

CR 2024/26 - Snack Foods Pty Ltd - Early Retirement Scheme 2024



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Status: **legally binding**

Class Ruling

Snack Foods Pty Ltd – Early Retirement Scheme 2024

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 Snack Foods Pty Ltd (Snack Foods).
2. Details of this scheme are set out in paragraphs 9 to 28 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 a Snack Foods employee who receives a payment under the scheme.

When this Ruling applies

5. This Ruling applies from 18 April 2024 to 31 July 2025.

Ruling

6. The Snack Foods – Early Retirement Scheme 2024 (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. Snack Foods and its related entities are one of the largest suppliers of snack foods in Australia.

11. Snack Foods is undertaking a multi-year transformational project focused on the consolidation of manufacturing operations from the current Blacktown and Smithfield factories to a modern and new site at Orchard Hills, which is adjacent to the existing warehouse operation. It is proposed that consolidation of manufacturing and distribution from Blacktown and Smithfield to Orchard Hills will commence in early 2024, with the Orchard Hills site being fully operational by late 2025.

12. Snack Foods intends to re-organise the workforce to better align the staffing mix with the needs of the business following consolidation of the manufacturing plants. The objective is to offer early retirement to a fixed number of long-serving employees at the 2 manufacturing plants to allow for the recruitment of employees who are better equipped to handle the physical demands of the job.

13. The re-organisation and rationalisation of Snack Foods' current workforce at the Smithfield and Blacktown manufacturing plants will regenerate the business and will bring new opportunities for growth and process improvements.

14. The class of employees eligible to participate in the Scheme are all staff employed at the Blacktown or Smithfield manufacturing plant who:

- are covered by the Snack Brands Australia Operations Agreement 2022 or The Real McCoy Snackfood Company Enterprise Agreement 2023
- are between 60 and 67 years old, with a minimum of 8 continuous years of service at the date of retirement, and
- were employed by either Snack Brands Industries and Snack Brand Foods Pty Ltd (Snack Brands Australia) or The Real McCoy Snackfood Co Pty Limited (The Real McCoy) on 8 January 2024, prior to the transfer of their employment to Snack Foods on 9 January 2024 as a result of a corporate re-organisation.

15. Eligible employees will be invited to submit an application to participate in the Scheme within 4 weeks from the date that the Scheme is approved.

16. A limit will apply on the number of employees who can retire under the Scheme based on available funding.

17. Applications submitted by employees will be considered based on those closest to pension age and, where 2 individuals are of the same age on application, then on a first-in basis.

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18. Applications will not be accepted once funds are exhausted. If the number of applications from employees who work on a particular shift or in a particular role means the shift or role cannot be filled and the operations will be severely impacted, Snack Foods will be able to refuse any further applications from employees on that shift or in that role. If a particular shift or role is oversubscribed, then the applicants closest to pension age will be given priority.

19. Employees who accept an offer as part of the Scheme will terminate employment by mutual agreement before they reach pension age and will receive payment by no later than 31 July 2025.

20. Employees who retire under the Scheme who were employees of Snack Brands Australia on 8 January 2024, will receive 2 weeks' pay at the relevant ordinary weekly rate excluding shift allowance for each completed year of service, capped at 26 years of service. The period of service for this purpose will be calculated based on the total period of employment with Snack Foods, Snack Brands Australia and their related entities.

21. Employees who retire under the Scheme who were employees of The Real McCoy on 8 January 2024, will receive 2 weeks' pay at the relevant ordinary weekly rate excluding shift allowance for each completed year of service, capped at 6 years of service. The period of service for this purpose will be calculated based on the total period of employment with Snack Foods, The Real McCoy and their related entities.

22. Participation in the Scheme is voluntary and if an eligible employee chooses not to participate in the Scheme, the employee will continue in their existing employment.

23. Employees who retire under the Scheme would not be entitled to the payment described in either paragraphs 20 or 21 of this Ruling if they had otherwise voluntarily terminated their employment.

24. Employees will receive payment for any accrued statutory entitlements, however, these payments will not form part of the payment under the Scheme.

25. The Scheme payment will not be made in lieu of superannuation benefits.

26. Employees who retire under the Scheme will do so before they reach the pension age (as defined in the *Income Tax Assessment Act 1997* by reference to the *Social Security Act 1991*).

27. At the time of retirement, there will be no arrangement between Snack Foods and terminating employees, or between Snack Foods and any other person, for those employees to be employed after retirement.

28. There is no association between the eligible employees and Snack Foods. Accordingly, the employees and Snack Foods will be at arm's length.

Commissioner of Taxation**17 April 2024**

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

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.

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

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

32. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14 of this Ruling.

33. 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 Snack Foods.

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

Status: **not legally binding**

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

35. 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).

36. Paragraphs 10 to 13 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 Snack Foods. It is considered that the Scheme is to be implemented by Snack Foods with a view to rationalising or re-organising the operations of Snack Foods for the purposes of paragraph 83-180(3)(b).

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

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

38. The Scheme is proposed to operate for a period from 18 April 2024 to 31 July 2025.

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

40. 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

41. 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.

42. 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.
- It is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

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43. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
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 2023–24 income year, the tax-free amount is limited to \$11,985 (base amount) plus \$5,994 (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.
47. For the 2024–25 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.
48. The total of the amount received on the termination of employment calculated in accordance with paragraphs 20 and 21 of this Ruling will qualify as an early retirement scheme payment.
49. The total payment calculated in accordance with paragraphs 20 and 21 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.
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 1983 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.

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)

Other references:

- Snack Brands Australia Operations Agreement 2022
- The Real McCoy Snackfood Company Enterprise Agreement 2023

ATO references

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