


# ***PR 2025/8 - Heng An Standard Life (Asia) Limited - OneFuture***

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Status: **legally binding**

## Product Ruling

# Heng An Standard Life (Asia) Limited – OneFuture

### **❶ 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 OneFuture (Policy) issued by Heng An Standard Life (Asia) Limited (Heng An) under the OneFuture Product Brochure dated March 2024 and subject to the Policy Provisions of OneFuture (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 Policy Provisions 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 Policy Owner 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 Initial Contribution or any Additional Contribution) incurred in connection with a Policy
  - the assessability (or otherwise) of amounts received under a Policy, other than the Death Benefit and the proceeds from surrender, Withdrawal and Regular Withdrawal
  - the assessability (or otherwise) of the Death Benefit or the proceeds from surrender, 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 Policy Owner'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 Policy Owner 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 (including a natural person) that purchases a Policy subject to the Policy Provisions (Policy Owner) 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 (including a natural person) to which ownership of a Policy subject to the Policy Provisions is assigned for no consideration (also a Policy Owner, and including a Contingent Policy Owner) on or after 1 July 2024 and on or before 30 June 2027 and, at the time of, or subsequent to, that

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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 (including a natural person) nominated as a Nominated Beneficiary by the Policy Owner or the deceased estate of the Policy Owner 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.

### ***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) A Policy is an 'eligible policy' for the purposes of section 26AH.
- (b) Any portion of the proceeds for the surrender of the Policy or a Withdrawal or Regular Withdrawal from the Policy (the surrender proceeds) received by a Policy Owner and comprising an adjustment for earnings referable to the investment choices represented by the redeemed allocated Units 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.
- (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

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

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- any portion (or to part of any portion) of the surrender proceeds received by a Policy Owner 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 Policy Owner under the 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 Policy Owner under the Policy as or by way of a bonus.
  - (e) Pursuant to subsection 26AH(5), an accretion in a Policy Owner's Policy Account Value, as calculated on a Valuation Day and linked to the performance of the Policy Owner's investment choices, is not regarded as having been received by the Policy Owner for the purposes of assessment under subsection 26AH(6).
  - (f) A Policy Owner 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 a Fund Switch.
  - (g) Where, during the eligible period in relation to a Policy a Policy Owner 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 Policy Owner 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 a premium payable by a Policy Owner 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 Initial Contribution 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 Policy Owner 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 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 Policy Owner 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 Policy Owner, as applicable, resulting from the payment to them under a Policy of the Death Benefit upon the death of the Life Insured (including but not limited to any Contingent Life Insured that has become the Life Insured) in circumstances where there is no named and

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surviving Contingent Life Insured 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 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.
  - A Policy Owner'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.
  - A Policy Owner referred to in subparagraph 4(a) of this Ruling is the original owner of the Policy they purchased.
  - All dealings between any of the entities referred to in paragraph 4 of this Ruling and Heng An will be at arm's length.
  - The scheme will be executed in the manner described in the Scheme section of this Ruling and in the Policy Provisions 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 27 February 2025
  - OneFuture Product Brochure dated March 2024, and
  - Policy Provisions of OneFuture received on 27 February 2025.

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. Heng An is incorporated in Hong Kong and authorised to issue, among other products, the Policy. Entities (Policy Owners) capable of purchasing a Policy from Heng An may, or may not, be residents of Australia for tax purposes at the time of issue.

14. The Policy is described as a single premium and investment-linked life insurance contract. Full details of the Policy, including the commitments and rights of both Heng An

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and the Policy Owner, are contained in the Policy Provisions which, together with the Policy Schedule and application form, form the contract between Heng An and the Policy Owner. The Policy is governed by and should be construed in accordance with the laws of Hong Kong.

15. The Policy Owner makes an application for a Policy and pays an Initial Contribution of at least \$38,462 (or the equivalent in 6 other currencies). Upon acceptance of the application Heng An issues the Policy. Once the Policy is in force and subject to Heng An's approval, the Policy Owner may nominate a Contingent Policy Owner who will become the new Policy Owner if the original Policy Owner dies.

16. The Policy Owner may also make optional Additional Contributions, subject to a minimum for each Additional Contribution of \$12,308 (or the equivalent in 6 other currencies) and provided that both the Policy Owner and Life Insured don't exceed the maximum age limit in effect at the time.

17. To enable calculation of the benefits and charges under a Policy, Heng An creates notional Units, each representing a proportionate share of the value of the investment choices invested in by the Policy Owner with the payment of their contributions and notionally allocated to their Policy. The investment choices notionally allocated to the Policy are chosen by the Policy Owner from a wide range of investment choices linked to external underlying funds and are invested in by Heng An with the Policy Owner's contributions.

