PR 2023/3 - PPS Mutual Professionals Choice - Profit-Share Plan

Status: **legally binding**

Product Ruling

PPS Mutual Professionals Choice – Profit-Share Plan

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.

Table of Contents **Paragraph**

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.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product 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 Product Ruling.

Status: **legally binding**

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

2. In this Product Ruling, the scheme involves the purchase and holding of a PPS Mutual Accidental Death Insurance and Profit-Share Account (Profit-Share Plan) issued by NobleOak Life Limited (NobleOak) and offered under the PPS Mutual Professionals Choice Product Disclosure Statement.[1]

3. Broadly, and subject to paragraph 4 of this Product Ruling, this Product Ruling addresses the:

- assessability of an Accidental Death Benefit and a Profit-Share Benefit paid under a Profit-Share Plan, and
- deductibility of premiums incurred in respect of a Profit-Share Plan.

4. This Product Ruling does not address:

- the tax consequences arising in connection with any of the core insurances or additional insurances offered under PPS Mutual Professionals Choice
- a Member's entitlement to a rebate under section 160AAB of the *Income Tax Assessment Act 1936* (ITAA 1936) in relation to an assessable Profit-Share Benefit received under the Profit-Share Plan
- the tax consequences arising for the recipient upon the on-payment of a benefit received under a Profit-Share Plan by a Member that is the trustee of a complying superannuation fund
- the tax consequences arising from the transfer of ownership of a Profit-Share Plan to another entity
- the tax consequences of borrowing funds to purchase a Profit-Share Plan, including the deductibility of interest on funds borrowed, and
- whether this scheme constitutes a financial arrangement for the purposes of Division 230 (taxation of financial arrangements).

Class of entities

5. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section.

6. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that are Australian residents for tax purposes and are:

(a) An individual (other than in the capacity of a trustee of a trust estate) who is a Member of the PPS Mutual Benefit Fund (the Fund) and purchases the Profit-Share Plan on or after 1 July 2022 and on or before 30 June 2025.

[1] Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from a Product Disclosure Statement or the PPS Mutual Benefit Fund Rules referred to in paragraph 17 of this Product Ruling.

(b) An entity nominated by the individual referred to in paragraph 6(a) of this Product Ruling as a beneficiary under that Profit-Share Plan.

(c) The deceased estate of the individual referred to in paragraph 6(a) of this Product Ruling.

(d) The trustee of a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993* (SISA) that is a Member of the Fund and purchases the Profit-Share Plan on or after 1 July 2022 and on or before 30 June 2025.

7. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that:

- are not Australian residents for tax purposes
- purchase the Profit-Share Plan before 1 July 2022 or after 30 June 2025, or
- are not one of the entities listed in paragraph 6 of this Product Ruling.

Superannuation Industry (Supervision) Act 1993

8. This Product Ruling does not address the provisions of the 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 Product Ruling as to whether investment in this scheme may contravene the provisions of the SISA.

Qualifications

9. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 17 to 45 of this Product Ruling.

10. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

Date of effect

11. This Product Ruling applies from 1 July 2022. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2022 until 30 June 2025, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

12. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity’s involvement in the scheme.

Changes in the law

13. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

14. 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 Product Ruling since it was issued.

Note to promoters and advisers

15. 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 that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Ruling

16. Subject to paragraph 4 of this Product Ruling and the assumptions in paragraph 45 of this Product Ruling:

(a) The Profit-Share Plan is an ‘eligible policy’ for the purposes of section 26AH of the ITAA 1936.

(b) A Profit-Share Benefit paid under a Profit-Share Plan held by a Member who is the Life Insured or the trustee of a complying superannuation fund will be a ‘bonus’ to which subsection 26AH(6) of the ITAA 1936 may apply, and will not otherwise be assessable as ordinary or statutory income under the ITAA 1936 or the ITAA 1997.

(c) For the purposes of subsection 26AH(13) of the ITAA 1936, which on application resets the date of commencement of the relevant eligible policy, only premiums payable in respect of the Profit-Share Plan (and not any other PPS Mutual insurance plan held in respect of the same Life Insured) are relevant and are to be taken into account.

