

# ***CR 2009/76 - Income tax: Victorian Department of Education and Early Childhood Development***

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## Class Ruling

# Income tax: Victorian Department of Education and Early Childhood Development

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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 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 which this Ruling applies is those employees of the Victorian Department of Education and Early Childhood Development who receive a payment under the scheme described in paragraph 16 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 26 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 16 December 2009 to 31 October 2010. The Ruling continues to apply after 31 October 2010 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. In response to the Council of Australian Government's (COAG) national agenda, the Victorian Government formulated the Blueprint for Education and Early Childhood Development (the Blueprint).

11. The Blueprint is a comprehensive five year plan which recognises the fundamental importance of a quality education workforce. The Blueprint makes clear the Victorian Government's support of contemporary workplaces and careers and a culture of leadership, learning and renewal across the entire learning and development system.

12. The Victorian Department of Education and Early Childhood Development (VDE) is offering a scheme known as the Career Transition Scheme (the Scheme) as part of the Blueprint and a range of actions which form part of an overall workforce reform strategy.

13. The Scheme is a significant initiative to rejuvenate the teaching workforce in Victorian Government schools. The Scheme will contribute to:

- the improvement of the quality of the teaching workforce;
- providing ongoing opportunities for high quality teachers currently employed fixed term;
- career opportunities for highly skilled graduate teachers; and
- the improvement in learning outcomes of Victorian children and young people.

14. In particular, the Scheme will provide opportunities for teachers who lack the contemporary teaching knowledge and skills or the desire to acquire the necessary knowledge and skills required to voluntarily leave the teaching profession and transition to a new career. These teachers will be replaced by those with the current knowledge, skills and motivation required by the VDE.

15. The Scheme will improve the standard of teacher's skills, improve the overall quality of education in Victoria, provide significant increases in productivity and provide substantial cost savings.

16. The scheme is open to all VDE employees who:

- have ongoing employment with the Victorian Teaching Service;
- have at least 10 years of continuous teaching service;
- are classified as a Classroom Teacher;

- are on pay as at the pay date immediately preceding the announcement of the Scheme;
- have not been subject to disciplinary or other action under Divisions 8, 9, 9A or 10 of Part 2.4 of the *Education and Training Reform Act 2006 (Vic)*;
- are not in receipt of weekly non-medical payments under WorkCover; and
- demonstrate a shortage of contemporary teaching skills as verified against the Victorian Institute of Teaching's Teacher Professional Standards (the Professional Standards) and identified in annual performance reviews.

17. The Professional Standards were developed by teachers for teachers and have been adopted and disseminated for a considerable period of time.

18. In the event that the Scheme is over subscribed, the Scheme will be offered on the basis of the date on which an application is received.

19. The VDE would retain a limited right of veto to applications by teachers who are in priority schools and hard to staff subject areas. A list of such schools and subject areas has been provided to the Commissioner.

20. The Scheme will be open from the date of the Commissioners approval to 31 October 2010.

21. Teachers will have two weeks to accept or reject the Scheme.

22. Teachers who accept the Scheme agree to not seek re-employment, including as a casual replacement teacher, in the Victorian public sector for a period of three years.

23. Eligible employees will be offered a payment of \$50,000, pro-rata for part time teachers (the Payment). The Payment is in excess of any superannuation or other benefits to which eligible employees would otherwise have been entitled to.

24. The payments made under the Scheme are to be made at arm's-length.

25. The retirement of employees under the Scheme will occur before they turn 65 years of age.

26. There will be no agreement in place between the employee and the VDE, or between VDE and another person, to employ the employee after retirement.

## **Ruling**

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27. The early retirement scheme to be implemented by the Victorian Department of Education and Early Childhood Development 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 the voluntary termination of his or her 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.

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**Commissioner of Taxation**

16 December 2009

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## Appendix 1 – Explanation

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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.***

30. Where a scheme satisfies the requirements of section 83-180, that scheme will be an ‘early retirement scheme’. 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 discussed in paragraphs 31 to 37 of this Ruling.

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

31. 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).

32. The class of employees to whom early retirement will be offered is set out in paragraph 16 of this Ruling.

33. 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. 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**

34. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer that the Commissioner approves.

35. Paragraphs 10 to 15 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. The scheme is to be implemented with a view to rationalising or re-organising the operations or work-force of the employer by making the changes approved by the Commissioner. Accordingly, the second condition for approval has been met.

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

36. The scheme will operate from 16 December 2009 to 31 October 2010. Approval was granted prior to implementation therefore for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

37. The scheme will be in operation for approximately 10 months, which is within the period considered appropriate by the Commissioner.

### **Other relevant information**

38. 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 retirement is an early retirement scheme payment.

39. 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 reaching a certain age or completing a particular period of service (as the case may be);
- if the retirement is not at arm's length 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; and
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

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. 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.

42. For the 2009-10 income year, the tax-free amount is limited to \$7,732 (base limit) plus \$3,867 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. The base limit and service amount limit will be indexed in line with average weekly ordinary time earnings each income year.

43. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this Ruling may qualify as an early retirement scheme payment.

44. The total of the payments in paragraph 43 of this Ruling will be measured against the limit calculated in accordance with 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; and
- not be able to be rolled-over into a superannuation fund.

46. Any payment in excess of this tax-free 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.

47. Employment termination payments made under an approved early retirement scheme cannot be rolled-over into a superannuation fund.

## **Appendix 2 – Detailed contents list**

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48. 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)(c)
  - ITAA 1997 83-180(5)
  - ITAA 1997 83-180(6)
  - ITAA 1997 995-1(1)
  - TAA 1953
  - Copyright Act 1968
  - Education and Training Reform Act 2006 (Vic) Div 8
  - Education and Training Reform Act 2006 (Vic) Div 9
  - Education and Training Reform Act 2006 (Vic) Div 9A
  - Education and Training Reform Act 2006 (Vic) Div 10
  - Education and Training Reform Act 2006 (Vic) Pt 2.4
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ATO references

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