

CR 2016/14 - Income tax: the South32 Cannington Voluntary Early Retirement Scheme

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Class Ruling

Income tax: the South32 Cannington Voluntary 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 early retirement 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 whom this Ruling applies is those employees of the South32 Cannington Pty Ltd (Cannington), shown at paragraph 14, who receive a payment under the scheme described in paragraphs 9 to 27 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 this 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:
 - 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
 - the Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 23 March 2016 to 23 March 2017. The Ruling continues to apply after 23 March 2017 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. Cannington is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180 of the ITAA 1997.
9. The scheme will be titled '*South32 Cannington Voluntary Early Retirement Scheme*', hereafter referred to as the Scheme.
10. Cannington is a fly-in fly-out mining and processing operation located in north-west Queensland. It employs 475 full-time employees and up to 350 contractors at the following sites:
 - an underground hard rock mine and surface processing facility near McKinley
 - a road to rail transfer facility in Cloncurry, and
 - a concentrate handling and ship loading facility at the Port of Townsville.

11. Cannington has undergone significant operating challenges in a declining commodity market. During this period, the company has identified cost reduction opportunities through headcount reductions, workforce efficiency, ore/grade blending and logistics optimisation. The company considers that productivity improvements are critical to ensure it maintains a globally competitive position.

12. The purpose of implementing the Scheme is to enable Cannington to manage transition to retirement in a planned manner to ensure they retain knowledge and skills within the company whilst also driving targeted diversity and local community employment programs.

13. Specifically, the Scheme aims to:

- provide an incentive for employees aged over 55 to transition into retirement in a dignified manner
- enable the company to manage the exit and retirement of people in critical positions in a planned and controllable manner
- introduce skills that will be critical to meet Cannington's strategic objectives, and
- increase diversity of Cannington's work force.

14. The class of employees to whom the Scheme applies is all permanent staff who are 55 years and over (but under 65 years) who:

- do not have a pre-existing retirement or other cessation agreement with Cannington, or
- are not subject to termination on the grounds of misconduct or unsatisfactory performance.

15. Eligible employees will receive a one-off payment of \$30,000.

16. There is a maximum of 40 packages under the Scheme.

17. Where the number of eligible employees applying to retire under the Scheme exceeds the number of packages available, Cannington will determine participation in the Scheme based on a 'first applied first accepted' basis.

18. To ensure transparency, accuracy and fairness in the selection process, applications for the program will be made in writing by completing a formal 'Expression of Interest'. All forms received will be date and time stamped at the time of receipt.

19. Participation in the Scheme is voluntary.

20. Following approval of the Scheme, all eligible employees within the specified class will be invited to submit an expression of interest to participate in the Scheme. Expressions of interest are open for the duration of the Scheme.

21. Once an expression of interest to participate in the Scheme has been made by an eligible employee, Cannington will make an offer to the employee within two weeks of receipt of the application.

22. Employees who accept the offer to retire under the Scheme will terminate their employment at a time mutually agreed between Cannington and the employee. The departure date will fall within the duration of the Scheme.
23. Payments will be made to eligible employees in the next available pay run following termination and will be processed as an early retirement scheme payment.
24. The payment made under paragraph 15 is in addition to any superannuation payments and any other payments such as accrued annual and long service leave entitlements to which eligible employees would otherwise be entitled to.
25. Any additional payments will not form part of the payment made under the Scheme.
26. Payment made under paragraph 15 of this Ruling will be at arm's length.
27. There is no agreement in place between the eligible employees and Cannington, or between Cannington and another person to employ any eligible employee after retirement under the Scheme.

Ruling

28. The early retirement scheme to be implemented by Cannington is an early retirement scheme for the purposes of section 83-180.
29. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of voluntary termination of their 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.

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. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

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 discussed below.

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

33. 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.

35. The Commissioner considers that this is an appropriate class of persons for the scheme to be offered to. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of Cannington. 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. The nature of the rationalisation or re-organisation of the employer's operations is described above under the heading *Scheme*. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force 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

38. The Scheme is proposed to operate for a period from 23 March 2016 to 23 March 2017. The approval to be provided by this 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 one year. This is considered appropriate due to the circumstances of the re-organisation.

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 their employment at the time of termination 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)
- 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. 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.

44. 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 six months, eight 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.

45. For the 2016-17 income year, the base amount and the service amount is yet to be determined at the publication of this Ruling. Therefore, employees should check the ATO website for the 2016-17 income year indexed amounts.

46. The total of the amount received on the termination of employment calculated in accordance with paragraph 15 of this Ruling may qualify as an early retirement scheme payment.

47. The total payment calculated in accordance with paragraph 15 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 45 and paragraph 46 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

48. The 'tax-free' amount will:

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

49. Any payment in excess of this limit will be an ETP. The tax-free component of an ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.

50. 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

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

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References

- Previous draft:*
- ITAA 1997 83-180(1)
 - ITAA 1997 83-180(2)
- Not previously issued as a draft
- ITAA 1997 83-180(3)
- Related Rulings/Determinations:*
- ITAA 1997 83-180(3)(a)
 - ITAA 1997 83-180(3)(b)
 - ITAA 1997 83-180(3)(c)
- TR 2006/10
- 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(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 960-285
 - ITAA 1997 995-1(1)
 - TAA 1953
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ATO references

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