

CR 2012/93 - Income tax: Hella Australia Pty Ltd early retirement scheme



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Class Ruling

Income tax: Hella Australia Pty Ltd early retirement scheme

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	34
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	37
Appendix 2:	
Detailed contents list	55

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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 provision(s) 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 which this Ruling applies is those employees of Hella Australia Pty Ltd, shown at paragraph 16, who receive a payment under the scheme described in paragraphs 9 to 33 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 33 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 17 October 2012 to 31 December 2012. The Ruling continues to apply after 31 December 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. Hella Australia Pty Ltd (the employer) 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 'Hella Australia Pty Ltd early retirement scheme', referred to as the Scheme.

11. The total number of employees currently employed by the employer is 365.
12. The company has identified the need to expand its operations beyond its traditional markets towards high technology products and processes.
13. The purpose in implementing the Scheme is to re-organise the employer's operations and reduce, by voluntary means, the number of older workers to provide more opportunities for the retention and redeployment of younger workers and reduce the need for forced redundancies.
14. As the company undertakes the reorganisation, the release of older employees will assist the employer by providing expanded redeployment and development opportunities for other classes of employees. This will assist the company to maintain and grow future core people and talent capability while eliminating the need to terminate employees due to genuine forced redundancy.
15. The employer has 84 employees within the class. The number of packages available for retiring employees under the Scheme is limited to 25.
16. The class of employees to whom this Scheme applies is all permanent employees who are over the age of 55 but less than 65 years of age.
17. Participation in the Scheme is entirely voluntary.
18. The employer proposes to retain a limited veto. Employees engaged as Sales Director, General Manager Human Resources, Tooling Manager and Production Manager – Moulding will not be eligible to participate in the Scheme.
19. The Scheme will be open from the date of approval by the Commissioner.
20. Following approval of the Scheme, all eligible employees will be invited to express an interest in the Scheme within one month of the employer's call for expressions of interest.
21. The employer will then make offers to successful employees within seven days of the end of the expression of interest period.
22. Employees will have two weeks to accept or decline any offer made by the employer.
23. All employees who accept the offer to retire under the Scheme will terminate employment within seven calendar days.
24. 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 the longest period of service with the employer.
25. It is proposed the Scheme will be implemented from the date of the Commissioner's approval to 31 December 2012.

26. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would be entitled to receive on voluntary termination of employment.

27. The payment made under the Scheme will be at arm's-length.

28. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.

29. The retirement of employees who receive a payment under the scheme will occur before they turn 65 years of age.

30. The payment under the Scheme is:

- 2 weeks per each completed year of continuous service up to a maximum of 52 weeks
- 4 weeks in lieu of notice; and
- 1 week mature age payment.

31. All employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the relevant enterprise agreement. However, they do not form part of the payment made under the Scheme.

32. There is no agreement in place between the employer and the employee, or between the employer and another person to employ the employee after retirement.

33. All eligible employees are employed under the Manufacturing and Associated Industries and Occupations Award 2010 and the Hella Australia Enterprise Agreement 2011.

Ruling

34. The early retirement scheme to be implemented by Hella Australia Pty Ltd is an early retirement scheme for the purposes of section 83-180.

35. Accordingly, so much of the payment received by an 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.

36. 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.*

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

38. 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

39. 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).

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

41. 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

42. 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).

43. The facts at paragraphs 12 to 14 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

44. The Scheme is proposed to operate for a period from 17 October 2012 to 31 December 2012. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

45. The Scheme will be in operation for approximately three 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

46. 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.

47. 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)).

48. 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'.

49. 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.

50. 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.

51. The total of the amount received on the termination of employment calculated in accordance with paragraph 30 of this ruling may qualify as an early retirement scheme payment.

52. The total payment calculated in accordance with paragraph 30 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 51 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

53. The 'tax free' amount will:

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

54. 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

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Ruling	34
Appendix 1 – Explanation	37
All employees within a class approved by the Commissioner may participate in the scheme	39
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	42
The scheme must be approved by the Commissioner prior to its implementation	44
Other relevant information	46
Appendix 2 – Detailed contents list	55

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- early retirement
- employment termination
- redundancy or early retirement scheme payments

Legislative references:

- ITAA 1997
- ITAA 1997 82-135
- ITAA 1997 82-135(e)

- ITAA 1997 83-170
- ITAA 1997 83-180
- ITAA 1997 83-180(1)
- 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)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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