

# Estate Duty Budget Change Finally Implemented

Andrew Halkyard explains recent changes brought by the Revenue Ordinance 1999 as it relates to the payment of estate duty on life insurance proceeds

The enactment in July of the Revenue Ordinance 1999 (No 44 of 1999) finally implemented the Budget proposal for exempting from estate duty certain proceeds from policies of life insurance.

## Background

Prior to the introduction of s 10(ga), estate duty was generally levied on a life insurance policy passing on death where the proceeds were payable in Hong Kong. In practice, this state of affairs favoured multinational insurance companies, compared with smaller local insurance companies, who were better placed to make use of the exemption for offshore property where the insurance proceeds were paid to the beneficiaries at a place of business outside Hong Kong.

As will be seen below, s 10(ga) provides all insurance companies with the same competitive business environment because life insurance proceeds are now exempt from estate duty irrespective of the place of payment.

## The New Provision

Section 10(ga) takes effect in respect of the death of any person on or after 1 April 1999. Essentially, the key to the exemption is that it only applies where (1) the property passing consists of benefits under a life insurance policy and (2) that policy was effected on the life of the deceased.

Accordingly, where the deceased owns a life insurance policy (or any interest therein) effected on his or her life, the exemption will apply. Similarly, the exemption will also

apply where the deceased has taken out a policy on his or her own life and gifted the policy (or any interest therein) to another person. In this latter case, the benefits payable under the policy, as well as any premiums paid on the policy by the deceased to maintain the policy, will not attract duty even though the deeming provisions of s 6(1)(c) (relating to inter vivos gifts) and s 6(1)(f) (relating to interests purchased or provided by the deceased) may apply.

By way of contrast, the exemption will not apply where the deceased was not the life insured. In this case, and assuming the deceased had an insurable interest in the life insured, the deceased may or may not be the owner of the policy. Where the deceased was the owner of the policy (eg where the deceased was the beneficiary under a policy on the life of his or her spouse), the normal charging provisions of ss 5 and 6(1)(a) would apply. This case is, of course, subject to the application of the offshore property exemption contained in s 10(b), which historically has been very important for life insurance policies (see Willoughby and Halkyard, *Encyclopaedia of Hong Kong Taxation: Estate Duty (vol 2)* at I [442], point 7 and II [590] et seq).

Where the deceased was not the owner of the policy (eg where the deceased took out a policy on the life of his or her spouse and gifted that policy to the couple's child), then any property gifted within three years of death would be deemed to pass under s 6(1)(c). A further deeming provision, s 6(1)(f), could also apply where the

interest provided by the deceased under the life policy only accrued to the beneficiary upon death. In all these cases, however, where the property gifted or otherwise provided by the deceased was a paid up policy, then the offshore property exemption referred to above might apply. Furthermore, where the deceased kept up the policy by regular payments of premium, then the exceptions to s 6(1)(c), particularly the normal and reasonable expenditure exemption or the de minimus exemption of \$200,000 for each donee, might apply to exempt the gifted property from estate duty.

The property exempted under s 10(ga) consists generally of the 'benefits' under a policy of insurance effected on the life of the deceased. These benefits must be either (i) any moneys (including accrued dividends) payable under the terms of the policy on the death of the deceased or (ii) any interest in such a policy passing on the death of the deceased. Where under the terms of the policy, any loans and advances and interest thereon (as well as charges such as administrative fees) are deductible from the moneys payable under (i) above, these amounts reduce the property for which the exemption from duty is available.

The relationship between s 10(ga) (i) and (ii) (the terms of which are summarised above) appears strange and difficult to reconcile. Paragraph (i) has the effect of reducing the property exempted from duty where, under the terms of the policy, any loans and advances and interest thereon (as well as charges such as administrative fees) are deductible from the moneys payable under the policy. Paragraph (ii) then provides a blanket exemption for 'any interest in the policy' passing on death.

It may, however, be possible to argue that s 10(ga) could be interpreted to restrict the operation of para (ii) to cases where para (i) did not apply. For instance, para (ii) could be intended to apply to an annuity as distinct from a

lump sum payment, although this is not an obvious conclusion. But in any event, if the policy properly provided for offshore payment at the insurer's place of business outside Hong Kong, then the full amount of any policy proceeds should be exempted under s 10(b), and not reduced under para (i)

of s 10(ga). Furthermore, and again in any event, it should still be possible to obtain a deduction under s 13(1) for the liabilities set out in para (i) to the extent that a full exemption for life insurance benefits is not granted under s 10(ga).

All in all, the exemption of s 10(ga) is useful and provides a neat solution

to the myriad 'offshore' policies currently on offer to the Hong Kong public.

