

## CORRESPONDENCE.

LIFE ASSURANCE COMPANIES AND ASSESSMENT OF  
INCOME-TAX.

*To the Editor of the Transactions of the Faculty of Actuaries.*

SIR,

THE LORD ADVOCATE *v.* THE EDINBURGH LIFE ASSURANCE CO.

This was a test case raised by the Inland Revenue to try the question whether life insurance companies which deal in annuities and which are assessed for income-tax, not on profits, but on income from investments, are accountable to the Inland Revenue for income-tax deducted by them from annuities paid to their annuitants; and if so, to what extent and effect.

The *Edinburgh Life Assurance Company*, with whom the question was raised, is a proprietary company, founded in 1823. Under the contract of copartnership constituting the Company, it is provided that every policy of insurance or other obligation issued by the Company shall contain a clause declaring that the capital stock and funds of the Company for the time being shall be the only fund answerable for any demand under such policy or other obligation, and all the Bonds of Annuity issued by the Company contain a clause in these terms. The Articles of the Company also provide for a separation between (1) the capital of the Company, (2) the "Proprietors' Fund," and (3) the "Assurance and Annuity Fund," which separation has all along been maintained. The Proprietors' Fund consists of all sums (other than the paid-up capital) "appropriated or to be appropriated to the proprietors by way of profit, and the interest, dividends, and accumulations of the same and of the paid-up capital." The Assurance and Annuity Fund consists of "the amount of all premiums and other sums to be received for assurances, endowments, annuities, and other obligations undertaken by the Company, and the interests, dividends, and accumulations thereof," and the Articles provide that this latter Fund is, in the first instance, to be the fund for answering all claims and demands on the Company in respect of its assurances or otherwise, and for defraying the expense of carrying on the business of the Company. Provision is also made by the Articles for a quinquennial investigation, and for ascertaining the profit of the quinquennium by valuing the current obligations of the Company, and deducting the net value of the liabilities from the Assurance and Annuity Fund. Of the balance of profit so ascertained one-tenth is to be added to the Proprietors' Fund and the remaining nine-tenths is to be added by way of bonus to the policies then current.

The Inland Revenue, which had already recovered income-tax from the Company on its income from invested accumulated funds, now claimed payment under Section 24(3) of the Customs and Inland Revenue Act, 1888, of a sum of £5809, 3s. 7d., being income-tax deducted by the Company from payments made to annuitants during the period from 5th April 1905 to 30th November 1907. The Company maintained that as the annuities in question had been paid out of profits and gains already brought into charge, the present demand of the Crown was an attempt to compel them to pay the same income-tax twice over. They therefore resisted the claim.

A proof was led before the Lord Ordinary (Johnston), from which it appeared that the Company's annuities were charged indiscriminately on its whole funds, no particular funds being set aside or investments ear-

marked and charged with the annuities. It also appeared that but for the income from invested funds (which was already taxed) the Company would have no profits or gains to show or to return for assessment. On these facts, the Lord Ordinary, following the decision in the case of *London County Council v. The Attorney-General*, L.R. 1901, A.C. 26, assolizied the Company. He held that as the Inland Revenue had chosen to assess and recover tax upon the Company's invested funds rather than upon its trade profits, and had thereby recovered a larger sum than if they had assessed on trade profits, they must be held to their election. To allow them to recover the tax effeiring to the annuities, in addition to that received on invested income, he held, would be to sanction the taxing over again, in part at least, of the same income. He was further of opinion that the defenders were entitled, and naturally as a business concern bound, to keep down their current obligations for annuities by paying them out of current income from invested funds. As they had already paid tax on that income, they were in his view entitled to treat their current annuities as paid out of their own current interests and dividends from invested funds, and to deduct and retain the tax in a question both with the annuitants and the Inland Revenue.

On a Reclaiming Note being taken, the First Division of the Court recalled the Lord Ordinary's Interlocutor. While agreeing with the Lord Ordinary that the case was ruled by the decision in the case of the *London County Council*, *supra*, the Court were of opinion that the application of that decision to the present case led to a different result. The question raised in the London County Council case was whether that body was entitled to retain income-tax it had deducted on moneys expended in payment of interest due to the holders of its consolidated stock, in so far as these moneys consisted of rents upon which the Council had already paid tax at the source. It was held that the County Council was entitled to retain the tax. But it was admitted in that case that in so far as the payments of interest to its stockholders were made, not out of rents received by the Council and already taxed, but out of *rates* on which no tax had been paid, the County Council was bound to account to the Inland Revenue for income-tax retained.

In the present case, the Lord President pointed out that the sums available to meet annuities were not only sums from investments already brought into charge, but also the Company's premium income on which no income-tax had been paid; and that the Company had no right to say, "We pay annuities out of the proceeds of funds on which we have paid income-tax, and pay our other debts out of funds which have paid no income-tax." In other words, they were not entitled to ascribe the payments of annuities to investment income alone. While therefore agreeing with the Lord Ordinary in his general view of the case, the Court remitted to him to ascertain what proportion for the period in question the premium income of the Company bore to the investment income, and to find that according to that proportion the income-tax retained from annuitants must be accounted for to the Inland Revenue.

The case is reported in *The Scots Law Times*, vol. xvi. p. 367, and 1909, vol. i. p. 363.

I understand that the decision of the Court of Session is now under appeal to the House of Lords.

I am, Sir,

Yours, etc.,

JOHN L. WARK.

EDINBURGH, 10th May 1909.