ESTATE DUTY IN RELATION TO LIFE ASSURANCE AND ANNUITY POLICIES

by

R. W. BOSS

(A paper discussed by the Society on 10 March 1961)

It is probably fair to say that during the last decade problems of internal administration have faded into insignificance besides the legal problems which now arise out of a life office’s relationship with its policy-holders—in particular in regard to estate duty matters.

Before examining the position in detail I would like to make some general remarks regarding the burden of estate duty on life assurance policies today. Rates of duty are progressive, as the table on page 399 shows, and bear most heavily on the large estates. Therefore, not surprisingly, a good deal of interest and effort has centred in recent years in reducing this burden.

One way of doing this is to divide up a big estate—if possible in ample time before the death of the donor—into ‘parcels’ for the ultimate benefit of those who would otherwise have benefited under the will, and for the owner to divest himself of all interest in those ‘parcels’ so that on his death each will be treated as a separate estate with a considerable overall saving in duty. I need not tell the Society that one method of achieving this is by means of a policy written under the Married Women’s Property Act, 1882 (or similar trust) and much of this paper and particularly chapter II is devoted to that particular contract.

In 1959 and 1960 two further measures were enacted which virtually removed the burden of estate duty from Married Women’s Property Act and similar policies.

The first of these measures namely, s. 34 Finance Act, 1959, provides that policies kept up for the absolute benefit of another will be treated in the same way as gifts of other types of property so that to avoid liability to duty on the full sum assured it is
necesary merely to make over, endorse or assign the policy to the donee or have it written under the Married Women's Property Act in his favour. It is then a policy kept up under s. 34. Outside 'assigned' policies (see p. 379) no duty will be payable except in respect of premiums paid within the five years prior to death and even then it is likely in the normal case that there will be no liability to estate duty because of the statutory concessions for 'small gifts' and 'normal and reasonable expenditure'. Secondly, where a liability remains, it may be substantially reduced by the operation of s. 64, Finance Act, 1960, which introduced a graduated scale so that gifts made in the 3rd, 4th and 5th years before death are not fully charged.

The conclusion I come to from all this is that if non-aggregation were abandoned altogether it would have little or no effect on the ordinary man who is providing expressly for his family by means of annual premium policies. What is more, most of the all-too-familiar problems now associated with Married Women's Property Act and similar policies (the pure endowment on the elderly life, for example) would vanish with it. I submit, accordingly, that non-aggregation, as a principle, is now not only of very little use in the normal case but in the hands of the few can be a growing danger to our business.

The liability of annuities to duty is of particular interest to those engaged in pension scheme business since, of course, the provision of widows' and children's annuities is becoming increasingly popular. This matter is dealt with in chapter VII.

Now let us examine the situation in detail.

I. THE GRANT OF ESTATE DUTY

The complex law relating to estate duty on policies stems from the Finance Act 1894 which charges to duty the principal value of all property passing (s. 1) or deemed to pass (even though it does not actually pass) on the death (s. 2).

What is 'principal value'? The 'principal value' of the property subject to duty is the price which, in the opinion of the Commissioners of Inland Revenue, it would fetch in the open market. But the surrender value of a policy passing may be treated as the
principal value in some cases (e.g. where the deceased holds a 'life of another' policy), although in a case where the life assured is in poor health the Board of Inland Revenue may well decide that market value, being higher than the surrender value, is to be the basis of the assessment.

'Passing on the death'. The expression in section 1 'passing on the death' need not detain us long. It denotes a change in the title or possession of the property as a whole which takes place at the death. The property is property of which the deceased is 'competent to dispose' but so it is under s. 2—the only distinction being that under s. 2 the property is deemed to be included in property which passes, even though it does not actually pass, on the death.

Into this latter category money payable under a policy of life assurance usually falls—the first and most simple example of its application being the policy effected by the deceased on his own life. This property—i.e. the proceeds of the policy—may be said to be dutiable under s.2(1)(a) of the Act as property of which the deceased was competent to dispose. It forms part of, and is aggregable with, the deceased's free estate and 'passes' accordingly to his legal personal representatives.

Exceptions for transactions for money consideration. An 'own-life' policy sold for full value by the deceased in his life-time does not attract estate duty.

The rates of duty

The rates of duty laid down in the Act have been amended from time to time. The present rates are set out on page 399.

II. NON-AGGREGATION FOR ESTATE DUTY

Before proceeding further a little time should be devoted to the principle of non-aggregation since this question has an important bearing on our subject. It has also given rise to the greatest number of problems to life offices.

S.4 Finance Act, 1894

The actual rate of duty is determined by aggregating all property passing or deemed to pass on the death [Finance Act, 1894, s.4].
‘Property in which the deceased never had an interest’ is not subject to the aggregation rule [Finance Act, 1894, s. 4].

The importance of this exception is clear. It will be seen from the table of rates that the rate per cent. of duty increases with the size of the estate—from ‘nil’, in fact, where the principal value does not exceed £3000, to 80% where the estate exceeds £1 million so that if a large estate can be divided into a number of small parcels of property in which the deceased ‘never had an interest’ then if the principal value of each does not exceed £3000, it can escape duty altogether.

‘Property in which the deceased never had an interest.’ The words ‘property in which the deceased never had an interest’ mean what they say.

Where a declaration of trust is made by the life assured at or before the time the policy is effected then provided the terms of the trust are such as to ensure that in no circumstances can the life assured have any interest in the policy in terms of the trust, it will become a parcel of property in which the deceased ‘never had an interest’ and will not be aggregable with the rest of the deceased’s estate for duty purposes. The beneficiary—whoever he or she may be—must, however, be absolutely entitled, i.e. there must be no reversion back in the event of, for example, the prior death of the beneficiary. If, therefore, the principle of non-aggregation is to apply at all it is important to ensure that an ultimate, absolute, interest is given to some beneficiary or group of beneficiaries.

Benefits and options in trust policy. But how strictly is this interpreted by the Inland Revenue?

We have heard recently that a provision in a trust policy providing for income benefits and waiver of premiums during disability does nothing to upset non-aggregation since the provision is not regarded as giving the life assured an interest in the death benefit under the policy, i.e. the property passing on death.

On the same basis it would seem that the Estate Duty Office would be bound to regard as property in which the deceased never
had an interest, a policy which enables the life assured to effect other policies without evidence of health.

If a claim were made under s.2(1)(d)—as it might well be if the trust is ‘for A whom failing for B’ and A survives—the subject-matter of the claim would be the policy and the amount thereof would be measured by reference to the beneficial interest arising on the death. It might therefore be argued that the right to effect further policies for the life assured’s own benefit give him an interest in the original policy so as to prevent non-aggregation. That the Estate Duty Office are prepared to ignore disability benefits in determining whether the deceased never had an interest, may be a pointer to their not enforcing aggregation in the ‘option case’, but it does not necessarily follow that this position would be upheld if the matter were challenged in the courts. Yet different considerations might well have applied before 1959 in the case of a claim under s.2(1)(c), Finance Act, 1894, for the subject-matter in that case would have been ‘money received under the policy’. Thus if the life assured had no contingent interest in the policy the ‘money received’, as such, would be ‘property in which the deceased never had an interest’ even if he had a right under the policy to effect further policies for his own benefit without evidence of health. Thus the principle of non-aggregation would almost certainly have been applied.

Married Women’s Property Act, 1882

We have seen that where a trust is created by the policy itself—the policy declaring without equivocation that the life assured is effecting the policy as trustee for a beneficiary absolutely and indefeasibly entitled—the proceeds, though dutiable, escape aggregation by virtue of s.4, Finance Act, 1894.

The simplest and most popular way of creating a trust in favour of a man’s wife and children is, however, by having the policy written under the provisions of the Married Women’s Property Act, 1882—s.11 of which says:

A policy of assurance effected by any man (woman) on his (her) own life, and expressed to be for the benefit of his wife (her husband) or of his (her) children, or of his (her) wife (husband) and children, or any of them, shall
create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured.

So that merely by expressing the policy 'for the benefit of' creates a trust 'in favour of the objects therein named'. At the same time the writing of policies under this Act has created, and still creates, problems—one outstanding example being that by advising a person to effect such a policy an office might well be advocating an arrangement which would attract a higher rate of duty than a policy outside the Act. This could happen

(i) where A's dutiable assets consist wholly or mainly of an existing policy written under the Act for the benefit of his wife; and

(ii) he is persuaded to effect another, similar, policy under the Act for the same beneficiary.

As a result of s.33, Finance Act, 1954 (see below), these policies would be aggregated inter se and the appropriate rate of duty applied to the total value. Yet if the second policy had not been written under the Act it would have ranked with the deceased's free estate. There are other problems, too.

'Effected by any man on his own life.' In drafting the policy it would not seem necessary to mention the Act itself. Thus a policy effected by A on his own life and expressed to be for the benefit of his child B will automatically create a trust under the Married Women's Property Act, 1882.

