



# ***PR 2024/13 - Friends Provident International - Global Portfolio - Collective Investments***

 This cover sheet is provided for information only. It does not form part of *PR 2024/13 - Friends Provident International - Global Portfolio - Collective Investments*

 This document has changed over time. This is a consolidated version of the ruling which was published on *21 August 2024*



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Status: **legally binding**

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## Product Ruling

# Friends Provident International – Global Portfolio – Collective Investments

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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.

#### **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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<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
<i>Requirements of the Superannuation Industry (Supervision) Act 1993</i>	6
<b>Date of effect</b>	<b>7</b>
<b>Ruling</b>	<b>9</b>
Assumptions	10
<b>Scheme</b>	<b>11</b>
Overview of scheme	13
<b>Appendix – Explanation</b>	<b>29</b>

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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 Global Portfolio – Collective Investments (Policy) issued by Friends Provident International Limited (Singapore Branch) (Friends Provident) and subject to the Friends Provident International Global Portfolio – Collective Investments Policy Conditions (Policy Conditions).
2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936), unless otherwise indicated. Terms which are defined in the Policy Conditions referred to in paragraph 11 of this Ruling have been capitalised.
3. This Ruling does not address:
  - the tax consequences arising in relation to a Policy held by a Policyholder that is not a resident of Australia for tax purposes during the period on or after 1 July 2024 and on or before 30 June 2027
  - 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 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 a 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 are:
  - (a) an entity that purchases a Policy subject to the Policy Conditions (the Policyholder) on or after 1 July 2024 and on or before 30 June 2027, 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 2024 and on or before 30 June 2027, became a resident of Australia for tax purposes
  - (b) an entity to which ownership of a Policy subject to the Policy Conditions is assigned to you for no consideration (also a Policyholder) on or after 1 July 2024 or on or before 30 June 2027 and, at the time of, or subsequent

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to, that assignment and during the period on or after 1 July 2024 and on or before 30 June 2027, are a resident of Australia for tax purposes<sup>1</sup>, or

- (c) either an entity nominated as a beneficiary by the Policyholder or a deceased estate of the Policyholder in receipt of a death benefit.

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

### ***Requirements of the Superannuation Industry (Supervision) Act 1993***

6. This Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993*. We give no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Ruling as to whether investment in this scheme may contravene the provisions of the *Superannuation Industry (Supervision) Act 1993*.

### **Date of effect**

7. This Ruling applies from 1 July 2024 to entities specified in paragraph 4 of this Ruling.

8. However, the Ruling only applies and may be relied on to the extent that there is no change in the scheme or in the entity's involvement in the scheme. If the scheme carried out is materially different from the scheme described at paragraphs 11 to 28 of this Ruling, this Ruling cannot be relied upon and may be withdrawn or modified.

### **Ruling**

9. Subject to paragraph 3 of this Ruling and the assumptions in paragraph 10 of this Ruling:

- (a) The Policy is an 'eligible policy' for the purposes of section 26AH.<sup>2</sup>
- (b) Any portion of a Cash Sum or Withdrawal Sum received by a Policyholder under a Policy and comprising an adjustment for earnings referable to the assets represented by the cancelled Units (as per paragraph 24 of this Ruling) is an amount as or by way of a 'bonus' for the purposes of section 26AH, and is
- (i) assessable under subsection 26AH(6) when received during the eligible period in relation to the Policy, and
  - (ii) not otherwise assessable as ordinary or statutory income under the ITAA 1936 or the ITAA 1997.

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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.

<sup>2</sup> As per paragraph 14 of this Ruling, the Policy Conditions permit the Policy to be issued as a series of separate policies with the Policy Conditions applying equally to each policy. Each policy therefore constitutes a separate eligible policy and the provisions in section 26AH apply separately to each one.

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- (c) Where, having regard to the matters listed in paragraph 26AH(8)(b), the Commissioner is of the opinion that it would be unreasonable for subsection 26AH(6) to apply (as per subparagraph 9(b) of this Ruling) to any portion (or to part of any portion) of a benefit received by a Policyholder by reason of their part or total surrender of their Policy, 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 a Cash Sum or Withdrawal Sum received by a Policyholder under a Policy other than as or by way of a bonus shall, for the purposes of subsection 26AH(6), be deemed pursuant to subsection 26AH(9) to have been received by the Policyholder under the Policy as or by way of a bonus.
- (e) Pursuant to subsection 26AH(5), an accretion in the value of the Policy Fund linked to a Policyholder, as calculated on a Valuation Day, 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 assets in the Policy Fund linked to them.
- (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 (where they are not the trustee of a complying superannuation entity) resulting from the payment to them under a Policy of a Cash Sum, a Withdrawal Sum 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 a Cash Sum, a Withdrawal Sum 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

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Life Assured (or last surviving Life Assured) is disregarded pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997.

