
AVOIDANCE USING LIFE INSURANCE POLICIES

Who is likely to be affected?

1. Individuals who own offshore life insurance policies where a chargeable event calculation for the policy does not show a gain, the calculation is said to produce a loss, and a claim for income tax loss relief has been or is to be made.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to counter schemes that are designed to exploit income tax loss relief rules using offshore life insurance policies. The measure amends the rules on income tax loss relief to put beyond any doubt that such relief does not arise on these policies.

Operative date

3. This measure has effect on and after 6 April 2009. Transitional provisions may also apply to 2008-09 for certain transactions taking place on or after 1 April 2009.

Current law and proposed revisions

4. Part 4 of Chapter 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) provides the tax regime for life insurance policies and applies income tax to gains made on events such as the assignment or surrender of a policy. If there is no gain there is no income tax charge, but a negative result from a chargeable event calculation is not an income tax loss and therefore does not attract income tax relief.
5. Sections 152 and 153 of the Income Tax Act 2007 (ITA) apply to certain sources of miscellaneous income, including gains from offshore life insurance policies. Although some of these sources can give rise to allowable income tax losses, as well as profits, the chargeable event regime governing life insurance policies ensures that any taxable gains over the life of the policies are restricted to economic gains. It does not provide for losses.

6. The legislation will amend section 152 of ITA and put beyond any doubt that claims for income tax loss relief cannot be made. This will apply to claims for income tax loss relief from offshore life insurance policies where chargeable events occur on or after 6 April 2009.
7. Transitional provisions will have effect for 2008-09 so that there is similarly no scope to claim income tax loss relief for that year where:
 - a policy or contract is made on or after 1 April 2009;
 - the terms of an existing policy or contract are varied on or after 1 April 2009, or a right under it is exercised, so as to increase the benefits under it;
 - all or part of the rights under the policy or contract are assigned to the person claiming a deduction (whether or not the assignment is for money or money's worth) on or after 1 April 2009; or
 - all or part of the rights under the policy become held on or after 1 April 2009 as security for a debt.
8. Transitional provisions affecting section 153 of ITA will also operate to prevent a deduction for income tax loss relief in 2009-10 and subsequent years regardless of when the chargeable event took place.

Further advice

9. The changes introduced by this measure were announced by the Financial Secretary to the Treasury in a Written Ministerial Statement on 1 April 2009.
10. If you have questions about this change, please contact Jon Prothero on 020 7147 2785 (email: jon.prothero@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk