

PR 2023/21 - St. James's Place International Investment Bond and International Investment Account



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Status: **legally binding**

Product Ruling

St. James's Place International Investment Bond and International Investment Account

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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
<i>Requirements of the Superannuation Industry (Supervision) Act 1993</i>	6
Date of effect	7
Ruling	9
Assumptions	10
Scheme	11
Overview of Scheme	13
Appendix – Explanation	32

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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 Policies¹:
 - an International Investment Bond (IIB) issued by St. James's Place International plc (SJPI) and subject to the International Investment Bond Terms and Conditions, or
 - an International Investment Account (IIA) issued by St. James's Place International plc (Singapore Branch) (SJPI SB) and subject to the International Investment Account 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 the 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 Policy held by a Policyholder³ 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 Policy
 - the assessability (or otherwise) of amounts received under a Policy, 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 a Policy
 - the capital gains tax consequences arising from the assignment of ownership of a Policy to another entity for consideration, and
 - whether a Policyholder 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 Policyholder, having purchased a Policy 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

¹ All references to 'Policy and Policies' in this Ruling are a reference to both or either of an International Investment Bond or an International Investment Account.

² All references to 'Terms and Conditions' in this Ruling are a reference to both or either of the International Investment Bond Terms and Conditions or the International Investment Account Terms and Conditions.

³ All references to 'Policyholder' in this Ruling are a reference to the holder of either an IIB or an IIA.

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- (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 Policy 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
 - (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 under a Policy.
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 enter into a Policy 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 31 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 Policy 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 Policy or the termination of the IIB under the circumstances contemplated in paragraph 28 of this Ruling (the surrender proceeds) by a Policyholder and comprising an adjustment for earnings referable to the Funds represented

⁴ 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.

⁵ As per paragraphs 15 and 16 of this Ruling, the Terms and Conditions permit a Policy 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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by the cancelled allocated Units 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 Policy, 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 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 Policy 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 Policy as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in the value of the Policyholder's Policy, linked to the performance of the Funds, 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' their investment between Funds.
- (g) Where, during the eligible period in relation to a Policy, a Policyholder receives an amount of consideration in respect of an assignment of that Policy, 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 Policy 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 Policy or a bonus that can reasonably be expected to accrue in respect of the Policy (subsection 26AH(12)).
- (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under a Policy is assessable under subsection 26AH(6).
- (i) Where the Investment or Investments payable by a Policyholder in respect of a Policy in relation to an assurance year exceeds the Investments payable under that Policy 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 Policy 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 Policy 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 4(a) of this Ruling (where they are not the trustee of a complying superannuation entity) resulting from the payment to them under a Policy 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 Policyholder referred to in subparagraph 4(b) of this Ruling resulting from the payment to them under a Policy of the surrender proceeds or a Death Benefit.
- (l) Any capital gain or capital loss made by an entity other than the Policyholder, resulting from the payment to them under a Policy 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 Policy.
 - (b) A Policyholder referred to in subparagraph 4(a) of this Ruling is the original owner of the Policy they purchased.
 - (c) All dealings between any of the entities referred to in paragraph 4 of this Ruling and SJPI or SJPIB 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 11 of this Ruling.

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 July 2023
 - International Investment Bond Terms and Conditions received on 18 July 2023, and
 - International Investment Account Terms and Conditions received on 18 July 2023.

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 IIB. SJPI's associated branch, SJPISB, is registered in Singapore and offers the IIA on broadly the same terms and conditions.

14. Entities (Policyholders) capable of purchasing a Policy alone or jointly from SJPI or SJPISB, as applicable, include individuals⁶, companies or trusts and may, or may not, be residents of Australia for tax purposes at the time of issue.

15. The Policy 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 Contract Numbers.

16. Full details of the Policy, including the commitments and rights of both SJPI or SJPISB and a Policyholder, are contained in the Terms and Conditions which, together with the Investment Certificate, form the contract between SJPI or SJPISB, as applicable, and the Policyholder. Where the Policy is set up as more than one identical contract, the Terms and Conditions apply separately to each contract.

