TR 96/10 - Income tax: section 110C of the Income Tax Assessment Act 1936: calculation of exempt income and deductions

Taxation Ruling
Income tax: section 110C of the *Income Tax Assessment Act 1936*: calculation of exempt income and deductions

other Rulings on this topic

IT 2617; TR 92/7; TR 93/17; TR 95/33

contents para

This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the ***Taxation Administration Act 1953****, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling explains how a life assurance company calculates the amount of its income which is exempt under section 110C of the *Income Tax Assessment Act 1936* ('the 1936 Act'). The Ruling also explains how certain deductions are apportioned.

2. In particular, this Ruling considers the following matters relating to section 110C of the 1936 Act:

(a) the interpretation of the term 'a percentage of the notional CS/RA amount'. The notional CS/RA amount of a life assurance company is the assessable income of the CS/RA class of a life assurance company before applying the exemption for current pension income. The CS/RA class is the complying superannuation/roll-over annuity class;

(b) the calculation of exempt income where a statutory fund or sub-fund of a statutory fund consists only of complying superannuation policies which relate solely to current pension liabilities;

(c) the calculation of exempt income where some complying superannuation policies within a statutory fund relate solely to current pension liabilities;

(d) the calculation of exempt income where some complying superannuation policies within a statutory fund relate to both current pension liabilities and other superannuation liabilities; and

(e) apportioning deductions which relate to both the assessable income of the CS/RA class and exempt current pension income.

Class of person/arrangement

3. This Ruling applies to life assurance companies that derive income from life assurance policies which are issued to complying superannuation funds, and are used by those funds (either wholly or partly) to meet their liability to pay current pensions.

Date of effect

4. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Note: The Addendum to this Ruling that issued on 18 August 1999 applies in relation to the 1997-98 or a later income year.

Ruling

A percentage of the notional CS/RA amount

*(see **Explanations** at paragraphs 39 to 44 and **Example 1** at paragraphs 72 to 77)*

5. 'A percentage of the notional CS/RA amount of a life assurance company' is the total of the actual amounts of exempt income calculated under section 110C of the 1936 Act for each statutory fund of a life assurance company expressed as a percentage of the 'notional CS/RA amount' of the life assurance company. To determine the amount of income exempt under section 110C of the 1936 Act, the notional CS/RA amount of a life assurance company must firstly be calculated in accordance with subsection 116CE(4) of the 1936 Act.

6. The actual amount of exempt income under section 110C of the 1936 Act for each statutory fund is determined using the calculated liabilities referable to complying superannuation policies for each statutory fund, and not the total calculated liabilities referable to the complying superannuation policies of the life assurance company.

7. The amount of exempt income under section 110C of the 1936 Act is calculated by assuming the notional CS/RA amount of the life assurance company is derived by the trustee(s) of the

superannuation fund who hold complying superannuation policies with the life assurance company.

Funds consisting solely of complying superannuation policies relating to current pension liabilities

*(see **Explanations** at paragraphs 45 to 52)*

8. Where a life assurance company has established a separate statutory fund, or a separate sub-fund of a statutory fund for complying superannuation policies which relate solely to current pension liabilities, all the income of that statutory fund or sub-fund is exempt from tax if the assets of the statutory fund or sub-fund relate solely to those liabilities.

9. The trustee of each of the complying superannuation funds is required to obtain an actuarial certificate for the purposes of section 273A of the 1936 Act for these complying superannuation policies. These certificates will be accepted as being in the approved form for the purposes of section 273A of the 1936 Act if they contain the information prescribed in Taxation Ruling IT 2617.

10. In the case of a sub-fund of a statutory fund, the Commissioner must be satisfied upon an examination of a life assurance company's accounting records that the assets of the sub-fund are set aside for complying superannuation policies which relate solely to current pension liabilities.

Some complying superannuation policies within a statutory fund relate solely to current pension liabilities

*(see **Explanations** at paragraphs 53 and 54 and **Example 2** at paragraph 78)*

11. Where a life assurance company has a statutory fund which has complying superannuation policies, some of which relate solely to current pension liabilities, the actuary of the life assurance company must calculate the amount of income exempt under section 110C of the 1936 Act.

