



PR 2023/24 - Allianz Guaranteed Income for Life

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 This document has changed over time. This is a consolidated version of the ruling which was published on *16 October 2024*



Status: **legally binding**

Product Ruling

Allianz Guaranteed Income for Life

📌 Relying on this Ruling

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

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

[Note: *This is a consolidated version of this document. Refer to the Legal database (ato.gov.au/law) to check its currency and to view the details of all changes.]*

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 Allianz Guaranteed Income for Life (AGILE) offered by Allianz Australia Life Insurance Limited (Allianz) under a Product Disclosure Statement (PDS).
2. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated. Terms which are defined in the PDS and Group Policy Deed referred to in paragraph 11 of this Ruling have been capitalised.
3. This Ruling does not address:
 - the tax consequences
 - of acquiring, holding and redeeming AGILE, other than as per paragraphs 11 to 38 of this Ruling
 - for investing in AGILE using a directed termination payment within the meaning of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997)
 - for investing in AGILE using personal injury compensation money, as per Division 54 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - of rolling over the residual capital, during the Growth Phase, into a further term
 - of a transfer of an investment in AGILE (except where specifically addressed in subparagraphs 9(fa), (ia) and (ib) of this Ruling), and
 - of borrowing funds to invest in AGILE, including the deductibility of interest on funds borrowed
 - eligibility to claim the seniors and pensioners tax offset
 - the deductibility of the amount invested in AGILE¹
 - whether the annuity payments made by Allianz under AGILE are subject to pay as you go withholding
 - the treatment of any duties, fees, taxes or other government charges that may be deducted from any payments payable by Allianz under AGILE, and
 - the deductibility of any fees or costs incurred in connection with AGILE.

Who this Ruling applies to

4. This Ruling applies to you if you are an Australian resident for tax purposes and you are:
 - (a) an Investor in AGILE by virtue of your acquisition of an interest in the Group Policy on or after 24 November 2023 and on or before 30 June 2026
 - (b) a nominated beneficiary of an Investor, where the Investor is an individual and dies without having fully withdrawn their Investment Value
 - (c) the deceased estate of an Investor, where the Investor is an individual, dies without having fully withdrawn their Investment Value and has either not

¹ For the purposes of this Ruling, it is assumed at subparagraph 10(d) of this Ruling that no portion of the Investment Amount is deductible.

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- nominated a beneficiary or their nominated beneficiary predeceases them, or
- (d) a nominated beneficiary of the nominated beneficiary referred to in subparagraph 4(b) of this Ruling, where the Investor is an individual, dies without having fully withdrawn their Investment Value, has elected the Spouse Insured Option and is not predeceased by their Spouse (Surviving Spouse).
5. This Ruling does not apply to you if you:
- are not an Australian resident for tax purposes
 - invest, or otherwise acquire an interest, in AGILE before 24 November 2023 or after 30 June 2026
 - invest in AGILE using a directed termination payment within the meaning of the IT(TP)A 1997 or personal injury compensation money that is subject to Division 54 of the ITAA 1997, or
 - are not at least one of the entities listed in paragraph 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* (SISA). 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 SISA.

Date of effect

7. This Ruling applies from 24 November 2023, to the entities specified in paragraph 4 of this Ruling that enter into AGILE from 24 November 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 38 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) Annuities granted to the Investor under the Group Policy Deed are
- (i) not a 'qualifying security' as defined in subsection 159GP(1)
 - (ii) not a 'superannuation income stream' as defined in section 307-70.02 of the *Income Tax Assessment (1997 Act) Regulations 2021* (ITAR (1997 Act) 2021), and
 - (iii) an 'annuity' as defined in subsection 27H(4).

