


CR 2007/89 - Income tax: early retirement scheme - ACL Bearing Company

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Class Ruling

Income tax: early retirement scheme – ACL Bearing Company

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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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. 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 subsequent legislative references are to the ITAA 1997 unless stated otherwise.

Class of entities

4. The class of entities to which this Ruling applies is those employees of ACL Bearing Company who receive a payment under the scheme described in paragraphs 15 to 33 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 in paragraphs 15 to 33 of this Ruling.

7. 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.

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9. A copy of this Ruling must be given to all employees eligible to participate in the early retirement scheme.

Date of effect

10. This Ruling applies from 26 September 2007 to 29 February 2008. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

11. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or

- the relevant provisions are not amended.

12. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

15. The following description of the scheme is based on information provided by the applicant.

16. ACL Bearing Company (ACL) is a division of Automotive Components Limited. ACL is seeking approval for an early retirement scheme.

17. ACL is a privately owned and funded Australian business that supplies components to the automotive industry.

18. Investment potential, competitiveness and profitability of the company has been hit hard by a number of considerable external pressures including rises in oil and petrol prices, reduced tariff levels, rising competition especially from China, restructuring of car companies with suppliers moving offshore, increases in the price of raw materials such as energy, metals, and the currency.

19. To improve the viability of the business, a restructuring plan for the company was approved by the company board in February 2007. The plan is to downsize and restructure operations in order to continue trading.

20. Downsizing was initially planned to be implemented in three stages of redundancies. In the first two stages downsizing was achieved by redundancies and resignations. The number of employees resigning has also increased after the announcement of ACL's plan to restructure.

21. ACL employ staff in non-production and production roles. The majority of employees who became redundant or resigned worked in production roles. Further reductions in production staff numbers will seriously limit the business's capacity to operate viably.

22. ACL is now pursuing an early retirement scheme for the third stage of the workforce reduction rather than redundancies and resignations of staff in non-production roles. This will be less costly for ACL to implement and provide long term benefits to ACL by allowing them to retain younger employees.

23. ACL will offer early retirement to all employees in non-production roles who were 55 years of age or older at 31 August 2007.

24. ACL will retain the right to veto an acceptance of the early retirement scheme offer by key personnel who cannot be readily replaced.

25. Employees will have up to four weeks to accept the offer of early retirement. All employees who retire under the scheme will terminate employment and receive the payment on a date determined by the employer based on their operational requirements but no later than 29 February 2008.

26. The payment employees will receive is:

- (i) 21 weeks severance pay; and
- (ii) accrued and unused sick leave up to a maximum of 5 weeks.

Payments made under the scheme

27. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 28 to 33 of this Ruling must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

28. The payment must be received by an employee because of their retirement under an early retirement scheme. The early retirement scheme payment will be so much of the payment that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement.

29. The payment must not be a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

30. The payment must not be made in lieu of superannuation benefits.

31. Where 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 must not exceed what would have been paid to the employee had they been dealing at arm's length.

32. The employee must retire before the earlier of:

- age 65; or

- the 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 certain period of service (as the case may be).

33. At the time of the retirement, there must be no arrangement in force between the employee and the employer or the employer and another person, to employ the employee after the retirement.

Ruling

34. The early retirement scheme to be implemented by ACL Bearing Company is an early retirement scheme for the purposes of section 83-180.

35. Accordingly, so much of the payment received by an employee as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment in relation to the taxpayer.

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

Commissioner of Taxation

26 September 2007

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.***

37. Where a scheme satisfies the requirements of subsection 83-180(3) that scheme will be an 'early retirement scheme'.

38. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of the former section 27E of the *Income Tax Assessment Act 1936*, which section 83-180 of the ITAA 1997 replaced.

39. 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

40. 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).

41. The class of employees to whom early retirement will be offered is set out at paragraph 23 of this Ruling.

42. The Commissioner considers that this is an appropriate class of employees 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 the employer. These employees meet the requirements of an approved class of employees for the purpose of paragraph 83-180(3)(a).

43. It is noted, however, that ACL retains a limited right of veto to be applied should a key employee accept the offer of early retirement as set out in paragraph 24 of this Ruling. The limitation of the scheme in this way is acceptable to the Commissioner.

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

44. 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).

45. Paragraphs 19 to 22 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 the employer. It is therefore 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 purpose of paragraph 83-180(3)(b).

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

46. The scheme is proposed to operate from 26 September 2007 to 29 February 2008. Approval was granted prior to implementation therefore the third condition is satisfied.

47. The scheme will be in operation for approximately 5 months which is within the period recommended in TR 94/12.

Other relevant information

48. 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 his or her employment at the time of termination is an early retirement scheme payment.

49. 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)).

50. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

51. An early retirement scheme payment made on or after 1 July 2007 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.

52. For the year ending 30 June 2008, this amount is limited to \$7,020 plus \$3,511 for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 26 of this Ruling may qualify as an early retirement scheme payment.

54. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 52 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

55. The 'tax-free' amount will:

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

56. Any payment in excess of this limit will be an employment termination payment and split up 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.

57. Employment termination payments cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 82-135(e)
- Not previously issued as a draft
- ITAA 1997 83-170
 - ITAA 1997 83-180
- Related Rulings/Determinations:*
- TR 94/12
- 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)
- Subject references:*
- early retirement scheme payment
 - ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - employment termination payment
 - ITAA 1997 995-1(1)
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
- Legislative references:*
- ITAA 1936 27E
 - ITAA 1997 82-135
-

ATO references

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