

ภาคผนวก

ภาคผนวก ก.

กรมธรรม์ประกันภัยผู้บริหาร (Keyman Insurance Policy)

The Life Insurance Policies which are proposed to be an organization (employer) on life of some of its key persons will be deemed to be a keyman insurance policies.

Premium paid will be allowed as an expenditure as per Circular of the Board and also as decided by Bombay High Court.

The sum received on such policy (except on the sad event of death of insured person) shall be taxable as income under the head business or other sources.

Any sum received under a keyman policy is considered as business income u/s 28 (vi). This may be in hands of company or keyman. In case of death of insured, sum received by legal heirs or nominee shall be income from other sources if not assessed under the head business or salaries.

However, for allowability of premium as business expenditure there must be clear and undisputed link between services of insured person with business of employer.

The amount received by employer will be taxable as business income.

In case the proposer of insurance policy is not employer but the employee, then premium paid by employer will be perquisite in hands of employee.

Relevant provisions which may be applicable in case of employer or employee are reproduced below (this list is not exhaustive, because general provisions are not reproduced):

INCOME-TAX ACT, 1961

[43 OF 1961]

An Act to consolidate and amend the law relating to income-tax and super-tax Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Income-tax Act, 1961.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962

(24) "income" includes—

(i) profits and gains ;

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;

[(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;]

[(xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to clause (10D) of section 10 ;]

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Incomes not included in total income [Clause (1) to Clause (10D)]

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

74[(10D) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA; or

(b) any sum received under a Keyman insurance policy; or

(c) any sum received under an insurance policy issued on or after the 1st day of April, 2003, 77[but on or before the 31st day of March, 2012] in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum 78[assured; or]:

79[(d) any sum received under an insurance policy issued on or after the 1st day of April, 2012

in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent of the actual capital sum assured];

Provided that the provisions of 80[sub-clauses (c) and (d)]) shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under 81[sub-clause (c)], effect shall be given to the 75[Explanation to sub-section (3) of section 80C or the Explanation to sub-section (2A) of section 88, as the case may be].

82[Explanation 1.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person;

Explanation 2.—For the purposes of sub-clause (d), the expression "actual capital sum assured" shall have the meaning assigned to it in the Explanation to sub-section (3A) of section 80C;]]

D.—Profits and gains of business or profession

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28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

[(vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (10D) of section 10.]

Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i) xx

[(iv) income referred to in sub-clause (xi) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession" or under the head "Salaries";]

[Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability.

80DD. (1)xxxx

(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

1[Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc.

80C. (1)

(3) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an 9[insurance policy, other than a contract for a deferred annuity, issued on or before the 31st day of March, 2012] as is not in excess of twenty per cent of the actual capital sum assured.

Explanation.—In calculating any such actual capital sum assured, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

10[(3A) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy, other than a contract for a deferred annuity, issued on or after the 1st day of April, 2012 as is not in excess of ten per cent of the actual capital sum assured.

Explanation.—For the purposes of this sub-section, "actual capital sum assured" in relation to a life insurance policy shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account—

(i) the value of any premium agreed to be returned; or

(ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is

to be or may be received under the policy by any person.]

Rebate on life insurance premia, contribution to provident fund, etc.

88. 1[

20[(2A) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy other than a contract for a deferred annuity as is not in excess of twenty per cent of the actual capital sum assured.

Explanation.—In calculating any such actual capital sum, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be, or, may be, received under the policy by any person.]

Relevant Circular- extract from Circular

From 230 ITR 12 (St.) relevant para 14 is at page 20-21

C.B.D.T. Circulars

Circular No.762, dated 18th February, 1998.

Subject : Finance (No. 2) Act, 1996 – Explanatory Notes on provisions relating to Direct Taxes.

Taxation of a sum received under the keyman insurance policy

14.1 A Keyman Insurance Policy of the Life Insurance Corporation of India, etc., provides for an insurance policy taken by a business organization or a professional organization on the life of an employee, in order to protect the business against the financial loss, which may occur from the employee's premature death. The "Keyman" is an employee or a director, whose services are perceived to have a significant effect on the profitability of the business. The premium is paid by the employer.

14.2 There were some doubts on the taxability of the income including bonus, etc., from such policy and also regarding the treatment of the premium paid – whether it should be allowed as a capital expenditure or as a revenue expenditure. The Act, therefore, lays down the tax treatment of the Keyman Insurance Policy.

14.3 Clause (10D) of section 10 of the Income-tax Act exempts certain income from tax. The Act amends clause (10D) of section 10 to exclude any sum received under a Keyman Insurance Policy including the sum allocated by way of bonus on such policy for this purpose.

