



PR 2022/11 - Allianz Guaranteed Income for Life

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 December 2022*



Status: **legally binding**

Product Ruling

Allianz Guaranteed Income for Life

📌 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

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

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

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What this Ruling is about

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

2. In this Product Ruling, the scheme is an investment in Allianz Guaranteed Income for Life (AGILE) offered by Allianz Australia Life Insurance Limited (Allianz) under a Product Disclosure Statement (PDS).¹

3. This Product Ruling does not address:

- the tax consequences of acquiring, holding and redeeming AGILE, other than as per paragraphs 15 to 39 of this Product Ruling
- the tax consequences for investing in AGILE using a directed termination payment within the meaning of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997)
- the tax consequences for investing in AGILE using personal injury compensation money, as per Division 54 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- an Investor's eligibility to claim the seniors and pensioners tax offset
- the deductibility of the amount invested in AGILE²
- whether the annuity payments made by Allianz to the Investor under AGILE are subject to pay as you go withholding
- the tax consequences of rolling over the residual capital, during the Growth Phase, into a further term
- the treatment of any duties, fees, taxes or other government charges that may be deducted from any payments payable by Allianz under AGILE
- the tax consequences of a transfer of an investment in AGILE
- the deductibility of any fees or costs incurred in connection with AGILE, and
- the tax consequences of borrowing funds to invest in AGILE, including the deductibility of interest on funds borrowed.

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 those entities that are Australian residents for tax purposes and:

- are an Investor in AGILE by virtue of their acquisition of an interest in the Group Policy on or after 14 December 2022 and on or before 30 June 2025, or

¹ Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from the PDS and Group Policy Deed referred to in paragraph 15 of this Product Ruling.

² For the purposes of this Product Ruling, it is assumed at paragraph 39(d) of this Product Ruling that no portion of the Investment Amount is deductible.

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- where the Investor is an individual and dies without having fully withdrawn their Investment Value, are
 - an entity nominated as a beneficiary by the Investor, or
 - the deceased estate of the Investor.

6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are not Australian residents for tax purposes
- invest in AGILE before 14 December 2022 or after 30 June 2025
- invest in AGILE using a directed termination payment within the meaning of the IT(TP)A 1997 or personal injury compensation money that is subject to Division 54 of the ITAA 1997, or
- are not at least one of the entities listed in paragraph 5 of this Product Ruling.

Qualifications

7. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 39 of this Product Ruling.

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

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

Date of effect

9. This Product Ruling applies prospectively from 14 December 2022, the date it was published. It applies only to the specified class of entities that enter into the scheme from 14 December 2022 until 30 June 2025, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

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

Changes in the law

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

12. Entities that participate 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.

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Note to promoters and advisers

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

Ruling

14. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 39 of this Product Ruling:

- (a) Annuities granted to the Investor under the Group Policy Deed are
 - (i) not a 'qualifying security' as defined in subsection 159GP(1)
 - (ii) not a 'superannuation income stream' as defined in section 307-70.02 of the *Income Tax Assessment (1997 Act) Regulations 2021* (ITAR (1997 Act) 2021), and
 - (iii) an 'annuity' as defined in subsection 27H(4).
- (b) Annuities granted to the Investor under the Group Policy Deed are not a financial arrangement to which Division 230 of the ITAA 1997 applies.
- (c) The annuity payments made by Allianz to the Investor are assessable income under subsection 27H(1) to the extent that the annuity payments exceed the 'deductible amount' in relation to the relevant annuity. The deductible amount is excluded from the assessable amount of the annuity.
- (d) The annual deductible amount in relation to the annuity payments derived by the Investor is ascertained (subject to subsection 27H(3)) in accordance with the formula set out in subsection 27H(2). Where the annuity payments are not payable to the Investor for the whole of an income year, the deductible amount for that year will be reduced proportionately by the Commissioner pursuant to subsection 27H(3) based on the part of the year during which the annuity payments are not paid.
- (e) Where the residual capital value in relation to an annuity reduces as a consequence of any negative movement in the relevant market-linked Protected Investment Options, causing the deductible amount ascertained in accordance with subsection 27H(2) for an income year to increase, and the annuity payments derived by the Investor for that year are exceeded by that deductible amount, the deductible amount for the year will be reduced by the Commissioner pursuant to subsection 27H(3) to the level of the annuity payments made.
- (f) The amount of any reduction in the deductible amount described in paragraphs 14(d) and (e) of this Product Ruling can be applied to annuity payments derived by the Investor in subsequent income years to the extent that those payments, individually or in aggregate, would otherwise exceed the deductible amount in those years.
- (g) Any capital gain made by the Investor resulting from the annuity payments made by Allianz is disregarded under section 118-300 of the ITAA 1997, and is not otherwise assessable as ordinary or statutory income under the ITAA 1997.

