



Status: **legally binding**

Product Ruling

St. James's Place Fund Administration Bond and Portfolio Administration Bond

❶ 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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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 the following Bonds¹:
 - a Fund Administration Bond (FAB) issued by St. James's Place International plc (SJPI) and subject to the Fund Administration Bond Terms and Conditions, or
 - a Portfolio Administration Bond (PAB) issued by SJPI and subject to the Portfolio Administration Bond Terms and Conditions.
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 Terms and Conditions² referred to in paragraph 11 of this Ruling have been capitalised.
3. This Ruling does not address:
 - the tax consequences arising in relation to a Bond held by a Planholder³ 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 incurred in connection with a Bond
 - the assessability (or otherwise) of amounts received under a Bond, other than under
 - section 26AH, and
 - the capital gains tax regime in Part 3-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - a Planholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under a Bond
 - the capital gains tax consequences arising from the assignment of ownership of a Bond to another entity for consideration, and
 - whether a Planholder makes forex realisation gains or losses under Division 775 of the ITAA 1997.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - (a) are the Planholder, having purchased a Bond subject to the Terms and Conditions 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

¹ All references to 'Bond' and 'Bonds' in this Ruling are a reference to both or either of a Fund Administration Bond or a Portfolio Administration Bond.

² All references to 'Terms and Conditions' in this Ruling are a reference to both or either of the Fund Administration Bond Terms and Conditions or the Portfolio Administration Bond Terms and Conditions.

³ All references to 'Planholder' in this Ruling are a reference to the holder of either a FAB or a PAB.

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- (b) are the Planholder, having had ownership of a Bond subject to the Terms and Conditions assigned to you for no consideration on or after 1 July 2023 or 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 purposes⁴, or
 - (c) are not a Planholder referred to in subparagraphs 4(a) or (b) of this Ruling and have received all or part of a Death Benefit under a Bond.
5. This Ruling does not apply to you if you are not an entity listed in paragraph 4 of this Ruling.

Requirements of the Superannuation Industry (Supervision) Act 1993

6. This Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993*. The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Ruling as to whether investment in this scheme may contravene the provisions of the *Superannuation Industry (Supervision) Act 1993*.

Date of effect

7. This Ruling applies from 1 July 2023 to the entities specified in paragraph 4 of this Ruling that either enter into a Bond or receive a Death Benefit under a Bond from 1 July 2023 until 30 June 2026.
8. 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 11 to 28 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

Ruling

9. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 10 of this Ruling:
- (a) The Bond is an 'eligible policy' for the purposes of section 26AH.⁵
 - (b) Any portion of the proceeds received for the partial or full withdrawal of the Bond (the surrender proceeds) by a Planholder and comprising an adjustment for earnings referable to the assets in which the Bond Fund is

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

⁵ As per paragraphs 15 and 16 of this Ruling, the Terms and Conditions permit a Bond to be set up as a number of identical contracts with the Terms and Conditions applying separately to each contract. Each contract therefore constitutes a separate eligible policy and the provisions in section 26AH apply separately to each contract.

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invested 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 Bond, 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 9(b) of this Ruling) to any portion (or to part of any portion) of the surrender proceeds received by a Planholder, 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 Planholder under the Bond 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 Planholder under the Bond as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in the value of the Planholder's Bond, linked to the performance of the assets in which the Bond Fund is invested, is not regarded as having been received by the Planholder for the purposes of assessment under subsection 26AH(6).
- (f) A Planholder 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' their investment between assets.
- (g) Where, during the eligible period in relation to a Bond, a Planholder receives an amount of consideration in respect of an assignment of that Bond, 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 Planholder under the Bond 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 Bond or a bonus that can reasonably be expected to accrue in respect of the Bond (subsection 26AH(12)).
- (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under a Bond is assessable under subsection 26AH(6).
- (i) Where the Investment or Investments payable by a Planholder in respect of a Bond in relation to an assurance year exceeds the Investments payable under that Bond 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 Bond to have commenced at the beginning of the year in which the Investment was increased (rather than at the date of commencement of the period in respect of which the first Investment under the Bond was paid).
- (j) Table item 3 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by a Planholder referred to in subparagraph 4(a) of this Ruling (where they are not the trustee of a complying superannuation entity) resulting from the payment to them under a Bond of the surrender proceeds or a Death Benefit.

