


CR 2009/47 - Income tax: early retirement scheme - Mars Australia Pty Ltd

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Class Ruling

Income tax: early retirement scheme – Mars Australia Pty Ltd

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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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:

- section 82-135 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 83-170 of the ITAA 1997; and
- section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

4. The class of entities to which this Ruling applies is those employees of Mars Australia Pty Ltd who receive a payment under the scheme described in paragraphs 10 to 26 of this Ruling.

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 10 to 26 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 9 September 2009 to 30 June 2010. The Ruling continues to apply after 30 June 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

10. The following description of the scheme is based on information provided by the applicant.
11. Mars Australia Pty Ltd (the employer) is a manufacturer of pet care products in Australia.
12. The employer intends to offer an early retirement scheme (the Scheme) to permanent full time employees.
13. The Scheme is open to all manufacturing employees at the Wodonga site who are over 55 years of age at the time of acceptance and have tenure of greater than five years within the business. There are currently 52 employees in this class.
14. There are significant changes occurring within the manufacturing environment at the employer's Wodonga site. These changes will require the employer to reorganise its workforce, where employees are required to be more flexible in their skills and areas of work, including being able and willing to work in other plants as demand dictates. Given the current culture amongst many of the employees with longer tenure, their ability to be flexible in this manner is constrained. The purpose of the Scheme is to provide the option of an early retirement should an employee be unable or prefer not to participate in this change.
15. There are two full tray facilities on the Wodonga site, Flexi and Single Serve. Single Serve products are manufactured in both the Flexi and Single Serve plants. A relocation of production output is currently occurring between these plants. Due to changes in demand, more volume will be produced within the Single Serve Plant. Some employees are required to move from the Flexi Facility to the Single Serve Facility. The Single Serve Facility is more automated and operates at an increased speed.
16. A change in customer demand has led to a decline in the volume of canning in the Cannery. This decline is causing significant fluctuations in output from the Cannery plant. Employees are required to conduct their tasks differently and to change the frequency at which the tasks are occurring.
17. New packaging technology has recently been commissioned within the Nutraceuticals plant. The introduction of this technology will cause fluctuations in employee labour within the plant. The new pack line requires less employees to operate. Some employees will relocate to the Tray or Cannery Facilities.
18. As a result of the variation of production across the different plants, maintenance requirements will also vary. Employees will be required to work across sites as demand dictates. Maintenance employees will be required to perform different tasks to those previously required. The primary concern will relate to skills flexibility.

19. The employer will limit the number of employees who can accept the offer of early retirement to 25. If there are more than 25 applications, employees with a longer tenure and/or age will be accepted first.

20. All employees who retire under the Scheme will terminate employment and receive the payment on a date determined by the employer based on their operational requirements but no later than 30 June 2010.

21. It is anticipated that the roles of the employees retiring under the Scheme will be managed by existing employees and casuals under a flexible arrangement.

22. Under the Scheme employees will receive an ex gratia payment that will be the equivalent of nine months pay at the time of acceptance.

23. The employer will pay any accrued annual leave and long service leave entitlements and retiree benefits, however these amounts do not form part of the early retirement scheme payment.

24. There is no agreement in force between the employees and the employer or between the employer and any other person to employ any of the employees after the date of termination.

25. The payments are not being made in lieu of superannuation benefits.

26. The Scheme will be open from 9 September 2009 until 30 June 2010.

Ruling

27. The early retirement scheme to be implemented by Mars Australia Pty Ltd is an early retirement scheme for the purposes of section 83-180.

28. Accordingly, so much of the payment received by an employee:

- as exceeds the amount that could reasonably be expected to be received by the employee; and
- in consequence of the voluntary termination of his or her 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.

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.*

30. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'. 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 discussed in paragraphs 31 to 38 of this Ruling.

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

31. 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).

32. The class of employees to whom early retirement will be offered is set out in paragraph 13 of this Ruling.

33. 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. These employees meet the requirements of an approved class of employees for the purposes of paragraph 83-180(3)(a).

34. It is noted, however, that Mars Australia Pty Ltd retains a limited right of veto to be applied to the number of employees that can accept the offer of early retirement as set out in paragraph 19 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

35. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer that the Commissioner approves.

36. Paragraphs 14 to 18 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes approved by the Commissioner. Accordingly, the second condition for approval, in paragraph 83-180(3)(b) has been met.

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

37. The scheme will operate from 9 September 2009 to 30 June 2010. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

38. The scheme will be in operation for approximately 10 months, which is considered appropriate by the Commissioner.

Other relevant information

39. 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; and
- in consequence of the voluntary termination of his or her employment at the time of retirement,

is an early retirement scheme payment.

40. 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 reaching a certain age or completing a particular period of service (as the case may be). If the retirement is not at arm's length 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)).

All of these requirements have been met.

41. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

42. From 1 July 2007, an early retirement scheme payment that falls within a specified limit will not be assessable income and will not be exempt income. The specified limit is referred to as the 'tax-free' amount.

43. For the 2009-10 income year, the tax-free amount is limited to \$7,732 (base limit) plus \$3,867 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that six months, eight months or even 11 months do not count as a whole year for the purposes of this calculation. The base limit and service amount limit will be indexed in line with average weekly ordinary time earnings each income year.

44. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling may qualify as an early retirement scheme payment.

45. The total of the payments for each employee in paragraph 44 of this Ruling will be measured against the limit calculated in accordance with paragraph 43 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

46. The 'tax-free' amount will:

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

47. Any payment in excess of this tax-free 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.

48. Employment termination payments made under an approved early retirement scheme cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

49. 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
- employment termination
- 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 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

NO: 2009/8563

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payments ~~ early retirement scheme