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- (b) Annuities granted to the Investor under the Group Policy Deed are not a financial arrangement to which Division 230 of the ITAA 1997 applies.
- (c) The annuity payments made by Allianz to an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, are assessable income under subsection 27H(1) to the extent that the annuity payments exceed the 'deductible amount' in relation to the relevant annuity. The deductible amount is excluded from the assessable amount of the annuity.
- (d) The annual deductible amount in relation to the annuity payments derived by an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, is ascertained (subject to subsection 27H(3)) in accordance with the formula set out in subsection 27H(2). Where the annuity payments are not payable for the whole of an income year, the deductible amount for that year will be reduced proportionately by the Commissioner pursuant to subsection 27H(3) based on the part of the year during which the annuity payments are not paid.
- (e) Where the residual capital value in relation to an annuity reduces as a consequence of any negative movement in the relevant market-linked Protected Investment Options, causing the deductible amount ascertained in accordance with subsection 27H(2) for an income year to increase, and the annuity payments derived by an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, for that year are exceeded by that deductible amount, the deductible amount for the year will be reduced by the Commissioner pursuant to subsection 27H(3) to the level of the annuity payments made.
- (f) The amount of any reduction in the deductible amount described in subparagraphs 9(d) and (e) of this Ruling can be applied to annuity payments derived in subsequent income years to the extent that those payments, individually or in aggregate, would otherwise exceed the deductible amount in those years.
- (fa) The transfer of an interest in the Group Policy by an Investor that is a trustee of a complying superannuation fund to its member who has satisfied a condition of release with a nil cashing restriction under Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (SISR) is
 - (i) a superannuation benefit as defined in section 307-5 of the ITAA 1997
 - (ii) a superannuation lump sum as defined in section 307-65 of the ITAA 1997, and
 - (iii) not assessable income or exempt income pursuant to section 301-10 of the ITAA 1997 where the member is 60 years old or over.
- (g) Any capital gain made by an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, resulting from the annuity payments made by Allianz is disregarded under section 118-300 of the ITAA 1997, and is not otherwise assessable as ordinary or statutory income under the ITAA 1997.
- (h) Any capital gain made by an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, resulting from the payment of the Withdrawal Value by Allianz to them upon Partial Withdrawal or Full Withdrawal is disregarded under section 118-300 of the ITAA 1997. The payment of the Withdrawal Value in these circumstances is, however,

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included in the assessable income of the relevant entity to the extent that it exceeds a capital component calculated as the undeducted purchase price (that is, the Investment Amount) less any deductible amounts previously applied to the annuity payments from Allianz, but not reduced to less than zero.

- (i) Any capital gain made by an entity referred to in paragraph 4 of this Ruling, as applicable, resulting from the payment of a death benefit by Allianz to them upon death is disregarded under section 118-300 of the ITAA 1997. The payment of a death benefit is, however, included in the assessable income of the relevant entity to the extent that it exceeds a capital component calculated as the undeducted purchase price (that is, the Investment Amount) less any deductible amounts previously applied to the annuity payments from Allianz, but not reduced to less than zero.
- (ia) Any capital gain or capital loss made by an Investor that is a trustee of a complying superannuation fund resulting from the transfer of its interest in the Group Policy to either another trustee of a complying superannuation fund or to its member is disregarded under section 118-300 of the ITAA 1997.
- (ib) Any capital gain made by a member of a complying superannuation fund resulting from the transfer to them of an interest in the Group Policy by an Investor that is the trustee of that fund is disregarded under section 118-305 of the ITAA 1997.
- (j) 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) Each of the entities referred to in paragraph 4 of the Ruling are Australian residents for tax purposes or Australian-resident trust estates as defined in subsection 95(2).
 - (b) The Investor will not invest in AGILE using a directed termination payment within the meaning of the IT(TP)A 1997, or using personal injury compensation money that is subject to Division 54 of the ITAA 1997.
 - (c) An Investor that is the trustee of a complying superannuation fund and transfers its interest in the Group Policy
 - (i) is permitted by the terms of its trust deed to pay a superannuation benefit that is a superannuation lump sum in-specie, and
 - (ii) has the means and capacity to attribute an accurate value to the benefit.
 - (d) No portion of the Investment Amount is deductible.
 - (e) An Investor that is the trustee of a trust, including a superannuation fund, is not prevented from investing in AGILE by any terms of its trust deed, and is not in breach of any of its stated investment guidelines and strategies.
 - (f) All dealings between any of the entities referred to in paragraph 4 of this Ruling and Allianz or the Policy Owner will be at arm's length.

