


# ***PR 2022/10 - Swiss Life (Singapore) Pte. Ltd. Life Asset Portfolio Universal Asia***

 This cover sheet is provided for information only. It does not form part of *PR 2022/10 - Swiss Life (Singapore) Pte. Ltd. Life Asset Portfolio Universal Asia*

 This document has changed over time. This is a consolidated version of the ruling which was published on *23 October 2024*



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Status: **legally binding**

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## Product Ruling

# Swiss Life (Singapore) Pte. Ltd. Life Asset Portfolio Universal Asia

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### **📌 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.

*[Note: This is a consolidated version of this document. Refer to the Legal database ([ato.gov.au/law](http://ato.gov.au/law)) to check its currency and to view the details of all changes.]*

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## No guarantee of commercial success

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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.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

## Terms of use of this Product Ruling

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This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product Ruling.

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### What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936), unless otherwise indicated.

2. In this Product Ruling, the scheme involves the purchase and holding of a life insurance policy, referred to as Life Asset Portfolio (LAP) Universal Asia (the LAP), issued by Swiss Life (Singapore) Pte. Ltd. (Swiss Life) subject to the General Policy Conditions (GPC).<sup>1</sup>

3. This Product Ruling does not address:

- the tax consequences arising in relation to the LAP held by a Policyholder that is not a resident of Australia for tax purposes during the period on or after 1 July 2022 and on or before 30 June 2025
- the treatment of any fees or charges, including the Premium, incurred in connection with the LAP
- the assessability (or otherwise) of amounts received under the LAP, 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 Policyholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under the LAP
- the capital gains tax consequences arising from the assignment of ownership of the LAP to another entity for consideration, and
- whether a Policyholder makes forex realisation gains or losses under Division 775 of the ITAA 1997.

### Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section.

5. The class of entities that can rely on the Ruling section of this Product Ruling consists of:

- (a) those entities that purchase the LAP subject to the GPC (the Policyholder) on or after 1 July 2022 and on or before 30 June 2025, 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 2022 and on or before 30 June 2025, became a resident of Australia for tax purposes

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<sup>1</sup> Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from the GPC referred to in paragraph 15 of this Product Ruling.

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- (b) entities to which ownership of the LAP subject to the GPC is assigned for no consideration (also a Policyholder) on or after 1 July 2022 and on or before 30 June 2025 and, at the time of, or subsequent to, that assignment and during the period on or after 1 July 2022 and on or before 30 June 2025, are a resident of Australia for tax purposes<sup>2</sup>
- (c) where a Policyholder referred to in subparagraphs 5(a) or (b) of this Product Ruling is also the Insured Person and dies
  - (i) an entity nominated as a Beneficiary by the Policyholder, or
  - (ii) the deceased estate of the Policyholder.

6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that are not one of the entities listed in paragraph 5 of this Product Ruling.

### Qualifications

7. The class of entities defined in this Product Ruling may rely on its contents, provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 29 of this Product Ruling.

8. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

### Date of effect

9. This Product Ruling applies prospectively from 1 July 2022 and applies only to the specified class of entities that:

- enter into the scheme, and
- are a resident of Australia for tax purposes during the period 1 July 2022 to 30 June 2025, being its period of application (this Product Ruling will continue to apply to those entities even after its period of application has ended, as long as the Policyholder remains a resident of Australia for tax purposes).

10. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

### Changes in the law

11. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

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<sup>2</sup> All references to 'Policyholder' in this Product Ruling are a reference to a Policyholder as described in both or either of subparagraphs 5(a) or (b) of this Product Ruling, unless otherwise indicated.

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12. 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 Product Ruling since it was issued.

### **Note to promoters and advisers**

13. 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 that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

## **Ruling**

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14. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 29 of this Product Ruling:

- (a) The LAP 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 LAP (the surrender proceeds) by a Policyholder and comprising an adjustment for earnings referable 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 LAP, 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 paragraph 14(b) of this Product Ruling) to any portion (or to part of any portion) of the surrender proceeds received by a Policyholder by reason of their partial or full surrender of their LAP, 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 LAP 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 LAP as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in the value of the Policy Fund linked to a 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 which comprise the Policy Fund linked to them.
- (g) Where, during the eligible period in relation to the LAP a Policyholder receives an amount of consideration in respect of an assignment of that LAP, that consideration (or part of it, as the case may be) will, for the purposes of subsection 26AH(6), be deemed pursuant to