But the policy must be one on the life of the person effecting it—not on the life of any other person—so that if the life assured is other than the person effecting the policy then, however close the family relationship, the policy will be without the ambit of s.11. [Note—e.g. in re Sinclair's Life Policy [1938], 3 All E.R. 124, where the life assured was a godson; in re Webb [1941], 1 All E.R. 321, where the life assured was the son; in re Engelbach's Estate [1924], 2 Ch. 348, where the life assured was a daughter.] It should be noted that the husband or wife signing the proposal is the person 'effecting' the policy—irrespective of whether another pays the premiums [re Oakes deceased (1950), 2 All E.R. 851].
Permitted beneficiaries: power of appointment. The policy must be expressed for the benefit of husband, wife or child, although the words 'payable to' may be sufficient. It is also possible for the policy to be expressed for the benefit of such of the wife and children as the assured shall by deed or will appoint and in default of appointment for the wife.

This special power of appointment is useful where there is a possibility of the life assured wishing to vary the trusts for it must be remembered that once a policy is written under the provisions of the Act a trust is created and this trust cannot be altered except by the beneficiaries themselves and even then only if they are all entitled, of full age and capacity.

Minors as beneficiaries. It is interesting to note that where a minor is appointed beneficiary, power to borrow, surrender, take a paid-up policy or to surrender bonuses is sometimes given to the trustees in the policy. Trustees may, however, in cases where power is not given,

pay or apply any capital money subject to a trust for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled...

[§ 32(1), Trustee Act, 1925]

so that there can be little doubt that maintaining a policy by, for example, borrowing to pay premiums, is permitted as being for the benefit of a beneficiary.

The Scottish case of Schumann v. The Scottish Widow’s Fund (1886), 13 R 678, is sometimes quoted as authority for trustees to surrender a policy without the concurrence of the beneficiaries—minor or otherwise. This case involved a policy written under the Married Women (Policies of Assurance) (Scotland) Act, 1880, for the benefit of Mrs Schumann (with reversion to husband), and it is interesting to note that the view was expressed that the policy could be surrendered by the trustee alone without the consent of Mrs Schumann. This was not, however, the decision of the Court. The remarks were obiter dicta and not a general authority for dispensing with the consent of beneficiaries.

* Up to but not exceeding one-half of the presumptive or vested share or interest of that person in the trust policy.
**Wife as beneficiary.** A wife as beneficiary can be either named or unnamed in the policy (or she can be a future wife).

If named she has an immediate vested interest in the policy (Cousins v. Sun Life [1933], 1 Ch. 126)—even if she pre-deceases the life assured. But if described ‘my wife’, the Court would probably apply legal rules of construction to ascertain her identity. There might even be a resulting trust to the husband in which case the moneys would be aggregable.

**Children.** The word ‘children’ means what it says. Thus it does not include step-children or grandchildren. Nor are illegitimate children ‘children’ for the purposes of the Act—the rule of law being that when ‘children’ are referred to in an Act of Parliament, legitimate—not natural—children are intended.

The Adoption Act of 1958 provides that children who have been adopted under an Adoption Order can be beneficiaries under policies written under the Married Women’s Property Act of 1882 on the life of one of the adoptive parents. It therefore seems reasonable to suppose that policies for the benefit of ‘legitimated’ children, i.e. legitimated by the subsequent marriage of the father, should, if effected after legitimation, be within s. 11, otherwise one might feel that a distinction between these and adopted children—both of whom, after all, have a status conferred upon them by law—would give rise to an anomalous position.

But although policies cannot be written under the Act for beneficiaries other than the wife (husband) or children (including adopted children) of the assured, trusts for persons who do not come within the Act, e.g. grandchildren, can be set up, either by the terms of the policy itself or by means of a subsidiary deed of trust—indeed trusts can even be set up under the Act itself for such persons. Thus beneficiaries not covered by s. 11 can be introduced in this way:

This policy is effected under the provisions of the Married Women’s Property Act, 1882, for the benefit of, and it shall create a trust for, A [not a beneficiary under the Act].

Whilst these words do not create a trust under the Act in favour
of $ A $ nevertheless the trust is there because words specifically creating a trust have been used.

**One beneficiary within, the other without, the Act.** Where one beneficiary is within s. 11—the other without (as for example where the policy is written under the Act for the benefit of wife and her illegitimate child)—MacGillivray (fourth edition at para. 1306) maintains that the whole policy is outside the Act. He quotes the decision *in re* Parker's Policies [1906], 1 Ch. 526, as authority for this. The position, however, is not free from doubt.

**Contingent interests and resulting trusts.** The benefit of non-aggregation will be lost if the deceased retains a contingent interest. For example, a policy creating a resulting trust in favour of the deceased or his legal personal representatives will be aggregated with the rest of the deceased's estate in the event of the wife and/or children pre-deceasing him—and for purposes of arriving at the rate of duty *even if the wife and children do in fact survive him*. [Sharp's Trustees *v.* Ld. Adv. (1951), S.C. 442; Tennant *v.* Ld. Adv. (1939), A.C. 207; A.G. *v.* Pearson (1924), 2 K.B. 375.]

But the benefit of non-aggregation can also be lost where there is no specific trust in favour of the deceased provided he could have taken under a resulting trust (e.g. where the policy is written for the benefit of unnamed 'wife and children' and all die in the deceased's lifetime).

It has been argued, however, that the words 'in favour of the objects' show an intent to benefit rather than to point to an individual, so that 'benefit of wife' would enable a subsequent wife to benefit and for any resulting trust which arises on the death of the first wife, to disappear on re-marriage.

*[Note—it will be clear from the above that where circumstances arise in which it is not possible to carry out the terms of the trust—the trusts fail and there is a resulting trust to the settlor. The case of Cleaver *v.* Mutual Reserve Fund Life Association (1892)—1 Q.B. 147—is of particular interest in this respect in that the trusts failed because the beneficiary under the policy murdered her husband and could not therefore benefit from it. There was a resulting trust for the husband's executors.]*
What is an 'interest'? This brings us to the decision of the House of Lords in

Walker's Trustees v. Inland Revenue
Haldane's Trustees v. Inland Revenue

[1954] SLT 17

before which there was considerable uncertainty as to what exactly might be held to constitute an 'interest' sufficient to deprive a policy of the benefit of non-aggregation. Three policies were effected under the provisions of the Married Women's Policies of Assurance (Scotland) Act, 1880, for the benefit of the life assured's children:

and if only one shall survive then wholly for the benefit of that one and if the assured's said three children shall all pre-decease the happening of the event assured against, then for the benefit of the state of the last to die....

The deceased's trustees maintained that each of the policies and its proceeds was an estate by itself and this was eventually supported by their Lordships on the basis that holding for the estate of a deceased child was holding for the benefit of that child. Thus the possibility that the father might take under the intestacy of a beneficiary did not constitute an 'interest' within the meaning of s.4, Finance Act, 1894.

This was a decision under Scottish Law but there is nothing to suggest that it would not also apply under English Law. It may therefore be accepted as established under the laws of both England and Scotland that the 'test' laid down in re Hodson's Settlement (1939), 1 All E.R. 196, viz.:

'would there be a resulting trust in the settlor's favour if all the beneficiaries disclaimed their benefits?'

can finally be disregarded.

Pure endowments. What types of policy may be written under the Married Women's Property Act, 1882?

The Act requires that the policy shall be a policy of assurance on life so that in addition to a whole of life assurance, endowment assurances also fall within the definition and are permissible [Gould v. Curtis (1913), 3 KB 84]. Whether pure endowments with return of premiums on death may be written under the Act is not, how-
ever, free from doubt. It seems clear from many such cases which have been before the Estate Duty Office that from the Inland Revenue’s point of view at any rate such policies are within the Act—an attitude of mind which seems entirely reasonable bearing in mind that a sum of money (the return of premiums) is payable dependant on human life. There is also some support for the Inland Revenue in the two cases:

Joseph v. Law Integrity Insurance Company Limited [1912], 2 Ch. 581.

The first case established that a pure endowment policy is a ‘policy of life insurance’ within the meaning of s. 98, Stamp Act 1891; the second that it is a ‘policy of assurance’ within the meaning of the Assurance Companies Act, 1909.

Substituted policies. A policyholder may surrender an existing policy on his own life and replace it by one written under the provisions of the Married Women’s Property Act, 1882.

The settled practice is to apply the surrender value as a first premium under the new policy but it is not usual for that first premium to be shown in the policy. It has been argued in fact that introduction of the surrender value in this way links the new policy with the old and consequently destroys the illusion of a policy in which the life assured ‘never had an interest’; that it would be desirable, accordingly, to effect the new policy with another office. Under the present law and practice, however, the Inland Revenue authorities have not sought to render aggregable, policies written under the 1882 Act and taken out in substitution for existing policies not so written.

This is confirmed by Dymond (thirteenth edition at p. 440) with, however, the following note of warning:

though in such cases it may be necessary to consider the precise steps by which the conversion was effected and to show that at no moment of time while the new policy existed could the deceased have instructed the insurance company to make the moneys payable to himself.

It will be remembered that in the case of Walker’s Trustees v. I.R.C. and Haldane’s Trustees v. I.R.C. the policies which were
the subject-matter of the actions were in fact 'substituted' policies issued by the same offices which had issued the originals. What is more the policies contained a statement to the effect that they had been issued in lieu of the earlier contracts.

It is significant that these circumstances were not used by the Inland Revenue in seeking to aggregate the policy moneys with the estate of the deceased.

