CROSS-BORDER ISSUES RELATED TO THE TAXATION OF LIFE INSURANCE INVESTMENT-LINKED POLICIES IN THE EU

Bruno Simoes[1]

Abstract

Life Assurance Investment-Linked Policies (also known as "investment bonds") are well known by High Net Worth Individuals (HNWIs). These products are usually purchased by expatriates working abroad and one of their main concerns is to know, not only how the product will be taxed by the jurisdiction in which they resided when they purchased the product, but also how such a product will be taxed when they return to their home jurisdiction. A description of the complex nature of Class III (investment-linked) Policies provides a background for introducing the UK 'Chargeable Event' regime as a case study. This case study allows a discussion of potential cross-border issues related to the taxation of Life Assurance Investment-Linked Policies in the EU, which is the main purpose of this study.

1 Introduction

The tax treatment of Life Assurance Investment-Linked Policies (also known as "investment bonds"[2]) is complex. The reason for this understanding is threefold:

a) The concept itself is complex, considering that this type of product is linked to underlying funds, which will be analysed in section 2;

1 The author is a qualified Portuguese lawyer with a background in tax law working in the international life assurance business for the last six years. He is a PhD candidate at Queen Mary University of London, Centre for Commercial Law Studies. Comments are welcomed. E-mail: b.m.r.simoes@qmul.ac.uk.

2 Financial advisers usually use this term in the insurance business.

b) There are multiple events during the policy period which may trigger a tax liability, which will be examined in section 3; and

c) Policyholders can bring the policy to a different jurisdiction from the one in which they originally purchased the policy – the portability feature -, which will be discussed in section 4.

The introduction to the concept of Life Assurance Investment-Linked Policies will explain how they differ from traditional life assurance policies. The concept of underlying assets will also be explained in detail. In addition, it is important to understand the nature of Life Assurance Investment-Linked Policies, i.e. whether or not they are an investment vehicle or a savings vehicle, considering that this classification will affect their tax treatment.

The UK Income Tax Chargeable Event regime will be analysed in order to identify the main categories of chargeable events, allowances and tax reliefs applicable to life assurance. The UK model is merely indicative, but it will provide a good understanding of how life assurance policies may be taxed.

The legal requirements to qualify as life assurance and correspondent tax treatment vary between EU jurisdictions, which leads to cross-border tax issues. As a rule of thumb, the life assurance policy should first qualify as life assurance in order to receive the beneficial tax treatment applicable to life assurance. Thus, it is possible that a policy meets the legal requirements of the jurisdiction in which it is sold, but the same policy may not meet the legal conditions to qualify as life assurance in the new jurisdiction where the policyholder intends to reside. As a result, the policy will not be compliant in the host jurisdiction, and therefore, it will be classified as an investment vehicle and will subsequently receive a different tax treatment from the one applicable to life assurance in that jurisdiction.

Considering the above, it is necessary to identify some of the potential cross-border issues related to the taxation of Life Assurance Investment-Linked Policies in the EU. The portability feature of life assurance raises several tax issues for the policyholder. Firstly, the jurisdiction where the insurance premium indirect tax should be charged was recently the subject of the interpretation of the ECJ in the *RVS Case* (C-243/11)[3]. Secondly, the mortality risk legally required for life assurance policies may vary between jurisdictions. Thirdly, the commencement of the tax benefits applicable to foreign life assurance policies also vary between EU Member States. Other tax issues are also identified, such as the restrictions imposed on the selection of underlying assets or, for example, the conditions applicable to the appointment of beneficiaries. However, despite these potential cross-border issues, the proposed OECD's Common Reporting Standard (CRS)

3 Judgement *in* RVS Levensverzekeringen NV v Belgische Staat, C-243/11, EU:C:2013:85.

model is bringing some stability in relation to the reporting requirements applicable to life assurance.

In summary, the main goal of this article is to introduce and discuss the complex topic of cross-border taxation of life assurance in the EU, bearing in mind that the literature available on this topic is limited and the available studies usually tend to analyse local jurisdictions rather than looking at the international or cross-border level[4].

---

4 For further reading on this topic see: AFSCHRIFT & GLINEUR LAWYERS, *Evolution récente de la fiscalité en matière d'assurances … un peu de tout*, Revue Générale de Fiscalité. - Waterloo. - Vol. 38, no. 2, 2008, p. 3-18. BORGMANN, Fred, SWALES, Jason & WELCH, Jillian, *Canadian taxation of life insurance*, 3rd Ed., LexisNexis Canada, 2009 (Chapters 12 and 14). BRAS, Américo F., *Subsídios para um regime fiscal do seguro de vida*, Fisco, n. 25, Almedina, Lisbon, Nov. 1990. BURKE, Julie, *Revenue Commissioners Single Premium Investigation*, Irish Broker, Dublin, April 2005. DAUB, Peter, *Alternative portfolio income and U.S. income tax treaties: the case of foreign investment in U.S. life insurance policies*, Tax Management International Journal. - Arlington. - Vol. 38, no. 7, 2009, p. 395-428. DELOITTE, *International comparison of insurance premium taxation*: Asia – Pacific, September 2008, (www.deloitte.com). DILLON EUSTACE, *A Guide to Cross Border Life Assurance from Ireland*, 2012 (www.dilloneustace.ie). FIELD, Joseph A., Investment through life assurance, ITPA, Jersey, 2001 (www.itpa.org). FULTON, Arthur, *The Tax on Life Insurance Premiums - Is It Defensible?*, TAXES – The Tax Magazine, Chicago, October 1939, pp. 583-584. GORETZKY, Kai-Michael & WALLIS, Kerry, *Entering the German life insurance market – A guide for foreign insurers and corporate investors*, 2nd Ed., PWC, Frankfurt, 2005. HARPER, Ian, *Taxation and Life Insurance: A Theoretical Analysis*, Economic Record, Vol. 60, Issue 2, June 1984, pp. 165–175. HMRC, *Insurance Policyholder Taxation Manual (IPTM)*, UK (www.hmrc.gov.uk/manuals/iptm). JAPPELLI, Tullio & PISTAFERRI, Luigi, *Tax incentives and the demand for life insurance: evidence from Italy*, London, Centre for Economic Policy Research, 2001. KAPLAN, Eric, *A guide to foreign irrevocable life insurance trusts*, Journal of international taxation, New York, Vol. 16, no. 2 , 2005, p. 28-33. LEDOUX, Jean-Luc & RAUCENT, Léon*, Droit notarial de l'assurence-vie: aspects patrimoniaux : aspects fiscaux*, Academia, 1989. LOZANO, Ana María Juan & ASENCIO, Ma Consuelo Fuster, *Estudio empírico sobre la tributación de los Seguros de Vida*, Instituto de Ciencias del Seguro, Fundación Mapfre, Madrid, 2010. LOZUNDES, Charles, *The Constitutional basis for taxing life insurance under Federal Estate Tax*, U. Pitt. L. Rev., 17, 1955-1956, pp. 346-361. MARSHALL, Chris, *Life Assurance & Pensions Handbook 2007/08*, 23rd Edition, Taxbriefs financial publishing, 2007. MELVILLE, G. L., *The unit-linked approach to life insurance*, Institute of Actuaries of Australia and New Zealand, September 1969. MOURA, Ricardo Seabra & MATOS, Francisco Cabral, *O estranho caso da tributação dos seguros de vida*, Fiscalidade, 35, Coimbra Editora, Coimbra, 2009, pp. 59-68. OECD (HAROLD, D. Skipper Jr.), *The taxation of life insurance policies in OECD: Implications for tax policy and planning*, 2001. PHILIP, Rémy, *La bénéficiaire à titre gratuit de l'assurance sur la vie et l'impot des sucessions: étude de droit français et de droit comparé*, Paris, Domat-Montchrestien, 1942. PWC, *International comparison of insurance taxation* – Financial services, 2011 Edition (www.pwc.com). SANCHES, Saldanha & TABORDA DA GAMA, João, *Provisões no âmbito de seguros unit-linked e dupla tributação económica*, Fiscalidade, 33, Coimbra Editora, Coimbra, 2008, pp. 25-69. SIR HILARY SCOTT, *Linked Life Assurance in the United Kingdom*, International Business Law, n.28, London, 1974, pp. 28-34). SMITH,

