


CR 2009/38 - Income tax: early retirement scheme - BlueScope Steel Limited and subsidiary companies

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Class Ruling

Income tax: early retirement scheme – BlueScope Steel Limited and subsidiary companies

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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.

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); and
 - section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless stated otherwise.

Class of entities

3. The class of entities to which this Ruling applies is those employees of BlueScope Steel Limited (BlueScope) and Subsidiary Companies, shown at paragraph 4, who receive a payment under the scheme described in paragraphs 10 to 29 of this Ruling.

4. The Subsidiary Companies are as follows:
- BlueScope Steel (AIS) Pty Ltd;
 - BlueScope Building Solutions Pty Ltd;
 - BlueScope Water Pty Ltd;
 - BlueScope Distribution Pty Ltd; and
 - Metalcorp Steel Pty Ltd.

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 in accordance with the scheme described in paragraphs 10 to 29 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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Date of effect

9. This Ruling applies from 29 July 2009 to 30 June 2010. The Ruling continues to apply after 30 June 2010 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

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

11. The scheme is to be known as the BlueScope Early Bird-Optional Early Retirement Scheme.

12. Since late 2008 BlueScope has been operating at lower steel making levels with correspondingly reduced steel rolling, coating and painting throughput and sales volumes across its downstream businesses. It is unclear how long current depressed demand will continue.

13. BlueScope will rationalise and re-organise operational and staff functional and overhead roles across areas so as to align future roles and structure to the changing requirements of their current rationalised operations. This will also preserve the people and organisational capability necessary to quickly ramp-up and support future operations as demand returns.

14. The purpose of the scheme is to reduce, swiftly and by voluntary means, the size of the company's Australian workforce to an economically sustainable level having regard to the current and forecast steel demand, while retaining core future people capabilities.

15. The class of employees to be offered the scheme will be all employees who are under age 65 years of age and:

- over 55 years of age; or
- 50 years of age or over with more than 20 years continuous service.

16. Some employees will be excluded from the scheme. They are:

- employees engaged on a short term and/or casual basis or for a specified period;
- temporary employees with less than 12 months service;
- employees on workers compensation whose claim is based on compensation for termination; and
- employees subject to termination on the grounds of misconduct or unsatisfactory service.

17. The number of eligible employees who can retire under the scheme will be limited.

18. If the number of employees seeking access to the scheme exceeds the number of packages available, the offer will be made to those employees on a 'first in first accepted' basis.

19. The employer proposes to retain a limited veto to be applied to applications by key employees to maintain key business and operational functions and to avoid loss of unique skills or roles that are critical to the business. Employees who will not be eligible to receive a payment under the scheme are those key personnel who occupy the following roles:

- 1 National sales Manager;
- 1 Estimator;
- 2 Crane drivers;
- 1 Slitter Operator;
- 1 Operations Assistant;
- 1 Branch Manager; and
- 1 Customer Service Operator.

20. It is proposed the scheme will be implemented from 29 July 2009 to 30 June 2010.

21. Eligible employees who express an interest in the scheme will receive an offer within 4 weeks of the scheme's approval by the Commissioner.

22. All employees who accept the offer to retire under the scheme will receive the payment and terminate employment by 30 June 2010. The actual date of termination will be negotiated between the employer and the employee.

23. The payment to be made under the Scheme is:

- a lump sum payment of \$7,732; plus
- one week's ordinary pay (capped up to a maximum amount of \$3,867) for each year of continuous service.

Payment under this formula is inclusive of any statutory or contractual notice that might otherwise have been payable where the Company does not require an employee to work out their notice of termination period.

24. In addition, employees will receive any unused annual leave and long service leave entitlements, however they do not form part of the payment made under the scheme.

25. Under the terms and conditions of employment there is no mandated requirement to retire, however all employees will be under the age of 65 when they terminate employment and the payment is made.

26. Any employee who terminates employment, other than under the proposed scheme, will not be entitled to receive the payment under the scheme.

27. The proposed scheme does not include any part of a payment that was paid to the employee in lieu of superannuation benefits to which the employee may have become entitled at the time the payment was made or at a later time.

28. There will be no agreement in place with the employer, or any other employer, to employ the employee following termination of employment under the scheme.

29. There is no association between the eligible employees and the employer, thereby the taxpayer and the employer will be at arm's length in accordance with the requirements.

Ruling

30. The early retirement scheme to be implemented by BlueScope and subsidiary companies is an early retirement scheme for the purposes of section 83-180.

31. Accordingly, so much of the payment received by an employee 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 will be an early retirement scheme payment.

32. 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.

Commissioner of Taxation

29 July 2009

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.***

33. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

34. 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.

35. These three conditions are considered in paragraphs 36 to 43 of this Ruling.

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

36. 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).

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

38. 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 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).

39. It is noted, however, that the employer retains a limited right of veto to be applied as set out in paragraph 19 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

40. 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).

41. 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 fact that the re-organisation is being implemented with a view to a restructuring of the work force or operations 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 purposes of paragraph 83-180(3)(b). Accordingly, the second condition for approval has been met.

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

42. The scheme is proposed to operate for a period from 29 July 2009 to 30 June 2010. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

43. The scheme will be in operation for approximately 11 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

Other relevant information

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

45. It should be noted that, in order for a payment to qualify as an approved 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)).

46. 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'.

47. From 1 July 2007, 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.

48. For the 2009-10 income year, the tax-free amount is limited to \$7,732 (base amount) plus \$3,867 (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. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

49. 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.

50. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 48 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

51. The 'tax-free' amount will:

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

52. The total amount of the payment made under the scheme to an eligible employee will be within the tax-free limits.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 83-170
- Not previously issued as a draft
- ITAA 1997 83-180
 - ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- TR 2006/10
- 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
 - Redundancy or early retirement scheme payments
- ITAA 1997 83-180(3)(c)
 - ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 960-285
 - ITAA 1997 995-1(1)
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - TAA 1953
 - Copyright Act 1968
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ATO references

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