



CR 2013/40 - Income tax: early retirement scheme for Barwon Region Water Corporation

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Class Ruling

Income tax: early retirement scheme for Barwon Region Water Corporation

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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.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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.

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Class of entities

3. The class of entities to which this Ruling applies are those employees of Barwon Region Water Corporation who receive a payment under the scheme described in paragraphs 11 to 25 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 10 to 29 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. The Ruling applies from 12 June 2013 to 1 October 2014. The Ruling continues to apply after 1 October 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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 the 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. Barwon Region Water Corporation (Barwon Water) is seeking the Commissioner of Taxation's approval to implement an early retirement scheme titled the 'Barwon Water Voluntary Department Program' (the Scheme).

11. Barwon Water is seeking to offer an early retirement scheme (the Scheme) to eligible employees who are employed by Barwon Water.

12. The purpose of implementing the Scheme is to rationalise and reorganise Barwon Water's functions and reduce the size of Barwon Water's workforce by voluntary means.

13. By offering the Scheme Barwon Water will be able to directly reduce its fixed operating costs and facilitate in the reorganisation of business operations identified for restructuring in the efficiency and effectiveness review.

14. An efficiency and effectiveness review was undertaken by an independent consulting company to review all business operations and determine which functions if any may have an opportunity to provide benefits for the business and customers through the engagement of a private sector organisation.

15. The class of employees to whom the Scheme applies is all permanent ongoing employees covered by the 2011 Barwon Water Enterprise Agreement who reside permanently in Australia within the following workgroups:

- nursery and land management;
- fleet and facilities management (including printing);
- civil maintenance;
- electrical and mechanical;
- stores;
- information and communications technology (excluding geospatial information services);
- strategy and planning group;
- infrastructure services group; and
- water conservation.

15A. The class of employees defined in this Ruling is extended to include employees within the following workgroups:

- customers and people group

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- business services group, and
- managing directors area.

16. The Scheme will not apply to staff at any level who fall within the following categories:

- Managing Director and other members of the General Management, Executive Management and Department Management teams on Government Sector Executive Remuneration Panel contracts;
- casual employees;
- employees on maximum term or limited tenure contracts;
- employees on probation;
- employees on unpaid leave;
- employees who are Work Cover recipients;
- employees in the Geospatial Information Services workgroup;
- employees working on secondment in functions eligible to participate in the scheme but whose substantive position is not within an eligible function; and
- employees who have resigned prior to expressions of interest date or accepted another pre-retirement agreement.

17. The number of employees who are eligible to retire under the Scheme is limited.

18. If more employees seek an offer under the Scheme than required, offers will be made based on the criteria listed below:

- Criterion one: Priority for package offers will be made to employees over the age of 55 for the purpose of early retirement.
- Criterion two: Employee length of service with priority given to employees with the greater length of service.

19. If two or more employees have the same length of service, offers made will then be determined on the first eligible employee to express interest in participating in the scheme.

20. The components offered under the package will consist of:

- (a) four week's pay in lieu of notice on cessation;
- (b) a lump sum voluntary departure incentive of up to \$10,000 (for a full time employee); and
- (c) Two week's pay per completed year of continuous service up to a maximum of 15 years.

Components (a) and (b) will be calculated at a part time rate for part time employees. Component (c) will be pro-rated for those employees who worked part time during their most recent period of continuous service.

21. A payment made under the Scheme does not include any payment made in lieu of superannuation benefits.
22. The Scheme will operate from the date of the Commissioner's approval to 1 October 2014.
23. Employees who retire under the Scheme will terminate employment and receive payment before 1 October 2014.
24. Barwon Water and the relevant employees will be dealing with each other at arm's length under the Scheme.
25. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
26. For payments made to eligible employees who have reached age 65 or over the payments will not be an early retirement scheme payment and will not be eligible for tax-free base limits under the Scheme. These payments will be concessional taxed as employment termination payments.
27. An employee who chooses not to participate in the scheme will remain in their employment with Barwon Water.
28. Recipients of the package are prohibited from seeking or accepting re-employment or any other fee or service from any public sector employer for a minimum of three calendar years from their date of separation.
29. There is no arrangement between Barwon Water and the terminating employees, or between Barwon Water and any other person, for those employees to be re-employed after retirement.

Ruling

30. The early retirement scheme to be implemented by the Barwon Water 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 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.
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

12 June 2013

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.*

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.

These three conditions are now 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 paragraphs 14 and 16 of this Ruling.

37. The Commissioner considers that this is an appropriate class of persons to whom the scheme will 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

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).

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39. Paragraphs 12 to 14 of this Ruling describes 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 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 the date of the Commissioner's approval to 1 October 2014. 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 approximately 17 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 approved 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 the retirement is an early retirement scheme payment.

43. It should be noted that, in order for a payment to qualify as an approved 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)).

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. 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 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 each income year.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 20 of this ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 41 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 46 of this ruling 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:

Not previously issued as a draft

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

Related Rulings/Determinations:

TR 2006/10

- 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 995-1(1)
- TAA 1953
- Copyright Act 1968

Subject references:

- early retirement scheme payment
- employment termination payment

Legislative references:

- ITAA 1997
-

ATO references

NO: 1-4MQ5PNG

ISSN: 1445-2014

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