



# Momentum Wealth International (MWI) Products

## Frequently asked questions (FAQs)

This document is aimed at answering some of the most pertinent questions pertaining to the products offered by Momentum Wealth through our Guernsey branch.

Please note that this document is a summary of facts and opinions relevant to the said products only and as such, should not be seen as giving financial, tax or product advice. . When a client decides to invest in an international product, it is vital that they should seek independent tax advice to ensure that their personal circumstances are considered, as it can have a significant impact on the actual outcome.

**Q1: What products are offered by MWI?**

MWI administers the International Endowment Option (IEO) and an International Investment Option (IIO). Please refer to the summary document published by MWI for more detail on the products.

**Q2: Who can invest in the MWI products?**

Natural persons, offshore companies and trusts can invest in these products. However, SA companies, Close Corporations (CCs) and trusts do not qualify for a foreign capital allowance and can therefore not invest in these products.

**Q3: Which tax legislation will apply to the products?**

In most instances, an investor's tax residency will dictate the tax legislation as mostly, the tax legislation where the person resides applies, subject to double taxation agreements. Various countries have double taxation agreements in place to determine where income or capital gains are taxable if the income or gain could be subject to tax in both jurisdictions.

SA has a residency-based tax system. This means that, if a person is a SA tax resident, all worldwide income is subject to tax in SA, provided the double taxation agreement does not dictate otherwise.

From an estate duty point of view, natural persons who die in SA will be subject to estate duty on most of their local and worldwide assets in SA, subject to certain exclusions and estate duty agreements concluded between SA and the country in question.

Some countries do not consider residency when determining estate duty liability (also referred to as death duties/taxes or inheritance tax), but instead look at where the asset is situated - which is where the term 'situs' comes from. This concept will be dealt with in more detail below.

**Q4: Who will pay income tax on any income generated from the investment products and the capital gains tax, on any capital gains realised?**

**For SA tax residents**

**International Investment Option**

As with any other portfolio of collective investment schemes, interest and dividends are earned by the funds and flow to the investor.

In respect of foreign interest earned, it will be included in the investor's gross income and is subject to income tax in SA. No interest exemption applies in respect of foreign interest earned.

The foreign dividends will also be included in gross income, and are taxable in SA. The foreign dividend exemption applies: Foreign dividends are exempt to the effect that no more than an effective 20% tax is paid on the dividend received.

If units are realised to either:

- Fund a withdrawal from the investment; or
- Change the ownership of the investment; or
- Do a fund switch; and

a capital gain is realised, that capital gain will be taxable in the hands of the investor. If the annual exclusion of R40000 will apply (in respect of a natural person) and the inclusion rate of 40% also applies, then the effective capital gains tax payable will range between 0% and 18%.

**Q5: International Endowment Option (both product options)**

As the endowments are issued by an offshore branch of the MMI group, the SA tax legislation applicable to long-term insurance policies and the Long Term Insurance Act will apply.

Therefore, the five-fund approach will apply to the underlying investments and the insurer will be the taxpayer. All interest, dividends and capital gains will be taxed in the individual policyholder fund, taxed at a marginal tax rate of 30% and an effective capital gains tax rate of 12%.

When the policy proceeds pay out to the policyholder, no further income tax is payable.

**For non-resident taxpayers**

The tax rules that apply in this instance will depend on where the investor is a tax resident. It is therefore important to determine this as well as the tax consequences applicable to the investor in that jurisdiction. It is better to refer the investor to a skilled and experienced tax specialist who can give practical and sound advice.

**Caution:** It is important to obtain the correct advice and guidance, as all tax jurisdictions have their own rules, and without practical experience, these can be difficult to obtain and interpret. As a financial adviser, giving such advice can be prejudicial and it is therefore recommended that the client is referred to an international tax expert.

It is also important to remember that the endowment-based investments will be subject to the five-fund tax rules as mentioned above, irrespective of who the investor is. In some tax jurisdictions, the proceeds from the endowment policies are also taxable in the hands of the investor; this can result in double taxation.

**Q6: Do the restrictions applicable to local endowment policies also apply in respect of the foreign endowments?**

When investing in an endowment policy governed by the Long Term Insurance Act, the normal rules pertaining to the restriction period and access to funds apply.

