CR 2007/56 - Income tax: Approved Early Retirement Scheme - Unilever Australia Limited

Class Ruling

Income tax: Approved Early Retirement Scheme – Unilever Australia Limited

Contents Para

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular early retirement scheme and acknowledges the availability of tax concessions for entities receiving payment under the scheme. There are many conditions attached to this Ruling and readers should be careful to ensure that these conditions are met before relying on this Ruling.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:

- section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 27CB of the ITAA 1936;
- section 27E of the ITAA 1936;
- section 82-130 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 83-170 of the ITAA 1997; and

- section 83-180 of the ITAA 1997.

All subsequent references are to the ITAA 1936 unless stated otherwise.

Class of entities

4. The class of entities to which this Ruling applies is those employees of Unilever Australia Limited (Unilever) who receive a payment under the scheme described in paragraphs 15 to 33 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 33 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

9. A copy of this Ruling must be given to all employees eligible to participate in the early retirement scheme.

Date of effect

10. This Ruling applies from 20 June 2007 to 20 June 2008. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

11. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

12. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

13. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

14. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

15. The following description of the scheme is based on information provided by the applicant.

16. Unilever is seeking approval for an early retirement scheme.

17. The scheme will be open to all employees of Unilever that are employed as factory wage-paid employees who have attained the age of 55 years or over and who are covered by the Tatura Enterprise Bargaining Agreement (EBA).

18. Unilever's vision is to become the 'fastest growing fast moving consumer goods' company in Australasia'. To do this it must accelerate its growth strategy and create world-class manufacturing units where appropriate. To be world-class the company needs to introduce the latest technology, raise operational efficiency levels and improve site risk profile.

19. The early retirement scheme is being implemented with a view to rationalising or re-organising the operations of Unilever at Tatura factory by replacing older, less flexible employees with more highly skilled and motivated employees. This will enable Unilever to improve overall competitiveness, responsiveness and productivity.

20. The installation of significantly more complex plant and equipment across the site has resulted in demands for a much higher level of skills than the current employees are capable of embracing.

21. Replacing older employees with employees who are more recently qualified and are willing to undertake extensive training and to adopt new technologies will assist in maximising the capital investment which the site is seeking to make into the future. Specific job skills for maintenance roles now require:

- the ability to troubleshoot problems with equipment;
- the ability to work with computer-controlled machines; and
- the strength and dexterity to perform manual tasks.

22. It is proposed that all employees who retire under the scheme will depart within 6 months of confirmation of acceptance of the offer of early retirement.

23. Unilever will not retain any right to decline any requests for early retirement from eligible employees.

24. The payments to be made under the early retirement will be contingent on an employee remaining at or being available for work and performing their assigned duties as required by Unilever during the notice period. The early retirement scheme payment will comprise of the following:

(a) **Notice Period (Paid on Normal Weekly Pay):** Where an employee accepts early retirement, that employee will be provided with at least one weeks notice. Where Unilever does not require an employee to work out their notice, the employee will receive a normal weeks pay in lieu of the balance of the notice period;

(b) **Severance Payment (Paid on Base Salary):** Employees who accept early retirement shall receive four week's payment of their base salary, provided that the employee has at least twelve months continuous service with Unilever;

(c) **Service Payment (Paid on Base Salary):** Where an employee accepts early retirement, the employee, in addition to the Period of Notice and Severance Payment, will be entitled to two weeks salary for each year of service or part thereof as at their leaving date and;

(d) **Sick Leave (Paid on Standard Weekly Rate):** Where an employee accepts early retirement, the employee, in addition to the above payments, will be paid out any accrued untaken sick leave entitlement to a maximum of 120 days paid out at their standard weekly rate.

25. The employees will also receive the following payments but these do not form part of the early retirement scheme payment:

(a) payment for accrued and/or pro rata long service leave for employees who have the appropriate length of service under the relevant Long Service Leave Legislation;

(b) payment of accrued but untaken annual leave; and

(c) payment of accrued rostered days off.

