Status: **legally binding**

Product Ruling

Swiss Life (Singapore) Pte. Ltd. Alpha Plus Variable Universal Life

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Terms of use of this Ruling

This Ruling has been given on the basis that the entity who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

Changes in the law

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Scheme are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

No guarantee of commercial success

The Commissioner does not sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

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Status: **legally binding**

What this Ruling is about

1. This Ruling sets out the income tax consequences for entities referred to in paragraph 4 of this Ruling in connection with an Alpha Plus Variable Universal Life insurance policy (VUL), issued by Swiss Life (Singapore) Pte. Ltd. (Swiss Life) and subject to the Swiss Life Alpha Plus General Policy Conditions (GPC).

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936), unless otherwise indicated. Terms which are defined in the GPC referred to in paragraph 10 of this Ruling have been capitalised.

3. This Ruling does not address:

- the tax consequences arising in relation to a VUL held by a Policyholder that is not a resident of Australia for tax purposes during the period on or after 1 July 2023 and on or before 30 June 2026
- the treatment of any fees or charges, including the Premium, incurred in connection with a VUL
- a Policyholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under a VUL
- the capital gains tax consequences arising from the assignment of ownership of a VUL to another entity for consideration, and
- whether a Policyholder makes forex realisation gains or losses under Division 775 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Who this Ruling applies to

4. This Ruling applies to you if you:

(a) are the Policyholder, having purchased a VUL subject to the GPC on or after 1 July 2023 and on or before 30 June 2026, and either

(i) are a resident of Australia for tax purposes at the time of purchase, or

(ii) subsequent to that purchase and during the period on or after 1 July 2023 and on or before 30 June 2026, became a resident of Australia for tax purposes

(b) are the Policyholder, having had ownership of a VUL subject to the GPC assigned to you for no consideration on or after 1 July 2023 and on or before 30 June 2026 and, at the time of, or subsequent to, that assignment and during the period on or after 1 July 2023 and on or before 30 June 2026, are a resident of Australia for tax purposes[1]

(c) are not a Policyholder referred to in subparagraphs 4(a) or (b) of this Ruling and have received all or part of a Death Benefit or Accidental Death Benefit under a VUL.

5. This Ruling does not apply to you if you are not an entity listed in paragraph 4 of this Ruling.

[1] All references to 'Policyholder' in this Ruling are a reference to a Policyholder as described in both or either of subparagraphs 4(a) or (b) of this Ruling, unless otherwise indicated.

Status: **legally binding**

Date of effect

6. This Ruling applies from 1 July 2023 to the entities specified in paragraph 4 of this Ruling that enter into a VUL from 1 July 2023 until 30 June 2026.

7. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the entity's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 10 to 26 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

Ruling

8. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 9 of this Ruling:

(a) The VUL is an 'eligible policy' for the purposes of section 26AH.

(b) Any portion of the proceeds received for the partial or full surrender of the VUL (surrender proceeds) by a Policyholder and comprising an adjustment for earnings referrable to the Policy Fund linked to the Policyholder is an amount as or by way of a 'bonus' for the purposes of section 26AH, and

(i) assessable under subsection 26AH(6) when received during the eligible period in relation to the VUL, and

(ii) is not otherwise assessable as ordinary or statutory income under the ITAA 1936 or the ITAA 1997.

(c) Where, having regard to the matters listed in paragraph 26AH(8)(b), the Commissioner is of the opinion that it would be unreasonable for subsection 26AH(6) to apply (as per subparagraph 8(b) of this Ruling) to any portion (or to part of any portion) of the surrender proceeds received by a Policyholder, and which constitutes an amount as or by way of a bonus, subsection 26AH(6) will not apply to that amount (subsection 26AH(8)).

(d) No portion of the surrender proceeds received by a Policyholder under the VUL otherwise than as or by way of a bonus shall, for the purposes of subsection 26AH(6), be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder under the VUL as or by way of a bonus.