17. The IIB is governed by and should be construed in accordance with the laws of Ireland. The IIA is governed by and should be construed in accordance with the laws of Ireland or Singapore, as chosen at the outset of the IIA by the Policyholder.

18. The IIB and IIA are similarly structured but have different features such as the fund range offered and minimum Investment and withdrawal levels.

Funds and Units

19. Policyholders can make an Initial Investment in respect of their Policy in the form of a Single Investment, paid on a one-off basis, or the first of a Regular Investment (in the case of an IIB) or the first of a Recurring Single Investment (in the case of an IIA), paid on a regular basis (either monthly, quarterly, half-yearly or yearly). There is also scope for Policyholders to make an additional Single Investment or additional Regular Investments or Recurring Single Investments (as the case may be) at any time. All Investments are subject to minimum amounts.

20. Each time the Policyholder makes an Investment, SJPI or SJPISB, as applicable, will allocate the Policyholder's Policy with Units in the Funds the Policyholder selects and will (where relevant) spread the Investment evenly across all of the identical contracts within the Policy. The number of Units allocated will be equal to the amount of the Investment divided by the applicable Bid Price.

21. The Units allocated to the Policy are notional and used solely for the purpose of calculating Benefits that are available under the Policy upon partial or full withdrawal of the Policy or the death of the relevant Life Assured.

22. The Investments paid by the Policyholder will be invested by SJPI or SJPISB, as applicable, in the Funds selected by the Policyholder. The range of Funds offered provide exposure to a collection of assets such as shares, fixed income securities, corporate bonds, property, collective investment vehicles and cash. The value of a Policy is directly linked to the performance of the Funds selected.

23. All Investments received by SJPI or SJPISB towards the Policyholder's Policy and any investments made by SJPI or SJPISB in the Funds become and remain the asset of

⁶ Individual Policyholders must be aged 18 or over when the Policy starts.

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SJPI or SJPI SB, as applicable. The Policyholder has no legal or beneficial rights to Units or to any part of the Funds.

24. The Policyholder can request to change (switch) some or all of their investment between Funds by completing a switch request form. When the Policyholder requests to switch their existing Fund choices, SJPI or SJPI SB, as applicable, will replace Units allocated in the existing Funds held within their Policy (after deducting any applicable Switch Charge) with Units of equal value in any other Funds, as requested.

Full and partial withdrawal

25. But for the circumstances contemplated in paragraph 28 of this Ruling (as they apply to the IIB only), the Policy will terminate on the earliest of the full withdrawal of the Policy or the death of the relevant Life Assured and the payment of the Death Benefit.

26. The Policyholder can withdraw all their money from their Policy by notifying SJPI or SJPI SB, as applicable, in writing. Upon full withdrawal of the Policy, the value of the Units allocated to the Policy (after deducting any Early Withdrawal Charge) will be paid to the Policyholder and the Policy will come to an end.

27. The Policyholder can also partially withdraw their money from their Policy 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 Policyholder's request:

- all the money invested in one or more of the identical contracts within their Policy can be withdrawn on a one-off basis, in which case SJPI or SJPI SB will pay the Policyholder the value of the Units allocated to those 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, can be spread evenly across all of the identical contracts within their Policy, in which case SJPI or SJPI SB will cancel enough of the Units allocated to each the contracts within their Policy to provide the withdrawn amount requested (after deducting any Early Withdrawal Charge).

28. If a period of at least 5 years has elapsed since the last Investment was made by the Policyholder into their IIB or since the Policyholder has withdrawn any money from their IIB, and the value of the IIB does not meet the minimum Dormant Bond value, the IIB will be deemed a Dormant Bond. SJPI may pay the remaining value of that Dormant Bond to the Policyholder at its discretion and the IIB will terminate.

