


# ***CR 2012/87 - Income tax: early retirement scheme - Centennial Park Cemetery Authority***

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## Class Ruling

### Income tax: early retirement scheme – Centennial Park Cemetery Authority

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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

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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 employees the Scheme applies to are employees within the Infrastructure and Grounds Maintenance area of the Centennial Park Cemetery Authority who are employed in a Horticulturalist position and are over 45 years of age.

## 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 8 to 33 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

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7. This Ruling applies from the date of the Commissioner's approval to 30 June 2013. The Ruling continues to apply after 30 June 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

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

8. The Centennial Park Cemetery Authority (the Authority) is planning to rationalise and rejuvenate its workforce.

9. The Authority is a regional subsidiary established by the Council of the City of Mitcham and the Council of the City of Unley pursuant to section 43 and Part 2 of Schedule 2 of the *Local Government Act 1999* of South Australia.
10. A review of the business of the Authority has shown that there is a need for rationalisation and the ability to work smarter in order to become more competitive in the industry.
11. The review revealed a need for operational employees to possess and maintain a more comprehensive set of work skills in the areas of grounds keeping, crematorium and maintenance.
12. The Authority wishes to create a more efficient, effective and flexible work group with an increase in the role of employees so that they are no longer restricted to maintenance and up keep of the grounds but are capable of performing a far greater scope of work. Operational employees will be expected to work across the whole of the cemetery environment which will include undertaking far more physically arduous work than previously.
13. In the past the authority encouraged and supported employees to obtain a Certificate III in Horticulture in order to maintain the grounds area. However, the desired operational changes require operational employees to undertake a far broader range of work activities.
14. Given the current culture, age profile and ability of certain operational employees the ability to be flexible to the extent required will be constrained. To achieve the rationalisation of its operations, the Authority needs to rejuvenate with a younger workforce that is better suited to meeting the additional physical demands of working across the cemetery grounds and who have or will obtain additional skills required to perform the new role correctly.
15. The class of employees the Scheme applies to are employees, within the Infrastructure and Grounds Maintenance area of the Authority, who are employed as Horticulturalists and are over 45 years of age.
16. The Authority employs approximately 56 staff working in the areas of Operations, Chapels, Memorials and Finance and Administration headed by the Chief Executive Officer, Corporate Services Manager, Operations Manager and Marketing and Client Services Manager.
17. Authority will retain a limited right to veto over the applications to limit the number of employees who are eligible to retire under the Scheme. If more employees accept an offer under the Scheme than required, employees who have the longest tenure will be accepted in preference to those who have served shorter tenures.
18. Participation in the Scheme will be entirely voluntary.
19. All employees who accept the offer to retire under the Scheme will terminate employment and receive a payment by 30 June 2013.

20. Under the Scheme an employee will be entitled to receive an ex gratia payment equivalent to 12 months of their annual salary calculated at the time of acceptance of the offer.
21. On termination of employment, employees are only entitled to be paid out their accrued long service leave, annual leave and such other payments specified in their terms of employment. These payments will be paid out to employees retiring under the scheme in addition to the ex gratia payment.
22. All payments will be made on arm's length terms.
23. The payments will not include any payment in lieu of superannuation benefits.
24. The payment will not be made from an eligible superannuation fund.
25. The Authority has no agreements or arrangements in place between itself and employees, or with itself and another person to re-employ employees should an offer under the Scheme be accepted.
26. No recipient will be over 65 years of age at the time of retiring, or such other date on which his or her employment would have necessarily terminated under the terms of employment.
27. The Scheme will be open for employees to participate in from the date of the Commissioner's approval until 30 June 2013. This will allow sufficient time for any employees to consider the offer, obtain advice with respect to the same and make transitional plans to assist them once their employment has been terminated.
28. All employees are employed under the Centennial Park Cemetery Authority and Cemetery Employees Award Enterprise Bargaining Agreement No. 9 2011.
29. Authority has considered a voluntary redundancy arrangement. However, the Authority chose not to pursue such a course of action as:
- The Authority considers that an early retirement scheme better suits the factual circumstances.
  - The Authority does not wish to dismiss its employees and wishes to afford its employees the opportunity to take an option of early retirement.

## Ruling

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30. The early retirement scheme to be implemented by the Centennial Park Cemetery Authority is an early retirement scheme for the purposes of section 83-180.

31. Accordingly so much of the payment received by an employee that exceeds the amount that could be reasonable 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.

32. 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.

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**Commissioner of Taxation**

10 October 2012

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## Appendix 1 – Explanation

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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.***

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

34. 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.

35. These three conditions are discussed below:

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

36. 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).

37. The class of employees to whom early retirement will be offered is set out under paragraph 15 of this Ruling.

38. 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 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***

39. 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).

40. The facts at paragraphs 8 to 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).

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

41. The Scheme is proposed to operate for a period from the date of the Commissioner's approval to 30 June 2013. The scheme will be in operation for approximately five months. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

***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. Centennial Park Cemetery Authority have stated that all these conditions will be met.

45. 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'.

46. 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.

47. 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 of the ITAA 1997, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

48. The amount in excess of what is received on ordinary termination of employment qualifies as an early retirement scheme payment.

49. The total of the payments in accordance with paragraph 47 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 48 to determine the 'tax free' amount of the early retirement scheme payment.

50. The 'tax free' amount will:

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

51. 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**

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

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## References

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

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