Role player scenarios

Allan Gray Offshore Endowment ("the plan")

The following example scenarios illustrate various ways in which the plan may be structured. These examples are not exhaustive – different scenarios are possible, depending on how the planholder chooses to structure their plan.

Scenario 1

The role players

PLANHOLDER
Cranberry Trust
(an offshore trust)

LIFE ASSURED
Thabo

BENEFICIARY FOR OWNERSHIP
Not applicable (a legal entity cannot appoint a beneficiary for ownership since the entity cannot die)

BENEFICIARY FOR PROCEEDS
Cranberry Trust (by default)

How will this scenario play out?

The Cranberry Trust can choose to structure their plan with or without a life assured. The life assured must be a natural person. If they choose not to appoint a life assured, the plan is referred to as a "sinking fund".

In this example, the Cranberry Trust chooses to appoint a life assured. Generally, in an offshore endowment, the planholder is always added as a life assured. However, if the planholder is a legal entity, as is the case here, this rule does not apply, and any natural person can be appointed as a life assured. Creditor protection* will not apply to the value of the plan because an entity cannot appoint itself as a life assured. When the planholder is a legal entity and a life assured is appointed, that same legal entity will automatically be the beneficiary for proceeds.

If Thabo dies, the proceeds of the plan will be paid to the beneficiary for proceeds, i.e. the Cranberry Trust. Because the proceeds are payable outside of South Africa, the plan will not be deemed property in the life assured's estate for estate duty purposes. However, since this is an offshore trust, consideration must be given to the general tax implications of receiving the proceeds with due regard to the tax legislation in the relevant foreign jurisdiction. If this were a South African trust and the proceeds were payable in South Africa, the plan would have been considered a deemed asset in the life assured's (i.e. Thabo's) estate, and estate duty would have been payable by the beneficiary for proceeds, namely the Cranberry Trust. A South African trust would require South African Reserve Bank approval to invest in the Allan Gray Offshore Endowment. If no life assured was appointed, the plan would continue until it was fully withdrawn.

Scenario 2

The role players

PLANHOLDER
Thobeka

LIFE ASSURED 1
Thobeka

LIFE ASSURED 2
John

PRIMARY BENEFICIARY FOR OWNERSHIP
John

How will this scenario play out?

Thobeka is the planholder and has chosen to structure her plan with John, her spouse, as a life assured. Since Thobeka is the planholder, she is also automatically included as a life assured. As there is more than one life assured, a beneficiary for ownership must be appointed (in this case, John). During Thobeka's life, the plan will qualify for protection from creditors three years after issue because Thobeka is a life assured.

If Thobeka dies first, the plan will continue, as the other life assured (John) is still alive. As the beneficiary for ownership, John will take ownership of the plan and have the option to either continue with the plan or withdraw in full. If the plan was in a restriction period, the restriction period will end on Thobeka's death. Should John continue with the plan, he will become the new planholder and remain a life assured. John can appoint new lives assured, beneficiaries for ownership and beneficiaries for proceeds.

Capital gains tax (CGT) will not be payable on the transfer of ownership, and John will take over the plan at its original base cost. However, if John decides to withdraw from the plan, CGT will be deducted from the value of the plan before the proceeds are paid to him.

As John is a life assured, when ownership of the plan passes to him, it will, during his lifetime, enjoy protection from creditors if the plan had been in existence for three years or more since it was first issued.

The plan will form part of Thobeka's estate for the calculation of estate duty, but since John is her spouse, the value of the plan will be deductible from her estate in terms of section 4(q) of the Estate Duty Act.

Scenario 2 – continued

The role players

SECONDARY BENEFICIARY FOR OWNERSHIP
None

PRIMARY AND SECONDARY BENEFICIARIES FOR PROCEEDS
None

How will this scenario play out?

If John dies first, the plan will continue, as the other life assured (Thobeka) is still alive. Thobeka should appoint a new life assured and beneficiary for ownership if she doesn't want the proceeds of the plan to be paid to her estate on her death.

