

# ***PR 2023/20 - St. James's Place International Investment Plan II***



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Status: **legally binding**

## Product Ruling

# St. James's Place International Investment Plan II

### **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.

<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>32</b>

### **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 an International Investment Plan II (Plan)

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issued by St. James's Place International (Hong Kong) Limited (St. James's Place) and subject to the International Investment Plan II Terms and Conditions (Terms and 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 International Investment Plan II Product Brochure and the Terms and 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 Plan held by a Planholder 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 incurred in connection with a Plan
- the assessability (or otherwise) of amounts received under a Plan, 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 Planholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under a Plan
- the capital gains tax consequences arising from the assignment of ownership of a Plan to another entity for consideration, and
- whether a Planholder 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 the Planholder, having purchased a Plan subject to the Terms and Conditions 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 the Planholder, having had ownership of a Plan subject to the Terms and Conditions assigned to you for no consideration on or after 1 July 2023 and on or before 30 June 2026 and, at the time of, or subsequent to, that assignment 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>

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

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- (c) are not a Planholder referred to in subparagraphs 4(a) or (b) of this Ruling and have received all or part of a Death Benefit paid by St. James's Place under the Plan.

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*. The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this 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 2023 to entities specified in paragraph 4 of this Ruling that enter into the Plan from 1 July 2023 until 30 June 2026.

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 31 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 Plan is an 'eligible policy' for the purposes of section 26AH.<sup>2</sup>
- (b) Any portion of the proceeds received for the full surrender or partial withdrawal of the Plan or the termination of the Plan under the circumstances contemplated in paragraphs 23 or 24 of this Ruling (the surrender proceeds) by a Planholder 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 Plan, 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 9(b) of this Ruling) to any portion (or to part of any portion) of the surrender proceeds received by

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<sup>2</sup> As per paragraph 14 of this Ruling, the Terms and Conditions permit a Plan to be set up as a number of identical contracts. Each contract therefore constitutes a separate eligible policy and the provisions in section 26AH apply separately to each contract.

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- a Planholder, 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 Planholder under the Plan 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 Planholder under the Plan as or by way of a bonus.
  - (e) Pursuant to subsection 26AH(5), an accretion in the Planholder's Plan Value is not regarded as having been received by the Planholder for the purposes of assessment under subsection 26AH(6).
  - (f) A Planholder 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 Investments Choices held in their Plan.
  - (g) Where, during the eligible period in relation to a Plan, a Planholder receives an amount of consideration in respect of an assignment of that Plan, 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 Planholder under the Plan 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 Plan or a bonus that can reasonably be expected to accrue in respect of the Plan (subsection 26AH(12)).
  - (h) Pursuant to subparagraph 26AH(7)(a)(i), no portion of a Death Benefit paid under a Plan is assessable under subsection 26AH(6).
  - (i) Where the Contribution or Contributions payable by a Planholder in respect of a Plan in relation to an assurance year exceeds the Contributions payable under that Plan 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 Plan to have commenced at the beginning of the year in which the Contribution was increased (rather than at the date of commencement of the period in respect of which the first Contribution under the Plan 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 Planholder 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 Plan 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 Planholder referred to in subparagraph 4(b) of this Ruling resulting from the payment to them under a Plan of the surrender proceeds or a Death Benefit.
  - (l) Any capital gain or capital loss made by an entity other than the Planholder, resulting from the payment to them under a Plan of the Death Benefit upon the death of the relevant 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.

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### Assumptions

10. This Ruling is made on the basis of the following necessary assumptions:
- (a) An entity 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 Plan.
  - (b) A Planholder referred to in subparagraph 4(a) of this Ruling is the original owner of the Plan they purchased.
  - (c) All dealings between any of the entities referred to in paragraph 4 of this Ruling and St. James's Place will be at arm's length.
  - (d) The scheme will be executed in the manner described in the Scheme section of this Ruling and scheme documentation referred to in paragraph 11 of the 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 18 July 2023
  - International Investment Plan II Product Brochure dated April 2023, and
  - International Investment Plan II Terms and Conditions received on 18 July 2023.

**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. St. James's Place, incorporated in Hong Kong, issues (among other products) the Plan. Entities (Planholders) capable of purchasing the Plan from St. James's Place, alone or jointly (as one of up to 10 Planholders), include individuals<sup>3</sup>, companies or trusts and may, or may not, be residents of Australia for tax purposes at the time of issue.

14. The Plan is an investment-linked life insurance policy which can be set up as a single contract or as a number of identical individual contracts (up to 1,000), including the same Planholder, Lives Assured, beneficiaries, investment instructions and allocation.

15. Full details of the Plan, including the commitments and rights of both St. James's Place and a Planholder, are contained in the Terms and Conditions which, together with the Plan Schedule, form the contract between the Planholder and St. James's Place. The Plan is governed by and should be construed in accordance with the laws of the Hong Kong Special Administrative Region.

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<sup>3</sup> Individual Planholders must be aged between 18 and 69 years old when the Plan starts.