(e) Pursuant to subsection 26AH(5), an accretion in the value of the Policy Fund linked to the Policyholder is not regarded as having been received by the Policyholder for the purposes of assessment under subsection 26AH(6).

(f) A Policyholder is not, for the purposes of assessment under subsection 26AH(6), taken to have received an amount under or in relation to an eligible policy pursuant to subsection 26AH(4) as a result of 'switching' the Underlying Investments in the Policy Fund linked to them.

(g) Where, during the eligible period in relation to a VUL, a Policyholder receives an amount of consideration in respect of an assignment of that VUL, that consideration (or part of it, as the case may be) will, for the purposes of subsection 26AH(6), be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder under the VUL as or by way of a bonus if the Commissioner is of the opinion that the consideration (or part of it) is attributable to a bonus that has accrued or has

been declared in respect of the VUL or a bonus that can reasonably be expected to accrue in respect of the VUL (subsection 26AH(12)).

(h) Pursuant to paragraph 26AH(7)(a), no portion of a Death Benefit, Accidental Death Benefit or Terminal Illness Benefit paid under a VUL is assessable under subsection 26AH(6).

(i) Where the Premium payable by a Policyholder in respect of a VUL in relation to an assurance year exceeds the Premium payable under that VUL in the immediately preceding assurance year by more than 25%, subsection 26AH(13) applies to deem the 10-year eligible period in respect of the VUL to have commenced at the beginning of the year in which the Premium was increased (rather than at the date of commencement of the period in respect of which the Initial Premium under the VUL was paid).

(j) A Death Benefit, Accidental Death Benefit or Terminal Illness Benefit received by an entity referred to in paragraph 4 of this Ruling will not be included in the assessable income of that entity under section 6-5 or 15-30 of the ITAA 1997.

(k) Table item 3 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by a Policyholder referred to in subparagraph 4(a) of this Ruling resulting from the payment to them under a VUL of the surrender proceeds, Terminal Illness Benefit, Accidental Death Benefit or Death Benefit.

(l) Table item 4 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by a Policyholder referred to in subparagraph 4(b) of this Ruling resulting from the payment to them under a VUL of the surrender proceeds, Terminal Illness Benefit, Accidental Death Benefit or Death Benefit.

(m) Any capital gain or capital loss made by an entity other than the Policyholder, resulting from the payment to them under a VUL of the Death Benefit or Accidental Death Benefit upon the death of the relevant Insured Person is disregarded pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997.

(n) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA will not apply to an entity referred to in paragraph 4 of this Ruling.

Assumptions

9. This Ruling is made on the basis of the following necessary assumptions:

(a) An entity referred to in subparagraph 4(c) of this Ruling is an Australian resident for tax purposes at the time of receipt of a Death Benefit or Accidental Death Benefit under the VUL.

(b) A Policyholder referred to in subparagraph 4(a) of this Ruling is the original owner of the VUL they purchased.

(c) All dealings between any of the entities referred to in paragraph 4 of this Ruling and Swiss Life will be at arm’s length.

(d) The scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation referred to in paragraph 10 of this Ruling.

Scheme

10. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 7 August 2023, and
- the Swiss Life Alpha Plus General Policy Conditions, dated October 2021.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

11. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which an entity referred to in paragraph 4 of this Ruling, or any associate of such entity, will be a party to which are a part of the scheme.

Overview of scheme

12. Swiss Life, registered in Singapore and licensed as a life insurer under the Insurance Act of Singapore, issues the VUL. Entities (Policyholders) capable of purchasing the VUL from Swiss Life include individuals[2] or companies and may, or may not, be residents of Australia for tax purposes at the time of issue.

13. The VUL is defined as a whole-of-life, single premium and investment-linked life insurance policy where the investment risks are borne by the Policyholder. Full details of the VUL, including the commitments and rights of both Swiss Life and the Policyholder, are contained in the Insurance Contract (also referred to as the Policy), consisting of the Insurance Application, the GPC, the Policy Schedule and all related annexes, schedules, supplements, and enclosures.

