


CR 2016/55 - Income tax: Searoad Ferries Early Retirement Scheme

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Class Ruling

Income tax: Searoad Ferries 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 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 those employees of Peninsula Searoad Transport Pty Ltd (the Company) shown at paragraph 12 who receive a payment under paragraph 16 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 - the Ruling may be withdrawn or modified.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

6. The Ruling will apply from 27 July 2016 to 30 September 2016. The Ruling continues to apply after 30 September 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

7. The Company is seeking the Commissioner of Taxation's approval to implement an early retirement scheme in accordance with section 83-180 of the ITAA 1997.
8. The scheme will be titled the 'Searoad Ferries Early Retirement Scheme', referred to as 'the Scheme'.
9. The Company operates the Sorrento-Queenscliff vehicle and passenger ferry service. In 2011, the Company began to fundamentally change its business from being a public transport service operator to a high quality tourism based ferry service. To do so, the Company has reorganised its policy, procedures, marketing, infrastructure and management.
10. The purpose of the Scheme is to reorganise the Company's current business mode of operations by better aligning its employee mix. The Scheme seeks to offer early retirement to a fixed number of its long-serving senior employees.
11. Implementation of the Scheme is anticipated to provide opportunities for a younger generation of employees who will be required to assume not only the roles of operating a vessel but also being prepared and willing to take on both tourism and technology responsibilities.

12. The class of employees to whom the Scheme applies is all senior staff who:
 - are masters and engineers currently working on board vessels full time
 - have a minimum of 10 years of fulltime service with Peninsula Searoad Transport Pty Ltd
 - are aged between 55 and 64 inclusive on 30 September 2016, and
 - currently earn a minimum of \$100,000 per annum.
13. There are a fixed number of employees within the class.
14. A fixed number of early retirement packages will be made available under the Scheme.
15. There is no minimum number of employees required to retire under the Scheme.
16. All eligible employees under the Scheme will be offered a lump sum payment, a Termination Severance Payment (TSP), which is calculated as follows:
 - \$25,000, and
 - \$10,000 for each year from 30 September 2016 until the eligible employee reaches 65 years of age with part years calculated pro-rata.
17. The minimum TSP paid to each eligible employee will be no less than \$50,000.
18. The TSP will be in addition to all other statutory entitlements, such as unused annual leave and long service leave entitlements, which will not form part of the Scheme payments.
19. Following approval of the Scheme, an offer will be made immediately to each eligible employee.
20. Eligible employees who receive an offer to retire under the Scheme will have until 30 September 2016 to accept the offer. The employment of employees who accept the offer will be terminated on a mutually agreed date on or before 30 September 2016.
21. 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.
22. Any employee who terminates employment other than under the proposed Scheme will not be entitled to receive the payment.
23. The payment made under the Scheme is at arm's-length.
24. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

25. There is no agreement in place between the Company and any eligible employee, or between the Company and another person to employ the eligible employee after retirement under the Scheme.

26. All eligible employees are employed under the Peninsula Searoad Transport Pty Ltd, Masters, Mates and GPs Enterprise Bargaining Agreement 2012.

Ruling

27. The 'Searoad Ferries Early Retirement Scheme' is an early retirement scheme for the purposes of section 83-180.

28. 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.

29. 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

27 July 2016

Appendix 1 – Explanation

ⓘ *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.*

30. A scheme is an **early retirement scheme** if it satisfies the requirements of subsection 83-180(3) or (4) which states:

A scheme is an **early retirement scheme** if:

- all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme
- 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
- before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

31. These three conditions will now be considered.

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

32. 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).

33. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 12 of this Ruling.

34. 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

35. 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).

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36. The nature of the rationalisation or re-organisation of the employer's operations are described at paragraphs 9 to 12 of this Ruling. In approving the Scheme, the Commissioner has had regard to the changes in the business operations and nature of the workforce of the employer.

37. 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).

38. 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 27 July 2016 to 30 September 2016. 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.

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

41. As all the conditions for approval under subsection 83-180(3) have been met, consideration of subsection 83-180(4) is not required.

Other relevant information

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

43. 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)).

44. 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'.

45. In accordance with section 83-170, 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.

46. 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.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 16 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 16 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 45 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

49. The tax free amount will:

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

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

51. 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.

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Appendix 2 – Detailed contents list

52. 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
- Legislative references:*
- 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(4)
 - ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - TAA 1953
 - ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - ITAA 1997 83-170
-

ATO references

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