

CR 2012/116 - Income tax: the City of Tea Tree Gully early retirement scheme



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Class Ruling

Income tax: the City of Tea Tree Gully early retirement scheme

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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.

Relevant provision(s)

2. 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

3. The class of entities to which this Ruling applies is those employees of City of Tea Tree Gully, shown at paragraph 22, who receive a payment under the scheme described in paragraphs 9 to 43 of this Ruling.

Qualifications

4. 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 43 of this Ruling.
5. 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

7. This Ruling applies from 12 December 2012 to 30 September 2013. The Ruling continues to apply after 30 September 2013 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

8. The following description of the scheme is based on information provided by the applicant.
9. The City of Tea Tree Gully (the employer) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.
10. The scheme will be titled the 'City of Tea Tree Gully Early Retirement Scheme', referred to as 'the Scheme'.

11. During the 2008-09, 2009-10, 2010-11 and 2011-12 income years the employer completed a number capital works projects.
12. Following a reduction in funding in the 2012-13 income year, the employer is restructuring due to a reduction in the capital works program.
13. The restructuring will allow for the consolidation of teams affected by the reduction in capital expenditure.
14. The employer has recently adopted its Long Term Financial Plan (the Plan). The Plan requires an efficiency gain to be achieved through the reduction of both non salary and salary related expenditure.
15. The purpose in implementing the Scheme will assist to reduce staffing costs and will facilitate the redesign of the employer's business operations.
16. The restructuring of departments will ensure that the organisational structure accommodates clear career progression pathways, increase opportunities for the recruitment of graduates and apprentice in areas of skill shortages and/or areas whereby the aging profile of staff means that a high proportion of their staff are likely to leave at a similar time.
17. The restructuring will consider changing community expectations, state and federal governments funding priorities and may focus on the recruitment of staff that are able to meet these needs.
18. In addition, the restructuring will allow for the transfer of surplus staff in some areas where community demand is high. In this instance, staff will be fully supported by comprehensive training and development programs.
19. The employer has engaged the services of several trainees and apprentices within broad on the job training programs to develop this skill set.
20. In addition to the skill sets, technological changes also impact the restructuring of the organisation, including the ways the community will interact with the employer via electronic systems.
21. It is anticipated the technological changes will:
 - requires new skill sets within the employer's workforce; and
 - result in a reduction of that workforce.
22. The employer has reviewed its workforce demographic and considered the ability for staff to be redeployed to accommodate the changes in work programs and technology.

23. As part of the management strategy, the employer has completed or due to be completed for their workforce planning include:

- Youth development services
- Verge cutting;
- Payroll services;
- Account payable;
- Customer relations;
- Envirocare services;
- Community development;
- Linemarking and signage shop;
- Immunisation service;
- Compliance services;
- Recreation and leisure service;
- Plant and fleet management;
- Changing the service delivery method; and
- Changing the service delivery methodology.

24. The class of employees to whom this Scheme applies is all permanent employees who are over the age of 55 but under 65 years of age.

25. Employees who are casual workers or those on fixed term contracts are not eligible.

26. The employer has 89 employees within the class. The number of packages available for retiring employees under the Scheme is estimated to be 25.

27. Participation in the Scheme is entirely voluntary.

28. The employer does not propose to retain a veto. The employer will accept all applications, and look to replace lost skill sets through the recruitment of graduate employees that are able to be mentored by other skilled staff. Essentially, the employer's current plan is to accept applications from all employees that apply to participate in the scheme, subject to the take up rate not exceeding 75% of eligible employees.

29. Where the number of employees seeking access to the Scheme exceeds the number of packages available, offers will be made to those eligible employees who have the longest continuing period of service.

30. Following approval of the Scheme, all eligible employees will be invited to express an interest in the Scheme within a maximum of seven weeks of the employer's call for expressions of interest. The employer will consider applications for a maximum of two weeks then offers will be made to those eligible employees.

