

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT (No. 3).

No. 110 of 1964.

An Act relating to Income Tax.

[Assented to 23rd November, 1964.]

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

Short title
and citation.

1.—(1.) This Act may be cited as the *Income Tax and Social Services Contribution Assessment Act (No. 3) 1964*.

(2.) The *Income Tax and Social Services Contribution Assessment Act 1936–1963*,* as amended by the *Income Tax and Social Services Contribution Assessment Act 1964*† and the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1964*,‡ is in this Act referred to as the Principal Act.

(3.) Section one of the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1964* is amended by omitting sub-section (4.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax and Social Services Contribution Assessment Act 1936–1964*.

* 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. 53 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; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; and Nos. 34 and 69, 1963.

† Act No. 46, 1964.

‡ Act No. 68, 1964.

2.—(1.) Subject to the next succeeding sub-section, this Act shall come into operation on the day on which it receives the Royal Assent. Commence-
ment.

(2.) The amendments made by paragraph (b) of section three and sections nine, nineteen, twenty, twenty-one, twenty-seven, thirty-five, thirty-six and thirty-seven of this Act shall be deemed to have come into operation on the twenty-third day of October, One thousand nine hundred and sixty-four.

3. Section five of the Principal Act is amended—

Parts.

(a) by inserting after the words—

“ Subdivision A.—General (Sections 48-82).”
the words—

“ Subdivision AA.—Contributions to Superannua-
tion Funds for Benefit of
Employees (Sections 82AAA-
82AAR).”; and

(b) by inserting after the words—

“ Division 6.—Trustees (Sections 95—102).”
the words—

“ Division 6A.—Alienation of Income for Short
Periods (Sections 102A-102c).”.

4. Section six of the Principal Act is amended—

Interpretation.

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

“ ‘ apportionable deductions ’ means—

(a) deductions allowed or allowable under
sub-section (7.) of section twenty-
three AB, section seventy-seven A,
section seventy-seven AA, section
seventy-seven B, paragraph (a) or
paragraph (b) of sub-section (1.) of
section seventy-eight, section seventy-
nine, section seventy-nine A or sec-
tion seventy-nine B of this Act or
under Subdivision B of Division 3
of Part III.; and

(b) deductions allowed or allowable under
section seventy-two of this Act, other
than deductions allowed or allowable
in respect of rates or land tax incurred
in gaining or producing assessable
income or necessarily incurred in
carrying on a business for the purpose
of gaining or producing assessable
income;”;

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

“ ‘constituent document’, in relation to a company, means the memorandum and articles of association of the company, or any rules or other document constituting the company or governing its activities;”;

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

“ ‘private company’, in relation to a year of income, means a company that is a private company in relation to that year of income for the purposes of Division 7 of Part III.;”;

(d) by omitting from sub-section (1.) the definition of “shares” and inserting in its stead the following definition:—

“ ‘shares’, in relation to a company, means shares in the capital of the company, and includes stock;”.

Exemptions.

5. Section twenty-three of the Principal Act is amended—

(a) by omitting sub-paragraph (i) of paragraph (j); and

(b) by inserting after paragraph (j) the following paragraph:—

“ (jaa) the income of a provident, benefit, superannuation or retirement 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;”.

6. After section twenty-three E of the Principal Act the following section is inserted:—

“ 23F.—(1.) In this section—

‘ person ’ includes a partnership;

‘ superannuation benefits ’ means individual personal benefits, pensions or retiring allowances;

‘ superannuation fund ’ means a provident, benefit, superannuation or retirement fund;

‘ transaction ’ includes a series of transactions.

Exemption of income of certain superannuation funds established for benefit of employees.

“(2.) Subject to this section, this section applies to a superannuation fund, not being a fund of a kind referred to in paragraph (jaa) of section twenty-three of this Act, in relation to a year of income, if the Commissioner is satisfied that—

- (a) the fund is an indefinitely continuing fund established and maintained solely for the purposes of—
 - (i) providing superannuation benefits for employees in the event of their retirement or in other circumstances approved by the Commissioner; and
 - (ii) providing superannuation benefits for dependants of employees in the event of the death of the employees;
- (b) an employer of each employee who has, or whose dependants have, a right to receive benefits from the fund contributed to the fund during the year of income on behalf of that employee;
- (c) the fund was not authorized by the terms and conditions applicable to the fund at any time during the year of income to accept contributions, and did not at any time during the year of income accept contributions, other than contributions on behalf of an employee who has, or whose dependants have, a right to receive benefits from the fund, being contributions made by—
 - (i) the employee;
 - (ii) an employer of the employee;
 - (iii) a company in which an employer of the employee has a controlling interest; or
 - (iv) if an employer of the employee is a company—by a person who is associated with that company;
- (d) the rights of employees and dependants of employees to receive benefits from the fund are fully secured;
- (e) the right of each employee and his dependants to receive benefits from the fund is defined by the terms and conditions applicable to the fund and was communicated in writing to the employee either before, or at the time when, contributions were first paid to the fund for the benefit of the employee or of his dependants or before such later date as the Commissioner allows in relation to the employee;
- (f) where the right of an employee or of the dependants of an employee to receive benefits from the fund is lost or forfeited in the year of income and, at the time of the loss or forfeiture, a specified part of the amount included in the fund was appropriated for the

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provision of benefits for, or for dependants of, that employee—the part of the amount so appropriated is applied in the year of income of the fund in which the right is lost or forfeited or in the period of two months, or such further period as the Commissioner allows, after the year of income for all or any of the following purposes:—

- (i) the provision of the benefits that other employees or their dependants have rights to receive from the fund;
 - (ii) the provision for, or for the dependants of, other employees who have rights to receive benefits from the fund of additional benefits on a basis that is reasonable, having regard to all the circumstances; and
 - (iii) any other purposes approved by the Commissioner;
- (g) where the right of an employee or of the dependants of an employee to receive benefits from the fund is lost or forfeited in the year of income and, at the time of the loss or forfeiture, a specified part of the amount included in the fund was not appropriated for the provision of benefits for, or for dependants of, that employee—any additional benefits that have been, or will or may be, provided from the fund for other employees or their dependants by reason of the loss or forfeiture have been, or will or may be, provided on a basis that is reasonable, having regard to all the circumstances;
- (h) the benefits that any employee has, or the dependants of any employee have, the right to receive from the fund are not excessive in amount having regard to—
- (i) the remuneration paid to the employee for services rendered by him to his employer;
 - (ii) the period of the service rendered by the employee to his employer;
 - (iii) the benefits, pensions and allowances that have been, are being or may be provided from any other fund for the employee or his dependants; and
 - (iv) any other matters that the Commissioner considers relevant; and
- (i) the amount of the moneys included in the fund is not substantially in excess of the amount that is necessary for the purpose of providing benefits that employees and their dependants have rights to receive from the

fund having regard to the contributions that are expected to be made to the fund in succeeding years of income in relation to those employees and their dependants and to the income that is expected to be derived by the fund in succeeding years of income.

“(3.) For the purposes of sub-paragraph (iv) of paragraph (c) of the last preceding sub-section, a person is associated with a company that is an employer of an employee if—

- (a) the person has a controlling interest in the employer;
- (b) the person is a company in which a controlling interest is held by a person who also has a controlling interest in the employer; or
- (c) the person is the beneficial owner of shares in the employer but does not have a controlling interest in the employer and is not connected with the employee.

“(4.) For the purposes of paragraph (c) of the last preceding sub-section, a person is connected with an employee if—

- (a) the person is a relative of the employee;
- (b) the person is a partnership and a partner in the partnership is connected with the employee; or
- (c) the person is a company that is a private company in relation to the year of income and, at any time during the year of income—

- (i) the employee, or a relative of the employee, was a director of the company;
- (ii) shares in the company were beneficially owned by, or held indirectly on behalf of or for the benefit of, the employee or a relative of the employee;
- (iii) the employee, or a relative of the employee, was a director of another company that is a private company in relation to the year of income of that other company that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income and shares in the first-mentioned company were beneficially owned by, or held indirectly on behalf of or for the benefit of, the other company;
- (iv) the employee, or a relative of the employee, was the beneficial owner of shares in, or was a director of, another company that is a private company in relation to the year of income of that other company that, in the

opinion of the Commissioner, corresponded to the first-mentioned year of income and shares in the other company were beneficially owned by, or held indirectly on behalf of or for the benefit of, the first-mentioned company; or

- (v) the employee, or a relative of the employee, was the beneficial owner of shares in, or was a director of, another company that is a private company in relation to the year of income of that other company that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income and shares in the other company were beneficially owned by, or held indirectly on behalf of or for the benefit of, a person who beneficially owned shares in the first-mentioned company or on whose behalf or for whose benefit shares in the first-mentioned company were indirectly held.

“(5.) In the application of the last preceding sub-section, shares in a company that is a private company in relation to the year of income shall be deemed to be held indirectly on behalf of or for the benefit of a person (not being a trustee or partnership), whether or not the shares are also to be deemed by virtue of this sub-section to be held indirectly on behalf of or for the benefit of another person, if, in the event of the payment of a dividend on those shares, the first-mentioned person would, otherwise than as a shareholder in the company, receive the whole or a part of that dividend if there were successive distributions of the relative parts of that dividend to and by each of any private companies, trustees or partnerships interposed between the company paying the dividend and that person.

(6.) Where, in relation to a superannuation fund, the Commissioner is not satisfied as to a matter referred to in sub-section (2.) of this section but the trustee of the fund satisfies the Commissioner that, by reason of special circumstances that existed in relation to the fund during the year of income, it would be reasonable for this section to have effect as if the Commissioner were satisfied as to that matter, this section has effect as if the Commissioner were satisfied as to that matter.

"(7.) Subject to the next three succeeding sub-sections, the income derived during the year of income by a superannuation fund to which this section applies in relation to the year of income is exempt from income tax.

(8.) A dividend paid to a superannuation fund by a company that is a private company in relation to the year of income of the company in which the dividend was paid is not exempt from income tax by virtue of the last preceding sub-section

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unless the Commissioner is of the opinion that it would be reasonable to exempt the dividend from income tax, having regard to—

- (a) the paid-up value of the shares in that company that are assets of the fund;
- (b) the cost to the fund of the shares on which the dividend was paid by the company;
- (c) the rate of the dividend paid to the fund by the company on the shares in the company that are assets of the fund;
- (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend;
- (e) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (f) any other matters that the Commissioner considers relevant.

“(9.) For the purposes of the last preceding sub-section, income that, in the opinion of the Commissioner, was derived by a superannuation fund indirectly from a dividend paid by a company, being a private company in relation to the year of income of the company in which the dividend was paid, shall be deemed to have been a dividend paid to the fund by the company.

“(10.) Income (other than a dividend to which sub-section (8.) of this section applies) derived by a superannuation fund from a transaction is not exempt from income tax by virtue of sub-section (7.) of this section if the Commissioner is satisfied that the parties to the transaction were not dealing with each other at arm's length in relation to the transaction and that that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm's length in relation to the transaction.”.

7. Section twenty-four A of the Principal Act is repealed and the following section inserted in its stead:—

“24A. The Commonwealth Trading Bank of Australia is not a public authority for the purposes of paragraph (d) of section twenty-three of this Act.”.

Commonwealth
Trading Bank
of Australia.

8. Section twenty-six of the Principal Act is amended by omitting from paragraph (d) the words “paid or credited by a private company”.

Certain items
of assessable
income.

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9. After section twenty-six AA of the Principal Act the following section is inserted:—

Assessable
income—
premium for
lease.

“ 26AB.—(1.) In this section, ‘ premium ’ means a consideration payable in one amount, or each amount of a consideration payable in more than one amount, where the consideration is—

(a) in the nature of a premium, fine or foregift payable for or in connexion with the grant or assignment of a lease; or

(b) for or in connexion with an assent to the grant or assignment of a lease,

but does not include an amount in respect of goodwill or a licence.

“ (2.) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was not, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or the assignee or some other person wholly or partly for the purpose of gaining or producing assessable income, the assessable income of the taxpayer shall include the premium.

“ (3.) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, intended by the grantee or assignee to be used by the grantee or assignee or some other person partly for the purpose of gaining or producing assessable income and partly for other purposes, the assessable income of the taxpayer shall include such part of the premium as the Commissioner considers may reasonably be attributed to the intended use of the property for purposes other than gaining or producing assessable income.

“ (4.) Where, in a case referred to in either of the last two preceding sub-sections, the taxpayer satisfies the Commissioner that, at the date on which the agreement to grant or assign the lease was made, or the assent to the grant or assignment of the lease was given, as the case may be, he believed on reasonable grounds that the grantee or assignee intended a particular use of the property by the grantee or assignee or some other person for the purpose of gaining or producing assessable income, the Commissioner may apply this section on the basis that that intention existed.

