


# ***PR 2022/1 - Tax consequences for Australian policyholders of a Kenforth international insurance policy***

 This cover sheet is provided for information only. It does not form part of *PR 2022/1 - Tax consequences for Australian policyholders of a Kenforth international insurance policy*



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Status: **legally binding**

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## Product Ruling

# Tax consequences for Australian policyholders of a Kenforth international insurance policy

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### **📌 Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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## No guarantee of commercial success

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The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

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

## Terms of use of this Product Ruling

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This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

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### What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that takes part in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936), unless otherwise indicated.
2. In this Product Ruling the scheme involves the purchase and holding of an International Insurance Policy (IIP) issued by Kenforth Life Insurance Limited (Kenforth) subject to the International Insurance Policy General Policy Conditions (the Policy Conditions).<sup>1</sup>
3. This Product Ruling does not address:
  - the tax consequences arising in relation to an IIP held by a Policyholder that is not a resident of Australia for tax purposes during the period on or after 1 July 2021 and on or before 30 June 2024
  - the treatment of any Fees and Premiums incurred in connection with an IIP
  - a Policyholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under an IIP
  - the tax consequences of any arrangement under which assets of the Segregated Fund are loaned pursuant to the terms of a securities lending contract
  - the tax consequences of a cancellation of the IIP
  - the capital gains tax consequences arising from the assignment of ownership of an IIP to another entity for consideration, and
  - whether a Policyholder makes forex realisation gains or losses under Division 775 of the *Income Tax Assessment Act 1997* (ITAA 1997).

### Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section.
5. The class of entities that can rely on the Ruling section of this Product Ruling consists of:
  - (a) Those entities that purchase an IIP subject to the Policy Conditions (the Policyholder) on or after 1 July 2021 and on or before 30 June 2024 and are a resident of Australia for tax purposes either at the time of purchase or subsequent to that purchase and during the period on or after 1 July 2021 and on or before 30 June 2024.
  - (b) Entities to which ownership of an IIP subject to the Policy Conditions is assigned for no consideration (also a Policyholder) on or before 30 June 2024 and, at the time of, or subsequent to, that assignment and

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<sup>1</sup> Unless otherwise defined, capitalised terms in this Product Ruling take their meaning as per the Policy Conditions and/or the Policy Application referred to in paragraph 16 of this Product Ruling.

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during the period on or after 1 July 2021 and on or before 30 June 2024, are a resident of Australia for tax purposes.<sup>2</sup>

- (c) Where a Policyholder referred to in subparagraphs 5(a) or (b) of this Product Ruling is also the Insured Person and dies
- (i) an entity nominated as a Beneficiary by the Policyholder, or
  - (ii) the deceased estate of the Policyholder.

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

### ***Superannuation Industry (Supervision) Act 1993***

7. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). 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 Product Ruling as to whether investment in this scheme may contravene the provisions of the SISA.

### **Qualifications**

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 36 of this Product Ruling.

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

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

### **Date of effect**

10. This Product Ruling applies from 1 July 2021. It applies only to the specified class of entities that:

- enter into the scheme, and
- are a resident of Australia for tax purposes during the period from 1 July 2021 to 30 June 2024, being its period of application (this Product Ruling will continue to apply to those entities even after its period of application has ended, as long as the Policyholder remains a resident of Australia for tax purposes).

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

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

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### **Changes in the law**

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

13. Entities that are considering participating in the scheme are advised to confirm with their tax adviser that changes in the law have not affected this Product Ruling since it was issued.

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

14. Product Rulings were introduced for the purpose of providing certainty about income tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

## **Ruling**

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15. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 36 of this Product Ruling:

- (a) The IIP is an 'eligible policy' for the purposes of section 26AH.
- (b) Any portion of the Insurance Benefits or partial surrender payment received by a Policyholder under an IIP upon full or partial surrender respectively, and comprising an adjustment for earnings referable to the increase in value of the units in the Segregated Fund designated to the Policyholder's IIP (as per paragraph 31 of this Product Ruling), 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 IIP, and
  - (ii) is not otherwise assessable as ordinary or statutory income under the ITAA 1936 or the ITAA 1997.
- (c) Where, having regard to the matters listed in paragraph 26AH(8)(b), the Commissioner is of the opinion that it would be unreasonable for subsection 26AH(6) to apply (as per paragraph 15(b) of this Product Ruling) to any portion (or to part of any portion) of the Insurance Benefits received by a Policyholder by reason of their full surrender of their IIP, 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 Insurance Benefits or partial surrender payment received by a Policyholder under an IIP 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 IIP as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in the value of the Segregated Fund designated to a Policyholder's IIP, as calculated at a Time of Valuation, is not regarded as having been received by the Policyholder for the purposes of assessment under subsection 26AH(6).