If Thobeka and John die simultaneously, the proceeds of the plan will be paid to Thobeka's estate after CGT has been deducted. We will act on a South African letter of executorship, i.e. no offshore will is required. The benefit will be protected from creditors if Thobeka is survived by a child or parent and the benefit passes to them.

*Section 63 of the Long-term Insurance Act protects the benefits provided in terms of a life policy against creditors, provided that the following requirements are met:

- The endowment is issued on the life of the planholder or their spouse, and
- The endowment has been in force for at least three years, and
- The surviving spouse, child, stepchild or parent benefits from the plan on the death of the planholder.

Scenario 3

The role players

PLANHOLDER
Mike

LIFE ASSURED 1
Mike

LIFE ASSURED 2
Myan

PRIMARY BENEFICIARY FOR OWNERSHIP
Myan (50%) and Layla (50%)

SECONDARY BENEFICIARY FOR OWNERSHIP FOR MYAN
Shameela

SECONDARY BENEFICIARY FOR OWNERSHIP FOR LAYLA
Joe (50%) and Kyle (50%)

PRIMARY AND SECONDARY BENEFICIARIES FOR PROCEEDS
None

How will this scenario play out?

Mike is the planholder and has chosen to structure his plan with Myan, his son, as a life assured. Since Mike is the planholder, he is also automatically included as a life assured.

Since there is more than one life assured, Mike needs to appoint a beneficiary for ownership. Mike has chosen to appoint both Myan and Layla, his adult children, as beneficiaries for ownership. If Myan dies before Mike, or declines the benefit, Myan's daughter Shameela has been appointed as the secondary beneficiary for ownership to replace Myan. If Layla dies before Mike, or declines the benefit, Layla's sons Joe and Kyle have been appointed as the secondary beneficiaries for ownership to replace Layla. During Mike's life, the plan will qualify for protection from creditors three years after issue because Mike is a life assured.

If Mike dies first, the plan will continue, and 50% ownership will be passed to Myan and 50% to Layla. If the plan was in a restriction period, the restriction period will end on Mike's death. Should Myan and Layla choose to become the new planholders (instead of withdrawing in full), two new plans will be created and Myan will remain the life assured on both, with Layla added as a life assured on her plan. Layla can remove Myan as a life assured on her plan at the point when she becomes the new owner of the plan. Both Myan and Layla can appoint new lives assured, beneficiaries for ownership and beneficiaries for proceeds on their respective plans.

Capital gains tax (CGT) will not be payable on the transfer of ownership, and Myan and Layla will take over their portion of the plan at the original base cost. However, if either Myan or Layla decides to withdraw from the plan, CGT will be deducted from the value of their portion of the plan before the proceeds are paid to them.

When ownership of the plan passes to Myan and Layla, and provided the plan has been in existence for three or more years since it was first issued, it will, during their lifetime, continue to enjoy protection from creditors because Myan and Layla will each be life assureds on their own plans.

The plan will form part of Mike's estate for the calculation of estate duty.

If Myan dies before Mike, the plan will continue, as the other life assured (Mike) is still alive. However, if Mike does not replace Myan as a life assured in this instance, the proceeds of the plan will be paid to Mike's estate when he dies as there are no appointed primary or secondary beneficiaries for proceeds. In this scenario, we will act on a South African letter of executorship, i.e. no offshore will is required.

If Layla dies before Mike, and if Mike does not replace Layla as a primary beneficiary for ownership, then Layla's benefit will be split between Joe and Kyle (split 50%/50%). Joe and Kyle will then have the option to either take over ownership of the plan or withdraw in full.

Scenario 4

The role players

PLANHOLDER
Adam

LIFE ASSURED
None

PRIMARY BENEFICIARY FOR OWNERSHIP
Eve

SECONDARY BENEFICIARIES FOR OWNERSHIP FOR EVE
Rebecca (40%), Tina (30%) and Olivia(30%)

PRIMARY BENEFICIARIES FOR PROCEEDS
Seth (50%) and Sean (50%)

SECONDARY BENEFICIARIES FOR PROCEEDS
None

How will this scenario play out?

Adam is the planholder and has chosen to structure his plan without a life assured, i.e. it is a sinking fund. Creditor protection will not apply because no life assured is appointed.

