

CR 2019/79 - Goulburn-Murray Rural Water Corporation - early retirement scheme 2019



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Class Ruling

Goulburn-Murray Rural Water Corporation – early retirement scheme 2019

❶ 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 the Goulburn-Murray Rural Water Corporation (GMW).
2. Full details of this scheme are set out in paragraphs 8 to 28 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 11 December 2019 to 18 December 2020.

Ruling

5. The Goulburn-Murray Rural Water Corporation early retirement scheme 2019 is an early retirement scheme for the purposes of section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997).¹

6. 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.

7. 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

8. 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.

9. The scheme will be titled '*The Goulburn-Murray Rural Water Corporation early retirement scheme 2019*', hereafter referred to as 'the Scheme'.

10. GMW commenced a plan in 2018 to transform the organisation involving an extensive process of analysis with a focus on delivering customers reliable water services at an efficient and affordable price.

11. At the core of business challenges for GMW was the need to identify a financially sustainable pathway to finance costs associated with the business. One of the recommendations of a Strategic Advisory Panel report in 2018 required a review of the operation of all business functions to ensure they were focused on key business activities. The result of this review indicates that GMW needs to change and reduce their functions and services to enable them to respond and adapt to customer and stakeholder needs, both present and future. This means aligning the size and compositions of the workforce so that it is appropriately equipped to serve its customers and stakeholders, effectively and efficiently.

12. Goulburn Murray Water is changing from an operational, irrigation-focused organisation with irrigation districts that served post-war social policy drivers.

13. Farm size and layouts are not suitable for today and the move has been to larger farms and enterprises with modernisation of delivery systems. In addition, climate change is placing stress on their services and customers. These changes present short and long term financial challenges, the need for improved asset management, capital delivery performance and use of new technology. This means a change is required for the employees to operate the business on a more commercial and modern basis.

14. The capability requirements have changed from hands on water operations, to requiring more effective customer engagement and the ability to innovate and use of data. In particular GMW is moving to technology driven services.

15. This was identified in their 2018 Strategic Advisory Panel report which highlighted the need for significant improvement in their internal systems both in use of technology and data and requires a significant uplift in the technology capability requirements of the current employees of GMW.

¹ All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

16. The intent of the Scheme is to enable a voluntary renewal of the workforce and a transition to retirement in a planned manner to ensure knowledge and skills are retained, and for staff who meet the eligibility criteria, to leave GMW voluntarily, with financial support.

17. The class of employees to whom the Scheme applies is all persons who meet all of the following criteria:

- currently employed under the Goulburn-Murray Rural Water Corporation Enterprise Agreement 2018
- employed in an ongoing full-time or part-time role
- are aged 57 years and over at the commencement of the Scheme, and
- have no formal arrangement with the GMW that will result in the termination of their employment on a specified date.

18. Employees who retire under the Scheme, will receive a payment as follows:

- two weeks base salary for each completed year of continuous service, up to a maximum of 46 weeks, plus
- an additional payment equivalent to five weeks payment in lieu of notice.

19. All employees retiring 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 under the Scheme.

20. Employees within the class will be able to express interest in retiring under the Scheme.

21. If more employees express interest in retiring under the Scheme than the number of packages available, offers will be made to the longest serving employees.

22. Employees who accept the offer to retire under the Scheme will terminate employment and receive payment no later than 18 December 2020.

23. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.

24. The payment made under the Scheme is in excess of any superannuation and any other benefits to which employees would otherwise be entitled.

25. Payments made under the Scheme will be at arm's length.

26. There is no agreement in place between an employee and the GMW or between the GMW and another person to employ the employee after retirement under the Scheme.

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

28. Participation in the Scheme is entirely voluntary.

Appendix – Explanation

❶ ***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

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

30. 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

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 under the Scheme is set out in paragraph 17 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 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

34. 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).

35. Paragraphs 11 to 17 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 work force 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).

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

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

37. The Scheme is proposed to operate for a period from 11 December 2019 to 18 December 2020. The approval to be provided by this class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

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

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 in consequence of the voluntary termination of their employment at the time of termination 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), (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
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

41. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

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. 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.

44. 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.

45. For the 2020–21 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check ato.gov.au for these indexed amounts at the relevant time.

46. The total of the amount received on the termination of employment calculated in accordance with paragraph 18 of this Ruling may qualify as an early retirement scheme payment.

47. The total payment calculated in accordance with paragraph 18 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 44 and 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

48. The tax-free amount will:

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

49. 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.

50. 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

- 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
- Social Security Act 1991 23(1)

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)

ATO references

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