


CR 2019/72 - Utilities Management Pty Ltd - early retirement scheme 2019

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Class Ruling

Utilities Management Pty Ltd – early retirement scheme 2019

❗ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out tax consequences of an early retirement scheme implemented by Utilities Management Pty Ltd (UMPL).
2. Full details of this scheme are set out in paragraphs 9 to 31 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to the employees who receive a payment under the scheme.

When this Ruling applies

4. This Ruling applies from 13 November 2019 to 31 January 2020.

Ruling

5. The Utilities Management early retirement scheme 2019 is an early retirement scheme for the purposes of section 83-180 of the *Income Tax Assessment Act 1997*.

6. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

7. 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.

8. 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.

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

10. The scheme will be titled 'Utilities Management early retirement scheme 2019', hereafter referred to as 'the scheme'.

11. SA Power Networks (SAPN) is a partnership of five companies, which together own and operate a high voltage electricity distribution network covering metropolitan and regional South Australia. UMPL is wholly owned by the SAPN partnership and employs all SAPN staff.

12. As the sole electricity distributor in South Australia, UMPL trains its own trade skilled workers. The Certificate III apprenticeship takes four years to complete and there are currently approximately 81 apprentices in the Field Services division in training. Over the last ten years, UMPL has employed almost every one of the apprentices that it has trained and would like to employ the apprentices currently in training after their graduation.

13. SAPN is under pressure to hold down network costs for customers while managing the changing nature and scale of their work and a desire to continue to recruit and train apprentices in order to ensure the workforce rejuvenation process can continue. Accordingly, UMPL wishes to rationalise and reorganise their trade skilled workforce within the Field Services division by:

- releasing longer serving employees who may not wish to continue in the business
- refreshing the workforce through ongoing recruitment of the trade apprentices and retention of apprentices currently in training
- continuing to retain the flexibility of using contractors, and
- ensuring there are clear promotion pathways for the next generation of employees.

14. The class of employees to whom the scheme applies is full-time and part-time employees who meet all of the following criteria:

- employed in one of the following subdivisions of the Field Services division
 - Projects & Construction
 - Metropolitan Operations Delivery
 - Regional Operations Delivery
- classed as a Trade Skilled Worker – Powerline (TSW-P) or Trade Skilled Worker – Electrical (TSW-E)

- TSW-P and TSW-E employees are divided into pay scales from 3 through to 8.

15. The scheme is open to 'transferred employees' as defined in subsection 24(13) of the *Electricity Corporations (Restructuring and Disposal) Act 1999* (SA). Transferred employee positions will not be surplus to requirements and will be backfilled.

16. The following employees are specifically excluded from participating in the scheme:

- any employee from the following depots
 - Port Lincoln
 - Ceduna
 - Streaky Bay
 - Wudinna
 - Cleve
 - Kadina
 - Whyalla
 - Barmera (TSW-P 3 to 6 pay scale only)
 - Nuriootpa
 - Kangaroo Island
 - Murray Bridge
 - Bordertown
 - Naracoorte
 - Central Business District (CBD) (TSW-P 3 to 6 pay scale only)
 - Port Pirie
 - Clare
 - Gumeracha
- any customer connect officer from metropolitan or regional depot
- any employee on a temporary or fixed term contract
- any employee who has submitted their resignation prior to the first day of consultation
- any employee with a TSW 8 pay scale located at Yorketown, Victor Harbor, Mount Gambier, Mount Barker, Holden Hill, Wingfield, Marlestone, Saint Marys and Morphett Vale depots
- all TSW-E employees from the Recloser and Transformer workshops, and
- all TSW-P employees from the CBD depot except those on a TSW 8 pay scale.

17. Eligible full-time employees who terminate their employment under the scheme will receive a payment comprising of:

- an incentive payment of \$10,638, and
- \$5,320 per completed year of service.

The maximum payment is one year's gross base wage (base rate for the 2019–20 income year as per pages 91 and 94 of the *Utilities Management Pty Ltd Enterprise*

Agreement 2018). Part-time employees will receive a prorated payment.

18. The number of packages available under the scheme is subject to a maximum cap.
19. An offer to retire under the scheme will be made to eligible employees in writing.
20. Eligible employees will be able to accept the offer by lodging a formal acceptance of the offer. Acceptances must be received by the nominated lodgment date.
21. A random ballot will be conducted to determine the order in which acceptances will be processed.
22. An eligible employee will terminate their employment under the scheme according to the order in which their acceptance is drawn from the random ballot.
23. UMPL will determine the last date of employment on a case by case basis, but the date will be no later than 31 January 2020 (inclusive).
24. To receive the payment under the scheme, all employees terminating under the scheme must continue to be employed by UMPL up to and including their last day of scheduled employment.
25. All employees terminated under the scheme will receive their statutory entitlements such as annual leave and long service leave where applicable. However, these amounts will not form part of the payment made under the scheme.
26. The payment made under the scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.
27. Employees who terminate their employment other than under the scheme will not receive the scheme payment.
28. The retirement of employees who receive a payment under the scheme will occur before they reach pension age.
29. Payments made under the scheme will be at arm's length.
30. There is no agreement in place between any eligible employee and UMPL, or between UMPL and another person to employ the eligible employee after retirement under the scheme.
31. Participation in the scheme is entirely voluntary.

Appendix – Explanation

! *This Explanation 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.*

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Requirements for an early retirement scheme

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 under the scheme is set out in paragraph 14 of this Ruling, subject to paragraph 16 of this Ruling.

36. 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 reorganisation 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 reorganise 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 reorganising the operations of the employer as described in paragraph 83-180(3)(b).

38. Paragraphs 11 to 13 of this Ruling describe the nature of the rationalisation or reorganisation 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 reorganising the operations of the employer for the purposes of paragraph 83-180(3)(b).

39. Accordingly, the second condition for approval has been met.

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

40. The scheme is proposed to operate for a period from 13 November 2019 to 30 June 2020. 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.

41. The scheme will be in operation for a period considered appropriate due to the circumstances of the reorganisation.

Other relevant information

42. 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.

43. 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), (5) and (6)):

- the retirement occurred before the employee reached pension age 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
- the payment 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 2019–20 income year, the tax-free amount is limited to \$10,638 (base amount) plus \$5,320 (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.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 17 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 17 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 46 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 ETP 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.

References

Previous draft:

Not previously issued as a draft

Legislative references:

- 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
- Electricity Corporations (Restructuring and Disposal) Act 1999 (SA) 24

ATO references

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