


CR 2013/76 - Income tax: early retirement scheme - Victorian WorkCover Authority

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Class Ruling

Income tax: early retirement scheme – Victorian WorkCover Authority

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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 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 Victorian WorkCover Authority who receive a payment under the scheme described in paragraphs 9 to 32 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 32 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. This Ruling applies from 23 October 2013 to 30 June 2014. The Ruling continues to apply after 30 June 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 Victorian WorkCover Authority is seeking the Commissioner of Taxation's approval to implement an early retirement scheme titled the WorkSafe Victoria Voluntary Departure Program (VDP) 2013 (the Scheme).
10. WorkSafe is currently executing its five year operation strategy, WorkSafe 2017, with four areas of focus, namely, Safety, Return to Work, Service and Sustainability.
11. A program of internal enablers has been set up to successfully support and implement the five year strategy. The enablers include:
 - (a) People: to increase the capability of its people through talent management, succession planning and governance, identifying critical roles, competency gaps and capability requirements.

- (b) Technology and systems: to replace and upgrade standard operating environment and removing unnecessary complexity and cost in the short term, and embark on a new IT program.

12. As part of the program, WorkSafe intends to rationalise and reorganise its organisation to:

- reduce duplicated activities,
- streamline administrative and business support functions to maximise support to public-facing roles, and
- provide further career opportunities within teams.

13. The class of employees to whom the Scheme applies is all employees within the Health and Safety Business Unit, which has the following divisions:

- Health and Safety Operations - North, West and East Regions,
- Workplace Hazards and Hazardous Industries Group (WHHIG),
- Operations Support Division (OSD),
- Prevention Strategy Division (PSD), and
- Office of the General Manager.

14. Employees within the following categories are excluded from participating in the Scheme:

- job classifications of Field 1, Field SME or Field 2 in:
 - Health and Safety Operations – North, West or East Region
 - WHHIG, and
- Job classifications of ADM2, ADM3 and ADM4 in Health and Safety Operations – North, West or East Region.

15. The following employees are also excluded from participating in the Scheme:

- on unpaid leave,
- on probation or trial,
- in fixed term (including executives) or casual role,
- WorkCover recipients, and
- essential services staff referred to in paragraph 14 above.

16. The maximum number of packages available under the Scheme, to the 150 eligible employees is limited to 25 VDP packages allocated as follows:

Class	Maximum number
Group Leader roles (PM2 and PM3 classifications) across all divisions included in the Scheme	5
Administration roles (ADM2, ADM3 and ADM4 classifications) in these areas: PSD, OSD, WHHIG, and the Office of the General Manager	3
All eligible employees in WHHIG	5
All eligible employees in OSD	4
All eligible employees in PSD	8
Total	25

17. If the number of employees seeking access to the Scheme exceeds the number of packages available, offers will be made to eligible employees who have the longest recognised continuous service with WorkSafe.

18. Where two or more employees of the same category of eligible employees seek access to the Scheme and all have the same length of service, offers will be made to the employee on the basis of the date and time the application is first received.

19. Participation in this scheme is voluntary.

20. The Scheme will operate from 23 October 2013 to 30 June 2014.

21. Following approval of the Scheme, employees will have 14 calendar days to express their interest to participate on the Scheme.

22. Departure offers with quotes and exit dates will be made to eligible employees over two weeks after closure of the expression of interest period. Employees will have seven calendar days to accept the offer.

23. All eligible employees will terminate employment and receive payments under the scheme no later than 30 June 2014.

24. All eligible employees under the Scheme will be offered a lump sum payment as follows:

- (a) four weeks' pay in lieu of notice of 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 years of continuous service in the Victorian Public Sector up to a maximum of 15 years.
25. 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.
26. Where an employee who is offered a Voluntary Departure Package (VDP) has less than one year's service, they will receive a corresponding fraction of the VDP they would have been paid at one year.
27. All employees terminated under the Scheme will receive their accrued annual leave and unused long service leave entitlements in accordance with the Victorian WorkCover Authority Enterprise Agreement 2012. However they do not form part of the payment made under the Scheme.
28. The payments made under the Scheme will be at arm's length.
29. The payments made under the Scheme do not include any payment in lieu of superannuation benefits.
30. Recipients of the Scheme are required to agree not to seek or accept re-employment or any other fee for service from any Victorian Public Sector employer for a minimum of three calendar years from the date of their separations.
31. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.
32. For payments made to eligible employees who have reached age 65 or over 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 taxed as employment termination payments up to the employment termination payment cap (ETP cap).

Ruling

33. The early retirement scheme to be implemented by the Victorian WorkCover Authority is an early retirement scheme for the purposes of section 83-180.
34. 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.
35. 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.

Class Ruling

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Page status: **legally binding**

Commissioner of Taxation

23 October 2013

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.*

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

37. 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

38. 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).

39. The class of employees to whom early retirement will be offered is set out in paragraphs 13-15 of this Ruling.

40. 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

41. 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).

42. Paragraphs 10-12 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

43. The scheme is proposed to operate for a period from 23 October 2013 to 30 June 2014. Approval was granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), the third condition is satisfied.

44. The scheme will be in operation for approximately nine months. This is considered to be 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

45. 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.

46. 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)).

47. 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'.

48. 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.

49. 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.

50. The total of the amount received on the termination of employment calculated in accordance with paragraphs 24 to 25 of this ruling may qualify as an early retirement scheme payment.

51. The total payment calculated in accordance with paragraphs 24 to 25 of this ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 49 of this ruling to determine the 'tax-free' amount of the early retirement scheme payment.

52. The 'tax-free' amount will:

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

53. 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.

54. It should be noted the 'whole of income' cap does not apply to any part of the early retirement scheme payment.

Appendix 2 – Detailed contents list

55. 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)

Subject references:

- early retirement scheme payment
- employment termination payment

- 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

Legislative references:

- ITAA 1997

ATO references

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