

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2018 edition**

### **Part 26 Life Assurance Companies**

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Part 26 Life Assurance Companies

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## PART 26 LIFE ASSURANCE COMPANIES

### CHAPTER 1 *General provisions*

#### Overview

This Chapter sets out rules for the taxation of life assurance companies. While life assurance companies are liable to corporation tax, special rules apply to the computation of their assessable profits. Whereas this Chapter contains the legislation relating to these special rules, certain matters are to an extent governed by longstanding practice and together these constitute the taxation of life assurance companies under the I – E basis – that is Income less Expenses. In respect of life assurance business contracted for, on or after 1 January 2001, this tax regime of life assurance companies and their policyholders has been replaced by a new regime – see *Chapters 4* and *5* of this Part.

#### 706 Interpretation and general (*Part 26*)

##### Summary

This section is an interpretation section for *Part 26 (Chapters 1 to 6)* in that it sets out definitions of terms used throughout the Part. It also provides for the manner of apportioning or allocating premiums, investment income, expenses and liabilities between the 3 classes of life assurance business (that is, general annuity business, pension business and other life assurance business) and the manner of apportioning deductions (for example, group relief) which are deductible from the overall profits of a life assurance company. (For accounting periods ending in 2002 and prior years, special investment business was treated as a business separate from other life assurance business.)

##### Details

The main definitions are as follows —

“assurance company” means —

- (a) an assurance company within the meaning of section 3 of the Insurance Act, 1936, or
- (b) a person that holds an authorisation within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994).

“excluded annuity business” is defined as annuity business (other than the types of annuity referred to in *paragraph (a)* of the definition) which arises from new contracts (for the granting of an annuity on human life) made or changed on or after 6 May, 1986 which fail to satisfy any one or more of the criteria set out in *paragraph (b)* of the definition. (I)

The two types of annuity business which are not to be regarded as excluded annuity business are — (I)(a)

- pension business: in effect, business arising from the provision of retirement annuities for Irish resident individuals or exempt approved pension schemes and superannuation funds set up for the benefit of such individuals; and
- foreign annuity business of an Irish life assurance company.

The criteria which the annuity business entered into on or after 6 May, 1986, must fail to comply with in order to be “excluded annuity business” are — (1)(b)

- the annuity must be a genuine life annuity payable until the end of a human life or for a period ascertainable only by reference to the end of a human life. An annuity would normally end on the death of the annuitant or after a prescribed time following that death;
- the annuity secured must not be capable of being reduced except on the death of the annuitant (for example, it would be permissible for a smaller annuity to be paid to a survivor of two joint annuitants) or by reference to a *bona fide* index (where, for example, the amount of the annuity is index-linked and there is a decrease in the index for a particular period). This means that contracts which provide for periodic returns of capital in the form of a large “annuity” for one or more years followed by a smaller annuity for the rest of the annuitant’s life is treated as excluded annuity business; and
- there must be a provision in the policy document preventing the company from agreeing to commute the annuity in whole or part.

“general annuity business” means any annuity business other than excluded annuity business and pension business.

“life business” includes “life assurance business” (ordinary branch) and “industrial assurance business” (industrial branch) which have the meanings assigned to them in section 1 of the Insurance Act, 1936. Life assurance business is defined in that section of that Act as the business of effecting contracts of assurance on human life, but excludes industrial assurance. Industrial assurance means the business of effecting assurances on human life where the premiums are payable at intervals of less than two months and are collected by means of collectors.

Where it is necessary to consider each of the constituent parts of the business of a life assurance company (viz. its general annuity business, its pension business and its other life business) the division is to be effected by attributing to pension business the premiums, other receipts, expenses and liabilities in respect of pension contracts (as set out in **subsection (3)**) and by attributing to general annuity business all other annuity business except excluded annuity business. The balance of the company’s life business is attributed to such business other than its general annuity and pension business.

The premiums which are to be attributed to pension business are all premiums (which includes any consideration for an annuity) payable under contracts approved under **sections 784 and 785** to provide for retirement annuities or related benefits, payable under contracts relating to exempt approved pensions schemes within **Chapter 1 of Part 30** or payable under a PRSA contract or a contract with a PRSA provider – see **Chapter 2 of Part 30**.

Deductions (for example, group relief) that are deductible from the overall profits of a life assurance company are to be treated as deductible from the profits of each class of business in proportion to the relative contribution of that class of business to the overall profits of the company. (The various classes of business for this purpose are pension business, general annuity business, and other life assurance business). (4)

## 707 Management expenses

### Summary

Relief is available to life assurance companies in respect of management expenses where the company is not charged to tax under Case I of Schedule D but rather under what is known as the Income less Expenses basis (I–E). The relief is subject to the limitation that

the tax borne after the allowance of management expenses must not be less than would have been payable by the company if the profits of the company had been charged to tax under Case I of Schedule D like other trading companies.

(All life assurance business commenced on or after 1 January 2001 is taxed under Case I of Schedule D – see *section 730A*.)

### Details

In computing, otherwise than on a “Case I” basis, the profits of a company carrying on a life business, *section 83* (expenses of management of investment companies) applies to give relief in respect of management expenses incurred. However, any repayments, refunds, reinsurance commissions and fines, fees and profits from reversions must be netted off against the management expenses to arrive at the net amount eligible for relief. In calculating profits from reversions the company may set off any unrelieved losses from reversions in previous periods. The amount of the management expenses is not reduced by the amount of any income exempt from tax unless the income concerned (other than receipts from premiums) would be included in a Case I computation, and that reduction is not regarded as reducing acquisition expenses, within the meaning of *section 708*. (1)

The different classes of life assurance business (namely, pension business, general annuity business and other life assurance business) are treated as separate businesses in their own right for the purposes of the set off of management expenses. For example, excess pension business management expenses cannot be deducted from the income and gains of basic life assurance business but must be carried forward to subsequent accounting periods and set off against pension business income and gains in those periods. This ring-fencing of management expenses does not apply to any expenses carried forward from accounting periods ending before 27 May, 1986. In the case of such expenses, the company can elect to set them off, to whatever extent it wishes, against the profits of any one or more of the four classes of business. (2)

The deduction for management expenses cannot result in the corporation tax on a life assurance company’s life business for any accounting period being reduced below what it would have been had it been taxed at the standard rate of corporation tax under Case I of Schedule D (that is, a notional Case I computation is required for comparison purposes). Any management expenses unrelieved as a result of this comparison can be carried forward for set off in subsequent accounting periods. This ensures that the minimum tax liability of such companies cannot fall below the amount chargeable on shareholders’ profits. (4)

If a loss arises to the assurance company, investment income (including franked investment income of the life assurance fund) is included as trading income. A deduction may be claimed under Case I in respect of the part of the profits allocated to policyholders. Franked investment income is taken into account when calculating the notional Case I tax but to the extent that such income is reserved for policyholders it is not charged to tax. (5)(a)(iv)

The fact that management expenses are deductible under *section 83* does not preclude them from being allowed in the notional Case I computation under *subsection (4)*. (5)(b)

### 708 Acquisition expenses

#### Summary

This section restricts the relief for expenses of life assurance companies in acquiring new business (for example, brokers’ commissions). The restriction involves the spreading of

those expenses over 7 years. One-seventh of the acquisition expenses incurred in a year are allowed in that year and each of the following 6 years.

### Details

A life assurance company's acquisition expenses (including commissions, but excluding a payment of rent that qualifies for double rent allowance under *section 324, 333 or 345*) for a period are that part of its management expenses which is spent on acquiring basic life assurance business (that is, excluding pension business and general annuity business) as reduced by — (1)

- any part of such management expenses that has been repaid or refunded in the period, and
- basic life assurance business reinsurance commissions.

Acquisition expenses in respect of policies issued before 1 April, 1992 are excluded from the spreading provisions but not to the extent that they relate to variations in policies or to payments of increased premiums secured after 1 April, 1992. (2) & (3)

Management expenses only qualify as acquisition expenses of a period if — (4)

- they have been disbursed in the period (ignoring management expenses brought forward and treated as disbursed in that period), and
- they would otherwise be deductible as management expenses in the period.

The deduction in respect of acquisition expenses for tax purposes is spread over 7 years. While, in general, one-seventh of the expenses is deductible in each of 7 accounting periods provision is made for reducing the fraction allowed in an accounting period of less than 12 months and for a compensatory adjustment to the final instalment of the relief in respect of the expenses. (5)–(7)

### 709 Companies carrying on life business

A company's life business is treated for corporation tax purposes as a business separate from any other class of business carried on by the company. In quantifying whether and to what extent a company has incurred a loss on its life business, the investment income of its life assurance fund (including franked investment income) must be taken into account.

### 710 Profits of life business

#### Summary

This section provides for certain adjustments to the normal Case I of Schedule D computational rules in the case of the life business of an assurance company and that life assurance companies trading from the International Financial Services Centre (IFSC) are to be charged to tax under that Case of that Schedule i.e. the I–E basis applicable to domestic life companies, in respect of policies commenced prior to 1 January 2001, does not apply to IFSC companies. It also provides the taxation regime for policies of assurance and annuity contracts (commenced prior to 1 January 2001) of an IFSC life assurance company in situations where such policies or contracts mature or are encashed in the hands of an individual who is at that time resident or ordinarily resident in the State. (The profits from life business of both non-IFSC and IFSC companies, in respect of policies commenced on or after 1 January 2001, are taxed under Case I of Schedule D – see *section 730A*. The investment returns of policyholders are liable to an exit tax – see *Chapter 5* of this Part).

## Details

When computing under Case I of Schedule D the profits of an assurance company in respect of its life business, a deduction can be claimed for the part of the profits allocated to or reserved for policyholders. However, if any part of the profits which have been reserved for policyholders cease to be so reserved without being allocated to the policyholders then it must be included in the profits for the period in which they cease to be so reserved. (1)(a) & (1)(b)

A deduction or credit is not available in respect of any foreign tax suffered on income that forms part of its ‘policy holder business’ which is not chargeable to Corporation Tax in the hands of the life assurance company under **subsection (1)(a)**. (1)(c)

Where a company’s business consisted solely of foreign life assurance business (as defined in **section 451**) on 31 December 2000, as is the case of life assurance companies trading from the IFSC with non-resident customers, then — (2)(a)

- the company’s profits are chargeable to tax under Case I of Schedule D; and
- a deduction is not allowed in respect of amounts reserved for policyholders.

