

BINDING PRIVATE RULING: BPR 105

DATE: 21 July 2011

ACT : INCOME TAX ACT, NO. 58 of 1962 (the Act)
SECTION : SECTIONS 1 AND 7(1)
SUBJECT : TAX IMPLICATIONS FOR A RESIDENT RELATING TO A SINGLE PREMIUM WHOLE LIFE INSURANCE POLICY ISSUED BY AN OFF-SHORE INSURER

1. Summary

This ruling deals with the income tax implications for a resident relating to a single premium whole life insurance policy issued by a long-term insurer registered off-shore. More specifically this ruling deals with whether amounts received by or accrued to a specific and separate bank portfolio account to be opened for the resident for the purpose of holding portfolio assets as the basis on which the benefits of the policy will be calculated, will be regarded as having been received by or accrued to or in favour of the resident during the existence of the policy.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the Act applicable as at 23 February 2011 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the Act.

This ruling has been requested under the provisions of –

- section 1, definition of “gross income”; and
- section 7(1).

3. Parties to the proposed transaction

The Applicant: A natural person as described in paragraph (a) of the definition of “resident” in section 1 (also a Policyholder)

The Insurer: A foreign, long-term Insurer not registered or deemed to be registered as a Long-term Insurer under the Long-term Insurance Act, No. 52 of 1998 (the Insurance Act) and not governed by section 29A of the Act

4. Description of the proposed transaction

The Applicant intends acquiring a single premium whole life insurance policy (the Policy) underwritten by the Insurer.

The general policy conditions provide that –

- the death and surrender benefit attendant on the Policy is directly linked to the performance of assets held in a specific and separate bank portfolio account opened for each Policyholder;
- the purpose of the portfolio account is to hold the assets as the basis on which the benefits of the Policy will be calculated;
- the assets in the portfolio are acquired in accordance with an investment option elected by the Policyholder upon inception of the Policy
- the Policyholder may name an off-shore based fund manager approved by the Insurer that will manage the portfolio assets on the Policyholder's behalf;
- the Policyholder bears the investment risk and is responsible for the performance of the assets in the portfolio;
- it is the Policyholder's duty to monitor and direct the investment management of the assets during the whole period of the Policy agreement;
- the investment option can be changed at any time by the Policyholder;
- neither the Policyholder nor any other person entitled to any benefits under the Policy will hold a legal interest in the assets held in the portfolio account as these assets remain the exclusive property of the Insurer. However, the assets in the portfolio are segregated and held for the benefit of the Policyholder. This also applies in the event of the Insurer's insolvency; and
- the Policy may be surrendered in whole or in part (that is, the Policyholder cancels the Policy prior to a life event transpiring) at any time, provided that the portfolio account linked to the Policy shows a positive balance after deducting all outstanding costs and fees (such as administration, management, risk, processing and transactional fees) and the filing of the prescribed form. The fees referred to are calculated according to the actuarial rules applicable to the Policy; and any payment due in terms of the Policy (including a payment upon the partial or full surrender of the Policy) will be made either in cash or, on request, by means of the transfer of assets held in the portfolio account.

5. Conditions and assumptions

This ruling is made subject to the conditions that no opinion is expressed or assurance given on whether any anti-avoidance provision in the Act will be or will not be applicable to the proposed transaction.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- The portfolio assets will be regarded as being held on behalf and for the benefit of the Applicant. All amounts received or accrued in respect of the portfolio assets must for purposes of the Act be reflected as a receipt by or accrual to or in favour of the Applicant.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from February 2010.

8. General note

SARS is in agreement with the fundamental principle of insurance investment that the assets concerned are held by the insurer, not the policyholder. This BPR only relates to the specific set of facts set out herein.

Issued by:

**Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**