12. Since the circumstances of life assurance companies vary, it is not appropriate to prescribe a single method for calculating the amount of income exempt under section 110C of the 1936 Act. An actuary of a life assurance company may use any recognised method to calculate the exemption, provided that the notional CS/RA amount attributable to each policy would have been exempt under section 282B of the 1936 Act if it was derived by the trustee of the complying superannuation fund. The requirements of the trustee of a complying superannuation fund for segregated current pension assets, which are stated at paragraph 9 above, also apply in these circumstances.

13. The following formula may be used to calculate the amount of exempt income under section 110C of the 1936 Act, provided the notional CS/RA amount attributable to each policy would have been exempt under section 282B of the 1936 Act if it was derived by the trustee of the complying superannuation fund - see **Example 2** below:

$$\text{notional CS/RA amount of the statutory fund} \times \frac{\text{average value of calculated liabilities of complying superannuation policies of the statutory fund relating solely to current pension liabilities}}{\text{average value of calculated liabilities of all complying superannuation policies and RA policies of the statutory fund}}$$

14. The notional CS/RA amount does not include amounts transferred to a life assurance company under section 275 of the 1936 Act and specified roll-over amounts. The RA policies of the statutory fund are those policies which satisfy the definition of 'RA policy' in subsection 110(1) of the 1936 Act. The term 'calculated liabilities' only applies to a life assurance company. Section 114 of the 1936 Act explains the meaning of 'calculated liabilities'.

15. The method used by an actuary of a life assurance company to calculate the average value of calculated liabilities should fairly reflect the value of liabilities throughout the year of income and must be calculated in accordance with any relevant Guidance Notes prepared by the Institute of Actuaries of Australia. Once again, it is not possible to prescribe a single method for calculating average liabilities because the circumstances of each life assurance company vary.

16. If the value of liabilities is reasonably constant throughout the income year a yearly average may be used, i.e., the value of liabilities at the beginning of the year plus the value of liabilities at the end of the year divided by two.

17. Where the value of liabilities varies significantly throughout the income year (for example, a large amount of complying superannuation business is written in mid to late June) a yearly average is not appropriate. The method used by the actuary of the life assurance company in these circumstances must fairly reflect the value of liabilities throughout the year of income.

Complying superannuation policies relating both to current pension liabilities and other superannuation liabilities

*(see **Explanations** at paragraphs 55 to 57 and **Example 3** at paragraphs 79 to 85)*

18. In some cases a complying superannuation policy of a life assurance company may relate to both current pension liabilities and other superannuation liabilities.

19. Usually where this occurs a number of the assets of the complying superannuation fund relate both to current pension liabilities and other superannuation liabilities.

20. The actuary of the superannuation fund in these cases must firstly calculate the proportion of 'unsegregated current pension liabilities' of the superannuation fund (as defined in subsection 283(2) of the 1936 Act) to 'unsegregated superannuation liabilities' of the superannuation fund (as defined in subsection 283(2) of the 1936 Act).

21. The value of these liabilities is based on the average value during the year of income. The principles used for determining the average value of unsegregated current pension liabilities and the average value of unsegregated superannuation liabilities are the same as for determining the average value of calculated liabilities as stated at paragraphs 15 to 17 above.

22. The trustee of the complying superannuation fund is required to obtain a certificate from an actuary for the purposes of section 283 of the 1936 Act. The certificate will be accepted as being in the approved form if the certificate contains the information prescribed in Taxation Ruling IT 2617, and the method of valuation adheres to the relevant Guidance Notes prepared by the Institute of Actuaries of Australia.

23. The proportion of 'unsegregated current pension liabilities' to 'unsegregated superannuation liabilities' for the complying superannuation fund may be applied by the actuary of the life assurance company to the relevant complying superannuation policy to determine the calculated liabilities of the complying superannuation policy relating to current pensions.

