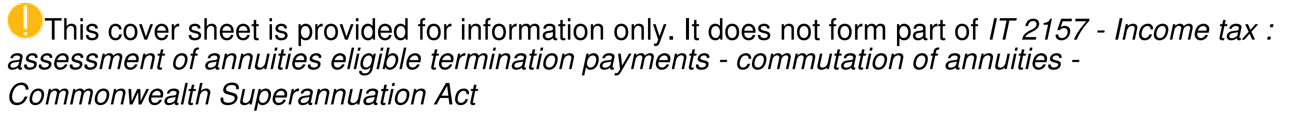
IT 2157 - Income tax : assessment of annuities eligible termination payments - commutation of annuities - Commonwealth Superannuation Act



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TAXATION RULING NO. IT 2157

INCOME TAX : ASSESSMENT OF ANNUITIES
ELIGIBLE TERMINATION PAYMENTS
- COMMUTATION OF ANNUITIES
- COMMONWEALTH SUPERANNUATION ACT

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1174777	ANNUITIES	27A
	- ASSESSMENT	27H
	- COMMUTATION	
	COMMONWEALTH SUPERANNUATION ACT - ELIGIBLE TERMINATION PAYMENTS	

PREAMBLE The Income Tax Assessment Amendment Act (No. 3) 1984 inserted into Division 2 of Part III of the Income Tax Assessment Act 1936 a new Subdivision AA dealing with the assessment of superannuation, termination of employment and kindred payments. This ruling deals with the manner in which section 27H is to be applied in making assessments and explains the application of section 27A to commutations of annuities and lump sum benefits under the Commonwealth Superannuation Act.

RULING Commencement of section 27H

2. Section 61 of the Income Tax Assessment Amendment Act (No. 3) 1984 provides that section 27H does not apply in relation to an annuity where the period in respect of which the annuity was first payable commenced before 1 July 1983. In those cases section 26AA continues to apply. That means generally that section 27H will apply where the recipient of the annuity (defined in section 27H to include a superannuation pension) purchased it or retired after 30 June 1983. In the case of a deferred annuity, however, if the particular event that actuated the payments happened after 30 June 1983, section 27H would apply, notwithstanding that the annuity was purchased before that date. On the other hand, a residuary annuity that commenced after 30 June 1983 (for example, one payable to a widow on the death after 30 June 1983 of her husband who was in receipt of the principal annuity) would not be subject to section 27H if the principal annuity commenced before 1 July 1983.

Undeducted purchase price

3. Section 27H includes in assessable income the amount of an annuity derived during the year of income, excluding the

"deductible amount". The deductible amount, calculated under sub-section (2) or (3), is a portion of the undeducted purchase price (UPP) of the annuity. Section 26AA has a similar operation for annuities that commenced before 1 July 1983. The terms "undeducted purchase price" and "purchase price" are defined in section 27A. The part of the UPP not excluded from assessable annuity payments under section 27H or 26AA (the "unused undeducted purchase price" (UUPP)), however, may also be excluded under section 27A from a payment received by way of the partial or full commutation of a superannuation pension or eligible annuity (defined in section 27A) in determining the amount of the relevant eligible termination payment. For this reason it is necessary at the outset to consider the manner in which UPP should be taken into account (that is, as deductible amounts under section 27H or as UUPP under section 27A or as both) where an annuity is partially commuted. (The following advice does not apply to commutations of eligible annuities after 18 February 1985. They, as announced by the Treasurer on that date, are to be the subject of remedial legislation.)

Partial commutation after 30 June 1983

4. Where an annuity results from the partial commutation after 30 June 1983 of a greater annuity entitlement that itself commenced after 30 June 1983, the discretion available under either sub-section 27H(3) (term certain or single life annuities) or paragraph (c) of the definition of "relevant number" in sub-section 27H(4) (other annuities) is to be exercised to substitute a different post-commutation deductible amount from that which would be excluded under sub-section 27H(2), to take account of either or both of the following :

(a) the taxpayer claims on Schedule L to exclude from the lump sum commutation payment an amount in respect of unused undeducted purchase price in determining how much of the commutation payment is an eligible termination payment;

(b) the residual capital value (RCV) of the annuity is reduced because of the commutation.

