


# ***CR 2015/16 - Income tax: the 'Capral Aluminium Early Retirement Scheme'***

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## Class Ruling

# Income tax: the 'Capral Aluminium 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

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 Capral Limited (Capral) shown at paragraph 13, subject to paragraph 14 of this Ruling, who receive a payment under the scheme described in paragraphs 7 to 28 of this Ruling.

## Qualifications

4. The class of entities defined in the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.
5. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:
  - the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
  - the Ruling may be withdrawn or modified.

## Date of effect

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6. The Ruling applies from 25 February 2015 to 25 February 2016. The Ruling continues to apply after 25 February 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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7. The following description of the scheme is based on information provided by the applicant.
8. Capral is Australia's largest manufacturer and distributor of aluminium profiles and employs around 820 people.
9. The scheme will be titled '*Capral Aluminium Early Retirement Scheme*', hereafter referred to as the Scheme.
10. Capral operates in a highly competitive environment where there is excess domestic aluminium extrusion capacity and significant imports (about 40% of the market) that, combined with a strong prevailing Australian dollar, adversely affects Capral's profitability.
11. Consequently, Capral proposes to rationalise and re-organise its operations to operate more productively and cost effectively. They intend to do this by:
  - continuing to reduce the cost base
  - completing the integration of businesses/sites, and
  - employing lean manufacturing practices.

12. The Scheme will focus on groups within the work force where roles can be rationalised and/or re-distributed in order to achieve the above outcomes. This may also involve the up-skilling of current roles with employees that embrace organisational change. The Scheme would operate in addition to redundancy programs to rationalise the Capral workplace.

13. The class of employees to whom the Scheme applies is all full-time and part-time salaried Capral employees who meet the following criteria:

- have reached 55 years but are under 65 years on their last day of employment at Capral
- have at least five years continuous service at Capral, and
- are employed in the following areas:

| <b>Salaried Divisions/Work area</b>       |
|---|
| Supply Chain                              |
| Logistics                                 |
| Paintline                                 |
| Commercial Manufacturing                  |
| Purchasing                                |
| Profile Solutions                         |
| Safety                                    |
| Inventory Coordination                    |
| Account Management                        |
| Regional Account Management               |
| Aluminium Centre Management               |
| Branch Sales Coordination                 |
| Building Systems Sales Management         |
| Warehouse Operations & Support            |
| Account Coordination                      |
| Customer Service Operation                |
| Kit Centre Coordination                   |
| RDC Supervision                           |
| Sales Management                          |
| Internal Sales                            |
| IT Infrastructure and Training Management |
| LAN and Desktop Technical                 |
| Master Data Coordination                  |
| Market Management                         |

14. The following employees are excluded from applying to retire under the Scheme:

- wage employees covered by an Enterprise/Collective Agreement
- employees who have a pre-existing retirement or other cessation agreement with Capral
- casual employees/contractors
- fixed-term employees
- WorkCover recipients (State government direction)
- employees who before the commencement of the Scheme were subject to termination on the grounds of misconduct or unsatisfactory service
- Capral directors, and
- all SAP Analysts.

15. The payment to be made to eligible employees under the Scheme is as follows:

| <b>Continuous years of service</b> | <b>Payment (salary)</b> |
|------------------------------------|-------------------------|
| 5 years but less than 6 years      | 10 weeks                |
| 6 years but less than 7 years      | 11 weeks                |
| 7 years but less than 8 years      | 13 weeks                |
| 8 years but less than 9 years      | 14 weeks                |
| 9 years but less than 10 years     | 16 weeks                |
| 10 years and over                  | 18 weeks                |

16. The payment in paragraph 15 of this Ruling is in addition to other entitlements (as applicable) which do not form part of the payment made under the Scheme including:

- accrued but unpaid salary
- payment in lieu of notice, depending on the circumstances
- extra one week for employees who are 45 years or older
- untaken accrued annual or purchased leave entitlements, and
- long service leave entitlements, depending on the circumstances.

17. The maximum number of early retirement offers under the Scheme is limited to 30.

18. The minimum number of packages to be provided under the Scheme is 10.
19. Where the number of eligible employees applying to retire under the Scheme exceeds the number of packages available, Capral will determine participation in the Scheme based on a 'first-applied first-accepted' basis.
20. If fewer employees than planned accept the offer to retire, Capral will still make offers to those who have applied.
21. The Scheme is voluntary. Following approval of the Scheme, all eligible employees within the specified class will be invited to submit an expression of interest to participate in the Scheme to Capral Human Resources (HR). Expressions of interest are open for the duration of the Scheme.
22. Once an expression of interest to participate in the Scheme has been made by an eligible employee, Capral will make an offer to the employee within four weeks of receipt of the application by HR.
23. Employees who accept the offer to retire under the Scheme will terminate their employment on four weeks notice. However, the company and the employee may mutually agree to extend the departure date provided the departure date falls within the duration of the Scheme. The payment will be made in the employee's next fortnightly payment period after their date of termination.
24. If an eligible employee chooses not to participate in the Scheme, Capral may redeploy employees into similar roles with varied responsibilities or into a new role.
25. The payment made under the Scheme is in excess of any superannuation and any other benefits to which 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. Payments made under the Scheme will be at arm's length.
28. There is no agreement in place between the eligible employees and Capral, or between Capral and another person to employ any employee after retirement under the Scheme.

## **Ruling**

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29. The early retirement scheme to be implemented by Capral is an early retirement scheme for the purposes of section 83-180.
30. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of voluntary termination of their 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.

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**Commissioner of Taxation**

25 February 2015

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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.*

32. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

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 are now 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 13, subject to paragraph 14 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. The nature of the rationalisation or re-organisation of the employer's operations are described in paragraphs 10 to 12 of this Ruling. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force 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).

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

39. The Scheme is proposed to operate for a period from 26 February 2015 to 25 February 2016. The approval to be provided by this Ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

### **Other relevant information**

40. 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 their employment at the time of termination is an early retirement scheme payment.

41. 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 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)).

42. 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'.

43. 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.

44. For 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. In accordance with section 960-285, the base limit and service amount limits are indexed in line with average weekly ordinary time earnings for each income year. For the 2015-16 income year, the base amount and the service amount is yet to be determined at the publication of this ruling. Therefore, employees should check the ATO website for the 2015-16 income year indexed amounts. 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.

45. The total of the amount received on the termination of employment calculated in accordance with paragraph 15 of this Ruling may qualify as an early retirement scheme payment.

46. The total payment calculated in accordance with paragraph 15 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 44 of this Ruling to determine the 'tax free' amount of the early retirement scheme payment.

47. The 'tax-free' amount will:

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

48. Any payment in excess of this limit will be an ETP 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.

49. 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**

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

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## References

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- Previous draft:*
- ITAA 1997 82-135(e)
- Not previously issued as a draft
- ITAA 1997 83-170
  - ITAA 1997 83-180
- Related Rulings/Determinations:*
- TR 2006/10
- 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)
- Subject references:*
- early retirement
  - employment termination
  - redundancy or early retirement scheme payment
- Legislative references:*
- ITAA 1997
  - ITAA 1997 82-135
  - TAA 1953
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### ATO references

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 scheme

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