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- (h) Any capital gain made by the Investor resulting from the payment of the Withdrawal Value by Allianz to them upon Partial Withdrawal or Full Withdrawal is disregarded under section 118-300 of the ITAA 1997. The payment of the Withdrawal Value in these circumstances is, however, included in the assessable income of the Investor to the extent that it exceeds a capital component calculated as the undeducted purchase price (that is, the Investment Amount) less any deductible amounts previously applied to the annuity payments from Allianz, but not reduced to less than zero.
- (i) Any capital gain made by a nominated beneficiary of an individual Investor, the trustee of the deceased estate of an individual Investor or an Investor other than an individual Investor, as applicable, resulting from the payment of the Investment Value by Allianz to them upon death is disregarded under section 118-300 of the ITAA 1997. The payment of the Investment Value in these circumstances is, however, included in the assessable income of such Investor, nominated beneficiary or deceased estate, as applicable, to the extent that it exceeds a capital component calculated as the undeducted purchase price (that is, the Investment Amount) less any deductible amounts previously applied to the annuity payments from Allianz, but not reduced to less than zero.
- (j) 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 the class of entities referred to in paragraph 5 of this Product Ruling.

Scheme

15. 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 20 July 2022, 21 September 2022, 27 September 2022 and 10 October 2022
- draft Product Disclosure Statement for Allianz Guaranteed Income for Life, received on 10 October 2022, and
- draft Group Policy Deed between Allianz Australia Life Insurance Limited (as Insurer) and Allianz Australia Life Policy Services Pty Limited (as Policy Owner), received on 27 September 2022.

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

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

17. All Australian Securities & Investments Commission requirements are, or will be, complied with for the term of the agreements.

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Overview

18. Allianz is registered under the *Life Insurance Act 1995* (LIA) to conduct life insurance business in Australia. As part of that business, Allianz is offering AGILE, a life policy for the purposes of the LIA that satisfies the definition of a 'life insurance policy' under subsection 995-1(1) of the ITAA 1997 and is structured as a Group Policy issued to Allianz Australia Life Policy Services Pty Limited (the Policy Owner), a wholly-owned subsidiary of Allianz.

19. Interests in the Group Policy are available to be acquired by individuals between the age of 50 to 80, companies and trustees of trusts, including complying superannuation funds (Investors³).

20. An individual Life Insured must be nominated by the Investor in their Application. Where the interest in the Group Policy is acquired by an individual Investor, that individual is the Life Insured. Where an Investor other than an individual acquires an interest in the Group Policy they must nominate at least one individual Life Insured between the age of 50 to 80. In the case of an Investor that is a trustee of a complying superannuation fund, the nominated Life or Lives Insured must also be members of the fund.

21. The Investor is responsible for paying the Investment Amount to Allianz. The minimum Investment Amount is \$20,000 and the maximum Investment Amount is \$5 million for each Life Insured (subject to approval by Allianz of a greater amount). The Investment Amount cannot be:

- funded using a 'roll-over superannuation benefit' (as defined in section 306-10 of the ITAA 1997)
- jointly funded with another person, or
- added to in respect of a Life Insured once the investment has commenced.

22. Each Investor is granted annuities under a master annuity instrument embedded in the Group Policy Deed and operating as a deed poll executed by Allianz in favour of the Investors.

23. All payments due under the Group Policy (including the Investment Amount) are payable by the Investor to Allianz and all Benefits under the Group Policy are payable by Allianz to the Investor. Investors will be paid, and will have all rights to receive Benefits provided under the Group Policy (to the exclusion of the Policy Owner), net of any deduction applicable under or pursuant to the Group Policy Deed and PDS, including the annual Product Fee and the annual Lifetime Income Premium. These entitlements of the Investor under the terms of the Group Policy Deed are protected by statutory rights provided for under the *Insurance Contracts Act 1984* and the LIA.

