 in relation to a "specified person" within the meaning of that section.
[8] This declaration must be signed by the policyholder. Where the policyholder is a company, it must be signed by the company secretary or other such authorised officer. It may also be signed by a person who holds power of attorney from the company. If the latter, a copy of the power of attorney should be furnished with this declaration.

Investment Undertaking

[1]Declaration referred to in Section 730D(2)(b)(ii) Taxes Consolidation Act, 1997

Name of Policyholder:____

Address of Policyholder:____

____

[2]Tax Reference Number of Policyholder:____

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is an investment undertaking (within the meaning of section 739B TCA 1997).
- I undertake, that should the policyholder cease to be a person referred to in subparagraph (ii) of section 730D(2)(b) TCA 1997, I will notify the assurance company accordingly.

[3]Signature of Policyholder/Authorised Signatory:____

Capacity in which declaration is made:____

Date: _________________

Notes

Charity

[1]Declaration referred to in Section 730D(2)(b)(iii) Taxes Consolidation Act, 1997

[1] This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

[2] Tax reference number in relation to a person, has the meaning assigned to it by section 885 TCA 1997 in relation to a "specified person" within the meaning of that section.

[3] This declaration must be signed by the policyholder. Where the policyholder is a company, it must be signed by the company secretary or other such authorised officer. It may also be signed by a person who holds power of attorney from the company. If the latter, a copy of the power of attorney should be furnished with this declaration.

Name of Policyholder: ____

Address of Policyholder: ____

____

[2]**Charity Exemption Number (CHY):** ___________________________________

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is a person who is entitled to exemption:
  - from income tax under Schedule D by virtue of section 207(1)(b) TCA 1997 or
  - from corporation tax by virtue of section 207(1)(b) TCA 1997 as it applies for the purpose of corporation tax under section 76(6) TCA 1997.
- I also declare that at the time of making this declaration, the policies in respect of which this declaration is made are held for charitable purposes only, and
  - form part of the assets of a body of persons or trust treated by the Revenue Commissioners as a body or trust established for charitable purposes only, or
  - are, according to the rules or regulations established by statute, charter, decree, deed of trust or will, held for charitable purposes only and are so treated by the Revenue Commissioners.
- I undertake, that should the policyholder cease to be a person referred to in subparagraph (iii) of section 730D(2)(b) TCA 1997, I will notify the assurance company accordingly.

[3]**Signature of Policyholder/Authorised Signatory:**
____

Capacity in which declaration is made: ____________________________________

Date: ________________

Notes

[1]Declaration referred to in Section 730D(2)(b)
Taxes Consolidation Act, 1997

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[1] This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

[2] For tax reference number, quote the Charity Exemption Number (CHY) as issued by Revenue.

[3] This declaration must be signed by the trustees or other authorised officer of a body of persons or trust established for charitable purposes only within the meaning of section 207 and 208 TCA 1997. Where a charity is a company, the declaration should be signed by the company secretary or other such authorised officer. It may also be signed by a person who holds power of attorney from the charity. If the latter, a copy of the power of attorney should be furnished with this declaration.

[1] This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

Name and address of Policyholder:

____

____

____

[2]**Tax Reference Number of Policyholder**: ____

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is a person referred to in Section 730D(2)(b) of the Taxes Consolidation Act, 1997, being a person who is: (please tick √ as appropriate)

(i) a company carrying on life business;	
(ii) an investment undertaking (within the meaning of section 739B TCA 1997);	
(iii) a person who is entitled to exemption:	
• from income tax under Schedule D by virtue of section 207(1)(b) TCA 1997 or,	
• from corporation tax by virtue of section 207(1)(b) TCA 1997 as it applies for the purpose of corporation tax under section 76(6) TCA 1997.	
(iv) a PRSA provider (within the meaning of Chapter 2A, Part 30 TCA 1997)	
(v) a credit union (within the meaning of section 2 of the Credit Union Act 1997)	
(vi) a person entrusted to pay all premiums payable in respect of the life policy, out of money under the control or subject to the order of any Court.	
(vii) a pension scheme;	
(viii) approved retirement fund or approved minimum retirement fund(within the meaning of sections 784A AND 784C of the TCA 1997 respectively;	

- I undertake, that should the policyholder cease to be a person referred to in subparagraphs (i) to (ix) of section 730D(2)(b) TCA 1997, the assurance company will be advised accordingly.

Additional requirements where the declaration is completed on behalf of a Charity

- I also declare that at the time of making this declaration, the policies in respect of which this declaration is made are held for charitable purposes only, and
  - form part of the assets of a body of persons or trust treated by the Revenue Commissioners as a body or trust established for charitable purposes only, or
  - are, according to the rules or regulations established by statute, charter, decree, deed of trust or will, held for charitable purposes only and are so treated by the Revenue Commissioners.

[3]**Signature of Policyholder or Authorised Signatory**: ____________________________________

Capacity in which declaration is made: _______________________________________

[2] Tax reference number in relation to a person, has the meaning assigned to it by section 885 TCA 1997 in relation to a "specified person" within the meaning of that section. In the case of a charity quote the Charity Exemption Number (CHY) as issued by Revenue.

[3] This declaration must be signed by the policyholder. Where the policyholder is a company, it must be signed by the company secretary or such other authorised officer. It may also be signed by a person who holds power of attorney from the policyholder. A copy of the power of attorney should be furnished with this declaration. In the case of a charity, the declaration must be signed by the trustees or other authorised officer of a body of persons or trust established for charitable purposes only within the meaning of section 207 and 208 TCA 1997.

