


PR 2026/3 - Variable Universal Life Assurance Policy - Advantage International Life Bermuda Limited and Advantage Life Assurance I.I.

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Status: **legally binding**

Product Ruling

Variable Universal Life Assurance Policy – Advantage International Life Bermuda Limited and Advantage Life Assurance I.I.

📌 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 a life insurance policy referred to as Variable Universal Life Assurance Policy (VLAP) issued by Advantage International Life Bermuda Limited (AILBL) or Advantage Life Assurance I.I. (ALAI)¹ and subject to the relevant Variable Life Assurance Policy conditions (Policy Conditions²).
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 Policy Conditions 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 VLAP held by an Owner³ that is not a resident of Australia for tax purposes during the period on or after 1 July 2025 and on or before 30 June 2028
 - the treatment of any fees or charges (including the Premium) incurred in connection with a VLAP
 - the assessability (or otherwise) of amounts received under a VLAP, other than under
 - section 26AH, and
 - the capital gains tax regime in Part 3-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - an Owner's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under a VLAP
 - the tax consequences arising in relation to any Policy Loan borrowed against the VLAP
 - the tax consequences arising in relation to the application of the Death Benefit Proceeds towards the purchase of an annuity
 - the capital gains tax consequences arising from the assignment of ownership of a VLAP to another entity for consideration, and
 - whether an Owner 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 are:
 - (a) an entity (including a natural person) that purchases a VLAP subject to the Policy Conditions (Owner) on or after 1 July 2025 and on or before 30 June 2028, and either
 - (i) are a resident of Australia for tax purposes at the time of purchase, or

¹ All references to 'VLAP' in this Ruling are a reference to both or either VLAP issued by AILBL or ALAI.

² All references to 'Policy Conditions' in this Ruling are a reference to both or either of the Policy Conditions issued separately by AILBL or ALAI.

³ All references to 'Owner' in this Ruling are a reference to the holder of a VLAP issued by either AILBL or ALAI.

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- (ii) subsequent to that purchase and during the period on or after 1 July 2025 and on or before 30 June 2028, became a resident of Australia for tax purposes
 - (b) an entity (including a natural person) to which ownership of a VLAP subject to the Policy Conditions is assigned for no consideration (also an Owner) on or after 1 July 2025 and on or before 30 June 2028 and, at the time of, or subsequent to, that assignment and during the period on or after 1 July 2025 and on or before 30 June 2028, are a resident of Australia for tax purposes⁴, or
 - (c) not an Owner referred to in subparagraphs 4(a) or (b) of this Ruling and have received the Death Benefit under a VLAP.
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*. We give 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 2025 to entities specified in paragraph 4 of this Ruling.
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) A VLAP is an 'eligible policy' for the purposes of section 26AH.
 - (b) Any portion of the proceeds received for the Surrender of the VLAP or a Withdrawal from the VLAP (surrender proceeds) by an Owner and comprising an adjustment for earnings referable to the Investments held in

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

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the Segregated Account⁵ is an amount as or by way of a 'bonus' for the purposes of section 26AH, and is

- (i) assessable under subsection 26AH(6) when received during the eligible period in relation to the VLAP, and
 - (ii) 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 an Owner 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 an Owner under the VLAP other 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 Owner under the VLAP as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in an Owner's Segregated Account, as calculated on a Quarterly Valuation Date and linked to the performance of the Investments, is not regarded as having been received by the Owner for the purposes of assessment under subsection 26AH(6).
- (f) An Owner 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 Investments in the Segregated Account linked to the VLAP.
- (g) Where, during the eligible period in relation to a VLAP an Owner receives an amount of consideration in respect of an assignment of that VLAP, 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 Owner under the VLAP 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 VLAP or a bonus that can reasonably be expected to accrue in respect of the VLAP (subsection 26AH(12)).
- (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under a VLAP is assessable under subsection 26AH(6).
- (i) Where a Premium payable by an Owner in respect of a VLAP in relation to an assurance year exceeds the Premium payable under that VLAP 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 VLAP 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 VLAP was paid).
- (j) Table item 3 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by an Owner referred to in subparagraph 4(a) of this Ruling (where they are not the trustee of a complying

⁵ The Policy Conditions to the VLAP issued by ALAI refers to the Segregated Account as the Segregated Assets Plan. Therefore, all references to 'Segregated Account' in this Ruling are a reference to either a 'Segregated Account' or 'Segregated Assets Plan', as applicable.

