**Income Tax Assessment (No. 3)**

**No. 47 of 1972**

An Act to Amend the Law relating to Income Tax in respect of Companies.

[*Assented to 7 June 1972*]

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 Assessment Act* (*No.* 3) 1972.

(2.) The *Income Tax Assessment Act* 1936-1971, as amended by the *Income Tax Assessment Act* 1972 and by the *Income Tax Assessment Act* (*No.* 2) 1972, is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Income Tax Assessment Act* (*No.* 2) 1972 is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1936-1972.

**Commencement.**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Rebate on dividends.**

**3.** Section 46 of the Principal Act is amended—

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

“(1a.) A reference in this section, other than a reference in paragraph (*a*)or paragraph (*b*)of sub-section (3.), to a dividend shall be read as a reference to a dividend in relation to which this section applies, and a dividend is a dividend in relation to which this section applies if the dividend is not a dividend in relation to which the next succeeding section applies.”;

(*b*)by inserting in paragraph (*a*)of sub-section (7.), after the word “shareholder” (first and second occurring), the words “of the year of income”;

(*c*) by inserting in paragraph (*b*)of sub-section (7.), after the word “shareholder” (first and second occurring), the words “of the year of income”;

(*d*)by inserting after sub-section (7.) the following sub-section:—

“(7a.) Where the value of an article of trading stock (not being live stock) that is to be taken into account at the end of the year of income in ascertaining whether or not a shareholder, being a company, has a taxable income is greater than the value of that article that would be taken into account at that time if the shareholder had exercised the option under sub-section (1.) of section thirty-one of this Act in relation to that article otherwise than in the way in which he exercised that option and the option was exercised in that way for the purpose, or for purposes that included the purpose, of increasing the amount of the rebate to which the shareholder would be entitled under sub-section (2.), or that might be allowed to the shareholder under sub-section (3.), of this section, then, in calculating the amount of the rebate to which the shareholder is entitled under sub-section (2.), or that may be allowed to the shareholder under sub-section (3.), of this section—

(*a*)a reference in this section to the part of any dividends that is included in the taxable income of the shareholder shall be read as a reference to the part of any dividends that would have been included in the taxable income of the shareholder if the option had been exercised in such a way that the value of the article that would have been taken into account at the end of the year of income would have been the lowest amount at which the value of that article could have been taken into account at that time in accordance with sub-section (1.) of section thirty-one of this Act; and

(*b*)a reference in this section to the part of any private company dividends that is included in the taxable income of the shareholder shall be read as a reference to the part of any private company dividends that would have been included in the taxable income of the shareholder if the option had been exercised in such a way that the value of the article that would have been taken into account at the end of the year of income would have been the lowest amount at which the value of that article could have been taken into account at that time in accordance with sub-section (1.) of section thirty-one of this Act.”; and

(*e*)by inserting in sub-section (8.), after the word “rebate”, the words “under this section”.

**4.** After section 46 of the Principal Act the following section is inserted:—

**Rebate on dividends paid as part of dividend stripping operation.**

“46a.—(1.) A reference in this section, other than a reference in sub-section (2.) or sub-section (3.), or paragraph (*a*)or paragraph (*b*)of sub-section (6.), to a dividend shall be read as a reference to a dividend in relation to which this section applies, and a dividend is a dividend in relation to which this section applies if the dividend was paid after the thirty-first day of August, One thousand nine hundred and seventy-one, and the payment of the dividend arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement that the Commissioner is satisfied was by way of dividend stripping.

“(2.) A dividend paid in respect of shares in a company shall not be taken to be a dividend in relation to which this section applies unless the shareholder acquired (whether alone or jointly with another person or other persons) those shares or other shares in that company (in this section referred to as ‘the relevant shares’) as trading stock or in such circumstances that any profit that would arise from a disposal of the shares would, in whole or in part, be included in the assessable income of the shareholder or any loss that would arise from a disposal of the shares would, in whole or in part, be allowable as a deduction to the shareholder.

