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Irish Life

Shareholder Protection – An Advisor Guide

Life Advisory Services

This document provides an outline of the taxation issues to be considered when you are putting together a business protection arrangement for your clients and is based on our understanding of current legislation and Revenue practice.

In all cases we would recommend that business owners obtain professional legal and tax advice to ensure that any arrangement they put in place is appropriate to their personal and corporate circumstances.

Information is correct as at 3 January 2012 but is subject to change.

Contents

1. THE DEATH OF A SHAREHOLDER

1.1 The Consequences

The sudden death of a shareholder in a private limited company can cause problems for both the surviving shareholders and the deceased's next of kin.

1.2 For the **surviving shareholders** the problems that can arise are**:**

*** Loss of control.**
If the deceased owned more than 50% of the company the other shareholders would now find themselves having to work with a new controlling shareholder, possibly the deceased's spouse or one of his children. There could be disagreements about how the business should be run, particularly if the new shareholder had no experience of the business.

*** Refusal to sell.**
The ideal outcome for the surviving shareholders may be to buy back the deceased's shareholding from his next of kin. But what happens if they refuse to sell?

*** Lack of liquid capital.**
Even if the deceased's next of kin are willing to sell the surviving shareholders simply may not have sufficient liquid capital to buy the shares from them.
The surviving shareholders could borrow the necessary funds but they would then be faced with the burden of loan repayments for years to come.

*** Shares pass to outside party.**
If the deceased's next of kin want to sell and the other shareholders are financially unable to buy then the deceased's next of kin may have to sell the shares to an outside third party, possibly a competitor or someone totally inexperienced in the business.

1.3 For the **deceased shareholder's next of kin** the problems that can arise are:

*** An illiquid asset.**
If the shares are not sold the next of kin may be left holding a 'paper asset' producing little or no income. The position could be even more serious if the shares also give rise to an immediate inheritance tax liability for the dependants.

*** No ready market for shares.**
The company's Articles of Association may give the other shareholders the right to block the sale of the shares to any outside party. The next of kin could therefore be forced into a 'fire sale' of the shares to the other shareholders at a low price in the absence of any other realistic offer for the shares.

2. SHAREHOLDER PROTECTION – THE OPTIONS

2.1 A Solution

Life assurance protection can provide a solution to the problems outlined in Section 1 by providing liquid capital on the death of a shareholder to enable

- the deceased's shares to be bought back from his estate or next of kin, and
- the surviving shareholders to maintain ownership and control of the business going forward.

2.2 Two Options

The solution outlined above can be achieved in one of two ways

- Personal Shareholder Protection
- Corporate Shareholder Protection

Personal Shareholder Protection

The shareholders enter into a **personal legal agreement** with each other to "buy out" a deceased shareholder's shares in the event of his death.

To provide the funds to fulfil their personal obligation under the agreement each shareholder personally effects life assurance cover which is payable to the surviving shareholders on his death. The surviving shareholders can then use the proceeds of the life assurance plan to "buy out" the deceased's next of kin in line with the legal agreement.

The "Personal" arrangement is relatively simple to arrange and the legal and taxation issues are more straightforward. The main drawback of this solution is that the cost of the arrangement is borne personally by the individual shareholders out of "after tax" income. If the company funds a "Personal Shareholder protection" arrangement - the cost is treated as a "benefit in kind" for each shareholder.

Corporate Shareholder Protection

In this case the Company enters into a legal agreement with each of its shareholders individually to buy back shares from their personal representatives in the event of their death. The company takes out a life assurance plan on each shareholder, to provide funds to enable the company to fulfil its obligation under the legal agreement.

In the event of the death of a shareholder, the proceeds of the life assurance plan are payable to the Company and are used to buy back shares from the deceased's next of kin.

The major advantage of the "Corporate" arrangement is that the cost is borne totally by the company with no "BIK" implications for the individual shareholders. The corporate shareholder protection option is complex to set up due to the fact that certain company law provisions must be satisfied and formal approvals are required.

In addition there are a number of conditions that must be satisfied to ensure the buy back of shares from the family of a deceased shareholder can be achieved in a tax efficient manner, thus making it unsuitable in certain circumstances.

Full details of the legal and tax implications of putting both a Personal Shareholder Protection arrangement and a Corporate Shareholder Protection arrangement in place, are covered in the following pages.

3. PERSONAL SHAREHOLDER PROTECTION

A Personal Shareholder Protection arrangement comprises two steps:

i) A **Shareholders Legal Agreement**.
ii) Funding through **Life Assurance**.