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- subsection 26AH(9) to have been received by the Policyholder under the LAP 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 LAP, or a bonus that can reasonably be expected to accrue in respect of the LAP (subsection 26AH(12)).
- (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under the LAP is assessable under subsection 26AH(6).
- (i) Where the Premium payable by a Policyholder in respect of the LAP in relation to an assurance year exceeds the Premium payable under that LAP 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 LAP 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 LAP 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 Policyholder referred to in subparagraph 5(a) of this Product Ruling resulting from the payment to them under the LAP of
- (i) the surrender proceeds upon full or partial surrender of their LAP, or
  - (ii) a Death Benefit upon the death of the Insured Person (where the Policyholder is not the Insured Person).
- (k) 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 5(b) of this Product Ruling resulting from the payment to them under the LAP of
- (i) the surrender proceeds upon full or partial surrender of their LAP, or
  - (ii) a Death Benefit upon the death of the Insured Person (where the Policyholder is not the Insured Person).
- (l) Any capital gain or capital loss made by the nominated Beneficiary or the deceased estate of a Policyholder, as applicable, resulting from the payment to them under the LAP of the Death Benefit upon the death of the Policyholder (as the Insured Person) 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 Product Ruling, the anti-avoidance provisions in Part IVA will not apply to an entity referred to in paragraph 5 of this Product Ruling.

## **Scheme**

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15. The scheme that is the subject of this Product Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by information and documentation received on 23 September 2022 and 5 August 2024
- the GPC and Application Form, dated 5 April 2021, and
- the GPC dated January 2024 and Application Form dated September 2023.

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

16. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an entity referred to in paragraph 5 of this Product Ruling, or any associate of such entities will be a party to, which are a part of the scheme.

### Overview

17. Swiss Life, registered in Singapore and licensed as a life insurer under the Insurance Act of Singapore, issues the LAP. Entities (Policyholders) capable of purchasing the LAP from Swiss Life may, or may not, be residents of Australia for tax purposes at the time of purchase.

18. The LAP 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 LAP, 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.

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

20. The Policyholder makes an application for the LAP and pays the Initial Premium, referring to the single premium of at least US\$500,000 (or the equivalent) paid into the Insurance Contract by transfer of cash or underlying assets. Upon acceptance of the application Swiss Life issues the Policy 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 21 of this Product Ruling) shall be transferred.

21. 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 LAP 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 Policyholder has defined. The Policyholder may apply to Swiss Life to make an Additional Contribution, referring to any subsequent single premium of at least US\$50,000 (or the equivalent) paid into the Insurance Contract during its lifetime by transfer of cash or underlying assets.

22. While the Policyholder is the legal owner of the LAP, Swiss Life is the owner of the Policy Fund linked to the Policyholder and the Policyholder has no legal or beneficial interest in and have no rights to deal with specific property which comprise the underlying investments held in the Policy Fund.

23. The Policyholder can submit a request for surrender of their LAP (either partial or full) in writing to Swiss Life. In the event of a full surrender of the LAP, 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. The

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Value of Insurance is defined to mean the value of the Policy Fund linked to the Policyholder at a particular time, representing the total of:

- (a) all Premium Contributed, plus
- (b) the net investment income and capital gains earned on all Premium Contributed, less
- (c) the net investment losses incurred on all Premium Contributed, less
- (d) any and all disbursements made in accordance with the GPC, less
- (e) any and all disbursements made for Fees, charges, costs, expenses, and applicable taxes incurred by or charged against the Policy.

24. In the event of a partial surrender of the LAP, 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\$50,000 (or the equivalent). Surrender proceeds may be paid by bank transfer or, where requested by the Policyholder and possible, by transfer of the underlying investments in kind.

25. There may be one or more natural persons whose life is insured under the LAP (the Insured Person), which may or may not be that of the Policyholder. If there are multiple Insured Persons under the LAP, the Death Benefit becomes due upon the death of the last surviving Insured Person.

26. The Death Benefit, payable by transfer of cash or the underlying investments comprising the Policy Fund linked to the Policyholder (in accordance with the relevant recipient's request), is equal to the Value of Insurance (as defined in paragraph 23 of this Product Ruling) plus a Death Coverage. The Death Benefit is:

- (a) 1% of Value of Insurance, up to maximum of US\$50,000 (or the equivalent) where the last Insured Person dies before 80 years of age attained, or
- (b) 0.5% of Value of Insurance, up to maximum of US\$25,000 (or the equivalent) where the last Insured Person dies on or after 80 years of age attained.

27. The Policy 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 LAP.

28. The Policyholder may assign their LAP at any time. Where the Policyholder assigns their LAP, the Insured Persons and any nominated beneficiaries remain the same.