14. The VUL shall be governed and construed in accordance with the law of Singapore and the Insurance Contract will be denominated in the selected currency at the point of application, which will apply for the lifetime of the Insurance Contract.

15. The Policyholder applies for the VUL and pays the Initial Premium, referring to the single premium of at least US$1 million (or the equivalent) paid into the Insurance Contract by transfer of cash or Underlying Investments or both. Upon acceptance of the application, Swiss Life issues the VUL and, if designated by the Policyholder, appoints a Custodian and an Asset Manager. Where a Custodian of the Policy Fund is designated by the Policyholder, Swiss Life opens a separate and identifiable account with the Custodian in the name of Swiss Life into which the Premium (meaning the Initial Premium and any Additional Contribution, defined in paragraph 16 of this Ruling) shall be transferred.

16. Where an Asset Manager is designated by the Policyholder, an agreement with the Asset Manager will be set up with respect to the Policyholder's defined Investment Strategy for the management of the Policy Fund linked to the Policyholder's VUL and the Asset Manager will make all the investment decisions that are deemed necessary in managing the Policy Fund within the context of the Investment Strategy that the

[2] Individual Policyholders must be aged 18 or over when the VUL starts.

Policyholder has defined. The Policyholder may apply to Swiss Life to change the Investment Strategy during the lifetime of the VUL and to make an Additional Contribution, referring to any subsequent single premium of at least US$20,000 (or the equivalent) paid into the Insurance Contract during its lifetime by transfer of cash or Underlying Investments or both.

17. While the Policyholder is the legal owner of the VUL, Swiss Life is the owner of the Policy Fund linked to the Policyholder and the Policyholder has no legal or beneficial interest in and has no rights to deal with specific property which comprise the Underlying Investments held in the Policy Fund.

18. The Policyholder can submit a request for surrender of their VUL (either partial or full) in writing to Swiss Life. In the event of a full surrender of the VUL, the surrender proceeds payable to the Policyholder by Swiss Life shall be calculated based on the Value of Insurance less any unpaid fees and charges for the remaining calendar year, including the Surrender Charge. The Value of Insurance is defined to mean the value of the Policy Fund linked to the Policyholder at a particular time, less any accrued but unpaid Fees, taxes and other costs due (excluding the Surrender Charge). The value of the Policy Fund corresponds to the net asset value of its cash and Underlying Investments on a relevant valuation day.

19. In the event of a partial surrender of the VUL, the surrender proceeds payable to the Policyholder by Swiss Life shall be calculated based on the appropriate portion of the Value of Insurance and is subject to a minimum amount of US$20,000 (or the equivalent).

20. Surrender proceeds may be paid by bank transfer or, where requested by the Policyholder and possible, by transfer of the Underlying Investments in kind.

21. There may be one or more natural persons whose life is insured under the VUL (Insured Person), which may or may not be that of the Policyholder. Unless otherwise agreed by Swiss Life, each Insured Person must be aged 18 years or over at the commencement of the VUL. If there are multiple Insured Persons under the VUL, the VUL is issued as the Alpha Plus VUL Joint Life insurance policy and a Death Benefit becomes due upon the death of the last surviving Insured Person.

22. The Death Benefit is:

- payable by transfer of cash or the Underlying Investments (in accordance with the request of the relevant recipient), and
- calculated as the higher of the Sum Assured (meaning the minimum amount of Death Benefit coverage provided by the Insurance Contract, as stated in the Policy Schedule) or the Value of Insurance (as defined in paragraph 18 of this Ruling) on the day the Death Benefit transfer instruction is issued by Swiss Life, less any indebtedness owing to Swiss Life.[3]