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### **Investment Choices and Units**

16. Planholders can make a Single Contribution, an Additional Single Contribution and Recurring Single Contributions in respect of their Plan in any one of 6 currencies (including the Australian dollar).<sup>4</sup> All Contributions are subject to a minimum amount.

17. Each time the Planholder makes a Contribution, St. James's Place will allocate the Planholder's Plan with Units in the Investment Choices the Planholder selects. The Units allocated to the Plan are notional and used solely for the purpose of calculating the sum of the value of all Investment Choices held under the Plan (the Plan Value). The number of Units allocated will be equal to the amount of the Contribution divided by the applicable Bid Price.

18. The value of the Units allocated to the Plan is used by St. James's Place when calculating Benefits that are available under the Plan upon partial withdrawal of the Plan, full surrender of the Plan or the death of the relevant Life Assured.

19. The Contributions paid by the Planholder will be invested by St. James's Place in the underlying funds corresponding to the Investment Choices selected by the Planholder. All underlying funds provide different exposures to different securities and are authorised by the Securities and Futures Commission of Hong Kong.

20. All Contributions received by St. James's Place towards the Planholder's Plan and any investments made by St. James's Place in the underlying funds corresponding to the chosen Investment Choices become and remain the asset of St. James's Place. The Planholder has no legal or beneficial rights to Units or to any part of those assets.

21. The Planholder can request to change (switch) some or all of the Investment Choices held in their Plan or, where they are making Recurring Single Contributions, the investment allocation instruction for their Recurring Single Contribution by completing a switch request form.

22. When the Planholder requests to switch their existing Investment Choices, St. James's Place will replace Units allocated in their existing Investment Choices (after deducting any applicable Switch Charge) with Units of equal value in any other Investment Choices, as requested. When the Planholder requests to change the Investment Choices that their Recurring Single Contributions are allocated to, St. James's Place will allocate all future Recurring Single Contributions received to the updated Investment Choices selected.

### **Termination and withdrawal**

23. The date on which the Plan matures and terminates (the Plan Maturity Date) is the Plan Anniversary on or immediately after the 80th birthday of the Life Assured (as the case may be) or the youngest surviving Life Assured (for multiple Lives Assured). Where the Plan terminates on the Plan Maturity Date the Plan Value is payable to the Planholder.

24. If a period of at least 5 years has elapsed since the last Contribution was received by St. James's Place and allocated to the Planholder's Investment Choices, the Plan will be deemed a Dormant Plan and must maintain the Minimum Plan Value. If the Plan Value of a Dormant Plan falls below the Minimum Plan Value for reasons other than market fluctuation and the Planholder does not make a Contribution within 30 days of having

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<sup>4</sup> No Additional Single Contribution or Recurring Single Contribution can be made beyond the age of 70 of the Planholder or youngest Planholder, as applicable.

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received written notice, the Plan will terminate at that time and the Plan Value will be payable to the Planholder.

25. The Planholder can surrender their Plan early by notifying St. James's Place in writing. Upon full surrender of the Plan, St. James's Place will pay the Planholder the Plan Value, less any applicable Early Withdrawal Charge, and the Plan will terminate.

26. The Planholder can also partially withdrawal their invested money from the Plan at any time, either on a regular basis (at least yearly) or on an ad hoc basis by completing a withdrawal request form. At the Planholder's request:

- all the money invested in one or more of the identical contracts within their Plan can be withdrawn on an ad hoc basis, in which case St. James's Place will pay the Planholder the value of the Units allocated to those contracts (after deducting any Early Withdrawal Charge) and those contracts will come to an end, or
- the amount to be withdrawn, either on a regular or one-off basis, can be spread evenly across all of the identical contracts within their Plan, in which case St. James's Place will cancel enough of the Units allocated to each the contracts within their Plan to provide the withdrawn amount requested (after deducting any Early Withdrawal Charge).

27. The Plan will terminate where the Planholder's request for a partial withdrawal takes the Plan Value below the Minimum Remaining Plan Value.

### **Death Benefit**

28. At the outset of the Plan, the Planholder can choose between 1 and 10 Lives Assured which may or may not include the Planholder. Unless otherwise agreed by St. James's Place, each Life Assured must be aged between 3 months and 69 years old at the commencement of the Plan.

29. Where the Plan is written on one Life Assured, the Death Benefit will become payable, all Units held in the Investment Choices will be redeemed and the Plan will terminate if the death of the Life Assured happens before the Plan Maturity Date (or any other termination event).

30. Where the Plan includes more than one Life Assured, the Death Benefit will become payable, all Units held in the Investment Choices will be redeemed and the Plan will terminate on the earliest of:

- the death of the last Life Assured before the Plan Maturity Date (or any other termination event), or
- the death of the youngest surviving Life Assured before the Plan Maturity Date (or any other termination event) where all other surviving Lives Assured were aged 80 or over at the previous Plan anniversary, prior to the death of the youngest surviving Life Assured.

31. The Death Benefit is 105% of the Plan Value at the date of death of the relevant Life Assured and will be paid:

- according to the percentage of benefit nominated by the Planholder if all the beneficiaries survive the relevant Life Assured
- into equal shares to all surviving beneficiaries if any beneficiaries nominated by the Planholder predecease the relevant Life Assured, or



# PR 2023/20

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- to the Planholder or the Planholder's estate, as applicable, if there is no surviving beneficiary.