3.1 Shareholders Legal Agreement

The shareholders agreement can be framed as a **Double Option** agreement that provides in the event of the death of a shareholder:

- the **surviving shareholders can exercise an option** to compel the deceased's personal representatives to sell the shares to them at market value,
  or
- the **deceased's personal representatives can exercise an option** to compel the surviving shareholders to buy the shares back at market value.

If neither side exercise their option then the shares are not bought back and go through the deceased's estate to his next of kin.

While Irish Life can provide a draft agreement, we recommend that the company and its shareholders should consult with its own legal and taxation advisers to draw up an Agreement appropriate to their own particular circumstances.

3.2 Life Assurance

The life assurance may be arranged in one of two ways:

Life of Another

Each shareholder covered by the Agreement effects life cover under a protection plan on the life of the other shareholders for a sum assured equal to the estimated current value of their shareholding.
The proposer / owner of each policy will pay the premium on the plan.

The "Life of Another" method is simple and straightforward. The proceeds of the plan are, under current legislation, free from personal tax in the hands of the plan owner provided they have paid the premium. This method can be cumbersome where there are more than two or three shareholders and can be inflexible, if circumstances change i.e. if a shareholder leaves the company.

Own Life in Trust

Each shareholder covered by the Agreement effects a life assurance protection plan on their own life for a sum assured equal to the estimated current value of their share of the company.
Each policy is written under Trust for the benefit of the other shareholders covered by the Legal Agreement.
Each shareholder pays the premium on his own plan.

The "Own Life in Trust" method is flexible, in that the beneficiaries can be changed if the business protection agreement ceases or if a shareholder leaves the business. The plan proceeds will be exempt from tax in the hands of the surviving shareholders provided certain Revenue conditions are met. See Appendix I for further details.

The correct approach will depend on each company's particular circumstances

Example: Personal Shareholder Protection – own life in Trust method

Lets assume the company ABC Ltd is valued at €1,000,000 with 3 shareholders as follows

Mr Quinn	40%	€400,000 Life Cover
Mr Dunne	40%	€400,000 Life Cover
Mr Hayes	20%	€200,000 Life Cover

3 own life in trust plans are effected. The premiums are paid by each shareholder personally.

Mr. B. dies

The sum assured on Mr Dunne's plan of €400,000

pays €266,667 to Mr Quinn who purchases share from Mr Dunne's Estate

pays €133,333 to Mr Hayes who purchases share from Mr Dunne's Estate

In line with the 'Buy / Sell' Double Option Legal Agreement.

The benefits of Personal Shareholder Protection

- Survivors have funds to buy the deceased's share without having to resort to borrowing or selling assets,
- Survivors retain control of the business
- The dependants of a deceased shareholder are financially compensated

3.3.1 Taxation of Plan Proceeds – Life of Another

Capital Gains Tax

The proceeds of the shareholder protection insurance plan payable on death or disablement are not liable to Capital Gains Tax under current legislation.

Inheritance Tax

On death the proceeds of the plan are paid to the plan owner where the arrangement has been made on a "life of another" basis. There is currently no inheritance tax liability for the surviving shareholder provided he has paid the premium for the benefit he will receive.

3.3.2 Taxation of Plan Proceeds – Own Life in Trust

Capital Gains Tax

The proceeds of the shareholder protection insurance plan payable on death or disablement are not liable to Capital Gains Tax under current legislation.

Inheritance Tax

On death the proceeds of the plan are paid to the trustee(s) of the policy for the benefit of the surviving shareholders.

The Revenue Commissioners have clarified that the proceeds of such a plan are *exempt from Inheritance Tax* in the hands of the surviving shareholders in certain circumstances, to the extent that they use the proceeds to purchase the deceased's shareholding.

More details are set out in Appendix I.

3.4 Sale of Shares by Personal Representatives

The proceeds from the disposal of shares would be liable to Capital Gains Tax in the hands of the personal representatives of the deceased. However, a liability to tax would only arise on any increase in the value of the shares from the date of death to the date of sale and as such is likely to be small. It is important to remember that the value received for the shares could give rise to an inheritance tax liability for the deceased's family.

3.5 Position of Surviving Shareholders

Following the buy back, the total number of shares held by the survivor, and hence the total value of his shareholding, will increase. On a subsequent sale of shares by the survivor it is this increased value which will apply for the purposes of Capital Gains Tax on such a disposal. Any chargeable gain arising will of course be reduced by the consideration paid for the shares at the time of death.