- (m) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA will not apply to an entity referred to in paragraph 4 of this Ruling.

### Assumptions

10. This Ruling is made on the basis of the following necessary assumptions:
- (a) 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 the Policy.
  - (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 the 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 Friends Provident will be at arm's length.
  - (e) The scheme will be executed in the manner described in the Scheme section of this Ruling and in the Policy Conditions referred to in paragraph 11 of this Ruling.

### Scheme

11. The scheme is identified and described in the following:
- application for a product ruling as constituted by documents and information received on 17 April 2024, and
  - Friends Provident International Global Portfolio – Collective Investments Policy Conditions received on 17 April 2024.

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

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

### Overview of scheme

13. Friends Provident, registered in Singapore, issues (among other products) Policies. Entities (Policyholders) capable of purchasing a Policy from Friends Provident may, or may not, be residents of Australia for tax purposes at the time of issue.

14. At the Policyholder's discretion, a Policy is issued in the form of a single policy or a number of multiple individual policies (up to a maximum of 100) each representing an

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equal proportion of the Policy. Where the Policy is set up as more than one policy, the Policy Conditions apply equally to each policy.

15. Full details of the Policy, including the commitments and rights of both Friends Provident and a Policyholder, are contained in the Policy Conditions. The Policy is governed by, and construed in accordance with, the law of Singapore.

### ***Policy Funds and Units***

16. To enable calculation of the benefits and charges under a Policy, Friends Provident creates notional units (Units), each representing a proportionate share of the value of the assets in a Policy Fund linked to the Policyholder's Policy. The assets in the Policy Fund linked to the Policyholder are chosen by the Policyholder (or their Investment Adviser or Discretionary Manager) from a broad selection of options made available by Friends Provident, and may be changed by instruction from the Policyholder (or their Investment Adviser or Discretionary Manager).

17. Units are allocated whenever a Premium (including any Additional Premium greater than the Minimum Additional Premium) is paid by the Policyholder and credited by Friends Provident to a general transaction account Friends Provident keeps in connection with the Policy to buy and sell assets for the Policy Fund linked to the Policyholder, as well as for the payment of benefits and charges.

18. The value of the Policy Fund (and the Bid Price of the Units) is determined by an Appointed Actuary on the Commencement Date and on each quarterly Valuation Day thereafter by reference to the market value of the assets relating to that Policy Fund.

19. While the Policyholder legally owns their Policy, they have no legal or beneficial interest in the Units, Policy Fund or any of the assets relating to the Policy Fund, which remain the property of Friends Provident.

### ***Surrender of a Policy***

20. The Policyholder can cash in their Policy or individual policies at any time by written request to Friends Provident (provided the Bid Value of the remaining policies, if any, does not fall below the Minimum Policy Value) and receive the Cash Sum, being the Bid Value of the Units allocated to the Policy (or policies), less any outstanding charges.

21. Where the Cash Sum has been paid on the Policy (or policies):

- Friends Provident cancels the Units in the Policyholder's Policy Fund, and
- the Policy (or policies) terminates, and no further benefits are payable.

22. The Policyholder can also withdraw money from their Policy at any time by written request to Friends Provident (provided the Withdrawal Sum exceeds the Minimum Sum and the Bid Value of the Policy does not fall below the Minimum Policy Value), either on a regular basis (monthly, quarterly, half-yearly or yearly) or on a one-off basis.

23. Where a Withdrawal Sum is paid, Friends Provident cancels Units allocated to all policies pro rata equal to the aggregate value of the Withdrawal Sum plus any outstanding charges.

24. Any Cash Sum or Withdrawal Sum paid to the Policyholder in connection with a cash in or a withdrawal respectively consists of the Premium allocated to the cancelled Units, as adjusted for the earnings referable to the assets represented by those Units, less any outstanding charges.

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25. The Policyholder has no right to payment of the Cash Sum or Withdrawal Sum other than on 'surrender' of their Policy either in whole or in part.

#### ***Death benefit***

26. The Policy is a whole-of-life assurance policy providing for a payment of a death benefit on the death of the Life Assured or, where there is more than one Life Assured under a Policy, on the death of the last surviving Life Assured. A Life Assured under a Policy may or may not be that of the Policyholder.