“ (5.) This section does not apply in relation to—

(a) a premium in relation to which Division 4 of this Part applies;

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- (b) a premium received in connexion with the assignment of a mining lease as defined in sub-section (7.) of section eighty-eight B of this Act;
- (c) a premium received in connexion with the grant or assignment of a lease that is, for the purposes of section eighty-eight B of this Act, a grant or assignment for mining purposes; or
- (d) a premium received in connexion with the assignment of a lease referred to in section eighty-nine of this Act.”.

10. Section forty-six of the Principal Act is repealed and the following section inserted in its stead:—

“ 46.—(1.) In this section, ‘ private company dividends ’, in relation to a shareholder, being a private company in relation to the year of income, means dividends paid to the shareholder by another company, being a private company in relation to the year of income of that other company in which the dividends were paid, but does not include, where the other company is a non-resident, those dividends to the extent to which they were paid out of profits derived from sources out of Australia. Rebate on dividends.

“(2.) Subject to this section, a shareholder, being a company that is a resident, is entitled to a rebate in its assessment in respect of income of the year of income of the amount obtained by applying the average rate of tax payable by the shareholder—

- (a) if the shareholder is a private company in relation to the year of income, to the sum of—
 - (i) one-half of the part of any private company dividends that is included in its taxable income; and
 - (ii) the part of any other dividends that is included in its taxable income; and
- (b) if the shareholder is not a private company in relation to the year of income, to the part of any dividends that is included in its taxable income.

“(3.) Subject to the succeeding provisions of this section, the Commissioner may allow a shareholder, being a company that is a private company in relation to the year of income and is a resident, a further rebate in its assessment of the amount obtained by applying the average rate of tax payable by the shareholder to one-half of the part of any private company dividends that is included in its taxable income if the Commissioner is satisfied that—

- (a) the shareholder has not paid, and will not pay, a dividend during the period commencing at the beginning of the year of income of the shareholder and ending at the expiration of ten months after that year of income to another private company;

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(b) where the shareholder has paid, or may pay, a dividend during the period—

(i) commencing at the beginning of the year of income of the shareholder; and

(ii) ending at the expiration of ten months after that year of income,

to a company, being a private company in relation to the year of income of the company in which the dividend was, or may be, paid, the company has not paid, and will not pay, a dividend during the period—

(iii) commencing at the beginning of the year of income of the company in which the dividend has been, or may be, paid by the shareholder; and

(iv) ending at the expiration of ten months after that year of income,

to another private company; or

(c) having regard to all the circumstances, it would be reasonable to allow the further rebate.

“(4.) Where, after the Commissioner has allowed a shareholder, being a company that is a private company in relation to a year of income and is a resident, a further rebate in its assessment in pursuance of the last preceding sub-section, the Commissioner becomes satisfied that, having regard to all the circumstances, the rebate ought not to have been allowed, the shareholder shall be deemed not to have been entitled to the rebate.

“(5.) Notwithstanding anything in any other provision of this Act, the Commissioner may amend an assessment for the purpose of giving effect to either of the last two preceding sub-sections if the amendment is made within three years after the date upon which the tax became due and payable under the assessment, but nothing in this sub-section limits the power of the Commissioner to amend an assessment in accordance with any other provision of this Act.

“(6.) For the purposes of sub-section (2.) and sub-section (3.) of this section, the average rate of tax payable by a shareholder for a year of tax shall be deemed to be an amount per pound being the amount ascertained by dividing the amount of income tax that would be assessed in respect of the taxable income derived by the shareholder in the year of income if—

(a) the shareholder was not entitled to any rebate of tax or credit against its liability to tax; and

(b) the shareholder was not liable to pay any tax under Division 7 of this Part,

by a number equal to the number of whole pounds in that taxable income.

“(7.) For the purposes of sub-section (2.) and sub-section (3.) of this section—

- (a) the part of any dividends that is included in the taxable income of a shareholder is the amount remaining after deducting from the amount of the dividends included in the assessable income of the shareholder the deductions allowable to the shareholder under this Act from income from dividends; and
- (b) the part of any private company dividends that is included in the taxable income of a shareholder, being a company that is a private company in relation to the year of income, is the amount remaining after deducting from the amount of the private company dividends included in the assessable income of the shareholder—
 - (i) any deductions allowable to the shareholder under this Act from income from dividends, being deductions that relate directly to the private company dividends; and
 - (ii) so much of any other deductions allowable to the shareholder under this Act from income from dividends as, in the opinion of the Commissioner, may appropriately be related to the private company dividends.

“(8.) A shareholder in a company that is a co-operative company within the meaning of Division 9 of this Part is not entitled to a rebate in its assessment in respect of dividends paid to it by that company.

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

11. Section fifty-nine AB of the Principal Act is amended by inserting in sub-section (1.), after the words “does not apply”, the words “in relation to an assessment of the taxpayer in accordance with section ninety-nine A of this Act or”.

Notional income where assessable income includes consideration receivable on disposal, loss or destruction of depreciated property.

12. Section sixty-five of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

Payments to associated persons and relatives.

“(1.) Subject to this section, the amount, or a part of the amount, of any payment made or liability incurred in the year of income by a taxpayer to an associated person that would, but for this sub-section, be an allowable deduction is allowable as a deduction only to the extent to which, in the opinion of the Commissioner, it is reasonable.

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“(1A.) Subject to the next succeeding sub-section, where, by virtue of the last preceding sub-section, any amount is not an allowable deduction, that amount shall, for the purposes of this Act, be deemed not to be income of the associated person.

“(1B.) Where, by virtue of sub-section (1.) of this section, an amount is not allowable as a deduction in calculating in accordance with section ninety of this Act the net income, or a partnership loss, of a partnership in which a company, being a private company in relation to the year of income of the company to which the individual interest of the company in the net income of the partnership or in the partnership loss relates, is a partner—

- (a) the company shall, for the purposes of this Act other than Division 11A of this Part and Division 4 of Part VI., be deemed to have paid, on the last day of that year of income, a dividend of an amount ascertained in accordance with the next succeeding sub-section; and
- (b) the last preceding sub-section does not apply in relation to so much of the amount that is not so allowable as a deduction as is equal to the amount of the dividend that the company is to be so deemed to have paid.

“(1C.) For the purposes of the last preceding sub-section, the amount of the dividend that the company is to be deemed to have paid is—

- (a) where the effect of the disallowance of the deduction has been to increase the net income of the partnership—an amount equal to the difference between the amount of the individual interest of the company in the net income of the partnership and the amount that would have been the individual interest of the company in the net income of the partnership if the deduction had been allowed;
- (b) where the effect of the disallowance of the deduction has been to reduce the partnership loss—an amount equal to the difference between the amount of the individual interest of the company in the partnership loss and the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed;
- (c) where there is net income of the partnership and the amount of the deduction that was disallowed is equal to that net income—an amount equal to the individual interest of the company in the net income of the partnership;

(d) where there is net income of the partnership and, but for the disallowance of the deduction, there would have been a partnership loss—an amount equal to the sum of the amount of the individual interest of the company in the net income of the partnership and the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed; and

(e) where there is no net income of the partnership and, but for the disallowance of the deduction, there would have been a partnership loss—an amount equal to the amount that would have been the individual interest of the company in the partnership loss if the deduction had been allowed.

“(1D.) A reference in sub-section (1.) or sub-section (1A.) of this section to an associated person shall be read as a reference—

(a) in the application of this section to a taxpayer, to—

- (i) a relative of the taxpayer; or
- (ii) a partnership a partner in which is a relative of the taxpayer; and

(b) in the application of this section to a partnership for the purpose of calculating in accordance with section ninety of this Act the net income of the partnership or a partnership loss, to—

- (i) a relative (not being a partner in the partnership) of a partner in the partnership;
- (ii) another partnership a partner in which is a relative of a partner in the first-mentioned partnership;
- (iii) a person (not being a partner in the partnership) who is or has been, or is a relative of a person who is or has been, a shareholder in, or a director of, a company, being a private company in relation to the year of income, that is a partner in the partnership; or
- (iv) a person (not being a partner in the partnership) who is, or is a relative of, a beneficiary in a trust estate the trustee of which is, in his capacity as trustee of the trust estate, a partner in the partnership.

“(1E.) Nothing in any other provision of this Act prevents the amendment of an assessment at any time for the purpose of giving effect to the provisions of sub-section (1A.) of this section.

“(1f.) Where there is allowed as a deduction an amount that, in pursuance of sub-section (1.) of this section, was not previously allowed as a deduction, nothing in any other provision of this Act prevents the amendment of any assessment at any time to give effect to the inclusion in the income of a taxpayer of an amount that, in pursuance of sub-section (1A.) of this section, was treated, by virtue of the disallowance of the deduction, as not being so included for the purposes of the assessment.”.

Contribution
to fund for
benefit of
employees
of taxpayer.

13. Section sixty-six of the Principal Act is repealed.

14. Section seventy-nine of the Principal Act is repealed and the following section inserted in its stead:—

Five per centum
of cost of
assets of
superannuation
fund established
for benefit of
employees and
other persons to
be allowable
deduction.

“ 79.—(1.) In this section—

‘asset’ does not include a policy as defined by sub-section (1.) of section four of the *Life Insurance Act* 1945–1961;

‘superannuation benefits’ means individual personal benefits, pensions or retiring allowances;

‘superannuation fund’ means a provident, benefit, superannuation or retirement fund, not being—

(a) a fund of a kind referred to in paragraph (jaa) of section twenty-three of this Act;

(b) a fund the income of which is, or, but for Division 9B of this Part, 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; or

(c) a fund to which section twenty-three F of this Act applies in relation to the year of income.

“(2.) This section applies, in relation to a year of income, to a superannuation fund if the Commissioner is satisfied that—

(a) the fund is an indefinitely continuing fund established and maintained solely for the purposes of—

(i) providing superannuation benefits for each of the members of the fund in the event of the retirement of the member from a business, trade, profession, vocation, calling or occupation in which he is engaged; and

(ii) providing superannuation benefits for dependants of each of the members of the fund in the event of the death of the member, or for those purposes and such incidental and ancillary purposes as the Commissioner approves;

(b) the rights of members of the fund and dependants of members to receive benefits from the fund are fully secured;

(c) the right of each member of the fund and his dependants to receive benefits from the fund is defined by the terms and conditions applicable to the fund and was communicated in writing to the member either before,

or at the time when, contributions were first paid to the fund for the benefit of the member or of his dependants or before such later date as the Commissioner allows in relation to the member;

- (d) where the right of a member of the fund or of the dependants of a member to receive benefits from the fund is lost or forfeited in the year of income and, at the time of the loss or forfeiture, a specified part of the amount included in the fund was appropriated for the provision of benefits for, or for dependants of, that member—the part of the amount so appropriated is applied in the year of income of the fund in which the right is lost or forfeited or in the period of two months, or such further period as the Commissioner allows, after the year of income for all or any of the following purposes:—

- (i) the provision of the benefits that other members of the fund or their dependants have rights to receive from the fund;
- (ii) the provision for, or for the dependants of, other members of the fund who have rights to receive benefits from the fund of additional benefits on a basis that is reasonable, having regard to all the circumstances; and
- (iii) any other purposes approved by the Commissioner;

- (e) where the right of a member of the fund or of the dependants of a member to receive benefits from the fund is lost or forfeited in the year of income and, at the time of the loss or forfeiture, a specified part of the amount included in the fund was not appropriated for the provision of benefits for, or for dependants of, that member—any additional benefits that have been, or will or may be, provided from the fund for other members of the fund or their dependants by reason of the loss or forfeiture have been, or will or may be, provided on a basis that is reasonable, having regard to all the circumstances; and

- (f) at all times during the year of income the terms and conditions that were applicable to the fund—
- (i) did not permit a member of the fund to receive any benefits from the fund, except in the event of the sickness or permanent incapacity for work of the member or in such other circumstances as the Commissioner approves, until the member attained the age of sixty years and

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required any benefits that a member had a right to receive from the fund to be paid to the member not later than the date on which he attained the age of seventy years; and

- (ii) did not permit the dependants of a member to receive any benefits from the fund except in the event of the death of the member,

and the terms and conditions applicable to the fund during the year of income were approved by the Commissioner having regard to—

- (g) the reasonableness of the benefits that have been, are being or may be provided from the fund or from any other fund for members of the first-mentioned fund or their dependants;
- (h) the amount of the fund in relation to the benefits that are being or may be provided for its members; and
- (i) such other matters as the Commissioner thinks fit.

“(3.) An amount equal to five per centum of the cost of the assets that were included at the end of the year of income in the assets of a superannuation fund to which this section applies in relation to the year of income is an allowable deduction in the assessment of the trustee of the fund in respect of income derived by the fund during the year of income.

