<table>
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<th>Title</th>
<th>Estate Duty Budget Change Finally Implemented; 遺產稅的修訂最終得以實施</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
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</table>
Estate Duty Budget Change Finally Implemented

Andrew Halkyard explains recent changes brought by the Revenue Ordinance 1999 as it relates to the payment of estate duty on life insurance proceeds.

The enactment in July of the Revenue Ordinance 1999 (No 44 of 1999) finally implemented the Budget proposal for exempting from estate duty certain proceeds from policies of life insurance.

Background
Prior to the introduction of s 10(ga), estate duty was generally levied on a life insurance policy passing on death where the proceeds were payable in Hong Kong. In practice, this state of affairs favoured multinational insurance companies, compared with smaller local insurance companies, who were better placed to take advantage of the exemption for offshore property where the insurance proceeds were paid to the beneficiaries at a place of business outside Hong Kong.

As will be seen below, s 10(ga) provides all insurance companies with the same competitive business environment because life insurance proceeds are now exempt from estate duty irrespective of the place of payment.

The New Provision
Section 10(ga) takes effect in respect of the death of any person on or after 1 April 1999. Essentially, the key to the exemption is that it only applies where (1) the property passing consists of benefits under a life insurance policy and (2) that policy was effected on the life of the deceased.

Accordingly, where the deceased owns a life insurance policy (or any interest therein) effected on his or her life, the exemption will apply. Similarly, the exemption will also apply where the deceased has taken out a policy on his or her own life and gifted the policy (or any interest therein) to another person. In this latter case, the benefits payable under the policy, as well as any premiums paid on the policy by the deceased to maintain the policy, will not attract duty even though the deeming provisions of s 6(1)(c) (relating to inter vivos gifts) and s 6(1)(f) (relating to interests purchased or provided by the deceased) may apply.

By way of contrast, the exemption will not apply where the deceased was not the life insured. In this case, and assuming the deceased had an insurable interest in the life insured, the deceased may or may not be the owner of the policy. Where the deceased was the owner of the policy (eg where the deceased was the beneficiary under a policy on the life of his or her spouse), the normal charging provisions of ss 5 and 6(1)(a) would apply. This case is, of course, subject to the application of the offshore property exemption contained in s 10(b), which historically has been very important for life insurance policies (see Willoughby and Halkyard, Encyclopaedia of Hong Kong Taxation: Estate Duty (vol 2) at 1 I [442], point 7 and II [590] et seq).

Where the deceased was not the owner of the policy (eg where the deceased took out a policy on the life of his or her spouse and gifted that policy to the couple’s child), then any property gifted within three years of death would be deemed to pass under s 6(1)(c). A further deeming provision, s 6(1)(f), could also apply where the interest provided by the deceased under the life policy only accrued to the beneficiary upon death. In all these cases, however, where the property gifted or otherwise provided by the deceased was a paid up policy, then the offshore property exemption referred to above might apply. Furthermore, where the deceased kept up the policy by regular payments of premium, then the exceptions to s 6(1)(c), particularly the normal and reasonable expenditure exemption or the de minimis exemption of $200,000 for each donee, might apply to exempt the gifted property from estate duty.

The property exempted under s 10(ga) consists generally of the ‘benefits’ under a policy of insurance effected on the life of the deceased. These benefits must be either (i) any moneys (including accrued dividends) payable under the terms of the policy on the death of the deceased or (ii) any interest in such a policy passing on the death of the deceased. Where under the terms of the policy, any loans and advances and interest thereon (as well as charges such as administrative fees) are deductible from the moneys payable under (i) above, these amounts reduce the property for which the exemption from duty is available.

The relationship between s 10(ga) (i) and (ii) (the terms of which are summarised above) appears strange and difficult to reconcile. Paragraph (i) has the effect of reducing the property exempted from duty where, under the terms of the policy, any loans and advances and interest thereon (as well as charges such as administrative fees) are deductible from the moneys payable under the policy. Paragraph (ii) then provides a blanket exemption for ‘any interest in the policy’ passing on death.

It may, however, be possible to argue that s 10(ga) could be interpreted to restrict the operation of para (ii) to cases where para (i) did not apply. For instance, para (ii) could be intended to apply to an annuity as distinct from a...
提单估价支付，尽管如此，这不是一个显而易见的结论。但无论如何，如果政策正确规定了受益人在香港的支付，必须支付遗产税，实际上，即使在规模较小的本地保险公司，这样的规定可能对跨区保险公司的支付有帮助，因为它能保障以香港以外的地区作为支付受益人的人身利益，而且更有效地用于对付香港以外财产的条款。

第10(ga)条的诞生，不言而喻地为——人寿保险单所得收益——一律须缴付遗产税，正如下文提及，对于所有保险公司而言，此举有助于提供平等竞争的营商环境。

新增条款
第10(ga)条适用于在1999年4月1日或之后身故者的遗产。豁免的主要内容只适用于以下情况：（一）所转移的财产包含人寿保险单所得利益；及（二）保险单为死者之遗嘱所指定。

由此，若死者拥有其遗嘱中所订立的人寿保险单（或其中任何权益），有关豁免将变得可用。因此，若死者为其遗嘱中所订立的人寿保险单（或其中任何权益）偿还另一人，有关豁免亦会可用。以后的情况而言，即使《条例》第6(1)(c)条内关于生者之间赠与（gift inter vivos）及s 10(ga)。更何况，而且在任何情况下，若死者在去世前三年内赠予他人的财产，将根据第6(1)(c)条被认定为转移的财产。

另一方面，若死者并无保险单的拥有者（例如死者清算附属保险单，然后把它赠予死者与其配偶的子女）时，任何人在死者去世前三年内赠予他人的财产，根据第6(1)(c)条将被认定为转移的财产。此外，若死者清楚地知道保险单的提供者，保险单在去世前三年内赠予他人的财产，根据第6(1)(c)条被认定为转移的财产。

上述论点的解释，第10(ga)条的适用可能用于在某些情况下，即若死者并无知道保险单的提供者，保险单在去世前三年内赠予他人的财产，根据第6(1)(c)条将被认定为转移的财产。因此，若死者清楚地知道保险单的提供者，保险单在去世前三年内赠予他人的财产，根据第6(1)(c)条将被认定为转移的财产。此外，若死者清楚地知道保险单的提供者，保险单在去世前三年内赠予他人的财产，根据第6(1)(c)条将被认定为转移的财产。