



CR 2013/52 - Income tax: NRMA Motoring Services Early Retirement Incentive Scheme

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 This document has changed over time. This is a consolidated version of the ruling which was published on *7 August 2013*



Class Ruling

Income tax: NRMA Motoring Services Early Retirement Incentive Scheme

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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.

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

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 entities to which this Ruling applies is those employees of NRMA Motoring & Services (NRMA), shown at paragraph 17, who receive a payment under the scheme described in paragraphs 7 to 37 of this Ruling.

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 in paragraphs 9 to 37 of this Ruling.

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 10 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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

7. The following description of the scheme is based on information provided by the applicant.

8. NRMA Motoring & Services (NRMA) is seeking the Commissioner's approval to implement an early retirement scheme in accordance with section 83-180.

9. The scheme will be titled 'NRMA Motoring Services Early Retirement Incentive Scheme,' referred to as the Scheme.

10. NRMA is currently part-way through a two year program in developing a number of infra-structure and IT based projects that will impact the way it operates. These broadly include its financial systems, member data base, key operating systems that impact across its road service network, and enhanced mobile technology existing and planned.

11. These systems will have significant impact in terms of skill requirements, which will in many instances require retraining and/or completely new skill sets and knowledge that is not currently within the NRMA groups at present.

12. During the life of the project NRMA is reviewing the impact across its Group and where possible retraining and enhancing skill sets and capability to enable employees to participate in and take new career opportunities.

13. The purpose of implementing the Scheme is to rationalise and re-organise NRMA's operations and reduce, by voluntary means, the size of NRMA's workforce to effectively streamline and maximise the capability of the remaining operations.

14. By offering an early retirement scheme, NRMA will be able to reduce its fixed operating costs and allow it to introduce additional flexibility amongst the existing labour force.

15. As NRMA undertakes the re-organisation, the release of older workers will assist by providing expanded redeployment and development opportunities for other classes of employees. This will assist NRMA to maintain and grow future talent capability while eliminating the need to eliminate employees due to genuine forced redundancy.

16. In the event that NRMA is not successful in this process, it has identified a number of options, these include:

- Natural attrition
- Restructure across specified groups. This will be achieved through our standard NRMA redundancy procedures, where there are groups affected.

17. The class of employees to whom this Scheme applies is all permanent full-time or part time employees who have reached 55 but less than 65 years of age by 31 July 2013 and have 10 or more years employment of continuous service.

18. The following group(s) of employees will be specifically excluded from participating in the Scheme:

- employees of Travel and Leisure and Thrifty Group;
- any employee not directly paid by NRMA;
- any employee who is on long term workers' compensation and is not paid by NRMA but paid directly by any insurance company;
- any employee who is absent from work and is not being paid by NRMA;
- any employee currently receiving salary continuance insurance payments;
- any employee currently receiving and/or has applied for total and permanent disablement entitlements;

- any casual or agency based employee;
- any employee who has tendered their resignation or has been made redundant prior to Scheme approval.

19. There are currently 138 employees that fall within the Scheme parameters.

20. The number of employees eligible to retire under the Scheme is capped at 40. The Scheme is also capped at a total cost of the Scheme. Being \$2 million dollars. NRMA reserves the right to close applications to the Scheme when any or all of the caps are reached.

21. The cap of 40 employees shall also be determined subject to the following:

- a cap of 30 employees across the Sydney metropolitan region; and
- a cap of 10 employees across all other regional areas.

22. In the event that there are fewer employees than the cap of 40 applying to access the Scheme, NRMA has identified two options that may apply:

- (a) Natural attrition; and
- (b) Re-organisation and implementing a new structure that is aligned to skill and business requirements. This may include implementing a redundancy program in accordance with our standard NRMA redundancy procedures. Redundancies will be the last option to be considered for implementation.

23. Following approval of the Scheme, all eligible employees will be invited to apply in the Scheme by submitting an application no later than 10 August 2013.

24. Participation in the Scheme is entirely voluntary.

25. Where the number of employees seeking access to the Scheme exceeds the number of packages available, the offer will be made to eligible employees on a first in first come basis.

26. The Scheme will operate from the date of the Commissioner's approval to 30 June 2014.

27. All employees who accept the offer to retire under the Scheme will continue their employment for a period of time. The actual date of termination will be conveyed to the individual employee based on operational requirements but no later than 30 June 2014.

28. All eligible employees under the Scheme will receive a payment as follows:

- (a) a cash payment of \$40,000 for permanent full-time employees and permanent part-time employees will receive the cash payment on a pro-rata basis; and

- (b) 8 weeks in lieu of notice calculated at the individual's actual base wages.
29. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive the payment.
30. In addition, all employees terminated under the Scheme will receive their statutory entitlements such as unused annual leave and unused long service leave however they do not form part of the payment made under the Scheme.
31. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled on termination.
32. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
33. Employees aged 65 and older will be eligible to participate in the Scheme, however, for payments made to eligible employees who have reached age 65 and older, the payments will not be an early retirement scheme payment and will not be eligible for the tax free base limits under the Scheme. These payments will be concessionally taxed as employment termination payments. However, NRMA will gross up the amount to ensure that employees over aged 65 shall receive an effective incentive component equal to the incentive payment amount of \$40,000.
34. There is no agreement in place between the employee and NRMA, or between NRMA and another person to employ any employee after retirement under the Scheme.
35. The Scheme payments will not be made in lieu of superannuation benefits.
36. Some eligible employees are employed under the NRMA Limited Customer Care Collective Agreement and NRMA Limited Patrol Enterprise Agreement.
37. An offer under the Scheme will not be made to an employee until the class ruling is approved and published on the ATO website.

Ruling

38. The scheme to be implemented by NRMA is an early retirement scheme for the purposes of section 83-180.
39. 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.
40. 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.

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Page status: **legally binding**

Commissioner of Taxation

10 July 2013

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.*

41. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

42. 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 discussed below.

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

43. 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).

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

45. The Commissioner considers that this is an appropriate class of persons for the Scheme to 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

46. 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).

47. The facts at paragraphs 10 to 15 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 therefore considered 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).

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

48. The Scheme is proposed to operate for a period from *(the date after the Commissioner's approval)* to 30 June 2014. The approval provided by this class ruling has been granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

49. The Scheme will be in operation for approximately 12 months. This is considered appropriate due to the circumstances of the restructure and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

50. 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 termination is an early retirement scheme payment.

51. 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;
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

52. 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'.

53. 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.

54. For the 2013-14 income year, the 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 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings for each income year.

55. Please note, the government has announced changes in respect of tax-free part of genuine redundancy payments and early retirement scheme payments, if passed by parliament, will change the way these amounts are indexed. The amounts for 2013-14 in the above are subject to these changes becoming law. We will publish updated guidance if these announced changes become law.

56. The total of the amount received on the termination of employment calculated in accordance with paragraph 31 of this ruling may qualify as an early retirement scheme payment.

57. The total payment calculated in accordance with paragraph 31 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 58 of this ruling to determine the 'tax free' amount of the early retirement scheme payment.

58. The 'tax free' amount will:

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

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59. Any payment in excess of this limit will be an employment termination payment and split up 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.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; CR 2012/89

Subject references:

- early retirement
- employment termination
- redundancy or early retirement scheme payments

Legislative references:

- ITAA 1997
- 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 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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