5. In these circumstances the deductible amount excluded from the reduced annuity is to be the amount that would be calculated under sub-section 27H(2) if, so far as relevant :

(a) component B in the formula were the balance of the UUPP not claimed on Schedule L;

(b) component D were the unexpired portion of the number of years equal to the relevant number in relation to the original annuity - e.g., the fixed term of the original annuity or the annuitant's life expectancy - taken to the nearest month; and

(c) component C were the reduced RCV.

The law permits the calculation of a different deductible amount

in this way only where sub-section 27H(3) applies, that is, where the annuity is for a term certain or for a single life. For other annuities the same matters as those listed in sub-section (3) may be considered, but only in the course of ascertaining the relevant number (sub-paragraphs (c)(i), (iii) and (v) of the definition of "relevant number"). That is, component D is the only component in the sub-section 27H(2) formula that can be changed when determining a changed deductible amount following the partial commutation of an annuity other than a single life or term certain annuity. In these other cases the deductible amount in relation to the reduced annuity is to be the amount that sub-section (3) would produce if it applied to annuities other than for a term certain or single life. Accordingly, the relevant number is to be the number that produces that deductible amount.

6. Where neither of the circumstances in paragraph 4 applies, the deductible amount is calculated under sub-section 27H(2) as if the commutation had not occurred. However, if, in accordance with Note 2 to Schedule L, the taxpayer asks the Taxation Office to calculate UUPP, the case is to be treated as a claim to exclude UUPP from the commutation payment up to the amount of the payment. A claim to exclude UUPP in excess of the commutation payment is to be treated as a claim to exclude UUPP equal to the commutation payment. If the whole of the UUPP is excluded from the commutation payment the subsequent deductible amount is NIL.

7. Application of these rules will have the result that, in all but exceptional cases, the whole of the UPP (less any RCV still available) will be excluded from either the annuity or the commutation payment or both over the period for which the annuity was expected at its commencement to be payable - e.g., the number of years in the annuitant's life expectancy at the commencement of the annuity. If the annuity extends beyond that period the deductible amount calculated after the partial commutation either in accordance with paragraph 5, if it applies, or in the same manner as before the partial commutation will continue to be excluded annually. In the exceptional case where the deductible amount after the commutation would exceed the reduced annuity, the deductible amount is to be an amount equal to the reduced annuity. This amount may continue to be excluded for the duration of the annuity contract.

8. If the UUPP at the date of partial commutation is NIL (because, for example, the annuitant has already outlived his or her life expectancy) no UUPP can be excluded from the commutation payment. The deductible amount in relation to the reduced annuity will continue to be calculated under sub-section 27H(2) as if the commutation had not occurred.

9. If a partial commutation takes place after 30 June 1983 of an annuity that commenced before 1 July 1983 and the taxpayer does not seek to exclude any UUPP from the commutation payment, former section 26AA is to continue to apply to the reduced annuity and section 27H does not apply. The amount excluded annually under former sub-section 26AA(1) is to be the same as

the annual exclusion before the partial commutation, but not, of course, exceeding the amount of the reduced annuity. If the taxpayer claims to reduce the commutation payment on account of UUPP the reduced annuity is to be treated as an annuity to which section 27H applies and section 26AA does not. The deductible amount is then to be calculated in accordance with paragraph 5 above. If the whole of the UUPP is excluded from the commutation payment, the deductible amount becomes NIL.

Calculation of undeducted purchase price

10. In calculating UPP under section 27A for the purposes of section 27H the principle will continue to apply that, where the sum of the life insurance premiums and superannuation contributions paid before 1 July 1983 exceeds the maximum deductible or rebatable amount for the relevant year of income, the excess (up to the amount of the superannuation contributions) is to be regarded as undeducted purchase price of the annuity. Superannuation contributions after 30 June 1983 may be UPP whether or not they have been treated as rebatable amounts (but not, of course, if they have been allowable deductions under section 82AAT). If superannuation contributions were paid after 30 June 1983 in an accounting period that was substituted for the year ended 30 June 1983, the principle applies to the pre-1 July 1983 contributions as if there were no contributions after 30 June 1983.

Commonwealth Superannuation Act pensions

11. Where a person receives a lump sum benefit under the Commonwealth Superannuation Act in lieu of additional age retirement pension or additional early retirement pension or in conjunction with a reduced invalidity pension or spouse benefit, section 27H includes the full amount of the remaining pension (standard age or early retirement pension or reduced invalidity pension or spouse benefit) in assessable income. That is, the UPP of the standard or reduced pension is to be treated as NIL. This approach - of regarding only the additional pension as purchased - follows existing assessing practice and is supported by the definition of "purchase price" in section 27A. It will, as before, also apply to pensions paid by other funds under similar rules.

