



# ***CR 2012/46 - Income tax: early retirement scheme - South Australia Department for Education and Child Development***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *4 July 2012*



## Class Ruling

### Income tax: early retirement scheme – South Australia Department for Education and Child Development

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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

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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 those employees of the South Australia Department for Education and Child Development (DECD), shown at paragraph 16, who receive a payment under the scheme described in paragraphs 9 to 35 of this Ruling.

## Qualifications

4. 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 35 of this Ruling.

5. 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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7. This Ruling applies from the *date of the Commissioner's approval* to 30 June 2013. The Ruling continues to apply after 30 June 2013 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).

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## Scheme

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8. The following description of the scheme is based on information provided by the applicant.

9. DECD is seeking the Commissioner's approval to implement an early retirement scheme (ERS).

10. The scheme will be titled the 'Teacher Renewal Program' referred to as the ERS.

11. DECD developed 'Teachers' Work' for primary and secondary teachers as a framework encompassing the contemporary work of teachers.

12. In South Australia, the Department for Education and Child Development (DECD) continues to use 'Teachers' Work' as a framework encompassing the contemporary work of primary and secondary teachers.

13. Graduating teachers are required to meet minimum standards under this framework in order to be granted registration to teach while existing teachers are expected to meet the minimum standards of the framework for re-registration every three years.

14. The National Professional Standards (NPS) for Teachers have been developed and the Australian Institute for Teaching and School Leadership is working with teachers, school leaders, and states and territories to develop support materials that will illustrate the NPS.

15. DECD is committed to providing the best possible education outcomes for primary and secondary school students. DECD recognises that some longer-serving primary and secondary teachers' skills do not meet the required standards set out in the 'Teachers' Work' framework and the NPS.

16. The class of employees to whom this scheme applies is open to all DECD employees who:

- are permanently employed as a member of the teaching staff in a government school across South Australia;
- currently appointed to or have a right of return to a teaching position;
- have accumulated at least 10 years of permanent teaching service;
- are younger than the normal age of retirement (that is younger than 65 years of age); and
- are identified as being unable to perform assigned teaching tasks at the required skill level or motivated to update their skills and meet one of the two criteria specified as follows:

- (a) their line manager has documented an unresolved skill or knowledge deficit which demonstrates that they no longer have the knowledge or skills to use a contemporary pedagogy, or
- (b) they have not undertaken a significant professional development activity in the past 3 years.

17. The Teacher Renewal Program has been developed to help rejuvenate the teaching workforce by creating opportunities for teachers who don't possess the skills as required by the National Professional Standards, to voluntary leave the DECD teaching workforce.

18. The Teacher Renewal Program will further support the rejuvenation of the teaching workforce in the South Australian Government primary and secondary schools. This program will contribute to:

- improving the quality of primary and secondary teachers;
- providing ongoing opportunities for high quality teachers currently employed; and
- career opportunities for highly skilled graduate teachers,

and thereby:

- improving the learning outcomes of South Australia's students; and
- improving the overall quality of primary and secondary education in South Australia.

19. The knowledge and skills that DECD teachers are expected to possess in order to perform at the required standard are specified in established standards. Specifically, the NPS clearly articulate the required standards for teachers.

20. Teachers that are identified as not meeting the minimum standards will be able to indicate if they are interested in receiving offers of early retirement under the Teacher Renewal Program. Teachers that retire under the Teacher Renewal Program will be replaced by teachers or graduates with the current curriculum knowledge and teaching skills and methodologies that satisfy the minimum standards.

21. Offers of early retirement will be made to teachers who indicate that they are interested in retiring under the ERS and satisfy the eligibility and selection criteria.

22. Participation in the Teacher Renewal Program is entirely voluntary.

23. All eligible employees under the ERS will be offered a lump sum payment of \$50,000 (maximum). This amount will be pro-rata for part-time teachers, for example a part-time teacher operating at 0.5 FTE (full-time equivalent) will be offered a maximum of \$25,000.

24. DECD will allow a limited number of employees to retire under the ERS. In the event the ERS is over subscribed, the ERS will be offered on the basis of the date on which an application is first received.

25. The following list of teachers will not be eligible to participate in the ERS:

- teachers who are not currently part of the teaching staff in DECD schools;
- casual teachers and other temporary teachers with no right to ongoing employment in the South Australian Public Sector (SAPS);
- teachers who are currently in a leadership position, including seconded teacher positions, won through a merit selection process;
- teachers with less than 10 years permanent teaching service;
- teachers who have an active worker's compensation claim where there is payment made for loss of income that is, weekly payments/income maintenance; and
- teachers who are under investigation for allegations of serious misconduct.

26. Teachers will have 2 weeks from the date of the offer to accept or reject the offer.

27. Teachers who retire under the ERS:

- (a) must voluntarily give notice of their resignation from SAPS;
- (b) must resign from all employment in the SAPS; and
- (c) agree that they will not apply for, accept, engage or remain in any employment whatsoever (whether as an employee, trainee or apprentice) in the SAPS, whether or not remunerated or otherwise and whether temporary, casual, contract, ongoing or by appointment for a period of 3 years from the date on which the employee's resignation takes effect.

28. The ERS will be open from the *date of the Commissioner's approval* to 30 June 2013.

29. All employees who accept the offer to retire under the ERS will terminate employment and receive the payment by 30 June 2013. The actual date of termination will be negotiated with each individual employee based on their operational requirements but no later than 30 June 2013.

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

31. Any employee who terminates employment other than under the proposed ERS, will not be entitled to receive the payment.

32. All employees terminated under the ERS will receive their unused annual leave and long service leave entitlements however they do not form part of the payment made under the ERS.

33. The payment made under the ERS are at arm's-length.

34. The retirement of employees who receive a payment under the ERS will occur before they turn 65 years of age.

35. There is no agreement in place between the employee and DECD, or between DECD and another person to employ the employee after retirement.

## Ruling

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36. The early retirement scheme to be implemented by the South Australia Department of Education and Child Development is an early retirement scheme for the purposes of section 83-180.

37. Accordingly, so much of the payment received by an employee that exceeds the amount that could be reasonable 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.

38. 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.

## 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.*

39. Where a scheme satisfies the requirements of subsection 83-180(3), that scheme will be an early retirement scheme.

40. 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 below.

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

41. 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).

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

43. The Commissioner considers that this is an appropriate class of persons for the ERS 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**

44. The proposed ERS 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).

45. The facts at paragraphs 17 and 20 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. In approving the ERS, the Commissioner has had regard to the changes in the operations and nature of the workforce of the employer. It is therefore considered the ERS 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).

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

46. The ERS is proposed to operate for a period from the *date of the Commissioner's approval* to 30 June 2013. 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.

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

## **Other relevant information**

48. 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.

49. 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 83-130(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)).

50. 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'.

51. 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.

52. For the 2011-12 income year, the tax free amount is limited to \$8,435 (base amount) plus \$4,218 (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 limit and service amount limits will be indexed in line with average weekly ordinary time earnings for each income year.

53. The total of the amount received on the termination of employment calculated in accordance with paragraph 23 of this ruling may qualify as an ERS payment.

54. The total payment calculated in accordance with paragraph 53 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 52 to determine the 'tax free' amount of the early retirement scheme payment.

55. The 'tax free' amount will:

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

56. 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**

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57. 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:*

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

*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 960-285
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

ATO references

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