PRSA Provider

Declaration referred to in Section 730D(2)(b)(iv) Taxes Consolidation Act, 1997

Name of Policyholder:____

Address of Policyholder:______________________________________

____

Tax Reference Number of Policyholder:____

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is a PRSA provider (within the meaning of Chapter 2A of Part 30, TCA 1997) and that the policy is held by the PRSA provider in the course of the business of PRSA provider.
- I undertake, that should the policyholder cease to be a person referred to in subparagraph (iv) of section 730D(2)(b) TCA 1997, I will notify the assurance company accordingly.

Signature of Policyholder/Authorised
Signatory:____

Capacity in which declaration is
made:____

Date:________________

Notes

1) This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an office to make a false declaration.
2) Tax reference number in relation to a person, has the meaning assigned to it by section 885 TCA 1997 in relation to a "specified person" within the meaning of that section.
3) This declaration must be signed by the policyholder. Where the policyholder is a company, it must be signed by the company secretary or other such authorised officer. It may also be signed by a person who holds power of attorney from the company. If the latter, a copy of the power of attorney should be furnished with this declaration.

Credit Union

Declaration referred to in Section 730D(2)(b)(v) Taxes Consolidation Act, 1997

Name of Policyholder:____

Address of Policyholder:____

____

Tax Reference Number of Policyholder:____
(Tax reference number in relation to a person, has the meaning assigned to it by section 885 TCA 1997 in relation to a "specified person" within the meaning of that section.)

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is a credit union within the meaning of section 2 of the Credit Union Act 1997.
- I undertake, that should the policyholder cease to be a person referred to in subparagraph (v) of section 730D(2)(b) TCA 1997, I will notify the assurance company accordingly.

Signature of Policyholder/Authorised Signatory:____

Capacity in which declaration is made:____

Date: _________________

Notes

1. This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

2. This declaration must be signed by the company secretary or other such authorised officer. It may also be signed by a person who holds power of attorney from the credit union. If the latter, a copy of the power of attorney should be furnished with this declaration.

Courts Service

Declaration referred to in Section 730D(2)(b)(vi) Taxes Consolidation Act, 1997

Name of Policyholder:____

Address of Policyholder:____

____

Tax Reference Number of Policyholder:____

Tax reference number in relation to a person, has the meaning assigned to it by section 885 TCA 1997 in relation to a "specified person" within the meaning of that section.

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is entrusted to pay all premiums payable in respect of the life policy, out of money under the control or subject to the order of any Court.
- I undertake, that should the policyholder cease to be a person referred to in subparagraph (vi) of section 730D(2)(b) TCA 1997, I will notify the assurance company accordingly.

Signature of Policyholder/Authorised Signatory:____

Capacity in which declaration is made:____

Date: ________________

Notes

1. This is a form authorised by Revenue. It may be subject to inspection by Revenue. It is an offence to make a false declaration.

2. This declaration must be signed by an authorised officer of the Courts Service.

Approved Retirement Fund
Approved Minimum Retirement Fund

Declaration referred to in Section 730D(2)(b)(ix) Taxes Consolidation Act 1997

Name of Policyholder:____

Name of beneficial owner (within the meaning of section730E(1)(a) TCA 1997):____

Address of beneficial owner:____

____

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is an approved retirement fund or an approved minimum retirement fund.
- I undertake that, should the policyholder cease to be an approved retirement fund or an approved minimum retirement fund, I will notify the assurance company accordingly.

Signature of Declarer
or Authorised Signatory:___________________________________

Capacity in which
declaration is made:_______________________________________

Date:_______________

IMPORTANT NOTES

1. This is a form authorised by Revenue and it may be subject to inspection by them. It is an offence to make a false declaration.
2. An approved retirement fund and an approved minimum retirement fund is a fund within the meaning of sections 784A and 784C of the TCA 1997 respectively.
3. This declaration must be signed by a qualifying fund manager of an approved retirement fund/an approved minimum retirement fund. In the case of a corporate manager, the declaration must be signed by the company secretary or such other authorised officer.This form may also be signed by a person who holds a power of attorney from the declarant.A copy of the power of attorney documentation should be retained with this form.

Pension Scheme

Declaration for the purposes of the 730D(2)(b)(viii) Taxes Consolidation Act 1997

Name of pension scheme:____

Address of pension scheme:____

____

IrishTax Reference Number
of Pension scheme:_______________________________________

- I declare that the information contained in this declaration is true and correct.
- I declare that the policyholder, at the time the declaration is made, is a pension scheme.
- I undertake that, should the policyholder cease to be a pension scheme, I will notify the assurance company accordingly.

Signature of Declarer
or Authorised Signatory:_____________________________________

Capacity in which
declaration is made:____

Date:________________

IMPORTANT NOTES

1. This is a form authorised by Revenue and it may be subject to inspection by them. It is an offence to make a false declaration.
2. A pension scheme means an exempt approved scheme within the meaning of Section 774 of the TCA 1997 or a trust scheme to which Sections 784 or 785 of the TCA 1997 applies.
3. Tax reference number has the same meaning as in Section 891B of the TCA 1997.
4. This declaration must be signed by (i) the administrator (within the meaning of Section 770 of the TCA 1997) in the case of an exempt approved scheme or (ii) the trustees in the case of a trust scheme or (iii) a person who holds power of attorney from the pension scheme (in which case a copy of the power of attorney should be furnished to support this declaration).