

Split subscription



Wealth Planning Department
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Split subscription is a technique allowing a split sum (for example following an inheritance, a notarised donation, the sale of an asset that had already been split, etc.) to be reinvested in a life insurance policy or capitalisation contract.



Why a split upon subscription?

The attraction of this kind of subscription consists mainly in the re-investment of a sum that has previously been split and the financial and ownership advantages that this splitting brings to the usufructuary and to the bare owner:

- the usufructuary can, at all times, receive his or her income freely and without constraint;
- the re-investment of the split funds allows the rights of the bare owner to be safeguarded and made durable;
- full ownership of the policy reverts to the bare owner without novation in the event of the death of the co-subscriber in usufruct. In this case, inheritance tax is not due, in application of Article 1133 of the French General Tax Code, according to which the transition from usufruct to bare ownership does not give rise to any tax when it takes place as a result of the expiration of the time established for the usufruct or of the usufructuary's death.

Splitting applied to life insurance policies and capitalisation contracts

The situations that give rise to the subscription of a split capitalisation contract are the same as those giving rise to split subscription of a life insurance policy.

Capitalisation contracts function in the same way as life insurance policies, but without taking account of any risk associated with the duration of human life. There is therefore no insured, and no beneficiary, which simplifies split subscription of a capitalisation contract compared with a life insurance policy.

	Splitting on subscription of a life insurance policy	Splitting on subscription of a capitalisation contract
Functioning	<p>The usufructuary and the bare owner are joint subscribers.</p> <p>The insured must be the bare owner, so that on the death of the usufructuary the policy can continue in the name of the bare owner, who then becomes the full owner.</p> <p>In the event of the death of the bare owner after the death of the usufructuary, the life insurance policy having previously been split by the death of the usufructuary, the death benefit will therefore be transferred to the beneficiary(ies) designated in the beneficiary clause.</p> <p>In the event that the bare owner insured should die first, the policy is unwound, and it is therefore advisable to provide for the continuity of the usufructuary's rights to the death benefit in the beneficiary clause.</p> <p>If there is more than one bare owner, the practice is to subscribe as many contracts as there are bare owners.</p>	<p>The usufructuary and the bare owner are joint subscribers.</p> <p>There is no insured, and no beneficiary.</p> <p>If the usufructuary dies first, the bare owner becomes the sole subscriber to the policy, free of tax.</p> <p>In the event that the bare owner dies before the usufructuary, bare ownership of the policy reverts to the heirs of the bare owner.</p> <p>If there is more than one bare owner, the practice is to subscribe as many contracts as there are bare owners.</p>

	Splitting on subscription of a life insurance policy	Splitting on subscription of a capitalisation contract
Rights and obligations of the parties	<p>The rights deriving from the policy normally belong jointly to the usufructuary and the bare owner. However, there are some nuances:</p> <ul style="list-style-type: none"> • Surrenders The usufructuary may carry out surrenders of his or her own accord, but only within the limit of the income defined in advance in the agreement. Total surrender requires the bare owner's consent. The usufructuary is strongly advised to exercise the right of surrender before dying in order to avoid the risk of the funds being considered as an indirect gift to the bare owner. • Supplementary premium payments Only a supplementary premium originating from the same legal source of the split can be accepted, subject to the insurer's agreement. 	<p>Here again, the rights deriving from the policy normally belong jointly to the usufructuary and the bare owner.</p> <p>The same restrictions apply to surrenders and supplementary premium payments as for the take out of a split life insurance policy.</p>
Tax treatment	<ul style="list-style-type: none"> • Surrenders The tax treatment of surrenders does not present any specific features as regards split subscription. The usufructuary is solely liable for tax if the surrender is confined to the income generated. In the event of surrender in excess of the income, it is for the usufructuary and the bare owner to agree on how the tax is shared. • Wealth Tax (IFI) In principle, it is the usufructuary that is liable for the Wealth Tax on the value in full ownership pursuant to Article 968 of the French General Tax Code. • At the end of the usufruct The transfer of full ownership to the bare owner does not entail any declaration or taxation providing that the origin of the split is clearly established and the proof retained. 	<p>The tax treatment applicable to a split capitalisation contract is exactly the same as that applying to a split life insurance policy.</p> <p>The major difference with the life insurance contract is that the capitalisation contract can be subscribed in full ownership by a policyholder alone, and then be the subject of a donation with usufruct reserve. Consequently, the contract is not dismembered at the time of subscription, but becomes so following a dismembered donation relating to the contract.</p>
Conditions required for the validity of a split	<p>Splitting upon subscription is subject to certain conditions being met in order to be fully effective, particularly as regards tax.</p> <p>The following is a non-exhaustive list of the main conditions:</p> <ul style="list-style-type: none"> • The split must be pre-existing. In other words the sum invested in the policy must itself have been subjected to a split (by donation or succession). Failing this, there is a risk of its being reclassified for tax purposes as a disguised gift to the bare owner. • Supplementary premiums must be authorised only if they come from sums that meet the same prior split condition. 	<p>The conditions required for the split to be valid are the same.</p>