However, the product is specifically structured with 100 underlying endowment policies to allow for multiple withdrawals.

## Q7: What happens to the product if the investor dies?

### International Investment Option

As the investment allows for multiple owners, the impact of the death of the owner will depend on the investment's ownership structure.

Where the investment is owned by one natural person investor, death will result in the investment coming to an end and the funds returned to the deceased's estate of the deceased. The executor will then deal with the funds in terms of the deceased investor's will.

Unless expressly excluded, in writing, by any contract owner, this investment automatically incorporates the joint and survivorship option provisions for contracts owned by two or more persons. This means that upon the death of a contract owner, the deceased person's contract interest shall directly accrue to the remaining contract owners without passing through Guernsey probate. If the joint and survivorship option is excluded, the deceased person's interest in the contract will accrue to the investor's estate, which may be subject to Guernsey probate.

### IEO Life Insurance Bond

This investment allows for unlimited contract owners and unlimited lives insured. The lives insured can be the same as, or different to, the contract owner/s. **The investment also allows for a joint and survivorship option (only between spouses).** The structure of the investment will therefore determine the outcome in the event of death of a role player.

**Where the joint and survivorship option is selected** (where the joint owners on a contract are spouses), both parties are lives insured on the contract. When a joint owner dies on a contract on which the joint and survivorship option has been selected, the surviving owner (spouse) automatically continues as sole owner of the contract. In this instance, the surviving spouse can add additional lives insured and also nominate a successor contract owner, which will ensure the continuance of the investment.

Where there is **only one contract owner with no other life insureds** and that person dies, the investment will come to an end and the proceeds will be payable, either to the deceased's estate or to the beneficiary nominated for proceeds.

Where there is **one contract owner and multiple lives insured** and the contract owner dies, the investment will continue to exist, but the ownership of the investment has to pass onto another. This can happen either by way of a nomination of a successor contract owner (in which case the ownership will pass to this nominated person), or as provided for in the will of the deceased contract owner. Where the contract owner is alive and one of the lives insured dies while there are other lives insured remaining, there will be no impact on the investment and it will continue as is.

Where there are **multiple contract owners**, they are automatically also lives insured on the contract and upon the death of any one of them, the contract will continue.

### IEO Capital Redemption Bond

This investment allows for unlimited contract owners, there is no life insured and the joint and survivorship provision is available between spouses.

**When the joint and survivorship provision is used** on the investment, the ownership of the one spouse shall automatically roll over to the surviving spouse.

**Where there is only one contract owner** and that person dies, the ownership will transfer to the person nominated as the successor contract owner or if no nomination is made, the ownership of the investment will form part of the deceased's estate.

**Where there are multiple contract owners** and one of them dies, that portion of the investment has to be transferred to either the person nominated as successor contract owner or it will form part of the deceased contract owner's estate and be dealt with in terms of the will.

## Q8: If an investor/policyholder did not select the "joint and survivorship option" in respect of the IEO, but they indicated who the proceeds must go to in their Will, how will this be dealt with in practice?

If the joint and survivorship option is not selected, the investment will fall into the investor's estate and dealt with in terms of the estate administration process. Depending on the value of the investment, it may be necessary to comply with Guernsey's domestic system of probate on death. This is an administrative and legal process in terms of Guernsey law that must be followed before the assets of a deceased person may be distributed to heirs.

**Q9: If an investor/policyholder did not select the “joint and survivorship option” in respect of the IEO, and there are additional contract owners and a beneficiary for proceeds was appointed, what happens if the original investor dies?**

The additional contract owners are automatically additional lives insured. Upon the death of any one contract owner, the policy will continue and the ownership of the deceased party will form part of his/her estate, which can be subject to Guernsey probate.

**Q10: What is Guernsey probate?**

Guernsey probate requires Letters of Administration to be obtained in relation to the investor’s estate to enable the Guernsey estate to be properly wound up. To obtain Letters of Administration, the registrar of the Ecclesiastical Court in Guernsey will require the investor’s will to be proved (or authenticated) in Guernsey and submitted together with a death certificate and an inventory stating the values of the estate. This may entail the added cost of appointing a Guernsey advocate to attend to the application.

