


CR 2013/75 - Income tax: the Imperial Tobacco Australia Limited Voluntary Early Retirement Scheme (VRS)

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Class Ruling

Income tax: the Imperial Tobacco Australia Limited Voluntary Early Retirement Scheme (VRS)

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	34
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	37
Appendix 2:	
<i>Detailed contents list</i>	57

ⓘ 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 otherwise indicated.

Class of entities

3. The class of employees to whom this scheme applies is all staff of Imperial Tobacco Australia Limited employed in the operational sales field, shown at paragraph 14, who receive a payment under the scheme described in paragraphs 9 to 33 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 9 to 33 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

7. The Ruling applies from 16 October 2013 to 28 February 2014. The Ruling continues to apply after 28 February 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

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

9. Imperial Tobacco Australia Limited (ITA) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.

10. The scheme will be titled 'the Imperial Tobacco Australia Limited Voluntary Early Retirement Scheme (VRS)', referred to as the Scheme.

11. ITA has been in operation since 1999. Prior to 1999, many of its current employees were employed by WD&HO Wills, who became employees of ITA when the latter company merged into ITA.

12. ITA is making changes to the way the Operational Sales are structured with the aim to bring it into line with the company's global structure and to ensure its viability and profitability in the Australian market. Over the past 12 months, ITA has had a particular focus on operational efficiencies by introducing a more centralized Operational Sales Business.

13. With the introduction of new technologies and the recent restructure, ITA is now able to realise efficiencies in the management of the field force by rationalising and reorganising ITA's operations and reduce, by voluntary means, the size of ITA's workforce in the Operational Sales function and introduce workers with more modern and improved skill sets.

14. The class of employees to whom the Scheme applies is all Imperial Tobacco Australia Limited staff who are aged 55 or over as at 20 December 2013 who:

- are employed in the operational sales field on a full time, part time or casual basis,
- are willing to retire at a date to be determined by ITA, at the latest by 20 December 2013, and
- apply by the application closing date.

15. Employees within this class may wish to express an interest in voluntarily leaving the organisation.

16. The payment to be made to eligible employees under the Scheme is a one off payment based on years of service calculated as two weeks' salary for each year of continuous service.

17. In addition, all employees terminated under the Scheme will receive their accrued annual and long service leave entitlements, however they do not form part of the payment made under the Scheme.

18. The employees will also be entitled to a preliminary financial advice meeting with an AMP agent and access to the employee assistance program (counselling support).

19. There are no employees excluded from expressing an interest in the scheme.

20. The maximum number of packages available for retiring employees under the scheme is limited.

21. In the case where the number of employees seeking access to the scheme exceeds the number of packages available, the offer will be made to those employees who expressed interest first, based on the 'first in' method.

22. There is no minimum number of employees required to retire under the Scheme.

23. The Commercial Sales Award 2010 applies to all staff at ITA which prevails over all other awards.
24. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have two weeks to submit applications of interest in the scheme.
25. Offers will be made to eligible employees approximately four weeks after the date that the scheme was approved.
26. All employees who accept the offer to retire under the Scheme will receive payment and terminate employment at a date mutually determined by ITA and its employees.
27. It is proposed the scheme will be implemented from 16 October 2013 to 28 February 2013.
28. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
29. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.
30. The scheme payment will not be made in lieu of superannuation benefits.
31. Payments made under the scheme will be at arm's length.
32. There is no agreement in place between the employee and the ITA, or between ITA and another person to employ any employee after retirement under the scheme.
33. All applicants will be considered and assessed equally.

Ruling

34. The early retirement scheme to be implemented by Imperial Tobacco Australia Limited (ITA) is an early retirement scheme for the purposes of section 83-180.
35. 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.
36. 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.

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.

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

38. 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

39. 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).

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

41. 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

42. 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).

43. 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 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

44. The Scheme is proposed to operate for a period commencing from 16 October 2013 to 28 February 2014. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

45. The Scheme will be in operation for approximately four months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

46. 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.

47. 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)).

48. 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'.

49. 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.

50. For the 2013-14 income year, the proposed tax free amount is limited to \$9,246 (base amount) plus \$4,624 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

51. The total of the amount received on termination of employment calculated in accordance with paragraph 16 of this ruling may qualify as an early retirement scheme payment.

52. The total payment calculated in accordance with paragraph 52 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 51 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

53. The 'tax-free' amount will:

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

54. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split 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. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Whole-of-income cap

55. The whole-of-income cap is \$180,000 (non-indexed) minus other taxable income a person earns throughout the income year. The taxable component of that person's ETP is taxed at either 16.5% or 31.5% up to their whole-of-income cap. ETP amounts over the whole-of-income cap are taxed at the top marginal tax rate (46.5%).

56. However, the whole-of-income cap does not apply to early retirement scheme payments or amounts that would have been early retirement scheme payments but for existing age or retirement restrictions (paragraph 82-10(6)(b)).

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Ruling	34
Appendix 1 – Explanation	37
<i>All employees within a class approved by the Commissioner may participate in the scheme</i>	39
<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>	42
<i>The scheme must be approved by the Commissioner prior to its implementation</i>	44
<i>Other relevant information</i>	46
<i>Whole-of-income cap</i>	55
Appendix 2 – Detailed contents list	57

References

Previous draft:

Not previously issued as a draft

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180

Related Rulings/Determinations:

TR 2006/10

- 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)
- TAA 1953
- Copyright Act 1968

Subject references:

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

Legislative references:

- ITAA 1997
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ATO references

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