2 Concept and Nature of Life Assurance Investment-Linked Policies

A) Traditional Life Assurance Policies vs. Life Assurance Investment-Linked Policies

The UK Life Assurance Act (1774) covers assurance[5] policies on a life[6]. Traditionally, such policies were used for pure protection where a previously agreed sum between the assurer and the policyholder would be guaranteed and paid to the beneficiary, in the event of the death of the relevant life assured who was identified at the outset, in return for the payment of (regular) premiums by the policyholder. These policies, known as 'Traditional Life Assurance Policies', currently correspond to Class I of the Solvency II Directive (2009/138/EC). However, nowadays, life assurance has become very complex as they are linked to underlying funds/assets[7]. The performance of such policies will depend on the performance of the underlying funds/assets. Thus, the sum received can be higher or lower than the sum previously paid, i.e. there is no guarantee on the return of such premiums, although some policies may combine a certain element of guarantee with an element of performance of the underlying funds. These policies, known as Life Assurance Investment-Linked Policies, currently correspond to Class III of the Solvency II Directive.

a) Life Assurance Investment-Linked Policies

Life Assurance Investment-Linked (Class III) Policies usually comprise a single or regular premium, whole of life and their performance is linked to the underlying funds/assets. Also, they usually provide a minimal guaranteed death benefit (*e.g.*

Robert, *Reconsidering the taxation of life insurance proceeds through the lens of current estate planning*, Virginia Tax Review, Vol. 15, Virginia, 1995-1996, pp. 282-369. SOLOMON, Ray, *Inheritance taxation of life insurance*, The Journal of Insurance, Vol. 30, n. 3, Sep. 1963, pp. 393-402. SURRIDGE, Robert, MURPHY, Brian & JOHN, Noleen, *Houseman's Law of Life Assurance*, 14th Ed., Bloomsbury Professional, London, 2011, pp. 593-696. WHELEHAN, David, *International life insurance*, Chancellor Publications, London, 2002, pp. 127-230.

5 Note the difference between the term "insurance", where the insured event may or may not occur, and the term "assurance", where the insured event (i.e. death) is inevitable. The former is applicable to general (non-life) insurance, whereas the latter is applicable to life assurance.

6 Nowadays, the concept of life assurance developed to also cover a long period (e.g. 100 years), known as "capital redemption policies".

7 The concept of "investment-linked" was discussed in 1973 by the Committee appointed by the Department of Trade and Industry (DIT). For further details see SIR HILARY SCOTT, *Linked Life Assurance in the United Kingdom*, International Business Law, n.28, London, 1974, pp. 28-34.

100.1% of the surrender value, although not required in certain jurisdictions) and are often capable of part or full surrender without penalty in the long-term.

There are two types of Life Assurance Investment-Linked (Class III) Policies[8]:

(i) **Unit-linked (*strictu sensu*)**[9]**:** MELVILLE (1969) defined unit-linked policies as "*the application of unit trust principles to the 'savings element' of each premium paid and the application of insurance principles to the remaining 'insurance element' only*"[10]. The concept evolved with regards to the 'savings element' aspect, and typically, this is a type of policy providing benefits calculated by reference to units (usually referred to as "notional units") which relates to the market value of the underlying funds[11]. It is often mentioned by life assurance industry that the performance of the policy will very much depend on the performance of the underlying funds. Hence, this type of policy may be a risk to the policyholder, in addition to the fact that the guarantee of death benefit offered by the assurer is usually small (0.1% of the surrender value; although this can be higher, for example, in Germany, the death benefit is 10%). This is the reason the regulatory authorities of some jurisdictions, in particular outside the EU, such as Hong Kong or Singapore, have launched comprehensive alerts regarding the risks of investing in such policies[12].

(ii) **Personal Portfolio Bonds (PPBs):** PPBs are unit-linked (*strictu sensu*) policies. However, in addition, the policyholder can select and manage

---

8 Note that this article will restrict the analysis to the taxation of life assurance on death/survival (Art. 2(3)(a)(i) of the Solvency Directive), thus it will exclude in particular the study of annuities, although they are included in the definition of Class III Policies (Art. 2(3)(a)(ii) of the Solvency Directive).

9 Unit-linked policies became very popular within the last two decades (see Society of Actuaries, *Unit-Linked Products on the Rise*, International Section News, Issue No. 22, May 2000).

10 MELVILLE, G. L., *The unit-linked approach to life insurance*, Institute of Actuaries of Australia and New Zealand, September 1969, p. 1.

11 Note that the policyholder is not investing into funds directly. Instead, the assurer invests in funds on behalf of the policyholder ("underlying funds"). In order to determine the underlying funds associated with the policy, the assurer needs to allocate units ("notional units"), which can be used as a reference for policyholders to track the performance of the product.

12 For further details, please refer to the guide released by the regulatory authority SFC (HK) on unit-linked policies where clearly explains the connection between the policy (i.e. scheme) and the "underlying funds/assets" (see, SFC (HK), *Understanding Investment-Linked Assurance Schemes and the New Regulatory Measures*, Hong Kong, June 2013).

'personal investments'[13] and benefit from the fact that these are held by the assurer[14]. Thus, as long as the 'personal assets' are held within the life assurance 'wrapper', the policyholder will not generally be subject to Income Tax nor Capital Gains Tax (CGT)[15]. This contrasts with the tax liability if the policyholder held these assets directly. For this reason, some jurisdictions have legislated against PPBs. They have restricted investments into the funds offered by the assurer, usually by limiting investments to EU collective schemes[16], and imposing tax penalties[17], or

13 For the sake of clarity, 'personal investments' refers to investments that go beyond the usual fund selection offered by the assurer and it is personal to the policyholder (e.g. the benefits are ascertained by reference to shares in the policyholder's private company), which have been transferred to the assurer and which are subsequently re-registered in the name of the assurer.