24. The actuary of the life assurance company may then determine the amount of income exempt under section 110C of the 1936 Act for such a superannuation policy using the following formula (and see also **Example 3**). It must be emphasised that this method is not prescriptive and another method may be used, provided it achieves a reasonable result.

$$\text{notional CS/RA amount of the statutory fund} \times \frac{\text{average value of that part of calculated liabilities of complying superannuation policies of the statutory fund that relate to current pension liabilities}}{\text{average value of calculated liabilities of all complying superannuation policies and RA policies of the statutory fund}}$$

The term 'calculated liabilities' in the formula only applies to a life assurance company. Section 114 of the Act explains the meaning of the expression 'calculated liabilities'.

Deductions

*(see **Explanations** at paragraphs 58 to 71)*

25. A number of deductions of a life assurance company relate to income exempt under section 110C of the 1936 Act. Any deductions of a life assurance company that relate exclusively to such income are not allowable. Any deductions that relate to income exempt under section 110C of the 1936 Act and the assessable income of the CS/RA class must be apportioned between assessable income and exempt income.

26. If a loss or outgoing of a life assurance company is an expense of a life assurance company and is incurred in the general management of the business of the life assurance company, the expense is apportioned in accordance with section 113 or section 113A of the 1936 Act.

27. If an expense of a life assurance company is allowable under a specific provision of the 1936 or 1997 Act which does not require apportionment between assessable income and exempt income (for example, gifts) the deduction must be apportioned in accordance with section 111C of the 1936 Act.

28. Where section 113 of the 1936 Act or section 111C of the 1936 Act does not apply, a loss or outgoing is usually apportioned under the general deduction provisions of the 1936 or 1997 Act, i.e., section 8-1 (formerly subsection 51(1) of the 1936 Act), or an applicable deduction provision. For example, repairs to tenant-occupied properties are apportioned under subsection 25-10(2) (formerly subsection 53(3) of the 1936 Act).

29. In most cases, a loss or outgoing to which section 8-1 of the 1997 Act applies is unable to be dissected between income exempt under section 110C of the 1936 Act and the CS/RA class of assessable income.

30. As the way each life assurance company operates is different, it is not appropriate that the Commissioner prescribes methods for apportioning such losses and outgoings. This is consistent with the Commissioner's approach in Taxation Ruling TR 93/17.

31. The Commissioner will accept a life assurance company's method of apportionment under section 8-1 of the 1997 Act if the company is able to demonstrate that its method is fair and reasonable. This approach is consistent with the decision in *Ronpibon Tin NL & Tongkah Compound NL v. FC of T* (1949) 78 CLR 47 - refer Taxation Ruling TR 95/33.

Explanations

Introduction

32. Section 110C of the 1936 Act exempts the investment income of the CS/RA class derived from complying superannuation policies that relate (either wholly or partly) to current pension liabilities. Section 110C of the 1936 Act was introduced into the Act by the *Taxation Laws Amendment (Superannuation) Act 1989*. The *Taxation Laws Amendment (Superannuation) Act 1989* introduced provisions to tax superannuation funds and the superannuation business of life companies.

33. The legislative intention of the amendments to Division 8 of the 1936 Act, including section 110C of the 1936 Act, is that the superannuation business of life assurance companies is taxed in the same way as superannuation funds.

34. The 'normal assessable income' of a complying superannuation fund relating to its liability to pay current pensions is exempt from tax under section 282B of the 1936 Act or section 283 of the 1936 Act. 'Normal assessable income' is defined in section 267 of the 1936 Act as income other than special income or taxable contributions. This is the reason the 'notional CS/RA amount' for the purposes of section 110C of the 1936 Act does not include section 275 of the 1936 Act amounts or specified roll-over amounts.

35. Section 282B of the 1936 Act exempts the normal assessable income derived by a complying superannuation fund from segregated current pension assets.

36. Section 283 of the 1936 Act exempts the normal assessable income of a complying superannuation fund where assets are not segregated to meet current pension liabilities. Section 283 of the 1936 Act prescribes the following formula to calculate the exempt proportion of normal assessable income attributable to current pension liabilities:

$$\frac{\text{Unsegregated current pension liabilities}}{\text{Unsegregated superannuation liabilities}}$$

'Unsegregated current pension liabilities' is the average value during the year of current pension liabilities, other than liabilities relating to segregated current pension assets. 'Unsegregated superannuation liabilities' is the average value during the year of income of the superannuation liabilities, other than liabilities in respect of segregated current pension assets or segregated non-current pension assets.

