


# ***CR 2023/29 - ASC Pty Ltd - early retirement scheme (operational employees) 2023***

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Status: **legally binding**

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## Class Ruling

# ASC Pty Ltd – early retirement scheme (operational employees) 2023

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### **📌 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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<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
<b>Ruling</b>	<b>6</b>
<b>Scheme</b>	<b>9</b>
<b>Appendix – Explanation</b>	<b>27</b>

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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 ASC Pty Ltd (ASC).
2. Details of this scheme are set out in paragraphs 9 to 26 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 you if you are an ASC employee who receives a payment under the ASC early retirement scheme (operational employees) 2023.

### **When this Ruling applies**

5. This Ruling applies from 1 June 2023 to 1 March 2024.

## **Ruling**

6. The ASC early retirement scheme (operational employees) 2023 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of section 83-180.

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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**

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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. ASC is one of Australia's largest specialised defence shipbuilders. ASC is focused on building and maintaining the most technologically advanced marine defence vessels in Australia, concentrating on engineering, module construction and systems integration.
11. ASC is responsible for the development and maintenance of talent within the shipbuilding industry across Australia. This will require the development of talent for current and future state shipbuilding programs.
12. ASC is currently undertaking a Digital Transformation Project (DTP) that will see the implementation of a new digital business platform. This will have a significant impact on employees in all areas, including but not limited to, engineering, planning, quality and operations.
13. Stage 2 of the DTP, which is due to go live in mid-2023, is where the majority of the impacts are at the operations level. Stage 2 of the DTP brings significant changes in the use of operational software, systems integration etc for operations employees who will need to learn how to utilise new software and hardware.
14. ASC intends to improve and realign its staffing profile to operate more effectively and efficiently, with a long-term view of aligning with their digitisation objectives, as well as increase the productivity of its workforce by replacing those employees who choose to take part in the Scheme with more physically capable employees.
15. The class of employees eligible to participate in the Scheme are operational staff (full or part-time) who have completed at least 10 years of service with ASC and are aged 60 years or older (at the invitation date) in the following positions:
- tradespeople (covered by an enterprise agreement)
  - operators (covered by an enterprise agreement)
  - leading hands, and
  - team leads.
16. The employees who are specifically excluded from participating in the Scheme are those:
- who have resigned prior to the invitation date
  - who have accepted a pre-retirement contract, or
  - with an active workers compensation claim where there is a payment for loss of income.

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17. Following approval of the Scheme, eligible employees will be notified of the Scheme and invited to submit an expression of interest application to participate in the Scheme. Employees will have a limited period to submit an application and may withdraw their application up until the closing submission date.

18. ASC will make formal offers to employees, where they will have a limited period to accept or decline the offer. Employees who retire under the Scheme will terminate their employment based on the business needs of ASC and the intended date of retirement per the employee's application. An employee will receive payment by no later than one month following the termination of their employment.

19. Employees who accept an offer as part of the Scheme will leave ASC on a progressive basis. All employees who retire under the Scheme will terminate employment and receive payment by no later than 1 March 2024.

20. Employees who retire under the Scheme will receive a lump sum payment equivalent to 5 months' salary.

21. Employees who retire under the Scheme would not be entitled to the payment outlined in paragraph 20 of this Ruling, if they had otherwise voluntarily terminated their employment.

22. Employees will receive payment for any accrued statutory entitlements. However, these payments will not form part of the payment under the Scheme.

23. The Scheme payment will not be made in lieu of superannuation benefits.

24. Employees who retire under the Scheme will do so before they reach the pension age (as defined in the *Income Tax Assessment Act 1997* by reference to the *Social Security Act 1991*).

25. At the time of retirement, there will be no arrangement between ASC and terminating employees, or between ASC any other person, for those employees to be employed after retirement.

26. There is no association between the eligible employees and ASC. Accordingly, the employees and ASC will be at arm's length.

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**Commissioner of Taxation**

31 May 2023

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Status: **not legally binding**

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## Appendix – Explanation

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**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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Requirements for an early retirement scheme	27
<i>All employees within a class approved by the Commissioner may participate in the scheme</i>	29
<i>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</i>	33
<i>The scheme must be approved by the Commissioner prior to its implementation</i>	36
<i>Other relevant information</i>	39

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### **Requirements for an early retirement scheme**

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

28. 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**

29. 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.

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

31. 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 ASC.

32. 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***

33. The proposed 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).

34. Paragraphs 12 to 14 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 workforce of ASC. It is considered that the Scheme is to be implemented by ASC with a view to rationalising or re-organising the operations of ASC for the purposes of paragraph 83-180(3)(b).

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

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

36. The Scheme is proposed to operate for a period from 1 June 2023 for a period of approximately 10 months.

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

38. 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***

39. 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.

40. 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 either reached pension age or an 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)).

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

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 2022–23 income year, the tax-free amount is limited to \$11,591 (base amount) plus \$5,797 (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.

45. For the 2023–24 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.

46. The total of the amount received on the termination of employment, calculated in accordance with paragraph 20 of this Ruling, will qualify as an early retirement scheme payment.

47. The total payment calculated in accordance with paragraph 20 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 44 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 (ETP), or
- able to be rolled-over into a superannuation fund.

49. 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.

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.

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Status: **not legally binding**

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## References

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*Legislative references:*

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- 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)
- Social Security Act 1991 23(1)

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ATO references

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