

CR 2020/7 - Department for Health and Wellbeing South Australia - 'Program 2' early retirement scheme 2020



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Class Ruling

Department for Health and Wellbeing South Australia – ‘Program 2’ early retirement scheme 2020

❶ Relying on this Ruling

This publication (excluding appendix) 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 this 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 this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out tax consequences of an early retirement scheme implemented by the Department for Health and Wellbeing South Australia (SA Health).
2. Full details of this scheme are set out in paragraphs 9 to 29 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to the employees who receive a payment under the scheme.

When this Ruling applies

4. This Ruling applies from 5 February 2020 to 20 June 2021.

Ruling

5. The *Department for Health and Wellbeing South Australia – ‘Program 2’ early retirement scheme 2020* is an early retirement scheme for the purposes of section 83-180 of the *Income Tax Assessment Act 1997* (ITAA 1997).

6. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

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

8. 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.

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

10. The scheme will be titled '*Department for Health and Wellbeing South Australia – 'Program 2' early retirement scheme 2020*,' hereafter referred to as 'the scheme.'

11. 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.

12. SA Health is undertaking a major workforce reform strategy aimed at providing the best possible health care outcomes for patients across the state. The strategy operates over two programs.

13. The ATO issued Class Ruling CR 2019/19 *Income tax: Department for Health and Wellbeing South Australia Early Retirement Program 2019*. That program has now been successfully implemented.

14. The second program 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.

15. The class of employees to whom the scheme applies is all employees of SA Health who meet all of the following conditions:

- registered as a Registered Nurse or Midwife with the Nursing and Midwifery Board of Australia and hold a current registration
- substantively classified and permanently appointed or have a right of return to an RN/M Level 3 (Nurse/Midwife Unit Manager) in scope position
- have completed at least 10 years' continuous service as a Registered Nurse and/or Midwife in SA Health, calculated as at 1 October 2019
- at least 60 years of age as at 1 October 2019
- either a full-time or part-time Registered Nurse and/or Midwife
 - for part-time Registered Nurses and/or Midwives, any payment will be on a pro rata basis
 - for part-time Registered Nurses and/or Midwives who have worked additional hours, such additional hours will be averaged over the previous 12 months and added to the pro rata calculation.
- not have any outstanding current workers compensation claims and have finalised all such claims

- agree to be employed at 0.5 FTE as a condition of the mentoring arrangement for a period of 6 months immediately prior to retirement, that is, if working above 0.5 FTE, to reduce their hours to 0.5 FTE
- agree to actively mentor a selected RN/M2 for a period of 6 months immediately prior to retirement, and
- not have submitted their resignation and/or intention to retire prior to 1 October 2019.

16. The number of packages in each class will be limited. Each Local Health Network (LHN) will also have an allocated number of packages available. If the scheme is oversubscribed, applications will be processed on the basis of longest length of service first.

17. If fewer employees than required accept the offer to retire or the scheme is undersubscribed with eligible employees, SA Health will continue to consider other initiatives to support its aim to renew, refresh and reform its nursing workforce.

18. Eligible employees with a minimum of 10 years continuous service, who retire under the scheme, will receive a maximum lump sum payment of \$50,000. No further benefit will be provided for each year of completed service beyond 10 years. This amount will be pro-rated for part-time employees.

19. All eligible employees terminated under the scheme will receive their statutory entitlements such as annual leave and long service leave where applicable. However, these amounts will not form part of the payment made under the scheme.

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 30 June 2021.

23. An offer and payment under the scheme will be 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 concessional taxed early retirement scheme payment, eligible employees must retire and receive payment under the scheme 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.

29. Participation in the scheme is entirely voluntary.

Commissioner of Taxation

5 February 2020

Appendix – Explanation

❶ *This Explanation 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.*

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Requirements for an early retirement scheme

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

31. 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

32. 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).

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

34. The Commissioner considers that this is an appropriate class of persons for the scheme to be offered to. In approving this class of employees the Commissioner has considered the nature of the rationalisation or reorganisation 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 reorganise the employer's operations in a way approved by the Commissioner

35. The proposed scheme must be implemented by the employer with a view to rationalising or reorganising the operations of the employer as described in paragraph 83-80(3)(b).

36. Paragraphs 12 to 14 of this Ruling describe the nature of the rationalisation or reorganisation 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 reorganising the operations of the employer for the purposes of paragraph 83-180(3)(b).

37. Accordingly, the second condition for approval has been met.

The scheme must be approved by the Commissioner prior to its implementation

38. The scheme is proposed to operate for a period from 5 February 2020 to 30 June 2021. The approval to be provided by this Ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

39. The scheme will be in operation for a period considered appropriate due to the circumstances of the reorganisation.

Other relevant information

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

41. 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 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)
- 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 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)).

42. 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'.

43. 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.

44. For the 2019–20 income year, the tax-free amount is limited to \$10,638 (base amount) plus \$5,320 (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.

45. For the 2020–21 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check the ATO website for these indexed amounts at the relevant time.

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

47. The total payment calculated in accordance with paragraph 18 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 44 and 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

48. The tax-free amount will:

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

49. 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 ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.

50. 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.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2019/19

Legislative references:

- 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

Other references:

- Nursing/Midwifery (South Australian Public Sector) Enterprise Agreement 2016

ATO references

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