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**Commissioner of Taxation**

18 October 2023

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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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Application of section 26AH to the International Investment Plan II	32
<i>The International Investment Plan II is an eligible policy</i>	33
<i>Treatment of benefits received under the International Investment Plan II</i>	38
<i>Effect of increased premiums on eligible period</i>	49
Capital gain or capital loss from payments under the International Investment Plan II disregarded	53

### **Application of section 26AH to the International Investment Plan II**

32. 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 International Investment Plan II is an eligible policy***

33. 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.

34. 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).

35. 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.

36. 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 types of policies is that

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

37. A Plan issued to a Planholder 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 Plan 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 International Investment Plan II***

38. 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.

39. The Plan, 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.

40. 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 St. James’s Place to a Planholder is considered to be a bonus. This amount provides the Planholder with participation in St. James’s Place’s profits, as derived from the performance of the Investment Choices selected for investment in by the Planholder (but owned by St. James’s Place) during the period the Planholder’s Plan is in force.

41. Payments of a bonus by St. James’s Place from the Investment Choices linked to a Plan 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 Plan is included as assessable income of a Planholder 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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42. 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).

43. 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 Planholder under a Plan otherwise 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 Planholder as if it had been received as or by way of a bonus.

44. 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.

45. An accretion in the Planholder's Plan Value constitutes a bonus that is merely accrued so as to increase the amount ultimately payable to the Planholder on partial withdrawal, full surrender or other form of termination of the Plan, and pursuant to subsection 26AH(5) is not regarded as having been received by the Planholder for the purposes of assessment under subsection 26AH(6).

46. 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 44 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 of the Planholder under a Plan involves the mere variation in the calculation base of their Plan such that subsection 26AH(4) does not apply, for the purposes of assessment under subsection 26AH(6), to take the Planholder to have received an amount under or in relation to their Plan.

47. 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 Planholder in respect of an assignment of their

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Plan 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 Planholder as or by way of a bonus to the extent that the consideration received is attributable to a bonus.

48. 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 Plan (as a portion of the Death Benefit) in consequence of the death of the relevant Life Assured is therefore not assessable under subsection 26AH(6).

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

49. 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.

50. 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 Plan, the amount invested across any assurance year (if any) is at the discretion of the Planholder (subject to minimum Contribution amounts). Therefore, in relation to the Plan, the premium payable for an assurance year is the total Contribution made in an assurance year.

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

52. Where the Contribution or Contributions payable by a Planholder in respect of a Plan in relation to each assurance year does not exceed the Contributions payable under that Plan in the immediately preceding assurance year by more than 25%, the 10-year eligible period in respect of the Plan, 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 Contribution under the Plan was paid.

#### ***Capital gain or capital loss from payments under the International Investment Plan II disregarded***

53. 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 Planholder and any other entity entitled to receive all or part of a Death Benefit under the Plan are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997.

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54. Where St. James's Place makes a payment of the surrender proceeds in satisfaction of a Planholder's contractual rights under a Plan, their ownership of those rights is discharged or satisfied. Similarly, where St. James's Place makes a payment of a Death Benefit in satisfaction of a Planholder's or other entity's contractual rights under the Plan, 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).

55. The Planholder or another entity with contractual rights to receive a payment of a Death Benefit under the Plan, 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).

56. 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?*).

57. 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).

58. As an entity to which the Plan is first issued, a Planholder 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 Planholder (where they are not the trustee of a complying superannuation entity<sup>5</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 St. James's Place of either the surrender proceeds or a Death Benefit.

59. 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.

60. On the assignment of ownership of the Plan for no consideration to a Planholder referred to in subparagraph 4(b) of this Ruling, that Planholder acquires an interest in the Plan for no consideration. A Planholder 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 St. James's Place of either the surrender proceeds or a Death Benefit.

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<sup>5</sup> Any capital gain or capital loss a Planholder that is the trustee of a complying superannuation entity makes under section 104-25 of the ITAA 1997 from the receipt of a payment by St. James's Place of either the surrender proceeds or a 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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61. Where, on the death of the relevant Life Assured, an entity other than the Planholder is entitled to receive all or part of the Death Benefit, they acquire an interest in the Plan for no consideration. That entity 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 St. James's Place.

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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

- ITAA 1936 160AAB
- ITAA 1936 Part IVA
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- ITAA 1997 118-300
- ITAA 1997 118-300(1)
- ITAA 1997 Div 775
- ITAA 1997 995-1(1)
- SISA 1993
- Life Insurance Act 1995 9
- Life Insurance Act 1995 9(1)(a)
- Life Insurance Act 1995 9(1)(g)

### *Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1936 26AH
  - ITAA 1936 26AH(1)
  - ITAA 1936 26AH(4)
  - ITAA 1936 26AH(5)
  - ITAA 1936 26AH(6)
  - ITAA 1936 26AH(7)(a)(i)
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### ATO references

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