37. Section 110C of the 1936 Act exempts the income of the CS/RA class of income of a life assurance company where the complying superannuation policies of that life assurance company relate to current pension liabilities. Section 110C of the 1936 Act assumes that the income is derived by the trustees of the complying superannuation funds who hold complying superannuation policies with the life assurance company.

38. To be entitled to an exemption under section 110C of the 1936 Act a life assurance company must satisfy the Commissioner that this income would have been exempt under either section 282B of the 1936 Act or section 283 of the 1936 Act if it had been derived by the trustees of the relevant complying superannuation funds.

A percentage of the notional CS/RA amount

*(see **Ruling** at paragraphs 5 to 7 and **Example 1** at paragraphs 72 to 77)*

39. Section 110C of the 1936 Act does not exempt the actual income of a life assurance company. It exempts a percentage of the notional CS/RA amount. The notional CS/RA amount of a life assurance company is defined in subsection 110C(2) of the 1936 Act as the CS/RA class of assessable income before applying the exemption for current pension income. The notional CS/RA amount of a life assurance company is determined in accordance with subsection 116CE(4) of the 1936 Act.

40. The term 'a percentage of the notional CS/RA amount' can be interpreted in two ways. One interpretation of this term is that it is the total of the actual amounts of exempt income for each statutory fund expressed as a percentage of the notional CS/RA amount of the life assurance company, i.e., the 'statutory fund basis' which is exempt from tax. **Example 1** explains this interpretation.

41. Another interpretation of this term is that a specific percentage of the notional CS/RA amount is exempt from tax. That is the actual amount of exempt income of a life assurance company relating to current pensions (as calculated for the 'statutory fund basis') expressed as a percentage of the notional CS/RA amount of the life assurance company. This percentage is then applied to the 'notional CS/RA amount' of each statutory fund, i.e., 'the company-wide basis'. **Example 1** also explains this interpretation.

42. The actual amount of exempt income under section 110C of the 1936 Act calculated under the 'company wide basis' is the same as for the 'statutory fund basis'. That is, under the 'company wide basis', income relating to current pensions is determined using calculated liabilities referable to complying superannuation policies for each statutory fund. The actual amount of exempt income under section 110C of the 1936 Act cannot be determined using the total calculated liabilities referable to complying superannuation policies of a life assurance company. To use this method to calculate the amount of exempt income under section 110C of the 1936 Act is not consistent with the wording of section 110C of the 1936 Act which requires a life assurance company to assume the notional CS/RA amount was derived by a complying superannuation fund.

43. Where two interpretations of a provision are possible, the interpretation which best reflects the legislative intention of the provision is preferred. Section 15AA of the *Acts Interpretation Act 1901* states that, in interpreting a provision of an Act, where there are alternative interpretations the interpretation which promotes the purpose or object underlying the Act shall be preferred. In *Cooper Brookes (Wollongong) Pty Ltd v. FC of T* (1981) 147 CLR 297; 81 ATC 4292; 11 ATR 949, Mason and Wilson JJ stated (at CLR 321; ATC 4306; ATR 966) that:

> 'If the choice is between two strongly competing interpretations, as we have said, the advantage may lie with that which produces the fairer and more convenient operation so long as it conforms to the legislative intention.'

44. We believe the 'statutory fund basis' best reflects the legislative intent of section 110C of the 1936 Act as it identifies the actual amount of the notional CS/RA income that would have been exempt in the complying superannuation fund, if the complying superannuation fund had derived the income. The 'statutory fund basis' also produces a fairer outcome. This is because income that is attributable to complying superannuation policies relating to current pensions is exempt from tax. The 'company-wide basis', on the other hand, only exempts a proportion of the income from these policies as **Example 1** shows. In other words, the 'company-wide' basis produces a somewhat distorted result.

