


CR 2020/67 - City of Tea Tree Gully Council - early retirement scheme 2020

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Class Ruling

City of Tea Tree Gully Council – early retirement scheme 2020

📌 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 the tax consequences of an early retirement scheme implemented by the City of Tea Tree Gully Council (the Council).
2. Full details of this scheme are set out in paragraphs 9 to 30 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to employees of the Council who receive a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 19 November 2020 to 30 June 2021.

Ruling

6. The City of Tea Tree Gully Council early retirement scheme 2020 (hereafter referred to as 'the Scheme') is an early retirement scheme for the purposes of section 83-180.

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 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 Council updated its *Long Term Financial Plan 2019-2030* (LTFP) in late 2019. Following a review of the LTFP, it was identified that the expenditure base was increasing greater than the forecast consumer price index. To correct this, an employee cost efficiency dividend across the 2020-2021, 2021-2022 and 2022-2023 income years was agreed to. It was anticipated these savings would be achieved through natural attrition.

11. In response to the financial pressures brought on by the COVID-19 pandemic, the Council has remained focused on cost containment. To minimise the financial impact on their community, the Council endorsed a 0% increase in rate revenue for the 2020-2021 income year. This has reduced rate revenue against the LTFP target.

12. This shortfall was funded through reductions in operating expenditure, capital expenditure and debt repayments for the 2020-2021 income year. The reductions in capital expenditure and debt repayments need to be recovered over subsequent financial years through a reduction in operating expenditure.

13. Over the past six years, the Council has made significant capital investments in information technology platforms to enhance the efficiency and effectiveness of service delivery to the community. These investments have particularly focused on:

- upgrading many legacy enterprise management systems
- introducing online customer portals
- business process and workflow automation, and
- data analytics and the deployment of mobile devices to field employees.

In particular, the automation of many transactional processes has impacted administrative roles across the organisation.

14. The Council recently completed the construction of a Service Centre, which is the new location for their outdoor workforce and support staff. The Service Centre provides a contemporary fit-for-purpose facility that increases the Council's capacity to respond to changing community needs and provides a platform to increase the efficiency and effectiveness of service delivery.

15. The Council has commenced a complete and thorough review of all services, operational delivery and organisational structure to ensure the ongoing efficiency, relevance and sustainability of Council operations for the community and to maintain an alignment with their financial sustainability policy principles. This review will result in a reduction of services and the displacement of employees providing those services.
16. The Council has reviewed its workforce demographics and considered the ability for employees to be redeployed to accommodate the technological changes and changes in work programs. The Council's existing workforce has a significant proportion of employees over 50 years of age. As part of its workforce planning, the Council has encouraged employees to broaden their skills base to meet the changing requirements.
17. The Scheme will give older employees the opportunity to retire early, which will assist the Council in reducing staff costs and renewing the skills of its workforce.
18. The class of employees to whom this Scheme applies is all permanent employees who are over the age of 55 but under pension age.
19. Casual employees and employees who are on fixed term contracts are not eligible to participate in the Scheme.
20. The number of employees who can retire under the Scheme is limited.
21. Following approval of the Scheme, employees will be invited to apply to participate in the Scheme. Employees will have until 8 February 2021 to submit an application.
22. The Council will make formal offers to employees by 22 February 2021. Where the number of employees who apply to participate in the Scheme exceeds the number of packages available, offers will be made to those employees who have the longest period of continuous service. Employees will have approximately two weeks to accept the offer.
23. Employees who accept the offer to retire under the Scheme will generally terminate employment within four weeks of accepting the formal offer. If a later date of departure is required for operational reasons, the employee will terminate their employment and receive the payment by no later than 30 June 2021.
24. Employees who participate in the Scheme will receive a lump sum payment calculated in accordance with the following:

Period of service	Severance pay (Salary)
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	6 weeks
3 years and less than 4 years	7 weeks
4 years and less than 5 years	8 weeks
5 years and less than 6 years	10 weeks
6 years and less than 7 years	11 weeks
7 years and over	12 weeks

Employees with not less than 10 years continuous service will receive an additional four weeks' pay.

25. Employees who participate in the Scheme will be entitled to five weeks' pay in lieu of notice, unless they work through their notice period. A payment in lieu of notice may consist of two elements:

- (a) the voluntary termination element – this is for the first two weeks of the notice period, and
- (b) the early retirement scheme element – this is for the final three weeks of the notice period.

26. All employees who terminate employment under the Scheme will receive their statutory leave entitlements, such as annual leave and long service leave. However, these amounts do not form part of the payment made under the Scheme.

27. The payment made under the Scheme does not include any payment in lieu of superannuation benefits to which an employee would otherwise be entitled.

28. The retirement of employees who receive a payment under the Scheme will occur before they reach pension age.

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

30. There is no arrangement in place between an employee and the Council, or between the Council and another person, to employ the employee after the retirement under the Scheme.

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

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

32. 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 requirements are considered in paragraphs 33 to 42 of this Ruling.

All employees within a class approved by the Commissioner may participate in the scheme

33. In order to satisfy the first requirement of subsection 83–180(3), participation in a scheme must be offered to all employees in a class approved by the Commissioner.

34. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 18, subject to paragraph 19, of this Ruling.

35. The Commissioner considers that, for the purposes of paragraph 83–180(3)(a), 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 re-organisation of the operations of the Council.

36. Therefore, the first requirement of subsection 83–180(3) is satisfied.

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 required by paragraph 83-180(3)(b).

38. Paragraphs 10 to 17 of this Ruling describe the nature of the rationalisation or re-organisation of the Council's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of the Council. It is considered that the Scheme is to be implemented by the Council with a view to rationalising or re-organising the operations of the Council for the purposes of paragraph 83-180(3)(b).

39. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

40. The Scheme is proposed to apply from 19 November 2020 to 30 June 2021.

41. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

42. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

Other relevant information

43. 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.

44. 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 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)).

45. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
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. 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.
48. For the 2020-21 income year, the tax-free amount is limited to \$10,989 (base amount) plus \$5,496 (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.
49. The total of the amount received on the termination of employment calculated in accordance with paragraphs 24 and 25(b) of this Ruling may qualify as an early retirement scheme payment.
50. The total payment calculated in accordance with paragraphs 24 and 25(b) of this Ruling will be measured against the limit 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 (ETP), and
 - able to be rolled-over into a superannuation fund.
52. 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.
53. The voluntary termination element of the payment in lieu of notice, referred to in paragraph 25(a) of this Ruling, will also be an ETP.
54. 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 but will apply to the voluntary termination element of the payment in lieu of notice.

References

Previous draft:

Not previously issued as a draft

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(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Social Security Act 1991 23(1)

ATO references

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