


# ***CR 2013/70 - Income tax: early retirement scheme - VicForests***

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## Class Ruling

### Income tax: early retirement scheme – VicForests

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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 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 are those employees of VicForests who receive a payment under the scheme described in paragraphs 12 to 22 of this Ruling.

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## 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 8 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.

## Date of effect

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7. The Ruling applies from 4 September 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

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8. The following description of the scheme is based on information provided by the applicant.
9. VicForests is seeking the Commissioner of Taxation's approval to implement an early retirement scheme titled the 'VicForests Voluntary Departure Program 2013' (the Scheme).
10. VicForests carried out organisation wide reviews to identify the problems associated with increasing expenses which have led to reduced profitability. The review also investigated how to reduce costs and improve operational efficiency and profitability in satisfying its government obligations. Following the reviews, VicForests has identified that not all current employees will seek to remain in their employment, nor can VicForests continue to employ the current numbers.
11. The purpose of implementing the Scheme is therefore to rationalise and reorganise VicForests' operations and assist in the required employment reductions, as identified in the review, across all areas of the business.

12. The class of employees to whom the Scheme applies is all ongoing staff covered by the VicForests Agreement 2012 who are within the following workgroups:

- Corporate Affairs
- Business Services
- Operations and Delivery
- Resource planning
- Sales and Contracting
- CEO and Legal

13. VicForests reserves the right to limit the number of packages within individual teams, locations or functions to ensure organisational requirements are met. The Scheme will not apply to staff at any level who fall within the following categories:

- Fixed term employees
- Casual employees
- Employees on leave without pay
- Employees on probation and other trial arrangements
- Employees receiving WorkCover salary payments
- Employees who have already submitted their notice of resignation or retirement
- Executive officers

14. The number of employees who are eligible to retire under the Scheme is limited.

15. If more employees seek an offer under the Scheme than required, offers will be made based on the criteria listed below:

- employees in a role or function where there are excess staff numbers to the current staffing or activity requirements, this includes:
  - functions delivered through the Corporate support office; and
  - management roles including Senior Foresters.
- employees with the longest continuous service in the Victorian Public Service (active employees and those on paid leave);
- employees with the most senior role within a team; then; and
- employees from a location where other voluntary departure packages offered, or reduced activity, means there is likely to be a decision to relocate or reduce employees from that particular site.

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16. VicForests reserves the right to increase the total number of packages available on the basis of operational requirements. If a class is over-subscribed with expressions, the organisation may also be prepared to increase the number of packages available in a particular class if other areas were under-subscribed.

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

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

Components (a) and (b) will be calculated at a part time rate for part time employees. Component (c) will be pro-rated for those employees who worked part time during their most recent period of continuous service.

Where an employee has less than one year of service, they will receive a corresponding fraction of the package they would have been paid at one year.

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

19. The Scheme will operate from the date of the Commissioner's approval to 31 March 2014.

20. Employees who retire under the Scheme will terminate employment and receive payment before 31 March 2014.

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

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

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

24. Where an employee chooses not to participate in the scheme and:

- their organisational group is identified to close, any remaining staff will be redeployed/reassigned to other roles and work. Where this is not possible, their employment may be terminated in accordance with the enterprise agreement and government policy; or

- their organisational group is continuing to operate, but on a reduced scale, the employee will remain in that group. Where reduction target for the group has not been met, excess staff will be redeployed/reassigned to other roles and work. If this is not possible, then their employment may be terminated in accordance with the enterprise agreement and government policy.

25. Recipients of a payment under the Scheme are prohibited from seeking or accepting re-employment or any other fee for service:

- from any Victorian Public Service employer for a minimum of three calendar years from the date of their separation; and
- from any Victorian Public Sector employer for a minimum of one calendar year from their date of separation.

Roles specified as outside the prohibition include:

- Police officer
- Protective services officer
- Fire-fighter
- Project fire-fighter

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

## **Ruling**

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27. The early retirement scheme to be implemented by VicForests 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**

4 September 2013

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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’.

31. 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***

32. 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).

33. The class of employees to whom early retirement will be offered is set out in paragraphs 12 and 13 of this Ruling.

34. 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***

35. 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).

36. Paragraphs 10 and 11 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***

37. The scheme is proposed to operate for a period from the date of the Commissioner's approval to 31 March 2014. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

38. The scheme will be in operation during various stages of the period mentioned above. 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***

39. 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.

40. 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);

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- 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)).

41. 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'.

42. 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.

43. For the 2013-14 income year, the 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. In accordance with section 960-285, the base limit and service amount limits will be indexed in line with average weekly ordinary time earnings each income year.

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

45. The total payment calculated in accordance with paragraph 17 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 43 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

46. The 'tax-free' amount will:

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

47. 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**

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

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## References

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- Previous draft:*
- ITAA 1997 82-135
- Not previously issued as a draft
- 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)
- Subject references:*
- early retirement scheme payment
  - employment termination payment
- ITAA 1997 995-1(1)
  - TAA 1953
  - Copyright Act 1968
- Legislative references:*
- ITAA 1997
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### ATO references

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