If Adam dies first, the plan will continue and Eve, his spouse, will have the option to either take ownership of the plan or withdraw in full.

If the plan was in a restriction period, the restriction period will end on Adam's death. Should Eve take ownership of the plan, she will become the new planholder. Eve can appoint new beneficiaries for ownership and beneficiaries for proceeds, but not a life assured, as one was not appointed on the original plan.

Capital gains tax (CGT) will not be payable on the transfer of ownership, and Eve will take over the plan at its original base cost. However, if Eve decides to withdraw from the plan, CGT will be deducted from the value of the plan before the proceeds are paid to her.

The plan will form part of Adam's estate for the calculation of estate duty, but since Eve is his spouse, the value of the plan will be deductible from his estate in terms of section 4(q) of the Estate Duty Act.

If Eve dies first, and Adam does not appoint a replacement primary beneficiary for ownership before he dies, the plan will be passed on to their children, namely Rebecca, Tina and Olivia (split 40%/30%/30%). Rebecca, Tina and Olivia will then have the option to either take over ownership of their portion of the plan or withdraw it in full.

If Eve and Rebecca die and are not replaced before Adam dies, then Rebecca's benefit will be split proportionately between Tina and Olivia.

If Eve, Rebecca, Tina and Olivia all die and are not replaced before Adam dies, the proceeds of the plan will be paid out to Seth and Sean, Adam's siblings, when Adam dies (split 50%/50%). The proceeds will be paid after CGT has been deducted.

Scenario 5

The role players

PLANHOLDER
Ben

LIFE ASSURED 1
Ben

LIFE ASSURED 2
Miranda

PRIMARY BENEFICIARY FOR OWNERSHIP
Homely Trust (an offshore trust whose beneficiaries are minor South African children)

How will this scenario play out?

Ben is the planholder and has chosen to structure his plan with Miranda, his spouse, as a life assured. Since Ben is the planholder, he is also automatically included as a life assured. As there is more than one life assured, a beneficiary for ownership must be appointed (in this case, the Homely Trust). During Ben's lifetime, the plan will qualify for protection from creditors three years after issue because Ben is a life assured.

If Ben dies first, the plan will continue, and the Homely Trust will take ownership of the plan and have the option to either continue with the plan or withdraw in full. Capital gains tax (CGT) will be triggered if the Homely Trust decides to make a full withdrawal from the plan. However, if they decide to take over ownership of the plan, CGT will not be triggered because the beneficiaries of the trust are all natural persons, and the plan will remain classified within the individual policyholder fund. However, if one of the beneficiaries were a company, CGT would be triggered on the change of ownership because the trust would move classification from the individual policyholder fund to the company policyholder fund.

The plan will be protected from creditors on the basis that it passes to a new owner (the Homely Trust), which is a contractual arrangement. Nothing is paid to the estate, so section 63 does not come into play on death. The same principle applies when the plan is protected on the basis that there is a beneficiary for proceeds, regardless of who those beneficiaries are. It is a contract for the benefit of a third party.

Scenario 5 – continued

The role players

PRIMARY AND SECONDARY BENEFICIARIES FOR PROCEEDS
None

How will this scenario play out?

If the Homely Trust takes over ownership of the plan and does not appoint another life assured before Miranda dies, the proceeds of the plan will be paid to the default beneficiary for proceeds, i.e. the Homely Trust, on her death. Being an offshore trust, consideration must be given to the general tax implications of receiving the proceeds with due regard to the tax legislation in the relevant foreign jurisdiction.

If no life assureds had originally been appointed by Ben, i.e. a sinking fund plan, then on Ben's death, if the Homely Trust had taken ownership of the plan, it would have continued until it was fully withdrawn.

The Homely Trust will not enjoy creditor protection because an entity cannot appoint itself as a life assured.

If Miranda dies first, the plan will continue. If no beneficiary for proceeds is appointed before Ben dies, the proceeds of the plan will be paid to Ben's estate on his death (after CGT has been deducted). The benefit will be protected from creditors if Ben is survived by a child or parent and the benefit passes to them.

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