23. An Accidental Death Benefit is payable upon the death of the last surviving Insured Person where that Insured Person was aged 65 years old or under at the time of death and the death results solely and directly from bodily injury that occurs within 90 days from the date of accident, referring to a sudden, unintentional and unexpected event causing bodily injury that is violent, external and visible in nature (and is not caused by sickness, disease or gradual physical or mental changes). The Accidental Death Benefit is payable

[3] The Death Benefit amount:
- is subject to any deduction pursuant to section 21(2) of the GPC where a partial surrender request has been made or surrender proceeds have been paid within 12 months of the date of death of the Insured Person or the date of death claim, and
- does not apply to Alpha Plus VUL Fixed Coverage under which the benefit is calculated as the Value of Insurance plus a fixed coverage amount.

by transfer of cash and will equal US$500,000 or US$1 million (or the equivalent) depending on the extent of the Sum Assured, less any indebtedness owing to Swiss Life.

24. A Terminal Illness Benefit is payable to the Policyholder upon the conclusive diagnosis of an illness that is expected to result in the death of the last surviving Insured Person within 12 months. The Terminal Illness Benefit is effectively a prepayment of the Death Benefit, is payable by transfer of cash and is limited to the lower of US$2 million (or the equivalent) or the Sum at Risk (referring to the higher of the difference between the Sum Assured and the Value of Insurance, or zero), less any indebtedness owing to Swiss Life.[4] The Sum Assured in respect of the VUL is reduced by the amount of the Terminal Illness Benefit paid and will be reflected under a revised Policy Schedule.

25. The VUL is non-participating and will not participate or share in the profits or surplus earnings of the accounts of Swiss Life. Swiss Life will not pay dividends to, or in respect of, the VUL.

26. The Policyholder may assign their VUL at any time. Where the Policyholder assigns their VUL, the Insured Persons and any nominated Beneficiary remain the same.

Commissioner of Taxation
8 November 2023

[4] This amount of the Terminal Illness Benefit is subject to any deduction pursuant to subsection 22(4) of the GPC where a partial surrender request has been made, or surrender proceeds have been paid, within 12 months of the date of diagnosis of the terminal illness or the date of the terminal illness claim.

Status: **not legally binding**

Appendix – Explanation

This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

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Application of section 26AH to the Alpha Plus Variable Universal Life

27. All, or part of, amounts received as, or by way of, bonuses under certain life assurance policies (eligible policies) which otherwise would not be included in the assessable income of the recipient, are included in the assessable income of the recipient pursuant to subsection 26AH(6) when received within 10 years of the date on which the first or only premium paid under the policy was paid (eligible period).

The Alpha Plus Variable Universal Life is an eligible policy

28. An 'eligible policy' in respect of which section 26AH may apply is defined in subsection 26AH(1) to mean:

> … a life assurance policy in relation to which the date of commencement of risk is after 27 August 1982, other than a funeral policy (as defined in the *Income Tax Assessment Act 1997*) issued on or after 1 January 2003.

29. The term 'life assurance policy' is defined in subsection 6(1) as having the meaning given to life insurance policy by the ITAA 1997. A life insurance policy is defined in subsection 995-1(1) of the ITAA 1997 as having the meaning given to the expression 'life policy' in section 9 of the *Life Insurance Act 1995* (LIA 1995).

30. A contract of insurance that provides for the payment of money on the death of a person and a contract (whether or not it is a contract of insurance) that constitutes an investment-linked contract both constitute a life policy under paragraphs 9(1)(a) and (g) of the LIA 1995.

Status: **not legally binding**

31. Some of the more general features of an investment-linked policy are described in paragraphs 5 and 6 of Taxation Ruling IT 2346 *Income tax: bonuses paid on certain life assurance policies – section 26AH – interpretation and operation* as follows:

> 5. … A contract providing a death benefit, and an investment account the value of which is directly linked to the performance of a specific investment portfolio. The value of the policyholder's interest will rise and fall with the movements in the value of the portfolio. …
>
> 6. Premiums in respect of an unbundled policy may be paid in a lump sum or annually, or the policyholder may elect to vary the amount of the premium by making additional payments under the policy at any time. A further feature of these types of policies is that they generally allow the policyholder to surrender a part of the policy at any time (a 'partial surrender').

