

The United States

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The United States has the strictest and most formalised rules. A contract counts as life insurance for federal tax purposes only if it meets the definition of the Internal Revenue Code, which requires either compliance with a cash value accumulation test or with a guideline premium test and a cash value corridor. These tests ensure that the death benefit exceeds the cash value by a statutory margin that depends on the age of the insured person. A contract that fails the tests is not life insurance, with the consequence that its income is taxed annually to the policyholder. Contracts that are funded too quickly in relation to the death benefit become modified endowment contracts, whose withdrawals and loans are taxed less favourably.¹

Policies whose cash value depends on segregated assets must also meet diversification requirements. The regulations require that no single investment represent more than 55 per cent of the value of the segregated account, no two investments more than 70 per cent, no three more than 80 per cent and no four more than 90 per cent. A contract that fails the diversification requirements is not treated as life insurance or as an annuity.²

The investor control doctrine, developed by the Internal Revenue Service in a series of revenue rulings and confirmed by the courts, treats the policyholder as the owner of the segregated assets if he exercises sufficient control over them. In Revenue Ruling 2003-91, the Service described a safe harbour in which the policyholder may choose between investment strategies but may not select or recommend particular investments. In *Webber v. Commissioner*, decided by the Tax Court in 2015, a policyholder who had directed the investments of his private placement policies through the investment manager was treated as the owner of the assets and taxed on their income.³

The United States

American policyholders who hold policies with foreign insurers are also subject to an excise tax on the premiums paid to foreign insurers and to extensive reporting obligations, unless the insurer has elected to be treated as an American taxpayer. These rules explain why most European wrapper insurers do not accept American policyholders and why American clients use Bermuda or domestic carriers. They also explain why the American authorities regarded Swiss and Liechtenstein policies held by undeclared American taxpayers as an instrument of evasion.⁴

1 Notes

1. 26 U.S.C. § 7702 (definition of life insurance contract: cash value accumulation test, guideline premium test and cash value corridor) and § 7702A (modified endowment contracts). To be verified. ↩
2. 26 U.S.C. § 817(h) and Treas. Reg. § 1.817-5 (diversification requirements for variable contracts, 55/70/80/90 per cent limits). To be verified. ↩
3. Rev. Rul. 2003-91 and Rev. Rul. 2003-92; *Webber v. Commissioner*, 144 T.C. 324 (2015). To be verified. ↩
4. 26 U.S.C. § 4371 (excise tax of 1 per cent on premiums for life insurance paid to foreign insurers) and § 953(d) (election of foreign insurers to be treated as domestic corporations); reporting under FBAR and Form 8938. To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-the-united-states