

CR 2021/88 - Thales Australia Limited - early retirement scheme 2021



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Status: **legally binding**

Class Ruling

Thales Australia Limited – early retirement scheme 2021

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by Thales Australia Limited (Thales).
2. Full details of this scheme are set out in paragraphs 9 to 27 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to employees of Thales who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 9 December 2021 to 31 July 2022.

Status: **legally binding**

Ruling

6. The Thales Australia Limited early retirement scheme 2021 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of section 83-180.

7. 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.

8. In addition, so much of the Scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Scheme

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. Thales Maritime Business Unit was split into two separate business units – Under Water Systems (UWS) and Above Water Systems (AWS). This split was part of a Thales initiative to drive simplification of its business structure, processes and ways of working in order to best shape the company for future success.

11. UWS and AWS have been established with the intention of redesigning the pre-existing organisational structure in order to better function and reflect the demands on the business due to the impact of COVID-19, including changing customer needs and increased competition in the market.

12. A significant shift has occurred in the market Thales operates in, including an increase in competition and a change in customer preference.

13. This is likely to mean future opportunities in the space in which UWS and AWS operate are likely to have changed aspects of size and breadth of projects and programs. This requires a different mix of skills and capabilities for their workforce.

14. The class of employees to whom this Scheme applies:

- are employed in the UWS and AWS business units at levels LR1 to LR9
- will be between 55 and 65 years of age, and
- have served a minimum of five years’ service with the company.

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

- an employee who has already tendered their notice
- casual employees, contractors and fixed-term employees
- employees who, before the commencement of the Scheme, were subject to termination on grounds of misconduct or unsatisfactory performance, or under investigation for allegations of misconduct or serious misconduct, or
- employees who have an active workers compensation claim where payments have been made for loss of income.

16. Following approval of the Scheme, employees will be given approximately one month to provide an expression of interest.

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17. Once expressions of interest have been received, employees will be offered retirement dates which will take effect anywhere between immediately and prior to 31 July 2022. This may be determined in accordance with operational requirements to ensure service levels are not detrimentally impacted.
18. There are a limited number of places under the Scheme and in the event of oversubscription, Thales will utilise a two-stage test to determine the allocation.
19. A maximum number of the Scheme places will be allocated per job family within UWS and AWS in accordance with a set percentage.
20. Where a job family does not utilise their specific entitlement, those unutilised places will be redistributed across the job families by proportional entitlement until they are exhausted.
21. Where any job family's allocation is oversubscribed, Thales will leverage the second test to allocate places to employees who have the longest period of service.
22. Employees who accept the offer will terminate employment and receive a payment on a date mutually agreed between the employee and Thales, but no later than 31 July 2022.
23. Employees who retire under the Scheme will receive a lump sum payment of \$5,500 plus two weeks' salary for each year of completed service (capped at 15 weeks' ordinary pay).
24. The package will be paid in addition to any superannuation and other benefits, including annual leave or long service leave, to which an eligible employee would otherwise be entitled.
25. Employees will also be permitted to utilise their outstanding annual leave balances prior to their termination.
26. At the time of retirement, there will be no arrangement between Thales and terminating employees, or between Thales and any other person, for those employees to be employed after retirement.
27. There is no association between the eligible employees and Thales. Accordingly, the employees and Thales will be at arm's length.

Commissioner of Taxation8 December 2021

Status: **not legally binding**

Appendix – Explanation

❶ *This Explanation 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.*

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Requirements for an early retirement scheme

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

29. 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.

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

30. In order to satisfy the first requirement of subsection 83-180(3), the scheme must be offered to all employees in a class approved by the Commissioner.

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

32. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), 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 Thales.

33. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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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

34. The Scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, as required by paragraph 83-180(3)(b).

35. Paragraphs 10 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 Thales. It is considered that the Scheme is to be implemented by Thales with a view to rationalising or re-organising the operations of Thales for the purposes of paragraph 83-180(3)(b).

36. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

37. The Scheme is proposed to operate from 9 December 2021 to 31 July 2022.

38. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

39. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

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), (5) and (6)):

- the retirement occurred before the employee reached pension age 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)).

42. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

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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 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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.

46. For the 2022–23 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 ATO website for these indexed amounts at the relevant time.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 23 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 45 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
- able to be rolled-over into a super 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 ETP 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.

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

Legislative references:

- | | |
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| <ul style="list-style-type: none"> - ITAA 1997 82-135 - ITAA 1997 82-135(e) - ITAA 1997 83-170 - ITAA 1997 83-180 - ITAA 1997 83-180(1) | <ul style="list-style-type: none"> - 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(5) - ITAA 1997 83-180(6) - ITAA 1997 995-1(1) - TAA 1953 - Social Security Act 1991 23(1) |
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ATO references

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