14 The UK Case *CIR v Willoughby* [1997] (70TC57) explains not only the personal portfolio bonds features, but also confirms, in particular, that the owner of the underlying assets is the life office. Below is an extract of the 1997 case law where Lord Nolan states the following: *"(...) the principal feature distinguishing a personal portfolio bond from other bonds issued by Royal Life was that the purchaser of the personal portfolio bond retained the ability to choose, switch and manage the investments comprised in the fund to which the bond was linked. (...) The underlying reality of the matter is that the holder of the Royal Life personal portfolio bond continues to manage and benefit from his own portfolio of investments, but by the insertion of the bond structure he escapes tax on the income and gains from those investments as they arise. Parliament cannot sensibly have intended the statutory taxation regime for offshore life policies to apply in such circumstances, so the purpose of an investor in such bonds cannot be characterised as mere tax mitigation. (...) As my noble and learned friend Lord Hoffmann pointed out in the course of argument, so far from the underlying investments being owned by the bond holder, he has no legal or equitable interest in them whatever. As Clause 12 of the Policy makes clear the allocation of investment units to the bond for which the policy provides is purely notional. Units are referred to solely for the purpose of computing benefits under the policy. The reality in truth is that the bond holder has a contractual right to the benefits promised by the policy, no more and no less. It is therefore quite wrong to describe the bond holder as having, in the words of the appellants' printed case "in substance all the advantages of direct personal ownership without the tax disadvantages." (...) I am unable to follow the reasoning of the Commissioners. The personal portfolio bond holder may fare better or worse in terms of benefits by reason of his control over investment policy than does his fellow bond holder with the standard type of bond, but the difference between them seems to me to have nothing to do with tax or with tax avoidance."*

15 Note that CGT may be due as a result of the transfer of 'personal assets' to the assurer.

16 Art. 520 of the UK Income Tax (Trading and Other Income) Act 2005 describe permitted categories of investment in life assurance.

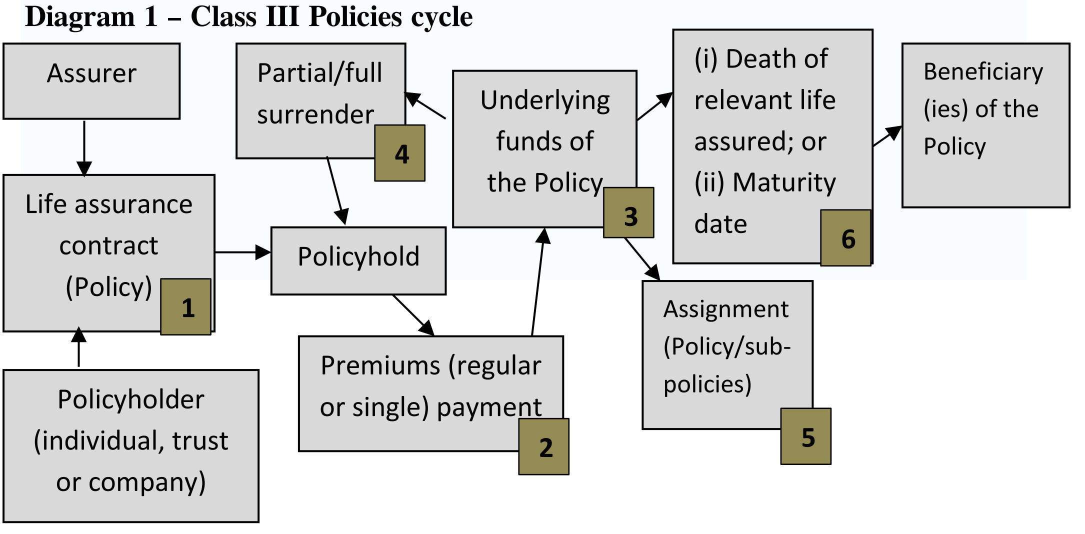
17 For example, in the UK, the annual gain on PPBs is charged at 15% on a cumulative basis (see Art. 522(4) of the UK Income Tax (Trading and Other Income) Act 2005 and UK HMRC "IPTM 7830: Computation of PPB gain and person taxable" (www.hmrc.gov.uk/manuals/iptm/IPTM7830.htm). Also, the US Passive Foreign Investment Company (PFIC) rules (§§1291-1297 of the IRC) may apply to the underlying assets, in which case the IRS will impose a heavy tax penalty on US person receiving "excess distributions" (i.e., gains) from a PFIC.

reclassifying life assurance products as an investment vehicle for tax purposes[18].

B) Class III Policies cycle

After briefly explaining the concept of Class III Policies, it is worthwhile understanding how Class III Policies work in practice before introducing the UK model as a case study – see diagram 1 below.

Diagram 1 – Class III Policies cycle



The cycle can be described as follows:
(1) A person (entity or individual) enters into a contract with the assurer – The Policy;
(2) The policyholder pays regular or single premiums; additional premiums can also be paid (these are known as "top-ups");
(3) Such premiums are allocated to units ("notional units") corresponding to the "underlying funds", which determines the performance of the Policy;
(4) The policyholder usually withdraws money from the account (partial surrender) or terminates the Policy (full surrender);
(5) The policyholder may assign the whole policy or sub-policies;
(6) (i) For life assurance on death: The relevant life assured dies, and the death proceeds will be paid to the beneficiary(ies) of the Policy.

---

18 In the US, PPBs do not usually meet the criteria of §7702(a) or §7702A of the IRC, and not necessarily the diversification requirements of §817(h). Consequently, such policies are deemed to be an investment vehicle and income and gains generated by the underlying assets will be included in the US-person policyholder's annual US Income Tax return.

(ii) For life assurance on survival: The relevant life assured survives the maturity date selected by the policyholder at the outset, and the survival benefit will be paid to the beneficiary(ies) of the Policy.

C) Nature: Investment vehicle or savings vehicle?

Generally, the rationale for the incentives provided by Governments for having life assurance policies (including Investment-Linked Policies) relates mainly to the fact that there is a need to ensure retirement income in addition to State pensions, in order to not only to increase revenue through the taxation of such additional income and also to spend less on public health. Thus, if the goal of Governments regarding life assurance is to ensure income on retirement, then obviously the incentive should be greater if policies are held for longer periods (e.g. ten or more years)[19]. Conversely, Governments tend to treat such policies less favourably if they are held for shorter periods of time (e.g. five years or less)[20]. Also, it is important to note that Governments usually tax saving vehicles, such as life assurance[21], under Personal/Corporate Income Tax, whereas investment vehicles are usually taxed under Capital Gains Tax (CGT)[22].

