

# ***CR 2014/37 - Income tax: Nyrstar Hobart Pty Ltd - early retirement scheme***



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## Class Ruling

### Income tax: Nyrstar Hobart Pty Ltd – early retirement scheme

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**❶ 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 entities to which this Ruling applies is those employees of for Nyrstar Hobart Pty Ltd, shown at paragraph 15 of this Ruling.

4. 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 7 to 27 of this Ruling.

5. 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- this Ruling may be withdrawn or modified.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

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6. This Ruling applies from 9 April 2014. The Ruling continues to apply after that date 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

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

8. Nyrstar Hobart Pty Ltd (Nyrstar) is seeking the Commissioner of Taxation's approval to implement an early retirement scheme known as the Workforce Renewal Incentive Program (the Program) in accordance with section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997).

9. Nyrstar is an integrated mining and metals business with market leading positions in zinc and lead, and growing positions in other base and precious metals.

10. Nyrstar operates smelters in Hobart, Tasmania.

11. In the coming years it has been identified key challenges for Nyrstar include:

- increasing productivity through workforce renewal, and
- technological change.

12. Nyrstar recognises the need to maintain a balanced workforce profile to ensure that it maintains an appropriate combination of skills, capabilities and experience to address future social, economic and workforce challenges.

13. The Program seeks to renew and reprofile the workforce to bring new skills and technological capacity into the organisation. The Program will support the upcoming transformation of the Hobart smelter in line with the proposed outcomes from Nyrstar's strategic smelter review.

14. Nystar has promoted the following strategies to assist in workforce renewal:

- the introduction of Phased in Retirement where employees can potentially move to part time work or job share arrangements.
- Portable redundancies between employers. This allows eligible employees in those businesses with sustainable roles to retire and allow otherwise redundant employees in other businesses to redeploy to the created vacancies ensuring key skills and motivated employees are retained in the workforce.

15. The class of employees to whom the Program applies is all permanent employees over 55 years of age.

16. Participation in the Program is voluntary.

17. The Program will commence 2 weeks from the date of the Commissioner's approval and remain open for a period of 20 weeks.

18. All eligible employees will be invited to express an interest to participate in the Program over a four week period.

19. The number of employees allowed to retire under the Program is limited.

20. The positions of Payroll Specialist and Control Engineer are considered key employees who cannot retire under the Program.

21. If the number of employees who accept the offer is greater than the number of employees Nyrstar is prepared to allow to retire those that apply first will be considered first.

22. All eligible employees who accept the offer to retire under the Program will terminate employment within 20 weeks.

23. Under the Program employees will be given one week pay per year of service up to a maximum of 26 weeks.

24. All payments will be made on arm's length terms.

25. The payment is not in lieu of superannuation benefits.

26. The payment will not be made from an eligible superannuation fund.

27. Nyrstar has no agreements or arrangements in place between itself and employees, or with itself and another person to re-employ employees should an offer under the Program be accepted.

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## **Ruling**

28. The early retirement scheme to be implemented by Nyrstar Hobart Pty Ltd is an early retirement scheme for the purposes of section 83-180.

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29. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

30. 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.

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**Commissioner of Taxation**

9 April 2014

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## 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.*

31. Where a scheme satisfies the requirements of section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997) that scheme will be an 'early retirement scheme'.

32. Subsection 83-180(3) of the ITAA 1997 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.

33. These three conditions will now be considered.

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

34. 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) of the ITAA 1997.

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

36. 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***

37. 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) of the ITAA 1997.

38. The facts at paragraphs 9 to 13 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) of the ITAA 1997.

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

39. The scheme is proposed to operate for a period of 20 weeks from the date of the Commissioner's approval. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

40. The Scheme will be in operation for a period considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

***Other relevant information***

41. Under subsection 83-180(1) of the ITAA 1997 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.

42. 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)) of the ITAA 1997:

- 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 of the ITAA 1997 (apart from paragraph 82-135(e)).

43. 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'.

44. 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.

45. For the 2013-14 income year, the 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, 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 of the ITAA 1997, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

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

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 46 of this ruling may qualify as an early retirement scheme payment.

48. The 'tax free' amount will not be an employment termination payment.

49. The 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**

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

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## 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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