If the deceased’s wishes are contained in an SA will, this needs to be lodged and resealed by the Master of the High Court in SA before it is submitted to the Registrar in Guernsey for processing.

The Letters of Administration is an official document which enables the person named as the executor in the will to prove to third parties (banks, insurance companies, etc.) that he/she is duly authorised to collect the assets of the deceased for distribution. Without this official document, no institution will pay out any funds to the deceased’s estate for a higher amount than a particular threshold they determine. Probate is required for all investments more than USD20,000.

**Q11: Is a separate will required for offshore assets?**

In Guernsey, the principle of freedom of testation applies to the law of succession. This means that individuals are free to dispose of their estates as they please on death. SA residents may choose to deal with their Guernsey assets in their SA wills or they may execute separate wills for their assets situated locally and in Guernsey. A will, will be regarded as valid in terms of Guernsey law if it complies with the internal law:

- a. In the territory where the will was executed;
- b. In the territory where, at the time of execution, the testator lived or had their habitual residence;
- c. The state where the testator was a national; or
- d. Where real property is disposed of, in the territory where the property is *situated*.

Not all jurisdictions are as straightforward as Guernsey and, where investors have assets abroad (particularly immovable property), it is important to understand the principles of the law of succession applicable to the disposal of assets on death (e.g. forced heirship) in the jurisdiction where the property is situated and whether there are any specific requirements that apply to the execution of wills. In these instances, obtaining specialist advice in the jurisdiction where the assets are situated, and to execute a separate will for those assets, is recommended.

**Q12: What are there pros and cons associated with having both a local and offshore will?**

The main advantages of having separate wills for local and offshore assets are:

- The executors in the jurisdictions where the assets are situated may proceed without delay;
- The wills may be adapted to provide for the laws of succession applicable in the jurisdictions where the assets are situated; and
- The wills may be drafted to comply with the formalities required for execution of wills in the particular jurisdictions where the assets are situated.

The biggest challenges associated with separate wills are to ensure that they correspond with one another and that, together, they deal with the testator’s worldwide estate. These challenges are easy to address in a single will dealing with a testator’s worldwide estate, which is also a cheaper option than having multiple wills. However, where assets are substantial, obtaining proper advice upfront is better, before it’s too late to rectify problems.

**Q13: If a person holds a local and offshore will, should there be a local and offshore executor?**

In practice, an expert in the jurisdiction where the assets are situated will be appointed to attend to the administration of the part of the estate situated in the particular jurisdiction. This expert may be appointed to act in the foreign jurisdiction on the local executor’s behalf either directly in the will, or by a local executor.

**Q14: The nominated beneficiary on the investment contract differs from the beneficiary nominated in the investor’s will. What will happen?**

Policy benefits that are dealt with in terms of the joint and survivorship option do not form part of a person’s estate for distribution purposes. Therefore, if there is a conflict between the provisions of the will and the joint and survivorship option, the terms of the joint and survivorship option will prevail.

If the joint and survivorship option does not apply, the policy contract will generally supersede the will as the contract dictates how the beneficiary nomination can be amended or cancelled, and the nomination in a will is not one of those methods.

**Q15: Upon death of the investor, where the investment is terminated as a result, do the proceeds have to return to SA or can they remain offshore?**

The general rule is that SA residents may retain foreign inheritances and any growth and income generated thereon abroad. This does not absolve beneficiaries from other obligations such as tax obligations, etc. In practice, where a SA resident inherits the offshore estate of another SA resident which has been built up by way of the deceased's SA offshore allowances, it is good practice to notify an authorised dealer who will advise on whether they wish to place the details of the inheritance on record with the Reserve Bank or not.

**Q16: Will the MWI investments be protected against the creditors of the investor?**

**International Investment Option**

No creditor protection applies and if the investor is declared insolvent, the investment will form part of the insolvent estate and can be attached by creditors.

