

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT.

No. 17 of 1961.

An Act relating to Income Tax.

[Assented to 15th May, 1961.]

[Date of commencement, 12th June, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Income Tax and Social Services Contribution Assessment Act* 1961. Short title and citation.

(2.) The *Income Tax and Social Services Contribution Assessment Act* 1936–1960* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Income Tax and Social Services Contribution Assessment Act* 1936–1961.

2. Section five of the Principal Act is amended— Parts.

(a) by omitting the words—

“ Division 8.—Life Assurance Companies (Sections 110–116).”

and inserting in their stead the words—

“ Division 8.—Life Assurance Companies (Sections 110–116D).”; and

(b) by inserting after the words—

“ Division 9A.—Friendly Society Dispensaries (Section 121A).”

the words—

“ Division 9B.—Superannuation Funds (Sections 121B–121E).”.

* Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; and Nos. 17, 18, 58 and 103, 1960.

Definitions.

3. Section six of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the definition of “Commissioner”, the following definition:—

“ ‘ Commonwealth securities’ means bonds, debentures, stock or other securities issued under an Act, but does not include securities issued in respect of a loan raised outside Australia unless there is in force a declaration by the Treasurer, published in the *Gazette*, that those securities shall be Commonwealth securities for the purposes of this Act; ”; and

(b) by inserting in that sub-section, after the definition of “primary production”, the following definition:—

“ ‘ public securities’ means—

(a) Commonwealth securities;

(b) bonds, debentures, stock or other securities issued by—

(i) a State;

(ii) a Territory of the Commonwealth; or

(iii) a municipal corporation, other local governing body or public authority constituted by or under an Act or by or under the law of a State or Territory of the Commonwealth,

but does not include securities in respect of a loan raised outside Australia and the Territories of the Commonwealth unless there is in force a declaration by the Treasurer, published in the *Gazette*, that those securities shall be public securities for the purposes of this Act; and

(c) securities issued in respect of a loan to a company the principal business of which is the supply and distribution, by a system of reticulation, in Australia or a Territory of the Commonwealth, of water, gas or electricity; ”.

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4. Section forty-six of the Principal Act is amended by adding at the end thereof the following sub-section:—

Rebate on
dividends.

“(5.) This section has effect subject to section one hundred and sixteen A of this Act.”.

5. Section one hundred and ten of the Principal Act is amended—

Definitions.

(a) by inserting before the definition of “ future premiums ” the following definitions:—

“ ‘ Australian policy ’ means a life assurance policy that is registered by the company liable under the policy in a register kept at a registry in a State or a Territory of the Commonwealth;

“ ‘ Australian statutory fund ’, in relation to a company, means a statutory fund maintained by the company under the *Life Insurance Act 1945–1959* other than such a fund maintained by the company solely in respect of a class of life insurance business that does not include business of, or in relation to, the issuing of, or the undertaking of liability under, Australian policies;

“ ‘ exempt superannuation fund ’ means—

(a) a fund established or maintained by a person—

(i) the income of which is, or, but for Division 9B of Part III. of this Act, would be, exempt from income tax by virtue of sub-paragraph (i) of paragraph (j) of section twenty-three of this Act, irrespective of whether that income would be so exempt by virtue of any other paragraph of that section;

(ii) the terms and conditions applicable to which provide for the payment of contributions to the fund by that person; and

(iii) the terms and conditions applicable to which provide for payments being made from the fund by reason of injury, sickness, retirement or death of employees of that person or of a company in which that person has a controlling interest; or

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(b) a fund—

- (i) the income of which is, or, but for Division 9B of Part III. of this Act, would be, exempt from income tax by virtue of paragraph (ja) of section twenty-three of this Act, irrespective of whether that income would be so exempt by virtue of any other paragraph of that section; and
- (ii) the terms and conditions applicable to which provide for payments being made from the fund by reason of injury, sickness, retirement or death of members of the fund;

“ ‘exempt superannuation scheme’ means a provident, benefit, superannuation or retirement scheme—

- (a) in respect of which there is an exempt superannuation fund; or
- (b) in respect of which there is no such fund but in respect of which the Commissioner is of opinion that, if there were a fund in respect of the scheme, it would, having regard to the terms and conditions of the scheme, be an exempt superannuation fund;”;

(b) by omitting the definition of “ life assurance company ” and inserting in its stead the following definition:—

“ ‘ life assurance company ’ means a company the sole or principal business of which is life assurance and includes a company that is registered under the *Life Insurance Act 1945–1959* and is carrying on life assurance business; ”; and

(c) by inserting after the definition of “ mutual life assurance company ” the following definitions:—

“ ‘ overseas policy ’ means a life assurance policy—
(a) that is not registered by the company liable under the policy in a register kept at a registry in a State or a Territory of the Commonwealth; and

