

PR 2023/2 - Zurich Life Insurance (Hong Kong) Limited - Matterhorn life insurance policy



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Status: **legally binding**

Product Ruling

Zurich Life Insurance (Hong Kong) Limited – Matterhorn life insurance policy

① 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.

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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.

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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 takes part in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.
2. In this Product Ruling, the scheme involves the purchase and holding of a life insurance policy referred to as Matterhorn (Policy), issued by Zurich Life Insurance (Hong Kong) Limited (Zurich) under the Matterhorn Product Brochure dated October 2022 and subject to the Matterhorn Policy Provisions.¹
3. This Product Ruling does not address:
 - the tax consequences arising in relation to a Policy held by a Policyholder that is not a resident of Australia for tax purposes during the period on or after 1 October 2022 and on or before 30 June 2025
 - the treatment of any fees or charges, including the premium, incurred in connection with a Policy
 - the assessability (or otherwise) of amounts received under a Policy, other than the Death Benefit and the proceeds of surrender, partial withdrawal and regular withdrawal
 - the assessability (or otherwise) of the Death Benefit or the proceeds of surrender, partial withdrawal or regular withdrawal, other than under the capital gains tax regime in Part 3-1
 - a Policyholder's entitlement (or otherwise) to a rebate under section 160AAB in relation to an assessable bonus received under a Policy
 - the capital gains tax consequences arising from the assignment of ownership of a Policy to another entity for consideration, and
 - whether the Policyholder makes forex realisation gains or losses under Division 775.

Class of entities

4. 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.
5. The class of entities that can rely on the Ruling section of this Product Ruling consists of:
 - (a) An individual who purchases a Policy subject to the Matterhorn Policy Provisions (the Policyholder) on or after 1 October 2022 and on or before 30 June 2025, and either
 - (i) is a resident of Australia for tax purposes at the time of purchase, or
 - (ii) subsequent to that purchase and during the period on or after 1 October 2022 and on or before 30 June 2025, became a resident of Australia for tax purposes.

¹ Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from the Matterhorn Policy Provisions referred to in paragraph 15 of this Product Ruling.

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- (b) An individual to whom ownership of a Policy subject to the Matterhorn Policy Provisions is assigned for no consideration (also as Policyholder, and including a Contingent Policyholder) on or after 1 October 2022 or on or before 30 June 2025 and, at the time of, or subsequent to, that assignment and during the period on or after 1 October 2022 and on or before 30 June 2025, is a resident of Australia for tax purposes.²
- (c) Either an entity nominated as a Beneficiary by the Policyholder or the deceased estate of the Policyholder in receipt of the Death Benefit.

6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that are not one of the entities listed in paragraph 5 of this Product Ruling.

Qualifications

7. 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 15 to 31 of this Product Ruling.

8. 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

9. This Product Ruling applies prospectively from 1 October 2022 and applies only to the specified class of entities that:

- enter into the scheme, and
- are a resident of Australia for tax purposes during the period from 1 October 2022 to 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, as long as the Policyholder remains a resident of Australia for tax purposes.

10. 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

11. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact 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.

² All references to 'Policyholder' in this Product Ruling are a reference to a Policyholder as described in both or either of subparagraphs 5(a) or (b) of this Product Ruling, unless otherwise indicated.

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12. Entities who 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

13. 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 this Product Ruling has issued.

Ruling

14. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 31 of this Product Ruling:

- (a) Table item 3 of subsection 118-300(1) disregards any capital gain or capital loss made by a Policyholder referred to in subparagraph 5(a) of this Product Ruling resulting from the payment to them under a Policy of
 - (i) the proceeds of surrender, partial withdrawal or regular withdrawal, or
 - (ii) a Death Benefit upon the death of the Life Insured (where the Policyholder is not the Life Insured and there is no nominated or surviving Beneficiary).
- (b) Table item 4 of subsection 118-300(1) disregards any capital gain or capital loss made by a Policyholder referred to in subparagraph 5(b) of this Product Ruling resulting from the payment to them under a Policy of
 - (i) the proceeds of surrender, partial withdrawal or regular withdrawal, or
 - (ii) a Death Benefit upon the death of the Life Insured (where the Policyholder is not the Life Insured and there is no nominated or surviving Beneficiary).
- (c) Any capital gain or capital loss made by the nominated Beneficiary or the deceased estate of a Policyholder, as applicable, resulting from the payment to them under a Policy of the Death Benefit upon the death of the Life Insured is disregarded pursuant to table item 4 of subsection 118-300(1).
- (d) 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 *Income Tax Assessment Act 1936* (ITAA 1936) will not apply to an entity referred to in paragraph 5 of this Product Ruling.

