

CR 2014/53 - Income tax: The Real McCoy Snackfood Co Pty Ltd Early Retirement Scheme



This cover sheet is provided for information only. It does not form part of *CR 2014/53 - Income tax: The Real McCoy Snackfood Co Pty Ltd Early Retirement Scheme*



Class Ruling

Income tax: The Real McCoy Snackfood Co Pty Ltd Early Retirement Scheme

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	32
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	35
Appendix 2:	
<i>Detailed contents list</i>	54

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 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 to whom this scheme applies is all staff of The Real McCoy Snackfood Co Pty Ltd employed at the Blacktown New South Wales (NSW) manufacturing plant, shown at paragraph 15, who receive a payment under the scheme described in paragraphs 9 to 31 of this Ruling.

CR 2014/53

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 32 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.

Date of effect

7. The Ruling applies from 25 June 2014 to 25 September 2014. The Ruling continues to apply after 25 September 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

8. The following description of the scheme is based on information provided by the applicant.
9. The Real McCoy Snackfood Co Pty Ltd (The Real McCoy) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
10. The scheme will be titled 'The Real McCoy Snackfood Co Pty Ltd Early Retirement Scheme', referred to as the Scheme.
11. The Real McCoy is one of the largest suppliers of snack foods in Australia.
12. The purpose of the Scheme is to re-organise The Real McCoy's workforce to better align the staffing mix with the needs of the business.
13. The objective of the Scheme is to offer early retirement to a fixed number of long-serving employees at the Blacktown manufacturing plant to allow for renewal by other operators who are better equipped to handle the physical demands of the job.

14. The re-organisation of The Real McCoy's workforce at the Blacktown manufacturing plant will regenerate the business and will bring new opportunities for growth and process improvements.

15. The class of employees to whom the Scheme applies is all The Real McCoy staff employed at the Blacktown manufacturing plant who are:

- between the age of 55 and 65, or
- between the age of 50 and 55 with more than 10 years of service.

16. The payment to be made to eligible employees under the Scheme is as follows:

- a lump sum payment of \$4,000, and
- two week's ordinary pay for each year of completed service (capped at 15 years).

17. In addition, all employees terminated under the Scheme will receive their accrued annual and long service leave entitlements, however they do not form part of the payment made under the Scheme.

18. The maximum number of packages available for retiring employees under the Scheme is limited to five, capped at three packages for staff on the morning shift and two for staff on the afternoon shift.

19. If the maximum number of offers for each shift is not exhausted, The Real McCoy will undertake a thorough review of the Scheme details and will re-assess the best method to achieve the objectives of the Scheme.

20. In the case where the number of employees seeking access to the scheme exceeds the number of packages available, the offer will be made to those employees who have the longest period of service.

21. If an eligible employee chooses not to participate in the Scheme, the employee will continue in their existing employment. There is currently no intention for relocation or termination of employment.

22. Eligible employees are covered under The Real McCoy Snackfood (Factory and Warehouse Staff) Enterprise Agreement 2011.

23. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have three weeks to submit applications of interest in the scheme.

24. Offers will be made to eligible employees following the deadline for the expressions of interest.

25. All employees who accept the offer to retire under the Scheme will receive payment and terminate employment at a date mutually determined by The Real McCoy and its employees no later three months after the date of the Commissioners approval.

CR 2014/53

26. It is proposed the scheme will be implemented from the date after the Commissioner's approval to three months after the date of the Commissioner's approval.

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

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

29. The scheme payment will not be made in lieu of superannuation benefits.

30. Payments made under the scheme will be at arm's length.

31. There is no agreement in place between the employee and The Real McCoy or between The Real McCoy and another person to employ any employee after retirement under the scheme.

Ruling

32. The early retirement scheme to be implemented by The Real McCoy Snackfood Co Pty Ltd (The Real McCoy) is an early retirement scheme for the purposes of section 83-180.

33. 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.

34. 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.*

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

36. 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

37. 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).

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

39. 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

40. 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).

CR 2014/53

41. Paragraphs 11 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 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

42. The Scheme is proposed to operate for a period commencing from the date after the Commissioner's approval to three months after the date of the Commissioner's approval. 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.

43. The Scheme will be in operation for approximately *three months*. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

44. 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 the retirement is an early retirement scheme payment.

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

46. 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'.

47. 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.

48. For the 2013-14 income year, the proposed tax free amount is limited to \$9,246 (base amount) plus \$4,624 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. For the 2014-15 income year, the base amount is \$9,514 and the service amount is \$4,758. It should be noted that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

49. The total of the amount received on termination of employment calculated in accordance with paragraph 16 of this ruling may qualify as an early retirement scheme payment.

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

51. The 'tax-free' amount will:

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

52. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split 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.

53. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Ruling	32
Appendix 1 – Explanation	35
All employees within a class approved by the Commissioner may participate in the scheme	37
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	40
The scheme must be approved by the Commissioner prior to its implementation	41
Other relevant information	44
Appendix 2 – Detailed contents list	54

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 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)(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

ATO references

NO:	1-5FNN7GL
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Assessable income ~~ employment termination payments - early retirement scheme

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products)