12. Where, under the Superannuation Act, a person receives a lump sum equal to the excess of the person's accumulated contributions over the amount required to fund the 20% additional age or early retirement pension (sub-sections 57(2) and 61(2) of the Superannuation Act), the person is to be permitted to reduce that lump sum by so much of the contributions to the superannuation fund after 30 June 1983 as the person claims on Schedule L is undeducted contributions (see the definition in section 27A) in relation to the lump sum payment. The amount so designated as undeducted contributions cannot then be treated as UPP of the pension. However, an equivalent payment under sub-section 91(2) of the Superannuation Act to the spouse of a deceased contributor cannot reduce the UPP of the spouse's additional pension. That is because the

lump sum benefit is not an eligible termination payment.

13. Where a person entitled to an invalidity pension under the Superannuation Act receives a lump sum benefit under section 67 or 70 of that Act equal to the person's accumulated supplementary contributions, those supplementary contributions are not included in the UPP of the pension for section 27H purposes. Where a person entitled to an orphan pension receives a lump sum benefit equal to the deceased employee's accumulated contributions or accumulated supplementary contributions, those contributions do not form part of the UPP of the orphan pension.

14. The tax treatment, under the provisions of Subdivision AA of Division 2, of the various lump sum benefits payable under the Superannuation Act is discussed in paragraphs 35 to 47 of this ruling.

Single life and term certain annuities

15. Where an annuity comes within the description in paragraph (a) or (b) of the definition of "relevant number" in sub-section 27H(4), the relevant number - component D in the formula used in sub-section 27H(2) to ascertain the deductible amount to be excluded annually from the annuity - is the number of years in the fixed term (paragraph (a) case) or the life expectation factor ascertained by reference to the Australian Life Tables 1975-77 (paragraph (b)). The terms "purchase price", "undeducted purchase price" and "residual capital value" used in the formula in sub-section 27H(2) are defined in section 27A. The term "relevant share" in the formula is defined in sub-section 27H(4).

The sub-section 27H(3) discretion

16. The discretion available under sub-section 27H(3) is to be used where the Commissioner is of the opinion that the deductible amount ascertained under sub-section (2) in relation to an annuity payable for a fixed term or during the life of one person and not thereafter is inappropriate. The application of the discretion to partial commutations of annuities of these kinds is discussed earlier. Paragraphs 17 to 24 illustrate further the way in which the discretion is to be exercised in respect of fixed term and single life annuities.

Part-year annuity

17. Where an annuity for a fixed term or single life is commuted (partially or wholly) after 30 June 1983 and section 27H applies in a year of income to the pre-commutation annuity, the discretion in sub-section 27H(3) is to be exercised so that the deductible amount to be excluded in the year of income from the pre-commutation annuity is the proportion of the amount calculated under sub-section 27H(2) for the full year that the period to the date of commutation bears to the full year. The amount so excluded is deducted from the UPP in arriving at the UUPP available to be excluded from the lump sum commutation payment.

18. Similarly, where an annuity or post-commutation reduced annuity commences after 30 June 1983 and during a year of income, sub-section 27H(3) is to apply so that the deductible amount is the proportion of the amount calculated under sub-section 27H(2) that the period for which the annuity or reduced annuity is payable during the year bears to the full year.

Increasing, decreasing and indexed annuities

19. The overriding principle to be adopted under sub-section 27H(3) (and in determining an appropriate relevant number under the sub-paragraphs of paragraph (c) of the definition of that term that have an equivalent operation to sub-section (3) - that is, sub-paragraphs (i), (iii) and (v)) is that the aim of the legislation is primarily the exclusion of the full UPP of an annuity in exactly the period for which the annuity can reasonably be expected to be payable, on a basis that is consistent with the "straight-line" exclusion approach adopted by paragraphs (a) and (b) of the definition and sub-section 27H(2). In the case of an annuity payable for a fixed term, the UPP can be excluded in every individual case in the actual period over which the annuity is paid, because the period is known in advance. However, because the period of an annuity payable for the lifetime of a person is not known in advance, it is not possible to nominate in advance a constant annual deductible amount that will, in a particular case, result in the UPP being excluded in precisely the period for which the annuitant actually lives. Accordingly, the legislature, through paragraph (b) of the definition of relevant number, in effect provides for the exclusion of the aggregate UPP of all single life annuities over the aggregate actual lifetimes of the annuitants.