(d) An Accidental Death Benefit received by the nominated beneficiary or the deceased estate of the Life Insured under a Profit-Share Plan held by a Member who is the Life Insured under the Profit-Share Plan will not be included in the assessable income of the beneficiary or deceased estate, as applicable, under section 6-5 or section 6-10.

(e) A capital gain or capital loss made by the nominated beneficiary or the deceased estate of the Life Insured upon receipt of an Accidental Death Benefit under a Profit-Share Plan held by a Member who is the Life Insured under the Profit-Share Plan will be disregarded pursuant to table item 4 of subsection 118-300(1).

(f) An Accidental Death Benefit received by a Member that is the trustee of a complying superannuation fund under a Profit-Share Plan held by that trustee will not be included in the assessable income of the fund under section 6-5 or section 6-10.

(g) A capital gain or capital loss made by a Member that is the trustee of a complying superannuation fund upon receipt of an Accidental Death Benefit under a Profit-Share Plan held by that trustee will be disregarded pursuant to table item 5 of subsection 118-300(1).

(h) Premiums incurred by a Member who is the Life Insured in respect of a Profit-Share Plan they hold will not be deductible under section 8-1.

(i) A Member that is the trustee of a complying superannuation fund will be entitled to a deduction under section 295-465 for the whole of the premiums that trustee incurs in respect of a Profit-Share Plan in the income year in which the premiums are paid.

(j) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to an entity referred to in paragraph 6 of this Product Ruling.

Scheme

17. The scheme that is the subject of this Product Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by documents and information received on 17 September 2022, 14 November 2022 and 17 March 2023
- PPS Mutual Professionals Choice Product Disclosure Statement dated 1 October 2021
- PPS Mutual Professionals Choice Product Disclosure Statement dated 10 December 2022, and
- PPS Mutual Benefit Fund Rules (the Rules) effective from 1 October 2021 and received on 14 November 2022.

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

18. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an entity referred to in paragraph 6 of this Product Ruling, or any associate of such entity, will be a party to, which are a part of the scheme.

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

Overview

20. NobleOak, a registered life insurer, established the Fund pursuant to the Rules for the purposes of PPS Mutual Professionals Choice.

21. PPS Mutual Professionals Choice is a product designed by PPS Mutual Insurance Pty Ltd (PPS Mutual Insurance). Services in relation to product and business development, distribution support, and underwriting of the business are provided by PPS Mutual

Insurance pursuant to the terms of a product development and distribution agreement it has entered into with NobleOak.

22. Insurance cover issued by NobleOak under PPS Mutual Professionals Choice comprises of:

- life, total and permanent disability, trauma, income protection, and business expenses (collectively referred to as core insurances)
- blood borne disease and child (collectively referred to as additional insurances), and
- the Profit-Share Plan insurance.

23. With the exception of the Profit-Share Plan, the insurance covers referred to in paragraph 22 of this Product Ruling can either be provided as stand-alone cover or (in certain circumstances) linked together with other covers. These insurance covers can also be provided as either single cover inside or outside superannuation or (in certain instances) split inside and outside of superannuation across 2 separate plans.

24. Entitlement to the provision of these insurance covers as determined by the Rules is exclusively available to an entity (a person who may or may not be different to the Life Insured, a company or a trustee (including the trustee of a superannuation fund)) that has been accepted as a Member of the Fund. To become a Member of the Fund, a person, company or trustee must meet the eligibility criteria contained in the Rules; apply to NobleOak to become a Member of the Fund; and have their application for insurance accepted by NobleOak.

25. Generally, an application for insurance requires, among other things, the proposed Life Insured under that application to be, at the time of the application, an Australian Resident; a PPS Mutual Member; and within the age limits applying to the cover being requested.

26. A PPS Mutual Member is a member of PPS Mutual Limited (PPS Mutual), a company owned by its members and of which PPS Mutual Insurance is a wholly-owned subsidiary.

27. Membership of PPS Mutual (which arises as a consequence of becoming the Life Insured under a PPS Mutual insurance plan) is only available to those individuals who are currently practising in, or are currently eligible to practice in, one of a number of eligible professions.

28. Applications and eligibility requirements are assessed by PPS Mutual on behalf of NobleOak. Where an Applicant has been accepted as a Member of the Fund and has been provided with insurance cover, the Rules, together with the information contained in the most recent Certificate of Membership that NobleOak has issued to the Member, will form the terms and conditions of the Member’s insurance contract with NobleOak.