“(4.) Where, during the year of income, a superannuation fund derived from an asset, being an asset that was included in the assets of the fund at the end of the year of income, income no part of which is taken into account in calculating in accordance with section one hundred and twenty-one BA of this Act the net income of the fund in relation to the year of income, the cost of the assets that were included in the assets of the fund at the end of the year of income shall, for the purposes of the last preceding sub-section, be deemed not to include the cost of the first-mentioned asset.

“(5.) Where, during the year of income, a superannuation fund derived from an asset, being an asset that was included in the assets of the fund at the end of the year of income, income a part only of which is taken into account in calculating in accordance with section one hundred and twenty-one BA of this Act the net income of the fund in relation to the year of income, the cost of the assets that were included in the assets of the fund at the end of the year of income shall, for the purposes of sub-section (3.) of this section, be deemed to include only so much of the cost of the first-mentioned asset as bears to that cost the same

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proportion as that part of that income bears to the total amount of income derived by the fund from that asset during the year of income.

“(6.) Where—

- (a) a superannuation fund did not derive any income during the year of income from an asset that was included in the assets of the fund at the end of the year of income but derived income from that asset in a preceding year of income; and
- (b) during the year of income in which the fund last derived income from that asset, no part of that income was taken into account in calculating in accordance with section one hundred and twenty-one BA of this Act the net income of the fund in relation to that year of income or, in the opinion of the Commissioner, would have been so taken into account if that section had been in force and had applied in respect of income of the fund derived during that year of income,

the cost of the assets that were included in the assets of the fund at the end of the first-mentioned year of income shall, for the purposes of sub-section (3.) of this section, be deemed not to include the cost of the first-mentioned asset.

“(7.) Where—

- (a) a superannuation fund did not derive any income during the year of income from an asset that was included in the assets of the fund at the end of the year of income but derived income from that asset in a preceding year of income; and
- (b) during the year of income in which the fund last derived income from that asset, a part only of that income was taken into account in calculating in accordance with section one hundred and twenty-one BA of this Act the net income of the fund in relation to that year of income or, in the opinion of the Commissioner, would have been so taken into account if that section had been in force and had applied in respect of income of the fund derived during that year of income,

the cost of the assets that were included in the assets of the fund at the end of the first-mentioned year of income shall, for the purposes of sub-section (3.) of this section, be deemed to include only so much of the cost of the first-mentioned asset as bears to that cost the same proportion as that part of the income derived by the fund from that asset during the year of income referred

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to in paragraph (b) of this sub-section bears to the total amount of income derived by the fund from that asset during that last-mentioned year of income.

“(8.) The cost of the assets that were included in the assets of a superannuation fund at the end of the year of income shall, for the purposes of sub-section (3.) of this section, be taken to be reduced by—

- (a) so much of the consideration for the acquisition of any asset as has not been paid before the end of the year of income; and
- (b) so much of any amount that has been borrowed by the fund before or during the year of income as has not been repaid before the end of the year of income.

“(9.) Subject to the next succeeding sub-section, where—

- (a) an asset of a superannuation fund was acquired for a consideration that, in the opinion of the Commissioner, was greater than the value of the asset when it was acquired; or
- (b) the whole or a part of the consideration for which an asset was acquired by a superannuation fund was other than money,

the cost of the asset shall, for the purposes of sub-section (3.) of this section, be such amount as the Commissioner determines as being reasonable in all the circumstances.

“(10.) Where a dividend or a part of a dividend payable by a company is satisfied by the issue of shares in that company, the cost of those shares shall, for the purposes of sub-section (3.) of this section, be deemed to be an amount equal to the amount of the dividend or part of the dividend so satisfied by the issue of those shares.”.

Limitation on certain deductions.

15. Section seventy-nine c of the Principal Act is amended by omitting the words “The aggregate of the deductions” and inserting in their stead the words “Subject to sub-section (5.) of section one hundred and twenty-one BA of this Act, the aggregate of the deductions”.

Losses of previous years to be allowable deduction.

16. Section eighty of the Principal Act is amended by omitting sub-sections (5.) and (6.).

17. After section eighty of the Principal Act the following sections are inserted:—

Losses of previous years not to be taken into account unless there is substantial continuity of ownership of shares in company.

“80A.—(1.) Notwithstanding the last preceding section, but subject to the next succeeding sub-section, a loss incurred by a taxpayer, being a company, in a year before the year of income shall not be taken into account for the purposes of the last preceding section unless—

- (a) the company satisfies the Commissioner; or

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- (b) in the case of a company that is not a private company in relation to the year of income, the Commissioner is satisfied that it is reasonable to assume,

that, at all times during the year of income, shares in the company carrying between them—

- (c) the right to exercise not less than two-fifths of the voting power in the company;
- (d) the right to receive not less than two-fifths of any dividends that may be paid by the company; and
- (e) the right to receive not less than two-fifths of any distribution of capital of the company in the event of the winding up, or of a reduction in the capital, of the company,

were beneficially owned by persons who, at all times during the year in which the loss was incurred, beneficially owned shares in the company carrying rights of those kinds.

“(2.) Where a loss incurred by a taxpayer, being a company, in a year before the year of income is not, by virtue of the last preceding sub-section, to be taken into account but the company satisfies the Commissioner that, at all times during the year of income, shares in the company carrying the rights referred to in that sub-section were beneficially owned by persons who, at all times during a part of the year in which the loss was incurred, beneficially owned shares in the company carrying rights of those kinds, the Commissioner may take into account for the purposes of the last preceding section such part of the loss as he considers to be the amount of the loss that was incurred during that part of that year.

“80B.—(1.) For the purposes of the application of the last preceding section in determining whether a loss incurred by a company in a year before the year of income is to be taken into account, the succeeding provisions of this section have effect.

Special provisions relating to beneficial ownership of or rights attached to, shares.

“(2.) Where shares in the company were allotted after the commencement of the year in which the loss was incurred and the allotment took place in the year of income in which the company was incorporated or within a period of two years, or such further period of a year or years as the Commissioner approves for the purpose of this sub-section in relation to the company, after the end of that year of income, the shares shall be deemed to have been allotted at the commencement of the year in which the loss was incurred and to have been beneficially owned, at all times from the commencement of that year until the time when the shares were in fact allotted, by the persons who beneficially owned the shares immediately after that last-mentioned time.

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“(3.) Shares in the company that were beneficially owned by a person at any time shall be deemed to have been beneficially owned by the same person at a later time if the person has died and, at that later time, the shares were owned by the trustee of his estate in his capacity as trustee of that estate or were beneficially owned by a person who received the shares as a beneficiary in that estate.

“(4.) Where shares in the company that were beneficially owned by a person at any time have been transferred by that person to a company and, at a later time, shares in the last-mentioned company carrying between them—

- (a) the right to exercise more than one-half of the voting power in the last-mentioned company;
- (b) the right to receive more than one-half of any dividends that might be paid by the last-mentioned company; and
- (c) the right to receive more than one-half of any distribution of capital of the last-mentioned company in the event of the winding up, or of a reduction in the capital, of that company,

were beneficially owned by that person or, if he has died, were owned by the trustee of his estate in his capacity as trustee of that estate or were beneficially owned by a person who received the shares as a beneficiary in that estate, the Commissioner may, if he considers that it is reasonable to do so, treat the shares in the first-mentioned company as having been beneficially owned by the first-mentioned person at that later time.

“(5.) Where, at any time during the year of income, a person, not being a person who had beneficially owned any shares in the company at all times during the year in which the loss was incurred, had an option by virtue of which he could, directly or indirectly, acquire shares in the company or cause shares in the company to be acquired by another person, whether the option was presently exercisable or not, the Commissioner may treat the shares to which the option related as having been beneficially owned at that time by the person, or any of the persons, for whose benefit or on whose behalf the option was exercisable.

“(6.) Where the Commissioner is satisfied that, by virtue of a provision in the constituent document of the company as in force at any time during the year of income or by virtue of an agreement or arrangement made before the end of the year of income between persons who at the time when the agreement or arrangement was made were, or since that time have become, beneficial owners of shares in the company, shares in the company that—

- (a) were beneficially owned at any time during the year of income by persons who beneficially owned any shares

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in the company at all times during the year in which the loss was incurred; and

(b) carried any rights at all times during the year of income, have ceased, or will or may cease, at any time after the end of the year of income, to carry those rights, the shares shall be deemed not to have carried those rights at any time during the year of income.

“(7.) Where the Commissioner is satisfied that, by virtue of a provision in the constituent document of the company as in force at any time during the year of income or by virtue of an agreement or arrangement made before the end of the year of income between persons who at the time when the agreement or arrangement was made were, or since that time have become, beneficial owners of shares in the company, shares in the company have commenced, or will or may commence, at any time after the end of the year of income, to carry rights that those shares did not carry at a time during the year of income—

(a) if the shares were not beneficially owned at any time during the year of income by persons who beneficially owned any shares in the company at all times during the year in which the loss was incurred—the shares shall be deemed to have carried those rights at all times during the year of income; and

(b) in any other case—the Commissioner may, if he considers that, having regard to all the circumstances, it is reasonable to do so, treat the shares as having carried those rights at all times during the year of income.

“(8.) In ascertaining whether a person, being a person who beneficially owned shares in the company at all times during the year in which the loss was incurred, beneficially owned any shares in the company at all times during the year of income, any shares (other than shares allotted by the company before the year in which the loss was incurred) that are, or at the option of the company are to be, liable to be redeemed shall be disregarded.

“80c.—(1.) Notwithstanding sections eighty and eighty A of this Act, where a company (in this section referred to as ‘the holding company’) had a controlling interest in another company (in this section referred to as ‘the subsidiary company’) at any time during a year in which a loss was incurred by the subsidiary company, the loss shall not be taken into account for the purposes of section eighty of this Act unless the Commissioner is satisfied that, at all times during the year of income, shares in the holding company carrying between them—

Losses of previous years of a subsidiary not to be taken into account unless there is substantial continuity in ownership of shares in holding company.

(a) the right to exercise not less than two-fifths of the voting power in the company;

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- (b) the right to receive not less than two-fifths of any dividends that may be paid by the company; and
- (c) the right to receive not less than two-fifths of any distribution of capital of the company in the event of the winding up, or of a reduction in the capital, of the company,

were beneficially owned by persons who, at all times during the year in which the loss was incurred by the subsidiary company, beneficially owned shares in the holding company carrying rights of those kinds.

“(2.) Without prejudice to the operation of the last preceding sub-section in relation to the holding company, where a company was, or two or more companies were, interposed between the holding company and the subsidiary company at any time during the year in which the loss was incurred by the subsidiary company, that sub-section also has effect as if each interposed company had a controlling interest in the subsidiary company at that time.

“(3.) For the purposes of the application of sub-section (1.) of this section in determining whether a loss incurred by the subsidiary company in a year before the year of income is to be taken into account, the provisions of sub-sections (3.) to (8.), inclusive, of the last preceding section apply in relation to the holding company and in relation to every interposed company referred to in the last preceding sub-section as if references in those sub-sections to the company were references to the holding company or the interposed company, as the case may be.

**Amendment of
assessments.**

“80D. Notwithstanding anything in any other provision of this Act, the Commissioner may amend an assessment for the purpose of giving effect to the provisions of sub-section (5.), (6.), (7.) or (8.) of section eighty B of this Act (including those provisions as applied by sub-section (3.) of the last preceding section) if the amendment is made within six years after the date upon which the tax became due and payable under the assessment, but nothing in this section limits the power of the Commissioner to amend an assessment in accordance with any other provision of this Act.”.

18. After section eighty-two of the Principal Act the following Subdivision is inserted:—

“*Subdivision AA.—Contributions to Superannuation Funds for Benefit of Employees.*

Interpretation.

“82AAA.—(1.) In this Subdivision, unless the contrary intention appears—

‘eligible employee’, in relation to a taxpayer, means—

- (a) in the case of a taxpayer whether a company or a person other than a company—

- (i) an employee of the taxpayer;

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- (ii) an employee of a company in which the taxpayer has a controlling interest; or
- (iii) an employee of a company in which the taxpayer is the beneficial owner of shares but in which the taxpayer does not have a controlling interest (not being an employee who is associated with the taxpayer or who, or a relative of whom, has set apart or paid, or entered into a contract, agreement or arrangement under which he is, or will or may be, required to set apart or pay, amounts as or to a fund for the purpose of providing superannuation benefits for, or for a relative of, the taxpayer); and

(b) in the case of a taxpayer being a company—

- (i) an employee of a person that has a controlling interest in the taxpayer; or
- (ii) an employee of a company in which a controlling interest is held by a person who also has a controlling interest in the taxpayer;

‘employee’ means a person who is employed by a taxpayer and—

- (a) is engaged in producing assessable income of the taxpayer; or
- (b) is a resident of Australia or a resident of the Territory of Papua and New Guinea and is engaged in the business of the taxpayer;

‘superannuation benefits’ means individual personal benefits, pensions or retiring allowances.

