# *PR 2006/71 - Income tax: taxation treatment of premiums paid and received in relation to American International Assurance Company (Australia) Limited's Priority Protection 'Money Back Term Benefit' plan*



This document has changed over time. This is a consolidated version of the ruling which was published on *10 May 2006*

# Product Ruling

## Income tax: taxation treatment of premiums paid and received in relation to American International Assurance Company (Australia) Limited's Priority Protection 'Money Back Term Benefit' plan

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**This Ruling provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give 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. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products and how the product fits an existing portfolio. We recommend 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. Potential participants may wish to seek assurances from the promoter that the scheme will be carried out as described in this Product Ruling.

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the scheme has been implemented as described below and to ensure that the participants in the scheme include in their income tax returns income derived in those future years.

# Terms of use of this Product Ruling

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

# What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant taxation provision(s)

2. The relevant taxation provision(s) dealt with in this Ruling are:

- section 82KL of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 82KZM of the ITAA 1936;
- Part IVA of the ITAA 1936;
- subsection 267(1) of the ITAA 1936;
- section 279 of the ITAA 1936;
- section 279A of the ITAA 1936;
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- section 8-1 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

### Class of entities

3. The class of entities to which this Ruling applies is trustees of complying superannuation funds who enter into the arrangement described below on or after the date of this Ruling. For the purpose of this Ruling these trustees of complying superannuation funds are referred to as 'Policyholder(s)'.

### Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 15.

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

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



## Date of effect

7. This Ruling applies prospectively from 10 May 2006, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

8. If this Product Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

9. If this Product Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Product Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

10. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Withdrawal

11. This Product Ruling is withdrawn and ceases to have effect after 30 June 2009. The Ruling continues to apply, in respect of the relevant provision(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no material differences in the arrangement or in the persons' involvement in the arrangement.

## Scheme

12. The scheme that is the subject of this Ruling is described below. This description of the scheme incorporates the following documents:

- Application for a Product Ruling dated 20 July 2005 received from American International Assurance Company (Australia) Limited ('AIA') as the entity issuing the Priority Protection Product and Money-Back Term Benefit Plan ('MBT');
- Product Disclosure Statement for the Priority Protection Product issued on 8 April 2005;
- Priority Protection Policy Document supplied on 20 July 2005;
- Product Disclosure Statement for the Priority Protection Product issued on 1 February 2006;
- Priority Protection Policy Document issued on 1 February 2006;
- Correspondence from AIA dated 30 September 2005 and specifically Table 2(a) entitled 'Money Back Term – Percentage of the MBT premium securing the Death Benefit;' and
- Correspondence from AIA dated 12 April 2006.

13. The details and aspects of the scheme subject to this Ruling are summarised as follows:

a) AIA is a life insurance company which issues life insurance policies.

b) One of the products offered by AIA is an insurance product called Priority Protection.

c) AIA offers the MBT as one product under the Priority Protection range.

d) The MBT is available to a trustee of a complying superannuation fund ('the Policyholder') who may wish to purchase the MBT to insure the life or lives of a member(s).

e) The MBT is a standardised policy in so far as the same policy terms apply to each MBT issued. The premium paid for the MBT varies depending upon the sum insured. However, the apportionment of the premium between the various components of the MBT will not vary from policy to policy.

f) The features of the MBT are as follows:

(i) the MBT is, in part, a life insurance policy issued for a period of 10 years. Under the policy the Policyholder will be paid the sum insured upon the death of the life insured within the 10 year period;

(ii) the Policyholder pays a level premium each year for 10 years;

(iii) under the MBT the Policyholder receives a lump sum benefit on the death of the life insured within the 10 year period;

(iv) under the MBT the Policyholder receives a lump sum benefit on the diagnosis of the life insured with a terminal illness within the 10 year period;

(v) on termination of the MBT at the end of the 10 year period, a full refund of 100% of the premiums paid throughout the term is returned to the Policyholder provided premiums are paid in full when due and no terminal illness benefit has been paid;

(vi) on termination of the MBT, after 5 years but before 10 years, a partial refund of 25% of the premiums paid is returned to the Policyholder if premiums are paid in full when due and no terminal illness benefit has been paid; and