18. Both an Extra Allocation (at a rate of 0.1%) and a Loyalty Bonus (at a prescribed rate once a Policy has been held for 6 years) will be credited to the Policy by Heng An in the form of additional notional Units allocated to the investment choices of the Policy Owner.

19. While the Policy Owner is the legal owner of the Policy, they have no legal or beneficial rights or ownership in any underlying funds corresponding to their investment choices or notional Units held under the Policy. The contributions paid by the Policy Owner and any investments made by Heng An in the underlying funds corresponding to the investment choices selected by the Policy Owner will become and remain assets of Heng An.

20. A Fund Switch whereby some or all of the investment choices notionally allocated to the Policy are switched for one or more different investment choices may be requested in the prescribed form by the Policy Owner at any time (subject to a minimum switch-out amount). Under a Fund Switch, Heng An will redeem the Units allocated in the original investment choices (based on the bid price on the next Valuation Day) and allocate the redemption amount to the newly selected investment choices.

21. If a dividend is declared and becomes payable in respect of an underlying fund of an investment choice, Heng An may either pay out the dividend amount to the Policy Owner (if Investment Choice (Cash Distribution) is selected) or re-invest the dividend amount in the form of additional notional Units of such investment choice (if investment choice other than Investment Choice (Cash Distribution) is selected).

22. The Policy Owner may submit a request in the prescribed form to surrender their Policy or to make a Withdrawal (on an ad hoc basis) or Regular Withdrawal (on an annual, semi-annual, quarterly or monthly basis) of part of their Policy. In the event of a surrender of the Policy, Heng An shall pay the Policy Account Value to the Policy Owner (less any applicable Surrender Charge), the Units notionally allocated to the Policy will redeem and the Policy will terminate. The Policy Account Value is equal to the sum of the Initial Contribution Account and any Additional Contribution Accounts of the Policy Owner's Policy, determined according to the number of notional Units of investment choices held in

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the Policy multiplied by the respective bid price of those investment choices, net of any applicable fees and charges.

23. As part of any request for each ad hoc Withdrawal, the Policy Owner shall designate the withdrawal amount or percentage of each investment choice to be redeemed from the Initial Contribution Account and any Additional Contribution Accounts. Any request for Regular Withdrawal by the Policy Owner shall designate the withdrawal amount and payment frequency.

24. All withdrawal requests will be subject to any applicable Surrender Charge and processed by Heng An provided that the withdrawal amount is no less than the minimum withdrawal amount specified by Heng An and the Policy Account Value immediately after a withdrawal is no less than the minimum policy value specified by Heng An.

25. The Life Insured designated by the Policy Owner under the Policy may or may not be that of the Policy Owner. The Policy Owner may, subject to Heng An's approval, change the Life Insured on or after the first Policy Anniversary. The Policy Owner may also, subject to Heng An's approval, assign a Contingent Life Insured to become the new Life Insured upon the death of the Life Insured. The Death Benefit becomes due upon the death of the Life Insured (including but not limited to any Contingent Life Insured that has become the Life Insured) in circumstances where there is no named and surviving Contingent Life Insured, and is payable to any one or more entities designated by the Policy Owner as a Nominated Beneficiary under the Policy or, in the absence of a Nominated Beneficiary at the time of the death of the Life Insured, to the Policy Owner or the Policy Owner's estate, as applicable.

26. If payable before reaching the Policy Anniversary immediately after the 65th birthday of the Life Insured or the 5th Policy Anniversary, whichever is later, the value of the Death Benefit will be the higher of:

- the total contributions paid by the Policy Owner less the total Withdrawals and Regular Withdrawals made, or
- 105% of the Policy Account Value.

27. If payable after the Policy Anniversary immediately after the 65th birthday of the Life Insured or the 5th Policy Anniversary, whichever is later, the value of the Death Benefit will be 105% of the Policy Account Value.

28. Once the Death Benefit has been paid by Heng An, the Units notionally allocated to the Policy will redeem and the Policy will terminate.

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**Commissioner of Taxation****25 June 2025**

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## Appendix – Explanation

**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 OneFuture**

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).

### ***OneFuture 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 generally allow the policyholder to surrender a part of the policy at any time (a "partial surrender").