**IEO Life Insurance Bond**

As the endowment policies are governed by the Long Term Insurance Act, the creditor protection awarded in terms of section 63 will apply. The following requirements must be met for the protection to apply during the lifetime of the investor/policyholder:

- The policy must be on the life of the policyholder or their spouse; and
- The policy must be in force for at least three years.

The requirements to enjoy the protection upon death of the policyholder include the following:

- The policy must be on the life of the policyholder or their spouse;
- The policy must be in force for at least three years;
- The policyholder is survived by a spouse, children, stepchildren or parents; and
- The policy benefits devolve upon them.

Where the requirements are met, in life and upon death, the protection of the policy benefits provided under this policy (or assets purchased exclusively with the policy benefits provided) will apply for five years from the date the benefits were provided.

The protection will NOT apply if:

- The policy was ceded as collateral security in respect of a specific debt; or
- It can be shown that the policy was acquired to intentionally defraud creditors.

The burden of proof always lies with the person relying on the protection.

**IEO Capital Redemption Bond**

No protection applies where there is no life insured on the insurance policy, and therefore no creditor protection will apply in terms of the Long Term Insurance Act.

**Q17: Will the MWI investments form part of the SA investor's deceased estate?**

Subject to certain exceptions, estate duty is levied on the worldwide estates of all persons that lived in SA at the date of death.

In terms of section 3(3)(d) of the Estate Duty Act, property includes property not taken into account elsewhere in the Act where the deceased was immediately prior to his death competent to dispose of for his own or the benefit of his estate. In terms of this catch-all provision, the value of an investment in the IIO and the IEO will be included in a person's estate for estate duty purposes, unless it qualifies for a deduction in terms of section 4(e) or some other provision of the Estate Duty Act.

In terms of section 4(e) of the Estate Duty Act, 1955, the following assets qualify for a deduction from estate duty:

*The amount included in the total value of all property of the deceased as representing the value of any right in or to property situated outside the Republic acquired by the deceased:*

- a. before he became ordinarily resident in the Republic for the first time; or
- b. after he became ordinarily resident in the Republic for the first time, by—
  - a donation from someone who was not ordinarily resident in South Africa at the date of the donation; or
  - an inheritance from a person who was not ordinarily resident at the date of his death; or
  - out of the profits and proceeds of any such property.

An investment purchased with a SA investor's personal offshore allowance must be included for estate duty purposes because it does not qualify for deduction in terms of the above provision.

**Q18: What will the estate duty implications in be when an investor and/or the life insured (that is not the investor/policyholder) dies?**

For purposes of this question it is assumed we are dealing with a person that dies in SA and that the funds in the investment are forthcoming from SA.

**International Investment Option**

The value assigned to that owners’ portion of the investment will be an asset in the deceased estate for estate duty purposes. It will therefore be added to all other assets and deemed assets to determine the dutiable estate and can therefore potentially be subject to estate duty. If the asset is bequeathed to the spouse of the deceased, the section 4(q) deduction will apply and the abatement will also apply if it is bequeathed to another.

**IEO Life Insurance Bond**

Where the owner or co-owner of this investment dies while there is another live insured still alive, the market value of the deceased’s portion of the investment will be an asset in the deceased’s estate. If the joint and survivorship provision applies to the investment and it goes to the deceased’s spouse, the section 4(q) provisions will apply. If this provision does not apply and the ownership goes to the successor contract owner nominated by the deceased contract owner and that nominated person is not a spouse, then it will be part of the dutiable estate. The abatement will still be applied to determine the eventual dutiable estate.

If the deceased is the last life insured on the investment, that investment will come to an end and pay out. Irrespective of whom it pays to, the total proceeds will be a deemed asset in the estate of that deceased life insured. If the proceeds are payable to the spouse of that deceased life insured, the section 4(q) deduction will apply. If not, it will be part of the dutiable estate that is still subject to the abatement.

**IEO Capital Redemption Bond**

The value assigned to that owners’ portion of the investment will be an asset in the deceased estate for estate duty purposes. It will therefore be added to all other assets and deemed assets to determine the dutiable estate and can therefore potentially be subject to estate duty. If the asset is bequeathed to the spouse of the deceased, the section 4(q) deduction as well as the abatement will apply if it is bequeathed to another.