(vii) at or before the end of the 10 year period the Policyholder has the choice of converting the MBT to a Term Life benefit from AIA. The conversion option must be exercised before the 70th birthday of the life insured and be effective from a policy anniversary of the MBT.

g) AIA will obtain an actuary's certificate from an actuary applicable to the MBT. That actuary's certificate will be in an approved form if it satisfies the conditions listed in paragraph 27 of Taxation Ruling No. IT 2617 Income tax: approved form of actuarial certificates in relation to the taxation of complying superannuation funds. Specifically IT 2617 states that, if a deduction is being claimed under paragraph 279(1)(d), the actuary's certificate should include, amongst other things, the total amount of premiums paid for insurance policies which are partly in respect of a current or contingent liability of the fund to provide death or disability benefits for the members of the fund and the portion of those premiums that relates to the death and disability cover. That apportionment will apply to each MBT issued. A copy of that certificate will be supplied by AIA to each Policyholder before the date of lodgment of the Policyholder's tax return (the 'certificate date').

### The Participants

14. American International Assurance Company (Australia) Limited is the issuer of the MBT under the Priority Protection product.

15. The Policyholders are trustees of complying superannuation funds.

## Ruling

### Section 279

16. A Policyholder who purchases the MBT to insure the life or lives of a member(s) will be entitled to a deduction under paragraph 279(1)(d) in respect of only so much of the premium paid by the Policyholder for the insurance policy that is attributable to the liability of the Policyholder to provide death or disability benefits for the member(s) of the fund.

17. No amounts will be deductible to the Policyholder in respect of those parts of the premium paid which are attributable to either:

- the terminal illness benefit; or
- the refund of premiums.

18. With regard to determining how much of the premium is attributable to different liabilities an actuary's certificate is required with respect to the operation of section 279; refer to subsection 279(3) and IT 2617.

19. Where the actuary's certificate in relation to the MBT (as described in paragraph 13) is obtained by AIA and supplied to a Policyholder before the certificate date, the actuary's certificate will be accepted as an actuary's certificate obtained by a Policyholder for the purposes of subsection 279(3).

### Section 279A

20. Where a Policyholder has received a rebate or refund of a premium which has, in whole or in part, been allowed or is allowable as a deduction under subsection 279(1), so much of that rebate or refund as is attributable to that deduction shall be included in the assessable income of the Policyholder under subsection 279A(1).

### Section 8-1

21. The premium paid by a Policyholder in relation to the MBT is not deductible by a Policyholder under section 8-1 of the ITAA 1997.

### Section 6-5

22. Any rebate or refund of the premium received by a Policyholder will not be included in a Policyholder's assessable income under section 6-5 of the ITAA 1997.

### Section 82KZL, section 82KZM and Part IVA

23. For a Policyholder who purchases the MBT and incurs expenditure by paying the premium, the following provisions of the ITAA 1936 have application as indicated:

- section 82KL does not apply to deny deductions otherwise allowable under paragraph 279(1)(d);
- section 82KZM does not apply to deny deductions otherwise allowable under paragraph 279(1)(d); and
- the anti-avoidance provisions in Part IVA will not be applied to deny the deductibility of part of the premium paid by the Policyholder in respect of the MBT.

**Commissioner of Taxation**
10 May 2006

# Appendix 1 – Explanation

***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.***

**Section 279**

24. Section 279 enables a Policyholder who is a trustee of a complying superannuation fund to claim as a deduction all or part of the premium for an insurance policy that is, in whole or in part, in respect of a current or contingent liability of the fund to provide death or disability benefits for members of the fund. The portion of the premium which is deductible will depend on the nature of the policy:

- if the policy is a whole of life policy, and under the policy the fund only insures the lives of its member(s), a deduction of 30% of the premium is allowable (paragraph 279(1)(a));
- if the policy is an endowment policy, and under the policy the fund only insures the lives of its member(s), a deduction of 10% of the premium is allowable (paragraph 279(1)(b));
- if the part of the premium referable to the death or disability cover is identifiable from the terms of the policy (that is an unbundled policy) then that part is deductible (paragraph 279(1)(c)); and
- in any other case, an actuary's certificate is required to establish the part of the premium which is relevant to providing death or disability cover for members of the fund. Only that part of the premium relevant to death or disability cover will be deductible under paragraph 279(1)(d).