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- superannuation entity) resulting from the payment to them under a VLAP of the surrender proceeds or a Death Benefit.
- (k) Table item 4 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by an Owner referred to in subparagraph 4(b) of this Ruling resulting from the payment to them under a VLAP of the surrender proceeds or a Death Benefit.
- (l) Any capital gain or capital loss made by an entity other than the Owner, resulting from the payment to them under a VLAP 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 VLAP.
- (b) An Owner referred to in subparagraph 4(a) of this Ruling is the original owner of the VLAP they purchased.
- (c) All dealings between any of the entities referred to in paragraph 4 of this Ruling and AILBL or ALAI will be at arm's length.
- (d) The scheme will be executed in the manner described in the Scheme section of this Ruling and in the Policy Conditions 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 29 January 2026 and 29 April 2026
 - AILBL Variable Life Assurance Policy conditions received on 29 January 2026, and
 - ALAI Variable Life Assurance Policy conditions received on 29 January 2026.

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. AILBL, a company incorporated in Bermuda and licenced as an insurance company under the Insurance Act of Bermuda, offers the VLAP. ALAI, a company incorporated and registered as an International Insurer Segregated Assets Plan Company under the laws of Puerto Rico, also offers the VLAP on broadly the same terms and conditions.

14. Entities (Owners) capable of purchasing a VLAP alone or jointly from AILBL or ALAI, as applicable, include individuals, companies or trusts and may, or may not, be residents of Australia for tax purposes at the time of issue.

15. The VLAP is an investment-linked life insurance policy where the investment risks are borne by the Owner. Full details of the VLAP, including the commitments and rights of both AILBL or ALAI and the Owner, are contained in the Policy Conditions which, together with the Application, form the contract between AILBL or ALAI, as applicable, and the Owner.

16. The VLAP issued by AILBL is governed by and should be construed in accordance with the laws of Bermuda. The VLAP issued by ALAI is governed by and should be construed in accordance with the laws of Puerto Rico.

17. The Owner makes an application for the VLAP and pays the Initial Premium on or before the Issue Date of the VLAP by transfer of cash or (upon agreement by AILBL or ALAI) by transfer of an asset (In-Kind). Upon acceptance of the application AILBL or ALAI issues the VLAP and an Investment Adviser nominated by the Owner and approved by AILBL or ALAI, as applicable, is appointed.

18. The Owner may apply to AILBL or ALAI, as applicable, to pay Additional Premiums by transfer of cash or In-Kind. Each time the Owner pays a Premium, AILBL or ALAI, as applicable, will credit the Premium net of relevant fees and charges (Net Premium) to a Segregated Account established in respect of the Owner's VLAP and separately identifiable from any other account of any other policy issued by AILBL or ALAI.

19. The Investments held in the Segregated Account are chosen by the Owner from a wide range of choices including financial assets, instruments, real property, precious metals and intellectual property, and are invested under the control and management of the Investment Adviser in accordance with guidelines agreed to by AILBL or ALAI.

20. Income and gains or losses from Investments are credited or charged to the Segregated Account. The Segregated Account Value⁶ is therefore directly linked to the performance of the Investments selected and will increase or decrease depending on that performance, as well as relevant fees and charges payable under the VLAP.

21. While the Owner is the legal owner of the VLAP, AILBL or ALAI, as applicable, is the exclusive and absolute owner of the Investments held in the Segregated Account and the Owner has no legal or beneficial interest in any specific Investment held in the Segregated Account.