Although the profits of life assurance companies trading from the IFSC are eligible for the 10 per cent rate of corporation tax only until 31 December 2005 or, in certain cases, 31 December, 2002 the provisions of **subsection (2)(a)** continue to apply after the expiry date of entitlement to the 10 per cent rate. The continuation of **subsection (2)(a)** is preserved by effectively ignoring the deletion of **section 446** and the time limit set in that section. (This provision has been overtaken by the provisions of **section 730A** which set out the Case I rules for life companies from 1 January 2001). (2)(b)

Prior to 1 January 2001, an IFSC life company could only issue policies to persons who were not resident in the State. (To do so would have jeopardised its entitlement to the 10% corporation tax rate). However such a policyholder could subsequently become resident in the State while retaining the policy and encash it while being so resident. Where a policyholder, who is resident or ordinarily resident in the State, is to receive the proceeds of a policy (this includes a policy of assurance and a retirement benefits policy) issued by an IFSC company before 1 January 2001, the paying company is obliged to deduct tax from the proceeds and pay over the net proceeds to the policyholder. The tax to be deducted is an amount equal to the standard rate of income tax on the relevant amount. The relevant amount is defined in respect of a policy of assurance and an retirement benefits policy and in each case is related to the increase I value of the policy during the period or periods during which the policyholder was residing in the State. The company is obliged to pay over the tax deducted to Revenue under the procedure set out in **section 239**. Tax is not to be deducted if the payment of the proceeds of the policy arises from the death or disability of the policyholder. Authority is given for the company to deduct this tax from the proceeds of the policy. The tax deducted cannot be repaid nor is any credit given in respect of the tax. The net proceeds of the policy received by the policyholder are not to be treated as income in the hands of the policyholder. (3)(b)

For the purposes of **subsection (3)(b)** “a policy of assurance” is a policy of assurance issued by an IFSC life assurance company to a person who resides continuously outside the State for a period of not less than 6 months after the date of issue of the policy and includes a policy which would be a “retirement benefits policy” but for the fact that it was encashed before the holder reached the age of 60 or after the holder attained the age of 70. A “retirement benefits policy” is a policy which matures at a time after the policyholder attains the age of 60 and before he/she attains the age of 70. (For policies taken out within 6 months of taking up residence in the State, see **section 594**) (3)(a)



Where a life assurance company carries on both ordinary life assurance business and industrial life assurance business the business of each class is treated for corporation tax purposes as a separate class and the management expenses provisions of *section 707* apply separately to each such class of business. (4)

However, if a company has amalgamated its industrial assurance and life assurance funds in accordance with section 25(1) of the Insurance Act, 1989 and that amalgamation has not ceased *subsection (4)* does not apply. (5)(a)

Pre-amalgamation industrial assurance management expenses must be set against post-amalgamation industrial assurance income. The pre-amalgamation trading losses of the industrial assurance can only be carried forward against industrial assurance trading income for the purposes of computing the restriction, if any, of the deduction of management expenses under *section 707(4)*. (5)(b)

Where an accounting period of a company straddles the day of amalgamation it is treated as 2 accounting periods for the purposes of *subsection (5)*. (6)

## 711 Chargeable gains of life business

### Summary

This section makes adjustments to the capital gains tax provisions for the purpose of their application to chargeable gains accruing to a fund or funds maintained by an assurance company in respect of its life business. One of the purposes of the section is to ensure that chargeable gains accruing to such funds are taxed at the standard rate of income tax.

### Details

In computing the chargeable gains accruing to life business funds neither the indexation provisions of *section 556* nor the exemption of government and certain other securities, under *section 607*, apply. Under *section 581*, where a person disposes of shares or securities that were acquired within 4 weeks of the disposal, the shares disposed of are identified with the shares acquired within those 4 weeks (the “4 week” rule). Furthermore, a loss generated by a disposal of shares or securities, where the shares or securities are reacquired within 4 weeks, can only be set off against any chargeable gain arising on the disposal of the reacquired shares or securities. These provisions are relaxed in the case of chargeable gains of life business in that in applying the provisions, gilts are treated as continuing to be exempt from capital gains tax and the annual deemed disposal and reacquisition provisions of *section 719* are ignored in respect of them. Where the 4 week rule applies to an actual (not deemed) disposal and reacquisition, and the reacquired shares recover in value and give rise to a chargeable gain on a deemed disposal and reacquisition, the deemed gain may absorb the loss of the previous actual disposal. (1)(a)&(b)

The amount of capital gains tax computed for the purposes of *section 78(2)* is the amount computed as if, *notwithstanding section 28(3)*, the rate of capital gains tax were — (1)(c)

- 40 per cent throughout the financial year 1999 (but subject to paragraph (d)), and
- throughout each subsequent financial year the rate of corporation tax specified in *section 21(1)* for that financial year e.g. 16 per cent for the financial year 2002 and 12 per cent for the financial year 2003 and each subsequent financial year.

Where, for an accounting period, the expenses of management (within the meaning of *section 83* as applied by *section 707*) deductible exceeds the amount of profits from which they are deductible, 28 per cent is substituted for 40 per cent in *paragraph (c)(i)* for the financial year 1999. (1)(d)

If securities are acquired by a company for its life business fund “cum-div” (that is, the (2)

company is entitled to the next interest payment) and they are then sold “ex-div” (that is, the company retains the right to the next interest payment) then the company will have realised a capital loss on the disposal and at a later date will receive a corresponding amount of interest. If the accounting date of the company falls between the date of the disposal of the security and the date of receipt of the interest the company would obtain a tax advantage. However, this tax advantage is negated by the requirement that any such loss is to be only allowed for tax purposes in the accounting period in which the interest is received.

Where a life assurance company in the course of its special investment business or basic life assurance business has net allowable losses on its disposal or deemed disposal of investments in an accounting period, the net loss can be set off against the investment income of those businesses. This is effected by treating the losses as management expenses of the accounting period. (3)

However, before calculating what capital loss is to be assimilated into management expenses, regard must be had to the spreading provisions of *section 720*. In computing an overall net loss of an accounting period the following are taken into account — (4)

- gains and losses on actual disposals of the period,
- one-seventh of the net unrealised gain or loss accruing in the period, and
- one-seventh of the net unrealised gain or loss of each of the previous periods which are spread forward into the current period.

## **712 Distributions received from Irish resident companies**

In respect of that part of an assurance company’s life business charged to corporation tax otherwise than under Case I or IV of Schedule D, dividends and other distributions received from Irish companies are charged to tax.

## **713 Investment income reserved for policyholders**

### **Summary**

This section provides that the tax charge, under the I-E tax regime, on a life assurance company in respect of the income and gains of policyholders is at an effective rate equal to the standard rate of income tax. For the taxation of life assurance companies and their policyholders in respect of policies commenced on or after 1 January 2001, refer to *Chapters 4* and *5* of this Part.

### **Details**

“unrelieved profits” are profits on which corporation tax falls finally to be borne. *Section 4(4)(c)* defines “profits on which corporation tax falls finally to be borne” as profits after all deductions, reliefs, set-off or other reductions of those profits for the purposes of corporation tax, except for the tax adjustment afforded by this section. (1)(a) & (1)(b)

A part of the unrelieved profits of the life assurance company (as set out in *subsection (6)*) is to be charged to tax at the standard rate of income tax, or where relevant at a weighted average of such rates. (3)

Distributions received from companies resident in the State are apportioned between policyholders or annuitants and shareholders of the company by apportioning to policyholders or annuitants such fraction of that income which is the fraction of the company’s profits excluded from a Case I of Schedule D computation under *section 710*. If the distributions received from companies resident in the State exceed the profits chargeable under Case I of Schedule D, without regard to *section 710*, then the excess is (5)

also attributed to policyholders.

Tax at the standard rate of income tax is charged on the lesser of — (6)

- the aggregate of the unrelieved profits and the shareholders' part of the distributions received from Irish resident companies, over the profits of the company computed under Case I of Schedule D, and
- the unrelieved profits.

Where the Case I of Schedule D profits are greater than the aggregate of the unrelieved profits and the shareholders' part of the distributions, the standard rate of income tax is not applied – all profits would therefore be taxed at the corporation tax rate.

Under transitional provisions there was a deemed disposal and reacquisition on 31 December, 1992 of all the non-gilt assets of an assurance company connected with its basic life assurance business. The net gain or loss resulting from this deemed disposal is spread over the period to 31 December, 1992 and the subsequent 6 years – 7 accounting periods in all. The fraction of the net gain or loss carried forward to subsequent accounting periods is excluded from the amount of unrelieved profits for the purposes of computing the relief under this section – see *paragraph 24 of Schedule 32*. (7)

#### 714 Life business: computation of profits

In calculating the tax which a life company would pay if it were charged to corporation tax under Case I of Schedule D (that is, on the basis of its trading income or shareholders' profits) all distributions received from Irish companies are taken into account. In effect *section 129* is disapplied.

#### 715 Annuity business: separate charge on profits

##### Summary

This section deals with the computation and charge to tax of profits arising to an assurance company from pension business and general annuity business.

##### Details

Where an assurance company is not charged to tax under Case I of Schedule D in respect of its life assurance business, profits arising to the company from pension business or general annuity business are treated as annual profits or gains chargeable to tax under Case IV of Schedule D. The pension business and general annuity business are each treated as a separate class of business and, although charged under Case IV of Schedule D, the profits of such businesses are computed in accordance with the computational rules of Case I of Schedule D. (1)

In making the computation under Case I of Schedule D —

- a deduction is allowed for profits allocated to pension business policyholders or annuitants but not for profits reserved for such persons; (2)(a)(ii)
- investment gains and losses (whether realised or unrealised) which arise on any fund held to match the company's liabilities to its policyholders are to be included in the computation of profits to the same extent that they are included in the liability of the company to its policyholders. The reference is to the liability as valued by an actuary for the purposes of the relevant periodic return. "Actuary" and "periodic return" are defined in *section 706*; (2)(a)(iii)
- where a company is bringing into the computation exchange gains and losses on the fund, referred to above, for the first time, those gains and losses are to be measured by reference to the original cost of the investments – *subsection (2)(a)(iii)* took (2)(a)(iv)

- effect as respects accounting periods ending on or after 4 March 1998;
- no deduction is allowed for management expenses; and (2)(b)
- losses from a previous period may be carried forward against profits of the same class of business. (2)(c)

The set off of losses provisions of Case IV of Schedule D (*section 399*) do not apply to a loss sustained by a company on its general annuity business or pension business. (3)

The full amount of an annuity (including the capital element) can be deducted in computing profits or be treated as a charge on income even though it contains a capital element under the provisions of *section 788*. (4)

Relief, by way of a charge on income, for annuities referable to the “excluded annuity business” of a life assurance company is not available. Excluded annuity business is defined in *section 706* and is essentially insurance linked investment bonds. Such annuities are, however, allowed against the income of life assurance business for the purposes of a Case I of Schedule D computation. The corresponding receipt (that is, the consideration given to the company for the granting of the annuity) will be included in the computation of profits as a trading receipt. (5)

## 716 General annuity business

### Summary

This section deals with the treatment of annuities paid which are referable to general annuity business.

