

# ***CR 2014/38 - Income tax: Queensland Urban Utilities 2014 early retirement scheme***



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## Class Ruling

### Income tax: Queensland Urban Utilities 2014 early retirement scheme

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#### **① 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.

### 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 all employees of the Queensland Urban Utilities (QUU), shown at paragraph 18, who receive a payment under the scheme described in paragraphs 9 to 32 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 32 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.

## Date of effect

7. This Ruling applies from 9 April 2014 to 31 December 2014. The Ruling continues to apply after 31 December 2014 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

8. The following description of the scheme is based on information provided by the applicant.
9. QUU is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled the '*Queensland Urban Utilities 2014 early retirement scheme*' and referred to as the Scheme.
11. In 2013, QUU agreed upon a Target Operating Model (TOM) which is a revised business model that defines how QUU will be structured and will deliver services into the future.
12. The TOM will focus efforts on delivering specialist services that will deliver solid business returns and excellent customer service outcomes.
13. In developing the future operating model, QUU has considered some key internal and external drivers for change:
  - industry trends that need to be responded to, or taken advantage of

- current and pending legislative changes that will impact on QUU
- corporate strategic pillars and priorities
- board, shareholder and customer feedback and aspirations, and
- employee feedback about opportunities to gain efficiencies.

14. QUU is proactively responding to these drivers by reorganising its business operations. As part of this process QUU also intends to:

- review and develop new skill requirements for employees, and
- review options for alternative operational and service delivery models.

15. The purpose of implementing the Scheme is to specifically focus on groups within the workforce where roles are being rationalized and re-organized resulting from changing business requirements. This includes the review and rationalisation of corporate services which provide support to operational business units and the outsourcing of maintenance services.

16. The identified class of employees may find the consequences of the organisational change program challenging as QUU looks to bring a new range of skills to corporate services and retain those employees with anticipated greater capacity to manage organisational change, in the maintenance services space.

17. The proposed Scheme is expected to provide employees at retirement age the opportunity to leave the organisation with dignity and financial security.

18. The class of employees to whom this scheme applies is all permanent full time and part time employees of Queensland Urban Utilities (QUU) covered by the *Queensland Urban Utilities Certified Agreement 2011* (EBA) between the ages of 58 years and 65 years inclusive and who have 10 or more years of continuous service (tested at the time of application).

19. The following employees are excluded from expressing an interest in the scheme. They are:

- employees who before the commencement of the Scheme were subject to termination on the grounds of misconduct or unsatisfactory service, but who may still be employed by QUU, and
- employees in the Leader of Design and Connections role within the Planning group.

20. Eligible employees will be entitled to receive the following amounts under the Scheme:

- \$10,000 or 12 weeks pay (whichever is the greater), and
- two weeks' pay per year of service (up to a maximum of 52 weeks pay).

21. Employees who terminate their employment other than under the proposed Scheme will not be entitled to receive this payment.

22. In addition, all employees terminated under the Scheme will receive their statutory entitlements however they do not form part of the payment made under the Scheme.

23. The maximum number of packages available for retiring employees under the Scheme is limited.

24. The Scheme will be available for applications within two weeks following ATO approval and open until the maximum number of packages has been exhausted, and by 31 December 2014.

25. Once an employee has submitted their expression of interest to participate in the Scheme, they will be notified in writing of their participation and will be unable to withdraw their application.

26. All employees who accept the offer to retire under the Scheme will terminate their employment and receive the payment at a date mutually determined by QUU and the individual employee, based on their operational requirements but no later than 31 December 2014.

27. At the time of retirement it is not proposed that there will be an arrangement between the employee and QUU or between QUU and another person, to employ the employee after the retirement.

28. The payment under the Scheme will not be made in lieu of superannuation benefits.

29. All payments will be made on an arm's length basis.

30. The Scheme will operate from the date after the Commissioner's approval to 31 December 2014.

31. If an employee chooses not to participate in the Scheme, his or her employment shall continue in accordance with their current employment arrangements.

32. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

## Ruling

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33. The early retirement scheme to be implemented by QUU is an early retirement scheme for the purposes of section 83-180.

34. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

35. 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**

9 April 2014

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## 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.*

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

37. 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***

38. 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).

39. The class of employees to whom early retirement will be offered is set out in paragraph 18 and subject to the exclusions set out in paragraph 19 of this Ruling.

40. 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***

41. 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).

42. Paragraphs 11 to 16 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 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***

43. The Scheme is proposed to operate after the Commissioner's approval to 31 December 2014. 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.

44. The Scheme will be in operation for approximately 9 months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

***Other relevant information***

45. 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.

46. 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 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)).

47. 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'.

48. 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.

49. For a payment made in the 2013-14 income year, the tax free amount is limited to \$9,246 (base amount) plus \$4,624 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. 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. For a payment made in 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.

50. The total of the amount received on termination of employment calculated in accordance with paragraph 20 of this ruling may qualify as an early retirement scheme payment.

51. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 50 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 49 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

52. The 'tax-free' amount will:

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

53. Any payment in excess of this limit will be an employment termination payment 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 (ETP) includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

54. Payments made under the ERS in excess of the tax-free limit will be concessionally taxed up to the ETP cap of \$180,000 for the 2013-14 income year and will continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

55. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

## **Appendix 2 – Detailed contents list**

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

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## References

*Previous draft:*

Not previously issued as a draft

- ITAA 1997 82-10(3)
- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170

*Related Rulings/Determinations:*

TR 2006/10

- ITAA 1997 83-180
- ITAA 1997 83-180(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)

*Subject references:*

- early retirement
- employment termination
- eligible termination payments
- redundancy or early retirement scheme payments

- 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

*Legislative references:*

- ITAA 1997

## ATO references

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