Funds consisting solely of complying superannuation policies relating to current pension liabilities

*(see **Ruling** at paragraphs 8 to 10)*

45. A number of life assurance companies have established a separate statutory fund or a sub-fund of a statutory fund for complying superannuation policies relating solely to current pension liabilities.

46. Section 110C of the 1936 Act assumes the 'notional CS/RA amount' of a life assurance company, as defined in section 110C of the 1936 Act, is derived by the trustees of the complying superannuation fund who hold complying superannuation policies with the life assurance company.

47. If the assets were held by the trustees of complying superannuation funds, the income derived from those assets would be exempt from tax provided the assets were 'segregated current pension assets' as defined in section 273A of the 1936 Act.

48. Segregated current pension assets are defined in section 273A of the 1936 Act as assets which are invested, held in reserve, or otherwise dealt with solely to meet current pension liabilities. Section 273A of the 1936 Act also requires the trustee of a complying superannuation fund to obtain a certificate from an actuary stating that these assets earn sufficient income to meet current pension liabilities.

49. For the Commissioner to accept assets of a complying superannuation fund as segregated current pension assets, the Commissioner, from an examination of the accounting records of the superannuation fund, must be able to identify that these assets are invested, held in reserve, or otherwise dealt with solely to meet current pension liabilities.

50. A life assurance company has a separate ledger for each statutory fund. Therefore, if a life assurance company has a statutory fund for complying superannuation policies relating solely to current pension liabilities, the income of that statutory fund will be exempt from tax if the assets of that statutory fund relate solely to those liabilities.

51. We understand that in the case of a sub-fund of a statutory fund, separate accounting records are kept and can be distinguished from the other accounting records of that statutory fund.

52. If our assumption is correct, the income of that sub-fund will be exempt from tax if the assets of that sub-fund are set side for complying superannuation policies which relate solely to current pension liabilities.

Some complying superannuation policies within a statutory fund relate solely to current pension liabilities

(see ***Ruling*** *at paragraphs 11 to 17 and* ***Example 2*** *at paragraph 78)*

53. A statutory fund of a life assurance company may have some complying superannuation policies which relate solely to current pension liabilities, and there is no sub-fund maintained for these policies. In these cases, the actuary of the life assurance company may use the following formula to calculate the amount of exempt income provided the notional CS/RA amount attributable to each policy would have been exempt under section 282B of the 1936 Act if it was derived by the trustee of the complying superannuation fund.

$$\text{notional CS/RA amount of the statutory fund} \times \frac{\text{average value of calculated liabilities of complying superannuation policies of the statutory fund relating solely to current pension liabilities}}{\text{average value of calculated liabilities of all complying superannuation policies and RA policies of the statutory fund}}$$

54. This formula may be used in these circumstances because it is consistent with the construction of Division 8 which allocates income on the basis of calculated liabilities. The reason a life assurance company may use calculated liabilities as the basis for determining exempt income under section 110C of the 1936 Act is because a life assurance company generally pools premiums received from policyholders together for the purposes of investment, and usually is unable to identify the investments relating to particular policies (unless the company establishes a sub-fund of a statutory fund).

Complying superannuation policies relating to both current pension liabilities and other superannuation liabilities

(see ***Ruling*** *at paragraphs 18 to 24 and* ***Example 3*** *at paragraphs 79 to 85)*

55. In some cases, a complying superannuation policy of a life assurance company may relate to both current pension liabilities and other superannuation liabilities. These types of complying superannuation policies are not the norm, and they are principally policies that were issued by life companies a number of years ago.

56. Where a complying superannuation policy and other assets of the superannuation fund relate both to current pension liabilities and other superannuation liabilities, we understand it is difficult for the actuary of the superannuation fund to determine the current pension liabilities relating to the superannuation policy.

57. That is the reason the Commissioner has allowed a proportionate approach (in the **Ruling**) for the actuary of the life assurance company to determine the current pension liabilities relating to a complying superannuation policy in these circumstances (see paragraphs 23 and 24 and **Example 3**).

