CR 2014/58 - Income tax: Unitywater early retirement scheme 2014

Class Ruling

Income tax: Unitywater early retirement scheme 2014

Contents Para

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 provisions

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 whom this scheme applies is all employees of Unitywater, shown at paragraphs 19 and 20, who receive a payment under the scheme described in paragraphs 9 to 35 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 35 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. This Ruling applies from 9 July 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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. Unitywater 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 '*Unitywater early retirement scheme 2014*' and referred to as the Scheme.

11. Unitywater is a statutory authority in the state of Queensland that provides water supply and sewerage services to the Sunshine Coast, Noosa and Moreton Bay local authority areas. It is governed by an Independent Board and has a Participation Agreement with the Noosa Council, Moreton Bay Regional Council and Sunshine Coast Regional Council.

12. In Unitywater's 2014-19 Corporate Strategic Plan, Unitywater has committed to a goal of reducing the organisation's total 'cost to serve' by achieving operational excellence. Total 'cost to serve' is calculated on a twelve month rolling basis as controllable operating expenditures including finance costs and depreciation but excluding potable water purchases divided by the number of water connections.

13. The purpose of the Scheme is to rationalise and regenerate Unitywater's workforce by offering a swift and voluntary means of reducing the size of Unitywater's workforce.

14. Successful implementation of the Scheme will reduce the current fixed operating costs which will ultimately assist the business to reduce its total 'cost to serve'.

15. By reducing the size of the workforce, the Scheme will also assist in reducing Unitywater's exposure to issues associated with direct labour costs.

16. Unitywater has a mature and long serving workforce which exposes Unitywater to increased costs due to higher absenteeism and greater risk of lost time injuries. Therefore, the Scheme is essential to reducing Unitywater's 'cost to serve' and achieving operational excellence.

17. As a result, Unitywater is seeking to offer the Scheme to employees to:

- rebalance the organisation's operations
- refresh the current workforce, and
- develop the next generation of workers for a labour-intensive area of the organisation.

18. Participation in the Scheme will be entirely voluntary.

19. The class of employees to whom this scheme applies is all permanent ongoing employees of Unitywater covered by the *Unitywater Certified Agreement No.1 2011* between the ages of 60 years and 64 years inclusive at the date the employee retires under the Scheme, and are also employed under specific divisions of Unitywater.

20. Only the following employees are eligible to express an interest in participating in the scheme:

- employees in the People, Culture & Safety Division, and
- employees in following branches of the Infrastructure Services Division:
    - Operations Support
    - Mechanical & Electrical Services
    - Northern Civil Maintenance, and
    - Southern Civil Maintenance.

21. The following employees are specifically excluded from the class and not eligible to apply under the Scheme. They are:

- Chief Executive Officer
- employees holding Executive Manager positions

- employees holding Branch Manager positions
- casual employees
- employees engaged on fixed term or temporary contracts
- employees on probation
- employees on unpaid leave
- employees who are WorkCover recipients
- 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.

22. Eligible employees will be entitled to receive the following amounts under the Scheme:

- three weeks' pay per year of service, and a proportional amount for each incomplete year, and
- employees with 10 years' continuous service with Unitywater (including the former Sunshine Coast Council and Moreton Bay Regional Council) will receive 3.5 weeks' pay per year of service, and a proportional amount for each incomplete year, and
- the minimum severance benefit is eight weeks' pay, and the maximum is 52 weeks' pay.

23. In addition, all employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the *Unitywater Certified Agreement No.1 2011*. However these entitlements do not form part of the payment made under the Scheme.

24. Employees who terminate their employment other than under the proposed Scheme will not be entitled to receive a payment under the Scheme.

25. The maximum number of packages available for retiring employees under the Scheme is limited.

26. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to those eligible employees who have expressed an interest on a 'first come first accepted' basis.

27. Following approval by the Commissioner, the Scheme will be made available for applications to all eligible employees, including those on leave. The eligible employees will have 14 calendar days to submit their applications of interest in the Scheme.

28. At the conclusion of the 14 day period, Unitywater will make an offer to eligible employees and develop an Early Retirement Quote (including pay in lieu of any accrued long service and annual leave) within three calendar days. Upon notification of their quote, eligible employees will have 14 calendar days to accept or decline the offer from the date the offer is made.

29. All employees who accept the offer to retire under the Scheme will be required to cease employment no later than 31 October 2014. In the event that there are insufficient employee applications under the initial offer, Unitywater may make subsequent rounds of offers under the same terms as the initial offer.

30. At the time of retirement there will be no arrangements between the employee and Unitywater, or between Unitywater and another person, to employ the employee after the retirement.

31. The payment under the Scheme will not be made in lieu of superannuation benefits. The payments will not be made from an eligible superannuation fund.

32. All payments will be made on arm's length basis.

33. The Scheme will operate from the date of the Commissioner's approval to 30 June 2015.

34. If an employee chooses not to participate in the Scheme, his or her employment shall continue in accordance with their current employment arrangements.

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

Ruling

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

37. 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.

38. 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
9 July 2014

Appendix 1 – Explanation

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.

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

40. 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

41. 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).

42. The class of employees to whom early retirement will be offered is set out in paragraphs 19 to 20, and subject to the exclusions set out in paragraph 21 of this Ruling.

43. 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

44. 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).

45. Paragraphs 12 to 17 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

46. The Scheme is proposed to operate after the Commissioner's approval to 30 June 2015. 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.

47. The Scheme will be in operation for approximately 12 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

48. 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.

49. 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)).

50. 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'.

51. 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.

52. For a payment made in 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. 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. For a payment made in the 2014-15 income year, the base amount is $9,514 and the service amount is $4,758.

53. The total of the amount received on termination of employment calculated in accordance with paragraph 22 of this ruling may qualify as an early retirement scheme payment.

54. The total payment being made to eligible employee under the age of 65 years and calculated in accordance with paragraph 53 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 52 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

55. The 'tax-free' amount will:

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

56. 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.

57. Payments made under the early retirement scheme in excess of the tax-free limit will be:

(a) concessionally taxed as an employment termination payment (ETP) up to the ETP cap

(b) taxed at various rates depending on the person's age, and

(c) continue to have access to the full benefit of an ETP tax offset under subsection 82-10(3).

58. The ETP cap for the 2013-14 income year is $180,000 and $185,000 for the 2014-15 income year.

59. The ETP cap is reduced by ETPs received earlier in the year or by ETPs received in an earlier year relating to the same termination.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- early retirement
- employment termination
- eligible termination payment
- redundancy or early retirement scheme payment

Legislative references:

- ITAA 1997
- ITAA 1997 82-10(3)
- 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

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