


CR 2018/20 - Income tax: Tasmanian Electro Metallurgical Company Early Retirement Scheme 2018

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Class Ruling

Income tax: Tasmanian Electro Metallurgical Company Early Retirement Scheme 2018

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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.

Summary – 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)
- 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 Tasmanian Electro Metallurgical Company Pty Ltd (TEMCO) shown at paragraph 14 of this Ruling, who receive a payment 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:
 - 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

6. This Ruling applies from 16 May 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

7. The following description of the scheme is based on information provided by the applicant.
8. TEMCO is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
9. The scheme will be titled '***Tasmanian Electro Metallurgical Company Early Retirement Scheme 2018***', hereafter referred to as 'the Scheme'.
10. TEMCO operates a ferroalloy smelter located at Bell Bay in Tasmania. This is the only manganese ferroalloy plant in Australia and produces high carbon ferromanganese, silicomanganese and sinter.
11. In recent years, TEMCO has undergone significant operating challenges in a declining commodity market. During this period, TEMCO has identified numerous cost reduction opportunities through workforce efficiency, power supply flexibility, supplier/contractor negotiations and logistics optimisation.
12. TEMCO is commencing a transformation of the organisation and sees productivity improvements as a priority to ensure the maintenance of a globally competitive position.

13. The purpose in implementing the Scheme is to rationalise and re-organise TEMCO's operations by:

- replacing and introducing skills to meet critical productivity targets
- increasing the diversity of its workforce to drive innovation and respond to future business and industry challenges, and
- increasing local area employment.

14. The class of employees to whom the Scheme applies is all TEMCO employees who are:

- at least 55 years of age, but under 65 years, on the date after the Commissioner's approval, and
- employed on a permanent basis.

15. Employees within this class may wish to express an interest in voluntarily leaving the organisation.

16. TEMCO will limit the maximum number (the maximum) of eligible employees that can be approved to take up the Scheme. Should the number of eligible employees who express an interest to retire under the Scheme exceed the maximum, TEMCO will approve the eligible employees on a first in basis.

17. If the number of employees initially willing to participate in the Scheme is less than the maximum, TEMCO will honour all applications. The progress of the Scheme will be reviewed after three and six months and further strategies to increase participation will be explored if the program is undersubscribed.

18. All eligible employees who retire under the Scheme will receive a \$40,000 lump sum payment.

19. All employees terminated under the Scheme will receive their accrued annual and long service leave entitlements. However, these entitlements do not form part of the payment made under the Scheme.

20. Following approval of the Scheme, all eligible employees within the class will be invited to apply in writing.

21. Applicants will be informed of the outcome of their application within 14 days of submission, and once the offer is made, will have seven days to accept or decline the offer.

22. Eligible employees who accept an offer to retire under the Scheme will terminate employment and receive payment on a date mutually agreed between the employee and TEMCO. All employees retiring under the Scheme must, without exception, cease their employment at least four weeks prior to the expiration of the Scheme on 30 June 2019.

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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 Scheme, will not be entitled to receive the Scheme payment.
25. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
26. Payments made under the scheme will be at arm's length.
27. There is no agreement in place between the eligible employees and TEMCO, or between TEMCO and another person to employ any employee after the retirement under the Scheme.

Ruling

28. The early retirement scheme to be implemented by the TEMCO 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 the 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 section 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 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.

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 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. 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).

38. Accordingly, the second condition for approval has been met.

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

39. The Scheme is proposed to operate for a period commencing from 16 May 2018 to 30 June 2019. 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.

40. The Scheme will be in operation for approximately fourteen months. This is considered appropriate due to the circumstances of the re-organisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

41. Under subsection 83-180(1), so much of the payment received by an employee because the employee retires under an approved 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 the retirement is an early retirement scheme payment.

42. 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), (5) and (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 the 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)).

43. 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'.

44. 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.

45. 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 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.

46. For the 2018-19 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check the Australian Taxation Office website for these indexed amounts at the relevant time.

47. The total of the amount received on 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 calculated in accordance with the formula mentioned in paragraphs 45 and 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 (ETP), and
- not be able to be rolled-over into a superannuation fund.

50. 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 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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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:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- 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 995-1(1)
 - TAA 1953
 - ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - ITAA 1997 83-170
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ATO references

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