CR 2022/96 - Domaine Chandon Australia Pty. Ltd. - early retirement scheme 2022-2023

Status: **legally binding**

Class Ruling

Domaine Chandon Australia Pty. Ltd. – early retirement scheme 2022–2023

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.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by Domaine Chandon Australia Pty. Ltd. (DCA).

2. Details of this scheme are set out in paragraphs 9 to 24 of this Ruling.

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

Who this Ruling applies to

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

When this Ruling applies

5. This Ruling applies from 27 October 2022 to 30 June 2023.

Ruling

6. Domaine Chandon Australia Pty. Ltd. – early retirement scheme 2022–2023 (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 their 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. DCA is one of the leading sparkling wine brands in the region, with a winery established in 1986 in the Yarra Valley, Victoria. DCA produces 4.5 million bottles annually, which are sold across Australia and exported to several markets in the Asia Pacific Region.

11. DCA is currently undergoing substantial organisational reform and evaluating functions and operations, with a view to revitalising the organisation.

12. The primary reason for DCA's re-organisation is to assist the business to put in place succession plans for an ageing workforce, in order to ensure that employees who are nearing retirement and who have built up extensive knowledge and skills unique to DCA do not suddenly retire in a way that creates a 'corporate memory' vacuum within the organisation. DCA is looking to implement a transition plan that will revitalise its workforce, as well as ensure the knowledge is transferred from experienced employees to successors, with a clear timeframe in mind.

13. The Scheme will be open to all employees who have worked for DCA for at least 5 years and are or will be above 60 years of age as at 31 December 2022.

14. Under the Scheme, all requests from qualifying employees to voluntarily retire will be accepted by DCA where the criteria in paragraph 13 of this Ruling has been met. The Scheme will be available to eligible employees from any department within the organisation.

15. Following approval of the Scheme, there will be an offer period where eligible employees can request early retirement under the Scheme.

16. Employees will generally terminate employment within 3 months of accepting the offer to retire. Based on operational needs, BCA and an employee may agree to a longer period before they terminate employment. Some full-time employees may transition to part-time hours during this period.

17. Employees who accept an offer to retire under the Scheme will receive a lump sum payment equivalent to 12 weeks' pay and one week per year of service (calculated on base wage) paid at termination. Payments for part-time employees will be pro-rated. Payments for full-time employees who transition to part-time hours will be calculated as though they continued to work full-time hours during the transition period.

18. All employees retiring under the Scheme will receive payment and cease their employment prior to the expiration of the Scheme on 30 June 2023.

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

20. The payment under the Scheme is in addition to and not in lieu of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

21. In order to receive a concessionally taxed early retirement scheme payment, employees must retire under the Scheme before they reach age pension age.

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

23. There is no agreement in place between an employee and DCA or between DCA and any other person to employ the employee after their retirement under the Scheme.

24. Participation in the Scheme is voluntary.

Commissioner of Taxation
26 October 2022

Appendix – Explanation

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.

Table of Contents **Paragraph**

Requirements for an early retirement scheme

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

26. 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.

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

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

28. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 13 of this Ruling.

29. 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 DCA.

30. 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

31. 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).

32. Paragraphs 11 and 12 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 of DCA. It is considered that the Scheme is to be implemented by DCA with a view to rationalising or re-organising the operations of DCA for the purposes of paragraph 83-180(3)(b).

33. Accordingly, the second requirement of subsection 83-180(3) 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 27 October 2022 to 30 June 2023.

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

36. 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

37. 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.

38. 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)).

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

40. 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.

41. 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.

42. For the 2022–23 income year, the tax-free amount is limited to $11,591 (base amount) plus $5,797 (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.

43. The total of the amount received on the termination of employment calculated in accordance with paragraph 17 of this Ruling will qualify as an early retirement scheme payment.

44. The total payment calculated in accordance with paragraph 17 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 42 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

45. The tax-free amount will not be:

- an employment termination payment (ETP), and
- able to be rolled-over into a super fund.

46. 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.

47. 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

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)
- Social Security Act 1991 23(1)

ATO references

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