22. After the first anniversary of the Issue Date, the Owner and each person named as Beneficiary under the VLAP may (with the consent of the Owner and any Irrevocable Beneficiary) borrow against the VLAP by assigning it to AILBL or ALAI, as applicable, as security (Policy Loan). Upon approval of a request for a Policy Loan, AILBL or ALAI, as applicable, will liquidate Investments in the Segregated Account equal to the principal

⁶ The Policy Conditions to the VLAP issued by ALAI refers to the Segregated Account Value as the Segregated Assets Plan Value. Therefore, all references to 'Segregated Account Value' in this Ruling are a reference to either a 'Segregated Account Value' or 'Segregated Assets Plan Value', as applicable.

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amount borrowed and transfer to a separately identified Loan Collateral Account to be held as collateral for the Policy Loan under the VLAP.

23. Interest is due and payable on each Anniversary Date by the Borrower to AILBL or ALAI, as applicable, for each Policy Loan at the Policy Loan Interest Rate, and a Policy Loan may be repaid in part or in full at any time prior to Termination. Upon repayment of a Policy Loan, an equal amount from the Loan Collateral Account will be transferred to the Segregated Account for the VLAP.

24. After the first anniversary of the Issue Date, the Owner can (with the consent of any Irrevocable Beneficiary) submit a written request to AILBL or ALAI, as applicable, for Withdrawal from or Surrender of their VLAP.

25. In the event of Surrender of the VLAP, the lesser of the Surrender Value or the Net Surrender Value (less any Surrender Charge) will be paid to the Owner and the VLAP will come to an end. Broadly, the Surrender Value is calculated as the Segregated Account Value less any accrued and unpaid fees and charges, and the Net Surrender Value is calculated as the Surrender Value less the sum of any unpaid Policy Loans (Outstanding Policy Debt).

26. Any Withdrawal from the VLAP must be made in even increments and is subject to a maximum amount which, combined with any Outstanding Policy Debt, is limited to the lesser of 90% of the Surrender Value or an amount that will result in the Segregated Account Value being at least \$100,000 more than the Minimum Policy Value on the date of the Withdrawal. Any Withdrawal from the VLAP is also subject to a Withdrawal Charge.

27. There may be one or more natural persons whose life is insured under the VLAP, which may or may not be that of the Owner. If there is one life insured under the VLAP (Single Life Policy), the sole Assured is the Relevant Life Assured and the Death Benefit becomes due upon their death. If there are multiple lives insured under the VLAP (Joint Life Policy), the Relevant Life Assured is that Assured who is the last to die and the Death Benefit becomes due upon their death.

28. The Death Benefit Proceeds payable under the VLAP by AILBL or ALAI, as applicable, in cash or In-Kind (or a combination of both) upon the death of the Relevant Life Assured will equal the sum of the liquidation proceeds received from the Segregated Account plus the Specified Amount, less any Outstanding Policy Debt and any fees or charges that apply. The Specified Amount is the amount used to determine the insurance coverage under the VLAP while it remains in force and is the greater of the initial Specified Amount or the minimum Net Amount at Risk (1% of the Segregated Account Value).

29. The Beneficiary is the natural or non-natural person or persons who has been designated and is entitled to receive the Death Benefit under the VLAP upon the death of the Relevant Life Assured. If the Beneficiary (including any contingent Beneficiary) does not survive the Relevant Life Assured, the Owner or the Owner's estate becomes the Beneficiary and will be paid the Death Benefit Proceeds unless there is an Irrevocable Beneficiary, in which case the Death Benefit Proceeds will be paid to the estate of the Irrevocable Beneficiary. Once the Death Benefit has been paid by AILBL or ALAI, as applicable, the VLAP will end.

30. The VLAP is non-participating and does not share in the profits or surplus earnings of AILBL or ALAI. AILBL and ALAI will not pay dividends to, or in respect of, the VLAP.