32. A VUL issued to a Policyholder referred to in paragraph 4 of this Ruling is an eligible policy for the purposes of section 26AH as it:

- has a date of commencement of risk, being the date of commencement of the period in respect of which the first premium paid under the VUL is paid, which is after 27 August 1982
- is not a 'funeral policy', as defined in subsection 995-1(1) of the ITAA 1997, and
- is a life assurance policy by virtue of it constituting a life policy pursuant to paragraphs 9(1)(a) and (g) of the LIA 1995.

Treatment of benefits received under the Alpha Plus Variable Universal Life

33. The term 'bonus' is not defined for the purposes of section 26AH but is explained at paragraph 8 of IT 2346 in the context of 'more traditional policies' (for example, endowment policies) as a guaranteed addition to the amount insured, payable when the amount insured is payable and representing both a form of participation by the policyholder in the issuing company's profits and a share in the surpluses derived by the issuing company during the period the policy is in force. Such a bonus, where received under an eligible policy that matures or is surrendered, forfeited or otherwise terminated within the eligible period of 10 years after commencement, falls within the scope of section 26AH.

34. The VUL, being an investment-linked policy, may be characterised as an unbundled life assurance contract (also referred to as an 'unbundled policy' in IT 2346). In the context of unbundled policies, paragraph 9 of IT 2346 explains:

> In the case of unbundled policies, the concept of bonuses representing the profit or gain element passed on to the policyholder is maintained for the purposes of section 26AH. For example, where a policy is linked to the purchase and sale of investment units, the profit derived on the sale of those units is, when paid to the policyholder, regarded as a payment by way of a bonus.

35. The portion of the surrender proceeds comprising an adjustment for earnings referrable to the Policy Fund and paid by Swiss Life to a Policyholder is considered to be a bonus. This amount provides the Policyholder with participation in the profits of Swiss Life as derived from the performance of the Underlying Investments forming part of the Policy Fund linked to the Policyholder (but owned by Swiss Life) during the period the Policyholder's VUL is in force.

Status: **not legally binding**

36. Payments of a bonus by Swiss Life from the Policy Fund linked to a VUL are therefore subject to section 26AH and are not assessable under any other provision of the ITAA 1936 or the ITAA 1997. Specifically, a bonus received under a VUL is included as assessable income of a Policyholder pursuant to subsection 26AH(6) to the following extent:

- in full, where it is received during the first 8 years of the eligible period
- as to two-thirds of the amount received, where it is received during the ninth year of the eligible period
- as to one-third of the amount received, where it is received during the 10th year of the eligible period, and
- nil, where it is received after the 10th year of the eligible period.

37. To ensure that bonuses or other amounts in the nature of bonuses are not subject to tax unless the total amount received by the policyholder under an eligible policy (that is, amounts previously received (including any amounts of bonus) and the surrender value at the time of forfeiture, surrender or other termination) exceeds the premiums paid under that eligible policy, subsection 26AH(8) provides (subject to any other matters the Commissioner considers relevant) a discretion for the Commissioner to exclude from assessable income the whole, or part of, an amount received as, or by way of, a bonus by reason of the forfeiture, surrender or other termination of an eligible policy, and which would otherwise be included in assessable income by the application of subsection 26AH(6) (see paragraph 10 of IT 2346).

38. Where a policyholder receives an amount under an eligible policy within the eligible period otherwise than as, or by way of, a bonus, that amount is assessable under subsection 26AH(6) as if it had been received as a bonus to the extent that, in the Commissioner's opinion, it represents a bonus that has accrued or been declared, or a bonus that can reasonably be expected to accrue (see subsection 26AH(9)). No portion of the surrender proceeds received by a Policyholder under a VUL otherwise than as or by way of a bonus (as referred to in subparagraph 8(b) of this Ruling) shall be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder as if it had been received as or by way of a bonus.