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Scheme

15. 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 information and documentation received on 30 September 2022 and 9 November 2022
- Matterhorn Product Brochure dated October 2022, and
- Matterhorn Policy Provisions received on 30 September 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.

16. For the purposes of describing the scheme to which this Product Ruling applies, and aside from the Policy Schedule to be issued to the Policyholder, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an entity referred to in paragraph 5 of this Product Ruling, or any associate of such entity, will be a party to, which are a part of the scheme.

Overview

17. Zurich is registered in Hong Kong and issues, among other products, the Policy. Policyholders capable of purchasing a Policy from Zurich are individuals who may, or may not, be residents of Australia for tax purposes at the time of issue.

18. The Policy is defined as a single premium and investment-linked life insurance policy. Full details of a Policy, including the commitments and rights of both Zurich and the Policyholder, are contained in the Matterhorn Policy Provisions which, together with the Policy Schedule and application form, constitute the Policy between Zurich and the Policyholder. The Policy is governed and construed in accordance with the laws of Hong Kong.

19. The Policyholder makes an application for a Policy and pays an initial single premium of at least US\$12,000 (or the equivalent). Upon acceptance of the application Zurich issues the Policy. Subject to Zurich's approval and after the first policy year, the Policyholder may nominate a person as the Contingent Policyholder who will become the new Policyholder of the Policy if the original Policyholder dies or suffers from terminal illness or another specified condition.

20. To enable calculation of the benefits and charges under a Policy, Zurich creates notional Units, each representing a proportionate share of the value of the investment choices purchased by the Policyholder with the payment of their premium and notionally allocated to the Policyholder's Policy. The investment choices notionally allocated to the Policy are chosen by the Policyholder from a broad list of investment choices and may be switched by instruction from the Policyholder at any time.

21. Both a welcome bonus (as soon as practicable upon receipt of the initial single premium) and loyalty bonuses (as soon as practicable within one month after the beginning of each policy month starting from the 61st policy month while the Policy is in force) will be credited to the Policy by Zurich by allocating notional Units in investment choices selected by the Policyholder.

22. While the Policyholder is the legal owner of the Policy, they have no legal or beneficial entitlement in any underlying funds corresponding to their investment choices, notional Units held under the Policy or the assets linked to the Policy. The premium paid

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by the Policyholder and any investments made by Zurich in the underlying funds corresponding to the investment choices selected by the Policyholder will become and remain part of the assets of Zurich.

23. If a dividend is declared and becomes payable in respect of an underlying fund of an investment choice, Zurich may either pay out the dividend amount to the Policyholder (if Investment Choice (Cash Distribution) is selected) or re-invest the dividend amount in the form of additional notional Units into the investment choice of the underlying fund in respect of which the dividend is declared (if investment choice other than Investment Choice (Cash Distribution) is selected).

24. The Policyholder may submit a request for surrender, partial withdrawal or regular withdrawal of their Policy in writing to Zurich. In the event of a surrender of the Policy, Zurich shall pay the Surrender Value to the Policyholder, calculated as the Total Account Value after deducting any surrender charge and any welcome bonus claw-back (applicable where the Policy is surrendered within the first 5 policy years). The Total Account Value is defined to mean the total value of all investment choices notionally allocated to the Policy (as represented by the number of notional Units of investment choices held under the Policy multiplied by the respective Bid Price of those investment choices).

25. As part of any request for partial withdrawal of the Policy, the Policyholder shall specify the number of notional Units of specific investment choices to be withdrawn from the Policy. Such request will be subject to a welcome bonus claw-back where the first partial withdrawal request is made within the first 3 policy years and shall be processed by Zurich, provided that:

- the Total Account Value is larger than or equal to the partial withdrawal amount
- the partial withdrawal amount is at least US\$1,000, and
- the Surrender Value, as if a surrender request is made at the time immediately after the partial withdrawal is made, is at least the higher of US\$10,000 or 50% of the initial single premium paid.

26. Regular withdrawal is not allowed in the first 3 policy years. As part of any request for regular withdrawal of the Policy (starting from the fourth policy year), the Policyholder shall specify the number of notional Units of specific investment choices to be withdrawn from the Policy monthly. Such request shall be processed by Zurich, provided that:

- the Total Account Value is larger than or equal to the regular withdrawal amount
- the regular withdrawal amount is at least US\$500 per month, and
- the Surrender Value, as if a surrender request is made at the time immediately after each of the regular withdrawals is made, is at least the higher of US\$10,000 or 50% of the initial single premium paid.

