


CR 2011/86 - Income tax: early retirement scheme - OneSteel Limited

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Class Ruling

Income tax: early retirement scheme – OneSteel Limited

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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, 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 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 are those employees of OneSteel Limited (OST), SSX Services Pty Ltd (SSX Services) and the Australian Steel Company (Operations) Pty Ltd (TASCO) who receive a payment under the scheme described in paragraphs 14 to 15 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 paragraph 10 to 25 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.
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Date of effect

8. This Ruling applies from the date of the Commissioner's approval to 30 November 2011. The Ruling continues to apply after 30 November 2011 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. OneSteel Limited (OST) is seeking approval for an early retirement scheme (ERS).

11. OST is the head company of a tax consolidated group of which SSX Services Pty Ltd (SSX Services) and the Australian Steel Company (Operations) Pty Ltd (TASCO) are subsidiary members.

12. OST, SSX Services and TASCO (the Applicants) are seeking approval to offer an early retirement scheme, ARC Early Retirement Scheme (the Scheme), to eligible employees.

13. The Applicants are currently in the process of reorganising the manufacturing operations of the Australian Reinforcing Company (ARC), a division of TASCO, in order to:

- Rationalise the ARC business and enable the employment of a younger workforce that is better suited to meeting the physical demands of working in the steel industry.
- Improve the operating capabilities of the employees to enable ARC to better meet current business and operational needs as well as to improve capacity for expected future increases in demand.
- Contribute to the revitalisation of ARC, develop and mentor new leaders of the organisation for the future.

14. The employees working for ARC are employed by SSX Services.

15. Employees will be eligible to participate in the Scheme if:

- they are employed in the Victorian business of ARC's operations division;
- they are 55 years of age and over; and
- they do not fall within the classes of employees to whom the Scheme does not apply.

16. The Scheme will not apply to the following classes of employees:

- employees engaged on a short term and/or casual basis or for a specified period;
- temporary employees with less than 12 months service;
- apprentices whose service would normally be terminated at the conclusion of their apprenticeship or within a short period thereafter;
- employees on workers compensation whose claim is based on compensation for termination;
- employees who are over 55 years of age and who would otherwise retire before 30 November 2011 because either:
 - they turn 65 years of age, or

- their employment will be terminated upon reaching a particular age under their relevant award or enterprise agreement;
- employees subject to termination on the grounds of misconduct and/or unsatisfactory service; or
- employees in trades classifications (for example, anyone who is employed within the ARC Maintenance team who are electricians and fitters) or staff employees (employees who are paid on a monthly basis including managers, administration, sales and customer service personnel).

17. If fewer employees than required accept the offer to retire OST will continue to work with their current workforce and ensure that where any employees resign or retire they are replaced with younger, more dynamic workforce that is required to achieve management's objectives.

18. If the number of employees seeking access to the Scheme exceeds the number of packages available, those with the longest period of service will be offered the Scheme first.

19. A payment under the Scheme will be determined based on the following criteria:

- one week of pay per year of service with a pro rata payment for each part completed year of service up to a maximum of 52 weeks pay, excluding the notice period will be paid;
- any unused annual leave and/or long service leave entitlements; and
- all eligible employees will receive an extra week's pay in accordance with the employee's current entitlement in the event of being made redundant.

20. A payment made under the Scheme does not include:

- any payment made in lieu of superannuation benefits; or
- any payment in lieu of other termination benefits to which the staff member may be entitled.

21. An employee who ordinarily terminates their employment with ARC is entitled to receive a termination payment consisting of their legal entitlement to accrued long service and annual leave entitlements.

22. The Scheme will operate from the date of the Commissioner's approval to 30 November 2011.

23. Employees who retire under the Scheme will terminate employment and receive payment before 30 November 2011.

24. OST, SSX Services and TASC0 and the relevant employees will be dealing with each other at arm's length under the Scheme and there will be no arrangement between OST, SSX Services and TASC0 and the terminating employees, or between OST, SSX Services and TASC0 and any other person, for those employees to be re-employed after retirement.

Ruling

25. The early retirement scheme to be implemented by OneSteel Limited (OST), SSX Services Pty Ltd (SSX Services) and the Australian Steel Company (Operations) Pty Ltd (TASC0) is an early retirement scheme for the purposes of section 83-180.

26. 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.

27. 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

28 September 2011

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.***

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

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.

These three conditions are now considered.

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

30. 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).

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

32. The Commissioner considers that this is an appropriate class of persons to whom the scheme will 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

33. 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).

34. Paragraph 13 of this Ruling describes 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 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

35. The scheme is proposed to operate for a period from the date of the Commissioner's approval to 30 November 2011. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

36. The scheme will be in operation for approximately three 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

37. 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 the retirement is an early retirement scheme payment.

38. 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)).

39. 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'.

40. 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.

41. 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 each income year.

42. The amount in excess of what is received on ordinary termination of employment qualifies as an early retirement scheme payment.

43. The total of the payments in paragraph 41 will be measured against the limit calculated in accordance with formula mentioned in paragraph 40 to determine the 'tax-free' amount of the early retirement scheme payment.

44. The 'tax-free' amount will:

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

45. 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

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

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References

- Previous draft:*
- ITAA 1997 82-135
- Not previously issued as a draft
- ITAA 1997 82-135(e)
 - ITAA 1997 83-170
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 83-180
 - ITAA 1997 83-180(1)
 - ITAA 1997 83-180(2)
 - ITAA 1997 83-180(3)
- Subject references:*
- early retirement scheme payment
 - ITAA 1997 83-180(3)(a)
 - ITAA 1997 83-180(3)(c)
 - employment termination payment
 - ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
- Legislative references:*
- TAA 1953
 - Copyright Act 1968
-
- ITAA 1997

ATO references

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