In summary, the concept of life assurance evolved with time from a guaranteed to a partially guaranteed or non-guaranteed investment product, although traditional life assurance is still being sold. Life Assurance Investment-Linked (Class III)

---

19 For further details regarding the definition of "long-term insurance", please see www.hmrc.gov.uk/manuals/ipt/ipt04265.htm. Note that in the UK, the main classes of "long-term insurance" are life assurance (including the policies sold as an investment – endowment business – and whole life or term assurance), pensions insured business and permanent health insurance (see www.hmrc.gov.uk/manuals/ipt/ipt02320.htm).

20 For example, in Portugal there is a different tax treatment for policies held for less than five years (fully taxable), within five years and eight years (taxable income reduced by 1/5) and over eight years (taxable income reduced by 3/5) – see Art. 5(3) of the Portuguese Personal Income Tax Code.

21 In the UK, life assurance is regarded not just as long-term business but is also regarded as a savings vehicle (see www.hmrc.gov.uk/manuals/ipt/ipt04260.htm). In Germany, one of the main arguments to restrict tax benefits to pure pension products, term insurance and to annuity insurance product (Rürup-Rente) when the Retirement Income Act was introduced on 1 January 2005, was that life assurance policies, equate more in economic terms to savings plans than insurance or retirement provision products.

22 In the UK, life assurance policies are taxed under Income Tax (see sections 461 to 546 ITTOIA and section 552 of the Income and Corporation Taxes Act 1988 (ICTA)) and are exempt from CGT (section 210 of the Taxation of Chargeable Gains Act 1992) providing it is held by the original policyholder, or has not ever been acquired for consideration of money or money's worth. On the other hand, the criteria may be determined taking into account where the policy was originally contracted (for example, in Ireland, certain foreign life assurance policies are subject to CGT – see section 594 of the TCA97).

Policies linked to underlying funds and the performance of the policy will depend on the performance of such funds. Nevertheless, Class III Policies are deemed to be savings vehicles, despite the non-guaranteed investment element and, therefore, such products also benefit from the favourable tax regime applicable to traditional life assurance policies.

A study of the complexity of the main chargeable events/transfers applicable to life assurance (including Class III Policies) will now follow.

3 CASE STUDY: THE UK MODEL

A) Background (Chargeable Event Income Tax regime)

It is worthwhile to describe briefly how the Chargeable Event Income Tax regime developed in order to understand the UK model better. In particular, it is important to introduce the concept of 'qualifying' and 'non-qualifying' policies considering that the former is less likely to give rise to a chargeable event.

The HMRC explains how tax relief for life assurance premiums was initially perceived to be a "good thing", but with time this understanding developed imposing several restrictions on its application. Nowadays, only 'qualifying' life assurance contracts initiated between 19 March 1968 and 13 March 1984 can attract tax relief by deduction[23]. The distinction between 'qualifying' and 'non-qualifying' policies was introduced by the Finance Act 1968 (FA68) in order to differentiate between 'investment type' and 'protection type' life assurance policies. The distinction is not very clear but, as rule of thumb, 'regular premium' policies should be classified as 'qualifying premiums' whereas 'single premium' policies should be classified as 'non-qualifying policies'. The main reason for this is that in 1968, the UK authorities recognised that large premiums were being paid into 'single premium' policies, which were short-term investment orientated policies, as opposed to premiums paid into 'regular premium' policies, which were

---

23 Life assurance premium relief was introduced in 1799 in the UK to help funding the Napoleonic Wars, and later in 1853, said relief was reintroduced to secure deferred annuities in the 1853 Finance Act. In 1916, during the First Great War, it was introduced relief for the death benefit related to trade union subscriptions. The tax relief was also included in the early days of the PAYE (1948-49 form P3). Note that the taxation of life assurance proceeds were outside the hands of the policyholder until 1968. This tax relief was abolished by FA84/S72, and nowadays, the application of tax relief for life assurance premiums is limited to "qualifying" policies (ICTA88/S267 and ICTA88/SCH15). For further details, see IPTM 1300 – "Development of policyholder taxation: historical" (http://www.hmrc.gov.uk/manuals/iptm/IPTM1300.htm) and IPTM 2110 – "Life assurance premium relief: relief given by deduction" (http://www.hmrc.gov.uk/manuals/iptm/iptm2110.htm).

deemed to be considered as long-term saving products[24]. Thus, this caused problems for the UK Government in terms of providing tax relief to 'non-qualifying' policies so that the relief ceased to apply when the distinction was drawn[25]. After restricting the tax relief to 'qualifying' policies, the UK Government also introduced an 'exit charge' to 'surtax' higher rate taxpayers when certain events took place resulting in the realisation of value from the policy.

There were a few changes to the original (FA68) regime introduced by the Financial Act 1975 (FA75) and the Financial Act 1998 (FA98), which are worthwhile to highlight below. The FA75 introduced at least two important changes: (1) The tax deferral rule applicable to partial surrenders and partial assignments which did not exceed an annual cumulative allowance of 5% of the premiums paid (the "5% Cumulative Allowance"); and (2) The "Corresponding Deficiency Relief" (CDR)[26]. On the other hand, the FA98 introduced legislation which provided the ground rules for the "1999 Personal Portfolio Bond regulations" with a view to introducing an annual charge on investment-linked bonds whose assets were chosen by the policyholder.

Considering the above, in order to meet the concerns of the life offices, and also to prevent tax avoidance, the rules applicable to life assurance in the UK (i.e. the Chargeable Event regime) are complex. Currently, the taxation of life assurance policies in the UK is subject to the Chargeable Events legislation, in particular sections 461 to 546 Income Tax (Trading and Other Income) Act (ITTOIA) 2005 and section 552 of the Income and Corporation Taxes Act 1988 (ICTA). This tax regime will apply irrespective of the type of life assurance policies or whether the policy is contracted onshore or offshore[27].

B) "Non-income producing asset" and "gross roll-up"

The underlying theory behind the Chargeable Event regime is based on the idea that the assurer collects the premiums and then invests that income to create

24 In the UK, 'qualifying' policies have to meet some requirements, such as, a minimum of 10 years of policy term, the premiums are payable at least once a year and the minimum sum assured is equal to 75% of the premiums payable for the whole duration of the contract.

25 For further details see IPTM1310 - Development of policyholder taxation: chargeable events (www.hmrc.gov.uk/Manuals/iptm/IPTM1310.htm).

26 For details on CDR see sub-section "E) Tax deferral – "5% Cumulative Allowance" -, "Excess Gains" and reliefs available".

