


# ***PR 2023/23 - Zurich Life Insurance (Hong Kong) Limited - Matterhorn life insurance policy***

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Status: **legally binding**

## Product Ruling

# Zurich Life Insurance (Hong Kong) Limited – Matterhorn life insurance policy

### **📌 Relying on this Ruling**

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

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

#### **Terms of use of this Ruling**

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

#### **Changes in the law**

Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling has issued. Similarly, entities that are considering participating in the Scheme are advised to confirm with their tax adviser that changes in the law have not affected this Ruling since it was issued.

#### **No guarantee of commercial success**

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

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

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for entities referred to in paragraph 4 of this Ruling in connection with a life insurance policy referred to as

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Matterhorn (Policy), issued by Zurich Life Insurance (Hong Kong) Limited (Zurich) under the Matterhorn Product Brochure dated October 2022 and subject to the Matterhorn Policy Provisions.

2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936), unless otherwise indicated. Terms which are defined in the Matterhorn Policy Provisions referred to in paragraph 10 of this Ruling have been capitalised.

3. This Ruling does not address:

- the tax consequences arising in relation to a Policy held by a Policyholder that is not a resident of Australia for tax purposes during the period on or after 1 July 2023 and on or before 30 June 2026
- the treatment of any fees or charges, including the premium, incurred in connection with a Policy
- the assessability (or otherwise) of amounts received under a Policy, other than the Death Benefit and the proceeds of surrender, partial withdrawal and regular withdrawal
- the assessability (or otherwise) of the Death Benefit or the proceeds of surrender, partial withdrawal and regular withdrawal, other than under
  - section 26AH, and
  - the capital gains tax regime in Part 3-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- a Policyholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under a Policy
- the capital gains tax consequences arising from the assignment of ownership of a Policy to another entity for consideration, and
- whether the Policyholder makes forex realisation gains or losses under Division 775 of the ITAA 1997.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you:

- (a) are an individual who purchases a Policy subject to the Matterhorn Policy Provisions (the Policyholder) on or after 1 July 2023 and on or before 30 June 2026, and either
  - (i) are a resident of Australia for tax purposes at the time of purchase, or
  - (ii) subsequent to that purchase and during the period on or after 1 July 2023 and on or before 30 June 2026, became a resident of Australia for tax purposes
- (b) are an individual to whom ownership of a Policy subject to the Matterhorn Policy Provisions is assigned for no consideration (also as Policyholder, and including a Contingent Policyholder) on or after 1 July 2023 and on or before 30 June 2026 and, at the time of, or subsequent to, that assignment

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and during the period on or after 1 July 2023 and on or before 30 June 2026, are a resident of Australia for tax purposes<sup>1</sup>

- (c) either are an entity nominated as a Beneficiary by the Policyholder or the deceased estate of the Policyholder in receipt of the Death Benefit.

5. This Ruling does not apply to you if you are not an entity listed in paragraph 4 of this Ruling.

## Date of effect

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6. This Ruling applies from 1 July 2023 to the entities specified in paragraph 4 of this Ruling that enter into a Policy from 1 July 2023 until 30 June 2026.

7. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the entity's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 10 to 25 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

## Ruling

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8. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 9 of this Ruling:

- (a) The Policy is an 'eligible policy' for the purposes of section 26AH.
- (b) Any portion of the proceeds of surrender, partial withdrawal or regular withdrawal (the surrender proceeds) received by a Policyholder under a Policy and comprising an adjustment for earnings referable to the investment choices represented by the cancelled allocated Units is an amount as or by way of a 'bonus' for the purposes of section 26AH, and
- (i) assessable under subsection 26AH(6) when received during the eligible period in relation to the Policy, and
- (ii) is not otherwise assessable as ordinary or statutory income under the ITAA 1936 or the ITAA 1997.
- (c) Where, having regard to the matters listed in paragraph 26AH(8)(b), the Commissioner is of the opinion that it would be unreasonable for subsection 26AH(6) to apply (as per subparagraph 8(b) of this Ruling) to any portion (or to part of any portion) of the surrender proceeds received by a Policyholder, and which constitutes an amount as or by way of a bonus, subsection 26AH(6) will not apply to that amount (subsection 26AH(8)).
- (d) No portion of the surrender proceeds received by a Policyholder under a Policy otherwise than as or by way of a bonus shall, for the purposes of subsection 26AH(6), be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder under the Policy as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in the value of the Policyholder's Policy, linked to the performance of the investment choices,

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<sup>1</sup> All references to 'Policyholder' in this Ruling are a reference to a Policyholder as described in both or either of subparagraphs 4(a) or (b) of this Ruling, unless otherwise indicated.

