

***CR 2008/46 - Income tax: early retirement scheme -
Central Northern Adelaide Health Service
Incorporated***

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Class Ruling

Income tax: early retirement scheme – Central Northern Adelaide Health Service Incorporated

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● This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

4. The class of entities to which this Ruling applies is those at the Glenside Hospital Campus, 226 Fullarton Road, Glenside SA 5065 in occupations of catering, cleaning, building services, plumbers and gasfitters who receive a payment under the scheme described in paragraphs 15 to 33 of this Ruling.

Qualifications

5. The Commissioner makes this Ruling based 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.

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

Date of effect

10. This Ruling applies from 2 July 2008 to 25 July 2008. However, the Ruling continues to apply after 25 July 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

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. South Australia's (SA's) mental health system is currently undergoing major reform to modernise and improve mental health services across the State.

17. Under this reform, Glenside Hospital Campus (the hospital) will undergo significant re-development. A Concept Master Plan was released on 20 September 2007, which outlines the development of key mental health facilities and co-location of drug and alcohol services, and additional developments providing community, aesthetic and environmental benefits.

18. The major reconfiguration of the mental health services across the hospital and consolidation of hospital beds will require fewer non-clinical staff. As such, the SA Government has recently decided to offer voluntary separation packages to a class of employees that are no longer required.

19. Separation of the class of employees will provide a direct saving to the Government's budget commensurate with their annual salary and related costs.

20. The class of employees to which the scheme will apply are those at Glenside Hospital Campus, 226 Fullarton Road, Glenside SA 5065 in occupations of catering, cleaning, building services, plumbers and gasfitters.

21. Acceptance of separation offers is voluntary in accordance with the Government's no forced redundancy policy for the public sector workforce. Therefore participation by employees is voluntary and the employee voluntarily gives notice of their resignation from the SA public sector.

22. It is proposed the scheme will be implemented from 2 July 2008 to 25 July 2008.

23. Actual separation and date of the payment will be effected 25 July 2008.

24. A Targeted Voluntary Separation Package (TVSP) offer may only be made to the hospital's employees who are:

- excess, or employees who are part of a group where some or all of the employees are excess.
- excess where they are substantially under utilised, or no longer required, or able to perform their assigned tasks. This may be due to changes in the nature or extent of work required or because the employees no longer have the required skills to undertake assigned tasks.
- similarly classified or skilled to employees designated in dot point 1 above, whose separation would enable the necessary workforce reduction through redeployment of excess employees.

25. A decision to separate is made by the employee and is voluntary.

26. TVSPs will not be offered to employees who are casual, or on contracts without any right to ongoing employment in the SA Public Sector.

27. Additionally, TVSPs will not be offered to eligible employees until the finalisation of any outstanding or previously accepted workers compensation claims.

28. An offer and payment of a TVSP is conditional upon the following:

- the employee resigns from all employment in the SA Public Sector after voluntarily giving notice of their resignation;

- the employee does not apply for, accept, engage in, or remain in any employment whatsoever (whether as an employee, trainee or apprentice) in the SA Public Sector, whether or not remunerated or otherwise and whether temporary, casual, contract, ongoing or by appointment, for a period of three years from the date on which the employee's resignation takes effect;
- the employee agrees that for a period of three years:
 - he or she or any associated entity, will not enter any contract to provide services to a SA Public Sector agency for a period of 3 years, whereby the employee is to personally perform all or a substantial part of the work to be performed under that contract;
 - he or she will not provide services to a SA Public Sector agency for a period of 3 years as an employee or contractor of a labour hire agency or other body contracted to provide personnel to carry out work or to provide services for a SA Public Sector agency, that work or services being work or services that would normally be expected to be carried out by an employee of that SA Public Sector agency; and
 - he or she will not for a period of 3 years perform the same or similar work functions for a third party, in respect of work required pursuant to a current arrangement, or an extension of a current arrangement, or an arrangement being negotiated at the time the employee received the TVSP, to be provided by that third party to a SA Public Sector agency. However, this is not intended to prevent the employee from accepting employment where he or she is to perform work or provide services to a body which receives funding from the SA Public Sector to assist it in providing services to the community on a non profit basis;
- the employee notifies the SA Public Sector agency of each and every workers compensation injury or disability;
- the employee is not suffering any other workers compensation injury or disability between the date of the offer of the separation package and the time at which the employee terminates their final day of employment;

- the employee does not have any entitlement, and the employee or their dependant(s) do not become entitled, to weekly payments of workers compensation;
- the employee does not have any outstanding current workers compensation claims;
- the TVSP payment will not exceed the sum payable in accordance with the terms and conditions of the TVSP Scheme. Any amount paid in excess of the sum payable shall be repayable within seven days of demand and any sum incorrectly stated as being payable, shall be adjusted to accurately state the sum payable. The repayment shall be payable and the adjustment shall be made irrespective of the cause or nature of the error or omission; and
- any employment obtained following the acceptance of a TVSP is gained at arm's length from influence by the SA Public Sector.

