


CR 2009/1 - Income tax: early retirement scheme - Arnott's Biscuits Limited

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Class Ruling

Income tax: early retirement scheme – Arnott's Biscuits Limited

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 employees of Arnott's Biscuits Limited (Arnott's) who receive a payment under the scheme described in paragraphs 10 to 24 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 10 to 24 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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Date of effect

9. This Ruling applies from 14 January 2009 to 28 February 2009. The Ruling continues to apply after 28 February 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

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

11. Arnott's operates a biscuit bakery in Huntingwood, Sydney (Huntingwood). Player's Biscuits Pty Ltd (Player's), a related body corporate of Arnott's, operates a biscuit bakery at Miranda, Sydney. Player's has announced that it intends to close its biscuit bakery at Miranda by the end of the 2008 calendar year.

12. Huntingwood is undergoing a restructure that involves the replacement of manual processes with computerised systems based processes. It is required that the workforce be able to adapt to this change.

13. The purpose in implementing the scheme is to re-organise the workforce at Huntingwood by offering those employees with long service an opportunity to retire early. The scheme also provides an opportunity to redeploy employees from the closing Miranda site to Huntingwood.

14. The scheme is open to all Huntingwood employees covered by the Huntingwood Union Collective Agreement 2006 (the Agreement) who have 25 years or more of continuous service with Arnott's or a related body corporate.

15. The scheme will remain open to all employees who fall within the class of eligible employees until the pool of funds set aside by Arnott's is exhausted. Eligible employees with more years of service will be accepted first.

16. Participation in the scheme is voluntary and will be open from the date the Commissioner approves the scheme until 28 February 2009.

17. Employees who retire under the scheme will have their employment terminated approximately one to three months after acceptance of the offer.

18. Eligible employees will be offered a termination payment based on the following formula:

- (a) a lump sum payment of \$7,350 plus \$3,000 for each full year of service, for employees with between 25 and up to 45 years of service;
- (b) a lump sum payment of \$7,350 plus \$4,600 for each full year of service, for employees with 45 or more full years of service.

19. Arnott's will pay any accrued unused annual leave and long service leave as well as a retirement payment less any applicable taxes within seven days of the effective date of retirement.

20. In the absence of the scheme, employees would not be entitled to any payment on their retirement other than the payment of accrued leave entitlements.

21. There is no mandated normal retirement age for the employees covered by the Agreement.

22. 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.

23. The payments are not being made in lieu of superannuation benefits and are not mentioned in section 82-135 (apart from paragraph 82-135(e)).

24. Employment termination payments made under the scheme cannot be rolled-over into a superannuation fund.

Ruling

25. The early retirement scheme to be implemented by Arnott's is an early retirement scheme for the purposes of section 83-180.

26. 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.

27. 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

❶ *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.*

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

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

29. 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).

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

31. 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

32. 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.

33. Paragraphs 11 to 13 of this Ruling describe 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 approved by the Commissioner. Accordingly, the second condition for approval has been met. (See paragraph 83-180(3)).

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

34. The scheme will operate from 14 January 2009 to 28 February 2009. Approval was granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

35. The scheme will be in operation for approximately 2 months, which is within the period considered appropriate by the Commissioner.

Other relevant information

36. 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 retirement is an early retirement scheme payment.

37. 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 reaching a certain age or completing a particular period of service (as the case may be); if the retirement is not at arm's length 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)).

38. 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'.

39. 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.

40. 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.

41. The total of the amount received on the termination of employment calculated in accordance with paragraph 18 of this Ruling may qualify as an early retirement scheme payment.

42. The total of the payments in paragraph 41 of this Ruling will be measured against the limit calculated in accordance with paragraph 40 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

43. The 'tax-free' amount will:

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

44. 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.

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

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- early retirement scheme payment
- employment termination payment

Legislative references:

- ITAA 1997
- 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)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

Other references:

- Huntingwood Union Collective Agreement 2006

ATO references

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