27 In the UK, policies issued by foreign assurers, after 18 November 1983, will fall within the definition of 'foreign policy'. These policies cannot, in most cases, be 'qualifying' policies nor be treated as the basic rate tax been paid on any gains. However, such gains can be reduced if the policyholder was not resident in the UK throughout the policy period. For further details see IPTM3700 – "Foreign policies: differences in treatment" (http://www.hmrc.gov.uk/manuals/iptm/IPTM3700.htm).

income or capital gains that accrue until the proceeds are taken from the policy and paid to the policyholder. This is the reason why financial advisors often highlight to their clients the advantage of life assurance as a non-income producing asset[28] and also highlight the benefit of a "gross roll-up" (i.e. gains accrue within the policy without being taxed annually, but only when a chargeable event occurs).

C) Chargeable events (categories)

In the UK, it is possible to identify the following three main categories of chargeable events, based on the different formulae applicable to calculate the chargeable gains[29]:

(i) **Full surrender** - the surrender of all rights under a policy which includes the addition/removal of a life assured, the death of the relevant life assured causing payment of the policy and the assignment of the policy for money or money's worth (i.e. the policyholder receives consideration in some form);

(ii) **Part surrenders exceeding the "5% Cumulative Allowance"** - the surrender of part of the policy or assignment for value in money or money's worth of some of the rights under a policy, which exceeds the "5% Cumulative Allowance");

(iii) **Personal Portfolio Bond (PPBs) events** - where the rules relating to Personal Portfolio Bonds have shown a gain[30].

D) Taxation of premiums paid into investment-linked policies

The Insurance Premium Tax (IPT) was introduced in the UK[31] in 1994 in the insurance sector as it was viewed as undertaxed, in particular because insurance

---

28 For example, see this leaflet provided by Scottish Widows highlighting the advantage of life assurance as a non-income producing asset (see: www.scottishwidows.co.uk/Extranet/Literature/Doc/FP0011).

29 For details regarding the HMRC classification of Chargeable Events, please see www.hmrc.gov.uk/manuals/iptm/IPTM3400.htm.

30 The Personal Portfolio Bonds (Tax) legislation (Statutory Instrument 1999 No 1029) consolidated into the ITTOIA (sections 515 to 526)) impose a tax charge on UK resident individuals, UK resident settlors or UK resident trustees (generally only where the settlor is not UK resident or has died) holding life assurance policies in some circumstances where unacceptable assets or indices (as opposed to permitted assets or indices as referred to in section 520(2) ITTOIA) can be selected as underlying assets of the life assurance policy by the policyholder.

31 For further details see www.hmrc.gov.uk/manuals/ipt/ipt03150.htm.

policies were not subject to VAT[32]. However, paragraph 2(1) of Schedule 7A of the Financial Act 1994 (FA94), provides an exemption from IPT to contracts of long-term insurance (including life assurance contracts)[33].

E) Tax deferral – "5% Cumulative Allowance" -, "Excess Gains" and reliefs available

The "5% Cumulative Allowance" is an annual threshold of 5% of the total premiums paid into the policy, which is available to the policyholder every year on partial surrenders without being subject to immediate Income Tax. Thus, every amount paid which is above this allowance (the "Excess Gain") is a chargeable event gain, which may trigger liability to Income Tax[34].

Tax deferral - "5% Cumulative Allowance" fulfils two main objectives:
(1) It reinforces the idea that investment-linked policies are long-term savings products by restricting withdrawals up to the maximum of 5% per annum without being subject to an immediate Income Tax; and
(2) Tax may only apply when the benefits which accrue over the original premium ("Excess Gains") are received by the policyholder.

On the other hand, "Corresponding Deficiency Relief" is not a relief for 'investment losses' (i.e. losses suffered due to underlying investment

32 Note that in the EU, indirect taxation on insurance was covered in Arts. 135 and 401 of the Principal VAT Directive (2006/112). Thus, if on the one hand, Art. 135(1)(a) provides an exemption from VAT for insurance transactions, on the other hand, Art. 401 states that "*without prejudice to other Community provisions (…) this Directive shall not prevent a member state from maintaining or introducing taxes on insurance contracts, which cannot be characterised as turnover taxes*". Also, note that the ECJ confirmed in the Case *Gil Insurance* (Judgement *in* Gil Insurance and Others, C-308/01, EU:C:2004:252) that IPT is a tax on insurance premiums, and not a turnover tax (see para. 44 of the decision).

33 For further details see www.hmrc.gov.uk/manuals/ipt/ipt04255.htm.

34 This allowance provides an individual to be entitled to a return of the capital invested in an investment-linked bond over a period of no less than 20 years without any immediate liability to UK Income Tax. This means that for every premium paid, the individual can withdraw up to 5% of the premiums paid each year without incurring an immediate UK Income Tax charge or jeopardising any personal allowances. Only where a withdrawal exceeds the permitted "5% Cumulative Allowance" could an immediate charge to UK Income Tax arise (this is referred to as an 'Excess Gain'). Note that the "5% Cumulative Allowance" acts only so as to defer the tax on any gain. For example, if the policyholder paid an initial premium of £100,000, he could then withdraw 5,000 (i.e. 5% of £100,000) in insurance year 1, or £10,000 (i.e. 5% X 2) in insurance year 2 if he did not withdraw in insurance year 1 (thus, the allowance is cumulative), without incurring any immediate Income Tax liability. However, partial surrenders will be included in the calculation of final events (e.g. full surrender), which may trigger liability to Income Tax. For further details see "IPTM7615 - Periodic calculations: excess events" (www.hmrc.gov.uk/manuals/iptm/iptm7615.htm).

performances) but instead is a relief to ensure that previous chargeable excesses ("Excess Gains") assessed to UK Income Tax do not exceed the ultimate overall gain (if any) on the investment-linked policy[35]. However, this relief is only available on final events (i.e. full surrender/death/assignment of the policy), and, therefore, another relief - Top Slicing Relief - is available to lower rate taxpayers for "Excess Gains" as result of partial surrenders incurred in a certain tax year. Thus, Top Slicing Relief is available for a person who is not a higher or additional rate tax payer but their "Excess Gain" pushes them into the higher or additional rate bands. Broadly speaking, this relief allows the gain to be averaged over the life of the policy, and if the average annual amount, when added to the taxpayer's income, does not make him into a higher/additional rate tax payer, he will not be liable to higher/additional rate tax[36].

The relevant legislation applicable to time apportionment relief can be found in ITTOIA (sections 528 and 528A). This relief allows a reduction of the amount liable to UK Income Tax on a chargeable event gain, taking into account the period of time the policyholder was abroad[37]. For policies issued on or after 6 April 2013, this reduction is calculated by reference to the period during which the person liable to Income Tax (which may not be the policyholder, e.g. an assignee) on the chargeable event gains was not resident in the UK (thus, only expatriate policyholders can claim this relief). For policies held before 6 April 2013, these rules generally apply if the policyholder, irrespective of the person liable to Income Tax, has been non-UK resident at any time during the life of the policy[38].