14.4 The Act also lays down that the sums received by the said organization on such policies,

be taxed as business profits ; the surrender value of the policy, endorsed in favour of the employee (Keyman), or the sum received by him at the time of retirement be taken as "profits in lieu of salary" for tax purposes; and in case of other persons having no employer-employee relationship, the surrender value of the policy or the sum received under the policy be taken as income from other sources and taxed accordingly. The premium paid on the Keyman Insurance Policy is allowed as business expenditure. taxmanagementindia.com

14.5 The amendments take effect from the 1st day of October, 1996.

[Section 3, 4, 8, 10 and 21]

From the Judgment of Bombay High Court in case of CIT v. B. N. Exports

2010 (3) TMI 186 - BOMBAY HIGH COURT

- Keyman Insurance Policy for section 10(10D) is not confined to a policy taken by a person on life of an employee, but also extends to an insurance policy taken with respect to life of another who is connected in any manner whatsoever with business of subscriber

There is no rational basis to confine allowability of expenditure incurred on premium paid towards a Keyman Insurance policy only to a situation where policy is in respect of life of an employee

HIGH COURT OF BOMBAY

CIT

v.

B. N. Exports

ITA No. 2714 of 2009

March 31, 2010

RELEVANT portion with high lights:

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5. The effect of Clause 10 -D is that a sum received under a life insurance policy is not to be included in computing the total income of any person. However, a sum received under a Keyman Insurance Policy forms a part of the total income and is liable to be offered to tax. For the purposes of Clause 10D, a Keyman Insurance Policy

is a life insurance policy taken by a person on the life of another person who is or was the employee of the person who subscribes to the policy of insurance or is or was connected in any manner whatsoever with the business of the subscriber to the policy. In other words, a Keyman Insurance Policy for Clause 10D is not confined to a policy taken by a person on the life of an employee, but also extends to an insurance policy taken with respect to the life of another who is connected in any manner whatsoever with the business of the subscriber.

6. The Central Board of Direct Taxes has issued a circular on 18th February, 1998 (Circular 762) which clarifies the scope and purpose of the provision. Paragraph 14.1 of the circular states thus :

“14.1 A Keyman Insurance Policy of the Life Insurance Corporation of India, etc., provides for an insurance policy taken by a business organisation or a professional organisation on the life of an employee, in order to protect the business against the financial loss, which may occur from the employee's premature death. The “Keyman ” is an employee or a director, whose services are perceived to have a significant effect on the profitability of the business. The premium is paid by the employer.”

7. The Circular notes that there were certain doubts on the taxability of the income, including bonus, received from such policies and as regards whether the premium paid should be allowed as capital or as revenue expenditure. The circular clarifies that the Act

lays down the tax treatment for a Keyman Insurance Policy. The circular clarifies that the premium paid on a Keyman Insurance Policy is allowable as business expenditure.

9. The effect of Section 10 (10 -D) is that monies which are received under a life insurance policy are not included in the computation of the total income of a person for a previous year. However, any sum received under a Keyman Insurance Policy is to be reckoned while computing total income. For that purpose, a Keyman Insurance Policy means a life insurance policy taken by a person on the life of another person who is or was in employment as well as on a person on who is or was connected in any manner whatsoever with the business of the subscriber. The words “is or was connected in any manner whatsoever with the business ” of the subscriber are wider than what would be subsumed under a contract of employment. The latter part makes it clear that a Keyman Insurance Policy for the purposes of Clause 10 -D is not confined to a situation where there is a contract of employment. Clause 10 -D relates to the treatment for the purpose of taxation of moneys received under an insurance policy. In this appeal, the Court has to determine the question of expenditure incurred towards the payment of insurance premium on a Keyman Insurance Policy. The circular which has been issued by the Central Board of Direct Taxes clarifies the position by stipulating that the premium paid for a Keyman Insurance Policy is allowable as business expenditure. In the present case, on the question whether the premium which was paid by the firm could have been allowed as business expenditure, there is a finding of fact by the Tribunal that the firm had not taken insurance for the personal benefit of the partner, but for the benefit of the firm, in

order to protect itself

against the set back that may be caused on account of the death of a partner. The object and purpose of a Keyman Insurance Policy is to protect the business against a financial set back which may occur, as a result of a premature death, to the business or professional organization. There is no rational basis to confine the allowability of the expenditure incurred on the premium paid towards such a policy only to a situation where the policy is in respect of the life of an employee. A Keyman Insurance Policy is obtained on the life of a partner to safeguard the firm against a disruption of the business that may result due to the premature death of a partner. Therefore, the expenditure which is laid out for the payment of premium on such a policy is incurred wholly and exclusively for the purposes of business.