### Details

Taxed income of an annuity fund is its income charged to corporation tax (otherwise than under Case IV of Schedule D in accordance with *section 715*) together with its franked investment income. (1)

Annuities paid by a company carrying on general annuity business, in so far as they are referable to that business, are treated as charges on income to the extent that they do not exceed the part of the annuity fund referable to that business. (2)

Such charges can be set off against profits of a life assurance company’s general annuity business only and not against the total profits of the company. (3)

In computing the profits arising from general annuity business chargeable to tax under Case IV of Schedule D — (4)

- taxed income is excluded,
- annuities treated as charges and deductible under *subsection (2)* may not be deducted, and
- annuities not so treated may be deducted.

A non-resident company carrying on general annuity business through a branch or agency in the State may not treat any part of the annuities paid which are referable to that business as paid out of profits or gains brought into charge to income tax. (5)

## 717 Pension business

### Summary

This section provides rules for the computation of profits arising from pension business.

## Details

The income and chargeable gains from investments of a life assurance company's life fund and separate annuity fund, if any, as are attributable to the company's pension business are exempt from corporation tax. (1)

This exemption extends to income and gains from transactions by pension funds in financial futures and traded options quoted on a futures exchange or stock exchange. (2)

The exemption from corporation tax in respect of a company's income and gains referable to pension business does not rule out such income and gains being taken into account in computing a loss or gain for corporation tax purposes. (3)

When computing pension business profits chargeable to tax under Case IV of Schedule D, franked investment income is taken into account. (4)

However, where a company's franked investment income in a period is less than its pension business profits chargeable under Case IV of Schedule D, the company may elect that its pension fund investment income is not to be treated as exempt and the franked investment income is not to be included as income in the Case IV computation. (5)

An election must be made in writing to the inspector within 2 years of the end of the accounting period to which it relates, or within a longer period as the Revenue Commissioners may be notice in writing allow.

When computing pension business profits chargeable under Case IV of Schedule D, annuities paid which are referable to pension business are deductible. Those annuities are not regarded as paid out of profits or gains brought into charge to income tax. (6)

## 718 Foreign life assurance funds

### Summary

This section sets out specific provisions which apply to foreign life assurance funds which are funds representing the amount of the liability of an assurance company in respect of its life business with policyholders and annuitants residing outside the State.

### Details

“foreign life assurance fund”, where the fund is kept separately from other life assurance funds, means any fund representing the amount of the liability of an assurance company in respect of its life business with policyholders and annuitants resident outside the State whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the State. Where the fund is not kept separately, it means such part of the life assurance fund as represents the company's liability under policies and annuity contracts made or granted to non-residents as estimated in the same manner as it is estimated for the purposes of the periodical returns of the company. (1)

Income arising to a foreign life assurance fund from securities and possessions in any place outside the State is taxed under Case III of Schedule D on the amount remitted to the State. (2)

Where certain stocks and securities form part of the investments of a foreign life assurance fund, the income from those stocks and securities is not liable to tax provided that the income is applied for the purposes of the fund or reinvested to form part of the fund. Income from a foreign life assurance fund remitted to the State and invested in such stocks or securities is also exempt from tax. The stocks and securities concerned are — (3) & (4)

- securities issued by the Minister for Finance with exemption from tax under *section*

43, and

- stocks and other securities exempt from tax as provided by *section 49*.

Where this section applies to relieve from corporation tax income from investments of a foreign life assurance fund, a corresponding reduction is made in respect of management expenses. A corresponding reduction is also made in the amount on which the company is chargeable to corporation tax by virtue of *section 715* in respect of general annuity business, or pension business in so far as the investment income relieved is referable to those classes of business. (5)

Where the section applies in relation to income arising from investments of any part of an assurance company's life assurance fund, it likewise applies to chargeable gains assuring from the disposal of those investments. However, any loss arising from the disposal of the investments are not allowable losses. (6)

## **719 Deemed disposal and reacquisition of certain assets**

### **Summary**

The assets of an assurance company's life business are, subject to certain exceptions, deemed to be disposed of and reacquired at market value at the end of each accounting period of the company. The resulting net gain or loss is spread over 7 years under *section 720*.

### **Details**

Certain definitions are provided for the purposes of *sections 719* and *720*. (1)

In general, each asset of the life business fund (that is, the fund or funds maintained in respect of its life business) of an assurance company is deemed to have been disposed of and immediately reacquired at the end of each accounting period at the asset's market value at that time. (2)

This deemed disposal and reacquisition does not apply to —

- assets to which *section 607* applies (that is, Irish Government and certain other securities) except, with effect from 26 March 1997, such assets held under a swap arrangement,
- assets which are strips within the meaning of *section 55*,
- assets linked solely to pension business or special investment business, or
- assets of the foreign life assurance fund.

Where assets are not linked solely to life assurance business (other than pension business and general annuity business) the deemed disposal and reacquisition applies to a fraction of each category of asset, as determined by *subsections (4)* and *(5)*. (3)

The apportionment of assets is made in proportion to the liabilities and investment reserves attributable to the difficult categories of business. Provision is made for the apportionment of linked assets and assets other than linked assets. The apportionment of assets other than linked assets involves the apportionment of investment reserves of with-profits business and other business. In the fraction (that is, the relevant chargeable fraction) of linked assets to be attributed to core life business the denominator is essentially an average of the company's liabilities in relation to the linked assets – other than assets linked solely to core life assurance business or linked solely to pension business and other than assets of the foreign life assurance fund. The numerator is essentially an average of the liabilities included in the denominator which are attributable to the core life assurance business. (4)(a)

In the fraction (the relevant chargeable fraction) of assets other than linked assets to be attributed to core life business, the denominator is essentially the sum of an average of the company’s liabilities, other than those related to linked assets and foreign life assurance business, and the average investment reserve. The numerator is the sum of those parts of the 2 components of the denominator which are attributable to core life business (that is, the appropriate part).

The appropriate part in relation to the investment reserve means —

(4)(b), (5)

- where none, or only an insignificant proportion, of the liabilities of the life business are with-profits liabilities, the part of the reserve which bears the same proportion to the whole as the non-linked liabilities of the business not charged to tax under Case I or Case IV of Schedule D bears to all the non-linked liabilities of the business, and
- in any other case, the part of the reserve which bears to the whole the same proportion as the amount of the with-profits liabilities of business, the profits of which are not charged to tax under Case I or Case IV of Schedule D, bears to the whole amount of the with-profits liabilities of the life business.

Deeming only the “relevant chargeable fraction” of assets partly related to the basic life assurance business of a company to have been disposed of and reacquired necessitates a part disposal computation of the assets in question. If unrealised gains and losses were computed on a part disposal basis over a number of years, the normal apportionment of costs of acquisition would result in an overcharge. To prevent this, in computing a gain or loss on the deemed disposal and reacquisition of assets on the last day of an accounting period, assets not linked solely to basic life assurance business (including pension business or general annuity business) are deemed to have been acquired at their respective market values on the day immediately before the day on which that period began. (6)

**Example**

	Deemed disposal	No deemed disposal
Year 1	60% of asset	40% of asset
Cost of asset	€	€
	1,000	400
Market value on deemed disposal	2,000	<u>1,200</u>
Gain (ignoring indexation)		<u>600</u>
Year 2		
Cost of asset		
1,200 + 400	x 60% = 960	x 40% = 640
Market value of deemed disposal (unchanged from Year 1)	1,200	800
Gain	240	

**Subsection (6)** will produce the following result in Year 2 —

Cost of asset

1,200 + 800	x 60% = 1,200	x 40% = 800
Market value of deemed disposal	1,200	
(unchanged from Year 1)		
Gain	Nil	

In determining the investment reserve, assets and liabilities of the foreign life assurance fund. (7)

## 720 Gains or losses arising by virtue of section 719

### Summary

This section provides for the spreading over 7 years of gains and losses arising in an accounting period by virtue of *section 719*.

### Details

Gains and losses arising in an accounting period by virtue of *section 719* (that is, on a deemed disposal and reacquisition of certain assets of the life business fund of an assurance company at the end of the accounting period) are treated as not arising in that accounting period but the net gain or net loss is spread in 7 equal instalments over the 7 years commencing with that accounting period. (1)

The spreading over 7 years of unrealised net gains or net losses in the case of rights under reinsurance contracts (within the meaning of *section 594(4)*) is phased in as follows — (2)

<i>Year ending</i>	<i>Amount spread</i>
31 December 1995	two-sevenths
31 December 1996	three-sevenths
31 December 1997	four-sevenths
31 December 1998	five-sevenths
31 December 1999	six-sevenths

For an accounting period shorter than one year the appropriate instalment of net gain or net loss is proportionately reduced. The amount of that reduction is charged (in the case of a net gain) or allowed (in the case of a net loss) in the last accounting period. (3)

If a company ceases to carry on life business in an accounting period, the balance of the net gain or net loss is charged or allowed, as the case may be, in that period. (4)

Adjustments are required where an asset is sold and the spreading approach has been applied to gains or losses arising from earlier annual increases or decreases in the value of the asset. Where a loss, computed by reference to the latest valuation, is incurred on the actual disposal of an asset, the part of the loss which is attributable to the revaluation is spread forward and is not available for immediate offset. The balance of the loss, which cannot exceed the actual loss, will be available for immediate offset. (5)

## 721 Life policies carrying rights not in money

Where any investments or other assets are transferred from a life assurance company to a policyholder, the policyholder's acquisition of the assets and the disposal of the assets to the policyholder are deemed to be for a consideration equal to the market value of the assets for the purposes of the Capital Gains Tax Acts and for the purposes of computing



income in accordance with Case I or Case IV of Schedule D.

### **722 Benefits from life policies issued before 6th April, 1974**

This section has application in respect of a policy of life assurance issued before 6 April, 1974 (the introduction of capital gains tax) where the policy is investment linked and it does not provide for the deduction of capital gains tax from the benefits payable.

In such a case the life assurance company which issued the policy can deduct from the benefits payable under the policy the amount of corporation tax on capital gains which accrues to the company from the disposal of investment required to meet the liability to the policyholder.

## CHAPTER 2 *Special investment policies*

### **Overview**

This Chapter provides for the taxation of special investment policies, which are essentially life assurance products based mainly on Irish equities.

