



## Class Ruling

### Income tax: the ASC 'Retire Early Assistance Program'

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#### **① This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in this Ruling are:

- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997), and
- section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

#### **Class of entities**

3. The class of entities to whom this scheme applies is those employees of ASC Pty Ltd and ASC Shipbuilding Pty Ltd shown at paragraphs 12 to 14 of this Ruling, who receive a payment under the scheme described in paragraphs 7 to 27 of this Ruling.

## Qualifications

4. The class of entities defined in the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.
5. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:
  - the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
  - the Ruling may be withdrawn or modified.

## Date of effect

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6. The Ruling applies from 21 January 2015 to 21 January 2016. The Ruling continues to apply after 21 January 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the Ruling will 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 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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7. The following description of the scheme is based on information provided by the applicant.
8. ASC Pty Ltd is Australia's largest specialised shipbuilding organisation and ASC Shipbuilding Pty Ltd is its subsidiary. Hereafter, ASC Pty Ltd and ASC Shipbuilding Pty Ltd are collectively referred to as ASC.
9. The scheme will be titled '*Retire Early Assistance Program*', hereafter referred to as the Scheme.
10. ASC recognises that, to remain competitive in the marketplace, they need to address future technological and workplace changes and challenges. Consequently, to maintain a balanced work force that has an appropriate level of skills, capabilities and experience, ASC need to bring new and improved skills and technological capacity to the organisation.

11. Thus, the purpose of the Scheme is to re-organise the ASC's business operations by:

- reducing the number of employees in strenuous roles where they are physically unable to fulfil their duties to an expected level
- reducing the number of employees within the business whose skills and capabilities are not at a level required by the business and who do not possess the willingness and motivation to adapt to change and develop these required skills, and
- employing other persons who are able to better handle physical and technological demands of a job in a changing work environment.

12. The class of employees to whom the Scheme applies is all ASC current employees covered under the *ASC Pty Ltd Enterprise Agreement 2012-2015*; the *ASC Pty Ltd (Western Australia) Enterprise Agreement 2012-2015*; and the *ASC Shipbuilding Pty Ltd Enterprise Agreement 2012-2015* who:

- have served as an ASC employee for five continuous years, and
- are aged between 61 and 64 years at the time of retirement.

13. Continuous years of service relates to a continuous period of employment but does not include breaks in employment such as long service leave, maternity leave and unpaid leave.

14. ASC have identified two eligible employees who retain key knowledge in relation to the accurate planning of trade work and are therefore, critical for effective and efficient business operation. As such, these employees would not be invited to participate in the Scheme.

15. The payment to be made to eligible employees under the Scheme is a lump sum payment equivalent to six months of the employee's total base salary.

16. In addition, all employees terminated under the Scheme will receive their accrued annual leave and long service leave entitlements. However, such payments do not form part of the payment made under the Scheme.

17. The maximum number of early retirement offers under the Scheme is limited to 120.

18. Where the number of employees applying for an early retirement under the Scheme exceeds the number of packages available, ASC will determine participation in the Scheme on a first-in first-served basis.

19. Following approval of the Scheme, all eligible employees within the class will be invited to express an interest to retire under the Scheme. The invitation will be made in two tranches. The first tranche will be due by 30 April 2015, and the second tranche will be due three months prior to the expiration of the Scheme. However, if the maximum early retirement offers are exhausted in the first tranche, then the second tranche will not occur.
20. Once an expression of interest in the Scheme has been made by an eligible employee, ASC will have up to four weeks to make an offer to the employee.
21. All employees who accept the offer to retire under the Scheme will terminate their employment and receive the payment on their last day of employment with ASC.
22. If an eligible employee chooses not to participate in the Scheme, the employee will continue in their existing employment.
23. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
24. Any employee who terminates their employment other than under the proposed Scheme, will not be entitled to receive the Scheme payment.
25. The Scheme payment will not be made in lieu of superannuation benefits.
26. Payments made under the Scheme will be at arm's length.
27. Where an eligible employee receives a payment under the Scheme, they may not be re-employed in any capacity by ASC.