29. The Applicant must pay any applicable premium that NobleOak requires to be paid prior to the commencement of the insurance cover. Premiums are thereafter due and payable annually in advance. The premiums payable in respect of a PPS Mutual insurance plan, including the Profit-Share Plan, are for the benefits provided by that plan, and not for any Profit-Share Benefit that may be payable by NobleOak under the terms of the Profit-Share Plan (as discussed at paragraphs 33 to 44 of this Product Ruling).

30. None of the PPS Mutual insurance plans offered by the Fund will have any cash surrender value. No bonuses will accrue or be paid in respect of a PPS Mutual insurance plan offered by the Fund, except the Profit Share Plan.

31. None of the PPS Mutual insurance plans have an investment-related component and so the benefits payable under those plans do not include investment income.

32. Membership of the Fund ceases for a Member when no further insurance cover is being provided to the Member by the Fund due to the termination of the insurance cover (for any reason).

PPS Mutual Profit-Share Plan

33. Unlike each of the other insurance plans available under the Fund, the Profit-Share Plan will not be available to purchase separately. Rather, it will be a plan that is automatically issued whenever one of the other core insurances is purchased.

34. The Profit-Share Plan will either be owned by the Life Insured under a core insurance plan (who is therefore a PPS Mutual Member) or, in situations where a core insurance plan provided by the Fund is owned by the trustee of a superannuation fund, that trustee. The Life Insured under both the Profit-Share Plan and the referable core insurance plan, each owned by the trustee of a superannuation fund, will be the same individual.

35. The Profit-Share Plan contains 2 components, Accidental Death Insurance and the Profit-Share Account.

36. Under the Accidental Death Insurance component of the Profit-Share Plan, NobleOak will pay an Accidental Death Benefit (a lump sum) of $10,000 where the Life Insured dies while they are covered by the Profit-Share Plan as a direct result, and within 90 days, of an Accident. The recipient of the Accidental Death Benefit may vary (as per the Rules) depending on who, or what type of entity (as referred to in paragraph 34 of this Product Ruling), owns the Profit-Share Plan.

37. The Profit-Share Account is a notional account maintained within the Fund for the benefit of its Members. The Profit-Share Pool, being the accumulated funds from which Profit-Share Benefits are paid to Members, will broadly track the profitability of the Fund and will be the mechanism by which the insurance operations are run on a mutual basis.

38. Amounts will be notionally allocated annually to each Profit-Share Account maintained for each holder of a Profit-Share Plan. The allocation:

- will be based on the profit-share rates determined annually by the Appointed Actuary, and approved by the Board of NobleOak
- will be expected to be proportional to the premiums paid for the year in respect of each Life Insured on all PPS Mutual insurance plans effected over the same Life Insured; and the existing balance of the Profit-Share Account, and
- may be positive (where there is a surplus and the profit-share rate is positive) or negative (where there is a loss and the profit-share rate is negative).

39. The balances in the Members' Profit-Share Accounts are not guaranteed to the Members and can be affected by investment performance and claims experience, among other things. Profit-Share Account balances can never be less than zero.

40. The Profit-Share Benefit only becomes payable (or part payable) to a Member when a payment circumstance occurs with a payment percentage greater than zero. A Profit-Share Benefit equating to 100% of the balance that has accrued to the Member in

their Profit-Share Account is payable under the Profit-Share Account component of the Profit-Share Plan in the following circumstances:

- automatically, at any time, if a benefit is paid on a PPS Mutual insurance plan that results in that and all other benefits for the relevant Life Insured terminating
- on request, or if all benefits covering the relevant Life Insured under a PPS Mutual insurance plan expire or lapse, after 20 years of continuous coverage under the Profit-Share Plan on the Life Insured, and
- on request, or if all benefits covering the relevant Life Insured under a PPS Mutual insurance plan expire or lapse, upon the first anniversary of the Profit-Share Plan after the Life Insured has reached age 65.