### **723 Special investment policies**

#### **Summary**

This section makes provision for special investment policies which are essentially life company investment products based on investment in Irish equities. The annual income and gains (both realised and unrealised) arising, for the benefit of policyholders, to the related investment fund within the life company are liable to a 20 per cent tax charge. No further tax charge arises on encashment of the policy by a policyholder. Such policies cannot be issued after 31 December 2001 and for accounting periods of the life company ending in 2003 their tax treatment is the same as ordinary life policies.

#### **Details**

##### ***Definitions***

“excluded shares” are shares in companies which are either investment companies, (1) corporate undertakings for collective investment in transferable securities or any other corporate entity used primarily as an investment vehicle. An investment fund only qualifies as a fund eligible for the 20 per cent tax rate if a minimum percentage of the fund’s assets are qualifying shares, other than excluded shares.

“inspector” is an inspector appointed under *section 852*, and includes other officers appointed by the Revenue Commissioners in that behalf.

“mortality cover” is any amount payable under a life assurance policy on the death of a person specified in the terms of the policy.

“qualifying shares” are ordinary shares (that is, shares forming part of a company’s ordinary share capital) in a company which is either Irish resident or quoted on the Irish Stock Exchange.

“special investment business”; “special investment fund”; and “special investment policy” are definitions relevant to a life company’s business which is to be charged to corporation tax at 20 per cent.

The income and gains accruing to the special investment fund, created by special

investment policy premiums, are to be charged at an effective tax rate of 20 per cent. The conditions in respect of the fund are set out in **subsection (2)**. The conditions governing the policies are set out in **subsection (3)** and the declaration required to be made by special investment policyholders is provided for in **subsection (4)**. These conditions only apply for accounting periods ending on or before 31 December 2002

“specified qualifying shares” are qualifying shares in companies with issued share capital valued at less than €255 million. Alongside the general requirement to invest special investment funds in Irish equities, there is also a requirement to invest a minimum percentage in specified qualifying shares.

### ***Special investment funds***

In respect of accounting periods ending on or before 31 December 2002, for a fund to be treated as a special investment fund, the fund has to be a life assurance company fund and must be kept separate from all other funds of the assurance company, and the assets of the fund must relate solely to special investment business. In addition, **paragraphs (d) to (g)** of the subsection set out the Irish equity investment requirements which since 1 February, 1996 require that the percentage of assets (on a cost of asset basis) of the fund which are Irish equities should be not less than 55 per cent of qualifying shares and 10 per cent of specified qualifying shares. This requirement was removed from 31 December 2000. (2)

### ***Special investment policies***

In respect of accounting periods ending on or before 31 December 2002, the requirements for a policy to be treated as a special investment policy were — (3)

- the assurance company had to designate the policy as a special investment policy,
- not more than a total of €63,500 premiums could be accepted in respect of a policy,
- the policy must be issued to and owned by an individual who is either married or is 18 years of age or older,
- the policyholder must be the beneficial owner of the policy and the payee for all amounts to be paid under the policy, other than any amount payable in respect of the life cover element of the policy in the event of the death of the person whose life is assured, and
- a joint policy was only permitted in the case of a married individual and such policy must be owned jointly by the individual and the spouse of the individual. A married couple could own 2 joint policies; otherwise an individual was only permitted to have one special investment policy.

### ***Declarations***

The “declaration” mentioned in the definition of “special investment policy” must be made in writing on a prescribed form and given to the assurance company at the time that the policy is issued. The declaration is to be made and signed by the beneficial owner of the policy who must certify that certain conditions are met, undertake to notify the life assurance company if these conditions cease to be met and give his/her name and address. (4)

Life assurance companies which issue special investment policies are obliged to retain and make available to an inspector (on written request) any such declarations made by policyholders. The inspector is empowered to copy or to take extracts from such declarations. (5)

### ***The 20 per cent corporation tax charge***

For accounting periods ending in 2003 and subsequently the special investment fund was required to be merged with the ordinary life fund. (6)

For prior accounting periods, a number of computational adjustments in respect of income and gains of a special investment fund were — (7)

- the assets of the fund, including Government securities, were deemed to be disposed of and immediately reacquired at the end of each accounting period of the assurance company, and this deemed disposal results in the inclusion of unrealised gains and losses in taxable profits,
- gains, whether realised or unrealised, accruing to the fund in respect of BES shares were not be charged to tax – losses were, however, allowable,
- dividends received by the fund in respect of BES shares were not to be charged to tax but the tax credit attaching to such a dividend was not available for set-off or payment under *section 712*, and
- *section 726*, which apportions the world-wide investment income of an “overseas” life assurance company carrying on a branch business in the State, was not to apply to special investment business carried on by such a company. Corporation tax was charged at the effective rate of 20 per cent on the actual investment income and gains accruing to the special investment fund of such a company.

#### **724 Transfer of assets into or out of special investment fund**

This section, which is an anti-avoidance provision, addressed the transfer of assets in accounting periods ending on or before 31 December 2002, into or out of the special investment fund of a life assurance company. Where a life assurance company transferred an asset into a special investment fund, there was a deemed disposal and reacquisition of the asset. This crystallised the gains or losses accruing on the asset before its transfer to the 20 per cent fund and, thereby, there was a liability to tax or an allowable loss at a rate equivalent to the standard rate of income tax. Where an asset was transferred out of the special investment fund into some other fund of the life assurance company, the gains or losses which accrued within the 20 per cent fund also crystallised and were charged or allowed at 20 per cent.

#### **725 Special investment policies: breaches of conditions**

##### **Summary**

This section provides for a situation where a life assurance company becomes aware at any time on or before 31 December 2002, that a policy issued to a policyholder no longer qualifies as a special investment policy (or never did so qualify from the time that it was issued). An additional liability to corporation tax arises on the life assurance company in such situations.

##### **Details**

The circumstances in which a policy is not to be treated as a special investment policy are set out. These include a situation where a policyholder acquires more special investment products or savings accounts than he/she is entitled to – in this regard see the notes on *section 839* (limits on special investments). (1)

A life assurance company is obliged to cease to treat a policy as a special investment policy on discovering on or before 31 December 2002, that it is not entitled to be so treated. An additional liability to corporation tax is also imposed on a life assurance company where the company discovers that a particular policy should not have been treated as a special investment policy. The additional charge to corporation tax on the company is calculated by reference to the increase in its liability in respect of the policy from the time that the policy ceased to qualify as a special investment policy (or from its (2)

date of issue if it never was a special investment policy) until the time the company became aware of that fact. The increase, which is to be net of 10 per cent tax, is regrossed and the additional liability to tax is calculated at a rate being the difference between the standard rate and the 10 per cent rate.

## CHAPTER 3

### *Provisions applying to overseas life assurance companies*

#### Overview

This Chapter contains a number of special provisions which affect the tax treatment of overseas life assurance companies. The provisions relating to the interpretation of, and the definition of terms used in this Chapter are found in *section 706*. The general provisions relating to life assurance companies in *Chapter 1* of this Part also apply, in general, to overseas life assurance companies.

#### 726 Investment income

##### Summary

An overseas life assurance company is an assurance company having its head office outside the State but carrying on life assurance business through a branch or agency in the State. This section provides for the tax treatment of the investment income of such a company.

##### Details

Investment income of an overseas life assurance company arising from the investment of its life assurance fund (excluding the pension fund, general annuity fund and special investment fund, if any) is, to the extent provided by this section, taxed under Case III of Schedule D. (1)

Investment income of an overseas life assurance company includes distributions from companies resident in the State. (2)

Distributions (including an amount which corresponds to a tax credit) received by an overseas life assurance company from a company not resident in the State is treated as income. (3)

Only a portion of the income from investments of the life assurance fund is charged under *subsection (1)* for an accounting period. The portion is determined by the formula — (4)

$$\frac{A \times B}{C}$$

A is the total world wide investment income.

B is the average of the liabilities for that period to policyholders resident in the State and to policyholders resident outside the State whose proposals were made to the company at or through its branch or agency in the State.

C is the average of the liabilities for that period to all the company's policyholders.

Neither the income from investments of, nor the liabilities in respect of, the pension fund, the general annuity fund and the special investment fund are included in the amounts which go to make up the formula.

The liabilities of an assurance company attributable to any business is the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return. (5)

The average of any liabilities for an accounting period is 50 per cent of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.

Where the average of branch liabilities for an accounting period exceeds the mean value for the accounting period of assets to which this subsection applies an amount is included in profits in respect of chargeable gains, such amount being determined by the formula — (6)

$$\frac{A \times B}{C}$$

A is the amount which would normally be included in profits.

B is the average of branch liabilities for the period.

C is the mean value for the period of those assets.

The average of branch liabilities for an accounting period is the average liabilities of the Irish business for the period being the sum of —

- the average of the liabilities in respect of the company's ordinary life business for the period to Irish resident policyholders and to non-resident policyholders whose proposals were made to the company at or through its Irish branch or agency,
- the average of the liabilities attributable to general annuity business in respect of contracts with Irish residents and with non-residents whose proposals were made to the company at or through its Irish branch or agency, and
- the average of liabilities attributable to pension business.

The assets involved are all Irish assets, whether or not chargeable to capital gains tax and overseas assets that are used to back the liabilities of the Irish branch.

The single source rule in regard to income chargeable under Case III of Schedule D does not apply to income of an overseas life assurance company from its life assurance fund. (7)

## 727 General annuity and pension business

### Summary

This section sets out rules for the computation of profits of an overseas life assurance company from its general annuity and pension business.

### Details

In computing, for the purposes of *section 715*, the profits of an overseas life assurance company in respect of its general annuity business and pension business, distributions received from Irish resident companies are brought into account. (1)

The charge to corporation tax for an accounting period in respect of the general annuity business of an overseas life assurance company extends only to a portion of the profits arising from that business. The portion is determined by the formula — (2)

$$\frac{A \times B}{C}$$

A is the total amount of the profits.

B is the average of the liabilities in respect of the company's general annuity business for the period in respect of contracts with Irish resident policyholders or contracts with persons resident outside the State whose proposals were made to the company at or through a branch or agency in the State.

C is the average of the liabilities attributable to general annuity business for the period in respect of all contracts.

The liabilities attributable to general annuity business are arrived at by reference to the net liabilities as valued by an actuary for the purposes the relevant periodical return.

The average of the liabilities for an accounting period is 50 per cent of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls. (3)

### **728 Expenses of management**

The management expenses available to an overseas life assurance company are limited to those attributable to the life assurance business carried on by the company at or through its branch or agency in the State.

### **729 Income tax, foreign tax and tax credit**

#### **Summary**

This section deals with the treatment of foreign tax and tax credits in relation to an overseas life assurance company.