39. Subject to subsection 26AH(5), subsection 26AH(4) operates to ensure that where an amount payable under an eligible policy is reinvested or otherwise dealt with on behalf of or at the direction of the policyholder, they are taken to have received that amount under or in relation to that policy. Subsection 26AH(6) does not, however, apply to bonuses that are merely notionally credited during the life of the policy but cannot actually be received until it ends. In this regard, subsection 26AH(5) provides that subsection 26AH(4) does not apply to an amount in relation to an eligible policy that is reinvested or otherwise dealt with on behalf of or at the direction of the policyholder so as to increase the surrender or maturity value that might reasonably be expected to be received under the policy.

40. An accretion in the value of the Policy Fund linked to a Policyholder constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policyholder on partial or full surrender of their VUL, and pursuant to subsection 26AH(5) is not regarded as having been received by the Policyholder for the purposes of assessment under subsection 26AH(6).

41. A facility which allows policyholders of investment-linked policies to reclassify or vary the class or classes of assets supporting the policy is known as 'switching'. The rights or entitlements of the policyholder under the policy remain unchanged following exercise of the switching option, except that the future value of the policy will be calculated by reference to different assets, and subsection 26AH(4) does not apply in the manner explained in paragraph 39 of this Ruling – see Taxation Determination TD 94/82 *Income tax: does section 26AH of the Income Tax Assessment Act 1936 apply when investment options are 'switched' under an eligible policy?* Any change of Investment Strategy that results in switches of the Underlying Investments forming part of the Policy Fund linked to a Policyholder involves the mere variation in the calculation base of their VUL such that subsection 26AH(4) does not apply, for the purposes of assessment under subsection 26AH(6), to take the Policyholder to have received an amount under or in relation to their VUL.

42. Where, during the eligible period of an eligible policy, a policyholder receives an amount of consideration in respect of the assignment of that eligible policy, that amount is assessable under subsection 26AH(6) as if it had been received as a bonus to the extent that, in the Commissioner's opinion, it is attributable to a bonus that has accrued or been declared, or a bonus that can reasonably be expected to accrue (subsections 26AH(9) and (12)). Any consideration received by a Policyholder in respect of an assignment of their VUL during its eligible period will, for the purposes of subsection 26AH(6), be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder as or by way of a bonus to the extent that the consideration received is attributable to a bonus.

43. Pursuant to paragraph 26AH(7)(a), subsection 26AH(6) does not apply to assess an amount received under an eligible policy where the amount is received in consequence of the death of the person on whose life the policy was effected or where the amount is received in consequence of an illness suffered by the person on whose life the policy was effected. Any amount as, or by way of, a bonus received under a VUL (as a portion of the Death Benefit, Accidental Death Benefit or Terminal Illness Benefit) in consequence of the death or illness of the relevant Insured Person, as applicable, is therefore not assessable under subsection 26AH(6).

Effect of increased premiums on eligible period

44. As an anti-avoidance measure, subsection 26AH(13) provides for a substituted date of commencement to apply if premiums increase by a certain amount from year to year. Where the premium payable under an eligible policy in relation to an assurance year exceeds by more than 25% the premium payable under the policy in the immediately preceding assurance year, the policy is deemed to have commenced at the beginning of the year in which the premium was increased. The effect of subsection 26AH(13) is to cause the 10-year eligible period in respect of an eligible policy to run from the commencement of that new period rather than from the date upon which the risk was first insured.

45. Where the premium payable is at the policyholder's discretion, the premium payable in relation to an assurance year is the total amount paid on the policy during that year (paragraph 19 of IT 2346). In relation to a VUL, the amount invested across any assurance year (if any) is at the discretion of the Policyholder (subject to minimum amounts). Therefore, in relation to the VUL, the premium payable for an assurance year is the total Initial Premium or Additional Contributions made in an assurance year.