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(b) the owner of which is resident outside Australia and the Territories of the Commonwealth;

“ ‘ superannuation policy ’ means a life assurance policy—

(a) that is vested in the trustee of an exempt superannuation fund; or

(b) that was—

(i) effected for the purposes of an exempt superannuation scheme; or

(ii) accepted by the person maintaining such a scheme for the purposes of the scheme,

not being a policy that has ceased to be a policy for the purposes of such a fund or scheme;

“ ‘ superannuation statutory fund ’, in relation to a company, means an Australian statutory fund, or any other fund, maintained by that company solely in respect of a class of life insurance business that consists of business of, or in relation to, the issuing of, or the undertaking of liability under, superannuation policies;

“ ‘ the insurance funds ’, in relation to a company, means all the Australian statutory funds of the company and all other funds maintained by the company in respect of the life assurance business of the company; ”.

6. After section one hundred and ten of the Principal Act the following section is inserted:—

“ 110A.—(1.) A company is—

(a) in relation to a year of income, a company in relation to which this section applies if the company is a life assurance company and at all times during that year of income—

(i) the assets of each Australian statutory fund of the company included public securities the cost of which was not less than thirty per centum of the cost of the assets of that fund; and

Companies to which certain provisions apply.

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(ii) the assets of each such fund consisting of public securities included Commonwealth securities the cost of which was not less than twenty per centum of the cost of the assets of that fund; or

(b) in relation to a year of income (being a year of income before the year of income commencing on the first day of July, One thousand nine hundred and seventy-two), a company in relation to which this section applies if the company is a life assurance company and—

(i) has given to the Commissioner an undertaking in writing in accordance with the next succeeding sub-section; and

(ii) has complied with the undertaking in so far as it relates to the first-mentioned year of income.

“(2.) The undertaking referred to in paragraph (b) of the last preceding sub-section is an undertaking that—

(a) as from the commencement of a year of income specified in the undertaking (being a year of income approved by the Commissioner), at all times during that year of income and during all subsequent years of income before the year of income commencing on the first day of July, One thousand nine hundred and seventy-two—

(i) the assets of each Australian statutory fund of the company will include public securities the cost of which is not less than thirty per centum of the cost of the assets of that fund; and

(ii) the assets of each such fund consisting of public securities will include Commonwealth securities the cost of which is not less than twenty per centum of the cost of the assets of that fund;

(b) at all times during each year of income before the year of income specified in the undertaking, the assets of each Australian statutory fund of the company will include public securities the cost of which is not less than the amount that bears to the cost of the assets of that fund such proportion as is specified in the undertaking in respect of that year of income, being a proportion approved by the Commissioner;

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(c) at all times during each year of income before the year of income specified in the undertaking, the assets of the insurance funds of the company will include public securities the cost of which is not less than—

(i) the cost of the public securities included, on the first day of March, One thousand nine hundred and sixty-one, in the assets of the insurance funds of the company; or

(ii) thirty per centum of the cost of the assets of all the Australian statutory funds of the company,

whichever is the less;

(d) at all times during each year of income before the year of income specified in the undertaking, the assets of each Australian statutory fund of the company consisting of public securities will include Commonwealth securities the cost of which is not less than the amount that bears to the cost of the assets of that fund such proportion as is specified in the undertaking in respect of that year of income, being a proportion approved by the Commissioner; and

(e) at all times during each year of income before the year of income specified in the undertaking, the assets of the insurance funds of the company consisting of public securities will include Commonwealth securities the cost of which is not less than—

(i) the cost of the Commonwealth securities included, on the first day of March, One thousand nine hundred and sixty-one, in the assets of the insurance funds of the company; or

(ii) twenty per centum of the cost of the assets of all the Australian statutory funds of the company,

whichever is the less.

“(3.) The year of income approved by the Commissioner in respect of a company for the purposes of paragraph (a) of the last preceding sub-section shall be the earliest year of income that the Commissioner considers to be reasonable in the circumstances but shall not be a year of income after the year of income commencing on the first day of July, One thousand nine hundred and seventy-one.

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“(4.) The proportion approved by the Commissioner in respect of an Australian statutory fund of a company in respect of a year of income—

(a) for the purposes of paragraph (b) of sub-section (2.) of this section—

(i) shall not exceed thirty per centum; and

(ii) if, in the opinion of the Commissioner, the proportion that the cost of the public securities included, on the first day of March, One thousand nine hundred and sixty-one, in the assets of all the Australian statutory funds of the company bore to the cost of all the assets of those funds as at that date was less than thirty per centum—shall not, except in special circumstances, be less than that proportion; and

(b) for the purposes of paragraph (d) of sub-section (2.) of this section—

(i) shall not exceed twenty per centum; and

(ii) if, in the opinion of the Commissioner, the proportion that the cost of the Commonwealth securities included, on the first day of March, One thousand nine hundred and sixty-one, in the assets of all the Australian statutory funds of the company bore to the cost of all the assets of those funds as at that date was less than twenty per centum—shall not, except in special circumstances, be less than that proportion.

