DAVEY'S Locker

TAX SHOCK, HORROR NEWSLETTER

April 2011

Offshore insurance policy-wrappers

Choose your insurer carefully

by Tony Davey

The further forex relaxation of the offshore investment allowance announced at the end of last year, to R4 million per person per annum, has given renewed impetus to offshore investments.

Competing among the array of offshore investment products are offshore insurance policies offered by both local long-term insurers and foreign insurers.

The attraction of the local insurers' product is due to two factors, first, simplicity of tax-compliance reporting, and, secondly, tax-efficient arbitrage in appropriate instances. The first factor arises because the local insurer pays tax, under the trustee or so-called four-fund approach, on behalf of the policyholder, who is thus is spared the hassle of obtaining investment information from foreign asset managers.

The second factor of tax arbitrage arises because, for policyholders who are natural persons, a local insurer's effective rate of CGT is 7,5%, and of income tax is 30%—lower than the maximum individual rates of 10% and 40% respectively.

Foreign Insurers have now entered the investment fray, claiming to offer an even better tax dispensation, in that, as foreign insurers, they are not subject to tax here under s 29A of our Income Tax Act. Thus the investment-portfolio growth is entirely free of tax .The only tax payable by the policyholder is CGT, upon maturity, or surrender of the policy, which is usually of a five-year term.

I was recently consulted by a prospective investor armed with all the marketing jargon pertaining to a foreign insurer's wrapper policy. The tax implications all seemed quite straightforward, given, in particular, first, a published binding private ruling, BPR 038, and, secondly, Issue 3 of the *Comprehensive Guide on Capital Gains Tax* published by SARS (§ 12.4.4.5), both to the effect that such policies with foreign long-term insurers are not subject to tax on the investment build-up and subject only to the CGT upon disposal, this usually being the maturity of the policy. (In addition, an article appeared in a well-known accountancy magazine, with the author expressing a similar view.)

Even so, given the amount of the proposed investment (R10 m in US dollars of amnestized monies), and, at the risk of immodesty, because I have learned from many years of consulting experience that the only certainty is uncertainty, particularly in the dynamic field of tax, (see my previous articles in 68 *TSH*

2008; 69 *TSH* 2008), I advised my client to obtain an advance tax ruling.

Generally speaking, I am a proponent of such rulings in appropriate circumstances, and have found the SARS ATR division to be both professional and efficient. (See my previous article in 74 *TSH* 2009).

This is not to say SARS and I always agree on a matter. In fact, in this particular instance it so happens that we agree to disagree. Suffice it to say that SARS will shortly publish a binding private ruling (BPR), to the effect that the tax consequences suggested here do not accord with BPR 038, which is now withdrawn, with the result that such a policyholder is liable to tax, upon an annual basis, on all investment receipts or accruals of the foreign insurer's policy-wrapper portfolio-assets.

In next month's article I shall examine this new BPR in more detail. In the mean time, I say again that the only certainty is uncertainty!

tsh