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- (g) The scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation 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 information and documentation received on 1 September 2023, 19 October 2023, 16 November 2023 and 15 May 2024
 - Product Disclosure Statement for Allianz Guaranteed Income for Life to issue 24 November 2023, and
 - Group Policy Deed between Allianz Australia Life Insurance Limited (as Insurer) and Allianz Australia Life Policy Services Pty Limited (as Policy Owner) to be executed 24 November 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 an entity, will be a party to which are a part of the scheme.

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

Overview of scheme

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

15. Interests in the Group Policy are available to be acquired by individuals aged 50 to 80 years old, companies and trustees of trusts, including complying superannuation funds (Investors).²

16. An individual Life Insured must be nominated by the Investor in their Application. Where the interest in the Group Policy is acquired by an individual Investor, that individual is the Life Insured. Where an Investor other than an individual acquires an interest in the Group Policy they must nominate at least one individual Life Insured between the age of 50 to 80 years old. In the case of an Investor that is a trustee of a complying superannuation fund, the nominated Life or Lives Insured must also be members of the fund. Interests in the Group Policy acquired by an Investor other than an individual may be transferred to another Investor by written notice to Allianz and the Policy Owner, and in such cases must be held by the new Investor in respect of the same Life or Lives Insured.

² Referred to in the Group Policy Deed as Beneficiaries or Annuitants.

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

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

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

19. All payments due under the Group Policy (including the Investment Amount) are payable by the Investor to Allianz and all Benefits under the Group Policy are payable by Allianz to the Investor (or, where applicable, one of the other entities referred to in paragraph 4 of this Ruling). The relevant recipient will be paid, and will have all rights to receive Benefits provided under the Group Policy (to the exclusion of the Policy Owner), net of any deduction applicable under or pursuant to the Group Policy Deed and PDS, including the annual Product Fee and the annual Lifetime Income Premium. These entitlements under the terms of the Group Policy Deed are protected by statutory rights provided for under the *Insurance Contracts Act 1984* and the LIA.

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

21. The Policy Owner's role is limited to acting as policyowner under and in accordance with the Group Policy which includes prioritising the interests of the Investor (or, where applicable, other entities entitled to receive Benefits), over itself.

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

23. Under the Growth Phase of AGILE, the Investor is provided a One Year Term Certain Annuity in respect of a Life Insured, the Proceeds of which are automatically rolled into a new One Year Term Certain Annuity on a continuous rolling basis, for a minimum of 3 years, and until the Investor elects to commence the Lifetime Income Phase in respect of the Life Insured.

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

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

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

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26. Prior to, and on each Anniversary Date during, the Growth Phase, the Investor chooses how to allocate their investment across 4 market-linked Protected Investment Options, allowing the Investor to benefit from exposure to market-linked returns (via the Annual Return), subject to a Maximum Return, and offering varying degrees of protection against adverse market movement.

27. Once the Investor elects to commence the Lifetime Income Phase after the expiry of a minimum of 3 years from the Commencement Date³, the Investor is paid regular monthly income payments that are guaranteed for the lifetime of the Life Insured (Lifetime Income).

28. Immediately prior to commencement of the Lifetime Income Phase, the Investor may elect the Spouse Insured Option which allows for the regular monthly payments constituting the Lifetime Income to continue to be paid to the Investor (other than an individual Investor) for the remaining lifetime of the Surviving Spouse in the event of the death of the Life Insured.⁴ Where the Spouse Insured Option is elected by an Investor that is an individual (and therefore the Life Insured), Lifetime Income payable in respect of the Surviving Spouse (following the death of the Investor) will be paid to the nominated beneficiary (or beneficiaries) of the Investor or the deceased estate of the Investor, as applicable.