“(5.) Subject to the last two preceding sub-sections, the Commissioner may, in his discretion, at the request of a company, vary any approval given for the purposes of an undertaking by the company under this section and the undertaking shall thereupon have effect accordingly.

“(6.) A company shall be taken to have complied with so much of an undertaking given to the Commissioner for the purposes of this section as is required to be included in the undertaking by reason of paragraph (b) of sub-section (2.) of this section, in respect of a year of income, in relation to a particular Australian statutory fund, if the amount by which the cost of the public securities included in that fund at the end of that year of income exceeded the cost of the public securities included in that fund at the beginning of that year of income was not less than forty per centum (or such higher percentage as the Commissioner determines by notice in writing given to the company before the commencement of that year of income) of

the amount by which the cost of the assets of that fund at the end of that year of income exceeded the cost of the assets of that fund at the commencement of that year of income.

“(7.) A company shall be taken to have complied with so much of an undertaking given to the Commissioner for the purposes of this section as is required to be included in the undertaking by reason of paragraph (d) of sub-section (2.) of this section, in respect of a year of income, in relation to a particular Australian statutory fund, if the amount by which the cost of the Commonwealth securities included in the public securities included in that fund at the end of that year of income exceeded the cost of the Commonwealth securities included in the public securities included in that fund at the beginning of the year of income was not less than twenty-five per centum (or such higher percentage as the Commissioner determines by notice in writing given to the company before the commencement of that year of income) of the amount by which the cost of the assets of that fund at the end of that year of income exceeded the cost of the assets of that fund at the commencement of that year of income.

“(8.) The Commissioner shall not determine a higher percentage under either of the last two preceding sub-sections, in relation to a particular Australian statutory fund, unless he is of opinion that that higher percentage is reasonably necessary to ensure that, as from the commencement of the year of income commencing on the first day of July, One thousand nine hundred and seventy-one, the assets of that fund will include public securities as provided by sub-paragraph (i) of paragraph (a) of sub-section (2.) of this section, or that the public securities included in the assets of that fund will include Commonwealth securities as provided by sub-paragraph (ii) of that paragraph, as the case may be.

“(9.) For the purposes of this section, the Commissioner shall disregard any failure of the assets of a company to include, at all times during a particular year of income, assets as provided by any provision of this section, or by an undertaking given to the Commissioner for the purposes of this section, if he is satisfied—

(a) that the company made a genuine and *bona fide* attempt to ensure that the first-mentioned assets included, at all times during that year of income, assets as so provided; or

(b) that the failure was by reason of a temporary delay in investment,

and that, in all the circumstances, it would be reasonable to disregard the failure.

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“(10.) Where a company has failed, in relation to a year of income, to comply with an undertaking given to the Commissioner for the purposes of this section, that undertaking shall not, unless the Commissioner, in pursuance of the last preceding sub-section, disregards the failure, have effect in relation to any subsequent year of income but the company may give a fresh undertaking, in accordance with sub-section (2.) of this section, to have effect as from the commencement of a subsequent year of income.

“(11.) Where a company was a life assurance company during part only of a year of income, this section has effect as if references in this section, or in an undertaking given to the Commissioner for the purposes of this section, to all times during that year of income were references to all times during the part of that year of income during which the company was a life assurance company.

“(12.) This section has effect subject to section one hundred and fifteen A of this Act.”.

7. After section one hundred and twelve of the Principal Act the following section is inserted:—

Exemption
of income
attributable to
superannuation
policies.

“112A.—(1.) The assessable income of a life assurance company, being a company in relation to which section one hundred and ten A of this Act applies, shall not include so much of each amount of income derived during the year of income from the assets included in an Australian statutory fund of the company or in any other fund maintained by the company in respect of the life assurance business of the company as is ascertained by applying to that amount the proportion ascertained in accordance with the formula $\frac{a}{b}$, where—

a is so much of the calculated liabilities of the company at the end of the year of income as, in the opinion of the Commissioner, is referable to superannuation policies included in that fund; and

b is so much of those calculated liabilities as, in the opinion of the Commissioner, is referable to all policies included in that fund.

“(2.) In the application of the last preceding sub-section, in relation to the year of income, in relation to a fund maintained by a life assurance company that has made an election that this sub-section shall apply in relation to the company, being an election that has effect in relation to that year of income, the expressions ‘superannuation policies’ and ‘policies’ shall be taken not to include policies that are not Australian policies.

