


# ***CR 2021/96 - Arnott's Biscuits Ltd - early retirement scheme 2021***

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Status: **legally binding**

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## **Class Ruling**

# **Arnott's Biscuits Ltd – early retirement scheme 2021**

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### **📌 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.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by Arnott's Biscuits Ltd (Arnott's).
2. Full details of this scheme are set out in paragraphs 9 to 25 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to employees of Arnott's who receive a payment under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 9 December 2021 to 30 September 2022.

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Status: **legally binding**

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## **Ruling**

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6. The Arnott's Biscuits Ltd – early retirement scheme 2021 (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 Scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

## **Scheme**

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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. Arnott's has a biscuit production facility at Huntingwood, New South Wales (Huntingwood).
11. Arnott's has experienced a reduction in demand for chocolate biscuits. This was initially considered to be a temporary issue; however, as demand has not improved Arnott's is seeking a more permanent solution.
12. The reduced consumer demand for chocolate biscuits necessitated a change for the chocolate biscuit production line from a seven-day operating model to a five-day operating model, which has created idle labour risks for Arnott's.
13. Also, across the site there are a large number of employees who may retire in the near future, with a large percentage of employees over 55 years of age.
14. The Scheme provides an opportunity to assist longer-serving employees to transition to retirement. The Scheme will provide Arnott's with an opportunity to re-organise its operations to manage the labour risks associated with an ageing workforce and to retrain and reskill employees to fill the gaps likely to arise in the near future. The Scheme will help Arnott's re-organise its operations to both adapt to the changes in demand and prepare its business for the future.
15. The Scheme will be open to all employees who:
- are covered by the Arnott's Biscuits Huntingwood Enterprise Agreement 2019, and
  - have 20 years or more continuous service with Arnott's or a related body corporate.
16. Following approval of the Scheme, employees in the class will be invited to submit an application to participate in the Scheme.
17. There is a limit on the number of employees who can retire under the Scheme based on available funding. Participation will be on a first-in basis and applications will not be accepted once the funds are exhausted.
18. If the number of applications from employees who work on a particular shift means the shift cannot be filled and the operations will be severely impacted, Arnott's will be able to refuse any further applications from employees on that shift.

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19. The Scheme will allow for a staggered exit of employees to ensure there is an appropriate transfer of knowledge to, and upskilling of, continuing employees at Huntingwood. In this regard, employees may be notified of a future retirement date to ensure adequate handover can occur and that production knowledge can be retained by Arnott's, with minimal disruption to its operational capabilities.

20. Employees who retire under the Scheme will terminate employment and receive payment by no later than 30 September 2022.

21. Employees will receive a lump sum payment equivalent to six months' pay at the relevant day shift rate for employees in the 20 plus years of service category.

22. Employees will also receive payment of accrued leave entitlements. Such payments will not form part of the payment under the Scheme.

23. Employees who retire under the Scheme will do so before they reach age pension age.

24. The retirement is at arm's length and there is no arrangement between Arnott's and its employees, or between Arnott's and another person, to employ the employees after the retirement.

25. The payment is not being made in lieu of superannuation benefits and is not mentioned in section 82-135 (apart from paragraph 82-135(e)).

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**Commissioner of Taxation**

8 December 2021

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Status: **not legally binding**

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## Appendix – Explanation

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**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**

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

27. 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.

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

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

29. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 15 of this Ruling.

30. 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 Arnott's.

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

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***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***

32. 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).

33. Paragraphs 11 to 14 of this Ruling describe the nature of the rationalisation or re-organisation of Arnott's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of Arnott's. It is considered that the Scheme is to be implemented by Arnott's with a view to rationalising or re-organising the operations of Arnott's for the purposes of paragraph 83-180(3)(b).

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

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

35. The Scheme is proposed to operate for a period from 9 December 2021 to 30 September 2022.

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

37. 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***

38. 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.

39. 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)).

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40. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
41. 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.
42. 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.
43. For the 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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.
44. For the 2022–23 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 the ATO website for these indexed amounts at the relevant time.
45. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this Ruling will qualify as an early retirement scheme payment.
46. The payment made in accordance with paragraph 21 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 43 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
47. The tax-free amount will not be:
- an employment termination payment (ETP), and
  - able to be rolled-over into a super fund.
48. 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.
49. 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.

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Status: **not legally binding**

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## References

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*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)
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ATO references

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