35 Corresponding Deficiency Relief allows an individual to offset the lesser of the deficiency or previous excess gains assessed to UK Income Tax against that individual's income in the higher rate tax band. If the deficiency relief cannot be used in a given tax year, it can be carried forward or back to other tax years. For further details see "IPTM3860 - Deficiency relief: entitlement and calculation" (www.hmrc.gov.uk/manuals/iptm/iptm3860.htm) and "IPTM7540 - Deficiency relief" (www.hmrc.gov.uk/manuals/iptm/iptm7540.htm).

36 Note that the calculation of this relief is complex. For further details see "IPTM3840 – Chargeable Events: Top slicing relief: how relief is given" (www.hmrc.gov.uk/manuals/iptm/iptm3840.htm).

37 Note that this relief assumes that the life policy was already subject to tax (if applicable) in the foreign jurisdiction.

38 For example, if an individual invested in a life assurance policy while working abroad and then returned to the UK 4,000 days later, and subsequently fully surrendered the policy 2,500 days after returning, then the chargeable gain (if any) is reduced to 2,500/6,500 of the original chargeable gain. For further details see "IPTM3740 – Chargeable Events: foreign policies: reduction for non-UK policyholder: example" (www.hmrc.gov.uk/manuals/iptm/iptm3740.htm).

F) Restriction of the underlying investments: Personal Portfolio Bonds (PPBs)

The Personal Portfolio Bond (PPB) rules were introduced in 1998 to prevent UK resident investors benefiting from placing highly personalised assets inside the tax-advantaged life assurance 'wrapper'. The Personal Portfolio Bonds (Tax) legislation[39] imposed a tax charge on UK resident individuals, UK resident settlors or UK resident trustees (generally only where the settlor is not UK resident or has died) holding life assurance policies in some circumstances where unacceptable assets or indices (as opposed to permitted assets or indices as referred to in section 520(2) ITTOIA) can be selected as underlying assets of the life assurance product by the policyholder.

G) Gifting the policy (or segments of the policy) and receiving death proceeds

Life assurance policies (or segments of the policy) can be transferred (assigned) to an individual for various different purposes (e.g. tax planning, payment of tuition fees, etc.). Assignments by way of gift (i.e. not for money or money's worth) are not subject to the Chargeable Event Income Tax regime in the hands of the assignor-policyholder. Note that, in turn, the assignee will then become the policyholder and future chargeable event gains will be assessed on the assignee. However, although there may be no liability under the Chargeable Event Income Tax regime, this may not be the case under the Chargeable Transfer Inheritance Tax regime[40] (in particular, in the case of Potential Exempt Transfers[41]). Conversely, the proceeds received by the beneficiary of the policy as a result of

39 See Statutory Instrument 1999 No 1029 consolidated into the ITTOIA (sections 515 to 526).

40 In the UK, rules relating to Transfers of Value are primarily contained in the Inheritance Tax Act 1984 (IHTA). Note that a Transfer of Value is a disposition made by a person as a result of which the value of that person's estate immediately after the disposition is less than it was before the disposition. A Transfer of Value can either take place during the donor's lifetime or on their death. There are two types of Transfer of Value: (a) Exempt Transfers; and (b) Chargeable Transfers, which can be of two types, Immediately Chargeable Transfers and Potentially Exempt Transfers.

41 Subject to certain exceptions, Potentially Exempt Transfers (PETs) are Transfers of Value (other than Exempt Transfers, e.g. transfers to spouses) by an individual during his lifetime to another individual or an eligible trust. PETs are not subject to an immediate IHT charge but may be subject to an IHT (if it is over the threshold – Nil Rate Band – available at the time of the transfer) charge if the donor dies within seven years of making the PET (a 'failed PET').

death of the relevant life assured are subject to the Chargeable Event Income Tax regime[42].

In summary, the UK Chargeable Event Income Tax regime theory is consistent with the idea that only the overall gains received by the policyholder are taxed. Thus, according to this regime, the investment performance (accruals) is not taxed, otherwise the charge would be deemed to be directly linked to the value of the underlying funds, which is not possible considering that these are owned by the assurer. Instead, what is subject to Income Tax is the amount withdrawn by the policyholder (realisations) which exceeds the total premiums paid. On the other hand, losses are not taxed, which is consistent with the idea that the investment performance of the product should not be taxed.

The fact that realisations are charged rather than accruals is also consistent with the nature of life assurance itself, i.e. savings vehicle, taking into account that gains may be deferred until after retirement when the income of an individual is likely to be lower and, therefore, may be liable to less Income Tax. Thus, taxing realisations provides an incentive to save for longer periods which fulfil the purpose of life assurance. Also, note that the selection of 'personalised assets' by the policyholder can put at risk the objective element of savings, in particular for policyholders who do not seek proper financial advice. Hence, the restriction of the underlying investments is also justifiable considering the nature of life assurance as a savings vehicle.

Considering all the above, after identifying the chargeable events and the tax reliefs applicable to life assurance in the UK, it would be worthwhile to compare with similar/different 'chargeable events' covered in other EU Member States, which may be relevant to take a step further towards the potential coordination of the taxation of investment-linked policies in the EU. However, this study should be considered separately due to the complexity of the topic. Nevertheless, some of the potential tax issues in the EU emerging from cross-border Life Assurance Investment-Linked Policies will be discussed below.

4 Cross-Border Issues Related to the Taxation of Life Assurance Investment-Linked Policies in the EU

A) The portability feature

One of the main features associated with an investment-linked life assurance policy is its portability, i.e. the fact that the policyholder can simply move from one EU

42 For further details see "IPTM7520 – Full surrender, maturity, death or whole assignment: total benefits value: value of the policy or contract" (www.hmrc.gov.uk/manuals/iptm/iptm7520.htm).

jurisdiction to another with the product. In addition, life assurance policies may not be seen as 'domestic assets'[43]. An important question related to portability is to know how such a product is going to be taxed in the new tax residency of the policyholder considering that the contract was agreed elsewhere, i.e. in a different EU jurisdiction.

In recent years, EU Member States have been challenged on several Income Tax law provisions, on grounds that the freedom to provide services, the free movement of capital, the free movement of workers, the freedom of establishment and EU citizenship have been breached. The current ECJ position in relation to life assurance policies concerning taxation is that an EU life assurance policy will be taxed according to the local rules where the policyholder is tax resident, even though the contract has been originally agreed elsewhere. Thus, the author is of the opinion that as a corollary of the ECJ position, EU policies should benefit, on the one hand from the favourable tax regime applicable to domestic policies in the Member State where the policyholder is now tax resident (if he has moved from the jurisdiction where he/she originally concluded the contract) and, on the other hand, the policyholder should also suffer the burden of paying taxes which are applicable to life assurance policies in that jurisdiction (e.g. insurance premium tax).