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- (f) A Policyholder is not, for the purposes of assessment under subsection 26AH(6), taken to have received an amount under or in relation to an eligible policy pursuant to subsection 26AH(4) as a result of 'switching' the assets in the Segregated Fund designated to them.
- (g) Where, during the eligible period in relation to an IIP a Policyholder receives an amount of consideration in respect of an assignment of that IIP, 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 IIP 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 IIP, or a bonus that can reasonably be expected to accrue in respect of the IIP (subsection 26AH(12)).
- (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under an IIP is assessable under subsection 26AH(6).
- (i) Where the Premium payable by a Policyholder in respect of an IIP in relation to an assurance year exceeds the Premium payable under that IIP 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 IIP to have commenced at the beginning of the year in which the premium was increased (rather than at the date of commencement of the period in respect of which the first premium under the IIP 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 paragraph 5(a) of this Product Ruling resulting from the payment to them under an IIP of the
  - (i) Insurance Benefits or partial surrender payment upon full or part surrender of their IIP, or
  - (ii) Death Benefit upon the death of the Insured Person (where the Policyholder is not a life assured).
- (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 paragraph 5(b) of this Product Ruling resulting from the payment to them under an IIP of the
  - (i) Insurance Benefits or partial surrender payment upon full or part surrender of their IIP, or
  - (ii) Death Benefit upon the death of the Insured Person (where the Policyholder is not a life assured).
- (l) Any capital gain or capital loss made by the nominated Beneficiary or the deceased estate of a Policyholder, as applicable, resulting from the payment to them under an IIP of the Death Benefit upon the death of the Policyholder (as the Insured Person) is disregarded pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997.
- (m) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA will not apply to an entity referred to in paragraph 5 of this Product Ruling.

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Status: **legally binding**

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## **Scheme**

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

- application for a Product Ruling as constituted by information and documentation received on 24 September 2021 and 27 September 2021
- the International Insurance Policy General Policy Conditions (version 1.06), last updated on 6 June 2019, and
- the Policy Application received on 24 September 2021.

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

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

18. Kenforth is a life insurance company licensed and registered in the Commonwealth of The Bahamas which issues (among other products) IIPs. Entities (Policyholders) capable of purchasing an IIP from Kenforth include both residents and non-residents of Australia for tax purposes at the time of issue.

19. An IIP is issued in the form of a single premium policy. Additional premium payments to acquire additional Insurance Benefits are possible at any time prior to the Insured Event (defined as the event of the death of the Insured Person or, where there are multiple Insured Persons, the death of the last surviving Insured Person).

20. Full details of the IIP, including the commitments and rights of both Kenforth and a Policyholder, are contained in the Policy Conditions. The Policy Conditions are interpreted in accordance with, and are governed by, the law of the Commonwealth of The Bahamas.

### **Segregated Funds**

21. To enable calculation of the benefits and charges under an IIP, Kenforth creates notional units, each representing a proportionate share of the value of the assets in a Segregated Fund designated to the Policyholder's IIP.

22. The Segregated Fund contains all of the Policyholder's Premiums (net of any Fees and Outgoings deducted), is a separate and distinct account belonging to Kenforth, and pertains to an identified or identifiable pool of assets and liabilities of Kenforth which are separate, segregated or distinguished from other assets and liabilities of Kenforth.

23. Subject to Kenforth's acceptance:

- the assets in the Segregated Fund designated to the Policyholder may be based on any Investment Strategy directed by the Policyholder, covering a broad selection of asset classes, and
- the Policyholder may change the Investment Strategy at any time prior to the Insured Event.

24. The Value of the Segregated Fund (that is, the net value of the assets comprised within the segregated Fund) is determined by Kenforth on each quarterly Time of Valuation date.

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25. While the Policyholder legally owns their IIP, they have no legal or beneficial interest in the Segregated Fund or any of the assets therein, which remain the property of Kenforth. Any appointed Custodian under the terms of the IIP is therefore custodian of Kenforth, not the Policyholder.

26. The Policyholder can request to lend the assets of the Segregated Fund to a borrower under a securities lending contract.

27. The Segregated Fund is only available to meet the Insurance Benefits. The Policyholder has no right to payment of the Insurance Benefits or partial surrender payment, as applicable, other than on surrender of their IIP either in whole or in part or on Death of the Insured Person.

### **Surrender of a Policy**

28. The Policyholder may at any time before the Insured Event partially or fully surrender their IIP. Execution of a partial surrender of the IIP is at the sole discretion of Kenforth.