“(3.) In considering whether the payment of a dividend by a company arose out of, or was made in the course of, a transaction, operation, undertaking, scheme or arrangement by way of dividend stripping, the Commissioner shall take into consideration—

(*a*)whether the effect of the payment of the dividend by the company to the shareholder, or the effect of that payment and of the payments of any other dividends that have been or are likely to be made by the company to the shareholder, has been, or would be, to reimburse the shareholder wholly or substantially for the amount or amounts paid by him in respect of the acquisition of the relevant shares;

(*b*)whether the value of the relevant shares—

(i) in the case of shares held by the shareholder at the end of the year of income—at that time;

(ii) in the case of shares disposed of by the shareholder during the year of income—immediately before the disposal; or

(iii) in the case where a distribution was made to the shareholder during the year of income by a liquidator in the course of winding up the company—immediately after the distribution was made,

was substantially less than the value of those shares at the time when they were acquired by the shareholder and, if so, whether the reduction in value was wholly or mainly attributable to the payment of a dividend to the shareholder by the company;

(*c*) whether the right to receive dividends in respect of the relevant shares is, by reason of any provision in the constituent document of the company or of any agreement, arrangement or understanding (whether formal or informal, whether express or implied and whether or not enforceable by legal proceedings), limited as to the total of the amounts that may be paid as dividends in respect of the shares or as to the source of the profits from which, or the period during which, dividends may be paid in respect of the shares; and

(*d*)any other relevant matters.

“(4.) 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.

“(5.) 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 net income derived from private company dividends by the shareholder; and

(ii) the net income derived from other dividends by the shareholder; and

(*b*)if the shareholder is not a private company in relation to the year of income, to the net income derived from dividends by the shareholder.

“(6.) 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 net income derived from private company dividends by the shareholder 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;

(*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.

“(7.) 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.

“(8.) For the purposes of sub-sections (5.) and (6.) 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 dollar 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 dollars in that taxable income.

“(9.) For the purposes of sub-sections (5.) and (6.) of this section—

(*a*)the net income derived from dividends by a shareholder is the amount remaining after deducting from the amount of the dividends included in the assessable income of the shareholder of the year of income the deductions allowed or allowable to the shareholder under this Act in respect of those dividends; and

(*b*)the net income derived from private company dividends by 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 of the year of income—

(i) any deductions allowed or allowable to the shareholder under this Act in respect of the dividends included in the assessable income of the shareholder of the year of income, being deductions that relate exclusively to the private company dividends; and

(ii) so much of any other deductions allowed or allowable to the shareholder under this Act in respect of the dividends included in the assessable income of the shareholder of the year of income as the Commissioner is satisfied it is reasonable to attribute to the private company dividends.

“(10.) For the purposes of the last preceding sub-section, the deductions allowed or allowable to a shareholder under this Act in respect of the dividends included in the assessable income of the shareholder of the year of income are—

(*a*)any deductions allowed or allowable to the shareholder under this Act in relation to the year of income or any other year of income, being deductions that related or relate exclusively to any of those dividends; and

(*b*)so much of any other deductions (including deductions, whether in respect of losses, outgoings or otherwise, that are not specifically related to particular income or to income included in a particular class of income) allowed or allowable to the shareholder under this Act in relation to the year of income or any other year of income as the Commissioner is satisfied it is reasonable to attribute to those dividends.

“(11.) Where any profit arising from a transaction, undertaking or scheme that involved the acquisition by a person (whether alone or jointly with another person or other persons) of shares in a company (being a company from which the person has received dividends, whether in respect of those shares or other shares) has been or is included in the assessable income of the person of a year of income—

(*a*)any expenditure incurred by the person in respect of the acquisition of those shares; and

(*b*)any other expenditure incurred by the person in connexion with the transaction, undertaking or scheme, being expenditure that was, or is to be, taken into account in ascertaining the amount of that profit,

shall, for the purposes of the last preceding sub-section, be deemed to have been a deduction allowed, or to be a deduction allowable, as the case may be, to the person under this Act in relation to that year of income.