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- (k) Table item 4 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by a Planholder referred to in subparagraph 4(b) of this Ruling resulting from the payment to them under a Bond of the surrender proceeds or a Death Benefit.
- (l) Any capital gain or capital loss made by an entity other than the Planholder, resulting from the payment to them under a Bond of the Death Benefit upon the death of the relevant Life Assured is disregarded pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997.
- (m) 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

10. 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 under the Bond.
 - (b) A Planholder referred to in subparagraph 4(a) of this Ruling is the original owner of the Bond they purchased.
 - (c) The scheme will be executed in the manner described in the documents referred to in paragraph 11 of this Ruling and in the Scheme section of this Ruling.
 - (d) All dealings between any of the entities referred to in paragraph 4 of this Ruling and SJPI will be at arm's length.

Scheme

11. The scheme is identified and described in the following:
- application for a product ruling as constituted by documents and information received on 18 March 2024 and 17 April 2024
 - Fund Administration Bond Terms and Conditions received on 18 March 2024
 - Portfolio Administration Bond Terms and Conditions received on 17 April 2024 and effective as of 6 April 2024, and
 - Portfolio Administration Bond Terms and Conditions received on 21 May 2024 and effective until 5 April 2024.

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

12. 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.

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Overview of scheme

13. SJPI, a company registered in Ireland, offers the FAB and PAB on broadly similar terms and conditions. Both Bonds are governed by and should be construed in accordance with the laws of Ireland.
14. Entities (Planholders) capable of investing in a Bond alone or jointly from SJPI includes individuals⁶, companies or trusts and may, or may not, be residents of Australia for tax purposes at the time of issue.
15. The Bond is an investment-linked life insurance policy which may be set up as a single contract or as a number of identical individual contracts with different Plan Numbers.
16. Full details of the Bond, including the commitments and rights of both SJPI and a Planholder, are contained in the Terms and Conditions which, together with the Schedule and the declarations the Planholder makes when they invest or provide Investment Recommendations, form the contract between SJPI and the Planholder. Where the Bond is set up as more than one identical contract, the Terms and Conditions apply separately to each contract.
17. The FAB and PAB are similarly structured but have certain differing features such as the range of assets which may be invested in.

Bond Funds and assets

18. The Planholder makes an Initial Investment at the time the Bond is set up and may make Additional Investments at any time. Each Additional Investment made will be spread evenly across all the identical contracts within the Bond. All Investments are subject to minimum amounts.
19. Through the Bond Fund, the Planholder is able to invest in a range of assets selected by them, including External Funds, Internal Funds, Transaction Accounts, Term Deposits and (in the case of the PAB only) Individual Securities.⁷ The Investments are made via the Planholder's Bond Fund which is an account used solely for the purpose of calculating the sum of the value of all assets held under the Bond (the Portfolio Value or the Realisation Value, as required). Each time a Planholder makes an Investment SJPI will add it to the Planholder's Bond Fund on the Investment Date.
20. The Realisation Value of the Bond Fund is used by SJPI when calculating Benefits that are available under the Bond upon partial or full withdrawal of the Bond or the death of the relevant Life Assured. The value of the Benefits payable under the Bond is directly linked to the performance of the assets in which the Bond Fund is invested.
21. The Planholder can request to change (switch) some, or all of the assets held in their Bond Fund.
22. The Planholder has no legal or beneficial rights to the Bond Fund or its underlying assets.

⁶ Individual Planholders must be 18 years old or over when the Bond starts.

