



CR 2019/19 - Income tax: Department for Health and Wellbeing South Australia Early Retirement Scheme 2019

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 This document has changed over time. This is a consolidated version of the ruling which was published on *22 July 2020*



Class Ruling

Income tax: Department for Health and Wellbeing South Australia Early Retirement Scheme 2019

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❗ Relying on this ruling:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in the ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this ruling.

Further, if we think that the ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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

Summary – what this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions 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)
 - 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 The Department for Health and Wellbeing South Australia (SA Health) shown at paragraph 14 of this Ruling, who receive a payment under the heading 'Scheme'.

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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 under the heading Scheme.
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 - this Ruling may be withdrawn or modified.

Date of effect

6. This Ruling applies from 20 March 2019 to 28 August 2020. The Ruling continues to apply after 28 August 2020 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Scheme

7. The following description of the scheme is based on information provided by the applicant.
8. SA Health is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
9. The scheme will be titled '**Department for Health and Wellbeing South Australia Retirement Scheme 2019**,' hereafter referred to as 'the Scheme'.
10. SA Health is a health service provider that delivers services directly to consumers and the community as part of a contemporary and sustainable health care system.
11. SA Health is undertaking a major workforce reform strategy aimed at providing the best possible health care outcomes for patients across the state.
12. The program, which will operate over two rounds, reflects SA Health's commitment to improving attraction, retention, transition to retirement, and towards the development of graduates, specialist clinicians and emergent leaders for public sector Nurses and Midwives. The aim is to support the introduction of new standards, processes, systems to modernise and improve nursing and midwifery services across South Australia.

13. The purpose in implementing the Scheme is to rationalise and re-organise SA Health's operations and contribute to the achievement of the health targets in the *Nursing/Midwifery (South Australian Public Sector) Enterprise Agreement 2016*.

14. The class of employees to whom the Scheme applies is all SA Health employees who:

- are substantively classified as or have a right of return to a Registered Nurse/Midwife (RN/M) Level 1 or RN/M Level 2 in-scope clinical position
- be permanently employed as a RN/M in an in-scope clinical position as specified
- have completed 10 years' of continuous service as a Nurse/Midwife in SA Health, calculated as at:
 - 18 March 2019 for round 1 of the program
 - 1 October 2019 for round 2 of the program
- are at least 60 years of age as at:
 - 18 March 2019 for round 1 of the program
 - 1 October 2019 for round 2 of the program
- are either a Full-time or Part-time Registered Nurse/Midwife, and
- do not have any outstanding current workers compensation claims and having finalised all such claims.

15. SA Health will limit the maximum number of eligible employees that can be approved to take up the Scheme. Each Local Health Network (LHN) will also have an allocated number of packages available.

16. If the number of eligible employees who express an interest to retire under the Scheme exceed the maximum number of packages available, eligible employees will be approved on the basis of the longest length of clinical service.

17. If the number of employees initially willing to participate in the Scheme is less than the maximum, SA Health will continue to consider other initiatives to support its aim to renew, refresh and reform its nursing workforce.

18. All eligible full time employees who retire under the Scheme will receive a lump sum payment. For eligible full time employees who have completed a minimum of 10 years continuous service, a maximum lump sum payment of \$50,000 will be made. This amount will be pro-rata for part-time nurses or midwives.

19. All employees terminated under the Scheme will receive their accrued annual and long service leave entitlements. However, these entitlements do not form part of the payment made under the Scheme.

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20. Following approval of the Scheme, all eligible employees within the class will be invited to submit an application to participate in the Scheme.

21. The assessment process will ensure applicants meet the eligibility criteria. Once an offer is made, applicants will have three weeks to accept or decline.

22. Eligible employees who accept an offer to retire under the Scheme will terminate employment and receive payment on a date mutually agreed between the employee and SA Health. All employees retiring under the Scheme must receive payment and cease their employment prior to the expiration of the Scheme on 28 August 2020.

23. An offer and payment under the Scheme will subject to a number of conditions relating to giving notice, future employment, and other matters.

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

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

26. In order to receive a concessionally-taxed early retirement scheme payment, for:

- round 1 of the program eligible employees must retire before they turn 65 years of age
- round 2 of the program eligible employees must retire before they reach pension age.

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

28. There is no agreement in place between the eligible employees and SA Health, or between SA Health and another person to employ any employee after the retirement under the Scheme.

Ruling

29. The early retirement scheme to be implemented by the SA Health is an early retirement scheme for the purposes of section 83-180.

30. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the

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

31. 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

20 March 2019

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.*

32. A scheme will be an early retirement scheme if it satisfies the requirements of section 83-180(3).

33. 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

34. 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).

35. The class of employees to whom early retirement will be offered is set out in paragraph 14 of this Ruling.

36. 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

37. 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).

38. Paragraphs 11 to 13 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. 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).

39. 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 20 March 2019 to 28 August 2020. 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.

41. The Scheme will be in operation for approximately 18 months. This is considered appropriate due to the circumstances of the re-organisation and the 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 their 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 early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 83-180(2), (5) and (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)

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- 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 the 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)).

43A. For round 2 of the program the requirements in paragraph 43 of this Ruling apply, but with the first bullet point modified such that the retirement occurred before the employee reached pension age 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).

43B The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

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. In accordance with section 83-170 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 2018-19 income year, the tax-free amount is limited to \$10,399 (base amount) plus \$5,200 (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 11 months do not count as a whole year for the purposes of this calculation.

47. For the 2019-20 income year, the base amount is \$10,638 and the service amount is \$5,320. For the 2020-21 income year, the base amount is \$10,989 and the service amount is \$5,496.

48. The total of the amount received on termination of employment calculated in accordance with paragraph 18 of this Ruling may qualify as an early retirement scheme payment.

49. The total payment calculated in accordance with paragraph 18 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraphs 46 and 47 of

this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

50. The 'tax-free' amount will:

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

51. Any payment in excess of this limit will be an ETP 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.

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

Appendix 2 – Detailed contents list

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

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References

<i>Previous draft:</i>	- ITAA 1997 83-180(3)
Not previously issued as a draft	- ITAA 1997 83-180(3)(a)
	- ITAA 1997 83-180(3)(b)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83-180(3)(c)
TR 2006/10	- ITAA 1997 83-180(5)
	- ITAA 1997 83-180(6)
<i>Legislative references:</i>	- ITAA 1997 995-1(1)
- ITAA 1997	- TAA 1953
- ITAA 1997 82-135	- Social Security Act 1991 23(1)
- ITAA 1997 82-135(e)	
- ITAA 1997 83-170	<i>Other references:</i>
- ITAA 1997 83-180	Nursing/Midwifery (South
- ITAA 1997 83-180(1)	Australian Public Sector)
- ITAA 1997 83-180(2)	Enterprise Agreement 2016

ATO references

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