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- is not regarded as having been received by the Policyholder for the purposes of assessment under subsection 26AH(6).
- (f) A Policyholder is not, for the purposes of assessment under subsection 26AH(6), taken to have received an amount under or in relation to an eligible policy pursuant to subsection 26AH(4) as a result of 'switching' the investment choices notionally allocated to their Policy.
  - (g) Where, during the eligible period in relation to a Policy a Policyholder receives an amount of consideration in respect of an assignment of that Policy, that consideration (or part of it, as the case may be) will, for the purposes of subsection 26AH(6), be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder under the Policy as or by way of a bonus if the Commissioner is of the opinion that the consideration (or part of it) is attributable to a bonus that has accrued or has been declared in respect of the Policy, or a bonus that can reasonably be expected to accrue in respect of the Policy (subsection 26AH(12)).
  - (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under a Policy is assessable under subsection 26AH(6).
  - (i) Where the premium payable by a Policyholder in respect of a Policy in relation to an assurance year exceeds the premium payable under that Policy in the immediately preceding assurance year by more than 25%, subsection 26AH(13) applies to deem the 10-year eligible period in respect of the Policy to have commenced at the beginning of the year in which the premium was increased (rather than at the date of commencement of the period in respect of which the first premium under the Policy was paid).
  - (j) Table item 3 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by a Policyholder referred to in subparagraph 4(a) of this Ruling resulting from the payment to them under a Policy of the surrender proceeds or a Death Benefit.
  - (k) Table item 4 of subsection 118-300(1) of the ITAA 1997 disregards any capital gain or capital loss made by a Policyholder referred to in subparagraph 4(b) of this Ruling resulting from the payment to them under a Policy of the surrender proceeds or a Death Benefit.
  - (l) Any capital gain or capital loss made by the nominated Beneficiary or the deceased estate of a Policyholder, as applicable, resulting from the payment to them under a Policy of the Death Benefit upon the death of the Life Assured is disregarded pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997.
  - (m) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA will not apply to an entity referred to in paragraph 4 of this Ruling.

### **Assumptions**

9. This Ruling is made on the basis of the following necessary assumptions:
- (a) A nominated Beneficiary referred to in subparagraph 4(c) of this Ruling is an Australian resident for tax purposes at the time of receipt of a Death Benefit under a Policy.

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- (b) A Policyholder's deceased estate, referred to in subparagraph 4(c) of this Ruling, is an Australian-resident trust estate as defined in subsection 95(2) at the time of receipt of a Death Benefit under a Policy.
- (c) A Policyholder referred to in subparagraph 4(a) of this Ruling is the original owner of the Policy they purchased.
- (d) All dealings between any of the entities referred to in paragraph 4 of this Ruling and Zurich will be at arm's length.
- (e) The scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation referred to in paragraph 10 of this Ruling.

## Scheme

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10. The scheme is identified and described in the following:

- application for a product ruling as constituted by documents and information received on 30 September 2022 and 9 November 2022
- Matterhorn Product Brochure dated October 2022, and
- Matterhorn Policy Provisions received on 30 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.

11. For the purposes of describing the scheme, there are no other agreements (whether formal or informal, and whether or not legally enforceable) which an entity referred to in paragraph 4 of this Ruling, or any associate of such entity, will be a party to which are a part of the scheme.

## Overview of scheme

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12. Zurich is registered in Hong Kong and issues, among other products, the Policy. Policyholders capable of purchasing a Policy from Zurich are individuals who may, or may not, be residents of Australia for tax purposes at the time of issue.

13. The Policy is defined as a single premium and investment-linked life insurance policy. Full details of a Policy, including the commitments and rights of both Zurich and the Policyholder, are contained in the Matterhorn Policy Provisions which, together with the Policy Schedule and application form, constitute the Policy between Zurich and the Policyholder. The Policy is governed and construed in accordance with the laws of Hong Kong.