25. The operation of section 279 is dependent on characterisation of the insurance policy as a whole of life, endowment, or other type of policy. The applicable paragraph, and thus the level of deduction available under section 279, differs depending on which characterisation the policy is given.

***Whole of life insurance***

26. A whole of life insurance policy offers immediate and continuing death cover to the life insured, equal to the sum insured, in return for a regular premium which is calculated by reference to the number of years the life insured is expected to live.

27. A whole of life insurance policy combines elements of both risk protection (by guaranteeing payment of the sum insured on death) and investment, usually in the form of bonuses (the means by which a life insurance company may distribute retained profits to policyholders). Accordingly the longer the insured person lives, the greater the sum insured payable upon death. These policies have a 'cash value' which is paid to the insured if the policyholder surrenders the policy prior to maturity.[1]

28. Whole of life policies are examples of bundled policies as the different components that comprise the premium cannot be identified or dissected from the terms of the policy. The different components of a premium usually include:

- an expense component to cover the insurance company's costs of the policy;
- an investment component; and
- a risk component to cover the cost of death cover.

29. Subsection 267(1) defines a 'whole of life policy' as follows:

> **'whole of life policy'** means an insurance policy where the following conditions are satisfied:
>
> (a) the policy includes an investment component;
>
> (b) the premium is not dissected (whether by reference to the investment component or otherwise);
>
> (c) the sum insured, together with bonuses (if any), is payable upon:
>
> (i) the death of the life insured; or
>
> (ii) the occurrence of the earlier of the following events:
>
> (A) the death of the life insured;
>
> (B) the life insured attaining the age specified in the policy, being the age of 85 years or more.

30. The investment component in whole of life and endowment policies is represented by bonuses. Bonuses paid by an insurance company increase a policy's sum insured and represent a share of the profits arising from the policy.[2] Policies which include an investment component would have bonuses payable in addition to the sum insured. These bonuses would be received by the policyholder on death of the life insured or, in the case of an endowment policy, upon maturity of the policy or death of the life insured. In both cases the investment component creates a return to the policyholder above the amount of the sum insured.

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[1] Marks F & Balla A 1940, *Guidebook to Insurance Law in Australia*, CCH Australia, Sydney, 3rd ed, p. 21.
[2] Ibid.

31. Where a policyholder is not entitled to the payment of bonuses under the terms of the policy and the sum insured remains constant throughout the term of the policy, there is no investment component included in the policy.

32. The MBT does not offer bonuses or any return above the amount of the premium paid. The sum insured remains constant throughout the term of the policy. Accordingly the MBT does not include an investment component.

33. As the MBT does not include an investment component it does not satisfy condition (a) in the definition of whole of life policy.

34. The MBT is a bundled policy. Those parts of the premium which relate to the different components of the MBT cannot be dissected. Accordingly, the MBT does satisfy condition (b) in the definition of whole of life policy.

35. Under the MBT, the sum insured is payable upon the death of the life insured. Accordingly the MBT falls within condition (c)(i) of the definition. Once condition (c)(i) is satisfied condition (c)(ii) does not need to be satisfied.

36. As condition (a) of the definition of a whole of life policy has not been satisfied the MBT is not a whole of life policy.

### *Endowment policies*

37. An endowment policy provides for the payment of the sum insured if the life insured survives to the end of the specified period or if the life insured dies within the specified period. Bonuses may be paid during the life of the policy and such bonuses constitute the investment component of the policy. An endowment policy will contain a nominated maturity age with the sum insured payable on the earlier of either the death of the life insured or the attainment of the maturity age.[3]

38. Subsection 267(1) defines endowment policy as follows:

> **'endowment policy'** means an insurance policy where the following conditions are satisfied:
>
> (a) the policy is not a whole of life policy;
>
> (b) the policy includes an investment component;
>
> (c) the premium is not dissected (whether by reference to the investment component or otherwise);
>
> (d) the sum insured, together with bonuses (if any), is payable upon the occurrence of the earlier of the following events:
>
> (i) the death of the life insured;
>
> (ii) the date specified in, or ascertained in accordance with, the policy.

[3] Ibid.