4. CORPORATE SHAREHOLDER PROTECTION

A Corporate Shareholder Protection Insurance arrangement also comprises two steps:

I. A **Legal Agreement**.
II. Funding through **Life Assurance**.

Corporate Shareholder Protection is an arrangement between a private trading company and one or more of its shareholders whereby:

- The Company enters into a **legal agreement** with a shareholder to buy back his shares from his personal representatives on death,

and

- The Company effects a **life assurance** plan on each shareholder covered by such an agreement to provide funds on death to enable the company to complete the buy back. The company pays the premiums on this plan.

4.1 Legal Agreement

Power of a company to buy back it's own shares.

Before the company enters into a legal agreement to purchase the shares of a deceased shareholder, it needs to check it's Articles of Association, to ensure it is allowed to do this.

Check Articles of Association

If the company's Articles of Association do not currently authorise the company to purchase its own shares then the Articles will need to be amended to include a provision authorising the company to purchase its own shares in accordance with the provisions of Part XI of the Companies Act 1990. *See Appendix II Companies Act 1990 for more details.*
A special resolution of the members of the company is necessary to amend its Articles of Association.

Prepare Put Call Option Agreement

Once the Articles have been amended, the company, in conjunction with its own legal and taxation advisers, then prepare a Put Call Option Agreement suitable to its own particular circumstances. A separate agreement is required in respect of each shareholder whose shares are to be bought back on death.
On the death of a shareholder covered by such an agreement:

- The Company can exercise a Call option to compel the deceased's personal representatives to sell the shares back to it at market value,

or

- The deceased's personal representatives can exercise a Put option to compel the Company to buy the shares back from them at market value.

While Irish Life can provide you with a sample draft agreement we recommend that the company and its shareholders should consult with its own legal and taxation advisers before drawing up an Agreement appropriate to their own particular circumstances.

A meeting of the Company to authorise the Put & Call Option Agreement

A copy of each proposed Put Call Agreement must be available at the company's registered office for at least 21 days before the meeting, and at the meeting itself.
See Appendix II Company Law 1990 for more details.

The authorisation for the company to enter each Agreement must be approved by a special resolution of the company.

What this means broadly, is that, if the shareholder who's Put Call Agreement is being voted on holds more than 25% of the equity of the company and he votes in favour of the resolution in respect of his own agreement, then the special resolution will be ineffective (Section 213(3) Companies Act 1990). To pass a Special Resolution in such circumstances, the shareholder who's Put Call Option Agreement is being voted on (remember there is an individual agreement between the company and each shareholder) would need to absent himself from that meeting, and allow the other shareholders vote through the special resolution with regard to his shareholding.

4.2 Life Assurance

To put itself in funds to meet its potential obligations under each Put / Call Option Agreement, the company proposes for a protection plan on the life of each shareholder to be covered by such an Agreement.

The sum assured would normally be equal to the estimated market value of that individual's shareholding.

The decision to propose for these plans would normally be minuted at a board meeting of the company, specifying the reason for effecting the plan, i.e. to buy back a shareholder's shares on death.

Example: Corporate Shareholder Protection

Lets assume the company ABC Ltd is valued at €1,000,000 with 3 shareholders as follows

Issued share capital 100 shares

Mr Quinn	owns 40 shares	(40%)
Mr Dunne	owns 40 shares	(40%)
Mr Hayes	owns 20 shares	(20%)

ABC Ltd. effects 3 life assurance plans

Mr Quinn owns 40 shares	(40%)	€400,000 Life Cover
Mr Dunne owns 40 shares	(40%)	€400,000 Life Cover
Mr Hayes owns 20 shares	(20%)	€200,000 Life Cover

ABC Ltd is the proposer. Premiums are paid by ABC Ltd.

Mr Dunne. dies
Life cover on Mr Dunne of €400,000 is paid to ABC Ltd who buy shares from Mr Dunne's estate

In line with the 'Put / Call' Legal Agreement.

Result The shares bought back by the company are cancelled.

	BEFORE		AFTER	
	Shares	% Ownership	Shares	% Ownership
Mr Quinn	40	40%	40	67%
Mr Dunne	40	40%	-	-
Mr Hayes	20	20%	20	33%

The benefits of this arrangement for the shareholders are as follows:

- On a death the surviving shareholders retain control of the company, as the deceased's shares are bought back by the company and cancelled.
- The dependants of a deceased shareholder can realise their shares for cash, shortly after death.
- The cost of the life assurance plans is borne totally by the company, and not by the shareholders personally.