27. The value of the death benefit payable by Friends Provident is the lower of 101% of the Cash Sum or the Cash Sum plus US\$15,000 (or currency equivalent).

28. On payment of the death benefit, the Units in the Policyholder's Policy are cancelled, the Policy terminates and no further benefit is payable.

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**Commissioner of Taxation**

21 August 2024

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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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Application of section 26AH to the Global Portfolio – Collective Investments	29
<i>The Global Portfolio – Collective Investments is an eligible policy</i>	30
<i>Treatment of benefits received under the Global Portfolio – Collective Investments</i>	35
<i>Effect of increased premiums on eligible period</i>	46
Capital gain or capital loss from payments under the Global Portfolio – Collective Investments disregarded	50

### **Application of section 26AH to the Global Portfolio – Collective Investments**

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

### ***The Global Portfolio – Collective Investments is an eligible policy***

30. 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.

31. 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).

32. 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.

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

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

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

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generally allow the policyholder to surrender a part of the policy at any time (a “partial surrender”).

34. 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 the Global Portfolio – Collective Investments***

35. 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.

36. 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.

37. The portion of a Cash Sum or Withdrawal Sum comprising an adjustment for earnings referable to the assets represented by the cancelled Units paid by Friends Provident from the balance of the general transaction account maintained for each Policyholder that owns a Policy, is considered to be a bonus. This amount provides the Policyholder with participation in the profits of Friends Provident, as derived from the assets in the Policy Fund linked to the Policyholder (but owned by Friends Provident) during the period the Policyholder’s Policy is in force.

38. Payments of a bonus by Friends Provident from the balance of the general transaction account maintained under a Policy 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
- two-thirds of the amount received, where it is received during the ninth year of the eligible period
- one-third of the amount received, where it is received during the 10th year of the eligible period, and

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- nil, where it is received after the 10th year of the eligible period.

39. 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).

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

41. 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.

42. An accretion in the value of the Policy Fund linked to a Policyholder, as calculated on a Valuation Day, constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policyholder on part or total surrender of their 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).

43. 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 41 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 assets in the Policy Fund linked to a Policyholder 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.

44. Where, during the eligible period of an eligible policy, a policyholder receives an amount of consideration in respect of the assignment of that eligible policy, that amount is assessable under subsection 26AH(6) as if it had been received as a bonus to the extent that, in our opinion, it is attributable to a bonus that has accrued or been declared, or a

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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 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.

45. 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 Assured (or last surviving Life Assured) is therefore not assessable under subsection 26AH(6).

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

46. 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.

47. Where the premium payable is at the policyholder's discretion, the premium payable in relation to an assurance year is the total amount paid on the policy during that year (paragraph 19 of IT 2346). In relation to a Policy, the amount invested across any assurance year (if any) is at the discretion of the Policyholder (subject to minimum amounts). Therefore, in relation to the Policy, the Premium payable for an assurance year is the total Premiums paid in an assurance year.

48. 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 Investments were increased, rather than at the date of commencement of the period in respect of which the first Premium under the Policy was paid.

49. 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 paid.

#### **Capital gain or capital loss from payments under the Global Portfolio – Collective Investments disregarded**

50. 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

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

51. Where Friends Provident makes a payment of a Cash Sum or Withdrawal Sum in satisfaction of a Policyholder's contractual rights under a Policy, their ownership of those rights is discharged or satisfied. Similarly, where Friends Provident 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).

52. 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).

53. 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?*).

54. 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).

55. As an entity to which the 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 (where they are not the trustee of a complying superannuation entity<sup>3</sup>) 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 Friends Provident of either a Cash Sum, a Withdrawal Sum or a death benefit.

56. 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.

57. 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

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<sup>3</sup> Any capital gain or capital loss a Policyholder that is the trustee of a complying superannuation entity makes under section 104-25 of the ITAA 1997 from the receipt of a payment of either a Cash Sum, a Withdrawal Sum or death benefit is disregarded pursuant to table item 5 of subsection 118-300(1) of the ITAA 1997.

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Status: **not legally binding**

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from the receipt of a payment by Friends Provident of either a Cash Sum, a Withdrawal Sum or a death benefit.

58. On the death of the Life Assured (or last surviving Life Assured), the Policyholder's nominated beneficiary or deceased estate, as applicable, may acquire an interest in the Policy for no consideration. Such a beneficiary or 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 Friends Provident.

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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:*

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  - ITAA 1936 26AH
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ATO references

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