



Class Ruling

Income tax: the 'Metro Trains Voluntary Early Retirement Scheme 2015-2016'

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① 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

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions 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 whom this scheme applies is those employees of Metro Trains Melbourne Pty Ltd shown at paragraph 14, who receive a payment under the scheme described in paragraphs 9 to 26 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 the Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described under the heading *Scheme*.
6. If the scheme actually carried out is materially different from the scheme that is described in the Ruling, then:
 - the Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
 - the Ruling may be withdrawn or modified.

Date of effect

7. The Ruling applies from 12 August 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant.
9. Metro Trains Melbourne Pty Ltd (Metro Trains) is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180 of the ITAA 1997.
10. The scheme will be titled '*Metro Trains Voluntary Early Retirement Scheme 2015-2016*', hereafter referred to as the Scheme.
11. Metro Trains operates the Melbourne metropolitan train service under the Metropolitan Rail Franchise agreement with the Victorian State Government.
12. Metro Trains is making changes to the way in which the company is structured, to bring it in line with the company's future needs. In particular, Metro Trains has identified that current staffing patterns and skill sets need to change in order to maintain and operate Melbourne's metropolitan train network.

13. The Scheme will focus on three areas:

- Rolling stock area – there is a need to remove a number of trade demarcations. Metro Trains therefore proposes to introduce more multi-skilled workforce to remove existing production impediments. Metro Trains plans to implement an apprentice recruitment program to obtain the required workforce, with skills commensurate with the technology being used on the modern train fleet
- Infrastructure Maintenance area – employees have become accustomed to working either straight day shifts, or day and afternoon shifts. Metro Trains is seeking to move more maintenance work to overnight, thus causing minimum disruption to passengers and ensure a productive workforce, and
- Station Operations area – it is intended to review management and support structures to identify areas where changes can occur consistent with Metro Trains business plan.

14. The class of employees to whom the Scheme applies is all full time and part-time salaried Metro Trains employees who meet the following criteria:

- will be 55 years of age or older as at 31 December 2015
- will be willing to retire before the day they turn 65 and no later than 30 June 2016
- have at least 4 years' service with Metro Trains, and
- are employed in the following workgroups:

Rolling Stock
C12-C12A – Skilled Labourer, Equipment Examiner Assistants
C11-C11A – Storeman, Train examiner
Production Co-Ordinators
Infrastructure
Foreman Track
Foreman Artisan 3 & 4
Track Supervisors Class 1 & Class 2
Track Maintainer Level 2, Level 3 & Level 4
Station Operations
Station Operations Management & Administration
Customer Service Leaders
Station Master Class 6, Class 7 & Class 8

15. Eligible employees who terminate under the Scheme will receive the following payment:

- 4 weeks' pay in lieu of notice, plus
- 2 weeks' pay per year of service up to 28 August 1999 with the Public Transport Corporation up to a maximum of 20 weeks, where employees maintained continuous service with successor entities of the Metropolitan Rail Franchise since 29 August 1999, plus
- 3 weeks' pay per year of continuous service from 29 August 1999 with the successor entities of the Metropolitan Rail Franchise up to a maximum of 21 weeks, plus
- for employees who have less than 7 years' continuous service, a gratuitous payment for pro rata accrued long service leave.

16. All employees who are terminated under the Scheme will receive their accrued unused annual and long service leave entitlements. However, these payments will not form part of the payment under the Scheme.

17. The Scheme will be offered to each area on a rolling basis throughout the period of the Scheme's operation. Once the Scheme is offered to an area, employees in that area will have 21 days to express an interest in applying for the Scheme.

18. Once an expression of interest has been made by an eligible employee to participate in the Scheme, Metro Trains will make an offer to the employee within 14 days of the applications of their area closing.

19. Employees who accept the offer to retire under the Scheme will terminate their employment at a date mutually agreed by Metro Trains and the employee. The employee will receive payment and terminate their employment no later than 30 June 2016.

20. All eligible employees who apply for the Scheme will be offered a package.

21. If an eligible employee chooses not to participate in the Scheme, Metro Trains may relocate some employees to another facility or location but this will not occur without prior consultation with the employee and the relevant industry union which they are a member.

22. Any employee who terminates employment other than under the proposed Scheme, will not be entitled to receive a payment under the Scheme.

23. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

24. The payment made under the Scheme will not be made in lieu of superannuation benefits.

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

26. There is no agreement in place between the class of employees identified and Metro Trains, or between Metro Trains and another person to employ any employee after retirement under the Scheme.

Ruling

27. The early retirement scheme to be implemented by Metro Trains is an early retirement scheme for the purposes of section 83-180.

28. 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 their employment at the time of the retirement will be an early retirement scheme payment.

29. 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.

Commissioner of Taxation

12 August 2015

Appendix 1 – Explanation

① *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.*

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 the Scheme is set out in paragraph 14 of this Ruling.

34. 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

35. 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).

36. Paragraphs 11 to 13 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 work force of the employer.

37. The Scheme will be in operation for approximately 11 months. This is considered appropriate due to the circumstances of the re-organisation.

38. It is 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

39. The Scheme is proposed to operate for a period from the 12 August 2015 to 30 June 2016. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

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 his or her 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 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 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. 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 2015-16 income year, the tax-free amount is limited to \$9,780 (base amount) plus \$4,891 (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.

45. The total of the amount received on the termination of employment calculated in accordance with paragraph 15 of this Ruling may qualify as an early retirement scheme payment.

46. The total payment calculated in accordance with paragraph 15 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 44 of this Ruling to determine the 'tax free' amount of the early retirement scheme payment.

47. The 'tax-free' amount will:

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

48. Any payment in excess of this limit will be an ETP where the payment is received no later than 12 months after termination of employment and will be split 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.

49. 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.

Appendix 2 – Detailed contents list

50. 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

Subject references:

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

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 995-1(1)
- TAA 1953

ATO references

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