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

30. The Lifetime Income Rate, which will vary depending on whether the Investor elects the Spouse Insured Option or the Age Pension+ Option, determines the percentage of the Investment Value received by the Investor on commencement of the Lifetime Income Phase and is determined by applying the:

- applicable Age-Based Rate, a percentage rate based on the age of the Life Insured (or the Spouse, if younger, where the Spouse Insured Option is elected), at the Commencement Date, plus
- Total Annual Income Escalator, being the sum of the escalator percentage rates accumulated for each complete year the Investor was in the Growth Phase.

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

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

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

³ The Investor will automatically transition to the Lifetime Income Phase on the first Anniversary Date after the Life Insured reaches 100 years old or, where the Age Pension+ Option is selected, on the first Anniversary Date after the Life Insured reaches Life Expectancy.

⁴ The Surviving Spouse must be aged 50 to 80 years old at the Commencement Date, a 'spouse' as defined in the SISA and alive upon the death of the Life Insured in the Lifetime Income Phase.

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33. The Investor (or the nominated beneficiary or deceased estate of an individual Investor receiving annuity payments under the circumstances considered in paragraph 28 of this Ruling) can access the Investment Value at any time, by virtue of a payment by Allianz of the Withdrawal Value, via a Partial Withdrawal or a Full Withdrawal. Subject to paragraph 34 of this Ruling, any withdrawals made by an entity during the Growth Phase in excess of 5% of the Investment Amount, or during the Income Phase and in excess of their Lifetime Income payments, will be treated as an Excess Withdrawal and attract a Market Value Adjustment (MVA) where it happens within 10 years of the Commencement Date. During the Lifetime Income Phase, Excess Withdrawals and any MVA will cause future Lifetime Income Payments to reduce proportionally, as well as reduce the Investor's Investment Value.

34. At the earliest of commencing the Lifetime Income Phase or either meeting a Relevant Condition of Release⁵ (where the Investor is the trustee of a complying superannuation fund) or reaching Pension Age (where the Investor is not the trustee of a complying superannuation fund), the Investor can elect the Age Pension+ Option. Where the Age Pension+ Option has been elected, the Investor will no longer have access to a Free Withdrawal Amount (during either phase) such that all Partial Withdrawals will be treated as an Excess Withdrawal and may attract a MVA where it happens within 10 years of the Commencement Date (that is, where the Investment Value less the MVA is lower than the Age Pension+ Maximum Withdrawal Value). During the Lifetime Income Phase, Excess Withdrawals and any MVA will cause future Lifetime Income Payments to reduce, and the available Withdrawal Value where Full Withdrawal is requested will be the lesser of the Investment Value (less MVA) and the Age Pension+ Maximum Withdrawal Value.⁶

35. Subject to paragraphs 36 and 37 of this Ruling, where the Life Insured dies, the Investment Value (as at the date of payment) will be paid to the Investor (if it is greater than zero), unless the Investor is also the Life Insured and is paid to either their nominated beneficiary or beneficiaries or, if there is no nominated beneficiary, the trustee of their estate. No MVA shall apply on death of the Life Insured.

36. Where the Investor has elected the Spouse Insured Option, the Investor (other than an individual Investor) or the nominated beneficiary (or beneficiaries) or deceased estate of an individual Investor, as applicable, can choose to receive a lump sum payment rather than the Lifetime Income for the remaining lifetime of the Surviving Spouse. Where the relevant entity chooses to receive the Lifetime Income for the remaining lifetime of the Surviving Spouse and the Surviving Spouse subsequently dies, any remaining Investment Value will be paid to the Investor (other than an individual Investor), the nominated beneficiary (or beneficiaries) or deceased estate of an individual Investor, or a beneficiary (or beneficiaries) nominated by the nominated beneficiary of an individual Investor, as applicable.