39. The MBT is not a whole of life policy. Accordingly condition (a) of the definition is satisfied.

40. The MBT does not include an investment component and accordingly condition (b) of the definition is not satisfied (refer to paragraphs 30 to 32).

41. The MBT is a bundled policy. The parts of the premium which relate to the different components of the MBT cannot be dissected. Accordingly, the MBT does satisfy condition (c) in the definition of whole of life policy.

42. Condition (d) in the definition of endowment policy requires the policy to specify a date upon which the policy will mature. Under an endowment policy the sum insured will be payable upon the earlier of the death of the insured or the attainment of the date specified in, or ascertained, in accordance with the policy. However, under the MBT the payment of the sum insured is contingent upon the death of the life insured, or the diagnosis of a terminal illness. The MBT does not have an alternative maturity date on which the sum insured can be paid for the purposes of the 'earlier of' comparison necessary to satisfy condition (d) of the definition.

43. As conditions (b) and (d) of the definition of an endowment policy have not been satisfied the MBT is not an endowment policy.

### *Term life insurance*

44. The MBT is described by AIA as a 'term life insurance policy'. A term life insurance policy provides death cover during a specified period only. If the life insured survives to the end of that period, no amount is payable by the insurer. If the life insured dies within that period the sum insured is payable. A term life policy differs from whole of life and endowment insurance policies as it does not contain an investment component.

45. Under the MBT there is no payment of the sum insured if the life insured survives to the end of the 10 year period. If the life insured dies within that period the sum insured is paid.

46. The MBT does not contain an investment component. This is on the basis that under the MBT the Policyholder is not entitled to the payment of bonuses under the terms of the policy and the sum insured remains constant throughout the term of the policy (refer to paragraphs 30 to 32).

47. The classification of the MBT as a 'term life insurance policy' is not necessary in order to apply subsection 279(1). It is sufficient, under the structure of subsection 279(1), to establish that the MBT is neither a whole of life insurance policy nor an endowment policy. The deductibility of the premium then becomes a question of whether paragraph 297(1)(c) or paragraph 279(1)(d) applies.

### *Bundled and unbundled life insurance policies*

48. Whether paragraph 279(1)(c) or paragraph 279(1)(d) applies depends on whether the MBT is a bundled or unbundled policy. In the case of an unbundled policy paragraph 279(1)(c) will apply to allow a deduction for that part of the premium referable to death or disability cover that is specifically identified in the policy. In a traditional term life insurance policy, the whole of the premium would be referable to death cover and accordingly a deduction of 100% of the premium would be allowed. This is on the basis that the premium for a term life insurance policy does not include an amount relating to anything other than death cover.

49. The courts have considered whether a premium payable under a policy which provides insurance and additional benefits can be apportioned between the different benefits provided under the policy. In *The National Mutual Life Association of Australasia v. Federal Commissioner of Taxation* (1959) 102 CLR 29 Windeyer J concluded that the insurer's obligation under the principal life insurance policy was separate from its additional obligation in relation to the waiver of premium benefit. This was notwithstanding that the principal policy and the waiver of premium benefit were linked in the sense that the insurer would provide the waiver of premium benefit only to the purchasers of life insurance (102 CLR 29 at 48). Windeyer J stated (102 CLR 29 at 50):

> If the premium paid in consideration of a combined policy were not severable and apportionable, then in my view, the result of s. 111 might well be, not that no part of the total premium should be included in the assessable income, but that all of it should be…the total premium here is divisible and apportionable, and that only so much as is the true actuarially established premium for the life insurance element is within s. 111.

50. This approach was also applied in *AMP Life Limited v. Commissioner of State Revenue* (Vic) 2003 ATC 4526.

51. The MBT does not meet the requirement of paragraph 279(1)(c) because it is not an unbundled policy. The terms of the policy do not specifically identify the part of the premium referable to the payment of the sum insured, on the death of the life insured, or the premium refund benefit.

52. As the MBT is a bundled policy that does not satisfy the definition of either a whole of life or endowment policy, paragraph 279(1)(d) is the appropriate provision.

### *Deductibility of MBT premiums*

53. In order for a deduction to be claimed under paragraph 279(1)(d), subsection 279(3) requires that the trustee of a complying superannuation fund must obtain an actuary's certificate with respect to the operation of section 279.