#### **Details**

In computing the investment income of the life assurance fund or the profits of the annuity business, of an overseas life assurance company a deduction is not made in respect of foreign tax suffered. (1)

The set off (against corporation tax liability) of income tax deducted from payments received by an overseas life assurance company is restricted. (2)

The income tax which may be set off against corporation tax chargeable in respect of investment income of the company's ordinary life business is restricted to an amount of income tax at the standard rate on the proportion of investment income chargeable to corporation tax in accordance with *section 726*. (3)

Where a company is chargeable to corporation tax in accordance with *section 727* on a proportion of its total profits arising from general annuity business, the income tax available for set off against corporation tax on those profits is restricted to an amount of income tax at the standard rate on the proportion of income from investments included in computing those profits. (4)

In relation to gains on the disposal of investments held in connection with the life business of an overseas life assurance company any foreign tax suffered is not allowed as a deduction in computing chargeable gains under *section 726(6)*. (6)

### **730 Tax credit in respect of distributions**

*Section 730* repealed by Finance Act 2000 section 69(2) and Schedule 2 Part 2 with effect from 6 April 1999 in the case of income tax and as respects accounting periods commencing on or after that date in the case of corporation tax.

## CHAPTER 4

### *Taxation of assurance companies – new basis*

### **730A Profits of life business: new basis**

## Summary

The Finance Act 2000 introduced a new regime for taxing life assurance companies and their policyholders. In general terms, and in respect of profits from life policies commenced on or after 1 January 2001, the new regime charges life assurance companies to tax under Case I of Schedule D. Profits from policies commenced before that date continue to be taxed on the I–E basis which in effect taxes both the company and its policyholder. There are special provisions for mutual life assurance companies (which cannot be taxed under Case I) whereby 5 per cent of the company’s increase in its policyholders’ funds in an accounting period will be deemed to be its profit and will be liable to corporation tax. A similar amount will be allowed as loss relief should the mutual life assurance company record a drop in its policyholders’ funds during in accounting period.

## Details

### Definitions

For this Chapter and **Chapter 5** of this Part the following definitions apply — (1)

“assurance company” means an assurance company chargeable to corporation tax.

For an assurance company which was carrying on domestic life assurance business on 1 April 2000, “new basis business” means —

- all policies and contracts commenced on or after 1 January 2001 except those referring to industrial assurance business;
- pension and general annuity business; and
- permanent health business if it was, before 1 January 2001, charged to tax under Case 1 of Schedule D.

For an assurance company which was carrying on foreign life assurance business only (i.e. an IFSC life assurance company) on 1 April 2000, “new basis business” is all policies and contracts commenced on or after 1 January 2001.

For an assurance company which was not carrying on life assurance business on 1 April 2000, “new basis business”, subject to **subsection (2)**, is all policies and contracts commenced from the time it began to carry on life business.

### Election for I–E regime

An assurance company, which commenced life assurance business after 1 April 2000 and before 31 December 2000, can elect that life policies (other than pension and general annuity business) commenced up to 1 January 2001, not be treated as “new basis business”. (2)

### Taxation, loss ringfencing, inclusions and exclusions

“New basis business” of an assurance company in so far as it relates to life business, is to be treated for the purposes of the Corporation Tax Acts as separate from any other business carried on by the assurance company. The profits of “new basis business” are, subject to **subsection (5)**, to be computed and charged to corporation tax under the provisions of Case I of Schedule D. (3) & (4)

In computing the “new basis business” Case I profits of an assurance company, profits which belong to or are allocated to or expended on behalf of policyholders are to be excluded; but profits reserved for policyholders are to be included. (5)(a) & (5)(b)

A deduction or credit is not available in respect of any foreign tax suffered on income that (5)(c)

forms part of its ‘policy holder business’ which is not chargeable to Corporation Tax in the hands of the life assurance company under **subsection 5)(a)**.

An assurance company suffering a loss in respect of “new basis business” may offset such loss against shareholder profits (i.e. the company’s profits of other life business) computed under Case I of Schedule D and **section 710**, i.e. losses under “new business basis” cannot be offset against profits of policyholders who continue to be effectively taxed under the old I–E regime. (6)

### ***Taxation of mutual life assurance companies***

For each accounting period of a mutual life assurance company, 5 per cent of the increase in the company’s unallocated funds will be treated as annual profits or gains and that amount will be chargeable to corporation tax under Case III of Schedule D. Should a company record a decrease in these unallocated funds for an accounting period, an amount equal to 5 per cent of the loss will be allowed as relief against the profits of a previous or subsequent accounting period to the extent that the value of those funds do not fall below their value as at 31 December 2000. (7)(b) & (7)(c)

The method of calculating the increase or decrease in unallocated funds for both domestic and overseas life assurance companies is provided for. (8)

## CHAPTER 5 *Policyholders – new basis*

### **Overview**

This Chapter, containing **sections 730B to 730GB**, sets out the taxation treatment of policyholders of life assurance companies in respect of “new basis business” – see **section 730A(1)**. It provides what is/is not a chargeable event, provides a method for calculating and taxing any gain which may arise on said chargeable event and provides for the return and collection of any tax due. It also provides for the taxation of personal portfolio life policies.

### **730B Taxation of policyholders**

#### **Summary**

This section outlines a new regime for the taxation of policyholders of life assurance companies in respect of “new basis business” as defined in **section 730A(1)**. This new regime allows policyholders’ funds to grow tax-free until such time as a policyholder realises his/her investment and, if applicable, 8 years after the policy commenced. At that stage an “exit tax” is imposed.

#### **Details**

##### ***Definitions***

For the purposes of this Chapter, “return” means a return made under **section 730G**. (1)

##### ***Application of the exit tax regime***

This exit tax regime applies to life policies, defined to mean life assurance policies or sinking fund or capital redemption business policies, where the life policy is “new basis business” of the assurance company which commenced the life policy. (2)

The new regime does not apply to life policies relating to pension business, general (3)



annuity business or permanent health business of an assurance company.

### ***The Courts Service***

Whereas the obligation to account for and remit exit tax normally falls on the assurance company concerned, where the Courts Service invests funds in a life company, that obligation falls on the Courts Service. In addition, the Courts Service is required to make an annual return to the Revenue Commissioners setting out — (4)

- the total amount of profits from such investment;
- details of the allocation of such profits to the beneficial owners; and
- such other information as may be required.

### **730BA Personal portfolio life policies**

#### **Summary**

This section provides special rules for the taxation of the proceeds of personal portfolio life policies.

Personal portfolio life assurance policies are a type of life policy which allows investors to place personal investments within a life assurance policy. This is referred to as the “wrapping” of personal investments in a life policy and, hence, the term commonly used for these products, namely, “wrappers”. With traditional life insurance investment products the insurance company uses its professional expertise and discretion to invest funds on behalf of policyholders collectively. However, there is no element of a collective investment in these wrapper products. Essentially, such a life policy is a contrived vehicle to allow the investor to gain access to the “gross roll-up” tax regime. Briefly, this means that the income and gains accruing in respect of the assets underlying a life policy are allowed to grow – or roll-up – tax-free over the duration of the policy. Tax is only imposed when a policyholder cashes in or withdraws funds from the policy and, if applicable, 8 years after the policy commenced. When this happens the profit on the policy, that is, the accrued income and gains, is currently liable to a flat exit tax at a rate of 33 per cent for non companies. By placing selected personal assets in a personal portfolio life policy investors could limit the taxation of income and gains from those assets to a flat 33 per cent and, furthermore, could defer that tax liability until the policy was cashed in or funds were withdrawn from the policy. In addition, no liability to PRSI or levies would arise. On the other hand, if the high-income policyholder had invested directly, the tax charge on the income arising from the investment would be at the marginal rate, currently 41 per cent per annum, plus PRSI and levies.

This section provides for a definition of a “personal portfolio life policy”. **Section 730F(1)(b)** imposes a 20 per cent additional charge (linked to the current standard rate of income tax) on the proceeds from a personal portfolio life assurance policy. The additional charge applies on top of the current 33 per cent exit tax charge and applies to the proceeds of such policies paid out by life assurance companies on or after 26 September 2001.

In this section, 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, the assets which determine the policy benefits. However, a policy will not be regarded as being a personal portfolio policy where the only property which may 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 a combination of these.

These exceptions only apply provided 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 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 will be limited to 1 per cent of the amount being sought by the assurance company.

## Details

### *Definitions*

The definitions of “internal linked fund” and “linked asset” are connected and are intended to identify the asset or assets (be it an actual cash fund, a portfolio of equities or commercial paper or real property) the assurance company allocates in its books as the property which will determine the level of benefits to be paid out on the policy on maturity or encashment. (1)

The definition of “land” is intended to include any buildings on the land. It is also intended that this should include land and buildings situated both in the State and elsewhere. Expressly included within the meaning of land is any interest in land. This is intended to be as wide as possible so as to minimise any possibility of persons circumventing the reference to land by means of lease holdings, licences, or anything else. Also, expressly included is the holding of land indirectly through a company except where the company is a quoted company.

The definition of “public” is intended to be flexible enough so that a distinction can be made between policies which are designed specifically for the corporate sector and those designed for individuals. The term is used in *subsections (5) and (6)* to require that the marketing of a particular life product is directed at the public generally rather than a pre-selected group of persons.

### *Meaning of Personal Portfolio Life Policies*

A “personal portfolio life policy” is defined for the purposes of both this Chapter (which applies to such life policies written by domestic life assurance companies) and *Chapter 6* (which applies to such life policies written by assurance companies established in other EU countries, in another State which is a contracting party to the Agreement on the European Economic Area and a State which is a member of the OECD and which has a tax treaty with Ireland) of this Part. (2)

A life policy is a personal portfolio life policy where —

- the benefits under the policy derive from either the value of or income from property or by virtue of fluctuations in the value of property or in an index, and
- the property or index concerned was or can be selected by, or the selection of the property or index concerned was or can be influenced by, certain specified persons.

These persons include the policyholder, an agent of the policyholder, a person connected with either of these two persons, or the policyholder and a connected person or an agent acting for both the policyholder and the connected person. Whether or not a person is considered connected with another person is to be determined in accordance with the

rules of *section 10*.

The general rule as to what constitutes a personal portfolio life policy is subject to certain exceptions to the rule – see below. It is to be noted that where the assurance company retains complete discretion over the property selected to provide the benefits under the policy, then the policy would not be a personal portfolio policy.

