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Status: **legally binding**

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## Class Ruling

# Victorian Department of Transport – early retirement scheme 2021–2022

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### **❶ 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.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by the Victorian Department of Transport (the Department).
2. Full details of this scheme are set out in paragraphs 9 to 30 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 the Department who receive a payment under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 9 December 2021 to 31 December 2022.

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## **Ruling**

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6. The Department of Transport – Early Retirement Scheme 2021–2022 (hereafter referred to as ‘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 the retirement will be an early retirement scheme payment.

8. 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**

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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. The Victorian Government 2021/22 Budget included significant investments to stimulate the economy, promote economic recovery, create jobs and invest in the implementation of the Victorian Government’s ambitious reform agenda.

11. In the context of this changed economic landscape and increased expenditure to fund the significant health and economic response to the global COVID-19 pandemic, the Victorian Government is taking steps to progressively realign expenditure to target areas of highest priority.

12. As a result, there will be a significant change to the Department’s operations that will necessitate the Department to re-evaluate the size and composition of its workforce. The Department will be required to implement the Scheme to rationalise and re-organise its operations in order to make a significant contribution to the initiatives referenced in paragraph 10 of this Ruling being carried out by the Victorian Government, including the reduction in the number of employees engaged in the Victorian Public Service.

13. The Department will be required to reduce staffing to meet these savings, alongside other mechanisms. Reductions in staffing will be across the Department and will include both general reductions to meet savings as well as reductions that will flow more directly from decisions to discontinue a function or initiative.

14. The class of employees to whom this Scheme applies are all ongoing employees, aged 45 years and above, subject to the exclusions set out at paragraph 15 of this Ruling.

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

- executive officers
- employees engaged on a casual basis
- employees engaged on a fixed-term basis
- employees on probation
- employees on leave without pay

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- employees in receipt of weekly payments of compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)*
- employees whose substantive position is outside of the Department
- employees in the following organisation structure, as they are known as at the date of this application
  - Intergovernmental Relations Group
  - Freight Victoria
  - Strategic Projects – MARL & SRL
  - Strategic Projects – ARTC & WIFT
  - Transport Assets
  - Sprayline Road Service Branch
  - Commercial Transaction
  - Commercial Advisory
  - Integrity and Ethical Behaviour
  - Cabinet and Appointments
  - Parliament Services, and
  - Internal Audit
- employees who have resigned in writing as at the date of the Scheme's commencement
- employees who were appointed to a new ongoing position within the Department within the last three months preceding the date of commencement of the Scheme
- within the divisional, usual work location and/or classification allocation caps, as described in paragraphs 16 to 30 of this Ruling.

16. Where the number of employees seeking to participate in the Scheme exceeds the number of packages available (such that the Scheme is oversubscribed), applications will be processed on the basis of age (date of birth) in order of oldest to youngest.

17. Following approval of the Scheme, the Department will offer employees within the class who are aged 50 years and above the opportunity to retire early. Employees will have 14 calendar days from the date of invitation to submit an expression of interest (EOI).

18. Employees who receive an offer to participate in the Scheme will have 14 calendar days from the date of receiving notification of the offer to accept or decline the offer to participate in the Scheme.

19. Most eligible employees who accept an offer to participate in the Scheme will terminate their employment and receive the early retirement payment within four weeks of the offer acceptance date. However, the date of termination may be extended by mutual agreement between the Department and the employee, which will be no later than 31 December 2022.

20. If a business area is over-subscribed with EOIs, and another business area is under-subscribed with EOIs, the Department may increase the number of packages available in the business area that is over-subscribed by decreasing the number of packages available in the business area that is under-subscribed.

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21. If the overall number of employees initially willing to participate in the Scheme is less than the number expected by the Department, further EOI processes may be implemented by the Department during the duration of the Scheme. Employees aged 45 years and above will be eligible, subject to the exclusions outlined in paragraph 15 of this Ruling.

22. Employees who participate in the Scheme will receive:

- a lump sum incentive of up to \$15,000 for a full-time employee and pro rata for a part-time employee
- four weeks' pay (irrespective of the employee's length of service), pro rata for a part-time employee
- two weeks' pay per each completed year of continuous service, up to a maximum of 15 years, pro rata for a part-time employee, and
- an additional four weeks' pay for employees who are over 54 years of age.

23. The payment referred to in paragraph 22 of this Ruling is calculated based on completed years of service within the Victorian public sector only.

24. Employees will receive payment for any accrued statutory entitlements; however, these payments will not form part of the payment under the Scheme.

25. The Scheme payment will not be made in lieu of superannuation benefits.

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

27. Employees who retire under the Scheme and receive the early retirement payment will do so before they reach the pension age (as defined in the *Income Tax Assessment Act 1997* by reference to the *Social Security Act 1991*).

28. At the time of retirement, there will be no arrangement between the Department and terminating employees, or between the Department and any other person, for those employees to be employed after retirement.

29. An employee who participates in the Scheme will be restricted from working in the Victorian Public Service in any capacity for a period of 12 months from the date their employment terminates with the Department.

30. There is no association between the eligible employees and the Department. Accordingly, the employees and the Department will be at arm's length.

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**Commissioner of Taxation**

8 December 2021

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Status: **not legally binding**

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## Appendix – Explanation

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**1** *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.

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

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

34. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14, subject to paragraph 15, of this Ruling.

35. 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 the Department.

36. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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***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***

37. 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).

38. Paragraphs 10 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 Department. It is considered that the Scheme is to be implemented by the Department with a view to rationalising or re-organising the operations of the Department for the purposes of paragraph 83-180(3)(b).

39. Accordingly, the second requirement of subsection 83-180(3) has been met.

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

40. The Scheme is proposed to operate for a period from 9 December 2021 to 31 December 2022.

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

42. 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***

43. 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.

44. 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)).

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

46. 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.

47. 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.

48. For the 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (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 11 months do not count as a whole year for the purposes of this calculation.

49. For the 2022–23 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 website for these indexed amounts at the relevant time.

50. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling will qualify as an early retirement scheme payment.

51. The total payment calculated in accordance with paragraph 22 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 48 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

52. The tax-free amount will not be:

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

53. 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.

54. 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.

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## References

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*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(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)
- TAA 1953
- Social Security Act 1991 23(1)
- Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)

*Other references:*

- Department of Treasury and Finance (26 October 2021) Victorian Budget 2021/22

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ATO references

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