29. Executive level employees are entitled to a separation payment equivalent to their total remuneration value, unless extraordinary circumstances can be demonstrated that justify the Commissioner for Public Employment approving an additional amount.

30. The calculation of a TVSP for non-executive employees is determined on separation date and 'years of service' and will be a minimum payment of eight (8) week's pay, plus three (3) week's pay for each completed year of service, with a maximum payment of 104 week's pay if employees, having requested an offer, resign and separate by 25 July 2008.

31. A formal offer of a TVSP must:

- (a) be made using the 'Formal TVSP Offer and Acceptance' proformas;
- (b) include a copy of this Target Voluntary Separation Packages (TVSP) document for the employee's information;
- (c) provide for a voluntary separation to be fully effective no later than close of business on 25 July 2008; and
- (d) make it clear to the excess employee that they are under no obligation to accept an offer of a TVSP.

32. Chief Executives should ensure that employees have not less than three weeks from the date of a formal offer to consider a TVSP and resign, unless this period is waived in writing by an employee prior to their resignation.

33. The normal age of retirement for employees is 55 years.

34. The payment will be received by an employee because the employee retires under an early retirement scheme. The early retirement scheme payments are amounts in excess of any payment

that an employee receives in consequence of a voluntary termination of employment.

35. The payment will not be a payment mentioned in subsection 82-135 (apart from paragraph 82-135(e)).

36. The employee will retire before the earlier of the following:

- the day he or she turned 65; or
- the date on which the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service – the day he or she would reach the age or complete the period of service (as the case may be).

37. The employee and the employer are dealing with each other at arm's length.

38. There is no arrangement between the hospital and the employer, or between the employer and another person, to employ the employee after the retirement.

39. The payments to be made under the early retirement scheme do not include payments in lieu of superannuation benefits to which the participating employee is entitled.

Ruling

40. The early retirement scheme to be implemented by Central Northern Adelaide Health Service Incorporated is an early retirement scheme for the purposes of section 83-180.

41. Accordingly, so much of the payment received by an employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

42. 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.

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.*

43. 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 the former section 27E of the *Income Tax Assessment Act 1936*, which, as of 1 July 2007, has been replaced by section 83-180 of the ITAA 1997.

44. Where a scheme satisfies the requirements of section 83-180, that scheme will be an 'early retirement scheme'.

45. 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 conditions are discussed below.

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

46. In order to satisfy the first condition, the scheme must be offered to all employees in a class approved by the Commissioner under paragraph 83-180(3)(a).

47. The class of employees to whom early retirement will be offered is set out in paragraph 20 of this Ruling.

48. The Commissioner considers that 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 the employer. These employees meet the requirements of an approved class of employees for the purposes of paragraph 83-180(3)(a).

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

49. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, that the Commissioner approves under paragraph 83-180(3)(b).

50. Paragraphs 16 to 19 of this Ruling describes the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes that are approved by the Commissioner. Accordingly, the second condition for approval has been met.

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

51. The scheme will operate from 2 July 2008 to 25 July 2008. Approval was granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

52. The scheme will be in operation for approximately one month, which is within the period recommended in TR 94/12.

Other relevant information

53. 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 his or her employment at the time of termination, is an early retirement scheme payment.

54. 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 turned age 65 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 made 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)).

55. The term 'arrangement' is defined in subsection 995-1(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'.

56. From 1 July 2007, 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.

57. For the 2008-09 income year, the tax-free amount is limited to \$7,350 (base limit) plus \$3,676 (service amount) for each whole year of completed employment service to which the 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 base limit and service amount limit will be indexed in line with average weekly ordinary time earnings each income year.

58. The total of the amount received on the termination of employment calculated in accordance with paragraph 29 to 30 of this Ruling may qualify as an early retirement scheme payment.

59. The total of the payments in paragraph 58 of this Ruling will be measured against the limit calculated in accordance with paragraph 57 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

60. The 'tax-free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

61. Any payment in excess of this tax-free limit will be an employment termination payment and 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.

62. Employment termination payments made under an approved early retirement scheme cannot be rolled-over into a superannuation fund.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180

Related Rulings/Determinations:

TR 94/12

- ITAA 1997 83-180(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)

Subject references:

- early retirement scheme payment
- employment termination payment

- ITAA 1997 83-180(3)(a)
- ITAA 1997 83-180(3)(b)

- ITAA 1997 83-180(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953

Legislative references:

- ITAA 1936 27E
- ITAA 1997
- ITAA 1997 82-135

- TAA 1953 Sch 1 357-75(1)

- Copyright Act 1968

ATO references

NO: 2008/9722

ISSN: 1445-2014

ATOlaw topic: Income tax ~~ assessable income ~~ eligible termination payment ~~ early retirement scheme.