



Class Ruling

Income tax: The Tasmanian Electro Metallurgical Company Proprietary Limited Early Retirement Scheme

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❶ 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 employees to whom this scheme applies are Tasmanian Electro Metallurgical Company Proprietary Limited (TEMCO) employees who:

- are employed on a permanent basis, and
- are at least 54 years, but less than 65 years at the time of retirement.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 27 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
 - this Ruling may be withdrawn or modified.

Date of effect

7. The Ruling applies from 13 May 2015 to 31 January 2016. The Ruling continues to apply after 31 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

8. The following description of the scheme is based on information provided by the applicant.
9. The scheme will be titled '*The Tasmanian Electro Metallurgical Company Proprietary Limited Early Retirement Scheme*', referred to as the Scheme.
10. As a result of significant operating challenges in a declining market, TEMCO proposes to rationalise and re-organise its operations by renewing the number of its employees. As a result of this renewal, TEMCO seeks to improve productivity through employing new staff to introduce new skills, increase employee engagement and increase workplace diversity.
11. The class of employees to whom the Scheme applies is all TEMCO employees who are:
 - are employed on a permanent basis; and
 - are at least 54 years, but less than 65 years at the time of retirement.

12. TEMCO proposes to provide eligible employees participating in the Scheme with an incentive lump sum payment of \$40,000.
13. In addition, all employees leaving under the Scheme will receive their statutory entitlements, such as accrued annual leave and long service leave entitlement, as at the date of termination. However these payments will not form part of the payment made under the Scheme.
14. Participation in the Scheme is entirely voluntary. Employees who chose not to participate in the Scheme will continue working with TEMCO.
15. There is a minimum number of five early retirement offers under the Scheme.
16. There is a maximum number of 22 early retirement offers under the Scheme.
17. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those eligible employees who have expressed an interest on a 'first in – first accepted' basis.
18. Following approval of the Scheme, all eligible employees will be invited to express their interest to retire early and will have until 22 May 2015 to submit their expression of interest in the Scheme.
19. After an employee has submitted an expression of interest in the Scheme, they will receive notice of acceptance within seven days after 22 May 2015.
20. After accepting the offer, employees will progressively terminate their employment up to and including 31 January 2016 as replacement staff are recruited and trained.
21. It is proposed the Scheme will be implemented from 13 May 2015 to 31 January 2016.
22. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
23. Any employee who terminates their employment other than under the Scheme, will not be entitled to receive the Scheme payment.
24. Payments made under the Scheme to employees who have not yet reached 65 years will be processed as an early retirement 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. There is no agreement in place between the eligible employees and TEMCO, or between TEMCO and another entity to employ any employee after retirement under the Scheme.

Ruling

28. The early retirement scheme to be implemented by the Tasmanian Electro Metallurgical Company Proprietary Limited 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 the voluntary termination of their 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.

Commissioner of Taxation

13 May 2015

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 under the Scheme is set out in paragraph 12 of this Ruling.

35. The Commissioner considers that this is an appropriate class of persons to whom the Scheme will be offered. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of TEMCO. 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 is described above under Scheme. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the employer.

38. It is considered that the Scheme is to be implemented by the TEMCO with a view to rationalising or re-organising the operations of TEMCO for the purposes of paragraph 83-180(3)(b). Accordingly, the second condition for approval has been met.

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

39. The Scheme is proposed to operate for a period commencing from 13 May 2015 of the Scheme to 31 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

40. 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 their employment at the time of the retirement, is an early retirement scheme payment.

41. 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)).

42. 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'.

43. 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.

44. For the 2014-15 income year, the 'tax-free' amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each completed year of employment service to which the early retirement scheme payment relates. 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.

45. In accordance with section 960-285, the base limit and service amount limits are indexed in line with average weekly ordinary time earnings for each income year. Consequently, for the 2015-16 income year, the base amount is \$9,780 and the service amount is \$4,891.

46. The amount received on termination of employment in accordance with paragraph 13 of this Ruling may qualify as an early retirement scheme payment.

47. The payment received in accordance with paragraph 12 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraphs 44 and 45 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

48. The 'tax-free' amount will:

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

49. 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 ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

50. 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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