20. It achieves this by requiring that the annual deductible amount, calculated by reference to the life expectancy of a person, is excluded every year of that person's life (notwithstanding that, because the particular person may live for a longer or shorter period than the life expectancy, the total exclusion on account of UPP may be more or less than the actual UPP). In this way the total amount excluded over the lifetimes of the population of persons of a particular age when their annuities commence should closely approximate the total UPP of all those annuities. The same philosophy underpinned section 26AA - it did not seek to exclude the full UPP in every individual case. Nor did it seek to ensure that the annual exclusion in every case was calculated according to the conventional "theoretically correct" view that the return of capital component represents an increasing proportion of annuity payments over the period of an annuity.

21. Sub-section 27H(3) is to apply to an increasing or indexed annuity only where the deductible amount calculated under sub-section 27H(2) for a full year exceeds the minimum annual amount proposed to be paid under the annuity contract. The deductible amount then excluded in accordance with sub-section 27H(3) is to be so much of the sub-section 27H(2) amount as does not exceed the annuity payment. The balance of the sub-section

27H(2) amount is to be carried forward and excluded (along with the next year's sub-section 27H(2) amount) from the following year's annuity payment. Sub-section 27H(3) will cease to apply when the annual payment exceeds the sum of the sub-section 27H(2) amount and the balance of any such amount carried forward from an earlier year or years. If the annuity is a single life annuity the annual sub-section 27H(2) exclusion may then continue beyond the annuitant's life expectancy.

22. It will be appreciated that it is most unlikely that sub-section 27H(3) would need to be applied to an indexed annuity. It is to be expected that annuity issuers would not sell an annuity that was indexed at a rate that exceeded the issuer's expected earning rates, that is, the rates at which the issuer discounts future annuity payments to determine the purchase price. It will also be appreciated that, in applying the straight-line method of exclusion of capital component under sub-section 27H(2) to indexed annuities, the income tax law is being even more generous than it is with unindexed annuities. Such an approach to the administration of the section is, however, consistent with the principle set out in paragraph 19 above and with the approach taken by the legislature in section 27A of excluding unused undeducted purchase price from commutation payments.

23. The position is different with decreasing annuities. The deductible amount in any year is to be either the sub-section 27H(2) amount or, if a certificate is received from an approved actuary stating that a different basis of exclusion of UPP UPP is appropriate, it should generally be accepted under sub-section 27H(3), subject to the constraint that the sum of the annual deductible amounts is not to exceed the UPP. Where no certificate is received and the sub-section 27H(2) amount exceeds the annuity in a year the deductible amount in that year is to be an amount equal to the annuity.

Residual capital values

24. If an annuity has a residual capital value (RCV) that is specified or ascertainable and does not change over the period of the annuity, the deductible amount is calculated under sub-section 27H(2) with the RCV as component C in the formula. If the RCV is in the form of a guaranteed reducing capital payment on death of an amount equal to the amount (if any) by which the purchase price of the annuity exceeds the sum of the annuity payments to the date of death, again sub-section 27H(2) is to apply, with component C being NIL. If the RCV is a variable amount, but exceeding the amount described in the previous example, the RCV aspect of the annuity contract is considered to be significant enough to warrant a reduction of the annual deductible amount in accordance with sub-section 27H(3). In these cases the deductible amount is to be the proportion of the amount calculated under sub-section 27H(2) that the part of the purchase price that would have been required to purchase the annuity without the RCV rights bears to the actual purchase price. It will be necessary for the taxpayer to obtain a certificate from an approved actuary stating the proportions in

which the purchase price can be so allocated.

Deferred annuities

25. A deferred annuity is one that is not presently payable, but will become payable upon the happening of a particular event, such as the death of the spouse of the person to whom the annuity is to become payable or the attainment by the person of a certain age. Where the annuity is payable for a fixed term (paragraph (a) of the definition of "relevant number") the term commences at the start of the period in respect of which the annuity is first payable - generally the date on which the relevant event occurs. In a paragraph (b) case the life expectation factor of the person during whose lifetime the annuity is payable is to be ascertained at the date of the relevant event that starts the period in respect of which the annuity is first payable. Under sub-paragraph (c)(ii) the number of years in the period for which the annuity is expected to be payable is to be ascertained at the date of the relevant event.