**Q18: Estate duty and executor’s fees implications of the MWI investments at a glance:**

Product	Scenario	Estate duty?	Exec-utor’s fees?
IIO:	<b>Investor dies and:</b>		
	The investor was the only person listed as an investor	Yes	Yes
	Where there are multiple investors and the investor is survived by another co-investor	Yes for the proportionate ownership	No
IEO:	<b>Investor dies and:</b>		
	There is no successor contract owner or beneficiary for proceeds	Yes	Yes
	There is a successor contract owner	Yes	No
	There is no successor contract owner but a beneficiary for proceeds	Yes	No
	Joint and survivorship provision applied	No, due to section 4(q)	No

**Q19: What are the capital gains tax implications when an investor/and/or the life insured dies?**

For purposes of this question it is assumed we are dealing with a person that dies in SA and that the funds in the investment are forthcoming from SA and the person is also a SA tax resident.

**International Investment Option**

When the owner or one of the owners of this investment dies, it is deemed that the owner has disposed of that investment (or that portion of the investment) for capital gains tax purposes and it is added to all the other deemed disposals as a result of death.

If the investment goes to the spouse of the deceased, roll-over relief will apply and no capital gains tax will be payable. The base cost will also roll over to the spouse.

If it goes to any other person, no roll-over relief will apply. Upon death, a natural person is entitled to a capital gains tax exclusion of R300 000. The inclusion rate of 40% will apply and this amount will be added to the deceased's taxable income and will therefore be subject to income tax.

### Life Insurance Bond and Capital Redemption Bond

The investments are long-term insurance policies as it is governed by the Long Term Insurance Act. The exclusion applicable to long-term insurance policies will therefore apply and the death of a contract owner, who is the original beneficial owner, will not result in capital gains tax.

### Q20: What should be considered from an estate planning point of view when doing an international investment?

It is vital that SA resident who invests in offshore jurisdictions such as the United Kingdom (UK) or United States of America (USA) appreciate and plan for the possible costs of death consequences on owning assets in such jurisdictions.

The SA offshore investor who holds assets in these jurisdictions could be liable for UK Inheritance Tax (IHT) or US estate tax together with SA estate duty.

Some aspects that may trigger a liability for UK Inheritance tax (IHT) or US estate tax together with SA estate duty will depend on factors such as the tax residence status, domicile; *lex situs* (the law applicable in the jurisdiction where the asset is located); asset type; the value of the investments; and beneficiary of the estate. SA resident clients, non-domiciled with UK connections, may be affected by IHT through ownership of UK property. Such foreign domiciled assets owned by the client are commonly referred to as *situs* assets, a Latin word that refers to the place to which, for purposes of legal jurisdiction or taxation, a property belongs. IHT is principally charged on assets situated in the UK (being the *situs* of the asset) upon a person's death, but may also apply to some lifetime gifts and trust assets.

IHT is a tax on the market value of property transferred on death and on the loss to a person's estate resulting from certain lifetime gifts. The location of the assets, along with domicile, is vital for IHT in an international context. The relevant tax depends on the type of event that gives rise to a charge. In all cases, there is a nil rate band whereby tax is charged at 0% on the value of the property within the band at a relevant time.

The current threshold, also known as the "nil rate band", for which no IHT is payable, is £325,000. Therefore, assuming that the client does not live in the UK, they would enjoy an exemption on UK *situs* assets up to a maximum amount of £325,000. The IHT tax rate applied to amounts exceeding this threshold is 40%. Bequests to non-domiciled spouses qualify for a further exemption of £325,000 with the result that a non-UK domiciled investor may transfer up to £650,000 to a spouse on death free of IHT. Certain assets, such as holdings in authorised unit trusts or open-ended investment companies; shares where the share register is kept outside of UK; and exempt British Government securities (exempt gilts), are also excluded from IHT upon the death of investors who do not live in the UK.

The table below illustrates the estate duty or death tax implications for a SA resident, who lives in SA and with assets situated in SA, the United Kingdom (UK) and United States of America (USA).

