Class Ruling

Museums Victoria – 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 tax consequences of an early retirement scheme implemented by Museums Board of Victoria (Museums Victoria).

2. Full details of this scheme are set out in paragraphs 8 to 30 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to the employees who receive a payment under the scheme.

When this Ruling applies

4. This Ruling applies from 18 March 2020 to 31 December 2020.

Ruling

5. The *Museums Victoria early retirement scheme 2020* is an early retirement scheme for the purposes of section 83-180 of the *Income Tax Assessment Act 1997*.[1]

[1] All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated

6. 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.

7. 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.

Scheme

8. 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.

9. The scheme will be titled '*Museums Victoria – early retirement scheme 2020*', hereafter referred to as 'the scheme'.

10. Museums Victoria has recently commenced a transformative program to deliver a major revitalisation of its museums and operations to create world-class experiences that grow visitation and revenue.

11. A plateauing of funding from both public and private sources since 2012 and significant increases in operating costs, most notably salaries and wages, has resulted in a projected deficit and a reduction in the viability and sustainability of Museums Victoria's current business model. In order to continue delivery of this transformative program their Executive, with full support of their Board, is now focused on addressing the structural budgetary issues.

12. As such, Museums Victoria has determined that in order for it to address the projected deficit and to increase the viability and sustainability of the organisation, the following initiatives will be actioned. Museums Victoria will:

- remove costs of $5 million from salaries and wages through voluntary departures in the first instance
- initiate comprehensive cost control measures including a significant reduction in casual labour expenditure, overtime payments and tight controls on new staff appointments, and
- renew focus on topline growth and prioritisation of revenue-generating business activities.

13. The delivery of the scheme will support Museums Victoria with delivery of its transformative program and Strategic Plan 2017-25.

14. The class of employees to whom the scheme applies is all employees from divisions of Museums Victoria who, as at the date that the scheme comes into effect (the commencement date), meet the following criteria:

- are permanent employees employed in a continuing position
- have years of service greater than one year, and
- are Victorian Public Service Classification Grades 2-7.

15. The following employees are specifically excluded from participating in the scheme:

- fixed-term or casual employees
- employees who are in positions funded by an external grant
- employees with an active workers' compensation claim

- employees on unpaid leave, and
- employees subject to a probation period.

16. Eligible employees will be given two weeks to submit their expression of interest (EOI) in the scheme.

17. Within two weeks of the conclusion of the EOI period, offers will be made by Museums Victoria on the basis of the scheme's criteria.

18. If more employees express interest in retiring under the scheme than the number of offers available, offers will be made to employees with the greatest number of years of service.

19. Eligible employees will have one week to accept the offer. Once an offer is accepted, voluntary withdrawal from the scheme will not be permitted.

20. Most employees who accept an offer to retire under the scheme will terminate their employment and receive their payment within eight weeks of accepting an offer, and no later than 31 December 2020. The termination date will be subject to operational requirements but will be no later than the duration of the approved.

21. Eligible employees who retire under the scheme will be paid the following:

- lump sum payment of four weeks' salary irrespective of length of service
- two weeks of salary per each completed year of continuous service (capped at 15 years), and
- a lump sum voluntary departure incentive based on continuous years of service as follows:

Years of service	Voluntary departure incentive
Less than 2 years	$0
2 years to 7 years	$5,000
8 years to 9 years	$7,000
Over 10 years	$10,000

22. All payments will be calculated with reference to the employee's superannuable salary and any superannuable allowances applicable to their continuing role as at the date of termination of employment.

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

24. No part of the payment will be made in lieu of superannuation.

25. Eligible employees retiring under the scheme will receive their statutory entitlements, such as annual leave and long service leave, where applicable. However, these amounts will not form part of the payment under the scheme.

26. Payments made under the scheme will be at arm's length.

27. The retirement of employees who receive a payment under the scheme will occur before they reach preservation age.

28. There is no agreement in place between any eligible employee and Museums Victoria, or between Museums Victoria and another person to employ the eligible employee after retirement under the scheme.

29. In accordance with the Victorian Government's *Public Sector Industrial Relations Policies 2015*[2], employees who voluntarily accept Museums Victoria's offer will be subject to a 3-year restriction on re-employment in the Victorian public sector.

30. Participation in the scheme is entirely voluntary.

Commissioner of Taxation
18 March 2020

[2] Department of Economic Development, Jobs, Transport and Resources, 2016, *Public Sector Industrial Relations Policies 2015*, Victoria State Government.

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.

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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 conditions are now considered.

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

33. 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).

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

35. 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 reorganisation 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 reorganise the employer's operations in a way approved by the Commissioner

36. The proposed scheme must be implemented by the employer with a view to rationalising or reorganising the operations of the employer as described in paragraph 83-180(3)(b).

37. Paragraphs 10 to 13 of this Ruling describe the nature of the rationalisation or reorganisation 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 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).

38. 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 18 March 2020 to 31 December 2020. The approval to be provided by this Ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

40. The scheme will be in operation for a period considered appropriate due to the circumstances of the reorganisation.

Other relevant information

41. 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.

42. 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)).

43. 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.

44. 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.

45. For the 2019–20 income year, the tax-free amount is limited to $10,638 (base amount) plus $5,320 (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 eleven months do not count as a whole year for the purposes of this calculation.

46. For the 2020–21 income year, the base amount and the service amount are yet to be determined at the date of publication of this Ruling. Therefore, employees should check the ato.gov.au for these indexed amounts at the relevant time.

47. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this Ruling may qualify as an early retirement scheme payment.

48. The total payment calculated in accordance with paragraph 21 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraphs 44 and 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

49. The tax-free amount will not be:

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

50. 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.

51. 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

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(3)(c)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953

Other references:

Victoria State Government Public Sector Industrial Relations Policies 2015

ATO references

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