54. The actuary's certificate in relation to the MBT (as described in paragraph 11) obtained by AIA and supplied to a Policyholder before the certificate date, will be accepted as an actuary's certificate obtained by a Policyholder for the purposes of subsection 279(3).

55. The Commissioner accepts that, in the case of the MBT, a standardised apportionment of the premium will suffice for the purposes of determining the deduction available under paragraph 279(1)(d). This is on the basis of the facts of the arrangement, and the design of the MBT, as provided by AIA.

56. The certificate date is defined in subsection 267(1) as the date of lodgment of the return of income of the fund of the year of income to which the certificate relates or such later date as the Commissioner allows.

57. The requirement in subsection 279(3) has the result that under paragraph 279(1)(d) only so much as is the actuarially established premium attributable to the procurement of death or disability insurance is an allowable deduction.

58. Subsection 267(1) defines 'death or disability benefit' in relation to a member of a complying superannuation fund as:

(a) a benefit provided in the event of the death of the member;

(b) a benefit provided to the member in the event of the permanent disability of the member; or

(c) a benefit provided to the member, by way of income, during a period (in this paragraph called the 'disability period') when the member is unable to perform the normal duties of the member's employment, being a period not exceeding whichever of the following periods is the longest:

(i) 2 years;

(ii) if there is in force at the beginning of the disability period an approval given in relation to the fund for the purposes of section 62 of the SIS Act and that approval specifies a maximum period for the provision of such benefits – that period;

(iii) if subparagraph (ii) does not apply and the Commissioner approves in writing a period in relation to the fund – that period.

59. The definition of 'death or disability benefit' in subsection 267(1) includes a benefit provided in the event of the death of the member. The benefits provided under the MBT include payment of the sum insured on the death of the life insured. Therefore, to the extent that the insurance premium paid by the trustee of a complying superannuation fund is in respect of securing payment of an insured sum on the death of a member(s), the premium is in respect of the fund's current or contingent liability to pay a 'death or disability benefit', as defined in subsection 267(1), for the member(s) of the fund.

60. The definition of 'death or disability benefit' in subsection 267(1) makes no reference to a benefit provided in the event of the diagnosis of the member with a terminal illness. However, amongst the benefits provided under the MBT is the payment of the sum insured on the diagnosis of the life insured with a terminal illness. The MBT states that a life insured is terminally ill if that person is diagnosed with an illness and in the opinion of AIA, (after receiving acceptable medical evidence) will die within 12 months regardless of any treatment that may be undertaken. Therefore, to the extent that the insurance premium paid by the trustee of a complying superannuation fund is in respect of securing payment of the insured sum on the diagnosis of a member(s) with a terminal illness, the premium will not be in respect of the fund's current or contingent liability to pay a 'death or disability benefit', as defined in subsection 267(1), for the member(s) of the fund.

61. The definition of 'death or disability benefit' in subsection 267(1) includes certain benefits payable in the event of disability. However, the benefits provided under the MBT do not include benefits payable on disability. Therefore the disability aspect of the definition is not relevant.

62. Part of the premium paid by the Policyholder under the MBT relates to the premium refund benefit rather than to obtaining death or disability insurance. That part of the premium cannot be characterised as insurance in respect of a liability. In Re *Commonwealth Homes and Investment Co Ltd* [1943] SASR 211, Mayo J said (at 231) (cited in *NM Superannuation Pty Ltd v. Young and Anor* (1993) 113 ALR 39; 41 FCR 182):

> …To 'insure' suggests an indemnity, or payment of an amount to cover loss or injury, where an element of risk, or what might be called of speculation, is present, which is insured against in consideration of a premium… A life policy as ordinarily understood is the purchase of a reversionary sum payable at death in consideration of a present payment of money, or as is generally the case on the payment of an annuity to the insurer during the life of the person insured… The word 'insure' is inept to describe an undertaking to refund, or acceleration of the repayment of a loan.

63. Accordingly only that part of the MBT premium which is attributable to the Policyholder's liability to provide death or disability cover to its members is deductible under paragraph 279(1)(d).

64. To the extent that the MBT premium relates to the:

- terminal illness benefit; or
- premium refund benefit,

the premium will not be deductible under paragraph 279(1)(d).