4.3 Taxation of Arrangement

The life assurance plans are issued to the company who pay the premiums.
Under current legislation and Revenue practice it is our opinion that the premiums would not be tax deductible for Corporation Tax purposes while the proceeds are likely to be exempt from Corporation Tax.

4.3.1 Taxation of Plan Proceeds

The purpose, for which the plan is taken out, whether to cover a "Capital" or "Revenue" type loss, is the main consideration in establishing whether or not the proceeds will be taxed.

If the plan is part of a corporate share buy back arrangement then the proceeds are likely to be treated as a Capital receipt for the company. The proceeds of a company owned plan, paid out on death or disablement, are exempt from Capital Gains Tax. So no tax liability arises for the company on the proceeds of the life assurance plan.
See Appendix IV for full clarification.

4.3.2 Tax deduction for premiums

Generally speaking Keyperson Insurance premiums are 'not' admissible deductions for Corporation Tax purposes.
However the Revenue Commissioners have outlined the circumstances in which such premiums may qualify as admissible deductions:

a) the sole relationship is that of Employer and Employee,

b) the employee has no substantial proprietary interest in the business,

c) the insurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss, and

d) the plan is a short term insurance, providing only for a sum to be paid in the event of death.

Therefore premiums on keyperson insurance plans which do not meet **all** of the above requirements are **not** admissible deductions for Corporation Tax purposes.

On this basis, keyperson insurance premiums for plans taken out as part of a shareholder protection arrangement **are not admissible deductions** for Corporation Tax purposes.
See Appendix IV for full details.

4.4 Taxation of the sale of shares by Personal Representatives

Capital Gains Tax Treatment
In certain circumstances, where a company buy's back its own shares, any amount paid by the company in excess of the original issue price is treated as a 'distribution' rather than a capital gain.

The implications of this treatment, with regard to a company purchasing its own shares, would be that the vendor of the shares would be liable to income tax under Schedule F on the amount of the distribution plus attaching tax credit.
This income tax treatment would obviously make the purchase of shares by the company unattractive to most vendors.

However, provided certain conditions are met, the sale of shares in an unquoted trading company back to that company can be treated as a disposal by the seller and subject to capital gains tax treatment, rather than as a distribution received from the company for income tax purposes.

It is important that all parties are satisfied, **before the Put / Call Option Agreement** is entered into, that the sale of the shares by a deceased shareholder's personal representatives back to the company, under the Agreement, is likely to qualify for capital gains tax treatment under Section 61, Finance Act 1991. This will involve checking that all seven conditions, outlined in Appendix III, are likely to apply.

If Capital Gains Tax (CGT) treatment does apply on the sale of shares to the company by a deceased shareholder's personal representatives, then any CGT liability would only arise in respect of any increase in value of the shares from the date of death to the date of sale. As this period is unlikely to be more than a few months in most cases, with the time frame set out in the Put Call Agreement, no material Capital Gains Tax liability is likely to arise in such circumstances.

It is important to remember that the value received for the shares could give rise to an inheritance tax liability for the deceased's family.

4.5 Position of Surviving Shareholders.

Following the buy back, the shares bought by the company are cancelled. Thus, the number of shares held by the survivors will not increase, but, as in the earlier example, their percentage ownership of the company will.

On a subsequent sale of shares by any of the survivors, it is this increased value which will apply for the purposes of Capital Gains Tax on such a disposal. However, as the buy back of the shares was funded by the company and not the shareholders personally, any chargeable gain will not be reduced by the amount paid for the shares by the company at the time of the buy back.

Below is a quick comparison of both arrangements which may assist you.

	Personal Shareholder Protection	**Corporate Shareholder Protection**
Premiums paid by	The shareholder personally	The company
Plan owned / proceeds payable to	The shareholder personally / the trustee of the life assurance plan	The company
Suitable for 'young' start up companies?	Yes	No – 7 rules for Capital Gains Tax treatment on sale of shares back to the company
Suitable for Investment companies	Yes	No – 7 rules for Capital Gains Tax treatment on the sale of shares back to the company
Suitable where non resident shareholders	Yes	No – 7 rules for Capital Gains Tax treatment on the sale of shares back to the company
Suitable if all shareholders not participating	Only shareholders who participate can benefit – refer to your account manager	Company can effect such cover on just one of it's shareholders

APPENDIX I – Revenue Clarification on taxation of Shareholder Protection Insurance Policies written under trust.

