

CR 2020/73 - SITA B.V. and C P S Systems Pty Ltd - early retirement scheme 2020



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Class Ruling

SITA B.V. and C P S Systems Pty Ltd – early retirement scheme 2020

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 SITA B.V. and C P S Systems Pty Ltd (together referred to as 'SITA').
2. Full details of this scheme are set out in paragraphs 9 to 29 of this Ruling
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to employees of SITA who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 3 December 2020 to 30 June 2021.

Ruling

6. SITA B.V. and C P S Systems Pty Ltd – early retirement scheme 2020 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of section 83-180.

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. Société Internationale de Télécommunications Aéronautiques is a multinational group (which is 100% owned by, and dedicated to, the air transport industry) specialising in air transport communications and information technology services.

11. The Australian operations of SITA B.V. provide airport services.

12. C P S Systems Pty Ltd works with governments and border and other agencies, focusing on border management, identity and risk, operations, and automation.

13. The economic impact of the COVID-19 pandemic has been significant for the air transport industry. SITA has put in place a number of cost-containment projects which will lead to savings in technical costs and other efficiencies.

14. Some of the efficiency savings will arise from reducing personnel costs through implementing the following measures:

- pay reductions for senior management
- requests to all employees to take paid and unpaid leave
- budget cuts
- the postponing of non-critical projects and recruitment, and
- the postponing of annual pay reviews.

15. SITA is currently considering implementing further methods to cost-save across the business due to the current economic climate. The impact of COVID-19, coupled with continuing developments in new technology, have led SITA to consider the composition and nature of the staffing profile needed for the future.

16. SITA intends to improve and re-align its staffing profile in order to operate more effectively and efficiently. Together with this aim, SITA is seeking to support and provide positive options for its employees to consider at this time. The ability to offer its eligible employees in Australia the opportunity to participate in the Scheme is one of those methods. The SITA group will be implementing similar measures in other international jurisdictions.

17. The purpose of the Scheme is to support SITA operating as a more effective and efficient organisation, as well as to transition some of the SITA workforce, by providing

employees who may be considering retirement, or whose aspirations no longer align with those of SITA, a financial incentive to retire early.

18. The class of employees to whom the Scheme applies is all Australian-based employees of SITA (full-time or part-time) who are aged over 55 years of age but under pension age as at the date of their retirement under the Scheme.

19. The following employees are specifically excluded from participating in the Scheme:

- employees who have resigned prior to the date of invitation or accepted a pre-retirement contract, or
- employees with an active workers' compensation claim where there is a payment made for loss of income.

20. Following approval of the Scheme, employees will be invited to submit an application to participate in the Scheme. Employees will have a limited period in which to submit an application. Employees can withdraw their application up until the closing date for applications to be submitted.

21. After applications have been received, SITA will make formal offers of early retirement to employees. Employees will have a limited period to accept or decline the offer to participate in the Scheme. Employees who retire under the Scheme will terminate employment and receive payment by no later than 30 June 2021. The date of termination of employment will be based on the business needs of SITA.

22. SITA has identified a small number of key employees within the class who will not be made a formal offer if they submit an application.

23. Eligible employees who retire under the Scheme will receive a lump sum payment equivalent to three weeks' salary per completed year of continuous service with SITA, up to a maximum of 32 weeks. Any unpaid time will not count as service but will not break service.

24. The lump sum payment will be calculated based on the employee's employment fraction as at the date of termination of employment. Employees are prohibited from seeking to change their current employment fractions for the purpose of increasing any payout under the Scheme.

25. In addition, employees who retire under the Scheme will receive their statutory entitlements (where applicable). However, these statutory entitlements will not form part of the payment made under the Scheme.

26. The payment under the Scheme is in addition to and not in lieu of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

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

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

29. There is no agreement in place between an employee and SITA, or between SITA and another person, to employ the employee after their retirement under the Scheme.

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

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

31. 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 requirements are considered in paragraphs 32 to 41 of this Ruling.

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

32. In order to satisfy the first requirement of subsection 83-180(3), participation in a scheme must be offered to all employees in a class approved by the Commissioner.

33. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 18, subject to paragraph 19, of this Ruling.

34. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), 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 SITA.

35. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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

36. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, as required by paragraph 83-180(3)(b).

37. Paragraphs 13 to 17 of this Ruling describe the nature of the rationalisation or re-organisation of SITA's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of SITA. It is considered that the Scheme is to be implemented by SITA with a view to rationalising or re-organising the operations of SITA for the purposes of paragraph 83-180(3)(b).

38. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

39. The Scheme is proposed to operate from 3 December 2020 to 30 June 2021.

40. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

41. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

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), 83-180(5) and 83-180(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)).

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

45. 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.

46. 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.

47. For the 2020–21 income year, the tax-free amount is limited to \$10,989 (base amount) plus \$5,496 (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 11 months do not count as a whole year for the purposes of this calculation.

48. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this Ruling may qualify as an early retirement scheme payment.

49. The total payment calculated in accordance with paragraph 23 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 47 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

50. The tax-free amount will not be:

- an employment termination payment (ETP), and
- able to be rolled-over into a super fund.

51. 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.

52. 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(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Social Security Act 1991 23(1)

ATO references

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