14. The Policyholder makes an application for a Policy and pays an initial single premium of at least US\$12,000 (or the equivalent). Upon acceptance of the application Zurich issues the Policy. Subject to Zurich's approval and after the first policy year, the Policyholder may nominate a person as the Contingent Policyholder who will become the new Policyholder of the Policy if the original Policyholder dies or suffers from terminal illness or another specified condition.

15. To enable calculation of the benefits and charges under a Policy, Zurich creates notional Units, each representing a proportionate share of the value of the investment choices purchased by the Policyholder with the payment of their premium and notionally allocated to the Policyholder's Policy. The investment choices notionally allocated to the

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Policy are chosen by the Policyholder from a broad list of investment choices, and may be switched by instruction from the Policyholder at any time.

16. Both a welcome bonus (as soon as practicable upon receipt of the initial single premium) and loyalty bonuses (as soon as practicable within one month after the beginning of each policy month starting from the 61st policy month while the Policy is in force) will be credited to the Policy by Zurich by allocating notional Units in investment choices selected by the Policyholder.

17. While the Policyholder is the legal owner of the Policy, they have no legal or beneficial entitlement in any underlying funds corresponding to their investment choices, notional Units held under the Policy or the assets linked to the Policy. The premium paid by the Policyholder and any investments made by Zurich in the underlying funds corresponding to the investment choices selected by the Policyholder will become and remain part of the assets of Zurich.

18. If a dividend is declared and becomes payable in respect of an underlying fund of an investment choice, Zurich may either pay out the dividend amount to the Policyholder (if Investment Choice (Cash Distribution) is selected) or re-invest the dividend amount in the form of additional notional Units into the investment choice of the underlying fund in respect of which the dividend is declared (if investment choice other than Investment Choice (Cash Distribution) is selected).

19. The Policyholder may submit a request for surrender, partial withdrawal or regular withdrawal of their Policy in writing to Zurich. In the event of a surrender of the Policy, Zurich shall pay the Surrender Value to the Policyholder, calculated as the Total Account Value after deducting any surrender charge and any welcome bonus claw-back (applicable where the Policy is surrendered within the first 5 policy years). The Total Account Value is defined to mean the total value of all investment choices notionally allocated to the Policy (as represented by the number of notional Units of investment choices held under the Policy multiplied by the respective Bid Price of those investment choices).

20. As part of any request for partial withdrawal of the Policy, the Policyholder shall specify the number of notional Units of specific investment choices to be withdrawn from the Policy. Such request will be subject to a welcome bonus claw-back where the first partial withdrawal request is made within the first 3 policy years and shall be processed by Zurich provided that the:

- Total Account Value is larger than or equal to the partial withdrawal amount
- partial withdrawal amount is at least US\$1,000, and
- Surrender Value, as if a surrender request is made at the time immediately after the partial withdrawal is made, is at least the higher of US\$10,000 or 50% of the initial single premium paid.

21. Regular withdrawal is not allowed in the first 3 policy years. As part of any request for regular withdrawal of the Policy (starting from the fourth policy year), the Policyholder shall specify the number of notional Units of specific investment choices to be withdrawn from the Policy monthly. Such request shall be processed by Zurich provided that the:

- Total Account Value is larger than or equal to the regular withdrawal amount
- regular withdrawal amount is at least US\$500 per month, and
- Surrender Value, as if a surrender request is made at the time immediately after each of the regular withdrawals is made, is at least the higher of US\$10,000 or 50% of the initial single premium paid.

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22. The Life Insured designated by the Policyholder under the Policy may or may not be that of the Policyholder. After the first policy year, the Policyholder may, subject to Zurich's approval, assign a Contingent Life Insured to become the new Life Insured upon the death of the original Life Insured. The Death Benefit becomes due upon the death of the Life Insured (whether that be an original Life Insured where there is no Contingent Life Insured, or a Contingent Life Insured, as applicable), and is payable to any one or more persons or entities designated by the Policyholder as a Beneficiary under the Policy or, in the absence of a nominated or surviving Beneficiary at the time of the death of the Life Insured, to the Policyholder or the Policyholder's estate, as applicable.

23. The Death Benefit payable by Zurich is equal to the higher of:

- 105% of the Total Account Value, and
- 100% of the initial single premium paid by the Policyholder, less any accumulated partial withdrawal amounts, regular withdrawal amounts and accumulated cash dividend that have been paid to the Policyholder.