“(12.) Where any loss incurred in respect of a transaction, undertaking or scheme that involved the acquisition by a person (whether alone or jointly with another person or other persons) of shares in a company (being a company from which the person has received dividends, whether in respect of those shares or other shares) has been allowed or is allowable as a deduction to the person under this Act in relation to a year of income—

(*a*)any expenditure incurred by the person in respect of the acquisition of those shares; and

(*b*)any other expenditure incurred by the person in connexion with the transaction, undertaking or scheme, being expenditure that was, or is to be, taken into account in ascertaining the amount of that loss,

shall, for the purposes of sub-section (10.) of this section, be deemed to have been a deduction allowed, or to be a deduction allowable, as the case may be, to the person under this Act in relation to that year of income, but the amount of the loss shall, for the purposes of that sub-section, be deemed not to have been a deduction allowed, or not to be a deduction allowable, as the case may be, to the person under this Act in relation to that year of income.

“(13.) In considering whether it is reasonable to attribute the whole or any part of a deduction referred to in paragraph (*b*)of sub-section (10.) of this section, to any dividends, the Commissioner shall disregard the operation of section fifty of this Act.

“(14.) Notwithstanding anything in any other provision of this Act—

(*a*)the Commissioner may amend an assessment for the purpose of giving effect to sub-section (6.) or sub-section (7.) of this section if the amendment is made within three years after the date upon which the tax became due and payable under the assessment; and

(*b*)the Commissioner may amend an assessment at any time for the purpose of taking into account, under sub-sections (9.) and (10.) of this section, a deduction that has been allowed, or is allowable, to a shareholder in relation to a year of income subsequent to the year of income to which the assessment relates,

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.

“(15.) 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 under this section in its assessment in respect of dividends paid to it by that company.

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

**Interpretation.**

**5.** Section 103 of the Principal Act is amended—

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

“‘the relevant holding company or holding companies’, in relation to another company in relation to a year of income of that other company, means—

(*a*)if the other company would, apart from sub-section (4d.) of section one hundred and three a of this Act, be a subsidiary of a public company for the purposes of that section in relation to that year of income by virtue of sub-section (4.) of that section—the public company or public companies referred to in paragraph (*a*)of sub-section (4.) of that section; or

(*b*)if the other company would, apart from sub-section (4d.) of section one hundred and three a of this Act, be a subsidiary of a public company for the purposes of that section in relation to that year of income by virtue of sub-section (4b.) of that section—the listed company or listed companies referred to in paragraphs (*a*)and (*b*)of sub-section (4b.) of that section;”;

(*b*)by inserting in the definition of “the undistributed amount” in sub-section (1.), after the words “other than special fund dividends”, the words “and dividends to which sub-section (3.) of section one hundred and five a of this Act applies”; and

(*c*) by adding at the end thereof the following sub-sections:—

“(4.) For the purposes of this Division, a company shall be taken to have been a listed company during a period that was included in a year of income of another company (in this sub-section referred to as ‘the relevant year of income’) where—

(*a*)if the period was included in the year of income of the first-mentioned company (in this sub-section referred to as ‘the corresponding year of income’) that corresponded with the relevant year of income—the first-mentioned company was, by virtue of paragraph (*a*)of sub-section (2.) of section one hundred and three a of this Act, a public company for the purposes of sub-section (1.) of that section in relation to the corresponding year of income; or

(*b*)if the period was included in the year of income of the first-mentioned company that immediately preceded or immediately followed the corresponding year of income—the first-mentioned company was, by virtue of paragraph (*a*)of sub-section (2.) of section one hundred and three a of this Act, a public company for the purposes of sub-section (1.) of that section in relation to that preceding or following year of income, as the case may be

“(5.) A reference in this Division to a right, power, option, agreement or instrument shall be read as including a reference to a right, power, option, agreement or instrument that is not enforceable by legal proceedings whether or not it was intended to be so enforceable.

“(6.) For the purposes of this Division, an arrangement or understanding, whether formal or informal and whether express or implied, shall be deemed to be an agreement.”.

