


CR 2023/23 - Unitywater - early retirement scheme 2023

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Status: **legally binding**

Class Ruling

Unitywater – early retirement scheme 2023

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.

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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 Northern SEQ Distributor – Retailer Authority trading as Unitywater (Unitywater).
2. Details of this scheme are set out in paragraphs 9 to 31 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 you if you are an employee of Unitywater who receives a payment under the scheme.

When this Ruling applies

5. This Ruling applies from 11 May 2023 to 30 September 2023.

Ruling

6. The Unitywater – early retirement scheme 2023 (the Scheme) is an early retirement scheme for the purposes of section 83-180.

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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

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. Unitywater is a statutory authority in the state of Queensland that provides water supply and sewerage services to the Sunshine Coast, Moreton Bay and Noosa local authority areas. It is governed by an Independent Board and has a Participation Agreement with the Sunshine Coast Regional Council, Moreton Bay Regional Council and Noosa Council.

11. Unitywater's purpose is keeping communities healthy through the delivery of safe and reliable water and sewerage services to customers in the Sunshine Coast, Moreton Bay and Noosa Council regions. Unitywater's strategy is to deliver these services ensuring they are affordable, interactions are easy, and Unitywater is a valued member of the community and makes a positive contribution to the communities they serve. Unitywater is also committed to the safety of its people and creating a culture in which team members can thrive. This will be achieved through offering ongoing development opportunities for the team, supporting safe practices, reduction in operational costs and achieving operational excellence.

12. The purpose of the Scheme is to rationalise and regenerate Unitywater's Customer Delivery workforce, plan for knowledge transfer, reduce the risk of injury and ensure 'on-call ready' replacements are in place.

13. Successful implementation of the Scheme will reduce the current fixed operating costs which will ultimately assist the business to reduce its total costs and achieve operational excellence.

14. By reducing the size of their workforce, the Scheme will also assist in reducing Unitywater's exposure to issues associated with direct labour costs.

15. As a result, Unitywater is seeking to offer the Scheme to employees to refresh the current workforce and develop the next generation of workers.

16. Participation in the Scheme is voluntary.

17. The class of employees that are eligible to participate in the Scheme are those who, at the date that the Scheme commences, are:

- permanent ongoing employees of Unitywater
- over the age of 61 years
- employed within the Customer Delivery Business Unit of Unitywater

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- covered by one of the following Unitywater Water Industry Enterprise Agreements
 - Unitywater Water Industry Field/Outdoor Employees Operations and Maintenance – Non-Trade Enterprise Agreement No. 2
 - Unitywater Water Industry Private Works Employees Construction Enterprise Agreement No. 1, or
 - Unitywater Water Industry Mechanical & Electrical Employees Enterprise Agreement No. 1.

18. The classes of employees that are specifically excluded from participating in the Scheme are those who, at the date that the Scheme commences:

- are subject to investigation or other formal process for misconduct or allegations of misconduct
- have less than 12 months of service
- work within the Treatment Plants Branch
- are WorkCover recipients
- are on leave without pay
- are working on secondment in functions eligible to participate in the Scheme but whose substantive position is not within an eligible function, and
- have accepted another pre-retirement agreement.

19. Under the Scheme, eligible employees will be entitled to receive the amounts set out in Table 1 of this Ruling, which is based on years of service with Unitywater:

Table 1: Amounts of severance pay based on years of service

Period of service	Severance pay (salary)
1 year and less than 2 years	4 weeks
2 years and less than 3 years	6 weeks
3 years and less than 4 years	9 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	15 weeks
6 years and less than 7 years	18 weeks
7 years and less than 8 years	21 weeks
8 years and less than 9 years	24 weeks
9 years and less than 10 years	27 weeks
10 years and less than 11 years	30 weeks
11 years and less than 12 years	33 weeks
12 years and less than 13 years	36 weeks
13 years and less than 14 years	39 weeks
14 years and less than 15 years	42 weeks
15 years and less than 16 years	45 weeks

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Period of service	Severance pay (salary)
16 years and less than 17 years	48 weeks
More than 17 years	52 weeks

20. The minimum severance benefit is 4 weeks' pay and the maximum is 52 weeks' pay. The amount of the pay is calculated based on an employee's base rate of pay for their ordinary hours of work.

21. Employees who retire under the Scheme would not be entitled to the payment outlined in Table 1 of this Ruling if they had otherwise voluntarily terminated their employment.

22. In addition, all employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the Unitywater Water Industry Agreement. However, these entitlements do not form part of the payment under the Scheme.

23. There is a limit on the number of packages to be provided under the Scheme. There is also a limit on the number of packages to be provided to each shift.

24. Where the number of employees seeking access to the Scheme exceeds the total number of packages available, or the number of packages available to the shift, offers will be made to those employees who are closest to the pension age.

25. Following approval by the Commissioner, the Scheme will be made available for applications to all eligible employees, including those on leave. The eligible employees will have 10 calendar days to submit their applications of interest in the Scheme.

26. At the conclusion of the 10-day period, Unitywater will make an offer to eligible employees and develop an early retirement quote (including pay in lieu of any accrued long service and annual leave) within 5 working days. Eligible employees will have 10 working days to accept or decline the offer from the date the offer is made.

27. All employees who accept the offer to retire under the Scheme will be required to cease employment and receive payment by no later than 30 September 2023.

28. At the time of retirement there will be no arrangements between the employee and Unitywater, or between Unitywater and another person, to employ the employee after the retirement.

29. The payment under the Scheme will not be made in lieu of superannuation benefits. The payments will not be made from an eligible superannuation fund.

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

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

Commissioner of Taxation

10 May 2023

Status: **not legally binding**

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 3 requirements are considered in paragraphs 34 to 43 of this Ruling.

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

34. 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.

35. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 17, subject to paragraph 18, of this Ruling.

36. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), this is an appropriate class of persons for participation in 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 Unitywater.

37. 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

38. 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).

39. Paragraphs 10 to 15 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 Unitywater. 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).

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

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

41. The Scheme is proposed to operate for a period from 11 May 2023 to 30 September 2023.

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

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

Other relevant information

44. 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.

45. 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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46. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
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. 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.
49. For the 2022-23 income year, the tax-free amount is limited to \$11,591 (base amount) plus \$5,797 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.
50. For the 2023-24 income year, the base amount is \$11,985 and the service amount is \$5,994.
51. The total of the amount received on the termination of employment calculated in accordance with paragraph 19 of this Ruling will qualify as an early retirement scheme payment.
52. The total payment calculated in accordance with paragraph 19 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 50 to 51 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
53. The tax-free amount will not be:
- an employment termination payment (ETP), or
 - able to be rolled-over into a superannuation fund.
54. 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.
55. 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.

Status: **not legally binding**

References

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)
- Social Security Act 1991 23(1)

ATO references

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