Scots. From a number of references which have been made in this paper it will be clear that there is a similar Act in Scotland—the Married Women’s Policies of Assurance (Scotland) Act, 1880, s. 2, of which reads:

A policy of assurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his children, or of his wife and children, shall, together with all benefit thereof, be deemed a trust for the benefit of his wife for her separate use, or for the benefit of his children, or for the benefit of his wife and children.

The general effect of the Act is the same as that of the English Act, but it will be noted that only married men may effect policies for the benefit of their wives and children. A wife may not, as the section is worded, effect a policy for the benefit of her husband although, presumably, there is nothing to prevent her crossing into England and effecting a policy under English Law with the English branch of a Scottish Office. Thus a contract effected in England will always be subject to English law whatever the domicile of the contracting parties. On the other hand, a contract effected in Scotland whether by a Scottish office or by the Scottish branch of an English office, would not be so subject.

Limited aggregation. The law relating to aggregation in so far as it applies to policies in which the deceased never had an interest is now governed by the important provisions of the Finance Act, 1954.

Before the Act, as I indicated earlier, no matter how many policies there were each one written under the provisions of the Married Women’s Property Act could be treated as an estate by itself and where, in each case, the sum assured did not exceed £2000 (as the limit then stood) it escaped duty altogether. The rates of duty were extremely high and it was inevitable that full advantage would be taken of the non-aggregation rule. This led to
the introduction of a system of limited aggregation under which
the extent to which insurance policies could be utilized for reducing
an estate’s liability to duty was severely restricted. S.33(2) of the
1954 Act provides, in effect, that where a number of policies are
non-aggregable with the general estate (e.g. policies effected under
the provisions of the Married Women’s Property Act for the
benefit of the same person) then on death after 30 July, 1954, such
policies will be aggregable \textit{inter se} whilst being non-aggregable
with the general estate. Thus while a policy written under the
Married Women’s Property Act and expressed to be for the
benefit of wife or child is a separate estate for duty purposes never-
theless any policies effected \textit{subsequently} for the benefit of that same
individual must be added to the original policy to form one non-
aggregable estate. So that there can \textit{only} be the same number of
separate estates as permitted beneficiaries.

It should be noted

(i) that the Act does not restrict the number of policies that can
be written for a single beneficiary; neither does it

(ii) affect aggregable policies or interests therein.

It is simply that all the dutiable interests in non-aggregable
policies to which any one person is indefeasibly entitled (in-
cluding life interests and interests in a defined share) are aggre-
gated to ascertain the rate of duty on those interests—there being
an individual ‘separate estate’ or ‘ring fence’ for each beneficiary
in respect of his indefeasible interests.

\textit{Identified and unidentified beneficiaries.} An ‘identified’ bene-
ficiary is one absolutely and indefeasibly entitled. Where, for
every example, the benefit is

\textit{for } X \textit{(son of policyholder) if he attains age 21 but otherwise for } Y \textit{(wife}
of policyholder)

then if on the death of the deceased the son has reached full age he
has an absolute interest, i.e. he is ‘identifiable’. If he has \textit{not}
reached full age at the death of his father then he is ‘unidentifiable’
—he has no absolute interest at that point of time. Neither has his
mother. She has a contingent interest anyway.
It has been seen that the rate of duty to be applied in respect of the policy moneys under policies in favour of identified beneficiaries is to be the rate appropriate to those policy moneys. So far as unidentified beneficiaries are concerned the rate to be applied to the proceeds is ascertained by reference to the total value, taken together, of all the dutiable non-aggregable policies and interests therein—including those taken care of in the individual separate estates. A ring fence, in other words, around other ring fences. This somewhat unfavourable position would clearly apply in the case of an interest under a discretionary trust where the trustees have discretion as to the beneficiary—even though they decide in fact to pay the whole of the policy moneys to a particular person.

This 'ring fence' legislation is not easy to understand consequently the following example may go some way to throwing light on a difficult subject—

Example. The following policies are effected under the provisions of the Married Women’s Property Act, 1882:

(i) a policy for £6000 for wife absolutely;
(ii) a policy for £2000 for daughter absolutely;
(iii) two policies each for £5000 for the absolute benefit of each of two sons;
(iv) a policy for £10,000 for the sons in equal shares if they survive life assured and attain age 21—whom failing for wife absolutely.

If the beneficiaries all survive the life assured but the sons are under age 21 at the death, the position will be this
(a) each of the four policies (i), (ii) and (iii) is dutiable as a separate estate therefore policy (ii), being less than £3000, escapes duty. The value of the others will be subject to s. 34, Finance Act, 1959 i.e. duty will be payable on the proportion of the policy moneys attributable to the premiums paid by the life assured within five years of his death and to graduation in accordance with s.64, Finance Act, 1960;
(b) the sons are not identifiable beneficiaries in (iv)—their interests are contingent on their attaining age 21. This particular policy is therefore liable to duty at a rate applicable to the total of the five policies i.e. to a maximum, depending on their value under the 1959 and 1960 legislation, of £28,000 i.e. 18%. The claim in this case would be under s.2(1)(d) Finance Act, 1894 so that there would be no reduction arising from the 1959 Finance Act.

If, now, one son had attained age 21 at the date of his father’s death, the situation would have been quite different. He would have been entitled to £5000 under policy (iv). This would have been added to his policy in
(iii) to give a separate estate of a maximum value of £10,000. The minor son, on the other hand, would have had one estate of £5000 under (iii) and his contingent interest under (iv) would be dutiable at 18%.

As a general rule the beneficiary to be considered for the purposes of the legislation is the person who is actually entitled to the policy or the interest therein at the time of the deceased's death—whether such person is the original beneficiary or an assignee of the original beneficiary. [s.33(2)(a).]

There are, however, exceptions to this rule. Excluded are purchasers of any interests in a policy for consideration in money or moneys worth. Proviso (iii) also provides that where the original beneficiary has predeceased the deceased he is still to be regarded, to the extent of his original interest, as the beneficiary for aggregation purposes if his estate (including his interest in the policy moneys) is still in course of administration at the death of the deceased. If such estate, including the interest in the policy moneys, is then fully administered, the beneficiaries for aggregation purposes are the persons entitled to the policy moneys under his will or intestacy to the extent of their respective interests.


The specific reference in s. 34 to a gift of rights under the policy can be related to s.38(10), Finance Act, 1957, which states that 'rights under a policy' can constitute property in which the deceased never had an interest. Thus by using the same form of words the Finance Act, 1959, preserves the important principle of non-aggregation in respect of gifts under the Act, i.e. in respect of the eventual claim moneys reduced in the proportion of the premium payment in question to the total premiums paid under the policy.

It will be appreciated, of course, that one of the ways of conferring a gift of a life policy is to assign the policy absolutely to the donee. In this case s.34(3), Finance Act, 1959 applies—the policy is one in respect of which the life assured had an interest before the assignment. The value of the policy moneys on death are therefore both dutiable and fully aggregable.
III. ANNUITIES OR OTHER INTEREST PURCHASED
BY DECEASED

S.2(1)(d), Finance Act, 1894, charges to duty:

Any annuity or other interest purchased or provided by the deceased either by himself alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

Thus for liability to duty to arise under the section three conditions must be complied with, viz.:

(i) there must be an ‘annuity or other interest’;
(ii) it must have been purchased or provided by the deceased either alone or in concert or by arrangement with any other person;
[Note—the application of the subsection was extended by s. 30 of the Finance Act, 1939, to cases where the annuity or other interest had been purchased by a person who was at any time entitled to (or amongst whose resources there was included) any property derived from the deceased.]
(iii) a beneficial interest therein must accrue or arise by survivorship or otherwise on the deceased’s death (this is the measure of the liability to duty).

‘Beneficial interest accruing or arising on the death’. In interpreting the phrase ‘beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased’ it is important to keep in mind the decision of the House of Lords in D’Avigdor-Goldsmid v. C.I.R. [1953], A.C. 347, which makes it abundantly clear that a beneficial interest does not accrue or arise merely because a policy matures and policy moneys become payable on the death of the deceased. Thus a policy on the deceased’s life which becomes indefeasibly vested in a donee prior to the death gives rise to no liability at all under s.2(1)(d).


But different considerations apply where the beneficiary’s interest changes on the death as, for example, where a policy on the
life of $A$ is effected under the Married Women's Property Act, 1882, for child $B$

should $B$ survive $A$ but otherwise for child $C$ absolutely.

It seems fairly clear in this case that a beneficial interest would accrue on the death of the life assured leading to liability under the section for if $B$ and $C$ both survive $A$ then the policy moneys will be dutiable under s.2(1)(d) though not aggregable—$B$’s interest being changed on the death from a contingent, to an absolute, interest. If, however, $B$ predeceased both $A$ and $C$ then $C$’s interest becomes vested on his brother’s death and s.34(2), Finance Act, 1959 [formerly s.2(1)(c), Finance Act, 1894] would apply—duty being payable on the proportion of the policy moneys attributable to the premiums paid by the life assured within five years of death.

It should be noted that the Finance Act, 1934 (s.28), provides that a contingent interest must be ignored in evaluating the ‘beneficial interest’ accruing on the death.

