

# ***CR 2017/69 - Income tax: 'Canon Information Systems Research Australia Pty. Ltd. Retirement Scheme 2017'***

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## Class Ruling

# Income tax: ‘Canon Information Systems Research Australia Pty. Ltd. Retirement Scheme 2017’

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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.

## Summary – 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)
  - 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 scheme applies is those employees of Canon Information Systems Research Australia Pty. Ltd. (CiSRA) shown at paragraph 11 of this Ruling who receive a payment under the scheme described under the heading *Scheme*.

## 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 under the heading *Scheme*.
5. If the scheme actually carried out is materially different from the scheme that is described in this 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

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6. The Ruling applies from 27 September 2017 to 31 December 2017. The Ruling continues to apply after 31 December 2017 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

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7. The scheme will be titled the '**Canon Information Systems Research Australia Pty. Ltd.**', hereafter referred to as 'the Scheme'.
8. CiSRA is an Australian subsidiary of Canon Inc. It is one of seven Research and Development Centres globally which primarily services Canon Inc. CiSRA has one office in Sydney and focuses on developing advanced technology solutions.
9. Over the past five to six years, the demand for software product development has substantially reduced. In response to the changing market conditions, CiSRA are now focussed on applied research and no are longer undertaking software product development. This has resulted in an oversupply of software engineering talent.
10. Implementation of the Scheme will enable CiSRA to maintain and extend the company's core competencies in applied research. The Scheme provides an avenue for the refreshment of a portion of the CiSRA workforce by opening employment opportunities for individuals with the technical skills who will enable CiSRA to meet its new business objectives.

11. The class of employees to whom the Scheme applies is:
- all permanent CiSRA employees who are between 50 and 64 years, with five or more years of service in the Image and Video Centre Division, and
  - any employees who are between 45 and 64 years and hold the position of General Manager, Principal Software Engineer, Principal User Experience Engineer or Senior Software Engineer.
12. The following staff are considered key employees and are critical to CiSRA providing high level research and business outcomes for clients. These employees are excluded from participating in the Scheme based on data as at the 'date of announcement' of the Scheme:
- Managing Director
  - Executive Director
  - Senior General Manager (Image and Video Centre Division)
  - Senior Manager
  - Senior Principal Engineer
  - Research Engineer (Standard, Senior or Principal).
13. In addition, the following staff will not be eligible to participate in the Scheme:
- employees who are on an expatriate assignment from Canon Inc. to CiSRA, and
  - employees who have resigned, or have been provided with a notice of the termination of their employment for reasons of redundancy, prior to the date of the announcement of the Scheme.
14. The Scheme will be open to eligible employees from 27 September 2017, and will be implemented as follows:
- Any employee wishing to retire under the Scheme must discuss their position with Human Resources.
  - Applications must be made within four weeks of the Scheme being opened to employees.
  - CiSRA will notify all individuals of the outcome of their application in writing within four weeks of the deadline for application.
  - Participants will be required to sign a Separation Agreement at least two weeks before the termination date. The termination date will be determined following full discussion and agreement between the employee and management.

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- Employees taking early voluntary retirement will receive a payment and terminate their employment no later than 31 December 2017.

15. There is no minimum number of employees required for the Scheme to be implemented.

16. All eligible employees under the Scheme will receive a payment at their ordinary rate of pay comprising of:

- five weeks' notice or payment in lieu of notice, and
- three weeks' base salary for each complete year of service to a maximum of 52 weeks base salary.

Any part time employees who retire under the Scheme will receive these payments on a pro rata basis.

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

18. Payments made under the Scheme will be at arm's length.

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

20. There is no agreement in place between any eligible employee and CiSRA, or between CiSRA and another person to employ the eligible employee after retirement under the Scheme.

21. Participation in the Scheme will be entirely voluntary.

## Ruling

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22. The early retirement scheme to be implemented by CiSRA is an early retirement scheme for the purposes of section 83-180.

23. 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.

24. 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.*

25. In accordance with subsection 83-180(3), a scheme will be 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 reorganise 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.

26. Accordingly, a scheme will be an early retirement scheme if the following three conditions are met.

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

27. 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).

28. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 11 (subject to paragraphs 12 and 13) of this Ruling.

29. 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 reorganisation 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 reorganise the employer's operations in a way approved by the Commissioner**

30. The proposed scheme must be implemented by the employer with a view to rationalising or reorganising the operations of the employer as described in paragraph 83-180(3)(b).

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31. Paragraphs 9 and 10 of this Ruling describe the nature of the rationalisation or reorganisation 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. It is considered that the Scheme is to be implemented by the employer with a view to rationalising or reorganising 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**

32. The Scheme is proposed to operate for a period from 27 September 2017 to 31 December 2017. 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.

33. The Scheme will be in operation for approximately two months. This is considered appropriate due to the circumstances of the reorganisation.

## **Other relevant information**

34. 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.

35. 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 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)).

36. 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*'.

37. 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.

38. For the 2017-18 income year, the tax free amount is limited to \$10,155 (base amount) plus \$5,078 (service amount) for each whole year of completed employment.

39. The total of the amount received on the termination of employment calculated in accordance with paragraph 16 of this Ruling may qualify as an early retirement scheme payment.

40. The total payment calculated in accordance with paragraph 16 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 38 of this Ruling to determine the tax free amount of the early retirement scheme payment.

41. The tax free amount will:

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

42. Any payment in excess of this limit will be an ETP and will be split into tax free and taxable components. 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.

43. 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.

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## Appendix 2 – Detailed contents list

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

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## References

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<i>Previous draft:</i>	- ITAA 1997 83-180
Not previously issued as a draft	- ITAA 1997 83-180(1)
	- ITAA 1997 83-180(2)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83-180(3)
TR 2006/10	- ITAA 1997 83-180(3)(a)
	- ITAA 1997 83-180(3)(b)
	- ITAA 1997 83-180(3)(c)
<i>Legislative references:</i>	- ITAA 1997 83-180(5)
- ITAA 1997	- ITAA 1997 83-180(6)
- ITAA 1997 82-135	- ITAA 1997 995-1(1)
- ITAA 1997 82-135(e)	- TAA 1953
- ITAA 1997 83-170	

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### ATO references

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