

CR 2011/52 - Income tax: early retirement scheme - East Wimmera Health Service

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Class Ruling

Income tax: early retirement scheme – East Wimmera Health Service

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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

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 provisions

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 all those employees within East Wimmera Health Service (EWHS) who receive a payment under the scheme described in paragraphs 10 to 27 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 10 to 27 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

8. This Ruling applies from 1 June 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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

9. The following description of the scheme is based on information provided by the applicant.
10. EWHS intends to implement an early retirement scheme (ERS).
11. The class of persons to whom this scheme applies is all employees across all campuses within EWHS.

12. Due to severe damage caused by the flooding on 14 January 2011, the Charlton campus of EWHS is closed indefinitely. Staff at the Charlton campus have been unable to work since the campus was affected.
13. For this reason EWHS needs to re-organise its business to relocate the employees at the Charlton campus.
14. The purpose of the scheme is to seek expressions of interest regarding voluntary departure packages (VDPs) from all employees at campuses within EWHS. These vacancies can then be filled by redeployment of staff from the Charlton campus.
15. The maximum number of eligible employees that the employer will allow to retire under the scheme will be limited.
16. Should the number of employees seeking access to the scheme exceed the number of packages available, the offer will be made firstly to those employees at the Charlton campus, then to other campus employees who are aged 50 or over, then to employees at other campuses where a Charlton campus employee can be matched to the position of the other campus employee.
17. EWHS proposes to retain a limited veto and has identified the positions of Executive and Senior Managers (excluding Charlton Campus Manager) as key employees who will not be eligible to participate in the scheme.
18. Participation in the scheme is entirely voluntary.
19. Following approval of the scheme, all eligible employees within the class will have 2 weeks to express an interest in the scheme. If not enough staff take up the initial expression of interest in the scheme a second round opportunity will be circulated to all eligible employees within the class and they will have until 31 August 2011 to express an interest in the scheme.
20. All offers will be made within six weeks after an expression of interest is made.
21. All employees who accept the offer to retire under the scheme will receive the VDP and terminate employment by 30 June 2012. The actual date of termination will be negotiated between the employer and the employee.
22. It is proposed the scheme will be implemented from 1 June 2011 to 30 June 2012.
23. All eligible employees under the ERS will be offered a VDP as follows:
 - 4 weeks pay in lieu of notice of cessation
 - a lump sum VDP of \$10,000 for full-time employees (pro rata for part-time employees) plus 2 weeks pay per year of service up to a maximum of 15 years.
24. The VDP is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

25. The VDP made under the ERS is at arm's length.
26. The retirement of employees under the ERS will occur before they turn 65 years of age.
27. There is no agreement in place between the employee and EWHS, or between EWHS and another person to employ the employee after retirement.

Ruling

28. The early retirement scheme to be implemented by EWHS is an early retirement scheme for the purposes of section 83-180.
29. 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 his or her employment at the time of the retirement will be an early retirement scheme payment.
30. 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

1 June 2011

Appendix 1 – Explanation

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.***

31. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

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 is set out in paragraph 11 of this Ruling.

35. 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

36. 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).

37. Paragraphs 12 to 14 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 workforce of the employer. It is therefore considered 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 is satisfied.

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

38. The scheme is proposed to operate for a period from 1 June 2011 to 30 June 2012. Approval will be granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

39. The scheme will be in operation for 13 months. This is considered to be appropriate in this case due to the circumstances of the restructure and for those employees that will be given the option of early retirement under the scheme.

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 the retirement 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 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)).

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 2010-11 income year, the tax free amount is limited to \$8,126 (base amount) plus \$4,064 (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. In accordance with section 960-285, the base amount and service amount limits will be indexed in line with average weekly ordinary time earnings for each income year. For the 2011-12 income year, the tax free amount is limited to \$8,435 plus \$4,218 for each whole year of completed employment service.

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

46. The total payment in paragraph 45 will be measured against the limit calculated in accordance with the formula mentioned in paragraph 44 to determine the 'tax free' amount of the early retirement scheme payment.

47. The 'tax free' amount will:

- not be an employment termination payment; and
- not be able to be rolled-over into a superannuation fund.

48. Any payment in excess of this 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.

Appendix 2 – Detailed contents list

49. The following is a detailed contents list for this Ruling:

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References

- Previous draft:*
- ITAA 1997 82-135(e)
- Not previously issued as a draft
- ITAA 1997 83-170
 - ITAA 1997 83-180
- Related Rulings/Determinations:*
- TR 2006/10
- 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)
- Subject references:*
- Early retirement
 - Early retirement scheme payment
 - Employment termination
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - TAA 1953
 - Copyright Act 1968
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ATO references

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