“(2.) For the purposes of this Subdivision—

- (a) a director of a company shall be deemed to be employed by the company; and
- (b) shares in a company that is a private company in relation to the year of income shall be deemed to be held indirectly on behalf of or for the benefit of a person (not being a trustee or partnership), whether or not the shares are also to be deemed by virtue of this paragraph to be held indirectly on behalf of or for the benefit of another person, if, in the event of the payment of a dividend by the company, the first-mentioned person would, otherwise than as a shareholder of the company, receive the whole or a part of that dividend if there were

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successive distributions of the relative parts of that dividend to and by each of any private companies, trusts or partnerships interposed between the company paying the dividend and that person.

“(3.) For the purposes of the application of this Subdivision in calculating in accordance with section ninety of this Act the net income of a partnership or a partnership loss—

- (a) a reference to a relative of a taxpayer shall be read as a reference to a relative of a partner in that partnership; and
- (b) a reference to an employee who is associated with a taxpayer shall be read as a reference to an employee who is associated with a partner in that partnership.

“(4.) For the purposes of the application of this Subdivision in relation to a taxpayer, being a partner in a partnership, a reference to an employee of a taxpayer shall be read as including a reference to an employee of the partnership.

“(5.) A reference in this Subdivision to the remuneration paid to an employee by a taxpayer during a year of income in respect of the employment of the employee by the taxpayer shall, if the employee is associated with the taxpayer, be read as a reference to so much only of that remuneration as, in the opinion of the Commissioner, is reasonable in amount.

Associated
persons.

“82AAB. For the purposes of this Subdivision, an employee is associated with a person if—

- (a) the employee is a relative of the person; or
- (b) the person is a company that is a private company in relation to the year of income and, at any time during the year of income—

- (i) the employee, or a relative of the employee, was a director of the company;
- (ii) shares in the company were beneficially owned by, or held indirectly on behalf of or for the benefit of, the employee or a relative of the employee;
- (iii) the employee, or a relative of the employee, was a director of another company that is a private company in relation to the year of income of that other company that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income and shares in the first-mentioned company were beneficially owned by, or held indirectly on behalf of or for the benefit of, the other company;

- (iv) the employee, or a relative of the employee, was the beneficial owner of shares in, or was a director of, another company that is a private company in relation to the year of income of that other company that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income and shares in the other company were beneficially owned by, or held indirectly on behalf of or for the benefit of, the first-mentioned company; or
- (v) the employee, or a relative of the employee, was the beneficial owner of shares in, or was a director of, another company that is a private company in relation to the year of income of that other company that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income and shares in the other company were beneficially owned by, or held indirectly on behalf of or for the benefit of, a person who beneficially owned shares in the first-mentioned company or on whose behalf or for whose benefit shares in the first-mentioned company were indirectly held.

“ 82AAC. Where a taxpayer, for the purpose of making provision for superannuation benefits for, or for dependants of, an eligible employee, sets apart or pays in the year of income an amount or amounts as or to a fund or funds from which the benefits are to be provided, and the right of the employee or dependants to receive the benefits is fully secured, the amount or the sum of the amounts, as the case may be, so set apart or paid is, subject to the succeeding provisions of this Subdivision, an allowable deduction.

Deduction for contributions to fund for employees.

“ 82AAD. Where an amount is, or amounts are, set apart or paid in the year of income by a taxpayer as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, an eligible employee, being an employee associated with the taxpayer, the amount or the sum of the amounts, as the case may be, is, subject to the succeeding provisions of this Subdivision, allowable as a deduction by virtue of the last preceding section only to the extent to which, in the opinion of the Commissioner, the amount or amounts would have been so set apart or paid if the employee had not been associated with the taxpayer.

Deduction to be reduced where employee is associated with taxpayer.

“ 82AAE. The deduction, or the sum of the deductions, allowable under this Subdivision in an assessment or assessments of a taxpayer or taxpayers in respect of income of the year of income

Maximum deduction allowable for all taxpayers in respect of the one employee.

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in respect of amounts set apart or paid by the taxpayer or taxpayers as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, any one employee—

(a) shall not exceed whichever is the greater of the following amounts:—

(i) Two hundred pounds; and

(ii) five per centum of the total remuneration paid to the employee by taxpayers during the year of income of the employee that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income in respect of his employment by those taxpayers; or

(b) if the Commissioner is of the opinion that there are special circumstances that justify the allowance of a greater deduction, or of deductions of a greater sum, than the amount ascertained in accordance with the last preceding paragraph—shall be such amount, being greater than the amount so ascertained, as he considers reasonable.

Ascertainment
of deduction
allowable when
two or more
taxpayers
contribute for
the one
employee.

“ 82AAF.—(1.) Where deductions are allowable under this Subdivision in the assessments of two or more taxpayers (in this sub-section referred to as ‘ the taxpayers ’) in respect of income of the year of income in respect of amounts respectively set apart or paid by the taxpayers as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, any one employee and the sum of the deductions that would, but for this and the last preceding section, be allowable under this Subdivision in respect of the amounts so set apart or paid exceeds the sum of the deductions that are allowable under this Subdivision in respect of those amounts, the deduction allowable under this Subdivision in the assessment of such a taxpayer in respect of the amount or amounts so set apart or paid by him is, subject to the succeeding provisions of this Subdivision, an amount equal to the sum of—

(a) whichever is the lesser of the following amounts:—

(i) five per centum of the remuneration, if any, paid by the taxpayer to the employee during the year of income of the employee that, in the opinion of the Commissioner, corresponded to the first-mentioned year of income in respect of the employment of the employee by the taxpayer; and

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- (ii) the amount of the deduction that would, but for this and the last preceding section, be allowable under this Subdivision in the assessment of the taxpayer in respect of income of the year of income in respect of the amounts so set apart or paid by him; and

(b) an amount ascertained in accordance with the formula
$$\frac{(a - b)(c - d)}{(e - b)},$$
 where—

- a* is the sum of the deductions allowable under this Subdivision in assessments of the taxpayers in respect of income of the year of income in respect of the amounts so set apart or paid by them;
- b* is the sum of the amounts respectively ascertained in relation to each of the taxpayers in accordance with the last preceding paragraph in respect of the amounts so set apart or paid by them;
- c* is the amount of the deduction that would, but for this and the last preceding section, be allowable under this Subdivision in the assessment of the taxpayer in respect of income of the year of income in respect of the amount or amounts so set apart or paid by him;
- d* is the amount ascertained in relation to the taxpayer in accordance with the last preceding paragraph in respect of the amount or amounts so set apart or paid by him; and
- e* is the sum of the deductions that would, but for this and the last preceding section, be allowable under this Subdivision in assessments of the taxpayers in respect of income of the year of income in respect of the amounts so set apart or paid by them.

“(2.) In calculating for the purposes of the last preceding sub-section the amount of a deduction that is, or, but for this and the last preceding section, would be, allowable under this Subdivision in an assessment of a taxpayer, or the sum of the amounts of any deductions that are, or, but for this and the last preceding section, would be, allowable under this Subdivision in assessments of taxpayers, in respect of income of a year of income, the succeeding provisions of this Subdivision, other than section eighty-two AAM of this Act, shall be disregarded.

Total deductions allowable to taxpayer in respect of all employees to be reduced by value of previous deductions allowed in respect of lost or forfeited benefits.

“ 82AAG. The deduction, or the sum of the deductions, allowable under this Subdivision in an assessment of a taxpayer in respect of income of the year of income in respect of an amount or amounts set apart or paid by him as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, employees is the amount of that deduction or the sum of the amounts of those deductions, as ascertained in accordance with the preceding provisions of this Subdivision, reduced by the value of the previous deductions, if any, in respect of benefits the rights to receive which have been lost or forfeited by employees after the commencement of the year of income that commences on the first day of July, One thousand nine hundred and sixty-five, but before the end of the first-mentioned year of income, other than any part of that value that has been taken into account by virtue of this section in reducing the deduction, or the sum of the deductions, allowed or allowable under this Subdivision in assessments of the taxpayer in respect of income of years of income preceding the first-mentioned year of income.

Ascertainment of value of previous deductions.

“ 82AAH. For the purposes of the last preceding section, the value of the previous deductions in respect of any benefits the right to receive which has been lost or forfeited by an employee is, subject to the succeeding provisions of this Subdivision, an amount equal to the sum of—

- (a) any deductions allowed or allowable under this Act or the previous Act in assessments of the taxpayer in respect of income of any year of income in respect of amounts set apart or paid as or to a fund or funds for the purpose of making provision for those benefits for, or for dependants of, that employee; and
- (b) the part of the total income derived by the fund or funds before the year of income, or during the year of income but before the right to receive the benefits was lost or forfeited, that, in the opinion of the Commissioner, was attributable to so much of the amounts so set apart or paid as were allowed or are allowable as deductions under this Act or the previous Act in assessments of the taxpayer in respect of income of any year of income.

Value of previous deductions to be reduced where amount of lost or forfeited benefits applied for other employees.

“ 82AAJ.—(1.) For the purposes of section eighty-two AAG of this Act, where the Commissioner is satisfied that an amount or amounts included in a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, an employee, being benefits the right to receive which has been lost or forfeited by the employee, has or have been applied in the

year of income of the taxpayer in which the right was lost or forfeited or in the period of two months, or such further period as the Commissioner allows, after that year of income for the purpose of making provision for superannuation benefits for, or for dependants of, another employee, being an eligible employee, and the right of the other employee or dependants to receive the benefits is fully secured, the value of the previous deductions in respect of the first-mentioned benefits is, subject to this section, the amount of that value, as ascertained in accordance with the last preceding section, reduced—

- (a) if a person other than the taxpayer has not paid any amount or amounts to that fund or those funds before the right was lost or forfeited for the purpose of making provision for superannuation benefits for, or for dependants of, the first-mentioned employee and has not set apart or paid in the year of income of the taxpayer an amount to that fund or as or to any other fund for the purpose of making provision for superannuation benefits for, or for dependants of, the other employee—by so much of the amount or of the sum of the amounts so applied for, or for dependants of, the other employee as bears to that amount or that sum the same proportion as the amount of the value of the previous deductions in respect of the first-mentioned benefits as ascertained in accordance with the last preceding section bears to the amount that was included in the fund or the sum of the amounts that were included in the funds, as the case may be, for the purpose of making provision for the first-mentioned benefits at the time at which the right to receive those benefits was lost or forfeited; and
- (b) in any other case—by so much, if any, of the amount or of the sum of the amounts so applied for, or for dependants of, the other employee as the Commissioner considers reasonable in the circumstances.

“(2.) Where the maximum deduction that, by virtue of paragraph (a) of section eighty-two AAE of this Act, may be allowed under this Subdivision in the assessment of the taxpayer in respect of income of the year of income in relation to the other employee exceeds the deduction that would, but for section eighty-two AAG of this Act, be allowable under this Subdivision in that assessment in relation to that employee, the last preceding sub-section does not operate to reduce the value of the previous deductions, as ascertained in accordance with the last preceding section, in respect of the benefits the right to receive which was lost or forfeited in the year of income by an amount greater than the amount of that excess.

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“(3.) Where the deduction that would, but for section eighty-two AAG of this Act, be allowable under this Subdivision in the assessment of the taxpayer in respect of income of the year of income in relation to the other employee is the amount ascertained in accordance with paragraph (b) of section eighty-two AAE of this Act, sub-section (1.) of this section does not operate to reduce the value of the previous deductions, as ascertained in accordance with the last preceding section, in respect of the benefits the right to receive which was lost or forfeited in the year of income.

Amount by which value of previous deductions reduced to be deemed to be a deduction.

“ 82AAJ. For the purposes of paragraph (a) of section eighty-two AAH of this Act, where the Commissioner is satisfied that an amount or amounts included in a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, an employee, being benefits the right to receive which has been lost or forfeited by the employee, has or have been applied in the year of income of the taxpayer in which the right was lost or forfeited or in the period of two months, or such further period as the Commissioner allows, after that year of income for the purpose of making provision for superannuation benefits for, or for dependants of, another employee, being an eligible employee—

- (a) the amount or amounts so applied shall be deemed to have been paid to the fund or funds for the purpose of making provision for the superannuation benefits for, or for dependants of, the other employee; and
- (b) a deduction equal to the amount of any reduction made by the last preceding section in calculating the value of the previous deductions in respect of the lost or forfeited benefits shall be deemed to have been allowed under this Subdivision in the assessment of the taxpayer in respect of income of the year of income in respect of the amount or amounts so deemed to have been paid to the fund or funds for the purpose of making provision for the superannuation benefits for, or for dependants of, the other employee.

Value of previous deductions to be reduced where amount of lost or forfeited benefits applied for other approved purposes.