Jurisdiction:	South Africa	UK	USA
Individual tax exempt threshold	R3,500,000	£325,000 (NRB)	\$60,000
Deductions for spousal bequests	Yes, in full	Yes, limited to a maximum of £325,000 where the spouse does not live in the UK.	No – unless assets are held in a qualified domestic trust.
Some examples of exemptions/deductions of some asset classes	Gross value of the deceased's worldwide assets is taxable, subject to a number of exclusions and deductions as contained in the Estate Duty Act, 1955.	<ol style="list-style-type: none"> <li>Foreign currency bank account maintained in UK;</li> <li>Holdings in authorised unit trusts or open ended investment company;</li> <li>Shares where share register is kept outside of the UK;</li> <li>British Government Securities referred to as exempt gilts</li> </ol>	<ol style="list-style-type: none"> <li>Cash deposits in a US bank;</li> <li>US government and corporate bonds;</li> <li>Retirement plans;</li> <li>Life insurance death benefits</li> </ol>
Tax rate	20%	40%	Sliding scale between 18% to 40%

The example below explains how a share portfolio *situated* in the UK and owned by a SA resident, who does not live in the UK, could be affected by IHT:

The client is SA resident (doesn't live in the UK) and owns a portfolio of individual UK registered shares valued at £1 000 000. He is not married and intends to pass his estate to his children and enquires whether his UK portfolio is exposed to IHT. According to the Double Death Duties Agreement (DDDA) between SA and the UK, the UK may levy IHT on the shares registered in the UK – even if an individual is considered to be living in SA. Therefore, even though the client will be liable to pay SA estate duty on his worldwide estate, he will also be liable for IHT on the value of the UK shares as a result of them being UK *situs* assets. The IHT on the UK shares will be £1 000 000 less the nil rate band of £325,000, which leaves £675,000 subject to IHT at 40% = £270 000. In terms of the DDDA, however, the client will be allowed apply for a credit from SARS up to the value of the estate duty attributable to the UK registered assets.

SA tax residents are liable for estate duty (subject to exemptions) on their death on all worldwide assets, while many foreign jurisdictions (such as the UK) levy estate or inheritance taxes on certain assets situated in those jurisdictions, irrespective of the tax residency or domicile of the owner. Such double taxation affects the estate of a SA offshore investor.

Double taxation agreements (DTAs) for the purposes of taxes are in place with the UK and USA to give some relief to such clients. Double Death Duties Agreement (DDDA) also exists between SA and the UK. According to the DTA between SA and UK, taxes due in SA and UK shall first be deducted from taxes due according to SA fiscal law. SA will allow a tax credit against any UK tax computed by reference to same taxes computed in SA levied on such assets. Where the estate duty rate in the foreign jurisdiction is higher than the SA estate duty rate, a portion of the foreign estate tax suffered, remains with no SA tax credit on that portion.

As with estate duty taxes, IHT may not affect SA investors on a day-to-day basis, but the potential impact on a client's wealth is likely to be significant upon death, when the liability will arise. Therefore, clients who own assets situated in offshore jurisdictions such as the UK, must plan for both IHT and estate duty costs.

## Q20: How does *situs* tax impact the Momentum Wealth International products?

### Investing in direct shares via a nominee structure

Note that there is no estate duty advantage to be gained by individuals holding direct UK shares/US stocks in a nominee structure *situated* outside of the UK and/or US. This is based on the fact that the investors, on whose behalf the nominee hold investments, are being regarded by the relevant tax authorities as the ultimate beneficial owner of the investments for tax purposes. The UK and US tax authorities will therefore look to the nominee structure for the beneficial owner and upon the investor's death; the relevant shares would attract death tax in that jurisdiction.

Remember that *situs* tax issues only affect investors who have shares in their own individual name, as opposed to legal entities such as a trust owning the shares. This is due to the fact that a trust is not a natural person and therefore not liable for death tax.

When either holding shares directly or in an International Investment Option, the deceased estate may be liable for *situs* tax on direct shares registered in the UK or US, even if there are DTAs and DDDAs in place between SA and these jurisdictions, as the DTAs may not assist your estate to entirely avoid any tax liability.

When investing in direct shares through the International Endowment Option, there will be no *situs* tax implication.