31. Where the employer is unable to achieve the required savings target included in the Plan and budget for financial year ending 30 June 2013 the employer will consider the offering of voluntary redundancy options to all employees in line with their redundancy and redevelopment principles and guidelines.

32. The Scheme will be open from the date of approval by the Commissioner, and employees will have two weeks to accept or decline the offer.

33. All employees who accept the offer to retire under the Scheme will continue their employment for 4-6 weeks. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 12 months from the date of publication of this class ruling.

34. The Scheme will operate from the date of the Commissioner's approval to 30 September 2013.

35. All eligible employees who participate in the Scheme will have their payments calculated in accordance with the following:

Period of service	Severance pay (Salary)
Less than 1 year	Nil
1 year and less than 2 year	8 weeks
2 years and less than 3 years	10 weeks
3 years and less than 4 years	11 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and less than 7 years	15 weeks
7 years and over	16 weeks

36. All eligible employees who participate in the Scheme will be entitled to five weeks pay in lieu of notice, unless they work through their notice period.

37. The payment made under the Scheme is in excess of any superannuation and other benefits to which eligible employees would otherwise be entitled.

38. All employees terminated under the Scheme will receive their unused annual leave and accrued unused long service leave entitlements, however, they do not form part of the payment made under the Scheme.

39. The employer and the eligible employees will be dealing with each other at arm's length under the Scheme and there will be no arrangement between the employer and the terminating employees, or between the employer and any other person, for those employees to be re-employed after retirement.

40. The payment made under the Scheme does not include any payment in lieu of superannuation benefits.

41. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

42. Any employee, who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.

43. All eligible employees are employed under the following Enterprise Bargaining Agreement (EBA) and Awards:

Awards

- Nurse (SA Local Govt Sector) Award
- Local Government Cafés Restaurant and Snack Bars Award
- Municipal Salaried officers Award
- Local Government Employees Award

EBA

- Nurses EBA 2010
- ASU EBA No.6 2010
- AWU EBA No.5 2010

Ruling

44. The early retirement scheme to be implemented by the City of Tea Tree Gully is an early retirement scheme for the purposes of section 83-180.

45. 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 voluntary termination of his or her employment at the time of the retirement will be an early retirement scheme payment.

46. 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.*

47. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

48. 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

49. 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).

50. The class of employees to whom early retirement will be offered is set out in paragraph 24 of this Ruling.

51. The employer does not propose to retain a veto. The employer will accept all applications, and look to replace lost skill sets through the recruitment of graduate employees that are able to be mentored by other skilled staff. Essentially, the employer's current plan is to accept applications from all employees that apply to participate in the scheme, subject to the take up rate not exceeding 75% of eligible employees.

52. Where the number of employees seeking access to the Scheme exceeds the number of packages available, offers will be made to those eligible employees who have the longest continuing period of service.

53. The Commissioner considers that this is an appropriate class of persons for the Scheme to be offered. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the Council. 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

54. 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).

55. The facts at paragraphs 15 to 23 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 the employer. It is therefore considered 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).

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

56. The Scheme is proposed to operate for a period from *(the date after the Commissioner's approval)* to 30 September 2013. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

57. The Scheme will be in operation for approximately 12 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

58. 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.

59. 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 83-130(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)).

60. 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'.

61. 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.

62. For the 2012-13 income year, the tax free amount is limited to \$8,806 (base amount) plus \$4,404 (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 for each income year.

63. The total of the amount received on the termination of employment calculated in accordance with paragraph 35 of this ruling may qualify as an early retirement scheme payment.

64. The total payment calculated in accordance with paragraph 35 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 62 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

65. The 'tax free' amount will:

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

66. 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

67. 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
- employment termination
- redundancy or early retirement scheme payments

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)(b)
- ITAA 1997 83-180(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

NO: 1-41DD82S

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payments - early retirement scheme