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34. A Policy issued to a Policy Owner 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 OneFuture***

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

38. Payments of a bonus by Heng An to the Policy Owner 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 Policy Owner 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
- 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 Policy Owner under an eligible policy (that is, amounts previously received (including any amounts of bonus) and the surrender value

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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 the surrender proceeds received by a Policy Owner 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 Policy Owner 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 Owner's Policy Account Value, as calculated on a Valuation Day and linked to the performance of the Policy Owner's investment choices, constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Policy Owner on part or total surrender of their Policy, and pursuant to subsection 26AH(5) is not regarded as having been received by the Policy Owner 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 investment choices notionally allocated to the Policy of a Policy Owner (that is, a Fund Switch) involves the mere variation in the calculation base of the Policy Account Value such that subsection 26AH(4) does not apply, for the purposes of assessment under subsection 26AH(6), to take the Policy Owner 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 bonus that can reasonably be expected to accrue (subsections 26AH(9) and (12)). Any consideration received by a Policy Owner in respect of an assignment of their Policy during its eligible period will, for the purposes of subsection 26AH(6), be deemed pursuant to

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subsection 26AH(9) to have been received by the Policy Owner 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 Insured (including but not limited to any Contingent Life Insured that has become the Life Insured) in circumstances where there is no named and surviving Contingent Life Insured, 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 Policy Owner (subject to a minimum contribution amount). Therefore, in relation to the Policy, the premium payable for an assurance year is the total premiums paid in an assurance year, including both any Additional Contribution made by the Policy Owner and any dividend amount payable in respect of an underlying fund for an investment choice that is reinvested by Heng An (on behalf of the Policy Owner) into the Policy (discussed at paragraph 21 of this Ruling).

48. Where the premium payable by a Policy Owner 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 Initial Contribution under the Policy was paid.

49. Where the premium payable by a Policy Owner 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 Initial Contribution under the Policy was paid.

#### ***Capital gain or capital loss from payments under OneFuture 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 Policy Owner and, as applicable, a Policy Owner'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 Heng An makes a payment of the surrender proceeds in satisfaction of a Policy Owner's contractual rights under a Policy, their ownership of those rights is discharged or satisfied. Similarly, where Heng An makes a payment of a Death Benefit in satisfaction of a Policy Owner's, a Nominated Beneficiary's or a Policy Owner'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 Policy Owner, 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 Policy Owner 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 Policy Owner (where they are not the trustee of a complying superannuation entity<sup>2</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 Heng An of either the surrender proceeds 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 Policy Owner referred to in subparagraph 4(b) of this Ruling, that Policy Owner acquires an interest in the Policy for no consideration. A Policy Owner 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>2</sup> Any capital gain or capital loss a Policy Owner 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 the surrender proceeds 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 Heng An of either the surrender proceeds or a Death Benefit.

58. On the death of the Life Insured (including but not limited to any Contingent Life Insured that has become the Life Insured) in circumstances where there is no named and surviving Contingent Life Insured, the Policy Owner'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 Heng An.

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Status: **not legally binding**


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## References

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### *Related rulings and determinations:*

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

### *Legislative references:*

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|---|--|
| <ul style="list-style-type: none"> <li>- ITAA 1936 6(1)</li> <li>- ITAA 1936 26AH</li> <li>- ITAA 1936 26AH(1)</li> <li>- ITAA 1936 26AH(4)</li> <li>- ITAA 1936 26AH(5)</li> <li>- ITAA 1936 26AH(6)</li> <li>- ITAA 1936 26AH(7)(a)(i)</li> <li>- ITAA 1936 26AH(8)</li> <li>- ITAA 1936 26AH(8)(b)</li> <li>- ITAA 1936 26AH(9)</li> <li>- ITAA 1936 26AH(12)</li> <li>- ITAA 1936 26AH(13)</li> </ul> | <ul style="list-style-type: none"> <li>- ITAA 1936 95(2)</li> <li>- ITAA 1936 160AAB</li> <li>- ITAA 1936 Pt IVA</li> <li>- ITAA 1997 Pt 3-1</li> <li>- ITAA 1997 104-25</li> <li>- ITAA 1997 104-25(1)(b)</li> <li>- ITAA 1997 104-25(3)</li> <li>- ITAA 1997 108-5(1)</li> <li>- ITAA 1997 118-300</li> <li>- ITAA 1997 118-300(1)</li> <li>- ITAA 1997 Div 775</li> <li>- ITAA 1997 995-1(1)</li> <li>- Life Insurance Act 1995 9</li> <li>- Life Insurance Act 1995 9(1)(a)</li> <li>- Life Insurance Act 1995 9(1)(g)</li> <li>- SISA 1993</li> </ul> |
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### ATO references

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