“ 82AAK. For the purposes of section eighty-two AAG of this Act, where the Commissioner is satisfied that an amount or amounts included in a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, an employee, being benefits the right to receive which has been lost or forfeited by the employee, has or have been applied in the year of income of the taxpayer in which the right was lost or forfeited or in the period of two months, or such further period as the Commissioner allows, after that year of income for a purpose, not being a purpose referred to in section eighty-two AAJ of this Act, approved by the Commissioner, the value of the previous

deductions in respect of those benefits is the amount of that value, as ascertained in accordance with sections eighty-two AAH and eighty-two AAI of this Act, reduced—

- (a) if a person other than the taxpayer has not paid any amount or amounts to that fund or those funds before the right to receive the benefits was lost or forfeited—by so much of the amount or of the sum of the amounts so applied as bears to that amount or that sum the same proportion as the amount of the value of the previous deductions in respect of those benefits, as ascertained in accordance with section eighty-two AAH of this Act, bears to the amount that was included in the fund or the sum of the amounts that were included in the funds, as the case may be, for the purpose of making provision for those benefits at the time at which the right to receive the benefits was lost or forfeited; or
- (b) in any other case—by so much of the amount or of the sum of the amounts so applied as the Commissioner considers reasonable in the circumstances.

“ 82AAL. Where the deduction or the sum of the deductions (in this section referred to as ‘ the total allowable deduction ’) allowed or allowable under this Subdivision in an assessment of a taxpayer in respect of income of the year of income in respect of an amount or amounts set apart or paid by him as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, employees is less than the deduction or the sum of the deductions (in this section referred to as ‘ the total notional deduction ’) that would, but for section eighty-two AAG of this Act, have been allowed or be allowable under this Subdivision in that assessment in respect of that amount or those amounts, the deduction allowed or allowable under this Subdivision in that assessment in respect of an amount or amounts set apart or paid by the taxpayer as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, any such employee shall, for the purposes of section eighty-two AAH of this Act, be deemed to have been or be so much of the deduction that would, but for section eighty-two AAG of this Act, have been or be allowable under this Subdivision in that assessment in respect of the amount or amounts set apart or paid in relation to the employee as bears to that deduction the same proportion as the total allowable deduction bears to the total notional deduction.

Where total deductions reduced by value of previous deductions, each deduction to be deemed to be reduced accordingly.

“ 82AAM. Where a taxpayer sets apart or pays an amount as or to a fund for the purpose of making provision for superannuation benefits for, or for dependants of, more than one employee but does not specify the part of the amount set apart or paid in respect

Ascertainment of contribution for each employee when lump sum contributed for two or more employees.

of a particular employee, that part shall, for the purposes of this Subdivision, be deemed to be such amount as the Commissioner determines.

Ascertainment of deduction attributable to contribution to fund where contributions made to more than one fund.

“ 82AAN. Where a deduction has been allowed or is allowable under this Act or the previous Act in an assessment of a taxpayer in respect of amounts set apart or paid as or to more than one fund for the purpose of making provision for superannuation benefits for, or for dependants of, any one employee, the part, if any, of the deduction that was allowed or is allowable in respect of the amount or amounts set apart or paid as or to any such fund shall, for the purposes of section eighty-two AAH of this Act, be deemed to be such amount as the Commissioner determines.

Special provisions relating to fund where a specified part of the amount included in the fund is not appropriated for each employee.

“ 82AAO. For the purposes of sections eighty-two AAI, eighty-two AAJ and eighty-two AAK of this Act, where an employee loses or forfeits any right of the employee or of his dependants to receive superannuation benefits from a fund and, at the time of the loss or forfeiture, a specified part of the amount included in the fund was not appropriated for the purpose of making provision for those benefits—

- (a) an amount determined by the Commissioner shall be deemed to have been included in the fund at that time for that purpose;
- (b) any payment out of the fund that, in the opinion of the Commissioner, resulted from the loss or forfeiture, shall be deemed to have been an application at the time, and for the purpose, for which the payment was made of so much of the amount determined by the Commissioner in pursuance of the last preceding paragraph as is equal to the payment; and
- (c) except to the extent to which the amount determined by the Commissioner in pursuance of paragraph (a) of this section is to be so deemed to have been applied by a payment out of the fund, that amount shall be deemed to have been applied in the year of income in which the loss or forfeiture occurred, to such extent as the Commissioner determines, for the purpose of making provision for the superannuation benefits that other employees, being eligible employees, and their dependants have rights to receive from the fund.

Ascertainment of part of amount in fund applied for each employee where lump sum applied for two or more employees.

“ 82AAP. Where an amount included in a fund has been applied for the purpose of making provision for superannuation benefits for, or for dependants of, more than one employee but the part of the amount that was applied in respect of a particular employee has not been specified, that part shall, for the purposes of

sections eighty-two AAI and eighty-two AAJ of this Act, be deemed to be such amount as the Commissioner determines.

" 82AAQ. Where a taxpayer who has, under this Act or the previous Act, been allowed in an assessment in respect of income of any year of income a deduction in respect of an amount or amounts set apart or paid as or to a fund or funds for the purpose of making provision for superannuation benefits for, or for dependants of, an employee receives in the year of income a payment or benefit from that fund or any of those funds, as the case may be, his assessable income of the year of income shall include the amount of the payment or an amount equal to the value of the benefit, as the case may be.

Amount paid from fund to taxpayer to be included in his assessable income.

" 82AAR. Except as provided by section eighty-two H of this Act, a deduction is not allowable under any provision of this Act other than this Subdivision in respect of an amount set apart or paid by a taxpayer as or to a fund for the purpose of making provision for superannuation benefits for, or for dependants of, an employee or employees."

Deductions for contributions to funds for employees not allowable under other provisions of Act.

19. Section eighty-three of the Principal Act is amended by omitting from the definition of "premium" in sub-section (1.) the words "the next succeeding section" and inserting in their stead the words "section eighty-three A of this Act".

Interpretation.

20. After section eighty-three of the Principal Act the following section is inserted:—

" 83AA.—(1.) Subject to this section, this Division does not apply to or in relation to a lease other than a lease granted on or before, or in pursuance of an agreement entered into on or before, the twenty-second day of October, One thousand nine hundred and sixty-four.

Application of Division.

" (2.) This Division, other than section eighty-five, does not apply in relation to the assignment or surrender of a lease unless the assignment or surrender—

(a) took effect on or before the twenty-second day of October, One thousand nine hundred and sixty-four; or

(b) takes effect after that date in pursuance of an agreement entered into on or before that date.

" (3.) In relation to the assignment or surrender after the twenty-second day of October, One thousand nine hundred and sixty-four, of a lease, section eighty-five of this Act does not apply unless the assignment or surrender is made by a person who acquired the lease on or before that date or in pursuance of an agreement entered into on or before that date, or by a person who succeeded to the lease upon the death of such a person, and does not apply—

(a) in relation to an amount referred to in paragraph (b) of sub-section (1.) of that section that was paid in effecting improvements other than improvements

referred to in sub-section (2.) of section eighty-eight of this Act, unless the assignment or surrender is made in pursuance of an agreement entered into on or before that date; or

- (b) in relation to an amount that was paid for the purpose referred to in paragraph (c) of sub-section (1.) of that section, unless the amount was paid on or before that date or in pursuance of an agreement entered into on or before that date.

“(4.) Where, after the twenty-second day of October, One thousand nine hundred and sixty-four, improvements are made on land the subject of a lease with the written consent of the lessor of that land, sections eighty-five, eighty-seven and eighty-eight of this Act do not apply in relation to those improvements unless—

- (a) the written consent was given on or before that date; or
 (b) the Commissioner is satisfied that, on or before that date, the lessor had agreed, whether absolutely or subject to conditions, to give that consent and the written consent was given within a period after that date that the Commissioner, on the joint application in writing of the lessor and the lessee made not later than sixty days from that date or within such further time as the Commissioner allows, has approved (whether before or after the giving of the consent) as reasonable for the purposes of this sub-section.

“(5.) Sub-section (1.) of this section does not operate to restrict the application of section eighty-eight A or section eighty-eight B of this Act.”.

Deductions
upon disposal
of lease,
goodwill or
licence.

Notional
income of
a taxpayer
deriving a
premium.

Liability of
partnerships.

Partner not
having control
and disposal
of share in
partnership
income.

21. Section eighty-five of the Principal Act is amended by omitting sub-section (7.).

22. Section eighty-six of the Principal Act is amended by inserting in sub-section (2.), after the words “shall not apply”, the words “in relation to an assessment of the taxpayer in accordance with section ninety-nine A of this Act or”.

23. Section ninety-one of the Principal Act is amended by omitting the words “, except as provided in this Division,”.

24. Section ninety-four of the Principal Act is repealed and the following section inserted in its stead:—

“94.—(1.) Subject to this section, where—

- (a) a share in the net income of a partnership of a year of income is included in the assessable income of a partner in the partnership, not being—
 (i) a company;
 (ii) a person in the capacity of a trustee; or

(iii) a person who was under the age of sixteen years on the last day of the year of income of the partnership; and

(b) the partnership is so constituted or controlled, or its operations are so conducted, that the partner has not the real and effective control and disposal of that share or of a part of that share,

this section applies to that share or that part of that share, as the case may be.

“(2.) Subject to the succeeding provisions of this section, where—

(a) a partnership is so constituted or controlled, or its operations are so conducted, that a partner in the partnership, being a trustee of a trust estate, has not the real and effective control and disposal of his share in the net income of the partnership or of a part of that share (which share or part of a share, as the case may be, is in this sub-section referred to as ‘uncontrolled partnership income’); and

(b) in calculating in accordance with section ninety-five of this Act the net income of that trust estate or of any other trust estate, there is included in the assessable income of the trust estate any uncontrolled partnership income,

then—

(c) if—

(i) a beneficiary, not being a company or a person in relation to whose share of the income of the trust estate sub-section (4.) of this section applies, is presently entitled to the whole of the income of the trust estate otherwise than in the capacity of a trustee; or

(ii) there is no part of the net income of the trust estate that is included in the assessable income of a beneficiary in pursuance of section ninety-seven of this Act or in respect of which the trustee is assessed and liable to pay tax in pursuance of section ninety-eight of this Act,

this section applies to the portion of the net income of the trust estate that was derived from uncontrolled partnership income;

(d) if a beneficiary, not being a company or a person in relation to whose share of the income of the trust estate sub-section (4.) of this section applies, is presently

entitled to a share of the income of the trust estate otherwise than in the capacity of a trustee, this section applies to so much of that share of the net income of the trust estate as bears to that share the same proportion as the portion of the net income of the trust estate that was derived from uncontrolled partnership income bears to the net income of the trust estate; and

- (e) if there is a part of the net income of the trust estate that is not included in the assessable income of a beneficiary in pursuance of section ninety-seven of this Act and in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section ninety-eight of this Act, this section applies to so much of that part of the net income of the trust estate as bears to that part the same proportion as the portion of the net income of the trust estate that was derived from uncontrolled partnership income bears to the net income of the trust estate.

“(3.) Subject to the succeeding provisions of this section, where a share in the net income of a partnership of a year of income is included in the assessable income of a partner in the partnership who was under the age of sixteen years on the last day of the year of income of the partnership, this section applies to that share but, if, during the year of income of the partnership, the partner rendered any services in the production of assessable income of the partnership, this section applies to that share reduced by an amount that, in the opinion of the Commissioner, would constitute reasonable remuneration by way of salary or wages for those services if they had been performed by an employee of the partnership.

“(4.) Subject to the succeeding provisions of this section, where, in calculating in accordance with section ninety-five of this Act the net income of a trust estate, not being the trust estate of a prescribed trust, there is included in the assessable income of the trust estate a share in the net income of a partnership of a year of income and a beneficiary who was under the age of sixteen years on the last day of the year of income of the partnership is presently entitled to, or to a share of, the income of the trust estate, this section applies—

- (a) if the beneficiary is presently entitled to the whole of the income of the trust estate—to the portion of the net income of the trust estate that was derived from the share of the trust estate in the net income of the partnership; or

(b) if the beneficiary is presently entitled to a share of the income of the trust estate—to so much of that share of the net income of the trust estate as bears to that share the same proportion as the portion of the net income of the trust estate that was derived from the share of the trust estate in the net income of the partnership bears to the net income of the trust estate, but, if, during that year of income of the partnership, the beneficiary rendered any services, without remuneration, in the production of assessable income of the partnership, this section applies to the portion of the net income of the trust estate referred to in paragraph (a) of this sub-section or the part of the share of the net income of the trust estate referred to in paragraph (b) of this sub-section, as the case may be, reduced by an amount that, in the opinion of the Commissioner, would constitute reasonable remuneration by way of salary or wages for those services.