27. The Life Insured designated by the Policyholder under the Policy may or may not be that of the Policyholder. After the first policy year, the Policyholder may, subject to Zurich's approval, assign a Contingent Life Insured to become the new Life Insured upon the death of the original Life Insured. The Death Benefit becomes due upon the death of the Life Insured (whether that be an original Life Insured where there is no Contingent Life Insured, or a Contingent Life Insured, as applicable), and is payable to any one or more persons or entities designated by the Policyholder as a Beneficiary under the Policy or, in the absence of a nominated or surviving Beneficiary at the time of the death of the Life Insured, to the Policyholder or the Policyholder's estate, as applicable.

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28. The Death Benefit payable by Zurich is equal to the higher of:
- 105% of the Total Account Value, and
 - 100% of the initial single premium paid by the Policyholder, less any accumulated partial withdrawal amounts, regular withdrawal amounts and accumulated cash dividend that have been paid to the Policyholder.
29. On payment of the Death Benefit, the notional Units allocated to the Policy will be cancelled and no further benefit will be payable by Zurich.
30. The Policy is non-participating and will not participate or share in the profits of Zurich.

Assumptions

31. This Product Ruling is made on the basis of the following necessary assumptions:
- (a) A nominated Beneficiary referred to in subparagraph 5(c) of this Product Ruling is an Australian resident for tax purposes at the time of receipt of a Death Benefit under a Policy.
 - (b) A Policyholder's deceased estate, referred to in subparagraph 5(c) of this Product Ruling, is an Australian-resident trust estate as defined in subsection 95(2) of the ITAA 1936 at the time of receipt of a Death Benefit under a Policy.
 - (c) A Policyholder referred to in subparagraph 5(a) of this Product Ruling is the original owner of the Policy they purchased.
 - (d) All dealings between any of the entities referred to in paragraph 5 of this Product Ruling and Zurich will be at arm's length.
 - (e) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 15 of this Product Ruling.

Commissioner of Taxation15 March 2023

Status: **not legally binding**

Appendix – Explanation

❶ *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.*

Capital gain or loss from payments under a Policy disregarded

32. Under subsection 108-5(1), a CGT asset is any kind of property or a legal or equitable right that is not property. The contractual rights of a Policyholder and, as applicable, a Policyholder's nominated Beneficiary or deceased estate under a Policy are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1).

33. Where Zurich makes a payment of the proceeds of surrender (that is, the Surrender Value), partial withdrawal or regular withdrawal in satisfaction of a Policyholder's contractual rights under a Policy, their ownership of those rights is discharged or satisfied. Similarly, where Zurich makes a payment of a Death Benefit in satisfaction of a Policyholder's, a nominated Beneficiary's or a Policyholder's deceased estate's contractual rights under a Policy, as applicable, their ownership of those rights is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b)).

34. The Policyholder, their nominated Beneficiary or their deceased estate, as applicable, makes a capital gain from this CGT event if their capital proceeds from the ending of the ownership of their asset are more than the asset's cost base or, alternatively, a capital loss if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

35. Section 118-300 exempts certain capital gains and losses made in respect of a policy of insurance on the life of an individual. The meaning to be given to the expression 'policy of insurance on the life of an individual' includes, but is not limited to, life insurance policies within the common law meaning of that term. It can apply to other life insurance policies as defined in subsection 995-1(1) 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?*).

36. Table item 3 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 original owner of the policy (other than the trustee of a complying superannuation entity).

37. As an individual to whom a Policy is first issued, a Policyholder referred to in subparagraph 5(a) of this Product Ruling is regarded as an original owner of a policy of insurance on the life of an individual. Accordingly, that Policyholder is entitled under table item 3 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 by Zurich of any of the proceeds of surrender, partial withdrawal and regular withdrawal of a Policy, or (where the Policyholder is not the Life Insured and there is no nominated or surviving Beneficiary) a Death Benefit.

38. 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.

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39. On the assignment of ownership of a Policy for no consideration to a Policyholder referred to in subparagraph 5(b) of this Product Ruling, that Policyholder acquires an interest in the Policy for no consideration. A policyholder referred to in subparagraph 5(b) of this Product Ruling is therefore 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 by Zurich of any of the proceeds of surrender, partial withdrawal and regular withdrawal of a Policy, or (where the Policyholder is not the Life Insured and there is no nominated or surviving Beneficiary) a Death Benefit.

40. On the death of the Life Insured, the Policyholder's nominated Beneficiary or deceased estate, as applicable, may acquire an interest in a Policy for no consideration. Under these circumstances, the Beneficiary or the deceased estate, as applicable, is 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 a Death Benefit by Zurich.

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References

Related Rulings/Determinations:

TD 2007/4

- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 108-5(1)
- ITAA 1997 118-300
- ITAA 1997 118-300(1)
- ITAA 1997 Div 775
- ITAA 1997 995-1(1)

Legislative references:

- ITAA 1936 95(2)
- ITAA 1936 160AAB
- ITAA 1936 Pt IVA
- ITAA 1997 Pt 3-1

ATO references

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