24. Lives Insured have no entitlement to Benefits, interests in, or other rights provided under the Group Policy (unless they are also the Investor).

25. The Policy Owner's role is limited to acting in a facilitative capacity in relation to the Investors under the Group Policy. That includes nominating the Investor as a person entitled to receive Benefits under the Group Policy and prioritising the interests of the Investor over itself.

26. AGILE is comprised of 2 phases, the Growth Phase and the Lifetime Income Phase.

27. Under the Growth Phase of AGILE, the Investor is provided a One Year Term Certain Annuity in respect of a Life Insured, the Proceeds of which are automatically rolled

³ Referred to in the Group Policy Deed as Beneficiaries or Annuitants.

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into a new One Year Term Certain Annuity on a continuous rolling basis, for a minimum of 3 years, and until the Investor elects to commence the Lifetime Income Phase in respect of the Life Insured.

28. The Proceeds in respect of each One Year Term Certain Annuity are comprised of:

- the relevant Residual Capital Value
- successive 6 monthly minimum annuity payments (payable 6 months after the Commencement Date and on the Anniversary Date) to the Investor in respect of the Life Insured of 1% of the Investment Value excluding the Daily Value Adjustment, and
- any additional annuity payment on the Anniversary Date referred to as the Additional Return and equal to any positive Annual Return of one or more selected Protected Investment Options credited to the Group Policy for the Investor in respect of a Life Insured.

29. The Investment Value is broadly defined to mean the value of the investment payable to the Investor in respect of a Life Insured at a particular time and will reflect the Annual Return, include amounts reinvested, and be reduced by any withdrawals or Lifetime Income Payments and deductions for fees and other charges.

30. Prior to, and on each Anniversary Date during, the Growth Phase, the Investor chooses how to allocate their investment across four market-linked Protected Investment Options, allowing the Investor to benefit from exposure to market-linked returns (via the Annual Return), subject to a Maximum Return, and offering varying degrees of protection against adverse market movement.

31. Once the Investor elects to commence the Lifetime Income Phase after the expiry of a minimum of 3 years from the Commencement Date⁴, the Investor is paid regular monthly income payments that are guaranteed for the lifetime of the Life Insured (Lifetime Income).

32. The Lifetime Income an Investor receives is determined by multiplying the Investment Value on the Lifetime Income Commencement Date by the Lifetime Income Rate.

33. The Lifetime Income Rate determines the percentage of the Investment Value received by the Investor on commencement of the Lifetime Income Phase and is determined by applying the:

- applicable Age-Based Rate, a percentage rate based on the age of the Life Insured at the Commencement Date, plus
- Total Annual Income Escalator, being the sum of the escalator percentage rates accumulated for each complete year the Investor was in the Growth Phase.

34. The Total Annual Income Escalator increases each year the Investor remains in the Growth Phase, increasing the Investor's starting Lifetime Income Rate.

⁴ The Investor will automatically transition to the Lifetime Income Phase on the first Anniversary Date after the Life Insured reaches 100 years of age.

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35. The amount of Lifetime Income received by the Investor annually will also be impacted by their selection at the Lifetime Income Commencement Date between 2 payment options. The options are:

- Lifetime Income – Fixed Option, which guarantees a fixed level of income, or
- Lifetime Income – Rising Option, which guarantees an income that will rise in line with any positive Annual Return percentage in the Australian Equity Index – Total Protection, up to a Maximum Return, or remain at the same level where there is a zero or negative movement in that index.

36. The Investor can access their Investment Value at any time, by virtue of a payment by Allianz of the Withdrawal Value, via a Partial Withdrawal or a Full Withdrawal. Any withdrawals made by the Investor during the Growth Phase in excess of 5% of the Investment Amount, or during the Income Phase and in excess of their Lifetime Income Payments, will be treated as an Excess Withdrawal and attract a Market Value Adjustment where it happens within 10 years of the Commencement Date. During the Lifetime Income Phase, Excess Withdrawals and any Market Value Adjustment will cause future Lifetime Income Payments to reduce proportionally, as well as reduce the Investor's Investment Value.

37. Where the Life Insured dies the Investment Value (as at the date of payment) will be paid to the Investor (if it is greater than zero), unless the Investor is also the Life Insured and is paid to either their nominated beneficiary or beneficiaries or, if there are no nominated beneficiaries, the trustee of their estate. No Market Value Adjustment shall apply on death of the Life Insured.

