

TA 2009/17 - Life insurance bonds issued by tax haven entities

! This cover sheet is provided for information only. It does not form part of *TA 2009/17 - Life insurance bonds issued by tax haven entities*

! The ATO view on the arrangement described in TA 2009/17 is set out in TR 2004/3.

! This document has changed over time. This version was published on *23 November 2009*



Taxpayer Alert

TA 2009/17

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging tax planning issues or arrangements that the ATO has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform ATO officers of new and emerging tax planning issues. Not all potential tax planning issues that the ATO has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the ATO.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the ATO considers give rise to taxation and superannuation regulatory issues. These issues will generally require more detailed analysis to provide an ATO view to taxpayers.

The developers and marketers of an arrangement which is the subject of a Taxpayer Alert should provide the full facts of the arrangement to the ATO to enable the ATO to finalise its view.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert might obtain their own advice or contact the Tax Office to seek guidance in relation to the income tax and superannuation regulatory issues covered in the Taxpayer Alert.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Life insurance bonds issued by tax haven entities

This Taxpayer Alert is concerned with life insurance bonds issued from tax haven entities to Australian residents which are designed to circumvent the Australian tax payable under the foreign investment fund measures.

Investors in these types of insurance bonds may not be eligible for concessional tax treatment such as capital gains tax exemption and the special rules applicable to reversionary bonus paid from life insurance bonds.

DESCRIPTION

This Alert applies to arrangements with features that are substantially equivalent to the following:

1. A person or group of persons (the promoter), operating in a tax haven, including Vanuatu, approaches Australian residents offering what purports to be a life insurance policy.
2. In some cases, a facilitator in Australia may assist in the marketing of these arrangements.
3. Australian resident participants involved in these arrangements may be individuals, companies, trusts, or self-managed superannuation funds (SMSFs).
4. The promoter arranges what purports to be a life insurance bond policy through an insurance company located in a tax haven jurisdiction.
5. Generally, the promoter or an Australian facilitator markets these arrangements on the basis that they will qualify as life insurance bonds for Australian tax purposes and that as a result investors will be able to qualify for concessional tax treatment, such as capital gains tax exemption and the special rules applicable to reversionary bonuses paid.
6. Typically, these purported life insurance policies may not qualify for the expected concessional tax treatment, as they do not satisfy the requirement for these concessions.
7. In addition, the promoter or an Australian facilitator may also indicate that fees paid in respect of such life insurance policies may be tax deductible in Australia.

FEATURES WHICH CONCERN US

The Tax Office considers that arrangements of this type give rise to the following income tax and superannuation regulatory issues, including whether:

- a. the arrangement, or certain steps within it, may constitute a sham at general law;
- b. upfront fees incurred in investing in these arrangements are deductible expenses under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- c. section 79D of the *Income Tax Assessment Act 1936* (ITAA 1936) (repealed from 24 September 2007) applies to limit the deductions for foreign sourced income;
- d. a capital gain or loss could arise under section 104-25 of the ITAA 1997 upon redemption of the bond;
- e. the foreign investment fund provisions under Part XI of the ITAA 1936 apply to include the accretion in value of the amount held in the life insurance bond policy in the assessable income of the taxpayer on an annual basis;
- f. section 26AH of the ITAA 1936 applies to include any reversionary bonuses paid on surrender to taxpayers who surrender their policies within 10 years of acquisition as assessable income;
- g. SMSFs are able to claim a deduction of 30% of the life insurance premium under section 279 of the ITAA 1936 (replaced by section 295-465 of the ITAA 1997 from the 2007-08 income year onwards);

- h. the Capital Gains Tax exemption under section 118-300 of the ITAA 1997 applies to SMSFs who invest in these arrangements;
- i. any provision of the *Superannuation Industry (Supervision) Act 1993* (SISA 1993) has been contravened;
- j. any penalties or interest charges should be applied to any understatement of such assessable income for the Australian resident;
- k. the general anti-avoidance rules contained in Part IVA of the ITAA 1936 may operate to cancel a tax benefit under the arrangement;
- l. any fee or commission received by the promoters or marketers of this arrangement should be included as assessable income for the relevant income year;
- m. any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953);
- n. any criminal offences may have been committed by the promoter, or their associates; and
- o. the conduct of a registered tax agent, involved in the marketing or facilitation of the arrangement, should be referred to the relevant tax agent board.

Taxation Ruling TR 2004/3 discusses taxation of foreign life insurance policies, while ATO ID 2009/99 and ATO ID 2009/100 discuss the life insurance premium deduction under section 279 of the ITAA 1936 (for years prior to the 2007-08 income year) and section 295-465 of the ITAA 1997 (from the 2007-08 income year onwards).

The Tax Office is investigating arrangements covered by this Alert, including through Project Wickenby.

Note 1: *Base penalties of up to 75% of the tax avoided can apply where someone makes a false and misleading statement to the Commissioner. Where there is a false or misleading statement over consecutive years, an uplift of 20% may apply. Reductions in base penalty will be available if the taxpayer makes a voluntary disclosure to the Tax Office. If you wish to make a voluntary disclosure about the current arrangement or have any information about promotion of these arrangements, phone us on 1800 060 062. Tax agents wanting to provide information about people or companies who may be promoting arrangements covered by this alert should call the tax agent integrity service on 1800 639 745.*

Note 2: *Penalties of up to 5,000 penalty units for individuals, 25,000 penalty units for bodies corporate or up to twice the amount of consideration received or receivable may apply to promoters of tax exploitation schemes under Division 290 of Schedule 1 to the TAA 1953. The Commissioner can also apply to the Federal Court of Australia for restraining and performance injunctions against promoters where prohibited conduct has occurred, is occurring or is proposed.*

Note 3: *Where appropriate, section 167 of the ITAA 1936 may be used to determine the amount of taxable income upon which the taxpayer should be assessed, see Law Administration Practice Statements, PSLA 2007/7 and PSLA 2007/24.*

Subject References:

capital gains
complying superannuation funds
foreign investment funds
foreign life assurance policies
insurance bonds
life insurance policies
Part IVA
tax havens
taxation of superannuation entities

Legislative References:

Income Tax Assessment Act 1936
Section 26AH
Section 79D
Section 167
Section 279
Part IVA
Part XI

Income Tax Assessment Act 1997
Section 8-1
Section 104-25
Section 118-300
Section 295-465

Taxation Administration Act 1953
[Division 290](#)

Related Taxation Rulings:

TR 2004/3

Related Practice Statements:

PS LA 2007/7
PS LA 2007/24
PS LA 2008/15

Other References:

ATO ID 2009/99
ATO ID 2009/100

Date issued:	23 November 2009
Authorised by:	Stephanie Martin Deputy Commissioner
Contact Officer:	Paul Cheetham
Business Line:	Serious Non Compliance
Section:	Project Wickenby
Phone:	(02) 9374 8740