Draft explanatory letter to the AO or other authorities about claim for keymen insurance policies:

Reg. : Keymen Insurance Policies – about allowability of premium paid by assessee

The policies on life of key men (in our case partners / Director/ executives) of the firm/ company) cover life risk of key men who are associated with the firm / company in its business as main pillars of business. In case of unfortunate event of death of life of covered key man the firm / company and /or the concerned key man will get insurance money. This will help the firm to face difficulties, which it may otherwise face in case of sudden death of any key man.

Having key men's policies provide financial stability and key manpower stability. These are very important for long-term stability and good will of business and confidence of customers ,suppliers, service providers and employees of the firm/ company.

Therefore, the premium paid for such policies is in the nature of 'insurance premium' incurred in the normal course of business of the firm/ company.

- 1) The expenses are on account of insurance premium.
- 2) The premium paid is not a personal expense of the firm / company and it is also not a capital expenditure – it is recurring expense to get cover of risks.
- 3) Keyman's insurance policies are taken on life of various keymen of the firm/ company to reduce risks and financial uncertainties which may caused due to death of key men of the firm/ company. Thus, the expenses on this account is wholly and exclusively incurred for the purpose of business.
- 4) In Circular No.762, dated 18th February, 1998 issued by the CBDT in para 14.4 it is stated that " The premium paid on the Keyman Insurance Policy is allowed as business expenditure."

Relevant para 14 of the circular which was issued in relation to key men's insurance premium-taxability of insurance money and allowability of premium is attached. This is reported in 230 ITR 12 (St.) relevant para 14 is at page 20-21

The above circular is fully applicable in our case and it is also binding. In view of the same we request your honor to kindly allow keymens insurance premium.

We also rely on judgment of the Bombay High Court in case of CIT v. B. N. Exports 2010 (3) TMI 186 - BOMBAY HIGH COURT a copy of which is also attached.

We hope the above explanation will be found satisfactory.

Thanks.

Keymens policies are financing and tax deferment tools:

It can be said that keymens insurance policies are suitable tools for deferment of tax liability. Because keymens policies are generally proposed when there is good profit in an organization. These policies also provide facility to obtain loan against policy based on its surrender value. Therefore, in case of need the organization can also take loan and such loan being secured loan carry lower rate of interest. Thus some financial leverage can be provided.

In case at some time business has problem, there is loss, and financial position is tight due to which it is not possible to pay premium and funds are required, then the policy can be surrendered to realize funds. This should be after due consideration of all other options available and loss on surrender of policy.

Not to treat as Capital Expenditure or investment:

The premium cannot be considered as investment or capital expenditure for the purpose of Income-tax Act. This is because if the sum paid is considered as a capital expenditure or an investment then the following consequences will take place.

- a) The amounts paid will be disallowed and therefore there will be no saving of tax.
- b) The amount received on the policy including bonus or other profit shall be treated as income u/s 28 although, the payments made were not allowed. Therefore, this will amount to double taxation.

Therefore, it is clear that the legislature have considered taxability of sums received as income and payment will be allowable.

The purpose of amendment of section 28:

To curb the chances of claim of premium as business expenditure and to claim money received on policy as capital receipts, various amendments were made in the Act by the Finance (No.2) Act, 1996.

The clause (vi) in section 28 was inserted by the Finance (No.2), Act 1996 w.e.f. from 1.10.96. At the same time, section 17 was also amended whereby it was provided in section 17(3)(ii) that

any sum received under a keyman's insurance policy including the sum allocated by way of bonus on such policy shall be considered as profits in lieu of salary. Section 10 (10D) was also amended to provide that sum received under key man's insurance policy shall not be tax free.

Therefore, if any amount under keyman's policy is received by the employee then it will be considered as income of employee under the head income from salaries and if the amount is received by the employer or any other person who is not employee then the amount received by employer or such other person shall be considered as business income of the employer or such other person u/s 28. In case the amount is not so considered, then the same will be considered as income under head 'other sources'.

Another way to look at KMI

Keyman's premium as investment:

Suppose accounting policy to treat premium paid as investment is adopted, in that case premium paid can be considered as investments, thereby increasing book profit. Similarly income earned and accumulated on KMI can be considered as income and debited to investment account. By this way financial position of the company shall improve as reserves will be on higher side.

In income tax return the premium can be claimed and money received can be considered as income in the year of receipt as per S. 28.

However, in that case the Assessing Officer may draw adverse inference in view of accounting policy adopted by the company. Although the circular of the Board is binding on the revenue authorities, and it being a beneficial circular has to be followed. However, in that case scope of dispute shall increase.

Another aspect to be considered is that in case of treating premium as investment, the book profit of company will increase, therefore there can be higher liability of MAT u/s 115JB.