

KEYMAN ASSURANCE POLICIES

A number of companies and close corporations choose to conclude insurance policies over the lives of the employees whose knowledge, work, or overall contribution is considered uniquely valuable to the company. Small companies for example are often reliant on one or two Key individuals and the loss of one of these individuals through death or disability would place significant financial pressure on the company.

The correct insurance will relieve the following financial pressure, usually resulting from the loss of the Key person:

- Income lost due to the specific knowledge lost
- The additional costs incurred to recruit and train a replacement
- Loss of goodwill as customers may be less inclined to deal with a new or replacement employee.

Keyman assurance is taken out to cover this scenario and ensures business continuity.

However, if this policy is taken out incorrectly and the assured employee dies, problems can occur in terms of the Estate Duty Act.

Section 3(3) of the Estate Duty Act reads as follows:

- "(3) Property which is deemed to be property of the deceased includes:-
- (a) so much of any amount due and recoverable under any policy which is a 'domestic policy' upon the life of the deceased as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Commissioner to have been paid by any person who is entitled to the amount due under the policy, together with interest at 6% per annum calculated upon such premiums or consideration from the date of payment to the date of death: Provided that the foregoing provisions of this paragraph shall not apply in respect of any amount due and recoverable under a policy of insurance, if –
 - (i) ..., or
 - (iA) ..., or
 - (ii) except where the provisions of paragraph (i) or (iA) of this proviso apply, the Commissioner is satisfied and remains satisfied that such policy was not effected by or at the instance of the deceased, that no premium on such policy was paid or borne by the deceased, that no amount due or recoverable under such policy has been or will be paid into the estate of the deceased and that no such amount has been or will be paid to, or utilized for the benefit of, any relative of the deceased or any person who was wholly or partly dependant for his maintenance upon the deceased or any company which was at any time a family company in relation to deceased;"

For the exclusion in terms of section 3(3)(a)(ii) of this Act to be applicable, the following circumstances must be considered:

1. The Commissioner must be satisfied that all the requirements mentioned in this section have been complied with before the exclusion. All the relevant documentation pertaining to the case must be presented.
2. Copies of the resolution taken by company to take out such policy.
3. Application made for the policy and any other documentation to prove that the proceeds of the policy were not applied to benefit either the estate, any relative of the deceased or any person who was dependant upon the deceased for his/her maintenance or a family company of the deceased as envisaged in the relevant section of the Act...

We have accordingly drafted a board resolution for Keyman policies which must be completed and signed by the relevant parties who currently have a Keyman policy and those who are planning on taking out a Keyman policy. Do not hesitate to contact us and set up an appointment to discuss and sign one of these resolutions.

Please note: A failure to sign one of these resolutions could have negative estate duty consequences in terms of the recent SARS Keyman practice note.