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31. The Owner may assign their VLAP at any time subject to the consent of AILBL or ALAI, as applicable, and any Irrevocable Beneficiary. Where the Owner assigns their VLAP, the Relevant Life Assured and any nominated Beneficiaries remain the same.

Commissioner of Taxation

13 May 2026

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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.*

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Application of section 26AH to the Variable Universal Life Assurance Policy

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 Variable Universal Life Assurance Policy is 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.

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:

... 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. ...

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”).

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37. A VLAP issued to an Owner 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 VLAP 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 Variable Universal Life Assurance Policy

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 VLAP, 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 Segregated Account and paid by AILBL or ALAI to an Owner is considered a bonus. This amount provides the Owner with participation in the profits of AILBL or ALAI, as applicable, as derived from the Investments held in the Segregated Account linked to the Owner (but owned by AILBL or ALAI) during the period the Owner's VLAP is in force.

41. Payments of a bonus by AILBL or ALAI, as applicable, from the Segregated Account linked to the Owner 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 VLAP is included as assessable income of an Owner pursuant to subsection 26AH(6) to the following extent:

- in full, where it is received during the first 8 years of the eligible period
- two-thirds of the amount received, where it is received during the ninth year of the eligible period
- 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 Owner under an eligible policy (that is,

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amounts previously received (including any amounts of bonus) and the surrender value at the time of forfeiture, surrender or other termination) exceeds the Premium 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 other 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 an Owner under a VLAP other 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 Owner 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 the Owner's Segregated Account, as calculated on a Quarterly Valuation Date and linked to the performance of the Investments, constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Owner on Withdrawal from or Surrender of their VLAP, and pursuant to subsection 26AH(5) is not regarded as having been received by the Owner 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 Investments held in the Segregated Account of an Owner involves the mere variation in the calculation base of their Segregated Account Value such that subsection 26AH(4) does not apply, for the purposes of assessment under subsection 26AH(6), to take the Owner to have received an amount under or in relation to their VLAP.

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 our 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 an Owner in respect of an assignment of their VLAP during its eligible period 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 Owner 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 VLAP (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 VLAP, the amount invested across any assurance year (if any) is at the discretion of the Owner. Therefore, in relation to the VLAP, the Premium payable for an assurance year is the total Premiums paid in an assurance year.

51. Where the Premium payable by an Owner in respect of a VLAP in relation to an assurance year exceeds the premium payable under that VLAP in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the VLAP 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 Initial Premium under the VLAP was paid.

52. Where the Premium payable by an Owner in respect of a VLAP in relation to each assurance year does not exceed the premium payable under that VLAP in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the VLAP, 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 Initial Premium under the VLAP was paid.

Capital gain or capital loss from payments under the Variable Universal Life Assurance Policy 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 an Owner and any other entity entitled to receive a Death Benefit under a VLAP are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

54. Where AILBL or ALAI makes a payment of the surrender proceeds in satisfaction of an Owner's contractual rights under a VLAP, their ownership of those rights is discharged

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or satisfied. Similarly, where AILBL or ALAI makes a payment of a Death Benefit in satisfaction of an Owner's or other entity's contractual rights under a VLAP, 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 Owner or another entity with contractual rights to receive a payment of a Death Benefit under the VLAP, 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 VLAP is first issued, an Owner 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 Owner (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 AILBL or ALAI 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.

60. On the assignment of ownership of a VLAP for no consideration to an Owner referred to in subparagraph 4(b) of this Ruling, that Owner acquires an interest in the VLAP for no consideration. An Owner 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 AILBL or ALAI of either the surrender proceeds or a Death Benefit.

61. Where, on the death of the Relevant Life Assured, an entity other than the Owner is entitled to receive the Death Benefit, they acquire an interest in the VLAP for no

⁷ Any capital gain or capital loss an Owner 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 Death Benefit is disregarded pursuant to table item 5 of subsection 118-300(1) of the ITAA 1997.

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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 AILBL or ALAI.

Status: **not legally binding**

References

Related Rulings/Determinations:

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

Legislative references:

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 - ITAA 1936 26AH
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