“(3.) The last preceding sub-section does not apply in relation to a fund in relation to which the Commissioner is of opinion that less than one-third of the value of *b*, as ascertained for the purposes of sub-section (1.) of this section in relation to the year of income, is referable to Australian policies.

“(4.) For the purposes of this section, a policy shall be taken to be included in a fund if, in the opinion of the Commissioner, liabilities under that policy would be payable from that fund.”.

8. Section one hundred and thirteen of the Principal Act is repealed and the following section inserted in its stead:—

“ 113.—(1.) In the case of a life assurance company the sole or principal business of which is life assurance, being a company that has made an election that this sub-section shall apply in relation to the company, and in the case of a life assurance company that is not a life assurance company the sole or principal business of which is life assurance, expenditure incurred in the year of income in the general management of the business of the company shall be an allowable deduction to the extent that that expenditure was incurred in gaining or producing assessable income of the company. Expenses of general management.

“(2.) In the case of a life assurance company the sole or principal business of which is life assurance, being a company that has not made an election that the last preceding sub-section shall be applied in relation to the company, so much of the expenditure incurred in the year of income in the general management of the business of the company as bears to that expenditure the same proportion as the assessable income of the company bears to the total income of the company shall be an allowable deduction.

“(3.) For the purposes of this section, expenditure—

- (a) of a capital nature;
- (b) exclusively incurred in gaining or producing assessable income; or
- (c) exclusively incurred in gaining or producing income that is not assessable income,

shall be deemed not to be expenditure incurred in the general management of the company.”.

9. Section one hundred and fifteen of the Principal Act is repealed and the following sections are inserted in its stead:—

Deduction in relation to calculated liabilities.

“ 115.—(1.) An amount is allowable as a deduction from the assessable income of a life assurance company of a year of income ascertained—

(a) in the case of a company in relation to which section one hundred and ten A of this Act applies and in respect of which, at all times during the year of income—

(i) the cost of the public securities (other than Commonwealth securities) included in the assets of the Australian statutory funds of the company was not less than the cost of the public securities (other than Commonwealth securities) included, on the first day of March, One thousand nine hundred and sixty-one, in the assets of the Australian statutory funds of the company; or

(ii) the cost of the public securities (other than Commonwealth securities) included in the assets of the insurance funds of the company was not less than the cost of the public securities (other than Commonwealth securities) included, on that day, in the assets of the insurance funds of the company,

in accordance with the formula $\frac{3ab(1+d+e-f)}{100c}$

or the formula $\frac{3ab}{100c}$, whichever produces the greater amount;

(b) in the case of any other company in relation to which that section applies—in accordance with the formula $\frac{3ab(1+d)}{100c}$; or

(c) in the case of a company that is not a company in relation to which that section applies—in accordance with the formula $\frac{3ab(1-g-h)}{100c}$ or the

formula $\frac{9ab}{400c}$, whichever produces the greater amount.

“(2.) In the application of the last preceding sub-section in relation to a life assurance company in relation to a year of income—

a is the calculated liabilities of the company as at the end of the year of income;

b is the value, as at the end of the year of income, of the assets included in the insurance funds of the company, being assets from which the company derives assessable income;

c is the value, as at the end of the year of income, of all the assets included in the insurance funds of the company;

$$d = \frac{10l - 3j}{10j};$$

$$e = \frac{5n - j}{10j};$$

$$f = \frac{j - 10l + 10n}{20j};$$

$$g = \frac{3i - 10k}{10i};$$

$$h = \frac{i - 5m}{10i};$$

i is, subject to the next succeeding section, the cost of the assets of all the Australian statutory funds of the company;

j is, subject to the next succeeding section, the cost of the assets of all the Australian statutory funds of the company other than superannuation statutory funds;

k is the cost of the public securities included in the assets of all the Australian statutory funds of the company;

l is the cost of the public securities included in the assets of all the Australian statutory funds of the company other than superannuation statutory funds;

m is the cost of the Commonwealth securities included in the assets of all the Australian statutory funds of the company; and

n is the cost of the Commonwealth securities included in the assets of all the Australian statutory funds of the company other than superannuation statutory funds.

“(3.) Where, in relation to a year of income, the assessable income of a life assurance company, by reason of the operation of section one hundred and twelve A of this Act, does not include a portion of the income derived during that year of income from the assets included in an Australian statutory fund of the company or in any other fund maintained by the company in respect of the life assurance business of the company, the value of the assets included in that fund, being assets from which the company derives assessable income, shall, in the calculation of

the value *b* for the purposes of this section in relation to that company in relation to that year of income, be deemed to be the amount that bears to the value of the assets included in that fund, being assets from which the company derives assessable income, the same proportion as the amount of the assessable income derived from assets of that fund during that year of income bears to the amount that would have been the amount of the assessable income so derived if that section did not apply in relation to that company in relation to that year of income.

