



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. SD 119

Stamp Duty Exemption for Certain Classes of Annuities - Section 71(3) of the Stamp Duties Act

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
SD 119	18 November, 1988	18 / 11 / 88	30 / 06 / 98	New Ruling required. Draft equivalent ruling for requirements under the Duties Act. Review with SD 69

Preamble

Under the provisions of section 71(3) of the Stamp Duties Act, which became effective on 6 February 1985, no stamp duty is payable in respect of any instrument whereby an annuity -

- (a) is issued, created or sold by a company registered under the Life Insurance Act of 1945 of the Commonwealth, the Government Insurance Office of New South Wales or a prescribed person; or
- (b) is purchased by a person from any such company, the Government Insurance Office of New South Wales or a prescribed person.

The Stamp Duties Act does not define "annuity" and it is therefore necessary to resort to legal dictionaries and judicial decisions for guidance.

The Australian Taxation Office, in its ruling IT 2480 on Variable Annuities of 16 June 1988, has set out the essential characteristics of purchased annuities. They are contained in paragraphs 8 to 12 of that ruling and may be summarised as follows:

- (a) an annuity is a yearly payment of a certain sum of money granted to another in fee for life or years;
- (b) where an annuity is purchased for cash, the annuity is income into which the capital laid out has been transformed;
- (c) it must be of a yearly sum certain (though variation according to a predetermined formula may be acceptable);
- (d) annuity payments are not derived from the money paid for the annuity; they are derived solely from the annuity contract. They are income and not repayments of capital.

There are a number of contracts, or products as they are referred to by issuers, marketed by life insurance companies as immediate variable annuity contracts or policies, and there has been some doubt about their liability to stamp duty.

Ruling

Contracts which are an Annuity

To be accepted as providing an annuity, and therefore exempt from stamp duty, a contract must satisfy the requirements of the Commissioner of Income Tax set out in paragraphs 18 to 20 of ruling IT 2480. That is:

- (i) the contract must state what the annuitant's annual entitlement is and the period for which it is payable;
- (ii) if the entitlement can be varied, the basis on which variation can be made should be stated;
- (iii) the regular payments must arise from the annuity contract;
- (iv) the amount of a payment must be of a sum certain expressed as a dollar amount.

Annuity contracts providing for the payment of bonuses, for residual capital values on termination or for commutation of the annuity into a lump sum, may also benefit from the stamp duty exemption provided they comply with the requirements set out in paragraphs 21 to 25 of ruling IT 2480.

Contracts which are not an Annuity

The following types of contracts are not considered to provide for the purchase of true annuities and are therefore not exempt from stamp duty (they will be liable to duty as a policy of life insurance):

(1) Investment Account 'Annuity' Type Contracts

The purchase price under these contracts forms part of the vendor's statutory funds and is credited to an investment account in the name of the purchaser. Charges are debited to the account and interest is credited to it. The liability of the company is limited to the balance of the funds in the purchaser's account. The essential feature of the contracts is that the identity of the capital sum invested is never lost. Duty is payable on this type of contract on the same basis as that outlined in paragraph (2) of Revenue Ruling SD 69. That is:

- (a) where the contract provides a guaranteed benefit the amount so guaranteed will be the sum insured;
- (b) where the contract does not provide a guaranteed benefit, the sum insured will be the maximum amount which, at the date of first execution of the contract, can be said to be the entitlement of the insured (for those contracts which provide for more than one premium, the first premium less non-recoverable charges will be the sum insured. For those contracts which provide for a single premium only, that premium less non-recoverable charges will be the sum insured).

(2) Variable 'Annuity' Contracts

The benefit payable under this type of contract is related to the number and value of units in the insured's unit account from time to time.

The contract may provide for a guaranteed benefit, in which case the insurance company guarantees that the unit value will not decrease, or they may be market linked (that is, the unit value will fluctuate upwards or downwards in accordance with movements in the market value of the investments held by the fund).

The liability of the insurer is limited to the number of units and their value at cashing-in or redemption. Duty is payable on these contracts in the same way as investment account contracts above.

These principles are relevant to Variable 'Annuity' Contracts and Investment Account Type 'Annuity' Contracts executed on or after 6 February 1985, and any such contracts written after that date will attract stamp duty on the basis aforementioned. Insurers paying duty by return should note that payments should be made to cover obligations which have arisen since that date up to the time of the next periodic return and, thereafter, periodic returns should include payment on these types of contracts in accordance with this Ruling.

Officers from the Compliance Division of the Office of State Revenue will be monitoring adherence to stamp duty obligations through field audits. However it is recognised that insurance packages are changing constantly and any insurer requiring clarification of the liability of its contracts should seek the advice of the Commissioner of Stamp Duties. Telephone inquiries should be directed to the Returns Branch of the Revenue Advisory Services Division¹ on telephone (02) 689 6223².

B. BUCHANAN,
for Chief Commissioner of Stamp Duties.
18 November, 1988

¹ Now Operations Division

² Now (02) 9689 8200