37. Where the Age Pension+ Option has been elected, the amount of benefit payable as a lump sum on death will be the lesser of the Investment Value on the date of payment and any Age Pension+ Maximum Benefit on Death applicable at the date of death.⁷

38. Lifetime Income Payments will continue to be made even after the Investment Value reduces to zero (for any reason other than Excess Withdrawal) and for as long as the Life Insured (or Surviving Spouse) is alive. AGILE will cease in respect of the Life Insured (or Surviving Spouse), together with the Lifetime Income Payments, on the later of

⁵ A Relevant Condition of Release refers to retirement, death, terminal medical condition, permanent incapacity and attaining the age of 65 years old.

⁶ The Age Pension+ Maximum Withdrawal Value is designed to comply with maximum limits specified for amounts withdrawn under the social security Capital Access Schedule.

⁷ The Age Pension+ Maximum Benefit on Death is designed to comply with maximum limits specified for amounts payable on death under the social security Capital Access Schedule.

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the death of the Life Insured (or Surviving Spouse, as applicable) or upon the earlier payment of the Withdrawal Value on Full Withdrawal of the investment.

Commissioner of Taxation

22 November 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.*

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Subsection 27H(4) – annuity

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

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

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

40. This definition encompasses an annuity on ordinary concepts, as contemplated within various judicial authorities and discussed in Taxation Ruling IT 2480 *Income tax : variable annuities*. An annuity on ordinary concepts is a contract under which a principal sum is converted into an income stream⁸ of payments that are at least annual, fixed or variable in a way that is calculable, and which will continue to be paid for a fixed or determinable period.

41. The Investor's Investment Amount is applied to purchase the annuity payments (including the Lifetime Income Payments) during the Growth Phase and the Lifetime Income Phase respectively payable by Allianz under the terms of the Group Policy Deed, a contract pursuant to which the Investor is granted an entitlement to receive such

⁸ The term 'income stream' is defined in paragraph 5 of Taxation Ruling TR 2013/5 *Income tax: when a superannuation income stream commences and ceases* in the context of a superannuation income stream payable by a superannuation fund trustee to a member as 'a series of periodic payments that relate to each other over an identifiable period of time'.

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payments. Those payments, in either phase, are a series of periodic payments (payable more regularly than yearly), either fixed at the time of purchase or variable in a way that is calculable by reference to index movements and (unless commuted earlier for the Withdrawal Value) continue for either a fixed term of one year (in the case of the One Year Term Certain Annuities) or for the life of the Life Insured or the Surviving Spouse, as the case may be (in the case of the Lifetime Income). The ability to commute does not of itself result in the Group Policy Deed failing to be accepted as an annuity contract (see paragraph 25 of IT 2480).

42. An annuity granted under the Group Policy Deed therefore constitutes an annuity on ordinary concepts and, subject to the exclusions in paragraphs (a) and (b) of the definition (considered at paragraphs 43 to 47 of this Ruling), constitutes an annuity as defined in subsection 27H(4).

Division 16E – qualifying security

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

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

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

Superannuation income stream

45. A ‘superannuation income stream’ has the meaning given by the ITAR (1997 Act) 2021 (subsection 307-70(2) of the ITAA 1997). Subsection 307-70.02(1) of the ITAR (1997 Act) 2021 defines superannuation income stream in relation to an annuity commenced after 19 September 2007 to mean an income stream that is taken to be an annuity for the purposes of the SISA in accordance with subregulation 1.05(1) of the SISR.

