


# ***CR 2014/18 - Income tax: Bradken Limited early retirement scheme***

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## Class Ruling

### Income tax: Bradken Limited early retirement scheme

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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

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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 employees to whom this scheme applies is those employees of the Bradken Limited who receive a payment under the scheme described in paragraph 14 of this Ruling.

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## 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 12 February 2014 to 31 July 2014. The Ruling continues to apply after 31 July 2014 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. Bradken Limited (Bradken) is an Australian Public Listed Company.
10. Bradken is seeking the Commissioner's approval to offer an early retirement scheme (the Scheme) in accordance with section 83-180 to certain eligible employees.
11. The Scheme will be implemented from the 12 February 2014 to 31 July 2014.
12. Bradken is seeking to implement the Scheme in order to:
  - rationalise and reorganise its operations and reduce, swiftly and by voluntary means, the size of the workforce;
  - to reduce its current fixed operating costs, by reducing swiftly and by voluntary means, the size of the workforce; and

- contribute to the revitalisation of the Bradken group, and to develop and mentor new leaders of the organisation for the future

13. The rationalisation and re-organisation will allow the release of older, longer serving employees which will assist in providing expanded redeployment and development opportunities for other classes of employees. This will assist in maintaining and growing future core employees and capability whilst eliminating the need for genuine forced redundancy.

14. Employees aged less than 65 years of age will be eligible to participate in the Scheme as detailed in the following table, and where they do not fall within the classes of employees to whom the Scheme does not apply:

Site	Staff Exclusions	Wages earner Exclusions	Staff Acceptance cap	Wages Acceptance cap	Minimum Age
Bassendean	Sales roles, Project Coordinators, Estimators, Production Managers, Welding Engineers	Nil	5	15	58
Global Corporate Centre	Business Development managers, Purchasing co-ordinators, Metal recycling roles, Executive positions	Nil	uncapped		58
Ipswich BEP and Foundry	Technical Manager	Patternmakers, Machinists	uncapped		55
Launceston	Manufacturing Manager	Tradesman, Electricians, Tradesman Moulders, Tradesman patternmakers, Melters	uncapped		55
Runcorn	Metallurgists, sales roles, environmental roles, Metal Recycling roles	Patternmakers, Metal Recycling roles	40 combined		58
Welshpool	Engineers, Manufacturing manager, Safety roles, Technical Manager, Melting and Beforecast Managers	All excluded	uncapped	N/A	45
Wundowie	Estimators, Metallurgists	Melters, Furnace operators, Patternmakers	uncapped		60

15. The Scheme will not apply to the following classes of employees:

- metallurgists;
- patternmakers;
- employees engaged on a short term and/or casual basis or for a specified period;
- employees with less than 12 months service;
- employees on workers compensation whose claim is based on compensation for termination;
- employees who would otherwise retire before 31 July 2014 because their employment will cease upon reaching a particular age under their relevant award or enterprise agreement;
- employees subject to termination on the grounds of misconduct and/or unsatisfactory service

16. For the purposes of application of this Scheme, the following definitions apply:

- (i) 'staff' employees are employed under an individual contract; and
- (ii) 'wages' employees are employed under an Enterprise Agreement or Modern Award.

17. Following approval of the Scheme, all eligible employees within the class will be invited to apply and submit their applications of expression of interest in the Scheme.

18. There are a total of 121 packages available under the Scheme.

19. There are a total of 133 employees who fall within the class of employees to be covered under the Scheme.

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. All employees who accept the offer to retire under the Scheme will cease employment within one month of it being offered, unless another period is mutually agreed up until 31 July 2014.

22. A payment under the Scheme will be 0.8 weeks of base pay per year of service, with a pro rata payment for each part completed year of service up to a maximum of 15 weeks pay, excluding the notice period. Part-time employees will receive a pro-rata payment based on the same formula.

23. Any employee who ceases employment other than under the proposed Scheme will not be entitled to receive the payment.

24. Participation in the Scheme is entirely voluntary.
25. The payment made under the Scheme cannot be rolled over into a superannuation fund.
26. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
27. All employees ceasing their employment under the Scheme will receive their accumulated annual leave and long service leave entitlements.

## **Ruling**

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28. The early retirement scheme to be implemented by the Bradken Limited is an early retirement scheme for the purposes of section 83-180.
29. 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 the 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.

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**Commissioner of Taxation**

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12 February 2014

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## 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. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

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 in paragraph 14 of this Ruling, subject to the additional exclusions in paragraph 15.

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 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. Paragraphs 12 to 13 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 considered that 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). Accordingly, the second condition for approval has been met.

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

38. The Scheme is proposed to operate for a period commencing from *the date after the Commissioner's approval* to 31 July 2014. 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.

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

***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 his or her 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);



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- 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)).

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 2013-14 income year, the proposed tax free amount is limited to \$9,246 (base amount) plus \$4,624 (service amount) for each whole year of completed 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. The total of the amount received on termination of employment calculated in accordance with paragraph 22 of this ruling may qualify as an early retirement scheme payment.

46. The total payment calculated in accordance with paragraph 45 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 44 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

47. The 'tax-free' amount will:

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

48. Any payment in excess of this limit will be an employment termination payment 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.

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49. The taxable component of the employment termination payment 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

<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)
- approved early retirement	- ITAA 1997 83-180(3)(b)
scheme payments	- ITAA 1997 83-180(3)(c)
- early retirement	- ITAA 1997 83-180(5)
- employment termination	- ITAA 1997 83-180(6)
	- ITAA 1997 995-1(1)
<i>Legislative references:</i>	- TAA 1953
- ITAA 1997	- Copyright Act 1968
- ITAA 1997 82-135	

### ATO references

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