#### ***Deemed selection by the policyholder***

The selection, by the policyholder or a person connected with the policyholder, of the property underpinning the benefits to be delivered by the life policy is an integral feature of a personal portfolio life policy. To counter an attempt to cloak what in substance is the exercise of the power to select by the policyholder etc. in a form which apparently confers the power of selection to some other unconnected person, the terms of the policy are treated as allowing selection by the policyholder etc. in certain specified circumstances whereas a strict analysis of the policy terms might not give such a result. These rules also apply where any such agreement, rather than forming part of the policy terms, is implemented in some other fashion. The reference to an “investment advisor no matter how described” is deliberately left undefined so as to allow the term to take on as wide a meaning as possible. The intention is to catch anyone who is given the authority to select or advise on the selection of the assets which are to determine the policy benefits. (3)

#### ***Exceptions***

Certain life policies which might otherwise be personal portfolio life policies are not to be treated as such where certain conditions are met. This treatment applies where the property to be selected is of a particular type. The type of property concerned is property — (4)

- which an assurance company has allocated to an internal fund and which, therefore, forms the basis on which the benefits under the policy will arise,
- units in an investment undertaking,
- cash (other than cash used for currency speculation), or
- a combination of these classes of property.

In addition, the property selected must satisfy the condition in relation to the selection of the property. A life policy which provides for the benefits under the policy to be determined by reference to an index may also receive this treatment where the index is an index which satisfies the condition in relation to the selection of the index.

As respects a life policy commenced on or after 5 December 2001, further requirements apply before such a policy will not be treated as a personal portfolio life policy. These requirements relate to the terms under which the policy is offered and are set out below.

#### ***Condition in relation to selection of property***

The condition which property must comply with in order for the policy not to be treated as a personal portfolio life policy is that, at the time the property is or was available for selection (the test will not apply at any other time), the chance to select the property must or must have been made available to the public generally. The definition of the term “public” makes it clear that this can include policies which have been specifically devised for particular groups, for example, individuals only, companies only or a combination of these groups. Making the opportunity available generally to the public has to be evidenced by marketing or other promotional literature published at the time the opportunity to select the property is made available. A distinction is made between land and other property in relation to the ability to select. (5)

In the case of land, the actual property available for selection must be made available

generally for selection by the public at the time the selection is being made (that is, everyone interested must have the chance to select the same property as the basis for determining the benefits under the policy).

In the case of other property, it is sufficient that property of the same description be available for selection generally at the time the selection is being made (for example, a portfolio of shares will require that the opportunity to select a portfolio of shares of the exact same companies be available generally to the public at the time the portfolio is being selected).

#### ***Condition in relation to selection of indices***

The condition which an index must satisfy if a policy is not to be a personal portfolio policy is that the opportunity to select the index must be or have been made available to the public generally at the time the index is or was available for selection. The same considerations as to what might constitute the public in any given case and the need to evidence the marketing or other promotional literature apply here as in relation to the selection of property. The index concerned is the consumer price index or a similar index compiled in another State or any published index of share prices on a recognised stock exchange. For this purpose, a recognised stock exchange is the Irish Stock Exchange or a stock exchange in another country which had the same level of recognition in that country as the Irish Stock Exchange has in Ireland. A combination of such indices is allowable. (6)

#### ***Additional requirement for post-6 December 2001 policies***

Additional requirements must be complied with by life policies commenced on or after 6 December 2001 if such policies are not to be regarded as personal portfolio life policies. These requirements do not apply to life policies which are based on a purely cash fund or policies where the marketing material was published in advance of 6 December 2001. The requirements are that — (7)

- the offer be made on a non-discriminatory basis,
- where the offer involves the selection of property which is primarily land/buildings (more than 50 per cent) and the assurance company has indicated in its marketing material the amount of money it is seeking from investors, the offer must limit the amount that any one investor may invest to 1 per cent of the amount capital requirement set out by the assurance company (exclusive of any borrowings).

### **730C Chargeable event**

#### **Summary**

This section sets out the meaning of a “chargeable event”. This is an event on which, subject to certain exemptions, an exit tax can be imposed on a life policy.

#### **Details**

##### ***Definitions***

For the purposes of this Chapter, “chargeable event” in relation to a life policy means — (1)(a)

- the maturity of the life policy (including where payments are made on death or disability which terminate the life policy),
- the full or part surrender of the rights conferred by the life policy (including where payments are made on death or disability which do not result in the termination of the life policy),
- the whole or part assignment of those rights,

- the ending of each 8-year period (called a “relevant period”) beginning with the inception of the policy, where such ending is not the maturity of the policy or the surrender or assignment of rights conferred by the policy.

Where an assurance company could have elected to opt out of the new basis business regime for all policies and contracts relating to life business commenced on or before 31 December 2000 but didn’t, a chargeable event will be deemed to happen on 31 December 2000 for life policies issued by the company before that date (see *section 730A(2)*). (1)(b)

***Exclusions from chargeable event***

A chargeable event does not occur where a life policy is wholly or partly assigned — (2)

- by way of security for a debt due to a financial institution or to a qualifying company, within the meaning of section 110, where the debt was originated by a financial institution and the life policy was assigned as security for that debt to that financial institution,
- between a husband and wife or between civil partners,
- between the spouses concerned by virtue of an order made following the granting of a divorce, or following a judicial separation 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.

***Benefits arising from life policies on death or disability***

Where a life policy gives rise to benefits in respect of death or disability, it is only the investment gain included in those benefits which will be subject to exit tax. (3)

**730D Gains arising on a chargeable event**

**Summary**

This section sets out the taxable gain that arises on the various chargeable events in relation to a life policy. It also sets out various situations where a gain does not arise on a chargeable event.

**Details**

***Gain arising on a chargeable event***

Where the chargeable event —

- is the maturity of the life policy or the surrender of the whole of the rights thereby conferred, the amount of the gain is determined by the formula — (1)(a) & (3)(a)

$$B - P$$

- is the assignment of the whole of the rights conferred by the life policy or the ending of a relevant period, the amount of the gain is determined by the formula — (1)(b) & (3)(b),  
(1)(da) &  
(3)(da)

$$V - P$$

- is the surrender of part of the rights conferred by the life policy, the amount of the gain is determined by the formula — (1)(c) & (3)(c)

$$B - \frac{(P \times B)}{V}$$

- is the assignment of part of the rights conferred by the life policy, the amount of the gain is determined by the formula — (1)(d) & (3)(d)

$$A - \frac{(P \times A)}{V}$$

- is deemed to happen on 31 December 2000 the amount of the gain is determined by the formula — (3)(e)

$$V - P$$

where —

- B is the amount of the sum payable and other benefits arising from the chargeable event,
- P is the total of all premiums paid on the life policy immediately before the chargeable event, less any premiums which have already been taken into account for a previous chargeable event (other than premiums in connection with a relevant event – these will have been taken into account, but will not have been repaid),
- V is the value of rights and other benefits under the life policy immediately before the chargeable event, and
- A is the value of the part of the rights and other benefits under the life policy which have been assigned.

**Note:** Certain technical adjustments are required in the calculation of the gain in respect of chargeable events that occur subsequent to the ending of a relevant period. The supplementary rules are contained in *subsection (1A)* and are explained in the note on that subsection below.

***Supplementary rules – calculation of gain subsequent to a gain arising on the ending of a relevant period***

Where a chargeable event occurs after a chargeable event consisting of the ending of a relevant period (as provided for in *section 730C(1)(a)(iv)*), that earlier event is disregarded when the gain is calculated. In other words, the gain on the new chargeable event is calculated as if there had been no such deemed disposal after 8 years. Supplementary rules apply depending on whether or not the later chargeable event is a partial disposal (i.e. part surrender or assignment). (1A)

- If the chargeable event is not a partial disposal, then when the gain is being calculated the value of the policy is increased by F, where F is tax on the deemed disposal that has not been repaid.
- If the chargeable event is a partial disposal, then when the gain is being calculated F (as defined above) is deducted from the eligible premiums figure.

***Chargeable events not giving rise to a gain***

A gain will not be treated as arising on a chargeable event in relation to a life policy if —

- immediately before the chargeable event the assurance company possesses a declaration from the policyholder stating that he/she is neither resident nor ordinarily resident in the State and the assurance company does not possess any information which would suggest that the declaration is not, or no longer, correct, that the policyholder has failed to notify them that he/she has become resident in the State, or that the policyholder is resident or ordinarily resident in the State, (2)(a)
- immediately before the chargeable event the policyholder itself is- (2)(b)
  - a life assurance company,

- an investment undertaking,
- a charity,
- a Personal Retirement Savings Account (PRSA) provider,
- a credit union,
- the Courts Service,
- the National Asset Management Agency,
- an exempt approved pension scheme or trust scheme to which section 784 or 785 applies; or
- approved retirement funds under section 784A and approved minimum retirement funds under section 784C

and the assurance company which commenced the policy possesses a declaration to this effect,

- the life policy is an investment made by the Motor Insurers’ Bureau of Ireland of moneys paid to the Motor Insurers Insolvency Compensation Fund under the Insurance Act 1964 (amended by the Insurance (Amendment) Act 2018), and the Motor Insurers’ Bureau of Ireland has made a declaration to this effect to the assurance company,
- the life policy is an asset held in a Special Savings Incentive Account (SSIA) and the assurance company possesses a declaration to this effect, (2)(c)
- the life policy is an asset held by the National Pensions Reserve Fund Commission, or the State acting through that Commission, and the Commission has made a declaration to this effect to the assurance company, (2)(d)
- the life policy is an asset held by a National Pensions Reserve Fund Commission investment vehicle, or the State acting through a Commission investment vehicle, and the Commission investment vehicle has made a declaration to this effect to the assurance company, (2)(e)
- the assurance company which commenced the life policy has established a branch in an offshore state (an offshore state means a State which is a member of the European Community or the European Economic Area), the life policy is covered through that branch and the assurance company has received written approval from the Revenue Commissioners that the provisions regarding declarations of non-residency in the State need not apply to the life policies covered by the branch, or (2A)(a),  
(b)(i)(I),  
(b)(iii) & (c)
- the assurance company which commenced the life policy underwrites the 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 policyholder resides in an EU or EEA Member State other than Ireland. Written approval from the Revenue Commissioners is also required before this exemption can be applied. This provision applies on and from 13 March 2008. (2A)(a),  
(b)(i)(II),  
(b)(iii) & (c)

The amount of premiums to be taken into account in determining the gain on a chargeable event is set out. (4)

Transitional arrangements apply in relation to a chargeable event occasioned by the ending of an 8-year period in the case of a policy taken out before 1 May 2006. An assurance company without a declaration of non-residence from the policyholder does not have to deduct exit tax in respect of the ending of a relevant 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, then exit tax in respect of the earlier chargeable event also becomes payable. (5)

## 730E Declarations

### Summary

This section sets out the details required to be included in the declarations (referred to in *section 730D(2)*) which must be made to the assurance company in order for the life policy concerned to be exempt from exit tax on a gain arising on a chargeable event.