24. On payment of the Death Benefit, the notional Units allocated to the Policy will be cancelled and no further benefit will be payable by Zurich.

25. The Policy is non-participating and will not participate or share in the profits of Zurich.

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**Commissioner of Taxation**

15 November 2023

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## Appendix – Explanation

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

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### Application of section 26AH to Matterhorn

26. All, or part of, amounts received as, or by way of, bonuses under certain life assurance policies (eligible policies) which otherwise would not be included in the assessable income of the recipient, are included in the assessable income of the recipient pursuant to subsection 26AH(6) when received within 10 years of the date on which the first or only premium paid under the policy was paid (eligible period).

### *Matterhorn is an eligible policy*

27. An eligible policy in respect of which section 26AH may apply is defined in subsection 26AH(1) to mean:

... a life assurance policy in relation to which the date of commencement of risk is after 27 August 1982, other than a funeral policy (as defined in the *Income Tax Assessment Act 1997*) issued on or after 1 January 2003.

28. The term 'life assurance policy' is defined in subsection 6(1) as having the meaning given to life insurance policy by the ITAA 1997. A life insurance policy is defined in subsection 995-1(1) of the ITAA 1997 as having the meaning given to the expression 'life policy' in section 9 of the *Life Insurance Act 1995* (LIA 1995).

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

30. Some of the more general features of an investment-linked policy are described in paragraphs 5 and 6 of Taxation Ruling IT 2346 *Income tax: bonuses paid on certain life assurance policies – section 26AH – interpretation and operation* as follows:

5. ... A contract providing a death benefit, and an investment account the value of which is directly linked to the performance of a specific investment portfolio. The value of the policyholder's interest will rise and fall with the movements in the value of the portfolio. ...

6. Premiums in respect of an unbundled policy may be paid in a lump sum or annually, or the policyholder may elect to vary the amount of the premium by making additional payments under the policy at any time. A further feature of these

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types of policies is that they generally allow the policyholder to surrender a part of the policy at any time (a 'partial surrender').

31. A Policy issued to a Policyholder referred to in paragraph 4 of this Ruling is an eligible policy for the purposes of section 26AH as it:

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

#### ***Treatment of benefits received under Matterhorn***

32. The term bonus is not defined for the purposes of section 26AH but is explained at paragraph 8 of IT 2346 in the context of 'more traditional policies' (for example, endowment policies) as a guaranteed addition to the amount insured, payable when the amount insured is payable and representing both a form of participation by the policyholder in the issuing company's profits and a share in the surpluses derived by the issuing company during the period the policy is in force. Such a bonus, where received under an eligible policy that matures or is surrendered, forfeited, or otherwise terminated within the eligible period of 10 years after commencement, falls within the scope of section 26AH.

33. The Policy, being an investment-linked policy, may be characterised as an unbundled life assurance contract (also referred to as an 'unbundled policy' in IT 2346). In the context of unbundled policies, paragraph 9 of IT 2346 explains:

In the case of unbundled policies, the concept of bonuses representing the profit or gain element passed on to the policyholder is maintained for the purposes of section 26AH. For example, where a policy is linked to the purchase and sale of investment units, the profit derived on the sale of those units is, when paid to the policyholder, regarded as a payment by way of a bonus.

34. The portion of the surrender proceeds comprising an adjustment for earnings referable to the investment choices represented by the cancelled allocated Units and paid by Zurich to a Policyholder is considered to be a bonus. This amount provides the Policyholder with participation in the profits of Zurich, as derived from the investment choices notionally allocated to the Policyholder's Policy (but owned by Zurich) during the period the Policy is in force.

35. Payments of a bonus by Zurich to the Policyholder are therefore subject to section 26AH and are not assessable under any other provision of the ITAA 1936 or the ITAA 1997. Specifically, a bonus received under a Policy is included as assessable income of a Policyholder pursuant to subsection 26AH(6) to the following extent:

- in full, where it is received during the first 8 years of the eligible period
- as to two-thirds of the amount received, where it is received during the ninth year of the eligible period
- as to one-third of the amount received, where it is received during the 10th year of the eligible period, and
- nil, where it is received after the 10th year of the eligible period.

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36. 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 proceeds 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).

