

TECHNICAL SALES BRIEFING



PERSONAL REPRESENTATIVES AND THE PAYMENT OF TAX ON DEATH

KEY POINTS

- › Personal Representatives (PRs) are responsible for administering the estate of the deceased and for settling their financial affairs
- › This Technical Sales Briefing (TSB) looks at the income tax position on the death of a policy owner and the role of the PRs and includes comment on how single premium bonds can be set up to provide planning opportunities to manage the incidence of chargeable events.

INTRODUCTION

When someone dies having made a valid will, the PRs will be the executors appointed in the will. It is the executors who will apply for, and should subsequently be granted, probate. In the event of an individual dying intestate, the PRs will be appointed by the probate office and they will be granted letters of administration to deal with the estate in accordance with the intestacy provisions. In Scotland, regardless of how they come to be appointed, they will be known as executors.

The PRs are responsible for payment of the deceased's tax liabilities arising both prior to death and after death during the period of administration. These responsibilities can include valuing the deceased's estate, claiming any overpaid tax and the payment of any inheritance tax (IHT) due.

SOME EXAMPLES OF THE POSITION ON DEATH OF BOND OWNERS AND LIVES ASSURED

A life assurance bond can be set up in a variety of ways with combinations of lives assured and policy owners. How the bond is set up will determine when and on whom any tax will fall on the happening of a chargeable event.

It is worth reiterating here that it is not necessarily the death of the policy owner that triggers a chargeable event but the death of the life assured. Where multiple lives assured are used, the position will be dependent on how the policy is written. The examples below all assume that the policy is written on a last survivor basis, meaning that the death of the last surviving life assured will trigger the policy to end and a subsequent chargeable event. This is the position for all current Utmost International Isle of Man Limited policies although a first death option is also available on some of the Utmost PanEurope policies.

EXAMPLES:



POLICY OWNER AND LIFE ASSURED ARE THE SAME PERSON

This is the most straightforward scenario although not without its issues. During the policy owner's lifetime it should be possible for the owner to plan chargeable events so as to ensure tax is not due or, if it is, it is reduced as far as possible. However, on the basis that the owner is the only life assured, death will cause a chargeable event which may mean the estate being liable for tax on a chargeable gain. The PRs will complete the final self-assessment and pay any tax due.



JOINT OWNERS AND JOINT LIVES ASSURED ON A LAST SURVIVOR BASIS

In the event of first death, the bond can continue in force and will pass to the other joint owner under survivorship rules with no chargeable event occurring. On second death, the situation is as above as effectively a single owner / single life assured is left.



MULTIPLE LIVES ASSURED AND THE SEPARATION OF OWNERS AND LIVES ASSURED

The opportunities for single premium bond planning are increased when there is "separation" between the policy owners and the lives assured. This is because, where multiple lives assured are used, the death of the first life assured will not trigger a chargeable event. The addition of younger lives assured, who may be assumed to outlive the policy owners, can potentially aid the process of tax efficient encashment and allow assignments to be made at the most effective time by the policy owners and subsequently their PRs.



CAPITAL REDEMPTION BONDS (CRBs)

It should be noted that the position with a CRB will be different as there are no lives assured although the eventual chargeable event calculation will be the same.

Let's have a look at a couple of examples:

SINGLE OWNER

On the death of the single owner, unlike a life assurance bond, the CRB will continue in force and the PRs can fulfil any legacies by assigning the ownership of the CRB to the beneficiaries or, if a will trust is created, the ownership can be assigned to the trustees. Alternatively the PRs can surrender the CRB to fulfil the legacies in cash although this will give rise to a chargeable event.

JOINT OWNERS

On the death of the first owner, the survivor becomes the sole owner by rights of survivorship and the CRB continues as it does on the death of the last survivor. At this time, the scenario is exactly as described in the previous paragraph.

THE TAX POSITION

The tax position will be determined by whether the policy owner's death brought the policy to an end and created a chargeable event, or the policy continues beyond their death and is subsequently surrendered by the PRs.

Where a life assurance policy is used and the policyholder is the last, or only, life assured their death gives rise to a chargeable event and gains are assessed against the policyholder. Their PRs will settle the now deceased policyholder's income tax liabilities.

The situation is different where the policy continues after the policyholder's death (because of the existence of another life assured or where a CRB is used) and the PRs subsequently surrender the policy during the period of administration.

In general terms, the PRs, who during the period of administration have neither a personal allowance nor a

liability to higher or additional rate tax, are liable to income tax in respect of any chargeable gain at the basic rate of, currently, 20%.

The beneficiaries of the deceased's estate will be supplied with a form R185 (Estate Income) by the PRs setting out details of any chargeable gain and the tax credit. If the beneficiaries are higher or additional rate taxpayers, they will be responsible for any higher/additional rate tax although, if they are non-taxpayers, they are able to reclaim any tax paid. It should be noted that PRs are not able to utilise top-slicing relief.

But what happens if the bond was held in trust? Well, depending on whether the chargeable event occurs in the tax year of the settlor's death (i.e. between the death and the following 5th April) or in a subsequent tax year, the position of both the settlor and the trustees is explained in the following tables:

ASSET/INVESTMENT	TYPE OF RETURN	WHO IS TAXED	RATE OF TAX
GAINS REALISED IN TAX YEAR OF SETTLOR'S DEATH			
Onshore bond	Chargeable gains	Settlor*	Marginal rate (top-slicing relief available)
Overseas bond	Chargeable gains	Settlor*	Marginal rate (top-slicing relief available)

ASSET/INVESTMENT	TYPE OF RETURN	WHO IS TAXED	RATE OF TAX
GAINS REALISED IN SUBSEQUENT TAX YEAR			
Onshore bond	Chargeable gains	Trustees	25% (no top-slicing)
Overseas bond	Chargeable gains	Trustees	45% (no top-slicing)

*Where a chargeable gain occurs under a joint settlement the rules are more complex. Each settlor is taxed in accordance to their settled property. If the gain occurs in the tax year of their death then the proportionate gain will still be assessed against them and paid by their executors. However, in subsequent tax years, part of any gain would then be assessed on the trustees (on the assumption they are UK resident).

SUMMARY

It can be seen that, by giving some thought to adding younger lives assured at the point when the bond is set up, not only does this extend the prospects for longevity of the contract, but also provides more flexibility in terms of managing the incidence of future chargeable events and any potential tax liability.

The issues of chargeable events on death do not arise, of course where a CRB is selected as there are no lives assured. A CRB is designed to run for a fixed period (usually 99 years) or until earlier surrender. For these reasons they provide a degree of additional flexibility in regards to control of chargeable events.

The PRs are responsible for settling the deceased's tax liabilities, as well as their own during the period of estate administration, and an understanding of their responsibilities is essential in assisting in the winding up of an estate.

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