In the recent *RVS Case* (C-243/11), an assurer which was established in the Netherlands (RVS) concluded life assurance contracts with certain individuals also resident in the Netherlands, who subsequently moved to Belgium. The Belgian authorities applied insurance premium tax, but RVS disagreed with this approach considering that such tax should only be imposed (if applicable) in the Member State where the policyholder was tax resident at the time of the conclusion of the contract. The ECJ held that the 'Member State of the commitment'[44] should be deemed to be the habitual residence of the policyholder (in this case, Belgium) at the moment of each premium payment. Thus, the ECJ was in favour of a 'dynamic' interpretation of Art. 50 of the Life Assurance Directive (2002/83)[45].

---

43 According to GORETZKY & WALLIS, "*As a life insurance policy is not considered to be a domestic asset, it is not subject to inheritance tax if neither the policyholder nor the beneficiary of the insurance proceeds or claims is resident in Germany*" (GORETZKY, Kai-Michael & WALLIS, Kerry, *Entering the German life insurance market – A guide for foreign insurers and corporate investors*, 2nd Ed., PWC, Frankfurt, 2005, p. 56).

44 According to Art. 1(1) (g) of the Life Assurance Directive (2002/83), 'Member State of the commitment' means the Member State where the policyholder has habitual residence (or establishment for legal persons).

45 The ECJ could hold a different position if instead was in favour of a 'static' interpretation. This interpretation takes into account the 'Member State of the commitment' being fixed by considering the habitual residence of the policyholder at the time the contract was concluded (in the *RVS Case*, The Netherlands would be the 'Member State of the commitment' if a 'static' interpretation were preferred). This position was held by the

Notwithstanding the decision in the *RVS Case*, the Portuguese Insurance Authority (ASF)[46] has not changed its understanding that only the place of residence of the (legal person) policyholder at the time of conclusion of the contract is relevant in assessing where the 'Member State of the commitment' is located[47]. As a result of this understanding, the Portuguese tax authorities may take into account the following three potential case scenarios: Firstly, if a policyholder moves to Portugal with a life assurance policy originally contracted in the Netherlands, then there would not be any insurance premium tax to pay in Portugal. Conversely, if a policyholder purchased a life assurance policy in Portugal and subsequently moved to the Netherlands, the policyholder would be still subject to Portuguese insurance premium tax. On the other hand, if the policyholder moved to Belgium he would be subject to double taxation on each premium payment, considering that Belgium would most likely apply the 'dynamic' interpretation of Art. 50(1).

The author is of the view first, that the ECJ indirectly called for a uniform interpretation in determining that the 'dynamic' approach should be considered in every Member State, rather than only in relation to the parties involved in the case itself; and secondly, such an interpretation can be also drawn *a contrario sensu* to allow a Member State not to claim its domestic indirect taxes on life assurance premiums if a policyholder becomes a habitual resident in another Member State. The latter position of the author is in line with the ECJ decision which states that Art. 50(1) is "*intended to confer on a single Member State the competence to tax life assurance premiums, in order thereby to eliminate double taxation of those premiums*"[48]. Hence, considering the discrepancy between the ECJ and ASF positions above, needless to say that harmonisation of such indirect tax (insurance premium tax and parafiscal charges) is desired as clearly stated in the Life Assurance Directive[49], although as the ECJ confirmed, pending such

Advocate General (for further details see: Opinion *in* RVS Levensverzekeringen NV v Belgische Staat, C-243/11, EU:C:2012:546, in particular see para(s). 31, 35, 47, 49, 57, 59, 63, 73, 81, 82, 85, 87, 90, 91 and 96).

46 "Autoridade de Supervisão de Seguros e Fundos de Pensões".

47 According to the ASF (free translation), in light of Arts. 2(1)(l) and 173(1) of the Decree Law 94-B/98 (as amended) which transposed Arts. 1(1)(g) and 50(1)/(3) of the Life Assurance Directive (2002/83), "(...) *the Member State of the commitment"* (which is entitled to apply indirect taxes and parafiscal taxes applicable to the assurance contract as per Directive 2002/83/CEE) is *"(...) the one where the policyholder habitually reside"* and "(...) *the habitual residence must be determined at the time of the contract was originally entered considering that terms and conditions of the contract are determined in such date.*" (source as at 03/02/2015: http://www.asf.com.pt/NR/exeres/64F5B298-E6E6-4308-94FD-F771832800FF,frameless.htm?NRMODE=Published – see ASF understandings "Taxa ISP" and "Estado-membro do compromisso")

48 See *RVS Case*, para. 48.

49 See recital 55 of the preamble and Art. 50(1) of the Directive 2002/83.

harmonisation, "the application of the tax system and other forms of contribution provided for by the Member State in which the commitment is entered into is likely to remedy that problem"[50]. In other words, and the author agrees with this position, the ECJ's 'dynamic' interpretation of Art. 50(1) should prevail until the harmonisation of the indirect tax applicable to life assurance premiums in the EU Member States is reached. However, note that an underlying and completely different issue would be whether or not there is a need to apply insurance premium tax to life assurance in the EU[51].

B) The mismatch of death benefit (mortality risk)

In the UK, the distinction between 'qualifying' and 'non-qualifying' policies is not directly related to the death benefit[52], as one would expect[53]. However, in other jurisdictions, such as Germany, a minimum of death benefit is required for the contract to be qualified as a life assurance policy either from tax or legal perspective[54]. Thus, one can already anticipate a potential problem of coordinating the taxation of investment-linked life assurance policies within EU jurisdictions, i.e. the mismatch (or inexistent) of death benefit (mortality risk) required in the different EU Member States.

50 See *RVS Case*, para. 26.

51 In 1939, FULTON explained the reasons why the taxation of insurance premiums in the US is wrong in principle. According to FULTON, "(...) *The premiums tax is often inequitable between policyholders. The tax is a fixed percentage of the premiums paid. It is apparent that the premium on a policy taken out late in life is subject to a higher tax than the premium on a policy issued to a younger man. (...)The tax on insurance premiums is discriminatory between the insured and the non-insured. The policyholder, because he wants to protect himself and his dependents which reduces the danger to the community of economic loss, must carry an extra tax burden in addition to the burden he has to share with other persons not carrying insurance protection.*". For further details see FULTON, Arthur, *The Tax on Life Insurance Premiums - Is It Defensible?*, TAXES – The Tax Magazine, Chicago, October 1939, pp. 583-584.

52 The Court of Appeal held in the Case *Fuji Finance Inc. v Aetna Life Insurance Co. Ltd & Another* [1997] Ch 173 (CA), that even a policy which offered no mortality benefit paying on death only the value of the underlying investments was still deemed to be a life assurance contract if it was sold by a life insurance company.

53 The higher the death benefit is, the higher should be the level of protection (although this may increase the premiums due to be paid), which should be consistent with the definition of 'qualifying' policy in the UK.

54 In Germany, the minimum death benefit is 110%, i.e. 10% of mortality risk to be paid based and in addition to the surrender value (the investment element of the contract after applying charges).