46. Where the Investment or Investments payable by a Policyholder in respect of VUL in relation to an assurance year exceeds the Premium payable under that VUL in the immediately preceding assurance year by more than 25%, the 10-year eligible period in

respect of the VUL is deemed by application of subsection 26AH(13) to have commenced at the beginning of the year in which the Premium was increased, rather than at the date of commencement of the period in respect of which the first Premium (the Initial Premium) under the VUL was paid.

47. Where the Premium payable by a Policyholder in respect of a VUL in relation to each assurance year does not exceed the Premium payable under that VUL in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the VUL, for the purposes of the application of subsection 26AH(6), continues to run from the date of commencement of the period in respect of which the first Premium under the VUL was paid.

Benefits not assessable as ordinary income under section 6-5 of the ITAA 1997

48. Section 6-5 of the ITAA 1997 includes income according to ordinary concepts (ordinary income) in assessable income. Income according to ordinary concepts refers to an accepted usage of the word 'income' and income that Courts have determined is ordinary income. The characterisation to be accorded to a Death Benefit, an Accidental Death Benefit and a Terminal Illness Benefit payable under the VUL in respect of the Insured Person's death or illness, as applicable, will depend on the purpose of the payments and the circumstances of their receipt (*Tinkler v Commissioner of Taxation* [1979] FCA 136 per Brennan J).

49. Policyholders are issued with a VUL with the intention for them, their nominated Beneficiary or deceased estate, as applicable, to receive the Death Benefit, Accidental Death Benefit or Terminal Illness Benefit on the happening of the death or terminal illness of the relevant Insured Person. The Death Benefit, Accidental Death Benefit or Terminal Illness Benefit payable in the event of the Insured Person's death or terminal illness is intended to compensate the relevant recipient for the loss of earning capacity of the Insured Person.

50. Ordinarily, the receipt of insurance proceeds in the form of a lump sum would not come within the term of ordinary income where the payment has been made in the event of death or for deprivation or impairment of earning capacity (*The Commissioner of Taxation of the Commonwealth of Australia v Slaven, Robyn Leanne* [1984] FCA 17). Such payments are capital in nature.

51. Accordingly, any Death Benefit, Accidental Death Benefit or Terminal Illness Benefit paid by Swiss Life under the VUL is a capital receipt and is not assessable under section 6-5 of the ITAA 1997 as ordinary income.

Benefits not assessable as statutory income under section 15-30 of the ITAA 1997

52. Section 6-10 of the ITAA 1997 includes statutory income in assessable income (that is, amounts that are not ordinary income but are included in assessable income by another provision). Section 15-30 of the ITAA 1997 is one such provision which operates to include in your assessable income an amount received by way of insurance or indemnity for the loss of an amount if the lost amount would have been included in your assessable income and the amount received is not assessable as ordinary income under section 6-5 of the ITAA 1997.

53. Whether a payment received by way of insurance or indemnity is subject to tax under paragraph 26(j) (the predecessor to section 15-30 of the ITAA 1997) was considered in *Commissioner of Taxation v. Inkster, H M* [1989] FCA 626 and *Groves v United Pacific Transport Pty. Ltd. and Thompson* [1965] Qd R 62. As the compensation paid under these

cases was for the loss of earning capacity, as distinct from the loss of income which would have been assessable income if the loss had not occurred, it was held that the payments were not subject to assessment under paragraph 26(j). For paragraph 26(j) to have applied, it would have been necessary to demonstrate that an actual loss of income suffered by the insured had been indemnified.

54. The Death Benefit, Accidental Death Benefit and Terminal Illness Benefit paid by Swiss Life under the VUL are payments received by way of insurance. However, these benefits are for the loss of the Insured Person's earning capacity and not for the loss of income. Any payment received to compensate for the loss of earning capacity is a capital receipt and does not fall to be assessed under section 15-30 of the ITAA 1997.