	Splitting on subscription of a life insurance policy	Splitting on subscription of a capitalisation contract
	<ul style="list-style-type: none"> • Documents evidencing the initial split must be provided (e.g. notarial attestation). • Subscription must always and necessarily be accompanied by the signing of an agreement (on the re-investment of the funds and the reversion of the usufruct) forming an integral part of the policy, in order to retrace the source of the funds and to specify the relations between usufructuary and bare owner (for example, the power to surrender and/or to switch investments, etc.) This agreement may be made under private seal or drawn up as an authenticated deed as part of the deed of gift or sale. 	
<p>Exemples</p>	<p>Mrs. X is the usufructuary of a building, bare ownership of which has fallen to Miss Y.</p> <p>Following the sale of the asset, Mrs. X wishes to receive the sale proceeds and to make sure that on her death the funds will be passed on to her daughter free of inheritance tax.</p> <p>Mrs. X and Miss Y decide (subject to the legal validity of a split subscription) to invest the sale proceeds in life insurance as per the following details.</p> <p>Joint subscribers to the policy: Mrs. X, usufructuary; Miss Y, bare owner.</p> <p>Insured: Miss Y.</p> <p>Subscribed capital: €450,000.</p> <p>Duration of the policy: whole life.</p> <p>Declaration on the source of the funds, confirming that the premium paid originates from the sale of a property belonging in usufruct to Mrs. X and in bare ownership to Miss Y. The life insurance policy constitutes the re-investment of the sale price.</p> <p>In the event of the death of Mrs X, Miss Y will become the subscriber and full owner of the life insurance policy and will pay no inheritance tax, pursuant to Article 1133 of the French General Tax Code.</p> <p>Beneficiaries in the event of the death of the insured:</p> <ul style="list-style-type: none"> • in the event that Mrs. X survives the insured: Mrs. X in usufruct, the child(ren) of the insured (Miss Y) born or to be born, living or represented, in equal parts as regards the bare ownership, the usufructuary enjoying a quasi-usufruct in respect of the sums thus paid; • in the event that Mrs. X should predecease the insured: the child(ren) of the insured (Miss Y), born or to be born, living or represented, in equal parts, or in their absence their heirs and assigns in proportion to their rights in the succession. 	<p>Mr. X has inherited, with his children, a property, the usufruct of which accrues to him and the bare ownership of which goes to his children.</p> <p>With his children he sells this property. He receives the usufruct and his children receive the bare ownership of the sale proceeds.</p> <p>Mr. X and his children re-invest the split sale proceeds by subscribing a capitalisation contract for each of them: in practice, if there are two children, two split contracts must be subscribed, each one for half of the sale proceeds. Mr. X has the usufruct of both contracts and each of his children will have bare ownership of the contract, to which (s)he is co-subscriber.</p> <p>In the most usual case, in which the usufructuary dies first, each child will become the subscriber and full owner of the capitalisation contract to which (s) he was a co-subscriber. In this case, the children will pay no inheritance tax, in application of Article 1133 of the French General Tax Code.</p> <p>In the event that one of the (bare owner) children were to die first, bare ownership of the contract would revert to his or her heirs.</p>

Conclusion

Subscribing a split life insurance policy or capitalisation contract provides a dual favourable tax treatment: that of life insurance benefits, which applies equally to capitalisation contracts (upon surrender or settlement) and that of split ownership (if the usufructuary dies first, full ownership reverts to the bare owner, free of tax (Article of the 1133 French General Tax Code)).

Nota Bene

Splitting subscription is an asset management technique that requires the maximum degree of assurance in order to guard against any possible challenges by third parties and/or by the tax authorities.

An in-depth study is therefore necessary in order to determine the possibility of re-investing split funds in a life insurance policy or capitalisation contract. Prior overall validation of the re-investment is not possible, and completion of the subscription will take place subject to the Company's prior agreement.

Note that usufructuaries and bare owners must be able at all times to prove that the split is legitimate, that it derives from a real need, that it responds to a financial and asset-related objective for each of them and that it is based on the observance of clearly enunciated precautions.

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www.baloise-international.lu

| Baloise Vie Luxembourg S.A. | 23, rue du Puits Romain | L-8070 Bertrange |
| Tél. +352 290 190-1 | Fax: +352 290 190 462 | www.baloise-international.lu |

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