


CR 2015/52 - Income tax: the Scentre Limited Early Retirement Scheme

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Class Ruling

Income tax: the Scentre Limited Early Retirement Scheme

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	34
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	37
Appendix 2:	
<i>Detailed contents list</i>	56

📌 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 those employees of Scentre Limited who receive a payment under the scheme described in paragraphs 9 to 33 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 9 to 33 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 15 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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. Scentre Limited (Scentre) 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 Scentre Limited Early Retirement Scheme', hereafter referred to as the 'Scheme'.
11. Scentre manages and develops Westfield branded shopping centres in Australia.
12. The Scheme aims to facilitate the early retirement of a number of long-serving employees in management positions at Scentre to allow younger employees with different skillsets to take on management responsibilities.
13. A new model for General Managers and Directors has been developed by Scentre which places emphasis on thought leadership skills for employees in these specific roles. Under this new model of management there is an expectation that General Managers and Directors will be capable of developing a vision and engaging a team of people to execute that vision.

14. The re-organisation and rationalisation of Scentre's workforce will regenerate the business and will bring new opportunities for growth and process improvements.

15. The class of employees to whom the Scheme applies are all General Managers and Directors who are aged between 55 and 65 with more than 15 years of service, calculated as at 30 June 2016.

16. The payment to be made to eligible employees under the Scheme is 12 months' ordinary pay.

17. Employees who terminate under the Scheme may be eligible to receive other payments from Scentre. However, these payments will not from part of the payment made under the Scheme. These payments include:

- unused annual leave and long service leave entitlements
- additional incentive payments not ordinarily paid to employees upon voluntary termination of employment may also be provided to encourage employees to exit by a specified date. These payments will be paid as a pro-rata bonus, which will be a discretionary payment based on the employee's performance up to the date of retirement, and
- payments under the Scentre performance rights plan in the same manner as other employees who retire from Scentre. Under the performance rights plan, rights generally have a three year vesting period. However, employees who retire are eligible to have their rights paid out in cash in accordance with the standard vesting timeframe.

18. Employees who accept an offer under the Scheme will also be offered the services of a retirement coach for one year from the cessation of employment. Support is provided by the retirement coach in the areas of relationships and financial planning. This service is optional and is paid for directly by Scentre.

19. Within seven days of the Commissioner's approval of the Scheme, Scentre will invite employees to register an Expression of Interest.

20. Eligible employees will have 30 days to register an Expression of Interest.

21. After the closing date to register an Expression of Interest, Scentre will have 30 days to make offers to the registered eligible employees.

22. Eligible employees will have seven days to accept an offer under the Scheme. This is on the understanding that the employee has been given the opportunity to seek their own personal taxation advice prior to registering an Expression of Interest.

23. All approved employees under the Scheme must terminate employment and receive payment prior to the expiration of the Scheme on 30 June 2016.

24. The termination date will be the minimum notice period under the employee's employment agreement, or such other time that is mutually agreed upon. Preference for the timing of an employee's termination will depend on their length of service and personal circumstances.

25. There is no minimum or maximum number of packages available under the Scheme.

26. If an eligible employee chooses not to participate in the Scheme, the employee may be relocated to another role or their responsibilities may change. Some employees may be made genuinely redundant if their roles are no longer required by Scentre.

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

28. Participation in the Scheme is voluntary.

29. There will be no arrangement between Scentre and terminating employees, or between Scentre and any other person, for those employees to be employed after retirement.

30. The payment made under the Scheme will be in excess of any superannuation or other benefits to which eligible employees would otherwise be entitled.

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

32. Payments made under the Scheme will be at arm's length.

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

Ruling

34. The early retirement scheme to be implemented by Scentre Limited is an early retirement scheme for the purposes of section 83-180.

35. 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 their employment at the time of the retirement will be an early retirement scheme payment.

36. 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.*

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

38. 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

39. 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).

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

41. 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

42. 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).

43. 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 work force of the employer.

44. The Scheme will be in operation for approximately 12 months. This is considered appropriate due to the circumstances of the re-organisation.

45. 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 for a period commencing from *the date after the Commissioner's approval* to 30 June 2016. 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

47. 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 their employment at the time of the retirement is an early retirement scheme payment.

48. 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)).

49. 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'.

50. 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.

51. For the 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (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.

52. 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.

53. The total payment calculated in accordance with paragraph 16 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 51 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

54. The 'tax-free' amount will:

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

55. Any payment in excess of this limit will be an ETP 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 ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income. 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

56. 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	34
Appendix 1 – Explanation	37
All employees within a class approved by the Commissioner may participate in the scheme	39
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	42
The scheme must be approved by the Commissioner prior to its implementation	46
Other relevant information	47
Appendix 2 – Detailed contents list	56

References

- Previous draft:*
- ITAA 1997 83-170
 - ITAA 1997 83-180
- Not previously issued as a draft
- ITAA 1997 83-180(1)
- Related Rulings/Determinations:*
- 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)
- TR 2006/10
- Subject references:*
- early retirement scheme payment
 - employment termination payment
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - TAA 1953
-

ATO references

NO: 1-6FWUE9Q
ISSN: 1445-2014
ATOLaw topic: Income tax ~~ Assessable income ~~ Employment related
~~ Employment termination payments - early retirement
scheme

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