⁷ An External Fund refers to a Fund offered by an entity other than SJPI and an Internal Fund refers to a Fund offered by SJPI. Individual Securities comprise of debt securities, bonds, loans and shares that are traded regularly on an acceptable stock exchange.

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Full and partial withdrawal

23. The Bond will end on the earliest of the full withdrawal of all the money from the Bond or the death of the relevant Life Assured and the payment of the Death Benefit.

24. The Planholder can withdraw all their money from their Bond by notifying SJPI in writing. Upon full withdrawal of the money from the Bond, the Realisation Value of the Bond Fund (after deducting any Early Withdrawal Charge) will be paid by SJPI to the Planholder and the Bond will come to an end.

25. The Planholder can also partially withdraw their money from their Bond at any time, either on a regular basis (at least yearly), or on a one-off basis by completing a withdrawal request form. At the Planholder's request:

- all the money invested in one or more of the identical contracts within their Bond can be withdrawn on a one-off basis, in which case SJPI will pay the Planholder the Realisation Value of the Bond Fund allocated to those identical contracts (after deducting any Early Withdrawal Charge) and those contracts will come to an end, or
- the amount to be withdrawn, either on a regular or one-off basis, and any Early Withdrawal Charge can be spread evenly across all of the identical contracts within the Bond.

26. The amount withdrawn and the amount remaining in the Bond following a partial withdrawal are subject to minimum amounts. SJPI reserves the right to bring the Bond to an end and pay the Planholder the Realisation Value of the Bond Fund (after deducting any Early Withdrawal Charge) where the Planholder's request for a partial withdrawal takes the amount remaining in the Bond below the minimum amount.

Death Benefit

27. At the outset of the Bond, the Planholder can choose between 1 and 10 Lives Assured which may or may not include the Planholder. Unless otherwise agreed by SJPI, each Life Assured must be 17 years old or over at the commencement of the Bond.

28. The Death Benefit is payable, and the Bond will come to an end on the death of the last to die of the Lives Assured. The Death Benefit is 101% of the Realisation Value of the Bond Fund and will be paid to the Planholder or the Planholder's estate, as applicable.

Commissioner of Taxation

19 June 2024

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 Fund Administration Bond and Portfolio Administration Bond

29. 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 Fund Administration Bond and the Portfolio Administration Bond are an eligible policy

30. 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.

31. 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).

32. 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.

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33. 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').

34. A Bond issued to a Planholder 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 Bond 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 Fund Administration Bond and the Portfolio Administration Bond

35. 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.

36. The Bond, 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.

37. The portion of the surrender proceeds comprising an adjustment for earnings referable to the assets in which the Bond Fund is invested and paid to a Planholder is considered to be a bonus. This amount provides the Planholder with participation in the profits of SJPI as derived from the performance of the assets selected for investment by the Planholder (but owned by SJPI) during the period the Planholder's Bond is in force.

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38. Payments of a bonus by SJPI from the assets linked to a Bond 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 Bond is included as assessable income of a Planholder 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.

39. 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).

40. 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 Planholder under a Bond otherwise than as or by way of a bonus (as referred to in subparagraph 9(b) of this Ruling) shall be deemed pursuant to subsection 26AH(9) to have been received by the Planholder as if it had been received as or by way of a bonus.

41. 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.

42. An accretion in the Portfolio Value of a Planholder's Bond Fund constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Planholder on part or total withdrawal of their Bond, and pursuant to subsection 26AH(5) is not regarded as having been received by the Planholder for the purposes of assessment under subsection 26AH(6).

43. 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 41 of this Ruling – see Taxation Determination TD 94/82 *Income*

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tax: does section 26AH of the Income Tax Assessment Act 1936 apply when investment options are 'switched' under an eligible policy? Switches of the assets of the Planholder under a Bond involves the mere variation in the calculation base of the Bond such that subsection 26AH(4) does not apply, for the purposes of assessment under subsection 26AH(6), to take the Planholder to have received an amount under or in relation to their Bond.