**Private companies.**

**6.**—(1.) Section 103a of the Principal Act is amended by omitting sub-section (4.) and inserting in its stead the following sub-sections:—

“(4.) Subject to sub-section (4d.) of this section, a company is, for the purposes of this section, a subsidiary of a public company in relation to the year of income if—

(*a*)at all times during the year of income all the shares in the first-mentioned company were beneficially owned by a company which, or companies each of which, is a public company for the purposes of sub-section (1.) of this section in relation to the year of income of that company (in this sub-section referred to as ‘the corresponding year of income’) that corresponds with the first-mentioned year of income but which is not, or none of which is—

(i) a company to which paragraph (*c*) of sub-section (2.) of this section applies in relation to the corresponding year of income; or

(ii) a subsidiary of a public company for the purposes of this section in relation to the corresponding year of income by reason of sub-section (4b.) of this section;

(*b*)the corresponding year of income, or each of the corresponding years of income, referred to in the last preceding paragraph ended on the same day as the year of income first-mentioned in that paragraph;

(*c*) at no time during the year of income was a person or were two or more persons in a position to affect rights of the relevant holding company or holding companies in connexion with the first-mentioned company so as to prevent the relevant holding company or holding companies from exercising for its or their own benefit the whole of the voting power in the first-mentioned company or from receiving for its or their own benefit the whole of any dividends that might be paid by the first-mentioned company or of any distribution that might be made of capital of the first-mentioned company; and

(*d*)no agreement was entered into before or during the year of income by virtue of which a person or two or more persons would be in a position after the year of income so to affect rights of the relevant holding company or holding companies in connexion with the first-mentioned company.

“(4a.) For the purposes of paragraphs (*c*) and (*d*)of the last preceding sub-section, a person shall be taken to have been, or to be, in a position at a particular time to affect any rights of the relevant holding company or holding companies in connexion with the company first-mentioned in that sub-section (in this sub-section referred to as ‘the first-mentioned company’) if at that time that person had or has a right, power or option (whether by virtue of any provision in the constituent document of the first-mentioned company or by virtue of any agreement or instrument or otherwise) to acquire those rights or to do an act or thing that would prevent the relevant holding company or holding companies from exercising those rights for its or their own benefit or receiving any benefits accruing by reason of those rights.

“(4b.) Subject to sub-section (4d.) of this section, a company that is not, by virtue of sub-section (4.) of this section, a subsidiary of a public company for the purposes of this section in relation to the year of income is, for the purposes of this section, a subsidiary of a public company in relation to the year of income if—

(*a*)at all times during the year of income the voting power in the first-mentioned company was controlled, or was capable of being controlled, by a listed company or listed companies, either directly or through one or more companies, trustees or partnerships interposed between the first-mentioned company and the listed company or listed companies;

(*b*)at all times during the year of income a listed company or listed companies had a right to receive, either directly or through one or more companies, trustees or partnerships interposed between the first-mentioned company and the listed company or listed companies, more than one-half of any dividends that might be paid by the first-mentioned company and more than one-half of any distribution that might be made of capital of the first-mentioned company;

(*c*)at no time during the year of income was a person or were two or more persons in a position to affect rights of the listed company or listed companies in connexion with the first-mentioned company so as to prevent the listed company or listed companies from exercising for its or their own benefit control of the voting power in the first-mentioned company or from receiving for its or their own benefit more than one-half of any dividends that might be paid by the first-mentioned company or of any distribution that might be made of capital of the first-mentioned company; and

(*d*)no agreement was entered into before or during the year of income by virtue of which a person or two or more persons would be in a position after the year of income so to affect rights of the listed company or listed companies in connexion with the first-mentioned company.

“(4c.) For the purposes of paragraphs (*c*)and (*d*)of the last preceding sub-section, a person shall be taken to have been, or to be, in a position at a particular time to affect any rights of a listed company or listed companies in connexion with another company if at that time that person had, or has, a right, power or option (whether by virtue of any provision in the constituent document of the other company or of any company interposed between the listed company or listed companies and the other company or by virtue of any agreement or instrument or otherwise) to acquire those rights or to do an act or thing that would prevent the listed company or listed companies from exercising those rights for its or their own benefit or receiving any benefits accruing by reason of those rights.

“(4d.) A company (in this sub-section and the next succeeding sub-section referred to as ‘the company concerned’) that would, apart from this sub-section, be a subsidiary of a public company for the purposes of this section in relation to the year of income shall be deemed, for the purposes of this section, not to be a subsidiary of a public company in relation to the year of income if the Commissioner is satisfied that—

(*a*)where the company concerned would, apart from this sub-section, be such a subsidiary in relation to the year of income by virtue of sub-section (4.) of this section—the affairs of the company concerned were managed or conducted in the year of income in the interests of persons other than the relevant holding company or holding companies; or

(*b*)where the company concerned would, apart from this sub-section, be such a subsidiary in relation to the year of income by virtue of sub-section (4b.) of this section—the affairs of the company concerned were managed or conducted in the year of income without proper regard to the interests of the relevant holding company or holding companies.