### **Assumptions**

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

- (a) A nominated Beneficiary, referred to in paragraph 5(c)(i) of this Product Ruling, is an Australian resident for tax purposes at the time of receipt of a Death Benefit under the LAP.
- (b) A Policyholder's deceased estate, referred to in paragraph 5(c)(ii) of this Product Ruling, is an Australian resident trust estate as defined in subsection 95(2) at the time of receipt of a Death Benefit under the LAP.
- (c) A Policyholder, referred to in paragraph 5(a) of this Product Ruling, is the original owner of the LAP they purchased.

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- (d) All dealings between any of the entities referred to in paragraph 5 of this Product Ruling and Swiss Life will be at arm's length.
- (e) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 15 of this Product Ruling.

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**Commissioner of Taxation**

14 December 2022

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## Appendix – Explanation

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**❶** *This Appendix 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 Life Asset Portfolio**

30. Subsection 26AH(6) includes all, or part of, amounts received as, or by way of, bonuses under certain life assurance policies (eligible policies), which, but for section 26AH, would not be included in the assessable income of the recipient, in the assessable income of the recipient when received within 10 years of the date on which the first or only premium paid under the policy was paid (eligible period).

### **The Life Asset Portfolio is an eligible policy**

31. 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.

32. 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*.

33. 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 *Life Insurance Act 1995*.

34. 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

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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”).

35. The LAP issued to a Policyholder referred to in paragraph 5 of this Product 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 LAP 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 *Life Insurance Act 1995*.

#### ***Treatment of benefits received under the Life Asset Portfolio***

36. 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’ 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 ten years after commencement, falls within the scope of section 26AH.

37. The portion of the surrender proceeds comprising an adjustment for earnings referable to the Policy Fund and paid by Swiss Life to a Policyholder is considered to have characteristics that are consistent with the description of a bonus in IT 2346. These characteristics include relating and being linked to a life assurance policy, being additional to the Death Benefit payable upon the death of the Insured Person, and providing the Policyholder with participation in Swiss Life’s profits, as derived from the performance of the underlying investments comprising the Policy Fund linked to the Policyholder (but owned by Swiss Life) during the period the Policyholder’s LAP is in force.

38. Payments of a bonus by Swiss Life from the Portfolio Fund linked to the LAP 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 the LAP 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.

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 proceeds 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

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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 Policyholder under the LAP otherwise than as or by way of a bonus (as referred to in paragraph 14(b) of this Product 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.

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 value of the Portfolio Fund linked to a Policyholder constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policyholder under the LAP, 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).

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 Product 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?*. Switches of the underlying investments comprising the Portfolio Fund linked to the Policyholder involves the mere variation in the calculation base of their LAP 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 LAP.

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 Policyholder in respect of an assignment of their LAP 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.

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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 the LAP (as a portion of the Death Benefit) in consequence of the death of the Insured Person 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 by a Policyholder in respect of the LAP in relation to an assurance year exceeds the Premium payable under that LAP in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the LAP 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 under the LAP was paid.

48. Where the Premium payable by a Policyholder in respect of the LAP in relation to each assurance year does not exceed the Premium payable under that LAP in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the LAP, 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 LAP was paid.

#### **Capital gain or capital loss from payments under the Life Asset Portfolio disregarded**

49. 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, as applicable, a Policyholder's nominated Beneficiary or deceased estate under the LAP, are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

50. Where Swiss Life makes a payment of the surrender proceeds in satisfaction of a Policyholder's contractual rights under the LAP, their ownership of those rights is discharged or satisfied. Similarly, where Swiss Life makes a payment of a Death Benefit in satisfaction of a Policyholder's, a nominated Beneficiary's, or a Policyholder's deceased estate's contractual rights under the LAP, 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).

51. The Policyholder, their nominated Beneficiary, or their deceased estate, 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,

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a capital loss if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3) of the ITAA 1997).

52. 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?*).

53. 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).

54. As an entity to which the LAP is first issued, a Policyholder referred to in paragraph 5(a) of this Product 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 either the surrender proceeds upon full or partial surrender of the LAP, or (where the Policyholder is not the Insured Person) a Death Benefit.

55. 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.

56. On the assignment of ownership of the LAP for no consideration to a Policyholder referred to in paragraph 5(b) of this Product Ruling, that Policyholder acquires an interest in the LAP for no consideration. A Policyholder referred to in paragraph 5(b) of this Product 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 either a payment by Swiss Life of either the surrender proceeds upon full or partial surrender of the LAP, or (where the Policyholder is not the Insured Person) a Death Benefit.

57. On the death of a Policyholder who is the Insured Person, the Policyholder's nominated Beneficiary or deceased estate, as applicable, acquires an interest in the LAP for no consideration. The Beneficiary or the deceased estate, as applicable, 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 Swiss Life.

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Status: **not legally binding**

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## References

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*Related Rulings/Determinations:*

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

*Legislative references:*

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  - ITAA 1936 26AH
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ATO references

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