Reversion to the life assured. Where the trusts of the policy provide for the interest in the policy to revert to the life assured in the event of the beneficiary predeceasing him and the beneficiary in fact survives, duty would be levied on the full sum assured at death under s.2(1)(d) of the 1894 Act (s.34 of the 1959 Act is also applicable but would not be used as it would produce in most cases less duty). If the life assured survives the beneficiary the policy would belong to him and would attract duty on his death as part of his estate. Aggregation would apply in both cases.

Beneficial interest a life interest only. It is only the value of the immediate beneficial interest accruing or arising on the death which is dutiable so that if the beneficial interest arising on the assured’s death is a life interest, the claim under s.2(1)(d) would be on the value of the life interest only. In this case the claim might be made under s.34 as that section could produce a larger liability for duty. Non-aggregation would apply if the deceased never had an interest in the policy.

In the case of all limited interests, however, further duty may be payable when the interest ceases—e.g. under s.2(1)(b).
Joint beneficiaries. Where a policy is effected in trust for A and B jointly so that—

(i) if both A and B survive the deceased they take one-half each;
(ii) if one alone survives he takes the whole;
(iii) if neither survive the benefit goes to the estate of the second to die,

the Estate Duty Office comment that on the death of the life assured leaving A and B both surviving, a beneficial interest accrues or arises giving rise to a claim under s. 2(1)(d) because the shares of A and B are determined on the death of the life assured. Neither A nor B is indefeasibly entitled until the death. Non-aggregation could apply.

A claim for duty under s.2(1)(d) will fail where there is no contractual right to a pension because in such a case no beneficial interest arises on the death [re Bibby (J) & Sons Ltd. (1952), 2 All E.R. 483].

'Other interest.' The term ‘other interest’ is not easy to interpret. It has certainly been held to include policies and beneficial interests therein. Policy moneys were also regarded as being covered by the wording [A.G. v. Murray (1904), 1 K.B. 165], but the position was clouded by their Lordships in the D'Avigdor-Goldsmid case when they said, in effect, that where a policy is absolutely vested in a donee during the lifetime of the assured, then the policy moneys—as distinct from the policy itself or any beneficial interest therein—are not an ‘other interest’. It can be argued, however, that if the words ‘other interest’ cover a beneficial interest in the policy then this can only mean the benefit of the policy i.e. the policy moneys.

This is, in fact, the position now for in the case of Westminster Bank Ltd. v. I.R.C. (1957) it was held that an ‘other interest’ could take the form of a policy of assurance and that there was no distinction to be drawn between a policy and its proceeds.

The position seems much clearer when we consider a policy which is not absolutely vested in a donee in the lifetime of the deceased for in this case an interest in the policy money does ‘accrue or arise’ on the death. It seems therefore that liability to duty in this case could arise on the death under either s. 2(1)(c) [as
a gift *inter vivos*] or under s.2(1)(d) of the 1894 Act. Yet even if these alternative heads of liability are available to the Inland Revenue we should take note of the important distinction between the two, viz. that under s.2(1)(c) it is the property chargeable which is the capital value of the *policy moneys* and under s.2(1)(d) the *policy*.

Certainly purchased life annuities and pension benefits are commonly covered by the words ‘other interest’. [See below.]

*Purchased or provided by the deceased.* The ‘annuity or other interest’ must be purchased or provided by the deceased. If, for example, a pension is granted to the widow of a retired employee under a non-contributory scheme the section does not apply—the deceased employee has not purchased or provided the pension [*re Bibby (J) & Sons Ltd. Pensions Trust Deed (1952), 2 All E.R. 483*].

The deceased must contribute in some real sense. It would undoubtedly be sufficient, for liability to arise under this section, for him to be a member of a contributory pension scheme. It is not essential that he should have effected the policy provided he pays the premiums or some part of them. It is not sufficient, moreover, that another person ‘purchases or provides’ in concert with the deceased. Thus in Richardson *v.* C.I.R. (*1909*), 2 Ir. R. 597 the deceased settled policies on his life and covenanted to pay premiums although, in fact, all premiums were paid by his wife out of her separate estate by arrangement with the husband. Result—no liability under the section.

*Ascertaining amount of claim.* It should be noted in regard to s.2(1)(d) that whilst the subject-matter of the charge is the annuity or other interest, nevertheless the *amount* of the claim is measured by reference to the beneficial interest immediately arising on the death. This interest can be for life; for a term of years or absolute. But if it is a *limited* interest, e.g. a life interest, then further duty may be payable when the interest ceases. Thus:

Where *A* settles a policy on his wife by an ordinary ante-nuptial settlement on trust to trustees to receive the policy moneys on his death and invest and pay the income to his wife for life—and covenants to pay the premiums—then

(i) subject to the terms of the trust the death of *A* will give rise to a claim under s.2(1)(d) since there is a beneficial interest in the policy proceeds accruing or arising on *A*’s death;
(ii) if the wife survives, the value of the life interest will be the yardstick against which the amount of the claim to duty will be measured—not the capital;

(iii) the value of the life interest will be aggregable for the purpose of ascertaining the rate of duty;

(iv) on the death of the wife duty will be chargeable on the capital representing the policy moneys (i.e. the interest in remainder) which will ‘pass’ under s.2 of the 1894 Act. [But note—there is every likelihood that the ‘surviving spouse’ concession would be allowed.]

IV. GIFTS INTER VIVOS

Policies maintained for the benefit of third party. Until recently the proceeds of policies (i.e. the policy moneys) effected in trust for a named beneficiary (e.g. M.W.P.A. policies and other trust policies so maintained that on death the proceeds pass to a third party without forming part of the assured’s estate disposable by will) were specifically charged to duty under that part of s.2(1)(c) of the Finance Act, 1894, which incorporates s.11 of the Customs and Inland Revenue Act, 1889. Thus money received under a policy of assurance effected by any person...on his life, where the policy is wholly kept up by him for the benefit of a donee...or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

But duty on such policies has now been eliminated—or at any rate considerably reduced—by s.34 Finance Act, 1959, which repeals the provisions of s.2(1)(c) so far as they relate to policies of assurance and ‘moneys received under a policy’ are therefore no longer dutiable, as such. To this extent the latter subsection is obsolete, although as it continues to charge to duty all gifts inter vivos it is still of interest to life assurance offices and will now be considered under that important heading, in association with the provisions of s.34, Finance Act, 1959.

It should be noted, first of all, that the legislation exempts gifts bona fide made more than five years before the death. To enjoy this exemption—

(i) the donee must have assumed possession and enjoyment of the gift forthwith; and

(ii) no benefit should be retained by the donor.
[Presumably these conditions are fulfilled in the case of a gift under a life assurance policy where the donor retains no interest in the policy.]

Ways of conferring gift of life policy. Before examining the position of ‘gifts’ in detail we would do well to remind ourselves of the two main methods of conferring a gift under a life assurance policy effected by the donor on his own life—

(a) by absolute assignment of the policy to the donee—so giving the donee full rights under the policy;

(b) by making the donee a beneficiary under the policy—in other words by creating a trust using unambiguous words to that end in the policy itself (e.g. assigning the policy to trustees on trust to apply the policy moneys for the benefit of the donee) or by writing the policy under the provisions of the Married Women’s Property Act (see chapter II).

Finance Act, 1959

The present position regarding gifts *inter vivos* is governed by s. 34 Finance Act, 1959, which applies in respect of deaths occurring after 7 April 1959—so including policies held by the deceased whether effected before or after that date. The Act repeals the provisions of s. 2(1)(c) of the 1894 Act in so far as the subsection relates to policies kept up for the benefit of a nominee or assignee—so placing gifts of such policies in the same position as other gifts. Thus there is now no liability to duty if the donor survives the ‘gifts *inter vivos*’ period of five years except in respect of any premiums paid by the donor during that period.

But ‘keeping up’ a policy for another clearly indicates a gift of a sort and as to this s. 34 makes compliance with the following conditions necessary to bring the gift within the ambit of the section—

(i) a person must pay a premium by way of gift under a policy on his own life;

(ii) the circumstances must be such that the payment does not fall to be treated for duty purposes as a gift of money; and
(iii) whether by way of assignment or otherwise the payment must operate to keep up the policy for the benefit of another.

In these circumstances the payment of each premium is to be treated for estate duty purposes as a gift to the donee of rights under the policy. These rights will be dutiable, but if after five years from the date of the gift the donor is still alive, then they will not be. It follows that if no premiums at all are paid by the donor within the five years immediately before his death, no duty is payable at all. There is an important exception to this. In the case of a gift by means of assignment as opposed to payment of premiums under a policy ‘kept up’, s.34(3) says, in effect, that the policy shall be treated as standing at the assured’s death at a value related to the proportion of premiums paid at any time up to the time of assignment. Obviously premiums paid thereafter would be ‘caught’ by s.34(2).

**Gift of cash or of ‘rights’?** It should be noted, in condition (ii) that liability to duty will not be incurred under the section where the gift is one of money.

A person can pay premiums under a policy on his life by way of gift in such a way that the payment can constitute a gift of money and therefore fall outside the section. Is the donor able to select in advance which category his gift will fall into? This is an important question because—

(i) if his gift is one of cash it will be aggregable;
(ii) if it is one of ‘rights’ then it may be non-aggregable with the rest of the estate for duty purposes.

