

CR 2006/43 - Income tax: Approved Early Retirement Scheme - Wallenius Wilhelmsen Logistics

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Class Ruling

Income tax: Approved Early Retirement Scheme – Wallenius Wilhelmsen Logistics

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ⓘ 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payments under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:
- section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 27CB of the ITAA 1936; and
 - section 27E of the ITAA 1936.

Class of entities

4. The class of entities to which this Ruling applies is all employees of Wallenius Wilhelmsen Logistics (WWL) who receive a payment under the scheme described in paragraphs 15 to 38 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 15 to 38 of this Ruling.

7. 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.

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9. A copy of this Ruling must be given to all employees eligible to participate in the approved early retirement scheme.

Date of effect

10. This Ruling applies from 24 May 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

14. This Ruling is withdrawn and ceases to have effect after 31 December 2006. The Ruling continues to apply, in respect of the relevant taxation provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. Thus, the Ruling continues to apply to those entities, even following its withdrawal, for schemes entered into prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

15. The scheme that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- correspondence from representatives of WWL; and
- records of telephone conversation with the representatives of WWL.

16. WWL is requesting approval for an early retirement scheme relating specifically to staff employed at Wallenius Wilhelmsen Logistics AS (WWLAS) and its division Wallenius Wilhelmsen Logistics Australia (WWLA).

17. The class of employees to be offered a package will be all ongoing employees who are aged between 45 and 65 years of age, within the Corporate Environment, Trade, Commercial, Operations and Logistics of WWLAS and WWLA.

18. The scheme is being offered as part of the re-organisation of the operations of the employer and subsequent re-evaluation of the organisation's structure, and to increase its focus on key customers through clear accountabilities in the regions.

19. Since the merger in 1999, Oceania's business base has evolved by the development of the WWL Solutions activities, the withdrawal from containers and intensified focus on Corporate and Key Accounts.

20. This re-organisation requires the business to move from a mature business focusing purely on ocean shipping services to one of a logistics oriented business focusing on complete supply chain services inclusive of shipping.

21. Prior to these changes the business needs and processes focused on the provision of a single product, including singular pricing structure and support services, focusing on a client base of freight forwarders.

22. The business will restructure by centralising divisions, developing current positions with a broader and more enhanced competence. The new processes and competence and requirements have been aligned with the development of logistics products and services through a customer supply chain within the global network.

23. WWL has identified key employees who will not be eligible to participate in the scheme. They are:

- all employees in the vehicle processing centres;
- personnel sponsored under 457 business visa;
- senior pricing/trade personnel – associated with key customer contracts; and
- operational personnel holding a master mariners qualification with experience at sea and land, and in stowage and planning.

24. The number of employees the employer is prepared to allow to retire under the scheme will be limited.

25. All eligible staff will be asked to consider taking a package through an expression of interest process.

26. Where more employees express an interest than the number of packages available under the scheme, the package will be offered to those employees who are the oldest within the class and who are under the age of 65 years at the time the payment is made.

27. The period the scheme will be open to employees is from 24 May 2006 to 31 December 2006.

28. The scheme will offer an incentive to employees to take early retirement in accordance with the provisions outlined in the scheme as an alternative option to re-engineering the business structure through redundancy.

29. The scheme will be offered to all eligible employees who will have two weeks to consider their options and inform the organisation of their application for early retirement.

30. All employees who accept the offer to retire under the scheme will terminate employment and receive the package no later than 31 December 2006, with the specified date of termination for each employee dependent upon the employee's contract or an agreed period of up to three months.

31. The payment under the scheme will be a lump sum equivalent to three weeks pay per year of service up to a maximum of seventy-five weeks. The benefit will be calculated on the employee's gross salary (excluding superannuation) at the date of ceasing employment. The nominal rate includes any allowance or loading which is counted as salary for superannuation purposes.

Payments made under the Scheme

32. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme, the conditions set out in paragraphs 33 to 38 of this Ruling must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

33. The payment must be an eligible termination payment (ETP) made in relation to the employee in consequence of his or her employment being terminated under the approved early retirement scheme.

34. The payment must not be made from an eligible superannuation fund.

35. The payment must not be made in lieu of superannuation benefits.

36. The employee must terminate his or her employment before the earlier of:

- age 65; or
- the date on which his or her employment would have necessarily terminated under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service.

37. Where 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 what would have been paid to the employee had they been dealing at arm's length.

38. At the termination time, there is no agreement in force between the employee and the employer or the employer and another person, to employ the employee after the date of termination.

Ruling

39. The early retirement scheme offered by WWL to eligible employees as set out in paragraph 17 of this Ruling, is an approved early retirement scheme for the purposes of section 27E of the ITAA 1936.

40. Accordingly, so much of the ETP as exceeds the amount of an ETP that could reasonably be expected to have been made in relation to the taxpayer if the termination of employment had occurred at the termination time otherwise than in accordance with the approved early retirement scheme, is an approved early retirement scheme payment in relation to the taxpayer.

41. In addition, so much of the approved early retirement scheme payment as falls within the threshold calculated in accordance with subsection 27A(19) of the ITAA 1936 is non-assessable and is ignored in working out whether a capital gain has been made via the operation of section 27CB of the ITAA 1936.

Commissioner of Taxation

24 May 2006

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.*

42. Where a scheme satisfies the requirements of section 27E of the ITAA 1936 that scheme will be an 'approved early retirement scheme'.

43. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of section 27E of the ITAA 1936.

44. Paragraph 14 of TR 94/12 states that:

Three conditions need to be satisfied for a scheme to qualify as an approved early retirement scheme. Those conditions are:

- the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
- the scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind (paragraph 27E(1)(b)); and
- the scheme must be approved by the Commissioner prior to its implementation (paragraph 27E(1)(c)).

These three conditions are discussed below in paragraphs 45 to 52 of this Ruling.

The scheme must be offered to all employees within a class identified by the employer

45. In order to satisfy the first condition, the scheme must be offered to all employees within one of the categories specified in subparagraphs 27E(1)(a)(i) to (v) of the ITAA 1936.

46. The class of employees to whom early retirement will be offered is set out in paragraph 17 of this Ruling.

47. This class of employees must be considered under subparagraph 27E(1)(a)(ii) of the ITAA 1936, namely, all employees of the employer who have attained a particular age. 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 subparagraph 27E(1)(a)(ii) of the ITAA 1936.

48. It is noted, however, that WWL retains a limited right of veto to be applied as set out in paragraphs 23 to 26 of this Ruling. The limitation of the scheme in this way is acceptable to the Commissioner.

The scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind

49. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer by means of one or more of the objectives set out in subparagraphs 27E(1)(b)(i) to (vi) of the ITAA 1936.

50. Paragraphs 18 to 22 of this Ruling describe the nature of the rationalisation or re-organisation of the WWL operations. 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 that the scheme is to be implemented by the employer with the view to rationalising or re-organising the operations of the employer for the purposes of subparagraph 27E(1)(b)(vi) of the ITAA 1936. Accordingly, the second condition for approval has been met.

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

51. The scheme is proposed to operate for a period from 24 May 2006 to 31 December 2006. Approval was granted prior to implementation therefore the third condition in paragraph 27E(1)(c) of the ITAA 1936 is satisfied.

52. The scheme will be in operation for approximately 7 months which is within the period recommended in TR 94/12.

Other relevant information

53. Under section 27E of the ITAA 1936, so much of the payment received by a taxpayer under the approved early retirement scheme, that exceeds the amount that would ordinarily have been received on voluntary resignation or retirement is an approved early retirement scheme payment.

54. It should be noted that, in order for a payment to qualify as an approved early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 27E(4) and (5) of the ITAA 1936):

- the payment must be an ETP made in relation to the taxpayer in consequence of the taxpayer's employment being terminated under an approved early retirement scheme;
- the payment must not be from an eligible superannuation fund;
- the payment must not be made in lieu of superannuation benefits;

- if the taxpayer 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 what would have been paid to the taxpayer had they been dealing at arm's length;
- the date of termination was before age 65 or such earlier date on which the taxpayer's employment would necessarily have had to terminate under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service (whichever occurs first); and
- there was no agreement at the date of termination between the taxpayer and the employer, or the employer and another person to employ the taxpayer after the date of termination.

55. The term 'agreement' is defined in subsection 27A(1) of the ITAA 1936 as meaning 'any agreement, scheme or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

56. An approved early retirement scheme payment made on or after 1 July 1994 that falls within the specified limit will be exempt from income tax and called the 'tax-free amount'.

57. For the year ending 30 June 2006, the tax-free amount is limited to \$6,491 plus \$3,246 for each whole year of completed employment service to which the approved early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. The \$6,491 plus \$3,246 limits will be indexed to rise in each subsequent year in line with the increases in average weekly ordinary time earnings.

58. The total of the amount received on the termination of employment calculated in accordance with paragraph 31 of this Ruling qualifies as an approved early retirement scheme payment.

59. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 57 of this Ruling to determine the 'tax-free amount'.

60. The tax-free amount will:

- not be an ETP;
- not be able to be rolled-over;
- not include any amount from a superannuation fund or paid in lieu of a superannuation benefit; and
- not count towards the recipient's reasonable benefit limit.

61. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

Appendix 2 – Detailed contents list

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

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References

<i>Previous draft:</i>	- ITAA 1936 27CB
Not previously issued as a draft	- ITAA 1936 27E
	- ITAA 1936 27E(1)(a)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 27E(1)(a)(i)
TR 94/12	- ITAA 1936 27E(1)(a)(ii)
	- ITAA 1936 27E(1)(a)(iii)
	- ITAA 1936 27E(1)(a)(iv)
<i>Subject references:</i>	- ITAA 1936 27E(1)(a)(v)
- approved early retirement scheme payments	- ITAA 1936 27E(1)(b)
	- ITAA 1936 27E(1)(b)(i)
- eligible termination payments	- ITAA 1936 27E(1)(b)(ii)
	- ITAA 1936 27E(1)(b)(iii)
- eligible termination payments components	- ITAA 1936 27E(1)(b)(iv)
	- ITAA 1936 27E(1)(b)(v)
<i>Legislative references:</i>	- ITAA 1936 27E(1)(b)(vi)
- TAA 1953	- ITAA 1936 27E(1)(c)
- TAA 1953 Sch 1 357-75(1)	- ITAA 1936 27E(4)
- ITAA 1936 27A	- ITAA 1936 27E(5)
- ITAA 1936 27A(1)	- Copyright Act 1968
- ITAA 1936 27A(19)	

ATO references

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