


CR 2015/78 - Income tax: BlueScope Steel (AIS) Pty Limited Early Retirement Scheme

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Class Ruling

Income tax: BlueScope Steel (AIS) Pty Limited 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 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 in this Ruling 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 Steel (AIS) Pty Limited, shown at paragraphs 14 and 15, who receive a payment under the scheme described in paragraphs 9 to 28 of this Ruling.

Qualifications

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

5. The class of entities defined in the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading **Scheme**.

6. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:

- the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- the Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 30 September 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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 Steel (AIS) Pty Limited is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180 of the ITAA 1997.

10. The scheme will be titled the '*BlueScope Steel (AIS) Early Retirement Scheme*', hereafter referred to as the Scheme.

11. BlueScope Steel (AIS) Pty Limited (BlueScope) is a wholly owned subsidiary company of the BlueScope Steel Group. In 2015 the BlueScope Steel Group announced that due to changes in the global steel sector, their steel manufacturing costs are too high requiring immediate reduction.

12. The Scheme seeks to rationalise and re-organise BlueScope's operations and reduce swiftly by voluntary means the size of its Australian workforce.

13. As BlueScope undertakes the reorganisation the release of older longer serving employees will assist BlueScope by providing expanded redeployment and development opportunities for other classes of employees. This will allow BlueScope to maintain and grow future core people and talent capability while eliminating the need to terminate employees due to redundancy.

14. The class of employees to whom this scheme applies is all employees over the age of 55 as at 1 December 2015 (and under 65 years of age) who are employed under common law employment contracts in the following departments:

- Finance Manufacturing
- Human Resources Manufacturing
- Capital Development, Engineering and Environment
- Product Innovation and Technology, and
- BlueScope Australia and New Zealand (BANZ) Steelmaking Technology and Planning.

15. The following employees are excluded from participating in the Scheme:

- The Manager of each of the departments listed in paragraph 14 of this Ruling
- Employees employed in the Capital Development, Engineering and Environment Department in the following classifications:
 - Manager Automation and Electrical Project Engineering
 - Senior Automation Engineer
 - Senior Automation Engineer HSM, and
 - Automation Engineer.

16. Participation in the Scheme is entirely voluntary.

17. Following approval of the Scheme, all eligible employees will receive a letter and an indicative payment estimate concerning their entitlements under the Scheme. In addition to this letter:

- eligible employees will have 14 days following the approval of the Scheme to submit an Expression of Interest form, and
- approval of the Expression of Interest form will be communicated to eligible employees within 3 weeks of submission.

18. All eligible employees who apply and terminate under the Scheme will be offered a lump sum payment as follows:

- a lump sum payment of \$9,780, and
- one week's ordinary pay (capped at \$4,891) for each completed year of continuous service.

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

20. Most employees who accept the offer to retire under the Scheme will terminate employment and receive the payment by 1 December 2015.

21. The remaining employees are those who are in key positions where trained replacements are required. The retirement date for these employees will be no later than six months after the date their application has been accepted and before 30 June 2016.

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

23. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

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

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

26. The payment made under the Scheme is at arm's-length.

27. 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.

28. All eligible employees are employed under the Clerical and Administrative Employees (BlueScope Steel (AIS) Pty Ltd Award, the Clerks – Private sector Award 2010, the Professional Employees Award 2010 and the Manufacturing and Associated Industries and Occupations Award 2010.

Ruling

29. The early retirement scheme to be implemented by BlueScope (AIS) Pty Limited is an early retirement scheme for the purposes of section 83-180.

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

31. 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.***

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

33. 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

34. 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).

35. The class of employees to whom early retirement will be offered is set out in paragraph 14, subject to paragraph 15 of this Ruling.

36. 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

37. 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).

38. Paragraphs 11 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 work force of the employer.

39. The Scheme will be in operation for approximately 9 months. This is considered appropriate due to the circumstances of the re-organisation.

40. 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

41. The Scheme is proposed to operate for a period from 30 September 2015 to 30 June 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

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 83-180(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 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. In accordance with section 83-170, 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 2015-16 income year, the tax free amount is limited to \$9,780 (base amount) plus \$4,891 (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 18 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 18 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 46 of this Ruling 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.

51. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 82-135(e)
 - ITAA 1997 83-170
- Not previously issued as a draft
- ITAA 1997 83-180
- Related Rulings/Determinations:*
- TR 2006/10
- 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)
- Subject references:*
- early retirement
 - employment termination
 - redundancy or early retirement scheme payments
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - TAA 1953
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ATO references

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