29. Where the Policyholder partially surrenders their IIP, Kenforth shall make a partial surrender payment to the Policyholder as a cash transfer or a transfer of the assets comprised within the Segregated Fund as soon as reasonably practical after receipt of the surrender request. The Policyholder can provide Kenforth with their preferences as to which assets in the Segregated Fund to realise or transfer in satisfaction of the partial surrender payment.

30. Where the Policyholder fully surrenders their IIP, Kenforth shall pay the Value of the Segregated Fund to the Policyholder as a cash transfer or a transfer of the assets comprised within the Segregated Fund as soon as reasonably practical after receipt of the surrender request, and the IIP will expire.

31. Any Insurance Benefits or partial surrender payment paid to the Policyholder on full or part surrender respectively consists of the Premium allocated to the Segregated Fund, as adjusted for any earnings referable to the increase in value of the notional units in the Segregated Fund less the Policyholders' share of referable Fees and Outgoings in managing the Segregated Fund.

### **Death Benefit**

32. The IIP is a whole-of-life assurance policy providing for a payment of a Death Benefit on the death of the Insured Person. Where multiple lives are assured under an IIP, the Insured Person is the last of the lives assured to die. A life assured under an IIP may or may not be that of the Policyholder.

33. The Death Benefit payable by Kenforth is the value of the Segregated Fund, calculated as soon as reasonably practical after Kenforth has received notice of the Insured Event, plus US\$100.

34. The Death Benefit may be paid by Kenforth as a cash transfer or a transfer of the assets comprised in the Segregated Fund. Where more than one Beneficiary is appointed, the Beneficiaries shall receive the Death Benefit in accordance with the directions given by the Policyholder prior to the Insured Event.

35. On payment of the Death Benefit the IIP will expire and no further benefit will be payable by Kenforth.

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**Assumptions**

36. This Product Ruling is made on the basis of the following necessary assumptions:
- (a) A nominated Beneficiary referred to in paragraph 5(c)(i) of this Product Ruling is an Australian resident for tax purposes at the time of receipt of a Death Benefit under the IIP.
  - (b) A Policyholder's deceased estate, referred to in paragraph 5(c)(ii) of this Product Ruling, is an Australian-resident trust estate as defined in subsection 95(2) at the time of receipt of a Death Benefit under the IIP.
  - (c) A Policyholder referred to in paragraph 5(a) of this Product Ruling is the original owner of the IIP they purchased.
  - (d) All dealings between any of the entities referred to in paragraph 5 of this Product Ruling and Kenforth will be at arm's length.
  - (e) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 16 of this Product Ruling.

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**Commissioner of Taxation**

23 February 2022

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 Status: **not legally binding**


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## Appendix – Explanation

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**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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### **Application of section 26AH to the International Insurance Policy**

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

### **The International Insurance Policy is an eligible policy**

38. 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 ITAA 1997) issued on or after 1 January 2003'.

39. 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*.

40. A contract of insurance that provides for the payment of money on the death of a person, and a contract (whether or not it is a contract of insurance) that constitutes an investment-linked contract, both constitute a life policy under paragraphs 9(1)(a) and (g) of the *Life Insurance Act 1995*.

41. 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.

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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").

42. An IIP issued to a Policyholder referred to in paragraph 5 of this Product Ruling is an eligible policy for the purposes of section 26AH as it:

- has a date of commencement of risk, being the date of commencement of the period in respect of which the first Premium paid under the IIP is paid, which is after 27 August 1982
- is not a 'funeral policy', as defined in subsection 995-1(1) of the ITAA 1997, and
- is a life assurance policy by virtue of it constituting a life policy pursuant to paragraphs 9(1)(a) and (g) of the *Life Insurance Act 1995*.

#### ***Treatment of benefits received under the International Insurance Policy***

43. The term 'bonus' is not defined for the purposes of section 26AH but is explained at paragraph 8 of IT 2346 in the context of 'more traditional policies' as a guaranteed addition to the amount insured, payable when the amount insured is payable and representing both a form of participation by the policyholder in the issuing company's profits and a share in the surpluses derived by the issuing company during the period the policy is in force. Such a bonus, where received under an eligible policy that matures or is surrendered, forfeited or otherwise terminated within the eligible period of ten years after commencement, falls within the scope of section 26AH.

44. The portion of the Insurance Benefits or any partial surrender payment comprising an adjustment for earnings referable to the increase in value of the units in the Segregated Fund designated to the Policyholder's IIP, and paid by Kenforth from the Segregated Fund maintained for each Policyholder that owns an IIP, is considered to have characteristics that are consistent with the description of a bonus in IT 2346. These characteristics include relating and being linked to a life assurance policy, being additional to the Death Benefit payable upon the death of the Insured Person, and providing the Policyholder with participation in Kenforth's profits, as derived from the assets in the Segregated Fund designated to the Policyholder (but owned by Kenforth) during the period the Policyholder's IIP is in force.