Deductions

*(see **Ruling** at paragraphs 25 to 31)*

58. The losses and outgoings of a life assurance company, which relate to a life assurance company's income which is exempt under section 110C of the 1936 Act, will usually require apportionment because in a number of cases the expenditure will relate to both that income and the assessable income of the CS/RA class of a life assurance company. For example, the investment department of a life assurance company may invest funds which relate to both income exempt under section 110C of the 1936 Act and the assessable income of the CS/RA class.

59. The basis of apportionment of these losses and outgoings depends upon the nature of the loss or outgoing.

60. If the loss or outgoing is expenditure incurred in the general management of the business of the life assurance company, the deduction is apportioned in accordance with either section 113 or section 113A of the 1936 Act.

61. Section 113 of the 1936 Act gives a life assurance company the choice of apportioning expenditure either using the formula:

$$\frac{\text{assessable income}}{\text{total income}}$$

which is explained in Taxation Ruling TR 92/7 (subsection 113(2)), or using a factual basis (subsection 113(1)).

62. A life assurance company may also have incurred expenditure on such items as gifts where Division 30 of the 1997 Act does not require an apportionment between assessable income and exempt income. Where a life assurance company has incurred such expenditure it is required to apportion expenditure in accordance with section 111C of the 1936 Act.

63. Section 111C of the 1936 Act applies to a life assurance company if a deduction is not allowable under section 8-1 of the 1997 Act, section 111AC (other than subsection (3)), section 111AD

(other than subsection (4) of the 1936 Act) or section 113 of the 1936 Act, and the deduction does not relate exclusively to the assessable income of the company.

64. A life assurance company is required to apportion a deduction to which this section applies using the formula:

$$\frac{\text{assessable income}}{\text{total income}}$$

which is explained in Taxation Ruling TR 92/7.

65. Where a loss or outgoing of a life assurance company is not a general management expense, and section 111C of the 1936 Act does not apply, the loss or outgoing must be apportioned in accordance with the particular provision of the 1936 Act or the 1997 Act to which it relates, for example, section 8-1 of the 1997 Act (general deduction provision) or subsection 25-10(2) of the 1997 Act (repairs relating to properties occupied by tenants).

66. When a loss or outgoing of the life assurance company requires apportionment under section 8-1 of the 1997 Act between income exempt under section 110C of the 1936 Act and the CS/RA class of assessable income, generally the loss or outgoing is unable to be dissected. In other words, in most cases it is 'a single outlay or charge which serves most objects indifferently' - refer *Ronpibon Tin NL & Tongkah Compound NL v. FC of T* (1949) 78 CLR 47 at 59.

67. In these circumstances, the Commissioner will not prescribe a method for apportioning such losses and outgoings.

68. This is consistent with the Commissioner's approach in Taxation Ruling TR 93/17. Paragraph 8 of TR 93/17 states that 'since each case depends on its own facts, it is not possible to prescribe a single method for apportioning expenditure of a superannuation fund so as to give a fair and reasonable assessment of the extent to which the outlay relates to assessable income'.

69. Therefore, if a life assurance company can demonstrate to the Commissioner that the method it uses to apportion losses and outgoings between income exempt under section 110C of the 1936 Act and the CS/RA class of assessable income is fair and reasonable it will be acceptable to the Commissioner.

70. Some deductions of a life assurance company will require apportionment under a specific provision of the 1936 or the 1997 Act, for example repairs to properties of the life assurance company occupied by tenants. It must be emphasised that where a specific

provision of the 1936 or the 1997 Act requires an outlay to be apportioned between assessable income and exempt income, that provision must be used to apportion the outlay.

71. For example, for repairs to properties occupied by tenants of a life assurance company, the deduction for repairs must be apportioned under subsection 25-10(2) of the 1997 Act. This view was expressed in the Explanatory Memorandum to *Taxation Laws Amendment (Superannuation) Act 1989* at page 56. Subsection 25-10(2) of the 1997 Act specifies that the apportionment of expenditure on repairs between assessable income and exempt income must, in the opinion of the Commissioner, be reasonable in the circumstances.