“(4e.) In considering whether the affairs of the company concerned were managed or conducted in the year of income as mentioned in the last preceding sub-section, the Commissioner shall have regard to—

(*a*)the circumstances in which the relevant holding company or holding companies acquired a direct or indirect beneficial interest or interests in shares in the company concerned (whether the interest was, or the interests were, acquired before or during the year of income) and, in particular, whether those circumstances were capable of explanation by reference to ordinary commercial dealing;

(*b*)the provisions of the constituent document of the company concerned as in force during the year of income that related to the management or conduct of the affairs of that company, including the provisions of the constituent document that related to the appointment or removal of directors, the issue, allotment or

redemption of shares, the grant, withdrawal or variation of rights in respect of shares, the payment of dividends and the investment or other application of moneys of that company;

(*c*)the nature and extent of any right, power, option or agreement in existence during the year of income that related to the management or conduct of the affairs of the company concerned, including any right, power, option or agreement that related to the appointment or removal of directors, the issue, allotment or redemption of shares, the grant, withdrawal or variation of rights in respect of shares, the payment of dividends and the investment or other application of moneys of that company;

(*d*)whether rights of the relevant holding company or holding companies in connexion with the company concerned were exercised during the year of income otherwise than for the benefit of the relevant holding company or holding companies or were not exercised in circumstances where it might reasonably have been expected that they would have been exercised;

(*e*)the nature and source of the income derived by the company concerned during the year of income and whether the derivation by that company of that income was capable of explanation by reference to ordinary commercial dealing;

(*f*) the manner in which the moneys of the company concerned were applied during the year of income and, in particular, whether they were lent to, or invested or otherwise made available for the use or benefit of, a person or persons other than the relevant holding company or holding companies and, if any such moneys were so lent, invested or made available—

(i) the terms and conditions upon which the moneys were so lent, invested or made available;

(ii) whether the lending, investment or making available of those moneys was capable of explanation by reference to ordinary commercial dealing; and

(iii) the connexion (if any) between that person or those persons, the directors of the company concerned and the directors of, or the beneficial owners of the shares in, the company from which the company concerned received dividends before or during the year of income;

(*g*)the respective amounts of any dividends in respect of shares in the company concerned that were paid during the year of income or might reasonably be expected to be paid after that year by that company and the circumstances in which those dividends were, or might be expected to be, paid; and

(*h*)any other relevant matters.”.

(2.) Section 103a of the Principal Act is amended—

(*a*)by omitting from sub-section (5.) the words “last three preceding sub-sections” and inserting in their stead the words “preceding provisions of this section”; and

(*b*)by omitting from sub-section (6.) the words “last four preceding sub-sections” and inserting in their stead the words “preceding provisions of this section”.

**Sufficient distribution.**

**7.** Section 105a of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(3.) A dividend paid by a company during the prescribed period shall not be taken into account for the purposes of sub-section (1.) of this section if—

(*a*)the dividend was paid in respect of shares that were issued at a premium; or

(*b*)the beneficial owner of the shares in respect of which the dividend was paid was, or had previously been, the beneficial owner of other shares in the company, being shares that were issued at a premium,

and the Commissioner is satisfied that the issue of the shares at a premium and the payment of the dividend were made in accordance with an agreement under which the company was to pay a dividend or dividends in respect of any shares and the effect of the payment of the dividend or dividends was to reimburse wholly or substantially the person by whom or on whose behalf the premium was paid for the payment of the amount of the premium.

“(4.) A reference in the last preceding sub-section to shares issued at a premium includes a reference to stock into which shares so issued have been converted.”.

