


CR 2011/47 - Income tax: early retirement scheme - BlueScope Steel Limited

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Class Ruling

Income tax: early retirement scheme – BlueScope Steel Limited

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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 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 those employees of BlueScope Steel Limited (the Company) and Subsidiary Companies, shown at paragraph 4, who receive a payment under the scheme described in paragraphs 11 to 28 of this Ruling.

4. The Subsidiary Companies are as follows:
- BlueScope Steel (AIS) Pty Ltd; and
 - BlueScope Distribution Pty Ltd.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 11 to 28 of this Ruling.
7. 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

9. This Ruling applies from 18 May 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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

10. The following description of the scheme is based on information provided by the applicant.
11. BlueScope Steel Limited (the Company) and the Subsidiary Companies intend to implement an early retirement scheme applying to their eligible employees. The scheme is to be known as the BlueScope Steel Early Retirement Scheme.

12. On 10 March 2011, the Company announced a new organisation structure for Australia and New Zealand, consolidating the existing business units into a new business called BlueScope Australia and New Zealand (BlueScope ANZ). This re-organisation is aimed at better serving the trans-Tasman flat steel market and to respond to current macro-economic conditions.

13. The purpose of the scheme is to reduce, swiftly and by voluntary means, the size of the Company's Australian workforce in the technical, professional, administrative, managerial and other business support functions which are likely to be directly impacted by the re-organisation, while maintaining their operational capabilities which will be largely unaffected.

14. The current Australian workforce in their technical, professional, administrative, managerial and other business support functions includes a number of employees who are over 50 and below age 65 and have a significant continuous service with the Company, typically in excess of 20 years.

15. As the Company undertakes the re-organisation, retention and development of talented employees within the younger and shorter serving classes, the release of older longer serving employees will assist by providing expanded redeployment and development opportunities for other classes of employees. This will assist the Company to maintain and grow future core people and talent capability and reduce the need to terminate employees due to genuine forced redundancy.

16. The class of employees to be offered the scheme will be all employees in technical, professional, administrative, managerial or business support roles in specific geographic regions who meet the age and service requirements.

17. The geographic regions include:

- New South Wales – Sydney Metropolitan and Illawarra regions;
- Victoria – Melbourne Metropolitan, Dandenong and Western Port regions;
- Queensland – Brisbane Metropolitan, Gold Coast and Sunshine Coast regions;
- South Australia – Adelaide Metropolitan region; and
- Tasmania – Hobart Metropolitan and Launceston regions.

18. The age and service requirements of the class of employees to be offered the scheme will be all employees who are under 65 years of age and

- over 55 years of age; or
- 50 years of age or over with more than 20 years continuous service.

19. In the case that the number of employees seeking access to the scheme exceeds the number of packages available, the offer will be made to those employees on a 'first in first accepted' basis up to a maximum of 25% of eligible employees in a team or function.

20. The employer proposes to retain a limited veto. Due to skill shortage, operational requirements, and the limited impact the transition to BlueScope ANZ will have on their position, employees in the following positions/functions will not be eligible to participate in the scheme:

- Estimators, customer services and sales roles in BlueScope Distribution Pty Ltd and BlueScope Lysaght Australia within BlueScope Limited.
- Employees in roles directly involved in engineering and technical services relating to the operations at the Port Kembla Steelworks, Springhill Works, Western Port Works and Western Sydney Service Centre.
- Applications in excess of 25% of eligible employees in a team or function.

21. It is proposed the scheme will be implemented from 18 May 2011 to 30 June 2012.

22. All employees who accept the offer to retire under the scheme will receive the payment and terminate employment by 30 June 2012. The actual date of termination will be negotiated between the employer and the employee.

23. The payment to be made under the scheme is:

- a lump sum payment of \$8,126; plus
- one week's ordinary pay (capped up to a maximum amount of \$4,064) for each completed year of continuous service.

Payment under this formula is inclusive of any statutory or contractual notice that might otherwise have been payable where the Company does not require an employee to work out their notice of termination period.

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

25. Under the terms and conditions of employment at the Company and the Subsidiary Companies, there is no mandated requirement to retire, however all employees will be under the age of 65 when they terminate employment and the payment is made.

26. The proposed scheme does not include any part of a payment that was paid to the employee in lieu of superannuation benefits to which the employee may have become entitled at the time the payment was made or at a later time.

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

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

Ruling

29. The early retirement scheme to be implemented by BlueScope Steel Limited is an early retirement scheme for the purposes of section 83-180.

30. Accordingly, so much of the payment received by an employee that exceeds the amount that could be reasonable 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.

31. 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 Taxation

18 May 2011

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.*

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

33. 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 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).

35. The class of employees to whom early retirement will be offered is set out in paragraph 16 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).

38. Paragraphs 13 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 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

39. The scheme is proposed to operate for a period from the date of the Commissioner's approval to 30 June 2012. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

40. The scheme will be in operation for approximately 13 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

41. 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.

42. 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 83-130(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)).

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. 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.

45. For the 2010-11 income year, the tax-free amount is limited to \$8,126 (base amount) plus \$4,064 (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 for each income year.

46. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of the facts may qualify as an early retirement scheme payment.

47. The total payment in paragraph 46 will be measured against the limit calculated in accordance with the formula mentioned in paragraph 45 to determine the 'tax-free' amount of the early retirement scheme payment.

48. The 'tax-free' amount will:

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

49. 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

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:

- Redundancy or early retirement scheme payments
- Early retirement
- Employment termination

Legislative references:

- TAA 1953
- Copyright Act 1968

- 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)

ATO references

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