### Section 279A

65. Where the Policyholder receives, in a year of income, a rebate or refund of a premium which has, in whole or in part, been allowed or is allowable as a deduction under subsection 279(1), so much of that rebate or refund as is attributable to that deduction shall be included in the assessable income of the Policyholder of the year of income; subsection 279A(1).

66. Accordingly, when the Policyholder receives a refund of premiums from AIA, under the terms of the MBT, the Policyholder is required to include that part of the refund that was allowable as a deduction under subsection 279(1) in assessable income.

67. Under the MBT a Policyholder is entitled to a refund of all of the premium paid over the 10 year period if no claims have been made within that 10 year period or 25% of the premium paid if the benefit is terminated after 5 years but before 10 years.

68. However, only a portion of the premium payable under an MBT is deductible pursuant to paragraph 279(1)(d). Accordingly, upon refund of that premium, only the portion that is attributable to the deduction previously allowed under paragraph 279(1)(d) is to be included in the assessable income of the Policyholder.

### Section 8-1

69. The premium paid by a Policyholder in relation to the MBT is not deductible by a Policyholder under section 8-1 of the ITAA 1997.

70. A specific deduction for part of the premium paid by a Policyholder is allowed under paragraph 279(1)(d). Section 8-10 of the ITAA 1997 states that where two or more provisions may allow a deduction in respect of the same amount, the deduction should be claimed under the most appropriate provision.

71. Paragraph 279(1)(d) is the most appropriate specific provision under which to deduct part of the premium paid in relation to the MBT.

### Section 6-5

72. Any rebate or refund of the premium received by a Policyholder will not be included in a Policyholder's assessable income under section 6-5 of the ITAA 1997. Where a specific provision includes an amount in assessable income, that provision prevails over the general rules about ordinary income.

73. Section 279A specifically includes a refund or rebate of a premium in the Policyholder's assessable income and prevails over the ordinary income provision in section 6-5 of the ITAA 1997; refer to subsection 6-25(2) of the ITAA 1997.

### Section 82KL

74. The operation of section 82KL depends, among other things, on the identification of a certain quantum of 'additional benefit(s)'. Insufficient 'additional benefits' will be provided to attract the application of section 82KL. Section 82KL will not apply to deny deductions otherwise allowable under paragraph 279(1)(d).

### Section 82KZM

75. Section 82KZM operates to spread over more than one income year a deduction for prepaid expenditure incurred by certain taxpayers. Section 82KZM does not apply in relation to a deduction claimed under paragraph 279(1)(d).

### Part IVA

76. Provided that the arrangement ruled on is entered into and carried out as described (see the Arrangement section of this Ruling), it is accepted that the arrangement is an ordinary commercial transaction and that Part IVA will not apply.

# Appendix 2 – Detailed contents list

77. The following is a detailed contents list for this Ruling:

# References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

IT 2617

*Subject references:*

- complying superannuation funds
- life insurance policies
- premium

*Legislative references:*

- ITAA 1936 82KL
- ITAA 1936 82KZL
- ITAA 1936 82KZM
- ITAA 1936 Pt IVA
- ITAA 1936 267(1)
- ITAA 1936 279
- ITAA 1936 279(1)
- ITAA 1936 279(1)(a)
- ITAA 1936 279(1)(b)
- ITAA 1936 279(1)(c)
- ITAA 1936 279(1)(d)
- ITAA 1936 279(3)
- ITAA 1936 279A
- ITAA 1936 279A(1)
- ITAA 1997 6-5
- ITAA 1997 6-25(2)
- ITAA 1997 8-1
- ITAA 1997 8-10
- TAA 1953
- TAA 1953 Sch 1 375-75(1)
- Copyright Act 1968

*Case references:*

- AMP Life Limited v. Commissioner of State Revenue (Vic) 2003 ATC 4526
- Re Commonwealth Homes and Investment Co Ltd [1943] SASR 211
- NM Superannuation Pty Ltd v. Young and Anor (1993) 113 ALR 39; 41 FCR 182
- The National Mutual Life Association of Australasia v. Federal Commissioner of Taxation (1959) 102 CLR 29

*Other references:*

- Marks F & Balla A 1940, Guidebook to Insurance Law in Australia, CCH Australia, Sydney, 3rd ed

ATO references

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