Examples

Example 1 - the meaning of 'a percentage of the notional CS/RA amount'

*(see **Ruling** at paragraphs 5 to 7 and **Explanations** at paragraphs 39 to 44)*

72. ABC Life Assurance Company

Statutory Fund No 1	
notional CS/RA amount	$3,000,000
current pension income	Nil
Statutory Fund No 2	
notional CS/RA amount	$2,000,000
current pension income	$500,000

The notional CS/RA amount for the ABC Life Assurance Company is $5,000,000.

The amount of income exempt is $500,000.

Therefore 10% of the notional CS/RA amount is exempt from tax, i.e.,

$$\frac{500{,}000}{5{,}000{,}000} \times \frac{100}{1}$$

Company-wide basis

73. Under the 'company wide basis' 10% of the notional CS/RA amount of each statutory fund is exempt from tax.

74. This means that $300,000 of the notional CS/RA amount of Statutory Fund No 1 is exempt from tax, and $200,000 of the notional CS/RA amount of Statutory Fund No 2 is exempt from tax.

Statutory fund basis

75. Under the 'statutory fund basis' it is the total of the actual income exempt under section 110C of the 1936 Act for each statutory fund expressed as a percentage of the notional CS/RA amount which is exempt from tax.

76. This means that none of the notional CS/RA amount of Statutory Fund No 1 is exempt from tax, and $500,000 of the notional CS/RA amount of Statutory Fund No 2 is exempt from tax.

77. Paragraph 5 above states that the 'statutory fund basis' is the appropriate method for determining 'a percentage of the notional CS/RA amount'.

Example 2 - some complying superannuation policies within a statutory fund relate solely to current pension liabilities

*(see **Ruling** at paragraphs 11 to 17 and **Explanations** at paragraphs 53 and 54)*

78. EFG Life Assurance Company

The EFG Life Assurance Company has an income year ended 30 June 1995

Statutory Fund No 1

notional CS/RA amount of statutory fund	$5,000,000
average value of calculated liabilities of complying superannuation policies and RA policies	$50,000,000
average value of calculated liabilities of complying superannuation policies relating to current pension liabilities	$5,000,000

$$\frac{\$5{,}000{,}000}{\$50{,}000{,}000} \times \$5{,}000{,}000$$

The amount of income from the life assurance company's No 1 Statutory fund exempt from tax under section 110C of the 1936 Act is $500,000.

Example 3 - a complying superannuation policy of a life company relating both to current pension liabilities and other superannuation liabilities

*(see **Ruling** at paragraphs 18 to 24 and **Explanations** at paragraphs 55 to 57)*

79. XYZ Life Assurance Company has issued a complying superannuation policy to the Keys Superannuation Fund. This complying superannuation policy relates to current pension liabilities and other superannuation liabilities.

80. The assets of the Keys Superannuation Fund consist of a complying superannuation policy with the XYZ Life Assurance Company and investments in equities.

81. Both the complying superannuation policy with the XYZ Life Assurance Company and equities relate to current pension liabilities and other superannuation liabilities.

82. The actuary of the superannuation fund is required to calculate the current pension liabilities of the superannuation fund and other superannuation liabilities of the superannuation fund.

83. The current pension liabilities of the superannuation fund are $2,500,000 and the non-current pension liabilities of the superannuation fund are $7,500,000. The proportion of current pension liabilities to total liabilities of the superannuation fund is 25%.

84. If the actuary of the Keys Superannuation Fund informs the actuary of the XYZ Life Assurance Company that 25% of the liabilities of the complying superannuation policy held with XYZ Life Company relate to current pension liabilities, that is acceptable to the Commissioner.

85. The actuary of the life assurance company may then calculate the income under section 110C of the 1936 Act for this policy using the following formula:

$$\text{notional CS/RA amount of the statutory fund} \times \frac{\text{average value of that part of calculated liabilities of the complying superannuation policy issued to the Keys Superannuation Fund that relates to current pension liabilities}}{\text{average value of calculated liabilities of all complying superannuation policies and RA policies of the statutory fund}}$$

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case references
- Cooper Brookes (Wollongong) Pty Ltd v. FC of T (1981) 147 CLR 297; 81 ATC 4292; 11 ATR 949
- Ronpibon Tin NL and Tongkah Compound NL v. FC of T (1949) 78 CLR 47