45. Payments of a bonus by Kenforth from the balance of the Segregated Fund maintained under an IIP 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 an IIP 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 eight 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.

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46. 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).

47. 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 Insurance Benefits or partial surrender payment received by a Policyholder under an IIP otherwise than as or by way of a bonus (as referred to in paragraph 15(b) of this Product Ruling) shall be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder as if it had been received as or by way of a bonus.

48. 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.

49. An accretion in the value of the Segregated Fund designated to a Policyholder, as calculated at a Time of Valuation, constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policyholder on part or full surrender of their IIP, 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).

50. 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 48 of this Product Ruling – see Taxation Determination TD 94/82 *Income tax: does section 26AH of the Income Tax Assessment Act 1936 apply when investment options are 'switched' under an eligible policy?* Switches of the assets in the Segregated Fund designated to the Policyholder involves the mere variation in the calculation base of their IIP 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 IIP.

51. 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

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IIP 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. For the purposes of subsection 26AH(6), no amount may be deemed pursuant to subsection 26AH(9) to have been received by a policyholder as or by way of a bonus where an eligible policy is assigned by the policyholder for no consideration.

52. 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 an IIP (as a portion of the Death Benefit) in consequence of the death of the Insured Person is therefore not assessable under subsection 26AH(6).

#### ***Effect of increased premiums on eligible period***

53. 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.

54. Where the Premium payable by a Policyholder in respect of an IIP in relation to an assurance year exceeds the Premium payable under that IIP in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the IIP is deemed by application of subsection 26AH(13) to have commenced at the beginning of the year in which the Premium was increased, rather than at the date of commencement of the period in respect of which the first Premium under the IIP was paid.

55. Where the Premium payable by a Policyholder in respect of an IIP in relation to each assurance year does not exceed the Premium payable under that IIP in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the IIP, for the purposes of the application of subsection 26AH(6), continues to run from the date of commencement of the period in respect of which the first Premium under the IIP was paid.

#### ***Capital gain or capital loss from payments under the International Insurance Policy disregarded***

56. Under subsection 108-5(1) of the ITAA 1997, a CGT asset is any kind of property or a legal or equitable right that is not property. The contractual rights of a Policyholder and, as applicable, a Policyholder's nominated Beneficiary or deceased estate under an IIP are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

57. Where Kenforth makes a payment of the Insurance Benefits or partial surrender payment in satisfaction of a Policyholder's contractual rights under an IIP, their ownership of those rights is discharged or satisfied. Similarly, where Kenforth makes a payment of a Death Benefit in satisfaction of a Policyholder's, a nominated Beneficiary's or a Policyholder's deceased estate's contractual rights under an IIP, as applicable, their

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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).

58. The Policyholder, their nominated Beneficiary or their deceased estate, as applicable, makes a capital gain from this CGT event if their capital proceeds from the ending of the ownership of their asset are more than the asset's cost base or, alternatively, a capital loss if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3) of the ITAA 1997).

59. 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?*).

60. 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).

61. As an entity to whom/which the IIP is first issued, a Policyholder referred to in paragraph 5(a) of this Product Ruling is regarded as an original owner of a policy of insurance on the life of an individual. Accordingly, that Policyholder is entitled under table item 3 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment by Kenforth of either the Insurance Benefits or partial surrender payment upon full or part surrender of the IIP, or (where the Policyholder is not a life assured) a Death Benefit.

62. 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.

63. On the assignment of ownership of an IIP for no consideration to a Policyholder referred to in paragraph 5(b) of this Product Ruling, that Policyholder acquires an interest in the IIP for no consideration. A Policyholder referred to in paragraph 5(b) of this Product Ruling is therefore entitled under table item 4 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment by Kenforth of either the Insurance Benefits or partial surrender payment upon full or part surrender of the IIP, or (where the Policyholder is not a life assured) a Death Benefit.

64. On the death of a Policyholder who is the Insured Person, the Policyholder's nominated Beneficiary or deceased estate, as applicable, acquires an interest in the IIP for no consideration. The Beneficiary or the deceased estate, as applicable, is therefore entitled under table item 4 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment of a Death Benefit by Kenforth.

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Status: **not legally binding**

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

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

*Legislative references:*

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ATO references

NO: 1-S7170CL

ISSN: 2205-6114

BSL: PW

ATOlaw topic Income tax ~~ Assessable income ~~ Other types of income ~~ Life insurance bonuses and policies

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