**Excess distributions carried forward.**

**8.** Section 106 of the Principal Act is amended—

(*a*)by inserting in sub-section (1.), after the words “special fund dividends”, the words “and dividends to which sub-section (3.) of section one hundred and five a of this Act applies”; and

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

“(4.) Where—

(*a*)a company is a subsidiary of a public company for the purposes of section one hundred and three a of this Act in relation to the year of income that ended on the thirtieth day of June, One thousand nine hundred and seventy-one;

(*b*)that company is not a subsidiary of a public company for the purposes of that section in relation to the year of income that commenced on the first day of July, One thousand nine hundred and seventy-one; and

(*c*) a company that was a private company for the purposes of this Division in relation to the year of income that ended on the thirtieth day of June, One thousand nine hundred and seventy-one, paid a dividend to the first-mentioned company on or after the twenty-ninth day of April, One thousand nine hundred and seventy-one, and before the expiration of the year of income of the first-mentioned company that ended on the thirtieth day of June, One thousand nine hundred and seventy-one,

the amount of that dividend shall not be taken into account in determining whether that private company has made an excess distribution for the year of income that ended on the thirtieth day of June, One thousand nine hundred and seventy, or for the year of income that ended on the thirtieth day of June, One thousand nine hundred and seventy-one.”.

**Modification of ss. 46 and 46a in relation to certain life assurance companies.**

**9.** Section 116a of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

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

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

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

the amount of the rebate to which the company is entitled under section forty-six or section forty-six a of this Act, or the sum of the amounts of the rebates to which the company is entitled under those sections, as the case may be, in respect of the first-mentioned year of income is an amount ascertained in accordance with the formula  where—

*a* is the amount of the rebate to which the company would have been entitled under section forty-six or section forty-six a of this Act, or the sum of the amounts of the rebates to which the company would have been entitled under those sections, as the case may be, in respect of the first-mentioned year of income if this section had not been enacted;

*b* is the amount of the rebate or the sum of the amounts of the rebates to which the company would have been so entitled if the references in that section or those sections to dividends were references to dividends from insurance funds and to no other dividends;

*c* is the amount of dividends from insurance funds included in the assessable income of the company of the first-mentioned year of income; and

*d* is the amount of dividends from insurance funds included in the assessable income of the company of the year of income that ended on the thirtieth day of June, One thousand nine hundred and sixty-one.”.

**Rebates and provisional tax.**

**10.** Section 121dd of the Principal Act is amended by inserting in paragraph (*b*),after the word “forty-six”, the words “or section forty-six a”.

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

**11.** Section 160af of the Principal Act is amended by inserting in paragraph (*b*)of sub-section (2.), after the word “forty-six”, the words “or section forty-six a”.

**Application and transitional provisions.**

**12.**—(1.) Subject to the next succeeding sub-section, the amendments made by paragraph (*d*)of section 3, by paragraphs (*a*)and (*c*) of section 5 and by section 6 of this Act apply to assessments in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and seventy-one, and in respect of income of all subsequent years of income.

(2.) Where—

(*a*)a company (in this sub-section referred to as “the spurious public company”) would, but for the enactment of this Act, have been a subsidiary of a public company for the purposes of sub-section (1.) of section 103a of the Principal Act in relation to the year of income that commenced on the first day of July, One thousand nine hundred and seventy, by reason that, before or during that year of income, shares in the spurious public company were allotted to, or otherwise acquired by, one or more companies that would, but for the enactment of this Act, have been a public company or public companies for the purposes of sub-section (1.) of section 103a of the Principal Act in relation to that year of income;

(*b*)the allotment or acquisition of those shares in the spurious public company was effected for the purpose, or for purposes that included the purpose, of ensuring that any dividend that might be paid to the spurious public company by another company would be treated for the purposes of the Principal Act as having been paid to a company that was a public company for the purposes of sub-section (1.) of section 103a of that Act in relation to the year of income of that last-mentioned company during which the dividend was received;

(*c*) shares in another company were allotted to, or otherwise acquired by, the spurious public company for the purpose of enabling the other company to pay a dividend in respect of those shares

and the other company was a private company for the purposes of Division 7 of Part III. of the Principal Act in relation to—

(i) a year of income of the other company in relation to which the period that is the prescribed period within the meaning of that Division is, in whole or in part, included in the year of income of the spurious public company that commenced on the first day of July, One thousand nine hundred and seventy; or

