


CR 2014/51 - Income tax: Nyrstar Port Pirie Workforce Renewal Scheme

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Class Ruling

Income tax: Nyrstar Port Pirie Workforce Renewal Scheme

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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 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 all those employees of Nyrstar Port Pirie Pty Ltd (Nyrstar), shown at paragraph 16 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 8 to 35 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- this Ruling may be withdrawn or modified.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

6. This Ruling will be available for applications within two weeks following the 25 June 2014 to 31 December 2014. The Ruling continues to apply after 31 December 2014 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

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

8. Nyrstar Port Pirie Pty Ltd (Nyrstar) is seeking the Commissioner of Taxation's approval to implement an early retirement scheme in accordance with section 83-180.

9. The scheme will be titled '*Nyrstar Port Pirie Workforce Renewal Scheme*', referred to as the Scheme.

10. 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.

11. In Australia, Nyrstar operates smelters in Hobart, Tasmania and in Port Pirie, South Australia.

12. In the coming years Nyrstar faces a number of key challenges which include:

- financial challenges
- relocation or reduction in output of part of the business operations, and
- the introduction of new technological processes, skills and systems.

13. 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.

14. Nyrstar has introduced 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
- replacing employees with particular skills with employees who have different skills to those which are currently utilised, and
- providing employment opportunities for others ensuring key skills and employees willing to learn new skills are retained in the workforce.

15. The Scheme seeks to renew the workforce to bring new skills and technological capacity into the organisation. The Scheme will support the upcoming transformation of the Port Pirie smelter and provide employment opportunities for others.

16. The class of employees to whom the Scheme applies is all Nyrstar permanent employees who are 55 years of age or older.

17. The following employees are specifically excluded from participating in the Scheme. They are:

- Senior Technologist.
- Transformation Project Team based in Adelaide.
- Staff classified as Manager on the Port Pirie site.

18. Participation in the Scheme is entirely voluntary.

19. The Scheme will be launched on site and commence no later than two weeks following the date of the Commissioner's approval to 31 December 2014. All eligible employees will then be able to express an interest to participate in the Scheme over a four week period.

20. Eligible employees will be made an offer from one week after the expressions of interest commence and not later than two weeks after the expressions of interest close.

21. All employees who accept the offer to retire under the Scheme will terminate employment and receive the payment. Based on organisational requirements the actual date of termination will be decided upon mutual agreement between the employee and Nyrstar but no later than 31 December 2014.

22. The number of packages available under the Scheme is limited.

23. If the number of employees who accept the offer is greater than the number of packages available, offers will be made to those eligible employees with the longest period of service, to retire under the Scheme.

24. Nyrstar will limit the number of packages available up to a maximum of 10% of the workforce of each department or one employee for departments with less than ten employees to ensure that business operations can continue.

25. In addition, a maximum number of maintenance tradespeople is limited as follows:

- three Electricians or Instrumentation Technicians
- four Boilermakers, and
- four Fitters and Turners.

26. All eligible employees under the Scheme will be offered one week's pay per year of service up to a maximum of 26 weeks.

27. All employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the relevant enterprise agreement or staff employment contract. However, these payments do not form part of the payment made under the Scheme.

28. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.

29. The payments made under the Scheme will be at arm's-length.

30. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

31. Employees aged 65 and older will be eligible to participate in the Scheme. However, for payments made to eligible employees who have reached age 65 and older, the payments will not be an early retirement scheme payment and will not be eligible for the tax-free base limits under the Scheme.

32. All eligible employees are employed under the '*Nyrstar Port Pirie Enterprise Agreement 2014*'.

33. Eligible staff employees are employed under their individual employment contract.

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

35. 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 to retire under the Scheme be accepted.

Ruling

36. The early retirement scheme to be implemented by Nyrstar Port Pirie Pty Ltd 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 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.

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 Taxation25 June 2014

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.

41. These three conditions will now be considered.

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

42. 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).

43. The class of employees to whom early retirement will be offered is set out in paragraph 16 of this Ruling.

44. 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

45. 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).

46. The facts at paragraphs 13 to 15 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).

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

47. The scheme is proposed to operate for approximately six months after the Commissioner's approval to 31 December 2014. 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.

48. 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.

49. The Scheme is proposed to operate within two weeks from the date after the Commissioner's approval to 31 December 2014.

Other relevant information

50. 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 termination is an early retirement scheme payment.

51. 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;
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

52. 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'.

53. 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.

54. 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 six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation. For a payment made in the 2014-15 income year, the tax free amount is limited to \$9,514 (base amount) plus \$4,758 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates.

55. The total of the amount received on termination of employment calculated in accordance with paragraph 26 of this ruling may qualify as an early retirement scheme payment.

56. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 55 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 54 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

57. The 'tax-free' amount will:

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

58. 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.

59. Payments under the Scheme in excess of the tax-free limit will be concessional tax as an employment termination payment up to the employment termination payment cap (ETP cap) and taxed at various rates depending on the person's age. The ETP cap for the 2013-14 income year is \$180,000 and will continue to have access to the full benefit of an employment termination payment tax offset under subsection 82-10(3).

60. The ETP cap is reduced by employment termination payments received earlier in the year or by employment termination payments received in an earlier year relating to the same termination.

Appendix 2 – Detailed contents list

61. 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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