Discretion in paragraph (c) of "relevant number"

26. If the annuity is not payable either for a term of years certain or during the lifetime of one person and not thereafter, paragraph (c) of the definition of "relevant number" in sub-section 27H(4) is to be applied. Once again, it is considered that the intention of the legislation is as described in paragraph 19 above, that is, the exclusion of the full UPP in the period for which the annuity can reasonably be expected to be payable. As in the case of annuities to which paragraphs (a) and (b) apply, the primary function of paragraph (c) is to ascertain the expected period for which the annuity will be payable (sub-paragraph (c) (ii)) and in the vast majority of cases the number of years in that period will be the relevant number. As with paragraph (a) and (b) cases, a constant deductible amount is then excluded each year for the full duration of the annuity.

27. A common type of annuity to which paragraph (c) will apply is the so-called joint life and survivorship (or last survivor) annuity, such as that payable under some statutory superannuation schemes. The annuity is payable to the former employee for life and, after his or her death, to any surviving spouse for life. The period for which such an annuity can be expected to be paid can be expressed actuarially as $e/_{xy}$ where x and y are the ages of the retired employee and spouse. The term $e/_{xy}$ can be expressed as $e/_{xy} = e/x + e/y - e/xy$, where e/x and e/y are the life expectancies of x and y at the date the annuity commences and e/xy is the period for which x and y can be expected to live jointly. In these cases, the greater of the two life expectancies is to be treated as the relevant number. Such an approach generally produces a relevant number which, while slightly smaller than $e/_{xy}$, is a reasonable approximation of it, particularly where the male is older than the female at commencement. That, in turn, produces a

constant annual deductible amount slightly greater than would be produced by using $e/_{xy}$ as the relevant number. This slightly generous result would tend to be offset in the case of some annuities of this kind where the survivorship (or reversionary) annuity is paid at a lower rate (say two-thirds of the original annuity).

28. It follows from the foregoing that this method of choosing the relevant number takes into account the probabilities of both the annuitant and spouse surviving. Accordingly, the death of one or other of them is not a basis for changing the relevant number, which must remain constant throughout the period of the annuity if the total amounts of UPP for all annuities issued to a population of annuitants and their spouses with a particular age profile are to be excluded over the periods for which those annuities come to be paid.

29. A different annuity to which paragraph (c) applies is one that is payable for a life or lives but in any event for a guaranteed minimum term (including a case where, for example, an annuity continues to be payable after the death of the annuitant until the annuitant's child reaches 21 years of age). The period for which such an annuity can be expected to be payable always exceeds the fixed minimum period, even where that period exceeds the life expectancy or the greater or greatest of two or more life expectancies, as the case may be. In these cases the greatest number of the one or more life expectancies and the fixed minimum period of years for which the annuity is payable is to be used as the relevant number.

30. Sub-paragraph (c)(iv) of the definition of "relevant number" can be expected to have a limited field of operation. It will apply, however, to some annuities issued under certain statutory schemes which provide for a reversionary or survivorship annuity to be paid in certain circumstances to a surviving spouse who was not married to the former employee at the time the original annuity commenced. In this situation the sub-paragraph is to first apply for the year in which it becomes evident that the spouse has satisfied the criteria of eligibility for the reversionary annuity (in most cases that would not be until the year in which the spouse's pension commences). If the life expectancy of the spouse at the date the former employee's annuity commenced exceeded that of the former employee, the higher relevant number is to be substituted immediately for all future calculations of the deductible amount.

31. Paragraphs 16 to 24 above deal with a limited range of term certain and single life annuities in which it may be appropriate for the discretion in sub-section 27H(3) to be applied. The rulings contained in those paragraphs are in a context that permit the direct substitution of a different deductible amount for the one calculated under sub-section 27H(2). As explained at paragraph 5 above regarding partial commutations, sub-paragraphs (c)(i), (iii) and (v) of the definition of "relevant number" require a consideration of the same matters as have to be considered under sub-section 27H(3).

However, the outcome of having regard to the paragraph (c) matters can only be the selection of an appropriate relevant number for use in sub-section 27H(2). Components A, B and C cannot change.