38. Lifetime Income Payments will continue to be made to the Investor even after the Investment Value reduces to zero (for any reason other than Excess Withdrawal) and for as long as the Life Insured is alive. AGILE will cease in respect of the Life Insured, together with the Lifetime Income Payments, on the death of the Life Insured or upon the earlier payment of a Full Withdrawal of their investment by the Investor.

Assumptions

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

- (a) Each of the entities referred to in paragraph 5 of the Product Ruling are Australian residents for tax purposes or Australian resident trust estates as defined in subsection 95(2).
- (b) The Investor will not invest in AGILE using a directed termination payment within the meaning of the IT(TP)A 1997, or using personal injury compensation money that is subject to Division 54 of the ITAA 1997.
- (c) The Investor has not acquired an interest in the Group Policy via transfer from another Investor.
- (d) No portion of the Investment Amount is deductible.
- (e) An Investor that is the trustee of a trust, including a superannuation fund, is not prevented from investing in AGILE by any terms of its trust deed, and is not in breach of any of its stated investment guidelines and strategies.
- (f) All dealings between any of the entities referred to in paragraph 5 of this Product Ruling and Allianz or the Policy Owner will be at arm's length.

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- (g) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 15 of this Product Ruling.

Commissioner of Taxation

14 December 2022

 Status: **not legally binding**

Appendix – Explanation

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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Subsection 27H(4) – annuity

40. Subsection 27H(4) defines an 'annuity' to mean:

... an annuity, a pension paid from a foreign superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) or a pension paid from a scheme mentioned in paragraph 290-5(c) of that Act, but does not include:

- (a) an annuity that is a qualifying security for the purposes of Division 16E; or
- (b) a superannuation income stream (within the meaning of the *Income Tax Assessment Act 1997*).

41. This definition encompasses an annuity on ordinary concepts, as contemplated within various judicial authorities and discussed in Taxation Ruling IT 2480 *Income tax: variable annuities*. An annuity on ordinary concepts is a contract under which a principal sum is converted into an income stream⁵ of payments that are at least annual, fixed or variable in a way that is calculable, and which will continue to be paid for a fixed or determinable period.

42. The Investor's Investment Amount is applied to purchase the annuity payments (including the Lifetime Income Payments) during the Growth Phase and the Lifetime Income Phase respectively payable by Allianz under the terms of the Group Policy Deed, a contract pursuant to which the Investor is granted an entitlement to receive such payments. Those payments, in either phase, are a series of periodic payments (payable more regularly than yearly), either fixed at the time of purchase or variable in a way that is calculable by reference to index movements and (unless commuted earlier for the

⁵ The term 'income stream' is defined in paragraph 5 of Taxation Ruling TR 2013/5 *Income tax: when a superannuation income stream commences and ceases* in the context of a superannuation income stream as a payment by a superannuation fund trustee to a member as 'a series of periodic payments that relate to each other over an identifiable period of time'.

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Withdrawal Value) continue for either a fixed term of one year (in the case of the One Year Term Certain Annuities) or for the life of the Life Insured (in the case of the Lifetime Income). The Investor's ability to commute does not of itself result in the Group Policy Deed failing to be accepted as an annuity contract (see paragraph 25 of IT 2480).

43. An annuity granted to the Investor under the Group Policy Deed therefore constitutes an annuity on ordinary concepts and, subject to the exclusions in paragraphs (a) and (b) of the definition (considered at paragraphs 44 to 48 of this Product Ruling), constitutes an annuity as defined in subsection 27H(4).

Division 16E – qualifying security

44. A 'qualifying security' is defined in subsection 159GP(1). For the purposes of determining whether an arrangement is a qualifying security, that arrangement must be a 'security', also defined in subsection 159GP(1) to mean:

- (a) stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;
- (b) a deposit with a bank or other financial institution;
- (c) a secured or unsecured loan; or
- (d) any other contract, whether or not in writing, under which a person is liable to pay an amount or amounts, whether or not the liability is secured.

45. An annuity granted to the Investor under the Group Policy Deed is not considered to have sufficient debt-like obligations to be a contract to which paragraph (d) of the definition of security in subsection 159GP(1) applies, nor does it fall within paragraphs (a), (b) or (c) of that definition. Therefore, the annuities do not meet the definition of security under subsection 159GP(1) and, as such, are not a qualifying security for the purposes of Division 16E.

