



DAVEY'S Locker



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Offshore life policies

And estate duty

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Offshore life policies

A local insurer has recently launched to the South African public a life insurance policy issued by its Guernsey branch. The sum-assured (life cover) proceeds are dollar-denominated and payable offshore, although these may be remitted, if desired, to South Africa.

The dollar-denominated premiums are funded by the South African policyholder or life assured with the rand equivalent, using the R1 million annual forex discretionary allowance, which does not require a tax clearance certificate.

Estate duty—deemed property

The question arises whether the policy proceeds, despite being payable offshore in dollars, are dutiable in South Africa upon the death of the resident life assured.

Section 3(3)(a) of the Estate Duty Act includes life policy proceeds in a dutiable estate if, first, the deceased was the life assured under the policy, and, secondly, if the policy is a 'domestic policy' as defined in the Estate Duty Act.

Thus the inclusion in an estate of a domestic policy for estate duty purposes is triggered if either the application for the policy is made in South Africa or the policy proceeds are payable here, subject to an exclusion if the

policy proceeds are payable outside South Africa.

It is thus easy to achieve an exclusion of a domestic policy as deemed property. Simply ask the insurer's offshore branch to pay the policy proceeds into an offshore bank account.

Estate duty—actual property

The further issue to be canvassed is whether the policy proceeds could be included in the deceased estate of a resident as actual property, under s 3(2) of the Estate Duty Act.

My sense is that, if a resident has a legal claim for a sum upon the happening of the death event, this should be treated as any other claim (albeit against an offshore party) with a monetary value and thus be subject to inclusion in an estate for estate duty purposes, since estate duty applies to a resident's world-wide assets.

An exception arises when the claimant is a nonresident, such as an offshore trust, since a nonresident is not subject to estate duty on offshore property.