32. It has been decided that an annuity, not being a term certain or single life annuity, that otherwise has the features referred to in paragraphs 17 to 24 above is to have the deductible amount calculated in the manner described there. In the case of an indexed annuity, for example, that means using the relevant number determined in accordance with paragraphs 26 to 29 above to calculate a notional constant annual deductible amount and then altering the relevant number annually to the extent necessary to produce the result set out in paragraph 21. In the case of a decreasing annuity the relevant number is either the number determined in accordance with paragraphs 26 to 29 or, if a certificate is received from an approved actuary, the relevant number that produces the deductible amount that the actuary states is appropriate for that particular year. As before, where an actuary's certificate is received in this situation the sum of the annual deductible amounts is not to exceed the UPP.

Supplements to annuities

33. Paragraph 27H(1)(b) provides for any payment of a supplement to an annuity or superannuation pension to be included in assessable income if made after 30 May 1984 (see sub-section 60(14) of the amending Act). The amendment overcomes the deficiency in the law revealed by the decision in FCT v. Harris, 80 ATC 4238, 10 ATR 869, that a gratuitous supplementary payment by a former employer to a retired employee was not income. The later decision in FCT v. Blake, 84 ATC 4661, 15 ATR 1006, that regular ex gratia payments received as a supplement to a superannuation pension were assessable income, confirmed the view that the Harris decision had only a limited field of operation.

34. Consequently, supplements paid during the period from 1 July 1983 (when section 27H generally commenced) to 30 May 1984 (after which paragraph 27H(1)(b) commenced) are -

(a) if analogous to the payments in the Harris case - not assessable; and

(b) if not analogous to the Harris payments - assessable in full under sub-section 25(1).

Payments in both categories made after 30 May 1984 are assessable in full under sub-section 27H(1).

Superannuation Act - eligible termination payments

35. Paragraphs 11 to 13 above set down rules for calculating the undeducted purchase price of pensions paid under the Commonwealth Superannuation Act in certain situations where a lump sum benefit is also payable under that Act. It is proposed in this part of this ruling to explain how Subdivision

AA of Division 2 is regarded as applying to lump sum benefits under the Superannuation Act.

36. Lump sum benefits payable under the following provisions of the Superannuation Act are to be treated as payments to which paragraph (d) of the definition of "eligible termination payment" in sub-section 27A(1) applies (that is, payments in relation to the commutation of a superannuation pension):

s.62(1)	- involuntary retirement - lump sum equal to 3.5 times accumulated basic contributions in lieu of standard and additional early retirement pensions;
s.64	- commutation of additional age or early retirement pension;
ss.68(1) 69(1) 71(1) 72(1)	- invalidity - lump sum in lieu of all or part of invalidity pension;
ss.83(1) 84(1) 86(1) 87(1) 92(1)	- spouse benefit upon death of contributor - lump sum in lieu of all or part of spouse's pension;
s.99(1)	- orphan benefit - lump sum in lieu of orphan pension;
ss.197-199, 202-205, 206-208	- age or invalidity retirement or death of former Provident Account contributor.

37. These benefits are to be regarded as commutation payments whether or not any instalments of pension are paid before the election is made to take the lump sum benefit. If instalments of pension are paid pending the election, the full amount of the lump sum is taken into account under the eligible termination payment provisions and the instalments of pension (which are then repaid) are not included in assessable income. The following summary of the relevant provisions of the Superannuation Act indicates how to calculate the unused undeducted purchase price (UUPP) to be excluded from the payments listed at paragraph 36 and considers the treatment of other lump sum benefits payable under that Act.

Age/early retirement

38. A lump sum benefit may be paid under sub-section 57(2) or 61(2) equal to the excess of the contributor's accumulated contributions over the amount required to fund the 20% additional age or early retirement pension. Such a lump sum payment is within paragraph (b) of the definition of eligible termination payment and the "undeducted contributions" component for the purposes of section 27B is so much of the contributions by the contributor to the fund after 30 June 1983 as the contributor claims on Schedule L as undeducted contributions in

relation to the payment. The balance of those contributions forms part of the UPP of the additional age or early retirement pension but not (see paragraph 11 above) of the standard age or early retirement pension. That is, if the additional age or early retirement pension is commuted under section 64, the UUPP is to be excluded in full from the commutation payment. The UPP of the remaining standard pension is NIL.