Superannuation income stream

46. A 'superannuation income stream' has the meaning given by the ITAR (1997 Act) 2021 (subsection 307-70(2) of the ITAA 1997). Subsection 307-70.02(1) of the ITAR (1997 Act) 2021 defines superannuation income stream in relation to an annuity commenced after 19 September 2007 to mean an income stream that is taken to be an annuity for the purposes of the *Superannuation Industry (Supervision) Act 1993* in accordance with subregulation 1.05(1) of the *Superannuation Industry (Supervision) Regulations 1994*.

47. Subregulation 1.05(1) of the *Superannuation Industry (Supervision) Regulations 1994* provides a number of requirements that must be met for a benefit provided by a life insurance company to be taken to be an annuity for the purposes of the *Superannuation Industry (Supervision) Act 1993*. One of those requirements in respect of a benefit purchased on or after 1 July 2007 is that it is purchased with the whole or part of a roll-over superannuation benefit as defined in section 306-10 of the ITAA 1997, or the whole or part of a directed termination payment within the meaning of the IT(TP)A 1997.

48. As per paragraph 21 of this Product Ruling, the Investor cannot purchase its interest in the Group Policy using a roll-over superannuation benefit as defined in section 306-10 of the ITAA 1997 and, as per paragraph 39(b) of this Product Ruling, it is assumed for the purposes of this Ruling that the Investor will not purchase its interest in the Group Policy using a directed termination payment within the meaning of the

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IT(TP)A 1997. As such, annuities granted under the Group Policy Deed are not a superannuation income stream for the Investor.

Division 230 of the ITAA 1997 – taxation of financial arrangements

49. Division 230 of the ITAA 1997 sets out the tax treatment of gains or losses from a 'financial arrangement'. Generally, a financial arrangement is a cash settlable legal or equitable right to receive a financial benefit, or obligation to provide such benefit, or a combination of one or more such rights or obligations (subsection 230-45(1) of the ITAA 1997). A right to receive or obligation to provide a financial benefit can be 'cash settlable' under subsection 230-45(2) of the ITAA 1997 if the benefit is money, or if it is a right the taxpayer intends to satisfy or settle by receiving money, or if it is an obligation that the taxpayer intends to satisfy or settle by providing money.

50. Annuities granted under the Group Policy Deed constitute a financial arrangement for the purposes of Division 230 of the ITAA 1997 on the basis that the Investor has cash settlable rights to receive a financial benefit in the form of the annuity payments, the Withdrawal Value or the Investment Value, as applicable, and on the basis that the Investor has a cash settlable obligation to provide a financial benefit in the form of the Investment Amount.

51. Subject to exceptions under Subdivision 230-H of the ITAA 1997, gains made from a financial arrangement are included in assessable income under subsection 230-15(1) of the ITAA 1997 and are not (to any extent) to be included in assessable income pursuant to any other taxing provision of the income tax Acts (subsection 230-20(4) of the ITAA 1997), including section 27H.

52. However, where the rights or obligations under an arrangement are the subject of an exception under section 230-460 of the ITAA 1997, Division 230 of the ITAA 1997 does not apply in relation to gains or losses from a financial arrangement for any income year (subsection 230-460(1) of the ITAA 1997). Subsection 230-460(5) of the ITAA 1997 provides a specific exception as follows:

A right or obligation under a life insurance policy is the subject of an exception unless:

- (a) you are not a life insurance company that is the insurer under the policy;
and
- (b) the policy is an annuity that is a qualifying security.

53. As AGILE is a life insurance policy (as defined in subsection 995-1(1) of the ITAA 1997 and as per paragraph 18 of this Product Ruling) that is not a qualifying security (as defined in subsection 159GP(1) and discussed at paragraphs 44 and 45 of this Product Ruling), the exception in subsection 230-460(5) of the ITAA 1997 applies and Division 230 of the ITAA 1997 does not apply to any gains or losses derived from the annuities granted under the Group Policy Deed to the Investor.

Section 27H – assessability of annuity payments

54. Paragraph 27H(1)(a) includes in the assessable income of a taxpayer of a year of income the amount of any annuity derived by the taxpayer during that year excluding, in the case of an annuity that has been purchased, any amount that is the deductible amount in relation to the annuity in relation to the year of income. The annuity payments made by Allianz to the Investor are therefore assessable income under subsection 27H(1) to the extent that the annuity payments exceed the deductible amount in relation to the relevant annuity.

