

TAXATION OF AN OFFSHORE LIFE ASSURANCE OR REDEMPTION POLICY PURCHASED OUTSIDE OF KENYA BY A KENYAN RESIDENT

This document provides an overview of the taxation of an Utmost International (UI) life or redemption policy which is owned by a Kenyan resident.

KENYAN RESIDENTS

In order for a non-Kenyan based insurer ('foreign insurer') to conduct life assurance or redemption business in Kenya, the foreign insurer must be authorised by the Kenyan Insurance Regulatory Authority (IRA).

However, where a foreign insurer is not authorised by the IRA, an individual who is resident in Kenya can purchase a life assurance policy or redemption policy from that foreign insurer provided the business is not conducted in Kenya. The individual must seek approval from the IRA before purchasing a policy.

In order to determine the Kenyan residency of an individual, it is defined in terms of whether that individual has a '**permanent home**' in Kenya, as well as by virtue of the number of days that individual spent in Kenya in a given year.

Where the individual has a 'permanent home' in Kenya, their presence in Kenya for any period in the year (even one day) makes them resident for tax.

Permanent home is not defined and there are no guidelines provided. In practice, and common to most jurisdictions, taxpayers apply it with reference to domicile.

Where the individual does not have a permanent home in Kenya, they become resident when:

a) They are present in Kenya for a period or periods aggregating to 183 days or more in the year;

or

b) They are present in Kenya in the year and in each of the two preceding years for periods averaging more than 122 days in each year.

TAXATION OF UI POLICIES IN KENYA

UI offer life assurance policies which have a death benefit of either 101% or 105% of the surrender value, and redemption policies which have no lives assured but have a contractual term of 99 years. They will be collectively referred to as 'UI policy' in this document.

The main tax advantage of an UI policy is that it is not taxable in Kenya when an encashment is taken from the policy. This is because the basis of taxation in Kenya is 'sourced base' whereas encashments from an UI policy is regarded as foreign income. This means that any income which is accrued or derived from Kenya, is taxable in Kenya. Foreign income isn't taxable, with the exception that;

- › where a business is carried on or exercised partly within and partly outside Kenya by a resident individual, the whole of the gains or profits from that business shall be deemed to have been accrued in or derived from Kenya; or
- › employment income is taxable on a worldwide income basis in Kenya and not solely where it is accrued or derived from Kenya.

TAX CATEGORY/EVENT	TAX APPLICATION
Tax relief on premiums	Premiums invested into a policy do not qualify for tax relief.
In specie transfers into the policy	In specie transfers into the policy may be subject to capital gains tax. The market value at the date of the transfer would be used. The transferor must disclose the details of the transfer to the tax authority.
Withholding tax	Premium payments are not subject to withholding taxes.
Tax on full and part surrender	There is no income tax liability on full or part surrender because income is derived from foreign sources.
Tax on death of a policyholder where there are remaining lives assured	There are no inheritance or gifts taxes in Kenya. The policy will continue without any liability to tax.
Tax on death of a policyholder where there are no remaining lives assured	There are no inheritance or gifts taxes in Kenya. The policy will come to an end without any liability to income tax.
Tax on death of the last life assured (the relevant life assured)	There are no inheritance or gifts taxes in Kenya. The policy will come to an end without any liability to income tax.
Tax on maturity (Redemption policies only)	There is no income tax liability on maturity because income is derived from foreign sources.
Inheritance tax, forced heirship and gift tax	There is no inheritance tax, forced heirship or gift tax in Kenya.
Other advantages of life or redemption contracts in Kenya	Kenya doesn't have any exchange controls. An individual can remit any sum from a foreign life or redemption policy to Kenya. However, amounts in excess of US\$10,000 should be reported to the Central Bank of Kenya. Policyholders can nominate beneficiaries on the policy. The beneficiaries may be different to the beneficiaries of the Policyholder's estate which can provide asset protection benefits.
Offshore trusts where the settlor and/or beneficiary are resident in Kenya	Isle of Man trusts are recognised in Kenya. A Kenyan resident individual is subject to tax on income only where the income is derived or accrued in Kenya. Where income is paid from an UI policy, it is deemed to be foreign income which is not taxable in Kenya.
A non-Kenyan domiciled company (Offshore company)	The Kenyan resident director would be subject to employment tax on the director's fees earned as a result of their directorship in the offshore company. This is because a Kenyan resident individual is subject to employment tax on their worldwide employment income. Profits distributed to any resident shareholders and directors would not be subject to income tax to the extent it is derived from foreign sources.
General anti avoidance rules	Kenya has anti avoidance rules set out in Section 23 Income Tax Act. This provision allows the Kenya Revenue Authority to take any steps necessary to recover tax, including deeming income, if it is of the view that a transaction is artificial or is designed purposely for the avoidance of, or reduction of, liability to tax.

The value of investments may fall as well as rise in value and investors may not get back what they paid in.

This document is based on Utmost International's interpretation of law and tax practice as at August 2019. We believe this interpretation to be correct, but cannot guarantee it. Tax relief and tax treatment of investment funds may change in the future. Full details of the products available from Utmost International are available on our website.

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www.utmostinternational.com

Calls may be monitored and recorded for training purposes and to avoid misunderstandings.

Utmost Wealth Solutions is the registered business name of Utmost International Isle of Man Limited Singapore Branch.

Utmost International Isle of Man Limited Singapore Branch, 6 Battery Road #16-02, Singapore 049909. Tel: +65 6216 7990 Fax: +65 6216 7999.

Registered in Singapore Number T08FC7158E. Authorised by the Monetary Authority of Singapore to conduct life assurance business in Singapore.
Member of the Life Insurance Association of Singapore. Member of the Singapore Finance Dispute Resolution Scheme.

Utmost International Isle of Man Limited is registered in the Isle of Man under number 024916C.

Registered Office: King Edward Bay House, King Edward Road, Onchan, Isle of Man, IM99 1NU, British Isles. Licensed by the Isle of Man Financial Services Authority.

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Administration Centre for correspondence: King Edward Bay House, King Edward Road, Onchan, Isle of Man, IM99 1NU, British Isles.

Tel: +353(0)1 479 3900 Fax: +353(0)1 475 1020.

Registered Office address: Navan Business Park, Athlumney, Navan, Co. Meath, C15 CCW8, Ireland.

Utmost Wealth Solutions is registered in Ireland as a business name of Utmost PanEurope dac.

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