37. Where a policyholder receives an amount under an eligible policy within the eligible period otherwise than as, or by way of, a bonus, that amount is assessable under subsection 26AH(6) as if it had been received as a bonus to the extent that, in the Commissioner's opinion, it represents a bonus that has accrued or been declared, or a bonus that can reasonably be expected to accrue (see subsection 26AH(9)). No portion of the surrender proceeds received by a Policyholder under a Policy otherwise than as or by way of a bonus (as referred to in subparagraph 8(b) of this Ruling) shall be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder as if it had been received as or by way of a bonus.

38. 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.

39. An accretion in the value of the Policyholder's Policy constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policyholder under the Policy, and pursuant to subsection 26AH(5) is not regarded as having been received by the Policyholder for the purposes of assessment under subsection 26AH(6).

40. 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 38 of this Ruling – see Taxation Determination TD 94/82 *Income tax: does section 26AH of the Income Tax Assessment Act 1936 apply when investment options are 'switched' under an eligible policy?* Switches of the investment choices notionally allocated to a Policy involves the mere variation in the calculation base of the Policy such that subsection 26AH(4) does not apply, for the purposes of assessment under subsection 26AH(6), to take the Policyholder to have received an amount under or in relation to their Policy.

41. Where, during the eligible period of an eligible policy, a policyholder receives an amount of consideration in respect of the assignment of that eligible policy, that amount is assessable under subsection 26AH(6) as if it had been received as a bonus to the extent that, in the Commissioner's opinion, it is attributable to a bonus that has accrued or been declared, or a bonus that can reasonably be expected to accrue (subsections 26AH(9) and (12)). Any consideration received by a Policyholder in respect of an assignment of their Policy during its eligible period will, for the purposes of subsection 26AH(6), be deemed

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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.

42. Pursuant to subparagraph 26AH(7)(a)(i), subsection 26AH(6) does not apply to assess an amount received under an eligible policy where the amount is received in consequence of the death of the person on whose life the policy was effected. Any amount as, or by way of, a bonus received under a Policy (as a portion of the Death Benefit) in consequence of the death of the Life Insured is therefore not assessable under subsection 26AH(6).

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

43. 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.

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

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

#### ***Capital gain or capital loss from payments under Matterhorn disregarded***

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

47. Where Zurich makes a payment of the surrender proceeds in satisfaction of a Policyholder's contractual rights under a Policy, their ownership of those rights is discharged or satisfied. Similarly, where Zurich 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 a Policy, as applicable, their ownership of those rights is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b) of the ITAA 1997).

48. 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

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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).

49. 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?*).

50. 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).

51. As an entity to whom a Policy is first issued, a Policyholder referred to in subparagraph 4(a) of this Ruling is regarded as an original owner of a policy of insurance on the life of an individual. Accordingly, that Policyholder 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 Zurich of either the surrender proceeds or (where the Policyholder is not the Life Insured and there is no nominated or surviving Beneficiary) a Death Benefit.

52. 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.

53. On the assignment of ownership of a Policy for no consideration to a Policyholder referred to in subparagraph 4(b) of this Ruling, that Policyholder acquires an interest in the Policy for no consideration. A Policyholder referred to in subparagraph 4(b) of this Ruling is therefore entitled under table item 4 of subsection 118-300(1) of the ITAA 1997 to disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a payment by Zurich of either the surrender proceeds or (where the Policyholder is not the Life Insured and there is no nominated or surviving Beneficiary) a Death Benefit.

54. On the death of the Life Insured, the Policyholder's nominated Beneficiary or deceased estate, as applicable, may acquire an interest in a Policy for no consideration. Under these circumstances, the Beneficiary or the deceased estate, as applicable, is 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 Zurich.

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Status: **not legally binding**

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## References

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*Related Rulings/Determinations:*

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

*Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1936 26AH
  - ITAA 1936 26AH(1)
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  - ITAA 1936 26AH(5)
  - ITAA 1936 26AH(6)
  - ITAA 1936 26AH(7)(a)(i)
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  - ITAA 1936 26AH(8)(b)
  - ITAA 1936 26AH(9)
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  - ITAA 1997 104-25
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  - ITAA 1997 104-25(3)
  - ITAA 1997 108-5(1)
  - ITAA 1997 118-300
  - ITAA 1997 118-300(1)
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  - ITAA 1997 995-1(1)
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  - Life Insurance Act 1995 9(1)(a)
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ATO references

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