The following is an extract of a letter written by the Office of the Revenue Commissioners (Capital Taxes Branch) to the Irish Insurance Federation in June 1992:

Re: Shareholder Protection Assurance

"Essentially we are dealing here with policies which are effected purely for commercial purposes and agreed between the individual partners/shareholders on an arms length basis without any intention to make a gift.

The Revenue approach to such policies, written in the form of own life in trust for others, is to treat the proceeds as exempt from Inheritance Tax in the following circumstances: -

- *Proceeds on death will be used to purchase deceased's shareholding. Any surplus arising will be liable to Inheritance Tax.*
- *The capital sum under each policy will reflect the policyholder's shareholding.*
- *Payment of premiums will be made by the individual members, or on their behalf by the company or partnership out of the individual's own company or partnership account.*
- *New partner(s)/shareholder(s) can join the arrangement at any time, subject to the conditions applicable to the existing members of the plan.*
- *On withdrawal from the company or on retirement, the policy of the partner who leaves will revert to himself and he will no longer benefit in the continuing arrangement, provided he sells his shareholding on withdrawal, otherwise he can remain a party to the arrangement. Such policy will be an asset in his estate on his death and will not be exempt from Inheritance Tax.*
- *On the death of a sole surviving partner or shareholder the policy on his life will be an asset in his estate and will not be exempt from Inheritance Tax. Similarly, if a partnership breaks up or a company is wound up, policies, which do not lapse, will be liable on death to Inheritance Tax.*
- *Where a partner refuses to join the arrangement or is unable to effect life insurance on medical grounds, then he will be precluded from benefiting from the policies of his co-shareholders.*
- *The insurance policies can either be Term Insurance, Endowment or Whole of Life policies, with the Death Benefit only passing to the surviving shareholders.*
- *Company Directors/Partnership Insurance using Own Life in Trust must be supported by relevant documentation:*

    (a) Buy/Sell (or Double Option) Agreement.
    (b) Reciprocal Agreement.
    (c) Trust Document.

APPENDIX II – Companies Act (1990)

Part XI of the Companies Act (1990), which came into force on the 1st July 1991, allows a private company to buy back its own shares in certain circumstances and subject to certain conditions:

- *The company must be authorised by its Articles of Association to purchase its own shares.*

- *The company must be authorised to purchase its own shares under a contract entered into in advance of the purchase. The terms of this contract must be authorised by a special resolution.*

  Under section 213(3) of the Act the special resolution authorising the contract to purchase the shares will be ineffective if a member holding shares affected by the resolution exercises his voting rights in respect of the shares in favour of the resolution and it would not have been carried without his vote.

  For example if a 30% shareholder votes in favour of the resolution then this is ineffective as without his vote the special resolution would not have been passed, assuming all shareholders vote.

  A special resolution requires not less than 75% of the votes cast by members of the company who 'being entitled to do so, vote in person'.

  Therefore a shareholder with more than 25% of the votes may need to absent himself from a meeting at which a special resolution will be voted on to authorise the company to enter a contingent purchase contract to purchase his shares. Otherwise it will not be possible to pass such a special resolution.

  The terms of such a contract to purchase its own shares may only be subsequently varied revoked, or renewed by a further special resolution.

- *A copy of the contract must be available for inspection by members both at the registered office of the company for at least 21 days before the meeting at which the resolution will be passed, and at the meeting itself.*

- *A company can not buy back all its own shares.*
  A company can not buy its own shares if as a result of the purchase the nominal value of the issued share capital which is not redeemable would be less than 10% of the nominal value of the total issued share capital of the company.

- *Only fully paid up shares can be purchased by the company.*

- *A company can buy back its own shares under a contingent purchase contract, provided the contract has been authorised by a special resolution.*

  For example a Put Call Option Agreement under which the company could exercise a Put option on the death of a shareholder to buy back his shares would be considered to be a contingent purchase contract, the contingency being the death of the shareholder.

- *A company purchasing its own shares must pay in full for the shares at the time of purchase. Instalment or phased payments are not allowed.*

- *A company can only buy shares 'out of profits available for distribution'.*
  This term is defined as accumulated realised revenue and capital profits less accumulated realised revenue and capital losses. It should be noted that for the purpose of ascertaining the availability of profits, a company's affairs are treated without reference to individual accounting periods and as being continuous.