“(4.) In any calculation for the purposes of this section—

(a) the values of *i*, *j*, *k*, *l*, *m* and *n* shall be ascertained as at the end of the year of income; and

(b) if the value of *d*, *e*, *f*, *g* or *h* is a minus quantity, nil shall be substituted in that calculation for that value.

“(5.) Where, in relation to a life assurance company in relation to a year of income, the Commissioner is of opinion that the value of *i*, *j*, *k*, *l*, *m* or *n* is abnormally high or abnormally low, having regard to all the circumstances and in particular to that value at any time or times during the period of twelve months ending six months after the end of the year of income, the Commissioner may determine the value of *i*, *j*, *k*, *l*, *m* or *n*, as the case may be, that shall have effect in relation to the company in relation to that year of income, having regard to that value on such days during that period as are, in his opinion, appropriate in the circumstances.

“(6.) A determination may be made under the last preceding sub-section in relation to a life assurance company in relation to a year of income in respect of all or any of the values *i*, *j*, *k*, *l*, *m* and *n*.

“(7.) Where, in the opinion of the Commissioner—

(a) a life assurance company has adopted a practice that results in life assurance policies the owners of which are resident in Australia or a Territory of the Commonwealth not being registered by the company in a register kept at a registry in a State or Territory of the Commonwealth; and

(b) as a result of that practice, amounts received by the company in respect of such policies are not carried to an Australian statutory fund of the company,

the values of *i* and *j* shall, in any calculation for the purposes of this section in relation to the company, be increased by such amount as represents, in the opinion of the Commissioner, the portion of the calculated liabilities of the company as at the end of the year of income that is referable to the policies referred to in paragraph (b) of this sub-section.

“(8.) Where a company is a life assurance company during part only of a year of income—

- (a) the deduction allowable under this section from the assessable income of the company of that year of income shall be such amount as bears to the amount of the deduction that, but for this sub-section, would have been allowable the same proportion as the period during which that company was a life assurance company during that year of income bears to a year; and
- (b) if the company was not a life assurance company at the end of that year of income, the last day during that year of income on which the company was a life assurance company shall, for the purposes of this section, be deemed to be, in relation to that company, the end of the year of income.

“115A.—(1.) A life assurance company may elect that this section shall apply in relation to the company.

Adjustment of
cost of assets
in relation to
overseas
business.

“(2.) In determining, in relation to a year of income in relation to which an election by a company under the last preceding sub-section has effect, whether the company is a company in relation to which section one hundred and ten A of this Act applies, securities issued in respect of a loan raised outside Australia and the Territories of the Commonwealth, shall be deemed not to be public securities or Commonwealth securities, as the case may be.

“(3.) In any calculation for the purposes of the last preceding section in relation to a year of income in relation to which an election by a company under sub-section (1.) of this section has effect—

- (a) the values of *k*, *l*, *m* and *n* shall, in relation to the company, be ascertained without reference to the cost of any public securities or Commonwealth securities issued in respect of a loan raised outside Australia and the Territories of the Commonwealth; and
- (b) the values of *d*, *e* and *f* shall, in the application of sub-section (1.) of the last preceding section in relation to the company, be multiplied by $\frac{a}{b}$, where—

a is so much of the calculated liabilities of the company as, in the opinion of the Commissioner, is referable to Australian policies (other than policies included in a superannuation statutory fund); and

b is so much of the calculated liabilities of the company as, in the opinion of the Commissioner, is referable to Australian policies (other than policies included in a superannuation statutory fund) that are not superannuation policies.

“(4.) For the purposes of the last preceding sub-section, a policy shall be taken to be included in a superannuation statutory fund if, in the opinion of the Commissioner, liabilities under that policy would be payable from that fund.

“(5.) Where, in relation to a year of income in relation to which an election by a company under sub-section (1.) of this section has effect, the company satisfies the Commissioner that liabilities of the company under overseas policies would be payable from an Australian statutory fund of the company, the cost of the assets of that fund shall, for the purposes of this Division and of any undertaking given by the company to the Commissioner for the purposes of section one hundred and ten A of this Act, be an amount ascertained in accordance with the formula $\frac{a(b-c)}{b}$, where—

a is the cost of the assets of that fund;

b is so much of the calculated liabilities of the company as, in the opinion of the Commissioner, is referable to policies liabilities under which would be payable from that fund; and

c is so much of the calculated liabilities of the company as, in the opinion of the Commissioner, is referable to overseas policies liabilities under which would be payable from that fund.”.