We have very little guide to this problem. The case of Potter v. Ld. Advocate (1958), T.R. 55, has a bearing however in that it was decided that where A who had applied for shares in a new company received a cheque from his father, drawn in favour of the company, and the father died, duty was payable on the purchase price—on the basis that it was a gift of money—not of shares.

The important aspect of this case so far as life assurance is concerned is that it was once thought to be adequate authority for regarding premiums paid within five years under short term pure endowments written under the Married Women’s Property Act
with return of premiums, as gifts of money—thus endangering the non-aggregation position. However, it is now known that the Estate Duty Office would not in practice seek to regard such premiums as gifts of money and there is accordingly little likelihood of a case ever being brought before the courts.

If $B$ effects a policy on the life of $A$ for the benefit of $B$, and $A$ pays a premium then that payment will presumably be regarded as a gift of money because $B$ is the party contracting to pay the premiums.

Where, on the other hand, $A$ effects a policy on his life himself, any payment he might make will be regarded as a gift of ‘rights’ under s.34 where, for example, he assigns the policy to $B$ by way of gift.

‘Keeping up’. Condition (iii) is interesting. The payment must operate to keep up the policy for the donee. But does a single premium—or for that matter the first premium on any policy ‘keep up’?

On the basis of the decision in Barclays Bank Limited v. Attorney General (1944), A.C. 372, a single premium ‘establishes’—it does not ‘keep up’—so that, presumably, such a gift will not be dutiable under the section. At least one would think so. The case was decided in 1944, and although s.76, Finance Act, 1948, brought the payment of premiums from a fund administered by trustees within the ambit of s.2(1)(c) of the 1894 Act, it must be remembered that s.2(1)(c) in so far at any rate as it related to ‘keeping up’ policies, was repealed in 1959. It may be therefore that the decision in Barclays Bank v. A.G. can be ignored and that a policy is ‘kept up’

(i) by a single premium;
(ii) by payment of premiums indirectly from a trust fund.

The position is not free from doubt but it is known that the Estate Duty Office’s existing practice is to regard single premiums as ‘establishing’ and therefore outside the ambit of s.34.

Valuing gifts of ‘rights’. We have seen that under s.34 each premium paid will constitute a gift of ‘rights’ under the policy—the value of these to be the proportion of the value of the policy
proceeds which the amount of premiums paid within the five-year period bears to the aggregate amount of premiums paid before maturity of the policy.

Example. A effects a whole of life policy in favour of his wife absolutely and pays all premiums up to his death then if he dies after paying 9 premiums, five-ninths of the policy proceeds will be dutiable.

Re-written policies. Where an existing policy is re-written under the Married Women's Property Act for the benefit of a third party it is not usual for the amount of the notional first premium (representing the book value of the superseded policy) to be written in the new policy. This raises a problem because if the life assured dies after five years, the denominator of the fraction for assessing duty under s. 34(2), Finance Act, 1959, will be artificially reduced.

It would seem unreasonable to exclude the notional first premium from the denominator in the foregoing circumstances, and life offices will doubtless protect their policyholders by writing it in—though this may give rise to other problems, e.g. income tax relief on special first premiums. It is believed that if this notional first premium is not written into the policy for a particular reason, nevertheless the Estate Duty Office would probably take written evidence of the amount 'to put the liability right'. The fraction would then be

\[
\frac{5 \times \text{annual premium}}{\text{surrender value} + (9 \times \text{annual premium})} \times \text{policy proceeds.}
\]

Consider, now, the case where A surrenders the original policy (his absolute property) and applies the surrender value as a first premium on the new policy in which he has no interest, and promptly dies (within one year) without paying any premium. What is the liability? It would seem:

(i) that s. 34(2) of the Finance Act 1959 would not apply since the new policy (despite the notional first premium) has not been 'kept up' for the benefit of the beneficiaries but only 'effected' for their benefit. There can only be one outcome—that is

(ii) that the policy will be regarded as a disposition by way of gift and the whole of the proceeds dutiable, accordingly, under
s.2(1)(c), Finance Act, 1894. This would be in line with the Estate Duty Office’s existing practice regarding single premium policies (see ‘keeping up’ above).

The general situation regarding re-written policies is now confirmed by a very recent case in which two policies were re-issued under the 1882 Act—both for the absolute benefit of the wife.

In the re-issued policies a reference was made that they were issued in lieu of the original policies, but no mention was made of the premiums paid under the original policies or the surrender value thereof. The cancelled and re-issued policies were produced to the Estate Duty Office and they noted that the cancelled policies were normal endowment policies on the life of the deceased to whom the surrender moneys on cancellation were payable under the terms of the policies. The Estate Duty Office then stated that the proportion of the moneys payable under the policy liable to duty was

\[
\frac{\mathcal{L}x}{\mathcal{L}x + \text{the two premiums paid}}
\]

where \(\mathcal{L}x\) is the sum that was payable to the deceased on the cancellation of the relevant policy and applied by him in providing the corresponding re-issued policy.*

**Graduation of charges.** Having ascertained the value of the rights under the policy the following factors should be borne in mind:

(i) that the premiums *actually paid* within the statutory period of five years rank for duty—*not* those falling due—so that a ‘late’ premium may be paid within the statutory period and be ‘caught’ although due *before* the statutory period;

(ii) that the position is further affected by s.64 Finance Act, 1960 inasmuch as there is now a graduation of charges to estate duty on gifts of all types during the *inter vivos* period—including, specifically, payment of premiums under a life assurance policy [ss.2(a)(iv)].

* This was a case where the two annual premiums payable after the re-issue of the policy were treated as ‘normal and reasonable’ expenditure, but it will be appreciated that the principle of the illustration is not affected thereby.
The position is therefore as follows:

**Example.** A 10-year endowment assurance written under the M.W.P.A. Sum assured £7000 with level annual premiums of £650—death occurring after payment of seven premiums.

<table>
<thead>
<tr>
<th>Premium paid in</th>
<th>Duty chargeable on</th>
<th>Position after F.A. 1959:</th>
<th>Duty chargeable on</th>
<th>Position after F.A. 1960:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st year before death</td>
<td>( \frac{1}{7} \times £7000 = £1000 )</td>
<td>No reduction on F.A. 1959 value = ( £1000 )</td>
<td>15 % reduction on £1000 = ( £850 )</td>
<td></td>
</tr>
<tr>
<td>2nd year before death</td>
<td>( \frac{1}{7} \times £7000 = £1000 )</td>
<td>No reduction on F.A. 1959 value = ( £1000 )</td>
<td>30 % reduction on £1000 = ( £700 )</td>
<td></td>
</tr>
<tr>
<td>3rd year before death</td>
<td>( \frac{1}{7} \times £7000 = £1000 )</td>
<td>60 % reduction on £1000 = ( £400 )</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4th year before death</td>
<td>( \frac{1}{7} \times £7000 = £1000 )</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5th year before death</td>
<td>( \frac{1}{7} \times £7000 = £1000 )</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total chargeable</td>
<td>( \frac{5}{7} \times £7000 = £5000 )</td>
<td>Total chargeable</td>
<td>( £3950 )</td>
<td></td>
</tr>
</tbody>
</table>

**Non-aggregation.** The amount chargeable to duty, viz. £3950 will be non-aggregable with the remainder of the deceased's estate unless there are other, similar, policies accruing to the wife (as to this see chapter II—'non-aggregation').

**Policies maturing in the lifetime of the donor.** An interesting estate duty position arises where a policy 'kept up' matures, or is surrendered, in the lifetime of the donor.

Suppose, for example, a 25-year endowment assurance is written under the provisions of the Married Women's Property Act for the benefit of wife absolutely and the life assured dies in the first year after the policy matures. Under the 1959 Finance Act liability to duty arises if the donor dies within five years of the date of payment of the last premium—the actual amount dutiable depending on the number of premiums paid in this period. So that in this case four twenty-fifths of the policy moneys will be liable to duty.

From a life office's point of view the position is only of academic interest since the Estate Duty Office have given an assurance that it will not be held liable to account for duty when payment of policy moneys has been made on maturity or surrender. If the position had been otherwise offices might have been burdened with
the irksome task of withholding part of the policy moneys against a possible claim for duty.

**Reliefs.** It should be borne in mind in all this that the concessions which operate in respect of gifts which in total amount to £500 or less and gifts which constitute 'normal and reasonable' expenditure, will apply equally well to gifts under section 34 so that if the premiums paid can be regarded as part of the 'normal and reasonable' expenditure of the deceased, no duty would be payable to all. (See chapter V—'Reliefs'.)

V. RELIEFS

It might be appropriate at this stage to remind ourselves of the concessions which enable gifts made within five years to enjoy exemption from duty. They are:

*‘Normal’ and ‘reasonable’ expenditure.* Gifts of life assurance premiums are exempt from estate duty if it can be shown to the satisfaction of the Inland Revenue that they are part of the normal and reasonable expenditure of the deceased [s.59(2), Finance (1909/10) Act, 1910]—‘reasonable’, that is to say, bearing in mind

(i) the deceased’s financial circumstances; and
(ii) the relationship of the donor to the donee, e.g. the necessity of providing for his wife.