41. A Profit-Share Benefit of 5% of the balance that has accrued to the Member in their Profit-Share Account (less any percentage amounts previously withdrawn) is payable after 10 years and thereafter annually for each full year of continuous coverage that exceeds 10 years from the first Profit-Share Plan commencement date where, after 10 years but less than 20 years of continuous coverage under the Profit-Share Plan on the Life Insured:

- it is requested by the Member, or
- all benefits covering the relevant Life Insured under a PPS Mutual insurance plan expire or lapse. In this circumstance the partially forfeited Profit-Share Account balance remains within the Profit-Share Pool and is available for notional allocation to other Members as part of the next annual profit allocation.

42. No Profit-Share Benefit is payable where a Member ceases their membership in the Fund because all benefits covering the Life Insured under a PPS Mutual insurance plan expire or lapse before they have achieved 10 years of continuous coverage under the Profit-Share Plan. In this circumstance the forfeited Profit-Share Account balance remains within the Profit-Share Pool and is available for notional allocation to other Members as part of the next annual profit allocation.

43. The premium payable in respect of the Profit-Share Plan is included in an administration fee charged to Members by NobleOak and subsequently paid by NobleOak on each Member's behalf. This premium has been set by reference to the expected costs to the Fund of providing the $10,000 Accidental Death Benefit. There is no loading for expense or profit margin on the premium for the Accidental Death Benefit, and no portion of the premium is referable to the provision of the Profit-Share Benefit.

44. The Profit-Share Plan is a 'life policy' as defined in section 9 of the *Life Insurance Act 1995*, and therefore satisfies the definition of a 'life insurance policy' under subsection 995-1(1).

Status: **legally binding**

Assumptions

45. This Product Ruling is made on the basis of the following necessary assumptions:

(a) Each of the entities referred to in paragraph 6 of this Product Ruling is an Australian resident for tax purposes.

(b) Each of the superannuation funds holding a Profit-Share Plan is a complying superannuation fund within the meaning of section 45 of the SISA.

(c) Complying superannuation funds holding a Profit-Share Plan will not choose, pursuant to subsection 295-465(4), to determine its deduction entitlement under section 295-470 for premiums paid.

(d) Any benefit received under a Profit-Share Plan by a Member that is the trustee of a complying superannuation fund will be on-paid by that fund directly to the Life Insured or, where applicable, to the deceased Life Insured's estate or nominated beneficiary.

(e) The scheme will be executed in the manner described in the scheme documentation referred to in paragraph 17 of this Product Ruling and in the Scheme section of this Product Ruling.

(f) All dealings between any of the entity's referred to in paragraph 6 of this Product Ruling and NobleOak will be at arm's length.

Commissioner of Taxation
12 April 2023

Appendix – Explanation

This Appendix 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.

Table of Contents	**Paragraph**

Assessability of benefits received under the Profit-Share Plan held by Members who are the Life Insured

Accidental Death Benefit under the Profit-Share Plan not assessable as ordinary income under section 6-5

46. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. Income according to ordinary concepts refers to an accepted usage of the word 'income' and income that Courts have determined is ordinary income.

47. The characterisation to be accorded to an Accidental Death Benefit payable under the Profit-Share Plan in respect of the Member's death by Accident will depend on the purpose of the payments and the circumstances of their receipt: *Tinkler v Commissioner of Taxation* [1979] FCA 136 per Brennan J.

48. Members who are the Life Insured are issued with a Profit-Share Plan with the intention for their nominated beneficiary or deceased estate to receive the Accidental Death Benefit on the happening of the death of the Member from an Accident. The Accidental Death Benefit payable in the event of the Member's accidental death is intended to compensate the Member's nominated beneficiary or deceased estate for the loss of earning capacity of the Member.

49. Ordinarily, the receipt of insurance proceeds in the form of a lump sum would not come within the term of ordinary income where the payment has been made in the event of death or for deprivation or impairment of earning capacity: *The Commissioner of Taxation of the Commonwealth of Australia v Slaven* [1984] FCA 17. Such payments are capital in nature.

50. Accordingly, an Accidental Death Benefit paid by NobleOak under the Profit-Share Plan is a capital receipt, and is not assessable under section 6-5 as ordinary income.

Accidental Death Benefit under the Profit-Share Plan not assessable as statutory income under section 15-30

51. Section 6-10 includes statutory income in assessable income (that is, amounts that are not ordinary income but are included in assessable income by another provision). Section 15-30 is one such provision which operates to include in your assessable income an amount received by way of insurance or indemnity for the loss of an amount if the lost amount would have been included in your assessable income and the amount received is not assessable as ordinary income under section 6-5.