(ii) a year of income of the other company during which a dividend to which sub-section (2.) of section one hundred and five a of the Principal Act applies was paid by that company to the spurious public company, being a dividend that was paid during the year of income of the spurious public company that commenced on the first day of July, One thousand nine hundred and seventy; and

(*d*)either the allotment or acquisition referred to in paragraph (*a*) of this sub-section of shares in the spurious public company or the allotment or acquisition referred to in the last preceding paragraph of shares in the other company referred to in that paragraph took place after the twenty-eighth day of April, One thousand nine hundred and seventy-one, and before the first day of the year of income of the spurious public company that commenced on the first day of July, One thousand nine hundred and seventy-one,

the amendments made by paragraphs (*a*)and (*c*) of section 5, and by section 6, of this Act apply to any assessment in respect of income of the spurious public company of the year of income that commenced on the first day of July, One thousand nine hundred and seventy.

(3.) Subject to the next two succeeding sub-sections, where—

(*a*)a period is declared by this section to be the relevant period in relation to a company in relation to a year of income; and

(*b*)if that period were a year of income, the company would be a subsidiary of a public company for the purposes of section 103a of the Principal Act as amended by this Act in relation to that period by virtue of sub-section (4.) or sub-section (4b.) of that section,

the company shall be deemed to be, by virtue of that sub-section, a subsidiary of a public company for the purposes of that section in relation to the year of income referred to in paragraph (*a*)of this sub-section.

(4.) The last preceding sub-section does not affect the operation of sub-sections (4d.) and (4e.) of section 103a of the Principal Act as amended by this Act but, in the application of those sub-sections in relation to a company in relation to a year of income of the company to which the last preceding sub-section applies, a reference in those sub-sections to a year of income shall be read as a reference to the period that is declared to be the relevant period in relation to the company in relation to that year of income.

(5.) Sub-section (3.) of this section does not apply in relation to a company (being a company to which paragraphs (*a*), (*b*)and (*c*) of sub-section (2.) of this section apply) in relation to a year of income if the other company referred to in paragraph (*c*) of sub-section (2.) of this section paid a dividend to the first-mentioned company after the twenty-eighth day of April, One thousand nine hundred and seventy-one, and after the commencement of that year of income but before the commencement of the period that is the relevant period in relation to the first-mentioned company in relation to that year of income.

(6.) For the purposes of this section but subject to sub-section (8.) of this section, whichever of the following periods is applicable in relation to a company is declared to be the relevant period in relation to the company in relation to the year of income of the company that commenced on the first day of July, One thousand nine hundred and seventy-one:—

(*a*)if the day immediately following the expiration of one month after the commencement of this Act is included in that year of income of the company—the period commencing on that immediately following day and ending at the expiration of that year of income; or

(*b*)if the day immediately following the expiration of one month after the commencement of this Act is included in the year of income of the company that commences on the first day of July, One thousand nine hundred and seventy-two—the period commencing on that immediately following day and ending on the first day of December, One thousand nine hundred and seventy-two.

(7.) If the day immediately following the expiration of one month after the commencement of this Act is included in the year of income of a company that commences on the first day of July, One thousand nine hundred and seventy-two, then, for the purposes of this section but subject to the next succeeding sub-section, the period commencing on that immediately following day and ending on the last day of that year of income is declared to be the relevant period in relation to the company in relation to that year of income.

(8.) For the purposes of this section, the relevant period, in relation to a company in relation to a year of income, shall be deemed to include any period (in this sub-section referred to as “the earlier period”) that commenced not earlier than the first day of that year of income and immediately preceded the period (in this sub-section referred to as “the later period”) that is the relevant period in relation to the company in relation to that year of income by virtue of sub-section (6.) or sub-section (7.), as the case may be, of this section, where, if the earlier period and the later period taken together constituted a year of income, the company would be a subsidiary of a public company for the purposes of section

103a of the Principal Act as amended by this Act in relation to those periods as so taken together by virtue of sub-section (4.) or sub-section (4b.) of that section.

(9.) The amendments made by paragraph (*b*)of section 5, and by section 7, of this Act apply in relation to dividends paid after the ninth day of December, One thousand nine hundred and seventy-one.