Payments made under the scheme

26. For a payment made under the above mentioned scheme to qualify as an approved early retirement scheme payment, the conditions set out in paragraphs 27 to 33 of this Ruling must be met. Please note, any payment made under the scheme that does not satisfy these requirements is not covered by this Ruling.

27. For a payment made before 1 July 2007 it must be an eligible termination payment (ETP) and for a payment made after 30 June 2007 it must not be a payment mentioned in section 82-135 of the ITAA 1997 (apart from paragraph 82-135(e) of the ITAA 1997).

28. The payment must be made in consequence of the taxpayer's employment being terminated under an approved early retirement scheme.

29. The payment must not be from an eligible superannuation fund.

30. The payment must not be made in lieu of superannuation benefits.

31. Where the taxpayer 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 what would have been paid to the taxpayer had they been dealing at arm's length.

32. The taxpayer must terminate his or her employment before the earlier of:

- age 65; or
- the date on which the taxpayer's employment would have necessarily terminated under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service (whichever occurs first).

33. At the termination time, there is no agreement in force between the taxpayer and the employer or the employer and another person, to employ the taxpayer after the date of termination.

Ruling

34. The early retirement scheme to be implemented by Unilever Australia Limited is an approved early retirement scheme for the purpose of section 27E.

35. Accordingly, so much of the ETP as exceeds the amount of an ETP that could reasonably be expected to have been made in relation to the taxpayer if the termination of employment had occurred at the termination time otherwise than in accordance with the approved early retirement scheme, is an approved early retirement scheme payment in relation to the taxpayer.

36. In addition, for a payment made before 1 July 2007, so much of the approved early retirement scheme payment as falls within the threshold calculated in accordance with subsection 27A(19) is non-assessable and is ignored in working out whether a capital gain has been made via the operation of section 27CB.

37. For an early retirement scheme payment that is made after 30 June 2007, so much of the payment as falls within the threshold calculated in accordance with section 83-170 of the ITAA 1997 is not assessable income and is not exempt income.

Commissioner of Taxation
20 June 2007

Appendix 1 – Explanation

This Appendix 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.

38. Where a scheme satisfies the requirements of section 27E that scheme will be an 'approved early retirement scheme.'

39. The Commissioner has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of section 27E.

40. Paragraph 14 of TR 94/12 states that:

> Three conditions need to be satisfied for a scheme to qualify as an approved early retirement scheme. Those conditions are:
>
> (i) the scheme must be offered to all employees within a class identified by the employer (paragraph 27E(1)(a));
>
> (ii) the scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind (paragraph 27E(1)(b)); and
>
> (iii) the scheme must be approved by the Commissioner prior to its implementation (paragraph 27E(1)(c)).

These three conditions are discussed below.

The scheme must be offered to all employees within a class identified by the employer

41. In order to satisfy the first condition, the scheme must be offered to all employees within one of the categories specified in subparagraphs 27E(1)(a)(i) to (v).

42. The class of employees to whom early retirement will be offered is set out at paragraph 17 of this Ruling.

43. This class of employees does not come within any of subparagraphs 27E(1)(a)(i) to (iv), therefore it must be considered under subparagraph 27E(1)(a)(v), namely, all employees of the employer who constitute a class of employees approved by the Commissioner for the purposes of this paragraph. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation 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 subparagraph 27E(1)(a)(v).

The scheme must be entered into with a view to rationalising or re-organising the operations of the employer with an identified purpose in mind

44. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer by means of one or more of the objectives set out in subparagraphs 27E(1)(b)(i) to (vi).

45. Paragraphs 19 to 21 of this Ruling describe the nature of the rationalisation or re-organisation of the operations. In approving the scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer. It is therefore 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 subparagraph 27E(1)(b)(vi).

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

46. The scheme is proposed to operate after 20 June 2007 to 20 June 2008. Approval was granted prior to implementation therefore the third condition is satisfied.