10. After section one hundred and sixteen of the Principal Act the following sections are inserted in Division 8 of Part III. :—

“ 116A.—(1.) Where, in respect of a year of income—

(a) a life assurance company that is not a company in relation to which section one hundred and ten A of this Act applies would, if this section had not been enacted, have been entitled to a rebate under section forty-six of this Act; and

(b) $\frac{1}{2}$ the amount of the dividends from insurance funds included in the assessable income of the company exceeds the amount of any dividends from insurance funds included in the assessable income of the company of the year of income that ended on the thirtieth day of June, One thousand nine hundred and sixty-one,

Modification
of s. 46 in
relation to
certain life
assurance
companies.

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the amount of the rebate to which the company is entitled under section forty-six of this Act in respect of the first-mentioned year of income is an amount ascertained in accordance with the formula $\frac{ac - b(c - d)}{c}$, where—

- a* is the amount of the rebate to which the company would have been entitled under section forty-six of this Act in respect of the first-mentioned year of income if this section had not been enacted;
- b* is the amount of the rebate to which the company would have been so entitled if the references in that section to dividends were references to dividends from insurance funds and to no other dividends;
- c* is the amount of dividends from insurance funds included in the assessable income of the company of the first-mentioned year of income; and
- d* is the amount of dividends from insurance funds included in the assessable income of the company of the year of income that ended on the thirtieth day of June, One thousand nine hundred and sixty-one.

“(2.) Where the Commissioner is of opinion that the amount expended by a life assurance company during the period that commenced on the first day of March, One thousand nine hundred and sixty-one, and ending on the last day of the year of income that commenced on the first day of July, One thousand nine hundred and sixty, in the acquisition of shares that became assets of the insurance funds of the company during that period was abnormally great having regard to all the circumstances and in particular to the expenditure of that company in the acquisition of shares during the period of twelve months ended on the twenty-eighth day of February, One thousand nine hundred and sixty-one, the amount of the dividends from insurance funds included in the assessable income of that company of that year of income shall, for the purposes of the last preceding sub-section, be deemed not to include so much of the dividends on shares acquired by the company on or after the first day of March, One thousand nine hundred and sixty-one, as the Commissioner determines.

“(3.) In this section, ‘dividends from insurance funds’, in relation to a company, means dividends derived from shares included in the assets of the insurance funds of the company.

“116B.—(1.) A life assurance company may elect that this section shall apply in relation to the company.

“(2.) Where it is necessary, in relation to a year of income in relation to which an election by a company under the last preceding sub-section has effect, to ascertain, as at a particular

Election to
substitute
value for cost
of assets.

time, for the purposes of this Division and of any undertaking given by the company to the Commissioner for the purposes of section one hundred and ten A of this Act, the cost of a particular asset of the company, that cost shall be taken to be the value of that asset as at that time.

Cost of assets
not acquired
for money.

“ 116C. Where the whole or a part of the consideration for which a particular asset of a company (not being a company in relation to which an election under sub-section (1.) of the last preceding section has effect in relation to the year of income) was acquired was other than money, the cost of that asset shall, for the purposes of this Division and of any undertaking given by the company to the Commissioner for the purposes of section one hundred and ten A of this Act, be such amount as, in the opinion of the Commissioner, is reasonable in the circumstances.

Manner of
election.

“ 116D.—(1.) An election by a life assurance company under or for the purposes of any provision of this Division—

(a) shall be made by notice in writing signed by the public officer of the company and delivered to the Commissioner as provided by the next succeeding sub-section;

(b) shall be expressed to take effect from a year of income specified in the notice; and

(c) has effect in relation to that year of income and, unless the Commissioner otherwise determines at the request of the company, to all subsequent years of income.

“ (2.) A notice of election under the last preceding sub-section shall be delivered to the Commissioner on or before the last day for the furnishing of the return of income of the year of income specified in the notice or within such further time as the Commissioner allows.”.

11. After Division 9A of Part III. of the Principal Act the following Division is inserted:—

“ Division 9B.—Superannuation Funds.

Definitions.

“ 121B. In this Division—

‘ investment income ’, in relation to a superannuation fund, means the income of the fund that, but for paragraph (j) or (ja) of section twenty-three of this Act, would be assessable income, other than contributions to the fund, calculated as if the trustee of the fund were a taxpayer in respect of that income, being a resident, less all amounts that would be allowable deductions

(other than the concessional deductions, deductions in respect of benefits and deductions under section seventy-nine of this Act) if that income were assessable income;

‘superannuation fund’ means a provident, benefit, superannuation or retirement fund the income of which would, but for this Division, be exempt from income tax by virtue of paragraph (j) or (ja) of section twenty-three of this Act, irrespective of whether that income would also be so exempt by virtue of any other paragraph of that section, but does not include—

(a) a fund established by—

(i) an Act, a State Act or an Ordinance of a Territory of the Commonwealth; or

(ii) a municipal corporation, other local governing body or public authority constituted by or under an Act, a State Act or an Ordinance of a Territory of the Commonwealth; or

(b) a fund that is primarily and principally a hospital benefits fund, medical benefits fund, sickness benefits fund, dental benefits fund or funeral benefits fund.

