

Revenue Ruling

Public Ruling

Ruling Number	: PUB-DT-2007-3
Title	: Life Insurance Riders
Tax Line	: Duties
Legislative Reference	: <i>Duties Act 2001</i>
Previous Ruling	:
Date of Ruling	: 22/06/2007
Attachments	: none

Preamble

The purpose of this Revenue Ruling is to clarify how life riders will be treated for insurance duty purposes under the *Duties Act 2001* (the Duties Act). This Revenue Ruling applies to all life insurance policies, including temporary or term insurance policies.

In response to deficiencies which were identified in the insurance duty provisions of the Duties Act, amendments were made to section 163(2) of the Duties Act through the *Taxation and Related Legislation (Miscellaneous Amendments) Act 2006*. These amendments commence on 1 July 2007. As part of this process I have discussed the impact of the amendments with the Investment and Financial Services Association (IFSA).

Legislation

General insurance is defined in section 163 of the Duties Act and includes "...insurance effected in respect of trauma or a disabling or incapacitating injury, sickness, condition or disease".

A general insurer is defined in section 178(2) of the Duties Act. Section 179 of the Duties Act requires all general insurers to be registered under Part 3 of Chapter 7 of the Duties Act. A registered general insurer is liable for duty at a rate of 8 per cent on the total premium paid in relation to a contract of insurance under section 166 of the Duties Act.

Policies of life insurance, on the other hand, are subject to duty calculated in accordance with Part 2 of Chapter 7 of the Duties Act on the total of the sum insured. The applicable rates are set out in section 174(1) of the Duties Act. The rate of duty where the sum insured is greater than \$2 000 is \$1.00 plus \$0.20 for every \$200 (or every fractional part of \$200) of the sum insured in excess of \$2 000.

A temporary or term insurance policy, however, is subject to a different treatment under the Duties Act. Duty on a temporary or term insurance policy is chargeable at a rate of 5 per cent on the first year's premium on the policy in accordance with section 174(2) of the Duties Act.

Case Law

The leading case on the duty treatment of life riders is *National Mutual Life Association of Australasia Limited v Commissioner of State Revenue (WA)* 96 ATC 4615 (the National Mutual Case). In this case it was held that riders which provided no additional financial benefits were "merely accessory and merely ancillary" to the principal object of the policy

(i.e. the riders were not separate) and were therefore subject to duty at life insurance rates.

More recently, in *AMP Life Limited v Commissioner of State Revenue (VIC)* [2003] VSC 198, the Supreme Court of Victoria followed the decision in the National Mutual case and also considered the duty treatment of clauses in life insurance policies that provided for a waiver or suspension of premiums payable in respect of that policy.

Ruling

For the purposes of the Duties Act, the principles set down in the National Mutual Case continue to apply. Therefore, to determine whether a particular rider attached to a life insurance policy is separately dutiable at the general insurance rate, the test is whether the rider is ancillary to the life cover or alternatively, whether it can be regarded as a separate policy of general insurance.

Where a rider attached to a life insurance policy provides an additional financial benefit over and above the life insurance, the rider is considered to be a separate policy of general insurance. In such a case, the premium relating to the rider is dutiable at the general insurance rate and the remainder of the policy will be dutiable at the life insurance rate.

The fact that no additional financial benefit is payable in relation to the rider will be significant in characterising the rider as ancillary to the life insurance policy. In particular, there is no additional benefit if any financial benefit paid serves to reduce the sum assured in respect of the life insurance. In this instance, duty will be charged at the life insurance rate.

Additionally, as decided in the AMP case, a clause in a life insurance policy that provides for a waiver or suspension of premiums payable in respect of that policy upon the occurrence of a specified event, trauma or disablement is considered to be an additional benefit over and above the sum insured, and therefore, the clause is to be treated as a separate policy of general insurance.

This Ruling applies to new policies written on or after 1 July 2007 and to existing policies which are amended on or after 1 July 2007 where the above criteria are met.

If a taxpayer is unsure as to whether a rider to a life insurance policy is separate from or ancillary to the policy of life insurance, please contact the SRO for clarification.

Please note that rulings do not have the force of law. Each decision made by the SRO is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling PUB-GEN-2005-05.



W K Sawford
Commissioner of State Revenue