CR 2011/72 - Income tax: early retirement scheme - Toyota Motor Corporation Australia Limited

Class Ruling

Income tax: early retirement scheme – Toyota Motor Corporation Australia Limited

Contents Para

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

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 otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is those employees of Toyota Motor Corporation Australia Limited (TMCA), shown at paragraph 14, who receive a payment under the scheme described in paragraphs 10 to 35 of this Ruling.

Qualifications

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

5. 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 10 to 35 of this Ruling.

6. 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- this Ruling may be withdrawn or modified.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

8. This Ruling applies from 20 July 2011 to 31 March 2012. The Ruling continues to apply after 31 March 2012 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

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

10. Toyota Motor Corporation Australia Limited (TMCA) intend to implement an early retirement scheme applying to their eligible employees.

11. The scheme is being implemented with a view to rationalising and re-organising the operations of TMCA. The short term objective of the early retirement scheme is to allow a controlled transfer of skills and knowledge for TMCA's older workforce to a workforce that can provide an increasing mix of skills, knowledge and qualifications and to be more flexible in their skills and areas of work, including being able and willing to work in other plants as demand dictates.

12. While the occupational skills of employees will not be a criterion when determining eligibility for the early retirement scheme, it is expected that the new replacement employees will have transferable skills that are better able to be adapted to the new technologies that will be introduced.

13. The purpose of the scheme is to facilitate the reorganization of the workforce in a manner necessary to achieve significant improvements with the aim to improve the company workforce profile. It is further intended that the new replacement employees will result in the TMCA workforce becoming more flexible with workers able to perform a greater variety of tasks in a greater number of locations.

14. The class of employees to be offered the scheme will be all permanent Australian based employees aged 55 to 64 inclusive, who have completed over 12 months continuous employment (as at 1 July 2011) with TMCA and within the three classes as follows:

Class 1:	All indirect employees and/or supervisory employees who are 55 years of age or over and employed under an award.
Class 2:	All direct production employees who are 55 years of age or over and employed under an award.
Class 3:	All indirect employees who are 55 years of age or over and are not employed under an award.

15. Direct production employees are those employees whose tasks and responsibilities involve them working directly on the production line in the manufacture of motor vehicles and motor vehicle engines and parts.

16. Indirect employees are all employees in support roles other than direct production employees.

17. TMCA has provided the limited number of packages available for eligible employees within each class and within each group.

18. In the case that the number of employees seeking access to the scheme exceeds the number of packages available, packages will be offered in accordance with the following order of priority:

First priority:	employees aged between 60 and 64 and who are within Production Engineering and Manufacturing #3 Divisions (Directly related to powertrain consolidation)
Second priority:	all remaining employees aged between 60 and 64
Third priority:	all remaining employees aged between 55 and 59

19. If further ranking is required between employees having the same priority level, the ranking will be based upon the date of birth with older employees having a higher priority.

20. The maximum take-up in each organisational division is capped at 10% of the actual headcount and 15% of each production group.

21. All employees who accept the offer to retire under the scheme will receive the payment and terminate employment by 31 March 2012. The actual date of termination will be negotiated between the employer and the employee.

22. The employer proposes to retain a limited veto and some key employees will be excluded from the scheme as they perform key business and operational functions that require unique skills. These roles are critical to: a) new model preparation and rollout, b) global projects or c) aligned to the achievement of new operational processes. They are employees whose position is in the following roles:

Manager – Environmental Policy,

Manager Business Development,

Divisional Manager National Sales,

Manager Public Relations,

Corporate Manager Marketing and After Sales,

National Manager Production Training,

Operations Manager Product Strategy,

Project Coordinator,

Specialist SMC Control,

CCR Manager,

Divisional Manager Production Engineering

23. Following approval of the scheme, all eligible employees within the class will have until 30 November 2011 to express an interest in the scheme.

24. All offers will be made by 3 December 2011.

25. Once an offer is made employees will have up to 2 weeks to gain all the relevant financial advice before being required to submit the signed application accepting the offer.

26. It is proposed the scheme will be implemented from 20 July 2011 to 31 March 2012.

27. The terms and conditions of employment of TMCA employees are governed by the Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Altona) 2010 and the Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Port Melbourne, Sydney and Regions) 2010.

28. Once approval is given, TMCA will utilise all available internal communication to all employees to participate in the scheme.

29. The payment to be made under the scheme is:

	Non-award	Award
Notice	12 weeks notice or payment in lieu	4 weeks notice or payment in lieu
Severance Pay	4 weeks per year of service up to a maximum of 52 weeks including notice	3 weeks per year of service up to a maximum of 52 weeks including notice
Shift Premium	N/A	To apply to severance payment and pro-rata in the event an employee has worked on both day and other shifts
Sick leave	Payout up to a maximum of 20 days of accrued sick leave	Payout up to a maximum of 20 days of accrued sick leave

30. In addition, eligible employees who receive a payment under the scheme will receive an augmentation to their superannuation benefits equivalent to two years accrual for defined benefit members or two years employer contributions for accumulation style members. Any augmentation of superannuation benefits will not, however, receive concessional tax treatment under the early retirement scheme.

31. Employees will also receive their accrued annual leave and long service leave entitlements; however they do not form part of the payment made under the scheme.

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

33. All employees will be under the age of 65 when they terminate employment and receive the payment under the scheme.

34. 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 does not exceed the amount that could reasonably be expected to be made had they been dealing with each other at arm's length.

35. 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.

Ruling

36. The early retirement scheme to be implemented by Toyota Motor Corporation Australia Limited is an early retirement scheme for the purposes of section 83-180.

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

38. 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
20 July 2011

Appendix 1 – Explanation

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.

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

40. 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 will now be considered.

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

41. 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).

42. The class of employees to whom early retirement will be offered is set out in paragraph 14 of this Ruling.

43. The Commissioner considers that this is an appropriate class of persons for the scheme to 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

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 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 workforce of the employer. It is therefore considered 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

46. The Scheme is proposed to operate for a period from the date of the Commissioner's approval to 31 March 2012. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

47. The Scheme will be in operation for approximately eight 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

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 the retirement is an early retirement scheme payment.

49. 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 83-130(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;
- 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 arrangement, agreement, understanding, promise or undertaking, whether express or implied and whether or not enforceable (or intended to be enforceable) by legal proceedings'.

51. 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.

52. For the 2011-12 income year, the tax-free amount is limited to $8,435 (base amount) plus $4,218 (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 for each income year.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 29 of the facts may qualify as an early retirement scheme payment.

54. The total payment in paragraph 53 will be measured against the limit calculated in accordance with the formula mentioned in paragraph 52 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.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- early retirement
- employment termination
- redundancy or early retirement scheme payments

Legislative references:

- ITAA 1997
- 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 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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