### Details

#### *Definitions*

In this section and *section 730F*, “policyholder” means — (1)

- where the rights conferred by the policy are vested in a person as beneficial owner, that person;
- where the rights conferred by the policy are held on trusts created by a person, that person;
- where the rights conferred by the policy are held as security for a debt owed by a person, that person.

#### *Non-Residents*

The declaration required to be made by a non-resident is a written declaration to the assurance company, in whatever form the Revenue Commissioners may prescribe, made and signed by the policyholder. This may be done at or about the time of the inception of the policy or at the latest must be done immediately before the chargeable event. It must state the name and principal place of residence of the policyholder, must declare that the policyholder is neither resident nor ordinarily resident in the State at the time of making the declaration, must contain an undertaking by the policyholder that he/she will notify the assurance company if he/she becomes resident in the State, and must also contain any other information the Revenue Commissioners may require. (2)

#### *Life Assurance companies etc.*

The declaration required to be made by a life assurance company etc. is a written declaration to the assurance company, in whatever form the Revenue Commissioners may prescribe, made and signed by the policyholder. It must contain the policyholder’s name and address and it must declare that the policyholder is either a life assurance company, an investment undertaking, a charity, a Personal Retirement Savings Account (PRSA) provider, a credit union, the Courts Service, the National Asset Management Agency, an exempt approved pension scheme, approved retirement annuity trust scheme, approved retirement fund and approved minimum retirement fund. It must also contain an undertaking that should the policyholder cease to be one of these, they will inform the assurance company accordingly. Finally, the declaration must contain any other information the Revenue Commissioners may require. (3)

#### *Special Savings Incentive Account Managers*

The declaration required to be made by a Special Savings Incentive Account (SSIA) manager is a written declaration to the assurance company made and signed by the qualifying savings manager who manages the SSIA of the individual who is entitled to the benefit of the life policy. It must be made in whatever form the Revenue Commissioners may prescribe and must contain the name, address and PPS Number of the individual who is beneficially entitled to the life policy. It must declare that the life policy is an asset held in an SSIA, is managed by the qualifying savings manager for the individual who is beneficially entitled to it and that, if the life policy ceases to be an asset in an SSIA, the qualifying savings manager (3A)



will inform the assurance company accordingly. Finally, it must contain any other information the Revenue Commissioners may require.

***Multiple owners of rights of a life policy***

If the rights conferred by a life policy are vested beneficially in two (or more) persons (4) immediately before a chargeable event occurs, then each person will be treated as a sole policyholder, but the consequences of the chargeable event will only be in proportion to his/her share in the policy.

***Retention of declarations***

Declarations are required to be retained by the assurance company concerned for a period of (5) 6 years from the time the policy in respect of which the declaration was made ceases.

**730F Deduction of tax on the happening of a chargeable event**

**Summary**

This section sets out the rates of tax that will be applied to gains arising on a chargeable event. The assurance company is liable to account for the tax and it has the power to either deduct it from any proceeds payable to the policyholder, or to appropriate sufficient assets underlying the policy to meet the tax liability. Provisions to allow for the refunding of tax, where the final amount due is less than what was paid to Revenue, are also included.

**Details**

***Definitions***

In this section and *section 730G*, “appropriate tax”, where it concerns a chargeable event in (1) relation to a life policy, means a sum representing income tax on a gain arising in accordance with *section 730D*.

***Tax rates***

The rate applicable on a chargeable event to which this Chapter applies, (see *Tables 1(a)* and (1)(a),(b) & *1(b)* below) will depend, on whether or not the policyholder is a company, and if so, on (1B) whether or not the life assurance company is in possession of a declaration from the company. The distinction between a company policyholder and other policyholders is of relevance only in respect of chargeable events arising on or after 1 January 2012.

**Table 1(a):**

Chargeable event arising on or after 1 January 2012	Companies that have made a declaration	No declaration and chargeable event arises between 1 January 2013 and 31 December 2013	No declaration and chargeable event arises on or after 1 January 2014
All Gains except from Personal Portfolio Life Policies (PPLPs)	25%	36%	41%
PPLPs – <i>section 730BA</i>	n/a	n/a	n/a

**Table 1(b):**

Chargeable event arising -	All Gains except from Personal Portfolio Life Policies (PPLPs)	PPLPs – <i>section 730BA</i>
<b>Before 1 January 2009</b>	Standard rate of income tax (20%) plus 3%	Standard rate of income tax (20%) plus 23%
<b>Between 1 January 2009 and 7 April 2009</b>	Standard rate of income tax (20%) plus 6%	Standard rate of income tax (20%) plus 26%
<b>Between 8 April 2009 and 31 December 2010</b>	28%	Standard rate of income tax (20%) plus 28%
<b>Between 1 January 2011 and 31 December 2011</b>	30%	Standard rate of income tax (20%) plus 30%
<b>Between 1 January 2012 and 31 December 2012</b>	33%	Standard rate of income tax (20%) plus 33%
<b>Between 1 January 2013 and 31 December 2013</b>	36%	Standard rate of income tax (20%) plus 36%
<b>On or after 1 January 2014</b>	41%	60%

If the chargeable event occurred on or before 31 December 2000, a rate of 40 per cent **(1)(c)** applied.

#### ***Setting off of appropriate tax in certain circumstances***

Appropriate tax already paid in connection with the ending of a relevant period (i.e. a chargeable event within the meaning of ***section 730C(1)(a)(iv)***) and which has not been repaid may be set off against appropriate tax calculated using the provisions of ***section 730D(1A)(a)*** in connection with a subsequent chargeable event. Where tax is overpaid, the assurance company repays the excess to the policyholder and sets off the amount in the return. **(1A)**

### ***Assurance company entitlements***

An assurance company, which is liable to account for appropriate tax on the happening of a chargeable event in relation to a life policy is entitled —

- to deduct the appropriate tax from the proceeds due to the policyholder if the chargeable event is the maturity or surrender (wholly or partly) of the rights conferred by the life policy, or (3)(a)(i)
- to appropriate sufficient assets underlying the life policy to meet their tax liability if the chargeable event is the assignment (wholly or partly) of the rights conferred by the life policy, the ending of a relevant (8-year) period in accordance with *section 730C(1)(a)(iv)*, or if the chargeable event is deemed to happen on 31 December 2000. (3)(a)(ii)

### ***Alternative method should assurance company not take up entitlement***

During the period between 26 September 2001 and 5 December 2001, if, in relation to a personal portfolio life policy, an assurance company was entitled, but failed, to either deduct an amount equal to the appropriate tax due or to appropriate and realise sufficient assets in order to meet the amount of appropriate tax which they are liable to account for, then, in order to account for the appropriate tax due, *section 730FA* and *subsection (7) of section 730G* will apply. (4)

## **730FA Assessment of appropriate tax where tax not deducted under *section 730F***

### **Summary**

*Section 730F(1)(b)* provides as respects the happening of a chargeable event in relation to a life policy to which the provisions of this Chapter apply on or after 26 September 2001 for the imposition of the 20 per cent additional charge (linked to the current standard rate of income tax) where such a policy is a personal portfolio life policy as defined in *section 730BA*.

*Section 730F(4)* provides, where the assurance company has not deducted this additional charge from the proceeds of a policy in the period from 26 September 2001 to 5 December 2001, that special collection measures as set out in this section apply. Where these special measures apply the normal provisions for accounting and paying appropriate tax do not apply.

The section applies to regulate the time and manner in which any such appropriate tax which remains unpaid (that is the 20 per cent additional charge) in relation to a personal portfolio life policy will be assessed and paid. The objective is to require the assurance company to return sufficient information to enable Revenue to directly assess the policyholder to the additional appropriate tax due.

There is no penalty on either assurance companies or policyholders where they did not apply the increased rate of exit tax (as no such legislation was then in place) and merely applied the rate as set out in the legislation before its amendment by Budget Day Financial Resolution No. 1 of 5 December 2001.

### **Details**

#### ***Application***

It is made clear that the section only applies to bridge the gap between the Ministerial announcement that the additional charge would apply to any personal portfolio life policies cashed in after 26 September to the introduction of enabling legislation in the Budget Day Financial Resolution of 5 December 2001. (1)

### **Returns**

An assurance company has to make a return to Revenue where it has not deducted sufficient funds from the proceeds of a personal portfolio life policy to cover the full amount of appropriate tax due in respect of the policy. The information required to be returned must be supplied by 31 December 2001. (2)

### **Secondary liability of assurance company**

The assurance company itself may be made liable for any appropriate tax due if it failed to make the return or made an incorrect or late return. This secondary liability will be in addition to any other penalty to which the assurance company may be liable. (3)

### **Direct assessment of policyholder**

The policyholder or other person to whom the assurance company paid the proceeds of the policy may be directly assessed for the unpaid appropriate tax. (4)

### **Administrative matters**

Various administrative matters such as the amendment of assessments, making of enquiries to confirm accuracy of returns or in absence of any return to acquire the information necessary to make an assessment are also provided for. Any tax assessed under these provisions is due within one month after the issue of the notice of assessment. (5) to (8)

### **Commencement**

By virtue of section 40(4)(b) of the Finance Act 2002 this section applies to the proceeds etc. arising in respect a life policy taken out with a domestic life assurance company to which the provisions of this Chapter applies on or after 26 September 2001 even where the policy was taken out before that date.

## **730G Returns and collection of appropriate tax**

### **Summary**

This section sets out the date for the payment of appropriate tax by the assurance company. The tax must be paid twice a year, for periods covering six months each. The assurance company must also file a return at this time, even if there is no tax to be paid for the period. The Revenue Commissioners have the power to raise an assessment on the assurance company should they have reason to believe that the assurance company has not declared, or not paid, all the appropriate tax for which they are liable. If an assessment is raised, the company will have a maximum of one month to pay the tax; however they have the right to appeal the assessment. Late payment of appropriate tax will attract interest while it remains outstanding.

### **Details**

#### **Return of appropriate tax**

Tax deducted by an assurance company from a gain arising on a chargeable event is termed “appropriate tax” and the company must make two returns in respect of each financial year for such tax to the Collector-General — (2)

- tax arising in respect of chargeable events occurring from 1 January to 30 June must be included in a return made to the Collector-General within 30 days of that latter date, and
- tax arising in respect of chargeable events occurring from 1 July to 31 December must be included in a return made to the Collector-General within 30 days of that latter date.

Should no tax arise, the assurance company must make a return to that effect to the Collector-General. Amounts of tax overpaid under the provisions of *section 730F(1A)* are included in the return.

#### ***Power to raise assessments***

The appropriate tax (reduced by any amount credited in accordance with *section 730F(1A)*) (3) must be paid over to the Collector-General by the time the return is due to be made without an assessment being raised, but the Revenue Commissioners can raise an assessment if any tax due has not been paid.