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

47. As per paragraph 17 of this Ruling, the Investor cannot purchase its interest in the Group Policy using a roll-over superannuation benefit as defined in section 306-10 of the ITAA 1997 and, as per subparagraph 10(b) of this Ruling, it is assumed for the purposes of this Ruling that the Investor will not purchase its interest in the Group Policy using a

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directed termination payment within the meaning of the IT(TP)A 1997. As such, annuities granted under the Group Policy Deed are not a superannuation income stream.

Division 230 of the ITAA 1997 – taxation of financial arrangements

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

49. Annuities granted under the Group Policy Deed constitute a financial arrangement for the purposes of Division 230 of the ITAA 1997 on the basis that the entities referred to in paragraph 4 of this Ruling have cash settleable rights to receive a financial benefit in the form of the annuity payments, the Withdrawal Value or a death benefit, as applicable, and on the basis that the Investor has a cash settleable obligation to provide a financial benefit in the form of the Investment Amount.

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

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

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

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

52. As AGILE is a life insurance policy (as defined in subsection 995-1(1) of the ITAA 1997 and as per paragraph 14 of this Ruling) that is not a qualifying security (as defined in subsection 159GP(1) and discussed at paragraphs 43 and 44 of this Ruling), the exception in subsection 230-460(5) of the ITAA 1997 applies and Division 230 of the ITAA 1997 does not apply to any gains or losses derived from the annuities granted under the Group Policy Deed.

Section 27H – assessability of annuity payments

53. Paragraph 27H(1)(a) includes in the assessable income of a taxpayer of a year of income the amount of any annuity derived by the taxpayer during that year excluding, in the case of an annuity that has been purchased, any amount that is the deductible amount in relation to the annuity in relation to the year of income. The annuity payments made by Allianz to an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, are therefore assessable income under subsection 27H(1) to the extent that the annuity payments exceed the deductible amount in relation to the relevant annuity.

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

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

Where:

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

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

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

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

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

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

59. For the purposes of paragraph (b) of the definition of the relevant number, the life expectation factor in relation to a person in relation to an annuity is defined in subsection 27H(4) to mean the number of years in the complete expectation of life of the person as ascertained by reference to the prescribed Life Tables⁹ at the time at the beginning of the period to which the first payment of the annuity relates. Where an annuity provides for a residuary life annuitant, the relevant number for the purposes of the formula in subsection 27H(2) is the life expectation factor of whichever annuitant (that is, the original or residuary annuitant) has the longer life expectancy (see paragraph 27 of Taxation Ruling IT 2157 *Income tax : assessment of annuities eligible termination*

⁹ For the purposes of the definition of 'life expectation factor' in subsection 27H(4) and with respect to annuities first commencing to be payable on or after 1 July 1993, table item 4 of section 7 of the *Income Tax Assessment (1936 Act) Regulation 2015* prescribes the Australian Life Tables that are most recently published before the year in which the annuity first commences to be payable.

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payments – commutation of annuities – Commonwealth Superannuation Act. This represents the period for which the annuity may reasonably be expected to be payable.

60. Where the Commissioner considers that the deductible amount ascertained in accordance with the formula in subsection 27H(2) is inappropriate, having regard to the terms and conditions applying to the annuity and to any other relevant matters, the Commissioner may, subject to subsection 27H(3A), determine the deductible amount that applies pursuant to subsection 27H(3). In making a determination pursuant to subsection 27H(3), the Commissioner may have regard to the terms and conditions applying to the annuity, to a certificate supplied by an actuary and to any other matters considered relevant.

61. Paragraphs 16 to 24 of IT 2157 provide some guidelines as to the exercise of the discretion under subsection 27H(3). Applying those guidelines to AGILE, the Commissioner may exercise the discretion under subsection 27H(3) where the:

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

62. The Commissioner will only alter the deductible amount pursuant to subsection 27H(3) where the deductible amount ascertained in accordance with the formula under subsection 27H(2) for a full year exceeds the minimum annual amount proposed to be paid under the annuity contract. Therefore, where the quantum of the residual capital value in relation to an annuity is reduced as a consequence of any negative movement in a market-linked Protected Investment Option and the deductible amount ascertained under subsection 27H(2) for a full year consequently exceeds the annuity payments to be paid by Allianz to an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling, as applicable, the Commissioner will alter that deductible amount pursuant to subsection 27H(3).