52. Whether a payment received by way of insurance or indemnity is subject to tax under paragraph 26(j) of the ITAA 1936 (the predecessor to section 15-30) was considered in *Commissioner of Taxation v Inkster, H M* [1989] FCA 626 and *Groves v United Pacific Transport Pty. Ltd. and Thompson* (1965) Qd. R. 62. As the compensation paid under these cases was for the loss of earning capacity, as distinct from the loss of income which would have been assessable income if the loss had not occurred, it was held that the payments were not subject to assessment under paragraph 26(j) of the ITAA 1936. For paragraph 26(j) of the ITAA 1936 to have applied, it would have been necessary to demonstrate that an actual loss of income suffered by the insured had been indemnified.

53. The Accidental Death Benefit paid by NobleOak under the Profit-Share Plan is a payment received by the nominated beneficiary or deceased estate of a Member who is the Life Insured by way of insurance. However, the Accidental Death Benefit is for the loss of the Member's earning capacity (where the Member is the Life Insured), and not for the loss of income. Any payment received to compensate for the loss of earning capacity is a capital receipt and does not fall to be assessed under section 15-30.

Assessability of benefits received under the Profit-Share Plan held by Members that are complying superannuation funds

54. Subsection 295-85(2) states that if a CGT event happens involving a CGT asset owned by a complying superannuation entity (including a complying superannuation fund), section 6-5 (among other provisions) does not apply in respect of that event (subject to the application of one of the exceptions at subsections 295-85(3) and (4)).

55. This means that the capital gains tax (CGT) provisions are the primary code for calculating gains or losses realised by complying superannuation funds from such a transaction. The normal weighing up that applies between the ordinary income and deduction provisions and the CGT provisions does not apply.

56. None of the exceptions in either subsections 295-85(3) or (4) apply to any CGT event happening to Members in relation to their Profit-Share Plan. As such, any gain or loss realised by a Member that is a complying superannuation fund upon receipt of a benefit under the Profit-Share Plan will, by the operation of subsection 295-85(2), not need to be considered for the purposes of section 6-5, but will constitute a capital gain or capital

loss as determined under the CGT provisions (and in accordance with paragraphs 58 to 65 of this Product Ruling).

57. For the reasons set out in paragraphs 51 to 53 of this Product Ruling in relation to an Accidental Death Benefit received by a nominated beneficiary or deceased estate of a Member who owns (and is the Life Insured under) a Profit Share Plan, an Accidental Death Benefit under a Profit-Share Plan received by a Member that is a complying superannuation fund would not be assessed as statutory income under section 15-30.

Capital gain or capital loss from payment of benefits received under the Profit-Share Plan disregarded

58. Under subsection 108-5(1) a CGT asset is any kind of property or a legal or equitable right that is not property. Contractual rights under an insurance policy are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1).

59. Where NobleOak makes a payment of a benefit in satisfaction of an entity's contractual rights under the Profit-Share Plan, that entity's 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)).

60. The recipient of the benefit 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)).

Section 118-300 – Accidental Death Benefit under the Profit-Share Plan held by Members who are the Life Insured

61. Section 118-300 exempts certain capital gains and capital 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) 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?*).

62. Table item 4 of subsection 118-300(1) 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.

63. A nominated beneficiary or deceased estate of the Life Insured would be taken to have acquired rights under the Profit-Share Plan for no consideration. The beneficiary or deceased estate will therefore be entitled under table item 4 of subsection 118-300(1) to disregard any capital gain or capital loss they make under section 104-25 from the receipt of a payment of an Accidental Death Benefit by NobleOak.

Section 118-300 – Accidental Death Benefit under the Profit-Share Plan held by Members that are complying superannuation funds

64. Table item 5 of subsection 118-300(1) 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 trustee of a complying superannuation entity for the income year in which the CGT event happened.

65. The trustee of a complying superannuation fund that owns a Profit-Share Plan will therefore be entitled under table item 5 of subsection 118-300(1) to disregard any capital gain or capital loss made by the fund under section 104-25 from the receipt of a payment of an Accidental Death Benefit by NobleOak.