Similarly, an assessment can be raised should the Revenue Commissioners discover that the amount of tax due by the assurance company has been under-declared. (4)

Revenue has the power to make any required adjustments where any item has been incorrectly included in a return. Revenue is also empowered to repay to the assurance company an amount of appropriate tax paid which was correctly included in a return but which, within one year, has been proved by the assurance company as just and reasonable that such tax should now be repaid. (5)

#### ***Tax due after assessment***

Where an assessment is raised to collect appropriate tax, the tax is due within one month of the date of issue of the notice of assessment unless it is due earlier under *subsection (3)*. Whereas there is a right of appeal against such assessments it cannot affect the date on which any amount of tax is due under the said subsection. (6)(a)

#### ***Interest charges***

The normal rules relating to assessments, appeals against assessments and the collection and recovery of income tax also apply to appropriate tax. Interest on late payment of such tax is charged at a rate of 0.0322 per cent per day or part of a day before 1 July 2009. The rate is 0.0274 per cent per day or part of a day on or after 1 July 2009. Such interest will not be payable should the total charged be €2 or less. Such interest must be paid without deduction of tax and is not allowed as a deduction in computing any income profits or losses. (7)

#### ***Declaration***

The return to be made by the assurance company to account for appropriate tax must be in a form prescribed by the Revenue Commissioners and must contain a declaration to the effect that the return is correct and complete. (8)

### **730GA Repayment of appropriate tax**

For the purposes of a claim to relief under *section 189, 189A, 192 or 205A* the amount of a payment to a policyholder is deemed to be a net amount, from whose gross equivalent a sum equal to the appropriate tax due has been deducted. This amount of gross income is treated as chargeable to tax under Case III of Schedule D.

### **730GB Capital acquisitions tax: set-off**

If appropriate tax is payable on the death of a person, then the amount of such tax will be treated as an amount of capital gains tax for the purposes of section 104 of the Capital Acquisitions Tax Consolidation Act 2003. However, the amount available for set off is limited to the amount of appropriate tax calculated at the rate in *section 730F(1)(a)* (currently 30 per cent).

## CHAPTER 6

### *Certain life policies – taxation and returns*

#### Overview

This Chapter, which contains *sections 730H to 730K*, provides rules for the taxation of certain foreign life policies. These are policies commenced by an assurance company established in an offshore state (an “offshore state” is defined in *section 730H*). However this does not include policies commenced by a branch or agency of the assurance company that is carrying on business within the State. Foreign life policies also include policies commenced by a branch or agency of a domestic assurance company that is carrying on business in an offshore state.

#### 730H Interpretation and application

##### Summary

This section defines some terms and concepts used in the following sections of the Chapter.

##### Details

##### *Definitions*

In this Chapter the following definitions apply — (1)

“EEA Agreement” means the Agreement on the European Economic Area signed in Oporto on 2 May, 1992 and adjusted in Brussels on 17 March, 1993.

“EEA state” means a State other than Ireland which is a party to the EEA Agreement.

“foreign life policy” means a life assurance policy issued by a life assurance company, or its branch or agency, in an offshore state.

An “offshore state” means a State other than Ireland, which is —

- a Member State of the European Communities,
- an EEA State, or
- a Member State of the Organisation for Economic Cooperation and Development (OECD) with which Ireland has a double taxation agreement.

“relevant event” means the ending of a “relevant period”, where a relevant period is an 8-year period beginning with the inception of the life policy and each subsequent 8-year period beginning when the previous one ends.

“relevant payment” means a regularly reoccurring payment from a foreign life policy to a person. It does not include a payment made in consideration of the whole or part disposal of the foreign life policy.

The capital gains tax provisions governing when there is a disposal of an asset also apply to determining when there is a disposal of a foreign life policy. (2)

An income from, or details of a disposal of, a life policy is treated as having been correctly included in a return where the income or details of the disposal are included in a return of income made on or before the specified return date for the chargeable period in which the income arises, or in which the disposal is made.

#### 730I Returns on acquisition of foreign policy

## Summary

This section outlines the details to be included in a return of income when a person acquires a foreign life assurance policy.

## Details

### *Return of income details*

Where in a chargeable period a person acquires a foreign life policy, the person is treated as being a chargeable person (whether or not the person is otherwise so treated) and is obliged to give details of the acquisition in the return of income required to be made in respect of that chargeable period. The details required are —

- the name and address of the person who commenced the policy,
- a description of the terms of the policy, and
- the name and address of the person through whom the policy was acquired.

## **730J Payment in respect of foreign life policy**

### Summary

This section sets out the income tax regime which applies to a foreign life policy when the policyholder receives a payment without there being a whole or part disposal of the policy.

### Details

This section applies from 26 September 2001 for payments in respect of a foreign life policy that is a personal portfolio life policy. In any other case, it applies from 1 January 2001.

### *Individual*

Where a policyholder (who is an individual) of a foreign life policy receives a payment in respect of the policy and the amount of the payment is correctly included in a return, it will be liable to income tax as outlined in **Table 1** below:— (a)

<b>Chargeable event arising —</b>	<b>Regular payment (i.e. made annually or at shorter intervals)</b>	<b>Non-regular payment (excluding PPLPs)</b>	<b>PPLPs – see <i>section 730BA</i> – applicable from 26 September 2001</b>
<b>Before 1 January 2009</b>	Standard rate of income tax (20%)	Standard rate of income tax (20%) plus 3%	Standard rate of income tax (20%) plus 23%
<b>Between 1 January 2009 and 7 April 2009</b>	Standard rate of income tax (20%) plus 3%	Standard rate of income tax (20%) plus 6%	Standard rate of income tax (20%) plus 26%
<b>Between 8 April 2009 and 31 December 2010</b>	25%	28%	Standard rate of income tax (20%) plus 28%
<b>Between 1 January 2011 and 31 December 2011</b>	27%	30%	Standard rate of income tax (20%) plus 30%
<b>Between 1 January 2012 and 31 December 2012</b>	30%	33%	Standard rate of income tax (20%) plus 33%
<b>Between 1 January 2013 and 31 December 2013</b>	33%	36%	Standard rate of income tax (20%) plus 36%
<b>Between 1 January 2014 and 31 December 2014</b>	41%	41%	60%
<b>On or after 1 January 2015 *</b>	41%	41%	60%

\*See additional Note following Table 2 below.



However, if the payment is not correctly included in such a return, it will be liable to income tax at the rates outlined in **Table 2** below:-

**Table 2:**

Chargeable event arising -	Not a PPLP	PPLPs – see <i>section 730BA</i> – applicable from 26 September 2001
<b>Before 1 January 2009</b>	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 20%
<b>Between 1 January 2009 and 7 April 2009</b>	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 23%
<b>Between 8 April 2009 and 31 December 2010</b>	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 25%
<b>Between 1 January 2011 and 31 December 2011</b>	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 27%
<b>Between 1 January 2012 and 31 December 2012</b>	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 30%
<b>Between 1 January 2013 and 31 December 2013</b>	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 33%
<b>Between 1 January 2014 and 31 December 2014</b>	Marginal rate (i.e. 20% or 41% as appropriate)	80%
<b>On or after 1 January 2015</b>	41%	80%

**Note:** With effect from 1 January 2015, the distinction between ‘correctly included’ and ‘not correctly included’ is removed for other than a PPLP, and, any payment, whether regular or non-regular, (excluding from a PPLP), will be liable to income tax at the rate of 41% (i.e. one percentage point higher than the higher rate of income tax (40%) that comes into effect from that same date).

### *Company*

A company in receipt of a payment in respect of a foreign life policy is liable to tax on the amount thereof under Case III of Schedule D. (b)

### **730K Disposal of foreign life policy**

#### **Summary**

This section sets out the taxation regime applicable when a policyholder wholly or partly disposes of a foreign life policy. It also covers the deemed disposal of a policy at the ending of each period of 8 years following the inception of the policy.

## Details

### *Introduction of provisions*

The following provisions apply to the whole or part disposal of a foreign life policy on or after 26 September 2001 in the case of a personal portfolio life policy. In any other case, they apply from 1 January 2001.

### *Taxation regime for companies and individuals*

Where a policyholder of a foreign life policy is a company and disposes of the whole or part of the policy then the amount of the gain on disposal, if correctly included in a return, will be chargeable to tax under Case IV of Schedule D. (1)

Where a policyholder is an individual and disposes of the whole or part of the foreign life policy on or after 1 January 2001, then the amount of the gain on disposal, if correctly included in a return, will be chargeable to income tax as detailed below —

Chargeable event arising —	Gains (excluding PPLPs)	PPLPs – see <i>section 730BA</i> – applicable from 26 September 2001
<b>Before 1 January 2009</b>	Standard rate of income tax (20%) plus 3%	Standard rate of income tax (20%) plus 23%
<b>Between 1 January 2009 and 7 April 2009</b>	Standard rate of income tax (20%) plus 6%	Standard rate of income tax (20%) plus 26%
<b>Between 8 April 2009 and 31 December 2010</b>	28%	Standard rate of income tax (20%) plus 28%
<b>Between 1 January 2011 and 31 December 2011</b>	30%	Standard rate of income tax (20%) plus 30%
<b>Between 1 January 2012 and 31 December 2012</b>	33%	Standard rate of income tax (20%) plus 33%
<b>Between 1 January 2013 and 31 December 2013</b>	36%	Standard rate of income tax (20%) plus 36%
<b>Between 1 January 2014 and 31 December 2014</b>	41%	60%
<b>On or after 1 January 2015</b>	41%	60%*

\* With effect from 1 January 2015, any gain from a PPLP which is not correctly included in a return, will be liable at the rate of 80%.

### *Loss on disposal*

The gain on disposal of a foreign life policy is computed on the same basis as it would be for capital gains tax purposes under *section 594* (however, where the computation produces a loss, the gain is treated as “nil”). Furthermore a gain on disposal cannot be reduced by a claim to relief under *sections 381, 383, 396* or *399*. (2) to (4)

Where a gain is treated as “nil” and tax was chargeable in respect of an earlier deemed

disposal of the policy, the overpaid amount is refundable/available for set-off.

***Capital acquisitions tax: set-off***

The amount of any income tax paid by an individual on a gain generated by the disposal of a foreign life policy is treated as being an amount of capital gains tax paid for the purposes of **section 104** of the Capital Acquisitions Tax Consolidation Act 2003. (5)

***Deemed disposal/reacquisition of foreign life policy***

There is a deemed disposal and reacquisition of a foreign life policy at the ending of each 8-year period beginning with the inception of the policy. For the purposes of the section, the policyholder is deemed to have disposed of the whole of the policy immediately before the ending of the period and to have immediately reacquired it at market value at that time. (6)