“121c.—(1.) The investment income of a superannuation fund derived during a year of income, being a superannuation fund that was established after the first day of March, One thousand nine hundred and sixty-one, is not exempt from income tax by virtue of paragraph (j) or (ja) of section twenty-three of this Act unless the Commissioner is satisfied that, at all times during that year of income—

Taxation of investment income of superannuation funds.

(a) the assets of the fund included public securities the cost of which was not less than thirty per centum of the cost of all the assets of the fund; and

(b) the assets of the fund consisting of public securities included Commonwealth securities the cost of which was not less than twenty per centum of the cost of all the assets of the fund.

“(2.) The investment income of a superannuation fund derived during a year of income, being a superannuation fund that was established on or before the first day of March, One thousand nine hundred and sixty-one, to the extent to which the amount of that investment income exceeds the amount of the investment income of the fund derived during the year of income that commenced on the first day of July, One thousand nine hundred and sixty, is not exempt from income tax by virtue

of paragraph (j) or (ja) of section twenty-three of this Act unless the Commissioner is satisfied that, at all times during the first-mentioned year of income—

(a) the assets of the fund included public securities the cost of which was not less than—

(i) thirty per centum of the cost of all the assets of the fund; or

(ii) the cost of the public securities included in the assets of the fund as at the first day of March, One thousand nine hundred and sixty-one, together with thirty per centum of the amount (if any) by which the cost of all the assets of the fund exceeded the cost of all the assets of the fund as at that day,

whichever is the less; and

(b) the assets of the fund consisting of public securities included Commonwealth securities the cost of which was not less than—

(i) twenty per centum of the cost of all the assets of the fund; or

(ii) the cost of the Commonwealth securities included in the assets of the fund as at the first day of March, One thousand nine hundred and sixty-one, together with twenty per centum of the amount (if any) by which the cost of all the assets of the fund exceeded the cost of all the assets of the fund as at that day,

whichever is the less.

“(3.) The investment income of a superannuation fund derived during a year of income, being a superannuation fund that was established on or before the first day of March, One thousand nine hundred and sixty-one, is not exempt from income tax by virtue of paragraph (j) or (ja) of section twenty-three of this Act, unless the Commissioner is satisfied that, at all times during that year of income—

(a) the assets of the fund included public securities the cost of which was not less than—

(i) thirty per centum of the cost of all the assets of the fund; or

(ii) the cost of the public securities included in the assets of the fund as at the first day of March, One thousand nine hundred and sixty-one,

whichever is the less; and

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Assessment.

- (b) the assets of the fund consisting of public securities included Commonwealth securities the cost of which was not less than—
- (i) twenty per centum of the cost of all the assets of the fund; or
 - (ii) the cost of the Commonwealth securities included in the assets of the fund as at the first day of March, One thousand nine hundred and sixty-one,

whichever is the less.

“(4.) For the purposes of this section, the Commissioner shall disregard any failure of the assets of a superannuation fund to include, at all times during a particular year of income, assets as provided by any provision of this section if he is satisfied—

- (a) that the trustee of the fund made a genuine and *bona fide* attempt to ensure that the assets of that fund included, at all times during that year of income, assets as so provided; or
- (b) that the failure was by reason of a temporary delay in investment,

and that, in all the circumstances, it would be reasonable to disregard the failure.

“(5.) Where the Commissioner is satisfied, upon application made by the trustee of a superannuation fund, that the inclusion in the assets of that fund, at any time or times, of assets as provided by any provision of this section would be likely to endanger the financial stability of that fund and would be unreasonable in the circumstances, the Commissioner may inform the trustee, by notice in writing, that the exemption from income tax of the investment income of that fund will continue, in whole or in part and in respect of a year or years of income, as specified in the notice, and in that case the exemption continues accordingly.

“(6.) This section does not apply, in relation to a year of income, to a superannuation fund where—

- (a) the terms and conditions applicable to the fund did not, at any time during that year of income, make provision for benefits for residents; and
- (b) no deductions have been allowed or are allowable in the assessment of the taxable income of any taxpayer in respect of contributions made to the fund during that year of income.

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Assessment.

