



# ***CR 2014/63 - Income tax: Sydney Trains Maintenance Division Early Retirement Scheme***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *22 October 2014*



## Class Ruling

### Income tax: Sydney Trains Maintenance Division Early Retirement Scheme

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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.

**[Note:** *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

## What this Ruling is about

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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 whom this scheme applies is all employees of Sydney Trains, shown at paragraph 16, who receive a payment under the scheme described in paragraphs 9 to 32 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 32 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

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7. This Ruling applies from 6 August 2014 to 31 December 2015. The Ruling continues to apply after 31 December 2015 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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8. The following description of the scheme is based on information provided by the applicant.

9. Sydney Trains is seeking the approval of the Commissioner of Taxation to implement an early retirement scheme in accordance with section 83-180.

10. The scheme will be titled '*Sydney Trains Maintenance Division Early Retirement Scheme*' referred to as the Scheme.

11. Transport for NSW (TfNSW) and Rail Corporation New South Wales are NSW Government agencies constituted under the *Transport Administration Act 1988*. Sydney Trains is a subsidiary corporation of TfNSW and is part of the 'transport cluster' which is controlled by TfNSW.

12. There has been a high volume of apprentice intake over recent years and Maintenance Directorate has recently announced that not all apprentices will be offered permanent full-time roles. There is currently a surplus of apprentices in the disciplines of cable jointers, rail traction, signalling and substations.

13. The purpose of implementing the Scheme is to rationalise and re-organise the employer's operations and vary, by voluntary means, the composition of Sydney Trains' workforce. Sydney Trains intends to offer a program to allow eligible staff to voluntarily leave the organisation and create opportunities for apprentices to join.

14. The Scheme will assist Sydney Trains to achieve reform goals to streamline the organisation by providing a mechanism through which the organisation may retain apprentices whilst at the same time allowing existing employees holding positions that are required going forward to exit the organisation.

15. The Scheme will also assist Sydney Trains to reinforce its 'talent pipeline' by enabling the organisation to offer early retirement to those holding lower level supervisory positions (such as Work Group Leaders and Team Leaders), offering internal candidates the opportunity to move into those positions and as a result, providing apprentices with suitable entry level opportunities.

16. The class of employees to whom this Scheme applies is all individuals currently employed within the Maintenance Division of Sydney Trains whose current grade is Team Manager or below and who are:

- (a) in 'trades' positions in the sub-divisions of Network Maintenance Division, Major Works and Fleet Maintenance Division
- (b) in the applicable disciplines of signals, rail traction, track and structures, substations and cable joiners
- (c) permanent full-time employees, and
- (d) aged between 50 years and under 65 years.

17. 'Maintenance' refers to employees who occupy positions that can be filled by graduated apprentices or fourth year apprentices or by positions that can be filled by internal promotion hence creating a vacancy at the frontline level. The positions are referred to as 'Infrastructure Worker' roles in the applicable disciplines.

18. The following employees are specifically excluded from the class and not eligible to apply under the Scheme. They are:

- (a) employees whose employment is on a temporary or casual basis;

- (b) employees who are part time;
- (c) employees on contract; and
- (d) current employees with open disciplinary proceedings or who are subject to disciplinary action.

19. All eligible employees under the Scheme will be offered a lump sum payment as follows:

**(a) Incentive bonus:**

This bonus is available if the offer is accepted within two weeks of the offer being made. The incentive bonus will be as follows:

- (i) 1 year of service – 20 weeks of severance pay
- (ii) 2 years of service – 21 weeks of severance pay
- (iii) 3 years of service – 22 weeks of severance pay
- (iv) 4 years of service – 23 weeks of severance pay
- (v) 5 or more years of service – 24 weeks of severance pay

An additional week is available for employees over 45 years of age.

**(b) Redundancy component:**

Each eligible employee will receive 3 weeks of severance pay for every year of continuous service (capped at 13 years / 39 weeks), with pro-rata payments for incomplete years of service to be on a quarterly basis.

20. Under the proposed payment schedule under the Scheme, the maximum total available to an eligible employee is 64 weeks of severance pay.

21. Sydney Trains will be seeking expressions of interest from employees who wish to voluntarily leave the organisation under the Scheme.

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

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

24. 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. However, they do not form part of the payment made under the Scheme.

25. As the program will be implemented on a rolling basis, there will be staggered timeframes for expressions of interest and offers being made to employees within each workforce category.

26. In the case where two or more employees with identical skills have expressed an interest in leaving but there are not as many matching employees available to backfill the roles, then the employee who first expressed an interest will be permitted to depart under the Scheme.

27. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those eligible employees who have expressed an interest on a 'first in first accepted' basis.

28. 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 by mutual agreement between the employee and the employer, but will be no later than 31 December 2015.

29. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

30. The payment made under the Scheme is at arm's-length.

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

32. All eligible employees are employed under the '*RailCorp Enterprise Agreement*' which expired on 31 March 2014, however, whilst negotiations are ongoing in relation to a new Enterprise Agreement, its clauses continue to apply.

## **Ruling**

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33. The early retirement scheme to be implemented by Sydney Trains is an early retirement scheme for the purposes of section 83-180.

34. 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.

35. 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**

6 August 2014

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## Appendix 1 – Explanation

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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.***

36. Where a scheme satisfies the requirements of section 83-180 that scheme will be an ‘early retirement scheme’.

37. 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**

38. 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).

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

40. 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**

41. 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).

42. Paragraphs 12 to 15 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**

43. The Scheme is proposed to operate from 6 August 2014 to 31 December 2015. 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.

44. The Scheme will be in operation for approximately 18 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**

45. 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.

46. 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)).

47. 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'.

48. 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.

49. For the 2014-15 income year, the proposed 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. 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.

50. For employees who are under the age of 65 years, the total of the amount received on termination of employment, calculated in accordance with paragraphs 19 and 20 of this ruling, may qualify as an early retirement scheme payment.

51. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 50 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 49 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

52. The 'tax-free' amount will:

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

53. 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 (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

54. Payments made under the early retirement scheme in excess of the tax-free limit will be concessionally taxed up to the ETP cap of \$185,000 for the 2014-15 income year and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

55. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

## Appendix 2 – Detailed contents list

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

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## References

- Previous draft:*
- ITAA 1997 82-10(3)
  - 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
  - employment termination
  - eligible termination payment
  - redundancy or early retirement scheme payment
- 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
- Legislative references:*
- ITAA 1997

### ATO references

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