

CR 2012/45 - Income tax: the 2012 BlueScope Sheet Metal Supplies Chullora and Trade Coast Early Retirement Scheme

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Class Ruling

Income tax: the 2012 BlueScope Sheet Metal Supplies Chullora and Trade Coast Early Retirement Scheme

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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, 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 provisions

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 which this Ruling applies is those employees of BlueScope Distribution Pty Ltd, shown at paragraph 16, who receive a payment under the scheme described in paragraphs 9 to 29 of this Ruling.

Qualifications

4. 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 9 to 29 of this Ruling.

5. 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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Date of effect

7. This Ruling applies from the date of the Commissioner's approval to 30 September 2012. The Ruling continues to apply after 30 September 2012 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this 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 this 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. BlueScope Distribution Pty Ltd is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled the '2012 BlueScope Sheet Metal Supplies Chullora and Trade Coast Early Retirement Scheme', referred to as the Scheme.
11. Throughout 2011, Sheet Metal Supplies has been facing heightened competition caused by the overall decline in the non-mining market, the high exchange rate giving importers a large advantage over Australian made product and overall, a large number of competitors in a smaller market. As a consequence Sheet Metal Supplies Chullora and Trade Coast are currently over staffed to meet current market demand.
12. The business requires less senior external selling roles in each of these businesses. In addition, the Company will seek improved flexibility amongst the existing sales force, particularly the internal sales team, to ensure they will meet the ongoing future needs of their customers. This will be achieved by providing the right tools and information to their internal sales team to better empower them to make sales decisions on a day to day basis.
13. The purpose in implementing the Scheme is to rationalise and re-organise the employer's operations and reduce, swiftly and by voluntary means, the size of their Sales workforce at Chullora and Trade Coast.
14. In the current market, the release of older longer serving employees will assist the employer to provide expanded redeployment and development opportunities for other classes of employees. This will assist the employer to maintain and grow future core people and talent capability while eliminating the need to terminate employees due to genuine forced redundancy.
15. By offering an early retirement scheme the employer will be able to directly reduce its current labour costs while retaining core people and organisational capability.
16. The class of employees to whom this Scheme applies is all employees over the age of 55 years (and under 65 years of age) who are employed in a Sales capacity at either Chullora or Trade Coast and have a Level 3 classification under the Clerks Private Sector Award 2010 or have a Commercial traveller classification under the Commercial Sales Award 2010.
17. Participation in the Scheme is entirely voluntary.

18. The employer proposes to retain a limited veto. Employees engaged at each site in transport, logistics scheduling, planning, safety, operations or maintenance will not be eligible to participate in the Scheme.

19. Following approval of the Scheme, all eligible employees will be invited to complete an Expression of Interest Form and to submit it to the Company within two weeks of the Scheme opening.

20. 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.

21. The number of packages available for retiring employees under the Scheme is limited.

22. All eligible employees under the Scheme will be offered a lump sum payment as follows:

- a lump sum payment of \$8,000; and
- one week's ordinary pay (capped at \$4,404) for each completed year of continuous service.

23. Payment under this formula is inclusive of any statutory or contractual notice that might otherwise have been payable where the Company does not require an employee to work out their notice of termination period.

24. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment from July through to 30 September 2012.

25. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 30 September 2012.

26. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 30 September 2012.

27. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.

28. All employees terminated under the Scheme will receive their unused annual leave and unused long service leave entitlements however they do not form part of the payment made under the Scheme.

29. All eligible employees are employed under the Clerks Private Sector Award 2010 or the Commercial Sales Award 2010.

Ruling

30. The early retirement scheme to be implemented by BlueScope Distribution Pty Ltd is an early retirement scheme for the purposes of section 83-180.

31. Accordingly, so much of the payment received by an employee that exceeds the amount that could be 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.

32. 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

27 June 2012

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.***

33. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

34. 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 discussed below.

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

35. 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).

36. The class of employees to whom early retirement will be offered is set out in paragraph 16 of this Ruling.

37. 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

38. 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).

39. The facts at paragraphs 11 to 15 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's 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 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

40. The Scheme is proposed to operate for a period from the day after the Commissioner's approval to 30 September 2012. 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.

41. The Scheme will be in operation for approximately 3 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

42. 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.

43. 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 83-130(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 made 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)).

44. 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'.

45. 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.

46. For the 2012-13 income year, the tax free amount is limited to \$8,806 (base amount) plus \$4,404 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. 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.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 47 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 46 to determine the 'tax free' amount of the early retirement scheme payment.

49. The 'tax free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

50. Any payment in excess of this limit will be an employment termination payment and split up 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.

Appendix 2 – Detailed contents list

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References

- Previous draft:*
- ITAA 1997 83-170
- Not previously issued as a draft
- ITAA 1997 83-180
 - ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 83-180(2)
 - ITAA 1997 83-180(3)
 - ITAA 1997 83-180(3)(a)
 - ITAA 1997 83-180(3)(b)
 - ITAA 1997 83-180(3)(c)
- Subject references:*
- early retirement
 - employment termination
 - redundancy or early retirement scheme payments
- ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 960-285
 - ITAA 1997 995-1(1)
 - TAA 1953
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - Copyright Act 1968
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ATO references

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