“(5.) For the purposes of this section—

(a) where—

(i) the assessable income of a trust estate includes the net income or a share of the net income of another trust estate; and

(ii) the assessable income of the other trust estate by reference to which that net income is calculated included income of a particular class (including an amount that is to be deemed by an application or applications of this paragraph to be income of a particular class),

the assessable income of the first-mentioned trust estate shall be deemed to include income of that class of an amount equal to so much of the net income or share of the net income of the other trust estate that is included in the assessable income of the first-mentioned trust estate as bears to that net income or share of that net income the same proportion as the portion of the net income of the other trust estate that was derived from income of that class bears to the net income of the other trust estate; and

(b) the portion of the net income of a trust estate that is derived from income of a particular class that is included in the assessable income of the trust estate is the amount remaining after deducting from the income of that class that is included in the assessable income of the trust estate—

(i) any prescribed deductions that relate exclusively to that income of that class;

- (ii) so much of any other prescribed deductions (other than apportionable deductions) as, in the opinion of the Commissioner, may appropriately be related to that income of that class; and
- (iii) the amount that bears to the prescribed deductions (being apportionable deductions) the same proportion as the amount that, but for this sub-paragraph, would be the portion of the net income of the trust estate that is derived from that income of that class bears to the sum of the net income of the trust estate and those last-mentioned prescribed deductions.

“(6.) Where the assessable income of a trust estate includes, or, by virtue of paragraph (a) of the last preceding sub-section, is to be deemed to include, income of a particular class but the Commissioner is of the opinion that it would be unreasonable to treat each part or share of the net income of the trust estate that is included in the assessable income of a beneficiary, or on or in respect of which the trustee is assessed and liable to pay tax, as including a proportionate part of the portion of the net income of the trust estate that is derived from income of that class, the amount—

- (a) that is the amount of a part or share of the net income of the trust estate to which this section applies by virtue of paragraph (d) or (e) of sub-section (2.), or paragraph (b) of sub-section (4.), of this section; or
- (b) that is, by virtue of paragraph (a) of the last preceding sub-section, the amount of the income of that class that is to be deemed to be included in the assessable income of another trust estate,

is, in lieu of the amount that, but for this sub-section, would be the amount of that part or share of that net income or the amount of that income of that class, as the case may be, such amount as the Commissioner considers reasonable in the circumstances.

“(7.) A reference in sub-section (3.) or sub-section (4.) of this section to a share in the net income of a partnership does not include a reference to a share in the net income of a partnership—

- (a) that is not carrying on a business;
- (b) that does not derive any income other than interest, dividends, rent or royalties; and
- (c) in which all the partners own jointly or in common the property from which the income of the partnership is derived.

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“(8.) Where the Commissioner is of the opinion that, by reason of special circumstances, it would be unreasonable that this section should apply to any income, this section does not apply to that income.

“(9.) Where the assessable income of a taxpayer, other than a taxpayer in the capacity of a trustee, includes income to which this section applies, the taxpayer shall be assessed and is liable to pay further tax, at the rate declared by the Parliament for the purposes of this section, upon the portion of his taxable income that is derived from income to which this section applies.

“(10.) For the purposes of the last preceding sub-section, the portion of the taxable income of a taxpayer that is derived from income to which this section applies is the amount remaining after deducting from the income to which this section applies that is included in his assessable income—

- (a) any deductions allowed or allowable in his assessment that relate exclusively to the income to which this section applies that is included in his assessable income;
- (b) so much of any other deductions allowed or allowable in his assessment (other than apportionable deductions) as, in the opinion of the Commissioner, may appropriately be related to the income to which this section applies that is included in his assessable income; and
- (c) the amount that bears to the apportionable deductions allowed or allowable in his assessment the same proportion as the amount that, but for this paragraph, would be the portion of his taxable income that is derived from income to which this section applies bears to the sum of his taxable income and those apportionable deductions.

“(11.) Where—

- (a) section ninety-eight of this Act applies in relation to the net income of a trust estate or a share of that net income; and
 - (b) this section applies to a portion of that net income or of that share of that net income, as the case may be,
- the trustee of the trust estate shall be assessed and is liable to pay further tax, at the rate declared by the Parliament for the purposes of this section, upon that portion of that net income or of that share of that net income, as the case may be, reduced by an amount equal to so much of the sum of the concessional deductions that are taken into account for the purposes of section ninety-eight of this Act in relation to that net income or

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that share of that net income as bears to that sum the same proportion as that portion of that net income or of that share of that net income bears to that net income or that share of that net income, as the case may be.

“(12.) Where—

(a) section ninety-nine of this Act applies in relation to the net income of a trust estate or a part of that net income; and

(b) this section applies to a portion of that net income or of that part of that net income, as the case may be, the trustee of the trust estate shall be assessed and is liable to pay further tax, at the rate declared by the Parliament for the purposes of this section, upon that portion of that net income or of that part of that net income, as the case may be.

“(13.) In this section—

‘prescribed deductions’, in relation to a trust estate, means the deductions that are allowable in calculating in accordance with section ninety-five of this Act the net income of the trust estate;

‘prescribed trust’ means a trust that resulted from—

(a) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or

(b) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;

‘share in the net income of a partnership’, in relation to a partner, means the individual interest of the partner in the net income of the partnership and any income derived by the partner from the partnership otherwise than as a partner.”.

25. Section ninety-nine of the Principal Act is repealed and the following sections are inserted in its stead:—

Certain trust
income to be
taxed as income
of an
individual.

“99.—(1.) This section applies in relation to a trust estate in relation to a year of income only if the next succeeding section does not apply in relation to that trust estate in relation to that year of income.

“(2.) Where—

(a) there is no part of the net income of a trust estate that is included in the assessable income of a beneficiary in pursuance of section ninety-seven of this Act or in respect of which the trustee is assessed and liable to pay tax in pursuance of the last preceding section; or

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- (b) there is a part of the net income of a trust estate that is not included in the assessable income of a beneficiary in pursuance of section ninety-seven of this Act and in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of the last preceding section,

the trustee shall be assessed and is liable to pay tax on that net income or on that part of that net income, as the case may be, as if it were the income of an individual and were not subject to any deduction.

“ 99A.—(1.) This section does not apply in relation to a trust estate in relation to any year of income if the trust resulted from—

Certain trust income to be taxed at special rate.

- (a) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
- (b) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate.

“(2.) This section does not apply in relation to a trust estate (other than a trust estate referred to in the last preceding sub-section) in relation to a year of income if the Commissioner is of the opinion that it would be unreasonable that this section should apply in relation to that trust estate in relation to that year of income.

“(3.) In forming an opinion for the purposes of the last preceding sub-section—

- (a) the Commissioner shall have regard to the circumstances in which and the conditions, if any, upon which, at any time, property (including money) was acquired by or lent to the trust estate, income was derived by the trust estate, benefits were conferred on the trust estate or special rights or privileges were conferred on or attached to property of the trust estate, whether or not the rights or privileges have been exercised;
- (b) if a person who has, at any time, directly or indirectly—
 - (i) transferred or lent any property (including money) to, or conferred any benefits on, the trust estate; or
 - (ii) conferred or attached any special right or privilege, or done any act or thing, either alone or together with another person or persons, that has resulted in the conferring or attaching of any special right or privilege,

on or to property of the trust estate, whether or not the right or privilege has been exercised,

has not, at any time, directly or indirectly—

(iii) transferred or lent any property (including money) to, or conferred any benefits on, another trust estate, not being a trust estate referred to in sub-section (1.) of this section; or

(iv) conferred or attached any special right or privilege, or done any act or thing, either alone or together with another person or persons, that has resulted in the conferring or attaching of any special right or privilege, on or to property of another trust estate, not being a trust estate referred to in sub-section (1.) of this section, whether or not the right or privilege has been exercised,

the Commissioner shall have regard to that fact; and

(c) the Commissioner shall have regard to such other matters, if any, as he thinks fit.

“(4.) Subject to the next succeeding sub-section, where—

(a) there is no part of the net income of a trust estate that is included in the assessable income of a beneficiary in pursuance of section ninety-seven of this Act or in respect of which the trustee is assessed and liable to pay tax in pursuance of section ninety-eight of this Act; or

(b) there is a part of the net income of a trust estate that is not included in the assessable income of a beneficiary in pursuance of section ninety-seven of this Act and in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section ninety-eight of this Act,

the trustee shall be assessed and is liable to pay tax on that net income or on that part of that net income, as the case may be, at the rate declared by the Parliament for the purposes of this section.

“(5.) Where a body, association or fund referred to in paragraph (d), (e), (ea), (eb), (f), (g), (h), (i) or (j) of section twenty-three of this Act, or an organization that is prescribed for the purposes of paragraph (x) of that section, has a vested interest, being an indefeasible interest, in the income or in part of the income of a trust estate, the net income or the part of the net income of the trust estate upon which the trustee is liable to be assessed and to pay tax as provided by the last preceding sub-section does not include so much of that net income or of that part

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of that net income as, in the opinion of the Commissioner, relates to the income or the part of the income of the trust estate in which that body, association, fund or organization has such a vested interest.”.

26. Section one hundred and one of the Principal Act is amended by omitting the word “ Division ” and inserting in its stead the word “ Act ”. Discretionary trusts.

27. After Division 6 of Part III. of the Principal Act the following Division is inserted:—

“ Division 6A.—Alienation of Income for Short Periods.

“ 102A.—(1.) In this Division—

‘ interest ’, in relation to property, means any legal or equitable estate or interest in the property;

‘ property ’ means any property whether real or personal;

‘ right to receive income from property ’ means a right to have income that will or may be derived from property paid to, or applied or accumulated for the benefit of, the person owning the right;

‘ the prescribed date ’, in relation to a person who transfers to another person a right to receive income from property, means the day preceding the seventh anniversary of the date on which income from the property is first paid to, or applied or accumulated for the benefit of, the other person by reason of the transfer.

“ (2.) A reference in this Division to a transfer of an interest in property or of a right to receive income from property shall be read as a reference to any such transfer, whether made for valuable consideration or not.

“ (3.) For the purposes of this Division, any income that will or may be derived by a trust estate from a business carried on by the trustee of the trust estate shall be deemed to be income that will or may be derived from property.

“ (4.) For the purposes of this Division—

(a) where a person—

(i) declares that he holds a right to receive income from property upon trust for another person;
or

(ii) transfers such a right to a trustee to be held upon trust for another person,

the right shall be deemed to be transferred to that other person; and

Interpretation.

(b) where a person—

(i) declares that he holds a right to receive income from property upon trust for two or more other persons in succession; or

(ii) transfers such a right to, or to a trustee to be held upon trust for, two or more other persons in succession,

the right shall be deemed to be separately transferred to each of those other persons for the respective periods for which the right is held upon trust for, or transferred to, those persons.

“(5.) Where an interest in property or a right to receive income from property is transferred by two or more persons jointly, each of those persons shall, for the purposes of this Division, be deemed to have transferred an interest in that property or a right to receive income from that property, as the case may be.

Certain income transferred for short periods to be included in assessable income of transferor.

“102b.—(1.) Subject to this section, where, after the twenty-second day of October, One thousand nine hundred and sixty-four, a right to receive income from property is transferred, otherwise than by a will or codicil, by a person to another person for a period that will, or may for any reason other than the death of any person or the other person's becoming under a legal disability, terminate before the prescribed date, any income derived from the property that is paid to, or applied or accumulated for the benefit of, the other person by reason of the transfer, being income that, but for the transfer, would have been included in the assessable income of the transferor, shall be treated for the purposes of this Act as if the transfer had not been made.

“(2.) This section does not apply in relation to a transfer of a right to receive income from property where—

(a) the right was not a right that arose from the ownership by the transferor of an interest in the property; or

(b) the right arose from the ownership by the transferor of an interest in the property and the transferor has transferred that interest to the transferee or another person.

“(3.) Where a person who has transferred a right to receive income from property dies or, being a company, ceases to exist, this section does not apply in relation to income derived from the property after the date of the death or the date on which the company ceased to exist, as the case may be.

“(4.) This section does not apply to income derived by a person in pursuance of a transfer to that person of a right to receive income from property where, by reason of the proviso to

paragraph (f) of section twenty-three of this Act, the income so derived by the person is not exempt from tax under that paragraph.

“(5.) Nothing in any other provision of this Act prevents the amendment of an assessment at any time for the purpose of excluding from the assessable income of a person income that is, by virtue of sub-section (1.) of this section, to be included in the assessable income of another person.

“(6.) Where there is excluded from the assessable income of a person an amount that, in pursuance of sub-section (1.) of this section was previously treated as assessable income of that person, nothing in any other provision of this Act prevents the amendment of any assessment at any time to give effect to the inclusion in the assessable income of another person of an amount that, in pursuance of that sub-section, was treated as not being so included for the purposes of the assessment.