‘Normal’ expenditure implies continuity—what, in fact, the deceased is in the habit of doing. Hence a policyholder paying annual premiums might be expected by the Inland Revenue to be incurring ‘normal’ expenditure. But a single premium, or even a first premium, would seem to create a different atmosphere and to suggest something unusual.

No precise rules are available, however, and it would seem that each case must continue to be decided ad hoc, although there is every reason to suppose that the Revenue will regard premiums paid in respect of long-term contracts as more ‘normal’ and usual (in the sense of being continuous) than in the case of other gifts.

It is also reasonable to assume that in considering whether the ‘normal and reasonable’ exception applies to gifts under s.34(2), Finance Act, 1959, the Revenue will have regard to the amount of
premises paid—*not* to the value of the benefit conferred on the donee by each payment!

*Gifts not exceeding.* Gifts of life assurance policies are exempt from estate duty if to any individual donee they do not exceed:

(i) £100 in value.
(ii) £500 in value (except where this represents a gift of settled property).

S.34(6), Finance Act, 1959, explains how gifts falling within the section are to be valued for the purpose of deciding whether one or other of these exemptions applies. Thus the value of the policy for this purpose may be the appropriate portion of the *market value* of the policy at the date of gift—*not* of the sum assured.

*Example.* A effects a whole life policy for a sum assured of £5000 at an annual premium of £100. After paying two premiums he assigns the policy to his son but continues to pay future premiums under the contract. A dies after paying two further premiums. The value of the ‘gifts’ to his son for purposes of the exemption for ‘gifts not exceeding’ is as follows:

- On assignment (market value of policy at that date).
- On payment of third premium: $\frac{1}{3}$ (market value after three premiums paid).
- On payment of fourth premium: $\frac{1}{4}$ (market value after four premiums paid).

If it is assumed that the market value of the policy is approximately equal to the surrender value, the computation becomes

\[(say, 20) + \frac{1}{3} (say, 85) + \frac{1}{4} (say, 155)\]

which in aggregate is clearly below the £500 limit.

Therefore, if there are no other gifts to bring the aggregate value of all gifts within the five-year period above £500, the policy proceeds will be exempt from estate duty.

**Marginal reliefs.** ‘Marginal relief’ is allowed where the principal value of the estate only slightly exceeds one of the limits. If, for example, the principal value is £50,150, then the appropriate rate per cent. of duty is applied to £50,000. Thus

\[
\begin{align*}
\text{£50,000 at } 31\% & \quad \cdots \quad \cdots \quad \cdots \quad \text{£15,500} \\
\text{and to that resultant amount} & \quad \text{is added the excess} \quad \cdots \quad \cdots \quad \cdots \quad 150 \\
\text{Total duty} & \quad \text{£15,650}
\end{align*}
\]
S. 38(1), Finance Act, 1957, introduces marginal relief from duty for gifts exceeding £500 so that where, apart from exceeding the £500 limit, a gift would be exempt from duty, duty is limited to the amount of the excess. This marginal relief is confirmed by s.34(6) Finance Act, 1959.

So far as 's.34' gifts are concerned subsection (6) lays down rules for calculating the value of the gift by reference to the market value of the policy at the date of gift. It is concerned only with the question of whether the gift is exempt or not. If the gift or gifts are valued at the date of the gift at more than £500 (or £100) that value ceases to be material. The value to be used in assessing the duty payable is the value at the date of death. In applying the provision for marginal relief the question is by how much does the aggregate value of the gifts to any one donee as valued for duty purposes exceed the £500 limit. If the excess is less than the duty chargeable, the duty is abated.

*Simultaneous deaths.* When two persons such as husband and wife die simultaneously—perhaps in an accident—the law presumes in any question relating to the destination of property that the elder of the two had died first (s. 184, Law of Property Act, 1925), accordingly until recently there was a possibility of estate duty being levied twice in respect of the same property, e.g. in the case of a policy written under the Married Women's Property Act, 1882, for the benefit of wife absolutely where the husband is older than the wife. It would be dutiable but non-aggregable first; then dutiable and aggregable in respect of the second death.

The effect of s.29(1), Finance Act, 1958, is to ensure that in such cases death duty shall be levied once only. Thus there will be no liability to duty on the death of the (younger) wife in respect of the property devolving upon her estate by reason of the presumed death of her husband. But even where the deaths were not simultaneous double duty could, before the Act, have been chargeable. Suppose, for example, A, B and C were grandfather, son and grandson respectively. Under s.33 of the Wills Act 1837 a bequest by A to B will be effective even if B pre-deceases A—provided B has issue (as he has) living at the death of the testator. Before the Finance Act, 1958, estate duty would have been payable...
in respect of property passing on the death of A and further duty in respect of the same property passing at the death of B which, for this purpose only, is assumed to have taken place immediately after A’s death.

The effect of s.29(2) is that duty will still be payable in respect of A’s death but not in respect of B’s, although the property will devolve in accordance with the will or intestacy of B.

Quick succession relief. Where property becomes liable to duty on two deaths occurring within five years of each other, relief is allowed to the extent of

75% where the second death occurs within 3 months of the first graduated to
10% where the second death takes place within 5 years of the earlier one.

[s.30, Finance Act, 1958.]

VI. LIFE ANNUITIES: LIABILITY TO ESTATE DUTY

Immediate annuity. The straightforward case is where A effects an immediate annuity on his own life; for his own benefit. There is no estate duty liability at A’s death. The annuity ceases on his death and nothing ‘passes’.

But where A purchases an annuity for B by way of a gift the question arises what is the liability to duty at the date of death of the donor? Dymond (thirteenth edition) says at p. 240:

Where the deceased has made a gift of an annuity (either immediate or deferred), for the purchase of which he has himself contracted, duty is chargeable only on the value of the unexpired annuity at the date of death. Where he purchased the annuity from an insurance company, the company incurs no liability until the price is paid, and the gift is normally treated as non-aggregable.

Gift of annuity or cash? It should be noted that there must be a gift of an annuity—not of cash. So that if B enters into a contract with C for the acquisition of any property, and A pays the sum due under the contract either to B (to enable him to pay C) or direct to C, the gift will probably be regarded as one of cash which is dutiable as to the full amount of the purchase money on an aggregable basis. But what of the position where A wishes to provide an
annuity to $B$ on $B$'s life; signs a proposal form and pays the insurance company the purchase price—the particulars in the proposal naming $B$ as both ‘grantee’ and annuitant and consequently when the contract is issued, bearing no mention of $A$?

The Revenue argue that normally in this case there would be no contract in existence until $A$ has paid the purchase price to the life office. [Thus the two transactions (i) the application for the purchase of the annuity, and (ii) the issue of the annuity as a separate transaction, are artificial remembering that the consideration paid by the proposer under (i) is really the consideration for the payments under (ii).]

Assuming that is so—that there is no contract in existence until $A$ has paid the purchase price—then the gift by $A$ to $B$ is one of annuity and unless $A$ has some contingent interest in the annuity, the property taxable would be non-aggregable with other property.

Potter v. Ld. Advocate. That is the way the Estate Duty Office look at it notwithstanding the decision in the case of Potter v. Lord Advocate (1938), SLT 198. Perhaps, however, it would be more to the point to argue that if the annuity is not in existence until the payment is made, $A$ cannot give it away!

Non-aggregation position. But now, as to the non-aggregation position. It arises because, presumably, the annuity is property in which, under s. 4 of the Finance Act, 1894, the purchaser ‘never had an interest’. It is clearly so under Scottish law where a third party beneficiary may enforce the contract but not under English law for it is quite clear there that $B$, not being party to the contract, has no legal right to enforce the performance of it. [If $C$ fails to pay $B$, $A$ can sue $C$ for the amount payable under the contract and can hand over the sum recovered, to $B$.]

A beneficiary not of the class specified in s. 11 of the Married Women’s Property Act has no right either to enforce the contract or to claim the benefit for himself. So, too, with an annuity. If $A$ purchases an annuity and the annuity bond is merely written in favour of $B$, $B$ will not be able to enforce payment. But where a policy is effected strictly in accordance with s. 11, a statutory trust is created. And bearing in mind that a policy may be so worded as to create a trust in favour of a third party outside the scope of s. 11
I am satisfied that it is possible also to write an annuity bond incorporating a trust for the benefit of a third party.

**Definition of ‘trust’**. A trust is defined as an equitable obligation binding a person to deal with property over which he has control, for the benefit of other persons, any one of whom may enforce the obligation. So that where an annuity bond incorporates a trust, beneficiary $B$ may enforce payment and the resultant position is the same as in the case of a contract subject to Scottish law which merely written in favour of $B$, nevertheless enables $B$ to enforce payment.

It should be noted, under this heading, that the practice regarding single premiums remains unchanged by s. 34, Finance Act, 1959.

But $A$ must not retain any benefit—the gift must be a perfect gift—a fact which gives rise to these interesting thoughts. Under English law when property is purchased by one party in the name of another there is a presumption against a gift except as between husband and wife or parent and child and if the person in whose name the property has been bought is neither the wife nor a child of the purchaser, he or she will be presumed to hold the property in trust for the purchaser. And even in the case of a purchase by a man in the name of his wife or child the presumption of gift may be rebutted by extrinsic evidence that a gift was not intended in which event the nominee will be a trustee of the property for the purchaser.