Capital gain or capital loss from payments under the Alpha Plus Variable Universal Life disregarded

55. Under subsection 108-5(1) of the ITAA 1997, a CGT asset is any kind of property or a legal or equitable right that is not property. The contractual rights of a Policyholder and any other entity entitled to receive all or part of a Death Benefit or Accidental Death Benefit under the VUL are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

56. Where Swiss Life makes a payment of the surrender proceeds or Terminal Illness Benefit in satisfaction of a Policyholder's contractual rights under a VUL, their ownership of those rights is discharged or satisfied. Similarly, where Swiss Life makes a payment of a Death Benefit or Accidental Death Benefit in satisfaction of a Policyholder's or other entity's contractual rights under the VUL, as applicable, their ownership of those rights is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b) of the ITAA 1997).

57. The Policyholder or another entity with contractual rights to receive a payment of a Death Benefit or Accidental Death Benefit under the VUL, as applicable, makes a capital gain from this CGT event if their capital proceeds from the ending of the ownership of their asset are more than the asset's cost base or, alternatively, a capital loss if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3) of the ITAA 1997).

58. Section 118-300 of the ITAA 1997 exempts certain capital gains and losses made in respect of a policy of insurance on the life of an individual. The meaning to be given to the expression 'policy of insurance on the life of an individual' includes, but is not limited to, life insurance policies within the common law meaning of that term. It can apply to other life insurance policies as defined in subsection 995-1(1) of the ITAA 1997 but only to the extent that those policies provide for a sum of money to be paid if an event happens that results in the death of an individual. Relevantly, a policy of insurance on the life of an individual also includes a life insurance policy to the extent that it provides for the payment of a terminal illness benefit (Taxation Determination TD 2007/4 *Income tax: capital gains tax: is a 'policy of insurance on the life of an individual' in section 118-300 of the Income Tax Assessment Act 1997 limited to a life insurance policy within the common law meaning of that expression?*).

59. Table item 3 of subsection 118-300(1) of the ITAA 1997 provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under a policy of insurance on the life of an individual is disregarded where that CGT event happens to the original owner of the policy (other than the trustee of a complying superannuation entity).

Status: **not legally binding**

60. As an entity to which the VUL is first issued, a Policyholder referred to in subparagraph 4(a) of this Ruling is regarded as an original owner of a policy of insurance on the life of an individual. Accordingly, that Policyholder is entitled under table item 3 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment by Swiss Life of the surrender proceeds, Death Benefit, Accidental Death Benefit or Terminal Illness Benefit.

61. Table item 4 of subsection 118-300(1) of the ITAA 1997 provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under a policy of insurance on the life of an individual is disregarded where that CGT event happens to an entity that acquired the interest in the policy for no consideration.

62. On the assignment of ownership of a VUL for no consideration to a Policyholder referred to in subparagraph 4(b) of this Ruling, that Policyholder acquires an interest in the VUL for no consideration. A Policyholder referred to in subparagraph 4(b) of this Ruling is therefore entitled under table item 4 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment by Swiss Life of the surrender proceeds, Death Benefit, Accidental Death Benefit or Terminal Illness Benefit.

63. Where, on the death of the relevant Insured Person, an entity other than the Policyholder is entitled to receive all or part of the Death Benefit or Accidental Death Benefit, they acquire an interest in the VUL for no consideration. That entity is therefore entitled under table item 4 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment of a Death Benefit or Accidental Death Benefit by Swiss Life.

Status: **not legally binding**

References

Related Rulings/Determinations:

IT 2346; TD 94/82; TD 2007/4

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Cases relied on:

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- Groves v United Pacific Transport Pty. Ltd. and Thompson [1965] Qd R 62
- The Commissioner of Taxation of the Commonwealth of Australia v Slaven, Robyn Leanne [1984] FCA 17; 1 FCR 11; 84 ATC 4077; 15 ATR 242; 52 ALR 84
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