“ 102c. Where—

- (a) any income is paid to, or applied or accumulated for the benefit of, a person (in this section referred to as ‘ the transferee ’) by reason of the transfer to the person of a right to receive income from property; and
- (b) the income so paid, applied or accumulated is, by virtue of the last preceding section, to be included in the assessable income of another person (in this section referred to as ‘ the transferor ’),

Effect of certain transfers of rights to receive income from property.

then—

- (c) for the purposes of the application of this Act other than this Division in relation to the transferor, an amount equal to the income so paid, applied or accumulated—
 - (i) shall be deemed to have been paid by the transferor to the transferee at the time at which the income was paid to, or applied or accumulated for the benefit of, the transferee; and
 - (ii) shall be deemed to have been so paid for the purpose for which the right was transferred; and
- (d) where, if the right had not been transferred but the transferor had paid to the transferee, at the time at which the income was so paid to, or applied or accumulated for the benefit of, the transferee and for the purpose for which the right was transferred, an amount (in this paragraph referred to as ‘ the notional amount ’) equal to the amount of the income so

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paid, applied or accumulated, the notional amount or a part of the notional amount would have been included in the assessable income of the transferee—there shall be included in that assessable income an amount equal to the notional amount or that part of the notional amount, as the case may be.”.

Interpretation.

28. Section one hundred and three of the Principal Act is amended—

(a) by omitting from sub-section (1.) the definition of “private company”; and

(b) by adding at the end thereof the following sub-section:—

“ (3.) For the purposes of this Division, shares in a company shall be deemed to be held indirectly on behalf of or for the benefit of a person (not being a private company, trustee or partnership) if, in the event of the payment of a dividend on those shares, that person would, otherwise than as a shareholder of the company, receive the whole or a part of that dividend if there were successive distributions of the relative parts of that dividend to and by each of any private companies, trustees or partnerships interposed between the company paying the dividend and that person.”.

29. After section one hundred and three of the Principal Act the following section is inserted:—

Private companies.

“ 103A.—(1.) For the purposes of this Division, a company is a private company in relation to the year of income if the company is not a public company in relation to the year of income.

“ (2.) For the purposes of the last preceding sub-section, a company is, subject to the next succeeding sub-section and to sub-section (6.) of this section, a public company in relation to the year of income if—

(a) shares in the company, not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits, were listed for quotation in the official list of a stock exchange, being a stock exchange in Australia or elsewhere, as at the last day of the year of income;

(b) at all times during the year of income, the company was a co-operative company as defined by section one hundred and seventeen of this Act;

- (c) the company has not, at any time since its formation, been carried on for the purposes of profit or gain to its individual members and was, at all times during the year of income, prohibited by the terms of its constituent document from making any distribution, whether in money, property or otherwise, to its members or to relatives of its members; or
- (d) the company is—
 - (i) a mutual life assurance company as defined by section one hundred and ten of this Act;
 - (ii) a friendly society dispensary within the meaning of section one hundred and twenty-one A of this Act;
 - (iii) a body constituted by a law of the Commonwealth or of a State or Territory of the Commonwealth and established for public purposes, not being a company within the meaning of the law of a State or Territory of the Commonwealth relating to companies;
 - (iv) a company in which a Government or a body referred to in the last preceding subparagraph had a controlling interest on the last day of the year of income; or
 - (v) in relation to the year of income, a subsidiary of a public company.

“(3.) Subject to sub-section (5.) of this section, a company is not, by virtue of paragraph (a) or paragraph (b) of the last preceding sub-section, a public company for the purposes of sub-section (1.) of this section in relation to the year of income where—

- (a) at any time during the year of income, one person or persons not more than twenty in number held, or had the right to acquire or become the holder or holders of, shares representing not less than three-quarters of the paid-up capital of the company, other than capital represented by shares entitled to a fixed rate of dividend only;
- (b) at any time during the year of income, not less than three-quarters of the voting power in the company was capable of being exercised by one person or by persons not more than twenty in number;
- (c) not less than three-quarters of—
 - (i) the amount of any dividend paid by the company during the year of income; or

- (ii) if more than one dividend was paid by the company during the year of income—the total amount of all the dividends paid by the company during the year of income, was paid to one person or to persons not more than twenty in number; or
- (d) a dividend was not paid by the company during the year of income but the Commissioner is of the opinion that, if a dividend had been paid by the company at any time during the year of income, not less than three-quarters of the amount of that dividend would have been paid to one person or to persons not more than twenty in number.

“(4.) For the purposes of this section, a company is a subsidiary of a public company in relation to the year of income if, at the end of the year of income, one or more companies that are public companies for the purposes of sub-section (1.) of this section in relation to the year of income but none of which is a company referred to in paragraph (c) of sub-section (2.) of this section—

- (a) beneficially owns or own shares representing more than one-half of the paid-up capital of the first-mentioned company;
- (b) is or are, by reason of its or their beneficial ownership of shares in the first-mentioned company, capable of controlling or of obtaining control of more than one-half of the voting power in that company;
- (c) would be beneficially entitled to receive more than one-half of any dividends paid by the first-mentioned company; and
- (d) would be beneficially entitled to receive more than one-half of any distribution of capital of the first-mentioned company in the event of the winding up, or of a reduction in the capital, of that company.

“(5.) Where a company would not, under the last three preceding sub-sections, be a public company for the purposes of sub-section (1.) of this section in relation to the year of income but the Commissioner is of the opinion that, having regard to—

- (a) the number of persons who were, at any time during the year of income, capable of controlling the company and whether any of those persons was a public company;
- (b) the paid-up value of the shares issued by the company before the end of the year of income;

- (c) the number of persons who beneficially owned shares in the company at the end of the year of income; and
- (d) any other matters that he thinks relevant,

it is reasonable that the company should be treated as a public company for the purposes of sub-section (1.) of this section in relation to the year of income, the company shall be deemed to be a public company for those purposes in relation to the year of income.

“(6.) Notwithstanding anything in the last four preceding sub-sections, the Commissioner may treat a company as not being, by virtue of paragraph (a) or paragraph (b) of sub-section (2.) of this section, a public company for the purposes of sub-section (1.) of this section in relation to the year of income if the Commissioner is of the opinion that, by reason of—

- (a) any provisions in the company’s constituent document, or in any contract, agreement or instrument, authorizing the variation or abrogation of the voting rights or rights to dividends in respect of any shares in the company or relating to the conversion, exchange or redemption of any such shares;
- (b) any contract, agreement, option or instrument under which a person has power to acquire shares in the company; or
- (c) any power or authority in a person in relation to the voting rights or rights to dividends in respect of any shares in the company,

the voting rights or rights to dividends in respect of any shares in the company were, at any time during the year of income, capable of being varied or abrogated in such a manner (notwithstanding that they were not in fact varied or abrogated in that manner) that—

- (d) not less than three-quarters of the voting power in the company would have been capable of being exercised by one person or by persons not more than twenty in number;
- (e) not less than three-quarters of—
 - (i) the amount of any dividend paid by the company during the year of income; or
 - (ii) if more than one dividend was paid by the company during the year of income—the total amount of all the dividends paid by the company during the year of income,would have been paid to one person or to persons not more than twenty in number; or

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- (f) in the case where the company did not pay a dividend during the year of income—if a dividend had been paid by the company at any time during the year of income, not less than three-quarters of the amount of that dividend would have been paid to one person or to persons not more than twenty in number.

“(7.) For the purposes of this section—

- (a) a person, whether or not he holds shares in the company concerned;
(b) his relatives; and
(c) in relation to any shares in respect of which they are such nominees, his nominees and the nominees of any of his relatives,

shall be deemed to be one person.”.

Companies
which are
private
companies.

30. Section one hundred and five of the Principal Act is repealed.

Definitions.

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

- (a) by omitting paragraph (a) of the definition of “exempt superannuation fund” and inserting in its stead the following paragraph—

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

- (i) being a fund of a kind referred to in paragraph (jaa) of section twenty-three of this Act or a fund to which section twenty-three F of this Act applies in relation to the year of income; and

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

- (b) by adding at the end of the definition of “exempt superannuation fund” the following word and paragraph:—

“or (c) a fund—

- (i) to which section seventy-nine of this Act applies in relation to the year of income; 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;”.

32. Section one hundred and twenty-one B of the Principal Act is repealed and the following sections are inserted in its stead:—

“ 121B. In this Division, unless the contrary intention appears— Definitions.

- ‘ investment income ’, in relation to a superannuation fund to which section one hundred and twenty-one D of this Act applies in relation to the year of income, means the income of the fund that, but for paragraph (ja) of section twenty-three, or section twenty-three F, 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 and deductions in respect of benefits) if that income were assessable income;
- ‘ losses and outgoings ’, in relation to a superannuation fund, does not include any deductions in respect of benefits or any amounts that, if the trustee of the fund were a taxpayer in respect of income derived by the fund, would be allowable as concessional deductions;
- ‘ superannuation fund ’ means a provident, benefit, superannuation or retirement fund;
- ‘ transaction ’ includes a series of transactions.

“ 121BA.—(1.) For the purposes of this Division, the net income of a superannuation fund to which section seventy-nine of this Act applies in relation to the year of income means the assessable income of the fund, other than contributions made to the fund and any income that, by virtue of the succeeding provisions of this section, is not to be taken into account, calculated as if the trustee were a taxpayer in respect of that income, less all allowable deductions other than— Net income. 2 2

- (a) deductions in respect of losses and outgoings to the extent to which those losses and outgoings were incurred by the fund in gaining or producing income that is so not to be taken into account;
- (b) concessional deductions; and
- (c) deductions in respect of benefits.

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“(2.) A dividend paid to a superannuation fund by a company that is a private company in relation to the year of income of the company in which the dividend was paid shall not be taken into account in calculating the net income of the fund unless the Commissioner is of the opinion that it would be reasonable to take the dividend into account having regard to—

- (a) the paid-up value of the shares in the company that are assets of the fund;
- (b) the cost to the fund of the shares on which the dividend was paid by the company;
- (c) the rate of the dividend paid to the fund by the company on the shares in the company that are assets of the fund;
- (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend;
- (e) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (f) any other matters that the Commissioner considers relevant.

“(3.) For the purposes of the last preceding sub-section, income that, in the opinion of the Commissioner, was derived by a superannuation fund indirectly from a dividend paid by a company, being a private company in relation to the year of income of the company in which the dividend was paid, shall be deemed to have been a dividend paid to the fund by the company.

“(4.) Income (other than a dividend to which sub-section (2.) of this section applies) derived by a superannuation fund from a transaction shall not be taken into account in calculating the net income of the fund if the Commissioner is satisfied that the parties to the transaction were not dealing with each other at arm’s length in relation to the transaction and that that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm’s length in relation to the transaction.

“(5.) For the purposes of section seventy-nine c of this Act—

- (a) any income that, by virtue of the last three preceding sub-sections, is not to be taken into account in calculating the net income of a superannuation fund to which section seventy-nine of this Act applies in relation to the year of income shall be deemed not to be assessable income of the fund; and
- (b) any losses and outgoings incurred by the fund, to the extent to which those losses or outgoings were incurred in gaining or producing income that is to be so deemed not to be assessable income of the fund, shall be deemed not to be allowable deductions.”.

33. Section one hundred and twenty-one c of the Principal Act is amended—

Limitation of exemption from tax of income of certain superannuation funds.

(a) by inserting before sub-section (1.) the following sub-section:—

“(1A.) In this section, ‘superannuation fund’ means a provident, benefit, superannuation or retirement fund—

(a) the income of which would, but for this Division, 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; or

(b) to which section twenty-three F of this Act applies in relation to the year of income,

but does not include a fund that is primarily and principally a hospital benefits fund, medical benefits fund, sickness benefits fund, dental benefits fund or funeral benefits fund.”; and

(b) by omitting from sub-section (1.), sub-section (2.) and sub-section (3.) the words “paragraph (j) or (ja) of section twenty-three” and inserting in their stead the words “paragraph (ja) of section twenty-three, or section twenty-three F,”.

34. Section one hundred and twenty-one D of the Principal Act is repealed and the following sections are inserted in its stead:—

“121CA. The trustee of a superannuation fund to which section twenty-three F of this Act applies in relation to the year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon so much of the income derived by the fund in the year of income, other than income that is, or, but for section one hundred and twenty-one c of this Act, would be, exempt from income tax by virtue of section twenty-three F of this Act, as remains after deducting from the first-mentioned income any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature.

Assessment of income of superannuation funds to which section 23F applies.

“121CB. The trustee of a superannuation fund to which section seventy-nine of this Act applies in relation to the year of income shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon an amount equal to the sum of—

Assessment of income of superannuation funds established for benefit of employees and other persons.

(a) the net income of the fund of the year of income; and

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- (b) so much of the income derived by the fund in the year of income that is not, by virtue of sub-sections (2.), (3.) and (4.) of section one hundred and twenty-one BA of this Act, to be taken into account in calculating the net income of the fund as remains after deducting from the income that is so not to be taken into account any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature.

Assessment of investment income of superannuation funds of a kind referred to in paragraph (ja) of section 23 or to which section 23F applies.