Deductibility of premiums in respect of the Profit-Share Plan held by Members who are the Life Insured

66. Generally, the question of whether a premium is deductible is answered by reference to whether the benefits, when paid, would be assessable. In discussing the operation of subsection 51(1) of the ITAA 1936 (being the equivalent of section 8-1) in the High Court decision of *Commissioner of Taxation (Cth) v Smith* [1981] HCA 10, Gibbs, Stephen, Mason, and Wilson JJ held that:

> What is incidental and relevant in the sense mentioned falls to be determined not by reference to the certainty or likelihood of the outgoing resulting in the generation of income but to its nature and character, and generally to its connection with the operations which more directly gain or produce the assessable income. It is true that the payment of the premium in June 1978 did not result in the generation of any income in that year, but there is a sufficient connection between the purchase of the cover against the loss of ability to earn and the consequent earning of assessable income to bring the premium within the first limb of sec 51(1).

67. Murphy J delivered a separate judgment but concurred with the view of the majority of their Honours and stated:

> In general, if receipts under such a policy would be treated as income, the premiums should be treated as allowable expenditure, and if the receipts would be treated as capital the premiums should not be allowable expenditure.

68. As the Accidental Death Benefit payable by NobleOak under a Profit-Share Plan held by a Member who is the Life Insured is intended to compensate for the loss of earning capacity of the Member and is treated as capital (see paragraphs 46 to 50 of this Product Ruling), the premiums incurred by the Member in respect of the Profit-Share Plan are not incurred in gaining or producing assessable income and are not deductible under section 8-1.

Deductibility of premiums in respect of the Profit-Share Plan held by Members that are complying superannuation funds

69. Subsection 295-465(1) sets out the requirements for determining a deduction for premiums paid by a complying superannuation fund for insurance policies. Subsection 295-465(1) provides that:

> A complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

70. Table item 5 of subsection 295-465(1) states that a complying superannuation fund can deduct that part of a premium that is specified in the policy as being wholly for the liability to provide benefits referred to in section 295-460. Section 295-460 sets out the benefits for which insurance premium deductions are available.

71. Section 295-460 relevantly lists a 'superannuation death benefit' at paragraph (a) of that section. A superannuation death benefit is defined in subsection 307-5(1) in the context of a superannuation fund payment to mean:

> A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.

72. The terms of the Profit-Share Plan provide for a $10,000 lump sum Accidental Death Benefit payable by NobleOak upon the death of the Life Insured by Accident.

73. When on-paid by the relevant superannuation fund to the deceased Life Insured's estate or nominated beneficiary, the Accidental Death Benefit will be a superannuation death benefit as defined in subsection 307-5(1).

74. It is considered that while a Profit-Share Plan held by the trustee of a complying superannuation fund is partly for current or contingent liabilities of the fund to provide a superannuation death benefit referred to in section 295-460, and partly to provide a Profit-Share Benefit in the circumstances set out in paragraphs 40 and 41 of this Product Ruling, as the whole of the premiums paid by the trustee in respect of the Profit-Share Plan is referable to the provision of the superannuation death benefit (as per paragraph 43 of this Product Ruling), they will be fully deductible to the fund under table item 5 of subsection 295-465(1).

Application of section 26AH to the Profit-Share Plan

75. Subsection 26AH(6) of the ITAA 1936 includes all or part of amounts received as or by way of bonuses under certain life assurance policies ('eligible policies'), which but for section 26AH of the ITAA 1936 would not be included in the assessable income of the recipient, in the assessable income of the recipient when received within 10 years of the date on which the first or only premium paid under the policy was paid (the 'eligible period').

76. An 'eligible policy' in respect of which section 26AH of the ITAA 1936 may apply is defined in subsection (1) of that provision 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'.

77. The term 'life assurance policy' is defined in subsection 6(1) of the ITAA 1936 as having the meaning given to life insurance policy by the ITAA 1997. A 'life insurance policy' is defined in subsection 995-1(1) as having the meaning given to the expression 'life policy' in section 9 of the *Life Insurance Act 1995*.