  Thus a company in computing what profits are available for distribution, and hence the extent of funds available to purchase its own shares, must take into account losses which may have accumulated over the years.

APPENDIX III – Capital Gains Tax treatment on sale of shares to company

In certain circumstances where a company redeems its shares, any amount paid by the company in excess of the original issue price is treated as a 'distribution' rather than a capital gain.

The implications of this treatment, with regard to a company purchasing its own shares, would be as follows :

(a) The company would be obliged to pay Advance Corporation Tax (ACT) to the Revenue on the payment, and

(b) The vendor of the shares would be liable to income tax under Schedule F on the amount of the distribution plus attaching tax credit.

The income tax treatment outlined above would obviously make the purchase of shares by the company unattractive to most vendors.

Section 176 of TCA 1997 provides that the purchase by an unquoted trading company of its own shares will not be treated as a distribution, subject to certain requirements being fulfilled. In this case the sale of the shares by the vendor to the company would be treated as a disposal for Capital Gains Tax purposes.

The vendor must meet seven separate requirements to obtain the Capital Gains Tax treatment on the sale of his shares to the company. These can be summarised as follows:

(1) The company must be an unquoted trading company.

(2) The purchase of the shares by the company must be for the benefit of the trade.

(3) The purchase of the shares by the company must not be part of any scheme to enable the shareholders to benefit from the profits of the company without taking a dividend.

(4) The vendor of the shares must be resident and ordinarily resident in the State for the year when the shares are purchased.

(5) The shares must be owned by the vendor for at least 5 years before the shares are purchased, or 3 years if the shares are being purchased on death.

(6) The vendor and his associates - i.e. spouse and children under 18 living with their parents - must reduce their shareholding by at least 25%, as a result of the purchase.

(7) The vendor and his associates combined must have less than 30% of the equity of the company after the purchase.

ALL TESTS MUST BE MET TO QUALIFY FOR CAPITAL GAINS TAX TREATMENT.

APPENDIX IV – Taxation of Life Assurance Policies

Premiums

Premiums paid by the Company on Corporate Co-Director's Insurance will, under current Revenue Practice, not be an allowable deduction for Corporation Tax purposes.

Revenue clarification on the taxation of Keyman Insurance Policies, issued in July 1986, require four separate conditions to be met in order for premiums to be admissible deduction for Corporation Tax purposes:

(i) The relationship between the company and the insured life is that of employer and employee. The term 'employee' in this context is taken as including a director.

(ii) The employee must have no substantial proprietary interest in the business. A person is regarded as having a substantial proprietary interest in a company if he has more than 15% of the ordinary share capital.

(iii) The life assurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss. Premiums on policies taken out to cover loans or other outstanding debts which would become repayable on the death of an employee are not admissible deductions.

(iv) The life policy must be for a fixed short term, usually less than 5 years, and have no surrender value or investment content.

The term 'keyman' in the Revenue's clarification is taken as applying to a wide range of policies, where an employer takes out 'in his own favour a policy insuring against death, sickness, or injury of an employee'.

In this context life assurance policies effected by a company as part of a Corporate Co-Director's Insurance arrangement can be taken as 'keyman' policies.

In the case of premiums paid by a company as part of a Corporate Co-Director's Insurance it is likely that requirements (ii) and (iii) will not be met in most cases and hence the premiums will not be admissible deductions for Corporation Tax purposes.

Proceeds

The Revenue clarification on the taxation of Keyman Insurance policies says :

'While the allowability of a premium or the chargeability of a benefit are strictly separate issues, it will usually be the case that, if the premiums are allowable for tax purposes, the benefit is chargeable to tax and, if the premiums are not allowable, the benefit is not chargeable.'

Therefore if it is perfectly clear from the circumstances that the sole purpose in effecting the Corporate Co-Director's Insurance policy is capital in nature, i.e. to enable the company to purchase a deceased shareholder's shares, then the premium is clearly not deductible for tax purposes (see (iii) above).

Therefore the proceeds of the policy payable on death or surrender would, under current Revenue practice and law, be treated for tax purposes as a capital rather than a taxable trading receipt.

Section 593 of the TCA 1997, exempts the proceeds of life assurance policies from capital gains tax, where the policy has remained in the beneficial ownership of the Company throughout. No tax liability on the proceeds should therefore arise under current legislation.

The above refers to the payment of policy proceeds in the event of death or disablement of a "keyman". Here once the proceeds are treated as a capital as opposed to a revenue receipt for the company the proceeds will be exempt from capital gains tax on death or disablement