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55. The deductible amount is excluded from the assessable amount of the annuity and is tax free to the recipient because it represents the return to them of the amount paid to acquire the annuity. Subsection 27H(2) provides for the calculation of the deductible amount in relation to an annuity derived by a taxpayer during a year of income, subject to subsections 27H(3) and (3A), in accordance with the following formula:

$$(A \times (B - C)) \div D$$

Where:

- **A** is the relevant share in relation to the annuity in relation to the taxpayer in relation to the year of income.
- **B** is the amount of the undeducted purchase price of the annuity.
- **C** is:
 - (a) if there is a residual capital value in relation to the annuity and that residual capital value is specified in the agreement by virtue of which the annuity is payable or is capable of being ascertained from the terms of that agreement at the time when the annuity is first derived – that residual capital value, or
 - (b) in any other case – nil, and
- **D** is the relevant number in relation to the annuity.

56. The relevant share in relation to an annuity (component A) is defined in subsection 27H(4) to mean one, unless the annuity derived by the taxpayer is a share of an annuity payable to the taxpayer and one or more other persons.

57. The undeducted purchase price in relation to an annuity (component B) is the purchase price of the annuity, reduced by any portion of the purchase price that is an allowable deduction.

58. The residual capital value in relation to an annuity (component C) is defined in subsection 27H(4) to mean the capital amount payable on the termination of the annuity.

59. The relevant number in relation to an annuity (component D) in relation to a year of income is defined in subsection 27H(4) to mean:

- (a) where the annuity is payable for a term of years certain – the number of years in the term;
- (b) where the annuity is payable during the lifetime of a person and not thereafter – the life expectation factor of that person;

60. For the purposes of paragraph (b) of the definition of the relevant number, the life expectation factor in relation to a person in relation to an annuity is defined in subsection 27H(4) to mean the number of years in the complete expectation of life of the person as ascertained by reference to the prescribed Life Tables⁶ at the time at the beginning of the period to which the first payment of the annuity relates.

61. Where we consider that the deductible amount ascertained in accordance with the formula in subsection 27H(2) is inappropriate, having regard to the terms and conditions applying to the annuity and to any other relevant matters, we may, subject to

⁶ For the purposes of the definition of 'life expectation factor' in subsection 27H(4) and with respect to annuities first commencing to be payable on or after 1 July 1993, table item 4 of regulation 7 of the *Income Tax Assessment (1936 Act) Regulation 2015* prescribes the Australian Life Tables that are most recently published before the year in which the annuity first commences to be payable.

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subsection 27H(3A), determine the deductible amount that applies pursuant to subsection 27H(3). In making a determination pursuant to subsection 27H(3), we may have regard to the terms and conditions applying to the annuity, to a certificate supplied by an actuary and to any other matters considered relevant.

62. Paragraphs 16 to 24 of Taxation Ruling IT 2157 *Income tax: assessment of annuities eligible termination payments – commutation of annuities – Commonwealth Superannuation Act* provide some guidelines as to the exercise of the discretion under subsection 27H(3). Applying those guidelines to AGILE, we may exercise the discretion under subsection 27H(3) where the:

- annuity payments are not payable for the whole of an income year, in which case the deductible amount ascertained under subsection 27H(2) will be inappropriate and reduced proportionately based on the part of the year during which the annuity payments are not paid, and
- the quantum of the residual capital value in relation to the annuity may vary as a consequence of it being subject to movements in one or more selected market-linked Protected Investment Options.

63. The Commissioner will only alter the deductible amount pursuant to subsection 27H(3) where the deductible amount ascertained in accordance with the formula under subsection 27H(2) for a full year exceeds the minimum annual amount proposed to be paid under the annuity contract. Therefore, where the quantum of the residual capital value in relation to an annuity is reduced as a consequence of any negative movement in a market-linked Protected Investment Option and the deductible amount ascertained under subsection 27H(2) for a full year consequently exceeds the annuity payments to be paid by Allianz to the Investor, we will alter that deductible amount pursuant to subsection 27H(3).