How does this affect our problem? Well, it means, does it not, that whilst the Estate Duty Office may concede, for estate duty purposes, that the annuity is property in which the real purchaser never had an interest, the matter does not really rest there because a situation may well arise where the successors in title to the real purchaser may find themselves with a duty to challenge the validity of the transaction and to claim the annuity as against the purported donee. The result may be highly unsatisfactory.

**Annuities payable for a number of years certain**. In the case of an annuity certain, duty is payable on the death of the annuitant on the commuted value of all remaining instalments.
Deferred annuities

On the death of the annuitant during the deferred term, estate duty will be payable on the surrender, or market, value of the annuity.

Reversionary life annuity

What is the estate duty liability in respect of a contract effected by A for absolute benefit of B—payable as from the death of A during the remainder of the lifetime of B?

S. 34 of the Finance Act, 1959, relates to 'a policy of assurance'. In introducing this legislation the Chancellor said that it would apply 'both to life assurance policies and to policies providing annuities'. S. 33 of the Finance Act, 1954, has similar wording so that it might be argued that a reversionary annuity by annual premium would attract liability to estate duty under s. 34—the amount of the policy moneys on A's death within five years of the policy being effected, being the subject of an actuarial valuation of the widow's benefit—the amount actually dutiable depending on the amount of premiums paid within the statutory period. By the same token limited aggregation can be regarded as applying under s. 33 Finance Act, 1954, since of course this is a policy in which the donor never had an interest. One can go further. An annuity the title to which is vested in the reversionary annuitant from outset will be property in which the deceased never had an interest and the value thereof will be non-aggregable, accordingly, with the rest of the deceased's estate. In order to attain this favourable position a joint life and survivor annuity should be drafted as a policy providing two annuities:

(i) an annuity payable for the lifetime of the first annuitant;
(ii) a life annuity for the second annuitant commencing on the death of the first annuitant and payable throughout the lifetime of the second. [Payton v. I.R.C. (1951), 2 All E.R. 425.]

It will be remembered that s. 2(1)(c) charges to duty all gifts inter vivos, but exempts gifts bona fide made more than five years before the death so that if A should die more than five years after the policy is effected:

(a) there can be no claim under s. 2(1)(c); and
(b) no claim, either, under s.2(1)(d) since the annuity vesting in B in the lifetime of the deceased does not ‘accrue or arise on death’. [D’Avigdor Goldsmid v. I.R.C.]

Finance Act, 1956

Widows annuity purchased out of return of premiums on death

The Finance Act, 1956, permits the payment of a reversionary annuity to the individual’s widow or widower. Alternatively, an annuity for a dependent may be purchased with a return of premiums which can be made if no annuity becomes payable either to the individual or to the widow or widower.

Where as the result of the death of the policyholder a reversionary annuity does become payable under a s.22 contract then duty is exigible, but it would be regarded as an estate by itself and aggregated only to the limited extent prescribed by s.33 Finance Act, 1954. But if the original contract makes no provision for the payment of a reversionary annuity the question arises what would be the position where the policy is later endorsed to this effect or where a bachelor effects a policy containing an option, to be exercised later in respect of a future (wife) widow?

The situation appears to be envisaged by s.35 of the Act which says that:

Where the property passing...includes any contract approved...under section twenty-two...being a contract providing for an annuity to become payable on the death to any widow, widower or other dependant of that person or includes any annuity so payable under such a contract, then the contract so passing...shall be treated...as a life insurance within the meaning of subsection (2) of section thirty-three of the Finance Act, 1954...and shall be so treated whether or not the deceased at any time had an interest therein.

The principle of non-aggregation is thereby preserved notwithstanding that the policyholder has at sometime had an interest in the contract—and notwithstanding, too, any option he might have exercised during his lifetime. Thus s.39(2) of the Finance Act, 1957, says:

Where under a contract or trust scheme so approved there becomes payable on a person’s death an annuity to which...s.35 (F.A. 1956) applies,
and under the terms of the contract or scheme a sum of money might, at that person's option, have become payable instead to his personal representatives, that sum of money shall not be treated as passing on his death as property of which he was competent to dispose.

**Joint-life and survivor annuity**

Where an annuity is payable throughout two or more lives and continues to the survivors or last survivor, s.2(1)(d), Finance Act, 1894, applies, i.e. estate duty will be payable on any death on which a benefit provided by the deceased 'accrues or arises by survivorship'.

The extent of that benefit (on which, it must be remembered, s.2(1)(d) says it shall be based) depends upon two things:

(a) the way the annuity was previously enjoyed; and

(b) to what extent it was purchased or provided by the deceased.

Where, for example, A provides the purchase money for a joint life and survivor annuity; enjoys the whole of the annuity during the joint life and is the first to die, then the *whole* of the annuity 'accrues or arises' on A's death and duty is payable on the value of the annuity at that point of time. Where, on the other hand, A provides the initial purchase money but has the benefit of only one-half of the annuity during his life-time, then one-half only of the annuity accrues or arises on his death since B, the joint life, would already have been in possession of her portion before the death. In this case duty on A's death after five years from purchase would be payable only on the value of the moiety. On the other hand, if death occurred within five years of purchase duty would also be chargeable on the value of the gift to the wife.

It probably follows from the foregoing that where A and B find the purchase money in equal shares and they each enjoy one-half of the annuity during the joint life then, if they are broadly of the same age, no duty is payable on the death of the first to die for the survivor is deemed to have purchased for value one-half of the annuity during his life and a reversionary annuity of the other moiety.

The concession offered by the Finance Act, 1894, should be noted. S.15(1) provides that duty shall not be payable in respect
of a single annuity not exceeding £52 purchased or provided by
the deceased for the joint life of himself and another and the
survivor. Only the first of several such annuities granted, however,
is entitled to the concession. The Finance Act, 1935 (s. 3), extends
the exemption by providing that an annuity of less than £104
which would, apart from its amount be exempt, shall be treated for
taxation as if it were an annuity for twice its excess over £52. Such
an annuity of £60 would, for example, be taxed as an annuity of
£16.

VII. ESTATE DUTY AND PENSIONS

*Lump sum death benefits under staff pension and life assurance
schemes*

In giving judgment in the ‘Bibby’ case [re Bibby (J) & Sons
(1952), 2 All E.R. 483], Mr Justice Harman said

...as each pension scheme differs from each other pension scheme a
decision on one of them will not necessarily conclude the law as to any
other...

therefore it could be misleading to do other than state the general
principles which govern the liability to duty of sums paid to
dependants following the death of an employee who is a member
of a scheme.

It may be said, however, that since the ‘Bibby’ case it has been
the custom to provide in a scheme for an employee to nominate a
beneficiary to whom the death benefit is to be payable and if the
beneficiary survives the employee, the benefit is so paid. If, how-
ever, the employee leaves no nominated beneficiary surviving, the
death benefit is payable to his widow and if there is neither widow
nor nominated beneficiary, the benefit goes to his estate.

If, therefore, an employee leaves a widow, this situation in effect
precludes him from leaving the death benefit to somebody outside
the class of possible nominee dependants. The result of this is that
that part of the death benefit will not be subject to estate duty
because the deceased will not be competent to dispose of it
(sections 1 and 2, Finance Act, 1894). Nor is there any benefit
purchased or provided by the deceased under s.2(1)(d).
Liability to duty is therefore broadly as follows:

(a) where benefits are payable as of right to a deceased member’s legal personal representatives, they are liable to duty and aggregable whether the scheme is contributory or non-contributory. But where they are payable to a third party as a right (e.g. widow of member) then

(i) in the case of a contributory scheme—or where the benefit arises from the member surrendering part of the benefits to which he was entitled—duty will be exigible, the proceeds non-aggregable;

(ii) in the case of a non-contributory scheme duty will only be exigible and on a non-aggregable basis where the benefit to the third party arises from the surrender by the member of part of his benefits.

(b) where benefits are payable at the discretion of the employer (or of the trustees of the scheme) whether to legal personal representatives or to dependants, then

(i) member leaves no dependants

payment would fall to be made as of right to members’ legal personal representatives and the benefits will be both subject to duty and aggregable with the members’ estate—whether contributory or non-contributory.

(ii) member leaves dependant

no claim for duty.

Widows’ pensions

The estate duty position in relation to widows’ pensions arising from the exercise of options under s.379 funds, appears to be governed by the decision in

Re Tapp deceased (1959), 1 All E.R. 705, which overrules the decision in

Re Weigall’s Will Trusts (1956), 2 All E.R. 312.

‘Continuing’ and ‘separate’ annuities. Thus any widow’s pension payable out of a trust fund under a single joint life and survivor annuity will be regarded as a continuation of the deceased’s annuity. It will be dutiable accordingly as property passing under
s. 1 of the 1894 Act—and aggregable with the rest of the deceased’s estate.

It seems therefore that if the widow’s pension is to enjoy non-aggregation it must be shown in the rules of the fund as a completely separate pension from that of the member and presumably should differ from it in amount. In this case, however, the pension would seem to be dutiable under s.2(1)(d) of the 1894 Act—not section 1—since there would be an interest (a new interest) accruing or arising on the death.

