


# ***CR 2010/24 - Income tax: early retirement scheme - Sunshine Coast Regional Council***

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## Class Ruling

### Income tax: early retirement scheme – Sunshine Coast Regional Council

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#### **ⓘ 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

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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 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 Sunshine Coast Regional Council (SCRC) who receive a payment under the scheme described in paragraphs 14 and 15 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 22 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.
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## Date of effect

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8. This Ruling applies from 30 June 2010 to 31 March 2011. The Ruling continues to apply after 31 March 2011 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

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9. The following description of the scheme is based on information provided by the applicant.
10. The Sunshine Coast Regional Council (SCRC) is seeking approval for an early retirement scheme (ERS).

11. The ERS is known as the SCRC Early Retirement Scheme (SCRCERS).
12. The SCRC is located in South East Queensland and consists of the three former local government authorities of Caloundra, Maroochy and Noosa Shires. It commenced operation in March 2008.
13. The purpose of the ERS is to rationalise the operations of the SCRC by reducing the size of its workforce to meet current business and operational needs. Current business and operational requirements have been impacted by loss of revenue sources due to circumstances beyond the control of the SCRC.
14. The ERS is open to all permanent employees in 6 areas of its organisation who have reached 55 years of age as at 14 April 2010. The 6 areas are Community Services, Executive Office, Finance and Business, Infrastructure Services, Organisation Performance and Regional Strategy and Planning.
15. The SCRC has identified 450 eligible employees aged 55 years and over and will accept and approve applications on a 'first in, first accepted' basis.
16. It is expected that this will result in the rationalisation of approximately 100 staff.
17. The SCRC has identified the positions of Chief Executive Officer, Executive Directors, Manager Treasury, Manager People and Culture and Manager Chief Information Officer as 'business critical' and these people will not be offered the ERS.
18. The ERS will be in operation from the date after the Commissioner's approval until 31 March 2011.
19. Staff who retire under the proposed scheme will be offered 12 weeks pay.
20. The scheme is at arm's length and there is no arrangement in force between the employee and the employer, or between the employer and another person to employ any of the retirees after the date of termination.
21. The payment made under the proposed ERS does not include any payment in lieu of superannuation benefits.
22. The ERS payments will not include any payment in lieu of other normal termination benefits to which the staff member is entitled. However all employees will still receive any unused annual leave and long service leave entitlements on termination of employment whether it be under ordinary termination of employment or termination under the ERS.

## Ruling

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23. The early retirement scheme to be implemented by the SCRC is an early retirement scheme for the purposes of section 83-180.

24. 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 his or her employment at the time of the retirement will be an early retirement scheme payment.

25. 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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**Commissioner of Taxation**

30 June 2010

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## 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.*

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

27. 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.

28. These three conditions will now be considered.

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

29. 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).

30. The class of employees to whom early retirement will be offered is set out in paragraphs 14 and 15 of this Ruling.

31. 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 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**

32. 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).

33. Paragraphs 13 to 16 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 fact that the re-organisation is being implemented with a view to a restructuring of the work force or operations of the employer. It is therefore 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**

34. The scheme is proposed to operate for a period from 30 June 2010 to 31 March 2011. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

35. The scheme will be in operation for 9 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

### **Other relevant information**

36. 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.

37. 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)).

38. 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'.

39. From 1 July 2007, 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.

40. For the 2010-11 income year, the tax-free amount is limited to \$8,126 (base amount) plus \$4,064 (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 each income year.

41. The total of the amount received on the termination of employment calculated in accordance with paragraphs 19 of the scheme may qualify as an early retirement scheme payment.

42. The total of the payments in the previous paragraph will be measured against the limit calculated in accordance with formula mentioned above to determine the 'tax-free' amount of the early retirement scheme payment.

43. The 'tax-free' amount will:

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

44. 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**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- approved early retirement scheme payments
- employment termination

*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
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ATO references

NO: 1-23E6EPU

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employment termination payments ~~ early retirement scheme