C) Commencement of the tax benefits applicable to foreign life assurance policies

Another issue relates to the commencement of the tax benefits, i.e. whether or not its application will start from the inception date, i.e. when the contract was concluded. As previously mentioned in section 3(E) above, the UK allows time apportionment relief to policyholders holding life assurance policies taking account the period they were abroad. This relief has particular relevance if the policy was purchased outside the UK. Hence, for the purpose of providing this relief, the UK Chargeable Event regime will look at the period of time between the date of inception when the policy was issued abroad and the date when the policyholder becomes tax resident in the UK. Also, in the UK, foreign policies will benefit from the 5% Cumulative Allowance counting from the inception date. Conversely, in France, tax benefits for foreign life assurance policies will only start when the policyholder becomes French tax resident[55].

D) Restrictions imposed to the selection of the underlying assets to be held within the policy

It is clear that certain jurisdictions impose restrictions to the selection of the underlying assets to be held within the policy and apply penalties for the selection of personalised assets[56], although this restriction may not be imposed in other jurisdictions[57]. In this case, the policyholder must endorse the policy to hold underlying assets compliant with the requirements imposed by the host EU Member State where the policyholder becomes tax resident. In the event that the policy is not endorsed, tax penalties may apply, as mentioned above in section 3(F) in relation to PPBs in the UK.

E) Appointment of beneficiaries

Life assurance is closely linked to estate planning and succession. For example, the appointment of beneficiaries usually has tax advantages in France. In the absence of a specific beneficiary nomination, the proceeds will be payable to the deceased's estate (heirs). Thus, in order to benefit from the preferential tax rates on death under French law, the policyholder may well be interested in nominating

---

55 For example, the favourable *prévèlement libératoire* rates will only apply to foreign policies after eight years the policyholder becomes tax resident in France, thus disregarding the date of inception of the contract.

56 For example, the Personal Portfolio Bonds in the UK or the "Asset Managed Insurance Contract" (AMICs) in Germany which was introduced by the German Annual Tax Act 2009.

57 For example, policyholders can select direct securities in Sweden.

beneficiaries promptly. Conversely, under UK rules, the policyholder is likely to retain UK domicile of origin (possibly for a considerable, even indefinite, period) and the nomination of beneficiaries could have adverse Inheritance Tax consequences.

F) Reporting requirements under the OECD's Common Reporting Standard (CRS) model

On 16 October 2014, the ECOFIN reviewed the Directive on Administrative Cooperation in the area of taxation between EU Member States, with the intention of extending the scope for mandatory Automatic Exchange of Information (in particular to cover the OECD's Common Reporting Standard (CRS) model) between tax administrations. Obviously, these measures will impact policyholders, who will be providing enhanced information to fulfil the reporting requirements of the EU life offices, which in turn will be obliged to transfer such information under CRS to the relevant tax administrations. Thus, there will be no foreseeable risk of policyholders providing different reporting requirements within different EU Member States.

In summary, the portability feature of life assurance is key to understand that cross-border issues may arise when the policyholder moves between jurisdictions. On the assumption that policies meet the legal definition of life assurance in host jurisdictions, such policies will be subject to different challenges depending on the jurisdiction in question. In the RVS Case, the ECJ held that insurance premium tax should be charged in the jurisdiction in which the policyholder is tax resident irrespective if the contract was concluded elsewhere. Another cross-border issue relates to the fact that certain jurisdictions do not accept PPBs without imposing a tax penalty, which means that the policyholder needs to endorse the policy to hold permissible assets before moving to such jurisdictions. Other issues may arise, for example, in relation to the death benefit required, which indicates that the legal definition of life assurance needs to be met first before applying a favourable tax regime. Considering all the above, the coordination within EU Member States of both legal definition and tax regime would be ideal to solve relevant cross-border issues related to life assurance.

5 Conclusions

The author started to describe briefly the concept of Investment-Linked (Class III) Policies as a complex life assurance product. Class III Policies differentiate from traditional life assurance policies taking into account that the payment of proceeds is not guaranteed, and instead such payment is linked to the performance of the underlying funds/assets held by the life office.

The author has also identified such products as savings vehicles (as opposed to investment vehicles) considering that it is seen as a medium/long-term financial product, even though it is not a guaranteed product. Life assurance policies held for longer periods should receive greater tax benefits when compared with policies held for shorter periods of time.

The UK model was introduced as a case study to identify 'qualifying policies' and chargeable events. The fact that the UK "Chargeable Event Income Tax regime" is based on the taxation of realisations (surrenders), rather than accruals, is consistent with the nature of life assurance as a savings vehicle. Thus, the taxation of proceeds may be deferred until after retirement when an individual is likely to be less liable to Income Tax, which is an incentive to save for longer periods, and, therefore, fulfils the purpose of life assurance as a savings vehicle.

As rule of thumb, foreign polices offered by EU life offices must comply with the rules applicable in the host EU Member State, i.e. foreign policies must meet the criteria of the legal concept of life assurance in the host Member State, in order to benefit from the tax regime applicable to life assurance policies.

There are several of issues associated with cross-border life assurance. For example, the approach taken by EU Member States regarding the taxation of insurance premiums may be different despite the recent ECJ decision in the *RVS Case* (C-243/11). Also, there are legal requirements applicable to the policy which may be different in certain EU Member States (e.g. additional death benefit, restriction of assets, etc.).

Considering all the above, the approach regarding the tax regime applicable to life assurance policies, in particular Investment-Linked (Class III) Policies, needs to be consistent across all Member States. Two alternatives seem viable:

1) The tax regime applicable to both EU (foreign) policies and domestic policies should be the one applicable in the host Member State where the policyholder is currently tax resident, taking into account that the EU (foreign) policy meets the legal definition of life assurance policy in the host Member State; or

2) The tax treatment of life assurance policies (indirect taxation and direct taxation) should be coordinated across all EU Member States.

The first solution is already available and it is the position held by the ECJ in the *RVS Case* in relation to insurance premium indirect tax. On the other hand, the second solution seems more ambitious. Indeed, the coordination of the tax regime applicable to life assurance policies across all EU Member States is a crucial point, and it should be discussed separately due to its complexity. Obviously, this latter solution needs to take into account a model that could be used as a starting point. In this regard, the author has introduced the UK model, i.e. the "Chargeable Event Income Tax regime" as a case study. The main reason for selecting this model and not another one, although likely viable, is related to the fact that the UK has been dealing with life assurance taxation for over two hundred years, thus giving enough credibility on how life assurance policies should be taxed. However, the UK model should be compared with other models available in the EU in order to identify similarities and differences applicable in the area of the taxation of Life Assurance Investment-Linked (Class III) Policies.

In summary, the main purpose of this article is to highlight the tax obstacles which policyholders are currently facing with cross-border life assurance policies in order to arrive at the conclusion that the coordination of the tax regime on life assurance may be required in the near future. Hopefully, this subject matter is now open for discussion.