

Foreign life assurance and deferred annuities: taxation and returns. CGTA75 s20A; FA93 s24; FA95 s68; FA97 s74(1) 594.—(1) (a) (i) For the purposes of this section, a policy of assurance or contract for a deferred annuity on the life of any person, being a policy issued or a contract made before the 20th day of May, 1993, shall be treated as a policy issued or contract made, as the case may be, after that date if there is a variation of the policy or contract on or after that date which directly or indirectly increases the benefits secured by, or extends the term of, the policy or contract, as the case may be.

(ii) For the purposes of subparagraph (i), where a policy of assurance issued or a contract made before the 20th day of May, 1993, provides an option to have another policy or contract substituted for it or to have any of its terms changed, any change in the terms of the policy or contract made in pursuance of the option shall be deemed to be a variation of the policy or contract, as the case may be.

(b) Subject to subsection (2), this section shall be construed together with subsections (3) and (4) of section 593 as if subsection (3) of that section were not subject to subsection (2) of that section.

(c) (i) In this paragraph and in subsection (3)—

“assurance company” has the same meaning as in section 3 of the Insurance Act, 1936 ;

“excluded policy” means a policy of assurance or contract for a deferred annuity on the life of any person where the policy is issued to or the contract is made with, as the case may be, a person who did not continuously reside outside the State throughout the period of 6 months commencing on the date of issue or the date of contract, as the case may be;

“life assurance fund” has the same meaning as in the Insurance Acts 1909 to 1969;

“relevant company” means a company which is—

(I) resident in the State, or

(II) chargeable under Case III of Schedule D by virtue of section 726 in respect of its income from the investment of its life assurance fund.

(ii) Subsection (2) shall apply to any policy of assurance or contract for a deferred annuity on the life of any person which is a policy issued or a contract made, as the case may be, on or after the 20th day of May, 1993—

(I) otherwise than by an assurance company which is a relevant company, or

(II) being a policy or contract which is an excluded policy issued or made, as the case may be, by a relevant company to which section 710 (2) applies.

(2) (a) In this subsection, “relevant gain” means a chargeable gain arising on a disposal of or of an

interest in the rights under any policy of assurance or contract for a deferred annuity to which this subsection applies, including a disposal by a person who is not the original beneficial owner of those rights and who acquired them or an interest in them for a consideration in money or money's worth.

(b) Section 593 (2) shall not apply in respect of any disposal of or of any interest in the rights under any policy of assurance or contract for a deferred annuity to which this subsection applies.

(c) A relevant gain shall be computed as if section 556 had not been enacted.

(d) Notwithstanding section 31, the total amount of chargeable gains accruing to a person chargeable in a year of assessment after deducting any allowable losses shall not be less than the total amount of any relevant gains accruing to the person in that year, and accordingly any deduction for allowable losses made in computing the total amount of chargeable gains so accruing shall not exceed the total amount of chargeable gains so accruing which are not relevant gains.

(e) Notwithstanding section 601 or 1028 (4), an individual shall be charged to capital gains tax on the amount of any relevant gains accruing to the individual.

(3) As respects a policy of assurance or a contract for a deferred annuity to which subsection (2) applies, section 895 shall apply with any necessary modifications—

(a) (i) to a relevant company, and

(ii) to every person carrying on in the State a trade or business in the ordinary course of the operations of which such person acts as an intermediary in or in connection with the issue of such a policy, or the making of such a contract,

in the same manner as it applies to every intermediary within the meaning of that section, and

(b) to a person resident or ordinarily resident in the State who is entitled to any amount payable under such a policy or contract, being an amount payable otherwise than in the event of the death of a person specified in the terms of the policy or the contract, as the case may be, in the same manner as it applies to a person resident in the State opening an account, in which a deposit which such person beneficially owns is held, at a location outside the State,

as if references in that section to—

(i) a deposit were references to any payment made by a person resident or ordinarily resident in the State in respect of such a policy or contract,

(ii) a foreign account were references to such a policy or contract,

(iii) the opening of a foreign account were references to the issue of such a policy or the making of such a contract, and

(iv) a relevant person were references to a person who in the normal course of such person's trade or business would issue such a policy or make such a contract.

(4) (a) In this subsection, “reinsurance contract” means any contract or other agreement for reinsurance or reinsurance in respect of—

(i) any policy of assurance on the life of any person, or

(ii) any class of such policies.

(b) Where apart from this paragraph a reinsurance contract would not be a policy of assurance on the life of any person for the purposes of the Capital Gains Tax Acts, it shall be deemed to be such a policy for those purposes.

(c) Subsections (2) and (3) shall not apply to, and shall be deemed never to have applied to, reinsurance contracts; but, where apart from this paragraph a reinsurance contract would not be a relevant policy within the meaning of section 595 for the purposes of that section, it shall be deemed not to be such a policy for those purposes.

(d) (i) Subject to paragraph (e), where subsection (2) would (apart from paragraph (c)) apply to a reinsurance contract in respect of any policy of assurance on the life of any person, being a policy issued on or after the 1st day of January, 1995, section 593 (2) shall not apply in respect of any disposal or deemed disposal on or after the 1st day of January, 1995, of, or of any interest in, rights of the insured company under the reinsurance contract to the extent that—

(I) those rights refer to that policy, and

(II) the insured company could receive, otherwise than on the death, disablement or disease of any person or one of a class of persons to whom that policy refers, payment on a disposal of those rights the aggregate amount of which would exceed the aggregate amount of payment made by it in respect of those rights.

(ii) Subparagraph (i) shall apply as if—

(I) as respects any reinsurance contract made before the 20th day of May, 1993, that contract were made on that day, and

(II) as respects any reinsurance contract made or modified on or after the 1st day of January, 1995, there were deleted from subparagraph (i) “being a policy issued on or after the 1st day of January, 1995,”.

(iii) Subparagraphs (i) and (ii) of subsection (1)(a) shall apply for the purposes of this paragraph as if for “the 20th day of May, 1993” there were substituted “the 1st day of January, 1995”.

(e) Paragraph (d) shall not apply to any disposal of or of any interest in rights under a reinsurance contract, being a disposal resulting directly from the death, disablement or disease of a person or one of a class of persons to whom the reinsurance contract refers; but in computing any gain or loss in respect of a

disposal or deemed disposal of or of any interest in rights of the insured company under a reinsurance contract—

(i) there shall be excluded from the sums allowable under section 552 so much of any payment made by the insured company under the reinsurance contract as is paid in respect of an entitlement to a payment on the death, disablement or disease of a person, or one of a class of persons, and

(ii) there shall be added to the consideration taken into account under Chapter 2 of this Part the market value of an entitlement for any period, commencing on or after the most recent acquisition or deemed acquisition by the insured company of those rights, to a payment on the death, disablement or disease of a person, or one of a class of persons, to the extent that the insured company held the entitlement for that period in place of any return which would otherwise have accrued under the reinsurance contract and increased that consideration.