63. The deductible amount excluded in accordance with subsection 27H(3) under the circumstances set out in paragraph 62 of this Ruling is to be so much of the deductible amount ascertained in accordance with the formula under subsection 27H(2) as does not exceed the annuity payments for the relevant year. The balance of the deductible amount ascertained in accordance with the formula under subsection 27H(2) is to be carried forward and excluded (along with the following year's deductible amount ascertained in accordance with the formula under subsection 27H(2)) from the following year's annuity payments (see paragraph 21 of IT 2157). As such, this amount will be used to reduce the portion of the annuity payments assessable in the following year.

Assessability of the Withdrawal Value and death benefit

64. The receipt of:

- the Withdrawal Value from Allianz by an entity referred to in subparagraph 4(a), (b) or (c) of this Ruling upon Partial Withdrawal or Full Withdrawal, or
- a death benefit from Allianz by an entity referred to in paragraph 4 of this Ruling,

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

65. Any amount referred to in paragraph 64 of this Ruling which is included in the assessable income of a trustee of a deceased estate shall be deemed to be income to which no beneficiary is presently entitled pursuant to subsection 101A(1).

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

66. Under subsection 108-5(1) of the ITAA 1997, a CGT asset is any kind of property or a legal or equitable right that is not property. The contractual rights of the Investor and, as applicable, any other entity referred to in paragraph 4 of this Ruling under the Group Policy Deed are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1) of the ITAA 1997. Generally, the discharge or satisfaction of contractual rights gives rise to a CGT event C2 (paragraph 104-25(1)(b) of the ITAA 1997).

67. Section 118-300 of the ITAA 1997 exempts certain capital gains and losses made in respect of a policy of insurance on the life of an individual or an annuity instrument. An annuity instrument is defined broadly in subsection 995-1(1) of the ITAA 1997 to mean an instrument that secures the grant of an annuity (whether dependent on the life of an individual or not).

Section 118-300 of the ITAA 1997 – annuity payments

68. Table item 3 of subsection 118-300(1) of the ITAA 1997 provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under an annuity instrument is disregarded where that CGT event happens to the original owner of the instrument (other than the trustee of a complying superannuation entity).

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

70. Table item 5 of subsection 118-300(1) of the ITAA 1997 provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under an annuity instrument is disregarded where that CGT event happens to the trustee of a complying superannuation entity for the income year in which the CGT event happens.

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

72. 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

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

73. A nominated beneficiary (or beneficiaries) or deceased estate of an individual Investor that elects the Spouse Insured Option, and a member of a complying superannuation fund to whom an interest in the Group Policy is transferred by an Investor that is the trustee of that fund, acquire an interest in an annuity for no consideration. Pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997, any capital gain or capital loss such entities make under section 104-25 of the ITAA 1997 from the receipt of annuity payments by Allianz is therefore disregarded.

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

74. Where the Investor is regarded as an original owner of an annuity instrument, pursuant to table item 3 of subsection 118-300(1) of the ITAA 1997 any such Investor that is not the trustee of a complying superannuation entity will disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of the Withdrawal Value from Allianz upon Partial Withdrawal or Full Withdrawal, and any such Investor that is neither the trustee of a complying superannuation entity or an individual will disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a death benefit from Allianz upon the death of their nominated Life Insured (or Surviving Spouse, where applicable).

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

76. As a nominated beneficiary (or beneficiaries) or deceased estate of an individual Investor that elects the Spouse Insured Option, and a member of a complying superannuation fund to whom an interest in the Group Policy is transferred by an Investor that is the trustee of that fund, acquire an interest in an annuity for no consideration, pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997 they will disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of the Withdrawal Value from Allianz upon Partial Withdrawal or Full Withdrawal.