The foregoing comments distinguish ‘continuing’ and ‘separate’ annuities. A further distinction should be drawn between annuities payable out of trust funds and those not so secured. In Payton’s case (Payton v. I.R.C. [1951], 2 All E.R. 425) a number of annuities were payable under two group annuity policies including two annuities to an employee and, after his death, to his widow. It was held that the annuities to the widow were merely resting on a personal contract to pay directly to the widow. Hence, whilst they were dutiable under s.2(1)(d), they were not aggregable with other property, or inter se. The member’s and the widow’s annuities were, in fact, two separate benefits, not a single continuing one. Result—no aggregation.

Limited aggregation. Where an annuity is dutiable and also constitutes property in which the deceased never had an interest, it would be necessary to determine whether it was a ‘life assurance’ or an ‘interest in a life assurance’ within the meaning of s.33(2), Finance Act, 1954. The answer to this would depend on the provisions of the particular scheme but if the answer were in the affirmative, aggregation would be governed by s.33(2)(a). If in the negative, it would form a separate estate by itself.

There is clearly no liability under s.2(1)(d) of the 1894 Act where a widow is paid a pension but has no contractual right to it. [Re Bibby (J) & Sons Ltd. (1952), 2 All E.R. 483, where, in exercise of their discretion under a non-contributory pension scheme, the directors of a company awarded the widow of a deceased employee a pension. The widow, it was decided, had no right to the pension; no beneficial interest arose on the death and there was no liability to duty.]
Valuation of widow's pension. The value of the widow’s pension for purposes of estate duty is the ‘market value’ at the date of death of the deceased employee. The ‘market value’ would take into account the age and health of the widow, the amount of the annuity and whether or not it was payable for a guaranteed period, throughout life or ceasing on re-marriage. This type of computation is of an actuarial nature and should make allowance for the very restricted market in pension annuities.

‘Salary sacrifice’ arrangements. It is not unusual for a ‘top hat’ policy to be effected where the premium is paid by the employers with a corresponding reduction in the amount of the employee’s salary.

The question whether the pension is regarded as ‘contributory’ or not is an important one inasmuch as if it is not it would seem to be free from estate duty altogether under the decision in re Bibby (J) & Sons Pension Trust Deed. What interpretation is placed on ‘non-contributory’ can only be a matter for the authorities and the present attitude of the Estate Duty Office appears to be to regard an employee as contributing

(i) where he surrenders previously existing rights under any subsisting agreement with the company;

(ii) where he agrees to make a financial contribution directly or indirectly towards the premiums.

The position is not, however, free from doubt.

Nomination of beneficiary under pension arrangements. A basic rule of the law relating to trusts is that a trust will be void for uncertainty if the persons who are to benefit from the trust money cannot be ascertained with reasonable certainty. Where, however, the trust is a discretionary one or where the trustees have a mere ‘power’, probably the same degree of preciseness is unnecessary—it is sufficient if the trustees can determine whether a person is or is not a member of a class to whom payment should be made.

It is this ‘discretionary’ trust category in to which pension funds fall so that the trustees or the employer normally have a measure of discretion regarding the persons to whom the pension fund benefits are to be paid.
The estate duty position would seem to be this. Where no individual beneficiary has an enforceable right to a pension, the pension benefits are regarded as exempt from duty ('Bibby' case) so that pension and life assurance schemes define the beneficiaries as the 'dependants or legal personal representatives of the employee as the trustees may decide'. Beneficiaries so defined obviously cannot be ascertained persons consequently there is no enforceable right to a pension and, in accordance with 'Bibby', no duty is payable.

Difficulties are now being raised by the Inland Revenue as to some of the clauses now being used in pension and life assurance scheme rules to define the destination of the benefits. They are claiming that unless they are more closely identified, duty is payable in cases where the benefits are expressed to be for 'dependants or relatives'. The Revenue support their argument by reference to the decision in I.R.C. v. Broadway Cottages (1954), which reaffirms the basic principle mentioned at the beginning of this section, viz. that where there is a trust to distribute a fund it will be void unless it is possible to ascertain with reasonable certainty the members of the class of beneficiary.

The position at the moment is therefore doubtful, consequently it could be that insured schemes should define 'dependants' relatives, etc., far more closely to avoid serious difficulties. In particular it would seem that wording such as the following describing the class in whose favour nominations may be made, should be re-examined:

The employee's wife, husband, ancestors or descendants or such other persons as the company may consider to have a moral claim upon the employee.

VIII. ESTATE DUTY [MISCELLANEOUS]

Loans on life policies

Where a trust policy is mortgaged to a life office to secure a loan and the proceeds less the amount of the loan are insufficient to pay the full amount of duty due, the Estate Duty Office will not seek to recover the balance from the life office provided the net proceeds are being paid to the persons entitled to sue therefor (i.e. the trustees—not the beneficiaries who, of course, are only entitled to enforce the equitable obligation).
At the same time, in granting such loans, offices would be wise to avoid any possibility of the trustees being left with insufficient funds to pay the duty.

The Finance Act, 1954, makes specific reference to trust policies. It provides, in effect, that loans are not to be deducted from the sum assured in calculating the amount liable to estate duty—in other words, although the net amount is paid to the trustees it is the gross figure which is to be used for estate duty purposes. An important exception is allowed, however, in the case of loans used for maintaining the policy, i.e. for paying premiums. The net amount is used, in this case only, for calculating the estate duty liability.

**Partnerships**

It is not unusual for a joint life policy to be effected by partners in a business as a means of providing capital for the survivor to purchase the share in the business of the deceased partner (i.e. of the first to die).

There are two contracts in effect. One provides for the proceeds of the policy to be payable only if A dies leaving B surviving. If this event occurs then B—the survivor—will be regarded as having acquired the policy proceeds by purchase and no estate duty will be payable on the death of A. Similarly, if B dies first no estate duty will be payable—A being regarded as acquiring the policy moneys by purchase. [s.3(1), Finance Act, 1894.]

This estate duty advantage depends, however, on the relative ages of the partners and on the respective contributions made by them to the joint premium. Thus they must both make approximately the same contribution. They must also be of the same age, although this condition would seem to be unnecessary where partners of different ages each pay a proportion of the joint premium appropriate to the age of the other. In these cases each partner would be regarded as having purchased the full amount of the sum assured and no estate duty would be payable.

There is, however, one disadvantage to all this. Neither partner is paying the whole of the premium and unless the policy is written (or endorsed) in such a way as to divide it into two separate parts
(as above) neither partner would be able to claim income tax relief in respect of the premium he pays [Wilson v. Simpson (1926), 2 KB 3]. Yet even where effect is given to this severance each separate portion of the policy would have to be so drafted as to set up a trust for the benefit of the other partner otherwise the underlying intention of the partners would be defeated.

**Advice to policyholders**

An important aspect of estate duty affecting all types of property—life policies, annuities and benefits under pension schemes—is that claims can only be determined in the light of the law existing when the relevant death takes place. It follows that it is impracticable for any life office to advise persons interested as to whether or not a claim for duty would arise at the death if a document now in draft were duly executed.

**APPENDIX**

**Rates of Estate Duty**

<table>
<thead>
<tr>
<th>Principal value of estate</th>
<th>Rate per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td><strong>Not exceeding</strong></td>
<td><strong>Nil</strong></td>
</tr>
<tr>
<td>Not exceeding 3,000</td>
<td>1</td>
</tr>
<tr>
<td>Exceeding 4,000 and not exceeding 4,000</td>
<td>2</td>
</tr>
<tr>
<td>Exceeding 5,000</td>
<td>3</td>
</tr>
<tr>
<td>Exceeding 7,500</td>
<td>4</td>
</tr>
<tr>
<td>Exceeding 10,000</td>
<td>6</td>
</tr>
<tr>
<td>Exceeding 12,500</td>
<td>8</td>
</tr>
<tr>
<td>Exceeding 15,000</td>
<td>10</td>
</tr>
<tr>
<td>Exceeding 17,500</td>
<td>12</td>
</tr>
<tr>
<td>Exceeding 20,000</td>
<td>15</td>
</tr>
<tr>
<td>Exceeding 25,000</td>
<td>18</td>
</tr>
<tr>
<td>Exceeding 30,000</td>
<td>21</td>
</tr>
<tr>
<td>Exceeding 35,000</td>
<td>24</td>
</tr>
<tr>
<td>Exceeding 40,000</td>
<td>28</td>
</tr>
<tr>
<td>Exceeding 45,000</td>
<td>31</td>
</tr>
<tr>
<td>Exceeding 50,000</td>
<td>35</td>
</tr>
<tr>
<td>Exceeding 60,000</td>
<td>40</td>
</tr>
<tr>
<td>Exceeding 75,000</td>
<td>45</td>
</tr>
<tr>
<td>Exceeding 100,000</td>
<td>50</td>
</tr>
<tr>
<td>Exceeding 150,000</td>
<td>55</td>
</tr>
<tr>
<td>Exceeding 200,000</td>
<td>60</td>
</tr>
<tr>
<td>Exceeding 300,000</td>
<td>65</td>
</tr>
<tr>
<td>Exceeding 500,000</td>
<td>70</td>
</tr>
<tr>
<td>Exceeding 750,000</td>
<td>75</td>
</tr>
<tr>
<td>Exceeding 1,000,000</td>
<td>80</td>
</tr>
</tbody>
</table>