Death Benefit

29. At the outset of the Policy, the Policyholder can choose between 1 and 10 Lives Assured which may or may not include the Policyholder. Unless otherwise agreed by SJPI or SJPI SB, as applicable, each Life Assured must be aged 3 months or over at the commencement of the Policy.

30. The Death Benefit will become payable, all Units held in the Funds will be cancelled and the Policy will come to an end on the death of the last to die of the Lives Assured.

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31. The Death Benefit is 101% of the value of the Units allocated to the Policy at the date of death of the relevant Life Assured and will be paid to:

- the Policyholder or the Policyholder's estate, as applicable, where the Policy is an IIB or where the Policyholder has chosen Ireland as the Governing Law of their IIA, or
- all surviving Beneficiaries nominated by the Policyholder, where the Policyholder has chosen Singapore as the Governing Law of their IIA.

Commissioner of Taxation

25 October 2023

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Appendix – Explanation

❶ *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.*

Table of Contents	Paragraph
Application of section 26AH to the International Investment Bond and the International Investment Account	32
<i>The International Investment Bond and the International Investment Account are an eligible policy</i>	33
<i>Treatment of benefits received under the International Investment Bond and the International Investment Account</i>	38
<i>Effect of increased premiums on eligible period</i>	49
Capital gain or capital loss from payments under the International Investment Bond and the International Investment Account disregarded	53

Application of section 26AH to the International Investment Bond and the International Investment Account

32. 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 International Investment Bond and the International Investment Account are an eligible policy

33. 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.

34. 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).

35. 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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36. 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').

37. A Policy 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 Policy 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 International Investment Bond and the International Investment Account

38. 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.

39. The Policy, 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.

40. The portion of the surrender proceeds comprising an adjustment for earnings referable to the Funds represented by the cancelled allocated Units and paid to a Policyholder is considered to be a bonus. This amount provides the Policyholder with participation in the profits of SJPI or SJPIB, as applicable, as derived from the investments in the Funds linked to the Policyholder (but owned by SJPI or SJPIB) during the period the Policyholder's Policy is in force.

41. Payments of a bonus by SJPI or SJPIB, as applicable, from the Funds linked to a Policy 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 Policy

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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.

42. 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).

43. 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 Policy 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 Policyholder as if it had been received as or by way of a bonus.

44. 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.

45. An accretion in the value of a Policyholder's Policy constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policyholder on part or total withdrawal of their Policy, 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).

46. 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 44 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?* Switches of the Funds linked to a

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Policyholder's Policy involves the mere variation in the calculation base of the Policy 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 Policy.

47. 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 Policy 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.

48. 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 Policy (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

49. 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.

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

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

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

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Capital gain or capital loss from payments under the International Investment Bond and the International Investment Account disregarded

53. 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 under the Policy are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

54. Where SJPI or SJPISB, as applicable, makes a payment of the surrender proceeds in satisfaction of a Policyholder's contractual rights under a Policy, their ownership of those rights is discharged or satisfied. Similarly, where SJPI or SJPISB makes a payment of a Death Benefit in satisfaction of a Policyholder's or other entity's contractual rights under the Policy, 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).

55. The Policyholder or another entity with contractual rights to receive a payment of a Death Benefit under the Policy, 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).

56. 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?*).

57. 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).

58. As an entity to which the Policy 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 (where they are not the trustee of a complying superannuation entity⁷) 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 or SJPISB of either the surrender proceeds or a Death Benefit.

59. 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.

⁷ Any capital gain or capital loss a Policyholder 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

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

61. Where, on the death of the relevant Life Assured, an entity other than the Policyholder is entitled to receive all or part of the Death Benefit, they acquire an interest in the Policy 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 or SJPIB.

Status: **not legally binding**

References

Related Rulings/Determinations:

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

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- ITAA 1936 Pt IVA
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25
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