


# ***CR 2016/40 - Income tax: Thales Australia Maritime Early Retirement Scheme***

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## Class Ruling

# Income tax: Thales Australia Maritime 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.

## 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 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 whom this scheme applies is those employees of Thales Australia Limited shown at paragraph 14 and modified by paragraph 15, who receive a payment under the scheme described in paragraphs 9 to 30 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 30 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. The Ruling will apply from 15 June 2016 to 31 October 2016. The Ruling continues to apply after 31 October 2016 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

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8. The following description of the scheme is based on information provided by the applicant.
9. Thales Australia Limited is seeking the Commissioner of Taxation's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled the '*Thales Australia Maritime Early Retirement Scheme*' referred to as the Scheme.
11. Thales Australia Limited conducts its operations through a number of discrete Country Business Units (CBUs). The Maritime CBU is one such unit. It is primarily concerned with the supply and maintenance of command and control systems, communications and mission management systems, electronic warfare, sonar and underwater systems, and ship repair and maintenance activities.
12. The purpose of the Scheme is to reorganise the Maritime CBU to better align its employee mix with its current and future business requirements, by offering early retirement to a fixed number of its long-serving employees.

13. Implementation of the Scheme is anticipated to allow for renewal of the workforce by other employees who are better equipped to handle the physical demands of the work at hand. The reorganisation is also expected to assist in regenerating the business and will bring new opportunities for employee career development, business process improvements and growth

14. The class of employees to whom this scheme applies is all Australia wide Maritime CBU employees who are:

- between the ages of 55 and 65 years, with a minimum of 5 years' service, and
- between the ages of 50 and 55 years, with more than 20 years' service.

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

- casual employees, contractors, and fixed term employees
- employees who before the commencement of the Scheme were subject to termination on the grounds of misconduct or unsatisfactory performance or are under investigation for allegations of misconduct, or serious misconduct, and
- employees who have an active workers' compensation claim where payments have been made for loss of income.

16. There are approximately 267 employees within the class.

17. The total of 20 early retirement packages will be made available under the Scheme.

18. If more than 20 employees apply under the Scheme, employees who have the longest period of service will be given priority.

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

20. Each eligible employee accepted under the Scheme will receive a lump sum payment as follows:

- \$5,000, and
- two weeks' ordinary pay for each year of completed service (capped at 15 weeks).

21. The payment under the formula above will be in addition to all other legal entitlements, such as unused annual leave and long service leave entitlements, which will not form part of the Scheme payments.

22. Following approval of the scheme, all eligible employees will be invited to apply under the Scheme and will have 21 days to submit Expressions of Interest.
23. All offers under the Scheme will be made within 30 days of the deadline for the Expressions of Interest.
24. Employees who receive an offer to retire under the Scheme will have 14 days to accept the offer. These employees will receive payment and terminate their employment on a date mutually agreed by the Employee and Thales Australia Limited, but no later than six months after the commencement of the Scheme.
25. The payment made under the Scheme is in excess of any superannuation and any other benefits to which the eligible employees would otherwise be entitled.
26. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.
27. The payment made under the Scheme is at arm's-length.
28. The retirement of employees who receive a payment under the scheme will occur before they turn 65 years of age.
29. There is no agreement in place between the employer and the employee, or between the employer and another person to employ the employee after retirement.
30. All eligible employees are employed under the *Thales Australia National Framework Agreement 2013* and the *Thales Australia Maritime Enterprise Agreement 2012*. The nominal expiration date of the *Thales Australia Maritime Enterprise Agreement 2012* was 30 September 2015. Whilst negotiations are ongoing, its clauses continue to apply.

## Ruling

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31. The early retirement scheme to be implemented by Thales Australia Limited is an early retirement scheme for the purposes of section 83-180.
32. 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 their employment at the time of the retirement will be an early retirement scheme payment.
33. 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**

**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.*

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

35. 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.

36. These three conditions will now be considered.

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

37. 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).

38. The class of employees to whom early retirement will be offered is set out under Class entities.

39. 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).

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## **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**

40. 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).

41. The nature of the rationalisation or re-organisation of the employer's operations are described above under Scheme. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer.

42. The Scheme will be in operation for approximately 6 months. This is considered appropriate due to the circumstances of the reorganisation.

43. It is therefore considered 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 shortly after the date of the Commissioner's approval to 31 October 2016. The approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

## **Other relevant information**

45. 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 termination is an early retirement scheme payment.

46. 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;
- 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 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates.

50. For the 2016-17 income year, the tax-free amount is limited to \$9,936 (base amount) plus \$4,969 (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.

51. The total of the amount received on the termination of employment calculated in accordance with the methodology outlined under the Scheme may qualify as an early retirement scheme payment.

52. The total payment calculated in accordance with the methodology outlined under the Scheme will be measured against the limit calculated in accordance with the formula mentioned above 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.

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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 the 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.

55. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

**Appendix 2 – Detailed contents list**

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

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## References

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|--|--------------------------|
| <i>Previous draft:</i>                 | - ITAA 1997 83-180(1)    |
| Not previously issued as a draft       | - ITAA 1997 83-180(2)    |
|  | - ITAA 1997 83-180(3)    |
| <i>Related Rulings/Determinations:</i> | - ITAA 1997 83-180(3)(a) |
| TR 2006/10                             | - ITAA 1997 83-180(3)(b) |
|  | - ITAA 1997 83-180(3)(c) |
| <i>Legislative references:</i>         | - ITAA 1997 83-180(5)    |
| - ITAA 1997                            | - ITAA 1997 83-180(6)    |
| - ITAA 1997 82-135                     | - ITAA 1997 995-1(1)     |
| - ITAA 1997 82-135(e)                  | - TAA 1953               |
| - ITAA 1997 83-170                     | - Copyright Act 1968     |
| - ITAA 1997 83-180                     |                          |
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### ATO references

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