


CR 2010/15 - Income tax: early retirement scheme - the Association of Professional Engineers, Scientists, Managers, Australia

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Class Ruling

Income tax: early retirement scheme – the Association of Professional Engineers, Scientists, Managers, Australia

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1 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.

Relevant provision(s)

2. The relevant provisions dealt with 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

3. The class of entities to which this Ruling applies is those employees of the Association of Professional Engineers, Scientists, Managers, Australia (APESMA) who receive a payment under the scheme described in paragraphs 16 and 17 of this Ruling.

Qualifications

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

5. 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 9 to 28 of this Ruling.

6. 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

8. This Ruling applies from 12 May 2010 to 30 September 2010. The Ruling continues to apply after 30 September 2010 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

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

10. The APESMA is seeking approval for an early retirement scheme.

11. The early retirement scheme is known as the APESMA Early Retirement Scheme (ERS).

12. APESMA is a national union for professional engineers and others which has a federal office in South Melbourne and branches in each state capital.

13. The purpose of the ERS is to change the profile of the staffing structure of the APESMA to facilitate the reforming of the operating responsiveness of the staff. This will be achieved by the stimulus of becoming a highly motivated, educated and information technology experienced organisation.

14. The objectives of the ERS are to:

- contribute to the revitalisation of APESMA, develop and mentor new leaders of the organisation for the future;
- employ young professionals, who have law or industrial relations qualifications, to assist in various specialised tasks in the industrial tribunal and Court to provide a better more skilled service to members;
- facilitate early retirement of high level managers and staff in business support and management roles who do not have formal qualifications, to allow a greater focus on member support.

15. The ERS will be in operation from the date after the Commissioner's approval until 30 September 2010.

16. The ERS is open to senior staff who are under 65 years of age, with 12 months or more of service in their current position and who are:

- Permanent Senior Management employees; or
- Permanent Senior Industrial Officer (SIO) level employees.

17. These employees will be at that level in the Executive branch, Office Management and Administration, branch and federal office communications, marketing, planning, evaluation, review, industrial administration and organising.

18. There are no staff within the class of employees who APESMA is not prepared to allow to accept an offer in the ERS.

19. The number of staff who will be released under the ERS will be limited to a maximum of 15.
20. If there is an oversubscription of staff for the ERS offer the limiting factors will be the length of service. Those with a longer length of service will be accepted first.
21. The minimum number of staff required to retire within the class that APESMA needs to fully implement the rationalisation and reorganisation is 5.
22. If sufficient staff do not apply for the ERS then APESMA will rely on natural attrition. Any relevant staff member, who chooses not to participate in the ERS, will be offered relocation within the organisation. If that is not satisfactory, after consultation with the staff representative committee, and the position is redundant, the employee will be offered a genuine redundancy payment.
23. The scheme is at arm's length and there is no arrangement in force between the employee and the employer and another person to employ any of the retirees after the date of termination.
24. Staff who retire under the proposed scheme will be offered payment as follows:

Length of service		ERS benefit pay
At least	but less than	
1 years	2 years	4 weeks
2 years	3 years	6 weeks
3 years	4 years	8 weeks
4 years	5 years	10 weeks
5 years	6 years	12 weeks
6 years	7 years	14 weeks
7 years	8 years	16 weeks
8 years	9 years	18 weeks
9 years		20 weeks

25. Employees aged over 45 years or more will receive an extra weeks pay.
26. The payment made under the proposed ERS does not include any payment in lieu of superannuation benefits.
27. The ERS payments will not include any payment in lieu of other normal termination benefits to which the staff member is entitled. All employees will receive any unused annual leave and long service leave entitlements on termination of employment whether it be under an ordinary termination of employment or termination under the ERS.

28. Those employees who are provided with an ERS offer will have two weeks to accept the offer and a further four week period after accepting it to terminate their employment.

Ruling

29. The early retirement scheme to be implemented by APESMA is an early retirement scheme for the purposes of section 83-180.

30. 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.

31. 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.

Commissioner of Taxation

12 May 2010

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.***

32. Where a scheme satisfies the requirements of section 83-180 that scheme will be an ‘early retirement scheme’.

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.

34. These three conditions will now be considered.

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

35. 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).

36. The class of employees to whom early retirement will be offered is set out in paragraph 3 of this Ruling.

37. 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. It is therefore considered that 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

38. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer as described in paragraph 83-180(3)(b).

39. Paragraphs 13 and 14 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 fact that the re-organisation is being implemented with a view to a restructuring of the work force or operations 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 paragraph 83-180(3)(b). Accordingly, the second condition for approval has been met.

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

40. The scheme is proposed to operate for a period from 12 May 2010 to 30 September 2010. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

41. The scheme will be in operation for 6 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

Other relevant information

42. 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.

43. 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;
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

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. 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.

46. For the 2009-10 income year, the tax-free amount is limited to \$7,732 (base amount) plus \$3,867 (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. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

47. The total of the amount received on the termination of employment calculated in accordance with paragraphs 24 and 25 of this Ruling may qualify as an early retirement scheme payment.

48. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with formula mentioned above to determine the 'tax-free' amount of the early retirement scheme payment.

49. The 'tax-free' amount will:

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

50. Any payment in excess of this 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.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 83-170
- Not previously issued as a draft
- ITAA 1997 83-180
 - ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- 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(3)(c)
- TR 2006/10
- Subject references:*
- approved early retirement scheme payments
 - employment termination
- ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 960-285
 - ITAA 1997 995-1(1)
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - TAA 1953
 - Copyright Act 1968
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ATO references

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