


CR 2009/75 - Income tax: early retirement scheme - Mercedes-Benz Australia/Pacific Pty Ltd

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Class Ruling

Income tax: early retirement scheme – Mercedes-Benz Australia/Pacific Pty Ltd

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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 subsequent legislative references are to the ITAA 1997 unless stated otherwise.

Class of entities

3. The class of entities to which this Ruling applies is those employees of Mercedes-Benz Australia/Pacific Pty Ltd (the employer) who receive a payment under the scheme described in paragraphs 22 and 23 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 29 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.
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Date of effect

8. This Ruling applies from 16 December 2009 to 15 December 2010. The Ruling continues to apply after 15 December 2010 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

9. The following description of the scheme is based on information provided by the applicant.
10. The scheme, to be known as the Mercedes-Benz Australia/Pacific Pty Ltd Voluntary Early Retirement Scheme (VERS), is proposed to apply to the employer's Wholesale Division (the Division).

11. The Division, which is present in Victoria, New South Wales and Queensland, is a distinct cost centre within the business which carries out the functions relating to accounting, importing, marketing and distribution of motor vehicles in Australia.

12. The nature of work in the Division has changed as a result of the introduction of the 'New Sales Organisation' model within the Daimler/Mercedes-Benz related companies worldwide which will result in the use of newer technology and a rationalisation of resources such as the centralisation of all marketing functions.

13. In addition, following the de-merger of Daimler and Chrysler worldwide, the employer has been supplying a range of services in Australia under a series of service level agreements, one of which has recently been terminated.

14. As the new model requires significant retraining of existing staff and the employer wants to focus on advancing the formal qualifications in the Division's workforce, to enable better adaptation to new operating methods, the employer proposes to replace employees who are not familiar with current business methods and do not possess current or recent formal qualifications with employees who do.

15. Further, the employer considers reorganisation of the Division in the above manner will aid in achieving its importing, sales outcomes and performance objectives.

16. The class of employees to be offered the scheme will be all employees in the employer's Wholesale Division who:

- are over 55 years of age as at 31 December 2009; and
- have been employed on a continuing basis for at least 5 years.

17. The number of eligible employees who can retire under the scheme will not be limited.

18. The employer proposes to retain a limited veto to be applied to applications by key employees to maintain key business and operational functions and to avoid loss of unique skills or roles that are critical to the business. The roles of the employees that the employer considers to be key personnel and will not be eligible to receive a payment under the scheme have been provided.

19. It is proposed that the scheme will be implemented from 16 December 2009 to 15 December 2010.

20. Eligible employees who express an interest in the scheme will receive an offer within a week of the scheme's approval by the Commissioner.

21. All employees who accept the offer to retire under the scheme will receive the payment and terminate employment by 15 December 2010. The actual date of termination will be negotiated between the employer and the employee.

22. The payment to be made under the scheme is two (2) weeks salary (all salary to be calculated on an employee's base salary, not including employer superannuation contributions or potential bonus payments) for every year of continuous service with the employer up to a maximum of forty (40) weeks.

23. In relation to period of notice it is customary for employees to work through a notice period. However, there may be certain circumstances where an employee may leave before the notice period has expired and will receive a payment in lieu of the unexpired period of notice. Where this occurs under the scheme, the payment in lieu of notice will form part of the early retirement scheme payment.

24. In addition, employees will receive any unused annual leave and long service leave entitlements. However, they do not form part of the payment under the scheme.

25. Under the terms and conditions of employment there is no compulsory retirement date for employees.

26. Any employee who terminates employment, other than under the proposed scheme, will not be entitled to receive the payment under the scheme.

27. The payment made under the proposed scheme does not include any payment in lieu of superannuation benefits.

28. There will be no agreement in place with the employer and an employee, or the employer and any other person, to employ an employee following the termination of employment under the scheme.

29. There is no association between the eligible employees and the employer. Accordingly, the employees and the employer will be at arm's length in accordance with the requirements.

Ruling

30. The early retirement scheme to be implemented by Mercedes-Benz Australia/Pacific Pty Ltd is an early retirement scheme for the purposes of section 83-180.

31. 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.

32. 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.*

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

34. 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.

35. These three conditions are considered in paragraphs 36 to 43 of this Ruling.

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

36. 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).

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

38. The Commissioner considers that this is an appropriate class of persons for the scheme to be offered to. 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).

39. It is noted, however, that the employer retains a limited right of veto to be applied as set out in paragraph 18 of this Ruling. The limitation of the scheme in this way is acceptable to the Commissioner.

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. Paragraphs 14 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 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). Accordingly, the second condition for approval has been met.

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

42. The scheme is proposed to operate for a period from 16 December 2009 to 15 December 2010. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

43. The scheme will be in operation for 12 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

Other relevant information

44. 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 the retirement is an early retirement scheme payment.

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

46. 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'.

47. From 1 July 2007, 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.

48. For the 2009-10 income year, the tax-free amount is limited to \$7,732 (base amount) plus \$3,867 (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.

49. The total of the amount received on the termination of employment calculated in accordance with paragraph 22, and 23 where applicable, of this Ruling may qualify as an early retirement scheme payment.

50. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with paragraph 48 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

51. The 'tax-free' amount will:

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

52. Any 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

53. 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
- 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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