


CR 2013/67 - Income tax: early retirement scheme for State Services Authority (Victoria)

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Class Ruling

Income tax: early retirement scheme for State Services Authority (Victoria)

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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

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 employees to whom this scheme applies is those employees of State Services Authority, shown at paragraph 13, who receive a payment under the scheme described in paragraphs 9 to 28 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 28 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.

Date of effect

7. The Ruling applies from 21 August 2013 to 31 March 2014. The Ruling continues to apply after 31 March 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant.
9. The State Services Authority Victoria (SSA) is seeking the Commissioner of Taxation's approval to implement an early retirement scheme titled the 'Voluntary Departure Package Program 2013-14' (the Scheme).
10. SSA is seeking to offer an early retirement scheme to eligible employees who are employed by SSA.
11. The purpose in implementing the Scheme is to rationalise and re-organise SSA's operations and achieve employment reductions in the following divisions:
 - Standards and Equity and Corporate Services
 - Workforce Planning and Development
 - Public Policy and Organisational Reviews

12. By offering the Scheme SSA will be able to directly reduce its fixed operating costs and achieve the budget reductions announced in the 2013-14 Victorian Budget.

13. The class of employees to whom the Scheme applies is all SSA employees covered by the Victorian Public Service Workplace Determination 2012 who are within the following workgroups:

- Standards and Equity and Corporate Services
- Workforce Planning and Development
- Public Policy and Organisational Reviews

14. The Scheme will not apply to staff at any level who fall within the following categories:

- Executive Officers;
- Employees employed on a fixed term or casual basis;
- Employees on probation, or unpaid leave or in receipt of WorkCover payments;
- Employees working in the Knowledge Management and Governance Branch;
- Employees working in the Victorian Leadership Development Centre;
- Employees classified as VPS 3;
- Principal Adviser, Executive Employment & Remuneration;
- Assistant Director, Projects, Workforce Planning & Development,;
- Principal Adviser, Attraction and Recruitment, Workforce Planning and Development;
- Principal Adviser, Standards and Equity (Reviews and Complaints);
- Principal Adviser, Public Policy and Organisational Reviews; and
- Systems Administration Officer, Corporate Services.

15. The number of employees who are eligible to retire under the Scheme is limited by reference to classification or division.

16. Where the number of employees seeking access to the Scheme exceeds the number of packages specified as available in a particular category, an offer will be made to those eligible employees within a category who have the longest period of continuous service with the Victorian Public Service.

17. The components offered under the package will consist of:

- (a) four weeks' pay in lieu of notice on cessation;

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- (b) a lump sum voluntary departure incentive of up to \$10,000 (for a full time employee);
- (c) two weeks' pay per completed year of continuous service up to a maximum of 15 years.

For part-time employees, payments (a) and (b) will be calculated at the part-time rate. For employees who have a period of part-time employment in the most recent years of continuous service, payment (c) will be a pro-rata payment.

18. A payment made under the Scheme does not include any payment made in lieu of superannuation benefits.

19. It is proposed the Scheme will be implemented from the date after the Commissioner's approval to 31 March 2014.

20. Upon commencement of the scheme, eligible employees will be invited to express an interest in the Scheme and such expressions will be open for a period of 14 calendar days.

21. Where the employee satisfies the criteria to receive an offer, such offers will be made progressively from the date expressions closed.

22. Employees will have 14 calendar days to consider the offer and make a decision to accept or reject the offer. Employees who do not respond within this timeframe will be considered to have rejected the offer.

23. All eligible employees who accept an offer will receive the package and terminate employment no later than 31 March 2014.

24. SSA and the relevant employees will be dealing with each other at arm's length under the Scheme.

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

26. For payments made to eligible employees who have reached age 65 or over the payments will not be an early retirement scheme payment and will not be eligible for tax-free base limits under the Scheme. These payments will be concessionally taxed as employment termination payments.

27. Recipients of the package are prohibited from seeking or accepting re-employment or any other fee for service from any public sector employer for a minimum of three calendar years from their date of separation.

28. There is no arrangement between SSA and the terminating employees, or between SSA and any other person, for those employees to be re-employed after retirement.

Ruling

29. The early retirement scheme to be implemented by the SSA is an early retirement scheme for the purposes of section 83-180.

30. 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.

31. 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

21 August 2013

Appendix 1 – Explanation

① *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.*

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

33. 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

34. 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).

35. The class of employees to whom early retirement will be offered is set out in paragraph 13 of this Ruling.

36. The Commissioner considers that this is an appropriate class of persons to whom the scheme will 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

37. 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).

38. Paragraphs 11 to 12 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 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). 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 commencing from 21 August 2013 to 31 March 2014. 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.

40. The Scheme will be in operation for approximately 7 months. This is considered appropriate due to the circumstances of the reorganisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

41. Under subsection 83-180(1) so much of the payment received by an employee because the employee retires under an approved 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.

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), 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;

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- 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. 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 2013-14 income year, the proposed tax free amount is limited to \$9,246 (base amount) plus \$4,624 (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.

46. The total of the amount received on termination of employment calculated in accordance with paragraph 17 of this ruling may qualify as an early retirement scheme payment.

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

48. The 'tax-free' amount will:

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

49. Any payment in excess of this limit will be an employment termination payment where the payment is received no later than 12 months after termination of employment and will be split 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

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

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- 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)
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968

Subject references:

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

Legislative references:

- ITAA 1997
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ATO references

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