44. 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 Planholder in respect of an assignment of their Bond 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 Planholder as or by way of a bonus to the extent that the consideration received is attributable to a bonus.

45. Pursuant to subparagraph 26AH(7)(a)(i), 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. Any amount as, or by way of, a bonus received under a Bond (as a portion of the Death Benefit) in consequence of the death of the relevant Life Assured is therefore not assessable under subsection 26AH(6).

Effect of increased premiums on eligible period

46. 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.

47. '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 Bond, the amount invested across any assurance year (if any) is at the discretion of the Planholder (subject to minimum Investment amounts). Therefore, in relation to the Bond, the premium payable for an assurance year is the total Investment made in an assurance year.

48. Where the Investment or Investments payable by a Planholder in respect of a Bond in relation to an assurance year exceeds the Investments payable under that Bond in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the Bond is deemed by application of subsection 26AH(13) to have commenced at the beginning of the year in which the Investments were increased, rather than at the date of commencement of the period in respect of which the first Investment (the Initial Investment) under the Bond was made.

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49. Where the Investment or Investments payable by a Planholder in respect of a Bond in relation to each assurance year does not exceed the Investments payable under that Bond in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the Bond, 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 Investment under the Bond was made.

Capital gain or capital loss from payments under the Fund Administration Bond and the Portfolio Administration Bond disregarded

50. 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 Planholder and any other entity entitled to receive all or part of a Death Benefit under the Bond are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

51. Where SJPI makes a payment of the surrender proceeds in satisfaction of a Planholder's contractual rights under a Bond, their ownership of those rights is discharged or satisfied. Similarly, where SJPI makes a payment of a Death Benefit in satisfaction of a Planholder's or other entity's contractual rights under the Bond, 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).

52. The Planholder or another entity with contractual rights to receive a payment of a Death Benefit under the Bond, 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).

53. 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 (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?*).

54. 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).

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55. As an entity to which the Bond is first issued, a Planholder 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 Planholder (where they are not the trustee of a complying superannuation entity⁸) 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 SJPI of either the surrender proceeds or a Death Benefit.

56. 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.

57. On the assignment of ownership of a Bond for no consideration to a Planholder referred to in subparagraph 4(b) of this Ruling, that Planholder acquires an interest in the Bond for no consideration. A Planholder 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 SJPI of either the surrender proceeds or a Death Benefit.

58. Where, on the death of the relevant Life Assured, an entity other than the Planholder is entitled to receive all or part of the Death Benefit, they acquire an interest in the Bond 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 by SJPI.

⁸ Any capital gain or capital loss a Planholder that is the trustee of a complying superannuation entity makes under section 104-25 of the ITAA 1997 from the receipt of a payment of either the surrender proceeds or a Death Benefit is disregarded pursuant to table item 5 of subsection 118-300(1) of the ITAA 1997.

Status: **not legally binding**

References

Related Rulings/Determinations:

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

- ITAA 1936 160AAB
- ITAA 1936 Pt IVA
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- ITAA 1997 118-300
- ITAA 1997 118-300(1)
- ITAA 1997 Div 775
- ITAA 1997 995-1(1)
- SISA 1993
- Life Insurance Act 1995 9
- Life Insurance Act 1995 9(1)(a)
- Life Insurance Act 1995 9(1)(g)

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 26AH
 - ITAA 1936 26AH(1)
 - ITAA 1936 26AH(4)
 - ITAA 1936 26AH(5)
 - ITAA 1936 26AH(6)
 - ITAA 1936 26AH(7)(a)(i)
 - ITAA 1936 26AH(8)
 - ITAA 1936 26AH(8)(b)
 - ITAA 1936 26AH(9)
 - ITAA 1936 26AH(12)
 - ITAA 1936 26AH(13)
-

ATO references

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