“(7.) Where the terms and conditions applicable to a superannuation fund made provision, at any time during the year of income, for benefits for both residents and non-residents—

- (a) the amount of the cost of all the assets of the fund shall, in respect of that year of income, for the purposes of sub-sections (1.) to (3.) (inclusive) of this section, be reduced by such amount (if any) as, in the opinion of the Commissioner, is reasonable in the circumstances; and
- (b) those sub-sections shall not have effect in relation to such part (if any) of the investment income of the fund as the Commissioner determines.

“(8.) For the purposes of this section, where, in relation to a year of income, the investment income of a superannuation fund consists of or includes a portion of the income arising from certain assets—

- (a) those assets shall be deemed to be assets of the fund;
- (b) any public securities included in those assets shall be deemed to be public securities included in the assets of the fund;
- (c) any Commonwealth securities included in those public securities shall be deemed to be Commonwealth securities included in the assets of the fund consisting of public securities; and
- (d) the cost of those assets, public securities and Commonwealth securities shall, in relation to any time during that year of income, be such respective amounts as, in the opinion of the Commissioner, are reasonable in the circumstances.

“(9.) Where—

- (a) a particular asset of a superannuation fund was acquired without consideration or for consideration less than the value of the asset when it was acquired; or
- (b) the whole or a part of the consideration for which a particular asset of a superannuation fund was acquired was other than money,

the cost of that asset shall, for the purposes of this section, be such amount as, in the opinion of the Commissioner, is reasonable in the circumstances.

“(10.) Where the Commissioner is of opinion that the amount of the investment income of a superannuation fund derived during the period that commenced on the first day of March, One thousand nine hundred and sixty-one, and ending on the last day of the year of income that commenced on the first day of July, One thousand nine hundred and sixty, was

abnormally great having regard to all the circumstances and in particular to the amount of the investment income of that fund derived during the period of twelve months ended on the twenty-eighth day of February, One thousand nine hundred and sixty-one, the amount of the investment income of that fund derived during that year of income shall, for the purposes of this section, be reduced by the amount of such part of the investment income derived during the first-mentioned period as the Commissioner determines.

“(11.) Where a superannuation fund is in existence during part only of a year of income, this section has effect as if references to all times during that year of income were references to all times during the part of that year of income during which the superannuation fund was in existence.

“(12.) For the purposes of this section, any policy (as defined by sub-section (1.) of section four of the *Life Insurance Act 1945-1959*) included in the assets of a superannuation fund shall be deemed not to be so included.

“121D.—(1.) The trustee of a superannuation fund shall be assessed and is liable to pay tax upon the investment income of the fund, to the extent to which that income is not exempt from income tax under this Act, at the rates declared by the Parliament for the purposes of this section.

Assessment of
investment
income of
superannuation
funds.

“(2.) The investment income of a superannuation fund is not subject to income tax otherwise than as provided by the last preceding sub-section.

“(3.) The trustee of a superannuation fund—

- (a) is entitled to a rebate in his assessment as provided by section one hundred and sixty AB of this Act but is not entitled to a rebate as provided by section forty-six of this Act; and
- (b) is not liable to pay provisional tax and contribution in respect of the investment income of the fund.

“121E.—(1.) Where the income of a superannuation fund is derived from assets that are not vested in a trustee of the fund, those assets shall, for the purposes of this Division, be deemed to be assets of the fund and—

Trustees.

- (a) the person in whom those assets are vested shall, for the purposes of this Act, be deemed to be a trustee of that superannuation fund; and
- (b) section two hundred and fifty-four of this Act has effect as if the income of that superannuation fund derived by that person, or any moneys of the superannuation fund that come to him, were derived by him, or came to him, respectively, in a representative capacity.

No. 17. *Income Tax and Social Services Contribution* 1961.
Assessment.

“(2.) Where property is held in trust for the trustee of a superannuation fund, that property shall, for the purposes of this Division, be deemed to be assets of the fund.”.

**Liability to
dividend
(withholding)
tax.**

12. Section one hundred and twenty-eight B of the Principal Act is amended by inserting after sub-section (1.) the following sub-section:—

“(1A.) For the purposes of the last preceding sub-section, in determining whether income is exempt from income tax by virtue of paragraph (j) or (ja) of section twenty-three of this Act, the operation of section one hundred and twenty-one c of this Act shall be disregarded.”.

**Application
of amendments.**

13.—(1.) Subject to the next succeeding sub-section, the amendments made by this Act apply to assessments in respect of income of the year of income commencing on the first day of July, One thousand nine hundred and sixty-one, and in respect of income of all subsequent years of income.

(2.) The amendment made by section seven of this Act does not apply to income derived before the first day of July, One thousand nine hundred and sixty-one.