78. A Profit-Share Plan issued to a Member referred to in paragraph 6 of this Product Ruling is an eligible policy for the purposes of section 26AH of the ITAA 1936 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 Profit-Share Plan is paid, which is after 27 August 1982
- is not a 'funeral policy', as defined in subsection 995-1(1), and
- is a life assurance policy by virtue of it constituting a life policy under section 9 of the *Life Insurance Act 1995* (see paragraph 44 of this Product Ruling).

79. The term 'bonus' is not defined for the purposes of section 26AH of the ITAA 1936 but is explained at paragraph 8 of Taxation Ruling IT 2346 *Income tax: bonuses paid on certain life assurance policies – section 26AH – interpretation and operation* in the context of 'more traditional 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 policy holder 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 of the ITAA 1936.

80. A Profit-Share Benefit paid by NobleOak from the balance of a Profit-Share Account maintained for each Member that owns the Profit-Share Plan is considered to have characteristics that are consistent with the description of a bonus in IT 2346. These characteristics include relating and being linked to a life assurance policy, being additional to the Accidental Death Benefit payable upon the death of the Life Insured by Accident, and providing the Member with participation in the Fund's profits, as derived during the period the Member's Profit-Share Plan is in force.

81. Payments of Profit-Share Benefits by NobleOak from the balance of a Profit-Share Account maintained under a Profit-Share Plan (as discussed at paragraphs 40 and 41 of this Product Ruling) will therefore be subject to section 26AH of the ITAA 1936 (subject to paragraph 82 of this Product Ruling) and will not be assessable under any other provision of the ITAA 1936 or the ITAA 1997. Specifically, a Profit-Share Benefit received under the Profit-Share Plan will (subject to paragraph 82 of this Product Ruling) be included as assessable income pursuant to subsection 26AH(6) of the ITAA 1936 to the following extent:

- where it is received within the first 8 years of the eligible period, the whole amount
- where it is received in the ninth year of the eligible period, two-thirds of the amount
- where it is received in the tenth year of the eligible period, one-third of the amount, and
- where it is received after the tenth year of the eligible period, none of the amount.

82. Irrespective of the timing of the receipt of a Profit-Share Benefit by a Member that is the trustee of a complying superannuation fund (as the holder of the Profit-Share Plan and the entity in respect of which the Profit-Share Account is maintained), subsection 26AH(6) of the ITAA 1936 will not apply to include that Profit-Share Benefit in the fund's assessable income (subparagraph 26AH(7)(b)(i) of the ITAA 1936).

83. As an anti-avoidance measure, subsection 26AH(13) of the ITAA 1936 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) of the ITAA 1936 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.

84. Where the premium payable in respect of the Profit-Share Plan in relation to an assurance year exceeds the premium payable under that Profit-Share Plan in the immediately preceding assurance year by more than 25%, the 10 year eligible period in respect of the Profit-Share Plan will be deemed by application of subsection 26AH(13) of the ITAA 1936 to have commenced at the beginning of the year in which the premium was increased, rather than at the date of commencement of the period in respect of which the first premium under the Profit-Share Plan was paid.

85. A Profit-Share Account is not maintained under, or in respect of, a PPS Mutual insurance plan other than a Profit-Share Plan. Therefore, an increase in a premium payable by a Member in respect of a PPS Mutual insurance plan other than a Profit-Share Plan will not give rise to an application of subsection 26AH(13) of the ITAA 1936.

References

Previous Rulings/Determinations:

PR 2019/7; PR 2016/6

Related Rulings/Determinations:

IT 2346; TD 2007/4

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- ITAA 1936 26(j)
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- ITAA 1997 995-1(1)
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Cases references:

- Commissioner of Taxation v Inkster, H M [1989] FCA 626; (1989) 24 FCR 53; 89 ATC 5142; (1989) 20 ATR 1516; (1989) 89 ALR 137
- Commissioner of Taxation (Cth) v Smith [1981] HCA 10; (1981) 147 CLR 578; 81 ATC 4114; (1981) 11 ATR 538
- Groves v United Pacific Transport Pty. Ltd. and Thompson [1965] Qd. R. 62
- The Commissioner of Taxation of the Commonwealth of Australia v Slaven, Robyn Leanne [1984] FCA 17; (1984) 1 FCR 11; 84 ATC 4077; (1984) 15 ATR 242; (1984) 52 ALR 84
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