64. The deductible amount excluded in accordance with subsection 27H(3) under the circumstances set out in paragraph 63 of this Product Ruling is to be so much of the deductible amount ascertained in accordance with the formula under subsection 27H(2) as does not exceed the annuity payments for the relevant year. The balance of the deductible amount ascertained in accordance with the formula under subsection 27H(2) is to be carried forward and excluded (along with the following year's deductible amount ascertained in accordance with the formula under subsection 27H(2)) from the following year's annuity payments (see paragraph 21 of IT 2157). As such, this amount will be used to reduce the portion of the annuity payments assessable in the following year.

Assessability of the Withdrawal Value and Investment Value

65. The receipt of the:

- Withdrawal Value from Allianz by the Investor upon Partial Withdrawal or Full Withdrawal, or
- Investment Value from Allianz by a nominated beneficiary or the trustee of the deceased estate of an individual Investor, on the death of that Investor, or by an Investor other than an individual Investor on the death of their nominated Life Insured,

is assessable income to the extent that it does not comprise a repayment of capital. The capital component of the Withdrawal Value and Investment Value in these circumstances is the undeducted purchase price of the Investor's investment less any deductible amounts previously applied to the annuity payments from Allianz, but not reduced to less than zero.

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66. Any amount referred to in paragraph 65 of this Product Ruling which is included in the assessable income of a trustee of a deceased estate shall be deemed to be income to which no beneficiary is presently entitled pursuant to subsection 101A(1).

Capital gain or capital loss from payments under Allianz Guaranteed Income for Life disregarded

67. 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 the Investor and, as applicable, an individual Investor's nominated beneficiary or deceased estate under the Group Policy Deed are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997. Generally, the discharge or satisfaction of contractual rights gives rise to a CGT event C2 (paragraph 104-25(1)(b) of the ITAA 1997).

68. 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 or an annuity instrument. An annuity instrument is defined broadly in subsection 995-1(1) of the ITAA 1997 to mean an instrument that secures the grant of an annuity (whether dependent on the life of an individual or not).

Section 118-300 of the ITAA 1997 – annuity payments

69. 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 an annuity instrument is disregarded where that CGT event happens to the original owner of the instrument (other than the trustee of a complying superannuation entity).

70. As the entity to whom or to which annuities under the master annuity instrument in the Group Policy Deed are first issued, the Investor is regarded as an original owner of an annuity instrument. Pursuant to table item 3 of subsection 118-300(1) of the ITAA 1997, any capital gain or capital loss an Investor other than an Investor that is the trustee of a complying superannuation entity makes under section 104-25 of the ITAA 1997 from the receipt of annuity payments by Allianz is therefore disregarded.

71. Table item 5 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 an annuity instrument is disregarded where that CGT event happens to the trustee of a complying superannuation entity for the income year in which the CGT event happens.

72. Pursuant to table item 5 of subsection 118-300(1) of the ITAA 1997, any capital gain or capital loss an Investor that is the trustee of a complying superannuation entity makes under section 104-25 of the ITAA 1997 from the receipt of annuity payments by Allianz is therefore disregarded.

Section 118-300 of the ITAA 1997 – payment of Withdrawal Value and Investment Value

73. As the Investor is regarded as an original owner of an annuity instrument, pursuant to table item 3 of subsection 118-300(1) of the ITAA 1997 any Investor that is not the trustee of a complying superannuation entity will disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of the Withdrawal Value

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from Allianz upon Partial Withdrawal or Full Withdrawal, and any Investor that is neither the trustee of a complying superannuation entity or an individual will disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of the Investment Value from Allianz upon their death or the death of their nominated Life Insured, as applicable.

74. Pursuant to table item 5 of subsection 118-300(1) of the ITAA 1997, an Investor that is the trustee of a complying superannuation entity will disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of the Withdrawal Value from Allianz upon Partial Withdrawal or Full Withdrawal, or from the receipt of the Investment Value from Allianz upon the death of their nominated Life Insured.

75. 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 an annuity instrument is disregarded where that CGT event happens to an entity that acquired that interest in the instrument for no consideration.

76. A nominated beneficiary of an individual Investor or the trustee of the deceased estate of an individual Investor (as applicable) acquires, on the death of the individual Investor, an interest in the Annuity for no consideration and will, therefore, pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997, disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of the Investment Value from Allianz upon the death of the Investor.

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Related Rulings/Determinations:

IT 2157; IT 2480; TR 2013/5

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