## Ruling

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28. The early retirement scheme to be implemented by ASC is an early retirement scheme for the purposes of section 83-180.
29. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of voluntary termination of his or her employment at the time of the retirement, will be an early retirement scheme payment.
30. In addition, so much of the early retirement scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

31. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

32. Subsection 83-180(3) states that:

A scheme is an **early retirement scheme** if:

- (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
- (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
- (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

These three conditions are now considered.

### **All employees within a class approved by the Commissioner may participate in the scheme**

33. In order to satisfy the first condition, the scheme must be offered to all employees in a class approved by the Commissioner under paragraph 83-180(3)(a).

34. The class of employees to whom early retirement will be offered is set out under Class of entities.

35. The Commissioner considers that this is an appropriate class of persons for the Scheme to be offered. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the employer. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of paragraph 83-180(3)(a).

### **The employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations in a way approved by the Commissioner**

36. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer as described in paragraph 83-180(3)(b).

37. The nature of the rationalisation or re-organisation of the employer's operations are described above under Scheme. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer. It is therefore considered the Scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the employer for the purposes of paragraph 83-180(3)(b).

## **The scheme must be approved by the Commissioner prior to its implementation**

38. The Scheme is proposed to operate for a period from 21 January 2015 to 21 January 2016. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

## **Other relevant information**

39. Under subsection 83-180(1) so much of the payment received by an employee because the employee retires under an early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of termination is an early retirement scheme payment.

40. It should be noted that, in order for a payment to qualify as an early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 83-180(2), 83-180(5) and 83-180(6)):

- the retirement occurred before the employee turned age 65 or such earlier date on which the employee's employment would have terminated under the terms of employment because of the employee attaining a certain age or completing a particular period of service (as the case may be)
- if the employee and the employer are not dealing with each other at arm's length (for example because they are related in some way), the payment does not exceed the amount that could reasonably be expected to be made if the retirement was at arm's length
- at the time of retirement there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement
- the payment must not be made in lieu of superannuation benefits, and
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

41. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings'.

42. An early retirement scheme payment that falls within the specified limit is referred to as the 'tax free' amount and will not be assessable income and will not be exempt income.

43. For the 2014-15 income year, the tax free amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings for each income year. For the 2015-16 income year, the base amount and the service amount is yet to be determined at the publication of this ruling. Therefore, employees should check the ATO website for the 2015-16 income year indexed amount. It should be noted that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

44. The total of the amount received on the termination of employment calculated in accordance with paragraph 15 of this Ruling may qualify as an early retirement scheme payment.

45. The total payment calculated in accordance with paragraph 15 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 43 of this Ruling to determine the 'tax free' amount of the early retirement scheme payment.

46. The 'tax-free' amount will:

- not be an employment termination payment (ETP), and
- not be able to be rolled-over into a superannuation fund.

47. Any payment in excess of this limit will be an ETP where the payment is received no later than 12 months after termination of employment and will be split into tax free and taxable components. The tax free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

48. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

## **Appendix 2 – Detailed contents list**

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49. The following is a detailed contents list for this Ruling:

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## References

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|                                        |                          |
|----------------------------------------|--------------------------|
| <i>Previous draft:</i>                 | - ITAA 1997 82-135(e)    |
| Not previously issued as a draft       | - ITAA 1997 83-170       |
|                                        | - ITAA 1997 83-180       |
| <i>Related Rulings/Determinations:</i> | - ITAA 1997 83-180(1)    |
| TR 2006/10                             | - ITAA 1997 83-180(2)    |
|                                        | - ITAA 1997 83-180(3)    |
| <i>Subject references:</i>             | - ITAA 1997 83-180(3)(a) |
| - early retirement                     | - ITAA 1997 83-180(3)(b) |
| - employment termination               | - ITAA 1997 83-180(3)(c) |
| - redundancy or early retirement       | - ITAA 1997 83-180(5)    |
| scheme payment                         | - ITAA 1997 83-180(6)    |
|                                        | - ITAA 1997 960-285      |
| <i>Legislative references:</i>         | - ITAA 1997 995-1(1)     |
| - ITAA 1997                            | - TAA 1953               |
| - ITAA 1997 82-135                     |                          |

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### ATO references

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