47. The scheme will be in operation for approximately 12 months which is within the period recommended in TR 94/12.

Other relevant information

48. Under section 27E, so much of the payment received by a taxpayer under the approved early retirement scheme, that exceeds the amount that would ordinarily have been received on voluntary resignation or retirement is an approved early retirement scheme payment.

49. It should be noted that, in order for a payment to qualify as an approved early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 27E(4) and (5)):

- the payment must be an ETP made in relation to the taxpayer in consequence of the taxpayer's employment being terminated under an approved early retirement scheme;
- the payment must not be from an eligible superannuation fund;
- the payment must not be made in lieu of superannuation benefits;
- if the taxpayer 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 what would have been paid to the taxpayer had they been dealing at arm's length;

- the date of termination was before age 65 or such earlier date on which the taxpayer's employment would necessarily have had to terminate under the terms of employment because of the taxpayer attaining a certain age or completing a certain period of service (whichever occurs first); and
- there was no agreement at the date of termination between the taxpayer and the employer, or the employer and another person to employ the taxpayer after the date of termination.

50. The term 'agreement' is defined in subsection 27A(1) as meaning 'any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings'.

51. An approved early retirement scheme payment made on or after 1 July 1994 that falls within the specified limit will be exempt from income tax and called the 'tax-free amount'.

52. For the year ending 30 June 2007, the tax-free amount is limited to $6,783 plus $3,392 for each whole year of completed employment service to which the approved early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. The $6,783 plus $3,392 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 24 of this Ruling qualifies as an approved early retirement scheme payment.

54. The total of the payment in the previous paragraph will be measured against the limit calculated in accordance with paragraph 52 of this Ruling to determine the 'tax-free amount'.

55. The tax-free amount will:

- not be an ETP;
- not be able to be rolled-over;
- not include any amount from a superannuation fund or paid in lieu of a superannuation benefit; and
- not count towards the recipient's Reasonable Benefit Limit.

56. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

Payments made after 30 June 2007

57. For payments made after 30 June 2007 the requirements in section 83-180 of the ITAA 1997 for a payment to be an early retirement scheme payment remain essentially the same as set out in paragraphs 53 to 56 of this Ruling.

58. The tax free amount of the early retirement scheme payment made after 30 June 2007 determined in accordance with paragraph 53 of this Ruling that falls within the limit specified in section 83-170 of the ITAA 1997 will not be assessable income and will not be exempt income. For the year ending 30 June 2008, the tax free amount is limited to $7,020 plus $3,511 for each whole year of completed employment service.

59. Any payment in excess of this limit will be an employment termination payment as defined in section 82-130 of the ITAA 1997, and will be split up into tax free and taxable components. The tax free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax free component is not assessable income and is not exempt income.

60. Employment termination payments cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

61. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 94/12; TR 2006/10;
TD 2006/42

Subject references:

- approved early retirement scheme payments
- early retirement scheme payment
- eligible termination payments
- eligible termination payments components
- employment termination payment

Legislative references:

- ITAA 1936 27A
- ITAA 1936 27A(1)
- ITAA 1936 27A(19)
- ITAA 1936 27CB
- ITAA 1936 27E
- ITAA 1936 27E(1)(a)
- ITAA 1936 27E(1)(a)(i)
- ITAA 1936 27E(1)(a)(ii)
- ITAA 1936 27E(1)(a)(iii)
- ITAA 1936 27E(1)(a)(iv)
- ITAA 1936 27E(1)(a)(v)
- ITAA 1936 27E(1)(b)
- ITAA 1936 27E(1)(b)(i)
- ITAA 1936 27E(1)(b)(ii)
- ITAA 1936 27E(1)(b)(iii)
- ITAA 1936 27E(1)(b)(iv)
- ITAA 1936 27E(1)(b)(v)
- ITAA 1936 27E(1)(b)(vi)
- ITAA 1936 27E(1)(c)
- ITAA 1936 27E(4)
- ITAA 1936 27E(5)
- ITAA 1997 82-130
- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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