INCOME TAX PRACTICE NOTE 2 - 2003

TAXATION OF COMPANY (EMPLOYER) OWNED POLICIES

This practice note serves to clarify the taxation of company owned policies, especially with regard to the deductibility for tax purposes of premiums contributed towards such policies, tax implications when zero rate interest loans are made against such policies and the substitution of a life covered on such policies.

Paragraph (m) of the definition of "gross income" in section 1 of the Income Tax Act 24 of 1981, (the "Act") provides as follows:

> *' "gross income" ….namely -*
>
> *(m)* *any amount received or accrued under or upon the surrender or disposal of any policy of insurance upon the life of any person who, at any time while the policy was in force, was an employee of the taxpayer, or where the taxpayer is a company, was a director or employee of such company;'*

Paragraph (m) of the definition of "gross income " explicitly refers to the proceeds of company (employer) owned policies and therefore render it taxable.

Section 17(1)(a) of the Act provides for a deduction on premiums contributed towards company (employer) owned policies.

The Namibian Long Term Insurance Act, 1998, does not prescribe a maximum term for a life insurance policy.

It came to the attention of the Directorate Inland Revenue that it is possible to indefinitely postpone the maturity of a company (employer) owned policy by continuously substituting/adding to the life covered on such policies, resulting in an indefinite postponement of the tax liability on the proceeds of such policies upon maturity.

As from 27 June 2003 the Directorate Inland Revenue has decided that company (employer) owned policies will be dealt with for tax purposes as follows:

- The amount of any loan (for example a zero interest loan) made against a company owned policy **will become taxable in the tax year the loan is made**; and

- The substitution or addition of life covered on any company owned policy will not be allowed as it may have the effect of indefinitely postponing the tax liability of the proceeds on such policy upon maturity. In other words, the **policy must mature upon the death of the last original life assured on such policy.**

Should the need arise to add an additional life assured on a company (employer) owned policy for a valid reason other than the postponement of tax, the Directorate of Inland Revenue must be approached for a directive in this regard. Failure to obtain a directive may lead to Inland Revenue Directorate invoking the provisions of section 95 of the Act, thereby effectively rendering the substitution of the life assured a scheme for the avoidance of tax.

ISSUED BY THE COMMISSIONER OF INLAND REVENUE

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