39. Where a person who is deemed to have retired involuntarily elects under section 62 to take a lump sum benefit equal to 3.5 times accumulated basic contributions in lieu of both standard and additional pensions, the payment is by way of commutation of both pensions (if the person would not have been entitled to any pension, the payment is within paragraph (b) of the definition of eligible termination payment). The UPP of the additional pension (the standard pension has no UPP) may nevertheless be excluded as UUPP from the commutation payment. In this context it is noted that, in appropriate circumstances, the "bona fide redundancy" provisions of section 27F may apply to payments under section 62 of the Superannution Act to persons who are retired involuntarily. Section 197 gives former Provident Account age retirement contributors a right similar to the section 62 election. Again, the lump sum benefit is a commutation of both standard and additional (age) pensions.

Invalidity benefits

40. Elections under sections 68, 69, 71, 72, 198 and 199 of the Superannuation Act are to be treated as commutations of the invalidity pension otherwise payable under section 67 or 70. The contributor's contributions to the fund (apart from supplementary contributions) are to be regarded as having purchased that pension. The UPP of the pension is therefore the UUPP of the commutation payment. Where section 68 or 71 applies to provide for payment of pension at a reduced rate, the UPP of the smaller pension is NIL. Lump sum payments of accumulated supplementary contributions under sections 67, 69, 70, 72, 73, 198 and 199 are eligible termination payments within paragraph (b) of the definition. The undeducted contributions in relation to such a payment are the supplementary contributions made after 30 June 1983. A lump sum payment under section 73 equal to 3.5 times accumulated basic contributions is also a paragraph (b) eligible termination payment. Undeducted contributions are the basic contributions after 30 June 1983.

41. Lump sum benefits paid under sections 67 to 73, 198 and 199 are eligible termination payments to which the invalidity payment provisons of section 27G of the Assessment Act apply.

Spouse benefits

42. Sections 82 to 88, 202 and 203 of the Superannuation Act provide for lump sum benefits to spouses of contributors who die before their maximum retiring age. The provisions mirror sections 67 to 73 and 198 and 199. The discussion at paragraph 40 above, therefore, applies mutatis mutandis to spouse benefits, insofar as it deals with commutation payments. However, whereas

certain payments under sections 67 to 73, 198 and 199 are paragraph (b) eligible termination payments, the equivalent payments to spouses are not eligible termination payments as the spouse would not have been a member of the superannuation fund. Where a contributor dies after reaching the maximum retiring age, the spouse may be entitled to a lump sum benefit under sub-section 91(2) or 92(1) or section 205. As these provisions mirror sub-section 57(2) and sections 64 and 62, the first-mentioned benefit is not an eligible termination payment and the discussion at paragraphs 38 and 39 above applies mutatis mutandis to the other two benefits.

Orphan benefits

43. Most lump sum benefits paid to orphans are not eligible termination payments as they are not paid in lieu of a pension and are not paid by reason that the orphan was a member of the superannuation fund. However, a lump sum benefit under sub-section 99(1) or section 206, 207 or 208 of 3.5 times (or 3 times) accumulated basic contributions of the deceased is a commutation payment within paragraph (d) of the definition of eligible termination payment. The contributor's basic contributions are to be regarded as purchasing the section 97, 98 or 100 orphan pension forgone and the UUPP is the UPP of that pension.

Former Provident Account contributors

44. Section 201 gives former Provident Account contributors who are not within the ordinary age, early retirement or invalidity provisions a right to a lump sum benefit in certain circumstances. The payment is an eligible termination payment under paragraph (b) of the definition.

Resignation of contributor (section 80)

45. The benefit is a paragraph (b) eligible termination payment. Contributions after 30 June 1983 are undeducted contributions.

Death of contributor or pensioner without dependants (s.111)

46. A lump sum benefit paid to the estate of a deceased contributor is a paragraph (b) eligible termination payment.

47. Where a pensioner dies and a spouse or orphan benefit is not payable, a lump sum representing the amount (if any) by which accumulated contributions at retirement exceed total benefits already paid is payable to the personal representative of the deceased. Such a payment when made to the trustee of the deceased's estate is to be regarded as the residual capital value of the pension and, after reduction by the UUPP, an eligible termination payment under paragraph (e) of the definition. If payment of the residual capital value is made to a person other than the trustee of the deceased's estate, the payment, less UUPP, is an eligible termination payment under paragraph (f).

COMMISSIONER OF TAXATION
9 May 1985