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## 遺產稅的修訂最終得以實施

賀雅德闡釋《1999年收入條例》對於人壽保險單的所得收益繳納遺產稅的近期修改

**較**早前，財政預算案曾建議把人壽保險單下的某些收益豁免繳付遺產稅。這項建議，藉著7月的立法制訂通過《1999年收入條例》（1999年第44號條例），最終得到了落實。

### 背景

在《遺產稅條例》（第111章）（以下簡稱《條例》）第10(ga)條未出現以前，一般而言，如因故世所得的人壽保險單收益是在香港支付者，必須繳付遺產稅。實際上，相對於規模較小的本地保險公司，此規定對於跨國的保險公司較為有利，因為它們能藉著以香港境外為營業地作為支付保險收益受益人之地點，而更能有效地享用對於香港境外財產的豁免條文。

隨著第10(ga)條的誕生，不論支付地點為何，人壽保險單的收益一律毋須繳付遺產稅，正如下文提及，對於所有保險公司而言，此舉有助提供平等競爭的營商環境。

### 新增條文

第10(ga)條適用於在1999年4月1日或之後身故者的遺產。豁免的主要內容只適用於以下情況：（一）所轉移之財產包含人壽保險單所得利益；及（二）保險單為死者的壽命訂立。

據此，若死者擁有一份就其壽命所訂立的人壽保險單（或當中任何權益），有關豁免將會適用。同樣地，若死者把就其壽命所訂立的人壽保險單（或當中任何權益）贈予另一人，有關豁免亦會適用。以後者的情況而言，即使《條例》第6(1)(c)條內關乎生者之間贈予（gift inter vivos）及

第6(1)(f)條內關乎由死者購買或提供之權益的兩項「認定」條文均可適用，對於保險單付的利益以及由死者所支付以維持保險單效力的保費，均毋須繳付遺產稅。

反之，若保險單並非就死者的壽命而訂立，有關豁免條款將不適用。在此情況下，假設死者對於受保人的壽命有著可被保權益，死者既可以是保險單的擁有人也可以不是。若死者是保險單的擁有人（例如保險單是就死者配偶的壽命訂立，而死者是該保險單指定的受益人），《條例》第5及6(1)(a)條的一般徵稅條文便會適用。但這當然會受制於第10(b)條內的香港境外財產豁免條文的適用性——傳統上這條文對於人壽保險單來說是相當重要的（見衛立邦與賀雅德著 *Encyclopaedia of Hong Kong Taxation: Estate Duty (Vol 2)* 第I[442]段第七項及II[590]段起）。

另一方面，若死者並非保險單的擁有人（例如死者就其配偶的壽命訂立保險單，然後把它贈予死者和其配偶的子女），任何在死者去世前三年內贈予的財產，將根據第6(1)(c)條被認為轉移的財產。此外，若死者透過人壽保險提供的權益只在去世時才歸予受益人，第6(1)(f)條的「認定」條文亦可適用。然而，在上述的所有情況下，若贈予的財產或死者提供的財產都是一份已繳費的保險單，上述對香港境外財產豁免的條文也可適用。此外，若死者定期支付保費以維持保險單的效力，第6(1)(c)條的例外事項——特別是有關正常和合理開支的豁免以及每名受贈人獲贈不超過二十萬元的贈予的豁免——也可能適用，使贈予的財產毋須繳付遺產稅。

新增的第10(ga)條所豁免的財產，一

般包括根據就死者的壽命訂立的保險單所得的「利益」。這些利益必須是：（一）於死者去世時根據該保險單的條款或條文所須支付的任何款項（包括任何已累算紅利）；或（二）於死者去世時轉移的任何該等保險單的權益。若根據保險單的條款或條文，須從上述第（一）項的款項中扣除任何貸款、預支款項、貸款利息及其他費用如行政費，這些支出自然會減少財產可獲豁免的數額。

第10(ga)(i)條與第10(ga)(ii)條（上文已扼要地描述兩項條文的內容）之間的關係頗為奇特及難以接軌。按照第(i)段，若從保險單所支付的款項中扣除貸款、預支款項、利息及其他費用如行政費，這便會減少可獲豁免的財產。第(ii)段則為死者去世時所轉移的「任何該保險單的權益」提供全面性的豁免。

然而，我們或可辯稱，第10(ga)條可解釋為第(ii)段只適用於那些不屬第(i)段適用範圍的情況。舉例說，第(ii)段的用意可能是用於年金（相對於整筆款項），但單從第(ii)段內容來看並不能作出這種結論。不管如何，若保險單明確指定向承保人在香港境外的營業地支付款項，則任何保險單收益的全數都應根據第10(b)條獲得豁免，而不能根據第10(ga)(i)條進行扣除。此外，不論任何情況下，在保險單權益不能根據第10(ga)條獲得十足豁免的範圍內，有關人士應仍可按第13(1)條，就第10(ga)(i)條所列的債務尋求得以扣除。

總的來說，第10(ga)條賦予的豁免相當有用；對於現時不同公司提供香港公眾選擇的各類「境外」保險及隨之而來的問題，亦提供了一個直接了當的解決方法。

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