77. A nominated beneficiary (or beneficiaries) or deceased estate of an individual Investor, or any subsequent beneficiary nominated by the individual Investor's nominated beneficiary (under the circumstances considered in subparagraph 4(d) of this Ruling), acquire an interest in an annuity for no consideration and will, therefore, pursuant to table item 4 of subsection 118-300(1) of the ITAA 1997, disregard any capital gain or capital loss they make under section 104-25 of the ITAA 1997 from the receipt of a death benefit from Allianz upon the death of the Investor or Surviving Spouse, as applicable.

Transfer of interest in Group Policy by trustee of a complying superannuation fund

Capital gain or capital loss from transfer disregarded

78. The rights and entitlements of the Investor under the Group Policy Deed, broadly referred to as their interest in the Group Policy, is a CGT asset under subsection 108-5(1) of the ITAA 1997. Generally, the transfer of a CGT asset involving a change of beneficial ownership gives rise to CGT event A1 (section 104-10 of the ITAA 1997).

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79. Pursuant to table item 5 of subsection 118-300(1) of the ITAA 1997, an Investor that is the trustee of a complying superannuation fund will disregard any capital gain or capital loss it makes under section 104-10 of the ITAA 1997 from the transfer of its interest in the Group Policy to either another trustee of a complying superannuation fund (in which the nominated Life Insured or Lives Insured are also members) or to its member.

80. Section 118-305 of the ITAA 1997 provides that a capital gain or capital loss is disregarded if it is made from a CGT event happening in relation to a right to, or to any part of, an allowance, annuity or capital amount payable out of a superannuation fund, or in relation to a right to, or to any part of, an asset of such a fund.

81. Where an Investor that is the trustee of a complying superannuation fund transfers its interest in the Group Policy to its member and the transfer constitutes a payment of a superannuation benefit (as discussed in paragraphs 82 to 84 of this Ruling), the discharge or satisfaction of the member's right to receive that payment gives rise to CGT event C2 (paragraph 104-25(1)(b) of the ITAA 1997). Pursuant to subsection 118-305(1) of the ITAA 1997, any capital gain or capital loss the member of the fund makes from the receipt of the superannuation benefit is disregarded.

Section 301-10 of the ITAA 1997 – assessability of benefit received by member

82. A 'superannuation benefit' is defined in subsection 307-5(1) of the ITAA 1997 to include a payment to a fund member from a superannuation fund because they are a fund member. A superannuation benefit can be a superannuation lump sum, defined in section 307-65 of the ITAA 1997 as a superannuation benefit that is not a superannuation income stream benefit, and a superannuation income stream benefit is defined in section 307-70 of the ITAA 1997 as a superannuation benefit specified in the ITAR (1997 Act) 2021 that is paid from a superannuation income stream.

83. Where an Investor that is a trustee of a complying superannuation fund transfers its interest in the Group Policy to its member, the transfer will not be paid from a superannuation income stream and therefore will not be a superannuation income stream benefit. As such, it will be a payment (in-specie) of a superannuation lump sum under section 307-65 of the ITAA 1997.

84. Section 301-10 of the ITAA 1997 provides that a superannuation benefit received by an individual 60 years or over is not assessable income and is not exempt income, and subregulation 6.18(3) of the SISR requires complying superannuation fund members to have satisfied a condition of release with a nil cashing restriction to be eligible to receive lump sum superannuation benefits. It follows that the transfer of an interest in the Group Policy by an Investor that is a trustee of a complying superannuation fund to its member who has satisfied a condition of release with a nil cashing restriction (under Schedule 1 of the SISR), will not be assessable income or exempt income where the member is 60 years or over at the time of the transfer.

Status: **not legally binding**

References

Related Rulings/Determinations:

IT 2157; IT 2480; TR 2013/5

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