“ 121D. The trustee of a superannuation fund—

- (a) the income of which would, but for this Division, 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; or
(b) to which section twenty-three F of this Act applies in relation to the year of income,

shall be assessed and is liable to pay tax, at the rates declared by the Parliament for the purposes of this section, upon the investment income of the fund of the year of income, to the extent to which that income is, by virtue of section one hundred and twenty-one C of this Act, not exempt from income tax.

Assessment of income of other superannuation funds.

“ 121DA. The trustee of a superannuation fund, other than a superannuation fund to which any of the last three preceding sections applies in relation to the year of income, shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon the amount remaining after deducting from the assessable income of the fund of the year of income, other than contributions to the fund, calculated as if the trustee were a taxpayer in respect of that income, all allowable deductions other than concessional deductions and deductions in respect of benefits.

Income of superannuation funds to be taxed exclusively under this Division.
Taxable income.

“ 121DB. Except as provided by Division 11A of this Part, the income of a superannuation fund is not subject to income tax otherwise than as provided by this Division.

“ 121DC. The amount upon which the trustee of a superannuation fund is assessed and liable to pay tax as provided by section one hundred and twenty-one CA, section one hundred and twenty-one CB or section one hundred and twenty-one DA of this Act shall, for the purposes of this Act, be deemed to be taxable income of the fund.

Rebates and provisional tax.

“ 121DD. 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;

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- (b) is not entitled to a rebate as provided by section forty-six of this Act; and
- (c) is not liable to pay provisional tax and contribution in respect of income of the fund.

“ 121DE. For the purposes of this Division, where the trustee of a superannuation fund has been, or is liable to be, assessed as provided by section one hundred and twenty-one CA of this Act in respect of income of the fund derived during a year of income—

Reduction of cost of assets and investment income in certain circumstances.

- (a) the cost of all the assets that were included in the assets of the fund as at any time during that year of income shall be deemed to be reduced by the cost of the assets from which, during that year of income, the fund derived the income in respect of which the trustee has been, or is liable to be, assessed as provided by section one hundred and twenty-one CA of this Act;
- (b) the cost of all the assets that were included in the assets of the fund as at the first day of March, One thousand nine hundred and sixty-one, shall be deemed to be reduced by the cost of the assets from which, during the year of income that commenced on the first day of July, One thousand nine hundred and sixty, the fund derived income in respect of which, in the opinion of the Commissioner, the trustee would have been liable to be assessed as provided by section one hundred and twenty-one CA of this Act if that section and section twenty-three F of this Act had been in force during that year of income and had applied in respect of income of the fund derived during that year of income; and
- (c) 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, shall be deemed to be reduced by the amount of the income, if any, of the fund derived during that year of income in respect of which, in the opinion of the Commissioner, the trustee would have been liable to have been assessed as provided by section one hundred and twenty-one CA of this Act if that section and section twenty-three F of this Act had been in force during that year of income and had applied in respect of income of the fund derived during that year of income.”.

35. Section one hundred and twenty-four of the Principal Act is amended by omitting from sub-section (4.) the words “ Division 4 of this Part ” and inserting in their stead the words “ section twenty-six AB of this Act or Division 4 of this Part ”.

Disposal, loss, destruction or termination of use of property.

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Disposal, loss,
destruction or
termination of
use of property.

36. Section one hundred and twenty-four G of the Principal Act is amended by omitting from sub-section (4.) the words " Division 4 of this Part " and inserting in their stead the words " section twenty-six AB of this Act or Division 4 of this Part ".

Disposal,
destruction or
termination of
use of building.

37. Section one hundred and twenty-four JB of the Principal Act is amended by omitting from sub-section (4.) the words " Division 4 of this Part " and inserting in their stead the words " section twenty-six AB of this Act or Division 4 of this Part ".

Liability to
dividend
(withholding)
tax.

38. Section one hundred and twenty-eight B of the Principal Act is amended—

(a) by omitting from paragraph (c) of sub-section (1.) the words " or sub-section (2.) of section twenty-three C," and inserting in their stead the words " sub-section (2.) of section twenty-three C or section twenty-three F ";

(b) by inserting in paragraph (e) of sub-section (1.), after the words " section ninety-nine ", the words " or section ninety-nine A "; and

(c) by omitting sub-section (1A.) and inserting in its stead 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 (ja) of section twenty-three, or section twenty-three F, of this Act, the operation of section one hundred and twenty-one C of this Act shall be disregarded."

Application of
Division.

39. Section one hundred and fifty-eight of the Principal Act is amended by inserting after the word " years " the words " or where the taxpayer is assessed in accordance with section ninety-nine A of this Act in respect of the year of income ".

Rebate in case
of disposal of
assets of a
business of
primary
production.

40. Section one hundred and sixty of the Principal Act is amended by inserting in sub-section (5.), before the definition of " the average income of the taxpayer ", the following definition:—

" ' tax ' does not include further tax payable in accordance with section ninety-four of this Act;".

Interpretation.

41. Section one hundred and sixty AE of the Principal Act is amended by omitting from sub-section (1.) the definitions of " apportionable deductions " and " private company ".

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42. Section one hundred and sixty AF of the Principal Act is amended by omitting sub-section (5.) and inserting in its stead the following sub-section:—

Credit in respect of tax paid in Territory of Papua and New Guinea.

“(5.) Where—

- (a) a person who has paid or is liable to pay further tax assessed under section ninety-four of this Act in respect of income derived in the year of income has derived income in the year of income from sources in the Territory; or
- (b) a trustee of a trust estate has paid or is liable to pay tax assessed under section one hundred and two of this Act in respect of income derived in the year of income, being income that consists of or includes income derived from sources in the Territory,

the amount of Australian tax payable in respect of the income derived by the person or trustee in the year of income from sources in the Territory is, for the purposes of sub-section (1.) of this section, such amount as the Commissioner determines, being so much of the tax paid or payable by the person or trustee in respect of income of the year of income as, in the opinion of the Commissioner, is reasonably attributable to the income derived from sources in the Territory.”.

43. Section one hundred and seventy of the Principal Act is amended by inserting after sub-section (10.) the following sub-section:—

Amendment of assessments.

“(10A.) Nothing in this section prevents the amendment of an assessment, for the purpose of giving effect to the provisions of sub-section (3.), sub-section (4.) or sub-section (8.) of section ninety-four, or sub-section (2.) of section ninety-nine A, of this Act, if the amendment effects a reduction in the liability of the taxpayer and is made within three years after the date upon which the tax became due and payable under that assessment.”.

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

Interpretation.

“(1A.) In this Division, other than sections two hundred and twenty-one YE and two hundred and twenty-one YG, ‘ income tax ’ or ‘ tax ’ does not include further tax assessed in accordance with section ninety-four of this Act or tax assessed in accordance with section ninety-nine A of this Act.”.

45.—(1.) The amendments made by sections four to seven (inclusive), ten, twelve to eighteen (inclusive), twenty-three to twenty-six (inclusive), twenty-eight to thirty-four (inclusive) and paragraph (c) of section thirty-eight of this Act apply to

Application of amendments.

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assessments in respect of income of the year of income that commences on the first day of July, One thousand nine hundred and sixty-five, and in respect of income of all subsequent years of income.

(2.) The amendments made by paragraphs (a) and (c) of section four and sections forty-one and forty-two of this Act apply to determinations of credits in respect of tax upon income of the year of income that commences on the first day of July, One thousand nine hundred and sixty-five, and in respect of tax upon income of all subsequent years of income.

(3.) The amendment made by section twenty-seven of this Act applies in relation to income where an effect of applying the amendment would be to include that income in the assessable income of the year of income that commences on the first day of July, One thousand nine hundred and sixty-five, or of a succeeding year of income, of a person who has transferred the right to receive that income to another person.

Transitional
provisions
relating to
income of
certain
superannuation
funds.

46.—(1.) In this section—

“losses and outgoings”, in relation to a superannuation fund, does not include any deductions in respect of benefits or any amounts that, if the trustee of the fund were a taxpayer in respect of income derived by the fund, would be allowable as concessional deductions;

“private company” means a company that is a private company under section one hundred and five of the Principal Act;

“superannuation fund” means a provident, benefit, superannuation or retirement fund;

“the prescribed period” means the period that commenced on the twenty-third day of October, One thousand nine hundred and sixty-four, and ends at the expiration of the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-five;

“transaction” includes a series of transactions.

(2.) This section applies to a superannuation fund the income of which would, but for Division 9B of Part III. of the Principal Act and this section, be exempt from income tax by virtue of paragraph (j) of section twenty-three of the Principal Act, irrespective of whether that income would also be so exempt by virtue of any other paragraph of that section, but does not apply to a fund established by—

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

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- (b) 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.

(3.) A dividend paid during the prescribed period by a private company to a superannuation fund to which this section applies is not exempt from income tax by virtue of paragraph (j) of section twenty-three of the Principal Act unless the Commissioner is of the opinion that it would be reasonable to exempt the dividend from income tax, having regard to—

- (a) the paid-up value of the shares in that company that are assets of the fund;
- (b) the cost to the fund of the shares on which the dividend was paid by the company;
- (c) the rate of the dividend paid to the fund by the company on the shares in the company that are assets of the fund;
- (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend;
- (e) whether any shares have been issued by the company to the fund in satisfaction of, or of a part of, a dividend paid by the company and, if so, the circumstances of the issue of those shares; and
- (f) any other matters that the Commissioner considers relevant.

(4.) For the purposes of the last preceding sub-section, income that, in the opinion of the Commissioner, was derived by a superannuation fund indirectly from a dividend paid by a private company shall be deemed to have been a dividend paid to the fund by the company.

(5.) Income (other than a dividend to which sub-section (3.) of this section applies) derived during the prescribed period by a superannuation fund to which this section applies from a transaction is not exempt from income tax by virtue of paragraph (j) of section twenty-three of the Principal Act if the Commissioner is satisfied that the parties to the transaction were not dealing with each other at arm's length in relation to the transaction and that that income is greater than the income that might have been expected to have been derived by the fund from the transaction if those parties had been dealing with each other at arm's length in relation to the transaction.

(6.) The last preceding sub-section does not apply in relation to income derived by a superannuation fund from a transaction entered into in the course of the carrying on of a business by the

trustee of the fund if the Commissioner is of the opinion that it is not practicable to ascertain the income derived by the fund from the transaction.

(7.) The trustee of a superannuation fund to which this section applies shall be assessed and is liable to pay tax, at the rate declared by the Parliament for the purposes of this section, upon so much of the income of the fund derived during the prescribed period, other than income that is, or, but for section one hundred and twenty-one c of the Principal Act. would be, exempt from income tax by virtue of paragraph (j) of section twenty-three of the Principal Act as affected by this section, as remains after deducting from that income any losses and outgoings incurred by the fund to the extent to which the losses and outgoings are incurred in gaining or producing that income and are not of a private or capital nature.

(8.) The amount upon which the trustee of a superannuation fund is assessed and liable to pay tax as provided by the last preceding sub-section shall, for the purposes of the Principal Act, be deemed to be taxable income of the fund.

(9.) The trustee of a superannuation fund to which this section applies is not liable to pay provisional tax and contribution in respect of income upon which he is assessed and liable to pay tax as provided by sub-section (7.) of this section.

(10.) For the purposes of this section, where the income of a superannuation fund to which this section applies is derived from assets that are not vested in a trustee of the fund—

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

(11.) Where property is held in trust for the trustee of a superannuation fund to which this section applies, that property shall, for the purposes of this section, be deemed to be assets of the fund.

(12.) For the purposes of Division 9B of Part III. of the Principal Act, where the trustee of a superannuation fund to which this section applies has been, or is liable to be, assessed as provided by sub-section (7.) of this section in respect of income of the fund derived during the prescribed period—

- (a) the cost of all the assets that were included in the assets of the fund at any time during the prescribed period shall be deemed to be reduced by the cost of the assets

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from which, during that period, the fund derived the income in respect of which the trustee has been, or is liable to be, assessed as provided by sub-section (7.) of this section;

- (b) the cost of all the assets that were included in the assets of the fund as at the first day of March, One thousand nine hundred and sixty-one, shall be deemed to be reduced by the cost of the assets from which, during the year of income that commenced on the first day of July, One thousand nine hundred and sixty, the fund derived income in respect of which, in the opinion of the Commissioner, the trustee would have been liable to be assessed as provided by sub-section (7.) of this section if this section had been in force during that year of income and had applied in respect of income of the fund derived during that year of income; and
- (c) 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, shall be deemed to be reduced by the amount of the income, if any, of the fund derived during that year of income in respect of which, in the opinion of the Commissioner, the trustee would have been liable to be assessed as provided by sub-section (7.) of this section if this section had been in force during that year of income and had applied in respect of income of the fund derived during that year of income.

(13.) In determining for the purposes of Division 9B of Part III. of the Principal Act whether a fund is a superannuation fund within the meaning of that Division, the operation of this section shall be disregarded.